Exemption 7(C)*

Exemption 7(C) provides protection for law enforcement information the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy."[1] Exemption 7(C) is the law enforcement counterpart to the privacy protection afforded under Exemption 6.[2] (See Exemption 6 for discussions of the primary privacy-protection principles that apply to both exemptions.)

The Supreme Court has noted that the language of Exemption 7(C) "is in marked contrast to the language in Exemption 6, pertaining to 'personnel and medical files,'" with Exemption 7(C) more broadly protecting personal privacy by omitting the word "clearly" and substituting the "would constitute" standard for the "could reasonably be expected to" standard.[3] Indeed, the "'strong interest' of individuals, whether they be suspects,

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* This section primarily includes case law, guidance, and statutes up until September 30, 2023. While some legal authorities after this date may be included, for a comprehensive accounting of all recent court decisions, please visit OIP's Court Decisions webpage (https://www.justice.gov/oip/court-decisions-overview). Please also note that this section generally only includes subsequent case history in the citations when it is relevant to the point for which the case is being cited.

[1] 5 U.S.C. § 552(b)(7)(C) (2018).

[2] See Seized Prop. Recovery, Corp. v. CBP, 502 F. Supp. 2d 50, 56 (D.D.C. 2007).

[3] NARA v. Favish, 541 U.S. 157, 165-66 (2004) (distinguishing between Exemption 6's and Exemption 7(C)'s language and noting that "Exemption 7(C)'s comparative breadth is no mere accident in drafting"); see also Keys v. DOJ, 830 F.2d 337, 346 (D.C. Cir. 1987) (finding that under Exemption 7(C) "government need not 'prove to a certainty that release will lead to an unwarranted invasion of personal privacy'" (quoting DOJ v. Reps. Comm. for Freedom of Press, 816 F.2d 730, 738 (D.C. Cir. 1987), rev'd on other grounds, 489 U.S. 749 (1989))); Kendrick v. DEA, No. 21-01624, 2022 WL 3681442, at *5 (D.D.C. Aug. 25, 2022) (noting that "[t]hough similar [to Exemption 6], 7(C) 'provides broader privacy protections' and 'thus establishes a lower bar for withholding material'" (quoting Citizens for Resp. & Ethics in Wash. v. DOJ, 854 F.3d 675, 681 (D.C. Cir. 2017))); Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. DOJ, No. 18-1860, 2020 WL 1189091, at *3-4 (D.D.C. Mar. 12, 2020)

witnesses, or investigators, 'in not being associated unwarrantedly with alleged criminal activity'" has been repeatedly recognized.[4]

In order to determine whether Exemption 7(C) protects against disclosure, courts require that agencies engage in the following four-step analysis: first, determine whether the "records or information [are] compiled for law enforcement purposes" (for further discussion of threshold requirements, see Exemption 7);[5] second, determine whether there is a significant privacy interest in the requested information; third, evaluate the requester's asserted FOIA public interest in disclosure; and finally, if there is a significant privacy interest in nondisclosure and a FOIA public interest in disclosure, balance those competing interests to determine whether disclosure "could reasonably be expected to constitute an unwarranted invasion of privacy."[6] (See Exemption 6 for further discussion of the four-step analysis.)

(confirming that Exemption 7(C) "imposes a 'lower bar for withholding' than Exemption 6").

[4] Fitzgibbon v. CIA, 911 F.2d 755, 767 (D.C. Cir. 1990) (quoting Dunkelberger v. DOJ, 906 F.2d 779, 781 (D.C. Cir. 1990)); see also Citizens for Resp. & Ethics in Wash. v. DOJ, 746 F.3d 1082, 1092 (D.C. Cir. 2014) (finding that public official's privacy interest in contents of FBI investigative file was "not insubstantial" because while public officials "may have a somewhat diminished privacy interest," public officials "'do not surrender all rights to personal privacy when they accept a public appointment'" (quoting Quiñon v. FBI, 86 F.3d 1222, 1230 (D.C. Cir. 1996))); Roth v. DOJ, 642 F.3d 1161, 1174 (D.C. Cir. 2011) (noting that "being associated with a quadruple homicide would likely cause [third parties] precisely the type of embarrassment and reputational harm that Exemption 7(C) is designed to guard against"); Neely v. FBI, 208 F.3d 461, 464-66 (4th Cir. 2000) (finding that FBI Special Agents and third-party suspects have "substantial interest[s] in nondisclosure of their identities and their connection[s] to particular investigations"); Schiffer v. FBI, 78 F.3d 1405, 1410 (9th Cir. 1996) (stating that persons named in FBI files have "strong interest in 'not being associated unwarrantedly with alleged criminal activity'" (quoting Fitzgibbon, 911 F.2d at 767)); Comput. Pros. for Soc. Resp. v. U.S. Secret Serv., 72 F.3d 897, 904 (D.C. Cir. 1996) (finding that release of names of individuals, including nonsuspects, who attended public meeting that attracted attention of law enforcement officials would impinge upon their privacy); Hunt v. FBI, 972 F.2d 286, 288 (9th Cir. 1992) (finding that association of FBI "agent's name with allegations of sexual and professional misconduct could cause the agent great personal and professional embarrassment").

[5] 5 U.S.C. § 552(b)(7).

[6] Citizens for Resp. & Ethics in Wash., 746 F.3d at 1091-96 (quoting 5 U.S.C. § 552(b)(7)(C) and utilizing four-step analysis to balance "not insubstantial" privacy interest against a "weighty public interest"); see also Jud. Watch, Inc. v. DOJ, 394 F. Supp. 3d 111, 116-17 (D.D.C. 2019) (noting similarity of analysis to Exemption 6 except that Exemption 7(C) "establishes a lower bar for withholding material" (quoting Citizens for Resp. & Ethics in Wash., 746 F.3d at 1091 n.2)).

Privacy Considerations

Under the balancing test that traditionally has been applied to both Exemption 6 and Exemption 7(C), the agency must first identify and evaluate the nature and extent of the privacy interest implicated in the requested records.[7] Furthermore, pursuant to the FOIA Improvement Act of 2016, agencies may only withhold information under Exemption 7(C) if there is a foreseeable privacy harm from release.[8] In the context of Exemption 7(C), "fulfilling the terms of . . . [the] exemption[] goes a long way to meeting the foreseeable harm requirement."[9]

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[7] See, e.g., Higgs v. U.S. Park Police, 933 F.3d 897, 903-04 (7th Cir. 2019) (finding that district court erred in not evaluating potential privacy interests prior to analyzing plaintiff's public interest since the court had postulated that criminal investigation records could include information about living and deceased individuals, third parties, law enforcement personnel, and grand jurors); Associated Press v. DOD, 554 F.3d 274, 284 (2d Cir. 2009) (noting that "[t]he first question to ask in determining whether Exemption 7(C) applies is whether there is any privacy interest in the information sought"); Rugiero v. DOJ, 257 F.3d 534, 552 (6th Cir. 2001) (finding that agency appropriately protected identities of third parties after balancing privacy interests against public disclosure interests); Matthews v. FBI, 575 F. Supp. 3d 166, 180 (D.D.C. 2021) (noting that "the [c]ourt is unpersuaded that the FBI has carried its burden of demonstrating that disclosing the identity of [government employees] . . . would threaten a substantial privacy interest"); Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. DOJ, 503 F. Supp. 2d 373, 383 (D.D.C. 2007) (cautioning that even though more protection is afforded to information compiled for law enforcement purposes, agency must still prove that it is reasonably expected that disclosure would result in an unwarranted invasion of privacy); see also Evans v. BOP, 951 F.3d 578, 586-87 (D.C. Cir. 2020) (finding that "language of the affidavit that the disclosure of the video recording 'may' constitute an unwarranted invasion is far too vague and unspecific to remove all factual issue as to whether it could reasonably be expected to invade personal privacy and that such invasion would be unwarranted"); Bartko v. DOJ, 898 F.3d 51, 66 (D.C. Cir. 2018) (explaining application of Exemption 7(C) to attorney misconduct allegations, finding that agency has obligation to identify privacy interest at stake based on various factors, including "frequency, nature, and severity" of misconduct allegations); 100Reporters LLC v. DOJ, 248 F. Supp. 3d 115, 164 (D.D.C. 2017) (pointing out the failure to differentiate the differing privacy interests of various groups of individuals named in corporation compliance monitoring records); FOIA Update, Vol. X, No. 2 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking") (advising that there first must be viable privacy interest of identifiable, living person in requested information for any further consideration of privacy-exemption protection to be appropriate).

[8] 5 U.S.C. § 552(a)(8)(A) (2018); see also Reps. Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d 97, 127 (D.D.C. 2021) (determining that, as part of the Exemption 7(C) analysis, "the agency must establish a foreseeable harm from disclosure of these names").

[9] Reps. Comm. for Freedom of the Press, 567 F. Supp. 3d at 127; see also Kendrick v. DEA, No. 21-01624, 2022 WL 3681442, at *6 (D.D.C. Aug. 25, 2022) (same); Kendrick v. FBI, No. 20-2900, 2022 WL 4534627, at *6 (D.D.C. Sept. 28, 2022) (same), aff'd, No. 22-5271, 2023 WL 8101123, at *1 (D.C. Cir. Nov. 21, 2023) (per curiam).

In the case of records related to criminal investigations, courts have long recognized, either expressly or implicitly, that "'the mention of an individual's name in a law enforcement file will engender comment and speculation and carries a stigmatizing

connotation.'"[10] In DOJ v. Reporters Committee for Freedom of the Press,[11] the Supreme Court placed strong emphasis on the propriety of broadly protecting the interests of

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[10] Fitzgibbon v. CIA, 911 F.2d 755, 767 (D.C. Cir. 1990) (quoting Branch v. FBI, 658 F. Supp. 204, 209 (D.D.C. 1987)); see, e.g., Elec. Priv. Info. Ctr. v. DOJ, 18 F.4th 712, 720 (D.C. Cir. 2021) (concluding that "individuals purportedly investigated for false statements . . . retain a significant privacy interest in the contents of the [Mueller] Report because the redacted sections include new facts that would be stigmatizing"); Rimmer v. Holder, 700 F.3d 246, 257 (6th Cir. 2012) (noting that individuals associated with murder investigation have privacy interest because of possibility of embarrassment, harassment, and physical danger); Associated Press, 554 F.3d at 286-88 (finding that disclosure of Guantanamo detainees' identities, "both those who have suffered abuse and those who are alleged to have perpetrated abuse" "could subject them to embarrassment and humiliation," and whether detainees would want to voluntarily disclose information publicly is "inapposite to the privacy interests at stake"); Fabiano v. McIntyre, 146 F. App'x 549, 550 (3d Cir. 2005) (per curiam) (affirming district court decision protecting names of persons not of investigative interest but associated with investigation of child pornography photographs); Massey v. FBI, 3 F.3d 620, 624 (2d Cir. 1993) (highlighting that disclosing identity of private persons in investigatory files "might reveal that they were suspects," which carries stigmatizing connotation); Lesar v. DOJ, 636 F.2d 472, 488 (D.C. Cir. 1980) ("It is difficult if not impossible, to anticipate all respects in which disclosure might damage reputation or lead to personal embarrassment and discomfort." (quoting Lesar v. DOJ, 455 F. Supp. 921, 925 (D.D.C. 1978))); Kendrick, 2022 WL 4534627, at *4 (recognizing that the "D.C. Circuit has 'consistently supported nondisclosure of names or other information identifying individuals appearing in law enforcement records, including investigators, suspects, witnesses, informants'" (quoting Schrecker v. DOJ, 349 F.3d 657, 661 (D.C. Cir. 2003))), aff'd, No. 22-5271, 2023 WL 8101123, at *1 (D.C. Cir. Nov. 21, 2023) (per curiam); Kortlander v. Bureau of Land Mgmt., 816 F. Supp. 2d 1001, 1013 (D. Mont. 2011) (noting that "[c]ourts addressing Exemption 7(C) have found that the stigma of being associated with a law enforcement investigation, the potential for harassment and potential to prejudice law enforcement personnel in carrying out law enforcement functions, generally outweighs the public interest"); Times Picayune Publ'g Corp. v. DOJ, 37 F. Supp. 2d 472, 477 (E.D. La. 1999) (recognizing that "mug shot's stigmatizing effect can last well beyond the actual criminal proceeding"); Abraham & Rose, P.L.C. v. United States, 36 F. Supp. 2d 955, 957 (E.D. Mich. 1998) (noting that filing of tax lien against individual could cause "comment, speculation and stigma"); McNamera v. DOJ, 974 F. Supp. 946, 959 (W.D. Tex. 1997) (rejecting argument that individual already investigated by one agency cannot be stigmatized by acknowledgment of investigation by another agency); Southam News v. INS, 674 F. Supp. 881, 887 (D.D.C. 1987) (finding that disclosure of identities of individuals excludable from U.S. "would result in derogatory inferences about and possible embarrassment to those individuals"); cf. Miller v. Bell, 661 F.2d 623, 628-31 (7th Cir. 1981) (per curiam) (noting "real potential for harassment and intrusion" because requester "seeks the deleted names to pursue civil action, and to enlist [third parties'] cooperation and support"). But see King & Spalding, L.L.P. v. HHS, 395 F. Supp. 3d 116, 122 (D.D.C. 2019) (finding that "lawyers . . . have little or no privacy interest in their "'representational capacity'" as counsel to the confidential source" (quoting John Doe 1 & John Doe 2 v. FEC, 920 F.3d 866, 873 (D.C. Cir. 2019))); Blanton v. DOJ, No. 93-2398, 1994 U.S. Dist. LEXIS 21444, at *8-12 (W.D. Tenn. July 14, 1994) (holding that there is no privacy interest in mere mention of defense

private citizens whose names or identities are in a record that the government "happens to be storing."[12] It subsequently recognized, in NARA v. Favish,[13] that law enforcement files often contain information on individuals by "mere happenstance," and it strongly reinforced the protection available under Exemption 7(C).[14] Thus, Exemption 7(C) has been regularly applied to withhold references to persons who are merely mentioned in law enforcement files,[15] as well as to persons of "investigatory interest" to a criminal law enforcement agency.[16]

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attorney's name in criminal file or in validity of law license when attorney represented requester at criminal trial) (Exemptions 6 and 7(C)).

[11] 489 U.S. 749 (1989).

[12] Id. at 780; see also id. at 774-75 (declaring that "it should come as no surprise that in none of our cases construing the FOIA have we found it appropriate to order a Government agency to honor a FOIA request for information about a particular private citizen").

[13] 541 U.S. 157 (2004).

[14] Id. at 166 (noting that "[l]aw enforcement documents obtained by Government investigators often contain information about persons interviewed as witnesses or initial suspects but whose link to the official inquiry may be the result of mere happenstance"); see also OIP Guidance: Supreme Court Rules for "Survivor Privacy" in *Favish* (posted 4/9/2004).

[15] See, e.g., Djenasevic v. EOUSA, No. 18-5262, 2019 WL 5390964, at *1 (D.C. Cir. Oct. 3, 2019) (per curiam) (finding that agencies properly withheld identifying information about "third parties mentioned in those criminal records"); Peltier v. FBI, 563 F.3d 754, 766 (8th Cir. 2009) (per curiam) (affirming district court's determination that third parties mentioned within released records were properly withheld); Neely v. FBI, 208 F.3d 461, 464 (4th Cir. 2000) (withholding names of third parties mentioned in course of investigation); Halpern v. FBI, 181 F.3d 279, 297 (2d Cir. 1999) (same); Gabel v. Comm'r of Internal Revenue, No. 95-15215, 1998 WL 21992, at *1 (9th Cir. Jan. 15, 1998) (unpublished table decision) (protecting third-party names in Department of Motor Vehicles computer printout included in plaintiff's IRS file); Comput. Pros. for Soc. Resp. v. U.S. Secret Serv., 72 F.3d 897, 904 (D.C. Cir. 1996) (finding that release of names of any individuals who attended public meeting that attracted attention of law enforcement officials would impinge upon their privacy); Sutton v. IRS, No. 05-7177, 2007 WL 30547, at *6 (N.D. Ill. Jan. 4, 2007) (finding that third-party taxpayers and IRS personnel have interest in maintaining privacy of their personal information); Fritz v. IRS, 862 F. Supp. 234, 236 (W.D. Wis. 1994) (protecting name and address of person who purchased requester's seized car). But see Balt. Sun v. USMS, 131 F. Supp. 2d 725, 729 (D. Md. 2001) (rejecting protection of names and addresses of forfeited property purchasers).

