



File Code: 6270
Date: June 9, 2021

Ms. Kris Pastoriza
294 Gibson Road
Easton, NH 03580-5615

Dear Ms. Pastoriza:

This is our final response to your Freedom of Information Act (FOIA) request #2021-FS-R9-03823-F of May 7, 2021. You requested the following information:

- “Forest Service permission for ATVs to use four (4) "through-travel" trails in Nash Stream State Forest (NH)”

A reasonable search was conducted by the FOIA staff on the White Mountain National Forest and all responsive records (three pages) were forwarded to this office for review. Upon review of these records, we have determined that all three pages should be partially redacted pursuant to FOIA 5 U.S.C. § 552(b)(5).

Exemptions

FOIA Exemption 5 protects from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party, other than a party in litigation with the agency. Incorporated in Exemption 5 are three primary privileges:

1. The deliberative process privilege,
2. The attorney work-product privilege, and
3. The attorney-client privilege.

We have determined that portions of the records requested must be withheld pursuant to all three of the primary privileges of Exemption 5 of the FOIA, 5 U.S.C. 552(b)(5).

Deliberative Process Privilege

The most commonly invoked privilege incorporated within Exemption 5 is the deliberative process privilege, the general purpose of which is to “prevent injury to the quality of agency decisions.” Specifically, three policy purposes consistently have been held to constitute the basis for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are actually adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an



agency's action. Information contained within these records are deliberative conversations and recommendations from legal counsel and therefore deliberative in nature and are being withheld under the deliberative process privilege according to 5 U.S.C. 552(b)(5).

Attorney Work-Product Privilege

The attorney work-product privilege protects records and documents prepared by an attorney or at an attorney's direction in contemplation or anticipation of litigation, including administrative proceedings. Information shared with a party holding a common legal interest with the agency. Information contained in these records has been drafted by legal counsel for the agency and is being withheld under the Attorney Work-Product Privilege according to 5 U.S.C. 552(b)(5).

Attorney-Client Privilege

The attorney-client privilege protects confidential communication between an attorney and a client relating to a legal matter for which the client has sought professional advice. The privilege applies to facts divulged by a client to an attorney, and communications between attorneys which reflect client-supplied information. Information contained in these records includes confidential communication between legal counsel and the agency and they are being withheld under the Attorney-Client Privilege according to 5 U.S.C. 552(b)(5).

Fees

Pursuant to Title 7 Code of Federal Regulations (CFR), Subtitle A, Part 1, Subpart A, Appendix A, the FOIA allows for the assessment of search and duplication costs. The first 100 pages of duplication and two hours of research time are provided free of charge. Because the number of pages provided falls below the minimum for us to charge fees, no fees are being assessed with this release.

Appeal Rights

This concludes the Eastern Region's response to your FOIA request. The FOIA provides you the right to appeal this response. Any appeal must be made in writing, within 90 days from the date of this letter to the Chief, USDA Forest Service.

Additionally, due to the concerns surrounding the COVID-19 virus we are only accepting appeals electronically at this time. Please email your appeal to SM.FS.WOFOIA@usda.gov. The term "FOIA APPEAL" should be placed in capital letters in the subject line of the email along with the FOIA case number (2021-FS-R9-03823-F) assigned to your request. To facilitate the processing of your appeal, please attach a copy of this letter to your request as well.

If you need further assistance or would like to discuss any aspect of your request, please contact the FOIA Public Liaison at (202) 205-1542. Additionally, you may contact the Office of Government Information Services (OGIS) National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
e-mail: ogis@nara.gov
telephone: (202) 741-5770
toll free: (877) 684-6448
facsimile: (202) 741-5769

Please contact Douglas Meloche douglas.meloche@usda.gov at (404) 293-8373 if you have questions regarding this FOIA request.

Sincerely,

GINA OWENS
Regional Forester

Enclosures

cc: Theresa Corless, Douglas Meloche