



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

April 29, 2019

FOIA Nos.: 2018-06-192, 2018-08-115, 2018-08-116
OASIS No.: 1051914

Tim Mak
National Public Radio, Inc.
1111 North Capitol St., N.E.
Washington, DC 20002

VIA ELECTRONIC MAIL: tmak@npr.org

Dear Mr. Mak:

Re: *National Public Radio, Inc. et al v. United States Department of the Treasury*, Civil
Action No. 1:19-CV-0017 (JDB)

This letter is the Office of Foreign Assets Control's (OFAC) first interim response to your three Freedom of Information Act (FOIA), 5 U.S.C. § 552, requests to the Department of the Treasury outlined in brief below.

FOIA No.	Date of Request	Subject of Request
2018-06-192	May 14, 2018	Alexander Torshin, Oleg Deripaska
2018-08-115	August 14, 2018	Maria Butina
2018-08-116	August 14, 2018	Kalashnikov Concern, Mark Barnes, National Rifle Association

In items four and nine of FOIA No. 2018-06-192, you seek all documents that constitute the evidentiary packages used to support, or form the basis of, OFAC's April 6, 2018 sanctions designations of Alexander Torshin and Oleg Deripaska. The first interim release is comprised of non-exempt portions of these two designation packages.

OFAC has conducted a search of its records and, among the results, located 311 pages of records that comprise the two evidentiary packages referenced above. Of these 311 pages, 34 are withheld in full pursuant to FOIA exemptions (b)(1), (b)(3), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). Of the remaining 277 pages, 31 are redacted in part pursuant to FOIA exemptions (b)(1), (b)(3), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E). The remaining 246 pages are being released to you in full.

OFAC is invoking FOIA exemption (b)(1) to protect from disclosure records and information that have been deemed classified "under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy" and are "in fact properly classified pursuant to such Executive order." See 5 U.S.C. § 552(b)(1).

FOIA exemption (b)(3) allows for the withholding of records or information that is prohibited from disclosure by another federal statute. OFAC is withholding information regarding intelligence sources and methods pursuant to 50 U.S.C. § 3024(i)(1).

FOIA exemption (b)(6) protects from disclosure personal privacy information, the release of which would constitute a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. OFAC is withholding information such as individuals' names, signatures, initials, and personal identifiers. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the withheld information. Any private interest in that information does not factor into the aforementioned balancing test.

FOIA exemption (b)(7)(C) protects from disclosure records or information compiled for law enforcement purposes, the release of which would reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(7)(C). The courts have determined that there are strong privacy interests inherent in law enforcement records. As a component of the Office of Terrorism and Financial Intelligence, within Treasury, OFAC is a law enforcement organization pursuant to 31 U.S.C. § 312. Accordingly, OFAC is invoking exemption (b)(7)(C) to protect individuals' names, signatures, initials, and personal identifiers.

OFAC is invoking FOIA exemption (b)(7)(D) to protect from disclosure "records or information compiled for law enforcement purposes...[which] could reasonably be expected to disclose the identity of a confidential source[.]" *See* 5 U.S.C. § 552(b)(7)(D).

OFAC is using FOIA exemption (b)(7)(E) to protect from release "records or information compiled for law enforcement purposes...[which] would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law[.]" *See* 5 U.S.C. § 552(b)(7)(E).

Separately, with regard to FOIA Nos. 2018-08-115 and 2018-08-116, to the extent those requests seek OFAC investigative records concerning Maria Butina or Mark Barnes, please be advised that OFAC hereby neither confirms nor denies the existence of such records, pursuant to exemptions (b)(6) and (b)(7)(C) of the FOIA. With respect to the named individuals, lacking their consent, an official acknowledgement of an investigation or an overriding public interest, even to acknowledge the existence of such records pertaining to these individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. Also, the courts have determined that the mere mention of an individual's name in a law enforcement file will engender comment and speculation and carries a stigmatizing connotation.

In addition, with regard to FOIA Nos. 2018-08-115 and 2018-08-116, to the extent those requests seek OFAC investigative records concerning Maria Butina, Mark Barnes, or the National Rifle Association, OFAC hereby neither confirms nor denies the existence of any such

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records, pursuant to exemptions (b)(7)(A). Unless there is an actual investigation that resulted in an OFAC designation or enforcement action, or the investigation is publicized by the U.S. Department of the Treasury, the mere acknowledgement of an OFAC investigation prior to an actual designation or enforcement action could frustrate OFAC's law enforcement efforts and tip off the subjects of pending investigations.

This mere acknowledgement would allow the subject of the investigation the opportunity to transfer assets and records beyond the jurisdiction of the United States and would frustrate ongoing law enforcement investigations as well as a central purpose of sanctions, namely, preventing individuals and entities around the world from using assets subject to U.S. jurisdiction to support sanctionable activities, which constitute an extraordinary threat to the national security, economy, or foreign policy of the United States. Conversely, if OFAC were to acknowledge that it was not investigating an individual or entity that was actually involved in illicit activity, that information alone may embolden the individual or entity in continued illicit activities.

Finally, please be advised that to the extent that FOIA Nos. 2018-06-192, 2018-08-115, and 2018-08-116 seek any records which are subject to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) [21 U.S.C. §§ 1901-08], all records or information obtained or created pursuant to the Kingpin Act are exempt from the provisions of the FOIA (5 U.S.C. § 552) pursuant to 21 U.S.C. § 1904(e)(3).

OFAC will continue to process records responsive to your three FOIA requests until all records have been processed. If you have any questions or would like to discuss this matter, please feel free to contact Trial Attorney Joshua Kolsky at (202) 305-7664.

Sincerely,

Marshall H. Fields, Jr.
Assistant Director
Information Disclosure and Records Management
Office of Sanctions Support and Operations
Office of Foreign Assets Control

Enclosure: Responsive Documents (311 pages)

CC: joshua.kolsky@usdoj.gov