

TO: DAD OCIO PMSP

FROM: WASO FOIA Office

RE: Awareness Review Process Delays

DATE: December 12, 2018

Current Status:

The Awareness Process [memo](#) issued by the DOI FOIA Officer, Cindy Cafaro on May 24, 2018, directed the National Park Service to review FOIA responses for any records that reference or contain email communications with Presidentially Appointed, Senate Confirmed (PAS), Non-Career Senior Executive (NCSE), and/or Schedule C employees. Bureau FOIA staff were to then to provide identified personnel a 72 hour Awareness Review notification of the pending FOIA release. The memo also specifically stated that the review was to be conducted within the existing legal FOIA response deadlines.

Currently there are ten requests that have been sent up for the required awareness review. NPS FOIA personnel have been instructed by DOI staff to hold off on issuing responses for nine of those requests, seven of which are now on the FOIA backlog. For two of the nine requests holds were requested for responses that consisted of records that had been previously released under FOIA.

One of the requests instructing NPS to delay the issuing of responses was issued so as to verify the adequacy of the search and the completeness of the response. One other request to delay issuing a response raised the issue of whether the information could be withhold as deliberative and predecisional. However, no further response has been received to the message sent to the party requesting the hold summarizing the Solicitor consult results, which found that there was no justification for withholding as deliberative and predecisional. The remaining eight hold requests contained no information as to the reason or justification for delaying the responses.

Potential Risks:

Delays resulting from the Awareness Review process, which prevent the NPS from responding to requests within the legally required 20 workday time frame, are preventing the NPS from meeting its legal obligations under the FOIA. Such delays leave the NPS open to potential litigation, which could result in the assessment of attorney fees. Such fees would need to be paid

out of the relevant NPS units' operating budgets, even if the failure to issue a timely response directly resulted from Awareness Review delays.

Since many of these requests have been submitted by members of the media there is also a risk that the NPS could be subject to media scrutiny relating to this issue, similar to coverage, such as [this](#) or [this](#), of the Department of Homeland Security in 2010, which ultimately resulted in a Congressional committee [investigation](#), and further OIG investigations.

Requested Action:

The NPS FOIA Officer and the WASO FOIA Liaison accordingly request that this issue be escalated to Senior NPS management so that they are aware of the risks and can make determinations as to any further NPS actions.