



Department of Energy

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

FREEDOM OF INFORMATION ACT PROGRAM

March 13, 2015

In reply refer to: FOIA #BPA-2013-01311-F

Ted Sickinger
The Oregonian
1500 SW First Ave, Ste 400
Portland, OR 97201

Due to the size of the responsive record it cannot be posted. To obtain a copy please contact the BPA FOIA Office at 503-230-5273

Dear Mr. Sickinger.:

This is a final response to your July 17, 2013, request for records that you made to the Bonneville Power Administration (BPA), under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. We apologize for the delay in response.

You requested the following:

“[A]ll e-mails to and from Roy Fox between February 2013 to present that mentions the Office of Inspector General (OIG), the U.S. Office of Personnel Management (OPM), or DOE Human Capital, or any inquiries, reviews and investigations into BPA hiring and promotion practices.”

Response:

FOIA generally requires the release of all government records upon request. However, FOIA permits withholding certain, limited information that falls under one or more of nine statutory exemptions (5 U.S.C. §§ 552(b)(1-9)).

We have located 861 pages of material responsive to your request. We are releasing 486 pages in full; withholding 45 pages in their entirety and releasing 330 pages with certain information redacted under Exemption 5 (5 U.S.C. § 552(b)(5)), Exemption 6 (5 U.S.C. § 552(b)(6)), and Exemption 7(C) (5 U.S.C. § 552(b)(7)(C)).

Exemption 5

Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” In plain language, the exemption protects privileged documents.

The deliberative process privilege protects the decision-making processes of government agencies. Records protected under this privilege must be (1) pre-decisional – created before the adoption of an agency policy or course of action, and (2) deliberative – making

recommendations or expressing opinions on a legal or policy matter. In this case, we assert Exemption 5 to protect draft memos, messages and documents, as well as internal discussion about certain events and issues.

Exemption 5 also protects records that qualify as privileged under attorney-client privilege. This privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. The privilege encompasses facts provided by the client and opinions provided by the attorney. In this case, we assert Exemption 5 to protect a limited amount of advice provided by BPA attorneys on legal matters related to hiring and investigations.

Exemption 6

Exemption 6 protects information in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy” (5 U.S.C. § 552(b)(6)). Exemption 6 requires balancing the public interest in the information against the individual privacy interest at issue. Here, we assert this exemption to redact the following items:

- (1) Personal, non-government e-mail addresses and contact information,
- (2) The names of employees who have or may have acted as whistleblowers,
- (3) The names of employees who have or may have filed Equal Employment Opportunity cases,
- (4) The names of applicants for BPA jobs,
- (5) The names of lower-level employees who are involved in matters under audit or investigation, facing discipline, and/or requiring re-certification,
- (6) Details that would permit identification of the above employees, including supervisor names and assignment specifics.

For item 1, we find no public interest in this information. For items 2-6, we find that the limited public interest does not outweigh the privacy concerns of the individuals at issue. Information that falls under Exemption 6 cannot be discretionarily released; the right of privacy belongs to the individual, not to the agency. Therefore, we did not analyze this information under the discretionary release guidelines in Attorney General Holder’s March 19, 2009, FOIA Memorandum.

Exemption 7(C)

Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes” that fall within the purview of one or more of six enumerated categories. To qualify under Exemption 7, the information must have been compiled, either originally or at some later date, for a law enforcement purpose, which includes crime prevention and security measures, even if that is only one of the many purposes for compilation. Exemption 7(C) provides that, “records of information compiled for law enforcement purposes” may be withheld from disclosure, but only to the extent that the production of such documents “could reasonably be expected to constitute an unwarranted invasion of personal privacy...” In applying Exemption

7(C), BPA considered whether a significant privacy interest would be invaded, whether the release of the information would further the public interest in shedding light on the operations or activities of the Government, and whether in balancing the privacy interests against the public interest, disclosure would constitute unwarranted invasion of privacy.

The information withheld includes names and contact information that identify members of the Department of Energy Office of Inspector General. Those individuals have a significant privacy interest in their identities, which, if known, could pose a serious safety risk to them, and may result in an unwarranted invasion of their privacy. Releasing their identities or contact information would reveal little about the operations or activities of the Government and disclosure of this information could reasonably be expected to constitute an unwarranted invasion of personal privacy. Therefore, it is appropriate to withhold this information pursuant to Exemption 7(C) of the FOIA.

We note that a few of the responsive e-mails are missing one or more listed attachments. These attachments were not captured by the original sweep of Mr. Fox's inbox, and we were not able to produce them in response to your request. In addition, an attachment to an email on page BPA-2013-01311 000899 was not reproduced here because you received it in response to request BPA-2013-01310.

Appeal:

Pursuant to Department of Energy FOIA regulations at 10 C.F.R. § 1004.8, you may administratively appeal this response in writing within 30 calendar days. If you choose to appeal, please include the following:

- (1) The nature of your appeal: denial of records, partial denial of records, adequacy of the search, or denial of fee waiver;
- (2) Any legal authorities relied upon to support the appeal; and
- (3) A copy of the determination letter.

Clearly mark both your letter and envelope with the words "FOIA Appeal," and direct it to the following address:

Director, Office of Hearings and Appeals:
Department of Energy
1000 Independence Avenue SW
Washington DC 20585-1615

I appreciate the opportunity to assist you. If you have any questions, please contact E. Thanh Knudson (Case Coordinator, DEA Onsite Contractor) at 503.530.5221.

Sincerely,



C.M. Frost
Freedom of Information/Privacy Act Officer

Enclosure: Responsive documents