



**Judicial
Watch**[®]
*Because no one
is above the law!*

August 31, 2011

VIA CERTIFIED MAIL & FACSIMILE (202) 622-3895

Daniel Tangherlini
Chief Freedom of Information Officer
Disclosure Services, Departmental Offices
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
(202) 622-0930

Re: Appeal of FOIA 2011-07-065 seeking SF-50s of Employees Earning \$225,000+

Dear Mr. Tangherlini:

This letter timely appeals an adverse determination¹ within the meaning of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*, respecting a public records request addressed to the U.S. Department of the Treasury (Treasury) on July 12, 2011, by Judicial Watch, Inc., (Judicial Watch).² The FOIA request sought Standard Forms 50 (SF-50s) for all Treasury employees earning \$225,000 or more, per year, in total compensation between January 1, 2011, and the date of the request (inclusive). The FOIA at issue was in turn redistributed to Treasury subdivisions by Disclosure Services Director Hugh Gilmore.³ With respect to the Departmental Offices, Human Resource Director Kristina Kaptur notified Judicial Watch in a letter dated August 25, 2011, as to the conclusion of Treasury's search and intended fulfillment of FOIA No. 2011-07-065.⁴

Judicial Watch appeals Treasury's production with respect to the Departmental

¹ *Taylor v. Appleton*, 30 F.3d 1365, 1370 (11th Cir. Fla. 1994)(withholding requested documents in whole or in part constitutes "adverse determination" within the meaning of 5 U.S.C. § 552(a)(6)(A)(i)).

² A copy of Judicial Watch's July 12 FOIA is here attached as Exhibit A.

³ A copy of Mr. Gilmore's July 13 letter asserting as much (along with its respective attachment) is here attached as Exhibit B.

⁴ A copy of Ms. Kaptur's August 25 letter is here attached as Exhibit C.

Treasury Department

August 31, 2011

Offices on two counts:

I. *Only two (2) DO staffers earned \$225,000 or more during the period?*

In light of responses to date from other, comparable executive agencies, it can hardly be believed that only two (2) individuals in Treasury's Departmental Offices were being paid an annual rate of \$225,000 or more during the relevant period. Consequently, Treasury's Departmental Offices ought to be compelled to find and deliver all SF-50s on file and in force during the relevant period for the entire specified class.

II. *What privacy interest is there in the identity of a senior government aide?*

Also in light of responses to date from other, comparable executive agencies (as well as even the narrowest application of jurisprudential doctrine on the subject), it is plain that Treasury's Departmental Offices excessively redacted the few SF-50s the division saw fit to provide.⁵ Names are not secret. Even assuming that respective birthdate and retirement information was properly withheld, the identities of top-level administration officials must -- in keeping with FOIA -- be disclosed. Hence, Treasury's Departmental Offices ought to be compelled to reproduce the two SF-50s it already delivered (but, this time, with the names showing) and the rest of the outstanding SF-50s without the contents of Box 1 redacted.

For all the foregoing reasons, Judicial Watch files this appeal in expectation that Treasury's Chief FOIA Officer will cause the agency's Departmental Offices to locate and deliver in accordance with all relevant laws and regulations all records requested in FOIA 2011-07-065. If you do not understand this appeal or any portion thereof, please contact FOIA Program Manager John Althen immediately at (202) 646-5172 or jalthen@judicialwatch.org. Judicial Watch anticipates receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days.

Sincerely,



Lisette Garcia, J.D.
Senior Investigator

⁵ Treasury's entire production with respect to the Departmental Offices is here attached as Exhibit D.



**Judicial
Watch**[®]
*Because no one
is above the law*

EXHIBIT
A

July 12, 2011

VIA CERTIFIED MAIL & FACSIMILE (202) 622-3895

FOIA Liaison Hugh Gilmore
Disclosure Services
U.S. Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220
Hugh.Gilmore@do.treas.gov
(202) 622-0930

Re: FOIA Request for SF-50s of Employees Earning More than \$225,000 per Year

Dear Sir or Madam:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*, Judicial Watch, Inc., (Judicial Watch) hereby requests that the U.S. Department of the Treasury (Treasury) produce the following within twenty (20) business days:

Standard Forms 50 (SF-50s) for all Treasury employees
earning \$225,000, or more, per year in total compensation.

