

10-1600 (L)  
Long v. Office of Personnel Mgmt.

1  
2 **UNITED STATES COURT OF APPEALS**

3  
4 **FOR THE SECOND CIRCUIT**

5  
6 August Term, 2011

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9 (Argued: May 18, 2012 Decided: September 5, 2012)

10 Docket Nos. 10-1600 (Lead) 10-1618 (XAP)

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15 SUSAN B. LONG, DAVID BURNHAM,

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17 Plaintiffs-Appellants-Cross-Appellees,

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19 - v.-

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21 OFFICE OF PERSONNEL MANAGEMENT,

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23 Defendant-Appellee-Cross-Appellant.

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26  
27 Before: JACOBS, Chief Judge, CHIN and DRONEY,  
28 Circuit Judges.

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30 Appeal from two orders of the United States District  
31 Court for the Northern District of New York (Norman A.  
32 Mordue, J.) granting in part and denying in part each side's  
33 motion for summary judgment resolving the applicability of  
34 Exemption 6 of the Freedom of Information Act, 5 U.S.C. §  
35 552(b)(6), to a federal agency's decision to withhold names  
36 and duty-station information from personnel records for over  
37 800,000 federal civilian employees. We hold that the

1 district court correctly found that the names could be  
2 withheld, but erred insofar as it found that the agency must  
3 disclose all of the duty-station information.

4 AFFIRMED IN PART, REVERSED IN PART.

5 ADINA H. ROSENBAUM, Public Citizen  
6 Litigation Group, Washington,  
7 D.C. (Scott L. Nelson, on  
8 brief), for Appellants-Cross-  
9 Appellees.

10  
11 STEVE FRANK, United States  
12 Department of Justice,  
13 Washington, D.C. (Leonard  
14 Schaitman, on brief), for Tony  
15 West, Assistant Attorney  
16 General, for Appellee-Cross-  
17 Appellant.

18  
19 DENNIS JACOBS, Chief Judge:

20  
21 In response to plaintiffs' Freedom of Information Act  
22 ("FOIA") request for all records in the central database of  
23 defendant Office of Personnel Management ("OPM"), OPM  
24 withheld from disclosure the names and duty-station  
25 information of over 800,000 federal employees. In a pair of  
26 orders, the United States District Court for the Northern  
27 District of New York (Norman A. Mordue, J.) granted in part  
28 and denied in part each side's motion for summary judgment  
29 resolving the applicability of FOIA's personal privacy  
30 exemption: Exemption 6, 5 U.S.C. § 552(b)(6). The district

1 court ruled that OPM could withhold all employee names, but  
2 that only some of the duty-station information could be  
3 withheld. We agree that the names could be withheld, but  
4 conclude that OPM was entitled to withhold all of the duty-  
5 station information.

6  
7 **BACKGROUND**

8 Plaintiffs Susan Long and David Burnham are professors  
9 at Syracuse University and co-directors of the Transactional  
10 Records Access Clearinghouse ("TRAC"), a data-gathering,  
11 research, and distribution organization affiliated with the  
12 university. TRAC's stated purpose is to provide the public  
13 and oversight institutions with "comprehensive information  
14 about federal staffing, spending, and the enforcement  
15 activities of the federal government." J.A. 188.

16 Among other data-collection techniques, plaintiffs use  
17 FOIA to get records and data from OPM's Central Personnel  
18 Data File ("CPDF"), a database of approximately 100 data  
19 elements, or fields, concerning the federal civilian  
20 workforce.<sup>1</sup> OPM's static files have information about

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<sup>1</sup> The CPDF includes records for almost every employee of the executive branch, except those that work in a few security agencies, the White House, the Office of the Vice President, and the Tennessee Valley Authority.

1 federal employees at a particular moment in time; its  
2 dynamic files record personnel actions over intervals.  
3 Covered agencies submit quarterly data to OPM, which stores  
4 it in the CPDF. In addition to each employee's name, the  
5 CPDF's other fields include salary history, duty station,  
6 occupation, work schedule, and veteran status.

7 For a time, OPM provided plaintiffs with all the data  
8 fields contained in the CPDF, including those associated  
9 with the civilian workforce of the Department of Defense  
10 ("DoD").<sup>2</sup> Near year-end 2004, plaintiffs requested CPDF  
11 records for that year. In February 2005, OPM told  
12 plaintiffs it would be applying a newly-implemented data-  
13 release policy to their request. The upshot of this new  
14 policy is that OPM redacted the names and duty-station  
15 information for over 800,000 federal employees, the majority  
16 of whom were civilian DoD employees.<sup>3</sup> The duty-station  
17 information withheld includes six data elements

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<sup>2</sup> There are some exceptions to this policy. For example, beginning with its response to plaintiffs' request for the 1996 CPDF file, OPM withheld name and duty-station information for all employees in the Bureau of Alcohol, Tobacco, and Firearms.

