



Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

October 7, 2021

In reply refer to: FOIA #BPA-2021-01107-F

John Ryan
KUOW Public Radio
312 North 160th Place, Unit 1
Shoreline, WA 98133
Email: jryan@kuow.org

Dear Mr. Ryan,

This communication concerns your records request submitted to the Bonneville Power Administration (BPA), made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). BPA received your request on September 14, 2021 and formally acknowledged your request on September 24, 2021.

Request

“Please provide an electronic copy of the BPA security camera footage mentioned in the Sept. 2021 USDOT-Federal Railroad Administration investigation of the Dec. 22, 2020, Custer, WA, oil train derailment.”

Response

The agency’s Office of Physical Security searched for and gathered the requested video footage. The footage is being withheld in full under 5 U.S.C. § 552(b)(3) (Exemption 3). 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 3

Exemption 3 permits withholding of material under the non-disclosure provisions of other federal statutes. A statute may qualify for Exemption 3 if it “requires that the matters be withheld” or “establishes particular criteria for withholding” (5 U.S.C. § 552(b)(3)). In this case, the Federal Power Act (16 U.S.C. § 824o-1(d) requires withholding of Critical Electric Infrastructure Information (CEII). The term “critical electric infrastructure” means “a system or

asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.” (16 U.S.C. § 824o-1(a)(2)) The term “critical electric infrastructure information” means “information related to critical electric infrastructure, or proposed critical electrical infrastructure, generated by or provided to the Commission or other Federal agency, other than classified national security information, that is designated as critical electric infrastructure information by the Commission or the [Energy] Secretary pursuant to subsection (d). Such term includes information that qualifies as critical energy infrastructure information under the Commission’s regulations.” (16 U.S.C. § 824o-1(a)(3))

The responsive records contain video from thermal imaging cameras which display thermal camera alarm zones at BPA’s Custer Substation, which could show an adversary how to avoid being detected by the alarms and defeat BPA’s security system. The Department of Energy designated the entire video footage as CEII pursuant to DOE regulations at 10 CFR § 1004.13. Therefore, we are withholding the information under Exemption 3 and the Federal Power Act (16 U.S.C. § 824o-1(d)).

Fee

No fees are associated with this request.

Certification

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

Appeal

The adequacy of the search may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. 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 the agency's FOIA Public Liaison, Jason Taylor, at jetaylor@bpa.gov.

Sincerely,



Candice D. Palen
Freedom of Information/Privacy Act Officer