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Via Electronic Filing

FOIA/Privacy Act Appeals Office
U.S. Department of the Interior
Office of the Solicitor
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Washington, DC 20240
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Re: Administrative Appeal of the U.S. Department of Interior's Final Response to Freedom of Information Act Request No. DOI-2025-000638.

FOIA Appeals Officer,

The Albany County Conservancy (Conservancy) hereby appeals the U.S. Department of Interior's (Department's) response to the Conservancy's Freedom of Information Act (FOIA or the Act) request, which was assigned "DOI-2025-000638" as its Department tracking number (Request). This appeal is made pursuant to FOIA, 5 U.S.C. § 552(a)(6), and the Department of Interior's (Department's) regulations implementing FOIA, 43 C.F.R. §§ 2.57-2.64.

As explained in greater detail below, the Department's Response cannot pass muster under FOIA or the agency's regulations implementing the same. The Response fails to disclose nonexempt, responsive information that the Conservancy knows to be in the Department's possession and/or control—without any of the explanation necessary to validate administrative action in any context, let alone under FOIA, where the agency bears the burden of proof in any subsequent litigation. The Department's failure to disclose the requested information—regarding the number of eagle fatalities and injuries that have occurred at three different renewable energy projects in Carbon County, Wyoming—further shrouds the Department's administration of wind-energy permits in secrecy. The Department's position, which seems to hold that the vast majority of data about eagle mortality is exempt from disclosure under FOIA as confidential, commercial information, would eviscerate most public oversight of the Department's administration of the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. §§ 668–668d, including how the Department (and its sub-agency U.S. Fish and Wildlife Service) decides which energy project deserves to receive a permit under BGEPA and how it determines the appropriate level of mitigation necessary to offset those losses.

For these reasons, and those outlined below, the Department should reconsider its Response, including its blanket invocation of FOIA Exemption 4, and promptly release to the Conservancy all nonexempt information responsive to its Request as required by FOIA. Although the Conservancy remains optimistic that the deficiencies underlying the Department's final Response can be corrected without judicial intervention, the requested information remains

imperative to the Conservancy and its core organizational mission. Thus, to the extent the Department refuses to correct these errors, the Conservancy will be forced to explore all available options for obtaining the Department's compliance with federal law—up to and including litigation in federal district court.

BACKGROUND

On October 11, 2024, pursuant to FOIA, the Conservancy properly filed its Request, seeking information concerning reports of dead and/or injured Golden eagles within Carbon County, Wyoming since 2007. Specifically, the Request sought:

- (1) Any and all records reporting the death or injury of any Golden eagles since 2007 within two miles of the:
 - (a) Seven Mile Hill I and II Wind Energy Projects, Carbon County, Wyoming;
 - (b) Ekola Flats Wind Project, Carbon County, Wyoming; and
 - (c) Dunlap Wind Energy Project, Carbon County, Wyoming;
- (2) Any and all annual monitoring reports documenting the death or injury of Golden eagles by the projects specified in categories (a)-(c) above since 2007.
- (3) Any and all written correspondence, emails, consultant reports, telephone call summaries, or other communications between any party and the Service concerning the Golden eagle deaths and/or injuries described in category (1) above.

See Ex. A (Request).

The Request explained that the government's collection of the requested information is a necessary condition of the incidental take permits (ITPs) issued by the Department pursuant to BGEPA. *See id.* at 2 n.2. Importantly, the Conservancy's Request also explained that the collection of the requested information is a duty which originates from *the Department*, not the permit holder or its commercial interests. *Id.* There can be no serious dispute, for instance, that industrial wind-turbine operators would *not* collect data about how many eagles its operations killed or injured absent a regulatory mandate to do so.

The Department officially acknowledged the Conservancy's FOIA Request via letter dated October 16, 2024. There, the Department explained that it considered the Request "Complex" and noted that it would proceed to process it as such. *See* Ex. B at 2.

Approximately five months later, on March 17, 2025, the Department issued its final Response. *See* Ex. C (Response). Without actually specifying the total number of records, or even pages, responsive to the Conservancy's Request within its possession or control, the Department explained in its final Response that it had decided to release 256 pages of responsive information while also withholding another 910 pages—in their entirety—under a blanket assertion of FOIA Exemption 4. *See id.* That specific exemption, Exemption 4, applies narrowly to "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4).

Although the Department’s first and only production of responsive documents includes *some* very limited data that respond to the Conservancy’s Request, there are many notable omissions. For example, despite the Conservancy specifically requesting data concerning eagle mortality at the Ekola Flats Wind Project, the Department did not disclose *any* data from that site. Further, the Department’s Response contains zero information responsive to the Conservancy’s specific request for “all written correspondence, emails, consultant reports, telephone call summaries, or other communications between any party and the Service concerning the Golden eagle deaths and/or injuries” at the Wind Project sites identified above (i.e., at either the Seven Mile Hill I and II, Ekola Flats, or Dunlap Wind Energy Projects in Carbon County, Wyoming).

Even the mortality data the Department *did* disclose is, at best, only incomplete. For instance, although the Conservancy’s Request specifically seeks mortality/injury data dating back to 2007, the Department’s Response only disclosed responsive data at the Dunlap Wind Project for the 2024 calendar year. Likewise, the most recent data disclosed for the Seven Mile Hill sites stops in 2020, which is suspect given that the Conservancy’s request sought records in the Department’s “possession or control as of the date that it commence[d] its search in response to [the Request],” Ex. A at 1, and that the Seven Mile Hill operators must report “any bald or golden eagle found dead or injured . . . to the Migratory Bird Permit Office within 24 hours of discovery.” *See* U.S. Fish & Wildlife Serv., Environmental Assessment for the Issuance of an Eagle Take Permit for Seven Mile Hill I and II Wind Energy Projects at 9 (2021), <https://bit.ly/46YdMKE>; *see also id.* (requiring annual mortality reports to be prepared be prepared “within three months of completing each year of post-construction monitoring”); 50 C.F.R. § 22.215(a)(4) (requiring permitholders to “annually report incidental take,” “nest take,” and “disturbance take” under both general and specific BGEPA permits).

