



## Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

October 7, 2014

In reply refer to: FOIA Appeal OHA Case No. FIA-14-0041  
(Request No. BPA-2014-00312-F)

Ted Sickinger  
The Oregonian  
1500 SW First Ave, Suite 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:

On June 30, 2014, the Department of Energy's (DOE) Office of Hearings and Appeals (OHA) received your appeal of BPA's May 27, 2014, final response to your Freedom of Information Act (FOIA) request. Your appeal challenged BPA's determination to withhold responsive records pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6).

On July 31, 2014, the OHA remanded the matter to BPA and directed BPA to "issue a new determination in accordance with the instructions set forth in the [OHA] Decision." This is BPA's response to the OHA Decision and our new determination letter.

**You had originally requested:**

1. "All travel or other expense reimbursement forms submitted by [BPA employees] Cathy Ehli and Robin Furrer since Jan[uary] 1, 2011. These include expenses on travel cards issued directly to them, or purchase card expenses made on their behalf.
2. All statements itemizing charges since Jan[uary] 1, 2011, on travel cards or government issued credit cards held by Cathy Ehli and Robin Furrer.
3. Any written or electronic documents that discuss whether Cathy Ehli or Robin Furrer used travel or purchase cards for personal expenses, and whether they have been asked to reimburse BPA or the government for personal expenses on their travel cards or government-issued credit cards. This request includes e-mails describing the personal uses and the amount involved."

**Response: Request Item #2**

In regard to statements itemizing charges on travel cards,<sup>1</sup> BPA has re-reviewed the information and is withholding, in full, any responsive records. Exemption 6 is intended to protect the privacy of individuals by shielding from disclosure certain documents that would constitute a clearly unwarranted invasion of personal privacy. Release of an individual's travel card billing statements is exactly the type of information that Exemption 6 is intended to protect; namely, the privacy interest in their billing statement for which the individual is responsible to repay.

The travel card charges are the responsibility of the employee to whom the card was issued, and they have a privacy interest in the information delineated on their travel card billing statement. Release of any of the requested information itemizing charges on travel cards would not shed any light on government activities - the purpose of the FOIA statute. Because BPA, in its response to Request Item #1, has disclosed the amounts these employees were reimbursed for any authorized travel through release of the travel vouchers requested, there is no remaining public interest in the billing statements of the individuals.

The FOIA requires that any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. *See* 5 U.S.C. § 552(b), 10 C.F.R. § 1004.7(b)(3). However, information in a privileged record may be withheld when it is not possible to reasonably segregate meaningful portions of non-exempt information from the privileged information without invading the employees' privacy. In the responsive records for Request Item #2, releasing any information would jeopardize the privacy interests that FOIA exemptions are clearly designed to protect. The non-exempt information is so inextricably intertwined with privileged information that disclosure of the non-exempt information would reveal too much personal information. Therefore, BPA has determined that the requested records will be withheld in their entirety.

**Response: Request Item #3**

As courts have recognized, there are instances when even acknowledging whether certain documents exist would jeopardize the privacy interest that FOIA exemptions are designed to protect. To acknowledge the existence of records for Request Item #3 would constitute a clearly unwarranted invasion of personal privacy pursuant to Exemption 6. *See e.g., Antonelli v. FBI*, 721 F.2d 615, 617-18 (7th Cir. 1983); *William H. Payne*, Case No. VFA-0243 (Nov. 15, 1996). Merely confirming that a particular file exists and stating the applicable exemption could reveal too much information where the requester seeks access to another person's files. *Antonelli*, 721 F.2d at 618 (upholding an agency's refusal to confirm or deny the existence of records that a FOIA requester sought about another person, where revealing that information would be likely to constitute an invasion of that person's privacy under Exemptions 6 and 7). In this instance, confirming or denying the existence of documents responsive to Request Item #3, namely, "documents that discuss whether Cathy Ehli or Robin Furrer used travel or purchase cards for personal expenses..." would constitute a clearly unwarranted invasion of their personal privacy under Exemption 6. Therefore, BPA is neither confirming nor denying the existence of any records responsive to Request Item #3.

<sup>1</sup> There are two types of government-issued credit cards. One is a purchase card for procurement reasons for which BPA has no responsive documents. The other is a travel card which is the type of card pertaining to your request.

**Appeal:**

Pursuant to DOE 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 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 Christopher Frost, FOIA Officer at (503) 230-5602.

