

September 24, 2004
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Appellant: Richard Hammond

Date of Filing: August 30, 2004

Case Number: TFA-0069

On August 30, 2004, Richard Hammond (the Appellant) filed an Appeal from a final determination issued by the Department of Energy's (DOE) Western Area Power Administration (WAPA). In that determination, WAPA responded to a Request for Information the Appellant filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b), as implemented by the DOE in 10 C.F.R. Part 1004. WAPA released portions of several responsive documents, but continued to withhold other portions of those documents under FOIA Exemption 6. This Appeal, if granted, would require WAPA to release those portions of the documents to the Appellant.

I. BACKGROUND

On April 15, 2004, the Appellant filed a request for information with WAPA seeking: "All EEO settlement agreements between complainants and the Western Area Power Administration . . . made between January 1999 and March 2004." Determination Letter at 1. On July 15, 2004, WAPA issued a determination letter (the Determination Letter) releasing a number of responsive documents to the Appellant. However, WAPA withheld portions of these documents under FOIA Exemption 6. On August 30, 2004 the Appellant submitted the present Appeal.

II. ANALYSIS

The FOIA generally requires that records held by federal agencies be released to the public upon request. 5 U.S.C. § 552(a)(3). However, the FOIA lists nine exemptions that set forth the types of information that an agency may withhold. 5 U.S.C. § 552(b)(1)-(9); 10 C.F.R. § 1004.10(b)(1)-(9). These nine exemptions must be narrowly construed. *Church of Scientology of California v. Department of the Army*, 611 F.2d 738, 742 (9th Cir. 1980) (citing *Bristol-Meyers Co. v. FTC*, 424 F.2d. 935 (D.C. Cir.), *cert. denied*, 400 U.S. 824 (1970)). "An agency seeking to withhold information under an exemption to FOIA has the burden of proving that the information falls under the claimed exemption." *Lewis v. IRS*, 823 F.2d 375, 378 (9th Cir. 1987). It is well settled that the agency's burden of justification is substantial. *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 861 (D.C. Cir. 1980) (*Coastal States*). Only Exemption 6 is at issue in the present case.

Turning to the present case, WAPA, invoking FOIA Exemption 6, redacted information from the copies of the settlement agreements it released to the Appellant claiming that release of the redacted

information constitutes a clearly unwarranted invasion of personal privacy. The Determination Letter does not provide a description of the information withheld by WAPA, however. Instead, WAPA states:

Information pertaining to the specific group of individuals who have filed employment related complaints involves a great amount of their privacy interest. The association of a person's name, working location, and other personal data intensifies the individual's right to privacy. Additionally, other information associated with the employment background of an individual, by its release or other use, would certainly result in embarrassment to the individual.

Determination Letter at 1. This description of the withheld information is too vague and conclusory to allow for a meaningful analysis of WAPA's withholding. After conducting a search for responsive documents under the FOIA, the agency must provide the requester with a written determination notifying the requester of the results of that search and, if applicable, of the agency's intentions to withhold any of the responsive information under one or more of the nine statutory exemptions to the FOIA. 5 U.S.C. § 552(a)(6)(A)(i). The agency must also provide the requester with an opportunity to appeal any adverse determination. *Id.*

The written determination letter serves to inform the requester of the results of the agency's search for responsive documents and of any withholdings that the agency intends to make. In doing so, the determination letter allows the requester to decide whether the agency's response to its request was adequate and proper and provides this office with a record upon which to base its consideration of an administrative appeal.

It therefore follows that the agency has an obligation to ensure that its determination letters (1) adequately describe the results of searches; (2) clearly indicate which information was withheld, and (3) specify the exemption(s) under which information was withheld. *Research Information Services, Inc.*, 26 DOE ¶ 80,139 (1996); *Burlin McKinney*, 25 DOE ¶ 80,205 at 80,767 (1996). Without an adequately informative determination letter, the requester and the review authority must speculate about the appropriateness of the agency's determinations. *Id.*

In the present case, we have addressed this issue by obtaining un-redacted copies of the settlement agreements. As a result of our *in camera* review of these documents, we have found that the withheld information can be adequately described as falling into five categories. We will discuss each category of information withheld by WAPA below.

Before analyzing WAPA's withholdings of the five categories of information, it is necessary to set forth the test which must be used to determine whether information must be withheld under Exemption 6. 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." *Department 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. Department of Hous. and Urban Dev.*, 746 F.2d 1, 3 (D.C. Cir. 1984) (*Ripskis*). 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. Department of Justice*, 489 U.S. 769, 773 (1989) (*Reporters Committee*). 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. We will apply these principles to each category of documents below.

