

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RUSSELL MOKHIBER, )  
)  
Plaintiff, )  
) Civil Action No. 01-1974 (EGS/JMF)  
v. )  
)  
U.S. DEPARTMENT OF THE TREASURY, )  
)  
Defendant. )

**MOTION FOR SUMMARY JUDGMENT**

Plaintiff Russell Mokhiber brings this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, to secure the release of certain agency records revealing how the Department of the Treasury has resolved charges that various corporations have violated laws that are designed to prevent, among other things, transfer of assets to terrorist organizations and embargoed foreign nations. This Court has previously granted Plaintiffs' Motion for Partial Summary Judgment, which challenged the Department's position that it could limit the records disclosed to those in existence prior to May 2000. See Doc. No. 15, Order of April 3, 2002, granting Plaintiff's Motion for Partial Summary Judgment with respect to Count Three of the Complaint. The Department has now produced the records at issue, but has redacted large portions of the records. On September 6, 2002, the Department filed a table that lists the exemptions that it claims justify withholding this information. See Doc. No. 21, Index of Withheld Information.

Plaintiff hereby moves for summary judgment against the Department's exemption claims because the Department has redacted information in a manner that is contrary to the governing law. Most of the records at issue consist of memoranda describing the reasons that the agency should accept a settlement that will resolve charges that a corporation has violated the

law. Prior cases have squarely held that the public is entitled to know the agency's rationale for such actions, and that the agency may not withhold records on the basis that they contain recommendations when, as has occurred here, the agency adopts the recommendations as its final action. Moreover, the cases make clear that the agency may not rely on Exemption 5 to withhold information received from, or given to, an adversarial party seeking to avoid litigation or administrative sanctions by settlement. Finally, the Department may only withhold information on its deliberations and must release factual information in the records unless it is inextricably intertwined with the deliberative material. The Department has ignored these limitations of Exemption 5 and, as a result, has withheld the bulk of information that describes the basis for the agency's decision to settle with the corporations rather than bringing an enforcement action.

In addition, the Department has improperly withheld "tracking numbers" based on an exemption that applies only to information that discloses internal agency "personnel rules and practices" and has redacted the names of corporate agents on the basis of "personal privacy." These claims are also inconsistent with the governing law, and the Department is obligated to release the redacted information. Because the Department bears the burden of proof and has misconstrued the FOIA exemptions upon which it relies, Plaintiff is entitled to judgment as a matter of law.

## **BACKGROUND**

The Department of Treasury, through the Office of Foreign Assets Control ("OFAC"), is responsible for enforcing laws that impose economic and trade sanctions, freeze assets, and prevent money laundering. OFAC enforces laws that impose penalties for trading with or transferring assets to Angola (UNITA), Burma, Cuba, Iran, Iraq, Libya, North Korea, Sierra Leone, Sudan, the Taliban in Afghanistan, foreign narcotics traffickers, and foreign terrorists.

These enforcement activities are designed to further national security and foreign policy objectives under the Trading With the Enemy Act, 50 U.S.C. App. 16, the International Emergency Economic Powers Act, 50 U.S.C. § 1705, the Antiterrorism and Effective Death Penalty Act, 31 U.S.C. § 321, and a host of specific statutes and executive orders imposing trade embargoes and freezing assets. OFAC has the authority to impose civil penalties for violations of a number of these laws. In fiscal year 2000, OFAC processed more than 2,000 civil penalty cases, and collected more than \$3.2 million in fines.<sup>1</sup>

OFAC resolves many charges that these laws have been violated through informal settlements. For example, OFAC's regulations provide that a financial institution that has been cited for unlawfully transferring assets to a foreign terrorist organization identified by the United States may respond by proposing a settlement. 31 C.F.R. § 597.703(c) (2001). If the settlement proposal is accepted, OFAC will allow the entity suspected of violating the relevant laws to avoid acknowledging that it engaged in unlawful transactions by agreeing to pay money to settle the charges. Id. OFAC's procedures for imposing civil penalties under a number of different laws provide for such "informal settlements" after OFAC has determined that it has reasonable cause to believe that regulated entities have engaged in illegal transactions. See 31 C.F.R. §§ 500.703(c) (Foreign Assets Control Regulations); 545.703(e) (Taliban Sanctions Regulations).

