

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
GRANT F. SMITH, <i>PRO SE</i>)	
)	
)	
<i>Plaintiff,</i>)	
vs.)	
)	
UNITED STATES DEPARTMENT OF)	Case: 17-1796
TREASURY)	
UNITED STATES OFFICE OF PERSONNEL)	
MANAGEMENT)	
)	
)	
<i>Defendants.</i>)	
)	
_____)	

**PLAINTIFF’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE AND
RESPONSE TO DEFENDANT’S STATEMENT OF FACTS NOT IN DISPUTE**

Pursuant to Local Rule 7(h) of the Rules of the United States District Court for the District of Columbia, Plaintiff hereby submits the following statement of material facts as to which Plaintiff contends there is no genuine issue in connection with its cross-motion for summary judgment, and Plaintiff’s response to Defendant’s statement of material facts.

(ECF 19-2)

1. Plaintiff agrees that the matters set forth in 1 of Defendant's statement of material facts are not in dispute, adding that the April 24, 2012 FOIA request also specified, "we do not request the data of any undercover IRS agent or other person whose identity is protected for enforcement or other legitimate purpose." The FOIA also requested data "...in a comma or tab delimited text file on a CD or DVD..." with would be readable in MS Excel or database applications.
2. Plaintiff agrees that the matters set forth in 2 of Defendant's statement of material facts are not in dispute.
3. Plaintiff agrees that the matters set forth in 3 of Defendant's statement of material facts are not in dispute, adding that the May 9, 2012 FOIA appeal specifically stated the response "does not list every Treasury Department employee" and "does not list Treasury bureau employees, e.g. from the U.S. Mint or IRS." The appeal again asked for data in a comma-delimited text file.
4. Plaintiff agrees that the matters set forth in 4 of Defendant's statement of material facts are not in dispute, adding that the October 9, 2012 FOIA appeal denial by Michael Lewis concluded that release of requested employee information below the management level (which Treasury released via printout of its directory) could be withheld under Exemption 6.
5. Plaintiff agrees that the matters set forth in 6 of Defendant's statement of material facts are not in dispute, adding that in the December 19, 2017 Joint

Status Report (ECF 13), Defendant conceded it was improperly withholding records by agreeing to conduct for the first time a bona fide search and release and offering reimbursement of Plaintiff 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)

6. Plaintiff has no independent knowledge of or means to verify the facts as set forth in 8-10 of Defendant’s statement of material facts and thus neither agrees or nor disagrees these are in dispute.
7. Plaintiff has no independent knowledge of or means to verify the facts as set forth in 11 of Defendant’s statement of material facts and thus neither agrees or nor disagrees these are in dispute. Plaintiff notes that the review format of the material, MS Excel, met the original FOIA request and FOIA administrative appeal for release of information as “tabular” digital data. However this format was changed before release to Plaintiff.
8. Plaintiff agrees that the matters set forth in 12 of Defendant’s statement of material facts are not in dispute, adding that none of the released documents

were in the requested format, but rather were converted from MS Excel into Portable Document Format (PDF) files. This PDF conversion unnecessarily reduced the utility of the information, and would require a lengthy, resource intensive and costly data conversion, entry, and error checking exercise at Plaintiff's expense in order render the data usable. Plaintiff notes that OTFI, which Defendants pledged to prioritize as the first review and release (ECF 13) was in fact the final May 30 release, eliminating any opportunity for feedback despite Plaintiff requests that it be a priority.

9. Plaintiff disputes that the matters as set forth in 13-17 of Defendant's statement of material facts are not in dispute, as there is evidence of high levels of agency capture that impose a great deal of improper selectivity in what alleged threats OTFI and others choose to "combat" through SDN and other programs.
10. Plaintiff submits that 18-24 of Defendant's statement of material facts are legal conclusions and in dispute in this case.
11. Plaintiff submits that his October 15, 2012 FOIA to OPM sought access to the "Employees of the U.S. Treasury "Terrorism and Financial Intelligence" (TFI) Unit...1. First Name, 2. Last Name, 3. Occupation/Title. (Complaint, ECF 1, pages 4-5)
12. Rather than respond directly, OPM appears to have referred Plaintiff's FOIA to Treasury's OTFI unit, which obtained the requested data, censored most of

it, proposed that OPM release it, and then released it as an almost entirely redacted PDF. It is still unclear, six years later, whether OPM maintains Treasury records within its exhaustive CPDF 100 field database on federal employees.

13. The reason Plaintiff filed a FOIA with OPM is that it is that OPM's Central Personnel Data File ("CPDF") database contains approximately 100 data elements, or fields, concerning the federal civilian workforce. 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. (which the Plaintiff did not request).
14. OPM has a great deal of experience responding to FOIA requests with electronic data from its CPDF with non-exempt employees and fields.
15. Plaintiff asserts that the twenty-four occupations that by law are considered sensitive are ATF inspection, border patrol agent, compliance inspection & support, correctional officer, criminal investigating, custom patrol officer,

customs & border protection, customs & border protection interdiction, customs inspection, game law enforcement, general inspection, general investigating, general national resources & biological science, immigration inspection, intelligence, intelligence clerk/aide, internal revenue officer, IRS agent, nuclear engineering, nuclear materials courier, plant protection & quarantine, police, U.S. marshal, and hearings & appeals. Plaintiff asserts Defendants are improperly redacting records as if they were included in these categories.

16. Plaintiff asserts there is a clear and compelling public interest in release of Treasury personnel records.
17. Plaintiff asserts that there is abundant evidence of the regulatory capture of OTFI.
18. Plaintiff asserts that release of requested records will help the public better understand the depth of regulatory capture of OTFI.
19. Plaintiff asserts Defendants are improperly withholding records under Exemption 1.
20. Plaintiff asserts Defendants are improperly withholding records under Exemption 6
21. Plaintiff asserts OPM has not met its separate obligations under FOIA referral procedures and communication with requester (Plaintiff).
22. Plaintiff asserts there are no applicable bona fide “derivative use” issues

allowing for the withholding of employee records.

23. Plaintiff asserts that Defendants have “unreasonably hampered” access to released records by violating their own guidelines on releasing records in the “manner and format it exists

Dated: August 24, 2018

Respectfully submitted,



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