

OIG identified 51 documents responsive to Appellant's request and provided Appellant with those documents, some of which were redacted pursuant to Exemptions 5, 6, and 7 of the FOIA.² See *Edelman* at 2 (2022). In his prior appeal, Appellant challenged the adequacy of the search for responsive documents and challenged OIG's use of Exemption 5 to redact Document 1 ("Doc. 1"), Document 10 ("Doc. 10"), and Document 51 ("Doc. 51"). *Id.* After review of the record, OHA granted Appellant's appeal challenging the adequacy of OIG's search, and denied the Appeal in all other respects. *Id.* at 1, 5.

Following OHA's decision, Appellant filed a new FOIA request ("current request") on January 28, 2022, asking for the following:

1. All records discussing, investigating, reviewing, or otherwise concerning the Complaint. These records include but are not limited to:
 - a. All records of the OIG's investigation of the Complaint....
 - b. The complete case file of the Complaint, including any supporting documents.
 - c. All records containing or discussing any reason for the [Complaint Coordination Committee's] CCC's decision to take no further action on [Appellant's] allegations.
 - d. All records containing or discussing any reason for CCC's decision that OIG was not the appropriate venue to adjudicate [Appellant's] allegation of unlawful termination.
 - e. All records concerning the possibility that an entity referred to by DOE personnel as "R1" would investigate the Complaint.
 - f. All records containing or discussing R1's decision not to investigate the Complaint.
 - g. All records concerning the Department's referral of the Complaint to the Office of Special Counsel.
 - h. The "Memorandum to Attorney General Sessions" referenced in the [DOE's] January 12 production.
 - i. The "Email from Deputy Assistant General Counsel" referenced in the [DOE's] January 12 production.
 - j. All written communications (including but not limited to email, meeting notes, minutes, and presentations) concerning the Complaint with any government agency or office outside the [DOE]....
2. All records containing or discussing the [DOE's] November 2017 agreement with [Appellant] to renew his employment contract....
3. All records containing or discussing any reason why the DOE placed the Appellant on administrative leave....
4. All records containing or discussing any reason why the Department did not renew the Appellant's employment contract.

² Appellant made his original request under the Privacy Act. DOE assigned the request as Privacy Act/Freedom of Information Act (FOIA) Request HQ-2021-00130-PA. In processing Appellant's request for records, OIG considered whether responsive records were subject to disclosure under the FOIA. The prior appeal appealed DOE's decision regarding his Privacy Act/FOIA request HQ-2021-00130-PA, however, the appeal essentially challenged only the application of the FOIA exemptions to the responsive documents. The current appeal challenges the OIG's determinations regarding both the Appellant's prior request HQ-2021-00130-PA and his current request HQ-2022-00414-F.

5. All emails dated between November 1, 2017, and January 30, 2018 (inclusive) containing the Appellant's first or last name, where the sender or recipient (including by direct recipient and recipients by way of "cc") is one of the following individuals: Robert ("Bob") Haus, William ("Bill") Turenne, Jr., Brian McCormack, Jocelyn Richards, or Shaylyn Hynes.
6. All emails to or from William Riddle discussing the Appellant's placement on the DOE's "do not enter" list.

Appeal at 33 (FOIA Request HQ-2022-00414-F).

The Appellant's current FOIA request is closely related to his prior request because it seeks substantively the same set of documents related to Appellant's reprisal complaint and documents relating to any investigation or review undertaken by OIG, while requesting the documents with more specificity. *See* Appeal at 9 (prior Privacy Act/FOIA request); Appeal at 33 (FOIA Request HQ-2021-00130-PA). Due to the almost identical requests, OIG issued a partial determination letter on February 4, 2022, that was responsive to both requests. Appeal at 33; OIG Response at 1. The partial determination letter specified that OIG was responding only to Item 1 of Appellant's request. Appeal at 35. Regarding Items 2 through 6, OIG stated that DOE would review the request to determine which other offices may have responsive records, and indicated that DOE Headquarters (HQ) would respond to Appellant regarding those requested items. *Id.* In addition, OIG identified ten responsive documents (Docs.) and explained that it had redacted portions of these documents pursuant to Exemptions 5, 6, and 7 of the FOIA.³ *Id.*

Pursuant to the February 4 determination letter, OIG redacted a paragraph in Doc. 56 pursuant to Exemption 5. The redacted segment contained an opinion identifying potential issues for investigation (Doc. 56). Additionally, OIG referred Doc. 55 to the DOE Office of Public Information (OPI) for a determination concerning its releasability and stated that OPI would respond to Appellant concerning Doc. 55. Appeal at 35.

