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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRUCE EVIN TURNER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE TREASURY,

Defendant.

No. 1:15-cv00007-DAD-SKO

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF’S MOTION
FOR A PROTECTIVE ORDER

(Doc. Nos. 23,24)

This action is before the court on defendant’s motion for summary judgment (Doc. No. 23), and plaintiff’s motion for a protective order (Doc. No. 24). Both motions were submitted without a hearing pursuant to Local Rule 230(1). For the reasons stated below, defendant’s motion for summary judgment will be granted in part and denied in part and plaintiff’s motion for a protective order will be denied.

FACTUAL BACKGROUND

Plaintiff Bruce Turner is a state prisoner proceeding pro se and *in forma pauperis* in this action against defendant United States Department of the Treasury. (Doc. No. 1.) Plaintiff brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a)(4)(B), seeking production of certain designated documents from the Department of the Treasury. (*Id.*)

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1 The following facts are undisputed on summary judgment. On August 25, 2014, the
2 Financial Crimes Enforcement Network (“FinCEN”), a bureau of the United States Department of
3 the Treasury, received a FOIA request from plaintiff. (Doc. Nos. 1 at 6; 23-3 at 10.) In his
4 request, plaintiff sought records concerning himself, specifically: (i) plaintiff’s savings account
5 records from a branch of Bank of America located in Riverside, California for the period of
6 January 1993 through December 1994; (ii) copies of checks and other instruments; (iii) records of
7 transactions; (iv) receipt of funds; and (v) a copy of a Currency Transaction Report (“CTR”)
8 submitted by Bank of America for the sum of \$100,000 in plaintiff’s name.¹ (Doc. Nos. 1 at 6;
9 23-3 at 10.)

10 On September 15, 2014, the FinCEN denied plaintiff’s FOIA request. (Doc. Nos. 1 at 7;
11 23-3 at 11.) The agency informed plaintiff that its non-Bank Secrecy Act (“BSA”)² records did
12 not include documents responsive to plaintiff’s request, and that its BSA records were specifically
13 exempt from disclosure under FOIA. (*Id.*) Plaintiff appealed the denial of his FOIA request on
14 October 5, 2014. (Doc. Nos. 1 at 7; 23-3 at 10.) On December 8, 2014, plaintiff received a letter
15 from the FinCEN denying plaintiff’s administrative appeal. (*Id.*) That letter informed plaintiff
16 that he could obtain judicial review in a district court where he resided pursuant to 5 U.S.C.
17 § 552(a)(4)(B). (Doc. Nos. 1 at 7; 23-3 at 11.) Plaintiff then commenced the present action in
18 this court. (Doc. No. 1.)

19 Defendant filed a motion for summary judgment on June 30, 2016. (Doc. No. 23.) On
20 August 5, 2016, plaintiff filed his opposition (Doc. No. 25), as well as a motion seeking a

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22 ¹ The court pauses to note that it seems somewhat odd that plaintiff is seeking his own bank
23 records, with the exception of the CTR sought, from the FinCEN of the United States Department
24 of the Treasury by way of a FOIA request instead of from his bank directly. Although somewhat
25 difficult to decipher from his pro se pleadings, it appears that plaintiff seeks these records because
26 he believes an individual he has identified and a Bank of America employee conspired to
27 withdraw \$100,000 from a savings account held in his name and to close the account. (Doc. No.
28 25 at 4, 6.) Plaintiff apparently believes that a CTR was issued when that bank account was
opened and that the CTR may reflect information he would find helpful in pursuing the identified
individual and the unknown Bank of America employee. (*Id.*)

² Codified at 31 U.S.C. §§ 5311–5332.

1 protective order from the court authorizing defendant to file a copy of the requested CTR under
2 seal. (Doc. No. 24). Defendant filed its reply on August 12, 2016. (Doc. No. 26.)

