



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

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

June 16, 2020

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

Daniel Snyder
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97401

Timothy Bechtold
Bechtold Law Firm, PLLC
PO Box 7051
Missoula, MT 59807

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. During this time period 538 pages were reviewed, with 38 pages found to be responsive while, 500 pages were found to be non-responsive. Please find attached one file consisting of 38 pages.

In reviewing the released records, you will find that the government has made certain redactions pursuant to the deliberative process and attorney-work product of FOIA Exemption 5, found at 5 U.S.C. § 552(b)(5) and FOIA Exemption 6 found at 5 U.S.C. § 552(b)(6).

Exemption 5

Deliberative Process Privilege

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, such as: (1) assuring that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protecting against premature disclosure of proposed policies; and (3) protecting 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 materials that have been withheld under the deliberative process privilege 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. Their contents have been held confidential by all parties and public dissemination of this information 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. We are withholding 3 pages under Exemption 5.

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

Attorney Work-Product Privilege

With respect to the attorney work-product privilege, as incorporated into Exemption 5 this privilege protects from disclosure any materials prepared by or for a party or its representative (including their attorney, consultant, surety, indemnitor, insurer, or agent) in anticipation of litigation or for trial. The privilege applies once specific claims have been identified that make litigation probable; the actual beginning of litigation is not required. Its purpose is to protect the adversarial trial process by insulating litigation preparation from scrutiny, as it is believed that the integrity of our system would suffer if adversaries were entitled to probe each other's thoughts and plans concerning the case. The privilege extends to administrative, as well as judicial proceedings. Once the determination is made that records are protected from disclosure by the attorney work-product privilege, the entire contents of those records are exempt from disclosure under FOIA.

Finally, the materials that have been withheld under Exemption 5 under the attorney work-product privilege were prepared by or for Federal attorneys in reasonable anticipation of

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litigation and they reflect the attorneys' thoughts and evaluation of litigation-related matters. Thus, we conclude that the materials within on this basis are protected in full from disclosure by the attorney work-product privilege of Exemption 5.

Exemption 6

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 five 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 the Secretary's email address and we have determined that the individual to whom this information pertains has a substantial privacy interest in withholding it. 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.

Kasie Durkit, Attorney-Advisor, in the Office of the Solicitor was consulted regarding this release.

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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,

Tonya Kirksey
Office of the Secretary
FOIA Office

cc: Mark Smith, AUSA

Electronic Enclosure