United States Department of Energy
Office of Hearings and Appeals

In the matter of Alliance to Protect Nantucket Sound	)	
Filing Date: March 8, 2013	)	Case No.: FIA-13-0018

Issued: April 4, 2013

Decision and Order

On March 8, 2013, the Alliance to Protect Nantucket Sound ("APNS" or "Appellant") filed an Appeal from a determination issued to it on February 7, 2013, by the Loan Programs Office (LPO) of the United States Department of Energy (DOE) (FOIA Request Number HQ-2013-00110-F). In its determination, the LPO responded to the Appellant's request for information filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. In response to the Appellant's request, the LPO released documents that it withheld in part pursuant to FOIA Exemptions 2, 4, 5 and 6. 5 U.S.C. § 552(b)(2), (4), (5), (6). The Appellant claims that the LPO failed to adequately explain why it redacted information pursuant the various FOIA exemptions, complains that the LPO has not completely responded to its FOIA Request, and seeks expedited processing of its Appeal. This Appeal, if granted, would require the LPO to produce the information that it withheld and provide for expedited processing of the Request.

I. Background

On October 25, 2012, the Appellant submitted a FOIA Request, seeking:

> *all* documents regarding *any* communications (written or oral) regarding potential grants, loans, loan guarantees, or any other federal funding assistance for the Cape Wind Project proposed by Cape Wind Associates, LLC. "All records" encompass any documents, including correspondence, meeting minutes, memoranda, emails, spreadsheets, reports, or other records regardless of form.

FOIA Request from Audra Parker, President and Executive Director, APNS, to Joan Ogbazghi, Information Access Specialist, Office of Information Resources (Oct. 25, 2012) (emphasis in original). The Appellant requested copies of all communications from February 24, 2011, to the date of the agency's response. *Id.*

On November 1, 2012, the DOE Office of Information Resources (OIR) provided an initial response to the Appellant's FOIA Request stating that it assigned the Request to the LPO for processing. Interim Response from Alexander C. Morris, FOIA Officer, OIR, to Appellant (Nov. 1, 2012). On December 19, 2012, the LPO provided a partial response to the Appellant, releasing five documents in full, and stating that it was continuing to process the Appellant's FOIA Request. Partial Response Letter from David Frantz, Director, LPO, to Appellant (Dec. 19, 2012). The next day, on December 20, 2012, the LPO emailed the Appellant stating that because of the volume of documents it needed to process, it would continue to provide partial responses until its search is complete. Email from Natalia Medina, LPO, to Appellant (Dec. 20, 2012). Subsequently, on January 24, 2013, the LPO sent a second partial response to the Appellant, releasing one document and stating that it was continuing to process the Appellant's FOIA Request. Second Partial Response Letter from David Frantz to Appellant (Jan. 24, 2013). Finally, on February 7, 2013, the LPO submitted its third partial response, which is the subject of the instant Appeal, releasing "Brian Jefferis, Senior Investment Analyst, correspondence," and withholding information pursuant to Exemptions 2, 4, 5 and 6. Third Partial Response Letter from David Frantz to Appellant (Feb. 7. 2013). While the LPO withheld information pursuant to Exemption 2, it failed to include an explanation for that withholding in its Determination Letter.

On March 8, 2013, the Appellant filed the instant Appeal, claiming that the LPO's Third Partial Response was deficient because it contained vague explanations in support of its redactions. Appeal at 3. It further complains that the LPO took over four months to provide responses to the FOIA Request, arguing that the LPO has yet to provide an adequate response to its FOIA Request. *Id.* Finally, the Appellant seeks expedited processing of its Appeal "in light of the open public comment period for DOE's adoption of the 2009 Environmental Impact Statement ("FEIS") issued by the U.S. Department of Interior." *Id.*

II. Analysis

In its Appeal, the Appellant complains that while the LPO has provided multiple partial responses to date, it has yet to provide a complete response to its FOIA Request. It argues that "DOE is past the required 10 business day response period for the October 25 FOIA Request," and therefore, it "is treating DOE's lack of response as a denial for purposes of seeking administrative appeal of its October 25 FOIA request." Appeal at 3. Accordingly, it challenges the timeliness of the LPO's response to its FOIA Request.