Notably, the Department’s final Response does *not* indicate that any of the omitted records either do not exist or are somehow beyond the Department’s control. *See* Ex. C (Response). Nor does the Department’s Response deny any part of the Conservancy’s Request on those grounds. *See id.*

Even setting aside the facial deficiencies in the Department’s final Response, the adequacy of that Response is made even more suspect by the fact that the Conservancy has first-hand knowledge of nonexempt, responsive information within the Department’s possession and control which was *not* disclosed in response to its Request. In both drafting their Request and reviewing the Department’s subsequent Response, the Conservancy has been working closely with Mr. J. Michael Lockhart, a 28-year resident of Albany County, Wyoming, and professionally trained wildlife biologist. Mr. Lockhart spent a 33-year career with the U.S. Fish and Wildlife Service—an agency within the Department—where he specialized in eagle tracking and mortality in the American West.

Since 2014, Mr. Lockhart has been trapping and satellite tagging golden eagles for three separate research projects in Wyoming, including for the U.S. Fish and Wildlife Service. Mr. Lockhart has personal knowledge of multiple reports of eagle mortality that were submitted to and accepted by the U.S. Fish and Wildlife Service, i.e., that fall within the ambit of the Request,

but that were omitted from the Department's first and only disclosure of responsive documents.¹ The omission of those reports—which do not fall under any of FOIA's narrow exemptions—casts serious doubts on both the credibility of the Department's Response and the adequacy of its disclosures. By refusing to even identify, let alone disclose, obviously responsive but nonexempt records the Conservancy knows to be in the Department's possession and/or control, the Department leaves open serious questions about the integrity of its administration of BGEPA, what the Department is ultimately hiding, and why.²

DISCUSSION

“The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (citations omitted). Thus, FOIA was enacted to “permit access to official information long shielded unnecessarily from public view” by creating a “right to secure such information from possibly unwilling official hands.” *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation omitted).

To realize the policy objectives animating FOIA, the Act requires every federal agency to produce “promptly” any requested records in its possession, unless those records are specifically exempted under one or more of the nine narrow exemptions enumerated in the statute. 5 U.S.C. §§ 552(a)(3), 552(b). The Supreme Court has, however, repeatedly emphasized that those statutory exemptions “must be narrowly construed” because “disclosure, not secrecy, is the dominant objective of the Act.” *Rose*, 425 U.S. at 361; *see also John Doe*, 493 U.S. at 152 (same).

For this reason, agencies responding to a FOIA request have “a duty to construe [that] request *liberally*.” *Inst. for Justice v. Internal Revenue Serv.*, 941 F.3d 567, 572 (D.C. Cir. 2019) (quoting *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (emphasis added)). In practice, this means if there is any uncertainty about which records may be responsive, agencies should err on the side of being over- rather than underinclusive. *See Shapiro v. U.S. Dep't of Justice*, 239 F. Supp. 3d 100, 119 n.7 (D.D.C. 2017) (noting that a “core notion” of FOIA “encourages the release of more, rather than less, information”).

FOIA's mandate for disclosure dovetails with the scope of the search required by the Act. Agencies responding to FOIA request “must show that it made a good faith effort to conduct a

¹ To the extent litigation in federal court becomes necessary to obtain the Department's compliance with FOIA, Mr. Lockhart is prepared to submit a sworn affidavit attesting to his knowledge of the Department's possession and/or control of nonexempt, responsive information.

² The Department's failure to disclose the information requested by the Conservancy stands in stark contrast to the new Administration's purported focus on improving the transparency and oversight of federal agencies. If anything, the Department's Response suggests that the Trump Administration is merely interested in protecting the status quo of bureaucratic secrecy and instead resisting any oversight of administrative agencies by the electorate.

search for the requested records, using methods which can be reasonably expected to produce the information requested.” *Oglesby v. U.S. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). That is, an agency must undertake a search for responsive records that is “reasonably calculated to uncover *all* relevant documents.” *Id.* (emphasis added); *see also id.* (“A reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched, is necessary to afford a FOIA requester an opportunity to challenge the adequacy of the search and to allow the district court to determine if the search was adequate . . .”).

Where an agency has determined that disclosure would implicate one of FOIA’s nine statutory exemptions, the agency may withhold the information “only if . . . the agency reasonably foresees that disclosure would harm an interest protected by an exemption” described in the statute. 5 U.S.C. § 552(a)(8). Furthermore, an agency must “consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible,” and must “take reasonable steps necessary to segregate and release nonexempt information[.]” *Id.* “[B]ecause FOIA requesters face an information asymmetry given that the agency possesses the requested information and decides whether it should be withheld or disclosed,” the agency ultimately bears the burden of justifying its decision to withhold responsive information under FOIA’s exemptions. *COMPTTEL v. F.C.C.*, 910 F. Supp. 2d 100, 111 (D.D.C. 2012) (citing *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 145–46 (D.C. Cir. 2006)).

With respect to exemptions applied by the Department, the agency’s regulations implementing FOIA require it to specifically identify “any FOIA exemption applied by [DOI] to withhold records in full or in part, along with a statement that [DOI] reasonably foresees that disclosure would harm an interest protected by the applied exemption(s) or disclosure is prohibited by law.” 43 C.F.R. § 2.24(b)(3); *see also* 5 U.S.C. § 552(a)(8) (providing that an agency may withhold information under one of FOIA enumerated exemptions “only if” it “reasonably foresees that disclosure would harm an interest protected by [that] exemption”).