3 LEGAL STANDARDS

4 **I. Summary Judgment**

5 “Most FOIA cases are resolved by the district court on summary judgment, with the
6 district court entering judgment as a matter of law.” *Animal Legal Def. Fund v. U.S. Food &*
7 *Drug Admin.*, 836 F.3d 987, 989 (9th Cir. 2016) (en banc); *see also Sakamoto v. EPA*, 443 F.
8 Supp. 2d 1182, 1188 (N.D. Cal. 2006) (“It is generally recognized that summary judgment is a
9 proper avenue for resolving a FOIA claim.”) (citing *Nat’l Wildlife Fed’n v. U.S. Forest Serv.*,
10 861 F.2d 1114 (9th Cir. 1988)). However, it has now been made clear in this circuit that usual
11 summary judgment standards apply and that “if there are genuine issues of material fact in a
12 FOIA case, the district court should proceed to a bench trial or adversary hearing.” *Animal Legal*
13 *Def. Fund*, 836 F.3d at 990; *see also Cameranesi v. U.S. Dep’t of Def.*, 839 F.3d 751,762 (9th Cir.
14 2016) (“We have now overruled this FOIA-specific summary judgment standard, and instead
15 apply our usual summary judgment standard.”)³

16 Accordingly, summary judgment is appropriate here if the moving party “shows that there
17 is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
18 law.” Fed. R. Civ. P. 56(a). On a motion for summary judgment, the moving party “initially
19 bears the burden of proving the absence of a genuine issue of material fact.” *In re Oracle Corp.*
20 *Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
21 (1986)). The moving party may meet its burden by “citing to particular parts of materials in the
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23 ³ Before the *en banc* decision in *Animal Legal Defense Fund*, this was not the case in the Ninth
24 Circuit. Rather, the recognized procedure was that, “[u]nlike the typical summary judgment
25 analysis,” “in a FOIA case, we do not ask whether there is a genuine issue of material fact,
26 because the facts are rarely in dispute.” *Minier v. CIA*, 88 F.3d 796, 800 (9th Cir. 1996). Rather,
27 the question was whether “an adequate factual basis” exists “upon which to base [a] decision” on
28 the FOIA claim at issue. *Id.*; *see also Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1040 (9th
Cir. 1999). It was also recognized that government affidavits could supply the requisite factual
basis. *Lane v. Dep’t of Interior*, 523 F.3d 1128, 1135–36 (9th Cir. 2008). Although this change
is legally significant, it may well be that it has no impact on the resolution of the pending motions
or on the ultimate resolution of this FOIA action.

1 record, including depositions, documents, electronically store information, affidavits or
2 declarations, stipulations (including those made for purposes of the motion only), admission,
3 interrogatory answers, or other materials” or by showing that such materials “do not establish the
4 absence or presence of a genuine dispute, or that the adverse party cannot produce admissible
5 evidence to support the fact.” Fed. R. Civ. P. 56(c)(1)(A), (B).

6 When the non-moving party bears the burden of proof at trial, “the moving party need
7 only prove that there is an absence of evidence to support the nonmoving party’s case.” *Oracle*
8 *Corp.*, 627 F.3d at 387 (citing *Celotex*, 477 U.S. at 325); *see also* Fed. R. Civ. P. 56(c)(1)(B).
9 Indeed, summary judgment should be entered, after adequate time for discovery and upon motion,
10 against a party who fails to make a showing sufficient to establish the existence of an element
11 essential to that party’s case, and on which that party will bear the burden of proof at trial. *See*
12 *Celotex*, 477 U.S. at 322. “[A] complete failure of proof concerning an essential element of the
13 nonmoving party’s case necessarily renders all other facts immaterial.” *Id.* In such a
14 circumstance, summary judgment should be granted, “so long as whatever is before the district
15 court demonstrates that the standard for entry of summary judgment . . . is satisfied.” *Id.* at 323.

