



denied the existence of any such records described in the request.<sup>1</sup> *Id.* The Determination Letter, citing FOIA Exemption 7(C), 5 U.S.C. §552(b)(7)(C)<sup>2</sup> as support, went on to state that, lacking an individual's consent, an official acknowledgement of an investigation or an acknowledgment of the existence of investigatory records about an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. In his Appeal, the Appellant challenges this portion of the OIG's determination.

## II. Analysis

Courts have recognized, in the context of some FOIA requests, that even acknowledging that certain records are kept would jeopardize the privacy interests that FOIA exemptions are designed to protect and that a *Glomar* response neither confirming nor denying the existence of responsive records is appropriate. *See, e.g., Antonelli v. FBI*, 721 F.2d 615, 617 (7<sup>th</sup> Cir. 1983) (*Antonelli*). In reviewing the interests to be balanced to justify Exemption 7(C) protection, it is apparent that the request at issue might reveal whether an individual is the subject of an OIG law enforcement investigation.<sup>3</sup> The courts and OHA have consistently held that individuals have a strong privacy interest in avoiding the stigma of being associated with a law enforcement investigation. *See, e.g., Fitzgibbon v. CIA*, 911 F.2d. 755, 767 (D.C. Cir. 1990); *Massey v. FBI*, 3 F.3d 620, 624 (2d Cir. 1993); *Westinghouse Savannah River Co., LLC*, Case No. VFA-0556 (March 13, 2000), *slip op.* at 3 (*Westinghouse*).<sup>4</sup> This strong interest is balanced against the fact that the Appellant has not referenced any specific public interest that would be furthered by the release of the requested documents. Given these interests, I find that the potential privacy interest threatened by release of any potentially responsive documents greatly outweighs any generalized, non-specific, public interest that would be furthered by release of such potential documents. *See Beck v. Dep't of Justice*, 997 F.2d 1489, 1492-94 (D.C. Cir. 1994); *Massey*, 3 F.3d at 624; *McNamara v. Dep't of Justice*, 974 F. Supp. 956, 957-60 (W.D. Tex. 1997); *Westinghouse*, *slip op.* at 3. Consequently, any potentially responsive documents would be protected by FOIA Exemption 7(C). Using this rationale, the courts and OHA have upheld the use of a *Glomar* response where a FOIA request might reveal Exemption 7(C) information disclosing the identity of individuals who are subjects of investigations or are otherwise mentioned in law enforcement records and who have not previously waived their privacy rights. *See, e.g., Dep't of Justice v. Reporters Comm. for the Freedom of the Press*, 489 U.S. 749, 775 (1989); *Massey*; *Antonelli*; *Westinghouse*.

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<sup>1</sup> An agency response to a FOIA Request, which states that the agency "can neither confirm or deny" the existence of responsive records because the confirmation or denial of the existence of responsive records would, in and of itself, reveal exempt information or constitute an unwarranted invasion of personal privacy is often called a *Glomar* response. *See Phillippi v. CIA*, 546 F.2d 1009, 1013 (D.C. Cir. 1976) (raising issue of whether CIA could refuse to confirm or deny its ties to Howard Hughes' submarine retrieval ship, the *Glomar Explorer*). We will refer to OIG's response as a *Glomar* response.

<sup>2</sup> Exemption 7(c) of the FOIA protects records or information compiled for law enforcement purposes but only "to the extent that production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C); 10 C.F.R. § 1004.10(b)(7)(iii).

<sup>3</sup> OHA has consistently held that OIG is a law enforcement body and its investigations and reports are records compiled for law enforcement purposes within the meaning of Exemption 7(C). *See Westinghouse Savannah River Co., LLC*, Case No. VFA-0556 (March 13, 2000), *slip op.* at 2.

<sup>4</sup> OHA FOIA decisions issued after November 19, 1996 may be accessed at <http://www.oha.doe.gov/foia1.asp>.

We have spoken to an OIG official who was familiar with the processing of the Appellant's FOIA Request. After reviewing the subject matter of the Request, the method by which the Request was processed, and the OIG justification offered in the determination letter, we find that OIG appropriately invoked its *Glomar* response. Thus, we agree that providing any other response to the FOIA Request could reasonably be expected to constitute an unwarranted invasion of personal privacy, such as that protected by Exemption 7(C). Consequently, the Appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed on May 8, 2012, by Russell Carollo, OHA Case No. FIA-12-0026, 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 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.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: June 7, 2012