

# BPA Policy 236-30

## Freedom of Information Act (FOIA)

### Information Governance

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## 1. Purpose & Background

This policy sets requirements and responsibilities for the Bonneville Power Administration FOIA (Freedom of Information Act) program. This program is responsible for compliance with the Freedom of Information Act (5 U.S.C. § 552). FOIA gives any person the right, enforceable in court, to access federal agency records. Access to records is limited by nine statutory exemptions.

The purposes of BPA's FOIA program are:

- A. Legal compliance;
- B. Proactively identifying and releasing BPA records that are of interest to the public; and
- C. Promoting accountability through transparency.

## 2. Policy Owner

The BPA Vice President of Compliance, Audit & Risk is the owner of this policy. The FOIA Officer implements this policy on behalf of the Vice President of Compliance, Audit & Risk. The FOIA Officer operates under designated authority from the BPA Administrator.

## 3. Applicability

This policy is applicable to all BPA employees.

## 4. Terms & Definitions

- A. *Agency records* are records that (1) were either created or obtained by BPA and (2) are under BPA control at the time of the FOIA request. Federal records, as defined by the Federal Records Act, are a subset of agency records.
- B. *Exemptions* are specific categories of information that do not have to be released upon request under FOIA. Most exemptions are discretionary – BPA can choose to release the information. Certain exemptions are mandatory and the information must not be released under FOIA. Exemptions are described in the FOIA statute and further interpreted by federal case law.
- C. *First-party requests* are requests for records about or concerning the individual requesting the records.
- D. *Official Use Only (OUO)* is a document category and marking indicating that the document contains information that has been determined to be unclassified but sensitive. OUO documents must be released under FOIA if the FOIA Officer determines that the OUO marking was misapplied or no longer applies. See Policy 433-1, Information Protection, for more information.

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- E. *Person*, as defined by FOIA through incorporation of the Administrative Procedure Act, is an individual, partnership, corporation, association, or public or private organization other than an agency.
- F. *Personal records* are only records that:
  - 1. Were created for the personal use of the author;
  - 2. Have not been integrated into a BPA file; and
  - 3. Have not been shared with other employees or relied upon by other employees to conduct BPA business.

Few records created in the course of business at BPA will qualify as personal records. These records are a limited subset of the “personal papers” exception to the Federal Records Act.
- G. *Records custodian* is any BPA employee in possession of, or with access to, agency records that have been requested under FOIA.
- H. *Request* is a written request for records from any person. A request does not have to mention FOIA to qualify as a FOIA request.
- I. *Third-party request* is any request that is not a first-party request.

## 5. Policy

- A. BPA complies with the spirit and letter of FOIA by:
  - 1. Treating requesters with respect and courtesy;
  - 2. Responding to requests completely, timely, and efficiently; and
  - 3. Encouraging discretionary release of records when permitted by law
- B. FOIA requests for Privacy Act records are processed under both FOIA and the Privacy Act, as required by law.
- C. Exemptions:
  - 1. BPA uses FOIA Exemption 4 as required by law to protect the trade secrets and confidential commercial or financial information of third parties.
  - 2. BPA uses FOIA Exemption 5 as permitted by law to protect internal or intra-agency privileged information. Information that qualifies for protection under Exemption 5 must be released if release would not harm the interest protected by a civil discovery privilege, including but not limited to the deliberative process privilege, attorney work-product privilege, and attorney-client privilege.
  - 3. BPA uses FOIA Exemption 6 as required by law to protect the privacy interests of individuals. Where required, FOIA Exemption 6 is used in conjunction with the Privacy Act.
  - 4. BPA uses other FOIA exemptions as permitted or required by law.
- D. FOIA does not obligate BPA to create records. Records may be created for the purpose of a FOIA response at the discretion of the FOIA Officer. Generally, records will only be created if doing so is less burdensome than searching for or processing responsive

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records. Before creating a record, the FOIA Office must secure agreement from the requester that they will accept the created record in lieu of existing responsive records.

- E. BPA’s FOIA Officer makes the final decision on release of all agency records under FOIA, including the release of records that were previously designated as OOU.
- F. BPA seeks opportunities to proactively disclose records that affect members of the public, including agency policy statements and administrative manuals.
- G. BPA publishes all third-party FOIA requests on BPA.gov. BPA publishes all responses to third-party requests on BPA.gov unless they are voluminous. This policy may be waived for certain requests at the discretion of the FOIA Officer. First-party requests and responses are not published on BPA.gov.

## 6. Policy Exceptions

Personal records are not subject to FOIA, and will not be disclosed under the FOIA process. Records custodians should seek the advice of the FOIA Office if records falling within the search parameters may qualify as personal records. If the FOIA Office determines that personal records have been collected, they will be returned to the author and any copies will be removed from the FOIA Office file.