Despite the significance of these settlements as evidence of whether OFAC is effectively enforcing the law, OFAC generally does not disclose the settlements or make them available for inspection by the public. See Declaration of Russell Mokhiber ("Mokhiber Decl."). On May

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<sup>1</sup> Senate Appropriations Committee, Subcommittee on Treasury and General Government, Statement of Richard Newcomb, Director of the Office of Foreign Assets Control U.S. Department of the Treasury, May 10, 2000, available at <http://www.treas.gov/press/releases/po370.htm>.

17, 2000, plaintiff Russell Mokhiber, the editor of the Corporate Crime Reporter, formally requested disclosure under the FOIA of “records of all enforcement actions settled by the OFAC since May 17, 1998.” See Mokhiber Decl.; Complaint and Answer ¶ 6.

After waiting over fifteen months for the Department to release the records, Plaintiff brought this action to compel the agency to respond. The Department finally released a few records describing OFAC settlements in February 2002, and agreed to a schedule that required it to release the remaining responsive records in three installments at the end of June, July and August 2002. See Doc. No.19, Revised Joint Report of Local Rule 16.3 Conference.<sup>2</sup> On September 6, 2002, the Department finally released the last of the records and filed with the Court a table that the agency describes as its Vaughn index.<sup>3</sup>

The majority of the records that the Department has released are “Settlement Memoranda” to the Director of OFAC that (i) describe the violation that the agency has identified; (ii) describe communications with the corporation charged with the violation, particularly settlement offers; (iii) list “[m]itigating factors” and other “[a]dministrative

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<sup>2</sup> The Department’s FOIA regulations incorporate a “time-of-request cut-off policy,” 65 Fed. Reg. 40,503 (2000), under which the Department considers records subject to the FOIA only if they are “in existence on or before the date of receipt of the request.” 31 C.F.R. § 1.5(a)(2). Count Three of Plaintiff’s complaint challenged this cut-off, which would have limited the records released by the Department to settlements reached between May 1998 and May 2000, even though the Department did not respond to Plaintiff’s request until 2002. See Public Citizen v. Department of State, 276 F.3d 634 (D.C. Cir. 2002) (holding that date of request cut-off is unlawful). This Court granted Plaintiff’s Motion for Partial Summary Judgment on this issue, the Department conceded that it was not entitled to apply the cut-off, and the Department has included records beyond the cut-off date in its response to this request.

<sup>3</sup> The Department’s table falls considerably short of being a true Vaughn index. A Vaughn index must contain three elements: a description of the material withheld, identification of the exemption claim, and the basis for the agency’s exemption claim. See Summers v. Department of Justice, 140 F.3d 1077, 1080 (D.C. Cir. 1998). The Department’s table fails to provide the third element because it gives only a conclusory statement of its basis for asserting particular exemptions, and the statements set forth in the table are not supported by an affidavit or other admissible evidence.

[c]onsiderations” that the agency considered in deciding whether to settle; and (iv) set forth a recommendation. See Mokhiber Decl., Exhibits, pp. 3-18. At the bottom of these Settlement Memoranda, the Director of OFAC, Richard Newcomb, has approved the settlements with the notation “OK/RN” or a similar indication of his approval, and a date.<sup>4</sup>

Before releasing these documents, the Department blacked-out large portions of the records and identified various FOIA exemptions as the justification for these redactions. Plaintiff challenges the Department’s claim that the following categories of information fall within the FOIA exemptions that the Department has cited:<sup>5</sup>

