



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 23, 2019

Via email: reilly@missoulian.com

Patrick Reilly
Flathead Valley Reporter, Missoulian
500 S. Higgins Ave.
Missoula, MT 59801

REF: FWS-2019-00465

Dear Mr. Reilly:

This letter is in regard to your Freedom of Information Act (FOIA) request dated June 26, 2018 for:

- *“Any and all budget forms prepared by Regina Martinez, budget analyst in the U.S. Fish and Wildlife Service’s Denver Office, concerning the National Bison Range’s budget allocation from 2010 to the present.*
- *Any and all budget summaries prepared by National Bison Range budget analyst Karen Shoemaker from 2010 to the present, with information for the Bison Range itself and for the other units in the National Bison Range Complex separated if possible.*
- *Any and all documentation concerning the “AFA Placeholder Account” in which funds from the National Bison Range’s Fiscal Year 2015 base allocation were placed, and where those funds were spent.*
- *Any and all notes, slides, informational handouts, etc. from a meeting that took place in either August, September or October of 2015 between leadership of the U.S. Fish and Wildlife Service Region 6, the Confederated Salish and Kootenai Tribes, and the National Bison Range Complex concerning an Annual Funding Agreement for the National Bison Range.*
- *Any “last and best offer” for an Annual Funding Agreement made by the tribes and/or the Fish and Wildlife Service after that meeting, as permitted by 25 CFR § 1000.179*
- *The written explanation that the Fish and Wildlife Service was required to give to the Tribes in the event it rejected that offer under 25 CFR § 1000.179 (b).*
- *Any and all requests by former National Bison Range Project Leader Jeff King to fill vacant positions at the Bison Range in 2016, and regional leadership’s response(s).*
- *Any and all proposals submitted to the House and Senate Appropriations Committees for a reprogramming of funds away from the National Bison Range, as required by FWS 253 3.5 C, from 2011 to 2016.”*

On April 22, 2019 we sent 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 one (1) Adobe PDF Binder consisting of three (3) pages, of which two (2) pages are being released to you in their entirety and one (1) page is being withheld in part under Exemption 5, commercial information privilege. We are withholding an additional two (2) pages in full under Exemption 5, deliberative process privilege.

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 three (3) pages in part and in full under Exemption 5 because they qualify to be withheld under the following privileges.

Deliberative Process Privilege (2 pages in full)

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.

Commercial Information Privilege (1 page in part)

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 monetary functions or commercial interests. The theory behind the privilege is that the government may be placed at a competitive disadvantage or the consummation of a contract may be endangered if confidential information generated by the government is disclosed during the process of awarding the contract.

The information withheld under this privilege reflects information concerning thoughts and determinations

of the employees regarding the property. Disclosure of this information to the public would allow other parties who may be interested in purchasing the property to know how the Service values it, thereby allowing them to weaken the government's negotiating position. Disclosure of conference lines and passcodes would harm the government's monetary functions and commercial interests.

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 as well as be prohibited by law or otherwise protected from disclosure under Exemption 3.

Stacey Cummins, US Fish and Wildlife Service Region 6 FOIA Coordinator is responsible for this partial denial. This decision was made in consultation with Dana Jacobsen, 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, Cathy Willis; Acting FWS FOIA Officer; 720-425-5173.

This is our final response and closes your request, FWS-2019-00465. If you have any questions, you may contact me by phone at 303-236-4473, by email at fw6_foia@fws.gov, or by mail at 134 Union Blvd, Lakewood, Colorado 80228.

Sincerely,

Stacey Cummins
Region 6 FOIA Coordinator

Enclosure