

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ORLY TAITZ, :
 :
 Plaintiff, :
 :
 v. : Civil No. ELH-13-1878
 :
 CAROLYN COLVIN, :
 :
 Defendant. :

...o0o...

**DEFENDANT'S MOTION TO DISMISS THE SECOND AMENDED
COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Now comes the defendant, by the undersigned counsel, and moves pursuant to Rule 12(b)(1) for an order dismissing the Second Amended Complaint or, in the alternative, for summary judgment pursuant to Rule 56.

In support whereof, the defendant states:

1. This is a Freedom of Information Act ("FOIA") case. The Court has granted the defendant's motion to dismiss the Amended Complaint, which alleged a failure to produce documents requested by plaintiff's FOIA request. At the Court's invitation, the plaintiff filed the instant Second Amended Complaint alleging that the search was inadequate.

2. The defendant incorporates herein by reference the points and authorities set forth in the accompanying memorandum of law and the attached exhibits. There is no genuine issue of material fact and the defendant is entitled to judgment as a matter of law because the search that was performed in response to the plaintiff's FOIA request was adequate.

WHEREFORE the defendant respectfully requests that the Court grant this motion and dismiss this case with prejudice.

Respectfully submitted,

Rod J. Rosenstein
United States Attorney

By: _____/s/
Allen F. Loucks
Assistant United States Attorney
36 South Charles Street
Fourth Floor
Baltimore, Maryland 21201
(410) 209-4800

Certificate of Service

I certify that on January 29, 2014, I caused a copy of the foregoing motion, memorandum in support thereof, and exhibits to be mailed, first class, postage pre-paid to Orly Taitz, 29839 Santa Margarita Parkway, Suite 100, Rancho Santa Margarita, California 92688.

/s/

Allen Loucks
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ORLY TAITZ, :
 :
 Plaintiff, :
 :
 v. : Civil No. ELH-13-1878
 :
 CAROLYN COLVIN, :
 :
 Defendant. :

...o0o...

MEMORANDUM IN SUPORT OF
DEFENDANT'S MOTION TO DISMISS THE SECOND AMENDED
COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

The defendant has moved to dismiss the Second Amended Complaint or, in the alternative, for summary judgment. For the reasons that follow, the motion should be granted.

INTRODUCTION

In this action, brought pro se, Dr. Orly Taitz ("Plaintiff") sued on behalf of herself under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for information contained in Social Security records, including information relating to individuals' Social-Security numbers and benefits. Specifically, Plaintiff sought SSA records about three individuals and their dependents and/or family members.

SSA performed a search for responsive records that identified the majority of the requested information. However, SSA could not locate responsive records concerning Plaintiff's request for records of Harrison (Harry) J. Bounel. SSA

responded to Plaintiff's FOIA request on July 29, 2013, and mailed a supplemental response about the fees charged for the requested records on August 7, 2013.

Plaintiff's Second Amended Complaint alleges that SSA did not conduct a proper search for Mr. Bounel's records. However, SSA has conducted a reasonable and adequate search for Mr. Bounel's records, as documented by the supporting declarations of Dawn S. Wiggins. Because SSA has conducted an adequate search for records, Plaintiff's FOIA request is moot and dismissal or, in the alternative, summary judgment should be granted in Defendant's favor.

STATEMENT OF FACTS

Plaintiff submitted a FOIA request, dated April 26, 2013, to SSA seeking the Social Security number (SSN) application (Form SS-5)¹ for three individuals, including Harrison (Harry) J. Bounel, and documentation on any Social Security benefits received by these individuals and their families and/or dependents. *See* Letter dated April 26, 2013 from Plaintiff to SSA ("FOIA Request"), attached as Exhibit A. Specifically, Plaintiff requested the following records about Mr. Bounel and his dependents:

"[The] SS-5 application and any and all documentation for Harrison (Harry) J. Bounel, immigrant from Russia, born in 1890, arrived in the

¹ The Form SS-5 is the form through which an individual applies for an original or replacement social security card. *See, e.g.,* <http://www.socialsecurity.gov/online/ss-5.html>. The Form SS-5 includes the individual's full name, Social Security number (SSN), place of birth, date of birth, citizenship, parents' names, parents' SSNs (in certain versions of the Form SS-5), and other identifying information.

U.S. in and around 1912, received Social Security number in the state of [Connecticut] in and around March 28, 1977, SSN [XXX-XX-XXXX]², and] any and all documentation on any Social Security benefits received by Mr. Bounel for himself and any and all known depend[e]nts."

Id. at ¶ 1-3. The SSA office responsible for responding to FOIA requests received Plaintiff's request on May 31, 2013. *See* August 12, 2013 Declaration of Dawn S. Wiggins, Division Director of the Office of Privacy and Disclosure ("August 2013 Wiggins Declaration") ¶ 5, attached as Exhibit C.

On June 25, 2013, Plaintiff filed an action in this Court, alleging SSA violated the FOIA by failing to respond to Plaintiff's FOIA request within the required statutory period and asking the Court to order SSA to produce the requested documents, specifically the Form SS-5 for Mr. Bounel. (ECF 1.)

SSA conducted a search of its records for the Form SS-5 for Mr. Bounel. Specifically, SSA searched its Privacy Act system of record entitled the Master File for Social Security Number Holders and SSN Applications (also known as the "Numident"), System of Record Notice No. 60-0058 (published at 75 F.R. 82121 (Dec. 29, 2010)), which includes records of each person who applied for a SSN.³ *See*

² SSN redacted to protect the privacy of the Social Security number holder, if the SSN is valid.

³ The Numident is a numerically ordered electronic database containing records of each person who has applied for an SSN. The Numident became fully electronic in the 1980s (i.e., it includes older records that were submitted in hardcopy). There is one Numident record for each SSN ever issued. The Numident record houses the

August 2013 Wiggins Declaration ¶ 6; September 13, 2013 Supplemental Declaration of Dawn S. Wiggins ("September 2013 Wiggins Suppl. Declaration") ¶ 4, attached as Exhibit D; January 29, 2014 Second Supplemental Declaration of Dawn S. Wiggins ("January 2014 Wiggins Suppl. Declaration") ¶ 3, attached as Exhibit E. This was the only location or record that SSA identified as having a reasonable likelihood of containing Mr. Bounel's Form SS-5. *See* January 2014 Wiggins Suppl. Declaration ¶ 3.

In order to locate an individual's Form SS-5 using the Numident database, SSA must have information such as SSN, name, date of birth, or other identifying information about the number holder that it can use to search the database. *See* August 2013 Wiggins Declaration ¶ 6; January 2014 Wiggins Suppl. Declaration ¶ 5. Because there is only one Numident record for each SSN issued by SSA, an SSN search is the primary and most accurate means of locating individuals' records in the Numident. *See* January 2014 Wiggins Suppl. Declaration ¶ 5.

In response to Plaintiff's FOIA request, SSA searched the Numident for the SSN provided by Plaintiff, which she asserts belongs to Mr. Bounel. *See* January 2014 Wiggins Suppl. Declaration ¶ 6. SSA also conducted alternate searches of the Numident using Mr. Bounel's name (the following variations were searched:

identifying information given by the applicant for an SSN and Form SS-5s. *See* January 2014 Wiggins Suppl. Declaration ¶ 4.

Harrison Bounel, Harrison J. Bounel, Harry Bounel, and Harry J. Bounel) and year of birth (i.e., 1890). *Id.* Because Plaintiff did not provide a full date of birth, SSA performed a date range search for any Numident records with dates of birth between January 1, 1890 and January 1, 1894. *Id.* SSA reviewed any results of the searches against the identifying information provided by Plaintiff for Mr. Bounel. *Id.* However, SSA was unable to locate a Form SS-5 or Numident record for Mr. Bounel based on the information provided by Plaintiff. *Id.*

The other identifying information about Mr. Bounel that Plaintiff provided with her FOIA request included that he emigrated from Russia, arrived in the United States around 1912, and received an SSN in Connecticut or around March 28, 1977. *See* January 2014 Wiggins Suppl. Declaration ¶ 5. However, SSA cannot conduct a search of the Numident by place of emigration, year of immigration, or the date the person received or applied for an SSN. *See* January 2014 Wiggins Suppl. Declaration ¶ 7.

