



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

VIA EMAIL

July 13, 2021

Jimmy Tobias
MuckRock News
DEPT MR 112936
411A Highland Ave
Somerville, MA 02144-2516

Re: OIG-2021-00184

Dear Jimmy Tobias:

This is in response to your Freedom of Information Act (FOIA) request dated June 16, 2021, which was received by the Office of Inspector General (OIG) on the same date. You requested the following information under the FOIA, 5 U.S.C. § 552:

- Any and all complaints and/or referral packages surrounding the U.S. Fish and Wildlife Service's handling of the Eastern Collier Property Owners (ECPO) development project and Incidental Take Permit application (i.e., the Eastern Collier Multi-Species Habitat Conservation Plan, permit application, or Environmental Impact Statement). This request also seeks to obtain the total number of complaints received by OIG relating to FWS' handling of the ECPO project, the total number that are being investigated by OIG, and the total number that are being referred back to FWS or other agencies.

For purposes of this request, you have been categorized as a representative of the news media. As such, we may charge you for some of our duplication costs, but we will not charge you for our search or review costs; you also are entitled to up to 100 pages of photocopies (or an equivalent volume) for free. *See* 43 C.F.R. § 2.39. If, after taking into consideration your fee category entitlements, our processing costs are less than \$50.00, we will not bill you because the cost of collection would be greater than the fee collected. *See* 43 C.F.R. § 2.49(a)(1). Therefore, in this case, no fee has been assessed.

We obtained the information you seek and conducted a review of the material you requested. After reviewing this information, we have determined that we may release the following information:

Total # of Complaints Received by OIG: 4
Total # Being Investigated by OIG: 0
Total # Referred to FWS: 2

In terms of your request for “any and all complaints and/or referral packages surrounding the U.S. Fish and Wildlife Service’s handling of the Eastern Collier Property Owners (ECPO)

development project and Incidental Take Permit application (i.e., the Eastern Collier Multi-Species Habitat Conservation Plan, permit application, or Environmental Impact Statement)” after reviewing this information, we have determined that we may release 10 pages of responsive documents, with FOIA redactions, pursuant to exemptions 5 U.S.C. § 552(b)(7)(C) and (b)(7)(D). Additionally, 133 pages have been withheld entirely pursuant to exemption 5 U.S.C. § (b)(7)(A). A further 1 page has been withheld entirely pursuant to exemption 5 U.S.C. § (b)(7)(D).

FOIA requires that agencies generally disclose records. Agencies may only withhold requested records if one or more of nine exemptions apply.

Exemption 7 allows agencies to refuse to disclose records compiled for law enforcement purposes under any one of six circumstances (identified as Exemptions 7 (A) through 7 (F)). Law enforcement within the meaning of Exemption 7 includes enforcement pursuant to both civil and criminal statutes.

Specifically, Exemption 7(A) calls for the agency to withhold information related to ongoing investigations. We have determined that the information in the documents you requested relate to an ongoing investigation. Therefore, we have determined the proceedings are not concluded in this matter and that release of records related to these proceedings could reasonably be expected to reveal OIG’s case prematurely, and otherwise interfere with OIG’s ability to effectively enforce the law. As a result, we are withholding the records you seek pursuant to the provisions of 5 U.S.C. § 552(b)(7)(A). However, you may contact me to inquire about the status of the investigation at the number listed below. When the investigation is completed and closed, you may submit a new FOIA request.

In addition, Exemption 7(C) permits an agency to withhold information contained in files compiled for law enforcement purposes if production “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” U.S.C. § 552(b)(7)(C). Thus, the purpose of Exemption 7(C) is to protect the privacy of an individual if one exists. To determine this, we must evaluate not only the nature of the personal information found in the records, but also whether release of that information to the general public could affect that individual adversely. In this case, we find that release of personal information could reasonably be expected to have a negative impact on an individual’s privacy. However, even if a privacy interest exists, we must nevertheless disclose the requested information if the public interest outweighs the privacy interest in the information requested. In this instance, you have not established that release of the privacy information of witnesses, interviewee, middle and low-ranking federal employees and investigators, and other individuals name in the investigatory file, would shed light on government operations, and we have not found such a public interest in this case. For this reason, after reviewing the information in question, we have determined that disclosure would be an unwarranted invasion of personal privacy and we must withhold this information under FOIA Exemption 7(C).

Lastly, FOIA Exemption 7(D) exempts from disclosure records or information compiled for law enforcement purposes which could reasonably be expected to disclose the identity of a confidential source. In this instance we have determined that releasing these documents could

reasonably be expected to disclose the identity of a confidential source who provided information under circumstances from which an assurance of confidentiality could be reasonably inferred. Because enforcement of the law depends upon information elicited from these vulnerable sources, they must be protected in order to further effective law enforcement. For this reason, we are withholding information that may identify confidential sources.

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.

If you disagree with this response, you may appeal this response to the OIG's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the OIG FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the OIG's response is in error. You must also include with your appeal copies of all correspondence between you and the OIG concerning your FOIA request, including your original FOIA request and the OIG's response. Failure to include with your appeal all correspondence between you and the OIG will result in the OIG's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal. The OIG FOIA/Privacy Act Appeals Office Contact Information is the following:

Office of the Inspector General
U.S. Department of the Interior
1849 C Street, NW
MS-4428
Washington, DC 20240
Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-6742
Fax: (202) 219-1944
Email: foia@doioig.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. *See* 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive 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
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the OIG FOIA & Privacy Act Appeals Officer.

However, should you need to contact me, my telephone number is (202) 878-9734, and the email is foia@doioig.gov.

Sincerely,
Sidrah Miraaj-Raza

Sidrah Miraaj-Raza
Attorney Advisor

Enclosures