



United States Department of the Interior



NATIONAL PARK SERVICE
Interior Region 1
North Atlantic-Appalachian
1234 Market Street, 20th Floor
Philadelphia, PA 19107

IN REPLY REFER TO:

DOI-NPS-2024-000421

September 12, 2024

Via Electronic Mail:

hfb138@yahoo.com

Hans Bader

Liberty Unyielding & Bader Family Foundation
1236 N. Stafford St.
Arlington, VA 22201

Dear Mr. Bader:

The National Park Service (NPS) Freedom of Information Act (FOIA) Office received your FOIA request, dated January 8, 2024, on January 9, 2024, and assigned it control number DOI-NPS-2024- 000421. Please cite this number in any future communications with our office regarding your request.

You requested:

- 1. All emails since January 1, 2020, about whether the William Penn statue should be removed from Welcome Park.*
- 2. All emails since January 1, 2020, about the William Penn statue in Welcome Park that were sent to, or sent by, any representative of the Haudenosaunee, the Delaware Nation, the Delaware Tribe of Indians, the Shawnee Tribe and the Eastern Shawnee Tribe of Oklahoma.*
- 3. All emails since January 1, 2020, about the William Penn statue that were sent to, or sent by, any employee, chief, tribal administrator, assistant tribal administrator, secretary, or treasurer of the Haudenosaunee, the Delaware Nation, the Delaware Tribe of Indians, the Shawnee Tribe and the Eastern Shawnee Tribe of Oklahoma.*
- 4. All emails since January 21, 2021, mentioning the William Penn statue, that were sent to, or sent by, the Secretary of the Interior, the Deputy Secretary of the Interior, the Assistant Secretary of Interior for Indian Affairs, the Assistant Secretary for Fish and Wildlife and Parks, or the Solicitor of the Department of the Interior.*
- 5. All emails since January 21, 2021, mentioning the William Penn statue that were sent to, or sent by, anyone in the Office of the Secretary of the Interior.*

6. *All emails since January 21, 2021, about the rehabilitation of Welcome Park that were sent to, or sent by, the Secretary of the Interior, the Deputy Secretary of the Interior, the Assistant Secretary of Interior for Indian Affairs, the Assistant Secretary for Fish and Wildlife and Parks, or the Solicitor of the Department of the Interior.*

7. *All emails since January 21, 2021, about the rehabilitation of Welcome Park that were sent to, or sent by, anyone in the Office of the Secretary of the Interior.*

8. *All emails since December 1, 2023, mentioning the William Penn statue that were sent to, or sent by, the Department of the Interior's Office of Communications or the National Park Service's Office of Communications*

Partial Release or Interim Response—[43 C.F.R. §§ 2.22, .23, .24](#)

We are writing to partially respond to your request.

We are providing you with 3 files consisting of 369 pages, which are being released to you in part. Portions of these materials are being withheld under the following FOIA Exemptions

Portions of approximately 109 pages of responsive material, however, have been withheld under Exemptions 5 and 6 of the FOIA.

Exemption 5—[5 U.S.C. § 552\(b\)\(5\)](#)

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.” *See* [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 approximately 51 pages in part under Exemption 5 because they qualify to be withheld both because they meet the Exemption 5 threshold of being inter-agency or intra-agency and under the following privileges.

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. 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.

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. 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

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—[5 U.S.C. § 552\(b\)\(6\)](#)

We are withholding approximately 59 pages in part under 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.” [5 U.S.C. § 552\(b\)\(6\)](#)

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. Specifically, phone numbers and home addresses 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.

Sarah Gamble, Records and Information Management Specialist, National Park Service and Jessica McHugh, IR1-NAA FOIA Officer are responsible for this partial denial.

Jason Waanders and Kasie Durkit, Attorney-Advisors in the Office of the Solicitor were consulted in reaching this decision.

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.

We are continuing to review additional records that are responsive to your request.

If you have any questions about our response to your request, you may contact Christina O'Tousa, Assistant United States Attorney, via email at Christina.O'Tousa@usdoj.gov.

Sincerely,

Nicholas Banco
National Park Service
Freedom of Information Act Officer

On behalf of:

Jessica McHugh
National Park Service
Interior Region 1, North Appalachian Area
Freedom of Information Act Officer