



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington D.C. 20240



March 23, 2023

VIA Email: [danb@fergusonlawmt.com](mailto:danb@fergusonlawmt.com)

Daniel Brister  
Save the Yellowstone Grizzly  
P.O. Box 8359  
Missoula, MT 59807

REF: DOI-FWS-2023-000971

Dear Mr. Daniel Brister,

We are writing to respond to your Freedom of Information Act (FOIA) request, dated November 18, 2022, and assigned it control number DOI-FWS-2022-000971. Please cite this number in any future communications with our office regarding your request. You generally requested records related to the grizzly bear sow and two cubs killed in Tetonia, Idaho on November 9 and 10, 2022.

## Response

We previously responded to you on March 7, 2023. For this final response, we processed seventy-seven (77) pages responsive to your request and our release determination is as follows: sixty-two (62) pages are released in full, ten (10) pages are released in part, and five (5) pages are withheld in full. The documents withheld in part and in full are being withheld under the following FOIA Exemptions:

### ***Exemption 5***

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. We are withholding one (1) pages in part and three (3) pages in full under Exemption 5 because they qualify to be withheld both because they meet the Exemption 5 threshold of being inter-agency or intra-agency and under the following privileges:

### ***Deliberative Process Privilege (3 pages in full)***

The deliberative process privilege protects materials that are both pre-decisional 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 pre-decisional 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 function.

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

### ***Commercial Information (1 page in part)***

When the government enters the marketplace as an ordinary commercial buyer or seller, the government’s information is protected under the commercial information privilege if it is sensitive information not otherwise available, and disclosure would significantly harm the government’s monetary functions or commercial interests. The information withheld consist of conference lines the government purchased to conduct government business.

### ***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 four (4) pages in part and two (2) pages in full under Exemption 6. In addition, we are withholding five (5) pages in part under Exemption 6 and 7c & 7F.

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 personal information, personal names and residential maps, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. 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.

### ***Exemption 7***

Exemption 7 protects from disclosure "records or information compiled for law enforcement purposes" if the records fall within one or more of six specific bases for withholding set forth in subparts (A) through (F). 5 U.S.C. § 552(b)(7)(A)-(F). We are withholding this information in full under Exemption 7 because it is protected under the following subpart:

#### ***7(C)***

Exemption 7(C) protects law enforcement records if their release could reasonably be expected to constitute an unwarranted invasion of personal privacy. It is regularly applied to withhold references to individuals in law enforcement files. For the materials that have been withheld under 7(C), we have determined that releasing them would constitute an unwarranted invasion of privacy because they identify individuals referenced in law enforcement records and the release of this information would not shed light on an agency's performance of its statutory duties.

#### ***7(F)***

Exemption 7(F) protects law enforcement records if their release could reasonably be expected to endanger the life or physical safety of any individual. For the materials that have been withheld under 7(F), we have determined releasing them could reasonably be expected to endanger the life or physical safety of an individual.

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.

Lydia Grimm, Attorney-Advisor with the Office of the Solicitor, was consulted in reaching this decision. Stacey Cummins, FWS FOIA Coordinator is responsible for this denial.

### **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 Jones by email at [doifoiapublicliaison@sol.doi.gov](mailto: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](mailto: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**

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 final response. 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 this response is in error. You must also include with your appeal copies of all correspondence between you and FWS concerning your FOIA request, including your original FOIA request and this response. Failure to include with your appeal all correspondence between you and FWS 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 Contact Information**

Department of the Interior  
Office of the Solicitor  
1849 C Street, N.W.

MS-6556 MIB  
Washington, DC 20240  
Attn: FOIA/Privacy Act Appeals Office  
Telephone: (202) 208-5339  
Fax: (202) 208-6677  
Email: [FOIA.Appeals@sol.doi.gov](mailto: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 FOIA. See [5 U.S.C. 552\(c\)](#). This response is limited to those records that are subject to the requirements of 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 is our final response and closes your request, DOI-FWS-2023-000971. If you have any questions about our response to your request, you may contact me by email at [stacey\\_cummins@fws.gov](mailto:stacey_cummins@fws.gov) or by phone at 303-236-4473.

Sincerely,

Stacey Cummins  
FWS FOIA Coordinator