



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington D.C. 20240



November 18, 2021

Email: [eclements@HuntonAK.com](mailto:eclements@HuntonAK.com)

E. Carter Chandler Clements  
Hunton Andrews Kurth  
2200 Pennsylvania Avenue, NW  
Washington, D.C. 20037-1701

Dear Ms. Clements:

The Fish and Wildlife Service Atlanta Regional Freedom of Information Act (FOIA) office received your FOIA request, dated August 30, 2019, on September 3, 2019, and assigned it control number FWS-2019-01086. Please cite this number in any future communications with our office regarding your request.

In your request, you asked for:

- *“Copies of all records related to correspondence or communications (whether maintained in hard copy or electronic format) with or concerning federally-recognized tribes or their representatives related to the ITP applications and/or the ECMSHCP, including, but not limited to, correspondence or communications with the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida.”*

## Response

We previously provided partial responses to your request on March 27, 2020, and July 16, 2021. This letter constitutes our final response to your request. We have enclosed one (1) Adobe PDF file consisting of 475 pages of records, which is being released to you in part. Portions of these materials are being withheld under FOIA Exemption 5 which 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 and attorney-client privileges. We are withholding seven (7) pages in part under Exemption 5 because they meet the Exemption 5 threshold of being inter-agency or intra-agency and fall under the following privilege:

*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, 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 pre-decisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process, which may include recommendations, draft documents, proposals, suggestions, and other subjective documents that reflect the personal opinions of the writer rather than the policy of the agency. The deliberative process privilege does not apply, however, to records created 25 years or more before the date on which the records were requested.

The materials that we have withheld under the deliberative process privilege are both pre-decisional and deliberative. They do not contain or represent formal or informal agency policies or decisions and 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 thereby undermining staffers' ability to perform the mandated functions of the agency.

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 and that disclosure would be prohibited by law or otherwise protected from disclosure under Exemption 3.

Stacey Cummins, FWS FOIA Coordinator, is responsible for this partial denial on which Vicki Mott, Attorney-Advisor in the Office of the Solicitor, was consulted.

### **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](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
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.

OGIS serves as a bridge between requesters and agencies, particularly in situations where clear, direct communication has been lacking. You can reach OGIS by email at [ogis@nara.gov](mailto:ogis@nara.gov), by phone at 1-877-684-6448, or by fax at (202) 741-5769.

### **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 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](mailto:FOIA.Appeals@sol.doi.gov)

For more information on FOIA Administrative Appeals, you may review the Department's FOIA regulations at [\*43 C.F.R. Part 2, Subpart H.\*](#)

## **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 records that are subject to the requirements of FOIA. This is a standard notification that is given to all requesters and should not be taken as an indication that excluded records do, or do not, exist.

This is our final response and closes your request, FWS-2019-01086. If you have any questions about our response to your request, you may contact me by phone at 303-236-4473 or by e-mail at [stacey\\_cummins@fws.gov](mailto:stacey_cummins@fws.gov).

Sincerely,

Stacey Cummins  
FWS FOIA Coordinator

Enclosure