

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NEIL ANAND, *et al.*,

*Plaintiffs,*

v.

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, *et al.*,

*Defendants.*

Civil Action No. 21-1635 (CKK)

**DECLARATION OF ROBIN BROOKS**

I, Robin Brooks, declare as follows:

1. I am the Director, Freedom of Information Act Division, Office of Inspector General (“OIG”), U.S. Department of Health and Human Services (“HHS” or “the Department”). In this capacity, I am the Freedom of Information Officer for OIG. I have held this position with the Department since February 2006.

2. The Department’s administration of its obligations under the Freedom of Information Act, 5 U.S.C. § 522 (“FOIA”), is decentralized and consists of eleven Operating Divisions, the Office of the Secretary, and OIG, all of which receive and respond to FOIA requests. The FOIA Division of OIG handles all FOIA requests for OIG records, and the Office of the Secretary handles appeals of OIG FOIA determinations.

3. My duties include responding to FOIA requests for OIG records. My duties include managing searches for OIG records in response to requests under the FOIA and determining whether to release or withhold records or portions of Department records in

accordance with the FOIA and the HHS regulations implementing the FOIA. *See* 45 C.F.R. Part 5.

4. I make this declaration based upon my personal knowledge and information available to me in my official capacity.

5. I am familiar with OIG's handling of the FOIA request at issue in this case.

6. I am also familiar with the law enforcement investigation into Plaintiff Anand and the progress of the resulting law enforcement proceedings. On September 10, 2019, a grand jury indicted Plaintiff Anand on multiple criminal counts, including health care fraud and the conspiracy to distribute controlled substances, in the Eastern District of Pennsylvania, and Plaintiff Anand is still awaiting trial. *United States v. Neil K. Anand et al.*, No. 2:19-cr-00518 (E.D. Pa.).

7. The purpose of this declaration is to explain OIG's response to the FOIA request at issue in the above-captioned litigation and to explain why responsive records are exempt from disclosure under FOIA Exemptions 3 (protecting records where disclosure is prohibited by statute), 4 (protecting trade secrets and confidential commercial or financial information), 5 (protecting deliberative and privileged communications), 6 (protecting personal privacy), 7A (protecting law enforcement investigations and proceedings from interference), 7(C) (protecting the personal privacy of individuals associated with law enforcement proceedings), 7(E) (protecting law enforcement techniques and procedures), and 7(F) (protecting law enforcement records that could endanger the life or physical safety of any individual).

#### **The Administrative Record**

8. On April 17, 2021, Plaintiff Anand submitted a FOIA request to OIG seeking “[a]ll information concerning data analytics algorithms used in the Pill Mill Doctor Project, all

reports and work product generated by contractor Qlarant corporation concerning the Pill Mill Doctor Project, statement of work and official contract of Qlarant corporation, all reports from Blue Cross Blue Shield corporation to OIG concerning improper prescribing of opiates by specific physicians, all reports of OIG concerning Neil Anand or Institute of Advanced Medicine and Surgery.” A true and correct copy of the request is attached as Exhibit 1.

9. Plaintiff Anand did not include Plaintiff Pompy as a requester.

10. After reviewing the FOIA request, OIG determined that Plaintiff Anand’s request for “all reports from Blue Cross Blue Shield corporation to OIG concerning improper prescribing of opiates by specific physicians” was too vague and did not reasonably describe the records he sought. A search for “Blue Cross Blue Shield” in the OIG database would have returned a voluminous amount of non-responsive claims information. All OIG reports are indexed by the subject of the investigation, and OIG cannot retrieve them by submitter. OIG also determined that the OIG Office of Investigations (“OI”) was the only OIG office reasonably likely to possess responsive records regarding the Pill Mill Doctor Project, Neil Anand, and/or the Institute of Advanced Medicine and Surgery.

11. OIG therefore sent the request to OI to conduct a search of its law enforcement database. That database houses all investigations conducted by OI, including complaints as well as documents related to civil and criminal cases. OI searched for records containing “Anand,” the “Institute of Advanced Medicine and Surgery,” “Qlarant,” or “the Pill Mill Doctor Project,” and located one case file where Mr. Anand, the owner of the Institute of Advanced Medicine and Surgery, was a subject of investigation. After locating that case file, OI reviewed all the documents in the electronic case file for documents pertaining to Mr. Anand, the Institute of Advanced Medicine and Surgery, Qlarant, or the Pill Mill Doctor Project.

