Exemption 6*

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

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

---

* This section primarily includes case law, guidance and statutes up until April 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)(6), (7)(C) (2018).

[2] 5 U.S.C. § 552(b)(6).

[3] 5 U.S.C. § 552(b)(7)(C).

[4] DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 763 (1989) (Exemption 7(C)).

[5] 5 U.S.C. § 552(b)(6).

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

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

---

[6] See Multi AG Media LLC v. USDA, 515 F.3d 1224, 1229 (D.C. Cir. 2008) ("The balancing analysis for FOIA Exemption 6 requires that we first determine whether disclosure of the files 'would compromise a substantial, as opposed to de minimis, privacy interest,' because '[i]f no significant privacy interest is implicated . . . FOIA demands disclosure.'" (quoting Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 874 (D.C. Cir. 1989))), superseded by statute on other grounds, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234 § 1619, 122 Stat. 923.

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

[8] 5 U.S.C. § 552(b)(6); see also Favish, 541 U.S. at 171 ("The term 'unwarranted' requires us to balance the . . . privacy interest against the public interest in disclosure.") (internal citation omitted); Wash. Post Co. v. HHS, 690 F.2d 252, 261 (D.C. Cir. 1982) ("Finally, we balance the competing interests to determine whether the invasion of privacy is clearly unwarranted.").

[9] Nat'l Ass'n of Home Builders v. Norton, 309 F.3d 26, 32 (D.C. Cir. 2002) (quoting Wash. Post Co. v. HHS, 690 F.2d 252, 261 (D.C. Cir. 1982)); see also Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1057 (D.C. Cir. 2009) (stating that FOIA's "'presumption favoring disclosure . . . is at its zenith under Exemption 6'" (quoting Nat'l Ass'n of Home Builders, 309 F.3d at 37)); Hunton & Williams LLP v. EPA, 346 F. Supp. 3d 61, 86 (D.D.C. 2018) (determining that certain names must be disclosed as no explanation for withholdings was provided); Laws.' Comm. for Civ. Rts. of S.F. Bay Area v. U.S. Dep't of the Treasury, No. 07-2590, 2008 WL 4482855, at *20 (N.D. Cal. Sept. 30, 2008) ("The burden remains on the agency to justify any withholdings under Exemption 6 since the presumption in favor of disclosure under this exemption is as strong as that with other exemptions.").

[10] See, e.g., Nat'l Ass'n of Home Builders, 309 F.3d at 32 ("[T]he threshold question is whether the requested information is contained in a personnel, medical, or similar file. . . . If it is, then the court must determine whether the information is of such a nature that its disclosure would constitute a clearly unwarranted privacy invasion."); N.Y. Times Co. v.

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

---

NASA, 920 F.2d 1002, 1004 (D.C. Cir. 1990) (en banc) (noting that "the tape must first satisfy the threshold requirement of being a 'similar file,'" and "[b]ecause the district court held that the tape did not constitute such a file, it never reached the second stage of the Exemption 6 analysis—whether the release of the file would result in a clearly unwarranted invasion of privacy") (internal citation omitted).

[11] See, e.g., Nat'l Ass'n of Retired Fed. Emps. v. Horner [hereinafter NARFE], 879 F.2d 873, 874 (D.C. Cir. 1989) ("If no significant privacy interest is implicated (and if no other Exemption applies), FOIA demands disclosure."); Adelante Ala. Worker Ctr. v. DHS, 376 F. Supp. 3d 345, 366 (S.D.N.Y. 2019) (same); Finkel v. U.S. Dep't of Labor, No. 05-5525, 2007 WL 1963163, at *9 (D.N.J. June 29, 2007) (concluding that no balancing analysis was required due to the Court's determination that defendant "has failed to meet its heavy burden on the issue of whether disclosure will invade the inspectors' privacy").

[12] NARFE, 879 F.2d at 879; see also Favish, 541 U.S. at 175 (finding that requester had not shown existence of public interest "to put the balance into play") (Exemption 7(C)); Pavement Coatings Tech. Council v. U.S. Geological Surv., 995 F.3d 1014, 1024-25 (D.C. Cir. 2021) (holding that district court properly concluded that study participants' personal information falls under Exemption 6 given modest privacy interest and absence of cognizable FOIA public interest); Wadhwa v. VA, 707 F. App'x 61, 63-64 (3d Cir. 2017) (protecting identifying information concerning individuals involved in adjudication of discrimination complaints and individuals' financial information in absence of any FOIA public interest); Taitz v. Astrue, No. 11-5304, 2012 WL 1930959, at *1 (D.C. Cir. May 25, 2012) ("Appellant has not demonstrated any valid public interest in disclosure to balance against the substantial privacy interest at stake.").

[13] See Favish, 541 U.S. at 171 ("The term 'unwarranted' requires us to balance the family's privacy interest against the public interest in disclosure.") (internal citation omitted); DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 776 (1989) (stating that "a court must balance the public interest in disclosure against the interest Congress intended the Exemption to protect") (Exemption 7(C)); Bloomgarden v. NARA, 798 F. App'x 674, 676 (D.C. Cir. 2020) ("[I]f we determine that a 'substantial privacy interest' exists, we must further inquire 'whether the public interest in disclosure outweighs the individual privacy concerns' so as to justify disclosure." (quoting Nat'l Ass'n of Home Builders, 309 F.3d at 35)) (unpublished disposition); Associated Press v. DOD, 554 F.3d 274, 291 (2d Cir. 2009) ("'Only where a privacy interest is implicated does the public interest for which the information will serve become relevant and require a balancing of the competing interests.'" (quoting Fed. Lab. Rels. Auth. v. VA, 958 F.2d 503, 509 (2d Cir. 1992))) (Exemptions 6 and 7(C)); Ripskis v. HUD, 746 F.2d 1, 3 (D.C. Cir. 1984) ("'Congress sought to construct an exemption that would require a balancing of the individual's right of privacy against the

privacy interests, the information should be disclosed; if the opposite is found to be the case, the information should be withheld.[14]

Threshold: Personnel, Medical and Similar Files

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

---

preservation of the basic purpose of the Freedom of Information Act'" (quoting Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976))).

[14] See DOD v. Fed. Lab. Rels. Auth., 510 U.S. 487, 502 (1994) ("Because the privacy interest of bargaining unit employees in nondisclosure of their home addresses substantially outweighs the negligible FOIA-related public interest in disclosure," the information should be withheld); News-Press v. DHS, 489 F.3d 1173, 1205 (11th Cir. 2007) ("In order to affirm withholding the addresses, we would have to find that the privacy interests against disclosure are greater than the public interest in disclosure."); see also FOIA Update, Vol. X, No. 2 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking") (outlining mechanics of balancing process).

[15] 5 U.S.C. § 552(b)(6) (2018).

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

[17] Id. at 599-603 (citing H.R. Rep. No. 89-1497, at 11 (1966)); S. Rep. No. 89-0813, at 9 (1965); S. Rep. No. 88-1219, at 14 (1964)).

[18] Id. at 601 (citing H.R. Rep. No. 89-1497, at 11 (1966)); see Cook v. NARA, 758 F.3d 168, 174 (2d Cir. 2014) (stating that "similar files" need not relate to medical or personnel issues and need not even constitute a "file"); Jud. Watch, Inc. v. FDA, 449 F.3d 141, 152 (D.C. Cir. 2006) ("The Supreme Court has read Exemption 6 broadly, concluding the propriety of an agency's decision to withhold information does not 'turn upon the label of the file which contains the damaging information.'" (quoting Wash. Post, 456 U.S. at 601)).

[19] Wash. Post, 456 U.S. at 602; see, e.g., Telematch, Inc. v. USDA, 45 F.4th 343, 351 (D.C. Cir. 2022) ("Customer numbers are 'similar files' under Exemption 6.") (internal citation omitted); Niskanen Ctr. v. FERC, 20 F.4th 787, 791 (D.C. Cir. 2021) (determining that Exemption 6 threshold is met since landowner lists pertain to particular individuals); Burton v. Wolf, 803 F. App'x 120, 121 (9th Cir. 2020) (determining that alien file records are similar files as they contain "personal identifying information," "immigration status[,] and .

clear that the Exemption 6 threshold applies very broadly, the threshold of Exemption 6 has been found not to be satisfied when the information cannot be linked to a particular individual.[20] For instance, email domains generally do not meet the threshold test.[21]

. . allegations of domestic abuse"); Cook, 758 F.3d at 174 (observing that "similar files" encompasses all records identifiable to particular individuals even if records do not encompass "'intimate'" or "'highly personal'" information (quoting Wash. Post, 456 U.S. at 599-602)); Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1050 (D.C. Cir. 2009) ("It is undisputed that the requested Medicare records are personnel, medical, or 'similar files.'"); Associated Press v. DOD, 554 F.3d 274, 291 (2d Cir. 2009) (determining that records applying to detainees whose family members seek protection are "similar files," explaining that "[t]he phrase 'similar files' has a broad meaning and encompasses the government's 'records on an individual which can be identified as applying to that individual'" (quoting Wash. Post, 456 U.S. at 600)) (Exemptions 6 and 7(C)); Berger v. IRS, 288 F. App'x 829, 832 (3d Cir. 2008) ("[Revenue Officer's] time records are a personal recording of the time expended as an employee and therefore can be identified as applying to [them]."); Wood v. FBI, 432 F.3d 78, 86-87 (2d Cir. 2005) (recognizing that personal information about government investigators appearing in investigative records are "similar files"); Lakin L. Firm, P.C. v. FTC, 352 F.3d 1122, 1123 (7th Cir. 2003) (holding that consumer complaints filed with the FTC "clearly fall[] within the exemption"); N.Y. Times Co. v. FCC, 457 F. Supp. 3d 266, 273 (S.D.N.Y. 2020) (concluding that IP addresses and other device-identifying information are "similar files"); White Coat Waste Project v. VA, 404 F. Supp. 3d 87, 101 (D.D.C. 2019) (holding that "principal investigator's name falls within Exemption 6's 'similar files' category" given its broad application) (internal citation omitted). But see Aguirre v. SEC, 551 F. Supp. 2d 33, 54 (D.D.C. 2008) ("Correspondence does not [satisfy the 'similar files' standard] solely because it identifies government employees."); Leadership Conf. on C.R. v. Gonzales, 404 F. Supp. 2d 246, 257 (D.D.C. 2005) (holding that the names and work telephone numbers of Justice Department paralegals do not meet the threshold for Exemption 6 on the basis that information is not "similar to a 'personnel' or 'medical' file") (internal citation omitted).

[20] See, e.g., Arieff v. U.S. Dep't of the Navy, 712 F.2d 1462, 1467-68 (D.C. Cir. 1983) (holding that defendant must establish "more than a 'mere possibility' that the medical condition of a particular individual might be disclosed" in order to protect a list of drugs ordered for use by some members of large group) (internal citation omitted); In Def. of Animals v. NIH, 543 F. Supp. 2d 70, 80 (D.D.C. 2008) (concluding that information related to a primate facility building does not meet the threshold of Exemption 6 because it "is not associated with any particular individual"); Na Iwi O Na Kupuna O Mokapu v. Dalton, 894 F. Supp. 1397, 1413 (D. Haw. 1995) (determining information pertaining to inventory of large group of Native Hawaiian human remains is not covered under Exemption 6 because "there is no real danger . . . that any particular individuals will be identified by disclosure of the inventory") (reverse FOIA suit); cf. Informed Consent Action Network v. NIH, No. 20-01277, 2021 WL 2592609, at *8 (D. Ariz. June 24, 2021) ("[U]nless this data is tied to personally identifying information, it does not warrant redaction pursuant to Exemption 6.").

[21] See, e.g., Transgender L. Ctr. v. ICE, 46 F.4th 771, 784 (9th Cir. 2022) ("[E]mail domains are not specific to particular individuals – email domains are shared by all employees within a given DHS component – so they do not satisfy the threshold test, and thus cannot be withheld per Exemption 6.") (Exemptions 6 and 7(C)); Citizens for Resp. & Ethics in Wash.

The Court of Appeals for the District of Columbia Circuit, sitting en banc, subsequently reinforced the Supreme Court's broad interpretation of the "similar files" threshold of Exemption 6 by holding that a tape recording of the last words of the Space Shuttle *Challenger* crew, which "reveal[ed] the sound and inflection of the crew's voices during the last seconds of their lives" satisfied the standard.[22] Along these lines, both lexical and non-lexical information has been found to meet the Exemption 6 threshold.[23]

Once it has been determined that information meets the threshold requirement of Exemption 6, the next step of the analysis is to identify whether there is a significant privacy interest in the requested information and to ascertain the extent of that interest in nondisclosure.[24]

Privacy Interest

In the landmark FOIA decision DOJ v. Reporters Committee for Freedom of the Press,[25] which governs all privacy-protection decision making under the FOIA, the

---

v. U.S. Dep't of State, Nos. 19-1344 & 19-2125, 2022 WL 1801054, at *13 (D.D.C. June 2, 2022) (concluding that "the Department has failed to show how the domain portion of a government email address" meets the Exemption 6 threshold, although acknowledging that "perhaps, in some instances, an email domain could be so unique that its release would reveal the identity of the address holder"); Bloche v. DOD, 370 F. Supp. 3d 40, 59 (D.D.C. 2019) (noting that while email domain could, in some cases, be so unique that it would reveal identity of address holder, in this instance, agency has not shown how domain part of government email address satisfies Exemption 6 threshold).

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

[23] Id. (determining that "lexical" and "non-lexical" information are subject to identical treatment under the FOIA); see Forest Guardians v. FEMA, 410 F.3d 1214, 1218 (10th Cir. 2005) (determining that electronic Geographic Information System files containing "specific geographic point locations" of structures are "similar files"); Tunnell v. DOD, No. 14-00269, 2016 WL 5724431, at *6 (N.D. Ind. Sept. 30, 2016) (discussing identifiable third parties located in video footage and stating that "courts have concluded that Exemption 6 applies to personal information in a broad range of documents or materials"); Hertzberg v. Veneman, 273 F. Supp. 2d 67, 85 n.11 (D.D.C. 2003) (finding that requested videotapes "contain identifiable audio and video images of individual residents," and concluding that they are "similar files").

[24] See, e.g., Multi AG Media LLC v. USDA, 515 F.3d 1224, 1229 (D.C. Cir. 2008) (discussing privacy interest analysis after determining that certain records containing farming data satisfy Exemption 6 "similar files" threshold), superseded by statute on other grounds, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234 § 1619, 122 Stat. 923; FOIA Update, Vol. X, No. 2 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking").

[25] 489 U.S. 749 (1989).

Supreme Court stressed that "both the common law and the literal understandings of privacy encompass the individual's control of information concerning his or her person."[26] As the Court of Appeals for the District of Columbia Circuit has recognized, this concept of privacy "includes the prosaic (e.g., place of birth and date of marriage) as well as the intimate and potentially embarrassing."[27] The Supreme Court has declared that the privacy interest inherent in Exemption 6 belongs to the individual, not the agency holding the information.[28] As such, Exemption 6 cannot be invoked to withhold from a requester information pertaining only to him or herself.[29] Furthermore, both the "author" and the "subject" of a file may possess cognizable privacy interests under Exemption 6.[30]

---

[26] Id. at 763 (holding "rap sheets" are entitled to protection under Exemption 7(C) and setting forth five guiding principles that govern the process by which determinations are made under both Exemptions 6 and 7(C)) (Exemption 7(C)).

[27] Painting & Drywall Work Pres. Fund, Inc. v. HUD, 936 F.2d 1300, 1302 (D.C. Cir. 1991); see also Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 875 (D.C. Cir. 1989) ("The Supreme Court has made clear that Exemption 6 is designed to protect personal information in public records, even if it is not embarrassing or of an intimate nature.").

[28] See Reps. Comm., 489 U.S. at 763-65 (emphasizing that privacy interest belongs to individual, not agency holding information pertaining to individual); Joseph W. Diemert, Jr. & Assocs. Co., L.P.A. v. FAA, 218 F. App'x 479, 482 (6th Cir. 2007) ("[S]ome courts have concluded that where personal privacy interests are implicated, only the individual who owns such interest may validly waive it."); Sherman v. U.S. Dep't of the Army, 244 F.3d 357, 363-64 (5th Cir. 2001) (protecting social security numbers of Soldiers even though Army publicly disclosed them in some circumstances, because individuals rather than government hold privacy interest in that information); Amiri v. Nat'l Sci. Found., No. 20-02006, 2021 WL 4438910, at *8 (D.D.C. Sept. 28, 2021) ("[A]n agency's inadvertent disclosure of individual names and other [personally identifiable information] rarely waives privacy interests under Exemption 6 because those interests belong to the individuals, not to the agency."), aff'd, No. 21-5241, 2022 WL 1279740 (D.C. Cir. Apr. 28, 2022); Amuso v. DOJ, 600 F. Supp. 2d 78, 93 (D.D.C. 2009) ("The privacy interest at stake belongs to the individual, not the agency."); Cozen O'Connor v. U.S. Dep't of the Treasury, 570 F. Supp. 2d 749, 781 (E.D. Pa. 2008) ("The focus of the exemption is the individual's interest, not the government's.").

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

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

Notably, courts afford foreign nationals the same privacy rights under the FOIA as they afford U.S. citizens.[31]

The D.C. Circuit has emphasized that under the FOIA's privacy-protection exemptions, "[t]he threat to privacy . . . need not be patent or obvious to be relevant."[32]

[31] See U.S. Dep't of State v. Ray, 502 U.S. 164, 175-79 (1991) (applying traditional analysis of privacy interests under FOIA to Haitian nationals); Graff v. FBI, 822 F. Supp. 2d 23, 34 (D.D.C. 2011) (holding "foreign nationals are entitled to the privacy protections embodied in FOIA") (Exemption 7(C)); Jud. Watch, Inc. v. DHS, 514 F. Supp. 2d 7, 10 n.4 (D.D.C. 2007) (noting "courts in [this] Circuit have held that foreign nationals are entitled to the same privacy rights under FOIA as United States citizens"); Ctr. for Nat'l Sec. Stud. v. DOJ, 215 F. Supp. 2d 94, 105-06 (D.D.C. 2002) (recognizing, without discussion, the privacy rights of post-9/11 detainees who were unlawfully in the United States, although ultimately concluding that public interest in disclosure outweighed those interests) (Exemption 7(C)).

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

At the same time, courts have found that the threat to privacy must be real rather than speculative,[33] and have disfavored conclusory allegations of harm.[34]

---

[33] See Dep't of the Air Force v. Rose, 425 U.S. 352, 380 n.19 (1976) ("The legislative history is clear that Exemption 6 was directed at threats to privacy interests more palpable than mere possibilities."); Friends of Animals v. Bernhardt, 15 F.4th 1254, 1270 (10th Cir. 2021) (noting that harassment risk is primarily speculative and while plaintiff does "submit some evidence that it asserts proves a likelihood of harassment if the submitters' names are disclosed," "this alone does nothing to demonstrate that those individuals faced or will face harassment or other negative consequences as a result of that publication") (Exemptions 6 and 7(C)); Civ. Beat L. Ctr. for the Pub. Int., Inc. v. CDC, 929 F.3d 1079, 1091-92 (9th Cir. 2019) (disagreeing that privacy interests were too speculative when agency submitted detailed affidavit explaining how disclosure of its employees' identities and contact information could potentially result in an invasion of privacy); Cameranesi v. DOD, 856 F.3d 626, 642 (9th Cir. 2017) ("We have never held that an agency must document that harassment or mistreatment have happened in the past or will certainly happen in the future; rather, the agency must merely establish that disclosure would result in a 'potential for harassment.'" (quoting Forest Serv. Emps. for Env't. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1026 (9th Cir. 2008))); ACLU v. DOD, 543 F.3d 59, 85-86 (2d Cir. 2008) ("Even accepting [defendants'] argument that it may be 'possible' to identify the detainees in spite of the district court's redactions, or that there remains a 'chance' that the detainees could identify themselves . . . such speculation does not establish a privacy interest that surpasses a de minimis level for the purposes of a FOIA inquiry.") (internal citation omitted) (Exemptions 6 and 7(C)); NARFE, 879 F.2d at 878 (determining that "mere speculation" of an invasion of privacy is not sufficient and that "[f]or the Exemption 6 balance to be implicated, there must, of course, be a causal relationship between the disclosure and the threatened invasion of privacy"); Carter v. U.S. Dep't of Com., 830 F.2d 388, 391 (D.C. Cir. 1987) (stating that "[w]ithholding information to prevent speculative harm" is contrary to the FOIA's pro-disclosure policy); Arieff v. U.S. Dep't of the Navy, 712 F.2d 1462, 1467-68 (D.C. Cir. 1983) (holding that Exemption 6 did not apply when there was only a "'mere possibility'" that the medical condition of a particular individual would be disclosed by releasing a list of pharmaceuticals supplied to a congressional doctor (quoting Rose, 425 U.S. at 380 n.19)); Cause of Action Inst. v. Exp.-Imp. Bank of the U.S., 521 F. Supp. 3d 64, 94 (D.D.C. 2021) (determining threat to privacy was real, rather than speculative, because email addresses pertained to high-ranking executive-branch personnel and requester indicated it would disseminate the results of the FOIA request); Adelante Ala. Worker Ctr. v. DHS, 376 F. Supp. 3d 345, 367 (S.D.N.Y. 2019) (noting that "mere possibility that the release of information could potentially lead to harassment is not evidence of a 'real' threat of harassment") (internal citation omitted); Seife v. U.S. Dep't of State, 298 F. Supp. 3d 592, 625 (S.D.N.Y. 2018) (finding that State Department failed to show "real" threat of harassment from identification of senior officials who anonymously provided press briefings on their areas of expertise); Aqualliance v. U.S. Army Corps. of Eng'rs, 243 F. Supp. 3d 193, 198 (D.D.C. 2017) (holding that privacy interest in mailing list of homeowners who lived in proximity to California water project was not substantial because agency failed to provide "anything beyond speculation regarding the results of disclosing the distribution list"); Finkel v. U.S. Dep't of Labor, No. 05-5525, 2007 WL 1963163, at *9 (D.N.J. June 29, 2007) (concluding that defendant failed to meet its burden of showing that release of inspectors' "coded ID numbers" would constitute a clearly unwarranted invasion of privacy because defendant "has 'established no more than a mere possibility that the medical condition of a

The D.C. Circuit has ruled that agencies must initially determine whether disclosure of the files "would compromise a substantial, as opposed to a de minimis, privacy interest," because "[i]f no significant privacy interest is implicated . . . FOIA demands disclosure."[35] As discussed above, when a substantial privacy interest is found,

---

particular individual might be disclosed – which the Supreme Court has told us is not enough'" (quoting Arieff, 712 F.2d at 1467)); Dayton Newspapers, Inc. v. Dep't of the Air Force, 107 F. Supp. 2d 912, 919 (S.D. Ohio 1999) (declining to protect medical malpractice settlement figures based upon "mere possibility that factual information might be pieced together to supply 'missing link' and lead to personal identification" of claimants) (internal citation omitted).

[34] Sai v. TSA, 315 F. Supp. 3d 218, 262-63 (D.D.C. 2018) (finding that agency "offered little more than conclusory assertions" regarding privacy interests of various TSA and DHS employees "without regard to the position held by the relevant employee, the role played by that employee, the substance of the underlying agency action, or the nature of the agency record at issue") (Exemptions 6 and 7(C)); Climate Investigations Ctr. v. DOE, 331 F. Supp. 3d 1, 26 (D.D.C. 2018) ("An agency must provide affidavits containing 'reasonable specificity of detail rather than merely conclusory statements' to establish a substantial invasion of privacy" (quoting Jud. Watch, Inc. v. U.S. Secret Serv., 726 F.3d 208, 215 (D.C. Cir. 2013))); Pinson v. DOJ, 313 F. Supp. 3d 88, 112 (D.D.C. 2018) (holding that "conclusory" and "generalized" allegations of privacy harms are insufficient for protection of records under Exemption 6); Hall v. DOJ, 552 F. Supp. 2d 23, 30 (D.D.C. 2008) (finding that DOJ failed to demonstrate that there is a real threat to employees' privacy, and concluding that "DOJ merely asserts, in vague and conclusory fashion, that the redacted information relates to a small group of employees and that release of the redacted information will lead to identification and harassment"); United Am. Fin., Inc. v. Potter, 531 F. Supp. 2d 29, 47 (D.D.C. 2008) (noting that bare and conclusory assessment that public disclosure of an employee's name would constitute an invasion of personal privacy is insufficient to support existence of a privacy interest); cf. Manivannan v. DOE, Nat'l Energy Tech. Lab'y, 843 F. App'x 481, 483 (4th Cir. 2021) (per curiam) (Plaintiff "failed to overcome the presumption of good faith accorded to the agency's relatively detailed and nonconclusory affidavits" supporting use of Exemption 6).

[35] NARFE, 879 F.2d at 874; see, e.g., Cook v. NARA, 758 F.3d 168, 175-76 (2d Cir. 2014) (noting that Exemption 6's privacy analysis first requires agencies to "determine whether disclosure of the files would compromise a substantial, as opposed to de minimis, privacy interest . . . .", and determining that former President, Vice President and their designated representatives maintain "compelling" privacy interest in conducting research regarding their years of public service "free from unwanted public scrutiny" of the subjects of inquiry); Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1050 (D.C. Cir. 2009) ("[W]e must determine whether 'disclosure would compromise a substantial, as opposed to a de minimis, privacy interest.'" (quoting NARFE, 879 F.2d at 874)); Multi AG Media LLC v. USDA, 515 F.3d 1224, 1229-30 (D.C. Cir. 2008) ("A substantial privacy interest is anything greater than a de minimis privacy interest.") superseded by statute on other grounds, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234 § 1619, 122 Stat. 923; cf. AquAlliance v. U.S. Bureau of Reclamation, 139 F. Supp. 3d 203, 212-13 (D.D.C. 2015) (concluding there is "greater than de minimis" but "not substantial" privacy

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

---

interest in names and addresses of water well owners and water transfer program participants).

[36] Nat'l Ass'n of Home Builders v. Norton, 309 F.3d 26, 35 (D.C. Cir. 2002); see, e.g., Consumers' Checkbook, 554 F.3d at 1050 ("If a substantial privacy interest is at stake, then we must balance the privacy interest in nondisclosure against the public interest."); Associated Press v. DOJ, 549 F.3d 62, 66 (2d Cir. 2008) (per curiam) ("Notwithstanding a document's private nature, FOIA may nevertheless require disclosure if the requester can show that revelation of the contents of the requested document would serve the public interest.") (Exemptions 6 and 7(C)); Scales v. EOUSA, 594 F. Supp. 2d 87, 90 (D.D.C. 2009) ("Given the significant individual privacy interest, disclosure of 7(C) material is warranted only when the individual's interest in privacy is outweighed by the public's interest in disclosure.") (Exemption 7(C)).

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

[38] See U.S. Dep't of State v. Wash. Post Co., 456 U.S. 595, 600 (1982) (determining that "[i]nformation such as place of birth, date of birth, date of marriage, employment history, and comparable data is not normally regarded as highly personal, and yet . . . such information . . . would be exempt from any disclosure that would constitute a clearly unwarranted invasion of personal privacy"); Broward Bulldog, Inc. v. DOJ, 939 F.3d 1164, 1188 (11th Cir. 2019) (upholding protection of names, addresses, and phone numbers because private citizens have privacy interests "in not being associated with a major terrorism investigation") (Exemption 7(C)); Henson v. HHS, 892 F.3d 868, 878 (7th Cir. 2018) (holding that Exemption 6 protected "medical information about the manufacturer's patients and the contact information for employees of the manufacturer and the agency"); Tereshchuk v. BOP, Dir., No. 14-5278, 2015 WL 4072055, at *1 (D.C. Cir. June 29, 2015) (holding that BOP properly withheld inmate names and register numbers in certain indexes); Yagman v. BOP, 605 F. App'x 666, 666-67 (9th Cir. 2015) (affirming district court's determination that withholding was proper as release of "the full name, prison number, and mailing address of every person in BOP custody" would constitute an invasion of inmates' privacy) (Exemptions 6 and 7(C)); Associated Press, 549 F.3d at 65 ("Personal information, including a citizen's name, address, and criminal history, has been found to implicate a privacy interest cognizable under the FOIA exemptions."); Moore v. USPS, No. 17-0773, 2018 WL 4903230, at *3 (N.D.N.Y. Oct. 9, 2018) ("The substantial privacy interest in employee medical records outweighs any public interest in the information."); Maryland v. VA, 130 F. Supp. 3d 342, 353 (D.D.C. 2015) (noting substantial privacy interest in identifying portions of email addresses of individuals whose applications for inclusion in

law enforcement agencies with reports of illegal conduct have well-recognized privacy interests, particularly when such persons reasonably fear reprisals for their assistance.[39]

Veteran small business database were rejected); Performance Coal Co. v. U.S. Dep't of Labor, 847 F. Supp. 2d 6, 17-18 (D.D.C. 2012) (concluding that defendants properly withheld "miners' names, cell phone numbers, and home phone numbers; inspectors' names and email addresses; inspectors' initials; MSHA employees' government issued cell phone numbers, home addresses, and home telephone numbers; third party home addresses, dates of birth, last four digits of social security numbers; and miners' job titles and ethnicities" contained in law enforcement records) (Exemption 7(C)); Strunk v. U.S. Dep't of State, 845 F. Supp. 2d 38, 45-46 (D.D.C. 2012) (concluding that defendant properly withheld "'unique characters constituting a terminal user ID which is generally assigned to a single person or system user'" and which could identify the agency employee who accessed the record (quoting agency declaration)); Advocs. for Highway & Auto Safety v. Fed. Highway Admin., 818 F. Supp. 2d 122, 128-29 (D.D.C. 2011) (noting that "the drivers have a privacy interest in their videotaped images from [a] study" to the extent that they reveal "personal details, captured up close and over a prolonged period of time, [which] are not generally available in the ordinary course of daily life"); Skinner v. DOJ, 806 F. Supp. 2d 105, 115 (D.D.C. 2011) (holding that agencies properly withheld names and identifying information related to law enforcement personnel and face of a third party) (Exemptions 6 and 7(C)); Mingo v. DOJ, 793 F. Supp. 2d 447, 456 (D.D.C. 2011) (privacy interest in videotapes of inmates and in medical records of inmates and staff) (Exemption 7(C)); Showing Animals Respect & Kindness v. U.S. Dep't of the Interior, 730 F. Supp. 2d 180, 197 (D.D.C. 2010) (concluding that, with respect to photographs, "[t]he fact that it may be obvious to Plaintiff whose faces or names are redacted . . . does not mean that the subjects of those redactions have no privacy interest in avoiding disclosure"); Nat'l Sec. News Serv. v. U.S. Dep't of the Navy, 584 F. Supp. 2d 94, 96 (D.D.C. 2008) ("Records . . . indicating that individuals sought medical treatment at a hospital are particularly sensitive."); People for the Am. Way Found. v. Nat'l Park Serv., 503 F. Supp. 2d 284, 304, 306 (D.D.C. 2007) (stating that "[f]ederal courts have previously recognized a privacy interest in a person's name and address," and concluding that "[g]enerally, there is a stronger case to be made for the applicability of Exemption 6 to phone numbers and addresses").

[39] See Wadhwa v. VA, 707 F. App'x 61, 63-64 (3d Cir. 2017) (noting agency properly withheld names and other identifying information of complainants and witnesses involved in adjudication of discrimination complaints); Moffat v. DOJ, 716 F.3d 244, 251 (1st Cir. 2013) (concluding that third-party informant names were properly withholdable) (Exemption 7(C)); McCutchen v. HHS, 30 F.3d 183, 189 (D.C. Cir. 1994) ("The complainants [alleging scientific misconduct] have a strong privacy interest in remaining anonymous because, as 'whistle-blowers,' they might face retaliation if their identities were revealed.") (internal citation omitted) (Exemption 7(C)); Holy Spirit Ass'n for Unification of World Christianity v. FBI, 683 F.2d 562, 564-65 (D.C. Cir. 1982) (MacKinnon, J., concurring) (recognizing that writers of letters to authorities describing "'bizarre' and possibly illegal activities . . . could reasonably have feared reprisals against themselves or their family members") (internal citation omitted) (Exemptions 6 and 7(C)); Rimmer v. Holder, No. 10-1106, 2011 WL 4431828, at *8 (M.D. Tenn. Sept. 22, 2011) (noting that "heightened privacy protections . . . are owed to . . . individuals who willingly provide potentially incriminating information to law enforcement") (Exemption 7(C)), aff'd, 700 F.3d 246 (6th Cir. 2012); Amuso v. DOJ, 600 F. Supp. 2d 78, 93 (D.D.C. 2009) ("Disclosure

Some courts have found that even absent any evidence of fear of reprisals, witnesses who provide information to investigative bodies – administrative and civil, as well as criminal – should be accorded privacy protection,[40] although at times courts have ruled

---

of the interviewee's identity could result in harassment, intimidation, or threats of reprisal or physical harm to the interviewee."); Clemmons v. U.S. Army Crime Recs. Ctr., No. 05-2353, 2007 WL 1020827, at *6 (D.D.C. Mar. 30, 2007) (stating that "there is a significant interest in maintaining the secrecy of the identity of witnesses and third party interviewees so that law enforcement can continue to gather information through these interviews while assuring that the interviewees will not be subject to harassment or reprisal") (Exemptions 6 and 7(C)); Balderrama v. DHS, No. 04-1617, 2006 WL 889778, at *9 (D.D.C. Mar. 30, 2006) ("[T]he individuals whose identities have been protected – witnesses, undercover officers, informants – maintain a substantial privacy interest in not being identified with law enforcement proceedings.") (Exemptions 6 and 7(C)); Forest Serv. Emps. for Env't. Ethics v. U.S. Forest Serv., No. 05-6015, 2005 WL 3488453, at *3 (D. Or. Dec. 21, 2005) (protecting identities of low-level and mid-level Forest Service employees who cooperated with accident investigation because "these employees could face harassment"), aff'd, 524 F.3d 1021 (9th Cir. 2008); McQueen v. United States, 264 F. Supp. 2d 502, 519-20 (S.D. Tex. 2003) (protecting names and identifying information of grand jury witnesses and other sources when suspect had made previous threats against witnesses) (Exemption 7(C)), aff'd, 100 F. App'x 964 (5th Cir. 2004) (per curiam).

