



United States Department of the Interior



MINERALS MANAGEMENT SERVICE
Minerals Revenue Management
P.O. Box 25165
Denver, Colorado 80225-0165
www.mrm.mms.gov

MRM/ITC/IMG/FOIA
Mail Stop 340A1
FOIA No. 2005-024

FEB - 3 2006

Mr. Jonathan A. Hunter
Liskow & Lewis
One Shell Square
701 Poydras Street, Suite 5000
New Orleans, Louisiana 70139-5099

Dear Mr. Hunter:

This is in response to your May 17, 2005, Freedom of Information Act (FOIA) request, which was amended on June 20, 2005, to reduce the scope and again on January 24, 2006 to agree to fees of \$2,316.38, included as Enclosures 1A, 1B and 1C.

Enclosure 2A is three expanding folders which contain 1,723 documents which are responsive to your request. We are not providing duplicate attachments or documents unless they contain edits, handwritten notes, changes, etc., as agreed in a January 5, 2006 email (Enclosure 2B).

Our policy, in keeping with the spirit of the FOIA, is the prompt release of records to the greatest extent possible. At the same time, we must protect the rights of individuals and the administrative processes surrounding such rights. The FOIA regulations require us to withhold information protected under FOIA exemptions at 43 CFR § 2.23 (2005) when disclosure is prohibited by statute or Executive Order, or if sound grounds exist to apply an exemption. Portions of the records responsive to your request are being withheld under Exemptions 2 and 5 of the FOIA.

The provisions of 5 U.S.C. 552(b)(2) exempt from release information which is "predominantly internal" and its disclosure, "significantly risks circumvention of agency regulations or statutes. "Release of various categories of information . . . [have] been found likely to result in harmful circumvention. . . [such as]. . . agency audit guidelines." We have applied this exemption to certain portions of documents which contain strategies and details of our auditing practices. Release of this data could limit our auditors' ability to conduct company audits in the future.



Exemption 5 of FOIA permits an agency to withhold, "...interagency or intra-agency memorandums or letters that would not be available by law to a party...in litigation with the agency." Deletions are marked as "X-5" to indicate exemptions under the deliberative process privilege. We are withholding these materials because they reflect the personal opinions, recommendations or advice of staff members, as well as pre-decisional deliberations between DOI employees and others. Disclosure of such material would inhibit the open and candid expression of such views in future deliberations, confuse the public as to the official agency position on an issue, and have a detrimental effect on our decision making process.

We are also withholding, in their entirety under Exemption 5, the following documents:

Under the attorney-client portion: "Briefing Outline--July 23, 2003," originally attached to July 22, 2003 email from Evelyn Marlowe to John Russo, et al.

Under the deliberative process privilege: three separate iterations of drafts of 30 CFR Part 206 and the Record of Compliance, these were originally attached to different emails (August 18, 2003 from Deborah Gibbs Tschudy to Larry Cobb, et al.; August 27, 2003 email from Larry Cobb to Debbie Gibbs Tschudy; June 30, 2004 email from Deborah Gibbs Tschudy to Rich Adamski, et al.; November 29, 2004 email from Amy Lunt to Mary Williams, et al.)

Under both Exemptions 2 and 5, we are withholding in their entirety three iterations of the following document:

"Guidelines for Valuing Federal Gas Sold as Unprocessed under Non-Arms Length Contracts," titled within the emails, "Sales to Affiliate audit guidelines," these documents were originally attached to January 30, 2004 email from Nagaraja Kirumakki to Shirley Burhop, et al; February 24, 2004 email from Shirley Burhop to Brian Johnson et al.; and February 25, 2004 from Karen Conway to Shirley Burhop, et al.

Under both Exemptions 4 and 5, we are withholding in their entirety the attachments to February 4, 2004 email from Karen Conway to Shirley Burhop, et al.

Exemption 4 of the FOIA exempts from disclosure "...trade secrets and commercial or financial information obtained from a person and privileged or confidential." We apply this exemption because the public release of this financial information could jeopardize the competitive and financial standing of those parties associated with it.

As the Minerals Revenue Management FOIA Officer, I am the official denying portions of your request. If you disagree with this determination, you have the right, under Department of the Interior regulations at 43 C.F.R. § 2.28 (2005), to appeal to:

Mr. Jonathan A. Hunter

3.

Freedom of Information Act Appeals Officer
Office of the Solicitor
Mail Stop 7456-MIB
1849 C Street, NW
Washington, DC 20240

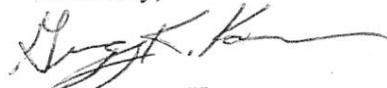
Your written appeal must be delivered to the FOIA Appeals Officer no later than 30 working days from the date of this letter. The appeal must include copies of your original request and of the initial denial. To expedite the appellant process and to ensure full consideration of your appeal, include a brief statement as to why you believe this decision is in error. Both the envelope containing the appeal and the face of the appeal itself should include the legend "FREEDOM OF INFORMATION ACT APPEAL."

In accordance with 43 C.F.R. § 2.16 (2005), we assess user fees to fulfill a FOIA request. Personnel charges cover our costs to conduct document searches and to review, identify, and delete privileged and confidential information. Other charges cover the direct costs of providing the material.

Enclosure 3 contains two copies of your bill for \$2,282.19, the cost to fulfill your request. Please include one copy of the bill with your payment and retain the other for your records.

If you have any questions, please contact Tracey Fay at (303) 231-3430.

