United States Department of Energy
Office of Hearings and Appeals

In the Matter of: The Oregonian	)	
	)	
Filing Date: October 3, 2013	)	Case No.: FIA-13-0065
	)	

Issued: October 24, 2013

Decision and Order

On October 3, 2013, the Oregonian (Appellant) filed an Appeal from a determination issued to it on September 19, 2013, by the Bonneville Power Administration (BPA) of the Department of Energy (DOE) (Request No. BPA-2013-01589-F). In that determination, BPA released several documents responsive to a request the Appellant 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. BPA, however, withheld portions of some of the released documents and a security videotape under FOIA Exemption 6. This Appeal, if granted, would release the withheld videotape.

I. Background

The Appellant filed a request with DOE for: "A copy of any incident report or security video tape of [a DOE Employee's] recent car crash off the loading dock in BPA's parking garage." Determination Letter at 1. On September 19, 2013, BPA responded by issuing a Determination Letter in which it released several responsive documents. *Id.* However, BPA's September 19, 2013, Determination Letter redacted portions of those documents pursuant to Exemption 6 of the FOIA. *Id.* BPA also withheld a security videotape of the accident. Determination Letter at 1. The Appellant challenges BPA's withholding of the security videotape of the accident under Exemption 6.[1] Appeal at 1-2.

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

[1] The Appeal also seeks to: add a request for any photo images of this incident to [its] original request. However, it is well settled that requesters are not permitted to expand the scope of their request on appeal. *Cliff Jenkins*, Case No. TFA-0122 (2005) *and cases cited therein*.

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. Only Exemption 6 is at issue in this Appeal.

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 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 significant privacy interest is identified, the record may not be withheld pursuant to this exemption. *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); *see also Ripskis v. Dep't of Hous. & 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 information 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) (*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 Nat'l Ass'n of Retired Federal Employees*, 879 F.2d at 874.

BPA invoked FOIA Exemption 6 to withhold the security videotape. The Appellant contends that BPA improperly withheld the security video because: (1) it is not "part of a medical, personnel or similar file," (2) the privacy interests of the individuals who appear in the video would not be invaded by its release, and (3) there is a strong public interest in the disclosure of this video because it shows an accident involving a senior executive of the BPA and allegedly reveals her "conduct on public property." Appeal at 1-2.

It is well settled that privacy interests of individuals can be violated when information is released that can be identified as applying to them. *Department of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982) (*Washington Post*) (holding that all information that "applies to a particular individual" constitutes "a personnel, medical or similar file") Accordingly, when disclosure of information which applies to a particular individual is sought from Government records, an agency must determine whether release of the information would constitute a clearly unwarranted invasion of that person's privacy. *Washington Post*, 456 U.S., at 602. Therefore, BPA correctly concluded that the individuals whose personal information appears in the security video have privacy interests which would be invaded if the information was released to the public. This is especially true for that individual who was operating the motor vehicle involved in the accident, who was described in an accident report to be "anxious and visibly shaking." Accident Report at 1.

Moreover, it is clear that release of the security videotape would not further the public interest by shedding light on the operations and activities of the Government. Release of the security videotape would contribute little, if any, to public understanding of any matter of public concern. Because we have found a privacy interest in the security videotape and no public interest in its disclosure, we find that release of this information would constitute a clearly unwarranted invasion of personal privacy.

III. Conclusion

We have found that release of the security videotape would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Bonneville Power Administration's withholding of the security videotape under Exemption 6 is upheld, and the Oregonian's Appeal is denied.

It Is Therefore Ordered That:

(1) The Appeal filed by the Oregonian, Case No. FIA-13-0065, 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 your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Web: ogis.archives.gov
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5759
Toll-free: 1-877-684-6448

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: October 24, 2013