

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

SUSAN B. LONG  
488 Newhouse II  
Syracuse University  
Syracuse, NY 13244-2100,

and

DAVID BURNHAM  
1718 Connecticut Ave., NW, Suite 200  
Washington, DC 20009

Plaintiffs,

v.

Civil Case No. 5:5cv1522

OFFICE OF PERSONNEL MANAGEMENT  
1900 E Street, NW  
Washington, DC 20415,

Defendant.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiffs Susan B. Long and David Burnham bring this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the Office of Personnel Management (OPM) to produce requested files from its Central Personnel Data File (CPDF), a database of information on the federal civilian workforce, and requested records relating to its newly-implemented data release policy. In particular, the agency has withheld all CPDF records pertaining to Department of Defense civilian employees, and has failed to provide names and most post-of-duty information for many federal civilian employees of non-defense agencies such as the Federal Trade Commission, the National Park Service, and the Occupational Safety and

Health Administration. Overall, despite this country's centuries-old tradition of providing public access to the names, work stations, and other information about most of the employees who carry out the day-to-day operations of the government, OPM has withheld information on more than 900,000 employees — over 40% of the federal civilian workforce — including information on employees in over 250 different agencies and 650 different occupations. The agency has also failed to respond to Plaintiffs' requests for a copy of its new data release policy and for records concerning the policy review that resulted in that policy.

2. Plaintiff Susan B. Long also brings this action to obtain a declaration that the agency's failure to indicate the amount of information it redacted violates FOIA, 5 U.S.C. § 552(b), and to compel the agency to state the amount of information redacted and to indicate, at the point in the records where redactions are made, that information was deleted from that spot.

### **JURISDICTION**

3. This court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

### **PARTIES**

4. Plaintiff Susan B. Long is an Associate Professor of Management Information and

Decision Sciences at the Martin J. Whitman School of Management at Syracuse University. Professor Long is also Co-Director of the Transactional Records Access Clearinghouse (TRAC), a data gathering, data research, and data distribution organization associated with Syracuse University. TRAC was established in 1989 and has offices both at Syracuse University and in Washington, D.C. The purpose of TRAC is to provide the American people — and institutions of oversight such as Congress, news organizations, public interest groups, businesses, scholars,

and lawyers — with comprehensive information about federal staffing, spending, and the enforcement activities of the federal government.

5. Plaintiff David Burnham is Co-Director of TRAC, a long-time journalist, and an Associate Research Professor in the S.I. Newhouse School of Public Communications at Syracuse University.

6. Defendant OPM is an agency of the federal government of the United States and has possession of and control over the records Plaintiff seeks.

### **STATEMENT OF FACTS**

#### OPM's Release of CPDF Data in Response to TRAC's FOIA Requests

7. The CPDF is an information system maintained by OPM that contains data on most federal civilian employees. Many data elements in the CPDF are submitted to OPM by other agencies from their own personnel data systems. The rest of the data elements are generated by OPM using the submitted data. OPM checks submitted data for accuracy, completeness, and adherence to uniform standards and revises information reported by agencies that do not meet its standards. According to OPM, the CPDF is composed of two files: a “status file” that contains a record of every employee on a specific date and a “dynamics file” that contains records of personnel actions – such as new hires, promotions, and transfers – taken over a three-month period.

8. In order to be able to provide the public with information on federal staffing and to allow the public meaningful oversight over the government's staffing practices, for over a decade Professors Long and Burnham have submitted FOIA requests to OPM on TRAC's behalf, seeking data from the CPDF. For each employee included in the CPDF, OPM has provided to

Professors Long and Burnham the following data elements from the CPDF status file, although the exact list of data elements provided has changed slightly over the years: employee name, agency, agency subelement, geographic location, occupation, supervisory status, work schedule, pay plan, grade, step, salary rate, bargaining unit, consolidated metropolitan statistical area, Fair Labor Standards Act category, functional classification, General Schedule-related grade, locality pay area, metropolitan statistical area, occupational category, basic pay, locality adjustment, adjusted basic pay, cost of living allowance, retention allowance, supervisory differential, total pay, pay basis, pay rate determinant, pay status, personnel office identifier, service computation date, special pay table identifier, veteran status, and senior pay level indicator. From the dynamics file, OPM has provided the following additional fields: award amount, prior adjusted basic pay, prior basic pay, prior geographic location, prior grade, prior locality adjustment, prior locality pay area, prior pay basis, prior pay plan, prior pay rate determinant, prior step, and prior work schedule.