A. The Department’s Search for Responsive Records Was Woefully Inadequate

Each federal agency “shall make [responsive] records promptly available to any person” who submits a “request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed” 5 U.S.C. § 552(a)(3)(A). The statute further provides that “an agency shall make reasonable efforts to search for the records” responsive to a proper FOIA request. *Id.* § 552(a)(3)(C). Accordingly, the courts evaluate the adequacy of an agency’s search under a “reasonableness” test. *Campbell v. Dep’t of Justice*, 164 F.3d 20, 27 (D.C. Cir. 1998). Under this test, an agency is required to make “a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested,” and it “cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Oglesby*, 920 F.2d at 68.

As explained, the Department’s final Response at issue here ultimately disclosed only 256 pages of information in response to a Request covering almost two decades of annual

reporting data. Although the Department's Response does not contain any information which could be used to gauge the adequacy of its search (e.g., search terms used, offices searched), the Conservancy is aware of nonexempt information responsive to its Request within the Department's possession and/or control which the Response neither identified nor disclosed, as described above. *See supra* at 3-4 (discussing Mr. Lockhart's involvement). Insofar as the Department's failure to disclose this information (or any of the untold amounts of additional responsive information in its possession) can be attributed to the adequacy of the Department's search, the Conservancy formally objects to and hereby appeals both the scope and depth of the Department's search for responsive records.

B. The Department's Reliance on Exemption 4 to Withhold Information Responsive to the Request Violates FOIA In Myriad Ways

Where, as here, a federal agency responding to a FOIA request decides to withhold responsive information under one of the Act's narrowly drawn exemptions, it must find that: (1) the responsive information falls under the plain terms of FOIA describing one of its nine exemptions, 5 U.S.C. § 552(b)(1)-(9); *and* (2) notwithstanding the facial applicability of any of those nine exemptions, that disclosing the responsive information would harm the interest protected by that exemption, *id.* § 552(a)(8) ("An agency shall withhold information under this section only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b) . . ."). In other words, the plain language of FOIA requires the Department to make findings about whether responsive information can be legally considered "trade secrets and commercial or financial information obtained from a person and privileged or confidential," *and* that disclosing it would result in reasonably foreseeable harm to the commercial or financial interests of the third-party (i.e., "person") asserting such exemption.

In its Response, as explained, the Department invoked only one exemption, Exemption 4, to withhold at least 910 pages of responsive information. While the Department's Response includes a boilerplate assertion of reasonably foreseeable harm as a result of disclosure, Ex. C at 1-2, it is entirely devoid of any substantiating explanation, which would be necessary to survive judicial review. *See Seife v. U.S. Food & Drug Admin.*, 43 F.4th 231, 241-42 (2d Cir. 2022) (holding that "[a]n agency in a FOIA case" under Exemption 4 must satisfy "the foreseeable harm requirement of the [Act] by showing foreseeable commercial or financial harm to the submitter upon release of the contested information" (emphasis added)); *see also Mead Data Central, Inc. v. U.S. Dept. of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977) ("[A]gencies must be required to provide the reasons behind their conclusions in order that they may be challenged by FOIA plaintiffs and reviewed by the courts."); *Ctr. for Investigative Reporting v. Customs and Border Prot.*, 436 F. Supp. 3d 90, 113 (D.D.C. 2019) (holding that the interests protected by Exemption 4 are "the submitter's economic or business interests").

Because the Department merely issued a self-serving statement asserting the existence of foreseeable harm to the submitter, the Response contains no additional information to verify that assertion. Insofar as litigation to obtain the Department's compliance with FOIA becomes necessary, the Conservancy reserves its right to challenge the Department's conclusion regarding its "independent burden" to verify that disclosure will result in foreseeable commercial or financial harm to the submitters of the requested information under 5 U.S.C. § 552(a)(8).

1. Eagle Mortality/Injury Data Is Not Commercial and the Department's Assertion to the Contrary Cannot Survive Judicial Scrutiny

Without any description of the withheld records or explanation as to its conclusion, the Department's final Response alleges that the 910 pages of responsive information withheld under Exemption 4 "is commercial or financial information." The Department is wrong.

In interpreting this same provision of FOIA, the D.C. Circuit has explained that "the government may not rely on Exemption 4 where the withheld information only tenuously or indirectly concerns the exchange of goods or services or the making of a profit." *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep't of Justice*, 58 F.4th 1255, 1265 (D.C. Cir. 2023) (citing *Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 38-39 (D.C. Cir. 2002); *Wash. Rsch. Project v. Dep't of Health, Educ. & Welfare*, 504 F.2d 238, 244-45 (D.C. Cir. 1974); *Getman v. Nat. Labor Relations Bd.*, 450 F.2d 670, 673 (D.C. Cir. 1971)). Instead, "information is 'commercial' under this exemption if, 'in and of itself,' it serves a 'commercial function' or is of a 'commercial nature.'" *Norton*, 309 F.3d at 38 (quoting *Am. Airlines, Inc. v. Nat'l Mediation Bd.*, 588 F.2d 863, 870 (2d Cir. 1978)). In fact, when it applied that standard to information closely analogous to the eagle mortality/injury data sought by the Conservancy here, the D.C. Circuit has declined to find "that owl-sighting information qualifies as 'commercial or financial' information" under Exemption 4. *See id.*

The Department's (unsupported and unexplained) claim that "[t]he withheld information is commercial or financial information," Ex. C at 2, is also concerning in what it portends for public oversight of the agency's administration of BGEPA (and other federal wildlife laws). Although the Department's Response overlooks the point entirely, it is important to remember that the duty to collect the information requested by the Conservancy originates not from the commercial interests of the submitter, but instead *from the government* and more specifically, the Department's congressionally mandated administration of BGEPA. *See* Ex. A (Request) at 2 n.2; *see also* Eagle Take Permit for Seven Mile Hill, *infra*, at 9 (alleging that "data" of the kind sought by the Conservancy's Request is "used to verify that take limits are not being exceeded, to update take estimates, and to evaluate the overall eagle mortality as related to meeting the objectives of Adaptive Management"); *see also id.* (explaining that "Adaptive Management," in this context, refers to a "plan to monitor for impacts and avoid, minimize, and mitigate impacts to eagles and other avian species based on the Project specifics and data available," including "the implementation of additional conservation measures as needed and applies before actual take exceeds the permitted take levels"). A system wherein the administration of federally protected wildlife resources is exempt from public scrutiny is a recipe for the kind of corruption that FOIA itself is meant to combat. *E.g., John Doe Agency*, 493 U.S. at 152.

