

**MAY 15 2019**

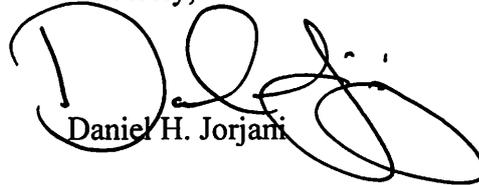
The Honorable Lisa Murkowski  
Chairman, Committee on Energy  
and Natural Resources  
United States Senate  
Washington, DC 20510

Dear Chairman Murkowski:

Enclosed you will find my responses to the written questions submitted following the May 2, 2019, hearing on my nomination to be Solicitor at the Department of the Interior.

Please feel free to contact me if I can be of further assistance.

Sincerely,



Daniel H. Jorjani

Enclosure

**Questions from Ranking Member Joe Manchin III**

**Question 1: During your confirmation hearing, I expressed my concern that seven of the eight legal opinions that you have issued as Acting Solicitor overturned well-reasoned legal opinions of the previous Solicitor. I cited the mitigation, railroad rights-of-way, and migratory bird opinions as three specific examples of prior opinions that you had overturned. I asked you what weight you afforded the prior legal opinions. You replied that the “catalyst” for overturning the prior opinions had been a January 20, 2017, memorandum to the heads of executive departments and agencies from the President’s Chief of Staff directing them to review recent regulations adopted during the Obama Administration with “a fresh set of eyes.”**

**My question went to the standard of review you apply. How much weight do you believe should be given to the Department’s prior legal opinions? Should a prior Solicitor’s decision stand unless it is clearly erroneous or can each Solicitor look at previously decided legal questions with “a fresh set of eyes” and substitute his opinion for that of his predecessors?**

**Response:** Respect for precedent is a foundational American legal principle critical to maintaining certainty and consistency in the application of the rule of law. While legal precedent is given considerable weight in American jurisprudence, it is not irrefutable. In examining questions of law and whether an extant legal opinion, or M-Opinion, should be corrected, the Department’s Solicitor should consider a number of factors including the text and purpose of the statute or statutes upon which the opinion is based, legislative history, current underlying facts and legal doctrines, and reliance on and workability of the opinion. M-Opinions issued by the Solicitor are important legal guidance for the entire Department; they are based on the law and developed through an exhaustive process.

**Questions from Ranking Member Joe Manchin III**

**Question 2: In response to my question about environmental mitigation, you defended your decision to withdraw your predecessor’s opinion on the grounds that you “couldn’t find anything mandatory” in the Federal Land Policy and Management Act or elsewhere that “directed” you to require mitigation.**

- **But wasn’t the focus of your predecessor’s opinion on the Secretary’s “general authority to require mitigation”? And wasn’t your predecessor’s conclusion that the Secretary “has the authority and discretion to ... require appropriate mitigation” under the Federal Land Policy and Management Act, rather than that the law mandates mitigation?**
- **If so, why was it necessary for you to withdraw your predecessor’s opinion that the law gives the Secretary “the authority” to require mitigation, even if Secretary Zinke declined, as a matter of policy, to exercise that authority?**

**Response:** The Federal Land Policy and Management Act does not provide the Secretary with the authority to require compensatory mitigation as a condition of authorization for the use of public lands or to require that project proponents implement compensatory mitigation. Because of this, Secretary Zinke signed S.O. 3349 which revoked the compensatory mitigation policies of the previous administration and directed a thorough review.

**Questions from Ranking Member Joe Manchin III**

**Question 3: The second example I cited involved your decision to overturn your predecessor's opinion that concluded that railroad companies holding railroad rights-of-way over public lands under the General Railroad Right-of-Way Act of March 3, 1875, can lease portions of those rights-of-way to other companies only for railroad purposes, not other unrelated purposes like the Cadiz Water Pipeline. Her opinion rested on the text of the 1875 Act, its legislative history, and prior judicial decisions. Your opinion rests instead on the "long established and settled expectations of landowners and companies" and your belief that the judicial decisions relied on by your predecessor were wrong. What weight do you give prior court decisions?**

**Response:** Respect for precedent is a foundation of American law and is given considerable weight in American jurisprudence; it is not irrefutable. In examining questions of law and whether an existing legal opinion should be corrected or withdrawn, the Department's Solicitor should consider a number of factors including the text and purpose of the statute or statutes upon which the opinion is based, legislative history, current underlying facts and legal doctrines, and reliance on and workability of the opinion. M-Opinions issued by the Solicitor are developed through an exhaustive process.