[16] See, e.g., Elec. Priv. Info. Ctr. v. DOJ, 18 F.4th 712, 720 (D.C. Cir. 2021) (concluding that "privacy interests of . . . individuals investigated for campaign violations are diminished, but not eliminated, by disclosure of the relevant facts elsewhere in the [government's report]"); Broward Bulldog, Inc. v. DOJ, 939 F.3d 1164, 1186 (11th Cir. 2019) (holding that district

Courts have found that privacy interests extend to foreign nationals in addition to U.S. citizens.[17] The Court of Appeals for the District of Columbia Circuit has held that even convicted defendants retain some privacy interest in the facts of their conviction, but

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court erred "when it ruled that Exemption 7(C) does not protect a privacy interest if an individual was connected to or was of investigative interest for the 9/11 attacks"); Neely, 208 F.3d at 464 (withholding names of third parties interviewed in course of investigation); Halpern, 181 F.3d at 297 (finding strong privacy interest in material that suggests person has at one time been subject to criminal investigation); O'Kane v. U.S. Customs Serv., 169 F.3d 1308, 1309-10 (11th Cir. 1999) (per curiam) (protecting home addresses of individuals whose possessions were seized by government); Spirko v. USPS, 147 F.3d 992, 998-99 (D.C. Cir. 1998) (protecting suspects' palm and fingerprints, their interviews and discussions with law enforcement officers, and photographs of former suspects and their criminal histories); Comput. Pros. for Soc. Resp., 72 F.3d at 904 (holding that potential suspects would have their privacy impinged if names disclosed); McDonnell v. United States, 4 F.3d 1227, 1255 (3d Cir. 1993) (finding that suspects have "obvious privacy interest in not having their identities revealed"); Massey v. FBI, 3 F.3d 620, 624 (2d Cir. 1993) (finding third parties' privacy interests in nondisclosure "potentially greater" than those of law enforcement officers "insofar as disclosure of their names might reveal that they were suspects in criminal investigations"); Maynard v. CIA, 986 F.2d 547, 566 (1st Cir. 1993) (reiterating "potential for harassment, reprisal or embarrassment" if FBI disclosed names of individuals investigated); Davis v. DOJ, 968 F.2d 1276, 1281 (D.C. Cir. 1992) (deciding that "embarrassment and reputational harm" would result from disclosure of taped conversations of individuals with boss of New Orleans organized crime family); Silets v. DOJ, 945 F.2d 227, 230 (7th Cir. 1991) (en banc) (protecting associates of Jimmy Hoffa who were subjects of electronic surveillance); SafeCard Servs. v. SEC, 926 F.2d 1197, 1206 (D.C. Cir. 1991) (protecting identities of targets of investigations); Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. DOJ, No. 18-1860, 2021 WL 2711765, at *11 (D.D.C. Jul. 1, 2021) (concluding that "third-party privacy interest is compelling in those cases where the initial investigation suggested some possible connection to terrorism . . . but the ultimate charges in the case were unrelated to terrorism"); Garcia v. DOJ, 181 F. Supp. 2d 356, 373-74 (S.D.N.Y. 2002) (protecting names, identities, addresses, and information pertaining to third parties who were of investigatory interest); Feshbach v. SEC, 5 F. Supp. 2d 774, 785-86 (N.D. Cal. 1997) (withholding identities of third parties against whom SEC did not take action).

[17] See, e.g., 100REPORTERS v. U.S. Dep't of State, 602 F. Supp. 3d 41, 74 (D.D.C. 2022) (noting that "[c]ourt has little doubt that disclosing the names of foreign personnel vetted to participate in U.S. training or assistance programs . . . [c]ould . . . expose those individuals to harassment and retaliation"); Graff v. FBI, 822 F. Supp. 2d 23, 34 (D.D.C. 2011) (noting that "foreign nationals are entitled to the privacy protections embodied in FOIA"); see also Tuffly v. DHS, 870 F.3d 1086, 1094 (9th Cir. 2017) (holding that non-citizens formerly detained by ICE pending final determination in their removal proceedings have particularly strong privacy interest in their identities).

"those interests are weaker than for individuals who have been acquitted or whose cases have been dismissed."[18]

Courts have found that booking photos or "mug shots" may be properly withheld under Exemption 7(C).[19] The Court of Appeals for the Sixth Circuit in Detroit Free Press Inc. v. DOJ[20] explained that "[b]ooking photos – snapped 'in the vulnerable and embarrassing moments immediately after [an individual is] accused, taken into custody, and deprived of most liberties' – fit squarely within [the] realm of embarrassing and humiliating information."[21] The court explained that "[m]ore than just 'vivid symbol[s] of criminal *accusation*,' booking photos convey *guilt* to the viewer," and it found that a "disclosed booking photo casts a long, damaging shadow over the depicted individual."[22]

The identities of federal, state, and local law enforcement personnel referenced in investigatory files are also routinely withheld, usually for reasons similar to those described by the Court of Appeals for the Fourth Circuit:

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[18] ACLU v. DOJ, 750 F.3d 927, 933 (D.C. Cir. 2014); see also ACLU v. DOJ, 655 F.3d 1, 7 (D.C. Cir. 2011) (same); accord Venkataram v. OIP, 590 F. App'x 138, 140 (3d Cir. 2014) (per curiam) (determining that co-conspirator, whose charges were dismissed, "has a 'fundamental interest' in limiting the disclosure of [his criminal] information"); see Citizens for Resp. & Ethics in Wash. v. DOJ, 854 F.3d 675, 683 (D.C. Cir. 2017) (holding that privacy interests of individuals not convicted or not publicly linked with investigation differ greatly from those convicted or who pled guilty); cf. Shapiro v. DOJ, No. 12-313, 2020 WL 3615511, at *31 (D.D.C. July 2, 2020) (asserting that individuals identified as "having pled guilty" and "'[parties] in a civil' lawsuit" have privacy interests); Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. DOJ, No. 18-1860, 2020 WL 1189091, at *7-11 (D.D.C. Mar. 12, 2020) (releasing docket numbers for cases that resulted in conviction but not for those that resulted in acquittal or dismissal), reconsideration granted in part, 2021 WL 2711765 (D.D.C. Jul. 1, 2021) (recognizing greater privacy interest in certain docket numbers for terrorism-related cases than found in original opinion); Shapiro v. CIA, 247 F. Supp. 3d 53, 66-67 (D.D.C. 2017) (finding that "[defendant] needs to take the public nature of his or her conviction into account when conducting the balancing" because convicted individual's privacy interest is weaker than individuals who were acquitted or whose cases were dismissed).

[19] See Detroit Free Press Inc. v. DOJ, 829 F.3d 478, 485 (6th Cir. 2016) (holding that individuals have privacy interest in preventing disclosure of their booking photos under Exemption 7(C)); World Publ'g Co. v. DOJ, 672 F.3d 825, 827-32 (10th Cir. 2012) (finding that agency properly withheld mug shots after balancing sensitive nature of such photographs with requester's failure to show how release would inform public about operations of government); Karantsalis v. DOJ, 635 F.3d 497, 504 (11th Cir. 2011) (per curiam) (same).

[20] 829 F.3d 478 (6th Cir. 2016).

[21] Id. at 482 (quoting Karantsalis, 635 F.3d at 503).

[22] Id.

> One 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.[23]

Moreover, agencies' redaction of the identities of law enforcement personnel who perform clerical or administrative duties with respect to requested records are routinely upheld, as courts recognize that the access these employees have to information regarding

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[23] Nix v. United States, 572 F.2d 998, 1006 (4th Cir. 1978); see, e.g., Hulstein v. DEA, 671 F.3d 690, 695-96 (8th Cir. 2012) (protecting names and signatures of DEA agents); Moore v. Obama, No. 09-5072, 2009 WL 2762827, at *1 (D.C. Cir. Aug. 24, 2009) (per curiam) (protecting names and a phone number of FBI employees); Fabiano v. McIntyre, 146 F. App'x 549, 550 (3d Cir. 2005) (per curiam) (affirming withholding of names and telephone numbers of FBI Special Agent, FBI support employees, and non-FBI federal employee); Halpern v. FBI, 181 F.3d 279, 296-97 (2d Cir. 1999) (protecting identities of nonfederal law enforcement officers); Manna v. DOJ, 51 F.3d 1158, 1166 (3d Cir. 1995) (finding that law enforcement officers have substantial privacy interest in nondisclosure of names, particularly when requester held high position in La Cosa Nostra); Davis v. DOJ, 968 F.2d 1276, 1281 (D.C. Cir. 1992) (holding that "undercover agents" have protectable privacy interests); Miller v. Bell, 661 F.2d 623, 630 (7th Cir. 1981) (per curiam) ("It is not necessary that harassment rise to the level of endangering physical safety before the protections of 7(C) can be invoked."); Reps. Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d 97, 126 (D.D.C. 2021) (recognizing strong privacy interest for agency employees who have faced vandalism, threats, and social media threats "solely based on their employment with [the agency]"); Stahl v. DOJ, No. 19-4142, 2021 WL 1163154, at *8 n.7 (E.D.N.Y. Mar. 26, 2021) (finding privacy interest in visual depiction of BOP staff providing involuntary medical treatment to inmate convicted of terrorism because "[t]he staff here face more than harassment and embarrassment – they face reprisals and retaliation"); Lamb v. Millennium Challenge Corp., 334 F. Supp. 3d 204, 216-17 (D.D.C. 2018) (finding that "government investigators and employees 'have a legitimate interest in preserving the secrecy of matters that conceivably could subject them to annoyance or harassment in either their official or private lives'" (quoting Lesar v. DOJ, 636 F.2d 472, 487 (D.C. Cir. 1980))); Sai v. TSA, 315 F. Supp. 3d 218, 262 (D.D.C. 2018) (finding that TSA properly redacted local law enforcement identifying information); Rojas-Vega v. USCIS, 132 F. Supp. 3d 11, 20 (D.D.C. 2015) (finding protection of "phone numbers, email addresses, names, signatures, and initials of . . . INS agents" appropriate), aff'd, 650 F. App'x 36, 37 (D.C. Cir. 2016) (per curiam); O'Keefe v. DOD, 463 F. Supp. 2d 317, 324 (E.D.N.Y. 2006) (protecting identities of DOD investigators); cf. Lissner v. U.S. Customs Serv., 241 F.3d 1220, 1224 (9th Cir. 2001) (finding that disclosure of physical description of state law enforcement officers does not implicate privacy interests because agency already released officers' identities); Fowlkes v. ATF, 139 F. Supp. 3d 287, 293 (D.D.C. 2015) (determining that name of judge presiding over grand jury must be disclosed as Exemption 7(C) does not afford such broad protection).

official law enforcement investigations creates a unique privacy interest.[24] Indeed, courts have held that identities of both clerical personnel and investigators are properly withheld as a routine matter under Exemption 7(C), even when they take part in a highly publicized investigation.[25] Likewise, courts customarily protect direct contact information for law enforcement investigators and administrative personnel.[26]

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[24] See, e.g., Burke v. EOUSA, No. 15-1151, 2018 U.S. Dist. LEXIS 44854, at *5-6 (D.D.C. Mar. 20, 2018) (finding that names of FBI support personnel withholdable because defendant adequately explained privacy interests at stake and plaintiff did not contest withholdings); Rojas-Vega, 132 F. Supp. 3d at 20 (finding withholding "the names, email addresses and phone numbers of . . . government employees who performed administrative, clerical, or support functions" appropriate); Council on Am.-Islamic Rels. v. FBI, 749 F. Supp. 2d 1104, 1120-21 (S.D. Cal. 2010) (upholding agency's redaction of support personnel); Skinner v. DOJ, 744 F. Supp. 2d 185, 210-11 (D.D.C. 2010) (concluding that names and identification of law enforcement support staff were properly withheld); Fischer v. DOJ, 596 F. Supp. 2d 34, 47 (D.D.C. 2009) (upholding Exemption 7(C) to protect agency employees, including support personnel, as "[t]he D.C. Circuit has consistently held that Exemption 7(C) protects the privacy interests of all persons mentioned in law enforcement records").

[25] See Lahr v. NTSB, 569 F.3d 964, 977-79 (9th Cir. 2009) (holding that names of FBI agents involved in investigation of crash of TWA Flight 800 were protected from disclosure and noting that "courts have recognized that agents retain an interest in keeping private their involvement in investigations of especially controversial events"); Wichlacz v. U.S. Dep't of the Interior, 938 F. Supp. 325, 334 (E.D. Va. 1996) (protecting names of Park Police officers who investigated suicide of former Deputy White House Counsel, as well as psychiatrists who were listed on paper found in his wallet, because disclosure would cause "onslaught of media attention" and could cause camera crews to "besiege" their workplaces and homes), aff'd per curiam, 114 F.3d 1178 (4th Cir. 1997) (unpublished table decision); Stone v. FBI, 727 F. Supp. 662, 663 n.1 (D.D.C. 1990) (protecting identities of FBI Special Agents and clerical employees who participated in investigation of assassination of Robert F. Kennedy), aff'd per curiam, No. 90-5065, 1990 WL 134431 (D.C. Cir. Sept. 14, 1990).

[26] See Ecological Rts. Found. v. EPA, No. 19-980, 2021 WL 535725, at *28 (D.D.C. Feb. 13, 2021) (protecting personal security detail agents' email addresses because they have a "substantial privacy interest in their direct contact information"); Freedom Watch, Inc. v. Mueller, 453 F. Supp. 3d 139, 156-58 (D.D.C. 2020) (upholding redactions of names and contact information for Special Counsel's Office personnel and other law enforcement personnel due to sensitive and high-profile nature of records) (Exemption 6 & 7(C)); Schotz v. DOJ, No. 14-1212, 2016 WL 1588491, at *5 (D.D.C. April 20, 2016) (determining that direct office and cellular phone number of BOP attorney was properly redacted); Rojas-Vega, 132 F. Supp. 3d at 20 (protecting phone numbers and email addresses of INS agents and support staff); cf. Transgender L. Ctr. v. ICE, 33 F.4th 1186, 1199 (9th Cir. 2022) (reversing district court and holding that "email domains are not specific to [individual government employees]" and, thus, cannot be withheld under Exemption 7(C)), vacated in part on other grounds, 46 F.4th 771 (9th Cir. 2022). Compare Sai I, 315 F. Supp. 3d at 262-63 (holding that TSA did not show there was a substantial privacy interest in certain clerical and administrative employees' contact information as well as employee names and contact information in policy documents) (Exemption 6), with Sai v. TSA, 466 F. Supp. 3d 35, 62-63

Courts routinely have found protectable privacy interests in the identities of individuals who provide information to law enforcement agencies.[27] Consequently, the names of witnesses and other identifying information have been held properly protectable

(D.D.C. 2020) (withholding names and contact information under Exemption 6 as agency declaration identified "position held by the relevant employee, the role played by that employee, the substance of the underlying agency action, [and] the nature of the agency record at issue" (quoting Sai I, 315 F. Supp. 3d at 262)).

