IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PRISON LEGAL NEWS	)	
Plaintiff,	)	
v.	)	**Civil Action No. 05-1812 (RBW)**
HARLEY G. LAPPIN, Director, Federal Bureau of Prisons	)	
Defendant.	)	

DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFF'S FIFTH MOTION FOR SUMMARY JUDGMENT

Defendant, by undersigned counsel, respectfully moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for an order granting defendant summary judgment on the ground that no genuine issue of material fact exists and defendant is entitled to judgment as a matter of law.

In support of this motion, the Court is respectfully referred to the accompanying Memorandum of Points and Authorities, Statement of Material Facts Not in Genuine Dispute, Declaration of Clinton Stroble, Assistant General Counsel, Office of General Counsel, Central Office, Federal Bureau of Prisons, Washington, DC, Vaughn Index and Exhibits. [1] A proposed order is also attached.

[1] Simultaneously with this Motion, Defendant is requesting an enlargement of time until April 26, 2012 to file the 102 exhibits on ECF.

Respectfully submitted,

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United States Attorney
for the District of Columbia

DANIEL F. VAN HORN, D.C. Bar # 924092
Acting Civil Chief

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DEFENDANT'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE

Pursuant to Fed. R. Civ. P. 56 and Local Rule 7(h), Defendant, Harley G. Lappin, Director, Federal Bureau of Prisons, respectfully submits the following Statement of Material Facts as to Which There is no Genuine Dispute.

1. Clinton Stroble, Assistant General Counsel, Office of General Counsel, Central Office, Federal Bureau of Prisons, Washington, D.C., is presently assigned to the Freedom of Information Act/Privacy Act (FOIA/PA) Section. His responsibilities include the coordination of the FOIA/PA Section litigation. Declaration of Clinton Stroble, ¶ 1.

Exemptions

2. A new Vaughn index (Stroble Vaughn), hereby supports Defendant's Cross-Motion for Summary Judgment. The Vaughn index is an approximate 129 page document that identifies the exhibits with a general specificity of the type of document, the number of pages of that document, the exemptions applied, and the rationale for the exemptions, Stroble Declaration ¶ 5.

3. Defendant applied Exemption 6 to redact the names and personal identifying information that would reveal the identity of a person related to claims filed with the Defendant pursuant to the Federal Torts Claims Act (FTCA) and claims filed against the defendant related to Equal Opportunity Commission (EEOC) or Merit Systems Protection Board. Stroble Declaration, ¶ 6.

4. Stroble applied Exemption 7(C) to redact the names and personal identifying information that would reveal the identity of a person related to claims filed with the Defendant pursuant to the Federal Torts Claims Act (FTCA) and claims filed against the defendant related to Equal Opportunity Commission (EEOC) or Merit Systems Protection Board. Stroble Declaration, ¶ 7.

5. Exemption 2 Low was not applied in the Stroble Vaughn on the 102 Exhibits. Stroble Declaration, ¶ 9.

Exhibits

6. Stroble reviewed the exhibits set forth below and redacted any inconsistencies where needed. Stroble Declaration, ¶ 4.

Exhibits 5 and 95

A. Exhibits 5 and 95 represent the same documents. Exhibit 5 was the release provided to the Plaintiff on June 10, 2011. Exhibit 95 was the Defendant's November 2011 release. On Page 1 of Exhibit 5, the Defendant did not redact the name of the complainant or witnesses, but on page 1 of Exhibit 95, the Defendant redacted this information. The Defendant has unredacted page 1 of Exhibit 95 as it appears that the claim was submitted as a part of a federal district court case. On page 2 of Exhibit 5, the Defendant did not redact the name on a witness, but redacted this name on page 2 of Exhibit 95. The Defendant has unredacted page 2 of Exhibit 95 as it appears that the claim was submitted as a part of a federal district court case.

Exhibits 2 and 23

B. On page 1 of Exhibit 2, the name of the EEO Specialist was not redacted, but on page 1 of Exhibit 23, the name is redacted. The Defendant has unredacted the name on Exhibit 23. Additionally, the Defendant redacted the name of a witness on page 7 of Exhibit 2, but inadvertently did not redact this name on page 7 of Exhibit 23. The Defendant has redacted the name of the Witness on page 7 of Exhibit 23.