It also stretches the boundaries of credulity to believe that Congress' decision exempting a circumscribed amount of take of Bald and Golden eagles from BGEPA's default, strict prohibition against taking and/or harming any individual of the species is tantamount to the commodification or commercialization of a cherished resource that includes this country's national symbol, and which the Department is supposed to manage in trust for the benefit of all Americans. Nevertheless, that is the core, or logical extension, of the Department's position here.

But, if that were true, the takeaway of the Department’s position—i.e., that data about how many eagles have been taken and/or disturbed in violation of BGEPA is actually confidential commercial information beyond public scrutiny—means the Department will have amassed yet more discretion, subject to zero public oversight, in its administration of BGEPA.

Notably, the Department’s newly minted position that data revealing the level of eagle take “caused by” specific “industrial wind turbine power-generating facilities” now qualifies as “commercial information” under Exemption 4 represents a shift in the Department’s position, which promotes more administrative secrecy than that exhibited by the George W. Bush Administration in similar circumstances. *See, e.g., Friends of Blackwater v. U.S. Dep’t of Interior*, 391 F. Supp. 2d 115, 118 (D.D.C. 2005) (explaining that in response to a request for “all documents relating to bird and bat mortality and injury caused by industrial wind turbine power-generating facilities,” including the Department’s “enforcement of related environmental laws,” like “BGEPA,” the agency did *not* claim that responsive documents were either commercial or confidential).

To the extent the Department continues to insist that—contrary to common sense and prior Department policy—the requested information is now considered commercial or financial information, it must explain that position in a manner sufficient to carry the burden FOIA places on the government here. *See COMPTTEL*, 910 F. Supp. 2d at 111 (citation omitted); *see also Judicial Watch, Inc.*, 449 F.3d at 145-46 (FOIA “places the burden ‘on the agency to sustain its action.’” (quoting 5 U.S.C. § 552(a)(4)(B)); *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 861 (D.C. Cir. 1980) (“[T]he burden is on [the agency] to establish [its] right to withhold information from the public.”). Basic principles of administrative law dictate that an agency’s duty to explain its decision is particularly acute in circumstances like this, where an agency’s position represents a change in position. *See, e.g., Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016). While “[a]gencies are free to change their existing policies,” they must “provide a reasoned explanation for the change,” including, at minimum, a “display [of] awareness” by the agency “that it is changing position” and a “show[ing] that there are good reasons for the new policy.” *Id.* (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

2. *The Department’s Response Flunks the Controlling Test for Confidentiality Under Exemption 4*

Although Exemption 4 permits agencies to withhold from mandatory disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential,” 5 U.S.C. § 552(b)(4), it does not define the term “confidential.” Nevertheless, in *Food Marketing Institute v. Argus Leader Media*, the Supreme Court clarified that the appropriate test governing whether records contain “confidential” information exempt from disclosure under 5 U.S.C. § 552(b)(4) is: (1) whether the responsive information is “customarily kept private, or at least closely held,” by the submitter; and (2) whether the government has provided “some assurance” that the responsive information will not be disclosed. *See* 588 U.S.

427, 434 (2019).³ The Court’s holding in *Argus Leader*, however, “makes clear” that in response to a challenge, a reviewing “court must examine whether the information [at issue] actually is kept and treated as confidential, not whether the submitter considers it to be so.” *Pub. Citizen Found. v. U.S. Dep’t of Labor*, No. 1:18-cv-00117, 2020 WL 9439355 at *9 (D.D.C. June 23, 2020).

Decisions by federal district courts in the wake of *Argus Leader* have also clarified that “only information originating from the [submitting] companies themselves can be considered information that they customarily and actually treated as private during their ordinary course of business,” meaning “that government assessments and evaluations cannot be considered ‘confidential’ information for purposes of Exemption 4.” *Am. Small Bus. League v. U.S. Dep’t of Def.*, 411 F. Supp. 3d 824, 830 (N.D. Cal. Nov. 24, 2019) (emphasis in original). “This includes, for example, the government’s evaluations of a [submitter]’s compliance with regulatory requirements, ratings, assessments of a contractor report’s accuracy, and recommendations” *Id.*

The Department’s final Response flunks the test for “confidentiality” in multiple ways. **First**, as explained above, the duty to collect and report the information responsive to the Conservancy’s Request originates from the government in the first instance. The obvious tension between that fact and the Department’s position that such information is “confidential” and, therefore, beyond public scrutiny under FOIA, imposes on the Department a burden to demonstrate the reasoning supporting its decision to withhold more than 78% of the information responsive to the Conservancy’s request. *See id.* (holding that information originating from the government is subject to FOIA’s mandatory disclosure provisions and cannot qualify as “confidential” under Exemption 4).

Second, the Department’s final Response fails to indicate whether it provided “some assurance” to the submitters that it will not disclose the requested information. *Cf. Argus Leader*, 588 U.S. at 434; *see also* Ex C. (Response). If anything, the Department’s regulations implementing FOIA, which recommend that submitters of allegedly confidential information “provide a detailed written statement to the [Department] that specifies all grounds for withholding the particular information under any FOIA exemption,” 43 C.F.R. § 2.30(a), and the Department’s failure to include any such grounds in its Response, *see* Ex. C, strongly suggests that the Department has neither received nor supplied any assurances to submitters of eagle mortality data concerning the confidentiality of that data. *See* U.S. Fish & Wildlife Serv., Migratory Bird Permit Office, Form 3-202-15, Eagle Incidental Take (50 C.F.R. 22.80) – Annual Report (2022) (recommending that submitters “identify any information that should be considered privileged and confidential business information to allow the Service to meet its responsibilities under FOIA” but omitting any assurance that information so designated will be treated as such).

