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, determine whether there is a substantial privacy interest in the requested information;[6] third,

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[1] 5 U.S.C. § 552(b)(6), (7)(C) (2018).

[2] 5 U.S.C. § 552(b)(6).

[3] 5 U.S.C. § 552(b)(7)(C).

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

[5] 5 U.S.C. § 552(b)(6).

[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. Emps. v. Horner, 879 F.2d 873, 874 (D.C. Cir. 1989)).

evaluate the requester's asserted FOIA public interest in disclosure;[7] and fourth, if there is a substantial privacy interest in nondisclosure 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 [Freedom of Information] 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 disclosed.[11]

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[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. at 171 ("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'") (quoting Nat'l Ass'n of Home Builders, 309 F.3d at 37)); Hunton & Williams LLP v. EPA, 346 F. Supp. 3d 61, 86 (D.D.C. 2018) (finding that certain names must be disclosed as no explanation for withholdings was provided); Laws.' Comm. for Civ. Rts. 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., Nat'l Ass'n of Home Builders v. Norton, 309 F.3d 26, 32 (D.C. Cir. 2002) ("[T]he threshold question is whether the requested information is contained in a personnel, medical, or similar file. . . . If it is, then the court must determine whether the information is of such a nature that its disclosure would constitute a clearly unwarranted privacy invasion."); New York Times Co. v. NASA, 920 F.2d 1002, 1004 (D.C. Cir. 1990) (noting that "the tape must first satisfy the threshold requirement of being a 'similar file,'" and "[b]ecause the district court held that the tape did not constitute such a file, it never reached the second stage of the Exemption 6 analysis—whether the release of the file would result in a clearly unwarranted invasion of privacy").

[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. Emps. v. Horner, 879 F.2d 873, 874 (D.C. Cir. 1989)); Adelante Ala. Worker Ctr. v. DHS, 376 F. Supp. 3d 345, 366 (S.D.N.Y. 2019) (same); Finkel v. Dep't of Labor, No. 05-5525, 2007 WL

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 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]

1963163, at *9 (D.N.J. June 29, 2007) (concluding that no balancing analysis was required due to the Court's determination that defendant "has failed to meet its heavy burden on the issue of whether disclosure will invade the inspectors' privacy").

[12] Nat'l Ass'n of Retired Fed. Emps. 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)); Wadhwa v. VA, 707 F. App'x 61, 63-64 (3d Cir. 2017) (protecting identifying information concerning individuals involved in adjudication of discrimination complaints and individuals' financial information in absence of any FOIA public interest); Int'l Brotherhood of Elec. Workers Loc. Union 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); Pubien v. EOUSA, No. 18-0172, 2018 WL 5923917, at *5 (D.D.C. Nov. 13, 2018) (finding names withholdable because plaintiff failed to identify any FOIA public interest in disclosure); Maryland v. VA, 130 F. Supp. 3d 342, 353 (D.D.C. 2015) (protecting identifying portions of email addresses of individuals whose businesses were not selected for inclusion in Veterans' small business database because public interest in such information was "practically nonexistent").

[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."); 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"); 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 'she[d] light on an agency's performance of its statutory duties' or otherwise let citizens 'know what their government is up to'") (quoting DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989)); 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

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 the Supreme Court established what constitutes a "similar file" 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] While the Supreme Court's decision makes

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would be compromised by disclosure against any public interest in the requested information"); 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 FOIA Update, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking") (outlining mechanics of balancing process).

[15] 5 U.S.C. § 552(b)(6) (2018).

[16] 456 U.S. 595 (1982).

[17] Id. at 599-603 (citing H.R. Rep. No. 89-1497, at 11 (1966); S. Rep. No. 89-0813, 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 Cook v. NARA, 758 F.3d 168, 174 (2d Cir. 2014) (stating that "similar files" need not relate to medical or personnel issues and need not even constitute a "file"); Jud. 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., Burton v. Wolf, 803 F. App'x. 120, 121 (9th Cir. 2020) (finding alien file records are similar files as they contain "personal identifying information," "immigration status[,] and . . . allegations of domestic abuse"); Cook, 758 F.3d at 174 (observing that "similar files" encompasses all records identifiable to particular individuals even if records do not encompass "intimate" or "highly personal" information) (quoting Wash. Post, 456 U.S. at 599-602); 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'") (quoting Wash. Post, 456 U.S. at 600); Berger v. IRS, 288 F. App'x 829, 832 (3d Cir. 2008) ("[Revenue Officer's] time records are a personal recording of the time expended as an employee and therefore can be identified as applying

clear that the Exemption 6 threshold applies very broadly, the threshold of 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]

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to [them]."); Forest Serv. Emps. for Env't. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1024 (9th Cir. 2008) (stating that threshold test of Exemption 6 is satisfied when government records contain information applying to particular individuals); Pierce v. U.S. Air Force, 512 F.3d 184, 191 (5th Cir. 2007) (finding that information need only apply to individuals to qualify as a similar file under Exemption 6); 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 L. 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"); N.Y. Times Co. v. FCC, 457 F. Supp. 3d 266, 273 (S.D.N.Y. 2020) (finding that IP addresses and other device-identifying information are "similar files"); White Coat Waste Project v. VA, 404 F. Supp. 3d 87, 101 (D.D.C. 2019) (finding that "principal investigator's name falls within Exemption 6's 'similar files' category" given its broad application); Carter, Fullerton & Hayes LLC v. FTC, 520 F. Supp. 2d 134, 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 because "each piece of information withheld by defendants applies to specific individuals"); MacLean v. Dep't of the 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).

[20] See, e.g., Arieff v. 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 O Mokapu v. Dalton, 894 F. Supp. 1397, 1413 (D. Haw. 1995) (determining information pertaining to inventory of large group of Native Hawaiian human remains is not covered under Exemption 6 because "there is no real danger . . . that any particular individuals will be identified by disclosure of the inventory") (reverse FOIA suit).

[21] Protect Our Defs. v. DOD, 401 F. Supp. 3d 259, 287 (D. Conn. 2019) ("The fact that agency work is attributed to a specific individual does not convert the record of that work to a 'similar file.'"); Fams. for Freedom v. U.S. Customs & Border Prot., 797 F. Supp. 2d 375, 388-89 (S.D.N.Y. 2011) ("[I]nformation that 'merely identifies the names of government officials who authored documents and received documents' does not generally fall within Exemption 6."); 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. 06-0378, 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 as moot, 305 F. App'x 333 (9th Cir. 2008); see, e.g., Leadership Conf. on C.R. v. Gonzales, 404 F. Supp. 2d 246, 257 (D.D.C.

The Court of Appeals for the District of Columbia Circuit, sitting en banc, subsequently reinforced the Supreme Court's broad interpretation of the "similar files" threshold of Exemption 6 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 standard.[22] Along these lines, both lexical and non-lexical information has been found to meet the Exemption 6 threshold.[23]

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.[24]

Privacy Interest

In the landmark FOIA decision DOJ 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 law and the literal understandings of privacy encompass the individual's control of information concerning his or her person."[25] 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

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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"), appeal dismissed voluntarily, No. 06-5055, 2006 WL 1214937 (D.C. Cir. Apr. 28, 2006).

[22] N.Y. Times Co. v. NASA, 920 F.2d 1002, 1005 (D.C. Cir. 1990) (en banc).

[23] Id. (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 point locations" of structures are "similar files"); 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").

[24] See, e.g., Multi AG Media LLC v. USDA, 515 F.3d 1224, 1229 (D.C. Cir. 2008); FOIA Update, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking").

[25] DOJ v. Reps. Comm. for Freedom of the Press, 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)).

well as the intimate and potentially embarrassing."[26] The Supreme Court has declared that the privacy interest inherent in Exemption 6 belongs to the individual, not the agency holding the information.[27] As such, Exemption 6 cannot be invoked to withhold from a requester information pertaining only to him or herself.[28] Furthermore, both the "author" and the "subject" of a file may possess cognizable privacy interests under Exemption 6.[29] Notably, courts afford foreign nationals the same privacy rights under the FOIA as they afford U.S. citizens.[30]

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[26] Painting & Drywall Work Pres. Fund, Inc. v. HUD, 936 F.2d 1300, 1302 (D.C. Cir. 1991); see also Kulkarni v. Dep't of State, 692 F. App'x 896, 896 (9th Cir. 2017) (affirming District Court's finding that documents concerning passport application of plaintiff's son were properly withheld); Associated Press v. DOD, 554 F.3d 274, 286-87 (2d 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"). But cf. Hyatt v. U.S. Pat. & Trademark Off., 346 F. Supp. 3d 141, 152 (D.D.C. 2018) (finding that while "gossip amongst colleagues is natural and even normal, such exchanges between public servants are not per se shielded from disclosure merely because their employing agency considers them to be insignificant").

[27] See Reps. 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. 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 the 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.").

[28] See Reps. 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) ("[D]isclosure 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 ("OIP Guidance: Privacy Protection Under the Supreme Court's Reps. Comm. Decision") (advising that, as a matter of sound administrative practice, "[a]n agency will not invoke an exemption to protect a requester from himself").

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

[30] See 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, 822 F. Supp. 2d 23, 34 (D.D.C. 2011) (holding "foreign nationals are entitled to the privacy protections embodied in FOIA") (Exemption 7(C)); Jud. Watch, Inc. v. DHS, 514 F. Supp. 2d 7, 10 n.4 (D.D.C. 2007) (noting "courts in [this] Circuit have held that foreign nationals are entitled to the same

Courts have also emphasized that under the FOIA's privacy-protection exemptions, "[t]he threat to privacy . . . need not be patent or obvious to be relevant."[31] At the same time, courts have found that the threat to privacy must be real rather than speculative and have disfavored conclusory allegations of harm.[32] In National Ass'n of

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privacy rights under FOIA as United States citizens"); Ctr. for Nat'l Sec. Stud. 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, although ultimately concluding that public interest in disclosure outweighed those interests) (Exemption 7(C)), rev'd on other grounds, 331 F.3d 918 (D.C. Cir. 2003).

[31] Pub. Citizen Health Rsch. Grp. v. 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); see also Civ. Beat L. Ctr. for the Pub. Int., Inc. v. Ctrs. for Disease Control & Prevention, 929 F.3d 1079, 1091-92 (9th Cir. 2019) (disagreeing that privacy interests were too speculative when agency submitted detailed affidavit explaining how disclosure of its employees' identities and contact information could potentially result in an invasion of privacy); Cameranesi v. DOD, 856 F.3d 626, 642 (9th Cir. 2017) ("We have never held that an agency must document that harassment or mistreatment have happened in the past or will certainly happen in the future; rather, the agency must merely establish that disclosure would result in a 'potential for harassment.'") (quoting Forest Serv. Emps. for Env't. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1026 (9th Cir. 2008)).

[32] 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, 558 U.S. 1042(2009); Carter v. Dep't of Com., 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. 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); Adelante Ala. Worker Ctr. v. DHS, 376 F. Supp. 3d 345, 367 (S.D.N.Y. 2019) (noting that "mere possibility that the release of information could potentially lead to harassment is not evidence of a 'real' threat of harassment"); Sai v. TSA, 315 F. Supp. 3d 218, 262-63 (D.D.C. 2018) (finding that agency "offered little more than conclusory assertions" regarding privacy interests of various TSA and DHS employees "without regard to the position held by the relevant employee, the role played by that employee, the substance of the underlying agency action, or the nature of the agency record at issue") (Exemptions 6 and 7(C)); Climate Investigations Ctr. v. DOE, 331 F. Supp. 3d 1, 26 (D.D.C. 2018) ("An agency must provide affidavits containing 'reasonable specificity of detail rather than merely conclusory statements' to establish a substantial invasion of privacy") (quoting Jud. Watch, Inc. v. U.S. Secret Serv., 726 F.3d 208, 215 (D.C. Cir. 2013)); Pinson v. DOJ, 313 F. Supp. 3d 88, 112 (D.D.C. 2018) (finding that "conclusory" and

Retired Federal Employees v. Horner [hereinafter NARFE], the D.C. Circuit explained that "mere speculation" of an invasion of privacy is not sufficient.[33] 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."[34]

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.'"[35] The D.C. Circuit has explained that, in the FOIA context, when assessing

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"generalized" allegations of privacy harms are insufficient for protection of records under Exemption 6); Seife v. Dep't of State, 298 F. Supp. 3d 592, 625 (S.D.N.Y. 2018) (finding that State Department failed to show "real" threat of harassment from identification of senior officials who anonymously provided press briefings on their areas of expertise); Aqualliance v. U.S. Army Corps. of Eng'rs, 243 F. Supp. 3d 193, 198 (D.D.C. 2017) (finding no substantial privacy interest in mailing list of homeowners who lived in proximity to California water project because agency failed to provide "anything beyond speculation regarding the results of disclosing the distribution list").

[33] 879 F.2d 873, 878 (D.C. Cir. 1989) (citing Arieff, 712 F.2d at 1468) [hereinafter NARFE]; 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, and 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) (noting that bare and conclusory assessment that public disclosure of an employee's name would constitute an invasion of personal privacy is insufficient to support 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); 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).

[34] 879 F.2d at 878.

[35] 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., Cook v. NARA, 758 F.3d 168, 175-76 (2d Cir. 2014) (noting that Exemption 6's privacy analysis first requires agencies to "determine whether disclosure of the files would compromise a substantial, as opposed to de minimis, privacy interest . . . ", and finding that former President, Vice President and their designated representatives maintain "compelling" privacy interest in conducting research regarding their years of

the weight of a protectable privacy interest, "[a] substantial privacy interest is anything greater than a de minimis privacy interest."[36] As discussed above, when a substantial privacy interest is found, the inquiry under the privacy exemptions is not finished and is only advanced to "'address the question whether the public interest in disclosure outweighs the individual privacy concerns.'"[37] 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."[38] Substantial privacy interests cognizable under the FOIA are generally found to exist in personally identifying information such as a person's name, physical address, email address, image, computer user ID, phone number, date of birth, criminal history, medical history, and social security number.[39]

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public service "free from unwanted public scrutiny" of the subjects of inquiry); 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).

[36] Multi AG, 515 F.3d at 1229-30; see, e.g., Ayuda, Inc. v. FTC, 70 F. Supp. 3d 247, 264 (D.D.C. 2014) (same); Barnard v. DHS, 598 F. Supp. 2d 1, 11 (D.D.C. 2009) (same); 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) (same); cf. AquAlliance v. U.S. Bureau of Reclamation, 139 F. Supp. 3d 203, 212-13 (D.D.C. 2015) (finding "greater than de minimis" but "not substantial" privacy interest in names and addresses of water well owners and water transfer program participants), aff'd on other grounds, 856 F.3d 101 (D.C. Cir. 2017).

[37] 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 (2d Cir. 2008) (per curiam) ("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)).

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

[39] 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"); Broward Bulldog, Inc. v. DOJ, 939 F.2d 1164, 1188 (11th Cir. 2019) (upholding protection of names, addresses, and phone numbers because private citizens have privacy interests "in not being associated with a major terrorism investigation") (Exemption 7(C)); Henson v. HHS, 892 F.3d 868, 878 (7th Cir. 2018) (finding that Exemption 6 protected "medical information about the manufacturer's patients and the contact information for employees of the manufacturer and the agency"); Tereshchuk v. BOP, No. 14-5278, 2015 WL 4072055, at *1 (D.C. Cir. June 29, 2015) (holding that BOP

Similarly, individuals who provide law enforcement agencies with reports of illegal conduct have well-recognized privacy interests, particularly when such persons reasonably fear reprisals for their assistance.[40] Some courts have found that even absent

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properly withheld inmate names and register numbers in certain indexes); Yagman v. BOP, 605 F. App'x 666, 666-67 (9th Cir. 2015) (affirming district court's finding that withholding was proper as release of "the full name, prison number, and mailing address of every person in BOP custody" would constitute an invasion of inmates' privacy) (Exemptions 6 and 7(C)); Associated Press, 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)); Moore v. USPS, No. 17-0773, 2018 WL 4903230, at *3 (N.D.N.Y. Oct. 9, 2018) ("The substantial privacy interest in employee medical records outweighs any public interest in the information."); Maryland v. VA, 130 F. Supp. 3d 342, 353 (D.D.C. 2015) (finding substantial privacy interest in identifying portions of email addresses of individuals whose applications for inclusion in Veteran small business database were rejected); Performance Coal Co. v. Dep't of Labor, 847 F. Supp. 2d 6, 17-18 (D.D.C. 2012) (concluding that defendants properly withheld "miners' names, cell phone numbers, and home phone numbers; inspectors' names and email 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. Dep't of State, 845 F. Supp. 2d 38, 45-46 (D.D.C. 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., 818 F. Supp. 2d 122, 128-29 (D.D.C. 2011) (noting that "the drivers have a privacy interest in their videotaped images from [a] 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, 115 (D.D.C. 2011) (holding that agencies properly withheld names and identifying information related to law enforcement personnel and face of a third party) (Exemption 7(C)); Mingo v. DOJ, 793 F. Supp. 2d 447, 456 (D.D.C. 2011) (finding 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. Dep't of the Navy, 584 F. Supp. 2d 94, 96 (D.D.C. 2008) ("Records . . . indicating that individuals sought medical treatment at a hospital are particularly sensitive."); 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").

