

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NEIL ANAND, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 21-1635 (CKK)
)	
U.S. DEPARTMENT OF HEALTH AND)	
HUMAN SERVICES, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF ANGELA D. HERTEL

I, Angela D. Hertel, declare the following to be true and correct:

1. I am currently the Unit Chief of the Legal and External Affairs Sub-Unit (“CCARL”), Freedom of Information/Privacy Act Unit (“CCAR”), of the United States Department of Justice (“DOJ”), Drug Enforcement Administration (“DEA”), located at DEA Headquarters in Arlington, Virginia. Due to internal reorganizations, my title and office name have undergone several changes since October 1, 2020, but my responsibilities have remained the same and so I have served in my current capacity since October 2020. From May 2019 to October 2020, I served as the Acting Unit Chief of the Freedom of Information/Privacy Act Unit. I have been responsible for working on DEA matters related to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Privacy Act (“PA”), 5 U.S.C. § 552a (cited together as “FOIA/PA”) since 2009.

2. As the Unit Chief, I oversee the processing of certain requests to the DEA under the FOIA/PA. Due to the nature of my official duties and my experience in responding to requests for DEA records since 2009, I am knowledgeable about the policies and practices of the DEA related to the search, process, and disclosure of DEA records pursuant to the FOIA/PA.

3. To prepare this declaration, I have read and am familiar with the Complaint in the above styled action.

4. The statements I make in this declaration are true and correct to the best of my belief and are based on my personal knowledge as well as information acquired by me in the course of performing my official duties.

DEA's Law Enforcement Mission and Investigative Records

5. DEA's law enforcement mission includes enforcing the controlled substance laws and regulations of the United States. DEA's investigative jurisdiction derives from the Controlled Substances Act, 21 U.S.C. § 801, *et seq.* ("the CSA" or "the Act"). The CSA authorizes the DEA to enforce the Act through the investigation of trafficking in controlled substances and the violators who operate at interstate and international levels. This mission involves conducting criminal investigations to assist prosecutions of organizations and principal members of organizations involved in the growing, manufacture, or distribution of controlled substances appearing in or destined for illicit traffic in the United States. DEA also prevents, detects, and investigates the diversion of controlled pharmaceuticals and listed chemicals from legitimate sources while ensuring an adequate and uninterrupted supply for legitimate medical, commercial, and scientific needs.

6. Pursuant to its law enforcement mission, all DEA criminal law enforcement investigative records are maintained as part of the DEA Investigative Reporting and Filing System (“IRFS”). IRFS is a DEA Privacy Act System of Records (Justice/DEA-008) that accounts for all administrative, general, and criminal investigative records compiled by DEA for law enforcement purposes across all DEA offices worldwide, including records maintained at DEA field offices. This includes any records related to an individual’s involvement in, or association, with a DEA intelligence operation or civil, criminal, or regulatory investigation.

7. DEA locates records that are maintained as part of IRFS using the DEA Narcotics and Dangerous Drugs Information System (“NADDIS”). NADDIS is a centralized electronic data index system that captures discrete data points about a person or entity collected during the course of a DEA investigation and maintained as part of a DEA record. Utilizing NADDIS to conduct an initial query as to whether investigative records exist as part of IRFS is the practical means by which DEA identifies, and then locates, investigative records across any DEA office worldwide. A NADDIS search is a worldwide, comprehensive search because all DEA intelligence and investigative records are indexed into NADDIS for purposes of being maintained as part of IRFS.

FOIA/PA Request of Neil Anand

A. Administrative Chronology of Mr. Anand’s FOIA/PA Request

8. By electronic submission dated April 17, 2021, Mr. Anand submitted a FOIA request seeking “all drug enforcement agency documents concerning Neil Anand, Institute of Advanced Medicine and Surgery, Anand Medical Investment, Paul Soccio.” Mr. Anand submitted a signed Form DOJ-361 (Certification of Identity) with the FOIA request. **Exhibit A.**

9. By email dated April 21, 2021, DEA acknowledged receipt of Mr. Anand's April 17, 2021 FOIA request and assigned it case number 21-00240-P. **Exhibit B.**

