

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLOMBIA**

GRANT F. SMITH, ProSe

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
THE TREASURY**

**UNITED STATES OF PERSONNEL
MANAGEMENT**

Defendants.

Civil Action No. 17-1796 (TSC)

DECLARATION OF JOHN M. FARLEY

I, John M. Farley do hereby state and declare as follows:

1. I am the Senior Resource Manager for the Office of Terrorism and Financial Intelligence (TFI) at the United States Department of the Treasury (Treasury). I am also the Director of the Treasury Executive Office for Asset Forfeiture (TEOAF). In this capacity, I have the authority to release and/or withhold records under the Freedom of Information Act (FOIA). For this case, I also consulted with TFI's departmental components regarding the review, release, and withholding of the records in this matter.

2. This declaration addresses TFI's departmental components' responses to the plaintiff's request. The statements contained in this Declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

TFI'S MISSION AND AUTHORITY

3. TFI develops and implements U.S. government strategies to combat terrorist financing domestically and internationally, develops and implements the National Money Laundering Strategy as well as other policies and programs to fight financial crimes. TFI's mission includes administering and enforcing U.S. economic sanctions programs under the Trading With the Enemy Act and International Emergency Economic Powers Act, among other statutes; combating financial crimes, including money laundering, counterfeiting, and other offenses threatening the integrity of the banking and financial systems, through administration and enforcement of Subchapter II of Subtitle IV of Title 31 of the United States Code, commonly known as the Bank Secrecy Act; and maintaining a robust analytical capability on terrorist finance and providing intelligence support to senior officials at Treasury on a wide range of international economic and national security issues. TFI is designated as a law enforcement organization of the Department of the Treasury for purposes of 31 U.S.C. § 9705.

4. Within TFI, the Office of Foreign Assets Control (OFAC) is principally responsible for administering U.S. economic sanctions programs. These programs are directed against foreign states and nationals to implement U.S. foreign policy and national security goals. Pursuant to authority delegated by the President of the United States to the Secretary of the Treasury, OFAC acts under presidential wartime and peacetime national emergency powers, as well as authority granted by specific legislation. In performing its function, OFAC relies primarily on its delegated powers under, among other authorities, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706. OFAC currently administers over 25 economic sanctions programs against foreign governments, entities, and individuals whose activities pose a threat to the national security, foreign policy, or economy of the United States.

5. The Office of Intelligence and Analysis (OIA) is a member of the United States intelligence community pursuant to the National Security Act of 1947. 50 U.S.C. § 3003(4)(J). Its mission includes counterintelligence, strategic, tactical, and operational intelligence analysis, and threat finance focusing on terrorism, proliferation, narco-trafficking and illicit finance. OIA provides intelligence analysis and assessments to identify threats and vulnerabilities in licit and illicit networks. OIA's priorities include counterterrorism, counterproliferation, counterintelligence, illicit finance, and global financial issues. OIA also provides the Treasury Department's security infrastructure, including all aspects of information and physical security, information security, and personnel security.

6. The Office of Terrorist Financing and Financial Crimes (TFFC) works with the national security community, including the law enforcement, and intelligence communities, to identify and address threats presented by all forms of illicit finance to the international financial system. TFFC develops strategies to deploy Treasury's financial authorities to counter money laundering, terrorist financing, proliferation, and other illicit activities. These include threat-specific strategies and initiatives to apply targeted financial measures to national security threats.

7. The Treasury Executive Office for Asset Forfeiture (TEOAF) administers the Treasury Forfeiture Fund (TFF). The TFF is the receipt account for deposit of non-tax forfeitures made pursuant to laws enforced or administered by it participating Treasury and Department of Homeland Security agencies. These agencies include: Internal Revenue Service Criminal Investigations Division, U.S. Department of the Treasury; U.S. Immigration and Customs Enforcement, Department of Homeland Security; U.S. Customs and Border Protection, Department of Homeland Security; U.S. Secret Service, Department of Homeland Security; U.S. Coast Guard, Department of Homeland Security. In addition to the agencies listed above, the

funds can be allocated to other law enforcement entities that do not have forfeiture authority, such as the Financial Crimes Enforcement Network and the Federal Law Enforcement Training Center.

TFI'S INVOCATION OF FOIA EXEMPTION 6

8. On May 30, 2018, Treasury provided the Plaintiff with the sixth and final production in this case. TFI, coordinating with its departmental components (OFAC, OIA, TFFC, TEOAF), released the titles of all employees, and the names of TFI leadership, including TFI component leadership. TFI withheld the names and phone numbers of employees below the senior management level, and the phone numbers of all employees pursuant to Exemption 6.¹

9. FOIA Exemption 6 protects information about individuals when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The protection afforded by Exemption 6 is broad and can include such items as “a person’s name, address, place of birth, employment history, and telephone number.” *Shapiro v. Dep’t of Justice*, 34 F. Supp. 3d 89, 94 (D.D.C. 2014). When determining whether to withhold information pursuant to Exemption 6, TFI balances the privacy interests of individuals identified in records against any public interest in disclosure of that information. While the FOIA would require disclosure in cases of a “de minimis” privacy interest, *Multi Ag Media LLC v. Dep’t of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008), “FOIA requires only a measureable interest in privacy to trigger the application of the disclosure balancing tests.” *Fed. Labor Relations Auth. v. U.S. Dep’t of Veterans Affairs*, 958 F. 2d 503, 509 (2d Cir. 1992). Meanwhile, the public interest considered when balancing disclosure is limited to information that would shed light on TFI’s performance of its mission: namely, administering and enforcing economic sanctions based on U.S. foreign policy and national security goals, intelligence and counterintelligence activities,

¹ As discussed in the Declaration of Michael W. Mason, all requested information pertaining to OIA, except its senior leadership, was also withheld in full pursuant to Exemption 1.

countering terrorist financing, money laundering, proliferation, narcotics trafficking, and other threats to the national security, foreign policy or economy of the United States.

