

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Firas Shaikh)	
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Filing Date: July 3, 2012)	Case No.: FIA-12-0038
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Issued: July 30, 2012

Decision and Order

On July 3, 2012, Firas Shaikh filed an Appeal from a final determination issued by the Office of Information Resources (IR) of the Department of Energy (DOE). In that determination, IR responded to a Request for Information that Mr. Shaikh filed under the Privacy Act, 5 U.S.C. § 552a, as implemented by the DOE in 10 C.F.R. Part 1008 (Request No. HQ-2011-00179-PA). IR released portions five responsive documents, but withheld other portions of these documents under Exemption (k)(1) of the Privacy Act and Exemptions 1, 3 and 6 of the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). This Appeal, if granted, would require the DOE to release to Mr. Shaikh only those portions of the documents that were withheld under FOIA Exemptions 3 and 6.

I. Background

Mr. Shaikh requested a copy of his personnel security file as maintained by the DOE. On May 1, 2012, the DOE responded with a partial determination, providing copies of 79 documents from his file. On May 22, 2012, IR issued a final determination letter regarding Documents 80 through 84, withholding portions of each document under the exemptions set forth in the above paragraph. On July 3, 2012, Mr. Shaikh submitted the present Appeal. Because our consideration of IR's withholdings under Privacy Act Exemption (k)(1) and FOIA Exemption 1 in this case requires consultation with the DOE's Office of Classification,¹ we determined that bifurcation of the present Appeal would allow for a more timely consideration of IR's withholdings under FOIA Exemptions 3 and 6. IR's withholdings under FOIA Exemptions 3 and 6 will therefore be considered in the present decision (OHA Case No. FIA-12-0038). Our consideration of IR's

¹ 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. § 522(b)(1). Exemption (k)(1) of the Privacy Act exempts from disclosure information this is subject to the provisions of Exemption 1 of the FOIA. 5 U.S.C. § 552a(k)(1).

withholdings under Privacy Act Exemption (k)(1) and FOIA Exemption 1 will be considered in a separate decision that will be issued as OHA Case No. FIC-12-0001.

II. Analysis

The Privacy Act was enacted to prevent the unnecessary dissemination of personal information compiled about individuals by federal agencies. Under the Privacy Act, each federal agency must permit an individual access to information pertaining to him or her that is contained in any system of records maintained by the agency. 5 U.S.C. § 552a(d). Personnel security files, such as the one Mr. Shaikh requested, are maintained in one such system of records, DOE-43.² Courts have consistently recognized that requests of this type, where an individual is requesting information pertaining to him or her, are to be processed under both the Privacy Act and the FOIA, holding that each statute provides the requester with an independent basis for access to these records. *Shapiro v. DEA*, 762 F.2d 611, 612 (7th Cir. 1985); *Blazy v. Tenet*, 979 F. Supp. 10, 16 (D.D.C. 1997), *summary affirmance granted*, No. 97-5330, 1998 WL 315583 (D.C. Cir. May 12, 1998). Information about an individual contained in a system of records may be withheld from disclosure to that individual only when both the Privacy Act and the FOIA provide bases for withholding the information. *See* 5 U.S.C. § 552a(t) (prohibiting reliance on FOIA exemptions to withhold under the Privacy Act, and vice versa); *Nat'l Whistleblower Ctr. v. Dep't of Health and Human Svcs.*, CIV. A. 10-2120 JEB, 2012 WL 1026725 at *4 (D.D.C. Mar. 28, 2012) (to withhold requested information subject to both acts, agency must demonstrate that it falls “within some exemption under *each* Act”). OHA has consistently followed this rule in its Decisions. *See Thomas R. Thielen*, Case No. FIA-12-0023 (June 28, 2012); *Martin Salazar*, Case No. VFA-0773 (Oct. 3, 2002); *Mark J. Chugg*, Case No. VFA-0714 (Feb. 14, 2002); *Robert H. Calhoun, Jr.*, Case No. VFA-0571 (June 14, 2000); *David R. Berg*, Case No. VFA-0376 (April 2, 1998).³

In the present case, with respect to the information withheld from Mr. Shaikh pursuant to Exemptions 3 and 6 of the FOIA, IR has not provided any justification for withholding that information under the Privacy Act. Therefore, even if we were to uphold IR's application of the claimed FOIA exemptions to the withheld information, we could not find that the information had been properly withheld from Mr. Shaikh. This matter must be remanded to IR for a new determination. In that determination, IR will either justify withholding the information independently under the Privacy Act that it withheld under FOIA Exemptions 3 and 6 or release that information to Mr. Shaikh.

It Is Therefore Ordered That:

(1) The Appeal filed on July 3, 2012, by Firas Shaikh, OHA Case No. FIA-12-0038, is hereby granted as set forth in Paragraph (2) below and is denied in all other respects.

² The Privacy Act defines the term “system of records” as “ a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.” 5 U.S.C. § 552a(a)(5).

³ OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.

(2) This matter is remanded to the Department of Energy's Office of Information Resources for further consideration in accordance with the instructions set forth in the foregoing decision.

(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. § 552a(g)(1). 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.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: July 30, 2012