

Exhibit A

FEDERAL COMPLIANCE
OFFICE OF THE GENERAL COUNSEL



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

December 19, 2018

Mr. Michael Williams
1233 20th St NW Suite 301
Washington, DC 20036-2363

Re: Freedom of Information Act Appeal No. 2019-APP-00026;
FOIA Case No. 2018-FPRO-00102

Dear Mr. Williams:

This is in response to your letter included with your email dated November 19, 2018. In your letter, you appealed from the action of Senior Ethics Counsel Jessica Brewster-Johnson on your request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for access to “[a]ny documents or communications related to an ethics investigation and/or ethics review of former Chief Customer and Marketing Officer James Cochrane” within a certain timeframe. After carefully considering your appeal, we are affirming the action of Ms. Brewster-Johnson in the instant request in full.

In a letter dated November 9, 2018, Ms. Brewster-Johnson neither confirmed nor denied the existence of any such records. She explained that any acknowledgement of these records would implicate a privacy interest protected under Exemption 6 of the FOIA and found that you had not demonstrated a legitimate public interest in these records. We note that you submitted a similar FOIA request in the past, in case number 2018-FPRO-01401. This request was denied in full on the same grounds and this denial was upheld on appeal in 2019-APP-00017.

In your instant appeal, you assert that the public has an interest in any ethics investigations involving James Cochrane because he was one of the highest paid employees “in the whole federal government.” You reason that knowing “whether there was a breach of ethics at the highest levels of one of the most important federal organizations is clearly in the public interest.” You further cite the timing of Mr. Cochrane’s interview with a Stamps.com earnings call and suggest that his interview contributed to an increase in the share prices of Stamps.com. Finally, you assert that there is a public interest in knowing whether Mr. Cochrane’s statements constituted official Postal Service policy on the reseller program, or whether his statements contradicted Postal Service policy.

Congress enacted the FOIA to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352 (1976). Congress balanced this objective by recognizing that “legitimate governmental and private interests could be harmed by release of certain types of information.” *Fed. Bureau of Investigation v. Abramson*, 456 U.S. 615, 621 (1982). The FOIA “requires federal agencies to make Government records available to the public, subject to nine exemptions.” *Milner v. Dep’t of the Navy*, 562 U.S. 562, 562 (2011). In addition, other laws allow the Postal Service to withhold certain categories of records and information. See 39 U.S.C. § 410(c).

Exemption 6 provides that the FOIA does not apply to matters that are “personnel files and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” See 5 U.S.C. § 552(b)(6). Under Exemption 6, the term “file” includes files as well as other types of records, see *U.S. Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982), and bits of information, see *Prison Legal News v. Samuels*, 787 F.3d 1142, 1147 (D.C. Cir. 2015). Under Exemption 6, “personnel,” “medical,” and “similar” files are not limited to records or information containing only intimate details or highly personal information about an individual; rather, the

exemption encompasses all records and information on an individual that can be identified as applying to that individual. See *U.S. Dep't of State v. Wash. Post Co.*, 456 U.S. 595, 600-602 (1982). The personal privacy interests cognizable under Exemption 6 include an individual's interest in avoiding public disclosure of personal matters, see *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 762 (1989), which encompasses an individual's control of information concerning his or her person, see *U.S. Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500 (1994). Therefore, the records and information protected from public disclosure by Exemption 6 are not limited to those of an intimate or highly personal nature, see *U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 600, 601, 602 (1982), but also include, for example, records and information the public disclosure of which could result in an adverse effect, such as annoyance, see *Fed. Labor Relations Auth.*, 510 U.S. at 501, embarrassment, or retaliation, see *U.S. Dep't of State v. Ray*, 502 U.S. 164, 176, 177 (1991). In order for a personal privacy interest to be cognizable under Exemption 6, its degree need only be very slight. See *Fed. Labor Relations Auth.*, 510 U.S. at 500. Public figures do not forfeit all rights of privacy by virtue of their status. See *Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008).

If an agency identifies an individual's cognizable personal privacy interest under Exemption 6 in the responsive record or information, it is then the requester's burden to overcome that personal privacy interest by establishing the following: (1) the requester seeks to advance a public interest cognizable under Exemption 6, and (2) the record or information is likely to advance that public interest; otherwise, the invasion of personal privacy is clearly unwarranted. See *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). The agency must weigh the individual's personal privacy interest against the cognizable public interest, if any, that would be served by public disclosure of the record or information. See *U.S. Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994).

