

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Ralph Sletager)
) Case No.: FIA-14-0030
Filing Date: May 28, 2014)
_____)

Issued: June 9, 2014

Decision and Order

On May 28, 2014, Ralph Sletager (“Appellant”) filed an Appeal from a determination issued to him by the Bonneville Power Administration (“BPA”) of the United States Department of Energy (“DOE”) (FOIA Request Number BPA-2014-00787-F) on May 7, 2014. In its determination, BPA responded to the Appellant’s request for information filed under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. BPA released documents that it withheld in part pursuant to Exemption 6. The Appellant challenges the application of Exemption 6 to the withheld material and also claims that certain documents provided by BPA are nonresponsive to his FOIA Request.

I. BACKGROUND

On May 7, 2014, BPA responded to the Appellant’s FOIA Request, wherein he sought a list of five different records. In response to the Appellant’s Request #1 for “[t]he BPA Journal Mailing List of approximately 3500 members, to include the mailings regarding the 2012 Fish Accord MOA with the Kalispell Tribe,” BPA provided a mailing list with redactions pursuant to FOIA Exemption 6. In response to the Appellant’s Request #5 for “[t]he written standards and regulations including the hearing and appeals process established by the agency to ensure compliance with procedural due process under the NEPA [National Environmental Policy Act],” BPA released five documents that “describe the NEPA process followed by BPA in their entirety.” *See* Determination Letter from Christina J. Munro, FOIA/PA Officer, to Appellant (May 7, 2014). On May 28, 2014, the Appellant filed an Appeal with the DOE’s Office of Hearings and Appeals (“OHA”) challenging BPA’s application of Exemption 6 to Request #1 and claiming that BPA’s response to Request #5 was unresponsive. *See* Appeal.

II. ANALYSIS

Upon further inquiry by OHA, BPA explained that with regard to the Appellant’s Request #1, it realized that it made too many redactions pursuant to Exemption 6 and would like to re-release the mailing list with fewer redactions. *See* Memorandum of Telephone Conversation between Paul Mautner, Office of General Counsel, BPA, and Shiwali Patel, Attorney Advisor, OHA

(June 5, 2015). Moreover, BPA also discovered a letter that is responsive to the Appellant's Request #1, specifically pertaining to "mailings regarding the 2012 Fish Accord MOA with the Kalispell Tribe." *See* Email from Paul Mautner, Office of General Counsel, BPA, to Shiwali Patel, Attorney Advisor, OHA (June 4, 2014). Thus, we will remand this matter in part to the BPA as to the Appellant's Request #1, seeking "[t]he BPA Journal Mailing List of approximately 3500 members, to include the mailings regarding the 2012 Fish Accord MOA with the Kalispell Tribe." Upon remand, BPA shall re-release the mailing list with a new determination as to the application of Exemption 6 and provide the responsive document that it recently discovered.

Furthermore, the Appellant claims that BPA's search for documents responsive to Request #5 was inadequate as the documents that BPA provided were non responsive. *See* Appeal. In response to our questions, BPA stated that it actually misinterpreted Request #5 and that it "does not have its own 'written standards and regulations' for the NEPA process," because BPA follows the DOE's NEPA regulations at 10 C.F.R. 1021.100 and 1021.410. *See* Email from Paul Mautner, Office of General Counsel, BPA, to Shiwali Patel, Attorney Advisor, OHA (June 4, 2014). Thus, as the requested information is found in the regulations, we will deny this part of the Appeal.

It Is Therefore Ordered That:

1) The Freedom of Information Action Appeal filed by Ralph Sletager on May 28, 2014, OHA Case Number FIA-14-0030, is denied in part and remanded in part as set forth in Paragraph (2) below.

(2) This matter is hereby remanded in part to the Bonneville Power Administration as to Request #1, to issue a new determination in accordance with the instructions set forth in this Decision.

(3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

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Date: June 9, 2014