**Nomination of Daniel H. Jorjani  
Senate Committee on Energy and Natural Resources  
May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 1: Mr. Jorjani -- as I mentioned during your confirmation hearing, the House Committee on Oversight and Reform and the House Committee on Natural Resources are investigating whether Secretary Bernhardt is complying with transparency and recordkeeping laws, including whether versions of his calendar were deleted and kept secret. On March 28, 2019, the Committees sent a joint letter to Interior requesting transcribed interviews with employees familiar with Secretary Bernhardt's scheduling.**

**It has been five weeks since the Committees issued their letter, and Interior has refused to schedule the interviews or to allow the employees to contact the Committees. I understand that the Department of the Interior has provided a sizeable number of documents to the House Committees, but it is often the case that documents fail to provide a full account of the activity in question, particularly where an investigation is related to the possible deletion or destruction of documents. In such cases, it is absolutely necessary to talk to the people involved about the activity in question.**

**Do you believe that it is up to Congress to decide what Congress intends to investigate, and how?**

**If confirmed, will you commit to doing everything in your power to ensure that Interior complies in a timely manner with Congressional requests and Subpoenas, such as these interview requests?**

**Please provide examples of how, if confirmed, you will accomplish the goal of ensuring Interior complies in a timely manner with Congressional requests and Subpoenas, such as these interview requests?**

**Response:** I am committed to cooperating with congressional oversight requests to the fullest extent, consistent with the Department's constitutional and statutory responsibilities. I am informed that the Solicitor's office, together with the Office of Congressional and Legislative Affairs, is in the process of responding to approximately 17 individual requests for information and documents from the two committees you mention in your question. It is my understanding that as of May 10, 2019, the Department had produced over 66,000 pages of documents to the committees.

As part of the process for responding to requests from Congress, the Solicitor's Office has the lead responsibility in the Department for ensuring that congressional oversight productions protect the legal interests of the Department, including our litigation and ongoing rulemaking interests. I take this commitment seriously. Since I became Principal Deputy Solicitor in April, 2017, I have worked with the Department to ensure that appropriate resources are provided and dedicated to fulfill the Solicitor's Office responsibility in the Department's oversight response process. If confirmed, I will work with the Department's Office of Congressional and Legislative Affairs to continue to do so.

**Nomination of Daniel H. Jorjani  
Senate Committee on Energy and Natural Resources  
May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 2: During an exchange you had with Senator King regarding your role overseeing the Department’s Freedom of Information Act (FOIA) policies, you stated that the Department of Justice provided comments on the Department of Interior’s revised FOIA rulemaking, and that “all of those comments have been integrated into the revised rule...”**

**When this revised FOIA rule is finalized, will you commit to providing my office, as well as the U.S. Senate Committee on Energy and Natural Resources, with any and all comments or guidance that the Department of Justice provided?**

**Response:** While the Office of the Solicitor has the responsibility to assure that any materials potentially responsive to a congressional oversight request are reviewed to ensure that the legal interests of the Department are protected, the Office of Congressional and Legislative Affairs would be the primary point of contact and would be responsible for communicating directly with Congress.

**Questions from Senator Ron Wyden**

**Question 3: You testified that you do not review FOIA requests or productions. Records provided to this committee show that you have been given the opportunity to review FOIA records prior to release under the “awareness review” process. Given this information, would you like to correct or clarify your testimony?**

**Response:** As indicated in my testimony, day-to-day management of the FOIA office is done by the Deputy Chief FOIA Officer, who is a career lawyer. As a policy matter, I typically did not review records prior to their release under the FOIA. Further, any review that is conducted is done so in accordance with the Department’s Awareness Process for Freedom of Information Act Productions issued in May 24, 2018, and updated on February 28, 2019. This document is publicly available on the Department’s website:

[https://www.doi.gov/sites/doi.gov/files/uploads/awareness\\_process\\_memo\\_2.0.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf).

