



BUFFALO
FIELD CAMPAIGN

18-18
NPS-2018-00887

FREEDOM OF INFORMATION ACT REQUEST

June 20, 2018

Superintendent
Office of the Superintendent
Yellowstone National Park
PO Box 168
Yellowstone National Park, WY 82190-0168
Phone: (307) 344-2002
Fax: (307) 344-2014
E-Mail: kerrie_evans@nps.gov

Dear Kerrie Evans,

Pursuant to the Freedom of Information Act 5 U.S.C. § 552 et. seq. and the U.S. Department of the Interior's regulations 43 C.F.R. §§ 2.1-2.290 (Jan. 19, 2017), Buffalo Field Campaign is filing a request for public information and records.

REQUESTED RECORDS

Buffalo Field Campaign requests all records from the Office of the Superintendent, Yellowstone National Park concerning the following subject matter:

1. The policy surrounding the size of the bison population or herds in the Yellowstone ecosystem.
 - a. Exclude the bison census or population size estimates produced by Yellowstone National Park.
 - b. Exclude Yellowstone National Park records available on ibmp.info.

The time period for the requested records is March 1, 2017 to June 20, 2018.

"Protecting the Last Wild Bison"

PO BOX 957 | WEST YELLOWSTONE, MT 59758 | 406.646.0070

WWW.BUFFALOFIELDCAMPAIGN.ORG

“Office of the Superintendent” refers to the Superintendent, Office of the Superintendent staff and personnel acting under the authority or on behalf of the Superintendent.

“All records” refers to, but is not limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, recordings, telephone records, voicemails, telephone notes, telephone logs, text messages, chat messages, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.

Buffalo Field Campaign’s Freedom of Information Act request *is not meant* to exclude any other records that are reasonably related to the subject matter of our request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Buffalo Field Campaign is willing to receive records on a rolling basis.

RELEASE NON-EXEMPT REQUESTED RECORDS

As you know, the Freedom of Information Act provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed within the statutory time limit. 5 U.S.C. § 552(b).

Should you decide to invoke an exemption, Buffalo Field Campaign requests all non-exempt portions of the requested records and asks that you justify your decision by reference to specific exemptions allowed under the Freedom of Information Act. Please include sufficient information for Buffalo Field Campaign to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please provide a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

Buffalo Field Campaign reserves the right to appeal a decision by the agency to withhold any requested records.

FORMAT REQUESTED

Under the Freedom of Information Act, you are obligated to provide records in a readily accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). “Readily accessible” means text-searchable and OCR-formatted records. 5 U.S.C. § 552(a)(3)(B).

In responding to our Freedom of Information Act request, Buffalo Field Campaign requests the agency reduce costs and waste by providing the requested records in electronic format on a web site for downloading, or on a USB stick, or CD/DVD that can be mailed to the address below.

Please do not provide the records in a single or “batched” PDF file. Please do not provide files in portfolios and embedded files within PDF files as these documents are not “readily accessible.”

You may include an index.

RECORD DELIVERY

Buffalo Field Campaign appreciates your help in obtaining a determination of the requested records within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 5

C.F.R. § 1303.10(c). Failure to comply within the statutory timeframe may result in Buffalo Field Campaign taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. You may deliver the requested records to:

Darrell Geist
Buffalo Field Campaign
PO Box 957
West Yellowstone, MT 59758
z@wildrockies.org

If our Freedom of Information Act request is unclear, if the responsive records are voluminous, or if I can be of assistance in expediting our request for records, please contact me at (406) 531-9284 or z@wildrockies.org.

FEE WAIVER REQUESTED

Buffalo Field Campaign requests a fee waiver for all search and duplication fees under the Freedom of Information Act and its implementing regulations. 5 U.S.C. § 552(a)(4)(A); 43 C.F.R. § 2.45. A fee waiver and release of the information and records requested will benefit the people of the United States by fostering public understanding of government activities and encouraging public involvement in important policy and management issues of bison as a wildlife species in Yellowstone National Park, the state of Montana, and the public trust interests of American Indian tribes and the American people.

The language of the Freedom of Information Act clearly indicates the U.S. Congress intended fees not to be a barrier to private individuals or public interest organizations seeking access to government information and records. In addition, the legislative history of the Freedom of Information Act fee waiver language indicates the U.S. Congress intended a liberal interpretation of the phrase "primarily benefiting the public." This suggests that all fees are to be waived whenever the release of information contributes to public debate on important public policy and management issues. This standard has been affirmed by the U.S. Court of Appeals for the District of Columbia in *Better Government Association v. Department of State*, 780 F.2d 86 (D.C. Cir. 1986). In *Better Government*, the D.C. Circuit Court found that under the Freedom of Information Act, the U.S. Congress explicitly recognized the need for non-profit organizations to have free access to government

documents and those government agencies cannot impair this free access by charging duplication or search fees for Freedom of Information Act requests. *Better Government*, 780 F.2d at 89.

