

EXHIBIT C



United States Department of the Interior



NATIONAL PARK SERVICE
Pacific West Region
333 Bush Street, Suite 500
San Francisco, CA 94104-2828

IN REPLY REFER TO:
9.C. (PWR-PI)
NPS-2015-00581

0 4 NOV 2015

**COPY FOR YOUR
INFORMATION**

Peter Browning
High Sierra Hikers Association
PO Box 1453
Lafayette, CA 94549

Dear Mr. Browning:

This is an interim response to your Freedom of Information Act (FOIA) request submitted to the National Park Service (NPS), Sequoia and Kings Canyon National Parks dated May 2, 2015 and received on May 4, 2015. The Department of the Interior (DOI) FOIA tracking number for this request is NPS-2015-00581. Please cite this tracking number in any future communications with our office regarding your request.

You requested:

1. *All communications, minutes of meetings, and all other records regarding stock- or meadow-management issues (including the WSP/DEIS and WSP/FEIS planning process), between NPS personnel and commercial packstock enterprises that operate within SEKI. Packstock "enterprises" include broadly all owners, employees, and representatives of commercial outfits that utilize packstock (horses, mules, burros, llamas) within SEKI.*
2. *Any and all records and communications regarding the WSP/DEIS and WSP/FEIS planning process, or other stock- or meadow-management issues that are germane to the WSP between NPS and the Backcountry Horsemen of California, the Backcountry Horsemen of America, and elected officials; and*
3. *All internal NPS communications regarding the WSP/DEIS and development of the WSP/DEIS and the WSP/FEIS that were created prior to the date of this letter; and*
4. *All backcountry ranger reports from 2004 through 2014, inclusive; and*
5. *All reports, memoranda, and other internal NPS communications regarding meadow management and/or stock management issues from 2004 through the date of this letter; and*
6. *The annual "Minutes and Background Information, Meadow Management Meeting," from 2009 through 2015, inclusive, and any/all minutes and other records from other meetings attended by SEKI staff where meadow management and/or stock management were discussed or addressed.*

7. All "records" created or maintained by NPS personnel and contractors who were responsible for creating the various alternatives in the WSP, including all records regarding the criteria they employed and how the criteria were weighed.
8. All records related to the examinations, monitoring, and/or evaluation of individual meadows, from 2009 to the date of this letter. These were on at least some occasions performed using standard forms, noting the condition of the meadow(s)—amount and type of growth, amount of bare ground, etc. These forms have had at least three different titles: Meadow Assessment Form; Meadow Capacity Assessment Form; and Meadow Monitoring Trip Report. (The first two may be the same thing, or may not be. The third one is a different category). We request all records related to the examination, monitoring, and/or evaluation of meadows and other areas grazed by domestic stock animals within SEKI (both wilderness and non-wilderness, including all living and non-living features, attributes, residents, occupants, and components of meadow and other forage areas) from 2009 through the present.
9. All records, including emails and other communications to, from, and between all those on the LIST OF PREPARERS AND CONSULTANTS that appears on pages 597, 598, and 599 of Volume 1 of the WSP/FEIS dated April 2015, that include, mentions, discuss, address, reference, or analyze topics or issues related to stock management, stock numbers, stock limits, meadow condition, meadow management, commercial stock services, trail suitability for stock use, campsite suitability for stock users, documented and potential environmental impacts of stock use, and all other topics related to stock and meadow management within SEKI.

In order to produce the documents requested, you agreed to the following search terms in your August 11, 2015 letter to Sequoia and Kings Canyon National Parks Superintendent Woody Smeck:

"the names of pack stations and pack station owners," "WSP," "Wilderness Stewardship Plan," "stock, meadow," "Backcountry Horsemen," "BCHC," "BCHA," "packer," "horse," "mule," "burro," "llama," "goat," "dunnage," "packstation," "pack station," "manure, forage, grazing, hay, pellets, biomass," "hoofprint," "cowbirds," "glyphosate," "WSP/EIS," "WSP/DEIS," "WSP/FEIS," "cheatgrass," "cheat grass," "velvetgrass," "velvet grass," "hola," "holcus lanatus," "e. coli," "escherichia coli," "campylobacter," "salmonella," and "giardia."

Sequoia and Kings Canyon National Parks staff searched for records responsive to your request, and your request has been forwarded to this office as policy requires when records must be withheld.

We have enclosed 692 pages of records responsive to item 4, which are being released to you in part. Portions of these materials are being withheld under FOIA Exemption 3 (five pages), FOIA Exemption 5 (174 pages), FOIA Exemption 6 (70 pages) and FOIA Exemption 7(F) (65 pages). See 5 U.S.C. §552(b)(1)-(9).