<sup>3</sup> Plaintiffs' requests and OPM's disclosures took place in several iterations over several years, but these complexities are irrelevant to the legal issues before us.

1 (organizational component code, duty post, bargaining unit,  
2 core-based statistical area, combined statistical area, and  
3 locality pay), which together disclose only the city and  
4 county where the employee works, but not the street address.  
5 For some employees whose duty-station information was  
6 redacted, OPM nevertheless indicated whether they worked  
7 within the Washington, D.C. metropolitan area.

8 OPM withheld names and at least some duty-station  
9 information for [I] *all* employees in what it deemed to be  
10 five "sensitive" federal agencies: Bureau of Alcohol,  
11 Tobacco, and Firearms ("ATF"), Drug Enforcement Agency  
12 ("DEA"), DoD, Secret Service, and United States Mint; and  
13 [ii] for those employees across *all* federal agencies who are  
14 in twenty-four "sensitive" occupation categories: e.g.,  
15 police, criminal investigating, nuclear engineering, game  
16 law enforcement.<sup>4</sup>

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<sup>4</sup> The twenty-four occupations are ATF inspection, border patrol agent, compliance inspection & support, correctional officer, criminal investigating, custom patrol officer, customs & border protection, customs & border protection interdiction, customs inspection, game law enforcement, general inspection, general investigating, general national resources & biological science, immigration inspection, intelligence, intelligence clerk/aide, internal revenue officer, IRS agent, nuclear engineering, nuclear materials courier, plant protection & quarantine, police, U.S. marshal, and hearings & appeals.

1 The policy change was security-related. According to  
2 the affidavit of OPM's FOIA officer, Gary Lukowski, the  
3 events of September 11, 2001--particularly the attack on the  
4 Pentagon--and a subsequent anthrax attack caused OPM to  
5 review the vulnerability of the federal workforce to  
6 harassment and attack. OPM's new policy was in part  
7 motivated by a similar change in policy undertaken by the  
8 DoD in the immediate aftermath of September 11th.<sup>5</sup> OPM also  
9 attributes its change in policy to an outcry by a number of  
10 individuals and federal agencies in response to a 2004  
11 Washington Post feature that provided online access to the  
12 CPDF, which allowed anyone to search for federal employees  
13 by name, federal agency, or locality.

14 To justify withholding the names and duty-station  
15 information, OPM invoked Exemption 6 of FOIA, which protects  
16 from disclosure "personnel and medical files and similar  
17 files the disclosure of which would constitute a clearly  
18 unwarranted invasion of personal privacy." 5 U.S.C. §

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<sup>5</sup> The DoD directed OPM not to release any personnel files of DoD employees in response to requests under FOIA, but instead to refer requesting parties to the DoD directly. Accordingly, in its initial responses to plaintiffs, OPM withheld *all* data on DoD employees and directed plaintiffs to seek it directly from the DoD. Eventually, OPM, with DoD's consent, released the DoD data without names or duty stations.

1 552(b)(6). Plaintiffs unsuccessfully grieved some of the  
2 decisions through OPM.

3 This suit seeks disclosure of the information withheld.  
4 On cross-motions for summary judgment, the district court  
5 ruled that OPM properly redacted the names and duty stations  
6 for federal employees in the five sensitive agencies and  
7 four of the sensitive occupations: general national  
8 resources and biological science; plant protection and  
9 quarantine; hearings and appeals; and border patrol. See  
10 Long v. Office of Pers. Mgmt. (Long I), No. 05 Civ. 1522  
11 (NAM/DEP), 2007 WL 2903924, at \*22 (N.D.N.Y. Sept. 30,  
12 2007). After further briefing, the court ruled that OPM  
13 also properly withheld the names of federal employees in the  
14 remaining occupations, see Long v. Office of Personnel  
15 Mgmt. (Long II), No. 05 Civ. 1522 (NAM/DEP), 2010 WL 681321,  
16 at \*15 (N.D.N.Y. Feb. 23, 2010), but that Exemption 6 did  
17 not allow withholding of duty-station information for the  
18 remaining sensitive occupations, id. at \*17. The parties  
19 cross-appealed.

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1 DISCUSSION

2 I

3 "FOIA was enacted to promote honest and open  
4 government," Grand Cent. P'ship, Inc. v. Cuomo, 166 F.3d  
5 473, 478 (2d Cir. 1999), and "to ensure public access to  
6 information created by the government in order to hold the  
7 governors accountable to the governed," Tigue v. U.S. Dep't  
8 of Justice, 312 F.3d 70, 76 (2d Cir. 2002) (internal  
9 quotation marks omitted). It "strongly favors a policy of  
10 disclosure and requires the government to disclose its  
11 records unless its documents fall within one of the  
12 specific, enumerated exemptions set forth in the Act."  
13 Nat'l Council of La Raza v. U.S. Dep't of Justice, 411 F.3d  
14 350, 355 (2d Cir. 2005) (internal citation omitted). FOIA  
15 exemptions are construed narrowly, and a court is to resolve  
16 all doubts in favor of disclosure. See Grand Cent. P'ship,  
17 166 F.3d at 478. The government bears the burden of  
18 establishing that any claimed exemption applies. Nat'l  
19 Council of La Raza, 411 F.3d at 356.

