



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

June 15, 2015

IN REPLY REFER TO:  
Appeal No. 2014-068

Clair Johnson

(b) (6)

59102

Dear Ms. Johnson:

This responds to the undated Freedom of Information Act ("FOIA") appeal ("appeal") that you filed with the Department of the Interior ("Department"), which the Department received on February 20, 2014, and that it assigned as **Appeal Number 2014-068**. Your appeal concerns the FOIA request that you submitted to the Bureau of Indian Affairs ("BIA") seeking "a copy of the results of an EEO investigation conducted sometime around the year 2007 or 2008" involving an individual whom you identified by name. You allege that "[t]he report involves complaints against" this individual. In response to the FOIA request, the BIA advised you of its determination to withhold in full, pursuant to FOIA exemption (6),<sup>1</sup> a Report of Investigation ("ROI") that it determined is responsive to the FOIA request.

In the appeal, you do not challenge the BIA's determination that the ROI is protected from disclosure by exemption (6). Instead, you state that you filed the appeal because you "believe those responsible for researching and providing information regarding [your] initial request made an error to strive to reasonably segregate any non-exempt information from such documents in order to make a partial disclosure of any related materials."

Your appeal is **DENIED**.

While the FOIA generally requires that "any reasonably segregable portion of a record" be released after appropriate application of the FOIA's nine exemptions,<sup>2</sup> the Department concludes that segregation and release of information from the ROI is not possible in this case. Since you specified in the FOIA request that the file you seek pertains to an investigation into the purported conduct of an individual whom you identified by name, all of the information in the ROI (even in redacted form) can be linked back to this investigation pertaining to that individual, making, as observed by one court, "redaction a pointless exercise."<sup>3</sup> As a result, the Department concludes that release of any information

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<sup>1</sup> Exemption (6) allows an agency to withhold "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).

<sup>2</sup> See 5 U.S.C. § 552(b) (discussion after exemptions).

<sup>3</sup> See *Hunt v. FBI*, 972 F.2d 286, 288 (9<sup>th</sup> Cir. 1992) ("*Hunt*") (finding that redaction was not possible because the request was for one investigative file that focused on the conduct of one employee and observing that "[b]ecause [the] FOIA request sought access to a single file that contained information about one particular [employee], disclosure of any material contents of this file, coupled with the public availability of [the] FOIA request naming the [employee], would make redaction of the file a pointless exercise."); *Cotton v. Adams*, 798 F. Supp. 22, 27-28 (D.D.C. 1992) (determining that releasing any portion of documents would "abrogate the privacy interests" when request is for documents pertaining to two named individuals); *Schonberger v. National Transportation Safety Board*, 508 F. Supp. 941, 945 (D.D.C. 1985) (stating that segregation is not possible when request was for one employee's file).

from the ROI would abrogate the substantial privacy interest that the BIA found the individual to have in withholding the information in the document. Accordingly, the Department will uphold the BIA's decision to withhold the ROI in its entirety pursuant to exemption (6).

If you are dissatisfied with the Department's determination that it is not possible to segregate and release information from the ROI, you have a right to seek judicial review of this decision under 5 *U.S.C. § 552(a)(4)(B)*.

This completes the Department's response to your appeal. If you have any questions regarding this matter, please call the FOIA Appeals Office at (202) 208-5339.

Sincerely,



Darrell R. Strayhorn  
FOIA & Privacy Act Appeals Officer  
Department of the Interior

cc: Daniel Largo, FOIA Officer, BIA  
Janeen Birckhead, Office of Civil Rights, BIA  
Cindy Cafaro, Departmental FOIA Officer