



Exemption 6

Personal privacy interests are protected by two provisions of the Freedom of Information Act, Exemptions 6 and 7(C).¹ Exemption 6 protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy."² [Exemption 7\(C\)](#) is limited to information compiled for law enforcement purposes, and protects personal information when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy."³ Under both personal privacy exemptions of the FOIA, the concept of privacy not only encompasses that which is inherently private, but also includes an "individual's control of information concerning his or her person."⁴

In order to determine whether Exemption 6 protects against disclosure, courts require that agencies engage in the following four-step analysis: first, determine whether the information at issue is a personnel, medical, or "similar" file;⁵ second,

¹ [5 U.S.C. § 552\(b\)\(6\), \(7\)\(C\) \(2006 & IV 2010\)](#); see also [Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act](#), 74 Fed. Reg. 4683 (Jan. 21, 2009) (emphasizing that the Freedom of Information Act reflects a "profound national commitment to ensuring an open Government" and directing agencies to "adopt a presumption in favor of disclosure"); accord [Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act](#), 74 Fed. Reg. 51879 (Oct. 8, 2009); FOIA Post, "[OIP Guidance: President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines - Creating a New Era of Open Government](#)" (posted 4/17/09).

² [5 U.S.C. § 552\(b\)\(6\)](#).

³ [5 U.S.C. § 552\(b\)\(7\)\(C\)](#).

⁴ [DOJ v. Reporters Comm. for Freedom of the Press](#), 489 U.S. 749, 763 (1989).

⁵ [5 U.S.C. § 552\(b\)\(6\)](#).

determine whether there is a significant privacy interest in the requested information;⁶ third, evaluate the requester's asserted FOIA public interest in disclosure;⁷ and finally, if there is a significant privacy interest in non-disclosure and a FOIA public interest in disclosure, balance those competing interests to determine whether disclosure "would constitute a clearly unwarranted invasion of personal privacy."⁸ When engaging in this analysis, it is important to remember that the Court of Appeals for the District of Columbia Circuit has declared that "under Exemption 6, the presumption in favor of disclosure is as strong as can be found anywhere in the Act."⁹

Each step of the Exemption 6 analysis is dependent upon the prior step being satisfied. For example, if the information in question does not satisfy the threshold requirement, it is unnecessary to evaluate privacy interests because Exemption 6 is inapplicable.¹⁰ Similarly, if significant privacy interests are not threatened by disclosure, further analysis is unnecessary and the information at issue must be

⁶ See Multi Ag Media LLC v. USDA, 515 F.3d 1224, 1229 (D.C. Cir. 2008) ("The balancing analysis for FOIA Exemption 6 requires that we first determine whether disclosure of the files 'would compromise a substantial, as opposed to de minimis, privacy interest,' because '[i]f no significant privacy interest is implicated . . . FOIA demands disclosure.'" (quoting Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873, 874 (D.C. Cir. 1989))).

⁷ See NARA v. Favish, 541 U.S. 157, 172 (2004) ("Where the privacy concerns . . . are present, the exemption requires the person requesting the information to establish a sufficient reason for the disclosure.") (Exemption 7(C)).

⁸ 5 U.S.C. § 552(b)(6); see also Favish, 541 U.S. 157 at 172 ("The term 'unwarranted' requires us to balance the . . . privacy interest against the public interest in disclosure."); Wash. Post Co. v. HHS, 690 F.2d 252, 261 (D.C. Cir. 1982) ("Finally, we balance the competing interests to determine whether the invasion of privacy is clearly unwarranted.").

⁹ Multi Ag, 515 F.3d at 1227 (quoting Nat'l Ass'n of Home Builders v. Norton, 309 F.3d 26, 32 (D.C. Cir. 2002)); see also Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1057 (D.C. Cir. 2009) (stating that FOIA's "presumption favoring disclosure . . . is at its zenith under Exemption 6"); Lawyers' Comm. for Civil Rights of S.F. Bay Area v. Dep't of the Treasury, No. 07-2590, 2008 WL 4482855, at *20 (N.D. Cal. Sept. 30, 2008) ("The burden remains on the agency to justify any withholdings under Exemption 6 since the presumption in favor of disclosure under this exemption is as strong as that with other exemptions.").

¹⁰ See, e.g., Schonberger v. NTSB, 508 F. Supp. 941, 942 (D.D.C. 1981) ("To satisfy exemption six, the defendants must meet both aspects of the statutory test, showing that the material requested 1) is part of a personnel, medical, or similar file, and if so 2) would, if disclosed publicly, constitute a clearly unwarranted invasion of personal privacy."); Stern v. SBA, 516 F. Supp. 145, 148-49 (D.D.C. 1980) ("In order for an agency to justify nondisclosure under Exemption 6, it must first establish that the requested information is in fact properly classified as a 'personnel,' 'medical' or 'similar' file.").

disclosed.¹¹ Alternatively, if a significant privacy interest is found to exist, but there is no FOIA public interest in disclosure, the information should be protected; as the D.C. Circuit has observed, "something, even a modest privacy interest, outweighs nothing every time."¹² The balancing of competing interests is required when there is both a significant privacy interest that would be infringed by disclosure and there is also a FOIA public interest that weighs in favor of disclosure.¹³ If the FOIA public interest in disclosure outweighs the attendant privacy interests, the information should be disclosed; if the opposite is found to be the case, the information should be withheld.¹⁴

¹¹ See, e.g., Multi Ag, 515 F.3d at 1229 (stating that "[i]f no significant privacy interest is implicated . . . FOIA demands disclosure" (quoting Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873, 874 (D.C. Cir. 1989))); Finkel v. Dep't of Labor, No. 05-5525, 2007 WL 1963163, at *9 (D.N.J. June 29, 2007) (concluding that no balancing analysis was required "due to the Court's determination that the [defendant] has failed to meet its heavy burden on the issue of whether disclosure will invade the inspectors' privacy"); Trentadue v. President's Council on Integrity & Efficiency, No. 03-CV-339, slip op. at 4 (D. Utah Apr. 26, 2004) (stating that agency made no showing of privacy interest, so names of government employees should be released) (Exemptions 6 and 7(C)); Holland v. CIA, No. 91-1233, 1992 WL 233820, at *16 (D.D.C. Aug. 31, 1992) (stating that information must be disclosed when there is no significant privacy interest, even if public interest is also de minimis).

¹² Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989); see also Favish, 541 U.S. at 175 (finding that requester had not shown existence of public interest "to put the balance into play") (Exemption 7(C)); Int'l Bhd. of Elec. Workers Local No. 5 v. HUD, 852 F.2d 87, 89 (3d Cir. 1988) (perceiving no public interest in disclosure and therefore protecting employees' social security numbers); Schoenman v. FBI, 573 F. Supp. 2d 119, 149 (D.D.C. 2008) (concluding individuals' name was properly withheld where requester's alleged public interest "is simply not the public interest cognizable under FOIA Exemption [6]"); Carter, Fullerton & Hayes LLC v. FTC, 520 F. Supp. 2d 134, 144-45 (D.D.C. 2007) (finding privacy interests of individual consumers in names, addresses, and telephone numbers "clearly outweigh the narrowly construed public interest"); Seized Prop. Recovery, 502 F. Supp. 2d at 56 ("If no public interest is found, then withholding the information is proper, even if the privacy interest is only modest.") (Exemptions 6 and 7(C)).

¹³ See Associated Press v. DOD, 554 F.3d 274, 291 (2d Cir. 2009) ("Only where a privacy interest is implicated does the public interest for which the information will serve become relevant and require a balancing of the competing interests" (quoting FLRA v. VA, 958 F.2d 503, 509 (2d Cir. 1992))); see also Favish, 541 U.S. at 171 ("The term 'unwarranted' requires us to balance the family's privacy interest against the public interest in disclosure"); Ripskis v. HUD, 746 F.2d 1, 3 (D.C. Cir. 1984) ("Congress sought to construct an exemption that would require a balancing of the individual's right of privacy against the preservation of the basic purpose of the Freedom of Information Act" (quoting Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976))).

¹⁴ See DOD v. FLRA, 510 U.S. 487, 497 (1994) ("We must weigh the privacy interest . . . in nondisclosure . . . against the only relevant public interest in the FOIA balancing analysis – the 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

Threshold: Personnel, Medical and Similar Files

Information meets the threshold requirement of Exemption 6 if it is contained in "personnel and medical files and similar files."¹⁵ Personnel and medical files are easily identified, but what constitutes a "similar file" was established by the Supreme Court in United States Department of State v. Washington Post Co.¹⁶ There the Supreme Court held, based upon a review of the legislative history of the FOIA, that Congress intended the term "similar files" to be interpreted broadly, rather than narrowly.¹⁷ The Court stated that the protection of an individual's privacy "surely was not intended to turn upon the label of the file which contains the damaging information."¹⁸ Rather, the Court made clear that all information that "applies to a particular individual" meets the threshold requirement for Exemption 6 protection.¹⁹ Conversely, the threshold of

up to" (quoting Reporters Comm., 489 U.S. at 773)); Multi Ag., 515 F.3d at 1228 (noting that if requested information falls within Exemption 6, the next step in the analysis is to determine whether "disclosure would constitute a clearly unwarranted invasion of personal privacy . . . [by] balanc[ing] the privacy interest that would be compromised by disclosure against any public interest in the requested information"); News-Press, 489 F.3d at 1205 ("In order to affirm withholding the addresses, we would have to find that the privacy interests against disclosure are greater than the public interest in disclosure"); see also FOIA Update, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decision-making") (outlining mechanics of balancing process).

¹⁵ [5 U.S.C. § 552\(b\)\(6\) \(2006 & IV 2010\)](#).

¹⁶ 456 U.S. 595 (1982).

¹⁷ Id. at 599-603 (citing H.R. Rep. No. 89-1497, at 11 (1966); S. Rep. No. 89-813, at 9 (1965); S. Rep. No. 88-1219, at 14 (1964)).

¹⁸ Id. at 601 (citing H.R. Rep. No. 89-1497, at 11 (1966)); see Judicial Watch, Inc. v. FDA, 449 F.3d 141, 152 (D.C. Cir. 2006) ("The Supreme Court has read Exemption 6 broadly, concluding the propriety of an agency's decision to withhold information does not 'turn upon the label of the file which contains the damaging information.'" (quoting Wash. Post, 456 U.S. at 601)).

¹⁹ 456 U.S. at 602; see, e.g., Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1050 (D.C. Cir. 2009) ("It is undisputed that the requested Medicare records are personnel, medical, or 'similar files.'"); Associated Press v. DOD, 554 F.3d 274, 291 (2d Cir. 2009) (finding that records applying to detainees whose family members seek protection are "similar files," explaining that "[t]he phrase 'similar files' has a broad meaning and encompasses the government's records on an individual which can be identified as applying to that individual"); Berger v. IRS, 288 F. App'x 829 (3d Cir. Aug. 11, 2008) ("[Revenue Officer's] time records are a personal recording of the time expended as an employee and therefore can be identified as applying to her."); Forest Serv. Employees for Env'tl. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1024 (9th Cir. 2008) (stating that the threshold test of Exemption 6 is satisfied when government records contain information applying to

Exemption 6 has been found not to be satisfied when the information cannot be linked to a particular individual,²⁰ or when the information pertains to federal government employees, but is "essentially business" in nature, rather than personal.²¹

particular individuals); Pierce v. U.S. Air Force, 512 F.3d 184, 191 (5th Cir. 2007) ("To qualify as a 'similar file' under Exemption 6 . . . the information need only 'appl[y]' to the individual."); Wood v. FBI, 432 F.3d 78, 86-87 (2d Cir. 2005) (recognizing that personal information about government investigators appearing in investigative records are "similar files"); Lakin Law Firm, P.C. v. FTC, 352 F.3d 1122, 1123 (7th Cir. 2003) (finding that consumer complaints filed with the FTC "clearly fall[] within the exemption"); Families for Freedom v. U.S. Customs & Border Protect., No. 10-2705, 2011 WL 6780896, at *9 (S.D.N.Y. Dec. 27, 2011) ("The plain meaning of the statute and the Second Circuit's method of applying it make clear that Exemption 6 applies only to personnel and medical files and to similar files, such as those containing investigations of alleged corruption, passport applications, asylum requests, or detainee abuse."); Carter, Fullerton & Hayes LLC v. FTC, 520 F. Supp. 2d at 144-45 (D.D.C. 2007) (concluding that the FTC met the threshold requirement for Exemption 6 protection regarding the names, addresses, and phone numbers of consumers who filed complaints "[s]ince each piece of information withheld by defendants applies to specific individuals"); Bigwood v. USAID, 484 F. Supp. 2d 68, 76 (D.D.C. 2007) ("[T]he organizational identity of USAID grantees is information which the Court concludes in this case 'applies to a particular individual,' and thus the records requested are 'similar files' which may be protected from disclosure by Exemption 6 of the FOIA."); Associated Press v. DOJ, No. 06-1758, 2007 WL 737476, at *6 (S.D.N.Y. Mar. 7, 2007) (finding that petition for reduction in sentence "contains personal information in which [Requester] has a privacy interest under the 'similar files' requirement of Exemption 6"), order aff'd, 549 F.3d 62 (2d Cir. 2008) (Exemptions 6 and 7(C)); MacLean v. U.S. Dep't of Army, No. 05-1519, 2007 WL 935604, at *14 (S.D. Cal. Mar. 6, 2007) ("The phrase, 'similar files,' is to be given a broad meaning, and it may apply even if the files at issue 'are likely to contain much information about a particular individual that is not intimate.'" (quoting Wash. Post, 456 U.S. at 598-600)); Hecht v. USAID, No. 95-263, 1996 WL 33502232, at *12 (D. Del. Dec. 18, 1996) ("We do not think that Congress meant to limit Exemption 6 to a narrow class of files containing only a discrete kind of personal information").

²⁰ See, e.g., Arieff v. U.S. Dep't of the Navy, 712 F.2d 1462, 1467-68 (D.C. Cir. 1983) (holding that defendant must establish "more than a 'mere possibility' that the medical condition of a particular individual might be disclosed" in order to protect a list of drugs ordered for use by some members of large group); In Def. of Animals v. NIH, 543 F. Supp. 2d 70, 80 (D.D.C. 2008) (concluding that information related to a primate facility building does not meet the threshold of Exemption 6 because it "is not associated with any particular individual"); Na Iwi O Na Kupuna v. Dalton, 894 F. Supp. 1397, 1413 (D. Haw. 1995) (same for records pertaining to large group of Native Hawaiian human remains) (reverse FOIA case).

²¹ Aguirre v. SEC, 551 F. Supp. 2d 33, 54 (D.D.C. 2008) ("Correspondence does not become personal solely because it identifies government employees."); Yonemoto v. VA, No 06-328, 2007 WL 1310165, at *2 (D. Haw. May 2, 2007) (stating that "[i]ntra-agency emails often qualify as 'similar files' under Exemption 6," but concluding that records at issue are not "similar files" when they have "an essentially business nature" or pertain to business relationships), appeal dismissed and remanded, 305 F. App'x 333 (9th Cir. 2008); see, e.g.,

The Court of Appeals for the District of Columbia Circuit, sitting en banc, subsequently reinforced the Supreme Court's broad interpretation of this term by holding that a tape recording of the last words of the Space Shuttle Challenger crew, which "reveal[ed] the sound and inflection of the crew's voices during the last seconds of their lives" satisfied the similar files threshold.²²

Once it has been determined that information meets the threshold requirement of Exemption 6, the next step of the analysis is to identify whether there is a significant privacy interest in the requested information and to ascertain the extent of that interest in nondisclosure.²³

Privacy Interest

In the landmark FOIA decision of United States Department of Justice v. Reporters Committee for Freedom of the Press, which governs all privacy-protection decision making under the FOIA, the Supreme Court stressed that "both the common

Leadership Conference on Civil Rights v. Gonzales, 404 F. Supp. 2d 246, 257 (D.D.C. 2005) (finding that the names and work telephone numbers of Justice Department paralegals do not meet the threshold for Exemption 6 on the basis that information is not "similar to a 'personnel' or 'medical' file"), motion to amend denied, 421 F. Supp. 2d 104, 107-10 (D.D.C. 2006), appeal dismissed voluntarily, No. 06-5055, 2006 WL 1214937 (D.C. Cir. Apr. 28, 2006); Gordon v. FBI, 390 F. Supp. 2d 897, 902 (N.D. Cal. 2004) (deciding that names of agency employees are not personal information about those employees that meets Exemption 6 threshold), summary judgment granted, 388 F. Supp. 2d 1028, 1040-42 (N.D. Cal. 2005) (concluding that Exemption 6 does not apply to the names of agency's "lower-level" employees, and likewise opining that "[t]he [agency] still has not demonstrated that an employee's name alone makes a document a personnel, medical or 'similar file'"); Greenpeace USA, Inc. v. EPA, 735 F. Supp. 13, 14 (D.D.C. 1990) (opining that information pertaining to an employee's compliance with agency regulations regarding outside employment "does not go to personal information . . . [e]ven in view of the broad interpretation [of Exemption 6] enunciated by the Supreme Court").

²² N.Y. Times Co. v. NASA, 920 F.2d 1002, 1005 (D.C. Cir. 1990) (en banc) (determining that "lexical" and "non-lexical" information are subject to identical treatment under the FOIA); see Forest Guardians v. FEMA, 410 F.3d 1214, 1218 (10th Cir. 2005) (finding that electronic Geographic Information System files containing "specific geographic location" of structures are "similar files"); Judicial Watch, Inc. v. USPS, No. 03-655, slip op. at 6 (D.D.C. Feb. 23, 2004) (assuming that audio portions of videotape are "similar files"), appeal dismissed voluntarily, No. 04-5153 (D.C. Cir. Aug. 25, 2004); Hertzberg v. Veneman, 273 F. Supp. 2d 67, 85 n.11 (D.D.C. 2003) (finding that requested videotapes "contain identifiable audio and video images of individual residents," and concluding that they are "similar files").

²³ See FOIA Update, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step by Step Decisionmaking").

law and the literal understandings of privacy encompass the individual's control of information concerning his or her person."²⁴ As the Court of Appeals for the District of Columbia Circuit has recognized, this concept of privacy "includes the prosaic (e.g., place of birth and date of marriage) as well as the intimate and potentially embarrassing."²⁵ It is important to note at the outset that the Supreme Court has declared that the privacy interest inherent in Exemption 6 "belongs to the individual, not the agency holding the information."²⁶ As such, Exemption 6 cannot be invoked to withhold from a requester information pertaining only to him or herself.²⁷ Furthermore, both the "author" and the "subject" of a file may possess cognizable

²⁴ 489 U.S. 749, 763 (1989) (holding "rap sheets" are entitled to protection under Exemption 7(C) and setting forth five guiding principles that govern the process by which determinations are made under both Exemptions 6 and 7(C)).

²⁵ Painting & Drywall Work Pres. Fund, Inc. v. HUD, 936 F.2d 1300, 1302 (D.C. Cir. 1991); see Associated Press v. DOD, 554 F.3d 274, 286-87 (2nd Cir. 2009) (holding that identities of Guantanamo Bay detainees associated with abuse allegations were entitled to protection, and noting that "[a]lthough the detainees here are indeed like prisoners, their Fourth Amendment reasonable expectation of privacy is not the measure by which we assess their personal privacy interest protected by FOIA").

²⁶ See Reporters Comm., 489 U.S. at 763-65 (emphasizing that privacy interest belongs to individual, not agency holding information pertaining to individual); Joseph W. Diemert, Jr. and Assocs. Co., L.P.A. v. FAA, 218 F. App'x 479, 482 (6th Cir. 2007) ("[S]ome courts have concluded that where personal privacy interests are implicated, only the individual who owns such interest may validly waive it."); Sherman v. U.S. Dep't of the Army, 244 F.3d 357, 363-64 (5th Cir. 2001) (protecting social security numbers of soldiers even though Army publicly disclosed them in some circumstances, because individuals rather than government hold privacy interest in that information); Amuso v. DOJ, 600 F. Supp. 2d 78, 93 (D.D.C. 2009) ("The privacy interest at stake belongs to the individual, not the agency."); Cozen O'Connor v. Dep't of Treasury, 570 F. Supp. 2d 749, 781 (E.D. Pa. 2008) ("The focus of the exemption is the individual's interest, not the government's.").

²⁷ See Reporters Comm., 489 U.S. at 771 (citing DOJ v. Julian, 486 U.S. 1, 13-14 (1988)); Dean v. FDIC, 389 F. Supp. 2d 780, 794 (E.D. Ky. 2005) (stating that "to the extent that the defendants have redacted the 'name, address, and other identifying information' of the plaintiff himself in these documents ... reliance on Exemption 6 or 7(C) would be improper"); H.R. Rep. No. 93-1380, at 13 (1974) ("disclosure of information about a person to that person does not constitute an invasion of his privacy"); see also FOIA Update, Vol. X, No. 2, at 5 ("Privacy Protection Under the Supreme Court's Reporters Committee Decision") (advising that, as a matter of sound administrative practice, "[a]n agency will not invoke an exemption to protect a requester from himself").

privacy interests under Exemption 6.²⁸ Notably, courts afford foreign nationals the same privacy rights under the FOIA as they afford U.S. citizens.²⁹

The D.C. Circuit has also emphasized the practical analytical point that under the FOIA's privacy-protection exemptions, "[t]he threat to privacy . . . need not be patent or obvious to be relevant."³⁰ At the same time, courts have found that the threat to privacy must be real rather than speculative.³¹ In National Ass'n of Retired Federal Employees

²⁸ N.Y. Times Co. v. NASA, 920 F.2d 1002, 1007-08 (D.C. Cir. 1990) (en banc).

²⁹ See U.S. Dep't of State v. Ray, 502 U.S. 164, 175-79 (1991) (applying traditional analysis of privacy interests under FOIA to Haitian nationals); Graff v. FBI, No. 09-2047, 2011 WL 5401928, at *8 (D.D.C. Nov. 9, 2011) (holding "foreign nationals are entitled to the privacy protections embodied in FOIA") (Exemption 7(C)); Judicial Watch, Inc. v. DHS, 514 F. Supp. 2d 7, 10 n.4 (D.D.C. 2007) (stating that "courts in our Circuit have held that foreign nationals are entitled to the same privacy rights under FOIA as United States citizens"); Ctr. for Nat'l Sec. Studies v. DOJ, 215 F. Supp. 2d 94, 105-06 (D.D.C. 2002) (recognizing, without discussion, the privacy rights of post-9/11 detainees who were unlawfully in the United States) (Exemption 7(C)), aff'd on other grounds, 331 F.3d 918 (D.C. Cir. 2003); Schiller v. INS, 205 F. Supp. 2d 648, 662 (W.D. Tex. 2002) (finding that "[a]liens [and] their families . . . have a strong privacy interest in nondisclosure of their names, addresses, and other information which could lead to revelation of their identities") (Exemption 7(C)); Judicial Watch, Inc. v. Reno, No. 00-0723, 2001 WL 1902811, at *8 (D.D.C. Mar. 30, 2001) (protecting asylum application filed on behalf of Cuban émigré); Hemenway v. Hughes, 601 F. Supp. 1002, 1005-07 (D.D.C. 1985) (accord[ing] Exemption 6 protection to citizenship information regarding news correspondents accredited to attend State Department press briefings).

³⁰ Pub. Citizen Health Research Group v. U.S. Dep't of Labor, 591 F.2d 808, 809 (D.C. Cir. 1978) (per curiam) (ruling that district court improperly refused to look beyond face of document at issue (i.e., to proffered in camera explanation of harm), which led it to fail to recognize underlying sensitivity).

³¹ See Dep't of the Air Force v. Rose, 425 U.S. 352, 380 n.19 (1976) ("The legislative history is clear that Exemption 6 was directed at threats to privacy interests more palpable than mere possibilities."); ACLU v. DOD, 543 F.3d 59, 85-86 (2d Cir. 2008) ("Even accepting [defendants'] argument that it may be 'possible' to identify the detainees in spite of the district court's redactions, or that there remains a 'chance' that the detainees could identify themselves . . . such speculation does not establish a privacy interest that surpasses a de minimis level for the purposes of a FOIA inquiry.") (Exemptions 6 and 7(C)), cert. granted, vacated & remanded on other grounds, 130 S. Ct. 777 (2009); Carter v. U.S. Dep't of Commerce, 830 F.2d 388, 391 (D.C. Cir. 1987) (stating that "[w]ithholding information to prevent speculative harm" is contrary to the FOIA's pro-disclosure policy); Arieff v. U.S. Dep't of the Navy, 712 F.2d 1462, 1467-68 (D.C. Cir. 1983) (finding that Exemption 6 did not apply when there was only a "mere possibility" that the medical condition of a particular individual would be disclosed by releasing a list of pharmaceuticals supplied to a congressional doctor (quoting Rose, 425 U.S. at 380 n.19)); Cawthon v. DOJ, No. 05-0567, 2006 WL 581250, at *3 (D.D.C. Mar. 9, 2006) ("To justify its exemption 6 withholdings, the defendant must show that the threat to employees' privacy is real rather than speculative").

v. Horner [hereinafter NARFE], the D.C. Circuit explained that "mere speculation" of an invasion of privacy is not sufficient.³² The NARFE court went on to state that "[f]or the Exemption 6 balance to be implicated, there must, of course, be a causal relationship between the disclosure and the threatened invasion of privacy."³³

The D.C. Circuit has ruled that agencies must initially determine "whether disclosure of the files 'would compromise a substantial, as opposed to de minimis, privacy interest,' because 'if no significant privacy interest is implicated . . . FOIA demands disclosure.'"³⁴ The D.C. Circuit has explained that, in the FOIA context, when

³² 879 F.2d 873, 878 (D.C. Cir. 1989) (citing Arieff, 712 F.2d at 1468); see also ACLU v. DOD, 543 F.3d at 86 (stating that "because the district court has redacted the Army photos to remove all identifying features, there is no cognizable privacy interest at issue in the release of the Army photos") (Exemptions 6 and 7(C)); Hall v. DOJ, 552 F. Supp. 2d 23, 30 (D.D.C. 2008) (finding that DOJ failed to demonstrate that there is a real threat to employees' privacy, concluding that "DOJ merely asserts, in vague and conclusory fashion, that the redacted information relates to a small group of employees and that release of the redacted information will lead to identification and harassment"); United Am. Fin., Inc. v. Potter, 531 F. Supp. 2d 29, 47 (D.D.C. 2008) ("A 'bare conclusory assessment' that public disclosure of an employee's name would constitute an invasion of personal privacy is insufficient to support the existence of a privacy interest."); Finkel v. Dep't of Labor, No. 05-5525, 2007 WL 1963163, at *9 (D.N.J. June 29, 2007) (concluding that defendant failed to meet its burden of showing that release of inspectors' "coded ID numbers" would constitute a clearly unwarranted invasion of privacy because defendant "has 'established no more than a mere possibility that the medical condition of a particular individual might be disclosed - which the Supreme Court has told us is not enough'" (quoting Arieff, 712 F.2d at 1467)); Fortson v. Harvey, 407 F. Supp. 2d 13, 17 (D.D.C. 2005) (deciding that potential harm to witnesses of unfavorable personnel evaluations and workplace harassment was "pure speculation"); Dayton Newspapers, Inc. v. Dep't of the Air Force, 107 F. Supp. 2d 912, 919 (S.D. Ohio 1999) (declining to protect medical malpractice settlement figures based upon "mere possibility that factual information might be pieced together to supply 'missing link' and lead to personal identification" of claimants); Chi. Tribune Co. v. HHS, No. 95-3917, 1997 WL 1137641, at *10-11 (N.D. Ill. Feb. 26, 1997) (magistrate's recommendation) (finding "speculative at best" agency's argument that release of breast cancer patient data forms that identify patients only by nine-digit encoded "Study Numbers" could result in identification of individual patients), adopted, (N.D. Ill. Mar. 28, 1997).

³³ 879 F.2d at 878.

³⁴ Multi Ag Media LLC v. USDA, 515 F.3d 1224, 1229 (D.C. Cir. 2008) (quoting NARFE, 879 F.2d at 874); see, e.g., Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1050 (D.C. Cir. 2009) ("[W]e must determine whether 'disclosure would compromise a substantial, as opposed to a de minimis, privacy interest.'" (quoting NARFE, 879 F.2d at 874)); Associated Press v. DOD, 554 F.3d at 285 ("Thus, 'once a more than de minimis privacy interest is implicated the competing interests at stake must be balanced in order to decide whether disclosure is permitted under FOIA.'" (quoting FLRA v. VA, 958 F.2d 503, 510 (2d Cir. 1992))).

assessing the weight of a protectible privacy interest, "[a] substantial privacy interest is anything greater than a de minimis privacy interest."³⁵ As discussed above, when a substantial privacy interest is found, the inquiry under the privacy exemptions is not finished, it is only advanced to "address the question whether the public interest in disclosure outweighs the individual privacy concerns."³⁶ Thus, as the D.C. Circuit has held, "a privacy interest may be substantial -- more than de minimis -- and yet be insufficient to overcome the public interest in disclosure."³⁷ Substantial privacy interests cognizable under the FOIA are generally found to exist in such personally identifying information as a person's name, address, image, computer user ID, phone number, date of birth, criminal history, medical history, and social security number.³⁸

³⁵ Multi Ag, 515 F.3d at 1229-30; see, e.g., Barnard v. DHS, 598 F. Supp. 2d 1, 11 (D.D.C. 2009); Schoenman v. FBI, 576 F. Supp. 2d 3, 9 (D.D.C. 2008); Unidad Latina En Accion v. DHS, 253 F.R.D. 44, 48 (D. Conn. 2008); Schoenman v. FBI, 573 F. Supp. 2d 119, 148 (D.D.C. 2008); Schoenman v. FBI, 575 F. Supp. 2d 136, 160 (D.D.C. 2008).

³⁶ Multi Ag, 515 F.3d at 1230 (quoting Nat'l Ass'n of Home Builders v. Norton, 309 F.3d 26, 35 (D.C. Cir. 2002)); see, e.g., Consumers' Checkbook, 554 F.3d at 1050 ("If a substantial privacy interest is at stake, then we must balance the privacy interest in nondisclosure against the public interest."); Associated Press v. DOJ, 549 F.3d 62, 66 (2nd Cir. 2008) ("Notwithstanding a document's private nature, FOIA may nevertheless require disclosure if the requester can show that revelation of the contents of the requested document would serve the public interest."); Scales v. EOUSA, 594 F. Supp. 2d 87, 90 (D.D.C. 2009) ("Given the significant individual privacy interest, disclosure of 7(C) material is warranted only when the individual's interest in privacy is outweighed by the public's interest in disclosure.") (Exemption 7(C)).

³⁷ Multi Ag, 515 F.3d at 1230-33 (finding that the significant public interest in disclosure of the databases outweighs the "greater than de minimis" privacy interest of individual farmers).

³⁸ See Dep't of State v. Wash. Post Co., 456 U.S. 595, 600 (1982) (finding that "[i]nformation such as place of birth, date of birth, date of marriage, employment history, and comparable data is not normally regarded as highly personal, and yet . . . such information . . . would be exempt from any disclosure that would constitute a clearly unwarranted invasion of personal privacy"); Associated Press v. DOJ, 549 F.3d at 65 ("Personal information, including a citizen's name, address, and criminal history, has been found to implicate a privacy interest cognizable under the FOIA exemptions.") (Exemptions 6 and 7(C)); Performance Coal Co. v. U.S. Dep't of Labor, No. 10-1698, 2012 WL 746411, at *8 (D.D.C. Mar. 7, 2012) (concluding that defendants properly withheld "miners' names, cell phone numbers, and home phone numbers; inspectors' names and e-mail addresses; inspectors' initials; MSHA employees' government issued cell phone numbers, home addresses, and home telephone numbers; third party home addresses, dates of birth, last four digits of social security numbers; and miners' job titles and ethnicities" contained in law enforcement records) (Exemption 7(C)); Strunk v. U.S. Dep't of State, No. 08-2234, 2012 WL 562398, at *5 (D.D.C. Feb. 15, 2012) (concluding that defendant properly withheld "unique characters constituting a terminal user ID which is generally assigned to a single person or system user" and which could identify the agency employee who accessed the record); Advoc. for Highway & Auto Safety v. Fed. Highway Admin., No. 98-306, 2011 WL

Practical Obscurity and Survivor Privacy

The FOIA's broad conception of privacy also encompasses the doctrines of "practical obscurity" and "survivor privacy." As to "practical obscurity," while as a general rule individuals have no privacy interest in information that has been previously disclosed, in United States Department of Justice v. Reporters Committee for Freedom of the Press, the Supreme Court found a "strong privacy interest" in the nondisclosure of records of a private citizen's criminal history, "even where the information may have been at one time public, if the information has over time become "practically obscure."³⁹

4840463, at *5 (D.D.C. Oct. 13, 2011) (noting that "the drivers have a privacy interest in their videotaped images from the study" to the extent that they reveal "personal details, captured up close and over a prolonged period of time, [which] are not generally available in the ordinary course of daily life"); Skinner v. DOJ, 806 F. Supp. 2d 105 (D.D.C. 2011) (holding that agencies properly withheld names and identifying information related to law enforcement personnel and the face of a third party) (Exemption 7(C)); Mingo v. DOJ, 793 F. Supp. 2d 447, 456 (D.D.C. 2011) (finding a privacy interest in videotapes of inmates and in medical records of inmates and staff) (Exemption 7(C)); Showing Animals Respect & Kindness v. Dep't of the Interior, 730 F. Supp. 2d 180, 197 (D.D.C. 2010) (finding that, with respect to photographs, "[t]he fact that it may be obvious to Plaintiff whose faces or names are redacted . . . does not mean that the subjects of those redactions have no privacy interest in avoiding disclosure"); Nat'l Sec. News Serv. v. U.S. Dep't of Navy, 584 F. Supp. 2d 94, 96 (D.D.C. 2008) ("Records . . . indicating that individuals sought medical treatment at a hospital are particularly sensitive."); Yelder v. DOD, 577 F. Supp. 2d 342, 346 (D.D.C. 2008) (noting that information such as names, addresses, and other personally identifying information creates a palpable threat to privacy); People for the Am. Way Found. v. Nat'l Park Serv., 503 F. Supp. 2d 284, 304, 306 (D.D.C. 2007) (stating that "[f]ederal courts have previously recognized a privacy interest in a person's name and address" and concluding that "[g]enerally, there is a stronger case to be made for the applicability of Exemption 6 to phone numbers and addresses"); Seized Prop. Recovery, Corp. v. U.S. Customs and Border Prot., 502 F. Supp. 2d 50, 58 (D.D.C. 2007) (finding that individuals have a privacy interest in the nondisclosure of their names and addresses when release "would automatically associate the individuals" with seizures conducted by Customs and the information is linked to financial information) (Exemptions 6 and 7(C)). But see Int'l Counsel Bureau v. DOD, 723 F. Supp. 2d 54, 66 (D.D.C. 2010) (rejecting DOD's assertion that disclosure of photographs of detainees "would risk both [their] safety upon release, through reprisals, and would undermine their likely willingness to cooperate with the intelligence collection activities").

³⁹ 489 U.S. 749, 762, 764, 767, 780 (1989) (establishing a "practical obscurity" standard, observing that if such items of information actually "were 'freely available,' there would be no reason to invoke the FOIA to obtain access to" them); see also DOD v. FLRA, 510 U.S. 487, 500 (1994) (finding privacy interest in federal employees' home addresses even though they "often are publicly available through sources such as telephone directories and voter registration lists"); FOIA Update, Vol. X, No. 2, at 4 ("OIP Guidance: Privacy Protection Under the Supreme Court's Reporters Committee Decision").

As the Supreme Court held, individuals can have a cognizable privacy interest in identifying information "that might be found after a diligent search of courthouse files, county archives, [...] local police stations," and other publicly available sources of information, but otherwise is not readily available to the public.⁴⁰ The Reporters Committee decision and its progeny have thus recognized that individuals have a privacy interest in information that at one time may have been disclosed or made publicly available, but is now difficult to obtain.⁴¹ That is, such individuals may have a privacy interest in maintaining the information's "practical obscurity."⁴² The Court of

⁴⁰ Reporters Comm., 489 U.S. at 764.

