IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:16-CV-843-D

CLARENCE ANDREW MCGUFFIN, Plaintiff,	)	
v.	)	**ORDER**
SOCIAL SECURITY ADMINISTRATION, Defendant.	)	

On October 7, 2016, Clarence McGuffin ("McGuffin" or "plaintiff") filed suit under the Freedom of Information Act, 5 U.S.C. § 552, seeking an order requiring the Social Security Administration ("the SSA" or "defendant") to produce records concerning productivity data of the SSA's decision writers [D.E. 1]. On December 22, 2016, the SSA moved to dismiss McGuffin's complaint for lack of subject-matter jurisdiction or, alternatively, for summary judgment [D.E. 10] and filed a supporting memorandum [D.E. 11], a statement of material facts [D.E. 12], and an appendix [D.E. 15]. On January 27, 2017, McGuffin responded in opposition [D.E. 18]. On February 10, 2017, the SSA replied [D.E. 19]. As explained below, the court grants the SSA's motion for summary judgment.

I.

On July 15, 2016, McGuffin submitted an electronic Freedom of Information Act ("FOIA") request for records concerning the productivity of the SSA's decision writers. Compl. [D.E. 1] ¶ 9. He requested two items in particular:

> i. The [Office of Disability Adjudication and Review's Case Processing and Management System ("CPMS")] data used to measure Decision Writer productivity in all 141 hearing offices for Fiscal Years 2006 through 2009 as identified in the SSA [Office of the Inspector General's ("OIG")] Audit Report A-02-09-19068 from November 2010, "Office of Disability

Adjudication and Review Decision-Writing Process"; and

ii. The monthly Decision Writer Productivity reports that measure individual and office Decision Writer productivity for Region IV (Atlanta) hearing offices from Fiscal Years 2010 through 2015[.]

Id. ¶ 11; [D.E. 1-2]. According to McGuffin, "release of the information is essential to ascertain whether the testimony and statements of witnesses in those legal matters are truthful or can be substantiated as untruthful." Compl. ¶ 7.

On August 3, 2016, the SSA informed McGuffin that it was contacting its components to fulfill McGuffin's request. Compl. ¶ 14–15; [D.E. 1-8] 4–5. The next day, an SSA FOIA officer told McGuffin the SSA had sent McGuffin's request to the SSA's Office of Disability Adjudication and Review ("ODAR"). Compl. ¶ 16. On August 11 and August 12, 2016, McGuffin again contacted the SSA about his request but received no response. Id. ¶ 17. On October 6, 2016, SSA notified McGuffin that it was fulfilling his request but was awaiting a response from yet another component from which it had requested responsive documents. Id. ¶ 18; [D.E. 1-8] 5–6. Not satisfied, McGuffin filed suit the following day to compel production of the requested documents. See Compl. ¶ 1; [D.E. 1-8] 7.

After McGuffin filed suit, the SSA responded to his FOIA request with two releases. The SSA's interim release on November 7, 2016, responded in full to McGuffin's first request by releasing all responsive records that the SSA had located. Zimmerman Decl. [D.E. 15-2] ¶ 6; Def.'s App. [D.E. 15-4]. The interim release also partially responded to McGuffin's second request by releasing productivity reports that measured decision-writer productivity on a per-office level. Zimmerman Decl. ¶ 6; Def.'s App. [D.E. 15-4]. The SSA told McGuffin it would soon respond to the other half of McGuffin's second request, which sought productivity reports of individual decision writers. Def.'s App. [D.E. 15-4]. On November 23, 2016, the SSA released that information, but withheld identifying information about SSA employees. Zimmerman Decl. ¶ 7; Def.'s App. [D.E. 15-3]. For each report, the withheld data included: (1) the employee's name, (2) the employee's

available hours to write decisions, (3) the percentage of time worked on decision writing out of the employee's total duty hours, and (4) the learning curve that applies to the employee. Zimmerman Decl. ¶ 8.

