United States Department of Energy
Office of Hearings and Appeals

In the Matter of Republican National Committee	)	
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Filing Date: April 4, 2016	)	Case No.: FIA-16-0026
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	)	

Issued: May 12, 2016

Decision and Order

On April 4, 2016, the Republican National Committee (Appellant) filed an Appeal from a determination issued to it on March 10, 2016, by the Office of Information Resources (OIR) of the Department of Energy (DOE) (Request No. HQ-2016-00087-F). In that determination, OIR responded to the Appellant's request for information 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. In response to the Appellant's request, OIR released one document, an email, but withheld portions of it pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). OIR also withheld two attachments to the email pursuant to Exemption 6. This Appeal, if granted, would require OIR to review whether to release additional information in the attachments.

I. Background

On October 15, 2016, the Appellant filed a FOIA request for documents referenced in an April 11, 2012, email from former Secretary of Energy Steven Chu to former Secretary of State Hillary Clinton. Letter from Scott Parker, Republican National Committee, to Department of Energy (October 7, 2015) (Request) at 1. In that April 11, 2012, email from Secretary Chu to Secretary Clinton, which the Appellant obtained in response to a previous FOIA request, former Secretary Chu stated, "I sent a longer email through your assistant. Enjoy the attachments as well." Email from Steven Chu, Secretary of Energy, to Hillary Clinton, Secretary of State (April 11, 2012). The Appellant attached a copy of the April 11, 2012, email to its request and sought all "correspondence and all attachments" referenced in that email. Request at 1.

On March 10, 2016, OIR issued a determination in which it informed the Appellant that the DOE's Office of the Executive Secretariat had conducted a search and located one responsive document, an email with two attachments. Determination from Alexander C. Morris, OIR, to Appellant (March 10, 2016) (Determination) at 1. OIR released the email in part but withheld portions of it

pursuant to Exemption 6 of the FOIA. OIR also withheld the two attachments in their entirety. *Id*. In support of its withholdings, OIR explained that the withheld information included private personal contact information, such as a mobile cell phone number, and other personal contact and identifying information relating to certain individuals. *Id*. OIR further determined that "the public interest in releasing this information does not outweigh the overriding privacy interests in keeping this information confidential." *Id*.

On April 4, 2016, the Appellant filed this Appeal in which it challenges the application of Exemption 6 to the two attachments. Appeal from Appellant to Director, Office of Hearings and Appeals (April 4, 2016) (Appeal) at 2. In the Appeal, the Appellant asserts that it is "incredibly dubious" that both pages of both attachments would be exempt from disclosure in their entirety, given that the body of the parent email was redacted only in part. *Id*. The Appeal asserts that it is "much more likely that at least some of this information does not fall within the ambit of Exemption 6, and as such was improperly withheld." *Id*.

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 agencies may withhold in their discretion. 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 construe these exemptions narrowly to maintain the FOIA's goal of broad disclosure. *See Dep't of the Interior v. Klamath Water Users Prot. Ass'n*., 532 U.S. 1, 8 (2001). The agency has the burden of showing that a FOIA exemption is applicable. *See* 5 U.S.C. § 552(a)(4)(B). To the extent permitted by law, the DOE will release documents exempt from mandatory disclosure under the FOIA whenever it determines that disclosure is in the public interest. 10 C.F.R. § 1004.1.

A. Material Withheld Under Exemption 6

Exemption 6 of the FOIA 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 determining whether information may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine if a significant privacy interest would be compromised by the disclosure of the information. *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). If the agency cannot find a significant privacy interest, the information may not be withheld. *Id*. Second, if an agency determines that a privacy interest exists, the agency must then determine whether the release of the information would further the public interest by shedding light on the operations and activities of the government. *Id.*; *Reporters Comm. for Freedom of the Press v. Dep't of Justice*, 489 U.S. 749, 773 (1989). 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. *NARFE*, 879 F.2d at 874.

In the instant matter, the Appellant has challenged only the withholding of the two attachments and not the redactions in the parent email. However, to understand the purpose of the attachments, we have reviewed both the attachments as well as redacted and unredacted versions of the parent email, which we will call the "Chu Email." The Chu Email is an email from Secretary Chu to Secretary Clinton that was routed through Secretary Clinton's assistant and sent to four other DOE officials. It is dated April 11, 2012, the same date as the email attached to the Appellant's FOIA request. In the redacted version of the Chu Email, Secretary Chu wrote to Secretary Clinton:

> A few meetings ago, we talked about how we – US companies and the USG – can help other countries develop the shale oil and gas with hydraulic fracking in an environmentally responsible way. The responsible development of these resources can change the energy and geo-political landscape in profound ways.

Secretary Chu next provided the names and contact information of two DOE officials whom he indicated could "support State" in that objective. OIR redacted one personal cell phone number from the Chu Email as well as three sentences at the bottom of the email. Our review of the redacted sentences indicates that they explain the purpose of the attachments. Further, our review of the attachments confirms that they consist of annotated images that are of a private nature and are unrelated to the subject of hydraulic fracking or any public policy matter.

In considering whether OIR properly applied Exemption 6 to the attachments, we first note that Exemption 6 has a threshold requirement in that the records at issue must be "personnel and medical files and similar files." OIR found that the Chu Email and its attachments qualify as "similar files" because they contain "information in which an individual has a privacy interest." Determination at 1. Given that the redacted information in the Chu Email and its attachments consists of private information pertaining to individuals, we agree with OIR's finding that the Chu Email and its attachments qualify as "similar files." *See Washington Post*, 456 U.S. at 602 (all information that "applies to a particular individual" meets the threshold requirement for Exemption 6 protection).

Due the private nature of the attachments, and particularly the possibility that the attachments could cause injury or embarrassment to one or more individuals if released, we also find that a significant privacy interest would be compromised if the attachments were disclosed. As to the public interest in disclosing the attachments, the Supreme Court has held that there is a public interest in disclosure of information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773. In the matter before us, the withheld attachments do not relate to the subject of hydraulic fracking and are unrelated to the performance of the statutory duties of the DOE, the Department of State or any other agency. We therefore find little or no public interest in their disclosure. Accordingly, because the privacy interests involved outweigh any public interest, we find that OIR properly withheld the two attachments.

B. Public Interest in Disclosure

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 that disclosure is in the public interest. 10 C.F.R. § 1004.1. The Attorney General has indicated that whether or not there is a legally correct application of a FOIA exemption, it is the policy of the Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency articulates a reasonably foreseeable harm to an interest protected by that exemption. Memorandum from the Attorney General to Heads of Executive Departments and Agencies, Subject: The Freedom of Information Act (FOIA) (March 19, 2009) at 2.

In the instant matter, because the analysis of the applicability of Exemption 6 already considers the public interest in release of the Exemption 6 withheld material, we need not make a separate public interest determination regarding discretionary release of the Exemption 6 material. *Another Way BPA*, Case No. TFA-0437 (2010).

C. Segregability

Notwithstanding the above, the FOIA requires that any "reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection." 5 U.S.C. § 552(b). Upon review, we find that the entirety of both attachments is private in nature and that there are no reasonably segregable portions.

It Is Therefore Ordered That:

(1) The Appeal filed on April 4, 2016, by the Republican National Committee, Case No. FIA-16-0026, 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.

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. FOIA requesters 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
Email: ogis@nara.gov
Telephone: 202-741-5770

Fax: 202-741-5769
Toll-free: 1-877-684-6448

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: May 12, 2016