



United States Department of the Interior



FISH AND WILDLIFE SERVICE

5600 American Boulevard West, Suite 990
Bloomington, Minnesota 55437-1458

February 6, 2020

VIA EMAIL: afrostatic@humanesociety.org

In Reply Refer To:
FWS/Bloomington/FOIA FWS-2019-00694

Ms. Anna Frostic
Managing Attorney, Wildlife Litigation
The Humane Society of the United States
1255 23rd Street NW
Washington, DC 20037

Dear Ms. Frostic:

The Department of the Interior (Department), U.S. Fish and Wildlife Service (Service) Bloomington Freedom of Information Act (FOIA) office received your FOIA request dated April 24, 2019, on April 24, 2019, and assigned it control number FWS-2019-00694. Please cite this number in any future communications with our office regarding your request. You requested the following:

We request the following records pertaining to the trapping of a Canada lynx dated March 18, 2016 through the date this request is processed:

- 1. All incidental take permit applications submitted pertaining to the taking of Canada lynx in Michigan;*
- 2. All incidental take permit denials pertaining to the taking of Canada lynx in Michigan;*
- 3. All issued incidental take permits pertaining to the taking of a Canada lynx in Michigan;*
- 4. All permit applications submitted pursuant to Section 10(a)(1)(a) of Endangered Species Act pertaining to the taking of Canada lynx in Michigan;*
- 5. All permit denials pursuant to Section 10 (a)(1)(a) of the Endangered Species Act pertaining to the taking of Canada lynx in Michigan;*
- 6. All permits issued pursuant to Section 10(a)(1)(a) of the Endangered Species Act pertaining to the taking of a Canada lynx in Michigan;*
- 7. All communications with permit applicants regarding the taking of a Canada lynx in Michigan;*

8. *All communications, veterinary records, photographs, law enforcement statements and other records regarding a Canada lynx that was trapped on March 17, 2019, in Harbor Beach, MI, and later released into Schoolcraft County on April 12, 2019, including but not limited to any records regarding the sighting of the lynx, the trapping of the lynx, the transportation of the lynx, or the release of the lynx into the wild.*

On December 13, 2019, Nicholas Arrivo, a Humane Society employee, participated in a phone conference with Scott Hicks, Michigan Field Office supervisor, and me to discuss the scope of this request. Mr. Arrivo agreed to narrow the scope of this request to the following:

- Only those records from Scott Hicks of the Service's Michigan Ecological Services Office, from March 16, 2018 through December 13, 2019. The Service agreed to reopen this request if after review of the records provided by Mr. Hicks, the Humane Society determined there were other Service records that would have been produced if the scope was not limited. We only agree to reopen the request if it is related to this specific instance (trapping of a Canada lynx on March 17, 2019) for the time period March 18, 2016 through December 13, 2019.

RESPONSE

This is the Service's final response to your request. There are no records responsive to Items #1 through #7 of your request because the Service has not received any applications or issued any permits for the take of Canada lynx in Michigan. In response to Item #8 of your request, attached are 72 files consisting of 201 pages. We are releasing 187 pages in full and withholding 10 pages in part as described below.

Per your email dated January 29, 2020, you agreed to the Service withholding conference call-in information. We have withheld 4 pages in part per this agreement and marked those withholdings as, "per agreement with requester."

Exemption 6 - 43 C.F.R. §§ 2.23, .24

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). We are withholding 10 pages in part under Exemption 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 personal information; cell phone numbers and the address/email/phone number of a tribal member, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, 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.

Eleanor Mcvey, Regional FOIA Coordinator, is responsible for this partial denial. Teresa Garrity in the Office of the Solicitor was consulted.

RECORDS REFERRAL

We have located records (2 records, consisting of 2 pages) that primarily concern the U.S. Department of Agriculture's U.S. Forest Service (USFS), a Federal Government agency that is also subject to FOIA. For these records, the USFS will issue a response directly to you. You do not have to contact the USFS at this time, but should you need to do so in the future, you may do so at:

USDA FS, FOIA Service Center
1400 Independence Avenue, SW
Mail Stop: 1143
Washington, DC 20250-1143
Telephone: 202-205-1542
Email: wo_foia@fs.fed.us

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://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Contact information for the Department's FOIA Public Liaison, who you may also seek dispute resolution services from, is available at <https://www.doi.gov/foia/foiacenters>.

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA and Privacy Act Appeals Officer.

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 letter. 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 also include with your appeal copies of all correspondence between you and the Service concerning your FOIA request, including your original FOIA request and the Service's response. 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/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

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.

We do not bill requesters for FOIA processing fees when their fees are less than \$50.00, because the cost of collection would be greater than the fee collected. *See* 43 C.F.R. § 2.37(g). Therefore, there is no billable fee for the processing of this request.

If you have any questions regarding this response, please contact me by phone at (413) 253-8629 or by electronic mail at Eleanor_McVey@fws.gov.

Sincerely,

Eleanor McVey
Regional FOIA Coordinator

Enclosure