



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington D.C. 20240



September 27, 2021

Email: [70979-69842753@requests.muckrock.com](mailto:70979-69842753@requests.muckrock.com)

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

REF: FWS-2019-00945

Dear Mr. Tobias:

This letter is in regard to your Freedom of Information Act (FOIA) request dated March 26, 2019 and assigned 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 panther’s status and habitat in Collier County.

We are writing today to partially respond to your request on behalf of the U.S. Fish and Wildlife Service. We have partially responded to this request on October 27, 2020, February 9, 2021, February 18, 2021, and August 3, 2021. We have enclosed one (1) Adobe PDF consisting of 325 pages, which is being released to you in part under Exemption 5 and 6, as described below. We are continuing to review records responsive to your request and hope to have final response sent to you by November 30, 2021.

### 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 pages in part and in full under Exemption 5 because they qualify to be withheld because they meet the Exemption 5 threshold of being inter-agency or intra-agency and under the following 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 fishbowl. A number of policy purposes have been attributed to the deliberative process privilege, such as: (1) assuring that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protecting against premature disclosure of proposed policies; and (3) protecting against confusing the issues and misleading the public.

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.

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional 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 and expose the agency's decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

## **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. 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.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens 'know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. 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.

The information that has been withheld under Exemption 6 consists of employee's personal information, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and 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.

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.

Stacey Cummins, FOIA Coordinator, is responsible for this partial denial.

Brigette Beaton in the Office of the Solicitor was consulted.

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

### **Conclusion**

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, please contact me by phone at (303) 236-4473 or by email at [stacey\\_cummins@fws.gov](mailto:stacey_cummins@fws.gov). Thank you for contacting the U.S. Fish and Wildlife Service.

Sincerely,

Stacey Cummins  
FWS FOIA Coordinator