This portion of the Appeal must be dismissed because the Office of Hearings and Appeals (OHA) does not have jurisdiction over matters that relate to whether the agency has responded to a FOIA request in a timely manner. *See R.E.V. Engineering Services*, OHA Case No. VFA-0636 (Jan. 10, 2001). Section 1004.8(a) of the DOE regulations grants the OHA jurisdiction to consider FOIA appeals when: 1) the Authorizing 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 2) when the Freedom of Information Officer has denied a request for waiver of fees. 10 C.F.R. § 1004.8(a). The OHA has consistently held that Section 1004.8(a) does not confer jurisdiction when an appeal is based on the agency's failure to process a FOIA within the time specified by law. *See Tulsa Tribune*, OHA Case No. HFA-0207 (Feb. 29. 1984) (no administrative remedy

for agency's non-compliance with a timeliness requirement). Accordingly, this part of the Appeal is dismissed. Thus, we will proceed with a review of whether the LPO sufficiently justified its redactions pursuant to the various FOIA Exemptions it invoked in its Third Partial Response.

The FOIA requires that documents held by federal agencies generally be released to the public upon request. However, pursuant to the FOIA, there are nine exemptions that set forth the types of information that may be withheld at the discretion of the agency. 5 U.S.C. § 552(b)(1)-(9). Those nine categories are repeated in the DOE regulations implementing the FOIA. 10 C.F.R. § 1004.10(b)(1)-(9). We must construe the FOIA exemptions narrowly to maintain the FOIA's goal of broad disclosure. *Dep't of the Interior v. Klamath Water Users Prot. Ass'n*, 532 U.S. 1, 8 (2001) (citation omitted). The agency has the burden to show that information is exempt from disclosure. 5 U.S.C. § 552(a)(4)(B).

A. Exemption 4

Exemption 4 exempts from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential" information. 5 U.S.C. § 552(b)(4); 10 C.F.R. § 1004.10(b)(4); *see also Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). In order to apply Exemption 4 to protect information from disclosure, the withheld information must be "obtained from a person." It is well-established that "person" refers to a wide-range of entities, including corporations and partnerships. *See Comstock Int'l, Inc. v. Export-Import Bank*, 464 F. Supp. 804, 806 (D.D.C. 1979); *see also Niagara Mohawk Power Corp.*, Case No. VFA-0591 (2000). As the redacted information contained in the released documents was derived from Cape Wind Associates, LLC, ("Cape Wind") it satisfies this requirement as being "obtained from a person."

In order to be exempt from disclosure under Exemption 4, the information must also be "privileged" or "confidential." Whether information is considered "confidential" turns in part on whether the information was voluntarily or involuntarily submitted. Here, the LPO contends that the withheld information was involuntarily submitted because it was obtained from Cape Wind to assist in negotiations regarding the loan agreement with the LPO. Memorandum of Telephone Conversation between Natalia Medina, LPO and Shiwali Patel, OHA (Mar. 25, 2013). We therefore agree that the information was involuntarily submitted, and will proceed with our analysis to consider whether the redacted information is confidential.

Under *National Parks*, involuntarily submitted information is considered confidential if its release would be likely to either (a) impair the government's ability to obtain such information in the future, or (b) cause substantial harm to the competitive position of submitters. 498 F.2d at 770. "In order to show the likelihood of substantial competitive harm, it is not necessary to show actual competitive harm. Actual competition and the likelihood of substantial competitive injury is all that need be shown." *See Gulf & W. Indus. v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979). Information pertaining to competitive strategies for bids has been held to be confidential for purposes of Exemption 4. *See id.* ("Norris' competitors would be able to accurately calculate Norris' future bids and its pricing structure from the withheld information. The deleted information, if released, would likely cause substantial harm to Norris' competitive position in that it would allow competitors to estimate, and undercut, its bids. This type of information has been held not to be of the type normally released to the public and the type that would cause

substantial competitive harm if released."). Finally, "[c]ourts generally defer to an agency's predictions concerning the repercussions of disclosure, acknowledging that predictions about competitive harm are not capable of exact proof." *Southern Alliance for Clean Energy v. DOE,* 853 F. Supp. 2d 60, 71 (D.D.C. 2012).

