



United States Department of the Interior



FISH AND WILDLIFE SERVICE

5275 Leesburg Pike, MS: IRTM-FOIA
Falls Church, Virginia 22041

In Reply Refer To:
FWS/FOIA

May 12, 2022

Ms. Cecilia Diedrich
Legal Fellow
Defenders of Wildlife
1130 17th Street NW
Washington, D.C. 20036

REF: FWS-2018-00436/FWS-2018-01159 (Partial 32)

Dear Ms. Diedrich:

This responds to your Freedom of Information Act (FOIA) requests concerning the Arctic National Wildlife Refuge. Please refer to the tracking numbers above in communications regarding this request.

Response

For this 32nd partial response, we are releasing 1078 pages to you. For this production, we are providing requested attachments to previously released parent emails in *Defenders of Wildlife v. DOI, 18-cv-2752 (D.D.C.)*. Based on this office's review, we reasonably foresee that disclosure of certain information in a document that falls 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, a portion of one record is partially redacted pursuant to FOIA Exemption (b)(5), as described below.

Exemptions

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.

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. Among the most important are to: (1) assure that subordinates will feel free to provide the decision maker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public.

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process and may include recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested. None of the records here were created prior to 25 years from the request date.

Under the deliberative process privilege of Exemption 5, three pages are partially redacted that are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They 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 these drafts would have a chilling effect on the agency's deliberative processes.

Mediation/Dispute Resolution

If after contacting us as described below, you need further information or assistance with your request, you may wish to seek dispute resolution services from the Department's FOIA Public Liaison, Natasha Alcantara by email at doifoiapublicliaison@sol.doi.gov.

If you need further information or assistance after contacting the Department's FOIA Public Liaison, you may wish to seek dispute resolution services from the Office of Government Information Services (OGIS). The 2007 FOIA amendments created the 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://www.archives.gov/ogis>
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.

Appeal Rights

The undersigned is responsible for this partial denial. This response to your FOIA request was made in consultation with Larry Mellinger, Attorney-Advisor, Office of the Solicitor, U.S. Department of the Interior (Department). 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

Conclusion

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 of requested attachments. 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