16 **II. Protective Orders**

17 As noted above, plaintiff has also moved for a protective order authorizing defendant to
18 file a copy of the CTR purportedly issued in his name with the court under seal.⁴ All documents
19 filed with the court are presumptively public. *See San Jose Mercury News, Inc. v. U.S. Dist.*
20 *Court*, 187 F.3d 1096, 1103 (9th Cir. 1999) (“It is well-established that the fruits of pretrial
21 discovery are, in the absence of a court order to the contrary, presumptively public.”). Rule 26 of
22 the Federal Rules of Civil Procedure provides a mechanism by which the parties may, in
23 appropriate circumstances, propose means of protecting the claimed confidentiality of
24 information in certain documents filed in a specific case. Fed. R. Civ. P. 26(c). Protective orders
25 pursuant to Rule 26(c) are intended to safeguard the parties and other persons in light of the broad
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27 ⁴ In reality, it appears that, although styled as a motion for protective order, plaintiff is actually
28 requesting that the court conduct an *in camera* review of a particular CTR. (*See* Doc. No. 24 at 2;
see also Doc. No. 25 at 4, 6.)

1 discovery rights authorized in Rule 26(b). *United States v. CBS, Inc.*, 666 F.2d 364, 368–69 (9th
2 Cir. 1982).

3 Whether a protective order is entered in any case is subject to the discretion of the court.
4 *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984); *Phillips v. Gen. Motors Corp.*, 307
5 F.3d 1206, 1211 (9th Cir. 2002). However, a protective order will not be entered absent a
6 showing of good cause. Fed. R. Civ. P. 26(c); *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d
7 1122, 1130–31 (9th Cir. 2003); *Phillips*, 307 F.3d at 1210. The party seeking protection bears the
8 burden of showing specific prejudice or harm, including, with respect to individual documents,
9 the particular and specific need for protection. *Phillips*, 307 F.3d at 1210-11; *San Jose Mercury*
10 *News*, 187 F.3d at 1102–03. “If a court finds particularized harm will result from disclosure of
11 information to the public, then it balances the public and private interests to decide whether a
12 protective order is necessary.” *Phillips*, 307 F.3d at 1211.

13 ANALYSIS

14 **I. Defendant’s Summary Judgment Motion**

15 The Freedom of Information Act (“FOIA”) establishes “a judicially enforceable right to
16 secure [government] information from possibly unwilling official hands.” *Dep’t of Air Force v.*
17 *Rose*, 425 U.S. 352, 361 (1976) (citing S. Rep. No. 813, 89th Cong. (1st Sess. 1965)); *see also*
18 *Lahr v. Nat’l Transp. Safety Bd.*, 569 F.3d 964, 973 (9th Cir. 2009). The aim of these disclosure
19 requirements is to “ensure an informed citizenry, vital to the functioning of a democratic society,
20 needed to check against corruption and to hold the governors accountable to the governed.”
21 *N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); *see also Hamdan v. U.S. Dep’t*
22 *of Justice*, 797 F.3d 759, 770 (9th Cir. 2015); *Shannahan v. I.R.S.*, 672 F.3d 1142, 1148 (9th Cir.
23 2012).

24 In response to a FOIA request, a government agency must conduct a search “reasonably
25 calculated to uncover all relevant documents.” *Lahr*, 569 F.3d at 986. To demonstrate that it has
26 conducted a reasonable search, an agency may produce “reasonably detailed, nonconclusory
27 affidavits submitted in good faith.” *Zemansky v. U.S. E.P.A.*, 767 F.2d 569, 571 (9th Cir. 1985)
28 (citing *Weisberg v. U.S. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)); *see also Lahr*,

1 569 F.3d at 986; *Citizens Comm’n on Human Rights v. Food & Drug Admin.*, 45 F.3d 1325, 1328
2 (9th Cir. 1995).