³ Although the Court noted that “[a]t least the first condition has to be” met for information to be considered “confidential” within the meaning of Exemption 4, it left open the question of whether the second condition (i.e., the assurance of confidential treatment by the government) must also be satisfied. *See Argus Leader*, 588 U.S. at 434.

Third, the inconsistency of the Department's *own* treatment of comparable data seriously undermines any claim by the agency that the requested information is "customarily kept private" as required to qualify for Exemption 4. *See Argus Leader*, 588 U.S. at 434. As explained above, in response to prior requests seeking analogous data, the Department has declined to treat such information as either commercial or confidential.

Fourth, to the extent information withheld by the Department was in fact generated by the Department (e.g., internal agency assessments of and/or communications about eagle mortality at any one of the sites identified by the Request), the Department's assertion of Exemption 4 is overly broad and violates FOIA. *E.g., Am. Small Bus. League*, 411 F. Supp. 3d at 830.

Fifth, to satisfy its burden under FOIA, the Department may not rely solely on the representations of submitters concerning the supposed confidentiality of responsive information. That is, the Department bears a duty to independently verify the submitter's assertion of confidentiality and the purported harm to that interest that would be caused by disclosure. *See Citizens for Responsibility & Ethics in Wash. v. Gen. Servs. Admin.*, No. 18-cv-02071, 2021 WL 1177797 at *8 (D.D.C. Mar. 29, 2021) (quoting *Ctr. for Pub. Integrity v. Dept of Def.*, 486 F. Supp. 3d 317, 335-36 (D.D.C. 2020)).

Although the Department's regulations implementing FOIA do not require submitters of allegedly confidential information "to designate confidential information in good faith"—i.e., "to identify specific information as information the submitter considers protected from disclosure under Exemption 4 of the FOIA"—when it submits that information, the same standard cannot be used to satisfy the Department's burden in litigation. Because "[t]he declarations 'of responsible officials'" offered in support of a withholding under FOIA "must be 'relatively detailed, nonconclusory, and submitted in good faith,'" *Jimenez v. Dep't of Homeland Sec.*, 119 F.4th 892, 900 (11th Cir. 2024), the Department's regulations acknowledging that the submitter's assertion of confidentiality need not be based on a good faith assertion of privilege, further undermines the Department's ability to rely on the assertion of confidentiality made solely by a self-interested, regulated entity.

For all these reasons, the Conservancy urges the Department to reconsider its application of Exemption 4 to the responsive information withheld by the Department's Response. In reconsidering its application of Exemption 4, the Department should bear in mind FOIA's obvious preference for disclosure, which counsels in favor of construing FOIA's nine exemptions "narrowly" because "disclosure, not secrecy, is the dominant objective of the Act." *Rose*, 425 U.S. at 361.

C. The Department Has Made No Effort to Disclose Reasonably Segregable Nonexempt Information

Where an agency finds that a record responsive to a FOIA request is barred from mandatory disclosure by one the statute's nine narrow exemptions, the agency must "consider whether partial disclosure of information is possible whenever the agency determines that a full

disclosure of a requested record is not possible.” 5 U.S.C. § 552(a)(8). In doing so, FOIA requires the agency “take reasonable steps necessary to segregate and release nonexempt information[.]” *Id.* Thus, “[e]ven when an exemption applies, the agency is obligated to disclose ‘[a]ny reasonably segregable portion of a record’ after removing the exempt material and must note the ‘amount of information deleted, and the exemption under which the deletion is made.’” *Bartko v. U.S. Dep’t of Justice*, 898 F.3d 51, 62 (D.C. Cir. 2018) (quoting 5 U.S.C. § 552(b)).

The principles of segregability are predicated upon the understanding that FOIA focuses on “information, not documents,” meaning “an agency cannot justify withholding an entire document simply by showing that it contains some exempt material.” *Mead Data*, 566 F.2d at 260. As a result, “for an agency to meet its segregability burden of proof, it must provide not only a detailed Vaughn index, but also an affidavit affirming that the agency performed a ‘line-by-line segregability review.’” *Climate Investigations Ctr. v. U.S. Dep’t of Energy*, No. 16-cv-00124, 2019 WL 6683751, at *3 (D.D.C. Dec. 6, 2019) (quoting *Rosenberg v. U.S. Dep’t of Def.*, 342 F. Supp. 3d 62, 96 (D.D.C. 2018)).

Assuming the entire universe of responsive information within the Department’s possession and/or control comprises a mere 1,166 pages (the 256 pages disclosed plus the 910 pages withheld)—an assumption the Conservancy vigorously disputes as demonstrably false—the Department will have chosen to withhold a little more than 78% of the information responsive to the Conservancy’s Request under a vague assertion of Exemption 4. *See* Ex. C (Response). However, the Department has not provided any assurance that *any* segregability review has been conducted by the agency, let alone the detailed, “line-by-line segregability review” necessary to carry the Department’s burden under FOIA. *Rosenberg*, 342 F. Supp. 3d at 96.

For all these reasons, the Department must carefully revisit the information withheld and must disclose any reasonably segregable, non-exempt information contained therein. In the interest of efficiency, the Department’s resolution of this appeal should also describe the segregability review conducted in a manner sufficient to carry its burden of proof under FOIA.

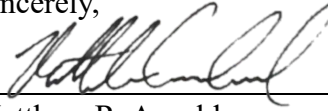
CONCLUSION

The Department’s final response to the Request is woefully inadequate under FOIA for multiple reasons. Rather than a sea change in favor heightened federal transparency, the Trump Administration’s Response instead evinces a clear preference for maintaining a status quo that hides the true cost of wind energy in southern Wyoming and gives a free pass to energy companies to kill the very symbol of America. The Department’s playbook is familiar, broadly invoking one of FOIA’s statutory exemptions without the explanation necessary to vindicate the government’s secrecy. Fortunately, the Department’s irrational withholdings cannot survive scrutiny under FOIA for the reasons described above. To discharge its duties under FOIA, the Department must renew its search for additional responsive documents, and disclose its findings promptly.

