

Federal Energy Regulatory Commission
Washington, DC 20426

MAY 25 2018

Re: FOIA No. FY18-75
Response

VIA E-MAIL AND REGULAR MAIL

Michael Mabee



CivilDefenseBook@gmail.com

Dear Mr. Mabee:

This is a response to your correspondence received on April 13, 2018, in which you requested information pursuant to the Freedom of Information Act (FOIA)¹, and the Federal Energy Regulatory Commission's (Commission) FOIA regulations, 18 C.F.R. § 388.108. Specifically, you requested a copy of the following:

1. I seek correspondence between FERC and the North American Electric Reliability Corporation (NERC) identifying the 'Unidentified Registered Entity' described in the document: 'NERC Full Notice of Penalty regarding Unidentified Registered Entity' filed with FERC on February 28, 2018.
2. I also seek any correspondence between FERC and NERC laying out any purported rationale for withholding the identity of the 'Unidentified Registered Entity' from public view.

On April 23, 2018, Commission staff notified NERC of your request and provided an opportunity to comment pursuant to 18 C.F.R. § 388.112. NERC submitted comments on April 30, 2018, objecting to "the FOIA Request because [FERC] has instructed NERC not to divulge the identity of entities that have violated NERC Critical Infrastructure Protection ('CIP') Reliability Standards." In support of the foregoing, NERC cites various Commission orders.

¹ 5 U.S.C. § 552, as amended by the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016).

A search of the Commission's non-public records has identified approximately seven (7) responsive documents² that are responsive to your request(s), consisting of various email correspondence between FERC and NERC regarding questions concerning details relative to the incident resulting in the Notice of Penalty. Such questions include detailed discussions of mitigation efforts and risk analysis, as well as the Unidentified Registered Entity's Cyber Security Incident Response Plan(s). As explained below, the documents are protected from disclosure pursuant to FOIA Exemptions 3 and 7, and therefore will not be released.

Exemption 3

The documents are designated as CEII and thus, exempt from mandatory disclosure pursuant to FOIA Exemption 3.³

Exemption 7(F)

The requested documents, including the identity of the Unidentified Registered Entity, are also exempt from mandatory disclosure under FOIA Exemption 7(F), which exempts "records or information compiled for law enforcement purposes" to the extent that release of such information "could reasonably be expected to endanger the life or physical safety of any individual." See 5 U.S.C. § 552(b)(7)(F). The requested material contains information regarding cyber security and risks to the Unidentified Registered Entity, as well the techniques used to resolve the incident and associated possible vulnerabilities. I also note that with respect to the name of the Unidentified Registered Entity, disclosing such name could provide a potential bad actor with information that would make a cyber intrusion less difficult. In this regard, public release of the requested documents would provide information which could help breach its network, and allow possible access to non-public, sensitive, and/or confidential information that could be used to plan an attack on energy infrastructure, endangering the lives and safety of citizens. Accordingly, the requested material is being withheld under FOIA Exemption 7(F).

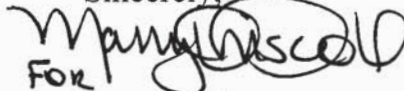
² Please note that Commission staff searched for responsive documents available through the date in which your FOIA request was accepted by the Commission, April 13, 2018.

³ CEII is specifically exempted from disclosure under the Fixing America's Surface Transportation Act, Pub. L. No. 118-94, § 61003 (2015) (establishing applicability of FOIA Exemption 3, 5 U.S.C. 552(b)(3) (protecting material specifically exempted by statute).

As provided by FOIA, any appeal from this determination must be filed within 90 days of the date of this letter. The appeal must be in writing, addressed to James Danly, General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, and clearly marked "Freedom of Information Act Appeal." Please include a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

You also have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by mail at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; email at ogis@nara.gov; telephone at 301-837-1996; facsimile at 301-837-0348; or toll-free at 1-877-684-6448.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard Tao", written over a circular stamp or seal.

For

Leonard Tao

Director

Office of External Affairs