

BUDD-FALEN LAW OFFICES

L.L.C.

ATTORNEYS FOR THE WEST

KAREN BUDD-FALEN
BRANDON L. JENSEN¹
KATHRYN BRACK MORROW^{1,2}

300 EAST 18TH STREET • POST OFFICE BOX 346
CHEYENNE, WYOMING 82003-0346
TELEPHONE: 307/632-5105
TELEFAX: 307/637-3891
WWW.BUDDFALEN.COM

FRANKLIN J. FALEN³
JOSHUA TOLIN¹
³ ALSO LICENSED IN NEBRASKA, SOUTH
DAKOTA AND NORTH DAKOTA

¹ ALSO LICENSED IN COLORADO
² ALSO LICENSED IN NEW MEXICO

MEMORANDUM

TO: INTERESTED PARTIES

FROM: KAREN BUDD-FALEN
BUDD-FALEN LAW OFFICES, LLC

DATE: JUNE 25, 2013

RE: FREEDOM OF INFORMATION ACT ABUSE

Since 2009, Western Watersheds Project (“WWP”) has issued at least 675 Freedom of Information Act (“FOIA”) requests just to the BLM and Forest Service, related to livestock grazing on the public lands. Although I did not read all 675 requests, I did find some letters that demanded information for as many as 50 allotments in one single FOIA request. Most WWP FOIAs also wanted documents from multiple years and on multiple subjects. Many of the requests included instructions to the BLM or Forest Service offices stating that the response to WWP should be sent electronically or in a certain format. While the FOIA requires that the federal government make certain documents available, can a requester really dictate the format of the response?

Additionally, for every request, WWP argues that they should receive all information free of charge because they are:

a non-profit membership organization dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP has over 1200 members WWP is active in seeking to protect and improve the riparian areas, water quality, fisheries, wildlife, and other natural resources and ecological values of western watersheds. To do so, WWP actively participates in agency decision-making concerning BLM [Forest Service] lands throughout the West, and the BLM’s management of livestock grazing in Idaho, Nevada, Utah, and Wyoming.*

WWP is effective at increasing public awareness of environmental matters, such as protection of the diverse and valuable sagebrush-steppe ecosystem, through public education and outreach, participation in administrative processes, litigation and other enforcement of federal environmental laws.

(*WWP uses this same language to justify its fee waiver requests in Montana, California, Arizona and New Mexico as well).

In contrast, if a rancher/permittee requests that very same information about his allotment requested by WWP, the BLM or the Forest Service will charge him \$42.00 per hour for administrative search time and \$.15 per page for each photocopy made. It seems backwards to me that a rancher is charged for “administrative search time” and photocopy costs to see what is in his own files, yet a group whose stated goal is to “get cows off the public lands ASAP” gets that exact same information for no charge at all (not even charging out-of-pocket costs).

In addition to the sheer volume of FOIA requests and the mass of information requested in each of the individual requests by WWP, other issues are of note:

First, in addition to requesting information about individual allotments or groups of allotments, some of WWP FOIAs request documents and information about named individuals. Of the FOIAs I reviewed where WWP wanted information about named ranchers or other individual ranchers, not one of the ranchers was contacted by the BLM or Forest Service before their information was released to WWP.

Second, a great number of FOIAs requested the same information over and over. For example, in 2009, a FOIA would request all monitoring data “gathered or generated to date” for an allotment or large group of allotments. The exact same FOIA will then be filed in 2010 requesting all monitoring data “gathered or generated to date” about the same allotment or groups of allotments. The same FOIA will then be filed in 2011. There is no mention in any of these FOIAs that the BLM or Forest Service had already supplied a great deal of the requested information in the past—the agency simply has to relocate and copy the same information over and over again—all at the public’s expense.

Third, if these radical groups do not receive the information they want – for free – federal court litigation follows, again at the taxpayers’ expense. The vast amount of FOIA cases filed by environmental groups only included the filing of a federal district court complaint, a settlement agreement for the release of the requested information and the payment of attorneys fees. Fee payments were anywhere from \$5000 to \$50,000.

In May, 2013, the Chairman of the Committee on Oversight and Government Reform for the U.S. House of Representatives, the Ranking Members of the Committee on Environment and Public Works and the Committee on the Judiciary for the U.S. Senate sent a letter to the Environmental Protection Agency (“EPA”) strongly questioning EPA’s practice of “readily grant[ing] FOIA fee waivers for liberal environmental groups – effectively subsidizing them – while denying fee waivers and making the FOIA process difficult for states and conservative groups.” It is clear from the above research that the EPA is not the only agency who engages in such practice. Ranchers who should have the information that is kept in their files are forced to pay excessive amounts for

information while radical environmental groups pay no fees for using this exact same information to file substantial numbers of administrative appeals and federal court litigation against these ranchers. With these radical groups, it is not a matter of providing fair public information; it is a matter of pushing a political agenda being subsidized by the taxpayers.

While there is no question that FOIA is an important statute to allow the public to get information from the federal government, this short essay points out the serious inequities in how the statute is implemented. Individuals are forced to pay search time and copy costs for the information gathered about them and located in their own files, while radical environmental groups can get the same documentation for free to use in litigation against the federal agency and rancher. Is that really the purpose of FOIA?

-END-