[40] See, e.g., Sorin v. DOJ, 758 F. App'x 28, 33 (2d Cir. 2018) (noting significant privacy interest in "identities of potential witnesses in a criminal investigation – including their professional and educational histories and financial information – along with similar information about [others] not interviewed") (Exemption 7(C)); Perlman v. DOJ, 312 F.3d 100, 106 (2d Cir. 2002) (concluding that witnesses and third parties possess "strong privacy interests because being identified as part of a law enforcement investigation could subject them to 'embarrassment and harassment,' especially if 'the material in question demonstrates or suggests they had at one time been subject to criminal investigation'" (quoting Halpern v. FBI, 181 F.3d 279, 297 (2d Cir. 1999))) (Exemptions 6 and 7(C)), vacated & remanded, 541 U.S. 970, on remand, 380 F.3d 110 (2d Cir. 2004) (per curiam) (holding that conclusion initially reached in Perlman was correct); Citizens for Resp. & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 73 (D.D.C. 2012) (noting that "in particular, informants and witnesses[] have a significant interest in [files] contents not being disclosed") (Exemption 7(C)); Citizens for Resp. & Ethics in Wash. v. Nat'l Indian Gaming Comm'n, 467 F. Supp. 2d 40, 53 (D.D.C. 2006) ("The fact that an individual supplied information to assist [the National Indian Gaming Commission] in its investigations is exempt from disclosure under FOIA, regardless of the nature of the information supplied.") (Exemptions 6 and 7(C)); Brown v. EPA, 384 F. Supp. 2d 271, 278-80 (D.D.C. 2005) (protecting government employee-witnesses and informants because "[t]here are important principles at stake in the general rule that employees may come forward to law enforcement officials with allegations of government wrongdoing and not fear that their identities will be exposed through FOIA") (Exemption 7(C)); Wolk v. United States, No. 04-0832, 2005 WL 465382, at *5 n.7 (E.D. Pa. Feb. 28, 2005) (recognizing that "interviewees who participate in FBI background investigations have a substantial privacy interest") (Exemptions 6 and 7(C)).

otherwise.[41] (For a more detailed discussion of the privacy protection accorded such law enforcement sources, see Exemption 7(C)).

The FOIA permits agencies to withhold information only if they "reasonably [foresee] that disclosure would harm an interest protected by an exemption . . . or disclosure is prohibited by law . . . ."[42] Courts require agencies to establish the foreseeable harm when invoking the FOIA's privacy exemptions and have generally considered Exemption 6's inherent privacy harms as largely sufficient.[43] At least one court has recognized that agencies may not need to make a separate showing of harm in the Exemption 6 context when the harm is self-evident.[44]

Derivative Privacy Invasion

---

[41] See Cooper Cameron Corp. v. U.S. Dep't of Labor, 280 F.3d 539, 553-54 (5th Cir. 2002) (ordering disclosure of information that could link witnesses to their OSHA investigation statements because agency presented no evidence of "possibility of employer retaliation") (Exemption 7(C)); Fortson v. Harvey, 407 F. Supp. 2d 13, 17 (D.D.C. 2005) (deciding that witness statements compiled during an investigation of an equal employment opportunity complaint filed by the plaintiff must be released due to the following: the government previously released the names of persons who gave statements during the investigation; the agency offered only "pure speculation" of potential for harm to be caused by disclosure of the statements; and "witness statements made during a discrimination investigation are not the type of information that exemption 6 is designed to protect").

[42] 5 U.S.C. § 552 (a)(8)(A) (2018).

[43] Kendrick v. FBI, No. 20-2900, 2022 WL 4534627, at *6 (D.D.C. Sept. 28, 2022) (recognizing that "fulfilling the terms of exemptions outside Exemption 5 'goes a long way to meeting the foreseeable harm requirement'" and determining that DEA "says little but enough" (quoting Reporters Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d 97, 127 (D.D.C. 2021))); Kendrick v. DEA, No. 21-01624, 2022 WL 3681442, at *6 (D.D.C. Aug. 25, 2022) (same) (Exemption 7(C)); Louise Trauma Ctr. LLC v. DHS, No. 20-01128, 2022 WL 1081097, at *7 (D.D.C. Apr. 11, 2022) (holding that agency sufficiently demonstrated foreseeable harm in identifying experts who trained asylum officers because release could subject the experts to harassment for helping the agency); Reps. Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d 97, 127 (D.D.C. 2021) (acknowledging that agency's assertion that "disclosure of names would cause invasions of privacy for many CBP employees" would "likely be enough" but recognizing that the agency's "specific examples of harassment and threats" establish the harm).

[44] Amiri v. Nat'l Sci. Found., No. 20-02006, 2021 WL 4438910 (D.D.C. Sept. 28, 2021) (acknowledging that agency did not specifically address the foreseeable harm, but explaining that "a court may find the foreseeable-harm requirement satisfied if 'the very context and purpose of' the withheld material 'make[s] the foreseeability of harm manifest'") (quoting Reporters Comm. for Freedom of the Press v. FBI, 3 F.4th 350, 372 (D.C. Cir. 2021))), aff'd, No. 21-5241, 2022 WL 1279740 (D.C. Cir. Apr. 28, 2022).

Courts have found that an invasion of privacy need not occur immediately upon disclosure in order to be considered "clearly unwarranted."[45] As the D.C. Circuit has held, "[w]here there is a substantial probability that disclosure will cause an interference with personal privacy, it matters not that there may be two or three links in the causal chain."[46]

For instance, the Court of Appeals for the Tenth Circuit, in Forest Guardians v. FEMA,[47] decided that the release of "electronic mapping files" would invade the privacy interest of homeowners even though the invasion would occur only after "manipulat[ion] [of the square and lot numbers] to derive the addresses of policyholders and potential policyholders."[48]

---

[45] See Havemann v. Colvin, 537 F. App'x 142, 147-48 (4th Cir. 2013) (unpublished disposition) (affirming withholding of data regarding social security beneficiaries, noting that while agency cannot withhold information based on a speculative possibility of identification of specific beneficiaries, it could withhold data that does not inherently constitute a "unique identifier" where there is "a likelihood that releasing the information would connect private records to specific individuals"); Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 878 (D.C. Cir. 1989) ("In virtually every case in which a privacy concern is implicated, someone must take steps after the initial disclosure in order to bring about the untoward effect."); Inclusive Communities Project, Inc. v. HUD, No. 14-3333, 2016 WL 4800440, at *8-10 (N.D. Tex. Sept. 13, 2016) (noting that Court of Appeals for Fifth Circuit has not ruled on issue of derivative privacy interests but following other Circuits that have done so, and holding that Exemption 6 does not apply to certain data regarding HUD housing vouchers for low-income families because agency failed to show a "substantial probability" that such data could lead to identification of individual voucher recipients); Hudson v. Dep't of the Army, No. 86-1114, 1987 WL 46755, at *3 (D.D.C. Jan. 29, 1987) ("While [possible threats and harassment] may be characterized as a sort of 'secondary effect,' to give credence to the distinction [between the original invasion of privacy and its possible effects] is to honor form over substance.") (internal citation omitted), aff'd, 926 F.2d 1215 (D.C. Cir. 1991) (unpublished table decision).

[46] NARFE, 879 F.2d at 878; see also Telematch, Inc. v. USDA, 45 F.4th 343, 351-52 (D.C. Cir. 2022) (observing substantial probability that disclosure of customer numbers would interfere with personal privacy, even though records do not identify farm owners at issue, because the "match between customer numbers and farm owners is already a matter of public record in many cases"); cf. NARA v. Favish, 541 U.S. 157, 167-70 (2004) (specifically taking into account "the consequences" of FOIA disclosure, including "public exploitation" of the records by either the requester or others) (Exemption 7(C)).

[47] 410 F.3d 1214 (10th Cir. 2005).

[48] Id. at 1220-21 (finding that additional information, such as individual's decision to buy flood insurance, could be revealed through disclosure of requested files and thus could also invade privacy).

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

Government Correspondents

The majority of courts have upheld the withholding of the identities of individuals who write to the government expressing personal opinions or making complaints to an agency.[50] Nevertheless, in some circumstances, courts have declined to grant privacy

---

[49] See U.S. Dep't of State v. Ray, 502 U.S. 164, 179-82 (1991) (Scalia, J., concurring in part) (suggesting that "derivative" privacy harm should not be relied upon in evaluating privacy interests); Associated Press v. DOD, 410 F. Supp. 2d 147, 151 (S.D.N.Y. 2006) (suggesting that "derivative" harms might not be cognizable under Exemption 6, based on Justice Scalia's concurring opinion in Ray); Forest Guardians v. U.S. Dep't of the Interior, No. 02-1003, 2004 WL 3426434, at *16-17 (D.N.M. Feb. 28, 2004) (deciding that agency did not meet its burden of establishing that names of financial institutions and amounts of individual loans in lienholder agreements could be used to trace individual permittees); Dayton Newspapers, Inc. v. VA, 257 F. Supp. 2d 988, 1001-05 (S.D. Ohio 2003) (rejecting argument based upon agency's concern that names of judges and attorneys could be used to search through databases to identify claimants and thereby invade privacy of claimants).

[50] See, e.g., Perioperative Servs. & Logistics LLC v. VA, 57 F.4th 1061, 1067-69 (D.C. Cir. 2023) ("[T]he person who filed the complaint . . . has a substantial privacy interest in maintaining in confidence the fact that he or she accused the company of wrongdoing and in avoiding unwanted contact by it."); Prudential Locations LLC v. HUD, 739 F.3d 424, 432 (9th Cir. 2013) (determining that "in light of the repeated public pronouncements of HUD's confidentiality policy," individuals who wrote to HUD alleging violations of federal statute had "cognizable privacy interest"); Jud. Watch, Inc. v. United States, 84 F. App'x 335, 337 (4th Cir. 2004) (protecting the names and addresses of people who wrote to the IRS expressing concerns about an organization's tax-exempt status) (Exemption 7(C)); Lakin L. Firm, P.C. v. FTC, 352 F.3d 1122, 1125 (7th Cir. 2003) (determining that the "core purpose" of the FOIA would not be served by the release of names and addresses of persons who complained to FTC about "cramming"); Strout v. U.S. Parole Comm'n, 40 F.3d 136, 139 (6th Cir. 1994) (articulating public policy against disclosure of names and addresses of people who write Parole Commission opposing convict's parole); Carter, Fullerton & Hayes LLC v. FTC, 520 F. Supp. 2d 134, 145 n.4 (D.D.C. 2007) ("Consumers making complaints with the FTC have an expectation that it will protect their personal information."); Gordon v. FBI, 388 F. Supp. 2d 1028, 1041-42, 1045 (N.D. Cal. 2005) (holding names of persons who complained to TSA and FBI about TSA "watch list" were properly protected, as long as those individuals had not otherwise made their complaints public) (Exemptions 6 and 7(C)); Kidd v. DOJ, 362 F. Supp. 2d 291, 297 (D.D.C. 2005) (protecting names and addresses of constituents in letters written to their congressman); Jud. Watch, Inc. v. Rossotti, 285 F. Supp. 2d 17, 28 (D.D.C. 2003) (protecting names and addresses of people who wrote to the IRS to comment on organization's tax-exempt status, both pro and con, under Exemption 7(C)); Holy Spirit Ass'n for Unification of World Christianity, Inc. v. U.S. Dep't of State, 526 F. Supp. 1022, 1032-34 (S.D.N.Y. 1981) (finding that "strong public interest in encouraging citizens to communicate their concerns regarding their communities" is fostered by protecting identities of writers).

protection to government correspondents, particularly where disclosure could shed light on the extent to which correspondents are influencing public policy.[51]

As to FOIA requesters, the District Court for the District of Columbia has held that Exemption 6 does not justify a "blanket withholding" of the names and organizational affiliations of FOIA requesters but noted that the agency may be able to justify the redactions in individual cases.[52]

---

[51] See N.Y. Times Co. v. FCC, 457 F. Supp. 3d 266, 274 (S.D.N.Y. 2020) (acknowledging that "[c]ommenters [regarding a proposed FCC rulemaking] arguably consented to the release of their IP addresses and other device-specific information, even though they may not have realized that the information was being divulged"); Prechtel v. FCC, 330 F. Supp. 3d 320, 329-34 (D.D.C. 2018) (ordering disclosure of .csv files used to submit public comments by large numbers of submitters, including email addresses of bulk submitters and individual commenters, given substantiated allegations of widespread fraudulent comment submissions concerning proposed regulation to repeal "net neutrality" rules); Edelman v. SEC, 239 F. Supp. 3d 45, 55-56 (D.D.C. 2017) (finding valid public interest in names of Empire State Building investors who filed complaints to oppose SEC's approval of real estate investment trust for that building, because such information would provide insight into which complainants views were given greater weight by SEC, and whether those complaints were based on proper or improper factors); People for the Am. Way Found. v. Nat'l Park Serv., 503 F. Supp. 2d 284, 288, 306 (D.D.C. 2007) ("Disclosing the mere identity of individuals who voluntarily submitted comments regarding the Lincoln video does not raise the kind of privacy concerns protected by Exemption 6 . . . . Moreover, the public interest in knowing who may be exerting influence on [agency] officials sufficient to convince them to change the video [for public viewing at Lincoln Memorial] outweighs any privacy interest in one's name."); Lardner v. DOJ, No. 03-0180, 2005 WL 758267, at *17, *19 (D.D.C. Mar. 31, 2005) (requiring release of identities of unsuccessful pardon applicants, as well as individuals mentioned in pardon documents, because they wrote letters in support of pardon applications or were listed as character references on pardon applications) (Exemptions 6 and 7(C)); Landmark Legal Found. v. IRS, 87 F. Supp. 2d 21, 27-28 (D.D.C. 2000) (granting Exemption 3 protection under 26 U.S.C. § 6103, but declining to grant Exemption 6 protection to citizens who wrote to IRS to express opinions or provide information; noting that "IRS has suggested no reason why existing laws are insufficient to deter any criminal or tortious conduct targeted at persons who would be identified"), aff'd on Exemption 3 grounds, 267 F.3d 1132 (D.C. Cir. 2001).

[52] See Kwoka v. IRS, No. 17-1157, 2018 WL 4681000, at *3 n.3 (D.D.C. Sept. 28, 2018) (noting "due to the vague topic descriptions in the publicly accessible log, adding the topic does not add much at all to the privacy interests at stake – and where the topic is more specific, the IRS can make case-by-case redactions if necessary"); see also Silets v. DOJ, 945 F.2d 227, 230 (7th Cir. 1991) (en banc) (protecting name of high school student who requested information about wiretaps on Jimmy Hoffa) (Exemption 7(C)); Hammond v. DOD, No. 16-421, 2021 WL 6049886, at *9 (D.D.C. Dec. 21, 2021) (concluding that agency properly withheld names of requesters seeking access to their own medical records because such records constitute "private details about an individual's medical care" and there is no legitimate public interest in names of particular requesters in this context). But see Agee v.

Federal Employees

Civilian federal employees who are not involved in law enforcement or sensitive occupations generally have no expectation of privacy regarding their names, titles, grades, salaries, and duty stations as employees[53] or regarding the parts of their successful employment applications that show their qualifications for their positions.[54] Courts have reached different conclusions as to whether work contact information for federal

---

CIA, 1 Gov't Disclosure Serv. (P-H) 80,213 at 80,532 (D.D.C. Jul. 23, 1980) (holding that "FOIA requesters . . . have no general expectation that their names will be kept private").

[53] See OPM Regulation, 5 C.F.R. § 293.311 (2023) (specifying that certain information contained in federal employee personnel files is generally available to public); see also Fed. Lab. Rels. Auth. v. U.S. Dep't of Com., 962 F.2d 1055, 1059-61 (D.C. Cir. 1992) (noting that performance awards "have traditionally been subject to disclosure"); Core v. USPS, 730 F.2d 946, 948 (4th Cir. 1984) (discerning no substantial invasion of privacy in information identifying successful federal job applicants); Leadership Conf. on C.R. v. Gonzales, 404 F. Supp. 2d 246, 257 (D.D.C. 2005) (noting that Justice Department paralegals' names and work numbers "are already publicly available from [OPM]"); Laws. Comm. for Hum. Rts. v. INS, 721 F. Supp. 552, 569 (S.D.N.Y. 1989) (stating that "disclosure [of names of State Department's officers and staff members involved in highly publicized case] merely establishes State [Department] employees' professional relationships or associates these employees with agency business"); Nat'l W. Life Ins. Co. v. United States, 512 F. Supp. 454, 461 (N.D. Tex. 1980) (discerning no expectation of privacy in names and duty stations of Postal Service employees); FOIA Update, Vol. III, No. 4 ("OIP Guidance: Privacy Protection Considerations") (discussing extent to which privacy of federal employees can be protected); cf. Tomscha v. GSA, 158 F. App'x 329, 331 (2d Cir. 2005) (agreeing with the district court's determination that "the release of the justifications for [low-ranking GSA employee's] awards would constitute more than a de minimis invasion of privacy, as they necessarily include personal, albeit positive, information regarding his job performance").

[54] See Protect Our Defs. v. DOD, 401 F. Supp. 3d 259, 287 (D. Conn. 2019) (holding that disclosure of Staff Judge Advocates' legal credentials and professional history, but not identities, was warranted as that information is related to job function); Knittel v. IRS, No. 07-1213, 2009 WL 2163619, at *6 (W.D. Tenn. July 20, 2009) (holding that agency is incorrect in its assertion that it is only required to disclose information about employees specifically listed in OPM's regulation, as categories mentioned there are "not meant to be exhaustive"); Cowdery, Ecker & Murphy, LLC v. U.S. Dep't of the Interior, 511 F. Supp. 2d 215, 219 (D. Conn. 2007) ("Because [E]xemption 6 seeks to protect government employees from unwarranted invasions of privacy, it makes sense that FOIA should protect an employee's personal information[] but not information related to job function."); Barvick v. Cisneros, 941 F. Supp. 1015, 1020 n.4 (D. Kan. 1996) (noting that agency "released information pertaining to the successful candidates' educational and professional qualifications, including letters of commendation and awards, as well as their prior work history, including federal positions, grades, salaries, and duty stations"); Associated Gen. Contractors v. EPA, 488 F. Supp. 861, 863 (D. Nev. 1980) (discussing education, former employment, academic achievements, and employee qualifications).

employees should be protected.[55] Notably, some courts have supported the withholding of certain federal employee email addresses,[56] and in doing so, one court observed that, "'[t]he privacy interest of civilian federal employees includes the right to control information related to themselves and to avoid disclosures that could conceivably subject

---

[55] Compare Mullane v. DOJ, No. 19-12379, 2021 WL 1080249, at *11 (D. Mass. Mar. 19, 2021) (protecting direct emails and telephone and fax numbers of government employees), and Bernegger v. EOUSA, 334 F. Supp. 3d 74, 89 (D.D.C. 2018) (determining names, addresses, and telephone numbers of AUSAs, legal assistants, law enforcement officers, and other personally identifiable information related to witness or nonparty individuals to be properly withholdable as "there [was] reason to believe" that plaintiff would harass or retaliate against those individuals) (Exemptions 6 and 7(C)), and Shurtleff v. EPA, 991 F. Supp. 2d 1, 18-19 (D.D.C. 2013) (protecting work email addresses of EPA Administrator and Executive Office of the President personnel due to significant privacy interest of such individuals in avoiding harassment and unsolicited email), with Sai v. TSA, 315 F. Supp. 3d 218, 262 (D.D.C. 2018) (finding defendant did not meet its burden of showing substantial privacy interest in contact information withheld pursuant to Exemption 6 because defendant "offered little more than conclusory assertions applicable to each redaction, without regard to the position held by the relevant employee, the role played by that employee, the substance of the underlying agency action, or the nature of the agency record at issue"), and Kleinert v. BLM, 132 F. Supp. 3d 79, 96 (D.D.C. 2015) (finding that defendant did not meet its burden to support use of Exemption 6 to withhold email addresses because "'[t]he disclosure of names and addresses is not inherently and always a significant threat to the privacy of those listed; whether it is a significant or a de minimis threat depends upon the characteristic(s) revealed . . . and the consequences likely to ensue'" (quoting Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 877 (D.C. Cir. 1989))). See also Pinson v. DOJ, 313 F. Supp. 3d 88, 112 (D.D.C. 2018) (observing that courts have come to differing conclusions regarding protection of work telephone numbers and email addresses of federal employees and holding that such information is withholdable).

[56] See, e.g., Energy Pol'y Advocs. v. U.S. Dep't of the Interior, No. 21-1411, 2023 WL 2585761, at *6 (D.D.C. Mar. 21, 2023) ("Because any public interest in publishing the relevant email addresses and phone numbers – assuming such an interest even exists – does not outweigh the privacy interest in preventing unwanted attention and harassment, the Court will grant Interior summary judgment on its Exemption 6 withholdings."); Citizens for Resp. & Ethics in Wash. v. U.S. Dep't of State, Nos. 19-1344 & 19-2125, 2022 WL 1801054, at *13 (D.D.C. June 2, 2022) (protecting username portion of former Secretary's email address when Department disclosed associated email domain and agency represented that disclosure of username would subject former Secretary to unsolicited or harassing inquiries); Jordan v. DOJ, No. 17-2702, 2021 WL 4033070, at *9 (D.D.C. Sept. 3, 2021) (noting that "while an agency employee does not always have a strong privacy interest in information like his name or professional contact information," "the agency does not need to disclose an individual's contact information if doing so would reveal that person's identity and make them a target for harassment" and holding that agency employee contact information was withholdable because plaintiff had a history of sending harassing emails to government employees).

them to annoyance or harassment in either their official or private lives.'"[57] (For cases addressing email domains, see Exemption 6, Threshold: Personnel, Medical and Similar Files, above.)

Federal employees also have a protectable privacy interest in purely personal details that do not shed light on agency functions.[58] Indeed, courts generally have

---

[57] Cause of Action Inst. v. Exp.-Imp. Bank of the U.S., 521 F. Supp. 3d 64, 94 (D.D.C. 2021) (holding that email addresses of high-ranking personnel from the Executive Office of the President were properly withheld (quoting Elec. Privacy Info. Ctr. v. DHS, 384 F. Supp. 2d 100, 116 (D.D.C. 2005))); cf. Matthews v. USPS, No. 92-1208, 1994 U.S. Dist. LEXIS 21916, at *6 (W.D. Mo. Apr. 15, 1994) (holding that suggestions submitted to Employee Suggestion Program are withholdable and noting that employees who made the suggestions "may be embarrassed by their disclosure").

[58] See, e.g., DOD v. Fed. Lab. Rels. Auth., 510 U.S. 487, 500 (1994) (protecting federal employees' home addresses); Energy Pol'y Advocs. v. U.S. Dep't of the Interior, No. 21-1411, 2023 WL 2585761, at *5 (D.D.C. Mar. 21, 2023) (observing "strong privacy interest in keeping federal employees' personal email addresses private" and determining that agency's practice of inserting names over redacted personal email addresses is "more than sufficient to determine whether an employee copies their personal email address"); Hunton & Williams LLP v. EPA, 346 F. Supp. 3d 61, 85-86 (D.D.C. 2018) (holding that agency properly withheld number of vacation hours two employees intended to take and information concerning health of EPA employee); Sai v. TSA, 315 F. Supp. 3d 218, 262 (D.D.C. 2018) (protecting "personal information" regarding two TSA employees for which there was no public interest in disclosure) (Exemptions 6 and 7(C)); Pub. Emps. for Env't. Resp. v. U.S. Sec. Int'l Boundary & Water Comm'n, 839 F. Supp. 2d 304, 323-24 (D.D.C. 2012) (protecting private contact information of emergency personnel whose names appear in emergency action plans), aff'd in part & vacated in part on other grounds, 740 F.3d 195 (D.C. Cir. 2014); Morales v. Pension Benefit Guar. Corp., No. 10-1167, 2012 U.S. Dist. LEXIS 9101, at *12 (D. Md. Jan. 26, 2012) (protecting handwritten Flex Time Sheets on which employees sign in and out of work); Wilson v. U.S. Air Force, No. 08-0324, 2009 WL 4782120, at *4 (E.D. Ky. Dec. 9, 2009) (holding that signatures, personal phone numbers, personal email addresses, and government employee email addresses were properly redacted); Kidd v. DOJ, 362 F. Supp. 2d 291, 296-97 (D.D.C. 2005) (determining agency decision to withhold an employee's home telephone number was proper); Barvick, 941 F. Supp. at 1020-21 (recognizing a significant privacy interest in personal information such as home addresses and telephone numbers, social security numbers, dates of birth, insurance and retirement information, reasons for leaving prior employment, and performance appraisals); cf. Cook v. NARA, 758 F.3d 168, 176-77 (2d Cir. 2014) (rejecting request for records about NARA access requests by former President and Vice President, noting that former federal officials have significant privacy interest in "developing their ideas [regarding the personal details of their transition to private life after their years of public service] privately, free from unwanted public scrutiny"). But cf. Wash. Post Co. v. HHS, 690 F.2d 252, 258-65 (D.C. Cir. 1982) (holding personal financial information required for appointment as HHS scientific consultant not exempt when balanced against need for oversight of awarding of government grants).

recognized the sensitivity of information contained in personnel-related files and have accorded protection to the personal details of a federal employee's service.[59]

Generally, federal employees have a privacy interest in their job performance evaluations.[60] Even "favorable information," such as details of an employee's outstanding performance evaluation, can be protected on the basis that it "may well embarrass an individual or incite jealousy" among co-workers.[61] Moreover, release of such information

---

[59] See, e.g., Ripskis v. HUD, 746 F.2d 1, 3-4 (D.C. Cir. 1984) (protecting names and identifying data contained on evaluation forms of HUD employees who received outstanding performance ratings); Wilson v. DOT, 730 F. Supp. 2d 140, 156 (D.D.C. 2010) (concluding that "[b]ecause [Equal Employment Opportunity ("EEO")] charges often concern matters of a sensitive nature, an EEO complainant has a significant privacy interest"), aff'd, No. 10-5295, 2010 WL 5479580 (D.C. Cir. Dec. 30, 2010); Warren v. SSA, No. 98-0116E, 2000 WL 1209383, at *4 (W.D.N.Y. Aug. 22, 2000) (withholding award nomination forms for specific employees), aff'd in pertinent part & remanded, 10 F. App'x 20 (2d Cir. 2001); Putnam v. DOJ, 873 F. Supp. 705, 712-13 (D.D.C. 1995) (withholding names of FBI employees mentioned in "circumstances outside of their official duties," such as attending training classes and as job applicants); Ferri v. DOJ, 573 F. Supp. 852, 862-63 (W.D. Pa. 1983) (withholding FBI background investigation of Assistant U.S. Attorney); Dubin v. U.S. Dep't of the Treasury, 555 F. Supp. 408, 412 (N.D. Ga. 1981) (withholding studies of supervisors' performance and recommendations for performance awards), aff'd, 697 F.2d 1093 (11th Cir. 1983) (unpublished table decision); see also Fed. Lab. Rels. Auth. v. U.S. Dep't of Com., 962 F.2d 1055, 1060 (D.C. Cir. 1992) (distinguishing personnel "ratings," which traditionally have not been disclosed, from "performance awards," which ordinarily are disclosed).

[60] See, e.g., Smith v. U.S. Dep't of Labor, 798 F. Supp. 2d 274, 283-85 (D.D.C. 2011) (affirming agency's redaction of personal and job-performance information); People for the Ethical Treatment of Animals v. USDA, No. 06-0930, 2007 WL 1720136, at *4 (D.D.C. June 11, 2007) ("'[A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures.'" (quoting Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984))) (Exemption 7(C)); see also Bonilla v. DOJ, 798 F. Supp. 2d 1325, 1332 (S.D. Fla. 2011) (recognizing a privacy interest in reference letters revealing "colleagues' personal opinions of [an AUSA] as a person and as a prosecutor"); Long v. OPM, No. 05-1522, 2010 WL 681321, at *18 (N.D.N.Y. Feb. 23, 2010) (concluding that "employees' interest in keeping performance based awards, or the lack thereof, private outweighs any public interest in disclosure of this information"). But cf. Hardy v. DOD, No. 99-0523, 2001 WL 34354945, at *9 (D. Ariz. Aug. 27, 2001) (recognizing only a minimal privacy interest in the performance ratings and evaluations for two high-level DOJ employees considering the rank of both officials and that "any issue of jealousy among coworkers [was] diminished" because the component Director had retired).

[61] Ripskis, 746 F.2d at 3; see Hardison v. Sec'y of VA, 159 F. App'x 93, 93 (11th Cir. 2005) (unpublished disposition) (withholding performance appraisals); Fed. Lab. Rels. Auth. v. U.S. Dep't of Com., 962 F.2d at 1059-61 (withholding performance appraisals); Lewis v. EPA, No. 06-2660, 2006 WL 3227787, at *6 (E.D. Pa. Nov. 3, 2006) (withholding employee or candidate rankings and evaluations); Vunder v. Potter, No. 05-0142, 2006 WL 162985, at

"reveals by omission the identities of those employees who did not receive high ratings, creating an invasion of their privacy."[62] Employees may also retain a privacy interest in employment-related misconduct[63] and mistakes,[64] although the rank of the federal employee is a factor to consider when analyzing the FOIA public interest in disclosure.[65] (See further discussion of this point under FOIA Public Interest, below.)

---

*2-3 (D. Utah Jan. 20, 2006) (withholding narrative of accomplishments submitted to superiors for consideration in performance evaluation); Tomscha v. Giorgianni, No. 03-6755, 2004 WL 1234043, at *4 (S.D.NY. June 3, 2004) ("Both favorable and unfavorable assessments trigger a privacy interest."), aff'd, 158 F. App'x 329, 331 (2d Cir. 2005) ("[W]e agree with the district court's determination that the release of the justifications for [plaintiff's] awards would constitute more than a de minimis invasion of privacy, as they necessarily include personal, albeit positive, information regarding his job performance.").

[62] Fed. Lab. Rels. Auth. v. U.S. Dep't of Com., 962 F.2d at 1059.

[63] See, e.g., Bloomgarden v. NARA, 798 F. App'x 674, 676 (D.C. Cir. 2020) (unpublished disposition) (upholding protection of letter detailing Assistant U.S. Attorney's "'garden-variety incompetence and insubordination' from 'many years ago,'" but discerning no privacy interest in AUSA's response, which did not discuss grounds for removal (citing previous court opinion)); Scott v. Treas. Insp. Gen. for Tax. Admin., 787 F. App'x 642, 644 (11th Cir. 2019) (recognizing significant privacy interest in specifics of alleged misconduct as release "would draw significant speculation, stigma, and embarrassment, as well as practical disabilities such as loss of employment independent of the ultimate resolution"); Sensor Sys. Support, Inc. v. FAA, 851 F. Supp. 2d 321, 333 (D.N.H. 2012) (noting that "[a]lthough a government employee investigated for performance-related misconduct 'generally possesses a diminished privacy interest' in comparison to private individuals, 'an internal criminal investigation would not invariably trigger FOIA disclosure of the identity of a targeted government employee'" (quoting Providence J. Co. v. U.S. Dep't of Army, 981 F.2d 552, 568 (1st Cir. 1992))) (Exemptions 6 and 7(C)); Steese, Evans & Frankel, P.C. v. SEC, No. 10-1071, 2010 WL 5072011, at *8 (D. Colo. Dec. 7, 2010) (recognizing "overwhelming" privacy interests in employees' identities where the "public was informed that employees were found to have spent hours at work viewing sexually explicit sites;" holding that disclosure could be the source of "'severe personal and professional harm including embarrassment and disgrace'" (quoting agency declaration)).

[64] See, e.g., Am. Small Bus. League v. U.S. Dep't of the Interior, No. 11-1880, 2011 U.S. Dist. LEXIS 114752, at *12 (N.D. Cal. Oct. 5, 2011) (determining that "invasion of [employees'] privacy is not warranted" because employees were "mere contracting officers [who] made data entry mistakes").

[65] See, e.g., Buzzfeed Inc. v. DOJ, No. 22-1812, 2023 WL 4246103, at *2-3 (2d Cir. 2023) (recognizing that retired official's high rank while employed with federal agency was factor that weighed in favor of disclosure but ultimately upholding protection of official's identity) (Exemption 7(C)); Stern v. FBI, 737 F.2d 84, 94 (D.C. Cir. 1984) (finding employees' level of seniority to be relevant to public interest in disclosure) (Exemption 7(C)); DBW Partners, LLC v. USPS, No. 18-3127, 2019 WL 5549623, at *5 (D.D.C. Oct. 28, 2019) ("There is a significant public interest in how [the Chief Customer and Marketing Officer] carried out his duties. The records requested by the Capitol Forum would shed light on how the USPS

Further, the identities of employees who provide information to investigators are generally protected.[66] In addition, the identities of persons who apply but are not selected for federal government employment may be protected.[67]

Federal employees involved in law enforcement, particularly those in non-senior positions, as well as military personnel and employees in sensitive occupations, do possess, by virtue of the nature of their work, substantial privacy interests in their

---

responds when a high-ranking official interacts . . . with leadership of a private corporation that does business with the government."); Ctr. for Pub. Integrity v. DOE, 234 F. Supp. 3d 65, 80 (D.D.C. 2017) (noting that "the public interest varies depending on the individual government employee involved in the wrongdoing and therefore the agency must make an individualized assessment of the public interest as to each employee," and observing that one of the factors courts must consider in weighing the public interest is the seniority of the employee) (Exemptions 6 and 7(C)).

[66] See, e.g., Corbett v. TSA, 568 F. App'x 690, 702-05 (11th Cir. 2014) (unpublished disposition) (protecting names and faces of TSA employees and Sheriff's Office employee who provided information or otherwise assisted with investigation of uncooperative airport traveler); Wash. Post Co. v. Special Inspector Gen. for Afghanistan Reconstruction, No. 18-2622, 2021 WL 4502106, at *15 (D.D.C. Sept. 30, 2021) (determining that low-level employees who spoke on the record regarding a certain program did not surrender their privacy interests when most individuals requested that information not be attributed to them without their permission) (Exemption 7(C)); McCann v. HHS, 828 F. Supp. 2d 317, 322-23 (D.D.C. 2011) (holding that assertion of Exemption 6 to protect identities of "individuals who provided information to an investigator who was conducting an investigation into Plaintiff's HIPAA complaint" was appropriate, and disclosure "could reasonably be expected to cause potential harassment or misuse of the [witness'] information"); Am. Small Bus. League, 2011 U.S. Dist. LEXIS 114752, at *10 (holding that agency properly withheld contracting officer and employee names and contact information in Office of the Inspector General workpapers).