10. By letter dated August 20, 2021, DEA notified Mr. Anand that his April 17, 2021 FOIA request¹ was considered to be of an "unusual circumstance" because it required searching other DEA offices for potentially responsive records. It also notified him that his request for records about "Paul Soccio" could be neither confirmed nor denied, pursuant to FOIA Exemptions 6 and 7(C), because to even acknowledge the existence of law enforcement records about another individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. **Exhibit C.**

11. By letter dated April 26, 2022, DEA notified Mr. Anand that it was withholding records that may be responsive to his April 17, 2021 FOIA request,² pursuant to Exemption 7(A) of the FOIA. DEA explained that the records were protected from disclosure because they were compiled for law enforcement purposes and the release of the records could reasonably be expected to interfere with enforcement activities. **Exhibit D.**

12. By letter dated August 2, 2022, DEA provided Mr. Anand its final determination on his April 17, 2021 FOIA request. The final determination letter re-stated that DEA could neither confirm nor deny the request for records about third party Paul Soccio, pursuant to FOIA Exemption 6 and 7(C). It also re-stated, and clarified, that DEA was withholding records that may be responsive to Mr. Anand's request for records about himself pursuant to the PA, 5 U.S.C.

¹ The August 20, 2021 letter mistakenly referred to Mr. Anand's request as being dated April 19, 2021.

² The April 26, 2022 letter mistakenly referred to Mr. Anand's request as being dated April 19, 2021.

§ 552a(j)(2), and the FOIA Exemption 7(A). DEA notified Mr. Anand that FOIA Exemptions 5, 6, 7(C), 7(D), 7(E), and 7(F) would apply if responsive records were disclosed. Lastly, DEA notified Mr. Anand that it conducted a search for records about the “Institute of Advance Medicine and Surgery” and “Anand Medical Investment” and located no records responsive to this part of his request. **Exhibit E.**

B. Search for Records Responsive to Mr. Anand’s FOIA/PA Request

13. DEA interpreted Mr. Anand’s FOIA request to be a request for investigative records about: (1) himself, (2) Institute of Advanced Medicine and Surgery, (3) Anand Medical Investment, and (4) Paul Soccio.

14. In order to locate all investigative records about Mr. Anand, DEA searched IRFS by querying NADDIS using the term “Neil Anand.” The search resulted in the identification of three investigative case numbers. Mr. Anand, however, is the subject of a pending federal criminal proceeding in the Eastern District of Pennsylvania involving health care fraud and conspiracy to distribute controlled substances in violation of the CSA (*United States v. Anand*, Crim. A. No. 19-0518 (E.D. Pa.)). Because of this still-pending criminal law enforcement proceeding, DEA withheld in full all responsive records pursuant to PA Exemption (j)(2) and FOIA Exemption 7(A), as well as asserted FOIA Exemptions 5, 6, 7(C), 7(D), 7(E), and 7(F) to protect from disclosure certain information within the records.

15. In order to locate all investigative records about Institute of Advanced Medicine and Anand Medical Investment, DEA searched IRFS by querying NADDIS, first using the term “Institute of Advanced Medicine and Surgery” and then separately using the term “Anand

Medical Investment.” Each search resulted in a “no results found” response in NADDIS.

Therefore, DEA located no records responsive to this part of the request.

16. For investigative records about Paul Soccio, DEA did not conduct a search because it is DEA standard practice to deny the request for investigative records about a third party, neither affirming nor denying the existence of records, known as a *Glomar* response pursuant to FOIA Exemptions 6 and 7(C). DEA asserts the *Glomar* response when nothing supports the conclusion that the third party is deceased or that the third party has authorized authorization to disclose records (to the extent they may exist), and there has been no official acknowledgement of an investigation about the third party.

17. I aver that DEA’s search was reasonably calculated to uncover all potentially responsive records and that all files likely to contain relevant documents were searched.

FOIA/PA Request of Lesly Pompy

A. Administrative Chronology of Mr. Pompy’s FOIA/PA Request

18. By letter dated April 17, 2021, Mr. Pompy submitted a FOIA/PA request seeking “DEA Administrative audit done on 09/26/2016 at 730 N. Macomb St., Monroe Michigan 48162”; “DEA investigation of Lesly Pompy regarding DEA and X-DEA registration”; “Investigation of investigation involving DEA registration BP 2527058, FP 2665478”; and “contractual relationship, statement of works between Blue Cross Blue Shield of Michigan Mutual Insurance Company and the DEA.” While the request stated that a completed Certification of Identity form (Form DOJ-361) was attached, no completed Form DOJ-361 accompanied the request.

