



Department of Energy

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

FREEDOM OF INFORMATION ACT PROGRAM

September 29, 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 Avenue, Suite B
Portland OR 97202

Dear Mr. Missel,

This communication is the Bonneville Power Administration's (BPA) fourth partial and final 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 on March 21, 2022 and a third partial response was provided on June 28, 2022.

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.

Additional definitions and request parameters submitted with your original FOIA request, and previously acknowledged, remained part of the agency's response plan throughout. This fourth and final release has also been processed in light of the additional definitions and request parameters. A recital of the additional definitions and parameters are omitted here for the sake of brevity.

Fourth Partial and Final Response

The agency collected responsive records from knowledgeable personnel in the Environment, Fish & Wildlife Commodity Investment office within Supply Chain Services. BPA's Cyber Security Forensics & Intelligence office also conducted a search and delivered Outlook email files responsive to your request. Those records have been released to you in the partial installments mentioned above. BPA's fourth and final response installment comprises 1709 pages of agency records. Those pages accompany this communication, with the following redactions applied:

- 4 pages with redactions applied under 5 U.S.C. § 552(b)(2) (Exemption 2)
- 354 pages with redactions applied under 5 U.S.C. § 552(b)(5) (Exemption 5)
- 114 pages with redactions applied under 5 U.S.C. § 552(b)(6) (Exemption 6)

You'll find a detailed explanation of the applied exemptions below.

Publicly Available Information

In addition to the fourth partial set of records described above, the agency's FOIA office collected an excel file entitled, "ca-data-all 01-28-2019". That file is responsive to your request and is publicly available at StreamNet — an internet service providing standardized information to support the Columbia River Basin Fish and Wildlife Program. You can locate the responsive information via a tabular search at: <https://www.streamnet.org/data/hli/?index=1&perpage=10>; or via a map based search at <https://cax.streamnet.org/>. BPA will also provide the native records available at StreamNet upon request.

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 material "related solely to the internal personnel rules and practices of an agency" (5 U.S.C. § 552(b)(2)). BPA relies on Exemption 2 here to protect telephonic meeting call-in numbers and related passcodes found on the subject responsive records from public release. 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 5

Exemption 5 protects agency records showing the deliberative or decision-making processes of government agencies. 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, the 2020 CRSO EIS Record of Decision, and ongoing decision-making related to Columbia River System operations and participation in discussions related to the litigation stays in the *NWF et al. v. NMFS et al.* and *Pacific Coast Federation of Fishermen's Association v. Bonneville Power Administration* litigation.

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. BPA is herein releasing segregable information as appropriate.

Additionally, BPA is herein providing you with a more detailed description of why public disclosure of the information withheld will, in the context of the agency action at issue, impede future agency deliberations and decisions.

Categories of Records and Foreseeable Harm

The information withheld under Exemption 5 is organized into the following categories:

- Discussions of study methods, possible areas of focus, and pros and cons of sources of SARs data; preliminary and brainstorming discussions by staff and contractors, many involving ongoing Columbia River System (CRS) issues.
- Discussions on data choices and influences on the study; preliminary and brainstorming discussions by staff and contractors, many involving ongoing CRS issues.
- Discussion of study aims and parameters; preliminary strategy discussions.
- General brainstorming regarding ongoing CRS issues.
- Discussions related to the study funding; deliberative strategy discussions concerning how to allocate limited funds.
- Discussions about the scientific basis for decision-making, including how analysis will inform decision-making.

All of the above categories are pre-decisional and deliberative agency information. While the categorized information contributed to decisions that have already been made, the CRS issues that those materials pertain to are active and ongoing. The categorized information continues to inform agency decision-making. Additionally to note, the subjects of these categorized discussions go beyond any one single agency decision. The subjects of these categorized discussions factor into a continuing series of decisions currently being made by BPA, and decisions that will be made in the future. These decisions include, but are not limited to, the agency's agreeing to alter 2021-2022 CRS operations, as captured in the Term Sheet for Stay of Preliminary Injunction Motion and Summary Judgment Schedule, and 2023 operations in the United States' Commitments record accompanying the Joint Motion to Extend the Litigation Stay for the *NWF et al. v. NMFS et al.* (3:01-cv-00640-SI) litigation.

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 records release described above.

Appeal

The records release certified above is final. Pursuant to 10 C.F.R. § 1004.8, you may appeal the adequacy of the records search, and the completeness of this final 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

Questions about this communication or the status of your FOIA request may be directed to James King, FOIA Public Liaison, at jjking@bpa.gov or 503-230-7621. 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.](#)