

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

In the Matter of Torres Law Group, LLC)
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Filing Date: December 4, 2014) Case No.: FIA-14-0084
)
_____)

Issued: December 15, 2014

Decision and Order

On December 4, 2014, Torres Law Group, LLC (Appellant) filed an Appeal from a determination issued to it by the Richland Operations Office (Richland) of the Department of Energy (DOE) (Request No. FOI 2015-00016). In that determination, Richland responded to a request 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. Richland released 14 pages of documents but redacted portions of those released documents under Exemptions 4 and 6 of the FOIA. This Appeal, if granted, would release wage and hour information from the redacted documents.

I. Background

On September 29, 2014, the Appellant filed a request with Richland for “[a]ll certified payroll records for Intermech Inc. covering all work performed . . . [and] [c]opies of employee time sheets in support of the referenced certified payroll reports” for work performed under Contract No. 36883 Release 19, the Realignment of Extraction Wells ME51 and ME52, at the Hanford Nuclear Site. Request Letter dated September 29, 2014, from Anna L. Clark, Senior Compliance Specialist, Appellant, to Dorothy Riehle, FOIA Officer, Richland. In its determination, Richland released 14 pages of documents but withheld portions of those documents under Exemptions 4 and 6 of the FOIA. Determination Letter dated October 23, 2014, from Dorothy Riehle to Appellant. The Appellant challenges only the Exemption 4 claim, stating that Richland improperly applied Exemption 4. Appeal Letter dated December 4, 2014, from Appellant to Director, Office of Hearings and Appeals (OHA), DOE.

II. Analysis

The FOIA requires that documents held by federal agencies generally be released to the public upon request. The FOIA, however, lists nine exemptions that set forth the types of information that may be withheld at the discretion of the agency. 5 U.S.C. § 552(b)(1)-(9). Those nine categories are repeated in the DOE regulations implementing the FOIA. 10 C.F.R.

§ 1004.10(b)(1)-(9). We must construe the FOIA exemptions narrowly to maintain the FOIA's goal of broad disclosure. *Dep't of the Interior v. Klamath Water Users Prot. Ass'n*, 532 U.S. 1, 8 (2001) (citation omitted). The agency has the burden to show that information is exempt from disclosure. *See* 5 U.S.C. § 552(a)(4)(B).

Exemption 4 shields from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4); 10 C.F.R. § 1004.10(b)(4). Accordingly, in order to be withheld under Exemption 4, a document must contain either (a) trade secrets or (b) information that is "commercial" or "financial," "obtained from a person," and "privileged or confidential." *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (*Nat'l Parks*). If the agency determines that the material is a trade secret for the purposes of the FOIA, its analysis is complete and the material may be withheld under Exemption 4. *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1286, 1288 (D.C. Cir. 1983) (*Public Citizen*). If the material does not constitute a "trade secret," a different analysis applies. The agency must determine whether the information in question is "commercial or financial," "obtained from a person" and "privileged or confidential."

The first requirement is that the withheld information be "commercial or financial." Federal courts have held that these terms should be given their ordinary meanings and that records are commercial as long as the submitter has a "commercial interest" in them. *Public Citizen*, 704 F.2d at 1290. The information submitted by the contractors, *i.e.*, payroll records, clearly satisfies the definition of commercial or financial information. The second requirement is that the information be "obtained from a person." It is well-established that "person" refers to a wide-range of entities, including corporations and partnerships. *See Comstock Int'l, Inc., v. Export-Import Bank*, 464 F. Supp. 804, 806 (D.D.C. 1979); *see also Niagara Mohawk Power Corp.*, Case No. TFA-591 (2000).^{*/} The contractor satisfies that definition. Finally, in order to be exempt from disclosure under Exemption 4, the information must be "confidential."

In this case, the contractor was required to submit the payroll records pursuant to the requirements of its contract with Richland. *See* Email from Dorothy Riehle to Janet R. H. Fishman, Attorney-Examiner, OHA (December 8, 2013). Accordingly, we find that the withheld information was "involuntarily submitted." Hence, as the information was "involuntarily submitted," the *National Parks* test must be met to find the information withheld to be confidential. Under *National Parks*, involuntarily submitted information is considered confidential if its release would be likely to either (a) impair the government's ability to obtain such information in the future, or (b) cause substantial harm to the competitive position of submitters. 498 F.2d at 770. "Courts generally defer to an agency's predictions concerning the repercussions of disclosure, acknowledging that predictions about competitive harm are not capable of exact proof." *SACE v. Dep't of Energy*, 853 F. Supp. 2d 60, 71 (D.D.C. 2012). In applying Exemption 4 to the documents at issue, Richland determined that release of the information would likely cause the contractor substantial competitive harm.

In the present case, Richland withheld the work classification, pay type, hours worked each day, total hours worked each week, rate of pay, gross amount earned, deductions, and net wages paid. We have considered a similar issue in an November 20, 2014, appeal decision issued to the same

^{*/} OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://energy.gov/oha/foia-cases>

Appellant, where we found that release of information in payroll records, specifically the work classification, hours worked each day, total hours worked each week, rate of pay, gross amount earned, deductions, and net wages paid, would provide competitors with an undue advantage, and therefore, that information was confidential and exempt from release. *Torres Consulting & Law Group, LLC*, Case No. FIA-14-0070 (2014); *see also Nat'l Parks*, 498 F.2d at 770. Moreover, release of that information would give the contractor's competitors an undue advantage in bidding on future contracts. Accordingly, we conclude that Exemption 4 has been properly invoked as to the commercial or financial information contained in the payroll records because the contractor would likely suffer substantial competitive harm from release of the information. Therefore, we will deny the Appeal.

III. Conclusion

After considering the Appellant's arguments, we are convinced that the information redacted from the payroll records was properly withheld under Exemption 4. Accordingly, the Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Torres Law Group, LLC, Case No. FIA-14-0084, 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 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.

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Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: December 15, 2014