Mr. Scott Amey  
General Counsel  
Project On Government Oversight (POGO)  
1100 G Street, NW, Suite 500  
Washington, DC 20005  

Dear Mr. Amey:

This letter is the final response to your September 18, 2012, Freedom of Information Act (FOIA) request for a copy of records from January 1, 2012 to the present regarding work performed at the Y-12 National Security Complex.

We contacted the NNSA Production Office at the Y-12 National Security Complex (NPO, Y-12) oversight for B&W Y-12 (Y-12) about your request. NPO, Y-12 and Y-12 searched and found the records identified below.

Specifically, POGO requested records regarding the following items:

1. All Show Cause and Cure Notices issued to Babcock and Wilcox related to work performed at the Y-12 National Security Complex in Tennessee.

   **Responsive Records**
   
   a. Letter, Albaugh to Kohlhorst, August 10, 2012, re Contract DE-AC05-00OR22800 (Babcock & Wilcox Technical Services Y-12, LLC) – Show Cause Notice. This document is fully releasable and is provided in its entirety.
   
   b. Letter, Albaugh to Spencer, August 30, 2012, re Contract DE-AC05-00OR22800 (Babcock & Wilcox Technical Services Y-12, LLC) – Supplemental Information Request to Show Cause Notice Issued August 10, 2012. This document is fully releasable and is provided in its entirety.
   
   c. Letter, Albaugh to Spencer, September 28, 2012, re Contract DE-AC05-00OR22800 (Babcock & Wilcox Technical Services Y-12, LLC) – Interim Reply to Response to Show Cause Letter and Recommendation to Terminate Subcontract No. 4300085923. This document is fully releasable and is provided in its entirety.
   
   d. Letter with enclosure, Albaugh to Spencer, October 24, 2012, re Contract DE-AC05-00OR22800 (Babcock & Wilcox Technical Services Y-12, LLC) –
Additional Information Requested Related to Response to Show Cause Notice, Dated September 10, 2012. This document is fully releasable and is provided in its entirety.

2. All Show Cause and Cure Notices issued to WSI-Oak Ridge related to work performed at the Y-12 National Security Complex in Tennessee.

   **Response**
   NPO, Y-12 searched but did not locate any responsive records.

   The documents you are seeking are contained in procurement records in the possession and control of B&W Y-12, LLC, (B&W Y-12) the management and operation contractor for the Y-12 National Security Complex, and are therefore, not “agency records” subject to the provision of the FOIA. “Agency records” are defined as records in a federal agency’s possession and control at the time of the FOIA request. However, pursuant to U.S. Department of Energy (DOE) policy, records in the possession and control of management and operation contractors and a prime contractor, such as B&W Y-12, will be available by DOE when the contract specifically provides that such records are the property of the Government. The contract between DOE and B&W Y-12 clearly defines the records that you have requested as B&W Y-12 records and not DOE records. Accordingly, these records are also not subject to release under DOE policy. You may view the contract at [DE-AC05-000R22800](#), specifically Part II, Section I.163 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)(M196), paragraph (b)(3).

3. Any correspondence, responses, or other records from Babcock and Wilcox to the Energy Department, including NNSA, in reference to the Show Cause and Cure Notice(s) issued.

   **Responsive Records**
   a. B&W Y-12 Response to Show Cause Notice, September 10, 2012 is provided with deletions pursuant to 5 USC § 552(b)(3) (Exemption 3 of the FOIA) and 5 USC § 552(b)(7)(F) (Exemption 7 of the FOIA). See justification below.
   b. Letter with enclosure, Spencer to Albaugh, November 16, 2012. This document is fully releasable and is provided in its entirety.

4. Any correspondence, responses, or other records from WSI-Oak Ridge to the Energy Department, including NNSA, in reference to the Show Cause and Cure Notice(s) issued.

   **Responsive Records**
   Document entitled “Response of G4S Government Solutions, Inc. to the Show Cause Notices Issued by NNSA and B&W Arising from the Intrusion of Protesters Into the Protected Area at the Y-12 Facility,” September 2, 2012. This document is provided with deletions pursuant to Exemptions 3 and 7F. See justification below.
Exemption 3 exempts information specifically exempted from disclosure by statute (other than section 552(b) of this title), provided that such 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.” The Atomic Energy Act (AEA) of 1954, as amended, 42 USC 2011 et seq., is an exemption 3 statute. Section 148 of this Act (42 USC 2168) prohibits the disclosure of information concerning atomic energy defense programs that is determined to be Unclassified Controlled Nuclear Information (UCNI) pursuant to the AEA, as amended. The portions deleted from the subject document pursuant to Exemption 3 contain information about security measures for the physical protection of nuclear materials contained in production or utilization facilities that has been safeguarded as UCNI. Disclosure of the exempt data would have a significant adverse effect on the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of nuclear materials.

Pursuant to Exemption 7(F), the portions of this document withheld are about deficiencies in security measures used to protect Federal buildings and personnel. Exemption 7(F) of the FOIA protects law enforcement information that “could reasonably be expected to endanger the life or physical safety of any individual.” The ordinary meaning of law enforcement includes not just the investigation and prosecution of offenses already committed but also proactive steps designed to maintain security.

The disclosure of information pertaining to the security measures of Federal buildings could enable anyone, including terrorists, to more easily plan operations that would target these facilities. Without question, uncontrolled release or access to this information by an unauthorized person could endanger the life or physical safety of Y-12 security police officers and employees as well as the general public.

The Department of Energy (DOE) regulations provide documents exempt from mandatory disclosure under the FOIA shall be released regardless of their exempt status, unless the DOE determines that disclosure is contrary to public interest. For the reasons described above, NNSA has determined that release of the information is not in the public interest.

Pursuant to 10 CFR § 1004.7(b)(2), Mr. Scott A Hawks, Classification Officer, NNSA Production Office, Y-12, is the official responsible for the denial of the Exemption 3 (UCNI) information. Ms. Elizabeth L. Osheim, Deputy General Counsel, is the individual responsible for withholding information pursuant to Exemption 7 of the FOIA.

You may appeal the withholding of Exemption 3 and 7 information and our inability to locate responsive records pursuant to 10 CFR § 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, L’Enfant Building, Washington, DC 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.

There are no fees chargeable to you for processing this request. If you have questions concerning the processing of this request, please email Ms. Karen Laney at karen.laney@nnsa.doe.gov, or write to the address above and reference Control Number FOIA 12-00316-K in your communication. We appreciate the opportunity to assist you.

Sincerely,

[Signature]

Elizabeth L. Osheim
Authorizing and Denying Official

Enclosures