



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE Mountain-Prairie Region

IN REPLY REFER TO:  
BA/FOIA  
MS 60180

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

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

March 16, 2018

Via email at: [pdinerstein@peer.org](mailto:pdinerstein@peer.org)

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

REF: FWS-2018-00095

Dear Ms. Dinerstein:

This letter is in regard to your Freedom of Information Act (FOIA) request dated October 20, 2017 for the “documents related to with the Confederated Salish and Kootenai Tribes (CSKT). Specifically, you request the following:

*All documents, correspondence and communications, or notes reflecting or discussing communications:*

*Between any employee or officer of Region 6 of the Fish and Wildlife Service and any person representing, or acting or speaking on behalf of the CSKT, between March 1, 2017 and the present.*

On February 27, 2018 we provided you a partial response. In that response, we stated we were still reviewing records responsive to your request. Our review is complete and we are enclosing four (4) documents (19 pages) responsive to your request, which are being released to you in their entirety. We are withholding one (1) document (2 pages) in full 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 discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. We are withholding under Exemption 5 because to be withheld under the following privilege:

### *Attorney Work-Product Privilege*

As incorporated into Exemption 5, the attorney work-product privilege protects from disclosure any materials prepared by or for a party or its representative (including their attorney, consultant, surety, indemnitor, insurer, or agent) in anticipation of litigation or for trial. The privilege applies once specific claims have been identified that make litigation probable; the actual

beginning of litigation is not required. Its purpose is to protect the adversarial trial process by insulating litigation preparation from scrutiny, as it is believed that the integrity of our system would suffer if adversaries were entitled to probe each other's thoughts and plans concerning the case. The privilege extends to administrative, as well as judicial proceedings. Once the determination is made that records are protected from disclosure by the attorney work-product privilege, the entire contents of those records are exempt from disclosure under FOIA.

The materials that have been withheld under Exemption 5 under the attorney work-product privilege were prepared by or for a Department attorney in reasonable anticipation of litigation and they reflect the parties' pre-litigation thoughts. So we conclude that the withheld materials are protected in full from disclosure by the attorney work-product privilege of Exemption 5.

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.

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](mailto: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](mailto: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 final response, and closes your request, FWS-2018-00095. If you have any questions about our response to your request, you may contact me by phone at 303-236-4473, by email at [fw6\\_foia@fws.gov](mailto:fw6_foia@fws.gov), or by mail at 134 Union Blvd, Lakewood, Colorado 80228.

Sincerely,

Stacey Cummins  
Region 6 FOIA Officer

Enclosures