## 7. Responsibilities

- A. Administrator: The Administrator has ultimate responsibility for compliance with this policy. The Administrator designates authority and assigns functional responsibility to the FOIA Officer for ensuring that BPA’s FOIA program is in compliance applicable statutes and regulations.
- B. Assistant General Counsel, General Law (LG AGC): Responsible for providing legal advice to the FOIA Officer and the Administrator.
- C. BPA Employees: Responsible for forwarding misdirected FOIA requests to the FOIA Office, and for maintaining the availability, effectiveness, security, and confidentiality of recorded information, as directed by the 236 series of BPA Policy. Employees identified by the FOIA Office as “records custodians” have additional obligations. See below.
- D. Executives, Managers, and Supervisors: Responsible for leading by example, promoting cooperation with the FOIA Office, and promoting a culture of transparency and compliance.
- E. FOIA Attorney: Responsible for legal review of records, including final recommendations on withholding or release.
- F. FOIA Case Coordinator: Responsible for communicating with requesters, coordinating the search for records, preparing records for review, and completing initial review, including making recommendations on withholding or release.
- G. FOIA Lead Case Officer: Responsible for daily management of the FOIA Office, including assignment of cases, review of certain responses, and administrative duties related to FOIA.

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- H. FOIA Officer: The FOIA Officer operates with designated authority from the Administrator. This authority cannot be re-designated to any other person. The FOIA Officer is responsible for the overall development and maintenance of the FOIA Program according to the principles in this policy. This includes drawing up practice guidance, promoting policy compliance, making final decisions on expedited processing, fees, and records released under FOIA, maintaining BPA’s online FOIA reading room, reporting to the Front Office on BPA’s FOIA programs and policies, and allocating resources to the FOIA program. This position also acts as a liaison with the Department of Energy, the Department of Justice, and the Office of Government Information Services at the National Archives and Records Administration.
- I. Records Custodians: Any employee may be identified by the FOIA Office as a records custodian for an individual request. Records custodians are responsible for identifying likely records locations, conducting a reasonable search for records, and documenting the search process as directed by the FOIA Office. Copies of all records located during the search must be provided to the FOIA Office. This includes records that are “need to know only” because of privacy and security concerns. The FOIA legal process requires review of *all* responsive records, regardless of content or categorization. Records custodians may also be required to provide background information, answer questions, and participate in related appeals processes and litigation, if any.

**8. Standards & Procedures**

- A. Once a request has been received by the FOIA Office, the following steps are completed:
  1. Request is entered into the DOE and BPA FOIA tracking systems.
  2. Request is assigned to a Case Coordinator. The Case Coordinator notifies the requester that the request has been received and clarifies any fee or scope issues.
  3. The Case Coordinator identifies likely Records Custodians and directs a records search of the offices of record. If necessary, the Cyber Forensics group is engaged to search for additional records. Records custodians document searches using the FOIA Search Certification form. See Appendix.
  4. The Case Coordinator organizes records and performs the initial review.
  5. A FOIA Attorney performs final legal review.
  6. A decision letter is sent to the requester along with any responsive, non-exempt records. The decision letter includes information about how to appeal the final decision.
  7. Third-party requests and responses are posted on BPA.gov.
  8. FOIA fees, if any, are invoiced and sent to the requester for payment.

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## 9. Performance & Monitoring

- A. The Information Governance and Lifecycle Management team compiles a daily report that tracks the number of cases and the current status and pertinent details of each case. This report facilitates analysis of the FOIA Office’s workload and effectiveness.
- B. The Lead Case Officer prepares an annual report for the Department of Energy on all BPA FOIA activity. This report includes the outcome of each case, including timeliness of response, total responsive pages, and exemptions used.
- C. The Department of Energy prepares an annual report for the Department of Justice on all DOE FOIA activity.

## 10. Authorities & References

- A. Administrative Procedure Act, 5 U.S.C. § 551(2)
- B. Freedom of Information Act, 5 U.S.C. § 552
- C. Privacy Act of 1974, 5 U.S.C. § 552a
- D. Department of Energy FOIA regulations, 10 CFR Part 1004
- E. Department of Energy Privacy Act regulations, 10 CFR Part 1008
- F. The Department of Justice FOIA Guide
- G. The Department of Justice Privacy Act Overview
- H. National Archives and Records Administration implementing regulations, 33 CFR 1220.18

## 11. Revision History

This chart contains a history of the revisions and reviews made to this document.

