

THE LAW OFFICES OF ED GOLDNER, P.C.

1616 SAN PEDRO, SAN ANTONIO, TEXAS 78212

PH: (210) 923-1234 FAX: (210) 822-4595

June 13, 2014

Executive Director for the Office of Privacy and Disclosure
Social Security Administration
617 Altmeyer Building,
6401 Security Boulevard
Baltimore, Maryland 21235

CMRRR#: 7010 1060 0000 0876 6941

RE: Freedom of Information Appeal of SSA FOIA #s AL7547/AL9397 - Formal Response

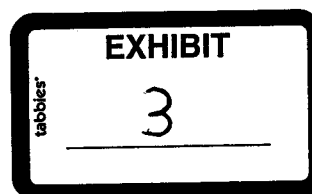
Dear Sir or Madam:

I appeal and request release of the redacted parts of the response as soon as possible. In writing this appeal I have borrowed heavily and sometimes outright plagiarized the *Department of Justice Guide to the FOIA*. I don't think I have extrapolated anything, but the Government's own Guide points squarely to disclosure of the redacted information. When you do release the information, a simple unredacted copy of the entire request response is what we need. As this has been going on since November of 2013, I would like to get it over with as soon as possible.

In order to determine whether Exemption 6 protects against disclosure, an agency should engage in the following two lines of inquiry: first, determine whether the information at issue is contained in a personnel, medical, or "similar" file covered by Exemption 6; and, if so, determine whether disclosure "would constitute a clearly unwarranted invasion of personal privacy" by balancing the privacy interest that would be compromised by disclosure against any public interest in the requested information. When engaging in this analysis, it is important to remember that the Court of Appeals for the District of Columbia Circuit has declared that under Exemption 6, the presumption in favor of disclosure is as strong as can be found anywhere in the Act.

The commercial name, address, phone number and email of representatives submitted to the Agency during the regular course of commercial business in representing claimants before the agency does not constitute information contained in a personnel, medical, or "similar" file covered by Exemption 6. These do not come from a "file" kept on the individual and the Act was not made to protect commercial entities.

Aguirre v. SEC, 551 F. Supp. 2d 33, 54 (D.D.C. 2008) ("Correspondence does not become personal solely because it identifies government employees."); *Leadership Conference on Civil Rights v.*



Gonzales, 404 F. Supp. 2d 246, 257 (D.D.C. 2005) (finding that the names and work telephone numbers of Justice Department paralegals do not meet the threshold for Exemption 6 on the basis that information is not "similar to a 'personnel' or 'medical' file"), motion to amend denied, 421 F. Supp. 2d 104, 107-10 (D.D.C. 2006), appeal dismissed voluntarily, No. 06-5055, 2006 WL 1214937 (D.C. Cir. Apr. 28, 2006); *Gordon v. FBI*, 390 F. Supp. 2d 897, 902 (N.D. Cal. 2004) (deciding that names of agency employees are not personal information about those employees that meets Exemption 6 threshold), summary judgment granted, 388 F. Supp. 2d 1028, 1040-42 (N.D. Cal. 2005) (concluding that Exemption 6 does not apply to the names of agency's "lower-level" employees, and likewise opining that "[t]he [agency] still has not demonstrated that an employee's name alone makes a document a personnel, medical or 'similar file'"); *Darby v. U.S. Dep't of the Air Force*, No. 00-0661, slip op. at 10-11 (D. Nev. Mar. 1, 2002) (rejecting redaction of names in IG report on basis that such documents "are not 'personnel or medical files[,] nor are they 'similar' to such files"), aff'd on other grounds sub nom. *Darby v. DOD*, 74 F. App'x 813 (9th Cir. 2003); *Providence Journal Co. v. U.S. Dep't of the Army*, 781 F. Supp. 878, 883 (D.R.I. 1991) (finding investigative report of criminal charges not to be "similar file," on basis that it was "created in response to specific criminal allegations" rather than as "regularly compiled administrative record"), modified & aff'd on other grounds, 981 F.2d 552 (1st Cir. 1992); *Greenpeace USA, Inc. v. EPA*, 735 F. Supp. 13, 14 (D.D.C. 1990) (opining that information pertaining to an employee's compliance with agency regulations regarding outside employment "does not go to personal information . . . [e]ven in view of the broad interpretation [of Exemption 6] enunciated by the Supreme Court").

