



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

August 17, 2010

Certified Mail

Ms. Helen Burke
(home address has been deleted)

Dear Ms. Burke:

FREEDOM OF INFORMATION ACT REQUEST (FOI 2010-01730)

You requested, pursuant to the Freedom of Information Act (FOIA), information related to the decision to remove the Enterprise Company (ENCO) employees from the Hanford Site Pension Plan and the reversal of that decision. Specifically, you requested information related to the letter sent from Ms. Elaine Cone and Ms. Heather Goldie-Baker to the Plan Participants dated August 1, 2009, informing them that they had been eliminated from the plan and the August 20, 2009, letter that was sent stating the plan was revised on August 14, 2009, to continue the special provisions for ENCO employees.

We have completed our search for documents. This office has made certain deletions in the enclosed documents pursuant to Exemption 5 of the FOIA. Exemption 5 shields from mandatory disclosure documents which are "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) and 10 C.F.R. § 1004.10(b)(5). There are three traditional privileges that fall under this definition of exclusion: the attorney-client privilege, the attorney work-product privilege, and the executive "deliberative process" or "pre-decisional" privilege.

Exemption 5 incorporates the deliberative process privilege that protects advice, recommendations, and opinions that are part of the process by which agency decisions and policies are formulated. The factors that are weighed to determine whether documents are protected by the deliberative process privilege include: (1) whether the documents are "deliberative" (i.e., whether it reflects the give-and-take of a consultative process); (2) whether the documents are so candid or personal in nature that public disclosure would stifle honest and frank communication in the future; and (3) whether the documents are recommendatory of what will become a final document.

Certain withheld information from the documents describes proposed recommendations and strategies as well as negotiation positions and impacts, which are deliberative and pre-decisional within the meaning of Exemption 5 of the FOIA.

Material determined to be exempt from mandatory disclosure may be released if disclosure is determined to be in the public interest. We have determined the public interest is best served by non-disclosure because disclosure of this information would impede the Plan Committee's ability to effectively discuss options surrounding the pension plan. In addition, as the withheld information consists of proposed recommendations and strategies deliberative in nature the information is predecisional and exempt from disclosure.

Information withheld under the attorney client privilege summarized communications between attorneys and their clients and was based upon expressed opinions on legal and policy matters. We have determined the information is protected from disclosure pursuant to the attorney-client and deliberative process privileges. Material determined to be exempt from mandatory disclosure may be released if disclosure is determined to be in the public interest. We have determined the public interest is best served by non-disclosure because disclosure of this information would inhibit pre-decisional discussion of policy issues as well as candid attorney-client discussion of legal matters.

In addition, we have also deleted the names, home addresses and any other personal information in the documents pursuant to Exemption 6 of the FOIA. Exemption 6 provides that an agency may protect from disclosure all personal information if its disclosure would constitute a clearly unwarranted invasion of privacy by subjecting the individuals to unwanted communications, harassment, intimidation, retaliation, or other substantial privacy invasions by interested parties.

In invoking Exemption 6 we considered 1) whether a significant privacy interest would be invaded by disclosure of information, 2) whether release of the information would further the public interest by shedding light on the operations or activities of the government, and 3) whether in balancing the private interest against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy. We have determined that the public interest in the identity of the individuals whose names appear in the documents does not outweigh the individuals' privacy interests.

Lastly, this office has deleted any information in the documents that is not responsive to your request.

All releasable information in the documents has been segregated and is being provided to you. The undersigned individual is responsible for this determination. You have the right to appeal to the Office of Hearings and Appeals, as provided in 10 CFR 1004.8, for any information denied to you in this letter. Any such appeal shall be made in writing to the following address: Director, Office of Hearings and Appeals (HG-1), U.S. Department of Energy, L'Enfant Plaza Building, 1000 Independence Avenue SW, Washington, D.C. 20585-1615, and shall be filed within 30 days after receipt of this letter. Should you choose to appeal, please provide this office with a copy of your letter.

As you know, you fall under a fee category which entitles you to two hours of search time and 100 pages of photocopies at no charge. Although we had originally stated that search time would be approximately 4 to 6 hours, after we concluded our search it only took 2 hours. Therefore, the documents are being provided to you at no charge.

Ms. Helen Burke

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If you have any questions regarding your request, please contact me at our address above or on (509) 376-6288.

Sincerely,



Dorothy Riehle
Freedom of Information Act Officer
Office of Communications
and External Affairs

OCE:DCR

Enclosures