

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
)
ANA JANCKSON-CURTIS) FOIA Control No. 2009-574
)
On Request for Inspection of Records)
)

MEMORANDUM OPINION AND ORDER

Adopted: March 8, 2011

Released: March 9, 2011

By the Commission:

1. By this memorandum opinion and order, we deny an application for review filed by Ana Janckson-Curtis (Curtis).¹ Curtis seeks review of a decision by the Managing Director² denying in part her Freedom of Information Act (FOIA) request for materials relating to a Commission employment action.³ We find that the Managing Director correctly applied FOIA Exemption 6 in withholding materials regarding the unsuccessful applicants for a management position at the Commission because releasing those materials would constitute an unwarranted invasion of the applicants’ personal privacy.

I. BACKGROUND

2. Curtis’ FOIA Request sought a copy of the Merit Promotion (MP) file compiled in response to Vacancy Announcement MP-CGB-2009-0008, which sought to fill the position of Assistant Bureau Chief for Management in the Consumer and Governmental Affairs Bureau.⁴ In response to the FOIA Request, the Managing Director released to Curtis several documents. These included: (1) the vacancy announcement; (2) the action document filling the vacancy, including the position description; (3) a redacted copy of the successful applicant’s “Quick Hire” application with an attached resume; (4) a redacted copy of the Applicant Listing Report; and (5) a redacted copy of the Applicant Job Tracking History.⁵ Pursuant to FOIA Exemption 6,⁶ the Managing Director redacted from the released documents the Social Security number, date of birth, home address, and other personal information of the successful

¹ See Letter from Ana Janckson-Curtis to Federal Communications Commission, Office of General Counsel (Oct. 16, 2009) (AFR).

² See Letter from Steven Van Roekel, Managing Director to Ana Janckson-Curtis (Sept. 25, 2009) (Decision).

³ See E-mail from Ana Curtis to FOIA@fcc.gov (Aug. 12, 2009) (FOIA Request).

⁴ See FOIA Request at 1.

⁵ See Decision, Enclosures.

⁶ See 5 U.S.C. § 552(b)(6) (protecting personnel and medical files and similar files the disclosure of which “would constitute a clearly unwarranted invasion of personal privacy”).

applicant.⁷ Also pursuant to Exemption 6, the Managing Director redacted the names of the unsuccessful applicants⁸ and withheld entirely their applications and resumes.⁹

3. In her application for review, Curtis focuses on the unsuccessful applicants' applications and resumes, contending that the Managing Director should have released redacted copies instead of withholding them.¹⁰ She asserts that the Managing Director invoked Exemption 6 merely because the records were part of personnel (or similar) files and failed to balance the individuals' privacy interest in nondisclosure of the records against the public interest in disclosure.¹¹ According to Curtis, the public interest would be served by disclosure because it would demonstrate whether the position was filled based on the applicants' qualifications rather than as a result of prohibited personnel practices.¹² Curtis also contends that any privacy interest could have been accommodated by redacting the unsuccessful applicants' names, addresses, telephone numbers, dates of birth, and Social Security numbers from their applications and resumes, and that the Managing Director failed to explain why this could not be done.¹³ Finally, Curtis indicates that the information requested will be used to support complaints to the Merit Systems Protection Board and Office of Special Counsel about prohibited personnel practices, which she contends further justifies disclosure.¹⁴

II. DISCUSSION

4. We find that the Managing Director correctly determined that privacy interests prevailed over the public interest in disclosure with respect to the resumes and applications of unsuccessful applicants, and that the Managing Director properly applied FOIA Exemption 6.¹⁵ This matter is similar

⁷ See Decision at 1.

⁸ A total of seven people applied for the position. See Decision, Enclosure (Applicant Listing Report).

⁹ See Decision at 1. The Managing Director also withheld various internal pre-decisional documents under FOIA Exemption 5. See *id.* The AFR does not address these documents and accordingly they are not addressed here.

¹⁰ The FOIA Request also sought documents other than the MP file: complaints regarding hiring and promotion practices. See FOIA Request at 1. Curtis, however, subsequently withdrew that portion of the FOIA Request from FOIA 2010-574 and filed it as a new FOIA request, FOIA 2010-006. See Decision at 1; E-mail from Ana Curtis to Laurence Schecker (Sept. 24, 2009). The Request also sought Office of Personnel Management (OPM) audit reports. See FOIA request at 1. In the Decision, the Managing Director indicated that OPM was being consulted to obtain its views on disclosure of the audit reports. See Decision at 2. Subsequently, the Managing Director released redacted versions of the reports. See Letter from Steven Van Roekel, Managing Director to Ana Janckson-Curtis (Jan. 5, 2010) (Further Decision). While the AFR, which was filed before the release of these redacted documents, discusses the audit reports (see AFR at 2-3), the Further Decision provided for the filing of a further AFR if Curtis was dissatisfied with the release of the redacted audit reports. Curtis did not file an appeal of the Further Decision. We therefore find that Curtis has waived any objections she might have had to the release of the redacted audit reports. As an additional matter, the AFR seeks a waiver of FOIA processing fees. See AFR at 3. No fees were, however, were required for processing Curtis' FOIA Request, so the matter is moot. See Decision at 2; Further Decision at 1.