[27] See, e.g., Stalcup v. CIA, 768 F.3d 65, 73 (1st Cir. 2014) (finding significant privacy interest in identity of eyewitness who provided information to FBI because their privacy interest is "'at its apex' when he or she is involved in a law enforcement investigation" (quoting NARA v. Favish, 541 U.S. 157, 166 (2004))); Quiñon v. FBI, 86 F.3d 1222, 1227, 1231 (D.C. Cir. 1996) (protecting informants' identities); Schiffer v. FBI, 78 F.3d 1405, 1410 (9th Cir. 1996) (protecting names of persons who provided information to FBI); Comput. Pros. for Soc. Resp. v. U.S. Secret Serv., 72 F.3d 897, 904-05 (D.C. Cir. 1996) (protecting names of informants, including name of company that reported crime to police, because disclosure might permit identification of corporate officer who reported crime); Jones v. FBI, 41 F.3d 238, 246 (6th Cir. 1994) (protecting informants' identities); McCutchen v. HHS, 30 F.3d 183, 189 (D.C. Cir. 1994) (protecting names of individuals alleging scientific misconduct); McDonnell v. United States, 4 F.3d 1227, 1255-56 (3d Cir. 1993) (protecting identities of witnesses and third parties involved in criminal investigation of maritime disaster); Massey v. FBI, 3 F.3d 620, 624 (2d Cir. 1993) (declaring that disclosure of names of cooperating witnesses and third parties, including cooperating law enforcement officials, could subject them to "embarrassment and harassment"); Nadler v. DOJ, 955 F.2d 1479, 1489 (11th Cir. 1992) (finding privacy interest in disclosure of source's identity because disclosure "might subject [source] to unnecessary questioning or harassment by those who look unfavorably upon law enforcement officials or by private litigants in civil suits incidentally related to the investigation"); KTVY-TV, a Div. of Knight-Ridder Broad., Inc. v. United States, 919 F.2d 1465, 1469 (10th Cir. 1990) (per curiam) (withholding interviewees' names as "necessary to avoid harassment and embarrassment"); Cleary v. FBI, 811 F.2d 421, 424 (8th Cir. 1987) (deciding that disclosure would subject "sources to unnecessary questioning concerning the investigation [and] to subpoenas issued by private litigants in civil suits incidentally related to the investigation"); Cuccaro v. Sec'y of Lab., 770 F.2d 355, 359 (3d Cir. 1985) (holding that "privacy interest of . . . witnesses who participated in OSHA's investigation outweighs public interest in disclosure"); Wash. Post Co. v. Special Inspector Gen. for Afg. Reconstruction, No. 18-2622, 2021 WL 4502106, at *16 (D.D.C. Sept. 30, 2021) (concluding that agency properly withheld "unique interviewee codes . . . [because] there is a risk that confidential informants could be identified if the codes were revealed"); Sheppard v. DOJ, No. 17-1037, 2021 WL 4304217, at *8 (W.D. Mo. Sept. 21, 2021) (concluding that "interviewees . . . [had] a substantial privacy interest in the *substance* of their interviews, because their interviews clearly reflect unique details, beyond the interviewee's personal information, that would permit identification"). But see Cooper Cameron Corp. v. OSHA, 280 F.3d 539, 554 (5th Cir. 2002) (rebuffing idea of retaliation against employees who gave statements to OSHA investigator, and ordering disclosure of source-identifying content of statements in part because identifiable employee-witnesses' names already had been released in separate civil proceeding and there was no evidence of retaliation by employer against employee-witnesses in course of civil proceeding).

under Exemption 7(C).[28] Courts have generally found that trial testimony does not eliminate Exemption 7(C) protection.[29] Similarly, courts have found privacy protection

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[28] See Sorin v. DOJ, 758 F. App'x 28, 33 (2d Cir. 2018) (summary order) (upholding agency protection of names, professional history, educational history, and financial information of potential witnesses in criminal investigation and employees not interviewed during internal investigation of company that were later acquired by federal government for criminal investigation); Lahr, 569 F.3d at 975-77 (reversing district court and holding that eyewitnesses in investigation of crash of TWA Flight 800 have cognizable privacy interest in nondisclosure of their names to avoid unwanted contact by plaintiff and other entities); Coulter v. Reno, No. 98-35170, 1998 WL 658835, at *1 (9th Cir. Sept. 17, 1998) (unpublished table decision) (protecting names of witnesses and of requester's accusers); Spirko v. USPS, 147 F.3d 992, 998-99 (D.C. Cir. 1998) (protecting notes and phone messages concerning witnesses); L&C Marine Transp., Ltd. v. United States, 740 F.2d 919, 922 (11th Cir. 1984) (noting that "employee-witnesses . . . have a substantial privacy interest"); Antonelli v. Sullivan, 732 F.2d 560, 562 (7th Cir. 1984) (per curiam) ("[The requester] has mentioned no legitimate need for the witnesses' phone numbers, and we can well imagine the invasions of privacy that would result should he obtain them."); Woodward v. USMS, No. 18-1249, 2022 WL 296171, at *4 n.3 (D.D.C. Feb. 1, 2022) (concluding that information about "informants, witnesses, and other third parties who were investigated" was properly withheld); Jarvis v. ATF, No. 07-00111, 2008 WL 2620741, at *12 (N.D. Fla. June 30, 2008) (protecting "names and specifics of those who gave evidence in the investigation" due to risk of "impassioned acts of retaliation directed by Plaintiff through the agency of others, even though he is now in prison"); Farese v. DOJ, 683 F. Supp. 273, 275 (D.D.C. 1987) (protecting names and number of family members of participants in Witness Security Program, as well as funds authorized to each, because disclosure "would pose a possible danger to the persons named" or "might subject those persons to harassment"). But see Cooper Cameron, 280 F.3d at 545, 554 (holding that names of three employee-witnesses exempt yet ordering release of source-identifying content of their statements).

[29] See Hawkins v. DEA, 347 F. App'x 223, 225 (7th Cir. 2009) (finding that testifying at requester's trial "did not wholly extinguish [witnesses'] privacy interests"); Jones, 41 F.3d at 247 (holding that fact that law enforcement employee chose to testify or was required to testify or otherwise come forward in other settings does not amount to waiver of personal privacy); Burge v. Eastburn, 934 F.2d 577, 579 (5th Cir. 1991) (affirming refusal, under Exemption 7(C), to confirm or deny existence of information in FBI files regarding individuals who testified at plaintiff's murder trial); Kowal v. DOJ, No. 18-938, 2021 WL 3363445, at *5 (D.D.C. Aug. 3, 2021) (recognizing that "a 'witness does not waive his or her interest in personal privacy by testifying at a public trial'" (quoting Sellers v. DOJ, 684 F. Supp. 2d 149, 159-60 (D.D.C. 2010))); Black v. DOJ, 69 F. Supp. 3d 26, 37 (D.D.C. 2014) (finding that testifying witness had "compelling privacy interest" in records concerning that testimony), aff'd, No. 14-5256, 2015 WL 6128830, at *1 (D.C. Cir. Oct. 6, 2015) (per curiam); Melville v. DOJ, No. 05-0645, 2006 WL 2927575, at *9 (D.D.C. Oct. 9, 2006) (emphasizing that privacy interest of law enforcement personnel or other third parties mentioned in responsive records is not diminished by fact they may have testified at trial). But see Linn v. DOJ, No. 92-1406, 1997 WL 577586, at *5 (D.D.C. May 29, 1997) (finding no justification

for individuals identified as potential witnesses.[30]

Moreover, courts have repeatedly recognized that the passage of time will not ordinarily diminish the privacy protection afforded by Exemption 7(C).[31] This has been found even in instances in which the information was obtained through past law enforcement investigations that are now viewed critically by the public.[32]

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for withholding identities of witnesses who testified against requester at trial) (Exemptions 7(C) and 7(F)).

[30] See Sorin, 758 F. App'x at 33 (mentioning substantial privacy interest in professional, educational, and financial information of potential witnesses obtained in criminal investigation); Stalcup, 768 F.3d at 73 (emphasizing that the "mere possibility of being called as a witness" does not mean privacy is abdicated); Kowal v. DOJ, 490 F. Supp. 3d 53, 70-71 (D.D.C. 2020) (protecting names of potential witnesses in ATF investigatory records); North v. DOJ, 774 F. Supp. 2d 217, 224 (D.D.C. 2011) (finding that agency properly withheld names of potential witnesses in grand jury proceeding); Rosenglick v. IRS, No. 97-747, 1998 WL 773629, at *3 (M.D. Fla. Mar. 10, 1998) (finding that "the chance of revealing the names of potential witnesses . . . counsels against forced disclosure").

[31] See, e.g., Halpern v. FBI, 181 F.3d 279, 297 (2d Cir. 1999) ("Confidentiality interests cannot be waived through . . . the passage of time."); McDonnell, 4 F.3d at 1256 (deciding that passage of forty-nine years does not negate individual's privacy interest); Maynard v. CIA, 986 F.2d 547, 566 n.21 (1st Cir. 1993) (finding that effect of passage of time upon individual's privacy interests to be "simply irrelevant when a FOIA requestor is unable to suggest any public interest in the disclosure of names that would reveal what the government is up to"); Fitzgibbon v. CIA, 911 F.2d 755, 768 (D.C. Cir. 1990) (concluding that passage of more than thirty years irrelevant when records reveal nothing about government activities); Keys v. DOJ, 830 F.2d 337, 348 (D.C. Cir. 1987) (holding that passage of forty years did not "dilute the privacy interest as to tip the balance the other way"); Stone v. FBI, 727 F. Supp. 662, 663 n.1, 664 (D.D.C. 1990) (explaining that FBI Special Agents who participated in investigation over twenty years earlier, even one as well-known as RFK assassination, "have earned the right to be 'left alone' unless an important public interest outweighs that right"); cf. Schrecker v. DOJ, 349 F.3d 657, 664-65 (D.C. Cir. 2003) [hereinafter Schrecker II] (approving FBI's use of "100-year rule," which presumes that individual is dead if birthdate appeared in documents responsive to request and was more than 100 years old, to determine if subject of requested record is still alive and has privacy interest). But see Davin v. DOJ, 60 F.3d 1043, 1058 (3d Cir. 1995) (finding that for some individuals privacy interest may become diluted by passage of over sixty years, though under certain circumstances potential for embarrassment and harassment may endure).

[32] See King v. DOJ, 830 F.2d 210, 234-35 (D.C. Cir. 1987) (affirming district court finding that "'McCarthy era'" investigation strengthened third-party privacy interests); Campbell v. DOJ, 193 F. Supp. 2d 29, 40-41 (D.D.C. 2001) (finding that "the persons who were involved in [investigation of 1960s writer and civil rights activist] deserve protection of their reputations as well as recognition that they were simply doing a job that the cultural and political climate at the time dictated"); Dunaway v. Webster, 519 F. Supp. 1059, 1079 (N.D. Cal. 1981) ("[The target of a McCarthy era investigation] may . . . deserve greater protection,

Relatedly, in Reporters Committee, the Supreme Court found that substantial privacy interests can exist in personal information even though the information has been made available to the general public at some place and point in time.[33] Applying a "practical obscurity" standard,[34] the Supreme Court observed that if such items of information actually "were 'freely available,' there would be no reason to invoke the FOIA to obtain access to [them]."[35] In fact, the "practical obscurity" concept embraced by the

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because the connection to such an investigation might prove particularly embarrassing or damaging.").

[33] DOJ v. Reps. Comm. For Freedom of the Press, 489 U.S. 749, 770-71 (1989) (finding "substantial" privacy interest in rap sheets even though they contain information previously disclosed to public); accord Lane v. Dep't of the Interior, 523 F.3d 1128, 1137 (9th Cir. 2008) (concluding that "notions of privacy in the FOIA exemption context encompass information already revealed to the public"); Halpern, 181 F.3d at 296-97 (noting that "[c]onfidentiality interests cannot be waived through prior disclosure or the passage of time"); cf. Cincinnati Enquirer v. DOJ, 45 F.4th 929, 933-34 (6th Cir. 2022) (concluding that private individual had "a somewhat reduced privacy interest" regarding "the fact of his conviction or other publicly disclosed facts" (citing ACLU v. DOJ, 655 F.3d 1, 7 (D.C. Cir. 2011))).

[34] See Reps. Comm. For Freedom of the Press, 489 U.S. at 757-71 (recognizing that certain events may "have been wholly forgotten," and noting that information in requested compilation, even though publicly available in various places, was "hard-to-obtain" and "web of federal statutory and regulatory provisions" limited its disclosure).

[35] Id. at 764; see also Eil v. DEA, 878 F.3d 392, 400 (1st Cir. 2017) (emphasizing that privacy interests of convicted physician's living former patients did not diminish due to prior introduction of records as trial exhibits); Prison Legal News v. EOUSA, 628 F.3d 1243, 1249-50 (10th Cir. 2011) (finding "strong privacy interest" in video and photographs where "images are no longer available to the public; they were displayed only twice (once at each [defendant's] trial); only those physically present in the court room were able to view the images; and the images were never reproduced for public consumption beyond those trials"); Fiduccia v. DOJ, 185 F.3d 1035, 1047-48 (9th Cir. 1999) (protecting FBI records reflecting information that is also available in "various courthouses"); Abraham & Rose, P.L.C. v. United States, 138 F.3d 1075, 1083 (6th Cir. 1998) (stating that clear privacy interest exists with respect to names, addresses, and other identifying information, even if already available in publicly recorded filings (citing DOD v. Fed. Lab. Rels. Auth., 510 U.S. 487, 500 (1994) (Exemption 6))); McGehee v. DOJ, 800 F. Supp. 2d 220, 233 n.6 (D.D.C. 2011) (noting that "it is clear that in our Circuit a privacy interest may be implicated by 'practically obscure' information"); Harrison v. EOUSA, 377 F. Supp. 2d 141, 147-48 (D.D.C. 2005) (protecting names and addresses of criminal defendants; case captions and numbers; attorney names and addresses; and case initiation, disposition, and sentencing dates even though information could be found by searches of public records); Billington v. DOJ, 11 F. Supp. 2d 45, 61 (D.D.C. 1998) (finding that "agency is not compelled to release information just because it may have been disclosed previously"), aff'd in pertinent part, 233 F.3d 581, 583 (D.C. Cir. 2000); Greenberg v. U.S. Dep't of the Treasury, 10 F. Supp. 2d 3, 30 (D.D.C.

Supreme Court expressly recognizes that the passage of time may actually increase the privacy interest at stake when disclosure would revive information that was once public knowledge but has long since faded from memory.[36] There have been times, however, when courts have found that the information at issue was not "practically obscure."[37] (For further discussion, see Exemption 6, Information in the Public Domain and Practical Obscurity.)

Courts have held that an individual's Exemption 7(C) privacy interest likewise is not extinguished merely because requesters might, on their own, be able to "piece

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1998) (finding that third party's privacy interest not extinguished because public may be aware third party was target of investigation).

[36] See Reps. Comm. For Freedom of the Press, 489 U.S. at 767 ("[O]ur cases have also recognized the privacy interest inherent in the nondisclosure of certain information even where the information may have been at one time public."); accord Rose v. Dep't of the Air Force, 495 F.2d 261, 267 (2d Cir. 1974) (noting that "a person's privacy may be as effectively infringed by reviving dormant memories as by imparting new information") (Exemption 6), aff'd, 425 U.S. 352 (1976); Huggans v. EOUSA, No. 19-02587, 2021 WL 1092143, at *6 (D.D.C. Mar. 22, 2021) (concluding "that revealing . . . potential government association[s] out of practical obscurity . . . and into the forefront of public awareness, could easily expose [the third party] to embarrassment, harassment, or even retribution by violent criminals"); Jud. Watch, Inc. v. DHS, 736 F. Supp. 2d 202, 211 (D.D.C. 2010) (finding "that the passage of time has not diluted the privacy interest at stake and, if anything, has actually increased [the] privacy interest as the events surrounding the . . . prosecution have faded from memory"); Assassination Archives & Rsch. Ctr., Inc. v. CIA, 903 F. Supp. 131, 133 (D.D.C. 1995) (finding that passage of thirty or forty years "may actually increase privacy interests, and that even a modest privacy interest will suffice" to protect identities); cf. NARA v. Favish, 541 U.S. 157, 170-71 (2004) (providing privacy protection, notwithstanding passage of ten years since third party's death).

