



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-2023-000298

August 18, 2023

Mr. Ted McDermott
Lee Enterprises
1913 W. 3rd Ave
Spokane, WA 99201
Phone: 509-666-9713
Email: ted.mcdermott@mtstandard.com

Dear Mr. McDermott:

This letter is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated October 17, 2022. Your request was received in the Bureau of Indian Education (BIE) FOIA office on October 17, 2022, and assigned FOIA case number DOI-BIE-2023-000298. Please refer to this number in any future correspondence concerning this FOIA request.

In your request, you stated: "I am seeking all Critical Incident or Death Reporting Forms filed since 2000".

As agreed, to via Microsoft Teams conversations and email correspondence with BIE FOIA and BIE HR staff on June 28, 2023, and July 18, 2023, you agreed to a narrowed initial response to this request. Subsequently, in your July 19, 2023, email to BIE, you confirmed the agreement to narrow your FOIA search (DOI-BIE-2023-000298) to a sampling of ten (10) documents. We have enclosed ten (10) files in portable document format (PDF) consisting of one hundred and three (103) pages total. This is being released to you with portions of the material being withheld under FOIA Exemptions 5 and 6.

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.



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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

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 information that has been withheld under Exemption 6 consists of personal and medical information, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. We are redacting portions of pages under Exemption 6 of the FOIA.

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.



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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, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. 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 such information under Exemption 6.

Costs

We do not bill requesters for FOIA processing fees if their fees are less than \$50.00. See 43 C.F.R § 2.37(g). This provision applies here, and there is no billable fee for the processing of this interim request. Since you fall under the category "representative of the media" you will be charged \$.15 cents per pages for any additional duplications and research.

Justin Davis, BIE Acting FOIA Officer, is responsible for this interim response to your FOIA request, Joshua Berg, Attorney-Advisor, in the Office of the Solicitor was consulted in issuing this interim response.

Because this is an interim response to your request, we will provide notice of your appeal rights in our final response letter.

If you have any questions, you may contact Justin Davis by phone at 202-513-7707, by email at foia@bie.gov or by mail at 1849 C Street, N.W., MS-4660-MIB, Washington, D.C. 20240.

Sincerely,

Justin Davis
Acting FOIA Officer
Bureau of Indian Education