



Department of Energy
National Nuclear Security Administration
Office of the General Counsel
P. O. Box 5400
Albuquerque, NM 87185



September 8, 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Tom Villars
113 Westcliff Dr
Harriman, TN 37748

Dear Mr. Villars:

This letter is a final response to your undated Freedom of Information Act (FOIA) request, for a copy of all emails sent or received from Sandia National Laboratories (SNL/Energy Storage Systems (ESS) that concern the technology being developed by the company EEStor. The date range is limited from 2008 to the present and the email addresses and keywords listed below:

Email Addresses:

Dr. Imre Gyuk / imre.gyuk@hq.doe.gov
John Boyes / jdboyes@sandia.gov
Stanley Atcitty / satcitt@sandia.gov
Nancy Clark / nhclark@sandia.gov
Georgianne Peek / ghpeek@sandia.gov
Dan Borneo / drborneo@sandia.gov

Keywords:

EEStor
EESU
Weir

Your request was received in my office on September 1, 2010.

I contacted the Sandia Site Office (SSO), oversight for the Sandia National Laboratories (SNL) to conduct a search for possible responsive records.

Sandia searched and located the enclosed 59 documents. Portions of Documents 7-13, 15, 17, 24, 25, and 37 were withheld pursuant to 5 USC §552(b)(4) (Exemption 4 of the FOIA). The deletions of names, e-mail addresses, phone numbers, and current work information of contractor personnel was withheld pursuant to 5 USC §552(b)(6) (Exemption 6 of the FOIA). The justifications for both Exemption 4 and 6 are provided below.

Exemption 4 of the FOIA protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” This exemption is intended to protect the interests of both the government and submitters of information. The exemption also affords protection to those submitters who are required to furnish commercial or financial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure. The exemption covers two broad categories of information in federal agency records: (1) trade secrets; and (2) information which is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential. The information being withheld pursuant to Exemption 4, if released, would likely cause substantial harm to the competitive position of the company. Also, the information is strictly developed by the company and release would provide insight into the development of the company’s costing strategy and quality of

performance. Since the company operates in a very competitive market, the release of this information could seriously affect its ability to obtain new business, thus causing substantial financial harm to the company. Release could allow a competitor to more easily predict how the company might bid in similar, future solicitations and adjust its future bids accordingly. In addition, this type of information is held in the strictest confidence by the company and is not customarily released to the general public. Therefore, release of the withheld information would likely cause substantial harm to the competitive and financial position of the company by giving competitors a means to gain a competitive advantage in the areas in which the company competes for work.

Pursuant to 10 CFR §1004.1, and to the extent permitted by law, DOE will make available records that it is authorized to withhold under the FOIA unless it determines that such disclosure is not in the public interest. For the reasons specified above, the National Nuclear Security Administration has determined that release of the withheld information is not in the public interest; therefore, the DOE has no further discretion under the FOIA or DOE regulations to release information properly withheld pursuant to Exemption 4.

We do not make the usual public interest inquiry in Exemption 4 cases because disclosure of “confidential” or proprietary data, exempt from mandatory disclosure under Exemption 4, would constitute a violation of 18 USC §1905, the Trade Secrets Act, and is, therefore, prohibited. Where, as in this case, the requested information has been found exempt under Exemption 4, we are prohibited by the Trade Secrets Act from considering whether it is nonetheless in the public interest to disclose the information.

Exemption 6 is to protect “individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information.” To determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy, the public interest in disclosure, if any, must be balanced against the privacy interest that would be invaded by disclosure of the information. Release of this information pertaining to private individuals could cause inevitable harassment and unwarranted solicitation. Also, release of this information would not shed light on the operations of the federal government. Since its release will not reveal anything of significance to the public, the interest in protecting against the invasion of privacy, which would result to the individuals in questions, far outweighs the public interest in such disclosure.

In addition, it is widely held that federal employees have no expectation of privacy regarding their names, titles, grades, salaries, and duty stations. 5 CFR § 293.31; Core v. United States Postal Serv., 730 F. 2d 946, 948 (4th Cir. 1984); National W. Life Ins. Co. v. United States, 512 F. Supp. 454, 461 (N.D. Tex. 1980). Therefore, the disclosure of such information about federal employees would involve little or no invasion of privacy. Contractor employees, however, are not federal employees. Rather, they are private individuals. The Supreme Court has long found a privacy interest in the names of private individuals significant enough to warrant protection from disclosure under Exemption 6.

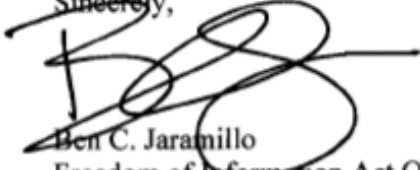
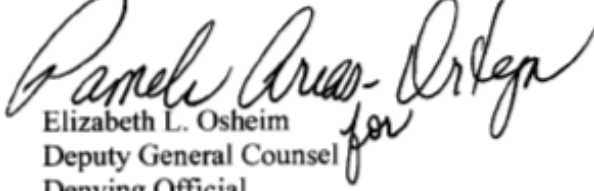
Pursuant to 10 CFR §1004.7(b)(2), Ms. Elizabeth L. Osheim is the person responsible for the denial of the above mentioned information pursuant to Exemptions 4 and 6 of the FOIA.

Pursuant to 10 CFR §1004.8, the denial of a FOIA request may be appealed, in writing, within 30 days after receipt of a letter denying any portion of the request, to the Director, Office of Hearings and Appeals, Department of Energy, L’Enfant Building, 1000 Independence Avenue, SW, Washington, DC 20585. The written appeal, including envelope, must clearly indicate that a Freedom of Information appeal is being made, and the appeal must contain all other elements required by 10 CFR §1004.8.

Judicial review will thereafter be available to you in the District of Columbia or in the district where: (1) you reside, (2) you have your principal place of business, or (3) the Department's records are situated.

There are no fees chargeable to you for processing this request.

If you have any questions concerning the processing of your request, please contact Christina Hamblen by email at Christina.Hamblen@nnsa.doe.gov and refer to our Control Number FOIA 10-00297-H.

Sincerely,

Ben C. Jaramillo
Freedom of Information Act Officer

Elizabeth L. Osheim
Deputy General Counsel
Denying Official

Enclosure