

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Tim Hadley)
)
Filing Date: September 12, 2014) Case No.: FIA-14-0052
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_____)

September 19, 2014

Decision and Order

On September 12, 2014, Tim Hadley (“Appellant”) filed an Appeal from a determination issued to him by the Office of Information Resources (OIR) of the Department of Energy (DOE) (Request No. HQ-2014-00743-F). In its determination, OIR responded to the Appellant’s Request for documents that he re-submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. OIR reviewed the Appellant’s FOIA Request a second time after his appeal concerning the same FOIA Request was partially remanded to OIR by DOE’s Office of Hearings and Appeals (OHA) on August 11, 2014. In OIR’s second determination letter, which is at issue in the instant Appeal, OIR released some of the information that was previously redacted. This Appeal, if granted, would require the DOE to release the remaining withheld portions of those documents. As explained below, we have determined that this Appeal should be denied.

I. Background

On March 19, 2014, the Appellant filed a FOIA Request with the DOE for “all information relating to OAS-RA-14-03 collected from any agency, entity or company to compile report.” FOIA Request E-mail from Appellant to FOIA-Central, OIR (Mar. 19, 2014). This request was referred to the Office of Inspector General, which identified 30 responsive documents, six of which were referred to the Office of Electricity Delivery and Energy Reliability (OE) for review. Determination Letter from Rickey R. Hass to Appellant (Apr. 29, 2014). On July 18, 2014, OIR issued a determination with respect to the six OE documents, releasing two documents in full and partially released the remaining four documents, which became the subject of the Appellant’s first Appeal. On August 11, 2014, OHA remanded in part the Appellant’s Appeal to OIR, stating that as the Appellant argued that some of the redacted vendor information was available on recovery.gov, OIR should review the information on that website and determine whether it

should release any of the information that it withheld.¹ *In the Matter of Tim Hadley*, OHA Case No. FIA-14-0047 (Aug. 11, 2014).²

OIR subsequently reviewed the information on recovery.gov and re-released documents 7 and 18, disclosing the identities of vendors that were listed on the website. Determination Letter from Alexander C. Morris, FOIA Officer, OIR, to Appellant (Aug. 25, 2014). On September 12, 2014, the Appellant appealed OIR's determination, stating that "it doesn't comply with the FOIA statute [sic]."

II. Analysis

In the August 11, 2014, decision, OHA concluded that OIR properly applied Exemption 4 to withhold the employees' email addresses and information related to vendors, pricing and performance and Exemption 6 to redact personal email addresses and telephone numbers of non-federal employees. *In the Matter of Tim Hadley*, OHA Case No. FIA-14-0047. Thus, at issue in the instant Appeal is only whether or not OIR complied with OHA's order to determine whether any additional information should be released based upon what is available on recovery.gov. In the reproduced documents, OIR released the names of vendors on four pages in document 7 and on eleven pages in document 18 as those names were revealed on recovery.gov. The other withheld names of vendors are not disclosed on the recovery.gov website, and therefore, remain confidential and exempt from release under Exemption 4. *See* 5 U.S.C. § 552(b)(4); 10 C.F.R. § 1004.10(b)(4) (Exemption 4 shields from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential."). As stated in the previous OHA decision regarding the Appellant's FOIA Request:

The courts have held that the type of information withheld – information related to vendors and pricing and performance - is the type of information whose release is likely to cause substantial competitive harm, including compromised relationships with vendors. *See GC Micro Corp. v. Defense Logistics Agency*, 33 F. 3d 1109, 1115 (9th Cir. 1994) (citing *Gulf & Western Industries, Inc. v. United States*, 615 F. 2d 527, 530 (D.C. Cir. 1979) (information such as a firm's profit rate, actual loss data, general and administrative expense rates, projected scrap rates, and learning curve data); *see also California-Arizona-Nevada District Organization Contract Compliance*, Case No. FIA-12-0060 (2012) (names of contractors and subcontractors contained in loan guarantee contract for a solar energy project).

In the Matter of Tim Hadley, OHA Case No. FIA-14-0047. Accordingly, the names of the vendors not released on recovery.gov are properly withheld under Exemption 4, and as OIR released the information published on the website and complied with OHA's order from August 11, 2014, this Appeal should be denied.

¹ In its decision, OHA stated that OIR properly withheld employees' email addresses and information related to vendors, pricing and performance under Exemption 4, and that OIR properly withheld personal email addresses and telephone numbers of non-federal employees pursuant to Exemption 6.

² Decisions issued by OHA can be found at www.energy.gov/oha.

It Is Therefore Ordered That:

- (1) The Appeal filed by Tim Hadley on September 12, 2014, OHA Case No. FIA-14-0052, is 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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