



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

May 21, 2015

IN REPLY REFER TO:  
Appeal No. 2015-030

Jeffrey R. Galloway  
Etter, McMahon, Lamberson, Clary  
& Oreskovich, P.C.  
618 West Riverside Avenue, Ste. 210  
Spokane, WA 99201

Dear Mr. Galloway:

This responds to the November 21, 2014, Freedom of Information Act ("FOIA") appeal that you filed with the Department of the Interior ("Department"), which it received on November 24, 2014,<sup>1</sup> and that you filed on behalf of [REDACTED] EX6. Your appeal, which the Department assigned as **Appeal Number 2015-030**, concerns [REDACTED] EX6 September 20, 2014, FOIA request to the National Park Service ("NPS") that sought a copy of an Incident Report concerning a "dog attack" that occurred in August 2014 at Fort Spokane Campground at Lake Roosevelt National Recreation Area. You filed the appeal to challenge the NPS's decision to withhold, pursuant to FOIA exemption (6),<sup>2</sup> the names and other personal identifying information of individuals mentioned in the requested Incident Report.

After fully reviewing the issues in the appeal, the Department concludes that the NPS cannot rely on FOIA exemption (6) as a basis to withhold the information at issue in this appeal, as such information is "otherwise accessible" by your clients (and you as their attorney) under the provisions of the Privacy Act.<sup>3</sup> Therefore, your appeal is **GRANTED**. The rationale for the Department's determination follows.

## **Right of Access to the Records Under the Privacy Act**

The Privacy Act<sup>4</sup> generally requires the release of records maintained in a "system of records"<sup>5</sup> about an individual to that individual when he or she requests them.<sup>6</sup> Furthermore, the Privacy Act prohibits disclosure of protected records "by any means of communication to any person...except pursuant to a written request by, or with the prior written consent of, the individual to whom the records pertain,"<sup>7</sup>

<sup>1</sup> The Department's FOIA regulations state that "Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday." 43 C.F.R. § 2.58(e). Since your appeal arrived in the FOIA Appeals Office's e-mail on Friday, November 21, 2014, at 6:40 PM, the Department deems your appeal as received on the next workday, Monday, November 24, 2014.

<sup>2</sup> 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).

<sup>3</sup> 5 U.S.C. § 552a(t)(1).

<sup>4</sup> 5 U.S.C. § 552a.

<sup>5</sup> The term "system of records" means a group of any records about an individual that are under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. 5 U.S.C. § 552a(a)(5).

<sup>6</sup> 5 U.S.C. § 552a(d)(1).

<sup>7</sup> 5 U.S.C. § 552a(b).

unless the disclosure is authorized by one of the 12 conditions of disclosure set forth in the Privacy Act.<sup>8</sup> This means that unless the individual to whom a record pertains gives an agency written consent to disclose a Privacy Act-protected record to a third party (i.e., anyone other than the person to whom a record pertains) or the disclosure to a third party is authorized by one of the conditions of disclosure, the Privacy Act prohibits an agency from disclosing protected records to third parties.

The information that you seek through this appeal is a part of a record maintained in the Department's agency-wide law enforcement Privacy Act system of records identified as "Incident Management, Analysis and Reporting System, DOI-10" ("DOI-10"), and the record is retrievable by your clients' names and the name(s) of one or more of the other parties involved in the incident that is the subject of the FOIA request. Since you have not presented documentation showing that you or your clients have the written consent of the other individuals whose names or other particular identifiers are used to retrieve the record that is the subject of the request, the Department may only disclose the information in that record to you on behalf of your clients if one of the conditions of disclosure in the Privacy Act authorizes the release of the information.

The only "condition[] of disclosure" that is relevant to this appeal authorizes an agency to disclose Privacy Act-protected records if the disclosure is made pursuant to a "routine use."<sup>9</sup> One of the routine uses in DOI-10 authorizes the NPS to disclose records maintained in this system of records "for the purpose of providing information on...personal injuries or the loss or damage of property" to persons involved in such incidents, persons injured in such incidents, owners of property damaged in such incidents or any of these individuals attorneys.<sup>10</sup> With limited exceptions, the routine use in DOI-10 authorizes the NPS to release an entire record that falls within this system to these individuals or their attorneys.<sup>11</sup>

In this case, EX6 identified herself in the FOIA request as the "victim of a dog attack" that is the subject of the requested Incident Report, a status that is confirmed by a review of the document. Her status as a person involved or injured in an incident and as the owner of property damaged in an incident was sufficient to trigger the authorization for the NPS to release the entire Incident Report to her as set forth in the routine use of DOI-10, unless one of the exceptions to release applies.

Since the NPS did not rely on any of the exceptions to release in DOI-10 to support its redaction of information from the Incident Report, the entire document was accessible to EX6 under the provisions of the Privacy Act.<sup>12</sup> When a record is "otherwise accessible to [an] individual under the provisions of the Privacy Act," the statute precludes an agency from relying on "any exemption

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<sup>8</sup> 5 U.S.C. § 552a(b)(1)-(12).

<sup>9</sup> 5 U.S.C. § 552a(b)(3). See also 5 U.S.C. § 552a(a)(7) for definition of a "routine use."

<sup>10</sup> See DOI-10, Routine Use 16(b).

<sup>11</sup> The routine use in DOI-10 does not authorize a release of information in a record when such a release will "interfere with ongoing law enforcement proceedings; risk the health or safety of an individual; or reveal the identity of an [informant] or witness that has received an explicit assurance of confidentiality." DOI-10 also does not authorize the release of Social Security numbers and tribal identification numbers, unless such number(s) belong(s) to the individual requester. See Routine Use 16.

<sup>12</sup> Since EX6 name is also used to retrieve the Incident Report, the entire document is also accessible to him under the provisions of the Privacy Act and now to you as their attorney.

contained in [the FOIA]” to withhold the record from the individual.<sup>13</sup> This means that the NPS should not have invoked a FOIA exemption as a basis to deny **EX6** access to any of the information contained in the Incident Report.

Because the NPS should not have relied on FOIA exemption (6) to withhold from **EX6** the names and other personal identifying information of the individuals mentioned in the Incident Report, **by copy of this letter, the Department is remanding the matter to the NPS for it to:**

- **Release to the Appellant an unredacted copy of the requested Incident Report.**
- **Correspond directly with the Appellant.**
- **Complete the processing of this remand within 10 workdays of the date of this decision, with a copy of its letter to this Office.**

This completes the Department’s response to your appeal. 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: Charis Wilson, FOIA Officer, NPS (**FOR ACTION**)  
Felix Uribe, Privacy Act Officer, NPS  
Nancy Hori, Pacific West Regional FOIA Coordinator, NPS  
Nolan Shishido, Assistant Regional Solicitor, SOL-Pacific Northwest Region  
Cindy Cafaro, Departmental FOIA Officer

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<sup>13</sup> See 5 U.S.C. § 552a(t)(1).