



Friends of the Clearwater

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November 23, 2022

Department of Interior

U.S. Fish and Wildlife Service

Attention: Information Request under the Freedom of Information Act (FOIA)

Via the internet portal at: <https://foiaonline.gov/foiaonline/action/public/request>

To Whom this concerns:

Pursuant to the federal Freedom of Information Act (5 U.S.C. § 552 et seq.) Friends of the Clearwater (FOC) is filing this request for information. Friends of the Clearwater is a 501(c)(3) non-profit, public-interest, public-education organization.

This information request is in regards to the two grizzly bears recently relocated from a area near Florence, MT to a site in the Sapphire Mountains. This is the subject of an email I sent to the U.S. Fish and Wildlife Service (Service) on November 8, 2022 to which the Service responded on November 14. For clarity, my email is reproduced as an attachment to this letter.

FOC requests:

A copy of all documents in possession of the Service pertaining to the relocation of the two grizzly bears mentioned above. This includes, but is not limited to, all inter-agency and intra-agency communications (including correspondence with other federal and state wildlife agencies including APHIS Wildlife Services, U.S. Forest Service, Montana Department of Livestock, Montana Department of Fish Wildlife and Parks, Idaho Department of Fish and Game, and others) including letters, emails, phone records, phone logs, meeting notes, memos, and any other documents, or information related to the agency action. We also request all such communications concerning those same grizzly bears prior to the relocation incident, because as the Missoulain Article referenced in my original email states, "The grizzlies were first observed in the Potomac area northeast of Missoula" and this likely led to numerous agency communications prior to relocation.

To FOC's knowledge, this information is not available from any other federal, state, or public agency required to provide it. In addition, the release of this information will not result in financial benefit to the Friends of the Clearwater or any individuals, groups, or organizations. FOC requests issuance of a tracking number. 5 U.S.C. § 552(a)(7)(A). FOC also requests that you notify us of the date of receipt as required by 5 U.S.C. §

552(a)(7)(B)(i). Finally, please provide an estimated completion date for the above request. *See* 5 USC § 552(a)(7)(B)(ii).

As you know, the Freedom of Information Act (FOIA) provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. *See* 5 U.S.C. § 552(b). We expect to receive all nonexempt portions of the documents that we have requested and ask that you justify any deletions by reference to specific exemptions allowed under FOIA. *See* 5 U.S.C. § 552(b). Friends of the Clearwater reserves the right to appeal a decision to withhold any materials.

Friends of the Clearwater hereby requests a fee waiver for all search and duplication fees under the FOIA regulations. *See* 5 U.S.C. Sec. 552 (a)(4)(A); 43 C.F.R. §§ 2.45, 2.46, 2.48 (Subpart G. Fees). Friends of the Clearwater addresses the following criteria, 43 C.F.R. § 2.48, to support its fee-waiver request:

1. The records concern the activities of the Federal government because the requested records pertain to communications in regard to the ESA-listed grizzly bear, between the Service and other agencies (federal and state) as they relate to the capture and relocation of the two grizzly bears in question. The communications for which documentation is being requested culminated in Service authorization of relocation(s) through the grizzly bear 4(d) rule (50 CFR 17.40) and the full record of the related communications are not available through other agencies. *See* 43 C.F.R. § 2.48(1).
2. These communication records are connected to the activities of the federal government and meaningfully informative because they potentially provide the whole picture as to how a federal action—in this case the authorization of grizzly bear relocation—might impact that ESA-listed species. The Service is the expert agency charged with implementing the Endangered Species Act. The communication records would also add to the public understanding of how the Service approaches its duties through the grizzly bear 4(d) rule (50 CFR 17.40). *See* 43 C.F.R. § 2.48(a)(2)(i), (2)(ii).
3. The agency's response will contribute a significant understanding of this matter to a reasonably broad audience. While the public often sees the result of the interagency communications, such capture and relocation, the Service's process to arrive at its authorization decision is not so widely or easily available. A full record of communications will help the broader public understand the role the Service plays in actions carried out by different agencies, which will enhance understanding above and beyond the relocation(s) in question. This response will help the public understand the breadth of factors the Service considered before authorizing relocation(s) of these grizzly bears. *See* 43 C.F.R. § 2.48(a)(2)(iii), (vii).
4. Friends of the Clearwater is a non-profit organization, public interest, public education organization that educates and protects public lands in the Wild Clearwater Country of Idaho and necessarily, adjacent lands that include the Bitterroot Ecosystem recovery area and other iterations of zones delineated for the purpose of grizzly bear recovery, e.g., the Bitterroot Grizzly Bear Nonessential Experimental Population Area. Our staff have experience in public lands as well as knowledge on the wildlife that inhabit these lands.

