

**UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS, UNITED  
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**ORACLE AMERICA, INC.'S  
UNOPPOSED MOTION TO SEAL  
PORTIONS OF PLAINTIFF'S  
MOTION TO COMPEL  
DEPOSITION OF ORACLE  
AMERICA, INC. PURSUANT TO  
41 § 60.30.11 AND FEDERAL  
RULE OF CIVIL PROCEDURE  
30(B)(6)**

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MAY 24 2019

Office of Administrative Law Judges  
San Francisco, CA

ORACLE'S MOTION TO SEAL PORTIONS OF PLAINTIFF'S MOTION TO COMPEL DEPOSITION OF  
ORACLE AMERICA, INC.

## **I. INTRODUCTION**

Defendant Oracle America, Inc. (“Oracle”) moves to seal limited portions of Plaintiff’s Motion to Compel Deposition of Oracle America, Inc. Pursuant to 41 § 60.30.11 and Federal Rule of Civil Procedure 30(b)(6) (“Motion”), pursuant to C.F.R. 18.85(b)(1) and this court’s May 22, 2019 order adopting and amending Judge Larsen’s May 26, 2017 Protective Order (collectively, the “Protective Order”).<sup>1</sup>

The material Oracle moves to seal comprises portions of a copyrighted compensation training PowerPoint that provides screenshots of Oracle’s internal compensation-, HR-, and budget-related databases and applications along with detailed access, data entry, and data extraction instructions for those systems. Oracle produced this material to Plaintiffs in discovery, designated confidential pursuant to the Protective Order, because it contains confidential, proprietary commercial information and detailed instructions on how to access confidential financial information and private information about Oracle employees—the types of information which the Freedom of Information Act (“FOIA”) exempts from disclosure.

Oracle does not share this content externally and only disseminates it internally to a limited group of individuals with a business need-to-know. Oracle restricts access and keeps this information confidential because, if publicly disclosed, it would present competitors an unfair business advantage, likely cause Oracle substantial competitive harm, and put at great risk the security of employees’ confidential information in which they possess a compelling privacy interest. These materials warrant sealing on three independent grounds. Public disclosure of this information would risk exposing confidential employee personnel information which is excepted from disclosure under FOIA Exemption 6. Additionally, these materials qualify for protection pursuant to FOIA Exemption 4 because they constitute “commercial information, obtained from a person, that is confidential.” Finally, the materials consist of Oracle’s confidential trade secrets, also excepted from disclosure under FOIA Exemption 4. Keeping this information

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<sup>1</sup> Although the Protective Order contains a provision which states “A motion under this provision is not subject to the Court’s pre-filing requirement,” counsel for both parties nevertheless met and conferred, and OFCCP does not oppose this motion. Declaration of Jonathan Riddell (“Riddell Decl.”) ¶ 3.

confidential through sealing is the only way to avoid these harms. Oracle's narrowly tailored proposed redactions of confidential information, therefore, meets the applicable legal standard and should be granted.

## **II. LEGAL STANDARD**

"FOIA contemplates that some information may legitimately be kept from the public." *Lahr v. NTSB*, 569 F.3d 964, 973 (9th Cir.2009). In enacting FOIA, Congress sought "to reach a workable balance between the right of the public to know and the need of the Government to keep information in confidence to the extent necessary without permitting indiscriminate secrecy." *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152, 110 S. Ct. 471, 475, 107 L. Ed. 2d 462 (1989) *citing* H.R. Rep. No. 1497, 89th Cong., 2d Sess., 6 (1966), U.S.Code Cong. & Admin.News 1966, pp. 2418, 2423.

This includes protecting from disclosure, *inter alia*, "trade secrets and commercial or financial information obtained from a person and privileged or confidential" and material from "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). Redaction of FOIA-exempted information from agency filings is expressly authorized. *See* 29 C.F.R. § 18.85. *See also U.S. Dep't of State v. Ray*, 502 U.S. 164, 174, 112 S. Ct. 541, 547, 116 L. Ed. 2d 526 (1991). For this reason, the Protective Order contemplates protecting Confidential Information that may be subject to FOIA Exemptions 4 or 6 through the filing of a motion to seal. Protective Order ¶¶ 2.2 and 12.3.