[67] See, e.g., Core v. USPS, 730 F.2d 946, 948-49 (4th Cir. 1984) (protecting identities and qualifications of unsuccessful applicants for federal employment); Neary v. FDIC, 104 F. Supp. 3d 52, 60 (D.D.C. 2015) ("[D]efendant properly withheld the requested job applicant records under FOIA exemption 6[.]"); Jud. Watch, Inc. v. U.S. Dep't of Com., 337 F. Supp. 2d 146, 177 (D.D.C. 2004) (holding that résumé of individual interested in project that never "got out of its embryonic stages" was properly withheld); Warren v. SSA, No. 98-0116E, 2000 WL 1209383, at *4 (W.D.N.Y. Aug. 22, 2000) (protecting identities of unsuccessful job applicants), aff'd in pertinent part & remanded on other grounds, 10 F. App'x 20 (2d Cir. 2001); Jud. Watch, Inc. v. Comm'n on U.S.-Pac. Trade & Inv. Pol'y, No. 97-0099, 1999 WL 33944413, at *11-12 (D.D.C. Sept. 30, 1999) (protecting identities of individuals considered for but not appointed to Commission); Barvick v. Cisneros, 941 F. Supp. 1015, 1020-22 (D. Kan. 1996) (protecting all information about unsuccessful federal job applicants because any information about members of "select group" that applies for such jobs could identify them).

identities, contact information, and work addresses.[68] Additionally, the identities of federal employees may be withheld when personnel are working on sensitive matters or

---

[68] See Pronin v. BOP, No. 20-5077, 2021 WL 6102460, at *1 (D.C. Cir. Dec. 21, 2021) (per curiam) ("[T]he district court correctly concluded that the agency properly relied on Exemption 6 . . . to withhold lists of staff at three [Bureau of Prisons] facilities."); Baker v. FBI, 863 F.3d 682, 684 (7th Cir. 2017) (protecting names of FBI agents involved in criminal investigation) (Exemptions 6 and 7(C)); Solers, Inc. v. IRS, 827 F.3d 323, 332-33 (4th Cir. 2016) (holding that IRS employees and other government employees have substantial privacy interests in withholding their names in connection with particular investigations due to potential for harassment or embarrassment) (Exemptions 6 and 7(C)); Long v. OPM, 692 F.3d 185, 194 (2d Cir. 2012) (holding that OPM properly withheld both names and duty-station information for over 800,000 federal employees in five sensitive agencies and twenty-four sensitive occupations, including, inter alia, correctional officer, U.S. Marshal, nuclear materials courier, internal revenue agent, game law enforcement, immigration inspection, customs and border interdiction, and border protection); Lahr v. NTSB, 569 F.3d 964, 977 (9th Cir. 2009) (reversing district court and holding that FBI agents have cognizable privacy interest in withholding their names because release of FBI agents' identity would most likely subject agents "to unwanted contact by the media and others, including [plaintiff], who are skeptical of the government's conclusion" in investigation of crash of TWA Flight 800) (Exemption 7(C)); Wood v. FBI, 432 F.3d 78, 87-89 (2d Cir. 2005) (protecting investigative personnel of FBI's Office of Professional Responsibility); Jud. Watch, Inc. v. United States, 84 F. App'x 335, 338-39 (4th Cir. 2004) (protecting names of lower-level clerical workers at IRS); New England Apple Council v. Donovan, 725 F.2d 139, 142-44 (1st Cir. 1984) (protecting identities of nonsupervisory Inspector General investigators who participated in grand jury investigation of requester) (Exemption 7(C)); Moore v. CIA, No. 20-1027, 2022 WL 2983419, at *10-11 (D.D.C. July 28, 2022) (protecting names and contact information of working-level CIA personnel); Reps. Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d 97, 125 (D.D.C. 2021) (determining that agency, which disclosed names of DHS and CBP senior leadership, properly withheld names and contact information of almost all other non-public facing employees) (Exemption 7(C)); Hawkinson v. ICE, 554 F. Supp. 3d 253, 274 (D. Mass. 2021) ("Courts have recognized that ICE attorneys have a privacy interest in not having their names and e-mail addresses revealed.") (Exemption 7(C)); Smith v. U.S. Dep't of Treasury, No. 17-1796, 2020 WL 376641, at *4 (D.D.C. Jan. 23, 2020) (upholding redaction of "names of a limited group of non-senior employees: those who work in offices that perform national security and law enforcement functions, IRS employees who are part of a pseudonym program to protect employees' personal safety, and IRS employees who work in 'sensitive' positions (as defined by OPM)") (internal citation omitted); Milbrand v. U.S. Dep't of Labor, No. 17-13237, 2018 WL 3770053, at *3 (E.D. Mich. Aug. 9, 2018) (holding that identities of OSHA employees who inspect workplaces and investigate health and safety complaints should be protected because they conduct sensitive law enforcement activities); Waterman v. IRS, 288 F. Supp. 3d 206, 211 (D.D.C. 2018) (holding that work telephone numbers and email addresses of IRS employees could be withheld because such information sheds little light on agency activities and release could cause harassment or threats of employees); Lewis v. DOJ, 867 F. Supp. 2d 1, 21 (D.D.C. 2011) (observing that although "[a] government employee's privacy interest may be diminished by virtue of his government service, . . . he retains an interest nonetheless") (Exemptions 6 and 7(C)); Banks v. DOJ, 813 F. Supp. 2d 132, 142 (D.D.C. 2011) (determining that agency properly redacted law enforcement personnel's names and

release would subject them to harassment or harm.[69] In light of this privacy interest, the Department of Defense regularly withholds personally identifying information about all military and civilian employees with respect to whom disclosure would "raise security or privacy concerns."[70] For law enforcement personnel in particular, these privacy interests

---

telephone numbers "from a list of newspapers") (Exemptions 6 and 7(C)); Moore v. Bush, 601 F. Supp. 2d 6, 14 (D.D.C. 2009) (protecting the name and phone number of an FBI support employee and the name of a Special Agent because release "could subject the Agent and the employee to harassment") (Exemptions 6 and 7(C)); cf. ACLU v. CIA, No. 16-1256, 2021 WL 5505448, at *4-5, 8 (D.D.C. Nov. 24, 2021) (holding that while CIA employee names were withholdable under Exemptions 1 and 3, "CIA has failed to meet its burden to justify withholding the names pursuant to Exemption 6" because the agency did not explain "why disclosing the list of CIA employees' names could subject them to harassment nor who would harass them").

[69] See Civ. Beat L. Ctr. for the Pub. Int., Inc. v. CDC, 929 F.3d 1079, 1092 (9th Cir. 2019) (upholding protection of identities and contact information of CDC employees involved in inspection of dangerous biotoxins, despite availability of their names in public directory, because they have knowledge of security measures and could face harassment or threats); Jud. Watch, Inc. v. FDA, 449 F.3d 141, 153 (D.C. Cir. 2006) (holding that HHS employees named in records concerning abortion drug testing of mifepristone (also referred to as Mifeprex or RU-486) were properly protected pursuant to Exemption 6 to ensure employees' safety); Reps. Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d at 125 ("[I]ndividuals associated with an unpopular agency action might be subject to public scrutiny and perhaps harassment.") (Exemption 7(C)); Seife v. U.S. Dep't of State, 366 F. Supp. 3d 592, 610-11 (S.D.N.Y. 2019) (agreeing with agency that disclosure of the names of three Department of State briefers could impact their personal safety); Pubien v. EOUSA, No. 18-0172, 2018 WL 5923917, at *5 (D.D.C. Nov. 13, 2018) (protecting identities of individuals working at District Court and U.S. Attorney's Office in memorandum with grand jury information to protect personnel from harassment or harm).

[70] Department of Defense Director for Administration and Management Memorandum for DOD FOIA Offices 1-2 (Nov. 9, 2001) (noting that, by contrast, certain personnel's names can be released due to "the nature of their positions and duties," including public affairs officers and flag officers); see also Long, 692 F.3d at 192 (holding that federal employees in sensitive agencies and occupations "have a cognizable privacy interest in keeping their names from being disclosed wholesale"); Seife v. U.S. Dep't of State, 298 F. Supp. 3d 592, 628 (S.D.N.Y. 2018) (determining privacy interest in DOD names to be stronger than public interest in disclosure for DOD personnel holding military rank of Colonel or below, or holding General Schedule rank of GS-15 or below); Am. Mgmt. Servs., LLC v. Dep't of the Army, 842 F. Supp. 2d 859, 864 n.4 (E.D. Va. 2012) (holding that DOD employees have a "substantial privacy interest" in their names and contact information); Schoenman v. FBI, 575 F. Supp. 2d 136, 160 (D.D.C. 2008) (stating that "since the attacks, as a matter of official policy, the DoD carefully considers and limits the release of all names and other personal information concerning military and civilian personnel, based on a conclusion that they are at increased risk regardless of their duties or assignment to such a unit"); Hiken v. DOD, 521 F. Supp. 2d 1047, 1065 (N.D. Cal. 2007) (upholding redactions of names of military personnel because "defendants present a strong argument that the privacy interests at stake are significant where the disclosure of these names would risk harm or retaliation"); L.A.

are generally protected under Exemption 7(C) when their personally identifying information is located in a law enforcement record.[71] (For a more detailed discussion of the privacy protection accorded law enforcement personnel, see Exemption 7(C).)

Information in the Public Domain and Practical Obscurity

Individuals generally do not possess substantial privacy interests in information that is particularly well known or is widely available within the public domain.[72] Likewise,

---

Times Commc'ns LLC v. U.S. Dep't of Labor, 483 F. Supp. 2d 975, 985-86 (C.D. Cal. 2007) (concluding that defendant properly withheld information revealing the identity of all civilian contractors supporting Allied military operations in Iraq and Afghanistan because "the privacy life or death interest of the individual whose records are requested" outweighs "the public interest in disclosure"); Clemmons v. U.S. Army Crime Recs. Ctr., No. 05-2353, 2007 WL 1020827, at *6 (D.D.C. Mar. 30, 2007) ("The identities of [U.S. Army Criminal Investigation Division] special agents, military police, other government personnel and [third party] witnesses were all properly withheld under Exemptions (b)(6) and (b)(7)(C).") (Exemptions 6 and 7(C)); O'Keefe v. DOD, 463 F. Supp. 2d 317, 327 (E.D.N.Y. 2006) (upholding DOD's withholding of personal information of investigators as well as subjects of investigation found in U.S. Central Command Report) (Exemptions 6 and 7(C)); cf. WP Co. LLC v. DOD, No. 21-01025, 2022 WL 4119769, at *3-6, 11 (D.D.C. Sept. 9, 2022) (ordering agencies to conduct individualized assessment of public and private interests with respect to names of former members of military ranked 0-6 and lower who applied for foreign employment after finding that "that there is a strong public interest in knowing what former military personnel have been granted *constitutional* approval to work for and be compensated by a foreign government").

[71] See Baker, 863 F.3d at 684-85 (stating district court correctly observed that "disclosing the names of the Chicago officers could expose them to harassment without conferring an offsetting public benefit and would thus be an unwarranted invasion of their personal privacy"); Keys v. DHS, 570 F. Supp. 2d 59, 68 (D.D.C. 2008) (stating that "'[o]ne who serves his state or nation as a career public servant is not thereby stripped of every vestige of personal privacy, even with respect to the discharge of his official duties. Public identification of any of these individuals could conceivably subject them to harassment and annoyance in the conduct of their official duties and in their private lives'" (quoting Nix v. United States, 572 F.2d 998, 1006 (4th Cir. 1978))) (Exemption 7(C)).

[72] See, e.g., Trentadue v. Integrity Comm., 501 F.3d 1215, 1234 (10th Cir. 2007) (concluding that the Inspector General's substantive response to the Integrity Committee's questions should be released because "those portions answer [plaintiff's] allegations with respect to specific individuals" and [plaintiff's] complaint filed with the Integrity Committee is a public document included in the record of the appeal; therefore, the "[Inspector General's] response to these accusations, by necessity, mentions the names of these individuals" and "[d]isclosure of these names, when the allegations made against the individuals are already part of the public record, would not invade the accused's privacy at all"); Matthews v. FBI, 575 F. Supp. 3d 166, 180 (D.D.C. 2021) (concluding that FBI did not meet its burden of demonstrating that disclosing identity of Assistant U.S. Attorney, who likely appeared both on the record and in court, would threaten substantial privacy interest) (Exemptions 6 and 7(C)); Reps. Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d at 127 (ordering

an individual generally does not have substantial privacy interests with respect to information that he or she has made public.[73] The D.C. Circuit has held that under the public domain doctrine, information that would otherwise be subject to a valid FOIA exemption must be disclosed if that information is preserved in a permanent public record or is otherwise easily accessible by the public.[74] In order for the public domain

---

release of names of a Special Agent and Special Agent in Charge whose "names appeared on the Twitter summons and in the subsequent litigation") (Exemption 7(C)); Jordan v. DOJ, No. 17-2702, 2021 WL 4033070, at *9 (D.D.C. Sept. 3, 2021) (concluding that agency "cannot withhold contact information that is already public"); Story of Stuff Project v. U.S. Forest Serv., 366 F. Supp. 3d 66, 80 (D.D.C. 2019) (finding government did not meet its burden of showing substantial privacy invasion would occur in part because information was publicly available); Gawker Media LLC v. FBI, 145 F. Supp. 3d 1100, 1108-11 (M.D. Fla. 2015) (ordering disclosure of names of individuals involved in highly-publicized investigation where such names were disclosed in open court and were subject of widespread media attention) (Exemptions 6 and 7(C)); Abou-Hussein v. Mabus, No. 09-1988, 2010 WL 4340935, at *1 (D.S.C. Oct. 28. 2010) (holding that "certain personnel and medical files" are protected "to the extent that they were not already publically available in the course of the public bidding process"); Int'l Couns. Bureau v. DOD, 723 F. Supp. 2d 54, 66-67 (D.D.C. 2010) (holding that Exemption 6 does not bar disclosure of publicly available detainee photographs); Blanton v. DOJ, No. 93-2398, 1994 U.S. Dist. LEXIS 21444, at *11-12 (W.D. Tenn. July 14, 1994) ("The fact of [requester's former counsel's] representation is a matter of public record . . . . Whether an individual possesses a valid license to practice law is also a matter of public record and cannot be protected by any privacy interest.").

[73] See The Nation Mag. v. U.S. Customs Serv., 71 F.3d 885, 896 (D.C. Cir. 1995) (recognizing no privacy interest in documents concerning presidential candidate's offer to aid federal government in drug interdiction, a subject about which the candidate had made several public statements); see also Kimberlin v. DOJ, 139 F.3d 944, 949 (D.C. Cir 1998) (noting that government lawyer investigated by DOJ's Office of Professional Responsibility diminished their privacy interest by acknowledging existence of investigation but still retained privacy interest in nondisclosure of any details of investigation) (Exemption 7(C)); Lindsey v. FBI, 271 F. Supp. 3d 1, 8 (D.D.C. 2017) (holding that regardless of whether government publicly acknowledged existence of records, subject of request can diminish their expectation of privacy by their own public acknowledgment) (Exemptions 6 and 7(C)); Gawker Media, 145 F. Supp. 3d at 1108-10 (ordering release of names of individuals who publicly disclosed their roles in high-profile investigation); cf. Associated Press v. DOD, 410 F. Supp. 2d 147, 150 (S.D.N.Y. 2006) (holding Guantanamo Bay military detainees had no privacy interests in their identifying information because they provided the information at formal legal proceedings before tribunal and there was no evidence that detainees "were informed that the proceedings would remain confidential in any respect").

[74] See Niagara Mohawk Power Corp. v. DOE, 169 F.3d 16, 19 (D.C. Cir. 1999); see also Avondale Indus. v. NLRB, 90 F.3d 955, 961 (5th Cir. 1996) (finding that names and addresses of voters in union election were already disclosed in voluminous public record and that there was no showing that public record was compiled in such a way as to effectively obscure that information); Hall v. DOJ, 552 F. Supp. 2d 23, 30-31 (D.D.C. 2008) (stating that "[t]he court agrees that, to the extent that the non-redacted portions specifically identify the names of individuals in specific redacted portions of the documents,

doctrine to apply, a requester must be able to point "to specific information in the public domain that appears to duplicate that being withheld."[75]

Although public knowledge diminishes an individual's privacy interests in that information, courts have found that the mere fact that some of the information may be known to some members of the public does not negate the individual's privacy interest in preventing further dissemination to the public at large.[76] For example, the Supreme Court

---

DOJ cannot redact these names" because "[t]he FOIA exemptions do not apply once the information is in the public domain"); Hidalgo v. FBI, 541 F. Supp. 2d 250, 255 (D.D.C. 2008) (finding government informant's personal privacy at stake, "but their interest is far more limited than that of the typical confidential informant" because "status as a government informant is open and notorious") (Exemptions 6 and 7(C)); O'Neill v. DOJ, No. 05-0306, 2007 WL 983143, at *9 (E.D. Wis. Mar. 26, 2007) ("Under the public domain doctrine, materials not normally immunized from disclosure under FOIA lose their protective cloak once disclosed and preserved in a permanent public record.").

[75] Afshar v. U.S. Dep't of State, 702 F.2d 1125, 1130 (D.C. Cir. 1983); see, e.g., Broward Bulldog, Inc. v. DOJ, 939 F.3d 1164, 1186 (11th Cir. 2019) (holding district court erred in ruling that "the public-domain doctrine applies to information that is in the public domain based only on media speculation and did not require [requester] to prove the *same* information in each redaction was already in the public domain"); Edwards v. DOJ, No. 04-5044, 2004 WL 2905342, at *1 (D.C. Cir. Dec. 15, 2004) (per curiam) (rejecting appellant's argument that government officially acknowledged the information at issue because appellant "has failed to point to 'specific information in the public domain that appears to duplicate that being withheld'" (quoting Davis v. DOJ, 968 F.2d 1276, 1279 (D.C. Cir. 1992))) (Exemption 7(C)); Sai v. TSA, 315 F. Supp. 3d 218, 262 (D.D.C. 2018) (noting that release of similar information to prior FOIA requesters does not trigger official acknowledgment doctrine; rather, "the specific information sought by the plaintiff must already be in the public domain" (quoting Wolf v. CIA, 473 F.3d 370, 378 (D.C. Cir. 2007))) (Exemptions 6 and 7(C)).

[76] See Am. Farm Bureau Fed'n v. EPA, 836 F.3d 963, 972 (8th Cir. 2016) (stating "[t]hat information about a particular owner might be obtained through publicly-available sources likewise does not preclude a substantial privacy interest" because "[t]here is an important distinction 'between the mere *ability* to access information and the likelihood of actual public *focus* on that information'" (quoting ACLU v. DOJ, 750 F.3d 927, 933 (D.C. Cir. 2014))) (reverse FOIA suit); Forest Serv. Emps. for Env't. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1025 n.3 (9th Cir. 2008) ("As a preliminary matter, we reject [plaintiff's] contention that the unauthorized leak of the unredacted Cramer Fire Report or OSHA's decision to identify certain employees in its own report diminishes the Forest Service's ability to apply Exemption 6 to redact the identities from the Report."); Horowitz v. Peace Corps, 428 F.3d 271, 280 (D.C. Cir. 2005) ("Even though the student did reveal his allegation to two Peace Corps workers . . . he still has an interest in avoiding further dissemination of his identity."); Campaign for Fam. Farms v. Glickman, 200 F.3d 1180, 1188 (8th Cir. 2000) (concluding that individuals signing petition, aware that those who sign after will observe their signatures, did not waive their privacy interests) (reverse FOIA suit); Huddleston v. FBI, No. 20-00447, 2022 WL 4593084, at *22 (E.D. Tex. Sept. 29, 2022) ("[E]ven when an individual's private information has been publicly disseminated in the

in NARA v. Favish[77] held that the fact that one death scene photograph of a former Deputy White House Counsel had been leaked to the media did not detract from the weighty privacy interests of his surviving relatives to be secure from intrusions by a "sensation-seeking culture" and in limiting further disclosure of the death scene images "for their own piece of mind and tranquility."[78] Indeed, the District Court for the District of

---

past, the individual 'still retain[s] substantial interests in preventing the further dissemination of the information.'" (quoting Halloran v. VA, 874 F.2d 315, 322 n.10 (5th Cir. 1989))) (Exemptions 6 and 7(C)); Citizens for Resp. & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 72 (D.D.C. 2012) (determining that Congressman who was investigated "retains a cognizable privacy interest in the requested records," because although he publicly acknowledged existence of investigation, "the details of that investigation have not been publicly disclosed") (Exemption 7(C)); Sensor Sys. Support, Inc. v. FAA, 851 F. Supp. 2d 321, 335 (D.N.H. 2012) (noting that "'[a]n individual's interest in controlling the dissemination of information regarding personal matters [such as one's home address] does not dissolve simply because that information may be available to the public in some form'" (quoting DOD v. Fed. Lab. Rels. Auth., 510 U.S. 487, 500 (1994))) (Exemptions 6 and 7(C)); Barnard v. DHS, 598 F. Supp. 2d 1, 12 (D.D.C. 2009) ("Plaintiff's argument is foreclosed by a long line of cases recognizing that individuals maintain an interest in their privacy even where some information is known about them publicly."); Laws.' Comm. for C.R. of S.F. Bay Area v. U.S. Dep't of the Treasury, No. 07-2590, 2008 WL 4482855, at *21 (N.D. Cal. Sept. 30, 2008) (stating that "a person may still have a privacy interest in information that has already been publicized" and explaining that "[n]or is one's privacy interest in potentially embarrassing information lost by the possibility that someone could reconstruct that data from public files"); Schoenman v. FBI, 573 F. Supp. 2d 119, 149 (D.D.C. 2008) ("[E]ven if Plaintiff is correct that he can guess the individual's identity, 'the fact that Plaintiff may deduce the identities of individuals through other means . . . does not diminish their privacy interests.'" (quoting Shores v. FBI, 185 F. Supp. 2d 77, 83 (D.D.C. 2002))); Thomas v. DOJ, 531 F. Supp. 2d 102, 109 (D.D.C. 2008) ("Third parties' privacy interests are not lost because a requester knows or can determine from a redacted record their identities . . . . Nor do third parties lose their privacy interests because their names already have been disclosed.") (Exemption 7(C)); Summers v. DOJ, 517 F. Supp. 2d 231, 240 (D.D.C. 2007) ("The possibility that plaintiff has determined the identity of the agent, however, does not undermine that agent's privacy interests."); Lee v. DOJ, No. 05-1665, 2007 WL 744731, at *2 (D.D.C. Mar. 6, 2007) ("[A]lthough the documents may contain information that has already been made public at one time, given that the information would disclose incidents of prior criminal conduct by third parties, those individuals certainly have privacy interests in keeping the information from renewed public scrutiny.") (Exemptions 6 and 7(C)); Mueller v. U.S. Dep't of the Air Force, 63 F. Supp. 2d 738, 743 (E.D. Va. 1999) (stating that existence of publicity surrounding events does not eliminate privacy interest) (Exemptions 6 and 7(C)); cf. Schiffer v. FBI, 78 F.3d 1405, 1411 (9th Cir. 1996) (treating requester's personal knowledge as irrelevant in assessing privacy interests).

[77] 541 U.S. 157 (2004) (Exemption 7(C)).

[78] Id. at 166-71 (Exemption 7(C)); cf. Balt. Sun v. U.S. Customs Serv., No. 97-1991, 1997 U.S. Dist. LEXIS 24466, at *5 (D. Md. Nov. 25, 1997) (determining that subject of photograph introduced into court record "retained at least some privacy interest in preventing the

Columbia has held that "[t]he public mention of an individual's name in one context does not preclude the [agency] from withholding it in another."[79]

Similarly, individuals who testify at criminal trials do not forfeit their rights to privacy except on those very matters that become part of the public record,[80] nor do individuals who plead guilty to criminal charges lose all rights to privacy with regard to the proceedings against them.[81]

---

further dissemination of the photographic image" when "[t]he photocopy in the Court record was of such poor quality as to severely limit its dissemination") (Exemption 7(C)).

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

[80] See, e.g., Isley v. EOUSA, No. 06-0123, 1999 WL 1021934, at *4 (D.C. Cir. Oct. 21, 1999) (unpublished disposition) (Exemption 7(C)); Jones v. FBI, 41 F.3d 238, 247 (6th Cir. 1994) ("The fact that an agent decided or was required to testify or otherwise come forward in other settings does not give plaintiff a right under FOIA to documents revealing the fact and nature of her employment.") (Exemption 7(C)); Kowal v. DOJ, No. 18-938, 2021 WL 3363445, at *5 (D.D.C. Aug. 3, 2021) ("While perhaps the identities of some individuals involved in the investigation were revealed at trial, [plaintiff] does not meet her burden to show that the identical documents and information that DEA seeks to withhold here were made public then.") (Exemptions 6 and 7(C)); Sellers v. DOJ, 684 F. Supp. 2d 149, 160 (D.D.C. 2010) ("A witness does not waive his or her interest in personal privacy by testifying at a public trial."); Scales v. EOUSA, 594 F. Supp. 2d 87, 91 (D.D.C. 2009) ("The mere fact that [witness] testified at trial, or that [witness] acknowledged at trial that there were forgery charges pending against [them] at that time, does not constitute a waiver of [their] privacy rights to all other related information, as requested by the plaintiff.") (Exemption 7(C)); Jarvis v. ATF, No. 07-0111, 2008 WL 2620741, at *13 (N.D. Fla. June 30, 2008) ("That the individual testified in a public trial, however, is not necessarily a waiver.") (Exemption 7(C)); Valdez v. DOJ, 474 F. Supp. 2d 128, 133 (D.D.C. 2007) ("The fact that a third party testified publicly at trial does not diminish or waive his privacy interest.") (Exemption 7(C)); Meserve v. DOJ, No. 04-1844, 2006 WL 2366427, at *7 (D.D.C. Aug. 14, 2006) ("[A] witness who testifies at trial does not waive her personal privacy."); cf. Irons v. FBI, 880 F.2d 1446, 1454 (1st Cir. 1989) (en banc) (holding that disclosure of any source information beyond that actually testified to by confidential source is not required) (Exemption 7(D)).

[81] See Detroit Free Press Inc. v. DOJ, 829 F.3d 478, 482 (6th Cir. 2016) (holding that individuals have non-trivial privacy interest in preventing disclosure of their booking photos under Exemption 7(C)) (Exemption 7(C)); World Publ'g Co. v. DOJ, 672 F.3d 825, 829 (10th Cir. 2012) (holding that "[e]xcept in limited circumstances, such as the attempt to capture a fugitive, a USMS booking photograph simply is not available to the public") (Exemption 7(C)); Karantsalis v. DOJ, 635 F.3d 497, 503 (11th Cir. 2011) (per curiam) (finding "booking photographs . . . are generally not available for public dissemination . . . which suggests the information implicates a personal privacy interest") (Exemption 7(C)); Shapiro v. DOJ, No. 12-0313, 2020 WL 3615511, at *31 (D.D.C. July 2, 2020) ("Plaintiff's failure to even mention

The FOIA's broad conception of privacy also encompasses the doctrine of "practical obscurity." While as a general rule individuals have no privacy interest in information that has been previously disclosed, in DOJ v. Reporters Committee for Freedom of the Press,[82] the Supreme Court found a "strong privacy interest" in the nondisclosure of records of a private citizen's criminal history, "even where the information may have been at one time public," if the information has over time become "practically obscure."[83] As the Supreme Court held, individuals can have a cognizable privacy interest in identifying information "that might be found after a diligent search of courthouse files, county archives, [. . .] local police stations," and other publicly available sources of information but is not otherwise readily available to the public.[84] The Reporters Committee decision and its progeny have thus recognized that individuals have a privacy interest in information that at one time may have been disclosed or made publicly available but is now difficult to obtain.[85] That is, such individuals may have a privacy interest in maintaining the information's "practical obscurity."[86] The D.C. Circuit

---

the possible public interest in disclosing the names of the individuals identified as having pled guilty means that the withholding of their names was proper.") (Exemptions 6 and 7(C)); Times Picayune Publ'g Corp. v. DOJ, 37 F. Supp. 2d 472, 477-82 (E.D. La. 1999) (protecting the mug shot of a prominent individual despite wide publicity prior to their guilty plea, and observing that a "mug shot is more than just another photograph of a person") (Exemption 7(C)); cf. ACLU v. DOJ, 655 F.3d 1, 17 (D.C. Cir. 2011) (noting "distinction between indictments resulting in convictions or guilty pleas, and those resulting in acquittals or dismissals, or cases that remain sealed," as privacy concerns are potentially greater for cases that resulted in acquittal or dismissal and those that are sealed) (Exemption 7(C)).

[82] 489 U.S. 749 (1989).

[83] Id. at 762, 764, 767, 780 (establishing a "practical obscurity" standard, observing that if such items of information actually "were 'freely available,' there would be no reason to invoke the FOIA to obtain access to" them) (internal citation omitted) (Exemption 7(C)); see also DOD v. Fed. Lab. Rels. Auth., 510 U.S. 487, 500 (1994) (recognizing privacy interest in federal employees' home addresses even though they "often are publicly available through sources such as telephone directories and voter registration lists"); FOIA Update, Vol. X, No. 2 ("OIP Guidance: Privacy Protection Under the Supreme Court's Reporters Committee Decision").

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

[85] See id. at 780.

[86] Id.; see, e.g., Associated Press v. DOJ, 549 F.3d 62, 65 (2d Cir. 2008) (per curiam) (applying "practical obscurity" concept and noting that "[t]his [privacy] protection extends even to information previously made public") (Exemptions 6 and 7(C)); Isley v. EOUSA, No. 06-0123, 1999 WL 1021934, at *4 (D.C. Cir. Oct. 21, 1999) (unpublished disposition) (finding no evidence that previously disclosed documents "continue to be 'freely available' in any 'permanent public record'") (internal citation omitted) (Exemption 7(C)); Fiduccia v.

has noted, however, that computerized databases may minimize the extent to which "practical obscurity" applies to conviction data.[87]

Moreover, as a general rule, courts have found that the passage of time serves to increase an individual's privacy interests, even in personal information that was once

---

DOJ, 185 F.3d 1035, 1046-47 (9th Cir. 1999) (noting privacy interest based on "practical obscurity" justified and protecting information about two individuals whose homes were searched ten years previously despite publicity at that time and fact that some information might be public in various courthouses) (Exemption 7(C)); Abraham & Rose, P.L.C. v. United States, 138 F.3d 1075, 1083 (6th Cir. 1998) (holding that there may be privacy interest in personal information even if "available on publicly recorded filings") (Exemptions 6 and 7(C)); Neary v. FDIC, 104 F. Supp. 3d 52, 60 (D.D.C. 2015) ("[T]hird-party information contained in lists . . . created for use at a job recruitment event while 'technically public may be practically obscure[,] . . . [and] in such circumstances, an individual's privacy interest in limiting disclosure or dissemination of information does not disappear just because it was once publicly released.'" (quoting ACLU v. DOJ, 655 F.3d 1, 9 (D.C. Cir. 2011))); Laws.' Comm. for C.R. of S.F. Bay Area v. U.S. Dep't of the Treasury, No. 07-2590, 2008 WL 4482855, at *21 (N.D. Cal. Sept. 30, 2008) (noting, consistent with "practical obscurity" principles, that "the Ninth Circuit has held that simply because certain documents that would normally be subject to Exemptions 7(C) and Exemption 6 have already been publicized does not mean they must be disclosed by the agency"); Jarvis v. ATF, No. 07-0111, 2008 WL 2620741, at *12 (N.D. Fla. June 30, 2008) (stating that "[a] document previously disclosed may have 'practical obscurity' and might not again become public without a diligent search[;]" consequently, "the individual privacy exemption in the FOIA is not necessarily vitiated by prior disclosures") (internal citation omitted) (Exemption 7(C)); Canaday v. ICE, 545 F. Supp. 2d 113, 117 (D.D.C. 2008) (relying on "practical obscurity" and recognizing "a privacy interest in the identifying information of the Federal employees even though the information may have been public at one time"); Leadership Conf. on C.R. v. Gonzales, 404 F. Supp. 2d 246, 257-59 (D.D.C. 2005) (holding, under Exemption 6, that law enforcement records that were previously given to symposium members fall within "practical obscurity" rule).

[87] See ACLU v. DOJ, 655 F.3d 1, 12 (D.C. Cir. 2011) ("[D]isclosure under FOIA [will not] make that information any more accessible than it already is through publicly available computerized databases.") (Exemption 7(C)); see also CNA Holdings, Inc. v. DOJ, No. 07-2084, 2008 WL 2002050, at *6 (N.D. Tex. May 9, 2008) (finding court documents to be in the public domain, noting defendant failed to meet its "burden to show that documents that were clearly public and should be in the court's files, according to PACER and the common record retention practice of federal courts, are for some reason not actually still publicly available").

publicly available.[88] However, some courts have noted that privacy interests may diminish over time.[89]

Corporations and Business Relations

The Supreme Court has held that corporations do not possess personal privacy interests under the FOIA.[90] However, courts have recognized substantial privacy

---

[88] See Reps. Comm., 489 U.S. at 763 ("[T]he extent of the protection accorded a privacy right at common law rested in part on the degree of dissemination of the allegedly private fact and the extent to which the passage of time rendered it private.") (Exemption 7(C)); Bloomgarden v. DOJ, 874 F.3d 757, 761 (D.C. Cir. 2017) (unpublished disposition) (recognizing "quite substantial" privacy interest in termination letter which was over twenty years old and presented allegations against former AUSA); ACLU v. DOJ, 655 F.3d 1, 9 (D.C. Cir. 2011) (distinguishing information that is "less than (and probably quite a bit less than) ten years old," from the Reps. Comm. "rap sheets that recorded a lifetime of everything from major crimes to youthful indiscretions") (Exemption 7(C)); Roth v. DOJ, 642 F.3d 1161, 1174 (D.C. Cir. 2011) (stating that "if . . . the passage of approximately a half century did not 'materially diminish' individuals' privacy interests in not being associated with McCarthy-era investigations, then certainly individuals continue to have a significant interest in not being associated with an investigation into a brutal quadruple homicide committed less than thirty years ago" (quoting Shrecker v. DOJ, 349 F.3d 657, 666 (D.C. Cir. 2003))) (Exemption 7(C)).

