



United States Department of the Interior  
OFFICE OF THE SECRETARY  
Washington, DC 20240

IN REPLY REFER TO:  
7202.4-OS-2018-01317  
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October 16, 2020

Via email: [dan@tebbuttlaw.com](mailto:dan@tebbuttlaw.com); [tim@bechtoldlaw.net](mailto:tim@bechtoldlaw.net)

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*Re: Buffalo Field Campaign v. U.S. Department of the Interior, 9:19-cv-00166*

Dear Messrs. Snyder and Bechtold:

On June 20, 2018, Mr. Darrell Geist, on behalf of Buffalo Field Campaign, filed a FOIA request seeking the following:

[A]ll records from the Office of the Secretary concerning the following subject matter:

1. Bison management in Yellowstone National Park and the state of Montana.
2. The Interagency Bison Management Plan.
3. Reintroducing bison from Yellowstone National Park to American Indian reservations or elsewhere.

The time period for the requested records is March 1, 2017 to June 20, 2018.

Mr. Geist's request was received in the Office of the Secretary FOIA office on June 20, 2018 and acknowledged on July 19, 2018 with the control number of **OS-2018-01317**.

We are writing today to provide a partial response to this request. During this time period 517 pages were reviewed, with 232 pages found to be responsive while, 285 pages were found to be non-responsive. Please find attached one file consisting of 232 pages, which is being released in part. Portions of the materials were withheld under the following FOIA Exemptions.

## Exemption 5

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency.” [5 U.S.C. § 552\(b\)\(5\)](#). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. We are withholding one page in part under Exemption 5 because they qualify to be withheld both because they meet the Exemption 5 threshold of being inter-agency or intra-agency and under the following privileges:

### *Deliberative Process Privilege*

The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege, such as: (1) assuring that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protecting against premature disclosure of proposed policies; and (3) protecting against confusing the issues and misleading the public.

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process and may include recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

## Exemption 6

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\(b\)\(6\)](#). We are withholding three pages in part under Exemption 6.

The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly

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unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens 'know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of the Secretary's email address and we have determined that the individual to whom this information pertains has a substantial privacy interest in withholding it. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure.

Kasie Durkit, Attorney-Advisor, in the Office of the Solicitor was consulted regarding this release.

If you have any questions about our response to your request, you may contact Mark Smith, Assistant United States Attorney, by phone at (406) 247-4667 or by email at [mark.smith3@usdoj.gov](mailto:mark.smith3@usdoj.gov).

Sincerely,

Tonya Kirksey  
Office of the Secretary  
FOIA Office

cc: Mark Smith, AUSA

Electronic Enclosure