



United States Department of the Interior
FISH AND WILDLIFE SERVICE

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



In Reply Refer To:
DOI-FWS-2020-00616

September 28, 2022

Jimmy Tobias
Muck-Rock News
411A Highland Ave
Somerville, Massachusetts 02144-2516

Dear Mr. Tobias:

This is in response to your Freedom of Information Act (FOIA) request, dated June 17, 2019, and assigned tracking number DOI-FWS-2020-000616 (legacy number FWS-2020-00404). Please cite this number in any future communications with our office regarding your request. You are generally seeking records related to *John Wrublik referring to Florida panther and/or the Eastern Collier Multispecies Habitat Conservation Plan*. We are writing today to complete the response to your request.

Response

We previously partially responded to this request on January 20, 2022. For this final response, we processed sixty-one (61) pages. Our determination is as follows:

- Fifty (50) pages are released in full.
- Eleven (11) pages are released in part.

We have withheld pages in part under FOIA exemptions (5) and (6). The rationale for this decision follows.

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 deliberative process, attorney work-product, attorney-client, and commercial information. The basis for our withholding pages in part and in full under Exemption 5 is because they contain information that meets the Exemption 5 threshold of being inter-agency or intra-agency and fall under the following privileges:

Deliberative Process Privilege (1 page in part)

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 fishbowl. A number of policy considerations underlie the deliberative process privilege, including: (1) assuring that

subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protecting against premature disclosure of proposed policies; and (3) protecting 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 that 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 out of concern that public dissemination of this information would have a chilling effect on the agency's deliberative processes. Dissemination also would 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 mandated functions.

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records are requested.

Attorney-Client Privilege (1 page in part)

The attorney-client privilege protects confidential communications between an attorney and their 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 their attorney, this privilege also encompasses any opinions given by an attorney to their client based upon and, thus, reflecting those facts as well as communications between attorneys that reflect confidential client-supplied information.

The information withheld under the attorney-client privilege of Exemption 5 constitutes confidential communications between agency counsel and agency clients related to legal matters for which the client sought professional legal assistance and services. It also encompasses opinions given by legal counsel to their clients based on client-supplied facts. Additionally, the FWS employees who communicated with agency counsel were clients of the agency counsel at the time the information was generated, and counsel was acting in their legal capacities at the time the legal advice was communicated. The Service has held this information confidential and not waived the attorney-client privilege.

Exemption 6 *(9 pages in part)*

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 is the greater result of disclosure: 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 we have withheld under Exemption 6 consists of individuals' email addresses, and we have determined that the individuals have a substantial privacy interest in withholding it. Additionally, you have not provided information that explains a relevant public interest in the disclosure of this personal information, and we have determined that disclosure would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than any public interest in the disclosure, release of the information would constitute a clearly unwarranted invasion of privacy of the individuals. Accordingly, we are withholding the information under Exemption 6.

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.

Stacey Cummins, FWS FOIA Coordinator, is responsible for this partial denial. Vicki V. Mott, Attorney-Advisor 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 Alcantara by email at 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
Web: <https://www.archives.gov/ogis>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Please note that using the Department's FOIA Public Liaison or 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

Conclusion

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 DOI-FWS-2020-000616 (legacy number FWS-2020-00404). If you have any questions, you may contact me by phone at 303-236-4473 or by email at Stacey_Cummins@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,

Stacey Cummins
FWS FOIA Coordinator