



United States Department of the Interior

FISH AND WILDLIFE SERVICE

1875 Century Boulevard
Atlanta, Georgia 30345

In Reply Refer To:
FWS/R4/ES/2015-01009

MAR 16 2016

Ms. Amber Crooks
Conservancy of Southwest Florida
1495 Smith Preserve Way
Naples, Florida 34102

Dear Ms. Crooks:

Thank you for your email inquiry dated February 8, 2016, regarding the U.S. Fish and Wildlife Service's (Service) January 27, 2016, response to your Freedom of Information Act (FOIA), 5 U.S.C. § 552, request dated June 5, 2015. In your email, you have inquired concerning six documents withheld under Exemption 5 of the FOIA.

We have consulted with our Regional Solicitor's Office and have determined that five documents can be released to you in full and one document can be released to you with portions withheld pursuant to Exemption 5 of the FOIA. These documents are included on the enclosed CD.

Exemption 5

Exemption 5 of the FOIA allows an agency to withhold "inter-agency and intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Agency." 5 U.S.C. § 552(b)(5). See *National Labor Relations Board v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). 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 document in part under Exemption 5 because it qualifies to be withheld 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." *Mead Data Cent., Inc. v. United States Department of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (internal citations omitted). A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) "assure that subordinates...will feel free to provide the decision maker with their uninhibited opinions and recommendations"; (2) "protect against premature disclosure of proposed policies"; and (3) "protect against confusing the issues and misleading the public."

Coastal States Gas Corporation v. United States Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980).

The deliberative process privilege protects materials that are both predecisional 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.” *Id.*

The materials that have been withheld under the deliberative process privilege of Exemption 5 are deliberative. They do not contain or represent formal or information 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, which would expose the agency’s decision-making process in such a way as to discourage candid discussions within the agency, thereby undermining the agency’s ability to perform its mandated functions.

In addition to me, the official responsible for this partial denial is:

Brigette J. Beaton
Attorney-Advisor
Office of the Regional Solicitor
U.S. Department of the Interior
75 Spring Street, S.W., Suite 304
Atlanta, GA 30303

You may appeal this partial denial under 43 C.F.R. § 2.57 by writing to:

Freedom of Information Act Appeals Officer
Department of the Interior
Office of the Solicitor
1849 C Street, NW, Mail Stop 6556
Washington, D.C. 20240

The FOIA Appeals Officer must receive your FOIA appeal no later than 30 workdays from the date of this final letter responding to your FOIA request. Appeals arriving or delivered after 5:00 p.m. E.T., Monday through Friday, will be deemed received on the next workday. You must include with your appeal copies of all correspondence between you and the Fish and Wildlife Service (Service) concerning your FOIA request, including a copy of your original FOIA request and this denial letter. Failure to include this documentation with your appeal will result in the Department’s rejection of your appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend, “FREEDOM OF INFORMATION APPEAL.” Your letter should include in as much detail as possible any reason(s) why you believe the Service’s response is in error.

Also as part of the 2007 OPEN Government Act FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation.

You may contact OGIS via regular mail at:

Office of Government Information Services (OGIS)
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

You may also contact OGIS in the following ways:

E-mail: ogis@nara.gov
Phone: (301) 837-1996
Fax: (301) 837-0348
Toll-free: 1-877-684-6448

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.

If you have any questions, please call LeeAnn Kelso, Florida Ecological Services, State Supervisor's Office, at (772) 469-4251.

Sincerely yours,


Cynthia K. Donner
Regional Director

Enclosures