

Subsequently, on November 7, 2012,² the Appellant sought review of IN's decision to withhold information on the document pursuant to Exemptions 1, 3 and 6. On December 3, 2012, OHA wrote a letter to the Appellant informing it that as some of the withheld information was classified, it would be reviewed by the Office of Health, Safety and Security. After confirming with IN that certain information was redacted solely pursuant to Exemption 6, on January 16, 2013, OHA informed the Appellant that it will review the withholding of that information, which is the subject of the instant Decision and Order.³

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 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 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 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 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). 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.

Courts have recognized a privacy interest in protecting the identities of employees in both sensitive agencies and sensitive occupations, as those employees “face an increased risk of

² In regards to the 30-day deadline for filing an appeal of IN's determination, the Appellant attached a copy of a mailed envelope indicating that IN did not mail its Determination Letter until October 1, 2012. The Appellant did not receive the Determination Letter until October 19, 2012. Accordingly, we deem the Appeal timely filed.

³ On January 25, 2013, IN informed us that it was releasing the information on the top right of the first page of the Daily Intelligence Highlights that it initially redacted pursuant to Exemption 6. Accordingly, we deem the Appeal as to that issue moot. In this Decision, we will proceed with a review of the (b)(6) redactions on the top left of the first page and the last page.

harassment or attack.” *See Long v. Office of Personnel Mgmt.*, 692 F.3d 185, 192 (2d Cir. 2012); *see also Judicial Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 152 (D.C. Cir. 2006) (“We have also read the statute to exempt not just files, but also bits of personal information, such as names and addresses, the release of which would ‘create[] a palpable threat to privacy.”); *Wood v. FBI*, 432 F.3d 78, 88 (2d Cir. 2005) (“whether the disclosure of names of government employees threatens a significant privacy interest depends on the consequences likely to ensue from disclosure.”). In *Long*, the Second Circuit cited the Office of Personnel Management’s (OPM) list of “sensitive” occupation categories across federal agencies, which included “intelligence” and “intelligence clerk/aide.” *Long*, 692 F.3d at 189, n. 4. The Court explained that “[i]t is not uncommon for courts to recognize a privacy interest in a federal employee’s work status (as opposed to some more intimate detail) if the occupation alone could subject the employee to harassment or attack.” *Id.* at 192. In order to reveal private information, such as the name of an individual involved in intelligence, it must be demonstrated that disclosure of the individual’s identity sheds light on government activity. *Id.* at 193. However, the Court stated that “[i]n many contexts, . . . disclosure of individual employee names tells nothing about ‘what the government is up to.’” *Id.*; *see also Judicial Watch, Inc.*, 449 F.3d at 153 (concluding that the FDA properly withheld the names of agency personnel who worked on the approval of a drug, stating that their names would not shed light on the nature of existence of the risks associated with that drug, and that disclosure of their names could lead to injury or harassment). The Court concluded that “Exemption 6 permits OPM to withhold the names of employees working in the sensitive agencies and sensitive occupations.” *Long*, 692 F.3d at 195.

Here, too, we find that there is a privacy interest in withholding the Exemption 6 redacted information in the Daily Intelligence Highlights, specifically, the portions on the first page, top left corner, and on the last page of the document. In response to our inquiries, IN described what was contained in the withheld portions of the document. IN informed us that the redacted information contains names of individuals who were involved with the production of the document, which is a classified document. Memorandum of Telephone Conversation between Shiwali Patel, Attorney-Examiner, OHA, and Yvonne Burch, Supervisory Management Analyst, IN (Jan. 22, 2013). IN stated that the name on the top left of the first page of the document, next to the title “Derivative Classifier,” cannot be disclosed because that individual was involved in the production of the Daily Intelligence Highlights and the classification review that is the subject of the document. *Id.* Similarly, the five names that are withheld on the last page of the document are of individuals who were also involved in the production of the document. *Id.* IN stated that disclosure of those names could result in harassment of those individuals because the Daily Intelligence Highlights pertains to a classified project and concerns intelligence activities in Iraq. *Id.* As the document contains intelligence activities and classified information, it is of a sensitive nature to warrant protection of the names of the individuals involved in its production. *See Long*, 692 F.3d at 195. Furthermore, there is no public interest in revealing those names, as the names themselves do not shed light on the government’s activities. *See id.* at 193. Thus, IN properly withheld the names located on the top left of the first page and last page of the Daily Intelligence Highlights pursuant to Exemption 6.

III. Conclusion

It Is Therefore Ordered That:

- (1) The Appeal filed by the National Security Archive, Case No. FIA-13-0003, 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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