



United States  
Department of  
Agriculture

Office of the General Counsel  
1400 Independence Ave. SW  
Washington, DC 20250-1400

September 8, 2021

**Delivered via Electronic Mail**

Kris Pastoriza  
294 Gibson Road  
Easton, NH 03580  
Email: [kripastoriza@gmail.com](mailto:kripastoriza@gmail.com)

**Re: Freedom of Information Act (FOIA) Request No. 2022-OGC-05169-F  
Final Response**

Dear Ms. Pastoriza:

This is the final response to the Freedom of Information Act (FOIA) request you submitted to the U.S. Department of Agriculture (USDA), Office of Information Affairs (OIA), FOIA Division. Your request sought the following records:

“I would like the documents written by USDA Attorney John Vandlik in 2001 and 2017 which ‘reaffirm’ Attorney Gene Erl’s 2001 opinion (attached) that the conservation easement deed for Nash Stream State Forest, in Coos County New Hampshire, gave the State of New Hampshire the right to allow Off Highway Recreational Vehicles in Nash Stream State Forest.”

Your request has been processed under the FOIA, 5 U.S.C. § 552.

A search for responsive records was conducted by the USDA’s Office of the General Counsel. The OGC is an independent legal agency that provides legal advice and services to the Secretary of Agriculture and to all other officials and agencies of the Department with respect to all USDA programs and activities. Responsive records totaling (5) pages were identified.

Following a review of the responsive records, the OIA has determined that certain information contained therein should be withheld pursuant to 5 U.S.C. § 552 (b)(5) and (b)(6) (FOIA Exemptions 5 and 6). Below is an explanation of the information that has been withheld.

**FOIA Exemption 5 – Attorney-Client**

The OIA is also withholding information under the attorney-client privilege. This privilege protects confidential communication between an attorney and his/her client relating to a legal matter for which the client has sought professional advice. Although this privilege fundamentally applies to facts divulged by a client to his/her attorney, this privilege also encompasses any opinion given by an attorney to his/her client based upon those facts, as well as communications between attorneys that reflect client supplied information. In this instance, the OIA is withholding information shared internally with and opinions shared by the Department’s counsel regarding potential and ongoing legal issues.

These confidential communications are shielded from disclosure in order to encourage open and frank discussions between the Department and its legal advisors. Ensuring the Department receives sound legal advice promotes public policy, and this advice depends on counsel being fully informed. The release of these confidential communications would inhibit the Department's ability to provide pertinent information and would impair the Department's counsel from making well-informed legal decisions.

### **FOIA Exemption 5 – Attorney Work Product**

The attorney work-product protects materials prepared by an attorney or others in anticipation of litigation by shielding materials which would disclose the attorney's theory of the case or trial strategy. The privilege is available once specific claims have been identified that make litigation probable.

The materials that have been withheld under the attorney work-product privilege were prepared by or for a Department attorney in reasonable anticipation of litigation and reflect the parties' pre-litigation thoughts and evaluation of matters related to ongoing administrative actions. We conclude that the withheld materials are protected in full from disclosure by the attorney work-product privilege of Exemption 5.

### **FOIA Exemption 6**

Exemption 6 generally is referred to as the "personal privacy" exemption. It provides that the disclosure requirements of FOIA do not apply to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Application of the exemption involves balancing the public's interest in disclosure against individuals' privacy interests.

The information withheld under Exemption 6 consists of non-public mobile phone numbers and a reference to a purely personal matter. This information qualifies as "similar files" because it is information in which individuals have a privacy interest. Moreover, releasing the non-public mobile phone numbers could subject the individuals to unwarranted to unsolicited communications. The remaining item is purely personal in nature and has no bearing on official USDA work. Because there is a viable privacy interest that would be threatened by disclosure, Exemption 6 authorizes this office to withhold the information. Accordingly, we have determined that the public interest in the information's release does not outweigh the overriding privacy interests in keeping it confidential.

You may appeal this response by email at [USDAFOIA@usda.gov](mailto:USDAFOIA@usda.gov). Your appeal must be in writing, and it must be received electronically no later than 90 calendar days from the date of this letter. The OGC will not consider appeals received after the 90 calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above, a copy of the original request, the OIA's response to your original request, and a statement explaining the basis of your appeal. For

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quickest possible handling, the subject line of your email should be marked “Freedom of Information Act Appeal.” You should also reference FOIA No. 2022-OGC-05169-F.

You may seek dispute resolution services from the OIA’s FOIA Public Liaison, Ms. Melanie Enciso. Ms. Enciso may be contacted by telephone at (202) 720-9425, or electronically at [Melanie.Enciso@usda.gov](mailto:Melanie.Enciso@usda.gov) or [USDAFOIA@usda.gov](mailto:USDAFOIA@usda.gov).

You also have the option to seek assistance from the Office of Government Information Services (OGIS). Please visit <https://www.archives.gov/ogis/mediation-program/request-assistance> for information about how to request OGIS assistance in relation to a FOIA request.

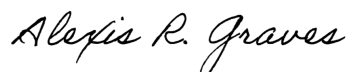
Provisions of the FOIA allow us to recover part of the cost of processing your request. In this instance, no fees will be charged.

If you have any questions regarding the processing of this request, please contact Mr. Kyle Kemper at [Kyle.Kemper@usda.gov](mailto:Kyle.Kemper@usda.gov) or [USDAFOIA@usda.gov](mailto:USDAFOIA@usda.gov).

For additional information regarding USDA FOIA regulations and processes, please refer to the information available online at [Freedom of Information Act Division | USDA](#).

The OIA FOIA Division appreciates the opportunity to assist you with this matter.

Sincerely,



Alexis R. Graves  
Director  
Office of Information Affairs

Enclosure: Responsive Record (5 pages)