In response to our inquiries, the LPO provided us with the redacted and unredacted versions of the documents. The LPO also provided a copy of an email wherein the submitter, Cape Wind, explained to the LPO why it sought redactions pursuant to Exemption 4. Cape Wind stated that the redactions "pertain to project-specific terms of pending negotiations and the proposed structuring of project pricing, contracts, operations and financing, which constitute highly confidential commercial and financial information that is not in the public domain." Email from Dennis Duffy, Vice President, Cape Wind, to Natalia Media, LPO (Feb. 6, 2013). Hence, in its Determination Letter, the LPO informed the Appellant that the redacted information includes "financing plans, business strategies, and procurement plans," and that disclosing the information would provide an unfair advantage to competitors "by enabling competing power suppliers to estimate supply costs and use this information to bid against the appellant." Determination Letter at 1. As explained below, we conclude that the LPO properly invoked Exemption 4 as to only some of the redactions it made pursuant to Exemption 4.

We find that the LPO properly invoked Exemption 4 as to a few redactions on pages 4 and 5 of the released document. Pages 4 and 5 contain an email entitled, "Cape Wind Facts & MPR recommendation summary." Upon review of the withheld information, we find that the redactions listed in the "Size," "Cost" and "Offtake" sections on the top of page 4, should remain redacted as it contains confidential financial and project information pertaining to the Cape Wind Project. For the same reasons, we also conclude that the LPO properly made redactions in paragraphs 7 and 14. However, it is unclear how the redacted information in paragraphs 1, 4 and 5 contain confidential financial or proprietary information. Although the LPO asserts that the redacted information contains "financing plans, business strategies, and procurement plans," we cannot ascertain what, if any, confidential *business* or *financial* information would be revealed if the redacted information in those paragraphs were revealed. While they may in fact be confidential, it is not apparent how the release of that information would likely cause substantial harm to Cape Wind. Hence, as those redactions do not, on their face, appear to contain sensitive information, we cannot conclude that their release would likely cause substantial harm to Cape Wind's competitive interests.

Moreover, we cannot conclude that the LPO properly invoked Exemption 4 as to the redacted information on page 17. Specifically, we cannot ascertain whether the information on page 17 is confidential as it appears to be released elsewhere in the document. Finally, we find that the LPO properly invoked Exemption 4 for most of the redactions on page 24 as they reveal confidential information pertaining to the terms of the loan agreement between Cape Wind and the LPO. The only redaction on page 24 that we are remanding to the LPO is the last redaction in the paragraph, which is contained in an email dated September 13, 2012, from Edward Neaher. That redaction, on its face, does not appear to contain confidential business or financial information, and accordingly, it shall be remanded to the LPO for a new determination. The remaining Exemption 4 redactions on page 24, however, were properly invoked.

Hence, we will remand this matter in part based on the foregoing analysis. If the LPO intends to maintain the redactions that we are remanding for a new determination, it should either explain

sufficiently how Exemption 4 applies to those redactions, or withhold the information pursuant to another FOIA exemption.

B. Exemption 5

Exemption 5 protects from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5); 10 C.F.R. § 1004.10(b)(5). Exemption 5 permits the withholding of responsive material that reflects advisory opinions, recommendations, and deliberations comprising part of the process by which government decisions and policies are formulated. *NLRB v. Sears, Roebuck & Co*., 421 U.S. 132, 149 (1974). The courts have identified three traditional privileges that fall under this definition of exclusion: the attorney-client privilege, the attorney work-product privilege, and the executive "deliberative process" or "predecisional" privilege. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 862 (D.C. Cir. 1980). While it was unclear in its Determination Letter, in its Comments, the LPO informed us that it relied on all three privileges in withholding portions of the released document.

