



Department of Energy

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

FREEDOM OF INFORMATION ACT PROGRAM

June 28, 2022

In reply refer to: FOIA #BPA-2021-00513-F

SENT VIA EMAIL ONLY TO: amissel@advocateswest.org

Andrew Missel
Advocates for the West
3701 SE Milwaukie Ave., Ste. B
Portland OR 97202

Dear Mr. Missel,

This communication is the Bonneville Power Administration's (BPA) third partial response to your request for agency records made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). BPA received your records request on March 29, 2021, and formally acknowledged your request on April 12, 2021. A first partial response to your FOIA request was provided to you on December 16, 2021; a second partial response was provided to you on March 21, 2021.

Request

"...copies of the records described below relating to the Bonneville Power Administration's ("BPA") relationship with Kintama Research Services ("Kintama") and/or its CEO, Dr. David Welch:

1. All contracts between BPA and Kintama and/or Dr. Welch from the start of the year 2000 through the date of search.
2. All communications between BPA and Kintama and/or Welch from the start of the year 2000 through the date of search.
3. All records from the start of the year 2000 through the search date that document, memorialize, or refer to any meetings, conversations, or other communications between BPA and Kintama and/or Welch.

Any reference to an entity—such as "BPA" or "Kintama"—includes all employees and agents of that entity as well as the entity itself and any division thereof. Any non-identical duplicates of records that include any information not contained in the original record should be disclosed in response to this request. Non-identical duplicates may contain additional information due to notation, attachment, or other alteration or supplement, or because of differences in metadata.

For this request, the term “records” includes, but is not limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, recordings, telephone records, voicemails, telephone notes, telephone logs, text messages, chat messages, minutes, memoranda, comments, files, presentations, consultations, assessments, evaluations, schedules, reports, studies, photographs and other images, data, maps, and/or all other responsive records, in draft or final form.

The term “communications” includes, but is not limited to, any and all emails, letters, faxes, notes, voicemails, text messages, chat messages, comments, presentations, and recordings, as well as any document, file, or other thing included with a letter or fax, attached to an email, or linked to in a text message, chat message, or email.”

Third Partial Response

The agency collected responsive records from knowledgeable agency personnel in the Environment, Fish & Wildlife Commodity Investment Office within Supply Chain Services and the Cyber Security Forensics & Intelligence Office conducted a search within the agency’s Outlook email system. Accompany this communication are 6,942 pages of responsive records with redactions applied under the following FOIA exemptions: 174 pages with redactions applied under 5 U.S.C. § 552(b)(2); and 90 pages with redactions applied under 5 U.S.C. § 552(b)(4); and 1,172 pages with redactions applied under 5 U.S.C. § 552(b)(5); and 849 pages with redactions applied under 5 U.S.C. § 552(b)(6). A more detailed explanation of the applied exemption follows.

Explanation of Exemptions

The FOIA generally requires the release of all agency records upon request. However, the FOIA permits or requires withholding certain limited information that falls under one or more of nine statutory exemptions (5 U.S.C. §§ 552(b)(1-9)). Further, section (b) of the FOIA, which contains the FOIA’s nine statutory exemptions, also directs agencies to publicly release any reasonably segregable, non-exempt information that is contained in those records.

Exemption 2

Exemption 2 permits withholding of agency information “related solely to the internal personnel rules and practices of an agency.” BPA relies on Exemption 2 here to protect internal internet portals, telephonic meeting call-in numbers and related passwords and passcodes found on the subject responsive records. Records protected by Exemption 2 may be discretionarily released. BPA considered a discretionary release and determined that the subject information should not be discretionarily released because a public release would hinder BPA internal procedures and policies.