Accordingly, you never get to the second step of the analysis which requires determining whether disclosure "would constitute a clearly unwarranted invasion of personal privacy" by balancing the privacy interest that would be compromised by disclosure against any public interest in the requested information. Assuming arguendo that you did get that far, the release of commercial addresses, phone numbers, and emails that are routinely advertised by those representatives to get more business does not rise to an unwarranted invasion of personal privacy. Certainly the presumption in favor of disclosure which is as strong as can be found anywhere in the Act, outweighs any "invasion" of commercial privacy.

Hodes v. HUD, 532 F. Supp. 2d 108, 119 (D.D.C. 2008) "As a threshold matter... only individuals (not commercial entities) may possess protectable privacy interests under Exemption 6."

Hersh & Hersh v. HHS, No. 06-4234, 2008 WL 901539, at *8 (N.D. Cal. Mar. 31, 2008) (finding that business addresses, phone numbers, and job titles of non-federal corporate employees do not implicate the same type of heightened concerns as "private citizens' identities, home addresses, home telephone numbers, social security numbers, medical information, etc."); Or. *Natural Desert Ass'n v. U.S. Dep't of the Interior*, 24 F. Supp. 2d 1088, 1089 (D. Or. 1998) (concluding that cattle owners who violated federal grazing laws have "diminished expectation of privacy" in their names when such information relates to commercial interests) (Exemption 7(C)); *Wash. Post Co. v. USDA*, 943 F. Supp. 31, 34-36 (D.D.C. Oct. 18, 1996) (finding that farmers who received subsidies under cotton price-support program have only minimal privacy interests in home addresses from which they also

operate businesses), appeal dismissed voluntarily, No. 96-5373 (D.C. Cir. May 19, 1997); *Ackerson & Bishop Chartered v. USDA*, No. 92-1068, slip op. at 1 (D.D.C. July 15, 1992) (concluding that commercial mushroom growers operating under individual names have no expectation of privacy).

Avondale Indus. v. NLRB, 90 F.3d 955, 961 (5th Cir. 1996) (finding that names and addresses of voters in union election already were disclosed in voluminous public record); *People for the Am. Way Found. v. Nat'l Park Serv.*, 503 F. Supp. 2d 284, 306 (D.D.C. 2007) (ordering release of names of those who voluntarily submitted comments regarding informational video shown at Lincoln Memorial because "the public interest in knowing who may be exerting influence on National Park Service officials sufficient to convince them to change the video outweighs any privacy interest in one's name."); *Baltimore Sun v. U.S. Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001) (declaring that purchasers of property previously seized by the government "voluntarily choose to participate in . . . a wholly legal commercial transaction" and "have little to fear in the way of 'harassment, annoyance, or embarrassment'").

What we request is commercial identifying information of businesses operated for profit. Not personal, private information of private citizens. And, the information we request has no bearing on the individual or business's conduct, nor any employee of the business's private lives. It is like requesting the name, address, email, fax number and phone number of the nearest Home Depot. Home Depot wants people to have it. Home Depot advertises that information so it can be found by customers. Home Depot pays to have that information distributed and would happily provide that information to anyone who asked. Home Depot is engaged in a business. The representative's addresses and phone numbers are exactly like Home Depot's information.

