



DEPARTMENT OF THE ARMY
U. S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
P. O. BOX 1229
GALVESTON, TEXAS 77553-1229

July 30, 2019

SUBJECT: FOIA FA-19-0231

Robert Rehak
2702 Rocky Wood Dr.
Kingwood, TX 77339

Dear Mr. Rehak:

In response to your Freedom of Information Act (FOIA) request of June 20, 2019, received by our office on June 20, 2019, for: objectives and Plans for the next phase of San Jacinto West Fork Dredging in the area of the mouth bar including Value Engineering Report if one was developed; permit application for third placement area (Berry Madden's property) and correspondence relating to it; copy of City of Houston's report on San Jacinto Mouth Bar sediment due to Harvey, performed by Tetra Tech using the FEMA requested Stanford Protocol (this is the report requesting FEMA to cover removal of 1.4 million yards of sediment from the mouth bar; copy of Army Corps report to FEMA in which the Corps concluded that only 500,000 cubic yards of sediment in the mouth bar were due to Harvey); copy of all minutes or meeting notes in which dredging of the mouth bar of the San Jacinto River has been discussed, please find the enclosed DVD responsive to your request.

The policy of the Department of the Army is to release the maximum amount of information under the FOIA unless the information is exempt from release and a significant reason exists for non-disclosure. I have reviewed the information responsive to your request and have determined the following: withhold a portion of the documents (118 pages total) responsive your request under Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5).

Exemption 5 authorizes the withholding of inter-agency or intra-agency memoranda or letters which 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). This exemption was applied to the record (118 pages) that included pre-decisional and deliberative discussion transmitted in draft for purposes of review and discussion amongst relevant agency personnel.

Intra-agency and inter-agency documents have been broadly defined to include "any agency document that is part of the deliberative process". *Ryan v. Department of Justice*, 617 F.2d 781, 790 (D.C. Cir. 1980). The three policy purposes advanced by this privilege are: (1) to encourage frank and open discussions on policy matters between agency subordinates and supervisors; (2) to protect against premature disclosure of proposed policies; and (3) to protect against public confusion that may

result from premature disclosures that were not the basis for the agency's final action. See *Russell v. Dep't of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982).

Additionally, the FOIA Improvement Act of 2016 (P.L. 114-185) requires us to analyze the potential harm of releasing documents, or parts of documents to the public before utilizing this exemption. Our analysis here is that the release of pre-decisional and deliberative discussions about possible courses of action would likely produce a chilling effect on the District's regular practice of communication, gathering information, and fully analyzing factors relevant to the process. Therefore, the application of Exemption 5 was deemed appropriate.

I trust that you will appreciate the consideration upon which this determination is based. However, because your request has been partially denied, you are advised of your right to appeal this determination through this office which will forward it to our Washington Office for processing to the Secretary of the Army (Attn: General Counsel).

Your appeal must be submitted within 90 days of the date of this letter. In your appeal, you must state the basis for your disagreement with the denial and, if the denial includes the withholding of documents, then you should state the justification for release. Your appeal must be made through this office, and should be addressed to U.S. Army Corps of Engineers, Office of Counsel, FOIA, 2000 Fort Point Road, P.O. Box 1229, Galveston, Texas 77553-1229. Please note your appeal should address the information denied in this response and cannot be used to make a new request for new or additional information.

You are also advised that you may seek dispute resolution regarding this determination through the FOIA Liaison for the Corps of Engineers (Corps) or the Office of Government Information Services (OGIS). Contact information is as follows:

FOIA Liaison for the Corps:

Captain James Whittaker
US Army Corps of Engineers
ATTN: CECC-L
441 G Street, NW
Washington, DC 20314-1000
Email: foia-liaison@usace.army.mil
Phone: 202-761-4791
FOIA Liaison for OGIS:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770
877-684-6448

Should you have any questions or need additional information, you may contact Clark Bartee, FOIA Officer, by phone at 409-766-3199 or email clark.bartee@usace.army.mil. Please refer to FOIA No. FA-19-0231 on any future inquiries.

Sincerely,



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P. Alex Petty
District Counsel
Initial Denial Authority

Enclosure