⁴¹ See id. at 780.

⁴² Id.; see, e.g., Associated Press v. DOJ, 549 F.3d 62, 65 (2d Cir. 2008) (applying "practical obscurity" concept and noting that "[t]his [privacy] protection extends even to information previously made public") (Exemptions 6 and 7(C)); Isley v. EOUSA, No. 98-5098, 1999 WL 1021934, at *4 (D.C. Cir. Oct. 21, 1999) (finding no evidence that previously disclosed documents "continue to be 'freely available' in any 'permanent public record'") (Exemption 7(C)); Fiduccia v. DOJ, 185 F.3d 1035, 1046-47 (9th Cir. 1999) (finding privacy interest based on "practical obscurity" justified and protecting information about two individuals whose homes were searched ten years previously despite publicity at that time and fact that some information might be public in various courthouses) (Exemption 7(C)); Abraham & Rose, P.L.C. v. United States, 138 F.3d 1075, 1083 (6th Cir. 1998) (holding that there may be privacy interest in personal information even if "available on publicly recorded filings"); Lawyers' Comm. for Civil Rights v. Dep't of Transp., No. 07-2590, 2008 WL 4482855, at *21 (N.D. Cal. Sept. 30, 2008) (noting, consistent with "practical obscurity" principles, that "the Ninth Circuit has held that simply because certain documents that would normally be subject to Exemptions 7(C) and Exemption 6 have already been publicized does not mean they must be disclosed by the agency"); Jarvis v. ATF, No. 07-111, 2008 WL 2620741, at *12 (N.D. Fla. June 30, 2008) (stating that "[a] document previously disclosed may have 'practical obscurity' and might not again become public without a diligent search[;]" consequently, "the individual privacy exemption in the FOIA is not necessarily vitiated by prior disclosures"); Canaday v. ICE, 545 F. Supp. 2d 113, 117 (D.D.C. 2008) (relying on "practical obscurity" and recognizing "a privacy interest in the identifying information of the Federal employees even though the information may have been public at one time"); Leadership Conference on Civil Rights v. Gonzales, 404 F. Supp. 2d 246, 257-59 (D.D.C. 2005) (holding, under Exemption 6, that law enforcement records that were previously given to symposium members fall within "practical obscurity" rule); Dayton Newspapers, Inc. v. VA, 257 F. Supp. 2d 988, 1010 (S.D. Ohio 2003) (reasoning that although modern search engines might make even otherwise obscure personal information more widely available, that "does not mean that [individuals] have lost all traits of privacy" in that information); Linn v. DOJ, No. 92-1406, 1995 WL 417810, at *31 (D.D.C. June 6, 1995) (declaring that even if "some of the names at issue were at one time released to the general public, individuals are entitled to maintaining the 'practical obscurity' of personal information that is developed through the passage of time"). But see CNA Holdings, Inc. v. DOJ, No. 07-2084, 2008 WL 2002050, at *6 (N.D. Tex. May 9, 2008) (finding court documents to be in the public domain due to defendant's failure to meet its "burden to show that the documents that were clearly public and should be in the court's files, according to

Appeals for the District of Columbia Circuit has noted, however, that computerized databases may minimize the extent to which practical obscurity applies to conviction data.⁴³

"Survivor privacy" is also encompassed within the Act's privacy exemptions.⁴⁴ In NARA v. Favish, the Supreme Court unanimously found that the surviving family members of a former Deputy White House Counsel had a protectible privacy interest in his death-scene photographs, based in part on the family's fears of "intense scrutiny by the media."⁴⁵ Pointing out that the surviving relatives invoked their own "right and interest to personal privacy,"⁴⁶ the Court held "that FOIA recognizes surviving family members' right to personal privacy with respect to their close relative's death-scene images."⁴⁷ Relying upon case law and cultural traditions, the Court concentrated on "the right of family members to direct and control disposition of the body of the deceased" and noted the right of family members "to limit attempts to exploit pictures of the deceased family member's remains for public purposes."⁴⁸ Analyzing what recipients of the death scene photos may do with them, the Court found that the surviving family members had a protectible privacy interest in seeking to limit the attempts by the requester, as well as the public and media, to exploit the deceased's photos.⁴⁹

The Court held that "survivor privacy" was a valid privacy interest protected by Exemption 7(C) based on three factors. First, the Court had previously ruled in Reporters Committee that FOIA's personal privacy protection was not "some limited or

PACER and the common record retention practice of federal courts, are for some reason not actually still publicly available").

⁴³ See ACLU v. DOJ, 655 F.3d 1, 12 (D.C. Cir. 2011) ("[D]isclosure under FOIA [will not] make that information any more accessible than it already is through publicly available computerized databases.") (Exemption 7(C)).

⁴⁴ See NARA v. Favish, 541 U.S. 157, 165-70 (2004) ("[T]he concept of personal privacy . . . is not some limited or 'cramped notion' of that idea.") (Exemption 7(C)); see also FOIA Post, "[Supreme Court Rules for 'Survivor Privacy' in Favish](#)" (posted 4/9/04) (highlighting breadth of privacy protection principles in Supreme Court's decision).

⁴⁵ 541 U.S. at 167; see also FOIA Post, "[Supreme Court Decides to Hear 'Survivor Privacy' Case](#)" (posted 5/13/03; supplemented 10/10/03) (chronicling case's history).

⁴⁶ 541 U.S. at 166.

⁴⁷ Id. at 170.

⁴⁸ Id. at 168.

⁴⁹ Id. at 167.

'cramped notion' of that idea,"⁵⁰ and so was broad enough to protect surviving family members' "own privacy rights against public intrusions."⁵¹ Second, the Court reviewed the long tradition at common law of "acknowledging a family's control over the body and death images of the deceased."⁵² Third, the Court reasoned that Congress used that background in creating Exemption 7(C), including the fact that the government-wide FOIA policy memoranda of two Attorneys General had specifically extended privacy protection to families.⁵³ Thus, the Favish decision endorsed the holdings of several lower courts in recognizing that surviving family members have substantial privacy interests in sensitive, often graphic, personal details about the circumstances surrounding an individual's death.⁵⁴

⁵⁰ Id. at 165.

⁵¹ Id. at 167.

⁵² Id. at 168. But cf. Showler v. Harper's Magazine Found., No. 05-178, slip op. at 6 (E.D. Okla. Dec. 22, 2005) (finding that a photograph of a deceased individual was distinguishable from the death-scene photographs in Favish because, inter alia, the photograph "was taken at a public, newsworthy event" and "was the same scene the funeral attendees observed").

⁵³ 541 U.S. at 169 (citing [Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act \(FOIA\)](#) 36 (June 1967) and [Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act](#) 9-10 (Feb. 1975)).

⁵⁴ See, e.g., Hale v. DOJ, 973 F.2d 894, 902 (10th Cir. 1992) (finding "personal privacy interests of the victim's family" outweigh non-existent public interest) (Exemption 7(C)); Bowen v. FDA, 925 F.2d 1225, 1228 (9th Cir. 1991) (affirming nondisclosure of autopsy reports of individuals killed by cyanide-contaminated products); N.Y. Times Co. v. NASA, 920 F.2d 1002, 1005 (D.C. Cir. 1990) (en banc) (affirming withholding of audiotape of voices of Space Shuttle Challenger astronauts recorded immediately before their deaths, to protect family members from pain of hearing final words of loved ones); Badhwar v. U.S. Dep't of the Air Force, 829 F.2d 182, 186 (D.C. Cir. 1987) (noting that some autopsy reports might "shock the sensibilities of surviving kin"); Marzen v. HHS, 825 F.2d 1148, 1154 (7th Cir. 1987) (holding deceased infant's medical records exempt because their release "would almost certainly cause . . . parents more anguish"); Isley v. EOUSA, No. 96-0123, slip op. at 3-4 (D.D.C. Feb. 25, 1998) (approving the withholding of "medical records, autopsy reports and inmate injury reports pertaining to a murder victim as a way of protecting surviving family members"), aff'd on other grounds, 203 F.3d 52 (D.C. Cir. 1999) (unpublished table decision); Katz v. NARA, 862 F. Supp. 476, 483-86 (D.D.C. 1994) (holding that Kennedy family's privacy interests would be invaded by disclosure of "graphic and explicit" JFK autopsy photographs), aff'd on other grounds, 68 F.3d 1438 (D.C. Cir. 1995); Cowles Publ'g Co. v. United States, No. 90-349, slip op. at 6-7 (E.D. Wash. Dec. 20, 1990) (withholding identities of individuals who became ill or died from radiation exposure, in order to protect living victims and family members of deceased persons from intrusive contacts and inquiries). But see Journal-Gazette Co. v. U.S. Dep't of the Army, No. F89-147, slip op. at 8-9 (N.D. Ind. Jan. 8, 1990) (holding that because autopsy report of Air National Guard pilot killed in training exercise contained "concise medical descriptions of the cause of death,"

Derivative Privacy Invasion

Courts have found that an invasion of privacy need not occur immediately upon disclosure in order to be considered "clearly unwarranted."⁵⁵ As the Court of Appeals for the District of Columbia Circuit has held, "[w]here there is a substantial probability that disclosure will cause an interference with personal privacy, it matters not that there may be two or three links in the causal chain."⁵⁶ One court has pragmatically observed

not "graphic, morbid descriptions," survivors' minimal privacy interest was outweighed by public interest); cf. Outlaw v. U.S. Dep't of the Army, 815 F. Supp. 505, 506 (D.D.C. 1993) (ordering disclosure in absence of evidence of existence of any survivor whose privacy would be invaded by release of murder-scene photographs of man murdered twenty-five years earlier).

⁵⁵ See National Ass'n of Retired Federal Employees v. Horner [hereinafter NARFE], 879 F.2d 873, 878 (D.C. Cir. 1989) ("In virtually every case in which a privacy concern is implicated, someone must take steps after the initial disclosure in order to bring about the untoward effect."); Hudson v. Dep't of the Army, No. 86-1114, 1987 WL 46755, at *3 (D.D.C. Jan. 29, 1987) ("While [possible threats and harassment] may be characterized as a sort of "secondary effect," to give credence to the distinction [between the original invasion of privacy and its possible effects] is to honor form over substance."), aff'd, 926 F.2d 1215 (D.C. Cir. 1991) (unpublished table decision).

⁵⁶ NARFE, 879 F.2d at 878; see, e.g., NARA v. Favish, 541 U.S. 157, 167-70 (2004) (specifically taking into account "the consequences" of FOIA disclosure, including "public exploitation" of the records by either the requester or others); Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1026 (9th Cir. 2008) (finding that "the public association of the employees with [the Cramer Fire] would subject them to the risk of embarrassment in their official capacities and in their personal lives"); Moore v. Bush, 601 F. Supp. 2d 6, 14 (D.D.C. 2009) (concluding that release of name and phone number of an FBI support employee and the name of a Special Agent "could subject the Agent and employee to harassment") (Exemptions 6 and 7(C)); Hall v. DOJ, 552 F. Supp. 2d 23, 30 (D.D.C. 2008) ("Pursuant to Exemption 6, individuals have a privacy interest in avoiding disclosure of identifying information if disclosure would subject them to harassment."); Reilly v. DOE, No. 07-995, 2007 WL 4548300, at *6 (N.D. Ill. Dec. 18, 2007) ("If the names of the [Merit Review Committee] members were disclosed to the public, they would be subject to harassment from disgruntled applicants whose proposals were denied."); George v. IRS, No. 05-955, 2007 WL 1450309, at *11 (N.D. Cal. May 14, 2007) ("IRS employees have a strong right to privacy in order to fulfill their obligations without fear that taxpayers will attempt to harass or contact employees directly instead of using the administrative and judicial processes for appeal."); Bigwood v. USAID, 484 F. Supp. 2d 68, 77 (D.D.C. 2007) ("Defendant has presented declarations that detail the potential harm to the employees if the identities of the grantee organizations at issue in this case are released."); O'Keefe v. DOD, 463 F. Supp. 2d 317, 324 (E.D.N.Y. 2006) ("Government employees, and specifically law enforcement personnel, have a significant privacy interest in their identities, as the release of their identities may subject them to embarrassment and harassment.") (Exemption 7(C)); Judicial Watch, Inc. v. Dep't of the Army, 402 F. Supp. 2d 241, 251 (D.D.C. 2005) (granting defendant's motion for summary judgment as to information

that to distinguish between the initial disclosure and unwanted intrusions that result from disclosure would be "to honor form over substance."⁵⁷

For instance, the Court of Appeals for the Tenth Circuit, in Forest Guardians v. FEMA, decided that the release of "electronic mapping files" would invade the privacy interest of homeowners, even though the invasion would occur only after "manipulat[ion] [of the square and lot numbers] to derive the addresses of policyholders and potential policyholders."⁵⁸ The Tenth Circuit found that the files contained the specific locations of insured structures that "could easily lead to the discovery of an individual's name and home address," as well as "unwanted and unsolicited mail, if not more."⁵⁹

In another case considering derivative privacy invasions, Prudential Locations LLC v. HUD, the Court of Appeals for the Ninth Circuit considered the consequences of disclosure of the names of individuals who sent emails to an agency alleging that a business had violated a federal statute.⁶⁰ In holding that the names should be withheld, the court found that the authors of the emails "could easily be adversely affected if their identities became known."⁶¹ The court noted that the authors were vulnerable "to retaliation such as loss of employment or loss of business" and "the possibility of a civil lawsuit," concluding that there was a "significant risk of harassment, retaliation, stigma, or embarrassment of the authors if their identities [were] revealed."⁶²

withheld pursuant to Exemption 6; finding that it is "likely" that the documents would be published on the Internet and that media reporters would seek out employees, and stating "[t]his contact is the very type of privacy invasion that Exemption 6 is designed to prevent"); cf. N.Y. Times, Co. v. U.S. Dep't of the Treasury, No. 09-10437, 2010 WL 4159601, at *5 (S.D.N.Y. Oct. 13, 2010) (noting that privacy interest is weak due to "lack of evidence that any of the corporate licensees – whose identities were released to the Times – have faced any negative consequences following that disclosure").

⁵⁷ Hudson, 1987 WL 46755, at *3 (protecting personal identifying information on the basis that its disclosure under the FOIA could ultimately lead to physical harm), aff'd, 926 F.2d 1215 (D.C. Cir. 1991) (unpublished table decision); see also, e.g., Hemenway, 601 F. Supp. at 1006-07 (D.D.C. 1985) (same).

⁵⁸ 410 F.3d 1214, 1220-21 (10th Cir. 2005).

⁵⁹ Id. (finding that additional information, such as individual's decision to buy flood insurance, could be revealed through disclosure of requested files and thus also invade privacy).

⁶⁰ No. 09-16995, 2013 WL 5539618 (9th Cir. Oct. 9, 2013).

⁶¹ Id. at *7.

⁶² Id.

There have been occasions, though, where this concept of derivative privacy has been questioned.⁶³ Moreover, even when courts recognize a derivative privacy invasion that results after the release of the requested information, they do not always find that invasion to be clearly unwarranted. In Multi Ag Media LLC v. USDA, the D.C. Circuit concluded that the disclosure of two databases containing information on crops and field acreage, and farm data on a digitized aerial photograph, would compromise a greater than de minimis privacy interest of individual farmers.⁶⁴ Although "not persuaded that the privacy interest that may exist is particularly strong," the court found that "[t]elling the public how many crops are on how much land or letting the public look at photographs of farmland with accompanying data will in some cases allow for an inference to be drawn about the financial situation of an individual farmer."⁶⁵ Despite this invasion of privacy, the court concluded that the information should be disclosed in light of a strong public interest in USDA's administration of certain subsidy and benefit programs.⁶⁶

Similarly, in ACLU v. DOJ, the D.C. Circuit considered the release of court docket information, finding that "it would take little work for an interested person to use the . . . information . . . to look up the underlying case files in the public records of the courts, and therein find the information of interest."⁶⁷ The court found that the requester's plan to use this information to contact individuals was relevant to the consideration of the privacy interest.⁶⁸ Nevertheless, the court held that, unlike the rap sheets that were at

⁶³ See Dep't of State v. Ray, 502 U.S. 164, 179-82 (1991) (Scalia, J., concurring in part) (suggesting that "derivative" privacy harm should not be relied upon in evaluating privacy interests); Associated Press v. DOD, 410 F. Supp. 2d 147, 151 (D.D.C. 2006) (suggesting that "derivative" harms might not be cognizable under Exemption 6, based on Justice Scalia's concurring opinion in Ray); Forest Guardians v. U.S. Dep't of the Interior, No. 02-1003, 2004 WL 3426434, at *16-17 (D.N.M. Feb. 28, 2004) (deciding that agency did not meet its burden of establishing that names of financial institutions and amounts of individual loans in lienholder agreements could be used to trace individual permittees); Dayton Newspapers, Inc., 257 F. Supp. 2d at 1001-05 (rejecting argument based upon agency's concern that names of judges and attorneys could be used to search through databases to identify claimants and thereby invade privacy of claimants).

⁶⁴ 515 F.3d 1224, 1230 (D.C. Cir. 2008).

⁶⁵ Id.; see, e.g., Seized Prop. Recovery v. U.S. Customs & Border Prot., 502 F. Supp. 2d 50, 58 (D.D.C. 2007) ("[I]ndividuals have a privacy interest in the nondisclosure of their names and addresses when linked to financial information, especially when this information could be used for solicitation purposes.") (Exemption 6 and 7(C)).

⁶⁶ Multi Ag, 515 F.3d at 1233.

⁶⁷ 655 F.3d 1, 6-7 (D.C. Cir. 2011) (Exemption 7(C)).

⁶⁸ Id. at 11 ("There is no doubt that the courts have held that the risk of unwanted contact following a FOIA disclosure is a privacy interest that must be weighed in the privacy interest/public interest balance.").

issue in Reporters Committee, "even if the docket information is used to find the underlying proceedings, for any particular individual it mostly likely would reveal only a single prosecution, rather than a comprehensive scorecard of the person's entire criminal history" and thus privacy intrusions would be "marginal."⁶⁹

In another case considering the extent of privacy intrusions that could result from release, the District Court for the Southern District of New York noted that "[t]he mere fact that someone might seek to interview a [third party] does not mean . . . that the individual would be subject to opprobrium or harassment" so as to cause a clearly unwarranted invasion of personal privacy.⁷⁰ In fact, one court has held that potentially exposing an individual to opprobrium [infamy or shame] is not necessarily a clearly unwarranted invasion of privacy. In Showing Animals Respect & Kindness v. United States Department of Interior, the District Court for the District of Columbia held that, with regard to video recordings of targets of an agency investigation, "[t]o the extent that Defendants seek to protect [third parties] from opprobrium based on their unlawful conduct, such an invasion of privacy is not necessarily unwarranted."⁷¹

Expectations of Privacy

In some instances, the disclosure of information might involve no invasion of privacy because, fundamentally, the information is of such a nature that little or no expectation of privacy exists.⁷² For example, the District Court for the District of

⁶⁹ Id. at 8, 12.

⁷⁰ N.Y. Times, Co. v. U.S. Dep't of the Treasury, No. 09-10437, 2010 WL 4159601, at *4 (S.D.N.Y. Oct. 13, 2010).

⁷¹ 730 F. Supp. 2d 180, 193 (D.D.C. 2010) (noting that privacy interests in video recordings made by subject of investigation are "quite attenuated," because "[u]nlike surveillance tapes that capture a person's image without their consent, the videos at issue here were created . . . expressly for distribution to the public . . . for later use on television or a music video").

⁷² See, e.g., Ditlow v. Shultz, 517 F.2d 166, 172 (D.C. Cir. 1975) (finding that, with regard to travelers' names in customs forms, both "the absence of a governmental assurance of confidentiality" and "agency assertion of authority to make discretionary disclosure" would "undercut the privacy expectations protected by exemption 6"); People for the Am. Way Found. v. Nat'l Park Serv., 503 F. Supp. 2d 284, 306 (D.D.C. 2007) ("Disclosing the mere identity of individuals who voluntarily submitted comments regarding the Lincoln video does not raise the kind of privacy concerns protected by Exemption 6."); Fuller v. CIA, No. 04-253, 2007 WL 666586, at *4 (D.D.C. Feb. 28, 2007) (finding that information reflecting only professional and business judgments and relationships "cannot fairly be characterized as personal information that exemption (b)(6) was meant to protect"); Alliance for the Wild Rockies v. Dep't of the Interior, 53 F. Supp. 2d 32, 37 (D.D.C. 1999) (finding that commenters to proposed rulemaking could have no expectation of privacy when agency made clear that their identities would not be concealed).

Columbia ruled decades ago that FOIA requesters do not ordinarily expect that their names will be kept private,⁷³ although a more recent opinion by the Court of Appeals for the Seventh Circuit reached a different conclusion, holding that a requester's name could be withheld.⁷⁴ The District Court for the District of Columbia has held that the names of individuals submitting comments to proposed agency rules should be released when the rulemaking notice "specified that '[t]he complete file for this proposed rule is available for inspection'" and comments were made voluntarily.⁷⁵

By contrast, the majority of courts to have considered the issue have held that individuals who write to the government expressing personal opinions generally have some expectation of confidentiality, and their identities, but not necessarily the substance of their letters, ordinarily have been withheld.⁷⁶ For instance, the Court of

⁷³ Agee v. CIA, 1 Gov't Disclosure Serv. (P-H) ¶ 80,213 at 80,532 (D.D.C. Jul. 23, 1980) ("FOIA requesters . . . have no general expectation that their names will be kept private."); see also Holland v. CIA, No. 91-1233, 1992 WL 233820, at *15-16 (D.D.C. Aug. 31, 1992) (holding that researcher who sought assistance of presidential advisor in obtaining CIA files he had requested is comparable to FOIA requester whose identity is not protected by Exemption 6); Stauss v. IRS, 516 F. Supp. 1218, 1223 (D.D.C. 1981) (finding that FOIA requesters "freely and voluntarily addressed their inquiries to the IRS, without a hint of expectation that the nature and origin of their correspondence would be kept confidential"). But cf. FOIA Update, Vol. VI, No. 1, at 6 (advising agencies that the identities of first-party requesters under the Privacy Act of 1974, 5 U.S.C. § 552a (2006 & Supp. IV 2010), should be protected because, unlike under the FOIA, an expectation of privacy can fairly be inferred from the personal nature of the records involved in those requests).

⁷⁴ See Silets v. DOJ, 945 F.2d 227, 230 (7th Cir. 1991) (en banc) (protecting name of high school student who requested information about wiretaps on Jimmy Hoffa) (Exemption 7(C)).

⁷⁵ Alliance for the Wild Rockies, 53 F. Supp. 2d at 36-37.

⁷⁶ See, e.g., Lakin Law Firm, P.C. v. FTC, 352 F.3d 1122, 1125 (7th Cir. 2003) (finding that the "core purposes" of the FOIA would not be served by the release of the names and addresses of persons who complained to the FTC about "cramming"); Strout v. U.S. Parole Comm'n, 40 F.3d 136, 139 (6th Cir. 1994) (articulating public policy against disclosure of names and addresses of people who write Parole Commission opposing convict's parole); Carter, Fullerton & Hayes LLC v. FTC, 520 F. Supp. 2d 134, 145 n.4 (D.D.C. 2007) ("Consumers making complaints with the FTC have an expectation that it will protect their personal information."); Kidd v. DOJ, 362 F. Supp. 2d 291, 297 (D.D.C. 2005) (protecting names and addresses of constituents in letters written to their congressman); Butler v. SSA, No. 03-0810, slip op. at 5 (W.D. La. June 25, 2004) (finding that persons making complaints against an administrative law judge "have a privacy interest" in their complaints), aff'd on other grounds, 146 F. App'x 752 (5th Cir. 2005); Voinche v. FBI, 940 F. Supp. 323, 329-30 (D.D.C. 1996) ("There is no reason to believe that the public will obtain a better understanding of the workings of various agencies by learning the identities of . . . private citizens who wrote to government officials . . ."), aff'd per curiam, No. 96-5304, 1997 WL 411685 (D.C. Cir. June 19, 1997); Holy Spirit Ass'n v. U.S. Dep't of State, 526 F.

Appeals for the Fourth Circuit protected under Exemption 7(C) the names and addresses of people who wrote to the IRS expressing concerns about an organization's tax-exempt status.⁷⁷ The District Court for the District of Columbia reached the same conclusion as the Fourth Circuit for the names and addresses of people who wrote to the IRS to comment on the same organization's tax-exempt status, both pro and con.⁷⁸ The Court of Appeals for the Ninth Circuit found a "cognizable privacy interest" in the names of individuals who wrote to HUD alleging that a business had violated a federal statute.⁷⁹ The United States District Court for the Northern District of California found that the names of persons who complained to the TSA and FBI about the TSA "watch list" were properly protected, as long as those individuals had not otherwise made their complaints public.⁸⁰ Nevertheless, in some circumstances courts have refused to accord privacy protection to such government correspondents.⁸¹

Supp. 1022, 1032-34 (S.D.N.Y. 1981) (finding that "strong public interest in encouraging citizens to communicate their concerns regarding their communities" is fostered by protecting identities of writers); see also Holy Spirit Ass'n v. FBI, 683 F.2d at 564 (MacKinnon, J., concurring) (concurring with the nondisclosure of correspondence because communications from citizens to their government "will frequently contain information of an intensely personal sort") (Exemptions 6 and 7(C)).

⁷⁷ See Judicial Watch, Inc. v. United States, 84 F. App'x at 337.

⁷⁸ See Judicial Watch, Inc. v. Rossotti, 285 F. Supp. 2d 17, 28 (D.D.C. 2003) (Exemption 7(C)).

⁷⁹ See Prudential Locations LLC v. HUD, No. 09-16995, 2013 WL 5539618, at *6 (9th Cir. Oct. 9, 2013) (holding that "in light of the repeated pronouncements of HUD's confidentiality policy," authors of emails to HUD alleging violations of federal statute "had reasonable expectations that HUD would protect their confidentiality even without a specific request that it do so").

⁸⁰ Gordon v. FBI, 388 F. Supp. 2d 1028, 1041-42, 1045 (N.D. Cal. 2005) (Exemptions 6 and 7(C)).

⁸¹ See People for the Am. Way Found., 503 F. Supp. 2d at 306 ("Disclosing the mere identity of individuals who voluntarily submitted comments regarding the Lincoln video does not raise the kind of privacy concerns protected by Exemption 6 Moreover, the public interest in knowing who may be exerting influence on [agency] officials sufficient to convince them to change the video outweighs any privacy interest in one's name."); Lardner v. DOJ, No. 03-0180, 2005 WL 758267, at *17, *19 (D.D.C. Mar. 31, 2005) (requiring release of identities of unsuccessful pardon applicants, as well as individuals mentioned in pardon documents, because they wrote letters in support of pardon applications or were listed as character references on pardon applications); Landmark Legal Found. v. IRS, 87 F. Supp. 2d 21, 27-28 (D.D.C. 2000) (granting Exemption 3 protection under 26 U.S.C. § 6103, but declining to grant Exemption 6 protection to citizens who wrote to IRS to express opinions or provide information; noting that "IRS has suggested no reason why existing laws are insufficient to deter any criminal or tortious conduct targeted at persons who would be identified"), aff'd on Exemption 3 grounds, 267 F.3d 1132 (D.C. Cir. 2001); Judicial Watch v.

Federal Employees

Civilian federal employees who are not involved in law enforcement or sensitive occupations generally have no expectation of privacy regarding their names, titles, grades, salaries, and duty stations as employees⁸² or regarding the parts of their successful employment applications that show their qualifications for their positions.⁸³

DOJ, 102 F. Supp. 2d 6, 17-18 (D.D.C. 2000) (allowing deletion of home addresses and telephone numbers but ordering release of identities of individuals who wrote to Attorney General about campaign finance or Independent Counsel issues); Cardona v. INS, No. 93-3912, 1995 WL 68747, at *3 (N.D. Ill. Feb. 15, 1995) (finding only "de minimis invasion of privacy" in release of name and address of individual who wrote letter to INS complaining about private agency that offered assistance to immigrants).

⁸² See OPM Regulation, 5 C.F.R. § 293.311 (2011) (specifying that certain information contained in federal employee personnel files is generally available to public); see also FLRA v. U.S. Dep't of Commerce, 962 F.2d 1055, 1059-61 (D.C. Cir. 1992) (noting that performance awards "have traditionally been subject to disclosure"); Core v. USPS, 730 F.2d 946, 948 (4th Cir. 1984) (finding no substantial invasion of privacy in information identifying successful federal job applicants); Leadership Conference on Civil Rights v. Gonzales, 404 F. Supp. 2d 246, 257 (D.D.C. 2005) (noting that Justice Department paralegals' names and work numbers "are already publicly available from [OPM]"), appeal dismissed voluntarily, No. 06-5055, 2006 WL 1214937 (D.C. Cir. Apr. 28, 2006); Lawyers Comm. for Human Rights v. INS, 721 F. Supp. 552, 569 (S.D.N.Y. 1989) (stating that "disclosure [of names of State Department's officers and staff members involved in highly publicized case] merely establishes State [Department] employees' professional relationships or associates these employees with agency business"); Nat'l W. Life Ins. v. United States, 512 F. Supp. 454, 461 (N.D. Tex. 1980) (discerning no expectation of privacy in names and duty stations of Postal Service employees); FOIA Update, Vol. III, No. 4, at 3 ("Privacy Protection Considerations") (discussing extent to which privacy of federal employees can be protected); cf. Tomscha v. GSA, No. 03-6755, 2004 WL 1234043, at *4-5 (S.D.N.Y. June 3, 2004) (deciding without discussion that amount of performance award was properly redacted when agency showed that there could be "mathematical linkage" between award and performance evaluation), aff'd, 158 F. App'x 329, 329 (2d Cir. 2005) (agreeing with the district court's finding that "the release of the justifications for [low-ranking GSA employee's] awards would constitute more than a de minimis invasion of privacy").

⁸³ See Knittel v. IRS, No. 07-1213, 2009 WL 2163619, at *6 (W.D. Tenn. July 20, 2009) (holding that agency is incorrect in its assertion that it is only required to disclose information about employees specifically listed in OPM's regulation, as categories mentioned there are "not meant to be exhaustive"); Cowdery, Ecker & Murphy, LLC v. Dep't of Interior, 511 F. Supp. 2d 215, 219 (D. Conn. 2007) ("Because exemption 6 seeks to protect government employees from unwarranted invasions of privacy, it makes sense that FOIA should protect an employee's personal information, but not information related to job function."); Barvick v. Cisneros, 941 F. Supp. 1015, 1020 n.4 (D. Kan. 1996) (noting that the agency had "released information pertaining to the successful candidates' educational and professional qualifications, including letters of commendation and awards, as well as their

However, those employees have a protectible privacy interest in purely personal details that do not shed light on agency functions.⁸⁴ Indeed, courts generally have recognized the sensitivity of information contained in personnel-related files and have accorded protection to the personal details of a federal employee's service.⁸⁵

prior work history, including federal positions, grades, salaries, and duty stations"); Samble v. U.S. Dep't of Commerce, No. 1:92-225, slip op. at 11 (S.D. Ga. Sept. 22, 1994) (requiring disclosure of successful job applicant's "undergraduate grades; private sector performance awards; foreign language abilities; and his answers to questions concerning prior firings, etc., convictions, delinquencies on federal debt, and pending charges against him"); Associated Gen. Contractors, Inc. v. EPA, 488 F. Supp. 861, 863 (D. Nev. 1980) (education, former employment, academic achievements, and employee qualifications).

⁸⁴ See, e.g., DOD v. FLRA, 510 U.S. 487, 500 (1994) (protecting federal employees' home addresses); Pub. Emps. for Envtl. Resp. v. U.S. Sec. Int'l Boundary & Water Comm'n, 839 F. Supp. 2d 304, 323-24 (D.D.C. 2012) (protecting private contact information of emergency personnel whose names appear in emergency action plans); Morales v. Pension Benefit Guar. Corp., No. 10-1167, 2012 U.S. Dist. LEXIS 9101, at *12 (D. Md. Jan. 26, 2012) (protecting handwritten Flex Time sign-in sheets on which employees sign in and out of work); Wilson v. United States Air Force, No. 08-324, 2009 WL 4782120, at *4 (E.D. Ky. Dec. 9, 2009) (finding that signatures, personal phone numbers, personal email addresses, and government email addresses were properly redacted); Kidd v. DOJ, 362 F. Supp. 2d 291, 296-97 (D.D.C. 2005) (home telephone number); Barvick, 941 F. Supp. at 1020-21 (personal information such as home addresses and telephone numbers, social security numbers, dates of birth, insurance and retirement information, reasons for leaving prior employment, and performance appraisals); Stabasefski v. United States, 919 F. Supp. 1570, 1575 (M.D. Ga. 1996) (names of FAA employees who received Hurricane Andrew assistance payments); Plain Dealer Publ'g Co. v. U.S. Dep't of Labor, 471 F. Supp. 1023, 1028-30 (D.D.C. 1979) (medical, personnel, and related documents of employees filing claims under Federal Employees Compensation Act); Info. Acquisition Corp. v. DOJ, 444 F. Supp. 458, 463-64 (D.D.C. 1978) ("core" personal information such as marital status and college grades). But see Wash. Post Co. v. HHS, 690 F.2d 252, 258-65 (D.C. Cir. 1982) (holding personal financial information required for appointment as HHS scientific consultant not exempt when balanced against need for oversight of awarding of government grants); Trupej v. DEA, No. 04-1481, slip op. at 3-5 (D.D.C. Sept. 27, 2005) (ordering disclosure of signature where name of retired DEA agent was already released, because "speculative" possibility of misuse of signature did not establish cognizable privacy interest); Husek v. IRS, No. 90-CV-923, 1991 U.S. Dist. LEXIS 20971, at *1 (N.D.N.Y. Aug. 16, 1991) (holding citizenship, date of birth, educational background, and veteran's preference of federal employees not exempt), aff'd, 956 F.2d 1161 (2d Cir. 1992) (unpublished table decision).

⁸⁵ See, e.g., Ripskis v. HUD, 746 F.2d 1, 3-4 (D.C. Cir. 1984) (names and identifying data contained on evaluation forms of HUD employees who received outstanding performance ratings); Ferrigno v. DHS, No. 09-5878, 2011 WL 1345168, at *8 (S.D.N.Y. Mar. 29, 2011) (determining that "the Supervisor, the Investigator, and the interviewees whose statements are recorded in the memoranda at issue all have a more than de minimus privacy interest in these memoranda, as being identified as part of Plaintiff's [employment-related harassment] complaint could subject them to embarrassment and harassment"); Wilson v. Dep't of Transp., 730 F. Supp. 2d 140, 156 (D.D.C. 2010) (concluding that "[b]ecause [Equal

Generally, federal employees have a privacy interest in their job performance evaluations.⁸⁶ Even "favorable information," such as details of an employee's outstanding performance evaluation, can be protected on the basis that it "may well embarrass an individual or incite jealousy" among coworkers.⁸⁷ Moreover, release of

Employment Opportunity] charges often concern matters of a sensitive nature, an EEO complainant has a significant privacy interest"), aff'd, No. 10-5295, 2010 WL 5479580 (D.C. Cir. Dec. 30, 2010); Warren v. Soc. Sec. Admin., No. 98-CV-0116E, 2000 WL 1209383, at *4 (W.D.N.Y. Aug. 22, 2000) (award nomination forms for specific employees), aff'd, 10 F. App'x 20 (2d Cir. 2001); Rothman v. USDA, No. 94-8151, slip op. at 6 (C.D. Cal. June 17, 1996) (settlement agreement related to charge of employment discrimination that "could conceivably lead to embarrassment or friction with fellow employees or supervisors"); Resendez v. Runyon, No. 94-434F, slip op. at 6-7 (W.D. Tex. Aug. 11, 1995) (names of applicants for supervisory training who have not yet been accepted or rejected); McLeod v. U.S. Coast Guard, No. 94-1924, slip op. at 8-10 (D.D.C. July 25, 1995) (Coast Guard officer's evaluation report), summary affirmance granted, No. 96-5071, 1997 WL 150096 (D.C. Cir. Feb. 10, 1997); Putnam v. DOJ, 873 F. Supp. 705, 712-13 (D.D.C. 1995) (names of FBI employees mentioned in "circumstances outside of their official duties," such as attending training classes and as job applicants); Ferri v. DOJ, 573 F. Supp. 852, 862-63 (W.D. Pa. 1983) (FBI background investigation of Assistant United States Attorney); Dubin v. Dep't of the Treasury, 555 F. Supp. 408, 412 (N.D. Ga. 1981) (studies of supervisors' performance and recommendations for performance awards), aff'd, 697 F.2d 1093 (11th Cir. 1983) (unpublished table decision); see also FLRA v. U.S. Dep't of Commerce, 962 F.2d at 1060 (distinguishing personnel "ratings," which traditionally have not been disclosed, from "performance awards," which ordinarily are disclosed); cf. Prof'l Review Org., Inc. v. HHS, 607 F. Supp. 423, 427 (D.D.C. 1985) (résumé data of proposed staff of government contract bidder).

