IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH, *PRO SE*	)	
Plaintiff,	)	
vs.	)	
UNITED STATES	)	
DEPARTMENT OF TREASURY	)	Case: 17-1796
UNITED STATES	)	**Oral Argument Requested**
OFFICE OF PERSONNEL MANAGEMENT	)	
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT

Grant F. Smith
IRmep
P.O. Box 32041
Washington, D.C. 20007
202-342-7325

info@IRmep.org

For process service:
Grant F. Smith c/o IRmep
1100 H St. NW Suite 840
Washington, D.C. 20005

TABLE OF CONTENTS

TABLE OF AUTHORITIES 2

PRELIMINARY STATEMENT 5

BACKGROUND 6

I. The US has a long history of proactively releasing federal personnel data to foster transparency and good governance. 6

II. Plaintiff is studying the depth of OTFI capture by the Israel lobby 7

III. Plaintiff sought full public disclosure of US Treasury personnel data—especially OTFI—in the service of these multiple specific and public interests 19

ARGUMENT 24

I. Standard of Review 26

II. Plaintiff is entitled to summary judgement 27

A. Defendants are improperly withholding personnel files under Exemption 6 28

B. Defendants are improperly redacting Exemption 1 Treasury Personnel Records 56

III. Defendant's motion should be denied. 57

A. Releases are not in the format processed by Treasury and requested under FOIA 57

B. OPM should not be dismissed 59

CONCLUSION 60

TABLE OF AUTHORITIES

Cases

ACLU v. DOJ, ___ Fed App'x ___, 2016 WL 1657953 (D.C. Cir. Apr. 21, 2016) 26

Associated Press v. US. Dep't of Def, 554 F.3d (2d Cir. 2009).. 31, 50

Brown v. FBI, 873 F. Supp. 2d (D.D.C. 2012) 27

Church of Scientology of Cal., Inc. v. Turner, 662 F.2d (D.C. Cir. 1980) 27

Citizens for Responsibility and Ethics in Washington v. DOJ, 746 F.3d 1082 (D.C. Cir. 2014) 24

Coastal States Gas Corp. v. Dep't of Energy, 617 F.2d 854 (D.C. Cir. 1980)..................................25

Cook v. Nat'l Archives & Records Admin., 758 F.3d at 170 29

Defenders of Wildlife v. U.S. Border Patrol, 623 F. Supp. 2d 83 (D.D.C. 2009)..............................26

Dep't of State v. Ray, 502 U.S. 164 (1991)...32

Dismukes v. Department of the Interior, 603 F. Supp. 760, 761-63 (D.D.C. 1984).........................59

DOJ v. Tax Analysts, 492 U.S. 136 (1989) 25

EPIC v. DHS, 384 F. Supp. 2d 100, 106 (D.D.C. 2005) 25

EPIC v. DHS, 999 F. Supp. 2d 24(D.D.C. 2013)... 25, 26

EPIC v. DOJ, 511 F. Supp. 2d 56 (D.D.C. 2007) 25

Falzone v. Department of the Navy, Civil No. 85 (D.D.C. Oct. 16, 1986) 35

FLRA v. U.S. Dep't of Treasury, 884 F.2d (D.C.Cir.1989 53

Gosen v. Citizen and Immigration Serv., 75 F. Supp. 3d (D.D.C. 2014)..27

Hopkins v. Department of the Navy, Civil No. 84-1868, slip op. at 4 (D.D.C. Feb. 5, 1985)........35

Judicial Watch, Inc. v. Dep't of Commerce, 83 F. Supp. 2d 105, 112 (D.D.C. 1999) 53, 54, 55

King v. DOJ, 830 F.2d (D.C. Cir. 1987) 27

Milner v. Dep't of the Navy, 562 U.S. 562 (2011) 25

Nat'l Archives & Records Admin. v. Favish, 541 U.S. (2004)..27

National Western Life Insurance Co. v. United States, 512 F. Supp. (N.D. Tex. 1980) 35

Neuman v. United States, 70 F. Supp. 3d 416 (D.D.C. 2014).. 26, 57

Painting & Drywall Work Preservation Fund v Hud 936 F.2d (App. D.C. 1991) 30, 50

PETA v. NIH, 745 F.3d (D.C. Cir. 2014) 27

Pub. Citizen, Inc. v. Rubber Mfrs. Ass'n, 533 F.3d 810 (D.C. Cir. 2008)...25

Shapiro v. Dep't of Justice, 34 F. Supp. 3d (D.D.C. 2014)." 28

Statutes

5 C.F.R. § 293.311(a) (1986)...34

5 U.S.C. § 552(b)(1) 6

5 U.S.C. § 552(b)(6) 28, 34

Freedom of Information Act, 5 U.S.C. § 552 .... 24, 25, 26, 27, 57

International Emergency Economic Powers Act, 50 U.S.C. § 1701-1706 47

Other Authorities

Confrontation Clause of the Sixth Amendment to the US Constitution 48

Department Of Justice Report On "Electronic Record" FOIA Issues, Part II, 1990, FOIA Update Vol. XI, No. 3....................59

Eligibility of a Dual United States Citizen for a Paid Position with the Department of Justice, Memorandum Opinion for the Director of Director, Office of Personnel Management, Department of Justice 12

FOIA Update: FOIA Counselor: Protecting Federal Personnel Lists., Vol VII, No. 3, 1986, updated August 13, 2014 36

S.720 - Israel Anti-Boycott Act 47

Specially Designated Nationals And Blocked Persons List (SDN) Human Readable Lists ...17

Testimony on Estimated Costs of U.S. Operations in Iraq and Afghanistan and of Other Activities Related to the War on Terrorism, Congressional Budget Office, October 24, 2007 43

Treaty on the Non-Proliferation of Nuclear Weapons 9

U.S. Central Intelligence Agency 1974 Special National Intelligence Estimate, *Prospects for Further Proliferation of Nuclear Weapons*....................17

US Department of Justice FOIA Update, Sept. 1982 34

Washington Institute for Near East Affairs testimony in support of the creation of OTFI to be headed by Stuart Levey, Senate Hearing 108-802, Counterterror Initiatives In The Terror Finance Program, Hearings before the Committee On Banking, Housing, and Urban Affairs, September 25, October 22, 2003, April 29, and September 29, 2004 U.S. Government Printing Office 7

PRELIMINARY STATEMENT

This case arises out of Plaintiff's Freedom of Information Act (FOIA) request for personnel records the Defendants failed to make public. Plaintiff now challenges the Defendant's withholdings of these personnel records under Exemptions 1 and 6, the Defendant's failure to release reasonably segregable portions of the records, in the format in which records were processed and requested by Plaintiff, and the attempt to dismiss OPM from these proceedings.

Pre and Post 9/11 FOIA treatment of federal agency personnel records are vastly different. Since 1816, it was correctly assumed Americans had a compelling interest in ongoing access to federal personnel records and they were proactively released in the *Official Register*. In the decades before 9/11 unfettered public access to federal agency personnel records through FOIA was presumed, and it was available without the need to present lengthy justifications for why it was needed. Post 9/11 unfounded, highly improbable assertions of potential terrorist attacks upon and public confrontations with federal agency employees means too far too little is available. When requesters take their case to court, they must submit detailed justifications sufficient to convince judges that the formerly presumed public interest in personnel release now outweighs multiple privacy considerations and highly inappropriate claims of supposed bans on "derivative use."

Plaintiff believes is time to return to the pre-9/11 climate, if not the rugged years of the 19th century, that presumed warranted public access for the purposes originally envisioned by the 1816 *Official Register* and later the FOIA.

The Court should deny Defendant's motion for summary judgement and order the agency to release the requested materials for five reasons. First, there is a clear and compelling public interest in release of agency, and particularly OTFI, personnel records. Second, the agency cannot establish that all personnel records fall under Exemption 6. Third, the agency cannot establish that personnel were properly redacted for release under Exemption 1. Fourth, the agency has not followed its own guidelines for releasing records in the original format in which records were processed (MS Excel) which was also the format requested by the Plaintiff (CSV, structured data, which MS Excel imports as readily as .xlsx files). Fifth, OPM should not be dismissed from the lawsuit because it is unclear whether it possesses responsive records and whether it followed proper referral and denial procedures.

BACKGROUND

I. The US has a long history of proactively releasing federal personnel data to foster transparency and good governance.

In 1816 Congress authorized the government to give citizens access to records about the names, number and compensation of federal employees. The first name listed in the first *Official Register* listing of employees was James Madison, listed as "president," born in Virginia, and who had a salary of $25,000.

This pro-disclosure environment predated FOIA by many years, and endured through regional, a civil and world wars—all true national security threats. This long and admirable responsiveness to obvious public expectation of access to federal employee personnel records has been stymied by increasingly hysterical invocations of national security in the post-9/11 age.

II. Plaintiff is studying the depth of OTFI capture by the Israel lobby

The American Israel Public Affairs Committee, AIPAC (an entity ordered to register as an Israeli foreign agent on November 21, 1962[1] when it was part of the American Zionist Council,[2] but which has never complied with the order) and its associated think tank, the Washington Institute for Near East Policy (WINEP) spun off from AIPAC during an FBI investigation of AIPAC for economic espionage,[3] were instrumental in lobbying President George W. Bush for the creation early in 2004 of the Office of Terrorism and Financial Intelligence (OTFI) unit specifically with Stuart Levey as its head. *Washington Institute for Near East Affairs testimony in support of the creation of OTFI to be headed by Stuart Levey, Senate Hearing 108-802, Counterterror Initiatives In The Terror Finance Program, Hearings before the Committee On Banking, Housing, and Urban Affairs, September 25, October 22, 2003, April 29, and September 29, 2004 U.S. Government Printing Office.*[4] Though OTFI proclaims it is charged with

---

[1] Department of Justice FARA order to AZC (of which AIPAC was an unincorporated lobbying division http://www.israellobby.org/FARA/01_AZC_FARA_Order.htm

[2] DOJ orders the AZC to Register as a Foreign Agent, http://www.israellobby.org/AZCDOJ/default.asp

[3] Spy Crisis Launched AIPAC's Think Tank "Crisis initiation" fears led to WINEP grandparent's destruction https://original.antiwar.com/smith-grant/2012/10/05/spy-crisis-launched-aipacs-think-tank/

[4] https://www.gpo.gov/fdsys/pkg/CHRG-108shrg20396/html/CHRG-108shrg20396.htm

"safeguarding the financial system against illicit use and combating rogue nations, terrorist facilitators, weapons of mass destruction (WMD) proliferators, money launderers, drug kingpins, and other national security threats," the secretive office studiously avoids confronting major terrorism generators, such as tax-exempt money laundering from the United States into illegal Israeli settlements or proliferation financing and weapons technology smuggling into Israel's clandestine nuclear weapons complex.

