



UNITED STATES PATENT AND TRADEMARK OFFICE

VIA EMAIL

Mr. Randy Landreneau
rlinventor@protonmail.com

RE: *Freedom of Information Act (FOIA) Request No. F-21-00011*

Dear Mr. Landreneau:

This is an interim response to your email dated October 5, 2020 in which you requested, under the Freedom of Information Act, 5 U.S.C. § 552, a copy of:

1. Documents sufficient to identify the person (either by role, title, or name) who heads the office responsible for the duties of the PTO under 44 U.S.C. § 3506(a)(3), for fiscal years 2013, 2016, 2018, 2019, and 2020.
2. Documents sufficient to identify the “measurable organization and individual goals in key operational areas as delineated in an annual performance plan” of 35 U.S.C. § 3(b)(2)(B) for the Commissioner for Patents, the Commissioner for Trademarks, the Deputy Commissioner for Patent Examination Policy, the Patent Trial and Appeal Board (“PTAB”) Chief Judge, Deputy Chief Judge, Vice Chief Judge, General Counsel, and Chief Information Officer, for fiscal years 2013, 2016, 2017, 2018, 2019, and 2020. This request is directed to only the criteria and scoring methods and any explanations thereof, not to the particular scores attained by individuals.
3. Any annual performance appraisal plan, Classification and Performance Management Record, Executive Performance Agreement, or the like, for the Commissioner for Patents, the Commissioner for Trademarks, the Deputy Commissioner for Patent Examination Policy, General Counsel, and Chief Information Officer for fiscal years 2013, 2016, 2017, 2018, 2019, and 2020.
4. All “PAP Support Documents” detailing AIA Trial crediting, and documents describing crediting of “decisional units” for AIA trials, for all PTAB employees for fiscal years 2013, 2016, 2018, 2019, and 2020.
5. The Board of Patent Appeals and Interferences’ or Patent Trial and Appeal Board’s Standard Operating Procedures (SOP) 5 and 6. For any SOP that is not in effect today, please provide the last or most recent version that was in effect, and documents reflecting withdrawal, termination, or expiration of that SOP.

The United States Patent and Trademark Office (USPTO or Agency) identified to 1,703 pages of records that are responsive to your request. Please note that per email correspondence dated December 17, 2020 an agreement was made to accept release on a rolling basis. This is the final release of documents. It contains approximately 821 pages of documents. Portions of these documents have been redacted pursuant to Exemptions (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 performance ratings, performance narratives, and personal signatures is information that applies to particular individuals, and in which those individuals have a legitimate privacy interest. Federal employees have a protectable privacy interest in purely personal details that do not shed light on agency functions, including their performance ratings. See Barvick v. Cisneros, 941 F. Supp. 1015, 1020 (D. Kan. 1996) (finding that performance appraisals were properly withheld under Exemption 6). 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 operations or activities of the USPTO. Your FOIA request does not assert a public interest that outweighs the privacy interest, nor is one otherwise evident. 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
USPTO FOIA Officer
Office of General Law

Enclosure