



Department of Energy

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

SECURITY AND CONTINUITY OF OPERATIONS

November 27, 2013

In reply refer to: NN-1

Dan Seligman
Columbia Research Corporation
PO Box 99249
Seattle, WA 98139

FOIA #BPA-2013-01651-F

Dear Mr. Seligman:

This is the final response to your request for records that you made to the Bonneville Power Administration (BPA), under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

You requested the following:

- “1. A copy of all "legal hold" or "document hold" notice(s) from BPA's Office of General Counselor from the U.S. Department of Energy since January 1, 2010, telling BPA employees not to destroy written or electronic documents (including e-mails) related to BPA's veterans hiring practices or allegations of bias or allegations of retaliation.
2. The distribution list for the "legal hold" or "document hold" notice(s).”

Response:

The enclosed documents are being released with certain information withheld pursuant to Exemption 6 of the FOIA.

BPA asserts this exemption for information which could reasonably be expected to constitute an unwarranted invasion of personal privacy if disclosed. The withheld information consists of the personal contact information (email and cell phone numbers) of individuals. There is no public interest in the disclosure of this information because it does not shed any light on how BPA has performed its statutory duties. Therefore, the individual privacy interest outweighs the public interest in the disclosure of this information.

Pursuant to 10 CFR 1004.8, if you are dissatisfied with this determination, or the adequacy of the search, you may appeal this FOIA response in writing within 30 calendar days of receipt of a final response letter. The appeal should be made to the Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA Appeal is being made.

Please contact Kim Winn, FOIA Specialist, at 503-230-5273 with any questions about this letter.

Sincerely,

/s/Christina J. Munro

Christina J. Munro

Freedom of Information/Privacy Act Officer

Enclosures

From: Ex 6
Sent: Friday, July 12, 2013 4:45 PM
To: Drummond,William K (BPA) - A-7; Decker,Anita J (BPA) - K-7; EX 6 Ex 6
Cc: Ex 6 Ex 6
Subject: IMPORTANT - PLEASE READ ENTIRE EMAIL - Litigation Hold
Importance: High

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

PRESERVATION OF RECORDS REQUEST/LITIGATION HOLD RELATING TO ALLEGED PROHIBITED PERSONNEL PRACTICES AT BONNEVILLE POWER ADMINISTRATION

PLEASE RETAIN THIS EMAIL FOR FUTURE REFERENCE AND FORWARD TO ANYONE WHO MIGHT POSSESS RELEVANT INFORMATION

THIS IS VERY IMPORTANT. FAILURE TO COMPLY WITH THESE INSTRUCTIONS MAY RESULT IN SIGNIFICANT NEGATIVE CONSEQUENCES.

This e-mail is for anyone who has worked on any aspect of personnel practices related to veterans' preference, the use of the category rating system in the exercise of Bonneville's delegated examining authority for competitive hiring, and any adverse actions proposed or taken against Bonneville employees.

To provide some background, in June 2012, the Office of Inspector General (IG) received an anonymous complaint alleging prohibited personnel practices at Bonneville. The complaint alleged violations of OPM regulations, as well as Department policies regarding the application of veterans' preference and the use of the category rating system in the exercise of Bonneville's delegated examining authority for competitive hiring. Allegations have also been raised that Bonneville management has proposed or recently executed a number of personnel actions against employees who cooperated with the IG's review. Destruction of related information could result in an incomplete record that could hinder the efforts of the IG, the Office of Special Counsel, DOE Headquarters management, and the U.S. Department of Justice from reviewing as may be necessary the circumstances surrounding any alleged inappropriate Bonneville hiring practices and determinations, including any subsequent proposed or actual adverse actions.

The Department of Energy is directing all recipients of this preservation of records/litigation hold request ("Litigation Hold") to preserve any and all documents, records and materials related to alleged prohibited personnel practices at Bonneville Power Administration, the subsequent IG investigation, and any related employment matters or personnel actions. Until you are notified otherwise, do not destroy potentially relevant information pertaining to these matters. Examples of potentially relevant information might include but are not limited to hard copy and electronic reports, memoranda, letters, applications, agreements, contracts, studies, evaluations, meeting minutes, calendars, logs, notes, presentations, charts, spreadsheets, work papers, facsimiles, emails, attachments, and photographs.

We must ensure that all potentially responsive items be retained and not altered, deleted or otherwise discarded. Furthermore, any routine or non-routine destruction or disposal must be suspended. The information below provides further guidance on what needs to be preserved and steps to take to comply with this Litigation Hold.

