



D.C. Circuit Disagrees with DOJ Handling of FOIA Request

Susan McGuire Smith November 2, 2016 Court Cases Comments (2)

This case (*American Immigration Lawyers Association v. Executive Office for Immigration Review* (C.A.D.C. No. 15-5201, 7/29/16)) involves a request by the AILA (American Immigration Lawyers Association) under the Freedom of Information Act (FOIA) for records relating to complaints filed against immigration judges, who are federal employees working under the Department of Justice (DOJ). AILA was looking for a pattern of problems with certain judges in their handling of immigration appeals.

When six months went by with no response, AILA sued in district court. This led to what the appeals court characterized in its decision as “a series of rolling disclosures” by DOJ. (Opinion p. 7) Eventually (after about a year and a half after the FOIA request), some 16,000 pages had been released involving 767 files involving complaints against immigration judges. While the files had detailed information as to date, nature and result of each complaint, the agency redacted certain information it declared to be exempt. Some of these redactions were under Exemption 6, which relates to personnel files—DOJ withheld individual immigration judges’ names and other identifying information and substituted a code for each judge so the requester could connect various complaints to a particular judge. DOJ went further and blanked out information that was not exempt under FOIA but that the department felt was not responsive to the request even though found in a document that was deemed responsive. (pp. 7-8)

The district court upheld the agency’s determinations so AILA took its challenge to the appeals court. AILA argued that it was not sustainable for the agency to redact the names of judges or information within releasable documents simply because it deemed the redacted information as irrelevant to their FOIA request.

The appeals court has now ruled against the agency and the lower court on these two issues: “We disagree with the district court’s resolution of the ...two issues and remand for further proceedings.” (pp. 8-9)

As to the blanket redaction of the judges' names from the decisions, the court ruled that the agency did not meet its burden to show this information is exempt. Balancing the public's interest in disclosure against the privacy interests of the judges, the court concludes the balance tips in favor of disclosure. The court found persuasive the AILA's argument that ongoing issues involving the process of discipline of immigration judges is relevant to the public understanding of what is going on within the agency in this regard. Since so much information on disciplinary cases has been disclosed already, there was no good justification for withholding names of judges involved in those disciplinary cases. For this reason, the appeals court has remanded this issue for further consideration by the district court. Presumably the door is open for the DOJ to make a better case supporting exemption on a particularized basis rather than a blanket determination. (p. 15)

As to the second issue involving redaction from some 64 pages of releasable documents certain information the agency deemed irrelevant to the request, the appeals court cast the question of first impression as follows: "if the government identifies a record as responsive to a FOIA request, can the government nonetheless redact particular information within the responsive record on the basis that the information is nonresponsive?" (pp. 16-17) In short, the appeals court concludes there is "no authority in the statute for the government to do so." (p. 17) The exemptions in FOIA are the only basis for withholding information. Period.

"[O]nce an agency *itself* identifies a particular document or collection of material—such as a chain of emails—as a responsive 'record,' the only information the agency may redact from that record is that falling within one of the statutory exemptions." (p. 20) The court pointed out that in this case the agency's redactions for non-responsiveness were individual sentences contained within an email. In a somewhat stinging rebuke of the DOJ, the court states "We find it difficult to believe that any reasonable understanding of a 'record' would permit withholding an individual sentence within a paragraph within an email on the ground that the sentence alone could be conceived of as a distinct, non-responsive 'record.'" (pp. 20-21)

Unless the district court can be persuaded by the agency on remand that any of these narrow redactions are supported as exempt under FOIA, then the entire records must be disclosed.

[AILA v. Office of Immigration Review 15-5201](#)

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