12. After OI failed to locate any records regarding the Pill Mill Doctor Project, OIG consulted with the case agents, who confirmed that they were unfamiliar with this phrase. The case agents also confirmed that they did not have any responsive documents from Qlarant and that a statement of work and/or contract with Qlarant, to the extent they exist, would be outside the scope of OIG's investigative work.

13. OIG denied Plaintiff's request for the responsive records within the case file by letter dated April 23, 2021. OIG explained that it was denying the requested records under FOIA Exemption 7(A) due to the open and ongoing investigation concerning the subject of Anand's request. OIG's April 23, 2021 response to the FOIA request is attached as Exhibit 2.

14. Plaintiff Anand subsequently appealed OIG's determination on April 29, 2021. Plaintiff Anand's appeal is attached as Exhibit 3.

15. The Department has checked its FOIA database and correspondence and has not identified any correspondence from either plaintiff or an acknowledgement letter from May 11, 2021.

16. Plaintiffs filed this action on June 11, 2021, before the Department responded to the appeal.

17. By email dated June 15, 2022, OIG issued a supplemental release responsive to Plaintiff Anand's request for the statement of work and official contract of Qlarant Corporation after the Centers for Medicaid and Medicare ("CMS"), a separate component of HHS, located 151 pages that CMS had previously released in response to unrelated FOIA requests. OIG released 151 pages with portions withheld pursuant to FOIA Exemptions 3, 4, and 6. OIG's June 15, 2022 release letter is attached as Exhibit 4.

18. OIG also conducted a supplemental search of its law enforcement database in June 2022 to locate any records that the initial search had excluded by using the term “the Pill Mill Doctor Project” rather than the term “Pill Mill Doctor Project.” After deleting the definite article, OIG located closed investigative reports comprising 774 pages. OIG released the reports to Plaintiff on July 31, 2022, with portions ultimately withheld pursuant to FOIA Exemptions 3, 6, 7(C), and 7(E).<sup>1</sup> The July 29, 2022 release letter and July 31, 2022 transmittal are attached as Exhibit 5. OIG included 61 pages of publicly available documents from Anand’s case file in their entirety with the release. OIG also located and fully withheld two reports totaling 74 pages pursuant to Exemptions 5, 6, 7(A), and 7(C) as those reports pertain to open and ongoing investigations.

**Categories of Partially Withheld Records and Bases for Withholdings**

19. The Department has adopted a categorical approach to describing the records and withholdings at issue in this case.

**Qlarant Statement of Work and Contract**

20. Defendant’s June 15, 2022 release of the statement of work and official contract of Qlarant Corporation consisted of 144 pages released in full and 7 pages released with portions redacted pursuant to Exemptions 3, 4, and 6.

21. Defendant asserts Exemption 3 pursuant to 26 U.S.C. § 6103, which exempts Taxpayer Identification Numbers from disclosure.

22. Defendant asserts Exemption 4 to contract amounts, including Total Estimated Cost, Total Award Fee, Costs, Base Fees, Award Fees, Billing Rate, and Indirect Cost Ceiling

---

<sup>1</sup> OIG previously asserted Exemption 4 for Federal Tax Identification Numbers. OIG no longer asserts Exemption 4 for these redactions and instead asserts Exemption 3.

Rate. The bid amounts incorporated into the contract are commercial information that bidders submit to the agency but otherwise keep confidential.

23. Defendant asserts Exemption 6 to the “Key Personnel” list under the task order. I have determined that this list of names satisfies Exemption 6’s threshold requirement of being about particular individuals and therefore a similar file. I have also determined that disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Releasing the identities of individuals investigating possible Medicare/Medicaid fraud would invade their privacy by exposing them to harassment from the targets of their investigation. After balancing the public’s interest in knowing how the agency is maintaining the integrity of its programs with the privacy interest of the individuals, I have determined to release the titles of those individuals. The release of the titles satisfies the public’s interest in knowing how the agency is maintaining the integrity of its programs, and providing the identities of the individuals filling those roles would not further inform the public. The privacy interest therefore outweighs the public interest with respect to the withheld names.

#### Closed OIG Reports

24. For the closed OIG reports released in part on July 31, 2022, Defendant asserts FOIA Exemptions 3, 6, 7(C), and 7(E).

25. Defendant asserts Exemption 3 for the Social Security Number of a deceased individual pursuant to 42 U.S.C. § 1306c, which exempts from disclosure information contained in the Death Master File. This individual’s death occurred within the past three years.

Defendant also asserts Exemption 3 to Federal Tax Identification Numbers pursuant to 26 U.S.C. § 6103.

