

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

In the Matter of International Union of Operating Engineers, Local 370)	
)	
Filing Date: June 13, 2016)	Case No.: FIA-16-0036
_____)	

Issued: July 7, 2016

Decision and Order

On June 13, 2016, the International Union of Operating Engineers, Local 370 (Appellant) filed an Appeal from a determination issued to it on May 9, 2016, by the Richland Operations Office (ROO) of the Department of Energy (DOE) (Request No. FOI 2016-00829). In its determination, the ROO responded to the Appellant’s request for information 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. In response to the Appellant’s request, the ROO released one document, but withheld portions of that document under Exemption 6 of the FOIA. The Appellant challenges the ROO’s redactions. This Appeal, if granted, would require the ROO to release the material that it withheld pursuant to Exemption 6.

I. Background

The Appellant filed a FOIA request with the ROO for the “[n]ames of any and all employees of Sunbelt Rentals that were issued badges to gain access to the Hanford Site from January 1, 2012 to the present.”¹ Request from Appellant to Cindy Oliver, ROO (April 19, 2016). The ROO issued a determination in which it released one responsive document, a spreadsheet with a list of individuals and corresponding badge information. Letter from Dorothy Riehle, FOIA Officer, ROO, to Appellant (May 9, 2016) at 1. However, citing Exemption 6 of the FOIA, the ROO redacted the names of the individuals and their badge identification numbers. *Id.* The ROO explained that it redacted the information under Exemption 6 because “the public interest in the identity and personal information of the third-party individuals whose information appear[s] in the documents does not outweigh the individuals’ privacy interests.” *Id.*

¹ The ROO manages DOE activities at the Hanford Site in southeastern Washington State and is responsible for overseeing the work of companies performing an environmental cleanup of the site.

In its Appeal, the Appellant challenges the ROO's redactions, arguing that it needs the names and badge numbers of the individuals to determine whether the Davis-Bacon Act applies with respect to the work that Sunbelt performs at the Hanford Site. Appeal from Appellant to OHA (June 13, 2016). The Appellant asserts that the withheld information is necessary for a "compliance check" and that releasing it is therefore in the public interest. *Id.*

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 agencies may withhold in their discretion. 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 construe these exemptions narrowly to maintain the FOIA's goal of broad disclosure. *See Dep't of the Interior v. Klamath Water Users Prot. Ass'n*, 532 U.S. 1, 8 (2001). The agency has the burden of showing that a FOIA exemption is applicable. *See* 5 U.S.C. § 552(a)(4)(B).

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). 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). Further, the term "similar files" has been interpreted broadly by the Supreme Court to include all information that "applies to a particular individual." *Id.* at 602.

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. *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). If the agency cannot find a significant privacy interest, the information may not be withheld. *Id.* 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 or activities of the government. *Id.*; *Reporters Comm. for Freedom of the Press v. Dep't of Justice*, 489 U.S. 749, 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. *NARFE*, 879 F.2d at 874.

A. Privacy Interest

We first consider whether disclosure of the redacted information would compromise a significant privacy interest. We find that it would. We have stated that "there is a substantial privacy interest in the identity of contractor employees." *Marilyn K. Lingle*, TFA-0242 (2008). One reason is that the disclosure of the names of contractor employee could subject those individuals to unsolicited contact. *See Sheet Metal Workers Int'l Ass'n, Local Union No. 19 v. Dep't of Veterans Affairs*, 135

F.3d 891, 903 (3d Cir. 1998) (contractor employees have a privacy interest in “avoiding a barrage of unsolicited contact”).

Moreover, the release of the withheld names would constitute a disclosure of specific information about those individuals. Sunbelt is a subcontractor that provides and services rental equipment at the Hanford Site. Email from Dorothy Riehle, ROO, to Gregory Krauss, OHA (June 22, 2016). Disclosure of the names would reveal that the individuals have been employed by Sunbelt and, based on public knowledge about Sunbelt, could also indicate the type of work in which those individuals have been engaged. *See Sheet Metal Workers Int’l Ass’n, Local No. 9 vs. U.S. Air Force*, 63 F.3d 994, 998 (10th Cir. 1995) (finding that release of forms identifying the area of the construction trade in which individuals work would “implicate a substantial privacy interest”). Further, due to the information on the spreadsheet that the ROO did not redact, disclosure of the names of the individuals would indicate time periods during which each individual held a badge. *See* Email from Dorothy Riehle, ROO, to Gregory Krauss, OHA (June 27, 2016). As the Supreme Court has stated, “[d]isclosure of records regarding private citizens, identifiable by name, is not what the framers of the FOIA had in mind.” *Reporters Committee*, 489 U.S. at 765.