The SSA withheld this information under FOIA's Exemption 6, which protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6); see Zimmerman Decl. ¶ 8; Def.'s App. [D.E. 15-3]. The SSA concluded that these four data fields fell within Exemption 6 because they could directly identify employees or lead to their identification. Zimmerman Decl. ¶ 8(c); Def.'s Stmt. Material Facts [D.E. 12] ¶¶ 24–25. Specifically, the employees' names could directly identify employees, the available hours and percentage of time spent on decision writing "could lead to identification of individuals whose hours were different than the majority of writers for a given month and location," and the learning-curve information could lead to identification of individuals "by showing who was on the learning curve (i.e., which employees were trainees in a given month)." Zimmerman Decl. ¶ 8(c). The SSA released all other fields on the reports. Id.

After the second of its two releases, the SSA moved to dismiss for lack of subject-matter jurisdiction or, alternatively, for summary judgment. See [D.E. 10]. The SSA seeks summary judgment because the SSA "has conducted a reasonable and adequate search for records and produced all responsive documents that are not exempt from release under FOIA." [D.E. 11] 2. McGuffin does not contest the adequacy of the SSA's search but argues that the SSA has not shown that the redacted materials fall within Exemption 6. [D.E. 18] 4. Thus, McGuffin contends that "the only unanswered FOIA question in this case is the 'Exemption 6' redactions." Id.

II.

Courts typically resolve FOIA cases on summary judgment. See Turner v. United States, 736 F.3d 274, 282 (4th Cir. 2013). Summary judgment is appropriate if the moving party demonstrates "that there is no genuine dispute as to any material fact" and the moving party "is entitled to

judgment as a matter of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment must initially show an absence of a genuine dispute of material fact or the absence of evidence to support the nonmoving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). If a moving party meets its burden, the nonmoving party must "come forward with specific facts showing that there is a genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quotation and emphasis omitted). A genuine issue for trial exists if there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). "The mere existence of a scintilla of evidence in support of the plaintiff's position [is] insufficient . . . ." Id. at 252; see Beale v. Hardy, 769 F.2d 213, 214 (4th Cir. 1985) ("The nonmoving party, however, cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another."). Only factual disputes that might affect the outcome under substantive law preclude summary judgment. Anderson, 477 U.S. at 248. In reviewing the factual record, the court views the facts in the light most favorable to the nonmoving party and draws reasonable inferences in that party's favor. Matsushita, 475 U.S. at 587–88.

III.

FOIA requires agencies, upon receiving a sufficiently specific and reasonable request for records, to "make the records promptly available." 5 U.S.C. § 552(a)(3)(A); see Am. Mgmt. Servs., LLC v. Dep't of the Army, 703 F.3d 724, 728 (4th Cir. 2013). FOIA, however, allows agencies to withhold records falling within one of nine exemptions. Baldrige v. Shapiro, 455 U.S. 345, 352 (1982); Am. Mgmt. Servs., LLC, 703 F.3d at 728; see 5 U.S.C. § 552(b). The nine exemptions "reflect a wide array of concerns, and are designed to safeguard various public interests against the harms that would arise from overbroad disclosure." Am. Mgmt. Servs., LLC, 703 F.3d at 728–29 (quotations omitted); see FBI v. Abramson, 456 U.S. 615, 621 (1982). "The government has the burden of demonstrating that a requested document falls under an exemption, which it can satisfy

by describing the withheld material with reasonable specificity and explaining how it falls under one of the enumerated exemptions." Am. Mgmt. Servs., LLC, 703 F.3d at 729 (alteration and quotations omitted). The court determines de novo whether an exemption applies. See U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press, 489 U.S. 749, 755 & n.6 (1989); 5 U.S.C. § 552(a)(4)(B).

Exemption 6 protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Exemption 6 permits the withholding of information when two requirements are met. First, the requested information must be contained in personnel, medical, or similar files. Second, the information must constitute a clearly unwarranted invasion of personal privacy. See U. S. Dep't of State v. Washington Post Co., 456 U.S. 595, 601–02 & n.4 (1982); Core v. U.S. Postal Serv., 730 F.2d 946, 947–48 (4th Cir. 1984).

A.

