



File Code: 6270

Date: SEP 23 2014

Mr. Matt Ehling  
President  
Public Records Media  
2375 University Ave. W  
Suite 200  
St. Paul, MN 55114-1678

Dear Mr. Ehling:

This is our final response to your Freedom of Information Act (FOIA) request dated November 21, 2013. Your FOIA has been assigned case # 2014-FS-R9-01131-F. Specifically, you requested:

*...records created, received, transmitted, or maintained by your agency between January 1, 2012 and November 20, 2013" which include:*

- 1. Any and all correspondence (in written or electronic form) between your agency and representatives or employees of Polymet Mining Corp, Glencore International AG, Twin Metals Mining Minnesota, Duluth Metals Limited, or Antofagasta PLC, regarding plans or proposals (in any stage, including pre-feasibility studies) to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the Boundary Waters Canoe Area Wilderness administered by the US Forest Service (BWCAW);*
- 2. Any and all internal agency correspondence (in written or electronic form) regarding plans or proposals (in any stage, including pre-feasibility studies) to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the BWCAW;*
- 3. Any and all internal agency correspondence (in written or electronic form) regarding any proposed "land exchange" related to plans or proposals to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the BWCAW.*

Forest Supervisor Brenda Halter, sent two partial responses to your request dated April 15, 2014, and May 15, 2014. Three hundred thirty-three (333) additional documents were forwarded to this office for review prior to release. The majority of these documents are being withheld as described below.

Two hundred one (201) documents were found to be responsive to items 1 and 2 of your request. Two hundred (200) of those are being withheld in their entirety under Exemptions 5 and 9 of the FOIA. Also, being entirely withheld under Exemption 5 of the FOIA are 132 documents responsive to item 3 of your request.

Exemption 5 permits the Government to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." 5 U.S.C. 552(b)(5).



The most commonly invoked privilege incorporated within Exemption 5 is the deliberative process privilege, the general purpose of which is to “prevent injury to the quality of agency decisions.”

We determined that much of the information (297 documents) related to the environmental analysis must be withheld pursuant to deliberative process prong of Exemption 5 of the FOIA, 5 U.S.C. 552(b)(5).

One of the privileges incorporated into Exemption 5, the attorney-client privilege, protects “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” We determined that thirty-three (33) documents must be withheld pursuant to the attorney-client prong of Exemption 5 of the FOIA, 5 U.S.C. 552(b)(5).

Exemption 9 of the FOIA covers “geological and geophysical information and data including map, concerning wells.” We determined that two (2) documents apply to well information of a technical or scientific nature and must be withheld pursuant to Exemption 9 of the FOIA, 5 U.S.C. 552(b)(9).

One document (38 pages) is being withheld in part under Exemption 6 of the FOIA. Exemption 6 requires the Government to withhold all information about individuals in “personnel and medical files and similar files,” where the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” In determining whether a particular disclosure would constitute an unwarranted invasion of personal privacy, the Forest Service must balance the public’s right to disclosure against the individuals’ right to privacy. We determined that the release of personal phone numbers would cause a clearly unwarranted invasion of the personal privacy and, therefore, the information must be withheld pursuant to Exemption 6 of the FOIA, 5 U.S.C. 552(b)(6). Please note that Exemption 6 is not subject to “discretionary disclosure” (transparency or open government); agencies cannot waive the withholding of information that is protected under Exemption 6.

