

July 4, 2017

Commander, U.S. Pacific Fleet
ATTN: FOIA Coordinator
250 Makalapa Drive
Pearl Harbor, HI 96860-3131

Re: Freedom of Information Act Request

Dear Commander,

This is a Freedom of Information Act Request. Pursuant to the Freedom of Information Act (FOIA) and on behalf of the Eyak Preservation Council, I submit this record request for all records discussing the following issues regarding the Northern Edge 2017 (NE17) Gulf of Alaska training exercises from May 1, 2015 – present:

1. All records of U.S. Navy and Navy personnel pertaining to ordnance used in or over the Temporary Maritime Activities Area (TMAA) during NE17. Please include all records dated between May 1, 2015 – present.
2. All records of U.S. Navy activities and those of Navy personnel pertaining to Northern Edge 17 regarding economic statements and projections of the reported income brought to the state of Alaska. Please include all records dated between May 1, 2015 – present.
3. All records of U.S. Navy activities and those of Navy personnel pertaining to scheduling of Northern Edge 17, 19 and 21. Please include all records dated between May 1, 2015 – present.
4. All records of U.S. Navy activities and those of Navy personnel pertaining to the use of active sonar during Northern Edge 17. Please include the type of sonar, the duration and frequency used, and number of power downs. Please include all records dated between May 1, 2015 – present.
5. All records of U.S. Navy activities and those of Navy personnel pertaining to interactions with marine mammals in the Gulf of Alaska and TMAA before, during and after Northern Edge 17. Please include the number of sightings, species, location, number, duration, type, incidences of power downs, incidences with ship strikes, Level A takes and Level B takes. Please include all records dated between May 1, 2015 – present.
6. All records of U.S. Navy activities and those of Navy personnel pertaining to fish in the Gulf of Alaska and TMAA before, during and after Northern Edge 17. Please include all records dated between May 1, 2015 – present.
7. All records of U.S. Navy activities and those of Navy personnel pertaining to birds in the Gulf of Alaska and TMAA before, during and after Northern Edge 17. Please include all records dated between May 1, 2015 – present.
8. All records of U.S. Navy activities and those of Navy personnel pertaining to non-military personnel aboard aircraft and naval ships during Northern Edge 17. We would like a list of all nonessential and nonmilitary persons. Please include all records dated between May 1, 2015 – present.

9. All records of U.S. Navy activities and those of Navy personnel pertaining to community outreach and stakeholder engagement before, during and after Northern Edge 17. We require a list of events Naval representatives attended and presented at regarding Northern Edge. Please include all records dated between May 1, 2015 – present.

10. All records of U.S. Navy activities and those of Navy personnel pertaining to scheduling of future engagements for community meetings, events and presentations. We require a list of events Naval representatives plan to attend and/or present at regarding Northern Edge. Please include all records dated between May 1, 2015 – present.

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind including electronic as well as paper documents, e-mails, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, data bases, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained. All of the foregoing is included in this request if it is in the Navy’s possession and control. If such records are no longer under the control of the Navy but were at any time, please refer this request to the relevant federal agency or agencies. This request is being sent to the headquarters for the Service with the understanding that it will be forwarded to any other agency offices where responsive records may be located.

This request is not meant to exclude any other records that, although not specially requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. 5 U.S.C. § 552(a)(8)(A).

If you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

In addition, if you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

We are willing to receive records on a rolling basis.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. See 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). Please provide all records in a readily-accessible, electronic .pdf format that is text-searchable and OCR-formatted.

Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or if that is not possible; (2) in .pdf format, without any “profiles” or “embedded files.” Profiles and embedded files within files are not readily-accessible. Please do not provide the records in a single, or “batched,” .pdf file. The inclusion of an index is appreciated.

REQUEST FOR FEE WAIVER

The Eyak Preservation Council requests a full waiver of fees for this request. FOIA was designed to provide citizens with a broad right to access government records, to “open agency action to the light of public scrutiny,” with a focus on the public’s “right to be informed about what their government is up to.” U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA’s fee waiver provision requires that “[d]ocuments shall be furnished without any charge or at a [reduced] charge,” if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA’s fee waiver requirement is “liberally construed.” Judicial Watch, Inc. v. Rossotti, 326 F.3d 1309, 1310 (D.C. Cir. 2003); Forest Guardians v. U.S. Dept. of Interior, 416 F.3d 1173, 1178 (10th Cir. 2005).

