

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

In the Matter of Melissa Lynn McKinley	)	
	)	
Filing Date: June 18, 2026	)	Case Nos.: FIA-26-0046
	)	PAA-26-0005
_____	)	

Issued: July 7, 2026

Decision and Order

On June 18, 2026, Melissa Lynn McKinley (Appellant) appealed a letter issued by the Department of Energy’s (DOE) Western Area Power Administration (WAPA) regarding Request No. WAPA-2026-00038-FP, a request filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004, and the Privacy Act of 1974 (Privacy Act), 5 U.S.C. § 552a, as implemented by DOE in 10 C.F.R. Part 1008. The letter informed Appellant that the estimated fees associated with processing her request under the FOIA are \$4,455.20, and that the fees must be paid before WAPA performs any more work to process Appellant’s request. Interim Response Letter from WAPA to Appellant (May 21, 2026) (Interim Response). The letter further identified which portions of Appellant’s request WAPA was processing under the FOIA and which portions it was processing under the Privacy Act. In this Decision, we dismiss the appeal in part and deny it in part.

I. BACKGROUND

On April 2, 2026, Appellant submitted a request for performance and discipline records pertaining to her, in addition to the communications related to those records, which implicated both FOIA and the Privacy Act. *See* Interim Response at 1–3 (reciting Appellant’s initial FOIA/Privacy Act request). Appellant submitted the FOIA request to WAPA, who assigned the request to WAPA’s Office of Safety and Occupational Health, Office of Public Utilities, Human Resources, and Office of Power Marketing. *Id.* at 7.

On April 8, 2026, WAPA advised Appellant that “the request as written did not reasonably describe the records [she was] seeking, it was overly broad and lacked specificity as to the type of records requested.” *See id.* at 3 (recounting the processing of Appellant’s FOIA/Privacy Act request). Accordingly, on April 9, 2026, Appellant submitted a revised request to clarify the records she was seeking and to specify that she wanted WAPA to search through “Outlook/Exchange email accounts and archives, Microsoft Teams chat and message history, and OneDrive, SharePoint, or shared folders to the extent they contain responsive communications or attachments.” *Id.* at 4 (reciting Appellant’s revised FOIA/Privacy Act request).

On May 21, 2026, WAPA issued a letter informing Appellant that the estimated fees associated

with processing her request under the FOIA are \$4,455.20, and that she would need to pay the fees before WAPA performed any more work to process Appellant's request. *Id.* at 7–8. The letter further stated that “the FOIA processing fees cover the search of responsive records in Microsoft Outlook, Microsoft Teams, OneDrive, SharePoint, and shared folders. The Privacy Act Information request has been separated with the description of requested records: Administrative Review Files, Grievance Files, Payroll/Leave Records, Supervisor-Maintained Personnel Records, and Reasonable Accommodation Requests.” *Id.* at 8. WAPA advised Appellant that she had appeal rights pursuant to 10 C.F.R. § 1004.8. *Id.* Appellant timely appealed the letter on June 18, 2026. Appeal Letter Email from Appellant to OHA at 1 (June 18, 2026) (Appeal). In her Appeal, Appellant claims that (1) the fee estimate is inadequately explained, (2) WAPA has not adequately justified the allocation between the FOIA and Privacy Act components, (3) WAPA's communications have not resolved the fee dispute, and (4) the fee dispute affects access to records in a time-sensitive context. *Id.* at 1–2.

II. ANALYSIS

A. FOIA

Section 1004.8(a) of the DOE regulations states that OHA has jurisdiction to consider FOIA appeals in the following relevant circumstances:

When the Authorizing or Denying Official or FOIA Officer has denied a request for records in whole or in part or has responded that there are no documents responsive to the request . . . , or when the FOIA Officer has denied a request for expedited processing . . . or for waiver of fees

10 C.F.R. § 1004.8(a).

In this case, the circumstances for an administrative appeal do yet not exist because, as of the date of the Appeal, the DOE had not yet denied a request for records in whole or in part, responded that there were no documents responsive to the request, or denied a request for expedited processing or waiver of fees. Appellant did not request a waiver of fees, and WAPA's fee assessment is not one of the enumerated bases for an appeal set forth in DOE's regulations. Other federal agencies have regulations that specify the right to appeal FOIA fee determinations; however, DOE does not specify fee determinations as a basis for appeal in its regulations. *Compare* 10 C.F.R. § 1004.8, *with* 24 C.F.R. § 15.110(c) (Department of Housing and Urban Development regulations regarding appeal of a FOIA fee determination) *and* 28 C.F.R. § 16.6 (Department of Justice regulations stating that “adverse determinations also include denials involving [FOIA] fees”) Based on a plain reading of DOE regulations in light of those of other federal agencies that have specified fee determinations or fees more broadly as grounds for an appeal, OHA lacks jurisdiction to decide the adequacy of WAPA's explanation of its fee assessment or the reasonableness of its fee calculation. Accordingly, the FOIA portion of the Appeal, assigned Case No. FIA-26-0046, is dismissed.