Exhibit F.

19. By email dated June 4, 2021, DEA acknowledged receipt of Mr. Pompy's April 17, 2021 FOIA request and assigned it case number 21-00038-FP. **Exhibit G.**

20. By letter dated August 20, 2021, DEA notified Mr. Pompy that it needed either a completed Certification of Identity form (Form DOJ-361) or a notarized statement confirming his identity in order for DEA to search for responsive records about himself. The letter stated that DEA would administratively close the request within 30 days if Mr. Pompy did not respond with a completed identity form. **Exhibit H.**

21. On November 4, 2021, DEA administratively closed Mr. Pompy's FOIA request because it never received a completed Form DOJ-361 or a notarized statement confirming his identity.

22. On December 2, 2021, DEA re-opened Mr. Pompy's request because it received a copy of a completed Form DOJ-361 that had been filed as part of the December 2, 2021 Joint Status Report.

23. By letter dated August 2, 2022, DEA provided Mr. Pompy its final determination on his April 17, 2021 request. DEA informed Mr. Pompy that it was withholding responsive records about himself pursuant to the PA, 5 U.S.C. § 552a(j)(2) and FOIA Exemption 7(A). DEA explained that these records had been compiled for law enforcement purposes and could reasonably be expected to interfere with law enforcement proceedings. DEA notified Mr. Pompy that FOIA Exemptions 5, 6, 7(C), 7(D), 7(E), and 7(F) would apply if responsive records were disclosed. DEA also notified Mr. Pompy that it searched for records about the contractual relationship between Blue Cross Blue Shield of Michigan Mutual Insurance Company (hereinafter "BCBS of Michigan") and DEA, and did not locate any records responsive to this request. **Exhibit I.**

B. Search for Records Responsive to Mr. Pompy's FOIA/PA Request

24. DEA interpreted Mr. Pompy's FOIA request to be a request for: (1) investigative records about himself³ and (2) any contract or statements of work between DEA and the BCBS of Michigan.

25. In order to locate all investigative records about Mr. Pompy, DEA searched IRFS by querying NADDIS using the term "Lesly Pompy." The search resulted in the identification of active investigative cases. Additionally, Mr. Pompy is the subject of a pending federal criminal proceeding in the Eastern District of Michigan involving the distribution of controlled substances in violation of the CSA and health care fraud (*United States v. Pompy*, Crim. A. No. 18-20454 (E.D. Mich.)). Because of the active investigations and pending criminal law enforcement proceeding, DEA withheld in full all responsive records pursuant to PA Exemption (j)(2) and FOIA Exemption 7(A), as well as asserted FOIA Exemptions 5, 6, 7(C), 7(D), 7(E), and 7(F) to protect from disclosure certain information within the records.

26. In order to locate all contracts or statements of work between DEA and BCBS of Michigan, DEA's Office of Acquisition & Relocation ("FA") conducted a search of its records. DEA determined that FA would have all responsive records because it is responsible for planning, developing, and managing DEA acquisition activities worldwide. This includes the overall planning, solicitation, evaluation, award, administration, and close out of contracts and

³ Mr. Pompy requested investigative records about "DEA administrative audit done on 9/26/2016 at 730 N. Macomb St, Monroe, MI," which was an address associated with Mr. Pompy in NADDIS. He also requested records "involving DEA registration BP2527058 and FP2665478," which were also associated with Mr. Pompy in NADDIS. A DEA search for all investigative records about Mr. Pompy would include a search for records responsive to these specific requests.

purchase orders. FA searched its acquisition database using the terms “Blue Cross,” “Blue,” “BCBS,” “Michigan,” “Mutual,” and “Insurance” and located no records or any information to indicate any contract between DEA and BCBS of Michigan.

27. I aver that DEA’s search was reasonably calculated to uncover all potentially responsive records and that all files likely to contain relevant documents were searched.

