



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

IN REPLY REFER TO:
7202.4-DOI-OS-2022-004193

December 8, 2022

Via email: michael.ding@aflegal.org; reed.rubinstein@aflegal.org

Michael Ding
American First Legal Foundation
611 Pennsylvania Ave SE #231
Washington, DC 20003

Reed D. Rubinstein
American First Legal Foundation
611 Pennsylvania Ave SE #231
Washington, DC 20003

Re: America First Legal Foundation v. U.S. Dep't of Agriculture, et al., 1:22-cv-3029

Dear Mr. Ding:

This communication concerns the FOIA lawsuit captioned as *America First Legal Foundation v. U.S. Dep't of Agriculture, et al.*, No. 22-cv-3029 (D.D.C). As we understand matters, the FOIA request at issue in the lawsuit is tracked as **DOI-OS-2022-004193**:

The Department's "strategic plan," that was required by Section 3(b) of Executive Order 14019 (March 7, 2021) on "Promoting Access to Voting," to be submitted to the Assistant to the President for Domestic Policy by September 23, 2021.

We are writing today to respond to your request.

After reviewing the eight (8) pages of responsive records, the government is withholding the entirety of those pages under the following exemptions.

Exemption 5

Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency." 5 U.S.C. § 552(b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client,

commercial information, and presidential communications privileges. We are withholding 8 pages under Exemption 5 because they qualify to be withheld both because they meet the Exemption 5 threshold of being inter-agency or intra-agency and under the following privileges:

Presidential Communications Privilege

The presidential communications privilege “preserves the President’s ability to obtain candid and informed opinions from his advisors and to make decisions confidentially.” *Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008); see also *In re Sealed Case*, 121 F.3d 729, 750 (D.C. Cir. 1997) (“[T]he privilege itself is rooted in the need for confidentiality to ensure that presidential decisionmaking is of the highest caliber, informed by honest advice and full knowledge.”). Unlike the deliberative process privilege, the presidential communications privilege “applies to documents in their entirety and covers final and post-decisional materials as well as pre-deliberative ones.” *In re Sealed Case*, 121 F.3d at 745.

We reasonably foresee that disclosure would harm an interest protected by Exemption 5. The materials that have been withheld under the presidential communications privilege of Exemption 5 reflect confidential presidential decisionmaking and deliberations and were solicited and received by White House advisers and their staff in the course of performing their function of advising the President on official government matters.

We are withholding the entirety of the record under the Presidential Communications Privilege.

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 by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege, such as: (1) assuring that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protecting against premature disclosure of proposed policies; and (3) protecting against confusing the issues and misleading the public.

The deliberative process privilege protects materials that are both predecisional 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 predecisional 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.

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

We are withholding eight (8) pages in part under the Deliberative Process Privilege.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure.

Cynthia Sweeney, Office of the Secretary FOIA Office, Government Information Specialist is responsible for this denial. Leah Bernhardt, Attorney-Advisor, in the Office of the Solicitor was consulted on these withholdings.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to records that are subject to the requirements of the 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.

Should you have concerns about our production, we will timely communicate through our attorney of record, Laurel Lum of the U.S. Attorney's Office.

Sincerely,

Cynthia Sweeney
Office of the Secretary
FOIA Office

cc: Laurel H. Lum, AUSA

Electronic Enclosure