

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

In the Matter of Douglas Harden)

Filing Date: February 24, 2026)

Case No.: PAA-26-0002

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Issued: March 12, 2026

Decision and Order

On February 24, 2026, Douglas Harden (Appellant) appealed a determination letter (Second Determination Letter) dated February 23, 2026, issued by the Department of Energy. The letter responded to Request No. HQ-2026-00098-PA, a request filed by the Appellant under the Privacy Act, 5 U.S.C. § 552a, as implemented by DOE regulations set forth at Part 1008 of Title 10 of the Code of Federal Regulations. The Second Determination Letter explained that DOE reviewed the Appellant’s request for correction or amendment of records and determined that the amendment that Appellant requested was exempt from the amendment provisions of the Privacy Act. In this Decision, we deny the appeal.

I. Background

On September 17, 2025, Appellant submitted a Privacy Act Amendment Request to DOE asking for “the immediate rescission and expungement of Security Infraction HQ-05/2015-0017 (dated May 6, 2015).” Privacy Act Amendment Request at 1 (Sept. 17, 2025).

The request was processed, and, on February 11, 2026, DOE provided Appellant with 38 pages of documents that were purported to be responsive to his request. First Determination Letter at 1 (Feb. 11, 2026). The 38 pages of documents consisted of materials related to Security Incident HQ-05/2015-0017, which occurred at DOE’s Germantown Headquarters in 2015. Security Incident Documents at 2. The documents included a Report of Security Incident/Infraction signed by Appellant, several contemporaneous narratives from individuals involved in the security incident, and a number of other documents related to the circumstances of the incident. *Id.* at 2–37. Appellant appealed the First Determination Letter to DOE’s Office of Hearings and Appeals (OHA), arguing that DOE did not respond to his request for amendment. Appeal Letter Email from Douglas Harden to OHA (Feb. 11, 2026). On February 17, 2026, DOE withdrew the First Determination Letter and informed Appellant that it would issue a new letter shortly. Email from DOE to Douglas Harden (Feb. 17, 2026). OHA accordingly dismissed Appellant’s appeal as moot. Dismissal Letter from OHA to Douglas Harden (Feb. 17, 2026).

DOE issued a Second Determination Letter on February 23, 2026. Second Determination Letter at 1 (Feb. 23, 2026). This determination stated that DOE had reviewed his request “in light of 10

C.F.R. 1008.10(e) and (g),” and that after considering those factors, it determined that his request for amendment should be denied. *Id.* at 1–2.

Appellant timely appealed the Second Determination Letter on February 24, 2026. Appeal Letter Email from Douglas Harden to OHA Filings at 1 (Feb. 24, 2026). In his appeal, the Appellant challenges the adequacy of the determination letter and argues that the denial fails to address whether the requested amendment is factually correct. *Id.* at 2. DOE contends that its denial was proper based on the criteria laid out for requests for amendment in 10 C.F.R. § 1008.10(e) and (g). Second Determination Letter at 1; Email from DOE Office of the General Counsel (GC) to OHA (Feb. 27, 2026).

II. Analysis

A. Denial of Appellant’s Request

First, we consider whether DOE’s denial of Appellant’s request was proper. In the Second Determination Letter, DOE explained that Appellant’s request for amendment was denied “in light of 10 C.F.R. 1008.10(e) and (g).” Second Determination Letter at 1. The letter further explained that the records at issue involved “information compiled and used for the purpose of granting, denying, or revoking personnel security clearances,” and, as such, those records are a part of the DOE-43 system of records, which DOE has specifically exempted from the provisions of the Privacy Act that permit requests for amendment of records. *Id.* (citing 10 C.F.R. § 1008.12). When asked by OHA how it determined that the relevant records were a part of DOE-43, GC, which processed Appellant’s request, explained that Appellant’s request was about a personnel security incident that he wanted to have removed from his personnel security file. Email from DOE GC to OHA (Mar. 9, 2026). In response to Appellant’s appeal, DOE also noted that it determined that the request should be denied because Appellant “did not submit any independent evidence to support his request for amendment or correction other than his initial statement.” Email from DOE GC to OHA (Feb. 27, 2026). DOE cited two provisions of its Privacy Act regulations in its denial. The first provision states:

