



United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, NW
Washington, DC 20240

IN REPLY REFER TO:
DOI-NPS-2024-000926

May 9, 2024

Via Electronic Mail: 156760-38418173@requests.muckrock.com

Jimmy Tobias
MuckRock News, DEPT MR156760
263 Huntington Ave
Boston, MA 02115

Dear Jimmy Tobias:

This letter is in response to your Freedom of Information Act (FOIA) request dated April 25, 2024, in which you requested:

All application materials, emails and letters, appeals, appeal decisions and other documents related to the application of Project 35138 (known as The Academy) submitted to NPS for approval by its Technical Preservation Services office. The Academy is a project located in New Orleans Louisiana. Please let me know if you have any question about this request.

Your request has been processed under the FOIA ([5 U.S.C. § 552](#)). Your request is granted in part and denied in part. In this, our final response, we are releasing 328 pages in 1 PDF. Portions of 12 pages of responsive material, however, have been withheld under Exemptions 5 and 6 of the FOIA.

Exemption 5—[5 U.S.C. § 552\(b\)\(5\)](#)

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.” See [5 U.S.C. § 552\(b\)\(5\)](#). 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. We are withholding 1 page in part under Exemption 5 because it qualifies to be withheld both because it meets the Exemption 5 threshold of being inter-agency or intra-agency and under the following 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 that has been withheld 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. Additionally, the National Park Service 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 National Park Service has held this information confidential and has not waived the attorney-client privilege

Deliberative Process Privilege

The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege, such as: (1) assuring that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protecting against premature disclosure of proposed policies; and (3) protecting against confusing the issues and misleading the public.

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process and may include recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency's deliberative processes; expose the agency's decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

Exemption 6—[5 U.S.C. § 552\(b\)\(6\)](#)

We are withholding approximately 11 pages in part under Exemption 6. Exemption 6 allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” [5 U.S.C. § 552\(b\)\(6\)](#)

The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. 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.

The information that has been withheld under Exemption 6 consists of personal information, the personal emails of private citizens and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's 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 this individual and we are withholding it under Exemption 6.

Sarah Gamble, Records and Information Management Specialist, National Park Service is responsible for this partial denial.

Jason Waanders, Attorney/Advisor in the Office of the Solicitor was consulted in reaching this decision.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure.

We do not bill requesters for FOIA processing fees when their fees are less than \$50.00, because the cost of collection would be greater than the fee collected. See [43 C.F.R. § 2.37\(g\)](#). Therefore, there is no billable fee for the processing of this request.

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this final response. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday. See [43 C.F.R. § 2.57](#), [.58](#)

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe this response is in error. You must also include with your appeal copies of all correspondence between you and National Park Service concerning your FOIA request, including your original FOIA request and this response. Failure to include with your appeal all correspondence between you and National Park Service will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal. See [43 C.F.R. § 2.59](#)

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240

Attn: FOIA/Privacy Act Appeals Office
Telephone: (202) 208-5339

Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

Also, as part of the 2007 OPEN Government Act FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. See [5 U.S.C. 552\(c\)](#).

You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road - OGIS
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Telephone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

Additionally, because the National Park Service creates and maintains law enforcement records, we are required by the Department of Justice to provide the following information, even though it may or may not apply to your specific request. Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See [5 U.S.C. 552\(c\)](#). (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that we are required to give all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Please do not hesitate to contact me, as the person responsible for processing your request, with any further questions or concerns. I can be reached at waso_foia_requests@nps.gov. Additionally, the Department's FOIA Public Liaison can be reached by emailing doifoiapublicliaison@sol.doi.gov.

Sincerely,

Sarah Gamble
Records and Information Management Specialist
Information Resources, National Park Service
waso_foia_requests@nps.gov