⁸⁶ See, e.g., Smith v. Dep't of Labor, 798 F. Supp. 2d 274, 283-85 (D.D.C. 2011) (affirming agency's redaction of personal and job-performance information); see also Bonilla v. DOJ, 798 F. Supp. 2d 1325, 1332 (S.D. Fla. 2011) (recognizing a privacy interest in reference letters revealing "colleagues' personal opinions of [an AUSA] as a person and as a prosecutor"); Long v. OPM, No. 05-1522, 2010 WL 681321, at *18 (N.D.N.Y. Feb. 23, 2010) (concluding that "employees' interest in keeping performance based awards, or the lack thereof, private outweighs any public interest in disclosure of this information"), aff'd on other grounds, 692 F.3d 185 (2d Cir. 2012); People for Ethical Treatment of Animals v. USDA, No. 06-930, 2007 WL 1720136, at *4 (D.D.C. June 11, 2007) ("[A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures." (quoting Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984))) (Exemption 7(C)).

⁸⁷ Ripskis, 746 F.2d at 3; see Hardison v. Sec'y of VA, 159 F. App'x 93, 93 (11th Cir. 2005) (performance appraisals); FLRA v. U.S. Dep't of Commerce, 962 F.2d at 1059-61 (performance appraisals); Lewis v. EPA, No. 06-2660, 2006 WL 3227787, at *6 (E.D. Pa. Nov. 3, 2006) (employee or candidate rankings and evaluations); Vunder v. Potter, No. 05-142, 2006 WL 162985, at *2-3 (D. Utah Jan. 20, 2006) (narrative of accomplishments submitted to superiors for consideration in performance evaluation); Tomscha v. GSA, 2004

such information "reveals by omission the identities of employees who did not receive high ratings, creating an invasion of their privacy."⁸⁸ Employees may also retain a privacy interest in employment related misconduct⁸⁹ and mistakes,⁹⁰ although the higher the level of the employee, the greater the public interest will be in disclosure.⁹¹ (See further discussion of this point under FOIA Public Interest, below.)

Further, the identities of employees who provide information to investigators are generally protected.⁹² In addition, the identities of persons who apply but are not

WL 1234043, at *4 ("Both favorable and unfavorable assessments trigger a privacy interest."), aff'd, 158 F. App'x 329, 331 (2d Cir. 2005) ("[W]e agree with the district court's finding that the release of the justifications for [plaintiff's] awards would constitute more than a de minimis invasion of privacy, as they necessarily include personal, albeit positive, information regarding his job performance."). But see also Hardy v. DOD, No. CV-99-523, 2001 WL 34354945, at *9 (D. Ariz. Aug. 27, 2001) (finding concern with jealousy on parts of co-workers diminished by fact that subject employee had since retired).

⁸⁸ FLRA v. U.S. Dep't of Commerce, 962 F.2d at 1059.

⁸⁹ See, e.g., Sensor Sys. Support, Inc. v. FAA, No. 10-262, 2012 WL 424376, at *8 (D.N.H. Feb. 9, 2012) (noting that "[a]lthough a government employee investigated for performance-related misconduct 'generally possesses a diminished privacy interest' in comparison to private individuals, 'an internal criminal investigation would not invariably trigger FOIA disclosure of the identity of a targeted government employee'"); Steese, Evans & Frankel, P.C. v. SEC, No. 10-1071, 2010 U.S. Dist. LEXIS 129401, at *22, 25 (D. Colo. Dec. 7, 2010) (finding "overwhelming" privacy interests in employees' identities where the "public was informed that employees were found to have spent hours at work viewing sexually explicit sites;" holding that disclosure would "reflect[] on the employees' sexual needs and/or desires" and could be the source of "'severe personal and professional harm including embarrassment and disgrace'").

⁹⁰ See, e.g., Am. Small Bus. League v. Dep't of the Interior, No. 11-1880, 2011 U.S. Dist. LEXIS 114752, at *12 (N.D. Cal. Oct. 5, 2011) (determining that "invasion of [employees'] privacy is not warranted" because their "right of privacy is greater than the public interest served by disclosure of their [names and contact information in an OIG report in which the writers disclose their own mistakes]").

⁹¹ See, e.g., CASA de Maryland, Inc. v. DHS, 409 F. App'x 697 (4th Cir. 2011) (per curiam) (affirming district court's decision ordering disclosure of names contained in an internal investigation report authored by DHS's Office of Professional Responsibility in light of evidence produced by plaintiff indicating that agency impropriety might have occurred); Stern, 737 F.2d at 94 (finding employees' level of seniority to be relevant to public interest in disclosure) (Exemption 7(C)).

⁹² See, e.g., McCann v. HHS, No. 10-1758, 2011 WL 6251090, at *3 (D.D.C. Dec. 15, 2011) (finding that assertion of Exemption 6 to protect identities of "'individuals who provided information to an investigator who was conducting an investigation into Plaintiff's HIPAA complaint'" was appropriate, and disclosure "'could reasonably be expected to cause potential harassment or misuse of the [witness'] information'"); Am. Small Bus.

selected for federal government employment may be protected.⁹³ Even suggestions submitted to an Employee Suggestion Program have been withheld to protect employees with whom the suggestions are identifiable from the embarrassment that might occur from disclosure.⁹⁴

Federal employees involved in law enforcement, as well as military personnel and employees in sensitive occupations, do possess, by virtue of the nature of their work, substantial privacy interests in their identities and work addresses.⁹⁵ In light of this

League, 2011 U.S. Dist. LEXIS 114752, at *10 (holding that agency properly withheld contracting officer and employee names and contact information in Office of the Inspector General workpapers).

⁹³ See, e.g., Core, 730 F.2d at 948-49 (protecting identities and qualifications of unsuccessful applicants for federal employment); Judicial Watch, Inc. v. U.S. Dep't of Commerce, 337 F. Supp. 2d 146, 177 (D.D.C. 2004) (holding that résumé of individual interested in project that never "got out of the embryonic stages" was properly withheld); Warren, 2000 WL 1209383, at *4 (protecting identities of unsuccessful job applicants); Judicial Watch, Inc. v. Exp.-Imp. Bank, 108 F. Supp. 2d 19, 38 (D.D.C. 2000) (protecting résumés of individuals whose applications for insurance were withdrawn or denied); Judicial Watch, Inc. v. Comm'n on U.S. Pac. Trade & Inv. Policy, No. 97-0099, 1999 WL 33944413, at *11-12 (D.D.C. Sept. 30, 1999) (protecting identities of individuals considered for but not appointed to Commission); Rothman, No. 94-8151, slip op. at 8-9 (C.D. Cal. June 17, 1996) ("Disclosure of information in the applications of persons who failed to get a job may 'embarrass or harm' them."); Barvick, 941 F. Supp. at 1021-22 (protecting all information about unsuccessful federal job applicants because any information about members of "select group" that applies for such jobs could identify them); Voinche v. FBI, 940 F. Supp. 323, 329-30 (D.D.C. 1996) (protecting identities of possible candidates for Supreme Court vacancies), aff'd per curiam, No. 96-5304, 1997 WL 411685 (D.C. Cir. June 19, 1997); Putnam, 873 F. Supp. at 712-13 (protecting identities of FBI personnel who were job candidates); Holland v. CIA, No. 91-1233, 1992 WL 233820, at *13-15 (D.D.C. Aug. 31, 1992) (protecting identity of person not selected as CIA general counsel).

⁹⁴ See Matthews v. USPS, No. 92-1208-CV-W-8, slip op. at 5 (W.D. Mo. Apr. 15, 1994).

⁹⁵ See Long v. OPM, 692 F.3d 185, 194 (2d Cir. 2012) (holding that OPM properly withheld both names and duty-station information for over 800,000 federal employees in five sensitive agencies and twenty-four sensitive occupations, including, inter alia, correctional officer, U.S. Marshal, nuclear materials courier, internal revenue agent, game law enforcement, immigration inspection, customs and border interdiction, and border protection); Moore v. Obama, No. 09-5072, 2009 WL 2762827, at *1 (D.C. Cir. Aug. 24, 2009) (unpublished disposition) (per curiam) ("Appellant fails to demonstrate that the Federal Bureau of Investigation improperly withheld the names and a phone number of its employees pursuant to FOIA Exemptions 6 and 7(C)."); Lahr v. NTSB, 569 F.3d 964, 977 (9th Cir. 2009) (reversing district court and holding that FBI agents have cognizable privacy interest in withholding their names because release of FBI agents' identity would most likely subject agents "to unwanted contact by the media and others, including [plaintiff], who are skeptical of the government's conclusion" in investigation of crash of TWA Flight 800), cert. denied, 130 S. Ct. 3493 (2010); Wood v. FBI, 432 F.3d 78, 87-89 (2d Cir. 2005) (protecting

privacy interest, the Department of Defense now regularly withholds personally identifying information about all military and civilian employees with respect to whom disclosure would "raise security or privacy concerns."⁹⁶ For law enforcement personnel

investigative personnel of FBI's Office of Professional Responsibility); Judicial Watch, Inc. v. United States, 84 F. App'x 335, 338-39 (4th Cir. 2004) (protecting names of lower-level clerical workers at IRS); New England Apple Council v. Donovan, 725 F.2d 139, 142-44 (1st Cir. 1984) (protecting identities of nonsupervisory Inspector General investigators who participated in grand jury investigation of requester) (Exemption 7(C)); Families for Freedom v. U.S. Customs & Border Protect., No. 10-2705, 2011 WL 6780896, at *9 (S.D.N.Y. Dec. 27, 2011) (finding that "disclosure of the names, phone numbers, and email addresses of government employees [in emails compiled for law enforcement purposes] implicates more than a de minimis privacy interest of those employees") (Exemption 7(C)); Lewis v. DOJ, No. 09-746, 2011 WL 5222896, at *13 (D.D.C. Nov. 2, 2011) (observing that although "[a] government employee's privacy interest may be diminished by virtue of his government service, . . . he retains an interest nonetheless") (Exemption 7(C)); Banks v. DOJ, 813 F. Supp. 2d 132, 142 (D.D.C. 2011) (determining that agency properly redacted law enforcement personnel's names and telephone numbers "from a list of newspapers"); Amnesty Int'l USA v. CIA, 728 F. Supp. 2d 479, 523 (S.D.N.Y. 2010) (holding that the CIA properly withheld "names and email addresses of DOD personnel below the office-director level, or officers below the rank of Colonel; the names of OLC line attorneys, persons interviewed by the CIA OIG, and one detainee; and personally identifying information such as dates of birth, social security numbers, and biographical information"), subsequent opinion, No. 07-5435, 2010 WL 5421928 (S.D.N.Y. Dec. 21, 2010) (Exemptions 6 and 7(C)); Moore, 601 F. Supp. 2d at 14 (protecting the name and phone number of an FBI support employee and the name of a Special Agent because release "could subject the Agent and employee to harassment") (Exemptions 6 and 7(C)); Cal-Trim Inc. v. IRS, 484 F. Supp. 2d 1021, 1027 (D. Ariz. 2007) (protecting names of lower-level IRS employees in internal IRS correspondence so as not to expose them to unreasonable annoyance or harassment) (Exemptions 6 and 7(C)); Clemmons v. U.S. Army Crime Records Ctr., No. 05-02353, 2007 WL 1020827, at *6 (D.D.C. Mar. 30, 2007) (withholding the identities of U.S. Army Criminal Investigation Division special agents and military police (Exemptions 6 and 7(C)); Elec. Privacy Info. Ctr. v. DHS, No. 04-1625, 2006 U.S. Dist. LEXIS 94615, at *30 (D.D.C. Dec. 22, 2006) (protecting names of employees from United States Customs and Border Protection and DHS involved in anti-terrorism efforts); Van Mechelen v. U.S. Dep't of the Interior, No. 05-5393, 2005 WL 3007121, at *4-5 (W.D. Wash. Nov. 9, 2005) (protecting identifying information of lower-level Office of Inspector General and Bureau of Indian Affairs employees in report of investigation) (Exemptions 6 and 7(C)), aff'd, 230 F. App'x 705 (9th Cir. 2007); Judicial Watch, Inc. v. FDA, 407 F. Supp. 2d 70, 76-77 (D.D.C. 2005) (finding that HHS employees named in records concerning abortion drug testing of mifepristone (also referred to as Mifeprex or RU-486) were properly protected pursuant to Exemption 6 in order to ensure employees' safety), aff'd in pertinent part, 449 F.3d 141, 152-54 (D.C. Cir. 2006); Davy v. CIA, 357 F. Supp. 2d 76, 87-88 (D.D.C. 2004) (protecting CIA employee names).

⁹⁶ Department of Defense Director for Administration and Management Memorandum for DOD FOIA Offices 1-2 (Nov. 9, 2001) (noting that, by contrast, certain personnel's names can be released due to "the nature of their positions and duties," including public affairs officers and flag officers); see also Long, 692 F.3d at 192 (finding that federal employees in

in particular, these privacy interests are generally protected under Exemption 7(C).⁹⁷ (For a more detailed discussion of the privacy protection accorded law enforcement personnel, see the chapter on [Exemption 7\(C\)](#).)

Information in the Public Domain

sensitive agencies and occupations "have a cognizable privacy interest in keeping their names from being disclosed wholesale"); Am. Mgmt. Servs., LLC v. Dep't of the Army, No. 11-442, 2012 U.S. Dist. LEXIS 8124, at *10 (E.D. Va. Jan. 23, 2012) (holding that DOD employees have a "substantial privacy interest" in their names and contact information); Schoenman v. FBI, 573 F. Supp. 2d 119, 160 (D.D.C. 2008) (stating that "since the attacks, as a matter of official policy, the DoD carefully considers and limits the release of all names and other personal information concerning military and civilian personnel, based on a conclusion that they are at increased risk regardless of their duties or assignment to such a unit"); Los Angeles Times Commc'ns LLC v. U.S. Dep't of Labor, 483 F. Supp. 2d 975, 985-86 (C.D. Cal. 2007) (concluding that defendant properly withheld information revealing the identity of all civilian contractors supporting Allied military operations in Iraq and Afghanistan because "the privacy life or death interest of the individual whose records are requested" outweighs "the public interest in disclosure"); Hiken v. DOD, 521 F. Supp. 2d 1047, 1065 (N.D. Cal. 2007) (finding that redactions of names of military personnel proper because "defendants present a strong argument that the privacy interests at stake are significant where the disclosure of these names would risk harm or retaliation"); Clemmons, 2007 WL 1020827, at *6 ("The identities of [U.S. Army Criminal Investigation Division] special agents, military police, other government personnel and [third-party] witnesses were all properly withheld under Exemptions (b)(6) and (b)(7)(C)."); O'Keefe v. DOD, 463 F. Supp. 2d 317, 327 (E.D.N.Y. 2006) (upholding DOD's withholding of personal information of investigators as well as subjects of investigation found in United States Central Command Report); Ctr. for Pub. Integrity v. OPM, No. 04-1274, 2006 WL 3498089, at *6 (D.D.C. Dec. 12, 2006) (finding that OPM properly withheld the names and duty stations of DOD and certain non-DOD federal personnel in sensitive occupations under Exemption 6); Deichman v. United States, No. 05-680, 2006 WL 3000448, at *7 (E.D. Va. Oct. 20, 2006) (upholding United States Joint Forces Command's withholding of employee names and discussions of personnel matters relating to other employees under Exemption 6); MacLean v. DOD, No. 04-2425, slip op. at 18 (S.D. Cal. June 2, 2005) (protecting "names, initials, and other personal information" about Defense Hotline Investigators and other DOD personnel) (Exemptions 6 and 7(C)).

⁹⁷ See Pinson v. Lappin, 806 F. Supp. 2d 230, 234 (D.D.C. 2011) (noting that the Bureau of Prisons properly redacted telephone numbers and email addresses of staff at certain offices "both because this information was not requested . . . and because this information is exempt from disclosure"); Keys v. DHS, 570 F. Supp. 2d 59, 68 (D.D.C. 2008) (stating that "[o]ne who serves his state or nation as a career public servant is not thereby stripped of every vestige of personal privacy, even with respect to the discharge of his official duties. Public identification of any of these individuals could conceivably subject them to harassment and annoyance in the conduct of their official duties and in their private lives" (quoting Nix v. United States, 572 F.2d 998, 1006 (4th Cir. 1978))) (Exemption 7(C)).

Individuals generally do not possess substantial privacy interests in information that is particularly well known or is widely available within the public domain.⁹⁸ Likewise, an individual generally does not have substantial privacy interests with respect to information that he or she has made public.⁹⁹ The Court of Appeals for the

⁹⁸ See, e.g., Trentadue v. Integrity Comm., 501 F.3d 1215, 1234 (10th Cir. 2007) (concluding that the Inspector General's substantive response to the Integrity Committee's questions should be released because "those portions answer Trentadue's allegations with respect to specific individuals" and Trentadue's complaint filed with the Integrity Committee is a public document included in the record of the appeal; therefore, the "[Inspector General's] response to these accusations, by necessity, mentions the names of these individuals" and "[d]isclosure of these names, when the allegations made against the individuals are already part of the public record, would not invade the accused's privacy at all"); Detroit Free Press, Inc. v. DOJ, 73 F.3d 93, 96-97 (6th Cir. 1996) (finding no privacy rights in mug shots of defendants in ongoing criminal proceedings when names are public and defendants have appeared in open court) (Exemption 7(C)); Hussein v. Mabus, No. 09-1988, 2010 US Dist. LEXIS 114830, at *4 (D.S.C. Oct. 28, 2010) (holding that "certain personnel and medical files," are protected "to the extent that they were not already publically available in the course of the public bidding process"), aff'd on other grounds, 414 F. App'x 518 (4th Cir. 2011); Blanton v. DOJ, No. 93-2398, 1994 U.S. Dist. LEXIS 21444, at *11-12 (W.D. Tenn. July 14, 1994) ("The fact of [requester's former counsel's] representation is a matter of public record Whether an individual possesses a valid license to practice law is also a matter of public record and cannot be protected by any privacy interest."). But see World Publ'g Co. v. DOJ, 672 F. 3d 825, 829 (10th Cir. 2012) (holding that "[e]xcept in limited circumstances, such as the attempt to capture a fugitive, a USMS booking photograph simply is not available to the public," and that "[p]ersons arrested on federal charges outside of the Sixth Circuit maintain some expectation of privacy in their booking photos") (Exemption 7(C)); Karantsalis v. DOJ, 635 F.3d 497, 503 (11th Cir. 2011) (per curiam) (finding "booking photographs are generally not available for public dissemination . . . which suggests the information implicates a personal privacy interest") (Exemption 7(C)); Times Picayune Publ'g Corp. v. DOJ, 37 F. Supp. 2d 472, 477-82 (E.D. La. 1999) (protecting the mug shot of a prominent individual despite wide publicity prior to his guilty plea, and observing that a "mug is more than just another photograph of a person") (Exemption 7(C)).

⁹⁹ See Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 896 (D.C. Cir. 1995) (finding no privacy interest in documents concerning presidential candidate's offer to aid federal government in drug interdiction, a subject about which the candidate had made several public statements); see also Kimberlin v. DOJ, 139 F.3d 944, 949 (D.C. Cir. 1998) (noting that government lawyer investigated by DOJ's Office of Professional Responsibility diminished his privacy interest by acknowledging existence of investigation but that he still retains privacy interest in nondisclosure of any details of investigation) (Exemption 7(C)); Associated Press v. DOD, 410 F. Supp. 2d 147, 150 (D.D.C. 2006) (holding Guantanamo Bay military detainees had no privacy interests in their identifying information because they provided the information at formal legal proceedings before tribunal and there was no evidence that detainees "were informed that the proceedings would remain confidential in any respect"); Billington v. DOJ, 245 F. Supp. 2d 79, 85-86 (D.D.C. 2003) (finding that information about two persons contained in a reporter's notes given to the State Department was not protected by Exemption 6, because these persons "knew that they were

District of Columbia Circuit has held that under the public domain doctrine, information that would otherwise be subject to a valid FOIA exemption must be disclosed if that information is preserved in a permanent public record or is otherwise easily accessible by the public.¹⁰⁰ In order for the public domain doctrine to apply, a requester must be able to point "to specific information in the public domain that appears to duplicate that being withheld."¹⁰¹

Although public knowledge diminishes an individual's privacy interests in that information, courts have found that the mere fact that some of the information may be known to some members of the public does not negate the individual's privacy interest

speaking to a reporter on the record and therefore could not expect to keep private the substance of the interview").

¹⁰⁰ See Niagara Mohawk Power Corp. v. DOJ, 169 F.3d 16, 19 (D.C. Cir.1999); Davis v. DOJ, 968 F.2d 1276, 1279 (D.C. Cir. 1992) (Exemptions 7(C) & 7(D)); see also Avondale Indus. v. NLRB, 90 F.3d 955, 961 (5th Cir. 1996) (finding that names and addresses of voters in union election were already disclosed in voluminous public record and that there was no showing that public record was compiled in such a way as to effectively obscure that information); Hall v. DOJ, 552 F. Supp. 2d 23, 30-31 (D.D.C. 2008) (stating that "[t]he court agrees that, to the extent that the non-redacted portions specifically identify the names of individuals in specific redacted portions of the documents, DOJ cannot redact these names" because "[t]he FOIA exemptions do not apply once the information is in the public domain"); Hidalgo v. FBI, 541 F. Supp. 2d 250, 255 (D.D.C. 2008) (finding government informant's personal privacy at stake, "but his interest is far more limited than that of the typical confidential informant" because "status as a government informant is open and notorious") (Exemptions 6 and 7(C)); O'Neill v. DOJ, No. 05-306, 2007 WL 983143, at *9 (E.D. Wis. Mar. 26, 2007) ("Under the public domain doctrine, materials not normally immunized from disclosure under FOIA lose their protective cloak once disclosed and preserved in a permanent public record.").

¹⁰¹ Afshar v. U.S. Dep't of State, 702 F.2d 1125, 1130 (D.C. Cir. 1983); see, e.g., Edwards v. DOJ, No. 04-5044, 2004 WL 2905342, at *1 (D.C. Cir. Dec. 15, 2004) (per curiam) (summarily affirming district court's decision to bar release of any responsive documents pursuant to Exemption 7(C); finding that appellant's argument that release of the documents was required, because government officially acknowledged the information contained therein, fails because appellant "has failed to point to 'specific information in the public domain that appears to duplicate that being withheld'" (quoting Davis, 968 F.2d at 1279)); Citizens for Responsibility & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 72 (D.D.C. 2012) (determining that Congressman who was investigated "retains a cognizable privacy interest in the requested records," because although he publicly acknowledged existence of investigation, "the details of that investigation have not been publicly disclosed") (Exemption 7(C)); Grandison v. DOJ, 600 F. Supp. 2d 103, 117 (D.D.C. 2009) (finding that plaintiff failed to show that requested information is publicly available because he "does not show that complete copies of the depositions and answers to interrogatories requested under the FOIA have been disclosed and are preserved in a permanent public court record").

in preventing further dissemination to the public at large.¹⁰² For example, the Supreme Court in NARA v. Favish held that the fact that one photograph of the death scene had been leaked to the media did not detract from the weighty privacy interests of the

¹⁰² See Forest Serv. Employees for Env'tl. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1025 n.3 (9th Cir. 2008) ("As a preliminary matter, we reject [plaintiff's] contention that the unauthorized leak of the unredacted Cramer Fire Report or OSHA's decision to identify certain employees in its own report diminishes the Forest Service's ability to apply Exemption 6 to redact the identities from the Report."); Horowitz v. Peace Corps, 428 F.3d 271, 280 (D.C. Cir. 2005) ("Even though the student did reveal his allegation to two Peace Corps workers . . . he still has an interest in avoiding further dissemination of his identity."); Sensor Sys. Support, Inc. v. FAA, 851 F. Supp. 2d 321, 335 (D.N.H. 2012) (noting that "[a]n individual's interest in controlling the dissemination of information regarding personal matters [such as one's home address] does not dissolve simply because that information may be available to the public in some form") (Exemptions 6 and 7(C)); Barnard v. DHS, 598 F. Supp. 2d 1, 12 (D.D.C. 2009) ("Plaintiff's argument is foreclosed by a long line of cases recognizing that individuals maintain an interest in their privacy even where some information is known about them publicly."); Lawyers' Comm. for Civil Rights v. Dep't of Transp., No. 07-2590, 2008 WL 4482855, at *21 (N.D. Cal. Sept. 30, 2008) (stating that "a person may still have a privacy interest in information that has already been publicized" and explaining that "[n]or is one's privacy interest in potentially embarrassing information lost by the possibility that someone could reconstruct that data from public files"); Schoenman v. FBI, 573 F. Supp. 2d 119, 149 (D.D.C. 2008) ("[E]ven if Plaintiff is correct that he can guess the individual's identity, 'the fact that Plaintiff may deduce the identities of individuals through other means . . . does not diminish their privacy interests.'" (quoting Shores v. FBI, 185 F. Supp. 2d 77, 83 (D.D.C. 2002))); Thomas v. DOJ, 531 F. Supp. 2d 102, 109 (D.D.C. 2008) ("Third parties' privacy interests are not lost because a requester knows or can determine from a redacted record their identities Nor do third parties lose their privacy interests because their names already have been disclosed.") (Exemption 7(C)); Summers v. DOJ, 517 F. Supp. 2d 231, 240 (D.D.C. 2007) ("The possibility that plaintiff has determined the identity of the agent, however, does not undermine that agent's privacy interests."); Lee v. DOJ, No. 05-1665, 2007 WL 744731, at *2 (D.D.C. Mar. 6, 2007) ("[A]lthough the documents may contain information that has already been made public at one time, given that the information would disclose incidents of prior criminal conduct by third parties, those individuals certainly have privacy interests in keeping the information from renewed public scrutiny.") (Exemptions 6 and 7(C)); Pendergrass v. DOJ, No. 04-112, 2005 WL 1378724, at *4 (D.D.C. June 7, 2005) (reasoning that individual does not lose all privacy interest in telephone conversation even if she knew of potential for monitoring of such calls); Edmonds v. FBI, 272 F. Supp. 2d 35, 53 (D.D.C. 2003) (finding that media identification of persons mentioned in a law enforcement file "does not lessen their privacy interests or 'defeat the exemption,' for prior disclosure of personal information does not eliminate an individual's privacy interest in avoiding subsequent disclosure by the government") (Exemptions 6 and 7(C)), appeal dismissed voluntarily, No. 03-5364, 2004 WL 2806508 (D.C. Cir. Dec. 7, 2004); Mueller v. U.S. Dep't of the Air Force, 63 F. Supp. 2d 738, 743 (E.D. Va. 1999) (stating that existence of publicity surrounding events does not eliminate privacy interest) (Exemptions 6 and 7(C)); cf. Schiffer v. FBI, 78 F.3d 1405, 1411 (9th Cir. 1996) (treating requester's personal knowledge as irrelevant in assessing privacy interests).

surviving relatives to be secure from intrusions by a "sensation-seeking culture" and in limiting further disclosure of the death scene images "for their own piece of mind and tranquility."¹⁰³

Furthermore, the Court of Appeals for the Eighth Circuit has held that individuals who sign a petition, knowing that those who sign afterward will observe their signatures, do not waive their privacy interests.¹⁰⁴ While such persons "would have no reason to be concerned that a limited number of like-minded individuals may have seen their names," they may well be concerned "that the petition not become available to the general public, including those opposing [the petitioners' position]."¹⁰⁵

Similarly, individuals who testify at criminal trials do not forfeit their rights to privacy except on those very matters that become part of the public record,¹⁰⁶ nor do individuals who plead guilty to criminal charges lose all rights to privacy with regard to the proceedings against them.¹⁰⁷ Similarly, individuals who provide law enforcement

¹⁰³ 541 U.S. 157, 166-71 (2004); see also Baltimore Sun v. U.S. Customs Serv., No. 97-1991, slip op. at 5 (D. Md. Nov. 21, 1997) (finding that subject of photograph introduced into court record "retained at least some privacy interest in preventing the further dissemination of the photographic image" when "[t]he photocopy in the Court record was of such poor quality as to severely limit its dissemination") (Exemption 7(C)).

¹⁰⁴ See Campaign for Family Farms v. Glickman, 200 F.3d 1180, 1188 (8th Cir. 2000).

¹⁰⁵ Id.

¹⁰⁶ See, e.g., Isley v. EOUSA, No. 98-5098, 1999 WL 1021934, at *4 (D.C. Cir. Oct. 21, 1999); Kiraly v. FBI, 728 F.2d 273, 279 (6th Cir. 1984); Brown v. FBI, 658 F.2d 71, 75 (2d Cir. 1981); see also Sellers v. DOJ, 684 F. Supp. 2d 149, 160 (D.D.C. 2010) ("A witness does not waive his or her interest in personal privacy by testifying at a public trial."); Scales v. EOUSA, 594 F. Supp. 2d 87, 91 (D.D.C. 2009) ("The mere fact that Hubbard testified at trial, or that she acknowledged at trial that there were forgery charges pending against her at that time, does not constitute a waiver of her privacy rights to all other related information, as requested by the plaintiff."); Jarvis v. ATF, No. 07-111, 2008 WL 2620741, at *13 (N.D. Fla. June 30, 2008) ("That the individual testified in a public trial, however, is not necessarily a waiver.") (Exemption 7(C)); Valdez v. DOJ, 474 F. Supp. 2d 128, 133 (D.D.C. 2007) ("The fact that a third party testified publicly at trial does not diminish or waive his privacy interest.") (Exemption 7(C)); Meserve v. DOJ, No. 04-1844, 2006 WL 2366427, at *7 (D.D.C. Aug. 14, 2006) ("[A] witness who testifies at trial does not waive her personal privacy."); Butler v. DOJ, 368 F. Supp. 2d 776, 783-84 (E.D. Mich. 2005) (protecting information about "informant who gave grand jury testimony implicating Plaintiff in crimes") (Exemptions 6 and 7(C)); Coleman v. FBI, 13 F. Supp. 2d 75, 80 (D.D.C. 1998); cf. Irons v. FBI, 880 F.2d 1446, 1454 (1st Cir. 1989) (en banc) (holding that disclosure of any source information beyond that actually testified to by confidential source is not required) (Exemption 7(D)).

¹⁰⁷ See Times Picayune, 37 F. Supp. 2d at 477-78 (refusing to order release of a mug shot, which with its "unflattering facial expressions" and "stigmatizing effect [that] can last well

agencies with reports of illegal conduct have well-recognized privacy interests, particularly when such persons reasonably fear reprisals for their assistance.¹⁰⁸ Even

beyond the actual criminal proceedings . . . preserves, in its unique and visually powerful way, the subject individual's brush with the law for posterity"); McNamara v. DOJ, 974 F. Supp. 946, 959 (W.D. Tex. 1997) (holding that convict's privacy rights are diminished only with respect to information made public during criminal proceedings against him) (Exemption 7(C)); cf. ACLU v. DOJ, 655 F.3d at 17 (noting "distinction between indictments resulting in convictions or guilty pleas, and those resulting in acquittals or dismissals, or cases that remain sealed," as privacy concerns are potentially greater for cases that resulted in acquittal or dismissal and those that are sealed). But see Rosenfeld v. DOJ, No. 07-3240, 2012 WL 710186, at *5 (N.D. Cal. Mar. 5, 2012) (finding that "the fact that the documents concerns [forty year] old traffic violations as opposed to more serious criminal prosecutions decreases the likely stigma that would follow such a disclosure" and "[a]s the likely stigma of disclosure falls, so too does the privacy interest at issue").

¹⁰⁸ See McCutchen v. HHS, 30 F.3d 183, 189 (D.C. Cir. 1994) ("The complainants [alleging scientific misconduct] have a strong privacy interest in remaining anonymous because, as 'whistle-blowers,' they might face retaliation if their identities were revealed.") (Exemption 7(C)); Holy Spirit Ass'n v. FBI, 683 F.2d 562, 564-65 (D.C. Cir. 1982) (MacKinnon, J., concurring) (recognizing that writers of letters to authorities describing "'bizarre' and possibly illegal activities . . . could reasonably have feared reprisals against themselves or their family members") (Exemptions 6 and 7(C)); Rimmer v. Holder, 10-1106, 2011 U.S. Dist. LEXIS 107883, at *25-26 (M.D. Tenn. Sept. 22, 2011) (finding "heightened privacy protections . . . are owed to . . . individuals who willingly provide potentially incriminating information to law enforcement") (Exemption 7(C)); Moffat v. DOJ, No. 09-12067, 2011 WL 3475440, at *17 (D. Mass. Aug. 5, 2011) (finding that, with respect to information pertaining to individuals interviewed by the FBI in the course of criminal investigations, "disclosure could subject these individuals to harassment, intimidation, threats, or even economic and physical harm, which could deter this kind of assistance to the FBI in the future") (Exemption 7(C)); Amuso v. DOJ, 600 F. Supp. 2d 78, 93 (D.D.C. 2009) ("Disclosure of the interviewee's identity could result in harassment, intimidation, or threats of reprisal or physical harm to the interviewee."); Clemmons v. U.S. Army Crime Records Ctr., No. 05-02353, 2007 WL 1020827, at *6 (D.D.C. Mar. 30, 2007) (stating that "there is a significant interest in maintaining the secrecy of the identity of witnesses and third party interviewees so that law enforcement can continue to gather information through these interviews while assuring that the interviewees will not be subject to harassment or reprisal") (Exemptions 6 and 7(C)); Balderrama v. DHS, No. 04-1617, 2006 WL 889778, at *9 (D.D.C. Mar. 30, 2006) ("[T]he individuals whose identities have been protected -- witnesses, undercover officers, informants -- maintain a substantial privacy interest in not being identified with law enforcement proceedings.") (Exemptions 6 and 7(C)); Forest Serv. Employees for Env'tl. Ethics v. U.S. Forest Serv., No. 05-6015, 2005 WL 3488453, at *3 (D. Or. Dec. 21, 2005) (protecting identities of low-level and mid-level Forest Service employees who cooperated with accident investigation, because "these employees could face harassment"), *aff'd*, 524 F.3d 1021 (9th Cir. 2008); Billington v. DOJ, 301 F. Supp. 2d 15, 19-21 (D.D.C. 2004) (protecting identity of reporter who furnished interview notes to State Department, partly based upon existence of "substantial" fear of reprisal by Lyndon LaRouche followers); McQueen v. United States, 264 F. Supp. 2d 502, 519-20 (S.D. Tex. 2003) (protecting names and identifying information of grand jury witnesses and other sources when suspect had

absent any evidence of fear of reprisals, witnesses who provide information to investigative bodies -- administrative and civil, as well as criminal -- ordinarily are accorded privacy protection.¹⁰⁹ (For a more detailed discussion of the privacy protection accorded such law enforcement sources, see the chapter on [Exemption 7\(C\)](#).)

made previous threats against witnesses) (Exemption 7(C)), *aff'd per curiam*, 100 F. App'x 964 (5th Cir. 2004); *Summers v. DOJ*, No. 87-3168, slip op. at 4-15 (D.D.C. Apr. 19, 2000) (protecting identities of individuals who provided information to FBI Director J. Edgar Hoover concerning well-known people "because persons who make allegations against public figures are often subject to public scrutiny"); *Ortiz v. HHS*, 874 F. Supp. 570, 573-75 (S.D.N.Y. 1995) (noting that probable close relationship between plaintiff and author of letter about her to HHS was likely to lead to retaliation); *Cappabianca v. Comm'r, U.S. Customs Serv.*, 847 F. Supp. 1558, 1564-65 (M.D. Fla. 1994) (finding that the "opportunity for harassment or embarrassment is very strong" in a case involving the investigation of "allegations of harassment and retaliation for cooperation in a prior investigation") (Exemptions 6 and 7(C)).

