



United States Department of the Interior

NATIONAL PARK SERVICE
12795 W. Alameda Parkway
P.O. Box 25287
Denver, Colorado 80225-0287

September 18, 2018

A7221 (2550)

Jimmy Tobias
Muck Rock
Department MR 43810
411A Highland Avenue
Somerville, MA 02144-2516

Dear Mr. Tobias:

Reference: PM 11-03 Recycling and Reduction of Disposable Plastic Bottles in Parks

Subject: Response to Freedom of Information Act (FOIA) Request NPS-2017-01356

This letter is in response to your Freedom of Information Act (FOIA) request dated August 29, 2017, in which you requested:

All copies of correspondence between National Park Service employees and Hitachi consulting relating to the National Park Service's water bottle policy, also known as the Water Bottle Ban, since January 2011. This request includes attachments included in the original correspondence.

Upon further review, your request is denied in granted in part and denied in part. We are providing you one file totaling 6,280 pages of responsive records. However, portions of 53 pages are being withheld in accordance with Exemption 3, which allows us to withhold information when releasing it is specifically prohibited by another statute. In accordance with 41 USC § 4702, formerly codified under 41 USC §253b(m), because the proposals that were partially responsive to your request were not incorporated either directly or by reference into the awarded contract, we are barred from releasing the proposal to you.

Additionally, portions of 8 pages are being withheld under Exemption 5, which 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.” 5 U.S.C. § 552(b)(5); see *Nat'l Labor Relations Bd. v. Sears Roebuck & Co.*, 421 U.S. 132, 149 (1975). 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 this information because it qualifies to be withheld under the following 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.” *Mead Data Cent., Inc. v. United States Dep’t of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (internal citations omitted). A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) “assure that subordinates . . . will feel free to provide the decisionmaker with their uninhibited opinions and recommendations”; (2) “protect against premature disclosure of proposed policies”; and (3) “protect against confusing the issues and misleading the public.” *Coastal States Gas Corp. v. United States Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

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.” Id.

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 describe the foreseeable harm that would occur from release.

The information being withheld consists of conference call numbers and passcodes. The conference call numbers being withheld constitute “intra-agency” documents because they are only shared with members of the Department or their consultants for the purpose of conducting official government business, including holding discussions that are deliberative and pre-decisional.

In addition to qualifying as “intra-agency” documents, it has been determined that the conference call numbers qualify as “confidential commercial information”, which also protectable by Exemption 5. In this case, the government entered the marketplace as an ordinary commercial buyer of private conference call numbers and pass codes. If the conference call numbers and/or pass codes were released, the government’s financial interest would be significantly harmed. The conference calls would no longer be private since unknown, non-governmental parties would have the ability to listen in to the calls.

Accordingly, the funds spent on purchasing the call-in numbers and pass codes would therefore have been wasted, and the conference call numbers and pass codes would be of no use. Because the release of the conference call numbers would significantly harm both the government’s financial interest and the deliberative process, the National Park Service is withholding the conference call numbers in accordance with Exemption 5 of the FOIA.

Lastly, portions of 41 pages are being withheld under Exemption 6, which allows us to withhold information that would constitute a clearly unwarranted invasion of personal privacy. In this case the individual(s) concerned have significant privacy interests in withholding the information you have requested. Accordingly we have determined that releasing redacted or withheld information, which includes personal phone numbers and email addresses for employees and other individuals, could cause the concerned individual(s) embarrassment, subject them to annoyance, or lead to harassment.

Additionally your request failed to demonstrate how the public’s interest would be served by releasing the information you have requested. We have therefore concluded that the threat to the privacy of the individuals concerned is greater than whatever public interest there might be in releasing the requested information. We are therefore withholding it under Exemption 6.

Pursuant to regulation, 43 CFR 2.24(b) the following person is responsible for this denial:

Charis Wilson
NPS FOIA Officer

Additionally the following attorney was consulted during the preparation of this response:

Jason Waanders, Attorney-Advisor, Office of the Solicitor
U.S. Department of the Interior, Philadelphia, PA

You have the right to appeal this denial of your request. You may file an appeal by writing to:

Freedom of Information Act Appeals Officer
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, NW
MS-6556-MIB,
Washington, D.C. 20240
foia.appeals@sol.doi.gov

Your appeal must be received no later than 90 workdays after the date of this final response. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and copies of all correspondence between yourself and the National Park Service related to this request, along with any information you have which leads you to believe the records are available, including where they might be found, if the location is known to you. Please note, appeals received after 5 p.m. EST will be considered to have been received as of the following day.

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.

You may contact OGIS in any of the following ways:

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

E-mail: ogis@nara.gov
Phone: 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 FOIA Liaison and the person processing your request, with any further questions or concerns. I can be reached at the address above or by phone at 303-969-2959. I can also be reached via e-mail at charis_wilson@nps.gov.

Sincerely,

Charis Wilson
NPS FOIA Officer