



United States Department of Agriculture

Animal and
Plant Health
Inspection
Service

October 31, 2018

Legislative and
Public Affairs

Darrell Geist
Buffalo Field Campaign
P.O. Box 957
West Yellowstone, MT 59758
z@wildrockies.org

Freedom of
Information

Dear Mr. Geist:

4700 River Road
Unit 50
Riverdale, MD
20737-1232

This letter is a sixth 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 pages responsive to Items 1, 3, and 4 of your request. This response consists of 400 pages of records. On October 1, 2018, our office sent you approximately 30 pages of records. Within these 400 pages, the 30 pages sent on October 1st are included for ease of clarity. In addition a total of 370 new pages of records including attachments and other responsive documents are being provided. Of the 400 pages, approximately 356 pages are being released in full and 44 pages contain redactions pursuant to Exemptions 5 and 6, 5 U.S.C. §552 (b) (5), and (b) (6). The chart enclosed shows the bates number for exemptions applied to records in this fifth interim response.

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 regarding pending FOIA litigation. In addition, deliberative content regarding a memorandum addressing the GonaCon study. This information would reveal discussions of litigation procedures and 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.

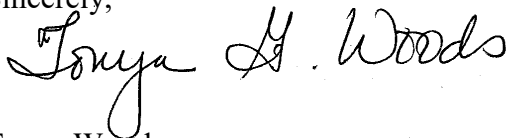
In order to determine whether a document may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether a significant privacy interest would be compromised by the disclosure of the record. Second, the agency must determine whether the release 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.

Darrell Geist
Buffalo Field Campaign

APHIS is withholding the personal home addresses and personal email address of individuals who corresponded with APHIS employees. In addition, names of private individuals and private cell phone numbers. 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