



United States Department of the Interior



FISH AND WILDLIFE SERVICE

5275 Leesburg Pike, MS: IRTM
Falls Church, VA 22041

IN REPLY REFER TO:
FWS-2019-00370

May 14, 2019

MuckRock News
DEPT MR 68320
411A Highland Ave
Somerville, MA 02144-2516
Email: 68320-06534593@requests.muckrock.com

Mr. Tobias:

The United States Fish and Wildlife Service (FWS) received your Freedom of Information Act (FOIA) request, dated January 30, 2019, and assigned it control number FWS-2019-00370. Please cite this number in any future communications with our office regarding your request. You requested the following documents pertinent to the FWS:

“Any written or electronic communications, including email attachments or text messages, that have been sent to Assistant Director Gary Frazer by one more more of the following individuals: Todd Willens, Aurelia Skipwith, Jason Larrabee and/or Susan Combs. This request seeks records that relate to the Endangered Species Act and/or endangered or threatened species. This request seeks records produced between September 1, 2018 and the date this request is processed.”

RESPONSE

We are writing to partially respond to your request. Today, we are providing you with 50 pages, 19 of which are released in full, and 31 of which are released in part as described below -

Exemption 5 - 5 U.S.C. § 552(b)(5)

Twenty-nine pages are released part 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\(b\)\(5\)](#). Exemption 5 therefore incorporates the privileges that protect materials from and commercial information privileges

Exemption 5 Deliberative Process Privilege 5 U.S.C. § 552(b)(5)

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. 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.

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)

Two pages are released part (which are also withheld under Exemption 5) under Exemption 6, which 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, specifically references to annual leave and personal meetings, and we have determined that the individuals to whom this information pertains has a substantial privacy interest in withholding it. Additionally, 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.

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.

The decision to withhold/deny this information was made by the undersigned and approved by Cathy Willis, FWS FOIA Officer, Division of Information Resources & Technology Management (IRTM). This decision was made in consultation with Larry Mellinger, Attorney, Department of the Interior Office of the Solicitor.

Mediation Services

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
Web: <https://ogis.archives.gov>
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. You also may seek dispute resolution services from our FOIA Public Liaison, Cathy Willis at 720-425-5173.

Appeal Rights

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 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 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 the Service's response is in error. You must also include with your appeal copies of all correspondence between you and Service concerning your FOIA request, including your original FOIA request and Service's response. Failure to include with your appeal all correspondence between you and the 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.

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

Consultation

We have located ten documents (872 pages) that originate in or substantially concern the U.S. Department of Commerce and have submitted a request for consultation to this Department. Once we hear back from the Department we will provide the remaining pages to you and close out this request.

Conclusion

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.

Tobias
FWS-2019-00370

If you have any questions about our response to your request, you may contact Eileen Harke by phone at 703-358-2096 or by email at eileen_harke@fws.gov.

Sincerely,
CATHY
WILLIS

Digitally signed
by CATHY
WILLIS
Date: 2019.05.14
12:11:07 -06'00'

Cathy Willis
FWS FOIA Officer

Enclosure