The FOIA (5 U.S.C. § 552 (a)(6)(A) (2006)), amended by the OPEN Act of 2007, provides you the right to appeal this response. An administrative appeal under the FOIA is a follow-up request by an initial requester (or their representative) based on the initial request (no new issues may be raised) asking the Agency to reverse the original decision for:

- Withholding all or part of a requested record
- Denying a fee category claim by a requester
- Denying a request for a waiver or reduction of fees
- Denying a request to review an initial fee estimate
- Denying a request for expedited processing due to demonstrating compelling need
- Confirming that no records were located during the initial search

You may also file an appeal to challenge the following:

- The adequacy of the search for records
- The timeliness of the final response determination
- The agency’s interpretation of the request.
- Any determination believed to be adverse in nature by the requester

Any appeal must be made in writing within 45 days from the date of this letter to the Chief, USDA Forest Service:

1. By email to [WO\\_FOIA@\[REDACTED\]](mailto:WO_FOIA@[REDACTED])
2. By regular mail to USDA, Forest Service, FOIA Service Center, Mail Stop 1143, 1400 Independence Avenue, SW, Washington, DC 20250-1143,
3. By FedEx or UPS to USDA Forest Service, FOIA Service Center, Mail Stop 1143, 201 14<sup>th</sup> Street, SW, Washington, DC 20250-1143, [REDACTED]
4. By fax to (202) 260-3245

The term "FOIA APPEAL" should be placed in capital letters on the subject line of the email or on the front of the envelope. To facilitate processing of your appeal, please include a copy of this letter and/or the FOIA control number assigned to your FOIA request (#2014-FS-R9-01131-F).

If you have further questions or concerns regarding resolution of your information request, please contact the Acting Eastern Region FOIA Coordinator Judi Perez [japerez@\[REDACTED\]](mailto:japerez@[REDACTED]) at [REDACTED].

Sincerely,

  
KATHLEEN ATKINSON  
Regional Forester

Enclosures (2)

cc: Kristina A Reichenbach, Brenda Halter, Vince Vukelich, Judi Perez

Matt Ehling  
President  
Public Record Media  
2375 University Ave W.  
Suite 200  
St. Paul MN, 55114



November 21, 2013

USDA, FS, FOIA Service Center  
1400 Independence Avenue, SW  
Mail Stop: 1143  
Washington, DC 20250-1143

RE: Freedom of Information Act request

Dear FOIA staff,

I am making a request for access to public information under the Freedom of Information Act (5 U.S.C. 552).

Through this request, I am seeking copies of the following records created, received, transmitted, or maintained by your agency between January 1, 2012 and November 20, 2013:

1. Any and all correspondence (in written or electronic form) between your agency and representatives or employees of Polymet Mining Corp, Glencore International AG, Twin Metals Mining Minnesota, Duluth Metals Limited, or Antofagasta PLC, regarding plans or proposals (in any stage, including pre-feasibility studies) to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the Boundary Waters Canoe Area Wilderness administered by the US Forest Service (BWCAW);
2. Any and all internal agency correspondence (in written or electronic form) regarding plans or proposals (in any stage, including pre-feasibility studies) to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the BWCAW;
3. Any and all internal agency correspondence (in written or electronic form) regarding any proposed "land exchange" related to plans or proposals to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the BWCAW.

In order to help you determine my status for the purpose of assessing fees, you should know that this request is made as part of news gathering, and is not for commercial use. Responsive files will be shared with researchers, journalists, and the public, and will not be licensed for profit.

I am seeking a waiver of fees for this request, since the public dissemination of the requested materials will aide the public's understanding of your agency's evaluation of proposed mining activities in or near the BWCAW, which have been matters of significant public discussion within the state of Minnesota.

If my fee waiver is denied, I am willing to pay fees of up to \$100.00 without prior notice. If fees are estimated to exceed this amount, please notify me first.

If this request is denied in whole or in part, please notify me of the legal basis for the denial, as well as all appeals procedures available under law.

I can be contacted at [REDACTED] or [info@publicrecordmedia.com](mailto:info@publicrecordmedia.com) if you need to discuss any aspect of this request.

Sincerely,

A handwritten signature in black ink, appearing to be 'ME', written in a cursive style.

Matt Ehling  
President, Public Record Media

**MAIL** ★

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Label 228, January 2008

RETURN RECEIPT  
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**USDA \ MRMD \ MSB**

12/3/2013 12:13:29 PM

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