



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington D.C. 20240



January 13, 2023

Daniel Brister
Save the Yellowstone Grizzly
PO Box 8359
Missoula, MT 59806

REF: DOI-FWS-2022-005571

Dear Mr. Brister:

This letter is regarding your Freedom of Information Act (FOIA) request dated 08/12/2022 and assigned tracking number DOI-FWS-2022-005571. Please cite this number in future communications regarding your request.

You requested the following:

- 1. any and all electronic communications, records of phone calls, or other correspondence between the United States Fish and Wildlife Service ("USFWS") and any federal or state agency, including the National Park Service ("NPS"), the U.S. Forest Service ("USFS"), and the Montana Department of Fish, Wildlife and Parks ("FWP") concerning the female grizzly bear killed near Polebridge, MT ("Grizzly Bear # 418" or "Monica") and her three cubs on or about September 4, 2021;*
- 2. any and all documents including notes, reports, communications, or meeting minutes discussing Grizzly Bear # 418 and/or her cubs, including those concerning the behaviors that led to the killings, the decision to lethally remove Grizzly Bear # 418 and her cubs, or subsequent investigations into the events surrounding the removal of Grizzly Bear # 418 and her cubs;*
- 3. any and all records generated between April 15, 2021 to the date FWS conducts this search in connection with any application from any person or agency for an Incidental Take Permit ("ITP") for Grizzly Bear # 418 and her cubs, which were killed near Polebridge, MT on or about September 4, 2021;*
- 4. any and all electronic communications, records of phone calls, or other correspondence between the United States Fish and Wildlife Service ("USFWS") and any federal or state agency, including the National Park Service ("NPS"), the U.S. Forest Service ("USFS"), and the Idaho Department of Fish and Game ("IDFG") concerning the sow and yearling grizzly bear killed on or about May 21, 2022 and the sow and two cubs killed on or about May 25, 2022, all near Island Park, ID;*
- 5. any and all documents including notes, reports, communications, or meeting minutes discussing any of the five grizzly bears killed near Island Park, ID on or about May 21 and May 25, 2022 including those concerning the behaviors that led to the killings, the decision to lethally remove the grizzly bears, or subsequent investigations into the events surrounding the removal of the five grizzly bears near Island Park, ID;*

6. *any and all records generated between April 15, 2021 to the date FWS conducts this search in connection with any application from any person or agency for an Incidental Take Permit ("ITP") for any of the five grizzly bears killed near Island Park, ID on or about May 21 and May 25, 2022;*
7. *any and all electronic communications, records of phone calls, or other correspondence between the USFWS and any federal or state agency, including the National Park Service ("NPS"), the U.S. Forest Service ("USFS"), and the FWP concerning the grizzly bears that were captured, killed, and/or relocated from near Columbia Falls, MT, Lupfer Meadows, and/or the Blankenship area on or about July 10, 2022, including the adult sow grizzly bear, two subadult male grizzly bears, and the two cubs that were relocated to the Rivendale Wildlife Sanctuary in Bulgaer, PA;*
8. *any and all documents including notes, reports, communications, or meeting minutes discussing any of the grizzly bears that were captured, killed, and/or relocated from near Columbia Falls, MT, Lupfer Meadows, and/or the Blankenship area on or about July 10, 2022, including the adult sow grizzly bear, two subadult male grizzly bears, and the two cubs that were relocated to the Rivendale Wildlife Sanctuary in Bulgar, PA including those concerning the behaviors that led to the killings, the decision to lethally remove the grizzly bears, or subsequent investigations into the events surrounding the capture and removal of these grizzly bears;*
9. *any and all records generated between June 15, 2022 to the date FWS conducts this search in connection with any application from any person or agency for any Incidental Take Permits ("ITP") issued for the grizzly bears that were captured, killed, and/or relocated from near Columbia Falls, MT, Lupfer Meadows, and/or the Blankenship area on or about July 10, 2022, including the adult sow grizzly bear, two subadult male grizzly bears, and the two cubs that were relocated to the Rivendale Wildlife Sanctuary in Bulgar, PA;*
10. *any and all electronic communications, records of phone calls, or other correspondence between the USFWS and any federal or state agency, including the National Park Service ("NPS"), the U.S. Forest Service ("USFS"), and the Wyoming Game and Fish Department ("WGFD") concerning grizzly bear #1057 that was killed in Sublette County, WY on or about July 12, 2022;*
11. *any and all documents including notes, reports, communications, or meeting minutes discussing grizzly bear #1057 that was killed in Sublette County, WY on or about July 12, 2022 including those concerning the behaviors that led to the killings, the decision to lethally remove the grizzly bear, or subsequent investigations into the events surrounding the capture and removal of this grizzly bears;*
12. *any and all records generated between June 15, 2022 and the date FWS conducts this search in connection with any application from any person or agency for any Incidental Take Permits ("ITP") issued for grizzly bear #1057 that was killed in Sublette County, WY on or about July 12, 2022;*
13. *any and all electronic communications, records of phone calls, or other correspondence from 2021 or 2022 between the USFWS and any federal or state agency, including the National Park Service ("NPS"), the U.S. Forest Service ("USFS"), and the Wyoming Game and Fish Department ("WGFD") concerning the capture, attempted capture, relocation, or removal of grizzly bear #399 or any of grizzly bear #399's offspring;*
14. *any and all documents including notes, reports, communications, or meeting minutes discussing Grizzly Bear #399 or any of Grizzly Bear #399's offspring;*

15. any and all records generated between January 1, 2021 and the date FWS conducts this search in connection with any application from any person or agency for any Incidental Take Permits (“ITP”) issued for Grizzly Bear #399 or any of Grizzly Bear #399’s offspring..

Response

We have enclosed two hundred forty-nine (249) files consisting of one thousand five hundred eighty-eight (1588) pages, which are being released to you in part. Eighty (80) of those files are being released to you in their entirety. The remaining one hundred sixty-nine (169) 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 one hundred thirty-three (133) pages in full and ninety-seven (97) 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:

Attorney-Client Privilege

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. 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 FWS has held this information confidential and has not waived the attorney-client 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.

Commercial Information.

When the government enters the marketplace as an ordinary commercial buyer or seller, the government's information is protected under the commercial information privilege if it is sensitive information not otherwise available, and disclosure would significantly harm the government's monetary functions or commercial interests. The information withheld consist of conference lines the government purchased to conduct government business.

Exemption 6

Three hundred (300) 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 hundred forty-eight (248) 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.

Conclusion

Because this is an interim response to your request, we will provide notice of your appeal rights in our final response letter.

If you have any questions about our response to your request, you may contact me by email at kendall_elifrits@fws.gov.

Sincerely,

Kendall Elifrits
FWS FOIA Coordinator

Enclosure