Sincerely,



Gregory K. Kann
Freedom of
Information Act Officer

Enclosures

1A—Request letter
1B—June 20, 2005 amendment
1C—January 24, 2006 email
2A—Responsive Information
2B—January 05, 2006 email
3 —Bill for Collection

CC:
Rodney Viera-Solicitor's Office
Darrell Strayhorn-DOI FOIA Appeals Officer

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New Orleans, Louisiana
May 17, 2005

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FOIA 2005-024
Rec'd 5/20/05
A. Barcraft

Ms. Ginny Morgan
FOIA Officer
United States Department of the Interior
Minerals Management Service
381 Elden Street, MS 2220
Herndon, VA 20170-4817

Diana Ostenson
MRM FOIA Officer
Minerals Management Service
Minerals Revenue Management
PO Box 25165, Mail Stop 340B2
Denver, CO 80225-0165

Re: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the provisions of 43 CFR §§ 2.7 et seq., we request copies of the documents described below.

These documents are being requested for commercial use. This law firm agrees to pay all fees chargeable under the regulations for locating, reproducing and mailing the requested documents. However, if such fees exceed, or are anticipated to exceed \$500.00, please call me at (504) 556-4131 before you proceed any further with responding to this request.

For purposes of the following requests, (a) the term "document" means all written or recorded material of any kind or character in your possession, custody or subject to your control, or within your knowledge, including, without limitation, documents, statements, letters, correspondence, papers, telegrams, memoranda, notes, records, reports, studies, interoffice communications, calendar and diary entries, microfilm, bulletins, electronic mail, circulars, pamphlets, messages, invoices, maps, charts, tabulations, summaries or abstracts, tape recordings, work sheets, any notes or writings pertaining to any meetings, oral or telephone

communication, surveys, graphs, statistics, tables, any computer print-outs, photographs, rules, regulations, opinions, orders, directives, interpretations, procedures, guidelines, manuals, and all other documentary material (including material transmitted and/or stored electronically), including non-identical copies (whether different from the original because of any alterations, notes, comments or other material contained thereon or attached thereto or otherwise, and whether a draft or final version); (b) the term "relating to" and its cognates means to make a statement about, set forth, refer to, discuss, describe, reflect, identify, deal with, consist of, explain, comprise, or in any way pertain in whole or in part, directly or indirectly, to the subject; (c) the term "*Fina Decision*" means the federal court decision dated June 27, 2003 and reported as *Fina Oil and Chemical Company v. Norton*, 332 F.3d 672 (D.C. Cir. 2003); (d) the term "MMS" means the Minerals Management Service.

Request No. 1:

All documents created by MMS personnel (or by other personnel within the Department of the Interior) after the *Fina Decision* that relate to the valuation of natural gas under 30 CFR § 206.152 and/or 30 CFR § 206.153.

If you have any questions concerning these requests, please contact me at (504) 556-4131.

Please acknowledge your receipt of this letter by date-stamping the enclosed copy of this letter and returning that copy to me in the enclosed envelope. Thank you for your assistance.

Respectfully submitted,

Jonathan A. Hunter

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New Orleans, Louisiana
June 20, 2005

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Ms. Tracey Fay
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Denver, Colorado 80225-0165

Re: 5/17/05 FOIA Request (MRM 2005-024)

Dear Ms. Fay:

This letter responds to your request that I clarify my Freedom of Information Act request dated May 17, 2005 (MRM FOIA No. 2005-024). As I have indicated by telephone, you may use the following limitations in responding: *first*, you can narrow the request to documents pertaining to the valuation of gas pursuant to 30 CFR §§ 206.152(c) and 206.153(c) (*i.e.*, non-arm's-length valuation); *second*, I am not interested in obtaining "audit" documents, but rather am interested in documents (i) analyzing, describing, or setting forth MMS policies regarding the valuation of natural gas, (ii) responding to value determination requests, and (iii) otherwise containing guidance by the MMS on valuation of gas that is not disposed of pursuant to an arm's-length contract.

Thank you for your assistance. Please let me know if you have any additional questions.

Yours very truly,

Jonathan A. Hunter

JAH/kgc

Fay, Tracey

From: Jonathan A Hunter [jahunter@liskow.com]
Sent: Tuesday, January 24, 2006 2:39 PM
To: Fay, Tracey
Subject: MRM FOIA 2005-024

Ms. Fay --

In response to your telephone message, I authorize the completion of the above-captioned FOIA, which I understand will cost \$2,316.38. Please let me know if you need anything further to complete this FOIA process. Thank you.

Jonathan Hunter
Liskow & Lewis
504-556-4131
504-556-4108 (fax)
jahunter@liskow.com

Fay, Tracey

From: Jonathan A Hunter [jahunter@liskow.com]
Sent: Thursday, January 05, 2006 1:32 PM
To: Fay, Tracey
Subject: RE: MRM FOIA 2005-024

That's correct. Thanks very much.

-----Original Message-----

From: Fay, Tracey [mailto:Tracey.Fay@mms.gov]
Sent: Thursday, January 05, 2006 2:17 PM
To: Jonathan A Hunter
Subject: MRM FOIA 2005-024

Mr. Hunter;

To follow up our phone conversation today, I will not be providing duplicate attachments or documents. We will provide any documents (which seem duplicative) if they contain edits, or handwritten notes etc. Please email me if this is not in agreement with what we discussed or if you have any questions.

Tracey Fay
303-231-3430

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