

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

In the Matter of Kevin Bogardus

Filing Date: August 7, 2026

Case No.: FIA-26-0054

Issued: October 8, 2026

Decision and Order

Kevin Bogardus (Appellant) appeals a final Determination Letter issued to him from the Department of Energy's (DOE) Office of the General Counsel (GC), concerning Request No. HQ-2026-01685-F, 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, GC informed the Appellant that it identified responsive documents, and that it was withholding some information contained in the documents pursuant to Exemption 6. Determination Letter from GC to Kevin Bogardus at 1 (July 9, 2026) (Determination Letter). In this Appeal, the Appellant challenges GC's redactions pursuant to the aforementioned exemption and argues that a proper search was not conducted. Appeal Email from Appellant to Office of Hearings and Appeals (OHA) at 1–4 (August 6, 2026) (Appeal). In this Decision, we dismiss the Appeal as moot in part and deny it in part.

I. Background

On May 1, 2026, the Appellant filed a FOIA request for

[R]ecords of all final approval of outside activity forms; final certifications of qualified trusts; final impartiality determinations; final notices of disqualification; final notification statements regarding negotiations for and agreements of post-government, non-federal employment and/or compensation; final recusals; final screening arrangements; final ethics waivers issued other than under 18 U.S.C. § 208 filed by and/or given to the Department of Energy's political appointees — either classified as Schedule C, Noncareer Senior Executive Service, Presidential Appointment without Senate Confirmation or Presidential Appointment with Senate Confirmation from April 1 to April 30, 2026. These documents would likely be prepared under 18 U.S.C. § 207; 18 U.S.C. § 208; 5 C.F.R. Part 2634; 5 C.F.R. Part 2635; and 5 C.F.R. Part 2641 as well as be in the care of the Designated Agency Ethics Official. Please do not consider these individuals' OGE Form 278 public financial disclosure reports as responsive records to this request.

FOIA Request from Kevin Bogardus at 1 (May 1, 2026).

On June 2, 2026, GC issued a Determination Letter, which indicated that four responsive documents were located and that portions of the documents were being withheld pursuant to Exemption 6, explaining that FOIA disclosure requirements “do not apply to ‘personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.’” First Determination Letter from GC to Kevin Bogardus at 1 (June 2, 2026). It indicated that the information that was withheld “consist[ed] of non-public personal information[,]” information in which the “individual has a privacy interest.” *Id.* It further explained that “the information could subject the individuals to unwarranted or unsolicited communications[,]” and because “no public interest would be served by disclosing this information . . . , Exemption 6 authorizes withholding the information.” *Id.* at 1–2. The Appellant filed an Appeal with OHA on June 2, 2026. On June 24, 2026, GC informed OHA that it was rescinding the Determination Letter to process the matter further, and OHA accordingly dismissed the Appeal as moot.

On July 9, 2026, GC issued a final Determination Letter, and more information was released from the same four responsive documents. Again, the July 9, 2026, Determination Letter explained that portions were withheld pursuant to Exemption 6. Determination Letter at 1. The Determination Letter stated that the information that was withheld consisted of “personal information of a federal employee[] and/or the employee’s family information” that constitute “similar files.” *Id.* at 1. Further, it stated that although DOE had “considered the public interest recognized under FOIA,” DOE had not identified or “has not been provided . . . any evidence suggesting that the withheld information would reveal government misconduct or otherwise enhance public understanding of agency operations.” *Id.* at 1–2. Further, the letter stated that the individuals whose information was contained in the records “maintain[] a substantial privacy interest in the confidentiality of personal information as part of their ethics records.” *Id.* The Determination Letter also explained that agency employees must comply with 18 U.S.C. § 208 when seeking outside employment, and the forms completed in compliance with the aforementioned law contain “details regarding duties of outside employment” which “could reveal career intentions and professional associations unrelated to official duties[.]” *Id.* at 3. It was asserted that disclosing this information could “subject the individual to reputational harm or unwarranted scrutiny[.]” *Id.* Furthermore, the letter stated, the financial information that was withheld was below the reportable threshold, and releasing the information could “reveal personal financial circumstances, investment strategies, financial behavior and economic relationships unrelated to the performance of official government duties.” *Id.*

The Appellant submitted an Appeal to OHA on August 6, 2026.¹ In the Appeal, the Appellant argues that DOE has not met its burden in showing that information was appropriately withheld. Appeal at 1. He argues that the documents evidence how “DOE identifies and manages conflicts of interest among officials exercising public power[.]” which “is quintessential government-operations information.” *Id.* The Appellant further argues that the “[t]he public interest in the withheld information is not speculative” and that DOE cannot “hide the substance, scope, and implementation of ethics decisions under the banner of privacy.” *Id.* at 2. Additionally, the

¹ The Appellant emailed the Appeal to OHA on August 6, 2026, after 5:00 pm, Eastern Time. Accordingly, it is deemed that his Appeal was filed the next business day, Friday, August 7, 2026. *See* 10 C.F.R. § 1004.8(c) (indicating that Appeals received outside of the regular business hours of OHA are deemed received on the next business day).