[40] See Wadhwa v. VA, 707 F. App'x 61, 63-64 (3d Cir. 2017) (noting agency properly withheld names and other identifying information of complainants and witnesses involved in adjudication of discrimination complaints); Moffat v. DOJ, 716 F.3d 244, 251 (1st Cir. 2013) (finding third-party informant names were properly withholdable) (Exemption 7(C));

any evidence of fear of reprisals, witnesses who provide information to investigative bodies – administrative and civil, as well as criminal – should be accorded privacy

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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 for Unification of World Christianity 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, No. 10-1106, 2011 WL 4431828, at *8 (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)), aff'd, 700 F.3d 246 (6th Cir. 2012); 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 Recs. Ctr., No. 05-2353, 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. Emps. for Env't. 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); 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 made previous threats against witnesses) (Exemption 7(C)), aff'd, 100 F. App'x 964 (5th Cir. 2004) (per curiam).

protection,[41] although at times courts have ruled otherwise.[42] (For a more detailed discussion of the privacy protection accorded such law enforcement sources, see the chapter on Exemption 7(C)).

Derivative Privacy Invasion

Courts have found that an invasion of privacy need not occur immediately upon disclosure in order to be considered "clearly unwarranted."[43] As the Court of Appeals for

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[41] See, e.g., Sorin v. DOJ, 758 F. App'x. 28, 33 (2d Cir. 2018) (finding significant privacy interest in "identities of potential witnesses in a criminal investigation – including their professional and educational histories and financial information – along with similar information about [others] not interviewed") (Exemption 7(C)); 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) (finding conclusion initially reached in Perlman was correct); Citizens for Resp. & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 73 (D.D.C. 2012) (noting that "in particular, informants and witnesses[] have a significant interest in [files] contents not being disclosed") (Exemption 7(C)); Citizens for Resp. & 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 [the 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. 04-0832, 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)).

[42] See Cooper Cameron Corp. v. 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 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").

[43] See Nat'l Ass'n of Retired Fed. Emps. 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)

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."[44] One court has observed that to distinguish between the initial disclosure and unwanted intrusions that result from disclosure would be "to honor form over substance."[45]

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."[46] The Tenth Circuit found that the files contained the specific locations

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("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).

[44] NARFE, 879 F.2d at 878; cf. 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); Bernegger v. EOUSA, 334 F. Supp. 3d 74, 89 (D.D.C. 2018) (finding names, addresses, and telephone numbers of AUSAs, legal assistants, law enforcement officers, and other personally identifiable information related to witness or nonparty individuals properly withholdable as "there is reason to believe" that plaintiff will harass or retaliate against those individuals) (Exemptions 6 and 7(C)); 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 name of a Special Agent "could subject the Agent and the 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. 07-0995, 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. 05-0955, 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."), aff'd, 344 F. App'x 309 (9th Cir. 2009); N.Y. Times Co. v. Dep't of the Treasury, No. 09-10437, 2010 WL 4159601, at *5 (S.D.N.Y. Oct. 13, 2010) (noting that privacy interest was weak due to "lack of evidence that any of the corporate licensees – whose identities were released to the Times – [had] faced any negative consequences following that disclosure").

[45] Hudson, 1987 WL 46755, at *3 (protecting personally identifying information because disclosure under 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 v. Hughes, 601 F. Supp. 1002, 1006-07 (D.D.C. 1985) (same).

[46] 410 F.3d 1214, 1220-21 (10th Cir. 2005).

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."[47]

Courts in other jurisdictions have also recognized the concept of derivative privacy invasions under Exemption 6.[48]

There have been occasions, though, where this concept of derivative privacy has been questioned.[49] 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.[50] 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

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

[48] See, e.g., Havemann v. Colvin, 537 F. App'x 142, 147-48 (4th Cir. 2013) (unpublished disposition) (affirming withholding of data regarding social security beneficiaries, noting that while agency cannot withhold information based on a speculative possibility of identification of specific beneficiaries, it could withhold data that does not inherently constitute a "unique identifier" where there is "a likelihood that releasing the information would connect private records to specific individuals"); Inclusive Communities Project, Inc. v. HUD, No. 14-3333, 2016 WL 4800440, at *8-10 (N.D. Tex. Sept. 13, 2016) (noting that Court of Appeals for Fifth Circuit has not ruled on issue of derivative privacy interests but following other Circuits that have done so, and finding that Exemption 6 does not apply to certain data regarding HUD housing vouchers for low-income families because agency failed to show a "substantial probability" that such data could lead to identification of individual voucher recipients).

[49] 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 (S.D.N.Y. 2006) (suggesting that "derivative" harms might not be cognizable under Exemption 6, based on Justice Scalia's concurring opinion in Ray); Forest Guardians v. 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. v. VA, 257 F. Supp. 2d 988, 1001-05 (S.D. Ohio 2003) (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).

[50] See ACLU v. DOJ, 655 F.3d 1, 7, 16 (D.C. Cir. 2011) (considering release of court docket information regarding individual criminal cases, and acknowledging that "it would take little work for an interested person to use the . . . [disclosed] information . . . to look up the underlying case files in the public records of the courts, and therein find the information of interest," though ultimately finding the significant public interest outweighed relatively weak privacy interests at stake) (Exemption 7(C)).

de minimis privacy interest of individual farmers.[51] Although "not persuaded that the privacy interest that may exist [was] 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."[52] 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.[53]

Government Correspondents

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.[54] For example, the District Court for the District of Columbia has held that the names of individuals submitting comments regarding proposed agency rules should be released when the rulemaking notice "specifie[s] that '[t]he complete file for this proposed rule is available for inspection'" and comments are made voluntarily.[55]

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 protection of their identities, which ordinarily

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[51] 515 F.3d 1224, 1230 (D.C. Cir. 2008).

[52] Id.; see, e.g., Seized Prop. Recovery, Corp. v. U.S. Customs Serv., 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)).

[53] Multi AG, 515 F.3d at 1233.

[54] 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, 288, 306 (D.D.C. 2007) ("Disclosing the mere identity of individuals who voluntarily submitted comments regarding [a video to be presented at the Lincoln memorial] does not raise the kind of privacy concerns protected by Exemption 6."); Fuller v. CIA, No. 04-0253, 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").

[55] All. for the Wild Rockies v. U.S. Dep't of the Interior, 53 F. Supp. 2d 32, 36-37 (D.D.C. 1999).

have been withheld, but not necessarily for the substance of their letters.[56] For instance, the Court of 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.[57] 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.[58] Similarly, 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.[59] The Court of Appeals for the Second Circuit found a "compelling" privacy interest for a former U.S. President and his Vice President in the types of records they sought for research purposes under the Presidential Records Act concerning their years in public office.[60] Nevertheless, in some

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[56] See, e.g., Lakin L. Firm, P.C. v. FTC, 352 F.3d 1122, 1125 (7th Cir. 2003) (finding that the "core purpose" of the FOIA would not be served by the release of names and addresses of persons who complained to 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); Holy Spirit Ass'n for Unification of World Christianity, Inc. v. Dep't of State, 526 F. 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 for Unification of World Christianity v. FBI, 683 F.2d 562, 564 (D.C. Cir. 1982) (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)).

[57] See Jud. Watch, Inc. v. United States, 84 F. App'x 335, 337 (4th Cir. 2004); accord Jud. Watch, Inc. v. Rossotti, 285 F. Supp. 2d 17, 28 (D.D.C. 2003) (finding names and addresses of people who wrote to the IRS to comment on organization's tax-exempt status, both pro and con, withholdable under Exemption 7(C)).

[58] See Prudential Locations LLC v. HUD, 739 F.3d 424, 432 (9th Cir. 2013) (holding that "in light of the repeated public 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").

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

[60] Cook v. NARA, 758 F.3d 168, 176-77 (2d Cir. 2014) (rejecting plaintiff's argument that former President, Vice President, and their representatives have only diminished privacy interest in subjects of their requests for archived White House records by noting strong legal tradition of confidentiality in all fifty states for research requests made to libraries).

circumstances courts have refused to accord privacy protection to such government correspondence.[61]

Similarly, the District Court for the District of Columbia has held that Exemption 6 does not justify a "blanket withholding" of the names and organizational affiliations of FOIA requesters but noted that the agency may be able to justify the redactions in individual cases.[62]

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[61] See N.Y. Times Co. v. FCC, 457 F. Supp. 3d 266, 274 (S.D.N.Y. 2020) (acknowledging that "[c]ommenters [regarding a proposed FCC rulemaking] arguably consented to the release of their IP addresses and other device-specific information, even though they may not have realized that the information was being divulged"); Prechtel v. FCC, 330 F. Supp. 3d 320, 329-34 (D.D.C. 2018) (ordering disclosure of .csv files used to submit public comments by large numbers of submitters, including email addresses of bulk submitters and individual commenters, given substantiated allegations of widespread fraudulent comment submissions concerning proposed regulation to repeal "net neutrality" rules); Edelman v. SEC, 239 F. Supp. 3d 45, 55-56 (D.D.C. 2017) (finding valid public interest in names of Empire State Building investors who filed complaints to oppose SEC's approval of real estate investment trust for that building, because such information would provide insight into which complainants views were given greater weight by SEC, and whether those complaints were based on proper or improper factors); People for the Am. Way Found. v. Nat'l Park Serv., 503 F. Supp. 2d 284, 288, 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 . . . . Moreover, the public interest in knowing who may be exerting influence on [agency] officials sufficient to convince them to change the video [for public viewing at Lincoln Memorial] 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); Cardona v. INS, No. 93-3912, 1995 WL 68747, at *3 (N.D. Ill. Feb. 16, 1995) (finding only a "de minim[i]s invasion of privacy" in release of name and address of individual who wrote letter to Immigration and Naturalization Service complaining about private agency that offered assistance to immigrants).

[62] See Kwoka v. IRS, No. 17-1157, 2018 WL 4681000, at *3 n.3 (D.D.C. Sept. 28, 2018) (noting "due to the vague topic descriptions in the publicly accessible log, adding the topic does not add much at all to the privacy interests at stake – and where the topic is more specific, the IRS can make case-by-case redactions if necessary"); see also 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)). But see Agee v. CIA, 1 Gov't Disclosure Serv. (P-H) 80,213 at 80,532 (D.D.C. Jul. 23, 1980) (holding that "FOIA requesters . . . have no general expectation that their names will be kept private").

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 employees[63] or regarding the parts of their successful employment applications that show their qualifications for their positions.[64] Courts have reached different conclusions as to whether work contact information for federal employees should be protected.[65] However, those employees have a protectable privacy

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[63] See OPM Regulation, 5 C.F.R. § 293.311 (2020) (specifying that certain information contained in federal employee personnel files is generally available to public); see also FLRA v. Dep't of Com., 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 Conf. on C.R. 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); Laws. Comm. for Hum. Rts. 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. Co. 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 ("OIP Guidance: Privacy Protection Considerations") (discussing extent to which privacy of federal employees can be protected); cf. Tomscha v. GSA, 158 F. App'x 329, 331 (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, as they necessarily include personal, albeit positive, information regarding his job performance").

[64] See Protect Our Defs. v. DOD, 401 F. Supp. 3d 259, 287 (D. Conn. 2019) (finding disclosure of Staff Judge Advocates' legal credentials and professional history, but not identities, to be warranted as that information is related to job function); 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. U.S. Dep't of the Interior, 511 F. Supp. 2d 215, 219 (D. Conn. 2007) ("Because [E]xemption 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 agency "released information pertaining to the successful candidates' educational and professional qualifications, including letters of commendation and awards, as well as their prior work history, including federal positions, grades, salaries, and duty stations"); Associated Gen. Contractors v. EPA, 488 F. Supp. 861, 863 (D. Nev. 1980) (discussing education, former employment, academic achievements, and employee qualifications).

[65] Compare Bernegger v. EOUSA, 334 F. Supp. 3d 74, 89 (D.D.C. 2018) (finding names, addresses, and telephone numbers of AUSAs, legal assistants, law enforcement officers, and

interest in purely personal details that do not shed light on agency functions.[66] Indeed, courts generally have recognized the sensitivity of information contained in personnel-

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other personally identifiable information related to witness or nonparty individuals properly withholdable as "there [was] reason to believe" that plaintiff would harass or retaliate against those individuals) (Exemptions 6 and 7(C)), and Shurtleff v. EPA, 991 F. Supp. 2d 1, 18-19 (D.D.C. 2013) (protecting work email addresses of EPA Administrator and Executive Office of the President personnel due to significant privacy interest of such individuals in avoiding harassment and unsolicited email), with Sai v. TSA, 315 F. Supp. 3d 218, 262 (D.D.C. 2018) (finding defendant did not meet its burden of showing substantial privacy interest in contact information withheld pursuant to Exemption 6 because defendant " offered little more than conclusory assertions applicable to each redaction, without regard to the position held by the relevant employee, the role played by that employee, the substance of the underlying agency action, or the nature of the agency record at issue"), and Kleinert v. BLM, 132 F. Supp. 3d 79, 96 (D.D.C. 2015) (finding that defendant did not meet its burden to support use of Exemption 6 to withhold email addresses because "'[t]he disclosure of names and addresses is not inherently and always a significant threat to the privacy of those listed; whether it is a significant or a de minimis threat depends upon the characteristic(s) revealed . . . and the consequences likely to ensue'") (quoting Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 877 (D.C. Cir. 1989)). See also Pinson v. DOJ, 313 F. Supp. 3d 88, 112 (D.D.C. 2018) (observing that courts have come to differing conclusions regarding protection of work telephone numbers and email addresses of federal employees and holding that such information is withholdable).

[66] See, e.g., DOD v. FLRA, 510 U.S. 487, 500 (1994) (protecting federal employees' home addresses); Hunton & Williams LLP v. EPA, 346 F. Supp. 3d 61, 85-86 (D.D.C. 2018) (finding that agency properly withheld number of vacation hours two employees intended to take and information concerning health of EPA employee); Sai v. TSA, 315 F. Supp. 3d 218, 262 (D.D.C. 2018) (protecting "personal information" regarding two TSA employees for which there was no public interest in disclosure) (Exemptions 6 and 7(C)); Pub. Emps. for Env't. 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), aff'd in part and vacated in part on other grounds, 740 F.3d 195 (D.C. Cir. 2014); 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 Sheets on which employees sign in and out of work); Wilson v. U.S. Air Force, No. 08-0324, 2009 WL 4782120, at *4 (E.D. Ky. Dec. 9, 2009) (finding that signatures, personal phone numbers, personal email addresses, and government employee email addresses were properly redacted); Kidd v. DOJ, 362 F. Supp. 2d 291, 296-97 (D.D.C. 2005) (determining agency decision to withhold an employee's home telephone number was proper); Barvick, 941 F. Supp. at 1020-21 (finding a significant privacy interest in 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). But cf. 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).

related files and have accorded protection to the personal details of a federal employee's service.[67]

Generally, federal employees have a privacy interest in their job performance evaluations.[68] 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 co-workers.[69] Moreover, release of such information

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[67] See, e.g., Ripskis v. HUD, 746 F.2d 1, 3-4 (D.C. Cir. 1984) (protecting names and identifying data contained on evaluation forms of HUD employees who received outstanding performance ratings); Wilson v. DOT, 730 F. Supp. 2d 140, 156 (D.D.C. 2010) (concluding that "[b]ecause [Equal Employment Opportunity ("EEO")] 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. SSA, No. 98-0116E, 2000 WL 1209383, at *4 (W.D.N.Y. Aug. 22, 2000) (withholding award nomination forms for specific employees), aff'd in pertinent part and remanded, 10 F. App'x 20 (2d Cir. 2001); Putnam v. DOJ, 873 F. Supp. 705, 712-13 (D.D.C. 1995) (withholding 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) (withholding FBI background investigation of Assistant U.S. Attorney); Dubin v. Dep't of the Treasury, 555 F. Supp. 408, 412 (N.D. Ga. 1981) (withholding 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. Dep't of Com., 962 F.2d at 1060 (distinguishing personnel "ratings," which traditionally have not been disclosed, from "performance awards," which ordinarily are disclosed).

[68] 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); People for the Ethical Treatment of Animals v. USDA, No. 06-0930, 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)); 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 in part on other grounds, 692 F.3d 185 (2d Cir. 2012). But cf. Hardy v. DOD, No. 99-0523, 2001 WL 34354945, at *9 (D. Ariz. Aug. 27, 2001) (finding a minimal privacy interest in the performance ratings and evaluations for two high-level DOJ employees considering the rank of both officials and that "any issue of jealousy among coworkers [was] diminished" because the component Director had retired).

[69] Ripskis, 746 F.2d at 3; see Hardison v. Sec'y of VA, 159 F. App'x 93, 93 (11th Cir. 2005) (unpublished disposition) (withholding performance appraisals); FLRA v. Dep't of Com., 962 F.2d at 1059-61 (withholding performance appraisals); Lewis v. EPA, No. 06-2660, 2006 WL 3227787, at *6 (E.D. Pa. Nov. 3, 2006) (withholding employee or candidate rankings and evaluations); Vunder v. Potter, No. 05-0142, 2006 WL 162985, at *2-3 (D. Utah Jan. 20, 2006) (withholding narrative of accomplishments submitted to superiors for

"reveals by omission the identities of those employees who did not receive high ratings, creating an invasion of their privacy."[70] 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.[71] Employees may also retain a privacy interest in employment-related misconduct[72] and mistakes,[73] although the rank of the federal employee is a factor to consider when analyzing the FOIA public interest in disclosure.[74] (See further discussion of this point under FOIA Public Interest, below.)

