United States Department of Energy
Office of Hearings and Appeals

In the Matter of Christopher Hicks	)	
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Filing Date: May 8, 2024	)	Case No.: FIA-24-0025
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	)	

Issued: May 28, 2024

Decision and Order

On May 8, 2024, Christopher Hicks (Appellant) appealed a determination letter issued by the United States Department of Energy's (DOE) Office of Inspector General (OIG) regarding Request No. HQ-2023-01326-F. Appellant's request was filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE regulations codified at 10 C.F.R. Part 1004, and sought records related to OIG's investigation of a whistleblower complaint filed by Appellant with OIG. Appeal from Christopher Hicks to OHA at 4 (May 8, 2024) (Appeal) (containing Appellant's FOIA request). On February 16, 2024, OIG provided Appellant with records responsive to the request and issued Appellant a letter (Determination Letter) in which it indicated that it had redacted records provided to Appellant pursuant to Exemptions 6 and 7(C) of the FOIA. *Id.* at 9–10. Appellant asserts on appeal that OIG's search was inadequate because the Determination Letter did not address several types of records Appellant requested and that OIG was not entitled to assert Exemptions 6 and 7(C) to withhold information contained in the records OIG provided. *Id.* at 1–3. As explained below, we dismiss the Appeal as moot in part and deny the Appeal in part.

I. Background

OIG received Appellant's FOIA request on August 7, 2023, which was amended on August 9, 2023, to include the following:

1. [A]ny records referring to Mr. Hicks's EEOC charge number 494-2019-01311;
2. copies of audio recordings of witness interviews in addition to transcripts and summaries, if possible;
3. [d]ocuments that were provided to the [DOE] Office of Hearings and Appeals (OHA) with the OIG report in this matter;
4. [c]ase files for OIG case number 19-0013-W that are contained in [OIG's] iPrism data system; and,
5. [c]ase files of the lead investigator's files for this case, if there are any.

Id. at 4–5. OIG conducted a search for responsive records and, on February 16, 2024, issued the Determination Letter. *Id.* at 9. OIG's search located records that, based on our review of the records, fall into the following general categories: (A) memoranda of investigative activity (MOIA) summarizing information collected by OIG during the investigation through interviews

or collection of documents; (B) recordings of OIG's interviews of witnesses; (C) transcripts of OIG's interviews of witnesses; (D) OIG's report concerning the findings of its investigation; and, (E) the complaint submitted by Appellant.[1] OIG withheld the recordings of interviews and redacted the transcripts of interviews excepting the Appellant's in their entirety, and redacted "information that would tend to disclose the identity" of all individuals identified in the other records, pursuant to Exemptions 6 and 7(C) of FOIA. *See* Appeal at 10 (providing OIG's summary of its actions from the Determination Letter). The Determination Letter made no reference to Appellant's request for the lead investigator's files or records from iPrism. *Id.* at 9–11. The Determination Letter also did not indicate whether OIG had located records related to Appellant's EEOC charge. *Id.*

On May 8, 2024, OHA received the Appeal. The Appeal asserted that OIG had failed to conduct the requested searches for records related to the lead investigator's files, records from iPrism, and records related to Appellant's EEOC charge. *Id.* at 2. Appellant further alleged that OIG was not entitled to assert Exemption 6 or Exemption 7(C) because the withheld and redacted records concerned OIG's performance of its statutory duties and did not concern personal details about private citizens. *Id.* at 2–3. Additionally, Appellant argued that OIG's redaction of eight of the interview transcripts in their entirety reflected a failure on OIG's part to release reasonably segregable material. *Id.* at 3.

OHA contacted OIG concerning the Appeal. On May 20, 2024, OIG submitted a response (Response) to Appellant's Appeal. In the Response, OIG indicated that it was conducting an additional search for records from iPrism and the lead investigator's files and that it would issue a new response concerning these records following the search. OIG Response at 1–2. OIG also indicated that it had located a record related to Appellant's EEOC charge, but that the record was an e-mail chain between the Appellant and OIG and that the record would not be "processed back" to Appellant as Appellant was the source of the record. *Id.* at 2. OIG argued that the redacted and withheld records were exempt from disclosure under Exemptions 6 and 7(C) because they implicated significant privacy interests and were not reasonably segregable.[2] *Id.* at 4–13.