The following criteria will be taken into account by the DOE in reviewing a request for amendment: (1) The sufficiency of the evidence submitted by the individual; (2) The factual accuracy of the information; (3) The relevance and necessity of the information in relation to the purpose for which it was collected; (4) If such information is used in making any determination about the individual, whether the information is as accurate, relevant, timely, and complete as is reasonably necessary to assure fairness to the individual in such determination; (5) The degree of possibility that denial of the request could unfairly result in a determination adverse to the individual; (6) The nature of the record sought to be corrected or amended; and (7) The propriety and feasibility of complying with the specific means of amendment requested by the individual.

10 C.F.R. § 1008.10(e). The second provision states, in relevant part:

Amendment of a record requested by an individual may be denied upon a determination that: (1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the amendment in relation to the criteria stated in paragraph ([e])¹ of this section; . . . or (6) The record has been properly exempted from the provisions of subsection (d) of the [Privacy] Act.

Id. § 1008.10(g).

As an initial matter, DOE’s argument that the records Appellant was seeking to have amended are exempt from the Privacy Act fails. DOE promulgated exemptions from the Privacy Act in 10 C.F.R. § 1008.12 pursuant to 5 U.S.C. § 552a(k).² DOE has exempted Personnel Security Clearance Files from the Privacy Act under three categories of specific exemptions, with certain limitations. *Id.* at § 1008.12(b)(1)–(3). 10 C.F.R. § 1008.12(b)(1) exempts systems of records, including DOE-43, from the Privacy Act to the extent that the system of records contains classified information. There is no allegation here that the records in question contain classified information. *See* Email from GC to OHA (Feb. 27, 2026) (“DOE did not claim the information in the personnel security file was classified”). 10 C.F.R. § 1008.12(b)(2) exempts systems of records, including DOE-43, from the Privacy Act to the extent that the system of records contains “investigatory material compiled for law enforcement purposes.” The records that Appellant seeks to amend are clearly not records compiled for law enforcement purposes. Finally, 10 C.F.R. § 1008.12(b)(3) exempts systems of records, including DOE-43, from the Privacy Act if they are:

systems of records that contain investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

While the records that Appellant seeks to amend contain investigatory material compiled for the purpose of determining suitability to access classified information, there is no indication that making the amendments that Appellant requested would reveal the identity of any government sources. As such, the records at issue in this request are not exempt from the Privacy Act pursuant

¹ The text of 10 C.F.R. § 1008.10(g)(1) states “the propriety of the amendment in relation to the criteria stated in paragraph (c).” However, paragraph (c) explains the steps that the Privacy Act Officer should take in response to a Privacy Act request. 10 C.F.R. § 1008.10(c). This is clearly a typographical error, and the provision should instead refer to paragraph (e), which lists the criteria that should be considered when reviewing a request for amendment. 10 C.F.R. § 1008.10(e).

² Subsection (k) permits agencies to promulgate rules to exempt any system of records if that system of records meets certain specified criteria, such as “investigatory material compiled for law enforcement purposes” or “investigatory material compiled solely for the purpose of determining . . . eligibility . . . for . . . access to classified information . . .” 5 U.S.C. § 552a(k).

to 10 C.F.R. § 1008.12(b), and therefore Appellant's request was not properly denied pursuant to 10 C.F.R. § 1008.10(g)(6).³

