

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

ED GOLDNER
PLAINTIFF

V.

Case No. _____

SOCIAL SECURITY ADMINISTRATION
DEFENDANT

COMPLAINT FOR DECLARATORY JUDGMENT & INJUNCTIVE RELIEF

Plaintiff Ed Goldner, for his Complaint for Declaratory Judgment & Injunctive Relief against Defendant Social Security Administration pursuant to Rule 57 of the Federal Rules of Civil Procedure, and seeking to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552, states:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) as the relevant agency records that constitute the subject of this Freedom of Information Act suit are situated within this district. Venue is also proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Ed Goldner is an individual residing in Bexar County, Texas.
4. Defendant Social Security Administration is an agency of the United States Government and resides in this judicial district. Defendant Social Security

Administration has possession, custody, and control of records to which Plaintiff Ed Goldner seeks access.

STATEMENT OF FACTS

5. On November 6, 2013, Plaintiff Ed Goldner sent a FOIA request to Defendant Social Security Administration seeking access to the following records:

- a. The first name, middle initial, last name, city, and state of all attorney representatives who are currently representing clients in ongoing social security disability claims.
- b. The first name, middle initial, last name, city, and state of all non-attorney representatives who are currently representing clients in ongoing social security disability claims that are not eligible for direct payment.
- c. The business name, business address, business phone number and business email of all attorney representatives who are currently representing clients in ongoing social security disability claims.
- d. The business name, business address, business phone number and business email of all non-attorney representatives who are currently representing clients in ongoing social security disability claims that are not eligible for direct payment.

In his request for access to records pursuant to the FOIA, Plaintiff Ed Goldner expressly noted he did “not request any private or home information on the above individuals.” See Exhibit 1 attached to this Complaint and incorporated herein.

6. Defendant Social Security Administration denied, in pertinent part, Plaintiff Ed Goldner’s FOIA request in a letter dated June 12, 2014. See Exhibit 2 attached to this Complaint and incorporated herein. Defendant Social Security

Administration erroneously claimed that the FOIA request sought “personal information about other individuals contained in the records” and that “disclosing records containing personal information about named individuals...would be a clearly unwarranted invasion of personal privacy, and the [FOIA] does not require disclosure.” *See Ex. 2.*

7. On June 13, 2014, Plaintiff Ed Goldner submitted a timely administrative appeal to the Executive Director for the Office of Privacy and Public Disclosure. In his administrative appeal, Plaintiff Ed Goldner expressly disclaimed Plaintiffs were seeking “personal, private information of private citizens.” Rather, Plaintiff Ed Goldner’s administrative appeal demonstrated that Plaintiff Ed Goldner sought commercial identifying information of businesses operated for profit. *See Exhibit 3 attached to this Complaint and incorporated herein.*

8. On September 24, 2014, the Executive Director for the Office for the Office of Privacy and Public Disclosure granted Plaintiff Ed Goldner’s request in part by releasing the phone numbers of the attorney representatives, but wrongfully denied Plaintiff Ed Goldner’s request for other information regarding the attorney representatives. *See Exhibit 4 attached to this Complaint and incorporated herein.* The Executive Director also wrongfully denied Plaintiff Ed Goldner’s request for information regarding the non-attorney representatives, and argued that a release of that information would constitute an invasion of privacy. *See Ex. 4.*

COUNT I: VIOLATION OF FOIA

9. Plaintiff re-alleges Paragraphs 1 through 8 as if fully stated herein.

10. Defendant Social Security Administration has violated the FOIA by failing to produce records responsive to Plaintiff Ed Goldner's November 6, 2013 FOIA request.

11. Defendant Social Security Administration, in denying in critical part Plaintiff Ed Goldner's FOIA request, relied only on FOIA Exemption 6. 5 U.S.C. § 552(b)(6).

12. FOIA Exemption 6 does not apply to the agency records that Defendant Social Security Administration has declined to release, and therefore Plaintiff is entitled to an order directing Defendant Social Security Administration to release the requested agency records it has wrongfully withheld.

COUNT II: DECLARATORY JUDGMENT


13. Plaintiff re-alleges Paragraphs 1 through 12 as if fully stated herein.

14. In accordance with Rule 57 of the Federal Rules of Civil Procedure, this Court should declare the rights, status, and other legal relations between Plaintiff Ed Goldner and Defendant Social Security Administration with respect to the FOIA request, in particular Plaintiff's entitlement to the agency documents requested.

15. Plaintiff Ed Goldner respectfully requests a declaratory judgment in order to settle and afford it relief from uncertainty and insecurity with respect to Defendant Social Security's obligations pursuant to the FOIA.

16. Plaintiff Ed Goldner further requests that this Court order a "speedy hearing" of this action pursuant to Rule 57 of the Federal Rules of Civil Procedure.

