



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Legal Counsel

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December 21, 2023

VIA: hfb138@yahoo.com

Hans Bader
BADER FAMILY FOUNDATION
1236 N. Stafford St.
Arlington, VA 22201

Re: FOIA No.: **820-2023-005557**

Mr. Bader:

Items one (1) through three (3), six (6), and seven (7), of your Freedom of Information Act (FOIA) request cited above and received on 02/16/2023 are processed. All agency records in creation as of 11/08/2023 are within the scope of EEOC's search for responsive records. The paragraph(s) checked below apply.

- ☒ This response is made in connection with the matter filed in the District Court of the District of Columbia on April 10, 2023, numbered 1:23-cv-00976-JMC, titled *BADER FAMILY FOUNDATION vs. EEOC*.
- ☒ Items one (1) and two (2) of your request are granted in part and denied in part pursuant to the subsections of the FOIA indicated at the end of this letter. The agency searched for items three (3), six (6), and seven (7) of your request and found no responsive records fitting the description you seek. See the comments below for further information.
- ☒ Because this request is in litigation, should you have any questions please contact Mr. Sam Escher, the Assistant U.S. Attorney assigned to this case at (202) 252-2531 or Sam.Escher@usdoj.gov.

Sincerely,

Michael L. Heise
Assistant Legal Counsel | FOIA Division
FOIA@eeoc.gov

Applicable Sections of the Freedom of Information Act, 5 U.S.C. § 552(b):

Exemption(s) Used:

- | | |
|--|---|
| <input type="checkbox"/> (b)(3)(A)(i) | <input checked="" type="checkbox"/> (b)(6) |
| <input type="checkbox"/> § 706(b) | <input type="checkbox"/> (b)(7)(A) |
| <input type="checkbox"/> § 709(e) | <input checked="" type="checkbox"/> (b)(7)(C) |
| <input type="checkbox"/> § 107 of the ADA | <input type="checkbox"/> (b)(7)(D) |
| <input type="checkbox"/> § 207 of the GINA | <input type="checkbox"/> (b)(7)(E) |
| <input type="checkbox"/> (b)(4) | <input type="checkbox"/> (b)(7)(F) |
| <input type="checkbox"/> (b)(5) | |

(b)(6)

Exemption (b)(6) to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(6) (2016), as amended by the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538, permits withholding of information about individuals in "personnel and medical files and similar files" if its disclosure "would constitute a clearly unwarranted invasion of personal privacy." In addition to personnel records and medical files, the term "similar files" encompasses all information that "applies to a particular individual." *Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599-603 (1982). This exemption requires that the privacy interests of the individual be balanced against the public interest in disclosure. *Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976). In examining whether there is a "public interest" in disclosure of certain information, the "public interest" must truly be in the interest of the overall public. In *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989), the Supreme Court explained that only "[o]fficial information that sheds light on an agency's performance of its statutory duties" merits disclosure under FOIA and noted that "disclosure of information about private citizens that is accumulated in various governmental files" would "reveal little or nothing about an agency's own conduct."

Personal details pertaining to an individual are generally protected under this exemption. *See, e.g., DOD v. FLRA*, 510 U.S. 487, 500-502 (1994) (finding privacy interest in federal employees' home addresses even though they often are publicly available through sources such as telephone directories and voter registration lists); *Pons v. United States Customs Service*, No. 93-2094, 1998 U.S. Dist. LEXIS 6084 at **13-14 (D.D.C. April 27, 1998) (protecting identities of lower and mid-level agency employees who worked on asset forfeiture documents); *Barvick v. Cisneros*, 941 F. Supp. 1015 (D. Kan. 1996) (finding 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 protectable under Exemption Six); *Rothman v. USDA*, 1996 Lexis 22716 (C.D. Cal. June 17, 1996) (disclosure of information in the applications of persons who failed to get a job may embarrass or harm them).

INFORMATION WITHHELD PURSUANT TO THE SIXTH EXEMPTION TO THE FOIA:

- **Access to confidential, non-public Equal Employment Opportunity (EEO) complaint information to which you are not a party would constitute a clearly unwarranted invasion of personal privacy.**

(b)(7)(C)

Exemption (b)(7)(C) to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(7)(C) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, authorizes the Commission to withhold:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy . . .

The seventh exemption applies to civil and criminal investigations conducted by regulatory agencies. *Abraham & Rose, P.L.C. v. United States*, 138 F.3d 1075, 1083 (6th Cir. 1998). Release of statements and identities of witnesses and subjects of an investigation creates the potential for witness intimidation that could deter their cooperation. *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214, 239 (1978); *Manna v. United States Dept. of Justice*, 51 F.3d 1158, 1164 (3d Cir. 1995). Disclosure of identities of employee-witnesses could cause "problems at their jobs and with their livelihoods." *L&C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984).