The fee waiver amendments of 1986 were designed specifically to provide non-profit organizations such as the Eyak Preservation Council with access to government records without the payment of fees. Indeed, FOIA’s fee waiver provision was intended “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars, and non-profit public interest groups.” Ettlenger v. FBI, 596 F. Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, “[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.” 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

1. The Eyak Preservation Council Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The Service’s regulations at 43 C.F.R. § 2.45(a) establish the same standard. Thus, the Service must consider four factors to determine whether a request is in the public interest:

- A. whether the subject of the requested records concerns “the operations or activities of the Federal government,”

- B. whether the disclosure is “likely to contribute” to an understanding of government operations or activities,
- C. whether the disclosure “will contribute to public understanding” of a reasonably-broad audience of persons interested in the subject, and
- D. whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

43 C.F.R. § 2.48(a)(A)–(D). As shown below, the Eyak Preservation Council’s request meets each of these factors.

A. The Subject of This Request Concerns “The Operations and Activities of the Government.”

The subject matter of this request concerns operations, activities, and records kept by the Service. This request asks for records from the Department of Defense and the U.S. Navy.

This FOIA will provide the Eyak Preservation Council and the public with crucial insight into the planning process of the military exercise known as Northern Edge. Thus, the Center meets the first factor for a fee waiver.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public. Disclosure of the requested records will allow the Eyak Preservation Council to convey to the public information about the planning and public engagement process of Northern Edge. Thus, the requested records are likely to contribute to an understanding of the Service’s operations and activities.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons’

The requested records will contribute to public understanding of Northern Edge planning processes.

Through the Eyak Preservation Council’s synthesis, dissemination and disclosure of information contained in and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep’t of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), cert. denied, 513 U.S. 823 (1994) (applying “public” to require a sufficient “breadth of benefit” beyond the requester’s own interests); *Cnty. Legal Servs. v. Dep’t of Hous. & Urban Dev.*, 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience,” “there is a segment of the public that is interested in its work”).

Disclosure of these records is not only “likely to contribute,” but is certain to contribute, to public understanding of U.S.-based military training exercises, its impacts on both communities and environments. The public is always well served when it knows how the government conducts its activities. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about military training processes in the United States.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Eyak Preservation Council is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public's understanding of the processes surrounding the planning process and impacts of Northern Edge, as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be significantly increased as a result of disclosure because the requested records will help reveal more about planning processes and impact measurement.

2. The Eyak Preservation Council has a Demonstrated Ability to Disseminate the Requested Information Broadly.

The Eyak Preservation Council is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and public processes relating to environmental issues since 1989.

In consistently granting the Eyak Preservation Council's fee-waivers, agencies have recognized: (1) that the information requested by the Eyak Preservation Council contributes significantly to the public's understanding of the government's operations or activities; (2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that the Eyak Preservation Council possesses the expertise to explain the requested information to the public; (4) that the Eyak Preservation Council possesses the ability to disseminate the requested information to the general public. The Eyak Preservation Council's track record of active participation in oversight of governmental activities and decisionmaking, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

Public oversight and enhanced understanding of the Service's duties is necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). The Eyak Preservation Council need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch*, 326 F.3d at 1314.

3. Obtaining the Requested Records is of No Commercial Interest to the Eyak Preservation Council.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Eyak Preservation Council's role of educating the general public. Requestor has no commercial interest—these documents are sought for their informative value. 43 C.F.R. Part 2, Appendix D, Section (b)(2)(i). Eyak Preservation Council is a public charity with 501(c)(3) status based in Cordova, Alaska whose mission is: To honor Eyak heritage and to conserve wild salmon habitat and culture through education, awareness and promotion of sustainable lifeways for all peoples. Eyak Preservation Council offers educational and outreach programs that concentrate on the regional salmon way of life, indigenous cultural preservation and the promotion of sustainable economies. We represent the communities and people of the Copper River, Prince William Sound

and the Gulf of Alaska and have program participants from these regions and from the nation at large. Requested documents will be used to help inform the public and interested parties.

For all of the foregoing reasons, the Eyak Preservation Council qualifies for a full fee-waiver. We hope that the Service will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

RECORD DELIVERY

As mandated in FOIA, we anticipate the agency's response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in our taking additional steps to ensure timely receipt of the requested materials. You may email or mail copies of the requested records to the address listed below.

CONCLUSION

We thank you in advance for the work and staff time required to respond to this records request. If you would like further clarification of this request, or if the responsive records are voluminous, please call Emily Stolarcyk at (907)491-1564.

Sincerely,



Emily Stolarcyk
Program Director

Eyak Preservation Council
PO Box 460
Cordova, AK 99574