WHEREFORE, Plaintiff Ed Goldner respectfully requests that the Court: (1) declare Defendant Social Security Administration's failure to comply with the FOIA to be unlawful; (2) enjoin Defendant Social Security Administration from continuing to withhold un-redacted records responsive to Plaintiff Ed Goldner's November 6, 2013 FOIA request; (3) grant judgment pursuant to Fed. R. Civ. P. 57 declaring Defendant's obligation to produce to Plaintiff the requested records; (4) grant Plaintiff an award of attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and, (5) grant Plaintiff such other relief as the Court deems just and proper.


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Attorneys for Ed Goldner

THE LAW OFFICES OF ED GOLDNER, P.C.

1616 SAN PEDRO, SAN ANTONIO, TEXAS 78212

PH: (210) 923-1234

FAX: (210) 822-4595

November 6, 2013

Carolyn W. Colvin
Acting Commissioner of Social Security
Social Security Administration
Office of Public Inquiries
Windsor Park Building
6401 Security Blvd.
Baltimore, MD 21235

CMRR#: 7012 1010 0001 1132 0484

RE: *Freedom of Information Act Request*

Dear Madam Commissioner:

I request two lists of persons and business identifiers from records kept by the Social Security Administration under the Freedom of Information Act:

1. The first name, middle initial, last name, city, and state of all attorney representatives who are currently representing clients in ongoing social security disability claims.
2. The first name, middle initial, last name, city, and state of all non-attorney representatives who are currently representing clients in ongoing social security disability claims that are not eligible for direct payment.

I can see on your website you have already provided the same information for non-attorney representatives who are eligible for direct payment. If it is permissible under the act, I also request the business name, business address, business phone number and business email of the individuals listed above in those same lists. I specifically do not request any private or home information on the above individuals.

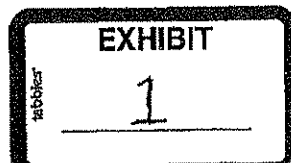
If you cannot provide any of that additional information, please do not hold up release of the rest of the permissible information.

If possible, I would prefer the two lists in an excel or like spreadsheet file that is accessible by computer. There is no need to send any paper documents unless the Act requires you to.

Sincerely,



Ed Goldner
Attorney at Law





SOCIAL SECURITY

Refer to:
S9H: AL7547

June 12, 2014

Mr. Ed Goldner
1616 San Pedro
San Antonio, TX 78212

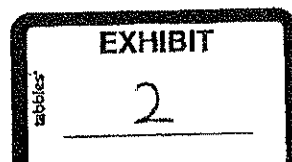
Dear Mr. Goldner:

I am responding to your November 6, 2013 Freedom of Information (FOIA) request for the following information:

1. The first name, middle initial, last name, city, and state of all attorney representatives who are currently representing clients in ongoing social security disability claims.
2. The first name, middle initial, last name, city, and state of all non-attorney representatives who are currently representing clients in ongoing social security disability claims that are not eligible for direct payment.

I reviewed your request under the FOIA (5 U.S.C. § 552) and I am enclosing 1,221 pages of responsive records. I am withholding portions of pages pursuant to FOIA Exemption 6 (5 U.S.C. § 552(b)(6)).

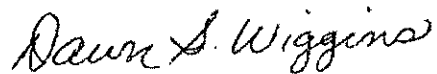
FOIA Exemption 6 exempts personal information about other individuals contained in the records. When we receive a request from a member of the public to release, we must balance the individual's privacy interest in withholding the information against the public interest in disclosing the information. 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. On the other hand, the only public interest we must consider is whether the information sought would shed light on the way an agency performs its statutory duties. We may not consider the identity of the requester or the purpose for which the information is requested. While the public has an interest in knowing how the Social Security Administration administers the Social Security Act, disclosing records containing personal information about named individuals would not shed light on how the agency performs its statutory duties. Therefore, disclosing this information would be a clearly unwarranted invasion of personal privacy, and the Freedom of Information Act (5 U.S.C. § 552(b)(6)) does not require disclosure.



Page 2 – Mr. Ed Goldner

If you disagree with this decision, you may appeal it. Mail the appeal within 30 days after you receive this letter to the Executive Director for the Office of Privacy and Disclosure, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. Mark the envelope "Freedom of Information Appeal."

Sincerely,

A handwritten signature in cursive script that reads "Dawn S. Wiggins".

Dawn S. Wiggins
Freedom of Information

Enclosures

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

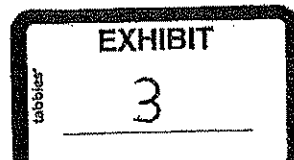
Dear Sir or Madam:

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