



United States Department of the Interior

FISH AND WILDLIFE SERVICE



IN REPLY REFER TO:
FWS-2017-00323

1 Wildlife Drive
Sanibel, Florida 33957

July 19, 2019

Charlotte Nycklemoe
League of Women Voters of Collier County
244 Melrose Place
Naples, Florida 34104

Dear Ms. Nycklemoe:

This completes our response to your Freedom of Information Act (FOIA), 5 U.S.C. § 552, request, dated January 19, 2017. In your request, you asked for:

- *A copy of all documents, including reports, letters, emails, and any other written communications, between USFWS and the Eastern Collier Property Owners (ECPO), including their contractors and employees, concerning the Eastern Collier Habitat Conservation Plan, ECPO's application for an incidental take permit and the related environmental impact statement between the time period January 1, 2015, to present.*

Response

We provided partial responses to you on February 1, 2017 and July 2, 2019. We have completed the review of the remaining five (5) documents (77 pages). After consulting with the Office of the Regional Solicitor, it has been determined that some of the information you are seeking is exempt from disclosure pursuant to Exemption 5 of the FOIA. We are releasing four (4) documents (76 pages) in their entirety and have withheld in part one (1) document (1 page).

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.

Commercial Information Privilege

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 theory behind the privilege is that the government may

be placed at a competitive disadvantage or lose the benefit of its bargain if such information were disclosed to the public.

The conference telephone number and passcode in this case pertains to the Service's ongoing operations in the area that is the subject of your request. The information withheld under this privilege reflects information concerning the operations of the government which could be harmed if disclosed. Therefore, we conclude that disclosure of conference telephone number and passcode could place the government at a competitive disadvantage. We are releasing the factual information in the responsive document that would not harm the Service's commercial interests.

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 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

Appeal Rights

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

Freedom of Information Act Appeals Officer
U.S. 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

Your appeal must be received no later than 90 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with any information you have which leads you to believe the records should be made available. Failure to include with your appeal all correspondence between you and the Service will result in the Department's rejection of your appeal, unless the FOIA Appeals Officer determines (in the FOIA 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 Appeals Officer needs additional information or clarification of your appeal.

Mediation Services

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
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, Cathy Willis, Chief Branch of FOIA, Records, and Privacy, at (720) 425-5173.


Conclusion

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,

7/19/2019

 Tiffany McClurkin

Tiffany McClurkin
Region 4 FOIA Coordinator
Signed by: TIFFANY MCCLURKIN