

## **EXHIBIT 5**

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND

ORLY TAITZ,

Plaintiff,

v.

CAROLYN COLVIN, COMMISSION OF THE  
SOCIAL SECURITY ADMINISTRATION

Defendant.

Civil No. ELH 13-cv-01878

**DECLARATION OF DAWN S. WIGGINS**

I, Dawn S. Wiggins, Deputy Executive Director of the Office of Privacy and Disclosure in the Office of General Counsel at the Social Security Administration (SSA), do hereby declare as follows:

1. I am employed at SSA in Baltimore, Maryland. I have been Deputy Executive Director for the Office of Privacy and Disclosure (OPD), the SSA office responsible for responding to Freedom of Information Act (FOIA), 5 U.S.C. § 552, requests, since October 2008.
2. As part of my duties and responsibilities, I act as SSA's Freedom of Information Officer and Privacy Officer. As such, I am delegated the responsibility for reviewing all initial FOIA requests and determining whether information should be released to the public. *See* 20 C.F.R. § 402.125. I have personal knowledge of the procedures that SSA employs in handling FOIA requests for records and in handling requests for the disclosure of information pursuant to the Privacy Act, 5 U.S.C. § 552a. In addition, I have personal knowledge of SSA's records and systems that contain records.
3. By letter dated April 26, 2013, Orly Taitz made a FOIA request to SSA for a copy of the original Applications for a Social Security Card (Form SS-5s) and any and all Social Security benefits received by Tamerlan Tsarnaev, Harrison J. Bounel, and Stanley Ann Dunham, and their families and dependents. Ms. Taitz provided information about each of the three individuals, including name, age or year of birth, last known residence, and date or year of death, if known. Ms. Taitz did not provide a Social Security number (SSN) for Mr. Tsarnaev or Ms. Dunham; however, she did provide an SSN for Mr. Bounel.
4. Ms. Taitz did not provide proof of death or the consent of any of the individuals named in her FOIA request or their family members or dependents.
5. OPD received Ms. Taitz's FOIA request on May 31, 2013.

6. SSA employees in OPD completed a search of its records for the Form SS-5s for Mr. Tsarnaev, Mr. Bounel, and Ms. Dunham. Though Ms. Taitz did not provide SSNs for Mr. Tsarnaev and Ms. Dunham, SSA was able to locate their SS-5 applications. SSA was unable to locate any information for Harrison J. Bounel based on the information provided by Ms. Taitz. In order to locate an individual's SS-5 application in the agency's Privacy Act system of record entitled the Master File for SSN Holders, the agency must have information such as the name, date of birth, or other identifying information about the number holder. In this case, SSA could not find a record that matched the information provided by Ms. Taitz for Harrison J. Bounel. Therefore, SSA could not produce an SS-5 for this individual.
7. SSA was in process of responding to Ms. Taitz's FOIA request, when Plaintiff filed her Complaint in the above-captioned action, on June 25, 2013.
8. By letters dated July 29, 2013 and August 7, 2013, SSA responded to Ms. Taitz's April 26, 2013 FOIA request. SSA released copies of the Form SS-5s for Tamerlan Tsarnaev and Stanley Ann Dunham, because SSA was able to determine that these individuals are deceased.
9. SSA redacted parent names and one parent SSN<sup>1</sup> on Mr. Tsarnaev's Form SS-5 and withheld information about any benefits received by Mr. Tsarnaev's and Ms. Dunham's dependents and family members, if any, because SSA records do not indicate that these individuals are deceased and Ms. Taitz did not provide proof of death or consent. SSA responded that it could not release this information, because the Privacy Act protects personally identifiable information contained in a system of records. 5 U.S.C. § 552a. Under the Privacy Act, an agency may not disclose an individual's records without the written consent of the individual. 5 U.S.C. § 552a(b). SSA maintains information regarding SSNs in its Privacy Act system of records entitled the Master Files of Social Security Number Holders and SSN Applications, System No. 60-0058 (published at 75 F.R. 82121 (Dec. 29, 2010)). SSA maintains information regarding benefits paid to individuals, including dependents and other beneficiaries, in its Privacy Act system of records entitled the Master Beneficiary Record, System No. 60-0090 (published at 71 F.R. 1826 (Jan. 11, 2006)). Thus, the Privacy Act protects information associated with the SSNs, financial records, medical records, and benefits of Mr. Tsarnaev's and Ms. Dunham's living dependents and family members. 20 C.F.R. § 401.190.
10. SSA also considered release of the redacted information about Mr. Tsarnaev's parents on his Form SS-5 and withheld information about any benefits received by Mr. Tsarnaev's and Ms. Dunham's dependents and family members under the FOIA, because the Privacy Act permits disclosure if FOIA requires it. 5 U.S.C. § 552(b)(2). SSA determined that the FOIA did not require release of the redacted and withheld


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<sup>1</sup> SSA intended to redact Mr. Tsarnaev's father's SSN on Mr. Tsarnaev's SS-5 application. However, SSA believes the copy mailed to Plaintiff may have inadvertently included Mr. Tsarnaev's father's SSN. SSA is taking appropriate action to confirm and address the possible disclosure of Mr. Tsarnaev's father's personally identifiable information.

information, because the information should be withheld under FOIA exemption 6. Under FOIA exemption 6, an agency may withhold from release "personnel and medical files and similar the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

11. The agency concluded that the personal information about Mr. Tsarnaev's parents on his Form SS-5 and information about any benefits received by Mr. Tsarnaev's and Ms. Dunham's dependents and family members falls within the category of files contemplated by exemption 6. *Havemann v. Astrue*, No. ELH-10-1498, 2012 U.S. Dist. LEXIS 136292, at \*16 (D. Md. Sept. 24, 2012) (social security records, including social security numbers, addresses, names, and information regarding eligibility or application for benefits qualify as "similar files" protected under exemption 6). SSA's FOIA regulations specifically identify SSNs and names and addresses of individual beneficiaries as the kind of information that SSA withholds under exemption 6 of the FOIA. 20 C.F.R. § 402.100(c). Thus, the only determination that the agency needed to make was whether the public's interest in disclosure outweighed the individual's interests in privacy. "The public interest to be weighed against the privacy interest in this balancing test is 'the extent to which disclosure would serve the core purpose of the FOIA by 'contribut[ing] significantly to public understanding of the operations or activities of the government.'" *National Ass'n of Home Builders v. Norton*, 309 F.3d 26, 34 (D.C. Cir. 2002) (quoting *United States Dep't of Def. v. FLRA*, 510 U.S. 487, 495 (1994)). The agency concluded that there is no public interest in this information. Revealing information associated with a particular number holder's SSN or claim or eligibility for Social Security benefits does not shed light on the agency's performance of its statutory duties. Even if Ms. Taitz can articulate a public interest that release of this information would serve, an individual number holder's right to keep private information associated with his/her SSN, financial records, medical records, and benefits outweighs the public's right to know this information. The agency has an obligation to keep such sensitive and personal information related to SSNs and benefits secure.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on August 12, 2013 in Baltimore, Maryland.

  
Dawn S. Wiggins  
Deputy Executive Director for the  
Office of Privacy and Disclosure  
Social Security Administration