



DEPARTMENT OF THE ARMY
OFFICE OF THE ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY
9301 CHAPEK ROAD
FORT BELVOIR VA 22060-5527

October 25, 2024

Mr. Ben Sparks
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005

Sent via email: foia@americanoversight.com
danny.martinez@americanoversight.org
elizabeth.haddix@americanoversight.org
ron.fein@americanoversight.org
ben.sparks@americanoversight.org

Dear Mr. Sparks:

This letter responds to your Freedom of Information Act (“FOIA”) request dated September 25, 2024. Your matter is now in litigation in *American Oversight v. DOD, et al.*, Civ. A. No. 24-2789 (PLF) (D.D.C.).

Your September 25, 2024, FOIA request is for all responsive records from August 26, 2024, to the present, and states:

Any report including, but not limited to, an incident report filed with U.S. Army Military Police Corps officials and/or any other military officials at Arlington National Cemetery-regarding the alleged incident reported to have taken place during the August 26, 2024 visit by former President Trump to Arlington National Cemetery (ANC).

Our search yielded the attached responsive records. These records are part of a release due to litigation. This release consists of seven pages. We have redacted material under Exemptions (b)(5), (b)(6), (b)(7)(A), (b)(7)(C) and (b)(7)(E).

Exemption 5 of the FOIA 5 U.S.C. § 552(b)(5)

Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). Courts have interpreted Exemption 5 to encompass the privileges recognized by statute or case law in the civil discovery context. See *U.S. v. Weber Aircraft Corp.*, 465 U.S. 792, 800 (1984); *FTC v. Grolier Inc.*, 462 U.S. 19, 26 (1983) at 26, *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). In this case, the applicable privilege that serve as bases for citing Exemption 5 is the attorney-client privilege.

Attorney-Client Privilege

The attorney-client privilege protects “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” *Mead Data Central, Inc. v. Dept. of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977). Additionally, the privilege protects communications containing purely factual information divulged by a client to the attorney and any opinions given by an attorney to his client based upon those facts.” *Electronic Privacy Info. Ctr., v. Dept. of Homeland Security*, 384 F. Supp. 2d 100, 114 (D.D.C. 2005).

Exemption 6 of the FOIA 5 U.S.C. § 552(b)(6)

Exemption (b)(6) of the FOIA protects from mandatory disclosure “personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” 5 U.S.C. § 552(b)(6) (2011). To qualify for protection under Exemption (b)(6), records must meet two criteria: (1) they must be “personnel and medical files and similar files,” (2) the disclosure of which “would constitute a clearly unwarranted invasion of personal privacy.” *Id.*; *United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 599-603 (1982). The first prong is met if the information “appl[ies] to a particular individual” and is “personal” in nature. *New York Times Co. v. NASA*, 852 F.2d 602, 606 (D.C. Cir. 1988). The second prong requires courts to strike a “balance between the protection of an individual’s right to privacy and the preservation of the public’s right to government information.” *Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982). The “public interest” in the analysis is limited to the “core purpose” for which Congress enacted the FOIA: to “shed . . . light on an agency’s performance of its statutory duties.” *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

We are withholding telephone numbers and other contact information for all Army personnel (e.g., e-mail addresses, statements, telephone-line numbers) and third-party information under Exemption 6. 5 U.S.C. § 552(b)(6). See *Judicial Watch, Inc. v. United States*, No. 03-1160, 2004 WL 26736, at *4 (4th Cir. Jan. 6, 2004). Under the Exemption (b)(6) balancing test, the Supreme Court held in a similar case that disclosure of employee addresses “would not appreciably further the citizens’ right to be informed about what their Government is up to and, indeed, would reveal little or nothing about the employing agencies or their activities.” *Dep’t of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487 (1994). The same is true here regarding telephone numbers. Disclosure of the names, contact, and personal information of government employees would contribute little to the public’s understanding of government activities. By contrast, such disclosure would constitute a “non-trivial” and “not insubstantial” invasion of government employees’ privacy interests. *Id.* at 500, 501.

Exemption 7 of the FOIA 5 U.S.C. § 552(b)(7)(A)

Exemption (b)(7)(A) of the FOIA protects from mandatory disclosure “records or information compiled for law enforcement purposes.” 5 U.S.C. § 552(b)(7)(A) (2011). The responsive records were collected and prepared as part of an on-going law enforcement investigation. These records contain information, the release of which could reasonably be expected to interfere with ongoing enforcement proceedings.

Exemption 7 of the FOIA 5 U.S.C. § 552(b)(7)(C)

Exemption (b)(7)(C) of the FOIA protects from mandatory disclosure “records or information compiled for law enforcement purposes, (C) but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C) (2011). To qualify for protection under Exemption (b)(7)(C), the agency must evaluate the privacy interests implicated in the requested records. Once the privacy interest has been evaluated, it is balanced against the public interest that would be served by disclosure of such records. See *Schiffer v. FBI*, 78 F.3d 1405, 1410 (Cal. 1996).