**Nomination of Daniel H. Jorjani  
Senate Committee on Energy and Natural Resources  
May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 4: What actions did you take in reviewing FOIA requests under the Department's "awareness review" process? Please describe your involvement in reviewing FOIA records under the Department's "awareness review" process.**

**Response:** As I indicated in the response to the previous question, as a policy matter, I typically did not review records prior to their release under the FOIA. Further, any review that is conducted is done so in accordance with the Department's Awareness Review Process for Freedom of Information Act Productions issued in May 24, 2018, and updated on February 28, 2019. This document is publicly available on the Department's website: [https://www.doi.gov/sites/doi.gov/files/uploads/awareness\\_process\\_memo\\_2.0.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf).

**Nomination of Daniel H. Jorjani**  
**Senate Committee on Energy and Natural Resources**  
**May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 5: What counsel or advice have you given Mr. Hubbel Relat on issues related to specific FOIA requests or the FOIA process at the Department of the Interior, generally?**

**Response:** In general, we have discussed the ongoing reassessment of the Department's FOIA program and implementation of necessary improvements, including acquiring and deploying better FOIA processing and tracking technology, establishing more robust training, standardizing and professionalizing the Department's FOIA processing workforce, and issuing policies and procedures to ensure that the FOIA processing offices can properly respond to the increased volume of incoming FOIA requests.

**Nomination of Daniel H. Jorjani**  
**Senate Committee on Energy and Natural Resources**  
**May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 6: What is the difference between the “awareness review” and “heightened awareness” process regarding FOIA requests? During your time as Acting Solicitor, how many times has the “awareness review” or “heightened awareness” process been implemented in response to FOIA requests?**

**Response:** The Department does not have a “heightened awareness” process. The Department’s Updated Awareness Process for Freedom of Information Act Productions, issued on February 28, 2019, contains the implementation guidelines that pertain when the Department is producing records in response to FOIA requests. The guidance document is publicly available and can be accessed on the Department’s website:

[https://www.doi.gov/sites/doi.gov/files/uploads/awareness\\_process\\_memo\\_2.0.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf)

**Nomination of Daniel H. Jorjani  
Senate Committee on Energy and Natural Resources  
May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 7: How many times has the “awareness review” or “heightened awareness” process resulted in the Interior Department missing litigation deadlines for document production?**

**Response:** The Department does not have a “heightened awareness” process. Although I cannot discuss individual litigation matters, awareness reviews are conducted in accordance with the timelines articulated in the February 28, 2019, Department’s Updated Awareness Process for Freedom of Information Act Productions, which is publicly available and can be accessed on the Department’s website:

[https://www.doi.gov/sites/doi.gov/files/uploads/awareness\\_process\\_memo\\_2.0.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf)

**Questions from Senator Ron Wyden**

**Question 8: Did the “awareness review” or “heightened awareness” process lead to Interior missing court deadlines for document production in the whistleblower lawsuit brought by former career official Joel Clement?**

**Response:** The Department does not have a “heightened awareness” process. Although I cannot discuss individual litigation matters, awareness reviews are conducted in accordance with the timelines articulated in the February 28, 2019, Department’s Updated Awareness Process for Freedom of Information Act Productions, which is publicly available and can be accessed on the Department’s website:

[https://www.doi.gov/sites/doi.gov/files/uploads/awareness\\_process\\_memo\\_2.0.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf)

**Nomination of Daniel H. Jorjani**  
**Senate Committee on Energy and Natural Resources**  
**May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 9: At any time, did Mr. Relat or anyone in the Solicitor's Office instruct or suggest FOIA officers remove documents from FOIA responses that were under court order? What was the result of those suggestions or instructions?**

**Response:** Although I cannot discuss particular litigation matters, awareness reviews are conducted in accordance with the February 28, 2019, Department's Updated Awareness Process for Freedom of Information Act Productions, which is publicly available and can be accessed on the Department's website:

[https://www.doi.gov/sites/doi.gov/files/uploads/awareness\\_process\\_memo\\_2.0.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf)

**Nomination of Daniel H. Jorjani  
Senate Committee on Energy and Natural Resources  
May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 10: If there are any records from the FOIA Office or Solicitor's Office memorializing conversations with Mr. Relat or other Solicitor's Office employees regarding document production or FOIA responses, please provide them to this committee within ten business days.**

**Response:** While the Office of the Solicitor has the responsibility to assure that any materials potentially responsive to a congressional oversight request are reviewed to ensure that the legal interests of the Department are protected, the Office of Congressional and Legislative Affairs would be the primary point of contact and would be responsible for communicating directly with Congress.

