

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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GRANT F. SMITH, ProSe		)
		)
Plaintiff,		)
v.	Civil Action No.: 17-1796 (TSC)	)
		)
UNITED STATES DEPARTMENT OF THE		)
TREASURY		)
		)
UNITED STATES OFFICE OF		)
PERSONNEL MANAGEMENT,		)
		)
Defendants.		)
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**DECLARATION OF RICHARD S. DODSON**

I, Richard S. Dodson, declare the following to be a true and correct statement of facts:

1. I am an Attorney-Advisor in the General Law, Ethics and Regulation section of the Office of the General Counsel at the Department of the Treasury (“Department” or “Treasury”). I work on a diverse set of legal issues, a significant percentage of which includes FOIA litigation.

2. The purpose of this declaration is to explain the Department’s processing of plaintiff’s Freedom of Information Act (FOIA) request since the date this lawsuit was filed. The statements made are based upon my personal review of the documents and upon information furnished to me in the course of my official duties.<sup>1</sup> I am familiar with efforts made by Department personnel to process the subject request.

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<sup>1</sup> I personally managed the production of documents for all Departmental components, with the exception of the Internal Revenue Service and the Office of Terrorism and Financial Intelligence (“TFI”) (and the components that report to the Under Secretary for TFI).

3. 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* ECM 1). In an undated letter, Sara Kay Fisher, then-Acting Director of the Office of Emergency Programs, responded to Plaintiff's 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 (*See* ECM 1). In a letter dated May 9, 2012, Plaintiff appealed the Department's response, indicating that it did not provide a full listing of Treasury employees (*See* ECM 1). In a letter dated October 9, 2012, Michael Lewis, Senior Advisor, Office of the Assistant Secretary for Management, denied Plaintiff's appeal (*See* ECM 1).

4. In a Complaint filed with the Court on September 1, 2017, Plaintiff sued the Department seeking declaratory and injunctive relief to compel compliance with the requirements of the FOIA (*See* ECM 1).

5. On November 28, 2017, the Assistant United States Attorney ("AUSA") assigned to this case sent Plaintiff an email, asking on behalf of the Department, whether Plaintiff would be willing to narrow the scope of his request, and also inquiring whether he wanted current employee information, or information as of the date of his FOIA request (April 24, 2012). A copy of this email is attached as Exhibit A.

6. On December 4, 2017, Plaintiff emailed the AUSA indicating that he wanted employee information from the date of his FOIA request (April 24, 2012). Plaintiff also indicated in that email that he was not willing to narrow the scope of his FOIA request. A copy of this email is attached as Exhibit B.

7. Upon receiving this information, I determined that the Office of the Deputy Assistant Secretary for Human Resources (“DASHR”) was the most likely office to have the requested information based on their human resources policy making and oversight functions for the entire Department. The Office of the DASHR indicated it had the information and would work with the Office of the Chief Information Officer to access and download the requested records. The requested employee information was obtained by the Office of the Chief Information Officer (“OCIO”), which was able to search the central employee database (called the National Finance Center (“NFC”) Personnel History database) and pull all of the information requested by the Plaintiff for every Treasury employee based on the date requested by the plaintiff. OCIO was not able to compile phone numbers as of the date of the FOIA request, so phone numbers current on the date of the search were produced from a database called HR Connect. The Department’s search uncovered all potentially responsive records.

8. The data were divided into separate Excel spreadsheet files based on Treasury component. 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>2</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 to me for review and clearance. Once approved, the redactions were made permanent and the records were sent to the Plaintiff.

9. Treasury produced the requested information in 6 productions, from February 8, 2018 through May 30, 2018.

10. Every Treasury component whose records I reviewed redacted business cell

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

phone numbers pursuant to exemption 6.<sup>3</sup> The Department believes it has satisfied both prongs required to apply exemption 6 to this information. First, the information is taken from a database containing personnel records. Second, the Department believes that its employees' privacy interests greatly outweigh any interest a member of the public may have in contacting those employees at any time of the day. Office phone numbers were released when available, and when they did not conflict with another exemption. It is reasonable to expect a member of the public to contact an employee at the office, and not on a cell phone they may have in their possession at all times.

11. A number of Treasury components perform law enforcement or national security functions. These components applied exemptions 6 and 7(C). These components include the United States Mint, TTB, FinCEN, the OIG, SIGTARP, and TIGTA.

12. 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.

13. Although FinCEN itself is not included in any list of sensitive agencies compiled by OPM, FinCEN has redacted, pursuant to exemptions 6 and 7(C), the names of those FinCEN employees who perform sensitive regulatory, law enforcement, or national security functions. In addition, FinCEN has redacted, pursuant to exemptions 6 and 7(C), the office telephone numbers of all FinCEN personnel. FinCEN maintains a database of Suspicious Activity Reports (SARs) filed by financial institutions. A FinCEN employee who reveals the existence of a SAR may

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<sup>3</sup> Departmental Offices (not including TFI), the Bureau of Engraving and Printing, the Bureau of the Public Debt, the Financial Management Service the United States Mint, the Office of the Comptroller of the Currency, the Alcohol & Tobacco Tax and Trade Bureau ("TTB"), the Financial Crimes Enforcement Network ("FinCEN"), the Office of the Inspector General ("OIG"), the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"), and the Treasury Inspector General for Tax Administration ("TIGTA").

face not only disciplinary sanctions, but also prosecution under 31 U.S.C. §§ 5318(g)(2) and 5322. FinCEN has provided through its FinCEN Resource Center a centralized path for incoming communications. FinCEN and the Department believe that the public interest in disclosure of office telephone numbers is clearly outweighed by the privacy interest in nondisclosure.

14. 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.

15. I declare under penalty of perjury that the matters set forth in this Declaration are true and correct.

Executed this 19th day of July, 2018

*R. S. Dodson*

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Richard S. Dodson  
Attorney-Advisor  
General Law, Ethics and Regulation  
Office of the General Counsel