



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

**MAY 19 2015**

Frank W. Kowalkowski, Esq.  
Davis & Kuelthau, s.c.  
318 S. Washington Street, Suite 300  
Green Bay, Wisconsin 54301

REF: BIA-2015-00933

Dear Mr. Kowalkowski:

Through this letter, the Bureau of Indian Affairs ("BIA") is providing responsive records in connection with your firm's July 19, 2014, Freedom of Information Act ("FOIA") request on behalf of the Village of Hobart. The FOIA request is the subject of litigation before the United States District Court for the Eastern District of Wisconsin: *Village of Hobart v. U.S. Dep't of the Interior*, No. 15-cv-234 (filed Mar. 2, 2015).

Through the FOIA, the Village sought the following records:

Land index reports, title status reports, title documents, ownership records, instruments, conveyance and encumbrance documents, and any other documents showing the status of title ownership, for all trust land located within the following section, township, ranges, in the Village of Hobart, Brown County, WI:

- a) Section 3, Township 24 North, Range 19 East
- b) Section 10, Township 24 North, Range 19 East
- c) Section 11, Township 24 North, Range 19 East
- d) Section 12, Township 24 North, Range 19 East
- e) Section 15, Township 24 North, Range 19 East
- f) Section 14, Township 24 North, Range 19 East
- g) Section 13, Township 24 North, Range 19 East
- h) Section 22, Township 24 North, Range 19 East
- i) Section 23, Township 24 North, Range 19 East
- j) Section 35, Township 24 North, Range 19 East
- k) Section 36, Township 24 North, Range 19 East
- l) Section 2, Township 23 North, Range 19 East
- m) Section 1, Township 23 North, Range 19 East
- n) Section 10, Township 23 North, Range 19 East
- o) Section 11, Township 23 North, Range 19 East
- p) Section 12, Township 23 North, Range 19 East
- q) Section 15, Township 23 North, Range 19 East
- r) Section 14, Township 23 North, Range 19 East
- s) Section 13, Township 23 North, Range 19 East

- t) Section 22, Township 23 North, Range 19 East
- u) Section 23, Township 23 North, Range 19 East
- v) Section 24, Township 23 North, Range 19 East
- w) Section 27, Township 23 North, Range 19 East
- x) Section 26, Township 23 North, Range 19 East
- y) Section 25, Township 23 North, Range 19 East
- z) Section 34, Township 23 North, Range 19 East
- aa) Section 35, Township 23 North, Range 19 East
- bb) Section 3, Township 22 North, Range 19 East
- cc) Section 2, Township 22 North, Range 19 East
- dd) Section 10, Township 22 North, Range 19 East
- ee) Section 18, Township 24 North, Range 20 East
- ff) Section 17, Township 24 North, Range 20 East
- gg) Section 20, Township 24 North, Range 20 East
- hh) Section 6, Township 23 North, Range 20 East
- ii) Section 7, Township 23 North, Range 20 East
- jj) Section 8, Township 23 North, Range 20 East
- kk) Section 18, Township 23 North, Range 20 East
- ll) Section 17, Township 23 North, Range 20 East
- mm) Section 19, Township 23 North, Range 20 East.

See Complaint at ¶ 5.

The BIA has located 6,559 pages of responsive records. Of these, 5,469 pages are hereby provided in full, and 1,090 have been withheld in part pursuant to FOIA Exemption 6, 5 U.S.C. 552(b)(6), as described below. Copies of these records may be found on the enclosed CD-ROM.

With respect to the partial withholdings, the BIA has redacted personal information—such as addresses, dates of birth, personal telephone numbers, and tribal census numbers—pursuant to 5 U.S.C. § 552(b)(6), otherwise known as Exemption 6. This FOIA exemption allows the withholding of “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. See *United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982).

To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, the BIA is required to balance the privacy interest that would be affected by disclosure against any public interest in the information. See *United States Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-75 (1989). Under the FOIA, “the only relevant public interest” to consider under the exemption is “the extent to which the information sought would ‘she[d] light on an agency’s performance of its statutory duties’ or otherwise let citizens ‘know what their government is up to.’” *United States Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495-96 (1994) (quoting *Reporters Comm.*, 489 U.S. at 775). The burden is on the requester to establish that disclosure would serve the public interest. See *National Archives and Records Admin. v. Favish*,

541 U.S. 157, 171-72 (2004). When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public. *See Reporters Comm.*, 489 U.S. at 771.

