



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-2021-003464

September 28, 2022

Via email: foia@biologicaldiversity.org

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

Dear Ms. Brown:

This letter is regarding your Freedom of Information Act (FOIA) request, dated August 6, 2020, and assigned control number DOI-FWS-2021-003464. Please cite this number in any future communications with our office regarding your request. You are generally seeking records related to the Eastern Collier Multiple Species HCP.

Response

We are writing today to complete our response to your request. We previously partially responded to this request on September 27, 2021, and April 1, 2022. With this final response, we processed thirty-four (34) files consisting of 178 pages. Our determination is as follows:

- Seventy (70) pages are being released to you in full.
- Thirteen (13) pages are released in part.
- Ninety-five (95) pages are being withheld in full

The pages withheld in full or in part are being withheld under FOIA exemption (5) which 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 and in full under Exemption 5 because they qualify to be withheld because they meet the Exemption 5 threshold of being inter-agency or intra-agency and fall under the following privileges:

Deliberative Process Privilege (13 pages in part; 95 pages in full)

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 purposes have been attributed to the deliberative process privilege, such as: (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 predecisional 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 which 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 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. Public dissemination of this information would have a chilling effect on the agency's deliberative processes and expose its decision-making process in such a way as to discourage candid discussion within the agency thereby undermining 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 were requested.

Attorney-Client and Deliberative Process Privilege (28 pages in full)

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 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 counsel and the FWS related to legal matters for which the Service sought professional legal assistance and services. The protected information also encompasses opinions given by agency counsel to the FWS based on client-supplied facts. The FWS employees who communicated with the agency counsel regarding this information were clients at the time the information was generated, and counsel was acting in her legal capacity at the time legal advice was communicated. Finally, the Service has held this information confidential and not waived the attorney-client privilege.

We reasonably foresee that disclosure of the withheld information 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, and Vicki 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-2021-003464. 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