



United States Department of the Interior

FISH AND WILDLIFE SERVICE



Post Office Box 1306
Albuquerque, New Mexico 87103

In Reply Refer To:
FWS/R2/NWRS/FOIA
DOI-FWS-2021-001256 (Partial 2)

March 23, 2021

Ms. Rose Monahan
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, California 94602

Dear Ms. Monahan:

This partially responds to your Freedom of Information Act (FOIA) request dated October 22, 2020, in which you seek the following:

1. Plans or actions undertaken within the San Bernardino National Wildlife Refuge to relocate, preserve, or salvage endangered fish species;
2. Observed instances of environmental harm occurring within or directly adjacent to the San Bernardino National Wildlife Refuge as a result of border barrier and/or wall construction, including, but not limited to, fish kills, habitat destruction, loss of wildlife, and discharges of visibly dirty or otherwise contaminated water;
3. Water quantity and/or quality monitoring in ponds and wells located on the San Bernardino National Wildlife Refuge.
4. Communications between FWS employees, independent contractors, and/or representatives and U.S. Customs and Border Protection, the U.S. Army Corps of Engineers, and/or contractors (including, but not limited to, Southwest Valley Constructors, Kiewit, Logistics Management Institute, and Baker Engineering) employees, independent contracts, and/or representations regarding potential or observed impacts of border walls and roads on San Bernardino National Wildlife Refuge and adjacent lands
5. Communications between FWS employees, independent contractors, and/or representatives and U.S. Customs and Border Protection, the U.S. Army Corps of

Engineers, and/or contractors (including, but not limited to, Southwest Valley Constructors, Kiewit, Logistics Management Institute, and Baker Engineering) employees, independent contracts, and/or representations regarding any border wall design elements and/or mitigation to lessen adverse impacts on local wildlife.”

Your FOIA request was assigned tracking number DOI-FWS-2021-001256 and forwarded to the Southwest Region National Wildlife System for processing.

For this second partial response to your request, 155 records (consisting of 363 pages) are provided to you with this letter.

Based on this office’s review, we reasonably foresee that disclosure of certain information in documents that fall under this request would harm an interest protected by one or more of the nine exemptions to the FOIA’s general rule of disclosure. Accordingly, from the responsive records, a portion of one record is partially redacted pursuant to FOIA Exemption (b)(5) as described below.

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 redacted a portion of one document (consisting of two pages) pursuant to the commercial information privilege of Exemption 5. The information withheld under this privilege consists of active conference call telephone numbers and access codes, which could be used to conduct conference calls by parties outside the government or used to call in to monitor internal government conversations. We are withholding it because disclosure to the public would chill communications between federal employees, harm the government’s ability to exchange information, and waste government financial resources.

When the government enters the marketplace as an ordinary commercial buyer or seller, the government’s information is protected under the commercial information privilege if it is sensitive information not otherwise available, and disclosure would significantly harm the government’s monetary functions or commercial interests. In regard to conference call numbers, if the information was released, the government’s financial interest would be significantly harmed as the calls would no longer be private and the funds spent on purchasing the information would be wasted. We are releasing the majority of the communication that would not harm the U.S. Fish and Wildlife Service’s (Service) commercial interests.

The undersigned is responsible for this partial denial. The following categories of preapproved withholdings were the subject of consultation with the Office of the Solicitor's Division of General Law and the Departmental FOIA Office: Commercial Information Privilege under Exemption 5.

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 letter. 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 the Service's response is in error. You must also include with your appeal copies of all correspondence between you and the Service concerning your FOIA request, including your original FOIA request and the Service's response. Failure to include with your appeal all correspondence between you and the 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.

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
Department of the Interior, Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, D.C. 20240
Telephone: 202-208-5339/Fax: 202-208-6677
Email: FOIA.Appeals@sol.doi.gov

Also, please note the 2007 FOIA amendments created the Office of Government Information Services (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 and does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer. 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://ogis.archives.gov>
Telephone: 202-741-5770 / Fax: 202-741-5769 / Toll-free: 1-877-684-6448

You also may seek dispute resolution services from our FOIA Acting Public Liaison, Cindy Cafaro, at 888-603-7119 or via email at cindy.cafaro@sol.doi.gov.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the 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.

We will continue processing your request and provide a response as soon as possible. If you have any questions or concerns regarding this request, please contact Government Information Specialist, David Tischer, by email at david_tischer@fws.gov.

Sincerely,

FOIA Coordinator