



Department of Energy
Washington, DC 20585

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Jeffrey Rosenberg)

Filing Date: September 10, 2025)

Case No.: FIA-25-0063

Issued: September 23, 2025

Decision and Order

Jeffrey Rosenberg (Appellant) appeals a final Determination Letter issued to him from the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA), concerning Request No. FOIA 25-00213-KA, 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 the final Determination Letter, NNSA informed the Appellant that it could neither confirm nor deny that it possessed records responsive to the Appellant’s request pursuant to Exemption 6. Determination Letter from NNSA to Appellant at 1 (Sept. 9, 2025) (Determination Letter). In this appeal, the Appellant challenges NNSA’s determination pursuant to Exemption 6. Appeal Email from Appellant to Office of Hearings and Appeals (OHA) at 1 (Sept. 10, 2025) (Appeal). In this Decision, we deny the Appeal.

I. Background

On October 13, 2024, the Appellant filed a FOIA request asking for, among other things, “[a]ny and all records associated with the investigation into the reported time fraud by [XX] at Y12 that was reported to [XX], [XX], and the Inspector General.” FOIA Request, via webform submission, from Appellant to DOE (Oct. 13, 2024).

On January 13, 2025, the request was partially transferred to NNSA. Memorandum of Transfer from DOE to NNSA (Jan. 13, 2025). Accordingly, NNSA was tasked with processing the aforementioned request from the Appellant’s larger initial FOIA request.

On September 9, 2025, NNSA issued a final Determination Letter indicating that, “[a]bsent employee consent . . . proof of death, or an overriding public interest, the Department neither confirms nor denies the existence or non-existence of any of the records described in [the] request pursuant to § 552(b)(6)[.]” Determination Letter at 1. NNSA went on to state that the disclosure of the requested information would cause the employees in question “inevitable harassment and unwarranted invasion of personal privacy[.]” *Id.* at 2. Further, the release of the information “would not reveal anything of significance to the public[.]” and accordingly, the employees’ privacy interest outweighs any interest the public may have in the disclosure of the information. *Id.*

The Appellant filed the Appeal on September 10, 2025. The Appellant challenged the application of Exemption 6, arguing that it does not apply, as the requested information pertains to a “retaliation case” that he has “opened with” DOE. Appeal at 1. The Appellant argues that the requested information should be made available to him via “5 U.S.C. § 552(b)(A),”¹ appearing to assert that because he already provided DOE with information regarding the underlying alleged violation of law, he should be provided with the requested information. *Id.*

II. Analysis

Agencies may provide a *Glomar* response, in which they refuse to admit or deny that certain records exist, when the records would be exempt from disclosure if they existed and acknowledging their existence or nonexistence would “cause harm cognizable under a[] FOIA exception.” *Bartko v. DOJ*, 898 F.3d 51, 63–64 (D.C. Cir. 2018) (quoting *Roth v. DOJ*, 642 F.3d 1161, 1178 (D.C. Cir. 2011)); *see also Phillippi v. CIA*, 546 F.2d 1009, 1013 (D.C. Cir. 1976) (providing the origin of the term “*Glomar* response”). Exemption 6 exempts from disclosure “personnel 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).

When a substantial privacy interest exists, a *Glomar* response is appropriate unless there is a public interest in the disclosure “strong enough to justify the privacy invasion.” *People for the Ethical Treatment of Animals v. NIH*, 745 F.3d 535, 542 (D.C. Cir. 2014) (considering the assertion of a *Glomar* response related to privacy concerns under Exemption 7(C)). Further, “the relevant public interest is not to find out what” the subjects of investigations are “up to.” *Citizens for Responsibility & Ethics in Wash. v. United States DOJ*, 746 F.3d 1082, 1093 (D.C. Cir. 2014). Instead, the relevant public interest under the FOIA is in how the agencies carry out their statutory duties. *Id.* In the matter at hand, the Appellant does not assert any potential public interest in the information he is seeking to obtain via his FOIA request or whether the information he is requesting would shed any light on how the agency executes its statutory duties. Rather, the Appellant appears to assert that because he provided information regarding the underlying alleged violation of law, for which he suffered an alleged act of retaliation that he is now pursuing, he should be provided the requested information. Appeal at 1. The Appellant’s knowledge regarding the matter, whatever that may be, does not diminish the privacy interest of the employees mentioned in the FOIA request. Further, “the fact that an event is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of the information.” *People for the Ethical Treatment of Animals*, 745 F.3d at 542. Furthermore, “special significance” attaches to the agency’s “official acknowledgment” of any potential investigation into an individual. *Id.* (reasoning that “official acknowledgment” of an investigation “would carry an added and material stigma”); *see also Solers, Inc. v. Internal Revenue Serv.*, 827 F.3d 323, 333 (4th Cir. 2016) (determining that “government employees[] have a substantial interest in the nondisclosure of their identities and their connection with a particular investigation[.]”). Courts have further found that the “significance” of official acknowledgments of investigations “tips the balance” towards the privacy interest, despite the information having otherwise been disclosed. *People for the Ethical Treatment of Animals*, 745 F.3d at 542. Accordingly, while the Appellant may have information regarding the alleged underlying criminal acts, and although he may have a retaliation

¹ The Appellant is likely referencing Exemption 7(A).

claim of his own arising from the reporting of the underlying facts, the aforementioned employees still retain a privacy interest that has not been overridden by any articulated, let alone strong, public interest.

III. Conclusion

It is hereby ordered that the Appeal filed by Jeffrey Rosenberg, on September 10, 2025, Case No. FIA-25-0063, is denied.

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. OGIS may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
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Telephone: 202-741-5770 Fax: 202-741-5769
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