FOIA Complaint’s May 11, 2021 Request

28. Generally, a FOIA or PA request may be submitted to DEA by three methods: (1) electronically using the DEA FOIA Public Access Link (PAL), available at <https://ifa/dea.gov/foia>, or the DOJ Office of Information Policy National FOIA Portal (“National FOIA Portal”), available at <https://www.foia.gov>; (2) by email at DEA.FOIA@dea.gov; and (3) by mail. DEA automatically receives by email, at its [DEA.FOIA](mailto:DEA.FOIA@dea.gov) email address, any requests that are submitted through DEA PAL or the National FOIA Portal. DEA uploads all requests into FOIAXpress⁴ upon receipt, regardless of the submission format.

29. Mr. Anand submitted his April 17, 2021 FOIA/PA request through the National FOIA Portal. DEA received his request when it was automatically forwarded to the [DEA.FOIA](mailto:DEA.FOIA@dea.gov) email address. Mr. Pompy submitted his April 17, 2021 FOIA/PA request by mail.

30. DEA received only the April 17, 2021 requests of Mr. Anand and Mr. Pompy. To ensure that it had not missed the May 11, 2021 request, DEA searched its [DEA.FOIA](mailto:DEA.FOIA@dea.gov) email inbox for any email that referenced Mr. Anand or Mr. Pompy by name (including different variations of each of their names), or that referenced their email addresses that are on file with DEA, and

⁴ FOIAXpress is document management system used by DEA to manage all records related to a FOIA or PA request. All records related to a request are uploaded into FOIAXpress, including the original FOIA or PA request.

located no requests from May 2021. DEA also searched FOIAXpress for all FOIA or PA requests submitted by Mr. Anand and Mr. Pompy, regardless of the date. DEA only located the April 17, 2021 requests for each and did not locate any requests, submitted either electronically or by email or mail, dated on or around May 11, 2021. If the May 11, 2021 request had been submitted to DEA electronically, or directly via email or mail, DEA would have some record of its submission.

Justification for Privacy Act Exemption

31. DOJ regulation, published at 28 C.F.R. § 16.98(i), exempts information that is maintained as part of IRFS from the access provision of the PA (5 U.S.C. § 552a(d)), as authorized by a PA general exemption at 5 U.S.C. § 552a(j)(2).⁵ Thus, an individual who is the subject of an investigative case maintained as part of IRFS does not have an individual right of access to their investigative records under the PA. DEA processes these PA exempt requests under the FOIA, withholding information from the subject individual only when both the PA and FOIA exemptions apply.

32. Mr. Anand and Mr. Pompy each requested investigative records about themselves. Investigative records are subject to the PA and are maintained as part of IRFS. Thus, pursuant to the DOJ regulatory exemption in 28 C.F.R § 16.98(i), neither Mr. Anand nor Mr. Pompy have a PA right of access to any records maintained as part of IRFS.

⁵ The general exemption in 5 U.S.C. § 552a(j)(2)(B) permits the head of an agency to promulgate rules to exempt any system of records within the agency from an individual right of access if the system of records is “maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws...and which consists of information compiled for the purpose of a criminal investigation....”

Justification for FOIA Exemptions

33. While neither Mr. Anand nor Mr. Pompy have access to their own investigative case records under the access provision of the PA, DEA further processed their requests under the FOIA in order to provide each with the greatest access possible. Pursuant to the FOIA, DEA invoked FOIA Exemption 7(A) to withhold in full the responsive investigative case records of Mr. Anand and Mr. Pompy because each is the subject of a pending federal criminal proceeding involving alleged violations of the CSA.

34. Given the pendency of these proceedings, DEA has properly invoked Exemption 7(A). When Exemption 7(A) is no longer applicable, DEA would continue to protect from disclosure certain information pursuant to FOIA exemptions 5, 6, 7(C), 7(D), 7(E), and 7(F). These exemptions are briefly addressed below for the purpose of preserving DEA's ability to assert these exemptions should Exemption 7(A), which is temporal in nature, expire.