Because SSA was unable to locate a record for Mr. Bounel in the Numident, SSA also could not locate benefit records for Mr. Bounel and his dependents, if any. SSA's beneficiary systems of records, the Master Beneficiary Record ("MBR"), System of Record Notice No. 60-0090 (published at 71 F.R. 1826 (Jan. 11, 2006)),⁴

⁴ The MBR contains the data needed to generate Social Security benefit payments under the Old-Age, Survivors, and Disability Insurance (OASDI) program. The MBR is indexed by SSN, and SSN is the primary identifier for each record or account.

and Supplemental Security Income Record and Special Veterans Benefits ("SSR"), System of Record Notice No. 60-0103 (published at 71 F.R. 1830 (Jan. 11, 2006)),⁵ require a valid SSN to complete a search. There are no other locations or records that the agency determined would have a reasonable likelihood of containing the requested benefit records of Mr. Bounel. *See* January 2014 Wiggins Suppl. Declaration ¶ 8.

On July 29, 2013, SSA responded to Plaintiff's FOIA request. *See* Letter dated July 29, 2013 from SSA to Plaintiff ("FOIA Response"), attached as Exhibit B. Defendant advised Plaintiff that, after completing a search of SSA records, SSA was unable to find the requested information about Mr. Bounel. *See* August 2013 Wiggins Declaration ¶ 6; FOIA Response ¶ 7.

On July 8, 2013, Plaintiff filed an amended complaint. (ECF 3)

In August 2013, Defendant filed a Motion to Dismiss or, in the Alternative for Summary Judgment, and on December 13, 2013 this Court granted Defendant's Motion to Dismiss. (ECF 7, 19)

On January 3, 2014, Plaintiff filed a second amended complaint. (ECF 20). Plaintiff's second amended complainant alleges a violation of the FOIA only as it

⁵ The SSR contains information on all persons who have ever applied for Title XVI Supplemental Security Income (SSI) and persons who, prior to the implementation of the federal SSI program in 1974, received state benefits and were converted to the SSI program. The SSR is indexed by SSN of the first eligible person on the record or account, which is the primary identifier for each record or account. SSNs of secondary beneficiaries on the record or account serve as a secondary index.

relates to Plaintiff's request for records of Mr. Bounel. Specifically, Plaintiff alleges that SSA did not provide evidence of an adequate search for Mr. Bounel's record and requests SSA produce the Form SS-5 for Mr. Bounel.

STANDARD OF REVIEW

I. STANDARD FOR DISMISSAL

When reviewing a 12(b)(1) motion to dismiss, "the court must accept the complaint's well-pled factual allegations as true and draw all reasonable inferences in the plaintiff's favor." *See Vanover v. Hantman*, 77 F. Supp. 2d 91, 98 (D.D.C. 1999). "The court is not required, however, to accept inferences unsupported by the facts alleged or legal conclusions that are cast as factual allegations." *Rann v. Chao*, 154 F. Supp. 2d 61, 64 (D.D.C. 2001), *aff'd*, 346 F.3d 192 (D.C. Cir. 2003). In addition, the plaintiff bears the burden of persuasion, and must establish subject-matter jurisdiction "by a preponderance of the evidence." *Simmington v. Gates*, No. DKC 08-3169, 2010 U.S. Dist. LEXIS 30749, at *15 (D. Md. Mar. 30, 2010); *Vanover*, 77 F. Supp.2d at 98.

To determine the existence of jurisdiction, a court may look beyond the allegations of the complaint, consider affidavits and other extrinsic information, and ultimately weigh the conflicting evidence. *Simmington*, 2010 U.S. Dist. LEXIS 30749, at *15; *Rann*, 154 F. Supp. at 64. A court should grant dismissal if material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law. *Simmington*, 2010 U.S. Dist. LEXIS 30749, at *15-16. Defendant

moves for dismissal under Rule 12(b)(1), Plaintiff conducted a reasonable and adequate search in response to Plaintiff's FOIA request and provided all responsive and non-exempt records located by Defendant. *See* FED. R. CIV. P. 12(b)(1).

II. STANDARD FOR SUMMARY JUDGMENT

A court shall grant summary judgment if "the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). Courts typically decide FOIA cases on motions for summary judgment. *Havemann v. Astrue*, No. ELH-10-1498, 2012 U.S. Dist. LEXIS 136292, at *13 (D. Md. Sept. 24, 2012), *aff'd*, No. 12-2453, 2013 U.S. App. LEXIS 15838 (4th Cir. Aug. 1, 2003); *Defenders of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 87 (D.D.C. 2009). To prevail on a motion for summary judgment in an FOIA case, an agency must demonstrate that the information that falls within the request has been produced, is unidentifiable, or is exempt from disclosure. *Taitz v. Astrue*, 806 F. Supp. 2d 214, 217 (D.D.C. 2011), *aff'd*, No. 11-5304, 2012 U.S. App. LEXIS 10713 (D.C. Cir. May 25, 2013); *Goland v. C.I.A.*, 607 F.2d 339, 352 (D.C. Cir. 1978).

For motions for summary judgment, factual assertions in a moving party's affidavits or declarations are accepted as true unless the opposing party rebuts them with affidavits or documentary evidence. *Davis v. F.B.I.*, 767 F. Supp. 2d 201, 204 (D.D.C. 2011). In FOIA cases, courts can grant summary judgment based solely on the information an agency provides through employee affidavits or declarations

as long as the declarations are sufficiently detailed and provide the information necessary to render judgment. *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981). Such agency affidavits or declarations are accorded a presumption of good faith, which a plaintiff cannot rebut with purely speculative claims.

Havemann, 2012 U.S. Dist. LEXIS 136292, at *15; *Taitz*, 806 F. Supp. 2d at 217; *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991). Defendant moves for summary judgment because there is no genuine dispute as to any material fact and Defendant is entitled to judgment as a matter of law.

ARGUMENT

I. THE CLAIMS IN WHICH PLAINTIFF CHALLENGES THE FAILURE TO RELEASE RECORDS RESPONSIVE TO HER FOIA REQUEST ARE MOOT BECAUSE DEFENDANT HAS CONDUCTED A REASONABLE SEARCH AND PROVIDED ALL NON-EXEMPT REQUESTED RECORDS LOCATED BY DEFENDENT.

A claim for relief under FOIA becomes moot once an agency produces all the information a plaintiff requested. *Cornucopia Institute v. USDA*, 560 F.3d 673, 675 (7th Cir. 2009). Indeed, courts have found that “however fitful or delayed the release of information under FOIA may be... if we are convinced [agencies] have, however belatedly, released all nonexempt material, we have no further judicial function to perform under FOIA.” *Tijerna v. Walters*, 821 F.2d 789, 799 (D.C. Cir. 1987) (quoting *Perry v. Block*, 684 F.2d 121, 125 (D.C. Cir. 1982)). The release of the information sought by Plaintiff has made it “impossible for th[is] [C]ourt to grant

any effectual relief" to Plaintiff, and therefore, the case must be dismissed. *See Cornucopia*, 560 F.3d at 676.

Under Article III, section 2 of the Constitution, federal courts only have jurisdiction to hear and decide actual "cases" or "controversies." *Allen v. Wright*, 468 U.S. 737, 750 (1984); *see National Black Police Ass'n v. District of Columbia*, 108 F.3d 346, 349 (D.C. Cir. 1997). This requirement prevents the issuance of advisory opinions, as it demands the existence of an actual dispute between adverse parties with a stake in the outcome. *See Richardson v. Ramirez*, 418 U.S. 24, 36 (1974). In fact, "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases and controversies." *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 37 (1976) (citing *Flast v. Cohen*, 392 U.S. 83, 95 (1968)).