[37] See ACLU v. DOJ, 655 F.3d 1, 9-10 (D.C. Cir. 2011) (finding that "unlike the rap sheet information in Reporters Committee," docket information compiled into single list by agency from cases pertaining to various individuals was "not practically obscure" on grounds that docket information contained only small amount of information regarding individual's criminal history rather than compilation, there was no "web of statutory or regulatory policies obscuring that information," and no "logistical difficulty in gathering" the information); Gawker Media, LLC v. FBI, 145 F. Supp. 3d 1100, 1108-12 (M.D. Fla. 2015) (requiring release of names mentioned in investigation of tape recording, made publicly available at one point in time); CNA Holdings, Inc. v. DOJ, No. 07-2084, 2008 WL 2002050, at *6 (N.D. Tex. May 9, 2008) (ordering production of documents when plaintiff demonstrated that documents at issue were filed in courthouse and DOJ failed to show that documents were no longer publicly available); Lardner v. DOJ, No. 03-0180, 2005 WL 758267, at *17 n.30 (D.D.C. Mar. 31, 2005) (rejecting agency argument that names of unsuccessful pardon applicants were analogous to rap sheets in Reporters Committee and finding that "[i]t would stretch Reporters Comm. well past recognition to apply it to a case where information is sought that does not *compile* sensitive information, but might only *remind* one of public but sensitive information") (Exemption 6).

together" the identities of third parties whose names have been protected.[38] Similarly, courts have found that publicity regarding a matter does not eliminate privacy interests

[38] Weisberg v. DOJ, 745 F.2d 1476, 1491 (D.C. Cir. 1984); see also Carpenter v. DOJ, 470 F.3d 434, 440 (1st Cir. 2006) (finding that privacy interest of subject is not terminated even if identity as an informant could arguably be determined from another source); Ford v. West, No. 97-1342, 1998 WL 317561, at *3 (10th Cir. June 12, 1998) (unpublished table decision) (holding that fact that requester obtained some information through other channels does not change privacy protection under FOIA); L&C Marine Transp., Ltd. v. United States, 740 F.2d 919, 922 (11th Cir. 1984) ("An individual does not lose his privacy interest under 7(C) because his identity . . . may be discovered through other means."); Butler v. Dep't of Lab., 316 F. Supp. 3d 330, 336 n.4 (D.D.C. 2018) (rejecting plaintiff's argument that witnesses' names and addresses should be released because they "'almost certainly' already [had] been identified by name in discovery in [individual's] wrongful death case, and many have been deposed"); Laws. Comm. for C.R. v. U.S. Dep't of the Treasury, No. 07-2590, 2008 WL 4482855, at *21 (N.D. Cal. Sept. 30, 2008) (finding that one's privacy interest in potentially embarrassing information is not lost "by the possibility that someone could reconstruct that data from public files"); Schoenman v. FBI, 573 F. Supp. 2d 119, 149 (D.D.C. 2008) ("Plaintiff's claim that he personally 'knows' that the individual at issue would not object to the release of his name is legally irrelevant."); Master v. FBI, 926 F. Supp. 193, 198-99 (D.D.C. 1996) (protecting subjects of investigative interest even though plaintiffs allegedly know their names), summary affirmance granted, 124 F.3d 1309 (D.C. Cir. 1997) (unpublished table decision) (per curiam).

in preventing further disclosures[39] or preventing disclosures of related information.[40] Courts have further held that an inadvertent failure to redact information regarding a third party does not eliminate the individual's privacy interest.[41]

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[39] See, e.g., Cincinnati Enquirer v. DOJ, 45 F.4th 929, 937 (6th Cir. 2022) (affirming agency's withholding of records despite third party having diminished privacy interest due to conviction); Fitzgibbon v. CIA, 911 F.2d 755, 768 (D.C. Cir. 1990) (concluding that fact that CIA or FBI may have released information about individual elsewhere does not diminish individual's "substantial privacy interests"); Bast v. DOJ, 665 F.2d 1251, 1255 (D.C. Cir. 1981) (finding that previous publicity amounting to "journalistic speculation" cannot "vitiate the FOIA privacy exemption"); Berger v. IRS, 487 F. Supp. 2d 482, 502 (D.N.J. 2007) (finding that agency's prior release of list of third parties' names contacted during investigation does not allow for further disclosure of identifying information), aff'd on other grounds, 288 F. App'x 829, 834 (3d Cir. 2008); Swope v. DOJ, 439 F. Supp. 2d 1, 6 (D.D.C. 2006) (stating that individual's awareness that telephone conversation is being monitored does not negate privacy rights in further disclosure of personal information); Odle v. DOJ, No. 05-2711, 2006 WL 1344813, at *10 (N.D. Cal. May 17, 2006) (finding that public's knowledge of subject's involvement in trial does not eliminate any privacy interest in further disclosure); Thomas v. Off. of U.S. Att'y for E. Dist. of N.Y., 928 F. Supp. 245, 250 n.8 (E.D.N.Y. 1996) (holding that despite public disclosure of some information about attorney's connection with crime family, he still retains privacy interests in preventing further disclosure). But cf. Grove v. CIA, 752 F. Supp. 28, 32 (D.D.C. 1990) (ordering FBI to further explain Exemption 7(C) withholdings in light of highly publicized nature of investigation and fact that CIA and Secret Service released other records pertaining to same individuals).

[40] See Favish, 541 U.S. at 171 (holding that "the fact that other pictures had been made public [does not] detract[] from the weighty privacy interests" in remaining pictures); Jud. Watch, Inc. v. NARA, 876 F.3d 346, 349 (D.C. Cir. 2017) (determining "distinct" privacy interest in contents of subject's investigation files, although existence of Independent Counsel investigation into subject was public knowledge); Karantsalis v. DOJ, 635 F.3d 497, 503 (11th Cir. 2011) (finding that agency's publishing of driver's license photograph did not eliminate individual's privacy interest in his mug shot); Kimberlin v. DOJ, 139 F.3d 944, 949 (D.C. Cir. 1998) (reasoning that merely because subject of investigation acknowledged existence of investigation – thus precluding Glomar response – does not constitute waiver of subject's interest in keeping contents of OPR report confidential); Hunt v. FBI, 972 F.2d 286, 288 (9th Cir. 1992) (holding that "public availability" of accused FBI Special Agent's name does not defeat privacy protection in substance of FBI's internal investigation); Parker v. DOJ, 214 F. Supp. 3d 79, 88 (D.D.C. 2016) (determining that former AUSA and other named individuals retained a substantial privacy interest in undisclosed records related to OPR investigation even if certain other information had been publicly disclosed).

[41] See, e.g., Broward Bulldog, Inc. v. DOJ, 939 F.3d 1164, 1186 (11th Cir. 2019) (explaining that agency errors in redacting information do not undermine application of Exemption 7(C)); Canning v. DOJ, 567 F. Supp. 2d 85, 95 (D.D.C. 2008) (finding that agency's inadvertent failure to redact does not strip third party of privacy interests); Billington v. DOJ, 69 F. Supp. 2d 128, 137 (D.D.C. 1999) (deciding that disclosure of unredacted records

Courts have found that death diminishes, but might not eliminate, an individual's privacy interest.[42] The D.C. Circuit approved the FBI's methods for determining whether individuals are presumed living or dead in Schrecker v. DOJ.[43] As described in Schrecker, the FBI took several steps to determine whether an individual mentioned in a record was alive or dead, including looking up the individual's name in Who Was Who, employing its "100-year rule" (which presumes that an individual is dead if their birthdate appears in the responsive documents and they would be over 100 years old), reviewing previous FOIA requests (institutional knowledge), searching the Social Security Death Index (when the social security number appears in the responsive documents), and utilizing other "internal" sources.[44] When these methods failed to reveal that an individual was

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due to administrative error did not "diminish the magnitude of the privacy interests of the individuals" involved).

[42] See Schrecker v. DOJ, 254 F.3d 162, 166 (D.C. Cir. 2001) [hereinafter Schrecker I] ("one's own and one's relations' interests in privacy ordinarily extend beyond one's death"), remanded, 217 F. Supp. 2d 29 (D.D.C. 2002) (continuing to find that "[d]eath does not extinguish a privacy interest but it does affect the weight accorded the privacy interest), aff'd, 349 F.3d 657, 665 (D.C. Cir. 2003); Wessler v. DOJ, 381 F. Supp. 3d 253, 259 (S.D.N.Y. 2019) (relying on Schrecker I to find that decedent still had privacy interest in own medical records); 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 in the nondisclosure of any information about him contained in law enforcement records."); Clemente v. FBI, 741 F. Supp. 2d 64, 85 (D.D.C. 2010) ("Even after death, a person retains some privacy interest in her identifying information[.]"); see also ACLU v. DOJ, 750 F.3d 927, 936 (D.C. Cir. 2014) (finding that "[d]eceased defendants never convicted of a crime retain a reputational interest in keeping information concerning their prosecutions out of the public eye"); Shapiro v. DOJ, No. 12-313, 2020 WL 3615511, at *31 (D.D.C. July 2, 2020) (finding that fact that individuals were deceased "would 'by no means extinguish[ ]' the individual's privacy interests" (quoting ACLU v. DOJ, 750 F.3d 927, 936 (D.C. Cir. 2014))).

[43] 349 F.3d 657, 663-65 (D.C. Cir 2003) [hereinafter Schrecker II] (pointing to FBI's use of online database Who Was Who; 100-year rule; previous FOIA requests; "'internal sources;'" and Social Security Death Index searches where individual's social security number appeared in responsive records as reasonable search methods); see also Davis v. DOJ, 460 F.3d 92, 103 (D.C. Cir. 2006) (clarifying that court's holding in Schrecker II did not purport to affirm any set of search methodologies as per se sufficient); Johnson v. EOUSA, 310 F.3d 771, 776 (D.C. Cir. 2002) (approving agency's inquiries concerning subject of request, and refusing to establish "brightline set of steps for an agency" to determine whether subject is living or dead).

[44] Schrecker II, 349 F.3d at 663-66.

deceased, the D.C. Circuit upheld the FBI's use of Exemption 7(C).[45] In Davis v. DOJ,[46] the D.C. Circuit analyzed a request for audiotapes and determined that the steps outlined in Schrecker were insufficient when analyzing the tapes, as there is "virtually no chance that a speaker will announce" any personal identifiers during an oral conversation.[47] The court concluded that, in determining whether an agency has made a reasonable effort to ascertain whether an individual is deceased, courts must consider several factors, specifically "the likelihood that it will yield the sought-after information, the existence of readily available alternatives, and the burden of employing those alternatives."[48]

In Schoenman v. FBI,[49] the District Court for the District of Columbia analyzed a situation where the Navy was unable to ascertain whether certain individuals were alive or dead, and found that the agency had taken reasonable steps in compliance with D.C. Circuit precedent to determine whether these individuals were deceased, and it appropriately protected their identities.[50] The court noted that the Navy explained that

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[45] Id. at 665; accord Frankenberry v. FBI, 567 F. App'x 120, 122-23 (3d Cir. 2014) (finding that FBI made reasonable efforts to determine life status of individuals upon whose behalf it claimed privacy interest by "cross-referencing information from prior FOIA requests and internal records"); Shapiro v. CIA, 247 F. Supp. 3d 53, 66 (D.D.C. 2017) (relying on Schrecker II to determine FBI met its obligation to determine "life status" by checking names "against a current list of deceased individuals" and using "information within the file itself"); Piper v. DOJ, 428 F. Supp. 2d 1, 3-4 (D.D.C. 2006) (per curiam) (relying on Schrecker II to find FBI's use of the 100-year rule reasonable), aff'd, 222 F. App'x 1, 1 (D.C. Cir. 2007); Peltier v. FBI, No. 03-905, 2005 WL 735964, at *14 (W.D.N.Y. Mar. 31, 2005) (finding that FBI made reasonable efforts to determine life status via methods expounded in Schrecker II); cf. Shapiro, 2020 WL 3615511, at *31 (noting plaintiff's failure to even mention the possible public interest in disclosing requested names and, as to plaintiff's objection concerning FBI failing to ascertain life status of certain individuals, holding that "Plaintiff's failure to identify a public interest in disclosure . . . is . . . fatal").

[46] 460 F.3d 92 (D.C. Cir. 2006).

[47] Id. at 104.

[48] Id. at 105 (remanding "to permit the agency an opportunity to evaluate the alternatives, and either to conduct a further search [to determine whether individuals were deceased] or to explain satisfactorily why it should not be required to do so"); cf. Davis v. DOJ, No. 88-00130, 2007 WL 4275512, at *4 (D.D.C. Dec. 13, 2007) (following remand, finding adequate agency's use of speaker's birth dates in searches of Google, obituaries, general circulation newspaper, law database, crime story compilation site, and five sites related to genealogy which included automatic Social Security Death Index searches).

[49] 575 F. Supp. 2d 166 (D.D.C. 2008).

[50] Id. at 177 (advising agency that "it is required to make efforts to ascertain an individual's life status *before* invoking a privacy interest in connection with FOIA Exemption 7(C)"); see also Schoenman v. FBI, 576 F. Supp. 2d 3, 10 (D.D.C. 2008) (approving efforts to determine

it normally uses either the birth date and applies the "100-year rule," or uses a social security number to consult the list of deceased persons published by the Social Security Administration.[51] The records at issue in Schoenman did not contain birth dates or social security numbers, so the Navy conducted further research on the internet using the third parties' names as they appeared in the records.[52] Regarding a former employee name, the Navy contacted the repository for personnel information for former employees; the Office of Personnel Management, which is responsible for federal civil retired pay; and the Association of Retired Naval Investigative Service Agents.[53] The Navy also conducted numerous searches, including several news searches via LEXIS-NEXIS for obituaries, searches in two human resources databases used by the Navy personnel department, and a search of the AUTO-TRACK database, which is a general public records database.[54]

Additionally, individuals can have a survivor privacy interest in particularly sensitive or distressing information about a deceased loved one contained in law enforcement records.[55] In these situations, the focus is on the harm that releasing the information would cause living relatives, not harm to the deceased's reputation.[56] (For further discussion, see Exemption 6, Practical Obscurity and Survivor Privacy.)

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whether FBI legal attaché was alive or dead, and upholding redaction of name, even though no determination was reached).

[51] Schoenman, 575 F. Supp. 2d at 177.

[52] Id.

[53] Id. at 178.

[54] Id.

[55] See NARA v. Favish, 541 U.S. 157, 165-67 (2004) (protecting death-scene photographs from investigation into Deputy White House Counsel's apparent suicide on the basis that deceased's family members have the right "to direct and control disposition of the body of the deceased and to limit attempts to exploit pictures of the deceased family member's remains for public purposes"); Sikes v. U.S. Dep't of Navy, 896 F.3d 1227, 1237-40 (11th Cir. 2018) (following reasoning in Favish to withhold admiral's suicide note to wife under Exemption 7(C)); McWatters v. ATF, No. 20-1092, 2022 WL 3355798, at *4 (D.D.C. Aug. 15, 2022) (concluding that "families of [fire] victims heard on the recording . . . have a significant privacy interest in nondisclosure"); cf. Huddleston v. FBI, No. 20-00447, 2022 WL 4593084, at *24 (E.D. Tex. Sept. 29, 2022) (concluding that FBI improperly withheld contents of laptop because "preventing the public from knowing [decedent's] favorite band is in no way comparable to releasing his autopsy report or photographs from when he was shot").

[56] See Favish, 541 U.S. at 166 (noting that deceased's relatives "seek to be shielded by the exemption 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"); ACLU v. DOJ, 750 F.3d 927, 936 (D.C. Cir. 2014) (holding that family members have interest in "avoiding increased scrutiny"

Finally, in FCC v. AT&T, Inc.,[57] the Supreme Court unanimously held that "the protection in FOIA against disclosure of law enforcement information on the ground that it would constitute an unwarranted invasion of personal privacy does not extend to corporations."[58] Previously in that case, the Court of the Appeals for the Third Circuit found that a corporation may have personal privacy interests because the Administrative Procedure Act defined the word "person" to include corporations, and, therefore, the adjectival form "personal" would also include corporations.[59] In reversing the Third Circuit, the Supreme Court explained that "[a]djectives typically reflect the meaning of corresponding nouns, but not always."[60] Citing various examples,[61] the Court noted that such adjectives sometimes "acquire distinct meanings of their own."[62] The Court found that Exemption 7(C) presented such an instance, and that because the word "personal" was not defined by Congress, it should be given its ordinary meaning, which "refers to individuals" but not to corporations.[63]

On the other hand, where disclosure concerning the financial makeup of a closely held corporation or small business would reveal the owner's personal finances, courts have found that the owner may have a personal privacy interest in such information.[64]

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from release of deceased loved one's docket information); Outlaw v. U.S. Dep't of the Army, 815 F. Supp. 505, 506 (D.D.C. Mar. 25, 1993) (ordering release of twenty-five-year-old photographs of murder victim where defendant failed to show existence of surviving relatives or that they would be offended by disclosure).

[57] 562 U.S. 397 (2011).

[58] Id. at 409-10; see also Woodward v. USMS, No. 18-1249, 2022 WL 296171, at *8 (D.D.C. Feb. 1, 2022) (concluding that phone company that "sent or received . . . [government] faxes" had "no personal privacy right at stake"); Prop. of the People v. DOJ, 310 F. Supp. 3d 57, 71-72 (D.D.C. 2018) (noting distinction between records about individual and records about individual's business); OIP Guidance: Supreme Court Rejects Argument that Corporations Have 'Personal Privacy' Interests (posted 3/2/2011); cf. Sims v. CIA, 642 F.2d 562, 572 n.47 (D.C. Cir. 1980) ("Exemption 6 is applicable only to individuals.").

[59] AT&T Inc. v. FCC, 582 F.3d 490, 497 (3d Cir. 2009), rev'd, 562 U.S. 397 (2011).

[60] FCC, 562 U.S. at 402.

[61] See id. at 402-03 (comparing "crab" with "crabbed," "corn" with "corny," and "crank" with "cranky").

[62] Id.

[63] Id. at 403.

[64] See, e.g., Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1051 (D.C. Cir. 2009) (stating that D.C. Circuit has "recognized substantial privacy interests in

This expectation of privacy can be diminished, however, with regard to matters in which that individual is acting in a business capacity.[65]

Public Interest

Under the traditional Exemption 7(C) analysis, once a privacy interest has been identified and its magnitude has been assessed, it is balanced against the magnitude of any recognized public interest in disclosure.[66] In NARA v. Favish,[67] the Supreme Court explained that, in order to balance the interests "and give practical meaning to the exemption, the usual rule that the citizen need not offer a reason for requesting the

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business-related financial information for individually-owned or closely-held businesses") (Exemption 6); Multi Ag Media LLC v. USDA, 515 F.3d 1224, 1230 (D.C. Cir. 2008) (finding privacy interest in data concerning farms because disclosure would reveal private personal financial information of owners) (Exemption 6); see also Campaign for Fam. Farms v. Glickman, 200 F.3d 1180, 1189 (8th Cir. 2000) ("An overly technical distinction between individuals acting in a purely private capacity and those acting in an entrepreneurial capacity fails to serve the exemption's purpose of protecting the privacy of individuals.") (Exemption 6).

