

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**DECLARATION OF GEVORG MARGARYAN IN SUPPORT OF DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT**

I, Gevorg Margaryan, hereby make the following declaration: under penalty of perjury pursuant to 28 U.S.C. § 1746.

1. I am currently a Program Analyst with the Freedom of Information/Privacy Act Unit (“FOIA/PA Unit”) of the United States Department of Justice (“DOJ”), Drug Enforcement Administration (“DEA”), located at DEA’s Headquarters in Arlington, Virginia. I have served in this capacity since August 2020. Prior to that, I was a Pathways Program intern with the FOIA/PA Unit.

2. As part of my duties, I oversee the processing of certain requests to DEA under 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”). Due to the nature of my official duties and my experience in responding to requests for FOIA records, I am familiar with the policies and practices of DEA related to the search, process, and disclosure of DEA information pursuant to the FOIA/ PA.

3. In preparing this declaration, I have read and am familiar with the complaint in the above titled action and DEA’s administrative record related to this matter.

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

5. DEA's mission includes enforcing the controlled substances 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 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, manufacturing, or distributing of controlled substances appearing in, or destined for, illicit traffic in the United States. Among other functions, DEA is authorized to cooperate with counterpart agencies abroad to combat illegal drug trafficking and to exchange information in support of drug trafficking prevention and control. DEA has foreign offices in countries throughout the world. 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. All DEA criminal law enforcement investigative records are maintained in the DEA's Investigative Reporting and Filing System ("IRFS"). IRFS is a DEA Privacy Act System of Records (also known as 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 DEA's 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. An individual is indexed and identified in NADDIS by various Personal Identifiable Information, such as name, Social Security Number, date of birth, address.

8. Based on the input of search terms (such as name, social security number, or date of birth), NADDIS provides search results in the form of an abstract of information, such as an investigative file number, investigative report number, or other record identifier by which one might locate any existing IRFS records that are linked to the individual. Unlike IRFS, NADDIS is not a record keeping system so it does not contain complete information from an investigative file. Rather, it contains only discrete pieces of information from the Report of Investigation (DEA Form 6), which is an investigative record that is maintained as part of IRFS.

9. A search of IRFS using NADDIS is a worldwide search for DEA records, including records maintained at field offices, since intelligence and investigative records generated across all DEA offices are indexed into NADDIS. The interplay between the NADDIS indexing system and IRFS is explained in greater detail below in paragraphs [51-53].

PLAINTIFF'S FOIA REQUEST

10. On April 17, 2021, Lesly Pompy ("Plaintiff") submitted a FOIA request.

11. A true and accurate copy of the April 17, 2021 request is attached to this declaration as Exhibit A.

12. The FOIA request sought the following records:

DEA Administrative audit done on 9/26/2016 at 730 Macomb St, Monroe Michigan 48162.

DEA investigation of Lesly Pompy regarding DEA and X-DEA registration.

Investigation [sic] involving DEA registration BP 2527058, FP 2665478 contractual relationship, statement of works between Blue Cross Blue Shield of Michigan Mutual Insurance Company and the DEA.

Contractual relationship, statement of works between Blue Cross Blue Shield of Michigan Mutual Insurance Company and the DEA.

See Exhibit A.

DEA'S PROCESSING OF PLAINTIFF'S FOIA REQUEST

13. On June 4, 2021, DEA acknowledged receipt of Plaintiff's FOIA request. *See Exhibit B.*

14. On August 20, 2021, DEA responded to the request. A true and accurate copy is attached to this declaration as Exhibit C.

15. In its response, DEA did not confirm or deny the existence of any records responsive to the request, specifically stating:

You have requested records pertaining to yourself. Therefore, you will need to verify your identity as required by Department regulation 28 C.F.R. § 16.41(d). Specifically, if you would like this office to process your request and search for responsive records, you will need to either (1) return a completed Certification of Identity form to this office, or (2) provide a statement notarized or signed under

penalty of perjury pursuant to 28 U.S.C. § 1746, indicating your full name, place of birth, date of birth, and current address.

See Exhibit C. DEA also noted that if Plaintiff did not respond in thirty days, the case would be closed.

16. Plaintiff did not respond within thirty days and DEA closed the case.

17. Plaintiff provided a Certification of Identity, dated December 1, 2021, as part of a joint status report during the instant litigation. *See* Exhibit D.

18. On July 14, 2023, DEA issued its final determination to Plaintiff. DEA informed Plaintiff that it withheld 288 pages and released 666 pages of responsive records with redactions pursuant to FOIA Exemptions 3, 6, 7(C), 7(D), 7(E), and 7(F). DEA also informed Plaintiff of the additional 3,987 files—which included, among other things, patient files, state patient prescription data, and employee time sheet—that it did not provide due to the undue burden of reviewing those files for responsiveness and processing them for production, and that the same would nonetheless be withheld pursuant to FOIA Exemptions 6 and 7(C) if processed for production. Lastly, DEA referred 17 pages to the Federal Bureau of Investigation (“FBI”), with limited DEA redactions pursuant to Exemptions 6, 7(C), 7(E), and 7(F). *See* Exhibit E. On August 11, 2023, the FBI released these 17 pages without applying any additional redactions beyond those that DEA asserted. *See* Exhibit F.

