



National Security Information (NSI) was improperly withheld from disclosure, because nearly all the text of the requested portions was withheld, and “extensive material has been released [to the public] related to some of the topics covered in the chapters.” Appeal Letter. Because, as explained below, the withheld information was identified as NSI, we referred the Appeal to the Office of Health, Safety and Security (HSS) for a review of the withheld material to determine whether it was properly identified, from the DOE’s perspective, as NSI under current guidance.

## II. Analysis

Exemption 1 of the FOIA provides that an agency may exempt from disclosure matters that are “(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order.” 5 U.S.C. § 552(b)(1); *accord* 10 C.F.R. § 1004.10(b)(1). Executive Order 13526 is the current Executive Order that provides for the classification, declassification and safeguarding of NSI. When properly classified under this Executive Order, NSI is exempt from mandatory disclosure under Exemption 1. 5 U.S.C. § 552(b)(1); 10 C.F.R. § 1004.10(b)(1).

The Chief Health, Safety and Security Officer, HSS, has been delegated the authority to make the final determination for the DOE regarding FOIA appeals involving the release of classified information. DOE Delegation Order No. 00-024.00B, Section 1.11 (June 9, 2009). This authority has been redelegated to the Principal Deputy Chief for Mission Support Operations, HSS (Deputy Chief). Redelegation Order No. 00-024-02A, Section 1.9. Upon referral of this Appeal from the Office of Hearings and Appeals, the HSS’s Office of Classification reviewed the requested chapters, focusing on the applicability of Exemption 1 to their contents.

After completing its review, the Office of Classification concluded, as did NNSA initially, that none of the requested information could be classified, from the DOE’s perspective, as NSI. Letter from Director, Office of Classification, Office of Health, Safety, and Security, DOE, to Headquarters Air Force Space Command, November 25, 2011 (“[T]he DOE has no withholdable equities in the requested [material].”) Consequently, on November 25, 2011, the Office of Classification forwarded Mr. Richelson’s Appeal to the Air Force, requesting that the Air Force perform its appellate review on the requested information to determine whether any previously withheld information may now be released. It further requested that the Air Force respond directly to Mr. Richelson. *Id.*

Based on the Office of Classification’s conclusion that the requested chapters contain no NSI from the DOE’s perspective, we have determined that the DOE should not withhold, and in fact has not withheld, any portions of those chapters pursuant to Exemption 1 of the FOIA. The Air Force must now determine whether, from its perspective, the requested chapters contain any NSI. Therefore, though we conclude that the DOE may not withhold

any of the requested information, we will not order the release of the chapters in their entirety. Accordingly, Mr. Richelson's Appeal will be granted in part and denied in part.

It Is Therefore Ordered That:

(1) The Appeal filed by Jeffrey T. Richelson on January 13, 2011, Case No. TFC-0007, is hereby granted to the extent that the Department of Energy has determined that no portion of the subject of Mr. Richelson's Freedom of Information Act request may be withheld from him, by the DOE, pursuant to its application of the FOIA.

(2) The Appeal is hereby denied to the extent that the subject of Mr. Richelson's Freedom of Information Act request will be released to him by the United States Air Force only after and in accordance with an appellate review conducted by that department.

(3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

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Poli A. Marmolejos  
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Date: February 25, 2013