



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

May 29, 2015

IN REPLY REFER TO:
Appeal No. 2014-066

Gary Goodson

(b) (6)

Dear Mr. Goodson:

This responds to the June 17, 2013, Freedom of Information Act (“FOIA”) appeal (“appeal”) (**No. 2014-066**) that you filed with the Department of the Interior (“Department”). Your appeal concerns a December 24, 2012, FOIA request that you submitted to the National Park Service (“NPS”) seeking:

Copies of all communications...between the [NPS] and all other parties to include the National Parks Conservation Association [(“NPCA”)] regarding the proposed annexation of what the NPCA terms ‘The Saddle[,]’ which is the land bordering, on or about, the north central portion of Joshua Tree National Park into Joshua Tree National Park itself.

In response to the FOIA request, the NPS released some documents and withheld others in full and in part pursuant to FOIA exemptions (5)¹ and (6).² You filed this appeal, raising several issues regarding the NPS’s determination. The Department identifies and addresses below each of the issues that you raise.

ISSUE 1: You challenge the NPS’s decision to invoke the deliberative process privilege of exemption (5)³ as a basis to withhold certain responsive materials.

DECISION: ISSUE 1 of the appeal is **DENIED IN PART** in that the Department’s review of the withheld pages reveals that the NPS properly invoked the deliberative process privilege of exemption (5) as a basis to withhold most of the information. The protected information consists of draft documents, NPS employees’ comments on those drafts, and the portion of a document that reflects the NPS’s internal discussions regarding the development of the drafts. The NPS prepared these documents prior to reaching a final determination on how to proceed with the materials and its employees drafted the documents to aid decisionmakers in the decisionmaking process--precisely the type of information that the deliberative process privilege of exemption (5) was designed to protect.

¹ Exemption (5) protects “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).

² 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).

³ The deliberative process privilege protects the decisionmaking process of government agencies in order to prevent injury to the quality of agency decisions. *Sierra Club, et al. v. United States Department of Interior, et al.*, 384 F. Supp. 2d 1, 15 (D.D.C. 2004).

ISSUE 1 of the appeal is **GRANTED IN PART** insofar as the Department's line-by-line, page-by-page review of the pages withheld in full under exemption (5) reveals that information on four pages is not protected from disclosure. The Department has attached copies of the documents in which these four pages appear and it is disclosing the non-exempt information. The Department has redacted from these four pages the type of information discussed above that is protected from disclosure by the deliberative process privilege of exemption (5).

ISSUE 2: You challenge the NPS's decision to invoke exemption (6) as a basis to withhold "the personal email addresses and names of private citizens" that appear in two e-mail messages.

DECISION: ISSUE 2 of the appeal is **DENIED IN PART**, as the NPS properly withheld personal e-mail addresses under exemption (6).⁴ The individuals to whom this information pertains have privacy interests in withholding their personal e-mail addresses, as disclosure would allow unwarranted intrusions into their private lives. Further, the Department is not aware of any public interest⁵ that would outweigh the individuals' privacy interests in withholding their e-mail addresses, as disclosure sheds no light on the Department's performance of its statutory duties. Therefore, the Department concludes that, on balance, the privacy interests in withholding outweigh the public interest in disclosure. Thus, the withholding of the individuals' personal e-mail addresses under exemption (6) is appropriate.

ISSUE 2 of the appeal is **GRANTED IN PART** in that the NPS should not have withheld in two places in the documents the name of one of the individuals whose e-mail address the NPS also withheld. While the individual has a privacy interest in withholding his e-mail address (as discussed above), he does not have a discernable privacy interest in withholding his name in connection with the type of communication on which his name appears in this case (a message from someone thanking the individual for "sharing [his] thoughts with Superintendent Mark Butler, Seth Shteir of [NPCA], and" the sender of the message). Where there is no privacy interest to be protected (as is the case with the individual's name), an evaluation of what, if any, public interest there may be in disclosure of the information is not undertaken, as exemption (6) would not apply.

The Department has attached copies of the e-mail messages from which the NPS redacted the individual's name and it is releasing them to you again with the name disclosed. However, personal e-mail addresses remain redacted from the pages under exemption (6).

ISSUE 3: You assert that the NPS did not provide you with copies of attachments to two e-mail messages that you describe in Items 5 and 6 of your appeal letter.

⁴ An agency's use of exemption (6) as a basis to withhold information requires identifying and balancing relevant privacy and public interests to determine whether disclosure is appropriate. *See Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). 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.

⁵ Under the FOIA, the "public interest" to consider under exemption (6) is limited to the FOIA's "core purpose" of "shedding light on an agency's performance of its statutory duties." *Id.* at 773-775.

