

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

In the Matter of Kevin Bogardus)	
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Filing Date: June 5, 2026)	Case No.: FIA-26-0040
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_____)	

Issued: June 17, 2026

Decision and Order

Kevin Bogardus (Appellant) appealed a determination letter dated May 26, 2026, issued to him by the Department of Energy’s (DOE) Office of Inspector General (OIG) concerning a request (Request No. HQ-2024-03091-F) that he 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 its determination letter, OIG stated that it found one document responsive to his request which had been withheld in full pursuant to Exemptions 3 and 7(F) of the FOIA. The Appellant challenged the withholding. In this Decision, we grant the appeal in part and deny it in part.

I. Background

On August 20, 2024, the Appellant submitted a FOIA request asking for a DOE OIG report titled “Implementation and Administration of the Human Reliability Program at the Savannah River Site.” FOIA Request from Kevin Bogardus (Aug. 20, 2024).

OIG issued a determination letter to the Appellant on May 26, 2026, stating that it had identified one document responsive to his request and was withholding the document in full pursuant to Exemptions 3 and 7(F) of the FOIA. Determination Letter from OIG to Kevin Bogardus at 1 (May 26, 2026).

The Appellant timely appealed the determination letter to the DOE’s Office of Hearings and Appeals (OHA) on June 1, 2026.¹ Appeal Letter Email from Kevin Bogardus to OHA at 1 (May 31, 2026). In his appeal, the Appellant challenges the withholding made pursuant to Exemptions 3 and 7(F). *Id.* at 1–3. The Appellant specifically argues that even if some portions of the document may be properly withheld, DOE’s justification for withholding the document in full based on the subject matter is impermissible. *Id.* Because the Exemption 3 portions of the appeal concern the withholding of unclassified controlled nuclear information (UCNI), OHA forwarded that portion of the request to DOE’s Office of Classification, Office of Environment, Health, Safety and Security (EHSS) for their review. That portion of the appeal was reassigned Case No. FIC-26-

¹ Appellant emailed his appeal to OHA at approximately 9:47 PM Eastern Time on Sunday, May 31, 2026. Email from Kevin Bogardus to OHA (May 31, 2026). OHA considers emails received outside of regular business hours to be received on the next regular business day after the document is received. 10 C.F.R. § 1004.8(c).

0001, and the Appellant will receive a response on that portion of the appeal when EHSS has completed its review.

II. Analysis

1. Exemption 7(F)

The threshold test for withholding information under any subpart of Exemption 7 is whether the agency compiled such information as part of or in connection with an agency law enforcement proceeding. *Rural Housing Alliance v. USDA*, 498 F.2d 73, 80 (D.C. Cir. 1974). When the matter involves a government agency's internal monitoring of compliance with applicable law, we must distinguish between two different types of internal review to determine if the records are related to an agency law enforcement proceeding: "(1) government surveillance or oversight of the performance of duties of its employees; (2) investigations which focus directly on specifically alleged illegal acts, illegal acts of particular identified officials, acts which could, if proved, result in civil or criminal sanctions." *Id.* at 81; *see also Ctr. for Nat'l Policy Review v. Weinberger*, 502 F.2d 370, 373 (D.C. Cir. 1974) ("There is no clear distinction between investigative reports and material that, despite occasionally alerting the administrator to violations of the law, is acquired essentially as a matter of routine. What is clear, however, is that where the inquiry departs from the routine and focuses with special intensity upon a particular party, an investigation is under way."). If the investigation is of the sort that focuses on whether an individual or individuals committed illegal acts, the agency is considered to have compiled the information in connection with an agency law enforcement proceeding, and the threshold test under Exemption 7 is met. *Rural Housing Alliance*, 498 F.2d at 80.

The document at issue here is a report on an audit of the Human Reliability Program at DOE's Savannah River Site. The document does not indicate that this audit was completed as a result of any specific allegation of wrongdoing. My review of the document finds that it is clearly of the more routine variety rather than an investigation focused specifically on illegal acts. However, that is not the end of the inquiry because "[l]aw enforcement entails more than just investigating and prosecuting individuals *after* a violation of the law," and "includes . . . proactive steps designed to prevent criminal activity and to maintain security." *Pub. Emps. for Env'tl. Responsibility v. U.S. Section, Int'l Boundary & Water Comm'n, U.S.-Mexico*, 740 F.3d 195, 203 (D.C. Cir. 2014) (alteration in original) (quoting *Milner v. Dep't of Navy*, 562 U.S. 562, 584 (Alito, J., concurring)). However,

[a]llowing agencies to claim that withheld records are "compiled for law enforcement purpose" because they implicate nebulous "high security concerns," without offering any specification of the law enforcement ends to which the records relate or indeed, any evidence that the records were even used by or made available to law enforcement, would deprive Exemption 7's threshold inquiry of all meaning.

Ecological Rights Found. v. EPA, 2021 U.S. Dist. LEXIS 27748 at *103 (D.D.C. Feb. 13, 2021). OIG has made no showing that the records at issue were ever used for a law enforcement purpose. Instead, OIG argues that the document "examined the effectiveness of accountability and security measures to account for access of HRP-certified individuals to locations involving the handling and storage of special nuclear materials." OIG Response to Appeal at 1 (June 4, 2026). Without

information about “the law enforcement ends to which the records relate,” we cannot say that the records were compiled for law enforcement purposes. *Ecological Rights Found.*, 2021 U.S. Dist. LEXIS 27748 at *103; *see also Raheer v. BOP*, No. 09-526, 2011 WL 2014875, at *9 (D. Or. May 24, 2011) (finding that although disclosure of information pertaining to security electronics, security inspection system, and staffing vulnerabilities raises security concerns with respect to BOP’s custodial functions, agency had not explained how withheld documents pertain to law enforcement functions).

Should OIG show that these records were “compiled for law enforcement purposes,” the records could clearly be withheld pursuant to Exemption 7(F) of the FOIA because we agree that disclosure of these records “could reasonably be expected to endanger the life or physical safety of any individual.” 5 U.S.C. § 552(b)(7)(F). Therefore, we remand for OIG to either make a showing that these records were compiled for a law enforcement purpose or release the responsive records.

2. Segregability

FOIA requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt” 5 U.S.C. § 552(b). An agency cannot “justify withholding an entire document simply by showing that it contains some exempt material.” *Mead Data Ctr., Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977). However, an agency may withhold otherwise non-exempt portions of a record if those portions are “inextricably intertwined with exempt portions” of the record. *Id.*

There is no indication in the record that OIG completed any segregability analysis. Our review of the document at issue here shows that the record contains a great deal of publicly available information, including the recitation of DOE regulations and orders. To the extent that any information in the withheld document is publicly available or not specifically covered by a relevant FOIA Exemption, it should be released.

III. Order

It is hereby ordered that the appeal filed by Kevin Bogardus on June 5, 2026, Case No. FIA-26-0040, is granted in part and denied in all other aspects. Accordingly, we remand this matter back to OIG to be processed in accordance with the above Decision, subject to the forthcoming determination concerning Case No. FIC-26-0001.

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
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