As demanded by AIPAC and WINEP in 2003, the office as initially lead by Stuart Levey, to work in close coordination with Israel. Undersecretary of Treasury Levey's Harvard thesis was about how Israel lobbying organizations could become more effective by staying farther underneath the radar of public scrutiny and distancing themselves from the notoriety generated by the illicit activities committed by such ideological cohort organizations such as the Jewish Defense League (a Department of Justice-designated terrorist organization involved in bombings and with a member recently indicted for 2017 violence against peaceful protester of AIPAC[5]). Levey wrote in his thesis that:

> *"Zionism is the modern quest to realize the 2000-year-old Jewish dream to return to the Holy Land and re-establish Jewish sovereignty…. All Zionist groups dreamed of settling Israel and creating a Jewish state by ingathering the scattered exiles of the Diaspora. They all stressed the ultimate unity of the Jewish people and their potential to create a state that would be a light unto other nations."*

[5] https://forward.com/fast-forward/390829/jewish-defense-league-member-indicted-for-assault-outside-aipac-convention/

See "Meir Kahane: The Development of a Religious Totalitarian and his Challenge to Israeli Democracy" Stuart Levey, November 1985[6] In its early years OTFI rebuffed all Plaintiff's related FOIA attempts to obtain information about OTFI sanctions and the purpose of Levey's numerous taxpayer-funded trips to Israel during his long tenure, all citing the Bank Secrecy Act as a defense against any public disclosure under FOIA. Levey made OTFI briefers available mostly for public presentations and Q&A sessions to a limited number of organizations well-known for having the advancement of Israel as a top organizational goal[7], such as not only the Washington Institute for Near East Policy but also the Foundation for the Defense of Democracies.

When Levey stepped down in 2011, the top job at TFI was transferred to David Cohen, who worked at the same Washington DC Law firm as Levey, Miller, Cassidy, Larroca & Lewin LLP (which later merged into Baker Botts LLP).[8]

Cohen continued Levey's practice of limiting the OTFI's exposure to the concerned public. On September 12, 2012, he refused to answer reporter questions about Israel's possession of nuclear weapons, and whether sanctioning Iran, a Treaty on the Non-Proliferation of Nuclear Weapons signatory, over its internationally-inspected civilian nuclear program was an example of endemic double standards at OTFI.[9] In 2015, *Mondoweiss* observed that the key requirement for Americans working in the top counterterrorism job at

---

[6] *http://israellobby.org/treas/levey.pdf*
[7] See Grant F. Smith "Big Israel: How Israel's Lobby Moves America" IRmep, 2016
[8] *"Treasury's Sanctions czar Stuart Levey to Step Down," by Laura Rozen, January 23, 2011.*[8]
[9] . *See Treasury official who cranks up the heat on Iran can't take the heat in New York, Philip Weiss, Mondoweiss, September 13, 2012*
http://mondoweiss.net/2012/09/treasury-official-who-cranks-up-the-heat-on-iran-cant-take-the-heat-in-new-york/

OTFI appeared to be being both Jewish and Zionist.[10] Most Americans (70%) do not self-identify as Zionists.[11] (A Zionist is any person who believes in the development and protection of a Jewish nation in what is now Israel.)

Cohen was succeeded by longtime OTFI employee Adam Szubin, former counsel to Stuart Levey, who was appointed to lead OTFI during the Obama administration, but never confirmed by the Senate. Szubin also visited Israel frequently on the taxpayer dime and, like Levey and Cohen before him, kept Washington Institute for Near East Policy[12] and American Israel Public Affairs Committee (AIPAC) lobbyists constantly briefed on OTFI initiatives.[13] Szubin then served as interim Under Secretary from January 20, 2017 until February 13, 2017. In 2017 the already narrow hiring criteria of TFI appeared to be even further restricted. According to the news and intelligence website DEBKAfile, TFI's leader Sigal Pearl Mandelker, also a dedicated Zionist, either had or still has Israeli citizenship.[14] Both of the OTFI chief's parents, Gershon Nachman Mandelker and Esther Mandelker *ne* Hornstein, emigrated to the US from Israel.[15] During confirmation hearings the new OTFI Chief Mandelker immediately put forth a statement about carrying forth her family's legacy in current threat assessments.

---

[10] *"Resume requirement for counter-terrorism job appears to include: Jewish." Philip Weiss, July 9, 2015* http://mondoweiss.net/2015/07/requirement-treasury-appears/
[11] Poll: Most Americans Aren't Zionists https://original.antiwar.com/smith-grant/2017/06/19/poll-americans-arent-zionists/
[12] https://mondoweiss.net/2016/07/imperilled-hardliners-hillary/
[13] The Chosen One, Foreign Policy, August 28, 2015 https://foreignpolicy.com/2015/08/28/the-chosen-one-adam-szubin-israel-iran-nuclear-deal-obama/
[14] *"Former Israeli named as sanctions czar for Trump administration." DEBKAfile, 3/15/2017* http://www.debka.com/newsupdate/20112/Former-Israeli-named-as-sanctions-czar-for-Trump-administration.
[15] *Holocaust survivor had boundless zest for life, Pittsburgh Tribune Review, 7/18/2005.*

Mandelker: Thank you, Chairman Crapo, Ranking Member Brown and members of the committee. It's a great honor to appear before you as the president's nominee to lead the office of terrorism and financial intelligence. I want to thank the president and the secretary for their trust and confidence in me.

I've had the opportunity to meet with so many of you over the last few weeks, and I want to thank you for the courtesies that you have shown me and I also look forward to working very closely with this committee if I'm honored to be confirmed. I also want to say I'm very grateful for the tremendous support of my family and friends, including those who traveled to attend this hearing.

I want to recognize in particular two of my heroes and constant sources of inspiration. My father, Gershon Mandelker whose here today, and my wonderfully lovely mother who passed away 12 years ago. Both of them were Holocaust survivors who spent part of their childhood hiding underground, in the forest and elsewhere here in their lives as they tried to escape the Nazi.

My dad tells one story about how he was hiding in a barn. The head of the village had a very courageous man had -- had agreed to hide my dad, my grandfather and several others. And as they were hiding, a group of soldiers came and they -- to the barn because they wanted to see whether or not and that was a good place to park their guns and their horses. And so my dad hid under a haystack and he very distinctly remembers the soldiers coming in, walking around, looking and ultimately decided that that's not where they were going to put their horses.

But he has a vivid memory of watching the boots of one of those soldiers. If my dad had so much as sneezed in that moment, I can assure you I

> *wouldn't be here today and my dad wouldn't be here proudly sitting beside me. I grew up hearing about the stories of my parents, their stories of survival having nearly avoided death.*
>
> *Unfortunately, many of my -- members of my family did not survive. Three of my grandparents were either killed or died as a result of the Holocaust. But I can say that with this history, my parents not only survived, but they went on to pursue successful careers in Pittsburgh. They gave us a very normal life and they were incredibly positive role models. They raise my brother and me with enormous love and a deep appreciation for the opportunities that our great nation provides, and the -- and the -- and the knowledge that we should never take for granted, our safety, security and our freedom.*
>
> *MANDELKER: I carry this legacy, which is an important one with me always. And as I told you, it's really what's motivated me to public service. For -- I think that the opportunity to make a difference is incredibly humbling especially when we consider the kinds of threats that we face today….*[16]

Mandelker was confirmed by the Senate on June 21, 2017. Within its own organization, Department of Justice policy has no issue with dual-nationals seeking and being granted jobs in federal agencies. *Eligibility of a Dual United States Citizen for a Paid Position with the Department of Justice,* Memorandum Opinion for the Director of Director, Office of Personnel Management, Department of Justice.[17] However, there are obvious questions about the potential conflicts of interests an Israeli-American dual national, dedicated to the

16

17 https://www.justice.gov/sites/default/files/olc/opinions/1999/08/31/op-olc-v023-p0181.pdf

advancement of Israel, running OTFI. It again raises the issue of whether the leadership of OTFI is being hand-picked by Israel either with or through its U.S. lobby on the basis of predicted devotion to advancing the strategic position Israel. It raises the question of how such influence negatively impacts Americans, now and in the near future.

The chief lobbying group that worked to create the OTFI, and ideologically vet its chiefs and possibly even some staff, and receive exclusive briefings, is currently attempting to create entirely new laws and enforcement powers to target Americans found "guilty" of boycotting Israel over its endemic human rights abuses. The AIPAC-drafted "Israel Anti-Boycott Act" will allow secretive units such as OTFI and new units housed within the Export Import Bank to fine Americans up to $1 million and imprison them for up to 20 years for such activities. Free speech rights arguments have not yet been an obstacle to such secretive operations. OTFI worked to successfully to imprison New Yorker Javed Iqbal for nearly six years over airing Hezbollah videos on his privately-owned cable network that Israel affinity organizations found distasteful. OTFI shut down nonprofit charities the Israel lobby opposed such as Al-Haramain, Benevolence International, Global Relief, and Kind Hearts with little due process.[18] The Israel lobby's new attempt to replicate its past "success" of creating, vetting the leadership, and likely the staffing, and lobbying for Israel-centric laws

---

[18] *See: The Israel Anti-Boycott Law" Is Beyond Repair; Writing Israeli Policies into US Law is Dangerous," July 28, 2017 http://original.antiwar.com/smith-grant/2017/07/27/israel-anti-boycott-law-beyond-repair/and "69% Oppose AIPAC's 'Israel Anti-Boycott Act: Formerly Neutral Americans Now Oppose Curbing Israel Boycotts" August 3, 2017*http://original.antiwar.com/smith-grant/2017/08/02/69-oppose-aipacs-israel-anti-boycott-act/

and executive orders for units inside the US federal government designed primarily to advance Israeli government interests, to "enforce," makes prompt, ongoing, efficient, warranted transparency through FOIA extremely urgent. This is particularly relevant since OTFI is operating in remarkably similar manner to an ideological predecessor government unit, the Pentagon Office of Special Plans, the activities of which had drastic consequences for U.S. national security, and which undermined other federal agencies with no checks and balances or transparency, as discussed later.

