

there was a showing of misconduct by law enforcement personnel, courts have found that disclosure must serve a public interest that is greater than the strong privacy interests of these employees and with lower level employees in particular, privacy protection is still often afforded.²³ Conversely, when a court does find that a plaintiff has demonstrated significant misconduct by a government official, particularly when that official is a higher-level employee, courts have found that disclosure would serve a public interest and have ordered release of the names.²⁴ Courts have also ordered disclosure in other contexts when they find that there

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government may neither confirm nor deny existence of records concerning results of INS investigation of alleged misconduct of employee); see also Favish, 541 U.S. at 173-75 (holding that requester who asserts a "government misconduct public interest" must produce evidence that would be deemed believable by a "reasonable person" for there to exist a "counterweight on the FOIA scale for the court to balance against the cognizable privacy interests in the requested records"); Aldridge, 2001 WL 196965, at *3 (ordering disclosure of recommendation concerning potential disciplinary action against IRS employees, but with individuals' names redacted).

²³ See Trentadue v. Integrity Comm., 501 F.3d 1215, 1234-36 (10th Cir. 2007) (finding that protection of "low-level" employees "who committed serious acts of misconduct" was proper, as disclosure of their names "would shed little light on the operation of the government"), reh'g denied, No. 04-4200, 2007 WL 4800708 (Nov. 20, 2007); People for the Ethical Treatment of Animals v. USDA, No. 06-930, 2007 WL 1720136, at *6 (D.D.C. June 11, 2007) (protecting identities of "low-level [agency] inspectors who engaged in misconduct in performing slaughterhouse inspections," since inspectors were not "high-level employees" and it was not a "well-publicized scandal"); Jefferson v. DOJ, No. 01-1418, slip op. at 11 (D.D.C. Nov. 14, 2003) (protecting details of IG investigation of government attorney-advisor with no decisionmaking authority as employee whose rank was not so high that public interest in disclosure could outweigh personal privacy interest in learning of any investigated alleged misconduct).

²⁴ See, e.g., Perlman v. DOJ, 312 F.3d 100, 107-09 (2d Cir. 2002) (ordering release of extensive details concerning IG investigation of former INS general counsel who was implicated in wrongdoing, and enunciating five-factor test to balance government employee's privacy interest against public interest in disclosure, including employee's rank, degree of wrongdoing and strength of evidence, availability of information, whether information sheds light on government activity, and whether information is related to job function or is personal in nature); Stern, 737 F.2d at 94 (ordering release of name of FBI Special Agent-in-Charge who directly participated in intentional wrongdoing, while protecting names of two mid-level agents whose negligence incidentally furthered cover-up); Homick v. DOJ, No. 98-00557, slip op. at 19-27 (N.D. Cal. Sept. 16, 2004) (ordering disclosure of identities of FBI Special Agents, government support personnel, and foreign, state, and local law enforcement officers as plaintiff produced specific evidence warranting a belief by a reasonable person that alleged government impropriety during three prosecutions might have occurred), reconsideration denied, (N.D. Cal. Oct. 27, 2004), appeal dismissed voluntarily, No. 04-17568 (9th Cir. July 5, 2005); Chang v. Dep't of the Navy, 314 F. Supp. 2d 35, 42-45 (D.D.C. 2004) (approving disclosure of details of nonjudicial punishment and letter of reprimand of commander of ship punished for dereliction of duty) (Privacy Act "wrongful disclosure" decision interpreting Exemption 6); Wood v. FBI, 312 F. Supp. 2d 328, 350-51 (D. Conn. 2004) (applying Perlman

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afforded to the identities of informants,³⁵ even when it was shown that "the information

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participants in Witness Security Program, as well as funds authorized to each, because disclosure "would pose a possible danger to the persons named" or "might subject those persons to harassment". But see Cooper Cameron, 280 F.3d at 545, 554 (holding names of three employee-witnesses exempt, yet ordering release of source-identifying content of their statements); Lipman v. United States, No. 3:97-667, slip op. at 3 (M.D. Pa. June 3, 1998) (releasing names of witnesses who testified at trial based upon assumption defendant had already received information under Jencks v. United States, 353 U.S. 657 (1957)), appeal dismissed voluntarily, No. 98-7489 (3d Cir. Feb. 23, 1999).