1. The Department claims that large portions of the records are protected by 5 U.S.C. § 552(b)(5), which applies to privileged information that appears in inter- and intra-agency memoranda. The Department has withheld any recommendations that appear in the records, as well as all paragraphs that are described as mitigating or aggravating factors, on the basis that these paragraphs are privileged because they reveal protected “internal deliberations” or convey “the substance of settlement negotiations.” See Doc. No. 21, Index of Withheld Information; Mokhiber Decl., Exhibits, pp. 3, 4. In many, but not all, of the records, the Department has also invoked Exemption 5 to withhold communications with the corporations identified as potential violators. For example, it

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<sup>4</sup> Of the 291 entries in the Department’s table describing the responsive records, 206 are listed as “SM,” which is the notation that the Department has used to describe settlement memoranda. Other documents are identified as settlement agreements, letters, “pre-penalty notices” or “PPN,” and accounting records.

<sup>5</sup> Although Plaintiff does not concede that the Department has applied the FOIA exemptions appropriately redacting other information from these records, Plaintiff’s challenge here is limited to the three categories of claims identified above. In particular, Plaintiff has chosen not to challenge redactions in which the Department has identified Exemption 4 as the applicable exemption, or Exemption 7(C) claims for names other than the names of corporate representatives.

has frequently withheld the description of the settlement offer that the corporation made to OFAC. See, e.g., id., pp. 5, 7, 10, 11, 13, 15, 16, 17.

2. The Department has withheld tracking numbers that appear on the records, citing 5 U.S.C. § 552(b)(2), an exemption that is available only for information “related solely to the internal personnel rules and practices of an agency.” See Mokhiber Decl., Exhibits, p. 1.
3. The Department has withheld the names of attorneys, corporate officials and other corporate agents, on the basis that disclosure of these names would constitute an “unwarranted invasion of personal privacy,” under 5 U.S.C. § 552(b)(7)(C). Id. at pp. 1, 4, 11.

For the reasons set forth below, Plaintiff challenges these claims and requests that the Court direct the agency to release the records without redacting this information.

### **ARGUMENT**

The “FOIA compels disclosure in every case where the government does not carry its burden of convincing the court that one of the statutory exemptions apply.” Goldberg v. United States Department of State, 818 F.2d 71, 76 (D.C. Cir. 1987), cert. denied, 485 U.S. 904 (1988). In evaluating the government’s claims that information is properly withheld, the statutory exemptions “must be narrowly construed” in favor of disclosure. Department of Air Force v. Rose, 425 U.S. 352, 361 (1976). The FOIA’s strong presumption in favor of disclosure places the burden on the agency to justify the withholding of any requested documents. United States Department of State v. Ray, 502 U.S. 164, 173 (1991). If the government does not satisfy this burden, the requester is entitled to summary judgment. Public Citizen Health Research Group v. FDA, 185 F.3d 898, 904-05 (D.C. Cir. 1999); accord Merit Energy Co. v. United States Dep’t of the Interior, 180 F. Supp.2d 1184, 1191-92 (D. Colo. 2001) (summary judgment entered for

requester on the court's own motion where government's motion for summary judgment failed to show records were exempt).

For the reasons discussed below, the Department's claims that information has properly been withheld under Exemptions 5, 2 and 7(C) of the FOIA are founded upon misinterpretation or misapplication of the applicable law. Because the Department has redacted information that may not properly be withheld under these exemptions, Plaintiff is entitled to summary judgment.

#### **I. THE DEPARTMENT HAS MIS APPLIED EXEMPTION 5.**

The Department relies upon Exemption 5 as the basis for withholding most of the information redacted from the records. See Appendix A, Table of Exemption 5 Claims. Exemption 5 allows the government to withhold "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). Information may be withheld under this Exemption if two conditions are met: Its source must be a government agency, and it must fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds the document. Department of the Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 8 (2001). The privilege that the Department invokes in this case is the so-called "deliberative process" privilege, which covers documents reflecting advisory opinions, recommendations, and deliberations that are part of a process by which government decisions and policies are formulated. See id.; NLRB v. Sears, Roebuck & Co., 421 U. S. 132, 150 (1975). For a document to be protected by the deliberative process privilege, it must be both "predecisional" and "deliberative." Army Times Publishing Co. v. Department of Air Force, 998 F.2d 1067, 1070 (D.C. Cir. 1993).

