

# PCU // Free Assembly Project

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~ an Association of Volunteers

28 June 2009

Corbin L. Newman, Jr., Regional Forester  
USDA Forest Service, Southwestern Region  
333 Broadway SE - Albuquerque, NM 87102

c/o: Sara Campney, Acting Forest Planner/FOIA

eM: scampney@fs.fed.us

Re: FOIA #338 and #516 ~

File Code: 6270-1-1      Date: June 25, 2009

~ "... No. 338 – Request for Expedited Processing"

~ "... No. 516 – Request for Expedited Processing"

• Rejoinder on Expedited Responses

Dear Mr. Newman:

Ms. Campney conveyed your above-cited letters via email on June 26, 2009. They respond to our two FOIA Requests in turn, #338 and #516, summarily denying "expedited processing" in each case. These actions are clearly obstructive in intent, factually and procedurally flawed, prejudicial to constitutional rights, and contrary to Federal policy on Freedom of Information.

The purpose here is to dispute their contentions and demand that these actions be rescinded, in order to proceed with simple, prompt disclosures in the public interest.

- i) The two denial letters are clones in content, throwing the same obstacles at the Requests. Both are erroneous on the submittal dates by Fax: Request #338 was filed on 6/17/09 - 3:01 PM (mt), and Request #516 on 6/24/09 - 9:02 PM (mt). For the record, these facts define the lawful timeframes for agency Response, which fall properly within the course of the 'Rainbow' event.
- ii) The decisive allegation in both denials is preposterous – *"Because the Rainbow Gathering is only of interest to the public in a limited geographic area..."* – and the supposed geographic reach of USFS policy actions is not a legitimate basis for denying timely information: The "interest" of participants and area residents is not casual, but a fundamental interest in their rights and standing under law. Moreover this annual event is known nationally and worldwide, and watched as a harbinger of expressive freedom OR government repression. These are vital interests of all citizens.
- iii) In both Requests, the grounds for expedited Response – *"Due to ongoing events and the timely nature of this information..."* – were stated simply for the sake of brevity, and should be self-evident in light of current policy actions, immediately affecting the 'Rainbow Gathering' just getting underway in Santa Fe N.F. This affirmation meets the test of "compelling need", if fairly construed, but in these denials it is dismissed in blithe disregard of reality. It might have been appropriate to ask for clarification, in order to enable "expedited processing" in accord with agency standards. However it is procedurally premature to deny it outright, arbitrary and capricious to misuse the review process or pose a lengthy Appeal to defeat timely disclosures. 5 U.S.C. 702, et seq.

iv) The "compelling need" for this information is easily made explicit, in each case:

(a) Request #338 concerns the Noncommercial Group Use Permit issued for the 'Rainbow Gathering'. On information and belief, it was executed by unknown signers who were not "*designated to sign*" on behalf of this public assembly, subjecting unaffiliated attendees to vicarious liabilities, curtailed personal rights, and fraud. 36 CFR 251.54(g)(3)(ii)(H). The granting of this Application, denial of any others presented, agency directives and *ex parte* correspondences specific to these proceedings are government actions of current impact, and such records are pertinent to current interests of participants and the public at-large.

(b) Request #516 concerns the 'Delegation of Authority' in Santa Fe N.F., the formation of the "National Incident Management Team", and the predicate determination or directive that the 2009 'Rainbow Gathering' in New Mexico was an "Incident", mandating the 'Delegation' in advance. Where such actions displace proper USFS civilian authorities, and enact extraordinary police powers targeting expressive assembly, related records are crucial to current interests of participants, and broader liberty interests in a democratic society.

v) For both Requests, the limited duration of the event and policy actions in question is defining: "*[T]he information is urgently needed to inform the public...*" because the circumstances are transient, and legal protections are made moot as they pass. Where First Amendment rights are at stake in government actions, the ability to obtain such information under FOIA is subject to Constitutional standards in judicial review. The facts are exigent in their relevance to a current exercise of expressive assembly by thousands of people, and the "*...loss of substantial due process rights if the records are not processed on an expedited basis.*" <http://www.fs.fed.us/im/foia/referenceguide.htm>

vi) The President set forth a new federal policy for openness under FOIA, upon entering office:

*"All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA."*

(Memorandum for the Heads of Executive Departments and Agencies; January 21, 2009.)

The USDA Forest Service is an Agency within this intent, and must uphold a "presumption of disclosure" on our Requests. It is a primary mission of *PCU/Free Assembly Project* to disseminate information on these concerns, and it is able to do so effectively and equitably.

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Therefore you are called upon to retract the tandem letters of denial issued on 6/25/09, and to proceed with expedited Responses immediately in accord with our Requests, #338 and #516.

If any FOIA determination is preempted by "*another agency having a substantial interest*" under the Incident regime, the Delegation of Authority should be rescinded and USFS powers in broad public interests restored – so that timely Responses are not further impeded. 5 U.S.C. 552(a)(6)(B)(iii)(III)

*I certify the foregoing statements to be true and correct,  
to the best of my knowledge and belief. 28 U.S.C. 1746*



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