### **A. FOIA EXEMPTION 4**

Certain confidential materials are properly exempted from disclosure pursuant to FOIA Exemption 4 if the party seeking to seal the information demonstrates the information is a trade secret or is "(1) commercial and financial information, (2) obtained from a person or by the government, (3) that is privileged or confidential." *Watkins v. U.S. Bureau of Customs & Border Prot.*, 643 F.3d 1189, 1194 (9th Cir. 2011). "The terms 'commercial or financial' are given their ordinary meanings." *Id.* Commercial material is confidential under exemption 4 if disclosure is

likely to “cause substantial harm to the competitive position of the person from whom the information was obtained.” *Id.* Actual competitive harm need not be demonstrated. The existence of actual competition in the relevant market, and a likelihood of substantial competitive injury if the information were released suffices to qualify such information for exemption from disclosure. *Id.*

### **B. FOIA EXEMPTION 6**

FOIA Exemption 6 prohibits disclosure of information from personnel files that would amount to an unwarranted invasion of privacy. *U.S. Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495, 114 S. Ct. 1006, 1012–13, 127 L. Ed. 2d 325 (1994). Such disclosure is unwarranted when privacy interests outweigh the public’s interest in disclosure. *Id.* The public’s interest in information from personnel files is limited to serving the “‘core purpose of the FOIA,’ which is ‘contribut[ing] significantly to public understanding of the operations or activities of the government.’”—that is, information which provides the public with an understanding of “what the government is up to.” *Id. citing Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773, 109 S.Ct. 1468, 1482, 103 L.Ed.2d 774 (1989). “That purpose [] is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency’s own conduct.” *Id.* [internal citations omitted].

### **III. ARGUMENT**

There are three independent grounds upon which the information Oracle seeks to seal are exempted from FOIA disclosure. First, the structure, configuration, and access methods for these systems constitute “commercial information, obtained from a person, that is confidential,” thus is protected against disclosure under FOIA Exemption 4. Next, the materials consist of Oracle’s confidential trade secrets, also excepted from disclosure under FOIA Exemption 4. Finally, and most significant, public disclosure would risk exposing confidential employee personnel information which is excepted from disclosure under FOIA Exemption 6.

A. **FOIA Exemption 4 Excepts Disclosure of the Configuration of and Access Points to Oracle's Networks on Two Grounds.**

1. **The Information Oracle Seeks to Seal Constitutes Commercial Information, Obtained From a Person, That is Confidential, Thus is Exempted From Disclosure.**

The information Oracle seeks to seal is exempted from FOIA disclosure because the configuration and access points of its internal networks and the information housed therein is “(1) commercial and financial information, (2) obtained from a person or by the government, (3) that is privileged or confidential.” *Watkins v. U.S. Bureau of Customs & Border Prot.*, 643 F.3d 1189, 1194 (9th Cir. 2011). The configuration and access points of Oracle's internal networks and the budget details and confidential employee compensation information housed in those systems is recognized as being “commercial” in nature, thus satisfying the first requirement for purposes of FOIA Exemption 4. *See Hustead v. Norwood*, 529 F. Supp. 323, 326 (S.D. Fla. 1981) (“unquestionably, information relating to the employment and wages of workers constitutes commercial or financial information within the meaning of the [FOIA 4] exemption.”). *See also, M/A-Com Info. Sys., Inc. v. U.S. Dep't of Health & Human Servs.*, 656 F. Supp. 691, 692 (D.D.C. 1986) (materials concerning accounting and other internal procedures concerned commercial information); *Allnet Commc'n Servs., Inc. v. F.C.C.*, 800 F. Supp. 984, 987 (D.D.C. 1992) (information encompassing the company's computer models and instructional materials was “clearly commercial”). Likewise, the second requirement is satisfied because the information was “obtained from a person” as Oracle provided the information to Plaintiff OFCCP in discovery. Riddell Decl. ¶ 2. *See* 5 U.S.C.A. § 551 (West) (FOIA definition of “person” includes an individual, partnership, corporation, association, or public or private organization other than an agency.”). As explained in more detail in section III.B, *infra*, Oracle maintains as confidential the manner in which it instructs its employees to access and navigate these electronic systems. This is in part because they house confidential commercial and financial information, but also because the configuration of, and access points for, the systems is confidential commercial information in itself. *Id.* ¶ 5.

