



Issue Date: 20 April 2020

CASE NO.: 2017-OFC-00006

In the Matter of

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS,
U.S. DEPARTMENT OF LABOR,
Plaintiff,

v.

ORACLE AMERICA, INC.,
Defendant.

OMNIBUS ORDER ON MOTIONS TO SEAL

This matter arises under Executive Order 11246 (30 Fed. Reg. 12319), as amended, (“EO 11246”) and associated regulations at 41 C.F.R. Chapter 60. It involves Plaintiff Office of Federal Contract Compliance Programs (“OFCCP” or “Plaintiff”) and Defendant Oracle America, Inc. (“Oracle” or “Defendant”) and has been pending at the Office of Administrative Law Judges (“OALJ”) since January 17, 2017. Hearing was held between December 5, 2019, and December 17, 2019. Presently there are seven motions to seal pending related to various pre-hearing filings and the hearing exhibits. This omnibus order addresses all seven motions to seal.

I. BACKGROUND

Prior to hearing, the parties filed cross motions for summary judgment and cross motions to exclude the evidence from the opposing expert, as well as motions in limine. Numerous other pre-hearing filings and assorted motions were made. The pre-hearing motion practice was accompanied by a number of motions to seal various submissions. In addition, prospective and then actual disputes emerged regarding the confidentiality of the hearing exhibits. As hearing approached, resolution of these various motions was delayed because 1) they often involved the same documents making it inefficient to address them in a piecemeal fashion, and 2) it appeared that further meeting and conferring between the parties could produce more significant areas of agreement and at least identify the particular points in need of adjudication.

On October 21, 2019, Oracle filed a Motion to Seal Portions of the Evidence Submitted in Support of Oracle’s Motion for Summary Judgment, or, in the Alternative, for Partial Summary Judgment and Motion to Exclude the Testimony of Janice Fanning Madden, Ph.D.” (“Defendant’s Motion to Seal #1” or “DMS1”).¹ Oracle seeks to seal or partially seal a total of 22 documents

¹ References below are made to the memorandum, not the notice of the motion.

submitted with its contemporaneously filed motion for summary decision and motion to exclude expert testimony on the grounds that the information is protected by Freedom of Information Act (“FOIA”) Exemption 4 or Exemption 6. It identifies these documents as Exhibits A-V. I refer to them as “DMS1 Ex. A – DMS1 Ex. V.” Defendant’s Motion to Seal #1 is supported by declarations from Kate Waggoner, Anje Dodson, Victoria Thrasher, and Jonathan Riddell.² The Riddell Declaration attaches the proposed redacted DMS1 Ex. A through DMS1 Ex. V. OFCCP filed an Opposition to Defendant’s Motion to Seal #1 (“Plaintiff’s Opposition #1” or “POS1”) on October 31, 2019. OFCCP opposes redactions under Exemption 4 and contends that the Exemption 6 redactions are overbroad. Plaintiff’s Opposition #1 is supported by a declaration from Boris Orlov attaching eight exhibits. On November 15, 2019, Oracle filed a permitted³ Reply in Support of Defendant’s Motion to Seal #1 (“Defendant’s Reply #1” or “DRS1”), which is supported by a declaration from Kayla Grundy.

Next, on October 31, 2019, Oracle filed a “Motion to Exclude or, in the Alternative, Motion to Seal Limited Portions of the Evidence Submitted in Support of OFCCP’s Opposition to Oracle’s Motion for a Protective Order” (“Defendant’s Motion to Seal #2” or “DMS2”).⁴ This motion concerns filings OFCCP made on October 17, 2019, in opposition to a motion for a protective order that Oracle filed on October 11, 2019. The motion for a protective order was denied on October 18, 2019. Oracle seeks to seal portions of five documents submitted with the October 17, 2019, opposition, which it identifies as Exhibits A-E and I refer to as “DMS2 Ex. A – DMS2 Ex. E,” on the grounds that the material is subject to FOIA Exemption 4 or Exemption 6. Defendant’s Motion to Seal #2 is supported by declarations from Kate Waggoner, Anje Dodson, and Jonathan Riddell. The Riddell Declaration attaches the proposed redacted DMS2 Ex. A – DMS2 Ex. E. On November 12, 2019, OFCCP filed an Opposition to Defendant’s Motion to Seal #2 (“Plaintiff’s Opposition #2” or “POS2”), which agrees with some proposed redactions and opposes others. The opposition is supported by a declaration of Boris Orlov attaching eight exhibits.

