



United States Department of the Interior

FISH AND WILDLIFE SERVICE



IN REPLY REFER TO:
FWS-2019-00595

1 Wildlife Drive
Sanibel, Florida 33957

February 9, 2021

Email: 70979-69842753@requests.muckrock.com

Jimmy Tobias
The Guardian
411A Highland Ave
Somerville, Massachusetts 02144-2516

Dear Mr. Tobias:

The United States Fish and Wildlife Service (FWS), Atlanta Regional FOIA office received your Freedom of Information Act (FOIA) request on March 26, 2019 and assigned it control number FWS-2019-00595. Please cite this number in any future communications with our office regarding your request.

In your request, you asked for the following records from January 20, 2017 to present:

1. *All records, including work plans, memorandums, guidances, or instructions, related to any draft environmental impacts statements, environmental impact statements, habitat conservation plans, incidental take permits or other crucial policy decisions concerning the Florida panther, an endangered species.*
2. *All written or electronic communications, including attachments and text messages, between Region 4 Supervisor Leo Miranda (or his executive assistants) and any person who:*
 - i. *Has, at any time since January 20, 2017, been a political appointee (including without limitation any government employee that was appointed by the President, any government employee that was appointed by the Secretary or Administrator of a federal agency, any government employee that has held a Schedule C position, or any employee who has worked in the Executive Office of the President);*
 - ii. *Has, at any time since January 20, 2017, held a position listed in any version of the document "United States Government Policy and Supporting Positions," otherwise known as the "Plum Book," whether or not the person's actual name appears in a version of the Plum Book;*
 - iii. *Whose hiring was coordinated with the Presidential Personnel Office; or*
 - iv. *Who, as a part of their job responsibilities with the Service, communicates with elected officials or their offices.*

3. *This request seeks communications and other records specifically concerning the Florida panther.*
4. *This request seeks records produced between January 20, 2017 and the date this request is processed.*

Response

On June 6, 2019, you modified Item 3 to read “This request only seeks records specifically pertaining to the Eastern Collier Multi-Species Habitat Conservation Plan, or any related draft biological opinions, final biological opinions, draft environmental impact statements, environmental impact statements or species status assessments, as well as similar records pertaining to the Florida panthers status and habitat in Collier County.

We are writing today to partially respond to your request on behalf of the Fish and Wildlife Service. We have partially responded to this request on October 27, 2020.

We have searched our records and have located five (5) files that are responsive to your request. We have enclosed these as a combined file consisting of five (5) pages, which are being released to you in part under Exemption 5, Commercial Information Privilege.

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 eleven (11) pages in part 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:

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.

Tiffany McClurkin, Atlanta Regional FOIA Coordinator, is responsible for this denial. The following categories of preapproved withholdings were the subject of consultation with the Office of the Solicitor's Division of General Law and the Departmental FOIA Office: Bureau/office conference call numbers and passcodes under Exemption 5.

Appeal Rights

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 90 workdays** from the date of this final response. 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

Mediation Services

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://www.archives.gov/ogis>
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.

You may also seek dispute resolution services from our FOIA Public Liaison, Cindy Cafaro, at (888) 603-7119.

Conclusion

Because this is a 2nd interim response to your request, we will provide notice of your appeal rights in our final response letter.

We currently have another document within our possession consisting of 2,346 pages that requires review. We plan to have this document released to you on or before March 31, 2021.

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.

If you have any questions regarding your request, you may contact me by email at tiffany_mcclurkin@fws.gov or by phone at (404) 679-4104.

Sincerely,

2/9/2021

 Tiffany McClurkin

Tiffany McClurkin
Atlanta Regional FOIA Coordinator
Signed by: TIFFANY MCCLURKIN

Enclosure