Exemption 4

Exemption 4 protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C. § 552(b)(4)). Information is considered commercial or financial in nature if it relates to business or trade. This exemption is intended to protect the interests of both the agency and third party submitters of information. BPA was required by Exemption 4 to solicit objections to the public release of any third party’s confidential commercial information contained in the responsive records set. BPA provided

Kintama and sub-contractors whose information was included in the responsive records with an opportunity to formally object to the public release of their information contained in BPA records. Innovasea Systems, Inc., owner of Vemco Tracking, submitted their objections to BPA. BPA accepted those objections, based on guidance available from the U.S. Department of Justice, and is withholding Innovasea Systems, Inc. commercial confidential information from public release, specifically pricing information. BPA also withheld third party banking and financial routing account numbers and wire transfer information. The FOIA does not permit a discretionary release of information otherwise protected by Exemption 4.

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 records. The FOIA’s Exemption 5 deliberative process privilege protects records showing the deliberative or decision-making processes of government agencies. Records protectable under this privilege must be both pre-decisional and deliberative. A record is pre-decisional if it is generated before the adoption of an agency policy. A record is deliberative if it reflects the give-and-take of the consultative process, either by assessing the merits of a particular viewpoint, or by articulating the process used by the agency to formulate a decision. Here, BPA relies on Exemption 5 to protect deliberative and pre-decisional communications appertaining to the agency’s interests in the Columbia River System Operations Environmental Impact Statement (“CRSO EIS”) dated July 2020, the associated Endangered Species Act consultations, and the 2020 CRSO EIS Record of Decision. Records protected by Exemption 5 may be discretionarily released. BPA has considered and declined a discretionary release of some pre-decisional and deliberative information in the responsive records set because disclosure of that information would harm the interests and protections encouraged by Exemption 5.

Exemption 6

Exemption 6 serves to protect Personally Identifiable Information (PII) contained in agency records when no overriding public interest in the information exists. BPA does not find an overriding public interest in a release of the information redacted under Exemption 6—specifically, individuals’ signatures, cell numbers, and personal matters. BPA cannot waive these PII redactions, as the protections afforded by Exemption 6 belong to individuals and not to the agency.

Lastly, as required by 5 U.S.C. § 552(a)(8)(A), information has been withheld only in instances where (1) disclosure is prohibited by statute, or (2) BPA foresees that disclosure would harm an interest protected by the exemption cited for the record. When full disclosure of a record is not possible, the FOIA statute further requires that BPA take reasonable steps to segregate and release nonexempt information. The agency has determined that in certain instances partial disclosure is possible, and has accordingly segregated the records into exempt and non-exempt portions.

Certification

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the records search, redactions, and partial records release described above.

Appeal

Note that the records release certified above is partial. Additional and remainder records releases will be forthcoming as agency resources and records volumes permit. Pursuant to 10 C.F.R. § 1004.8, you may appeal the adequacy of the records search, and the completeness of this partial records release, within 90 calendar days from the date of this communication. Appeals should be addressed to:

Director, Office of Hearings and Appeals
HG-1, L'Enfant Plaza
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase "Freedom of Information Appeal" in the subject line. (The Office of Hearings and Appeals prefers to receive appeals by email.) The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE's records are situated, or (4) in the District of Columbia.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
E-mail: ogis@nara.gov
Phone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769>

Processing Update & Final Release Target Date

BPA continues to review and process the remaining records collected in response to your request. Those remaining records are potentially subject to the application of 5 U.S.C. § 552(b)(4). In light of the above conditions and determinations BPA currently estimates the final release to your FOIA request by September 9, 2022. BPA invites you to contact us to narrow the scope of your request, if desirable, or to discuss the estimated completion date.

Questions about this communication or the status of your FOIA request may be directed to the FOIA Public Liaison Jason Taylor at jetaylor@bpa.gov or 503-230-3537. Questions may also be

directed to E. Thanh Knudson, Case Coordinator (ACS Staffing Group), at 503-230-5221 or etknudson@bpa.gov.

Sincerely,

Candice D. Palen
Freedom of Information/Privacy Act Officer

[Attachments / Enclosures: Agency records responsive to FOIA request BPA-2021-00513-F accompany this communication.](#)