This type of harmful regulatory capture is not limited to federal government agencies. In the commonwealth of Virginia, the taxpayer-funded Virginia Israel Advisory Board, formerly an office of the Governor, now of the legislature, must, by state law, draw 13 of the 29 citizen members of the board from four Virginia-based Jewish community federations, which all have the advancement of Israel as a top objective. *§ 2.2-2424 Virginia-Israel Advisory Board; purpose; membership; terms; compensation and expenses; staff; chairman's executive summary.* VIAB and its federation supporters have been active attempting to politicize state K-12 textbooks with pro-Israel propaganda, fight boycotts of Israeli human rights abuses with state funds and gubernatorial authority, and secure massive federal and state aid for dubious Israel investment projects, over the opposition of state human rights activists, who have used Virginia's state FOIA as the only means to unearth corruption[19]. Like OTFI, VIAB and its sponsors in the Israel advocacy ecosystem are also highly secretive, in VIAB's case using

[19] VCHR and Virginia professors push back against questionable textbook changes by Israel advocacy organizations, https://www.prnewswire.com/news-releases/vchr-and-virginia-professors-push-back-against-questionable-textbook-changes-by-israel-advocacy-organizations-300660227.html

code words for projects it develops on the taxpayer dime and refusing to turn over internal email correspondence via state sunshine laws. Like OTFI, the leadership of VIAB can be passed on, with no outside input, to ideological fellow travelers.

Earlier in 2018 VOAB went through a reconstitution to diminish the Governor of Virginia's power to influence the selection of VIAB's executive director after the Governor's office questioned and investigated VIAB's operations for conflicts of interest and inflated claims.[20] The internal corruption of VIAB was only made public through state sunshine laws.

There is a reason for this evasiveness on the part of captured government units advancing Israel's programs. National surveys indicate it is unlikely most state voters would support such anti-boycott activities, if they knew about them.[21] Americans are even less enthusiastic about being trip-wired into another costly and unnecessary war.[22] Yet OTFI's selective "law enforcement" has been making war increasingly likely throughout the course of its existence.

In short, the Israel lobby, with AIPAC at the tip of the spear, is actively creating and seeking to create entirely new, secretive, captive organs of government with special powers that negatively impact U.S foreign policy, trade, investment, free speech, transparency and public policy desired by the majority. The units are exclusively to be led by leaders vetted for

[20] Meet VIAB, Virginia's Taxpayer-Funded Israel Lobby. https://original.antiwar.com/smith-grant/2018/07/30/meet-viab-virginias-taxpayer-funded-israel-lobby/
[21] https://original.antiwar.com/smith-grant/2017/08/02/69-oppose-aipacs-israel-anti-boycott-act/
[22] Poll: Americans Would Cut Middle East War Spending
https://www.irmep.org/polls/content/11152017_ME_Military_Spending.asp

the proper ideological suitability as dictated by the Israel lobby ecosystem. They demonstrably do not advance the policy preferences of most Americans.

Defendants demand special secrecy privileges to block public scrutiny of OTFI by misusing FOIA exemptions. But these are easily overcome by obvious public "functions of government" questions that only personnel data can help answer, including: "How many people work at OTFI?" "Are OTFI employees hired by the same strict ideological criteria as OTFI leadership?" "What do alumni of OTFI who weren't vetted for their strong pro-Israel credentials think about their time working there, and OTFI operations?" "Was the initial cohort of OTFI employees mostly drawn from the world of Israel advocacy organizations?" "Where are they now?" "Why is there so much ongoing secret OTFI coordination with Israel?" "Have AIPAC and affiliate organizations inserted a large number of interns and student trainees into OTFI as 'eyes and ears' like it has successfully done into congressional offices?" "Why is OTFI so selective in enforcement by targeting Israel's geopolitical rivals, but not illegal Israeli settlements, seizures of Palestinian lands with funds laundered from the U.S. and ongoing Israeli nuclear weapons related smuggling and proliferation?" "Why aren't Israeli nuclear technology smugglers such as Telogy, Arnon Milchan and Benjamin Netanyahu on the SDN list?[23]" "Why aren't illegal Israeli settlement financiers Sheldon Adelson or Jack Abramoff on the SDN watch list?" These are serious questions that only ongoing FOIA-empowered public interest research and reporting can answer.

---

[23] OFAC publishes a list of individuals and companies is says are owned or controlled by, or acting for or on behalf of, targeted countries. OFAC serves as judge and jury on deciding who is placed on, and who can get off, the list. https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx

OTFI has extraordinary powers to sanction entities and individuals and secondary action against entities that do business with them under broad executive orders. But and examination of OTFI's *Specially Designated Nationals And Blocked Persons List (SDN) Human Readable Lists,* like a review of the trajectory of its leaders, only provide further evidence of regulatory capture. As part of its enforcement efforts, OFAC publishes the SDN list of individuals and companies it accuses of being owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities it claims are terrorists and narcotics traffickers designated under indicators that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked, and U.S. persons are generally prohibited from dealing with them. Lawyers specializing in this area attest to the difficulty of removing oneself from the Treasury's SDN list. To outsiders, the most puzzling aspect to the list is the absence of well-known nuclear weapons technology traffickers for the only country confirmed by authoritative U.S. reports in the region to have a clandestine nuclear weapons program—Israel. Central Intelligence Agency 1974 Special National Intelligence Estimate, *Prospects for Further Proliferation of Nuclear Weapons*

TFI/OFAC operatives code each SDN individual or entity suspected of trafficking in nuclear weapons technology with the designator code "NPWMD" meaning "Weapons of Mass Destruction Proliferators Sanctions Regulations" which 31 C.F.R part 544 authorizes for the applications of sanctions. However, Israeli film producer Arnon Milchan, who transacts hundreds of millions of dollars through the U.S. and international financial system,

and his accomplice, Israeli Prime Minister Benjamin Netanyahu, are both known to the FBI and DHS as having facilitated the unlawful smuggling of hundreds of nuclear weapons triggers from the United States through a global network of front companies. Though never convicted, nothing prevents their listing on the SDN. However, neither individual nor their related business organizations or front companies appear as sanctioned entities under the SDN.

In 2012, Belgian company Telogy International NV committed 23 violations of the Export Administration Act of 1979, by smuggling 22 Tektronix oscilloscopes worth hundreds of thousands of dollars, and which are critical nuclear weapons testing and production technology and export-prohibited without proper end-user licenses, out of the United States along with other prohibited items. *Order Relating to Telogy International NV*, US Department of Commerce Bureau of Industry and Security, 2010.[24] However Telogy International NV never appeared on the SDN list. OTFI's sanctioners never entered either Telogy or the company that acquired it, Electro Rent Corp, into the SDN database to ward off banks and others from doing business with it. Plaintiff believes the reason is that the prohibited nuclear weapons-making technology was illegally shipped by Telogy to a country of great sympathy to OTFI stakeholders and leaders that really needed it for its nuclear weapons program, Israel. Have OTFI SDN list compilers been specifically told not to include any Israeli nuclear weapons traffickers on the list? It certainly appears to be the case.

[24] https://irmep.org/IsraeliNuclearSmuggling/e2166.pdf

And with a better understanding of who works at OTFI, such mysteries of selective enforcement will soon be resolved. In the current SDN there are multiple entries for countries not known to have nuclear weapons programs, such as Iran and Syria. There is not a single SDN NPWMD entry for any Israeli individual or entity, again, despite the CIA's having publicly confirmed the existence of an Israeli nuclear weapons program in 1974, which it said was fueled by material stolen from the United States in the 1960s, and a proliferation threat with countries such as Taiwan (which appears in the SDN) and South Africa. Indeed, there are only a handful of SDN entries for Israel at all, which mostly appear to be Russian oligarchs with Israeli passports.

III. Plaintiff sought full public disclosure of US Treasury personnel data—especially OTFI—in the service of these multiple specific and public interests

The Plaintiff's FOIA request was sent to the Department of Treasury on April 24,

2012, and sought access to the "US Treasury Department Employee First Name, Middle Initial, Last Name, Title, Department and Phone Number" (ECF 1, Exhibit A).
On October 15, 2012 Plaintiff sent a FOIA to OPM, which has a good reputation for responding with usable, structured data, for the "Employees of the U.S. Treasury Terrorism and Financial Intelligence" (TFI) Unit…1. First Name, 2. Last Name, 3. Occupation/Title. (ECF 1, Exhibit E).

After unresponsive and non-responsive results that did not comply with statutory mandates of FOIA, on 9/1/2017 Plaintiff filed suit. On the December 19, 2017 Joint Status

Report (ECF 13), Defendant conceded it was improperly withholding records by agreeing to conduct a bona fide search and release and offering reimbursement of Plaintiffs court costs. Defendant further agreed to "start with the Office of Terrorism and Financial Intelligence and Office of Financial Asset Control, before moving on to the easier bureaus, such as the Headquarters, in recognition that those are of highest interest to the Plaintiff, who insists they are not statutorily excluded from release." Defendant also agreed "to negotiate reimbursement to Plaintiff of his court filing fee ($400), travel to the court for complaint filing ($20) and photocopying expenses ($15)." (ECF 13) Defendant's have since reneged on this offer and threatened to charge Plaintiff their attorney fees.

Beginning in December of 2018 and culminating in May of 2018, Defendants made monthly rolling productions.

On February 2, 2018 Defendants released the Bureau of Printing and Engraving. The file was minimally redacted under Exemption 6 and included phone numbers for most employees, including a great many in law enforcement including supervisory security specialists, general investigators, supervisory police officers. Plaintiff believes this was an exemplary FOIA release, diminished only by the fact that it was converted from Excel into a PDF. (See Exhibit A)

On February 26, 2018 Defendants released the Bureau of Public Debt, (See Exhibit B) Financial Management Service, (See Exhibit C) and the office of the Comptroller of the Currency. (See Exhibit D) Again, the release was exemplary, with only a few telephone

numbers redacted under (b)(6). The FOIA release was diminished only by the fact that it was converted from Excel into a PDF.