Exhibits 3 and 82

C. Exhibits 3 and 82 are the same documents. Exhibit 3 was the release provided to the Plaintiff on June 10, 2011. Exhibit 82 was the Plaintiff's November 2011 release. Exhibit 3 revealed some information that Defendant's contended during the November 2011 joint meeting should be protected. Thus, when the Defendant's reviewed Plaintiff's Exhibit 82, the Defendant redacted this exhibit consistent with its stated purpose of redacting personal identifying information. However, since the Plaintiff already possessed Exhibit 3 personal identifying information revealed, it would have been futile and almost pointless to go back and redact this information from Exhibit 3.

Exhibits 4 and 51

D. On page 33 of Exhibit 51, the name of witnesses were not redacted as it appears the administrative claim was filed as part of a district court case, but on page 33of Exhibit 4, these same names were redacted. The Defendant has unredacted the names on Exhibit 4.

Exhibits 12 and 81

E. On pages 4 and 5 of Exhibit 12, the Defendant did not redact a reference where the word "inmate" or "officer" was used. However, on pages 4 and 5 of Exhibit 81, the

Defendant redacted these same references. The Defendant has unredacted the reference to "inmate" or "officer" on pages 4 and 5 of Exhibit 81.

Exhibits 26 and 68

F. The Defendant has unredacted Exemption 2 Low application to administrative complaint number on Exhibit 26. Further, on page 1 of Exhibit 26, the Defendant redacted the name of a person that was not a witness. However, on page 1 of Exhibit 68, the Defendant did not redact the same name. The Defendant has unredacted the name on Exhibit 26.

Exhibits 79 and 80

G. On page 3 of Exhibit 79, the name of the parties were redacted, but inadvertently the names were not redacted on page 3 of Exhibit 80. The Defendant has redacted the name of the Witness on page 3 of Exhibit 80.

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFF'S FIFTH MOTION FOR SUMMARY JUDGMENT

Plaintiff filed an August 15, 2003 FOIA request which sought the following documents:

> [A]ll documents showing all money paid by the Bureau of Prisons (BOP) for lawsuits and claims against it. This is all funds paid out to claimants/litigants between January 1, 1996 through and including July 31, 2003. I am requesting a copy of the verdict, settlement or claim in each case showing the dollar amount paid, the identity of the plaintiff/claimant and the legal identifying information for each lawsuit or claim or attorney fee award. I am requesting a copy of the complaint (if it was a lawsuit) or the claim (if it was not) in each incident which describes the underlying facts of each lawsuit and claim.

After several years of litigation, and Defendant's release of thousands of pages of documents, the parties have agreed that the 102 Exhibits attached to Plaintiff's Fifth Motion for Summary Judgment constitute the remaining documents in contention in this litigation. Plaintiff requests that Defendant release "copies to Plaintiff of all documents previously produced in Plaintiff's 2003 FOIA Request without any redaction of any names, job titles or descriptions, dates of employment or events, and religious affiliation of individuals." Motion at 1.

Defendant herewith files a Cross-Motion for Summary Judgment with a new 125 page Vaughn Index submitted by Clinton Stroble, Assistant General Counsel, Freedom of Information Act/ Privacy Act Section ("Stroble Vaughn"), April 25, 2012. The Stroble Vaughn explains Defendant's redactions pursuant to FOIA exemptions 6 and 7(C) on the above referenced 102 Exhibits noted on the attached Discs 1, 2, and 3. Defendant continues to argue, as it has in its previous Memoranda, that Exemptions 6 and 7(C) are applicable here to the release of individual names, and to the extent that job titles, department descriptions, work addresses, dates of employment, dates of events, religious affiliation, countries of origin, and entire sentences of text would identify individual names, the information has been properly redacted.[1]

Thus, at this stage of the litigation, the narrow issue, as it relates to the application of Exemptions 6 and 7(C), is whether the agency has met its burden in withholding names and personal identifying information that would likely reveal the identity of a person related to claims filed with the Defendant pursuant to the Federal Torts Claims Act (FTCA) and claims filed against the defendant related to Equal Employment Opportunity Commission (EEOC) or Merit Systems Protection Board. More specifically, as it relates to claims pursuant to the FTCA, the types of documents in question, as described in the Vaughn Index are Tort Claim Form SF-95; Tort Claim Judgments; Tort Claim Voucher For Payment; and documents including e-mails, facsimile cover sheets, and other documents related to the processing and disposition of such claims. As it relates to claims related to EEOC or the MSPB, the types of documents in question relate to Settlement Stipulations, General Correspondence (E-mails, Fax Cover Sheets, Letters; Merit System Protection Board—Settlement Agreements; Equal Employment Opportunity Commission—Settlement Agreements, Order of Dismissal, Settlement or Comprise Agreement,

[1] The application of Exemption 2 low has not been requested in the "Stroble Vaughn" (April 25, 2012).

