



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

300 Westgate Center Drive  
Hadley, MA 01035-9589

March 1, 2021

VIA EMAIL: [Cassidy.lang@sierraclub.org](mailto:Cassidy.lang@sierraclub.org)

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

Cassidy Lang  
Sierra Club  
1650 38<sup>th</sup> 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 eighth interim response to your request. We are providing 240 pdf files consisting of approximately 2,723 pages, via Fileshare. We are releasing 2,686 pages in full, withholding 37 pages in part, and withholding 194 pages in full as described below:

#### ***Exemption 4 - 43 C.F.R. §§ 2.23, .24***

We are withholding 16 pages in part under FOIA Exemption 4. 5 U.S.C. § 552(b)(4). Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."

The withheld information is financial information. The entity that supplied this information (the submitter) is considered a person, because the term "person," under the FOIA, includes a wide range of entities including state governments. Also, the submitter does not customarily release this information to the public, so the information is confidential for the purposes of Exemption 4.

#### ***Exemption 5 - 43 C.F.R. §§ 2.23, .24***

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 3 pages in part and 194 pages in full under Exemption 5 because they qualify to be withheld both because they meet the Exemption 5 threshold of being inter-agency or intra-agency and under the following privilege:

#### ***Attorney-Client Privilege***

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice and is not limited to the context of litigation. Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information.

The information that has been withheld under the attorney-client privilege of Exemption 5 constitutes confidential communications between agency attorneys and agency clients, related to legal matters for which the client sought professional legal assistance and services. It also encompasses opinions given by attorneys to their clients based on client-supplied facts. Additionally, the Service employees who communicated with the attorneys regarding this information were clients of the attorneys at the time the information was generated and the attorneys were acting in their capacities as lawyers at the time they communicated legal advice. Finally, the Service has held this information confidential and has not waived the attorney-client privilege.

***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 14 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 names of individuals, personal email addresses, home addresses, and personal phone numbers; 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, FOIA Coordinator, is responsible for this partial denial. Amanda Bossie in the Office of the Solicitor was consulted.

***Withheld per Agreement with Requester***

We are withholding 4 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 do not contain an exemption number and consist of a plain black redaction block.

**CONCLUSION**

We are continuing to review additional records that are responsive to your request. We anticipate our next release to you on or about March 31, 2021. 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](mailto:Eleanor_McVey@fws.gov).

Sincerely,

Eleanor McVey  
Regional FOIA Coordinator

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