

July 30, 2019

AnnaLou Tirol  
Acting Chief, Public Integrity Section  
United States Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Dear Acting Chief Tirol:

I write to ask that you initiate an investigation into whether current Deputy Solicitor and nominee for Solicitor at the Department of the Interior (the Department), Daniel Jorjani, knowingly made misleading statements to Congress on May 2, and May 15, 2019. Mr. Jorjani appeared before the Senate Committee on Energy and Natural Resources (the Committee) for his confirmation hearing on May 2, 2019. He subsequently provided responses to additional written questions from Committee members on May 15, 2019. I believe Department documents made public through the Freedom of Information Act (FOIA) show Mr. Jorjani may have knowingly misled members of the Committee about the Department's adherence to laws meant to ensure transparency and accountability in government.

During his confirmation hearing, members of the Committee questioned Mr. Jorjani about his involvement in reviewing Freedom of Information Act requests. In response to a question from Senator King, Mr. Jorjani confirmed that he serves as the Department's Chief FOIA Officer but stated, "I, myself, don't review FOIAs or make determinations."<sup>1</sup>

Additionally, I submitted a series of written questions to Mr. Jorjani regarding his role in reviewing and approving FOIA productions. On May 15, 2019, in response to these questions, Mr. Jorjani stated, "... any review [of documents to be released under FOIA] that is conducted is done so in accordance with the Department's Awareness Review Process for Freedom of Information Act productions issued in May 24, 2018, and updated on February 28, 2019." Mr. Jorjani provided that answer repeatedly in response to several of my questions regarding the Department's FOIA process.<sup>2</sup>

Internal documents released by the Department in response to a lawsuit filed by Sierra Club and Friends of the Earth (*Sierra Club, et al. v. U.S. Dep't of the Interior, et al.*, Civil No. 18-cv-3799), appear to contradict Mr. Jorjani's oral and written responses to the Committee.

<sup>1</sup> Senate Committee on Energy and Natural Resources, Full Committee Hearing to Consider Various Nominations, May 2, 2019; [www.energy.senate.gov/public/index.cfm/2019/5/full-committee-nominations-hearing](http://www.energy.senate.gov/public/index.cfm/2019/5/full-committee-nominations-hearing)

<sup>2</sup> Daniel Jorjani's Written Responses to Questions for the Record, Senate Committee on Energy and Natural Resources, May 15, 2019; [www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=5221E1A2-B9A2-4D31-B615-82AA68C9C5B7](http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=5221E1A2-B9A2-4D31-B615-82AA68C9C5B7)

Department documents show that the actual FOIA review process implemented by political appointees at the Department appear to go well beyond the written policy Mr. Jorjani cited on May 15, 2019. Additional emails show that he was notified of the supplemental process before he provided his written responses to the Committee.

On February 28, 2019, the Department issued an updated version of its formal “Awareness Review” policy, which outlines the Department’s review process for FOIA productions.<sup>3</sup> The updated guidance describes three steps for the awareness process after all relevant documents have been collected.

According to the Department’s “Awareness Review” policy, FOIA personnel are required to search documents for mentions of current or recent Presidentially Appointed, Senate Confirmed, Non-Career Senior Executive, and/or Schedule C employees, as well as former department officials who meet those qualifications. Then, personnel are to notify their contact in the Office of the Solicitor and Bureau contact for awareness reviews and provide them with the full set of responsive records. This notification starts a 72-hour review window. Finally, the FOIA personnel respond to the requester after the awareness review process is complete per the Department’s usual FOIA response process.

Internal Department documents indicate that a supplemental review process conducted “in addition to the written policy on awareness review” exists at the Department, which Mr. Jorjani failed to disclose to Congress.<sup>4</sup> In fact, Mr. Jorjani specifically disputed the existence of a supplemental review process in his written responses to the Committee. In response to my questions, he wrote on May 15, 2019, “The Department does not have a “heightened awareness” process.”<sup>5</sup> Despite Mr. Jorjani’s assertion, the unwritten supplemental review policy appears to have allowed political appointees at the Department to delay and potentially inappropriately limit the release of information subject to release under FOIA.