FOIA Exemption 5

35. FOIA Exemption 5 exempts from mandatory disclosure "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). DEA anticipates that when the pending criminal proceedings have resolved, both Mr. Anand and Mr. Pompy's investigative case records will include communications between DEA and the DOJ attorneys representing the United States in the criminal proceedings, where the parties discuss the underlying facts at issue and legal strategy. Given that DEA is a component of DOJ, these records would be "intra-agency" records within the threshold of Exemption 5. Additionally, communications between DEA and DOJ

concerning legal aspects and strategy of the criminal proceedings would fall squarely within the deliberative process privilege and/or attorney-client privilege.

FOIA Exemption 7

36. FOIA Exemption 7 exempts from mandatory disclosure “records or information compiled for law enforcement purposes” when disclosure could reasonably be expected to cause one of the harms enumerated in the subparts of the exemption. 5 U.S.C. § 552(b)(7).

37. As a threshold matter, information withheld pursuant to Exemption 7 and its subparts must be or have been compiled for law enforcement purposes. The records relevant to Mr. Anand and Mr. Pompy’s request about themselves were compiled as part of a law enforcement criminal or regulatory investigation, where they were the subjects of the investigation, and maintained as part of a criminal or regulatory investigative case. Thus, all the responsive records are part of investigative cases that were compiled for law enforcement purposes and meet the threshold for applying FOIA Exemption 7.

38. Additionally, to the extent any records responsive to Mr. Anand’s request for records about Paul Soccio may exist in IRFS, the records would have been compiled as part of a law enforcement investigation and maintained as part of an investigative case.

FOIA Exemption 7(A)

39. FOIA Exemption 7(A) authorizes the withholding of “records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information...could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A).

40. DEA applied Exemption 7(A) to all investigative case records of Mr. Anand and Mr. Pompy because of pending criminal proceedings in the Eastern District of Pennsylvania and the Eastern District of Michigan, respectively. Both criminal proceedings involve alleged violations of the CSA, the enforcement of which is one of DEA's primary law enforcement missions. The release of DEA's investigative case records to Mr. Anand and Mr. Pompy while the criminal proceedings are pending could reveal information that Mr. Anand and Mr. Pompy would not otherwise have access to and would undermine the United States' prosecution in the pending proceedings as well as in any criminal appellate process.

FOIA Exemptions 6 and 7(C)

41. FOIA Exemptions 6 and 7(C) protect against unwarranted invasions of individuals' personal privacy. Exemption 6 protects information about individuals in personnel, medical, and similar files when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Exemption 7(C) protects information compiled for law enforcement purposes, which if disclosed "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.C.S. § 552(b)(7)(C).

42. Given the nature and context of DEA's investigative records, the disclosure of any information could potentially tip-off a criminal or drug trafficking organization that they are the subject of a DEA investigation, or potentially subject an individual to unwarranted attention. If DEA denied the existence of such records in cases when no responsive records existed, it could not then, in cases where responsive records actually exist, neither affirm nor deny the existence of such records without in fact disclosing the existence of an investigation. Consequently, DEA must consistently neither confirm nor deny responsive records exist in situations where the mere

acknowledgement of responsive records would disclose information protected from disclosure by the FOIA. In response to Mr. Anand's request for investigative records about Paul Soccio, DEA asserted a *Glomar* response pursuant to Exemptions 6 and 7(C) because DEA had no evidence of Mr. Soccio's death, nor did it have authorization from Mr. Soccio to disclose information to Mr. Anand. The disclosure of even the existence of DEA law enforcement records concerning a third party, such as Mr. Soccio, could reasonably be expected to subject him to unwarranted invasions of personal privacy. Mr. Soccio has a substantial privacy interest in not being associated with a DEA law enforcement investigation. Members of the public would draw adverse inferences about Mr. Soccio from the mere fact that he might be mentioned in the law enforcement investigative records.

43. Even if a *Glomar* response based on Exemption 6 and 7(C) was not warranted for Mr. Soccio, DEA would also be justified in categorically denying Mr. Anand's request for information about him and not conducting a search because being linked with any law enforcement investigation carries a strong negative connotation and stigma.

44. Similarly, Exemptions 6 and 7(C) also protects personally identifying information, such as names, address, and dates of birth, about non-law enforcement individuals contained within the responsive investigative case records of Mr. Anand and Mr. Pompy. The investigative case records include personally identifying information of DEA registrants (i.e., prescribing doctors), patients, and witnesses. These individuals are not the subject of the investigative case records, but nonetheless have a personal privacy interest in not being associated with a law enforcement investigation. Members of the public would draw an adverse inference from the mere fact that

these individuals are mentioned. Mere mention in a DEA investigative record could also subject an individual to possible violent retribution by criminal wrongdoers.