The case-or-controversy requirement must be met "through all stages of federal judicial proceedings." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). The effect of post-complaint changes in the facts or law on the continued existence of a particular controversy is assessed through the lens of mootness. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n.22 (1997) (quoting *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)). Thus, the controversy must exist at the outset of the litigation and continue throughout the existence of the suit. *See Columbian Rope Company v. West*, 142 F.3d 1313, 1316

(D.C. Cir. 1998) (citing *Arizonans for Official English*, 520 U.S. 43). As the D.C. Circuit has explained, “[e]ven where litigation poses a live controversy when filed, the [mootness] doctrine requires a federal Court to refrain from deciding it if ‘events have so transpired that the decision will neither presently affect the parties’ rights nor have a more-than-speculative chance of affecting them in the future.’” *Columbian Rope*, 142 F.3d at 1316 (quoting *Clarke v. United States*, 915 F.2d 699, 701 (D.C. Cir. 1990) (en banc)). Once a case becomes moot, the court loses jurisdiction. See *City of Houston v. Dep’t of Housing and Urban Dev.*, 24 F.3d 1421, 1426 (D.C. Cir. 1994).

In FOIA cases, an agency’s release of documents eliminates any live controversy between the parties because it gives the requester the relief sought in the FOIA complaint. See *Crooker v. United States State Dep’t*, 628 F.2d 9, 10 (D.C. Cir. 1980) (“Once the records are produced [in a FOIA case] the substance of the controversy disappears and becomes moot since the disclosure which the suit seeks has already been made.”). A court can properly dismiss such cases on mootness grounds because there is no further judicial function for the court to perform. See *Tijerina*, 821 F.2d at 799; *Perry v. Block*, 684 F.2d 121, 125 (D.C. Cir. 1982); *Trueblood v. Dep’t of Treasury*, 943 F. Supp. 64, 67 (D.D.C. 1996).

After conducting a reasonable and adequate search, Defendant responded to Plaintiff’s FOIA request, providing all responsive records located by Defendant that

were not exempt from disclosure. Thus, Defendant has satisfied Plaintiff's FOIA request and her request is now moot. Accordingly, the Court should grant dismissal or, in the alternative, summary judgment in Defendant's favor on this basis.

II. SSA CONDUCTED A REASONABLE AND ADEQUATE SEARCH FOR RESPONSIVE RECORDS OF HARRISON (HARRY) J. BOUNEL.

SSA is entitled to summary judgment because it conducted a reasonable and adequate search for responsive records of Harrison (Harry) J. Bounel, using the information provided by Plaintiff in her April 26, 2013 FOIA request. An agency's summary judgment motion should be granted if the agency shows that it "conduct[ed] a search reasonably calculated to uncover all relevant documents." *Kowalczyk v. DOJ*, 73 F.3d 386, 388 (D.C. Cir. 1996) (quoting *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)); see also *Voinche v. FBI*, 425 F. Supp. 2d 134, 135 (D.D.C. 2006). If the plaintiff challenges the nature and extent of an agency's search for responsive documents, the agency "must demonstrate beyond material doubt that the search was reasonable." *Kowalczyk*, 73 F.3d at 388.

The fundamental question is not "whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate." *Steinberg v. United States Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994) (quoting *Weisberg v. United States Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). In other words, "the focus of the adequacy inquiry is not on the results." *Hornbostel v. United States Dep't of the Interior*, 305

F. Supp. 2d 21, 28 (D.D.C. 2003); *see also Meeropol v. Meese*, 790 F.2d 942, 952 (D.C. Cir. 1986) (search is not unreasonable simply because it fails to produce all relevant materials). Further, the agency is "not obligated to look beyond the four corners of the request for leads to the location of responsive documents." *Kowalczyk*, 73 F.3d at 389 (holding that agency is not required to speculate about potential leads).

An agency may use reasonably detailed, non-conclusory affidavits to demonstrate that it conducted a reasonable search in accordance with the FOIA. *See Ground Saucer Watch, Inc. v. CIA*, 692 F.2d 770, 771 (D. C. Cir.1981); *see also Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). Those affidavits "enjoy a presumption of good faith, which will withstand purely speculative claims about the existence and discoverability of other documents." *Ground Saucer Watch*, 692 F.3d at 771; *see also Havemann*, 2012 U.S. Dist. LEXIS 136292, at *15; *Chamberlain v. United States Dep't of Justice*, 957 F. Supp. 292, 294 (D.D.C. 1997) ("It is well established that '[a]gency affidavits enjoy a presumption of good faith that withstand[s] purely speculative claims about the existence and discoverability of other documents,' (quoting *Albuquerque Publ'g Co. v. United States Dep't of Justice*, 726 F. Supp. 851, 860 (D.D.C. 1989)). Therefore, unless Plaintiff can point to specific evidence sufficient to put the agency's good faith into doubt, summary judgment must be granted to the agency. *Ground Saucer Watch*, 692 F.3d at 771.

As detailed in the August 2013 Declaration of Dawn S. Wiggins, Deputy Executive Director of the Office of Privacy and Disclosure (attached as Exhibit C), the September 2013 Supplemental Wiggins Declaration (attached as Exhibit D), and the January 2014 Supplemental Wiggins Declaration (attached as Exhibit E), SSA conducted an adequate search for the requested documents about Mr. Bounel. Specifically, SSA searched its Privacy Act system of record entitled the Master File for Social Security Number Holders and SSN Applications (also known as the "Numident"), System of Record Notice No. 60-0058 (published at 75 F.R. 82121 (Dec. 29, 2010)), which includes records of each person who applied for a Social Security number (SSN). There are no other locations or records that the agency determined would have a reasonable likelihood of containing a Form SS-5 of Mr. Bounel. *See* January 2014 Wiggins Suppl. Declaration ¶ 3.

In order to locate an individual's Form SS-5 using the Numident database, SSA must have information such as SSN, name, date of birth, or other identifying information about the number holder that it can use to search the database. *See* August 2013 Wiggins Declaration ¶ 6; January 2014 Wiggins Suppl. Declaration ¶ 5. Because there is only one Numident record for each SSN issued by SSA, an SSN search is the primary and most accurate means locating individual records in the Numident. *See* January 2014 Wiggins Suppl. Declaration ¶ 5.

In response to Plaintiff's April 26, 2013 FOIA request, SSA searched the Numident for the SSN provided by Plaintiff, which she asserts belongs to Mr. Bounel.⁶ See January 2014 Wiggins Suppl. Declaration ¶ 6. SSA also conducted alternate searches of the Numident using Mr. Bounel's name (the following variations were searched: Harrison Bounel, Harrison J. Bounel, Harry Bounel, and Harry J. Bounel) and year of birth (i.e., 1890). *Id.* Because Plaintiff did not provide a full date of birth, SSA performed a date range search for any Numident records with dates of birth between January 1, 1890 and January 1, 1894. *Id.* SSA reviewed any results of the searches against the identifying information provided by Plaintiff for Mr. Bounel. *Id.* However, SSA was unable to locate a Form SS-5 or Numident record for Mr. Bounel based on the information provided by Plaintiff in her FOIA request. *Id.* The other identifying information about Mr. Bounel provided by Plaintiff with her FOIA request included that he emigrated from

⁶ SSA has previously advised Plaintiff that SSA cannot disclose information about the SSN she asserts belongs to Mr. Bounel because the individual holding the SSN is living. See September 2013 Wiggins Suppl. Declaration ¶ 7. Plaintiff has made multiple FOIA requests to SSA and initiated previous lawsuits for information about the SSN she asserts belongs to Mr. Bounel. See *Taitz v. Astrue*, 806 F.Supp.2d 214, 217 (D.D.C. 2011), *aff'd*, No. 11-5304, 2012 U.S. App. LEXIS 10713 (D.C. Cir. May 25, 2013) (SSA properly withheld a Form SS-5 under FOIA Exemption 6 because disclosure of the form, which the requestor contended was for a number being fraudulently used by President Barack Obama, would implicate a substantial privacy interest while serving no public interest cognizable under FOIA.); *Taitz v. Obama*, 707 F.Supp.2d 1 (D.D.C. 2010), *recons. denied*, 754 F.Supp.2d 57 (D.D.C. 2010). SSA has consistently withheld information about this SSN under FOIA exemption 6, and the United States District Court for the District of Columbia has upheld such withholding. *Id.*

Russia, arrived in the United States around 1912, and received an SSN in Connecticut or around March 28, 1977. *See* September 2013 Wiggins Suppl. Declaration ¶ 5. However, SSA cannot conduct a search of the Numident by place of emigration, year of immigration, or the date the person received or applied for an SSN. *See* January 2014 Wiggins Suppl. Declaration ¶ 7.

