

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

In the Matter of Randy Dins )  
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Filing Date: September 5, 2024 ) Case No.: FIA-24-0051  
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Issued: September 23, 2024

**Decision and Order**

Randy Dins (Appellant) appeals a final determination letter issued to him from the Department of Energy (DOE) Office of Inspector General (OIG), concerning Request No. HQ-2024-01398-F, filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. In the final determination letter, OIG informed the Appellant that it could neither confirm nor deny that it possessed records responsive to the Appellant’s request pursuant to Exemptions 6, 7(A), and 7(C). Determination Letter from OIG to Appellant at 1 (Aug. 15, 2024) (Determination Letter). In this appeal, the Appellant challenges OIG’s determinations pursuant to Exemptions 6 and 7(C). Appeal Email from Appellant to Office of Hearings and Appeals (OHA) at 1–2 (Sept. 4, 2024)<sup>1</sup> (Appeal). In this Decision, we deny the Appeal.

**I. Background**

On March 8, 2024, the Appellant filed the following FOIA request:

Please provide the DOE-IG investigative Final Report and/or any other IG-produced documentation output of the investigation of [DOE Employee].

[The DOE Employee] was investigated by the DOE-IG from approximately April 2023 until approximately December 2023, when the IG investigation was closed.

A Final Report of some kind would have been provided to EERE or DOE-HQ Executive Management for review. The date of such report is likely to be between August and October of 2023 and contain the following key words in the title: [Search terms pertaining to DOE Employee’s name, job title and organization].

The Complaint that initiated the investigation was titled: Inappropriate Relations with a Contractor, Abuse of Authority, Gross Mismanagement, Conflict of Interest

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<sup>1</sup>The Appeal was received on September 4, 2024, after 5:00 p.m., Eastern Time. Accordingly, the filing date is computed as September 5, 2024. 10 C.F.R. § 1004.8(c) (“Documents delivered after the regular business hours of the Office of Hearings and Appeals are considered received on the next regular business day.”).

and Ethics Violations . . . . Charges are submitted to the best of my knowledge on 4/23/2023[.]

I'm happy to pay whatever reasonable costs are associated with producing the documentation.

FOIA Request, via webform submission, from Appellant to DOE (March 8, 2024) (FOIA Request).

On August 15, 2024, OIG issued its Determination Letter, indicating that “[w]ith respect to records pertaining to any closed OIG investigation of” the DOE Employee, “the OIG neither confirms nor denies the existence of any such records . . . .” pursuant to 5 U.S.C. § 552(b)(6), 7(C) (Exemptions 6 and 7(C)). Determination Letter at 1 (emphasis in original). OIG asserted that “even acknowledging the existence of” closed OIG investigation records “pertaining to an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy.” *Id.*

The Determination Letter continued that with respect to “records pertaining to any open investigations of” the DOE Employee, “the OIG neither confirms nor denies the existence of any such records . . . .” pursuant to 5 U.S.C. § 552(b)(7)(A) (Exemption 7(A)). Determination Letter at 1 (emphasis in original). OIG reasoned that “[d]eclaring the existence or non-existence of any records responsive to this request would tip off subjects and persons of investigative interest, thus giving them the opportunity to take defensive actions to conceal their criminal activities, elude detection, and suppress and/or fabricate evidence.” *Id.*

On September 4, 2024, Appellant filed his Appeal. Appellant appears only to challenge the OIG’s invocation of Exemption 6 and Exemption 7(C)—making no mention of Exemption 7(A). Appeal at 1–2. Appellant asserts the following bases for relief:

- (1) “[A]s the whistleblower involved in the initial complaint and subsequent investigation, [the DOE Employee’s] identity is obviously known to me.” *Id.* at 1 (emphasis in original).
- (2) “This report pertains to serious allegations involving potential violations of federal regulations and mismanagement of public resources. As such, the content of this investigation is of significant public interest, particularly in ensuring transparency and accountability within the DOE.” *Id.* at 1–2.
- (3) “I believe that I have a right to access the final investigative report, provided that any sensitive personal information . . . is appropriately redacted.” *Id.*

Appellant requests, as relief, “access to the final investigative report and any other relevant documentation, with appropriate redactions made to protect personal privacy and any other sensitive information.” *Id.* at 2.

On September 13, 2024, OIG submitted its Response to the Appeal (Response). OIG correctly noted that Appellant only challenged “OIG’s invocation of Exemptions 6 and 7(C), pertaining to

the OIG's response regarding closed investigations . . . ." Response at 3 (emphasis in original). Accordingly, OIG concluded that its invocation of Exemption 7(A) with respect to any "open investigations should be upheld without further argument." *Id.*

Regarding the application of Exemptions 6 and 7(C) to any closed investigatory records, OIG reiterated that FOIA protects the strong privacy interest that individual government employees have in not being identified as part of a law enforcement investigation. *Id.* at 4. OIG further reasoned that "simply acknowledging the existence of such records would be in contravention of th[ose] personal privacy equities that the OIG (and the Department) [are] bound to protect under FOIA." *Id.* at 4–5. In response to Appellant's assertion that he was a complainant leading to a whistleblower investigation into [the DOE Employee], OIG asserted that, even if this were true, "the decision as to whether to release records does not change based on the identity of the requestor" and "that the release of records to one person is equivalent to the release of records to all persons." *Id.* at 4. Regarding Appellant's assertion that disclosure would be in the public interest, OIG reasoned that "[i]n the absence of substantiated allegations of misconduct by high-level officials, the revelation of the identity of an individual being the subject of a criminal investigation is highly damaging to an individual and not in the public interest." *Id.* Last, with respect to Appellant's assertion that redactions might be made to protect privacy interests, OIG responded that "[t]here were no numbers of redactions that OIG could utilize that would adequately protect the privacy of the subject individual." *Id.*