[89] See Davin v. DOJ, 60 F.3d 1043, 1058 (3d Cir. 1995) ("[F]or some, the privacy interest may become diluted by the passage of time, though under certain circumstances the potential for embarrassment and harassment may also endure.") (Exemption 7(C)); Hall v. CIA, 268 F. Supp. 3d 148, 162-63 (D.D.C. 2017) (observing that "[a]lthough the Court understands the government's interest in protecting lower-level employees . . . or at least persons who were lower-level employees at the time of the relevant document's creation, the weight of that interest fades considerably as decades pass" and finding an overriding FOIA public interest in the names of non-CIA employees); Rosenfeld v. DOJ, No. 07-3240, 2012 WL 710186, at *5 (N.D. Cal. Mar. 5, 2012) (finding that "the fact that the documents concerns [forty year] old traffic violations as opposed to more serious criminal prosecutions decreases the likely stigma that would follow such a disclosure" and "[a]s the likely stigma of disclosure falls, so too does the privacy interest at issue") (Exemptions 6 and 7(C)); Silets v. FBI, 591 F. Supp. 490, 498 (N.D. Ill. 1984) ("[W]here documents are exceptionally old, it is likely that their age has diminished the privacy interests at stake.") (Exemption 7(C)); cf. Moore v. CIA, No. 20-1027, 2022 WL 2983419, at *11 (D.D.C. July 28, 2022) (upholding protection of names and identifying information of working-level CIA personnel and noting that "even if the privacy interests [of CIA personnel] have diminished somewhat with age, the public interest remains de minimis").

[90] See FCC v. AT&T, Inc., 562 U.S. 397, 403 (2011) (finding that in common usage the term "'[p]ersonal' ordinarily refers to individuals" and that the word is not used to "refer[] to corporations or other artificial entities") (internal citation omitted) (Exemption 7(C)); see also Sims v. CIA, 642 F.2d 562, 572 n.47 (D.C. Cir. 1980) ("Exemption 6 is applicable only to individuals."); Nat'l Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 686 n.44 (D.C. Cir. 1976) ("The sixth exemption has not been extended to protect the privacy interests of

interests in business-related financial information for individually owned or closely held businesses where the records would necessarily reveal at least a portion of the owner's personal finances.[91]

---

businesses or corporations."); Hodes v. HUD, 532 F. Supp. 2d 108, 119 (D.D.C. 2008) ("As a threshold matter, both Parties fail . . . to acknowledge that only individuals (not commercial entities) may possess protectible privacy interests under Exemption 6."); cf. Doe, 1 v. FEC, 920 F.3d 866, 872 (D.C. Cir. 2019) (dictum) ("We add that, under Exemption 7(C), the Commission would not have had discretion to withhold information identifying the trust in response to a FOIA request.").

[91] See Telematch, Inc. v. USDA, 45 F.4th 343, 351 (D.C. Cir. 2022) ("[T]he release of [customer numbers] would 'allow for an inference to be drawn about the financial situation of an individual farmer,' which implicates a substantial privacy interest." (quoting Multi AG Media LLC v. USDA, 515 F.3d 1224, 1230 (D.C. Cir. 2008))); Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1051 (D.C. Cir. 2009) (concluding that physicians have substantial privacy interest in total payments they receive from Medicare for covered services); Beard v. Espy, No. 94-16748, 1995 WL 792071, at *1 (9th Cir. Dec. 6, 1995) (unpublished table decision) (finding that disclosure of information about loans made to a collection of businesses with only two stockholders and three partners "would clearly affect the privacy interests of the individuals involved in the transactions"); Nat'l Parks, 547 F.2d at 685-86 (acknowledging that "personalized" financial information, "which we take to mean that ownership is so limited that a business' finances can be attributed divisibly and accurately to individual stockholders or partners," may implicate substantial privacy interests); The Humane Soc'y of the U.S. v. USDA, 549 F. Supp. 3d 76, 92 (D.D.C. 2021) (considering withholding of names and other information pertaining to loan applicants and concluding that "[t]here is enough to show that 'at least a significant portion' of the documents involve individuals or closely held businesses, which is 'sufficient for [the Court] to conclude that the files are covered by Exemption 6'" (quoting Multi AG Media LLC v. USDA, 515 F.3d 1224, 1229 (D.C. Cir. 2008))); Providence J. Co. v. FBI, 460 F. Supp. 778, 785 (D.R.I. 1978) ("While corporations have no privacy, personal financial information is protected, including information about small businesses when the individual and corporation are identical."); FOIA Update, Vol. III, No. 4 ("FOIA Counselor: Questions & Answers") (advising that corporations do not have privacy, but that personal financial information is protectable when individual and corporation are identical); cf. WP Co. LLC v. Small Bus. Admin., 502 F. Supp. 3d 1, 18, 21 (D.D.C. 2020) (determining that "a valid, albeit weak" privacy interest exists in names and addresses of sole proprietorships and independent contractors receiving certain loan since "SBA's own loan materials substantially diminish the privacy interest at stake"); Doe v. Veneman, 230 F. Supp. 2d 739, 748-51 (W.D. Tex. 2002) (holding that Department of Agriculture erroneously labeled individuals taking part in USDA program as businesses based on either number of livestock owned or fact that they had name for their ranch, and concluding that personally identifying information about those individuals are exempt from disclosure). But cf. Long v. DOJ, 450 F. Supp. 2d 42, 72 (D.D.C. 2006) ("At most, [the Department of Justice] ha[s] shown that disclosure of one record would reveal that an individual is associated with a business that in turn is a party to legal proceedings. That fact, standing alone, does not implicate the FOIA's personal privacy concerns . . . .").

More generally, when a record reflects personal details regarding an individual, albeit within the context of a business record, the individual's privacy interest is not diminished, and courts have permitted agency withholding of such information.[92] Courts have found that such an individual's expectation of privacy is diminished with regard to

[92] See Am. Small Bus. League v. DOD, 674 F. App'x 675, 677 (9th Cir. 2017) (holding that DOD properly withheld business contact information and signatures of employees whose privacy interests were small, but not trivial, as this information could be used for harassment or forgery); Campaign for Fam. Farms v. Glickman, 200 F.3d 1180, 1187-89 (8th Cir. 2000) (protecting identities of pork producers who signed petition calling for abolishment of mandatory contributions to fund for marketing and advertising pork, because release would reveal position on referendum and "would vitiate petitioners' privacy interest in a secret ballot") (reverse FOIA suit); Skybridge Spectrum Found. v. FCC, 842 F. Supp. 2d 65, 83-84 (D.D.C. 2012) (holding that the FCC properly invoked Exemption 6 to withhold "the names and personal identifying information of officers, employees, and representatives of [plaintiff's competitors]" because "the private interest in non-disclosure outweighs the public interest in disclosure"); Jud. Watch, Inc. v. Bd. of Governors of Fed. Rsrv. Sys., 773 F. Supp. 2d 57, 62 (D.D.C. 2011) (determining names and organizations associated with personal visits with Chairman of the Board of Governors of the Federal Reserve System were properly redacted from visitor logs); Hill v. USDA, 77 F. Supp. 2d 6, 8 (D.D.C. 1999) (recognizing privacy interest in records of business transactions between borrowers and partly owned family corporation relating to loans made by Farmers Home Administration to individual borrowers), summary affirmance granted, No. 99-5365, 2000 WL 520724, at *1 (D.C. Cir. Mar. 7, 2000).

matters in which he or she is acting in a business capacity,[93] although privacy has still been afforded at times.[94]

---

[93] See, e.g., Brown v. Perez, 835 F.3d 1223, 1235-37 (10th Cir. 2016) (rejecting summary judgment at district court level because "[i]t is not intuitive . . . that the . . . physicians [at issue] possess a cognizable privacy interest in their business addresses – after all, it is in their economic interests to make their office locations generally available to the public . . . [and] the agency has not provided any testimony from physicians – or any other evidence – to support its assertion that treating physicians have a privacy interest in their business addresses" and noting the agency did not identify adverse consequences that could result from disclosure of referee physicians' identities and business addresses); Elec. Frontier Found. v. Off. of the Dir. of Nat'l Intel., 639 F.3d 876, 888 (9th Cir. 2010) (determining that withholding of telecommunication industry lobbyists' names was improper, and observing that government acknowledgment of lobbying activities does not reveal sensitive, personal information); King & Spalding, LLP v. HHS, 395 F. Supp. 3d 116, 122 (D.D.C. 2019) (requiring release of identities of attorneys representing confidential source relaying information to government because they have little to no privacy in their representational capacity as counsel) (Exemptions 6 and 7(C)); Story of Stuff Project v. U.S. Forest Serv., 366 F. Supp. 3d 66, 81 (D.D.C. 2019) (holding that Exemption 6 did not apply to names of submitter's environmental and engineering consultants and other scientists because the names and photographs were publicly available and privacy interest concerning professional relationships is not substantial); Edelman v. SEC, 239 F. Supp. 3d 45, 56-57 (D.D.C. 2017) (stating that names of individuals who make comments/complaints to government implicate "less weighty" privacy interests where such comments concern commercial activities); W. Watersheds Project v. Bureau of Land Mgmt., No. 09-0482, 2010 WL 3735710, at *1, *12 (D. Idaho Sept. 13, 2010) (holding that two categories of permittees [i.e., "entities listed under a personal name along with the words 'Ranch' or 'Farm'"] have only a "minimal" privacy interest in the disclosure of their names and/or addresses and that release "would not constitute a clearly unwarranted invasion of personal privacy"); Hersh & Hersh v. HHS, No. 06-4234, 2008 WL 901539, at *8 (N.D. Cal. Mar. 31, 2008) (finding that business addresses, phone numbers, and job titles of non-federal corporate employees do not implicate the same type of heightened concerns as "private citizens' identities, home addresses, home telephone numbers, social security numbers, medical information, etc."); Fuller v. CIA, No. 04-0253, 2007 WL 666586, at *4 (D.D.C. Feb. 28, 2007) (holding that information reflecting only professional and business judgments and relationships "cannot fairly be characterized as personal information that exemption (b)(6) was meant to protect"); Or. Nat. Desert Ass'n v. U.S. Dep't of the Interior, 24 F. Supp. 2d 1088, 1093 (D. Or. 1998) ("[T]he relationship of the individual and the government does weigh in favor of disclosure. The subjects in the records sought were not merely private citizens. This relationship between the cattle trespassers operating under contract or permit with the government is at least quasi-business related.") (Exemption 7(C)); Wash. Post Co. v. USDA, 943 F. Supp. 31, 34-36 (D.D.C. 1996) (determining that farmers who received subsidies under cotton price-support program have only minimal privacy interests in home addresses from which they also operate businesses).

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

Life Status

An individual who is deceased has diminished personal privacy interests in the context of the FOIA.[95] While courts have not established a bright-line rule regarding the extent to which an agency must go in determining whether an individual has died, the D.C. Circuit has held that an agency must take certain "basic steps," which can vary depending on the specific circumstances of a particular case, before invoking a privacy interest under Exemptions 6 or 7(C).[96] The D.C. Circuit has upheld the FBI's use of the

---

[95] See Davis v. DOJ, 460 F.3d 92, 97-98 (D.C. Cir. 2007) ("We have recognized 'that the privacy interest in nondisclosure of identifying information may be diminished where the individual is deceased.'" (quoting Schrecker v. DOJ, 349 F.3d 657, 661 (D.C. Cir. 2003))) (Exemption 7(C)); Mitchell v. VA, No. 18-2672, 2021 WL 5180261, at *8-9 (S.D.N.Y. Nov. 8, 2021) (observing that death diminishes, but does not extinguish, privacy interest and holding that decedent's social security number, medical information, and financial information fall under Exemption 6 given "weak" FOIA public interest in disclosure); Viet. Veterans of Am. v. DOD, 453 F. Supp. 3d 508, 517 (D. Conn. 2020) (stating that "[w]hile death may have diminished the privacy interests of deceased [V]eterans, it did not render those interests de minimis"); Wessler v. DOJ, 381 F. Supp. 3d 253, 259 (S.D.N.Y. 2019) (deciding that decedents' privacy interest is greatly diminished, though "presumably remains more than de minimis") (Exemptions 6 and 7(C)); Vest v. Dep't of the Air Force, 793 F. Supp. 2d 103, 122 (D.D.C. 2011) ("An individual's death diminishes, but does not eliminate, his privacy interest . . . .") (Exemption 7(C)); Grandison v. DOJ, 600 F. Supp. 2d 103, 114 (D.D.C. 2009) ("However, 'the death of the subject of personal information does diminish to some extent the privacy interest in that information, though it by no means extinguishes that interest; one's own and one's relations' interests in privacy ordinarily extend beyond one's death.'" (quoting Schrecker v. DOJ, 254 F.3d 162, 166 (D.C. Cir. 2001))). Compare Moore v. CIA, No. 20-1027, 2022 WL 2983419, at *11 (D.D.C. July 28, 2022) (holding agency properly withheld names and identifying information related to working-level CIA personnel located in Korean War-era records because "there are 'reputational and family related privacy expectations that survive death'" and agency asserted that it cannot locate every individual mentioned in the records to determine life status (quoting Campbell v. DOJ, 193 F. Supp. 2d 29, 41 (D.D.C. 2001))), with Reclaim the Recs. v. VA, No. 18-8449, 2020 WL 1435220, at *10 (S.D.N.Y. Mar. 24, 2020) (rejecting agency's argument that its lack of confidence in accuracy of death records after taking steps to verify accuracy was sufficient to withhold them under Exemption 6, and requiring agency to produce records with data relating to living persons redacted or removed).

[96] See Johnson v. EOUSA, 310 F.3d 771, 775-76 (D.C. Cir. 2002) (finding that agency's efforts to determine if individuals were alive or dead met "basic steps" necessary to determine information that could affect privacy interests, and concluding that "[w]e will not attempt to establish a brightline set of steps for an agency to take" in determining whether an individual is dead) (Exemption 7(C)); Schrecker v. DOJ, 254 F.3d 162, 167 (D.C. Cir. 2001) ("Without confirmation that the Government took certain basic steps to ascertain whether an individual was dead or alive, we are unable to say whether the Government reasonably balanced the interests in personal privacy against the public interest in release of the information at issue."); see also Schoenman v. FBI, 576 F. Supp. 2d 3, 9-10, 13-14

"100-year rule" in making its privacy protection determinations whereby the FBI assumes that an individual is alive unless their birth date is more than 100 years ago.[97]

"Survivor privacy" is also encompassed within the Act's privacy exemptions.[98] As mentioned previously, in NARA v. Favish,[99] the Supreme Court unanimously found that

---

(D.D.C. 2008) (declaring that an agency must make reasonable effort to determine an individual's life status prior to invoking privacy interest under Exemptions 6 and 7(C), and observing that "agencies must take pains to ascertain life status in the first instance, i.e., in initially balancing the privacy and public interests at issue") (Exemptions 6 and 7(C)). But cf. Shapiro v. DOJ, No. 12-0313, 2020 WL 3615511, at *31 (D.D.C. July 2, 2020) (acknowledging plaintiff's argument that agency failed to ascertain life status of certain individuals, but finding that plaintiff's failure to identify a public interest in disclosure was fatal because "even if the FBI had determined that the individuals were deceased by conducting an adequate life-status check" that fact does not extinguish the individuals' privacy interests) (Exemptions 6 and 7(C)); Vest, 793 F. Supp. 2d at 122 (observing that "[w]hile on first blush it appears that the DOJ/FBI should have taken the life status of [the subject] into account, '[t]he effect of an individual's death on [their] privacy interests need not be factored into an Exemption 7(C) balancing test . . . where no public interest would be served by the disclosure of that individual's name or other identifying information'" (quoting Clemente v. FBI, 741 F. Supp. 2d 64, 85 (D.D.C. 2010))).

[97] Schrecker v. DOJ, 349 F.3d 657, 662-65 (D.C. Cir. 2003) (holding that the FBI's administrative process of using its "100-year rule," searching the Social Security Death Index if an individual's birth date is in records, and using its institutional knowledge, is reasonable and sufficient in determining whether individuals mentioned in requested records are deceased); see also Schoenman, 576 F. Supp. 2d at 10 ("The D.C. Circuit has concluded that the 100-year rule is, as a general matter, a reasonable prophylactic presumption."); Summers v. DOJ, 517 F. Supp. 2d 231, 242 (D.D.C. 2007) (concluding that defendants adequately "determined the life status of named agents by using the agency's '100-year rule,' the Who Was Who publication, the institutional knowledge of employees, and prior FOIA requests" given that "there are over 1100 responsive documents, and there are likely many third-party named individuals whose privacy is at issue") (internal citation omitted); cf. Davis, 460 F.3d at 101-05 (acknowledging FBI's use of "100-year rule"; finding that use of the rule was destined to fail when applied to audiotapes, as opposed to documents, and stating that "[t]he reasonableness of [the "100-year rule"] depends upon the probability that the responsive records will contain the individual's birth date . . . . [I]t seems highly unlikely that the participants in an audiotaped conversation would have announced their ages or dates of birth").

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

[99] 541 U.S. 157 (2004).

the surviving family members of a former Deputy White House Counsel had a protectable privacy interest in his death-scene photographs.[100] The Court held that "survivor privacy" was a valid privacy interest protected by Exemption 7(C) based on three factors.[101] First, the Court had previously ruled in Reporters Committee that FOIA's personal privacy protection was not "some limited or 'cramped notion' of that idea,"[102] and so was broad enough to protect surviving family members' "own privacy rights against public intrusions."[103] Second, the Court reviewed the long tradition at common law of "acknowledging a family's control over the body and death images of the deceased."[104] Third, the Court reasoned that Congress used that background in creating Exemption 7(C), including the fact that the government-wide FOIA policy memoranda of two Attorneys General had specifically extended privacy protection to families.[105] Thus, the Favish decision endorsed the holdings of several lower courts in recognizing that surviving family members have substantial privacy interests in sensitive, often graphic,

---

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

[101] 541 U.S. at 165-69.

[102] Id. at 165.

[103] Id. at 167; see also Prison Legal News v. EOUSA, 628 F.3d 1243, 1248-49 (10th Cir. 2011) (concluding that privacy interests of the victim's family in images was high and noting "[a]s the Supreme Court stated in Favish, family members have a right to personal privacy 'to secure their own refuge from a sensation-seeking culture for their own peace of mind and tranquility, not for the sake of the deceased'" (quoting Favish, 541 U.S. at 166)) (Exemption 7(C).

[104] 541 U.S. at 168.

[105] Id. at 169 (citing Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act (June 1967) and Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act (Feb. 1975)).

personal details about the circumstances surrounding an individual's death,[106] and subsequent decisions have reinforced this principle.[107]

Public Figures

Although courts have found that an individual's status as a public figure might in some circumstances factor into the privacy balance,[108] a public figure does not, by virtue

---

[106] See, e.g., Hale v. DOJ, 973 F.2d 894, 902 (10th Cir. 1992) (concluding "personal privacy interests of the victim's family" outweigh non-existent public interest) (Exemption 7(C)), cert. granted, 509 U.S. 918 (1993) (vacating judgment on Exemption 7(D) grounds); Bowen v. FDA, 925 F.2d 1225, 1228 (9th Cir. 1991) (affirming nondisclosure of autopsy reports of individuals killed by cyanide-contaminated products); Badhwar v. U.S. Dep't of the Air Force, 829 F.2d 182, 186 (D.C. Cir. 1987) (noting that some autopsy reports might "shock the sensibilities of surviving kin"); Marzen v. HHS, 825 F.2d 1148, 1154 (7th Cir. 1987) (holding deceased infant's medical records exempt because their release "would almost certainly cause . . . parents more anguish"); Katz v. NARA, 862 F. Supp. 476, 483-86 (D.D.C. 1994) (holding that Kennedy family's privacy interests would be invaded by disclosure of "graphic and explicit" JFK autopsy photographs); cf. Outlaw v. U.S. Dep't of the Army, 815 F. Supp. 505, 506 (D.D.C. 1993) (ordering disclosure in absence of evidence of existence of any survivor whose privacy would be invaded by release of murder-scene photographs of man murdered twenty-five years earlier).

[107] See, e.g., Sikes v. U.S. Dep't of Navy, 896 F.3d 1227, 1238 (11th Cir. 2018) (noting weighty privacy interest family members have in suicide note and holding that "[s]uch significant privacy interests 'should yield only where exceptional [public] interests militate in favor of disclosure'" (quoting Jud. Watch, Inc. v. NARA, 876 F.3d 346, 350 (D.C. Cir. 2017))) (Exemptions 6 and 7(C)); Eil v. DEA, 878 F.3d 392, 400 (1st Cir. 2017) (acknowledging Favish and concluding that "the district court failed to acknowledge the distinct privacy interests of the relatives of [the] deceased patients in the deceased patients' death-related records") (Exemption 7(C)); Huddleston v. FBI, No. 20-00447, 2022 WL 4593084, at *24 (E.D. Tex. Sept. 29, 2022) (declining to find that survivors have a privacy interest in contents of deceased relative's laptop, which "is in no way comparable to releasing his autopsy report or photographs from when he was shot") (Exemptions 6 and 7(C)); McWatters v. ATF, No. 20-1092, 2022 WL 3355798, at *3 (D.D.C. Aug. 15, 2022) (protecting audio recording of nightclub fire tragedy under the notion of survivor privacy, without "requiring ATF to individually identify each victim from their last moments") (Exemption 7(C)); cf. Viet. Veterans of Am. v. DOD, 453 F. Supp. 3d 508, 517-18 (D. Conn. 2020) (holding that deceased Veterans' survivors have a privacy interest in the medical histories of these individuals with respect to exposure to plutonium radiation, known to negatively impact health); Wessler v. DOJ, 381 F. Supp. 3d 253, 259 (S.D.N.Y. 2019) (noting that "decedents' family members have a privacy interest in the medical and autopsy records at issue here, even if the records do not depict graphic death scene images as in Favish") (Exemptions 6 and 7(C)).

[108] See, e.g., Fund for Const. Gov't v. NARA, 656 F.2d 856, 865 (D.C. Cir. 1981) (stating that while status as a public figure "might somewhat diminish an individual's interest in privacy, the degree of intrusion occasioned by disclosure is necessarily dependent upon the character of the information in question") (Exemption 7(C)); Rosenfeld v. DOJ, No. 07-3240, 2012

of their status, forfeit all rights of privacy.[109] Indeed, in NARA v. Favish,[110] the deceased former Deputy White House Counsel's status as both a public figure and a high-level government official did not, in the Supreme Court's opinion, "detract" from the surviving

---

WL 710186, at *4 (N.D. Cal. Mar. 5, 2012) (stating that privacy interest "is low because . . . the subject is a public figure") (Exemptions 6 and 7(C)); Jud. Watch, Inc. v. DOJ, No. 00-0745, 2001 U.S. Dist. LEXIS 25731, at *13 (D.D.C. Feb. 12, 2001) (noting that pardoned prisoners "arguably bec[a]me public figures through their well-publicized pleas for clemency and [given] the speeches some have made since their release" and that EOUSA had failed to demonstrate that their privacy interests outweighed the public interest in disclosure) (Exemption 7(C)).

[109] See Behar v. DHS, 39 F.4th 81, 92 (2d Cir. 2022) (rejecting notion that one's status as a public figure limits privacy interest in information exchanged with Secret Service) (Exemption 7(C)); Forest Serv. Emps. for Env't. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1025 (9th Cir. 2008) (noting that "while the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all privacy interests . . . simply by taking an oath of public office'" (quoting Lissner v. U.S. Customs Serv., 241 F.3d 1220, 1223 (9th Cir. 2001))); Kimberlin v. DOJ, 139 F.3d 944, 949 (D.C. Cir. 1998) (stating that "although government officials, as we have stated before, may have a 'somewhat diminished' privacy interest, they 'do not surrender all rights to personal privacy when they accept a public appointment'" (quoting Quiñon v. FBI, 86 F.3d 1222, 1230 (D.C. Cir. 1996))) (Exemption 7(C)); Jud. Watch, Inc. v. DOJ, 394 F. Supp. 3d 111, 118 (D.D.C. 2019) (finding that subject's FBI-related notoriety certainly weakens their privacy interest but that their status as a "public figure with a well-known association with the FBI does not, to be sure, destroy his privacy interest in other communications he may have had with the FBI") (Exemptions 6 and 7(C)); Citizens for Resp. & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 71 (D.D.C. 2012) (observing that "despite the fact that [a congressman's] privacy interest is 'somewhat diminished' by the office he holds, he nevertheless 'd[id] not surrender all rights to personal privacy when [he] accept[ed] a public appointment'" (quoting Quiñon v. FBI, 86 F.3d 1222, 1230 (D.C. Cir. 1996))) (Exemption 7(C)); Citizens for Resp. & Ethics in Wash. v. DOJ, 840 F. Supp. 2d 226, 233 (D.D.C. 2012) (observing that "'individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity'" and "this may be especially true for politicians who rely on the electorate to return them to public office" (quoting Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984))); Phillips v. ICE, 385 F. Supp. 2d 296, 305 (S.D.N.Y. 2005) (disregarding requester's unsupported claim that former foreign government officials have no "legitimate privacy interest[s]"); Wolk v. United States, No. 04-0832, 2005 WL 465382, at *5 (E.D. Pa. Feb. 28, 2005) ("[O]fficials do not surrender all of their rights to personal privacy when they accept a public appointment.") (Exemptions 6 and 7(C)); cf. McNamera v. DOJ, 974 F. Supp. 946, 959 (W.D. Tex. 1997) (stating that "[s]imply because an individual was once a public official does not mean that he retains that status throughout his life," and holding that three years after a disgraced sheriff resigned, he was "a private, not a public figure") (Exemption 7(C)).

[110] 541 U.S. 157 (2004).

family members' "weighty privacy interests."[111] Likewise, a candidate for a political office, either federal or nonfederal, does not forfeit all rights to privacy.[112]

Privacy Assurances and Waivers

Privacy assurances given to those providing information to the government generally serve to increase their privacy interests.[113] However, such assurances alone are not dispositive.[114] Alternatively, disclosure warnings advising the public that information may be released pursuant to the FOIA can diminish the attendant privacy interests,[115] but

---

[111] Id. at 171 (Exemption 7(C)).

[112] See The Nation Mag. v. U.S. Customs Serv., 71 F.3d 885, 894 & n.9 (D.C. Cir. 1995) ("Although candidacy for federal office may diminish an individual's right to privacy . . . it does not eliminate it . . . ."); Archibald v. DOJ, 950 F. Supp. 2d 80, 88 (D.D.C. 2013) (same), aff'd, No. 13-5190, 2014 WL 590894 (D.C. Cir. Jan. 28, 2014); Hunt v. U.S. Marine Corps, 935 F. Supp. 46, 54 (D.D.C. 1996) (holding that senatorial candidate has unquestionable privacy interest in their military service personnel records and medical records); The Nation Mag. v. U.S. Dep't of State, No. 92-2303, 1995 WL 17660254, at *10 (D.D.C. Aug. 18, 1995) (upholding refusal to confirm or deny existence of investigative records pertaining to presidential candidate); cf. Iowa Citizens for Cmty. Improvement v. USDA, 256 F. Supp. 2d 946, 954 (S.D. Iowa 2002) (ruling that nominee for position of Undersecretary of Agriculture for Rural Development does not forfeit all privacy rights).

[113] See, e.g., Pavement Coatings Tech. Council v. U.S. Geological Surv., 436 F. Supp. 3d 115, 132 (D.D.C. 2019) ("[T]he volunteers' reasonable (and promised) expectation of confidentiality and privacy alone is enough to implicate Exemption 6 . . . ."); Kensington Rsch. & Recovery v. U.S. Dep't of the Treasury, No. 10-3538, 2011 WL 2647969, at *9 (N.D. Ill. June 30, 2011) (finding that the agency's regulation governing individuals purchasing securities, in which it "pledged confidentiality and protection under Exemption 6" both "raises the bondholders' expectation of privacy, and enhances the privacy interests of nondisclosure").

[114] See, e.g., Prudential Locations LLC v. HUD, 739 F.3d 424, 431-32 (9th Cir. 2013) (noting that "an assurance [of confidentiality] is neither a necessary, nor a necessarily sufficient, condition for the existence of a cognizable personal privacy interest under Exemption 6," but it is "a relevant factor"); Advocs. for Highway & Auto Safety v. Fed. Highway Admin., 818 F. Supp. 2d 122, 129 (D.D.C. 2011) (determining that while "[a]ssurances of confidentiality are to be accorded some weight in assessing privacy interests under FOIA Exemption 6 . . . such promises do not necessarily prohibit disclosure").

[115] See Ditlow v. Shultz, 517 F.2d 166, 172 (D.C. Cir. 1975) (finding that, with regard to travelers' names in customs forms, both "the absence of a governmental assurance of confidentiality" and "[agency] assertion of authority to make discretionary disclosure" would "undercut the privacy expectations protected by exemption 6"); WP Co. LLC v. Small Bus. Admin., 502 F. Supp. 3d 1, 19 (D.D.C. 2020) (noting that "[c]ourts in this district have recognized that privacy interests under Exemption 6 are diminished when individuals provide information to the government despite notice that the relevant agency will disclose it to the public"); Prechtel v. FCC, 330 F. Supp. 3d 320, 329 (D.D.C. 2018) (bulk submitters'

do not operate to waive privacy rights.[116] As one court has observed, such a statement is not a waiver of the right to confidentiality, it is merely a warning by the agency and corresponding acknowledgment by the signers "that the information they were providing *could* be subject to release."[117] Further, one person's waiver has been found not to apply to other individuals.[118] Additionally, an agency's inadvertent disclosure of personal information rarely waives the privacy interests at stake since they belong to the individual, rather than the agency.[119] (For a further discussion of waiver and inadvertent disclosures, see Waiver & Discretionary Disclosure, Waiver.)

Interest in Disclosure

The D.C. Circuit has held that in certain circumstances, an individual may have an interest in having their personal information disclosed rather than withheld.[120] The court

---

privacy interest in their email addresses was minimal because they had ample warning when submitting comments to proposed rule that their email addresses could be made public); All. for the Wild Rockies v. U.S. Dep't of the Interior, 53 F. Supp. 2d 32, 37 (D.D.C. 1999) (holding that Exemption 6 did not bar disclosure of names and addresses of commenters to proposed rulemaking when comments were submitted voluntarily and rulemaking notice stated that complete file would be publicly available).

[116] See Lakin L. Firm, P.C. v. FTC, 352 F.3d 1122, 1124-25 (7th Cir. 2003) (explaining that warning on Federal Trade Commission website that "information provided may be subject to release under the FOIA" cannot be construed as a waiver by consumers) (emphasis added); Ayuda, Inc. v. FTC, 70 F. Supp. 3d 247, 264 (D.D.C. 2014) ("[E]ven if all parties involved actually read and consented to the policy, the policy itself represents only a warning, not a waiver of FOIA privacy rights."); Hill v. USDA, 77 F. Supp. 2d 6, 8 (D.D.C. 1999) (noting that disclosure warning in loan documents was "a warning, not a waiver," and that "[t]he statement does not say that the government will not attempt to protect privacy rights by asserting them, and indeed the government is expected to do so"), summary affirmance granted, No. 99-5365, 2000 WL 520724, at *1 (D.C. Cir. Mar. 7, 2000).

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

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

[119] Amiri v. Nat'l Sci. Found., No. 20-02006, 2021 WL 4438910, at *16-17 (D.D.C. Sept. 28, 2021) (holding that agency did not waive right to invoke Exemption 6 because privacy interests belong to the individual and agency took prompt steps to correct inadvertent disclosure of information), aff'd, No. 21-5241, 2022 WL 1279740 (D.C. Cir. Apr. 28, 2022).

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

explained that the FOIA analysis under Exemption 6 must include consideration of any interest the individual might have in the release of the information."[121]

Faced with reverse FOIA challenges permitted under the Administrative Procedure Act,[122] several courts have had to consider whether to order agencies not to release records pertaining to individuals that agencies had determined should be disclosed.[123] Courts

---

[121] Id. at 48 (explaining that the standard test "is inapposite here, i.e., where the individuals whom the government seeks to protect have a clear interest in the release of the requested information" and "it is overly paternalistic to insist upon protecting an individual's privacy interest," but finding that, while personal interest in disclosure is a consideration, balancing test still needs to be applied and withholding can still occur under certain circumstances).

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

[123] See, e.g., Am. Farm Bureau Fed'n v. EPA, 836 F.3d 963, 973-74 (8th Cir. 2016) (holding agency improperly decided that Exemption 6 did not protect personal information about owners, and noting information revealed little about agency's own conduct) (reverse FOIA suit); Campaign for Fam. Farms v. Glickman, 200 F.3d 1180, 1184-89 (8th Cir. 2000) (determining that agency decision to release petition with names unredacted was not in accordance with law) (reverse FOIA suit); Nat'l Org. for Women v. SSA, 736 F.2d 727, 728 (D.C. Cir. 1984) (per curiam) (affirming district court's decision to enjoin release of affirmative action plans submitted to SSA) (Exemptions 4 and 6) (reverse FOIA suit); Schmidt v. U.S. Air Force, No. 06-3069, 2007 WL 2812148, at *11 (C.D. Ill. Sept. 20, 2007) (determining that plaintiff has a valid privacy interest regarding information about their discipline; however, disclosure of records regarding disciplinary actions against plaintiff is proper because "[i]t is undisputed that the friendly-fire incident garnered significant public and media attention" and "[t]he release of [plaintiff's] reprimand gave the public, in the United States and around the world, insight into the way in which the U.S. government was holding its pilot accountable") (reverse FOIA suit); Doe v. Veneman, 230 F. Supp. 2d 739, 749-51 (W.D. Tex. 2002) (holding agency decision to release identifying information pertaining to farmers and ranchers was incorrect) (reverse FOIA suit); Am. Fed'n of Lab. & Congress of Indus. Orgs. v. FEC, 177 F. Supp. 2d 48, 61-63 (D.D.C. 2001) (concluding agency's decision not to invoke Exemption 7(C) to withhold identities of individuals in its investigative files to be "arbitrary, capricious and contrary to law") (reverse FOIA suit); Sonderegger v. U.S. Dep't of the Interior, 424 F. Supp. 847, 853-56 (D. Idaho 1976) (ordering temporary injunction of release of claimant names and amount claimed for victims of Teton Dam disaster, while allowing release of amount paid and category of payment with all personal identifying information deleted) (Exemptions 4 and 6) (reverse FOIA suit); cf. Na Iwi O Na Kupuna O Mokapu v. Dalton, 894 F. Supp. 1397, 1412-13 (D. Haw. 1995) (concluding that Exemption 6 was not intended to protect information pertaining to human remains, nor to protect information pertaining to large groups in which individuals are not identifiable) (reverse FOIA suit).

have generally not found any requirement that an agency notify record subjects of the agency's intent to disclose personal information about them or that it "track down an individual about whom another has requested information merely to obtain the former's permission to comply with the request."[124]

FOIA Public Interest

Once it is determined that a substantial privacy interest may be infringed by disclosure, the third step of the analysis must be undertaken. This step requires the identification and assessment of the FOIA public interest in disclosure.[125] In order to constitute a FOIA public interest in disclosure, information must serve the "basic purpose of the Freedom of Information Act[,] 'to open agency action to the light of public scrutiny.'"[126] Information that informs the public about "an agency's performance of its statutory duties falls squarely within that statutory purpose."[127] Furthermore, as the Supreme Court held in NARA v. Favish,[128] "the public interest sought to be advanced

---

[124] Blakey v. DOJ, 549 F. Supp. 362, 365 (D.D.C. 1982) (Exemption 7(C)), aff'd, 720 F.2d 215 (D.C. Cir. 1983); cf. War Babes v. Wilson, 770 F. Supp. 1, 4-5 (D.D.C. 1990) (allowing agency sixty days to meet burden of establishing privacy interest by obtaining affidavits from World War II service members who objected to release of their addresses to British citizens seeking to locate their fathers); Hemenway v. Hughes, 601 F. Supp. 1002, 1007 (D.D.C. 1985) (placing burden on requester, not agency, to contact foreign correspondents for requested citizenship information after receiving list of correspondents with office telephone numbers and addresses, and noting that correspondents are "free to decline to respond"). But see Associated Press v. DOD, 395 F. Supp. 2d 15, 16-17 & n.1 (S.D.N.Y. 2005) (requiring agency to ask Guantanamo Bay detainees whether they wished their identifying information to be released to plaintiff, based on fact that "detainees are in custody and therefore readily available").