Public reporting and internal Department emails appear to confirm this process. According to Roll Call, “political staffers regularly delayed the release of government records. In some cases, records were prevented from release following the reviews.”<sup>6</sup> Multiple internal Department emails confirm the existence of this supplemental review process:

- A June 11, 2018 email from FOIA officer Ryan McQuighan to the Department’s Deputy Chief of Staff, Downey Magallanes, shows that FOIA processors were required to send responsive records to Ms. Magallanes, and to seek affirmative approval from her for release of those records.<sup>7</sup>

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<sup>3</sup> United States Department of the Interior Memorandum, Updated Awareness Process for Freedom of Information Act Productions, February 28, 2019; [www.doi.gov/sites/doi.gov/files/uploads/awareness\\_process\\_memo\\_2.0.pdf](http://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf)

<sup>4</sup> Clarice Julka email to Department staff, “Additional Awareness Review,” June 11, 2018

<sup>5</sup> Daniel Jorjani’s Written Responses to Questions for the Record, Senate Committee on Energy and Natural Resources, May 15, 2019; [www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=5221E1A2-B9A2-4D31-B615-82AA68C9C5B7](http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=5221E1A2-B9A2-4D31-B615-82AA68C9C5B7)

<sup>6</sup> Roll Call, Interior held back FOIA’d documents after political screenings, June 18, 2019; [www.rollcall.com/news/interior-held-back-documents-after-political-screenings](http://www.rollcall.com/news/interior-held-back-documents-after-political-screenings)

<sup>7</sup> Ryan McQuighan email to Downey Magallanes, “72 Hours Awareness Notice (Monuments),” June 11, 2018

- On June 19, 2018, FOIA processor Nicholas Banco wrote to Ms. Magallanes to say, “I believe this package falls within the updated guidance that requires your affirmation before release due to its having references to the Secretary.”<sup>8</sup>
- In an August 7, 2018 email, Special Advisor Hubbel Relat intervened in a FOIA request during the awareness process, telling FOIA processor Justin Wilkinson “please hold up on sending this until we speak.”<sup>9</sup>
- In a July 27, 2018 email, Public Liaison Clarice Julka stated: “What I was told was that anything that involved the ‘Big 4’ (Zinke, Hommel, Renner, Boulton) needed to be sent to Downey, and affirmative response was required before release.”<sup>10</sup>

Documents show that Department staff were instructed to notify Mr. Jorjani when they emailed FOIA productions subject to supplemental review to the Deputy Chief of Staff.<sup>11</sup> Documents also show that Department staff prepared Mr. Jorjani to answer questions about the supplemental review process before his May 2, 2019 confirmation hearing. On April 19, 2019, Rachel Spector, the Department’s Deputy Chief FOIA Officer, distributed to several Department officials a document outlining “several FOIA-related questions for Dan that may be used in preparation for his confirmation hearing.” While the document is heavily redacted, the final page referenced “Awareness review in general,” “Heightened awareness review for DB,” and “FOIA regulations.”<sup>12</sup>

I believe Mr. Jorjani’s failure to acknowledge the informal supplemental review process, and his outright denial of any “heightened awareness” process reflects an effort to mislead the Committee about the nature and scope of political-level interference in FOIA processing and decisions at the Department. I am therefore requesting your office initiate an investigation into whether Mr. Jorjani knowingly made misleading statements before Congress. You may contact Malcolm McGeary in my office at (202) 224-5244, or by email at [Malcolm\\_McGeary@wyden.senate.gov](mailto:Malcolm_McGeary@wyden.senate.gov), with any questions or concerns. I appreciate your prompt attention to this matter,

Sincerely,



Ron Wyden  
United States Senator

Enclosures (9)

<sup>8</sup> Nicholas Branco email to Downey Magallanes, “Re: 1:18-cv-00387/ OS-2018-00089 and OS-2018-00145 Litigation Awareness Review,” June 19, 2018

<sup>9</sup> Hubbel Relat email to Justin Wilkinson, “Re: ACTIVE LITIGATION – Awareness Review – 1:18-cv-00815-BAH/OS-2018-00750 PEER v. DOI,” August 7, 2018

<sup>10</sup> Clarice Julka email to Juliette Lillie, “Fwd: downey,” July 27, 2018

<sup>11</sup> Juliette Lillie email to Ryan McQuighan, “Re: Additional Awareness Review,” June 11, 2018

<sup>12</sup> Rachel Spector email to Matthew Quinn, et al, “FOIA questions for Dan,” April 22, 2019