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consideration in performance evaluation); Tomscha v. Giorgianni, No. 03-6755, 2004 WL 1234043, at *4 (S.D.NY. June 3, 2004) ("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.").

[70] FLRA v. Dep't of Com., 962 F.2d at 1059.

[71] See Matthews v. USPS, No. 92-1208, 1994 U.S. Dist. LEXIS 21916, at *6 (W.D. Mo. Apr. 15, 1994).

[72] See, e.g., Bloomgarden v. NARA, 798 F. App'x 674, 676 (D.C. Cir. 2020) (upholding protection of letter detailing Assistant U.S. Attorney's "'garden-variety incompetence and insubordination' from 'many years ago,'" but finding no privacy interest in AUSA's response, which did not discuss grounds for removal); Scott v. Treas. Insp. Gen. for Tax. Admin., 787 F. App'x 642, 644 (11th Cir. 2019) (finding significant privacy interest in specifics of alleged misconduct as release "would draw significant speculation, stigma, and embarrassment, as well as practical disabilities such as loss of employment independent of the ultimate resolution"); Sensor Sys. Support, Inc. v. FAA, 851 F. Supp. 2d 321, 333 (D.N.H. 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'") (quoting Providence J. Co. v. Dep't of Army, 981 F.2d 552, 568 (1st Cir. 1992)) (Exemptions 6 and 7(C)); 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 could be the source of "'severe personal and professional harm including embarrassment and disgrace'").

[73] 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 employees were "mere contracting officers [who] made data entry mistakes").

[74] See, e.g., Stern v. FBI, 737 F.2d 84, 94 (D.C. Cir. 1984) (finding employees' level of seniority to be relevant to public interest in disclosure) (Exemption 7(C)); DBW Partners, LLC v. USPS, No. 18-3127, 2019 WL 5549623, at *5 (D.D.C. Oct. 28, 2019) ("[There is a significant public interest in how [the Chief Customer and Marketing Officer] carried out his

Further, the identities of employees who provide information to investigators are generally protected.[75] In addition, the identities of persons who apply but are not selected for federal government employment may be protected.[76] Moreover, the Court of Appeals for the Second Circuit has held that the privacy interests of a former President and Vice President in the subjects of their research requests under the Presidential Records Act are not diminished merely because of their former public service.[77]

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duties. The records requested by the Capitol Forum would shed light on how the USPS responds when a high-ranking official interacts . . . with leadership of a private corporation that does business with the government."); Ctr. for Pub. Integrity v. DOE, 234 F. Supp. 3d 65, 80 (D.D.C. 2017) (noting that "the public interest varies depending on the individual government employee involved in the wrongdoing and therefore the agency must make an individualized assessment of the public interest as to each employee," and observing that one of the factors courts must consider in weighing the public interest is the seniority of the employee).

[75] See, e.g., Corbett v. TSA, 568 F. App'x 690, 702-05 (11th Cir. 2014) (unpublished disposition) (protecting names and faces of TSA employees and Sheriff's Office employee who provided information or otherwise assisted with investigation of uncooperative airport traveler); McCann v. HHS, 828 F. Supp. 2d 317, 322-23 (D.D.C. 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. 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).

[76] See, e.g., Core v. USPS, 730 F.2d 946, 948-49 (4th Cir. 1984) (protecting identities and qualifications of unsuccessful applicants for federal employment); Neary v. FDIC, 104 F. Supp. 3d 52, 60 (D.D.C. 2015) ("[D]efendant properly withheld the requested job applicant records under FOIA exemption 6[.]"); Jud. Watch, Inc. v. Dep't of Com., 337 F. Supp. 2d 146, 177 (D.D.C. 2004) (holding that résumé of individual interested in project that never "got out of its embryonic stages" was properly withheld); Warren, 2000 WL 1209383, at *4 (protecting identities of unsuccessful job applicants); Jud. Watch, Inc. v. Comm'n on U.S.-Pac. Trade & Inv. Pol'y, 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); Barvick v. Cisneros, 941 F. Supp. 1015, 1020-22 (D. Kan. 1996) (protecting all information about unsuccessful federal job applicants because any information about members of "select group" that applies for such jobs could identify them).

[77] Cook v. NARA, 758 F.3d 168, 176-77 (2d Cir. 2014) (rejecting plaintiff's argument that former high-ranking federal officials are "quasi-government actors" deserving of "diminished" privacy protection in subjects of their research requests, noting that all fifty states provide confidentiality for research requests to libraries, and finding that former federal officials have significant privacy interest in "developing their ideas [regarding their years of public service] privately, free from unwanted public scrutiny.").

Federal employees involved in law enforcement, particularly those in non-senior positions, 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.[78] Additionally, the identities of federal employees may be

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[78] See Baker v. FBI, 863 F.3d 682, 684 (7th Cir. 2017) (protecting names of FBI agents involved in criminal investigation) (Exemptions 6 and 7(C)); Solers, Inc. v. IRS, 827 F.3d 323, 332-33 (4th Cir. 2016) (holding that IRS employees and other government employees have substantial privacy interests in withholding their names in connection with particular investigations due to potential for harassment or embarrassment) (Exemptions 6 and 7(C)); 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); 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); Wood v. FBI, 432 F.3d 78, 87-89 (2d Cir. 2005) (protecting investigative personnel of FBI's Office of Professional Responsibility); Jud. 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)); Smith v. U.S. Dep't of Treasury, No. 17-1796, 2020 WL 376641, at *4 (D.D.C. Jan. 23, 2020) (upholding redaction of "names of a limited group of non-senior employees: those who work in offices that perform national security and law enforcement functions, IRS employees who are part of a pseudonym program to protect employees' personal safety, and IRS employees who work in 'sensitive' positions (as defined by OPM)"); Waterman v. IRS, 288 F. Supp. 3d 206, 211 (D.D.C. 2018) (holding that work telephone numbers and email addresses of IRS employees could be withheld because such information sheds little light on agency activities and release could cause harassment or threats of employees), vacated & remanded on other grounds, 755 F. App'x 26 (D.C. Cir. 2019); Milbrand v. Dep't of Labor, No. 17-13237, 2018 WL 3770053, at *3 (E.D. Mich. Aug. 9, 2018) (finding that identities of OSHA employees who inspect workplaces and investigate health and safety complaints should be protected because they conduct sensitive law enforcement activities); Lewis v. DOJ, 867 F. Supp. 2d 1, 21 (D.D.C. 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"); Moore v. Bush, 601 F. Supp. 2d 6, 14 (D.D.C. 2009) (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 the employee to harassment") (Exemptions 6 and 7(C)); Van Mechelen v. 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); Davy v. CIA, 357 F. Supp. 2d 76, 87-88 (D.D.C. 2004) (protecting CIA employee names).

withheld when personnel are working on sensitive matters or release would subject them to harassment or harm.[79] In light of this privacy interest, the Department of Defense regularly withholds personally identifying information about all military and civilian employees with respect to whom disclosure would "raise security or privacy concerns."[80]

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[79] See Civ. Beat L. Ctr. for the Pub. Int., Inc. v. Ctrs. for Disease Control & Prevention, 929 F.3d 1079, 1092 (9th Cir. 2019) (upholding protection of identities and contact information of CDC employees involved in inspection of dangerous biotoxins, despite availability of their names in public directory, because they have knowledge of security measures and could face harassment or threats); Jud. Watch, Inc. v. FDA, 449 F.3d 141, 153 (D.C. Cir. 2006) (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 to ensure employees' safety); Seife v. U.S. Dep't of State, 366 F. Supp. 3d 592, 610-11 (S.D.N.Y. 2019) (agreeing with agency that disclosure of the names of three Department of State briefers could impact their personal safety); Pubien v. EOUSA, No. 18-0172, 2018 WL 5923917, at *5 (D.D.C. Nov. 13, 2018) (protecting identities of individuals working at District Court and U.S. Attorney's Office in memorandum with grand jury information to protect personnel from harassment or harm).

[80] 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 sensitive agencies and occupations "have a cognizable privacy interest in keeping their names from being disclosed wholesale"); Seife v. Dep't of State, 298 F. Supp. 3d 592, 628 (S.D.N.Y. 2018) (finding privacy interest in DOD names to be stronger than public interest in disclosure for DOD personnel holding military rank of Colonel or below, or holding General Schedule rank of GS-15 or below); Am. Mgmt. Servs., LLC v. Dep't of the Army, 842 F. Supp. 2d 859, 864 n.4 (E.D. Va. 2012) (holding that DOD employees have a "substantial privacy interest" in their names and contact information), aff'd on other grounds, 703 F.3d 724 (4th Cir. 2013); Schoenman v. FBI, 575 F. Supp. 2d 136, 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"); L.A. Times Commc'ns LLC v. 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 v. U.S. Army Crime Recs. Ctr., No. 05-2353, 2007 WL 1020827, at *6 (D.D.C. Mar. 30, 2007) ("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 U.S. Central Command Report).

For law enforcement personnel in particular, these privacy interests are generally protected under Exemption 7(C) when their personally identifying information is located in a law enforcement record.[81] (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 and Practical Obscurity

Individuals generally do not possess substantial privacy interests in information that is particularly well known or is widely available within the public domain.[82] Likewise, an individual generally does not have substantial privacy interests with respect to

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[81] See Baker, 863 F.3d at 684-85 (stating district court correctly observed that "disclosing the names of the Chicago officers could expose them to harassment without conferring an offsetting public benefit and would thus be an unwarranted invasion of their personal privacy") (Exemptions 6 and 7(C)); 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)).

[82] 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 [plaintiff's] allegations with respect to specific individuals" and [plaintiff'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"); Story of Stuff Project v. U.S. Forest Serv., 366 F. Supp. 3d 66, 80 (D.D.C. 2019) (finding government did not meet its burden of showing substantial privacy invasion would occur in part because information was publicly available); Gawker Media LLC v. FBI, 145 F. Supp. 3d 1100, 1108-11 (M.D. Fla. 2015) (ordering disclosure of names of individuals involved in highly-publicized investigation where such names were disclosed in open court and were subject of widespread media attention) (Exemptions 6 and 7(C)); Abou-Hussein v. Mabus, No. 09-1988, 2010 U.S. 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); Int'l Couns. Bureau v. DOD, 723 F. Supp. 2d 54, 66-67 (D.D.C. 2010) (holding that Exemption 6 does not bar disclosure of publicly available detainee photographs); 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.").

information that he or she has made public.[83] The Court of Appeals for the 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.[84] 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."[85]

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[83] See The Nation Mag. 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)); Lindsey v. FBI, 271 F. Supp. 3d 1, 8 (D.D.C. 2017) (finding that regardless of whether government publicly acknowledged existence of records, subject of request can diminish their expectation of privacy by their own public acknowledgment) (Exemptions 6 and 7(C)); Gawker Media, 145 F. Supp. 3d at 1108-10 (ordering release of names of individuals who publicly disclosed their roles in high-profile investigation); cf. Associated Press v. DOD, 410 F. Supp. 2d 147, 150 (S.D.N.Y. 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").

[84] See Niagara Mohawk Power Corp. v. DOE, 169 F.3d 16, 19 (D.C. Cir. 1999); 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); Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. DOJ, No. 18-1860, 2020 WL 1189091, at *6 (D.D.C. Mar. 12, 2020) (noting that terrorism-related convictions are likely to generate more press coverage than the average case, thus weakening the privacy interest in case docket numbers) (Exemptions 6 and 7(C)); 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 their 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. 05-0306, 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.").

[85] Afshar v. Dep't of State, 702 F.2d 1125, 1130 (D.C. Cir. 1983); see, e.g., Broward Bulldog, Inc. v. DOJ, 939 F.3d 1164, 1186 (11th Cir. 2019) (finding district court erred in ruling that "the public-domain doctrine applies to information that is in the public domain based only on media speculation and did not require [requester] to prove the *same* information in each redaction was already in the public domain"); Edwards v. DOJ, No. 04-5044, 2004 WL

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 in preventing further dissemination to the public at large.[86] For example, the Supreme

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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); Sai v. TSA, 315 F. Supp. 3d 218, 262 (D.D.C. 2018) (noting that release of similar information to prior FOIA requesters does not trigger official acknowledgment doctrine; rather, "the specific information sought by the plaintiff must already be in the public domain") (quoting Wolf v. CIA, 473 F.3d 370, 378 (D.C. Cir. 2007)) (Exemptions 6 and 7(C)).

[86] See Am. Farm Bureau Fed'n v. EPA, 836 F.3d 963, 972 (8th Cir. 2016) (finding "[t]hat information about a particular owner might be obtained through publicly-available sources likewise does not preclude a substantial privacy interest" because "[t]here is an important distinction 'between the mere *ability* to access information and the likelihood of actual public *focus* on that information'") (quoting ACLU v. DOJ, 750 F.3d 927, 933 (D.C. Cir. 2014)) (reverse FOIA suit); Forest Serv. Emps. for Env't. 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."); Citizens for Resp. & 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)); 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."); Laws.' Comm. for C.R. of S.F. Bay Area v. Dep't of the Treasury, 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

Court in NARA v. Favish held that the fact that one death scene photograph of a former Deputy White House Counsel had been leaked to the media did not detract from the weighty privacy interests of his 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."[87] Indeed, the District Court for the District of Columbia has held that "[t]he public mention of an individual's name in one context does not preclude the [agency] from withholding it in another."[88]

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.[89] 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]."[90]

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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)); Mueller v. 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).

[87] NARA v. Favish, 541 U.S. 157, 166-71 (2004); cf. Balt. Sun v. U.S. Customs Serv., No. 97-1991, 1997 U.S. Dist. LEXIS 24466, at *5 (D. Md. Nov. 25, 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)).

[88] Shapiro v. DOJ, No. 12-0313, 2020 WL 3615511, at *32 (D.D.C. July 2, 2020) (explaining that "[i]nformation filed on a public docket or otherwise released . . . of course, may differ substantially from information contained in . . . investigative records") (Exemptions 6 and 7(C)).

[89] See Campaign for Fam. Farms v. Glickman, 200 F.3d 1180, 1188 (8th Cir. 2000) (reverse FOIA suit).

[90] Id.

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,[91] nor do individuals who plead guilty to criminal charges lose all rights to privacy with regard to the proceedings against them.[92]

The FOIA's broad conception of privacy also encompasses the doctrine of "practical obscurity." While as a general rule individuals have no privacy interest in information that has been previously disclosed, in DOJ 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

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[91] See, e.g., Isley v. EOUSA, 203 F.3d 52, 52 (D.C. Cir. Oct. 1999) (unpublished disposition); 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 [witness] testified at trial, or that [witness] acknowledged at trial that there were forgery charges pending against [them] at that time, does not constitute a waiver of [their] privacy rights to all other related information, as requested by the plaintiff."); Jarvis v. ATF, No. 07-0111, 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."); 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)).

[92] See Detroit Free Press Inc. v. DOJ, 829 F.3d 478, 482 (6th Cir. 2016) (finding that individuals have non-trivial privacy interest in preventing disclosure of their booking photos under Exemption 7(C)) (Exemption 7(C)); 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") (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)); Shapiro v. DOJ, No. 12-0313, 2020 WL 3615511, at *31 (D.D.C. July 2, 2020) ("Plaintiff's failure to even mention the possible public interest in disclosing the names of the individuals identified as having pled guilty means that the withholding of their names was proper.") (Exemptions 6 and 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 their guilty plea, and observing that a "mug shot is more than just another photograph of a person") (Exemption 7(C)); cf. ACLU v. DOJ, 655 F.3d 1, 17 (D.C. Cir. 2011) (Exemption 7(C)) (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).

information may have been at one time public," if the information has over time become "practically obscure."[93] 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 is not otherwise readily available to the public.[94] 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.[95] That is, such individuals may have a privacy interest in maintaining the information's "practical obscurity."[96] The Court of

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[93] 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").

[94] Reps. Comm., 489 U.S. at 764.

[95] See id. at 780.

[96] Id.; see, e.g., Associated Press v. DOJ, 549 F.3d 62, 65 (2d Cir. 2008) (per curiam) (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, 203 F.3d 52, 52 (D.C. Cir. Oct. 1999) (unpublished disposition) (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"); Laws.' Comm. for C.R. of S.F. Bay Area v. Dep't of the Treasury, 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. 07-0111, 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 Conf. on C.R. 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), appeal dismissed voluntarily, No. 06-5055, 2006 WL 1214937 (D.C. Cir. Apr. 28, 2006).

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.[97]

Moreover, as a general rule, courts have found that the passage of time serves to increase an individual's privacy interests, even in personal information that was once publicly available.[98] However, some courts have noted that privacy interests may diminish over time.[99]

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[97] 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)); see also 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, noting defendant failed to meet its "burden to show that documents that were clearly public and should be in the court's files, according to PACER and the common record retention practice of federal courts, are for some reason not actually still publicly available").

