

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

In the Matter of Epoch Times )  
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Filing Date: July 24, 2023 )  
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Case No.: FIA-23-0025

Issued: August 4, 2023

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**Decision and Order**

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On July 24, 2023, Epoch Times (Appellant) appealed a determination letter dated July 21, 2023, issued by the Department of Energy’s (DOE) Office of Public Information (OPI). The letter responded to Request No. HQ-2023-00862-F, a request filed by the Appellant under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. The determination letter was accompanied by three documents, which were partially redacted pursuant to FOIA Exemption 6. The letter stated that two attachments were being withheld in full, pursuant to Exemption 6. The Appellant challenges the decision to withhold information pursuant to Exemption 6 and argues that OPI failed to take steps to release information that was reasonably segregable. In this Decision, we grant the appeal in part and deny it in part.

**I. Background**

On April 20, 2023, the Appellant submitted the FOIA request to DOE. FOIA Request from Epoch Times at 1 (April 20, 2023). The request asked that DOE “[p]lease provide all documents pertaining to Samuel Brinton's departure from the DOE, including his resignation or termination letter.” *Id.* at 1.

DOE acknowledged receipt of the request on that same day. Interim Response Letter from OPI to Epoch Times at 1 (April 20, 2023). OPI assigned the request to DOE’s Office of the Chief Human Capital Officer (HC) to conduct a search of its records. Determination Letter from OPI to Epoch Times at 1 (July 21, 2023). The search identified three responsive documents. *Id.* OPI issued a determination letter on July 21, 2023, that explained that the search had found three responsive documents, but certain information was being withheld pursuant to FOIA Exemption 6. *Id.* The responsive documents were attached to the determination letter along with an index describing the documents. *Id.* at 1, 4.

The Appellant timely appealed the determination letter on July 24, 2023. Appeal Letter Email from Epoch Times to OHA at 1 (July 22, 2023). In its appeal, the Appellant challenges the redactions made pursuant to Exemption 6 and whether OPI appropriately segregated releasable portions of the redacted records. *Id.* The Appellant argues that the redactions made in the documents were “clearly overbroad” and “at least some of the information should not have been redacted.” *Id.*

## II. Analysis

### A. Exemption 6

Exemption 6 of the FOIA exempts from disclosure “personnel 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). As a threshold matter, the record must be personnel, medical, or other similar files. *Id.*

After it is determined that the information falls into one of those categories, the agency must determine whether the disclosure of the record would compromise a significant privacy interest. *Ripskis v. Dep’t of Hous. & Urban Dev.*, 746 F.2d 1, 3 (D.C. Cir. 1984). Civilian federal employees who are not involved in law enforcement or sensitive occupations generally have no expectation of privacy regarding their names, titles, grades, salaries, and duty stations as employees. 5 C.F.R. § 293.311. However, federal employees do have a privacy interest in personal details that do not shed light on agency function. *Barvick v. Cisneros*, 941 F. Supp. 1015, 1020–21 (D. Kan. 1996) (finding a significant privacy interest in personal information such as home addresses and telephone numbers, social security numbers, dates of birth, insurance and retirement information, reasons for leaving prior employment, and performance appraisals). If no such privacy interest exists, then the agency may not withhold the record based on this exemption. *Id.* If the agency determines that a privacy interest does exist in the record, the agency must then decide if the release of the record would serve the interest of the public by shedding “light on an agency’s performance of its statutory duties . . . .” *Dep’t of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 773 (1989).

The agency must determine whether “the potential harm to privacy interests from disclosure [would] outweigh the public interest in disclosure of the requested information . . . .” *Ripskis*, 746 F.2d at 3. The interests must be balanced by determining whether “disclosure would compromise a substantial, as opposed to a *de minimis*, privacy interest,” and, if so, “whether the public interest in disclosure outweighs the individual privacy concerns.” *Am. Oversight v. Gen. Servs. Admin.*, 311 F. Supp. 3d 327, 345 (D.D.C. 2018) (internal quotations omitted).

Here, the Appellant requested records related to the end of Samuel Brinton’s employment at DOE. FOIA Request at 1. The Appellant alleges that there is significant public interest in knowing whether Brinton committed crimes while being paid by the federal government and how that factored into the end of their employment at DOE. Email from Epoch Times to OHA (July 26, 2023). DOE counters that there is no public interest and releasing that information would violate Brinton’s privacy.

There is no dispute that records related to Brinton’s tenure at DOE are personnel files of the type that could be exempt from release pursuant Exemption 6. Additionally, there is no dispute that Brinton has a significant privacy interest in information contained in their personnel file. Therefore, our concern here is whether there is a public interest in disclosure and if so if that interest outweighs Brinton’s privacy interest.