**2. The Information Oracle Seeks to Seal is a Trade Secret.**

The information Oracle seeks to seal is exempted from FOIA disclosure because the configuration of, access points to, and data entry and extraction methods for its internal networks amounts to a trade secret. *See Pub. Citizen Health Research Grp. v. Food & Drug Admin.*, 704 F.2d 1280, 1288 (D.C. Cir. 1983) (defining a trade secret for the purpose of FOIA Exemption 4 as “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort”). Oracle maintains confidentiality over its internal systems because it derives an economic advantage by its competitors not having access to such information which reflects some of the methods and designs that Oracle deems the most efficient and productive means by which to conduct its business. Declaration of Vickie Thrasher in Support of Oracle America Inc.’s Motion to Seal (“Thrasher Decl.”) ¶ 5. The economic value of this information depends on it remaining confidential because Oracle, as a large software company with thousands of employees across the globe, has devoted significant time and resources to configure and integrate its internal systems to most efficiently and productively manage everything from budget setting across an organization to singular HR-related transactions. *Id.* To this end, Oracle is constantly developing and improving its internal systems, in part because of the economic value which comes along with increasing process potential and efficiency. *Id.* Therefore, in addition to safeguarding Oracle’s confidential budget-related and employee personnel information, Oracle needs to maintain confidentiality here for the additional reason that it would be prejudiced if Oracle’s competitors were given insight regarding what Oracle deems to be the most efficient and productive configuration of its networks. *Id. See In re Google Inc. Gmail Litig.*, No. 13-MD-02430-LHK, 2013 WL 5366963, at \*3 (N.D. Cal. Sept. 25, 2013) (disclosure of documents describing how Google operates and the structures it has in place would enable competitors to duplicate the features and cause competitive harm to Google). Oracle does not share this information externally and only disseminates it internally to those with a business need to know, preventing wide disclosure

within Oracle by password-protecting the information and limiting access to only those with proper credentials.

**B. FOIA Exemption 6 Excepts Disclosure of the Configuration of and Access Points to Oracle's Networks Housing Confidential Employee Compensation and Human Resources Information.**

In an environment where data and network security breaches are increasingly common, Oracle takes seriously the need, and obligation under California law, to protect sensitive data and information from threats and vulnerabilities, especially information related to its employees. *Id.* ¶ 6; Cal. Const. art. I, § 1; *Puerto v. Super. Ct.*, 158 Cal. App. 4th 1242, 1252-53 (2008); *see also Craig v. Mun. Ct.*, 100 Cal. App. 3d 69, 77 (1979) (“The custodian [of private information] has the right, in fact the duty, to resist attempts at unauthorized disclosure and the person who is the subject of [the private information] is entitled to expect that his right will be thus asserted.”). *See also Music Grp. Macao Commercial Offshore Ltd. v. Foote*, No. 14-CV-03078-JSC, 2015 WL 3993147, at \*8 (N.D. Cal. June 30, 2015) (disclosure of information regarding the company’s operations and internal IT and IS systems and measures taken to improve them could pose a threat to Plaintiff’s network security). For that reason, this information is not public or outward facing, but rather is shared with a selective audience and exists within a secure environment that facilitates access only by employees possessing the requisite login and password credentials; with the requisite credentials, these employees are granted access to materials ranging from Oracle’s confidential business strategies, its budgets, employee personnel files, and employee bonus awards. Thrasher Decl. ¶¶ 4-6. With so much at risk, Oracle takes the security and integrity of its internal networks seriously and has taken steps to restrict access to the foregoing information to those with a legitimate business need. *Id.*

