

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Carrie Williamson)
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Filing Date: November 4, 2019) Case No.: FIA-20-0006
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_____)

Issued: November 7, 2019

Decision and Order

On November 4, 2019, Ms. Carrie Williamson (Appellant) appealed a determination letter issued by the United States Department of Energy’s (DOE) Office of Inspector General (OIG) regarding Request No. HQ-2019-01304-F. In that letter, the OIG responded to the Appellant’s request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE regulations codified at 10 C.F.R. Part 1004, in which the Appellant sought a copy of the determination for OIG file number 19-0447-C. On September 23, 2019, the OIG responded to the Appellant’s FOIA request and provided a copy of a form summarizing the allegations and status of a complaint referred to the OIG by the Appellant (the Complaint Form). The OIG redacted the name of the OIG employee who received the complaint pursuant to Exemptions 6 and 7(C) of the FOIA. The Appellant asserts on appeal that the OIG improperly applied Exemptions 6 and 7(C), and also that she was entitled to know what action the OIG had taken concerning the allegations. As explained below, we deny the Appellant’s appeal.

I. Background

The Appellant contacted the OIG on August 15, 2019, to refer allegations that her former employer, a DOE contractor, was in breach of a DOE contract because it failed to timely disclose a judgement that the contractor had violated federal labor laws. Complaint Form at 1. On August 29, 2019, the OIG sent the Appellant an e-mail indicating that it had closed its review of her complaint and that she could obtain a copy of the Complaint Form by filing a FOIA request. Closeout E-mail from OIG to Appellant (August 29, 2019).

The Appellant subsequently filed a FOIA request with the OIG seeking “a copy of the determination 19-0447-C.” Determination Letter at 1. On September 23, 2019, the OIG provided the Appellant with a copy of the Complaint Form with the name of the OIG employee who took the complaint redacted and a notation that the OIG made the redaction pursuant to Exemptions 6 and 7(C) of the FOIA. *Id.* at 3. In a determination letter accompanying the Complaint Form, the OIG explained that it had determined that the privacy interest of the employee identified on the Complaint Form outweighed the public interest in the redacted information. *Id.* at 1. On November 4, 2019, the Appellant submitted her appeal in which she asserted that disclosing the redacted information “would not be a personal intrusion” and that she “need[ed] to know what happened

with the information that [she] reported to [the OIG] about how [the DOE contractor] [] violated their [f]ederal [c]ontract” Appeal at 1.

On November 4, 2019, an OHA staff attorney communicated with an OIG representative concerning the Appellant’s referral of allegations against the DOE contractor. The OIG representative indicated that the Complaint Form provided to the Appellant was the only documentation of the OIG’s determination with respect to this matter, and that the OIG closed the file without further action.

II. Analysis

The FOIA requires that federal agencies disclose records to the public upon request unless the records are exempt from disclosure under one or more of nine enumerated exemptions. 5 U.S.C. § 552(b)(1)–(9). However, “these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the [FOIA].” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976). The nine statutory exemptions from disclosure are repeated in the DOE regulations implementing the FOIA. 10 C.F.R. § 1004.10(b)(1)–(9). The agency has the burden to show that information is exempt from disclosure. See 5 U.S.C. § 552(a)(4)(B). An agency is also required to “consider whether partial disclosure of information is possible whenever [it] determines that a full disclosure of a requested record is not possible[] and take reasonable steps necessary to segregate and release nonexempt information.” 5 U.S.C. § 552(a)(8)(A)(ii)(I)–(II).

A. Privacy Interests of OIG Employees under Exemptions 6 and 7(C)

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). Exemption 7(C) protects “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7). In determining the applicability of Exemption 6 and Exemption 7(C), courts weigh the privacy interests of persons named in agency records against the public interest in shedding light on the operations and activities of government that would be furthered by disclosing the identities of the named persons. *See Nat’l Ass’n of Retired Federal Employees v. Horner*, 879 F.2d 873 (D.C. Cir. 1989) (applying the Exemption 6 balancing test); *see also Associated Press v. DOD*, 554 F.3d 274, 284 (2d Cir. 2009) (applying the Exemption 7(C) balancing test).

Courts have found that rank-and-file federal employees within an agency’s Office of Inspector General have a significant privacy interest in the non-disclosure of their names under Exemption 7(C). *See, e.g., Van Mechelen v. U.S. Dep’t of the Interior*, No. 05-5393, 2005 WL 3007121, at 4-5 (W.D. Wash. 2005). In light of the investigatory role of OIG employees, there is a tangible risk that they will be exposed to harassment or interference by targets of investigations or disgruntled individuals who refer allegations to the OIG if their names are publicly disclosed. Against this tangible privacy interest, the Appellant has not asserted any public interest in the disclosure of the identity of the OIG employee who received her complaint.

The OHA has previously held that the OIG properly withheld the names of OIG employees under Exemption 7(C) in cases where an appellant failed to identify a public interest in the disclosure of their identities. *Matter of Glenn Stephenson*, OHA Case No. FIA-18-0034 at 3–4 (2018).¹ We reach the same conclusion in this case.²

B. Other Appeal Grounds

The Appellant’s appeal also seeks to learn “what happened with the information that [she] reported to [OIG and] . . . why did [] DOE not ask why they are getting a notification of [the contractor] being found guilty of violating employees’ rights?” Appeal at 1. The Appellant asserted that DOE should have taken additional steps in response to her allegations and that she “need[s] a response to [her] questions” *Id.* at 2.

The FOIA requires agencies to provide the public with access to records, but does not require agencies to create records that do not exist and “also does not require agencies to conduct research by ‘answer[ing] questions disguised as a FOIA request.’” *Nat’l Sec. Counselors v. CIA*, 898 F. Supp.2d 233, 269 (D.D.C. 2012) (citing *Hudgins v. IRS*, 620 F.Supp. 19, 21 (D.D.C.1985), *aff’d mem.*, 808 F.2d 137 (D.C. Cir. 1987)). The OHA has previously held that DOE offices are not required to respond to demands for justifications or explanations of operational decisions contained within FOIA requests. *Matter of Dr. Ayyakkann Manivannan*, OHA Case No. FIA-19-0009 at 4 (2019) (citing *Thomas v. Comptroller of Currency*, 684 F.Supp.2d 29, 33 (D.D.C. 2010)).

The OIG closed its review of the Appellant’s complaint and promptly provided the Appellant with the only documentation of its decision. The FOIA does not require the OIG to justify its investigative determinations to sources who refer allegations to the OIG, and we find the Appellant’s arguments to the contrary unsupported and meritless.

III. Order

It is hereby ordered that the appeal filed by Carrie Williamson on November 4, 2019, No. FIA-20-0006, is denied.

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.

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 the right to pursue litigation. OGIS may be contacted in any of the following ways:

¹ Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/oha>.

² Because we find that OIG properly withheld the name of the OIG employee from the Complaint Form pursuant to Exemption 7(C), we need not evaluate the propriety of OIG’s invocation of Exemption 6 to withhold this information.

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