



UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Indian Education
1849 C Street NW, MIB-3610
Washington, DC 20240

IN REPLY REFER TO:
DOI-BIE-2023-004115

May 25, 2023

Mr. Jeff P. Ruch
PEER
248 3rd Street
#331
Los Angeles, CA
94607
Phone: 510 213-7028
Email: jruch@peer.org

Dear Mr. Ruch:

The Bureau of Indian Education FOIA Office received your Freedom of Information Act (“FOIA”) request, dated April 20, 2023, assigned number DOI-BIE-2023-004115. Please cite this control number in any future communications with our office regarding your request.

In your request, you stated that you are seeking the following:

In the March 10, 2023 edition of the Lawrence Journal-World there is an article about students from the Haskell Indian Nations University demanding the release of an investigatory report compiled by the Bureau of Indian Education (BIE) in the latter half of 2022. The article recounts that this completed investigation concerned wide-ranging improprieties, ranging from sexual assaults on students to embezzlement and theft of university property. Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests a copy of this report of investigation,

We are writing to respond to your request. We have withheld in full records consisting of 528 pages of 2 pdf files, under FOIA Exemptions 3, 5 and 6.

Exemption 3

Exemption 3 of FIOA allows the withholding of records that are specifically exempted from disclosure by another federal statute other than FOIA provided that the statute “...establishes



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particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3). In the present case, some of the requested records are subject to the Indian Child Protection and Family Violence Prevention Act, which provides for the confidentiality of informants making reports of abused Indian children. 25 U.S.C. § 3203(d).

Exemption 5

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). Exemption 5 incorporates the privileges that protect materials from discovery in litigation, including the deliberative process privilege. We are redacting or withholding pages under Exemption 5 of the FOIA.

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. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) ensure that subordinates will feel free to provide the decision-maker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against public confusion from disclosure of reasons and rationales ultimately not adopted.

The deliberative process privilege protects materials that are both pre-decisional 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 pre-decisional 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.

Exemption 6

The remaining records are being withheld pursuant to Exemption 6, which allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute



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a clearly unwarranted invasion of personal privacy.” *5 U.S.C. § 552(b)(6)*. The information that has been withheld under Exemption 6 consists of personal information, personnel records, and medical records. We have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it.

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. 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.

Justin Davis, BIE Acting FOIA Officer, is responsible for this determination. This response was prepared in consultation with Attorney Advisor, Claudette Rushing, U.S. Department of the Interior Office of the Solicitor.

Right to Appeal

You may appeal this decision to the FOIA Appeal Officer. The FOIA Appeal Officer must receive your FOIA appeal no later than 90 work days from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next work day.

Your appeal must be in writing and addressed to:

Freedom of Information Act Appeals Officer Department of the Interior
Office of the Solicitor
1849 C Street, NW, MS 6556
Washington, DC 20240



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Bureau of Indian Education
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Attn: FOIA/Privacy Act Appeals Office

Telephone: 202-208-5339

Fax: 202-208-6677

Email: FOIA.Appeals@sol.doi.gov

You must include with your appeal copies of all correspondence between you and the Bureau concerning your FOIA request, including a copy of your original FOIA request and this Final Letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your letter should include in as much detail as possible any reason(s) why you believe the Bureau's response is in error.

You also may seek dispute resolution services from our FOIA Public Liaison, Natasha Jones, Chief, Coordination and Oversight Team, Departmental FOIA, Office of the Solicitor, U.S. Department of the Interior or by email DOIFOIAPublicLiaison@sol.doi.gov.

If you are unable to resolve your FOIA dispute through our Acting FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>

Telephone: 202-741-5770

Facsimile: 202-741-5769

Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Office. Using OGIS services does not affect your right to pursue litigation.

We do not bill requesters for FOIA processing fees when their fees are less than \$50.00, because the cost of collection would be greater than the fee collected. See, 43 C.F.R § 2.37(g). Therefore, there is no billable fee for the processing of this request.



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This completes our response to your FOIA request. If you have any questions about our response to your request, you may contact Justin Davis by phone at 202-513-7707, by email at foia@bie.edu, or by mail at Bureau of Indian Education, U.S. Department of the Interior, 1849 C Street NW, MS 4146 - MIB, Washington, DC 20240.

Sincerely,

JUSTIN Digitally signed
by JUSTIN DAVIS
DAVIS Date: 2023.05.25
09:37:44 -04'00'

Justin Davis
Acting FOIA Officer
Bureau of Indian Education