On March 28, 2022, OIG issued a final determination letter specifying that OIG was responding to Item 1 of Appellant's request. Appeal at 45. Regarding Items 2 through 6, OIG reiterated that DOE's search for responsive documents was ongoing and indicated that DOE HQ would provide Appellant with a rolling production of documents as they were discovered. *Id.* OIG identified 27 additional documents responsive to Appellant's current and prior requests and explained that it had redacted portions of responsive documents pursuant to Exemptions 5, 6, and 7 of the FOIA. Appeal at 43-48.

Three of the redacted documents released in the March 28 determination letter reflect an email thread containing the same redacted passage in which DOE personnel discussed their opinions and recommended advice regarding an issue of law related to a draft response they were preparing for a senator. (Doc. 67; Doc. 76; Doc. 83). Additionally, in Doc. 74, OIG applied Exemptions 5, 6, and 7(c) to redact two passages that referred to deliberations concerning legal advice and pre-decisional recommendations regarding potential issues related to Appellant's complaint. (Doc. 74). Finally, regarding Doc. 86, OIG also referred that document to OPI for determination

³ Since the partial determination letter was responsive to the Appellant's current request and prior request, the responsive documents were numbered sequentially and labeled as Docs. 52-61. Appeal at 35.

concerning its releasability and stated that OPI would respond to Appellant concerning Doc. 86.⁴ Appeal at 46.

On April 25, 2022, OHA received Appellant's appeal. The appeal asserted that DOE HQ failed to produce responsive records for Items 2 through 6 in the January 2022 FOIA request within the timeframe mandated by 5 U.S.C. § 522(a)(6)(A), and, as a result, is required to produce all responsive records. Appeal at 2. Appellant further asserted that because DOE failed to respond regarding the releasability of Documents ("Docs.") 55 and 86 within the timeframe mandated by 5 U.S.C. § 522(a)(6)(A), it is required to produce unredacted versions of Docs. 55 and 86.⁵ *Id.* at 3. Additionally, Appellant argued that DOE failed to adequately justify the applicability of Exemption 5 to its redactions of Docs. 1, 10, 51, 56, 67, 74, 75, and 83, or to establish that disclosing the redacted information could reasonably be foreseen to harm an interest protected under Exemption 5. *Id.* Further, Appellant asserted that if DOE applied Exemptions 6 and 7(c) to withhold more than names and personal identifying information from the two redacted passages in Doc. 74, then it has failed to meet its burden to justify the Exemption 6 and 7(c) redactions. *Id.* at 3–4.

On receipt of the Appeal, OHA contacted OIG concerning its redactions pursuant to Exemption 5, 6, and 7 (c). In its May 10, 2022, response, OIG asserted that regarding Exemption 5, the deliberative process privilege applied to the redacted portions of the records challenged in the Appeal. Response at 2. Additionally, OIG asserted that the attorney-client privilege and the attorney work-product privileges applied to the redacted portions of some of the records. *Id.* OIG also opined that disclosure of the redacted information could confuse the public as the redacted opinions in the records were merely advisory and thus do not reflect the formal opinions of OIG. Further, disclosure of advisory opinions could have a chilling effect on the ability of OIG to obtain such opinions in the future, and disclosure would prevent DOE attorneys from being able to freely discuss their ideas, strategies, and recommendations. *Id.* at 3–4. Regarding the redactions pursuant to Exemptions 6 and 7(c) in Doc. 74, OIG asserted that the entirety of the redacted paragraph is protected under Exemption 5, while also acknowledging that only the names and personal identifying information in the redacted paragraph were intended to be protected by Exemptions 6 and 7(c). *Id.* at 5.

OHA also contacted OPI regarding the status of the review of Docs. 55 and 86, and the status of DOE's search for additional responsive documents.

