



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
MRM FOIA No. 2007-022
MMS FOIA No. 2007-00152

JUL 11 2008

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 March 13, 2007, Freedom of Information Act (FOIA) request, Minerals Revenue Management (MRM) FOIA No. 2007-022 included as Enclosure 1. We provided an interim response on July 18, 2007. We explained in that response letter that the documents remaining were all pre-decisional and in draft format. You requested in an August 1, 2007, letter that we provide those remaining responsive documents.

On November 26, 2007, we discussed that our office would complete the final portion of this request after our office completed the responses to MRM FOIA Nos. 2007-024, 2007-025 and 2007-035. Enclosure 2 is a list of the documents we are withholding in their entirety under FOIA exemptions 2, 4 and 5.

The low portion of Exemption 2 is used to protect information which is not a matter of any genuine and significant public interest and is for internal agency use. The high portion of Exemption 2 exempts 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."

Exemption 4 of the FOIA exempts from disclosure ". . . two broad categories of information in federal agency records: (1) trade secrets; and (2) information that is (a) commercial or financial, and (b) obtained from a person, and (c) 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. The information in the withheld documents contains confidential business information which Lukens Energy Group (Lukens) has a "commercial interest in" and is "intrinsically valuable" to Lukens. Additionally, the information could be considered commercial to the government.

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We are invoking the deliberative process privilege of Exemption 5 as a basis to withhold these consultative documents as they are pre-decisional and drafts, and were developed prior to the final policy documents. Further, these documents were prepared to aid the decision-maker, (*i.e.*, the MMS Director) in arriving at a final policy. The deliberative process privilege is designed “to protect against premature disclosure of proposed policies before they have been finally formulated or adopted [,] and to protect against confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the agency’s action.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980) (“Coastal States”). To qualify for protection under the deliberative process privilege of Exemption 5, a document must be both pre-decisional and deliberative. A document is pre-decisional if it was “generated before the adoption of an agency policy.” *Id.*; *Sierra Club, et al. v. United States Department of Interior, et al.*, 384 F. Supp. 2d 1, 15 (D.D.C. 2004) (“Sierra Club”). Documents that are prepared to assist a decision-maker in arriving at a final decision are pre-decisional. *Quarles v. Dep’t of the Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990). A document is deliberative if it reflects the “give-and-take of the consultative process.” *Coastal States, supra*; *Sierra Club, supra*.

This decision was made in consultation with the 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 (2007) 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

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 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.”

We have approved your fee waiver request based on the information provided in your FOIA request, plus the additional fee waiver justification provided March 16, 2007, for your prior FOIA requests. For future reference, in accordance with 43 C.F.R. § 2.16 (2007), 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.

Ms. Beth Daley

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If you have any questions, please contact Ms. Fay at 303-231-3430.

Sincerely,

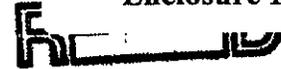
A handwritten signature in cursive script that reads "Tracy L. Fay".Handwritten initials "GK" in cursive script.

Gregory K. Kann
Freedom of Information Act Officer

Enclosures

bc: RM File (705-16)
MMS FOIA Officer, Ginny Morgan (e.t.)
Deborah Gibbs Tschudy with enclosures (e.t.)
Theresa Walsh Bayani with enclosures (e.t.)
ITC Chron

LMS:MRM/ITC/IMG/FOIA:MS340A1:tfay: 07/10/08:303-231-3430:
N:\ITC\IMG\FOIA\FOIA\Templates for the processing of a FOIA\2007 Requests &
Responses\2007-022a.doc
Finalized: des 07/10/2008



MAR 14 2007

Fay

MRM FOIA 2007-022

MMS FOIA 2007-00152

Fay, Tracey

From: Morgan, Ginny
Sent: Wednesday, March 14, 2007 7:13 AM
To: Kann, Gregory
Subject: FW: FOIA Request -- Lukens Analysis
Follow Up Flag: Follow up
Due By: Thursday, March 15, 2007 12:00 AM
Flag Status: Red

Lukens analysis of the RIK operation

Ginny Morgan
MMS FOIA/Privacy Officer
 703-787-1689

From: Beth Daley [mailto:beth@pogo.org]
Sent: Tuesday, March 13, 2007 12:07 PM
To: Morgan, Ginny
Subject: FOIA Request -- Lukens Analysis

March 13, 2007

Ginny Morgan
 MS:2200
 381 Elden Street
 Herndon, VA 20170-4817

Re: Freedom of Information Act Request

Dear Ms. Morgan:

I am making this request under the Freedom Of Information Act ("FOIA"), 5 U.S.C. § 552.

I would like to request copies of all reports and analyses produced by the Lukens Energy Group under contract for the MMS including but not limited to what was described in the MMS 2008 budget:

"In January 2003, MMS engaged the Lukens Energy Group to evaluate the capabilities and performance of the RIK operation, make recommendations for improvement, and provide advice on a five year strategic business plan for the RIK operation.

The Lukens Energy Group concluded in a series of reports, including the final assessment report issued in September 2003, that the MMS RIK business model had performed well in a volatile marketplace, and that the program had evolved from pilot projects to a well-developed operational program."