3 “At the same time, FOIA contemplates that some information may legitimately be kept
4 from the public.” *Watkins v. U.S. Bureau of Customs & Border Prot.*, 643 F.3d 1189, 1194 (9th
5 Cir. 2011) (quoting *Lahr*, 569 F.3d at 973). The FOIA enumerates nine statutory exemptions
6 allowing the government to withhold documents or portions of documents. *See* U.S.C.
7 § 552(b)(1)–(9). An agency invoking a statutory exemption to justify withholding documents
8 bears the burden of demonstrating the applicability of that exception. *See U.S. Dep’t of State v.*
9 *Ray*, 502 U.S. 164, 173 (1991); *Shannahan*, 672 F.3d at 1148; *Lahr*, 569 F.3d at 973; *see also*
10 *Yonemoto v. Dep’t of Veterans Affairs*, 686 F.3d 681, 688 (9th Cir. 2011) (“[A]gencies are
11 typically required to submit . . . a particularized explanation of why each document falls within
12 the claimed exemption.”), *rev’d on other grounds by Animal Legal Def. Fund*, 836 F.3d at 987.
13 To meet this burden, an agency may supply a reasonably detailed affidavit identifying the
14 documents withheld, the FOIA exemptions claimed, and the reason why each documents falls
15 within a claimed exemption.⁵ *See Lion Raisins v. U.S. Dep’t of Agric.*, 354 F.3d 1072, 1082 (9th
16 Cir. 2004), *rev’d on other grounds by Animal Legal Def. Fund*, 836 F.3d at 987. This submission
17 is typically referred to as the “Vaughn index.” *Id.*; *see also Hamdan*, 797 F.3d at 769.

18 One of the exemptions specifically enumerated in the FOIA statute, Exemption 3,
19 incorporates nondisclosure provisions contained in other federal statutes. *See* 5 U.S.C.
20 § 552(b)(3). Exemption 3 permits the withholding of information “specifically exempted from
21 disclosure by statute” if that statute “requires that the matters be withheld from the public in such

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25 ⁵ There is an exception to this rule, termed the *Glomar* exception, which applies when
26 “confirming or denying the existence of records would itself reveal protected information.”
27 *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 893 (D.C. Cir. 1995); *see also Hunt v. CIA*,
28 981 F.2d 1116, 1118 (9th Cir. 1992). For this exception to apply, the government must
demonstrate that revealing the very existence of records would cause harm cognizable under a
FOIA exception. *See Pickard v. Dep’t of Justice*, 653 F.3d 782, 785–6 (9th Cir. 2011) (citing
Wolf v. CIA, 473 F.3d 370, 374 (D.C. Cir. 2007)).

1 a manner as to leave no discretion on the issue.” *Id.*⁶ The Ninth Circuit has outlined a two-step
2 inquiry for deciding Exemption 3 questions, requiring courts to analyze (i) whether the statute
3 identified by the agency is a statute of exemption within the meaning of Exemption 3; and, if so,
4 (ii) whether the withheld records satisfy the criteria of the exemption statute. *See Hamdan*, 797
5 F.3d at 776 (citing *C.I.A. v. Sims*, 471 U.S. 159, 179 (1985)).

6 If an agency withholds a document pursuant to a FOIA exemption, it must nonetheless
7 disclose any “reasonably segregable portion” of the document. *See* 5 U.S.C. § 552(b) (“Any
8 reasonably segregable portion of a record shall be provided to any person requesting such record
9 after deletion of the portions which are exempt under this subsection.”); *see also Mead Data Ctr.,*
10 *Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977) (“[N]on-exempt portions of a
11 document must be disclosed unless they are inextricably intertwined with exempt portions.”).
12 “The burden is on the agency to establish that all reasonably segregable portions of a document
13 have been segregated and disclosed.” *Pac. Fisheries, Inc. v. United States*, 539 F.3d 1143, 1148
14 (9th Cir. 2008). An agency can meet this burden by providing the court with “a reasonably
15 detailed description of the withheld material,” and by “alleging facts sufficient to establish an
16 exemption.” *Pac. Fisheries, Inc.*, 539 F.3d at 1148; *see also Hamdan*, 797 F.3d at 779 (“A
17 district court must take seriously its role as a check on agency discretion, but this does not require
18 a page-by-page review of an agency’s work); *Johnson v. Exec. Office of U.S. Attorneys*, 310 F.3d
19 771, 776 (D.C. Cir. 2002) (“In order to demonstrate that all reasonably segregable material has
20 been released, the agency must provide a ‘detailed justification’ for its non-segregability,”
21 although ‘the agency is not required to provide so much detail that the exempt material would be
22 effectively disclosed.’”) (quoting *Mead Data*, 566 F.2d at 261).