45. DEA balanced the privacy interests of the individuals against any FOIA public interest in disclosing the personally identifying information. DEA determined that disclosure of the identities, or any associated information of individuals mentioned in a criminal investigation, no matter the circumstances, would subject the individuals to unwarranted attention, harassment, and potential harm, which gives rise to a significant privacy interest. DEA also considered the stigmatizing effect of being associated with a criminal investigation and determined that the disclosure of personally identifying information would not aid the public's understanding of how DEA carries out its mission of enforcing the controlled substance laws.

46. The FOIA public interest is limited to information that would shed light on the government's performance of its official duties – in particular, on DEA's performance of its mission to enforce the controlled substance law, and investigate violations of the laws, to keep America safe from dangerous drugs and those that traffic in them. In assessing whether there is a FOIA public interest in disclosure, DEA considered its mission and whether disclosing personally identifying information sheds light on the operations and activities of DEA. Disclosure of personally identifying information would not aid the public's understanding of how DEA carries out its mission; therefore, the FOIA public interest in the information is de minimis.

47. The significant privacy interests outweighed the public interests in the disclosure of information. As such, Exemptions 6 and 7(C) protect this information because disclosure would constitute a clearly unwarranted invasion of personal privacy.

FOIA Exemptions 6, 7(C), and 7(F)

48. In conjunction with Exemptions 6 and 7(C), Exemption 7(F) protects the personally identifying information of DEA employees. Exemption 7(F) protects information compiled for law enforcement purposes, which, if disclosed “could reasonably be expected to endanger the life or physical safety of an individual.” 5 U.S.C. § 552(b)(7)(F). Exemptions 6, 7(C), and 7(F) protect the disclosure of personally identifying information of DEA Special Agents and Diversion Investigators conducting criminal and regulatory investigations of alleged violations of the CSA. The specific information protected includes names; unpublished individual phone numbers; specific locations of offices that are not generally made public by DEA, including the street address of a DEA evidence storage facility; and Group Numbers (solely internal code that identifies an office location).

49. In order to determine whether to disclose the information, DEA balanced the privacy interests of the individuals against any FOIA public interest in disclosing the personally identifying information. DEA determined that disclosure of the identities, or any associated personal information, of law enforcement employees would subject the individuals to unwarranted attention, harassment, and potential harm, which gives rise to a significant privacy interest. Considering the sensitive and often contentious nature of the work of law enforcement personnel, and in particular DEA employees, the disclosure of their identities or contact information would seriously prejudice their effectiveness in carrying out their official duties and subject them to unwarranted harassment. Publicity about the individual’s DEA employment may seriously prejudice the effectiveness of that employee’s ability to conduct their official duties. Moreover, given the sensitivity of the DEA’s work and mission, identification of the DEA

employee, and access to sensitive information afforded that position, risks this and other DEA employees being targeted by those who would undermine the critical work conducted by DEA on a daily basis. Additionally, the disclosure of the identities and specific locations of DEA employees actively working on investigations, or who have worked on investigations resulting in a conviction, could endanger their lives and physical safety if members of the public, including drug trafficking organizations, have access to the information and wish to harm DEA employees because of their work.

50. In assessing whether there is a FOIA public interest in the disclosure of law enforcement personally identifying information, DEA once again considered its mission and whether disclosing the personally identifiable information of law enforcement personnel sheds light on the operations and activities of DEA. Disclosure of this information would not aid the public's understanding of how DEA carries out its mission; therefore, the FOIA public interest in the information is de minimis.

51. For these reasons, DEA determined that the significant privacy interest outweighed the relatively insignificant public interest in the disclosure of the information. As such, Exemptions 6, 7(C), and 7(F) protect the information because disclosure would constitute a clearly unwarranted (and could reasonably be expected to constitute an unwarranted) invasion of personal privacy.