Notice of Settlement, Agency Offer of Resolution, and/or Stipulation of Dismissal; and Complaint of Discrimination, Form DOJ 201. Defendant submits that it has properly applied Exemptions 6 and 7(C) in redactions contained in the 102 Exhibits.

ARGUMENT

A. Standard of Review

"In review of a motion for summary judgment under FOIA, the Court must conduct a de novo review of the record." Lardner v. Dept. of Justice, 638 F.Supp.2d 14, 20 (D.D.C. 2009), aff'd, 398 Fed. Appx. 609 (2010); citing 5 U.S.C. § 552(a)(4)(B). The court determines "whether the agency has sustained its burden of demonstrating that the documents requested * * * are exempt from disclosure under FOIA." Id. ; Assassination Archives & Research Ctr. v. Cent. Intelligence Agency, 334 F.3d 55, 57 (D.C. Cir. 2003)) (omission in original).

Although, "[u]nderlying facts and inferences are analyzed in the light most favorable to the FOIA requester," Lardner, 638 F.Supp at 20, "a plaintiff . . . must establish that the agency has improperly claimed an exemption as a matter of law or that the agency has failed to segregate and disclose all non-exempt information in the requested documents." Id.; Perry-Torres v. Dep't. of State, 404 F.Supp.2d 140, 142 (D.D.C. 2005)). The agency bears the burden to justify its withholding, describing with specific detail in accompanying affidavits or declarations the justifications for nondisclosure and that such non-disclosure falls within a claimed exemption, and "detailing what proportion of the information in a document is non-exempt and how that material is dispersed throughout the document." Lardner, 638 F.Supp at 20-21. As we set forth below, the agency has met its burden regarding the application of Exemptions 6 and 7(C).

B. Exemption 6 Was Appropriately Applied to Redact the Names and Personal Identifying Information That Would Reveal the Identity of A Person.

Exemption 6 permits the government to withhold all information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7). To warrant protection under Exemption 6, information must meet the threshold requirement, that is, it must fall within the category of personnel and medical files and similar files. United States Department of State v. Washington Post Co., 456 U.S. 595, 602 n. 4 (1982). The threshold is met where the information applies to any particular, identifiable individual. Once it has been established that information meets the threshold requirement of Exemption 6, the focus of the inquiry turns to whether disclosure of the records at issue "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(6). This requires a balancing of the public's right to disclosure against the individual's right to privacy. See Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976); Fund for Constitutional Gov't v. Nat'l Archives & Records Serv., 656 F.2d 856, 862 (D.C. Cir. 1981).

The next step under Exemption 6 involves identifying the relevant privacy interests in non-disclosure and the public interest in disclosure, and determining whether, on balance, disclosure would work a clearly unwarranted invasion of personal privacy. Reed v. NLRB, 927 F.2d 1249, 1251 (D.C.Cir.1991), cert. denied, 502 U.S. 1047 (1992) (quoting National Ass'n. of Retired Federal Employees v. Horner, 879 F.2d 873, 874 (D.C. Cir. 1989).

The essential issue is whether Exemption 6 permits the Defendant to exempt names and personal identifying information that will reveal the identity of a person related to claims filed with the Defendant pursuant to the Federal Torts Claims Act (FTCA) and claims filed against the

defendant related to the Equal Employment Opportunity Commission (EEOC) or the Merit Systems Protection Board. The answer to the first point ultimately resolves the latter point. Plaintiff argues that the "Defendant has improperly redacted complainant, tortfeasor, and witness names from the newly produced documents." Plaintiff's Fifth Motion For Summary Judgment at 9.