DECISION: The two attachments that you reference are a part of the documents that the NPS withheld in full under exemption (5) and that the Department discussed under ISSUE 1 of the appeal. Since the Department's review of both attachments reveals that the NPS properly withheld them in their entirety under the deliberative process privilege of exemption (5), there is **NO ACTION** for the Department to take on ISSUE 3 of the appeal.

ISSUE 4: You assert that the NPS did not provide you with "communications of any kind referencing the claims" that you hold or any "regarding the UCSB/USGS research permit applications in the same general area."

DECISION: Please be aware that the FOIA requires an agency to disclose, upon request by any person, non-exempt documents that are in its possession and control and are retrievable by a reasonable search of its files.⁶ To decide appeals such as yours that indicate that there are additional documents that are responsive to a FOIA request that the bureau did not provide or address, the Department looks at whether the bureau conducted a reasonable search of its files in an effort to locate the requested materials. A reasonable search is one that is "reasonably calculated to uncover the sought materials."⁷ Where a bureau has conducted a reasonable search of its files to locate the requested documents, the Department will deem its search as adequate. The fact that a requester believes that the subject of the requested records should generate more documents than what a bureau disclosed or addressed does not mean that the search was not adequate.⁸ The bureau simply cannot produce documents that it does not have or cannot locate through a reasonable search.

Here, in connection with the appeal, the NPS has advised the Department that it conducted manual and electronic searches of the files in its offices that are most likely to contain responsive documents and that it released to you all of the non-exempt documents that it located. However, its search did not produce any additional responsive documents to disclose to you. Since the NPS has met its obligations under the FOIA to conduct a search that was reasonably calculated to uncover all relevant documents, the Department concludes that the NPS's search was adequate. Therefore, ISSUE 4 of the appeal is **DENIED**.

ISSUE 5: You pose several questions in various items of the appeal letter and request additional documents: See Items 1, 2, 3, 7, 8, 9, and 10 of the appeal letter.

DECISION: Since the documents that you specify and those that would answer the questions that you pose for the above items are not a part of what you initially sought in the FOIA request, the Department concludes that the items constitute a new request for documents. If you remain interested in obtaining any of the documents for the above items, please submit a new FOIA request

⁶ See 5 U.S.C. § 552(a)(3).

⁷ See *Judicial Watch, Inc. v. United States DOE*, 310 F. Supp. 2d 271, 296 (D.D.C. 2004) (quoting *Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

⁸ See *Jennings v. DOJ*, 230 F. App'x 1, 1 (D.C. Cir. 2007) (finding that "the adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search"); *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1247-48 (11th Cir. 2008); *Radcliffe v. IRS*, No. 081513, 2009 WL 1459449, at *1-2 (2d Cir. May 27, 2009).

to the NPS, ensuring that you include information regarding the payment of the processing fees (as required by the Department's FOIA regulations⁹).

ISSUE 6: On page 1 of the appeal, you seek verification "that the maps...provided to [you] by [the NPS]...are copies of the very maps that were made available to the public during which time that the 'Desert Protection' legislation was under review as noted in the law..." Also on page 1, you ask whether the "legal description" referenced in the "Desert Protection" legislation that you cited "is available for public inspection of the appropriate offices of the [NPS]." You also pose questions in Item 4 ("In addition to the report itself, what other facts arose from this study or the final discussion amongst the final decision makers?") and Item 11 ("What other *facts* have come from deliberation and study?" [(emphasis in original)]).

DECISION: None of the items listed above are proper requests for agency records under the FOIA. The FOIA does not require an agency to perform research for the purpose of explaining, interpreting, or justifying the rules, regulations, and laws legislated by the Government or the actions that it has taken on a particular issue. Nor does the FOIA require an agency to answer questions or interrogatories disguised as FOIA requests or provide personal services. Because each of the items listed above under ISSUE 6 of the appeal implicate precisely the type of research and services that an agency is not required to perform or provide in response to a FOIA request, the Department concludes that there is **NO ACTION** for it to take on any of the items listed under ISSUE 6 of the appeal.

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

Attachments

cc: Charis Wilson, FOIA Officer, NPS
Nancy Hori, Pacific West Regional FOIA Coordinator, NPS
Deborah Bardwick, Attorney-Advisor, SOL-San Francisco Field Office
Cindy Cafaro, Departmental FOIA Officer

⁹ 43 C.F.R. § 2.6(a) (requiring requesters to "explicitly state that [he] will pay all fees associated with processing the request, [he] will pay fees up to a specified amount, and/or that [he is] seeking a fee waiver" by addressing and meeting the fee waiver criteria set forth in § 2.48 of the regulations).