

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

In the Matter of Real Estate Appraisal Litigation, LLC)
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Filing Date: March 2, 2015) Case No. FIA-15-0008
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Issued: March 30, 2015

Decision and Order

On March 2, 2015, Mr. Jim L. Sanders of Real Estate Appraisal Litigation, LLC (“Appellant”) filed an Appeal from a determination issued to him on January 12, 2015, by the Bonneville Power Administration (BPA) of the Department of Energy (DOE) (FOIA Request No. BPA-2015-00205-F). In its determination, BPA released two documents responsive to a request that the Appellant filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1004. BPA withheld portions of those documents under Exemption 6 of the FOIA. 5 U.S.C. § 552(b)(6). The Appellant claims that BPA did not conduct an adequate search for records and that it should not have applied Exemption 6 to the withheld information. This Appeal, if granted, would require BPA to conduct another search for the documents that the Appellant requested and to release the information it withheld pursuant to Exemption 6.

I. Background

On November 14, 2014, the Appellant submitted a FOIA Request seeking input data for a realty article written by Mr. Steven C. Bottemiller, Chief Appraiser for the BPA. The article is a study of real estate market history of various properties. The Appellant also requested the contact information of the contract employee who co-authored the article. *See* Determination Letter from C.M. Frost, BPA, to Appellant (January 12, 2015); *see* Appeal Letter from Mr. Jim L. Sanders, to the Office of Hearings and Appeals (March 2, 2015). On January 12, 2015, BPA responded to the Appellant’s FOIA Request, stating that it located two spreadsheets in response to the Appellant’s first request. However, BPA indicated that it withheld some of the columns of information in the spreadsheets under Exemption 6 of the FOIA. *Id.* With regard to the Appellant’s request for the contact information of the contract employee who co-authored the article, BPA indicated that this information is also being withheld in its entirety under Exemption 6 because the contract employee is not a federal employee. *Id.*

The Appellant contends that BPA improperly invoked Exemption 6 as the information requested is typically available online through county assessor records. *See* Appeal. In addition, the Appellant contests the adequacy of the search for responsive documents, asserting that the data he received was incomplete. He further asserts that it is highly unlikely that input data would have been stored in an e-mail account. *Id.*

II. Analysis

A. Adequacy of Search

In responding to a request for information filed under the FOIA, it is well established that an agency must conduct a search “reasonably calculated to uncover all relevant documents.” *Valencia Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (*quoting* *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). “[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought material.” *Miller v. Dep’t of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord* *Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Project on Government Oversight*, Case No. TFA-0489 (2011).

In its Determination Letter, BPA stated that it located two spreadsheets in response to the Appellant’s first request. Moreover, in response to our inquiries, BPA provided us with additional information to evaluate the reasonableness of its search. BPA informed us that it contacted its Chief Appraiser, Mr. Steve Bottemiller, who participated in the development and publication of the article at issue and who also conducted the search for responsive documents. Mr. Bottemiller explained that his participation in the development and publication of the article involved the gathering and assembly of data, as well as editing the article. *See* E-mail from Paul Mautner, OGC, BPA, to Kimberly Jenkins-Chapman, OHA (citing response from Mr. Steve Bottemiller) (March 24, 2015). According to Mr. Bottemiller, BPA sent raw data about realty sales in the greater Portland and Seattle areas to a BPA contractor in Texas, and this contractor “used that raw data to statistically assemble, analyze, and draft the spreadsheets that are the subject of this FOIA request.” *Id.* Mr. Bottemiller further explained that the Texas contractor received the raw data from an in-house BPA contractor (administrative assistant). *Id.* Mr. Bottemiller’s involvement was to oversee the raw data gathered and sent to the BPA Texas contractor. *Id.* He stated that the two BPA contractors communicated back and forth regarding the data and that all data exchanges were electronic. *Id.* Mr. Bottemiller further explained that the Texas contractor assembled spreadsheets on his personal computer. *Id.* He stated that the contractor is no longer under contract with BPA, nor does BPA have access to the contractor’s records or files. *Id.* Mr. Bottemiller indicated that the Texas contractor sent him copies of the spreadsheets which are the subject of the Appellant’s FOIA request. *Id.*