The Supreme Court has explained that only "[o]fficial information that sheds light on an agency's performance of its statutory duties" merits disclosure under FOIA and noted that "disclosure of information about private citizens that is accumulated in various governmental files" would "reveal little or nothing about

an agency's own conduct." *United States Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 773 (1989).

INFORMATION WITHHELD PURSUANT TO EXEMPTION (b)(7)(C) TO THE FOIA:

- **Access to confidential, non-public Equal Employment Opportunity (EEO) complaint information to which you are not a party could reasonably be expected to constitute an unwarranted invasion of personal privacy.**

For a full description of the exemption codes used please find them at the following URL:

<https://www.eeoc.gov/foia/freedom-information-act-reference-guide>

COMMENTS

Items one (1) through three (3) and six (6) and seven (7) of your request, which were not affected by any subsequent amendments, read as follows:

1. All court complaints or administrative complaints alleging that the Equal Employment Opportunity Commission has discriminated against, or is discriminating against, a white employee or white employees based on their race.
2. All court complaints or administrative complaints alleging that the Equal Employment Opportunity Commission has discriminated against, or is discriminating against, a male employee or male employees based on their sex.
3. All briefs or memoranda filed in support of a motion for summary judgment alleging that the Equal Employment Opportunity Commission has discriminated against, or is discriminating against, a white employee or white employees based on their race.
6. All court rulings or administrative rulings finding that the Equal Employment Opportunity Commission racially discriminated against a white employee or white employees, or finding that it has likely committed illegal racial discrimination against a white employee or white employees, or issuing a preliminary or permanent injunction based on alleged or actual racial discrimination against a white employee or white employees.
7. All court rulings or administrative rulings finding that the Equal Employment Opportunity Commission discriminated based on sex against a male employee or male employees.

The court complaints from items one (1) and two (2) of your request are granted and two (2) responsive complaints totaling seventy (70) pages are released to you in full.

The administrative complaints from items one (1) and two (2) of your request are denied in full pursuant to the sixth and seventh exemptions to the FOIA. 5 U.S.C. §§ 552(b)(6) and (b)(7)(C). A detailed explanation of these exemptions and withheld information can be found above.

As part of our Exemption 6 and 7 analysis we considered the implicated privacy interests, which are significant, and the potential public interest in disclosure of the requested information. A complainant who has filed a federal sector administrative EEO complaint has a substantial privacy interest in keeping the fact of their complaint, and the details within it, as confidential as possible. Release of any details about an EEO complaint risks disclosure of the identity of the complainant, who has a very strong expectation of privacy. Furthermore, knowledge of an individual's participation in the EEO process could subject them to intimidation and embarrassment. *See Wilson v. DOT*, 730 F. Supp. 2d 140, 156 (D.D.C. 2010) (concluding that "[b]ecause [Equal Employment Opportunity ("EEO")] charges often concern matters of a sensitive nature, an EEO complainant has a significant privacy interest in keeping confidential the fact that she was an EEO complainant."), *aff'd*, No. 10-5295, 2010 WL 5479580 (D.C. Cir. Dec. 30, 2010). Thus, the EEOC does not disclose EEO complaint files to third parties.

Your February 16, 2023, request, and the amendment you submitted to that request on February 17, 2023, failed to articulate any specific public interest in disclosure of the requested information; rather, you state in conclusory terms that "disclosure of the records will significantly contribute to public understanding of Federal Government operations or activities." See, e.g., *NARA v. Favish*, 541 U.S. 157, at 172 (2004) (declaring that requesters "must show the information is likely to advance [a specific, significant public] interest").

Moreover, if a court finds that there is no public interest in disclosure and there is a privacy interest in the requested material, the Court of Appeals for the District of Columbia Circuit has held "[w]e need not linger over the balance; something, even a modest privacy interest, outweighs nothing every time." *Nat'l Ass'n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Beck v. DOJ*, 997 F.2d 1489, 1494 (D.C. Cir. 1993) (observing that because request implicates no public interest at all, court "'need not linger over the balance; something . . . outweighs nothing every time'" (quoting *NARFE*, 879 F.2d at 879)) (Exemptions 6 and 7(C)); *King v. DOJ*, 586 F. Supp. 286, 294 (D.D.C. 1983) ("Where the requester fails to assert a public interest purpose for disclosure, even a less than substantial invasion of another's privacy is unwarranted."), *aff'd*, 830 F.2d 210 (D.C. Cir. 1987).

Finally, the agency searched for items three (3), six (6), and seven (7) of your request and found no responsive records.