In applying the deliberative process privilege to the records concerning OFAC decisions to settle with corporations, the Department has ignored three limitations on the privilege: (1) the

privilege does not apply to records adopted as the agency decision; (2) the privilege is not available for communications from, or information shared with, outsiders; and (3) even if a record contains opinions that qualify for the privilege, facts within the document must be released.

First, the deliberative process privilege does not apply when a document recording “predecisional” recommendations is “adopted, formally or informally, as the agency position on an issue.” Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980); accord Badran v. United States Department of Justice, 652 F. Supp. 1437, 1439 (N.D. Ill. 1987) (rejecting deliberative process claim for information agency relied upon in taking final action). This exception was firmly established by the Supreme Court’s decision in NLRB v. Sears, 421 U.S. 132. In Sears, the Supreme Court observed that, although the FOIA allowed agencies to withhold deliberative records, including recommendations concerning whether the agency should bring a certain enforcement action, the statute affirmatively required the agency to disclose final decisions made in the disposition of adjudicated cases. Id. at 151-53. Exemption 5 can never apply to matters that constitute the “‘final dispositions’ of matters by an agency,” id. at 154-55, including final decisions not to bring an enforcement action. Id. at 155-58. Moreover, the Supreme Court concluded that documents incorporated by reference in the agency’s decision not to bring an enforcement action may not be withheld under Exemption 5. Id. 161. If the recommendations in a pre-decisional document are adopted by the agency, the document is no longer pre-decisional or deliberative, but represents the agency’s decision. Id.

Subsequent decisions have recognized that Sears precludes agencies from withholding recommendations after those recommendations are endorsed by agency decision makers. For example, in Bristol-Meyers Co. v. FTC, 598 F.2d 18 (D.C. Cir. 1978), the Court of Appeals observed that “the Court held in Sears that a memorandum prepared prior to the decision to

dismiss a charge will lose its predecisional character if the agency chooses expressly to adopt or incorporate it by reference in a ‘final opinion.’” Id. at 24. Once adopted, records are no longer privileged because the policies that underlie the deliberative process privilege no longer apply. If the recommendations of an agency employee are adopted, “the reasoning becomes that of [the] agency and becomes its responsibility to defend.” Id. at 24 (quoting Sears, 421 U.S. at 161). In addition, “agency employees will generally be encouraged rather than discouraged by public knowledge that their policy suggestions have been adopted by the agency.” Id. Perhaps most importantly, the public interest “in knowing the reasons for a policy actually adopted by an agency” supports disclosure of recommendations once they are adopted. Id. Consequently, when the agency’s final decision endorses a recommendation, the exemption recognized in Sears requires that the record be disclosed because agencies must “disclose all documents that are agency final opinions, even if they are inter- or intra-agency memoranda.” Rockwell International Corp. v. United States Department of Justice, 235 F.3d 598, 602 (D.C. Cir. 2001); accord Ashfar v. Department of State, 702 F.2d 1125, 1140-41 (D.C. Cir. 1983).

The Sears exception clearly applies to the OFAC Settlement Memoranda in which the Director has adopted recommendations by endorsing the Memoranda with his initials. The memoranda adopted by the Director are the record of the agency’s decisions. In fact, there is no separate, later document that sets forth the agency’s decision. The rationale for the agency’s decision to settle, rather than pursue enforcement — which is the information that FOIA contemplates must be released to inform the public of how the agency is carrying out its duties — is the recommendation and reasoning set forth in the memoranda adopted by the Director. The Department, however, has misapplied Exemption 5 by uniformly redacting this information from the Settlement Memoranda approved by the Director.

Second, the precedents firmly establish that an agency may not invoke Exemption 5 to withhold communications with outside entities that are pursuing interests that are distinct from, and may be adverse to, those of the agency. This limitation was underscored by the Supreme Court in Klamath Water Users Protective Association, 532 U.S. at 12-14. The Court observed that, although the language of Exemption 5 indicates that it is limited to communications between government employees, some decisions have extended its rationale to government consultants. Id. at 9-10. However, Exemption 5 does not permit agencies to withhold communications with outsiders that are communicating with the government “with their own, albeit entirely legitimate, interests in mind.” Id. at 12.

