Exemption 2

Exemption 2 of the Freedom of Information Act exempts from mandatory disclosure records that are "related solely to the internal personnel rules and practices of an agency."[1] The Supreme Court has held that agencies must look to the plain language of Exemption 2 to determine its scope.[2] (For a discussion on the current test for Exemption 2, please see Exemption 2's Three-part Test & Exemption 2 Since Milner.)

Historical Interpretation of Exemption 2

For more than fifteen years after the passage of the FOIA in 1966, much confusion existed concerning the intended coverage of Exemption 2. In the course of the enactment of the FOIA, the Senate and House drafted Reports that differed greatly in their explanation of the intended meaning of Exemption 2, and these differences were not reconciled in a joint statement or report by both Houses of Congress. The Senate Report reflected a narrow view of Exemption 2 wherein the Exemption would only protect trivial internal records that would come to be known as "low 2" material.[3] The House Report provided a more expansive interpretation of Exemption 2's intended coverage, stating that it was intended to cover more substantive types of records that would later come to be known as "high 2" material.[4]

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[1] 5 U.S.C. § 552(b)(2) (2018).

[2] See Milner v. Dep't of the Navy, 562 U.S. 562, 569-70 (2011) (looking first to Exemption 2's text to determine its meaning, noting that prior courts had paid "comparatively little attention" to the text of Exemption 2); see also OIP Guidance: Exemption 2 After the Supreme Court's Ruling in Milner v. Dep't of the Navy (posted 2011).

[3] S. Rep. No. 89-813, at 8 (1965) (stating that "Exemption No. 2 relates only to the internal personnel rules and practices of an agency. Examples of these may be rules as to personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and the like.").

[4] H. Rep. No. 89-1497, at 10 (1966), reprinted in 1966 U.S.C.C.A.N. 2418, 2427 (stating that "Operating rules, guidelines, and manuals of procedure for Government investigators or examiners [are covered]. . . but this exemption would not cover all 'matters of internal management' such as employee relations and working conditions and routine administrative procedures which are withheld under the present law."); see also id. at 5

Approximately ten years after the enactment of the FOIA, the Supreme Court confronted this conflict in Department of the Air Force v. Rose.[5] In Rose, the Court construed Exemption 2, in line with the Senate's view, as protecting "low 2" information, i.e., internal agency matters so routine or trivial that they could not be "subject to . . . a genuine and significant public interest."[6] The Court declared that Exemption 2 was intended to relieve agencies of the burden of assembling and providing access to any "matter in which the public could not reasonably be expected to have an interest."[7] At the same time, the Court left the door open for the future application of what came to be known as "high 2," for information whose release could lead to circumvention of the law, in line with the House's more substantive view of Exemption 2.[8]

The Supreme Court's ruling in Rose helped to define the contours of Exemption 2, but it did not dispel all of the early confusion about Exemption 2's scope. Judicial opinions subsequent to Rose, particularly in the Court of Appeals for the District of Columbia Circuit, demonstrated judicial ambivalence about whether Exemption 2 covered only personnel-related records or included more general internal agency practices.[9] In 1981, the D.C. Circuit allayed some of the confusion in Crooker v. ATF.[10] In Crooker, the D.C. Circuit ruled that Exemption 2 was intended to cover records whose disclosure would risk circumvention of the law, whether or not such records were

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(explaining that "premature disclosure of agency plans that are undergoing development . . . , particularly plans relating to expenditures, could have adverse effects upon both public and private interests").

[5] 425 U.S. 352 (1976).

[6] Id. at 369.

[7] Id. at 369-70.

[8] Id. at 369 (suggesting that approach taken in House Report could permit an agency to withhold matters of some public interest "where disclosure may risk circumvention of agency regulation").

[9] Compare Allen v. CIA, 636 F.2d 1287, 1290 (D.C. Cir. 1980) (holding that exemption covers "nothing more than trivial administrative personnel rules"), and Jordan v. DOJ, 591 F.2d 753, 764 (D.C. Cir. 1978) (en banc) (ruling that exemption covers "trivia" pertaining only to "internal personnel matters"), with Lesar v. DOJ, 636 F.2d 472, 485-86 (D.C. Cir. 1980) (withholding non-personnel related records (informant codes) because exemption covers routine matters of merely internal interest), and Cox v. DOJ, 601 F.2d 1, 4 (D.C. Cir. 1979) (per curiam) (withholding non-personnel related law enforcement manuals as "routine matters of merely internal interest"), abrogated on other grounds by Benavides v. BOP, 993 F.2 257 (D.C. Cir. 1993).