23 Here, defendant moves for summary judgment in its favor on plaintiff’s FOIA claim on
24 two grounds. First, defendant contends that the FinCEN conducted a search reasonably

25 ⁶ Title 5 U.S.C. § 552(b)(3) provides, in relevant part: (b) This section does not apply to matters
26 that are— . . . (3) specifically exempted from disclosure by statute . . . , if that statute— (A)(i)
27 requires that the matters be withheld from the public in such a manner as to leave no discretion on
28 the issue; or (ii) establishes particular criteria for withholding or refers to particular types
of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act
of 2009, specifically cites to this paragraph.”

1 calculated to uncover all non-BSA records responsive to plaintiff's request. (Doc. No. 23-1 at 4–
2 5.) In support of this contention, defendant points to the following evidence: (i) a declaration
3 from Gilbert Paist, a Senior Project and Program Management Advisor with the FinCEN, who
4 states that any non-BSA records responsive to plaintiff's FOIA request would have been
5 contained within the Enforcement Division's files,⁷ (Doc. No. 23-3 at 1–4); (ii) a declaration from
6 Antonya Brown, a Program Administration Specialist with the FinCEN Enforcement Division,
7 who explains that the FinCEN conducted a computerized search of Enforcement Division
8 database using plaintiff's name, checked against plaintiff's social security number and date of
9 birth, and discovered no responsive records, (Doc. No. 23-4 at 2, ¶¶ 4, 7); (iii) a copy of a letter
10 from Amanda Michancyk, FinCEN Management Specialist, responding to plaintiff's initial FOIA
11 request, and informing plaintiff that FinCEN had searched its files but found no responsive non-
12 BSA records, (Doc. No. 23-3 at 8); and (iv) a copy of a letter from Frederick Reynolds, FinCEN
13 Deputy Director, informing plaintiff that the FinCEN had rejected his appeal of the agency's
14 decision denying his FOIA request, (*Id.* at 10–11). Second, defendant argues, without citation to
15 authority, that it had no obligation to search its BSA records because such records are not subject
16 to FOIA disclosure under Exemption 3 and 31 U.S.C. § 5319. (Doc. No. 23-1 at 6–7; Doc. No.
17 26 at 3.)

18 In opposition to defendant's motion for summary judgment, plaintiff argues in conclusory
19 fashion that the FinCEN did not make a good faith attempt to search non-BSA records for
20 documents responsive to his request. (Doc. No. 25 at 1–2.) Plaintiff also argues that defendant
21 violated the FOIA by not including BSA records in its search. (*Id.*) Finally, plaintiff contends
22 that, to the extent BSA records are exempt from the FOIA disclosure requirements, this
23 exemption does not prevent defendant from disclosing excerpts of documents that are responsive

24 ⁷ As noted above, plaintiff's FOIA request sought the following five categories of documents:
25 (i) plaintiff's savings account records from a Riverside, California branch of Bank of America for
26 the period of January 1993 through December 1994; (ii) copies of checks and other instruments;
27 (iii) records of transactions; (iv) receipt of funds; and (v) a copy of a Currency Transaction Report
28 ("CTR") submitted by Bank of America for the sum of \$100,000 in plaintiff's name. Mr. Paist's
declaration establishes that if FinCEN had any records responsive to these four requests they
would be found within the FinCEN Enforcement Division's files.

1 to plaintiff's request. (*Id.* at 4.)

2 The court first considers the adequacy of the search conducted by defendant of non-BSA
3 records in response to plaintiff's FOIA request. In its motion for summary judgment, defendant
4 has submitted a number of declarations explaining the process that the agency used to search for
5 responsive documents of the non-BSA category. For instance, the declarations submitted by
6 defendant identify the files searched, those from the FinCEN Enforcement Division. *See*
7 *Lawyers' Comm. for Civil Rights v. U.S. Dep't of the Treasury*, 534 F. Supp. 2d 1126, 1131 (N.D.
8 Cal. 2008) (explaining that in a FOIA case, sufficient declarations describe "what records were
9 searched") (citing *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994)).

