United States Department of Energy
Office of Hearings and Appeals

In the Matter of Martha J. McNeely	)		
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Filing Date: November 1, 2012	)	Case No.:	FIA-12-0071
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Issued: November 29, 2012

Decision and Order

On November 1, 2012, Ms. Martha J. McNeely ("Appellant") filed an Appeal from determinations issued to her on September 21, 2012, by the Richland Operations Office (ROO) and October 11, 2012, and by the Oak Ridge Office (ORO) of the Department of Energy (DOE) (FOIA Request Numbers PA-2012-00597 (ROO) and ORO-2012-00691-PA (ORO)). The ROO determination provided the Appellant with documents pursuant to a June 21, 2012, Privacy Act Request (Request)[1] but withheld a portion of a document pursuant to Exemption 6 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. In its response to the Appellant's Request, ORO stated that it was unable to locate any documents responsive to the Request. In her Appeal, the Appellant contends that there should be additional documents that are responsive to her Request at both ROO and ORO. Further, the Appellant apparently believes that ROO improperly applied Exemption 6 to the information it provided her. Thus, this Appeal, if granted, would require ROO and ORO to conduct further searches for the documents that the Appellant requested as well as require ROO to release the information it withheld pursuant to Exemption 6.

I. Background

In her Request, the Appellant requested documents regarding her medical and radiation exposure records for the period 1947 through 1953 while she was a child living at the now-DOE Hanford facility.[2] Appeal - Attachment A at 1. Because the Appellant believed that responsive documents

[1] The Appellant's Request was made pursuant to the Privacy Act but ROO and ORO also searched for responsive documents under broader scope of the FOIA.

[2] In her Request, the Appellant provided her social security number along with various documents. Additionally, in the Request, the Appellant suggested that responsive documents might exist in records relating to various student and health screening/treatment programs. Specifically she referenced the following programs: A student field trip to sugar beet fields during the "Hanford releases in the summer of 1949"; Chest X-rays as part of a Hanford school

might exist at ORO, ROO referred the Request to that office so that a search for responsive documents could also be conducted. ROO Determination Letter at 3.

In its September 11 Determination Letter, ROO provided the Appellant with several documents. In one of the documents provided to the Appellant, an X-Ray medical procedure list, ROO redacted the names of the individuals who underwent X-Ray medical procedures (except for entries pertaining to the Appellant) pursuant to Exemption 6. In its October 11 Determination Letter, the ORO informed the Appellant that its search failed to uncover documents responsive to the Request.

In her Appeal, the Appellant asserts that ROO and ORO failed to conduct an adequate search for documents to her Request.[3]

II. Analysis

A. The Richland Operations Office's Determination

1. Adequacy of the search

In responding to a request for information filed under the FOIA, it is well established that an agency must conduct a search "reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (quoting *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Dep't of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g.*, *Project on Government Oversight*, Case No. TFA-0489 (2011).[4]

During our review of the Appellant's Appeal, ROO provided OHA with the details concerning its search for responsive records. ROO informed us that it conducted searches at facilities on or

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district monitoring program operated from the Lewis and Clark Elementary School; Kadlec Hospital records including radioiodine treatment records; Dental monitoring records during 1951 to 1952; and Allergy/ENT (Ears, Nose, and Throat) testing records during 1951-1952. The Individual also provided a list of buildings and records locations where responsive documents might exist: the Federal Building area in Richland, Washington; the Federal Records storage facility in Seattle, Washington; Hanford Site 300 Area storage; the Classified Area Vault storage facility; the DOE-Richland Administrative Offices; the DOE's Oak Ridge Operations Office; and the Hanford Environmental Health Foundation. Appeal - Attachment A at 1.

[3] The Appellant Appeal asserts that, in 1996, DOE informed the Appellant that relevant documents existed but were being withheld pursuant to Exemption 6 due to anticipated litigation. To support this assertion, the Appellant referenced an earlier OHA decision regarding a FOIA Appeal she filed in 2010, *Martha J. McNeely*, Case No. TFA-0371 (2010). That decision did not reference any withholdings under Exemption 6. Nevertheless, because ROO withheld information pursuant to Exemption 6 and for purposes of administrative efficiency, we will review ROO's Exemption 6 withholding. *See John P. Newton*, Case No. FIA-12-0061 (2012).

[4] Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, are available on the OHA website located at http://www.oha.doe.gov.

around the Hanford Site where the requested documents were most likely to be held: the Records Holding Area (300 Area Storage); the Seattle Records Holding Area (which maintains records from the DOE Hanford area along with records held in the classified area vault storage); the Pacific Northwest National Laboratory; the CSC Hanford Occupational Health Service (including records from the Kadlec Hospital); and the DOE's Site Infrastructure, Services and Information Management Division. All of these locations were searched using the Appellant's name and social security number. All documents located from this search were provided to the Appellant. The ROO FOIA Officer informed us that the searches were conducted by officials with the best knowledge regarding the areas to be searched and that the she did not have any knowledge regarding any other location at the Hanford site where responsive documents might be located.

Given the information provided by ROO, we find that it performed an adequate search under the FOIA. Using the Individual's name and social security number, ROO conducted a search of the facilities most likely to contain responsive information and those which were named in the Appellant's Request. Given the information provided by ROO, our review finds that the search was reasonably calculated to uncover the documents sought in the Request. Consequently, we find ROO's search for responsive documents to be adequate for the purposes of the FOIA.

