



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO
FOIA Appeal No. 2013-108

JUN 19 2013

Richard Brummel
P.O. Box 124
Greenvale, NY 11548

Dear Mr. Brummel:

This responds to your June 14, 2013, Freedom of Information Act ("FOIA") appeal ("appeal") to the Department of the Interior ("Department"), which was received on the same date. Your appeal is assigned as **Appeal Number 2013-108** and concerns your May 29, 2013, FOIA request to the Fish and Wildlife Service ("FWS") generally seeking "permits issued by [FWS]...to round up and/or kill Canada Geese and/or other water fowl in Nassau County, NY and Suffolk County, NY." You also requested that the FWS expedite its processing of the FOIA request. By letter dated June 11, 2013, the FWS denied your request for expedited processing and you timely filed this appeal regarding that response.

Subsequent to the filing of the appeal, the FWS responded to your FOIA request (copy attached), which renders the need for the Department to determine whether you are entitled to expedited processing moot. Therefore, the Department is closing its file on this matter.

This completes the Department's response to your appeal. If you have any questions regarding this letter, please call LaRima Lane at (202) 208-5339.

Sincerely,

Darrell R. Strayhorn
FOIA Appeals Officer
Department of the Interior

Attachment

cc: Johnny Hunt, FOIA Officer, FWS



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Migratory Bird Permit Office
P.O. Box 779
Hadley, MA 01035

JUN 1 2013

In Reply Refer To:
FWS/Region 5/FOIA2013-00877

Certified Mail: 7008 0500 0000 1123 4230

Mr. Richard Brummel
P.O. Box 124
Greenvale, New York 11548

Re: FOIA #2013-00877
Records of Migratory Bird Permits Issued in
Nassau County, New York and Suffolk County, New York

Dear Mr. Brummel:

The U.S. Fish & Wildlife Service (Service) received your Freedom of Information Act (FOIA) request on May 29, 2013, and assigned it FOIA #2013-00877. This letter is in response to your request. You requested the following:

- Copies of all permits issued by the Service between January 1, 2012 to July 30, 2013, to round up and/or kill Canada Geese and/or other water fowl in Nassau County, New York and Suffolk County, New York.

In accordance with the Department's regulations (43 CFR 2.12(b)), in order for a record to be considered subject to a FOIA request, it must be in the possession and control of the Department at the time it begins its search for records. We have searched our files and have enclosed those documents related to your request.

Enclosed please find responsive records consisting of 28 pages. Of the enclosed records, we have redacted personal names, addresses and telephone number information on 7 lines occurring over 7 pages under Exemption 6 (6 U.S.C. § 552 (b)(6); 43 C.F.R. Pt. 2, App. E(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." The courts have held that the phrase "similar files" involves all information that applies to a particular person. When disclosure of information about particular individuals is requested, the courts have decided that it is necessary for us to determine whether release of the information would constitute a clearly unwarranted invasion of the individual's privacy. To make this determination, we perform a "balancing test." This means that we must weigh the individual's right to privacy against the public's right to disclosure:

- (1) First, we must determine whether the individual has a discernible privacy interest in the information that has been requested.
- (2) Next, we must determine whether release of this information would serve "the public interest generally" (i.e., would "shed light on the performance of the agency's statutory duties").
- (3) Finally, we must determine whether the public interest in disclosure is greater than the privacy interest of the individual in withholding.

The information that we are withholding consists solely of identity of private citizens who have been named as sub-permittees on the permits you have requested. We have determined that the individuals to whom this information pertains have a substantial privacy interest in it. Additionally, we have determined that the disclosure of this information would shed little or no light on the performance of our agency's statutory duties and that the public interest to be served by its disclosure does not outweigh the privacy interest of the individuals in withholding it.

In short, we have determined that release of the personal information that we have redacted would constitute a clearly unwarranted invasion of the privacy of these individuals, and that it should be withheld pursuant to Exemption 6.

Finally, 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.

The decision to withhold certain records was made by Valerie Slocumb of the U.S. Fish and Wildlife Service, Region 5 Regional Office, in coordination with Dave Rothstein, of the Office of the Regional Solicitor for the U.S. Department of the Interior.

You have a right to treat this response as a denial of your request. You may appeal this response pursuant to 43 CFR 2.57 by writing to the Freedom of Information Act Appeals Officer at:

Department of the Interior
Departmental FOIA Appeals Officer
MS-6554
1849 C Street, NW
Washington, DC 20240

Any appeal must be received no later than 30 workdays after the date of this letter. Appeals arriving or delivered after 5 p.m. E.T., Monday through Friday, will be deemed received on the next workday. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." You must include with your appeal copies of all correspondence between you and the bureau concerning your FOIA request, including your request and the bureau's response (if there is one). You should also include a detailed statement setting forth the basis of your belief that this decision is in error.

Failure to include with your appeal all correspondence between you and the bureau will result in the Department of the Interior's rejection of your appeal, unless the FOIA Appeals Officer determines in the FOIA Appeal Officer's sole discretion that good cause exists to accept the defective appeal. The time limits of responding to your appeal will not begin to run until the documents are received. 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, Maryland 20740-6001

Electronic mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

Due to the time required for security screening of incoming mail at the Department of the Interior, faxing a copy of your letter and supporting documents to the above facsimile number will ensure timely receipt of your appeal.

The fee incurred in responding to your request is less than \$50.00, and you are therefore not being charged in accordance with the 43 CFR 2.16(b)(2).

If you have any questions regarding this letter and the enclosed materials, please contact Valerie Slocumb at 413-253-8541 or by electronic mail at Valerie_Slocumb@fws.gov.

Sincerely,



Sherry Morgan
Assistant Regional Director
Migratory Birds

cc: MaryLou DeFilippo, FOIA Coordinator
David Rothstein, Office of the Solicitor
Beth Goldstein, EA