



Department of Energy

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

FREEDOM OF INFORMATION ACT PROGRAM

February 2, 2016

In reply refer to: FOIA #BPA-2015-00301-F

Rick Eichstaedt
Gonzaga University, School of Law
721 N. Cincinnati Street
Spokane, WA 99220

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

Mr. Eichstaedt:

This is a final response to your request for Bonneville Power Administration (BPA) records under the Freedom of Information Act, 5 U.S.C. § 552. Your request was received in our office on Thursday, December 4, 2014, with an acknowledgement letter sent to you on December 23, 2014.

BPA extended the target date for a response to you in letters dated March 31, 2015, June 10, 2015, September 8, 2015, and November 12, 2015 respectively, with a final extension in an email dated January 26, 2016.

You requested:

“Beginning on June 1, 2013 through today, all communications (including but not limited to emails, phone logs, presentations, meeting notes, and any written material) between the Bonneville Power Administration leaders and staff and BIOP Accord Parties, Federal Agencies, Congressional Members, individual Northwest Power and Conservation Council members, and Non-Governmental Organizations (including but not limited to utility organizations and ratepayer groups) where the subject matter was the Northwest Power and Conservation Council’s Fish and Wildlife Program’s fish passage and reintroduction provisions, toxics provisions, and any provisions that could or could be construed to expand the current Northwest Power and Conservation Council’s Fish and Wildlife Program and/or the Bonneville Power Administration’s fish and wildlife funding requirements.”

Response:

We conducted a search of the [paper/electronic] records of BPA’s Environment, Fish & Wildlife. We have located 334 pages of material responsive to your request. We are releasing 325 pages in full and releasing 9 pages with certain information redacted under Exemptions (b)5 and (b)6 of the FOIA.

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)).

Exemption (b)5: Exemption (b)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 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 (b)5 to protect a pre-decisional, deliberative portion of an internal conversation.

Records protected by Exemption (b) 5’s pre-decisional and deliberative privilege 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. The deliberative process privilege protects the decision-making processes of government agencies, and Exemption (b)5 encourages open, frank discussions on matters of policy and protects against public confusion and the premature disclosure of proposed policies. Disclosure of the protected draft material and internal discussions would have a chilling effect on future BPA discussions and decisions, and we decline to discretionarily release this material.

Exemption (b)6: Exemption (b)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 (b)6 requires balancing the public interest in the information against the individual privacy interest at issue. Here, we assert this exemption to redact cell phone numbers and personal email addresses. We find no public interest in this information and therefore redact it under Exemption (b)6.

Information that falls under Exemption (b)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.

There are no fees associated with this request.

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

I appreciate the opportunity to assist you. If you have any questions, please contact Kim Winn, Case Coordinator, at 503-230-5273 or via email at kswinn@bpa.gov.

Sincerely,



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

Enclosure: Responsive documents and CD