



United States Department of the Interior



FISH AND WILDLIFE SERVICE Mountain-Prairie Region

IN REPLY REFER TO:
BA/FOIA
MS 60180

MAILING ADDRESS:
Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Blvd.
Lakewood, Colorado 80228-1807

September 9, 2014

Jeff Ruch
PEER
2000 P. Street, NW. Suite 240
Washington D.C. 20036

REF: FWS-2014-00925

Dear Jeff Ruch:

This responds to your Freedom of Information Act (FOIA) request dated May 12, 2014, for:

Documents created on or after September 1, 2010 to the present date, related to the Environmental Assessment (EA) for the Draft Fiscal Year 2013-2016 Annual Funding Agreement (AFA) Between the United States Department of the Interior and the Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT). Specifically, we request the following:

- Copies of all communications and documents exchanged between U.S. Fish & Wildlife Service (USFWS) and CSKT regarding the draft EA and /or AFA;*
- Copies of all documents and communications concerning development of a national policy for Annual Funding Agreements with Indian tribes; and*
- All documents and communications concerning the Comprehensive Conservation Plan for the National Bison Range Wildlife Refuge Complex.*

On June 23, 2014, we provided a partial response to your request. In that response we stated additional documents were still under review. Our review is complete and in accordance with 43 CFR 2, enclosed are the remaining documents responsive to your request. Certain information in 5 documents and 4 documents in their entirety are being withheld under exemption 5 of the FOIA (5 U.S.C. § 552 (b)(5)), which applies to inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. Federal courts have interpreted Exemption 5 to cover attorney-client communications, pre-decisional deliberative process, and government confidential commercial information. All withheld information is being protected by the pre-decisional deliberative process privilege. Please see enclosed privileged index for a list of documents withheld in part and in full.

The pre-decisional deliberative process privilege applies to communications that are antecedent to the adoption of an agency policy, and are a direct result of the deliberative process in that they make recommendations or express opinions on legal or policy matters. The pre-decisional/deliberative process privilege prevents injury to the quality of agency decisions. The privilege protects not merely documents, but also the integrity of the deliberative process itself where the exposure of that process would result in harm.¹

This decision was made in consultation with Sharon Brenna, Office of the Solicitor, Rocky Mountain Region, Department of the Interior. You may appeal this partial response to the FOIA Appeals Officer. The FOIA Appeals Officer must receive your FOIA appeal no later than 30 workdays from the date of this letter responding to your FOIA request. Appeals arriving or delivered after 5 p.m. E.T., Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

Freedom of Information Act Appeals Officer
Department of the Interior
Office of the Solicitor
1849 C Street, NW, MS 6556
Washington, DC 20240

You must include with your appeal copies of all correspondence between you and the bureau concerning your FOIA request, including a copy of your original FOIA request and this response letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend, "FREEDOM OF INFORMATION APPEAL." Your letter should include in as much detail as possible any reason(s) why you believe the bureau's response is in error."

As part of the 2007 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. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. 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
College Park, MD 20740-6001
E-mail: ogis@nara.gov

¹ See, e.g., *Russell v. Dep't of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982); *Coastal States Gas Corp. v. DOE*, 617 F.2d 854, 866 (D.C. Cir. 1980); *Jordan v. DOJ*, 591 F.2d 753, 77273 (D.C. Cir. 1978) (en banc); *Kidd v. DOJ*, 362 F. Supp. 2d 291, 296 (D.D.C. 2005) (protecting documents on basis that disclosure would "inhibit drafters from freely exchanging ideas, language choice, and comments in drafting documents") (internal quotation marks omitted); *Heggstad v. DOJ*, 182 F. Supp. 2d 1, 12 (D.D.C. 2000) (protecting memoranda containing recommendations based on perjured testimony, finding that they "have no probative value to the public since they are based on misrepresentations"); *AFGE v. HHS*, 63 F. Supp. 2d 104, 108 (D. Mass. 1999) (holding that release of predecisional documents "could cause harm by providing the public with erroneous information"), aff'd, No. 99-2208, 2000 U.S. App. LEXIS 10993, at *3 (1st Cir. May 18, 2000). But see *ITT World Comments, Inc. v. FCC*, 699 F.2d 1219, 1237-38 (D.C. Cir. 1983) (dictum) (suggesting that otherwise exempt predecisional material "may" be ordered released so as to explain actual agency positions), rev'd on other grounds, 466 U.S. 463 (1984).

Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

For your information, 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 is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Thank you for your consideration in this matter, any fee associated with this request has been waived. If you have any questions please contact me at 303-236-4473 or by email at FW6_FOIA@fws.gov.

Sincerely,

Antoinette Urioste
Region 6 FOIA Office

Privilege Document Index

Date	Document Name	Author	Recipient	Document Type	Description	Withheld in Full/Partial	Reason for Withholding
1/15/2014	complete email DEPARTMENT OF THE INTERIOR Mail - AFA national policy 1	Will Meeks	Jeff King	Email	AFA national policy	Partial	(b)(5) Deliberative Privilege
8/8/2011	DOI Mail - FW_ Fw_ Draft tribal AFA policy being loaded into DTS for directorates review - PRIVELEGED & CONFIDENTIAL	Paul Steblein (FWS)	Dean Rundle (FWS)	Email	Draft Tribal AFA Policy	Partial	(b)(5) Deliberative Privilege
10/28/2013	email to Will original draft powerpoint presentation	Laura King (FWS)	Will Meeks (FWS)	Email	Draft powerpoint presentations on alternatives	Partial	(b)(5) Deliberative Privilege
8/4/2011	Fw_ Fw_ Draft tribal AFA policy	Jeff King (FWS)	Laura King (FWS)	Email	Discussion of the Draft Tribal AFA policy	Partial	(b)(5) Deliberative Privilege
7/3/2013	Fwd_ My projects	Laura King (FWS)	Laurie Shannon (FWS), Toni Griffin (FWS)	Email	Briefing on various projects including NBR's CCP process	Partial	(b)(5) Deliberative Privilege
2013	Alternatives briefing Current Draft Alternatives.wdr (2)	FWS	n/a	Powerpoint	Nationalsl Bison Range Draft Alternatives to Date presentation	Full	(b)(5) Deliberative Privilege
8/4/2014	Brief discussion of AFA issues	Paul Steblein (FWS)	Jeff King (FWS)	Email	Discussion of the Draft Tribal AFA policy	Full	(b)(5) Deliberative Privilege
10/29/2013	FW_ revised presentation	Laura King (FWS)	Dean Rundle (FWS), Jeff King (FWS), and Will Meeks (FWS)	Email	Draft powerpoint presentations on alternatives	Full	(b)(5) Deliberative Privilege
12/6/2010	with attachment Re_ Fw_ IMPORTANT - PLEASE READ_ Briefing Pape...	Dean Rundle (FWS)	Jeff King (FWS)	Email	Discussion of the Draft Tribal AFA policy	Full	(b)(5) Deliberative Privilege