October 7, 2021

In reply refer to: FOIA #BPA-2021-01107-F

John Ryan
KUOW Public Radio
312 North 160th Place, Unit 1
Shoreline, WA 98133
Email: jryan@kuow.org

Dear Mr. Ryan,

This communication concerns your records request submitted to the Bonneville Power Administration (BPA), made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). BPA received your request on September 14, 2021 and formally acknowledged your request on September 24, 2021.

Request

Response
The agency’s Office of Physical Security searched for and gathered the requested video footage. The footage is being withheld in full under 5 U.S.C. § 552(b)(3) (Exemption 3). A more detailed explanation of the applied exemption follows.

Explanation of Exemptions
The FOIA generally requires the release of all agency records upon request. However, the FOIA permits or requires withholding certain limited information that falls under one or more of nine statutory exemptions (5 U.S.C. §§ 552(b)(1-9)). Further, section (b) of the FOIA, which contains the FOIA’s nine statutory exemptions, also directs agencies to publicly release any reasonably segregable, non-exempt information that is contained in those records.

Exemption 3
Exemption 3 permits withholding of material under the non-disclosure provisions of other federal statutes. A statute may qualify for Exemption 3 if it “requires that the matters be withheld” or “establishes particular criteria for withholding” (5 U.S.C. § 552(b)(3)). In this case, the Federal Power Act (16 U.S.C. § 824o-1(d) requires withholding of Critical Electric Infrastructure Information (CEII). The term “critical electric infrastructure” means “a system or
asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of
which would negatively affect national security, economic security, public health or safety, or
any combination of such matters.” (16 U.S.C. § 824o-1(a)(2)) The term “critical electric
infrastructure information” means “information related to critical electric infrastructure, or
proposed critical electrical infrastructure, generated by or provided to the Commission or other
Federal agency, other than classified national security information, that is designated as critical
electric infrastructure information by the Commission or the [Energy] Secretary pursuant to
subsection (d). Such term includes information that qualifies as critical energy infrastructure
information under the Commission’s regulations.” (16 U.S.C. § 824o-1(a)(3))

The responsive records contain video from thermal imaging cameras which display thermal
camera alarm zones at BPA’s Custer Substation, which could show an adversary how to avoid
being detected by the alarms and defeat BPA’s security system. The Department of Energy
designated the entire video footage as CEII pursuant to DOE regulations at 10 CFR § 1004.13.
Therefore, we are withholding the information under Exemption 3 and the Federal Power Act
(16 U.S.C. § 824o-1(d)).

Fee
No fees are associated with this request.

Certification
Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the records search and
FOIA response described above.

Appeal
The adequacy of the search may be appealed within 90 calendar days from your receipt of this
letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to:

    Director, Office of Hearings and Appeals
    HG-1, L’Enfant Plaza
    U.S. Department of Energy
    1000 Independence Avenue, S.W.
    Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being
made. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the
phrase “Freedom of Information Appeal” in the subject line. (The Office of Hearings and
Appeals prefers to receive appeals by email.) The appeal must contain all the elements required
by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review
will be available to you in the Federal District Court either (1) in the district where you reside,
(2) where you have your principal place of business, (3) where DOE’s records are situated, or (4)
in the District of Columbia.
Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
E-mail: ogis@nara.gov  
Phone: 202-741-5770  
Toll-free: 1-877-684-6448  
Fax: 202-741-5769

Questions about this communication or the status of your FOIA request may be directed to the agency’s FOIA Public Liaison, Jason Taylor, at jetaylor@bpa.gov.

Sincerely,

Candice D. Palen  
Freedom of Information/Privacy Act Officer