

1 William Gregory Kelly (#026843)
2 FRYE LAW FIRM, P.C.
3 10400 Academy Rd. NE, Suite 310
4 Albuquerque, NM 87111
5 Tel: (505) 296-9400
6 Fax: (505) 296-9401
7 wgk@fryelaw.us

8 Attorney for the Plaintiff

9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 Diné Bi' Olta School Board
12 Association,

13 Plaintiff,

14 v.

15 The United States Department of the
16 Interior; The Bureau of Indian
17 Education, an agency of the
18 United States Department of the
19 Interior; Tony L. Dearman, Director,
20 Bureau of Indian Education; and
21 Emily K. Arviso, Acting Associate
22 Director of the Navajo Region,
23 Bureau of Indian Education,

24 Defendants.

Case No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
UNDER THE FREEDOM OF
INFORMATION ACT

25 DATED this 6th day of April, 2017.

26 s/ William Gregory Kelly
27 Attorney for Plaintiff Diné Bi Olta School
28 Board Association

1 1. This lawsuit under the Freedom of Information Act (“FOIA”), 5 U.S.C.
2 § 552, is brought by the Diné Bi’Olta School Board Association (“DBOSBA”),
3 formerly known as the Navajo Area School Board Association. DBOSBA is the only
4 pan-Navajo association of local school boards officially recognized and empowered
5 by the Navajo Nation Council. *See* 10 N.N.C. §§ 301-305 (2007 Supp.). DBOSBA’s
6 membership is comprised of representatives from the local school boards of federally
7 funded schools throughout the Navajo Nation.

8 2. DBOSBA seeks the release of records related to the operations and structure
9 of the Bureau of Indian Education (“BIE”) and to any United States Department of
10 Interior (“DOI”) plans or former plans for reorganization of the BIE. DBOSBA seeks
11 to ensure that its member school boards, who are elected officials of the Navajo
12 Nation, are properly informed about any such operations, activities, and/or plans.

13 3. The records sought directly concern the operations, plans, and activities of
14 BIE relating to its structure, human resources, duties, and operations; BIE’s
15 compliance with law, including without limitation Secretarial Orders, judicial orders,
16 and federal statutes; and the present and future governance of, grants to, and
17 contracting with schools, including those schools within the Navajo Nation that
18 DBOSBA represents as a matter of Navajo law.

19 4. DBOSBA’s FOIA Requests (described below) are designed to ensure that
20 the contents of the records sought will be meaningfully informative regarding the
21 activities, plans, and operations of BIE and therefore of value to DBOSBA and its
22 member school boards, and are logically connected to such activities, plans and
23 operations.

24 5. Disclosure of the information in the requested records will be made to all
25 of the school boards represented by DBOSBA at regular meetings prescribed by
26 Navajo law. *See* 10 N.N.C. §§ 302 (A), (C), *id.* at § 304 (2007 Supp.). These school
27 boards are comprised of elected officials of the Navajo Nation who will further
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1 disseminate this information to local Navajo communities and parents.

2 6. The information sought has not been disclosed to DBOSBA or, according
3 to its member school boards, to local school boards in any understandable or
4 comprehensive manner, if at all. DBOSBA does not know which, if any, records will
5 clarify or contradict any informal statements made or other information released by
6 BIE. The information in the records requested is not published or otherwise routinely
7 available. Receipt of the records sought will allow DBOSBA to assemble,
8 summarize, and disseminate information that is significant to all federally funded
9 school boards within the Navajo Nation pursuant to the authorities and duties
10 conferred on DBOSBA by the Navajo Nation.

11 7. The United States has continuing treaty, trust, and statutory duties to
12 provide quality education to Navajo students. *See Meyers v. Board of Educ. of San*
13 *Juan School Dist.*, 905 F.Supp. 1544, 1560-62 (D. Utah 1995).

14 8. The public's understanding of the important responsibilities of BIE as it
15 affects the public education of Navajo children will be enhanced by the requested
16 records.

17 9. On October 27, 2016, DBOSBA sent identical FOIA requests to Defendants
18 through Dr. Tamarah Pfeiffer, then Associate Director of the Navajo Region of the
19 BIE and Defendant Arviso's predecessor, and Ann Marie Bledsoe Downes, then
20 Acting Director of the BIE and Defendant Dearman's predecessor. Dr. Pfeiffer's
21 request was delivered to her office's post office box on October 29, 2016. Ms.
22 Downes' request was delivered to her office on October 31, 2016. For purposes of
23 this Complaint, these two requests will be termed the "Requests." The Requests
24 sought the release of records related to DOI's activities, structure, operations and
25 plans. DBOSBA also sought a waiver of fees.

