United States Department of Energy
Office of Hearings and Appeals

In the Matter of Tim Hadley	)	
	)	
Filing Date: April 28, 2014	)	Case No.: FIA-14-0025
	)	
	)	

Issued: May 16, 2014

Decision and Order

On April 28, 2014, Tim Hadley (Appellant) filed an Appeal from a determination issued by the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In that determination, OHA responded to a Request for Information (Request) that the Appellant 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 (Request No. HQ-2014-00653-F). OHA released several documents to the Appellant but withheld the names of private individuals and the names and E-mail addresses of former and current federal OHA employees from the documents pursuant to FOIA Exemptions 6 and 7(c). This Appeal, if granted, would require the DOE to release to the Appellant the names and E-mail addresses withheld under Exemption 6 and 7(c). [1]

I. Background

The Appellant requested "[i]nformation on ARRA [American Recovery and Reinvestment Act] Whistle Blower cases (nonfederal employees) that have been heard by the Office of Hearings and Appeals, including case number, case date, plaintiff and defendant(s), case outcome (verdict)." The Request was assigned by the DOE's Officer of Information Resources to OHA for processing.

In her March 26, 2014, determination letter (Determination Letter), the Chief of OHA's Personnel Security and Appeals Division (OHA Chief) identified several responsive documents consisting of printed database information listing American Recovery and Reinvestment Act (ARRA) whistleblower cases referred to OHA with various fields containing information regarding each case (database documents). *See* American Recovery and Reinvestment Act of 2009, Pub L. 111-5,

[1] This Appeal was decided by the DOE's Office of the Chief Information Officer, which was not involved with the determination regarding the Appellant's Request.

123 Stat. 115 (2009). However, the OHA Chief redacted fields that contained the names of the individuals filing the complaints, the names of former and present federal OHA attorney employees assigned to each case, the federal OHA attorneys' E-mail addresses, and the name of the current federal OHA employee who entered data into the database. March 26, 2014, Determination Letter at 2. The OHA Chief found that all of these individuals had significant privacy interests that would be compromised by release of their names and E-mail addresses. She then determined that, pursuant to Exemption 6, release of the names would not shed any light on the operations and activities of the government and that the significant privacy interest of the individuals greatly outweighed the limited, if any, public interest that might be furthered by release of the withheld information. Determination Letter at 2. Consequently, the OHA Chief withheld the redacted information pursuant to Exemption 6.[2]

In his April 28, 2014, Appeal, the Appellant argues that Exemption 6 only applies to "personnel or medical or similar files" and that the database documents do not relate to the employees named in them. April 25, 2014, E-mail from Tim Hadley to OHA at 1 (Appeal). [3] The Appellant asserts that the federal employees in question are funded by "tax-dollars" and are accountable to the public to ensure they are fulfilling their responsibilities. Appeal at 1. The Appellant thus argues that the names of the federal employees are relevant to the public "to ensure that the employees are following federal, state and professional associations' standards of conduct and adhering to same agency's policies and procedures." Appeal at 1.

II. Analysis

A. Application of 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 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 "[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

[2] Because we find that the OHA Chief properly withheld the redacted information pursuant to Exemption 6, we will not consider the propriety of the OHA Chief's application of Exemption 7(c) to the redacted material.

[3] The Appellant's Appeal, received on Friday, April 25, 2014, was not docketed by OHA until the following Monday, April 28, 2014.

information." *Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982) (*Washington Post*). In the present case, the Appellant argues that the database documents are not the type of files that may be protected under Exemption 6. However, the U.S Supreme Court and other federal courts have given the phrase "personnel and medical files and similar files" a broad meaning when a requested document refers specifically to an individual. *See e.g. Washington Post*, 456 U.S. at 602; *Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1024 (9th Cir. 2008) (stating that the threshold test of Exemption 6 is satisfied when government records contain information applying to particular individuals). Because the database documents specifically list individual names and E-mail addresses, we find that the database documents meet the Exemption 6 threshold test of being "personnel and medical files and similar files."

In determining whether a record may be withheld under Exemption 6, an agency must perform a three-step analysis. First, the agency must determine if a significant privacy interest would be compromised by the disclosure of the record. If the agency cannot find a significant privacy interest, 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) (*NARFE*); *see also Ripskis v. Dep't of Hous. & Urban Dev.*, 746 F.2d 1, 3 (D.C. Cir. 1984). Second, if an agency determines that a privacy interest exists, the agency must then determine whether the release of the information at issue 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*). 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. *See generally, NARFE,* 879 F.2d 873 at 874.

The initial step in analyzing whether Exemption 6 has been properly applied to withhold information is, as stated above, determining whether or not a significant privacy interest would be compromised by the disclosure of the names of the individuals who filed the whistleblower complaints, the names of the federal OHA attorney employees who worked on these cases, or the federal OHA employee who prepared the database documents.[4] OHA has consistently held that there is a significant privacy interest connected to a non-federal employee's name. *See, e.g.*, *Dorothy Pritchard*, Case No. TFA-0112 (2005). Consequently, we agree with the OHA Chief's assessment that there is a significant privacy interest with regard to the names of the individuals who filed whistleblower complaints under the ARRA and to the names of the former federal OHA attorney employees, along with their E-mail addresses.