[98] See DOJ v. Reps. 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."); Bloomgarden v. DOJ, 874 F.3d 757, 761 (D.C. Cir. 2017) (finding "quite substantial" privacy interest in termination letter which was over twenty years old and presented allegations against former AUSA); 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 Reps. Comm. "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)).

[99] See Davin v. DOJ, 60 F.3d 1043, 1058 (3d Cir. 1995) ("[F]or some, the privacy interest may become diluted by the passage of time, though under certain circumstances the potential for embarrassment and harassment may also endure.") (Exemption 7(C)); 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") (Exemptions 6 and 7(C)); Silets v. FBI, 591 F. Supp. 490, 498 (N.D. Ill. 1984) ("[W]here documents are exceptionally old, it is likely that their age has diminished the privacy interests at stake.") (Exemption 7(C)).

Corporations and Business Relations

The Supreme Court has held that corporations do not possess personal privacy interests under the FOIA.[100] A closely held corporation or similar business entity is 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.'"[101]

More generally, when a record reflects personal details regarding an individual, albeit within the context of a business record, the individual's privacy interest is not

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[100] See FCC v. AT&T, Inc., 562 U.S. 397, 403 (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 & 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) may possess protectible privacy interests under Exemption 6."); cf. Doe, 1 v. FEC, 920 F.3d 866, 872 (D.C. Cir. 2019) (dictum) ("We add that, under Exemption 7(C), the Commission would not have had discretion to withhold information identifying the trust in response to a FOIA request."), cert. denied, 206 L. Ed. 2d 462 (Mar. 23, 2020).

[101] 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 also 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."); Beard v. Espy, 76 F.3d 384, 384 (9th Cir. 1995) (unpublished table decision); Nat'l Parks, 547 F.2d at 685-86; Providence J. 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); 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 protectable when individual and corporation are identical); cf. Doe v. Veneman, 230 F. Supp. 2d 739, 748-51 (W.D. Tex. 2002) (holding that Department of Agriculture erroneously labeled individuals taking part in USDA program as businesses based on either number of livestock owned or fact that they had name for their ranch, and finding that personally identifying information about those individuals exempt from disclosure), aff'd in pertinent part on other grounds, 380 F.3d 807, 818 n.39 (5th Cir. 2004). But cf. 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 legal proceedings. That fact, standing alone, does not implicate the FOIA's personal privacy concerns . . . ."), amended on other grounds on reconsideration, 479 F. Supp. 2d 23 (D.D.C. 2007).

diminished, and courts have permitted agency withholding of such information.[102] For 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.[103] 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.'"[104] Similarly, courts have found that such an individual's expectation of privacy is diminished with

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[102] See Am. Small Bus. League v. DOD, 674 F. App'x 675, 677 (9th Cir. 2017) (finding DOD properly withheld business contact information and signatures of employees whose privacy interests were small, but not trivial, as this information could be used for harassment or forgery); Campaign for Fam. 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 a secret ballot") (reverse FOIA suit); Skybridge Spectrum Found. v. FCC, 842 F. Supp. 2d 65, 83-84 (D.D.C. 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"); 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).

[103] Jud. Watch, Inc. v. Bd. of Governors of Fed. Rsrv. 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").

[104] Elec. Frontier Found. v. Off. of the Dir. of Nat'l Intel., 639 F.3d 876, 888 (9th Cir. 2010) (quoting Jud. Watch, Inc. v. DOJ, 365 F.3d 1108, 1126 (D.C. Cir. 2004).

regard to matters in which he or she is acting in a business capacity,[105] although privacy has still been afforded at times.[106]

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[105] See, e.g., Brown v. Perez, 835 F.3d 1223, 1235-37 (10th Cir. 2016) (finding summary judgment at district court level not appropriate because "[i]t is not intuitive . . . that the . . . physicians [at issue] possess a cognizable privacy interest in their business addresses – after all, it is in their economic interests to make their office locations generally available to the public . . . [and] the agency has not provided any testimony from physicians – or any other evidence – to support its assertion that treating physicians have a privacy interest in their business addresses" and noting the agency did not identify adverse consequences that could result from disclosure of referee physicians' identities and business addresses), amended on other grounds on reh'g (Nov. 8, 2016); King & Spalding, LLP v. HHS, 395 F. Supp. 3d 116, 122 (D.D.C. 2019) (requiring release of identities of attorneys representing confidential source relaying information to government because they have little to no privacy in their representational capacity as counsel) (Exemptions 6 and 7(C)); Story of Stuff Project v. U.S. Forest Serv., 366 F. Supp. 3d 66, 81 (D.D.C. 2019) (finding that Exemption 6 did not apply to names of submitter's environmental and engineering consultants and other scientists because the names and photographs were publicly available and privacy interest concerning professional relationships is not substantial); Edelman v. SEC, 239 F. Supp. 3d 45, 56-57 (D.D.C. 2017) (finding that names of individuals who make comments/complaints to government implicate "less weighty" privacy interests where such comments concern commercial activities); W. Watersheds Project & Wildearth Guardians v. Bureau of Land Mgmt., et al., No. 09-0482, 2010 WL 3735710, at *1, *12 (D. Idaho 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. Nat. Desert Ass'n v. Dep't of the Interior, 24 F. Supp. 2d 1088, 1093 (D. Or. 1998) ("[T]he relationship of the individual and the government does weigh in favor of disclosure. The subjects in the records sought were not merely private citizens. This relationship between the cattle trespassers operating under contract or permit with the government is at least quasi-business related.") (Exemption 7(C)); Wash. Post Co. v. USDA, 943 F. Supp. 31, 34-36 (D.D.C. 1996) (finding that farmers who received subsidies under cotton price-support program have only minimal privacy interests in home addresses from which they also operate businesses), appeal dismissed voluntarily, No. 96-5373 (D.C. Cir. May 19, 1997).

[106] 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").

Life Status

An individual who is deceased has greatly diminished personal privacy interests in the context of the FOIA.[107] 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, before invoking a privacy interest under Exemptions 6 or 7(C).[108] The

[107] 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)) (Exemption 7(C)); Viet. Veterans of Am. v. DOD, 453 F. Supp. 3d 508, 517 (D. Conn. 2020) (finding that "[w]hile death may have diminished the privacy interests of deceased [V]eterans, it did not render those interests de minimis"); Wessler v. DOJ, 381 F. Supp. 3d 253, 259 (S.D.N.Y. 2019) (deciding that decedents' privacy interest is greatly diminished, though "presumably remains more than de minimis") (Exemptions 6 and 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)); cf. Reclaim the Recs. v. VA, No. 18-8449, 2020 WL 1435220, at *10 (S.D.N.Y. Mar. 24, 2020) (rejecting agency's argument that its lack of confidence in accuracy of death records after taking steps to verify accuracy was sufficient to withhold them under Exemption 6, and requiring agency to produce records with data relating to living persons redacted or removed).

[108] 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."); 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 an agency to take" in determining whether an individual is dead); see also Schoenman v. FBI, 576 F. Supp. 2d 3, 9-10, 13-14 (D.D.C. 2008) (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 cf. Shapiro v. DOJ, No. 12-0313, 2020 WL 3615511, at *31 (D.D.C. July 2, 2020) (acknowledging plaintiff's argument that agency failed to ascertain life status of certain individuals, but finding that plaintiff's failure to identify a public interest in disclosure was fatal because "even if the FBI had determined that the individuals were deceased by conducting an adequate life-status check" that fact does not extinguish the individuals' privacy interests) (Exemptions 6 and 7(C)); 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

D.C. Circuit has upheld the FBI's use of the "100-year rule" in making its privacy protection determinations whereby the FBI assumes that an individual is alive unless their birth date is more than 100 years ago.[109]

"Survivor privacy" is also encompassed within the Act's privacy exemptions.[110] As mentioned previously, in NARA v. Favish, the Supreme Court unanimously found that the surviving family members of a former Deputy White House Counsel had a protectable privacy interest in his death-scene photographs.[111] The Court held that "survivor privacy" was a valid privacy interest protected by Exemption 7(C) based on three factors.[112] First, the Court had previously ruled in Reporters Committee that FOIA's personal privacy protection was not "some limited or 'cramped notion' of that idea,"[113] and so was broad enough to protect surviving family members' "own privacy rights against public

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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'") (quoting Clemente v. FBI, 741 F. Supp. 2d 64, 85 (D.D.C. 2010)) (Exemption 7(C)).

[109] 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 birth date 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 v. DOJ, 517 F. Supp. 2d 231, 242 (D.D.C. 2007) (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"); 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)).

[110] See NARA v. Favish, 541 U.S. 157, 165-70 (2004) ("To say that the concept of personal privacy must 'encompass' the individual's control of information about himself does not mean it cannot encompass other personal privacy interests as well.") (Exemption 7(C)); see also OIP Guidance: Supreme Court Rules for "Survivor Privacy" in *Favish* (posted 2004) (highlighting breadth of privacy protection principles in Supreme Court's decision).

[111] 541 U.S. at 167; see also OIP Guidance: Supreme Court Decides to Hear "Survivor Privacy" Case (posted 2003) (chronicling case's history).

[112] 541 U.S. at 165-69.

[113] Id. at 165.

intrusions."[114] 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."[115] 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.[116] 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,[117] and subsequent decisions have reinforced this principle.[118]

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[114] Id. at 167; see also Prison Legal News v. EOUSA, 628 F.3d 1243, 1248-49 (10th Cir. 2011) (finding that privacy interests of the victim's family in images was high and noting "[a]s the Supreme Court stated in Favish, family members have a right to personal privacy 'to secure their own refuge from a sensation-seeking culture for their own peace of mind and tranquility, not for the sake of the deceased'") (quoting Favish, 541 U.S. at 166).

[115] 541 U.S. at 168.

[116] 541 U.S. at 169 (citing Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act 36 (June 1967) and Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act 9-10 (Feb. 1975)).

[117] 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)), cert. granted, judgment vacated, 509 U.S. 918 (1993), overruled in part on other grounds, 2 F.3d 1055 (10th Cir. 1993); Bowen v. FDA, 925 F.2d 1225, 1228 (9th Cir. 1991) (affirming nondisclosure of autopsy reports of individuals killed by cyanide-contaminated products); Badhwar v. 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"); 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); cf. Outlaw v. 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).

[118] See, e.g., Sikes v. Dep't of Navy, 896 F.3d 1227, 1238 (11th Cir. 2018) (noting weighty privacy interest family members have in suicide note, and holding that "[s]uch significant privacy interests 'should yield only where exceptional [public] interests militate in favor of disclosure'") (quoting Jud. Watch, Inc. v. NARA, 876 F.3d 346, 350 (D.C. Cir. 2017)) (Exemptions 6 and 7(C)); Eil v. DEA, 878 F.3d 392, 400 (1st Cir. 2017) (acknowledging Favish and finding that "the district court failed to acknowledge the distinct privacy interests of the relatives of [the] deceased patients in the deceased patients' death-related records") (Exemption 7(C)); cf. Viet. Veterans of Am. v. DOD, 453 F. Supp. 3d 508, 517–18 (D. Conn. 2020) (finding that deceased Veterans' survivors have a privacy interest in the medical histories of these individuals with respect to exposure to plutonium radiation,

Public Figures

Although courts have found that an individual's status as a public figure might in some circumstances factor into the privacy balance,[119] a public figure does not, by virtue of their status, forfeit all rights of privacy.[120] Indeed, in NARA v. Favish, the deceased

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known to negatively impact health); Wessler v. DOJ, 381 F. Supp. 3d 253, 259 (S.D.N.Y. 2019) (noting that "decedents' family members have a privacy interest in the medical and autopsy records at issue here, even if the records do not depict graphic death scene images as in Favish") (Exemptions 6 and 7(C)).

[119] 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") (Exemptions 6 and 7(C)); Jud. Watch, Inc. v. DOJ, No. 00-0745, 2001 U.S. Dist. LEXIS 25731, at *13 (D.D.C. Feb. 12, 2001) (noting that pardoned prisoners "arguably bec[a]me public figures through their well-publicized pleas for clemency and [given] the speeches some have made since their release" and that EOUSA had failed to demonstrate that their privacy interests outweighed the public interest in disclosure) (Exemption 7(C)).

[120] See Forest Serv. Emps. for Env't. 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 Const. Gov't v. NARA, 656 F.2d 856, 865 (D.C. Cir. 1981); Jud. Watch, Inc. v. DOJ, 394 F. Supp. 3d 111, 118 (D.D.C. 2019) (finding that subject's FBI-related notoriety certainly weakens their privacy interest but that their status as a "public figure with a well-known association with the FBI does not, to be sure, destroy his privacy interest in other communications he may have had with the FBI") (Exemptions 6 and 7(C)); 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'" and "this may be especially true for politicians who rely on the electorate to return them to public office") (quoting Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984)); Citizens for Resp. & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 71 (D.D.C. 2012) (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'") (quoting Quinon v. FBI, 86 F.3d 1222, 1230 (D.C. Cir. 1996)) (Exemption 7(C)); 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'"), summary affirmance granted, No. 11-5304, 2012 WL 1930959 (D.C. Cir. May 25, 2012); Nat'l Sec. News Serv. v. Dep't of the 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

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 surviving family members' "weighty privacy interests."[121] Likewise, a candidate for a political office, either federal or nonfederal, does not forfeit all rights to privacy.[122]

Privacy Assurances and Waivers

Privacy assurances given to those providing information to the government generally serve to increase their privacy interests.[123] However, such assurances alone are not dispositive.[124] Alternatively, courts have found that disclosure warnings

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"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. 04-0832, 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)); 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)).

[121] 541 U.S. 157, 171 (2004).

[122] See The Nation Mag. 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 . . . ."); Archibald v. DOJ, 950 F. Supp. 2d 80, 88 (D.D.C. 2013) (same), aff'd, No. 13-5190, 2014 WL 590894 (D.C. Cir. Jan. 28, 2014); Hunt v. U.S. Marine Corps, 935 F. Supp. 46, 54 (D.D.C. 1996) (finding that senatorial candidate has unquestionable privacy interest in their military service personnel records and medical records); The Nation Mag. 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).

[123] See, e.g., Pavement Coatings Tech. Council v. U.S. Geological Surv., 436 F. Supp. 3d 115, 132 (D.D.C. 2019) ("[T]he volunteers' reasonable (and promised) expectation of confidentiality and privacy alone is enough to implicate Exemption 6 . . . ."), rev'd & remanded on other grounds, 995 F.3d 1014 (D.C. Cir. 2021); Kensington Rsch. & Recovery v. Dep't of the Treasury, No. 10-3538, 2011 WL 2647969, at *9 (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").

[124] See, e.g., Prudential Locations LLC v. HUD, 739 F.3d 424, 431-32 (9th Cir. 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., 818 F. Supp. 2d 122, 129 (D.D.C. 2011) (finding that while "[a]ssurances of confidentiality are to

advising the public that information may be released pursuant to the FOIA do not operate to waive privacy rights.[125] As one court has observed, such a statement is not a waiver of the right to 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."[126] Further, one person's waiver has been found not to apply to other individuals.[127]

Interest in Disclosure

In certain circumstances, an individual may have an interest in having their 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.[128] Introducing a new element into the balancing test for this particular

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be accorded some weight in assessing privacy interests under FOIA Exemption 6 . . . such promises do not necessarily prohibit disclosure").

[125] See Lakin L. Firm, P.C. v. FTC, 352 F.3d 1122, 1124-25 (7th Cir. 2003) (explaining that warning on Federal Trade Commission website that "information provided may be subject to release under the FOIA" cannot be construed as a waiver by consumers) (emphasis added); Ayuda, Inc. v. FTC, 70 F. Supp. 3d 247, 264 (D.D.C. 2014) ("[E]ven if all parties involved actually read and consented to the policy, the policy itself represents only a warning, not a waiver of FOIA privacy rights."); 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"), summary affirmance granted, No. 99-5365, 2000 WL 520724, at *1 (D.C. Cir. Mar. 7, 2000). But cf. Prechtel v. FCC, 330 F. Supp. 3d 320, 329 (D.D.C. 2018) (bulk submitters' privacy interest in their email addresses was minimal because they had ample warning when submitting comments to proposed rule that their email addresses could be made public); All. for the Wild Rockies v. U.S. Dep't of the Interior, 53 F. Supp. 2d 32, 37 (D.D.C. 1999) (finding that Exemption 6 did not bar disclosure of names and addresses of commenters to proposed rulemaking when comments were submitted voluntarily and rulemaking notice stated that complete file would be publicly available).

[126] Hill, 77 F. Supp. 2d at 8.

[127] 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").

[128] 164 F.3d 37, 48-49 (D.C. Cir. 1999) (depositors had clear interest in release of requested information because disclosure of their names would greatly increase probability that they or their heirs would be reunited with their fund).

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."[129] 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 the 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."[130]

Faced with reverse FOIA challenges permitted under the Administrative Procedure Act,[131] several courts have had to consider whether to order agencies not to release records pertaining to individuals that agencies had determined should be disclosed.[132] Courts

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[129] Id. at 48.

[130] Id.