According to Mr. Bottemiller, he filed the spreadsheets in a folder in his e-mail. *Id.* He believed his file would be saved and archived, but later discovered that his e-mail files only last for 90 days. *Id.* When Mr. Bottemiller searched for the spreadsheets in response to Appellant's FOIA request, he could only locate two spreadsheets for the Portland, Oregon data which was redacted and provided to the Appellant. *Id.* According to Mr. Bottemiller, the administrative assistant left BPA about three years ago. *Id.* He stated that her files are no longer available as it is BPA practice to "wipe clean" the hard drive of departing BPA employees or contractors. *Id.* In addition to inquiring about the administrative assistant's files, Mr. Bottemiller stated that he expanded his search by thoroughly searching his thumb drives, his "C" drive on his computer, the flash drives he uses, the e-mail archives he kept as well as a "W" drive for Real Property Services. *Id.* He indicated that he searched the "W" drive because "any appraisal authorized employee from Real Property Services can store records and data there. *Id.* Mr. Bottemiller stated that he found no responsive documents as a result of these additional searches. *Id.*

Based on the foregoing, we are satisfied that BPA conducted a more than adequate search for documents that are responsive to the Appellant's FOIA request. As stated above, the standard for agency search procedures is reasonableness, which "does not require absolute exhaustion of the files." *Miller*, 779 F.2d at 1384-85. Here, a reasonable search was conducted to locate the requested documents.

B. 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 individual 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 Housing 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, BPA withheld the name, street, mailing address and phone numbers of property owners on the spreadsheets provided to the Appellant. It also redacted MLS listing numbers and county recording information, i.e., land parcel numbers and map page numbers that could be used to identify the specific properties and owners. BPA further withheld its entirety the contact information of a co-author of the article at issue. We have consistently determined “that there is a real and substantial threat to employees’ privacy if personal identifying information . . . were released.” *Painting & Drywall Work Preservation Fund, Inc.*, 15 DOE ¶ 80, 115 at 80,537 (1987). *See also Painting & Drywall Work Preservation Fund, Inc.* 16 DOE ¶ 80, 102 at 80, 504 (1987). Federal courts have also considered the privacy interests of individuals outside of the context of federal employees and have held that names and home addresses can be protected under Exemption 6. *See Bibles v. Or. Natural Desert Ass’n* 519 U.S. 355, 356 (1997) (protecting mailing list or recipients of Bureau of Land Management publication). They have also held that specific lists may reveal sensitive information beyond the mere names and addresses of the individuals found on the list. *Minnis v. USDA*, 737 F.2d 784, 787 (9th Cir. 1984) (“Disclosure would reveal not only the applicant’s names and addresses, but also their personal interests in water sports and the out-of-door.”).

In this case, we believe that there is a significant privacy interest in the names, addresses, phone numbers, land parcel numbers and map page numbers of private homeowners, as well as the contact information of the co-author of the article. If this information were disclosed to the requester, the disclosure could cause a clearly warranted invasion of personal privacy. Moreover, there is no public interest in the redacted information as it does not shed light on how BPA conducts business. *See Long v. Office of Personnel Mgmt.*, 692 F.3d 185, 193 (2d Cir. 2012); *see also Schwarz v. Dep’t of Treasury*, 131 F.Supp.2d 142, 150 (D.D.C. 2000) (“Disclosures of these names could subject the individuals to unwanted harassment but could not contribute to the public understanding of government functions.”). Hence, in balancing the significant privacy interest against the minimal public interest, we conclude that release of the withheld information would constitute a clearly unwarranted intrusion of privacy. Accordingly, this Appeal will be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed on March 2, 2015, by Real Estate Appraisal Litigation, LLC, OHA Case No. FIA-15-0008, 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 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:

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