System Limitations of the DEA Law Enforcement Databases

19. DEA’s investigative case files are maintained by the office in which the investigation was commenced and are titled according to the name of the principal suspect or entity known to DEA at the time the file is opened. DEA does not maintain a separate investigative case file for every individual or entity that is of interest.

20. DEA locates investigative case files by utilizing NADDIS, which is an electronic data index system that primarily contains identifying information of individuals obtained from investigative reports in investigative case files across the agency. Information contained in the system is not indexed by reference to any criminal case name or docket number.

21. Once the investigative files are located, DEA uses FOIAXpress, a case management system, to process its files for FOIA review. FOIAXpress only supports specific file formats and unsupported files must be converted to a FOIAXpress-accepted format in order to be reviewed for release. Conversion involves opening each file individually, changing the file to an accepted format, and then uploading the file into FOIAXpress.

DEA's Search and Results

22. In response to Plaintiff's request, DEA conducted a query in NADDIS using Plaintiff's name. The search identified four investigative files (hereinafter "files" or "investigative files") concerning Plaintiff. This search was reasonably expected to uncover all responsive records, and it in fact uncovered the files responsive to Plaintiff's FOIA request. The investigative files were located and retrieved from DEA's Detroit Field Office, DEA's Intelligence Division, the Michigan Automated Prescription System, and the Ohio Automated Rx Reporting System.

23. The FOIA/PA Unit received the investigative files for processing, but discovered the files were not provided in a FOIAXpress-accepted format, requiring conversion.

24. Each file was a collection of separate files, each containing several individual items. For example, one file contained 242 items. Within those items, there was a zipped folder containing an additional 113 items, making the total items for that one file 355, all requiring conversion. The number of items, however, does not represent the number of pages as one item could include hundreds of pages.

25. Further, the files were not identical in size and some files could not be converted. Accordingly, the total number of pages for all the potentially responsive records could increase exponentially.

Extrapolated Length of Review

26. DEA identified 3,987 files responsive to Plaintiff's request. These records can be categorized as: (1) patient files; (2) state patient prescription data; (3) employee timecards; and (4) other records. DEA reviewed exemplar records and determined that withholding in full pursuant to Exemptions 6 and 7(C) would be appropriate, as described in detail further below.

27. In order to extrapolate how long it would take to conduct a line-by-line review of all records contained in those 3,987 files, I selected a random sample of four files from the search results and it revealed the following:

- a. The conversion of each separate file took about four hours. Accordingly, conversion of 3,987 files at a rate of four hours each would total approximately 15,948 hours or a little over seven years using a 2080-hour work year. This estimate does not include actual processing time.
- b. On average, each file totaled approximately 889 pages. Therefore, the files would likely amount to approximately 3,544,443 pages.
- c. Processing 3,544,443 pages would take approximately 413,518 working hours or 59,074 work days based on a seven-hour day, if calculated at seven minutes per page. This estimate does not include time spent by supervisors reviewing the records prior to disclosure.
- d. DEA generally requires 20% of the processing time for supervisory review, which would be an additional 11,814 days.

28. Accordingly, I estimate that the total number of days to process this request further would be approximately 70,888 days or 194 years.

29. Even if DEA's Sub-Unit, being staffed with two people, were to assign both individuals to work full-time on this specific request, neglecting all other FOIA requests or work duties, processing this request would still take approximately 100 years to complete.

30. Further, the above estimates do not include applying any applicable FOIA exemptions, which would take additional time.

31. The individuals who process FOIA records at DEA range from GS-12 to GS-13 employees. If DEA tasked two GS-13, Step 1 employees to work full-time on Plaintiff's FOIA request, it would cost DEA more than \$20,000,000 in salary alone, which does not even account for the significant cost of benefits, nor does it account for the fact that the employee would generally be entitled to yearly pay increases, as the employee receives step increases.

32. DEA's FOIA/PA Unit currently has 2,115 pending FOIA cases. Furthermore, while the sub-unit is the relevant sub-unit for handling this request, the entire FOIA/PA Unit has only 10 employees, who are processing the over 1,600 FOIA requests DEA receives annually.