[65] See, e.g., Doe v. FEC, 920 F.3d 866, 872-73 (D.C. Cir. 2019) (holding that trust had no personal privacy under Exemption 7(C) and trustees had minimal privacy interests); Or. Nat. Desert Ass'n v. U.S. Dep't of the Interior, 24 F. Supp. 2d 1088, 1089 (D. Or. 1998) (concluding that cattle owners who violated federal grazing laws have "diminished expectation of privacy" in their names when that information related to their commercial interests) (Exemptions 6 and 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 interest in home addresses from which they also operate businesses) (Exemption 6); cf. Jud. Watch, Inc. v. FDA, 449 F.3d 141, 152-53 (D.C. Cir. 2006) (upholding the redaction of business's names and addresses, as well as business employees' names as necessary to protect the privacy interests of individuals to be safe from physical violence) (Exemption 6).

[66] See Elec. Priv. Info. Ctr. v. DOJ, 18 F.4th 712, 718 (D.C. Cir. 2021) (indicating that public interest is evaluated and balanced against privacy interest); Schiffer v. FBI, 78 F.3d 1405, 1410 (9th Cir. 1996) (explaining that once agency shows privacy interest exists, court must balance it against public's interest in disclosure); Massey v. FBI, 3 F.3d 620, 624-25 (2d Cir. 1993) (holding that once agency establishes that privacy interest exists that interest must be balanced against value of information in furthering FOIA's disclosure objectives); Thomas v. Off. of U.S. Att'y for the E. Dist. of N.Y., 928 F. Supp. 245, 250 (E.D.N.Y. 1996) (observing that since personal privacy interest in information is implicated, court must inquire whether any countervailing factors exist that would warrant invasion of that interest); OIP Guidance: Supreme Court Rules for "Survivor Privacy" in *Favish* (posted 4/9/2004) (discussing balancing of privacy interests and public interest); FOIA Update, Vol. X, No. 2 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking").

[67] 541 U.S. 157 (2004).

information must be inapplicable."[68] Instead, the Supreme Court held that a requester must show "that the public interest sought to be advanced is a significant one" and that "the information is likely to advance that interest," to warrant an invasion of privacy in the Exemption 7(C) context.[69]

Under DOJ v. Reporters Committee for Freedom of the Press,[70] the public interest recognized under the FOIA is specifically limited to the FOIA's "core purpose" of "shed[ding] light on an agency's performance of its statutory duties."[71] In contrast, information that does not reveal the operations and activities of the federal government

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[68] Id. at 172; see also Lewis v. DOJ, 867 F. Supp. 2d 1, 19 (D.D.C. 2011) (holding that "[i]t 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"); Graff v. FBI, 822 F. Supp. 2d 23, 33 (D.D.C. 2011) (recognizing "special burden" on requester in Exemption 7(C) context and noting that "it would be inefficient and impractical, and ultimately, unfair to the requesters, to depend upon the government to guess what the requesters had in mind and to catalogue the possible public reasons for disclosure").

[69] NARA v. Favish, 541 U.S. 157, 172 (2004); see also Broward Bulldog, Inc. v. DOJ, 939 F.3d 1164, 1187 (11th Cir. 2019) (following Favish and "reiterat[ing] that there is a difference between public curiosity and the type of public interest that can outweigh a personal privacy interest under Exemption 7(C)"); Tuffly v. DHS, 870 F.3d 1086, 1093 (9th Cir. 2017) ("Absent a showing of a significant public interest [], the invasion of privacy is unwarranted, and the information is properly withheld."); Stahl v. DOJ, No. 19-4142, 2021 WL 1163154, at *8 (E.D.N.Y. Mar. 26, 2021) ("As for the public interest, a plaintiff must show that 'the public interest sought to be advanced is a significant one' and that 'the information is likely to advance that interest.'" (quoting Favish, 541 U.S. at 172)); OIP Guidance: Supreme Court Rules for "Survivor Privacy" in *Favish* (posted 4/9/2004) (discussing public interest standard adopted in Favish, as well as required "nexus" between requested information and public interest asserted).

[70] 489 U.S. 749 (1989).

[71] Id. at 773; see also Jabar v. DOJ, 62 F.4th 44, 50 n.4 (2d Cir. 2023) ("Indeed, 'the only relevant public interest in the FOIA balancing analysis' is '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 DOD v. Fed. Lab. Rels. Auth., 510 U.S. 487, 497 (1994))); Cincinnati Enquirer v. DOJ, 45 F.4th 929, 934 (6th Cir. 2022) (same); McGehee v. DOJ, 800 F. Supp. 2d 220, 234 (D.D.C. 2011) (noting that "the relevant question" in public interest analysis "is not whether the public would like to know the names . . . but whether knowing those names would shed light on the [agency's] performance of its statutory duties"); Dayton Newspapers, Inc. v. U.S. Dep't of the Navy, 109 F. Supp. 2d 768, 775 (S.D. Ohio 1999) (concluding that questionnaire responses by court-martial members were properly withheld because "information contained therein sheds no light on the workings of the government").

does not satisfy the public interest requirement.[72] As a result, with the exception of the situation discussed below regarding death row inmates, courts have rarely recognized any public interest in disclosure of information sought to assist someone in challenging their conviction.[73] Indeed, a FOIA requester's private need for information in connection with litigation has been found to play no part in determining whether disclosure is

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[72] See Reps. Comm. For Freedom of the Press, 489 U.S. at 773 (finding that purpose of FOIA "is not fostered by disclosure of information about private citizens that is accumulated in various government files but that reveals little or nothing about an agency's own conduct"); see also Behar v. DHS, 39 F.4th 81, 94 (2d Cir. 2022) (reversing district court and finding that there is no public interest in Presidential campaign and transition team records as they "would shed no light on the operations or decision-making of the Secret Service"); Associated Press v. DOJ, 549 F.3d 62, 66 (2d Cir. 2008) (per curiam) (finding that plaintiff failed to demonstrate how disclosure of [third party's] commutation petition "would in any way shed light on the DOJ's conduct" in order to warrant disclosing "private, personal information" contained in petition); Stahl, 2021 WL 1163154, at *8 (noting that while "the public has a right to be informed about *what* actions the government takes," it does not necessarily follow that "the public has a right to be informed of *who in the government* takes those actions"); Humane Soc'y Int'l v. U.S. Fish & Wildlife Serv., 394 F. Supp. 3d 67, 78 (D.D.C. 2019) (finding that disclosure of names of hunters would not advance significant public interest because plaintiff's argument based on misconduct by hunters was speculative and names of hunters would not themselves advance any public interest in agency's monitoring of licenses).

[73] See, e.g., Watters v. DOJ, 576 F. App'x 718, 724 (10th Cir. 2014) (determining that plaintiff "offers nothing to suggest that disclosure would contribute to public's understanding of Defendants' activities; instead, he asserts his own personal interest in securing his release"); Hawkins v. DEA, 347 F. App'x 223, 225 (7th Cir. 2009) (finding that "a prisoner's interest in attacking his own conviction is not a public interest"); Peltier v. FBI, 563 F.3d 754, 764 (8th Cir. 2009) (per curiam) (holding that "a prisoner may not override legitimate privacy interests recognized in Exemption 7(C) simply by pointing to the public's interest in fair criminal trials or the even-handed administration of justice"); Thomas v. DOJ, 260 F. App'x 677, 679 (5th Cir. 2007) (finding no public interest as plaintiff was "seek[ing] to learn about prosecutorial misconduct, not the [agency's] misconduct"); Neely v. FBI, 208 F.3d 461, 464 (4th Cir. 2000) (ruling that requester's wish to establish his own innocence does not create FOIA-recognized public interest); Hale v. DOJ, 973 F.2d 894, 901 (10th Cir. 1992) (finding no FOIA-recognized public interest in death-row inmate's allegation of unfair trial), vacated & remanded on other grounds, 509 U.S. 918 (1993); Landano v. DOJ, 956 F.2d 422, 430 (3d Cir. 1991) (finding no public interest in disclosure of identities of individuals involved in murder investigation because such release would not shed light on how FBI fulfills its responsibilities); Kendrick v. DEA, No. 21-01624, 2022 WL 3681442, at *5 (D.D.C. Aug. 25, 2022) (concluding that request for records to fight criminal conviction is "'irrelevant to the balancing' required by 7(C)" (quoting Roth v. DOJ, 642 F.3d 1161, 1177 (D.C. Cir. 2011))); Clifton v. U.S. Postal Inspection Serv., 591 F. Supp. 2d 10, 12 (D.D.C. 2008) (stating that "plaintiff's *Brady* argument is both misplaced and ineffective" because it "does not give [the] Court any factual basis upon which to conclude that the plaintiff's interest in the information outweighs the third parties' legitimate interest in keeping the images of their fingerprints private").

warranted.[74] Moreover, the identity of the requester is irrelevant in assessing any public interest in disclosure.[75]

Courts have found agency compliance with enforcement of laws to be sufficient public interests.[76] For example, the Court of Appeals for the District of Columbia Circuit

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[74] See Sorin v. DOJ, 758 F. App'x 28, 33 (2d Cir. 2018) (summary order) (finding that plaintiff's stated public interest of preparing an accurate manuscript for their prosecution was "not relevant" and that plaintiff failed to show that government impropriety occurred); Massey v. FBI, 3 F.3d 620, 625 (2d Cir. 1993) ("[The] mere possibility that information may aid an individual in the pursuit of litigation does not give rise to a public interest."); Del Rio v. Miami Field Off. of the FBI, No. 08-21103, 2009 WL 2762698, at *5 (S.D. Fla. Aug. 27, 2009) (holding that "[a] FOIA litigant's private interest in obtaining materials for personal reasons plays no part in the required balancing of interests"); Sakamoto v. EPA, 443 F. Supp. 2d 1182, 1197 (N.D. Cal. 2006) (finding no public interest in disclosure of documents sought for use in plaintiff's employment discrimination case); Garcia v. DOJ, 181 F. Supp. 2d 356, 372 (S.D.N.Y. 2002) (holding that request seeking information in furtherance of private litigation falls outside "the ambit of FOIA's goal of public disclosure of agency action"). But see United Am. Fin., Inc. v. Potter, 667 F. Supp. 2d 49, 60 (D.D.C. 2009) (holding that "the potential use of [the responsive records] in a potential civil suit does constitute a recognized public interest under Exemption 7(C)"); Butler v. DOJ, No. 86-2255, 1994 WL 55621, at *5-6 (D.D.C. Feb. 3, 1994) (ordering identities of supervisory FBI personnel disclosed because of "significant" public interest in protecting requester's due process rights in his attempt to vacate sentence).

[75] See Hawkins, 347 F. App'x at 224 (noting that "the identity of the requesting party and the motivation for a FOIA request are irrelevant"); Ford v. West, No. 97-1342, 1998 WL 317561, at *3 (10th Cir. June 12, 1998) (unpublished table decision) (holding that plaintiff's prior EEO successes against agency do not establish public interest in disclosure of third-party names in this investigation); Massey, 3 F.3d at 625 (finding that identity of requester and use that requester plans to make of requested information have "no bearing on the assessment of the public interest served by disclosure"); Stone v. FBI, 727 F. Supp. 662, 668 n.4 (D.D.C. 1990) (stating that court looks to public interest served by release of information, "not to the highly specialized interests of those individuals who understandably have a great personal stake in gaining access to that information"), aff'd, No. 90-5065, 1990 WL 134431 (D.C. Cir. Sept. 14, 1990) (per curiam). But cf. Manna v. DOJ, 51 F.3d 1158, 1166 (3d Cir. 1995) (deciding that, although court does not usually consider requester's identity, fact that requester held high position in La Cosa Nostra is certainly material to protection of individual privacy).

[76] See, e.g., Friends of Animals v. Bernhardt, 15 F.4th 1254, 1266 (10th Cir. 2021) (determining that "the public still has an interest in knowing the identities of the submitters to ensure that FWS [U.S. Field & Wildlife Services] is fulfilling its duty to oversee the import of elephant parts consistently with the law" because "knowing the submitters' names would assist the public in ensuring that FWS is not allowing individuals to import products besides what has been approved on the permit, beyond the scope of the permit, or without a permit at all"); People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535, 542 (D.C. Cir. 2014) (recognizing public interest "in learning how NIH handles complaints concerning

has recognized a public interest in whether federal agencies investigate public officials with the same vigor with which they investigate the general public.[77] Another recognized public interest is government misconduct. In NARA v. Favish,[78] the Supreme Court addressed the showing necessary to demonstrate a public interest in disclosure where government wrongdoing is alleged.[79] Noting that "[a]llegations of misconduct are 'easy to allege and hard to disprove,'"[80] it ruled that a FOIA requester relying on such a public interest must do more than assert a "bare suspicion" and instead "must produce evidence that would warrant a belief by a reasonable person that the alleged government impropriety might have occurred" before there will "exist a counterweight on the FOIA scale to balance against the cognizable privacy interests in the requested records."[81] (See

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animal abuse and misappropriation of federal research funds"); ACLU v. DOJ, 655 F.3d 1, 12-13 (D.C. Cir. 2011) (highlighting public interest in prosecutions where agency used warrantless cellphone tracking); 100REPORTERS v. U.S. Dep't of State, 602 F. Supp. 3d 41, 75 (D.D.C. 2022) (agreeing that there is a public interest in "the vetted individuals' names . . . to 'examine and illuminate State's compliance with the Leahy Laws'" (quoting plaintiff's cross motion for summary judgment)).

[77] See, e.g., Elec. Priv. Info. Ctr. v. DOJ, 18 F.4th 712, 720 (D.C. Cir. 2021) (concluding that there is a public interest in "'whether the Special Counsel adequately investigated and reached proper declination decisions as to potential crimes by members of the Trump campaign'" (citing plaintiff's briefing)); Citizens for Resp. & Ethics in Wash. v. DOJ, 746 F.3d 1082, 1093-94 (D.C. Cir. 2014) (finding public interest in "whether prominent and influential public officials are subjected to the same investigative scrutiny and prosecutorial zeal as local aldermen and little-known lobbyists"); Bast v. DOJ, 665 F.2d 1251, 1255 (D.C. Cir. 1981) (noting important public interest in agency decision to not prosecute federal judge and whether agency "properly exercised its prosecutorial discretion").

[78] 541 U.S. 157 (2004).

[79] Id. at 174.

[80] Id. at 175 (quoting Crawford-El v. Britton, 523 U.S. 574, 585 (1998)).

[81] Id. at 174-75. Compare Patino-Restrepo v. DOJ, No. 17-5143, 2019 WL 1250497, at *1 (D.C. Cir. Mar. 14, 2019) (per curiam) (upholding district court finding that plaintiff had not produced evidence of government impropriety sufficient to outweigh substantial privacy interests because plaintiff failed to show pattern of government misconduct in plaintiff's prosecution or evidence of blatant Brady violation), Blackwell v. FBI, 646 F.3d 37, 41 (D.C. Cir. 2011) (holding that plaintiff had "not come close to meeting the demanding Favish standard"), Associated Press v. DOD, 554 F.3d 274, 289 (2d Cir. 2009) (finding that plaintiff's argument "squarely foreclosed by Favish" as no evidence of abuse was produced), Boyd v. Crim. Div. of DOJ, 475 F.3d 381, 388 (D.C. Cir. 2007) (agreeing that agency correctly applied Exemption 7(C) as plaintiff failed to make "'meaningful evidentiary showing'" as required by Favish (quoting Favish, 541 U.S. at 175)), Oguaju v. United States, 288 F.3d 448, 451 (D.C. Cir. 2002) (holding that "bald accusations" of prosecutorial misconduct are insufficient to establish public interest), vacated & remanded, 541 U.S. 970, on remand, 378 F.3d 1115 (D.C. Cir. 2004) (reaffirming prior decision), Spirko v. USPS, 147

further discussion of Favish's privacy-protection principles under Exemption 6, FOIA Public Interest.)

