



United States Department of the Interior

FISH AND WILDLIFE SERVICE

1875 Century Boulevard
Atlanta, Georgia 30345

JUL 27 2018

In Reply Refer To:
FWS/R4/ES/2017-00044

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

Dear Ms. Crooks:

This is in response to your Freedom of Information Act (FOIA), 5 U.S.C. § 552, request dated October 13, 2016. In your request, you asked for:

- *Documents regarding the Eastern Collier Habitat Conservation Plan (HCP) and associated Environmental Impact Statement (EIS) from February 1, 2016 to present*

This completes our response of pertinent information that we found in our files. We provided partial responses to you on January 31, 2017; May 12, 2017; and May 30, 2018. We have searched our records and have located one (1) additional document that is responsive to your request (3 pages). After consulting with the Office of the Regional Solicitor, we have determined that the information in the document contains material that is exempt from disclosure under Exemption 5 of the FOIA. The information redacted pursuant to Exemption 5 includes privileged information involving discussions on matters of policy between subordinates and superiors and were used to guide the Agency in the decision making process.

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). 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.

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. 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.

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.

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.

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 Ted Turner Drive, S.W., Suite 304
Atlanta, Georgia 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
Email: FOIA.Appeals@sol.doi.gov

The FOIA Appeals Officer must receive your FOIA appeal no later than 90 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 U.S. Fish and Wildlife 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
8601 Adelphi Road - OGIS
College Park, MD 20740-6001

You may also contact OGIS in the following ways:

E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Phone: (202) 741-5770
Fax: (202) 741-5769
Toll-free: 1-877-684-6448

You also may seek dispute resolution services from our FOIA Public Liaison, Carrie Hyde-Michaels, Chief Branch of FOIA, Records, and Privacy, at (703) 358-2291.

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). 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 contact Roxanna Hinzman, Project Leader, South Florida Ecological Services Field Office at (772) 469-4309 or Roxanna_hinzman@fws.gov. Thank you for contacting the U.S. Fish and Wildlife Service.

Sincerely yours,


FOR Mike Oetker
Acting Regional Director