## II. Analysis

As a preliminary matter, Appellant only challenged OIG's invocation of Exemptions 6 and 7(C), which were the bases for refusing to admit or deny that records pertaining to a closed investigation of the DOE Employee exist. Accordingly, this Decision does not review OIG's application of Exemption 7(A) to records pertaining to any open investigations of the DOE Employee that may or may not exist. Agencies may provide a *Glomar* response, in which they refuse to admit or deny that certain records exist, when the records would be exempt from disclosure if they existed and acknowledging their existence or nonexistence would "cause harm cognizable under a[] FOIA exception." *Bartko v. DOJ*, 898 F.3d 51, 63–64 (D.C. Cir. 2018) (quoting *Roth v. DOJ*, 642 F.3d 1161, 1178 (D.C. Cir. 2011)); *see also Phillippi v. CIA*, 546 F.2d 1009, 1013 (D.C. Cir. 1976) (providing the origin of the term "*Glomar* response"). Exemption 6 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). Exemption 7(C) exempts from disclosure records "compiled for law enforcement purposes" that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." *Id.* § 552(b)(7)(C). This decision considers the Exemptions 6 and 7(C) *Glomar* responses together with the understanding that "the standard for evaluating" the privacy interest protected in Exemption 7(C) is "broader than the standard applicable" for Exemption 6. *DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Targets of law enforcement investigations have substantial privacy interests in the nondisclosure of that information. *Roth v. DOJ*, 642 F.3d 1161, 1174 (D.C. Cir. 2011). Where even acknowledging the existence of records would reveal the fact that a named individual was investigated, courts have found a *Glomar* response appropriate, as this "go[es] to the heart of the

privacy interest that Exemption 7(C) was designed to protect.” *People for the Ethical Treatment of Animals v. NIH*, 745 F.3d 535, 540 (D.C. Cir. 2014). Here, Appellant requested records specifically regarding one individual, and any acknowledgment of an investigation into the DOE Employee or disclosure of responsive records would necessarily compromise a strong privacy interest.

Appellant appears to assert that the privacy interest of the DOE Employee is diminished by the fact that Appellant initiated a whistleblower complaint and participated in a subsequent investigation into the DOE Employee. Appeal at 1. However, “the fact that an event is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of the information.” *People for the Ethical Treatment of Animals*, 745 F.3d at 542. Furthermore, “special significance” attaches to the agency’s “official acknowledgment” of any potential investigation into an individual. *Id.* (reasoning that “official acknowledgment” of an investigation “would carry an added and material stigma”); *see also Solers, Inc. v. Internal Revenue Serv.*, 827 F.3d 323, 333 (4th Cir. 2016) (determining that “government employees[ ] have a substantial interest in the nondisclosure of their identities and their connection with particular investigation . . .”) (quotations omitted). Court have found that the “significance” of official acknowledgments of investigations “tips the balance” towards the privacy interest, despite the information having otherwise been disclosed. *People for the Ethical Treatment of Animals*, 745 F.3d at 542. Accordingly, that Appellant claims to have been the whistleblower complainant in an OIG investigation detracts little from the DOE Employee’s privacy interest.

Appellant further argues that disclosure is appropriate because the investigation was of “significant public interest, particularly in ensuring transparency and accountability within the DOE.” Appeal at 2. An agency may disclose information under Exemption 7(C) when “public interest in disclosure is strong enough to justify the privacy invasion.” *People for the Ethical Treatment of Animals*, 745 F.3d at 542. However, “the relevant public interest is not to find out what” the subjects of investigations are “up to.” *Citizens for Responsibility & Ethics in Wash. v. United States DOJ*, 746 F.3d 1082, 1093 (D.C. Cir. 2014). Instead, the relevant public interest under the FOIA is in how the agencies carry out their statutory duties. *Id.* Furthermore, “where a privacy interest protected by Exemption 7(C) and the public interest being asserted is to show that responsible officials acted negligently or otherwise improperly in the performance of their duties, the requester must establish more than a bare suspicion in order to obtain disclosure.” *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004). Here, Appellant only vaguely referenced “transparency” and “accountability.” Without more, the privacy interest weighs more heavily against disclosure and in favor of OIG’s *Glomar* response.

Appellant’s last argument is that any report might be redactable to protect any privacy interests. This ignores, however, that even acknowledging that an individual was investigated implicates that individual’s privacy interests. Furthermore, even if these investigatory records existed, this FOIA request specifically requests records singling out the individual DOE Employee; redactions would have no practical effect in safeguarding the privacy interest implicated here. *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 381 (1976) (remanding with the instruction to not disclose records if the court determined that “deletion of personal references and other identifying information [was] not sufficient to safeguard privacy”).

In summary, the FOIA Request specifically implicates an employee's strong privacy interest in not being identified as a subject of investigation. That privacy interest is not diminished by the Appellant's purported involvement with an investigation and, on balance, is not outweighed in the Appellant's general assertions regarding transparency and accountability. Furthermore, because merely acknowledging the existence of investigatory records implicate the privacy interests, there are no redactions that are appropriate to records that may or may not exist. Accordingly, we find the OIG's *Glomar* response pursuant to Exemptions 6 and 7(C) to be justified.

### **III. Order**

It is hereby ordered that the Appeal filed by Randy Dins, on September 5, 2024, Case No. FIA-24-0051, 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  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740  
Web: [ogis.archives.gov](http://ogis.archives.gov) Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
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