However, the request for amendment was properly denied based on Appellant's failure to establish, by a preponderance of the evidence, that the amendment proposed by Appellant was proper in relation to the criteria found in 10 C.F.R. § 1008.10(e). *See* 10 C.F.R. § 1008.10(g)(1) (explaining the evidentiary standard for an amendment). I consider herein each of the seven criteria listed in subsection (e). First, Appellant did not submit any evidence of factual error in the documents that he requested to be amended. He does not dispute that the incident in 2015 occurred, that it was treated as a security incident, and that he and several of his colleagues gave contemporaneous statements about the incident. Second, Appellant does not allege any actual factual error in the records at issue. He raises several issues of policy disagreement,⁴ but those are not errors of the type contemplated under the Privacy Act. *See generally* *Rogers v. Dep't of Labor*, 607 F. Supp. 697, 699 (N.D. Cal. 1985) (citing *Blevins v. Plummer*, 613 F.2d 767, 768 (9th Cir. 1980)) ("The Privacy Act allows for the amendment of factual or historical errors. It is not . . . a vehicle for amending the judgments of federal officials or of other parties as those judgments are reflected in records maintained by federal agencies."); *see also* *Kleiman v. Dep't of Energy*, 956 F.2d 335, 337–38 (D.C. Cir. 1992) (citing *Rogers*). Third, it is without question that it is relevant and necessary for the DOE employees tasked with security protocol to investigate incidents related to the alleged mishandling of classified information. As to the fourth and fifth factors, the information at issue here could be used to make a determination about Appellant, including one that may be adverse to him. However, as previously noted, Appellant does not dispute that the documents in question accurately depict the statements he and his colleagues gave in connection with the security incident or the conclusions drawn related to the incident. Moreover, there can be no question that a security infraction is relevant information to be included in Appellant's personnel security file, and the information is not so old as to be irrelevant. Next, there is nothing about the nature of the record for which Appellant seeks an amendment that particularly weighs for or against it being corrected or amended. Finally, it would not be proper or feasible to "expunge" these records from Appellant's personnel security file because it would remove from the personnel security file records that are material to Appellant's eligibility for access to classified information,

³ Further undermining DOE's position that the records at issue are "exempt" from the Privacy Act is the fact that DOE produced those very records to Appellant, pursuant to his Privacy Act request, in the First Determination Letter. DOE's production of these records demonstrates that it does not believe they require protection because they contain classified information, because their disclosure could compromise law enforcement, or because they could reveal the identity of a confidential source.

⁴ Appellant first argues that DOE regulations "recognize[] that nothing restricts DOE from granting in part or denying in part a request for amendment." Appeal at 2. This statement is correct. However, Appellant has not advanced any basis on which a partial grant would be appropriate in this case, and it does not appear that partial granting of Appellant's request to expunge records in their entirety is possible. Therefore, we find no impropriety in DOE's decision not to grant Appellant's amendment request in part.

Next, Appellant argues that "the denial fails to address the core issue presented by [his] request, namely that the record content is false . . ." and that the denial is "inconsistent with the fairness and accuracy principles that DOE itself is required to apply in reviewing correction requests." Appeal at 2. These contentions misunderstand the purpose of the Privacy Act. As noted, *infra*, the Privacy Act is intended to correct factual errors, not amend the judgments of federal officials.

without Appellant having established any inaccuracy in those records. Ultimately, the criteria weigh against DOE granting Appellant's request for amendment.

As such, the decision to deny Appellant's request for amendment was proper under 10 C.F.R. § 1008.10(g)(1).

B. Sufficiency of the Determination Letter

Appellant argues that the reasons for denial given by DOE were "conclusory" and "[do] not satisfy the requirement that a denial provide reasons with citation." Appeal at 2. The Second Determination Letter does not analyze the factors set forth at 10 C.F.R. § 1008.10(e). However, Appellant is effectively seeking to remove factually accurate records of a decision with which he disagrees from his personnel security file rather than to correct factual discrepancies. Considering our above analysis of the factors, we find that it would be fruitless to remand this matter for a more fulsome determination letter when a decision on the merits of the appeal can be rendered now. Accordingly, we conclude that any deficiency in the Second Determination Letter was harmless error, and we will not remand this matter for a new determination letter.

Accordingly, we find that the appeal should not be granted.

III. Order

It is hereby ordered that the appeal filed on February 24, 2026, by Douglas Harden, PAA-26-0002, 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. § 552a(g)(1)(B) as limited by 5 U.S.C. § 552a(g)(5). 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.

Mr. Harden has the right to file a concise, signed statement of reasons for his disagreement with this final determination with the Privacy Act Officer pursuant to 10 C.F.R. § 1008.11(j), which would be maintained with his record. Should he choose to do so, this statement and the final determination will be provided to any persons or agencies to which the record is disclosed subsequent to the Privacy Act Officer's receipt of such a statement.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between record seekers 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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Email: ogis@nara.gov
Telephone: 202-741-5770
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