The only public interest cognizable under Exemption 6 is the extent to which public disclosure of the record or information would serve the core purpose of the FOIA, which is contributing significantly to public understanding of the federal government's operations or activities. See *id.* A very slight cognizable personal privacy interest is sufficient to outweigh a negligible or non-existent public interest under Exemption 6. See *Fed. Labor Relations Auth.*, 510 U.S. at 497, 500.

Here, any files concerning a potential ethics investigation regarding Mr. Cochran would meet the threshold of "similar files" under Exemption 6. Mr. Cochran also has a privacy interest in the fact of whether such an ethics investigation occurred. You do not appear to dispute these points in your appeal. Instead, you argue that you have proffered sufficient information to demonstrate that a public interest exists in disclosing the information you request and that this public interest outweighs any privacy interest maintained by Mr. Cochran in potentially responsive material. We recognize that, under certain circumstances, there may be a public interest in information relating to potential misconduct of high-level government employees. See *Stern v. Fed. Bureau of Investigation*, 737 F.2d 84, 94 (D.C. Cir. 1984). However, at the same time, information concerning a single investigation or incident often does not shed enough light on an agency's activities to overcome an individual's privacy interest. See, e.g., *Hunt v. Fed. Bureau of Investigation*, 972 F.2d 286, 288-89 (9th Cir. 1992) (a single file requested would not shed light on the agency's actions in general or whether similar misconduct is common); *Mueller v. U.S. Dep't of Air Force*, 63 F. Supp. 2d 738, 745 (E.D. Va. 1999) ("information concerning a single isolated investigation reveals relatively little about *the conduct of the Air Force as an agency*") (emphasis added). Here, we find that the potential privacy interest involved in any responsive records, if they exist, weighed against the potential public interest that you assert, places the instant case in the latter category as opposed to the former.

In addition, we also note that there must be a sufficient nexus between the information requested and the public interest asserted in order to overcome an individual's privacy interest under Exemption 6 and require disclosure. *Favish*, 541 U.S. at 172-73. Here, the public interest that you assert concerns one particular incident regarding an interview between Mr. Cochran and Stamps.com. However, your request broadly asks for all ethics investigations concerning Mr. Cochran for a certain timeframe, regardless of whether they concern this particular incident. Thus, your request, as written, does not contain a sufficient nexus to any public interest that you assert so as to require the disclosure of any

potentially responsive documents. Furthermore, for the reasons noted above, we find that even if your request were limited to any ethics investigations that concern the incident described in your appeal, you still have not asserted a sufficient public interest to outweigh the privacy interests involved in this case and thus require disclosure. Finally, one of your central arguments supporting a public interest in the disclosure of any potentially responsive documents concerns whether Mr. Cochran's statements constituted "official" Postal Service policy concerning Stamps.com and the reseller program. However, we note that even if any documents existed concerning an ethics investigation of Mr. Cochran, such documents would not necessarily shed any light on the position or policy of the Postal Service concerning any particular program. Accordingly, for all of these reasons, we find that Ms. Brewster-Johnson appropriately asserted Exemption 6 in her initial decision.

Having found that Ms. Brewster-Johnson correctly applied Exemption 6 to your request, we also find that Ms. Brewster-Johnson appropriately responded by neither confirming nor denying the existence of any responsive records. Your request seeks records related to a specific individual whom you identified in your request. When a requester seeks records or information within the scope of Exemption 6 that relate to a specific individual, an agency may decline to provide information when merely acknowledging the existence of responsive records would constitute a clearly unwarranted invasion of the individual's personal privacy under Exemption 6. As a result, the Postal Service can neither affirm nor deny whether it maintains records responsive to your request because such a response would compromise the privacy interest of that individual. See, e.g., *Am. Civil Liberties Union v. Cent. Intelligence Agency*, 710 F.3d 422, 426 (D.C. Cir. 2013). Such a response is appropriate in the context of the FOIA when a response confirming or denying the existence of responsive records would itself cause harm cognizable under a FOIA exemption, including Exemption 6. See, e.g., *People for the Ethical Treatment of Animals v. Nat'l Insts. of Health, Dep't of Health & Human Servs.*, 745 F.3d 535, 540-41 (D.C. Cir. 2014). Accordingly, the Postal Service declines to conduct a search for records responsive to the request or perform an analysis to identify segregable portions of such records. See, e.g., *People for the Ethical Treatment of Animals*, 745 F.3d at 540.

Thus, after carefully considering your appeal, we are affirming Ms. Brewster-Johnson's action on your request.

This is the final decision of the Postal Service regarding your right of access to records requested pursuant to the FOIA. You may seek judicial review of this decision by bringing suit for that purpose in the United States District Court for the district in which you reside or have your principal place of business, the district in which the records are located, or in the District of Columbia.

The Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows:

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