



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:
Appeal No. 2015-015

July 10, 2015

Clint Reese

(b) (6)

Dear Mr. Reese:

This responds to the October 29, 2014, Freedom of Information Act (“FOIA”) appeal (“appeal”) that you filed with the Department of the Interior (“Department”), which the Department assigned as **Appeal Number 2015-015**. Your appeal concerns a September 17, 2014, FOIA request that you submitted to the Fish and Wildlife Service (“FWS”) seeking “[d]ocument[s]” and asking “questions” regarding a “TERM GS-11 Wildlife Biologist position; Recruited as...Announcement number R1-13-894798-RM...on or about April of 2013.”

After conducting “[a] thorough record search” of its files, the FWS released to you the responsive documents that it located, including one that it found was not “rigorously responsive to” two items of your FOIA request but that it believed would better assist you in understanding the funding aspects of the position that you are seeking information about. The FWS also invoked FOIA exemption (6)¹ as a basis to withhold the names and other personal identifying information of the individuals it did not select to fill the position (“unsuccessful applicants”) that is the subject of your FOIA request. You filed this appeal to challenge the FWS’s decision to withhold information pertaining to the unsuccessful applicants. You also assert that additional responsive documents exist that the FWS did not release to you.

Your appeal is **DENIED**, as the FWS conducted an adequate search of its files and it released to you all of the responsive documents that it located. The Department further concludes that the FWS properly invoked exemption (6) as a basis to withhold information pertaining to the unsuccessful applicants.

As to your challenge regarding whether there are additional responsive documents, 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.² To decide appeals such as yours that challenge whether additional responsive documents beyond what a bureau has already released exist, the Department looks at whether the bureau conducted a reasonable search of its files in an effort to locate the materials. A reasonable search is one that is “reasonably calculated to uncover the sought materials.”³ 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

¹ 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).

² See 5 U.S.C. § 552(a)(3).

³ 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)).

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.⁴ The bureau simply cannot produce documents that it does not have or cannot locate through a reasonable search.

In this case, the FWS conducted a manual search of the files in its office that are most likely to contain the requested documents using key words that were likely to retrieve any responsive documents that might exist. The FWS released to you all of the non-exempt responsive documents that it uncovered through its search. However, its extensive search efforts did not produce any additional responsive documents to disclose. Since the FWS 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 FWS's search was adequate.

With regard to the FWS's withholding of information concerning the unsuccessful applicants pursuant to exemption (6), please note that the unsuccessful applicants have strong privacy interests in withholding their names and other information that identifies them. The public could conclude from disclosure that these individuals were judged less qualified or less competent than the successful applicant, causing the unsuccessful applicants a great deal of personal and professional embarrassment. Any minor public interest that could be served by disclosure of information pertaining to the unsuccessful applicants would not overcome their significant privacy interests in withholding such information.⁵ Accordingly, the Department will continue to withhold the information pursuant to exemption (6).

This completes the Department's response to your appeal. If you are dissatisfied with this decision, you have a right to seek judicial review 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 & Privacy Act Appeals Officer
Department of the Interior

cc: Melissa Allen, FOIA Officer, FWS
Larry Buklis, Pacific Regions FOIA Coordinator, FWS
Cindy Cafaro, Departmental FOIA Officer

⁴ 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).

⁵ *Core v. United States Postal Service*, 730 F.2d 946, 948-49 (4th Cir. 1984); *Barvick v. Cisneros*, 941 F. Supp. 1015, 1021-1022 (D. Kan. 1996) (protecting all information about unsuccessful federal job applicants because any information about members of a "select group" who apply for such jobs could identify them).