With regard to information identifying the names of current federal OHA attorney employees and a federal OHA employee who prepared the documents at issue, we find that there is also a significant privacy interest. Generally, civilian federal employees who are not involved in law enforcement generally have no expectation of privacy regarding their names, titles, grades, salaries, and duty stations as employees. *See* Office of Personnel Management Regulation, 5 C.F.R. § 293.311 (2009) (specifying that certain information contained in federal employee personnel files is available to public). However, federal employees involved in law enforcement do possess, by virtue of the nature of their work, protectable privacy interests in their identities.

[4] The withheld E-mail addresses contain the names of the former and current federal OHA employees.

Wood v. FBI, 432 F.3d 78, 87-89 (2d Cir. 2005) (protecting investigative personnel of FBI's Office of Professional Responsibility); *Judicial Watch, Inc. v. United States*, 84 F. App'x 335, 338-39 (4th Cir. 2004) (protecting names of lower-level clerical workers at IRS).

In the present case, the current federal employees identified in the database documents were processing ARRA whistleblower cases referred to OHA by the DOE Office of Inspector General (OIG). We have consistently held that OIG is a law enforcement agency. *See, e.g., Steven Wallace*, Case No. VFA-0735 (2002). As such, the current federal OHA attorney employees, as well as the federal OHA employee who prepared the database documents, were involved with an OIG law enforcement function relating to the ARRA. We therefore find that the federal employees listed in the database documents have a significant privacy interest regarding release of their identities in that such a release could subject them to unwanted contact and harassment. *Cal-Trim Inc. v. IRS*, 484 F. Supp. 2d 1021, 1027 (D. Ariz. 2007) (protecting names of lower-level IRS employees in internal IRS correspondence so as not to expose them to unreasonable annoyance or harassment).

Because we find that a protectable privacy interest exists, we must now consider if release of the withheld information would further the public interest by shedding light on the operations and activities of the government. Release of the names of the non-governmental individuals who filed ARRA whistleblower complaints sheds no light with regard to the operations and activities of government. Further, as a general matter, the courts have not found that release of individual federal employee names, when presumptively withholdable, provides any light to the workings of a federal agency. *See Voinche v. FBI*, 940 F.Supp. 323, 330 (D.D.C.1996) ("There is no reason to believe that the public will obtain a better understanding of the workings of various agencies by learning the identities of [various federal employees]. . . ."). In reviewing the database documents, we find that no additional information regarding OHA operations would be disclosed by release of the withheld information. While the Appellant argues that the public interest would be furthered by the release of these names by ensuring that federal employees are "following federal, state and professional associations standards of conduct and adhering to same agency's policies and procedures," such a speculative public interest in detecting potential wrongdoing is insufficient to satisfy the public interest standard required under the FOIA. *See National Archives and Records Administration v. Favish*, 541 U.S. 157 at 173 (2004); *U.S. Dep't of State v. Ray*, 502 U.S. 164, 179 (1991) ("[i]f a totally unsupported suggestion that the interest in finding out whether government agents have been telling the truth justified disclosure of private materials, government agencies would have no defenses against requests for production of private information.") Consequently, we find that there is no public interest that would be furthered by release of the names and E-mails withheld in the database documents.

In applying the Exemption 6 balancing test, we have found that there is a significant privacy interest in the names of the individuals who filed complaints under the ARRA, the former and current federal OHA attorneys who processed these complaints, and the current federal OHA employee who prepared the database documents. Additionally, we find that there is no public interest that is furthered by release of the withheld information. In balancing these factors pursuant to Exemption 6, we find that release of the withheld information would constitute a clearly unwarranted invasion of personal privacy. Consequently, Exemption 6 was properly invoked to withhold the redacted information in the database documents.

B. Release Pursuant to the Public Interest

The DOE regulations provide that the DOE should release to the public material exempt from mandatory disclosure under the FOIA if the DOE determines that federal law permits disclosure and it is in the public interest. 10 C.F.R. § 1004.1. The Attorney General has indicated that whether or not there is a legally correct application of a FOIA exemption, it is the policy of the Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency articulates a reasonably foreseeable harm to an interest protected by that exemption. Memorandum from the Attorney General to Heads of Executive Departments and Agencies, Subject: The Freedom of Information Act (FOIA) (March 19, 2009) at 2. As discussed above, we find that release of the redacted information would not further the public interest. Therefore, section 1004.1 does not require the release of the withheld information.

III. Conclusion

We find that the OHA Chief properly applied Exemption 6 to the information withheld in the database documents. We also find that release the withheld information is not required pursuant to 10 C.F.R. § 1004.1. Consequently, the Appeal will be denied.

It Is Therefore Ordered That:

(1) The Appeal filed on April 28, 2014, by Tim Hadley, OHA Case No. FIA-14-0025, is 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). 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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Robert F. Brese
Chief Information Officer
Office of the Chief Information Officer

Date: May 16, 2014