In Roth v. DOJ,[82] the D.C. Circuit found that there was a "substantial" public interest "in knowing whether [an agency] is withholding information that could corroborate a death-row inmate's claim of innocence."[83] The court held that the requested information would advance that interest where the requester "show[ed] that a reasonable person could believe that the following might be true: (1) that the [subjects of the request] were the real killers, and (2) that the [agency was] withholding information that could corroborate that theory."[84] The D.C. Circuit, after finding that the requester

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F.3d 992, 999 (D.C. Cir. 1998) (finding no public interest in names and information pertaining to suspects and law enforcement officers absent any evidence of alleged misconduct by agency), Enzinna v. DOJ, No. 97-5078, 1997 WL 404327, at *1 (D.C. Cir. June 30, 1997) (per curiam) (finding that, without evidence that AUSA made misrepresentation at trial, public interest in disclosure is insubstantial), Quiñon v. FBI, 86 F.3d 1222, 1231 (D.C. Cir. 1996) (holding that, in absence of evidence FBI engaged in wrongdoing, public interest is "insubstantial"), McCutchen v. HHS, 30 F.3d 183, 189 (D.C. Cir. 1994) (finding "negligible" public interest in disclosure of identities of agency scientists who did not engage in scientific misconduct), and Beck v. DOJ, 997 F.2d 1489, 1494 (D.C. Cir. 1993) (holding that agency properly "Glomared" request for records concerning alleged wrongdoing by two named employees as there was no public interest absent any evidence of wrongdoing or widespread publicity of investigation) with CASA de Md., Inc. v. DHS, 409 F. App'x 697, 700-01 (4th Cir. 2011) (per curiam) (finding that Favish misconduct standard satisfied because "CASA submitted affidavits from thirteen of the arrestees which all suggested that government agents arrested them without first obtaining any information about their immigration status and ignored non-Latino day laborers"), Peltier v. FBI, 563 F.3d 754, 765 (8th Cir. 2009) (per curiam) (emphasizing that requester's production of evidence that government improprieties might have occurred only establishes public interest that must then be weighed), ACLU v. DOD, 543 F.3d 59, 88 (2d Cir. 2008) (noting, as government misconduct was conceded, that public interest in disclosure of photographs depicting prisoner abuse by government forces in Iraq and Afghanistan was "strong"), Reps. Comm. For Freedom of the Press v. CBP, 567 F. Supp. 3d 97, 126 (D.D.C. 2021) (accepting as a significant public interest "CBP's 'improper efforts' to use its summons authority to compel Twitter to unmask an account"), Sheppard v. DOJ, No. 17-1037, 2021 WL 4304217, at *9 (W.D. Mo. Sept. 21, 2021) (finding sufficient showing of government misconduct as local "reputable news outlet" reported "that several government witnesses lied at trial and that the government used coercive investigative tactics and suppressed evidence"), and Wessler v. DOJ, 381 F. Supp. 3d 253, 260 (S.D.N.Y. 2019) (finding a "significant public interest" in disclosure of medical records for prisoners who died in pretrial custody of USMS).

[82] 642 F.3d 1161 (D.C. Cir. 2011).

[83] Id. at 1175.

[84] Id. at 1180.

had made such a showing in the case, ordered the government to reveal the existence of any records connecting three individuals with a specific criminal investigation.[85]

Regarding federal employee misconduct, the D.C. Circuit established guidelines to differentiate between employees in this context, holding "that the level of responsibility held by a federal employee" and the type of wrongdoing committed by that employee "are appropriate considerations" in this privacy analysis.[86] Courts have found that disclosure must serve a public interest that is greater than the strong privacy interests of these employees and for lower level employees in particular, privacy protection is still often afforded.[87] (For further discussion, see Exemption 6, FOIA Public Interest, Public

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[85] Id. at 1181-82; cf. Rimmer v. Holder, 700 F.3d 246, 260 (6th Cir. 2012) (emphasizing that Roth concerned use of Glomar response, not whether FOIA exemptions could protect contents of records).

[86] Stern v. FBI, 737 F.2d 84, 92-94 (D.C. Cir. 1984) (protecting identities of lower-level employees, who were found only to be negligent, but ordering disclosure of higher-level official's identity who knowingly participated in cover-up); see also, e.g., Perlman v. DOJ, 312 F.3d 100, 107-09 (2d Cir. 2002) (ordering release of extensive details concerning IG investigation of former INS General Counsel who was implicated in wrongdoing, and enunciating five-factor test to balance government employee's privacy interest against public interest in disclosure, including employee's rank, degree of wrongdoing and strength of evidence, availability of information, whether information sheds light on government activity, and whether information is related to job function or is personal in nature), vacated, 541 U.S. 970 (2004), aff'd on remand, 380 F.3d 110 (2d. Cir. 2004); Homick v. DOJ, No. 98-00557, slip op. at 19-27 (N.D. Cal. Sept. 16, 2004) (ordering disclosure of identities of FBI Special Agents, government support personnel, and foreign, state, and local law enforcement officers as plaintiff produced specific evidence warranting a belief by a reasonable person that government officials may have failed to provide exculpatory and impeachment information).

[87] See BuzzFeed Inc. v. DOJ, No. 22-1812, 2023 WL 4246103, at *2 (2d Cir. June 29, 2023) (per curiam) (protecting identity of subject in OIG report on sexual harassment misconduct despite subject's rank and seriousness of wrongdoing as "[r]evealing the identity of the Subject would do little to further advance the public interest" and "creates a risk that the victims, third-party witnesses, and those close to the situation may be identified"); Trentadue v. Integrity Comm., 501 F.3d 1215, 1234-36 (10th Cir. 2007) (finding that protection of "low-level" employees "who committed serious acts of misconduct" was proper, as disclosure of their names "would shed little light on the operations or activities of the government"); People for the Ethical Treatment of Animals v. USDA, No. 06-930, 2007 WL 1720136, at *6 (D.D.C. June 11, 2007) (protecting identities of "low-level [agency] inspectors who engaged in misconduct in performing slaughterhouse inspections," since inspectors were not "high-level employees" and it was not "well-publicized scandal"); Jefferson v. DOJ, No. 01-1418, slip op. at 11 (D.D.C. Nov. 14, 2003) (protecting details of IG investigation of government attorney-advisor with no decisionmaking authority as employee whose rank was not so high that public interest in disclosure could outweigh personal privacy interest in learning of any investigated alleged misconduct).

Servant Accountability.) Courts have held that no public interest exists in federal records that pertain to alleged misconduct by state officials.[88]

Courts have found a distinction between the public interest in an *overall subject* that relates to a FOIA request and the public interest that might be served by disclosure of the *particular records* that are responsive to a given FOIA request.[89] The key consideration is whether there is a nexus between the disclosure of the particular record portions at issue and an identified public interest.[90] If a requester demonstrates this

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[88] See Cincinnati Enquirer v. DOJ, 45 F.4th 929, 935 (6th Cir. 2022) (emphasizing that there is no public interest "in disclosing federal files merely because they show wrongdoing committed by state officials"); Landano v. DOJ, 956 F.2d 422, 430 (3d Cir. 1991) (discerning "no FOIA-recognized public interest in discovering wrongdoing by a *state* agency"); Garcia v. DOJ, 181 F. Supp. 2d 356, 374 (S.D.N.Y. 2002) ("The discovery of wrongdoing at a state as opposed to a federal agency . . . is not the goal of FOIA."); LaRouche v. DOJ, No. 90-2753, 2001 U.S. Dist. LEXIS 25416, at *20 (D.D.C. July 5, 2001) ("The possible disclosures of state government misconduct is not information that falls within a public interest FOIA [was] intended to protect."); Thomas v. Off. of U.S. Att'y for E. Dist. of N.Y., 928 F. Supp. 245, 251 (E.D.N.Y. 1996) (recognizing that FOIA cannot serve as basis for requests about conduct of state agency). But see Lissner v. U.S. Customs Serv., 241 F.3d 1220, 1223 (9th Cir. 2001) (finding that public interest exists in Custom Service's handling of smuggling incident despite fact that information pertained to actions of state law enforcement officers).

[89] See ACLU of N. Cal. v. DOJ, No. 04-4447, 2005 WL 588354, at *13 (N.D. Cal. Mar. 11, 2005) (ruling that "it was not sufficient for the plaintiffs to show [public] interest in only the general subject area of the request"); Elec. Priv. Info. Ctr. v. DOD, 355 F. Supp. 2d 98, 102 (D.D.C. 2004) (stating that "[t]he fact that [the requester] has provided evidence that there is some media interest in data mining as an umbrella issue does not satisfy the requirement that [it] demonstrate interest in the specific subject of [its] FOIA request").

[90] See, e.g., Peltier v. FBI, 563 F.3d 754, 765-66 (8th Cir. 2009) (upholding Exemption 7(C) redactions because court was "not convinced that there is a substantial nexus" between request and requester's asserted public interest, and finding that any public benefit from disclosure is "too uncertain and remote"); KTVY-TV, a Div. of Knight-Ridder Broad., Inc. v. United States, 919 F.2d 1465, 1470 (10th Cir. 1990) (per curiam) (rejecting assertion that "the public interest at stake is the right of the public to know" about controversial event, because on careful analysis particular record segments at issue "do not provide information about" that subject); McWatters v. ATF, No. 20-1092, 2022 WL 3355798, at *4 (D.D.C. Aug. 15, 2022) (concluding that plaintiff "makes no connection between the recording's contents and ATF's performance of its duties; i.e., its investigation after the Station nightclub fire"); Reps. Comm. For Freedom of the Press v. CBP, 567 F. Supp. 3d 97, 126 (D.D.C. 2021) (determining that releasing employee names on summons "will [not] clarify the agency's activities, particularly after public dissemination of the summons and the IG Report"); Clemente v. FBI, 741 F. Supp. 2d 64, 85 (D.D.C. 2010) (finding that "[w]hile the Court agrees that the public has a significant interest in learning about any misuse of criminal informants by the FBI, [plaintiff] has failed to explain how that interest would be advanced by the release of the names and identifying information of all individuals mentioned in [the] file"); Lopez v. EOUSA, 598 F. Supp. 2d 83, 89 (D.D.C. 2009) (holding that agency's Vaughn

nexus, courts have found a cognizable public interest in disclosure of the requested information.[91]

Balancing Process

If a court finds that there is no public interest in disclosure and there is a privacy interest in the requested material, the Court of Appeals for the District of Columbia Circuit

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Index demonstrates that disclosure of specific information withheld is not likely to advance any significant public interest, "even if the plaintiff could establish that the public has a significant interest in the material he is seeking"); see also 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"); OIP Guidance: Supreme Court Rules for "Survivor Privacy" in *Favish* (posted 4/9/2004) (discussing public interest standard adopted in Favish, as well as required "nexus" between requested information and public interest asserted).

[91] See, e.g., Elec. Priv. Info. Ctr. v. DOJ, 18 F.4th 712, 721-22 (D.C. Cir. 2021) (finding sufficient link between public interest in Special Counsel investigations and releasing information about individuals investigated for campaign violations); ACLU v. DOJ, 655 F.3d 1, 14 (D.C. Cir. 2011) (finding valid public interest where requesters sought to show nature, effectiveness, and intrusiveness of government's policy regarding warrantless cell phone tracking, and specifically noting that "plaintiffs are not (or at least not only) seeking to show that the government's tracking policy is legally improper"); Wessler v. DOJ, 381 F. Supp. 3d 253, 261 (S.D.N.Y. 2019) (finding that release of records concerning conditions of confinement for federal pretrial detainees held in state, local, and private prison facilities with which USMS contracts to house those detainees would advance the public understanding of USMS's monitoring of care provided to detainees in these facilities which "is a core responsibility of USMS, as set forth on USMS's own website"); Buzzfeed, Inc. v. DOJ, No. 17-7949, 2019 WL 1114864, at *8 (S.D.N.Y. Mar. 11, 2019) (finding valid public interest when "[t]he information sought by Plaintiff would shed light on the misconduct of managerial-level government employees, how that misconduct affected their abilities to fulfill their professional responsibilities, and the impact that misconduct had on the operation of the Office"); Citizens for Resp. & Ethics in Wash. v. DOJ, 840 F. Supp. 2d 226, 235 (D.D.C. 2012) (finding public interest in request for investigatory records pertaining to member of Congress and noting that as requester "made it very clear . . . it is not arguing that [agency] engaged in misconduct . . . it is not correct that Plaintiff must provide compelling evidence of any such conduct"); Fams. for Freedom v. CBP, 797 F. Supp. 2d 375, 398-99 (S.D.N.Y. 2011) (finding that even if Exemption 7 threshold met, names of authors and recipients of two memoranda must be released because of the "substantial public interest in knowing whether the expectations and requirements articulated in the memoranda reflect high-level agency policy"); Jud. Watch, Inc. v. U.S. Secret Serv., 579 F. Supp. 2d 151, 154 (D.D.C. 2008) (finding that disclosure of names of those requesting access to White House would shed light on why visitors came to White House); Butler v. DOJ, No. 86-2255, 1994 WL 55621, at *5 (D.D.C. Feb. 3, 1994) (releasing identities of supervisory FBI personnel upon finding of "significant" public interest in protecting requester's due process rights).

has held "[w]e need not linger over the balance; something, even a modest privacy interest, outweighs nothing every time."[92]

If a court finds that a public interest qualifies for consideration under DOJ v. Reporters Committee for Freedom of the Press,[93] the court then analyzes whether the public interest in disclosure is sufficiently compelling to, on balance, outweigh legitimate

[92] Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989) (Exemption 6) [hereinafter NARFE]; see also Garza v. USMS, No. 18-5311, 2020 WL 768221, at *1 (D.C. Cir. Jan. 22, 2020) (per curiam) (finding that defendant "properly [withheld] personally identifiable information of individuals involved with [plaintiff's] criminal investigation . . . [because] [plaintiff] has not demonstrated any public interest in disclosure that would outweigh . . . privacy interests"); Beck v. DOJ, 997 F.2d 1489, 1494 (D.C. Cir. 1993) (observing that because request implicates no public interest at all, court "'need not linger over the balance; something . . . outweighs nothing every time'" (quoting NARFE, 879 F.2d at 879)) (Exemptions 6 and 7(C)); Maynard v. CIA, 986 F.2d 547, 566 (1st Cir. 1993) (finding that court "need not . . . dwell upon the balance" where no public interest is implicated); McWatters, 2022 WL 3355798, at *4 (relying on NARFE to protect victim voices on audio recording where plaintiff failed to provide public interest); Hawkinson v. ICE, 554 F. Supp. 3d 253, 275 (D. Mass. 2021) (protecting personally identifiable information of ICE attorneys as plaintiff's argument that public interest in "'knowing the *who* in "*who is doing what*"'" is insufficient as it would apply in every case (quoting plaintiff's filing)); Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. DOJ, No. 18-1860, 2021 WL 2711765, at *11-12 (D.D.C. Jul. 1, 2021) (determining that Exemption 7(C) protects "the identities of those individuals who were subject to terrorism-related investigations but were never charged with or convicted of a terrorism-related charge" because, while there may be a public interest in terrorism-related prosecutions, there is not a similar interest in terrorism-related investigations); Cole v. FBI, No. 13-01205, 2015 WL 4622917, at *3 (D.D.C. July 31, 2015) ("The Court concludes, however, that it need not reach the step of balancing private and public interests because [plaintiff] has not provided sufficient evidence of any public interest to be balanced."); King v. DOJ, 586 F. Supp. 286, 294 (D.D.C. 1983) ("Where the requester fails to assert a public interest purpose for disclosure, even a less than substantial invasion of another's privacy is unwarranted."), aff'd, 830 F.2d 210 (D.C. Cir. 1987).