The Bitterroot Ecosystem is in our mission area, and grizzly bears have been sighted within and nearby these lands in recent years. Because Friends of the Clearwater is a public-interest organization dedicated to outreach, education, and protection of public lands, Friends of the Clearwater plans to disseminate information from this request through its Facebook page, its newsletter, and its website (<http://www.friendsoftheclearwater.org/>), as well as disseminating it to other public-interest organizations with similar geographic or species-related interests. To our knowledge, these records have not been previously released. See 43 C.F.R. § 2.48(2)(iv), (v), (vi).

5. The information requested will benefit the citizens of the United States and is for the purpose of public education. Friends of the Clearwater will not commercially benefit from the information requested. In addition to Friends of the Clearwater's plans to disseminate this information (see above), the information that the Service discloses will be made available to the public through the Friends of the Clearwater office. See 43 C.F.R. §§ 2.45(a), 2.48(b).

The language of the FOIA clearly indicates that Congress intended fees not to be a barrier to private individuals or public interest organizations seeking access to government records. In addition, the legislative history of the FOIA fee waiver language indicates that Congress intended a liberal interpretation of the phrase "Primarily benefiting the public." This suggests that all fees are to be waived whenever the release of information contributes to public debate on important policy issues. This has been affirmed by the U.S. Court of Appeals for the District of Columbia in *Better Government Association v. Department of State*, 780 F. 2d 86 (D.C. Cir. 1986). In that case, the Court found that under the FOIA, Congress had explicitly recognized the need for non-profit organizations to have free access to government documents and those government agencies cannot impair this free access by charging duplication or search for FOIA requests. *Id.* at 89.

To reduce the use of paper, Friends of the Clearwater would prefer disclosure of the requested information in a commonly used electronic format, such as pdfs, Word, Excel, gifs, tifs, etc. Again, FOC requests an estimated completion date for this request. 5 U.S.C. 552(a)(7)(B)(ii). Your help is appreciated. Thank you for your time.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeff Juel". The signature is fluid and cursive, with the first name "Jeff" and last name "Juel" clearly distinguishable.

Jeff Juel, Montana Policy Director
Friends of the Clearwater
509-688-5956
jeffjuel@wildrockies.org

ATTACHMENT

From: Jeff Juel <jeffjuel@wildrockies.org>
Sent: Tuesday, November 8, 2022 11:34:40 AM
To: Fortin-Noreus, Jennifer K <jennifer_fortin-noreus@fws.gov>
Subject: [EXTERNAL] grizzly relocation in the Bitterroot NF

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Jennifer, I'm inquiring about the recent relocation of two grizzly bears from west of US Highway 93 near the Bitterroot National Forest to the Sapphire Mountains. This is written up in a Missoulian article: https://missoulian.com/news/local/grizzlies-captured-in-bitterroot-relocated/article_75335e43-110a-51ba-849d-af2af0ab3667.html

The most recent Species Status Assessment states:

Management removals are allowed under the Act through a section 4(d) rule (50 CFR 17.40(b)). These types of removals encompass grizzly bear mortalities resulting from conflicts at developed sites (e.g., bears attracted to anthropogenic food sources), livestock depredation, and other situations where human life or property is considered threatened by bear presence. While lethal to the individual grizzly bears involved, management removals can promote conservation grizzly bears by reducing illegal killing of bears, providing an opportunity to educate the public about avoiding conflicts, and promoting tolerance of grizzly bears by responding promptly and effectively when bears pose a threat to public safety or repeatedly depredate livestock. Without the support of the people that live, work, and recreate in grizzly bear country, grizzly bear conservation will not be successful.

When I go online to read those regulations at 50 CFR 17.40(b), I don't find much that specifically directs or authorizes actions such as that particular relocation. Logically, it seems there would be some limits to what the US Fish and Wildlife Service allows Montana Fish, Wildlife and Parks to do with grizzly bears. So I'm wondering how authorization for Montana Fish, Wildlife and Parks to do such relocations is made by the USFWS. Agreements? MOUs? Other permit(s)?

Thank you for your time.

-- Jeff Juel Montana Policy Director Friends of the Clearwater 509-688-5956
jeffjuel@wildrockies.org <https://www.friendsoftheclearwater.org>