Accordingly, a long line of decisions have held that the government may not invoke Exemption 5 to withhold communications received from non-governmental entities in the course of settlement discussions and similar interactions. For example, in Madison County v. United States Department of Justice, 641 F.2d 1036, 1039-40 (1st Cir. 1981), the First Circuit held that correspondence between attorneys for an Indian tribe and the Justice Department with respect to a proposed settlement could not be withheld under Exemption 5. In Center for Auto Safety v. DOJ, 576 F. Supp. 739, 749 (D.D.C. 1983), this Court held that documents that the Department of Justice exchanged with General Motors in the course of discussions concerning modification of a consent decree could not be withheld under Exemption 5 because these communications were not internal to the government and there is no “settlement privilege.” See also Mead Data Central, Inc. v. United States Dept. of Air Force, 566 F.2d 242, 258 (D.C. Cir. 1977) (agency cannot assert Exemption 5 for documents disclosed to a business with a competitive interest in the records because Exemption is inapplicable if the information has been or is later shared with

third parties); North Dakota v. Andrus, 581 F.2d 177, 182 (8th Cir. 1978) (government may not disclose records to some private parties and then claim privilege precludes disclosure to others).<sup>6</sup>

The Department has ignored this limitation by redacting portions of the settlement records that contain communications between OFAC and the corporations that have been identified as potential violators of the laws that OFAC administers. In the most glaring example, the Department has withheld the description of the corporations' offers in the settlement negotiations from many (although not all) of the Settlement Memorandum. See Mokhiber Decl., Exhibits, pp. 5, 7, 10, 11, 13, 15, 16, 17. The offers from the corporations, counter-offers that OFAC makes to the corporations, and any other communications with private parties involved in these settlements are not exempt under Exemption 5 because they are neither inter- or intra-agency communications.

Third, Exemption 5 is intended to allow the agency to withhold opinions expressed in the course of internal government deliberations, but it is not a license to withhold facts.

Environmental Protection Agency v. Mink, 410 U.S. 73, 91 (1973). Consequently, factual information that can be disclosed without disclosing the content of agency deliberations is not covered by this Exemption. Mead Data, 566 F.2d at 260. The agency has the burden of

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<sup>6</sup> The only "privilege" raised by the Department's description of the material that it is withholding under Exemption 5 is the deliberative process privilege. See Doc. No. 21, Department's Index of Withheld Information. If the Department claims that its withholdings are justified by a privilege for communications with outsiders in the course of settlement negotiations, that claim would be unavailing. It is well established that there is no settlement "privilege" that would permit a party to withhold documents in discovery. Center for Auto Safety v. DOJ, 576 F. Supp. at 749; accord Grumman Aerospace Corp. v. Titanium Metals Corp., 91 F.R.D. 84, 90 (E.D.N.Y., 1981) (documents relating to settlement discussions may not be withheld when subpoenaed). While Federal Rule of Evidence 408 provides that settlement communications are not admissible unless they are offered for certain purposes, this is a limitation on admissibility and not a privilege. See Morse/Diesel, Inc. v. Fidelity and Deposit Co., 122 F.R.D. 447, 449 (S.D.N.Y. 1988) (courts have uniformly concluded that Rule 408 is not a privilege).

demonstrating that it has disclosed any segregable factual information in the records. Army Times Pub. Co. v. Department of Air Force, 998 F.2d 1067, 1071 (D.C. Cir. 1993); see also Trans-Pacific Policing Agreement v. United States Customs Serv., 177 F.3d 1022 (D.C. Cir. 1999) (agency must prove all segregable information has been released even if the segregability issue is not raised by the requester).

