

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

In the Matter of Kent Preston )  
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Filing Date: July 21, 2017 ) Case No.: FIA-17-0022  
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Issued: On July 27, 2017

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**Decision and Order**

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On July 21, 2017, Kent Preston (Appellant) filed an Appeal from a Determination issued by the Department of Energy’s (DOE) Bonneville Power Administration (BPA) (FOIA No. BPA-2017-00179-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 withheld the entirety of 499 pages of responsive records pursuant to Exemption 6 of the FOIA. The Appellant challenged BPA’s withholding. This Appeal, if granted, would require BPA to release some or all of the withheld records.

**I. Background**

On November 15, 2016, the DOE received three FOIA requests filed by the Appellant, one of which requested “[s]ign in and out times (electronic access) for beginning and ending work shift for [an Individual]<sup>1</sup> (security) from March 2015-Present.” Determination Letter at 1 (June 9, 2017). In response to the three requests, BPA located 604 pages of documents. *Id.* at 2. However, BPA withheld some documents pursuant to Exemption 6. *Id.* On June 20, 2017, the Appellant appealed the Determination to OHA. FOIA Appeal (June 20, 2017). On July 5, 2017, BPA informed OHA that it was withdrawing its June 9, 2017, Determination and would issue a separate response letter for each of the three FOIA Requests. Letter from BPA to K. Preston (July 5, 2017). Accordingly, OHA dismissed the Appeal. *Id.*

On July 13, 2017, BPA issued a new Determination Letter with regard to FOIA No. BPA-2017-00179. Determination Letter (July 13, 2017). BPA indicated that it had located 499 responsive records and that it was withholding the 499 pages in their entirety pursuant to Exception 6 of the FOIA. *Id.* at 1. To justify its withholdings, BPA stated that the documents contained information from the Individual’s “personnel or similar file,” in which the Individual has a substantial privacy interest. *Id.* BPA noted that the requested documents did not shed light on the “workings of the

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<sup>1</sup> In order to protect the subject of the FOIA request from a clearly unwarranted invasion of privacy, we are redacting the subject’s name and will refer to the person as “the Individual.” *See* 5 U.S.C. § 552(a)(2).

agency,” and therefore, the documents must be redacted as required by Exemption 6. *Id.* at 1-2. On July 21, 2017, the Appellant challenged BPA’s Determination. FOIA Appeal (July 21, 2017). The Appellant contends that BPA is hiding “the fact that...employees are not fulfilling their duties by clocking in and out early.” *Id.* He argues that the “information is of relevance to every single taxpayer that is paying” the Individual’s salary. *Id.*

## II. Analysis

### A. Exemption 6

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 exemptions 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 6 of the FOIA shields from disclosure “[p]ersonnel 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); 10 C.F.R. § 1004.10(b)(6). The purpose of Exemption 6 is to “protect individuals from 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. *Nat’l Ass’n of Retired Federal Employees v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989); *see also Ripskis v. Dep’t of Hous. & Urban Dev.*, 746 F.2d 1, 3 (D.C. Cir. 1984). If the agency cannot find a significant privacy interest, the information may not be withheld. *Horner*, 879 F.2d at 874. 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. *Id.*; *Reporters Comm. for Freedom of the Press v. Dep’t of Justice*, 489 U.S. 749, 773 (1989). Lastly, the agency must weigh the privacy interests it has identified against the public interest in order to determine whether release of the record would constitute a clearly unwarranted invasion of personal privacy. *Horner*, 879 F.2d at 874.

The information BPA withheld under Exemption 6 was one spreadsheet, containing 499 pages, which showed the ingress and egress records of the Individual about whom the Appellant made the FOIA request. In considering whether BPA properly applied Exemption 6, we first note that Exemption 6 has a threshold requirement in that the records at issue must be personnel, or medical files, or similar files. Here, BPA stated that the withheld information arose from “personnel or similar files,” and the Individual has a “substantial privacy interest in the requested information.” Determination Letter at 1 (July 13, 2017). Since the records consist of information contained within the Individual’s personnel file, we determine that the withheld documentation satisfies the threshold requirement under Exception 6. *See Washington Post*, 456 U.S. at 602 (all information

that “applies to a particular individual” meets the threshold requirement for Exemption 6 protection). Next, we apply the three-step analysis to the withheld information.

It is well established that both federal and contractor employees have a substantial privacy interest in records containing the hours worked. *See DeShonne E. Massey Sr.*, Case No. FIA-13-0051 (2013); *Painting and Drywall Work Preservation Fund, Inc. v. HUD*, 936 F.2d 1300, 1301-02 (D.C. Cir. 1991). As such, we conclude that there is a significant privacy interest in the withholding of the ingress and egress records of the Individual.

The FOIA requires disclosure to “any person;” therefore, if the information requested is “released to one requester, it must be released to all, regardless of the uses to which it might be put.” *Painting and Drywall Work Preservation Fund*, 963 F.2d at 1302. Further, it is well established that the basic policy of full agency disclosure “focuses on the citizens rights’ to be informed about ‘what their government is up to.’” *Dep’t of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 773 (1989). When and where a particular individual enters and exits a DOE facility does not shed light on “what the government is up to.” Further, the release of this information would present a significant diminution of personal privacy because if the information is released to one requester, it must be released to all, including those who seek the information with no intent to discover anything about the agency or its workings. *See DeShonne E. Massey Sr.*, Case No. FIA-13-0051; *Painting and Drywall Work Preservation Fund*, 963 F.2d at 130. Therefore, we conclude that there is a minimal public interest, if any, in revealing when and where the Individual entered and exited the premises.

Because there is a substantial personal privacy interest in the withheld material and because this information is of minimal public interest, BPA was correct to withhold the ingress and egress records of the Individual.

## **B. Segregation**

Notwithstanding the above determination, the FOIA requires that DOE “consider whether partial disclosure of information is possible whenever [it] determines that a full disclosure of the requested records is not possible.” 5 U.S.C. § 552(a)(8)(A). Further, DOE must “take reasonable steps necessary to segregate and release nonexempt information.” *Id.* Here, BPA withheld the 499 page spreadsheet in its entirety, and there is no indication in the record that it attempted to segregate and release nonexempt information. Determination Letter (July 13, 2017). However, after examination of the withheld material, the header that organizes and labels the spreadsheet does not fall within Exemption 6 and can be segregated for release. *See National Security Archive*, FIA-16-0020 (2016); *see, e.g., Judicial Watch, Inc. v. U.S. Dep’t of Treasury*, 796 F. Supp. 2d 13, 29-30 (D.D.C. 2011) (finding that headers on meeting minutes were not exempt material). Following conversations on this matter, BPA has now concurred that the heading should be released to the Appellant. Email from BPA to OHA (July 21, 2017). Accordingly, we provide the Appellant with the segregated information (the header of the withheld spreadsheet) under separate cover.

### **III. Conclusion**

For the reasons stated above, we have concluded that, with the exception of the spreadsheet header, BPA appropriately applied Exemption 6 to withhold the information requested by the Appellant. As we will release the information contained in the header, we grant the present Appeal in part.

It Is Therefore Ordered That:

- (1) The Appeal filed by Kent Preston, Case No. FIA-17-0022, is hereby granted in part to the extent set forth in paragraph (2) below.
- (2) The header of the withheld spreadsheet is provided to the Appellant under separate cover.

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  
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Date: On July 27, 2017