



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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



IN REPLY REFER TO:
FWS-2015-00753

December 2, 2015

Pete Frost
Western Environmental Law Center
1216 Lincoln Street
Eugene, Oregon 97401
Email: frost@westernlaw.org

Dear Mr. Frost:

On April 9, 2015, you sent a Freedom of Information Act to the United States Fish and Wildlife Service (FWS) Headquarters FOIA Office and Region 6. We have assigned it tracking number FWS-2015-00753. Please refer to this number in communications regarding your request.

You stated the following in your request:

- “1. Please provide copies of all data and/or records of all lynx trapped, killed, injured, or otherwise taken since January 1, 2012 and reported to the Service by all of the States and Tribes the Service has approved for coverage under the CITES export program for Appendix II furbearers.
2. Please provide copies of any and all annual, periodic, or other reports or other data since January 1, 2012 from the State of Idaho to the Service to apply for, report on, or otherwise support any coverage from the Service to the State of Idaho for the trapping, hunting, or harvest of bobcats under the CITES export program for Appendix II furbearers.
3. Please provide copies of any and all documents by which the Service has approved of the State of Idaho’s bobcat harvest program for any coverage under the 2001 and 2012 Biological Opinions and Incidental Take Statement (ITS) prepared by the Service to evaluate the effects on Canada lynx of the CITES export program for Appendix II furbearers.
4. Please provide copies of any and all documents that explain whether the Biological Opinions and ITSs prepared by the Service to evaluate the effects on Canada lynx of the CITES export program evaluates or covers the hunting of bobcats using hounds or dogs.

5. Please provide copies of any and all documents that discuss or explain, when the Service adopted criterion in the ITSs to specify the amount of permissible take, what the Service meant or means by the term “injured,” and what reports, data, or information the Service relies on to determine whether a lynx has been “injured.”

6. On April 11, 2012, the Acting Assistant Regional Director – Ecological Services, Region 6, wrote a letter to the Assistant Director – International Affairs, Division of Management Authority, Attention: Robert Gabel, that stated that since the Service issued a Biological Opinion in 2001 to evaluate impacts on Canada lynx of the CITES export program for furbearers, “take of Canada lynx by various trapping methods has been documented, however, take of lynx attributable to the Program has been limited to eight trappings where the lynx were released unharmed.” Please provide copies of all documents that discuss the difference between take of Canada lynx by “various trapping methods” and “take of Canada lynx attributable to the Program.”

We are writing today to provide you with our final response. We are providing 19 files in portable document format via email. Portions of three files have been withheld in part under FOIA Exemption 6.

Exemption 6 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. *See United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982). 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. *See United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-75 (1989).

Under the FOIA, “the only relevant public interest” to consider under the exemption is “the extent to which the information sought would ‘sh[e]d light on an agency’s performance of its statutory duties’ or otherwise let citizens ‘know what their government is up to.’” *United States Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495-96 (1994) (quoting *Reporters Comm.*, 489 U.S. at 775). The burden is on the requester to establish that disclosure would serve the public interest. *See National Archives and Records Admin. v. Favish*, 541 U.S. 157, 171-72 (2004). 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. *See Reporters Comm.*, 489 U.S. at 771.

The information that has been withheld under Exemption 6 consists of personal information, including names, email addresses and phone numbers. We have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, 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.

Additionally, we have referred 59 files to the FWS Headquarters Office of Law Enforcement (OLE) for processing. The FWS Headquarters OLE will issue a response directly to you. You do not have to contact the FWS Headquarters OLE at this time, but should you need to do so in the future, you may do so at the following address:

U.S. Fish and Wildlife Service
Office of Law Enforcement
5275 Leesburg Pike (MS: OLE)
Falls Church, Virginia 22041

Melissa Allen, FWS FOIA Officer, is responsible for this partial denial. Larry Mellinger, Attorney Advisor, in the Office of the Solicitor was consulted.

Because the FWS failed to respond to your FOIA request within FOIA's time limits, and unusual or exceptional circumstances do not apply, there is no fee for processing your request. See *43 C.F.R. § 2.37(f)*.

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 30 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 FWS's response is in error. You must also include with your appeal copies of all correspondence between you and the FWS concerning your FOIA request, including your original FOIA request and the FWS's response. Failure to include with your appeal all correspondence between you and the 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

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.

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.

If you have any questions about our response to your request, you may contact Pam Mozina by phone at (703) 358-2698, via email at fwfq_foia@fws.gov, or by U.S. mail at the following address:

U.S. Fish and Wildlife Service
FWS FOIA Officer
5275 Leesburg Pike
MS: IRTM
Falls Church, VA 22041

Sincerely,

Melissa Allen

Melissa Allen
FWS FOIA Officer

Enclosures