Because SSA was unable to locate Mr. Bounel in the Numident, SSA also could not locate benefits records for Mr. Bounel. SSA's beneficiary systems of records, the Master Beneficiary Record ("MBR"), System of Record Notice No. 60-0090 (published at 71 F.R. 1826 (Jan. 11, 2006), and Supplemental Security Income Record and Special Veterans Benefits ("SSR"), System of Record Notice No. 60-0103 (published at 71 F.R. 1830 (Jan. 11, 2006), require a valid SSN to complete a search. There are no other locations or records that the agency determined would have a reasonable likelihood of containing the requested benefit records of Mr. Bounel. *See* January 2014 Wiggins Suppl. Declaration ¶ 8.

SSA searched all records and locations that the agency determined would have a reasonable likelihood of containing the Social Security records of Mr. Bounel, performed alternate searches of its records using the information in Plaintiff's FOIA request, and further reviewed any possibly responsive records before responding to Plaintiff's FOIA request. SSA's failure to locate Mr. Bounel's records, if any exist, does not render SSA's search inadequate or unreasonable. "[I]t is long settled that the failure of an agency to turn up one specific document in its search does not alone

render a search inadequate.” *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). Because SSA conducted an adequate search for responsive documents, it is entitled to summary judgment.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court dismiss the above-captioned caption, or, in the alternative, grant summary judgment in Defendant’s favor.

Respectfully submitted,

Rod J. Rosenstein
United States Attorney

By: _____/s/_____
Allen F. Loucks
Assistant United States Attorney
36 South Charles Street
Fourth Floor
Baltimore, Maryland 21201
(410) 209-4800

SS-5
3 requests
Cert

DR. ORLY TAITZ, ESQ

PRESIDENT

DEFEND OUR FREEDOMS FOUNDATION

29839 SANTA MARGARITA PKWY, STE 100

RANCHO SANTA MARGARITA CA 92688

04.26.2013

Social Security Administration

OEO FOIA Workgroup

300 N. Green Street

P.O. Box 33022

Baltimore, MD 21290-3022

via certified mail, fee attached

Dear Sir/Mdm,

I am requesting under the Freedom of Information act 5US 552 following documents:

1. A copy of the SS-5 application for Social Security number for deceased Tamerlan Tsarnaev, 26 years old, immigrant from Russia, last known residence Boston MA area. Additionally I am requesting any and all information available in the SSA file for the deceased. Please, advise if additional fee is required. Specifically I am requesting any and all documentation pertaining to any and all payments or aid provided by the Social Security administration to the deceased and his family.

2. I am hereby requesting SS-5 application and any and all documentation for Harrison (Harry) J. Bounel, immigrant from Russia, born in 1890, arrived in the U.S. in and around 1912, received Social Security number in the state of CT in and

2013 MAY 37 AM 9 56

around March 28, 1977, SSN 042-68-4425. I am seeking any and all documentation on any Social Security benefits received by Mr. Bounel for himself and any and all known dependants

3. I am seeking a SS-5 application for Stanley Ann Dunham, born in 1942 Wichita KS, deceased 1995, Honolulu HI. I am seeking any and all documentation for any and all Social Security benefits received by Mr. Dunham for herself and any and all dependants.

A handwritten signature in black ink, appearing to be 'Orly Taitz', written over a horizontal line.

Sincerely,

Dr. Orly Taitz ESQ.- President of
Defend our Freedoms Foundation
29839 Santa Margarita Pkwy, ste 100
Rancho Santa Margarita Ca 92688
cc Congressman Darrell Issa
Chairman
House Oversight Committee
2347 Rayburn House Building
Washington DC, 20515

cc Congressman Mike Rogers
Chairman
House Intelligence Committee

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Special Rapporteur on the Situation of Human Rights Defenders

The Honorable Mrs. Margaret Sekaggya

Palais des Nations

CH-1211 Geneva 10, Switzerland

International Criminal bar Hague

United Nations Commission for

Civil Rights Defenders

Orsolya Toth (Ms)

Human Rights Officer

Civil and Political Rights Section

Special Procedures Division

Office of the High Commissioner for Human Rights

tel: + 41 22 917 91 51

email: ototh@ohchr.org

133 Cannon House Office building

Washington DC 20515

cc Congressman Sam Johnson

Chairman

House Subcommittee on Social Security

House Ways and Means Committee

2929 N Central Expy, 240

Richardson, TX 75080

cc Congressman Bob Goodlatt

Chairman of the House Committee on the Judiciary

2309 Rayburn HOB

Washington, D.C. 20515

Phone: (202) 225-5431

Fax: (202) 225-9681

Public Integrity Section

Department of Justice

950 Pennsylvania Ave, NW

Washington DC 20530-0001

COMPLETE THE FOLLOWING

ROUTE RESPONSE TO / RETURN TO (SELECT ONE): 1
1=SCREEN 2=PRINTER/MAIN 3=PRINTER
SOCIAL SECURITY NUMBER: 042 68 4425

OPTIONAL FIELD

ADDITIONAL RECORD TYPES REQUESTED: _
1 = CROSS REFERENCE RECORDS
2 = CORRESPONDENCE RECORDS
3 = BOTH OF THE ABOVE

SSN PRINTOUT (Y/N): N

RESTRICTED RECORD - HAVE SUPERVISOR CALL (410) 965-8006

Terrell Humphreys 5/30/13

*said that they didn't restrict his record
and will talk to OSI director*

for 410-965-9244

• **Green, Phyllis E. HQ OGC**

From: Murray, Michelle G.
Sent: Friday, May 31, 2013 12:12 PM
To: Green, Phyllis E. HQ OGC
Cc: Battle, Nancy; Ray III, George; Murray, Michelle G.
Subject: FOIA Cases
Attachments: [Untitled].pdf

Good afternoon Phyllis,

Per our conversation, I have attached the President Obama FOIA request. DERO will close-out the request in our MICES system. The request will state that "the request is closed and OPD has jurisdiction".

If you have any questions, let me know.

Thanks,
Michelle G. Murray
Earnings Adjustment Branch Manager
Division of Earnings Records Operations Office of Earnings Operations
410-965-2048



SOCIAL SECURITY

July 29, 2013

Refer to:
S9H: AL0414

Dr. Orly Taitz, Esquire
Defend Our Freedoms Foundation
29839 Santa Margarita Parkway
Suite 100
Rancho Santa Margarita, CA 92688

Dear Dr. Taitz:

Thank you for your April 26, 2013 request for a copy of the original Applications for a Social Security Card (Form SS-5s) and any and all Social Security benefits received by Mr. Tamerlan Tsarnaev, Mr. Harrison J. Bounel, and Ms. Stanley Ann Dunham or their dependents.

We did not receive your request until June 6, 2013. We apologize for the delay in responding to your request and any inconvenience this may have caused.

I have enclosed a copy of the SS-5s for Mr. Tsarnaev and Ms. Dunham. We cannot disclose the parents' names listed on Mr. Tsarnaev's application without their written consent or acceptable proof of their death. The Privacy Act of 1974 (5 U.S.C. § 552a) provides the guidelines and limitations for disclosing the information you have requested. The information requested is also exempt from disclosure under the FOIA (5 U.S.C. § 552(b)(6)). Exemption 6 of the FOIA does not require agencies to disclose information that would be a clearly unwarranted invasion of personal privacy.

With your request, you submitted \$37.00 as payment; however, the total cost for the two SS-5s we have enclosed is \$58.00. Please submit an additional payment of \$21.00 to cover the cost of processing this request.