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

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

[127] DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989) (Exemption 7(C)); see also O'Kane v. U.S. Customs Serv., 169 F.3d 1308, 1310 (11th Cir. 1999) (per curiam) (affirming that Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048, do not overrule Reps. Comm. definition of "public interest") (Exemption 7(C)); cf. NARA v. Favish, 541 U.S. 157, 172 (2004) (reiterating the Reps. Comm. "public interest" standard, and characterizing it as "a structural necessity in a real democracy" that "should not be dismissed" – despite arguments by amici that Reps. Comm. had been "overruled" by Electronic FOIA amendments since 1996) (Exemption 7(C)).

[128] 541 U.S. 157 (2004).

[must be] a significant one, an interest more specific than having the information for its own sake."[129]

While requesters are typically not required to provide the reasons for requesting information, when disclosure could result in an invasion of personal privacy, the Supreme Court has ruled that a requester bears the burden of establishing that disclosure would serve a FOIA public interest.[130] A requester's personal interest in disclosure is irrelevant to the public interest analysis.[131] As the Supreme Court held in DOJ v. Reporters

---

[129] Id. at 172; see also Boyd v. DOJ, 475 F.3d 381, 387 (D.C. Cir. 2007) ("[T]o trigger the balancing of public interests against private interests, a FOIA requester must (1) show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake, and (2) show the information is likely to advance that interest.") (Exemption 7(C)); Carpenter v. DOJ, 470 F.3d 434, 440 (1st Cir. 2006) ("Because there is a valid privacy interest, the requested documents will only be revealed where 'the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake.'" (quoting Favish, 541 U.S. at 172)) (Exemption 7(C)).

[130] Favish, 541 U.S. at 172 ("Where the privacy concerns . . . are present, the exemption requires the person requesting the information to establish a sufficient reason for the disclosure.") (Exemption 7(C)); see also Garza v. USMS, No. 18-5311, 2020 WL 768221, at *1 (D.C. Cir. Jan. 22, 2020) (upholding protection of identifying information of individuals involved in requester's investigation and prosecution and other third parties because requester did not articulate FOIA public interest in disclosure) (Exemption 7(C)); Wadhwa v. VA, 446 F. App'x 516, 519 (3d Cir. 2011) (per curiam) (unpublished disposition) (holding that withholding was appropriate where requester failed to articulate proper FOIA public interest in disclosure); Associated Press v. DOD, 549 F.3d 62, 66 (2d Cir. 2008) (per curiam) ("The requesting party bears the burden of establishing that disclosure of personal information would serve a public interest cognizable under FOIA."); Carter v. U.S. Dep't of Com., 830 F.2d 388, 391 nn.8 & 13 (D.C. Cir. 1987); see also Hunton & Williams LLP v. EPA, 346 F. Supp. 3d 61, 86 (D.D.C. 2018) (holding that protection of certain information, including EPA employee's work email address and mobile phone number, was proper as no public interest was identified); Graff v. FBI, 822 F. Supp. 2d 23, 33 (D.D.C. 2011) ("[B]ecause the public interest justification in each case depends on how the requester plans to use the records or information, the agency must obtain that justification from the requester in order to balance it against the third party's privacy interest."); Rogers v. Davis, No. 08-0177, 2009 WL 213034, at *2 (E.D. Mo. Jan. 28, 2009) ("The burden of establishing that the disclosure would serve the public interest . . . is on the requester."); Salas v. OIG, 577 F. Supp. 2d 105, 112 (D.D.C. 2008) ("It is the requester's obligation to articulate a public interest sufficient to outweigh an individual's privacy interest, and the public interest must be significant.") (Exemptions 6 and 7(C)).

[131] See Reps. Comm., 489 U.S. at 771-72 & n.20; see also Perioperative Servs. & Logistics LLC v. VA, 57 F.4th 1061, 1069 (D.C. Cir. 2023) (explaining that plaintiff's desire to sue an unidentified complainant for defamation was not a FOIA public interest); Joseph W. Diemert, Jr. & Assocs. Co., L.P.A. v. FAA, 218 F. App'x 479, 482 (6th Cir. 2007) (concluding that "the release of the requested information is clearly an unwarranted invasion of personal

Committee for Freedom of the Press,[132] the requester's identity can have "no bearing on the merits of his or her FOIA request."[133] In so declaring, the Court ruled that agencies should treat all requesters alike in making FOIA disclosure decisions and should not consider a requester's "particular purpose" in making the request.[134] Rather, the proper

---

privacy" because "[t]he disclosure of such information would only serve the private interests of [the requester]"); Schiffer v. FBI, 78 F.3d 1405, 1410-11 (9th Cir. 1996) (noting that individual interest in obtaining information about oneself does not constitute public interest); Kendrick v. DEA, No. 21-01624, 2022 WL 3681442, at *5 (D.D.C. Aug. 25, 2022) (holding that requester's personal interest in his criminal case is not FOIA public interest warranting disclosure of third party information) (Exemption 7(C)); Neary v. FDIC, 104 F. Supp. 3d 52, 58 (D.D.C. May 19, 2015) (explaining that "plaintiff's interest in gathering information [to bring a class action complaint] is not sufficient"); Ubungen v. ICE, 600 F. Supp. 2d 9, 12 (D.D.C. 2009) (concluding that plaintiff's request for information about the whereabouts or fate of their sister is "purely personal" and there is no public interest under the FOIA); Berger v. IRS, 487 F. Supp. 2d 482, 505 (D.N.J. 2007) (stating that disclosure of IRS employee's time sheets "would primarily serve Plaintiffs' particular private interests as individual taxpayers" and "[d]isclosure would not be 'instrumental in shedding light on the operations of government'" (quoting Lewis v. EPA, No. 06-2660, 2006 WL 3227787, at *6 (E.D. Pa. Nov. 3, 2006))); L.A. Times Commc'ns LLC v. U.S. Dep't of Labor, 483 F. Supp. 2d 975, 981 (C.D. Cal. 2007) ("Courts weigh the public interest by considering the interest of the general public, not the private motives, interests, or needs of a litigant.").

[132] 489 U.S. 749 (1989) (Exemption 7(C)).

[133] Id. at 771; see also Favish, 541 U.S. at 170-72 (reiterating that "[a]s a general rule, withholding information under FOIA cannot be predicated on the identity of the requester" but adding that this does not mean that a requester seeking to establish an overriding "public interest" in disclosure of requested information "need not offer a reason for requesting the information"); DOD v. Fed. Lab. Rels. Auth., 510 U.S. 487, 496 (1994) (reiterating that "'the identity of the requesting party has no bearing on the merits of his or her FOIA request'" (quoting Reps. Comm., 489 U.S. at 771)); Associated Press v. DOD, 554 F.3d 274, 285 (2d Cir. 2009) ("The public interest 'cannot turn on the purposes for which the request for information is made,' and 'the identity of the requesting party has no bearing on the merits of his or her FOIA request.'" (quoting Reps. Comm., 489 U.S. at 771)) (Exemptions 6 and 7(C)); Carpenter, 470 F.3d at 440 ("Neither the specific purpose for which the information is requested nor the identity of the requesting party has any bearing on the evaluation."); O'Neill v. DOJ, No. 05-0306, 2007 WL 983143, at *8 (E.D. Wis. Mar. 26, 2007) ("The requester's identity, purpose in making the request, and proposed use of the requested information have no bearing on this balancing test.").

[134] Reps. Comm., 489 U.S. at 771-72 & n.20; see also Favish, 541 U.S. at 172 (reiterating the Reps. Comm. principle that "citizens should not be required to explain why they seek the information" at issue, but further elucidating that in a case where the requester's purported public interest revolves around an allegation of government wrongdoing, "the usual rule that the citizen need not offer a reason for requesting the information must be inapplicable"); DOD v. Fed. Lab. Rels. Auth., 510 U.S. at 496 (holding that "except in certain cases involving claims of privilege, 'the identity of the requesting party has no bearing on the merits of his or her FOIA request'" (quoting Reps. Comm., 489 U.S. at 771)); Consumers'

approach for determining whether there is a FOIA public interest in disclosure is to evaluate "the nature of the requested document and its relationship to 'the basic purpose of the Freedom of Information Act.'"[135]

Information serves a FOIA public interest if it sheds light on agency action.[136] Several courts have observed that the minimal amount of information of interest to the

---

Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1051 (D.C. Cir. 2009) ("The requesting party's intended use for the information is irrelevant to our analysis."); Multi AG Media LLC v. USDA, 515 F.3d 1224, 1231 n.2 (D.C. Cir. 2008) ("Although [the requester] may not want the information to check up on the government itself, the use for which the requester seeks the information is not relevant for purposes of determining the public interest under FOIA Exemption 6."), superseded by statute on other grounds, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234 § 1619, 122 Stat. 923; Rogers v. Davis, No. 08-0177, 2009 WL 213034, at *2 (E.D. Mo. Jan. 28, 2009) ("[T]he purposes for which the FOIA request is made is irrelevant to whether an invasion of privacy is warranted.").

[135] Reps. Comm., 489 U.S. at 772 (quoting Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976)); see, e.g., Broward Bulldog, Inc. v. DOJ, 939 F.3d 1164, 1187 (11th Cir. 2019) (concluding that a "bare interest in learning who may have been involved in the 9/11 attacks 'falls outside the ambit of the public interest that the [Act] was enacted to serve'" (quoting DOD v. Fed. Lab. Rels. Auth., 510 U.S. at 500)) (Exemption 7(C)); Carpenter, 470 F.3d at 440 (observing that nature of requested document and its relationship to opening agency action to light of public scrutiny determines whether invasion of privacy is warranted); Schrecker v. DOJ, 349 F.3d 657, 661 (D.C. Cir. 2003) (stating that an inquiry regarding the public interest "should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld") (Exemption 7(C)); McGehee v. DOJ, 800 F. Supp. 2d 220, 234 (D.D.C. 2011) ("Although the Jonestown Massacre may have elicited a great deal of public attention, the relevant question is not whether the public would like to know the names of FBI agents and victims involved, but whether knowing those names would shed light on the FBI's performance of its statutory duties.") (Exemption 7(C)); People for the Am. Way Found. v. Nat'l Park Serv., 503 F. Supp. 2d 284, 304 (D.D.C. 2007) ("[T]o assess the public interest, the Court must examine 'the nature of the requested document and its relationship to the basic purpose of [FOIA] to open agency action to the light of public scrutiny.'" (quoting Reps. Comm., 489 U.S. at 773)); ACLU of N. Cal. v. DOJ, No. 04-4447, 2005 WL 588354, at *13 (N.D. Cal. Mar. 11, 2005) (ruling that "it was not sufficient for the plaintiffs to show [public] interest in only the general subject area of the request"). But see Int'l Couns. Bureau v. DOD, 723 F. Supp. 2d 54, 66 (D.D.C. 2010) (identifying substantial public interest in disclosure of photographs of Guantanamo Bay detainees, as "[t]he press has taken a substantial interest in the Guantanamo Bay detainees, and has reported extensively on them and their condition").

[136] See Reps. Comm., 489 U.S. at 773; Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976); see also Bartko v. DOJ, 898 F.3d 51, 76 (D.C. Cir. 2018) ("[T]he public interest in the material [appellant] seeks is substantial given the Fourth Circuit's disclosure of a troubling pattern of prosecutorial missteps and the U.S. Attorney's Office's recognition that errors had been made and changes would be implemented") (Exemption 7(C)); Henson v. HHS, 892

public revealed by a single incident or investigation does not shed enough light on an agency's conduct to overcome the subject's privacy interest in their records.[137] At other

---

F.3d 868, 878 (7th Cir. 2018) (upholding protection of "medical information about the manufacturer's patients and the contact information for employees of the manufacturer and the agency," stating that "the [FOIA] requires transparency from the government—not the manufacturer's patients and employees"); Citizens for Resp. & Ethics in Wash. v. DOJ, 746 F.3d 1082, 1092-96 (D.C. Cir. 2014) (holding categorical rule inappropriate as "[o]n the other side of the scale sits a weighty public interest in shining a light on the FBI's investigation of major political corruption and the DOJ's ultimate decision not to prosecute a prominent member of the Congress for any involvement he may have had") (Exemption 7(C)); ACLU v. CIA, No. 16-1256, 2021 WL 5505448, at *5-8 (D.D.C. Nov. 24, 2021) (concluding there was overriding public interest in list of employees granted exemptions from prepublication review process to provide insight about how CIA handled such reviews, but holding that information was exempt pursuant to Exemption 3 statute that protects CIA employees' names); Pavement Coatings Tech. Council v. U.S. Geological Surv., 436 F. Supp. 3d 115, 133 (D.D.C. 2019) (upholding protection of "names and addresses of the volunteer survey participants," and explaining that "the purpose of the FOIA is not to allow the public to replicate the agency's deliberations by collecting its own data from the sources that an agency relies upon. Instead, the far more modest goal of the FOIA statute is to shed light on an agency's decisionmaking"); Nat'l Day Laborer Org. Network v. ICE, 811 F. Supp. 2d 713, 748 (S.D.N.Y. 2011) ("[T]he public interest in disclosure outweighs the privacy interest as regards [to] the names of agency heads or high-level subordinates . . . [as] [t]here is a substantial public interest in knowing whether the documents at issue reflect high-level agency policy, helping to inform the public as to 'what their government is up to.'" (quoting Reps. Comm., 489 U.S. at 773)) (Exemptions 6 and 7(C)); Fams. for Freedom v. CBP, 797 F. Supp. 2d 375, 399 (S.D.N.Y. 2011) (holding that disclosure of agency employee names would inform the public of "what their government is up to" by revealing "whether the expectations and requirements articulated in the memoranda reflect high-level agency policy") (Exemptions 6 and 7(C)); Gordon v. FBI, 388 F. Supp. 2d 1028, 1041 (N.D. Cal. 2005) (determining that public interest was served by disclosure of individual agency employee names because their names show "who are making important government policy") (Exemptions 6 and 7(C)).

[137] See, e.g., Burton v. Wolf, 803 F. App'x 120, 122 (9th Cir. 2020) (concluding that "disclosure of personal information in an isolated case" involving requester's estranged wife's immigration petition would not advance FOIA public interest); Scott v. Treas. Insp. Gen. for Tax Admin., 787 F. App'x 642, 645 (11th Cir. 2019) (holding that "disclosure of Inspector General investigation and resolution of an internal complaint of incompetence . . . by a single individual" warrants protection because "disclosure of the isolated incident would shed little light on the agency's statutory duty"); Higgs v. U.S. Park Police, 933 F.3d 897, 905 (7th Cir. 2019) (explaining that "'the diligence of the [agency's] investigation and the DOJ's exercise of its prosecutorial discretion'" was too vague to comprise FOIA public interest and "would come up in virtually every case") (internal citation omitted) (Exemptions 6 and 7(C)); Neely v. FBI, 208 F.3d 461, 464 (4th Cir. 2000) (observing that "courts have sensibly refused to recognize, for purposes of FOIA, a public interest in nothing more than the fairness of a criminal defendant's own trial") (Exemption 7(C)); Hunt v. FBI, 972 F.2d 286, 289 (9th Cir. 1992) (observing that disclosure of single internal investigation file "will not shed any light on whether all such FBI investigations are comprehensive or

times, though, courts have found that the public interest in a particular, singular investigation is sufficient, particularly concerning substantiated allegations of misconduct by high-level government officials.[138] (For additional information, see Exemption 6, Public Servant Accountability, below.) Courts have also found a significant FOIA public interest in other contexts, such as when the information at issue would shed light on whether the government hires qualified individuals, how the agency is spending taxpayer funds, the integrity of a public commenting process, or whether the agency is

---

whether sexual misconduct by agents is common"); Salas v. OIG, 577 F. Supp. 2d 105, 112 (D.D.C. 2008) (concluding that DOJ OIG properly redacted personally identifying information about Border Patrol employees mentioned in investigative records about a complaint by plaintiff concluding that "[t]his one incident, though of obvious importance to plaintiff, is not one of such magnitude that it outweighs the agency employees' substantial privacy interest") (Exemptions 6 and 7(C)); Berger v. IRS, 487 F. Supp. 2d 482, 505 (D.N.J. 2007) (finding that disclosure of one IRS employee's time sheets would not serve the public interest); Mueller v. U.S. Dep't of the Air Force, 63 F. Supp. 2d 738, 745 (E.D. Va. 1999) ("[T]he interest of the public in the personnel file of one Air Force prosecutor is attenuated because information concerning a single isolated investigation reveals relatively little about the conduct of the Air Force as an agency.") (Exemptions 6 and 7(C)); cf. Tomscha v. GSA, 158 F. App'x 329, 331 (2d Cir. 2005) (explaining that disclosure of the justification for awards given to "a single low-ranking employee of the GSA . . . would not 'contribute significantly to the public understanding of the operations or activities of the government'" (quoting DOD v. Fed. Lab. Rels. Auth., 510 U.S. at 495)).

[138] See, e.g., Citizens for Resp. & Ethics in Wash. v. DOJ, 746 F.3d 1082, 1094 (D.C. Cir. 2014) (recognizing significant public interest in information relating to DOJ's investigation of congressman accused of bribery because although it "may reflect only one data point regarding the performance of its statutory duties [. . .] it is a significant one: It may show whether prominent and influential public officials are subjected to the same investigative scrutiny and prosecutorial zeal as local aldermen and little-known lobbyists") (Exemptions 6 and 7(C)); Citizens for Resp. & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 74 (D.D.C. 2012) ("Against the backdrop of broader public concerns about the agency's handling of allegations of corruption leveled against high-ranking public officials . . . the public has a clear interest in documents concerning" DOJ's investigation of Congressman accused of providing earmarks and contracts to donors) (Exemption 7(C)).

complying with federal laws.[139] Requesters seeking to vindicate the policies underlying a federal statute must still identify a specific FOIA public interest in disclosure.[140]

---

[139] See 100Reporters v. U.S. Dep't of State, 602 F. Supp. 3d 41, 75-76 (D.D.C. 2022) (identifying significant FOIA public interest in names of foreign security personnel vetted pursuant to "Leahy Laws" to show whether agency complied with these statutes, but requiring additional detail to complete privacy balancing); Humane Soc'y of the U.S. v. USDA, 549 F. Supp. 3d 76, 94 (D.D.C. 2021) (holding that public interest in understanding whether agency lawfully administers a loan program disbursing billions of taxpayer dollars to family farmers outweighs privacy interest in loan recipients' identifying information); WP Co. LLC v. Small Bus. Admin., 502 F. Supp. 3d 1, 23 (D.D.C. 2020) (holding that the FOIA public interest in "whether government programs dispensing taxpayer money involve, fraud, waste, or abuse" outweighs privacy interest in names and addresses of loan recipients who were given notice that their information may be publicly released); N.Y. Times Co. v. FCC, 457 F. Supp. 3d 266, 274-75 (S.D.N.Y. 2020) (identifying an overriding FOIA public interest in release of internet protocol addresses and device-specific information to "clarify whether and to what extent fraudulent activity interfered with the [public] comment process"); The Few, The Proud, The Forgotten v. VA, 407 F. Supp. 3d 83, 96 (D. Conn. 2019) (determining whether agency employs qualified individuals constituted overriding FOIA public interest); Story of Stuff Project v. U.S. Forest Serv., 366 F. Supp. 3d 66, 81 (D.D.C. 2019) (identifying an overriding FOIA public interest in names of company employees and consultants who prepared reports to aid agency in making permit renewal decisions because of public's "plausible interest in evaluating these individuals' qualifications"); Adelante Ala. Worker Ctr. v. DHS, 376 F. Supp. 3d 345, 368-69 (S.D.N.Y. 2019) (requiring release of identities and professional backgrounds of certain experts assisting agency to shed light on how agency is spending taxpayer dollars and whether qualified experts were hired).

[140] See DOD v. Fed. Lab. Rels. Auth., 510 U.S. at 499 (determining that asserted public interest in disclosure, that home addresses would facilitate communication between unions and the bargaining unit employees, which would further public interest in collective bargaining under Federal Service Labor-Management Relations statute, was "negligible, at best" and that "the fact that respondents are seeking to vindicate the policies behind the Labor Statute is irrelevant to the FOIA analysis"); Sheet Metal Workers Int'l Ass'n, Loc. No. 19 v. VA, 135 F.3d 891, 903-05 (3d Cir. 1998) (holding that revealing compliance with Davis-Bacon Act, 40 U.S.C. §§ 3141, et seq. (2018), is not in and of itself a public interest whose significance outweighs competing privacy interests of third parties); Sheet Metal Workers Int'l Ass'n, Loc. No. 9 v. U.S. Air Force, 63 F.3d 994, 997-98 (10th Cir. 1995) (same); Painting & Drywall Work Pres. Fund, Inc. v. HUD, 936 F.2d 1300, 1303 (D.C. Cir. 1991) (holding that release of names would not provide additional insight to how well the government was enforcing labor statutes); Hopkins v. HUD, 929 F.2d 81, 88 (2d Cir. 1991) (holding that release of names and addresses of workers employed on HUD-assisted public housing projects would shed no light on HUD's enforcement of prevailing wage laws); Minnis v. USDA, 737 F.2d 784, 784-87 (9th Cir. 1984) (recognizing valid public interest in fairness of agency lottery system that awarded permits to raft down the Rogue River, which has restricted traffic pursuant to the Wild and Scenic Rivers Act of 1968, but holding that release of names and addresses of applicants would in no way further that interest); Heights Cmty. Cong. v. VA, 732 F.2d 526, 530 (6th Cir. 1984) (determining release of names and home addresses would result only in the "involuntary personal involvement" of innocent

A request made for the purpose of challenging a criminal conviction or establishing a criminal defendant's innocence has generally been found not to further a FOIA public interest.[141] Likewise, a request made to obtain or supplement discovery in a private

---

purchasers rather than appreciably furthering a concededly valid public interest in determining whether anyone had engaged in "racial steering" in the administration of a Veterans loan program); People for the Ethical Treatment of Animals v. NIH, 853 F. Supp. 2d 146, 158 (D.D.C. 2012) (assuming arguendo that the Animal Welfare Act and Health Research Extension Acts establish a public interest in knowing "'whether those who conduct research on animals are treating them humanely,'" and concluding that disclosure of identities of three named researchers would not serve that interest because information would not reveal anything about the government's own conduct (quoting plaintiff's memorandum)) (Exemption 7(C)), aff'd in part, No. 12-5183, 2012 WL 5896791 (D.C. Cir. Nov. 2, 2012), aff'd in part, vacated in part, & remanded, 745 F.3d 535, 538 (D.C. Cir. 2014); Long v. DOJ, 778 F. Supp. 2d 222, 236 (N.D.N.Y. 2011) (rejecting plaintiffs' claims that "disclosure of the vaccine type and date of administration will shed light on the DOJ's handling of petitions brought under the Vaccine Act").

[141] See, e.g., Watters v. DOJ, 576 F. App'x 718, 724 (10th Cir. 2014) (determining that agency properly withheld identifying information of law enforcement personnel and private third parties because plaintiff sought records to secure their release from prison rather than to further public understanding of government activities) (Exemptions 6 and 7(C)); Carpenter v. DOJ, 470 F.3d 434, 441 (1st Cir. 2006) ("There is no public interest in supplementing an individual's request for discovery" concerning plaintiff's own innocence) (criminal trial) (Exemption 7(C)); Brown v. FBI, 658 F.2d 71, 75 (2d Cir. 1981) (holding that the court "cannot allow the plaintiff's personal interest to enter into the weighing or balancing process" where they are "hoping to obtain evidence sufficient to mount a collateral attack on [their] kidnapping conviction"); Rimmer v. Holder, No. 10-1106, 2011 WL 4431828, at *7 (M.D. Tenn. Sept. 22, 2011) (characterizing requester's asserted interest in collaterally attacking their state conviction as an "illegitimate" public interest) (Exemption 7(C)), aff'd, 700 F.3d 246 (6th Cir. 2012); Lewis v. DOJ, 733 F. Supp. 2d 97, 111 (D.D.C. 2010) (explaining that plaintiff's personal interest in learning "the identities of the DEA Special Agents" related to their criminal conviction "does not qualify as a public interest favoring disclosure") (Exemptions 6 and 7(C)); Lasko v. DOJ, 684 F. Supp. 2d 120, 129 (D.D.C. 2010) ("Plaintiff's personal interest in the requested records for the purpose of attacking his conviction or sentence is not relevant to this analysis.") (Exemption 7(C)), aff'd, No. 10-5068, 2010 WL 3521595 (D.C. Cir. Sept. 3, 2010); Amuso v. DOJ, 600 F. Supp. 2d 78, 93 (D.D.C. 2009) ("Any interest in the information for purposes of proving his innocence or proving that government witnesses perjured testimony at his criminal trial does not overcome the individual's privacy interest."); Scales v. EOUSA, 594 F. Supp. 2d 87, 91 (D.D.C. 2009) (stating "that a bald assertion of a *Brady* violation is insufficient to overcome the individual's privacy interests in the records at issue") (Exemption 7(C)); Ebersole v. United States, No. 06-2219, 2007 WL 2908725, at *6 (D. Md. Sept. 24, 2007) (holding that "FOIA requests are not meant to displace discovery rules" where plaintiff claims public interest in establishing their innocence) (Exemption 7(C)); Thomas v. DOJ, No. 04-0112, 2006 WL 722141, at *3 (E.D. Tex. Mar. 15, 2006) ("[T]he interest of a private litigant [in collaterally attacking their conviction] is not a significant public interest."), aff'd, 260 F. App'x 677 (5th Cir. 2007).

lawsuit has generally been found not to serve a FOIA public interest.[142] In fact, one court has observed that if the requester truly had a great need for the records for purposes of litigation, he or she should seek them in that forum, where it would be possible to provide them under an appropriate protective order.[143] The Court of Appeals for the District of Columbia Circuit has found that there is a public interest, however, "in knowing whether the FBI is withholding information that could corroborate a death-row inmate's claim of innocence."[144]

Assigning a Weight to the FOIA Public Interest

If an asserted public interest is found to qualify under this standard, it then must be accorded some measure of value so that it can be weighed against the threat to

---

[142] See Horowitz v. Peace Corps, 428 F.3d 271, 278-79 (D.C. Cir. 2005) (explaining that plaintiff's "need to obtain the information for a pending civil suit is irrelevant, as the public interest to be weighed has nothing to do with [their] personal situation"); Pronin v. BOP, No. 17-1807 2020 WL 1189386, at *3 (D.D.C. Mar. 12, 2020) (explaining that plaintiff's "personal interest in discerning potential defendants for his own litigation" is not a FOIA public interest), aff'd, No. 20-5077, 2021 WL 6102460 (D.C. Cir. Dec. 21, 2021) (per curiam); Sakamoto v. EPA, 443 F. Supp. 2d 1182, 1197 (N.D. Cal. 2006) ("Here, plaintiff expressly acknowledges that she wants the discrimination complaint files to use as possible evidence in her employment discrimination case . . . [which is] not a significant public interest warranting disclosure of private information."); Cappabianca v. Comm'r, U.S. Customs Serv., 847 F. Supp. 1558, 1564 (M.D. Fla. 1994) (seeking records for job-related causes of action was insufficient). But see United Am. Fin., Inc. v. Potter, 667 F. Supp. 2d 49, 60 (D.D.C. 2009) (ordering release of names of USPS employees and agents where individuals identified could provide information in a related civil suit) (Exemption 7(C)).

[143] Gilbey v. U.S. Dep't of the Interior, No. 89-0801, 1990 WL 174889, at *2 (D.D.C. Oct. 22, 1990); see also Pronin v. BOP, 2020 WL 1189386, at *3 (acknowledging "if [plaintiff] wants BOP staff names for his personal litigation purposes, he may file a lawsuit and seek those names in civil discovery"); Bongiorno v. Reno, No. 95-72143, 1996 WL 426451, at *4 (E.D. Mich. Mar. 19, 1996) (observing that the proper place for a noncustodial parent to seek information about their child is the "state court that has jurisdiction over the parties, not a FOIA request or the federal court system"); cf. NARA v. Favish, 541 U.S. 157, 174 (2004) ("There is no mechanism under FOIA for a protective order allowing only the requester to see whether the information bears out his theory, or for proscribing its general dissemination.") (Exemption 7(C)).

[144] Roth v. DOJ, 642 F.3d 1161, 1180 (D.C. Cir. 2011) (holding that FOIA public interest favored fuller disclosure where death-row inmate demonstrated that a reasonable person could believe that the agency might be withholding information that could corroborate their claim that four others actually committed the quadruple homicide for which they were convicted) (Exemption 7(C)).

privacy.[145] In evaluating the weightiness of a FOIA public interest in disclosure, the D.C. Circuit has found that "[w]hile [this is] certainly not a per se defense to a FOIA request," it is appropriate, when assessing the public interest side of the balancing equation, to consider "the extent to which there are alternative sources of information available that could serve the public interest in disclosure."[146] Significantly, although a FOIA public

---

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

[146] DOD v. Fed. Lab. Rels. Auth., 964 F.2d 26, 29-30 (D.C. Cir. 1992); see NARA v. Favish, 541 U.S. 157, 175 (2004) (recognizing that the government had thoroughly investigated the suicide at issue and that "[i]t would be quite extraordinary to say we must ignore the fact that five different inquiries into the . . . matter reached the same conclusion") (Exemption 7(C)); Telematch, Inc. v USDA, 45 F.4th 343, 352 (D.C. Cir. 2022) (explaining that the "incremental value of disclosing customer numbers" is low in light of other information available that would shed light on how USDA administers farm benefit and subsidy programs); Pavement Coatings Tech. Council v. U.S. Geological Surv., 995 F.3d 1014, 1024 (D.C. Cir. 2021) (holding that release of study participants' personal information was unwarranted because the agency "already produced the questionnaires and a 'means by which to match [participants'] responses to the results of the sample analysis'" (quoting agency declaration)); Forest Serv. Emps. for Env't Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1028 (9th Cir. 2008) ("As a result of the substantial information already in the public domain, we must conclude that the release of the identities of the employees who participated in the Forest Service's response to the Cramer Fire would not appreciably further the public's important interest in monitoring the agency's performance during that tragic event."); Forest Guardians v. FEMA, 410 F.3d 1214, 1219 & n.3 (10th Cir. 2005) (identifying no public interest in a request to FEMA for "electronic map files" showing the locations of federally insured structures, because the electronic files were "merely cumulative of the information" that FEMA already had released in "hard-copy" and because the requester already had a "plethora of information" with which "to evaluate FEMA's activities"); Off. of the Cap. Collateral Couns. v. DOJ, 331 F.3d 799, 804 (11th Cir. 2003) (holding that there is substantial public information available about AUSA's misconduct and that therefore any "public interest in knowing how DOJ responded to [AUSA's] misconduct can be satisfied by this other public information"); Painting Indus. of Haw. Mkt. Recovery Fund v. U.S. Dep't of the Air Force, 26 F.3d 1479, 1485 (9th Cir. 1994) (explaining that union may "pass out fliers" or "post signs or advertisements soliciting information from workers about possible violations of the Davis-Bacon Act"); Fed. Lab. Rels. Auth. v. U.S. Dep't of Com., 962 F.2d 1055, 1060 n.2 (D.C. Cir. 1992) (explaining that union may "distribute questionnaires or conduct confidential face-to-face interviews" to obtain rating information about employees); Painting & Drywall Work Pres. Fund, Inc. v. HUD, 936 F.2d 1300, 1303 (D.C. Cir. 1991) (determining that release of workplace contact information is alternative to disclosing home addresses of employees); Multnomah Cnty. Med. Soc'y v. Scott, 825 F.2d 1410, 1416 (9th Cir. 1987) (holding that medical society can have members send literature to their patients as alternative to disclosure of identities of all Medicare beneficiaries); ACLU v. BOP, No. 20-2320, 2022 WL 17250300, at *13 (D.D.C. Nov. 28, 2022) (concluding that public interest in understanding how BOP handled federal executions during COVID-19 pandemic was sufficiently served by hundreds of documents

interest typically weighs in favor of disclosure, several courts, including the D.C. Circuit, have implicitly recognized that there can be a public interest in the nondisclosure of personal privacy information – particularly, the public interest in avoiding the impairment of ongoing and future law enforcement investigations.[147]

Nexus Between the Requested Information and the Public Interest

The Supreme Court has held that there must be a "nexus between the requested information and the asserted public interest that would be advanced by disclosure."[148]

---

previously released and does not outweigh employees' and other third parties' privacy interest in avoiding harassment); Cowdery, Ecker & Murphy, LLC v. U.S. Dep't of the Interior, 511 F. Supp. 2d 215, 219 (D. Conn. 2007) (stating that "it is not clear from the Department's arguments that other means could adequately provide such information and such an assessment" and so concluding that "this factor weighs in favor of disclosure").