**Nomination of Daniel H. Jorjani**  
**Senate Committee on Energy and Natural Resources**  
**May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 11: On February 27, 2019, three Solicitor's Office employees received an email regarding "FOIA requests related to profanity and Bernhard't [sic] google docs schedule." Within ten business days, please provide this committee with an unredacted copy of that email and any other records related to that email.**

**Response:** While the Office of the Solicitor has the responsibility to assure that any materials potentially responsive to a congressional oversight request are reviewed to ensure that the legal interests of the Department are protected, the Office of Congressional and Legislative Affairs would be responsible for communicating directly with Congress.

**Nomination of Daniel H. Jorjani  
Senate Committee on Energy and Natural Resources  
May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 12: On April 16, 2019, CQ Roll Call reported that “Secretary David Bernhardt’s staff intentionally left controversial meetings with representatives of fossil fuel, timber and water interests off his public calendar, citing ‘internal protocol’ governing his schedules. The department also confirmed that Bernhardt used a personal itinerary kept on a single Google document that was regularly overwritten by his scheduling staff.” Did you or anyone within the Solicitor’s Office advise Secretary Bernhardt or his staff regarding this method of keeping his calendars?**

**Response:** I did not advise the Secretary or his administrative staff regarding how they notated entries on calendars, nor did I advise anyone in the Solicitor’s Office to do so. However, I am informed that the Office of the Solicitor staff has reviewed the Department’s record-keeping and calendar maintenance practices, and has advised that the Department is appropriately capturing and preserving information documenting the Secretary’s meetings pursuant to 36 C.F.R. 1222.22. I am informed that this finding has been confirmed by the Department’s Senior Agency Official for Records Management and the Departmental Records Officer, who have reported to the National Archives and Records Administration that Interior has and continues to comply with the Federal Records Act (FRA) and relevant regulations and policies with regard to calendars and calendar entries.

**Nomination of Daniel H. Jorjani  
Senate Committee on Energy and Natural Resources  
May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 13: A review of then-Deputy Secretary Bernhardt’s public calendars shows a significant change in May of 2018, when more than 30 meetings or calls are listed only as “external” with no details. Did you or anyone within the Solicitor’s Office suggest or approve of this change?**

**Response:** I did not advise the Deputy Secretary or his administrative staff regarding how they notated entries on calendars, nor did I advise anyone in the Solicitor’s Office to do so.

**Nomination of Daniel H. Jorjani  
Senate Committee on Energy and Natural Resources  
May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 14: Did you or anyone within the Solicitor's Office consult with the National Archives regarding whether this change was consistent with the Federal Records Act?**

**Response:** I have been informed that the Department worked with the National Archives and Records Administration to review and report findings to ensure that the Department's practices fulfill its obligation to create and maintain adequate and proper documentation of the persons, places, things or matters dealt with by the agency pursuant to 36 C.F.R. 1222.22. I have been informed that the Department's Senior Agency Official for Records Management and the Departmental Records Officer have reported to the National Archives and Records Administration that Interior has and continues to comply with the Federal Records Act (FRA) and relevant regulations and policies with regard to calendars and calendar entries.

**Questions from Senator Ron Wyden**

**Question 15:** CQ Roll Call also reported that “on some days, staff would print out [Bernhardt’s] public calendar along with any relevant meeting request forms.” Faith Vander Voort, an Interior department spokesperson, said that “Meeting requests are a huge part of the puzzle that makes up [Secretary Bernhardt’s] calendar. It shares what they want to meet about, who asked for the meeting. It’s a puzzle piece that fits together, and when you have the public calendar and the daily card and the meeting request, if you put those things together, you could have a very good picture of what his day looks like.” Given the importance of these meeting request forms to deciphering the “puzzle” that is Secretary Bernhardt’s calendar, will you release all of his meeting request forms to this Committee within 10 business days?

