



United States Department of the Interior

NATIONAL PARK SERVICE
PO Box 168
Yellowstone National Park
Wyoming 82190

IN REPLY REFER TO:

A7221/9.C.(YELL)

CERTIFIED

April 23, 2024

Mr. Darrell Geist
Buffalo Field Campaign
P.O. Box 957
West Yellowstone, Montana 59758
habitat@buffalofieldcampaign.org

Dear Mr. Geist:

This letter is Yellowstone National Park's response to your Freedom of Information Act (FOIA) Appeal assigned control number 2024-069 regarding your FOIA request dated and received December 7, 2023, in which you requested:

1. "Briefing Statements on Yellowstone bison from January 1, 2019-current.
2. Wallen et al. 2013 and Wallen et al. 2013 updated. These unpublished papers are referenced in Ch. 8, Yellowstone Bison: Conserving an American Icon in Modern Society (2015). Wallen, R.L., M. Gardipee, G. Luikart, and P.J. White, 2013. Population substructure in Yellowstone bison. Yellowstone National Park, Mammoth, Wyoming.
3. Papers, reports, studies, and surveys on Yellowstone bison genetics from January 1, 2019-current.
4. Records transmitted between Yellowstone National Park and the U.S. Fish & Wildlife Service on Yellowstone bison from January 1, 2018-current."

An interim response was sent to you on January 24, 2024, and a final response was sent January 29, 2024. Your request was assigned FOIA control number DOI-NPS-2024-000297.

It is the policy of the National Park Service (NPS) to: (1) make records of the NPS available to the public to the greatest extent possible in keeping with the spirit of the FOIA; (2) make documents requested under the FOIA available at the earliest possible date while, at the same time, protecting the rights of the individuals involved and the administrative processes surrounding such rights; and (3) withhold documents falling within one of the FOIA exemptions only if disclosure is prohibited by statute or Executive Order (EO). 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) (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 is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Your request is being processed under the provisions of the Freedom of Information Act (5 United States Code 552); United States Department of the Interior ("Department") implementing regulations found at 43 Code of Federal Regulations Part 2, Subparts A through E, beginning at 2.1; and the Privacy Act of 1974 (5 United States Code 552a). Please be advised that additional FOIA and/or Privacy Act guidance/regulations may also be found at either the Department's web site, www.doi.gov/foia, or the United States Department of Justice web site, www.usdoj.gov.

Exemption 5

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). 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 8 pages in part under Exemption 5 because they qualify to be withheld under the following privileges: 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. 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 have a chilling effect on the agency's deliberative processes; 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.

Exemption 6

Pursuant to the Privacy Act of 1974 (P.L. 93-579), certain items of personal information will have been redacted. Even though this personal information may be available to you through other sources, we are prohibited from providing it to you as a matter of United States Law.

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." 5 U.S.C. § 552(b)(6). We are withholding 6 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 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 personal information consisting of the names of individuals, home addresses, and other personally identifiable information, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. 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.

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.

Appealed Documents Reviewed for Segregability - Exemption (b)5 Deliberative Process Privilege

Three (3) documents totaling 179 pages are being released in their entirety:

1. July 3, 2023 – Memorandum from P.J. White to Tyler Abbott, Adam Zerrenner, Jim Boyd, Kevin Salgado, Subject: Information for the Species Status Assessment on Yellowstone Bison (26 pp.)
2. October 20, 2023 – Yellowstone National Park Bison Simulation Examples (14 pp.)

Yellowstone National Park further consulted with the U.S. Geological Survey (USGS) on this document and agreed to a discretionary release. USGS conducted a foreseeable harm analysis under the FOIA Improvement Act of 2016 and, after consulting with a subject matter expert, 1) does not reasonably foresee that disclosure of this information would harm an interest that the FOIA’s exemptions were designed to protect; and 2) disclosure would not be prohibited by law. Therefore, we are releasing this information in full. Please be aware that the decision to release this information does not mean that we have waived our ability to invoke applicable FOIA exemptions for similar or related information in the future. Please be advised these data are preliminary or provisional and are subject to revision. The data have not received final approval by the USGS and are provided on the condition that neither the USGS nor the U.S. Government shall be held liable for any damages resulting from the authorized or unauthorized use of the data.

3. November 3, 2023 – Draft Status of the Yellowstone Bison Population by P.J. White, Natural Resources Program Manager, Yellowstone National Park (retired), Report YCR-2023-03, Yellowstone Center for Resources (139 pp.)

Three (3) documents totaling 6 pages are being released with redactions made under Exemption (b)(5) as cited above:

1. February 19, 2020 – Briefing Statement, Applicability of Indian Treaty Hunting Rights (1 page)
Note: briefing material for Regional, Washington and Departmental staff, not intended for public distribution.
2. July 10, 2023 – Briefing Statement, Bison Conservation Transfer Program (2 pp.)
Note: briefing material for Regional, Washington and Departmental staff, not intended for public distribution.
3. November 30, 2023 – Briefing Statement, Bison Management FAQ (3 pp.)
Note: briefing material for Regional, Washington and Departmental staff, not intended for public distribution.

