



## Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

February 26, 2014

In reply refer to: D-1

Ben Tansey  
Energy NewsData Publications  
PO Box 900928, Queen Anne Stn.  
Seattle, WA 98119-9228

### FOIA #BPA-2014-00074-F

Mr. Tansey:

This is a final response to your request for Bonneville Power Administration (BPA) records, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in our office on October 15, 2013, with an acknowledgement letter sent to you on October 28, 2013. Further, a letter extending our deadline for response was sent to you on November 21, 2013. We regret that we were not able to respond to your request more quickly.

#### **You requested the following:**

1. A complete copy of the "informal comments" referred to on page 23 of DOE/IG-0895 that were supplied by BPA.
2. Any other comments that BPA supplied in response to the findings reported by the IG in DOE/IG-0895.

#### **Response:**

BPA conducted a search of the paper and electronic records of the Executive Office and the Office of General Counsel, including the records of then Acting Administrator Eliot Mainzer and General Counsel Randy Roach.<sup>1</sup> The Office of General Counsel coordinates any necessary comment or response to IG reports.

We have determined that there are no responsive records for Item 2. For Item 1, we have located a single responsive document consisting of five pages. We are withholding this document in its entirety under Exemption 5 (5 U.S.C. § 552(b)(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. The deliberative process privilege

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<sup>1</sup> Mr. Mainzer became Administrator of BPA on January 20, 2014.

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 comments that were offered in an informal dialogue between BPA and the Department of Energy. These comments differ from formal comments, which are prepared for publication with the reported findings.

Material protected under Exemption 5 was considered for discretionary release, according to 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. 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. Disclosure of the informal comments would have a chilling effect on future BPA discussions with the Department of Energy, and we decline to discretionarily release this material.

### **Appeal**

This is BPA's final action on your FOIA request. You may seek administrative appeal pursuant to Department of Energy FOIA regulations at 10 C.F.R. § 1004.8. If you choose to appeal, you must do so in writing within 30 days and include the following information:

- (1) The nature of your appeal - denial of records, partial denial of records, adequacy of search, or denial of fee waiver;
- (2) Any legal authorities relied upon to support the appeal; and
- (3) A copy of this 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 Kim Winn, FOIA Public Liaison, at (503) 230-7305.

Sincerely,

*/s/Christina J. Munro*

Christina J. Munro

Freedom of Information/Privacy Act Officer