As noted above, the information that the BIA has withheld under Exemption 6 consists of personal information, such as birth dates and tribal census numbers. The BIA has determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, the Village of Hobart has not provided information that explains a relevant public interest in the disclosure of this personal information under the FOIA, and the BIA has determined that its disclosure would shed little or no light on the bureau's performance of its statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals. Accordingly, the BIA is withholding such information under Exemption 6.

This is our final response to your firm's request. On behalf of the BIA, I apologize for the delay in providing these materials to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Largo Jr", with a stylized flourish at the end.

Daniel Largo, Jr.  
Indian Affairs – FOIA Officer

Enclosure (1) – CD Rom

cc: Chris Larsen  
Assistant United States Attorney  
United States Attorney's Office  
517 East Wisconsin Avenue, Room 530  
Milwaukee, Wisconsin 53202



July 10, 2014

**VIA CERTIFIED RETURN RECEIPT MAIL**

Office of the Solicitor  
U.S. Department of the Interior  
Mail Stop 6415  
1849 C Street, NW  
Washington, DC 20240

Re: **FOIA REQUEST**

Dear Sir or Madam:

The following is a request for information under the federal Freedom of Information Act, 5 U.S.C. § 552. On behalf of the Village of Hobart, in Brown County, Wisconsin, I am requesting access to and/or copies of the documents referenced below.

1. Any documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent from the Oneida Tribe of Indians of Wisconsin and any of its representatives, to the United States Department of the Interior, including any department or office thereunder, relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida Reservation" located within Brown County, Wisconsin, as described in "an Act granting the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation in the State of Wisconsin." 16 Stat. 588 (March 3, 1871).
2. Any documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent from the United States Department of the Interior, including any department or office thereunder, to the Oneida Tribe of Indians of Wisconsin and any of its representatives relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida Reservation" located within Brown County, Wisconsin, as described in "an Act granting

Phone 920.435.9378 Direct 920.431.2221 Fax 920.431.2261  
318 S. Washington Street, Suite 300, Green Bay, WI 54301  
fkowalkowski@dkattorneys.com

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July 10, 2014  
Page 2

the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation in the State of Wisconsin." 16 Stat. 588 (March 3, 1871).

I would like to receive the information in electronic format.

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed \$500.00. However, please notify me prior to your incurring any expenses in excess of that amount.

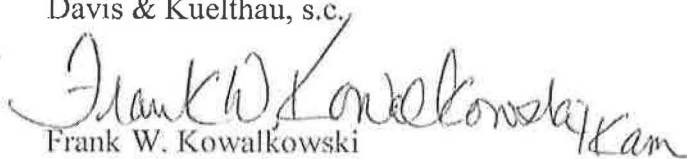
If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Very truly yours,

Davis & Kuelthau, s.c.

  
Frank W. Kowalkowski

FWK:kam

cc: Village of Hobart

7010 1870 0001 6970 7912

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PS Form 3800, August 2006 See Reverse for Instructions



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

SOL-2014-00072

March 19, 2015

Frank W. Kowalkowski, Esq.  
Davis & Kuelthau, s.c.  
318 S. Washington Street  
Suite 300  
Green Bay, WI 54301

Dear Mr. Kowalkowski:

This letter serves to release records in connection with *Village of Hobart v. U.S. Dep't of the Interior*, Civ. No. 1:15-cv-00234-WCG (E.D. Wisc., filed Mar. 3, 2015), which concerns, in part, a July 10, 2014, FOIA request to the Office of the Solicitor, to which we assigned a control number of SOL-2014-00072. The July 10, 2014, request sought

[a]ny documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent *from the Oneida Tribe of Indians of Wisconsin* and any of its representatives, to the United States Department of the Interior, including any department or office thereunder, relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida Reservation" located within Brown County, Wisconsin, as described in "an Act granting the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation and the State of Wisconsin." 16 Stat. 588 (March 3, 1871).

The request further sought

[a]ny documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent *from the United States Department of the Interior*, including any department or office thereunder, to the Oneida Tribe of Indians of Wisconsin and any of its representatives relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida Reservation" located within Brown County, Wisconsin, as described in "an Act granting



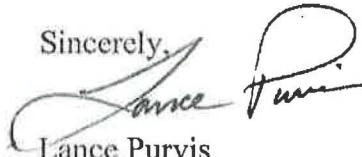
the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation in the State of Wisconsin." 16 Stat. 588 (March 3, 1871).