³⁵ See Fiduccia, 185 F.3d at 1044 (withholding names of informants); Quiñon v. FBI, 86 F.3d 1222, 1227, 1231 (D.C. Cir. 1996) (protecting informants' identities in absence of agency misconduct); Schiffer v. FBI, 78 F.3d 1405, 1410 (9th Cir. 1996) (protecting names of persons who provided information to FBI); Computer Prof'ls, 72 F.3d at 904-05 (protecting names of informants, including name of company that reported crime to police, because disclosure might permit identification of corporate officer who reported crime); Manna, 51 F.3d at 1162 (safeguarding names of informants in La Cosa Nostra case); Jones, 41 F.3d at 246 (protecting informants' identities); McCutchen v. HHS, 30 F.3d 183, 189 (D.C. Cir. 1994) (protecting names of individuals alleging scientific misconduct); Koch v. USPS, No. 93-1487, 1993 U.S. App. LEXIS 26130, at *2 (8th Cir. Oct. 8, 1993) ("The informant's interest in maintaining confidentiality is considerable [because] the informant risked embarrassment, harassment, and emotional and physical retaliation."); Nadler v. DOJ, 955 F.2d 1479, 1490 (11th Cir. 1992) ("Disclosure of the identities of the FBI's sources will disclose a great deal about those sources but in this case will disclose virtually nothing about the conduct of the government."); Coleman v. DOJ, No. 02-79-A, slip op. at 11 (E.D. Va. Oct. 7, 2002) (protecting names and identifying information of people who aided in investigation of Ruby Ridge incident); LaRouche v. DOJ, No. 90-2753, 2001 U.S. Dist. LEXIS 25416, at *21 (D.D.C. July 5, 2001) (finding that informant's handwritten drawings could reveal identity); Gonzalez v. FBI, No. CV F 99-5789, slip op. at 18 (E.D. Cal. Aug. 11, 2000) (finding that privacy interest is not invalidated merely because person is confirmed informant); Unger v. IRS, No. 99-698, 2000 U.S. Dist. LEXIS 5260, at *12 (N.D. Ohio Mar. 28, 2000) (protecting "identities of private citizens who provided information to law enforcement officials"); Petterson v. IRS, No. 98-6020, slip op. at 8 (W.D. Mo. Apr. 22, 1999) (protecting informant's personal data); Pfannenstiel v. FBI, No. 98-0386, slip op. at 7 (D.N.M. Feb. 18, 1999) (withholding identities of confidential informants); Schlabach v. IRS, No. 98-0075, 1998 U.S. Dist. LEXIS 19579, at *2 (E.D. Wash. Nov. 10, 1998) (withholding personal information obtained from private citizens during investigation); Local 32B-32J, Serv. Employees Int'l Union v. GSA, No. 97-8509, 1998 WL 726000, at *9 (S.D.N.Y. Oct. 15, 1998) (finding that disclosure of names of individuals who provided information during investigation may subject them to threats of reprisal); Billington, 11 F. Supp. 2d at 63 (finding that witnesses' privacy interests outweigh public interest, even when witnesses appeared in court or participated in media interview); Thompson v. DOJ, No. 96-1118, slip op. at 24 (D. Kan. July 14, 1998) (protecting names and identifying information about individuals who provided or could provide information concerning investigation); Rosenberg v. Freeh, No. 97-0476, slip op. at 10 (D.D.C. May 13, 1998) (protecting names of individuals who cooperated and actively participated in investigation, as well as of "individuals who provided assistance to the operation because of their occupation or use of their property"); see also Wrenn v. Vanderbilt

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expressly recognizes that the passage of time may actually increase the privacy interest at stake when disclosure would revive information that was once public knowledge but has long since faded from memory.⁴¹

An individual's Exemption 7(C) privacy interest likewise is not extinguished merely because a requester might on his own be able to "piece together" the identities of third parties whose names have been deleted.⁴² Nor do persons mentioned in law enforcement records

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political climate at the time dictated").