[10] 670 F.2d 1051 (D.C. Cir. 1981) (en banc).

personnel-related.[11] The Crooker case thus endorsed the House's interpretation, and what later became widely known as "high 2," affording protection to more substantive matters when disclosure would risk circumvention of the law.[12]

Throughout the thirty years following Crooker, and prior to the Supreme Court's ruling in Milner v. Department of the Navy,[13] courts applied the "low 2" aspect of Exemption 2 to a wide variety of records that would be of no genuine interest to the public.[14] In the "high 2" context, prior to the Supreme Court's ruling in Milner, courts

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[11] Id. at 1073 (rejecting prior D.C. Circuit opinion's rationale that Exemption 2 was limited to personnel records of little interest to general public and endorsing protection for sensitive law enforcement manuals).

[12] See id. at 1073 & n.58 (holding that Exemption 2 encompasses "predominantly internal" material where disclosure would risk circumvention of law, noting that Rose had protected internal material of no genuine public interest under this exemption).

[13] 562 U.S. 562, 580-81 (2011) (overturning prior judicial interpretations and ruling that Exemption 2 must be defined by its text, which requires that information relate solely to internal personnel rules and practices).

[14] See, e.g., Hale v. DOJ, 973 F.2d 894, 902 (10th Cir. 1992) (FBI room numbers, telephone numbers, and FBI employees' identification numbers; personnel directories containing names and addresses of FBI employees; checklist form used to assist FBI special agents in consensual monitoring; and administrative markings and notations on documents), cert. granted, vacated on other grounds, 509 U.S. 918 (1993); Schiller v. NLRB, 964 F.2d 1205, 1208 (D.C. Cir. 1992) (internal time deadlines and procedures, recordkeeping directions, instructions on contacting agency officials for assistance, and guidelines on agency decisionmaking); Nix v. United States, 572 F.2d 998, 1005 (4th Cir. 1978) (cover letters of merely internal significance); Bangoura v. U.S. Dep't of the Army, 607 F. Supp. 2d 134, 145-46 (D.D.C. 2009) (military special agent identification numbers); Concepcion v. FBI, 606 F. Supp. 2d 14, 31-32 (D.D.C. 2009) (telephone numbers of FBI employees, Assistant U.S. Attorneys and paralegals; and "'administrative markings relating to internal agency file control systems'" and FBI source symbol numbers/informant numbers (quoting agency declaration)); James Madison Project v. CIA, 607 F. Supp. 2d 109, 124-25 (D.D.C. 2009) (internal publications, employee bulletins, component abbreviations, names/numbers of internal CIA regulations, evaluations of employees' resumes, and policies regarding Publications Review Board review of nonofficial publications containing CIA information); Asian Law Caucus v. DHS, No. 08-00842, 2008 WL 5047839, at *5 (N.D. Cal. Nov. 24, 2008) (electronic storage location of interviewing procedures, data, and name of obsolete database); Antonelli v. BOP, 569 F. Supp. 2d 61, 65 (D.D.C. 2008) (file number used to index and retrieve information in investigatory files); Wheeler v. DOJ, 403 F. Supp. 2d 1, 13 (D.D.C. 2005) ("information concerning the distribution of copies of documents" to unnamed agency); Changzhou Laosan Grp. v. U.S. Customs & Border Prot. Bureau, No. 04-1919, 2005 WL 913268, at *3 (D.D.C. Apr. 20, 2005) ("computer function codes, internal file numbers, and computer system and report identity"), partial reconsideration granted on other grounds, 374 F. Supp. 2d 129 (D.D.C. 2005); Envtl. Prot. Servs. v. EPA, 364 F. Supp.

endorsed the withholding of a wide range of records where the release of such records could significantly risk circumvention of the law.[15]

The Supreme Court's Decision in *Milner v. Department of the Navy*

In Milner v. Department of the Navy,[16] the issue for decision by the Supreme Court was whether the two-part test for withholding fashioned by the Court of Appeals for the District of Columbia Circuit in Crooker v. ATF[17] adhered to the statutory text of the FOIA.

2d 575, 583-84 (N.D. W. Va. 2005) ("Criminal Investigation Division tracking numbers"); Coleman v. FBI, 13 F. Supp. 2d 75, 78 (D.D.C. 1998) ("mail routing stamps").

