



United States Department of Agriculture

Animal and
Plant Health
Inspection
Service

July 27, 2018

Legislative and
Public Affairs

Darrell Geist
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Freedom of
Information

Dear Mr. Geist:

4700 River Road
Unit 50
Riverdale, MD
20737-1232

This letter is a third partial response to your October 11, 2017, request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended. Your request was received on October 12, 2017, and assigned FOIA Case number 2018-APHIS-00286-F. You requested the following items concerning the U.S. Department of Agriculture, Animal and Plant Health Inspection Service's (APHIS) study Evaluation of GonaCon:

1. All publications, studies, reports, memos, and communications (emails, faxes, letters).
2. All animal welfare monitoring, including inspections, reports, evaluations, appointment books, and notes related to injury, abandonment, and death of bison.
3. Bison abortions and birth.
4. Removal and disposition of genetic material from bison.
5. Number and status of bison, held for study, incinerated, landfill buried, distributed to food banks and other activities resulting in removal.

On or about October 13, 2017, your request was forwarded to the APHIS, Office of Veterinary Services (VS) and the pertinent employees commenced a search for records starting on October 20, 2017. We are continuing to review responsive records that have already been provided to us by VS and intend to continue to provide additional partial responses and produce these records to you on a rolling basis.

Enclosed are 433 pages responsive to Items 1, 3 and 4 of your request. This response consists of 59 pages of records that were removed from our second partial response, dated April 13, 2018, and 374 pages that make up our third partial response. Also please note, approximately 30 pages of records from our April 13, 2018 are still under review. Within the 433 pages, approximately 335 pages are being released in full and 98 pages contain redactions pursuant to Exemptions 3, 5 and Exemption 6, 5 U.S.C. §552 (b) (3), (b) (5), and (b) (6). The two charts enclosed shows the bates number and exemptions applied to records in this third interim response.

Exemption 3

FOIA Exemption 5 U.S.C. § 552(b)(3), protects information specifically exempted from disclosure by statute, provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. APHIS has determined that the information is subject to the Agricultural Bioterrorism Protection Act of 2002, 7 U.S.C. § 8401(h)(1).

Pursuant to 7 U.S.C. § 8401(h)(1), USDA shall not disclose under FOIA the following:

- (A) Any registration or transfer documentation submitted under subsections (b) and (c) of this section, or permits issued prior to June 12, 2002, for the possession, use or transfer of a listed agent or toxin; or information derived therefrom to the extent that it identifies the listed agent or toxin possessed, used or transferred by a specific person or discloses the identity or location of a specific person.
- (B) The national database developed pursuant to subsection (d) of this section, or any other compilation of the registration or transfer information submitted under subsections (b) and (c) of this section to the extent that such compilation discloses site-specific registration or transfer information.
- (C) Any portion of a record that discloses the site-specific or transfer-specific safeguard and security measures used by a registered person to prevent unauthorized access to listed agents and toxins.
- (D) Any notification of a release of a listed agent or toxin submitted under subsections (b) and (c) of this section, or any notification of theft or loss submitted under such subsections.
- (E) Any portion of an evaluation or report of an inspection of a specific registered person conducted under subsection (f) of this section that identifies the listed agent or toxin possessed by a specific registered person or that discloses the identity or location of a specific registered person if the agency determines that public disclosure of the information would endanger animal or plant health, or animal or plant products.

We have determined that the Agricultural Bioterrorism Protection Act of 2002 meets the threshold of FOIA Exemption 3(A), because it leaves the agency no discretion to release information. The portions of the records withheld contain information that would identify the name of a select agent toxin and testing protocols that would show the name of a select agent and toxin.

Exemption 5

Information has been withheld pursuant to the deliberative process privilege. Exemption 5 permits the Government 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). The exemption has been construed by the courts to exempt records that would be subject to evidentiary privileges available in judicial proceedings. As a threshold matter, the responsive records must be inter-agency or intra-agency documents in order to be protected from disclosure under Exemption 5.

One privilege incorporated into Exemption 5 is the deliberative process privilege, which protects the quality of agency decision making. To qualify for protection, the information must be pre-decisional and deliberative. Three policy purposes constitute the basis for the deliberative process privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and supervisors; (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 policies and rationales that do not ultimately serve as the basis for agency action. Specifically, we have withheld APHIS employee thoughts, comments and suggestions about the disposition of animals within the GonaCon Study. This information would reveal discussions of policy options under consideration by the agency, but do not reflect final agency action or decision. Where possible, the agency has made discretionary releases of information that it deemed would not cause harm to the agency's decision-making process.

Exemption 6

Information has been withheld under Exemption 6, 5 U.S.C. 552 (b)(6). Exemption 6, permits the government to withhold from "personnel and medical files and similar files" information about individuals when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." We have determined that these records meet the definition of "similar" files, because they contain information pertaining to individuals.

In order to determine whether a document may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether a significant privacy interest would be compromised by the disclosure of the record. Second, the agency must determine whether the release of the document would further the public interest by shedding light on the operations and activities of the Government. Third, the agency must balance the identified privacy interests against the public interest in disclosure.

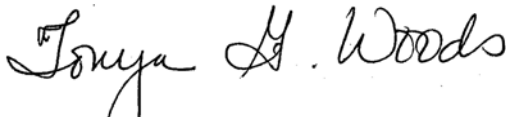
APHIS is withholding the personal home addresses and telephone number of APHIS employees, the personal email address of a person who corresponded with APHIS

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employees, and names of private ranches where animals were housed. Release of this type of information could subject them to unwanted personal contact. We have determined that there is no public interest in releasing the identified personal information about APHIS employees and correspondents. Please note that we have released the names of employees involved in the VS mission work. Releasing personal contact information would not reveal anything about government activities and therefore the privacy interests of the individuals outweighs the nonexistent public interest.

We note that this FOIA request is currently the subject of litigation, *Buffalo Field Campaign v. APHIS*, Case No. 9:18-cv-00031-DC. Accordingly, any inquiries regarding this matter should be directed to Assistant United States Attorney Mark Smith, U.S. Attorney's Office for the District of Montana, on (406) 247-4667.

Sincerely,

A handwritten signature in black ink that reads "Tonya H. Woods". The signature is written in a cursive, flowing style.

Tonya Woods
Director
Freedom of Information & Privacy Act
Legislative and Public Affairs

Enclosures