The "deliberative process" privilege of Exemption 5 permits the government to withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of the process by which government decisions and policies are formulated. *Sears, Roebuck & Co.*, 421 U.S. at 150. It is intended to promote frank and independent discussion among those responsible for making governmental decisions. *EPA v. Mink*, 410 U.S. 73, 87 (1973) (quoting *Kaiser Aluminum & Chem. Corp. v. United States*, 157 F. Supp. 939 (Cl. Ct. 1958)). The ultimate purpose of the exemption is to protect the quality of agency decisions. *Sears, Roebuck & Co.*, 421 U.S. at 151. In order to be shielded by this privilege, a record must be both predecisional, *i.e.*, generated before the adoption of agency policy, and deliberative, *i.e.*, reflecting the give-and-take of the consultative process. *Coastal States Gas Corp.*, 617 F.2d at 866. The deliberative process privilege does not exempt purely factual information from disclosure. *Petroleum Info. Corp. v. Dep't of the Interior*, 976 F.2d 1429, 1435 (D.C. Cir. 1992). However, "[t]o the extent that predecisional materials, even if 'factual' in form, reflect an agency's preliminary positions or ruminations about how to exercise discretion on some policy matter, they are protected under Exemption 5." *Id*. The deliberative process privilege routinely protects certain types of information, including "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." *Coastal States Gas Corp.*, 617 F.2d at 866.

The attorney-client and the attorney work-product privileges are frequently confused with each other. The attorney-client privilege exists to protect confidential communications between attorneys and their clients made for the purpose of securing or providing legal advice. *In Re Grand Jury Subpoena of Slaughter*, 694 F.2d 1258, 1260 (11th Cir. 1982); 8 J. Wigmore, *Evidence*, § 2291, p. 590 (McNaughton Rev. Ed. 1961); McCormack, *Law of Evidence*, Sec. 87, p.175 (2d ed. E. Cleary 1972). Not all communications between attorney and client are privileged, however. *Clark v. American Commerce National Bank*, 974 F.2d 127 (9th Cir. 1992). The courts have limited the protection of the privilege to those disclosures necessary to obtain or provide legal advice. *Fisher v. United States*, 96 S. Ct. 1569, 1577 (1976). In other words, the privilege does not extend to social, informational, or procedural communications between attorney and client.

The attorney work-product privilege protects from disclosure documents which reveal "the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." Fed. R. Civ. P. 26(b)(3); *see also Hickman v. Taylor*, 329 U.S. 495, 511 (1947). This privilege is also limited. It does not extend to every written document generated by an attorney. In order to be afforded protection under the attorney work-product privilege, a document must have been prepared either for trial or in anticipation of litigation. *See, e.g.*, *Coastal States*, 617 F.2d at 865.

We will remand this matter as to the Exemption 5 redactions on pages 6, 8, 9, 11-13, 16, and 19-21 because the LPO did not satisfactorily explain the basis for its withholdings. Indeed, even on the face of much of the information withheld, it is unclear how any of Exemption 5's privileges applies to those redactions.

Much of the Exemption 5 redacted material contained in pages 6, 8, and 19-21 pertains to login information for a DOE case management system. Page 6 has login information for the system, but does not contain the password to access that system, and page 8 contains a link to the LPO's W drive, which the LPO asserts contains government sensitive documents related to the Cape Wind Project. The LPO redacted that information out of concern that it would be hacked. *See* Email from Natalia Medina, LPO, to Shiwali Patel, OHA (Mar. 21, 2013). However, the LPO did not demonstrate how any deliberative process, attorney-client communications or attorney work-product would be revealed by disclosure of that information.

Similarly, we are not persuaded that Exemption 5 applies to certain withholdings on pages 19-21. On page 19, the first redaction is a link to a website and the second redaction is a screen shot of a login page that does not, on its face, appear to contain any privileged or confidential information. While the third redaction on that page is a password, it is unclear how Exemption 5 applies to withhold that information, particularly as the email that reveals that password does not contain a login name. A password itself does not reveal a deliberative process, and it certainly does not reveal communications between an attorney and a client or attorney work-product. Furthermore, the redactions on pages 20 and 21 contain a link to the case management system website and questions from a DOE employee concerning the login information for the system. Those pages do not reveal any passwords to gain access to the system.