[15] See, e.g., Massey v. FBI, 3 F.3d 620, 622 (2d Cir. 1993) (finding that disclosure of informant symbol numbers and source-identifying information "could do substantial damage to the FBI's law enforcement activities"); Kaganove v. EPA, 856 F.2d 884, 890 (7th Cir. 1988) (holding that disclosure of agency applicant rating plan would render it ineffectual and allow future applicants to "embellish" job qualifications); NTEU v. U.S. Customs Serv., 802 F.2d 525, 528-29 (D.C. Cir. 1986) (determining that disclosure of hiring plan would give unfair advantage to some future applicants); Lesar, 636 F.2d at 485 (finding that "informant codes plainly fall within the ambit of Exemption 2"); Cox, 601 F.2d at 4-5 (upholding nondisclosure of weapon, handcuff, and transportation security procedures); Allard K. Lowenstein Int'l Human Rights Project v. DHS, 603 F. Supp. 2d 354, 365 (D. Conn. 2009) (protecting priority rankings of types of investigations and criteria used by agency to prioritize such investigations), aff'd on other grounds, 626 F.3d 678 (2d Cir. 2010); James Madison Project v. CIA, 605 F. Supp. 2d 99, 111-12 (D.D.C. 2009) (withholding internal CIA security procedures relating to foreign nationals as well as employee security clearance procedures because effectiveness of such procedures would be reduced if they were released, allowing foreign intelligence services and others to circumvent such procedures); Amuso v. DOJ, 600 F. Supp. 2d 78, 100-01 (D.D.C. 2009) (protecting logistics of undercover FBI operations because disclosure would allow wrongdoers to "'predict how the FBI will conduct similar operations in the future,'" thereby allowing wrongdoers to circumvent such future operations (quoting agency declaration)); Kishore v. DOJ, 575 F. Supp. 2d 243, 255 (D.D.C. 2008) (protecting FBI "search" techniques and numerical ratings of effectiveness of such techniques as determined by FBI agents); Keys v. DHS, 510 F. Supp. 2d 121, 127-28 (D.D.C. 2007) (allowing withholding of Secret Service special agent ID numbers, disclosure of which would allow identification or impersonation of agent); Judicial Watch, Inc. v. U.S. Dep't of Commerce, 337 F. Supp. 2d 146, 166 (D.D.C. 2004) (finding that "guidelines for protecting the Secretary of Commerce on trade missions" were properly withheld, as disclosure "would compromise the Secretary's safety, making the Secretary subject to unlawful attacks"); Voinche v. FBI, 940 F. Supp. 323, 329 (D.D.C. 1996) (approving nondisclosure of information relating to security of Supreme Court building and Justices), aff'd on other grounds, No. 95-01944, 1997 WL 411685 (D.C. Cir. June 19, 1997).

[16] 562 U.S. 562 (2011).

[17] 670 F.2d 1051, 1073 (D.C. Cir. 1981) (en banc).

The records sought by the plaintiff in Milner consisted of Explosive Safety Quantity Distance information regarding munitions stored on a Naval base in Puget Sound, Washington.[18] This information prescribes the minimum storage distance between munitions necessary to minimize the likelihood of a chain reaction explosion in the event that one or more of the stored explosives detonates.[19] The Court of Appeals for the Ninth Circuit had agreed with the district court that these records could be withheld, adopting the D.C. Circuit's "high 2" test from Crooker to reach its conclusion.[20] Plaintiff appealed, and the Supreme Court granted certiorari to clarify the statutory meaning of Exemption 2.[21]

The Supreme Court held that "Exemption 2, consistent with the plain meaning of the term 'personnel rules and practices,' encompasses only records relating to issues of employee relations and human resources."[22] Applying this interpretation of the exemption, the Court found that "[t]he explosives maps and data requested here do not qualify for withholding under that exemption."[23] The Court remanded the case back to the Ninth Circuit for consideration of the applicability of Exemption 7(F)[24] to the data and maps.[25]

In Milner, the government had argued for the adoption of Crooker's two-part test.[26] The Court ultimately disagreed, ruling that the Crooker test "is disconnected from Exemption 2's text, . . . ignores the plain meaning of the adjective 'personnel,' . . . and adopts a circumvention requirement with no basis or referent in Exemption 2's language."[27] While the government relied on the House Report[28] as the basis of its legislative history argument, the Court noted that in Department of the Air Force v.

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[18] Milner, 562 U.S. at 567-68.

[19] Id.

[20] Milner v. U.S. Dep't of the Navy, 575 F.3d 959, 965 (9th Cir. 2009).