Segregation of Non-exempt Information

52. In each instance where information will be withheld pursuant to Exemptions 6, 7(C), or 7(F), every effort is made to release all segregable information without invading the privacy interest of the individual to whom the information pertained. While Mr. Anand and Mr. Pompy

may have knowledge about some of the protected information, it does not negate an individual's significant privacy interests in not having their information disclosed to the public. No additional information may be segregable for disclosure without revealing the protected information.

FOIA Exemption 7(D)

53. FOIA Exemption 7(D) protects “records or information compiled for law enforcement purposes [which] could reasonably be expected to disclose the identity of a confidential source” and information furnished by a confidential source “in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation.” 5 U.S.C. § 552(b)(7)(D). Exemption 7(D), in conjunction with Exemptions 6, 7(C), and 7(F), protects the identity of a DEA confidential source (“CS”) and all information the CS provides to DEA.

54. DEA policy requires that all persons used as a DEA CS be vetted and established through a formal DEA process. The formal process includes a written agreement between DEA and the CS where DEA explicitly states that the United States Government and DEA will protect the CS's identity to the extent that it can under the law. In the investigative records of Mr. Anand and Mr. Pompy, Exemption 7(D), in conjunction with Exemptions 6, 7(C), and 7(F), will protect the information naming or otherwise identifying the sources who provided information to DEA under an express assurance of confidentiality or during the course of an investigation under circumstances from which an assurance of confidentiality can reasonably be inferred.

55. Not only would disclosure of the information reveal the information provided to DEA by a DEA CS, it could potentially reveal the identity of the CS, which could harm other DEA criminal investigations and development of criminal intelligence. Release of CS information,

including information that could potentially reveal a CS's identity would hamper future cooperation by individuals. Because of the nature of DEA's criminal investigations, any information that could identify a CS could subject the CS or the CS's family members to serious bodily harm, substantial repercussions, and possibly even death. Therefore, Exemption 7(D), in conjunction with Exemptions 6, 7(C), and 7(F), protects the specific information from disclosure.

Segregation of Non-Exempt Information

56. On the limited pages where DEA will withhold information pursuant to Exemption 7(D), every effort will be made to release all segregable information without disclosing the identity of the DEA CS or information provided by the CS. No additional information may be segregable for disclosure without revealing the protected information.

FOIA Exemption 7(E)

57. FOIA Exemption 7(E) protects "records or information compiled for law enforcement purposes" when disclosure "would disclose techniques and procedure for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E). Within the investigative records of Mr. Anand and Mr. Pompy, Exemption 7(E) protects the following categories of information: (a) investigative case numbers, (b) Geo-Drug Enforcement Program ("G-DEP") identifiers, (c) NADDIS numbers, (d) DEA controlled substance codes, (e) Qualitative Characterization codes, and (f) DEA registration numbers.

58. Investigative case number. Exemption 7(E) protects investigative case numbers, including investigative file numbers. DEA investigative case numbers are a series of numbers and letters, which are solely internal to DEA practices and can be legitimately used only by DEA

employees. Case numbers reveal the specific DEA office that initiated the investigation, the year the investigation was established, and the total number of cases initiated by the DEA office in a particular fiscal year. Disclosure of the investigative case number identifies the investigative interest or priority given to the investigation. Disclosing the information would give bad actors key information about how DEA conducts its investigations and could reasonably be expected to create a risk of circumvention of the law by revealing how DEA's law enforcement databases work and render them vulnerable to manipulation. Additionally, investigations of associates and criminal business enterprises are linked to the same investigative case number. For example, the records of DEA civil proceedings, such as an administrative forfeiture proceeding, include reference to the related criminal investigative case number, if any. Disclosure of the investigative case number could be used to determine the scope of DEA's investigation of a target's criminal operation. The release of investigative case numbers would allow a suspect to change their patterns of drug trafficking and develop enforcement countermeasures to avoid detection and apprehension.