On March 30, Defendants released the US Mint. The release was missing a substantial number of telephone numbers, and unlike the Bureau of Printing and Engraving, redacted the name of every policy officer, a large percentage of the entries. The FOIA release was diminished by the fact that it was converted from Excel into a PDF. (See Exhibit E)

On April 26, 2018 Defendants released the SIGTARP, the Special Inspector General for the Troubled Asset Relief Program, excluding all OTFI-related offices. The release included economists, region-focused personnel such as Mid East and Africa specialists, student trainees, auditors, managing directors for countries such as China, and policy analysts and office managers with minimal phone number redactions. OIG criminal investigator records were redacted, along with a large number of full b(6)(7) redactions beginning on page 1086. The FOIA release is unsatisfactory because it was accompanied by no Vaughn index justifying the redactions or segregability. The FOIA release was diminished by the fact that it was converted from Excel into a PDF. (See Exhibit F)

On May 25, 2018 Defendants released the IRS. IRS agents, tax fraud investigators, criminal investigators, and all phone numbers were redacted under citations internal policy guidelines, which Plaintiff disputes. Plaintiff could not find as many Tax Exempt/Government Entity personnel overseeing U.S. charities as have known in the past

to exist. The FOIA release was diminished by the fact that it was converted from Excel into a PDF. (See Exhibit G)

On May 25, 2018 Defendants released the Treasury Inspector General for Tax Administration. Criminal investigators, supervisory IT specialists were redacted. The FOIA release was diminished by the fact that it was converted from Excel into a PDF. (See Exhibit H) Plaintiff reminded Defendants that they were not honoring the Joint Status Report agreement by withholding OTFI and OFAC in such as manner as to provide no opportunity for feedback before the release deadline. (ECF 13) (Exhibit I)

On May 25, 2018 Defendants released the Financial Crimes Enforcement Network. A much larger array of position holder names in non-sensitive positions were redacted, including Compliance Staff Specialist, Intelligence Research Specialist, Lead Law Enforcement Liaison, Supervisory Intelligence Research Specialists, Compliance Project Officers, Records Sharing Compliance Specialists, Regulatory Enforcement Program managers, and nearly all phone numbers were redacted. The unsatisfactory FOIA release was further diminished by the fact that it was converted from Excel into a PDF. (See Exhibit J)

On May 25, 2018 Defendants released the Alcohol and Tobacco Tax and Trade Bureau. An enormous array of position holder names were redacted from non-sensitive positions including Auditors, Labeling Specialists, Regulations Specialists, Management and Program Analysts, Writer-Editors, It Specialists, Alcohol and Tobacco Tax Specialists, Tax and Trade Specialists, Special Assistants, Management Analysts, Statistical Operations

Specialists, Investigators, Librarians, Chemists, market Compliance Specialists, Budget Analysts, Legal Instruments Examiners, clerks and nearly all phone numbers were redacted. The unsatisfactory FOIA release was further diminished by the fact that it was converted from Excel into a PDF. (See Exhibit K)

On May 30 Defendants finally released the Office of Terrorism and Financial Intelligence, which was supposed to be the first release under the Joint Status Agreement)." (ECF 13) All phone numbers were redacted. The release contained some appropriately unredacted names including Katherine C. Bauer, Assistant Director, Luke A. Bronin, DAS, Executive Office OTFI, Katrina A. Carroll, Assistant Director, Strategic Business Policy, Charles J. Cavella, DAS for Security; David Cohen, Under Secretary for Enforcement, Cathleen M Einstein, Assistant Director, Information Technology; Thomas Peter Feddo, Assistant Director, Enforcement Operations, Marshall H. Fields, Assistant Director, Disclosure Service, Eytan Jordan Fisch, Assistant Director; Jennifer L. Fowler, Chief of Staff, Andrea M. Gacki, Assistant Director, Daniel L. Glaser, Assistant Secretary Terrorist Financing Sanctions; Carlton M. Greene, Assistant Director, Transnational Threats, Barbara C. Hammerle, Deputy Director, OFAC; Eric E. Hampl, Director of the Executive Office for Asset Forfeiture; Michael P Madon, Deputy Assistant Secretary, Office of Investigations; Susan Leslie Ireland, Assistant Secretary, Arthur D. McGlynn, Deputy Assistant Secretary, Mark P Poncy, Director of the Office of Strategic Policy, Deanna O'Reilly, Assistant Director, Elizabeth S. Rosenberg, Senior Advisor, John E. Smith, Associate Director

Program Policy and Implem, Colleen Frances Stack, Assistant Director, Charles M. Steele, Associate Director, Rochelle E. Stern, Assistant Director for Policy; Michael D. Swanson, Assistant Director, Global Counter Nar, Adam J Szubin, Director of OFAC, Dennis P Wood, Assistant Director, Compliance. (See Exhibit L)

Most of the redacted OTFI position holders are not sensitive, but rather positions not afforded Exemption 6 protections in other U.S. Treasury units, and call into question how the position could possibly be represented as a sensitive intelligence, law enforcement or national security position, such as Civil Penalties Officer, Administrative Management Specialist, Licensing Examining Officer, Supervisory License Examining Analyst, Administrative Management Specialist, Policy Advisor, Senior Advisor for Legislative Affairs, Information Management Analyst, Program Analyst, Research Analyst, Clerks, and Management Analysts. There are also no obvious OIA supervisory officials or employees redacted under Exemptions 1 and 6. The unsatisfactory FOIA release was further diminished by the fact that it was converted from Excel into a PDF.

ARGUMENT

The Freedom of Information Act, 5 U.S.C. § 552, was enacted "to facilitate public access to Government documents" and "was designed to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Citizens for Responsibility and Ethics in Washington v. DOJ*, 746 F.3d 1082, 1088 (D.C. Cir. 2014) The underlying purpose of the FOIA is "to ensure an informed citizenry, vital to the functioning of a democratic

society, needed to check against corruption and to hold the governors accountable to the governed." *EPIC v. DHS*, 999 F. Supp. 2d 24, 29 (D.D.C. 2013) (quoting John Doe Agency v. John Doe Corp., 493 U.S. 146, 152 (1989)). "In enacting FOIA, Congress struck the balance it thought right—generally favoring disclosure, subject only to a handful of specified exemptions—and did so across the length and breadth of the Federal Government." *Milner v. Dep't of the Navy*, 562 U.S. 562, 571 n.5 (2011). As a result, the FOIA "mandates a strong presumption in favor of disclosure." *EPIC v. DOJ*, 511 F. Supp. 2d 56, 64 (D.D.C. 2007) (internal citations omitted).

The FOIA specifies that certain categories of information may be exempt from disclosure, "[b]ut these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." *Pub. Citizen, Inc. v. Rubber Mfrs. Ass'n*, 533 F.3d 810, 813 (D.C. Cir. 2008). Therefore FOIA exemptions "must be narrowly construed." Id. "The statute's goal is broad disclosure, and the exemptions must be given a narrow compass." *Milner*, 562 U.S. at 563 (internal citations omitted). Furthermore, "the burden is on the agency to sustain its action." 5 U.S.C. § 552(a)(4)(B); see also *EPIC v. DHS*, 384 F. Supp. 2d 100, 106 (D.D.C. 2005). Where the government has not carried this burden, summary judgment in favor of the Plaintiff is appropriate. *DOJ v. Tax Analysts*, 492 U.S. 136, 142 (1989); *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 861 (D.C. Cir. 1980).

I. Standard of Review

Summary judgment may be granted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A genuine issue of material fact is one that would change the outcome of the litigation." *EPIC v. DHS*, 999 F. Supp. 2d 24, 28 (D.D.C. 2013). FOIA cases are typically decided on motions for summary judgment. Id.; see *Defenders of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 87 (D.D.C. 2009). A district court reviewing a motion for summary judgment in a FOIA case "conducts a de novo review of the record, and the responding federal agency bears the burden of proving that it has complied with its obligations under the FOIA." *Neuman v. United States*, 70 F. Supp. 3d 416, 421 (D.D.C. 2014); CREW, 746 F.3d at 1088; see also 5 U.S.C. § 552(a)(4)(B). The court must "analyze all underlying facts and inferences in the light most favorable to the FOIA requester," and therefore "summary judgment for an agency is only appropriate after the agency proves that it has 'fully discharged its [FOIA] obligations.'" Neuman, 70 F. Supp. 3d at 421.)In some cases, the agency may carry its burden by submitting affidavits that "describe the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor evidence of agency bad faith." *ACLU v. DOJ*, ___ Fed App'x ___, 2016 WL 1657953, at *1 (D.C. Cir. Apr. 21, 2016).

II. Plaintiff is entitled to summary judgement

The FOIA provides that every government agency shall "upon any request which (i) reasonably describes such records and (ii) is made in accordance with published rules . . . make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A). Despite the general "pro disclosure purpose" of the statute, *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004), the FOIA provides for nine exemptions. These exemptions outline "specified circumstances under which disclosure is not required." *Gosen v. Citizen and Immigration Serv.*, 75 F. Supp. 3d 279, 286 (D.D.C. 2014); see 5 U.S.C. § 552(b). In a FOIA case, the "agency bears the burden of establishing that an exemption applies." *PETA v. NIH*, 745 F.3d 535 (D.C. Cir. 2014). The agency may "meet this burden by filing affidavits describing the material withheld and the manner in which it falls within the exemption claimed." *King v. DOJ*, 830 F.2d 210, 217 (D.C. Cir. 1987). However, it is not sufficient for the agency to provide "vague, conclusory affidavits, or those that merely paraphrase the words of a statute." *Church of Scientology of Cal., Inc. v. Turner*, 662 F.2d 784, 787 (D.C. Cir. 1980) (per curiam). When an agency invokes an exemption, "it must submit affidavits that provide the kind of detailed, scrupulous description [of the withheld documents] that enables a District Court judge to perform a de novo review." *Brown v. FBI*, 873 F. Supp. 2d 388, 401 (D.D.C. 2012) (internal quotation marks omitted).

A. Defendants are improperly withholding personnel files under Exemption 6

Defendants are improperly invoking Exemption 6 5 U.S.C. § 552(b)(6) under precedents that have little to do with personnel lists while making improbable, unsupported claims about threats to employees, while insisting that the privacy interests of OTFI and other employees vastly outweigh any cognizable public interest in ascertaining their identities. Defendants also mistakenly claim derivative use is prohibited, when it clearly is not.

Defendants claim "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)." (ECF, 19-1, p 8)

Plaintiff notes that *Shapiro v. Department of Justice* was not a personnel files FOIA lawsuit, by a Plaintiff request tailored to "determine what the government was up to" but rather a request for 23 pages of FBI files on the deceased computer programmer Aaron Swartz, which had incidental names and phone numbers of law enforcement officials withheld from released pages. Also, although Exemption 6 *can* include the kinds of biographical data cited in *Shapiro*, it is not true that all possible combinations of such biographical data is inherently non-releasable in all circumstances, as Defendants seem to believe. Plaintiff's request, moever, is much narrower and less intrusive, since he is not requesting employment history, place of birth, salaries or even addresses. (Original FOIA, ECF 1, Exhibit A). That is because those

files are unnecessary to his study of how Israel lobby regulatory capture negatively impacts functions of government.

