



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE Mountain-Prairie Region

IN REPLY REFER TO:  
FWS/FOIA

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

STREET LOCATION:  
134 Union Boulevard  
Lakewood, Colorado 80228-1807

May 31, 2019

Letter via email: [reilly.patrickf@gmail.com](mailto:reilly.patrickf@gmail.com)

Hard copy and documents via regular mail to:  
Patrick Reilly  
500 S. Higgins Ave.  
Missoula, MT 59801

REF: FWS-2018-01099

Dear Mr. Reilly:

This letter is in regard to your Freedom of Information Act (FOIA) request August 7, 2018 for the following *“Any and all emails, and all attachments, that Bernardo Garza and/or Vanessa Fields sent or received between May 15, 2017 and January 29, 2018 containing the term “National Bison Range” and any of the following terms: “CCP;” “comprehensive conservation plan;” “conservation plan;” “work plan;” “settlement;” “secretarial order;” “3355.”*

This is our final response. We are enclosing a DVD containing documents responsive to your request. Thirty-five (35) documents are being released to you in their entirety; and sixty-nine (69) documents are being withheld in full or in part as described as follows:

Twenty (20) document are withheld in full under FOIA Exemption 3. Exemption 3 allows the withholding of information protected by a nondisclosure provision in a federal statute other than FOIA. Under 41 U.S.C. § 4702(b)-(c), the release of contractor proposals under the FOIA is specifically prohibited unless they have been set forth or incorporated by reference in a final contract. The parts of the requested documents contain proposals that were not set forth or incorporated by reference into the final contract and therefore are being withheld in full under Exemption 3.

Thirty (38) documents are being withheld in full or in part under Exemption 5. 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). 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 the documents in full or in part under Exemption 5 because they qualify to be

withheld under the deliberative process privilege, the attorney-client privilege and the commercial information privilege as described below.

Six (6) documents are withheld in full because they qualify under the attorney-client privilege and the deliberative process privilege; seventeen (17) documents are withheld in part because they qualify under the deliberative process privilege; and fifteen (15) documents are withheld in part because they qualify under the commercial process privilege.

*Attorney-Client Privilege (six (6) documents)*

The attorney-client which 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 FWS 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 FWS has held this information confidential and has not waived the attorney-client privilege.

*Deliberative Process Privilege (seventeen (17) documents)*

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 decision maker 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 pre-decisional 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 pre-decisional 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 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.

*Commercial Information Privilege (fifteen (15) documents)*

When the government enters the marketplace as an ordinary commercial buyer or seller, the government's information is protected under the commercial information privilege if it is sensitive information not otherwise available, and disclosure would significantly harm the government's operations. The government purchases the use of conference lines to conduct government operations. Protecting this information is necessary for the proper functioning of government and to ensure efficient governmental operations. We conclude that disclosure of the conference telephone numbers would constitute a harm to the governments operations and we are withholding it under Exemption 5.

Twenty (6) document are withheld in part under FOIA Exemption 6. 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. 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 the greater result of disclosure is: 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 the personal email address, 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.

Two (2) document are withheld in part under FOIA Exemption 5 and 6. See the discussions above for relevant exemption discussion.

We reasonably foresee that disclosure would harm the basic institutional interests that underlie exemption 3, 5, and 6 of the FOIA. Specifically, we foresee that the disclosure of the withheld information would inhibit candor in the decision-making process if this information is disclosed to the public at this time and the release would inhibit the candid discussion needed for optimum decision-making inside this agency.

Stacey Cummins, US Fish and Wildlife Service FOIA Coordinator is responsible for this partial denial. Dana Jacobsen, Attorney-Advisor, in the Office of the Solicitor was consulted.

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.

You also may seek dispute resolution services from our FOIA Public Liaison, Cathy Willis, Acting FWS FOIA Officer, 720-425-5173

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.

This is our final response, and closes your request, FWS-2018-01099. If you have any questions, 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  
US Fish and Wildlife Service  
Region 6 FOIA Coordinator

Enclosure