The records at issue here contain both factual information (e.g., descriptions of the violation at issue and the aggravating or mitigating circumstances) and opinions (e.g., recommendations on settlement proposals). Insofar as there are any sections of the documents that involve information that the government is not required to release under Sears and has not disclosed to private parties, the Department must demonstrate that it has released all segregable factual information in these records. See Playboy Enterprises, Inc. v. Department of Justice, 677 F.2d 931, 935 (D.C. Cir. 1982). The table that it has tendered as its Vaughn index falls far short of meeting this burden.

## **II. OFAC TRACKING NUMBERS ARE NOT COVERED BY EXEMPTION 2 BECAUSE THIS EXEMPTION IS LIMITED TO INTERNAL PERSONNEL RULES AND PRACTICES.**

The Department is withholding OFAC tracking numbers that appear on some of the documents at issue. See Appendix B, Table of Exemption 2 Claims. The Department claims that these numbers fall under 5 U.S.C. § 552(b)(2), which permits withholding material that is “solely related to internal agency personnel rules and practices.” To sustain a claim under this Exemption, the agency must show both that (1) the information falls within the terms of the statutory language and (2) there is no legitimate public interest in disclosure of the information. Abraham & Rose v. United States, 138 F.3d 1075, 1080 & n.4 (6th Cir. 1998); Schwaner v. Department of Air Force, 898 F. 2d 793, 794 (D.C. Cir. 1990). In this case it is not necessary to

consider the second requirement because the information that the Department is withholding is not part of the agency's internal personnel rules and practices.<sup>7</sup>

In Schwaner, the Court of Appeals rejected the claim that Exemption 2 allows the government to withhold information solely on the basis that it is trivial and internal, and held that lists of names and addresses of agency personnel were not exempt because such "lists do not necessarily (or perhaps even normally) shed significant light on a rule or practice; insignificant light is not enough." Id. at 795-96, 797-98. In Fitzgibbon v. United States Secret Service, 747 F. Supp. 51 (D.D.C. 1990), Judge Harold Greene considered the application of Schwaner to agency administrative file markings that were "used to index, store, locate, retrieve, and identify information," and concluded that these notations were not covered by Exemption 2 because they are not related to an agency personnel rule or practice.<sup>8</sup> Although some cases have found that certain agency codes and file numbers were covered by Exemption 2, see, e.g., Lesar v. United States Department of Justice, 636 F.2d 472 (D.C. Cir. 1980), these decisions either pre-date

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<sup>7</sup>The case law distinguishes between "low two" and "high two" claims. In a low two claim, the government does not contend that disclosure of the information would be harmful but maintains that the second prong of the test is satisfied because the information relates to trivial matters of no public interest. In a "high two" claim, the government maintains that disclosure of the information would be harmful because it would permit circumvention of agency rules or enforcement efforts. Schwaner, 898 F.2d at 794. In making its Exemption 2 claim here, the Department has not stated whether it is claiming that disclosure would be harmful. In any event, the statutory language on which Plaintiff relies to challenge the Department's claim here is applicable to all Exemption 2 claims.

<sup>8</sup> Accord Abraham & Rose, 138 F.3d at 1081 (information in IRS database used for tracking liens does not fall within Exemption 2); Goldstein v. Office of Independent Counsel, 1999 WL 570862, 6 (D.D.C. 1999) (records of reservations and phone calls are not exempt because they do not "implicate or relate in a significant way to any internal rule or practice."); DeLorme Pub. Co., Inc. v. National Oceanic and Atmospheric Admin., 917 F. Supp. 867, 876 (D. Me. 1996) (electronic raster compilations of nautical charts were not covered by Exemption 2 because they "do not shed significant light upon anything having to do with personnel matters or rules or practices governing agency personnel, and they are neither solely nor predominantly related to such matters.").

Schwaner, addressed codes that shed light on personnel matters (such as codes identifying agency sources), or involve notations with particularly sensitive information about the internal routing and distribution of records. See Schwaner, 898 F.2d at 796 (distinguishing prior cases concerning sources and file numbers); accord Fitzgibbon, 747 F. Supp. at 57 (same).

