

Exhibit 6



July 7, 2023

Bobak Talebian
Director, Office of Information Policy
United States Department of Justice
441 G Street, NW, 6th Floor
Washington, DC 20530
Submitted via FOIA STAR

Re: Freedom of Information Act Appeal: BOP Case 2023-03689

Dear Mr. Talebian,

I am an attorney for National Public Radio writing on behalf of NPR and NPR Reporter Fernando Alfonso to appeal the Bureau of Prisons' ("BOP") denial of FOIA request 2023-03689.

On June 12, 2023, NPR submitted a FOIA request for the following documents:

“All records related to the detention of Ghislaine Maxwell (Register Number: 02879-509) at MDC Brooklyn from July 2020 through July 2022. These records should include, but not be limited to, any daily lieutenant’s log that mentions Ms. Maxwell, psychiatric observation logs, suicide watch logs, agency communications with Ms. Maxwell’s attorneys, Special Housing Unit records, and any other records that may reflect the conditions of Ms. Maxwell’s confinement.” (Exhibit A.)

BOP responded to the request on June 27, 2023, providing three pages of “public records” and asserting that the remainder must be withheld under Exemptions 6 and 7(C):

“Outside of requesting public information on any individual, for us to release records, your request must be accompanied by a signed authorization from the person to whom the records pertain. That authorization must be notarized or signed under penalty of perjury. Your request did not include an appropriately executed authorization. Consequently, the non-public records you seek are exempt from disclosure to you pursuant to exemptions (b)(6) and (b)(7)(C) of the Freedom of Information Act, 5 U.S.C. § 552. The BOP considered the foreseeable harm standard when applying FOIA exemptions.” (Exhibit B.)

BOP did not provide any information about the contents or the volume of withheld records.

Argument

Exemption 6 allows an agency to withhold personnel, medical, and similar files where the agency

can show that disclosure “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Exemption 7(C) is the law enforcement counterpart to Exemption 6 and protects against the release of “records or information compiled for law enforcement purposes” that “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). “When information is claimed to be exempt from disclosure under both provisions, courts ‘focus ... on Exemption 7(C) because it provides broader privacy protection than Exemption 6 and thus establishes a lower bar for withholding material.’” *Citizens for Resp. and Ethics in Wash. v. Dep’t of Justice*, 854 F.3d 675, 681 (D.C. Cir. 2017) (quoting *Citizens for Resp. and Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1091 n.2 (D.C. Cir. 2014)).

A. The Threshold “Unwarranted Invasion” of a Privacy Interest Cannot Be Established Here.

The release of records related to the conditions of Ghislaine Maxwell’s confinement in MDC Brooklyn cannot invade her privacy, because Ms. Maxwell herself has already publicly disclosed these conditions through her lawyers and family members. In a court filing, Ms. Maxwell, through her attorney, described the “physical and emotional abuse” and “poor and unsanitary living conditions” she endured.¹ Ms. Maxwell explained that she was regularly subject to inappropriate pat searches and has even gone so far as to decline recreation time in order to avoid additional searches.² She also described how guards shone flashlights into her cell every 15 minutes throughout the night, which led to sleep deprivation.³

Ms. Maxwell’s brother has also detailed the conditions of her confinement in various media interviews. Ian Maxwell described to the BBC how she undergoes daily mental evaluations and is under 24-hour surveillance.⁴ He told the Jerusalem Post that Ms. Maxwell “is woken up every 15 minutes with a flashlight in her face.”⁵ He told ABC News that Ms. Maxwell is “losing her hair” and “cannot concentrate,” characterizing her confinement as “torture.”⁶ The Maxwell family also maintains a website that describes the conditions of Ms. Maxwell’s confinement.⁷

“A person’s privacy interest is lessened, if not entirely eliminated, when the person who is identified by or is the subject of the information maintained by the agency has commented publicly about such information.” *Iowa Citizens for Cmty. Improvement v. Dep’t of Agric.*, 256 F.Supp. 2d 946, 950 (S.D. Iowa 2002). Because Ms. Maxwell, through her family and her attorneys, has already commented publicly about the conditions of her confinement, releasing the records cannot inappropriately “invade” her privacy, and there can be no foreseeable harm caused by the disclosure.

¹ Mot. for Recons. re: Release on Bond at 1, *U.S. v. Maxwell*, 1:20-cr-330, (S.D.N.Y. Nov. 3, 2021) ECF No. 408.

² *Id.* at 2.

³ *Id.* at 3.

⁴ BBC, *Ghislaine Maxwell’s US jail conditions ‘are torture’ – brother*, (Mar. 10, 2021), <https://www.bbc.com/news/world-us-canada-56344553>.

⁵ David Brinn, *EXCLUSIVE: Ghislaine Maxwell’s brother: Her jail time akin to torture*, JERUSALEM POST (Mar. 13, 2021), <https://www.jpost.com/international/ghislaine-maxwells-brother-to-post-her-jail-time-akin-to-torture-661743>.

⁶ James Hill, Kaitlyn Folmer, James Longman, & Santina Leuci, *Ghislaine Maxwell’s brother insists she should be treated as ‘presumed innocent’: ‘She is not Epstein’*, ABC NEWS (Mar. 15, 2021), <https://abcnews.go.com/International/ghislaine-maxwells-brother-insists-treated-presumed-innocent-epstein/story?id=76450296>.

⁷ RealGhislaine.com Frequently Asked Questions (FAQs), <https://www.realghislaine.com/facts> (last visited July 7, 2023).

B. The Public Interest in the Records Outweighs Any Purported Privacy Interest.

As discussed above, no privacy interest will be infringed by the disclosure of the requested records. However, even if BOP could make the necessary threshold showing of a cognizable privacy interest, the FOIA public interest in the release of the records is substantial and outweighs that privacy interest.