[21] Milner, 562 U.S. at 568-69.

[22] Id. at 581.

[23] Id.

[24] 5 U.S.C. § 552(b)(7)(F) (2018).

[25] Milner, 562 U.S. at 581.

[26] Id. at 573.

[27] Id.

[28] H. Rep. No. 89-1497, at 10 (1966), reprinted in 1966 U.S.C.C.A.N. 2418, 2427.

Rose,[29] the Supreme Court had found the Senate Report to be a more reliable indicator of Congressional intent.[30] The Court declared that "[l]egislative history, for those who take it into account, is meant to clear up ambiguity, not create it" and "when presented, on the one hand, with clear statutory language and, on the other, with dueling committee reports, we must choose the language."[31]

In reaching its decision, the Court began by stating that its "consideration of Exemption 2's scope starts with its text."[32] The Court noted that although other court decisions had analyzed the meaning of the exemption, "comparatively little attention has focused on the provision's 12 simple words: 'related solely to the internal personnel rules and practices of an agency.'"[33] Of those words, the Court found "[t]he key word" and "the one that most clearly marks the provision's boundaries" is the word "personnel."[34] That word, in common usage, "means 'the selection, placement, and training of employees and . . . the formulation of policies, procedures, and relations with [or involving] employees or their representatives.'"[35]

Further, because the word "personnel" is used in the statute as an adjective to modify "rules and practices," the Court found that the term clearly refers to human resources matters.[36] As the Court stated, such records "concern the conditions of employment in federal agencies – such matters as hiring and firing, work rules and discipline, compensation and benefits."[37] According to the Court, its construction of Exemption 2 "makes clear that 'Low 2' is all of 2 (and that 'High 2' is not 2 at all)."[38]

The Court also rejected the government's alternative argument that Exemption 2 should be interpreted to protect records constituting "internal rules and practices for

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[29] 425 U.S. 352 (1976).

[30] Milner, 562 U.S. at 574 (citing Rose, 425 U.S. at 366).

[31] Id. (citing Wong Yang Sung v. McGrath, 339 U.S. 33, 49 (1950)).

[32] Id. at 569.

[33] Id.

[34] Id.

[35] Id.

[36] Id. at 569.

[37] Id. at 570.

[38] Id. at 571.

[agency] personnel to follow in the discharge of their governmental functions."[39] The Court found that logically, the exemption must be understood to pertain to records *about* personnel, not simply any records created *for* personnel.[40] Otherwise, the Court declared, the exemption would be so broad as to strip the word "personnel" of any meaning.[41]

The Supreme Court only briefly alluded to two additional requirements for withholding under Exemption 2, namely, that the records must "relate solely" to the agency's "internal" personnel rules and practices.[42] The Court noted that Exemption 2's requirement that the material "relate solely" to personnel means "exclusively or only," while the requirement that the records be "internal" means that the agency "must typically keep the records to itself for its own use."[43]

Exemption 2's Three-part Test

Based on Exemption 2's text, and as set forth by the Supreme Court in Milner v. Department of the Navy, three elements must be satisfied for information to fit within Exemption 2.[44]

1. *The Information Must Be Related to "Personnel" Rules and Practices*

As the Supreme Court emphasized, the "key word" in the exemption and the one word which "most clearly marks the provision's boundaries – is 'personnel.'"[45] The Department of Justice Guidance on Milner advises agencies that in order for information to qualify for protection under Exemption 2, agencies must ensure that the information at issue satisfies the requirement that it "relate to an agency's *personnel* rules or

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[39] Id. at 577-78.

[40] Id. at 578; see also Nat'l Sec. Counselors v. CIA, 960 F. Supp. 2d 101, 172-73 (D.D.C. 2013) (finding that Exemption 2 does not protect "'internal training documents'" because they "are not 'human resources documents[,]'" but rather "are the very 'records concerning an agency's internal rules and practices for its personnel to follow in the discharge of their governmental functions,' which the Supreme Court specifically excluded from the scope of Exemption 2" (quoting agency declaration)).

[41] Id.

[42] Id. at 570 n.4.

[43] Id.

[44] See 562 U.S. 562, 570 & n.4 (2011); see also OIP Guidance: Exemption 2 After the Supreme Court's Ruling in Milner v. Dep't of the Navy (posted 2011) [hereinafter OIP Milner Guidance].