Because the OFAC tracking numbers do not constitute or even shed significant light on an internal agency personnel rule or personnel practice, the Department may not withhold these numbers under Exemption 2.

### **III. DISCLOSURE OF THE NAMES OF COMPANY REPRESENTATIVES DOES NOT CONSTITUTE AN UNWARRANTED INVASION OF PERSONAL PRIVACY.**

Several of the records at issue contain the names of attorneys, corporate officers or other agents for corporations that sought a settlement with OFAC. The Department has withheld these names under Exemption 7(C), which provides that information in records compiled for law enforcement purposes may be withheld if disclosure would constitute an “unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). Appendix C, Table of Exemption 7(C) Claims for Company Personnel.

These names are not properly withheld under Exemption 7(C) because the disclosures relate to business activity, not to personal privacy. “Information relating to business judgments and relationships does not qualify for exemption.” Washington Post Co. v. United States Dept. of Justice, 863 F.2d 96, 100 (D.C. Cir. 1988); accord Sims v. CIA, 642 F.2d 562, 574-75 (D.C. Cir. 1980). Indeed, courts have generally held that FOIA’s personal privacy exemptions do not apply to disclosure of individual names in contexts relating to business activities and relationships, “even if disclosure might tarnish someone’s professional reputation.” Washington Post Co., 863 F.2d at 100. For example, this Court has held that names appearing in EPA notice

letters concerning liability for hazardous waste could not be withheld, even where the letters contained the names of individuals, because letters that identified individuals “only in their public roles as users of hazardous waste disposal sites” did not implicate the personal privacy interest protected by the FOIA. Cohen v. EPA., 575 F. Supp. 425, 429-430 (D.D.C. 1993). This Court has also held that records identifying the name and addresses of recipients of government subsidies must be disclosed because the records did not concern their personal lives, but their professional relationships as business people. Washington Post Co. v United States Department of Agriculture, 943 F. Supp. 31, 32 (D.D.C. 1996); see also Board of Trade v. Commodity Futures Trading Commission, 627 F. 2d 392, 399-400 (D.C. Cir. 1980) (agency may not rely on 5 U.S.C. § 552(b)(6)’s protection of personal privacy to withhold records where the information withheld associates individuals with business and commercial matters, rather than revealing an aspect of their personal lives). Because the Department has used Exemption 7(C) to improperly withhold information that does not violate “personal privacy,” but merely discloses that the individuals acted as agents for the corporations that negotiated settlements with OFAC, Plaintiff is entitled to summary judgment rejecting these exemptions as well.

## CONCLUSION

The Court should enter summary judgment for Plaintiff because the Department has misapplied the exemptions in the FOIA by withholding information under Exemptions 5, 2, and 7(C) that is not exempt from disclosure as a matter of law.

Respectfully submitted,

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September 27, 2002

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RUSSELL MOKHIBER, )  
 )  
 Plaintiff, )  
 ) Civil Action No. 01-1974 (EGS/JMF)  
 v. )  
 )  
 U.S. DEPARTMENT OF THE TREASURY, )  
 )  
 Defendant. )

**ORDER**

Upon consideration of Plaintiff's Motion For Summary Judgment, defendant's response thereto, and the entire record in this case, it is this \_\_\_ day of \_\_\_\_\_, 2002.

ORDERED that Plaintiff's motion is granted; and it is further

ORDERED that within thirty days from the date of this Order the Department of the Treasury shall make available to Plaintiff the records that are responsive to Plaintiff's May 17, 2000, FOIA request without redacting the information previously withheld based on 5 U.S.C. § 552(b)(2) and (5), and without redacting the names of corporate representatives previously withheld based on 5 U.S.C. § 552(b)(7)(C).

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

Copies to:

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CERTIFICATE OF SERVICE

I, Michael E. Tankersley, hereby certify that on September 27, 2002, I caused copies of Plaintiff's Motion For Summary Judgment to be served by delivering an electronic copy to the CM/ECF system for the District Court for the District of Columbia.

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