

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Tim Hadley)	
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Filing Date: July 15, 2014)	Case No.: FIA-14-0045
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Issued: July 24, 2014

Decision and Order

On July 14, 2014, Tim Hadley (Appellant) filed an Appeal from a determination issued to him by the Oak Ridge Office (Oak Ridge) of the Department of Energy (DOE) (Request Nos. ORO-2014-00095-C and HQ-2014-00743-F). In that determination, Oak Ridge, responding to a request filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004, withheld portions of two documents. This Appeal, if granted, would require the DOE to release the withheld information.

I. Background

On March 19, 2014, the Appellant filed a request with the DOE for “all information relating to OAS-RA-14-03 collected from any agency, entity or company to compile report.” Request E-mail dated March 19, 2014, from Appellant to FOIA-Central, OIR, DOE. The Office of the Inspector General (OIG) was tasked with responding to the request. OIG located 30 responsive documents. April 9, 2014, Determination Letter from Rickey R. Hass, Deputy Inspector General for Audits and Inspections, OIG, to Appellant. In that determination, OIG referred a number of documents to Oak Ridge. *Id.* On June 19, 2014, Oak Ridge released two documents in full. June 19, 2014, Determination Letter from Amy Rothrock, FOIA Officer, Oak Ridge, to Appellant. Oak Ridge indicated that it was still reviewing two responsive documents.

On July 11, 2014, Oak Ridge released the final two responsive documents, but withheld the names of contractor employees under Exemption 6 of the FOIA. July 11, 2014, Determination Letter from Amy Rothrock to Appellant. On July 14, 2014, the Office of Hearings and Appeals (OHA) received a submission from the Appellant, stating that Oak Ridge’s determination did not

comply with the FOIA statute. Appeal E-mail dated July 14, 2014, from Appellant to Director, OHA, DOE.

II. Analysis

The FOIA requires that documents held by federal agencies generally be released to the public upon request. The FOIA, however, lists 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. *See* 5 U.S.C. § 552(a)(4)(B). The DOE regulations further provide that documents exempt from mandatory disclosure under the FOIA shall nonetheless be released to the public whenever the DOE determines that disclosure is in the public interest. 10 C.F.R. § 1004.1.

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 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 the present case, the Appellant argues that the database documents are not the type of files that may be protected under Exemption 6. However, the Supreme Court and other federal courts have given the phrase “personnel and medical files and similar files” a broad meaning when a requested document refers specifically to an individual. *See, e.g., Washington Post*, 456 U.S. at 602; *Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1024 (9th Cir. 2008) (stating that the threshold test of Exemption 6 is satisfied when government records contain information applying to particular individuals).

In determining whether a record may be withheld under Exemption 6, an agency must perform a three-step analysis. First, the agency must determine if a significant privacy interest would be compromised by the disclosure of the record. If the agency cannot find a significant privacy interest, the record may not be withheld pursuant to this exemption. *Nat'l Ass'n of Retired Federal Employees v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1078 (1990) (NARFE); *see also Ripskis v. Dep't of Hous. & Urban Dev.*, 746 F.2d 1, 3 (D.C. Cir. 1984). Second, if an agency determines that a privacy interest exists, the agency must then determine whether the release of the information at issue would further the public interest by shedding light on the operations and activities of the government. *See Reporters Comm. for Freedom of the Press v. Dep't of Justice*, 489 U.S. 749, 773 (1989) (*Reporters Committee*). Lastly, 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 NARFE*, 879 F.2d at 874.

Oak Ridge withheld the names of individuals, who are not Federal employees, under Exemption 6 from the two documents. July 11, 2014, Determination. The initial step in analyzing whether Exemption 6 has been properly applied to withhold information is, as stated above, determining

whether or not a significant privacy interest would be compromised by the disclosure of the withheld information. It is well settled that the release of an individual's name to the public implicates a privacy interest under the FOIA.^{*/} *Associated Press v. Dep't of Justice*, 549 F.3d 62, 65-66 (2d Cir. 2008). Therefore, Oak Ridge correctly concluded that a person who is not an employee of the federal government has a legitimate expectation of privacy under the FOIA.

Because we find that a protectable privacy interest exists, we must now consider if release of the withheld information would further the public interest by shedding light on the operations and activities of the government. It is clear that release of the names of persons not employed by the federal government would not further the public interest by shedding light on the operations and activities of the government. We note that Oak Ridge did release information regarding their hours, rates, and wages, as that would shed light on the operations and activities of the government. In making that determination, Oak Ridge stated that the release of the names would not shed light on the operations of the government. We agree and find that the public interest in the withheld names is minimal at best. Release of the information would reveal little, if anything, to the public about the workings of the government. *Elec. Frontier Found. v. Office of the Director of Nat'l Intelligence*, 639 F.3d. 876, 888 (9th Cir. 2010).

In applying the Exemption 6 balancing test, we have found that there is a significant privacy interest in the names of the non-federal employees. Additionally, we find that there is little or no public interest that is furthered by release of the withheld information. In balancing these factors pursuant to Exemption 6, we find that release of the withheld information would constitute a clearly unwarranted invasion of personal privacy. Consequently, Exemption 6 was properly invoked to withhold the redacted information.

III. Conclusion

After reviewing the Appellant's Appeal, we have determined that the information withheld from two documents was properly withheld under Exemption 6 of the FOIA. Accordingly, the Appeal, designated as Case No. FIA-14-0045, should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Tim Hadley, Case No. FIA-14-0045, is hereby denied.
- (2) This 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. § 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.

^{*/} Conversely, civilian federal employees who are not involved in law enforcement generally have no expectation of privacy regarding their names, titles, grades, salaries, and duty stations as employees. *See Office of Pers. Mgmt. Regulation*, 5 C.F.R. § 293.311 (2009) (specifying that certain information contained in federal employee personnel files is available to public).

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Poli A. Marmolejos
Director
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