



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:  
Appeal No. 2014-017

August 14, 2015

Don Webb  
Institute for Wildlife Protection  
2630 Elinor St.  
Eugene, OR 97403

Dear Mr. Webb:

This responds to the October 13, 2013, Freedom of Information Act (“FOIA”) appeal (“appeal”) that you e-mailed to the Department of the Interior (“Department”) on November 20, 2013, which the Department assigned as **Appeal Number 2014-017**. Your appeal concerns an August 30, 2013, FOIA request that you submitted to the Fish and Wildlife Service (“FWS”) seeking, in relevant part, “all agency records where unoccupied critical habitat was designated for any species listed as threatened or endangered under the Endangered Species Act” and “comments, notes, analyses or other communications” generated within the FWS or sent to the FWS regarding any such “entity.”

In response to the FOIA request, the FWS advised you that it “does not maintain, categorize, or identify [its] records according to whether or not the designated critical habitat is occupied by the species. Therefore, [the FWS is] not able to search [its] files in the manner you have requested.” The FWS also provided you with an Internet web address where you could find a list of the species that it has designated with critical habitat under the ESA<sup>1</sup> and it requested that you clarify your FOIA request by identifying the specific critical habitat designations for which you seek information. You filed this appeal to challenge the FWS’s response.

Your appeal is **DENIED**, as you have not reasonably described the records that you seek. To assist you in absorbing the conclusion of this decision, please be aware that in order to trigger the right of access to agency records under the FOIA, a requester must reasonably describe the records requested.<sup>2</sup> This requires requesters to “reasonably describe the records sought...[in] sufficient detail to enable bureau personnel familiar with the subject matter of the request to locate the records with a reasonable amount of effort.”<sup>3</sup> The courts have found that the “linchpin inquiry” on whether a request reasonably describes the records sought “is whether the agency is able to determine ‘precisely what records [are] being requested.’”<sup>4</sup>

However, “[e]ven where a request ‘identif[ies] the documents requested with sufficient precision to enable the agency to identify them,’ the request may still fail to ‘reasonably describe[]’ the records sought if it is ‘so broad as to impose an unreasonable burden upon the agency.’”<sup>5</sup> “It is the requester’s

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<sup>1</sup> [http://ecos.fws.gov/tess\\_public/](http://ecos.fws.gov/tess_public/)

<sup>2</sup> 5 U.S.C. § 552(a)(3)(A).

<sup>3</sup> 43 C.F.R. § 2.5(a).

<sup>4</sup> *Nat’l Sec. Counselors v. CIA*, 898 F. Supp. 2d 233, 274 (D.D.C. 2012) (quoting *Yeager v. DEA* 678 F.2d 315, 322, 326 (D.C. Cir. 1982) (“*Yeager*”)) (alteration in original).

<sup>5</sup> *Nat’l Sec. Counselors v. CIA*, 960 F. Supp. 2d 101, 163 (D.D.C. 2013) (quoting *Am. Fed’n Gov’t Emps., Local 2782 v. U.S. Dep’t of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990) and, to illustrate the point, using the

responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested.”<sup>6</sup>

In the case of your request, the Department notes that the point of the FWS’s notice to you that it “does not maintain...[its] records according to whether or not the designated critical habitat is occupied by the species” was to alert you to the fact that it has not previously segregated the class of records that you seek and, as a result, it cannot locate any such records that may exist with a reasonable amount of effort.<sup>7</sup> The Department agrees that the contours of your August 30<sup>th</sup> FOIA request are so imprecise that the FWS cannot possibly determine with a “reasonable amount of effort” which, if any, of its documents fall within the parameters of your request.

Indeed, processing this matter would require the FWS to first define the contours of your request for you by sifting through all of the documentation in its possession designating critical habitat for every endangered or threatened species (which are materials that date back decades and number in the thousands of documents) in order to identify which may be “unoccupied.” Only after the FWS has identified for you what, if any, designated critical habitat is “unoccupied” could it begin to search for documents that are responsive to your FOIA request. Conducting this type of research for you is not only unduly burdensome, but also the sort of personal service that the FOIA does not require an agency to provide in order to respond to a FOIA request, as the “FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters.”<sup>8</sup>

Your point in the appeal that “a human being is certainly capable of reading through such records and sending the ones meeting the FOIA Request criterion to [your organization]” is worth noting because you are correct that someone would need to read through all of those materials to identify which designated critical habitat is “unoccupied” and, thus, fall within the parameters of your request. However, the Department will not require the personnel in the FWS to conduct this research for you or transfer to them your responsibility of defining the contours of your FOIA request with “sufficient particularity” to enable agency personnel to locate the documents you seek with a reasonable amount of effort.<sup>9</sup> So, if you remain interested in pursuing the August 30<sup>th</sup> FOIA request, please resubmit a

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example “if a FOIA requester sought ‘all CIA records printed in the English language,’ the agency certainly would know what the requester was asking the agency to produce. The problem with such a request, however, is its breadth, rather than its opaqueness.”).

<sup>6</sup> *Assassination Archives & Research Center, Inc. v. CIA*, 720 F. Supp. 217, 219 (D.D.C. 1989) (“*Assassination Archives*”) (quoting *Yeager, supra.*).

<sup>7</sup> *Goland v. CIA*, 607 F.2d 339, 353-354 (D.C. Cir. 1978) (stating “It is well established that an agency is not ‘required to reorganize (its) files in response to (a plaintiff’s) request in the form in which it was made,’ and that if an agency has not previously segregated the requested class of records production may be required only ‘where the agency (can) identify that material with reasonable effort.’”).

<sup>8</sup> *Assassination Archives, supra.* See also *Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011) (reasoning that “[b]ecause ‘FOIA’ was not intended to reduce government agencies to full-time investigators on behalf of requesters,...[t]o the extent that plaintiff can identify documents which he believes exist in a particular office within [the agency], such identifying information should have been included as part of his original FOIA request.”).

<sup>9</sup> *Assassination Archives, supra.*

clarified request to the FWS that identifies the specific critical habitat designations for which you seek information about, as the FWS requested in its response that you do. Reading through the critical habitat documentation found at the Internet web address that the FWS provided to you in its response to determine which ones are “unoccupied” would assist you in better formulating your request.

This completes the Department’s response to your appeal. You have a right to seek judicial review of this decision under 5 U.S.C. § 552(a)(4)(B).

If you have any questions regarding this matter, please call the FOIA Appeals Office at (202) 208-5339.

Sincerely,



Darrell R. Strayhorn  
FOIA Appeals Officer  
Department of the Interior

cc: Melissa Allen, FOIA Officer, FWS  
Mary Klee, FOIA Coordinator, FWS-Ecological Services  
Cindy Cafaro, Departmental FOIA Officer