The Duty to Preserve Potentially Relevant Information

Because federal law may impose an obligation on this agency and its employees to preserve potentially relevant information, you personally must take appropriate steps to preserve any such information that is in your possession, custody, or control. You must preserve this information even if it otherwise could be destroyed, deleted or overwritten in the normal course of Agency operations. If information that is subject to a litigation hold is destroyed, the responsible party could be subject to the imposition of administrative or judicial sanctions, including in certain appropriate instances criminal sanctions.

What Must Be Preserved

The information that must be preserved includes electronically stored information ("ESI"), hard copies of documents, and tangible things. ESI includes, but is not limited to, computer files of any type (including word processing documents, e-mail messages, spreadsheets, models, calendar entries, digital photographs or other digital images, floppy discs, CDs, DVDs, and flash memory media [including USB drives and memory cards for cameras and cell phones]). It includes not only information stored on agency computers but can also include information stored on home computers, personal laptop computers, tablets such as iPads, Personal Digital Assistants ("PDAs") such as Palm Pilots and BlackBerry smartphones, and mobile phones, if used for work. Examples of tangible things may include samples and photographs. All information, including privileged, protected, and confidential information, must be preserved.

What You Need to Do

You must take the following steps with respect to the above-described materials. Please contact me if you need any assistance or have any questions.

1. Do not delete, throw out, shred, or otherwise destroy potentially relevant information, or allow deletion to happen by automatic deletion operations.
2. Maintain relevant ESI as described above. You should take steps to ensure that ESI is preserved in such a way as to preserve the "metadata" (internal computer data) embedded in the ESI. If you do not understand what this involves, please contact the appropriate IT staff to explain it to you and assist you with specific problems you may face. You should expeditiously identify any critical databases that may contain relevant information and which may be updated and cause the information to be lost to determine what steps, if any, need to be taken to ensure the preservation of relevant data without adversely disrupting Agency operations.
3. Take affirmative steps to prevent the destruction of any potentially relevant information that has been transferred to a Federal Records Center or any other location.
4. Do not transfer any potentially relevant information to a Federal Records Center or any other location unless you have received advance approval from me.
5. Before any computer or electronic system that contains relevant information is retired or upgraded, or before an old computer or hard drive containing relevant information is retired or reimaged, whether because of a departing employee or otherwise, please ensure that the agency retains access to potentially relevant information after the retirement or upgrade.
6. Contact me if there are any staffing changes in your office that affect this matter, such as the retirement or departure of people who have done work related to this matter or new or additional people doing work relating to this matter.
7. Treat non-identical copies of documents (word processing files, spreadsheets, etc.) as if they were unique and save, at a minimum, the latest version and all versions that were shared with others.

8. If potentially relevant ESI is inadvertently deleted, then immediately contact my staff and IT staff. Under some circumstances, IT staff may be able to recover information.

9. Maintain information subject to the litigation hold in an orderly, readily retrievable manner, keeping confidential and/or privileged information separate from publicly releasable information; and be prepared to provide materials subject to this litigation hold for review and/or production as needed for any subsequent case development, settlement discussions, alternative dispute resolution, preparation of privilege logs, discovery, pre-trial activities, and trial.

10. If you need to comply with an e-mail space quota, do not delete potentially relevant e-mail or move it from the e-mail system. You may move the potentially relevant information to an existing archive within the e-mail system if that archive exists on a network hard drive and will not be subject to accidental deletion. If you do not know if your archive meets these criteria, or if you need to create an archive, do not delete or move anything; contact IT staff.

11. If you need to work with any information subject to this hold, you must create a copy of the original, preserve the original and work from the copy. Note that opening an electronic document can change the document's metadata. You must take appropriate steps, if practicable, to create your copy without changing the document's metadata. If you are unsure how to do this, contact the appropriate IT staff.

12. Please review the list of recipients of this litigation hold notice. If you are aware of other people not listed who have worked or are working on this matter, or whom you otherwise believe may have custody of potentially relevant information, please forward a copy of these instructions to them and inform me.

13. If you are a supervisor, monitor and take all reasonable steps to make sure those you supervise comply with these instructions.

In the future, you may receive additional instructions for producing this information. In the meantime, please carefully review this e-mail and preserve all materials in accordance with these instructions.

Thank you for your attention to this matter.

