



April 18, 2019

Via Email and U.S. Mail

Jason Nunez and FOIA Disclosure Officers
FOIA Coordinator
Office of Administrative Law Judges
United States Department of Labor
Suite 400 North
800 K. Street, NW
Washington, DC 20001-8002

Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
+1 415 773 5700
orrick.com

Gary R. Siniscalco

E grsiniscalco@orrick.com
D +1 415 773 5833
F +1 415 773 5759

Re: FOIA Case No. 2017-MIS-00006. Re: The Matter of *OFCCP v. Oracle America, Inc.*, Case No. 2017-OFC-00006

Dear Mr. Nunez:

Oracle America, Inc. ("Oracle") respectfully submits this letter to provide notice that OFCCP filed and subsequently submitted to the FOIA Coordinator on April 16, 2019, "Plaintiff's Motion to Compel Historical Data of Comparator Employees ("Motion"), containing Oracle's confidential information, the disclosure of which should be withheld pursuant to 18 U.S.C.A. § 1905 because it is information that qualifies as a trade secret pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code § 3426.1 (West)) and under FOIA Exemption 4.¹ Additionally, certain portions of OFCCP's Motion comprise confidential personal information excepted from disclosure under FOIA Exemption 6.

The discrete portion of OFCCP's Motion to which Oracle objects to the public disclosure thereof (and for which Oracle filed a Motion to Seal on April 16, 2019) consists of less than twenty words in one paragraph found in Exhibit 6 at page 13 (Mantoan letter to Bremmer, p.4), which quotes from information provided to Plaintiffs in the data production which was produced with a confidential designation. Attached hereto as **Exhibit A**, is a redacted version of this page of Exhibit 6 which shows the redactions necessary to protect Oracle's confidential trade secrets, and sensitive personal information of various Oracle employees.

The information at issue divulges the initial salary offer and current salary amounts for two class members along with the reasoning for those initial salary offers. As such, the information falls under the Freedom of Information Act ("FOIA") Exemption 6 which exempts from disclosure: "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C.A. § 552 (West).

¹ This is the third notice provided to FOIA disclosure officers related to the material described herein. Pursuant to the Proactive Disclosure Order in This Case, Oracle submitted to OALJSQLMail@dol.gov and ballard.maryanne.b@DOL.GOV, two notices related to withholding the confidential information. On April 12, 2019 Oracle served, via email, the notice letter sent to ALJ Clark regarding the need to seal the confidential information, "2019.04.12 [Oracle] Connell Ltr to [Court] ALJ Clark re Mot to Seal." On April 17, 2019 Oracle served via email, Oracle's Unopposed Motion to Seal the information discussed above.
4129-5256-4252.1



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Additionally, the relevant information divulges confidential salary range information which falls under FOIA Exemption 4: "trade secrets and commercial or financial information obtained from a person and privileged or confidential," 5 U.S.C.A. § 552 (West), because disclosure would create a substantial risk of the "use of proprietary information by [Oracle's] competitors" to cause Oracle competitive harm. *Watkins v. U.S. Bureau of Customs & Border Prot.*, 643 F.3d 1189, 1195 (9th Cir. 2011). The information also constitutes a trade secret under the Uniform Trade Secrets Act, because it is "information, that derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (Cal. Civ. Code § 3426.1 (West)). Therefore, disclosure of the information is prohibited pursuant to 18 U.S.C.A. § 1905.

Based on the foregoing, Oracle respectfully submits this letter along with its proposed redactions to request and ensure that the redacted information not be publicly disclosed pursuant to FOIA.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary R. Siniscalco".

Gary R. Siniscalco

cc: Laura C. Bremer (*via email*)
Norman E. Garcia (*via email*)
Jeremiah Miller (*via email*)
Mark Pilotin (*via email*)

EXHIBIT A



Laura C. Bremer
March 14, 2019
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managers in the iRecruitment approval workflow for new hires, which OFCCP can readily review to identify where a hiring and/or HR manager referenced the individual's compa-ratio at an international affiliate. *See, e.g.*, ORACLE_HQCA_0000070747 (HQCA_IREC_DATA.xlsx), tab "OFFER APPROVAL COMM HISTORY," column H ("COMMENTS") at VACANCY_NAME IRC1971522 (emphasis added) ("We are requesting approval to relocate ██████████ to the US. ... ██████████ is currently at Sr. Manager level and we are requesting to transfer him at the same level. We have discussed the management opportunity here at HQ with ██████████ and he is interest in moving to Headquarters. He has a *current comparatio ██████████ with a salary of ██████████*. We have discussed compensation with ██████████ and he believes he cannot accept a salary of less than ██████████. Hence, we are requesting approval for a salary of ██████████ which maps to the ██████████ of the M3 range."); *id.* at VACANCY_NAME IRC2351658 (emphasis added) ("This request is for approval to facilitate an international transfer from IDC to US-HQ for our ██████████ ██████████ as a Software Developer 3 in IDM Development for Identity Governance team. ... *Currently ██████████ salary is ██████████ INR (IDC IC3 software developer range- ██████████ for a comparatio of ██████████*. Proposing an annual salary of ██████████ as an Senior Software Developer (US IC3 software developer range ██████████) for a comparatio of ██████████. Within ██████████ benchmark for IC3(HQ only) of Ave: ██████████). OFCCP has not articulated any reason that it also needs Oracle to separately pull each individual's pre-transfer compa-ratio at an Oracle affiliate when it already has such extensive information.

Moreover, the request as framed clearly seeks information that is not in Oracle America, Inc.'s possession, custody or control. *See* Fed. R. Civ. P. 34(a)(1) (party only obligated to produce only those records that are in its "possession, custody, or control"). OFCCP suggests in its February 15 and March 6 letters that it is entitled to international compa-ratio data because "Oracle has access to this information and it would have been reviewed by managers." But that claim is wrong both factually and legally. While it is true that some hiring managers may have obtained information regarding an individual's compa-ratio at an international affiliate as part of processing a particular transfer into Oracle America, Inc., this information is not available to those managers as a matter of course. Rather, if an individual was employed at an international affiliate, a hiring manager or HR representative or manager would have to request the international compa-ratio data specifically for that individual. Such requests are often oral and are not directly reflected or recorded in any central HRIS data source (*e.g.*, Workforce Compensation; iRecruitment). Moreover, the Ninth Circuit has expressly rejected the argument that merely because a party has access to information means that it has possession, custody or control over it. *See In re Citric Acid Litig.*, 191 F.3d 1090, 1107 (9th Cir. 1999) (refusing to