10. Releasing the names of lower-level TFI employees and the phone numbers for all TFI employees would reasonably be expected to constitute an unwarranted invasion of personal privacy. TFI employees, similar to military personnel and other federal employees working in law enforcement, are employed in a sensitive occupation. TFI employees, like their law enforcement military, and intelligence agency counterparts, do possess, by virtue of the nature of their work, substantial privacy interests in their identities and contact information considering the sensitive and often contentious nature of the work that TFI personnel engage in. TFI employees are involved in sensitive national security and foreign policy matters which may range from investigating individuals and entities for violations of U.S. sanctions, investigating individuals and entities for potential addition to OFAC's Specially Designated National and Blocked Person list, issuing licenses to authorize transactions that are otherwise prohibited under various sanctions programs, intelligence analysis, personnel and physical security, and developing U.S. policy to use financial authorities to counter national security threats.

11. Given the sensitive, contemporary, and occasionally contentious nature of much of TFI's activities, its employees whose identities and contact information are disclosed to the public would become targets by foreign adversaries or individuals seeking to learn more about or expressing their disapproval of TFI's activities. Interaction of this sort is made all the more invasive by the fact that many of the activities in which these employees participate are themselves properly exempt from disclosure under other FOIA exemptions, such as FOIA Exemptions 1 and 7. Accordingly, release of the withheld information would subject these employees to annoyance or unwanted harassment in either their official or private lives. As a result, the disclosure of TFI

employees' phone numbers and lower-level TFI employees' identities could seriously prejudice their effectiveness in conducting their duties.

12. In addition, such a disclosure would not aid the public's understanding of how TFI carries out its mission, which is the "core purpose of FOIA," *Cook v. Nat'l Archives & Records Admin.*, 758 F.3d at 170. See e.g. *Painting & Drywall Work Preservation Fund v. Department of Housing & Urban Dev.*, 936 F.2d 1300, 1303 (App. D.C. 1991) (holding that the disclosure of names/addresses of construction workers would imperil personal privacy without supplying a sufficient public benefit because the disclosure of names would shed no light on "what HUD was up to."). While Plaintiff argues it needs all of the names of TFI personnel to evaluate the extent of "regulatory capture," courts have generally declined to view the "derivative" use of information, which is indirect and speculative, as a cognizable public interest. See *Associated Press v. U.S. Dep't of Def.*, 554 F.3d 274, 292 (2d Cir. 2009) ("We emphasize that the focus, in assessing a claim under Exemption 6, must be solely upon what the requested information *reveals*, not upon what it might lead to." (internal quotation marks omitted)); see also *United States Dep't of State v. Ray*, 502 U.S. 164, 180 (1991) (Scalia, J., concurring) ("[I]t is unavoidable that the focus, in assessing a claim under Exemption 6, must be solely upon what the requested information *reveals*, not upon what it might lead to."). In this case, releasing the names of lower-level TFI personnel and telephone numbers for all TFI personnel would not aid the public's understanding of how TFI carries out its mission. The release of contact information for TFI employees would not aid the public's understanding of how TFI carries out its duties, particularly when considering that the identities of senior TFI employees have been disclosed. Moreover, OFAC maintains a hotline that provides further opportunity for the public to engage with TFI.²

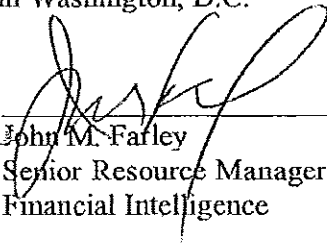
² See https://www.treasury.gov/resource-center/sanctions/Pages/contact_ofac.aspx for public contact information for OFAC. On this website OFAC provides direct contact information for its Licensing Division, Compliance Division,

13. Therefore, I have determined that the privacy interests in lower-level TFI employees' names, as well as all TFI employees' contact information, strongly outweighs the dearth of public interest in the disclosure of this information, and as such, a balancing analysis between the public interests in disclosure and personal privacy interests favors the withholding of such information pursuant to FOIA Exemption 6.

14. In each instance where information was withheld from the plaintiff pursuant to Exemption 6, TFI determined that the individuals' privacy interests were not outweighed by the FOIA public interest in disclosure of that information. Every effort has been made to release all segregable information to plaintiffs without invading the privacy interests of individuals who were mentioned in the records discussed above. Where possible, TFI released the names of senior officials, withholding only the contact information for those officials.

I certify, pursuant to 28 U.S.C. § 1746, under penalty of perjury that the foregoing is true and correct.

Executed this 19 day of July 2018 in Washington, D.C.



John M. Farley
Senior Resource Manager, Office of Terrorism and
Financial Intelligence

Director
Treasury Executive Office for Asset Forfeiture
Office
U.S. Department of the Treasury

and Office of Global Targeting components.

