



**United States Department of the Interior  
Pacific Southwest Region  
FISH AND WILDLIFE SERVICE**  
Reno Fish and Wildlife Office  
1340 Financial Boulevard, Suite 234  
Reno, Nevada 89502  
Ph: (775) 861-6300 ~ Fax: (775) 861-6301



April 16, 2021  
2020 File No. FWS-2020-  
005744  
Sent via email

Ann K. Brown  
Center for Biological Diversity  
P.O. Box 11374  
Portland, OR 97211-0374

Dear Ms. Brown:

This letter continues our response to your Freedom of Information Act (FOIA) request dated September 16, 2020, regarding the following:

**FOIA**

From July 6, 2020 to the date FWS conducts this search, the records mentioning or referencing:

1. Incidents of destruction or harm to, or the poaching or harvesting of Tiehm's buckwheat (*Eriogonum tiehmii*); or
2. Discovery of new populations of Tiehm's buckwheat.

In the letters you received from the Nevada FWS ES office the FOIA online number was provided for the Tiehm's Buckwheat eDNA which was DOI-FWS-2021-001089.

On January 22, 2021 the Nevada office sent you a link that contained 161 records that are responsive to this FOIA as well. I have uploaded these records to FileShare and we are re-sharing these records with you for this FOIA.

Portions of these materials are being withheld under the following FOIA Exemptions:

**Exemption 5—[43 C.F.R. §§ 2.23, 24](#)**

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. In this response, we are withholding 16 pages in part under Exemption 5 because they qualify to be

withheld under the following privilege.

#### *Attorney-Client Privilege*

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 U.S. Fish and Wildlife 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 U.S. Fish and Wildlife Service has held this information confidential and has not waived the attorney-client privilege.

#### **Exemption 6—[43 C.F.R. §§ 2.23, 24](#)**

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\(b\)\(6\)](#).

We are withholding seven records in part. 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 has been withheld under Exemption 6 consists of personal information, emails and usernames, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, 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 the individual and we are withholding it under Exemption 6.

We are continuing to review additional records that are responsive to your request. We will release more records on a rolling release schedule as they are reviewed by our agency. We apologize for this delay.

Although we hope that you will wait so that we can complete our review process, please note that you may seek dispute resolution services from our FOIA Public Liaison, and/or seek dispute resolution services from the Office of Government Information Services (OGIS).

If you choose to contact OGIS, you may do so 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

You may also file an appeal with the Department's FOIA/Privacy Act Appeals Officer regarding this delay. If you choose to appeal this delay, you may do so anytime between now and the date we make our determination on the FOIA request. 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 also include with your appeal copies of all correspondence between you and the U.S. Fish and Wildlife Service concerning your FOIA request, including your original FOIA request and U.S. Fish and Wildlife Service's response. Failure to include with your appeal all correspondence between you and U.S. Fish and Wildlife 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.

*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)

If you have any questions, please contact me at 503-231-2072.

Sincerely,

John De Clerck  
Headquarters FOIA Coordinator  
Portland, Sacramento, and Alaska