



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

October 1, 2015

CERTIFIED MAIL

Mr. Gerry Pollet  
Heart of America Northwest  
444 NE Ravenna Blvd, Street #406  
Seattle, Washington 98115

Dear Mr. Pollet:

FREEDOM OF INFORMATION ACT REQUEST (FOI 2015-01514)

This letter is in reference to your request dated June 18, 2015, requesting the following information:

1. "The official report required by Washington Administration Code 173-303-640 (7)(d)(ii) and RCRA 40 CFR 264/265.196(d)(ii), on detectable or potential leaks from High-Level Nuclear Waste Single Shell tanks B-203, B-204, T-111, T-203, T-204, and TY- 105, including reports filed with: (a) The Department of Ecology; and (b) The National Response Center from 2010 on. The report(s) pertain to: a. Likely route of migration. b. Characteristics of surrounding soil of the detectable or potential leaks. c. Results of monitoring and sampling in connection with the detectable or potential leaks. d. Proximity of the detectable or potential leaks to down gradient drinking water, service water, and populated area. e. Description of response action taken to mitigate the detectable or potential leaks."
2. "All records relating to whether there was a potential or detectable release from the aforementioned tanks and when the release was detected from these tanks, including but not limited to: a. Correspondences or discussions, including but not limited to, letters, notes, email messages (and attachments corresponding to those emails), and phone logs, about the detectable or potential leak from the last ten years. This includes correspondence or discussions with regulators or contractors. b. All monitoring or other reports and evaluations of detectable or potential leaks in the last ten years."
3. "Any correspondence between USDOE and the Washington Department of Ecology relating to analysis of whether USDOE was required to report pursuant to the statutes and rules cited in item 1 (above), and the adequacy of required reports. a. This includes, but is not limited to, internal and contractor records regarding the duty to file the reports cited in item 1 (above), and factual and legal bases for determining if reporting potential or documented releases from the tanks was required."
4. "Plans to respond to detectable or potential leaks from the aforementioned tanks pursuant to 40 CFR 264/265.196 (7) and W.A.C. 173-303-640 (7), including but not limited to any plan to, at the "earliest practicable time, remove as much waste as is necessary to prevent further release of dangerous waste to the environment and to allow inspect and repair of the tank system to be performed."

For Item 1 the enclosed documents have been located pertaining to Tank T-111. No other documents were located for the remaining tanks you listed.

For Item 3, responsive documents are enclosed with deletions of certain information pursuant to Exemptions 5 and 6 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. 5 U.S.C. § 552(b)(5). This Exemption protects those documents normally privileged in the civil discovery process, such as pre-decisional, deliberative process material. 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 and government representatives 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.

In addition, we have also deleted information in draft documents pursuant to Exemption 5. Draft documents, by their very nature, are pre-decisional because they are prepared prior to the undertaking of any action by the agency. Draft documents are deliberative because they are part of the deliberative process by which that agency action was considered and taken. They reflect only the tentative view of their authors, views that might be altered or rejected upon further deliberation either by the authors or by their superiors. The withheld information in the draft documents do not represent final agency policy on the matters it discusses.

Exemption 6 is generally referred to as the “personal privacy” exemption; it provides that the disclosure requirements of FOIA do not apply to “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). In applying Exemption 6, DOE considered: 1) whether a significant privacy interest would be invaded; 2) whether the 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 privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy. The information withheld under Exemption 6 consists of personal cell phone numbers. We have determined that the public interest in releasing this information does not outweigh the overriding privacy interests in keeping this information confidential.

Lastly, we have deleted information in the documents that is not responsive to your request. 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.

In addition, you requested "all" information related to your request. The FOIA requires that an agency conduct a thorough search for documents responsive to a request, not an exhaustive search. We cannot guarantee that you have been provided all information related to your request, as we did not conduct an exhaustive search. A search was conducted, however, by representatives of the agency who are familiar with the subject areas of your request, in locations where responsive documents would most likely be found.

This letter completes our response to your request. 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. Your appeal shall be filed within 30 days after receipt of this letter. You may submit your appeal by e-mail to [OHA.filings@hq.doe.gov](mailto:OHA.filings@hq.doe.gov), including the phrase "Freedom of Information Appeal" in the subject line. Alternatively, any such appeal may 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. Should you choose to appeal, please provide this office with a copy of your e-mail or letter.

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

Enclosures