33. DEA cannot devote all its resources to Plaintiff's request and has many other pressing matters.

34. It was with this undue burden in mind that DEA processed only 971 pages (comprised of investigative files) responsive to Plaintiff's request and did not conduct post-search review and processing of the remaining 3,987 files where Exemptions 6 and 7(C) would apply to protect the records, such as, patient files, state patient prescription data, and employee timecards. DEA did not review records contained in those 3,987 files line-by-line; rather, DEA reviewed exemplar documents within these categories to confirm the applicability of Exemptions 6 and 7(C)

for records of those categories. For all remaining records, DEA conducted a line-by-line review. This line-by-line review resulted in DEA releasing 666 pages of responsive records with redactions on July 14, 2023, and in DEA making the limited redactions that appear in the FBI's August 11, 2023 release of 17 pages.

35. On March 27, 2023, and April 26, 2023, DEA, through counsel, attempted to narrow Plaintiff's request to exclude the most burdensome records. I understand from DEA counsel that, after Plaintiff did not respond to either email, counsel cold-called Plaintiff on May 5, 2023, and explained the burden of the request, and during that call, Plaintiff declined to narrow his request.

JUSTIFICATION FOR NON-DISCLOSURE PURSUANT TO THE PRIVACY ACT

36. DEA processes all requests by individuals for records pertaining to themselves under both the FOIA and PA to provide the requester with the maximum disclosure authorized by law.

37. Privacy Act Exemption (j)(2) protects from disclosure systems of records maintained by an agency which performs as its principal function any activity pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or to apprehend criminals. 5 U.S.C. § 552a(j)(2).

38. The records maintained in IRFS consist of (a) information compiled to identify individual criminal offenders and alleged offenders; identifying data and notations of arrests; and the nature and disposition of criminal charges, sentencing, confinement, release, parole, and probation status; (b) information compiled for a criminal investigation, including reports of informants and investigators associated with an identifiable individual; or (c) investigatory

material compiled for law enforcement purposes. DEA promulgated regulations at 28 C.F.R. § 16.98 exempting IRFS records from the PA's access provisions. 28 C.F.R. § 16.98(i).

39. Because Plaintiff's request pertained to the criminal investigation relating to him, the requested records were clearly compiled for law enforcement purposes. DEA, therefore, determined that the responsive records were exempt under the PA. Accordingly, DEA next reviewed the responsive records under the FOIA.

**JUSTIFICATION FOR NON-DISCLOSURE AND WITHHOLDING
PURSUANT THE FOIA**

FOIA Exemption (b)(3)

40. Exemption 3 protects from disclosure information specifically exempted by statute if that statute requires that matters be withheld from the public in such a manner as to leave no discretion on the issues or establishes particular criteria for withholding or refers to particular types of matters to be withheld. 5 U.S.C. 552(b)(3). DEA asserted Exemption 3 to redact one page of responsive records.

41. Federal grand jury information is exempt from disclosure pursuant to Federal Rule of Criminal Procedure 6(e). It is well established that Rule 6(e) embodies a broad, sweeping policy of preserving the secrecy of grand jury material regardless of the substance in which the material is contained.

42. The one page in question contains information about the names of recipients of Federal grand jury subpoenas. Any disclosure of this information would clearly violate the secrecy of the grand jury proceedings and could reveal the inner workings of a Federal grand jury.

43. Thus, DEA is precluded from disclosing this information, which is also protected by Exemptions 6 and 7(C).

FOIA Exemption (b)(6)

44. Exemption 6 protects information about individuals in personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6). DEA applied Exemption 6 in conjunction with Exemption 7(C) to information contained in the responsive records. Although the balancing test for Exemption 6 uses a “would constitute a clearly unwarranted invasion of personal privacy” and the test for Exemption 7(C) uses the lesser standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is similar enough to warrant a consolidated discussion.

45. Exemption 7(C) protects from disclosure records or information compiled for law enforcement purposes the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

46. DEA withheld in full records relating to third parties pursuant to FOIA exemptions (b)(6) and (b)(7)(C), to protect the names and other identifying information about individuals obtained by DEA during its investigation of Plaintiff, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

47. With respect to Exemption 6, I have determined that the records we processed meet the threshold requirement of being “similar files” as the records consist of medical patient files, state prescription data for specific patients, and time sheets for particular employees. I have determined that these patients and employees have a significant privacy interest in avoiding harassment, and that there is no public interest in disclosure because the documents and identities of these individuals do not shed light on the government’s actions.

48. With respect to Exemption 7(C), I have determined that third-parties, such as patients and employees identified in these records, 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.

49. The non-processed files, such as the patient files and state patient prescription data, include Medicare and Medicaid claims information, for which DEA would claim Exemptions 6 and 7(C) if it were compelled to process these files. The claims information contains sensitive medical information about individuals gathered in the course of the investigation. 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 is reasonably foreseen to 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.

50. Upon receiving a FOIA request for records concerning third-parties, DEA's standard practice is to not conduct a search for any responsive records, unless the requester provides sufficient proof of death, submits a sufficient authorization by the third-party to disclose the records, or demonstrates a public interest in the records that outweighs any privacy interests. Plaintiff did not provide any such information in this matter.

