



United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240

September 23, 2015

IN REPLY REFER TO:
Appeal No. 2015-175

Randy Webb
Institute for Wildlife Protection
2630 Elinor St.
Eugene, OR 97403

Dear Mr. Webb:

This responds to the November 3, 2014, Freedom of Information Act ("FOIA") appeal ("appeal") that you filed with the Department of the Interior ("Department"), which the Department received on August 18, 2015, (the date the Department received all of the documents that you are required to submit in order to file an appeal) and assigned as **Appeal Number 2015-175**. Your appeal concerns an August 4, 2014, FOIA request to the Fish and Wildlife Service ("FWS") that seeks, in relevant part, the following two categories of documents:

1. Copies of all petitions to list any species, subspecies, or distinct population segment...under the [Endangered Species Act], for which no listing has yet taken place *AND* which has a population size less than 10,000 individuals...
2. Any documents that discuss, or refer to, the effects of population sizes lower than 10,000 individuals on the likelihood of extinction or extirpation.

In response to the request, the FWS advised that it "does not maintain, categorize, or identify [its] records according to species population sizes." The FWS also explained in detail why conducting a search in response to the above two items would be "unreasonably burdensome." To further assist you, the FWS offered various ways in which you could refine the scope of the FOIA request so that it could process the matter. However, you declined the FWS's offer, simply noting, "We DO want a search for the records we requested. If you do not index your records that is not our problem. What are you trying to hide?"

The FWS responded again by explaining that "[t]he FOIA does not require Federal agencies to perform research or analyze information in response to a FOIA request, which is the only way [it] would be able to identify the responsive records you are seeking in your FOIA request." The FWS again offered ways for you to refine the items so that it could process them. You filed this appeal, not to refine the scope of what you seek, but to complain that the FWS has not made a decision on your "request within the time limits provided in [the Department's] FOIA regulations." You also assert that:

[The FWS has] worked hard to muddy the waters...claiming [you] did not adequately describe the records [you] are seeking ('clarification' which is really limitation), and [you] question the adequacy of the [FWS's] search for responsive records, not to mention [its] claims that they need to do 'research'. Looking for their own records is NOT research.

Your appeal is **GRANTED IN PART** and **DENIED IN PART**. The rationale for the decision follows.

In order to trigger the right of access to agency records under the FOIA, a requester must reasonably describe the records requested.¹ This requires requesters to “reasonably describe the records sought...[in] sufficient detail to enable bureau personnel familiar with the subject matter of the request to locate the records with a reasonable amount of effort.”² “It is the requester’s responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested.”³ However, please note that “agencies are not required to perform searches [of their files] which are not compatible with their own document retrieval systems, as the “FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters.”⁴

Here, conducting the type of extensive research and analysis of the FWS’s records to define the contours of your August 4th FOIA request for you is not only unduly burdensome, but also the sort of personal service that the FOIA does not require an agency to provide in order to respond to a FOIA request. As the FWS advised you, its file systems are not organized in a way that would permit it to determine with a reasonable amount of effort what, if any, documents fall within a category of records you are seeking.

So, in an effort to resolve Item 1 of the FOIA request, the FWS offered to provide you with “.pdf copies of all petitions in [its] files so that you can conduct your own search for the petitions you are interested in.” The FWS’s offer here was a reasonable one because even though conducting a search for the records you requested in Item 1 would not be compatible with its document retrieval systems, any records that the FWS may have that fall within the parameters of this item of the request would be found in these petition records. Therefore, to resolve Item 1 of the FOIA request, **by copy of this letter, the FWS is directed to:**

- **Release to the Appellant “.pdf copies of all petitions in [its] files...” (or provide the Internet web address to “all petitions” on the FWS’s website) within 20 workdays from the date of this decision.**

With the FWS’s release of the petitions to address Item 1 of the request, your appeal on this item is **GRANTED**.

Your appeal with respect to the FWS’s response to Item 2 of the request is **DENIED**, as the current wording of this item does not contain sufficient information for the FWS to determine with a reasonable amount of effort the precise records that you seek, the offices where any potentially responsive records may be located, or who could be a likely possessor of any such records that may exist. Until such time

¹ 5 U.S.C. § 552(a)(3)(A).

² 43 C.F.R. § 2.5(a).

³ *Assassination Archives & Research Center, Inc. v. CIA*, 720 F. Supp. 217, 219 (D.D.C. 1989) (“*Assassination Archives*”) (quoting *Yeager v. DEA* 678 F.2d 315, 322, 326 (D.C. Cir. 1982)).

⁴ *Assassination Archives, supra*. See also *Cunningham v. United States DOJ*, 961 F. Supp. 2d 226, 237 (D.D.C. 2013) (finding the “FOIA was not intended to compel agencies to become ad hoc investigators for requesters whose requests are not compatible with their own information retrieval systems.”). See also *Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011) (noting that “[b]ecause ‘FOIA’ was not intended to reduce government agencies to full-time investigators on behalf of requesters,...[t]o the extent that plaintiff can identify documents which he believes exist in a particular office within [the agency], such identifying information should have been included as part of his original FOIA request.”).

as you refine Item 2 of the request by “reasonably describ[ing] the records sought...[in] sufficient detail to enable bureau personnel familiar with the subject matter of the request to locate the records with a reasonable amount of effort,”⁵ the FWS will not be able to process this item. As a starting point in identifying the precise records that you seek, the FWS advised of the need for you to tell it “what species you are interested in.” Reading through the petitions that the FWS provides to you for Item 1 to identify which species fall within the parameters of your request would assist you in better formulating and refining your request for records for this item.

If you remain interested in pursuing Item 2, please resubmit a FOIA request to the FWS that describes the records you seek here “with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the [FWS] to determine precisely what records are being requested.”⁶

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

cc: Melissa Allen, FOIA Officer, FWS (**FOR ACTION**)

Eileen Harke, Records Manager & FOIA Coordinator, FWS-Ecological Services

Cindy Cafaro, Departmental FOIA Officer

⁵ 43 C.F.R. § 2.5(a).

⁶ *Assassination Archives*, *supra*.