

BPA Policy 236-30

Freedom of Information Act (FOIA)

Information Governance

Table of Contents

1. Purpose & Background	2
2. Policy Owner.....	2
3. Applicability	2
4. Terms & Definitions.....	2
5. Policy	3
6. Policy Exceptions.....	4
7. Responsibilities.....	4
8. Standards & Procedures	6
9. Performance & Monitoring.....	6
10. Authorities & References.....	7
11. Revision History.....	7



1. Purpose & Background

This policy sets requirements and responsibilities for the Bonneville Power Administration FOIA (Freedom of Information Act) program. This program is responsible for compliance with the Freedom of Information Act (5 U.S.C. § 552). FOIA gives any person the right, enforceable in court, to access federal agency records. Access to records is limited by nine statutory exemptions.

The purposes of BPA’s FOIA program are:

- A. Legal compliance;
- B. Proactively identifying and releasing BPA records that are of interest to the public; and
- C. Promoting accountability through transparency.

2. Policy Owner

The BPA Executive Vice President of Compliance, Audit, and Risk Management (EVP CAR) is the owner of this policy. The FOIA Officer within Information Governance develops, implements, and manages this policy on behalf of the EVP CAR. The Department of Energy delegates FOIA authority to the BPA Administrator, who in turn designates authority in the FOIA Officer.

3. Applicability

This policy applies to all agency records.

4. Terms & Definitions

- A. **Agency records:** Records that (1) were either created or obtained by BPA and (2) are under BPA control at the time of the FOIA request. Federal records, as defined by the Federal Records Act, are a subset of agency records.
- B. **Controlled Unclassified Information (CUI):** CUI is information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, Government-wide policy (LRGWP) requires or permits an agency to handle using safeguarding or dissemination controls. CUI does not include classified information or information a nonexecutive branch entity possesses and maintains in its own systems that did not come from, or was not created or possessed by or for, an executive branch agency or an entity acting for an agency. See BPA Policy 433-1, *Information Security*, for more information.
- C. **Exemptions:** Specific categories of information that can be withheld by the agency, even if they have been requested under FOIA. Most exemptions are discretionary – BPA can choose to release the information. Certain exemptions are mandatory, and the

Organization CGI	Title Freedom of Information Act (FOIA)	Unique ID 236-30		
Author Jason Taylor	Approved by EVP, Compliance, Audit & Risk	Date August 15, 2023	Version 4	Page 2

information must not be released. Exemptions are described in the FOIA statute and further interpreted by federal case law.

- D. **First-party requests:** Requests for records about or concerning the individual requesting the records.
- E. **Official Use Only (OUO):** A legacy category of Controlled Unclassified Information (CUI) that requires safeguards and has not been updated with a current CUI marking. OUO is identified by the following characteristics: (1) The information has the potential to damage governmental, commercial, or private interests if released to those who do not need the information to perform their jobs at BPA or to perform other BPA authorized activities, and (2) the information that may be exempt from public release under the Freedom of Information Act (FOIA) (exemptions 2-9). See BPA Policy 433-1, *Information Security*, for more information.
- F. **Person:** An individual person, partnership, corporation, association, or public or private organization other than a federal executive branch agency. This definition originates in the Administrative Procedure Act and is incorporated by the FOIA statute.
- G. **Personal records:** Documentary materials that:
 - 1. Were created for the personal use of the author;
 - 2. Have not been integrated into a BPA file; and
 - 3. Have not been shared with other employees or relied upon by other employees to conduct BPA business.

Few records created in the course of business at BPA will qualify as personal records. These records are a limited subset of the “personal files” exception to the Federal Records Act. See BPA Policy 236-1, *Information Governance & Lifecycle Management*, for more information.
- H. **Records custodian:** Any BPA employee in possession of, or with access to, agency records that have been requested under FOIA.
- I. **Request:** A written request for records from any person. A request does not have to mention FOIA to qualify as a FOIA request.
- J. **Third-party request:** Any request that is not a first-party request.

