

(D.C. Cir. 1997). Further, the privilege may disappear when there is reason to believe government misconduct has occurred. Alexander v. Federal Bureau of Investigation, 186 F.R.D. 170, 177 (D.D.C. 1999). Here, the reports in question are the result of inquiries into negligence at best and at worst misconduct.

With respect to Case #IA-07-04-001, the information on the Vaughn Index under the category "Investigator's opinion/judgment and conclusion" was not properly redacted as part of the deliberative process privilege. This information, contained on pages 19-25, is a summation of the investigator's findings and conclusions based on facts gathered through interviews with medical and correctional staff; it "sheds light" on the circumstances surrounding the suicides. The information on the Vaughn Index under the category "Investigator's recommendations" was properly redacted as part of the deliberative process privilege. This information, contained on pages 26 & 27 does not "shed light" on the circumstances surrounding the suicides; it only recommends future policies and action.

With respect to Case #IA-06-12-020, the information on the Vaughn Index under the category "Investigator's opinion/judgment" was not properly redacted as part of the deliberative process privilege. This information, contained on pages 14, 6, 7, 12-18, is a summation of the investigator's findings and conclusions based on facts gathered through interviews with medical and correctional staff; it "sheds light" on the circumstances surrounding the suicides. Similarly, the information contained on pages 19-21 was not properly redacted. The information on the Vaughn Index under the category "Investigator's conclusions and recommendations," again limited to pages 22 and 23, was properly redacted as part of the deliberative process privilege. These two pages do not "shed light" on the circumstances surrounding the suicides, they only recommend future policies and action.

2. Disclosure of Identities of Government Employees

"Exemption 6," as it is known, exempts from disclosure (1) personnel files, (2) medical files and (3) similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy. The threshold question is whether the information sought fits into one of these three categories. Although the exemption is given the broadest possible interpretation, especially with respect to the definition of "similar files," it is not absolute. A balancing test must be applied to weigh the potential harm to the individual whose privacy would be breached against the public interest served by disclosure. Lurie v. Department of Army, 970 F. Supp 19, 38 (D.D.C. 1997).

Here, it is clear that inmate suicides are matters of great public interest. However, it is less clear that the public would have great interest in the identities of day-to-day employees working on site at the facilities where the suicides occurred, especially if there is no allegation that a particular employee was responsible for the suicides. Instead, the public interest is in the process, to wit, the policies and procedures in place at the time of the suicides and actions taken in compliance or contravention of said policies and procedures. Therefore, we find it

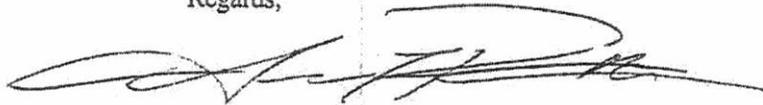
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appropriate, based on the current record, to redact the identities of individuals named in the report.

Accordingly, the Appeal is hereby REMANDED to DOC to provide to Appellant and this within five (5) days office the two requested reports in redacted form consistent with this decision.

If [REDACTED] is dissatisfied with this decision, he remains free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Regards,



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cc: Director Devon Brown
Maria Amato