**Response:** I am informed that meeting request forms have been provided to the House Committees on Oversight and Reform and Natural Resources. I would be happy to recommend to the Department’s Office of Congressional and Legislative Affairs, which serves as the primary point of contact and is responsible for communicating directly with Congress, that they provide the same in response to a request for such documents from the Chairman.

**Nomination of Daniel H. Jorjani  
Senate Committee on Energy and Natural Resources  
May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 16: As the Chief FOIA Officer, did you oversee the process by which Secretary Bernhardt's "daily cards" were re-created from the version history of the original Google Document?**

**Response:** I have been informed that all daily cards were preserved and that no daily cards were re-created, as this was not necessary. It is my understanding that the Department's Senior Agency Official for Records Management and the Departmental Records Officer have reported to the National Archives and Records Administration that Interior has and continues to comply with the Federal Records Act (FRA) and relevant regulations and policies with regard to calendars and calendar entries. Furthermore, I have been informed that these same individuals have attested that every daily card that was created is and always has been preserved consistent with law, regulation, policy, and the Department's record schedule.

**Nomination of Daniel H. Jorjani**  
**Senate Committee on Energy and Natural Resources**  
**May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 17: Why has the FOIA office not provided that version history in response to FOIA requests for it?**

**Response:** I am not aware of any FOIA request related to the daily cards that is unfulfilled. I am informed that all of the Secretary's "daily cards" are being posted on the Department's website.

**Nomination of Daniel H. Jorjani**  
**Senate Committee on Energy and Natural Resources**  
**May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 18: Will you release that full version history to this committee within 10 business days?**

**Response:** I am informed that all versions of the Secretary's daily cards are being posted on the Department's website. Additionally, it is my understanding that information pertaining to the Secretary's calendar has been provided to the House Committees on Oversight and Reform and Natural Resources. To the extent information beyond that already posted or otherwise provided to Congress is requested, I would be happy to recommend to the Department's Office of Congressional and Legislative Affairs, which serves as the primary point of contact and is responsible for communicating directly with Congress, that they provide such information in response to a request for such documents from the Chairman.

**Questions from Senator Ron Wyden**

**Question 19: Did you or anyone in the FOIA or Solicitor's office consult with an IT forensics expert or the National Archives and Records Administration about the proper way to re-construct Secretary Bernhardt's calendars from the version history?**

**Response:** As noted above, I have been informed that no daily cards required re-construction and that all daily cards were preserved. The Department's Senior Agency Official for Records Management and the Departmental Records Officer have reported to the National Archives and Records Administration that every daily card that was created is and always has been preserved consistent with law, regulation, policy, and the Department's record schedule. As noted previously, these same individuals have warranted that Interior has and continues to comply with the Federal Records Act (FRA) and relevant regulations and policies with regard to calendars and calendar entries. There is no need or role for "IT forensics" activities.

**Questions from Senator Ron Wyden**

**Question 20: If not, how can you be sure the re-construction process was thorough, complete, and did not destroy data along the way?**

**Response:** As noted above, I have been informed that no daily cards required re-construction and that all daily cards were preserved. The Department's Senior Agency Official for Records Management and the Departmental Records Officer have reported to the National Archives and Records Administration that every daily card that was created is and always has been preserved consistent with law, regulation, policy, and the Department's record schedule. As noted previously, these same individuals have warranted that Interior has and continues to comply with the Federal Records Act (FRA) and relevant regulations and policies with regard to calendars and calendar entries.

**Nomination of Daniel H. Jorjani**  
**Senate Committee on Energy and Natural Resources**  
**May 2, 2019**

**Questions from Senator Ron Wyden**

**Question 21: In response to Senator Manchin’s question at the hearing, you said that your office reviewed your predecessor’s opinion in a “multi-month process” that involved career lawyers and consultations with other agencies, including the Department of Justice. Did you or anyone in the Department of the Interior have any contact with anyone whose interests may have been affected by the opinions concerning any of these opinions? If so, please provide the Committee with a list of those contacts, identifying the parties to the contact and a summary of the substance of each contact.**

**Response:** I cannot speak to the actions of every employee in the Department of the Interior. Many of the staff at the Department and its bureaus routinely meet with stakeholders on a variety of issues. I do not personally recall meeting with external entities to discuss the matter raised by the Ranking Member at my hearing. Regardless, I have fully complied with my ethics agreement, the ethics laws, and my ethics pledge and I will continue to do so in the future.