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 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). An agency is also required to "consider whether partial disclosure of information is possible whenever [it]

[1] OIG also identified responsive records controlled by another DOE office. As indicated in the Determination Letter, that office will issue a separate determination letter addressing those records. Appeal at 10.

[2] In its response, OIG asserted that its redactions were justified under several other FOIA exemptions. OIG Response at 8–9, 11–12. As OIG did not assert these justifications in the Determination Letter and Appellant has not had an opportunity to address these alternative justifications, we do not consider them herein.

determines that a full disclosure of a requested record is not possible[] and take reasonable steps necessary to segregate and release nonexempt information." *Id.* § 552(a)(8)(A)(ii)(I)–(II).

A. Adequacy of Search

In responding to a request for information filed under the FOIA, an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). The standard of reasonableness we apply "does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Dep't of State*, 779 F.2d 1378, 1384–85 (8th Cir. 1985). We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *E.g., Ralph Sletager*, OHA Case No. FIA-14-0030 (2014).[3]

In this case, OIG has decided to conduct an additional search with respect to Appellant's request for the lead investigator's files and records from iPrism. Additionally, OIG acknowledged that the Determination Letter did not indicate the results of its search for records related to Appellant's EEOC charge. Accordingly, we deem the Determination Letter withdrawn as it concerns these aspects of Appellant's FOIA request and Appellant will have the opportunity to appeal the adequacy of OIG's search for responsive records following OIG's issuance of a new determination letter.

B. OIG's Redactions

OIG asserted both Exemption 6 and Exemption 7(C) in redacting the records provided to Appellant and withholding the recordings of interviews. 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). Exemption 7(C) of the FOIA 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); 10 C.F.R. § 1004.10(b)(7). Appellant does not dispute that records of OIG's investigation of Appellant's whistleblower complaint were compiled for a law enforcement purpose, and it is readily apparent that the records were compiled for such a purpose. *See* Appeal at 2–3 (disputing that disclosure of the records would constitute an unwarranted invasion of personal privacy, but not that the records were compiled for a law enforcement purpose); *Jefferson v. DOJ*, 284 F.3d 172, 178 (D.C. Cir. 2002) (indicating that investigatory records related to enforcement via adjudicatory proceedings may be compiled for a law enforcement purpose); *Fine v. Dep't of Energy*, 823 F.Supp. 888, 907–08 (D. N.M. 1993) (finding that records prepared by DOE's OIG in connection with an investigation into specific allegations were compiled for law enforcement purposes under Exemption 7(C)). As it is undisputed that the records at issue were compiled for law enforcement purposes, and in light of the expansive protections from disclosure under Exemption 7(C) for records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy" as compared to the more modest Exemption 6 protection for records that "would constitute a clearly unwarranted invasion of personal privacy," we will limit our analysis to the appropriateness of OIG's redactions under Exemption 7(C). *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 165–66 (2004) (explaining that the expansive privacy

[3] Decisions issued by OHA are available on the OHA website located at http://www.energy.gov/OHA.

protections under Exemption 7(C) are "in marked contrast to the [limiting] language in Exemption 6").

Courts apply a four-step test to determine the applicability of Exemption 7(C) in which they: (1) determine whether the records in question were compiled for a law enforcement purpose, (2) determine whether there is a significant privacy interest in the information, (3) assess the requester's asserted public interest in disclosure, and (4) balance the privacy interest in non-disclosure against the public interest in disclose. *Citizens for Resp. & Ethics in Wash. v. DOJ*, 746 F.3d 1082, 1091–96 (D.C. Cir. 2014). As noted above, there is no question that the records at issue were prepared for a law enforcement purpose. Thus, we must turn to identifying whether there is a significant privacy interest in the non-disclosure of the records.