[131] See 5 U.S.C. §§ 701-706 (2018) ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . is entitled to judicial review thereof."); see also Chrysler Corp. v. Brown, 441 U.S. 281, 318 (1979) (deciding that judicial review based on administrative record according to "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" standard applies to reverse FOIA cases).

[132] See, e.g., Am. Farm Bureau Fed'n v. EPA, 836 F.3d 963, 973-74 (8th Cir. 2016) (holding agency improperly decided that Exemption 6 did not protect personal information about owners, and noting information revealed little about agency's own conduct) (reverse FOIA suit); Campaign for Fam. 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) (reverse FOIA suit); Schmidt v. U.S. 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 their 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 [plaintiff's] reprimand gave the public, in the United States and around the world, insight into the way in which the U.S. government was holding its pilot accountable") (reverse FOIA suit); Doe v. Veneman, 230 F. Supp. 2d 739, 749-51 (W.D. Tex. 2002) (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); Am. Fed'n of Lab. & Congress of Indus. Orgs. v. FEC, 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); Sonderegger v. 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

have generally not found any requirement that an agency notify record subjects of the agency's intent to disclose personal information about them 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."[133]

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.[134] 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.'"[135] Information that informs the public about "an agency's performance of its statutory duties falls squarely within that statutory purpose."[136]

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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) (reverse FOIA suit); cf. Na Iwi O Na Kupuna O Mokapu 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).

[133] Blakey v. DOJ, 549 F. Supp. 362, 365 (D.D.C. 1982) (Exemption 7(C)), aff'd, 720 F.2d 215 (D.C. Cir. 1983); 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 service members who objected to release of their addresses to British citizens seeking to locate their fathers); 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").

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

[135] 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.").

[136] DOJ v. Reps. 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 Reps. Comm. definition of "public interest"); cf. NARA v. Favish, 541

Furthermore, as the Supreme Court held in NARA v. Favish, "the public interest sought to be advanced [must be] a significant one, an interest more specific than having the information for its own sake."[137]

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.[138] A requester's personal interest in

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U.S. 157, 172 (2004) (reiterating the Reps. Comm. "public interest" standard, and characterizing it as "a structural necessity in a real democracy" that "should not be dismissed" – despite arguments by amici that Reps. Comm. had been "overruled" by Electronic FOIA amendments since 1996).

[137] 541 U.S. at 172; see also Martin v. DOJ, 488 F.3d 446, 458 (D.C. Cir. 2007) ("'[T]o 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).

[138] 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)); Garza v. USMS, No. 18-5311, 2020 U.S. App. LEXIS 1917, at *2-3 (D.C. Cir. Jan. 22, 2020) (upholding protection of "personally identifying information of individuals involved in requester's investigation and prosecution" and other third parties because requester did not articulate a FOIA public interest in disclosure) (Exemption 7(C)); Wadhwa v. VA, 446 F. App'x 516, 519 (3d Cir. 2011) (per curiam) (unpublished disposition) (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. Dep't of Com., 830 F.2d 388, 391 nn.8 & 13 (D.C. Cir. 1987); see also Hunton & Williams LLP v. EPA, 346 F. Supp. 3d 61, 86 (D.D.C. 2018) (finding proper the withholding of certain information, including EPA employee's work email address and mobile phone number, as no public interest was identified); 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. 08-0177, 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. OIG, 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.").

disclosure is irrelevant to the public interest analysis.[139] As the Supreme Court held in 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."[140] 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.[141]

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[139] See Reps. Comm., 489 U.S. at 771-72 & n.20; see also Joseph W. Diemert, Jr. and Assocs. Co., L.P.A. v. FAA, 218 F. 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 [the requester]"); 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); Neary v. FDIC, 104 F. Supp. 3d 52, 58 (D.D.C. May 19, 2015) (explaining that "plaintiff's interest in gathering information [to bring a class action complaint] is not sufficient"); 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 their sister is "purely personal" and there is no public interest under the FOIA); Salas, 577 F. Supp. 2d at 111 (finding plaintiff's argument that release of redacted information would expose an agency's action pertaining to an incident involving plaintiff insufficient because "[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 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" and "[d]isclosure 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)); L.A. 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.").

[140] 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 (1994) (reiterating that "'the identity of the requesting party has no bearing on the merits of his or her FOIA request'") (quoting Reps. Comm., 489 U.S. at 771); Associated Press, 554 F.3d 274, 285 (2d Cir. 2009) ("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 Reps. 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."); 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.").

[141] Reps. Comm., 489 U.S. at 771-72 & n.20; see also Favish, 541 U.S. at 172 (reiterating the Reps. Comm. 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

Rather, 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.'"[142]

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inapplicable"); DOD v. FLRA, 510 U.S. at 496 (holding that "except in certain cases involving claims of privilege, 'the identity of the requesting party has no bearing on the merits of his or her FOIA request'") (quoting Reps. Comm., 489 U.S. at 771); 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."); Multi AG Media LLC v. USDA, 515 F.3d 1224, 1231 n.2 (D.C. Cir. 2008) ("Although [the requester] 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."); 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 v. Davis, No. 08-0177, 2009 WL 213034, at *2 (E.D. Mo. Jan. 28, 2009) ("[T]he purposes for which the FOIA request is made is irrelevant to whether an invasion of privacy is warranted.").

[142] Reps. Comm., 489 U.S. at 772 (quoting Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976)); see, e.g., Broward Bulldog, Inc. v. DOJ, 939 F.3d 1164, 1187 (11th Cir. 2019) (finding that a "bare interest in learning who may have been involved in the 9/11 attacks 'falls outside the ambit of the public interest that the [Act] was enacted to serve'") (quoting DOD v. FLRA, 510 U.S. at 500) (Exemption 7(C)); 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); 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)); 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) ("[T]o 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 Reps. Comm., 489 U.S. at 773); 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"). But see Int'l Couns. Bureau v. DOD, 723 F. Supp. 2d 54, 66 (D.D.C. 2010) (finding substantial public interest in disclosure of photographs of 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").

Information serves a FOIA public interest if it sheds light on agency action.[143] 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 their records.[144] At other

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[143] See Reps. Comm., 489 U.S. at 773; Rose, 425 U.S. at 372; see also Bartko v. DOJ, 898 F.3d 51, 76 (D.C. Cir. 2018) ("[T]he public interest in the material [appellant] seeks is substantial given the Fourth Circuit's disclosure of a troubling pattern of prosecutorial missteps and the U.S. Attorney's Office's recognition that errors had been made and changes would be implemented") (Exemption 7(C)), reh'g denied, (July 31, 2018); Henson v. HHS, 892 F.3d 868, 878 (7th Cir. 2018) (upholding protection of "medical information about the manufacturer's patients and the contact information for employees of the manufacturer and the agency," stating that "the [FOIA] requires transparency from the government—not the manufacturer's patients and employees"), reh'g denied, July 31, 2018; Citizens for Resp. & Ethics in Wash. v. DOJ, 746 F.3d 1082, 1092-96 (D.C. Cir. 2014) (holding categorical rule inappropriate as "[o]n the other side of the scale sits a weighty public interest in shining a light on the FBI's investigation of major political corruption and the DOJ's ultimate decision not to prosecute a prominent member of the Congress for any involvement he may have had") (Exemption 7(C)); Pavement Coatings Tech. Council v. U.S. Geological Surv., 436 F. Supp. 3d 115, 133 (D.D.C. 2019) (upholding protection of "names and addresses of the volunteer survey participants," and explaining that "the purpose of the FOIA is not to allow the public to replicate the agency's deliberations by collecting its own data from the sources that an agency relies upon. Instead, the far more modest goal of the FOIA statute is to shed light on an agency's decisionmaking") rev'd & remanded on other grounds, 995 F.3d 1014 (D.C. Cir. 2021); Nat'l Day Laborer Org. Network v. ICE, 811 F. Supp. 2d 713, 748 (S.D.N.Y. 2011) ("[T]he public interest in disclosure outweighs the privacy interest as regards [to] 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 Reps. Comm., 489 U.S. at 773) (Exemptions 6 & 7(C)); Fams. for Freedom v. U.S. Customs & Border Prot., 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)).

[144] See, e.g., Burton v. Wolf, 803 F. App'x. 120, 122 (9th Cir. 2020) (finding that "disclosure of personal information in an isolated case" involving requester's estranged wife's immigration petition would not advance FOIA public interest); Scott v. Treas. Insp. Gen. for Tax Admin., 787 F. App'x. 642, 645 (11th Cir. 2019) (holding that "disclosure of Inspector General investigation and resolution of an internal complaint of incompetence . . . by a single individual" warrants protection because "disclosure of the isolated incident would shed little light on the agency's statutory duty"); Higgs v. U.S. Park Police, 933 F.3d 897, 905 (7th Cir. 2019) (explaining that "'the diligence of the [agency's] investigation and the DOJ's exercise of its prosecutorial discretion'" too vague to comprise FOIA public interest and "would come up in virtually every case") (Exemptions 6 & 7(C)); Neely v. FBI, 208 F.3d 461, 464 (4th Cir. 2000) (observing that "courts have sensibly refused to recognize, for

times, though, courts have found that the public interest in a particular, singular investigation is sufficient, particularly concerning substantiated allegations of misconduct by high-level government officials.[145] (For additional information, see Exemption 6, Public Servant Accountability, below.) Courts have also found a significant FOIA public interest in other contexts, such as when the information at issue would shed light on whether the government hires qualified individuals, how the agency is spending taxpayer funds, or whether there is integrity to a public commenting

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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 v. OIG, 577 F. Supp. 2d 105, 112 (D.D.C. 2008) (finding that DOJ OIG properly redacted personally identifying information about Border Patrol employees mentioned in investigative records about a complaint by plaintiff 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 v. IRS, 487 F. Supp. 2d 482, 505 (D.N.J. 2007) (finding that disclosure of one IRS employee's time sheets would not serve the public interest); Mueller v. 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)); cf. 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).

[145] See, e.g., Citizens for Resp. & Ethics in Wash. v. DOJ, 746 F.3d 1082, 1094 (D.C. Cir. 2014) (recognizing significant public interest in information relating to DOJ's investigation of congressman accused of bribery because although it "may reflect only one data point regarding the performance of its statutory duties [. . .] it is a significant one: It may show whether prominent and influential public officials are subjected to the same investigative scrutiny and prosecutorial zeal as local aldermen and little-known lobbyists") (Exemptions 6 & 7(C)); Citizens for Resp. & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 74 (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)).

process.[146] Requesters seeking to bolster the policies of another federal statute must still identify a specific FOIA public interest in disclosure.[147]

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[146] See N.Y. Times Co. v. FCC, 457 F. Supp. 3d 266, 274-75 (S.D.N.Y. 2020) (finding overriding FOIA public interest in release of internet protocol addresses and device-specific information to "clarify whether and to what extent fraudulent activity interfered with the [public] comment process"); The Few, The Proud, The Forgotten v. VA, 407 F. Supp. 3d 83, 96 (D. Conn. 2019) (determining whether agency employs qualified individuals constituted overriding FOIA public interest); Story of Stuff Project v. U.S. Forest Serv., 366 F. Supp. 3d 66, 81 (D.D.C. 2019) (finding overriding FOIA public interest in names of company employees and consultants who prepared reports to aid agency in making permit renewal decisions because of public's "plausible interest in evaluating these individuals' qualifications"); Adelante Ala. Worker Ctr. v. DHS, 376 F. Supp. 3d 345, 368-69 (S.D.N.Y. 2019) (requiring release of the identities and professional backgrounds of certain experts assisting the agency to shed light on how the agency is spending taxpayer dollars and whether qualified experts were hired).

[147] See DOD v. FLRA, 510 U.S. at 499 (finding that asserted public interest in disclosure, that home addresses would facilitate communication between unions and the bargaining unit employees, which would further public interest in collective bargaining under Federal Service Labor-Management Relations statute, was "negligible, at best" and that "the fact that respondents are seeking to vindicate the policies behind the Labor Statute is irrelevant to the FOIA analysis"); Sheet Metal Workers Int'l Ass'n, Loc. No. 19 v. VA, 135 F.3d 891, 903-05 (3d Cir. 1998) (holding that revealing compliance with Davis-Bacon Act, 40 U.S.C. §§ 3141, *et seq*. (2018), is not in and of itself a public interest whose significance outweighs competing privacy interests of third parties); Sheet Metal Workers Int'l Ass'n, Loc. No. 9 v. U.S. Air Force, 63 F.3d 994, 997-98 (10th Cir. 1995) (same); Painting & Drywall Work Pres. Fund, Inc. v. HUD, 936 F.2d 1300, 1303 (D.C. Cir. 1991) (finding that release of names would not provide additional insight to how well the government was enforcing labor statutes); Hopkins v. HUD, 929 F.2d 81, 88 (2d Cir. 1991) (finding that release of names and addresses of workers employed on HUD-assisted public housing projects would shed no light on HUD's enforcement of prevailing wage laws); Minnis v. USDA, 737 F.2d 784, 784-87 (9th Cir. 1984) (recognizing valid public interest in fairness of agency lottery system that awarded permits to raft down the Rogue River, which has restricted traffic pursuant to the Wild and Scenic Rivers Act of 1968, but finding that release of names and addresses of applicants would in no way further that interest); Heights Cmty. Cong. v. VA, 732 F.2d 526, 530 (6th Cir. 1984) (determining 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" in the administration of a Veterans loan program); People for the Ethical Treatment of Animals v. NIH, No. 10-1818, 2012 WL 1185730, at* 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)), aff'd in part, No. 12-5183, 2012 WL 5896791 (D.C. Cir. Nov. 2, 2012), aff'd in part, vacated in part, 745 F.3d 535 (D.C. Cir. 2014); Long v. DOJ, 778 F. Supp. 2d 222, 236 (N.D.N.Y. 2011) (rejecting plaintiffs' claims that "disclosure

A request made for the purpose of challenging a criminal conviction has generally been found not to further a FOIA public interest.[148] Likewise, a request made to obtain or supplement discovery in a private lawsuit has generally been found not to serve a FOIA public interest.[149] In fact, one court has observed that if the requester truly had a

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of the vaccine type and date of administration will shed light on the DOJ's handling of petitions brought under the Vaccine Act").

[148] See, e.g., Watters v. DOJ, 576 F. App'x 718, 724 (10th Cir. 2014) (finding that agency properly withheld identifying information of law enforcement personnel and private third parties because plaintiff sought records to secure their release from prison rather than to further public understanding of government activities) (Exemptions 6 & 7(C)); Rimmer v. Holder, No. 10-1106, 2011 WL 4431828, at *7 (M.D. Tenn. Sept. 22, 2011) (characterizing requester's asserted interest in collaterally attacking their state conviction as an "illegitimate" public interest) (Exemption 7(C)), aff'd, 700 F.3d 246 (6th Cir. 2012); 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 their criminal conviction "does not qualify as a public interest favoring disclosure") (Exemptions 6 and 7(C)), denying motion for relief from judgment, 867 F. Supp. 2d 1 (D.D.C. 2011); 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)), aff'd, No. 10-5068, 2010 WL 3521595 (D.C. Cir. Sept. 3, 2010); 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 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. 04-0112, 2006 WL 722141, at *3 (E.D. Tex. Mar. 15, 2006) ("[T]he interest of a private litigant is not a significant public interest."), aff'd, 260 F. App'x 677 (5th Cir. 2007).

[149] 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, 278-79 (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 [their] 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 they are "hoping to obtain evidence sufficient to mount a collateral attack on [their] 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). But see United Am. Fin., Inc. v. Potter, 667 F. Supp. 2d 49, 60 (D.D.C. 2009) (ordering release of names of

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.[150] 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 that could corroborate a death-row inmate's claim of innocence."[151] 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."[152]

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.[153] In evaluating the weightiness of a FOIA public interest in disclosure, 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."[154] Significantly, although a FOIA public interest typically weighs in favor of

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USPS employees and agents where individuals identified could provide information in a related civil suit) (Exemption 7(C)).

[150] Gilbey v. Dep't of the Interior, No. 89-0801, 1990 WL 174889, at *2 (D.D.C. Oct. 22, 1990); see also 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 their child is the "state court that has jurisdiction over the parties, not a FOIA request or the federal court system"); cf. NARA v. Favish, 541 U.S. 157, 174 (2004) ("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.").

[151] 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 surmounted fairly substantial hurdle of showing that a reasonable person could believe that the agency might be withholding information that could corroborate their claim that four others actually committed the quadruple homicide for which they were convicted) (Exemption 7(C)).

[152] Id. at 1176, 1184.

[153] See, e.g., Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976) (explaining that Congress's intended purpose of Exemption 6 was to require a balancing of privacy and FOIA public interests); Ripskis v. HUD, 746 F.2d 1, 3 (D.C. Cir. 1984) (same); Fund for Const. Gov't v. NARA, 656 F.2d 856, 862 (D.C. Cir. 1981) (same).

[154] DOD v. FLRA, 964 F.2d 26, 29-30 (D.C. Cir. 1992); see NARA v. Favish, 541 U.S. 157, 175 (2004) (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 Serv. Emps. for Env't.