⁴¹ See Reporters Comm., 489 U.S. at 767 ("[O]ur cases have also recognized the privacy interest inherent in the nondisclosure of certain information even when the information may at one time have been public."); Rose v. Dep't of the Air Force, 495 F.2d 261, 267 (2d Cir. 1974) (noting that "a person's privacy may be as effectively infringed by reviving dormant memories as by imparting new information") (Exemption 6), aff'd, 425 U.S. 352 (1976); see also Assassination Archives & Research Ctr. v. CIA, 903 F. Supp. 131, 133 (D.D.C. 1995) (finding that passage of thirty or forty years "may actually increase privacy interests, and that even a modest privacy interest will suffice" to protect identities). See generally Favish, 541 U.S. at 173-74 (according full privacy protection without any hesitation, notwithstanding passage of ten years since third party's death).

⁴² Weisberg v. DOJ, 745 F.2d 1476, 1491 (D.C. Cir. 1984); see also Carpenter v. DOJ, 470 F.3d 434, 440 (1st Cir. 2006) (finding that privacy interest of subject is not terminated even if his identity as an informant could arguably be determined from another source); Ford v. West, No. 97-1342, 1998 WL 317561, at *3 (10th Cir. June 12, 1998) (holding fact that requester obtained some information through other channels does not change privacy protection under FOIA and no waiver of third parties' privacy interests due to "inadequate redactions"); L&C Marine, 740 F.2d at 922 ("An individual does not lose his privacy interest under 7(C) because his identity . . . may be discovered through other means."); Lawyer's Comm. for Civil Rights v. U.S. Dep't of the Treasury, No. 07-2590, 2008 WL 4482855, at *21 (N.D. Cal. Sept. 30, 2008) (finding one's privacy interest in potentially embarrassing information is not 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) ("Plaintiff's claim that he personally 'knows' that the individual at issue would not object to the release of his name is legally irrelevant."); Canning v. DOJ, 567 F. Supp. 2d 85, 95 (D.D.C. 2008) (stating that agency's inadvertent failure to redact does not strip third party of privacy interests); Gavin v. SEC, No. 04-4522, 2007 WL 2454156, at *12 (D. Minn. Aug. 23, 2007) (noting that "it is inconsequential that [plaintiff] or the public could deduce the identities of staff members and third parties whose name and personal information have been redacted"); Judicial Watch, Inc. v. FBI, No. 00-745, 2001 U.S. Dist. LEXIS 25732, at *20 (D.D.C. Apr. 20, 2001) ("The fact that the requester might be able to figure out the individuals' identities through other means or that their identities have been disclosed elsewhere does not diminish their privacy interests . . ."); Voinche v. FBI, No. 99-1931, slip op. at 13 n.4 (D.D.C. Nov. 17, 2000) ("The fact that Mr. Voinche [might have] learned of the identity of these individuals by reading a publication does not impair the privacy rights enjoyed by these three people."); Billington v. DOJ, 69 F. Supp. 2d 128, 137 (D.D.C. 1999) (deciding that disclosure of unredacted records due to administrative error did not "diminish the magnitude of the privacy interests of the individuals" involved), aff'd in pertinent part, 233 F.3d 581, 583 (D.C. Cir. 2000)

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lose all their rights to privacy merely because their names have been disclosed.⁴³

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(stating there was "nothing to add to the district court's sound reasoning" with respect to the withholdings under Exemption 7(C)); Cujas, 1998 U.S. Dist. LEXIS 6466, at *9 (reiterating fact that information available elsewhere does not diminish third-party privacy interests in such law enforcement records); Smith v. ATF, 977 F. Supp. 446, 500 (D.D.C. 1997) (finding fact that plaintiff "can guess" names withheld does not waive privacy interest); Master v. FBI, 926 F. Supp. 193, 198-99 (D.D.C. 1996) (protecting subjects of investigative interest even though plaintiffs allegedly know their names), summary affirmance granted, 124 F.3d 1309 (D.C. Cir. 1997) (unpublished table decision); cf. EDUCAP, Inc. v. IRS, No. 07-2106, 2009 WL 416428, at *4 (D.D.C. Feb. 18, 2009) ("There is nothing in the FOIA that precludes the government from relying on an otherwise applicable FOIA exemption when a non-FOIA statute requires disclosure."). But see Cooper Cameron, 280 F.3d at 553 (refusing to protect the content of three employee-witness statements after release of the witnesses' names, even though disclosure would result in linking each employee to his or her statement).

