



The National Treasury Employees Union

FOIA/PA REQUEST

Case No.:

2011-0004A

Date Recd:

2-1-11

Specialist:

Raphael

Related Case:

January 28, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. Nuclear Regulatory Commission
FOIA/Privacy Officer Mailstop: T-5 F09
Washington, DC 20555-0001

Re: FOIA/PA Appeal

Dear Sir or Madam:

On November 30, 2010, NTEU requested the following information pursuant to the Freedom of Information Act ("FOIA"), Title 5 of the United States Code, section 552. The information is requested for each Nuclear Regulatory Commission ("NRC") employee for the years 2004 to 2009 ("subject years"). NTEU requested that NRC provide the following information, preferably presented in an electronic spreadsheet format:

1. Information for each NRC employee for each of the subject years:

- Position title;
- Series;
- Grade;
- Step;
- Date of last step increase;
- Base Salary;
- Base salary with locality pay;
- Overall appraisal score/rating;
- Specific appraisal score/rating;
- Gender;
- Race;
- National Origin;
- Disability Status;
- Age or DOB;
- Location of employee by city and state;
- Location of organization by city and state;
- Organizational component;
- NRC service computation date; and
- Bargaining unit status.

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2. The award amounts received in each of the subject years by each NRC employee;
3. The type of award received in each of the subject years by each NRC employee;
4. Whether the employee received a QSI in any of the subject years;
5. Whether an employee was promoted in any of the subject years;
6. The amount of any other form of other financial compensation the employee may have received in any of the subject years, including, but not limited to, retention allowances, student loan repayments, or recruitment allowances;

NTEU had, prior to receiving any response from the NRC, agreed to limit the request to years 2004-2006. On January 5, 2011, NTEU received information as to the above request for the years 2004 to 2006. However, the NRC exempted information as to gender, race, national origin, disability, age, and date of birth, relying upon Exemption 6 of the FOIA/Privacy Act. NTEU hereby appeals the denial of that information.

NTEU directs the NRC to legal authority which holds that a union is not barred by Exemption 6 of the FOIA/Privacy Act, with respect to receiving information regarding gender, race, national origin, disability, age, and date of birth. In *Veterans Administration Medical Center, Jackson, MS and NFFE, Local 589*, 32 FLRA 133 (1988), the Federal Labor Relations Authority held as follows:

The Privacy Act generally prohibits the disclosure of personal information about Federal employees without their consent. However, section (b)(2) of the Privacy Act provides that the prohibition against disclosure is not applicable if disclosure of the information is required under the FOIA. Exemption (b)(6) of the FOIA provides that information contained in personnel files may be withheld if disclosure of the information would constitute a "clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). In order to determine whether the requested information falls within the (b)(6) exemption, a balance must be struck between an individual's right to privacy and the public interest in having the information disclosed. See Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA 788 (1986), enforced in part and remanded sub nom. U.S. Department of Agriculture and Farmers Home Administration Finance Office, St. Louis, Missouri v. FLRA, 836 F.2d 1139 (8th Cir. 1988). . . .

In this case, we find that the balance of interests favors the disclosure sought by the Union. We conclude that the information requested by the Union is necessary

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and relevant to its representational functions under the Statute. We note the Union's expressed intent in requesting the information was to "make judgments concerning the filing of a grievance," Opposition at 1, and to determine "whether there is a statistical pattern of discrimination on a basis prohibited by the Civil Rights Act of 1964." Opposition at 7. In order to perform these functions, the Union must know the position title, race, sex, grade and service of the Center's employees. The exclusive representative has the right to identify the minority status of individual employees in order to pursue its representational duties under the Statute. See U.S. Army Corps of Engineers, Kansas City District, Kansas City, Missouri, 22 FLRA 667, 669 (1986). The Union has requested the information in order to perform its representational functions as an exclusive representative. These functions are in the public interest and also safeguard the public interest.

The Agency has not established that disclosure of the position title, race and service concerning employees who encumber unique positions constitutes a clearly unwarranted invasion of privacy. The Agency submitted no support for its claim that there are any employees in such positions whose race is not obvious. Even if such evidence had been submitted, however, the Agency's argument that the disclosure of information concerning the position title, race, sex, grade and service of that employee would cause embarrassment and discrimination is speculative. Such speculative harm to a hypothetical employee is outweighed by the Union's need for the information to determine whether an impermissible pattern of discrimination against minorities exists within the Center.

In sum, we conclude that the public interest in disclosure of the information sought by the Union outweighs the invasion of privacy resulting from the disclosure. The invasion of privacy is not clearly unwarranted within the meaning of exemption (b)(6) of FOIA, and disclosure is not prohibited by the Privacy Act. *Id.*, available at: <http://www.flra.gov/decisions/v32/32-019.html>

Based, in part, on the above, NTEU hereby reasserts its right to the information the NRC exempted from its disclosure. NTEU would also like to stress the fact that it is not requesting any names or personally identification numbers of employees such that any potential infringement on an employee's privacy is minimal, if at all.

According to 5 U.S.C. § 552, a waiver of fees based on service in the public interest is requested because the aforementioned information will likely assist NTEU in better serving the interests of its numerous bargaining unit members by further contributing to their overall understanding of government operations. Additionally, NTEU needs this information to perform its representational functions, and ensure the NRC is not discriminating against its employees.

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Furthermore, a waiver should be granted due to the fact that this request is not in NTEU's commercial interest.

NTEU is a non-commercial category III requester and is therefore entitled to waiver of fees for the first two hours of research and the first 100 pages of documentation. If research time is estimated to exceed \$300.00, please contact Luke Chesek at (202) 572-5528 or the address below regarding the estimated cost of responding to this request. Thank you for taking the time to hear NTEU's appeal in this matter.

Sincerely,

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