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.[155]

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."); 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-copy" the maps and because the requester already had a "plethora of information" with which "to evaluate FEMA's activities"); Off. of the Cap. Collateral Couns. 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"); Painting Indus. of Haw. Mkt. Recovery Fund v. Dep't of the Air Force, 26 F.3d 1479, 1485 (9th Cir. 1994) (finding that union may "pass out fliers" or "post signs or advertisements soliciting information from workers about possible violations of the Davis-Bacon Act"); FLRA v. Dep't of Com., 962 F.2d 1055, 1060 n.2 (D.C. Cir. 1992) (finding that 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) (determining that release of workplace contact information is alternative to disclosing home addresses of employees); Multnomah Cnty. Med. Soc'y v. Scott, 825 F.2d 1410, 1416 (9th Cir. 1987) (holding that medical society can have members send literature to their patients as alternative to disclosure of identities of all Medicare beneficiaries); Cowdery, Ecker & Murphy, LLC v. Dep't of the 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").

[155] 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."); Fund for Const. 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)). But see Advocs. 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.").

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."[156] 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.[157] Courts have found that it is not enough that the information

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[156] NARA v. Favish, 541 U.S. 157, 172-73 (2004); see also Associated Press v. DOD, 554 F.3d 274, 293 (2d Cir. 2009) ("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 103, 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. 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. U.S. Agency for Int'l Dev., No. 95-0263, 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 and disclosure of employees' names would shed no additional light on agency activities).

[157] See Favish, 541 U.S. at 172 (declaring that requesters "must show the information is likely to advance [a specific, significant public] interest"). Compare Cameranesi v. DOD, 856 F.3d 626, 644-45 (9th Cir. 2017) (noting that "the relationship between [Western Hemisphere Institute for Security Cooperation's ("WHINSEC")] obligation to provide human rights training to WHINSEC students and the subsequent conduct of foreign law enforcement or military personnel, perhaps years after their training at WHINSEC, is tenuous at best[]" and that "[b]ecause any incremental value stemming from the disclosure of the identities of WHINSEC students and instructors is small, the public interest in this case does not outweigh the serious risks that would result from disclosure"), and Havemann v. Colvin, 629 F. App'x 537, 540 (4th Cir. 2015) (finding privacy interest outweighed FOIA public

would permit speculative inferences about the conduct of an agency or a government official[158] 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.[159] 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."[160] The Second Circuit held that instead, "a court must first ascertain whether that interest would be served by disclosure."[161] For example, in NARA v. Favish, the Supreme Court

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interest as "it is undisputed that [plaintiff] would be unable to make any eligibility determinations for benefits based solely on [requested personal] data [concerning social security beneficiaries], because such . . . determinations require examination of many different and complicated variables including work issues, prior filings, and auxiliary benefits"), with 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), Mattachine Soc'y of Wash., D.C. v. DOJ, 267 F. Supp. 3d 218, 228 (D.D.C. 2017) (determining that third party names were properly withheld, but finding significant public interest in extent to which government "surveilled, harassed, and/or terminated" lesbian, gay, bisexual, and transgender federal employees" under E.O. No. 10,450, and ordering agency to replace third party names in responsive records with "alphanumeric markers, which are to be uniquely identifiable and consistent throughout all documents produced" to protect privacy while vindicating public interest) (Exemptions 6 and 7(C)), and 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").

[158] See DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 774 (1989) (explaining that release of an individual's rap sheet revealing criminal history potentially related to the individual's dealings with the government would not reveal anything about the conduct of the agency in how it awards contracts); see also Cozen O'Connor v. Dep't of the Treasury, 570 F. Supp. 2d 749, 781 (E.D. Pa. 2008) (stating that "[d]uring 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").

[159] See Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989) (rejecting FOIA public interest argument that release of federal annuitants' names and addresses would "aid [National Association of Retired Federal Employees ("NARFE")] in its lobbying activities, and thus result in the passage of laws that would benefit the public in general and federal retirees in particular").

[160] 929 F.2d 81, 88 (2d 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").

recognized that 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.[162] However, the Supreme 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."[163] 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.[164]

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

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[161] Id.; see also Favish, 541 U.S. at 175 (highlighting "the nexus required between the requested documents and the purported public interest served by disclosure"); Cook v. NARA, 758 F.3d 168, 178 (2d Cir. 2014) (protecting specific subjects of Presidential Records Act ("PRA") requests by former President and Vice President because records would shed little light on activities of NARA, which has no role in policing types of records requested by former officials under PRA); World Publ'g Co. v. DOJ, 672 F.3d 825, 831 (10th Cir. 2012) ("Based on 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) (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 carefully scrutinizing various public interests asserted by plaintiff, that "the requested data does not serve any FOIA-related public interest in disclosure"); Viet. Veterans of Am. v. DOD, 453 F. Supp. 3d 508, 519 (D. Conn. 2020) (finding that releasing names of Veterans exposed to radiation "will not, in and of itself, increase the public's understanding of the operations and activities of the government in connection with the Palomares nuclear accident"); Berger v. IRS, 487 F. Supp. 2d 482, 505 (D.N.J. 2007) (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").

[162] 541 U.S. at 173.

[163] Id. at 174.

[164] Id. at 175.

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.[165] Specifically, the requesters in Reporters Committee argued that information contained in a defense contractor's rap sheet, if it existed, needed to be 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."[166] 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."[167] 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.[168]

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[165] DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 774 (1989).

[166] Id.

[167] Id.

[168] 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 v. DOD, 554 F.3d 274, 288 (2nd Cir. 2009) ("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 v. HUD, 929 F.2d 81, 88 (2d Cir. 1991)); Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989) (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, 13 (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, Corp. v. U.S. Customs Serv., 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)). But see The Nation Mag. 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,[169] 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.[170] 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."[171] Although the plaintiff claimed that disclosure of the identities of the unsuccessful emigrants would allow him to re-interview 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 relevant information . . . . Mere speculation about hypothetical public benefits cannot outweigh a demonstrably significant invasion of privacy."[172]

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[169] 502 U.S. 164 (1991).

[170] Id. at 174.

[171] Id. at 178; see also Prudential Locations LLC v. HUD, 739 F.3d 424, 433 (9th Cir. 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 Resp. & 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 [convicted lobbyist] from speaking with members of the media'" had "been satisfied by the documents and portions of the documents already released") (quoting plaintiff's motion at 15); Seized Prop. Recovery, Corp. 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)). 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)).

[172] Dep't of State v. Ray, 502 U.S. 164, 178-79 (1991); 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. Emps. for Env't

Courts typically have not found a FOIA public interest in records concerning state or foreign governments[173] or individuals[174] where records do not shed light on agency

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Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1027-28 (9th Cir. 2008) (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").

[173] 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)), rev'd & remanded on other grounds, 508 U.S. 165 (1993); Phillips v. ICE, 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 ("FOIA Counselor: Questions & Answers") (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)).

[174] DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989); see Bibles v. Or. Nat. 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 Reps. Comm., 489 U.S. at 773); see also, e.g., Zaldivar v. VA, 695 F. App'x 319, 320 (9th Cir. 2017) (upholding district court's Exemption 6 analysis where district court previously held plaintiff did not identify any public interest in disclosure of third party's contact information and social security number); Consumers' Checkbook for the Study of Servs. v. HHS, 554 F.3d 1046, 1051 (D.C. Cir. 2009) ("'[I]nformation about private citizens . . . that reveals little or nothing about an agency's own conduct' does not serve a relevant public interest under FOIA.") (quoting Reps. Comm., 489 U.S. at 773); Kishore v. DOJ, 575 F. Supp. 2d 243, 256 (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

operations. As the Supreme Court has declared, such information "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.[175] Nevertheless, the below sections explain where courts have found an overriding FOIA public interest in the release of information concerning individuals.

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.[176] 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 its duties.[177] In

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Reps. 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."); 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"); 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 Reps. Comm. Decision").

[175] Reps. Comm., 489 U.S. at 775.

[176] 502 U.S. 164, 178-79 (1991); see 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").

[177] See, e.g., ACLU v. DOJ, 655 F.3d 1, 13 (D.C. Cir. 2011) (Exemption 7(C)); Elec. Frontier Found. v. Off. of the Dir. of Nat'l Intel., 639 F.3d 876, 887-88 (9th Cir. 2010); Rosenfeld v. DOJ, 57 F.3d 803, 811-12 (9th Cir. 1995); Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. DOJ, No. 18-1860, 2020 WL 1189091, at *7 (D.D.C. Mar. 12, 2020); W. Watersheds Project & Wildearth Guardians v. Bureau of Land Mgmt., No. 09-0482, 2010 WL 3735710, at *12 (D. Idaho Sept. 13, 2010); Sun-Sentinel Co. 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); Balt. Sun v. U.S. Marshals

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."[178] 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."[179] 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."[180] To support a "derivative use" public interest, the information must shed additional light on the government's activities.[181] 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;[182]

(2) a list of Haitian nationals returned to Haiti, which could be used for follow-up interviews with the Haitians to learn "whether the [Immigration and

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Serv., 131 F. Supp. 2d 725, 729-30 (D. Md. 2001) (Exemption 7(C)); Or. Nat. Desert Ass'n v. Dep't of the Interior, 24 F. Supp. 2d 1088, 1093 (D. Or. 1998) (Exemption 7(C)); Cardona v. INS, No. 93-3912, 1995 WL 68747, at *3 (N.D. Ill. Feb. 16, 1995); Ray v. DOJ, 852 F. Supp. 1558, 1564-65 (S.D. Fla. 1994).

[178] 655 F.3d at 13-14 (considering derivative use of docket information, such as case name, case number and court) (Exemption 7(C)).

[179] Id.

[180] Id. at 16 ("'[D]erivative use on the public-benefits side, and derivative use on the personal-privacy side must surely go together.'") (citing Dep't of State v. Ray, 502 U.S. 164, 181 (1991)) (Scalia, J., concurring in part).

[181] Ray, 502 U.S. at 178 (finding that release of identifying information that would permit second round of interviews with Haitian returnees "would not shed any additional light on the Government's conduct"); Pavement Coatings Tech. Council v. U.S. Geological Surv., 436 F. Supp. 3d 115, 133 (D.D.C. 2019) (declining to find a derivative FOIA public interest in the release of names and addresses of volunteer survey participants, explaining that the requester "does not need to replicate or reproduce USGS's study to know what USGS was up to" because the requester already had "the information that support[ed] the conclusions that USGS reached") rev'd & remanded on other grounds, 995 F.3d 1014 (D.C. Cir. 2021).

[182] Thott v. Dep't of the Interior, No. 93-0177-B, slip op. at 5-6 (D. Me. Apr. 14, 1994).

Naturalization Service (INS)] is fulfilling its duties not to turn away Haitians who may have valid claims for political asylum;"[183]

(3) 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;[184]

(4) 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;[185]

(5) 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;[186]

(6) 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;"[187]

(7) 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;"[188]

(8) the "names and addresses of individuals as well as the addresses of the closely held entities and family owned businesses" which would "allow the

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[183] Ray v. DOJ, 852 F. Supp. 1558, 1564-65 (S.D. Fla. 1994) (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").

[184] Weiner v. FBI, No. 83-1720, slip op. at 5-7 (C.D. Cal. Dec. 6, 1995) (Exemptions 6 and 7(C)).

[185] Cardona v. INS, No. 93-3912, 1995 WL 68747, at *3 (N.D. Ill. Feb. 16, 1995).

[186] Sun-Sentinel Co. v. DHS, 431 F. Supp. 2d 1258, 1269-73 (S.D. Fla. 2006).

[187] Lardner v. DOJ, No. 03-0180, 2005 WL 758267, at *17 (D.D.C. Mar. 31, 2005).

[188] Balt. Sun, 131 F. Supp. 2d at 729-30.

public to better understand the scope of the [Department of the Interior, Bureau of Land Management's] grazing program;"[189]

(9) 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));[190]

(10) 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;"[191]

(11) Docket numbers of cases with convictions of terrorism-related charges, which would permit "[u]nderstanding how and when the Department categorizes cases as terrorism cases and following trends related to these prosecutions."[192]

In Associated Press v. DOD, the Court of Appeals for the Second Circuit expressed skepticism as to whether a "derivative use" can support a public interest under the FOIA, stating 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

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[189] W. Watersheds Project & Wildearth Guardians v. Bureau of Land Mgmt., No. 09-0482, 2010 WL 3735710, at *4 (D. Idaho Sept. 13, 2010); see also Or. Nat. Desert Ass'n v. Dep't of the Interior, 24 F. Supp. 2d 1088, 1093 (D. Or. 1998) (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)).

[190] Rosenfeld v. DOJ, 57 F.3d 803, 812 (9th Cir. 1995).

[191] Elec. Frontier Found. v. Off. of the Dir. of Nat'l Intel., 639 F.3d 876, 887-88 (9th Cir. 2010).

[192] Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. DOJ, No. 18-1860, 2020 WL 1189091, at *7 (D.D.C. Mar. 12, 2020) (explaining that release of docket numbers is "the only way to conduct a comprehensive study of the prosecutions" the Department categorizes as terrorism cases) (Exemptions 6 and 7(C)).

is furthered, we have indicated that it may not be."[193] The Court of Appeals for the Ninth Circuit has at times expressed similar concerns.[194]

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."[195] 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.[196] The Court of Appeals

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[193] 554 F.3d 274, 290 (2d Cir. 2009); see Kuzma v. DOJ, 692 F. App'x 30, 35 (2d Cir. 2017) ("To the extent [plaintiff] means that learning the identities will provide further avenues for research, we have observed that 'courts have been skeptical of recognizing a public interest in this derivative use of information. . . .'") (quoting Long v. OPM, 692 F.3d 185, 194 (2d Cir. 2012)) (Exemptions 6 and 7(C)); 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."); see also Viet. Veterans of Am. v. DOD, No. 17-1660, 2020 WL 1703239 (D. Conn. Apr. 8, 2020) (declining to release the names of Veterans tested for radiation exposure, which would "allow the public to fully appreciate the human cost of the Palomares nuclear accident" and "'benefit those [V]eterans and their survivors,'" because the proposed release is based on a "derivative theory of public interest" and would not further "understanding of the government's operations or activities"); Seife v. Dep't of State, 298 F. Supp. 3d 592, 626 (S.D.N.Y. 2018) (rejecting plaintiff's argument that public interest would be satisfied by release of names of certain agency officials because plaintiff would need to contact those officials to obtain further information to satisfy that interest, and noting that Second Circuit has rejected derivative public interests as grounds for FOIA disclosure).

[194] 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. . . . [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. Emps. for Env't. 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 888 (finding that release of lobbyists' names "will allow the public to draw inferences comparing the various agents' influence in relation to each other and compared to the agents' or their corporate sponsors' political activity and contributions").

[195] NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978).

[196] See Bartko v. DOJ, 898 F.3d 51, 70 (D.C. Cir. 2018) (finding categorical denial of access to disciplinary records inappropriate following public referral of supervisory AUSA to OPR

for the District of Columbia Circuit's decision in Stern v. FBI[197] 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,[198] the D.C. Circuit subsequently reaffirmed the legitimacy of a FOIA public interest rooted in public servant accountability in Dunkelberger v. DOJ.[199] There, it held that even post-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.[200]

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.[201] The court found the employees' level of seniority within the FBI and their respective levels of culpability to be particularly

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because "[t]he public has an interest in knowing 'that a government investigation itself is comprehensive, that the report of an investigation released publicly is accurate, that any disciplinary measures imposed are adequate, and that those who are accountable are dealt with in an appropriate manner'") (quoting Stern v. FBI, 737 F.2d 84, 92-94 (D.C. Cir. 1984)) (Exemption 7(C)); Cochran v. United States, 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. 10-1775, 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."), report & recommendation adopted, No. 10-1775, 2011 WL 4501388 (M.D. Fla. Sept. 27, 2011).

[197] 737 F.2d 84 (D.C. Cir. 1984).

[198] 489 U.S. 749 (1989).

[199] 906 F.2d 779, 781 (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)).

[200] Id. at 781; see also 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)).

[201] 737 F.2d at 86.

relevant in evaluating the extent of the public interest in disclosure.[202] 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."[203]

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 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.[204]

Applying this analysis, courts have followed a general rule that demonstrated wrongdoing of a serious and intentional nature by high-level government officials weighs heavily in favor of disclosure.[205] In reviewing the conduct of public officials,

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[202] Id. at 94.

[203] Id. at 92-93.

[204] Id. at 93-94.