26 10. Defendants failed to respond to the Requests or the requested fee waiver.
27 On January 19, 2017, DBOSBA filed and Defendants received DBOSBA's Appeal
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1 of Defendants' failure to respond to the Requests or supply the requested documents.
2 As of the date of this Complaint, Defendants have not responded to DBOSBA's
3 Appeal.

4 11. DBOSBA brings this action pursuant to FOIA and the Administrative
5 Procedures Act to compel disclosure of all records responsive to its Requests.
6 DBOSBA asks the Court to enjoin Defendants from withholding any of the requested
7 records and to order production of the agency records sought by DBOSBA.
8 DBOSBA also asks the Court to enjoin Defendants from charging DBOSBA for any
9 search, review, or duplication fees for processing the Requests.

10 **Jurisdiction and Venue**

11 12. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346(a)(2);
12 5 U.S.C. §§ 552(a)(4)(A)(vii), (4)(B), (6)(C)(i), and (6)(E)(i); and 5 U.S.C. §§ 701-
13 706. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

14 **Parties**

15 13. Plaintiff DBOSBA is the only pan-Navajo association of local school
16 boards officially recognized and empowered by the Navajo Nation Council. *See* 10
17 N.N.C. §§ 301-305 (2007 Supp.). DBOSBA's principal place of business is in
18 Window Rock, Arizona. A partial list of the duties with which DBOSBA is
19 statutorily charged include making recommendations to the Navajo Nation Board of
20 Education and the Health, Education and Human Services Committee of the Navajo
21 Nation Council concerning all federally funded schools within the Navajo Nation,
22 including both tribally controlled and BIE-operated schools; planning activities,
23 including comprehensive school board training programs appropriate for the needs
24 of Navajo schools; implementing procedures which allow the views of local
25 community school boards to be fully aired; and working with local community school
26 boards to attempt to make joint recommendations to the Navajo Nation Board of
27 Education and the Health, Education and Human Services Committee of the Navajo
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1 Nation Council related to educational programs, problems, and issues of significance
2 to the Navajo Nation. 10 N.N.C. §§ 302(A)-(F).

3 14. Defendant DOI is an executive department within the executive branch of
4 the Government of the United States. DOI is an agency within the meaning of 5
5 U.S.C. § 552(f)(1). As an agency of the United States, DOI has treaty, statutory, and
6 trust responsibilities relating to the education of Navajo children on the Navajo
7 Nation.

8 15. Defendant BIE is an agency within DOI responsible for educating
9 American Indian students from pre-school to post-secondary school as part of the
10 United States' educational duties and commitments to Indian tribes. BIE is an agency
11 within the meaning of 5 U.S.C. § 552(f)(1). As an agency of the United States, BIE
12 has treaty, statutory, and trust responsibilities relating to the education of Navajo
13 children on the Navajo Nation.

14 16. Defendant Tony L. Dearman is the Director of BIE.

15 17. Defendant Emily K. Arviso is the Acting Associate Director of the Navajo
16 Region, BIE.

17 **Factual Background**

18 18. Secretarial Order No. 3334 was issued by DOI on June 12, 2014. It
19 restructured BIE and was expressly intended to “(1) improv[e] responsiveness of BIE
20 operational support to schools and (2) improv[e] performance of individual schools.”
21 *Id.* § 1.

22 19. DBOSBA has contracted with the United States, through DOI and BIE,
23 under the Indian Self-Determination and Education Assistance Act (“ISDEAA”), 25
24 U.S.C. §§ 5301, *et seq.*, P.L. 93-638, as amended, to provide training to local Navajo
25 school boards.

26 20. BIE has been considering its further reorganization, but has not responded
27 to DBOSBA's repeated requests for information regarding its present structure,
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1 activities, operations, or plans.

2 21. DBOSBA requires correct and adequate information from BIE relating to
3 BIE's structure, human resources, duties, and operations; its compliance with law,
4 including Secretarial Orders, judicial proceedings, and federal statutes; and the
5 present and future governance of, grants to, and contracting with schools, including
6 those BIE-operated and tribally controlled schools within the Navajo Nation that
7 DBOSBA represents, in order for DBOSBA to fulfill its statutory mandates with
8 regard to federally-funded schools on the Navajo Nation and to fully perform its
9 ISDEAA agreement.

10 **DBOSBA's FOIA Requests, FOIA Appeal and Agency Inaction**

11 22. On October 27, 2016, DBOSBA sent the Requests to Defendants through
12 Dr. Tamarah Pfeiffer, then Associate Director of the Navajo Region of BIE and
13 Defendant Arviso's predecessor, and Ann Marie Bledsoe Downes, then Acting
14 Director of BIE and Defendant Dearman's predecessor. Dr. Pfeiffer's Request was
15 delivered to her office's post office box on October 29, 2016. Ms. Downes' Request
16 was delivered to her office on October 31, 2016.

17 23. The Requests seek a waiver of any and all fees under 5 U.S.C.
18 § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.45 because the requested information is in the
19 public interest and is not in the commercial interest of DBOSBA.

