



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:
Appeal No. 2017-136

September 13, 2017

Joan Jett

(b) (6)

Dear Ms. Jett:

This responds to the undated letter that you sent to the Department of the Interior (“Department”) via e-mail on May 13, 2017, seeking to file a Freedom of Information Act (“FOIA”) appeal (“appeal”). Your letter intending to file an appeal pertains to a December 12, 2016, amended FOIA request that you submitted to the Fish and Wildlife Service (“FWS”) that seeks various personnel and personnel-related documents, certain documents regarding water resources and water rights, “[a]ny documents regarding the [FWS’s] plans to comply with Groundwater Rules and Regulations,” and certain budget documents.

On May 23, 2017, the Department advised you that it could not accept your letter for processing as an appeal at that time because you did not submit all of the documentation that its FOIA regulations (“regulations”) require you to submit in order to file an appeal. The Department also afforded you 20 workdays to comply with the regulations and submit “copies of all correspondence between you and the FWS concerning the FOIA request, including a copy of the original FOIA request.” On May 23, 2017, you submitted via e-mail a copy of the original FOIA request and also re-submitted many of the same copies of communications that you had with the FWS that you previously provided to the Department on May 13, 2017. You re-submitted many of these same materials via e-mail again on May 31, 2017.

However, absent from the 50 e-mail messages that you sent to the Department regarding this matter on the various dates were copies of four letters referenced in e-mail messages that the FWS sent to you on December 5, 2016, December 23, 2016, January 23, 2017, and March 27, 2017, addressing procedural processing issues and partially responding to the FOIA request. Note that while you did provide the Department with copies of the e-mail messages from the FWS stating that it attached copies of these letters to its messages, you did not provide any of those attached letters with the materials you submitted to the Department.¹

Nonetheless, as a courtesy to you, the Department obtained copies of the above-dated letters from the FWS for you,² even though the regulations do not require it to do so. The Department requested and received copies of the missing letters from the FWS on June 7, 2017. Now that the Department has copies of all of the correspondence between you and the FWS concerning the FOIA request, it has accepted this matter for processing as an appeal.

¹ The Department notes your assertion in a May 31, 2017, e-mail message that a “UPS package” was delivered to this Office containing a “CD and transmittal letters.” However, this Office has not received any such mailing from you.

² Please be aware that the Department could have rejected an appeal from you for processing upon its receipt of your May 13, 2017, e-mail message that did not include copies of all of the correspondence between you and the FWS concerning the FOIA request. *See 43 C.F.R. § 2.59(f)* (noting, “The Department will reject an appeal that does not attach all correspondence [between the requester and the bureau concerning the FOIA request], unless the FOIA Appeals Officer determines, in his or her sole discretion, that good cause exists to accept the defective appeal.”). The Department could have again rejected your appeal for processing when you did not submit copies of all of the correspondence required to file an appeal (i.e., the four letters referenced above that the FWS sent to you) within the 20 workday time limit that it afforded you on May 23, 2017, to comply with the regulations.

Your appeal, which the Department received on June 7, 2017 (the date the Department received all of the documents that you are required to submit in order to file an appeal), is assigned as **Appeal Number 2017-136**. You argue in the appeal that the documents the FWS has released to you thus far are not responsive to your FOIA request, consist of duplicates, fall outside of the date range that you specified, and did not include explanations on how they are responsive to certain items that you requested. You also seek to have the FWS “clearly identify which item [in the FOIA request] the documents [it released] are responsive to.” Further, you state that you have not received responses to two of the items in the FOIA request.

The Department concludes that there is **NO ACTION** for it to take with regard to your assertion that the documents the FWS has released to you so far are not responsive to the FOIA request, duplicative, or outside of the date range of what you seek. There is nothing in the FOIA, regulations, or current case law that precludes an agency from releasing more documents to a requester than what she requested, especially when the agency has not charged the requester fees for the processing of those purportedly excess materials. Indeed, the record before the Department does not show that the FWS assessed processing fees against you for its production of the documents that you have received thus far.

As the FWS has advised you, it is continuing to process your FOIA request. If your review of the FWS’s *final* response and the documents it releases lead you to continue to believe that it has not released documents that are responsive to one or more of the items listed in your FOIA request and/or you find its response to be deficient in some other way, you may file a new appeal with the Department to raise such issues. The appropriate time to raise any such challenge(s) with the Department through an appeal, however, is after the FWS has completed its processing of the FOIA request.

As for your challenge that the FWS did not provide you with explanations of how the documents it released are responsive to certain items in the FOIA request, please be aware that there is no requirement in the FOIA, regulations, or current case law for it to provide you with such information. There is also no requirement for the FWS to correlate the documents it released to you with particular items of the FOIA request. As a result, there is also **NO ACTION** for the Department to take on these issues in the appeal.

Finally, with respect to your challenge that the FWS has not responded to two items of the FOIA request, as previously noted, the FWS is continuing to process this matter. The FWS has advised the Department that it is nearing the completion of its processing of the FOIA request and anticipates sending its final response to you soon. To be sure, **by copy of this letter, the FWS is directed to:**

- **Make a determination on the release of the remaining documents that it has located in response to the FOIA request.**
- **Within 20 workdays from the date of this letter, correspond directly with the Appellant to:**
 - **Advise whether it will comply with the FOIA request and release the non-exempt documents or portions of documents with the letter.**

OR

- **If the FWS’s review of the documents for releasability yields a voluminous amount of materials, advise of the need for it to stagger the release, provide the anticipated schedule the FWS plans to follow in releasing the remaining non-exempt**

- **documents (or portions thereof), and enclose the latest installment of non-exempt documents or portions of documents with its letter.**

While it is regrettable that the FWS has not yet completed its processing of your FOIA request, please be assured that the FWS is processing this matter as quickly as it can. However, since the FWS has not completed its processing of, and response to, the FOIA request, you may treat the continued delay in responding to you as a denial of the FOIA request and seek judicial review under 5 U.S.C. § 552 (a)(4)(B). However, we hope that you will delay filing a lawsuit so that the FWS can complete its processing of this matter.

This completes the Department's response to your appeal. If you wish to discuss the progress the FWS is making in completing its processing of your FOIA request, you may contact the FWS's FOIA Officer, Carrie Hyde-Michaels, at (703) 358-2291. If you have any questions regarding your appeal, please call the FOIA Appeals Office at (202) 208-5339.

Sincerely,



Darrell R. Strayhorn
FOIA Appeals Officer
Department of the Interior

cc: Carrie Hyde-Michaels, FOIA Officer, FWS (**FOR ACTION**)
Stacey Cummins, FOIA Coordinator, FWS-Region 6