[147] See, e.g., Perlman v. DOJ, 312 F.3d 100, 106 (2d Cir. 2002) ("The strong public interest in encouraging witnesses to participate in future government investigations offsets the weak public interest in learning witness and third party identities.") (Exemptions 6 and 7(C)), cert. granted, vacated & remanded, 541 U.S. 970 (2004), reinstated after remand, 380 F.3d 110 (2d Cir. 2004) (per curiam); Strout v. USPC, 40 F.3d 136, 139 (6th Cir. 1994) ("[T]here would appear to be a public policy interest *against* such disclosure, as the fear of disclosure to a convicted criminal could have a chilling effect on persons, particularly victims, who would otherwise provide the Commission with information relevant to a parole decision."); Fund for Const. Gov't, 656 F.2d at 865-66 (recognizing that "public interest properly factors into both sides of the balance," and holding that agency properly withheld the identities of government officials investigated but not charged with any crime in "Watergate" investigation) (Exemption 7(C)). But see Advocs. for Highway & Auto Safety v. Fed. Highway Admin., 818 F. Supp. 2d 122, 131 (D.D.C. 2011) ("The belief that disclosure might impair the government's ability to acquire similar information in the future carries no weight under FOIA Exemption 6, which focuses on individual privacy interests.").

[148] NARA v. Favish, 541 U.S. 157, 172-73 (2004) (Exemption 7(C)); see also, e.g., Associated Press v. DOD, 554 F.3d 274, 293 (2d Cir. 2009) ("We conclude that the public interest in evaluating whether DOD properly followed-up on the detainees' claims of mistaken identity have been adequately served by the disclosure of the redacted information and that disclosing names and addresses of the family members would constitute a clearly unwarranted invasion of the family members' privacy interest because such disclosure would not shed any light on DOD's action in connection with the detainees' claims at issue here.") (Exemptions 6 and 7(C)); Abraham & Rose, P.L.C. v. United States, 138 F.3d 1075, 1083 (6th Cir. 1998) (holding that information about individual taxpayers does not serve any possible public interest in "how the IRS exercises its power over the collection of taxes") (Exemptions 6 and 7(C)); Reps. Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d 97, 126 (D.D.C. 2021) (explaining that plaintiff "offers no suggestion as to how knowing names alone will clarify the agency's activities, particularly after public dissemination of [other records]") (Exemption 7(C)); Grandison v. DOJ, 600 F. Supp. 2d 103, 117 (D.D.C. 2009) ("Release of the names of law enforcement personnel, witnesses, experts, targets of

That is to say, release of the actual personal information at issue must further the public's understanding of the activity that is the basis for the asserted FOIA public interest in disclosure.[149] Courts have found that it is not enough that the information would permit

---

investigation, court reporters and other court personnel, sheds no light on the working of the government."); Anderson v. DOJ, 518 F. Supp. 2d 1, 14 (D.D.C. 2007) (protecting retired DEA Special Agent's home address because release of the address "in no way would further FOIA's basic purpose") (Exemptions 6 and 7(C)); Sutton v. IRS, No. 05-7177, 2007 WL 30547, at *6 (N.D. Ill. Jan. 4, 2007) (protecting personal information of third party taxpayers and IRS personnel because "none of their personal information will give Plaintiff a greater understanding of how the agency is performing its duties"); Forest Guardians v. U.S. Dep't of the Interior, No. 02-1003, 2004 WL 3426434, at *17 (D.N.M. Feb. 28, 2004) (holding public interest served by release of financial value of loans and names of financial institutions that issued loans, but "protecting any arguably private personal financial or other information concerning individual [Bureau of Land Management] grazing permittees").

[149] See Favish, 541 U.S. at 172 (declaring that requesters "must show the information is likely to advance [a specific, significant public] interest"). Compare Cameranesi v. DOD, 856 F.3d 626, 644-45 (9th Cir. 2017) (noting that "the relationship between [Western Hemisphere Institute for Security Cooperation's ("WHINSEC")] obligation to provide human rights training to WHINSEC students and the subsequent conduct of foreign law enforcement or military personnel, perhaps years after their training at WHINSEC, is tenuous at best[]" and holding that "[b]ecause any incremental value stemming from the disclosure of the identities of WHINSEC students and instructors is small, the public interest in this case does not outweigh the serious risks that would result from disclosure"), and Havemann v. Colvin, 629 F. App'x 537, 540 (4th Cir. 2015) (concluding privacy interest outweighed FOIA public interest as "it is undisputed that [plaintiff] would be unable to make any eligibility determinations for benefits based solely on [requested personal] data [concerning social security beneficiaries], because such . . . determinations require examination of many different and complicated variables including work issues, prior filings, and auxiliary benefits"), with Avondale Indus. v. NLRB, 90 F.3d 955, 961-62 (5th Cir. 1996) (declaring that disclosure of marked unredacted voting lists in union representation election would give plaintiff information it needs to determine whether NLRB conducted election tainted with fraud and corruption), Mattachine Soc'y of Wash., D.C. v. DOJ, 267 F. Supp. 3d 218, 228 (D.D.C. 2017) (determining that third party names were properly withheld, but identifying significant public interest in extent to which government "surveilled, harassed, and/or terminated" "lesbian, gay, bisexual, and transgender federal employees" under E.O. No. 10,450, and ordering agency to replace third party names in responsive records with "alphanumeric markers, which are to be uniquely identifiable and consistent throughout all documents produced" to protect privacy while vindicating public interest) (Exemptions 6 and 7(C)), and Int'l Diatomite Producers Ass'n v. SSA, No. 92-1634, 1993 WL 137286, at *5 (N.D. Cal. Apr. 28, 1993) (holding that release of vital status information concerning diatomite industry workers serves "public interest in evaluating whether public agencies . . . carry out their statutory duties to protect the public from the potential health hazards from crystalline silica exposure").

speculative inferences about the conduct of an agency or a government official[150] or that it might aid the requester in lobbying efforts that would result in passage of laws and thus benefit the public in that respect.[151] Simply identifying a valid public interest is not enough to warrant the release of personal information.[152] The public interest must be served by disclosure.[153]

---

[150] See DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 774 (1989) (explaining that release of an individual's rap sheet revealing criminal history potentially related to the individual's dealings with the government would not reveal anything about the conduct of the agency in how it awards contracts) (Exemption 7(C)); see also Cozen O'Connor v. U.S. Dep't of the Treasury, 570 F. Supp. 2d 749, 781 (E.D. Pa. 2008) (stating that "[d]uring information gathering and compilation, government agencies may coincidentally receive personal and private information that has no bearing on their decision-making or operations[,]" and "[i]n those instances, the relationship of the information to the individual is not pertinent to the government's workings").

[151] See Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989) (rejecting FOIA public interest argument that release of federal annuitants' names and addresses would "aid [National Association of Retired Federal Employees ("NARFE")] in its lobbying activities, and thus result in the passage of laws that would benefit the public in general and federal retirees in particular"); McWatters v. ATF, No. 20-1092, 2022 WL 3355798, at *4 (D.D.C. Aug. 15, 2022) (rejecting FOIA public interest that release of recordings identifying deceased victims of fire would allow plaintiff to raise awareness for government to "'adopt and improve fire safety laws'") (Exemption 7(C)).

[152] See, e.g., Hopkins v. HUD, 929 F.2d 81, 88 (2d Cir. 1991) ("The simple invocation of a legitimate public interest . . . cannot itself justify the release of personal information."); 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").

[153] Hopkins, 929 F.2d at 88; see also Favish, 541 U.S. at 175 (highlighting "the nexus required between the requested documents and the purported public interest served by disclosure"); Cook v. NARA, 758 F.3d 168, 178 (2d Cir. 2014) (protecting specific subjects of Presidential Records Act ("PRA") requests by former President and Vice President because records would shed little light on activities of NARA, which has no role in policing types of records requested by former officials under PRA); World Publ'g Co. v. DOJ, 672 F.3d 825, 831 (10th Cir. 2012) ("Based on the purpose of the FOIA, there is little to suggest that disclosure of booking photos would inform citizens of a government agency's adequate performance of its function . . . [or] would significantly assist the public in detecting or deterring any underlying government misconduct.") (Exemption 7(C)); Karantsalis v. DOJ, 635 F.3d 497, 504 (11th Cir. 2011) (per curiam) (holding that disclosure of booking photographs might satisfy "voyeuristic curiosities" but "would not serve the public interest" as "the facial expression of a prisoner in a booking photograph is [not] a sufficient proxy to evaluate whether a prisoner is receiving preferential treatment") (Exemption 7(C)); Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1056 (D.C. Cir. 2009) (concluding, after carefully scrutinizing various public interests asserted by plaintiff, that "the requested data does not serve any FOIA-related public interest in disclosure"); Viet. Veterans of Am. v. DOD, 453 F. Supp. 3d 508, 519 (D. Conn. 2020) (holding that

The Supreme Court has reinforced the nexus requirement multiple times. For example, in NARA v. Favish,[154] the Supreme Court recognized that surviving family members had a privacy interest in their close relative's death scene images and also found there could be a FOIA public interest "in uncovering deficiencies or misfeasance in the Government's investigation" of an apparent suicide that occurred under mysterious circumstances.[155] However, the Supreme Court found that the asserted FOIA public interest would not be served by release of the death scene images because the requester failed to "produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred."[156] Without such a showing, the requester could not establish the requisite nexus – that disclosure of the images at issue would shed light on whether the government's investigation was deficient.[157]

Similarly, the Supreme Court in DOJ v. Reporters Committee for Freedom of the Press[158] held that the subject of a criminal history or "rap sheet" possessed a substantial privacy interest in its contents and that disclosure of this information would not contribute to the public's understanding of the operations or activities of the government.[159] The Supreme Court rejected a public interest claim concerning whether a defense contractor "allegedly had improper dealings with a corrupt Congressman," commenting that "the rap sheet would [conceivably] provide details to include in a news story, but, in itself . . . [was] not the kind of public interest for which Congress enacted the FOIA."[160] It premised this conclusion on the fact that the defense contractor's rap

---

releasing names of Veterans exposed to radiation "will not, in and of itself, increase the public's understanding of the operations and activities of the government in connection with the Palomares nuclear accident"); Berger v. IRS, 487 F. Supp. 2d 482, 505 (D.N.J. 2007) (holding that disclosure of an IRS agent's time sheets would do little to serve plaintiff's asserted public interest that the records would shed light on the operations of the IRS in conducting investigations of taxpayers); Associated Press v. DOD, 462 F. Supp. 2d 573, 577-78 (S.D.N.Y. 2006) (identifying a strong public interest in information pertaining to the height and weight of Guantanamo Bay detainees, as it would allow the public to assess "not only DOD's conduct with respect to the hunger strikes at Guantanamo, but more generally DOD's care and (literally) feeding of the detainees").

[154] NARA v. Favish, 541 U.S. 157 (2004).

[155] Id. at 173.

[156] Id. at 174.

[157] Id. at 175.

[158] 489 U.S. 749 (1989) (Exemption 7(C)).

[159] Id. at 774.

[160] Id.

sheet would reveal nothing directly about the behavior of the Congressman with whom the contractor allegedly had an improper relationship, nor would it reveal anything about the conduct of the DOD in awarding contracts to the contractor's company.[161]

Furthermore, in United States Department of State v. Ray,[162] the Supreme Court recognized that although there was a legitimate public interest in whether the State Department was adequately monitoring the Haitian Government's promise not to prosecute Haitians who were returned to their country after failed attempts to enter the United States, the Court determined that this public interest had been "adequately served" by release of redacted summaries of the agency's interviews with the returnees.[163] Although the plaintiff claimed that disclosure of the identities of the returnees would allow him to elicit further information concerning their treatment, the Court found "nothing in the record to suggest that a second set of interviews with the already-interviewed returnees would produce any relevant information . . . . Mere speculation about hypothetical public benefits cannot outweigh a demonstrably significant invasion of privacy."[164]

Consistent with these Supreme Court decisions, courts have found that release of personal information must directly reveal information about how the government functions in order to serve the FOIA public interest.[165] Furthermore, disclosure of

---

[161] Id.

[162] 502 U.S. 164 (1991).

[163] Id. at 174.

[164] Id. at 178-79.

[165] See, e.g., Prudential Locations LLC v. HUD, 739 F.3d 424, 433 (9th Cir. 2013) ("Revealing the identity of a private individual [who wrote an email alleging illegal conduct by a business] does not further the public interest unless it casts light on the conduct of the government."); Associated Press v. DOD, 554 F.3d 274, 288 (2d Cir. 2009) ("This Court has similarly said that 'disclosure of information affecting privacy interests is permissible only if the information reveals something *directly* about the character of a government agency or official.'" (quoting Hopkins v. HUD, 929 F.2d 81, 88 (2d Cir. 1991))) (Exemptions 6 and 7(C)); The Nation Mag. v. U.S. Customs Serv., 71 F.3d 885, 895 (D.C. Cir. 1995) (holding that agency's response to presidential candidate H. Ross Perot's offer to assist in drug interdiction would serve public interest in knowing about agency's plans to privatize government functions) (Exemption 7(C)); Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989) (determining that names and home addresses of federal annuitants reveal nothing directly about workings of government); Halloran v. VA, 874 F.2d 315, 323 (5th Cir. 1989) ("[M]erely stating that the interest exists in the abstract is not enough; rather, the court should have analyzed how that interest would be served by compelling disclosure . . . .") (Exemption 7(C)); Kimberlin v. U.S. Dep't of the Treasury, 774 F.2d 204, 208 (7th Cir. 1985) ("The record fails to reflect any benefit which would accrue to the public from disclosure and [the requester's] self-serving assertions of government wrongdoing and coverup do not rise to the level of justifying disclosure.") (Exemption 7(C));

personal information must advance the FOIA public interest beyond information that may already be public.[166] Finally, courts have consistently held that speculative or hypothetical FOIA public interests are insufficient to overcome privacy interests.[167]

Stern v. FBI, 737 F.2d 84, 92 (D.C. Cir. 1984) (holding that certain specified public interests "would not be satiated in any way" by disclosure) (Exemption 7(C)); Barnard v. DHS, 598 F. Supp. 2d 1, 13 (D.D.C. 2009) ("Where, as here, the nexus between the information sought and the asserted public interest is lacking, the asserted public interests will not outweigh legitimate privacy interests."); Seized Prop. Recovery, Corp. v. U.S. Customs Serv., 502 F. Supp. 2d 50, 59 (D.D.C. 2007) (stating that there must be a nexus between the information sought under FOIA and the public's ability to learn about the agency's operations) (Exemptions 6 and 7(C)).

[166] See, e.g., Prison Legal News v. EOUSA, 628 F.3d 1243, 1250 (10th Cir. 2011) (holding that public interest in disclosure of video and audio files depicting death scene outweighed by survivors' privacy interests because "[w]hile the BOP's protection of prisoners and the government's discretionary use of taxpayer money may be matters of public interest, there is nothing to suggest the records would add anything new to the public understanding") (Exemption 7(C)); Associated Press, 554 F.3d at 293 (concluding that "the public interest in evaluating whether DOD properly followed-up on the detainees' claims of mistaken identity have been adequately served by the disclosure of the redacted information and that disclosing names and addresses of the family members would constitute a clearly unwarranted invasion of the family members' privacy interest because such disclosure would not shed any light on DOD's action in connection with the detainees' claims at issue here"); Forest Serv. Emps. for Env't Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1027-28 (9th Cir. 2008) (explaining that plaintiff, who admitted that "the identities of the employees alone will shed no new light on the Forest Service's performance of its duties beyond that which is already publicly known[,]" did not persuade the court that "direct contact with the employees would produce any information that has not already been revealed to the public through the four investigations that have already occurred and the three reports that have been publicly released"); Rosenfeld v. DOJ, 57 F.3d 803, 811-12 (9th Cir. 1995) (concluding that disclosure of names of investigative subjects would serve public interest in knowing whether FBI "overzealously" investigated political protest group by allowing comparison of investigative subjects to group's leadership roster) (Exemption 7(C)); ACLU v. BOP, No. 20-2320, 2022 WL 17250300, at *13 (D.D.C. Nov. 28, 2022) (concluding that public interest in understanding how BOP handled federal executions during COVID-19 pandemic was sufficiently served by hundreds of documents previously released and does not outweigh employees' and other third parties' privacy interest in avoiding harassment); Seized Prop. Recovery, Corp., 502 F. Supp. 2d at 60 (noting that "any documents containing information about Custom's performance or behavior would advance [the public interest of informing the citizenry of how Customs operates] regardless of whether they contained the names and addresses of individuals whose property was subject to forfeiture").

[167] See, e.g., Perioperative Servs. & Logistics LLC v. VA, 57 F.4th 1061, 1068 (D.C. Cir. 2023) (determining that significant privacy interest in complaint about a medical device outweighs FOIA public interest in how the VA handles complaints from competitors where plaintiff "offers nothing but speculation to suggest that a competitor filed the complaint"); Long v. OPM, 692 F.3d 185, 194 (2d Cir. 2012) (noting that "an employee's name may be useful for investigating the behavior of individual employees; but courts have been skeptical of

Courts typically have not found a FOIA public interest in records concerning state or foreign governments[168] or individuals[169] where records do not shed light on agency

---

recognizing a public interest in this 'derivative' use of information, which is indirect and speculative") (internal citation omitted); Navigator Publ'g v. DOT, 146 F. Supp. 2d 68, 71 (D. Me. 2001) (concluding that release of addresses of merchant mariners licensed by United States would serve only "hypothetical 'derivative use'" that is far outweighed by "demonstrably significant invasion of privacy") (internal citation omitted).

[168] See Cincinnati Enquirer v. DOJ, 45 F.4th 929, 935 (6th Cir. 2022) (emphasizing that focus of FOIA public interest analysis must be on alleged conduct of federal, rather than state, officials) (Exemption 7(C)); Landano v. DOJ, 956 F.2d 422, 430 (3d Cir. 1992) (stating that there is "no FOIA-recognized public interest in discovering wrongdoing by a *state* agency") (Exemption 7(C)); Phillips v. ICE, 385 F. Supp. 2d 296, 305 (S.D.N.Y. 2005) (observing that, although privacy interests of government officials may be lessened by countervailing public interest, that idea "would appear to be inapplicable to former foreign government officials"); McMillian v. BOP, No. 03-1210, 2004 WL 4953170, at *7 n.11 (D.D.C. July 23, 2004) (ruling that the plaintiff's argument that an audiotape would show the misconduct of the District of Columbia Board of Parole was irrelevant because "the FOIA is designed to support the public interest in how agencies of the federal government conduct business"); Garcia v. DOJ, 181 F. Supp. 2d 356, 374 (S.D.N.Y. 2002) (recognizing that the "discovery of wrongdoing at a state as opposed to a federal agency . . . is not a goal of FOIA") (Exemption 7(C)); see also FOIA Update, Vol. XII, No. 2 ("FOIA Counselor: Questions & Answers") (advising that "government" should mean federal government); cf. Lissner v. U.S. Customs Serv., 241 F.3d 1220, 1223 & n.2 (9th Cir. 2001) (identifying a public interest in the agency's treatment of city police officers arrested for smuggling steroids, but declining to "address the issue of whether opening up *state and local governments* to scrutiny also raises a cognizable public interest under the FOIA") (Exemption 7(C)).

[169] See, e.g., DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989) (Exemption 7(C)); Bibles v. Or. Nat. Desert Ass'n, 519 U.S. 355, 355-56 (1997) (per curiam) (determining that there is no FOIA public interest in "knowing with whom the government has chosen to communicate"); DOD v. Fed. Lab. Rels. Auth., 510 U.S. 487, 497 (1994) ("Disclosure of the addresses might allow the unions to communicate more effectively with employees, but it would not appreciably further 'the citizens' right to be informed about what their government is up to." (quoting Reps. Comm., 489 U.S. at 773)); Pavement Coatings Tech. Council v. U.S. Geological Surv., 995 F.3d 1014, 1024 (D.C. Cir. 2021) (holding that release of study participants' personal information was unwarranted because the agency "already produced the questionnaires and a 'means by which to match [participants'] responses to the results of the sample analysis'" (quoting agency's filing)); Zaldivar v. VA, 695 F. App'x 319, 320 (9th Cir. 2017) (upholding district court's Exemption 6 analysis where district court previously held plaintiff did not identify any public interest in disclosure of third party's contact information and social security number); Consumers' Checkbook for the Study of Servs. v. HHS, 554 F.3d 1046, 1051 (D.C. Cir. 2009) ("'[I]nformation about private citizens . . . that reveals little or nothing about an agency's own conduct' does not serve a relevant public interest under FOIA." (quoting Reps. Comm., 489 U.S. at 773)); Reps. Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d 97, 126

operations. As the Supreme Court has declared, such information "falls outside the ambit of the public interest that the FOIA was enacted to serve," as it does not directly reveal the operations or activities of the federal government.[170] Nevertheless, the below sections discuss situations where courts have found an overriding FOIA public interest in the release of information concerning individuals.

Derivative Use of the Information

The Supreme Court expressly declined in United States Department of State v. Ray[171] to decide whether a public interest that stems not from the documents themselves but rather from a "derivative use" to which the documents could be put could ever be weighed in the balancing process against a privacy interest.[172] Subsequently, however, the D.C. Circuit and several other courts have addressed the "derivative use" issue and ordered the release of personal information despite the fact that the public benefit to be derived from release depended upon the requesters' use of the information to further

---

(D.D.C. 2021) (holding that identifying non-public employees was not warranted after public dissemination of a summons and related Inspector General's report provided insight into agency's activities) (Exemption 7(C)); Kishore v. DOJ, 575 F. Supp. 2d 243, 256 (D.D.C. 2008) ("Information about individuals that does not directly reveal the operations or activities of the government – which is the focus of FOIA – 'falls outside the ambit of the public interest that the FOIA was enacted to serve' and may be protected under Exemption 7(C)." (quoting Reps. Comm., 489 U.S. at 775)); Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. DOJ, 503 F. Supp. 2d 373, 382 (D.D.C. 2007) ("When the material in the government's control is a compilation of information about private citizens, rather than a record of government actions, there is little legitimate public interest that would outweigh the invasion of privacy because the information reveals little or nothing about an agency's own conduct."); Iowa Citizens for Cmty. Improvement v. USDA, 256 F. Supp. 2d 946, 951 (S.D. Iowa 2002) (declaring that while a presidential nominee's "fitness for public office may be of great popular concern to the public," such concern "does not translate into a real public interest that is cognizable . . . [under] the FOIA"); Andrews v. DOJ, 769 F. Supp. 314, 316-17 (E.D. Mo. 1991) (holding that although release of an individual's address, telephone number, and place of employment might serve a general public interest in the satisfaction of monetary judgments, "it does not implicate a public interest cognizable under the FOIA") (Exemptions 6 and 7(C)); FOIA Update, Vol. XVIII, No. 1 ("Supreme Court Rules in Mailing List Case"); FOIA Update, Vol. X, No. 2 ("OIP Guidance: Privacy Protection Under the Supreme Court's Reps. Comm. Decision").

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

[171] 502 U.S. 164 (1991).

[172] Id. at 178-79; see Associated Press v. DOD, 554 F.3d 274, 290 (2d Cir. 2009) (explaining that the "derivative use" theory "posits that the public interest can be read more broadly to include the ability to use redacted information to obtain additional as yet undiscovered information outside the government files") (Exemptions 6 and 7(C)).

investigate how the government performs its duties.[173] In ACLU v. DOJ,[174] the D.C. Circuit found that release of certain court docket information could be used to show the "kinds of crimes the government uses cell phone tracking data to investigate" and "how often prosecutions against people who have been tracked are successful."[175] The court found that derivative information from suppression hearings in these cases could show "the efficacy of the technique," the "standards the government uses to justify warrantless tracking," and "the duration of tracking and the quality of tracking data," thus informing "the public discussion concerning the intrusiveness of this investigative tool."[176] The court reasoned that this was a relevant consideration, and if a court "consider[s] derivative use for evaluating privacy concerns, [then it] must do the same for the public interest."[177]

To support a "derivative use" public interest, the information must shed additional light on the government's activities.[178] Courts have found a "derivative use" public interest in the following contexts:

---

[173] See, e.g., ACLU v. DOJ, 655 F.3d 1, 13 (D.C. Cir. 2011) (Exemption 7(C)); Elec. Frontier Found. v. Off. of the Dir. of Nat'l Intel., 639 F.3d 876, 887-88 (9th Cir. 2010); Rosenfeld v. DOJ, 57 F.3d 803, 811-12 (9th Cir. 1995); W. Watersheds Project v. Bureau of Land Mgmt., No. 09-0482, 2010 WL 3735710, at *12 (D. Idaho Sept. 13, 2010); Sun-Sentinel Co. v. DHS, 431 F. Supp. 2d 1258, 1269-73 (S.D. Fla. 2006), aff'd sub nom. News-Press v. DHS, 489 F.3d 1173 (11th Cir. 2007); Lardner v. DOJ, No. 03-0180, 2005 WL 758267, at *17 (D.D.C. Mar. 31, 2005) (Exemptions 6 and 7(C)); Balt. Sun v. USMS, 131 F. Supp. 2d 725, 729-30 (D. Md. 2001) (Exemption 7(C)); Or. Nat. Desert Ass'n v. U.S. Dep't of the Interior, 24 F. Supp. 2d 1088, 1093 (D. Or. 1998) (Exemption 7(C)); Cardona v. INS, No. 93-3912, 1995 WL 68747, at *3 (N.D. Ill. Feb. 16, 1995); Ray v. DOJ, 852 F. Supp. 1558, 1564-65 (S.D. Fla. 1994).

[174] 655 F.3d 1 (D.C. Cir. 2011).

[175] Id. at 13-14 (considering derivative use of docket information, such as case name, case number and court) (Exemption 7(C)).

[176] Id.

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

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

(1) a list of individuals who sold land to the Fish and Wildlife Service, which could be used to contact the individuals to determine how the agency acquires property throughout the United States;[179]

(2) a list of Haitian nationals returned to Haiti, which could be used for follow-up interviews with the Haitians to learn "whether the [Immigration and Naturalization Service (INS)] is fulfilling its duties not to turn away Haitians who may have valid claims for political asylum;"[180]

(3) the names of agents involved in the management and supervision of the FBI's 1972 investigation of John Lennon, which could be used to help determine whether the investigation was politically motivated;[181]

(4) the name and address of an individual who wrote a letter complaining about an immigration assistance company, which could be used to determine whether the INS acted upon the complaint;[182]

(5) the addresses of claimants awarded disaster assistance by FEMA based upon claims of damages from various hurricanes in Florida in 2004, which could be used to uncover further information pertaining to allegations of fraud and wasteful spending in the distribution of disaster assistance by FEMA;[183]

(6) the names of unsuccessful pardon applicants, which would assist the public in analyzing the "circumstances in which the executive chooses to grant or deny a pardon and the factors that bear on that decision;"[184]

(7) the "names and addresses [of purchasers of seized property, which] would enable the public to assess law enforcement agencies' exercise of the

---

[179] Thott v. U.S. Dep't of the Interior, No. 93-0177, slip op. at 5-7 (D. Me. Apr. 14, 1994).

[180] Ray v. DOJ, 852 F. Supp. 1558, 1564-65 (S.D. Fla. 1994) (distinguishing Supreme Court's decision in Ray, 502 U.S. 164, on the basis that "in the instant case . . . the public interest is not adequately served by release of the redacted logs [and] this Court cannot say that interviewing the returnees would not produce any information concerning our government's conduct during the interdiction process").

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

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

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

[184] Lardner v. DOJ, No. 03-0180, 2005 WL 758267, at *17 (D.D.C. Mar. 31, 2005) (Exemptions 6 and 7(C)).

substantial power to seize property, as well as USMS's performance of its duties regarding disposal of forfeited property;"[185]

(8) the "names and addresses of individuals as well as the addresses of the closely held entities and family-owned businesses" which would "allow the public to better understand the scope of the [Department of the Interior, Bureau of Land Management's] grazing program;"[186]

(9) the identities of individuals investigated by the FBI, which "would make it possible to compare the FBI's investigation [subjects] to a roster of the [Free Speech Movement]'s leadership" to determine "to what extent the FBI investigated individuals for participating in political protests, not federal criminal activity";[187]

(10) the identities of "well-connected corporate lobbyists," which would enable the public to "determine how the Executive Branch used advice from particular individuals and corporations in reaching its own policy decisions;"[188]

(11) the names of importers of elephant parts, which could reveal whether agency employees have conflicts of interests, exhibit favoritism, or engage in arbitrary decision-making, and, whether the Fish and Wildlife Service is generally enforcing regulations pertaining to elephant imports;[189] and

(12) the names, pay information, and security clearances of former military officials who sought approval for employment by foreign governments,

---

[185] Balt. Sun v. USMS, 131 F. Supp. 2d 725, 729-30 (D. Md. 2001) (Exemption 7(C)).

[186] W. Watersheds Project v. Bureau of Land Mgmt., No. 09-0482, 2010 WL 3735710, at *4 (D. Idaho Sept. 13, 2010); see also Or. Nat. Desert Ass'n v. U.S. Dep't of the Interior, 24 F. Supp. 2d 1088, 1093 (D. Or. 1998) (holding that public interest in knowing how agency is enforcing land-management laws is served by release of names of cattle owners who violated federal grazing laws) (Exemption 7(C)).

[187] Rosenfeld v. DOJ, 57 F.3d 803, 812 (9th Cir. 1995) (Exemption 7(C)).

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

[189] Friends of Animals v. Bernhardt, 15 F.4th 1254, 1266 (10th Cir. 2021) (explaining that releasing names of private individuals on permit forms allows public to verify that agency is overseeing elephant imports consistent with permitting requirements and ensuring that no single person exceeds regulatory limitations on number of imports) (Exemptions 6 and 7(C)).

> which would facilitate public understanding of the "'extent of influence that foreign powers may have over America's former military leaders.'"[190]

In Associated Press v. DOD,[191] the Court of Appeals for the Second Circuit expressed skepticism as to whether a "derivative use" can support a public interest under the FOIA, stating that "[a]lthough this Court has not addressed the issue of whether a 'derivative use' theory is cognizable under FOIA as a valid way by which to assert that a public interest is furthered, we have indicated that it may not be."[192] The Court of Appeals for the Ninth Circuit has at times expressed similar concerns.[193]

---

[190] WP Co. LLC v. DOD, No. 21-01025, 2022 WL 4119769, at *7 (D.D.C. Sept. 9, 2022) (quoting plaintiff's memorandum)); see id. (recognizing that while former military officials are no longer on active duty, they may still influence U.S. interests by advising U.S. defense contractors or later returning to public service, and release could shed light on whether "military leaders are taking advantage of their stations – or might be perceived to be doing so – to create employment opportunities with foreign governments in retirement").

[191] 554 F.3d 274 (2d Cir. 2009) (Exemptions 6 and 7(C)).

[192] Id. at 290; see Kuzma v. DOJ, 692 F. App'x 30, 35 (2d Cir. 2017) ("To the extent [plaintiff] means that learning the identities will provide further avenues for research, we have observed that 'courts have been skeptical of recognizing a public interest in this derivative use of information. . . .'" (quoting Long v. OPM, 692 F.3d 185, 194 (2d Cir. 2012))) (Exemptions 6 and 7(C)); Hopkins v. HUD, 929 F.2d 81, 88 (2d Cir. 1991) ("[W]e find that disclosure of information affecting privacy interests is permissible only if the information reveals something directly about the character of a government agency or official."); see also Viet. Veterans of Am. v. DOD, No. 17-1660, 2020 WL 1703239, at *7 (D. Conn. Apr. 8, 2020) (declining to release the names of Veterans tested for radiation exposure, which would "allow the public to fully appreciate the human cost of the Palomares nuclear accident" and "'benefit those veterans and their survivors,'" because the proposed release is based on a "derivative theory of public interest" and would not further "understanding of the government's operations or activities"); Seife v. U.S. Dep't of State, 298 F. Supp. 3d 592, 626 (S.D.N.Y. 2018) (rejecting plaintiff's argument that public interest would be satisfied by release of names of certain agency officials because plaintiff would need to contact those officials to obtain further information to satisfy that interest, and noting that Second Circuit has rejected derivative public interests as grounds for FOIA disclosure).

[193] Lahr v. NTSB, 569 F.3d 964, 979 (9th Cir. 2009) ("The only way that the identities of the eyewitnesses and FBI agents mentioned in the documents already released would have public value is if these individuals were contacted directly by the plaintiff or by the media. . . . [S]uch use is insufficient to override the witnesses' and agents' privacy interests, as the disclosure would bring about additional useful information only if direct contacts, furthering the privacy intrusion, are made.") (Exemption 7(C)); Forest Serv. Emps. for Env't Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1027-28 (9th Cir. 2008) (explaining that "[w]e have previously expressed skepticism at the notion that such derivative use of information can justify disclosure under Exemption 6," and concluding that the plaintiff's theory that "the only way the release of the identities of the Forest Service employees can benefit the public is if the public uses such information to contact the employees directly" is an unjustified reason to release their identities). But see Elec. Frontier Found., 639 F.3d at

Public Servant Accountability

Public oversight of government operations is the essence of public interest under the FOIA, one of the purposes of which is to "check against corruption and to hold the governors accountable to the governed."[194] Accordingly, disclosure of information that informs the public of violations of the public trust has been found to serve a strong public interest and is accorded great weight in the balancing process.[195] The D.C. Circuit's decision in Stern v. FBI[196] provides guidance for evaluating whether the public's interest in public servant accountability, a distinct category of FOIA public interest, supports disclosure of the identities of federal employees. Although the Stern decision was decided prior to the Supreme Court's decision in DOJ v. Reporters Committee for Freedom of the Press,[197] the D.C. Circuit subsequently reaffirmed the legitimacy of a FOIA public interest rooted in public servant accountability in Dunkelberger v. DOJ.[198] There, it held that even post-Reporters Committee, the D.C. Circuit's Stern decision provides guidance for the balancing of the privacy interests of federal employees found to have committed wrongdoing against the public interest in shedding light on agency activities.[199]

---

888 (finding that release of lobbyists' names "will allow the public to draw inferences comparing the various agents' influence in relation to each other and compared to the agents' or their corporate sponsors' political activity and contributions").