In its Determination Letter, the LPO provided generalized statements in support of these redactions. The LPO stated that "[t]he material withheld from these documents relates to the government deliberations concerning various matters. The documents were created during Government consideration of proposed actions and other matters and were prepared in order to assist Government decision makers in arriving at their decisions." Determination Letter at 2. However, the LPO did not explain what decisions were being considered and how the government's deliberative process would be revealed if the withheld information was revealed.

In addition, upon further inquiry by the OHA, the LPO stated that this information is protected under all three Exemption 5 privileges, not just the deliberative process privilege as it indicated in its Determination Letter. *See* Email from Natalia Medina, LPO, to Shiwali Patel, OHA (Mar. 26, 2013). It states that if the Appellant has access to the login information for the case management system, then it would have access to the all the documents pertaining to the Cape

Wind Project, including documents created under the advice of LPO attorneys and outside counsel, documents created by LPO attorneys and outside counsel and documents demonstrating the LPO's deliberative process with regards to negotiating a deal with Cape Wind. *Id.* While we appreciate the LPO's concerns about preventing unauthorized access to its case management system, Exemption 5 is not the proper mechanism for redacting this information. Indeed, as explained above, most of the redacted login information contained only the login name or the link to the case management system, not the password. In order to invoke Exemption 5, the withheld information *itself* must reveal a deliberative process, attorney work-product, or attorney-client communication. A link to the LPO's internal drive, login name, password or screen shot of a case management system are simply insufficient for invoking any of Exemption 5's privileges. These, in and of themselves, do not contain privileged information.

Therefore, we will remand to the LPO its decision to redact the log-in information for the LPO's case management system, the link to the LPO's internal W drive, the link to the website, the screen shot of the log-in page, and the password, as we have described in the preceding paragraphs. (We will refer to this redacted information as the "access" information.) Upon remand, the LPO shall determine if the access information is itself responsive to the Appellant's FOIA Request. If the LPO determines that the access information is responsive, the LPO should verify with the Appellant as to whether it is actually seeking the access information. If the Appellant is seeking the access information, and the LPO decides to withhold it, the LPO shall either explain in its new determination letter how Exemption 5 applies to the access information, or withhold it under another exemption. In addition, the LPO should explain, at a minimum, how the release of the access information would enable the public to access its case management system and its internal W drive; and why the material that could thus be accessed should itself be withheld under Exemption 5 or another exemption.

Moreover, the LPO has not properly invoked Exemption 5 as to the redactions on pages 9 and 11-13. The LPO provided a general explanation in support of the withheld information on pages 9 and 11-13, stating that they contain sensitive information and are accordingly, protected under the attorney-client privilege. Email from Natalia Medina, LPO, to Shiwali Patel, OHA (Mar. 21, 2013). Yet, the LPO failed to explain to the Appellant in its Determination Letter that it was invoking the attorney-client privilege at all. Nonetheless, even considering the arguments that the LPO later asserted in its Comments, we cannot conclude that it properly invoked the attorney-client privilege in support of its withholdings.

The LPO claimed that the redaction on page 9 consists of advice from DOE's outside counsel regarding confidential information pertaining to the Cape Wind Project. While it appears that the email contains legal advice and was sent from outside counsel, we are not convinced that the information redacted is sufficiently confidential to warrant the protection of the attorney-client privilege. Specifically, the email is sent to multiple individuals, and based on their email addresses, it appears that many of those individuals are not DOE employees or employees of the outside counsel's law firm. It is also unclear that whether those individuals are contractors of DOE or the outside counsel's law firm. Thus, we cannot surpass the threshold question of whether the withheld information consists of "inter-agency" or "intra-agency" discussions, as it may have been made available to outside parties. *See* 5 U.S.C. § 552(b)(5); 10 C.F.R. § 1004.10(b)(5) (Exemption 5 protects from disclosure "inter-agency or intra-agency

memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."). Furthermore, the LPO invoked the attorney-client privilege to redact a term that is repeated on pages 9, 11, 12 and 13. However, that term alone, contained in the subject headings of multiple email correspondences, does not reveal any confidential communications or information concerning legal advice sought by the LPO. As stated above, the pertinent issue is whether the withheld information *itself* reveals confidential attorney-client communications. Here, the LPO has not shown this to be the case.

