



THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Environmental
Conservation

OFFICE OF THE COMMISSIONER

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July 15, 2022

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FOIA Officer:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. As Commissioner of the Alaska Department of Environmental Conservation ("ADEC"), an agency of the State of Alaska, I write to request Records on behalf of ADEC. See *Maryland Dep't of Hum. Res. v. Dep't of Health & Hum. Servs.*, 763 F.2d 1441, 1445 (D.C. Cir. 1985) (explaining a state or state agency is a "person" under the APA); U.S. DOJ, *Guide to FOIA, Procedural Requirements* at 19 (2021) (explaining that FOIA has the same definition of "person" as found in the Administrative Procedure Act at 5 U.S.C. § 551(2), which definition includes non-federal public organizations).

The requests below relate to the sites identified in Appendix A (the "Sites"). For each of the Sites, ADEC requests that the U.S. Air Force promptly provide copies of the following Records,¹ or Records containing the following information, for *each* of the Sites:

1. All Records referencing, discussing, and/or identifying each Site.
2. All Records identifying, referencing, and/or relating to past or present ownership of each Site by any person, including but not limited to any agency, department, branch, or entity of the United States government.
3. All Records identifying, referencing, and/or explaining the United States government's past or present uses of each Site, including but not limited to descriptions of activities or operations undertaken by or on behalf of the United States government.
4. All Records referencing and/or discussing conveyance of property rights for each Site to any Alaska Native Corporation ("ANC") under the Alaska Native Claim Settlement Act ("ANCSA").
5. All Records referencing, identifying, describing, and/or delineating past or present Environmental Contamination² at each Site.

¹ For purposes of this request, a "**Record**" is defined as the product(s) of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States government under Federal law in connection with the transaction of public business and in DoD possession and control at the time the FOIA request is made.

² For purposes of this request, the following additional definitions apply:

- "**Environmental Contamination**" includes, but is not limited to, the presence, suspected presence, or threat of one or more Hazardous Substances in the Environment: (a) which may result in pollution, contamination, degradation, impacts, damage, threat or injury caused by, related to, or arising from, in connection with or concerning Hazardous

6. All Records analyzing, evaluating, referencing, identifying, describing, and/or delineating the party(ies) that caused or contributed to the Environmental Contamination at each Site.
7. All Records analyzing, evaluating, referencing, identifying, describing, and/or delineating the party(ies) that should be financially responsible for investigating, restoring, remediating, and/or cleaning up the Environmental Contamination at each Site.
8. All Records referencing and/or identifying each of the Sites as requiring environmental investigation, restoration, remediation, or clean-up under any Environmental Laws or to protect the Environment and/or human safety.
9. All Records referencing and/or identifying each of the Sites together with Alaska Statute 46.03.822 et seq.; Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq.; or the Resource Conversation and Recovery Act, 42 U.S.C. § 6901 et seq.
10. All Records referencing and/or identifying potentially responsible parties (also known as “PRPs”) under CERCLA or Alaska Statute 46.03.822, for the Environmental Contamination at each of the Sites.
11. All Records referencing, discussing, and/or identifying the U.S. Bureau of Land Management’s 1998 Report to Congress on Hazardous Substance Contamination of Alaska Native Claim Settlement Act Lands in Alaska
12. All Records referencing, discussing, and/or identifying the U.S. Bureau of Land Management’s 2016 Update to the 1998 Report to Congress on Hazardous Substance Contamination of ANCSA Lands in Alaska (“2016 Update”).

Substances, (b) that may affect, or pose an actual or potential threat or impact to, human health or the Environment, or (c) which is not allowed by Environmental Laws or which is not in compliance with Environmental Laws.

