



**Department of Energy**  
Washington, DC 20585

April 16, 2010

**MEMORANDUM TO:**       **GEORGE HELLSTROM**  
                                  **CARLSBAD FIELD OFFICE**

**CLAYTON OGILVIE**  
                                  **IDAHO OPERATIONS OFFICE**

**MARIAN WILCOX**  
                                  **EM CONSOLIDATED BUSINESS CENTER**

**FROM:**                   **ALEXANDER C. MORRIS**  
                                  **FOIA OFFICER**  
                                  **OFFICE OF INFORMATION RESOURCES**

**SUBJECT:**               **FOIA REQUEST OF KRISTIN HINCKE**

The attached request for information submitted by Mr. Kristin Hincke is transferred to your office for action. Mr. Hincke submitted his request under the FOIA, U.S.C. 552 to the Department of Energy. We have informed Mr. Hincke that documents responsive to his request may be located at your office.

Please conduct a search of your office for responsive documents. Upon completion of your search, please respond to Mr. Hincke.

If you have any questions about this transmittal, please contact Ms. Sheila Jeter of my staff on



**Morris, Alexander**

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**From:** FOIA-Central@hq.doe.gov  
**Sent:** Friday, April 09, 2010 10:45 AM  
**To:** FOIA-Central  
**Subject:** DOE Headquarters FOIA Request

**Name:** Kristin Hincke

**Organization:** Vikki Cooper & Associates

**Address:**

████████████████████  
Washington, DC 20002

**Phone:** ██████████

**FAX:** ██████████

**Email:** ██████████

**Record Description:**

The (Annual Performance Evaluations Reports for contract years 2009, 2008, 2007, 2006, 2005 for the following DOE prime contracts.)

WTS - WIPP Carlsbad, NM

CWI - Idaho Cleanup Project (ICP)

WVES - Interim Ends State Contract - West Valley, NY

**Preferred Form or Format:** electronically Word or pdf

**Type of Requester (if provided):**

Affiliated with a private corporation and seeking information for the use in the company's business.

**Fees and Fee Waivers:**

I agree to pay up to a specified amount for fees. Enter amount \$ 100

**Waiver or Reduction of Fees Factors (if provided):**

**Expedited Processing:**

**Specific Justification for Expedited Processing:**

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COMMERCIAL SEARCH SERVICE REPRODUCTION

*Sheik*



Department of Energy  
Carlsbad Field Office  
P. O. Box 3090  
Carlsbad, New Mexico 88221  
April 23, 2010

CERTIFIED MAIL-RETURN RECEIPT

Kristin Hincke  
[REDACTED]

Washington, DC 20002


Subject: Freedom of Information Act 10-004

Dear Ms. Hincke:

This office has received your April 9, 2010, Freedom of Information Act (FOIA) request transferred from the Department of Energy (DOE) Headquarters to the Department of Energy Carlsbad Field Office (CBFO) on April 16, 2010, requesting Annual Performance Evaluations Reports for contract years 2009, 200S, 2007, 2006, 2005 for the following DOE prime contracts.

WTS - WIPP Carlsbad, NM  
CWI - Idaho Cleanup Project (ICP)  
WVES - Interim Ends State Contract - West Valley, NY.

If you have any questions or need additional assistance regarding this request, please contact Mr. George Hellstrom, FOIA Public Liaison, at (575) 234-7010, or [george.hellstrom@wipp.ws](mailto:george.hellstrom@wipp.ws). Please refer to FOIA 10-004 in any correspondence regarding this request.

Sincerely, 

[REDACTED]

George W. Hellstrom  
Freedom of Information Act Public Liaison

cc:  
FOIA File 10-004  
CBFO M&RC



Department of Energy  
Carlsbad Field Office  
P. O. Box 3090  
Carlsbad, New Mexico 88221  
May 6, 2010

CERTIFIED MAIL-RETURN RECEIPT

Ms. Kristin Hincke

Washington, DC 20002

Subject: Freedom of Information Act (FOIA) 10-004

Dear Ms. Hincke:

This is a final response from the Carlsbad Field Office (CBFO), regarding your April 9, 2010, Freedom of Information Act (FOIA) request. This FOIA request was received by CBFO from Mr. Chris Morris, FOIA Officer, U.S. Department of Energy (DOE) Headquarters on April 16, 2010, requesting the Annual Performance Evaluation Reports for contract years 2009, 2008, 2007, 2006, 2005 for the following DOE prime contracts Washington TRU Solutions (WTS)Waste Isolation Pilot Plant (WIPP) Carlsbad, New Mexico; CWI – Idaho Cleanup Project (ICP) and WVES – Interim Ends State Contract – West Valley, NY.