Moreover, we cannot conclude that the LPO properly invoked the deliberative process privilege as to its redactions on page 16 and 21. The information redacted on page 16 is the same as that redacted on the bottom of page 21. That redaction is two sentences in an email from an individual employed with an outside organization discussing a background check for the Cape Wind Project. These sentences do not appear to reveal anything about the LPO's deliberative process. Specifically, although this information may be predecisional, *i.e.*, generated before the adoption of agency policy, it is not on its face deliberative, *i.e.*, reflecting the give-and-take of the consultative process. *See Coastal States Gas Corp.*, 617 F.2d at 866.

Finally, we find that the LPO properly invoked Exemption 5 only as to the redactions on page 14. In its Comment, the LPO states that the information redacted consisted of input regarding the Independent Engineering Report for the Cape Wind Project from the LPO's staff. Email from Natalia Medina, LPO, to Shiwali Patel, OHA (Mar. 21, 2013). Upon our review of the redacted information, we agree that it reflects personal opinions by the LPO employees, which warrants invocation of Exemption 5's deliberative process privilege.

Thus, as the LPO has not adequately demonstrated in its Determination Letter or Comments that most of the information described above is protected under Exemption 5, we will remand this matter in part as to the redactions on pages 6, 8, 9, 11, 12, 13, 16, 19, 20 and 21. If the LPO intends to continue to withhold this information, it should either explain how Exemption 5 applies and specifically, which privilege – attorney-client, attorney work-product, or deliberative process – it is invoking, or withhold the information pursuant to another FOIA exemption.

The DOE regulations provide that the DOE should nonetheless release to the public material exempt from mandatory disclosure under the FOIA if the DOE determines that federal law permits disclosure and it is in the public interest. 10 C.F.R. § 1004.1. As to the information that we deemed properly withheld that revealed a deliberative process, we conclude that it should remain withheld as there is no public interest in their disclosure. As to the remaining redactions that we are remanding to the LPO, in its new determination, the LPO should explain, if it continues to withhold the information, how there is no public interest in the release of that information.

C. Exemption 6

Exemption 6 shields from disclosure "[p]ersonnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6); 10 C.F.R. § 1004.10(b)(6). The purpose of Exemption 6 is to "protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of

personal information." *Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982). In order to determine whether a record may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether or not a significant privacy interest would be compromised by the disclosure of the record. If no privacy interest is identified, the record may not be withheld pursuant to this exemption. *Ripskis v. Dep't of Hous. and Urban Dev.*, 746 F.2d 1, 3 (D.C. Cir. 1984). Second, if privacy interests exist, the agency must determine whether or not release of the document would further the public interest by shedding light on the operations and activities of the Government. *See Reporters Committee for Freedom of the Press v. Dep't of Justice*, 489 U.S. 769, 773 (1989). Finally, the agency must weigh the privacy interests it has identified against the public interest in order to determine whether release of the record would constitute a clearly unwarranted invasion of personal privacy. *See generally Ripskis*, 746 F.2d at 3.

In its Determination Letter, the LPO explained that it redacted mobile phone numbers and personal addresses because significant privacy interests would be compromised by its release. *Id.* at 2. We agree. The redactions on pages 8, 14, 24 and 25 contain mobile phone numbers, which generally are not released to the public, and the redactions on page 17 and 22 contain addresses for individuals.