**C. The Public Has No Meaningful Interest in Viewing the Materials Oracle Seeks to Seal While There is a Compelling Interest in Precluding Disclosure to Protect Oracle's Trade Secrets and the Integrity of Oracle's Safeguards Against Unauthorized Access to Its Internal Networks.**

The material Oracle seeks to seal has no bearing on the merits of Plaintiff’s pending Motion, nor to the issues in this case, and disclosure of the information would divulge Oracle’s

trade secrets and put at great risk, the security of the databases and applications which house confidential employee compensation and performance information, and confidential commercial and financial information, such as budget availability. The public has no meaningful interest in gleaning the proprietary manner in which Oracle configures and has customized its network and modules to efficiently facilitate HR transactions. Such information is protected from disclosure under FOIA exemptions 4 and 6.

The internal-network-related information which Oracle seeks to seal provides a roadmap regarding the configuration, structure, architecture, and accessibility of Oracle's internal networks, Human Resources-, Compensation-, and budget-related applications, and methods for data entry and extraction to and from the internal network and those applications. Thrasher Decl. ¶¶ 4.

OFCCP cites to a discrete portion of these materials to support its contention—despite Oracle's explanation of the fact that compensation decisions are decentralized and made at the manager level—that compensation decisions require approval from the highest echelons of Oracle's leadership, and specifically Larry Ellison, and that Plaintiff therefore should be allowed to depose someone on the topic. *See* Plaintiff's Motion at pp.13-14 (providing an image from a compensation training PowerPoint to support its contention: "For example in its 2014 Manager Training, Compensation for Global Corporate Bonus & Fusion Workforce Compensation, it instructs managers as follows, requiring approval of Oracle's founder Larry Ellison himself.").

Oracle has left unredacted the portion of the training PowerPoint to which Plaintiff cites in support of its proposition (found in Plaintiff's Motion and in Exhibit H to the Declaration of Jeremiah Miller in support thereof), therefore any possible interest the public *may* have in viewing this information remains unaffected. *See* Thrasher Decl. Ex. A, B (redacted versions of the materials). Oracle has also left unredacted all the portions of the PowerPoint that do not compromise or jeopardize the security of its internal networks—though those materials still remain irrelevant to Plaintiff's pending Motion. To be sure, while OFCCP only cites to a single sentence found on a single page of the 44-page PowerPoint, Oracle left a substantial portion of

the entire document unredacted. The public will glean no meaningful information about the merits of Plaintiff's pending Motion—compelling the deposition of a 30(b)(6) witness—or the merits of this case generally—alleged compensation discrimination—by viewing screenshots of Oracle's internal networks, or instructions related to the mechanics of entering and retrieving data into or from those internal networks.

The redacted information needs to remain safeguarded to protect Oracle's trade secrets and to help minimize the risks posed by external threats to Oracle's systems – threats that would serve to compromise the privacy and integrity of Oracle employees' personnel files, confidential information regarding the way Oracle conducts its internal affairs and external business, and the way in which it executes its confidential business and budgeting strategies. This amounts to an overriding interest to warrant sealing under any one of the three independent grounds described above.

Oracle has taken care to only redact information that reveals its proprietary configuration, disclosure of which would jeopardize the integrity of Oracle's internal systems, while leaving unredacted those portions which provide general descriptions of the information therein. Thus, Oracle's sealing request protects the integrity of Oracle's internal systems while simultaneously protecting any potential interest the public may have in access to materials providing a general understanding of the information housed in those systems.

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**IV. CONCLUSION**

For the reasons set forth above, Oracle respectfully requests that the court grant Oracle's Motion to Seal limited portions of Plaintiff's Motion.

May 24, 2019

Respectfully submitted,

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