Sincerely,



Christopher Frost  
Freedom of Information/Privacy Act Officer

Cc: Department of Energy, Office of Hearings and Appeals



## Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

May 27, 2014

In reply refer to: D-B1

Ted Sickinger  
The Oregonian  
1320 SW Broadway  
Portland, Oregon 97201

### FOIA #BPA-2014-00312-F

Dear Mr. Sickinger:

This is a final response to the December 12, 2013, request for information that you sent to the Department of Energy, Bonneville Power Administration (BPA) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested:

1. "All travel or other expense reimbursement forms submitted by [BPA employees] Cathy Ehli and Robin Furrer since Jan[uary] 1 2011. These include expenses on travel cards issued directly to them, or purchase card expenses made on their behalf.
2. All statements itemizing charges since Jan. 1, 2011, on travel cards or government-issued credit cards held by Cathy Ehli and Robin Furrer.
3. Any written or electronic documents that discuss whether Cathy Ehli or Robin Furrer used travel or purchase cards for personal expenses, and whether they have been asked to reimburse BPA or the government for personal expenses on their travel cards or government-issued credit cards. This request includes e-mails describing the personal uses and the amount involved."

#### **Response:**

BPA conducted its search on December 13, 2013, which is the cutoff date for responsive records. After review, BPA has determined that the records responsive to Item 1 of your request should be withheld in part pursuant to Exemption 6 of the FOIA and that any records responsive to either Items 2 or 3 of your request should be withheld in their entirety pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552 (b)(6).

Exemption 6 is generally referred to as the "personal privacy" exemption; it provides that the disclosure requirements of the FOIA do not apply to personnel and medical files and similar files the disclosure of which, "would constitute a clearly unwarranted invasion of personal privacy." In applying Exemption 6, BPA considered: 1) whether a significant privacy interest would be invaded; 2) whether the release of the information would further the public interest by shedding light on operation or activities of the Government; and 3) whether in balancing the privacy

interest against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy.

#### Records Responsive to Item 1

BPA is releasing, in part, records that are responsive to Item 1 of your request. The information withheld under Exemption 6 consists of social security numbers, home addresses, and/or other private information. This information qualifies as “similar files” because it is information in which an individual has a privacy interest. Moreover, releasing the information could subject the individual(s) to unwarranted or unsolicited communications. Since no public interest would be served by disclosing this information, and since there is a viable privacy interest that would be threatened by such disclosure, Exemption 6 authorizes withholding the information. Therefore, we have determined that the public interest in the information's release does not outweigh the overriding privacy interests in keeping it confidential.

#### Records Responsive to Items 2 & 3

BPA is withholding in full, any records that are responsive to Items 2 or 3 of your request. In its review, BPA determined first, that the information withheld under Exemption 6 qualified as “similar files” because it is information in which an individual has a significant privacy interest. Next, BPA determined that there is a significant privacy interest that would be invaded by releasing the requested information. Releasing the information could subject the individual(s) to unwarranted or unsolicited communications and/or could cause private and personal information to be released to the public.

BPA then determined that there is no public interest in releasing the requested information. Information that “reveals little or nothing about an agency’s own conduct” does not meet the public interest standard. *See: DOJ v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 773 (1989).

Furthermore, even if it was determined that some of the requested information would shed any light on BPA’s performance of its statutory duties in these isolated circumstances, or otherwise let citizens know “what their government is up to,” the weight of privacy interest in these types of instances significantly outweigh the public interest. Release of the requested records that contains private materials of two named individuals simply does not provide enough information demonstrating agency operations or activities in order to overcome the significant privacy interest contained in the documents.

Since no public interest would be served by disclosing this information, and since there is a viable privacy interest that would be threatened by such disclosure, Exemption 6 authorizes withholding the information. Therefore, we have determined that the public interest in the information’s release does not outweigh the overriding privacy interest in keeping it confidential.

This satisfies the standard set forth in the Attorney General’s March 19, 2009, memorandum that the agency is justified in not releasing material that the agency reasonably foresees would harm

an interest protected by the one of the statutory exemptions. Accordingly, this information is not being disclosed.

#### 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 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

If you have any questions or concerns about this letter, please contact Kim Winn, FOIA Public Liaison, at 503-230-5273.

Sincerely,

*/s/Christina J. Munro*

Christina J. Munro  
Freedom of Information/Privacy Act Officer

Enclosure: CD