20 FOIA's Exemption 6 permits federal agencies to withhold  
21 from disclosure "personnel and medical files and similar  
22 files the disclosure of which would constitute a clearly

1 unwarranted invasion of personal privacy." 5 U.S.C. §  
2 552(b)(6). To determine whether a federal agency may  
3 withhold information pursuant to Exemption 6, we first  
4 determine whether the information is kept in "personnel [or]  
5 medical files [or] similar files." Id.; see U.S. Dep't of  
6 State v. Wash. Post Co., 456 U.S. 595, 598-601 (1982). If  
7 so, we "balance the public's need for the information  
8 against the individual's privacy interest to determine  
9 whether the disclosure of the names would constitute a  
10 'clearly unwarranted invasion of personal privacy.'" Wood  
11 v. FBI, 432 F.3d 78, 86 (2d Cir. 2005) (quoting 5 U.S.C. §  
12 552(b)(6)); accord U.S. Dep't of State v. Ray, 502 U.S. 164,  
13 175 (1991).

14 In resolving summary judgment motions in a FOIA case, a  
15 district court proceeds primarily by affidavits in lieu of  
16 other documentary or testimonial evidence, as we have  
17 explained:

18 In order to prevail on a motion for summary  
19 judgment in a FOIA case, the defending agency  
20 has the burden of showing that its search was  
21 adequate and that any withheld documents fall  
22 within an exemption to the FOIA. Affidavits  
23 or declarations supplying facts indicating  
24 that the agency has conducted a thorough  
25 search and giving reasonably detailed  
26 explanations why any withheld documents fall  
27 within an exemption are sufficient to sustain

1 the agency's burden. Affidavits submitted by  
2 an agency are accorded a presumption of good  
3 faith; accordingly, discovery relating to the  
4 agency's search and the exemptions it claims  
5 for withholding records generally is  
6 unnecessary if the agency's submissions are  
7 adequate on their face. When this is the case,  
8 the district court may forgo discovery and  
9 award summary judgment on the basis of  
10 affidavits.

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12 Carney v. U.S. Dep't of Justice, 19 F.3d 807, 812 (2d Cir.  
13 1994) (internal quotation marks, footnote, and citations  
14 omitted). Neither party contends that the record in the  
15 district court was deficient. Accordingly, we now undertake  
16 the same analysis for each category of withheld information,  
17 reviewing the district court's judgment de novo, see Nat'l  
18 Council of La Raza, 411 F.3d at 355.<sup>6</sup>

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20 II

21  
22 The district court ruled that the names of the federal  
23 employees in the five sensitive agencies and twenty-four

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<sup>6</sup> In a similar case, the withholding of names and duty-station information by OPM was ruled justified by the United States District Court for the District of Columbia. See Ctr. for Pub. Integrity v. U.S. Office of Pers. Mgmt., No. 04-1274(GK), 2006 WL 3498089, at \*6 (D.D.C. Dec. 4, 2006). That court considered only whether Exemption 6 justified OPM's withholding of names together with duty-station information; it did not consider whether withholding duty-station information decoupled from employee names was justified by Exemption 6. Id.

1 sensitive occupations were properly withheld because OPM had  
2 demonstrated that disclosure of employee names could subject  
3 them to harassment or attack. Long I, 2007 WL 2903924, at  
4 \*15-19; Long II, 2010 WL 681321, at \*16-17. We conclude  
5 that the public interests weighing in favor of disclosure  
6 are few and weak, and are clearly outweighed by the  
7 employees' privacy interests.

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**A**

10 Plaintiffs contend that federal employees' interest in  
11 their names is "[m]inimal or [n]on-[e]xistent," and cannot  
12 outweigh the public interest in disclosure.<sup>7</sup> (Appellants'  
13 Br. 21.) "The balancing analysis for FOIA Exemption 6  
14 requires that we first determine whether disclosure of the  
15 files would compromise a substantial, as opposed to de  
16 minimis, privacy interest, because if no significant privacy  
17 interest is implicated FOIA demands disclosure." Multi Ag  
18 Media LLC v. Dep't of Agric., 515 F.3d 1224, 1229 (D.C. Cir.  
19 2008) (internal quotation marks and alterations omitted);

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<sup>7</sup> There is no real dispute that the CPDF data (with names included) meets the statutory category of "personnel and medical files and similar files," 5 U.S.C. § 552(b)(6), because the CPDF contains quintessential personnel information. Plaintiffs do not argue otherwise.

