



United States Department of the Interior

FISH AND WILDLIFE SERVICE



Post Office Box 1306
Albuquerque, New Mexico 87103

In Reply Refer To:
FWS/R2/ES/FOIA
DOI-FWS-2020-001491 (Final)
FWS-2020-00748

March 12, 2021

Mr. James Chapman
Frontera Audubon Society
200 East 11th Street
Weslaco, Texas 78596

Dear Mr. Chapman:

This partially responds to your Freedom of Information Act (FOIA) request dated June 14, 2020, in which you seek the following:

“All correspondence, written and electronic, including phone and conference notes & transcriptions, between USFWS and the FAA regarding the SpaceX project at Boca Chica, Texas, from March 2014 to the present. Also, any correspondence between USFWS and SpaceX.”

Your FOIA request was reassigned to tracking number DOI-FWS-2020-001491 from FWS-2020-00748 in FOIAOnline, and forwarded to the Texas Coastal Ecological Services Field Office for processing. For this third partial and final response response, 20 records (consisting of 79 pages) are provided to you with this letter.

Based on this office’s review, we reasonably foresee that disclosure of certain information in documents that fall under this request would harm an interest protected by one or more of the nine exemptions to the FOIA’s general rule of disclosure. Accordingly, from the responsive records, portions of ten records are partially redacted pursuant to FOIA Exemptions (b)(5) and (b)(6), as described below.

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 redacted a portion of eight documents (consisting of 24 pages) pursuant to the commercial information privilege of Exemption 5. The information withheld under this privilege consists of active conference call telephone numbers and access codes, which could be used to conduct conference calls by parties outside the government or used to call in to monitor internal government conversations. We are withholding it because disclosure to the public would chill communications between federal employees, harm the government's ability to exchange information, and waste government financial resources.

When the government enters the marketplace as an ordinary commercial buyer or seller, the government's information is protected under the commercial information privilege if it is sensitive information not otherwise available, and disclosure would significantly harm the government's monetary functions or commercial interests. In regard to conference call numbers, if the information was released, the government's financial interest would be significantly harmed as the calls would no longer be private and the funds spent on purchasing the information would be wasted. We are releasing the majority of the communication that would not harm the Service's commercial interests.

Portions of two records (consisting of ten pages) have been redacted pursuant to Exemption (b)(6) of the FOIA. Under Exemption 6, agencies may withhold information or records on individuals contained in "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)). The withheld material includes personal contact information (personal email addresses).

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." (*See Dept. of Defense v. FLRA*, 510 U.S. 487, 497 (1994) (*quoting Dept. of Justice v. Reporters Comm.*, 489 U.S. 749, 773 (1989))). 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, as described above, 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 are releasing the majority of the communication that would not warrant an invasion of privacy for these individuals.

Lastly, in our compilation and review of responsive records, we identified records that originated from or substantially concern another federal agency. Fifty-Nine records are being referred to the Federal Aviation Administration (FAA) for a release determination. FAA will issue a response directly to you. You do not have to contact the agency at this time, but should you need to do so in the future, you may do so at:

National Freedom of Information Act Office, AFN-400
Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591
(7-AWA-ARC-FOIA@faa.gov)

The undersigned is responsible for this partial denial.

The following categories of preapproved withholdings were the subject of consultation with the Office of the Solicitor's Division of General Law and the Departmental FOIA Office: Exemption 5 (Commercial Information Privilege). This response to your FOIA request was made in consultation with Justin Tade, Attorney-Advisor, Office of the Solicitor, Southwest Region, U.S. Department of the Interior (Department) for all other withholdings.

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 U.S. Fish and Wildlife Service's (Service) response is in error. 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
Department of the Interior, Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, D.C. 20240
Telephone: 202-208-5339/Fax: 202-208-6677
Email: FOIA.Appeals@sol.doi.gov

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

You also may seek dispute resolution services from our FOIA Acting Public Liaison, Cindy Cafaro, at 888-603-7119 or via email at cindy.cafaro@sol.doi.gov.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the 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 completes the Service's response. The fees incurred in responding to your request have been waived in accordance with 43 C.F.R. §2.37. If you have any questions or concerns regarding this request, please contact Government Information Specialist, David Tischer, by email at david_tischer@fws.gov.

Sincerely,

FOIA Coordinator