10 Defendant's declarations explain that the search for non-BSA documents was conducted through
11 a computerized survey, and specify the terms used to conduct this computerized search. *See*
12 *McCash v. CIA*, No. 5:15-cv-02308-EJD, 2016 WL 6650389, at *6-7 (N.D. Cal. Nov. 10, 2016)
13 (finding that defendant met its burden to show the adequacy of a search conducted in response to
14 a FOIA request, because it "described with particularity the office responsible for the search, the
15 database it searched, the process it used to search—including the search terms used—and the
16 results of the search"); *Hiken v. Dep't of Defense*, 521 F. Supp. 2d 1047, 1054 (N.D. Cal. 2007)
17 ("The disclosure of search terms and a declarant's assurances that the search covered all relevant
18 files may be helpful in evaluating the adequacy of the search."); *cf. Lion Raisins, Inc.*, 636 F.
19 Supp. 2d at 1105 (finding defendant's FOIA search inadequate in part because the affidavits
20 provided by defendant "do[] not mention whether, or what, search terms or key words were
21 utilized").

22 In his opposition to the summary judgment motion, plaintiff has not come forward with
23 any "meaningful evidentiary showing" that the defendant's search of non-BSA records was
24 inadequate. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 175 (2004) ("Allegations
25 of government misconduct are easy to allege and hard to disprove, so courts must insist on a
26 meaningful evidentiary showing.") (internal quotation marks and citation omitted); *see also*
27 *Hamdan*, 797 F.3d at 770 ("Affidavits submitted by an agency to demonstrate the adequacy of its
28 response are presumed to be in good faith."); *Lahr*, 569 F.3d at 987-88 (finding that an agency

1 had conducted an adequate search in response to a FOIA request, after finding that there was “no
2 evidence of either agency’s bad faith in conducting their searches, and [that], aside from his
3 general allegations of government cover-up, [plaintiff] presents no evidence [to the contrary]”).
4 Plaintiff has also not come forward with any evidence that that the agency failed to produce
5 documents that were discovered during the search that they have described. *See Lahr*, 569 F.3d at
6 988 n.24 (“The government, of course, must produce responsive documents actually uncovered in
7 a search, unless one of FOIA’s exemptions applies.”); *cf. Hamdan*, 797 F.3d at 771 (“[A] search
8 is not inadequate for failure to turn up a single document.”).

9 In light of the evidence submitted by defendant on summary judgment and plaintiff’s
10 failure to make any evidentiary showing in response, the court concludes that defendant has
11 satisfied its burden of establishing the adequacy of its search of non-BSA FinCEN Enforcement
12 Division files made in connection with plaintiff’s FOIA request. Defendant has also established
13 that as a result of its appropriate search, no records responsive to plaintiff’s FOIA requests
14 numbered one through four were located. Plaintiff has not presented any contrary evidence or
15 any evidence of bad faith on the part of the agency. *See Elec. Privacy Info. Ctr. v. Fed. Bureau of*
16 *Investigation*, ___F. Supp. 3d___, 2017 WL 680370, at *3 (D.D.C. Feb. 21, 2017) (“To successfully
17 challenge an agency’s showing that it complied with the FOIA, the plaintiff must come forward
18 with ‘specific facts’ demonstrating that there is a genuine issue with respect to whether the
19 agency has improperly withheld extant agency records.”) (citation omitted); *Civil Beat Law Ctr.*
20 *for the Pub. Interest, Inc. v. Ctr. for Disease Control & Prevention*, ___F. Supp. 3d___, 2016 WL
21 6155358, at *9 (D. Haw. Aug. 30, 2016). Accordingly, defendant’s motion for summary
22 judgment will be granted with respect to plaintiff’s FOIA requests one through four.

23 With respect to plaintiff’s FOIA request for a copy of a CTR submitted by Bank of
24 America in his name, however, the court is not persuaded that defendant properly excluded BSA
25 records from the search it conducted. In its summary judgment motion, defendant invokes
26 Exemption 3 and 31 U.S.C. § 5319 as grounds for nondisclosure of any and all BSA records.
27 Though it appears likely defendant may ultimately prevail on that ground, it has cited no authority
28 for the proposition that it was under no obligation to search the BSA records in response to

1 plaintiff's FOIA request, and the court has found no such authority.

