

On October 4, 2018, an OHA staff attorney met with the OIG staff person who processed Appellant's FOIA request to review the contents of Document 1. Document 1, entitled "Complaint Form," recited the allegations Appellant made to OIG in his complaint, described the steps OIG took to investigate Appellant's allegations, and indicated that the case was closed. OHA Staff Attorney Memorandum of Meeting (October 4, 2018). The only entries the OHA Staff Attorney observed as having been redacted from Document 1 were the names of OIG personnel involved in processing Appellant's complaint and the names of persons who provided OIG with information during the investigation. *Id.*

II. Analysis

The FOIA requires that documents held by federal agencies generally be released to the public upon request. However, the FOIA lists nine exemptions pursuant to which agencies may withhold information at their discretion. 5 U.S.C. § 552(b)(1)–(9). Those nine exemptions are repeated in the DOE regulations implementing FOIA. 10 C.F.R. § 1004.10(b)(1)–(9). We must construe the FOIA exemptions narrowly to maintain FOIA's goal of broad disclosure. *Dep't of the Interior v. Klamath Water Users Prot. Ass'n*, 532 U.S. 1, 8 (2001). The agency has the burden to show that withheld information is exempt from disclosure. *See* 5 U.S.C. § 552(a)(4)(B).

A. Evaluating the Privacy Interests of Individuals under Exemptions 6 and 7(c)

Exemption 6 of the FOIA 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 determining whether information may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine if a significant privacy interest would be compromised by the disclosure of the information. *Nat'l Ass'n of Retired Federal Employees v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989) (*Horner*); *see also Ripskis v. Dep't of Hous. & Urban Dev.*, 746 F.2d 1, 3 (D.C. Cir. 1984). If an agency determines that a privacy interest exists, the agency must then determine whether the release of the information would further the public interest by shedding light on the operations and activities of the government. 879 F.2d at 874.; *see also DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989) (*Reporters Committee*). Lastly, 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. 879 F.2d at 874.

Exemption 7(C) protects "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7). Exemption 7(C), like Exemption 6, requires an agency to identify and weigh the privacy interests of individuals in information contained in responsive records against the public interest in disclosure. *See, e.g., Associated Press v. DOD*, 554 F.3d 274, 284 (2d Cir. 2009). However, Exemption 7(C)'s applicability when disclosure "could reasonably" invade an individual's privacy is significantly more permissive than the requirement under Exemption 6 that

an agency find that disclosure “would constitute a clearly unwarranted invasion of personal privacy.”

An individual may have a significant privacy interest in his or her name. *Associated Press v. DOJ*, 549 F.3d 62, 65 (2d Cir. 2008). However, the privacy interest of most federal employees in the non-disclosure of their names is generally minimal because federal employment, in and of itself, is not derogatory or likely to cause harm if it becomes generally known. *See Core v. USPS*, 730 F.2d 946, 948 (4th Cir. 1984). A federal employee’s privacy interest in his or her name increases significantly if disclosure of his or her name could subject him or her to harassment or attack because of his or her occupation. *Long v. OPM*, 692 F.3d 185, 192 (2d Cir. 2012) (noting that federal employees whose occupations are investigatory enjoy a significant privacy interest in their names). Courts have found that the privacy interests of rank-and-file federal employees within an agency’s office of inspector general in the non-disclosure of their names are entitled to significant weight. *See, e.g., Van Mechelen v. U.S. Dep’t of the Interior*, No. 05-5393, 2005 WL 3007121, at 4-5 (W.D. Wash. 2005).

Witnesses and third parties named in documents compiled for law enforcement purposes have strong privacy interests against being identified under Exemption 7(C). *Perlman v. DOJ*, 312 F.3d 100, 106 (2d Cir. 2002), *vacated & remanded*, 541 U.S. 970, on remand, 380 F.3d 110, 111–12 (2d Cir. 2004) (per curiam) (affirming previous holding). The public interest in learning the identities of individuals who cooperate with government investigations is minimal as compared to the public interest in encouraging such individuals to cooperate in the future by protecting witnesses’ privacy. *Id.* Investigatory personnel also enjoy a strong privacy interest in the non-disclosure of their names under Exemption 7(C) due to the risk of harassment if their identities are disclosed. *Neely v. FBI*, 208 F.3d 461, 464–65 (4th Cir. 2000).

B. Weighing the Privacy Interests in Document 1

OIG compiled Document 1 to describe its progress in investigating Appellant’s allegations that one or more persons engaged in unlawful conduct, and therefore Document 1 was compiled for a law enforcement purpose. Accordingly, under Exemption 7(C), the individuals who cooperated with OIG’s investigation and the OIG personnel involved in processing the complaint enjoy a strong privacy interest against the disclosure of their identities.

The strong interests of the individuals named in Document 1 against the disclosure of their identities must be weighed against the public interest in knowing “what the Government is up to” *Reporters Committee*, 489 U.S. 749, 780 (1989). The only information redacted from Document 1 in the version provided by OIG to Appellant was the names of witnesses and OIG personnel. OHA Staff Attorney Memorandum of Meeting (October 4, 2018). Disclosure of the names of the individuals redacted from Document 1 would not serve any obvious public interest in understanding the operations of OIG, and Appellant has not offered any arguments as to the public interest in disclosing their identities. Since the individuals named in Document 1 have a readily identifiable privacy interest against disclosure of their identities, “[w]e need not linger over the balance; something, even a modest privacy interest, outweighs nothing every time.” *Horner*,

879 F.2d at 879. Therefore, OIG properly redacted the names of the individuals from Document 1 in its response to Appellant's FOIA request.¹

III. Order

It is hereby ordered that the appeal filed by Glenn Stephenson on October 2, 2018, No. FIA-18-0034, is denied.

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 the right to pursue litigation. OGIS may be contacted in any of the following ways:

Office of Government Information Services
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Telephone: 202-741-5770 Fax: 202-741-5769
Toll-free: 1-877-684-6448

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¹ Because we find that OIG properly used Exemption 7(c) to withhold the information in Document 1 we need not evaluate the propriety of OIG's invocation of Exemption 6 to withhold this information.