

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

In the Matter of Ted Sickinger )  
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Filing Date: June 30, 2014 ) Case No.: FIA-14-0041  
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Issued: July 31, 2014

**Decision and Order**

On June 30, 2014, the Department of Energy (DOE) Office of Hearings and Appeals (OHA) received an Appeal of a determination issued to Ted Sickinger (Appellant) by the Bonneville Power Administration (BPA) on May 27, 2014 (Request No. BPA-2014-00312-F). In that determination, BPA released documents responsive to a request that the Appellant filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. The Appellant challenges BPA’s determination to withhold responsive documents pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). Thus, this Appeal, if granted, would require BPA to release the information that it withheld pursuant to Exemption 6 or issue a new determination letter justifying the withholding of those documents.

**I. Background**

On December 12, 2013, the Appellant filed a FOIA Request seeking the following documents:

1. “All travel or other expense reimbursement forms submitted by [BPA employees] Cathy Ehli and Robin Furrer since Jan[uary] 1 2011. These include expenses on travel cards issued directly to them, or purchase card expenses made on their behalf.
2. All statements itemizing charges since Jan. 1, 2011, on travel cards or government issued credit cards held by Cathy Ehli and Robin Furrer.
3. Any written or electronic documents that discuss whether Cathy Ehli or Robin Furrer used travel or purchase cards for personal expenses, and whether they have been asked to reimburse BPA or the government for personal expenses on their travel cards or government-issued credit cards. This request includes e-mails describing the personal uses and the amount involved.”

*See* Determination Letter from Christina J. Munro, FOIA/PA Officer, BPA, to Appellant (May 27, 2014).

In its Determination Letter, BPA provided documents responsive to the first part of the Appellant's FOIA Request, but redacted privacy information pursuant to Exemption 6. BPA did not release documents in response to the second and third parts of the FOIA Request, applying Exemption 6 to the entirety of any responsive documents. *Id.* As for the second and third requested items, BPA stated that releasing the information "could subject the individual(s) to unwarranted or unsolicited communications and/or could cause private and personal information to be released to the public." *Id.* BPA also concluded that there was no public interest in releasing those documents, and that assuming there is a public interest in the documents, the privacy interests outweigh it. *Id.*

The Appellant appeals BPA's determination as to the second and third parts of his FOIA Request. He asserts that credit card statements "are representations of purely factual matters about government expenses that are routinely released under FOIA." *See* Appeal. Moreover, the Appellant claims that releasing the employees' names and itemization of expenses do not raise privacy concerns, and that as the cards were issued for official use only, there should be no expectation of privacy in the statements, and that any privacy interest in the records would be outweighed by the public interest in their release. *Id.*

## II. Analysis

### A. FOIA Exemption 6

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 term "similar files" was intended by Congress to be interpreted broadly, to include all information that "applies to a particular individual." *Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982). Here, the withheld information in the second and third FOIA requests are "similar files" as they are specific to the two individuals listed in the FOIA Request – Cathy Ehli and Robin Furrer. *See Dep't of State*, 456 U.S. at 595.

Exemption 6 purports to "protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." In order to determine whether a record may be withheld under Exemption 6, an agency must undertake a three-step analysis. *Id.* at 599-603. 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 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.

As a preliminary matter, the Appellant argues that the requested credit card statements contain factual material, and therefore, cannot be withheld under the FOIA. The Appellant relies on the BPA's internal audit and claims that it states that cash advances from the government for personal use on travel cards constitute an "interest free loan" by the government to the employee, and therefore, the requested credit card statements are "records of these government loans to employees." Hence, the Appellant contends that the credit card statements are analogous to travel vouchers, which he avers are releasable because they are "representations of purely factual matters," and accordingly, not subject to the FOIA. Yet, contrary to the Appellant's assertions, vouchers for government travel expenses are not the same as credit card statements. Furthermore, even if the credit card statements contain factual information, our inquiry with respect to Exemption 6 withholdings does not necessarily end. Many applicable Exemption 6 redactions apply to *factual* information that is also deemed private, such as personal addresses, phone numbers, social security numbers and bank account numbers.

Nonetheless, for the reasons explained below, we will remand this matter to BPA to issue a new determination letter in support of its withholdings.

#### **B. Adequacy of Justification**

A written determination letter informs the requester of the results of the agency's search for responsive documents and of any withholdings that the agency intends to make. In so doing, 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. We have consistently held that determination letters must (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.*, OHA Case No. VFA-0235 (Nov. 27, 1997).

As described in relevant case law, conclusory and generalized allegations will not support an agency's decision to withhold requested documents. *See Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 680 (D.C. Cir 1976); *see also Environmental Defense Institute*, Case No. TFA-0289 (2009) (citing *Public Citizen Health Research Group v. Food & Drug Admin.*, 704 F.2d 1280, 1291 (D.C. Cir. 1983)). Here, BPA stated that it "is withholding in full, any records that are responsive to Items 2 or 3 of your request" because there is a "significant privacy interest" in not releasing the documents; however, BPA did not specify the privacy concerns at issue and how they would be compromised by release of the information. Thus, the justifications in BPA's Determination Letter are conclusory and insufficient. Hence, we will remand this

matter to BPA to issue a new determination letter with adequate justifications in support of its withholdings under Exemption 6.

It Is Therefore Ordered That:

- (1) The Appeal filed by Ted Sickinger, OHA Case No. FIA-14-0041, is hereby remanded as specified in Paragraph (2) below.
- (2) This matter is hereby remanded to the Bonneville Power Administration, which shall issue a new determination in accordance with the instructions set forth in the Decision.
- (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.

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