First, we consider redacted information in Documents 1, 2, and 3 regarding why Brinton's employment at DOE ended. Courts have held that the minimal amount of information of interest revealed to the public by disclosures about a single incident do not shed enough light on agency actions to overcome a person's privacy interest in their records. *Scott v. Treas. Insp. Gen. for Tax Admin.*, 787 F. App'x. 642, 645 (11th Cir. 2019) (holding that "disclosure of Inspector General investigation and resolution of an internal complaint of incompetence . . . by a single individual" warrants protection because "disclosure of the isolated incident would shed little light on the agency's statutory duty"); *Mueller v. Dep't of the Air Force*, 63 F. Supp. 2d 738, 745 (E.D. Va. 1999) ("[T]he interest of the public in the personnel file of one Air Force prosecutor is attenuated because information concerning a single isolated investigation reveals relatively little about the conduct of the Air Force as an agency."). A single incident may be sufficient to overcome a person's privacy interests if there are allegations of substantial misconduct related to the performance of duties by high-level officials, *see Citizens for Resp. & Ethics in Wash. v. Dep't of Justice*, 746 F.3d 1082, 1094 (D.C. Cir. 2014) (recognizing significant public interest in information relating to the Department of Justice's investigation of congressman accused of bribery); *Citizens for Resp. & Ethics in Wash. v. Dep't of Justice*, 846 F. Supp. 2d 63, 74 (D.D.C. 2012) ("Against the backdrop of broader public concerns about the agency's handling of allegations of corruption leveled against high-ranking public officials . . . the public has a clear interest in documents concerning" DOJ's investigation of Congressman accused of providing earmarks and contracts to donors), but that is not the case here. While Brinton was a member of the Senior Executive Service (SES), the allegations that led to the end of their employment at DOE had nothing to do with their job performance or any contention that they had acted corruptly. Further, there is no allegation that releasing this information would inform the public about DOE's statutory duty. As such, there is little public interest in the disclosure of the details from Brinton's personnel file about the end of their tenure at DOE. Because disclosure would compromise a substantial privacy interest and there is minimal public interest in disclosure, OPI's decision to redact information related to the end of Brinton's employment at DOE was proper.

In addition to the information relating to the end of Brinton's employment, OPI redacted a cell phone number of a DOE employee and Brinton's personal email address in Document 1. Attachment to Email from OPI to OHA (July 25, 2023). The phone number and email address are both clearly pieces of information where the privacy interest of the individual outweighs the minimal public interest in disclosure. *See Performance Coal Co. v. Dep't of Labor*, 847 F. Supp. 2d 6, 17-18 (D.D.C. 2012) (holding agency properly withheld government employee cell phone numbers); *Wilson v. U.S. Air Force*, No. 08-0324, 2009 WL 4782120, at 4 (E.D. Ky. 2009) (finding personal email addresses of government employees were properly redacted). Therefore, this information is also properly redacted.

Finally, OPI redacted information in Documents 2 and 3 that revealed basic information about Brinton's employment at DOE. This information cannot be withheld as is explained by 5 C.F.R. § 293.311. Therefore, where this information is reasonably segregable, *see infra*, it should not be withheld.

## **B. Segregability**

FOIA requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt . . . .” 5 U.S.C. § 552(b). An agency cannot “justify withholding an entire document simply by showing that it contains some exempt material.” *Mead Data Ctr., Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977). However, an agency may withhold otherwise non-exempt portions of a record if those portions are “inextricably intertwined with exempt portions” of the record. *Id.*

The Appellant argues that some contents of the redacted documents were reasonably segregable. Email from Epoch Times to OHA (July 26, 2023). DOE contends that it is concerned that revealing what type of forms that Documents 2 and 3 are could violate Brinton’s privacy interest. This particular concern from DOE is misplaced because the documents already released by OPI are labelled “Standard Form 50” and “Standard Form 52,” respectively, in the upper left-hand corner of each document. Attachment to Appeal from Epoch Times to OHA (July 24, 2023). These forms are both available in full to the public on the website of the Office of Personnel Management.

Further, our review of the released documents showed that portions of the responsive record contain information that is not exempt from release pursuant to Exemption 6. Documents 2 and 3 are clearly formatted in such a way that it is entirely feasible for OPI to segregate out non-exempt information from information that would violate Brinton’s privacy interest.

Accordingly, we remand for OPI to review Documents 2 and 3 for any information for which a civilian federal employee has no privacy interest (such as name, grade, salary, title, and duty station) and any other non-exempt information that is reasonably segregable.

### **III. Order**

It is hereby ordered that the appeal filed on July 24, 2023, by Epoch Times, FIA-23-0025, is granted in part and denied in all other aspects.

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. § 522(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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