[93] 489 U.S. 749 (1989).

privacy interests.[94] When the public interest is found to outweigh the privacy interest at stake, courts have found that release of third-party information is justified.[95]

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[94] See, e.g., Schoenberg v. FBI, 820 F. App'x 609, 610 (9th Cir. 2020) (per curiam) (finding privacy interest outweighed public interest because "[while] the public has an interest in the SSA's improper behavior . . . [plaintiff] offers no evidence of official misconduct"); Broward Bulldog, Inc. v. DOJ, 939 F.3d 1164, 1188 (11th Cir. 2019) (finding that public would have some interest in how government investigated leads concerning 9/11 attacks, but noting that this interest did not outweigh individuals' significant privacy interests "in not being associated with a major terrorism investigation"); Lahr v. NTSB, 569 F.3d 964, 979 (9th Cir. 2009) (finding that where "only way that [third parties] mentioned . . . would have public value is if [they] were contacted directly by the plaintiff or by the media 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"); Associated Press v. DOD, 554 F.3d 274, 286-91 (2d Cir. 2009) (reversing district court ruling and finding that Guantanamo detainees have substantial privacy interest that is not outweighed by speculative public interest in "allow[ing] the public to track these detainees' treatment in other aspects of DOD actions, including transfer and release decisions"); Adamowicz v. IRS, 552 F. Supp. 2d 355, 369-70 (S.D.N.Y. 2008) (finding that plaintiffs' asserted public interests "too speculative to overcome the well-recognized, weighty privacy interests of IRS personnel and third-parties"); Ctr. to Prevent Handgun Violence v. U.S. Dep't of Treasury, 981 F. Supp. 20, 23-24 (D.D.C. 1997) (finding "minuscule privacy interest" in identifying sellers in multiple-sales gun reports in comparison to public interest in scrutinizing ATF's performance of its duty to enforce gun control laws and to curtail illegal interstate gun trafficking); cf. Tuffly v. DHS, 870 F.3d 1086, 1098 (9th Cir. 2017) (finding that names of ICE detainees would not add significantly to already available information and names would not be likely to advance that interest because public already has access to substantive portions of ICE material); Prison Legal News v. EOUSA, 628 F.3d 1243, 1251 (10th Cir. 2011) (noting that because alleged public interests are already satisfied by materials viewed and reported on by media related to trial any "incremental addition" to public knowledge was outweighed by privacy interest); Brennan Ctr. for Just. at N.Y. Univ. Sch. of L., 2020 WL 1189091, at *9 (finding no nexus between number of records at issue and weight of public interest in disclosure), reconsidered, 2021 WL 2711765 (D.D.C. Jul. 1, 2021) (determining that certain docket numbers for terrorism-related cases have greater privacy interest than found in original opinion).

[95] See, e.g., Elec. Priv. Info. Ctr. v. DOJ, 18 F.4th 712, 721-22 (D.C. Cir. 2021) (determining public interest in "Special Counsel [Mueller]'s declination decisions on the purported campaign violations" outweighs individuals' privacy interest especially for individuals whose information has already been released); Friends of Animals v. Bernhardt, 15 F.4th 1254, 1266-67 (10th Cir. 2021) (ordering release of submitter names as release "would assist the public in ensuring that [the agency] is not allowing individuals to import products besides what has been approved on the permit, beyond the scope of the permit, or without a permit at all"); Bartko v. DOJ, 898 F.3d 51, 69 (D.C. Cir. 2018) (finding public interest in disclosing OPR records of prosecutorial misconduct because matter was of public record, attorney was a supervisory official, and there was public interest in knowing how investigation was conducted); ACLU v. DOJ, 655 F.3d 1, 12-16, 19 (D.C. Cir. 2011) (finding that release appropriate because, while convicted defendants maintained small but cognizable privacy

interest in aggregated docket information pertaining to 255 criminal cases in which the government utilized warrantless cellular phone tracking, there was "significant public interest in disclosure" that would result from derivative use of information, especially in light of widespread media, congressional, and judicial interest in the issue); Cooper Cameron Corp. v. U.S. Dep't of Lab., 280 F.3d 539, 554 (5th Cir. 2002) (viewing "general public interest in monitoring" a specific OSHA investigation as sufficient to overcome employee-witnesses' privacy interests against employer retaliation and requiring release of "linking information" while protecting "identity information"); Rosenfeld v. DOJ, 57 F.3d 803, 811-12 (9th Cir. 1995) (ordering agency to release names of subjects of investigation after finding public interest in "knowing whether and to what extent the FBI investigated individuals for participating in political protests, not federal criminal activity" outweighed privacy interests); Providence J. Co. v. U.S. Dep't of Army, 981 F.2d 552, 567-69 (1st Cir. 1992) (finding public interest in disclosure of unsubstantiated allegations against senior officials outweighed privacy interests because "[the agency] already has disclosed one of the two unsubstantiated allegations and the other is minimally invasive of privacy, containing as it does a rather blurred suggestion of possible impropriety"); Sheppard v. DOJ, No. 17-1037, 2021 WL 4304217, at *9-11 (W.D. Mo. Sept. 21, 2021) (ordering release of names of third-party interviewees who spoke with local paper and accused, but not charged, interviewees publicly linked to investigation); Jud. Watch, Inc. v. DOJ, 394 F. Supp. 3d 111, 118 (D.D.C. 2019) (holding that "balance . . . tilts in favor of disclosure" for records concerning FBI relationship with former British intelligence operative, because records could allow the public to evaluate FBI's performance of its law enforcement duties and disclosure would not make public for the first time operative's affiliation with law enforcement); Buzzfeed, Inc. v. DOJ, No. 17-7949, 2019 WL 1114864, at *6-9 (S.D.N.Y. Mar. 11, 2019) (balancing Perlman [Perlman v. DOJ, 312 F.3d 100 (2d Cir. 2002)] factors to find there was public interest in release of attorney names in investigatory report concerning consensual affair between supervisor and subordinate in U.S. Attorney's Office); ACLU of Ariz. v. DHS, No. 15-00247, 2018 WL 1428153, at *6 (D. Ariz. Mar. 22, 2018) (finding public interest in disclosing names of federal employees accused of misconduct, as request was targeted at specific accused employees which could shed light on patterns of behavior and determine whether agencies conducted appropriate investigation); Eberg v. DOD, 193 F. Supp. 3d 95, 117-18 (D. Conn. 2016) (finding public interest "significant" in release of records naming third party in sexual assault, equal employment opportunity, and sexual harassment complaints as "gender-based obstacles to success in the military, and issues of gender discrimination have long been a matter of strong public concern"); Fams. for Freedom v. CBP, 797 F. Supp. 2d 375, 399 (S.D.N.Y. 2011) (finding "substantial public interest in knowing whether the expectations and requirements articulated in the memoranda reflect high-level agency policy" greater than privacy interests of authors and recipients of memoranda); Hidalgo v. FBI, 541 F. Supp. 2d 250, 255-56 (D.D.C. 2008) (ordering disclosure of records reflecting any misconduct in agency's relationship with third-party informant as case was "atypical" and "plaintiff has made enough of a showing to raise questions about possible agency misconduct"); Lardner v. DOJ, No. 03-0180, 2005 WL 758267, at *17 (D.D.C. Mar. 31, 2005) (finding that "release of the identity of unsuccessful pardon applicants would 'shed light' on the [government's] exercise of the pardon power in important ways"); cf. Elec. Priv. Info. Ctr., 18 F.4th at 722 (protecting identities of individuals who were investigated but not charged with making false statements); Buzzfeed, Inc., 2019 WL 1114864, at *9-10 (finding no public interest in

In Reporters Committee, the Supreme Court emphasized the appropriateness of "categorical balancing" in achieving "workable rules" for processing FOIA requests expeditiously.[96] In so doing, it recognized that entire categories of records can properly receive uniform disposition "without regard to individual circumstances; [when] the standard virtues of bright-line rules are thus present, and the difficulties attendant to ad hoc adjudication may be avoided."[97] Accordingly, where a request seeks information that categorically implicates an individual's privacy interest, and the requester has failed to assert a substantial public interest, courts have upheld agencies' use of Exemption 7(C) to categorically protect such information, without the need to conduct a search.[98] In

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information concerning unsubstantiated allegations of misconduct and upholding redactions).

[96] Reps. Comm. For Freedom of the Press, 489 U.S. at 776-80.

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

[98] See, e.g., Broward Bulldog, 939 F.3d at 1184-85 (disagreeing with district court's finding that "an individual assessment is always necessary to support every redaction made under Exemption 7(C)" and that "'categorical balancing is appropriate'" when the public and private interests for withheld information are the same (quoting Nadler v. DOJ, 955 F.2d 147, 1488-89 (11th Cir. 1992))); Patino-Restrepo v. DOJ, No. 17-5143, 2019 WL 1250497, at *1 (D.C. Cir. Mar. 14, 2019) (per curiam) (finding that requester "has not produced 'evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred,' . . . which would outweigh the 'substantial' privacy interests at stake" and therefore affirming district court holding that "the Department of State properly declined to review thousands of pages of records related to third parties without sufficient information to verify their identities" (quoting NARA v. Favish, 541 U.S. 157, 174 (2004))); Reep v. DOJ, No. 18-5132, 2018 WL 6721099, at *1 (D.C. Cir. Dec. 18, 2018) (finding that "appellant's conclusory assertions of government misconduct do not constitute the 'compelling evidence that the agency is engaged in illegal activity' required to overcome the categorical exemption from disclosure of personal identifying information of law enforcement personnel" (quoting Citizens for Resp. & Ethics in Wash. v. DOJ, 854 F.3d 675, 681-82 (D.C. Cir. 2017))); Citizens for Resp. & Ethics in Wash., 854 F.3d at 681-82 (categorically protecting names of FBI and other government personnel as well as names of private individuals who had never been publicly implicated in investigation); Blackwell v. FBI, 646 F.3d 37, 42 (D.C. Cir. 2011) (holding that agency "was correct in declining to search" for records pertaining to certain third parties because it "would have added only information that [the court has] concluded is protected by Exemption 7(C)"); Thomas v. DOJ, 260 F. App'x 677, 679 (5th Cir. 2007) (recognizing that "[t]he Supreme Court has held as a categorical matter that a third party's request for law-enforcement records about a private citizen can reasonably be expected to invade that citizen's privacy"); Boyd v. Crim. Div. of DOJ, 475 F.3d 381, 388-89 (D.C. Cir. 2007) (finding that Exemption 7(C) protected information pertaining to third party even where "Glomar" response was improper and that it was unnecessary to find out whether government actually had the requested information); Blanton v. DOJ, 64 F. App'x 787, 789 (D.C. Cir. 2003) (protecting identities of third parties

SafeCard Services v. SEC,[99] the court recognized the inherent privacy interest of individuals mentioned in law enforcement files, and determined that the identities of individuals who appear in law enforcement files would virtually never be "very probative of an agency's behavior or performance."[100] It observed that such information would serve a "significant" public interest only if "there is compelling evidence that the agency . . . is engaged in illegal activity."[101] Consequently, the D.C. Circuit held that "unless access to the names and addresses of private individuals appearing in files within the ambit of Exemption 7(C) is necessary in order to confirm or refute compelling evidence that the

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contained in FBI files categorically, including those assumed to be deceased); Fiduccia v. DOJ, 185 F.3d 1035, 1047-48 (9th Cir. 1999) (categorically protecting records concerning FBI searches of houses of two named individuals); Nation Mag. v. U.S. Customs Serv., 71 F.3d 885, 896 (D.C. Cir. 1995) (restating Safecard's holding that portions of records in investigatory files which would reveal subjects, witnesses, and informants in law enforcement investigations are categorically exempt); SafeCard Servs. v. SEC, 926 F.2d 1197, 1206 (D.C. Cir. 1991) (categorically protecting "the names and addresses of third parties mentioned in witness interviews, of customers listed in stock transaction records obtained from investment companies, and of persons in correspondence with the SEC"); Huggans v. EOUSA, No. 19-02587, 2021 WL 1092143, at *6-11 (D.D.C. Mar. 22, 2021) (finding that agencies appropriately protected law enforcement files of third party because there is no public benefit in release where requester's interest is "in exculpatory information relating to his own prosecution, conviction, and sentencing"); Schoenman v. FBI, 575 F. Supp. 2d 136, 159 (D.D.C. 2008) (quoting SafeCard for proposition that names and addresses of private individuals can be categorically protected under Exemption 7(C), but noting that "the same categorical conclusion does not necessarily apply under Exemption 6").

[99] 926 F.2d 1197 (D.C. Cir. 1991).

[100] Id. at 1205 (recognizing privacy interests of suspects, witnesses, and investigators).

[101] Id. at 1206; see also Kuzma v. DOJ, 692 F. App'x 30, 35 (2d Cir. 2017) (per curiam) (determining that requester's assertion that disclosing names of individuals involved in investigation will reveal government mishandling of one case is not enough); Oguaju v. United States, 288 F.3d 448, 451 (D.C. Cir. 2002) (finding that "exposing a single, garden-variety act of misconduct would not serve the FOIA's purpose of showing 'what the Government is up to'" (quoting DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 780 (1989))), vacated & remanded, 541 U.S. 970 (2004), on remand, 378 F.3d 1115 (D.C. Cir. 2004) (reaffirming prior decision); Quiñon v. FBI, 86 F.3d 1222, 1231 (D.C. Cir. 1996) (finding insufficient public interest in revealing individuals mentioned in FBI files absent evidence of wrongdoing; even if individuals had engaged in wrongdoing, such misconduct would have to shed light on agency's action); Davis v. DOJ, 968 F.2d 1276, 1282 (D.C. Cir. 1992) (holding that "when . . . governmental misconduct is alleged as the justification for disclosure, the public interest is 'insubstantial' unless the requester puts forward 'compelling evidence 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'" (quoting SafeCard Servs., 926 F.2d at 1205-06)).

agency is engaged in illegal activity, such information is [categorically] exempt from disclosure."[102]

The D.C. Circuit cautioned that "a categorical approach is appropriate only if 'a case fits into a genus in which the balance *characteristically* tips in one direction.'"[103] As such, when balancing does not tip towards categorical protection, an agency may be required to conduct an individualized privacy balancing assessment for each responsive record.[104]

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[102] SafeCard Servs., 926 F.2d at 1206; see also Neely v. FBI, 208 F.3d 461, 464 (4th Cir. 2000) (adopting SafeCard approach). But see Balt. Sun v. USMS, 131 F. Supp. 2d 725, 730 n.5 (D. Md. 2001) (determining that "plaintiff need not provide compelling evidence of government wrongdoing in light of the inapplicability of the categorical rule of SafeCard" to this case; deciding that "[a] more general public interest in what a government agency is up to is sufficient here").

[103] Citizens for Resp. & Ethics in Wash. v. DOJ, 746 F.3d 1082, 1095 (D.C. Cir. 2014) (quoting Reps. Comm., 489 U.S. at 776 (emphasis added by D.C. Circuit)); see, e.g., id. (finding that case-by-case balancing approach that considers rank of public official involved and seriousness of misconduct alleged appropriate in place of categorical approach); Roth v. DOJ, 642 F.3d 1161, 1183-84 (D.C. Cir. 2011) (finding that balancing approach, not categorical approach, appropriate because "where the FOIA requester has surmounted the fairly substantial hurdle of showing that a reasonable person could believe that the FBI might be withholding information that could corroborate a death-row inmate's claim of innocence, the balance militates in favor of fuller disclosure"); Nation Mag. v. U.S. Customs Serv., 71 F.3d 885, 895 (D.C. Cir. 1995) (finding that "[b]ecause the range of circumstances included in . . . categorical rule do not 'characteristically support' an inference that all material in law enforcement files which names a particular individual is exempt from disclosure to third parties, a more particularized approach is required"); see also Jud. Watch, Inc. v. DHS, 598 F. Supp. 2d 93, 96 (D.D.C. 2009) (finding that records concerning agency's handling of immigration matters not appropriate for categorical handling because balance between private and public interests in records requested "is a much closer call" and defendant must conduct "an assessment of each responsive document to determine whether it is exempt").

[104] See, e.g., Citizens for Resp. & Ethics in Wash. v. DOJ, 854 F.3d 675, 683 (D.C. Cir. 2017) (rejecting agency's categorical denial of investigatory records related to investigation of member of Congress and fourteen specified individuals, since connecting this information to names "could add much, or not at all, to the public's understanding of how the government carried out its investigation and decision not to prosecute"); Cabezas v. BOP, No. 20-02484, 2023 WL 6312349, at *2-3 (D.D.C. Sept. 28, 2023) (concluding that agency needed to conduct balancing for certain law enforcement officers' OPR records because "the seriousness of the officers' and agents' privacy interests might vary depending on whether the records show complaints that were 'substantiated' as opposed to 'unsubstantiated,' 'serious' as opposed to 'trivial,' and 'repeated' as opposed to singular" (quoting Bartko v. DOJ, 898 F.3d 51, 66 (D.C. Cir. 2018))); Citizens for Resp. & Ethics in Wash. v. DOJ, 840 F. Supp. 2d 226, 234 (D.D.C. 2012) (rejecting agency's categorical denial of request for investigatory records pertaining to member of Congress where agency had been specifically

In ACLU v. DOJ,[105] the D.C. Circuit found a small but cognizable privacy interest in aggregated docket information for criminal cases in which cellular phone tracking was used and that resulted in a conviction.[106] The court also found a "significant public interest in disclosure" that would result from the derivative use of the information due to the widespread media, congressional, and judicial interest in the issue.[107] As a result "of the strength of the public interest . . . and the relative weakness of the privacy interests at stake," the court concluded that the balance tilted in favor of disclosure of such docket information for convicted defendants.[108]

As with Exemption 6, when applying Exemption 7(C), courts have required agencies to address whether they could redact the documents to protect individual privacy interests, while releasing the remaining information.[109] Furthermore, courts have

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directed by Congress to investigate particular project, and stating that "the American public has a right to know about the manner in which its representatives are conducting themselves and whether the government agency responsible for investigating and, if warranted, prosecuting those representatives for alleged illegal conduct is doing its job"); see also Bonilla v. DOJ, No. 10-22168, 2011 WL 122023, at *3 (S.D. Fla. Jan. 13, 2011) (rejecting categorical withholding and finding that "[d]efendant has not met its burden of showing the type of record requested by Plaintiff would not reveal any 'official information' about a government agency" (citing DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 780 (1989))); cf. Kimberlin v. DOJ, 139 F.3d 944, 948-49 (D.C. Cir. 1998) (eschewing categorical rule of nondisclosure for OPR files, and suggesting use of case-by-case balancing test involving consideration of "rank of public official involved and the seriousness of misconduct alleged"); Davin v. DOJ, 60 F.3d 1043, 1060 (3d Cir. 1995) (ruling that "government must conduct a document by document fact-specific balancing"); Konigsberg v. FBI, No. 02-2428, slip op. at 5-7 (D.D.C. May 27, 2003) (refusing to apply categorical rule to records on informant who allegedly was protected from prosecution by FBI, based upon exceptional circumstances presented); Balt. Sun, 131 F. Supp. 2d at 730 n.5 (declining to accord categorical protection to third parties who purchased federally forfeited property because risk of harassment, annoyance, or embarrassment is low).

