

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Gail M. Sullivan)
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Filing Date: June 28, 2013) Case No.: FIA-13-0046
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Issued: July 10, 2013

Decision and Order

On June 28, 2013, the Department of Energy (DOE) Office of Hearings and Appeals (OHA) received an Appeal of a determination issued to Gail M. Sullivan (Appellant) by the Office of Legacy Management (LM) on June 13, 2013 (Request No. HQ-2013-00054-C). In that determination, LM released documents responsive to a request that the Appellant filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. The Appellant challenges LM's determination to redact information on nine of the 313 pages of released documents pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). Thus, this Appeal, if granted, would require LM to release the information that it withheld pursuant to Exemption 6.

I. Background

On September 12, 2012, the Appellant submitted a FOIA Request to the Department of Health and Human Services (HHS), seeking a complete copy of her late husband's file that was developed by the National Institute for Occupational Safety and Health (NIOSH).^{*} FOIA Request of Gail M. Sullivan to David S. Sundin, Deputy Director, NIOSH Office of Compensation Analysis and Support (Sept. 12, 2012). LM issued its determination on June 12, 2013, stating that portions of the 313 pages of responsive documents it released are exempt from disclosure pursuant to Exemption 6 for containing names and information that would likely disclose the identities of certain individuals. Determination Letter from John V. Montgomery, FOIA Officer, LM to Franklin Gerlach, Attorney for Appellant (June 12, 2013). It withheld information on nine pages of the documents for containing information about third parties. *See* Email from Tamara Wilson, LM, to Shiwali Patel, OHA (July 2, 2013).

^{*} While the original FOIA Request was submitted to HHS, HHS located 313 pages of documents that originated at DOE and were subsequently forwarded to LM for processing. *See* Email from Tamara Wilson, LM, to Shiwali Patel, OHA (July 2, 2013). LM's determination as to the releasability of the information on those 313 pages of documents is at issue in the instant Appeal.

On June 28, 2013, the Appellant filed an Appeal of LM's determination, stating that as she is the widow of the employee whose records she is seeking, Richard P. Sullivan, the privacy concerns raised by LM should be waived.

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 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 term “similar files” was intended by Congress to be interpreted broadly, to include all information that “applies to a particular individual.” *Dep't of State v. Washington Post Co.*, 456 U.S. 595, 595 (1982).

Exemption 6 purports to “protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information.” In order to determine whether a record may be withheld under Exemption 6, an agency must undertake a three-step analysis. *Id.* at 599-603. First, the agency must determine whether or not a significant privacy interest would be compromised by the disclosure of the record. If no privacy interest is identified, the record may not be withheld pursuant to this exemption. *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 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). 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 Ripskis*, 746 F.2d at 3.

Here, LM redacted information contained on nine pages of documents, which may implicate significant privacy interests if released. On pages 4 and 33, LM redacted the names and badge numbers of three individuals on documents entitled, “Radiation Exposure Investigation.” The redacted names and badge numbers are listed in a chart, entitled “Coworker Dosimetry Results.” Thus, that information contains private information regarding medical or “similar files,” as it reveals the names and badge numbers of individuals who were tested for radiation exposure. On pages 107, 112 and 121, which are “Health Examination” forms, LM redacted notes in the “Family History” box that identify the age, birthdates and health conditions of living individuals. Memorandum of Telephone Conversation with Tamara Wilson and Jessica Lambert, LM (July 2,

2013). As these redactions contain medical information of third parties, a significant privacy interest could be compromised by their release. Finally, on pages 198, 199, 203 and 252, LM redacted employees' badge numbers, informing OHA that the badge numbers are private because LM's records are retrievable by badge numbers. *Id.* Accordingly, access to the badge numbers may provide access to personnel, medical or similar files located in LM's systems of records. Moreover, pages 198, 199, 203 and 252 pertain to employees' schedules and projects, which also raise significant privacy interests. *See Painting and Drywall Work Preservation Fund, Inc. v. Department of Housing and Urban Development*, 936 F.2d 1300, 1302-03 (D.C. 1991) (holding that federal workers have a substantial privacy interests in their names and hours worked). For those reasons, we conclude that the redactions on pages 198, 199, 203 and 252 contain private information.

Moreover, there is no public interest in the redacted names of employees as they hardly shed light on the government's activities. *See Long v. Office of Personnel Mgmt.*, 692 F.3d 185, 193 (2d Cir. 2012); *see also Schwarz v. Dep't of Treasury*, 131 F.Supp.2d 142, 150 (D.D.C. 2000) ("Disclosures of these names could subject the individuals to unwanted harassment but would not contribute to the public understanding of government functions."); *Voinche v. F.B.I.*, 940 F.Supp. 323, 330 (D.D.C. 1996) (stating that the release of names and identifying features of federal employees would serve no articulable public interest). Furthermore, the Appellant has not described, and we cannot find, any public interest in knowing the ages and health conditions of living individuals, or badge numbers of various DOE employees.

Hence, in balancing the significant privacy interest against the minimal public interest, we conclude that release of the withheld information would constitute a clearly unwarranted intrusion of privacy. Accordingly, this Appeal will be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Gail M. Sullivan, Case No. FIA-13-0046, 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.

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