5. Policy

- A. BPA complies with the spirit and letter of FOIA by:
 - 1. Treating requesters with respect and courtesy;
 - 2. Responding to requests completely, timely, and efficiently; and
 - 3. Encouraging discretionary release of records when permitted by law.
- B. FOIA requests for Privacy Act records are processed under both FOIA and the Privacy Act, as permitted by law.
- C. Exemptions:
 - 1. BPA uses FOIA Exemption 4 as required by law to protect the trade secrets and confidential commercial or financial information of third parties.

Organization CGI		Title Freedom of Information Act (FOIA)		Unique ID 236-30	
Author Jason Taylor		Approved by EVP, Compliance, Audit & Risk	Date August 15, 2023	Version 4	Page 3

2. BPA uses FOIA Exemption 5 as permitted by law to protect internal or intra-agency privileged information. Information that qualifies for protection under Exemption 5 must be released if release would not harm the interest protected by a civil discovery privilege, including but not limited to the deliberative process privilege, attorney work-product privilege, and attorney-client privilege.
 3. BPA uses FOIA Exemption 6 as required by law to protect the privacy interests of individuals. Where required, FOIA Exemption 6 is used in conjunction with the Privacy Act.
 4. BPA uses other FOIA exemptions as permitted or required by law.
- D. FOIA does not obligate BPA to create records. Records may be created for the purpose of a FOIA response at the discretion of the FOIA Officer. Generally, records will only be created if doing so is less burdensome than searching for or processing responsive records. Before creating a record, the FOIA Office must secure agreement from the requester that they will accept the created record in lieu of existing responsive records.
 - E. Copies of all records located during the records search must be provided to the FOIA Office. This includes records that are that are designated as CUI or were previously designated as OOU. The FOIA legal process requires review of *all* responsive records, regardless of content or categorization.
 - F. BPA’s FOIA Officer makes the final decision on release of all agency records under FOIA, including the release of records that are designated as CUI or were previously designated as OOU.
 - G. BPA seeks opportunities to proactively disclose records that affect members of the public, including agency policy statements and administrative manuals.
 - H. BPA publishes all third-party FOIA requests on BPA.gov unless they are voluminous and cannot be posted. This policy may be waived for certain requests at the discretion of the FOIA Officer. First-party requests and responses are not published on BPA.gov.

6. Policy Exceptions

Personal records are not subject to FOIA and will not be disclosed under the FOIA process. Records custodians should seek the advice of the FOIA Office if records falling within the search parameters may qualify as personal records. If the FOIA Office determines that personal records have been collected, they will be returned to the author and any copies will be removed from the FOIA Office file, after the time for an appeal by the FOIA requester has passed.

7. Responsibilities

A. Administrator:

1. The Administrator has ultimate responsibility for compliance with this policy. The Administrator designates authority and assigns functional responsibility to the

Organization CGI		Title Freedom of Information Act (FOIA)		Unique ID 236-30	
Author Jason Taylor		Approved by EVP, Compliance, Audit & Risk	Date August 15, 2023	Version 4	Page 4

FOIA Officer for ensuring that BPA’s FOIA program is in compliance with applicable statutes and regulations.

B. Audit, Compliance & Governance Committee (ACGC):

1. The overarching committee with responsibility for monitoring the FOIA program and policy. It is supported by the Information Governance Oversight Team.

C. Assistant General Counsel, General Law:

1. Responsible for providing legal advice to the FOIA Officer and the Administrator.

D. BPA Employees:

1. Responsible for forwarding misdirected FOIA requests to the FOIA Office, and for maintaining the availability, effectiveness, security, and confidentiality of recorded information, as directed by the 236 series of BPA Policy.
2. Employees identified by the FOIA Office as “records custodians” have additional obligations. See below.

E. Cyber Security Forensics and Intelligence:

1. Responsible for supporting the record collection process, including conducting searches for email records.

F. Executives, Managers, and Supervisors:

1. Responsible for leading by example, promoting cooperation with the FOIA Office, and promoting a culture of transparency and compliance.

G. FOIA Attorney:

1. Responsible for legal review of records, including final recommendations on withholding or release.

H. FOIA Office:

1. Responsible for preparing records for review, completing initial review, and making recommendations on withholding or release.
2. Responsible for FOIA Public Liaison duties, including communicating with requesters, coordinating the search for records, maintaining the FOIA public library, and updating the Department FOIA tracking system.