¹⁰⁹ See, e.g., *Perlman v. DOJ*, 312 F.3d 100, 106 (2d Cir. 2002) (finding that witnesses and third parties possess "strong privacy interests, because being identified as part of a law enforcement investigation could subject them to 'embarrassment and harassment,' especially if 'the material in question demonstrates or suggests they had at one time been subject to criminal investigation'" (quoting *Halpern v. FBI*, 181 F.3d 279, 297 (2d Cir. 1999))) (Exemptions 6 and 7(C)), *vacated & remanded*, 541 U.S. 970, *on remand*, 380 F.3d 110 (2d Cir. 2004) (per curiam); *Ford v. West*, No. 97-1342, 1998 WL 317561, at *1-2 (10th Cir. June 12, 1998) (finding thoughts, sentiments, and emotions of co-workers questioned in investigation of racial harassment claim to be within protections of Exemptions 6 and 7(C)); *Citizens for Responsibility & Ethics in Wash.*, 846 F. Supp. 2d at 73 (noting that "in particular, informants and witnesses, have a significant interest in [the files'] contents not being disclosed") (Exemption 7(C)); *Citizens for Responsibility & Ethics in Wash. v. Nat'l Indian Gaming Comm'n*, 467 F. Supp. 2d 40, 53 (D.D.C. 2006) ("The fact that an individual supplied information to assist [National Indian Gaming Commission] in its investigations is exempt from disclosure under FOIA, regardless of the nature of the information supplied.") (Exemptions 6 and 7(C)); *Brown v. EPA*, 384 F. Supp. 2d 271, 278-80 (D.D.C. 2005) (protecting government employee-witnesses and informants because "[t]here are important principles at stake in the general rule that employees may come forward to law enforcement officials with allegations of government wrongdoing and not fear that their identities will be exposed through FOIA") (Exemption 7(C)); *Wolk v. United States*, No. 04-832, 2005 WL 465382, at *5 n.7 (E.D. Pa. Feb. 28, 2005) (recognizing that "interviewees who participate in FBI background investigations have a substantial privacy interest") (Exemptions 6 and 7(C)); *Hayes v. U.S. Dep't of Labor*, No. 96-1149, slip op. at 9-10 (S.D. Ala. June 18, 1998) (magistrate's recommendation) (protecting information that "would have divulged personal information or disclosed the identity of a confidential source" in an OSHA investigation) (Exemption 7(C)), *adopted*, (S.D. Ala. Aug. 10, 1998); *Tenaska Wash. Partners v. DOE*, No. 8:96-128, slip op. at 6-8 (D. Neb. Feb. 19, 1997) (protecting information that would "readily identify" individuals who provided information during routine IG audit). *But see Cooper Cameron Corp. v. U.S. Dep't of Labor*, 280 F.3d 539, 553-54 (5th Cir. 2002) (ordering disclosure of information that could link witnesses to their OSHA investigation statements, because agency presented no evidence of "possibility of employer retaliation") (Exemption 7(C)); *Fortson v. Harvey*, 407 F. Supp. 2d 13, 17 (D.D.C. 2005) (deciding that witness

Passage of Time

As a general rule, the passage of time serves to increase an individual's privacy interests, even in personal information that was once publically available.¹¹⁰ However, the District Court for the Northern District of California has found that an individual's privacy interests were "low" in a document concerning traffic violations that occurred forty years previously.¹¹¹

Corporations and Business Relations

The Supreme Court has held that corporations do not possess personal privacy interests under the FOIA.¹¹² A closely held corporation or similar business entity is

statements compiled during an investigation of an equal employment opportunity complaint filed by the plaintiff must be released due to the following: the government previously released the names of persons who gave statements during the investigation; the agency offered only "pure speculation" of potential for harm to be caused by disclosure of the statements; and "witness statements made during a discrimination investigation are not the type of information that exemption 6 is designed to protect"); Fine v. DOE, 823 F. Supp. 888, 896 (D.N.M. 1993) (ordering disclosure based partly upon the fact that the plaintiff no longer was employed by the agency and was "not in a position on-the-job to harass or intimidate employees of DOE/OIG and/or its contractors").

¹¹⁰ See DOJ v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 763 (1989) ("[T]he extent of the protection accorded a privacy right at common law rested in part on the degree of dissemination of the allegedly private fact and the extent to which the passage of time rendered it private."); ACLU v. DOJ, 655 F.3d 1, 9 (D.C. Cir. 2011) (distinguishing information that is "less than (and probably quite a bit less than) ten years old," from the Reporters Committee "rap sheets that recorded a lifetime of everything from major crimes to youthful indiscretions") (Exemption 7(C)); Roth v. DOJ, 642 F.3d 1161, 1174 (D.C. Cir. 2011) (finding that "if . . . the passage of approximately a half century did not 'materially diminish' individuals' privacy interests in not being associated with McCarthy-era investigations, then certainly individuals continue to have a significant interest in not being associated with an investigation into a brutal quadruple homicide committed less than thirty years ago" (quoting Shrecker v. DOJ, 349 F.3d 657, 666 (D.C. Cir. 2003))) (Exemption 7(C)).

¹¹¹ Rosenfeld v. DOJ, No. 07-3240, 2012 WL 710186, at *4 (N.D. Cal. Mar. 5, 2012).

¹¹² See FCC v. AT&T, Inc., 131 S. Ct. 1177, 1182 (2011) (finding that in common usage the term "[p]ersonal" ordinarily refers to individuals" and that the word is not used to "refer[] to corporations or other artificial entities") (Exemption 7(C)); see also Sims v. CIA, 642 F.2d 562, 572 n.47 (D.C. Cir. 1980) ("Exemption 6 is applicable only to individuals."); Nat'l Parks and Conservation Ass'n v. Kleppe, 547 F.2d 673, 686 n.44 (D.C. Cir. 1976) ("The sixth exemption has not been extended to protect the privacy interests of businesses or corporations."); Hodes v. HUD, 532 F. Supp. 2d 108, 119 (D.D.C. 2008) ("As a threshold matter, both Parties fail . . . to acknowledge that only individuals (not commercial entities)

treated differently, however, as the Court of Appeals for the District of Columbia Circuit has held that "Exemption 6 applies to financial information in business records when the business is individually owned or closely held, and 'the records would necessarily reveal at least a portion of the owner's personal finances.'"¹¹³ Similarly, in Doe v. Veneman, the District Court for the Western District of Texas ruled that the Department of Agriculture had erroneously labeled individuals (who were taking part in a USDA program) as "businesses" based on either the number of livestock they owned or the fact that they had a name for their ranch, and it found that personally identifying information about those individuals was exempt from disclosure.¹¹⁴

Moreover, when a record reflects personal details regarding an individual, albeit within the context of a business record, the individual's privacy interest is not diminished and courts have permitted agency withholding of such information.¹¹⁵ For

may possess protectible privacy interests under Exemption 6."); Maydak v. DOJ, 362 F. Supp. 2d 316, 324-25 (D.D.C. 2005) (stating that Exemption 6 applies "only to individuals" (quoting Sims, 642 F.2d at 572 n.47)); cf. Iowa Citizens for Cmty. Improvement v. USDA, 256 F. Supp. 2d 946, 952 n.10 (S.D. Iowa 2002) (dictum) (noting that "[i]t is not clear to this Court that a trust, any more than a corporation, has a privacy interest worthy of protection under the FOIA").

¹¹³ Multi Ag Media LLC v. USDA, 515 F.3d 1224, 1228-29 (D.C. Cir. 2008) (quoting Nat'l Parks, 547 F.2d at 685); see, e.g., Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1051 (D.C. Cir. 2009) ("We have . . . recognized substantial privacy interests in business-related financial information for individually owned or closely held businesses."); Providence Journal Co. v. FBI, 460 F. Supp. 778, 785 (D.R.I. 1978) ("While corporations have no privacy, personal financial information is protected, including information about small businesses when the individual and corporation are identical.") rev'd on other grounds, 602 F.2d 1010 (1st Cir. 1979); see also Beard v. Espy, No. 94-16748, 1995 WL 792071, at *1 (9th Cir. Dec. 11, 1995); Nat'l Parks, 547 F.2d at 685-86; Okla. Publ'g Co. v. HUD, No. CIV-87-1935-P, 1988 U.S. Dist. LEXIS 18643, at *4-5 (W.D. Okla. June 17, 1988); FOIA Update, Vol. III, No. 4, at 5 ("FOIA Counselor: Questions & Answers") (advising that corporations do not have privacy, but that personal financial information is protectible when individual and corporation are identical). But see Long v. DOJ, 450 F. Supp. 2d 42, 72 (D.D.C. 2006) ("At most, [the Department of Justice] ha[s] shown that disclosure of one record would reveal that an individual is associated with a business that in turn is a party to a legal proceeding. That fact, standing alone, does not implicate the FOIA's personal privacy concerns . . ."), amended by 457 F. Supp. 2d 30 (D.D.C. 2006), amended further on reconsideration, 479 F. Supp. 2d 23 (D.D.C. 2007).

¹¹⁴ 230 F. Supp. 2d 739, 748-51 (W.D. Tex. 2002), aff'd in pertinent part on other grounds, 380 F.3d 807, 818 n.39 (5th Cir. 2004).

¹¹⁵ See Campaign for Family Farms v. Glickman, 200 F.3d 1180, 1187-89 (8th Cir. 2000) (protecting identities of pork producers who signed petition calling for abolishment of mandatory contributions to fund for marketing and advertising pork, because release would reveal position on referendum and "would vitiate petitioners' privacy interest in secret ballot") (reverse FOIA suit); Skybridge Spectrum Found. v. FCC, No. 10-1496, 2012 WL

example, the District Court for the District of Columbia has found that names and organizations associated with personal visits with the Chairman of the Board of Governors of the Federal Reserve System were properly redacted from visitor logs.¹¹⁶ On the other hand, the Court of Appeals for the Ninth Circuit has found that the release of telecommunication industry lobbyists' names did not constitute a clearly unwarranted invasion of personal privacy, as "government acknowledgment of a lobbyist's lobbying activities does not reveal 'sensitive personal information' about the individual rising to a 'clearly unwarranted invasion of personal privacy.'"¹¹⁷ Similarly, courts have found that such an individual's expectation of privacy is diminished with regard to matters in which he or she is acting in a business capacity,¹¹⁸ although privacy has still been afforded at times.¹¹⁹

336160, at *16 (D.D.C. Feb. 2, 2012) (holding that the FCC properly invoked Exemption 6 to withhold "the names and personal identifying information of officers, employees, and representatives of [plaintiff's competitors]" because "the private interest in non-disclosure outweighs the public interest in disclosure"); Forest Guardians v. U.S. Forest Serv., No. 99-0615, slip op. at 39-45 (D.N.M. Jan. 29, 2001) (finding "'substantial' privacy interest" in personal loan information contained on escrow waiver forms that record ranchers' use of federal grazing permits as loan collateral) (reverse FOIA suit); Hill v. USDA, 77 F. Supp. 2d 6, 8 (D.D.C. 1999) (finding privacy interest in records of business transactions between borrowers and partly owned family corporation relating to loans made by Farmers Home Administration to individual borrowers), summary affirmance granted, No. 99-5365, 2000 WL 520724, at *1 (D.C. Cir. Mar. 7, 2000).

¹¹⁶ Judicial Watch, Inc. v. Bd. of Gvn'rs of Fed. Reserve Sys., 773 F. Supp. 2d 57, 62 (D.D.C. 2011) (concluding that "visitors have at least some privacy interest in protecting their names from disclosure, as it is quite conceivable that parties other than [plaintiff] might be interested in obtaining the names of individuals personally affiliated with high-ranking members of the Board").

¹¹⁷ Elec. Frontier Found. v. Office of the Dir. of Nat'l Intelligence, 639 F.3d 876, 888 (9th Cir. 2010) (quoting Judicial Watch, Inc. v. DOJ, 365 F.3d 1108, 1126 (D.C. Cir. 2004)).

¹¹⁸ See, e.g., W. Watersheds Proj. & Wildearth Guardians v. BLM, No. 09-482, 2010 U.S. Dist. LEXIS 95379, at *4, *41 (D. Id. Sept. 13, 2010) (finding that two categories of permittees [i.e., "entities listed under a personal name along with the words 'Ranch' or 'Farm'"] have only a "minimal" privacy interest in the disclosure of their names and/or addresses and that release "would not constitute a clearly unwarranted invasion of personal privacy"); Hersh & Hersh v. HHS, No. 06-4234, 2008 WL 901539, at *8 (N.D. Cal. Mar. 31, 2008) (finding that business addresses, phone numbers, and job titles of non-federal corporate employees do not implicate the same type of heightened concerns as "private citizens' identities, home addresses, home telephone numbers, social security numbers, medical information, etc."); Or. Natural Desert Ass'n v. U.S. Dep't of the Interior, 24 F. Supp. 2d 1088, 1089 (D. Or. 1998) (concluding that cattle owners who violated federal grazing laws have "diminished expectation of privacy" in their names when such information relates to commercial interests) (Exemption 7(C)); Wash. Post Co. v. USDA, 943 F. Supp. 31, 34-36 (D.D.C. Oct. 18, 1996) (finding that farmers who received subsidies under cotton price-support program have only minimal privacy interests in home addresses

Life Status

An individual who is deceased has greatly diminished personal privacy interests in the context of the FOIA.¹²⁰ While courts have not established a bright-line rule regarding the extent to which an agency must go in determining whether an individual has died, the Court of Appeals for the District of Columbia Circuit has held that an agency must take certain "basic steps," which can vary depending on the specific circumstances of a particular case, to investigate whether disclosure would violate a significant privacy interest.¹²¹ The D.C. Circuit has found that an agency must take these

from which they also operate businesses), appeal dismissed voluntarily, No. 96-5373 (D.C. Cir. May 19, 1997); Ackerson & Bishop Chartered v. USDA, No. 92-1068, slip op. at 1 (D.D.C. July 15, 1992) (concluding that commercial mushroom growers operating under individual names have no expectation of privacy).

¹¹⁹ See Citizens for Resp. & Ethics in Wash. v. DOJ, 822 F. Supp. 2d 12, 20-21 (D.D.C. 2011) (concluding that "there is at least a minimal privacy interest" in identities of journalist and filmmakers seeking to interview former lobbyist while he was in BOP custody, even though they were acting "in their professional capacities").

¹²⁰ See Davis v. DOJ, 460 F.3d 92, 97-98 (D.C. Cir. 2007) ("We have recognized 'that the privacy interest in nondisclosure of identifying information may be diminished where the individual is deceased.'" (quoting Schrecker v. DOJ, 349 F.3d 657, 661 (D.C. Cir. 2003) ("The fact of death, therefore, while not requiring the release of identifying information, is a relevant factor to be taken into account in the balancing decision whether to release information."))) (Exemption 7(C)); Vest v. Dep't of the Air Force, 793 F. Supp. 2d 103, 122 (D.D.C. 2011) ("An individual's death diminishes, but does not eliminate, his privacy interest . . .") (Exemption 7(C)); Grandison v. DOJ, 600 F. Supp. 2d 103, 114 (D.D.C. 2009) ("However, 'the death of the subject of personal information does diminish to some extent the privacy interest in that information, though it by no means extinguishes that interest; one's own and one's relations' interests in privacy ordinarily extend beyond one's death.'" (quoting Schrecker v. DOJ, 254 F.3d 162, 166 (D.C. Cir. 2001))); Schoenman v. FBI, 763 F. Supp. 2d 173, 176 (D.D.C. 2011) ("Significantly, the D.C. Circuit also recognizes 'that the privacy interest in nondisclosure of identifying information may be diminished where the individual is deceased,' and has explained that '[t]he fact of death, therefore, while not requiring the release of information, is a relevant factor to be taken into account in the balancing decision whether to release information.'" (quoting Schrecker v. DOJ, 349 F.3d 657, 661 (D.C. Cir. 2003))); Summers v. DOJ, 517 F. Supp. 2d 231, 241 (D.D.C. 2007) ("This Circuit has 'recognized that the privacy interest in nondisclosure of identifying information may be diminished where the individual is deceased.'" (quoting Davis, 460 F.3d at 98)).

¹²¹ See Johnson v. EOUSA, 310 F.3d 771, 775-76 (D.C. Cir. 2002) (finding that agency's efforts to determine if individuals were alive or dead met "basic steps" necessary to determine information that could affect privacy interests, and concluding that "[w]e will not attempt to establish a brightline set of steps for agency to take" in determining whether an individual is dead); see also, e.g., Manna v. DOJ, No. 92-1840, slip op. at 8 (D.N.J. Aug. 27, 1993) (finding government's obligation fulfilled by search of computerized index system and index cards for evidence of death of witness relocated more than twenty years ago), aff'd, 51

basic steps to determine life status before invoking a privacy interest under Exemptions 6 or 7(C).¹²² The D.C. Circuit has upheld the use of the FBI's "100-year rule," in making its privacy protection determinations whereby the FBI assumes that an individual is alive unless his or her birth date is more than 100 years ago.¹²³

F.3d 1158 (3d Cir. 1995); Williams v. DOJ, 556 F. Supp. 63, 66 (D.D.C. 1982) (finding agency's good-faith processing, rather than extensive research for public disclosures, sufficient in lengthy, multifaceted judicial proceedings).

¹²² See Schrecker, 254 F.3d at 167 ("Without confirmation that the Government took certain basic steps to ascertain whether an individual was dead or alive, we are unable to say whether the Government reasonably balanced the interests in personal privacy against the public interest in release of the information at issue."); Frankenberry v. FBI, No. 08-1565, 2012 U.S. Dist. LEXIS 39027, at *54 (M.D. Pa. Mar. 22, 2012) (adopting in part and rejecting in part magistrate's recommendation) (determining that the FBI's assertion of Exemption 7(C) to protect the identities of special agents, agency support personnel, suspects, individuals merely mentioned in plaintiff's criminal investigatory records, local law enforcement personnel, witnesses, and other federal employees is not appropriate where it "provided no information as to whether [these individuals] are still alive") (Exemption 7(C)); Schoenman, 576 F. Supp. 2d at 9-10, 13-14 (declaring that an agency must make reasonable effort to determine an individual's life status prior to invoking privacy interest under Exemptions 6 and 7(C), and finding that "agencies must take pains to ascertain life status in the first instance, i.e., in initially balancing the privacy and public interests at issue"). But see Vest, 793 F. Supp. 2d at 122 (finding that "[w]hile on first blush it appears that the DOJ/FBI should have taken the life status of [the subject] into account, '[t]he effect of an individual's death on [their] privacy interests need not be factored into an Exemption 7(C) balancing test . . . where no public interest would be served by the disclosure of that individual's name or other identifying information'" (Exemption 7(C)).

¹²³ Schrecker, 349 F.3d at 662-65 (holding that the FBI's administrative process of using its "100-year rule," searching the Social Security Death Index if an individual's birthdate is in records, and using its institutional knowledge, is reasonable and sufficient in determining whether individuals mentioned in requested records are deceased); see also Schoenman, 576 F. Supp. 2d at 10 ("The D.C. Circuit has concluded that the 100-year rule is, as a general matter, a reasonable prophylactic presumption."); Summers, 517 F. Supp. 2d at 242 (concluding that defendants adequately "determined the life status of named agents by using the agency's '100-year rule,' the Who Was Who publication, the institutional knowledge of employees, and prior FOIA requests" given that "there are over 1100 responsive documents, and there are likely many third-party named individuals whose privacy is at issue"); Piper v. DOJ, 428 F. Supp. 2d 1, 3 (D.D.C. Apr. 12, 2006) (observing that D.C. Circuit in Schrecker, 349 F.3d at 665, concluded that use of "100-year rule" was reasonable), aff'd, 222 F. App'x 1 (D.C. Cir. 2007); cf. Davis, 460 F.3d at 101-05 (acknowledging FBI's use of "100-year rule"; finding that use of the rule was destined to fail when applied to audiotapes, as opposed to documents, and stating that "[t]he reasonableness of [the "100-year rule"] depends upon the probability that the responsive records will contain the individual's birth date [I]t seems highly unlikely that the participants in an audiotaped conversation would have announced their ages or dates of birth") (Exemption 7(C)).

Public Figures

Although courts have found that an individual's status as a public figure might in some circumstances factor into the privacy balance,¹²⁴ a public figure does not, by virtue of his status, forfeit all rights of privacy.¹²⁵ Indeed, in NARA v. Favish, the deceased

¹²⁴ See, e.g., Rosenfeld v. DOJ, No. 07-3240, 2012 WL 710186, at *4 (N.D. Cal. Mar. 5, 2012) (finding that privacy interest "is low because . . . the subject is a public figure"); Citizens for Responsibility & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 71 (observing that "despite the fact that [a congressman's] privacy interest is 'somewhat diminished' by the office he holds, he nevertheless 'd[id] not surrender all rights to personal privacy when [he] accept[ed] a public appointment'" (Exemption 7(C)).

¹²⁵ See Forest Serv. Employees for Env'tl. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1025 (9th Cir. 2008) (noting that "while the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all privacy interests . . . simply by taking an oath of public office'" (quoting Lissner v. U.S. Customs Serv., 241 F.3d 1220, 1223 (9th Cir. 2001))); Kimberlin v. DOJ, 139 F.3d 944, 949 (D.C. Cir. 1998) (stating that "although government officials, as we have stated before, may have a 'somewhat diminished' privacy interest, they 'do not surrender all rights to personal privacy when they accept a public appointment'" (quoting Quinon v. FBI, 86 F.3d 1222, 1230 (D.C. Cir. 1996))) (Exemption 7(C)); Fund for Constitutional Gov't v. NARA, 656 F.2d 856, 865 (D.C. Cir. 1981); Citizens for Resp. & Ethics in Wash. v. DOJ, 840 F. Supp. 2d 226, 233 (D.D.C. 2012) (observing that "'individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity'" (quoting Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984)) and this "may be especially true for politicians who rely on the electorate to return them to public office"); Taitz v. Astrue, 806 F. Supp. 2d 214, 219 (D.D.C. 2011) (noting that "an individual's status as a public official does not, as plaintiff contends, 'make exemption 6 irrelevant to him and his vital records'"); Nat'l Sec. News Serv. v. U.S. Dep't of Navy, 584 F. Supp. 2d 94, 96 (D.D.C. 2008) (finding that "[d]isclosure of the requested patient admission records only would reveal who was admitted to the Naval Medical Center; it would reveal nothing about the Navy's own conduct" and "[t]his is so irrespective of whether one of the persons then admitted to the hospital is now a public figure"); Canaday v. ICE, 545 F. Supp. 2d 113, 118 (D.D.C. 2008) (stating that public figures "do not forfeit all vestiges of privacy"); Phillips v. ICE, 385 F. Supp. 2d 296, 305 (S.D.N.Y. 2005) (disregarding requester's unsupported claim that former foreign government officials have no "legitimate privacy interest[s]"); Wolk v. United States, No. 04-832, 2005 WL 465382, at *5 (E.D. Pa. Feb. 28, 2005) ("[O]fficials do not surrender all of their rights to personal privacy when they accept a public appointment.") (Exemptions 6 and 7(C)); Elec. Privacy Info. Ctr. v. DOJ, No. 02-0063, slip op. at 10 n.7 (D.D.C. Mar. 11, 2004) (concluding that "government officials do not lose all personal private rights when they accept a public appointment"); Billington v. DOJ, 11 F. Supp. 2d 45, 62 (D.D.C. 1998) (finding that although public officials in some circumstances have diminished privacy, residual privacy interests militate against disclosure of nonpublic details), aff'd in pertinent part, 233 F.3d 581 (D.C. Cir. 2000); cf. McNamera v. DOJ, 974 F. Supp. 946, 959 (W.D. Tex. 1997) (stating that "[s]imply because an individual was once a public official does not mean that he retains that status throughout his life," and holding that three years after a disgraced sheriff resigned he was "a private, not a public figure") (Exemption 7(C)). But cf. Judicial Watch, Inc. v. DOJ,

former Deputy White House Counsel's status as both a public figure and a high-level government official did not, in the Supreme Court's opinion, "detract" from the "weighty privacy interests involved."¹²⁶ Likewise, a candidate for a political office, either federal or nonfederal, does not forfeit all rights to privacy.¹²⁷

Privacy Assurances and Waivers

Privacy assurances given to those providing information to the government generally serve to increase their privacy interests.¹²⁸ However, such assurances alone are not dispositive.¹²⁹ Alternatively, individuals do not waive their privacy rights merely by signing a document that states that information may be released pursuant to the FOIA.¹³⁰ As one court has observed, such a statement is not a waiver of the right to

No. 00-745, 2001 U.S. Dist. LEXIS 25731, at *13 (D.D.C. Feb. 12, 2001) (suggesting that pardoned prisoners lost any privacy interests since they "arguably bec[a]me public figures through their well-publicized pleas for clemency and [given] the speeches some have made since their release") (Exemption 7(C)).

¹²⁶ 541 U.S. 157, 171 (2004).

¹²⁷ See Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 894 & n.9 (D.C. Cir. 1995) ("Although candidacy for federal office may diminish an individual's right to privacy . . . it does not eliminate it . . ."); Hunt v. U.S. Marine Corps, 935 F. Supp. 46, 54 (D.D.C. 1996) (finding that senatorial candidate has unquestionable privacy interest in his military service personnel records and medical records); Nation Magazine v. Dep't of State, No. 92-2303, 1995 WL 17660254, at *10 (D.D.C. Aug. 18, 1995) (upholding refusal to confirm or deny existence of investigative records pertaining to presidential candidate); cf. Iowa Citizens for Cmty. Improvement v. USDA, 256 F. Supp. 2d 946, 954 (S.D. Iowa 2002) (ruling that nominee for position of Undersecretary of Agriculture for Rural Development does not forfeit all privacy rights).

¹²⁸ See, e.g., Kensington Res. & Recovery v. Dep't of Treasury, No. 10-3538, 2011 U.S. Dist. LEXIS 71041, at *24 (N.D. Ill. June 30, 2011) (finding that the agency's regulation governing individuals purchasing securities, in which it "pledged confidentiality and protection under Exemption 6," both "raises the bondholders' expectation of privacy, and enhances the privacy interests of nondisclosure").

¹²⁹ See, e.g., Prudential Locations LLC v. HUD, No. 09-16995, 2013 WL 5539618, at *6 (9th Cir. Oct. 9, 2013) (noting that "an assurance [of confidentiality] is neither a necessary, nor a necessarily sufficient, condition for the existence of a cognizable personal privacy interest under Exemption 6," but it is "a relevant factor"); Advoc. for Highway & Auto Safety v. Fed. Highway Admin., No. 98-306, 2011 WL 4840463, at *6 (D.D.C. Oct. 13, 2011) (finding that while "[a]ssurances of confidentiality are to be accorded some weight in assessing privacy interest under FOIA Exemption 6 . . . such promises do not necessarily prohibit disclosure").

¹³⁰ See Lakin Law Firm, P.C. v. FTC, 352 F.3d 1122, 1124-25 (7th Cir. 2003) (explaining that a warning on Federal Trade Commission website that "information provided may be subject

confidentiality, it is merely a warning by the agency and corresponding acknowledgment by the signers "that the information they were providing could be subject to release."¹³¹ Further, one person's waiver has been found not to apply to other individuals.¹³²

Interest in Disclosure

In certain circumstances, an individual may have an interest in having his or her personal information disclosed rather than withheld. In Lepelletier v. FDIC, the Court of Appeals for the District of Columbia Circuit remanded the case back to the district court to determine whether some of the names of individual depositors with unclaimed funds at banks for which the FDIC was then the receiver should be released to a professional money finder.¹³³ Introducing a new element into the balancing test for this particular type of information, the D.C. Circuit held that the standard test "is inapposite here, i.e., where the individuals whom the government seeks to protect have a clear interest in the release of the requested information."¹³⁴ As guidance to the lower court charged with addressing this novel set of circumstances, the D.C. Circuit ordered, first, that "release of names associated with unclaimed deposits should not be matched with the amount owed to that individual" and, second, that "on remand, the District Court must determine the dollar amount below which an individual's privacy interest should be deemed to outweigh his or her interest in discovering his or her money, such that the names of depositors with lesser amounts may be redacted."¹³⁵

Faced with reverse FOIA challenges,¹³⁶ several courts have had to consider whether to order agencies not to release records pertaining to individuals that agencies

to release under the FOIA" cannot be construed as a waiver by consumers) (emphasis added); Hill v. USDA, 77 F. Supp. 2d 6, 8 (D.D.C. 1999) (noting that disclosure warning in loan documents was "a warning, not a waiver," and that "[t]he statement does not say that the government will not attempt to protect privacy rights by asserting them, and indeed the government is expected to do so").

¹³¹ Hill, 77 F. Supp. 2d at 8 (holding borrowers of Farmers Home Administration loans did not waive their privacy interests by signing loan-application documents that contained a mere warning information supplied could be released).

¹³² Milton v. DOJ, 783 F. Supp. 2d 55, 58 (D.D.C. 2011) (finding that release of recording of telephone conversation can be invasion of personal privacy; rejecting plaintiff's assertion that waiver he signed "allowing [Bureau of Prisons] to monitor his phone calls . . . impliedly extends to any party who accepted his calls").

¹³³ 164 F.3d 37, 48-49 (D.C. Cir. 1999).

¹³⁴ Id. at 48.

¹³⁵ Id.

¹³⁶ See 5 U.S.C. §§ 701-706 (2006) ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . is entitled to judicial review

had determined should be disclosed.¹³⁷ These privacy reverse FOIA cases are similar in posture to the more common reverse FOIA cases that are based upon a submitter's claim that information falls within Exemption 4, cases which ordinarily involve the agency conducting "submitter notice" pursuant to the requirements of Executive Order 12,600.¹³⁸ (See further discussion of this point under Reverse FOIA, below.) Despite this similarity, though, courts have generally not found any requirement that an agency notify record subjects of the agency's intent to disclose personal information about them

thereof."); see also Chrysler v. Brown, 441 U.S. 281, 318 (1979) (deciding that judicial review based on administrative record according to "arbitrary, capricious, or not in accordance with law" standard applies to reverse FOIA cases).

¹³⁷ See, e.g., Campaign for Family Farms v. Glickman, 200 F.3d 1180, 1184-89 (8th Cir. 2000) (finding agency decision to release petition with names unredacted was not in accordance with law) (reverse FOIA suit); Nat'l Org. for Women v. SSA, 736 F.2d 727, 728 (D.C. Cir. 1984) (per curiam) (affirming district court's decision to enjoin release of affirmative action plans submitted to SSA) (Exemptions 4 and 6); Schmidt v. U.S. Dep't of the Air Force, No. 06-3069, 2007 WL 2812148, at *11 (C.D. Ill. Sept. 20, 2007) (finding that plaintiff has a valid privacy interest regarding information about his discipline; however, disclosure of records regarding disciplinary actions against plaintiff is proper because "[i]t is undisputed that the friendly-fire incident garnered significant public and media attention" and "[t]he release of Schmidt's reprimand gave the public, in the United States and around the world, insight into the way in which the United States government was holding its pilot accountable") (Reverse FOIA/Privacy Act wrongful disclosure suit); Doe v. Veneman, 230 F. Supp. 2d at 749-51 (holding agency decision to release identifying information pertaining to farmers and ranchers was incorrect) (reverse FOIA suit), aff'd in pertinent part on other grounds, 380 F.3d 807, 818 n.39 (5th Cir. 2004); AFL-CIO v. Fed. Election Comm'n, 177 F. Supp. 2d 48, 61-63 (D.D.C. 2001) (finding agency's decision not to invoke Exemption 7(C) to withhold identities of individuals in its investigative files to be "arbitrary, capricious and contrary to law") (reverse FOIA suit), aff'd on other grounds, 333 F.3d 168 (D.C. Cir. 2003); Forest Guardians v. U.S. Forest Serv., No. 99-0615, slip op. at 39-45 (D.N.M. Jan. 29, 2001) (setting aside agency's decision to disclose personal financial information on escrow waiver forms that are used by banks to record use of federal grazing permits as loan collateral) (reverse FOIA suit); Sonderegger v. U.S. Dep't of the Interior, 424 F. Supp. 847, 853-56 (D. Idaho 1976) (ordering temporary injunction of release of claimant names and amount claimed for victims of Teton Dam disaster, while allowing release of amount paid and category of payment with all personal identifying information deleted) (Exemptions 4 and 6); cf. Na Iwi O Na Kupuna v. Dalton, 894 F. Supp. 1397, 1412-13 (D. Haw. 1995) (concluding that Exemption 6 was not intended to protect information pertaining to human remains, nor to protect information pertaining to large groups in which individuals are not identifiable) (reverse FOIA suit).

¹³⁸ 3 C.F.R. 235 (1988), reprinted in 5 U.S.C. § 552 note (2006 & IV 2010), and in FOIA Update, Vol. VIII, No. 2, at 2-3; see also FOIA Post, "Supreme Court Rules for 'Survivor Privacy' in Favish" (posted 4/9/04) (comparing the operation of the "submitter notice" provision to cases involving personal privacy, where the individuals whose privacy "interests are being protected under the FOIA rarely are aware of th[e FOIA] process, let alone involved in it").

or that it "track down an individual about whom another has requested information merely to obtain the former's permission to comply with the request."¹³⁹

FOIA Public Interest

Once it is determined that a substantial privacy interest may be infringed by disclosure, the third step of the analysis must be undertaken. This step requires the identification and assessment of the FOIA public interest in disclosure.¹⁴⁰ In order to constitute a FOIA public interest in disclosure, information must serve the "basic purpose of the Freedom of Information Act[,] 'to open agency action to the light of public scrutiny.'"¹⁴¹ Information that informs the public about "an agency's performance of its statutory duties falls squarely within that statutory purpose."¹⁴² Furthermore, as the Supreme Court held in NARA v. Favish, "the public interest sought to be advanced

¹³⁹ Blakey v. DOJ, 549 F. Supp. 362, 365 (D.D.C. 1982) (Exemption 7(C)), aff'd in part & vacated in part, 720 F.2d 215 (D.C. Cir. 1983); see Halpern v. FBI, No. 94-CV-365A, 2002 WL 31012157, at *10 (W.D.N.Y. Sept. 1, 2001) (magistrate's recommendation) (finding that there exists "no authority requiring the Government to contact [individuals mentioned in documents] for Exemption 6 to apply"), adopted, (W.D.N.Y. Oct. 17, 2001); cf. Hemenway v. Hughes, 601 F. Supp. 1002, 1007 (D.D.C. 1985) (placing burden on requester, not agency, to contact foreign correspondents for requested citizenship information after receiving list of correspondents with office telephone numbers and addresses, and noting that correspondents are "free to decline to respond"). But see Associated Press v. DOD, 395 F. Supp. 2d 15, 16-17 & n.1 (S.D.N.Y. 2005) (requiring agency to ask Guantanamo Bay detainees whether they wished their identifying information to be released to plaintiff, based on fact that "detainees are in custody and therefore readily available"); cf. War Babes v. Wilson, 770 F. Supp. 1, 4-5 (D.D.C. 1990) (allowing agency sixty days to meet burden of establishing privacy interest by obtaining affidavits from World War II servicemembers who objected to release of their addresses to British citizens seeking to locate their fathers).

