



United States Department of the Interior

FISH AND WILDLIFE SERVICE

5275 Leesburg Pike, MS: IRTM
Falls Church, VA 22041



IN REPLY REFER TO:
DOI-FWS-2021-005331

January 20, 2023

Via email: dougpeacock@savetheyellowstonegrizzly.org

Doug Peacock
Save the Yellowstone Grizzly
PO Box 2242
Livingston, MT 59047

Dear Mr. Peacock:

This is in response to your Freedom of Information Act (FOIA) request dated December 23, 2021, and assigned control number DOI-FWS-2022-001303. Please cite this number in any future communications with our office regarding your request. You requested the following:

- 1. any electronic communications, records of phone calls, or other correspondence between the United States Fish and Wildlife Service ("USFWS") and the Montana Department of Fish, Wildlife and Parks ("FWP") and/or the United States Forest Service ("USFS") concerning the grizzly bear killed near Baker's Hole Campground ("Grizzly Bear 449") on April 16, 2021;*
- 2. any documents including notes, reports, communications, or meeting minutes discussing Grizzly Bear 449, the incident in which Carl Mock was attacked on April 15, 2021, the decision to kill Grizzly Bear 449, or subsequent investigations into the events surrounding the bear attack on Mock on April 15, 2021 or the killing of Grizzly Bear 449 on April 16, 2021;*
- 3. from April 15, 2021 to the date USFWS conducts this search, any and all records generated in connection with any application from FWP, USFS, or any other person or agency for an Incidental Take Permit ("ITP") for Grizzly Bear 449, which was killed near Baker's Hole Campground near West Yellowstone, Montana;*
- 4. any electronic communications, records of phone calls, or other correspondence between the USFWS and FWP concerning the grizzly bear that was relocated from the Whitetail Golf Course north of Stevensville, Montana on October 27, 2018 to the Northern Continental Divide Ecosystem;*
- 5. any documents including notes, reports, communications, or meeting minutes, including but not limited to those between the USFWS and FWP, related to the decision*

to relocate the grizzly bear captured on the Whitetail Golf Course north of Stevensville, Montana on October 27, 2018 to the Northern Continental Divide Ecosystem;

6. *any electronic communications, records of phone calls, or other correspondence between the USFWS and FWP concerning the grizzly bear that FWP killed on or about May 26, 2021 near Dupuyer, Montana;*

7. *any documents including notes, reports, communications, or meeting minutes, including but not limited to those between the USFWS and FWP, concerning the grizzly bear that FWP killed on or about May 26, 2021 near Dupuyer Montana;*

8. *any electronic communications, records of phone calls, or other correspondence between the USFWS and FWP concerning the grizzly bear that FWP killed on or about May 12, 2021 in the Big Snowy Mountains south of Lewistown, Montana;*

9. *any documents including notes, reports, communications, or meeting minutes, including but not limited to those between the USFWS and FWP, concerning the grizzly bear that FWP killed on or about May 12, 2021 in the Big Snowy Mountains south of Lewistown, Montana;*

10. *any electronic communications, records of phone calls, or other correspondence between the USFWS and FWP concerning a grizzly bear that was found dead in late November or early December, 2021 near Emigrant, Montana.*

11. *any documents including notes, reports, communications, or meeting minutes, including but not limited to those between the USFWS and FWP, concerning the grizzly bear that was found dead in late November or early December, 2021 near Emigrant, Montana.*

On October 3, 2022, we sent you our final response. You appealed our response to the Department of the Interior FOIA Appeals Office (Appeals Office). For reference your appeal was assigned appeal number 2023-025. On December 20, 2022, the Appeals Office remanded your request to the Fish and Wildlife Service (Service) for further processing. In response we conducted an additional search and located six (6) records (402 pages) responsive to items 1-3 of your request; and no additional records were located for items 4-11 of your request. Of the additional located records we are releasing four (4) records (400 pages) in full, and are withholding in part two (2) records (2 pages) as described below.

Exemption 6

Two (2) pages are released but withheld in part under Exemption 6, which allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” [5 U.S.C. § 552\(b\)\(6\)](#).

The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens 'know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure - the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of personal information and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

Exemption 7

Exemption 7 protects from disclosure "records or information compiled for law enforcement purposes" if the records fall within one or more of six specific bases for withholding set forth in subparts (A) through (F). 5 U.S.C. § 552(b)(7)(A)-(F). Two (2) pages are released but withheld in part under Exemption 7 because they are protected under the following subparts:

Exemption 7(C) protects law enforcement records if their release could reasonably be expected to constitute an unwarranted invasion of personal privacy. It is regularly applied to withhold references to individuals in law enforcement files. To overcome the significant privacy interests that individuals have in withholding information about them that appears in law enforcement records, the courts have ruled that requesters must establish that the information is needed to confirm or refute compelling evidence of agency misconduct.

7(F)

Exemption 7(F) protects law enforcement records if their release could reasonably be expected to endanger the life or physical safety of any individual. For the materials that have been withheld under 7(F), we have determined releasing them could reasonably be expected to endanger the life or physical safety of an individual because it would endanger the life or physical safety of individuals. Absent a showing of compelling evidence of agency misconduct, the courts have concluded that the privacy interests in withholding identifying information in law enforcement files will always outweigh the insubstantial public interest in disclosure and have authorized agencies to withhold this information based on exemptions (6), (7)(C), and (7)(f).

For the records you are seeking, we have determined that if any such record did exist, releasing them would constitute an unwarranted invasion of privacy because they would identify individuals referenced in law enforcement records and the release of this information would not shed light on an

agency's performance of its statutory duties.

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.

Kendall Elifrits, U.S. Fish and Wildlife Service FOIA Coordinator is responsible for this partial denial. Dana Jacobsen, Attorney-Advisor, in the Office of the Solicitor was consulted.

Mediation Services

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 Jones 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 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.

If you have any questions regarding this request, please contact me via 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