⁴³ See, e.g., Fiduccia, 185 F.3d at 1047 (concluding that privacy interests are not lost by reason of earlier publicity); Halpern, 181 F.3d at 297 ("Confidentiality interests cannot be waived through prior public disclosure . . ."); Kimberlin v. DOJ, 139 F.3d 944, 949 (D.C. Cir. 1998) (finding that even after subject's public acknowledgment of charges and sanction against him, he retained privacy interest in nondisclosure of "details of investigation, of his misconduct, and of his punishment," and in "preventing speculative press reports of his misconduct from receiving authoritative confirmation from official source" (citing Bast v. DOJ, 665 F.2d 1251, 1255 (D.C. Cir. 1981))); Schiffer, 78 F.3d at 1410-11 (deciding fact that much of information in requested documents was made public during related civil suit does not reduce privacy interest); Jones, 41 F.3d at 247 (holding fact that law enforcement employee chose to testify or was required to testify or otherwise come forward in other settings does not amount to personal privacy waiver); Hunt v. FBI, 972 F.2d 286, 288 (9th Cir. 1992) (holding that "public availability" of accused FBI Special Agent's name does not defeat privacy protection and "would make redaction of [the agent's name in] the file a pointless exercise"); Fitzgibbon, 911 F.2d at 768 (concluding fact that CIA or FBI may have released information about individual elsewhere does not diminish the individual's "substantial privacy interests"); Bast, 665 F.2d at 1255 (finding that "previous publicity amounting to journalistic speculation cannot vitiate the FOIA privacy exemption"); Wiggins v. Nat'l Credit Union Admin., No. 05-2332, 2007 U.S. Dist. LEXIS 6367, at *21 (D.D.C. Jan. 30, 2007) (deciding fact that identities of third parties were disclosed in a related criminal trial does not diminish privacy interest); Swope v. DOJ, 439 F. Supp. 2d 1, 6 (D.D.C. 2006) (stating that individual's awareness that telephone conversation is being monitored does not negate privacy rights in further disclosure of personal information); Odle v. DOJ, No. 05-2711, 2006 WL 1344813, at *10 (N.D. Cal. May 17, 2006) (finding that public's knowledge of subject's involvement in trial does not eliminate any privacy interest in further disclosure); Shores v. FBI, 185 F. Supp. 2d 77, 83 (D.D.C. 2002) (deciding that privacy interests are not diminished by the fact that plaintiff "may deduce the identities of individuals through other means or that their identities have already been disclosed" (citing Fitzgibbon, 911 F.2d at 768, and Weisberg, 745 F.2d at 1491)); LaRouche, 2001 U.S. Dist. LEXIS 25416, at *30 (holding that "release of similar information in another case does not warrant disclosure of otherwise properly exempted material"); Ponder v. Reno, No. 98-3097, slip op. at 6 (D.D.C. Jan. 22, 2001) (deciding that the fact that the government "failed

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In Davis v. Department of Justice⁵¹ the D.C. Circuit revisited the issue of agency methods for determining whether a person is still living. In Davis, the D.C. Circuit was presented with an unusual fact pattern in which the request was for audiotapes, not documents.⁵² It accordingly determined that the steps outlined in Schrecker were insufficient when analyzing the tapes, as there is "virtually no chance that a speaker will announce" any personal identifiers during an oral conversation.⁵³ The court concluded that "[i]n determining whether an agency's search is reasonable," courts must consider several factors, specifically "the likelihood that it will yield the sought-after information, the existence of readily available alternatives, and the burden of employing those alternatives."⁵⁴ The court remanded the case in Davis "to permit the agency an opportunity to evaluate the alternatives and either to conduct a further search or to explain satisfactorily why it should not be required to do so."⁵⁵