You can pay by credit card. We accept Visa, MasterCard, Discover, American Express, and Diner's Club. To pay by credit card, complete and sign the enclosed form. Include your credit card number and expiration date. We also accept checks or money orders payable to the Social Security Administration. Submit your payment to:

Social Security Administration
Office of Privacy and Disclosure
617 Altmeyer Building
6401 Security Boulevard
Baltimore, MD 21235

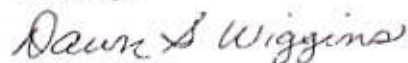
Page 2 – Dr. Orly Taitz, Esquire

In response to your request for any and all Social Security benefits received by Mr. Tsarnaev and Ms. Dunham or their dependents, neither Mr. Tsarnaev nor Ms. Dunham had received any Social Security benefits. The Privacy Act protects information regarding benefits to their family members. Thus, we cannot disclose any records responsive to your request.

We were unable to find any information for Mr. Bounel based on the information you provided to us. Mr. Bounel may not have applied for a Social Security number (SSN) or may have given different information on the application for a number.

If you disagree with this decision, you may request a review. Mail your appeal within 30 days after you receive this letter to the Executive Director for the Office of Privacy and Disclosure, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. Mark the envelope "Freedom of Information Appeal."

Sincerely,

A handwritten signature in cursive script that reads "Dawn S. Wiggins".

Dawn S. Wiggins
Freedom of Information Officer

Enclosure

HE HAD COMPLETED APPLICATION
TO AFFAIRS SOCIAL SECURITY
ADMINISTRATIVE DISTRICT OFFICE

APPLICATION FOR SOCIAL SECURITY ACCOUNT NUMBER
REQUIRED UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT
READ INSTRUCTIONS ON BACK BEFORE FILLING IN FORM

535-410-8522

DO NOT WRITE IN THE ABOVE SPACE

PRINT OR SIGN ON DARK BLUE INK OR USE TYPEWRITER FOR ALL ITEMS EXCEPT SIGNATURE. IF THE INFORMATION CALLED FOR IN ANY ITEM IS NOT AVAILABLE, WRITE "UNAVAILABLE".

JUST NAME YOUR OWN COMPANY FIRST NAME

MIDDLE NAME. (IF YOU USE NO MIDDLE NAME OR INITIAL, DRAW A LINE _____)

EAST HAMPSHIRE

1992/93. CH 3 VARIOUS, THE
MADE THE WILL OF. OFFICE FIVE OVER

STANLEY ANN

DUNHAM

MAILING ADDRESS (IF ANY) AND ST., P. O. BOX OR RFD: (CITY) (STATE) (ZIP)

3206 E. LEXINGTON MECEETIS, WASH.

PRINT FULL NAME GIVEN YOU AT BIRTH
SPANLEY ANN DOWNHAM

NOV 16 1942

PLACE OF BIRTH (CITY)	(COUNTY)	(STATE)
WICHITA		KANSAS

FAITHFUL AND FULL: WIFEHOODS OF WHETHER LIVING OR DEAD

STANLEY ARMOUR DUNHAM

MADE-YN LEE PAYNE

MADELYN LEE PAVNE

NAME (LAST, FIRST, MIDDLE) (IF OTHER, SPECIFY)

DATE	FRANCE	10	09	WHITE	WESLEY	OTHELLO
1900	10	09	10	09	10	09

WILLIAM WARE OF NEW YORK. EMPLOYED

[illegible]

REPLACING ALUMINUM, IRON AND STEEL	(CITY)	(ZONE)	(STATE)
------------------------------------	--------	--------	---------

THEY ARE WAITING

1951, 27, 6.6

WRITE YOUR NAME AS USUALLY WRITTEN (DO NOT PRINT)

YOUR NAME AS USUALLY WRITTEN (DO NOT PRINT)
Stanley Anne Rose

INSTRUMENT PREPARED BY THE PRACTICE INTERNAL EVENT SERVICE (Revised 7-65)

10-1024-01

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
Bureau of Old-Age and Survivors Insurance

REQUEST FOR CHANGE
IN SOCIAL SECURITY RECORDS

Form Approved Budget Bureau No. 72-R 121.0

SOCIAL SECURITY ACCOUNT NUMBER

535-40-85226

Read Instructions On Back Before Filling In Form. Print in dark ink or use typewriter.

1 IF REQUESTING NAME CHANGE Print NEW NAME HERE EXACTLY AS YOU WILL USE IT AT WORK		(First Name) ANN	(Middle Name or Initial - if none, draw line —) DUNHAM	(Last Name) OBAMA	DO NOT WRITE IN THIS SPACE <input type="checkbox"/> DUP. ISSUED <input type="checkbox"/> EMPLOYEE CORRESP.
2 Print YOUR NAME AS SHOWN ON YOUR LAST CARD		(First Name) STANLEY	(Middle Name or Initial - if none, draw line —) ANN	(Last Name) DUNHAM	
3 DATE OF BIRTH	(Month) NOV	(Day) 29	(Year) 42	4 BIRTH DATE PREVIOUSLY REPORTED (If different from Item 3) (same)	
5 PLACE OF BIRTH	(City) WICHITA	(County) SEDGWICK	(State) KANSAS	6 SEX: MALE <input type="checkbox"/> FEMALE <input checked="" type="checkbox"/>	7 COLOR OR RACE: WHITE <input checked="" type="checkbox"/> NEGRO <input type="checkbox"/> OTHER <input type="checkbox"/>
8 MOTHER'S FULL NAME AT HER BIRTH MADELYN LEE PAYNE			9 FATHER'S FULL NAME (Regardless of whether living or dead) STANLEY ARMOUR DUNHAM		
10 HAVE YOU LOST YOUR CARD?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	11 IF "YES," ENTER ACCOUNT NUMBER, IF KNOWN, IN UPPER RIGHT CORNER AND COMPLETE ITEM 11. IF "NO," ATTACH CARD ON BACK OF THIS FORM.		11 WHERE AND WHEN DID YOU GET YOUR FIRST CARD? (State) WASHINGTON (Year) 1959	
12 PRESENT MAILING ADDRESS		(Number and Street) 2277 KAMEHAMEHA AVE. (City) HONOLULU (Zone) 14 (State) HAWAII			
13 TODAY'S DATE JAN. 3, 1963		14 Write YOUR NAME AS YOU USUALLY WRITE IT (Do Not Print or Type—Use dark ink.) Ann Dunham Obama			

8510948

SOCIAL SECURITY ADMINISTRATION Application for a Social Security Card

Form Approved
OMB No. 0960-0060

INSTRUCTIONS

888

- Please read "How To Complete This Form" on page 2.
- Print or type using black or blue ink. **DO NOT USE PENCIL.**
- After you complete this form, take or mail it along with the required documents to your nearest Social Security office.
- If you are completing this form for someone else, answer the questions as they apply to that person. Then, sign your name in question 16.

1 NAME
To Be Shown On Card
FULL NAME AT BIRTH (IF OTHER THAN ABOVE)
OTHER NAMES USED

FIRST STANLEY MIDDLE NAME ANN LAST DUNHAM

FIRST SAME MIDDLE NAME OBAMA LAST SOETORO (MARRIED NAMES)

2 MAILING ADDRESS
(A, Not Abbreviate)

STREET ADDRESS, APT. NO., PO BOX, RURAL ROUTE NO. 1617 SOUTH BERETANIA, APARTMENT 1008

CITY HONOLULU STATE HAWAII ZIP CODE 96826

3 CITIZENSHIP
(Check One)

☒ U.S. Citizen ☐ Legal Alien Allowed To ☐ Legal Alien Not Allowed To Work ☐ Foreign Student Allowed Restricted Employment ☐ Conditionally Legalized Alien Allowed To Work ☐ Other (See Instructions On Page 2)

4 SEX

☐ Male ☒ Female

5 RACE/ETHNIC DESCRIPTION
(Check One Only—Voluntary)

☐ Asian, Asian-American Or Pacific Islander ☐ Hispanic ☐ Black (Not Hispanic) ☐ North American Indian Or Alaskan Native ☒ White (Not Hispanic)

6 DATE OF BIRTH NOV 29 1942 **7 PLACE OF BIRTH** WICHITA, KANSAS

MONTH DAY YEAR CITY STATE OR FOREIGN COUNTRY PCI

8 MOTHER'S MAIDEN NAME FIRST MADELYN MIDDLE NAME LEE LAST NAME AT HER BIRTH PAYNE

9 FATHER'S NAME FIRST STANLEY MIDDLE NAME ARMOUR LAST DUNHAM

10 Has the person in item 1 ever received a Social Security number before?

☒ Yes (If "yes", answer questions 11-13.) ☐ No (If "no", go on to question 14.) ☐ Don't Know (If "don't know", go on to question 14.)