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

[195] See Bartko v. DOJ, 898 F.3d 51, 70 (D.C. Cir. 2018) (holding that categorical denial of access to disciplinary records was inappropriate following public referral of supervisory AUSA to OPR because "[t]he public has an interest in knowing 'that a government investigation itself is comprehensive, that the report of an investigation released publicly is accurate, that any disciplinary measures imposed are adequate, and that those who are accountable are dealt with in an appropriate manner'" (quoting Stern v. FBI, 737 F.2d 84, 92-94 (D.C. Cir. 1984))) (Exemption 7(C)); Cochran v. United States, 770 F.2d 949, 956 (11th Cir. 1985) ("[T]he balance struck under FOIA exemption six overwhelming favors the disclosure of information relating to a violation of the public trust by a government official . . . ."); Engberg v. DOJ, No. 10-1775, 2011 WL 4502079, at *7 (M.D. Fla. Aug. 12, 2011) ("When a government official's actions constitute a violation of the public trust, courts favor disclosure."), report & recommendation adopted, No. 10-1775, 2011 WL 4501388 (M.D. Fla. Sept. 27, 2011).

[196] 737 F.2d 84 (D.C. Cir. 1984).

[197] 489 U.S. 749 (1989) (Exemption 7(C)).

[198] 906 F.2d 779, 781 (D.C. Cir. 1990) (upholding FBI's refusal to confirm or deny existence of letters of reprimand or suspension for alleged misconduct by undercover agent) (Exemption 7(C)).

[199] Id. at 781; see also e.g., Kimberlin v. DOJ, 139 F.3d 944, 949 (D.C. Cir. 1998) (protecting information about investigation of staff-level attorney for allegations of unauthorized

In Stern, the court was faced with the question of whether the FBI improperly withheld the identities of three FBI employees identified in letters of censure, which were issued to the employees as the result of an investigation into whether they had engaged in a cover-up of illegal FBI surveillance activities.[200] The court found the employees' level of seniority within the FBI and their respective levels of culpability to be particularly relevant in evaluating the extent of the public interest in disclosure.[201] After recognizing that all three employees had privacy interests in information relating to their employment evaluations, and a strong interest in "not being associated unwarrantedly with alleged criminal activity," the court held that the agency properly withheld the identities of two lower-level employees who "were found to have contributed only inadvertently to the wrongdoing under investigation."[202]

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

> [I]t would not be an "unwarranted invasion of personal privacy" to reveal his name, despite the potential association with notorious and serious allegations of criminal wrongdoing. He was a high-level employee who was found to have participated deliberately and knowingly in the withholding of damaging information in an important inquiry – an act that he should have known would lead to a misrepresentation by the FBI. The public has a great interest in being enlightened about that type of malfeasance by this senior FBI official – an action called "intolerable" by the FBI – an interest that is not outweighed by his own interest in personal privacy.[203]

Applying this analysis, courts have followed a general rule that demonstrated wrongdoing of a serious and intentional nature by high-level government officials weighs heavily in favor of disclosure.[204] In reviewing the conduct of public officials, courts have

---

disclosure of information to media) (Exemption 7(C)); Beck v. DOJ, 997 F.2d 1489, 1494 (D.C. Cir. 1993) (upholding agency's refusal to either confirm or deny existence of records concerning alleged wrongdoing of named DEA agents) (Exemptions 6 and 7(C)); Hunt v. FBI, 972 F.2d 286, 288-90 (9th Cir. 1992) (protecting contents of investigative file of nonsupervisory FBI agent accused of unsubstantiated misconduct) (Exemption 7(C)).

[200] Stern, 737 F.2d at 86.

[201] Id. at 94.

[202] Id. at 92-93.

[203] Id. at 93-94 (internal citations omitted).

[204] See, e.g., Am. Immigr. Laws. Ass'n v. EOIR, 830 F.3d 667, 675 (D.C. Cir. 2016) (noting that "disclosing the name of an immigration judge subject to numerous and/or serious substantiated complaints might shed considerable light on matters of public interest, whereas disclosing the name of an immigration judge subject to a single, unsubstantiated

also considered whether the conduct pertains to agency operations rather than personal conduct.[205] In Perlman v. DOJ,[206] the Second Circuit outlined five factors, none of which are dispositive, when evaluating a government employee's privacy interest against the FOIA public interest in disclosure:

> (1) the government employee's rank; (2) the degree of wrongdoing and strength of evidence against the employee; (3) whether there are other ways to obtain the information; (4) whether the information sought sheds light on a government

---

complaint might not"); Perlman v. DOJ, 312 F.3d 100, 107 (2d Cir. 2002) (noting subject of request involved INS General Counsel investigated for allegedly granting improper access and preferential treatment to former INS officials with financial interests in various visa investment firms, and determining that government employee's high rank and responsibility for serious allegations tilted the balance strongly in favor of disclosure) (Exemptions 6 and 7(C)), cert. granted, vacated & remanded, 541 U.S. 970 (2004), reinstated after remand, 380 F.3d 110 (2d Cir. 2004) (per curiam); Ferri v. Bell, 645 F.2d 1213, 1218 (3d Cir. 1981) (finding attempt to expose alleged deal between prosecutor and witness to be in public interest) (Exemption 7(C)), vacated & reinstated in part on reh'g, 671 F.2d 769 (3d Cir. 1982); Columbia Packing Co. v. USDA, 563 F.2d 495, 499 (1st Cir. 1977) (affirming district court's order to release information about federal employees found guilty of accepting bribes); Buzzfeed, Inc. v. DOJ, No. 17-7949, 2019 WL 1114864, at *6-10 (S.D.N.Y. Mar. 11, 2019) (determining the disclosure of identities of U.S. Attorney and supervisory AUSA warranted as to substantiated allegations but not as to unsubstantiated allegations) (Exemption 7(C)); Cowdery, Ecker & Murphy, LLC v. U.S. Dep't of the Interior, 511 F. Supp. 2d 215, 220 (D. Conn. 2007) (discussing performance evaluation information pertaining to high ranking federal employee charged with wrongdoing); Chang v. Dep't of the Navy, 314 F. Supp. 2d 35, 42-45 (D.D.C. 2004) (determining that public interest in Naval Commander's nonjudicial punishment for involvement in accident at sea outweighs any privacy interests protected under Exemption 6) (Privacy Act "wrongful disclosure" suit); Wood v. FBI, 312 F. Supp. 2d 328, 345-51 (D. Conn. 2004) (analyzing information linking FBI Supervisory Special Agent's name with specific findings and disciplinary action taken against them).

[205] See Perlman, 312 F.3d at 107 (considering "whether the information sought is related to job function or is of a personal nature" as a factor in evaluating employee privacy interest against FOIA public interest); Buzzfeed Inc. v. DOJ, No. 21-7533, 2022 WL 2223124, at *5-8 (S.D.N.Y. June 20, 2022) (explaining that subject's misconduct, while serious, did not affect any action taken by agency and disclosure of subject's identity would not shed any additional light on agency activity beyond what was already released in Inspector General's report), aff'd, No. 22-1812, 2023 WL 4246103 (2d Cir. June 29, 2023) (Exemption 7(C)); DBW Partners, LLC v. USPS, No. 18-3127, 2019 WL 5549623, *6-7 (D.D.C. Oct. 28, 2019) (identifying significant FOIA public interest in existence of any ethics investigation into how high-ranking Chief Officer carried out their duties when records would shed light on agency's relationships with private partners).

[206] Perlman v. DOJ, 312 F.3d 100 (2d Cir. 2002).

activity; and (5) whether the information sought is related to job function or is of a personal nature.[207]

Many courts have focused in particular on the employee's rank, identifying less public interest in both serious and less serious misconduct by lower-level agency employees.[208] As such, courts have often extended protection to the identities of mid-

---

[207] Id. at 107.

[208] See, e.g., Dep't of the Air Force v. Rose, 425 U.S. 352, 381 (1976) (protecting names of cadets found to have violated military Academy honor code); Janangelo v. Treasury Inspector Gen. for Tax Admin., 726 F. App'x 660, 661 (9th Cir. 2018) (placing "'emphasis on the employee's position in her employer's hierarchical structure'" and "giving greater weight to the privacy interests of 'lower level officials' like [the plaintiff's] former boss" (quoting Forest Serv. Emps. for Env't. Ethics v. U.S. Forest Serv. 524 F.3d 1021, 1025 (9th Cir. 2008))); Forest Serv. Emps. for Env't. Ethics v. U.S. Forest Serv. 524 F.3d 1021, 1025 (9th Cir. 2008) ("[W]e have placed emphasis on the employee's position in her employer's hierarchical structure as 'lower level officials . . . generally have a stronger interest in personal privacy than do senior officials.'" (quoting Dobronski v. FCC, 17 F.3d 275, 280 n.4 (9th Cir. 1994))); Trentadue v. Integrity Comm., 501 F.3d 1215, 1234 (10th Cir. 2007) (noting "[t]he interest in learning of a government employee's misconduct increases as one moves up an agency's hierarchical ladder," and concluding that the agency properly withheld identifying information about employees because "[e]ach of these individuals was a low-level employee who committed serious acts of misconduct" and even though "[t]he public interest in learning how law enforcement agencies dealt with these individuals is very high," the "[d]isclos[ure of] the names of the employees . . . would shed little light on the operation of government"); Beck v. DOJ, 997 F.2d 1489, 1493 (D.C. Cir. 1993) ("The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency's own conduct.") (Exemptions 6 and 7(C)); Chamberlain v. Kurtz, 589 F.2d 827, 842 (5th Cir. 1979) (protecting names of disciplined IRS agents); Sensor Sys. Support, Inc. v. FAA, 851 F. Supp. 2d 321, 334 (D.N.H. 2012) (concluding that disclosure of the identity of "a low-level FAA employee" investigated for possible misconduct would "shed little light on the operation of the agency") (Exemptions 6 and 7(C)); Gerstein v. CIA, No. 06-4643, 2011 WL 89337, at *3 (N.D. Cal. Jan. 11, 2011) (holding identity of AUSA properly withheld "[g]iven the level of the employee in question, [and] the lack of intentional misconduct") (Exemption 7(C)); Steese, Evans & Frankel, P.C. v. SEC, No. 10-1071, 2010 WL 5072011, at *10-11 (D. Colo. Dec. 7, 2010) (holding employee names properly withheld where "the misconduct was not directly related to how the employees performed their official responsibilities, but rather, whether and when they performed them" and the employees' conduct did not reflect on the "'attitude' of the SEC toward fulfillment of its duties and responsibilities") (internal citation omitted); Coleman v. Lappin, 680 F. Supp. 2d 192, 200 (D.D.C. 2010) ("There exists a public interest in disclosure of information about [an] investigation [of a BOP staff member accused of serious misconduct], but that interest is minimal.") (Exemption 7(C)); MacLean v. U.S. Dep't of the Army, No. 05-1519, 2007 WL 935604, at *13 (S.D. Cal. Mar. 6, 2007) ("'[L]ower level officials . . . generally have a stronger interest in personal privacy than do senior officials,' . . . [and] the public's interest in misconduct by a lower level official is weaker than its interest in misconduct by a senior official." (quoting Dobronski, 17 F.3d at 280 n.4)) (Exemptions 6 and 7(C)); Kimmel v. DOD, No. 04-1551, 2006 WL 1126812, at *3 (D.D.C.

and low-level federal employees accused of misconduct.[209] At times, however, an overriding FOIA public interest warrants the disclosure of non-senior federal employee identities.[210]

Evidentiary Showing

The D.C. Circuit has opined that disclosure of information may be "necessary in order to confirm or refute compelling evidence that the agency is engaged in illegal activity."[211] At the same time, however, the Supreme Court has held that mere allegations

---

Mar. 31, 2006) (protecting names of civilian personnel below level of office director and of military personnel below rank of colonel (or captain in Navy); concluding that disclosure of names would not shed any light on subject matter of FOIA request seeking release of documents related to posthumous advancement of Rear Admiral to rank of admiral on retired list of Navy); Chang, 314 F. Supp. 2d at 44-45 (protecting names and results of punishment of lower-level officers involved in collision of Navy vessel with another ship).

[209] See, e.g., Forest Serv. Emps. for Env't Ethics, 524 F.3d at 1026-28 (protecting names of public employees connected to investigation into mishandled forest fire response); McCutchen v. HHS, 30 F.3d 183, 187-89 (D.C. Cir. 1994) (protecting identities of both federally and privately employed scientists investigated for possible scientific misconduct) (Exemption 7(C)); Chamberlain, 589 F.2d at 841-42 (protecting names of disciplined IRS agents); Hum. Rts. Def. Ctr. v. U.S. Park Police, No. 19-1502, 2023 WL 5561602, at *5 (D.D.C. Aug. 29, 2023) (protecting identities of relatively low-ranking officers involved in "tort incidents . . . which did not result in fatalities" where allegations were unproven and other information disclosed serves the public interest); MacLean, 2007 WL 935604, at *10-12 (protecting identities of military attorneys who issued illegal subpoenas in court-martial proceedings); Cawthon v. DOJ, No. 05-0567, 2006 WL 581250, at *2-4 (D.D.C. Mar. 9, 2006) (protecting information about two Bureau of Prisons doctors, including records pertaining to malpractice and disciplinary matters).

[210] See Hum. Rts. Def. Ctr. v. DOJ, No. 20-00674, 2023 WL 4131616, at *9-10 (W.D. Wash. June 22, 2023) (requiring release of identities of DEA employees who were alleged tortfeasors in incidents where payments of $1,000 or more were paid to claimants to shed light on how DEA holds employees accountable and whether it continued to employ repeat offenders); Schmidt v. U.S. Air Force, No. 06-3069, 2007 WL 2812148, at *11 (C.D. Ill. Sept. 20, 2007) (acknowledging that although Air Force officer had a privacy interest in keeping information about their discipline confidential, competing public interest in deadly friendly-fire incident with international effects outweighed that privacy interest and shed light on how the U.S. government was holding its pilot accountable) (Reverse FOIA/Privacy Act wrongful disclosure suit).

[211] SafeCard Servs., Inc. v. SEC, 926 F.2d 1197, 1206 (D.C. Cir. 1991) (protecting individuals' identities in absence of such a showing); see also Comput. Pros. for Soc. Resp. v. U.S. Secret Serv., 72 F.3d 897, 905 (D.C. Cir. 1996) ("[T]he public interest is insubstantial unless the requester puts forward compelling evidence that the agency denying the FOIA request is engaged in illegal activity and shows that the information sought is necessary in order to confirm or refute that evidence.") (Exemption 7(C)); cf. Dobronski , 17 F.3d at 278-80 (ordering release of employee's sick leave slips despite fact that requester's allegations of abuse of leave time were wholly based upon unsubstantiated tips); Lamb v. Millennium

of wrongdoing do not constitute a FOIA public interest and cannot outweigh an individual's privacy interest in avoiding unwarranted association with such allegations.[212] In NARA v. Favish,[213] the Supreme Court observed that if "bare allegations" could be sufficient to satisfy the public interest requirement, then the exemption would be "transformed . . . into nothing more than a rule of pleading."[214] The court went on to recognize that "allegations of misconduct are 'easy to allege and hard to disprove'"[215] and

---

Challenge Corp., 334 F. Supp. 3d 204, 216 (D.D.C. 2018) (upholding protection of identifying information about a third party in light of Safecard rule where plaintiff "has not offered any – let alone 'compelling' – evidence of illegal activity") (internal citation omitted) (Exemption 7(C)).

[212] NARA v. Favish, 541 U.S. 157, 175 (2004) (Exemption 7(C)); see, e.g., Bloomgarden v. DOJ, 874 F.3d 757, 761 (D.C. Cir. 2017) (identifying substantial privacy interest in termination letter concerning Assistant United States Attorney, and noting "[t]he aspect of the letter that concerns [the court] the most is that it contains mere allegations; it was never tested, nor was it ever formally adopted by the deputy-attorney general's office"); Kuzma v. DOJ, 692 F. App'x 30, 35 (2d Cir. 2017) (protecting identities of individuals involved in murder investigation, and noting plaintiff does not provide evidence that information would reveal fault in handling of investigation) (Exemptions 6 and 7(C)); Watters v. DOJ, 576 F. App'x 718, 724 (10th Cir. 2014) (rejecting plaintiff's asserted public interest of obtaining exculpatory information to prove their innocence because they provided no evidence of government wrongdoing) (Exemptions 6 and 7(C)); Sussman v. USMS, 494 F.3d 1106, 1115 (D.C. Cir. 2007) (determining that USMS properly protected the privacy of various individuals stressing that "[w]hile we find [plaintiff] did in fact allege misconduct, his bare and undeveloped allegations would not warrant a belief by a reasonable person that impropriety might have occurred") (Exemption 7(C)); McCutchen v. HHS, 30 F.3d 183, 187-89 (D.C. Cir. 1994) (protecting identities of scientists found not to have engaged in alleged scientific misconduct) (Exemption 7(C)); Hunt v. FBI, 972 F.2d 286, 288-90 (9th Cir. 1992) (protecting investigation of named FBI agent cleared of charges of misconduct) (Exemption 7(C)); Dunkelberger v. DOJ, 906 F.2d 779, 781 (D.C. Cir. 1990) (protecting existence of "letters of reprimand or suspension" of named FBI agent) (Exemption 7(C)); Carter v. U.S. Dep't of Com., 830 F.2d 388, 391 (D.C. Cir. 1987) (protecting identities of attorneys subject to disciplinary proceedings, which were later dismissed).

[213] NARA v. Favish, 541 U.S. 157 (2004) (Exemption 7(C)).

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

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

that courts therefore must require a "meaningful evidentiary showing" by the FOIA requester.[216] Specifically:

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

---

[216] Favish, 541 U.S. at 175; see, e.g., Martin v. DOJ, 488 F.3d 446, 458 (D.C. Cir. 2007) (concluding that "'[u]nsubstantiated assertions of government wrongdoing . . . do not establish a meaningful evidentiary showing'" (quoting Boyd v. DOJ, 475 F.3d 381, 388 (D.C. Cir. 2007))) (Exemption 7(C)); Cole v. DOJ, No. 04-5329, 2005 U.S. App. LEXIS 7358, at *2-3 (D.C. Cir. Apr. 27, 2005) (holding that requester's asserted public interest "that disclosure of the records is necessary to show prosecutorial misconduct is insufficient to overcome Exemption 7(C), because appellant has failed to put forward a 'meaningful evidentiary showing' that would 'warrant a belief by a reasonable person that the alleged Government impropriety might have occurred'" (quoting Favish, 541 U.S. at 174)); O'Brien v. DOJ, No. 20-0092, 2022 WL 2651850, at *7 (E.D. Pa. July 8, 2022) (holding that plaintiff did not provide evidence "'that would warrant a belief by a reasonable person'" that the government committed misconduct at trial) (quoting Favish, 541 U.S. at 174)) (Exemptions 6 and 7(C)); Cole v. FBI, No. 13-1205, 2015 WL 4622917, at *3 (D.D.C. July 31, 2015) (observing that where government misconduct is alleged, plaintiffs must make a "meaningful evidentiary showing" that is "based on the known facts") (Exemptions 6 and 7(C)); Jarvis v. ATF, No. 07-0111, 2008 WL 2620741, at *13 (N.D. Fla. June 30, 2008) ("When the significant asserted public interest is to uncover Government misfeasance, there must be a 'meaningful evidentiary showing.'" (quoting Favish, 541 U.S. at 174)) (Exemption 7(C)).

[217] Favish, 541 U.S. at 174; cf. Codrea v. ATF, No. 21-2201, 2022 WL 4182189, at *8-9 (D.D.C. Sept. 13, 2022) (explaining that plaintiff need not satisfy Favish standard when plaintiff identifies "a separate public interest in understanding ATF's substantive law enforcement policies") (Exemption 7(C)); Citizens for Resp. & Ethics in Wash. v. DOJ, 846 F. Supp. 2d 63, 74 (D.D.C. 2012) (holding that as "agency misconduct" was not the asserted basis for disclosure, "[plaintiff] need not produce the compelling evidence of illegal activity that would be required if it had done so") (Exemption 7(C)); Vento v. IRS, 714 F. Supp. 2d 137, 150 (D.D.C. 2010) (concluding that "the improper withholding of requested documents is not the type of government 'impropriety' to which the interest of privacy yields") (internal citation omitted) (Exemption 7(C)); Jud. Watch v. DHS, 598 F. Supp. 2d 93, 97 (D.D.C. 2009) ("The extra burden established by Favish only applies when the requester asserts government negligence or improper conduct.").

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

---

[218] See Djenasevic v. EOUSA, No. 18-5262, 2019 WL 5390964, at *1 (D.C. Cir. Oct. 3, 2019) (determining that privacy interest in third-party identifying information related to requester's investigation and prosecution was not overcome because appellant did not produce "'evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred'" (quoting Favish, 541 U.S. at 174)); Higgs v. U.S. Park Police, 933 F.3d 897, 904-05 (7th Cir. 2019) (concluding that district court erred in not resolving whether requester met Favish standard, and holding "the only possible conclusion . . . is that [plaintiff] has not shown that a reasonable person could find government impropriety"); Patino-Restrepo v. DOJ, No. 17-5143, 2019 WL 1250497, at *1 (D.C. Cir. Mar. 14, 2019) (explaining that "[a]ppellant has not produced 'evidence that would warrant a belief by a reasonable person that the alleged government impropriety might have occurred'" (quoting Favish 541 U.S. at 174-75)); Reep v. DOJ, No. 18-5132, 2018 WL 6721099, at *1 (D.C. Cir. Dec. 18, 2018) (explaining that "conclusory assertions . . . do not constitute 'compelling evidence that the agency is engaged in illegal activity'" (quoting Citizens for Resp. and Ethics in Wash. v. DOJ, 854 F.3d 675, 681-82 (D.C. Cir. 2017))); Janangelo v. Treasury Inspector Gen. for Tax Admin., 726 F. App'x 660, 661-62 (9th Cir. 2018) (holding that plaintiff produced no evidence "that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred," but instead provided "mere allegations and conjecture" (quoting Favish, 541 U.S. at 174)); Cameranesi v. DOD, 856 F.3d 626, 644 (9th Cir. 2017) ("Although we agree there is a public interest in identifying government impropriety in performing its statutory duties, allegations of two errors among the thousands of students that trained at WHINSEC from 2001 through 2004 does not amount to a 'meaningful evidentiary showing' that would lead to 'a belief by a reasonable person that the alleged Government impropriety might have occurred.'" (quoting Favish, 541 U.S. at 174-75)); Watters v. DOJ, 576 F. App'x 718, 724 (10th Cir. 2014) (observing that plaintiff provided only unsubstantiated allegations of government wrongdoing to support their assertions that disclosure of third party information would prove their innocence); Hulstein v. DEA, 671 F. 3d 690, 696 (8th Cir. 2012) (concluding that plaintiff's "casting general aspersions on the fact that the DEA was investigating him" is not a FOIA public interest in disclosure) (Exemption 7(C)); Blackwell v. FBI, 646 F.3d 37, 41 (D.C. Cir. 2011) (determining that plaintiff "has failed to meet the demanding Favish standard," where "[t]he only support [plaintiff] offers for his allegation of government misconduct is his own affidavit, which recounts a litany of alleged suspicious circumstances but lacks any substantiation") (Exemption 7(C)); Associated Press v. DOD, 554 F.3d 274, 289-92 (2d Cir. 2009) (concluding that redactions of the detainees' identifying information was proper because plaintiff failed to produce sufficient evidence of DOD impropriety) (Exemptions 6 and 7(C)); Lane v. U.S. Dep't of the Interior, 523 F.3d 1128, 1138 (9th Cir. 2008) (explaining that because interest in disclosure involved government employee's alleged misconduct, requester was required to "'produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred'" (quoting Favish, 541 U.S. at 174)); Martin, 488 F.3d at 458 (stating that "[i]f the public interest is government wrongdoing, then the requester 'must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred'" (quoting Boyd v. DOJ, 475 F.3d 381, 387 (D.C. Cir. 2007))) (Exemption 7(C)); Carpenter v. DOJ, 470 F.3d 434, 442 (1st Cir. 2006) (declaring

In conclusion, the identification and assessment of a FOIA public interest is the second part of the analysis used for determining whether personal information falls within the FOIA's privacy exemptions. If an agency determines that no legitimate FOIA public interest exists, and there is a more than de minimis privacy interest in nondisclosure, courts have held that the information should be protected because "'something, even a modest privacy interest outweighs nothing every time.'"[220] Alternatively, if a FOIA public interest is found to exist, the next step of the analysis

---

that valid public interest in disclosure of information relating to allegations of impropriety on part of government officials must be supported by more than mere suspicion improper actions occurred) (Exemption 7(C)); Wood v. FBI, 432 F.3d 78, 89 (2d Cir. 2005) (holding that plaintiff's "unsupported allegations" do not overcome "presumption of legitimacy . . . [of] government actions"); Schiffer v. FBI, 78 F.3d 1405, 1410 (9th Cir. 1996) (rejecting public interest argument absent evidence suggesting wrongdoing by FBI); Halloran v. VA, 874 F.2d 315, 323 (5th Cir. 1989) (determining that while there is general public interest in the government's interaction with federal contractors, "merely stating that the interest exists in the abstract is not enough;" requesters must show how that interest would be served by compelling disclosure); Bernegger v. EOUSA, 334 F. Supp. 3d 74, 90 (D.D.C. 2018) (concluding "baseless accusations are insufficient to overcome the privacy interests at stake") (Exemptions 6 and 7(C)); Cole, 2015 WL 4622917, at *3-4 (finding insufficient evidence that FBI special agent interfered with potential witness, and noting that habeas court had also found insufficient evidence of such misconduct); Long v. OPM, No. 05-1522, 2007 WL 2903924, at *18 (N.D.N.Y. Sept. 30, 2007) ("Although plaintiffs have submitted declarations from reporters who . . . have uncovered government wrongdoing, plaintiffs submit no actual evidence of wrongdoing, thus this factor weighs against disclosure."), aff'd in pertinent part, 692 F.3d 185 (2d Cir. 2012).

[219] See, e.g., Rojas v. FAA, 941 F.3d 392, 407 (9th Cir. 2019) (holding Favish standard satisfied where requester "has overcome 'the presumption of legitimacy accorded to official conduct'" and requiring release of identities of employees involved in discussion of the selection of air traffic controllers (quoting Cameranesi, 856 F.3d at 640)); CASA de Md., Inc. v. DHS, 409 F. App'x 697, 700-01 (4th Cir. 2011) (holding Favish requirement satisfied where requester provided evidence indicating agency impropriety) (Exemptions 6 and 7(C)); Lardner v. DOJ, 398 F. App'x 609, 611 (D.C. Cir. 2010) (per curiam) (determining privacy interests outweighed by public interest in disclosing the names of unsuccessful clemency applicants "in view of the Inspector General's Report on whether impermissible considerations played a role in pardon determinations").

[220] Schoenman v. FBI, 573 F. Supp. 2d 119, 149 (D.D.C. 2008) (concluding that information was properly withheld in absence of public interest (quoting Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989))); see also Carter, Fullerton & Hayes LLC v. FTC, 520 F. Supp. 2d 134, 144-45 (D.D.C. 2007) (same); Seized Prop. Recovery, Corp. v. U.S. Customs Serv., 502 F. Supp. 2d 50, 56 (D.D.C. 2007) ("If no public interest is found, then withholding the information is proper, even if the privacy interest is only modest.") (Exemptions 6 and 7(C)); FOIA Update, Vol. X, No. 2 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking").

requires the public interest in disclosure to be balanced against the privacy interest in nondisclosure.[221]

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

If an agency identifies both a substantial (i.e., more than a de minimis) privacy interest in nondisclosure of the requested information and a FOIA public interest in its disclosure (i.e., the information opens agency action to the light of public scrutiny) the two competing interests must be weighed against one another in order to determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy.[222] In other words, courts have held that identifying a substantial privacy interest and the existence of a FOIA public interest "does not conclude the inquiry; it only moves it along to the point where [the agency] can 'address the question whether the public interest in disclosure outweighs the individual privacy concerns.'"[223] If the privacy interests against disclosure are greater than the public interests in disclosure, the information may be properly withheld; alternatively, if the balance is in favor of disclosure, the information should be released.[224]

---

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

[222] See DOD v. Fed. Lab. Rels. Auth., 510 U.S. 487, 495 (1994) (reiterating need to balance FOIA public interest against privacy interest); DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 762 (1989) (discussing balancing in Exemption 7(C) context, which generally employs same balancing test applicable in Exemption 6 cases) (Exemption 7(C)); Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976) (explaining that Exemption 6 requires balancing of FOIA public interest and privacy interest); see also FOIA Update, Vol. X, No. 2 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking").

[223] Multi AG Media LLC v. USDA, 515 F.3d 1224, 1229-30 (D.C. Cir. 2008) (quoting Nat'l Ass'n of Home Builders v. Norton, 309 F.3d 26, 35 (D.C. Cir. 2002)), superseded by statute on other grounds, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234 § 1619, 122 Stat. 923; see Reps. Comm., 489 U.S. at 749 ("[A] court must balance the public interest in disclosure against the interest Congress intended the Exemption to protect."); see also DOD v. Fed. Lab. Rels. Auth., 510 U.S. at 495 (same); U.S. Dep't of State v. Ray, 502 U.S. 164, 175 (1991) (same); Rose, 425 U.S. at 372 (same).

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

As the Supreme Court has held: "Exemption 6 does not protect against disclosure [of] every incidental invasion of privacy, only such disclosures as constitute 'clearly unwarranted' invasions of personal privacy."[225] In balancing these interests, the Court of Appeals for the District of Columbia Circuit has held that "the 'clearly unwarranted' language of Exemption 6 weights the scales in favor of disclosure"[226] and "creates a 'heavy burden'" for an agency invoking Exemption 6.[227]

Although "the presumption in favor of disclosure is as strong [under Exemption 6] as can be found anywhere in the Act,"[228] courts have readily protected personal, intimate details of an individual's life. For example, as the D.C. Circuit has noted, courts have traditionally upheld the nondisclosure of information concerning "marital status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcoholic consumption, family fights, reputation," and similarly personal information.[229] Furthermore, courts have consistently upheld protection, absent an overriding FOIA public interest, for:

---

[225] Rose, 425 U.S. at 382 (quoting Exemption 6); see also, e.g., Ctr. for Biological Diversity v. Off. of the U.S. Trade Representative, 450 F. App'x 605, 609 (9th Cir. 2011) (unpublished disposition) (observing that "[i]n assessing the applicability of Exemption 6 on remand, the district court should 'consider, first, whether the information is contained in a personnel, medical, or similar file, and, second, whether release of the information would constitute a clearly unwarranted invasion of the person's privacy'" and, next, the district court should balance the privacy interests of the individuals identified in the records against the public interest in disclosure (quoting Elec. Frontier Found. v. Off. of the Dir. of Nat'l Intel., 639 F.3d 876, 886 (9th Cir. 2010))); Associated Press v. DOD, 554 F.3d 274, 291 (2d Cir. 2009) (same) (Exemptions 6 and 7(C)).

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

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

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

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

(1) birth dates;[230]

(2) religious affiliations;[231]

(3) citizenship or immigration data;[232]

(4) social security numbers;[233]

(5) criminal history records;[234]

---

[230] See, e.g., Hardison, 159 F. App'x at 93; In Def. of Animals v. NIH, 543 F. Supp. 2d 70, 80 (D.D.C. 2008) ("Exemption 6 allows an agency to withhold documents if they contain personal identifying information, such as 'place of birth, date of birth, date of marriage, employment history, and comparable data.'" (quoting U.S. Dep't of State v. Wash. Post Co., 456 U.S. 595, 600 (1982))). But cf. Am. Immigr. Council v. ICE, No. 18-1614, 2020 WL 2748515, at *6 (D.D.C. May 27, 2020) (requiring agency to produce birth month and year, but not birth date, because agency did not "identif[y] any harm that would flow from a more limited disclosure").

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

[232] See U.S. Dep't of State v. Wash. Post Co., 456 U.S. at 602 (concerning passport information); Burton v. Wolf, 803 F. App'x 120, 121 (9th Cir. 2020) (protecting third-party alien file and explaining that "immigration status" implicates "nontrivial" privacy interests); Bales v. U.S. Dep't of State, No. 18-2779, 2020 WL 1078854, at *5 (D.D.C. Mar. 6, 2020) (determining Glomar response appropriate as to "whether [the agency] had visa records pertaining to the Afghan witnesses" who testified at plaintiff's trial "[b]ecause the public interest in exoneration of the wrongfully-convicted would not be advanced" and the witnesses have a privacy interest in their "immigration status"); Hemenway v. Hughes, 601 F. Supp. 1002, 1006 (D.D.C. 1985) ("Nationals from some countries face persistent discrimination . . . [and] are potential targets for terrorist attacks."); cf. Jud. Watch, Inc. v. Reno, No. 00-0723, 2001 WL 1902811, at *8 (D.D.C. Mar. 30, 2001) (referencing asylum application).

[233] See, e.g., Sherman v. U.S. Dep't of the Army, 244 F.3d 357, 365-66 (5th Cir. 2001); Norwood v. FAA, 993 F.2d 570, 575 (6th Cir. 1993); Lamb v. Millennium Challenge Corp., 334 F. Supp. 3d 204, 214 (D.D.C. 2018) (concluding that "the Department acted well within its authority in redacting a third party's social security number") (Exemption 7(C)); Prison Legal News v. Lappin, 780 F. Supp. 2d 29, 40 (D.D.C. 2011) (explaining that "the privacy interest in one's social security number is self-evident"); Schoenman v. FBI, 575 F. Supp. 2d 136, 164 (D.D.C. 2008) (concluding that "the Army has properly invoked FOIA Exemption 6 to withhold the names, birthdates, and social security numbers of government personnel and third parties"); Peay v. DOJ, No. 04-1859, 2006 WL 1805616, at *2 (D.D.C. June 29, 2006) ("The IRS properly applied [E]xemption 6 to the social security numbers of IRS personnel.").

[234] See, e.g., DOJ v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 780 (1989) (Exemption 7(C)); Associated Press v. DOJ, 549 F.3d 62, 66 (2d Cir. 2008) (per curiam) (holding commutation petition exempt from disclosure under Exemptions 6 and 7(C)); Jud.