1 accord Fed. Labor Relations Auth. v. U.S. Dep't of Veterans  
2 Affairs, 958 F.2d 503, 509 (2d Cir. 1992). But the bar is  
3 low: "FOIA requires only a measurable interest in privacy to  
4 trigger the application of the disclosure balancing tests."  
5 Fed. Labor Relations Auth. v. U.S. Dep't of Veterans  
6 Affairs, 958 F.2d at 510.

7 The analysis is context specific. "Names and other  
8 identifying information do not *always* present a significant  
9 threat to an individual's privacy interest." Wood, 432 F.3d  
10 at 88 (emphasis added); accord Ray, 502 U.S. at 176 n.12  
11 ("We emphasize, however, that we are not implying that  
12 disclosure of a list of names and other identifying  
13 information is inherently and always a significant threat to  
14 the privacy of the individuals on the list."). "[W]hether  
15 disclosure of a list of names is a significant or a de  
16 minimis threat depends upon the characteristic(s) revealed  
17 by virtue of being on the particular list, and the  
18 consequences likely to ensue." Ray, 502 U.S. at 176 n.12  
19 (internal quotation marks and alterations omitted).

20 It is not uncommon for courts to recognize a privacy  
21 interest in a federal employee's work status (as opposed to  
22 some more intimate detail) if the occupation alone could

1 subject the employee to harassment or attack. Courts have  
2 recognized, for example, a privacy interest in the names of  
3 employees who worked on the regulatory approval of a  
4 controversial drug, see Judicial Watch, Inc. v. FDA, 449  
5 F.3d 141, 152-53 (D.C. Cir. 2006), and of law enforcement  
6 agents who participated in an investigation, see Wood, 432  
7 F.3d at 86-89; Nix v. United States, 572 F.2d 998, 1006 (4th  
8 Cir. 1978).

9 The record on appeal persuades us that the federal  
10 employees in both the sensitive agencies and the sensitive  
11 occupations have a cognizable privacy interest in keeping  
12 their names from being disclosed wholesale. Michael Donley,  
13 the Director of Administration and Management at DoD attests  
14 that withholding of employee names is one of many security  
15 measures instituted after the attack on the Pentagon on  
16 September 11th to make it "as difficult as possible for  
17 adversaries to collect valuable information that will enable  
18 them to carry out attacks on DoD personnel." J.A. 328.  
19 Moreover, disclosure of names could permit the targeting of  
20 individual federal employees and their families outside the  
21 workplace. Lukowski, OPM's FOIA officer, explains: many of  
22 the agencies deal with national security, homeland security,

1 or law enforcement, and "the mission and nature of the work  
2 performed by those agencies rendered not only individuals in  
3 specific occupations within the agencies, but any employee  
4 in the agency, vulnerable to harassment or attack." J.A.

5 72. OPM's submissions sufficiently demonstrate that, by and  
6 large, federal employees in the sensitive agencies and  
7 occupations face an increased risk of harassment or attack.

8 Plaintiffs interpose two further objections. First,  
9 they point out that, under law developed in another circuit,  
10 Exemption 6 is not a "blanket exemption," Baez v. U.S. Dep't  
11 of Justice, 647 F.2d 1328, 1339 (D.C. Cir. 1980), or a  
12 "categorical rule," Armstrong v. Exec. Office of the  
13 President, 97 F.3d 575, 582 (D.C. Cir. 1996), protecting the  
14 names of mine-run federal law enforcement officers. Neither  
15 case implies that employees have no privacy interest in  
16 their names. Baez held that names could be withheld because  
17 the public had no interest in obtaining the names at issue,  
18 and implied that employees enjoy at least a minimal privacy  
19 interest in their names. See Baez, 647 F.2d at 1339. The  
20 ruling in Armstrong is that the Exemption 6 inquiry does not  
21 end whenever a privacy interest has been identified, but  
22 that the privacy interest must be weighed against the  
23 public's interest in disclosure. Armstrong, 97 F.3d at 581-  
24 82.

1 Second, plaintiffs challenge the withholding of  
2 information by category of employee, rather than record-by-  
3 record. This argument is not serious. Plaintiffs seek  
4 millions upon millions of data elements. FOIA does not  
5 require an agency to mobilize its full resources for  
6 compliance with FOIA requests. In cases in which  
7 considerably smaller amounts of records have been sought,  
8 withholding based upon general characteristics of classes of  
9 people or employees has been found compliant. See, e.g.,  
10 U.S. Dep't of Def. v. Fed. Labor Relations Auth., 510 U.S.  
11 487, 501 (1994) (sustaining withholding of names and contact  
12 information for entire class of employees without individual  
13 inquiry); Nat'l Ass'n of Retired Fed. Emps. v. Horner, 879  
14 F.2d 873, 879 (D.C. Cir. 1989) (recognizing privacy interest  
15 in list of names of retired and disabled federal employees  
16 without individual inquiry).