To the contrary, there is a clearly established privacy interest in names. Painting and Drywall Work Preservation Fund, Inc. v. Dep't of Housing and Urban Dev., 936 F.2d 1300, 1303 (D.C.Cir.1991) (holding that the disclosure of names and addresses of construction workers from payroll records submitted by contractors would constitute a substantial invasion of privacy not outweighed by the public interest in disclosure); Sherman v. U.S. Dep't of the Army, 244 F.3d 357, 363-64 (5th Cir. 2001) (protecting social security numbers of soldiers even though Army publicly disclosed SSNs in some circumstances, because individuals rather than government hold privacy interest in that information). Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989), cert. denied, 494 U.S. 1078 (1990); see also Int'l Bhd. of Elec. Workers Local No. 5 v. HUD, 852 F.2d 87, 89 (3d Cir. 1988) (perceiving no public interest in disclosure of employees' social security numbers); DOD v. FLRA, 510 U.S. 487, 500-02 (1994) (finding privacy interest in federal employees' home addresses).

"Exemption 6 permits an agency to withhold information contained within 'personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.'" Lardner, 638 F.Supp at 23. In this context, "similar files" is given a broad interpretation thus protecting from disclosure "all information that 'applies to a particular individual' in the absence of a public interest in disclosure." Id.; State Dep't v. Washington Post Co., 456 U.S. 595, 602 (1982). Although the balance tilts in favor of disclosure

against privacy, Lardner, 638 F.Supp. at 23, upon the agency meeting its burden in non-disclosure, Exemption 6 is applicable.

Determining whether Exemption 6 applies, the court will determine "whether disclosure of the [the information at issue] 'would comprise a substantial, as opposed to de minimis privacy interest.'" Id. at 24; Multi Ag Media LLC v. Dep't of Agriculture, 515 F.3d 1224, 1230 (D.C. Cir. 2008). In this context, "information that 'reveals little or nothing about an agency's own conduct does not further the statutory purpose; thus the public has no cognizable interest in the release of such information." Lardner, 638 F.Supp. at 24.

Without clearly articulating a reason for the disclosure of names of individuals that have filed claims or were named as witnesses pursuant to the FTCA, EEOC claims, and/or MSPB claims, the Plaintiff generally suggests that it seeks the "names of the individuals for several reasons, which are all related to the public interest in gathering information that would contribute to an understanding of the Bureau of Prisons operations." Plaintiff's Fifth Motion for Summary Judgment at 13. More specifically, the Plaintiff argues that "[w]ithout the name of the plaintiff/claimant, records from administrative agency proceedings lose most of their analytical use." Id. Further, the Plaintiff argues that "[w]ithout knowing the name of the party, plaintiff, or claimant, the seeker of information is left to try to sort through every case ever filed against the Defendant(s) named in order to try to find the one with the particular facts or details of interest." Id. at 14.

Plaintiff's assertions do not establish that the disclosure of the names will reveal anything concerning the agency's conduct or an understanding of the Defendant's operations. When considering the claims pursuant to the FTCA, such claims cover a large universe of potential types of claims to include claims such as damage to uniforms. Thus, a payment pursuant to the

FTCA does not necessarily indicate that an individual has engaged in actionable conduct. If anything, knowledge that a claim has been filed, the allegations supporting such a claim and that the government settled the claim may arguably reveal information concerning the Defendant's conduct. In fact, Plaintiff's effort to seek disclosure of the names of persons that sought administrative recovery from the Defendant, places the identity of those persons' names in the public realm for seeking administrative relief or for merely being named in the request for administrative relief. Indeed, such disclosure serves to embarrass and intimidate those individuals. This embarrassment and intimidation operates as a chilling effect on a government employee's right to seek redress. Thus, the Plaintiff's interest in the disclosure of individual names is more about the individuals and less about exposing the operations of the Bureau of Prisons and properly exempted pursuant to Exemption 6.

Plaintiff argues that "[t]he frequency of litigation and the results thereof are good standards for measurement of the performance of public officials and government operations." Plaintiff's Fifth Motion For Summary Judgment at 14. Thus, the Plaintiff argues that "knowledge of whether or not certain public employees have been repeatedly named as defendants in successful civil complaints would help identify problematic areas of public functions." Id.

Plaintiff's argument is misplaced for two reasons. First, complaints filed in United States District Courts have not been redacted. Thus, if an administrative complaint resulted in litigation in the United States District Court and Defendant was able to connect the administrative complaint with litigation filed in the United States District Court, the information from the administrative complaint was not redacted.