On November 1, 2019, Oracle filed a “Motion to Seal Limited Portions of OFCCP’s Motion for Summary Judgment, OFCCP’s Motion to Exclude the Expert Testimony of Dr. Ali Saad, Oracle’s Opposition to OFCCP’s Motion for Summary Judgment, and Oracle’s Opposition to OFCCP’s Motion to Exclude the Expert Reports and Testimony of Dr. Ali Saad, Ph.D.” (“Defendant’s Motion to Seal #3” or “DMS3”).⁵ This motion involves 48 exhibits filed with OFCCP’s motions for summary judgment and to exclude expert evidence, both filed on October 21, 2019, and Oracle’s oppositions to those motions, both filed on November 1, 2019. Oracle identifies the exhibits in question as Exhibits A – VV and I refer to them as “DMS3 Ex. A – DMS3 VV.” Oracle again invokes FOIA Exemptions 4 and 6. Defendant’s Motion to Seal #3 is supported by declarations from Les Cundall, Victoria Thrasher, Anje Dodson, Kris Edwards, and Jonathan Riddell. The Riddell Declaration attaches eight volumes containing the proposed redacted versions of DMS3 Ex. A – DMS3 Ex. VV. OFCCP filed an Opposition to Defendant’s Motion to Seal #3 (“Plaintiff’s Opposition #3” or “POS3”) on November

² I refer to these when necessary as, for example “DMS1 KWD” for the declaration of Kate Waggoner, with the first and last initials of the declarant substituting as appropriate. I use the same reference convention for all of the declarations included as part of the briefing on motions to seal. When referring to an exhibit attached to a declaration that is not otherwise given an abbreviation, I use the same reference connection and add the exhibit number/letter, e.g. “POS2 BOD Ex. 2” for exhibit two of the declaration of Boris Orlov submitted with Plaintiff’s Opposition to Defendant’s Motion to Seal #2.

³ Oracle sought leave to file a reply brief on November 6, 2019, which was granted as part of the November 12, 2019, order discussed below.

⁴ Oracle filed notice that it would file this motion to seal on October 22, 2019. This notice forestalled the process of proactive disclosure under FOIA until the underlying confidentiality concerns could be addressed.

⁵ Oracle filed notice that it would be filing a motion to seal as to the submissions in OFCCP’s motion for summary judgment and to exclude expert evidence on October 25, 2019.

12, 2019. It deems the proposed redactions under Exemption 4 improper and the proposed redactions under Exemption 6 overbroad. Plaintiff's Opposition #3 is supported by a declaration from Boris Orlov attaching eight exhibits.

Oracle filed a "Motion to Seal Limited Portions of its Reply in Support of Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgement" ("Defendant's Motion to Seal #4" or "DMS4") on November 8, 2019. Invoking FOIA Exemptions 4 and 6, Oracle seeks to seal portions of three exhibits it filed with its contemporaneous reply brief in support of its motion for summary judgment, which it identified here as Ex. A – Ex. C and I will refer to as "DMS4 Ex. A – DMS4 Ex. C". Defendant's Motion to Seal #4 is supported by declarations from Anje Dodson, Kris Edwards, and Erin M. Connell. The Connell Declaration attaches the proposed redacted versions of DMS4 Ex. A – DMS4 Ex. C. On November 18, 2019, OFCCP filed an Opposition to Defendant's Motion to Seal #4 ("Plaintiff's Opposition #4" or "PO4") contesting the proposed redactions. This opposition is supported by another declaration from Boris Orlov attaching nine exhibits. Oracle filed a permitted Reply to Plaintiff's Opposition #4 ("Defendant's Reply #4" or "DRS4") on November 21, 2019.