With respect to the badge identification numbers, we find that a significant privacy interest would be implicated by their disclosure as well. Because those numbers apply to particular individuals, there is at least some possibility that the numbers could be used to identify the individuals. *See, e.g., International Bhd. of Elec. Workers Local Union No. 5 v. United States Dep’t of Hous. and Urban Dev.*, 852 F.2d 87, 89 (3d Cir. 1988) (finding that contractor employees have a strong privacy interest in their Social Security numbers); *Sheet Metal Workers Int’l Ass’n, Local No. 9*, 63 F.3d at 998 (stating that contractor employees have a substantial privacy interest where “personal identifiers” link them to personal financial information); *International Union of Painters and Allied Trades, District Council #15*, TFA-0347 (2010) (International Union) (finding that subcontractor employee names and identification numbers were properly redacted under Exemption 6).²

B. Public Interest

The Appellant contends that release of the names and badge numbers is in the public interest because it is necessary to assess compliance with the Davis-Bacon Act, 40 U.S.C. § 3141 *et seq.*, a law that requires that construction workers on federally funded projects be paid at prevailing wage rates.³ In response to the Appeal, the ROO asserts that names and badge numbers are insufficient to determine compliance with the Davis-Bacon Act. Memorandum from Dorothy Riehle, ROO, to Gregory Krauss, OHA (June 21, 2016) at 3.

We note that unions have often sought to monitor compliance with the Davis-Bacon Act by filing FOIA requests for payroll records, not badge information. *See, e.g., Sheet Metal Workers Int’l*

² OHA FOIA decisions may be accessed at <http://energy.gov/oha/foia-cases>.

³ The Davis-Bacon Act applies to contractors and subcontractors working on federally funded contracts over \$2000 for the construction, alteration, and repair of public buildings or public works. *See* 40 U.S.C. § 3142(a); *International Union*.

Ass'n, Local No. 9, 63 F.3d at 995; *Painting and Drywall Work Preservation*, 936 F.2d 1300, 1301 (D.C. Cir. 1991). In any event, even if the withheld information were useful to assessing compliance, its release would not further any public interest recognized by the FOIA. The relevant issue for assessing the public interest for FOIA purposes is whether disclosure of the information would shed light on the operations or activities of the government. Courts have found that there is little or no public interest in the release of information that would help unions monitor contractor compliance with the Davis-Bacon Act because such information usually does not provide insight into the operations or activities of the government. *See Sheet Metal Workers Int'l Ass'n, Local Union No. 19*, 135 F.3d at 903 (release of names, addresses and other information for purpose of assessing Davis-Bacon compliance “reveals little, if anything about the operations of the Department of Veterans Affairs”); *Painting and Drywall Work Preservation Fund*, 936 F.2d at 1303 (information that might help assess contractor compliance with laws including Davis-Bacon Act “does not in itself cast light on” the operations of the Department of Housing and Urban Development). Here, the disclosure of the names and badge identification numbers of the individuals would not shed light on the activities or operations of DOE or the government. Consequently, we find that there is little or no public interest in the disclosure of that information.

C. Balancing Test

We have determined that disclosure of the redacted names and badge identification numbers would compromise a significant privacy interest and would not appreciably further any public interest. Given that the privacy interests in this matter substantially outweigh the public interest, we conclude that release of the redacted information would constitute a clearly unwarranted invasion of personal privacy. Accordingly, we find that the ROO properly redacted the information under Exemption 6 and that the Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed on June 13, 2016, by the International Union of Operating Engineers, Local 370, Case No. FIA-16-0036, 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.

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. FOIA requesters may contact OGIS in any of the following ways:

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Telephone: 202-741-5770
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