2. Application of Exemption 6

Exemption 6 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 order to determine whether a record may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether or not a significant privacy interest would be compromised by the disclosure of the record. If no significant privacy interest is identified, the record may not be withheld pursuant to this exemption. *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); *see also Ripskis v. Dep't of Hous. and Urban Dev*., 746 F.2d 1, 3 (D.C. Cir. 1984). Second, if privacy interests exist, the agency must determine whether or not release of the document would further the public interest by shedding light on the operations and activities of the Government. *See Reporters Committee for Freedom of the Press v. Dep't of Justice*, 489 U.S. 769, 773 (1989) (*Reporters Committee*). Finally, 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. *See generally Nat'l Ass'n of Retired Federal Employees*, 879 F.2d at 874.

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 FOIA are broadly construed. *See Reporters Comm.*, 489 U.S. at 763.

Having identified a privacy interest in the withheld information, it is necessary to determine whether there is a public interest in the disclosure of the information. Information falls within the public interest if it contributes significantly to the public's understanding of the operations or activities of the government. *See Reporters Comm.*, 489 U.S. at 775. Therefore, unless the public would learn something directly about the workings of government from the release of information, its disclosure is not "affected with the public interest." *Id*.; *see also Nat'l Ass'n of Retired Employees v. Horner*, 879 F.2d at 879.

As described above, the information withheld by ROO consisted of the names of individuals who received X-Ray medical procedures. It is well established that individuals have a considerable privacy interest with regard to their individual medical records. *See Nat'l Sec. News Serv. v. U.S. Dep't of Navy*, 584 F. Supp. 2d 94, 96 (D.D.C. 2008) ("Records . . . indicating that individuals sought medical treatment at a hospital are particularly sensitive.") Further, we find that release of the individual names in themselves would provide little or no additional information regarding the operations or activities of the government. Therefore, there is little or no public interest regarding the release of the individual names in the X-ray medical procedure list. Given this, we find that the considerable privacy interests associated with the names of the individuals listed in the X-Ray medical procedure list greatly outweighs the *de minimis* public interest in their disclosure. Consequently, we find that release of the names contained in the X-Ray medical procedure list would constitute a clearly unwarranted invasion of personal privacy and that ROO properly withheld the individual names on the X-Ray medical procedure list pursuant to Exemption 6. 5

B. The Oak Ridge Office's Determination

We inquired with the ORO FOIA Officer to ascertain what search had been conducted for documents responsive to the Appellant's Appeal. The FOIA Officer informed us that a search for records pertaining to the Appellant, using her name and social security number, was conducted at the Oak Ridge Associated Universities (ORAU), which conducted epidemiology studies on Hanford workers, and the DOE Oak Ridge Office (ORO) Records Holding Area (RHA) which holds historical Manhattan Project and Atomic Energy Commission (AEC) records for multiple sites including Hanford.[6] Rothrock E-mail at 1.

ORO also searched for historical records on the monitoring of children who lived on or near the Hanford Reservation during the years specified by the Appellant. Specifically, ORO searched a

[5] As described above, the Appellant's Request was made pursuant to the Privacy Act. It is DOE's established policy and practice to comply with this requirement and process requests under both the Privacy Act and the FOIA. *See Thomas R. Thielen*, Case No. FIA-12-0023 (2012) at 3 n.* (*Thielen*). Under the Privacy Act, we find that the names contained in the X-Ray medical procedure list (other than the Appellant's name) were properly withheld. Courts have upheld the withholding of third-party personal information, including the identities of third parties, under the Privacy Act on the ground that the third-party information is not "about" the requester, and is therefore outside the scope of the Privacy Act and not subject to disclosure, pursuant to the Privacy Act's definition of a "record" as "any item, collection, or grouping of information about an individual . . ." (At 5 U.S.C. § 552a(a)(4)). *Haddon v. Freeh*, 31 F. Supp.2d 16, 22 (D. D.C.1998); *Thielen*, at 3 n.*.

[6] We were also informed that Oak Ridge only maintains records retrievable by identifier on current and former employees of historical operations and not civilians at these sites. E-mail from Amy Rothrock, ORO FOIA Officer, to Richard Cronin, OHA Attorney-Examiner, (November 20, 2012) (Rothrock E-mail).

collection in the Record Holding Area containing Hanford Downwinder litigation files and Human Radiation Experiment (HREX) records. In its search, ORO searched both electronic and paper files, finding aids, and indices, classified and unclassified, using terms that might reveal responsive records, such as "Kadlec Hospital, sugar beet, school, etc." However, no responsive records were located.

Upon reviewing ORO's search for responsive documents, we find that it was sufficient under the FOIA. As described above, ORO searched the facilities most likely to contain responsive documents using identifying information and tools that were reasonably calculated to uncover responsive records. Consequently, we find that ORO, under the FOIA, performed an adequate search for documents responsive to the Appellant's Request.

C. Conclusion

We find that ROO and ORO performed adequate searches under the FOIA in response to the Appellant's Request. Additionally, we find that ROO properly used Exemption 6 to withhold the names of individuals contained in the X-Ray medical procedure list. Consequently, the Appellant's Appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed by the Appellant on November 1, 2012, OHA Case Number FIA-12-0071, 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 5 U.S.C. § 552(a)(4)(B) (FOIA) and 5 U.S.C. § 552a(g)(1) (Privacy Act). 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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