



Department of Energy
Washington, DC 20585

September 4, 2020

Mehreen Rasheed
American Oversight
1030 15th Street, N.W., Suite B255
Washington, D.C. 20005

Via email: foia@americanoversight.org

Re: HQ-2020-00757-F

Dear Ms. Rasheed,

This is the final response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested the following:

All communications (email messages, email attachments, complete email chains, text messages, calendar entries, calendar invitations, and attachments thereto between (1) Brian Miller of the White House Counsel's Office and (2) the following agency officials:

- i. Anyone serving in the capacity of chief counsel or legal advisor, or their deputies;
- ii. Anyone serving in the capacity of White House liaison or advisor, or their deputies;
- iii. Anyone serving as agency point of contact for matters related to the presidential impeachment inquiry or trial.

Please provide all responsive records from September 24, 2019, through February 5, 2020.

On May 13, 2020 in an email with Ms. Iwetta Pyc, of my office, you agreed to amend your request to:

1. A search of Brian Miller's potential addresses:

- brian.miller@who.eop.gov
- brian.d.miller@who.eop.gov.

You requested that we also use Brian Miller's name as a search term in the 'to,' 'from,' 'cc,' and 'bcc' fields.

2. You agreed to receive text messages, calendar entries, and calendar invitations as they show up in emails or attachments to emails at this time. However,



American Oversight reserves the right to have all other responsive text messages, calendar entries, and calendar invitations produced at a later time.

3. You agreed to waive duplicate attachments.

4. You agreed to waive news clips, newsletters, or other mass-distribution emails that were sent without any additional commentary. For example, an email communication containing such a mass mailer with an additional message in the email would not be waived and would still be responsive to our request.

On June 11, 2020 in an email with Ms. Iwetta Pyc, you confirmed that American Oversight agrees to waive the search of text messages for the time being, and DOE will provide any text messages produced as a result of the email search.

Your request was assigned to DOE's Office of the General Counsel (GC) and Office of the Executive Secretariat (ES) to conduct a search of their files for responsive documents. DOE started its search on June 15, 2020, which is the cut-off date for responsive documents. DOE identified one (1) document responsive to your request.

Upon review, DOE has determined that certain information contained in the documents should be withheld pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6).

Exemption 6 is generally referred to as the "personal privacy" exemption; it provides that the disclosure requirements of FOIA do not apply to "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). In applying Exemption 6, the DOE considered: 1) whether a significant privacy interest would be invaded; 2) whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and 3) whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy.

The information withheld under Exemption 6 consists of the identity of an unsuccessful job candidate and personal and private email addresses. Additionally, the information withheld includes a certain telephone number and a cellphone number. This information qualifies as "similar files" because it is information in which an individual has a privacy interest. Moreover, releasing the information could subject the individuals to unwarranted or unsolicited communications. Since no public interest would be served by disclosing this information, and since there is a viable privacy interest that would be threatened by such disclosure, Exemption 6 authorizes withholding the information. Therefore, we have determined that the public interest in the information's release does not outweigh the overriding privacy interests in keeping it confidential, and this information is being withheld pursuant to Exemption 6.

This satisfies the standard set forth at 5 U.S.C. § 552(a)(8)(A) that agencies shall withhold information under FOIA "only if (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption...; or (II) disclosure is prohibited by law..." 5

U.S.C. § 552(a)(8)(A) also provides that whenever full disclosure of a record is not possible, agencies shall “consider whether partial disclosure of information is possible...and (II) take reasonable steps necessary to segregate and release nonexempt information.” Therefore, we have determined that, in certain instances, a partial disclosure is proper.

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the determination to withhold the information described above. The FOIA requires that “any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b). As a result, a redacted version of the documents is being released to you in accordance with 10 C.F.R. §1004.7(b)(3).

This determination, as well as the adequacy of the search, may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to Director, Office of Hearings and Appeals, HG-1, L’Enfant Plaza, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal to OHA.filings@hq.doe.gov, including the phrase “Freedom of Information Appeal” in the subject line (this is the preferred method by the Office of Hearings and Appeals). The appeal must contain all of the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either: 1) in the district where you reside; 2) where you have your principal place of business; 3) where DOE’s records are situated; or 4) in the District of Columbia.

You may contact DOE’s FOIA Public Liaison, Alexander Morris, FOIA Officer, Office of Public Information, at 202-586-5955, or by mail at MA-46/Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

The FOIA provides for the assessment of fees for the processing of requests. *See* 5 U.S.C. § 552(a)(4)(A)(i); *see also* 10 C.F.R. § 1004.9(a). In our May 6, 2020 letter, you were advised that your request was placed in the “other” category for fee purposes. Requesters in this category are entitled to two (2) free hours of search time and are provided 100 pages at no cost. However, in that same letter, we granted you a fee waiver for this request. Thus, no fees will be charged for processing your request.

If you have any questions about the processing of your request or this letter, you may contact me or Ms. Iwetta Pyc of this office at MA-46/Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, or at 202-586-4933.

I appreciate the opportunity to assist you with this matter.

Sincerely,

Alexander C. Morris

Digitally signed by
Alexander C. Morris
Date: 2020.09.04
12:29:54 -04'00'

Alexander C. Morris
FOIA Officer
Office of Public Information

Enclosures

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Request #: HQ-2020-00757-F

Final response for Mehreen Rasheed:

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being, and DOE will provide any text messages produced as a result of the email search.

DOE's Office of the General Counsel (GC) and Office of the Executive Secretariat (ES) completed their search and located one (1) document responsive to your request.

- One (1) document is *being released, in part, pursuant to Exemption (b)(6)*.

From: [Cooper III, William S.](#)
To: [Miller, Brian D. EOP/WHO](#)
Cc: (b)6
Subject: RE: E-introduction
Date: Wednesday, October 16, 2019 7:06:00 PM

Document 1

Thanks, Brian.

Bill

From: Miller, Brian D. EOP/WHO [mailto:(b)6]
Sent: Tuesday, October 15, 2019 4:14 PM
To: Cooper III, William S. <william.cooper@hq.doe.gov>
Cc: (b)6
Subject: [EXTERNAL] E-introduction

Hi Bill,
Nice seeing you recently. I wanted to introduce you to (b)6. (b)6's a great attorney with whom I've worked at the DOJ and at the U.S. Attorney's office in EDVA.
All the best,
Brian

Brian D. Miller
Senior Associate Counsel and
Special Assistant to the President
Office of White House Counsel
EEOB No. 123
(b)6
O: (b)6 | C: (b)6

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