FREEDOM OF INFORMATION APPEAL (43 C.F.R. § 2.59(e))

The Conservancy appreciates your immediate attention to this matter. In accordance with the Department's regulations governing FOIA appeals, 43 C.F.R. § 2.62, the Conservancy anticipates receiving a response to this appeal within 20 working days (i.e., no later than June 5, 2025). Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Matthew R. Arnold
EUBANKS & ASSOCIATES PLLC
1629 K Street NW, Suite 300
Washington, DC 20006
matt@eubankslegal.com
Ph: (843) 718-4513

CC (via Email):

David Tischer, FOIA Coordinator
U.S. Fish & Wildlife Service
Albuquerque Regional Office
david_tischer@fws.gov

Ranita D. Jackson, FOIA Officer
U.S. Fish & Wildlife Service
fwhq_foia@fws.gov

Anna Muñoz, Deputy Regional Director
Mountain-Prairie Region
U.S. Fish & Wildlife Service
anna_munoz@fws.gov

October 11, 2024

Via Email

Ranita D. Jackson, FOIA Officer
U.S. Fish & Wildlife Service
fwhq_foia@fws.gov

Re: Request Pursuant to the Freedom of Information Act for Records Related to the Take of Eagles Near Certain Wind Energy Infrastructure

Ms. Jackson,

On behalf of our client, the Albany County Conservancy (“Conservancy”) and pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, we are writing to request from the U.S. Fish and Wildlife Service (“Service”) all records documenting the take of Golden Eagles by certain wind energy projects in Wyoming, as specified below. The Conservancy is a non-profit organization headquartered in Laramie, Wyoming. It works to protect and preserve the significant wildlife and cultural values found within the native habitats found in and around Albany County, through community outreach and education efforts, as well as direct advocacy. The Conservancy appreciates and encourages sustainable energy generation, and is committed to ensuring that such projects exist in harmony with the natural environment by encouraging thorough pre-construction studies, proper project siting, and robust post-construction/operational monitoring.

REQUESTED RECORDS

The Conservancy requests from the Service¹ electronic copies of the following records in the Service’s possession or control as of the date that it commences its search in response to this FOIA request:

- (1) Any and all records reporting the death or injury of any Golden eagles since 2007 within two miles of the:
 - (a) Seven Mile Hill I and II Wind Energy Projects, Carbon County, Wyoming;
 - (b) Ekola Flats Wind Project, Carbon County, Wyoming;

¹ For search purposes, “the Service” should be construed to include, but not be limited to, the Service’s offices nationwide, including the Migratory Bird Management offices, the Migratory Bird Permit offices, the Upper Colorado Basin Regional offices, and any staff members of those offices or any other Service offices that might possess records responsive to this request.

- (c) Dunlap Wind Energy Project, Carbon County, Wyoming; and
- (2) Any and all annual monitoring reports documenting the death or injury of Golden eagles by the projects specified in categories (a)-(c) above since 2007.²
- (3) Any and all written correspondence, emails, consultant reports, telephone call summaries, or other communications between any party and the Service concerning the Golden eagle deaths and/or injuries described in category (1) above.

As used throughout this request, the terms “record” or “records” shall mean any and all forms of records and documents (handwritten, typed, electronic or otherwise produced, reproduced or stored) in the Service’s possession or control that were generated, received, obtained, held, or created by or for the agency by any entity, agent, partner, or representative within or outside the federal government, including any employees, agents, or counsel.

Because FOIA provides that if portions of a document are exempt from release, the remainder must nevertheless be segregated and disclosed, 5 U.S.C. § 552(b), we request that you provide us with all non-exempt portions of the requested records, along with an explanation of which documents, if any, may be privileged or exempt from disclosure, including the basis for any exemption applied.

FEE WAIVER REQUEST

We request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.45. FOIA provides that agencies “shall” provide records “without any charge” or at a reduced rate where “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.48 (enumerating criteria for determining whether “fee waiver request meets the requirements of § 2.45”). The relevant statutory and regulatory criteria are easily satisfied here.

² As a condition of these projects’ incidental eagle take permits, issued pursuant to the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. §§ 668–668d, operators are required to submit to the Service “annual monitoring reports” which must “document annual fatalities for eagles, other birds, and bats on a per-turbine basis” and include “all raw monitoring data upon which the reports are based and cumulative results of post-construction monitoring performed to date.” *See* U.S. Fish & Wildlife Serv., Environmental Assessment for the Issuance of an Eagle Take Permit for Seven Mile Hill I and II Wind Energy Projects at 9 (2021), <https://bit.ly/46YdMKE>; *see also* U.S. Fish & Wildlife Serv., Environmental Assessment for the Issuance of an Incidental Eagle Take Permit for the Dunlap Wind Energy Project at 9 (2020), <https://bit.ly/3Xg5jiP> (same); U.S. Fish & Wildlife Serv., General Permit Conditions – Incidental Take of Eagles by Wind Energy Projects, ¶ G (2024), <https://bit.ly/3WUWMk0> (requiring permittees to prepare and submit an “annual report of all dead or injured eagles discovered in the previous year”).

1. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations and/or Activities

The records requested here concern the Service’s administration of BGEPA and the agency’s management of Golden Eagles—a federally protected species under the Service’s jurisdiction. The Conservancy is requesting these records to shed light on whether and/or how the Service is discharging its duties under BGEPA and its implementing regulations, and whether the incidental take permits issued by the Service adequately protect this species from rapidly accelerating wind energy projects in Wyoming. In this way, the records sought here “concern the operations or activities of the Federal government” because the Conservancy is seeking records related to “discrete, identifiable agency activities, operations, or programs . . .” 43 C.F.R. § 2.48(a)(1). In other words, “the logical connection [] between the content of the records and the operations or activities of the Federal government” is self-evident. *Id.* § 2.48(a)(2)(ii).