Version Number	Issue Date	Brief Description of Change or Review
1	6/13/2013	Creation
2	1/22/2015	Formatted into new template
3	3/30/2016	Policy updated

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# Appendix A: FOIA Search Certification Form

## SPECIAL INSTRUCTIONS

1. The FOIA Office completes Section I of this form. The Records Custodian should complete Sections II, III, IV, and V.
2. Please contact the FOIA Case Officer if you believe that: (a) the responsive records will be voluminous, (b) it will take more than two weeks to gather documents, or (c) the cost of providing responsive records will exceed the agreed-upon fees. The FOIA Office may contact the requester to discuss narrowing the scope of the request.
3. If possible, please provide records in the form of searchable PDFs. Records may be provided by email or disc, or the FOIA Office can provide a secure thumb drive or electronic drop box.
4. If any records are marked OOU, Official Use Only, please provide two copies of those records – one copy marked OOU and one copy with the OOU marking removed.
5. If any records are contained in a Privacy Act System of Records, identify the Privacy Act records and provide the title of the System of Records in section IV below. If you need assistance identifying Privacy Act records, contact the FOIA Office.
6. When the responsive records are ready, please contact the FOIA Case Officer to arrange transfer of records and provide an overview. If you have identified other persons as subject matter experts, it may be helpful to have them available to answer questions at the time of transfer.
7. If you have any questions about the FOIA process, this request, your obligations or how to conduct a search, please contact the FOIA Office.

## I – REQUEST INFORMATION

Requester Name \_\_\_\_\_

First-Party Request     Third-Party Request

Description of Records Requested (*Copy and paste from request; do not summarize.*) \_\_\_\_\_

Date on Request Letter	Date Received by BPA	Response Due Date
FOIA Case Officer	FOIA Case Officer Contact Information Work Phone No _____ Work E-mail _____	
DOE Tracking Number	Request Queue <input type="checkbox"/> Simple <input type="checkbox"/> Complex	
Type of Requester <input type="checkbox"/> Commercial Use <input type="checkbox"/> Educational/Scientific <input type="checkbox"/> Media <input type="checkbox"/> Other	Fees <input type="checkbox"/> Requester is <b>not</b> willing to pay fees <input type="checkbox"/> Requester has agreed to pay up to \$ _____ <input type="checkbox"/> No fees involved ( <i>“Other” requesters, Privacy Act first-party requests, fees waived by FOIA Officer</i> )	
Requested Document Format <input type="checkbox"/> Searchable PDF <input type="checkbox"/> Other:	Responsible Program Office	

## II – SEARCH PARAMETERS

*Records Custodians must make reasonable efforts to locate the requested records, including records in storage. The cut-off date is the date that the search begins. Records created after this date are not responsive, but may be included in search results at the Records*

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Custodian's discretion.

**CRITERIA USED IN SEARCH:**

Date range:

Keywords used, including names:

Other criteria

**DATE(S) OF SEARCH:** \_\_\_\_\_

**FILES SEARCHED** (check all that apply)

- Staff records of the following persons or groups: \_\_\_\_\_
- Employee self-search of the following e-mail accounts: \_\_\_\_\_
- IT search of the following e-mail accounts: \_\_\_\_\_
- Search of the following archived e-mail accounts: \_\_\_\_\_
- Search of the following archived **on-site** records holdings: \_\_\_\_\_
- Search of the following archived **off-site** records holdings: \_\_\_\_\_
- Search of the following databases: \_\_\_\_\_
- Search of the following other records: \_\_\_\_\_

Name of Employee Conducting Search

Hourly Rate **BFTE**  
**ONLY**

Total Search Time

Name of Employee Conducting Search

Hourly Rate **BFTE**  
**ONLY**

Total Search Time

**III - SEARCH RESULTS**

We have been unable to locate any records responsive to this request.

**OR (check all that apply)**

We have located \_\_\_\_\_ pages of records responsive to this request.

We have located \_\_\_\_\_ audio or visual files responsive to this request.

Responsive records are stored at a National Archives and Records Administration facility under File Name/Number: \_\_\_\_\_

**IV - RECORD CONTENTS**

Records should be released in their entirety.

**OR (check all that apply)**

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- Records include information generated by customers or organizations outside of BPA.
- Records include draft documents.
- Records include information generated by BPA attorneys or outside counsel.
- Records include personal information (*for example, personal e-mail addresses, medical information or performance reviews.*)
- Records include sensitive information marked OOU, Official Use Only. (*Provide one marked copy and one unmarked copy.*)
- Records include documents from the following Privacy Act System(s) of Records: \_\_\_\_\_ (*Segregate and label Privacy Act records.*)

**V – OTHER SUBJECT MATTER EXPERTS**

If you have identified additional persons who are subject matter experts or who may have records responsive to this request, please provide information about them here.

Employee Name(s)	Work Phone Number(s)
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***I certify by Signature below that a thorough search has been conducted for records responsive to this request and all responsive material has been brought to the attention of the FOIA Office.***

Print or Type Name ( <i>Federal Employee</i> )	Signature ( <i>Federal Employee</i> )	Job Title	Date
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