¹⁴⁰ See FOIA Update, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking").

¹⁴¹ Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976); see also Showing Animals Respect & Kindness v. Dep't of the Interior, 730 F. Supp. 2d 180, 196 (D.D.C. 2010) ("[T]he public interest in disclosure under FOIA is not limited to the agency processing the request for records; the public has a right to know what their 'government' is up to, not just what a particular agency is up to.").

¹⁴² DOJ v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989); see also O'Kane v. U.S. Customs Serv., 169 F.3d 1308, 1310 (11th Cir. 1999) (per curiam) (affirming that Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048, do not overrule Reporters Committee definition of "public interest"); cf. NARA v. Favish, 541 U.S. 157, 172 (2004) (reiterating the Reporters Committee "public interest" standard, and characterizing it as "a structural necessity in a real democracy" that "should not be dismissed" – despite arguments by amici that Reporters Committee had been "overruled" by Electronic FOIA amendments since 1996).

[must be] a significant one, an interest more specific than having the information for its own sake."¹⁴³

While requesters are typically not required to provide the reasons for requesting information, when disclosure could result in an invasion of personal privacy, the Supreme Court has ruled that a requester bears the burden of establishing that disclosure would serve a FOIA public interest.¹⁴⁴ A requester's personal interest in disclosure is irrelevant to the public interest analysis.¹⁴⁵ As the Supreme Court held in

¹⁴³ 541 U.S. at 172; see also Martin v. DOJ, 488 F.3d 446, 458 (D.C. Cir. 2007) ("In order to trigger the balancing of public interests against private interests, a FOIA requester must (1) show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake, and (2) show the information is likely to advance that interest." (quoting Boyd v. DOJ, 475 F.3d 381, 387 (D.C. Cir. 2007))); Carpenter v. DOJ, 470 F.3d 434, 440 (1st Cir. 2006) ("Because there is a valid privacy interest, the requested documents will only be revealed where 'the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake.'" (quoting Favish, 541 U.S. at 172)).

¹⁴⁴ See Favish, 541 U.S. at 172 ("Where the privacy concerns . . . are present, the exemption requires the person requesting the information to establish a sufficient reason for the disclosure.") (Exemption 7(C)); Wadhwa v. VA, 446 Fed. App'x 516, 519 (3d Cir. 2011) (finding withholding appropriate where requester failed to articulate proper FOIA public interest in disclosure); Associated Press v. DOD, 549 F.3d 62, 66 (2d Cir. 2008) ("The requesting party bears the burden of establishing that disclosure of personal information would serve a public interest cognizable under FOIA."); Carter v. U.S. Dep't of Commerce, 830 F.2d 388, 391 nn.8 & 13 (D.C. Cir. 1987); see also Graff v. FBI, 822 F. Supp. 2d 23, 33 (D.D.C. 2011) ("[B]ecause the public interest justification in each case depends on how the requester plans to use the records or information, the agency must obtain that justification from the requester in order to balance it against the third party's privacy interest."); Rogers v. Davis, No. 08-177, 2009 WL 213034, at *2 (E.D. Mo. Jan. 28, 2009) ("The burden of establishing that the disclosure would serve the public interest . . . is on the requester."); Salas v. Office of Inspector General, 577 F. Supp. 2d 105, 112 (D.D.C. 2008) ("It is the requester's obligation to articulate a public interest sufficient to outweigh an individual's privacy interest, and the public interest must be significant."); Prison Legal News v. Lappin, 436 F. Supp. 2d 17, 22 (D.D.C. 2006) ("The burden of satisfying the 'public interest standard' is on the requester.").

¹⁴⁵ See Reporters Comm., 489 U.S. at 771-72 & n.20; see also Joseph W. Diemert, Jr. and Assocs. Co., L.P.A. v. FAA, 218 Fed. App'x 479, 482 (6th Cir. 2007) (concluding that "the release of the requested information is clearly an unwarranted invasion of personal privacy" because "[t]he disclosure of such information would only serve the private interests of Diemert"); Schiffer v. FBI, 78 F.3d 1405, 1410-11 (9th Cir. 1996) (noting that individual interest in obtaining information about oneself does not constitute public interest); Ubungen v. ICE, 600 F. Supp. 2d 9, 12 (D.D.C. 2009) (concluding that plaintiff's request for information about the whereabouts or fate of her sister is "purely personal" and there is no public interest under the FOIA); Salas, 577 F. Supp. 2d at 111 (finding that plaintiff's argument that release of redacted information will expose an agency's action pertaining to an incident involving plaintiff is insufficient because "[t]his one incident, though of obvious

DOJ v. Reporters Committee for Freedom of the Press, the requester's identity can have "no bearing on the merits of his or her FOIA request."¹⁴⁶ In so declaring, the Court ruled that agencies should treat all requesters alike in making FOIA disclosure decisions, and should not consider a requester's "particular purpose" in making the request.¹⁴⁷ Rather,

importance to plaintiff, is not one of such magnitude that it outweighs the agency employees' substantial privacy interest"); Summers v. DOJ, 517 F. Supp. 2d 231, 240 (D.D.C. 2007) (finding plaintiff's argument "that knowing the names of the FBI agents in question would enable him to contact them and seek more information about [a former agent]" insufficient since "the operative inquiry in determining whether disclosure of a document implicating privacy issues is warranted is the nature of the requested document itself, not the purpose for which the document is being requested"); Berger v. IRS, 487 F. Supp. 2d 482, 505 (D.N.J. 2007) (stating that disclosure of IRS employee's time sheets "would primarily serve Plaintiffs' particular private interests as individual taxpayers. Disclosure would not be 'instrumental in shedding light on the operations of government'" (quoting Lewis v. EPA, No. 06-2660, 2006 WL 3227787, at *6 (E.D. Pa. Nov. 3, 2006))); Los Angeles Times Commc'ns LLC v. Dep't of Labor, 483 F. Supp. 2d 975, 981 (C.D. Cal. 2007) ("Courts weigh the public interest by considering the interest of the general public, not the private motives, interests, or needs of a litigant."). But see Finkel v. Dep't of Labor, No. 05-5525, 2007 WL 1963163, at *9 (D.N.J. June 29, 2007) (noting that "plaintiff raises a legitimate public interest in the information sought because his proposed research concerns OSHA's response to beryllium sensitization amongst its own inspectors and the general workforce").

¹⁴⁶ 489 U.S. at 771; see also Favish, 541 U.S. at 170-72 (reiterating that "[a]s a general rule, withholding information under FOIA cannot be predicated on the identity of the requester," but adding that this does not mean that a requester seeking to establish an overriding "public interest" in disclosure of requested information "need not offer a reason for requesting the information"); DOD v. FLRA, 510 U.S. 487, 496-501 (1994); Associated Press, 554 F.3d at 285 ("The public interest 'cannot turn on the purposes for which the request for information is made,' and 'the identity of the requesting party has no bearing on the merits of his or her FOIA request.'" (quoting Reporters Comm., 489 U.S. at 771)); Carpenter, 470 F.3d at 440 ("Neither the specific purpose for which the information is requested nor the identity of the requesting party has any bearing on the evaluation."); EduCap Inc. v. IRS, No. 07-2106, 2009 WL 416428, at *4 (D.D.C. Feb. 18, 2009) ("But under the FOIA, '[e]xcept for cases in which the objection to disclosure is based on a claim of privilege and the person requesting disclosure is the party protected by the privilege, the identity of the requesting party has no bearing on the merits of his or her FOIA request.'" (quoting Reporters Comm., 489 U.S. at 771)); O'Neill v. DOJ, No. 05-0306, 2007 WL 983143, at *8 (E.D. Wis. Mar. 26, 2007) ("The requester's identity, purpose in making the request, and proposed use of the requested information have no bearing on this balancing test.").

¹⁴⁷ 489 U.S. at 771-72 & n.20; see also Favish, 541 U.S. at 172 (reiterating the Reporters Committee principle that "citizens should not be required to explain why they seek the information" at issue, but further elucidating that in a case where the requester's purported public interest revolves around an allegation of government wrongdoing, "the usual rule that the citizen need not offer a reason for requesting the information must be inapplicable"); DOD v. FLRA, 510 U.S. at 496 (holding that "except in certain cases

the proper approach for determining whether there is a FOIA public interest in disclosure is to evaluate "the nature of the requested document and its relationship to 'the basic purpose of the Freedom of Information Act.'"¹⁴⁸

involving claims of privilege, 'the identity of the requesting party has no bearing on the merits of his or her FOIA request'") (quoting Reporters Comm., 489 U.S. at 773); Multi Ag Media LLC v. USDA, 515 F.3d 1224, 1231 n.2 (D.C. Cir. 2008) ("Although Multi Ag may not want the information to check up on the government itself, the use for which the requester seeks the information is not relevant for purposes of determining the public interest under FOIA Exemption 6."); Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1051 (D.C. Cir. 2009) ("The requesting party's intended use for the information is irrelevant to our analysis."); Milton v. DOJ, 783 F. Supp. 2d 55, 59 (D.D.C. 2011) (finding that "[i]n the absence of any evidence of government impropriety," plaintiff's claim that certain telephone recordings are needed to support a claim of innocence "reflects a personal rather than a public interest"); Moore v. United States, 602 F. Supp. 2d 189, 194 (D.D.C. 2009) ("The plaintiff's personal interest is, no doubt, of paramount importance to him, but it is irrelevant to the FOIA, which by law is sensitive only to a public interest."); Rogers, 2009 WL 213034, at *2 ("[T]he purposes for which the FOIA request is made is irrelevant to whether an invasion of privacy is warranted."); Thomas v. DOJ, 531 F. Supp. 2d 102, 108 (D.D.C. 2008) ("The purpose for which a requester seeks federal government records is not relevant in a FOIA case.") (Exemption 7(C)); Davy v. CIA, 357 F. Supp. 2d 76, 88 (D.D.C. 2004) (holding that requester's "personal crusade to unearth . . . information" that was the subject of a book that he wrote was found not to serve "in any way [] a cognizable public interest").

¹⁴⁸ Reporters Comm., 489 U.S. at 772 (quoting Rose, 425 U.S. at 372); see, e.g., Carpenter, 470 F.3d at 440 (observing that nature of requested document and its relationship to opening agency action to light of public scrutiny determines whether invasion of privacy is warranted); McGehee v. DOJ, 800 F. Supp. 2d 220, 234 (D.D.C. 2011) ("Although the Jonestown Massacre may have elicited a great deal of public attention, the relevant question is not whether the public would like to know the names of FBI agents and victims involved, but whether knowing those names would shed light on the FBI's performance of its statutory duties.") (Exemption 7(C)); People for the Am. Way Found. v. Nat'l Park Serv., 503 F. Supp. 2d 284, 304 (D.D.C. 2007) ("Accordingly, to assess the public interest, the Court must examine 'the nature of the requested document and its relationship to the basic purpose of [FOIA] to open agency action to the light of public scrutiny.'" (quoting Judicial Watch of Florida, Inc. v. DOJ, 102 F. Supp. 2d 6, 17 (D.D.C. 2002))); ACLU of N. Cal. v. DOJ, No. 04-4447, 2005 WL 588354, at *13 (N.D. Cal. Mar. 11, 2005) (ruling that "it was not sufficient for the plaintiffs to show [public] interest in only the general subject area of the request"); Elec. Privacy Info. Ctr. v. DOD, 355 F. Supp. 2d 98, 102 (D.D.C. 2004) (stating that "[t]he fact that [the requester] has provided evidence that there is some media interest in data mining as an umbrella issue does not satisfy the requirement that [the requester] demonstrate interest in the specific subject of [its] FOIA request"); see also Schrecker v. DOJ, 349 F.3d 657, 661 (D.C. Cir. 2003) (stating that an inquiry regarding the public interest "should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld") (Exemption 7(C)). But see Int'l Counsel Bureau v. DOD, 723 F. Supp. 2d 54, 66 (D.D.C. 2010) (finding substantial public interest in disclosure of photographs of

Information serves a FOIA public interest if it sheds light on agency action.¹⁴⁹ Several courts have observed that the minimal amount of information of interest to the public revealed by a single incident or investigation does not shed enough light on an agency's conduct to overcome the subject's privacy interest in his records.¹⁵⁰ At other

Guantanamo Bay detainees, as "[t]he press has taken a substantial interest in the Guantanamo Bay detainees, and has reported extensively on them and their condition").

¹⁴⁹ See Reporters Comm., 489 U.S. at 773; Rose, 425 U.S. at 372; see also, Nat'l Day Laborer Organizing Network v. U.S. Immigr. & Customs Enforcement Agency, 811 F. Supp. 2d 713, 748 (S.D.N.Y. 2011) ("[T]he public interest in disclosure outweighs the privacy interest as regards the names of agency heads or high-level subordinates . . . [as] [t]here is a substantial public interest in knowing whether the documents at issue reflect high-level agency policy, helping to inform the public as to 'what their government is up to.'") (quoting Reporters Comm., 489 U.S. at 773) (Exemptions 6 & 7(C)); Families for Freedom v. U.S. Customs & Border Protect., 797 F. Supp. 2d 375, 399 (S.D.N.Y. 2011) (finding disclosure of agency employee names would inform the public of "what their government is up to" by revealing "whether the expectations and requirements articulated in the memoranda reflect high-level agency policy") (Exemptions 6 and 7(C)); Gordon v. FBI, 388 F. Supp. 2d 1028, 1041 (N.D. Cal. 2005) (finding public interest served by disclosure of individual agency employee names because their names show "who are making important government policy") (Exemptions 6 and 7(C)).

¹⁵⁰ See, e.g., World Publ'g Co. v. DOJ, 672 F. 3d 825, 831 (10th Cir. 2012) ("Based upon the purpose of the FOIA, there is little to suggest that disclosure of booking photos would inform citizens of a government agency's adequate performance of its function" or "would significantly assist the public in detecting or deterring any underlying government misconduct") (Exemption 7(C)); Karantsalis v. DOJ, 635 F.3d 497, 504 (11th Cir. 2011) (per curiam) (holding "the general curiosity of the public in [the subject's] facial expression during his booking photographs is not a cognizable interest that would 'contribute significantly to public understanding of the operations or activities of the government'" (quoting Reporters Comm., 489 U.S. at 775) (Exemption 7(C))); Tomscha v. GSA, 158 F. App'x 329, 331 (2d Cir. 2005) (finding that disclosure of the justification for awards given to "a single low-ranking employee of the GSA . . . would not 'contribute significantly to the public understanding of the operations or activities of the government'" (quoting DOD v. FLRA, 510 U.S. at 495)); Oguaju v. United States, 288 F.3d 448, 451 (D.C. Cir. 2002) (declaring that "even if the records Oguaju seeks would reveal wrongdoing in his case, exposing a single, garden-variety act of misconduct would not serve the FOIA's purpose of showing 'what the Government is up to'" (Exemption 7(C)), vacated & remanded, 541 U.S. 970, on remand, 378 F.3d 1115 (D.C. Cir.), reh'g denied & amended, 386 F.3d 273 (D.C. Cir. 2004) (per curiam); Needy v. FBI, 208 F.3d 461, 464 (4th Cir. 2000) (observing that "courts have refused to recognize, for purposes of FOIA, a public interest in nothing more than the fairness of a criminal defendant's own trial") (Exemption 7(C)); Hunt v. FBI, 972 F.2d 286, 289 (9th Cir. 1992) (observing that disclosure of single internal investigation file "will not shed any light on whether all such FBI investigations are comprehensive or whether sexual misconduct by agents is common"); Salas, 577 F. Supp. 2d at 112 (finding that OIG properly redacted personally identifying information about Border Patrol employees mentioned in investigative records about a complaint by plaintiff

times, though, courts have found that the public interest in a particular, singular investigation is sufficient.¹⁵¹

A request made for the purpose of challenging a criminal conviction has generally been found not to further a FOIA public interest.¹⁵² Likewise, a request made in order to

concluding that "[t]his one incident, though of obvious importance to plaintiff, is not one of such magnitude that it outweighs the agency employees' substantial privacy interest"); Berger, 487 F. Supp. 2d at 505 (finding that disclosure of one IRS employee's time sheets would not serve the public interest); Mueller v. U.S. Dep't of the Air Force, 63 F. Supp. 2d 738, 745 (E.D. Va. 1999) ("[T]he interest of the public in the personnel file of one Air Force prosecutor is attenuated because information concerning a single isolated investigation reveals relatively little about the conduct of the Air Force as an agency.") (Exemptions 6 and 7(C)); Chin v. U.S. Dep't of the Air Force, No. 97-2176, slip op. at 5 (W.D. La. June 24, 1999) (finding only "marginal benefit to the public interest" in release of the facts of a single case, particularly "where alternative means exist -- such as statistical samples or generalized accounts -- to satisfy the public interest"); Cotton v. Adams, 798 F. Supp. 22, 27 n.9 (D.D.C. 1992) (finding that, where FOIA request sought misconduct reports for two named employees, the "generalized public interest in good management does not override the privacy interests").

¹⁵¹ See, e.g., Detroit Free Press, Inc. v. DOJ, 73 F.3d 93, 97-98 (6th Cir. 1996) (finding that the agency's disclosure of the mug shots of indicted individuals during the course of an ongoing criminal proceeding could reveal an "error in detaining the wrong person for an offense" or the "circumstances surrounding an arrest and initial incarceration"); Citizens for Responsibility & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 67 (D.D.C. 2012) ("Against the backdrop of broader public concerns about the agency's handling of allegations of corruption leveled against high-ranking public officials . . . the public has a clear interest in documents concerning" DOJ's investigation of Congressman accused of providing earmarks and contracts to donors.) (Exemption 7(C)); Citizens for Responsibility & Ethics in Wash. v. DOJ, 840 F. Supp. 2d 226, 234 (D.D.C. 2012) (recognizing significant public interest in information relating to DOJ's investigation of congressman accused of bribery because "the American public has a right to know about the manner in which its representatives are conducting themselves and whether the government agency responsible for investigating and, if warranted, prosecuting those representatives for alleged illegal conduct is doing its job") (Exemptions 6 & 7(C)).

¹⁵² See, e.g., Rimmer v. Holder, 10-1106, 2011 U.S. Dist. LEXIS 107883, at *22 (M.D. Tenn. Sept. 22, 2011) (characterizing requester's asserted interest in collaterally attacking his state conviction as an "illegitimate" public interest) (Exemption 7(C)); Lewis v. DOJ, 733 F. Supp. 2d 97, 111 (D.D.C. 2010) (finding plaintiff's personal interest in learning "the identities of the DEA Special Agents" related to his criminal conviction "does not qualify as a public interest favoring disclosure") (Exemptions 6 and 7(C)); Lasko v. DOJ, 684 F. Supp. 2d 120, 129 (D.D.C. 2010) ("Plaintiff's personal interest in the requested records for the purpose of attacking his conviction or sentence is not relevant to this analysis") (Exemption 7(C)); Amuso v. DOJ, 600 F. Supp. 2d 78, 93 (D.D.C. 2009) ("Any interest in the information for purposes of proving his innocence or proving that government witnesses perjured testimony at his criminal trial does not overcome the individual's privacy interest."); Lopez v. EOUSA, 598 F. Supp. 2d 83, 88 (D.D.C. 2009) (rejecting plaintiff's argument that "the personal

obtain or supplement discovery in a private lawsuit has generally been found not to serve a FOIA public interest.¹⁵³ In fact, one court has observed that if the requester truly had a great need for the records for purposes of litigation, he or she should seek them in that forum, where it would be possible to provide them under an appropriate protective order.¹⁵⁴ The Court of Appeals for the District of Columbia Circuit has found that there is a public interest, however, "in knowing whether the FBI is withholding information

privacy exemptions must yield in the face of the plaintiff's belief that a Brady violation infected his criminal trial"); Scales v. EOUSA, 594 F. Supp. 2d 87, 91 (D.D.C. 2009) (stating "that a bald assertion of a Brady violation is insufficient to overcome the individual's privacy interests in the records at issue"); Thomas v. DOJ, No. 04-112, 2006 WL 722141, at *3 (E.D. Tex. Mar. 15, 2006) ("[T]he interest of a private litigant is not a significant public interest."); Billington v. DOJ, 11 F. Supp. 2d 45, 63 (D.D.C. 1998) (noting that "requests for Brady material are 'outside the proper role of FOIA'" (quoting Johnson v. DOJ, 758 F. Supp. 2, 5 (D.D.C. 1991))), aff'd in pertinent part, 233 F.3d 581 (D.C. Cir. 2000).

¹⁵³ See Carpenter, 470 F.3d at 441 ("There is no public interest in supplementing an individual's request for discovery.") (criminal trial) (Exemption 7(C)); Horowitz v. Peace Corps, 428 F.3d 271, 278 (D.C. Cir. 2005) (finding that plaintiff's "need to obtain the information for a pending civil suit is irrelevant, as the public interest to be weighed has nothing to do with [his] personal situation"); Brown v. FBI, 658 F.2d 71, 75 (2d Cir. 1981) (holding that the court "cannot allow the plaintiff's personal interest to enter into the weighing or balancing process" where he is "hoping to obtain evidence sufficient to mount a collateral attack on his kidnapping conviction"); Ebersole v. United States, No. 06-2219, 2007 WL 2908725, at *6 (D. Md. Sept. 24, 2007) ("Thus, FOIA requests are not meant to displace discovery rules.") (Exemption 7(C)); Sakamoto v. EPA, 443 F. Supp. 2d 1182, 1197 (N.D. Cal. 2006) ("Here, plaintiff expressly acknowledges that she wants the discrimination complaint files to use as possible evidence in her employment discrimination case . . . [which is] not a significant public interest warranting disclosure of private information."); Cappabianca v. Comm'r, U.S. Customs Serv., 847 F. Supp. 1558, 1564 (M.D. Fla. 1994) (seeking records for job-related causes of action insufficient); Harry v. Dep't of the Army, No. 92-1654, slip op. at 7-8 (D.D.C. Sept. 10, 1993) (seeking records to appeal negative officer efficiency report insufficient); NTEU v. U.S. Dep't of the Treasury, 3 Gov't Disclosure Serv. (P-H) ¶ 83,224, at 83,948 (D.D.C. June 17, 1983) (requesting records for grievance proceeding insufficient). But see United Am. Fin., Inc. v. Potter, 667 F. Supp. 2d. 49, 60 (D.D.C. 2009) (ordering release of names of USPS employees and agents where individuals identified could provide information in a related civil suit) (Exemption 7(C)).

¹⁵⁴ Gilbey v. Dep't of the Interior, No. 89-0801, 1990 WL 174889, at *2 (D.D.C. Oct. 22, 1990); see also Billington, 11 F. Supp. 2d at 64 (noting that proper forum for challenging alleged illegal warrantless search is in district court where case was prosecuted); Bongiorno v. Reno, No. 95-72143, 1996 WL 426451, at *4 (E.D. Mich. Mar. 19, 1996) (observing that the proper place for a noncustodial parent to seek information about his child is the "state court that has jurisdiction over the parties, not a FOIA request or the federal court system"); cf. Favish, 541 U.S. at 174 ("There is no mechanism under FOIA for a protective order allowing only the requester to see whether the information bears out his theory, or for proscribing its general dissemination.").

that could corroborate a death-row inmate's claim of innocence."¹⁵⁵ Specifically, the D.C. Circuit ruled that there is a "substantial" public interest "where the FOIA requester has [shown] that a reasonable person could believe that the FBI might be withholding information that could corroborate a death-row inmates' claim of innocence."¹⁵⁶

Assigning a Weight to the FOIA Public Interest

If an asserted public interest is found to qualify under this standard, it then must be accorded some measure of value so that it can be weighed against the threat to privacy.¹⁵⁷ In evaluating the weightiness of a FOIA public interest in disclosure, it is important to note that if alternative, less intrusive means are available to obtain information that would serve a FOIA public interest, there is less need to require disclosure of information that would cause an invasion of someone's privacy. Accordingly, the Court of Appeals for the District of Columbia Circuit has found that "[w]hile [this is] certainly not a *per se* defense to a FOIA request," it is appropriate, when assessing the public interest side of the balancing equation, to consider "the extent to which there are alternative sources of information available that could serve the public interest in disclosure."¹⁵⁸ Significantly, although a FOIA public interest typically

¹⁵⁵ Roth v. DOJ, 642 F.3d 1161, 1180 (D.C. Cir. 2011) (finding FOIA public interest militating in favor of fuller disclosure where death-row inmate has surmounted fairly substantial hurdle of showing that a reasonable person could believe that the agency might be withholding information that could corroborate his claim that four other men actually committed the quadruple homicide for which he was convicted) (Exemption 7(C)).

¹⁵⁶ Id. at 1176, 1184.

¹⁵⁷ See, e.g., Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976); Ripskis v. HUD, 746 F.2d 1, 3 (D.C. Cir. 1981); Fund for Constitutional Gov't v. Nat'l Archives & Records Serv., 656 F.2d 856, 862 (D.C. Cir. 1981).

¹⁵⁸ DOD v. FLRA, 964 F.2d 26, 29-30 (D.C. Cir. 1992); see Favish, 541 U.S. at 175 (recognizing that the government had thoroughly investigated the suicide at issue and that "[i]t would be quite extraordinary to say we must ignore the fact that five different inquiries into the . . . matter reached the same conclusion"); Forest Guardians v. FEMA, 410 F.3d 1214, 1219 & n.3 (10th Cir. 2005) (finding no public interest in a request to FEMA for "electronic map files" showing the locations of federally insured structures, because the electronic files were "merely cumulative of the information" that FEMA already had released in "hard copies" of the maps and because the requester already had a "plethora of information" with which "to evaluate FEMA's activities"); Forest Serv. Employees for Env'tl. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1028 (9th Cir. 2008) ("As a result of the substantial information already in the public domain, we must conclude that the release of the identities of the employees who participated in the Forest Service's response to the Cramer Fire would not appreciably further the public's important interest in monitoring the agency's performance during that tragic event."); Office of the Capital Collateral Counsel v. DOJ, 331 F.3d 799, 804 (11th Cir. 2003) (finding that there is substantial public information available about AUSA's misconduct and that therefore any "public interest in knowing how DOJ responded to [AUSA's] misconduct can be satisfied by this other public information");

weighs in favor of disclosure, several courts including the D.C. Circuit have implicitly recognized that there can be a public interest in the nondisclosure of personal privacy information -- particularly, the public interest in avoiding the impairment of ongoing and future law enforcement investigations.¹⁵⁹

Painting Indus. of Haw. Mkt. Recovery Fund v. U.S. Dep't of the Air Force, 26 F.3d 1479, 1485 (9th Cir. 1994) (union may "pass out fliers" or "post signs or advertisements soliciting information from workers about possible violations of the Davis-Bacon Act"); FLRA v. U.S. Dep't of Commerce, 962 F.2d 1055, 1060 n.2 (D.C. Cir. 1992) (union may "distribute questionnaires or conduct confidential face-to-face interviews" to obtain rating information about employees); Painting & Drywall Work Pres. Fund, Inc. v. HUD, 936 F.2d 1300, 1303 (D.C. Cir. 1991) (contact at workplace is alternative to disclosing home addresses of employees); Multnomah County Med. Soc'y v. Scott, 825 F.2d 1410, 1416 (9th Cir. 1987) (medical society can have members send literature to their patients as alternative to disclosure of identities of all Medicare beneficiaries); ACLU v. DHS, 738 F. Supp 2d 93, 117 (D.D.C. 2010) (noting that "where the privacy interests and public interests in disclosure can be simultaneously protected by withholding the actual handwritten versions of the notes by producing typed renditions, an appropriate balance is reached") (Exemption 7(C)); Chin v. U.S. Dep't of the Air Force, No. 97-2176, slip op. at 4-5 (W.D. La. June 24, 1999) (release of "statistical data and/or general accounts of incidents" would be an alternative to releasing investigative records of named individual to show whether government policies were "administered in an arbitrary manner"); *cf.* Cowdery, Ecker & Murphy, LLC v. Dep't of Interior, 511 F. Supp. 2d 215, 219 (D. Conn. 2007) (stating that "it is not clear from the Department's arguments that other means could adequately provide such information and such an assessment," and so concluding that "this factor weighs in favor of disclosure"); Heat & Frost Insulators & Asbestos Workers, Local 16 v. U.S. Dep't of the Air Force, No. S92-2173, slip op. at 3-4 (E.D. Cal. Oct. 4, 1993) (no alternative to union's request for payroll records -- with names, addresses, and social security numbers redacted -- would allow union to monitor agency's collection of records in compliance with federal regulations); Cotton v. Adams, 798 F. Supp. 22, 27 n.9 (D.D.C. 1992) (suggesting that request for all inspector general reports, from which identifying information could be redacted, would better serve public interest in overseeing discharge of inspector general duties than does request for only two specific investigative reports involving known individuals).

¹⁵⁹ See, e.g., Perlman v. DOJ, 312 F.3d 100, 106 (2d Cir. 2002) ("The strong public interest in encouraging witnesses to participate in future government investigations offsets the weak public interest in learning witness and third party identities.") (Exemptions 6 and 7(C)), cert. granted, vacated & remanded, 541 U.S. 970 (2004), reinstated after remand, 380 F.3d 110 (2d Cir. 2004) (per curiam); Strout v. U.S. Parole Comm'n, 40 F.3d 136, 139 (6th Cir. 1994) ("[T]here would appear to be a public policy interest against such disclosure, as the fear of disclosure to a convicted criminal could have a chilling effect on persons, particularly victims, who would otherwise provide the Commission with information relevant to a parole decision."); Miller v. Bell, 661 F.2d 623, 631 (7th Cir. 1981) (observing that the district court failed to consider "the substantial public interest in maintaining the integrity of future FBI undercover investigations") (Exemption 7(C)); Fund for Constitutional Gov't, 656 F.2d at 865-66 (recognizing that "public interest properly factors into both sides of the balance," and finding that agency properly withheld the identities of government officials investigated but not charged with any crime in "Watergate" investigation) (Exemption 7(C)); Amuso v.

Nexus Between the Requested Information and the Public Interest

The Supreme Court has held that there must be a "nexus between the requested information and the asserted public interest that would be advanced by disclosure."¹⁶⁰

DOJ, 600 F. Supp. 2d 78, 97 (D.D.C. 2009) (stating that "[i]ndividuals involved in law enforcement investigations" and suspects have a "'substantial interest' in the nondisclosure of their identities and connection to a particular investigation"); Diaz v. BOP, No. 01-40070, slip op. at 10 (D. Mass. Dec. 20, 2001) (deciding that there would be "chilling" effect if conversations between inmates and their attorneys were disclosed to public anytime they spoke on monitored prison telephones). *But see* Advocates for Highway & Auto Safety v. Fed. Highway Admin., 818 F. Supp. 2d 122, 131 (D.D.C. 2011) ("The belief that disclosure might impair the government's ability to acquire similar information in the future carries no weight under FOIA Exemption 6, which focuses on individual privacy interests.").

¹⁶⁰ NARA v. Favish, 541 U.S. 157, 172-73 (2004); *see also* Associated Press v. DOD, 554 F.3d at 293 ("We conclude that the public interest in evaluating whether DOD properly followed-up on the detainees' claims of mistaken identity have been adequately served by the disclosure of the redacted information and that disclosing names and addresses of the family members would constitute a clearly unwarranted invasion of the family members' privacy interest because such disclosure would not shed any light on DOD's action in connection with the detainees' claims at issue here."); Abraham & Rose, P.L.C. v. United States, 138 F.3d 1075, 1083 (6th Cir. 1998) (finding that information about individual taxpayers does not serve any possible public interest in "how the IRS exercises its power over the collection of taxes"); Grandison v. DOJ, 600 F. Supp. 2d 109, 117 (D.D.C. 2009) ("Release of the names of law enforcement personnel, witnesses, experts, targets of investigation, court reporters and other court personnel, sheds no light on the working of the government."); Anderson v. DOJ, 518 F. Supp. 2d 1, 14 (D.D.C. 2007) (protecting retired DEA Special Agent's home address because release of the address "in no way would further FOIA's basic purpose"); Sutton v. IRS, No. 05-7177, 2007 WL 30547, at *6 (N.D. Ill. Jan. 4, 2007) (protecting personal information of third-party taxpayers and IRS personnel because "none of their personal information will give Plaintiff a greater understanding of how the agency is performing its duties"); Forest Guardians v. U.S. Dep't of the Interior, No. 02-1003, 2004 WL 3426434, at *17 (D.N.M. Feb. 28, 2004) (finding public interest served by release of financial value of loans and names of financial institutions that issued loans, but "protecting any arguably private personal financial or other information concerning individual [Bureau of Land Management] grazing permittees"); Hecht v. USAID, No. 95-263, 1996 WL 33502232, at *12 (D. Del. Dec. 18, 1996) (determining that the public interest is served by release of redacted contractor's employee data sheets without the names, addresses, and other identifying information of employees); Stabasefski v. United States, 919 F. Supp. 1570, 1575 (M.D. Ga. 1996) (finding that public interest is served by release of redacted vouchers showing amounts of Hurricane Andrew subsistence payment to FAA employees; disclosure of names of employees would shed no additional light on agency activities); Gannett Satellite Info. Network, Inc. v. U.S. Dep't of Educ., No. 90-1392, 1990 WL 251480, at *6 (D.D.C. Dec. 21, 1990) ("If in fact a student has defaulted, [his] name, address, and social security number would reveal nothing about the Department's attempts

That is to say, release of the actual personal information at issue must further the public's understanding of the activity that is the basis for the asserted FOIA public interest in disclosure.¹⁶¹ It is not enough that the information would permit speculative inferences about the conduct of an agency or a government official,¹⁶² or that it might aid the requester in lobbying efforts that would result in passage of laws and thus benefit the public in that respect.¹⁶³ As stated by the Court of Appeals for the Second Circuit in Hopkins v. HUD, "[t]he simple invocation of a legitimate public interest . . . cannot itself justify the release of personal information."¹⁶⁴ The Second Circuit held that instead, "a court must first ascertain whether that interest would be served by disclosure."¹⁶⁵ For example, in NARA v. Favish the Supreme Court recognized that

to collect on those defaulted loans. Nor would [they] reveal anything about the potential misuse of public funds.").

¹⁶¹ See Favish, 541 U.S. at 172 (declaring that requesters "must show the information is likely to advance [a specific, significant public] interest"); Avondale Indus. v. NLRB, 90 F.3d 955, 961-62 (5th Cir. 1996) (declaring that disclosure of marked unredacted voting lists in union representation election would give plaintiff information it needs to determine whether NLRB conducted election tainted with fraud and corruption); Int'l Diatomite Producers Ass'n v. SSA, No. 92-1634, 1993 WL 137286, at *5 (N.D. Cal. Apr. 28, 1993) (finding that release of vital status information concerning diatomite industry workers serves "public interest in evaluating whether public agencies . . . carry out their statutory duties to protect the public from the potential health hazards from crystalline silica exposure").

¹⁶² See DOJ v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 766 n.18 (1989); see also Cozen O'Connor v. Dep't of Treasury, 570 F. Supp. 2d 749, 781 (E.D. Pa. 2008) (stating that "[during information gathering and compilation, government agencies may coincidentally receive personal and private information that has no bearing on their decision-making or operations[,] and "[i]n those instances, the relationship of the information to the individual is not pertinent to the government's workings"); Robbins v. HHS, No. 1:95-cv-3258, slip op. at 8-9 (N.D. Ga. Aug. 12, 1996) (ruling that the possibility that release of names and addresses of rejected social security disability claimants could ultimately reveal the agency's wrongful denial is "too attenuated to outweigh the significant invasion of privacy"), aff'd per curiam, No. 96-9000 (11th Cir. July 8, 1997).

¹⁶³ See Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873, 875 (D.C. Cir. 1989) [hereinafter NARFE].