II. Analysis

The FOIA requires that federal agencies disclose records to the public upon request unless the records are exempt from disclosure under one or more of nine enumerated exemptions. 5 U.S.C. § 552(b)(1)–(9). However, "these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the [FOIA]." *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976). The nine statutory exemptions from disclosure are repeated in the DOE

⁴ The determination letter also stated that OIG redacted certain information from Doc. 86 pursuant to Exemptions 6 and 7(c) before referring it to OPI. Appeal at 46.

⁵ Specifically, Appellant alleged that OPI had not timely produced Doc. 55. Appeal at 3. Appellant also alleged that OPI had failed to timely produce Doc. 86. *Id.*

regulations implementing the FOIA. 10 C.F.R. § 1004.10(b)(1)–(9). The agency has the burden to show that information is exempt from disclosure. 5 U.S.C. § 552(a)(4)(B).

A. Failure to Timely Produce Responsive Documents

Appellant asserts that DOE has not complied with the timeframe mandated by 5 U.S.C. § 522(a)(6)(A) in that OIG has failed to timely produce Docs. 55 and 86. Appellant argues that because of OIG's failure to timely produce the requested documents, it is required to produce all responsive records along with unredacted versions of Docs. 55 and 86.

Section 1004.8(a) of the DOE Regulations states that OHA has jurisdiction to consider a Freedom of Information Act Appeal in the following circumstances:

When the Authorizing Officer has denied a request for records in whole or in part or has responded that there are no documents responsive to the request . . . or when the Freedom of Information Officer has denied a request for waiver of fees....

10 C.F.R. § 1004.8(a).

OIG informed Appellant in its partial determination letter and in its final determination letter that, regarding Items 2 through 6, DOE's search for responsive documents was ongoing and indicated DOE Headquarters was planning to provide Appellant with responsive documents on a continuous basis as they receive them and after they complete their review regarding releasability. Additionally, OIG informed Appellant that it had referred Docs. 55 and Doc. 86 to OPI, and stated that OPI would respond to Appellant directly concerning those documents.

OPI stated that it had made additional proposed redactions to Docs. 55 and 86 and still needed concurrences from DOE's Office of the General Counsel (OGC), Office of Management (MA), and Office of Public Affairs (PA). Memorandum of Telephone Conversation between Jenn Goldsmith, OPI, and Brenda B. Balzon (May 5, 2022). According to OPI, after all concurrences are obtained, OPI will send a Partial Response Letter and the final redacted version of Docs. 55 and 86 to Appellant. *Id.* As of May 23, 2022, OPI informed OHA that Doc. 55 is still under review. OPI indicated that once it has completed its reviews and obtained all necessary concurrences, it will release it to the Appellant, with any appropriate redactions. *Id.*

Regarding Items 2–6 of Appellant's FOIA request and DOE's ongoing search for additional responsive documents, OPI has received additional documents from two other DOE offices and is waiting on receipt of possible responsive documents from another DOE office. OPI will make determinations on the responsiveness and releasability of those documents at that time.

In this case, the circumstances for an administrative appeal do not exist because, as of the date of the Appeal, DOE had not denied a request for records in whole or in part, responded that there are no documents responsive to the request, or denied a request for waiver of fees. Accordingly, OHA is dismissing the Appellant's appeal with respect to the portion of his appeal regarding Docs. 55 and 86 and the search for documents responsive to Items 2–6. As to Appellant's assertion that the FOIA requires DOE to provide him with these documents in unredacted form, we find that there

is no basis in law for this assertion. Moreover, Appellant has provided no legal authority that would mandate such a result.

After receiving a final determination from OIG regarding Docs. 55 and 86 and any documents responsive to Items 2-6, Appellant may file another appeal with OHA if he is not satisfied with that determination.

B. Applicability of Exemption 5 to Docs. 1, 10, 51, 56, 67, 74, 76, and 83

Exemption 5 applies to “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). The U.S. Supreme Court has interpreted this provision to “exempt those documents, and only those documents[] [that are] normally privileged in the civil discovery context.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Courts have identified three traditional privileges, among others, that fall under Exemption 5: the attorney-client privilege, the attorney work-product privilege, and the executive “deliberative process” privilege. *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 862 (D.C. Cir. 1980).