The District Court for the District of Columbia's recent holding in Schoenman v. FBI⁵⁶ provides a detailed example of the steps agencies can take to comply with the D.C. Circuit's precedent.⁵⁷ In Schoenman, the Navy explained that to the extent the information is discernable from the file, it normally uses either the birth date and applies the "100-year rule," as described above, or uses a Social Security number to consult the list of deceased persons published by the Social Security Administration.⁵⁸ The records at issue in Schoenman did not contain birth dates or Social Security numbers, so the Navy conducted further research on the Internet using the third parties' names as they appeared in the records.⁵⁹ The Navy also articulated the steps taken to determine whether a former employee, whose name appeared in the record, was deceased. Specifically, the Navy contacted the center that stores personnel information for former employees; the Office of Personnel Management, which is responsible for federal civil retired pay; and the president of the Association of Retired Naval Investigative Service Agents to see if he or one of his members knew the individual.⁶⁰ The Navy also conducted numerous searches, including several news searches via LEXIS-NEXIS for obituaries, searches in two human resources databases used by the Navy personnel

⁵¹ 460 F.3d 92.

⁵² Id. at 95.

⁵³ Id. at 104.

⁵⁴ See id. at 105.

⁵⁵ Id.

⁵⁶ 575 F. Supp. 2d 166 (D.D.C. 2008).

⁵⁷ Id. at 177 (warning agency that "it is required to make efforts to ascertain an individual's life status before invoking a privacy interest in connection with FOIA Exemption 7(C)"); see also Schoenman v. FBI, 576 F. Supp. 2d 3, 10 (D.D.C. 2008) (reminding another agency of the same).

⁵⁸ Schoenman, 575 F. Supp. 2d at 177.

⁵⁹ Id.

⁶⁰ Id. at 178.

public interest standard ordinarily has been found not to be satisfied when FOIA requesters seek law enforcement information pertaining to living persons.⁸⁴

Indeed, in Reporters Committee, the Supreme Court emphasized the appropriateness of "categorical balancing" under Exemption 7(C) as a means of achieving "workable rules" for

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INS officials alleged to have deceived members of congressional task force) (Privacy Act wrongful disclosure case), adopted, (D. Vt. Feb. 9, 1999), aff'd, No. 99-6059 (2d Cir. Apr. 6, 2000); Or. Natural Desert Ass'n v. U.S. Dep't of the Interior, 24 F. Supp. 2d 1088, 1093-94 (D. Or. 1998) (finding that public interest in knowing how government enforces and punishes violations of land-management laws outweighs privacy interests of cattle trespassers who admitted violations) (Exemptions 6 and 7(C)).