Appellant asserts that the harms that DOE claims may occur, such as embarrassment, scrutiny, solicitation, reputational harm, or intrusion,” constitute “generic predictions that could be asserted in virtually every Exemption 6 case” and that “DOE’s segregability showing is . . . deficient.” *Id.* He claims that “[a]t a minimum, DOE should release the redacted activity description in the Harvard outside-employment approval[,]” which consisted of a course description, as well as some information pertaining to the last document, a recusal statement. *Id.* Finally, the Appellant argues that an adequate search was not conducted for responsive documents. *Id.*

OHA asked GC to provide a response to the Appeal. With respect to the withheld financial information in the fourth document, GC explained that the employee was “designated as a public filer[,]” and the Ethics Agreements of such filers are published on the Office of Government Ethics website for public viewing. First Response from GC to OHA at 2 (August 26, 2026). However, Recusal Statements are not available to the public, and therefore, some of the information provided is “not subject to public disclosure.” *Id.* Per ethics law, GC explained, financial investments that are above a certain threshold amount must be publicly disclosed for a public filer, and that information was released to the Appellant. *Id.* The financial investments that fall below that threshold amount need not be disclosed, and the employee “retains a significant privacy interest” in the information. *Id.*

Subsequent to the filing of the Appeal, GC released the course description that was previously withheld pursuant to Exemption 6 in the third responsive document.

II. Analysis

The FOIA requires that federal agencies disclose records to the public upon request unless the records are exempt from disclosure under one or more of the nine enumerated exemptions. 5 U.S.C. § 552(b)(1)–(9). However, “these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the [FOIA.]” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976). The nine statutory exemptions from disclosure are repeated in the DOE regulations implementing the FOIA. 10 C.F.R. § 1004.10(b)(1)–(9). The agency has the burden to show that information is exempt from disclosure. *See* 5 U.S.C. § 552(a)(4)(B).

A. Exemption 6

Exemption 6 of the FOIA 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). As a threshold matter, the withheld record must be a personnel, medical, or other similar file. *Id.* A record is a “similar file” when it “contains personal information identifiable to a particular person.” *Cook v. Nat’l Archives & Records Admin.*, 758 F.3d 168, 175 (2d Cir. 2014). The Supreme Court has noted that Congress intended “the phrase ‘similar files’ [] to have a broad, rather than a narrow, meaning.” *Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 600 (1982).

After it is determined that the information falls into one of those categories, the agency must first determine whether the disclosure of the record would compromise a significant privacy interest. *Ripskis v. Dep’t of Hous. & Urban Dev.*, 746 F.2d 1, 3 (D.C. Cir. 1984). Then, the agency

must weigh the public interest in disclosure against the privacy interest of the person or persons identified in the record. *Wash. Post Co. v. Dep't of Health and Human Servs.*, 690 F.2d 252, 260 (D.C. Cir. 1982). The federal courts have set out a test specifically for balancing the privacy interests of government employees with the public interest:

In balancing a government employee's privacy interests against the public interest in disclosure, a court should consider several factors, including: (1) the government employee's rank; (2) the degree of wrongdoing and strength of evidence against the employee; (3) whether there are other ways to obtain the information; (4) whether the information sought sheds light on a government activity; and (5) whether the information sought is related to job function or is of a personal nature. The factors are not all inclusive, and no one factor is dispositive.

Perlman v. Dep't of Just., 312 F.3d. 100, 107 (2d Cir. 2002).

The last page of the fourth document contains names of companies in which the DOE employee holds a financial interest, a "similar file." GC released some company names in the last page of the last document because it concluded that the information was publicly available. The remainder of the company names were withheld, and the employee's interest in those companies is not large enough to require public disclosure pursuant to applicable ethics laws, as indicated above. In the matter at hand, the employee who holds a financial interest in the companies listed on the last page of the fourth document is a Senior Advisor in the DOE Office of Congressional and Intergovernmental Affairs, and is therefore a higher ranking official. The record does not contain any indication of any wrongdoing on behalf of the employee. As stated above, the redacted information is not otherwise subject to release to the public pursuant to Ethics Agreements or Public Financial Disclosure Forms. The employee's financial interests at issue here do not appear to "relate directly or indirectly to [his] . . . duties." Courts have found that federal employees retain a privacy interest in information that is purely personal and does not shed light on the agency's functions. *See Barvick v. Cisneros*, 941 F. Supp. 1015, 1020–21 (D. Kan. 1996) (recognizing that a significant privacy interest exists in such personal information as home addresses, social security numbers, dates of birth, telephone numbers, retirement plan information, performance appraisals). Based on our understanding of the employee's work for DOE, and our review of the financial interests in question, his financial interests in the withheld companies appear neither directly nor indirectly related to his work at DOE. As the employee retains a privacy interest in the withheld information, and as the information sought would shed little to no light on a government activity, the public's interest in disclosure is not strong enough to outweigh the employee's existing privacy interest. We find that the information was properly withheld.