59. G-DEP identifier. Exemption 7(E) protects internal G-DEP identifiers. Similar to the investigative case number, the G-DEP is a series of letters and numbers that indicates the classification of the subject of an investigation, the types and amount of suspected controlled substances that are involved, the priority of the investigation, and the suspected location and scope of criminal activity. All DEA investigations are assigned a G-DEP identifier at the time an investigation is opened. As with the investigative case numbers, the G-DEP can be legitimately used only by DEA employees and solely for investigative purposes. Disclosing the information could reasonably be expected to create a risk of circumvention of the law by revealing how

DEA's law enforcement databases work and render them vulnerable to manipulation. Disclosure of G-DEP identifiers would reveal to the public, and more importantly, the subjects of investigation, the priority given to specific narcotics investigations and the scope of investigatory operations. Disclosure of the information would allow targets of current investigations and targets of future investigations to circumvent the law and would reduce or negate the effectiveness of law enforcement investigative procedures, if the information could be decoded.

60. NADDIS number. Exemption 7(E) protects NADDIS numbers. NADDIS generates and assigns a system-generated number to an individual based on a specific algorithm. Disclosure of NADDIS numbers would reveal, for example, when DEA first became aware of the subject of an investigation or became aware of a known associate. Such disclosures would enable the subjects of investigations, and individuals conducting criminal activity but not yet on DEA's radar, to identify the timing and circumstances of when DEA became aware of the individual or began investigating the individual. This would provide valuable information to investigative targets, especially to individuals who are not yet aware that they are the subject of an investigation, allowing the individuals to take evasive actions or countermeasures to circumvent investigation.

61. Controlled substance code. Exemption 7(E) protects an internal DEA code for controlled substances involved in investigations. The code represents the controlled substance or commodity being trafficked by the subject of an investigation or drug trafficking organization. While the code by itself is used to identify specific controlled substances, it is more importantly used as part of the G-DEP identifier and, therefore, can be legitimately used only by DEA employees. As discussed earlier, revealing the controlled substance code would give investigation targets information into the scope of DEA's investigations and would reduce or

negate the effectiveness of DEA's investigative procedures. Disclosure of this information would allow criminals to decode DEA's internal data, determine what drug was being investigated by DEA, and then change their methods of drug trafficking to evade detection.

62. Qualitative Characterization code. Exemption 7(E) protects Qualitative Characterization codes. This solely internal DEA code provides information about the primary role or criminal activity conducted within a drug trafficking organization by the subject or target of an investigation. As with other internal numbers used by DEA, this number can be legitimately used only by DEA employees and solely for investigative purposes. This code represents DEA's understanding of the level of involvement of the subject or target within a drug trafficking organization or their involvement in the alleged criminal activity being investigated, and allows DEA to tailor the scope of its investigation accordingly. Disclosing the information could reasonably be expected to create a risk of circumvention of the law because it would reveal the scope of DEA's investigation and its understanding of the roles of the individuals involved.

63. DEA registration number. Exemption 7(E) protects the unique DEA registration number issued to regulated persons authorized to handle controlled substances or chemicals. These regulated persons include any entity or individual who manufactures, distributes, imports, exports, or prescribes controlled substances. The registration number is a series of letters and numbers that indicate the type of registrant, the initials of the registrant, and a unique code that DEA uses to confirm the validity of the number. The ability to confirm that a registration number is valid prevents the public from creating fake registration numbers to illegally obtain or otherwise have unauthorized access to controlled substances. Additionally, the release of

registration numbers to the general public over time could result in the “reverse engineering” of the validity code.

64. The disclosure of any of these categories of information would reveal techniques and practices used in DEA investigations and could provide information to individuals seeking to violate or circumvent the law to take proactive steps to counter operations and investigative actions taken by DEA during drug enforcement operations. How DEA internally labels and codes information is a law enforcement technique and procedure that is not generally known to the public. By using discrete pieces of information and applying a mosaic analysis, individuals of the public looking to violate or circumvent the law could use the information to change their pattern of activity to avoid detection, apprehension, create alibis for criminal activities, and illegally obtain controlled substances.

Segregation of Non-Exempt Information

65. Every effort is made to release all segregable information without disclosing law enforcement techniques or procedures. No additional information may be segregable for disclosure without revealing the protected information.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

August 15, 2022

DATE

**ANGELA
HERTEL**

Digitally signed by
ANGELA HERTEL
Date: 2022.08.15
16:54:59 -04'00'

ANGELA D. HERTEL
Chief, Legal and External Affairs Sub-Unit
Freedom of Information and Privacy Act Unit
Drug Enforcement Administration