⁸⁴ See, e.g., Spirko v. USPS, 147 F.3d 992, 999 (D.C. Cir. 1998) (recognizing strong privacy interests of suspects and law enforcement officers when requested documents neither confirm nor refute plaintiff's allegations of government misconduct); Abraham & Rose, 138 F.3d at 1083 (stating that public may have interest in learning how IRS exercises its power over collection of taxes but that this does not mean that identity or other personal information concerning taxpayers will shed light on agency's performance) (Exemption 6); Quiñon v. FBI, 86 F.3d 1222, 1231 (D.C. Cir. 1996) (finding insufficient public interest in disclosing individuals mentioned in FBI files when no evidence of wrongdoing; even if individuals had engaged in wrongdoing, such misconduct would have to shed light on agency's action); Schiffer v. FBI, 78 F.3d 1405, 1410 (9th Cir. 1996) (recognizing "little to no" public interest in disclosure of persons in FBI file, including some who provided information to FBI, when no evidence of FBI wrongdoing); Schwarz v. INTERPOL, No. 94-4111, 1995 U.S. App. LEXIS 3987, at *7 (10th Cir. Feb. 28, 1995) (ruling that disclosure of any possible information about whereabouts of requester's "alleged husband" is not in public interest); Maynard v. CIA, 986 F.2d 547, 566 (1st Cir. 1993) (holding that disclosure of information concerning low-level FBI employees and third parties not in public interest); KTVY-TV v. United States, 919 F.2d 1465, 1470 (10th Cir. 1990) (stating that disclosing identities of witnesses and third parties would not further plaintiff's unsupported theory that post office shootings could have been prevented by postal authorities); Fitzgibbon, 911 F.2d at 768 (stating that "there is no reasonably conceivable way in which the release of one individual's name . . . would allow citizens to know 'what their government is up to'" (quoting Reporters Comm., 489 U.S. at 773)); Pemco Aeroplex, Inc. v. U.S. Dep't of Labor, No. 01-AR-1421, slip op. at 5 (N.D. Ala. Dec. 11, 2001) (finding no public interest in disclosing identities of employees who completed race-discrimination questionnaire); Greenberg v. U.S. Dep't of Treasury, 10 F. Supp. 2d 3, 29 (D.D.C. 1998) (holding that privacy interests of individuals mentioned in FBI surveillance tapes and transcripts obtained in arms-for-hostages investigation clearly outweigh any public interest in disclosure); Stone, 727 F. Supp. at 666-67 (stating that disclosing identities of low-level FBI Special Agents who participated in RFK assassination investigation is not in public interest); see also Fischer v. DOJ, 596 F. Supp. 2d 34, 47 (D.D.C. 2009) (stating that question of whether third party was deceased was irrelevant as plaintiff had not identified any public interest in disclosure); cf. Nation Magazine, 71 F.3d at 895 (finding that "in some, perhaps many" instances when third party seeks information on named individual in law enforcement files, public interest will be "negligible"; but when individual had publicly offered to help agency, disclosure of records concerning that fact might be in public interest by reflecting "agency activity" in how it responded to offer of assistance).

processing FOIA requests.⁸⁵ In so doing, it recognized that entire categories of cases can properly receive uniform disposition "without regard to individual circumstances; the standard virtues of bright-line rules are thus present, and the difficulties attendant to ad hoc adjudication may be avoided."⁸⁶ This approach, in conjunction with other elements of Reporters Committee and traditional Exemption 7(C) principles, subsequently led the D.C. Circuit in SafeCard Services v. SEC to largely eliminate the need for case-by-case balancing in favor of "categorical" withholding of individuals' identities in law enforcement records.⁸⁷

In SafeCard, the plaintiff sought information pertaining to an SEC investigation of manipulation of SafeCard stock, including "names and addresses of third parties mentioned in witness interviews, of customers listed in stock transaction records obtained from investment companies, and of persons in correspondence with the SEC."⁸⁸ Recognizing the fundamentally inherent privacy interest of individuals mentioned in any way in law enforcement files,⁸⁹ the D.C. Circuit found that the plaintiff's asserted public interest -- providing the public "with insight into the SEC's conduct with respect to SafeCard" -- was "not just less substantial [but] insubstantial."⁹⁰ Based upon the Supreme Court's endorsement of categorical rules in Reporters Committee, it then further determined that the identities of individuals who appear in law enforcement files would virtually never be "very probative of an agency's behavior or performance."⁹¹ It observed that such information would serve a "significant" public interest only if "there is compelling evidence that the agency . . . is engaged in illegal activity."⁹² Consequently, the D.C. Circuit held that "unless access to the names and

⁸⁵ 489 U.S. at 776-80.

⁸⁶ Id. at 780. But see also Cooper Cameron, 280 F.3d at 553 (acknowledging that statements to OSHA by employee-witnesses are "a characteristic genus suitable for categorical treatment," yet declining to use categorical approach).

⁸⁷ SafeCard Servs. v. SEC, 926 F.2d 1197, 1206 (D.C. Cir. 1991).

⁸⁸ Id. at 1205.

⁸⁹ Id. (recognizing privacy interests of suspects, witnesses, and investigators).

⁹⁰ Id.

⁹¹ Id.