With respect to the third document, in which a course description was withheld, because the course description has since been released to Appellant, we dismiss as moot this basis for Appeal.

B. Foreseeable Harm

Appellant alleges GC has not satisfied the foreseeable-harm requirement of the FOIA, as it has failed to make a "particularized showing that disclosure would reasonably foreseeably harm an interest protected by the asserted exemption." Appeal at 2. The Appellant argues that the GC's

stated harms, such as “embarrassment, scrutiny, solicitation, reputational harm, or intrusion[.]” appear to be “generic predictions that could be asserted in virtually every Exemption 6 case.” *Id.* The statute states, “An agency shall – [] withhold information under this section only if – [] the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b).” 5 U.S.C. § 552(a)(8)(A). GC’s justification for its Exemption 6 redactions is clearly intertwined with its foreseeable harm determination. For example, with respect to the first responsive document, the letter stated that the release of the withheld information could “expose the employee or their spouse” and dependents “to unwanted scrutiny, solicitation, or intrusion . . . unrelated to the performance of official duties by the federal employee.” Determination Letter at 3. With respect to the fourth responsive document, the letter states that the disclosure of the withheld information “could reveal personal financial circumstances unrelated to the performance of official government duties.” *Id.* In this matter, the agency’s argument regarding why Exemption 6 justifies the withholding of the fourth document clearly also articulates the foreseeable harm that would accrue from the release of that document.

C. Segregability

The 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). However, when the non-exempt information is “inextricably intertwined” with information that is otherwise properly protected pursuant to an exemption, reasonable segregation is not possible. *Mead Data Cent., Inc. v. United States Dep’t of the Air Force*, 566 F.2d 242, 250 (D.C. Cir. 1977). The Appellant specifically argues that DOE “stripped out information needed to understand the covered entity routing chain”² in the fourth document. Appeal at 3. He also indicated that he believes things like “routing instructions” or “the entity or entities covered” in the last document should be released. *Id.* Insofar as these allegations constitute a segregability argument, as opposed to an argument challenging the Exemption 6 redactions, our review indicates that DOE met its obligations with respect to segregability. Further, having examined the fourth document, it should be noted that some of the information the Appellant believes is redacted, like information in the last document pertaining to the routing matters, was, in fact, released to him. With respect to the fourth document, the only withheld portions appear on the last page and consist of the names of companies in which the DOE employee holds a financial interest, which were properly withheld as discussed *supra*.

D. Adequacy of Search

A FOIA request requires an agency to “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). The standard of reasonableness we apply “does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Dep’t of State*, 779 F.2d 1378, 1384–85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. “The adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Jennings v. Dep’t of Justice*, 230 F. App’x 1, 1 (D.C. Cir. 2007) (internal quotation marks omitted).

² The Appellant is referring to a section of the Recusal Statement that indicates that an appointed individual is to route all matters from which the employee has recused himself/herself to an appropriate entity/individual.

Appellant's request was reasonably assigned to the DOE Office of the Assistant General Counsel for Ethics and Personnel Law, which carries out the responsibilities of the Designated Agency Ethics Official, the official that Appellant noted in his request would be most likely to be in possession of responsive record. It is this office within GC which collects and processes the forms that are the subject of Appellant's request. In the matter at hand, GC provided information regarding the search that was conducted. The responsive documents that are at issue are documents that are submitted in connection with ethics matters and procedure. OHA received information indicating that the GC ethics attorneys searched Microsoft Outlook, including emails and calendar to-do lists, as well as individual files in a shared drive. Email from GC to OHA at 1 (September 25, 2026). The date range for the search was from April 1, 2025, through April 30, 2026. *Id.* The search terms used included "STOCK Act Form"/"STOCK Act," "Outside Activity Request Form," "208 Recusal"/"Recusal"/"Recusal Statement," "502 Authorization," and "208 Waiver." *Id.* We are satisfied that this search was reasonably calculated to uncover all relevant documents.

III. Order

It is hereby ordered that the Appeal filed by Kevin Bogardus, on August 7, 2026, Case No. FIA-26-0054, is dismissed as moot in part and denied in all other aspects.

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
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