



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-2021-004947 (Partial 1)

July 15, 2021

Ms. Jacqueline Kalil
CBS News/60 Minutes+
555 W. 57th Street
New York, New York 11019

Dear Ms. Kalil:

This partially responds to your Freedom of Information Act (FOIA) request dated July 8, 2021, in which you seek the following:

“I am requesting an opportunity to obtain copies of communications between U.S. Fish and Wildlife Service and SpaceX relating directly and indirectly to SpaceX activities that impact U.S. Fish and Wildlife Service land at the Boca Chica and/or Refuge in past three months.”

Your FOIA request was assigned tracking number DOI-FWS-2021-004947. On July 12, 2021, phone conversation with myself, you agreed to a partial response of records released from recent SpaceX related FOIA requests. For this first partial response 411 pages are being released 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.

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

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. 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

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

Contact information for the Department's FOIA Public Liaison, whom you may also seek dispute resolution services from, is available at <https://www.doi.gov/foia/foiacenters>.

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