Through this letter, the Office of the Solicitor is releasing 24 files, which may be found on the enclosed CD-ROM, and are being released to you in their entirety.

As for fees, three components fall under the rubric of fees: search fees, review fees, and duplication fees. Due to our failure to comply with statutory time limits, no search fees may be assessed here. Review fees are inapplicable as well, given that the "other requester" category, in which the Village of Hobart falls, is not subject to such fees. The fee incurred in responding to your request is less than \$50 and is not being charged in accordance with 43 CFR 2.49(a)(1).

This constitutes our final response to the July 10, 2014, FOIA request. We thank you for your interest in matters concerning the Office of the Solicitor.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lance Purvis".

Lance Purvis  
FOIA Officer, Office of the Solicitor

Enclosure – 1 CD-ROM

cc: Chris Larsen, Assistant U.S. Attorney  
United States Attorney's Office  
*Chris.Larsen@usdoj.gov*





# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:

SOL-2014-00072

April 22, 2015

Frank W. Kowalkowski, Esq.  
Davis & Kuelthau, s.c.  
318 S. Washington Street  
Suite 300  
Green Bay, WI 54301

Dear Mr. Kowalkowski:

This letter serves to supplement our earlier release records in connection with *Village of Hobart v. U.S. Dep't of the Interior*, Civ. No. 1:15-cv-00234-WCG (E.D. Wisc., filed Mar. 3, 2015), which concerns, in part, a July 10, 2014, FOIA request to the Office of the Solicitor, to which we assigned a control number of SOL-2014-00072. We apologize for not having disgorged all responsive records in one fell swoop.

As you recall, the July 10, 2014, FOIA request sought

[a]ny documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent from the *Oneida Tribe of Indians of Wisconsin* and any of its representatives, to the United States Department of the Interior, including any department or office thereunder, relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida Reservation" located within Brown County, Wisconsin, as described in "an Act granting the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation and the State of Wisconsin." 16 Stat. 588 (March 3, 1871).

The request further sought

[a]ny documents, including but not limited to, correspondence, e-mails, memoranda, or anything else, sent from the *United States Department of the Interior*, including any department or office thereunder, to the Oneida Tribe of Indians of Wisconsin and any of its representatives relating to the authorization for, construction of, payment of compensation for, the title status of, claims of any interest in, and anything else in any way relating to the right-of-way, for railroad purposes, granted to the Green Bay and Lake Pepin Railway Company (and all of its successors and assigns) within the "Oneida

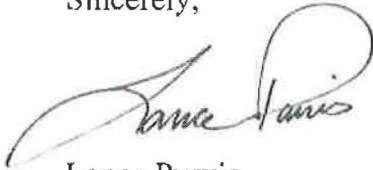
Reservation” located within Brown County, Wisconsin, as described in “an Act granting the right-of-way to the Green Bay and Lake Pepin Railway Company for its road across the Oneida Reservation in the State of Wisconsin.” 16 Stat. 588 (March 3, 1871).

Through this letter, the Office of the Solicitor is releasing 104 pages of documents, which may be found on the enclosed CD-ROM . No FOIA exemptions are being asserted; the records are released in full.

No fees are being assessed for the processing of the Village’s FOIA request.

This supplemental release constitutes our final response to the July 10, 2014, FOIA request. We thank you for your interest in matters concerning the Office of the Solicitor.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Purvis", with a large, stylized loop at the end.

Lance Purvis  
FOIA Officer, Office of the Solicitor

Enclosure – 1 CD-ROM

cc: Chris Larsen, Assistant U.S. Attorney  
United States Attorney’s Office  
[Chris.Larsen@usdoj.gov](mailto:Chris.Larsen@usdoj.gov)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

VILLAGE OF HOBART,

Plaintiff,

v.

Case No. 14-cv-201

UNITED STATES DEPARTMENT  
OF THE INTERIOR,

UNITED STATES DEPARTMENT  
OF THE INTERIOR,  
OFFICE OF SOLICITOR,  
DIVISION OF INDIAN AFFAIRS, and

UNITED STATES DEPARTMENT  
OF THE INTERIOR,  
OFFICE OF THE SPECIAL TRUSTEE  
FOR AMERICAN INDIANS,

Defendants.

