

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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<b>GRANT F. SMITH, ProSe</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>vs.</b>	)	<b>Civil Action No. 17-1796 (TSC)</b>
	)	
<b>UNITED STATES</b>	)	
<b>DEPARTMENT OF TREASURY</b>	)	
	)	
<b>UNITED STATES OFFICE OF</b>	)	
<b>PERSONNEL MANAGEMENT</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**DEFENDANT’S STATEMENT OF UNDISPUTED MATERIALFACTS**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7(h), Defendants United States Department of Treasury (“Treasury” or “Defendant”) and the United States Office of Personnel Management (“OPM”), respectfully submits this statement of material facts as to which there is no genuine dispute. The attached Declarations of Richard S. Dodson (“Dodson Decl.”), John M. Farley (“Farley Decl.”), Michael W. Mason (“Mason Decl.”), and Elizabeth M. Hill (“Hill Decl.”), from Defendant supports the following statement:

**PLAINTIFF’S REQUEST**

1. Plaintiff’s FOIA request, dated April 24, 2012, requested a list of all Treasury Department employees, including their first name, middle initial, last name, title, department, and phone number. (*See* ECF No.1, Complaint (“Compl.”); *see also* Dodson Decl. 3).

2. In an undated letter, Sara Kay Fisher, then-Acting Director of the Office of Emergency Programs, responded to Plaintiff's Freedom of Information Act ("FOIA") request and provided the Treasury Headquarters Organizational Directory, the Treasury Phonebook Bureau Offices and the U. S. Department of the Treasury Organizational Structure chart in response. (ECF No. 1; *see also* Dodson Decl. ¶ 3).
3. In a letter dated May 9, 2012, Plaintiff appealed the Agency's response, arguing that the agency did not provide a full listing of Treasury employees. (ECF No. 1; *see also* Dodson Decl. ¶ 3).
4. In a letter dated October 9, 2012, Michael Lewis, Senior Advisor, Office of the Assistant Secretary for Management, denied Plaintiff's appeal. (ECF No.1; *see also* Dodson Decl. ¶ 3).
5. On September 1, 2017, Plaintiff filed this Complaint seeking declaratory and injunctive relief to compel compliance with the requirements of the FOIA. (ECF No. 1).
6. On November 28, 2017, Defendant asked Plaintiff if he would narrow the scope of his request, and also asked for clarification on Plaintiff's FOIA request. Specifically, Defendant inquired if Plaintiff wanted current employee information, or information as of the date of his April 24, 2012, FOIA request. (Dodson Decl. ¶ 4; *see also* Exhibit A, attached to Dodson Decl.).
7. On December 4, 2017, Plaintiff responded to Defendant's November 28, 2017, electronic mail and indicated that: 1) he was not willing to narrow the scope of his request, and 2) he wanted employee information from the date of his April 24, 2012, FOIA. (Dodson Decl. ¶ 5; *see also* Exhibit B, attached to Dodson Decl.).

**TREASURY’S SEARCH FOR RESPONSIVE MATERIAL**

8. Defendant determined that the Office of the Deputy Assistant Secretary for Human Resources (“DASHR”) was the most likely office to have the requested material based on their human resources policy making and oversight functions for the entire United States Department of Treasury. (Dodson Decl. ¶ 7).
9. The Office of the DASHR indicated it had the responsive material and it would work with the Office of the Chief Information Officer (“OCIO”) to access and download the requested records. (Dodson Decl. ¶ 7).
10. The Treasury’s central employee database (called the National Finance Center (“NFC”) Personnel History database) was searched by OCIO. (Dodson Decl. ¶ 7).

**TREASURY’S PRODUCTION OF RESPONSIVE DOCUMENTS**

11. The responsive data produced from OCIO’s search of the central employee database were divided into separate Excel spreadsheets based on Treasury components. The Office of the DASHR sent each component its list of employees as of April 24, 2012, and asked them to review and make appropriate redactions.<sup>1</sup> Each component reviewed their list, made appropriate redactions, and returned the list to the Office of the DASHR. The redacted lists were then sent the Treasury’s Office of General Counsel for review and clearance, and once approved, the redactions were made permanent and the records were sent to the Plaintiff. (Dodson Decl. ¶ 8).
12. Treasury produced the requested information with redactions in 6 productions, from February 8, 2018 through May 30, 2018. (Dodson Decl. ¶ 9).

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<sup>1</sup> The Internal Revenue Service was the only Treasury component that conducted its own search of employees’ information. (Dodson Decl. Ftnt. 2).

**OFFICE OF TERRORISM AND FINANCIAL INTELLIGENCE'S MISSION AND AUTHORITY**

13. The Office of Terrorism and Financial Intelligence (“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 N 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. (Farley Decl. ¶ 3).
14. 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. (Farley Decl. ¶ 4).

15. 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, counter proliferation, 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. (Farley Decl. ¶ 5; Mason Decl. ¶ 1).

16. 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. (Farley Decl. ¶ 6).

17. 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. (Farley Decl. ¶ 7).

#### **TFI'S INNOVATION OF FOIA EXEMPTION 6**

18. A number of Treasury components perform law enforcement or national security functions. These components applied exemptions 6 to the withheld material. (Farley Decl. ¶¶ 8-13; Dodson Decl. ¶ 6).

**INTERNAL REVENUE SERVICE'S MISSION AND AUTHORITY**

19. The Alcohol, and Tobacco Tax and Trade Bureau ("TTB") is primarily a tax agency with a significant law enforcement component via the tax audit, trade investigations, and intelligence divisions; therefore, it has redacted the names and phone numbers of nearly all of its non-supervisory employees pursuant to exemption 6. (Dodson Decl. ¶ 12).
20. 26 CFR § 301.9000-1, 31 CFR § 1.5(c), and Pub. L.105-206 § 3706, I understand that it is IRS policy to produce employee lists using the IRS Public Information Listing ("PIL") program as outlined in the Internal Revenue Manual ("IRM") at IRM 11.3.13.9.10.1. Employee lists pulled through the PIL program exclude the names of employees participating in the pseudonym program authorized by Pub. L. 105-206 and those holding positions identified as sensitive by the Office of Personnel Management ("OPM"): police officers; revenue agents; appeals officers; revenue officers; property appraisal and liquidation specialists; general inspection, investigation and compliance personnel; compliance inspection and support personnel; general investigating personnel; and special agents. Further, it is IRS policy as outlined at IRM 11.3.13.9.10.1 to withhold phone numbers when sought for all employees. (Hill Decl. ¶ 4).

**IRS'S INVOCATION OF FOIA EXEMPTION 6**

21. IRS and its components perform law enforcement or national security functions. These components applied exemptions 6 to the withheld material. (Hill Decl. ¶ 6; Dodson Decl. ¶¶ 12-13).

**OIA'S INVOCATION OF FOIA EXEMPTION 1**

22. Treasury's component, OIA performs intelligence and foreign activities of the United States, which is a national security functions, and OIA properly applied exemption 1 to the withheld material. (Mason Decl. ¶ 8).
23. In processing the FOIA request, steps were taken by the Department to ensure that all reasonably segregable non-exempt information responsive to Plaintiff's request was released. All information withheld either was exempt from disclosure pursuant to a FOIA exemption or was so intertwined with protected material that segregation was not possible without revealing the underlying protected material. (Dodson Decl. ¶ 14).

24. Having completed its searches and review, Treasury has produced all the documents responsive to this request. All redactions made are described in detail and justified in the declarations (attached herewith).

July 20, 2018

Respectfully submitted,

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/s/

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