17  
18 **B**

19 The privacy interest must be weighed against the public  
20 interest that would be advanced by disclosure. See Fed.  
21 Labor Rel. Auth. v. U.S. Dep't of Veterans Affairs, 958 F.2d  
22 at 510 ("[O]nce a more than de minimis privacy interest is

1 implicated the competing interests at stake must be balanced  
2 in order to decide whether disclosure is permitted under  
3 FOIA."). The only public interest cognizable under FOIA is  
4 the public "understanding of the operations or activities of  
5 the government." U.S. Dep't of Justice v. Reporters Comm.  
6 for Freedom of Press, 489 U.S. 749, 775 (1989); Bibles v.  
7 Or. Natural Desert Ass'n, 519 U.S. 355, 355-56 (1997)  
8 (identifying relevant public interest as "extent to which  
9 disclosure of the information sought would shed light on an  
10 agency's performance of its statutory duties or otherwise  
11 let citizens know what their government is up to" (internal  
12 quotation marks and alterations omitted)).

13 In many contexts, federal courts have observed that  
14 disclosure of individual employee names tells nothing about  
15 "what the government is up to." See Fed. Labor Relations  
16 Auth. v. U.S. Dep't of Veterans Affairs, 958 F.2d at 512;  
17 Schwarz v. U.S. Dep't of Treasury, 131 F. Supp. 2d 142, 150  
18 (D.D.C. 2000) ("Disclosure of [names of federal  
19 employees] . . . would not contribute to the public  
20 understanding of government functions."); Voinche v. FBI,  
21 940 F. Supp. 323, 330 (D.D.C. 1996) ("There is no reason to  
22 believe that the public will obtain a better understanding

1 of the workings of various agencies by learning the  
2 identifies of [federal employees]."). Other cases allow for  
3 a possible public interest in identifying specific federal  
4 employees; but that the interest is slight, and in each case  
5 was substantially outweighed by the threat to the employee's  
6 personal privacy. See Wood, 432 F.3d at 88-89 (authorizing,  
7 under Exemption 6, redaction of the names of low-level FBI  
8 employees who participated in investigation because public  
9 interest was insufficiently furthered relative to the  
10 potential for harassment); Judicial Watch, 449 F.3d at  
11 152-54 (permitting FDA to withhold pursuant to Exemption 6  
12 names of employees and outsiders who worked on regulatory  
13 approval of "abortion pill"); Fed. Labor Relations Auth. v.  
14 U.S. Dep't of Commerce, 962 F.2d 1055, 1060 (D.C. Cir. 1992)  
15 (permitting agency to keep private under Exemption 6 list of  
16 employees who received positive commendation).

17 Plaintiffs posit a strong public interest in knowing  
18 employee names because "Government work is done by people."  
19 But if that were weighed in the balance of the Exemption 6  
20 inquiry, little would be left to FOIA's protection for  
21 personal privacy. See Fed. Labor Relations Auth. v. U.S.  
22 Dep't of Veterans Affairs, 958 F.2d at 512 ("Compelling

1 disclosure of personal information, that has no relationship  
2 to an agency's activities, on so attenuated a basis would  
3 inevitably result in the disclosure of virtually all  
4 personal information, thereby effectively eviscerating the  
5 protections of privacy provided by Exemption 6."). Whether  
6 the public has an interest in the identity of federal  
7 workers, and to what extent, depends on circumstances,  
8 including whether the information sought sheds light on  
9 government activity. See Wood, 432 F.3d at 88; Perlman v.  
10 U.S. Dep't of Justice, 312 F.3d 100, 107 (2d Cir. 2002),  
11 vacated, 541 U.S. 970 (2004), reinstated after remand, 380  
12 F.3d 110 (2d Cir. 2004).

13 Plaintiffs point to ways in which they (or the media)  
14 have used the names of federal employees obtained from the  
15 CPDF to inform themselves about what their "government is up  
16 to." Specifically, they cite (1) disparities in the rates  
17 at which individual immigration judges grant and deny asylum  
18 requests; (2) high turnover rates at particular agencies;  
19 (3) agency employees who wrongfully benefit from agency  
20 programs; and (4) access to employees in order to "uncover  
21 agency malfeasance." (Appellants' Br. 34-37.)