The time frame for this request is January 1, 2011 through the present.

In placing this request, Judicial Watch directs the Treasury's attention to President Barack Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act which states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA... The presumption of disclosure should be applied to all decisions involving FOIA.

Freedom of Information Act. Pres. Mem. of January 21, 2009, 74 Fed. Reg. 4683.

The memo further provides that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nevertheless, if any responsive record or portion thereof is claimed to be exempt

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from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552 (b).

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552 (a)(4)(A)(ii)(II) and (a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. Cf. *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)(defining news media within FOIA context). Judicial Watch has also been recognized as a member of the news media in other FOIA litigation. See, e.g., *Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Department of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006). Judicial Watch regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii).

In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under Section 6 (b) of the OPEN Government Act of 2007, which amended FOIA at 5 U.S.C. § 552 (a)(4)(A)(viii).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts

Treasury

July 12, 2011

to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification, please contact Judicial Watch FOIA Program Manager John Althen immediately at (202) 646-5172 or jalthen@judicialwatch.org. Judicial Watch looks forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your prompt compliance with all applicable laws.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lisette Garcia', with a stylized flourish at the end.

Lisette Garcia, J.D.
Senior Investigator



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220
July 13, 2011

RE: 2011-07-065

EXHIBIT
B

Lisette Garcia, J.D.
Senior Investigator
Judicial Watch, Inc.
425 Third St., S.W., Suite 800
Washington, DC 20024

Dear Ms. Garcia:

This concerns your July 12, 2011, Freedom of Information Act (FOIA) request which was received in this office.

Every effort will be made in Departmental Offices (DO) to provide you with a timely response. However, please be advised that unusual circumstances exist regarding a search and review of the information requested due to the timeframe of the records which may result in voluminous records.

Your request for a fee waiver will be addressed by the program office assigned to the processing of your request. They will contact you directly. Your request may require further submissions, justifications, and or more reasonable descriptions. Departmental Offices (DO) and each Treasury Bureau will access fees separately. Therefore, DO and each Bureau can change you up to \$350.00 respectively, for the processing of your request if your fee waiver is denied.

Further inquiries to DO concerning this request should make reference to the identification number at the top of this letter and should be faxed to 202-622-3895 or mailed to:

FOIA Request
Disclosure Services
Department of the Treasury
Washington, DC 20220

Your request has also been assigned to the Treasury Bureaus listed on the enclosure. Further inquiries to the Bureaus should be addressed to them directly.

Sincerely,

Hugh Gilmore
Director, Disclosure Services

Enclosure

**THE DEPARTMENT OF THE TREASURY
BUREAU FOIA/PA OFFICES**

Headquarters/Departmental Offices (DO)

Hugh Gilmore
Disclosure Services
FOIA Public Liaison: 202/622-0478
Ph: 202/622-0930
Fax: 202/622-3895
Address:
FOIA Request
Department of the Treasury
Washington, DC 20220

***Function:** The Department of the Treasury is organized into two major components the **Departmental offices also referred to as "Headquarters"** and the operating bureaus. The **Departmental Offices are primarily responsible for the formulation of policy and management of the Department as a whole**, while the operating bureaus carry out the specific operations assigned to the Department. Our bureaus make up 98% of the Treasury work force. The basic functions of the Department of the Treasury include:*

Alcohol and Tobacco Tax and Trade Bureau (TTB)

Quinton Mason
Phone: 202/453-2034
Fax: 202/453-2939
Address: Disclosure Services
1310 G Street, NW, Suite 400-E
Washington, DC 20220

Function: Enforce and administer laws covering the production, use, and distribution of alcohol and tobacco products. TTB also collects excise taxes for firearms and ammunition.

Bureau of Engraving & Printing (BEP)

Sherrylyn Bell
Phone: 202/874-2058
Fax: 202/874-2951
Address: FOIA Office
Room 419-A
14th & C Street, SW
Washington, DC 20228

Function: Designs and manufactures U.S. currency, securities, and other official certificates and awards.

