

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

In the Matter of Wynship Hillier)	
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Filing Date: March 22, 2016)	Case No.: FIA-16-0022
)	
_____)	

Issued: April 4, 2016

Decision and Order

On March 22, 2016, Wynship Hillier (Appellant) appealed a determination received from the National Nuclear Security Administration (NNSA) of the Department of Energy (DOE) (Request No. FOIA 16-00096-H). In that determination, NNSA 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. As explained below, we have determined that the Appeal should be granted in part and denied in part.

I. Background

On February 23, 2016, the Appellant filed a FOIA request with NNSA for a “copy of the currently active signed contract or award and all contract modifications between DOE/NNSA and Lawrence Livermore National Laboratory (LLNL) in the contracting office file.” Determination Letter from Jane R. Summerson, Authorizing and Denying Official, NNSA to Wynship W. Hillier (March 2, 2016). In its determination, NNSA stated that the responsive document is available in the public domain and provided the website information for the document. *Id.* On March 22, 2016, the Appellant filed an appeal, stating that the link did not contain the entire contract requested. Appeal Letter from Wynship Hillier to Director, Office of Hearings and Appeals (OHA) (March 14, 2016). The Appellant requested that NNSA release the remaining parts of the requested contract, or provide a specific statement about the withheld portions citing the applicable exemption. *Id.*

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).

The Appellant argues that NNSA is withholding portions of the requested document, without justifying which exemptions it used to withhold the information. Appeal Letter from Wynship Hillier to Director, OHA (March 14, 2016). The Appellant contends that he could find “no title page, no preamble naming the parties to the contract, no description [of] what is to be provided by Lawrence Livermore National Laboratory, no description of what compensation is to be made by DOE/NNSA, nor any pages containing signatures among the files listed on the website referred to by the URL listed on the letter” and that “Part I and Section A of Part II” are missing. *Id.*

To evaluate the Appeal, we visited the website referenced in the Determination Letter (Lawrence Livermore National Security (LLNS) website).¹ The LLNS website included links to PDF versions of the prime contract, modifications to the contract, and performance evaluation and parent oversight plans for the contract.

Contrary to the argument in the Appeal, we were able to find the various clauses of the contract, including those identifying the parties, their obligations, and their compensation. For example, the Appellant stated that he was unable to find any “description of what compensation is to be made by DOE/NNSA,” but Part II, Section B-2 “Contract Type and Value,” pages 5 through 13, outlines in detail the value of the contract and the calculation of compensation. Similarly, the Appellant stated that he could find no pages containing signatures. Again, we looked through the various links on the LLNS website and found several signature pages, with only the actual signature redacted. NNSA informed us that it redacts signatures to prevent the signatures from being copied. Email between Christina Hamblen, NNSA, and Brooke DuBois, OHA (March 28, 2016). After reviewing the LLNS website, we find that all the information one would expect to be included in a contract is available to the Appellant through this website.

With respect to the Appellant's argument that Part I and Section A of Part II were missing from the LLNS website, we reached out to NNSA to find out if the LLNS website contained the entire contract. Memorandum of Telephone Conversation between Debbie Harkness, NNSA, and Brooke DuBois, OHA (March 29, 2016). NNSA informed us that, when reviewing the LLNS website in relation to this case, it realized that the LLNS website contained a labeling error. *Id.* Specifically, the link titled “Part II Section B-H,” should instead read “Part I Section B-H.” *Id.* NNSA further informed us that Section A of Part I (which the Appellant referenced as Section A of Part II) was not available on the LLNS website. *Id.* This section is the solicitation form, which DOE uses to solicit bids for government contracts. *Id.* Although LLNS did not publish this information on its website, this information is available on NNSA's website, which also includes the original contract, properly labeled.²

NNSA stated that the entire contract, except Part IV, was available between the LLNS and NNSA websites. Memorandum of Telephone Conversation between Debbie Harkness, NNSA, and

¹ <http://www.llnslc.com/contract/contract.asp>

² <http://nnsa.energy.gov/aboutus/ouoperations/apm/mosupportdept/llnl>

Brooke DuBois, OHA (March 29, 2016). NNSA asserts that Part IV is comprised of proprietary information and is exempt under Exemption 4 of the FOIA. *Id.* Determinations under the FOIA must identify the information that was withheld, state the exemption that is invoked, and state how the exemption applies to the information being withheld. *F.A.C.T.S.*, OHA Case No. VFA-0339 (1997); *Research Information Services, Inc.*, OHA Case No. VFA-0235 (1996).³ This allows both the requestor and OHA to determine whether the claimed exemption was accurately applied. *Tri-State Drilling, Inc.*, OHA Case No. VFA-0304 (1997). It also aids the requester in formulating a meaningful appeal and OHA in reviewing that appeal. *Wisconsin Project on Nuclear Arms Control*, OHA Case No. LFA-0176 (1992). Because NNSA did not claim Exemption 4 in its Determination Letter, we cannot make a determination as to whether this withholding is appropriate. Therefore, we will remand this matter to NNSA for issuance of a new determination letter, which adequately justifies withholding Part IV of the contract.

III. Conclusion

As explained above, although we find that NNSA appropriately directed the Appellant to the LLNS website where he could find the information requested, we also find that NNSA did not properly describe and justify withholding Part IV of the requested contract. Therefore, this matter is remanded in part for the issuance of a new determination.

It Is Therefore Ordered That:

- (1) The Appeal filed on March 22, 2016, by Wynship Hillier, Case No. FIA-16-0022, is hereby granted in part and denied in part, as set forth in Paragraph (2) below.
- (2) This matter is hereby remanded in part to the National Nuclear Security Administration, which shall issue a new determination in accordance with the instruction set forth in the above Decision.
- (3) 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.
- (4) 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 your right to pursue litigation. You may contact OGIS in any of the following ways:

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³ Decisions issued by OHA are available on the OHA website located at www.energy.gov/oha.

Telephone: 202-741-5770
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Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: April 4, 2016