Defendants object to releasing OTFI employee names, citing yet another case unrelated to federal employee personnel records, claiming “In addition, and notably 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.” The case cited by Defendants was a request by a researcher to the National Archives and Records Administration for copies of special access requests made by George W. Bush and Dick Cheney, or their agents, for presidential records. The researcher hoped to learn what documents the former president and vice president were interested in as they prepared memoirs and otherwise used records to shape their legacy. The court ruled that that particular FOIA request had so little to do with NARA operations, that “In light of this, disclosure of the former officials' requests for records would do little to advance the public understanding of how NARA is carrying out its duties."

Plaintiff disagrees that revealing requests of former officials through NARA will never reveal a great deal about NARA custody and administration of records. In 2003 Clinton national security adviser Sandy Berger repeatedly stole and smuggled classified documents out of the National Archives that detailed the president’s efforts to handle terrorist threats to the millennium celebrations. The crime cost Berger $50,000, 100 hours of community service, his security clearance, and his law license. That case was clearly about

NARA, whose agents that went after Berger still haven't forgotten NARA's failure to protect public documents. "It weighs on you," said Archives Inspector General Paul Brachfeld.[25] If researchers were granted routines access to executive office special requests, such thefts of American history might be deterred, in Plaintiff's view.

However, in the case of OTFI, the identities of the officials working there can reveals a great deal about how OTFI carries out its mission. OTFI has been led by a string of such ardent pro-Israel ideologues that its actions are inexplicable to close outside observers and reporters as anything other than regulatory capture by the Israel lobby. Understanding how deep the discriminatory hiring pattern goes forms the foundation for why releasing personnel records is a means for appropriately opening agency action to the light of public scrutiny. OTFI already has begun, with the release of additional names, provided additional means for a great deal of further research into explaining OTFI's highly selective, yet mostly unreviewable, "law enforcement" and how OTFI may further undermine not only foreigner, but American citizens' right to due process if AIPAC wins passage of the Israel Anti-Boycott Act and OTFI and a sister organization starts enforcing it.

Defendants also proclaim the relevancy of *Painting & Drywall Work Preservation Fund v Hud* 936 F.2d 1300, 1303 (App. D.C. 1991). But once again, no federal personnel records were at issue, only whether the release of temporary contractor home addresses combined

---

[25] Berger Thefts Still Weigh on Archives Agents, US News & World Report, March 14, 2011, https://www.usnews.com/news/blogs/washington-whispers/2011/03/14/berger-thefts-still-weigh-on-archives-agents

with certified payroll data solicited by a labor union interested in maintaining high compensation levels and building up its membership rolls was permissible under FOIA. But what the precedent most clearly reveals, is that in certain circumstances, courts clearly recognize and respect derivative use of information (which Defendants cite other precedents to give the false conception that it never is) *is cognizable under FOIA*, though in this case was outweighed by privacy interests

Finally, lacking any favorable precedents on relevant federal personnel records, Defendants seek their next best proxy, Guantanamo detainees, (ECF 19-1, page 10) claiming "courts have generally declined to view the 'derivative' use of information, which is indirect and speculative, as a cognizable public interest. *Associated Press v. US. Dep't of Def*, 554 F.3d 274,292 (2d Cir. 2009)" That case was all about the Associate Press seeking release of the names of Guantanamo Bay detainees and addresses and names of family members contained in the detainees' personal private correspondence, which the news agency wanted to use as contact information to develop news stories. Again, this had absolutely nothing to do with personnel records at a government agency with inherent conflicts of interest and selective enforcement issues. What the Associated Press wanted was highly invasive information from prisoners in a highly vulnerable, legally dubious, position. Clearly, *Associated Press* is not very informative as to the question of "derivative use" vs "cognizable public interest." Indeed, the court in that case emphasized fundamentally that it "had not addressed" derivative use theory, but that the "Refusing to order such disclosure, we commented that "[w]ere we to

compel disclosure of personal information with so attenuated a relationship to governmental activity, however, we would open the door to disclosure of virtually all personal information, thereby eviscerating the FOIA privacy exemptions."

Clearly, Plaintiff's requested disclosures are nowhere near as "attenuated" as diverted prison correspondence, because upon public release they and additional research and outreach they build upon the existing public interest in determining the degree of OTFI's capture by the Israel lobby. In the case of these particular personnel records, there is no solid case to be built against derivative use, as Defendant's citation of inaccessible prisoner correspondence clearly reveals. There is a "cognizable public interest" in determining how much further down OTFI's demonstrated ideological staffing practices go into the front lines of the organization, in order to reveal function of government, and obvious public interest.

Finally, it must be noted, once more, that yet another supposedly key case cited by Defendants, *Dep't of State v. Ray*, 502 U.S. 164, 180 (1991) is not about federal personnel records, but rather the identities of vulnerable Haitian refugees. Ray, an immigrant legal aid attorney, wished to double check US Department of State claims that returnee undocumented Haitian immigrants were not suffering persecution at the hands of Haitian authorities. The court's decision had less to do with an alleged universal ban on all derivative use, than the issue of violating the privacy rights of returnees who provided their contact information, along with personal stories of their return and status in Haiti, to the

Department of State only under strict assurances of confidentiality. The court found no cause, in that particular case, to violate privacy assurances given by the U.S. Department of State. If Plaintiffs had only solicited the names of the Haitians surveyed, or only the anonymized survey results, it is quite likely they would have prevailed. The court noted, "Although disclosure of such personal information (interviews) constitutes only a *de minimis* invasion of privacy when the identities of the interviewees are unknown, the invasion of privacy becomes significant when the personal information is linked to particular interviewees. Cf. id., at 380-381." In this sense, although not related to personnel records, the precedent seems to support, rather than cast doubt upon, the Plaintiff's much narrower and less revealing request. As to the question of derivative use in *Dep't of State v. Ray*, the immigrant rights lawyer was going to use Haitian refugee contact information and surveys, to reconduct the surveys and verify that the returnees were really doing well back in Haiti. The presiding judge saw no evidence that the State Department surveys had been compromised in any way that could justify Ray's derivative use in obtaining the requested information simply to reconduct the survey.

In the plaintiff's case, sadly, there is no evidence that the Department of Treasury has conducted any self-reflection study into how increasingly obvious regulatory capture may be contributing to unequal enforcement and selective prosecution. After the Plaintiff has finally secured a proper FOIA response and further analyzed personnel data, he will certainly share

those results not only first with the public, but also with the U.S. Treasury Department. In that sense, and unlike *Ray*, Plaintiff's study will be the original, not the derivative, study.

The Plaintiff firmly believes this court must consider not the Defendant's uninformative precedents, but how personnel information was handled before the age of threat inflation, irrational fear, and irritation over uncontrolled public contact. Before 9/11, the American public generally had unfettered access to personnel records. That is because during that period 5 U.S.C. § 552(b)(6) precedents covering personnel records demanded extremely narrow application that overwhelmingly favored disclosure of personnel records.

In that less fearful time, Exemption 6 of the FOIA protected only records the release of which would constitute "a clearly unwarranted invasion of personal privacy," 5 U.S.C. § 552(b)(6), and was generally mostly inapplicable to agency personnel lists inasmuch sought not for public interest use, but by various marketers of commercial products and services of various kinds. Even so, there was no viable privacy interest in the names and business addresses of most federal employees. *US Department of Justice FOIA Update*, Sept. 1982, at 3.

In 1986, the Office of Personnel Management even promulgated a regulation which required that the names of most individual employees and their official duty addresses (as well as other specified data) be made freely available to the public, 5 C.F.R. § 293.311(a) (1986), except where "the data sought is a list" of such names and work addresses that would "otherwise be protected from mandatory disclosure under an exemption of the FOIA," 5 C.F.R. § 293.311(b) (1986).

Back then, many FOIA decisions that focused on requests for basic personnel lists containing office addresses or duty stations found no protectible privacy interests in such records. See, e.g., *Hopkins v. Department of the Navy*, Civil No. 84-1868, slip op. at 4 (D.D.C. Feb. 5, 1985) (release of names and official duty addresses of marines stationed at Quantico, Virginia would not constitute invasions of personal privacy because it "would disclose nothing about any of the individuals listed other than the fact that they are members of the armed services, which is itself a matter of public record"); *National Western Life Insurance Co. v. United States*, 512 F. Supp. 454, 461 (N.D. Tex. 1980) ("It cannot be seriously contended that postal employees have an expectation of privacy with respect to their names and duty stations.").

Because disclosure of actual duty stations sometimes presented a plausible threat to military personnel overseas military personnel "serving overseas or with classified, sensitive or deployable units" some were held to be withheld on personal privacy grounds. *Falzone v. Department of the Navy*, Civil No. 85-3862 (D.D.C. Oct. 16, 1986) (protecting "potential targets of threats and terrorist attacks" under Exemption 6).

It used to be the firm Department of Justice view only that, "In sum, Exemption 6 provides a narrow but important basis for protecting lists of the names and official duty addresses of federal employees whose positions place them at a risk of personal danger or

harassment." FOIA Update: FOIA Counselor: Protecting Federal Personnel Lists., Vol VII, No. 3, 1986[26].

Though still online, those Department of Justice guidelines are deemed to be obsolete and irrelevant by Defendants. They are not to the Plaintiff. Though it is 17 years in the past, many government officials allege the 9/11 attacks have permanently changed everything, and that all U.S. government facilities and personnel are under constant threat of attack. Alleged threats to the safety of government employees whose identities are known are so high, they content, they must be allowed complete anonymity as they work to protect "national security" as they alone (and their special interest group patrons and sponsors) interpret it. Cobbling together disparate cases about the research habits of former White House executives, and home addresses of temporary drywall contractors, Gitmo detainees and Haitian returnees they contend that 9/11 is growing ever larger in the rear-view mirror, rather than receding.

Overall, the fears expressed by Defendants of violence being perpetrated upon employees working in facilities far more secure than those enjoyed by most Americans—are self-serving, self-aggrandizing and grossly exaggerated, absent any concrete proof. "Targets of foreign adversaries…" (19-5, 5) The annual chance of being killed by an animal was 1 in 1.6 million per year from 2008 through 2015. The chance of being murdered in a terrorist attack on U.S. soil was 1 in 30.1 million per year during that time. The chance of being

---

[26] https://www.justice.gov/oip/blog/foia-update-foia-counselor-protecting-federal-personnel-lists

murdered by a native-born terrorist was 1 in 43.8 million per year, more than twice as deadly as foreign-born terrorists at 1 in 104.2 million per year."[27] If Defendants have any actual evidence in the form of credible threat analysis that public knowledge about their personnel would place them at any greater risk of physical danger than the average member of the American public, they should present it.