[205] See, e.g., Am. Immigr. Laws. Ass'n v. EOIR, 830 F.3d 667, 675 (D.C. Cir. 2016) (noting that "disclosing the name of an immigration judge subject to numerous and/or serious substantiated complaints might shed considerable light on matters of public interest, whereas disclosing the name of an immigration judge subject to a single, unsubstantiated complaint might not"); 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)), cert. granted, vacated & remanded, 541 U.S. 970 (2004), reinstated after remand, 380 F.3d 110 (2d Cir. 2004) (per curiam); 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) (affirming district court's order to release information about federal employees found guilty of accepting bribes); Buzzfeed, Inc. v. DOJ, No. 17-7949, 2019 WL 1114864, at *6-10 (S.D.N.Y. Mar. 11, 2019) (determining the disclosure of identities of U.S. Attorney and supervisory AUSA warranted as to substantiated allegations but not as to unsubstantiated allegations)

courts have also considered whether the conduct pertains to agency operations rather than personal conduct.[206] In Perlman v. DOJ, the 2nd Circuit outlined five factors, none of which are dispositive, when evaluating a government employee's privacy interest against the FOIA public interest in disclosure:

> (1) the government employee's rank; (2) the degree of wrongdoing and strength of evidence against the employee; (3) whether there are other ways to obtain the information; (4) whether the information sought sheds light on a government activity; and (5) whether the information sought is related to job function or is of a personal nature.[207]

Many courts have focused in particular on the employee's rank, finding less public interest in both serious and less serious misconduct by lower-level agency

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(Exemption 7(C)); Cowdery, Ecker & Murphy, LLC v. Dep't of the Interior, 511 F. Supp. 2d 215, 220 (D. Conn. 2007) (discussing 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) (finding that public interest in Naval Commander's nonjudicial punishment for involvement in accident at sea outweighs any privacy interests protected under Exemption 6) (Privacy Act "wrongful disclosure" suit); Wood v. FBI, 312 F. Supp. 2d 328, 345-51 (D. Conn. 2004) (analyzing information linking FBI Supervisory Special Agent's name with specific findings and disciplinary action taken against them), aff'd in part & rev'd in part on other grounds, 432 F.3d 78 (2d Cir. 2005).

[206] See Perlman, 312 F.3d at 107 (considering "whether the information sought is related to job function or is of a personal nature" as a factor in evaluating employee privacy interest against FOIA public interest); DBW Partners, LLC v. USPS, No. 18-3127, 2019 WL 5549623, *6-7 (D.D.C. Oct. 28, 2019) (finding a significant FOIA public interest in existence of any ethics investigation into how high-ranking Chief Officer carried out his duties when records would shed light on agency's relationships with private partners).

[207] Perlman, 312 F.3d at 107.

employees.[208] As such, courts have often extended protection to the identities of mid- and low-level federal employees accused of misconduct.[209]

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[208] 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 military Academy honor code); Janangelo v. Treasury Inspector Gen. for Tax Admin., 726 F. App'x 660, 661 (9th Cir. 2018) (placing "'emphasis on the employee's position in her employer's hierarchical structure'" and "giving greater weight to the privacy interests of 'lower level officials' like [the plaintiff's] former boss") (quoting Forest Serv. Emps. for Env't. Ethics v. U.S. Forest Serv. 524 F.3d 1021, 1025 (9th Cir. 2008)), cert. denied, 139 S. Ct. 490 (2018) (mem.); Forest Serv. Emps. for Env't. 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 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 individuals is very high," the "[d]isclos[ure of] the names of the employees . . . would shed little light on the operation of government"); Beck v. DOJ, 997 F.2d 1489, 1493 (D.C. Cir. 1993) ("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, 851 F. Supp. 2d 321, 334 (D.N.H. 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. Dep't of the Army, No. 05-1519, 2007 WL 935604, at *13 (S.D. Cal. Mar. 6, 2007) ("'[L]ower 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, 17 F.3d at 280 n.4) (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); 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).

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."[210] 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.[211] In NARA v. Favish, the Supreme

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[209] See, e.g., Forest Serv. Emps. for Env't. Ethics, 524 F.3d at 1026-28 (protecting names of public employees connected to investigation into mishandled forest fire response); 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-martial proceedings); Cawthon v. DOJ, No. 05-0567, 2006 WL 581250, at *2-4 (D.D.C. Mar. 9, 2006) (protecting information about two Bureau of Prisons doctors, including records pertaining to malpractice and disciplinary matters); but see Schmidt v. U.S. Air Force, No. 06-3069, 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 their discipline confidential, competing public interest in deadly friendly-fire incident with international effects outweighed that privacy interest and shed light on how the U.S. government was holding its pilot accountable) (Reverse FOIA/Privacy Act wrongful disclosure suit); Gannett River States Publ'g Corp. v. Bureau of the Nat'l Guard, No. 91-0455, 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).

[210] 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 Comput. Pros. for Soc. Resp. 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); Lamb v. Millennium Challenge Corp., 334 F. Supp. 3d 204, 216 (D.D.C. 2018) (upholding protection of identifying information about a third party in light of Safecard rule where plaintiff "has not offered any – let alone 'compelling' – evidence of illegal activity").

[211] NARA v. Favish, 541 U.S. 157, 175 (2004); see, e.g., Bloomgarden v. DOJ, 874 F.3d 757, 761 (D.C. Cir. 2017) (finding substantial privacy interest in termination letter concerning Assistant United States Attorney, and noting "[t]he aspect of the letter that concerns [the court] the most is that it contains mere allegations; it was never tested, nor was it ever formally adopted by the deputy-attorney general's office"); Kuzma v. DOJ, 692 F. App'x 30, 35 (2d Cir. 2017) (protecting identities of individuals involved in murder investigation, and noting plaintiff does not provide evidence that information would reveal fault in handling of investigation) (Exemptions 6 and 7(C)); Watters v. DOJ, 576 F. App'x 718, 724 (10th Cir.

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."[212] The court went on to recognize that "allegations of misconduct are 'easy to allege and hard to disprove'"[213] and that courts therefore must require a "meaningful evidentiary showing" by the FOIA requester.[214] Specifically:

> [T]he requester must establish more than a bare suspicion in order to obtain disclosure. Rather, the requester must produce evidence

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2014) (finding fault with plaintiff's asserted public interest of obtaining exculpatory information to prove their innocence because they provided no evidence of government wrongdoing) (Exemptions 6 & 7(C)); 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, 781 (D.C. Cir. 1990) (protecting existence of "letters of reprimand or suspension" of named FBI agent) (Exemption 7(C)); Carter v. Dep't of Com., 830 F.2d 388, 391 (D.C. Cir. 1987) (protecting identities of attorneys subject to disciplinary proceedings, which were later dismissed).

[212] 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.").

[213] 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).

[214] Favish, 541 U.S. at 175; see, e.g., 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)); 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); Cole v. FBI, No. 13-1205, 2015 WL 4622917, at *3 (D.D.C. July 31, 2015) (observing that where government misconduct is alleged, plaintiffs must make a "meaningful evidentiary showing" that is "based on the known facts") (Exemptions 6 and 7(C)); Jarvis v. ATF, No. 07-0111, 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.'").

that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.[215]

[215] Favish, 541 U.S. at 174; cf. Citizens for Resp. & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 74 (D.D.C. 2012) (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)); Jud. 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.").

Courts applying this heightened standard to allegations of government misconduct have generally found that plaintiffs have not provided the requisite evidence required by Favish,[216] while in other cases the standard has been found to be satisfied.[217]

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[216] See Djenasevic v. EOUSA, No. 18-5262, 2019 U.S. App. LEXIS 29884, at *3 (D.C. Cir. Oct. 3, 2019) (finding privacy interest in third-party identifying information related to requester's investigation and prosecution not overcome because appellant did not 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); Patino-Restrepo v. DOJ, No. 17-5143, 2019 WL 1250497 (D.C. Cir. Mar. 14, 2019) (finding "[a]ppellant has not produced 'evidence that would warrant a belief by a reasonable person that the alleged government impropriety might have occurred'") (quoting Favish 541 U.S. at 174-75); Higgs v. U.S. Park Police, 933 F.3d 897, 904-05 (7th Cir. 2019) (finding that district court erred in not resolving whether requester met Favish standard, and holding "the only possible conclusion . . . is that [plaintiff] has not shown that a reasonable person could find government impropriety"); Reep v. DOJ, No. 18-5132, 2018 WL 6721099, at *1 (D.C. Cir. Dec. 18, 2018) (finding "conclusory assertions . . . do not constitute 'compelling evidence that the agency is engaged in illegal activity'") (quoting Citizens for Resp. and Ethics in Wash. v. DOJ, 854 F.3d 675, 681-82 (D.C. Cir. 2017)); Janangelo v. Treasury Inspector Gen. for Tax Admin., 726 F. App'x 660, 661-62 (9th Cir. 2018) (finding that plaintiff produced no evidence "that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred," but instead provided "mere allegations and conjecture") (quoting Favish, 541 U.S. at 174), cert. denied, 139 S. Ct. 490 (2018) (mem.); Cameranesi v. DOD, 856 F.3d 626, 644 (9th Cir. 2017) ("Although we agree there is a public interest in identifying government impropriety in performing its statutory duties, allegations of two errors among the thousands of students that trained at WHINSEC from 2001 through 2004 does not amount to a 'meaningful evidentiary showing' that would lead to 'a belief by a reasonable person that the alleged Government impropriety might have occurred.'") (quoting Favish, 541 U.S. at 174-75); Watters, 576 F. App'x at 724 (observing that plaintiff provided only unsubstantiated allegations of government wrongdoing to support their assertions that disclosure of third party information would prove their innocence); 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 [plaintiff] 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 274, 289-92 (2d Cir. 2009) (concluding that redactions of the detainees' identifying information was proper because plaintiff failed to produce sufficient evidence of DOD impropriety) (Exemption 7(C)); Lane v. Dep't of the 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, 475 F.3d at 387); 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

In conclusion, the identification and assessment of a FOIA public interest is the second part of the analysis used for determining whether personal information falls within the FOIA's privacy exemptions. If an agency determines that no legitimate FOIA public interest exists, and there is a more than de minimis privacy interest in nondisclosure, courts have found that the information should be protected because "'something, even a modest privacy interest outweighs nothing every time.'"[218] Alternatively, if a FOIA public interest is found to exist, the next step of the analysis

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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"); Schiffer v. FBI, 78 F.3d 1405, 1410 (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); Bernegger v. EOUSA, 334 F. Supp. 3d 74, 90 (D.D.C. 2018) (concluding "baseless accusations are insufficient to overcome the privacy interests at stake") (Exemptions 6 and 7(C)); Cole, 2015 WL 4622917, at *3-4 (finding insufficient evidence that FBI special agent interfered with potential witness, and noting that habeas court had also found insufficient evidence of such misconduct); 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 in pertinent part, 692 F.3d 185 (2d Cir. 2012).

[217] Rojas v. FAA, 941 F.3d 392, 407 (9th Cir. 2019) (finding Favish standard satisfied where requester "has overcome 'the presumption of legitimacy accorded to official conduct'" and requiring release of identities of employees involved in discussion of the selection of air traffic controllers); CASA de Md., Inc. v. DHS, 409 F. 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 F. App'x 609, 611 (D.C. Cir. 2010) (per curiam) (finding privacy interests outweighed by 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").

[218] Schoenman v. FBI, 573 F. Supp. 2d 119, 149 (D.D.C. 2008) (concluding that information was properly withheld in absence of public interest) (quoting Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989)); see also Seized Prop. Recovery, Corp. v. U.S. Customs Serv., 502 F. Supp. 2d 50, 56 (D.D.C. 2007) ("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)); FOIA Update, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking").

requires the public interest in disclosure to be balanced against the privacy interest in nondisclosure.[219]

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

If an agency identifies both a substantial (i.e., more than a 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.[220] In other words, courts have held that 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.'"[221] 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.[222]

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

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[219] See NARA v. Favish, 541 U.S. 157, 171 (2004) ("The term 'unwarranted' requires us to balance the family's privacy interest against the public interest in disclosure.") (Exemption 7(C)).

[220] See DOD v. FLRA, 510 U.S. 487, 495 (1994) (reiterating need to balance FOIA public interest against privacy interest); DOJ v. Reps. 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) (explaining that Exemption 6 requires balancing of FOIA public interest and privacy interest); see also FOIA Update, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking").

[221] 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 Reps. Comm., 489 U.S. at 749 (a "court must balance the public interest in disclosure against the interest Congress intended the Exemption to protect"); see also 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).

[222] See, e.g., Ray, 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 Rsch. Grp. v. Dep't of Labor, 591 F.2d 808, 809 (D.C. Cir. 1978) (per curiam) (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").

unwarranted' invasions of personal privacy."[223] In balancing these interests, the Court of Appeals for the District of Columbia Circuit has held that "the 'clearly unwarranted' language of Exemption 6 weights the scales in favor of disclosure"[224] and "creates a 'heavy burden'" for an agency invoking Exemption 6.[225]

Although "the presumption in favor of disclosure is as strong [under Exemption 6] as can be found anywhere in the Act,"[226] courts have readily protected personal, intimate details of an individual's life. For example, as the D.C. 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.[227] Furthermore, courts have consistently upheld protection, absent an overriding FOIA public interest, for:

(1) birth dates;[228]

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[223] Rose, 425 U.S. at 382; see also, e.g., Ctr. for Biological Diversity v. Off. of the U.S. Trade Representative, 450 F. App'x 605, 609 (9th Cir. 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) (quoting Elec. Frontier Found. v. Off. of the Dir. of Nat'l Intel., 639 F.3d 876, 886 (9th Cir. 2010)) (unpublished disposition); Associated Press v. DOD, 554 F.3d 274, 291 (2d Cir. 2009) (same).

[224] 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)).

[225] Morley, 508 F.3d at 1127 (quoting Wash. Post Co., 690 F.2d at 261).

[226] Wash. Post Co., 690 F.2d at 261.

[227] Rural Hous. All. v. USDA, 498 F.2d 73, 77 (D.C. Cir. 1974), supplemented, 511 F.2d 1347 (D.C. Cir. 1974); see Hardison v. Sec'y of VA, 159 F. App'x 93, 94 (11th Cir. 2005) (addressing dates of marriage and spouses' names); Kortlander v. Bureau of Land Mgmt., 816 F. Supp. 2d 1001, 1013 (D. Mont. 2011) (discussing "addresses, social security numbers, dates of birth, criminal histories, past addresses, private signatures, phone numbers, driver's license numbers, motor vehicle identification numbers, fax numbers, private email addresses, credit card number, and eBay and Paypal identifiers") (Exemptions 6 and 7(C)).

[228] See, e.g., Hardison, 159 F. App'x at 93; In Def. 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 Dep't of State v. Wash. Post Co., 456 U.S. 595, 600 (1982)). But cf. Am. Immigr. Council v. ICE, No. 18-1614, 2020 WL 2748515,

(2) religious affiliations;[229]

(3) citizenship or immigration data;[230]

(4) social security numbers;[231]

(5) criminal history records;[232]

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at *6 (D.D.C. May 27, 2020) (requiring agency to produce birth month and year, but not birth date, because agency did not "identif[y] any harm that would flow from a more limited disclosure").

[229] See, e.g., Hall v. CIA, 881 F. Supp. 2d 38, 71 (D.D.C. 2012).

[230] See Dep't of State v. Wash. Post Co., 456 U.S. at 602 (concerning passport information); Burton v. Wolf, 803 F. App'x 120, 121 (9th Cir. 2020) (protecting third-party alien file and explaining that "immigration status" implicates "nontrivial" privacy interests); Bales v. Dep't of State, No. 18-2779, 2020 WL 1078854, at *5 (D.D.C. Mar. 6, 2020) (determining Glomar response appropriate as to "whether [the agency] had visa records pertaining to the Afghan witnesses" who testified as plaintiff's trial "[b]ecause the public interest in exoneration of the wrongfully-convicted would not be advanced" and the witnesses have a privacy interest in their "immigration status"); 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. Jud. Watch, Inc. v. Reno, No. 00-0723, 2001 WL 1902811, at *8 (D.D.C. Mar. 30, 2001) (referencing asylum application).

[231] See, e.g., Sherman v. 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); Lamb v. Millennium Challenge Corp., 334 F. Supp. 3d 204, 214 (D.D.C. 2018) Finding that "the Department acted well within its authority in redacting a third party's social security number"); 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 [E]xemption 6 to the social security numbers of IRS personnel.").

[232] See, e.g., DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 780 (1989); 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)); Jud. Watch, Inc. v. DOJ, 365 F.3d 1108, 1124-26 (D.C. Cir. 2004) (protecting pardon applications, which include information about crimes committed); Pinson v. DOJ, 202 F. Supp. 3d 86, 100-01 (D.D.C. 2016) ("Disclosure of the individuals' names, criminal history, and the respective [Special Administrative Measures] implemented during their custody implicate substantial privacy interests and would likely cause reputational and other harm to the individuals in question."); 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).

(6) incarceration of U.S. citizens in foreign prisons;[233]
(7) identities of crime victims;[234]

(8) financial information;[235]

(9) personal landline and cellular telephone numbers;[236]

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

[234] 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"); Bagwell v. Dep't of Educ., 183 F. Supp. 3d 109, 129 (D.D.C. 2016) (protecting "crime reports and statements by victims, [which] can be of the most private nature" and because "[s]uch information is often underreported, and it is plausible that further disclosure of such private information would only exacerbate the challenges of such underreporting") (Exemptions 6 and 7(C)); Pickens v. DOJ, No. 11-1168, 2012 WL 761995, at *6 (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 FOIA's underlying purpose, as that information fails to shed light on the operations of the FBI") (Exemptions 6 and 7(C)).

[235] See, e.g., Consumers' 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, 76 F.3d 384 (9th Cir. 1995) (unpublished table decision); Kensington Rsch. & Recovery v. Dep't of the Treasury, No. 10-3538, 2011 WL 2647969, at *9 (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"); Reno Newspapers, Inc. v. U.S. Parole Comm'n, No. 09-0683, 2011 WL 1233477, at *7 (D. Nev. Mar. 29, 2011) (finding a "clear privacy interest" in parolee's bank records and upholding protection); 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).

