



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

October 6, 2016

Paula Dinerstein
Public Employees for Environmental Responsibility
962 Wayne Ave., Suite 610
Silver Spring MD 20910

REF: FWS-2016-01069

Dear Ms. Dinerstein:

This letter is in regard to your Freedom of Information Act (FOIA) request dated August 1, 2016 for the following:

- 1. All communications or records of communications, including but not limited to emails, letters, and notes or reports of telephone conversations and meetings, between 1) officers and employees of the Fish and Wildlife Service or the Department of Interior and 2) members of the public, members of Congress or staff to members of Congress or congressional committees, and members or officers or representatives of the Confederated Salish and Kootenai Tribes (CSKT), which concern or reference any proposal, or any proposed legislation, to transfer the National Bison Range to be held in trust by the United States for the benefit of the CSKT.*
- 2. Drafts and comments on any drafts of legislation to transfer the National Bison Range to be held in trust by the United States for the benefit of the CSKT.*
- 3. Any analysis, comments, memoranda, or other writings concerning any proposal, or any proposed legislation, to transfer the National Bison Range to be held in trust by the United States for the benefit of the CSKT.*

We are enclosing a DVD containing documents responsive to your request. One-hundred thirteen (113) documents (559 pages) are being released to you in their entirety. An additional thirty-four (34) documents (128 pages) are being withheld in full or part as described below. We are continuing to review additional documents responsive to your request. Once that review is complete, we will send you our final response.

Exemption 5 - Inter-Agency or Intra-Agency Memorandums or Letters Which Would Not Be Available By Law

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." 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 in full and in part under Exemption 5 because they qualify to be withheld under the deliberative process and attorney-client privilege.

Attorney-Client Privilege (16 (48 pages) documents in full; 1 (6 pages) documents in part)

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. It also encompasses opinions given by attorneys to their clients based on client-supplied facts. Additionally, the 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 Service has held this information confidential and has not waived the attorney-client privilege.

Exemption 6 - Personnel and Medical Files and Similar Files

Seventeen (17) documents (79 pages) are being withheld in part under 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. *See United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982). 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. *See United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-75 (1989).

Under the FOIA, "the only relevant public interest" to consider under the exemption is "the extent to which the information sought would 'she[d] light on an agency's performance of its statutory duties' or otherwise let citizens 'know what their government is up to.'" *United States Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495-96 (1994) (quoting *Reporters Comm.*, 489 U.S. at 775). The burden is on the requester to establish that disclosure would serve the public interest. *See National Archives and Records Admin. v. Favish*, 541 U.S. 157, 171-72 (2004). 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. *See Reporters Comm.*, 489 U.S. at 771.

The information that has been withheld under Exemption 6 consists of personal home addresses and emails, 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 these individuals and we are withholding it under Exemption 6.

This decision was made in consultation with Lori Caramanian, Office of Solicitor, Rocky Mountain Region, and Department of the Interior.

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 the Service concerning your FOIA request, including your original FOIA request and the 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

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

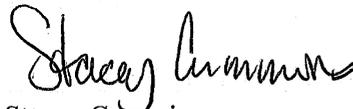
Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

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.

You also may seek dispute resolution services from our FOIA Public Liaison, Carrie Hyde-Michaels; Chief, Branch of FOIA, Records, Privacy; 703-358-2291.

This is our only and final response and closes your request, FWS-2016-01233. If you have any questions about our response to your request, you may contact me by phone at 303-236-4473, by email at Stacey_Cummins@fws.gov, or by mail at 134 Union Blvd, Lakewood, Colorado 80228.

Sincerely,



Stacey Cummins
Region 6 FOIA Officer

Enclosure