20 24. On November 1, 2017, the office of Acting Director of BIE acknowledged,
21 in an email, receipt of the Requests.

22 25. By letter dated November 21, 2016, the Special Assistant to the Director
23 of BIE and the FOIA Coordinator for BIE stated that BIE was in the process of
24 determining whether or not DBOSBA's "entitlements are sufficient to enable us to
25 process" your fee waiver request "or if we will need to issue a formal determination
26 on your request for a fee waiver."

27 26. The letter dated November 21 referenced in paragraph 25, above, also
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1 requested three clarifications to DBOSBA's Requests.

2 27. By email dated November 29, 2016, DBOSBA, through its counsel,
3 provided the requested clarifications to BIE's designated FOIA Coordinator.

4 28. On December 27, 2016, DBOSBA, through its counsel, asked the BIE
5 FOIA Coordinator by email if she had an estimated time for responses to the
6 Requests.

7 29. On December 27, 2016, the BIE FOIA Coordinator sent an email to
8 DBOSBA, through its counsel, stating that she was on leave from December 21, 2016
9 through January 5, 2017. By email dated February 6, 2017 the BIE FOIA
10 Coordinator stated that she would provide an estimate of the time for Defendants to
11 respond to the Requests by February 10, 2017, but she did not do so.

12 30. No further communications or responses regarding the Requests from the
13 BIE FOIA Coordinator or anyone else at BIE or DOI have been received by
14 DBOSBA.

15 31. On January 19, 2017, DBOSBA filed and Defendants received DBOSBA's
16 FOIA Appeal pursuant to 43 CFR §§ 2.16 and 2.59 based on BIE's failure to timely
17 respond to its Requests and fee waiver request.

18 32. DBOSBA received no response to the FOIA Appeal it filed on January 19,
19 2017.

20 **DBOSBA's Entitlement to a Fee Waiver**

21 33. DBOSBA is entitled to a waiver of fees because Defendants have failed
22 to make a timely determination on DBOSBA's fee waiver request. *See* 5 U.S.C.
23 § 552(a)(6)(A)(i); 43 C.F.R. § 216(a); *Bensman v. National Park Service*, 806
24 F.Supp.2d 31, 42 (D.D.C. 2011).

25 34. DBOSBA is entitled to a waiver of fees because Defendants have failed
26 to timely respond to its FOIA Appeal. *See* 5 U.S.C. § 552(a)(6)(A)(ii); 43 C.F.R.
27 § 2.62.

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1 35. DBOSBA is also entitled to a waiver of document search, review, and
2 duplication fees because disclosure is likely to contribute significantly to public
3 understanding of the operations or activities of the government and is not primarily
4 in the commercial interest of DBOSBA. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 CFR
5 § 2.45(a)(1) and (2).

6 36. Disclosure is not in DBOSBA's commercial interest. Any information
7 disclosed to DBOSBA will be made available to the public at no cost.

8 **Claim for Relief**

9 37. DBOSBA realleges and incorporates by reference herein the allegations
10 of paragraphs 1 through 36 of this Complaint and further alleges:

11 38. Defendants' failure to timely Respond to the Requests violated FOIA, 5
12 U.S.C. § 552(a)(6)(A), and corresponding DOI regulations.

13 39. Defendants' failure to make a reasonable effort to search for records in
14 electronic form or format responsive to Plaintiff's Requests violated FOIA, 5 U.S.C.
15 § 552(a)(3)(C), and corresponding DOI regulations.

16 40. Defendants' failure to make promptly available the records sought by the
17 Requests violated FOIA, 5 U.S.C. § 552(a)(3)(A), and corresponding DOI
18 regulations.

19 41. Defendants' failure to timely respond to Plaintiff's FOIA Appeal violated
20 FOIA, 5 U.S.C. § 552(a)(6)(A)(ii), and corresponding DOI regulations.

21 42. Defendants' failure to grant Plaintiff's request for a fee waiver violated
22 FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and corresponding DOI regulations.

23 **Prayer for Relief**

24 WHEREFORE, Plaintiff Diné Bi' Olta School Board Association respectfully
25 requests that this Court:

- 26 a. Order Defendants to immediately process and release all records
27 responsive to Plaintiff's Requests;

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- b. Enjoin Defendants from charging Plaintiff for search, review, or duplication fees for the processing of the Requests;
- c. Award Plaintiff its costs and reasonable attorney fees incurred in this action; and
- d. Grant such additional relief as the Court may deem just and proper.

Respectfully submitted,
FRYE LAW FIRM, P.C.

By: s/ William Gregory Kelly
William Gregory Kelly (#026843)
10400 Academy Rd. NE, Suite 310
Albuquerque, NM 87111
(505) 296-9400
wgk@fryelaw.us