- **“Environment”** includes but is not limited to the waters of the United States, the waters of Alaska, the waters of the contiguous zone and the ocean waters, and any other surface water, groundwater, drinking water, water supply, property, premises, land surface, subsurface, subsurface strata, sediment, soil, air or atmosphere, as well as all human, animal, organisms, plants or natural resources located in, under or near thereon.
- **“Environmental Laws”** includes but is not limited to all United States federal and Alaska state and local statutes, laws, ordinances, regulations, codes, permits, licenses, authorizations and rules, and other provisions having the force and effect of law, in each case as amended, and including any judicial or administrative orders, determinations, writs, injunctions, judgments and decrees, concerning the Environment or Hazardous Substances, including but not limited to the generation, production, presence, use, distribution, handling, storage, treatment, transportation, testing, processing, discharge, release, threatened release, control, investigation or cleanup of any Pollutants, or the protection of human health, safety, natural resources, ecological impacts or animal health or welfare, or the Environment. Specifically, Environmental Laws includes, but is not limited to, Alaska Statute 46.03.822 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq.; the Resource Conversation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Oil Pollution Act, 33 U.S.C. § 2701; the Clean Water Act, 33 U.S.C. § 1151 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the National Environmental Protection Act, 42 U.S.C. § 4321 et. seq.; and the Endangered Species Act, 16 U.S.C. § 1531 et seq.
- **“Hazardous Substance(s)”** includes but is not limited to (a) any chemical, material, mixture, constituent, waste, water or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “toxic chemicals,” “contaminants,” “pollutants,” “solid wastes,” “industrial wastes,” “industrial solid or hazardous wastes,” “wastes” or words of similar import, under Environmental Laws or considered toxic, explosive, corrosive, reactive, flammable, ignitable, infectious, radioactive, carcinogenic or mutagenic; (b) any pesticide (or ingredients, degradation or daughter products or byproducts or constituents thereof), petroleum or petroleum products, petroleum hydrocarbons, gasoline, diesel fuel, natural gas or natural gas products, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls (“PCBs”), transformers or other equipment that contains dielectric fluid containing levels of PCBs, dioxin, radon gas, or noise; (c) any other chemical, material, waste, water or substance, (or constituent thereof), which is in any way regulated under the Environmental Laws or by any federal or Alaska state or local government authority, agency or instrumentality, including mixtures thereof with other materials, and including any regulated building materials such as asbestos and lead; or (d) any other chemical, material, waste, water or substance, or constituent thereof, concerning or that may affect or pose an actual or potential threat or impact to human health or the Environment.

13. All Records referencing, discussing, and/or identifying the comprehensive inventory of contaminated sites discussed in the 2016 Update, and any subsequent updates to the inventory.
14. All Records referencing, discussing, identifying, and/or explaining that lands conveyed under the ANCSA, as identified in the 2016 Update or any subsequent updates, contain contaminated or potentially contaminated sites that may require environmental clean-up, investigation, restoration, and/or remediation under any Environmental Laws or to protect the Environment and/or human safety.
15. To the extent that any of the requested Records are already publicly available, please identify the location, including web address, and title of the Record.

ADEC is charged with conserving, improving, and protecting Alaska's natural resources and environment to enhance the health, safety, and economic and social well-being of Alaskans. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(III) (all other requesters category for fee purposes). As a part of this charge, ADEC seeks to help Alaska Natives,³ through their ANCs, determine the extent of the contamination of the lands transferred to them by the United States government under the ANCSA (enacted in 1971), 43 U.S.C. §§ 1601-1629h, and to take appropriate action to address the contamination. In so doing, ADEC's purpose is to obtain justice for the Alaska Natives negatively impacted by the United States government's actions and operations on land transferred to them under the ANCSA.

ADEC requests a waiver of all fees for this request because this request is in the "public interest" and will "contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). More specifically, the requested Records will significantly contribute to the public understanding of the United States government's operations and/or activities, including, but not limited to, those of the U.S. Air Force, on the lands conveyed to the ANCs under the ANCSA and the scope and scale of the contamination the United States government caused on these lands. This contamination continues to not only impacts Alaska's environment, but also affects the health and safety of Alaska Natives and Alaskans to this very day. There is no greater environmental justice issue in Alaska today. Once ADEC receives the requested Records, ADEC will share these Records with the ANCs, Alaska Natives, and the public to ensure the protection of the health, safety, and well-being of the Alaska Natives and Alaskans living on the lands transferred under the ANCSA or within the possible off-site migration path of the contamination. ADEC will also look to take action to address the contamination on these lands to protect Alaska Natives, other Alaskans, and the environment.