11 Enter the Social Security number previously assigned to the person listed in item 1.

525-40-8522

12 Enter the name shown on the most recent Social Security card issued for the person listed in item 1.

FIRST ANN MIDDLE NAME DUNHAM LAST OBAMA

13 Enter any different date of birth if used on an earlier application for a card. MONTH DAY YEAR

14 TODAY'S DATE JUNE 14 1995 **15 DAYTIME PHONE NUMBER** (808) 946-6808

MONTH DAY YEAR AREA CODE

DELIBERATELY FURNISHING OR CAUSING TO BE FURNISHED FALSE INFORMATION ON THIS APPLICATION IS A CRIME PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.

16 YOUR SIGNATURE Stanley Ann Dunham **17 YOUR RELATIONSHIP TO THE PERSON IN ITEM 1 IS:**

☒ Self ☐ Natural Or Adoptive Parent ☐ Legal Guardian ☐ Other (Specify)

DO NOT WRITE BELOW THIS LINE (FOR SSA USE ONLY)

NPN	DOC	MT	CAN	ITV
PBC	N	EVI	Y	EVA
N	N	EVC	N	PRA
NWK	DNR	UNIT		

EVIDENCE SUBMITTED
US PP # 6155268 issued 3/31/96 - shows DUNHAM
DIWILE DECREE # 57972 Honolulu HI.
SHOWS OBAMA

SIGNATURE AND TITLE OF EMPLOYEE(S) REVIEWING EVIDENCE AND/OR CONDUCTING INTERVIEW
CR 6/15/95
DATE
OCL
DATE

Form Approved
OMB No. 0590-0062

289

Social Security Administration
Application for a Social Security Card

1. NAME TO BE SHOWN ON CARD		First Name	Full Middle Name	Last Name
FULL NAME AT BIRTH IF OTHER THAN ABOVE		DEHOKHAR	ANZOROVICH	TSARNAEV
OTHER NAMES USED		N/A		
2. MAILING ADDRESS (Do not abbreviate)		Street Address, Apt. No., PO Box, Rural Route No. 410 NORFOLK ST, APT 3 City: CAMBRIDGE State: MA Zip Code: 02139		
3. CITIZENSHIP (Check one)		<input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Legal Alien Allowed To Work <input type="checkbox"/> Legal Alien Not Allowed To Work (See Instructions On Page 1) <input checked="" type="checkbox"/> Other (See Instructions On Page 1)		
4. SEX		<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female		
5. RACE/ETHNIC DESCRIPTION (Check one - Voluntary)		<input type="checkbox"/> Asian, Asian-American or Pacific Islander <input type="checkbox"/> Hispanic <input type="checkbox"/> Black (Not Hispanic) <input type="checkbox"/> North American Indian or Alaskan Native <input checked="" type="checkbox"/> White (Not Hispanic)		
6. DATE OF BIRTH	7. PLACE OF BIRTH	(Do Not Abbreviate) City: TOKMAK State or Foreign Country: KYRGYZSTAN PC:		
8. A. MOTHER'S MARRIED NAME		First Name: Middle Name: Last Name: As Mar. Brn:		
B. MOTHER'S SOCIAL SECURITY NUMBER		<input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		
9. A. FATHER'S NAME		First Name: Middle Name: Last Name:		
B. FATHER'S SOCIAL SECURITY NUMBER		<input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		
10. Has the applicant or anyone acting on his/her behalf ever filed for or received a Social Security number card before?				
<input type="checkbox"/> Yes (If "yes", answer questions 11-13.) <input checked="" type="checkbox"/> No (If "no", go on to question 14.) <input type="checkbox"/> Don't Know (If "don't know", go on to question 14.)				
11. Enter the Social Security number previously assigned to the person listed in item 1.		<input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		
12. Enter the name shown on the most recent Social Security card issued for the person listed in item 1.		First Name: Middle Name: Last Name:		
13. Enter any different date of birth if used on an earlier application for a card.		Month: Day: Year:		
14. TODAY'S DATE		15. DAYTIME PHONE NUMBER		
10/07/2002		617 547 6016		
16. YOUR SIGNATURE				
17. YOUR RELATIONSHIP TO THE PERSON IN ITEM 1 IS:				
<input type="checkbox"/> Self <input type="checkbox"/> Natural Or Adoptive Parent <input type="checkbox"/> Legal Guardian <input checked="" type="checkbox"/> Other (Specify): FATHER				
DO NOT WRITE BELOW THIS LINE (FOR SSA USE ONLY)				
NPN	DOC	UTI	CAN	ITW
	032			
PSC	EVI	EVR	EVE	PRA
N	Y	Y	Y	Y
EVIDENCE SUBMITTED		SIGNATURE AND TITLE OF EMPLOYER(S) REVIEWING EVIDENCE AND/OR CONDUCTING INTERVIEW		
Entered as employee A 9588 7193 same verified 200222 14510765		S. Smith 10/10/02 DATE		
DEL		EXF		

APPLICATION FOR REPLACEMENT SOCIAL SECURITY NUMBER CARD REF: 02297038640

APPLICANT NAME: DZHOKHAR ANZOROVICH/TSARNAEV
NAME TO BE SHOWN ON CARD: DZHOKHAR ANZOROVICH/TSARNAEV

APPLICANT'S MAILING ADDRESS: 410 NORFOLK STREET
APT 3
CAMBRIDGE MA 02139

SEX: M BIRTH DATE: 07/22/1993

PLACE OF BIRTH: TOKMAK, SR

MOTHER'S NAME AT HER BIRTH: FOREIGN BORN

FATHER'S NAME: [REDACTED]

HAS THE APPLICANT OR ANYONE ACTING ON HIS/HER BEHALF EVER FILED FOR OR RECEIVED A SOCIAL SECURITY NUMBER CARD BEFORE? YES LAST SSN: 020-86-0491

NAME ON LAST CARD: DZHOKHAR ANZOROVICH/TSARNAEV

CITIZENSHIP: LEGAL ALIEN ALLOWED TO WORK

RACE/ETHNIC DESCRIPTION: WHITE

APPLICANT'S TELEPHONE: (617) 547-6016

WARNING

DELIBERATELY FURNISHING (OR CAUSING TO BE FURNISHED) FALSE INFORMATION ON THIS APPLICATION IS A CRIME PUNISHABLE BY FINE OR IMPRISONMENT OR BOTH

SIGNATURE: _____

DATE: _____

YOUR RELATIONSHIP TO APPLICANT: () SELF () OTHER (SPECIFY) _____

WITNESS (IF SIGNED BY MARK X): _____

WITNESS (IF SIGNED BY MARK X): _____

DO NOT WRITE BELOW THIS LINE (FOR SSA USE ONLY)

DATE APPLICATION ENTERED: 10/24/02 DOC: 032

UNIT: SNA

SIGNATURE AND TITLE OF EMPLOYEE(S) REVIEWING EVIDENCE AND/OR CONDUCTING INTERVIEW: _____

IN-PERSON INTERVIEW CONDUCTED? NO

ACCEPTABLE EVIDENCE OF CITIZENSHIP/ALIEN STATUS, IDENTITY, AND AGE SUBMITTED. TYPES OF EVIDENCE SUBMITTED: EVIDENCE PREVIOUSLY SUBMITTED C/D 10/16/2002. TYPOGRAPHICAL ERROR ON LAST NAME AND EVIDENCE SUBMITTED WAS CODED CORRECTLY ON SSS BUT ENTERED WRONG ON MMS. ASYLUM PRA FIELD SHOULD BE Y.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

ORLY TAITZ,

Plaintiff,

v.

CAROLYN COLVIN, COMMISSION OF THE
SOCIAL SECURITY ADMINISTRATION

Defendant.