¹⁶⁴ 929 F.2d 81, 88 (2nd Cir. 1991) (citing Halloran v. VA, 874 F.2d 315, 323 (5th Cir. 1989) (observing that "merely stating that the interest exists in the abstract is not enough; rather, the court should have analyzed how that interest would be served by compelling disclosure").

¹⁶⁵ Id.; see also Favish, 541 U.S. at 172-73 (highlighting "the nexus required between the requested documents and the purported public interest served by disclosure"); World Publ'g Co. v. DOJ, 672 F. 3d 825, 831 (10th Cir. 2012) ("Based upon the purpose of the FOIA, there is little to suggest that disclosure of booking photos would inform citizens of a government agency's adequate performance of its function" or "would significantly assist the public in detecting or deterring any underlying government misconduct.") (Exemption 7(C));

surviving family members had a privacy interest in their close relative's death scene images, and also found there could be a FOIA public interest "in uncovering deficiencies or misfeasance in the Government's investigation" of an apparent suicide that occurred under mysterious circumstances.¹⁶⁶ However, the Court found that the asserted FOIA public interest would not be served by release of the death scene images because the requester failed to "produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred."¹⁶⁷ Without such a showing, the requester could not establish the requisite nexus, that disclosure of the images at issue would shed light on whether the government's investigation was deficient.¹⁶⁸

Similarly, the Supreme Court in DOJ v. Reporters Committee for Freedom of the Press held that the subject of a criminal history or "rap sheet" possessed a substantial privacy interest in its contents, and that disclosure of this information would not contribute to the public's understanding of the operations or activities of the government.¹⁶⁹ Specifically, the requesters in Reporters Committee argued that information contained in a defense contractor's rap sheet, if it existed, needed to be

Karantsalis v. DOJ, 635 F.3d 497, 504 (11th Cir. 2011) (finding disclosure of booking photographs might satisfy "voyeuristic curiosities," but "would not serve the public interest" as "the facial expression of a prisoner in a booking photograph is [not] a sufficient proxy to evaluate whether a prisoner is receiving preferential treatment") (Exemption 7(C)); Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1056 (D.C. Cir. 2009) (concluding after careful scrutinizing of various assertions of public interest asserted by plaintiff, that "the requested data does not serve any FOIA-related public interest in disclosure"); Schoenman v. FBI, 763 F. Supp. 2d 173, 199 (D.D.C. 2011) (holding disclosure of identities of individuals identified in law enforcement records "shed[s] relatively little light on the performance and activities of the FBI" where "the substantive contents of the records have otherwise been disclosed") (Exemption 7(C)); Vento v. IRS, No. 08-159, 2010 WL 1375279, at *8 (D.V.I. Mar. 31, 2010) ("While Plaintiffs argue they seek this information merely to know what the government is 'up to,' such an argument is plainly disingenuous given the ongoing enforcement proceedings against Plaintiffs.") (Exemption 7(C)); Berger, 487 F. Supp. 2d at 505 (finding that disclosure of an IRS agent's time sheets would do little to serve plaintiff's asserted public interest that the records would shed light on the operations of the IRS in conducting investigations of taxpayers); Associated Press v. DOD, 462 F. Supp. 2d 573, 577-78 (S.D.N.Y. 2006) (finding a strong public interest in information pertaining to the height and weight of Guantanamo Bay detainees, as it would allow the public to assess "not only DOD's conduct with respect to the hunger strikes at Guantanamo, but more generally DOD's care and (literally) feeding of the detainees").

¹⁶⁶ 541 U.S. at 173.

¹⁶⁷ Id. at 174.

¹⁶⁸ Id.

¹⁶⁹ 489 U.S. at 774.

disclosed to the public because (1) the contractor "allegedly had improper dealings with a corrupt Congressman," and (2) the contractor was "an officer of a corporation with defense contracts."¹⁷⁰ The Supreme Court rejected this two-fold public interest claim, commenting that "the rap sheet would [conceivably] provide details to include in a news story, but, in itself . . . [was] not the kind of public interest for which Congress enacted the FOIA."¹⁷¹ It premised this conclusion on the fact that the defense contractor's rap sheet would reveal nothing directly about the behavior of the Congressman with whom the contractor allegedly had an improper relationship, nor would it reveal anything about the conduct of the DOD in awarding contracts to the contractor's company.¹⁷²

¹⁷⁰ Id.

¹⁷¹ Id.

¹⁷² Id.; see, e.g., Long v. OPM, 692 F.3d 185, 194 (2d Cir. 2012) (noting that "an employee's name may be useful for investigating the behavior of individual employees; but courts have been skeptical of recognizing a public interest in this 'derivative' use of information, which is indirect and speculative"); Associated Press, 554 F.3d at 288 ("This Court has similarly said that 'disclosure of information affecting privacy interests is permissible only if the information reveals something directly about the character of a government agency or official.'" (quoting Hopkins, 929 F.2d at 88)); NARFE, 879 F.2d at 879 (finding that names and home addresses of federal annuitants reveal nothing directly about workings of government); Halloran v. VA, 874 F.2d 315, 323 (5th Cir. 1989) ("[M]erely stating that the interest exists in the abstract is not enough; rather, the court should have analyzed how that interest would be served by compelling disclosure . . .") (Exemption 7(C)); Kimberlin v. Dep't of the Treasury, 774 F.2d 204, 208 (7th Cir. 1985) ("The record fails to reflect any benefit which would accrue to the public from disclosure and [the requester's] self-serving assertions of government wrongdoing and coverup do not rise to the level of justifying disclosure.") (Exemption 7(C)); Stern v. FBI, 737 F.2d 84, 92 (D.C. Cir. 1984) (finding that certain specified public interests "would not be satiated in any way" by disclosure) (Exemption 7(C)); Barnard v. DHS, 598 F. Supp. 2d 1, 9 (D.D.C. 2009) ("Where, as here, the nexus between the information sought and the asserted public interest is lacking, the asserted public interests will not outweigh legitimate privacy interests."); Seized Prop. Recovery v. U.S. Customs & Border Prot., 502 F. Supp. 2d 50, 59 (D.D.C. 2007) (stating that there must be a nexus between the information sought under FOIA and the public's ability to learn about the agency's operations) (Exemptions 6 and 7(C)); Elec. Privacy Info. Ctr. v. DHS, 384 F. Supp. 2d 100, 117-18 (D.D.C. 2005) ("Names alone will not shed any light on how the agencies worked with the airlines."); Nation Magazine v. Dep't of State, No. 92-2303, 1995 WL 17660254, at *10 & n.15 (D.D.C. Aug. 18, 1995) ("[T]he public interest in knowing more about [presidential candidate H. Ross] Perot's dealings with the government is also not the type of public interest protected by the FOIA."). But see Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 895 (D.C. Cir. 1995) (finding that agency's response to presidential candidate H. Ross Perot's offer to assist in drug interdiction would serve public interest in knowing about agency's plans to privatize government functions).

Furthermore, in United States Department of State v. Ray,¹⁷³ the Supreme Court recognized that although there was a legitimate public interest in whether the State Department was adequately monitoring the Haitian Government's promise not to prosecute Haitians who were returned to their country after failed attempts to enter the United States, the Court determined that this public interest had been "adequately served" by release of redacted summaries of the agency's interviews with the returnees.¹⁷⁴ The court held that "[t]he addition of the redacted identifying information would not shed any additional light on the Government's conduct of its obligation."¹⁷⁵ Although the plaintiff claimed that disclosure of the identities of the unsuccessful emigrants would allow him to reinterview them and elicit further information concerning their treatment, the Court found "nothing in the record to suggest that a second set of interviews with the already-interviewed returnees would produce any

¹⁷³ 502 U.S. 164 (1991).

¹⁷⁴ Id. at 174.

¹⁷⁵ Id. at 178; see also Prudential Locations LLC v. HUD, No. 09-16995, 2013 WL 5539618, at *7 (9th Cir. Oct. 9, 2013) ("Revealing the identity of a private individual [who wrote an email alleging illegal conduct by a business] does not further the public interest unless it casts light on the conduct of the government."); Associated Press, 554 F.3d at 293 (concluding that "the public interest in evaluating whether DOD properly followed-up on the detainees' claims of mistaken identity have been adequately served by the disclosure of the redacted information and that disclosing names and addresses of the family members would constitute a clearly unwarranted invasion of the family members' privacy interest because such disclosure would not shed any light on DOD's action in connection with the detainees' claims at issue here"); Citizens for Responsibility & Ethics in Wash. v. DOJ, 822 F. Supp. 2d 12, 22 (D.D.C. 2011) (holding any public interest "in knowing the extent to which the BOP and Criminal Division 'sought to prevent Mr. Abramoff from speaking with members of the media'" had "been satisfied by the documents and portions of the documents already released") (quoting Plaintiff's Cross-Motion for Summary Judgment at 15); Am. Small Bus. League v. Dep't of the Interior, No. 11-01880, 2011 U.S. Dist. LEXIS 114752, at *11 (N.D. Cal. Oct. 5, 2011) (finding public interest adequately served by release of redacted OIG report); Seized Prop. Recovery, 502 F. Supp. 2d at 60 (noting that "any documents containing information about Custom's performance or behavior would advance [the public interest of informing the citizenry of how Customs operates] regardless of whether they contained the names and addresses of individuals whose property was subject to forfeiture") (Exemptions 6 and 7(C)); Pub. Citizen, Inc. v. RTC, No. 92-0010, 1993 WL 1617868, at *3-4 (D.D.C. Mar. 19, 1993) (adjudging public interest in agency's compliance with Affordable Housing Disposition Program to be served by release of information with identities of bidders and purchasers redacted). But see Rosenfeld v. DOJ, 57 F.3d 803, 811-12 (9th Cir. 1995) (concluding that disclosure of names of investigative subjects would serve public interest in knowing whether FBI "overzealously" investigated political protest group by allowing comparison of investigative subjects to group's leadership roster) (Exemption 7(C)).

relevant information . . . Mere speculation about hypothetical public benefits cannot outweigh a demonstrably significant invasion of privacy."¹⁷⁶

Courts have found no FOIA public interest for records concerning state or foreign governments¹⁷⁷ or individuals.¹⁷⁸ As the Supreme Court has declared, such information

¹⁷⁶ Ray, 502 U.S. at 178-79; see also Prison Legal News v. EOUSA, 628 F.3d 1243, 1250 (10th Cir. 2011) (holding public interest in disclosure of video and audio files depicting death scene outweighed by survivors' privacy interests, because "[w]hile the BOP's protection of prisoners and the government's discretionary use of taxpayer money may be matters of public interest, there is nothing to suggest the records would add anything new to the public understanding") (Exemption 7(C)); Forest Serv. Employees, 524 F.3d at 1027-28 (finding that plaintiff, who admitted that "the identities of the employees alone will shed no new light on the Forest Service's performance of its duties beyond that which is already publicly known[,] did not persuade the court that "direct contact with the employees would produce any information that has not already been revealed to the public through the four investigations that have already occurred and the three reports that have been publicly released"); Navigator Publ'g v. DOT, 146 F. Supp. 2d 68, 71 (D. Me. 2001) (concluding that release of addresses of merchant mariners licensed by United States would serve only "hypothetical 'derivative use'" that is far outweighed by "demonstrably significant invasion of privacy"), appeal dismissed, No. 01-1939 (1st Cir. Sept. 19, 2001).

¹⁷⁷ See Landano v. DOJ, 956 F.2d 422, 430 (3d Cir. 1992) (stating that there is "no FOIA-recognized public interest in discovering wrongdoing by a state agency") (Exemption 7(C)), cert. denied on Exemption 7(C) question, 506 U.S. 868 (1992), & rev'd & remanded on other grounds, 508 U.S. 165 (1993); Phillips v. Immigration & Customs Enforcement, 385 F. Supp. 2d 296, 305 (S.D.N.Y. 2005) (observing that, although privacy interests of government officials may be lessened by countervailing public interest, that idea "would appear to be inapplicable to former foreign government officials"); McMillian v. BOP, No. 03-1210, 2004 WL 4953170, at 7 n.11 (D.D.C. July 23, 2004) (ruling that the plaintiff's argument that an audiotape would show the misconduct of the District of Columbia Board of Parole was irrelevant because "the FOIA is designed to support the public interest in how agencies of the federal government conduct business"); Garcia v. DOJ, 181 F. Supp. 2d 356, 374 (S.D.N.Y. 2002) (recognizing that the "discovery of wrongdoing at a state as opposed to a federal agency . . . is not a goal of FOIA") (Exemption 7(C)); see also FOIA Update, Vol. XII, No. 2, at 6 (advising that "government" should mean federal government); cf. Lissner v. U.S. Customs Serv., 241 F.3d 1220, 1223 & n.2 (9th Cir. 2001) (finding a public interest in the agency's treatment of city police officers arrested for smuggling steroids, but declining to "address the issue of whether opening up state and local governments to scrutiny also raises a cognizable public interest under the FOIA") (Exemption 7(C)).

¹⁷⁸ Reporters Comm., 489 U.S. at 773; see Bibles v. Or. Natural Desert Ass'n, 519 U.S. 355, 355-56 (1997) (finding that there is no FOIA public interest in "knowing with whom the government has chosen to communicate"); DOD v. FLRA, 510 U.S. 487, 497 (1994) ("Disclosure of the addresses might allow the unions to communicate more effectively with employees, but it would not appreciably further 'the citizens' right to be informed about what their government is up to." (quoting Reporters' Comm., 489 U.S. at 773)); see also, e.g., Consumers' Checkbook, 554 F.3d at 1051 ("[I]nformation about private citizens . . . that reveals little or nothing about an agency's own conduct' does not serve a relevant public

"falls outside the ambit of the public interest that the FOIA was enacted to serve," as it does not directly reveal the operations or activities of the federal government.¹⁷⁹

Derivative Use of the Information

The Supreme Court expressly declined in United States Department of State v. Ray to decide whether a public interest that stems not from the documents themselves but rather from a "derivative use" to which the documents could be put could ever be weighed in the balancing process against a privacy interest.¹⁸⁰ Subsequently, however, the Court of Appeals for the District of Columbia Circuit and several other courts have addressed the "derivative use" issue and ordered the release of personal information despite the fact that the public benefit to be derived from release depended upon the requesters' use of the information to further investigate how the government performs

interest under FOIA." (quoting Reporters Comm., 489 U.S. at 773)); Kishore v. DOJ, 575 F. Supp. 2d 243, 257 (D.D.C. 2008) ("Information about individuals that does not directly reveal the operations or activities of the government-which is the focus of FOIA-'falls outside the ambit of the public interest that the FOIA was enacted to serve' and may be protected under Exemption 7(C)." (quoting Reporters Comm., 489 U.S. at 775)); Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. DOJ, 503 F. Supp. 2d 373, 382 (D.D.C. 2007) ("When the material in the government's control is a compilation of information about private citizens, rather than a record of government actions, there is little legitimate public interest that would outweigh the invasion of privacy because the information reveals little or nothing about an agency's own conduct."); Piper v. DOJ, 428 F. Supp. 2d 1, 3 (D.D.C. 2006) (reasoning that "the public interest in knowing how the Department of Justice . . . handles its investigations 'is served whether or not the names and identifying information of third parties are redacted'"); Iowa Citizens for Cmty. Improvement v. USDA, 256 F. Supp. 2d 946, 951 (S.D. Iowa 2002) (declaring that while a presidential nominee's "fitness for public office may be of great popular concern to the public," such concern "does not translate into a real public interest that is cognizable . . . [under] the FOIA"); Gallant v. NLRB, No. 92-873, slip op. at 8-10 (D.D.C. Nov. 6, 1992) (concluding that disclosure of names of individuals to whom NLRB Member sent letters in attempt to secure reappointment would not add to understanding of NLRB's performance of its duties), aff'd on other grounds, 26 F.3d 168 (D.C. Cir. 1994); Andrews v. DOJ, 769 F. Supp. 314, 316-17 (E.D. Mo. 1991) (finding that although release of an individual's address, telephone number, and place of employment might serve a general public interest in the satisfaction of monetary judgments, "it does not implicate a public interest cognizable under the FOIA"); FOIA Update, Vol. XVIII, No. 1, at 1; ("Supreme Court Rules in Mailing List Case"); FOIA Update, Vol. X, No. 2, at 4, 6 ("OIP Guidance: Privacy Protection Under the Supreme Court's Reporters Committee Decision").

¹⁷⁹ Reporters Comm., 489 U.S. at 775.

¹⁸⁰ 502 U.S. 164, 178-79 (1991); Associated Press v. DOD, 554 F.3d 274, 290 (2d Cir. 2009) (explaining that the "derivative use" theory "posits that the public interest can be read more broadly to include the ability to use redacted information to obtain additional as yet undiscovered information outside the government files").

its duties.¹⁸¹ In ACLU v. DOJ, the D.C. Circuit found that release of certain court docket information could be used to show the "kinds of crimes the government uses cell phone tracking data to investigate" and "how often prosecutions against people who have been tracked are successful."¹⁸² The court found that derivative information from suppression hearings in these cases could show "the efficacy of the technique," the "standards the government uses to justify warrantless tracking," and "the duration of tracking and the quality of tracking data," thus informing "the public discussion concerning the intrusiveness of this investigative tool."¹⁸³ The court reasoned that this was a relevant consideration, and if a court "consider[s] derivative use for evaluating privacy concerns, [then it] must do the same for the public interest."¹⁸⁴ Other courts have found a "derivative use" public interest in the following contexts:

- (1) a list of individuals who sold land to the Fish and Wildlife Service, which could be used to contact the individuals to determine how the agency acquires property throughout the United States;¹⁸⁵
- (2) a list of Haitian nationals returned to Haiti, which could be used for follow-up interviews with the Haitians to learn "whether the INS is

¹⁸¹ See, e.g., ACLU v. DOJ, 655 F.3d 1, 13 (D.C. Cir. 2011); Elec. Frontier Found. v. Office of the Dir. of Nat'l Intelligence, 639 F.3d 876, 887-88 (9th Cir. 2010); W. Watersheds Proj. & Wildearth Guardians v. BLM, et al., No. 09-482, 2010 U.S. Dist. LEXIS 95379, at *40 (D. Id. Sept. 13, 2010); Or. Natural Desert Ass'n v. U.S. Dep't of the Interior, 24 F. Supp. 2d 1088, 1093 (D. Or. 1998) (Exemption 7(C)); Maples v. USDA, No. F 97-5663, slip op. at 14 (E.D. Cal. Jan. 13, 1998); Cardona v. INS, No. 93-3912, 1995 WL 68747, at *3 (N.D. Ill. Feb. 15, 1995); Rosenfeld v. DOJ, 57 F.3d 803, 811-12 (9th Cir. 1995); Weiner v. FBI, No. 83-1720, slip op. at 5-7 (C.D. Cal. Dec. 6, 1995) (Exemptions 6 and 7(C)); Thott v. U.S. Dep't of the Interior, No. 93-0177-B, slip op. at 5-6 (D. Me. Apr. 14, 1994); Ray v. DOJ, 852 F. Supp. 1558, 1564-65 (S.D. Fla. 1994); Urbigkit v. U.S. Dep't of the Interior, No. 93-CV-0232-J, slip op. at 13 (D. Wyo. May 31, 1994); Sun-Sentinel v. DHS, 431 F. Supp. 2d 1258, 1269-73 (S.D. Fla. 2006), aff'd sub nom. News-Press v. DHS, 489 F.3d 1173 (11th Cir. 2007); Lardner v. DOJ, No. 03-0180, 2005 WL 758267, at *17 (D.D.C. Mar. 31, 2005); Baltimore Sun v. U.S. Marshals Serv., 131 F. Supp. 2d 725, 729-30 (D. Md. 2001) (Exemption 7(C)), appeal dismissed voluntarily, No. 01-1537 (4th Cir. June 25, 2001).

¹⁸² 655 F.3d at 13-14 (considering derivative use of docket information, such as case name, case number and court) (Exemption 7(C)).

¹⁸³ Id. at 13-14.

¹⁸⁴ Id. at 16 ("[D]erivative use on the public-benefits side, and derivative use on the personal-privacy side must surely go together." (citing Ray, 502 U.S. 181 (Scalia, J., concurring in part))).

¹⁸⁵ Thott, No. 93-0177-B, slip op. at 5-6 (D. Me. Apr. 14, 1994).

fulfilling its duties not to turn away Haitians who may have valid claims for political asylum;"¹⁸⁶

- (3) a list of citizens who reported wolf sightings, which could be used to monitor the Fish and Wildlife Service's enforcement of the Endangered Species Act;¹⁸⁷
- (4) the names of agents involved in the management and supervision of the FBI's 1972 investigation of John Lennon, which could be used to help determine whether the investigation was politically motivated;¹⁸⁸
- (5) the name and address of an individual who wrote a letter complaining about an immigration assistance company, which could be used to determine whether the INS acted upon the complaint;¹⁸⁹
- (6) the addresses of claimants awarded disaster assistance by FEMA based upon claims of damages from various hurricanes in Florida in 2004, which could be used to uncover further information pertaining to allegations of fraud and wasteful spending in the distribution of disaster assistance by FEMA;¹⁹⁰
- (7) the names of unsuccessful pardon applicants, which would assist the public in analyzing the "circumstances in which the executive chooses to grant or deny a pardon and the factors that bear on that decision;"¹⁹¹
- (8) the "names and addresses [of purchasers of seized property, which] would enable the public to assess law enforcement agencies' exercise of the substantial power to seize property, as well as USMS's performance of its duties regarding disposal of forfeited property;"¹⁹²

¹⁸⁶ Ray, 852 F. Supp. at 1564-65 (distinguishing Supreme Court's decision in Ray, 502 U.S. 164, on the basis that "in the instant case . . . the public interest is not adequately served by release of the redacted logs [and] this Court cannot say that interviewing the returnees would not produce any information concerning our government's conduct during the interdiction process").

¹⁸⁷ Urbigkit, No. 93-CV-0232-J, slip op. at 13 (D. Wyo. May 31, 1994).

¹⁸⁸ Weiner, No. 83-1720, slip op. at 5-7 (C.D. Cal. Dec. 6, 1995).

¹⁸⁹ Cardona v. INS, No. 93-3912, 1995 WL 68747, at *3 (N.D. Ill. Feb. 15, 1995).

¹⁹⁰ Sun-Sentinel, 431 F. Supp. 2d at 1269-73.

¹⁹¹ Lardner, 2005 WL 758267, at *17 (D.D.C. Mar. 31, 2005).

¹⁹² Baltimore Sun, 131 F. Supp. 2d at 729-30.

- (9) the "names and addresses of individuals as well as the addresses of the closely held entities and family owned businesses" which would "allow the public to better understand the scope of the [Department of the Interior, Bureau of Land Management's] grazing program;"¹⁹³
- (10) the identities of individuals investigated by the FBI, which "would make it possible to compare the FBI's investigation [subjects] to a roster of the [Free Speech Movement]'s leadership" to determine "to what extent the FBI investigated individuals for participating in political protests, not federal criminal activity" (Exemption 7(C));¹⁹⁴
- (11) the identities of "well-connected corporate lobbyists," which would enable the public to "determine how the Executive Branch used advice from particular individuals and corporations in reaching its own policy decisions."¹⁹⁵

The Court of Appeals for the Second Circuit expressed skepticism as to whether a "derivative use" can support a public interest under the FOIA. In Associated Press v. DOD, the Second Circuit stated that "[a]lthough this Court has not addressed the issue of whether a 'derivative use' theory is cognizable under FOIA as a valid way by which to assert that a public interest is furthered, we have indicated that it may not be."¹⁹⁶ The Court of Appeals for the Ninth Circuit has at times expressed similar concerns.¹⁹⁷

¹⁹³ W. Watersheds Proj. & Wildearth Guardians, 2010 U.S. Dist. LEXIS 95379, at *40; see also Or. Natural Desert Ass'n, 24 F. Supp. 2d at 1093 (finding that public interest in knowing how agency is enforcing land-management laws is served by release of names of cattle owners who violated federal grazing laws) (Exemption 7(C)); Maples, No. F 97-5663, slip op. at 14 (E.D. Cal. Jan. 13, 1998) (finding that release of names and addresses of permit holders would show public how permit process works and eliminate "suspicions of favoritism in giving out permits" for use of federal lands).

¹⁹⁴ Rosenfeld, 57 F.3d at 812.

¹⁹⁵ Elec. Frontier Found., 639 F.3d at 887-88; cf. Prudential Locations LLC v. HUD, No. 09-16995, 2013 WL 5539618, at *8 (9th Cir. Oct. 9, 2013) (distinguishing the lobbyists in Elec. Frontier Found. from email authors who "did not seek to influence legislation or to change any substantive policy," but rather "alleged violations of an existing federal statute in communications to the federal agency charged with enforcing that statute").

¹⁹⁶ 554 F.3d 274, 290 (2d Cir. 2009); see Hopkins v. HUD, 929 F.2d 81, 88 (2d Cir. 1991) ("[W]e find that disclosure of information affecting privacy interests is permissible only if the information reveals something directly about the character of a government agency or official.")

¹⁹⁷ Lahr v. NTSB, 569 F.3d 964, 979 (9th Cir. 2009) ("The only way that the identities of the eyewitnesses and FBI agents mentioned in the documents already released would have public value is if these individuals were contacted directly by the plaintiff or by the media

Public Servant Accountability

Public oversight of government operations is the essence of public interest under the FOIA, one of the purposes of which is to "check against corruption and to hold the governors accountable to the governed."¹⁹⁸ Accordingly, disclosure of information that informs the public of violations of the public trust has been found to serve a strong public interest and is accorded great weight in the balancing process.¹⁹⁹ The Court of Appeals for the District of Columbia Circuit's decision in Stern v. FBI²⁰⁰ provides guidance for evaluating whether the public's interest in public servant accountability, a distinct category of FOIA public interest, supports disclosure of the identities of federal employees. Although the Stern decision was decided prior to the Supreme Court's decision in DOJ v. Reporters Committee for Freedom of the Press,²⁰¹ the D.C. Circuit subsequently reaffirmed the legitimacy of a FOIA public interest rooted in public servant accountability in Dunkelberger v. DOJ,²⁰² in which it held that even post-

. . . . [S]uch use is insufficient to override the witnesses' and agents' privacy interests, as the disclosure would bring about additional useful information only if direct contacts, furthering the privacy intrusion, are made." (Exemption 7(C)); Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1027-28 (9th Cir. 2008) (finding that "[w]e have previously expressed skepticism at the notion that such derivative use of information can justify disclosure under Exemption 6," and concluding that the plaintiff's theory that "the only way the release of the identities of the Forest Service employees can benefit the public is if the public uses such information to contact the employees directly" is an unjustified reason to release their identities). But see Elec. Frontier Found., 639 F.3d at 887-88 (recognizing derivative use).

¹⁹⁸ NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978); see also ACLU v. DOD, 543 F.3d 59, 66 (2d Cir. 2008) (Exemptions 6 and 7(C)), cert. granted, vacated & remanded on other grounds, 130 S. Ct. 777 (2009); Multi Ag, 515 F.3d at 1232; News-Press v. DHS, 489 F.3d 1173, 1190 (11th Cir. 2007); Arieff v. U.S. Dep't of the Navy, 712 F.2d 1462, 1468 (D.C. Cir. 1983); Wash. Post Co. v. HHS, 690 F.2d 252, 264 (D.C. Cir. 1982); Nat'l Ass'n of Atomic Veterans, Inc. v. Dir., Def. Nuclear Agency, 583 F. Supp. 1483, 1487 (D.D.C. 1984).

¹⁹⁹ See Cochran v. U.S., 770 F.2d 949, 956 (11th Cir. 1985) ("[T]he balance struck under FOIA exemption six overwhelming favors the disclosure of information relating to a violation of the public trust by a government official"); Engberg v. DOJ, No. 10-01775, 2011 WL 4502079, at *7 (M.D. Fla. Aug. 12, 2011) ("When a government official's actions constitute a violation of the public trust, courts favor disclosure.").

²⁰⁰ 737 F.2d 84 (D.C. Cir. 1984).

²⁰¹ 489 U.S. 749 (1989).

²⁰² 906 F.2d 779, 782 (D.C. Cir. 1990) (upholding FBI's refusal to confirm or deny existence of letters of reprimand or suspension for alleged misconduct by undercover agent) (Exemption 7(C)).

Reporters Committee, the D.C. Circuit's Stern decision provides guidance for the balancing of the privacy interests of federal employees found to have committed wrongdoing against the public interest in shedding light on agency activities.²⁰³

In Stern, the court was faced with the question of whether the FBI improperly withheld the identities of three FBI employees identified in letters of censure, which were issued to the employees as the result of an investigation into whether they had engaged in a cover-up of illegal FBI surveillance activities.²⁰⁴ The court found the employees' level of seniority within the FBI and their respective levels of culpability to be particularly relevant in evaluating the extent of the public interest in disclosure.²⁰⁵ After recognizing that all three employees had privacy interests in information relating to their employment evaluations, and a strong interest in "not being associated unwarrantedly with alleged criminal activity," the court found that the agency properly withheld the identities of two lower-level employees who "were found to have contributed only inadvertently to the wrongdoing under investigation."²⁰⁶

However, with regard to the senior level employee, the court reached the opposite conclusion and held:

[I]t would not be an "unwarranted invasion of personal privacy" to reveal his name, despite the potential association with notorious and serious allegations of criminal wrongdoing. He was a high-level employee who was found to have participated deliberately and knowingly in the withholding of damaging information in an important inquiry—an act that he should have known would lead to a misrepresentation by the FBI. The public has a great interest in being enlightened about that type of

²⁰³ Id. at 781; see also Ford v. West, No. 97-1342, 1998 WL 317561, at *2-3 (10th Cir. June 12, 1998) (protecting information about discipline of coworker and finding that redacted information would not inform public about agency's response to racial harassment claim); Kimberlin v. DOJ, 139 F.3d 944, 949 (D.C. Cir. 1998) (protecting information about investigation of staff-level attorney for allegations of unauthorized disclosure of information to media) (Exemption 7(C)); Beck v. DOJ, 997 F.2d 1489, 1494 (D.C. Cir. 1993) (upholding agency's refusal to either confirm or deny existence of records concerning alleged wrongdoing of named DEA agents) (Exemptions 6 and 7(C)); Hunt v. FBI, 972 F.2d 286, 288-90 (9th Cir. 1992) (protecting contents of investigative file of nonsupervisory FBI agent accused of unsubstantiated misconduct) (Exemption 7(C)); Early v. OPR, No. 95-0254, slip op. at 2-3 (D.D.C. Apr. 30, 1996) (upholding OPR's refusal to confirm or deny existence of complaints or investigations concerning performance of professional duties of one United States district court judge and two AUSAs) (Exemption 7(C)), summary affirmance granted, No. 96-5136, 1997 WL 195523 (D.C. Cir. Mar. 31, 1997).

²⁰⁴ 737 F.2d at 86.

²⁰⁵ Id. at 94.

²⁰⁶ Id. at 92, 93.

malfeasance by this senior FBI official—an action called "intolerable" by the FBI—an interest that is not outweighed by his own interest in personal privacy.²⁰⁷

Applying this analysis, courts have followed a general rule that demonstrated wrongdoing of a serious and intentional nature by high-level government officials is of sufficient public interest to outweigh almost any privacy interest of that official.²⁰⁸ By contrast, both serious and less serious misconduct by lower-level agency employees generally have not been considered of sufficient public interest to outweigh the privacy interest of the employee.²⁰⁹ As such, courts customarily have extended protection to the

²⁰⁷ Id. at 94.

²⁰⁸ See, e.g., Perlman v. DOJ, 312 F.3d 100, 107 (2d Cir. 2002) (noting subject of request involved INS General Counsel investigated for allegedly granting improper access and preferential treatment to former INS officials with financial interests in various visa investment firms, and finding that government employee's high rank and responsibility for serious allegations tilted the balance strongly in favor of disclosure) (Exemptions 6 and 7(C)); Ferri v. Bell, 645 F.2d 1213, 1218 (3d Cir. 1981) (finding attempt to expose alleged deal between prosecutor and witness to be in public interest) (Exemption 7(C)), vacated & reinstated in part on reh'g, 671 F.2d 769 (3d Cir. 1982); Columbia Packing Co. v. USDA, 563 F.2d 495, 499 (1st Cir. 1977) (information about federal employees found guilty of accepting bribes); Cowdery, Ecker & Murphy, LLC v. Dep't of Interior, 511 F. Supp. 2d 215, 221 (D. Conn. 2007) (performance evaluation information pertaining to high ranking federal employee charged with wrongdoing); Chang v. Dep't of the Navy, 314 F. Supp. 2d 35, 42-45 (D.D.C. 2004) (information about Naval Commander's nonjudicial punishment for involvement in accident at sea) (Privacy Act "wrongful disclosure" suit); Wood v. FBI, 312 F. Supp. 2d 328, 345-51 (D. Conn. 2004) (identifying information linking FBI Supervisory Special Agent's name with specific findings and disciplinary action taken against him), aff'd in part & rev'd in part, 432 F.3d 78 (2d Cir. 2005); Lurie v. Dep't of the Army, 970 F. Supp. 19, 39-40 (D.D.C. 1997) (information concerning "mid- to high-level" Army medical researcher whose apparent misrepresentation and misconduct contributed to appropriation of \$20,000,000 for particular form of AIDS research); Sullivan v. VA, 617 F. Supp. 258, 260-61 (D.D.C. 1985) (reprimand of senior official for misuse of government vehicle and failure to report accident) (Privacy Act "wrongful disclosure" suit/Exemption 7(C)); Cong. News Syndicate v. DOJ, 438 F. Supp. 538, 544 (D.D.C. 1977) (misconduct by White House staffers).