**Nomination of Daniel H. Jorjani  
Senate Committee on Energy and Natural Resources  
May 2, 2019**

**Questions from Senator Maria Cantwell**

**Question 1: Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act**

**For over 15 years I have been working with the Spokane Tribe of Indians to get legislation signed into law that would provide the Tribe just and equitable compensation for the thousands of acres that were lost when the Grand Coulee Dam was constructed in the 1930s. This legislation is non-controversial, has passed out of the Senate Committee on Indian Affairs almost every Congress, and has passed the U.S. House of Representatives and U.S. Senate, but unfortunately, not at the same time. I worked with Assistant Secretary for Indian Affairs Tara Sweeney last Congress and she provided a letter that confirmed the Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act will not result in any obligation or legal exposure to the federal government.**

**On November 30, 2018, Assistant Secretary Sweeney sent a letter to Representative Rob Bishop asserting the Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act will not result in legal exposure to the federal government and it does not relate to water claims against the United States. Mr. Jorjani, do you agree with this letter?**

**Mr. Jorjani, can you commit to working with myself, Senator Murray and Representative McMorris Rodgers to get this bill signed into law?**

**Response:** I am generally familiar with this matter and recall the Department's interpretation of the language in the previous Congress. While I cannot speak to the Administration's views on the bill at this time, should I be confirmed as Solicitor, I commit to ensuring that policy makers within the Department have accurate, reliable and timely legal guidance in their review of this and other issues pertaining to federal responsibilities to Indian Country and fulfilling this Administration's commitment to maintaining strong and productive government to government relationships with tribes.

**Questions from Senator Maria Cantwell**

**Question 2: Arctic National Refuge**

**I share the concerns of many of my constituents and the majority of Americans that drilling in the Arctic National Wildlife Refuge—our nation’s largest and wildest Refuge—will cause irreparable damage to one of the most unique and fragile ecosystems on the planet. I am very concerned that in the rush to jam through Arctic drilling, the Department of Interior has ignored its legal obligations to conduct a meaningful analysis on the impacts industrial development will have on the Refuge and on species, like the polar bear, that call the Refuge home.**

**Mr. Jorjani, do you agree with Secretary Bernhardt’s April 25<sup>th</sup> announcement to suspend opening federal waters to offshore drilling, following U.S. District Court Judge Gleason’s decision to overturn Executive Order 13795?**

**Why did you not agree to commit to revoking Arctic Refuge leases issued based on an Environmental Impact Statement that is found to be unlawful by a federal court?**

**In light of your stated commitment to “follow the law,” are you willing to let leases that a federal court determines were issued without a lawful environmental impact analysis proceed?**

**Mr. Jorjani, since polar bears are listed as a threatened species under the ESA, ANILCA and the Refuge Act both require the Secretary to manage the Arctic Refuge primarily to conserve habitat, does the Department of the Interior have a legal obligation to provide for conservation of polar bear species within the Refuge?**

**Response:** The Secretary is evaluating what effect, if any, the decision by the district court will have on the development of a National OCS oil and gas leasing program and the Department’s policy options to determine the best pathway to accomplish the mission entrusted to it by the President. I am committed to providing the Secretary and the Department’s bureaus with the legal advice necessary to make these important policy decisions. With regard to the Coastal Plain leasing program, the BLM’s Draft Environmental Impact Statement was released in December 2018. Public comments received on that document are currently being reviewed, and no leases have been issued to date. With regard to polar bear conservation, the BLM has been successfully managing polar bear impacts over the course of the last four decades in implementing the oil and gas leasing program for the nearby National Petroleum Reserve in Alaska, and is applying that experience to the ANWR Coastal Plain in coordination with career scientists from the Fish and Wildlife Service and U.S. Geological Survey.

