



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

PUBLIC AFFAIRS

May 7, 2009

In reply refer to: DK-7

John R. Tait
Law Offices of Keaton and Tait
P.O. Drawer E
312 Miller Street
Lewiston, ID 83501

RE: FOIA #09-027

Dear Mr. Tait:

This letter is your final response to your Freedom of Information Act (FOIA) request to the Bonneville Power Administration (BPA) for the following:

“Any and all records pertaining to a fire that commenced on July 10, 2008 on or around Eaton Road in the City of Lewiston, County of Nez Perce, State of Idaho. See the attached Lewiston Morning Tribune newspaper articles of July 11 and 12, 2008, report of Nez Perce County Fire Chief Ron Hall and letter of February 13, 2009 of attorney Paul F. Mautner to assist you in identifying the records we are seeking.”

BPA is disclosing most of the responsive records in their entirety. However, BPA has withheld some of the responsive records, in whole or in part, pursuant to 5 USC § 552(b)(5) (Exemption 5) and 5 USC § 552(b)(6) (Exemption 6) of the FOIA.

Exemption 5

Exemption 5 protects inter or intra-agency records that are privileged in the civil discovery context. BPA has not released the redacted, responsive records outside of the executive branch.

BPA asserts the attorney work-product privilege for most of the records prepared by or for an attorney in contemplation of litigation. BPA's legal office created these records when BPA was on notice of potential or actual tort claims against BPA arising from the Lewiston fire. BPA also asserts the attorney-client privilege for those records reflecting legal advice from BPA's legal office.

To the extent practicable, BPA made a discretionary release under Exemption 5 for records within the attorney work-product privilege that would not compromise the agency's legal position. A further discretionary release of the redacted records is not in the public interest, and would in fact harm the interests protected by Exemption 5. Disclosure of the redacted portions of the responsive records would affect the agency's ability to investigate or settle administrative claims, and would harm the agency's ability to ask for, and receive, legal advice.

Finally, since the statute of limitations has not expired on other potential claims related to the fire, release of these redacted records would likely harm the United States' future litigation position.

The Privacy Act prohibits further release of the responsive documents. Any questions be directed to the BPA FOIA Office at 503-230-7305.

Exemption 6

Exemption 6 protects the disclosure of personnel, medical, and similar files when disclosure would constitute a clearly unwarranted invasion of personal privacy. To determine whether information should be withheld under Exemption 6, an agency must: (1) identify whether a privacy interest exists in the information; (2) identify whether release would further the public interest by shedding light on the operations and activities of the government; and (3) weigh the identified privacy interests in the information against the public interest in disclosure.

BPA asserts Exemption 6 for any identifying information of individuals in the responsive records who requested or submitted tort claims with BPA, or who contacted BPA about the fire (other than your client). BPA also asserts Exemption 6 for the names of individual BPA crew members who were in the area of the fire.

There is a significant privacy interest in of the identity of the private individuals who contacted the government. These individuals have an expectation of privacy that their identities will not be made public, and disclosing their identities could subject them to unwanted inquiries or harassment. Likewise, there is a significant privacy interest in the identity of the names of the BPA crew members that were patrolling in the area, especially because there are unfounded accusations of wrongdoing against the crew members. Disclosing their identities could subject them to unwanted inquiries or harassment.

The identity of the private individuals and of the crew members does not, in itself, shed light on the operations and activities of BPA. Therefore, there is no public interest in releasing this information.

Because there is a significant privacy interest in the information being withheld, and no public interest that would be served by disclosure, BPA finds that disclosure would cause an unwarranted invasion of personal privacy. BPA has disclosed, however, the reasonably segregable portions of the responsive records that are not protected by Exemption 6.

If you are dissatisfied with this determination, you may appeal within 30 days from the date you received this letter to The Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. The appeal must be in writing and both the envelope and letter must be clearly marked "Freedom of Information Act Appeal."

I appreciate the opportunity to assist you with this matter. If you have any questions or concerns about this letter, please contact Laura M. Atterbury, FOIA/Privacy Act Specialist, at 503-230-7305.

Sincerely,

/s/ Christina J. Brannon

Christina J. Brannon
Freedom of Information Act/Privacy Act Officer

Enclosures: CD with responsive documents