



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

IN REPLY REFER TO:  
7202.4-OS-2018-01173

August 2, 2018

Via email: [54009-08931871@requests.muckrock.com](mailto:54009-08931871@requests.muckrock.com)

Jimmy Tobias  
Muckrock  
DEPT MR 49538  
411A Highland Ave  
Somerville, MA 02144

Dear Mr. Tobias:

On May 17, 2018, you filed a Freedom of Information Act (FOIA) request seeking the following:

Any and all written or electronic correspondence, including attachments between DOI appointee Katherine MacGregor (or her executive assistant Michael Anderson) and any outside email address that contains the following: @bkstrategies.com

This request seeks documents produced between May 1, 2017, and the date this request is processed.

On May 18, 2018, we acknowledged your request and advised you of your fee status under the FOIA

Accordingly, we are writing today to respond to your request on behalf of the Office of the Secretary. Please find attached one file, consisting of 23 pages. Of those 23 pages, 20 pages are being released in their entirety, and three contain redactions as described below. This completes the Office of the Secretary's response.

**Portions of the enclosed documents have been redacted pursuant to Exemption 5 of the FOIA (5 U.S.C. § 552 (b)(5)) under the following privileges:**

**Confidential Commercial Information**

Mr. Jimmy Tobias

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). As such, the Exemption 5 “exempt[s] those documents... normally privileged in the civil discovery context.” National Labor Relations Bd. v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975). The exemption incorporates the privileges that protect materials from discovery in litigation. These privileges include deliberative process, confidential commercial information, attorney work-product, and attorney-client. See id.; see also Federal Open Market Committee v. Merrill, 443 U.S. 340, 363 (1979) (finding a confidential commercial information privilege under Exemption 5).

#### *Confidential Commercial Information Privilege*

When the government enters the marketplace as an ordinary commercial buyer or seller, the government information is protected from competitive disadvantage under Exemption 5. Government Land Bank v. General Services Administration, 671 F.2d 663, 665 (1<sup>st</sup> Cir. 1982). Exemption 5 prevails “where the document contains ‘sensitive information not otherwise available,’ and disclosure would significantly harm the government’s commercial interest.” Id. at 666; see also Merrill, 443 U.S. at 363.

Pursuant to the confidential commercial information privilege, conference call codes and passcodes have been withheld under Exemption 5. This information constitutes “intra-agency” documents because they are only shared with members of the Department of the Interior for the purpose of conducting official government business. Moreover, this information qualifies as “confidential commercial information” because the government entered the marketplace as an ordinary commercial buyer.

In line with Land Bank and Merrill, the information is “sensitive and not otherwise available.” If the information was released, the government’s financial interest would be significantly harmed. The conference calls would no longer be private since unknown, non-governmental parties would have the ability to listen in to the calls. The funds spent on purchasing the information would therefore be wasted, and the information would be of no use.

Because we reasonably foresee that the release of this information would significantly harm the government’s financial interest by publicizing sensitive information, the Office of the Secretary is withholding it in accordance with Exemption 5 of the FOIA.

Leisa Schwab, Attorney-Advisor, in the Office of the Solicitor, was consulted in reaching this decision. Clarice Julka, Office of the Secretary FOIA Officer, is responsible for making this decision

We do not bill requesters for FOIA processing fees when their fees are less than \$50.00, because the cost of collection would be greater than the fee collected. (see 43 C.F.R. § 2.37(g)). Therefore, there is no billable fee for the processing of this request.

#### **Appeals**

Mr. Jimmy Tobias

You may appeal this decision to the Department's FOIA/Privacy Act Appeals Officer. The FOIA Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this final letter responding to your FOIA request. Appeals arriving or delivered after 5 PM Eastern Time, Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

Attn: FOIA/Privacy Act Appeals Officer  
U.S. Department of the Interior  
Office of the Solicitor  
1849 C Street, N.W.  
MS6556 MIB  
Washington, D.C. 20240

Fax: 202-208-6677

E-mail: [FOIA.Appeals@sol.doi.gov](mailto:FOIA.Appeals@sol.doi.gov)

You must include with your appeal copies of all correspondence between you and the Office of the Secretary concerning your FOIA request, including a copy of your original FOIA request and the response letter. You must also include, in as much detail as possible, an explanation of why you believe the Office of the Secretary's response was in error. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Officer determines (in her sole discretion) that good cause exists to accept the defective appeal. All communications concerning your appeal, including envelopes, should be clearly marked with the words "FREEDOM OF INFORMATION APPEAL." The appeal should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the Department needs additional information or clarification. For more information on FOIA administrative appeals, including how the Department will respond to your appeal, please refer to Subpart H of the Department's FOIA regulations, 43 C.F.R. § 2.57-§ 2.64.

For your information, 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). This response is limited to records that are subject to the requirements of the 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:

Mr. Jimmy Tobias

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Fax: 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 Department's FOIA & Privacy Act Appeals Officer.

If you have any questions about our response to your request, you may contact Leah Fairman by phone at 202-513-0765, by fax at 202-219-2374, by email at [os\\_foia@ios.doi.gov](mailto:os_foia@ios.doi.gov), or by mail at U.S. Department of the Interior, 1849 C St, N.W., MS-7328, Washington, D.C. 20240.

Sincerely,

Clarice Julka  
Office of the Secretary  
FOIA Officer

Electronic enclosure