To bring more structure to this flurry of disputes, on November 12, 2019, I issued an Order Regarding Motions to Seal that modified the procedures surrounding these motions in an attempt to encourage the parties to both avoid the need for motions to seal and to narrow or eliminate the disputes presented by them. In that order, I directed the parties to review future submissions prior to filing to determine if private or confidential information needed to be submitted at all and to determine if anything that was being filed should be sealed, in which case the party was to file a motion to seal. I required the parties to engage in additional meet and confers after motions to seal had been filed and noticed, and I required that this be done in face-to-face meetings. I ordered parties filing or opposing motions to seal to also file proposed redactions. As to the pending motions to seal, I ordered the parties to meet and confer in person to reach agreement or narrow their disputes, and then to file a status update as well as updated proposed redactions. Finally, I ordered the parties to meet and confer about the hearing exhibits and confidentiality concerns in an attempt to reach some agreements about what material should be sealed.

On November 18, 2019, Oracle filed a "Motion to Seal Limited Portions of Evidence Submitted in Support of Plaintiff OFCCP's Opposition to Oracle's Motion for Summary Judgment and Opposition to Oracle America, Inc.'s Motion to Exclude the Expert Report and Testimony of Janice Fanning Madden, Ph.D." ("Defendant's Motion to Seal #5" or "DMS5"). The underlying oppositions had both been filed by OFCCP on November 1, 2019.⁶ Relying on FOIA Exemptions 4 and 6, Oracle seeks to seal portions of 20 exhibits filed with OFCCP's oppositions, which it identifies as Ex. A – Ex. T and I refer to as "DMS5 Ex. A – DMS5 Ex. T." Defendant's Motion to Seal #5 is supported by declarations from Kris Edwards, Anje Dodson, and Lara F. Graham. The Graham Declaration attaches the proposed redactions for DMS5 Ex. A – DMS5 Ex. T. OFCCP filed its Opposition to Defendant's Motion to Seal #5 ("Plaintiff's Opposition #5" or "POS5") on December 2, 2019, which is supported by a declaration of Boris Orlov attaching eight exhibits.

Oracle filed a "Motion to Seal Limited Portions of Plaintiff OFCCP's Reply to Opposition to OFCCP's Motion for Summary Judgment, OFCCP's Reply in Support of Motion to Exclude the Testimony and Reports of Dr. Saad, and OFCCP's Motion in Limine" ("Defendant's Motion to Seal #6" or "DMS6") on November 25, 2019. This motion to seal concerns three prior filings: two reply briefs filed by OFCCP on November 8, 2019, and a motion in limine filed by OFCCP on November 15,

⁶ Oracle gave notice that it would be filing a motion to seal on November 6, 2019.

2019.⁷ Oracle seeks to partially seal six documents on the basis of FOIA Exemptions 4 and 6, which it identifies as Ex. A – Ex. F and I will refer to as “DMS6 Ex. A – DMS6 Ex. F.” Defendant’s Motion to Seal #6 is supported by declarations from Les Cundall, Anje Dodson, Kris Edwards, and Lara F. Graham. The Graham Declaration attaches Oracle’s proposed redactions for DMS6 A – DMS6 F. On December 10, 2019, OFCCP filed its Opposition to Defendant’s Motion to Seal #6 (“Plaintiff’s Opposition #6” or “POS6”), which is supported by another declaration from Boris Orlov attaching eight exhibits.

On November 25, 2019, the parties filed a Joint Status Report Re Hearing Exhibits (“JSR1”), which was required by the November 12, 2019, order. The parties had been unable to reach agreement about how to address confidentiality concerns or specific agreements as to particular documents that would be submitted at hearing. The issues were discussed further at the November 26, 2019, pre-hearing conference, and summarized in the November 29, 2019, Order Following Pre-Hearing Conference. On November 26, 2019, the parties filed the other status report required by the November 12, 2019, order, a Joint Status Report Re Pending Motions to Seal (“JSR2”). Though the parties had been able to make some progress, significant disputes remained. This filing included a chart specifying the documents subject to motions to seal, their locations in the underlying filings and the motions to seal, and the positions of each party, in brief, on the filing. JSR2 at 5-37. As ordered, Oracle filed a separate chart of Documents Subject to Pending Motions to Seal (“DSMS”) that specified each of the documents subject to a motion to seal and the locations of that document in the underlying filings and pending motions to seal. This chart contains a number of later documents not discussed in the status report. DSMS at 19-25.