1           Such inquiries may be interesting, but they do not  
2 illustrate how the disclosure of names serves the purposes  
3 of FOIA. First, the disposition data for individual  
4 immigration judges are available even though the judges'  
5 names are withheld, because OPM has now replaced employee  
6 names with unique identifiers.<sup>8</sup> Second, an employee's name  
7 may be useful for investigating the behavior of individual  
8 employees; but courts have been skeptical of recognizing a  
9 public interest in this "derivative" use of information,  
10 which is indirect and speculative. See Associated Press v.  
11 U.S. Dep't of Def., 554 F.3d 274, 292 (2d Cir. 2009) ("We  
12 emphasize that the focus, in assessing a claim under  
13 Exemption 6, must be solely upon what the requested  
14 information *reveals*, not upon what it might lead to."  
15 (internal quotation marks omitted)); see also Ray, 502 U.S.  
16 at 180 (Scalia, J., concurring) ("[I]t is unavoidable that  
17 the focus, in assessing a claim under Exemption 6, must be  
18 solely upon what the requested information *reveals*, not upon  
19 what it might lead to."). But see Painting & Drywall Work

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<sup>8</sup> The same is true for plaintiffs' assertion that access to employee names permitted TRAC to "trace[] a large drop in the enforcement of wildlife laws to the retirement of one employee." (Appellants' Br. 35.) The drop could just as easily be attributed to the single individual by way of the unique employee identifier.

1 Pres. Fund, Inc. v. Dep't of Hous. and Urban Dev., 936 F.2d  
2 1300, 1303 (D.C. Cir. 1991) (indicating that derivative use  
3 of information is cognizable under FOIA, but in that case  
4 clearly outweighed by privacy interests).

5 Also discounted is the interest in identifying a  
6 federal employee by name in order to make contact or conduct  
7 interviews. See Forest Serv. Emps. for Envtl. Ethics v.  
8 U.S. Forest Serv., 524 F.3d 1021, 1028 (9th Cir. 2008)  
9 (identity of forest service employees could be withheld  
10 where primary purpose of identifying employees was to  
11 contact employees directly to obtain information). Such a  
12 use is an example of the "derivative theory" of public  
13 interest, and actually facilitates the invasion of the  
14 employee's personal privacy. See Painting Indus. of Haw.  
15 Mkt. Recovery Fund v. U.S. Dep't of Air Force, 26 F.3d 1479,  
16 1485 (9th Cir. 1994) ("Any additional public benefit the  
17 requesters might realize through [contact with employees] is  
18 inextricably intertwined with the invasions of privacy that  
19 those contacts will work."). The use of personnel files to  
20 contact government employees in the hopes of uncovering  
21 malfeasance does not serve FOIA's objectives.

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C

Where public interest favoring disclosure is no more than minimal, a lesser privacy interest suffices to outweigh it. See U.S. Dep't of Def. v. Fed. Labor Relations Auth., 510 U.S. at 500. This reciprocal principle is illustrated by a pair of cases in which unions wanted employee contact information in order to tell them about union activities. While the privacy interest was small, no countervailing public interest at all was cognizable under Exemption 6. See id. at 502 (holding that employees' home addresses need not be disclosed to unions because such disclosure did not further FOIA's purpose of open government); Fed. Labor Relations Auth. v. U.S. Dep't of Veterans Affairs, 958 F.2d at 513 (same).

Plaintiffs have identified no appreciable public interest militating in favor of the wholesale disclosure of names of employees in the sensitive agencies and sensitive occupations. OPM therefore need not identify any compelling privacy interest in order to "clearly outweigh[]" the nonexistent public interest. See U.S. Dep't of Def. v. Fed. Labor Relations Auth., 510 U.S. at 500 ("Because a very slight privacy interest would suffice to outweigh the

1 relevant public interest, we need not be exact in our  
2 quantification of the privacy interest. It is enough for  
3 present purposes to observe that the employees' interest in  
4 nondisclosure is not insubstantial." ). Accordingly, we hold  
5 that Exemption 6 permits OPM to withhold the names of  
6 employees working in the sensitive agencies and sensitive  
7 occupations.

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## III

10 The remaining issue is whether Exemption 6 permits OPM  
11 to withhold duty-station information even after employee  
12 names have been redacted. The district court's first  
13 opinion considered the duty-station information together  
14 with employee names, and found that both were properly  
15 withheld for the sensitive agencies and the four sensitive  
16 occupations that it considered. Long I, 2007 WL 2903924, at  
17 \*19. When the district court turned to the remaining twenty  
18 sensitive occupations in Long II, it considered duty-station  
19 information apart from names and found that "OPM has failed  
20 to show more than a de minimis privacy interest in the . . .  
21 geographic location of federal employees," Long II, 2010 WL

1 681321, at \*17.<sup>9</sup> Although the issue is close, we conclude  
2 that OPM has demonstrated that employees possess a  
3 cognizable privacy interest in their duty-station records  
4 de-linked from their names, and that it clearly outweighs  
5 any public interest that might be served by disclosure.

