



# United States Department of the Interior

FISH AND WILDLIFE SERVICE



Post Office Box 1306  
Albuquerque, New Mexico 87103

In Reply Refer To:  
FWS/R2/ES/FOIA  
DOI-FWS-2021-003653 (Final)

July 7, 2021

Ms. Ann Brown  
Center for Biological Diversity  
Post Office Box 11374  
Portland, Oregon 97211-0374

Dear Ms. Brown:

This partially responds to your Freedom of Information Act (FOIA) request dated April 19, 2021, in which you seek the following:

“... the following records from the U.S. Fish and Wildlife Service (“FWS”), Interior Region 6, Corpus Christi Ecological Services Office: From January 1, 2019 to the date FWS conducts this search, the records documenting impacts from SpaceX’s operations at the SpaceX South Texas launch site (also known as “Starbase”) on species listed under the Endangered Species Act (“ESA”), found in or adjacent to the Lower Rio Grande Valley National Wildlife Refuge, including but not limited to the: 1. Piping plover; 2. Northern aplomado falcon; 3. Ocelot; 4. Gulf Coast jaguarundi; 5. Hawksbill sea turtle; 6. Green sea turtle; 7. Kemp’s ridley sea turtle; 8. Leatherback sea turtle; and 9. Loggerhead sea turtle.”

Your FOIA request was assigned tracking number DOI-FWS-2021-003653. For this second and final response, we are releasing 364 pages to you.

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, three records are being withheld in full 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 are withholding three documents in full (consisting of 15 pages) in accordance with the attorney-client privilege of Exemption 5. 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 Federal 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 Federal 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 (Service) has held this information confidential and has not waived the attorney-client privilege.

Lastly, in our compilation and review of responsive records, we identified records that originated from or substantially concern another federal agency. Five records are being referred to Federal Aviation Administration (FAA) for a release determination. FAA will issue a response directly to you. You do not have to contact the agency at this time, but should you need to do so in the future, you may do so at:

National Freedom of Information Act Office, AFN-400  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, D.C. 20591  
Email: 7-AWA-ARC-FOIA@faa.gov

The undersigned is responsible for this denial. This response to your FOIA request was made in consultation with Justin Tade, Attorney-Advisor, Office of the Solicitor, Southwest Region, U.S. Department of the Interior (Department). 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 Public Liaison, Natasha Alcantara, at 888-603-7119.

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.

This completes the Service's response. The fees incurred in responding to your request have been waived in accordance with 43 C.F.R. §2.37. If you have any questions or concerns regarding this request, please contact Government Information Specialist, David Tischer, by email at [david\\_tischer@fws.gov](mailto:david_tischer@fws.gov).

Sincerely,

FOIA Coordinator