26. Defendant asserts Exemptions 6 and 7(C) to the names, dates of birth, contact information, and other Personally Identifiable Information (“PII”) of beneficiaries, federal agents, investigators, complainants, witnesses, and other investigation subjects. The privacy analysis is the same as that described for Exemptions 6 and 7(C) in the “Investigational Transcripts and Associated Records,” “Claims Data/Analysis,” and “Investigational Techniques” categories of fully withheld records herein, and this paragraph incorporates paragraphs 34–36, 37–38, 41, and 43, by reference.

27. Defendant asserts Exemption 7(E) to Drug Enforcement Administration (“DEA”) registration numbers, which the government uses to regulate the prescription of controlled substances. The government uses DEA registration numbers to investigate abusive or fraudulent prescriptions, and the release of the numbers is reasonably expected to risk circumvention of law as individuals could use these numbers to forge prescriptions.

**Categories of Fully Withheld Records and Bases for Withholdings**

28. For each of the categories of documents listed below, Defendant asserts Exemption 7(A), as well as the exemptions listed in the respective sections. The premature disclosure of these records in response to this FOIA request is reasonably expected to interfere with the pending criminal proceeding against Plaintiff Anand through the premature disclosure of: evidence; witness information; prospective testimony; identification of the evidence likely to be relied upon by the government; the activity under continuing investigation during the litigation; the direction of the government so far; government strategy; the presence or absence of whistleblowers or other undisclosed sources; the scope and limits of the government’s investigation; and attorney work product; along with other confidential information. Disclosures concerning the details of the investigation risk witness intimidation and the possible silencing of

other information sources. Disclosure of these records also risks the concealment of damaging evidence and the fabrication of false evidence.

#### Grand Jury Records

29. The case file contains grand jury material subject to the disclosure restrictions of Rule 6(e) of the Federal Rules of Criminal Procedure. Fed. R. Crim. P. 6(e), enacted by Act of July 30, 1977, Pub. L. No. 95-78, 91 Stat. 319. The Department therefore asserts Exemption 3 to these records.

30. OIG withheld grand jury material contained within the casefile to protect both the substance of what was said to the grand jury and any references to any particular witnesses who testified before the grand jury. OIG protected the questions and answers to and from witnesses as well as the surveillance reports and notes. Disclosing these records risks leading to witness tampering and the destruction of evidence and would reveal protected grand jury procedures.

31. The case file also contained an unsigned, unfiled version of the indictment. The Defendant respectfully refers Plaintiff and the Court to the filed version of the indictment, which the Department has attached as Exhibit 6.

#### Investigational Transcripts and Associated Records

32. This category consists of witness statements and associated HHS-OIG agent notes, for which the Department asserts Exemptions 5, 6, and 7(C).

33. Exemption 5 exempts from 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.” This exemption applies to documents that are normally privileged in the civil litigation context. Consequently, Exemption 5 permits the withholding of all or portions of any documents that are subject to the deliberative process privilege. The Department asserts



this exemption as to the HHS-OIG agent notes on witness statements, which meet the privilege's requirements of being inter-agency, deliberative, and predecisional. The Department has not shared these notes outside the federal government, and the notes represent the thoughts and impressions of the HHS-OIG agents as they built their case against Mr. Anand. Releasing these notes would reveal aspects of the government's strategy in its case against Mr. Anand and would impede the government's ability to prosecute him.

34. Exemptions 6 and 7(C) both protect personal privacy. Exemption 6 protects 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." Exemption 7(C) is limited to information compiled for law enforcement purposes and protects personal information when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." The Department asserts these exemptions with respect to witness statements and any references to witnesses in the HHS-OIG agent notes.

35. With respect to Exemption 6, I have determined that these records meet the threshold requirement of being "similar files" as the records are about the recollections of particular individuals. I have also determined that those individuals have a significant privacy interest in avoiding harassment and that there is no public interest in disclosure because the statements and identities of these individuals do not shed light on the government's actions.

36. With respect to Exemption 7(C), the Department compiled the witness statements and subsequent agent notes for the purpose of investigating possible health care fraud. These individuals have a strong privacy interest in not being associated with alleged criminal activity, and there is no public interest in disclosure because the statements and identities of these individuals do not shed light on the government's actions.

Claims Data/Analysis

37. This category consists of Medicare and Medicaid claims information as well as information provided by Qlarant to the Department. The Department asserts Exemptions 5, 6, and 7(C) to the records in this category. The Department asserts Exemption 5 to communications with Qlarant and to Qlarant's analysis of claims data. Qlarant served as a consultant to the Department, which satisfies the inter-agency threshold of Exemption 5. Qlarant analyzed Medicare and Medicaid claims information to look for trends in billing information and to determine outlier providers that were potentially overbilling. This analysis and associated communications are part of OIG's deliberations in deciding how best to use its resources to root out waste, fraud, and abuse. Revealing this analysis would reveal aspects of the government's strategy in its case against Mr. Anand and others and would impede the government's ability to prosecute individuals who defraud the government.