Second and more important, the agency administrative complaints are treated differently than matters filed in the United States District Courts. Thus, for example, as it relates to an FTCA matter, there are two important statutory deadlines—(1) the presentation of the claim to the agency within two years of the date of injury and (2) filing a civil action after within six months of the notice of the final denial by the agency. See 28 U.S.C. § 2401(b). Similarly, in EEOC cases, the mere filing of an EEOC complaint with the agency is not the same as the filing of civil litigation in the United States District Court regarding EEOC claims. The staff names on an EEO complaint are personal in nature as they are claims filed by an individual. Purely personal details pertaining to government employees are protected under Exemption 6. Plain Dealer Publ'g Co.v. U.S. Dep't of Labor, 471 F. Supp. 1023, 1028-30 (D.D.C. 1979).

Indeed, innocuous information will trigger the protections of Exemption 6. See Wash. Post Co., 456 U.S. at 600. The information need not be intimate or embarrassing to qualify. Horowitz v. Peace Corps, 428 F.3d 271, 279 (D.C. Cir. 2005), cert. denied, 126 S. Ct. 1627 (2006); Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873, 875 (D.C. Cir. 1989); Knight v. NASA, No. 2:04-2054, 2006 WL 3780901, at *6 (E.D. Cal. Dec. 21, 2006); see also Appleton v. FDA, 451 F. Supp. 2d 129, 145 (D.D.C. 2006) ("Individuals have a privacy interest in personal information even if it is not of an embarrassing or intimate nature."). Some or all information in a claim summary may be personal in nature. As a result, the redactions to the claim summary portion of the various claims were determined on a case by case basis using a line by line review.

Plaintiff argues that the redaction of all personal names does not outweigh the public interest in disclosure of spent taxpayer dollars. Plaintiff asserts that "[n]o court, absent an order to seal the information, has found a per se privacy interest for litigants who file suit in open

court" and "when such litigants are successful and obtain monetary relief paid from the public coffers, the Courts have consistently held that disclosure of information related to the suit is proper," citing Inform v. Bureau of Land Management, 611 F.Supp. 2d 1178 (D. Colo 2009) and Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973). Plaintiff's Fifth Motion for Summary Judgment at 10. Plaintiff, however, fails to proffer any case that supports the position that the redaction of all personal names does not outweigh the public interest in the disclosure of spent taxpayer dollars. In fact, the cases proffered by the Plaintiff do not support that contention. For example, in Inform, the court was evaluating the application of Exemption 5, unlike Exemption 6 applied in this case, and does not support the proposition asserted by Plaintiff. Plaintiff also cites Lardner v. Dept. of Justice, 638 F.Supp.2d 14, 20 (D.D.C. 2009) for the proposition that it is entitled to know the identities of individuals who used governmental process to redress grievances suffered at the hands of public officials and who were paid with public funds in satisfaction of judgment or settlement on those claims. Lardner does not support Plaintiff's assertion that the redaction of all personal names does not outweigh the public interest in the disclosure of spent taxpayer dollars. The facts here are distinguishable. In Lardner, clemency applications in the Office of the Pardon Attorney do not have a reasonable expectation of privacy because the clemency application specifically states that upon request, the office would advise anyone whether a named person has been granted or denied clemency. Lardner, 638 at 24. Thus, Lardner provides no support for Plaintiff's position. Accordingly, Defendant has properly applied Exemption 6 to redact the personal identifying information in Exhibits 1-102.

C. Exemption 7(C) was Appropriately Applied to Redact the Names and Personal Identifying Information That Would Reveal the Identity of a Person as the Documents Related to the Enforcement of a Federal Law.

Exemption 7(C) of the FOIA exempts from mandatory disclosure information compiled for law enforcement purposes when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C).

Exemption 7(C) ordinarily permits the Government to withhold only the specific information to which it applies, not the entire page or document in which the information appears; any non-exempt information must be segregated and released, unless the "exempt and nonexempt information are 'inextricably intertwined,' such that the excision of exempt information would impose significant costs on the agency and produce an edited document with little informational value." Mays v. Drug Enforcement Admin., 234 F.3d 1324, 1327 (D.C.Cir. 2000) (citations omitted).