When you do balance disclosure with privacy interests, the Courts have held that Federal employees involved in law enforcement, as well as military personnel and Internal Revenue Service employees, do possess, by virtue of the nature of their work, protectable privacy interests in their identities and work addresses. In light of this privacy interest, the Department of Defense now regularly withholds personally identifying information about all military and civilian employees with respect to whom disclosure would "raise security or privacy concerns." We are not looking for that. We are looking for commercial names, addresses, phone numbers, faxes, and emails of commercial entities who are doing business with the Agency.

Los Angeles Times Commc'ns LLC v. U.S. Dep't of Labor, 483 F. Supp. 2d 975, 985-86 (C.D. Cal. 2007) (concluding that defendant properly withheld information revealing the identity of all civilian contractors supporting Allied military operations in Iraq and Afghanistan because "the privacy life or death interest of the individual whose records are requested" outweighs "the public interest in disclosure"); *Long*, 2007 WL 2903924, at *16 n.8 (finding that certain DOD and non-DOD government employees "have a privacy interest in their names and duty stations" when revelation of their identities could possibly make them subject to harassment or embarrassment in their occupation or personal lives); *Hiken v. DOD*, 521 F. Supp. 2d 1047, 1065 (N.D. Cal. 2007) (finding that redactions of names of military personnel proper because "defendants present a strong argument that

the privacy interests at stake are significant where the disclosure of these names would risk harm or retaliation"); *Clemmons*, 2007 WL 1020827, at *6 ("The identities of [U.S. Army Criminal Investigation Division] special agents, military police, other government personnel and [third-party] witnesses were all properly withheld under Exemptions (b)(6) and (b)(7)(C)."); *O'Keefe*, 463 F. Supp. 2d at 327 (upholding DOD's withholding of personal information of investigators as well as subjects of investigation found in United States Central Command Report); *Ctr. for Pub. Integrity v. OPM*, No. 04-1274, 2006 WL 3498089, at *6 (D.D.C. Dec. 12, 2006) (finding that OPM properly withheld the names and duty stations of DOD and certain non-DOD federal personnel in sensitive occupations under Exemption 6); *Deichman v. United States*, No. 05-680, 2006 WL 3000448, at *7 (E.D. Va. Oct. 20, 2006) (upholding United States Joint Forces Command's withholding of employee names and discussions of personnel matters relating to other employees under Exemption 6); *MacLean v. DOD*, No. 04-2425, slip op. at 18 (S.D. Cal. June 2, 2005) (protecting "names, initials, and other personal information" about Defense Hotline Investigators and other DOD personnel) (Exemptions 6 and 7(C)).

None of these concerns are applicable here. There is no retaliation, embarrassment, security, or other interest protected by disclosing the business name, business address, business phone number, business email, or business fax of any representative who is currently doing commercial business with the Agency. Just citing Exemption 6 and saying the commercial address, commercial phone number, commercial email and commercial fax consist of private information as the Agency does here is not enough to stop the great bias towards disclosure under the Act. Not nearly enough. The FOIA Officer admitted in his response that there is "No compelling interest to keep these public records from disclosure." The FOIA Officer also stated that "We must determine whether disclosure would affect a *personal privacy interest*. *Individuals clearly have a substantial personal privacy interest in the personal details furnished to the Government (emphasis added)*." The information requested is from commercial entities, not claimants. The information we request is not anything that affects a "Substantial personal privacy interest." We do not request personal details of individuals. The information we request consists of commercial addresses, commercial emails, commercial phone numbers and commercial faxes that every one of the representatives who submitted it to the agency regularly publishes to the public--Information these representatives pay millions of dollars a year to disclose on an ever widening basis--Information that is on their business cards they hand out--Information that is on their office door--Information that is in their commercial Yellow Page ad--Information that is on their commercial website--Information that they provide to professional organizations--information that they give to professional social websites like LinkedIn--Information they take pains to always update in all of these public places.

Sincerely,

FOR THE LAW OFFICES OF ED GOLDNER, P.C.



Ed Goldner
Attorney at Law