38. This category also includes Medicare and Medicaid claims information, for which the Department claims Exemptions 6 and 7(C). The claims information contains sensitive medical information about individuals that the Department compiled for purposes of its investigations. The claims information therefore satisfies the thresholds of both Exemptions 6 and 7(C). Medical information often constitutes the most sensitive and closely held information about an individual, the release of which could cause embarrassment both independently and by virtue of a link to a criminal investigation. The public does not have an interest in this sensitive medical information that overcomes the privacy interest of the individuals.

Investigational Techniques

39. This category consists of surveillance reports, consensual monitoring, undercover operations, a protective order, bank records and documents relative to iPhone/iPad extractions as

they relate to Plaintiff Anand. The Department asserts Exemptions 5 (deliberative process privilege), 6, 7(C), 7(E), and 7(F) for the records in this category.

40. The Department asserts Exemption 5 to deliberative and predecisional communications with the Department of Justice (DOJ) and within OIG regarding the results of surveillance reports, bank records, and information gleaned from consensual monitoring. These communications reflect the analytical stage of an investigation that precedes a decision to charge an individual with a crime. They reflect deliberations as to the import and persuasiveness of individual pieces of evidence, the release of which would handicap the government's ability to present its case against Mr. Anand at trial.

41. The Department asserts Exemptions 6, 7(C), and 7(F) to the names of the case agents as well as the agents involved in the digital analysis/examination of the digital devices. These agents have a privacy interest in avoiding harassment, which outweighs any public interest in knowing the names of these individuals serving in sensitive government positions. The Department asserts Exemption 7(F), which protects "records or information compiled for law enforcement purposes [the disclosure of which] could reasonably be expected to endanger the life or physical safety of any individual," to the names of field agents. OIG field agents have been subject to violent threats, and disclosing their identity could put them in harm's way.

42. Exemption 7(E) protects law enforcement information that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law."

43. The methods by which HHS-OIG investigated Mr. Anand are not well-known to the public and revealing them could result in similar individuals purposely evading detection,

thereby nullifying the effectiveness of those methods. This category includes the questions and answers to and from witnesses as well as the types of surveillance used and the surveillance reports. It also includes the types of software used to examine digital media and the name of the internal OIG law enforcement database. Disclosing these non-public methods would likely reduce or even nullify the effectiveness of the methods and provide a roadmap for circumvention.

#### Internal Government Communications

44. This category consists of meeting notes and other deliberative documents and attorney-client communications, for which the Department asserts Exemptions 5, 6, 7(C) and 7(F). In addition to the deliberative process privilege, Exemption 5 also incorporates the attorney-client privilege, which protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.


45. The Department asserts Exemption 5 to deliberative and predecisional communications with DOJ and within OIG regarding the Anand case. These communications reflect the analytical stage of an investigation that precedes a decision to charge an individual with a crime. They reflect deliberations as to the import and persuasiveness of individual pieces of evidence, the release of which would handicap the government's ability to present its case against Mr. Anand at trial. This category also contains attorney-client communications reflecting legal advice from DOJ and agency counsel regarding the legal theories and litigation strategy of the case against Mr. Anand, which would similarly handicap the government's ability to prosecute.

46. Defendant asserts Exemptions 6, 7(C), and 7(F) to protect names and contact information, including email addresses and phone numbers, of OIG agents. The OIG agents

have a privacy interest in avoiding harassment from the individuals they investigate, which overcomes any interest the public has in knowing the identity of individuals occupying sensitive government positions. Disclosing the names of field agents risks jeopardizing their physical safety, as agents have received threats.

47. I have reviewed the records line by line and determined that no nonexempt information is reasonably segregable. After extensive review of the records at issue, the Department has determined that there is no further non-exempt information that can be reasonably segregated and released without revealing exempt information.

I declare under penalty of perjury that the foregoing to true and correct, to the best of my information and belief. 28 U.S.C. § 1746. Executed this 16th day of August, 2022.

  
ROBIN BROOKS Digitally signed by ROBIN BROOKS  
Date: 2022.08.16 13:34:07 -0400  
Robin Brooks  
Director  
Freedom of Information Act Division  
Office of Inspector General  
U.S. Department of Health and Human Services