Exemption 3 allows the withholding of information protected by a nondisclosure provision in a federal statute other than the FOIA. See 5 U.S.C. §552(b)(3). Under 54 U.S.C. §100707, also known as section 207 of the National Parks Omnibus Act of 1998, information concerning the

nature and specific location of a National Park System resource which is endangered, threatened, rare, or commercially valuable, of mineral or paleontological objects within units of the National Park System, or of objects of cultural patrimony within units of the National Park System, may be withheld from the public in response to a FOIA request unless the Secretary of the Interior determines that (1) disclosure of the information would further the purposes of the unit of the National Park System in which the resource or object is located and would not create an unreasonable risk of harm, theft, or destruction of the resource or object, including individual organic or inorganic specimens; and (2) disclosure is consistent with other applicable laws protecting the resource or object. The information withheld under Exemption 3 pertains to the location of objects of cultural patrimony within the park; the release of which would not further the purposes of the park and would create a reasonable risk of harm, theft, or destruction of the resource. Therefore, it is withheld under Exemption 3.

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." See 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 recommendations and suggestions from employees to park managers regarding policy and park management strategies under Exemption 5 because it qualifies to be withheld under the deliberative process 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." See *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 decision maker 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." See *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 have a chilling effect on the agency's deliberative processes. Disclosure would expose the agency's decision-making process in such a way as to

discourage candid discussion within the agency, and thereby undermine the agency's ability to perform its mandated functions.

FOIA 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." See 5 U.S.C. §552(b)(6).

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. See *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982). To determine whether releasing records containing information about a particular individual would constitute a clearly 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. See *United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-75 (1989).

Under the FOIA, "the only relevant public interest" to consider under the exemption is "the extent to which the information sought would 'sh[e]d light on an agency's performance of its statutory duties' or otherwise let citizens 'know what their government is up to.'" See *United States Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495-96 (1994) (quoting *Reporters Comm.*, 489 U.S. at 775). The burden is on the requester to establish that disclosure would serve the public interest. See *National Archives and Records Admin. v. Favish*, 541 U.S. 157, 171-72 (2004). 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. See *Reporters Comm.*, 489 U.S. at 771.

The information withheld under FOIA Exemption 6 consists of names and photographs of individuals who are not NPS employees or volunteers, including park visitors and subjects of search and rescue and/or medical incidents. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. 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.

Exemption 7(F) protects law enforcement information if its release could reasonably be expected to endanger the life or physical safety of any individual. See 5 U.S.C. § 552(b)(7)(F). For the materials that have been withheld under 7(F), we have determined releasing them could reasonably be expected to endanger the life or physical safety of an individual because the information would reveal details concerning NPS communications coverage and capabilities within the park. This would compromise the safety of our employees, including NPS law enforcement personnel, and endanger the life or physical safety of individuals.

Deborah Bardwick, DOI Assistant Field Solicitor and Andrew S. Muñoz, NPS Pacific West Region FOIA Officer participated in this decision.

We use Multitrack Processing to process FOIA requests. Your request falls into the Exceptional/Voluminous processing track. The Exceptional/Voluminous track is for requests requiring more than sixty workdays for processing. Within each track, requests are usually processed on a first-in, first-out basis.

Because we will need to search for, collect, and examine a voluminous amount of separate and distinct records that are demanded in a single request, we are taking a 90 workday extension under 43 C.F.R. §2.19(b). As we complete our review of records, we will dispatch interim responses to you. We expect that we will dispatch a final determination to you on or before March 21, 2016.

You may appeal this response to the Department'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 30 workdays** from the date of this letter. Appeals arriving or delivered after 5:00 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 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 NPS response is in error. You must also include with your appeal copies of all correspondence between you and the NPS concerning your FOIA request, including your original FOIA request and the NPS response. Failure to include with your appeal all correspondence between you and the NPS will result in the Department'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.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240
Attn: FOIA/Privacy Act Appeals Office

Telephone: 202-208-5339
Fax: 202-208-6677
Email: FOIA.Appeals@sol.doi.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 (OGIS)
National Archives and Records Administration
8601 Adelphi Road - OGIA
College Park, MD 20740-6001

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

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

If you have any questions about the processing of your FOIA request, please contact Sequoia and Kings Canyon National Parks FOIA Officer Jason Watkins at 559-565-3107, jason_watkins@nps.gov, or National Park Service, Sequoia and Kings Canyon National Parks, 47050 Generals Highway, Three Rivers, California 93271-9651.

Sincerely,



Martha J. Lee
Acting Regional Director
Pacific West Region

cc: Trystan Stern, Chief, Commercial Services, NPS Pacific West Region
Woody Smeck, Superintendent, Sequoia and Kings Canyon National Parks
Jason Watkins, FOIA Officer, Sequoia and Kings Canyon National Parks