



United States Department of the Interior



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

NOV 27 2007

MRM/ITC/IMG/FOIA
Mail Stop 340A1
MRM FOIA No. 2007-033
MMS FOIA No. 2007-000209

Ms. Beth Daley
Director of Investigations
Project On Government Oversight
666 11th Street, NW, #900
Washington, DC 20001

Dear Ms. Daley:

This is in response to your May 4, 2007, Freedom of Information Act (FOIA) request, which has been assigned Minerals Revenue Management (MRM) FOIA No. 2007-033. Enclosed are six pages of documents responsive to your request. In addition, a final copy of the OIG report titled Final IG responseNove12006.doc and the MMS response letter can be found on the OIG website at doioig.gov/upload/2007-G-00011.pdf. We believe you will find the OIG report to be very informative regarding the issue you are researching. Please review this document before taking any further action on this FOIA request. This document is not included here because it is a public document available on the internet.

In your FOIA request you asked for "copies of all memos, policy directives, emails, letters, research, analyses, documents and communications, including correspondence to and from Accenture, concerning MMS' use of source documents to verify volume and allowances data in the CAM system. Source documents include run tickets, tank gauging reports, oil and gas sales summary statements, etc. Date range January 2001 to current day." This FOIA request was limited on May 31, 2007, to the policies regarding the use of source documents for compliance reviews. You confirmed that you are not interested in the actual source documents. The timeframe of this FOIA was also limited to those policies issued since January 2006. Most of this information is included in the Audit and Compliance Review Manuals.

The requested manuals contain internal practices that are exempt from disclosure under Exemption 2 of the Freedom of Information Act (FOIA). See 5 U.S.C. Section 552(b)(2). Exemption "High 2" is designed to protect information, which if disclosed would allow circumvention of a statute or agency regulation, or impede the effectiveness of the agency's activities. According to the Department of the Interior's FOIA regulations at 43 C.F.R., Part 2, "[y]our request will be denied . . . only if one of the nine statutory exemptions listed in Appendix E to this part applies to all or part of the records you have requested."

TAKE PRIDE[™]
IN AMERICA 

43 C.F.R. § 2.21(b)(2)(2006). As noted above, FOIA Exemption 2 does apply to the requested documents. See 5 U.S.C. Section 552(b)(2); 43 C.F.R., Part 2, Appendix E(2). *The Department of Interior Departmental Manual (DM), Freedom of Information Act Handbook*, 383 DM 15 at Section 5.4(B)(1) (April 22, 2004), states that FOIA Exemption 2 protects from disclosure, “[a]gency procedures, manuals and instructions concerning investigatory or security matters, e.g., records that reveal how investigations or audits are conducted, security techniques, etc.” In addition, the Chief Information Officer for the Department of the Interior, requires bureaus to consult with their designated FOIA Attorney, Office of the Solicitor, and obtain his/her surname before releasing any Exemption “High 2” information. See Office of the Chief Information Officer Bulletin 2003-001 (January 6, 2003) <http://www.doi.gov/foia/policy.html>. Our Solicitor has determined that these manuals are not releasable under the FOIA.

In *Crooker vs. ATF*, 670 F.2d 1051, 1054 (D.C. Cir. 1981) (en banc), the Court of Appeals for the District of Columbia held that Exemption 2 of the FOIA could protect documents whose disclosure would risk circumvention of the law. The court fashioned a test for determining which sensitive materials are exempt from mandatory disclosure under Exemption 2. This test requires both:

- (1) That the requested document be predominantly internal, and
- (2) That its disclosure “significantly risks circumvention of agency regulations or statutes.”

In this instance, the MMS’s *Audit Manual* and *Compliance Review Manual* are for internal MMS use only, and disclosure of this material would allow circumvention of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. §§ 1701 *et seq.* (FOGRMA). FOGRMA authorizes the Secretary to “audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil and gas and to take appropriate actions to make additional collection or refunds as warranted.” Release of the documents requested would increase a lessee’s ability to avoid detection of royalty valuation errors, and thereby impede MMS’s audit effectiveness. This in turn would circumvent FOGRMA’s audit requirements, and frustrate the statute’s stated purpose. Withholding of these documents will protect the integrity of our audit and compliance processes and, therefore, we must deny your request for any information from the 683 page *Audit Manual* or the 181 page *Compliance Review Manual*.

We are also withholding, in their entirety under Exemption 2 (high), as discussed above, and Exemption 5, as discussed below, two memos and the associated attachments, and a procedure document which are proprietary, predecisional, planning documents which discuss our compliance process and consist of 38 pages of material. These documents are:

- 1) Email to Richard Adamski and Associate Director Lucy Querques Denett dated November 1, 2006 entitled "Response to Draft2 Audit Rpt C-EV-MOA-0006-2006_102706 (5).doc; Final IG ResponseNov12—6.doc (1 page) and the attachments associated with this email:
 - Memo entitled "Draft Audit Report, Minerals Management Service's Compliance Process (Assignment No. C-EV-MOA-0006-2006) (3 pages)
 - Response to Office of Inspector General Draft Report (11 pages)
- 2) Email to Theresa Walsh Bayani dated November 1, 2006 entitled "Response to Draft2 Audit Rpt C-EV-MOA-0006-2006_102706 (5).doc" (1 page) and the attachment associated with this email:
 - Memo entitled "Draft Audit Report, Minerals Management Service's Compliance Process (Assignment No. C-EV-MOA-0006-2006) (3 pages)
 - Response to Office of Inspector General Draft Report (11 pages)
- 3) Final 2004 End-to-End Work Procedures (revised April 11, 2007 – all revisions highlighted in yellow) (effective April 23, 2007). (8 pages)

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, and were used to arrive at a final agency decision. Disclosure of such material would inhibit the open and candid expression of such views in similar future deliberations, confuse the public as to the official agency position on an issue, and have a detrimental effect on our decision making process. Sound grounds exist for withholding the materials under Exemption 5 of FOIA (5 U.S.C. 552(b)(5)), which 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."

This decision was made in consultation with Rodney J. Vieira, Division of Mineral Resources, Office of the Solicitor. If you disagree with this determination, you have the right under Department of the Interior regulations at 43 C.F.R. § 2.28 (2006) to appeal to:

Department of the Interior
Office of the Solicitor
1849 C Street, NW, Mail Stop 6556
Washington, DC 20240

Attn: FOIA Appeals Office

Ms. Beth Daley

4

"Your appeal must be received by the FOIA Appeals Officer no later than 30 workdays after the date of the final response or 30 workdays after receipt of any records that are provided to you." 43 C.F.R. § 2.29 (2006) The appeal must include copies of your original request and of the initial denial. To expedite the appellate 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."

If you have any questions, please contact Jayne Barton at 303-231-3706.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory K. Kann", with a long horizontal flourish extending to the right.

Gregory K. Kann
Freedom of Information Act Officer

Enclosure