The Freedom of Information Act was designed to provide citizens a broad right to access government records. Its basic purpose is to “open agency action to the light of public scrutiny.” *U.S. Department of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 772 (1989) (internal quotation and citation omitted). “The generation that made the nation thought secrecy in government one of the instruments of Old World tyranny, and committed itself to the principle that a democracy cannot function unless the people are permitted to know *what their government is up to*.” *Freedom of Press*, 489 U.S. at 772-773 (internal quotation and citation omitted). In order to provide public access to this information, its fee waiver provision requires that “[d]ocuments shall be furnished without any charge or at a [reduced] charge,” if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The fee waiver requirement is “liberally construed.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Department of the Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Buffalo Field Campaign access to government records without the payment of fees. Indeed, the Freedom of Information Act’s fee waiver provision was intended by the U.S. Congress “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars and non-profit public interest groups.” *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).

Buffalo Field Campaign Qualifies for a Fee Waiver

Under the Freedom of Information Act, a party is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a)–(f).

A. The Subject Matter of our Freedom of Information Act Request Concerns the “Operations and Activities of the Government.”

The subject matter of our Freedom of Information Act request concerns the operations and activities of the Superintendent, and the Office of the Superintendent, in bison management in Yellowstone National Park and the state of Montana, the associated Interagency Bison Management Plan, and the legal and public trust responsibilities of the Superintendent.

Release of the requested records will provide Buffalo Field Campaign and the public with crucial insight into the Office of the Superintendent's role in managing American bison and the ecosystems upon which the native species depends, a subject of immense public interest for the past several decades. The subject is of broad public interest due to the substantial taxpayer moneys spent, the significance held for this remnant bison population by the public at large, and the public's interest in the execution of the U.S. government's trust and legal responsibilities.

It is clear that the role of the Superintendent and the Office of the Superintendent in managing bison held in the public trust is a specific and identifiable activity of the government, in this case the executive branch agency of the U.S. National Park Service. *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1313 (D.C. Cir. 2003) ("reasonable specificity" is all that is required). Thus, Buffalo Field Campaign meets this factor.

B. Disclosure of Requested Records is "Likely to Contribute" to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities. Release of the requested records will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow Buffalo Field Campaign to convey to the public information about the role of the Superintendent, and the Office of the Superintendent, in bison operations or activities, public trust management of National Parks and the ecosystems upon which bison depend for survival, and the legal and public trust interests of American Indian tribes and the American people.

Once records are available, Buffalo Field Campaign will review and analyze it and present it to the general public in a manner that will meaningfully

enhance the public's understanding of government operations or activities.

Release of the requested records is likely to contribute to an understanding of the operations and activities of the Superintendent, and the Office of the Superintendent, in managing public trust bison and National Parks, and the legal and public trust interests of American Indian tribes and the American people.

C. Disclosure of Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons' Understanding Government Operations or Activities.

Release of the requested records will contribute to public understanding of how the Superintendent, Office of the Superintendent, National Park Service manage bison and Yellowstone National Park in light of their statutory duties under the Organic Act, a host of environmental and cultural resource laws, and the legal and public trust concerns held by American Indian tribes and the American people.

As explained herein, disclosing the records will contribute to public understanding of the role of the Superintendent in caretaking bison and Yellowstone National Park, and reasonably reach a broad audience of interested persons who can influence bison management, specifically in Yellowstone National Park and the state of Montana, through the associated Interagency Bison Management Plan.

Buffalo Field Campaign will use the information it obtains from the disclosed records to educate the public at large about how National Parks are being managed and how bison are being managed – operations or activities of government involving the U.S. National Park Service, the Superintendent, and the Office of the Superintendent.

Through Buffalo Field Campaign's synthesis and dissemination (by means discussed herein), disclosure of information contained in and gleaned from the requested records will contribute to the understanding of a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F. Supp. 867, 876 (D. Mass. 1984) (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Department of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994)

(applying the term “public” to include a sufficient “breadth of benefit” beyond the requester’s own interests); *Community Legal Services. v. U.S. Department of Housing & Urban Development*, 405 F. Supp. 2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience . . . there is a segment of the public that is interested in its work”).

Indeed, the public does not currently have an ability to evaluate the requested records, which concern how the Superintendent, Office of the Superintendent, National Park Service manage bison in light of their public trust and statutory duties under the Organic Act, and numerous environmental and cultural resource laws. To the best of our knowledge, none of the requested records are currently in the public domain, *e.g.*, the U.S. National Park Service’s FOIA Library (<https://www.nps.gov/aboutus/foia/foia-reading-room.htm>). *See Community Legal Services. v. HUD*, 405 F. Supp. 2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts” about agency policy, the documents sought by the requestor “would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), “Legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations”

Disclosure of requested records is not only “likely to contribute,” but is certain to contribute, to public understanding of the role of the Superintendent and the Office of the Superintendent, in executing their public trust duties and legal responsibilities concerning bison and National Parks.