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**ANSWER TO COMPLAINT**

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Defendants United States Department of the Interior ("DOI"); DOI Office of the Solicitor, Division of Indian Affairs; and DOI Office of the Special Trustee for American Indians, by their attorneys, James L. Santelle, United States Attorney for the Eastern District of Wisconsin, and Chris R. Larsen, Assistant United States Attorney for said district, hereby answer plaintiff's Complaint as follows:

1. *This is an action under the Freedom of information Act ("FOIA"), 5 U.S.C. § 552, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq., for injunctive and other appropriate relief, seeking the immediate processing and release of records requested by Plaintiff from Defendants.*



**Answer:** In response to paragraph 1, admit that plaintiff seeks the relief set forth in paragraph 1, but denies that plaintiff is entitled to such relief.

2. *This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § § 701-706. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).*

**Answer:** In response to paragraph 2, admit.

3. *Plaintiff, Village of Hobart ("Hobart"), is a Wisconsin municipality which maintains its principal offices at 2990 South Pine Tree Road, Hobart, Wisconsin.*

**Answer:** In response to paragraph 3, defendants are without information sufficient to form a belief as to the truth of the allegations, and therefore deny them.

4. *Defendant, Department of Interior ("DOI") is a Department of the Executive Branch of the United States Government. DOI is an agency within the meaning of 5 U.S.C. § 552(f). The components of DOI include the Office of the Solicitor and Division of Indian Affairs.*

**Answer:** In response to paragraph 4, admit that DOI is a Department of the Executive Branch of the United States Government and is an agency within the meaning of 5 U.S.C. § 552(f). Defendants deny that the Office of the Solicitor and the Division of Indian Affairs are separate components of DOI. The Division of Indian Affairs is a component of the Office of the Solicitor, which in turn is part of the Office of the Secretary for DOI.

5. *The following parcels of land are located within the Village of Hobart ("Village"): HB-1036; HB-1330; HB-1342-1; HB-1364-1; HB-1368-1; HB-1372; HB-1380; HB-1389; HB-1409-1; HB-1410-1; HB-1414-1; HB-1416; HB-1420-1; HB-1422; HB-1425-1; HB-1426-1; HB-1428-1; HB-1429-1; HB-742; HB-786 ("Parcels").*

**Answer:** In response to paragraph 5, defendants are without information sufficient to form a belief as to the truth of the allegations, and therefore deny them.

6. *Until approximately November 2007, the Parcels were titled in the name of Fox Valley & Western Ltd., and were previously used as a railroad right-of-way by Fox Valley & Western Ltd. and its predecessors in interest.*

**Answer:** In response to paragraph 6, deny that the Parcels referred to in paragraph 5 were titled in the name of Fox Valley & Western Ltd. until approximately November 2007. Defendants are without information sufficient to form a belief as to the truth of the allegation that the parcels were previously used as a railroad right-of-way by Fox Valley & Western Ltd. and its predecessors in interest, and therefore deny that allegation.

7. *On October 18, 2007, the Oneida Tribe of Indians of Wisconsin ("Tribe") filed an Affidavit of Easement Cancellation ("Affidavit") relating to the Parcels with the Brown County Register of Deeds and recorded as Document No. 2337382.*

**Answer:** In response to paragraph 7, defendants are without information sufficient to form a belief as to the truth of the allegations, and therefore deny them.

8. *In approximately November 2007, as requested by the Tribe in its October 18, 2007 Affidavit of Easement Cancellation, the Brown County Wisconsin Register of Deeds changed title to the parcels referenced in Paragraph 3 to "USA IN TRUST FOR ONEIDA TRIBE OF INDIANS OF WI."*

**Answer:** In response to paragraph 8, defendants are without information sufficient to form a belief as to the truth of the allegations, and therefore deny them.

9. *The Village never received notification of a fee-to-trust application, nor a copy of any decision by the Defendants' or any other federal agency or department accepting the Parcels into trust for the benefit of the Tribe.*

**Answer:** In response to paragraph 9, defendants are without information sufficient to form a belief as to the truth of the allegations, and therefore deny them, but state that the Department of the Interior has not issued any decision accepting the Parcels into trust for the benefit of the Tribe.