**Nomination of Daniel H. Jorjani  
Senate Committee on Energy and Natural Resources  
May 2, 2019**

**Questions from Senator Mazie K. Hirono**

**Question 1: According to the Organic Act, the purpose of the National Park Service is to “conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”**

**Did the decision to keep units of the National Park Service open during the 35-day government shutdown threaten the above-stated purpose?**

**Response:** The decisions made by the Department during the 35-day lapse in appropriations related to national parks were in accordance with the National Park Service’s Organic Act.

**Nomination of Daniel H. Jorjani**  
**Senate Committee on Energy and Natural Resources**  
**May 2, 2019**

**Questions from Senator Mazie K. Hirono**

**Question 2: A lot of uncertainty surrounds the Department of the Interior's plan to reorganize, including placement of funding and the role that Interior Regional Directors will play.**

**Can you describe how FY19 funds are being utilized for the reorganization of the Department as well as where the FY20 requested funds would be placed to support the reorganization? In addition, what role will Regional Directors play?**

**Response:** While I am aware of the Department's reorganization efforts, the policy decisions and budget information related to these activities fall under the offices of the Assistant Secretary for Policy, Management and Budget. Information related to the Department's efforts regarding reorganization can be found here, <https://www.doi.gov/employees/reorg>, and specific budget related information regarding the reorganization can be found at the following sites:

Budget Justification for Department-wide Programs:

[https://www.doi.gov/sites/doi.gov/files/uploads/fy2020\\_os\\_budget\\_justification.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/fy2020_os_budget_justification.pdf)

Interior Budget In Brief document: <https://www.doi.gov/budget/appropriations/2020/highlights>

**Nomination of Daniel H. Jorjani**  
**Senate Committee on Energy and Natural Resources**  
**May 2, 2019**

**Question from Senator Angus S. King, Jr.**

**Question:** As discussed during yesterday's hearing, you were previously employed at Freedom Partners Chamber of Commerce, an organization that is partially funded by the Koch Brothers. You stated that you were employed there from February 2012 to January 2017. Since you have been in the Department of the Interior, have you had any oral or written contact with any personnel associated with Freedom Partner Chamber of Commerce or any other Koch Brothers business or political interests?

**Response:** Information regarding former employers is contained in the Statement for Completion by Presidential Nominees that I completed and submitted for this nomination. I have actively sought and consulted with the Department's designated ethics officials for advice and I have a robust screening process in place to ensure that I fully comply with my ethics agreement, the ethics laws, and my ethics pledge, both with respect to former employers and any other person.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

## Memorandum

To: Assistant Secretaries  
Heads of Bureaus and Offices  
Bureau/Office FOIA Officers

From: Cindy Cafaro  
Departmental FOIA Officer

FEB 28 2019

Subject: Updated Awareness Process for Freedom of Information Act Productions

For more than 6 years, the Department of the Interior (Department) leadership and the Solicitor's Office (SOL) were made aware of impending Freedom of Information Act (FOIA) responses on a case-by-case basis. This allowed the Department's leadership and SOL to efficiently respond to queries and legal ramifications arising from FOIA responses. Given the unprecedented number of incoming FOIA requests<sup>1</sup> and increased FOIA litigation the Department has faced in the past few years,<sup>2</sup> we formalized the awareness process on May 24, 2018 to ensure it was consistent and effective. We are now updating this process, clarifying it, and making it more efficient.<sup>3</sup>

The Department will continue to process FOIA requests as usual, including: directing searches for responsive records;<sup>4</sup> searching for and providing responsive records;<sup>5</sup> processing responsive records;<sup>6</sup> and reviewing proposed responses.<sup>7</sup> After these steps are completed, the awareness process is now as follows:

<sup>1</sup> In Fiscal Year (FY) 2016, the Department received 6,428 FOIA requests; in FY 2017, 8,005 FOIA requests; and in FY 2018, 8,402 FOIA requests. Some Bureaus have particularly large increases in FOIA requests. For example, in FY 2016, the Office of the Secretary (OS) received 512 FOIA requests; in FY 2017, 1,226 FOIA requests; and in FY 2018, 1,597 FOIA requests. For more information, see the Department's [FOIA Annual Reports](#).

<sup>2</sup> For example, at the close of FY 2018, the Department had a total of 129 active FOIA cases in litigation (39 in OS alone) compared to a total of just 6 cases in litigation at the close of FY 2015 and a total of 30 cases in litigation at the end of FY 2016.

