



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington D.C. 20240



January 25, 2022

Via email: [112007-27200146@requests.muckrock.com](mailto:112007-27200146@requests.muckrock.com)

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

REF: DOI-FWS-2021-003925

Dear Mr. Tobias:

This is in response to your Freedom of Information Act (FOIA) request, dated May 4, 2021, assigned control number DOI-FWS-2021-003925. Please cite this number in any future communications with our office regarding your request.

You requested the following:

*"...any and all written or electronic communications, including email attachments, sent or received by Martha Williams that contain one or more of the following words or phrases: "Tiehm's", "buckwheat", "Mahan", and/or "loneer". This request seeks records produced since April 1, 2021."*

## 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 thirty-seven (37) pages, twenty-seven (27) pages are being released in their entirety, three (3) pages are being withheld in part, seven (7) pages are being withheld in full and one (1) document consisting of twelve (12) pages is being withheld in full under Exemption 5 as described below.

### 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 Work-Product Privilege (withholding in part three (3) pages and sixteen (16) pages in full)*

As incorporated into Exemption 5, the attorney work-product privilege protects from disclosure any materials prepared by or for a party or its representative (including their attorney, consultant, surety, indemnitor, insurer, or agent) in anticipation of litigation or for trial. The privilege applies once specific claims have been identified that make litigation probable; the actual beginning of litigation is not required. Its purpose is to protect the adversarial trial process by insulating litigation preparation from scrutiny, as it is believed that the integrity of our system would suffer if adversaries were entitled to probe each other's thoughts and plans concerning the case. The privilege extends to administrative, as well as judicial proceedings. Once the determination is made that records are protected from disclosure by the attorney work-product privilege, the entire contents of those records are exempt from disclosure under FOIA.

The materials that have been withheld under Exemption 5 under the attorney work-product privilege were prepared by or for a Departmental attorney or Department of Justice attorney in reasonable anticipation of litigation and they reflect the parties' pre-litigation thoughts and evaluation. Thus, we conclude that the withheld materials are protected in full from disclosure by the attorney work-product privilege of Exemption 5.

*Attorney-Client Privilege (withholding in full three (3) pages)*

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.

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.

Adele R. Young 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-2021-003925. If you have any questions about our response to your request, you may contact me, by email at [barbara\\_beckett@fws.gov](mailto:barbara_beckett@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,

Barbara Beckett  
FWS FOIA Coordinator