



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington D.C. 20240



February 16, 2022

Via email: [jimmytobias@protonmail.com](mailto:jimmytobias@protonmail.com)

Jimmy Tobias  
MuckRock News  
DEPT MR 110755  
411A Highland Ave  
Somerville, MA 02144

REF: DOI-FWS-2021-001248

Dear Mr. Tobias:

The United States Fish and Wildlife Service (FWS) Freedom of Information Act (FOIA) office received your request dated December 13, 2020 and assigned it tracking number DOI-FWS-2021-001248. Please cite this number in any future communications with our office regarding your request.

You are seeking the following from February 2011 to January 2017:

*"Any and all written or electronic communications, including email attachments, sent or received by then-Director Dan Ashe that contain one or more of the following key words or phrases: "red wolf", "red wolves", "Alligator River", "Gordon Myers", "North Carolina Wildlife Resources Commission", "N.C. Wildlife Resources Commission", and/or "Jett Ferebee"."*

## Response

Due to ongoing vacancies in the Headquarters FOIA office, we apologize for this delay in responding to your request. We have enclosed one (1) document consisting of six hundred and five (605) pages, the following is our determination on our withholdings:

- Three hundred and sixty-one (361) pages are being released in their entirety,
- One hundred and forty-one (141) pages are being withheld in part under Exemption 6 and Exemption 7(f),
- Forty-nine (49) pages are being withheld in part under Exemption 6 and Exemption 7(c),
- Two (2) pages are being withheld in part under Exemption 5 and
- Fifty-two (52) page is being withheld in part under Exemption 6.

## 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*

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.

#### **Exemption 6**

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 has been withheld under Exemption 6 consists of employee’s personal information, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and 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 of these individuals, and we are withholding it under Exemption 6.

### **Exemption 7(c)(f)**

Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes” if the records fall within one or more of six specific bases for withholding set forth in subparts (A) through (F). [5 U.S.C. § 552\(b\)\(7\)\(A\)-\(F\)](#). For the records you are seeking, we have determined that releasing them would constitute an unwarranted invasion of privacy because they would identify individuals referenced in law enforcement records and the release of this information would not shed light on an agency’s performance of its statutory duties.

Exemption 7(C) protects law enforcement records if their release could reasonably be expected to constitute an unwarranted invasion of personal privacy. It is regularly applied to withhold references to individuals in law enforcement files. For the materials that have been withheld under 7(C), we have determined that releasing them would constitute an unwarranted invasion of privacy because they identify individuals referenced in law enforcement records and the release of this information would not shed light on an agency’s performance of its statutory duties.

Exemption 7(F) protects law enforcement records if their release could reasonably be expected to endanger the life or physical safety of any individual. For the materials that have been withheld under 7(F), we have determined releasing them could reasonably be expected to endanger the life or physical safety of an individual because it would endanger the life or physical safety of individuals.

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.

Cathy Willis, FOIA Officer, is responsible for this partial denial.

Helen H. Speights and Shannon L. Goessling in the Office of the Solicitor was consulted.

### **Fee Category**

We have classified you as a representative of the news media. Because the cost of processing your request was less than \$50.00, there is no billable fee for processing this request, as the cost of collection would be greater than the fee collected. See [43 C.F.R. § 2.37\(g\)](#). Therefore, there is no billable fee for the processing of this request.

### **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](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 final 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)

### **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-2021-001248. If you have any questions, you may contact me, by email at [barbara\\_beckett@fws.gov](mailto:barbara_beckett@fws.gov), by phone at (703) 358-2239, or by mail at U.S. Fish and Wildlife Service; ATTN: FOIA Office; 5275 Leesburg Pike; MS: IRTM; Falls Church, VA 22041.

Sincerely,

Barbara Beckett  
FWS FOIA Coordinator