[45] OIP Milner Guidance (quoting Milner, 562 U.S. at 569).

practices." [46]

2. The Information Must Relate "Solely" to Those Personnel Rules and Practices

The second requirement for Exemption 2 is that "the information at issue must 'relate solely' to the agency's personnel rules and practices."[47] The Supreme Court defined this phrase by its "usual" meaning, which is "exclusively or only."[48]

3. The Information Must Be "Internal"

The third requirement for Exemption 2 is that the information must be "'internal,' meaning that 'the agency must typically keep the records to itself for its own use.'"[49]

Exemption 2 Since *Milner*

As discussed above, the Supreme Court's decision in Milner v. Department of the Navy[50] clarified the scope of Exemption 2. Relatively few courts have ruled on the application of Exemption 2 in a post-Milner context. The types of records at issue in those cases for which Exemption 2 has been found to no longer be applicable include the following: investigative techniques, procedures, and guidelines;[51] computer codes pertaining to a highly sensitive database;[52] psychological records pertaining to an

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[46] Id.

[47] Id. (citing Milner, 562 U.S. at 570 n.4).

[48] Milner, 562 U.S. at 570 n.4.

[49] Id.

[50] 562 U.S. 562 (2011).

[51] See Frankenberry v. FBI, No. 08-1565, 2012 U.S. Dist. LEXIS 39027, at *39-42, 68-76 (M.D. Pa. Mar. 22, 2012) (rejecting withholding of investigative techniques under Exemption 2 in light of Milner and ordering release of some material, but allowing withholding under Exemption 7(E) of polygraph materials, ratings of effectiveness of law enforcement techniques, placement of surveillance devices, and investigatory expenditures); ACLU of Wash. v. DOJ, No. 09-0642, 2011 WL 887731, at *4, 7-9 (W.D. Wash. Mar. 10, 2011) (noting that agency conceded that Exemption 2 was not applicable, also rejecting applicability of Exemption 7(E) to much of withheld material that consisted of policies, procedures and guidelines for watch lists and no fly lists, ordering release of some records and ordering further briefing on withholdability of other records), reconsideration granted in part on other grounds, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

[52] See Skinner v. DOJ, 806 F. Supp. 2d 105, 112 (D.D.C. 2011) (finding that internal computer codes do not relate to human resources or employee relations matters and that "high 2" circumvention risk potentially caused by release of such information is not relevant

inmate;[53] records regarding inmate discipline, inmate supervision, and prison incident responses;[54] videos of Guantanamo detainees;[55] and technical reviews, action plans, and inundation maps for dams.[56] In several cases, the court denied the agency's motion for summary judgment, but provided the agency with an opportunity to reconsider whether Exemption 2 could be used to protect such records.[57]

Some courts have upheld Exemption 2 after applying some or all of the standards set forth in Milner.[58] The Court of Appeals for the Ninth Circuit, applying the plain

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to post-Milner analysis of such records, denying without prejudice agency's motion for summary judgment as to such materials).

[53] See Jordan v. DOJ, 668 F.3d 1188, 1200 (10th Cir. 2011) (rejecting withholding of inmate psychological records under "high 2," in light of Milner, but allowing withholding under Exemption 7(E)).

[54] See Kubik v. BOP, No. 10-6078, 2011 WL 2619538, at *5-6 (D. Or. July 1, 2011) (rejecting Exemption 2 claims and allowing withholding of portions of records under other exemptions, but ordering disclosure of remaining portions to plaintiffs).

[55] Int'l Counsel Bureau v. DOD, 864 F. Supp. 2d 101, 105 (D.D.C. 2012) (ordering in camera review of withheld videos, noting that "there is no 'high 2'" exemption, nor can a viable argument be made that such videos "relate to 'issues of employee relations and human resources'" (quoting Milner, 562 U.S. at 581)).

[56] See Pub. Emps. for Envtl. Responsibility v. U.S Section Int'l Boundary & Water Comm'n, 839 F. Supp. 2d 304, 322-27 (D.D.C. 2012) (rejecting Exemption 2, but upholding protection of such records pursuant to Exemptions 5, 7(E), and 7(F)), aff'd in part, vacated in part, & remanded on other grounds, 740 F.3d 195 (D.C. Cir. 2014).

