

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NISKANEN CENTER, )  
Plaintiff, )  
v. ) Civil Action No. 19-0125 (JEB)  
FEDERAL ENERGY )  
REGULATORY COMMISSION, )  
Defendant. )  
\_\_\_\_\_  
)

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT AND REPLY IN FURTHER SUPPORT OF DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

**INTRODUCTION**

Defendant Federal Energy Regulatory Commission (“FERC” or “Defendant”), is entitled to summary judgment on all claims. There is no genuine dispute that Defendant has satisfied its obligations under the Freedom of Information Act (“FOIA”), 5 U.S.C. §552, because it: (1) conducted a reasonable search to locate records responsive to Plaintiff’s FOIA request; (2) properly withheld information pursuant to the statutory exemptions; and (3) complied with FOIA’s segregability obligations.

Plaintiff challenges FERC’s withholdings under Exemption 6, contending that there is not a substantial privacy interest in the names and personal addresses of the landowners. Pl. Mot. at 24. Plaintiff further argues that the public interest in the records it seeks outweighs the privacy interests of the individual landowners. *Id.* at 26. These arguments lack merit and the Court should reject them outright.

## **DISCUSSION**

### **DEFENDANT'S RELIANCE ON EXEMPTION 6 WAS PROPER**

Portions of the records responsive to Plaintiff's request were withheld under Exemption 6 because any public interest in their disclosure was outweighed by the probability that such disclosure would constitute a clearly unwarranted invasion of the privacy interest held by the individuals to which those portions pertained. Plaintiff asserts that there is no privacy interest in the landowners' information because "none of the landowners chose to be on the requested lists," and that "[a] landowner's name being on one of the lists does not reveal any significant personal matters, financial information, beliefs, or characteristics." Pl. Mot. at 24.

The existence of a privacy interest certainly does not turn on whether an individual "chose" to be included on a government listing, and if anything that interest would be enhanced if the information was included involuntarily. Nor has Plaintiff articulated a sufficient public interest that would outweigh the privacy interests of the landowners in the dissemination of this personal information.

Disclosure to one person under FOIA generally means that the information must be disclosed to anyone who asks for it. *Reporters Comm. for Freedom of the Press v. Dep't of Justice*, 489 U.S. 749, 771 (1989); *National Archives and Records Admin. v. Favish*, 124 S. Ct. 1570, 1580-81 (2004). And, unlike information a litigant obtains in discovery that can be shielded from further dissemination by a protective order, FOIA places no limit on what the recipient may do with the information so obtained, including releasing it to others, to the press, or to the public at large. FOIA disclosure is thus public disclosure. *Favish*, 124 S. Ct. at 1581 ("It must be remembered that once there is disclosure [under FOIA], the information belongs to the general public. There is no mechanism under the FOIA for a protective order allowing only the requester to see [the information], or for proscribing its general dissemination."). These principles

necessarily must inform all applications of FOIA, including the identification and balancing of the public and private interests under Exemption 6. *See Swan v. SEC*, 96 F.3d 498, 500 (D.C. Cir. 1996) (“[a]gencies, and hence courts, must evaluate the risks of disclosing records to some particular FOIA requester not simply in terms of what the requester might do with the information, but also in terms of what anyone else might do with it”).

The majority of landowners who happen to live near a proposed pipeline do not take any affirmative action for or against a pipeline. Disclosing their names and home addresses could lead directly to intrusion, solicitations, and encroachment of their private residences. Indeed, the landowners did not provide this information to the government and have not consented to its release to anyone. Private citizens have the right to be left alone. In other words, disclosing the withheld information would be highly disruptive to the lives of thousands of individual landowners. *See, e.g., Horsehead Indus. v. EPA*, No. 94-1299, slip. op. at 6 (D.D.C. Mar. 13, 1997) (noting that disclosure of the identities of homeowners who volunteered to participate in a Superfund study would cause potential harm to the privacy of study participants, based in part upon “reports of trespassers taking environmental samples”).

In *Odland v. FERC*, 34 F. Supp. 3d 3, 22 (D.D.C. 2014), this Court held that where “[t]he record already contains ample public document[ation] showing that FERC . . . provided notice of the project through local newspapers, open house meetings, and mailings” and through the distribution of “brochures and fliers,” the plaintiffs had “not shown that releasing the landowners’ names and addresses would reveal anything about the workings of FERC” and “there is no public interest in disclosure.” Here, as in *Odland*, there is ample evidence of notice for this project. Transparency and public participation are demonstrated by the extensive public administrative

record. *See* Ex. A; FERC Docket Nos. PF15-6 and CP15-554.5.<sup>1</sup> In describing FERC’s notification, the record indicates that “the mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental groups and non-governmental organizations; interested Indian tribes; other interested parties; and local libraries and newspapers . . . all affected landowners (as defined in FERC’s regulations) and anyone who submits comments on the projects.” *See* Notice of intent to prepare an Environmental Impact Statement for the Planned Supply Header Project and Atlantic Coast Pipeline Project, and Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings (NOI) under PF15-5 and PF15-6 (Feb. 27, 2017); *see also* 18 C.F.R. §§ 157.21(f)(3) and 157.6(d)(2) (defining affected landowners).

In addition to the considerable public record, there were ten public meetings in three states to inform the public of the project. Additionally, full disclosure of the list would not be dispositive of its notice obligations. As in *Odland*, “[w]hether notice was received is irrelevant to FERC’s conduct and thus is not a matter of public interest. Because Plaintiffs have not shown that releasing the landowners’ names and addresses would reveal anything about the workings of FERC, there is no public interest in disclosure.” 34 F. Supp. 3d at 22.

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<sup>1</sup> There are over 10,000 documents collectively in FERC Docket Nos. PF15-6 and CP15-554.

**CONCLUSION**

For the reasons set forth above, and based upon the entire record herein, FERC respectfully requests that Defendant's Motion for Summary Judgment be granted and that Plaintiff's Cross-Motion for Summary Judgment be denied.

Dated: September 6, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6th day of September 2019, that service of the foregoing *Defendant's Reply to Plaintiff's Opposition to FERC's Motion for Summary Judgment and Opposition to Plaintiff's Cross-Motion* has been made on counsel of record through the Court's ECF system.

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