



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

June 4, 2013

CERTIFIED MAIL

Mr. Mike Nartker
Weapons Complex Monitor
4301 Connecticut Avenue, NW
Suite 132
Washington, D.C. 20008

Dear Mr. Nartker:

FREEDOM OF INFORMATION ACT REQUEST (FOI 2013-00899)

This letter is in response to your Freedom of Information Act (FOIA) request that you sent to the Department of Energy (DOE) Headquarters FOIA Office. Your request was received in this office on April 18, 2013. In that letter you requested copies of correspondence and emails between DOE officials in the Secretary of Energy's office, the Deputy Secretary of Energy's office, the Office of Health, Safety and Security, the Office of Environmental Management and the Office of River Protection, and between Bechtel National and Bechtel Inc. concerning Bechtel's proposal to forgo its award fee for the period of the second half of 2012 for its work at the Hanford Waste Treatment Plant.

Your request was assigned to the DOE's Office of River Protection and Bechtel National, Inc. to conduct a search of its files for responsive documents. We have conducted a thorough search and the enclosed documents were located. Within the documents, this office has made certain deletions pursuant to Exemption 5 of the FOIA.

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." 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. In this case, we are invoking the deliberative process privilege and the attorney-client privilege.

The deliberative process protects advice, recommendations, and opinions that are pre-decisional and part of the decision-making process of the Government. This privilege protects not merely the documents, but also the integrity of the deliberative process itself where the exposure of that process, or an element thereof, would result in harm. The material being withheld as deliberative includes exchanges between government employees, government representatives, and/or contractor employees regarding decisions not yet made. It is reasonably foreseeable that release of such information could chill open and frank discussions, limit government personnel's range of options to consider, and thus detract from the quality of Agency decisions. For these reasons, the information is being withheld.

A portion of the documents are also being withheld under the attorney client and deliberative process privilege as this information contains certain communications between DOE attorneys and their clients and was based upon expressed opinions on legal and policy matters on pages 65, 67, 68, 70, 188, 199 and 276. We have determined the information is protected from disclosure pursuant to the attorney-client and deliberative process privileges. Our rationale for invoking the deliberative process privilege is explained in the above paragraph.

With respect to the discretionary disclosure of deliberative information, the quality of agency decisions would be adversely affected if frank, written discussion of policy matters were inhibited by the knowledge that the content of such discussion might be made public. For this reason, we have determined that disclosure of the deliberative material and attorney client information material is not in the public interest because foreseeable harm could result from such disclosure by tending to inhibit free pre-decisional discussion of issues as well as candid attorney-client discussion of legal matters.

This satisfies the standard set forth in the Attorney General's March 19, 2009 memorandum that when a FOIA request is denied, agencies will be defended and justified in not releasing the material on a discretionary basis "if (1) the agency reasonably foresees that disclosure will harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law." The Attorney General's memorandum also provides that whenever full disclosure of a record is not possible, agencies "must consider whether they can make a partial disclosure." Thus, we have determined that, in certain instances, a partial disclosure is proper.

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.

In your letter, you agreed to pay all applicable fees associated with the processing of your request. For purposes of assessment of fees, you have been categorized under 10 CFR 1004.9(b)(3), as a "news media" requester. In this category, you will be charged duplication fees only and will be provided 100 pages at no charge. 277 pages of documents are being provided to you on the enclosed CD. However, fees are not charged if the total cost does not exceed the \$15.00 threshold for charging fees under the FOIA, therefore, there are no fees associated with your request at this time.

During our search for records, we also located numerous e-mails (10 pages) generated by HQ's staff. Therefore, a copy of those documents have been provided to the HQ FOIA Office for a release determination and the FOIA Officer at that location will provide a response to you. Should you wish to contact that office, you may do so at the following address: DOE-HQ, 1000 Independence Avenue, S.W. Office of Information Resources, Room 1G-051, Forrestal, Washington, DC, 20585, Phone No: (202) 586-5955.

Mr. Mike Nartker

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June 4, 2013

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

Sincerely,

-Original Signed By-

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

OCE:DCR

Enclosure