The “core purpose of the FOIA” is to contribute “to public understanding of the operations or activities of the government.” *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (emphasis in the original). The release of these records would aid in public understanding of the operations of the Bureau of Prisons by shedding light on how prisoners are treated. The treatment of Ms. Maxwell in particular has been the topic of multiple news reports, as evidenced by the interviews with her brother as described above.

Courts have already found that the release of records related to the conditions of confinement for pretrial detainees is in the public interest. *See Wessler v. Dep’t of Justice*, 381 F.Supp. 3d 253 (S.D.N.Y. 2019). In *Wessler*, the requester sought medical records for detainees who had died in confinement. *Id.* at 256. The court determined that the privacy interest in medical records was strong enough that even deceased inmates maintained more than a *de minimis* privacy interest, and the surviving family members also had a privacy interest in the records. *Id.* at 259. Nevertheless, the court found that “there [was] significant public interest in the release of these records.” *Id.* at 260. The records NPR seeks are significantly less private than medical records at issue in *Wessler*, but the public interest in disclosure is just as high: holding agencies accountable for their treatment of prisoners. Therefore, the balance must weigh in favor of requiring disclosure of the records.

Conclusion

For the reasons above, I respectfully request that OIP grant the instant appeal. I look forward to your response within twenty (20) working days from the date you receive this appeal, as required by 5 U.S.C. § 552(a)(6)(A)(ii). If possible, please provide your response via email to rseller@npr.org.

Thank you for your attention to this matter.

Sincerely,

Rachel Seller
NPR Ishiyama Transparency in Government Legal Fellow
rseller@npr.org

cc: Micah Ratner, Senior Assistant General Counsel
Fernando Alfonso, NPR Reporter

Exhibit A



June 12, 2023

FOIA/PA Section
Office of General Counsel, Room 924
Federal Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534
Via email: BOP-OGC-EFOIA-S@BOP.GOV

FOIA Request: Ghislaine Maxwell Detention Logs

Dear Sir or Madam:

Under the federal Freedom of Information Act, 5 U.S.C. § 552 (the “FOIA”), I request as a reporter for National Public Radio, Inc. (NPR) that the Bureau of Prisons make available to me for inspection and copying the following documents (which include electronic records):

All records related to the detention of Ghislaine Maxwell (Register Number: 02879-509) at MDC Brooklyn from July 2020 through July 2022. These records should include, but not be limited to, any daily lieutenant’s log that mentions Ms. Maxwell, psychiatric observation logs, suicide watch logs, agency communications with Ms. Maxwell’s attorneys, Special Housing Unit records, and any other records that may reflect the conditions of Ms. Maxwell’s confinement.

As you know, the FOIA provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. Therefore, please send me all non-exempt portions of the records I have requested and justify any deletions by reference to specific exemptions of the FOIA. I reserve the right to appeal your decision to withhold any materials.

Since some of the documents may be more readily available than others, please provide the documents that are available as soon as possible without waiting to provide access to all the documents.

The FOIA provides for waiver or reduction of fees if disclosure could be considered as “primarily benefiting the general public.” I am a journalist employed by NPR, which makes me a “representative of the news media,” and intend to use the information I am requesting as a basis for a planned news story. Therefore, I ask that you waive all duplication fees. If you deny this request, however, and the fees will exceed \$250, please notify me of the charges before you fulfill my request so that I may decide whether to pay the fees or appeal your denial of my request for a waiver.

I submit this request in my capacity as a journalist, and this information is time-sensitive. Accordingly, I would appreciate your communicating with me by telephone or email (914-325-5726 or falfonso@npr.org), rather than by mail, if you have any questions regarding this request. You can also communicate with anyone in NPR’s Legal Department, including Rachel Seller (rseller@npr.org) or Micah Ratner (mratner@npr.org).

June 12, 2023

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I look forward to receiving your reply within twenty (20) business days, as required by federal law.

Thank you for your anticipated cooperation with this FOIA request.

Sincerely,
Fernando Alfonso

Exhibit B



**U.S. Department of Justice
Federal Bureau of Prisons**

*Central Office
320 First St., NW
Washington, DC 20534*

June 27, 2023

Fernando Alfonso
National Public Radio
falfonso@npr.org

Request Number: 2023-03689

Dear Mr. Alfonso:

The Federal Bureau of Prisons (BOP) received the above-referenced Freedom of Information Act (FOIA) request in which you seek records regarding a specific incarcerated individual.

In response to your request, staff located 3 pages of responsive **public** records, which were forwarded to this office for a release determination. After careful review, we determined 3 pages are appropriate for release in full.

Outside of requesting public information on any individual, for us to release records, your request must be accompanied by a signed authorization from the person to whom the records pertain. That authorization must be notarized or signed under penalty of perjury. Your request did not include an appropriately executed authorization. Consequently, the non-public records you seek are exempt from disclosure to you pursuant to exemptions (b)(6) and (b)(7)(C) of the Freedom of Information Act, 5 U.S.C. § 552. The BOP considered the foreseeable harm standard when applying FOIA exemptions.

If you have questions about this response please feel free to contact the undersigned, this office, or the BOP's FOIA Public Liaison, Ms. Kara Christenson, at: 202-616-7750 (phone); 320 First Street NW, Room 924, Washington, DC 20534; or BOP-OGC-EFOIA-S@bop.gov.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road (OGIS), College Park, MD 20740-6001; ogis@nara.gov; 202-741-5770 (phone); 1-877-684-6448 (toll free); or 202-741-5769 (fax).

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, DC 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions

on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "Blake Danser". The signature is written in a cursive, slightly slanted style.

Blake Danser, for
Eugene Baime, Supervisory Attorney