⁹² Id. at 1206; see also Oguaju v. United States, 288 F.3d 448, 451 (D.C. Cir. 2002) (finding that "exposing a single, garden-variety act of misconduct would not serve the FOIA's purpose of showing 'what the Government is up to'" (quoting Reporters Comm., 489 U.S. at 780)); Quiñon, 86 F.3d at 1231 (finding insufficient public interest in revealing individuals mentioned in FBI files absent evidence of wrongdoing; even if individuals had engaged in wrongdoing, such misconduct would have to shed light on agency's action); McCutchen v. HHS, 30 F.3d 183, 188 (D.C. Cir. 1994) ("Mere desire to review how an agency is doing its job, coupled with allegations that it is not, does not create a public interest sufficient to override the privacy interests protected by Exemption 7(C)."); Davis v. DOJ, 968 F.2d 1276, 1282 (D.C. Cir. 1992) (holding that "when . . . governmental misconduct is alleged as the justification for disclosure, the public interest is 'insubstantial' unless the requester puts forward 'compelling evidence

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law enforcement record.¹⁰¹

In employing privacy "Glomarization," however, agencies must be careful to use it only to the extent that is warranted by the terms of the particular FOIA request at hand.¹⁰² For a

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individuals who testified at public trial and finding plaintiff's argument that testimony was false unavailing); Juste v. DOJ, No. 03-723 (D.D.C. Jan. 30, 2004) (finding that agency properly refused to confirm or deny existence of records on third parties who testified at plaintiff's trial); see also Meserve v. DOJ, No. 04-1844, 2006 U.S. Dist. LEXIS 56732, at *19-22 (D.D.C. Aug. 14, 2006) (concluding that while agency confirmed existence of records relating to third party's participation at public trial, it also properly provided "Glomar" response for any additional documents concerning third party).

¹⁰⁰ See, e.g., DOJ v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 775 (1989) (upholding FBI's refusal to confirm or deny that it maintained "rap sheets" on named individual); Schwarz v. INTERPOL, No. 94-4111, 1995 U.S. App. LEXIS 3987, at *7 (10th Cir. Feb. 28, 1995) (holding "Glomar" response proper for third-party request for file of requester's "alleged husband" when no public interest shown); Massey v. FBI, 3 F.3d 620, 624 (2d Cir. 1993) (declaring that "individuals have substantial privacy interests in information that either confirms or suggests that they have been subject to criminal investigations or proceedings"); Schwarz v. U.S. Dep't of Treasury, 131 F. Supp. 2d 142, 150 (D.D.C. 2000) (finding that "Glomar" response is proper in connection with request for third party's law enforcement records); Claudio v. SSA, No. H-98-1911, slip op. at 16 (S.D. Tex. May 24, 2000) (holding "Glomar" response proper when request sought any investigatory records about administrative law judge); Greenberg v. U.S. Dep't of Treasury, 10 F. Supp. 2d 3, 24 (D.D.C. 1998) (holding "Glomar" response appropriate when existence of records would link named individuals with taking of American hostages in Iran and disclosure would not shed light on agency's performance); Early v. OPR, No. 95-0254, slip op. at 3 (D.D.C. Apr. 30, 1996) (concluding that "Glomar" response concerning possible complaints against or investigations of judge and three named federal employees was proper absent any public interest in disclosure), summary affirmance granted, No. 96-5136, 1997 WL 195523 (D.C. Cir. Mar. 31, 1997); Latshaw v. FBI, No. 93-571, slip op. at 1 (W.D. Pa. Feb. 21, 1994) (deciding that FBI may refuse to confirm or deny existence of any law enforcement records on third party), aff'd, 40 F.3d 1240 (3d Cir. 1994) (unpublished table decision).

¹⁰¹ See, e.g., Jefferson v. DOJ, 168 F. App'x 448 (D.C. Cir. 2005) (affirming district court judgment that agency, after processing responsive documents, could refuse to confirm or deny existence of any additional mention of third party in its investigative database); Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 894 (D.C. Cir. 1995) (stating that privacy interest in keeping secret the fact that individual was subject to law enforcement investigation extends to third parties who might be mentioned in investigatory files).

¹⁰² See, e.g., Nation Magazine, 71 F.3d at 894-96 (holding categorical "Glomar" response concerning law enforcement files on individual inappropriate when individual had publicly offered to help agency; records discussing reported offers of assistance to the agency by former presidential candidate H. Ross Perot "may implicate a less substantial privacy interest than any records associating Perot with criminal activity," so conventional processing is

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