I. FOIA Officer:

1. Operates with designated authority from the Administrator. This authority cannot be re-designated to any other person.
2. Responsible for the overall development and maintenance of the FOIA Program according to the principles in this policy. This includes drawing up practice guidance, promoting policy compliance, making final decisions on expedited processing, fees, and records released under FOIA.
3. Reports to the ACGC on BPA’s FOIA programs and policies, and allocates resources to the FOIA program.
4. Acts as a liaison with the Department of Energy, the Department of Justice, and the Office of Government Information Services at the National Archives and Records Administration.

J. Records Custodians:

Organization CGI		Title Freedom of Information Act (FOIA)		Unique ID 236-30	
Author Jason Taylor		Approved by EVP, Compliance, Audit & Risk		Date August 15, 2023	
				Version 4	
				Page 5	

1. Any employee may be identified by the FOIA Office as a records custodian for an individual request.
2. Records custodians are responsible for identifying likely records locations, conducting a reasonable search for records, and documenting the search process as directed by the FOIA Office.
3. Records custodians may also be required to provide background information, answer questions, and participate in related appeals processes and litigation, if any.

8. Standards & Procedures

- A. Once a request has been received by the FOIA Office, the following steps are completed:
 1. The FOIA Office enters the request into the DOE and BPA FOIA tracking systems.
 2. The FOIA Office notifies the requester of receipt and clarifies any fee or scope issues.
 3. The FOIA Office identifies likely Records Custodians and directs a records search of the offices of record. If necessary, Cyber Security Forensics and Intelligence is engaged to search for records. Records custodians document searches using the FOIA Search Certification form.
 4. The FOIA Office organizes records and performs the initial review.
 5. A FOIA Attorney performs final legal review.
 6. The FOIA Officer performs final review.
 7. The FOIA Office sends a determination letter to the requester along with any responsive, non-exempt records. The letter includes information about how to appeal the final decision.
 8. Third-party requests and responses are posted on BPA.gov.
 9. FOIA fees, if any, are invoiced and the invoice is sent to the requester for payment.

9. Performance & Monitoring

- A. The FOIA Office compiles a weekly report that tracks the number of cases and the current status and pertinent details of each case. This report facilitates analysis of the FOIA Office’s workload and effectiveness.
- B. The FOIA Office prepares an annual report for the Department of Energy on all BPA FOIA activity. This report includes the outcome of each case, including timeliness of response, total responsive pages, and exemptions used.
- C. The Department of Energy prepares an annual report for the Department of Justice on all DOE FOIA activity.

Organization CGI		Title Freedom of Information Act (FOIA)		Unique ID 236-30	
Author Jason Taylor		Approved by EVP, Compliance, Audit & Risk		Date August 15, 2023	
				Version 4	
				Page 6	

- D. The FOIA Office reports out quarterly processing metrics to the ACGC and Information Governance Oversight Team.

10. Authorities & References

- A. Administrative Procedure Act, 5 U.S.C. § 551(2)
- B. Freedom of Information Act, 5 U.S.C. § 552
- C. Privacy Act of 1974, 5 U.S.C. § 552a
- D. Department of Energy FOIA regulations, 10 CFR Part 1004
- E. Department of Energy Privacy Act regulations, 10 CFR Part 1008
- F. The Department of Justice FOIA Guide
- G. The Department of Justice Privacy Act Overview
- H. National Archives and Records Administration implementing regulations, 33 CFR 1220.18

11. Revision History

This chart contains a history of the revisions and reviews made to this document.

Version Number	Issue Date	Brief Description of Change or Review
1	6/13/2013	Initial Publication
2	1/22/2015	Formatted into new template
3	3/30/2016	Policy updated
4	8/15/23	Policy Owner updated, Terms and Conditions updated

Organization CGI		Title Freedom of Information Act (FOIA)		Unique ID 236-30	
Author Jason Taylor		Approved by EVP, Compliance, Audit & Risk		Date August 15, 2023	
				Version 4	
				Page 7	