The information redacted by the BOP pursuant to Exemption 7 (C) is private in nature and the public's need to know does not outweigh this interest. Plaintiff's contention that the Defendant "improperly relies on Exemption 7(C) because (a) none of the documents at issue are properly considered law enforcements records and (b) Defendant has failed to show that the release of any individual name 'could reasonably be expected to constitute an unwarranted invasion of person privacy," citing 5 U.S. C. §552(b)(7)(C), is erroneous. Plaintiff's Fifth Motion For Summary Judgment at 15.

It is well established that courts do defer to agencies' assertions of law enforcement purposes. See Gardels v. CIA, 689 F.2d 1100, 1104-05 (D.C. Cir. 1982) (the "test" is not whether the court agrees with the agency; rather, the test is "whether on the whole record the Agency's judgment objectively survives" because court must "accord" weight to agency

determination); see also, Schoenman v. FBI, 575 F.Supp. 2d 166, 174 (D.D.C. 2008) (at "the onset the Court notes" agency specializing in law enforcement is entitled to deference when it invokes 7, but adding that deferential standard is not vacuous).

Under FOIA, "Courts have generally interpreted Exemption 7 as applying to records that pertain to specific investigations conducted by agencies, whether internal or external, and whether created or collected by the agency—in other words, investigatory files." See Families For Freedom v. U.S. Customs and Border Protection, 797 F.Supp. 2d 375, 397 n. 144 (S.D.N.Y. 2011); see e.g., Ortiz v. United States Dep't of Health and Human Servs., 70 F.3d 729, 32 (2d Cir.1995) (finding letter that HHS's Office of Inspector General "used ... to launch a criminal investigation" qualifies as a law enforcement record under Exemption 7); Vento v. Internal Revenue Serv., 714 F.Supp. 2d 137, 148 (D.D.C.2010) (finding documents "compiled in the course of an investigation into plaintiff's tax liability" qualify as law enforcement records under Exemption 7, and compiling cases); Ligorner v. Reno, 2 F.Supp. 2d 400 (S.D.N.Y.1998) (finding complaint letter that contained the identity of an individual who accused another of misconduct within the Department of Justice qualifies as a law enforcement record under Exemption 7); Lurie v. Department of Army, 970 F.Supp. 19, 36 (D.D.C.1997) (finding records pertaining to Army's informal investigation of military medical researcher's representations qualify as law enforcement records under Exemption 7).

Thus, it is axiomatic that a Complaint of Discrimination (Form DOJ 201) and Claim For Damage, Injury, or Death (Standard Form 95) all qualify as law enforcement records because the records, in and of themselves, accuse another of some level of misconduct.

Further, Plaintiff's reliance on whether the documents are law enforcement documents is somewhat misplaced. The two-part test for determining whether the threshold for Exemption 7

has been met is as follows: (1) whether the agency's investigatory activities that gave rise to the documents sought are related to the enforcement of federal laws or to the maintenance of national security; and (2) whether the nexus between the investigation and one of the agency's law enforcement duties is based on information sufficient to support at least a colorable claim of rationality. See Pratt v. Webster, 673 F.2d 408, 420-21 (D.C. Cir. 1982).

In Wilson Moorer's Fourth Supplemental Declaration,[2] dated May 26, 2011, the Defendant has articulated the enforcement of the federal laws related to each category of document in which Exemption 7(C) was applied. Although Plaintiff contends that matters arising in the context of civil claim litigation or quasi-judicial forums are not part of any law enforcement as is "commonly understood," Plaintiff's Fifth Motion For Summary Judgment at 16, the specific emphasis on "law enforcement" is misplaced. The appropriate emphasis, however, is on "enforcement of federal laws." When one couples "enforcement of federal laws" with the fact that the Defendant is an agency specializing in law enforcement, the Defendant is entitled to deference related to Exemption 7(C). Thus, the application of Exemption 7(C) was proper.

CONCLUSION

Based on the foregoing and its previous Memoranda, incorporated herein, Defendant submits that all responsive documents have been released to Plaintiff, that Exemptions 6 and 7(C) have been properly applied to the redactions in Exhibits 1-102, and that summary judgment should be granted to Defendant.

[2] For the convenience of the Court, Moorer's Fourth Supplemental Declaration is attached.

Respectfully submitted,

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United States Attorney
for the District of Columbia

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