



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

Mr. Steven J. Milloy

Re: Freedom of Information Act Appeal No. EPA-HQ-2016-005388 (Request No. EPA-HQ-2016-004613)

Dear Mr. Milloy:

I am responding to your April 5, 2016 Freedom of Information Act (“FOIA”) appeal. You appealed the March 23, 2016 decision of Thomas H. Brennan, Deputy Director, Science Advisory Board (“decision”) of the U.S. Environmental Protection Agency (“EPA” or “Agency”), to deny the request you submitted to EPA on March 11, 2016. Your request sought documents pertaining to the conflict of interest and financial disclosure forms for members of the Clean Air Scientific Advisory Committee Particulate Matter Review Panel (2015-2018). The decision stated that your request was denied because the documents were exempt from disclosure under Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6).

I have carefully considered your request, EPA’s decision, and your appeal. For the reasons set forth below, I have determined that your appeal should be, and is, denied.

Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The 26 withheld documents are within the scope of the phrase “personnel and medical files and similar files” because they contain information that applies to particular individuals.

In balancing the public’s right to disclosure against the individual’s right to privacy, a comparison must be made between the extent to which the documents shed light on EPA’s performance of its statutory duties, and the need to avoid disclosure of personal matters. In this case, the harm to the individuals as a result of disclosure clearly outweighs the public interest in such disclosure. Disclosure of the withheld material would thus constitute a clearly unwarranted invasion of personal privacy. Therefore, I have determined that the withheld material is exempt from disclosure under Exemption 6 of the FOIA.

The information should also be withheld pursuant to FOIA Exemption 3, 5 U.S.C. § 552(b)(3), which protects from release any information that has been “specifically exempted from disclosure by statute.” This exemption applies to the confidential financial disclosure reports that are collected by EPA ethics officials pursuant to the Ethics in Government Act

("EIGA") of 1978. See 5 U.S.C. Appx § 107(a)(1). Unlike the public financial disclosure reports, the confidential reports are not subject to public disclosure. In fact, EIGA provides that, "[a]ny information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public." 5 U.S.C. Appx § 107(a)(2). Because the EIGA was enacted prior to October 28, 2009, it need not specifically cite to 5 U.S.C. § 552(b)(3) to qualify as a withholding statute under Exemption 3. See Meyerhoff v. EPA, 958 F.2d 1498, 1500-02 (9th Cir. 1992); Seife v. NIH, 874 F. Supp. 2d 248, 254 (S.D.N.Y. 2012); Concepcion v. FBI, 606 F. Supp. 2d 14, 33 (D.D.C. 2009); Glascoe v. DOJ, No. 04-0486, 2005 WL 1139269, at *1 (D.D.C. May 15, 2005). Therefore, I have determined that the withheld material is also exempt from disclosure under Exemption 3 of the FOIA.

Finally, I have determined that the withheld documents contain no reasonably segregable information that may be released.

This letter constitutes EPA's final determination on this matter. Pursuant to 5 U.S.C. § 552(a)(4)(B), you may obtain judicial review of this determination by filing a complaint in the United States District Court for the district in which you reside or have your principal place of business, or the district in which the records are situated, or in the District of Columbia. Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services ("OGIS") within the National Archives and Records Administration was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; e-mail, ogis@nara.gov; telephone, 301-837-1996 or 1-877-684-6448; and facsimile, 301-837-0348.

Should you have any questions concerning this matter, please call Joan Kaminer at (202) 564-0334.

Sincerely,



Kevin Miller
Assistant General Counsel
General Law Office

cc: Thomas H. Brennan, Deputy Director, Science Advisory Board