The November 12, 2019, order also required the parties to meet and confer about the proposed redactions. It directed Oracle to file updated proposed redactions insofar as they had changed and OFCCP to file proposed redactions when they differed from Oracle’s proposals. Oracle filed a Notice of Amended Redactions (“DNAR”) on November 26, 2019, covering fifteen documents subject to the various motions to seal. The amended proposed redactions were attached as exhibits (“DNAR Ex. 1 – DNAR Ex. 15”). OFCCP also filed Proposed Redactions (“PPR”) on November 26, 2019, for eight documents and attached its versions of the eight documents in question (“PPR Ex. 1 – PPR Ex. 8”).

The parties filed a Joint Exhibit Status Report (“JSR3”) on December 2, 2019, as required by the November 29, 2019, Order Following Pre-Hearing Conference. They requested further guidance on what would be found confidential in order to assist their attempts to resolve disputes. JSR3 at 3. On December 4, 2019, I issued an Order Regarding Motions to Seal and Hearing Confidentiality that attempted to provide additional guidance to the parties. The order also determined that further meet and confers were necessary and further progress could be made on issues of confidentiality. The parties were ordered to further meet and confer and file another status update on December 20, 2019, delineating the exhibits they agreed were public, those they agreed to seal in full or part, and those that were still in dispute. The parties were then ordered to meet and confer in person to review all documents in this last category and attempt to reach further agreement. The parties were directed to file another joint status update on January 13, 2020, identifying, from among those in dispute as of December 20, 2019, those that they had agreed were public, those that they agreed to seal in full or part, and those still in dispute. The order then set out a briefing schedule for an omnibus motion to seal, with

⁷ Oracle filed notice that it would be submitting a motion to seal as to the reply briefs on November 14, 2019, and the motion in limine on November 21, 2019.

a brief and opposition due on January 17, 2020, and reply briefs due on January 22, 2020. The order further set out guidance for confidentiality issues at the hearing.⁸

Hearing was held in this matter over eight court days between December 5, 2019, and December 17, 2019.⁹ On December 20, 2019, the parties filed a Joint Status Report Re Hearing Exhibits (“JSR4”). As directed, they designated the exhibits that they agreed should not be sealed, those that they agreed should be sealed in full or in part (with the agreed redacted versions provided on a thumb drive), and those that were still subject to dispute. JSR 4 at 1-3. OFCCP also asked for modifications to the briefing schedule, which were opposed by Oracle. *Id.* at 3-4. On January 7, 2020, I issued an order modifying the schedule such that the second status report became due on January 17, 2020, the brief and oppositions due on January 24, 2020, and the reply briefs due on January 31, 2020.

The parties filed another Joint Status Report Re Confidentiality of Hearing Exhibits (“JSR5”) on January 17, 2020. They indicated that they were able to agree that several additional exhibits could be made public, had agreed that a number of exhibits could be sealed in full or in part (and provided electronic copies of the proposed redactions on a thumb drive), and continued to have disputes over a significant number of exhibits. JSR5 at 1-4. However, the parties expressed optimism that further meet and confers could produce further agreement and jointly requested an extension of the briefing schedule. *Id.* at 4-5. I granted this request in a January 21, 2020, order such that motions to seal and oppositions would be due on February 6, 2020, and replies due on February 13, 2020. I also directed the parties to file another joint status update by February 5, 2020.