As for the first requirement, the information withheld is contained in "similar files." "The Supreme Court has directed that the phrase 'similar files' has a 'broad, rather than a narrow, meaning,' and expressly rejected the contention that such files must contain 'highly personal' or 'intimate' information to fall within the exemption." Judicial Watch, Inc. v. United States, 84 F. App'x 335, 338 (4th Cir. 2004) (unpublished) (quoting Washington Post Co., 456 U.S. at 598). Congress did not intend Exemption 6 to cover only "a narrow class of files containing only a discrete kind of personal information." Washington Post Co., 456 U.S. at 602. Instead, Congress intended that Exemption 6 "cover detailed Government records on an individual which can be identified as applying to that individual." Id. (quotation omitted). Thus, "under Supreme Court precedent Exemption 6 extends to '[a]ll information which applies to a particular individual . . . regardless of the type of file in which it is contained.'" Judicial Watch, Inc., 84 F. App'x at 338 (emphasis omitted) (alteration in original) (quoting Washington Post Co. v. United States Dep't of Health & Human Servs., 690 F.2d 252, 260 (D.C. Cir.1982)); see Washington Post Co., 456 U.S. at 601 & 602

n.3; Core, 730 F.2d at 948 ("Because this information pertains to particular individuals, it clearly falls within the 'similar files' definition of Washington Post, 456 U.S. at 602."). The productivity reports of individual decision writers from which the information was redacted contain the names of individual employees as well as information about their personal on-the-job productivity. The reports comfortably fit the definition of "similar files."

B.

In determining whether a privacy invasion is "clearly unwarranted," courts must balance the asserted privacy interests against "the only relevant public interest in the FOIA balancing analysis—the extent to which disclosure of the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to." U.S. Dep't of Def. v. Fed. Labor Relations Auth., 510 U.S. 487, 497 (1994) (alteration and quotations omitted). Here, the balance favors withholding the redacted information.

Exemption 6 protects the privacy of federal employees' names. See Solers, Inc. v. Internal Revenue Serv., 827 F.3d 323, 333 (4th Cir. 2016); Judicial Watch, Inc., 84 F. App'x at 339; cf. Neely v. FBI, 208 F.3d 461, 464–65 (4th Cir. 2000). "[T]he public interest in the names of government employees alone [is] negligible absent a compelling allegation of agency corruption or illegality." Judicial Watch, Inc., 84 F. App'x at 339 (quotations omitted); see Solers, Inc., 827 F.3d at 333; cf. Neely, 208 F.3d at 464. McGuffin has not made a compelling allegation of agency corruption or illegality, and therefore the SSA's decision writers' privacy interest in their names outweighs the public interest in disclosure, and the SSA permissibly redacted this information under Exemption 6.

The disclosure of the employee's available hours to write decisions, the percentage of time worked on decision writing out of the employee's total duty hours, and the learning curve that applies to the employee implicates privacy interests as well. A person can use the redacted information to identify the employee the information corresponds to, and the information reflects

how one employee may be performing over other employees. See Def.'s Stmt. Material Facts ¶¶ 24–25, 28. Federal employees "have a substantial interest in the nondisclosure of their identities." Solers, Inc., 827 F.3d at 333 (quotation omitted). Exemption 6's protects "individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." Core, 730 F.2d at 947; see Ripskis v. Dep't of Hous. & Urban Dev., 746 F.2d 1, 3 (D.C. Cir. 1984) (per curiam). Thus, federal employees have a "substantial" privacy interest in employee evaluations, because "disclosure of even favorable information may well embarrass an individual or incite jealousy in his or her co-workers." Ripskis, 746 F.2d at 3; see Fed. Labor Relations Auth. v. U.S. Dep't of Commerce, 962 F.2d 1055, 1060 (D.C. Cir. 1992); Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984); cf. Core, 730 F.2d at 948–49. The privacy interest in job-performance evaluations "also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file." Stern, 737 F.2d at 91. Performance appraisals are exempt by regulation from information that must generally be made publically available. See 5 C.F.R. § 293.311(a)(6). Because the redacted information can lead to identifying SSA employees' identities and link them with productivity information likely to lead to injury, embarrassment, or jealousy, the employees have a privacy interest in the redacted information.

Having concluded that the requested information implicates legitimate privacy interests, "the burden shifts to the requester to (1) show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake, and (2) show the information is likely to advance that interest." Casa De Md., Inc. v. U.S. Dep't of Homeland Sec., 409 F. App'x 697, 700 (4th Cir. 2011) (per curiam) (unpublished) (quotation omitted); see Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157, 172 (2004). McGuffin argues that two aspects of the public interest support disclosure.

