



Department of Energy
Washington, DC 20585

May 31, 2024

Via Email: email@philrutherford.com

Phil Rutherford
8655 Delmonico Ave
West Hills, CA 91304

Re: Supplemental Response to HQ-2024-01160-F.

Dear Mr. Rutherford:

This is a supplemental response from the Department of Energy (DOE) Office of Inspector General (OIG) in regard to your letter dated March 30, 2024, Subject: FOIA Request HQ-2024-01160-F.

On February 8, 2024, you submitted a Freedom of Information Act (FOIA) request to the Department of Energy ("Department"). On March 6, 2024, the Department assigned your request, HQ-2024-01160-F, to the Department's Office of the Inspector General (OIG). On March 26, 2024, the OIG FOIA Office responded with nine responsive documents with information withheld under various exemptions.

In your letter of March 30, 2024, you brought to our attention various issues you have with your Hotline complaint submission and the FOIA response provided. We would like to take the opportunity now to address some of those concerns.

First, after receipt of your letter, the OIG FOIA Office conducted a search of emails of an OIG investigator who had departed the OIG. As a result, we found 25 emails. A review of the 25 additional responsive documents and a determination concerning their release has been made pursuant to the FOIA. Based on this review, the OIG determined that certain material has been withheld from the responsive documents pursuant to subsections (b)(5), (b)(6) and (b)(7)(C), (hereinafter referred to as Exemptions 5, 6, and 7(C)) of the FOIA. Documents 5 through 34 are being released to you at this time.

As to the memorandum sent from Hotline to Office of Environmental Management (EM) dated March 16, 2023, a response was received from EM, which is identified as Document 4. Extensions to the requested 30-day response time can be granted as reflected in the emails being released to you. As to the scope and contents of Document 4, that is being referred to EM. Please be aware that documents are routinely referred to the originating office for review and release under FOIA. For any questions regarding the release of Document 4, please contact Alexander Morris at Alexander.Morris@hq.doe.gov. The OIG FOIA Team is not involved in the final review and release of that document.

Document 5 is being released to you in its entirety. In response to your FOIA, we stated in error that Document 5 had been redacted pursuant to Exemptions 6 and 7(C). In fact, it is Document 4 that has been redacted pursuant to Exemptions 6 and 7(C) by the OIG and been referred to EM for release. We apologize for any confusion this may have caused.

Documents 11 through 15 and 34 are the email submission of the referral to EM along with requests for extensions and final referral submission back to Hotline. We are releasing those emails to you now with redactions made pursuant to Exemptions 6 and 7(C). In response to your question about attachments, please note that the referral form states: "This memorandum, including any attachments and information contained therein, is the property of the Office of Inspector General and is designated as CONTROLLED UNCLASSIFIED INFORMATION." However, this formulation does not necessarily mean an attachment is always included. Had there been an attachment, it should have been mentioned at the end of the document.

To respond to your question about the "CCC," please be aware that it stands for "Complaint Coordination Committee." This is a meeting where Hotline staff brief senior management about recommended dispositions of certain complaints. At that time, senior management determines whether to accept or modify the recommended disposition.

Exemption 5 exempts from mandatory disclosure "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. . . ." Exemption 5 incorporates the deliberative process privilege which protects recommendations, advice, and opinions that are part of the process by which agency decisions and policies are formulated.

Exemption 6 protects from disclosure "personnel and medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" Exemption 7(C) provides that "records or information compiled for law enforcement purposes" may be withheld from disclosure to the extent the production of such documents "could reasonably be expected to constitute an unwarranted invasion of personal privacy. . . ."

Names and information that would tend to disclose the identity of certain individuals have been withheld pursuant to Exemptions 6 and 7(C). Individuals involved in OIG enforcement matters, which in this case include subjects, witnesses, sources of information, and other individuals, are entitled to privacy protections so that they will be free from harassment, intimidation, and other personal intrusions. Your name and personal information would typically be withheld under Exemption 6. We are releasing this information to you, pursuant to the Privacy Act, 5 U.S.C. § 552a; however, this information could be withheld if the document is requested by someone else under FOIA.

In invoking Exemptions 6 and 7(C), we have determined that it is not in the public interest to release the withheld material. We have determined that the public interest in the identity of certain individuals who appear in these files does not outweigh these individuals' privacy interests. Those interests include being free from intrusions into their professional and private lives.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

To the extent permitted by law, the OIG, in accordance with Title 10, Code of Federal Regulations (C.F.R.) § 1004.1, will make records available which it is authorized to withhold under 5 U.S.C. § 552 whenever it determines that such disclosure is in the public interest. As required, all releasable information has been segregated from the material that is withheld and is provided to you. *See* 10 C.F.R. § 1004.7(b)(3).

FOIA Appeal Rights

This decision may be appealed to the Office of Hearings and Appeals within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals must be in writing and addressed to the Director, Office of Hearings and Appeals, HG-1 /L'Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. You may also submit your appeal by email to OHA.filings@hq.doe.gov. The appeal must be clearly marked "Freedom of Information Act Appeal" on the envelope and letter, and if submitted by email, in the subject line of the email. *See* 10 C.F.R. § 1004.8(b).

Once your administrative remedies are exhausted, judicial review will be available to you in United States District Court. *See* 10 C.F.R. § 1004.8(d)(3).

If you have any questions about the processing of your request, you may contact our FOIA Public Liaison, Mr. Alexander Morris. He may be contacted to discuss any aspect of your request by phone at (202) 586-3159 or by email at Alexander.Morris@hq.doe.gov. Please know that you also have the right to seek dispute resolution services from the FOIA Public Liaison or the Office of Government Information Services (<https://ogis.archives.gov>) at (202) 741-5770; (877) 684-6448 (toll free); by fax: (202) 741-5769, or by email at ogis@nara.gov.

Sincerely,



Anthony Cruz
Assistant Inspector General
Office of Inspections, Intelligence Oversight
and Special Projects
Office of Inspector General

Attachments