Comptroller of the Currency (OCC)

Frank Vance
Phone: 202/874-4700
Fax: 202/874-5274
Address: Disclosure (FOIA) Office
Washington, DC 20219

Function: The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises national banks to ensure a safe, sound, and competitive banking system that supports the citizens, communities, and economy of the United States.

Financial Management Service (FMS)

Cynthia Sydnor
Phone: 202/874-0765
Fax: 202/874-2391
Address: Disclosure Branch
401 14th Street, SW
Washington, DC 20227

Function: Receives and disburses all public monies, maintains government accounts, and prepares daily and monthly reports on the status of government finances.

Bureau of the Public Debt (BPD)

Denise Nelson
Phone: 304/480-8402
Fax: 304/480-8188
Address: FOIA Request
200 Third Street, Avery A4-A
Parkersburg, WV 26106

Function: Borrows the money needed to operate the Federal Government. It administers the public debt by issuing and servicing U.S. Treasury marketable, savings and special securities.

Internal Revenue Service (IRS)

Marie Twarog
Phone: 770-234-4374
Fax: 770-234-4346
Address: (Headquarters only)

Internal Revenue Service
FOIA Requests
Headquarters Disclosure Office
2385 Chamblee Tucker Road
Chamblee, GA 30341

Function: Responsible for determining, assessing, and collecting internal revenue in the United States. The IRS is Treasury's largest Bureau - To locate an office closer to your location, please check the IRS' website at:
<http://www.irs.gov/foia/article/0,,id=120681,00.html>

Office of Thrift Supervision (OTS)

Marilyn K. Burton
Phone: 202/906-6467
Fax: 202/906-6353
FOIA Public Liaison: 202/906-7631 (Dirk Roberts)
Address: FOIA Request
1700 G Street, NW
Washington, DC 20552

Function: The primary regulator of all federal and many state-chartered thrift institutions, which include savings banks and savings and loan associations.

Treasury Inspector General for Tax Administration (TIGTA)

Amy P. Jones (FOIA Public Liaison)
Phone: 202/927-7044
Fax: 202/622-3339
Address: FOIA Request
TIGTA Chief Counsel
1125 15th Street, NW, Suite 700
Washington, DC 20005

Function: Provides leadership and coordination and recommends policy for activities designed to promote economy, efficiency, and effectiveness in the administration of the internal revenue laws. TIGTA also recommends policies to prevent and detect fraud and abuse in the programs and operations of the IRS and related entities.

Financial Crimes Enforcement Network (FinCEN)

Amanda Michanczyk

FOIA Requester Service Center: 703/905-5034

Phone: 703/905-3537

Fax: 703/905-3885

Address: FOIA Request

P.O. Box 39

Vienna, VA 22183

Function: The Financial Crimes Enforcement Network (FinCEN) supports law enforcement investigative efforts and fosters interagency and global cooperation against domestic and international financial crimes. It also provides U.S. policy makers with strategic analyses of domestic and worldwide trends and patterns.

United States Mint

Kathleen Saunders-Mitchell

FOIA Requester Service Center: 202/354-6788

Phone: 202/772-7322

Fax: 202/756-6100

Address:

FOIA Request

801 9th St., NW, 8th Floor

Washington, DC 20220

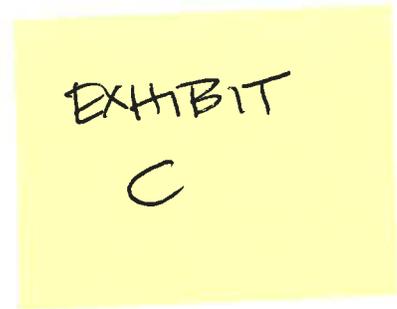
Function: Designs and manufactures domestic, bullion and foreign coins as well as commemorative medals and other numismatic items. The Mint also distributes U.S. coins to the Federal Reserve banks as well as maintains physical custody and protection of our nation's silver and gold assets.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 25, 2011

Lisette Garcia, J.D.
Senior Investigator
Judicial Watch
425 Third Street, S.W.
Suite 800
Washington, D.C. 20024



Re: FOIA 2011-07-065

Dear Ms. Garcia,

This is in response to your Freedom of Information Act (FOIA) request dated July 12, 2011.