A. Category 1: Information that, if released, would reveal the identities of persons who had filed EEO complaints.

The first category consists of that information that, if released, would reveal the identities of persons who had filed EEO complaints. This category includes the names of the complainants, their job descriptions, pronouns revealing the gender of the complainants, and information indicating the office or duty station at which the complainant was employed. It is clear that releasing information showing that an Individual has filed an EEO Complaint and linking a particular complainant's identity to the information contained in the settlement agreements would constitute a serious intrusion into the complainant's personal privacy. On the other hand, it is clear that release of the individual's identities would reveal very little, if anything about the operations or activities of the Government. Accordingly, we find that release of information revealing the identities of those individual who had settled their EEO complaints would not further the public interest. Weighing the substantial intrusions into personal privacy that would result from its release against the minimal public interest in its disclosure, we find that release of information revealing these individuals' identities would constitute a clearly unwarranted invasion of personal privacy. Accordingly, WAPA was correct to withhold Category 1 information under Exemption 6.

B. Category 2: Information that, if released, would reveal the identities of DOE management team members.

The second category consists of information that, if released, would reveal the identities of DOE management team members. This category includes the names of DOE management team members as well as their job title. Specifically, WAPA often, but not always, withheld the names and titles of the DOE officials who signed the settlement agreements. Civilian employees of the Federal Government have no expectation of privacy in matters pertaining to their official duties, unless the release of this information could reasonably be expected to raise security or safety concerns. The redacted information in this category simply identifies those public officials who signed these settlement agreements on behalf of the government. These public employees have no personal privacy interests in their titles or in actions taken in their official capacities. Since we find that there are not any privacy interests in the redacted information falling into Category 2, we need not proceed further in

our analysis. Category 2 information may not be withheld under Exemption 6. Accordingly, we are remanding this portion of the Appeal to WAPA. On remand, WAPA must either release the Category 2 information or issue a new determination letter justifying its withholding under another FOIA exemption.

C. Category 3: Information setting forth the terms of the settlement agreements.

The third category consists of information setting forth the terms and substance of the settlement agreements. This category includes information indicating new terms or conditions of employment agreed to by the complainant and DOE offices, and the amount of money received by the complainants in settlement of their complaints. WAPA withheld a considerable amount of information in this category.

Since all the information allowing a third party to ascertain the identity of the individual who filed a particular EEO action is being withheld, the information in this category cannot be attributed to a particular person. Because this information cannot be attributed to particular individuals, its release would not cause any intrusion into personal privacy interests. Accordingly, we need not proceed further in our analysis. Category 3 information may not be withheld under Exemption 6. On remand, WAPA must either release the Category 3 information or issue a new determination letter justifying its withholding under another FOIA exemption.

D. Category 4: Dates redacted from the settlement agreements.

The fourth category consists of various dates that were redacted from the settlement agreements. These dates include the effective dates of retirements agreed to by several complainants, the dates that parties to the document signed the document, the dates that retirement annuity benefits would become available to complainants, and the effective dates of settlement agreements.

The dates themselves are not the type of sensitive information that Exemption 6 is intended to protect. However, in some cases, release of the dates might allow third parties to ascertain the identity of the complainants that are the subject of the Settlement Agreements. In such cases, the dates may be withheld under Exemption 6 for the same reasons we set forth in our discussion of that information contained in Category 1. Protection under Exemption 6 is not available, however, for those dates which, if released, could not reasonably be expected to reveal the identities of the complainants. Accordingly, we are remanding this portion of the Appeal to WAPA. On remand, WAPA must review all Category 4 information to determine whether its release could reasonably be expected to reveal the identity of complainants. If WAPA determines that any Category 4 information could reasonably be expected to reveal the identity of a complainant, it should issue a new determination letter withholding that information and explaining why it concluded that its release could reasonably be expected to reveal the identity of complainants. Any information in Category 4 that WAPA determines could not reasonably be expected to reveal the identity of a complainant upon release must either be released or become the subject of a new determination letter withholding it under a FOIA exemption other than Exemption 6.

E. Category 5: Information revealing the identity of third parties.

The fifth category consists of information that, if released, would identify individuals whose names are mentioned in the settlement agreements, but who are not parties or signatories of the agreement. Such information needs to be considered on a case by case basis. Accordingly, we are remanding this part of the Appeal to WAPA for further consideration. On remand, WAPA must analyze each third-party identity it has protected under Exemption 6 under the standards set forth above. It then must either release the Category 5 information or issue a new determination letter clearly identifying the information it is continuing to withhold and providing a detailed justification for its continued withholding under Exemption 6 or any other FOIA Exemption.

III. CONCLUSION

Because WAPA has not met its burden of showing that it properly withheld information under Exemption 6, we are remanding this matter to WAPA. On remand, WAPA must promptly release the information described in Categories Two through Five or issue a new determination letter, in accordance with the instructions set forth above.

It Is Therefore Ordered That:

- (1) The Appeal filed by Richard Hammond, Case No. TFA-0069, is hereby granted in part as set forth in Paragraph (2) and denied in all other aspects.
- (2) The Appeal is hereby remanded to the Western Area Power Administration for further proceedings in accordance with the instructions set forth above.
- (3) 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.

George B. Breznay
Director
Office of Hearings and Appeals

Date: September 24, 2004