2 As noted above, the applicable two-step inquiry in deciding Exemption 3 questions
3 requires the court first to consider whether the statute identified by the agency represents an
4 Exemption 3 withholding statute, *and then to analyze whether records withheld by the*
5 *government satisfy the exemption statute's criteria. See Hamdan, 797 F.3d at 776 (emphasis*
6 *added). It is certainly true that under the BSA, CTRs and other "financial institution reports and*
7 *records of reports of transactions involving the payment, receipt or transfer of United States coins*
8 *and currency" are exempt from FOIA disclosure. See Council on Am.-Islamic Relations v. F.B.I.,*
9 *749 F. Supp. 2d 1104, 1117 (S.D. Cal. 2010); Berger v. I.R.S., 487 F. Supp. 2d 482, 496 (D. N.J.*
10 *2007) ("Congress explicitly precluded disclosure of CTRs and similar reports . . . under § 5319*
11 *and expressly stated that covered reports would be exempt from disclosure under FOIA."), aff'd*
12 *on other grounds, 288 F. App'x 829 (3d Cir. 2008); Vosburgh v. I.R.S., No. 93-1493-MA, 1994*
13 *WL 564699, at *4 (D. Or. July 5, 1994); see also Small v. I.R.S., 820 F. Supp. 163, 166 (D. N.J.*
14 *1992). Any such information collected pursuant to the BSA is therefore properly subject to*
15 *Exemption 3. See Council on Am.-Islamic Relations, 749 F. Supp. 2d at 1117 (finding that*
16 *agency's "reli[ance] on the [BSA] to withhold information obtained from the [FinCEN]" was*
17 *proper) (citing Davis v. U.S. Dep't of Justice, No. Civ. A. 00-2457(CKK), 2003 WL 25568468,*
18 *at *5 (D. D.C. 2003)); see also Berger, 487 F. Supp. 2d at 496-97 (finding information*
19 *concerning cash transactions was protected from disclosure because the BSA "mandates*
20 *withholding in such a manner as to leave no discretion on the issue to the agency").*

21 Here, however, defendant has not identified which, if any, documents were withheld in
22 response to plaintiff's FOIA request for the CTR he identified. This is because defendant
23 categorically excluded all BSA records from its search. (Doc. No. 23-1 at 7-8.) Beyond the
24 conclusory characterization of these documents as "BSA records," defendant did not and could
25 not provide any information as to what records were located or how many pages of documents
26 were withheld because no search was conducted. As noted above, an agency has the burden to
27 demonstrate why disclosure of withheld documents would violate a FOIA exemption. In order to
28 do so, the agency must provide "reasonably detailed descriptions" of documents withheld as well

1 as facts sufficient to establish the exemption. *Pac. Fisheries, Inc.*, 539 F.3d at 1148; *see also*
2 *Wiener v. F.B.I.*, 843 F.2d 972, 983 (finding that a CIA affidavit was inadequate to support
3 withholding under Exemption 3 because it “fail[ed] to discuss the facts or reasoning upon which
4 [defendant] based [its] conclusion”); *see also Stolt-Nielsen Transp. Group Ltd. v. United States*,
5 534 F.3d 728, 734 (D.C. Cir. 2008) (finding that the government could not withhold information
6 requested under FOIA merely by providing an affidavit stating in conclusory fashion that the
7 documents withheld were subject to nondisclosure under Exemption 3). It would appear that,
8 without conducting a search of its BSA documents in response to plaintiff’s request, defendant
9 cannot meet this burden. *See Hamdan*, 797 F.3d at 780 (“An agency must describe the document
10 or information being withheld in sufficient detail to allow the plaintiffs and the court to determine
11 whether the facts alleged establish the corresponding exemption”); *see also Morley v. CIA*, 508
12 F.3d 1108, 1122 (D.C. Cir. 2007) (“[W]hen an agency seeks to withhold information, it must
13 provide ‘a relatively detailed justification’); *Boyd v. Exec. Office for U.S. Att’ys*, 87 F. Supp. 3d
14 58, 90 (D.D.C. 2015) (“Treasury states that it applied Exemption 3 in conjunction with the [BSA]
15 to withhold ‘references to information collected pursuant to the Bank Secrecy Act.’ . . .
16 Treasury’s description of this withholding is not sufficient: the agency has failed to provide even
17 a general description of the relevant records or the type of information withheld.”).