Exemption 7 of the FOIA 5 U.S.C. § 552(b)(7)(E)

Exemption (b)(7)(E) of the FOIA protects from mandatory disclosure records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

If you have any questions regarding this letter or the information furnished, please contact Assistant United States Attorney Dedra Curteman at (202) 252-2550 or dedra.curteman@usdoj.gov.

Sincerely,



Paul V. DeAgostino
Senior Counsel



~~CUI~~

(b) (7)(E)

DEPARTMENT OF THE ARMY
Directorate of Emergency Services
Fort Myer, VA
108 Sheridan Avenue, Bldg 415
Fort Myer, Virginia, 22211-1199

2024/08/29

LAW ENFORCEMENT REPORT - Initial - (b) (7)(E)

OFFENSE(S)

1. Simple Assault (Federal (USC/CFR) - 18 USC 113(a)(5))

SUBJECT(S)

1. (b) (6), (b) (7)(C)

VICTIM(S)

1. (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) Arlington National Cemetary, Arlington, VA, USA

EXECUTIVE SUMMARY

On 26 August 2024 at 1030 hours, the Joint Base Myer - Henderson Hall (JBM-HH) Police Department was notified by (b) (6), (b) (7)(C) of the following incident:

While working at the Arlington National Cemetery, (b) (6), (b) (7)(C) (b) (7)(A) (b) (6), (b) (7)(C) with both of (b) (6), (b) (7)(C) hands while attempting to move past (b) (6), (b) (7)(C) did not require medical

attention on scene and later refused when offered. (b) (6), (b) (7)(C) rendered a sworn statement on a DA Form 2823 and stated (b) (6), (b) (7)(C) did not want to press charges. Investigation continues by JBMHH PD Investigations Branch.

~~Information contained in this report is Law Enforcement Sensitive containing Controlled Unclassified Information (CUI), categories: PRVCY, LEI, INV. Dissemination is controlled respectively by DACID or OPMG based on Army Regulation 190-45 (Law Enforcement Reporting), limited to authorized holders, and cannot be further distributed.~~

~~CUI~~

(b) (7)(E)

~~CUI~~

LAW ENFORCEMENT REPORT - Initial (b) (7)(E)

EXHIBITS

a. Attached:

(1) Sworn Statement (DA Form 2823) (b) (6), (b) (7)(C)

b. Not Attached: None

Reported By

(b) (6), (b) (7)(C)

Report Approved By

(b) (6), (b) (7)(C)

Signature Authority

(b) (6), (b) (7)(C)

DISTRIBUTION

JBM-HH Police Records

(b) (6), (b) (7)(C)

~~Information contained in this report is Law Enforcement Sensitive containing Controlled Unclassified Information (CUI), categories: PRVCY, LEI, INV. Dissemination is controlled respectively by DACID or OPMG based on Army Regulation 190-45 (Law Enforcement Reporting), limited to authorized holders, and cannot be further distributed.~~

~~CUI~~

(b) (7)(E)

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION Arlington National Cemetery - Welcome Center	2. DATE (YYYYMMDD) 20240826 (b) (6), (b) (7)(C)	3. TIME 1345	4. FILE NUMBER (b) (6), (b) (7)(C)
5. LAST NAME, FIRST NAME, MIDDLE NAME (b) (6), (b) (7)(C)	6. SSN (b) (6), (b) (7)(C)	7. GRADE/STATUS (b) (6), (b) (7)(C)	
8. ORGANIZATION OR ADDRESS (b) (6), (b) (7)(C) 1 Memorial Ave., Arlington, VA 22211			
9. I, (b) (6), (b) (7)(C) WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:			

(b) (6), (b) (7)(A), (b) (7)(C)

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT (b) (6), (b) (7)(C)	Page 1 of 14 (b) (6), (b) (7)(C)
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF (b) (6), (b) (7)(C) TAKEN AT Arlington National Cemetery -
Welcome Center DATED 20240826

9. STATEMENT (Continued)

(b) (5), (b) (6), (b) (7)(A), (b) (7)(C)

INITIALS OF PERSON MAKING STATEMENT

(b) (6), (b) (7)(C)

Page 2 of 34

(b) (6), (b) (7)(C)

(b) (7)(E)

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF (b) (6), (b) (7)(C) TAKEN AT Arlington National Cemetery -
Welcome Center DATED 20240826

9. STATEMENT (Continued)

(b) (6), (b) (7)(A), (b) (7)(C)

INITIALS OF PERSON MAKING STATEMENT

(b) (6), (b) (7)(C)

Page ³ 2 of 84

(b) (6), (b) (7)(C)

(b) (7)(E)

STATEMENT OF (b) (6), (b) (7)(C) TAKEN AT Arlington National Cemetery - Welcome Center DATED 20240826

AFFIDAVIT

I, (b) (6), (b) (7)(C), HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 34. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

(b) (6), (b) (7)(C)

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 26 day of August, 2024 at Arlington National Cemetery - Welcome Center

(b) (6), (b) (7)(C)

(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

(b) (6), (b) (7)(C)

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

5 USC 3026

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT (b) (6), (b) (7)(C)

Page 4 of 4 (b) (6), (b) (7)(C)

(b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

