



# 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-2022-005151

January 18, 2023

Via email: [rhaland@comcast.net](mailto:rhaland@comcast.net)

Mr. Robert H. Aland  
140 Old Green Bay Road  
Winnetka, IL 60093-1512

Dear Mr. Aland:

This is in regard to your Freedom of Information Act (FOIA) request dated July 22, 2022 and assigned tracking number DOI-FWS-2022-005151. Please cite this number in future communications about your request. You requested the following:

*All records of every kind and character, including hard-copy and electronic, that relate, directly or indirectly, to the lethal removal in July 2022 of a cub (possibly #1057) of Grizzly Bear 399 in or near Grand Teton National Park or Bridger-Teton National Forest by the Wyoming Game & Fish Department (WGFD) pursuant to authorization by the U. S. Fish & Wildlife Service (FWS). The request includes, but is not limited to, communications involving FWS Region 6 and WGFD; FWS Region 6 and FWS Headquarters; FWS offices within Region 6; FWS and other federal agencies; and FWS and third parties such as non-government agencies and individuals. The request includes, but is not limited to, photographs and notes, memos all other forms of communication.*

### Response

We have enclosed eighty-three (83) files consisting of three hundred twenty-three (323) pages, which are being released to you in part. Thirty (30) of those files are being released to you in their entirety. The remaining fifty-three (53) files are released in part 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 twenty-six (26) pages in full and nine (9) in part under Exemption 5 because they qualify to be withheld both because they meet the Exemption 5 threshold of being inter-agency or intra-agency and under the following privilege:

### *Deliberative Process Privilege*

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 fish bowl. 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 pre-decisional 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 both pre-decisional 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 and public dissemination of this information would have a chilling effect on the agency's deliberative processes.

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

### *Exemption 6*

One hundred eighteen (118) 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). Sixty (60) 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 Information Disclosure Specialist is responsible for this partial denial. Dana Jacobsen, Attorney-Advisor, in the Office of the Solicitor was consulted.

### **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](mailto:FOIA.Appeals@sol.doi.gov)

### **Mediation Services**

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](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.

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>.

### **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 Kendall Elifrits, FWS Information Disclosure Specialist, via email at [FWHQ\\_FOIA@fws.gov](mailto:FWHQ_FOIA@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,

Kendall Elifrits  
U.S. Fish and Wildlife Service  
FWS Headquarters FOIA Program