The transparency costs Defendants ask the public to bear to protect against such unsubstantiated threats are unacceptably high and should not be accepted on the basis of rote assertions and boilerplate affidavits filed to this court. It is also unclear if agency employees feel as personally threatened as the affidavits claim. Their postings on LinkedIn, an online career and resume website, suggests that they do not. On online search of LinkedIn reveals 37,700 results. Not all are OTFI employees, consultants, advisors and leaders, but a great many are.[28] They include Julie Mills, OTFI senior advisor, David J. Park, Senior advisor, Greg Pollock, Chrissy Bishai, Jamie Kraut, Seth Unger, Sam White, Brian Grant, Michael Hertzberg, Pat O'Brien, Ron Hess, Elizabeth Rosenberg, Jeffrey Gaines, Matthew Stubbs, Robert Werner, Andrew Jensen, Alex Parets, Eytan Fisch, Jack Jensen, Todd Conklin, Basil Kiwan, Sergio Rodriguera, Jeff Ross, David Cohen, Scott Renda, Jacob Cohen, Zachery Goldman, Atuweni Jawayeyi, Rebeccal Boddington, Kevin Whaley, Julie

---

[27] https://www.cato.org/blog/more-americans-die-animal-attacks-terrorist-attacks

[28] https://www.google.com/search?q=office%20of%20terrorism%20and%20financial%20intelligence%20site%3Alinkedin.com&oq=linked+in&aqs=chrome..69i57j69i60l2.1448j0j4&sourceid=chrome&ie=UTF-8&ved=2ahUKEwjlh5en-oXdAhWvl-AKHXZWDI0Q2wF6BAgAEAg&ei=rh2AW-X4Fa-vggf2rLHoCA

Mills, Sean Kane and many, many others. Also, Defendants have not submitted any substantiating employee surveys into the record.

America is a rough and tumble place. When Kirstin Mink recently confronted former EPA Secretary Scott Pruitt at Teaism in Penn Quarter about policies she vigorously disagreed with, it was not only protected 1st Amendment activity, but an American tradition. Furthermore, Pruitt survived the encounter, though not his with position in the federal government intact. Some public officials would like to have critics arrested and prosecuted for criticizing them, such efforts have not been viewed favorably by the courts.[29]

OTFI (19-5) and IRS (ECF 19-6) both *speculate* that if personnel records were released they could "reasonably be expected to…lead to harassment, embarrassment, or other wanted invasion of privacy" without offering any proof for why that is so. If a disgruntled SDN target or subject of an IRS audit makes abusive calls, can they not simply block the number, as Americans plagued by robocalls are accustomed to doing? Is it harassment if Americans call and complain that certain subjectively applied OTFI operations are harming U.S. business opportunities, which they most definitely are? Are the current personnel of Treasury organizations embarrassed about where they work for some reason? Alumni don't seem to be. Back when contact information was freely available, did the IRS founder under

[29] https://www.theatlantic.com/politics/archive/2018/01/can-government-officials-have-you-arrested-for-speaking-to-them/550517/

waves of abusive, nonstop phone calls that threatened the carrying out of its mission? If so, can Defendants provide any concrete evidence?

Absent a detailed explanation, or better yet actual proof, it is not clear at all to Plaintiff why Defendants expect personnel will be harassed if somehow the public comes to know their name and phone number. Do Defendants fear harassment, or do they really fear employees simply interacting with members of the public impacted by their actions and exercising their constitutionally protected right to petition their government? Contrary to affidavits, there is a large and very real countervailing public interest in knowing more about OTFI.

Defendants argue that "national security" allows them to shield the identities of agency employees. Plaintiff argues the polar opposite—that threats emanating from government demands the public knows which lobby-driven political appointees are manning the wheelhouse within sensitive policy-making agencies, and who they brought along in tow. Especially those government units displaying obvious warning flags in multiple ways. Disclosure of individual employee names in fact sometimes is the only way to properly reveal "what the government is up to." That is because when particular government units are set up entirely by and for the needs of narrow political interest groups, "personnel is policy."[30]

[30] Scott Falknre, "Personnel is policy" Washington Examiner, 02/02/2016 https://www.washingtonexaminer.com/personnel-is-policy

One case in point is the Office of Special Plans of the U.S. Department of Defense. Like OTFI, it was top-heavy with ardent pro-Israel ideologues determined to advance the strategic position of Israel from within U.S. government. It was created by Deputy Secretary of Defense Paul Wolfowitz and Undersecretary of Defense for Policy Douglas Feith[31] who were both ardent Zionists and had political reasons to hide the true motivation behind their policies, as Zelikow later openly discussed. Their ideological zeal impacted their selection of staff, who had to share their views to secure a place in the OSP. If Plaintiff or others had filed a FOIA request for the personnel roster of OSP employees in 2002, they surely would have faced the precise Exemption 1 and 6 obstacles and clamors for privacy and protection against harassment presented by Defendants.

And yet, armed with that single roster, Plaintiff and others may have had a chance to gather information from OSP transfer employee Karen Kwiatkowski, a colonel who quickly grew alarmed about the large numbers of Israelis improperly entering and leaving the facility on leadership's waiving of security protocols as they worked to funnel bogus intelligence to justify the unwarranted invasion of Iraq.[32] The OSP was an open and largely unfiltered conduit to the White House not only for information from the expatiate Iraqi opposition such as bank fraudster Ahmed Chalabi. It also forged close ties to a parallel, ad hoc intelligence operation inside Ariel Sharon's office in Israel specifically to provide the Bush

[31] https://mondoweiss.net/2008/06/because-of-my-deep-fascination-with-neocons-in-caves-im-reading-douglas-feiths-book-war-and-decision-as-i-said-the-other-da/

[32] Kwiatkowski, Karen, "Inside the Pentagon's Office of Special Plant, http://natsummit.org/transcripts/karen_kwiatkowski.htm

administration with more alarmist reports on Saddam's Iraq than even Mossad was prepared to authorize. "None of the Israelis who came were cleared into the Pentagon through normal channels," said one source familiar with the unauthorized Israeli visits. Instead, they were waved in on Mr. Feith's personal authority without having to fill in the usual forms. The exchange of information continued a long-standing relationship with Mr Feith and other Washington neo-conservatives had with Israel's Likud party."[33]

Plaintiff and others could have gained a three-year head start to investigate OSP staff member Col. Lawrence Franklin, who landed an OSP job solely on the basis of his own ardent support for Israel, who in 2005 was finally indicted and later convicted of espionage for Israel in collusion with the two American Israel Public Affairs Committee (AIPAC) staffers, who were also indicted for espionage against the U.S. The joint AIPAC-Franklin effort was a classified information leak designed to tripwire the U.S. into war with Iran.[34]

A 2007 IG report found OSP "developed, produced, and then disseminated alternative intelligence assessments on the Iraq and al Qaida relationship, which included some conclusions that were inconsistent with the consensus of the Intelligence Community, to senior decision-makers." The report found that these actions were "inappropriate" though

[33] Borger, Julian (July 17, 2003) The spies who pushed for war The Guardian.

[34] AIPAC Pushes Hard for War With Iran by Grant Smith Posted on June 15, 2011, https://original.antiwar.com/smith-grant/2011/06/14/aipac-pushes-hard-for-war-with-iran/

not "illegal." Review of Pre-Iraqi War Activities of the Office of the Under Secretary of Defense for Policy, February 9, 2007[35]

Senator Carl Levin, Chair of the Senate Armed Services Committee, stated that "The bottom line is that intelligence relating to the Iraq-al-Qaeda relationship was manipulated by high-ranking officials in the Department of Defense to support the administration's decision to invade Iraq. The inspector general's report is a devastating condemnation of inappropriate activities in the DOD policy office that helped take this nation to war." At Senator Levin's insistence, on April 6, 2007, the Pentagon's Inspector General's Report was declassified and released to the public.

Government insider ideologues such as Philip Zelikow eventually admitted that the Israel lobby, through units like OSP, worked hard to foment a U.S. attack on Iraq. "'Why would Iraq attack America or use nuclear weapons against us? I'll tell you what I think the real threat (is) and actually has been since 1990 – it's the threat against Israel,' Zelikow told a crowd at the University of Virginia on Sep. 10, 2002, speaking on a panel of foreign policy experts assessing the impact of 9/11 and the future of the war on the al-Qaeda terrorist organization.

[35] https://www.npr.org/documents/2007/feb/dod_iog_iraq_summary.pdf

'And this is the threat that dare not speak its name, because the Europeans don't care deeply about that threat, I will tell you frankly. And the American government doesn't want to lean too hard on it rhetorically, because it is not a popular sell,' said Zenlike."'[36]

In plaintiff's view, exposing OSP including through FOIA release of its personnel list combined with other research could have helped avoid an unnecessary, violent, bankrupting $2.4 trillion war. *Testimony on Estimated Costs of U.S. Operations in Iraq and Afghanistan and of Other Activities Related to the War on Terrorism*, Congressional Budget Office, October 24, 2007.[37] So far, that conflict has resulted in 5,000[38] U.S. service member casualties and at least 288,000 combined combatant/civilian casualties.[39]

Plaintiff asserts that exposing OSP for what it was (a secretive Israeli-linked war propaganda and disinformation unit) and shutting it down through public exposure would have done more for U.S. national security than all combined newly-contrived FOIA-exemption mechanisms for thwarting policy-maker accountability advanced by Defendants could ever hope to accomplish. A critical reading of U.S. history reveals that oftentimes it is the secretive, ideologically-driven and rogue government units ensconced within the federal bureaucracy ***are*** the true threat to U.S. national security. And like Iraq, war with Iran on

---

[36] IRAQ: War Launched to Protect Israel – Bush Adviser, http://www.ipsnews.net/2004/03/iraq-war-launched-to-protect-israel-bush-adviser/
[37] https://www.cbo.gov/publication/19202
[38] https://www.washingtonpost.com/news/politics/wp/2018/03/20/15-years-after-it-began-the-death-toll-from-the-iraq-war-is-still-murky/?noredirect=on&utm_term=.cb6390ab9058
[39] https://www.iraqbodycount.org/

Israel's behalf is not "a popular sell," nor should it be provoked through the subversion of governance.[40]

Richard Dodson asserts that "Every Treasury component whose records I reviewed redacted business cell phone numbers pursuant to exemption 6. 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 day. Office phone number 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 and employee at the office, and not on a cell phone they may have in their possession at all times." (ECF 19-3, page 3)

Plaintiff disagrees that this is an acceptable application of Exemption 6. The fact that information exists in a federal database containing employee records does not automatically make it subject to withholding under Exemption 6. Federal employees who dispute that, should look up their own salaries, released yearly to various organizations by OPM, available on the open internet.[41] Second, the privacy interests of federal employees in their mobile phone number is certainly not absolute. If the mobile phones are paid for by a taxpayer-

[40] For an example of how regulatory capture contributed to a global financial services melt down, review the case of how research Harry Markopolos tried to get the SEC to take action on Bernie Madoff's Ponzi scheme, but was rebuffed for a decade.