The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions and public trust responsibilities. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties concerning bison and National Parks.

D. Disclosure of Requested Records is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

Buffalo Field Campaign is requesting the disclosure of records to significantly enhance the public's understanding of the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties carried out concerning bison and National Parks.

Disclosure of the requested records will enhance what is publicly known or readily available. Disclosure will significantly enhance the public's understanding because the requested records will help reveal more about the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties carried out concerning bison and National Parks.

Disclosure of requested records to Buffalo Field Campaign is also certain to shed light on the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties carried out concerning bison and National Parks.

The release of information and records is for the public's benefit and in the public's interest and will be made available to the public at large through Buffalo Field Campaign's offices and our website, list-serve and network outlets. Information and records available to Buffalo Field Campaign are used in press conferences and releases, television and radio interviews, regional and national publications, local and national broadcast networks, in public meetings and before legislative bodies, is shared online through a variety of platforms that reaches the public nationwide and abroad, and shared with people traveling through Yellowstone National Park on an annual basis through our summer outreach programs. These and other Buffalo Field Campaign activities described herein significantly contribute to the public's understanding of government operations and activities.

Public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the Freedom of Information Act. Buffalo Field Campaign meets this factor as well.

Buffalo Field Campaign has a Demonstrated Ability to Disseminate the Requested Records Broadly

Buffalo Field Campaign is a non-profit organization that informs, educates, and engages the public regarding bison management issues, policies, and laws. Buffalo Field Campaign has been substantially involved in the activities of

numerous government agencies for over 20 years and consistently demonstrated its ability to disseminate information granted to it through the Freedom of Information Act.

In consistently granting Buffalo Field Campaign fee waivers, agencies have recognized: (1) the information requested by Buffalo Field Campaign contributes significantly to the public's understanding of the government's operations or activities; (2) the information enhances the public's understanding to a greater degree than currently exists; (3) Buffalo Field Campaign possesses the expertise to explain the requested information to the public; (4) Buffalo Field Campaign possesses the ability to disseminate the requested information to the general public; and (5) news outlets and reporters recognize and rely upon Buffalo Field Campaign as an on the ground, and expert source of information on bison, and the ecosystem they depend on for survival.

Buffalo Field Campaign's track record of active participation in oversight of governmental activities and decision making, and its consistent contribution to the public's understanding of those activities, as compared to the level of public understanding prior to disclosure, are well established.

Buffalo Field Campaign intends to use the records requested here similarly. Information and records obtained by Buffalo Field Campaign appear in news stories online and in print, radio and TV, including regular reporting in local, regional, national, and international outlets. Buffalo Field Campaign's extensive website reaches a broad level of people. Buffalo Field Campaign sends out weekly and biweekly updates and action alerts to a network of supporters throughout the United States. Buffalo Field Campaign sends and distributes an annual printed newsletter to more than 45,000 people. A diverse and broad group of people has joined Buffalo Field Campaign's social media platforms to regularly post news and take action items concerning bison.

Buffalo Field Campaign is also a source of news based on our capacity as an in the field organization providing information and news reports to people located throughout the United States, to broadcast networks and news media outlets in the United States and abroad, and to various local, regional, and international communities.

Buffalo Field Campaign intends to use any or all of these far-reaching public outlets to share with the public information obtained as a result of our Freedom of Information Act request.

Public oversight and enhanced understanding of the Office of the Superintendent's legal and public trust duties is a matter of public interest and an on-going concern.

In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. *Carney v U.S. Department of Justice*, 19 F.3d 807 (2nd Cir. 1994). Buffalo Field Campaign need not show exactly how it intends to distribute the information, because "nothing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). It is sufficient for Buffalo Field Campaign to show how it distributes information to the public generally. *Judicial Watch*, 326 F.3d at 1314.

Obtaining the Requested Records is of No Commercial Interest to Buffalo Field Campaign

Access to government records through Freedom of Information Act requests is essential to Buffalo Field Campaign's role in educating, informing, and engaging the general public. Founded in 1997, Buffalo Field Campaign is a 501(c)(3) nonprofit organization (EIN: 36 3964401) with supporters found throughout the United States who are dedicated to the protection of bison in the wild and the ecosystems upon which they depend for survival.

Buffalo Field Campaign has no commercial interest and will realize no commercial benefit from the release of the requested records.

For all of the foregoing reasons, Buffalo Field Campaign qualifies for a full fee waiver. We hope that the Office of the Superintendent will immediately grant our fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

All records and any related correspondence should be sent to my attention at the address below.

Thank you for your time and assistance.

Sincerely,

/s/

Darrell Geist
Buffalo Field Campaign
PO Box 957
West Yellowstone, MT 59758
z@wildrockies.org