3/14/2007

I request a waiver of all costs associated with fulfilling this submission pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the requested records will further 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, the Project On Government Oversight (POGO). Specifically, POGO intends to use the requested records to highlight [issue i.e., when appropriate, specifically explain how the disclosure of the requested records will contribute to public understanding of the operations or activities of the government].

Founded in 1981, POGO is an independent nonprofit that investigates and exposes corruption in order to achieve a more accountable federal government. POGO disseminates information about its activities to thousands of concerned citizens, policymakers, and the media via email, direct mail, and its web site <http://www.pogo.org>, which receives 75,000 visitors monthly. The information provided by the agency will be used for the following activities: publication by email and on our website; publication in reports and newsletters issued by POGO; publication in the newsletters of affiliated nonprofit organizations; efforts to educate Congress, the Executive Branch, and other policymakers in Washington, DC; or investigational projects conducted in conjunction with the news media.

If this request is denied in full or in part, please cite the exemptions pursuant to 5 U.S.C. § 552(b) that justify the denial. If an exemption applies, however, please consider exercising the agency’s discretionary release powers to disclose the records. Additionally, please release all reasonably segregable portions of the records that do not meet an exemption.

I look forward to your response within 20 days of the receipt of this request, unless, in the case of “unusual circumstances,” the time limitation is “extended by written notice.” I may appeal this request if it is wholly or partially denied or if the agency fails to respond within 20 days. I am aware that, if successful, a federal district court may assess “reasonable attorney fees and other litigation costs” per 5 U.S.C. § 552(a)(4)(E).

Please contact me if this request requires further clarification. Thank you for your prompt attention to this matter.

Sincerely,

Beth M. Daley
Director of Investigations

*** POGO HAS MOVED -- NOTE OUR NEW SUITE # BELOW ***

Beth Daley
Director of Investigations
Project On Government Oversight
666 11th Street, NW, #900, Washington, DC 20001
Phone 202-347-1122
Fax 202-347-1116
Web <http://www.pogo.org>

Founded in 1981, the Project On Government Oversight is an independent nonprofit which investigates and exposes corruption and other misconduct in order to achieve a more accountable federal government.

3/14/2007

Documents withheld in their entirety

1. MMS Royalty-in-Kind Risk Metrics Program Prototype Manual – January 2006.
 - 48 pages, withheld under b-5 internal draft/deliberative, b-2 high, circumvention of regulations and b-2 low not of any significant interest.
2. Implementation of RIK Performance Metrics and Measurement Tools – Procedures Manual – January 2004
 - 37 pages, withheld under b-5 internal draft/deliberative, b-2 high, circumvention of regulations and b-2 low not of any significant interest.
3. Fair Market Value (FMV) Risk Metrics – September 2005
 - 23 pages, withheld under b-5 internal draft/deliberative, b-2 high, circumvention of regulations.
4. FMV Risk Metrics – Prototype Demo – November 2005
 - 11 pages, withheld under b-5 internal draft/deliberative, b-2 high, circumvention of regulations.
5. Wyoming RIK Gas Study – NARG Analysis of Rocky Mountain Gas Price – June 2, 2005
 - 61 pages, withheld under b-5 internal draft/deliberative, b-4, financial/commercial.
6. RIK Risk Assessment Report: A Review and Assessment of the risk profile for the existing MMS Royalty in Kind (RIK) Program – January 24, 2005
 - 25 pages, withheld under b-5 internal draft/deliberative, b-2 high, circumvention of regulations.
7. Human Resource Survey Findings and Conclusions – November 19, 2004
 - 11 pages, withheld under: b-5 internal draft/deliberative.
8. Review of MMS RIK Performance Measurement Process – October 20, 2004
 - 9 pages, withheld under b-5 internal draft/deliberative.

9. RIK Performance Measurement Review – October 2004
 - 12 pages, withheld under b-5 internal draft/deliberative.

10. Assessment of the Federal Royalty-in-Kind (RIK) Program and Development of RIK Business Plan – Deliverable 1: Evaluation of the current RIK Business Model and Operational Processes, including a review of the Alberta RIK Program – April 3, 2003
 - 24 pages, withheld under b-5 internal draft/deliberative.

11. Assessment of the Federal Royalty-in-Kind (RIK) Program and Development of RIK Business Plan – Deliverable 2: Recommendations for internal control process improvements, including RIK performance measurement tools and metrics – April 3, 2003
 - 25 pages, withheld under b-5 internal draft/deliberative, b-2 high, circumvention of regulations.

12. Deliverable 3: Alternative approaches for marketing strategies and risk assessment for RIK sales volumes and supporting appendices– Draft – June 2, 2003
 - 109 pages, withheld under b-5 internal draft/deliberative, b-4, financial/commercial, b-2 high, circumvention of regulations.

13. Assessment of the Federal Royalty-in-Kind (RIK) Program and Development of RIK Business Plan – Deliverable 4: Assessment of operational structures and human resources required to effectively support the permanent Federal RIK Program – July 24, 2003
 - 13 pages, withheld under b-5 internal draft/deliberative.

14. Review and Assessment of Selected Metrics and Benchmarks – RIK Blueprint for the Future – December 1, 2003
 - 17 pages withheld under b-5 internal draft/deliberative.

15. RIK Risk Metrics, July 29, 2005
 - 16 pages, withheld under b-5 internal draft/deliberative, b-2 high, circumvention of regulations.