[41] https://www.fedsdatacenter.com/federal-pay-rates/

funded agency or is the primary work phone for a mobile employee, there is no automatic privacy right. Substantial numbers of employees of all types, like residential users, have "cut the cord" of fixed landlines due to the changing nature of work. If suppressing mobile phone numbers renders a federal employee unreachable, it is unacceptable to suppress the number. Additionally, simply because a federal employee provides a mobile phone number to the public does not mean they will be besieged by calls day and night. Many mobile phone subscribers set unknown caller numbers or anonymous calls to be directed to voice mail during non-business hours. If the mobile phone is paid for by tax dollars, and or is a primary contact number, it should be public and not private.

TTB, the Alcohol and Tobacco Tax and Trade Bureau, is not a law enforcement or intelligence agency. TTB was created on January 24, 2003, when the Homeland Security Act of 2002 split the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new organizations with separate functions. Specifically, the Act transferred ATF and its law enforcement functions from the Department of the Treasury to the Department of Justice. ATF's other functions, dealing with tax collection and regulation of legitimate trade, remained within the Treasury Department and became part of the new TTB. In other words, TTB's law enforcement functions were transferred out of Treasury.

Is this new agency staffed up with alumni of cigarette maker Philip Morris or alcoholic beverage maker AmBev, which have significant interests in minimizing taxation and regulation of their products? Are there any other regulatory capture issues? Impossible

to tell since after OTFI, the TTB personnel records file is the most heavily redacted. As noted, the functions deleted under Exemption 6 and 7 include such highly non-sensitive positions as "labeling specialist" and "attorney advisor." Defendants should acknowledge that this division is no longer the ATF, and that the cited exemptions are inapplicable.

Plaintiff agrees with Defendants that FinCEN is also not an OPM-designated sensitive agency. (ECF 19-3, page 4). Defendant argues that because FinCEN handles Suspicious Activity Reports (SARs) filed by financial institutions, and can be prosecuted for releasing them, somehow the centralized main switchboard phone number buried deep within a Treasury website is a sufficient means to be available to the public. For that reason, Defendants have redacted all FinCEN phone numbers since "public interest in disclosure of office telephone numbers is clearly outweighed by the privacy interest in nondisclosure." (ECF 19-3, page 5).

Once again, Plaintiff disagrees. National Archives and Records Administration officials and staff handle sensitive, classified records and can be prosecuted for improper disclosure of classified information. However, it would be nightmarish for partners and information seekers who are members of the public to have to navigate NARA's central phone system to find the right person or work on a request. Defendants have deleted not only all phone numbers, but also the identities of non-sensitive positions such as "information sharing compliance specialist" and "compliance specialist." Because FinCEN heavily recruits compliance specialists from the private sector, mostly large financial services

companies, but also has a role in regulating that sector, there is a public interest in maximum disclosure of staff identity as a means to determine regulatory capture.

John M. Farley, Senior Resource Manager for OTFI argues that most OTFI personnel rolls are exempt from release. Farley argues that lower-level TFI employees cannot have their identities or phone number released because they are "similar to military personnel and other federal officials working in law enforcement." Plaintiff disagrees. OTFI arguably is not subject to the threats faced by U.S. military service members or even engaged in law enforcement as commonly understood by most Americans. That is because its administrators and employees, with extreme levels of personal discretion, can place individuals and companies into the SDN sanctions list with no criminal indictment or due process of any kind. Appearing on a sanctions list can be an economic death sentence for a legitimate business enterprise or individual needing access to the global financial system. While improperly targeted individuals can attempt to get off the list by contracting Washington DC lawyers who specialize in the SDN list removal, a review of the list reveals that most probably could not manage the language barriers or afford to access such counsel to recover their reputations and financial viability.

More worryingly, the American Israel Public Affairs Committee, AIPAC, is pushing legislation in Congress S.720 - Israel Anti-Boycott Act that allows "enforcement actions" under the very same authorities used by OTFI, the International Emergency Economic Powers Act, 50 U.S.C. § 1701-1706 to declare as a "U.S. national emergency" grassroots-led

boycotts of products made in illegal Israeli West Bank settlements and other Israeli products and services as a means to protest of Israel's dismal human rights record. AIPAC considers the OTFI model of unaccountable, anonymous judges, jurors and financial executioners as a model to apply to Americans and foreigners who engage in entirely peaceful, lawful, 1st Amendment protected boycotts. AIPAC has lobbied for passage of the Israel Anti-Boycott Act for two years running even though the ACLU and statistically significant polling reveals that 69.1% of Americans oppose it.[42]

Farley argues that TFI "employees would become targets by foreign adversaries or individuals seeking to learn more about or expressing their disapproval of TFI's activities…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 employee's phone numbers and lower-level TFI employee's identities could seriously prejudice their effectiveness in conducting their duties."

Plaintiff disagrees. One of the most cherished rights in America is the Confrontation Clause of the Sixth Amendment to the US Constitution which provides, "in all criminal prosecutions, the accused shall enjoy the right…to be confronted with the witnesses against him." This right only applies to criminal prosecutions, and not civil cases or other

[42] https://original.antiwar.com/smith-grant/2017/08/02/69-oppose-aipacs-israel-anti-boycott-act/

proceedings. But it is a commonplace American expectation that they will not be punished for accusations of wrongdoing by anonymous accusers.

Nevertheless, having already served as *de facto* criminal prosecutors, judges and juries, and financial access executioners, OTFI staff, Farley apparently believes, should never bear the burden of confrontation by the accused. Americans who disagree with OTFI's selective interpretation of laws, based on their own interpretations of executive orders and other authorities used to place people on the SDN list should also never be able to meaningfully interact with the OTFI personnel making such punitive policy decisions, unless it is as an attendee of a special briefing conducted by Adam Szubin and they are already fully paid-up donors or members of AIPAC or the Washington Institute for Near East Policy. This does not pass muster. Also, courts have held that the U.S. Constitution applies to non-citizens, raising questions about the soundness of OTFI's intentional severing of meaningful public access.[43]

If a foreigner has been unjustly placed on the SDN with no due process, at very least he or she should be able to make a phone call from overseas and informally present their case. The stakes are high. OTFI or an operation very much like it, may soon be designating American companies and inviduals on the SDN or SDN-like list.

[43] https://www.forbes.com/sites/danielfisher/2017/01/30/does-the-constitution-protect-non-citizens-judges-say-yes/#7e391864f1de

If Plaintiff wishes to present a comprehensive case to OTFI that Israeli Prime Minister Benjamin Netanyahu and Arnon Milchan and their smuggling organizations should be on the SDN list, he should be able to do so on a first name basis, through a series of phone calls with OTFI front line employees. But he cannot, as explored later.

Citing an inapplicable precedent about unions and temporary laborers *Painting & Drywall Work Preservation Fund v Hud* 936 F.2d 1300, 1303 (App. D.C. 1991) Farley also misses the point that in this case, the disclosure of agency employees and phone numbers in such an organization as OTFI with such curious leadership selection characteristics and patterns of special interest group communications, and government-classified operations can not only immensely aid the public's understanding of the functions of government, but perhaps enable them to avoid being persecuted by it through a timely phone call. OTFI employee names and phone numbers, in Plaintiff's view, should be updated and released on an annual basis, and will be if he prevails in this lawsuit.

Farely also believes Gitmo detainee family correspondence is somehow related, though it is clearly not, citing *Associated Press v. US. Dep't of Def*, 554 F.3d 274,292 (2d Cir. 2009) Gaining access to officials in positions of power, who appear to be abusing that power, and compiling a sophisticated multi-variate study of the functions of government so that it may be improved through citizen awareness is not a "derivative use." It is the purpose of FOIA. Citing attempts by reporters to access correspondence from prisoners with no due

process rights locked away in an offshore tropical gulag provides no relief against this argument.

Farley claims that OTFI's general number provides a chance to interact with OTFI personnel. (ECF 19-5, page 6) This is true only if you want to verify a match to an SDN target, ask about sending gifts to family in Iran, or want to know more about hot new programs touted by the current administration, such as Cuba or Ukraine-related sanctions. One can also solicit tech support about Treasury's website, or to learn more about the Terrorist Tracking Program.[44] However, Plaintiff was unable to reach an actual living, breathing person, and none of the automated voice options involved appealing one's appearance on the SDN listing or helping add entities and people and entities who should most certainly should appear on the SDN list.

In the case of OTFI, release of personnel contact information would be immensely beneficial to the public's understanding of how TFI operates and is compliant with the purpose of FOIA. The public somewhat see why the unit is selectively composing the SDN list, and it will have the warranted opportunity to engage in effective constitutionally protected petitions of government that the current dead-end automated phone tree does not allow. The public will better understand the flow of many personnel as they enter OTFI from Israel advocacy organizations or on the basis of their pledged unconditional support for Israel, work on secret projects, then flow back out to Israel advocacy organizations or

[44] Plaintiff called the DC hotline 202-622-2490 before 5PM on 8/23/2018

other organizations to continue advocating for Israel, such as within Democratic think tanks like the Center for American Progress, the landing spot for one former OTFI supervisor. The public will learn for the first time how far down into OTFI the Israel lobby's capture really goes.

There is no "dearth of public interest" in the disclosure of this information (ECF 19-5) since OTFI is not only harming Americans through in-transparency and capture. OTFI may soon be carrying out the same kind of targeting of Americans under the Israel Anti-Boycott Act that it presently selectively carries out against disenfranchised foreigners. Only a full, and entirely lawful, release of personnel records will provide insight into an organization that appears to be secretly working as hard to provoke a war with Iran as OSP did for Iraq. Better understanding and interacting with every name released under FOIA could be the best step toward national security made in a post 9/11 world in order to avoid a devasting repeat of that costly disaster.

