



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, PORTLAND DISTRICT
PO BOX 2946
PORTLAND OR 97208-2946

February 8, 2008

Office of Counsel

Mr. Doug Albright
Actuation Test Equipment Company
3393 Eddie Drive
Winnebago, Illinois 61088

Re: Freedom of Information Act Request 2008-028

Dear Mr. Albright:

This is the final response to your December 18, 2007, which was accepted after your payment on December 28, 2007. You requested documents regarding "proof of concept" testing. Please note that we sent you all of the documents regarding "proof of concept" testing with our August 17, 2006 response.

The following is the remainder of this request:

1. Electronic format of all field test data from turbine testing using either HDC's index test box or automated efficiency improver.

The data is enclosed on the attached CD, please note that it is all raw, unreviewed, and unverified by the agency.

2. Please send a copy of the "prior contract" that the Index Test Box was developed under. Also the Statement of Work and any DD Form 350's relative to that contract.

The prior contract was with your company, therefore you have already received copies of these documents. There have been no other contracts regarding the Index Test Box.

3. Please provide any documentation of the job description and daily responsibilities for any personnel working on the Index Test Box or automated efficiency improver projects.

All job descriptions are enclosed as requested.

The costs involved in search, review and copying for this request totaled \$714.95. You have previously sent in a deposit of \$250 towards this request, so the balance owing is \$464.95. Please send a check in that amount, made payable to FAO, Portland, to my attention, to P.O. Box 2946, Portland, Oregon 97208-2946.

a document is pre-decisional. Coastal States Gas Corp. v. Dept. of Energy, 617 F.2d 854, 868 (D.C. Cir. 1980). These requirements recognize that the underlying purpose of this privilege is to protect the consultative functions of government by maintaining the confidentiality of advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.

The Federal courts have held that a document is "deliberative" if the disclosure of the materials would expose an agency's decision-making process in such a way as to discourage candid discussion by personnel within the agency, and thereby, undermine the agency's ability to perform its functions. There are many different judgments called forth in performing the work, and different recommendations are made concerning these issues. Disclosure of this material would tend to discourage candid discussion and discourage employees from freely exploring possibilities, engage in internal debates, and/or produce "what if" situations all designed to address the requirements in a free expression of ideas without fear of public scrutiny.

In addition, 58 pages of internal documents were withheld pursuant to Exemption 5 as well as Exemption 2. Exemption 2 of the Act applies when release of documents might enable unauthorized access to Department of Defense computer systems. Within these documents are codes that would allow access into secure operating systems of equipment. Since September 11, 2001, and given the potential for further terrorist activity, all Federal agencies are concerned with the need to protect unclassified but sensitive information, including information pertaining to critical systems, facilities, stockpiles, and critical infrastructures from security breaches and harm. This information includes that which could be expected to enable someone to succeed in causing the feared harm, not all of which can be accorded national security classification protection as a practical matter. In this case, the release of this data could allow someone access into the Generic Data Acquisition Control System, which is the subject of a System Security Authorization Agreement.

4. Any documentation explaining how the ITB was "incompatible," or how "the apparent replica of it" built by HDC is more compatible.

One document was found that responds to this request and it is included herein.

The costs involved in search, review and copying for this request totaled \$264.00. Please send a check in that amount, made payable to FAO, Portland, to my attention, to P.O. Box 2946, Portland, Oregon 97208-2946.

If you are dissatisfied with my action on this request, you may appeal from this denial by writing to the Secretary of the Army (ATTN: General Counsel). An appeal must be received by

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the appellate authority within 60 days of the date of this letter. The envelope containing the appeal should bear the notation "Freedom of Information Act Appeal" and should be sent to: District Counsel, Portland District, U.S. Army Corps of Engineers, P.O. Box 2946, Portland, Oregon 97208-2946.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim G. Anderson". The signature is fluid and cursive, with a large initial "T" and "A".

Tim G. Anderson
District Counsel

Enclosures

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