<sup>3</sup> Please note that this process, in its entirety, still does not apply to the Office of Inspector General's (OIG) FOIA personnel or processes. Other Bureaus should continue, however, to consult with OIG as they normally would for any documents that originated with or contain reference to OIG business, including OIG investigations, audits, or inspections. See [43 C.F.R. § 2.13](#) (outlining the consultation and referral process).

<sup>4</sup> See [383 DM 15 § 15.6.H](#) (outlining the responsibilities of the office and/or employee that will be making a final decision on a particular FOIA request).

<sup>5</sup> See [383 DM 15 § 15.6.L](#) (outlining the responsibilities of all employees of the Department to respond promptly and accurately to FOIA-related requests).

<sup>6</sup> See [5 U.S.C. §§ 552\(a\)\(8\) & \(b\)](#) (outlining FOIA exemptions and foreseeable harm); [43 C.F.R. § 2.13\(b\)](#); see also [383 DM 15 § 15.6.H](#); and the Department's [Foreseeable Harm Standard Memorandum](#).

<sup>7</sup> See [43 C.F.R. § 2.23\(c\)](#) (requiring Bureaus to consult with SOL before withholding a record in full or in part).

- 1) FOIA personnel search responsive calendars, emails, and attachments to emails for the names and/or email addresses of:
  - a. Current Department employees who are Presidentially Appointed, Senate Confirmed (PAS), Non-Career Senior Executive (NCSE), and/or Schedule C employees; and/or
  - b. Former Department employees who left the Department within the last 3 months and were PAS, NCSE, and/or Schedule C employees.
  
- 2) If such names and/or email addresses are identified:
  - a. FOIA personnel notify their Bureau contact for awareness reviews (hereinafter, the “reviewer”) and provide him/her:
    - i. Access to the full set of responsive records<sup>8</sup> in the same format and with the same withholdings that have been approved by SOL (so he/she will see the records exactly as the FOIA requester will); and
    - ii. A list of the PAS, NCSE and/or Schedule C employees whose names and/or email addresses are identified in the set of responsive records.
  - b. FOIA personnel simultaneously notify a SOL attorney. When applicable, this will be the attorney who reviewed the proposed redactions and/or is handling related FOIA litigation, otherwise the FOIA personnel will contact the SOL Division or Region he/she would contact to review proposed redactions.
  - c. The reviewer and SOL attorney have 3 *workdays* to review the responsive records.<sup>9</sup>
    - i. The reviewer ordinarily reviews the requests according to their order of receipt within their processing track.
    - ii. If the reviewer needs a reasonable amount of additional time to review the responsive records, he/she must inform the FOIA personnel within 3 workdays.
    - iii. If the reviewer does not reply to the FOIA personnel within 3 workdays, *his/her silence will be taken as an affirmation that he/she has concluded his/her review.*
  
- 3) FOIA personnel will then respond to the FOIA requester in accordance with their usual response process.

As you know, FOIA is a statutory requirement, and full and timely compliance with FOIA obligations is a responsibility of every Department employee.<sup>10</sup> The awareness process discussed above does not change the Department’s statutory or, when applicable, litigation deadlines and must be conducted within those existing deadlines.

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<sup>8</sup> This is true even if the identified PAS, NCSE, and/or Schedule C employees are not in the same Bureau as the FOIA personnel and the reviewer.

<sup>9</sup> The reviewer and/or SOL attorney may follow up as necessary to understand the basis of the proposed production.

<sup>10</sup> See Secretary’s Order 3371, The Department of the Interior Freedom of Information Act Program (November 20, 2018).

If you need assistance with a particular FOIA request, please contact your Bureau FOIA Officer using the information found at <https://www.doi.gov/foia/contacts>. If you have general FOIA questions, please contact me at (202) 208-5342 or [cindy\\_cafaro@ios.doi.gov](mailto:cindy_cafaro@ios.doi.gov).

cc: Daniel Jorjani, Chief FOIA Officer  
Rachel Spector, Deputy Chief FOIA Officer  
Edward Keable, Deputy Solicitor for General Law  
FOIA Contacts