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*"Rummaging in the government's attic"*

Description of document:

Department of the Interior (DOI) - Office of the Solicitor  
Memoranda regarding Bureau of Indian Affairs (BIA)  
requirement to remit Section 413 Fees to the Treasury  
2016-2017

Requested date:

20-August-2020

Release date:

30-September-2020

Posted date:

06-December-2021

Source of document:

Freedom of Information Act Request  
Office of the Secretary (OS)  
William Holzerman  
MS-7328, MIB  
1849 C Street, NW  
Washington, DC 20240  
Fax: (202) 219-2374  
Email: [osfoia@ios.doi.gov](mailto:osfoia@ios.doi.gov)

FOIA submission during COVID-19 pandemic:  
[FOIAonline](#)

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United States Department of the Interior  
OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

IN REPLY REFER TO:  
SOL-2020-002103

September 30, 2020

Via Email

On August 20, 2020, the U.S. Department of the Interior, Office of the Solicitor, received your Freedom of Information Act (FOIA) request. In your request, you specifically ask for:

“A copy of the two Solicitor’s Office Memos to BIA, one sent July 2016 and the second sent in June 2017, the first memo stating and the second one reiterating the BIA’s requirement to remit Section 413 fees to the Treasury. Please release all segregable portions.”

In processing your request, for this first release, the Office of the Solicitor found 6 pages of responsive documents. Upon review 6 pages are being redacted in part. The pages being released in part were redacted pursuant to Exemption 5 attorney-client and attorney work-product privileges. Please see the attached responsive documents.

Exemption 5 allows an agency to withhold inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency. Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges.

**Attorney-Client Privilege**

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice and is not limited to the context of litigation. Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information.

The information redacted under the attorney-client privilege of Exemption 5 constitutes confidential communications between agency attorneys and agency clients related to legal matters

for which the client sought professional legal assistance and services. It also encompasses opinions given by attorneys to their clients based on client-supplied facts. Additionally, the Bureau employees who communicated with the attorneys regarding this information were clients of the attorneys at the time the information was generated and the attorneys were acting in their capacities as lawyers at the time they communicated legal advice. Finally, the Bureau has held this information confidential and has not waived the attorney-client privilege.

### **Attorney Work Product Privilege**

As incorporated into Exemption 5, the attorney work-product privilege protects from disclosure any materials prepared by or for a party or its representative (including their attorney, consultant, surety, indemnitor, insurer, or agent) in anticipation of litigation or for trial. The privilege applies once specific claims have been identified that make litigation probable; the actual beginning of litigation is not required. Its purpose is to protect the adversarial trial process by insulating litigation preparation from scrutiny, as it is believed that the integrity of our system would suffer if adversaries were entitled to probe each other's thoughts and plans concerning the case. The privilege extends to administrative, as well as judicial proceedings. Once the determination is made that records are protected from disclosure by the attorney work-product privilege, the entire contents of those records are exempt from disclosure under FOIA.

The materials redacted under Exemption 5 under the attorney work-product privilege were prepared by or for a Department attorney in reasonable anticipation of litigation and they reflect the parties' pre-litigation thoughts. So we conclude that the withheld materials are protected in full from disclosure by the attorney work-product privilege of Exemption 5.

Michele Dearing, Attorney-Advisor, Office of the Solicitor was consulted in reaching this decision. Lance Purvis, FOIA Officer, Office of the Solicitor, is responsible for making this decision. You may contact the FOIA Officer at [sol.foia@sol.doi.gov](mailto:sol.foia@sol.doi.gov) for further assistance and to discuss any aspect of your request.

This concludes the Office of the Solicitor's response to your request. The fee incurred in responding to your request is less than \$50 and is not being charged in accordance with 43 CFR 2.16(b)(2).

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. *See* 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://www.archives.gov/ogis>  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

Contact information for the Department's FOIA Public Liaison, who you may also seek dispute resolution services from, is available at <https://www.doi.gov/foia/foiacenters>.

If you consider this response to be a denial of your request, you may appeal this response to the Department's FOIA Appeals Officer. If you choose to appeal, the FOIA Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

FOIA Appeals Officer  
U.S. Department of the Interior  
1849 C Street, N.W., MS 6556  
Washington, D.C. 20240  
Phone: 202-208-5339  
Fax: 202-208-6677  
Email: [FOIA.Appeals@sol.doi.gov](mailto:FOIA.Appeals@sol.doi.gov)

You must include with your appeal copies of all correspondence between you and the Office of the Solicitor concerning your FOIA request, including a copy of your original FOIA request and your denial letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. All communications concerning your appeal, including envelopes, should be clearly marked with the words "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the Office of the Solicitor's response is in error.

For more information on FOIA Administrative Appeals, you may review the Department's FOIA regulations at 43 C.F.R. Part 2, Subpart H.