[57] See Adionser v. DOJ, No. 11-5093, 2012 WL 5897172, at * 1-2 (D.C. Cir. Nov. 5, 2012) (per curiam) (ordering on court's own motion further briefing on Exemption 7(E) for "G-DEP" codes originally withheld under Exemption 2 in light of Milner), on remand, 33 F. Supp. 3d 23, 26 (D.D.C. 2014) (protecting G-DEP codes under Exemption 7(E)); Island Film, S.A. v. Dep't of the Treasury, 869 F. Supp. 2d 123, 133 (D.D.C. 2012) (denying without prejudice agency's motion for summary judgment to provide it with opportunity to revisit withholding of administrative case tracking numbers in light of Milner); Lewis v. DOJ, 867 F. Supp. 2d 1, 15-16 (D.D.C. 2011) (noting that agency's declarations were prepared before Milner; thus, agency should reconsider application of Exemption 2 to file numbers, file path names, fax numbers, and telephone numbers in light of that case).

[58] See Citizens for Responsibility & Ethics in Wash. v. DOJ, 870 F. Supp. 2d 70, 83 (D.D.C. 2012) (protecting internal telephone and fax numbers of FBI personnel under Milner), rev'd on other grounds, 746 F.3d 1082 (D.C. Cir. 2014); Nat'l Day Laborer Org. Network v. ICE, 811 F. Supp. 2d 713, 734, 738 (S.D.N.Y. 2011) (upholding protection of records under what was formerly known as "low 2" while observing that "low 2" but not "high 2" survived Milner), amended on reconsideration, (Aug. 8, 2011); see also Wolk Law Firm v. United States, 371 F. Supp. 3d 203, 209 (E.D. Pa. 2019) (holding that Exemption 2 applies to

meaning of Exemption 2 as defined in Milner, concluded that an agency's rules and practices concerning scoring a test used in the selection of employees was properly protected because the rules and practices were internal, and the test was used exclusively as one step in the hiring process.[59] Several courts have discussed the viability of the withholding of agency telephone numbers under Exemption 2, but they have reached differing opinions on the issue.[60] Similarly, courts have reached different conclusions on the viability of withholding FOIA case evaluation notes.[61] In one case, the court concluded that the standards laid out in Milner and Department of the Air Force v. Rose must both be met in order for Exemption 2 to apply.[62] The court explained that in analyzing Exemption 2, the inquiry into whether records "deal with 'trivial administrative matters of no genuine public interest,'" as set forth in Rose, is not "distinct from the inquiry into whether documents relate 'solely' to personnel matters," as set forth in Milner.[63]

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withheld communications that concern requests for compensatory and overtime pay for work during investigation, but noting that plaintiffs did not argue in opposition briefing that NTSB had improperly withheld materials under Exemption 2).

[59] Rojas v. FAA, 941 F.3d 392, 402 (9th Cir. 2019) (affirming application of Exemption 2 to screening test used as part of hiring process, while addressing agency's articulated harms from disclosure only under the Privacy Act).

[60] Compare Brown v. FBI, 873 F. Supp. 2d 388, 400 (D.D.C. 2012) (holding that FBI telephone numbers are not "personnel rules and practices" because they do not concern employee relations or human resources as explained in Milner), and Inst. for Policy Studies v. CIA, 885 F. Supp. 2d 120, 150 (D.D.C. 2012) (opining in dictum that withholding of agency telephone numbers would not survive Milner's interpretation of Exemption 2), with Citizens for Responsibility & Ethics in Wash., 870 F. Supp. 2d at 83 (finding that internal telephone and fax numbers of FBI personnel "fall squarely" within Milner's interpretation of Exemption 2).

[61] Compare Stein v. DOJ, 134 F. Supp. 3d 457, 472 (D.D.C. 2015) (finding that FBI FOIA Analyst Case Evaluation Forms "relate solely to the FBI's internal personnel rules and practices" relying exclusively on second element of Exemption 2 as described in Milner), with Shapiro v. DOJ, 153 F. Supp. 3d 253, 281 (D.D.C. 2016) (holding that FBI FOIA Analyst Case Evaluation forms do not "relate solely to trivial or minor matters," relying on Supreme Court's interpretation of Exemption 2 in both Milner and Dep't of the Air Force v. Rose, 425 U.S. 352 (1976)).

[62] Shapiro, 153 F. Supp. 3d at 280 (finding that "[i]f a document is 'subject to. . . a genuine and significant public interest,'. . . it cannot be said to relate 'solely' to the kinds of . . . records that Exemption 2 permits an agency to withhold" (quoting Rose, 425 U.S. at 369 and citing Milner)).

[63] Id. at 281 (quoting Elliott v. USDA, 596 F.3d 842, 847 (D.C. Cir. 2010)).