6  
7 **A**

8 Plaintiffs argue that federal employees have no privacy  
9 interest in their duty-station information once their names  
10 have been redacted.<sup>10</sup> “[P]rivacy interests protected by the  
11 exemptions to FOIA are broadly construed.” Associated Press  
12 v. U.S. Dep’t of Justice, 549 F.3d 62, 65 (2d Cir. 2008).  
13 Exemption 6 extends to “personnel and medical files and  
14 similar files the disclosure of which would constitute a  
15 clearly unwarranted invasion of personal privacy.” 5 U.S.C.

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<sup>9</sup> This portion of the district court’s reasoning substantially undermines its earlier finding that OPM could redact duty-station information for the five sensitive agencies and four of the sensitive occupations. However, it did not expressly revisit its earlier order, and we will assume that it was left intact. In any event, our review is *de novo*. See Nat’l Council of La Raza, 411 F.3d at 355.

<sup>10</sup> Plaintiffs also posit that employee duty-station information does not constitute “personnel and medical files and similar files” referenced in Exemption 6. 5 U.S.C. § 552(b)(6). The redaction of names, however, does not change the nature of the files that plaintiffs seek--the CPDF is still a collection of personnel records.

1 § 552(b)(6). "[B]oth the common law and the literal  
2 understandings of privacy encompass the individual's control  
3 of information concerning his or her person." Reporters  
4 Comm., 489 U.S. at 763; Fed. Labor Relations Auth. v. U.S.  
5 Dep't of Veterans Affairs, 958 F.2d at 510 ("[T]he concept  
6 of privacy is not an abstract concept, but rather a  
7 valuable--and, in the present context, elastic--right whose  
8 boundaries are delineated by the type of information sought  
9 and by the persons requesting it.").

10 The records sought by plaintiffs are "personal" in the  
11 sense that they are specific to individuals. Even if  
12 employee names are replaced by anonymous identifiers, every  
13 employee entry contains dozens of items of personal  
14 information about the individual. The current and career  
15 information reveals job classification, pay, veteran status,  
16 and work schedule. This data is personal to the employee  
17 because it is wholly "information concerning his or her  
18 person." Reporters Comm., 489 U.S. at 763. And it would be  
19 child's play for a determined researcher to deduce a name  
20 from the descriptive data if the researcher is looking for  
21 anyone specific.

1           Some duty-station information redacted by OPM was at  
2 one time freely available. But it is now private  
3 nevertheless in the sense that it is "intended for or  
4 restricted to the use of a particular person or group or  
5 class of persons: not freely available to the public." Id.,  
6 489 U.S. at 763-64 (quoting Webster's Third New  
7 International Dictionary 1804 (1976)). OPM's affidavits on  
8 the subject, which we accord a presumption of good faith,  
9 see Carney, 19 F.3d at 812, set forth in reasonable detail  
10 that OPM (and DoD) now preserve the privacy of duty-station  
11 information pursuant to comprehensive data security and  
12 safety plans.

13           Plaintiffs contend that "because the withheld records  
14 do not provide work addresses . . . the potential harasser  
15 or attacker would not be able to locate the employee."  
16 (Appellants' Br. 59-60.) But knowledge that an employee  
17 works for a particular agency or in a particular role, in a  
18 particular locality, is often enough to pinpoint the street  
19 address of the workplace. Plaintiffs concede as much. Id.  
20 at 43.

21           Redaction of names goes a long way toward protecting  
22 against surveillance and publicity those things that are

1 generally treated as nobody else's business. See Grand  
2 Cent. P'ship, 166 F.3d at 485-86. But a primary reason for  
3 the protection afforded by Exemption 6 is to protect  
4 individuals' physical safety. See Judicial Watch, 449 F.3d  
5 at 152-53. That is the risk that the OPM attests will arise  
6 from disclosure of the duty-station information.

7 OPM's affidavits set forth how terrorists and others  
8 could derive specific work addresses from the duty-station  
9 information. Plaintiffs contend that this risk of harm is  
10 not personal because an individual cannot be identified from  
11 disclosure of duty-station information, and therefore any  
12 harm would be directed at the entire federal agency (or a  
13 particular office location), not the individual employee.  
14 Even if an individual cannot be identified from the duty-  
15 station information, the risk of harm to that individual is  
16 not abated by anonymity. "If the disclosure assisted  
17 wrongdoers in carrying out an attack, it would be Jane  
18 Doe . . . , [a] real person[], who would be harmed."

19 (Appellee's Br. 80.) Federal employees thus have a  
20 cognizable personal privacy interest in safeguarding the  
21 disclosure of their duty-station information when a risk of  
22 such harm is present.

1 Plaintiffs also label the risk of harm as speculative,  
2 but the record satisfies us that the risk is no more  
3 attenuated or contingent than risks of harassment or attack  
4 that have been recognized in FOIA cases dealing with federal  
5 law enforcement officers. See, e.g., Wood, 432 F.3d at 88;  
6 Halpern v. FBI, 181 F.3d 279, 297 (2d Cir. 1999).