9. According to OPM, the Federal Bureau of Investigation (FBI) does not provide OPM with the names of its employees and reports the geographical location for all employees working outside the greater District of Columbia area as working in state "US." Therefore, OPM does not provide to TRAC the names of FBI employees or most duty-station information on FBI employees.

10. In its response to Professor Long's request for the September 1996 CPDF file, OPM began withholding names and most duty-station information for employees of agencies besides the FBI. In its response to the request for the September 1996 file, the agency withheld name and work-station information for employees of what was then the Treasury Department's

Bureau of Alcohol, Tobacco, and Firearms (ATF). In its responses to Professor Long's requests for the September 2000 CPDF files, the agency withheld name and work-station information for employees of the Justice Department's Drug Enforcement Administration (DEA) and the Treasury Department's U.S. Secret Service (SS) as well as for ATF employees. OPM claimed it was referring the requests to the agencies' respective FOIA offices and, when Professor Long appealed the denials, stated that the decision to refer the requests to other agencies was consistent with OPM regulations and guidance issued by the United States Department of Justice. In its responses to later requests, however, OPM continued to withhold information on employees of ATF, DEA, and SS but did not always claim it was forwarding the requests to the agencies' respective FOIA offices for processing.

Requests for Records Relating to the March 2004 CPDF File and OPM's  
Policy on the Disclosure of Employee Records

11. On October 8, 2004, Professor Long, on behalf of TRAC, submitted to OPM a FOIA request for an electronic copy of the status file for the March 2004 CPDF.

12. By letter dated November 23, 2004, and signed by Gary A. Lukowski, OPM acknowledged receipt of Professor Long's request. The letter stated that the "Office of Personnel Management is currently conducting a review of the policy on disclosure of individual employee records as this relates to the Freedom of Information Act, and the Privacy Act," and informed Professor Long that she would subsequently be contacted regarding the request.

13. On February 2, 2005, Professors Long and Burnham submitted to OPM a FOIA request for records relating to the policy review mentioned in Mr. Lukowski's letter. Professors Long and Burnham noted that a free government is incompatible with governing in secret and

pointed out that public access to names, salaries, and work stations for almost all federal employees “has been an essential aspect of America’s system of representative democracy since the first years in our history.” They requested, under FOIA, “all documents, reports and memos relating to the purpose, scope and production schedule of the policy review mentioned in Mr. Lukowski’s letter.” They also requested “the names and titles of staff members directly involved in the study.”

14. By e-mail dated February 3, 2005, Mr. Lukowski informed Professor Long that her outstanding FOIA requests were being processed and would “be fulfilled according to our newly implemented data release policy.”

15. On February 4, 2005, Professors Long and Burnham submitted to OPM a FOIA request for “a copy of the ‘newly implemented data release policy’ referred to in [Mr. Lukowski’s] February 3, 2005 e-mail.”

16. To this date, Professors Long and Burnham have not received any response from OPM concerning their February 2, 2005 and February 4, 2005 FOIA requests.

#### Requests for the June 2004, September 2004, and March 2005 CPDF Files

17. On February 4, 2005, Professor Long, on behalf of TRAC, submitted to OPM a FOIA request for the status and dynamics files for the June 2004 CPDF. The request stated that if the dynamics file were not yet available, OPM should consider the request a request for the status file alone. That same date, Professor Long submitted an identical FOIA request to OPM seeking release of the status and dynamics files for the September 2004 CPDF. On June 13, 2005, Professor Long submitted to OPM a request for the March 2005 CPDF file.

