



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



IN REPLY REFER TO:
FWS/FOIA

July 29, 2021

Via email: bishop@westernlaw.org

Matthew Bishop
Western Environmental Law Center
103 Reeder's Alley
Helena, Montana 59601

REF: FWS-2020-00098

Dear Mr. Bishop:

This letter is in regard to your Freedom of Information Act (FOIA) request, dated October 31, 2019 and assigned tracking number FOIA FWS-2020-00098 for the following:

“All documents and information related to the Service’s preparation of a final SSA for wolverine. This includes, but is not limited to, all inter-agency and intra-agency communications (including correspondence with state wildlife agencies) including letters, emails, phone records, phone logs, meeting notes, memos, white papers, policy papers, and any other documents or information (and drafts of such documents and information) related to the final SSA for wolverine.”

Response

This is the eighth and final response to your request. For this response, we have enclosed one (1) Adobe PDF consisting of 2045 pages, which are being released to you in part. Portions of these materials are being withheld under the following FOIA Exemptions:

Exemption 3—[43 C.F.R. §§ 2.23, .24](#)

We are withholding 192 pages in full and nine (9) pages in part under FOIA Exemption 3. [5 U.S.C. § 552\(b\)\(3\)](#). Exemption 3 allows the withholding of information protected by a nondisclosure provision in a federal statute other than FOIA. Under 10 U.S.C. § 2305(g) and 41 U.S.C. § 4702(b)-(c), the release of contractor proposals under the FOIA is specifically prohibited unless they have been set forth or incorporated by reference in a final contract. The requested proposal is not releasable under FOIA because it was not set forth or incorporated by reference into the final contract. It has been withheld in full under Exemption 3.

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 twenty-two (22) 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, personal phone numbers, dates of education and other information on resumes, 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, FWS FOIA Coordinator is responsible for this partial denial. Kate Williams-Shuck, 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
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, 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

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 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.

This is our final response and closes your request, FWS-2020-00098. If you have any questions, you may contact me by phone at 303-236-4473 or by email at Stacey_Cummins@fws.gov.

Sincerely,

Stacey Cummins
FWS FOIA Coordinator