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Executive Secretariat—FOIA Regulations  
Department of the Interior  
1849 C Street NW  
Washington, DC 20240

To Whom It May Concern:

Western Values Project (WVP) is writing to express opposition to the Department of Interior (Interior)'s proposed rule to amend its Freedom of Information Act (FOIA) Regulations (Docket No. DOI-2018-0017) proposed on December 28, 2018. As an organization that brings transparency to the public lands debate, WVP is especially concerned about the rule's potential for giving Interior wide discretion to deny requests it deems "unreasonably burdensome."<sup>1</sup> This provision, along with others that would let Interior off the hook for its obligation to disclose records requested under FOIA in a timely fashion, would significantly impede the public's ability to hold Interior accountable. Moreover, this proposal is simply the latest example of the agency's politicization of Interior's FOIA program, and represents a blatant attempt to obscure the Trump administration's unpopular anti-public lands policies from public scrutiny.

The proposed rule gives Interior wide discretion to limit its responses to some requests and deny others altogether. Under the new rule, requesters would have to "describe the records [they] seek sufficiently to enable a professional employee familiar with the subject to locate the documents with a reasonable effort."<sup>2</sup> This hardly gives requesters a concrete framework to follow in describing the content of their request. What constitutes "sufficient" for an Interior employee with great experience with the subject will likely not constitute "sufficient" for an employee with less experience, and in turn could make the FOIA process inconsistent and unpredictable. The proposed rule says that "extremely broad or vague requests...do not satisfy this requirement," without defining what exactly constitutes "broad" or "vague."<sup>3</sup> The proposed rule also allows Interior to deny a request that "requires an unreasonably burdensome search," without defining "unreasonably burdensome."<sup>4</sup>

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<sup>1</sup> Proposed 43 C.F.R. § 2.5 (d).

<sup>2</sup> Proposed 43 C.F.R. § 2.5 (d).

<sup>3</sup> Proposed 43 C.F.R. § 2.5 (d).

<sup>4</sup> Proposed 43 C.F.R. § 2.5 (d).



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The proposed rule itself provides little useful guidance on the criteria governing the style and substance of FOIA requests, leaving requesters at the essentially unfettered discretion of those processing their FOIA requests. However, when situated within the broader context of overt politicization of the Interior's FOIA program, these changes are all the more troubling: In November, former Secretary Ryan Zinke issued a secretarial order giving acting Interior Acting Solicitor Daniel Jorjani the authority to oversee all FOIA requests at the agency.<sup>5</sup> Jorjani's role as a political appointee casts doubt on his ability to impartially run the FOIA program, a role that has traditionally been served by career officials. Indeed, one of Jorjani's first moves after taking the reins of the FOIA office was to make public a proposal to issue these sweeping changes at a time when few would be paying attention -- three days after Christmas, during a government shutdown.<sup>6</sup> If the proposed rule goes into effect, Jorjani and other political appointees at Interior could hypothetically deny FOIA requests simply because the responsive documents would be controversial, embarrassing, or would reveal the political underpinnings of major policy decisions.

The proposed rule also allows Interior to limit the number of records it processes per month,<sup>7</sup> providing cover for Jorjani to delay processing of FOIA requests that could produce documents portraying Interior in an unfavorable light. Nowhere in the text of FOIA does the statute authorize such a limit. What can be found in the law, however, is a definitive obligation on federal agencies to provide records to those requesting them in a prompt manner.<sup>8</sup> The proposal even removes any obligation of Interior to comply with deadlines for document production by replacing the word "will" with "would generally" in connection with the timeframes for response.<sup>9</sup> This would allow Interior to delay its responses to requests indefinitely, directly conflicting with the language of the statute that mandates agencies "exercise due diligence" in responding to FOIA requests.<sup>10</sup>

Finally, it is unclear whether Jorjani, whose appointment as Acting Solicitor has never been confirmed by the United States Senate, is even authorized to issue this rule. Jorjani's time spent as an "acting" official exceeds the limit of 210 days set forth in the Federal Vacancies Reform Act (FVRA), which prohibits the President from appointing officials to serve as "acting" directors for long periods and completely bypass Senate confirmation.<sup>11</sup> The position of Solicitor for DOI has remained vacant for the last two years.

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<sup>5</sup> Secretarial Order 3371; *see also* Miranda Green, *Former Koch adviser to oversee Interior Department's FOIA requests*, The Hill (Dec. 10, 2018).

<sup>6</sup> Rebecca Kern, *Interior Proposing to Ignore Certain 'Burdensome' FOIA Requests*, Bloomberg Environment (Dec. 28, 2018).

<sup>7</sup> Proposed 43 C.F.R. § 2.14.

<sup>8</sup> 5 U.S.C. § 552 (a)(3)(A).

<sup>9</sup> Proposed 43 C.F.R. § 2.15

<sup>10</sup> 5 U.S.C. § 552(a)(6)(D)(iii).

<sup>11</sup> 5 U.S.C. § 3346(a)(1).



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Jorjani was announced as the new Principal Deputy Solicitor on May 26, 2017.<sup>12</sup> Pursuant to FVRA Jorjani—the Principal Deputy Solicitor and therefore the “first assistant” to the Solicitor—automatically took over in an acting capacity during the summer of 2017. As a result, Jorjani’s time as an “acting” official well exceeds the limit of 210 days proscribed by the Act, calling into question his authority to promulgate regulations.<sup>13</sup>

Interior’s job is to ensure activities taking place on public lands follow laws. A robust FOIA program is essential to ensure Interior is acting in the public interest and complying with applicable regulations. Using documents obtained through FOIA, government oversight organizations have been able to expose Interior appointees’ troubling conflicts of interest and even potentially illegal activity taking place within the department and its agencies. The FOIA review process has revealed that Interior’s motive behind an unprecedented review of national monuments was the oil and gas industry’s desire to privatize the land for resource extraction,<sup>14</sup> as well as a secret meeting between Zinke and a real estate officer that later led to an investigation by the Interior Inspector General.<sup>15</sup> The proposed changes to the Interior Department’s FOIA program would prevent this type of crucial citizen oversight from taking place. At a time when the political appointees at the Interior Department have proven themselves more than willing to prioritize industry interests and personal enrichment over public lands, wildlife, and the American public, this oversight is more necessary than ever.

Sincerely,

Chris Saeger  
Executive Director  
Western Values Project

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<sup>12</sup> DOI, Interior Announces 19 New Hires (May 26, 2017)  
<https://www.doi.gov/pressreleases/interior-announces-19-new-hires>.

<sup>13</sup> DOI, Interior Announces 19 New Hires (May 26, 2017)  
<https://www.doi.gov/pressreleases/interior-announces-19-new-hires>.

<sup>14</sup> Eric Lipton & Lisa Friedman, *Oil Was Central in Decision to Shrink Bears Ears Monument, Emails Show*, N.Y. Times (Mar. 2, 2018).

<sup>15</sup> Coral Davenport, *Inquiry Into Ryan Zinke Land Deal Is Said to Escalate*, N.Y. Times (Oct. 30, 2018).