NORTHEAST
MIDWEST
INSTITUTE

218 D Street, S.E.
Washington, D.C. 20003
TEL: 202.544.5200
FAX: 202.544.0043
http://www.nemw.org

**FREEDOM OF INFORMATION ACT REQUEST**

November 25, 2002

RECEIVED BY BPA FOIA OFFICE THIS DATE: 11-27-02
DUE DATE: 12-27-02
LOG # 03-012

Gene Tollefson, FoIA Officer
Mail Stop CILR-4
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208

Dear Mr Tollefson:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and implementing regulations of the U.S. Department of Energy, 10 C.F.R. § 1004.1 *et seq.*, the Northeast-Midwest Institute ("Institute") hereby requests copies of the following records and information related to the Bonneville Power Administration ("BPA"):

- Any and all information, records, or communications, written or electronic, generated or received during the period from June 5, 2002, to November 25, 2002, regarding proposed increases in borrowing authority by the BPA, including, but not limited to, those communications with congressional offices, utilities, and any other persons or organization.

There is no basis for claiming that the records requested herein are exempt from immediate disclosure under the FOIA. Each of these records is described by 5 U.S.C. § 552(a)(2) as information an agency is required to make available to the public. If, however, it is your position that any portion of the requested records is exempt from disclosure, the Alliance requests that you provide it with an index of those documents as required under Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." Founding Church of Scientology v. Bell, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the Vaughn index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." King v. U.S. Dep't of Justice, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'"[1] Id. at 224 (citing Mead Data Central v. U.S. Dept. of the Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977)).

[1] Vaughn indices are appropriate in administrative actions such as this FOIA request. As the Court of Appeals for this Circuit has noted, "the objective of the Vaughn requirements, to permit the requesting party to present its case effectively, is equally applicable to proceedings within the agency." Mead Data Central, Inc. v. U.S. Dept. of the Air Force, 566 F.2d 242 (D.C. Cir. 1977), aff'd 575 F.2d 932 (D.C. Cir. 1978).

In the event that some portions of the requested documents are properly exempt from disclosure, please disclose any reasonably segregable nonexempt portions of the requested documents. See 5 U.S.C. § 552(b) ("Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt . . . ."); see also Schiller v. National Labor Relations Board, 964 F.2d 1205, 1209 (D.C. Cir. 1992); 32 C.F.R. §518.22. If it is your position that a document contains non-exempt segments but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed throughout the document. Mead Data Central, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

In his October 12, 2001, MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES ON THE FREEDOM OF INFORMATION ACT, the U.S. Attorney General indicated that the Justice Department will only defend decision not to disclose documents where a "sound legal basis" for non-disclosure exists.

The Institute further requests that BPA waive all charges for search and review associated with this request, as provided by 5 U.S.C. # 522(a)(4)(A)(iii) and Department of Energy regulations. The Northeast-Midwest Institute is a private, non-profit – 501(c)(3) – research organization. It conducts research, provides analysis of key federal program, disseminates information, and highlights sounds economic and environmental technologies and practices. Indeed, disclosure of the requested information is not in the Institute's commercial interest. The Institute is able to analyze the sought information and share it with the broader public via its web site, newsletters, and other publications. The release of these records is in the public interest because it will contribute significantly to the public's understanding of BPA policy and decisions. This fee waiver request should not delay your response to this information request. In the event that the fee waiver request is denied, the Institute authorizes you to move forward with processing this request, and the Institute will pay an amount not to exceed $100 for search and review.

Please respond to this request in writing within twenty (20) days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, the Institute requests that you provide it with all requested documents or portions of documents which are available within that time period. If you have any questions about this request or foresee problems in fully releasing the requested records within the twenty-day period, please call me within that time period. Thank you for your prompt attention to this matter.

Sincerely,

Dick Munson

Dick Munson
Executive Director

**Department of Energy**

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

SHARED SERVICES

November 27, 2002

In reply refer to: CILR-4

Mr. Dick Munson
Northeast Midwest Institute
218 D Street, S.E.
Washington, D.C. 20003

Dear Mr. Munson:

Thank you for the letter of November 25 requesting documents related to Bonneville Power Administration (BPA) borrowing authority under provisions of the Freedom of Information Act. The request has been logged as #03-012 on the date of its receipt, November 27.

You asked for documents generated or received from June 5, 2002 to November 25, 2002 regarding proposed increases in borrowing authority by the BPA, including, but not limited to, communication with congressional offices, utilities, and other persons or organizations.

You further requested a waiver of fees associated with the request. That request is granted.

Mr. Roger Seifert, Special Assistant to Vice President, National Relations, has been designated as Authorizing Official for your request. Mr. Seifert has 20 working days, until December 27, to provide a response. Should you have any questions he may be reached at Mail Stop DC/WASH or by calling 202-586-5628.

Sincerely,

Gene Tollefson
Freedom of Information Act Officer

bcc:
G. Tollefson – CILR-4
R. Seifert – DC/WASH
J. Bennett – LC-7
C. Jacobson – LC-7
Official File – CILR (EX 13-13, 03-012

Gtollefson:aal:4444:11/27/02 (CILR-H:\data\FOIA\Munson 1.doc)

**Department of Energy**

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P.O. Box 3621
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Freedom of Information Act Officer

## Tollefson, Gene - CILR-4

**From:** Hawken, Mary - KFF-2
**Sent:** Tuesday, December 03, 2002 6:03 PM
**To:** Jacobson, Carol L - LC-7
**Cc:** Mautner, Paul F - LC-7; Tollefson, Gene - CILR-4; Wright, April E - LC-7
**Subject:** RE: Borrowing Authority FOIA

Carol,
Roger and I have talked about this request and yes, my group can coordinate this FOIA. I'll be asking April Wright to manage this effort. (April's routing says "LC", but her detail has ended and she's returned to KFF.) - - Mary

-----Original Message-----
**From:** Jacobson, Carol L - LC-7
**Sent:** Monday, December 02, 2002 1:13 PM
**To:** Hawken, Mary - KFF-2
**Cc:** Mautner, Paul F - LC-7; Tollefson, Gene - CILR-4
**Subject:** Borrowing Authority FOIA

Mary,

Per my voicemail, I am sending you a copy of a FOIA request from Dick Munson of Northeast Midwest Institute. The request is identical to the previous request we received from Munson on Borrowing Authority - - the only difference is the time period involved. This one asks for documents from June 5, 2002 - November 25, 2002.

The request was formally assigned to Roger Seifert by Gene Tollefson. We assume that you will handle this request the same as the previous request BPA received, including coordinating with Roger and contacting others in BPA who may have responsive documents. If you run across any documents that you think should be withheld from disclosure or otherwise need any assistance, please do not hesitate to contact either me or Paul Mautner. Thanks! Carol - ext. 4179.

## Tollefson, Gene - CILR-4

**From:** Jacobson, Carol L - LC-7
**Sent:** Wednesday, December 04, 2002 7:36 AM
**To:** Hawken, Mary - KFF-2
**Cc:** Mautner, Paul F - LC-7; Tollefson, Gene - CILR-4; Wright, April E - LC-7
**Subject:** RE: Borrowing Authority FOIA

Thanks. If you or Sue still have the e-mail you sent out to folks on the last request asking them to search for responsive documents, that would probably be helpful for April. If not, I can probably locate a copy of it in my files. I'll be in training in Vancouver today, be will be here tomorrow.

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**Cc:** Mautner, Paul F - LC-7; Tollefson, Gene - CILR-4; Wright, April E - LC-7
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