²⁰⁹ See, e.g., Dep't of the Air Force v. Rose, 425 U.S. 352, 381 (1976) (protecting names of cadets found to have violated Academy honor code); Forest Serv. Employees for Env'tl. Ethics, 524 F.3d at 1025 ("[W]e have placed emphasis on the employee's position in her employer's hierarchical structure as 'lower level officials . . . generally have a stronger interest in personal privacy than do senior officials.'") (quoting Dobronski v. FCC, 17 F.3d 275, 280 n.4 (9th Cir. 1994)); Trentadue v. Integrity Comm., 501 F.3d 1215, 1234 (10th Cir. 2007) (noting "[t]he public interest in learning of a government employee's misconduct increases as one moves up an agency's hierarchical ladder," and concluding that the agency properly withheld identifying information about employees because "[e]ach of these individuals was a low-level employee who committed serious acts of misconduct" and even though "[t]he public interest in learning how law enforcement agencies dealt with these

identities of mid- and low-level federal employees accused of misconduct, as well as to

individuals is very high," the "[d]isclos[ure of] the names of the employees . . . would shed little light on the operation of government"); Hoyos v. United States, No. 98-4178, slip op. at 3 (11th Cir. Feb. 1, 1999) (finding "little public interest in access to [identities of individuals fired from the VA], especially when the reasons for removal -- the information that truly bears upon the agency's conduct, which is the focus of FOIA's concern -- were readily made available"); Beck, 997 F.2d at 1493 ("The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency's own conduct.") (Exemptions 6 and 7(C)); Chamberlain v. Kurtz, 589 F.2d 827, 842 (5th Cir. 1979) (protecting names of disciplined IRS agents); Sensor Sys. Support, Inc. v. FAA, No. 10-262, 2012 WL 424376, at *9 (D.N.H. Feb. 9, 2012) (finding that disclosure of the identity of "a low-level FAA employee" investigated for possible misconduct would "shed little light on the operation of the agency"); Gerstein v. CIA, No. 06-4643, 2011 WL 89337, at *3 (N.D. Cal. Jan. 11, 2011) (holding identity of AUSA properly withheld "[g]iven the level of the employee in question, [and] the lack of intentional misconduct") (Exemption 7(C)); Steese, Evans & Frankel, P.C. v. SEC, No. 10-1071, 2010 U.S. Dist. LEXIS 129401, at 31-32 (D. Colo. Dec. 7, 2010) (holding employee names properly withheld where "the misconduct was not directly related to how the employees performed their official responsibilities, but rather, whether and when they performed them" and the employees' conduct did not reflect on the "'attitude' of the SEC toward fulfillment of its duties and responsibilities"); Coleman v. Lappin, 680 F. Supp. 2d 192, 200 (D.D.C. 2010) ("There exists a public interest in disclosure of information about [an] investigation [of a BOP staff member accused of serious misconduct], but that interest is minimal."); MacLean v. U.S. Dep't of Army, No. 05-1519, 2007 WL 935604, at *13 (S.D. Cal. Mar. 6, 2007) ("Moreover, 'lower level officials . . . generally have a stronger interest in personal privacy than do senior officials,' . . . the public's interest in misconduct by a lower level official is weaker than its interest in misconduct by a senior official." (quoting Dobronski v. FCC, 17 F.3d 275, 280 n.4 (9th Cir. 1994))) (Exemptions 6 and 7(C)); Kimmel v. DOD, No. 04-1551, 2006 WL 1126812, at *3 (D.D.C. Mar. 31, 2006) (protecting names of civilian personnel below level of office director and of military personnel below rank of colonel (or captain in Navy); finding that disclosure of names would not shed any light on subject matter of FOIA request seeking release of documents related to posthumous advancement of Rear Admiral to rank of admiral on retired list of Navy); Buckley v. Schaul, No. 03-03233, slip op. at 8-9 (W.D. Wash. Mar. 8, 2004) (protecting identity of regional counsel alleged to have violated Privacy Act) (Exemptions 6 and 7(C)), aff'd, 135 F. App'x 929 (9th Cir. 2005); Chang, 314 F. Supp. 2d at 44-45 (protecting names and results of punishment of lower-level officers involved in collision of Navy vessel with another ship); Jefferson v. DOJ Office of the Inspector General, No. 01-1418, slip op. at 11 (D.D.C. Nov. 14, 2003) ("A [nonsupervisory] Attorney-Advisor is not a government employee whose rank is so high that the public interest in disclosure of information pertaining to her performance of official government functions outweighs her personal privacy interest in protecting information about the details of a law enforcement investigation of her alleged misconduct.") (Exemption 7(C)); Butler v. DOJ, No. 86-2255, 1994 WL 55621, at *10 (D.D.C. Feb. 3, 1994) (protecting identity of FBI Special Agent who received "mild admonishment" for conduct that "was not particularly egregious"); Cotton, 798 F. Supp. at 26-27 (finding that release of IG reports on conduct of low-level Smithsonian Institution employees would not allow public to evaluate Smithsonian's performance of mission).

the details and results of any internal investigations into such allegations of impropriety.²¹⁰ Furthermore, the D.C. Circuit has held that there is not likely to be strong public interest in disclosure of the names of censured employees when the case has not "occurred against the backdrop of a well-publicized scandal" that has resulted in "widespread knowledge" that certain employees were disciplined.²¹¹

²¹⁰ See, e.g., McCutchen v. HHS, 30 F.3d 183, 187-89 (D.C. Cir. 1994) (protecting identities of both federally and privately employed scientists investigated for possible scientific misconduct) (Exemption 7(C)); Chamberlain, 589 F.2d at 841-42 (protecting names of disciplined IRS agents); MacLean, 2007 WL 935604, at *10-12 (protecting identity of military attorneys who issued illegal subpoenas in court marshal proceedings); Cawthon v. DOJ, No. 05-0567, 2006 WL 581250, at *2-4 (D.D.C. Mar. 9, 2006) (protecting information about two Federal Bureau of Prisons doctors, including records pertaining to malpractice and disciplinary matters); Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv., No. 05-6015, 2005 WL 3488453, at *4 (D. Or. Dec. 21, 2005) (protecting names of public employees in connection with stigmatizing event), aff'd, 524 F.3d 1021 (9th Cir. 2008); Mueller v. U.S. Dep't of the Air Force, 63 F. Supp. 2d 738, 743-45 (E.D. Va. 1999) (unsubstantiated allegations of prosecutorial misconduct) (Exemptions 6 and 7(C)); Chin v. U.S. Dep't of the Air Force, No. 97-2176, slip op. at 3-5 (W.D. La. June 24, 1999) (investigations of fraternization), aff'd per curiam, No. 99-31237 (5th Cir. June 15, 2000); Lurie, 970 F. Supp. at 40 (identities of HIV researchers who played minor role in possible scientific misconduct), appeal dismissed voluntarily, No. 97-5248 (D.C. Cir. Oct. 22, 1997); McLeod v. Peña, No. 94-1924, slip op. at 4-6 (D.D.C. Feb. 9, 1996) (investigation of Coast Guard officer for alleged use of government resources for personal religious activities) (Exemption 7(C)), summary affirmance granted sub nom. McLeod v. U.S. Coast Guard, No. 96-5071, 1997 WL 150096 (D.C. Cir. Feb. 10, 1997); Cotton, 798 F. Supp. at 25-28 (report of Inspector General's investigation of low-level employees of Smithsonian Institution museum shops); Schonberger v. NTSB, 508 F. Supp. 941, 944-45 (D.D.C.) (results of complaint by employee against supervisor), aff'd, 672 F.2d 896 (D.C. Cir. 1981) (unpublished table decision); Iglesias v. CIA, 525 F. Supp. 547, 561 (D.D.C. 1981) (agency attorney's response to Office of Professional Responsibility misconduct allegations). But see Schmidt v. U.S. Air Force, 2007 WL 2812148, at *11 (C.D. Ill. Sept. 20, 2007) (finding that although Air Force officer had a privacy interest in keeping information about his discipline confidential, competing public interest in deadly friendly-fire incident with international effects outweighed that privacy interest and shed light on how the United States government was holding its pilot accountable); Gannett River States Publ'g Corp. v. Bureau of the Nat'l Guard, No. J91-0455, 1992 WL 175235, at *5-6 (S.D. Miss. Mar. 2, 1992) (holding that given previous disclosure of investigative report of helocasting accident, disclosure of actual discipline received would result in "insignificant burden" on soldiers' privacy interests).

²¹¹ Beck, 997 F.2d at 1493-94; see Chin, No. 97-2176, slip op. at 3 (W.D. La. June 24, 1999) (finding a significant privacy interest in records that "document[] personal and intimate incidents of misconduct [that have] not previously been a part of the public domain"), aff'd per curiam, No. 99-31237 (5th Cir. June 15, 2000).

Evidentiary Showing

The Court of Appeals for the District of Columbia Circuit has opined that disclosure of information may be "necessary in order to confirm or refute compelling evidence that the agency is engaged in illegal activity."²¹² At the same time, however, the Supreme Court has held that mere allegations of wrongdoing do not constitute a FOIA public interest and cannot outweigh an individual's privacy interest in avoiding unwarranted association with such allegations.²¹³ In NARA v. Favish, the Supreme

²¹² SafeCard Servs., Inc. v. SEC, 926 F.2d 1197, 1206 (D.C. Cir. 1991) (protecting individuals' identities in absence of such a showing); see also Computer Prof'ls for Soc. Responsibility v. U.S. Secret Serv., 72 F.3d 897, 904-05 (D.C. Cir. 1996) ("[T]he public interest is insubstantial unless the requester puts forward compelling evidence that the agency denying the FOIA request is engaged in illegal activity and shows that the information sought is necessary in order to confirm or refute that evidence") (Exemption 7(C)); cf. Dobronski v. FCC, 17 F.3d 275, 278-80 (9th Cir. 1994) (ordering release of employee's sick leave slips despite fact that requester's allegations of abuse of leave time were wholly based upon unsubstantiated tips).

²¹³ NARA v. Favish, 541 U.S. 157, 175 (2004); see, e.g., Sussman v. USMS, 494 F.3d 1106, 1115 (D.C. Cir. 2007) (finding that USMS properly protected the privacy of various individuals stressing that "[w]hile we find [plaintiff] did in fact allege misconduct, his bare and undeveloped allegations would not warrant a belief by a reasonable person that impropriety might have occurred") (Exemption 7(C)); McCutchen v. HHS, 30 F.3d 183, 187-89 (D.C. Cir. 1994) (protecting identities of scientists found not to have engaged in alleged scientific misconduct) (Exemption 7(C)); Hunt v. FBI, 972 F.2d 286, 288-90 (9th Cir. 1992) (protecting investigation of named FBI agent cleared of charges of misconduct) (Exemption 7(C)); Dunkelberger v. DOJ, 906 F.2d 779, 782 (D.C. Cir. 1990) (same) (Exemption 7(C)); Carter v. Dep't of Commerce, 830 F.2d 388, 391 (D.C. Cir. 1987) (protecting identities of attorneys subject to disciplinary proceedings, which were later dismissed); Bonilla v. DOJ, 798 F. Supp. 2d 1325, 1332 (S.D. Fla. July 25, 2011) (holding speculative allegations of impropriety, found meritless in requester's criminal action, fail to satisfy Favish standard); Harrison v. BOP, No. 07-1543, 2009 WL 1163909, *8 (D.D.C. May 1, 2009) ("Plaintiff's vague allegations of 'fabricated' charges, 'illegal and conspiratorial conduct' between a prison counselor and the BOP officer who screened [plaintiff's] telephone call, his non-specific reference to 'corrupt acts and practices of federal employees,' and his implied suspicions as to the qualifications of the disciplinary hearing officer, do not rise to the level required by the rule articulated in Favish." (quoting plaintiff's filing) (internal citations omitted)); Aguirre v. SEC, 551 F. Supp. 2d 33, 56 (D.D.C. 2008) ("A 'bare suspicion' of agency misconduct is insufficient; the FOIA requester 'must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred'" (quoting Favish, 541 U.S. at 174)); Bullock v. FBI, 587 F. Supp. 2d 250, 253 (D.D.C. 2008) ("Absent strong evidence of official misconduct, the identities of law enforcement officials are protected by Exemption 7(C) Plaintiff's unsupported allegations of official misconduct do not outweigh the privacy interests of these law enforcement officials") (Exemption 7(C)); Barbosa v. DEA, 541 F. Supp. 2d 108, 111-12 (D.D.C. 2008) (stating that plaintiff must present "'more than a bare suspicion' of official misconduct; '[r]ather, the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred' . . . For it

Court observed that if "bare allegations" could be sufficient to satisfy the public interest requirement, then the exemption would be "transformed . . . into nothing more than a rule of pleading."²¹⁴ The court went on to recognize that "allegations of misconduct are 'easy to allege and hard to disprove'"²¹⁵ and that courts therefore must require a "meaningful evidentiary showing" by the FOIA requester.²¹⁶ Specifically:

is "[o]nly when [such evidence is] produced [that] there [will] exist a counterweight on the FOIA scale for the court to balance against the cognizable privacy interests in the requested records" (quoting Favish, 541 U.S. at 174-75)); Buckley v. Schaul, No. 03-03233, slip op. at 10-11 (W.D. Wash. Mar. 8, 2004) ("If these files were released, the public disclosure of allegations of impropriety against [regional counsel] and whomever else, without any findings of actual misconduct, could scar employees' personal and professional reputations") (Exemptions 6 and 7(C)), aff'd, 135 F. App'x 929 (9th Cir. 2005); Edmonds v. FBI, 272 F. Supp. 2d 35, 52 (D.D.C. 2003) (protecting identities of FBI clerical employees and FBI Special Agents because there was no reason to believe that their identities would shed light on alleged misconduct in FBI's language division) (Exemptions 6 and 7(C)), appeal dismissed voluntarily, No. 03-5364, 2004 WL 2806508 (D.C. Cir. Dec. 7, 2004); McQueen v. United States, 264 F. Supp. 2d 502, 533-34 (S.D. Tex. 2003) (deciding that public interest would not be served by "disclosure of information regarding unsubstantiated allegations" made against three government employees) (Exemptions 6 and 7(C)), aff'd, 100 F. App'x 964 (5th Cir. 2004) (per curiam); Pontecorvo v. FBI, No. 00-1511, slip op. at 40 (D.D.C. Sept. 30, 2001) (declining to order disclosure of the identity of an FBI Special Agent under investigation the FBI Office of Professional Responsibility when the investigation was instituted solely "because of Plaintiff's own written request, not the independent determination of the Bureau") (Exemption 7(C)).

²¹⁴ Favish, 541 U.S. at 174; see also Dep't of State v. Ray, 502 U.S. 164, 179 (1991) ("If a totally unsupported suggestion that the interest in finding out whether Government agents have been telling the truth justified disclosure of private materials, Government agencies would have no defense against requests for production of private information.").

²¹⁵ Favish, 541 U.S. at 175 (quoting Crawford-El v. Britton, 523 U.S. 574, 585 (1998)); see also Ray, 502 U.S. at 178-79 (holding that there is presumption of legitimacy given to government conduct, and noting that privacy interests would be worthless if only bare allegations could overcome these interests).

²¹⁶ Favish, 541 U.S. at 175; Cole v. DOJ, No. 04-5329, 2005 U.S. App. LEXIS 7358, at *2-3 (D.C. Cir. Apr. 27, 2005) (holding that requester's asserted public interest "that disclosure of the records is necessary to show prosecutorial misconduct is insufficient to overcome Exemption 7(C), because appellant has failed to put forward a 'meaningful evidentiary showing' that would 'warrant a belief by a reasonable person that the alleged Government impropriety might have occurred'" (quoting Favish, 541 U.S. at 174)); Martin v. DOJ, 488 F.3d 446, 458 (D.C. Cir. 2007) (concluding that "[u]nsubstantiated assertions of government wrongdoing . . . do not establish a meaningful evidentiary showing" (quoting Boyd v. DOJ, 475 F.3d 381, 388 (D.C. Cir. 2007))); Jarvis v. ATF, No. 07-111, 2008 WL 2620741, at *13 (N.D. Fla. June 30, 2008) ("When the significant asserted public interest is to uncover Government misfeasance, there must be a 'meaningful evidentiary showing.'").

[T]he requester must establish more than a bare suspicion in order to obtain disclosure. Rather, the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.²¹⁷

Courts applying this heightened standard to allegations of government misconduct have generally found that plaintiffs have not provided the requisite evidence required by Favish,²¹⁸ while in some cases the standard has been found to be satisfied.²¹⁹

²¹⁷ Favish, 541 U.S. at 174; cf., Citizens for Responsibility & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 74 (holding that as "agency misconduct" was not the asserted basis for disclosure, "[plaintiff] need not produce the compelling evidence of illegal activity that would be required if it had done so") (Exemption 7(C)); Vento v. IRS, 714 F. Supp. 2d 137, 150 (D.D.C. 2010) (concluding that "the improper withholding of requested documents is not the type of government 'impropriety' to which the interest of privacy yields") (Exemption 7(C)); Judicial Watch v. DHS, 598 F. Supp. 2d 93, 97 (D.D.C. 2009) ("The extra burden established by Favish only applies when the requester asserts government negligence or improper conduct.").

²¹⁸ See Hulstein v. DEA, 671 F. 3d 690, 696 (8th Cir. 2012) (finding plaintiff's "casting general aspersions on the fact that the DEA was investigating him" is not a FOIA public interest in disclosure) (Exemption 7(C)); Blackwell v. FBI, 646 F.3d 37, 41 (D.C. Cir. 2011) (finding that plaintiff "has failed to meet the demanding Favish standard," where "[t]he only support [he] offers for his allegation of government misconduct is his own affidavit, which recounts a litany of alleged suspicious circumstances but lacks any substantiation") (Exemption 7(C)); Associated Press v. DOD, 554 F.3d at 289-92 (concluding that redactions of the detainees' identifying information was proper because plaintiff failed to produce sufficient evidence of impropriety by DOD) (Exemption 7(C)); Lane v. Dep't of Interior, 523 F.3d 1128, 1138 (9th Cir. 2008) (finding that because interest in disclosure involved government employee's alleged misconduct, requester was required to "produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred" (quoting Favish, 541 U.S. at 174)); Martin, 488 F.3d at 458 (stating that "[i]f the public interest is government wrongdoing, then the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred" (quoting Boyd v. DOJ, 475 F.3d 381, 387 (D.C. Cir. 2007))); Carpenter v. DOJ, 470 F.3d 434, 442 (1st Cir. 2006) (declaring that valid public interest in disclosure of information relating to allegations of impropriety on part of government officials must be supported by more than mere suspicion improper actions occurred) (Exemption 7(C)); Wood v. FBI, 432 F.3d 78, 89 (2d Cir. 2005) (finding that plaintiff's "unsupported allegations" do not overcome "presumption of legitimacy . . . [of] government actions"); Horowitz v. Peace Corps, 428 F.3d 271, 278 & n.1 (D.C. Cir. 2005) (finding that the plaintiff offered "no further details to support these extremely speculative allegations" and did not "overcome the presumption that the Peace Corps' [] official conduct was proper"); Oguaju v. United States, 378 F.3d 1115, 1117 (D.C. Cir. 2004) (ruling that plaintiff "failed to make the requisite showing" required by Favish), reh'g denied & amended, 386 F.3d 273 (D.C. Cir. 2004) (per curiam); Accuracy in Media, Inc. v. Nat'l Park Serv., 194 F.3d 120, 124 (D.C. Cir. 1999) (discounting inconsistencies in multiple agency reports from complex crime scene as "hardly so shocking as to suggest illegality or deliberate government falsification") (Exemption 7(C)); Schiffer v. FBI, 78 F.3d 1405, 1410

Public Interest in Agency Compliance with Federal Statutes

The Supreme Court has held that requesters seeking to vindicate the policies of another federal statute have not demonstrated a FOIA public interest in disclosure.²²⁰ Specifically, in DOD v. FLRA, two unions requested the names and home addresses of certain DOD employees who worked in bargaining units represented by the unions.²²¹ DOD responded by providing the employee names and work stations, but did not provide the home addresses on the grounds such disclosure would violate the employees

(9th Cir. 1996) (rejecting public interest argument absent evidence suggesting wrongdoing by FBI); Halloran v. VA, 874 F.2d 315, 323 (5th Cir. 1989) (finding that while there is general public interest in the government's interaction with federal contractors, "merely stating that the interest exists in the abstract is not enough"; requesters must show how that interest would be served by compelling disclosure); Lewis v. DOJ, No. 09-0746, 2011 WL 5222896, at *14 (D.D.C. Nov. 2, 2011) (finding "unsupported assertions and speculation" do not constitute "evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred") (quoting Favish, 541 U.S. at 174) (Exemption 7(C)); Schoenman v. FBI, 763 F. Supp. 2d 173, 200 (D.D.C. 2011) (noting plaintiff "failed to present anything remotely approaching [the] quantum of evidence" required under Favish to support allegations of wrongdoing on the part of the FBI) (Exemption 7(C)); Aguirre, 551 F. Supp. 2d at 56 ("A 'bare suspicion' of agency misconduct is insufficient." (quoting Favish, 541 U.S. at 174)); Long v. OPM, No. 05-1522, 2007 WL 2903924, at *18 (N.D.N.Y. Sept. 30, 2007) ("Although plaintiffs have submitted declarations from reporters who . . . have uncovered government wrongdoing, plaintiffs submit no actual evidence of wrongdoing, thus this factor weighs against disclosure"), aff'd, 692 F.3d 185 (2nd Cir. 2012); LaRouche v. DOJ, No. 90-2753, slip op. at 22-23 (D.D.C. Nov. 17, 2000) ("[W]hile the public interest in possible corruption is great, mere inferences of a violation carry little weight"); Wichlacz v. Dep't of Interior, 938 F. Supp. 325, 333 (E.D. Va. 1996) (observing that plaintiff "has set forth no evidence to buttress his bald allegations" of cover-up in investigation of death of former Deputy White House Counsel, a theory substantially undercut by then-ongoing Independent Counsel investigation), aff'd, 114 F.3d 1178 (4th Cir. 1997) (unpublished table decision); Allard v. HHS, No. 4:90-CV-156, slip op. at 10-11 (W.D. Mich. Feb. 14, 1992) (finding that "conclusory allegations" of plaintiff -- a prisoner with violent tendencies -- concerning ex-wife's misuse of children's social security benefits do not establish public interest), aff'd, 972 F.2d 346 (6th Cir. 1992) (unpublished table decision).

²¹⁹ CASA de Maryland, Inc. v. DHS, 409 Fed. App'x 697, 700-01 (4th Cir. 2011) (finding Favish requirement satisfied where requester did provide evidence indicating agency impropriety) (Exemptions 6 and 7(C)); Lardner v. DOJ, 398 Fed. App'x 609, 611 (D.C. Cir. 2010) (per curiam) (finding privacy interests outweighed by the public interest in disclosing the names of unsuccessful clemency applicants "in view of the Inspector General's Report on whether impermissible considerations played a role in pardon determinations").

²²⁰ DOD v. FLRA, 510 U.S. 487 (1994).

²²¹ Id.

privacy.²²² The asserted public interest in disclosure, that the home addresses would facilitate communication between the unions and the bargaining unit employees, which would further the public interest in collective bargaining under the Federal Service Labor-Management Relations statute, was characterized by the Supreme Court as being "negligible, at best."²²³ Noting that only information that contributes significantly to public understanding of government operations or activities constitutes a FOIA public interest, the Court held that "the fact that respondents are seeking to vindicate the policies behind the Labor Statute is irrelevant to the FOIA analysis."²²⁴

Similarly, the Courts of Appeals for the District of Columbia, Second, Third, and Tenth Circuits have found that the public interest in compliance with the Davis-Bacon Act²²⁵ is not a public interest whose significance outweighs competing privacy interests of third parties.²²⁶ For example, in Painting and Drywall Work Preservation Fund, Inc. v. HUD, a nonprofit cooperative of painting and drywall contractors and labor unions requested certified payroll records relating to three HUD-assisted construction projects in an effort to determine whether these projects were in compliance with laws effecting public work projects.²²⁷ Finding that those identified in the certified payroll records had personal privacy interests in their information, the court turned to the public interest in disclosure and found "information that might reveal the failure of contractors to comply with relevant laws does not in itself cast light on what HUD is up to," and was not a "public interest in . . . disclosure that is relevant to this analysis."²²⁸ As to the requester's argument that disclosure could be used to monitor how well the government was enforcing labor statutes, the court acknowledged the possibility that the disclosure

²²² Id.

²²³ Id. at 497; see also Wade v. IRS, 771 F. Supp. 2d 20, 25 (D.D.C. 2011) ("[J]ust as '[d]isclosure of the addresses might [have allowed] the unions to communicate more effectively with employees,' in Federal Labor Relations Authority, the disclosure of the home phone numbers of Enrolled Agents here might, as Plaintiffs argue, help the public at large access greater contact information for Enrolled Agents who complete public tax returns, 'but it would not appreciably further the citizens right to be informed about what their government is up to.'" (quoting DOD v. FLRA, 512 U.S. at 497).

²²⁴ 510 U.S. at 499.

²²⁵ 40 U.S.C. §§ 3141-3144, 3146-3147 (2006) (requiring federal contractors to pay their laborers no less than the prevailing wages for comparable work in their geographical area).

²²⁶ See Sheet Metal Workers Int'l Ass'n, Local No. 19 v. VA, 135 F.3d 891, 903-05 (3d Cir. 1998); Sheet Metal Workers Int'l Ass'n, Local No. 9 v. U.S. Air Force, 63 F.3d 994, 997-98 (10th Cir. 1995); Painting & Drywall Work Pres. Fund, 936 F.2d at 1303; Hopkins v. HUD, 929 F.2d 81, 88 (2nd Cir. 1991).

²²⁷ 936 F.2d at 1301.

²²⁸ Id. at 1303.

of names could serve such a public interest in certain cases, but found that in this case, the requester had alternative means of accessing this information by engaging in "face-to-face conversation[s]" with workers at worksites.²²⁹

Although the Second Circuit found a legitimate public interest in monitoring HUD's enforcement of prevailing wage laws generally, it found that disclosure of the names and addresses of workers employed on HUD-assisted public housing projects would shed no light on the agency's performance of that duty in particular.²³⁰ Faced with the same public interest question, the Ninth Circuit took a different approach but reached the same result.²³¹ The Court of Appeals for the Ninth Circuit found a public interest in monitoring the agency's "diligence in enforcing Davis-Bacon," but found the weight to be given that interest weakened when the public benefit was derived neither directly from the release of the information itself nor from mere tabulation of data or further research, but rather, from personal contact with the individuals whose privacy was at issue.²³²

Courts of Appeals have reached similar conclusions outside the context of federal labor laws. For example, the Ninth Circuit in Minnis v. USDA recognized a valid public interest in the fairness of an agency lottery system that awarded permits to raft down the Rogue River, but found, upon careful analysis, that the release of the names and addresses of the applicants would in no way further that interest.²³³ Similarly, in Heights Community Congress v. VA, the Court of Appeals for the Sixth Circuit found that the release of names and home addresses would result only in the "involuntary personal involvement" of innocent purchasers rather than appreciably furthering a concededly valid public interest in determining whether anyone had engaged in "racial steering."²³⁴

As such, the majority of courts to have considered the question of whether disclosure of personal information serves a FOIA public interest in agency compliance with federal statutes have generally found that where disclosure of personal information reveals nothing "directly about the character of a government agency or official" but

²²⁹ Id.

²³⁰ Hopkins, 929 F.2d at 88.

²³¹ Painting Indus. of Haw. Mkt. Recovery Fund v. U.S. Dep't of the Air Force, 26 F.3d 1479, 1486 (9th Cir. 1994).

²³² Id. at 1485; see also Sheet Metal Workers Int'l Ass'n, Local No. 9, 63 F.3d at 997-98.

²³³ 737 F.2d 784, 787 (9th Cir. 1984).

²³⁴ 732 F.2d 526, 530 (6th Cir. 1984); see Painting Indus., 26 F.3d at 1484-85 (protecting names and addresses of employees on payroll records, and stating that the "additional public benefit the requesters might realize through [contacting the employees] is inextricably intertwined with the invasions of privacy that those contacts will work").

rather, bears only an "attenuated . . . relationship to governmental activity," such an "attenuated public interest in disclosure does not outweigh individuals' privacy interests in their personal information."²³⁵

In conclusion, the identification and assessment of a FOIA public interest is only part of the analysis for determining whether personal information should be protected under the FOIA. If an agency determines that no legitimate FOIA public interest exists, and there is a more than de minimis privacy interest in nondisclosure, then the information should be protected.²³⁶ Alternatively, if a FOIA public interest is found to exist, the next step of the analysis requires the public interest in disclosure to be balanced against the privacy interest in nondisclosure.²³⁷

²³⁵ Hopkins, 929 F.2d at 88; see Sheet Metal Workers Int'l Ass'n, Local No. 19, 135 F.3d at 903-05 (concluding that names, addresses and Social Security numbers included in payroll records did not need to be disclosed to union in order to ensure enforcement of prevailing wage laws); Sheet Metal Workers Int'l Ass'n, Local No. 9, 63 F.3d at 997-98 (same); Painting & Drywall Work Pres. Fund, Inc., 936 F.2d at 1303 ("As information that might reveal the failure of contractors to comply with relevant laws does not in itself cast light on what HUD is up to, we can find no obvious public interest in its disclosure that is relevant to this analysis."); People for the Ethical Treatment of Animals v. NIH, No. 10-1818, 2012 WL 1185730, 9 (D.D.C. Apr. 10, 2012) (assuming arguendo that the Animal Welfare Act and Health Research Extension Acts establish a public interest in knowing "whether those who conduct research on animals are treating them humanely," and finding that disclosure of identities of three named researchers would not serve that interest because information would not reveal anything about the government's own conduct) (quoting plaintiff's memorandum) (Exemption 7(C)); Long v. DOJ, 778 F. Supp. 2d 222, 236 (N.D.N.Y. 2011) (rejecting plaintiffs' claims that "disclosure of the vaccine type and date of administration will shed light on the DOJ's handling of petitions brought under the Vaccine Act"); Kelly v. CIA, No. 00-2498, slip op. at 49-50 (D.D.C. Sept. 25, 2002) (finding that although the "public interest in [the CIA's former] MKULTRA [program] is certainly very high," plaintiff had not demonstrated how disclosing the names of individual test subjects would shed light on the MKULTRA program or CIA activities), appeal on adequacy of search dismissed on procedural grounds, No. 02-5384, 2003 WL 21804101 (D.C. Cir. July 31, 2003).

²³⁶ See Schoenman v. FBI, 573 F. Supp. 2d 119, 149 (D.D.C. 2008) (concluding that information was properly withheld because "something, even a modest privacy interest outweighs nothing every time" (quoting Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989))); Seized Prop. Recovery, 502 F. Supp. 2d at 56 ("If no public interest is found, then withholding the information is proper, even if the privacy interest is only modest."); Carter, Fullerton & Hayes LLC v. FTC, 520 F. Supp. 2d 134, 144-45 (D.D.C. 2007) (Exemptions 6 and 7(C)).; see also FOIA Update, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking").

²³⁷ See Favish, 541 U.S. at 171 ("The term 'unwarranted' requires us to balance the family's privacy interest against the public interest in disclosure.") (Exemption 7(C)).

**Balancing a Privacy Interest in Nondisclosure
Against a Public Interest in Release**

If an agency identifies both a substantial (i.e., more than de minimis) privacy interest in nondisclosure of the requested information and a FOIA public interest in its disclosure (i.e., the information opens agency action to the light of public scrutiny) the two competing interests must be weighed against one another in order to determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy.²³⁸ In other words, identifying a substantial privacy interest and the existence of a FOIA public interest "does not conclude the inquiry; it only moves it along to the point where [the agency] can 'address the question whether the public interest in disclosure outweighs the individual privacy concerns.'"²³⁹ If the privacy interests against disclosure are greater than the public interests in disclosure, the information may be properly withheld; alternatively, if the balance is in favor of disclosure the information should be released.²⁴⁰

As the Supreme Court has held: "Exemption 6 does not protect against disclosure [of] every incidental invasion of privacy, only such disclosures as constitute 'clearly unwarranted' invasions of personal privacy."²⁴¹ In balancing these interests, "the

²³⁸ See DOD v. FLRA, 510 U.S. 487, 495 (1994); DOJ v. Reporters Comm. For Freedom of the Press, 489 U.S. 749, 762 (1989) (discussing balancing in Exemption 7(C) context, which generally employs same balancing test applicable in Exemption 6 cases); Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976); see also FOIA Update, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decision making").

²³⁹ Multi Ag Media LLC v. USDA, 515 F.3d 1224, 1229-30 (D.C. Cir. 2008) (quoting Nat'l Ass'n of Home Builders v. Norton, 309 F.3d 26, 35 (D.C. Cir. 2002); see Reporters Comm., 489 U.S. at 749 (a "court must balance the public interest in disclosure against the interest Congress intended the [e]xemption to protect"); DOD v. FLRA, 510 U.S. at 495 (same); Dep't of State v. Ray, 502 U.S. 164, 175 (1991) (same); Rose 425 U.S. at 372 (same)).

²⁴⁰ See, e.g., Rose, 502 U.S. at 177 (noting that "unless the invasion of privacy is 'clearly unwarranted,' the public interest in disclosure must prevail"); News-Press v. DHS, 489 F.3d 1173, 1205 (11th Cir. 2007) ("In order to affirm withholding the addresses, we would have to find that the privacy interests against disclosure are greater than the public interest in disclosure."); see also Pub. Citizen Health Research Group v. U.S. Dep't of Labor, 591 F.2d 808, 809 (D.C. Cir. 1978) (finding that "[s]ince this is a balancing test, any invasion of privacy can prevail, so long as the public interest balanced against it is sufficiently weaker").

²⁴¹ Rose, 425 U.S. at 382; see, e.g., Ctr. for Biological Diversity v. Office of the USTR, No. 10-35102, 2011 U.S. App. LEXIS 19197, at *9 (9th Cir. Sept.16, 2011) (observing that "[i]n assessing the applicability of Exemption 6 on remand, the district court should 'consider, first, whether the information is contained in a personnel, medical, or similar file, and, second, whether release of the information would constitute a clearly unwarranted invasion of the person's privacy'" and, next, the district court should balance the privacy interests of the individuals identified in the records against the public interest in disclosure)

'clearly unwarranted' language of Exemption 6 weights the scales in favor of disclosure"²⁴² and "creates a 'heavy burden'" for an agency invoking Exemption 6.²⁴³

Although "the presumption in favor of disclosure is as strong [under Exemption 6] as can be found anywhere in the Act,"²⁴⁴ courts have readily protected personal, intimate details of an individual's life. For example, as the Court of Appeals for the District of Columbia Circuit has noted, courts have traditionally upheld the nondisclosure of information concerning "marital status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcoholic consumption, family fights, reputation" and similarly personal information.²⁴⁵ Furthermore, courts have consistently upheld protection for:

- (1) birth dates;²⁴⁶
- (2) religious affiliations;²⁴⁷

(unpublished disposition); Associated Press v. DOD, 554 F.3d 274, 291 (2d Cir. 2009) (same).

²⁴² Ripskis v. HUD, 746 F.2d 1, 3 (D.C. Cir. 1984); see, e.g., Morley v. CIA, 508 F.3d 1108, 1127 (D.C. Cir. 2007) ("Exemption 6's requirement that disclosure be clearly unwarranted instructs us to tilt the balance (of disclosure interests against privacy interests) in favor of disclosure." (quoting Wash. Post Co. v. HHS, 690 F.2d 252, 261 (D.C. Cir. 1982))).

²⁴³ Morley, 508 F.3d at 1127, (quoting Wash. Post Co. v. HHS, 690 F.2d 252, 261 (D.C. Cir. 1982)).

²⁴⁴ Wash. Post Co. v. HHS, 690 F.2d 252, 261 (D.C. Cir. 1982).

²⁴⁵ Rural Hous. Alliance v. USDA, 498 F.2d 73, 77 (D.C. Cir. 1974); see Hardison v. Sec'y of VA, 159 F. App'x 93, 94 (11th Cir. 2005) (dates of marriage and spouses' names); Kortlander v. BLM, No. 10-132, 2011 U.S. Dist. LEXIS 103264, at *29 (D. Mont. Sept. 13, 2011) ("[A]ddresses, social security numbers, dates of birth, criminal histories, past addresses, private signatures, phone numbers, drivers license numbers, motor vehicle identification numbers, fax numbers, private e-mail addresses, credit card number, and eBay and Paypal identifiers.") (Exemptions 6 and 7(C)).

²⁴⁶ See, e.g., Hardison, 159 F. App'x at 93; In Defense of Animals v. NIH, 543 F. Supp. 2d 70, 80 (D.D.C. 2008) ("Exemption 6 allows an agency to withhold documents if they contain personal identifying information, such as 'place of birth, date of birth, date of marriage, employment history, and comparable data'" (quoting U.S. Dep't of State v. Wash. Post Co., 456 U.S. 595, 600)); Judicial Watch, Inc. v. U.S. Dep't of Commerce, 83 F. Supp. 2d 105, 112 (D.D.C. 1999), appeal dismissed voluntarily, No. 99-5054 (D.C. Cir. Sept. 10, 1999).

²⁴⁷ See, e.g., Church of Scientology v. U.S. Dep't of the Army, 611 F.2d 738, 747 (9th Cir. 1979).

- (3) citizenship data;²⁴⁸
- (4) social security numbers;²⁴⁹
- (5) criminal history records;²⁵⁰
- (6) incarceration of United States citizens in foreign prisons;²⁵¹
- (7) identities of crime victims;²⁵²

²⁴⁸ See U.S. Dep't of State v. Wash. Post Co., 456 U.S. 595, 602 (1982) (passport information); Hemenway v. Hughes, 601 F. Supp. 1002, 1006 (D.D.C. 1985) ("Nationals from some countries face persistent discrimination . . . [and] are potential targets for terrorist attacks."); cf. Judicial Watch, Inc. v. Reno, No. 00-0723, 2001 WL 1902811, at *8 (D.D.C. Mar. 30, 2001) (asylum application); Judicial Watch, Inc., 83 F. Supp. 2d at 112 (visa and passport data).