18. On April 15, 2005, under a cover letter signed by Gary A. Lukowski, OPM released to Professor Long and TRAC records from the March 2004, June 2004, September 2004, and December 2004 CPDF files. On August 23, 2005, also under cover of a letter signed by Mr. Lukowski, OPM released to Professor Long and TRAC records from the March 2005 CPDF. Mr. Lukowski's April 15 and August 23 letters stated that the "major change affecting your request is that individual employee records for Department of Defense employees are excluded from the file provided." The letters did not claim that OPM did not have the requested data on Department of Defense employees, but they told Professor Long she would "have to go directly to the Department of Defense for their data." The letters continued: "We are not deciding whether or not you may obtain the Defense data; thus it is not a denial with administrative appeal rights here at the Office of Personnel Management." The letters then provided Professor Long with an address at the Pentagon to which they said she should send her requests for Department of Defense data.

19. In accordance with Mr. Lukowski's letters, the data files provided with the April 15 and August 23 letters did not contain records for Department of Defense employees.

20. The data files provided with the April 15 and August 23 letters also did not contain names and most duty-station information for over 150,000 additional employees. Mr. Lukowski's letters did not explain why OPM was withholding name and duty-station information for these employees or claim that it was referring Professor Long's requests to the respective agencies for processing.

21. Although OPM redacted information from the records of hundreds of thousands of employees, it did not indicate the extent of the redactions on the portions of the records

released. For example, when it redacted a name, it replaced the name field with “name unknown.” However, OPM also placed “name unknown” in the name field when it itself did not know the employee’s name. Thus, Professor Long and TRAC are unable to tell, based on the released portions of the record, exactly how many names OPM redacted. OPM also has not informed Professor Long and TRAC how many employee records for Department of Defense employees were excluded from the files it released.

22. Mr. Lukowski’s April 15 and August 23 letters did not state that they were denials of Professor Long’s requests in any respect or notify her of her right to appeal.

### **CLAIM FOR RELIEF**

23. The records at issue in this action — OPM’s data release policy, records concerning OPM’s review of its policy on disclosure of individual employee records, records on Department of Defense civilian employees from the March 2004, June 2004, September 2004, and March 2005 CPDFs, and employee name and duty-station records from the March 2004, June 2004, September 2004, and March 2005 CPDFs for the numerous non-defense-agency employees for whom this information was withheld — are agency records of OPM. Plaintiffs requested the release of these records, and the agency failed to release them.

24. OPM’s responses to Professor Long’s requests for records from the March 2004, June 2004, September 2004, and March 2005 CPDFs did not inform her that OPM was denying the requests in part and failed to notify her of her right to appeal. Accordingly, Professor Long has exhausted her administrative remedies with regard to those requests.

25. Under 5 U.S.C. § 552(a)(6)(A)(i), OPM has 20 working days to respond to FOIA requests. More than 20 working days have passed since OPM received Plaintiffs’ February 2,



2005 and February 4, 2005 requests, yet Plaintiffs have not received a determination from OPM concerning those requests, nor has OPM produced any records in response to those requests.

Plaintiffs have therefore exhausted their administrative remedies with regard to those requests.

26. Plaintiffs have a statutory right under FOIA, 5 U.S.C. § 552(a)(3), to the records they requested and no legal basis exists for OPM's failure to disclose the records to them.

27. FOIA expressly states that when records are redacted the "amount of information deleted shall be indicated on the released portion of the record," unless the indication would harm an interest protected by the exemption under which the redactions were made. 5 U.S.C. § 552(b). If technologically feasible, that indication must take place at the point in the records where the agency redacted information. The agency's failure to make clear how many records were redacted and to indicate that redactions were made at the point in the record where information was deleted violates FOIA, 5 U.S.C. § 552(b).

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff requests that this Court:

- A) Declare that Defendant's failure to disclose its data release policy, records concerning its review of its policy on disclosure of individual employee records, records on Department of Defense civilian employees from the March 2004, June 2004, September 2004, and March 2005 CPDFs, and employee name and duty-station records from the March 2004, June 2004, September 2004, and March 2005 CPDFs for the non-defense-agency employees for whom this information was withheld is unlawful under FOIA;
- B) Order Defendant to make the requested records available to Plaintiffs;

- C) Declare that Defendant's failure to indicate the amount of information redacted from the released records is unlawful under FOIA;
- D) Order Defendant to state the number of Department of Defense files redacted from the CPDF files, to indicate the amount of information redacted from the released files, and to make such an indication at the points in the released records where the redactions were made;
- E) Award Plaintiffs their costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- F) Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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Dated: December 6, 2005

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