In the Determination Letter, OIG indicated that its redactions were intended to prevent the disclosure of the "[n]ames and information that would tend to disclose the identities of . . . subjects, witnesses, sources of information, and other individuals . . . so that they will be free from harassment, intimidation, and other personal intrusions." Appeal at 10. Appellant argued that the records did not concern information that would constitute an unwarranted invasion of personal privacy but were rather related to "what these individuals did and said on the work site and testified to under oath to OIG investigators." Appeal at 2. This argument is unavailing as what identifiable persons said to investigators cuts to the heart of the Exemption 7(C) protections. *See Fitzgibbon v. CIA*, 911 F.2d 755, 767 (D.C. Cir. 1990) (indicating that "persons involved in [] investigations—even if they are not the subject of the investigation— have a substantial interest in seeing that their participation remains secret") (quotations omitted). "Witnesses and informants who provided information during the course of an investigation" have a privacy interest in the non-disclosure of their identities. *Nation Magazine, Wash. Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 894 (D.C. Cir. 1995); *see also Sorin v. DOJ*, 758 F. App'x 28 at 33 (2d Cir. 2018) (finding a "substantial" privacy interest in the names, professional histories, and educational backgrounds of potential witnesses in an investigation). This privacy interest also extends to "third parties who may be mentioned in investigatory files . . . ." *Id.* Additionally, investigatory personnel enjoy a strong privacy interest in the nondisclosure 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). Thus, there is a significant privacy interest in each class of individual whose name or identifying information OIG redacted from the records.

Balanced against these privacy interests, Appellant asserts that the records in question contain "information that directly pertains to the agency's performance of its statutory duties both to comply with the law and to investigate and act on [Appellant's allegations]." Appeal at 2–3. While Appellant has a significant personal interest in the conduct and outcome of the investigation, it is not apparent why OIG's investigation of Appellant's complaint would be of significant interest to the public. *See Scott v. Treas. Insp. Gen for Tax Admin.*, 787 Fed. App'x. 642, 645 (11th Cir. 2019) (finding that disclosure of the IRS OIG's investigation into a single incident "would shed little light on the agency's [performance of its] statutory duty" and therefore that the public interest in disclosure was minimal). On balance, the privacy interests of the witnesses, OIG investigators, and other named individuals in the non-disclosure of their identities significantly outweighs the vague public interest in the investigation alluded to by Appellant. *See SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1205 (D.C. Cir. 1991) (finding that the privacy interests of witnesses and other individuals named in law enforcement records in the non-disclosure of their names and identifying

information significantly outweighed the public interest in disclosure of such information because the information "is simply not very probative of an agency's behavior or performance"). Thus, we conclude that Appellant has not established that OIG improperly asserted Exemption 7(C) with respect to any of the records in question.

C. Segregability

The FOIA requires agencies to take reasonable steps to segregate and release nonexempt information. 5 U.S.C. § 552(a)(8)(A)(ii)(II). Based on our review of the MOIA and OIG report, OIG limited its redactions to individuals' names and information likely to identify them. With respect to the interview transcripts, information concerning the roles and responsibilities of the interviewees which would be likely to reveal their identities is interspersed throughout the interviews. Line-by-line redaction of this information throughout over five hundred pages of interview transcripts would be extremely time consuming and the remaining text would shed minimal light on OIG's investigative actions. Under these circumstances, segregating nonexempt information would be unreasonable and therefore is not required. *See Sorin*, 758 F. App'x at 33 (indicating that DOJ was entitled to withhold records in their entirety under Exemption 7(C) where "redaction could not adequately protect the identity of witnesses because their testimony concerned their specific roles at the company under investigation"); *see also Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977) (indicating that segregation is not required where the cost of line-by-line analysis would be high and the result would be an essentially meaningless set of words and phrases). This analysis is equally applicable to the audio recordings of the interviews, which in any case OIG lacks the technical capability to redact. OIG Response at 12. Thus, we find that there is no reasonably segregable information that OIG is required to disclose.

III. Order

It is hereby ordered that the Appeal filed by Christopher Hicks on May 8, 2024, No. FIA-24-0025, is dismissed as moot as to OIG's search for records responsive to Appellant's request for the lead investigator's files and records from iPrism based on OIG's decision to conduct additional searches. The Appeal is also moot as it pertains to Appellant's request for records related to his EEOC charge which OIG did not address in the Determination Letter. The Appeal is denied in all other respects.

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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