18 Defendant’s position that it was under no obligation to search BSA records in its
19 possession because the requested CTR is exempt from disclosure under FOIA, finds no support in
20 the cases addressing similar FOIA requests. In each of those cases it appears that although the
21 agency was found to have properly withheld the documents in question (including CTRs), that
22 determination was based upon the agency’s search of the records followed by a reasonably
23 detailed description of the documents being withheld as well as facts sufficient to establish the
24 applicability of the claimed exemption. *See Berger*, 487 F. Supp. 2d at 496 (finding that the IRS
25 properly withheld records under Exemption 3 pursuant to the BSA non-disclosure provision,
26 when it explained the number of documents withheld, identified those documents as Currency
27 and Banking Retrieval System (“CBRS”) summaries and CBRS CTRs, and disclosed portions of
28 withheld documents after finding they contained information not derived or extracted directly

1 from non-disclosable records); *Sciba v. Bd. of Governors of the Fed. Reserve Sys.*, No. Civ.A. 04-
2 1011, 2005 WL 3201206, at *3–4 (D.D.C. Nov. 4, 2005) (finding that an agency properly
3 withheld records under Exemption 3 pursuant to the BSA when it specifically identified the
4 withheld documents as including three Suspicious Activity Reports and four CTRs); *Linn v. U.S.*
5 *Dep't of Justice*, Civ. A. No. 92-1406, 1995 WL 631847, at *29–30 (D.D.C. Aug. 22, 1995) (IRS
6 invocation of Exemption 3 and 31 U.S.C. § 5319 as the basis for withholding a CTR in response
7 to a FOIA request, supported by the declaration of an IRS attorney, found to be proper on
8 summary judgment); *Vosburgh*, 1994 WL 564699, at *2, 4 (concluding defendants lawfully
9 withheld CTRs pursuant to the FOIA Exemption 3 and 31 U.S.C. § 5319 based upon three IRS
10 affidavits describing the withheld documents and the basis for invoking the exemption); *Small*,
11 820 F. Supp. at 166 (granting summary judgment, concluding that seven specific pages were
12 exempt from disclosure under FOIA because they contained information from TECS and
13 CBRS).⁸

14 For these reasons, defendant's motion for summary judgment will be denied as to
15 plaintiff's fifth numbered request for a copy of the identified CTR without prejudice to the
16 defendant's filing of a new, properly supported motion for summary judgment addressing the
17 deficiencies noted above.⁹

18 ⁸ The court acknowledges it has been recognized that “Exemption 3 differs from other FOIA
19 exemptions in that its applicability depends less on the detailed factual contents of specific
20 documents; the sole issue for decision is the existence of a relevant statute and the inclusion of
21 withheld material within the statute's coverage.” *Bloomer v. U.S. Dep't of Homeland Sec.*, 870 F.
22 Supp.2d 358, 365 (D. Vt. 2012) (quoting *Wilner v. NSA*, 592 F.3d 60, 72 (2d Cir. 2009)).
23 Nonetheless, the court has been unable to find any authority for the government's proposition that
no search need be conducted of certain categories of documents and that therefore no description
of documents withheld, or of why the claimed exemption applies to them, need be provided. If
the government is aware of such authority it may, of course, move to reconsider.

24 ⁹ The court recognizes that it may be defendant's position that a CTR contains no segregable
25 portion and that the entire document is exempt from disclosure under FOIA. However, that
26 question is unaddressed in the briefing now before the court. Accordingly, in any subsequent
27 motion defendant may elect to file, counsel is directed to also address whether segregability
28 applies where Exemption 3 and 31 U.S.C. § 5319 are invoked with respect to a request for a CTR.
That doctrine requires a determination of whether there were any segregable portions of
documents that could be released, or whether all portions of the documents in question were
“inextricably intertwined” with exempt portions so as to justify their non-disclosure. *Mead Data*,