²⁴⁹ See, e.g., Sherman v. U.S. Dep't of the Army, 244 F.3d 357, 365-66 (5th Cir. 2001); Norwood v. FAA, 993 F.2d 570, 575 (6th Cir. 1993); Prison Legal News v. Lappin, 780 F. Supp. 2d 29, 40 (D.D.C. 2011) (finding that "the privacy interest in one's social security number is self-evident"); Schoenman v. FBI, 575 F. Supp. 2d 136, 164 (D.D.C. 2008) (concluding that "the Army has properly invoked FOIA Exemption 6 to withhold the names, birthdates, and social security numbers of government personnel and third parties"); Peay v. DOJ, No. 04-1859, 2006 WL 1805616, at *2 (D.D.C. June 29, 2006) ("The IRS properly applied exemption 6 to the social security numbers of IRS personnel."); Dayton Newspapers, Inc. v. U.S. Dep't of the Navy, No. C-3-95-328, slip op. at 31-38 (S.D. Ohio Sept. 12, 1996); Fid. Nat'l Title Ins. Co. v. HHS, No. 91-5484, slip op. at 6-7 (C.D. Cal. Feb. 13, 1992).

²⁵⁰ See, e.g., Reporters Comm., 489 U.S. at 780; Associated Press v. DOJ, 549 F.3d 62, 66 (2d Cir. 2008) (per curiam) (holding commutation petition exempt from disclosure under Exemptions 6 and 7(C)); Judicial Watch, Inc. v. DOJ, 365 F.3d 1108, 1124-26 (D.C. Cir. 2004) (protecting pardon applications, which include information about crimes committed); Rimmer v. Holder, 10-1106, 2011 U.S. Dist. LEXIS 107883, at *24 (M.D. Tenn. Sept. 22, 2011) (finding that where the public interest implicated by third party records is "negligible," "it is clear that the defendants are properly redacting the names and indentifying information of those connected with the law enforcement investigation") (Exemption 7(C)); Lee v. DOJ, No. 05-1665, 2007 WL 744731, at *2 (D.D.C. Mar. 6, 2007) (withholding list of individuals convicted of serious criminal activity from whom the government attempted to collect restitution).

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²⁵¹ See Harbolt v. Dep't of State, 616 F.2d 772, 774 (5th Cir. 1980).

²⁵² See, e.g., Horowitz v. Peace Corps, 428 F.3d 271, 279-80 (D.C. Cir. 2005) (recognizing that "strong privacy interests are implicated . . . when the individual has reported a sexual assault"); Pickens v. DOJ, No. 11-1168, 2012 U.S. Dist. LEXIS 30449, at *17 (D.S.C. Mar. 7, 2012) (The court "does not see how disclosure of the limited information that has been withheld – identifying information of third parties and the victim of Plaintiff's crimes – would serve the FOIA's underlying purpose, as that information fails to shed light on the

- (8) financial information;²⁵³
- (9) personal landline and cellular telephone numbers;²⁵⁴
- (10) email addresses;²⁵⁵ and

operations of the FBI") (Exemptions 6 and 7(C)); Elliott v. FBI, No. 06-1244, 2007 WL 1302595, at *6 (D.D.C. May 2, 2007) (upholding FBI's withholding of identity of juvenile victim of sexual assault) (Exemption 7(C)).

²⁵³ See, e.g., Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1056 (D.C. Cir. 2009) (concluding that HHS properly withheld information that could reveal total payments received by physicians from Medicare for covered services); Beard v. Espy, No. 94-16748, 1995 WL 792071, at *1 (9th Cir. Dec. 11, 1995); Hill v. USDA, 77 F. Supp. 2d 6, 8-9 (D.D.C. 1999), summary affirmance granted, No. 99-5365, 2000 WL 520724, at *1 (D.C. Cir. Mar. 7, 2000); Kensington Res. & Recovery v. Dep't of Treasury, No. 10-3538, 2011 U.S. Dist. LEXIS 71041 (N.D. Ill. June 30, 2011) (determining that "[t]he disclosure of specific information on the registration records, such as the name, address, or bond serial number would publicize the financial affairs of the individual bondholders" and "would also expose the bondholders to unsolicited attempts by [plaintiff] and other companies to collect the unredeemed bonds"); Green v. United States, 8 F. Supp. 2d 983, 998 (W.D. Mich. 1998), appeal dismissed, No. 98-1568 (6th Cir. Aug. 11, 1998); Stabasefski v. United States, 919 F. Supp. 1570, 1575 (M.D. Ga. 1996); Biase v. Office of Thrift Supervision, No. 93-2521, slip op. at 8-10 (D.N.J. Dec. 10, 1993); Okla. Publ'g Co. v. HUD, No. 87-1935-P, 1988 U.S. Dist. LEXIS 18643, at *4-5 (W.D. Okla. June 17, 1988). But see Reno Newspapers, Inc. v. U.S. Parole Comm'n, No. 09-683, 2011 U.S. Dist. LEXIS 33957, at *16 (D. Nev. Mar. 29, 2011) (holding that agency must release "all segregable" information from a parole applicant's bank statements and other documents submitted to parole officer).

²⁵⁴ See, e.g., Performance Coal Co. v. U.S. Dep't of Labor, No. 10-1698, 2012 WL 746411, * at 8 (D.D.C. Mar. 7, 2012) (holding agency properly withheld names, cell phone numbers, and home phone numbers) (Exemption 7(C)); Nat'l Rt. to Work Legal Def. and Educ. Found., Inc. v. U.S. Dep't of Labor, No. 09-2205, 2011 WL 6148661, at *7 (D.D.C. Dec. 12, 2011) (noting that "there is generally 'a stronger case to be made for the applicability of Exemption 6 to phone numbers . . .'" because "[d]isclosure of these numbers could subject the individuals to 'annoyance, embarrassment, and harassment in the conduct of their official and private lives'" (quoting Marshall v. FBI, No. 10-871, 2011 WL 3497801, at *6 (D.D.C. Aug. 10, 2011))); Lowy v. IRS, No. 10-767, 2011 U.S. Dist. LEXIS 34168, at *51 (N.D. Cal. Mar. 30, 2011) (concluding that agency provided "sufficient justification for the withholding and/or redaction of personal information" such as mobile telephone numbers, bank account numbers of third parties, and similar types of information); Wade v. IRS, 771 F. Supp. 2d 20, 26 (D.D.C. 2011) (determining that the IRS properly withheld the home telephone numbers of third parties who are permitted to practice before the IRS).

²⁵⁵ See Elec. Frontier Found. v. Office of the Dir. of Nat'l Intelligence, 639 F.3d 876, 888 (9th Cir. 2010) (finding that lobbyists' email addresses should be protected from disclosure unless they are the only way to identify the agent in question); Wilson v. United States Air Force, No. 08-324, 2009 WL 4782120, at *4 (E.D. Ky. Dec. 9, 2009)

(11) medical information linked to individuals.²⁵⁶

By contrast, on some occasions, courts have found that the FOIA public interest outweighs even a strong personal privacy interest in the requested records.²⁵⁷

Names and Home Addresses

There are numerous decisions concerning requests for lists of names and home addresses of individuals. Because agencies may neither distinguish between requesters nor limit the use to which disclosed information is put,²⁵⁸ courts have found that an

(finding that signatures, personal phone numbers, personal email addresses, and government email addresses were properly redacted).

²⁵⁶ See, e.g., Yonemoto v. VA, 686 F.3d 681, 696 (9th Cir. 2012) (amended op.) (emails containing information about employee's illness, conditions for disqualifying individual from clinical trial for medication, and employee's complaints about coworker); Wadhwa v. VA, 446 F. App'x 516, 519 (3d Cir. 2011) (per curiam) (unpublished disposition) (third party medical files); McDonnell v. United States, 4 F.3d 1227, 1254 (3d Cir. 1993) ("living individual has a strong privacy interest in withholding his medical records"); Long v. DOJ, 778 F. Supp. 2d 222, 236 (N.D.N.Y. 2011) ("list of vaccine type and date of administration"); Nat'l Sec. News Serv. v. U.S. Dep't of Navy, 584 F. Supp. 2d 94, 97 (D.D.C. 2008) (upholding nondisclosure of hospital patient admission records); Pub. Employees for Envtl. Responsibility v. U.S. Dep't of the Interior, No. 06-182, 2006 WL 3422484, at *4 n.4 (D.D.C. Nov. 28, 2006) (withholding information detailing employee's physical ailments and medical advice regarding those ailments); Sousa v. DOJ, No. 95-375, 1997 U.S. Dist. LEXIS 9010, at *22 (D.D.C. June 18, 1997) (withholding co-defendant's medical records); Hunt v. U.S. Marine Corps, 935 F. Supp. 46, 54 (D.D.C. 1996) (observing that although public may have interest in a political candidate's fitness for office, disclosure of candidate's medical records would not shed light on conduct of Marine Corps).

²⁵⁷ See Roth v. DOJ, 642 F.3d 1161, 1166 (D.C. Cir. 2011) (concluding that "(1) the public has an interest in knowing whether the federal government is withholding information that could corroborate a death-row inmate's claim of innocence, and (2) that interest outweighs the three men's privacy interest in having the FBI not disclose whether it possesses any information linking them to the murders") (Exemption 7(C)); Lardner v. DOJ, 398 F. App'x 609, 610 (D.C. Cir. 2010) (per curiam) (holding that public interest in names of unsuccessful clemency applicants outweighed applicants privacy interests); Rosenfeld v. DOJ, No. 07-3240, 2012 WL 710186, at *8 (N.D. Cal. Mar. 5, 2012) (concluding that any privacy interest in a traffic violation is "outweighed by the public interest in understanding whether the FBI used public resources to compile information, without any apparent law enforcement purpose, to assist Ronald Reagan's political aspirations").

²⁵⁸ See NARA v. Favish, 541 U.S. 157, 174 (2004) ("It must be remembered that once there is disclosure, the information belongs to the general public. There is no mechanism under FOIA for a protective order allowing only the requester to see . . . the information . . . or for proscribing its general dissemination."); Forest Serv. Employees for Envtl. Ethics v. U.S.

analysis of the consequences of disclosure of names and addresses cannot turn on the identity or purpose of the requester.²⁵⁹ The Supreme Court has held that compilations of names and home addresses are protectible under Exemption 6,²⁶⁰ and that specific lists may reveal sensitive information beyond the mere names and addresses of the individuals found on the list.²⁶¹ The Court of Appeals for the District of Columbia Circuit addressed the question of whether disclosure of mailing lists constituted a clearly unwarranted invasion of personal privacy in National Ass'n of Retired Federal Employees v. Horner, and, while stopping short of creating a nondisclosure category for all mailing lists, the D.C. Circuit held that mailing lists consisting of names and home addresses of federal annuitants are categorically withholdable under Exemption 6.²⁶²

Forest Serv., 524 F.3d 1021, 1025 (9th Cir. 2008) ("FOIA provides every member of the public with equal access to public documents and, as such, information released in response to one FOIA request must be released to the public at large.").

²⁵⁹ See Bibles v. Or. Natural Desert Ass'n, 519 U.S. 355, 356 (1997) (finding irrelevant requester's claimed purpose for seeking mailing list in order to disseminate information); Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989) [hereinafter NARFE] (finding irrelevant requester's claimed purpose to use list of federal retirees to aid in its lobbying efforts on behalf of those retirees).

²⁶⁰ See Bibles, 519 U.S. at 355-56 (protecting mailing list of recipients of Bureau of Land Management publication); DOD v. FLRA, 510 U.S. 487, 494, 502 (1994) (protecting names and home addresses of federal employees in union bargaining units); Ray, 502 U.S. at 173-79 (withholding from interview summaries the names and addresses of Haitian refugees interviewed by State Department about treatment upon return to Haiti).

²⁶¹ See Ray, 502 U.S. at 176 (observing that disclosure of a list of Haitian refugees interviewed by the State Department about their treatment upon return to Haiti "would publicly identify the interviewees as people who cooperated with a State Department investigation"); Campaign for Family Farms v. Glickman, 200 F.3d 1180, 1187-88 (8th Cir. 2000) (protecting list of pork producers who signed petition that declared their position on referendum that was sought by petition) (reverse FOIA suit); NARFE, 879 F.2d at 876 (characterizing the list at issue as revealing that each individual on it "is retired or disabled (or the survivor of such a person) and receives a monthly annuity check from the federal Government"); Minnis v. USDA, 737 F.2d 784, 787 (9th Cir. 1984) ("Disclosure would reveal not only the applicants' names and addresses, but also their personal interests in water sports and the out-of-doors"). See generally McDonald v. City of Chicago, 130 S.Ct. 3020, 3105 (2010) (finding "we have long accorded special deference to the privacy of the home") (non-FOIA case); Wilson v. Layne, 526 U.S. 603, 604 (1999) (noting the Fourth Amendment "embodies centuries-old principles of respect for the privacy of the home") (non-FOIA case).

²⁶² NARFE, 879 F.2d at 879; see also Retired Officers Ass'n v. Dep't of the Navy, 744 F. Supp. 1, 2-3 (D.D.C. May 14, 1990) (holding names and home addresses of retired military officers exempt); cf. Reed v. NLRB, 927 F.2d 1249, 1251-52 (D.C. Cir. 1991) (categorically protecting "Excelsior" list (names and addresses of employees eligible to vote in union representation elections)).

In these types of cases, courts have frequently found the asserted public interest too attenuated to overcome the clear privacy interest an individual has in his name and home address.²⁶³ Nevertheless, several lower courts have ordered the disclosure of such information in certain contexts. Some of these courts have found little or no privacy interest in the names and addresses at issue.²⁶⁴ Other courts have ordered the release of such personal information on the rationale that the names and addresses themselves would reveal (or lead to other information that would reveal) how an agency conducted some aspect of its business.²⁶⁵

²⁶³ See Bibles, 519 U.S. at 355-56; DOD v. FLRA, 510 U.S. at 494-502; Ray, 502 U.S. at 173-79.

²⁶⁴ See Nat'l Ass'n of Home Builders v. Norton, 309 F.3d 26, 36 (D.C. Cir. 2002) (finding privacy interest "relatively weak," and determining that public interest in learning about agency's use of owl data is served by release of lot numbers of parcels of land where owls have been spotted, even while acknowledging that the identities of landowners could be determined by use of this information); Avondale Indus. v. NLRB, 90 F.3d 955, 961 (5th Cir. 1996) (finding that names and addresses of voters in union election already were disclosed in voluminous public record); People for the Am. Way Found. v. Nat'l Park Serv., 503 F. Supp. 2d 284, 306 (D.D.C. 2007) (ordering release of names of those who voluntarily submitted comments regarding informational video shown at Lincoln Memorial because "the public interest in knowing who may be exerting influence on National Park Service officials sufficient to convince them to change the video outweighs any privacy interest in one's name"); Baltimore Sun v. U.S. Marshals Serv., 131 F. Supp. 2d 725, 729 (D. Md. 2001) (declaring that purchasers of property previously seized by the government "voluntarily choose to participate in . . . a wholly legal commercial transaction" and "have little to fear in the way of 'harassment, annoyance, or embarrassment'") (Exemption 7(C)), appeal dismissed voluntarily, No. 01-1537 (4th Cir. June 25, 2001); Alliance for the Wild Rockies v. Dep't of the Interior, 53 F. Supp. 2d 32, 36-37 (D.D.C. 1999) (concluding that commenters to proposed rulemaking could have little expectation of privacy when rulemaking notice stated that complete file would be publicly available); Wash. Post Co. v. USDA, 943 F. Supp. 31, 34-36 (D.D.C. Oct. 18, 1996) (finding minimal privacy interest in home addresses at which farmers receiving subsidies under cotton price support program operate their businesses), appeal dismissed voluntarily, No. 96-5373 (D.C. Cir. May 19, 1997); Ackerson & Bishop Chartered v. USDA, No. 92-1068, slip op. at 1 (D.D.C. July 15, 1992) (finding no privacy interest in names of commercial mushroom growers operating under own names).

²⁶⁵ See Columbia Riverkeeper v. FERC, 650 F. Supp. 2d 1121, 1131 (D. Or. 2009) (ordering agency to produce a list of land owner names and addresses where agency has previously posted a similar list on its website and plaintiffs have demonstrated a public interest in release of the list); Baltimore Sun v. U.S. Marshals Serv., 131 F. Supp. 2d 725, 729-30 (D. Md. 2001) (names and addresses of purchasers of property seized by government found to allow public to assess agencies' exercise of their power to seize property and their duty to dispose of such property) (Exemption 7(C)), appeal dismissed voluntarily, No. 01-1537 (4th Cir. June 25, 2001); Or. Natural Desert Ass'n v. U.S. Dep't of the Interior, 24 F. Supp. 2d 1088, 1093 (D. Or. 1998) (names of cattle owners who violated federal grazing laws found to reveal "how government is enforcing and punishing violations of land management laws") (Exemption 7(C)); Maples v. USDA, No. 97-5663, slip op. at 14 (E.D. Cal. Jan. 13, 1998)

For example, the Court of Appeals for the Eleventh Circuit concluded in News-Press v. DHS that disclosure of the addresses of buildings that received disaster assistance from FEMA should be released, but that the names of aid recipients were properly withheld.²⁶⁶ The court recognized that the public had a legitimate interest in knowing whether FEMA appropriately handled billions of dollars in disaster relief claims, especially in light of evidence submitted by the requesters of wasteful or fraudulent spending of disaster assistance funds.²⁶⁷ The court went on to find that the addresses of those structures allegedly damaged would shed light directly on the allegations of impropriety, as those addresses that received disaster relief which were located outside the path of the natural disasters "plainly would raise red flags" regarding FEMA's effectiveness in properly distributing disaster assistance.²⁶⁸

Against this "powerful public interest,"²⁶⁹ the court weighed the privacy interests of aid recipients in the nondisclosure of their home addresses. The Court identified a number of privacy interests threatened by disclosure of the home addresses, including the fact that disclosure of the addresses would allow the public to "link certain information already disclosed by FEMA to particular individuals."²⁷⁰ However, the court found that these privacy interests were not substantial enough to warrant protection under Exemption 6.²⁷¹ In summary, the court stated that "[q]uite simply, the disclosure of the addresses serves a powerful public interest, and the privacy interests extant cannot be said even to rival this public interest, let alone exceed it, so that disclosure would constitute a 'clearly unwarranted' invasion of personal privacy."²⁷² The

(names and addresses of permit holders for use of federal lands "would provide the public with an understanding of how the permit process works"); Urbigkit v. U.S. Dep't of the Interior, No. 93-CV-0232-J, slip op. at 13 (D. Wyo. May 31, 1994) (list of citizens who reported wolf sightings found to show agency activities "with respect to the duties imposed upon it by the Endangered Species Act"); Ray v. DOJ, 852 F. Supp. 1558, 1564-65 (S.D. Fla. 1994) (names and addresses of interdicted Haitians might reveal "information concerning our government's conduct during the interdiction process").

²⁶⁶ 489 F.3d at 1205-06.

²⁶⁷ Id. at 1192.

²⁶⁸ Id. at 1192-96.

²⁶⁹ Id. at 1196.

²⁷⁰ Id. at 1199.

²⁷¹ Id. at 1200.

²⁷² Id. at 1205.

court remarked that in this case it did "not find the balancing calculus to be particularly hard."²⁷³

By contrast, the court held that disclosure of the names of the aid recipients would constitute a "clearly unwarranted invasion of personal privacy."²⁷⁴ Whereas the addresses would shed light directly on whether FEMA improperly disbursed funds, the names of those aid recipients "would provide no further insight into the operations of FEMA."²⁷⁵ As such, the court found that the public's interest in the aid recipient names was "outweighed by the increased privacy risks" posed by disclosure of those names.²⁷⁶

Redacting Identifying Information

Deletion of the identities of individuals mentioned in a document, with release of the remaining material, can provide protection for personal privacy while at the same time opening agency action to the light of public scrutiny.²⁷⁷ For example, in Department of the Air Force v. Rose, the Supreme Court ordered the release of case summaries of disciplinary proceedings, provided that personal identifying information was deleted.²⁷⁸ Similarly, courts have ordered the disclosure of a variety of medical and

²⁷³ Id.

²⁷⁴ Id.

²⁷⁵ Id. at 1205 (quoting Sun-Sentinel Co. v. DHS, 431 F. Supp. 2d 1258, 1271 (S.D. Fla. 2006)).

²⁷⁶ Id.

²⁷⁷ See Carter v. Dep't of Commerce, 830 F.2d 388, 390 (D.C. Cir. 1987) (affirming District Court's finding that redactions were proper where agency had "already given as much [unredacted information] as possible without unduly risking disclosure of the identities of the investigation targets"); Steese, Evans & Frankel, P.C. v. SEC, No. 10-1071, 2010 U.S. Dist. LEXIS 129401, at *34 (D. Colo. Dec. 7, 2010) (noting that "[t]he redacted reports and other information that the SEC has disclosed to date are sufficient to inform the public about the extent and the nature of the employees' misconduct as well as the SEC's response to the same"); see also FOIA Update, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decision making").

²⁷⁸ 425 U.S. 352, 380-81 (1976); see Ripskis v. HUD, 746 F.2d 1, 4 (D.C. Cir. 1984) (noting that agency voluntarily released outstanding performance rating forms with identifying information deleted); Ferrigno v. DHS, No. 09-5878, 2011 WL 1345168, at *9 (S.D.N.Y. Mar. 29, 2011) (holding identity of supervisor in employment-related harassment complaint could be withheld because "the Supervisor's somewhat low rank, the relatively minor charge against him, and the weakness of the evidence all weigh against disclosure"); Aldridge v. U.S. Comm'r of Internal Revenue, No. 7:00-CV-131, 2001 WL 196965, at *3 (N.D. Tex. Feb. 23, 2001) (determining that privacy interests of employees recommended for discipline could be protected by redacting their names); Hecht v. USAID, No. 95-263, 1996 WL 33502232, at *12 (D. Del. Dec. 18, 1996) (finding that privacy interests of government

health-related data after deletion of any item identifiable to a specific individual.²⁷⁹ Similarly, documents voluntarily submitted to the government by private citizens have been held releasable, as long as redactions are made of personally identifying information.²⁸⁰

Nevertheless, in some situations the deletion of personal identifying information may not be adequate to provide necessary privacy protection.²⁸¹ The Supreme Court recognized this in Rose, and specifically held that if the District Court determined on remand that the deletions of personal references were not sufficient to safeguard

contractor's employees could be protected by withholding their names and addresses from biographical data sheets); Church of Scientology v. IRS, 816 F. Supp. 1138, 1160 (W.D. Tex. 1993) (ordering agency to protect employees' privacy interests in their handwriting by typing handwritten records at requester's expense).

²⁷⁹ See Arieff v. U.S. Dep't of the Navy, 712 F.2d 1462, 1468-69 (D.C. Cir. 1983) (ordering disclosure of computerized lists of numbers and types of drugs routinely ordered by the congressional pharmacy); see also Dayton Newspapers, Inc. v. Dep't of the Air Force, 35 F. Supp. 2d 1033, 1035 (S.D. Ohio 1998) (ordering release of militarywide medical tort-claims database with "claimants' names, social security numbers, home addresses, home/work telephone numbers and places of employment" redacted); Chi. Tribune Co. v. HHS, No. 95 C 3917, 1997 WL 1137641, at *18-19 (N.D. Ill. Feb. 26, 1997) (magistrate's recommendation) (ordering release of patient data forms that identify patients only by nine-digit encoded "Study Numbers"), adopted, (N.D. Ill. Mar. 28, 1997); Minnotech Corp. v. HHS, No. 92-2720, slip op. at 5 (D.D.C. Nov. 17, 1993) (ordering release of FDA studies concerning mortality rates and use of kidney dialyzers with names, addresses, places of birth, and last four digits of social security numbers deleted); Frets v. Dep't of Transp., No. 88-404-W-9, 1989 WL 222608, at *5 (W.D. Mo. Dec. 14, 1989) (ordering disclosure of drug reports of air traffic controllers with identities deleted); Citizens for Env'tl. Quality v. USDA, 602 F. Supp. 534, 538-39 (D.D.C. 1984) (ordering disclosure of health test results because identity of single agency employee tested could not, after deletion of his name, be ascertained from any information known outside appropriate part of agency (citing Rose, 425 U.S. at 380 n.19 (dicta))).

²⁸⁰ See Billington v. DOJ, 258 F. App'x 348, 349 (D.C. Cir. 2007); see also Carter, Fullerton & Hayes LLC v. FTC, 520 F. Supp. 2d 134, 148 (D.D.C. 2007) (finding agency properly released text of consumer complaints while redacting personal information pertaining to individual complainants).

²⁸¹ See, e.g., Harry v. Dep't of the Army, No. 92-1654, slip op. at 9 (D.D.C. Sept. 13, 1993) (concluding that redaction of ROTC personnel records was not possible because "intimate character" of ROTC corps at university would make records recognizable to requester who was in charge of university's ROTC program); see also Alirez v. NLRB, 676 F.2d 423, 428 (10th Cir. 1982) (finding that deletion of names and other identifying data pertaining to small group of co-workers was simply inadequate to protect them from embarrassment or reprisals because requester could still possibly identify individuals) (Exemption 7(C)).

privacy, then the summaries of disciplinary hearings should not be released.²⁸² Following this line of reasoning, in Carter v. United States Department of Commerce, the Court of Appeals for the District of Columbia Circuit upheld the nondisclosure of public information contained in disciplinary files when the redaction of personal information would not be adequate to protect the privacy of the subjects because the requester could easily obtain and compare unredacted copies of the documents from public sources.²⁸³ Similarly, when the information in question concerns a small group of individuals who are known to each other and easily identifiable from the details contained in the information, redaction might not adequately protect privacy interests.²⁸⁴

²⁸² 425 U.S. at 381; see also, e.g., ACLU v. DOD, 389 F. Supp. 2d 547, 572 (S.D.N.Y. 2005) (declaring that for certain photographic and video images, "where the context compelled the conclusion that individual recognition could not be prevented without redaction so extensive as to render the images meaningless, [the court orders] those images not to be produced").

²⁸³ Carter v. U.S. Dep't of Commerce, 830 F.2d 388, 391 (D.C. Cir. 1987); see also, e.g., Marzen v. HHS, 825 F.2d 1148, 1152 (7th Cir. 1987) (concluding that redaction of "identifying characteristics" would not protect the privacy of a deceased infant's family because others could ascertain the identity and "would learn the intimate details connected with the family's ordeal"); Campaign for Family Farms v. Veneman, No. 99-1165, 2001 WL 1631459, at *3 (D. Minn. July 19, 2001) (finding that disclosure of zip codes and dates of signatures could identify signers of petition); Ligorner v. Reno, 2 F. Supp. 2d 400, 405 (S.D.N.Y. 1998) (finding that redaction of a complaint letter to the Office of Professional Responsibility would be inadequate to protect the identities of the individual accused of misconduct and of the accuser, because "public could deduce the identities of the individuals whose names appear in the document from its context").

²⁸⁴ See, e.g., Alirez, 676 F.2d at 428 (finding that mere deletion of names and other identifying data concerning small group of co-workers inadequate to protect them from embarrassment or reprisals because requester could still possibly identify individuals) (Exemption 7(C)); Karantsalis v. U.S. Dep't of Educ., No. 05-22088, slip op. at 4 n.4 (S.D. Fla. Dec. 19, 2005) (reasoning that because the requested document dealt "with a particular, small workplace, and since the contents of the report deal exclusively with confidential personnel matters, it is not possible, as in some cases, merely to excise personally identifying information"); Butler v. SSA, No. 03-0810, slip op. at 6 (W.D. La. June 25, 2004) (protecting complaints made against the requester, "because the employee or employees who complained could have been easily identified by the fact scenarios described in the documents"), aff'd on other grounds, 146 F. App'x 752 (5th Cir. 2005); Rothman v. Dep't of Agric., No. 94-8151, slip op. at 8-9 (C.D. Cal. June 17, 1996) (protecting information in employment applications that pertains to knowledge, skills, and abilities of unsuccessful applicants, because the "field of candidates for this particular position (canine officer) is specialized and is limited to about forty persons who work in same agency and may know each other personally"); McLeod v. Pena, No. 94-1924, slip op. at 6 (D.D.C. Feb. 9, 1996) (concluding that redaction of investigative memoranda and witness statements would not protect privacy when "community of possible witnesses and investigators is very small" -- eight officers and twenty enlisted personnel) (Exemption 7(C)); Barvick v. Cisneros, 941 F. Supp. 1015, 1021-22 (D. Kan. 1996) (protecting all information about unsuccessful federal

Furthermore, when requested information is "personal and unique" to the subjects of a record, deletion of personal identifying information may not be adequate to provide the necessary privacy protection.²⁸⁵ Indeed, a determination of what constitutes identifying information requires both an objective analysis and an analysis "from the vantage point of those familiar with the mentioned individuals."²⁸⁶

"Glomar" Responses

In some circumstances a FOIA request can be narrowly targeted so that by its very terms it is limited to privacy-sensitive information pertaining to an identified or identifiable individual. In such circumstances, redaction would not be adequate to protect the personal privacy interests at risk,²⁸⁷ and an agency may have to invoke the

job applicants because any information about members of "select group" that applies for such job could identify them).

²⁸⁵ See Whitehouse v. U.S. Dep't of Labor, 997 F. Supp. 172, 175 (D. Mass. 1998) (discerning "no practical way" to sanitize "personal and unique" medical evaluation reports to prevent identification by knowledgeable reader); see, e.g., Ortiz v. HHS, 874 F. Supp. 570, 573-75 (S.D.N.Y. 1995) (finding that factors such as type style, grammar, syntax, language usage, writing style, and mention of facts "that would reasonably be known only by a few persons" could lead to identification of the author if an anonymous letter were released) (Exemptions 7(C) and 7(D)), aff'd on Exemption 7(D) grounds, 70 F.3d 729 (2d Cir. 1995); Rashid v. DOJ, No. 99-2461, slip op. at 18-19 (D.D.C. June 12, 2001) (concluding "deletion of personal identifying information, such as names and addresses, may not be adequate to provide the necessary privacy protection").

²⁸⁶ Cappabianca v. Comm'r, U.S. Customs Serv., 847 F. Supp. 1558, 1565 (M.D. Fla. 1994). But see ACLU v. DOD, 389 F. Supp. 2d at 572 ("If, because someone sees the redacted pictures and remembers from earlier versions leaked to, or otherwise obtained by, the media that his image, or someone else's, may have been redacted from the picture, the intrusion into personal privacy is marginal and speculative, arising from the event itself and not the redacted image.").

²⁸⁷ See, e.g., Hunt v. FBI, 972 F.2d 286, 288 (9th Cir. 1992) (holding that "public availability" of an accused FBI agent's name does not defeat privacy protection and "would make redactions of [the agent's name in] the file a pointless exercise"); MacLean v. DOD, No. 04-2425, slip op. at 18 (S.D. Cal. June 2, 2005) (pointing out that deletion of identity of named subject of request from professional responsibility file "would be pointless") (Exemptions 6 and 7(C)); Buckley v. Schaul, No. 03-03233, slip op. at 9 (W.D. Wash. Mar. 8, 2004) (finding that even with redactions, the "disclosure of investigative files coupled with the public availability of Plaintiff's FOIA request naming [regional counsel]" would not adequately protect privacy interests) (Exemptions 6 and 7(C)); Claudio v. SSA, No. H-98-1911, 2000 WL 33379041, at *8 (S.D. Tex. May 24, 2000) (observing that redaction of documents concerning named subject "would prove meaningless"); Mueller v. U.S. Dep't of the Air Force, 63 F. Supp. 2d 738, 744 (E.D. Va. 1999) (noting that when requested documents relate to a specific individual, "deleting [her] name from the disclosed

"Glomar" response, i.e., neither confirm nor deny the existence of any responsive records.²⁸⁸ Courts have endorsed Glomar responses to requests seeking records that might reveal whether an individual government employee was investigated for misconduct or disciplined, for example, because even to acknowledge the existence of such records would typically cause an unwarranted invasion of personal privacy.²⁸⁹ The Glomar response was also upheld in a case where the public disclosure of certain information by other agencies "diminished" the privacy of the third party subject, but where the requester failed to make a sufficient showing of public interest to outweigh even that diminished privacy interest.²⁹⁰ Glomar responses are not appropriate, however, when there is a substantial FOIA public interest in the requested information

documents, when it is known that she was the subject of the investigation, would be pointless"); Chin v. U.S. Dep't of the Air Force, No. 97-2176, slip op. at 5 (W.D. La. June 24, 1999) (observing that deletion of identifying information "fails to protect the identity of [the individual] who is named in the FOIA request"), aff'd per curiam, No. 99-31237 (5th Cir. June 15, 2000).

²⁸⁸ See Rahim v. FBI, No. 11-2850, 2013 WL 2393048, at *13 (E.D. La. May 31, 2013) ("Defendants' Glomar response invoking exemptions 6 and 7(C) as to [an alleged informant] was proper.") (Exemptions 6 & 7(C)); Claudio, 2000 WL 33379041, at *8-9 (affirming agency's refusal to confirm or deny existence of any record reflecting any investigation of administrative law judge). See generally FOIA Update, Vol. VII, No. 1, at 3-4 ("OIP Guidance: Privacy 'Glomarization'").

²⁸⁹ Beck v. DOJ, 997 F.2d 1489 (D.C. Cir. 1993) (affirming Glomar response to request for records concerning misconduct by two DEA agents) (Exemptions 6 & 7(C)); Lewis v. DOJ, 733 F. Supp. 2d 97, 112 (D.D.C. 2010) ("If an individual is the target of a FOIA request [for investigative records], the agency to which the FOIA request is submitted may provide a 'Glomar' response, that is, the agency may refuse to confirm or deny the existence of records or information responsive to the FOIA request on the ground that even acknowledging the existence of responsive records constitutes an unwarranted invasion of the targeted individual's personal privacy.") (Exemptions 6 & 7(C)); Smith v. FBI, 663 F. Supp. 2d 1, 5 (D.D.C. 2009) ("Because . . . confirmation of records concerning '[a]ny adverse action or disciplinary reports on [named] Agent . . .' would necessarily reveal the precise information Exemption 6 shields, the Glomar response was proper.") (Exemptions 6 & 7(C)); Cawthon v. DOJ, No. 05-0567, 2006 WL 581250, at *4 (D.D.C. March 9, 2006) (holding that, with respect to a request for malpractice information, "defendant properly invoked exemption 6 with respect to . . . its Glomar response [as to information maintained in the National Practitioner Data Bank]") (Exemptions 6 & 7(C)).

²⁹⁰ See Taplin v. DOJ, No. 12-1815, 2013 WL 4804490, at *5 (D.D.C. Sept. 10, 2013) (finding that although "it is the law of this circuit that another agency's disclosure cannot altogether preclude [an agency] from asserting a Glomar response, the rule does not speak to the much narrower issue of whether such a disclosure can diminish a third party's privacy interest" and holding that third party's "privacy interest exists in a diminished capacity" where disclosures were made about him by judge and in sheriff's report, but finding that plaintiff had failed to establish public interest in disclosure sufficient to override even that diminished privacy interest) (Exemption 7(C)).

that outweighs the privacy interest.²⁹¹ (For a detailed explanation of the "Glomar" response used in protecting privacy interests in law enforcement records, see the discussion in the chapter on [Exemption 7\(C\)](#).)

²⁹¹ See Roth v. DOJ, 642 F.3d 1161, 1176 (D.C. Cir. 2011) (holding that the public's "general interest in knowing whether the FBI [wa]s withholding information" that could corroborate death-row inmate's claim of innocence overcame the FBI's Glomar response for three named individuals) (Exemption 7(C)); Parker v. EOUSA, 852 F. Supp. 2d 1, 10-13 (D.D.C. 2012) (finding that although an AUSA "has a valid privacy interest at stake in DOJ's disclosure of disciplinary documents about her," there is a countervailing "public interest in knowing how DOJ handles the investigation of unlicensed attorneys").