(6) incarceration of U.S. citizens in foreign prisons;[235]

(7) identities of crime victims;[236]

(8) financial information;[237]

(9) personal landline and cellular telephone numbers;[238]

Watch, Inc. v. DOJ, 365 F.3d 1108, 1124-26 (D.C. Cir. 2004) (protecting pardon applications, which include information about crimes committed); Pinson v. DOJ, 202 F. Supp. 3d 86, 100 (D.D.C. 2016) ("Disclosure of the individuals' names, criminal history, and the respective [Special Administrative Measures] implemented during their custody implicate substantial privacy interests and would likely cause reputational and other harm to the individuals in question."); Lee v. DOJ, No. 05-1665, 2007 WL 744731, at *2 (D.D.C. Mar. 6, 2007) (withholding list of individuals convicted of serious criminal activity from whom the government attempted to collect restitution) (Exemptions 6 and 7(C)).

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

[236] See, e.g., Horowitz v. Peace Corps, 428 F.3d 271, 279-80 (D.C. Cir. 2005) (recognizing that "strong privacy interests are implicated . . . when the individual has reported a sexual assault"); Bagwell v. U.S. Dep't of Educ., 183 F. Supp. 3d 109, 129 (D.D.C. 2016) (protecting "crime reports and statements by victims, [which] can be of the most private nature" and because "[s]uch information is often underreported, and it is plausible that further disclosure of such private information would only exacerbate the challenges of such underreporting") (Exemptions 6 and 7(C)); Pickens v. DOJ, No. 11-1168, 2012 WL 761995, at *6 (D.S.C. Mar. 7, 2012) (The court "does not see how disclosure of the limited information that has been withheld – identifying information of third parties and the victim of Plaintiff's crimes – would serve FOIA's underlying purpose, as that information fails to shed light on the operations of the FBI") (Exemptions 6 and 7(C)).

[237] See, e.g., Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1056 (D.C. Cir. 2009) (concluding that HHS properly withheld information that could reveal total payments received by physicians from Medicare for covered services); Beard v. Espy, No. 94-16748, 1995 WL 792071 (9th Cir. Dec. 6, 1995) (unpublished table decision); Kensington Rsch. & Recovery v. U.S. Dep't of the Treasury, No. 10-3538, 2011 WL 2647969, at *9 (N.D. Ill. June 30, 2011) (determining that "[t]he disclosure of specific information on the registration records, such as the name, address, or bond serial number would publicize the financial affairs of the individual bondholders" and "would also expose the bondholders to unsolicited attempts by [plaintiff] and other companies to collect the unredeemed bonds"); Reno Newspapers, Inc. v. USPC, No. 09-0683, 2011 WL 1233477, at *7 (D. Nev. Mar. 29, 2011) (identifying a "clear privacy interest" in parolee's bank records and upholding protection); Green v. United States, 8 F. Supp. 2d 983, 998 (W.D. Mich. 1998); Stabasefski v. United States, 919 F. Supp. 1570, 1575 (M.D. Ga. 1996).

[238] See, e.g., Energy Pol'y Advocs. v. U.S. Dep't of the Interior, No. 21-1411, 2023 WL 2585761, at *5 (D.D.C. Mar. 21, 2023) (concluding that employee cell phone number should be protected in absence of information about how release would "give the public any

(10) email addresses;[239]

(11) medical information linked to individuals;[240] and

---

information about anyone's use of Signal or other messenger apps"); Chelmowski v. United States, No. 17-1394, 2021 WL 3077558, at *5 (D.D.C. Jul. 21, 2021) (holding that protection of a "single, private cell phone number" was appropriate where plaintiff did not identify a FOIA public interest in release), aff'd, No. 21-5208, 2022 WL 11337053 (D.C. Cir. Oct. 17, 2022) (per curiam) (unpublished disposition); Smith v. U.S. Dep't of Treasury, No. 17-1796, 2020 WL 376641, at *4 (D.D.C. Jan. 23, 2020) (noting that "[c]ell phone numbers implicate a different privacy interest from landline office phone numbers because employees carry cell phones with them outside the office and regular work hours"); Nat'l Right to Work Legal Def. & Educ. Found., Inc. v. U.S. Dep't of Labor, 828 F. Supp. 2d 183, 192 (D.D.C. 2011) (noting that disclosure of phone numbers "could subject the individuals to 'annoyance, embarrassment, and harassment in the conduct of their official and private lives'" (quoting Marshall v. FBI, 802 F. Supp. 2d 125, 134 (D.D.C. 2011))); Lowy v. IRS, No. 10-0767, 2011 U.S. Dist. LEXIS 34168, at *51 (N.D. Cal. Mar. 30, 2011) (concluding that agency provided "sufficient justification for the withholding and/or redaction of personal information" such as mobile telephone numbers, bank account numbers of third parties, and similar types of information); Wade v. IRS, 771 F. Supp. 2d 20, 26 (D.D.C. 2011) (determining that IRS properly withheld home telephone numbers of third parties who are permitted to practice before the IRS).

[239] See, e.g., Elec. Frontier Found. v. Off. of the Dir. of Nat'l Intel., 639 F.3d 876, 888 (9th Cir. 2010) (determining that lobbyists' email addresses should be protected from disclosure unless email addresses are only way to identify agent in question); Maryland v. VA, 130 F. Supp. 3d 342, 353 (D.D.C. 2015) (finding substantial privacy interest in identifying portions of email addresses of individuals whose applications for inclusion in Veteran small business database were rejected); Wilson v. U.S. Air Force, No. 08-0324, 2009 WL 4782120, at *4 (E.D. Ky. Dec. 9, 2009) (concluding that signatures, personal phone numbers, personal email addresses, and government email addresses were properly redacted). But see Prechtel v. FCC, 330 F. Supp. 3d 320, 329-33 (D.D.C. 2018) (determining that agency improperly withheld email addresses of "bulk submitters" of comments on proposed repeal of "net neutrality" regulations due to demonstrated, widespread fraud in comment submission process, such that there was high public interest in specific email addresses used by submitters of public comments).

[240] See, e.g., Henson v. HHS, 892 F.3d 868, 878 (7th Cir. 2018) (protecting medical information about manufacturer's patients); Wadhwa v. VA, 446 F. App'x 516, 519 (3d Cir. 2011) (per curiam) (unpublished disposition) (affirming withholding of third party medical information); McDonnell v. United States, 4 F.3d 1227, 1254 (3d Cir. 1993) (holding that "living individual has a strong privacy interest in withholding his medical records"); ACLU v. BOP, No. 20-2320, 2022 WL 17250300, at *9, 11 (D.D.C. Nov. 28, 2022) (protecting records pertaining to COVID-19 testing and contact tracing); Moore v. USPS, No. 17-0773, 2018 WL 4903230, at *3 (N.D.N.Y. Oct. 9, 2018) (protecting letters that could potentially include identifying information of postal employees and material related to physical or psychological conditions of individuals); Long v. DOJ, 778 F. Supp. 2d 222, 236 (N.D.N.Y. 2011) (withholding "list of the vaccine type and date of administration"); Nat'l Sec. News

(12) identities of individuals making complaints to the government.[241]

By contrast, on some occasions, courts have found that the FOIA public interest outweighs even a strong personal privacy interest in the requested records.[242]

Names and Home Addresses

There are numerous decisions concerning requests for lists of names and home addresses of individuals. Because agencies may neither distinguish between requesters

---

Serv. v. U.S. Dep't of the Navy, 584 F. Supp. 2d 94, 97 (D.D.C. 2008) (upholding nondisclosure of hospital patient admission records); Pub. Emps. for Env't. Resp. v. U.S. Dep't of the Interior, No. 06-0182, 2006 WL 3422484, at *4 n.4 (D.D.C. Nov. 28, 2006) (withholding information detailing "employee's physical ailments and medical advice regarding those ailments").

[241] See, e.g., Perioperative Servs. & Logistics LLC v. VA, 57 F.4th 1061, 1068 (D.C. Cir. 2023) (determining third-party complainant's privacy interest outweighed public interest in "[k]nowing how the VA handles complaints from competitors" where plaintiff's claims that a competitor filed the complaint were speculative); Edelman v. SEC, 302 F. Supp. 3d 421, 428 (D.D.C. 2018) (holding that releasing identities of certain complainants would not show how SEC assessed a particular complaint).

[242] See, e.g., Rojas v. FAA, 941 F.3d 392, 406-07 (9th Cir. 2019) (explaining that public interest in release of the personal email addresses of agency employees is "'the only way to identify' the FAA employees involved in discussing" changes in hiring practices, though permitting agency to identify recipients by name rather than by revealing the personal email addresses); Roth v. DOJ, 642 F.3d 1161, 1166 (D.C. Cir. 2011) (concluding that "(1) the public has an interest in knowing whether the federal government is withholding information that could corroborate a death-row inmate's claim of innocence, and (2) that interest outweighs the three men's privacy interest in having the FBI not disclose whether it possesses any information linking them to the murders") (Exemption 7(C)); Lardner v. DOJ, 398 F. App'x 609, 610 (D.C. Cir. 2010) (per curiam) (holding that public interest in names of unsuccessful clemency applicants outweighed applicants privacy interests); WP Co. LLC v. DOD, No. 21-01025, 2022 WL 4119769, at *6 (D.D.C. Sept. 9, 2022) (holding that there is an overriding "FOIA public interest in knowing what former military personnel have been granted constitutional approval to [be employed] by a foreign government"); Jud. Watch, Inc. v. DOJ, 394 F. Supp. 3d 111, 117-18 (D.D.C. 2019) (identifying an overriding FOIA public interest in records concerning FBI's relationship with former British intelligence operative) (Exemptions 6 and 7(C)); Rosenfeld v. DOJ, No. 07-3240, 2012 WL 710186, at *8 (N.D. Cal. Mar. 5, 2012) (concluding that any privacy interest in a traffic violation is "outweighed by the public interest in understanding whether the FBI used public resources to compile information, without any apparent law enforcement purpose, to assist Ronald Reagan's political aspirations") (Exemptions 6 and 7(C)).

nor limit the use to which disclosed information is put,[243] courts have held that an analysis of the consequences of disclosure of names and addresses cannot turn on the identity or purpose of the requester.[244] The Supreme Court has held that when considering whether compilations of names and home addresses fall under Exemption 6, the only relevant FOIA public interest is the extent to which disclosure sheds light on an agency's operations,[245] and that specific lists may reveal sensitive information beyond the mere names and addresses of the individuals found on the list.[246] The D.C. Circuit addressed

---

[243] See NARA v. Favish, 541 U.S. 157, 174 (2004) ("It must be remembered that once there is disclosure, the information belongs to the general public. There is no mechanism under FOIA for a protective order allowing only the requester to see . . . the information . . . or for proscribing its general dissemination.") (Exemption 7(C)); Forest Serv. Emps. for Env't Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1025 (9th Cir. 2008) ("FOIA provides every member of the public with equal access to public documents and, as such, information released in response to one FOIA request must be released to the public at large."); Bernegger v. EOUSA, 334 F. Supp. 3d 74, 90 (D.D.C. 2018) ("[A]gencies releasing records pursuant to FOIA requests must be mindful that '[d]ocuments released in a FOIA action must be made available to the public as a whole.'" (quoting Stonehill v. IRS, 558 F.3d 534, 539 (D.C. Cir. 2009))) (Exemptions 6 and 7(C)).

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

[245] See Bibles, 519 U.S. at 355-56 (remanding for further consideration of withholding of mailing list of recipients of Bureau of Land Management publication, as "perceived public interest in 'providing [persons on the BLM's mailing list] with additional information'" was not a FOIA public interest); DOD v. Fed. Lab. Rels. Auth., 510 U.S. 487, 496 (1994) (protecting home addresses of federal employees in union bargaining units where "disclosure would reveal little or nothing about the employing agencies or their activities"); U.S. Dep't of State v. Ray, 502 U.S. 164, 173-79 (1991) (withholding from interview summaries the names and addresses of Haitian refugees interviewed by State Department about treatment upon return to Haiti, as release would not "shed any additional light on the Government's conduct").

[246] See Ray, 502 U.S. at 176 (observing that disclosure of a list of Haitian refugees interviewed by the State Department about their treatment upon return to Haiti "would publicly identify the interviewees as people who cooperated with a State Department investigation"); Campaign for Fam. Farms v. Glickman, 200 F.3d 1180, 1187-88 (8th Cir. 2000) (protecting list of pork producers who signed petition that declared their position on referendum that was sought by petition) (reverse FOIA suit); NARFE, 879 F.2d at 876 (characterizing the list at issue as revealing that each individual on it "is retired or disabled (or the survivor of such a person) and receives a monthly annuity check from the federal Government"); Minnis v. USDA, 737 F.2d 784, 787 (9th Cir. 1984) ("Disclosure would reveal not only the applicants' names and addresses, but also their personal interests in water sports and the out-of-doors."). See generally McDonald v. City of Chi., 561 U.S. 742, 886 (2010) (Stevens, J., dissenting) (explaining "we have long accorded special deference to the

the question of whether disclosure of mailing lists constituted a clearly unwarranted invasion of personal privacy in National Ass'n of Retired Federal Employees v. Horner,[247] and, while stopping short of creating a nondisclosure category for all mailing lists, the D.C. Circuit held that mailing lists consisting of names and home addresses of federal annuitants are categorically withholdable under Exemption 6.[248]

In these types of cases, courts have frequently found the asserted public interest too attenuated to overcome the clear privacy interest an individual has in their name and home address.[249] Nevertheless, several courts have ordered the disclosure of such information in certain contexts. Some of these courts have found little or no privacy interest in the names and addresses at issue.[250] Other courts have ordered the release of

---

privacy of the home") (non-FOIA case); Wilson v. Layne, 526 U.S. 603, 604 (1999) (noting the Fourth Amendment "embodies centuries-old principles of respect for the privacy of the home") (non-FOIA case); Story of Stuff Project v. U.S. Forest Serv., 366 F. Supp. 3d 66, 80 (D.D.C. 2019) ("'[D]isclosure of names and addresses is not inherently and always a significant threat to the privacy of those listed; whether it is a significant or a de minimis threat depends upon the characteristic(s) revealed.'" (quoting NARFE, 879 F.2d at 877)).

[247] 879 F.2d 873 (D.C. Cir. 1989).

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

[249] See Bibles, 519 U.S. at 355-56; DOD v. Fed. Lab. Rels. Auth., 510 U.S. at 494-502; Ray, 502 U.S. at 173-79.

[250] See Nat'l Ass'n of Home Builders v. Norton, 309 F.3d 26, 36 (D.C. Cir. 2002) (explaining that privacy interest is "relatively weak," and determining that public interest in learning about agency's use of owl data is served by release of lot numbers of parcels of land where owls have been spotted despite acknowledging that identities of landowners could be determined by use of this information); Avondale Indus. v. NLRB, 90 F.3d 955, 961 (5th Cir. 1996) (finding that names and addresses of voters in union election already were disclosed in voluminous public record); AquAlliance v. U.S. Army Corps. of Eng'rs, 243 F. Supp. 3d 193, 198 (D.D.C. 2017) (ordering disclosure of list of names and home addresses of individuals living near proposed California water project because agency failed to articulate why such individuals would be subject to unwanted harassment or solicitation merely due to proximity to water project); AquAlliance v. U.S. Bureau of Reclamation, 139 F. Supp. 3d 203, 212-13 (D.D.C. 2015) (identifying "greater than de minimis" but "not substantial" privacy interest in names and addresses of water well owners and water transfer program participants); People for the Am. Way Found. v. Nat'l Park Serv., 503 F. Supp. 2d 284, 306 (D.D.C. 2007) (ordering release of names of those who voluntarily submitted comments regarding informational video shown at Lincoln Memorial because "the public interest in knowing who may be exerting influence on [National Park Service] officials sufficient to convince them to change the video outweighs any privacy interest in one's name"); Balt. Sun v. USMS, 131 F. Supp. 2d 725, 729 (D. Md. 2001) (declaring that purchasers of property

such personal information on the rationale that the names and addresses themselves would reveal (or lead to other information that would reveal) how an agency conducted some aspect of its business.[251]

For example, the Court of Appeals for the Eleventh Circuit concluded in News-Press v. DHS[252] that disclosure of the addresses of buildings that received disaster assistance from FEMA should be released but that the names of aid recipients were properly withheld.[253] The court recognized that the public had a legitimate interest in knowing whether FEMA appropriately handled billions of dollars in disaster relief claims, especially in light of evidence submitted by the requesters of wasteful or fraudulent spending of disaster assistance funds.[254] The court weighed the privacy interests of aid recipients in the nondisclosure of their home addresses, including the fact that disclosure of the addresses would allow the public to "link certain information already disclosed by FEMA to particular individuals,"[255] but it ultimately found that "the disclosure of the addresses serves a powerful public interest, and the privacy interests extant cannot be said even to rival this public interest, let alone exceed it."[256] By contrast, the court held that disclosure of the names of the aid recipients would constitute a "clearly unwarranted

---

previously seized by the government "voluntarily choose to participate in . . . a wholly legal commercial transaction" and "have little to fear in the way of 'harassment, annoyance, or embarrassment'") (internal citation omitted); All. for the Wild Rockies v. U.S. Dep't of the Interior, 53 F. Supp. 2d 32, 36-37 (D.D.C. 1999) (concluding that commenters to proposed rulemaking could have little expectation of privacy when rulemaking notice stated that complete file would be publicly available).

[251] See, e.g., Niskanen Ctr. v. FERC, 20 F.4th 787, 793 (D.C. Cir. 2021) (holding that release of initials and street names of landowners affected by pipeline would allow plaintiff to determine whether agency notified all affected landowners); Columbia Riverkeeper v. FERC, 650 F. Supp. 2d 1121, 1131 (D. Or. 2009) (ordering agency to produce a list of landowner names and addresses where agency has previously posted a similar list on its website and plaintiffs have demonstrated a public interest in release of the list to verify the defendant was complying with public notice mandate); Balt. Sun, 131 F. Supp. 2d at 729-30 (names and addresses of purchasers of property seized by government found to allow public to assess agencies' exercise of their power to seize property and their duty to dispose of such property); Ray v. DOJ, 852 F. Supp. 1558, 1564-65 (S.D. Fla. 1994) (determining that names and addresses of interdicted Haitians might reveal "information concerning our Government's conduct during the interdiction process").

[252] 489 F.3d 1173 (11th Cir. 2007).

[253] Id. at 1205-06.

[254] Id. at 1192.

[255] Id. at 1199.

[256] Id. at 1205.

invasion of personal privacy" because the names of those aid recipients "'would provide no further insight into the operations of FEMA.'"[257]

Redacting Identifying Information

Deletion of the identities of individuals mentioned in a document, coupled with release of the remaining material, can provide protection for personal privacy while at the same time opening agency action to the light of public scrutiny.[258] For example, in Department of the Air Force v. Rose,[259] the Supreme Court ordered the release of case summaries of disciplinary proceedings, provided that personal identifying information was deleted.[260] At times, courts have upheld protection of identifying information about employees and government contractors, while releasing other information in the records that serves the FOIA public interest.[261] Additionally, courts have recognized that

---

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

[258] See Torres Consulting & L. Grp., LLC v. NASA, 666 F. App'x 643, 645 (9th Cir. 2016) (reversing district court's Exemption 6 holding regarding protection of tax and net earnings information, and remanding for segregability analysis, as "any privacy interest in payroll data after names, addresses, and social security numbers are redacted is trivial"); Kowack v. U.S. Forest Serv., 766 F.3d 1130, 1134 (9th Cir. 2014) (requiring agency to provide additional detail about whether substance of particular witness statements could be released without revealing identities of individuals who made those statements); Carter v. U.S. Dep't of Com., 830 F.2d 388, 390 (D.C. Cir. 1987) (affirming district court's holding that redactions were proper where agency had "already given as much [unredacted information] as possible without unduly risking disclosure of the identities of the investigation targets"); Protect Our Defs. v. DOD, 401 F. Supp. 3d 259, 287 (D. Conn. 2019) (determining Staff Judge Advocates have a substantial privacy interest in their names, but ordering release of their legal credentials and professional history, which relate to their job functions and constitute the type of information "that is frequently circulated"); Steese, Evans & Frankel, P.C. v. SEC, No. 10-1071, 2010 WL 5072011, at *11 (D. Colo. Dec. 7, 2010) (noting that "[t]he redacted reports and other information that the SEC has disclosed to date are sufficient to inform the public about the extent and the nature of the employees' misconduct as well as the SEC's response to the same"); see also FOIA Update, Vol. X, No. 2 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking"); cf. WP Co. LLC v. Small Bus. Admin., 575 F. Supp. 3d 114, 120-21 (D.D.C. 2021) (determining that agency was not required to segregate non-exempt employer identification numbers from exempt social security numbers of recipients of Paycheck Protection Program loans when this could only be done through prohibited information-sharing between agencies or consulting each of the twelve million borrowers).

[259] 425 U.S. 352 (1976).

[260] Id. at 380-81.

[261] See Ripskis v. HUD, 746 F.2d 1, 4 (D.C. Cir. 1984) (noting that agency voluntarily released outstanding performance rating forms while redacting identifying information); Ferrigno v. DHS, No. 09-5878, 2011 WL 1345168, at *9 (S.D.N.Y. Mar. 29, 2011) (holding

disclosure of medical and health-related data may be warranted after deletion of any item identifiable to a specific individual.[262] Additionally, documents voluntarily submitted to the government by private citizens have been held releasable as long as redactions are made of personally identifying information.[263] However, an agency's lack of confidence in the accuracy of records that identify individuals has been held insufficient to justify withholding records in full rather than redacting only the exempt information.[264] Additionally, as technology has evolved, the Court of Appeals for the District of Columbia Circuit has required agencies to explain why information in video records cannot be provided in a way that protects privacy interests, rather than being withheld in full.[265]

---

that release of the outcome of investigation served public interest while protecting identity of supervisor in employment-related harassment complaint because "the Supervisor's somewhat low rank, the relatively minor charge against him, and the weakness of the evidence all weigh against disclosure"); Aldridge v. U.S. Comm'r of Internal Revenue, No. 00-0131, 2001 WL 196965, at *3 (N.D. Tex. Feb. 23, 2001) (determining that privacy interests of employees recommended for discipline could be protected by redacting their names, while releasing the recommendation); Hecht v. U.S. Agency for Int'l Dev., No. 95-0263, 1996 WL 33502232, at *12 (D. Del. Dec. 18, 1996) (holding that privacy interests of government contractor's employees could be protected by withholding their names and addresses from biographical data sheets while releasing their qualifications); Church of Scientology of Tex. V. IRS, 816 F. Supp. 1138, 1160 (W.D. Tex. 1993) (ordering agency to protect employees' privacy interests in their handwriting by typing handwritten records at requester's expense).

[262] See Arieff v. U.S. Dep't of the Navy, 712 F.2d 1462, 1467-69 (D.C. Cir. 1983) (recognizing that disclosure of computerized lists of numbers and types of drugs routinely ordered by the congressional pharmacy may not be identifying, but remanding for further consideration of whether medical conditions may be disclosed as to some portions of the records); Dayton Newspapers, Inc. v. Dep't of the Air Force, 35 F. Supp. 2d 1033, 1035 (S.D. Ohio 1998) (ordering release of military-wide medical tort-claims database with "claimants' names, social security numbers, home addresses, home/work telephone numbers and places of employment" redacted); Frets v. DOT, No. 88-0404, 1989 WL 222608, at *5 (W.D. Mo. Dec. 14, 1989) (ordering disclosure of drug reports of air traffic controllers with identities deleted).

[263] See Billington v. DOJ, 258 F. App'x 348, 349 (D.C. Cir. 2007) (rejecting government's argument that documents should be withheld in full and explaining that only identifying information may be redacted); see also Carter, Fullerton & Hayes LLC v. FTC, 520 F. Supp. 2d 134, 148 (D.D.C. 2007) (holding that agency properly released text of consumer complaints while redacting personal information pertaining to individual complainants).

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

[265] Evans v. BOP, 951 F.3d 578, 587 (D.C. Cir. 2020) (requiring government to explain why it cannot use readily available techniques such as "blurring out faces, either in the video

Courts have also required the limited disclosure of personal information and, at times, the use of unique identifiers that distinguish between individuals but protect their identities, when there is an overriding FOIA public interest in disclosure.[266]

Nevertheless, in some situations courts have found that the deletion of personal identifying information may not be adequate to provide necessary privacy protection.[267]

---

itself or in screenshots, [to] eliminate unwarranted invasions of privacy") (Exemption 7(C)); see also Stahl v. DOJ, No. 19-4142, 2021 WL 1163154, at *8 (E.D.N.Y. Mar. 26, 2021) (determining that "[d]efendants have not explained why they cannot edit the video to obscure the identities of BOP staff, just as they could redact a written document") (Exemptions 6 and 7(C)).

[266] See Niskanen Ctr. v. FERC, 20 F.4th 787, 792-93 (D.C. Cir. 2021) (concluding that defendant's release of initials and street names, but not exact addresses, of private landowners affected by pipeline "best balanced landowners' privacy and the public interest" in whether agency properly notified landowners regarding pipeline); Am. Immigr. Council v. ICE, No. 18-1614, 2020 WL 2748515, at *6 (D.D.C. May 27, 2020) (allowing withholding of date of birth, but not the month and year, as agency "does not explain how the birth dates, without more, would identify the individuals involved or give rise to any of those concerns given the lack of other data, in particular, the individuals' names, on the same spreadsheets") (Exemption 7(C)); Mattachine Soc'y of Wash., D.C. v. DOJ, 267 F. Supp. 3d 218, 228-29 (D.D.C. 2017) (balancing significant privacy interest of third parties with significant public interest in extent to which government "surveilled, harassed, and/or terminated" "lesbian, gay, bisexual, and transgender federal employees" under E.O. 10,450 by ordering agency to replace third-party names in responsive records with "alphanumeric markers, which are to be uniquely identifiable and consistent throughout all documents produced") (Exemptions 6 and 7(C)); see also Energy Pol'y Advocs. v. U.S. Dep't of the Interior, No. 21-1411, 2023 WL 2585761, at *5 (D.D.C. Mar. 21, 2023) (recognizing that agency practice of providing identities of employees while protecting contact information sufficiently served FOIA public interest); Hawkinson v. ICE, 554 F. Supp. 3d 253, 275-76 (D. Mass. 2021) (declining to require government to replace redacted names with unique markers, but acknowledging that it may be warranted in some circumstances where public interest outweighs privacy interest).

[267] See, e.g., Alirez v. NLRB, 676 F.2d 423, 428 (10th Cir. 1982) (determining that deletion of names and other identifying data pertaining to small group of co-workers was simply inadequate to protect them from embarrassment or reprisals because requester could still possibly identify individuals) (Exemption 7(C)); Wash. Post Co. v. Special Inspector Gen. for Afg. Reconstruction, No. 18-2622, 2021 WL 4502106, at *16 (D.D.C. Sept. 30, 2021) (holding that redaction of "codes assigned to informants in lieu of their names" was appropriate because agency believed a former employee took a copy of the master list that would permit identification); Hum. Rts. Watch v. BOP, No. 13-7360, 2015 WL 5459713, at *7 (S.D.N.Y. Sept. 16, 2015) (explaining that the "substantial" concern that someone might be able to identify particular inmates from information compiled on a spreadsheet that did not explicitly identify the inmates where only fifty inmates were housed in each of two prison units outweighed the "relatively slight" public interest) (Exemptions 6 and 7(C)); cf. ACLU v. DOD, 389 F. Supp. 2d 547, 572 (S.D.N.Y. 2005) (declaring that for certain photographic and video images, "where the context compelled the conclusion that

The Supreme Court recognized this in Rose and specifically held that if the district court determined on remand that the deletions of personal references were not sufficient to safeguard privacy, then the summaries of disciplinary hearings should not be released.[268] Following this line of reasoning, the D.C. Circuit upheld the nondisclosure of public information contained in disciplinary files when the redaction of personal information would not be adequate to protect the privacy of the subjects because the requester could easily obtain and compare unredacted copies of the documents from public sources.[269]

Furthermore, when requested information is "personal and unique" to the subjects of a record, courts have found that deletion of personal identifying information may not be adequate to provide the necessary privacy protection.[270] Indeed, as one court has put it, a determination of what constitutes identifying information requires both an objective analysis and an analysis "from the vantage point of those familiar with the mentioned individuals."[271]

---

individual recognition could not be prevented without redaction so extensive as to render the images meaningless, [the court orders] those images not to be produced").

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

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

[270] Whitehouse v. U.S. Dep't of Labor, 997 F. Supp. 172, 175 (D. Mass. 1998) (discerning "no practical way" to sanitize "personal and unique" medical evaluation reports to prevent identification by knowledgeable reader); see also, e.g., Ortiz v. HHS, 874 F. Supp. 570, 573-75 (S.D.N.Y. 1995) (concluding that factors such as type style, grammar, syntax, language usage, writing style, and mention of facts "that would reasonably be known only by a few persons" could lead to identification of the author if an anonymous letter were released) (Exemptions 7(C) and 7(D)), aff'd on Exemption 7(D) grounds, 70 F.3d 729 (2d Cir. 1995).

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

Glomar Responses

In some circumstances a FOIA request can be targeted so that by its very terms it specifically requests privacy-sensitive information pertaining to an identified or identifiable individual. In such circumstances, courts have recognized that acknowledging the existence of records would not be adequate to protect the personal privacy interests at risk and an agency may have to invoke the Glomar response, i.e., neither confirm nor deny the existence of any responsive records.[272] Courts have endorsed Glomar responses to requests seeking records that might reveal whether an individual government employee was investigated for misconduct or disciplined, for example, because even to acknowledge the existence of such records would typically cause an unwarranted invasion of personal privacy.[273] The Glomar response was also upheld in a case where the public disclosure of certain information by other agencies "diminished" the privacy of the third party subject but where the requester failed to make a sufficient showing of public interest to outweigh even that diminished privacy interest.[274] In some

---

[272] See, e.g., Codrea v. ATF, No. 21-2201, 2022 WL 4182189, at *8-9 (D.D.C. Sept. 13, 2022) (upholding Glomar response where "remarkably strong" privacy interest in whether a public figure was investigated outweighed FOIA public interest in ATF's handling of an "isolated incident" of misconduct) (Exemption 7(C)); Howard v. United States, No. 18-0608, 2019 WL 1491787, at *2 (D.D.C. 2019) (noting that Glomar response is appropriate where confirming or denying existence of records would itself cause cognizable harm under FOIA) (Exemptions 6 and 7(C)); Rahim v. FBI, 947 F. Supp. 2d 631, 648 (E.D. La. 2013) ("Defendants' Glomar response invoking [E]xemptions 6 and 7(C) as to [an alleged informant] was proper."); Claudio v. SSA, No. H-98-1911, 2000 WL 33379041, at *8-9 (S.D. Tex. May 24, 2000) (affirming agency's refusal to confirm or deny existence of any record reflecting any investigation of administrative law judge). See generally FOIA Update, Vol. VII, No. 1 ("OIP Guidance: Privacy 'Glomarization'").

[273] See Wadhwa v. VA, 707 F. App'x 61, 64-65 (3d Cir. 2017) (upholding agency's refusal to confirm or deny existence of disciplinary records concerning removal of two VA doctors given plaintiff's failure to identify any FOIA public interest in disclosure of records); Beck v. DOJ, 997 F.2d 1489, 1494 (D.C. Cir. 1993) (affirming Glomar response to request for records concerning misconduct by two DEA agents) (Exemptions 6 and 7(C)); Lewis v. DOJ, 733 F. Supp. 2d 97, 112 (D.D.C. 2010) ("If an individual is the target of a FOIA request [for investigative records], the agency to which the FOIA request is submitted may provide a 'Glomar' response, that is, the agency may refuse to confirm or deny the existence of records or information responsive to the FOIA request on the ground that even acknowledging the existence of responsive records constitutes an unwarranted invasion of the targeted individual's personal privacy.") (Exemptions 6 and 7(C)); Smith v. FBI, 663 F. Supp. 2d 1, 5 (D.D.C. 2009) ("Because . . . confirmation of records concerning '[a]ny adverse action or disciplinary reports on [named] Agent . . .' would necessarily reveal the precise information Exemption 6 shields, the Glomar response was proper.") (internal citation omitted) (Exemptions 6 and 7(C)).

[274] See Taplin v. DOJ, 967 F. Supp. 2d 348, 355 (D.D.C. 2013) (concluding that although "it is the law of this circuit that another agency's disclosure cannot altogether preclude [an agency] from asserting a Glomar response, the rule does not speak to the much narrower

law enforcement and national security contexts, Glomar responses may also be upheld even where the third party subject has publicly claimed a link with the agency, if the agency has not officially acknowledged the connection and there is no overriding FOIA public interest in disclosure.[275] Courts have held Glomar responses to not be appropriate, however, when there is a substantial FOIA public interest in the requested information that outweighs the privacy interest,[276] or when the existence of the requested information has been officially acknowledged.[277] (For a detailed explanation of the Glomar response used in protecting privacy interests in law enforcement records, see Exemption 7(C).)

---

issue of whether such a disclosure can diminish a third party's privacy interest" and holding that third party's "privacy interest exists in a diminished capacity" where disclosures were made about them by judge and in sheriff's report, but determining that plaintiff had failed to establish public interest in disclosure sufficient to override even that diminished privacy interest) (Exemption 7(C)).

[275] See White v. DOJ, 16 F.4th 539, 545 (7th Cir. 2021) (upholding FBI's Glomar response where some subjects had asserted an affiliation with the agency, which "had not itself confirmed those individuals' assertions," and where requester provides "no clear public interest to overcome even the diminished privacy interests") (Exemption 7(C)); Eddington v. DOJ, 581 F. Supp. 3d 218, 235-36 (D.D.C. 2022) (holding that Glomar response was warranted to protect whether U.S. citizen was subject to terrorism-related investigation where subject had spoken publicly about their detention but agency had not officially acknowledged investigation of subject) (Exemption 7(C)).

[276] See Roth v. DOJ, 642 F.3d 1161, 1180 (D.C. Cir. 2011) (holding that the public's "general interest in knowing whether the FBI [wa]s withholding information" that could corroborate death-row inmate's claim of innocence overcame the FBI's Glomar response for three named individuals) (Exemption 7(C)); DBW Partners, LLC v. USPS, No. 18-3127, 2019 WL 5549623, at *6 (D.D.C. Oct. 28, 2019) (determining Exemption 6 Glomar response not proper given significant FOIA public interest in how high-ranking official carried out their duties); Parker v. EOUSA, 852 F. Supp. 2d 1, 10-13 (D.D.C. 2012) (holding that although an AUSA "has a valid privacy interest at stake in DOJ's disclosure of disciplinary documents about [themself]," there is a countervailing "public interest in knowing how DOJ handles the investigation of unlicensed attorneys").

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