¹¹ See AFR at 1; see also *U.S. Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 776 (1989) (court must balance the public interest in disclosure against the privacy interests Congress intended to protect).

¹² See AFR at 2.

¹³ See *id.* at 1-2.

¹⁴ See *id.* at 2.

¹⁵ The AFR also argues that records should not be withheld under FOIA Exemption 2. See *id.* The Managing Director, however, did not rely on Exemption 2 to withhold any records. Because we uphold the Managing Director's Decision under Exemption 6, we need not consider Exemption 2.

to *Core v. U.S. Postal Service*,¹⁶ a case in which an unsuccessful applicant for several Postal Service information technology positions sought information about both successful and unsuccessful applicants for the positions. There, the Fourth Circuit held that information concerning the successful applicants for a Postal Service position should be released but that information regarding unsuccessful applicants properly could be withheld. It found that the public has an interest in the qualifications of people selected to fill a position but only a slight interest in people not selected, stating: “Disclosure of the qualifications of people who were not appointed is unnecessary to evaluate the competence of people who were appointed.”¹⁷ The court also found that the unsuccessful applicants had a greater privacy interest at stake than the successful applicant, because the fact of non-selection might be embarrassing and the disclosure of certain information in an application could reveal the disappointed applicants’ identities even if their names were redacted.¹⁸

5. Curtis’ stated intention of uncovering irregularities in the hiring process does not change the balance the Managing Director appropriately calibrated between private and public interests. The Supreme Court has held that where the public interest asserted in support of release is obtaining information to show that responsible officials acted improperly in the performance of their duties, the requester must establish more than a bare suspicion of wrongdoing to obtain disclosure.¹⁹ The requester must produce evidence that would warrant belief by a reasonable person that the alleged Government impropriety might have occurred.²⁰ Such evidence has not been adduced here. Further, it is irrelevant that Curtis intends to use the information to support a complaint before the Merit Systems Protection Board or the Office of Special Counsel. Whether an item must be disclosed under FOIA does not depend on the purpose of the request.²¹

6. We have examined the records responsive to Curtis’ request to determine whether any additional portions could be segregated and released, or whether we should as a matter of our discretion release the records we have found are exempt from disclosure under Exemption 6.²² We have found no

¹⁶ 730 F.2d 946, 947-49 (4th Cir. 1984).

¹⁷ *Id.* at 949.

¹⁸ *See id.* at 948-49:

Even if [unsuccessful applicants’] names were deleted, the applications generally would provide sufficient information for interested persons to identify them with little further investigation. Though the unsuccessful applicants about whom Core requested information were deemed qualified by the officials who reviewed the files, ultimately they were rejected after interviews by the selecting official. In contrast to the lack of harm from disclosure of the applications of persons who are hired, disclosure may embarrass or harm applicants who failed to get a job. Their present employers, co-workers, and prospective employers, should they seek new work, may learn that other people were deemed better qualified for a competitive appointment.

¹⁹ *See National Archives and Records Admin. v. Favish*, 541 U.S. 157, 174 (2003).

²⁰ *See id.*

²¹ *See U.S. Dep’t of Defense v. FLRA*, 510 U.S. 487, 496 (1994) (whether an invasion of privacy is warranted cannot turn on the purposes for which the request for information is made); *Mayock v. Nelson*, 938 F.2d 1006, 1008 (9th Cir. 1991) (litigation-generated need for documents is irrelevant to whether statutory exemption applies); *Core*, 730 F.2d at 949 (“It is no answer to say that only Core seeks information about the unsuccessful applicants and that his purpose is benign. If Core is entitled to information about unsuccessful applicants for a government job, other members of the public, including employers and employment agencies, would be entitled to the same information in this and other instances.”).

²² *See Memorandum to Heads of Executive Departments and Agencies, Freedom of Information Act*, 74 Fed. Reg. 4683 (2009) (President Obama’s memorandum concerning the FOIA); *The Freedom of Information Act (FOIA)*, available at <<http://www.usdoj.gov/ag/foia-memo-march2009.pdf>> (Attorney General Holder’s FOIA Memo).

meaningful information that could be released without compromising privacy interests. As the *Core* decision recognized, information regarding unsuccessful job applicants could be used to determine their identities even if certain personal identifiers were redacted.²³ Accordingly, our disposition fulfills the mandate of the FOIA and Attorney General Holder's FOIA Memo to release segregable portions of the records where reasonable. Moreover, while it is true that even when particular information falls within the scope of a FOIA exemption, federal agencies generally are afforded the discretion to release the information on public interest grounds,²⁴ we decline to exercise our discretion to do so here. We do not discern any overriding public interest in releasing the records that we have determined are exempt from disclosure under FOIA Exemption 6 given the personal privacy interests attendant to those records.

III. ORDERING CLAUSE

7. Accordingly, it is ordered that the application for review filed by Ana Janckson-Curtis IS DENIED. Curtis may seek judicial review of this action, pursuant to 5 U.S.C. § 552(a)(4)(B).

8. The officials responsible for this action are the following: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²³ See note 18, *supra*.

²⁴ See Attorney General Holder's FOIA Memo, *supra*.