Civil No. ELH 13-cv-01878

DECLARATION OF DAWN S. WIGGINS

I, Dawn S. Wiggins, Deputy Executive Director of the Office of Privacy and Disclosure in the Office of General Counsel at the Social Security Administration (SSA), do hereby declare as follows:

1. I am employed at SSA in Baltimore, Maryland. I have been Deputy Executive Director for the Office of Privacy and Disclosure (OPD), the SSA office responsible for responding to Freedom of Information Act (FOIA), 5 U.S.C. § 552, requests, since October 2008.
2. As part of my duties and responsibilities, I act as SSA's Freedom of Information Officer and Privacy Officer. As such, I am delegated the responsibility for reviewing all initial FOIA requests and determining whether information should be released to the public. See 20 C.F.R. § 402.125. I have personal knowledge of the procedures that SSA employs in handling FOIA requests for records and in handling requests for the disclosure of information pursuant to the Privacy Act, 5 U.S.C. § 552a. In addition, I have personal knowledge of SSA's records and systems that contain records.
3. By letter dated April 26, 2013, Orly Taitz made a FOIA request to SSA for a copy of the original Applications for a Social Security Card (Form SS-5s) and any and all Social Security benefits received by Tamerlan Tsarnaev, Harrison J. Bounel, and Stanley Ann Dunham, and their families and dependents. Ms. Taitz provided information about each of the three individuals, including name, age or year of birth, last known residence, and date or year of death, if known. Ms. Taitz did not provide a Social Security number (SSN) for Mr. Tsarnaev or Ms. Dunham; however, she did provide an SSN for Mr. Bounel.
4. Ms. Taitz did not provide proof of death or the consent of any of the individuals named in her FOIA request or their family members or dependents.
5. OPD received Ms. Taitz's FOIA request on May 31, 2013.


6. SSA employees in OPD completed a search of its records for the Form SS-5s for Mr. Tsarnaev, Mr. Bounel, and Ms. Dunham. Though Ms. Taitz did not provide SSNs for Mr. Tsarnaev and Ms. Dunham, SSA was able to locate their SS-5 applications. SSA was unable to locate any information for Harrison J. Bounel based on the information provided by Ms. Taitz. In order to locate an individual's SS-5 application in the agency's Privacy Act system of record entitled the Master File for SSN Holders, the agency must have information such as the name, date of birth, or other identifying information about the number holder. In this case, SSA could not find a record that matched the information provided by Ms. Taitz for Harrison J. Bounel. Therefore, SSA could not produce an SS-5 for this individual.
7. SSA was in process of responding to Ms. Taitz's FOIA request, when Plaintiff filed her Complaint in the above-captioned action, on June 25, 2013.
8. By letters dated July 29, 2013 and August 7, 2013, SSA responded to Ms. Taitz's April 26, 2013 FOIA request. SSA released copies of the Form SS-5s for Tamerlan Tsarnaev and Stanley Ann Dunham, because SSA was able to determine that these individuals are deceased.
9. SSA redacted parent names and one parent SSN¹ on Mr. Tsarnaev's Form SS-5 and withheld information about any benefits received by Mr. Tsarnaev's and Ms. Dunham's dependents and family members, if any, because SSA records do not indicate that these individuals are deceased and Ms. Taitz did not provide proof of death or consent. SSA responded that it could not release this information, because the Privacy Act protects personally identifiable information contained in a system of records. 5 U.S.C. § 552a. Under the Privacy Act, an agency may not disclose an individual's records without the written consent of the individual. 5 U.S.C. § 552a(b). SSA maintains information regarding SSNs in its Privacy Act system of records entitled the Master Files of Social Security Number Holders and SSN Applications, System No. 60-0058 (published at 75 F.R. 82121 (Dec. 29, 2010)). SSA maintains information regarding benefits paid to individuals, including dependents and other beneficiaries, in its Privacy Act system of records entitled the Master Beneficiary Record, System No. 60-0090 (published at 71 F.R. 1826 (Jan. 11, 2006)). Thus, the Privacy Act protects information associated with the SSNs, financial records, medical records, and benefits of Mr. Tsarnaev's and Ms. Dunham's living dependents and family members. 20 C.F.R. § 401.190.
10. SSA also considered release of the redacted information about Mr. Tsarnaev's parents on his Form SS-5 and withheld information about any benefits received by Mr. Tsarnaev's and Ms. Dunham's dependents and family members under the FOIA, because the Privacy Act permits disclosure if FOIA requires it. 5 U.S.C. § 552(b)(2). SSA determined that the FOIA did not require release of the redacted and withheld

¹ SSA intended to redact Mr. Tsarnaev's father's SSN on Mr. Tsarnaev's SS-5 application. However, SSA believes the copy mailed to Plaintiff may have inadvertently included Mr. Tsarnaev's father's SSN. SSA is taking appropriate action to confirm and address the possible disclosure of Mr. Tsarnaev's father's personally identifiable information.

information, because the information should be withheld under FOIA exemption 6. Under FOIA exemption 6, an agency may withhold from release "personnel and medical files and similar the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

11. The agency concluded that the personal information about Mr. Tsarnaev's parents on his Form SS-5 and information about any benefits received by Mr. Tsarnaev's and Ms. Dunham's dependents and family members falls within the category of files contemplated by exemption 6. *Havemann v. Astrue*, No. ELH-10-1498, 2012 U.S. Dist. LEXIS 136292, at *16 (D. Md. Sept. 24, 2012) (social security records, including social security numbers, addresses, names, and information regarding eligibility or application for benefits qualify as "similar files" protected under exemption 6). SSA's FOIA regulations specifically identify SSNs and names and addresses of individual beneficiaries as the kind of information that SSA withholds under exemption 6 of the FOIA. 20 C.F.R. § 402.100(c). Thus, the only determination that the agency needed to make was whether the public's interest in disclosure outweighed the individual's interests in privacy. "The public interest to be weighed against the privacy interest in this balancing test is 'the extent to which disclosure would serve the core purpose of the FOIA by 'contribut[ing] significantly to public understanding of the operations or activities of the government.'" *National Ass'n of Home Builders v. Norton*, 309 F.3d 26, 34 (D.C. Cir. 2002) (quoting *United States Dep't of Def. v. FLRA*, 510 U.S. 487, 495 (1994)). The agency concluded that there is no public interest in this information. Revealing information associated with a particular number holder's SSN or claim or eligibility for Social Security benefits does not shed light on the agency's performance of its statutory duties. Even if Ms. Taitz can articulate a public interest that release of this information would serve, an individual number holder's right to keep private information associated with his/her SSN, financial records, medical records, and benefits outweighs the public's right to know this information. The agency has an obligation to keep such sensitive and personal information related to SSNs and benefits secure.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on August 12, 2013 in Baltimore, Maryland.



Dawn S. Wiggins
Deputy Executive Director for the
Office of Privacy and Disclosure
Social Security Administration

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

ORLY TAITZ,

Plaintiff,

v.

CAROLYN COLVIN, COMMISSIONER OF
THE SOCIAL SECURITY ADMINISTRATION

Defendant.

Civil No. ELH 13-cv-01878

SUPPLEMENTAL DECLARATION OF DAWN S. WIGGINS


I, Dawn S. Wiggins, Deputy Executive Director of the Office of Privacy and Disclosure in the Office of General Counsel at the Social Security Administration (SSA), do hereby declare as follows:

1. I am employed at SSA in Baltimore, Maryland. I have been Deputy Executive Director for the Office of Privacy and Disclosure (OPD), the SSA office responsible for responding to Freedom of Information Act (FOIA), 5 U.S.C. § 552, requests, since October 2008.
2. As part of my duties and responsibilities, I act as SSA's Freedom of Information Officer and Privacy Officer. As such, I am delegated the responsibility for reviewing all initial FOIA requests and determining whether information should be released to the public. See 20 C.F.R. § 402.125. I have personal knowledge of the procedures that SSA employs in handling FOIA requests for records and in handling requests for the disclosure of information pursuant to the Privacy Act, 5 U.S.C. § 552a. In addition, I have personal knowledge of SSA's records and systems that contain records.
3. On or about October 15, 2012, SSA received an internet FOIA request for the Social Security number (SSN) records of Harry J. Bounel, also known as, Harrison Bounel. Outside of name and gender, the only identifiable information provided to SSA with the October 15, 2012 FOIA request was an SSN. Plaintiff was not the requester in the October 15, 2012 FOIA request.
4. SSA conducted a search of its Privacy Act system of records entitled the Master Files of Social Security Number Holders and SSN Applications (also known as the "Numident"), System No. 60-0058 (published at 75 F.R. 82121 (Dec. 29, 2010)) for the SSN records requested in the October 15, 2012 FOIA request. However, because the October 15, 2012 FOIA request only provided Mr. Bounel's name and an SSN, any information provided to the requester about SSA's search would result in validation of the SSN. Consequently, on November 16, 2012, when SSA responded

to the October 15, 2012 FOIA request, SSA advised the requester that the Privacy Act of 1974 and FOIA exemption 6 restricts disclosure of the requested information.