B. Privacy Act

Section 1008.11(a) of the DOE regulations states that OHA has jurisdiction over Privacy Act appeals “relating to DOE records” where the appellant challenges “the denial of a request made by him for information about or for access to or correction or amendment of records.” 10 C.F.R. § 1008.11(a). In the Appeal, Appellant contends that “WAPA has not adequately justified the allocation between the FOIA and Privacy Act components” of her request. Appeal at 1. Specifically, Appellant disputes WAPA’s determination that “searches of Outlook, Teams, OneDrive, SharePoint, and shared folders are treated as the FOIA component, while certain categories of records in DOE systems of records are treated as the Privacy Act component.” *Id.* We construe this argument to be asserting that WAPA’s decision to process certain portions of her request under the FOIA amounts to a “denial of a request” for records under the Privacy Act.

Whenever a request is submitted under both the FOIA and the Privacy Act, “DOE shall, to the maximum extent possible, process the request under the provisions of [the Privacy Act]” 10 C.F.R. § 1008.5(c). However, the Privacy Act limits the information that any individual may request to information that is within “a DOE system of records.” *Id.* § 1008.6(a). “System of records means a group of any records under DOE control from which information is retrieved by the name of the individual or by some identifying number, symbol, or other particulars assigned to the individual.” *Id.* § 1008.2(m). However, the capability to retrieve information by the name or other identifier of an individual is not sufficient to create a system of records under the Privacy Act. *Henke v. United States DOC*, 83 F.3d 1453, 1459 (D.C. Cir. 1996). The United States Court of Appeals for the District of Columbia Circuit has concluded that “it is not sufficient that an agency has the *capability* to retrieve information indexed under a person’s name, but the agency must *in fact* retrieve records in this way in order for a system of records to exist.” *Id.* at 1460 n.12 (emphasis in original). DOE is required by law to provide notice to the public regarding what the “systems of records” are through a System of Records Notice. *See* Privacy Act of 1974; Publication of Compilation of Privacy Act Systems of Records, 74 Fed. Reg. 994 (Jan. 9, 2009).

Appellant is correct that she is entitled to information pertaining to her in DOE systems of records, but she is incorrect that WAPA improperly excluded information from the processing of her Privacy Act request. In processing Appellant’s request, WAPA reviewed the DOE systems of records and determined that four are applicable: DOE-1 (Grievance Records), DOE-2 (Supervisor-Maintained Personnel Records), DOE-13 (Payroll and Leave Records),¹ and DOE-47 (Reasonable Accommodation Requests Records).² Memorandum of Video Conference between WAPA and OHA (Jun. 25, 2026). WAPA searched—as Appellant specified in her revised request—Outlook, Teams, OneDrive, SharePoint, and shared folders for responsive records that fall under those four DOE systems of records.³ *Id.* Thus, although the Interim Response implied otherwise, WAPA confirmed to OHA that it included applicable records stored in the aforementioned locations in its processing of Appellant’s Privacy Act request. Further, upon our review of the remaining DOE

¹ *See* 74 Fed. Reg. at 998–99, 1012–14 (establishing DOE-1, DOE-2, and DOE-13).

² *See* Privacy Act of 1974; System of Records, 89 Fed. Reg. 78854 (Sep. 26, 2024) (establishing DOE-47).

³ On May 26, 2026, the first installment of 313 documents responsive to the Privacy Act request was sent to Appellant with information that additional records released would be forthcoming. Interim Response Letter from WAPA to Appellant at 6–7 (May 26, 2026).

systems of records, we conclude that none of them are applicable to Appellant's request and therefore that the remaining records identified by WAPA through its search of the aforementioned systems are properly processed under FOIA. Accordingly, WAPA is properly processing Appellant's request "to the maximum extent possible" under the Privacy Act, and the Privacy Act portion of the Appeal, assigned Case No. PAA-26-0005, is denied.

WAPA has only issued a partial response to Appellant's request under the Privacy Act with a final determination forthcoming once WAPA completes its review of all responsive records. Upon receiving a final determination from WAPA, Appellant may file another appeal with OHA if she is not satisfied with that determination.

III. ORDER

It is hereby ordered that the Appeal filed on June 18, 2026, by Melissa Lynn McKinley, No. FIA-26-0046 and No. PAA-26-0005, is dismissed in part and denied in part.

The Privacy Act portion of this Decision is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552a(g)(1)(B) as limited by 5 U.S.C. § 552a(g)(5). 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.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect the right to pursue litigation. OGIS may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS, College Park, MD 20740
Web: <https://www.archives.gov/ogis> Email: ogis@nara.gov
Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

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