



United States Department of the Interior



FISH AND WILDLIFE SERVICE

300 Westgate Center Drive
Hadley, MA 01035-9589

September 29, 2020

VIA EMAIL: Cassidy.Lang@sierraclub.org

In Reply Refer To:
FWS/Region 5/FOIA FWS-2020-00399

Cassidy Lang
Sierra Club
1650 38th Street, Suite 102W
Boulder, Colorado 80301

Dear Cassidy Lang:

The Department of the Interior (Department), U.S. Fish and Wildlife Service (Service), Hadley, Massachusetts Freedom of Information Act (FOIA) office received your FOIA request dated December 17, 2019, and assigned it control number FWS-2020-00399. Please cite this number in any future communications with our office regarding your request. You requested the following:

1. *All documents or other records in the U.S. Fish and Wildlife Service's project file for the Mountain Valley Pipeline Project (FERC Docket No. CP16-10; Project #05E2VA00-2016-F-0880 and #05E2WV00-2015-F-0046)*
2. *All documents and records related to the USFWS's obligations under the Endangered Species Act, including but not limited to:*
 - a. *Documents and records related to the Biological Opinion and Incidental Take Statement issued on November 21, 2017, for the Mountain Valley Pipeline Project;*
 - b. *Documents and records related to the email and attached comments sent by Dr. Paul Angermeier to Cindy Schulz, Troy Andersen, and Sumalee Hoskin on October 23, 2018;*
 - c. *Documents and records related to the USFWS's April 12, 2019 letter to FERC regarding the Mountain Valley Pipeline Project, including but not limited to information/data received in response to that letter;*
 - d. *Documents and records related to USFWS's decision, on September 11, 2019, to accept FERC's request for reinitiation of consultation;*
 - e. *Documents and records related to the subsequent reinitiation of consultation, including but not limited to responses to USFWS's October 16, 2019 letter to FERC requesting additional data and information; to the November 27, 2019 technical meeting between USFWS, Mountain Valley Pipeline, LLC, and FERC; and to the decision to extend the re-consultation period by 60 days.*
3. *To the extent not captured above, this request includes all correspondence related to the Mountain Valley Pipeline Project.*

On February 14, 2020, Ms. Amanda Bossie contacted you via email to determine if you were willing to exclude sensitive species location information, conference call/WebEx dial-in information, links to ftp sites, Google

document links, and other hyperlinks or passwords from your FOIA request. On February 20, 2020, you replied that Sierra Club agreed to that information being withheld understanding that:

1. Records containing specific species location information will otherwise be released with only the specific location information redacted, unless the specific location information is not separable. For example, files that consist entirely of shapefile data containing specific species location information will be withheld in their entirety.
2. Relevant documents that are linked to/in other documents (e.g., Google documents or documents housed at ftp sites) will be released (subject to other applicable privileges) to the extent those documents were downloaded or are still available and in FWS files.

RESPONSE

In accordance with the Department's regulations (43 CFR 2.12(b)), in order for a record to be considered subject to a FOIA request, it must be in the possession and control of the Department at the time it begins its search.

This letter is to notify you that a search was conducted in offices believed to be most likely to have records responsive to your request; this included the Service's Virginia Field Office, West Virginia Field Office, and the Northeast Regional Ecological Services Offices.

This is the Service's fifth interim response to your request. We are providing 29 records consisting of approximately 1,538 pages, via Fileshare. The Fileshare link can be found in the email transmitting this correspondence. We are releasing 1,351 pages in full and withholding 187 pages in part as described below. We are also withholding 8 GIS files in full as described below.

We would like to note the Service applied the Exemption 6 withholdings to the record, *00169_20161204_email_Cmnts_MBCPlan_attach_Redacted*. The Service did not remove the content marked as privileged and confidential or redact the site-specific species occurrences in the attachments, the attachments were provided to the Service with that information removed or redacted.

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 three (3) 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: specifically the name, home address, and email address (and email addresses of those cc'd on the email) of a person who

submitted comments to FERC; and the name of a landowner, 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.

Withheld per Agreement with Requester

We are withholding 184 pages in part because these pages contain sensitive species location information, or ftp links and passwords. As noted above, you agreed to the withholding of this type of information. These exemptions are marked as "Species Location Information/SLI" or "File Share Information" and the redactions do not contain an exemption number.

CONCLUSION

We are continuing to review additional records that are responsive to your request. We anticipate our next release to you on or about December 4, 2020. Because this is an interim response to your request, we will provide notice of your appeal rights in our final response letter.

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 about our response to your request, you may contact me at (413) 253-8629 or by email at Eleanor_McVey@fws.gov.

Sincerely,

Eleanor McVey
Regional FOIA Coordinator

cc: Amanda Bossie (Solicitor)
Virginia Field Office (C. Schulz)