The deliberative process privilege protects records which are both pre-decisional and deliberative. *Elec. Frontier Found. v. DOJ*, 739 F.3d 1, 7 (D.C. Cir. 2014). A document is pre-decisional if it is “generated before the adoption of an agency policy.” *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 151 (D.C. Cir. 2006). A document is deliberative if “it reflects the give-and-take of the consultative process. The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

1. Docs. 1, 10, and 51

Appellant’s challenges to OIG’s Exemption 5 redactions as applied to Docs. 1, 10, and 51 (“the prior documents”) were part of Appellant’s previous appeal and were already addressed and adjudicated by OHA in *Simon Edelman*, OHA Case No. FIA-22-0004/PAA-22-0002 (2022). In that decision, OHA denied the Appellant’s appeal on the basis that the information redacted by OIG from the prior documents was exempt from disclosure under the deliberative process privilege and on the basis that its disclosure could reasonably be expected to harm an interest protected under Exemption 5.⁶ *Id.* Appellant’s current appeal regarding these documents is essentially an attempt to relitigate this issue. Because his current appeal has brought forth nothing that would cause us to change our prior decision regarding the applicability of Exemption 5, we will deny his appeal regarding Docs. 1, 10 and 51.

2. Application of the Deliberative Process Privilege to Docs. 56, 67, 74, 76, and 83

The protected information in Docs. 56, 67, 74, 76, and 83 meets the initial intra-agency threshold requirement of Exemption 5 because the information is being transmitted from one agency official

⁶In Appellant’s previous appeal, Appellant also asserted that OIG failed to conduct an adequate search for responsive records. *Simon Edelman*, OHA Case No. FIA-22-0004/PAA-22-0002 (2022). OHA granted the previous appeal as to the adequacy of OIG’s search for responsive records and denied the appeal in all other respects. *Id.*

to another agency official. Each of these documents are e-mails exchanged between DOE personnel. These records were prepared by DOE personnel and were transmitted to other DOE personnel. Accordingly, we find that all five documents are intra-agency records.

After review of the redacted documents, we find that the information withheld is pre-decisional and deliberative. Doc. 56 contains an opinion communicated to the OIG prior to its determination as to whether to pursue civil, criminal, or administrative remedies. The withheld information in Doc. 56 is pre-decisional because it is clear from the content that the author provided his/her opinion prior to OIG's decision of whether to commence an actual OIG investigation. *See, e.g., Worldnetdaily.com, Inc. v. DOJ*, 215 F.Supp.3d 81, 84–85 (D.D.C. 2016) (holding that a memo recommending against prosecuting a defendant was pre-decisional because it was prepared nearly two months before the issuance of a letter formally declining to prosecute the defendant). Moreover, OHA finds that the redacted passage is deliberative. As explained by OIG, the author is a subordinate who was conveying an opinion to a senior management official, and the opinion was solicited and provided during the phase in which OIG was determining whether to pursue a criminal investigation. OIG Response at 3; Doc. 56. The provision of a non-binding, subjective opinion by an agency expert on a topic at the request of OIG to assist it in carrying out an investigation is clearly indicative of the “give-and-take of the consultative process,” and is thus exempt from disclosure under the deliberative process privilege of Exemption 5. *Coastal States Gas Corp.*, 617 F.2d at 866. Accordingly, we find that the redactions in Doc. 56 are protected under the deliberative process privilege.

The Exemption 5 withholdings in Docs. 67, 76, and 83, which is the same redacted passage in all three documents, reflects the provision of legal advice concerning possible implications affecting a draft letter to a U.S. Senator. The redacted information is pre-decisional because the legal advice is a recommended course of action related to a planned transmittal that had not been released by OIG to the senator at the time the advice was given. Furthermore, the redacted passage is deliberative because it reflects the subjective legal opinion of the individual providing the advice at the request of OIG. *See Brinton v. Dep't of State*, 636 F.2d 600, 604 (D.C. Cir. 1980) (holding that “[t]here can be no doubt that [] legal advice, given in the form of intra-agency memoranda prior to any agency decision on the issues involved, fits exactly within the deliberative process rationale for Exemption 5.”). Accordingly, the advisory opinion in the three documents is protected by the deliberative process privilege.

