



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

April 22, 2015

IN REPLY REFER TO:
Appeal No. 2015-043

EX6

Port Angeles, WA 98363

Dear EX6

This responds to the December 29, 2014, Freedom of Information Act (“FOIA”)¹ appeal (“appeal”) (No. 2015-043) that you filed with the Department of the Interior (“Department”). Your appeal concerns an October 20, 2014, FOIA request that you submitted to the National Park Service (“NPS”) that sought a “report of an assault” involving you that occurred at Olympic National Park on August 10, 2014, near Altair Campground. You filed the appeal to challenge the NPS’s decision to withhold, pursuant to FOIA exemptions (6)² and (7)(C),³ the names and other personal identifying information of individuals who are mentioned in the record that is the subject of your request.

After fully reviewing the issues in the appeal, the Department concludes that the NPS cannot rely on FOIA exemptions (6) and (7)(C) as bases to withhold the information at issue in this appeal, as such information is “otherwise accessible” to you under the provisions of the Privacy Act.⁴ 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 Act⁵ generally requires the release of records maintained in a “system of records”⁶ about an individual to that individual when he or she requests them.⁷ 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,”⁸ unless the disclosure is authorized by one of the 12 conditions of disclosure set forth in the Privacy Act.⁹ This means that unless the individual to whom a record pertains gives an agency written consent

¹ 5 U.S.C. § 552.

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 Exemption (7)(C) allows the withholding of records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).

⁴ 5 U.S.C. § 552a(t)(1).

⁵ 5 U.S.C. § 552a.

⁶ 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).

⁷ 5 U.S.C. § 552a(d)(1).

⁸ 5 U.S.C. § 552a(b).

⁹ 5 U.S.C. § 552a(b)(1)-(12).

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 name and the name(s) of one or more of the other parties involved in the incident that is the subject of your request. Since you have not presented documentation showing that you 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 your request, the Department may only disclose the information in that record to you 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."¹⁰ 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" to persons, such as you, who claim they were injured in an incident.¹¹ The Department notes that it is not necessary for such a person to have sought medical attention at the scene of the incident in order for her/his status in DOI-10 as a "person[] injured in such [an] incident[]" to apply.

Nonetheless, with your status as a person who alleges that she was injured in an incident, with limited exceptions, the routine use in DOI-10 authorizes the NPS to release to you the entire record that you requested. 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."¹² 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.¹³

In the case of your request, the NPS did not rely on any of the above exceptions to release in the routine use of DOI-10 to support its decision to withhold the names and other personal identifying information of the individuals mentioned in the record. Since the NPS has not asserted that any of those exceptions to release apply, the entire record from which it redacted the information that you seek through the appeal is accessible by you under the provisions of the Privacy Act.

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 contained in [the FOIA]" to withhold the record from the individual.¹⁴ This means that the NPS cannot invoke any FOIA exemptions as bases to deny you access to the information that you seek through this appeal.

¹⁰ 5 U.S.C. § 552a(b)(3). See also 5 U.S.C. § 552a(a)(7) for definition of a "routine use."

¹¹ See DOI-10, Routine Use 16(b).

¹² Routine Use 16.

¹³ *Id.*

¹⁴ See 5 U.S.C. § 552a(t)(1).

Because the NPS cannot rely on FOIA exemptions (6) and (7)(C) as bases to withhold the names and other personal identifying information of the individuals mentioned in the record that is the subject of your request, **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 pages of the record from which it redacted the names and identifying information of individuals.**
- **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 and Privacy Act 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

Barb Maynes, Public Information Officer, NPS-Olympic National Park

Nolan Shishido, Assistant Regional Solicitor, SOL-Pacific Northwest Region

Cindy Cafaro, Departmental FOIA Officer