



Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

November 20, 2015

In reply refer to: FOIA #BPA-2013-01328-F

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

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

Dear Mr. Sickinger.:

This is a partial response to your July 19, 2013, Freedom of Information Act (5 U.S.C. § 552) request for Bonneville Power Administration records. We apologize for the delay in response.

You requested the following:

“Electronic copies of e-mails to and from ... David C. Clarke [sic] ... [and] Charles T. Mantei ... between April 2013 and 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.”

We note that your original request included three additional names, and that you later agreed to narrow your request to exclude those individuals.

Response:

The Freedom of Information Act 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 **2787** pages of material responsive to your request. We are releasing **1540** pages in full, withholding **11** pages in their entirety and releasing **1181** 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)). Additionally, **55** pages were sent to the Department of Energy Office of Inspector General for review. A final decision will be made on these records, **28** of which will be released to you by BPA and **27** of which will be released to you by the OIG.

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” (5 U.S.C. § 552(b)(5)). In plain language, the exemption protects privileged documents.

Pre-Decisional and Deliberative – 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. The deliberative process privilege protects the decision-making processes of government agencies, and Exemption 5 encourages open, frank discussions on matters of policy and protects against public confusion and the premature disclosure of proposed policies. In this case, we assert Exemption 5 to protect draft documents, certain portions of planning or strategic discussions, and communications within BPA regarding hiring, audits, and investigations.

Attorney-Client Privilege – Attorney-client privilege protects confidential communications between an attorney and her 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 communications with and within BPA’s Office of the General Counsel regarding hiring and related audits and investigations.

Records protected by Exemption 5 may be discretionarily released. We considered discretionary release in accordance with the guidelines set forth in Attorney General Holder’s March 19, 2009, FOIA Memorandum. Agencies may decline to discretionarily release material when they reasonably foresee that disclosure would harm an interest protected by the statutory exemption. While certain material was discretionarily disclosed as a result of this process, we decline to discretionarily release the protected draft material and internal discussions redacted here because it would have a chilling effect on future BPA discussions and decisions.

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) A limited number of personal or non-business comments made by employees
- (3) The names and identifying details of:
 - a. Employees who have or may have acted as whistleblowers

- b. Employees who have or may have filed Equal Employment Opportunity cases
- c. Applicants for BPA jobs, including internal applicants who were not selected
- d. Lower-level employees who were involved in matters under audit or investigation, facing discipline, and/or requiring re-certification
- e. Employees who received incentive payments

For items 1 and 2, we find no public interest in this information. For item 3, 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 under Exemption 7(C) is limited to the names and contact information of Department of Energy Office of Inspector General employees. 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.

Additional Notes:

- (1) Per earlier agreement with you, we have removed records that are responsive but duplicative of records you received in response to FOIA requests BPA-2013-01309-F, BPA-2013-01310-F, and BPA-2013-01311-F.
- (2) We have removed duplicate attachments. If the same document was attached to multiple responsive emails, it is only provided once.

- (3) The responsive documents include references to terminations, and an alphabetical list of terminations starting on page 002090. At BPA, "termination" is a term used to indicate that an individual has left the agency *for any reason*, including retirement or voluntary resignation, transfer to another agency, end of temporary employment, death, and misconduct or unsatisfactory performance.
- (4) As noted above, this is a partial release because a small number of records were sent the the Department of Energy Office of Inspector General for review, and these records have not been returned to BPA at this time. A final decision will be made on those records when they are returned. Until that time, this request will not be closed.

Appeal:

Although this case is not closed, we are providing information about your appeal rights at this time because this release includes almost all of the records responsive to your request. 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:

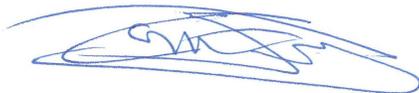
- (1) The nature of your appeal: denial of records, partial denial of records, adequacy of the search, or denial of fee waiver;
- (2) Any legal authorities relied upon to support the appeal; and
- (3) A copy of the determination letter.

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 Colleen Cushnie, Case Coordinator (BPA Contractor, ACS) at (503)530-5986 or via email at cacushnie@bpa.gov.

Sincerely,



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