



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

IN REPLY REFER TO:
7202.4-OS-2018-01317

December 30, 2019

Via email: dan@tebbuttlaw.com; tim@bechtoldlaw.net

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Re: Buffalo Field Campaign v. U.S. Department of the Interior, 9:19-cv-00166

Dear Messrs. Snyder and Bechtold:

On June 20, 2018, Mr. Darrell Geist, on behalf of Buffalo Field Campaign, filed a FOIA request seeking the following:

[A]ll records from the Office of the Secretary concerning the following subject matter:

1. Bison management in Yellowstone National Park and the state of Montana.
2. The Interagency Bison Management Plan.
3. Reintroducing bison from Yellowstone National Park to American Indian reservations or elsewhere.

The time period for the requested records is March 1, 2017 to June 20, 2018.

Mr. Geist's request was received in the Office of the Secretary FOIA office on June 20, 2018 and acknowledged on July 19, 2018 with the control number of OS-2018-01317.

We are writing today to provide a partial response to this request. Additional records for Mr. Geist's request will arrive under separate cover.

Please find attached 1 file consisting of 43 pages. Of those 43 pages, 38 pages are being released in full, while 5 pages contain redactions as described below.

Portions of the enclosed documents have been redacted pursuant to Exemption 5 of the FOIA (5 U.S.C. § 552 (b)(5)) under the following privileges:

Deliberative Process

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). As such, the Exemption 5 “exempt[s] those documents... normally privileged in the civil discovery context.” National Labor Relations Bd. v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975). The exemption incorporates the privileges that protect materials from discovery in litigation. These privileges include deliberative process, confidential commercial information, attorney work-product, and attorney-client. See id.; see also Federal Open Market Committee v. Merrill, 443 U.S. 340, 363 (1979) (finding a confidential commercial information privilege under Exemption 5).

Deliberative Process Privilege

The deliberative process privilege “protects the decisionmaking process of government agencies” and “encourages the frank discussion of legal and policy issues” by ensuring that agencies are “not forced to operate in a fishbowl.” Mapother v. United States Dep’t of Justice, 3 F.3d 1533, 1537 (D.C. Cir. 1993) (citing Wolfe v. United States Dep’t of Health & Human Services, 839 F.2d 768, 773 (D.C. Cir. 1988)). Three policy purposes have been advanced by the courts as the bases for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency’s action. See Coastal States Gas Corp. v. United States Dep’t of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980).

The deliberative process privilege protects materials that are both predecisional and deliberative. Mapother, 3 F.3d at 1537; Access Reports v. United States Dep’t of Justice, 926 F.2d 1192, 1195 (D.C. Cir. 1991); Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975). A “predecisional” document is one “prepared in order to assist an agency decisionmaker in arriving at his decision,” 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.” Maricopa Audubon Society v. United States Forest Service, 108 F.3d 1089, 1093 (9th Cir. 1997). A predecisional document is part of the “deliberative process” if “the disclosure of [the] materials would expose an agency’s decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.” Dudman Communications Corp. v. Department of the Air Force, 815 F.2d 1565, 1568 (D.C. Cir. 1987).

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

We reasonably foresee that disclosure would harm an interest protected by exemption 5. Those portions of the documents that have been withheld pursuant to the deliberative process privilege

Mr. Daniel Snyder and Mr. Timothy Bechtold

of Exemption 5 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. Therefore, their content has been held confidential by all parties. Public dissemination of this information would have a chilling effect on the agency's deliberative processes; it would expose the agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine its ability to perform its mandated functions.

If you have any questions about our response to your request, you may contact Mark Smith, Assistant United States Attorney, by phone at (406) 247-4667 or by email at mark.smith3@usdoj.gov.

Sincerely,

Justin Davis
Office of the Secretary

Electronic Enclosures