



United States Department of the Interior

NATIONAL PARK SERVICE
12795 W. Alameda Parkway
P.O. Box 25287
Denver, Colorado 80225-0287

July 9, 2021

A7221 (2550)

Arthur Deal
5939 E. Cambridge Avenue
Scottsdale, AZ 85257

Dear Mr. Deal:

Reference: DOI-NPS-2021-003329

Subject: Response to Freedom of Information Act (FOIA) Request

This letter is in response to your Freedom of Information Act (FOIA) request dated March 25, 2021, in which you requested:

All correspondence and attachments and reports containing the word(s) "Papago Park" (any variation, upper or lower case) for the year 2020, to and from all staff within the the [sic] National park [sic] Service.

Upon further review, your request is granted in part and denied in part. We are providing you two file(s) totaling 374 pages of responsive records. However, portions of 17 pages are being withheld under Exemption 5, which 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\(b\)\(5\)](#); *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 this information because it qualifies 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." *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 decisionmaker 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." *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 chill the open and candid discussions necessary for an effective deliberative process.

Attorney-Client Privilege

The attorney-client privilege protects “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice” and is not limited to the context of litigation. *Mead Data Cent, Inc. v. United States Dep’t of the Air Force*, 566 F.2d 242, 252-53 (D.C. Cir. 1977). Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information. *See Elec. Privacy Info. Ctr. v. United States Dep’t of Homeland Sec.*, 384 F. Supp. 2d 100, 114-15 (D.D.C. 2005).

The information that has been withheld under the attorney-client privilege of Exemption 5 constitutes confidential communications between agency attorneys and agency clients, related to legal matters for which the client sought professional legal assistance and services. It also encompasses opinions given by attorneys to their clients based on client-supplied facts. Additionally, the National Park Service employees who communicated with the attorneys regarding this information were clients of the attorneys at the time the information was generated and the attorneys were acting in their capacities as lawyers at the time they communicated legal advice. Finally, the National Park Service has held this information confidential and has not waived the attorney-client privilege.

Commercial Information Privilege

The conference call numbers and online meeting links being withheld constitute “intra-agency” documents because they are only shared with members of the Department or their consultants for the purpose of conducting official government business, including holding discussions that are deliberative and pre-decisional. In addition to qualifying as “intra-agency” documents, it has been determined that the conference call numbers qualify as “confidential commercial information”, which also protectable by Exemption 5.

In this case, the government entered the marketplace as an ordinary commercial buyer of private conference call numbers and pass codes. If the conference call numbers and/or pass codes were 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.

Accordingly, the funds spent on purchasing the call-in numbers and pass codes would therefore have been wasted and the conference call numbers and pass codes would be of no use. Because the release of the conference call numbers would significantly harm both the government’s financial interest and the deliberative process, the National Park Service is withholding the conference call numbers in accordance with Exemption 5 of the FOIA.

Pursuant to regulation, 43 CFR 2.24(b) the following person is responsible for this denial:

Charis Wilson
NPS FOIA Officer

Additionally the following attorney was consulted during the preparation of this response:

Michael C. Williams, Attorney-Advisor, Office of the Solicitor
U.S. Department of the Interior, Lakewood, CO

You have the right to appeal this denial of your request. You may file an appeal by writing to:

Freedom of Information Act Appeals Officer
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, NW
MS-6556-MIB,
Washington, D.C. 20240
foia.appeals@sol.doi.gov

Your appeal must be received no later than 30 workdays after the date of this final response. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and copies of all correspondence between yourself and the National Park Service related to this request, along with any information you have which leads you to believe the records are available, including where they might be found, if the location is known to you. Please note, appeals received after 5 p.m. EST will be considered to have been received as of the following day.

Also as part of the 2007 OPEN Government Act 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 nonexclusive 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
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

Additionally, because the National Park Service creates and maintains law enforcement records, we are required by the Department of Justice to provide the following information, even though it may or may not apply to your specific request. 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 we are required to give all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Please do not hesitate to contact me with any further questions or concerns I can also be reached via e-mail at npsfoia@nps.gov. Information for the Department of the Interior's FOIA Liaison can be found here: <https://www.doi.gov/foia/foiacenters>.

Sincerely,

Charis Wilson
NPS FOIA Officer