10. *Upon information and belief, the Department of Interior questioned the Tribe's action relating to its attempts to claim trust status for the railroad parcels.*

**Answer:** In response to paragraph 10, deny that the Department of the Interior questioned the Tribe's action relating to its attempts to claim trust status for the railroad parcels, but state that the Department received a request from the Tribe for confirmation of the trust status of the railroad right-of-way, and that the Department's analysis of this issue is ongoing.

11. *On or about May 13, 2009, Attorney Carl J. Artman sent a memorandum to Maria Wiseman, United States Department of the Interior, Office of the Solicitor, and Karen Lindquist, United States Department of the Interior, Office of the Solicitor ("Memorandum"). The Memorandum indicated, in relevant part, that "The GB & LP right-of-way runs through Oneida reservation lands and individual parcels. The railroad continued to use the right-of-way until 2000. The Fox Valley & Western Ltd. ("FVW") sought official abandonment approval of the Railway and the right-of-way in 2000, and received this grant in 2001. FVW entered into a Mutual Release Agreement ("Mutual Release") with the Oneida Tribe in 2003 that acknowledged the railroad received an easement, never obtained fee title to the right-of-way land, and the title remains in trust for the Oneida Tribe." The Memorandum also indicated, in relevant part, that*



*"[t]he Oneida Tribe originally sought, and still seeks, confirmation that the land the Oneida Chiefs and the United States Congress approved for a railroad easement and right-of-way in 1870 and 1871, respectively, remains titled to the United States of America for the beneficial use of the Tribe."*

**Answer:** In response to paragraph 11, admit that plaintiff has provided accurate quotations from a memorandum dated May 13, 2009, from Attorney Carl J. Artman to Maria Wiseman, but deny that the quoted excerpts are all the "relevant" excerpts.

12. *On August 23, 2013, the Village, through its legal counsel, submitted FOIA Requests to the Office of the Solicitor, Bureau of Indian Affairs to obtain documents relevant to the Tribe's claim the Parcels were held in trust. The Village requested the following related to the Memorandum:*

*Carl J. Artman, Godfrey & Kahn, s.c., prepared a Memorandum to Maria Wiseman, United States Department of the Interior, Office of the Solicitor, and Karen Lindquist, United States Department of the Interior, Office of the Solicitor, dated May 13, 2009, regarding Status of the Railroad Right-of-Way Land within the Oneida Tribe of Indians of Wisconsin Reservation. I am requesting a copy of any documents which were prepared in response to the May 13, 2009 Memorandum, including any correspondence or memorandum addressed to Carl J. Artman. I am also requesting a copy of any documents which reference the May 13, 2009 Memorandum.*

**Answer:** In response to paragraph 12, admit that on August 23, 2013, Attorney Jenna Clevers submitted a FOIA request to the Office of the Solicitor, and that the request included the language contained in the indented paragraph. However, defendants deny that the request identified the Village of Hobart as the requesting party.

13. *On or about September 17, 2013, the Office of the Solicitor sent correspondence in response to the FOIA Request, indicating, in relevant part, that "[b]ecause the Office of the*

*Solicitor will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Solicitor FOIA office is taking a 10- workday extension under 43 C.P.R. §2.19. For the same reason, we are placing your request under the "Complex" processing track. See 43 C.P.R. §2.15."*

**Answer:** In response to paragraph 13, admit that on or about September 17, 2013, the Office of the Solicitor sent correspondence in response to the FOIA Request that included the language quoted in this paragraph.

14. *On or about September 27, 2013, the Office of the Special Trustee for American Indians sent correspondence in response to the FOIA Request ("FOIA Response") indicating it was withholding all of the responsive documents, which consisted of 94 pages. The correspondence indicated, in relevant part, as follows:*

*I am writing today to respond to your request on behalf of the Office of the Solicitor. In response to your letter, the Department has searched its records and located 94 pages (sic) documents responsive to your request. However, the documents have been withheld in full on the basis of FOIA Exemption 5, which protects internal Federal government documents that are both pre-decisional and deliberative, or are work-product or attorney-client privileged.*

**Answer:** In response to paragraph 14, admit that on or about September 27, 2013, the Office of the Solicitor sent correspondence (inadvertently using letterhead for the Office of the Special Trustee for American Indians) in response to the FOIA Request indicating that it was withholding all of the responsive documents, consisting of 94 pages, on the basis of FOIA Exemption 5.