7 Risk of physical attack distinguishes this case from  
8 cases in which the redaction of names has been found  
9 sufficient to secure other privacy interests. See Ray, 502  
10 U.S. at 175-176 (once names were redacted from interviews  
11 with Haitians attempting to enter United States, they had  
12 only a de minimis privacy interest in those records); ACLU,  
13 543 F.3d 59, 85-86 (2d Cir. 2008), vacated on other grounds,  
14 130 S. Ct. 777 (2009) (detainees whose abuse was depicted in  
15 photographs had no more than de minimis privacy interest  
16 because all identifying information had been redacted).

17 Here, as discussed above, redaction of employee names  
18 does not allay the threat of harassment or attack of federal  
19 employees. We therefore hold that federal employees have a  
20 more than de minimis privacy interest in safeguarding the  
21 disclosure of their duty-station information when a risk of

1 such harm is present.<sup>11</sup>

2

3

**B**

4 It remains to weigh the employees' privacy interests  
5 against the public's interest in the duty-station  
6 information. The chief public interest identified by  
7 plaintiffs is an interest in seeing where the federal  
8 government deploys its personnel. Although this information  
9 might shed some dim, diffused light on "what the Government  
10 is up to," Reporters Comm., 489 U.S. at 780 (internal  
11 quotation marks omitted), the number of federal employees  
12 here and there is a rough data point that imparts virtually  
13 nothing about the function of the federal government.

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<sup>11</sup> The parties disagree about whether the duty-station information should be treated as a whole, or as separate data fields in the CPDF: organizational component, post of duty, bargaining unit, core-based statistical area, combined statistical area, and locality pay area. Organizational component codes are 18-digit codes, a portion of which indicates the employees' place within the hierarchy of the agency, and a portion of which might indicate where the employee is geographically located. Plaintiffs contend that organizational components are different because they primarily tell where an employee fits within an organization's overall structure, and only sometimes contain geographic information as well. However, OPM has sufficiently shown that, because organizational codes are unique to each agency and frequently changing, there is no feasible way for it to segregate those that contain geographic information from those that do not, or to redact the portion of the code that contains the geographic information.

1 OPM has identified other sources from which plaintiffs  
2 could obtain much of the information they seek. That  
3 further reduces the public interest, such as it is. See  
4 U.S. Dep't of Def. Dep't of Military Affairs v. Fed. Labor  
5 Relations Auth., 964 F.2d 26, 29-30 (D.C. Cir. 1992)  
6 (recognizing that "alternative sources of information  
7 available that could serve the public interest in  
8 disclosure" diminish public interest value of disclosure).  
9 For example, plaintiffs present a hypothetical comparison of  
10 staffing levels in the Federal Emergency Management Agency  
11 before and after Hurricane Katrina; but OPM points out that  
12 multiple, comprehensive reports exist on the subject.<sup>12</sup>

13 Finally, the duty-station information is on a  
14 comprehensive computerized database that is vulnerable to  
15 analysis and manipulation by persons seeking to identify  
16 targets for violence, or to increase casualties. Heightened  
17 vigilance is appropriate in cases involving computerized  
18 databases. See Reporters Comm., 489 U.S. at 766-67 (citing

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<sup>12</sup> OPM cites two reports, one prepared by The White House, and one prepared by FEMA itself. See The Federal Response to Hurricane Katrina: Lessons Learned (2006), available at <http://georgewbush-whitehouse.archives.gov/reports/katrina-lessons-learned>; A Performance Review of FEMA's Disaster Management Activities in Response to Hurricane Katrina, OIG-06-32 (2006), available at [http://www.dhs.gov/xoig/assets/mgmtrpts/OIG\\_06-32\\_Mar06.pdf](http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_06-32_Mar06.pdf).

1 the Privacy Act of 1974 for the proposition that "Congress'  
2 basic policy concern regarding the implications of  
3 computerized data banks for personal privacy is certainly  
4 relevant").

5 The threat cited by OPM is not specific as to location  
6 or individual. But plaintiffs seek records of millions of  
7 employees who work in dozens of agencies and hundreds of  
8 occupations. It is not feasible to gauge the threat to each  
9 individual employee, office, or facility included in the  
10 CPDF. Since the defendant agency has already demonstrated  
11 that employees will be put at risk by disclosure, this  
12 uncertainty has weight in the balance struck by Exemption 6.

13 Accordingly, we hold that OPM has demonstrated that  
14 employee privacy concern about the release of their duty-  
15 station information clearly outweighs the public interests  
16 identified by plaintiffs.

17

18 **CONCLUSION**

19 For the foregoing reasons, we AFFIRM the judgment of  
20 the district court insofar as it ruled that FOIA Exemption 6  
21 permitted OPM to withhold all of the names at issue and some  
22 of the duty-station information, but REVERSE insofar as it  
23 ruled that duty-station information for twenty sensitive  
24 occupations must be disclosed.