First, McGuffin argues that releasing the redacted information serves the public interest by "determin[ing] how individual writers perform over time to determine if Defendant treated Plaintiff disparately." [D.E. 18] 9–10. Although McGuffin frames this inquiry as serving the public interest, the inquiry is personal to McGuffin given McGuffin's statement that he "requested this information for use in a legal proceeding" to determine whether witnesses were lying. Compl. ¶ 7. Although McGuffin may have a personal interest in knowing whether the SSA discriminated against him, his personal interest in the requested information does not implicate a public interest. Instead, whether disclosure is clearly unwarranted "must turn on the nature of the requested document and its relationship to the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny, rather than on the particular purpose for which the document is being requested." Reporters Comm. For Freedom of Press, 489 U.S. at 772; see Neely, 208 F.3d at 464. Moreover, Congress did not intend FOIA "to supplement or displace rules of discovery." John Doe Agency v. John Doe Corp., 493 U.S. 146, 153 (1989); see Cooper Cameron Corp. v. U.S. Dep't of Labor, Occupational Safety & Health Admin., 280 F.3d 539, 547–48 (5th Cir. 2002) (finding no public interest in the fact that documents sought under FOIA would impeach testimony in a civil suit).

Even construing McGuffin's claimed interest as one belonging to the public rather than him personally, his contention fails. In analyzing Exemption 7(c), which exempts the disclosure of law enforcement records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy," the Supreme Court has held that where

> the public interest being asserted is to show that responsible officials acted negligently or otherwise improperly in the performance of their duties, the requester must establish more than a bare suspicion in order to obtain disclosure. Rather, the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.

Favish, 541 U.S. at 174. Courts have applied the same standard to Exemption 6. See Casa De Md., Inc., 409 F. App'x at 700; Goldstein v. Treasury Inspector Gen. for Tax Admin., 172 F. Supp. 3d

221, 232–33 & n.3 (D.D.C. 2016); Samahon v. FBI, 40 F. Supp. 3d 498, 521 (E.D. Pa. 2014); Bloomer v. U.S. Dep't of Homeland Sec., 870 F. Supp. 2d 358, 367 (D. Vt. 2012). McGuffin, the requester, has not met this burden.

Second, McGuffin has not met his burden of articulating how the release of the redacted information would otherwise "shed light on an agency's performance of its statutory duties" or "let citizens know what their government is up to." Fed. Labor Relations Auth., 510 U.S. at 497 (alteration and quotations omitted). In his FOIA request, McGuffin "asserted no public interest in SSA's release of individual-level performance information." Zimmerman Decl. ¶ 8(b); see [D.E. 1-2]. Moreover, McGuffin's assertion that "there is a public interest in the information that Plaintiff seeks" because "Congress has shown an interest" in the SSA's backlog of pending claims, Compl. ¶ 22, does not suffice. Although that interest may well be a public one, McGuffin has cited nothing suggesting how the information redacted from the individual-level productivity reports "would produce any relevant information that is not set forth in the documents that have already been produced." U.S. Dep't of State v. Ray, 502 U.S. 164, 178–79 (1991). For example, McGuffin does not show how the individual-level productivity reports further this interest in a way office-level reports do not. Having failed to show that the requested information is likely to further the public interest asserted, McGuffin has not carried his burden. See Favish, 541 U.S. at 172; Case De Md., Inc., 409 F. App'x at 700.

Balancing the SSA decision writers' privacy interests in their names and personal productivity information against the lack of an articulated public interest that disclosure would advance, the privacy interests prevail. See Ray, 502 U.S. at 179 ("Mere speculation about hypothetical public benefits cannot outweigh a demonstrably significant invasion of privacy."). Disclosing the redacted information would "constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

IV.

In sum, the SSA properly withheld the redacted information under FOIA's Exemption 6. Accordingly, the court GRANTS the SSA's motion for summary judgment [D.E. 10]. The clerk shall close the case.

SO ORDERED. This 17 day of July 2017.

JAMES C. DEVER III
Chief United States District Judge