

Memorandum

Date: April 20, 2020

From: Deputy General Counsel, General Law

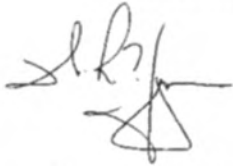
Subj: Update on Email Redactions under Freedom of Information Act (FOIA) Exemption (b)(6)

To: VACO FOIA Service (005R1C), Administration FOIA Services, Program Office
FOIA Officers

1. To ensure consistent practice by VA FOIA officers, OGC is restating the basic analysis for determining whether to withhold the government email addresses of VA employees when disclosing information under FOIA.
2. The individual va.gov email addresses of all VA employees should be redacted, regardless of Grade or SES level, under 5 U.S.C. § 552a(b)(6). Generally, disclosure of the individual's email address is a clearly unwarranted invasion of personal privacy.
3. Applying this guidance, the email address John.Doe@VA.gov would be redacted leaving only ■■■■■■■■@va.gov.
4. This guidance does not affect the general practice of redacting the names of VA employees of GS-15 and below and releasing the names of employees of SES level or above.
5. Background: FOIA Exemption 6 "broadly exempts disclosure of all information that 'applies to a particular individual.'" *Schoenman v. FBI*, 575 F. Supp. 2d 136, 159 (D.D.C. 2008) (quoting *U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602, 102 S. Ct. 1957 (1982)).
6. The following step-by-step analysis is used to determine when Exemption (b)(6) applies: (1) determine whether a personal privacy interest is involved; (2) determine whether disclosure would serve the public interest; and (3) balance the personal privacy interest against the public interest. *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). When analyzing whether a particular employee's email address is exempt from release under FOIA, there is a clearly identifiable privacy interest. As a matter of law, career public servants such as VA employees retain personal privacy interests in the discharge of their public duties. VA employees have an interest in being protected from the risk of annoyance and harassment as well as other safety concerns.
7. The only public interest cognizable under FOIA is the public "understanding of the operations or activities of the government." *U.S. Dep't of Justice v.*

Reporters Comm. for Freedom of Press, 489 U.S. 749, 775, 109 S. Ct. 1468, 103 L. Ed. 2d 774 (1989); *Bibles v. Or. Natural Desert Ass'n*, 519 U.S. 355, 355-56, 117 S. Ct. 795, 136 L. Ed. 2d 825 (1997) (identifying relevant public interest as extent to which disclosure of the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to.) It is clear that the email address of an individual VA employee would not "open agency action to the light of public scrutiny" or add to the public's understanding of agency operations. *Reporter's Committee*, 489 U.S. at 772.

8. This analysis is consistent with the most recent case law that has addressed the issue. See e.g., *Seife v. United States Dep't of State*, 298 F. Supp. 3d 592, 629 (S.D.N.Y. 2018); *Braun v. United States Postal Serv.*, 317 F. Supp. 3d 540 (D.D.C. 2018); *Milbrand v. United States DOL*, No. 17-CV-13237, 2018 U.S. Dist. LEXIS 134025 (E.D. Mich. Aug. 9, 2018) *Shurtleff v. United States EPA*, 991 F. Supp. 2d 1 (D.D.C. 2013).
9. In many instances, VA may have published individual email addresses publicly; in those cases the privacy interest is moot and the individual's email address may be released. However, unless it is known to the FOIA officer that the email address has been released through an official public release by the agency, the assumption may be made that the individual has retained a privacy interest in the address.
10. Please disseminate within your respective organizations to ensure that the Department is consistently applying FOIA exemption (b)(6) throughout the enterprise. If you have any questions please contact, Brian Tierney, Deputy Chief Counsel, Information and Administrative Law Group (brian.tierney@va.gov).



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