On February 5, 2020, the parties filed a Joint Status Report Re Confidentiality of Hearing Exhibits (“JSR6”) reporting that they had reached agreement on the confidentiality of all hearing exhibits. JSR6 at 1. The parties then provided lists of the previously disputed exhibits that could be released to the public in full and those that they agreed should be sealed in full or part. *Id.* at 2-4. Oracle filed an “Omnibus Motion to Seal Hearing Exhibits” (“DMSE”) on February 6, 2020. This motion is supported by declarations from Mallory Cohn, Anje Dodson, Kris Edwards, Victoria Thrasher, and Lara F. Graham. The Graham Declaration attaches an appendix specifying the documents subject to the motion and their locations in prior filings, as well as a thumb drive with the proposed redactions. A corrected appendix (“DMSE GDA”) and thumb drive were filed on February 7, 2020.

After reviewing the filings, I determined that there were a number of hearing exhibits that, for one reason or another, had not been addressed in the negotiations. On February 28, 2020, I issued an Order for Further Status Report directing the parties to meet and confer about these 25 exhibits and file a status report within 14 days. On March 13, 2020, the parties filed Joint Status Report Re Hearing Exhibits (“JSR7”). They correctly point out that one of the exhibits identified in the February 28, 2020, order, DX 342, was actually withdrawn. JSR 7 at 1-2. As to the remaining 24 exhibits, the parties were able to reach an agreement as to what should be sealed. *Id.* at 2-3. They also discussed five exhibits relating to depositions that were not admitted, but are part of the case file, and agreed to appropriate redactions for those exhibits. *Id.* at 3. Contemporaneous with the status report, Oracle filed a Supplement to its Omnibus Motion to Seal Hearing Exhibits (“DMSS”), which is supported by declarations from Kris Edwards and Anje Dodson. The parties also filed electronic copies of the proposed redactions for the exhibits not previously addressed.

⁸ Confidentiality issues ended up emerging only rarely at the hearing and the process envisioned was not necessary.

⁹ On December 17, 2019, Oracle filed a “Notice of Exhibits that do not Contain Private or Confidential Information.” This was superseded by the December 20, 2019, joint status report.

On March 17, 2020, I issued an Order for Additional Briefing on Motions to Seal. The parties had agreed that various exhibits containing “internal employee demographic information” including exhibits containing EEO-1 forms, similar forms, or similar aggregated demographic data about the composition of Oracle’s workforce could be sealed. Though the parties had agreed, I requested more briefing in light of a recent decision involving seemingly similar information, including similar information from Oracle, by the United States District Court for the Northern District of California that had determined that the sort of aggregated demographic data produced on an EEO-1 form could not be withheld under Exemption 4.¹⁰ Though I observed that the decision in question was not binding precedent, I explained that it raised questions requiring more attention in reference to similar information in the documents here. I ordered Oracle to file a responsive brief within 14 days, and permitted OFCCP to file a responsive brief within 14 days as well.

On March 19, 2020, Chief Administrative Law Judge Stephen R. Henley issued an Administrative Order and Notice (No. 2020-MIS-00006)¹¹ suspending all hearings and procedural deadlines due to the COVID-19 National Emergency. On March 20, 2020, I issued an order in this case providing, as relevant here, that Oracle’s response to the March 17, 2020, order, as well as any response OFCCP chose to make, was due on April 3, 2020. Neither Oracle nor OFCCP filed any response to the March 17, 2020, order.

II. LEGAL STANDARD

The Office of Administrative Law Judges is an adjudicatory agency and hearings are open to the public. *See* 29 C.F.R. § 18.81(a).¹² “It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc’ns*, 435 U.S. 589, 597 (1978). But “the right to inspect and copy judicial records is not absolute.” *Id.* at 598. “Where the common-law right of access is implicated, the court must consider the degree to which sealing a judicial record would interfere with the interests served by the common-law right of access and balance that interference against the salutary interests served by maintaining confidentiality of the information sought to be sealed.” *IDT Corp. v. eBay, Inc.*, 709 F.3d 1220, 1223 (8th Cir. 2013) (citing *Webster Groves Sch. Dist. v. Pulitzer Publ’g Co.*, 898 F.2d 1371, 1376 (8th Cir. 1990)). The purpose of the right of public access “is to enable interested members of the public, including lawyers, journalists, and government officials, to know who’s using the courts, to understand judicial decisions, and to monitor the judiciary’s performance of its duties.” *Goesel v. Boley Int’l (H.K.) Ltd.*, 738 F.3d 831, 833 (7th Cir. 2013).

