



United States Department of the Interior

NATIONAL PARK SERVICE
12795 W. Alameda Parkway
P.O. Box 25287
Denver, Colorado 80225-0287

November 4, 2020

A7221 (2550)

Ann Brown
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374

Dear Ms. Brown:

Reference: NPS-2020-00938

Subject: Response to Freedom of Information Act (FOIA) Request

This letter is in response to your Freedom of Information Act (FOIA) request dated June 5, 2020, in which you requested:

...records showing actions taken by NPS in response to Executive Order ("EO"), "EO on Accelerating the Nation's Economic Recovery from the CO VID-19 Emergency by Expediting Infrastructure Investments and Other Activities," including email communications.

Upon further review, your request is granted in part and denied in part. During a search of our file(s) we located two (2) email records, totaling three (3) pages of responsive material. However, portions of one page are being withheld under Exemption 5, which 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\(b\)\(5\)](#); see *Nat'l Labor Relations Bd. v. Sears Roebuck & Co.*, 421 U.S. 132, 149 (1975). 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 this information because it qualifies to be withheld under the following privilege:

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." *Mead Data Cent., Inc. v. United States Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (internal citations omitted). A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) "assure that subordinates . . . will feel free to provide the decisionmaker with their uninhibited opinions and recommendations"; (2) "protect against premature disclosure of

proposed policies”; and (3) “protect against confusing the issues and misleading the public.” *Coastal States Gas Corp. v. United States Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

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.” *Id.*

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 chill the free and open discussions that are a necessary element of the deliberative process.

Pursuant to regulation, 43 CFR 2.24(b) the following person is responsible for this denial:

Charis Wilson
NPS FOIA Officer

Additionally the following attorney was consulted during the preparation of this response:

Jason Waanders, Attorney-Advisor, Office of the Solicitor
U.S. Department of the Interior, Philadelphia, PA

You have the right to appeal this denial of your request. You may file an appeal by writing to:

Freedom of Information Act Appeals Officer
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, NW
MS-6556-MIB,
Washington, D.C. 20240
foia.appeals@sol.doi.gov

Your appeal must be received no later than 30 workdays after the date of this final response. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and copies of all correspondence between yourself and the National Park Service related to this request, along with any information you have which leads you to believe the records are available, including where they might be found, if the location is known to you. Please note, appeals received after 5 p.m. EST will be considered to have been received as of the following day.

Also as part of the 2007 OPEN Government Act FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation.

You may contact OGIS in any of the following ways:

Office of Government Information Services (OGIS)
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

Additionally, because the National Park Service creates and maintains law enforcement records, we are required by the Department of Justice to provide the following information, even though it may or may not apply to your specific request. Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that we are required to give all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Please do not hesitate to contact me with any further questions or concerns. I can be reached at the address above or by phone at 303-969-2959. I can also be reached via e-mail at charis_wilson@nps.gov.

Sincerely,

Charis Wilson
NPS FOIA Officer

cc:

bcc:

From: [McDowall, Lena E](#)
To: [Benge, Shawn T](#); [Farinelli, Susan](#); [Vela, Raymond \(David\)](#); [Bowron, Jessica](#)
Cc: [Bies, Brandon](#)
Subject: RE: EO from yesterday
Date: Friday, June 5, 2020 3:14:31 PM

It certainly (b) (5)

I can run it by DOI HR/ELLU just to make sure. If we (b) (5)

I'll send them a note now.

Thanks,

Lena

Lena McDowall

Deputy Director, Management and Administration

Ph: (202) 513-7240

Cell: (202) 641-1814

From: Benge, Shawn T
Sent: Friday, June 5, 2020 2:56 PM
To: Farinelli, Susan ; Vela, Raymond (David) ; McDowall, Lena E ; Bowron, Jessica
Cc: Bies, Brandon
Subject: RE: EO from yesterday
Lena/Jessica,
Do you think (b) (5)

From: Farinelli, Susan <Susan_Farinelli@nps.gov>
Sent: Friday, June 5, 2020 1:47 PM
To: Vela, Raymond (David) <David_Vela@nps.gov>; Benge, Shawn T <Shawn_Benge@nps.gov>;
McDowall, Lena E <Lena_McDowall@nps.gov>; Bowron, Jessica <Jessica_Bowron@nps.gov>
Cc: Bies, Brandon <Brandon_Bies@nps.gov>
Subject: Fw: EO from yesterday

All,

We'll need to think about how we handle this. I have seen no other direction from the Dept. beyond this email from John. Has anyone heard anything from other avenues? The key items I see for us are:

(c) No later than 30 days of the date of this order, the Secretary of Defense, the Secretary of the Interior, and the Secretary of Agriculture shall each provide a summary report, listing all such projects that have been expedited ("expedited Federal lands projects"), to the OMB Director, the Assistant to the President for Economic Policy, and the Chairman of CEQ. Such report may be combined, as appropriate, with any other reports required by this order.

(d) Within 30 days following the submission of the initial summary report described in subsection (c) of this section, the Secretary of Defense, the Secretary of the Interior, and the Secretary of Agriculture shall each provide a status report to the

OMB Director, the Assistant to the President for Economic Policy, and the Chairman of CEQ. Each such report shall list the status of all expedited Federal lands projects and shall list any additions or other changes to the list described in subsection (c) of this section. Such status reports shall thereafter be provided to these officials at least every 30 days for the duration of the national emergency and may be combined, as appropriate, with any other reports required by this order.

Susan Farinelli
Chief of Staff (Acting)
National Park Service
202-309-3272

From: Tanner, John R <john_tanner@ios.doi.gov>

Sent: Friday, June 5, 2020 12:34 PM

To: Vela, Raymond (David) <David_Vela@nps.gov>; Bengé, Shawn T <Shawn_Benge@nps.gov>; Farinelli, Susan <Susan_Farinelli@nps.gov>; Bies, Brandon <Brandon_Bies@nps.gov>

Cc: Wallace, George R <george_wallace@ios.doi.gov>; Hambleton, Ryan M <ryan_hambleton@ios.doi.gov>; Maione, Dominic <Dominic_Maione@ios.doi.gov>; Foster, Maureen D <maureen_foster@ios.doi.gov>

Subject: EO from yesterday

Flagging this for NPS. Please keep Dominic in the loop on the reporting.

<https://www.whitehouse.gov/presidential-actions/eo-accelerating-nations-economic-recovery-covid-19-emergency-expediting-infrastructure-investments-activities/>

From: [Tanner, John R](#)
To: [Mendelson, Lisa](#)
Subject: Fw: EO from yesterday
Date: Friday, June 5, 2020 10:35:25 AM

FYI

From: Tanner, John R
Sent: Friday, June 5, 2020 12:34 PM
To: Vela, Raymond (David) ; Bengel, Shawn T ; Farinelli, Susan ; Bies, Brandon
Cc: Wallace, George R ; Hambleton, Ryan M ; Maione, Dominic ; Foster, Maureen D
Subject: EO from yesterday
Flagging this for NPS. Please keep Dominic in the loop on the reporting.

<https://www.whitehouse.gov/presidential-actions/eo-accelerating-nations-economic-recovery-covid-19-emergency-expediting-infrastructure-investments-activities/>