Furthermore, disclosure of the requested records will contribute significantly to the public’s understanding of the government’s operations or activities. *Id.* §2.48(a)(2). At this point it is axiomatic that the public (and, thus, their representatives in government) has “a compelling interest in protecting the bald eagle as our national symbol, and the golden eagle, as its survival and the survival of the bald eagle are intimately intertwined.” *United States v. Wilgus*, 638 F.3d 1274, 1285 (10th Cir. 2011); *see also* S. Rep. No. 92-1159 (1972), *as reprinted in* 1972 U.S.C.C.A.N. 4285, 4286 (discussing the legislative intent animating BGEPA, including the public outcry over the loss of even a small number of eagles). Moreover, “small changes in the number of breeding adults can have *drastic* impacts on the overall health of the species.” *Id.* at 1283 (emphasis added). As such, the public has a vested interest in understanding when and under what circumstances the Service allows eagles to be injured or killed, and whether the mitigation strategies devised by the Service are proving effective at minimizing those losses’ effects on the area population.

Disclosure of the requested records will serve that interest by allowing the public to understand whether the proliferation of wind energy in Carbon County, and Wyoming in general, is having a significant negative impact on the state’s Golden Eagle population and/or whether more robust siting and mitigation strategies should be implemented as yet more projects are proposed. The requested records will also serve the public’s interest in eagle management by allowing the public to submit more meaningful comments during environmental review processes necessary to approve such projects; commenters will better understand whether future mortality projections are accurate by comparing those in the past to the actual mortality data obtained through this request. As such, the records sought by the Conservancy would be “meaningfully informative.” 43 C.F.R. § 2.48(a)(2)(i).³

³ Because the requested information has not been made public it is *not* “already readily available . . . from other sources or easily accessible to the public.” 43 C.F.R. § 2.48(a)(2)(i). Likewise, the requested information, which is not already available, does not merely “confirm or clarify data that has been released previously.” *Id.* § 2.48(a)(2)(vi).

Disclosure of the requested records “will contribute to the understanding of a reasonably broad audience of persons interested in the subject,” too. *Id.* § 2.48(a)(2)(iii). The Conservancy has a significant online following, with well over a thousand followers, most of whom are keenly interested in measuring and understanding the statewide impacts caused by the exponential increase in wind energy production on Wyoming’s environment. The Conservancy routinely posts information on its social media page(s) and website, which are frequently trafficked by members of the public and media outlets. The Conservancy will also likely disseminate information obtained from these records by writing reports and/or press releases comparing the mortality data obtained here to baseline data/projections provided by the Service and that collected by field biologists working in the area. The Conservancy’s proven record of disseminating information to the broader public and media in the manner described above is demonstrative of its “ability and intent to disseminate the information to a reasonably broad audience.” *Id.* § 2.48(a)(2)(v). The organization’s plan to continue disseminating information obtained through the requested records is also representative of its concrete “plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons.” *Id.* § 2.48(a)(2)(iv).

Finally, as noted above, the Conservancy is devoted to protecting Wyoming’s ecosystems, and ensuring they continue to thrive alongside the current and future wind energy projects throughout the state. The Conservancy has partnered with a local wildlife biologist, Mike Lockhart, who has been tracking and studying eagles since 1972, and is uniquely familiar with eagle populations in southern Wyoming, and the risks thereto, via 10 years of active satellite tagging efforts. In this way, the Conservancy retains extensive “expertise” in the requested information. *Id.* By comparing the information obtained through this request against baseline data provided by Mr. Lockhart, and using that to prepare/publish reports synthesizing its findings, the Conservancy seeks to further its core mission, thereby significantly enhancing “the public’s understanding of the subject in question” *Id.* § 2.48(a)(2)(vii).

2. Disclosure of the Requested Information is Not Primarily in the Commercial Interest of the Requesters

The Conservancy does not have *any* commercial interest in the requested information. In fact, the Conservancy, a non-profit organization, does not make commercial use of information obtained through FOIA requests or other record disclosure forums. As noted above, it works through advocacy, education, and public outreach to ensure the protection of Wyoming’s unparalleled natural beauty and wildlife values. The Conservancy has no commercial interests in these records, and instead intends to utilize such records exclusively to gauge whether the Service’s management of eagle populations complies with all applicable federal laws.

In short, because the Conservancy is a non-profit organization with no commercial interest in the disclosure of the requested information, disclosure is clearly “[n]ot primarily in [its] commercial interest.” 43 C.F.R. § 2.45(a)(2). Instead, disclosure is in the public interest, which will be well-served by the Conservancy obtaining and disseminating this information to the public. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Further, because the Conservancy has zero commercial interest in the information requested, the extensive public interest in this information, as described above, vastly outweighs the non-existent commercial interest here. *See*

43 C.F.R. § 2.48(b)(4) (noting that the agency “will not find that disclosing the requested records will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure”).

CONCLUSION

Please respond to this request within 20 working days, as FOIA requires. Thank you for your time and attention to this matter. Email is the best way to reach me regarding this FOIA request; please use the email address in my signature block below for any such correspondence.