We find that there is a significant privacy interest connected with this information. Release of this information could subject these individuals to unwanted intrusions. Further, we find that little, if any, light would be shed on the operations and activities of the Cape Wind Project by revelation of this information. The personal phone numbers and addresses do not, in themselves, relate to any description of the Cape Wind Project. As we find that there is a significant privacy interest connected to the withheld Exemption 6 material and little public interest that would be furthered by the release of this information, we conclude that release of the material withheld pursuant to Exemption 6 would constitute a clearly unwarranted invasion of personal privacy. Consequently, that material was properly withheld pursuant to Exemption 6.

D. Adequacy of the Determination Letter

The Appellant appeals the LPO's Determination Letter for its failure to adequately explain why information was redacted pursuant to the various exemptions. A written determination letter informs the requester of the results of the agency's search for responsive documents and of any withholdings that the agency intends to make. In doing so, the determination letter allows the requester to decide whether the agency's response to its request was adequate and proper and provides this office with a record upon which to base its consideration of an administrative appeal. We have consistently held that determination letters must (1) adequately describe the results of searches, (2) clearly indicate which information was withheld, and (3) specify the exemption(s) under which information was withheld. *Research Information Services, Inc.*, OHA Case No. VFA-0235 (Nov. 27, 1997).

As explained above, we have determined that the LPO failed to sufficiently justify certain redactions that it made pursuant to Exemptions 4 and 5. Moreover, while the LPO redacted information pursuant to Exemption 2, it acknowledged that it inadvertently failed to explain that it invoked Exemption 2 in its Determination Letter. *See* Email from Natalia Medina, LPO, to

Shiwali Patel, OHA (Mar. 21, 2013). Hence, this matter is also remanded so that if the LPO decides to continue to withhold the information pursuant to Exemption 2, it shall sufficiently explain, in a separate determination, why it is applying that exemption.

As described in relevant case law, conclusory and generalized allegations will not support an agency's decision to withhold requested documents. *See Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 680 (D.C. Cir 1976); *see also Environmental Defense Institute*, Case No. TFA-0289 (2009) (citing *Public Citizen Health Research Group v. Food & Drug Admin.*, 704 F.2d 1280, 1291 (D.C. Cir. 1983). Accordingly, to the extent that we are remanding this matter, the LPO must issue a new determination letter that provides sufficient justifications for its redactions. *See Research Information Services, Inc.*, OHA Case No. VFA-0235 (Nov. 27, 1997).

E. Expedited Processing

Finally, the Appellant seeks expedited processing of its FOIA Request, which we will deny. Generally, agencies process FOIA requests on a "first in, first out" basis, according to the order in which they are received. Granting one requester expedited processing gives that person a preference over previous requesters, by moving his request "up the line" and delaying the processing of earlier requests. Therefore, the FOIA provides that expedited processing is to be offered only when the requester demonstrates a "compelling need," or when otherwise determined by the agency. 5 U.S.C. § 552(a)(6)(E)(i).

"Compelling need," as defined in the FOIA, arises in either of two situations. The first is when failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The second situation occurs when the requester, who is primarily engaged in disseminating information, has an "urgency to inform" the public about an activity of the federal government. 5 U.S.C. § 552 (a)(6)(E)(v).

Here, the Appellant contends that expedited processing is warranted because the period for open public comment on DOE's adoption of the 2009 Environmental Impact Statement was extended to February 8, 2013. As the Appellant filed this appeal on March 8, 2013, one month after it contends the public comment period was finished, the Appellant has identified no "compelling need" for expedited processing of this Appeal. Accordingly, we will deny its request for expedited processing.

III. Conclusion

Therefore, as explained above, this matter is remanded in part so that the LPO can issue a new determination as to its withholdings under Exemption 2 and certain redactions it made pursuant to Exemptions 4 and 5.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by the Audra Parker, on behalf of Alliance to Protect Nantucket Sound, on March 8, 2013, OHA Case Number FIA-13-0018, is hereby denied in part and remanded in part, as set forth in Paragraph (2) below.

(2)This matter is hereby remanded in part to the Department of Energy's Loan Programs Office which shall issue a new determination in accordance with the instructions set forth in the above 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. 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.

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 your right to pursue litigation. You may contact OGIS 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: ogis.archives.gov
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5759
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Poli A. Marmolejos
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Date: April 4, 2013