In short, this FOIA request is in the public interest and not for commercial purposes because it seeks information about the United States government's operations and/or activities on, and ownership of, lands transferred to the ANCs under the ANCSA and any contamination the United States government on these lands prior to the transfer. In answering this request, ADEC respectfully reminds the U.S. Air Force that each federal agency subject to FOIA has an affirmative duty to construe FOIA requests liberally. *Yagman v. Pompeo*, 868 F.3d 1075, 1079-80 (9th Cir. 2017) (compiling cases); U.S. DOJ, *Procedural Requirements* at 28 n.113 (same). This duty extends to liberally construing the fee-waiver request in favor of finding that ADEC has met the requirements for the waiver. *See Nat'l Sec. Couns. v. United States Dep't of Just.*, 848 F.3d 467, 473 (D.C. Cir. 2017) (explaining that "fee-waiver applications are to be 'liberally construed' in favor of finding that requesters meet FOIA's two-prong test").⁴

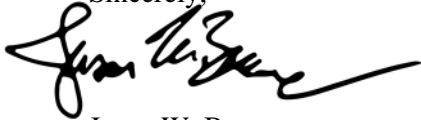
³ Alaska "Native" is used here as it is defined in ANCSA, 43 U.S.C. § 1602(b).

⁴ To the extent the U.S. Air Force believes the exemption for inter- or intra-agency memorandums or letters applies, that exemption is limited to the "ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds it"—e.g., the attorney work-product or deliberate process privileges. *DOI v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001). But, in no event, does attorney work-product protection apply unless the document's author anticipated litigation at the time the Record was created. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 865 (D.C. Cir. 1980). Additionally, the deliberate process privilege does not apply to documents created more than 25 years before the date of this request. 5 U.S.C. § 552(b)(5).

ADEC requests the information sought be provided in electronic format. If you need to reach me, please either call the number listed below during the hours of 9:00 am to 5:00 pm Alaska Time to discuss my request or email me at the email listed below.

ADEC looks forward to your response to this request within 20 working days, as required under FOIA. *See* 5 U.S.C. § 552(a)(6)(A).

Sincerely,

A handwritten signature in black ink, appearing to read "Jason W. Brune", with a long, sweeping horizontal stroke extending to the right.

Jason W. Brune,
Commissioner

555 Cordova St.
Anchorage, AK 99501
Email: dec.commissioner@alaska.gov

Appendix A

No.	Agency ID	Site Name	Latitude	Longitude
1	SS004	DRIFTWOOD BAY RADIO RELAY STATION (Former Drum Storage Area)	53.966717	-166.859482
2	SS011	DRIFTWOOD BAY RADIO RELAY STATION (Former Lighting Vault at Runway)	53.966505	-166.858049
3	TU012	DRIFTWOOD BAY RADIO RELAY STATION (Former USTs near lighting vault)	53.966516	-166.858057
4	SS010	DRIFTWOOD BAY RADIO RELAY STATION (Former Water Supply Pumphouse)	53.966399	-166.866107
5	SS014	DRIFTWOOD BAY RADIO RELAY STATION (Heavy Equipment Storage)	53.961296	-166.852083
6	LF006	DRIFTWOOD BAY RADIO RELAY STATION (Old Disposal Area)	53.959625	-166.851183
7	SS003	NORTH RIVER RADIO RELAY STATION (Drums and Stained Soil (A))	63.883469	-160.534178
8	SS004	NORTH RIVER RADIO RELAY STATION (Drums and Stained Soil (B))	63.882602	-160.532409
9	SO001	NORTH RIVER RADIO RELAY STATION (Vehicle Maintenance Building UST)	63.886613	-160.521717
10	LF007	PORT HEIDEN RADIO RELAY STATION (Landfill No 1 at Former Composite Bldg)	56.979987	-158.656771
11	LF006	WAINWRIGHT (ABANDONED LANDFILL: AC)	70.593157	-159.856501