Enclosed are 2 pages found to be responsive to your request. Some information has been deleted in accordance with subsection (b) (6) of the FOIA, 5 U.S.C. 552 exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute and clearly unwarranted invasion of personal privacy."

This is a partial denial of your request. You may appeal this decision within 35 days from the date of this letter. Your appeal must be in writing, signed by you, and should be addressed to:

Freedom of Information Appeal
Disclosure Services, DO
Department of the Treasury
Washington, D.C. 20220

The appeal should specify the date of your initial request and the date of this letter. If possible, please provide a copy of your request and this letter.

No fees were incurred in processing your request.

I regret this response is not made under more favorable terms of your request.

Sincerely,

Kristina J. Kaptur
Director, Office of Human Resources
for Departmental Offices

Standard Form 50
 Rev 7/91
 U.S. Office of Personnel Management
 FPM Supp 296-33, Subch. 4

NOTIFICATION OF PERSONNEL ACTION

(b) (6)						(b) (6)			(b) (6)			4. Effective Date 04-24-2011					
FIRST ACTION						SECOND ACTION						EXHIBIT D					
5-A. Code 171		5-B. Nature of Action EXC APPT NTE 04/23/15				6-A. Code		6-B. Nature of Action									
5-C. Code W9P		5-D. Legal Authority SCH A.213.3102(1)(2)				6-C. Code		6-D. Legal Authority									
5-E. Code		5-F. Legal Authority				6-E. Code		6-F. Legal Authority									
7. FROM: Position Title and Number						15. TO: Position Title and Number CHIEF BUSINESS OFFICER 65668569 011715											
8. Pay Plan		9. Org. Code	10. Grade or Level	11. Step or Rate	12. Total Salary .00	13. Pay Basis	16. Pay Plan AD	17. Occ. Code 0301	18. Grade or Level 00	19. Step or Rate 00	20. Total Salary/Award \$247,500.00		21. Pay Basis PA				
12A. Basic Pay .00		12B. Locality Adj. .00	12C. Adj. Basic Pay .00	12D. Other Pay .00		20A. Basic Pay \$247,500.00		20B. Locality Adj. .00	20C. Adj. Basic Pay \$247,500.00	20D. Other Pay .00							
14. Name and Location of Position's Organization						22. Name and Location of Position's Organization DEPARTMENTAL OFFICES UNDER SECY DOMESTIC FINANCE OFC OF FINANCIAL RESEARCH TR 910605000000000000 PP 09 2011											
EMPLOYEE DATA																	
(b) (6)						24. Tenure 0 0-None 1-Permanent 2-Conditional 3-Indefinite			25. Agency Use			(b) (6)					
(b) (6)						(b) (6)						29. Pay Rate Determinant 0					
(b) (6)						31. Service Comp. Date (Leave) 04-24-2011			32. Work Schedule F FULL TIME			33. Part-Time Hours Per Biweekly Pay Period					
POSITION DATA																	
34. Position Occupied 2 1-Competitive Service 3-SES General 2-Excepted Service 4-SES Career Reserved			35. FLSA Category E E-Exempt N-Nonexempt			36. Appropriation Code			37. Bargaining Unit Status 8888								
38. Duty Station Code 11-0010-001			39. Duty Station (City-County-State or Overseas Location) WASHINGTON DIST OF COLUMBIA DC														
40. Agency Data		41.		42.		43.		44.									
45. Remarks IN ACCORDANCE WITH PL 111-203, THIS POSITION IS IN THE OFR CLASSIFICATION SYSTEM, AND THE APPOINTEE HAS BEEN SELECTED FOR A POSITION IN PAYBAND 7. DUE TO CURRENT SYSTEM LIMITATIONS, INITIAL APPOINTMENT IS TO PAY PLAN "AD", AND WILL LATER BE CHANGED TO THE "OR" PAY BAND 7 WITH NO CHANGE IN SALARY. POSITION IS AT THE FULL PERFORMANCE LEVEL OR BAND. APPOINTMENT AFFIDAVIT EXECUTED 04/24/2011. REASON FOR TEMPORARY APPOINTMENT: PROJECT OF TEMPORARY NATURE OPF MAINTAINED BY: BUREAU OF PUBLIC DEBT 200 THIRD STREET AVERY A2-A PARKERSBURG, WV 26106. FROZEN SERVICE: 00 YRS. 00 MOS. (b) (6) (b) (6)																	
46. Employing Department or Agency DEPARTMENT OF THE TREASURY						47. Agency Code TR 91						48. Personnel Office ID 2731		49. Approval Date 04-24-2011		50. Signature/Authentication and Title of Approving Official E/S BY: NANCY SMITH DIRECTOR, HR OPER DIV	