[105] 655 F.3d 1 (D.C. Cir. 2011).

[106] Id. at 7-12.

[107] Id. at 12-15.

[108] Id. at 16.

[109] See, e.g., Sorin v. DOJ, 758 F. App'x 28, 33 (2d Cir. 2018) (summary order) (upholding withholding of documents under Exemption 7(C) based on DOJ's assertion that "redaction could not adequately protect the identity of witnesses because their testimony concerned their specific roles at the company under investigation"); Ocasio v. DOJ, Nos. 17-5005, 17-5085, 2017 U.S. App. LEXIS 16147, at *2 (D.C. Cir. Aug. 23, 2017) (per curiam) (finding that government's declaration and Vaughn Index provided sufficient justification for withholding documents in their entirety by demonstrating no further information could be

reached differing conclusions as to whether agencies can be required to replace identifying information with anonymized identifiers.[110] (See further discussion of privacy redaction under Exemption 6, Redacting Identifying Information.)

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segregated for release); Stahl v. DOJ, No. 19-4142, 2021 WL 1163154, at *8 (E.D.N.Y. Mar. 26, 2021) (holding that agency personnel must explain "why they cannot edit the video to obscure the identities of BOP staff, just as they could redact a written document"); Am. Immigr. Council v. ICE, 464 F. Supp. 3d 228, 239 (D.D.C. 2020) (finding that "there is no genuine dispute that the government can adequately protect whatever minimal privacy interests the detainees have in their birthdates by redacting the date but not the month and year, because the agency has not identified any harm that would flow from a more limited disclosure, and the statute requires that reasonably segregable portions of records should be provided"); Maydak v. DOJ, 362 F. Supp. 2d 316, 325 (D.D.C. 2005) (ordering release of prisoner housing unit information, but withholding inmate names and register numbers because agency did not proffer evidence that released information could be used to identify inmates); Canning v. DOJ, No. 01-2215, slip op. at 19 (D.D.C. Mar. 9, 2004) (finding application of Exemption 7(C) to entire documents rather than to specific identifying information within documents to be overly broad); Aldridge v. U.S. Comm'r of Internal Revenue, No. 00-131, 2001 WL 196965, at *2-3 (N.D. Tex. Feb. 23, 2001) (deciding that privacy of IRS employees could be adequately protected by redacting their names from recommendation concerning potential disciplinary action against them); Prows v. DOJ, No. 90-2561, 1996 WL 228463, at *3 (D.D.C. Apr. 25, 1996) (concluding that rather than withholding documents in full, agency simply can delete identifying information about third-party individuals to eliminate stigma of being associated with law enforcement investigation); Laws. Comm. for Hum. Rts. v. INS, 721 F. Supp. 552, 571 (S.D.N.Y. 1989) (finding middle ground in balancing public interest in disclosure of names in INS Lookout Book on basis of "ideological exclusion" provision against individuals' privacy interest by ordering release of only occupation and country of excluded individuals).

[110] Compare ACLU Immigrants' Rts. Project v. ICE, 58 F.4th 643, 664 (2d Cir. 2023) (concluding that substituting A-numbers for unique IDs "does not create any new agency records and is a reasonable step to shield the exempt content of A-Numbers while preserving the function necessary to afford public access to non-exempt records in the same person-centric form or format available to the agency"), Hawkinson v. ICE, 554 F. Supp. 3d 253, 275-76 (D. Mass. 2021) (recognizing that agencies may need to replace names with unique identifiers but declining to do so here as plaintiff "has not identified any unusually heightened public interest or benefit in this case, nor any unusual burden imposed by the failure to provide unique identifiers"), and Mattachine Soc'y of Wash., D.C. v. DOJ, 267 F. Supp. 3d 218, 228 (D.D.C. 2017) (finding public interest in release of records naming government employees targeted by Executive Order, where names would be replaced with unique alphanumeric markers that would serve as index), with Cincinnati Enquirer v. DOJ, No. 20-758, 2021 WL 4262322, at *4 (S.D. Ohio Sept. 20, 2021) (declining to consider replacing names with unique identifiers as it "requires the government agency to create new documents"), aff'd, 45 F.4th 929 (6th Cir. 2022).

Glomar Responses

The Court of Appeals for the District of Columbia Circuit has explained that "[a] 'Glomar' response to a FOIA request, [i.e., when an agency does not acknowledge whether records responsive to the request exist] is permitted in that rare situation when either confirming or denying the very existence of records responsive to a request would 'cause harm cognizable under a FOIA [exemption].'"[111] For purposes of Exemption 7(C), the D.C. Circuit has found that "[t]he question . . . is whether disclosing even 'the existence or nonexistence of the requested records' is itself information protected by Exemption 7(C)."[112] The D.C. Circuit has held that acknowledging the existence of records that would reveal that named individuals were investigated "'go[es] to the heart of the privacy interest that Exemption 7(C) was designed to protect.'"[113] Indeed, "'[t]here can be no clearer example of an unwarranted invasion of personal privacy than to release to the public that another individual was the subject of [a law enforcement] investigation.'"[114]

Courts have found a Glomar response appropriate when responding to targeted requests for documents regarding alleged government informants,[115] trial witnesses,[116]

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[111] Bartko v. DOJ, 898 F.3d 51, 63-64 (D.C. Cir. 2018) (quoting Roth v. DOJ, 642 F.3d 1161, 1178 (D.C. Cir. 2011)).

[112] Id. at 64; see also Antonelli v. FBI, 721 F.2d 615, 617 (7th Cir. 1983) (concluding that "even acknowledging that certain records are kept would jeopardize the privacy interests that the FOIA exemptions are intended to protect").

[113] People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535, 540 (D.C. Cir. 2014) (quoting PETA v. NIH, 853 F. Supp. 2d 146, 155 (D.D.C. 2012)).

[114] Id. (quoting Fund for Const. Gov't v. Nat'l Archives & Recs. Serv., 656 F.2d 856, 864 (D.C. Cir. 1981)).

[115] See, e.g., Butler v. DEA, No. 05-1798, 2006 WL 398653, at *3-4 (D.D.C. Feb. 16, 2006) (finding that agency properly refused to confirm or deny existence of records pertaining to alleged DEA informants); Tanks v. Huff, No. 95-568, 1996 U.S. Dist. LEXIS 7266, at *12-13 (D.D.C. May 28, 1996) (permitting FBI to refuse to confirm or deny existence of any law enforcement records, unrelated to requester's case, concerning informants who testified against requester).

[116] See, e.g., Oguaju v. United States, 288 F.3d 448, 451 (D.C. Cir. 2002) (approving Glomar response to request for any information on individual who testified at requester's trial when requester provided no public interest rationale), vacated & remanded, 541 U.S. 970 (2004), on remand, 378 F.3d 1115 (D.C. Cir. 2004) (reaffirming prior decision); Enzinna v. DOJ, No. 97-5078, 1997 WL 404327, at *2 (D.C. Cir. June 30, 1997) (per curiam) (finding that government's Glomar response appropriate because acknowledging existence of responsive documents would associate witnesses with criminal investigation); see also Meserve v. DOJ, No. 04-1844, 2006 WL 2366427, at *6-7 (D.D.C. Aug. 14, 2006) (concluding that while agency confirmed existence of records relating to third party's participation at public trial, it

subjects of investigations,[117] and even individuals who may merely be mentioned in a law enforcement record.[118]

For a Glomar response to be effective, it must be employed universally in situations where mere acknowledgment of records would reveal exempt information, even where no responsive records actually exist, because, as one court has noted "[i]f a *Glomar* response is provided only when . . . records are found, the response would in fact be useless because

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also properly provided Glomar response for any additional documents concerning third party).

[117] See, e.g., DOJ v. Reps. Comm. For Freedom of the Press, 489 U.S. 749, 780 (1989) (upholding FBI's refusal to confirm or deny that it maintained "rap sheets" on named individual); Schwarz v. INTERPOL, Nos. 94-4111, 94-4142, 1995 U.S. App. LEXIS 3987, at *7 (10th Cir. Feb. 28, 1995) (holding that Glomar response proper for third-party request for file of requester's "alleged husband" when no public interest shown); Massey v. FBI, 3 F.3d 620, 624 (2d Cir. 1993) (declaring that "individuals have substantial privacy interests in information that either confirms or suggests that they have been subject to criminal investigations or proceedings"); Beck v. DOJ, 997 F.2d 1489, 1493-94 (D.C. Cir. 1993) (protecting OPR records concerning alleged wrongdoing by two named DEA agents); Strassman v. DOJ, 792 F.2d 1267, 1269 (4th Cir. 1986) (finding that Glomar response appropriate regarding request for records allegedly indicating whether governor of West Virginia threatened to invoke Fifth Amendment because "divulgence of [responsive records], if [they] existed, could lead the public to infer a link between [the governor] and criminal wrongdoing"); Eddington v. DOJ, 581 F. Supp. 3d 218, 230-32 (D.D.C. 2022) (finding no official acknowledgment that individual was subject of counterterrorism investigation and accordingly affirming Glomar response); Lindsey v. FBI, 490 F. Supp. 3d 1, 19-21 (D.D.C. 2020) (finding that Glomar response appropriate given potential subject's strong privacy interest in not being associated with FBI investigative records); Jud. Watch, Inc. v. DOJ, 898 F. Supp. 2d 93, 107 (D.D.C. 2012) (upholding Glomar response and noting that revelation of contemplated criminal prosecution is significant intrusion upon personal privacy); Greenberg v. U.S. Dep't of Treasury, 10 F. Supp. 2d 3, 24-25 (D.D.C. 1998) (holding that Glomar response appropriate when existence of records would link named individuals with taking of American hostages in Iran and disclosure would not shed light on agency's performance).

[118] See, e.g., White v. DOJ, 16 F.4th 539, 542 (7th Cir. 2021) (affirming FBI's use of Glomar response for requests concerning individuals allegedly affiliated with FBI as FBI never confirmed affiliation), cert. dismissed, 143 S. Ct. 438 (2022); Jefferson v. DOJ, 168 F. App'x 448, 450 (D.C. Cir. 2005) (per curiam) (affirming district court judgment that agency, after processing responsive documents, could refuse to confirm or deny existence of any additional mention of third party in its investigative database); Nation Mag., Wash. Bureau v. U.S. Customs Serv., 71 F.3d 885, 896 (D.C. Cir. 1995) (concluding that Glomar response appropriate after finding that privacy interest in keeping secret the fact that individual was subject to law enforcement investigation extends to third parties who might be mentioned in investigatory files); Huddleston v. FBI, No. 20-00447, 2022 WL 4593084, at *21-22 (E.D. Tex. Sept. 29, 2022) (upholding Glomar response for deceased subject's brother and federal prosecutor).

it 'would unsurprisingly be interpreted as an admission that . . . responsive records exist.'"[119]

Courts have limited agencies' use of a Glomar response in a variety of circumstances. A request that does not sufficiently "target" the subject of the request is not appropriate for a Glomar response.[120] An agency may not be able to utilize a Glomar response where the subject of a request has already been publicly associated with agency law enforcement matters that would otherwise justify a Glomar response.[121] Courts have held that a Glomar response is inappropriate once it is determined that an informant's status has been officially confirmed.[122] The D.C. Circuit rejected an agency's use of a Glomar response even where the underlying subjects had never been associated by the

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[119] Moore v. FBI, 883 F. Supp. 2d 155, 164 (D.D.C. 2012) (quoting agency declaration and noting agency provided "reasonable explanation" for invoking Glomar regardless of whether responsive records existed) (Exemptions 1 and 3).

[120] People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535, 544-45 (D.C. Cir. 2014) (holding that Glomar response inappropriate when "the request, broadly construed, encompasses documents relating to *any* ensuing investigation," and not investigation targeted to specific individual).

[121] See, e.g., Citizens for Resp. & Ethics in Wash. v. DOJ, 746 F.3d 1082, 1091-92 (D.C. Cir. 2014) (holding that subject's public statements that subject had been, but was no longer, under investigation, made Glomar response inappropriate); see also Kimberlin v. DOJ, 139 F.3d 944, 949 (D.C. Cir. 1998) (noting that prosecutor's public acknowledgment that he was subject of disciplinary proceedings "undoubtedly does diminish his interest in privacy: the public already knows who he is, what he was accused of, and that he received a relatively mild sanction" and so Glomar response inappropriate); cf. Cabezas v. BOP, No. 20-02484, 2023 WL 6312349, at *3 (D.D.C. Sept. 28, 2023) (noting that agency acknowledged investigation and OPR issued letter about investigation into certain law enforcement agent); Lindsey v. FBI, 271 F. Supp. 3d 1, 7-8 (D.D.C. 2017) (requiring defendant to provide more information to justify Glomar response after third party acknowledged information because "the fact that the *government* has not acknowledged a potentially personal piece of information, does not mean that the *third-party's* acknowledgment of that information has no bearing on the private-public interest balancing test underlying the FOIA exemptions at issue").

[122] See Pickard v. DOJ, 653 F.3d 782, 787 (9th Cir. 2011) (finding that agency could not refuse to confirm or deny records pertaining to third party where "the government . . . intentionally elicited testimony from [the third party] and several DEA agents as to [the third party's] activities as a confidential informant in open court in the course of official and documented public proceedings"); Boyd v. Crim. Div. of DOJ, 475 F.3d 381, 389 (D.C. Cir. 2007) ("Where an informant's status has been officially confirmed, a Glomar response is unavailable, and the agency must acknowledge the existence of any responsive records it holds."); North v. DOJ, 810 F. Supp. 2d 205, 208-09 (D.D.C. 2011) (rejecting Glomar response where requester produced trial transcripts in which government referred to third party as informant, and that third party testified regarding his cooperation agreement with government).

agency with a specific investigation, when it found an overriding public interest in knowing whether the individuals who were the subject of the request were the actual perpetrators of a crime for which the requester was convicted and on death row.[123]

For a request that seeks non-law enforcement records as well as law enforcement records, or which seeks acknowledged law enforcement files as well as unacknowledged files, courts have upheld agencies' use of a "bifurcated" or two-pronged approach in its response, i.e., using a Glomar response for part and addressing and processing separately other records that are located.[124]

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[123] Roth v. DOJ, 642 F.3d 1161, 1181-82 (D.C. Cir. 2011).

[124] See, e.g., Jefferson v. DOJ, 284 F.3d 172, 178-79 (D.C. Cir. 2002) (refusing to allow Glomar response to request for OPR records concerning AUSA because agency did not bifurcate for separate treatment its non-law enforcement records); Nation Mag., Wash. Bureau v. U.S. Customs Serv., 71 F.3d 885, 894-96 (D.C. Cir. 1995) (deciding that Glomar response appropriate only as to existence of records associating former presidential candidate with criminal activity), on remand, 937 F. Supp. 39, 45 (D.D.C. 1996) (finding that Glomar response as to whether candidate was subject, witness, or informant in law enforcement investigation appropriate after agency searched law enforcement files for records concerning candidate's acknowledged efforts to assist agency); Burke v. DOJ, No. 96-1739, 1999 WL 1032814, at *5 (D.D.C. Sept. 30, 1999) (finding no need to bifurcate request that "specifically and exclusively" sought investigative records on third parties). See generally FOIA Update, Vol. XVII, No. 2 ("OIP Guidance: The Bifurcation Requirement for Privacy 'Glomarization'") (providing guidance on how agencies should handle requests for law enforcement records on third parties).