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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MICHAEL SWEENEY,
Movant,
v.
INSPECTOR GENERAL OF THE
UNITED STATES DEPARTMENT OF
AGRICULTURE,
Respondent.

14-mc-00054 LJO GSA

**ORDER DENYING MOTION FOR ORDER
PURSUANT TO CUSTOMER
CHALLENGE PROVISIONS OF THE
RIGHT TO PRIVACY ACT OF 1978**

(Doc. 2)

INTRODUCTION

This is a miscellaneous action filed by Michael Sweeney (“Movant”), challenging the Office of the Inspector General of the United States Department of Agriculture’s (“USDA,” “OIG”) attempt to obtain access to his financial records from the Bank of America (“BOA”). Pending before the Court is the Movant’s Motion for an Order pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3401 *et seq* (“RFPA”), OIG’s Response, and the Movant’s

1 Reply. (Docs. 2, 6, and 7). The Court has reviewed the pleadings and DENIES Movant's motion.

2 **RELEVANT BACKGROUND**

3 The Movant seeks an order quashing a subpoena duces tecum served by OIG which seeks
4 to obtain all documents related to the Movant's financial account records from BOA beginning
5 December 1, 2008 until January 31, 2010. (Doc. 3, pgs. 7-9). The Movant objects to the
6 subpoena stating that the requested records are not relevant to any law enforcement inquiry
7 because: (1) he has never mortgaged any collateral to the USDA; (2) he has never had any
8 possession or control of any collateral that has been mortgaged to the USDA; and (3) the request
9 is overbroad and based on vague allegations. He also contends that OIG has not complied with
10 the RFPA because the subpoena does not set forth the specific nature of the law enforcement
11 inquiry.
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14 In its response, OIG argues that the subpoena is narrowly tailored and is necessary to
15 conduct a law enforcement investigation into alleged unauthorized use of collateral mortgaged to
16 USDA's Farm Service Agency ("FSA") by the Movant's son and daughter-in-law, Kevin and
17 Misty Sweeney.¹ Declaration of Erika Marin, dated October 9, 2014 ("*Marin Dec'l at ¶ 9*") (Doc.
18 6-2). More specifically, the government is investigating whether Kevin and Misty Sweeney
19 misrepresented that they owned collateral for a loan issued by the FSA as required, and whether
20 they failed to comply with the terms of loan service agreement.
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22 To qualify for an operating loan with the FSA, the applicant must show sufficient
23 repayment ability, pledge enough collateral to secure the loan fully, and demonstrate managerial
24 ability to succeed in farming. *Marin Dec'l at ¶ 10*. The applicant must also have the legal
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26 ¹ FSA is an agency of USDA. FSA makes direct and guaranteed farm ownership and operating loans to farmers and
27 ranchers who cannot obtain commercial credit from a bank or other lenders. Operating loans are available through
28 FSA's Direct Loan Program. 7 C.F.R. pt. 764. An operating loan can be used to purchase livestock, land, equipment,
feed, seed, fuel, and farm chemicals; to pay other operating expenses; and to make minor improvements to buildings
or make other farm improvements. *Marin Dec'l. ¶ 10*.

1 capacity to incur loan obligations, be unable to obtain credit elsewhere, and have an acceptable
2 credit history. *Id.* Loan funds cannot be used to finance non-farm enterprises. *Id.*; 7 C.F.R. §
3 764.251 (appropriate uses of operating loan funds). Generally, proceeds from the sales of loan
4 collateral should be used to pay off the loan. *Id.*; 7 C.F.R. §§ 765.301-765.305 (disposal of chattel
5 security).

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7 In March 2009, OIG obtained information that Kevin and Misty Sweeney signed a loan
8 security agreement with FSA in order to obtain an FSA-funded loan in the amount of \$218,000,
9 for annual living and/or farm operating expenses. *Marin Decl.* at ¶ 12. The security agreement
10 they signed stated that they were the absolute and exclusive owners of the collateral used for the
11 loan (i.e., their 2009 crops and farm equipment), and that the collateral was free from all liens,
12 encumbrances, security, and other interests. *Id.* However, although the security agreement states
13 that the collateral they listed belonged to them, Kevin Sweeney subsequently admitted that some
14 of the farm equipment belonged to his father, the Movant. *Id.*

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16 Additionally, during the loan application process, FSA informed Kevin and Misty
17 Sweeney that they had to obtain FSA's consent before selling or otherwise disposing of any loan
18 collateral (e.g., their 2009 grape crop), and could only sell to certain buyers. *Id.* OIG's
19 investigation discovered that Kevin Sweeney sold his grape crop to buyers other than those listed
20 on the security agreement without consulting or obtaining clearance from FSA, and failed to remit
21 all of the proceeds from their grapes as required by the loan agreement. *Id.* OIG is also
22 investigating allegations that Kevin and Misty Sweeney used FSA loan funds for unauthorized
23 purposes, including financing the farming activities of Movant. *Id.* at ¶ 9. In particular, despite
24 statements by Kevin Sweeney that his father leased their joint farm operation to him in 2006, OIG
25 received allegations that the Movant continued to farm on the land (either solely or with Kevin)
26 and that the loan funds were used to fund the Movant's operations. *Id.* at ¶ 13.
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1 customer's ability to challenge a subpoena is cabined by strict procedural requirements.” *S.E.C. v.*
2 *Jerry T. O'Brien, Inc.*, 467 U.S. 735, 745 (1984).