Given the many questions about OTFI regulatory capture, investigative reporters would clearly benefit from having access to personnel phone numbers. "To be sure, the names of current workers might provide leads for an investigative reporter seeking to ferret out what 'government is up to.' But the same may be said as to the retirees involved in NARFE; indeed, recent retirees might sometimes, because of their relative invulnerability to retaliation, be an especially rich source of revelations. Moreover, the zealous investigator has an alternative means of access to current workers that is unavailable as to retirees — face-to-

face conversation attained simply by following other leads and roaming government hallways." *FLRA v. U.S*. Dep't of Treasury, 884 F.2d 1446, 1452 (D.C.Cir.1989 Unfortunately, there is not public access to OTFI facilities. And the Israel advocacy organizations hosting OTFI briefers are generally closed to the news media and non-members. In this situation, stripping anonymity and providing access would tip the scale of access slightly away from exclusively special interests and toward members of the public and reporters.

Defendant's claim that "Plaintiff has not demonstrated any legitimate public interest in the release of this personnel information, and, therefore, this information was properly withheld pursuant to Exemption 6. See, e.g., *Judicial Watch, Inc. v. Dep't of Commerce*, 83 F. Supp. 2d 105, 112 (D.D.C. 1999) (finding similar biographical data to be the type of information protected by Exemption 6)."

Plaintiff thanks Defendant for the reminder. *Judicial Watch* sought Department of Commerce information on into how John Huang, a large Clinton donor became Deputy Assistant Secretary for International Economic Affairs at the Department of Commerce had selected members of the public to participate in foreign junkets (once again, nothing much to do with personnel registers). DOC located 30,000 pages of damning information, which it promptly started to destroy in violation of court orders. DOC moved for entry of judgment, *against itself*, admitting to its violation of FOIA, and released reams of damning information

about campaign finance fraud revealing that a group of Taiwan bankers had laundered huge amounts of foreign money into U.S. electoral politics.

Plaintiff therefore again thanks Defendants for providing such an informative case that provides such an an appropriate comparative summary of the legitimate public interests that can easily overcome unwarranted FOIA exemptions that block release of OTFI personnel information.

1. Public availability of OTFI personnel records, first the names of its executives, more recently managers, provide the transparency needed for the public to better understand the functions of government. This is very similar to Judicial *Watch, Inc. v. Dep't of Commerce*, 83 F. Supp. 2d 105, 112 (D.D.C. 1999) in which a number of Tainwan nationals interacting within DOC, including Yah-Lin "Charlie" Trie, Johnny Chung, John Huang, and Maria Hsia with the support of the Huang.
2. *Judicial Watch, Inc. v. Dep't of Commerce* played a role in uncovering the "China Plan," a Taiwanese lobbying initiative to launder hundreds of thousands of dollars in offshore money to buy favor with the Clinton administration later dubbed, "the 1996 Campaign Controversy." They exposed to Americans via FOIA a vast, hidden, foreign corruption-in-government scandal that was ultimately so damning to the administration that the Department of Justice could not credibly prosecute. Public exposure through FOIA was among the

only hopes for accountability. Plaintiff is also slowly uncovering problems, which Plaintiff refers to as "The Economic Warfare to Advance Israel Plan" at OTFI. AIPAC, again an entity ordered to register as an Israel foreign agent in 1962, helps create, then funnels an unbroken string of unrepresentative, pro-Israel ideologues into OTFI, who appear to be answerable only to AIPAC its think tank, the Washington Institute for Near East Policy, and the broader Israel advocacy ecosystem, who secretly coordinate with Israel to use OTFI to target Israel's rivals, oftentimes at great cost to the U.S. economy. The unit claims to be in law enforcement but has a curious soft spot for Israeli nuclear smuggling, money laundering and international crime as revealed by inexplicable omissions in its SDN file. Like AIPAC, and its predecessor the OSP, OTFI activity makes US war with Iran increasingly inevitable, which has been a long-term Israeli, and therefore Israel lobby but not U.S., strategic goal.

3. *Judicial Watch, Inc. v. Dep't of Commerce* concurred with the felony conspiracy conviction of John Huang, Deputy Assistant Secretary for International Economic Affairs at the Department of Commerce who pled guilty to violating campaign finance laws in 1999 and later returned to his foreign banking activities. The Plaintiff's action is helping to expose a similar though longer lasting operation designed to advance the strategic position of Israel through the operations of secretive "judge, jurors and financial executioners" at moment they are poised to unleash their financial sanctions power, coupled

with complete anonymity, upon the American people when the Israel Anti-Boycott Act or similar legislation becomes law, as is quite likely.

B. Defendants are improperly redacting Exemption 1 Treasury Personnel Records

The Office of Intelligence and Analysis, a component of OTFI, claims Exemption 1 to withhold the names of its employees from FOIA. (ECF 19-7, page 3) OIA claims that "On May 30, 2018 the Treasury released records to Plaintiff from departmental components within the Office of Terrorism and Financial Intelligence (TFI) which included releasable records disclosing the names of OIA leadership. As discussed in the Declaration of John M. Farley, TFI withheld the names and phone numbers of all non-leadership employees in these documents, and the phone numbers of all employees, including OIA, pursuant to Exemption 6…The names, title, and phone numbers of the withheld OIA employees are also protected from disclosure by FOIA Exemption 1." (ECF, 19-7, page 3).

Whether or not OIA employees' names can be withheld under Exemption 1 and 6, these records have not been properly redacted or released. Plaintiff cannot locate any "records disclosing OIA leadership" in the May 30 OTFI release. Also, a proper release of records OIA claims are Exemption 1 and Exemption 6 OIA personnel redactions should have been attached to the May 30 OTFI records release, with both exemption numbers explicitly covering the redacted records.

III. Defendant's motion should be denied.

Defendants have not met their burden of proving they have complied with their obligations under FOIA. A district court reviewing a motion for summary judgment in a FOIA case "conducts a de novo review of the record, and the responding federal agency bears the burden of proving that it has complied with its obligations under the FOIA." *Neuman v. United States*, 70 F. Supp. 3d 416, 421 (D.D.C. 2014); *CREW*, 746 F.3d at 1088; see also 5 U.S.C. § 552(a)(4)(B). In addition to misapplying FOIA exemptions, Defendants have not met the required standards for obtaining summary judgement because they did not properly process Plaintiff's FOIA request under their own file format release guidelines.

A. Releases are not in the format processed by Treasury and requested under FOIA

Plaintiff originally requested records in a usable format "data in comma or tab delaminated text file" that could be imported into MS Excel or a database application for analysis in his regulatory capture study. (FOIA Request, Complaint, ECF 1, Exhibit A).

Plaintiff was encouraged to learn from Defendants that all the files processed for his request were compliant. "The data were divided into separate Excel spreadsheet files based on Treasury component. The Office of DASHR sent each component its list of employees as of April 24, 2012 and asked them to review and make appropriate redactions. 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." (Declaration of Richard Dodson, ECF 19-3, page 3).

However, Excel files were not released to Plaintiff as requested, but rather were released as Adobe PDF files. This is apparently was what was meant by "the redactions were made permanent.". Technologically, Defendants could have released redacted MS Excel files to Plaintiff that would have allowed him to efficiently access and use the data without incurring prohibitive data entry, conversion, error checking and other avoidable costs. In response to FOIA requests, the US Departments of Defense and Department of Justice have released records that originate as Excel files to Plaintiff during administrative releases, when requested. It is not permitted to "unreasonably hamper" the access of a FOIA requester to the data in any way. *Dismukes v. Department of the Interior*, 603 F. Supp. 760, 761-63 (D.D.C. 1984)

Not only did Defendants unreasonably hamper access to the data, they went against their agency's own position on electronic records release. The Department of the Treasury, for example, stated: "The public should be required to accept information in the form, manner and format in which it exists rather than have a requirement placed upon government to expend resources converting data for the requester's convenience" in

response to a survey fielded by the Department of Justice. *Department Of Justice Report On "Electronic Record" FOIA Issues*, Part II, 1990, FOIA Update Vol. XI, No. 3[45]

The Plaintiff therefore requests that after improper applications of FOIA exemptions are removed, the records be released in the format in which "it exists" (MS Excel) rather than unusable PDF files.

B. OPM should not be dismissed

Defendant briefly claims (ECF 19-1, p 1, footnote 1) that "OPM should be dismissed from this case pursuant to Federal Rule of Civil Procedure 12(b)(6). OPM does not possess Treasury's employee contact information. (Declaration of Becky C. Ronayne (Ronayne Decl.)." In fact, none of the OPM affidavits, which were all filed seven days after the court-ordered deadline, clearly state that OPM does not have the requested data. There is redacted correspondence about the Bank Secrecy Act, referrals to IRS and statements that OPM received Plaintiff's FOIA, but states that no OPM denials or Plaintiff appeals were ever issued or received. If this is an indirect way of claiming proper FOIA administrative procedure was not followed, it is clearly OPM that failed to follow proper referral procedure and notification to Plaintiff. Under FOIA, OPM's non-responses gave Plaintiff standing to sue OPM, regardless of its undisclosed referrals to Treasury[46], or lack of Plaintiff appeals to non-existent denials. (ECF 20, 20-1, 20-2)

---

[45] https://www.justice.gov/oip/blog/foia-update-department-justice-report-electronic-record-foia-issues-part-ii

[46] https://www.justice.gov/oip/blog/foia-update-oip-guidance-referral-and-consultation-procedures

It is important for the Court to know that the reason Plaintiff filed an OTFI FOIA with OPM is that it is that OPM's Central Personnel Data File ("CPDF") database contains approximately 100 data elements, or fields, for each federal civilian workforce member. OPM's static files have information about federal employees at a particular moment in time; its 2 dynamic files record personnel actions over intervals. The CPDF includes records for almost every employee of the executive branch, except those that work in a few security agencies, the White House, the Office of the Vice President, and the Tennessee Valley Authority. Covered agencies submit quarterly data to OPM, which stores it in the CPDF. In addition to each employee's name, the CPDF's other fields include salary history, duty station, occupation, work schedule, and veteran status (most of which the Plaintiff did not request).

Unless Defendants present a compelling affidavit that OTFI personnel data was not, and is not, held by OPM, Plaintiff must consider OPM may still be a viable present and future option for accessing data Defendants have improperly withheld and/or released in unusable formats. Therefore, OPM must remain a party to this action.

CONCLUSION

For the foregoing reasons, the Court should deny the Defendant's Motion for Summary Judgement and grant Plaintiff's Motion for Summary Judgement.