Three (3) documents totaling 26 pages are being released with redactions made under Exemptions (b)(5) and (b)(6) as cited above:

1. September 3, 2022 – Briefing Statement, New Bison Management Plan/EIS (2 pp.)
Note: briefing material for Regional, Washington and Departmental staff, not intended for public distribution.
2. February 1, 2023 – Briefing Statement, Bison Restoration and Management (2 pp.)
Note: this briefing statement was drafted as an update on the Draft EIS and was to be used internally for briefings up the chain of command to the Intermountain Region, Washington, and Department of Interior Offices. The addition of the names of the Congressional Delegation were for the information of the intended audience and does not indicate that this was a briefing for those Members of Congress, nor was it shared with any Members of Congress or intended for public distribution.
3. May 1, 2023 – Meeting Briefing Memo, Memorandum for the Secretary, Yellowstone Bison (22 pp.)
Note: briefing material for Regional, Washington and Departmental staff, not intended for public distribution.

One (1) document totaling 3 pages is being released with redactions made under Exemption (b)(6) as cited above:

1. April 27, 2022 – Briefing Statement, Bison Restoration and Management (3 pp.)

Documents Located in New Search

Fifteen (15) documents totaling 139 pages are being released in their entirety:

1. July 18, 2018 – email from Rick Wallen to Matthew Kauffman, Chris Geremia, Jerod Merkle, Subject: Fwd: Executed Task Agreement P18AC00951, \$33,000 (16 pp.)
2. December 21, 2018 – Notes from call between Jerod Merkle and Chris Geremia (2 pp.)
3. April 5, 2019 – Notes from call between Jerod Merkle and Chris Geremia (2 pp.)
4. July 8, 2019 – Notes from meeting for project update (1 page)
5. October 22, 2021 – email from Jerod Merkle to Chris Geremia, Subject: ids for genetics (4 pp.)
6. January 10, 2022 – email from Vanessa Simoneau to Chris Geremia, Subject: Fw: Annual Performance Report (3 pp.)
7. January 10, 2022 – email from Matthew Kauffman to Vanessa Simoneau, Chris Geremia,

- Subject: Re: Annual Performance Report (1 page)
8. February 11, 2022 – email from Jerod Merkle to Chris Geremia, Subject: sociality and genetics-summer 2022! (1 page)
 9. September 9, 2022 – email from Jerod Merkle to Chris Geremia, Subject: related individuals... (1 page)
 10. September 29, 2022 – Status Report on the Yellowstone Bison Population to the Superintendent (13 pp.)
 11. December 18, 2022 – email from Jerod Merkle to Chris Geremia, Subject: RE: reminder-genetics data (4 pp.)
 12. March 23, 2023 – email from Joleen Pantier to Chris Geremia, Subject: FW: 1004025 progress report due, P18AC00951 (6 pp.)
 13. June 9, 2023 – email from Jerod Merkle to Chris Geremia, Subject: FW: updated pdfs (31 pp.)
 14. June 9, 2023 – email from Jerod Merkle to Chris Geremia, Subject: FW: for our discussion tomorrow (53 pp.)
 15. No Date – Rocky Mountains Cooperative Ecosystem Studies Unit Project Summary, Identifying Structure of the Yellowstone Bison Population (1 page)

One (1) document totaling 77 pages is being released with redactions made under Exemption (b)(6) as cited above:

1. June 9, 2023 – email from Jerod Merkle to Chris Geremia, Subject: FW: figures from our visit (77 pp. pdf with 8 additional attachments in native format in folder)

A copy of Yellowstone National Park's response to FOIA DOI-NPS-2023-004709 from Andreia Marcuccio of Friends of Animals, which included documents regarding the Identifying Structure of the Yellowstone Bison Population research project, is also included with this response and is being released in its entirety.

The National Park Service consulted with Kathryn L. Williams-Shuck, Attorney, Office of the Solicitor, Rocky Mountain Region, United States Department of the Interior, Lakewood, Colorado, in connection with this FOIA response.

In accordance with Department regulations found at 43 C.F.R. 2.24(d), the following individuals are responsible for the partial denial of your request:

- Kate Hammond, Director, Regions 6, 7 & 8, National Park Service, Denver, Colorado
- Nicholas Banco, Freedom of Information Act Officer, National Park Service, Denver, Colorado

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 90 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 National Park Service's response is in error. You must also include with your appeal copies of all correspondence between you and

Yellowstone National Park concerning your FOIA request, including your original FOIA request and the Bureau's response. Failure to include with your appeal all correspondence between you and the Bureau 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, D.C. 20240
Attn: FOIA/Privacy Act Appeals Office
Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

As part of the 2007 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 non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
(OGIS) 8601 Adelphi Road
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 Department's FOIA and Privacy Act Appeals Officer.

Contact information for the Department's FOIA Public Liaison, who you may also seek dispute resolution services from, is available at <https://www.doi.gov/foia/foiacenters>.

This completes Yellowstone National Park's response to this request. If you have questions concerning this FOIA response, please contact me at (307) 344-2002.

Sincerely,

A handwritten signature in black ink that reads "Kerrie Evans". The signature is written in a cursive, flowing style.

Kerrie Evans
Freedom of Information Act Officer

Enclosures

cc:
Darrell R. Strayhorn, FOIA & Privacy Act Appeals Officer