



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

5275 Leesburg Pike, MS: IRTM  
Falls Church, VA 22041



IN REPLY REFER TO:  
DOI-FWS-2023-003086

March 30, 2023

Via E-mail: [canchando@eenews.net](mailto:canchando@eenews.net)

Carlos J. Anchondo  
E&E News/POLITICO  
1000 Wilson Blvd. 8<sup>th</sup> Floor  
Arlington, VA 22209

Mr. Anchondo:

This is in response to your Freedom of Information Act (FOIA) request, dated March 3, 2023, assigned control number FWS-2023-003086. Your request sought *“all written communications, including but not limited to emails, between Cindy Schulz ([cindy\\_schulz@fws.gov](mailto:cindy_schulz@fws.gov)) and Karen Armstrong([karen\\_armstrong@fws.gov](mailto:karen_armstrong@fws.gov)) that discuss the Mountain Valley pipeline project and a biological opinion issued on February 28, 2023, for the Mountain Valley pipeline project. The time window for my request is between February 17, 2023, and March 3, 2023.”*

### Response

After review, the following is our determination on our withholdings:

- Releasing two documents in their entirety; and
- Releasing but withholding in part, three documents under Exemption 5, as described below.

### 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 pages in part under Exemption 5 because they qualify to be withheld because they meet the Exemption 5 threshold of being inter-agency or intra-agency and under the following privileges:

*Attorney-Client Privilege (withholding in part three pages).*

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 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 Service has held this information confidential and has not waived the attorney-client privilege.

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.

Amanda Crask, FOIA Coordinator, is responsible for this partial denial. Amanda Bossie in the Office of the Solicitor was consulted.

### **Mediation/Dispute Resolution**

If after contacting us as described below, you need further information or assistance with your request, you may wish to seek dispute resolution services from the Department's FOIA Public Liaison, Natasha Jones by email at [doifoiapublicliaison@sol.doi.gov](mailto:doifoiapublicliaison@sol.doi.gov).

If you need further information or assistance after contacting the Department's FOIA Public Liaison, you may wish to seek dispute resolution services from the Office of Government Information Services (OGIS). The 2007 FOIA amendments created the 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://www.archives.gov/ogis>  
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.

## **Appeal Rights**

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 final response. 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 this response is in error. You must also include with your appeal copies of all correspondence between you and FWS concerning your FOIA request, including your original FOIA request and this response. Failure to include with your appeal all correspondence between you and FWS 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)

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.

If you have any questions about our response to your request, you may contact me by email at [Amanda\\_Crask@fws.gov](mailto:Amanda_Crask@fws.gov), or by mail at U.S. Fish and Wildlife Service; ATTN: FOIA Office; 5275 Leesburg Pike; MS: IRTM; Falls Church, VA 22041.

Sincerely,

Amanda Crask  
U.S. Fish & Wildlife Service  
FOIA Coordinator

Cc: ABossie, SOL