



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

IN REPLY REFER TO:  
7202.4-OS-2018-01317

April 17, 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 597 pages were reviewed, with 155 pages found to be responsive while, 442 pages were found to be non-responsive. Please find attached one file consisting of 155 pages.

In reviewing the released records, you will find that the government has made certain redactions pursuant to the deliberative process of FOIA Exemption 5, found at 5 U.S.C. § 552(b)(5).

## **Exemption 5**

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.

You will also find that in reviewing the released records the government made exemptions pursuant to Exemption 6 found at [5 U.S.C. § 552\(b\)\(6\)](#).

## **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." 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 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

Mr. Daniel Snyder and Mr. Timothy Bechtold

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 this individual 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.

Tonya Kirksey, Office of the Secretary, Government Information Specialist is responsible for this partial denial. Kasie Durkit, Attorney-Advisor in the Office of the Solicitor was consulted.

Additional records for Mr. Geist's request will arrive under separate cover.

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

Electronic Enclosures