3 If the court finds that the customer has complied with section 3410(a), it shall order the
4 government authority to file a sworn response, and the response may be filed in camera, provided
5 the government furnishes the reasons which make such review appropriate. 12 U.S.C. § 3410(b);
6 *See, Thomas v. U.S. Dept. of Homeland Sec.*, 876 F.Supp.2d 1, 5 - 6 (D.D.C., 2012). The court
7 shall deny the motion or application if it “finds that there is a demonstrable reason to believe that
8 the law enforcement inquiry is legitimate and a reasonable belief that the records sought are
9 relevant to that inquiry[.]” 12 U.S.C. § 3410(c). There are only three grounds on which a district
10 court may quash a subpoena: “(1) the agency's inquiry is not a legitimate law enforcement
11 inquiry[;] (2) the records requested are not relevant to the agency's inquiry[;] or (3) the agency
12 has not substantially complied with the RFPA.” *Sandsend Fin. Consultants, Ltd. v. Fed. Home*
13 *Loan Bank Bd.*, 878 F.2d 875, 882 (5th Cir.1989); *See also, In re Bank United F.S.B. (10061)*
14 *Coral Gables, Fla.*, 2012 WL 1225931, at *4 (N.D. Cal. April 11, 2011) (The movant bears the
15 burden of proving that the subpoena is overbroad or otherwise not in accordance with the
16 requirements of the RFPA.); *Nimmer v. Securities and Exchange Commission*, 2011 WL 3156791
17 at *1 (D. Neb. July 26, 2011) (“The customer must state either the reasons the financial records
18 are not relevant to a legitimate law enforcement inquiry, or that the Government authority has not
19 substantially complied with the RFPA.”) (citing 12 U.S.C. § 3410); *See also*, 12 U.S.C. § 3405.

22 DISCUSSION

23 Here, the Movant’s argues that he has never had any involvement with collateralizing
24 assets to secure a loan through the USDA and that his bank records would shed no light on the
25 actual ownership of the collateralized assets. He also contends that the subpoena is defective
26 because it is overbroad and fails to mention that OIG is investigating allegations that the Movant
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1 received USDA loan funds. Finally, he argues that the government's reliance on "allegations" of
2 misconduct is insufficient because the government has not come forward with evidence in support
3 of the request. Therefore, OIG has not demonstrated that a legitimate law enforcement inquiry
4 exists.

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6 As previously noted, the Court must grant the instant motion to quash if: (1) the agency's
7 inquiry is not a legitimate law enforcement inquiry; (2) the records requested are not relevant to
8 the agency's inquiry; or (3) the agency has not substantially complied with the RFPA. *Sandsend*
9 *Fin. Consultants, Ltd. v. Fed. Home Loan Bank Bd.*, 878 F.2d at 882. With respect to the first
10 prong of the analysis, there is a demonstrable reason to believe that the law enforcement inquiry
11 is legitimate. As set forth above, there is an ongoing investigation of the Movant's son's loan
12 application with the FSA, and subsequent use of loan funds. The government has established that
13 the Movant's property may have been used as collateral for the FSA loan, and that loan funds
14 may have been used to fund the Movant's farming operations.

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16 With respect to the second prong of the analysis, the Movant bears the initial burden of
17 showing that the documents sought are not relevant. See *Davidov v. Sec. & Exch. Comm'n*, 415
18 F.Supp. 2d 386, 391 (S.D.N.Y.2006). If that burden is satisfied, OIG must only show that there is
19 a reasonable belief that the records are relevant. *Id.* ("What need be shown is not probable cause,
20 but good reason to investigate.") (citation and internal quotation marks omitted). Here, the
21 Movant contends that the requested records are not relevant because he has asserted in the sworn
22 statement that he does not have, nor has he had possession of, or made any disposition of
23 collateralized assets securing USDA loans. He argues that the USDA has not established how his
24 bank records would establish that the Movant's son used the Movant's property as collateral.
25 However, OIG has indicated that the Movant's son admitted that some of the farm equipment
26 used as collateral belongs to his father. Movant also argues that OIG has based part of the
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1 justification of the investigation on the fact that it has received “allegations” that the Movant had
2 not leased the farm to Kevin, and that the Movant may have received proceeds from the loan. He
3 contends that the government’s reliance on “allegations” has not established a valid reason to
4 obtain the bank records.

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6 These arguments are not persuasive. Under the RFPA, an agency “can investigate merely
7 on the suspicion that the law is being violated, or even just because it wants assurance that it is
8 not.” *In re Blunden*, 896 F. Supp. 996, 999 (C.D. Cal. 1995) (citations omitted). “What need be
9 shown is not probable cause but a good reason to investigate.” *Davidov v. Sec. & Exch. Comm’n*,
10 415 F. Supp. 2d at 391. The showing of relevance need not be substantial and any records that
11 “touch on a matter under investigation” are considered relevant. *See Sandsend Fin. Consultants,*
12 *Ltd. v. Fed. Home Loan Bank Bd.*, 878 F.2d at 882. Given the facts, the government has
13 established that the requested documents are relevant and necessary to conduct the investigation.
14 Similarly, the Court is not persuaded by the Movant’s argument that the request is overbroad.
15 Despite the Movant’s claims that OIG is seeking virtually all of his financial records from BOA,
16 the government is only seeking financial records for a short time span beginning December 1,
17 2008 until January 31, 2010, and the subpoena request is limited to specific categories of
18 documents. (Doc. 3, pg.8).

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21 Finally, the Court is also not persuaded by the Movant’s argument that OIG has not
22 complied with the requirements of the RFPA because the notice of subpoena never identifies
23 Michael Sweeney’s alleged receipt of USDA loan funds; it only mentions an investigation into
24 the unauthorized disposition of the actual assets pledged as collateral to secure the loan. It is well
25 established that the government must provide a copy of the subpoena to the customer and provide
26 the customer with reasonably specific notice of the nature of the law enforcement inquiry before
27 obtaining records under the RFPA. 12 U.S.C. § 3405(2). Here, the customer notice letter that
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