The FOIA generally requires that records held by federal agencies be released to the public upon request, however, the FOIA lists nine exemptions that set forth the types of information that an agency may withhold. After careful consideration it has been determined that the information you requested has been placed in Contractor Performance Assessment Reporting system (CPARS). CPARS is the database maintained by the U.S. Department of Defense Business Transformation Agency Information System, administered by the Naval Sea Logistics Center, Detachment Portsmouth. More information regarding CPARS can be located at <http://www.cpars.csd.disa.mil/index.htm>. Because this database is not owned or maintained by the DOE, DOE does not have authority to release any information contained in CPARS. In addition, the information contained in CPARS is exempt from disclosure under the FOIA, specifically, Exemptions 3 and 5 (5 U.S.C. § 552(b)(3) and (b)(5)).

The WTS performance information has been withheld in its entirety under Exemption 3 (5 United States Code [U.S.C.] § 552(b)(3) of the FOIA under the Federal Acquisition Regulation (FAR) 42.15 (48 Code of Federal Regulations (CFR) subpart 42.15). As stated in the FAR, contractor performance information produced and maintained for purposes of the agency's compliance with FAR Subpart 42.15 is source selection information, and must not be released to other than Government personnel and the contractor whose performance is being evaluated. FAR 42.1503 (b) Exemption 3 [5 U.S.C. (b) (3)] of the FOIA allows agencies to withhold requested information if specifically authorized by another statute. The withholding statute must meet strict statutory guidelines. An agency can invoke Exemption 3 only where the withholding statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria

for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 1004.10(b)(3). A statute falls within the exemptions' coverage if it satisfies either of its prongs. Exemption 3 analysis under the FOIA is not dependent on the factual content of the documents at issue; instead "the sole issue for decision is the existence of a relevant statute and the inclusion of withheld material with the statute's coverage."

The Supreme Court has established a two-prong standard of review for Exemption 3 cases. First, the agency must determine whether the statute is question is a statute of exemption as contemplated by Exemption 3. Second, the agency must determine whether the withheld material satisfies the criteria of the exemption statute. Source selection information is prohibited from disclosure under 41 U.S.C. § 423. The purpose of the deliberative process privilege is to protect the free flow of information within the government. This free flow of information can be inhibited not only by fear of the personal revelations, but also by concern such as publicizing preliminary ideas which are never adopted and misleading the public. These concerns would not be mitigated by merely withholding the names of government employees involved in the decision-making process.

Moreover, the release of the this information would not be in the public interest because the ability and willingness of the evaluators to make honest and open recommendations could be compromised if they knew that this information would be released (10 CFR 1004.1). Consequently, the CBFO has properly withheld WTS Performance Evaluations. The deliberative process privilege permits the government to withhold document that reflect advisory opinions, recommendations, and deliberations comprising part of the process by which government decisions and policies are formulated. It is a privilege developed primarily to promote frank and independent discussions among those responsible for making government decisions and to protect the quality of the agency decision, including both inter-agency and intra-agency communications.

The WTS Performance Evaluations report and decisions covers the services rendered for the CBFO. The portions of the report that contains advice, recommendation for management action, and opinions of the evaluator are subject to further agency review, is also provided for other agency review in performance of source selection activities, is consider pre-decisional and, therefore, exempt in its entirety form disclosure pursuant to Exemption 5.

Accordingly, we have withheld the pre-decisional/deliberative portions of the report. The withheld information does not shed light on the general operations or policy of DOE. We conclude that the release of the withheld information would result in foreseeable harm to the interests protected by the deliberative process privilege so that information is being withheld.

In accord with 10 CFR, 1004.7(b)(2), I am the Denying Officer responsible for approval the above exemptions. You may appeal my withholding of this specific information

Ms. Kristin Hincke

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May 6, 2010

pursuant to 10 CFR Part 1004.8. Such an appeal must be made in writing within 30 calendar days after receipt of this letter, addressed to the Director, Office of Hearings and Appeals, HG-1, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, D.C. 20585. Your appeal must contain a concise statement of the grounds for the appeal and a description of the relief sought. Please submit a copy of this letter with the appeal. Please clearly mark both the envelope and the letter "Freedom of Information Appeal." Thereafter, judicial review will 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.

No fees will be charged to you in association with the processing of this FOIA request. If you have any questions or need additional assistance regarding this FOIA request, please contact Ms. Sharon Warren-Briggs, FOIA contact person, at (575) 234-7406, or [sharon.warren.briggs@wipp.ws](mailto:sharon.warren.briggs@wipp.ws). Please reference FOIA 10-004 in any correspondence regarding this request.

Sincerely,

A large black rectangular redaction box covers the signature area. A thin black line curves from the left side of the box towards the text below.

David M. Garcia  
Alternate Freedom of Information Public  
Liaison

Enclosures

cc: w/o enclosures  
File: FOIA 10-004  
CBFO M&RC