



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:  
Appeal No. 2015-054

April 1, 2015

Jared M. Margolis  
Center for Biological Diversity  
2852 Willamette St. #171  
Eugene, OR 97405

Dear Mr. Margolis:

This responds to the January 21, 2015, Freedom of Information Act (“FOIA”) appeal (“appeal”) that you filed with the Department of the Interior (“Department”), which it received on the same date and assigned as **Appeal Number 2015-054**. Your appeal concerns a November 19, 2014, FOIA request that you submitted to the Fish and Wildlife Service (“FWS”) seeking, among other things, Appendices Q and R to the Department of State’s Biological Assessment related to the proposed TransCanada Keystone XL Pipeline project. You filed the appeal to challenge the FWS’s determination that it does not have the requested appendices.

After fully reviewing the issues presented in the appeal, the Department concludes that the FWS conducted an adequate search of its files and it did not locate Appendices Q and R. Therefore, your appeal is **DENIED**. The rationale for the Department’s decision follows.

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.<sup>1</sup> To decide appeals such as yours that challenge a bureau’s determination that it was unable to locate documents that are responsive to a FOIA request, 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.”<sup>2</sup> 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 bureau does not locate documents that are responsive to a FOIA request does not mean that the search was not adequate. The Department simply cannot produce documents that it does not have or cannot locate through a reasonable search.

In this case, the FWS has advised the Department that it conducted manual and electronic searches of the files in its offices that are most likely to contain the requested appendices, including the files in its Director’s Office, the Mountain-Prairie Regional Office, and the Nebraska Ecological Services Field Offices. Since these FWS offices were involved with the underlying issue in the FOIA request, i.e., the proposed TransCanada Keystone XL Pipeline project, the Department concludes that these were the appropriate offices for the FWS to search for any responsive documents that may exist. Further, the FWS had the personnel in those offices who were likely possessors of responsive documents

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<sup>1</sup> See 5 U.S.C. § 552(a)(3).

<sup>2</sup> 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)).

perform manual and electronic searches of their files using sufficient key words that were likely to retrieve any responsive documents that might exist, e.g., Keystone, XL, KXL, and TransCanada. However, the searches did not yield the requested appendices.

Based on the foregoing, the Department finds that the efforts the FWS undertook to locate Appendices Q and R lead the Department to conclude that the FWS has met its obligations under the FOIA to conduct a search that was reasonably calculated to uncover the requested documents. Therefore, the Department concludes that the FWS's search was adequate.

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 me at (202) 208-5339.

Sincerely,



Darrell R. Strayhorn  
FOIA Appeals Officer  
Department of the Interior

cc: Melissa Allen, FOIA Officer, FWS  
Cathy Willis, Regional FOIA Officer, FWS-Mountain-Prairie Region  
Cindy Cafaro, Department FOIA Officer