

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

In the Matter of Robert Kamansky)
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Filing Date: April 13, 2016) Case No.: FIA-16-0027
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Issued: May 4, 2016

Decision and Order

On April 13, 2016, Robert Kamansky (Appellant) appealed a determination received from the Department of Energy (DOE) Office of Information Resources (OIR) (Request No. HQ-2016-00097-C). In that determination, OIR 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. OIR released one responsive document, withholding portions pursuant to Exemption 6 of the FOIA. The Appellant challenges these withholdings, and if granted, this Appeal would require OIR to release the withheld material.

I. Background

The Appellant originally submitted a FOIA request to the Federal Bureau of Investigation (FBI), seeking “full investigation records and background materials on White House, US State Department and NSC Member Mr. Helmut Sonnenfeldt.” Determination Letter from Alexander C. Morris, FOIA Officer, OIR, to Robert Kamansky (March 17, 2016). In its search, the FBI located one document that originated at DOE: Sonnenfeldt’s 1957 Personnel Security Questionnaire.¹ *Id.* OIR forwarded the responsive document to DOE’s Office of Environment, Health, Safety, and Security (AU) for review and response. *Id.* On March 17, 2016, OIR released this document with redactions pursuant to Exemption 6. On March 22, 2016, the Appellant appealed the determination letter. FOIA DOE Appeal Email to Director, Office of Hearings and Appeals (OHA) (March 22, 2016).

¹ As part of its response to this FOIA, the FBI released, without many redactions, a similar document, Sonnenfeldt’s 1969 Security Investigation Data for Sensitive Position. This previous release of similar information, however, is not determinative. *See Frugone v. CIA*, 169 F.3d 772, 774 (D.C. Cir. 1999) (“We do not deem ‘official’ a disclosure made by someone other than the agency from which the information is being sought.”).

After an initial review, OHA dismissed the Appeal as moot because OIR agreed to review the withholdings and issue a new determination letter. Dismissal Letter from Poli A. Marmolejos to Robert Kamansky (March 28, 2016). On April 12, 2016, OIR issued a new determination releasing the same responsive document with fewer redactions again citing Exemption 6. Determination Letter from Alexander C. Morris, FOIA Officer, OIR to Robert Kamansky (April 12, 2016). On April 13, 2016, the Appellant appealed this new determination letter. FOIA DOE Appeal Email to Director, OHA (April 12, 2016).

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 “personnel 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); *see also* 10 C.F.R. § 1004.10(b)(6). The purpose of Exemption 6 is to “protect individuals from the 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. If the agency cannot find a significant privacy interest, the information may not be withheld. *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); *Associated Press v. Dep't of Defense*, 554 F.3d 274, 284 (2d Cir. 2009). 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. *See NARFE*, 879 F.2d at 874; *Reporters Comm. for Freedom of the Press v. Dep't of Justice*, 489 U.S. 749, 773 (1989). Lastly, the agency must balance the personal privacy interest in the information proposed for withholding against the public interest in the same information. *See NARFE*, 879 F.2d at 874; *Reporters Comm.*, 489 U.S. at 762.

In its April 12, 2016, determination letter, OIR released some additional information but continued to withhold certain information under Exemption 6, i.e., “Mr. Sonnenfeldt's file number, naturalization certification information, social security number, military service numbers, travel information that is not publicly available, employment information, and residence address information, in addition to residential address information for multiple individuals.” Determination Letter at 2. The Appellant challenges these withholdings specifically highlighting the release of

some, but not all, of Sonnenfeldt's travel information. FOIA DOE Appeal Email to Director, OHA (April 12, 2016).

In deciding whether OIR appropriately withheld this information, we must first determine whether the release of the information would compromise any significant privacy interest. We note that Helmut Sonnenfeldt is deceased, and therefore has a diminished privacy interest. *See Davis v. DOJ*, 460 F.3d 92, 97-98 (D.C. Cir. 2006); *Schoenman v. FBI*, 763 F. Supp. 2d 173, 199 (D.D.C. 2011). In *Shrecker v. DOJ*, the court stated, "[t]he fact of death...while not requiring the release of information, is a relevant factor to be taken into account in the balancing decision whether to release information." 349 F.3d 657, 661 (D.C. Cir. 2003). Recognizing Sonnenfeldt's diminished privacy interest, we find that given the sensitive nature of the document in question and his personal information withheld, Sonnenfeldt retains a significant privacy interest in the information included in the form. Along with this, we find that the other individuals, whose information was included on the form by Sonnenfeldt, also have a privacy interest in the disclosure of their information. Because we agree with OIR that the public interest in the withheld information does not outweigh the privacy interests at stake, we find that OIR properly withheld the redacted information.

III. Conclusion

As explained above, we find that OIR properly withheld the redacted information pursuant to Exemption 6. Accordingly, the Appeal is denied.

It Is Therefore Ordered That:

- (1) The Appeal filed on April 13, 2016, by Robert Kamansky, Case No. FIA-16-0027, 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.
- (3) 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 your right to pursue litigation. You may contact OGIS in any of the following ways:

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Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: May 4, 2016