51. In making the determination whether to release or withhold the requested information, the individuals' privacy interests were balanced against any discernible public interest in disclosure of the individuals' identities.

52. In this case, Plaintiff has articulated no legitimate public interest, such as alleged wrongdoing by the United States Government, that would outweigh the privacy interests of the

third-party individuals mentioned in the responsive records. Therefore, releasing this information would constitute an unwarranted invasion of their privacy.

53. DEA was justified in withholding the records responsive to Plaintiff's request pursuant to Exemptions 6 and 7(C). Further, no segregability would be possible as the records could not be segregated in a way that would not implicate the privacy interests of the third-parties involved. Merely redacting the names of patients or employees would not provide sufficient protection to these third-parties' identities, as other information in the records would allow someone, such as Plaintiff, with knowledge of particular patients' prescriptions and/or medical records to use this information to identify the specific patients. Any remaining information in these records would have minimal or no informational content.

FOIA Exemption (b)(7)(D)

54. 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.

55. To invoke Exemption 7(D), an agency must show either that a source provided the information to the agency "under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred." *Engelking v. Drug Enforcement*

Administration, 119 F.3d 980 (D.C. Cir. 1997) (quoting *United States Dep't of Justice v. Landano*, 508 U.S. 165, 174 (1993)).

56. DEA withheld names and information provided by confidential sources from several Reports of Investigation produced to Plaintiff in part pursuant to Exemption 7(D). 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 Plaintiff, Exemption 7(D), in conjunction with Exemptions 6, 7(C), and 7(F), is utilized to prevent 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.

57. Not only would disclosure 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 also 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 that specific information from disclosure.

58. Further, DEA produced the Reports of Investigation in part, and no further segregability is possible without implicating the privacy interests of confidential sources involved in responsive records.

59. Accordingly, DEA was justified in withholding responsive records pursuant to Exemptions 7(D).

FOIA Exemption (b)(7)(E)

60. Exemption 7(E) exempts records or information, compiled for law enforcement purposes, if its release would disclose techniques, guidelines, and procedures 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).

61. As described here and further described in the Declaration of Angela Hertel (ECF No. 59-11) ¶¶ 57–65, DEA asserted Exemption 7(E) to withhold information related to Plaintiff’s investigations, including Geo-Drug Enforcement Program (“G-DEP”) identifiers, NADDIS numbers, and other information. These identifiers or information relate solely to internal DEA investigative procedures such as the classification of the violator(s), program codes, cross-files, the types and amounts of suspected drugs involved, the priority of the investigation, the suspected location and scope of criminal activity, and material that would reveal sensitive, nonpublic references to DEA’s Agents’ Manual, which is not available to the public and would reveal DEA information and law enforcement techniques.

62. Releasing the G-DEP identifiers/information would help identify the priority given to narcotics investigations, the types of criminal activities involved, and violator ratings. Suspects could decode this information, develop enforcement countermeasures, avoid detection and apprehension, create excuses and alibis for suspected activities, and restructure their actions to prevent or limit the capabilities of the techniques, thus circumventing the law.

63. It is never the case that the application of Exemption (7)(E) is the sole reason a document is withheld in its entirety. Rather, Exemption 7(E) is applied to documents withheld in their entirety due to other additional exemptions and Exemption 7(E) is also applicable to parts of the document.

64. DEA was, therefore, justified in withholding responsive information pursuant to Exemption 7(E).

FOIA Exemption (b)(7)(F)

65. Exemption 7(F) exempts records or information, compiled for law enforcement purposes, the disclosure of which could reasonably be expected to endanger an individual's life or physical safety. 5 U.S.C. § 552(b)(7)(F).

66. The names of DEA Special Agents, other law enforcement personnel, and individuals involved in criminal investigations were withheld pursuant to Exemption 7(F), in conjunction with Exemptions (6) and 7(C).


67. DEA Special Agents are frequently called upon to conduct a wide variety of investigations, including sensitive and dangerous undercover operations. Special Agents routinely approach and associate with violators in a covert capacity. It has been the experience of DEA that violence is inherent in the drug trade, and the release of the identities of law enforcement officers has resulted in several instances of physical attacks, threats, harassment, murder, and attempted murder. Therefore, the names of the Special Agents as well as other individuals involved in criminal investigations are withheld, since it is reasonable to conclude that identifying them could subject them to harassment, reprisal or physical retaliation for providing information and being connected with the investigation in any way.

68. DEA was justified in withholding the names of Special Agents pursuant to Exemption 7(F).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

08/18/2023
DATE

**GEVORG
MARGARYAN**

 Digitally signed by GEVORG
MARGARYAN
Date: 2023.08.18 14:53:24 -04'00'

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