The two passages redacted in Doc. 74 reflect confidential legal advice and recommendations between an attorney in OIG and an attorney in OGC pertaining to a matter related to the Appellant's complaint. The passages reflect deliberations about actions being developed and undertaken by OGC concerning an agency employee in anticipation of possible future developments including potential litigation. Additionally, another redacted portion of the passage also contains a proposed recommendation regarding how to proceed if future inquiries arise about the matter. Here, the passages are pre-decisional because they were created as part of an ongoing decision-making process within the DOE, and the advice and recommendations contained therein were prepared to assist the DOE in arriving at future decisions related to the Appellant's complaint. Further, the passages are deliberative. The redacted passages include a non-binding subjective opinion on the topic of future inquiries. As explained by OIG, the author is an OIG attorney who provided her recommendation to OGC. However, the OGC attorney falls under a different reporting structure, and therefore is not required to follow the recommendation provided by OIG.

OIG Response at 3. The redacted discussion with its recommendations and opinions clearly indicates participation in the consultative process used for the purpose of weighing the pros and cons of agency adoption of a particular course of recommended action.

Appellant asserts that OIG has also failed to establish that disclosing the redacted information could reasonably be foreseen to harm an interest protected under Exemption 5. Contrary to Appellant's argument, we find that the anticipated harm of disclosure relates directly to the very purpose of Exemption 5. As argued by OIG in its response to Appellant's appeal, the public disclosure of opinions provided to OIG by sources with whom it consults concerning issues raised in its investigations could compromise the candor and fullness of those opinions. Response at 3–4. OIG's argument is supported by judicial precedent. *See Ryan v. Dep't of Justice*, D.C. Cir. 1980(stating that Exemption 5 “was created to protect the deliberative process of the government[] by ensuring that persons in an advisory role would be able to express their opinions freely to agency decision-makers without fear of publicity.”). The Court recognized that “an agency often needs to rely on the opinions and recommendations of ...consultants,...[and] its own employees...and [s]uch consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit frank discussion of policy matters and likely impair the quality of decisions.” *Id.* Further, OIG asserts that the redacted passages include opinions and recommendations regarding potential avenues of investigation from a sole agency employee that do not necessarily reflect the official opinion of OIG. OIG Response at 4. Consequently, if this information were disclosed, standing alone, it could cause public confusion and mislead the public as to OIG's decision-making process. OIG Response at 4; *See Coastal States Gas Corp.*, 617 F.2d at 866 (the deliberative process privilege serves to “protect against confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the agency's action....”).

For the reasons set forth above, we find that the information redacted by OIG from Doc. 56, Doc. 67, Doc. 74, Doc. 76, and Doc. 83 was exempt from disclosure under the deliberative process privilege and that its disclosure could reasonably be expected to harm an interest protected under Exemption 5.

3. Application of the Attorney Client Privilege to Docs. 67, 74, 76, and 83

OIG also argued that the attorney-client communications privilege applies to the withholdings of Docs. 67, 74, 76, and 83. The attorney-client communications privilege attaches to “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” *Mead Data Cent. Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977). Regarding Docs. 67, 76, and 83, the same passage is redacted in all three documents. As stated in OIG's determination letter, the redacted passage reflects the counsel to OIG providing an advisory legal opinion to the Principal Deputy Inspector General. A review of the three documents at issue shows that OIG solicited confidential legal advice regarding a planned transmittal to a U.S. Senator that had not yet been released. In response, Counsel to OIG provided the legal advice sought by OIG, including her recommendation for a proposed course of action related to the same matter. As such, OIG provided confidential information to its counsel for purposes of seeking legal advice, and counsel rendered legal advice including her assessment and recommendations that were related to confidential communications from OIG. Therefore, we find that OIG properly asserted the attorney-client communications privilege in the redacted passage of Docs. 67, 74, 76, and 83.