Sincerely,

/s/ Matthew R. Arnold

Matthew R. Arnold
EUBANKS & ASSOCIATES, PLLC
1629 K Street NW, Suite 300
Washington, DC 20006
Phone: (843) 718-4513
matt@eubankslegal.com

CC (via email):

Ranita D. Jackson, FOIA Officer
U.S. Fish & Wildlife Service
fwhq_foia@fws.gov

Anna Muñoz, Deputy Regional Director
Mountain-Prairie Region
U.S. Fish & Wildlife Service
anna_munoz@fws.gov



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington D.C. 20240



October 16, 2024

Via email: matt@eubankslegal.com

Matthew Arnold
1629 K Street NW
Ste 300
Washington, DC 06092

REF: DOI-2025-000638

Dear: Matthew Arnold

The United States Fish and Wildlife Service (FWS) Freedom of Information Act (FOIA) office received your request, dated October 11, 2024, on 10/15/2024, and assigned it tracking number DOI-2025-000638. Please cite this number in any future communications with our office regarding your request for:

- 1) *Any and all records reporting the death or injury of any Golden eagles since 2007 within two miles of the:*
 - a. *Seven Mile Hill I and II Wind Energy Projects, Carbon County, Wyoming;*
 - b. *Ekola Flats Wind Project, Carbon County, Wyoming;*
 - c. *Dunlap Wind Energy Project, Carbon County, Wyoming; and*
- 2) *Any and all annual monitoring reports documenting the death or injury of Golden eagles by the projects specified in categories (a)-(c) above since 2007.*
- 3) *Any and all written correspondence, emails, consultant reports, telephone call summaries, or other communications between any party and the Service concerning the Golden eagle deaths and/or injuries described in category (1) above.*

Fee Category and Fee

We have classified you as an “other-use” requester. As such, we may charge you for some of our search and duplication costs, but we will not charge you for our review costs; you are also entitled to up to 2 hours of search time and 100 pages of photocopies (or an equivalent volume) for free. See [43 C.F.R. § 2.39](#).

You have asked us to waive the fees for processing your request. Our FOIA regulations state that bureaus will waive, or partially waive, fees if disclosure of all or part of the information is:

Ex. B (to Administrative Appeal of DOI-2025-000638)

- (1) In the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and
- (2) Not primarily in your commercial interest.

See [43 C.F.R. § 2.45\(a\)](#). Our FOIA regulations also provide four specific criteria that are used to determine whether these two requirements are met. See [43 C.F.R. § 2.48\(a\)](#). Your request meets the requirements, and your fee waiver has been granted.

Multitrack Processing

We use Multitrack Processing to process FOIA requests. The Simple track is for requests that would generally take one to five workdays to process. The Normal track is for requests that would generally take six to twenty workdays to process. The Complex track is for requests that would generally take twenty-one to sixty workdays to process. The Extraordinary track is for requests that would generally take more than sixty workdays to process. The Expedited track is for requests that have been granted expedited processing, which are processed as soon as practicable. Within each track, requests are usually processed on a first-in, first-out basis.

Your request falls into the Complex processing track. There are 256 requests pending ahead of yours in this processing track. Presuming that our current FOIA capacity and burden remain constant, we expect that we will dispatch a determination to you by January 13, 2025.

If you have any questions, please don't hesitate to contact us at fwhq_foia@fws.gov.

Sincerely,

Matthew Sullivan
Government Information Specialist
U.S. Fish and Wildlife Service



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington D.C. 20240



In Reply Refer To:
FWS/FOIA

March 17, 2025

Mr. Matthew R. Arnold
Eubanks & Associates, PLLC
1629 K Street NW, Suite 300
Washington, D.C. 20006

REF: DOI-2025-000638

Dear Mr. Arnold:

This responds to your Freedom of Information Act (FOIA) request dated October 11, 2024, in which you seek the following:

(1) Any and all records reporting the death or injury of any Golden eagles since 2007 within two miles of the:

(a) Seven Mile Hill I and II Wind Energy Projects, Carbon County, Wyoming;

(b) Ekola Flats Wind Project, Carbon County, Wyoming;

(c) Dunlap Wind Energy Project, Carbon County, Wyoming; and

(2) Any and all annual monitoring reports documenting the death or injury of Golden eagles by the projects specified in categories (a)-(c) above since 2007.

(3) Any and all written correspondence, emails, consultant reports, telephone call summaries, or other communications between any party and the Service concerning the Golden eagle deaths and/or injuries described in category (1) above.

Please refer to tracking number noted above in communications regarding this request.

Response

In response to your request, 256 pages are being released to you. Based on this office's review, we reasonably foresee that disclosure of certain information in documents that fall under this

Ex. C (to Administrative Appeal of DOI-2025-000638)

request would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure. Accordingly, from the responsive records, 910 pages are withheld in full pursuant to FOIA Exemption (b)(4), as described below.

Exemption 4 of the FOIA

We are withholding approximately 910 pages in full under FOIA Exemption 4. [5 U.S.C. § 552\(b\)\(4\)](#). Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." The withheld information is commercial or financial information. The entity that supplied this information (the submitter) is considered a person, because the term "person," under the FOIA, includes a wide range of entities including corporations. Also, the submitter does not customarily release this information to the public, so the information is confidential for the purposes of Exemption 4.

Rebecca Sokol, Attorney-Advisor, Office of the Solicitor, Mountain-Prairie Region, U.S. Department of the Interior (Department) was consulted in reaching this decision. The undersigned is responsible for this denial.

Mediation/Dispute Resolution

If after contacting us as described below, you need further information or assistance with your request, you may wish to seek dispute resolution services from the Department's FOIA Public Liaison, Natasha Jones by email at doifoiapublicliaison@sol.doi.gov.

If you need further information or assistance after contacting the Department's FOIA Public Liaison, you may wish to seek dispute resolution services from the Office of Government Information Services (OGIS). The 2007 FOIA amendments created the 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
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://www.archives.gov/ogis>
Telephone: (202) 741-5770 / 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.

Appeal Rights

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 final response. 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 this response is in error. You must also include with your appeal copies of all correspondence between you and FWS concerning your FOIA request, including your original FOIA request and this response. Failure to include with your appeal all correspondence between you and FWS 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

Conclusion

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.

This completes the Service's response. If you have any questions regarding this request, please contact Government Information Specialist, David Tischer, by email at david_tischer@fws.gov.

Sincerely,

FOIA Coordinator