

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

In the Matter of Actuation Test Equipment Company)

Filing Date: May 26, 2016

Case No.: FIA-16-0033

Issued: June 20, 2016

Decision and Order

On May 26, 2016, Actuation Test Equipment Company (Appellant) appealed a determination received from the Department of Energy (DOE) Bonneville Power Administration (BPA) (FOIA #BPA-2016-00728-F). In that determination, BPA 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. BPA released one responsive document, withholding portions pursuant to Exemption 7(F) of the FOIA. The Appellant challenges these withholdings, and if granted, this Appeal would require BPA to release the withheld material.

I. Background

On March 31, 2016, the Appellant submitted a FOIA request to BPA seeking “a copy of the latest HOT Committee meeting’s Agenda and Minutes, but only if the meeting was after April 6, 2015.” Determination Letter from C.M. Frost, Freedom of Information/Privacy Act Officer, BPA, to Douglas Albright, Actuation Test Equipment Company (May 9, 2016). On May 9, 2016, BPA responded to the FOIA request releasing one document, which contained redactions under Exemption 7(F) of the FOIA.

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 7(F) of the FOIA protects information compiled for law enforcement purposes to the extent that its production “could reasonably be expected to endanger the life or physical safety of any individual.” 5 U.S.C. § 552(b)(7)(F). This exemption originally protected only law enforcement personnel but was amended to protect the safety of “any individual.” *See ACLU v. Dep’t of Defense*, 543 F.3d 59, 79 (2d Cir. 2008), *cert. granted, vacated, and remanded on other grounds*, 558 U.S. 1042 (2009) (discussing legislative history of Exemption 7(F) and explaining that the 1986 amendments to FOIA expanded coverage of this exemption to include individuals who are not law enforcement personnel). Information that was not originally compiled for law enforcement purposes may nonetheless fall within Exemption 7 if that information is later compiled and given to law enforcement officers for security purposes. *Milner v. Dep’t of the Navy*, 131 S. Ct. 1259, 1273 (2011) (Alito, J., concurring).

For the purposes of Exemption 7, “preventing dam attacks and maintaining order and ensuring dam security during dam emergencies qualify as valid law enforcement purposes.” *Pub. Emp. For Envtl. Responsibility v. U.S. Section, Int’l Boundary & Water Comm’n, U.S.-Mexico*, 740 F.3d 195, 204 (D.C. Cir. 2014). Exemption 7(F) also protects sensitive information compiled for law enforcement purposes from disclosure when the Agency reasonably estimates that it could be “misused for nefarious ends” if released. *Id* at 206.

The Appellant asserts that BPA withheld the redacted information not for any of the stated Exemption 7(F) reasons, but instead “to avoid embarrassment.” Appeal Letter from Douglas J. Albright, Actuation Test Equipment Company, to Director, OHA (May 19, 2016). When we contacted BPA about the redactions, they informed us, as stated in the Determination Letter, that before releasing the responsive document, they consulted with the U.S. Army Corps of Engineers (USACE) and the U.S. Bureau of Reclamation, who both provided some of the information contained within the responsive document. USACE determined that the redacted information was exempt under Exemption 7(F) and BPA accordingly withheld the information when releasing the document to the Appellant. Email from Rachel Hull, BPA, to Brooke DuBois, OHA (May 27, 2016).

After reviewing an unredacted copy of the responsive document, we find that the Determination Letter accurately describes the redacted portion as containing sensitive information withheld for security purposes. Therefore, we will uphold BPA’s application of Exemption 7(F) to the withheld information.

III. Conclusion

As explained above, we find that BPA properly withheld the redacted information pursuant to Exemption 7(F). Accordingly, the Appeal is denied.

It Is Therefore Ordered That:

- (1) The Appeal filed on May 26, 2016, by Actuation Test Equipment Company, Case No. FIA-16-0033, 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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Date: June 20, 2016