

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

In the Matter of Yogi Shan	)	
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Filing Date: February 17, 2016	)	Case No.: FIA-16-0019
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Issued: February 29, 2015

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**Decision and Order**

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On February 17, 2016, Yogi Shan (Appellant) appealed a determination received from the National Nuclear Security Administration (NNSA) of the Department of Energy (DOE) (Request No. FOIA 13-00258-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. NNSA partially released one document, withholding portions pursuant to Exemptions 3 and 6 of the FOIA. This Appeal pertains only to the withholding taken under Exemption 6.<sup>1</sup> If granted, this Appeal would require NNSA to release the withheld material.

**I. Background**

On September 9, 2013, NNSA received a FOIA request from the Appellant seeking copies of five specific documents. Determination Letter from Jane Summerson, Authorizing and Denying Official, NNSA, to Yogi Shan (January 29, 2016). In its January 29, 2016, determination letter, NNSA informed the Appellant that its search located one responsive document. *Id.* NNSA withheld a significant portion of the document as classified material protected from disclosure by the Atomic Energy Act of 1954. *Id.* Additionally, NNSA withheld the names of contractor employees pursuant to Exemption 6 of the FOIA. *Id.* On February 16, 2016, the Appellant challenged the deletions contained in the released document. FOIA Appeal from Yogi Shan to OHA Filings (February 16, 2016).

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<sup>1</sup> On February 18, 2016, the Office of Hearings and Appeals (OHA) informed the Appellant that those withholdings taken pursuant to Exemption 3 related to classified information and would need to be reviewed by the DOE's Office of the Environment, Health, Safety, and Security. However, as we ascertained that portions of the redacted information were withheld solely pursuant to Exemption 6, we will proceed with a review of those redactions in the instant Decision and Order.

## 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 DOE regulations further provide that documents exempt from mandatory disclosure under the FOIA shall nonetheless be released to the public whenever the DOE determines that disclosure is in the public interest. 10 C.F.R. § 1004.1.

Exemption 6 shields 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); *see also* 10 C.F.R. § 1004.10(b)(6). The purpose of Exemption 6 is to “protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information.” *Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982).

In determining whether information may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine if a significant privacy interest would be compromised by the disclosure of the information. If the agency cannot find a significant privacy interest, the information may not be withheld. *Nat'l Ass'n of Retired Federal Employees v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1078 (1990) (NARFE); *Associated Press v. Dep't of Defense*, 554 F.3d 274, 284 (2d Cir. 2009). Second, if an agency determines that a privacy interest exists, the agency must then determine whether the release of the information would further the public interest by shedding light on the operations and activities of the government. *See* NARFE, 879 F.2d at 874; *Reporters Comm. for Freedom of the Press v. Dep't of Justice*, 489 U.S. 749, 773 (1989). Lastly, the agency must balance the personal privacy interest in the information proposed for withholding against the public interest in the same information. *See* NARFE, 879 F.2d at 874; *Reporters Comm.*, 489 U.S. at 762.

NNSA has stated that the names withheld from the responsive document are those of contractor employees. It is well settled that the release of an individual's name to the public implicates a privacy interest under the FOIA. *Associated Press v. Dep't of Justice*, 549 F.3d 62, 65 (2d Cir. 2008). The privacy interests protected by the exemptions to the FOIA are broadly construed. *See Reporters Comm.*, 489 U.S. at 763. The extent of an individual's privacy interest in his or her name is diminished under certain circumstances. Generally, employees of the federal government who are not involved in law enforcement have no expectation of privacy regarding their names, titles, grades, salaries, and duty stations as employees. *See Office of Pers. Mgmt. Regulations*, 5 C.F.R. § 293.311 (2009) (specifying that certain information contained in federal employee personnel files is available to public).

Contractor employees, however, are not federal employees, but rather private individuals. Therefore, we find that, as contractor employees, they retain a significant privacy interest in the release of their names. *See Sheet Metal Workers v. Dep't of Veteran Affairs*, 135 F.3d 891 (3d Cir.

1998); *Amigos Bravo*, OHA Case No. VFA-0634 (2001). We further agree with NNSA that “[s]ince its release will not reveal anything of significance to the public, the interest in protecting against the invasion of privacy that would result to the individuals in question far outweighs the public interest in such disclosure.” Determination Letter from Jane Summerson, Authorizing and Denying Official, NNSA, to Yogi Shan (January 29, 2016). Therefore, NNSA’s withholding of this information was appropriate.

### III. Conclusion

After reviewing the Appeal, we find that NNSA properly withheld information from the responsive document under Exemption 6 of the FOIA. Accordingly, the Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed on February 17, 2016, by Yogi Shan, Case No. FIA-16-0019, 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.
- (3) 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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Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

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