15. *The Office of the Special Trustee for American Indians did not include a privilege log or otherwise provide any description of the responsive documents.*

**Answer:** In response to paragraph 15, admit that the Office of the Solicitor did not include a privilege log or other description of the responsive documents, except that the number of pages was provided along with a statement as to the privileged nature of the documents.

16. *The Village timely filed a FOIA Appeal with respect to the above FOIA Response with the FOIA Appeals Officer, U.S. Department of the Interior, 1849 C Street, N.W., MS 6556-MIB, Washington, D.C. 20240 on October 22, 2013.*

**Answer:** In response to paragraph 16, admit that the Village of Hobart filed a timely FOIA Appeal with the FOIA Appeals Officer, United States Department of the Interior, but deny that the Village was the proper appellant or that the Village had standing to appeal.

17. *The time for responding to the Appeal expired with no response. Receiving neither a request for an extension nor any other response from the FOIA Appeals Officer, the Village, through its attorney, communicated with that Officer on December 3, 2013 by telephone and follow-up e-mail, and again on December 23, 2013, by telephone and follow-up e-mail, seeking the status of the Appeal.*

**Answer:** In response to paragraph 17, admit.

18. *The Village's counsel was told the Appeals Office was backlogged.*

**Answer:** In response to paragraph 18, admit.

19. *To date, the Village has not received a request for an extension to respond to the Appeal nor a ruling on the Appeal.*

**Answer:** In response to paragraph 19, admit.

20. *Plaintiff repeats and realleges paragraphs 1 through 19.*

**Answer:** In response to paragraph 20, state that no response is necessary.



21. *Defendants' failure to make promptly available the records sought by Plaintiff's request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and the corresponding agency regulations.*

**Answer:** In response to paragraph 21, deny.

22. *The Plaintiff is entitled to an award of attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).*

**Answer:** In response to paragraph 22, deny.

23. *Plaintiff repeats and realleges paragraphs 1 through 22.*

**Answer:** In response to paragraph 23, state that no response is necessary.

24. *Defendants' failure to respond to Plaintiff's Administrative Appeal even after follow-up communications by the Village's attorney, violates 5 U.S.C. § 552(a)(6)(A)(ii), and the corresponding agency regulations, requiring a response within 20 days.*

**Answer:** In response to paragraph 24, deny.

25. *As a result of the Defendants' failure to respond to the Administrative Appeal, the Plaintiff is deemed to have exhausted all administrative remedies.*

**Answer:** In response to paragraph 25, deny that plaintiff has exhausted its administrative remedies because plaintiff was not identified in the August 23, 2014, FOIA Request as the requesting party.

26. *The Plaintiff is entitled to an award of attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).*

**Answer:** In response to paragraph 26, deny.

27. *Plaintiff repeats and realleges paragraphs 1 through 26.*

**Answer:** In response to paragraph 27, state that no response is necessary.

28. *Defendants' failure to grant Plaintiff's requests for information and the Defendants' actions in ignoring the Administrative Appeal, are arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701, et seq.*

**Answer:** In response to paragraph 28, deny.

29. *The Plaintiff is entitled to an award of attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).*

**Answer:** In response to paragraph 29, deny.

**Defendants deny each and every allegation not previously admitted or qualified. Defendants further deny that plaintiff is entitled to any of the relief requested.**

#### **AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted because the defendants have not improperly withheld agency records.
2. The August 23, 2013 FOIA Request implicates records that are protected from disclosure by one or more statutory FOIA exemptions; therefore, disclosure is not required.
3. Plaintiff lacks standing to bring this lawsuit because the individual who made the August 23, 2013 FOIA Request did not indicate she was doing so on behalf of the plaintiff.
4. Plaintiff has failed to properly exhaust its administrative remedies.
5. Plaintiff has named two improper parties, DOI Office of the Solicitor, Division of Indian Affairs; and DOI Office of the Special Trustee for American Indians. These entities are components of DOI, a federal agency, but are not themselves federal agencies subject to suit under FOIA. *See* 5 U.S.C. §§ 551(1) and 552(f).

WHEREFORE, defendants demand judgment as follows:

1. Dismissing plaintiff's complaint on its merits and with prejudice; and
2. Awarding such other relief as the Court deems just and equitable.

Dated at Milwaukee, Wisconsin this 2<sup>nd</sup> day of May, 2014.

Respectfully submitted,

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United States Attorney

By: /s/ Chris R. Larsen

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