Editions Prior to 7/91 Are Not Usable After 6/30/93
 NSN 7540-01-333-6236

Standard Form 50
 Rev 7/91
 U.S. Office of Personnel Management
 FPM Supp. 296-33, Subch. 4

NOTIFICATION OF PERSONNEL ACTION

(b) (6)						(b) (6)				(b) (6)		4. Effective Date 07-31-2011	
FIRST ACTION						SECOND ACTION							
5-A. Code 721		5-B. Nature of Action REASSIGNMENT				6-A. Code		6-B. Nature of Action					
5-C. Code ZLM		5-D. Legal Authority SCH A 213 3201 I 2				6-C. Code		6-D. Legal Authority					
5-E. Code		5-F. Legal Authority				6-E. Code		6-F. Legal Authority					
7. FROM: Position Title and Number CHIEF OPERATING OFFICER 65675943 011721						15. TO: Position Title and Number CHIEF OPERATING OFFICER 65680530 011740							
8. Pay Plan AD		9. Occ. Code	10. Grade or Level 00	11. Step or Rate	12. Total Salary .00	13. Pay Basis	16. Pay Plan OR	17. Occ. Code 0301	18. Grade or Level 08	19. Step or Rate 00	20. Total Salary/Award \$247,500.00	21. Pay Basis PA	
12A. Basic Pay .00		12B. Locality Adj. .00	12C. Adj. Basic Pay .00	12D. Other Pay .00		20A. Basic Pay \$247,500.00		20B. Locality Adj. .00	20C. Adj. Basic Pay \$247,500.00	20D. Other Pay .00			
14. Name and Location of Position's Organization						22. Name and Location of Position's Organization DEPARTMENTAL OFFICES UNDER SECY DOMESTIC FINANCE OFC OF FINANCIAL RESEARCH TR 910605000000000000 PP 16 2011							
EMPLOYEE DATA													
(b) (6)						24. Tenure 0-None 2-Conditional 1-Permanent 3-Indefinite		25. Agency Use		(b) (6)			
(b) (6)						(b) (6)						29. Pay Rate Determinant 0	
(b) (6)						31. Service Comp. Date (Leave) 10-08-1996		32. Work Schedule F FULL TIME		33. Part-Time Hours Per Biweekly Pay Period			
POSITION DATA													
34. Position Occupied 2 1-Competitive Service 3-SES General 2-Excepted Service 4-SES Career Reserved			35. FLSA Category E F-Exempt N-Nonexempt			36. Appropriation Code			37. Bargaining Unit Status 8888				
38. Duty Station Code 11-0010-001			39. Duty Station (City-County-State or Overseas Location) WASHINGTON DIST OF COLUMBIA DC										
40. Agency Data		41.		42.		43.		44.					
45. Remarks ACCORDING TO THE PL 111-203, THIS POSITION IS IN THE OFR CLASSIFICATION AND COMPENSATION SYSTEM. DUE TO SYSTEM LIMITATIONS THE POSITION WAS ORIGINALLY PLACED IN THE AD PAY PLAN BUT EMPLOYEES CAN NOW BE REASSIGNED INTO OR PAY PLAN WITH NO CHANGE IN GRADE/BAND LEVEL OR SALARY. POSITION IS AT THE FULL PERFORMANCE LEVEL OR BAND.													
46. Employing Department or Agency DEPARTMENT OF THE TREASURY						50. Signature/Authentication and Title of Approving Official E/S BY: NANCY SMITH DIRECTOR, HR OPER DIV							
47. Agency Code TR 91		48. Personnel Office ID 2743		49. Approval Date 08-02-2011									

Editions Prior to 7/91 Are Not Usable After 6/30/93
 NSN 7540-01-333-6236