United States Department of Energy
Office of Hearings and Appeals

In the Matter of Barbara McNeal Lloyd	)	
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Filing Date: June 2, 2015	)	Case No.: FIA-15-0032
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Issued: June 15, 2015

Decision and Order

On June 2, 2015, Barbara McNeal Lloyd (Lloyd or Appellant) filed an Appeal from a determination issued to her by the Department of Energy (DOE), Office of Information Resources (OIR). The determination responded to a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. In the determination, OIR released some responsive information to Lloyd, but withheld certain information under Exemption 6. 5 U.S.C. § 552(b)(6). This Appeal, if granted, would require OIR to release the withheld information.

I. Background

On December 24, 2014, the Appellant filed a FOIA request with the DOE seeking "copies of FY 2014 performance appraisals of all direct reporting employees to David W. Geiser, Department of Energy, Office of Legacy Management." Letter to Barbara McNeal Lloyd from Alexander C. Morris, FOIA Officer, OIR (April 30, 2015). On April 30, 2015, OIR issued a determination letter indicating that the DOE Office of the Chief Human Capital Officer (HC) had located responsive documents but that employee rating scores, and the rating official's and employees' comments were being withheld under Exemption 6. *Id*. On June 2, 2015, the Appellant appealed the application of Exemption 6 to the withheld information. Letter from Barbara McNeal Lloyd to Director, OHA (May 26, 2015).

II. Analysis

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 exemptions 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)(citing *U.S. Dep't of Justice v. Tax Analyst*, 492 U.S. 136 (1989)). The agency has the burden to show that information is exempt from disclosure. 5 U.S.C. § 552(a)(4)(B).

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). 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 Envt'l 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 Fed. Employees v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1078 (1990); *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. 769, 773 (1989). Lastly, the agency must weigh the privacy interest 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 Nat'l Ass'n of Retired Fed. Employees*, 879 F.2d 873.

We find that significant privacy interests would be implicated by the release of the employees' performance ratings and the comments accompanying the ratings. Obviously, the release of mediocre or poor ratings could result in humiliation, but even the release of favorable ratings can cause embarrassment, jealousy, or possible harassment. *See Linda Dunham*, OHA Case No. TFA-0286 (2009).[1] On the other hand, the release of this information could also shed light on how the government assesses its employees. *Id*. We have found in the past however that the public interest in performance ratings is outweighed by the harmful effects disclosure could have on employee morale and workplace efficiency. *Id*. In *Ripskis*, the District of Columbia Circuit Court of Appeals found that the release of employee performance ratings could likely "spur unhealthy comparisons among … employees and thus breed discord in the workplace," and likely "chill candor in the evaluation process as well." 746 F.2d at 3.[2] Because comments made by the rating official and the employee could indicate the nature of the employees' performance rating, or even the rating itself, they are also properly withheld under Exemption 6. *See Linda*

[1] Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, are available on the OHA website located at http://www.energy.gov/oha.

[2] In that case, the Court held that the redaction of employees' names from performance evaluation forms was appropriate under Exemption 6.

Dunham, OHA Case No. TFA-0286 (2009). In the instant case, we find that OIR's decision to withhold employee rating scores, and the rating official's and employees' comments to be appropriate.

III. Conclusion

We have reviewed the information that was withheld from the Appellant and have determined that OIR segregated and released to the Appellant all information that is not subject to withholding under Exemption 6. Having found that OIR properly withheld personal information regarding employees from the documents it released, we will deny the present Appeal.

It Is Therefore Ordered That:

(1) The Appeal filed on June 2, 2015, by Barbara McNeal Lloyd, Case No. FIA-15-0032, 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.

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Poli A. Marmolejos
Director
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Date: June 15, 2015