5. Plaintiff's April 26, 2013 FOIA request provided several pieces of information that Plaintiff asserts are true about Mr. Bounel, including: (1) his name, (2) where he immigrated from, (3) his year of birth, (4) when he arrived in the United States, (5) where and when he received a SSN, and (6) his SSN. SSA conducted a search of the Numident for a record that matched the information provided by Plaintiff but could not locate a record for Mr. Bounel. Because Plaintiff provided multiple pieces of identifying information with her FOIA request, SSA determined it could disclose to Plaintiff that no records were located because such disclosure would not result in validation of the SSN provided by Plaintiff for Mr. Bounel.
6. Plaintiff has made multiple FOIA requests to SSA and initiated previous lawsuits for information about the SSN she asserts belongs to Mr. Bounel. *See Taitz v. Astrue*, 806 F.Supp.2d 214, 217 (D.D.C. 2011), *aff'd*, No. 11-5304, 2012 U.S. App. LEXIS 10713 (D.C. Cir. May 25, 2013); *Taitz v. Obama*, 707 F.Supp.2d 1 (D.D.C. 2010), *recons. denied*, 754 F.Supp.2d 57 (D.D.C. 2010).
7. SSA has consistently withheld information about the SSN Plaintiff asserts belongs to Mr. Bounel under FOIA exemption 6 and the Privacy Act. In addition, SSA has previously advised Plaintiff that SSA cannot disclose information about the SSN she asserts belongs to Mr. Bounel because the individual holding the SSN is living.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on September 13, 2013 in Baltimore, Maryland.


Dawn S. Wiggins
Deputy Executive Director for the
Office of Privacy and Disclosure
Social Security Administration

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

ORLY TAITZ,

Plaintiff,

v.

CAROLYN COLVIN, COMMISSIONER OF
THE SOCIAL SECURITY ADMINISTRATION

Defendant.

Civil No. ELH 13-cv-01878

SECOND SUPPLEMENTAL DECLARATION OF DAWN S. WIGGINS

I, Dawn S. Wiggins, Deputy Executive Director of the Office of Privacy and Disclosure in the Office of General Counsel at the Social Security Administration (SSA), do hereby declare as follows:

1. I am employed at SSA in Baltimore, Maryland. I have been Deputy Executive Director for the Office of Privacy and Disclosure (OPD), the SSA office responsible for responding to Freedom of Information Act (FOIA), 5 U.S.C. § 552, requests, since October 2008.
2. As part of my duties and responsibilities, I act as SSA's Freedom of Information Officer and Privacy Officer. As such, I am delegated the responsibility for reviewing all initial FOIA requests and determining whether information should be released to the public. *See* 20 C.F.R. § 402.125. I have personal knowledge of the procedures that SSA employs in handling FOIA requests for records and in handling requests for the disclosure of information pursuant to the Privacy Act, 5 U.S.C. § 552a. In addition, I have personal knowledge of SSA's records and systems that contain records.
3. In response to Plaintiff's April 26, 2013 FOIA request for the Form SS-5¹ for Harrison (Harry) J. Bounel, SSA searched its Privacy Act system of records entitled the Master File for Social Security Number Holders and SSN Applications (also known as the "Numident"), System of Records Notice No. 60-0058 (published at 75 F.R. 82121 (Dec. 29, 2010)), which includes electronic records of each person who applied for a Social Security number (SSN). There are no other locations or records that the agency determined would have a reasonable likelihood of containing a Form SS-5 for Mr. Bounel.

¹ The Form SS-5 is the form through which an individual applies for an original or replacement social security card. *See, e.g.,* <http://www.socialsecurity.gov/online/ss-5.html>. The Form SS-5 includes the individual's full name, Social Security number (SSN), place of birth, date of birth, citizenship, parents' names, parents' SSNs (in certain versions of the Form SS-5), and other identifying information.

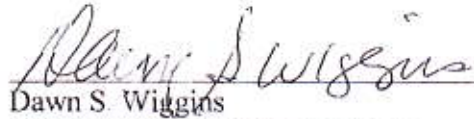
4. The Numident is a numerically ordered electronic database containing records of each person who has applied for an SSN. The Numident became fully electronic in the 1980s (i.e., it includes older records that were submitted in hardcopy). There is one Numident record for each SSN ever issued. The Numident record houses the identifying information given by the applicant for an SSN and Form SS-5s.
5. In order to locate an individual's Form SS-5 using the Numident database, SSA must have information such as SSN, name, date of birth, or other identifying information about the number holder that it can use to search the Numident database. Because there is only one Numident record for each SSN issued by SSA, an SSN search is the primary and most accurate means of locating individuals' records in the Numident.
6. In response to Plaintiff's April 26, 2013 FOIA request, SSA searched the Numident for the SSN provided by Plaintiff, which she asserts belongs to Mr. Bounel. SSA also conducted alternate searches of the Numident using Mr. Bounel's name (the following variations were searched: Harrison Bounel, Harrison J. Bounel, Harry Bounel, and Harry J. Bounel) and year of birth (i.e., 1890). Because Plaintiff did not provide a full date of birth, SSA performed a date range search for any Numident records with dates of birth between January 1, 1890 and January 1, 1894. SSA reviewed any results of the searches against the identifying information provided by Plaintiff for Mr. Bounel. However, SSA was unable to locate a Form SS-5 or Numident record for Mr. Bounel based on the information provided by Plaintiff in her FOIA request.
7. SSA cannot conduct a search of the Numident by place of emigration, year of immigration, or the date the person received or applied for an SSN.
8. Plaintiff's FOIA request also requested "any and all documentation on any Social Security benefits received by Mr. Bounel for himself and any and all known dependents." Because SSA was unable to locate a record for Mr. Bounel in the Numident, SSA could not locate benefit records for Mr. Bounel and his dependents, if any. SSA's beneficiary systems of records, the Master Beneficiary Record ("MBR"), System of Record Notice No. 60-0090 (published at 71 F.R. 1826 (Jan. 11, 2006)),² and Supplemental Security Income Record and Special Veterans Benefits ("SSR"), System of Record Notice No. 60-0103 (published at 71 F.R. 1830 (Jan. 11, 2006)),³ require a valid SSN to complete a search. There are no other locations or records that

² The MBR contains the data needed to generate Social Security benefit payments under the Old-Age, Survivors, and Disability Insurance (OASDI) program. The MBR is indexed by SSN, and SSN is the primary identifier for each record or account.

³ The SSR contains information on all persons who have ever applied for Title XVI Supplemental Security Income (SSI) and persons who, prior to the implementation of the federal SSI program in 1974, received state benefits and were converted to the SSI program. The SSR is indexed by SSN of the first eligible person on the record or account, which is the primary identifier for each record or account. SSNs of secondary beneficiaries on the record or account serve as a secondary index.

the agency determined would have a reasonable likelihood of containing the requested benefit records of Mr. Bounel.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on January 29, 2014 in Baltimore, Maryland.

A handwritten signature in cursive script, reading "Dawn S. Wiggins", written over a horizontal line.

Dawn S. Wiggins
Deputy Executive Director for the
Office of Privacy and Disclosure
Social Security Administration