Sincerely,



Lance Purvis  
Office of the Solicitor FOIA Officer

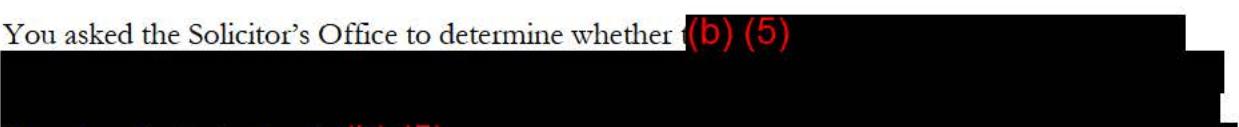
Memorandum

To: Teri Lin, Chief, Financial Reporting and Analysis Division, IA-OCFO  
From: Femila Ervin, Attorney-Advisor, TGS-DIA-SOL  
Date: July 26, 2016  
Re: **Retention of fees collected pursuant to 25 U.S.C. § 413 and the Freedom of Information Act**

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**I. Questions**

You asked the Solicitor's Office to determine whether (b) (5)

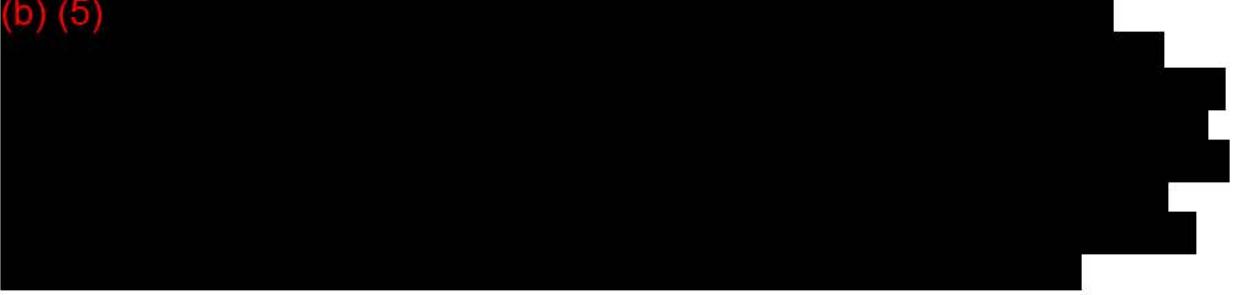


You also asked whether the (b) (5)



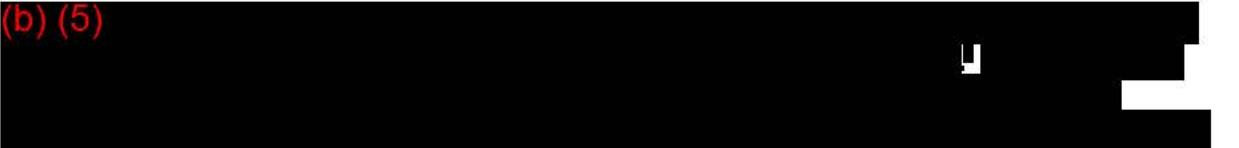
**II. Brief Answers**

(b) (5)



**III. Discussion**

(b) (5)



25 U.S.C. § 413 provides:

The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, leases, or other sources of revenue: *Provided*, That the amounts so collected shall be covered into the Treasury as miscellaneous receipts, except when the expenses of the work are paid from Indian tribal funds, in which event they shall be credited to such funds.



(b) (5)

(b) (5)



(b) (5)



If you have any further questions, please contact Femila “Mila” Ervin at 202-208-4350,  
[femila.ervin@sol.doi.gov](mailto:femila.ervin@sol.doi.gov).

(b) (5)

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# United States Department of the Interior

OFFICE OF THE SOLICITOR  
1849 C Street NW MS 6557  
Washington, DC 20240

## Memorandum

To: Bureau of Indian Affairs  
Office of the Assistant Secretary – Indian Affairs

Cc: Deputy Assistant Secretary - Indian Affairs (Management)  
Office of the Chief Financial Officer, Indian Affairs

From: Division of General Law, SOL  
Division of Indian Affairs, SOL

Date: June 14, 2017

Re: Administrative fees collected by the Bureau of Indian Affairs

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### Introduction

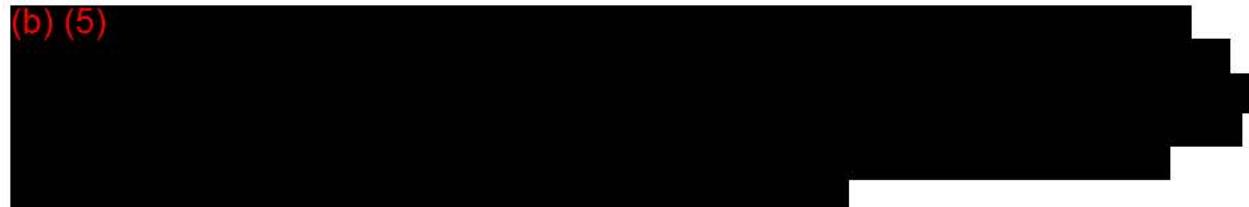
The Bureau of Indian Affairs (BIA) has asked the following questions:

(b) (5)



### Short Answer

(b) (5)

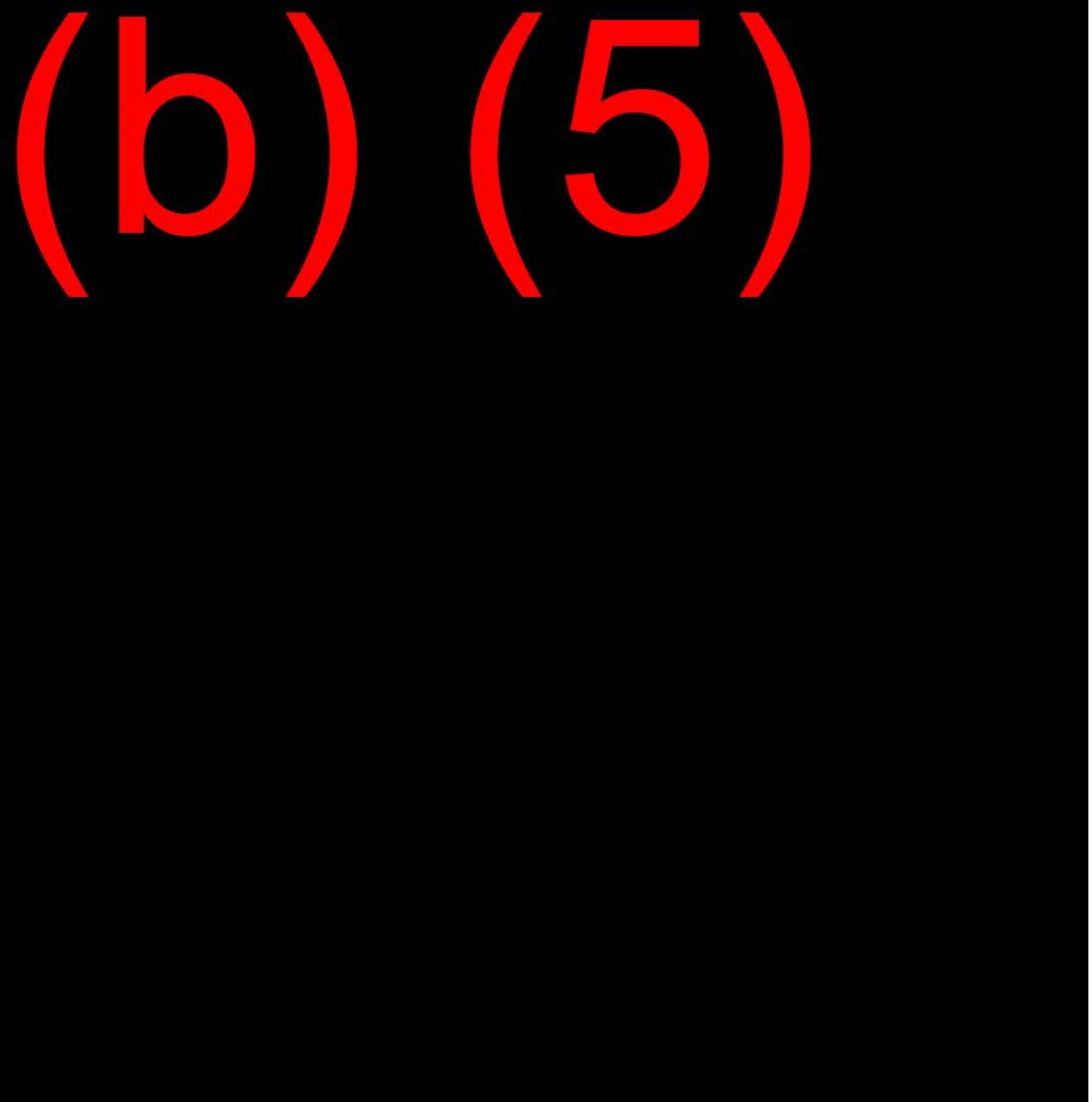


### Analysis

(b) (5)



(b) (5)



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<sup>1</sup> 25 U.S.C. § 413 provides:

The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, leases, or other sources of revenue: Provided, That the amounts so collected shall be covered into the Treasury as miscellaneous receipts, except when the expenses of the work are paid from Indian tribal funds, in which event they shall be credited to such funds.

<sup>2</sup> (b) (5)



(b) (5)

(b) (5)