[236] See, e.g., Smith v. U.S. Dep't of Treasury, No. 17-1796, 2020 WL 376641, at *4 (D.D.C. Jan. 23, 2020) (noting that "[c]ell phone numbers implicate a different privacy interest from landline office phone numbers because employees carry cell phones with them outside the office and regular work hours"); Performance Coal Co. v. Dep't of Labor, 847 F. Supp. 2d 6, 17-18 (D.D.C. 2012) (holding agency properly withheld names, cell phone numbers, and home phone numbers) (Exemption 7(C)); Nat'l Right to Work Legal Def. & Educ. Found., Inc. v. Dep't of Labor, 828 F. Supp. 2d 183 (D.D.C. 2011) (noting that disclosure of phone numbers "could subject the individuals to 'annoyance, embarrassment, and harassment in the conduct of their official and private lives'") (quoting Marshall v. FBI, 802 F. Supp. 2d 125, 134 (D.D.C. 2011)); Lowy v. IRS, No. 10-0767, 2011 U.S. Dist. LEXIS 34168, at *51 (N.D. Cal. Mar. 30, 2011) (concluding that agency provided "sufficient justification for the

(10) email addresses;[237] and

(11) medical information linked to individuals.[238]

By contrast, on some occasions, courts have found that the FOIA public interest outweighs even a strong personal privacy interest in the requested records.[239]

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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).

[237] See Elec. Frontier Found. v. Off. of the Dir. of Nat'l Intel., 639 F.3d 876, 888 (9th Cir. 2010) (finding that lobbyists' email addresses should be protected from disclosure unless the email addresses are the only way to identify the agent in question); Maryland v. VA, 130 F. Supp. 3d 342, 353 (D.D.C. 2015) (finding substantial privacy interest in identifying portions of email addresses of individuals whose applications for inclusion in Veteran small business database were rejected); Wilson v. U.S. Air Force, No. 08-0324, 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). But see Prechtel v. FCC, 330 F. Supp. 3d 320, 329-33 (D.D.C. 2018) (finding that agency improperly withheld email addresses of "bulk submitters" of comments on proposed repeal of "net neutrality" regulations due to demonstrated, widespread fraud in comment submission process, such that there was high public interest in specific email addresses used by submitters of public comments).

[238] See, e.g., Henson v. HHS, 892 F.3d 868, 878 (7th Cir. 2018) (protecting medical information about manufacturer's patients) reh'g denied, July 31, 2018; Wadhwa v. VA, 446 F. App'x 516, 519 (3d Cir. 2011) (per curiam) (unpublished disposition) (withholding release of third party medical files); McDonnell v. United States, 4 F.3d 1227, 1254 (3d Cir. 1993) (finding that "living individual has a strong privacy interest in withholding his medical records"); Moore v. USPS, No. 17-0773, 2018 WL 4903230, at *3 (N.D.N.Y. Oct. 9, 2018) (protecting letters that could potentially include identifying information of postal employees and material related to physical or psychological conditions of individuals); Long v. DOJ, 778 F. Supp. 2d 222, 236 (N.D.N.Y. 2011) (withholding "list of vaccine type and date of administration"); Nat'l Sec. News Serv. v. Dep't of the Navy, 584 F. Supp. 2d 94, 97 (D.D.C. 2008) (upholding nondisclosure of hospital patient admission records); Pub. Emps. for Env't. Resp. v. Dep't of the Interior, No. 06-0182, 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").

[239] See, e.g., Rojas v. FAA, 941 F.3d 392, 406-07 (9th Cir. 2019) (finding public interest in release of the personal email addresses of agency employees as "'the only way to identify' the FAA employees involved in discussing" changes in hiring practices, though permitting agency to identify recipients by name rather than by revealing the personal email addresses); 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

Names and Home Addresses

There are numerous decisions concerning requests for lists of names and home addresses of individuals.[240] Because agencies may neither distinguish between requesters nor limit the use to which disclosed information is put,[241] courts have found that an analysis of the consequences of disclosure of names and addresses cannot turn on the identity or purpose of the requester.[242] The Supreme Court has held that when considering whether compilations of names and home addresses fall under Exemption 6, the only relevant FOIA public interest is the extent to which disclosure sheds light on an agency's operations,[243] and that specific lists may reveal sensitive information

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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); Jud. Watch, Inc. v. DOJ, 394 F. Supp. 3d 111, 117-18 (D.D.C. 2019) (finding an overriding FOIA public interest in records concerning the FBI's relationship with a former British intelligence operative) (Exemptions 6 and 7(C)); 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") (Exemptions 6 and 7(C)).

[240] See, e.g., Bibles v. Or. Nat. Desert Ass'n, 519 U.S. 355 (1997) (addresses); Dep't of State v. Ray, 502 U.S. 164 (1991) (names).

[241] 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. Emps. for Env't. Ethics v. U.S. 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."); Bernegger v. EOUSA, 334 F. Supp. 3d 74, 90 (D.D.C. 2018) ("[A]gencies releasing records pursuant to FOIA requests must be mindful that '[d]ocuments released in a FOIA action must be made available to the public as a whole.'") (quoting Stonehill v. IRS, 558 F.3d 534, 539 (D.C. Cir. 2009)) (Exemptions 6 and 7(C)).

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

[243] See Bibles, 519 U.S. at 355-56 (remanding for further consideration of withholding of mailing list of recipients of Bureau of Land Management publication, as "perceived public interest in 'providing [persons on the BLM's mailing list] with additional information" was not a FOIA public interest); DOD v. FLRA, 510 U.S. 487, 496 (1994) (protecting home addresses of federal employees in union bargaining units where "disclosure would reveal

beyond the mere names and addresses of the individuals found on the list.[244] 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.[245]

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 their name and home address.[246] Nevertheless, a number of 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.[247] Other courts have ordered the release of

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little or nothing about the employing agencies or their activities"); 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, as release would not "shed any additional light on the Government's conduct").

[244] 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 Fam. 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 Chi., 561 U.S. 742, 886 (2010) (dissent) (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); Story of Stuff Project v. U.S. Forest Serv., 366 F. Supp. 3d 66, 80 (D.D.C. 2019) ("'[D]isclosure of names and addresses is not inherently and always a significant threat to the privacy of those listed; whether it is a significant or a de minimis threat depends upon the characteristic(s) revealed.'") (quoting NARFE, 879 F.2d at 877).

[245] 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 from release); 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)).

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

[247] 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

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.[248] 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.[249] 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

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agency's use of owl data is served by release of lot numbers of parcels of land where owls have been spotted despite 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); Aqualliance v. U.S. Army Corps. of Eng'rs, 243 F. Supp. 3d 193, 198 (D.D.C. 2017) (ordering disclosure of list of names and home addresses of individuals living near proposed California water project because agency failed to articulate why such individuals would be subject to unwanted harassment or solicitation merely due to proximity to water project); AquAlliance v. U.S. Bureau of Reclamation, 139 F. Supp. 3d 203, 212-13 (D.D.C. 2015) (finding "greater than de minimis" but "not substantial" privacy interest in names and addresses of water well owners and water transfer program participants), aff'd on other grounds, 856 F.3d 101 (D.C. Cir. 2017); 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"); Balt. 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'"); All. for the Wild Rockies v. U.S. 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).

[248] See Niskanen Ctr. v. FERC, 436 F. Supp. 3d 206, 214 (D.D.C. 2020) (finding that release of initials and street names of landowners affected by pipeline would allow plaintiff to determine whether agency notified all affected landowners) aff'd, 20 F.4th 787 (D.C. Cir. 2021); 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 to verify the defendant was complying with public notice mandate); Balt. Sun, 131 F. Supp. 2d at 729-30 (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); Ray v. DOJ, 852 F. Supp. 1558, 1564-65 (S.D. Fla. 1994) (determining that names and addresses of interdicted Haitians might reveal "information concerning our Government's conduct during the interdiction process").

[249] 489 F.3d 1173, 1205-06 (11th Cir. 2007).

wasteful or fraudulent spending of disaster assistance funds.[250] 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.[251]

Against this "powerful public interest,"[252] the court weighed the privacy interests of aid recipients in the nondisclosure of their 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,"[253] but it ultimately found that "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."[254] By contrast, the court held that disclosure of the names of the aid recipients would constitute a "clearly unwarranted invasion of personal privacy."[255] 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.'"[256]

Redacting Identifying Information

Deletion of the identities of individuals mentioned in a document, coupled 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.[257] For example, in

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[250] Id. at 1192.

[251] Id. at 1192-96.

[252] Id. at 1196.

[253] Id. at 1199.

[254] Id. at 1205.

[255] Id.

[256] Id. (quoting Sun-Sentinel Co. v. DHS, 431 F. Supp. 2d 1258, 1271 (S.D. Fla. 2006)).

[257] See Torres Consulting & L. Grp., LLC v. NASA, 666 F. App'x 643, 645 (9th Cir. 2016) (reversing district court's Exemption 6 finding regarding protection of tax and net earnings information, and remanding for segregability analysis, as "any privacy interest in payroll data after names, addresses, and social security numbers are redacted is trivial"); Kowack v. U.S. Forest Serv., 766 F.3d 1130, 1134 (9th Cir. 2014) (requiring agency to provide additional detail about whether substance of particular witness statements could be released without revealing identities of individuals who made those statements); Carter v. Dep't of Com., 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"); Protect Our Defs. v. DOD, 401 F. Supp. 3d 259, 287 (D. Conn. 2019) (finding Staff Judge Advocates have a substantial privacy interest in their names, but ordering release of their legal credentials

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.[258] Similarly, courts have ordered the disclosure of a variety of medical and health-related data after deletion of any item identifiable to a specific individual.[259] Additionally, documents voluntarily submitted to the government by private citizens have been held releasable as long as redactions are made of personally identifying information.[260] However, an agency's lack of confidence in the accuracy of records that identify individuals has been held insufficient to justify withholding records in full rather

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and professional history, which relate to their job functions and constitute the type of information "that is frequently circulated"); 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 Decisionmaking").

[258] 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. 00-0131, 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. U.S. Agency for Int'l Dev., No. 95-0263, 1996 WL 33502232, at *12 (D. Del. Dec. 18, 1996) (finding that privacy interests of government contractor's employees could be protected by withholding their names and addresses from biographical data sheets); Church of Scientology of Tex. 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).

[259] See Arieff v. 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 military-wide medical tort-claims database with "claimants' names, social security numbers, home addresses, home/work telephone numbers and places of employment" redacted), reconsidered in part on other grounds, 107 F. Supp. 2d 912 (S.D. Ohio 1999); Frets v. DOT, No. 88-0404, 1989 WL 222608, at *5 (W.D. Mo. Dec. 14, 1989) (ordering disclosure of drug reports of air traffic controllers with identities deleted).

[260] 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).

than redacting only the exempt information.[261] Additionally, as technology has evolved, the Court of Appeals for the District of Columbia Circuit has required agencies to explain why information in video records cannot be provided in a way that protects privacy interests, rather than being withheld in full.[262] Courts have also required the limited disclosure of personal information and, at times, the use of unique identifiers that distinguish between individuals but protect their identities, when there is an overriding FOIA public interest in disclosure.[263]

Nevertheless, in some situations courts have found that the deletion of personal identifying information may not be adequate to provide necessary privacy protection.[264]

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[261] Reclaim the Recs. v. VA, No. 18-8449, 2020 WL 1435220, at *10-11 (S.D.N.Y. Mar. 24, 2020) (rejecting agency's argument that its lack of confidence in accuracy of death records was sufficient to withhold them under Exemption 6 and requiring agency to correct inaccuracies in records and then to produce them with data relating to living persons redacted or removed).

[262] Evans v. BOP, 951 F.3d 578, 587 (D.C. Cir. 2020) (Exemption 7(C)) (requiring government to explain why it cannot use readily available techniques such as "blurring out faces, either in the video itself or in screenshots, [to] eliminate unwarranted invasions of privacy").

[263] Am. Immigr. Council v. ICE, No. 18-1614, 2020 WL 2748515, at *6 (D.D.C. May 27, 2020) (allowing withholding of date of birth, but not the month and year, as agency "does not explain how the birth dates, without more, would identify the individuals involved or give rise to any of those concerns given the lack of other data, in particular, the individuals' names, on the same spreadsheets") (Exemption 7(C)); Niskanen Ctr. v. FERC, 436 F. Supp. 3d 206, 214 (D.D.C. 2020) (concluding that defendant's offer to release the initials and street names, but not exact addresses, of private landowners affected by pipeline adequately protected privacy interests of thousands of affected landowners without sacrificing legitimate public interest in whether agency properly notified landowners regarding pipeline), aff'd, 20 F.4th 787 (D.C. Cir. 2021); Mattachine Soc'y of Wash., D.C. v. DOJ, 267 F. Supp. 3d 218, 228-29 (D.D.C. 2017) (balancing significant privacy interest of third parties with significant public interest in extent to which government "surveilled, harassed, and/or terminated" "lesbian, gay, bisexual, and transgender federal employees" under E.O. 10,450 by ordering agency to replace third-party names in responsive records with "alphanumeric markers, which are to be uniquely identifiable and consistent throughout all documents produced") (Exemptions 6 and 7(C)).

[264] See, e.g., 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)); Hum. Rts. Watch v. BOP, No. 13-7360, 2015 WL 5459713, at *7 (S.D.N.Y. Sept. 16, 2015) (finding the "substantial" concern that someone might be able to identify particular inmates from information compiled on a spreadsheet that did not explicitly identify the inmates where only fifty inmates were housed in each of two prison units outweighed the "relatively slight" public interest) (Exemptions 6 and 7(C)), amended on other grounds on reconsideration, 2016 WL 3541549 (S.D.N.Y. June 23, 2016).

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 privacy, then the summaries of disciplinary hearings should not be released.[265] Following this line of reasoning, 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.[266]

Furthermore, when requested information is "personal and unique" to the subjects of a record, courts have found that deletion of personal identifying information may not be adequate to provide the necessary privacy protection.[267] Indeed, as one court has put it, 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."[268]

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[265] Dep't of the Air Force v. Rose, 425 U.S. 352, 381 (1976); 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").

[266] Carter v. Dep't of Com., 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 Fam. 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").

[267] See Whitehouse v. 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).

[268] 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

"Glomar" Responses

In some circumstances a FOIA request can be targeted so that by its very terms it specifically requests privacy-sensitive information pertaining to an identified or identifiable individual. In such circumstances, courts have recognized that acknowledging the existence of records would not be adequate to protect the personal privacy interests at risk and an agency may have to invoke the Glomar response, i.e., neither confirm nor deny the existence of any responsive records.[269] 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.[270] 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.[271] Courts

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intrusion into personal privacy is marginal and speculative, arising from the event itself and not the redacted image.").

[269] See, e.g., Cole v. FBI, No. 13-1205, 2015 WL 4622917, at *2 (D.D.C. July 31, 2015) (noting that Glomar response is appropriate where confirming or denying existence of records would itself cause cognizable harm under FOIA) (Exemptions 6 and 7(C)); Rahim v. FBI, 947 F. Supp. 2d 631, 648 (E.D. La. 2013) ("Defendants' *Glomar* response invoking [E]xemptions 6 and 7(C) as to [an alleged informant] was proper."); Claudio v. SSA, No. H-98-1911, 2000 WL 33379041, at *8-9 (S.D. Tex. May 24, 2000) (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'").

[270] See Wadhwa v. VA, 707 F. App'x 61, 64-65 (3d Cir. 2017) (upholding agency's refusal to confirm or deny existence of disciplinary records concerning removal of two VA doctors given plaintiff's failure to identify any FOIA public interest in disclosure of records); Beck v. DOJ, 997 F.2d 1489, 1494 (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)), denying motion for relief from judgment, 867 F. Supp. 2d 1 (D.D.C. 2011); 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)).

[271] See Taplin v. DOJ, 967 F. Supp. 2d 348, 355 (D.D.C. 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

have found Glomar responses to not be appropriate, however, when there is a substantial FOIA public interest in the requested information that outweighs the privacy interest,[272] or when the existence of the requested information has been officially acknowledged.[273] (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).)

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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 them 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)).

[272] See Roth v. DOJ, 642 F.3d 1161, 1180 (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)); DBW Partners, LLC v. USPS, No. 18-3127, 2019 WL 5549623, at *6 (D.D.C. Oct. 28, 2019) (determining Exemption 6 Glomar response not proper given significant FOIA public interest in how high-ranking official carried out their duties); 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 [themself]," there is a countervailing "public interest in knowing how DOJ handles the investigation of unlicensed attorneys").

[273] See, e.g., Janangelo v. Treasury Inspector Gen. for Tax Admin., 726 F. App'x 660, 661 (9th Cir. 2018) (holding that agency "did not waive its ability to make a so-called *Glomar* response" because the report sought had "not been 'officially acknowledged'"), cert. denied, 139 S. Ct. 490 (2018) (mem.); see also ACLU v. CIA, 710 F.3d 422, 427 (D.C. Cir. 2013) (holding that agency may not issue Glomar response if it has already publicly acknowledged existence of records sought).