



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

September 29, 2021

VIA EMAIL

Mr. Randy Landreneau
U.S. Inventor
17440 Dallas Parkway
Dallas, TX 75287

RE: ***Freedom of Information Act (FOIA) Request No. F-21-00173***

Dear Mr. Landreneau:

The United States Patent and Trademark Office (USPTO) FOIA Office has received your e-mail dated July 18, 2021 requesting a copy of the following documents pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. § 552:

All communications, documents, requests for approval, and records the PTO submitted to OPM regarding base salaries, bonus awards (including their calculation) for each of fiscal years 2012-2020 inclusive, and to each PTO employee working for the Patent Trial and Appeal Board (PTAB). This includes the names and signatures of the authorizing officials and pay information for all Administrative Patent Judges (APJs), Lead APJs, Vice Chief APJs, Deputy Chief APJ, and Chief APJ. The records under this request also include but not limited to any cover letters, submission slips, and any online submission forms provided to OPM when communicating the information sought hereunder.

Please provide copies of all communications, documents, records, and approvals that the PTO received from OPM in response to, and with respect to PTO's communications identified in Request 1 above.

The USPTO has identified 75 pages of documents that are responsive to your request. A copy of the material is enclosed. Portions of the material, however, were redacted pursuant to Exemption (b)(6) of the FOIA.

Exemption (b)(6) of the FOIA, which permits the withholding of "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). The term "similar files" has been broadly construed to cover "detailed Government records on an individual which can be identified as applying to that individual." *Dep't of State v. Washington Post*, 456 U.S. 595, 601 (1982). Information that applies to a particular individual meets the threshold requirement for Exemption (b)(6) protection. *Id.* The privacy interest at stake belongs to the individual, not the agency. *See Dep't of Justice v. Reporter's Comm. for Freedom of the Press*, 489 U.S. 749, 763-65 (1989). Exemption (b)(6) requires a balancing of an individual's right to privacy against the public's right to disclosure. *See Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Multi Ag Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1228 (D.C. Cir. 2008).

Here, the social security numbers, birthdates, benefit elections, percentage ranges for bonus compensation and individual performance rating numbers is information that applies to particular individuals, and in which those individuals have a legitimate privacy interest. The combination of bonus percentage with the bonus amount could lead to revealing an individual performance rating, which is information that falls squarely within the accepted privacy interest federal employee have over their performance records. *E.g., Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283-85 (D.D.C. 2011) (affirming agency's redaction of job performance information); *Barvick v. Cisneros*, 941 F. Supp. 1015, 1020 n.4 (D. Kan. 1996) (concluding that employees have protectable privacy interest in performance appraisals).

If a privacy interest in the responsive records exists, as it does here, exemption (b)(6) requires a balancing of an individual's right to privacy against the public's right to disclosure. *See Dep't of the Air Force v. Rose*, 425 U.S.

352, 372 (1976); Multi Ag Media LLC v. Dep't of Agric., 515 F.3d 1224, 1228 (D.C. Cir. 2008). The burden is on the requester to establish that disclosure of this information would serve the public interest. See Bangoura v. Dep't of the Army, 607 F. Supp. 2d 134, 148-49 (D.D.C. 2009). When balancing the public interest of release against individual privacy interest, the Supreme Court has made clear that information that does not directly reveal the operations or activities of the federal government falls outside the ambit of the public interest. See Reporters Comm., 489 U.S. at 775. The withheld information does little to shed light or contribute significantly to public understanding of the overall operations or activities of the USPTO, and is instead focused on individual employee performance. Moreover, your FOIA request does not articulate any alleged public interest that outweighs this privacy interest. See NARA v. Favish, 541 U.S. 157, 175 (2004) (noting that the balancing test did not even come into play when the requester had produced no evidence to warrant a belief that government impropriety occurred). As such, the FOIA dictates that the information be withheld.

You have the right to appeal this initial decision to the Deputy General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. An appeal must be received within 90 calendar days from the date of this letter. See 37 C.F.R. § 102.10(a). The appeal must be in writing. You must include a copy of your original request, this letter, and a statement of the reasons why the information should be made available and why this initial denial is in error. Both the letter and the envelope must be clearly marked "Freedom of Information Appeal."

You may contact the FOIA Public Liaison at 571-272-9585 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.

Sincerely,

Dorothy G. Campbell

Dorothy G. Campbell
USPTO FOIA Specialist
Office of General Law

Enclosure