Regarding Doc. 74, a review of the document indicates that OIG sought legal advice concerning allegations made by Appellant, including possible mismanagement by an agency employee. In response, the redacted passage reflects OIG Counsel's confidential discussion between herself and an attorney in OGC in the context of developing and rendering legal advice. The confidential discussion also includes legal recommendations as to how to proceed concerning future inquiries related to the same matter involving the employee at issue. Since the legal advice was provided in response to the agency's sought-after advice on how to respond and proceed regarding the allegations made by Appellant, we find that it was appropriately redacted under the attorney-client communications privilege.

4. Application of the Attorney Work Product Privilege to Docs. 67, 74, 76, and 83

Additionally, OIG argued that the attorney work-product privilege applies to the withholdings of Docs. 67, 74, 76, and 83. "The purpose of the attorney work-product doctrine is to 'protect documents prepared in contemplation of litigation' and 'provide a working attorney with a 'zone of privacy' within which to think, plan, weigh facts and evidence...and prepare legal theories without fear that the information will be disclosed in litigation.'" *Citizens for Responsibility & Ethics in Wash. v. NARA*, 583 F. Supp. 2d 146, 158 (2008) (citing *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 864 (D.C. Cir. 1980)). Further, and as particularly relevant to Appellant's appeal, courts have found that the attorney work-product privilege does not require a specific claim in order to be properly invoked. See *Media Rsch. Ctr. v. U.S. Dep't of Justice*, 818 F. Supp. 2d 131, 141 (D.D.C. 2011). Specifically "the privilege may be invoked if the agency documents were prepared 'because of the prospect of litigation' and by attorneys who 'subjective[ly] belie[ved] that litigation was a real possibility, and that belief [was] objectively reasonable.'" *Media Rsch. Ctr.*, 818 F. Supp. 2d at 141 (citing *In re Sealed Case*, 146 F.3d 881, 884 (D.C. Cir. 1998)).

The information withheld in Docs. 67, 76, and 83 is the same redacted passage in all three documents, and contains legal advice concerning possible implications affecting a draft letter to a U.S. Senator. Moreover, as asserted and explained by OIG, the agency's counsel provided advice based on her belief about possible legal challenge(s) that could arise in future litigation. After review of both the redacted passages, as well as the Appeal, we have determined that counsel's belief about the prospect of litigation was objectively reasonable. Her belief is supported by the evidence of record which indicates clearly that her thoughts about the possibility of litigation pertaining to a specific issue are well-founded based on the culmination of events in this case thus far.

Regarding Doc. 74, the redacted passages discuss a communication between an OIG attorney and an attorney from OGC regarding actions being developed and undertaken by OGC concerning an agency employee in anticipation of possible future developments, including potential litigation. The second redacted portion of the passage also contains a proposed recommendation by counsel regarding how to proceed if future inquiries arise about the same matter. A review of the passage shows that it contains the attorney's thoughts, preparation, and legal strategies to address potential litigation concerning an agency employee. A review of Doc. 74, including its unredacted portions, as well as the Appeal both indicate that the Appellant made allegations concerning mismanagement or misconduct by agency employees. Given those specific allegations made by Appellant, we find that the agency attorneys who prepared the documents did so based on an

objectively reasonable belief about the prospect of litigation. Thus we find that the attorney work product privilege was a proper basis for redaction under Exemption 5.

C. Applicability of Exemptions 6 and 7(c) to Doc. 74

OIG applied Exemptions 6 and 7(c) in addition to Exemption 5 to withhold two passages in Doc. 74. As discussed above, OHA has determined that OIG properly applied Exemption 5 to redact the two passages in Doc. 74. Moreover, OIG acknowledged in its response that it only intended to apply Exemptions 6 and 7(c) to protect the names and personal identifying information in the redacted passages. OIG Response at 5. A review of the withheld passages reflects that the information contained therein includes such names and personal identifying information. The Appellant is not actually challenging the redactions of the names and personal identifying information. Rather, he states in his appeal that he would challenge Exemption 6 and 7(c) redactions in Doc. 74 if those exemptions were used by DOE to withhold “more than names and identifying information...” Appeal at 4. Accordingly, the Appellant’s argument concerning the application of Exemptions 6 and 7(c) is moot.

III. Order

It is hereby ordered that the appeal filed by Simon Edelman on April 25, 2022, Case No. FIA-22-0015, is dismissed in part, and denied in all other respects as described in the decision above.

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:

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