The Rules of Practice and Procedure for the Office of Administrative Law Judges (“OALJ”) provide that “[o]n motion to any interested person or the judge’s own, the judge may order any material that is in the record to be sealed from public access.” 29 C.F.R. § 18.85(b)(1). “An order that seals material must state findings and explain why the reasons to seal adjudicatory records outweigh the presumption of public access.” 29 C.F.R. § 18.85(b)(2). OALJ is an administrative agency that serves a judicial function, but is not part of the judiciary. Hence, OALJ records are subject to disclosure under the Freedom of Information Act (“FOIA”). *See* 5 U.S.C. § 522. As such, a record will not be sealed “unless the record qualifies for an exemption to such disclosure.” *Jordan v. Sprint Nextel Corp.*, ARB No.

¹⁰ *See Center for Investigative Reporting v. United States DOL [CIR v. DOL]*, No. 4:19-cv-01843-KAW, 2019 U.S. Dist. LEXIS 213793, 2019 WL 6716352 (N.D. Cal. Dec. 10, 2019)

¹¹ The order can be accessed online here:

[https://www.oalj.dol.gov/IN_RE_SUSPENSION_OF_HEARIN_2020MIS00006_\(MAR_19_2020\)_140827_CADEC_SD.pdf](https://www.oalj.dol.gov/IN_RE_SUSPENSION_OF_HEARIN_2020MIS00006_(MAR_19_2020)_140827_CADEC_SD.pdf)

¹² The February 6, 2019, Pre-Hearing Order provided notice that this would be a public hearing.

06-105, ALJ No. 2006-SOX-041, slip op. at 12 (ARB June 19, 2008). Under FOIA, agencies may withhold records subject to nine statutory exceptions. 5 U.S.C. § 552(b)(1)-(9). Even “if a document contains exempt information, the agency must still release ‘any reasonably segregable portion’ after deletion of the nondisclosable portions.” *Oglesby v. United States Dep’t of the Army*, 79 F.3d 1172, 1176 (D.C. Cir. 1996) (quoting 5 U.S.C. § 552(b)). Accordingly, a motion to seal at OALJ “must propose the fewest redactions possible that will protect the interest offered as the basis for the motion.” 29 C.F.R. § 18.85(b)(1).

The motions to seal in this case involve two FOIA exemptions, Exemption 4 and Exemption 6. Exemption 6 applies to “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The threshold question is whether the information in question is contained in a personnel, medical, or similar file. If it is, it must be determined whether disclosure would constitute a clearly unwarranted invasion of personal privacy. *United States Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 598 (1982); *N.Y. Times Co. v. NASA*, 920 F.2d 1002, 1004 (D.C. Cir. 1990) (en banc). The privacy interests of the individual in question must then be weighed against “‘the core purpose of FOIA,’ which is ‘contributing significantly to public understanding of the operations or activities of the government.’” *United States Dep’t of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 495 (1994) (quoting *Department of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 775 (1989)) (emphasis removed).

FOIA Exemption 4 protects “trade secrets and commercial or financial information obtained from a person and privileged and confidential.” 5 U.S.C. § 552(b)(4). A “trade secret” in the meaning of Exemption 4 is “a secret, commercially valuable plan, formula, process, or device that is used for making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). For other information to be covered by Exemption 4, that information must be (1) commercial or financial information; (2) obtained from a person; and (3) privileged or confidential. See, e.g., *Bowen v. U.S. FDA*, 925 F.2d 1225, 1227 (9th Cir. 1991); *Getman v. NLRB*, 450 F.2d 670, 673 (D.C. Cir. 1971). “Commercial” and “financial” are given their ordinary meanings and apply when the submitters “have a commercial interest in the requested information.” *Pub. Citizen Health Research Group*, 704 F.2d at 1290 (citing *Washington Post Co. v. United States Dep’t of Health & Human Servs.*, 690 F.2d 252, 266 (D.C. Cir. 1982); *Board of Trade v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 403 (D.C. Cir. 1980). A “person” in the meaning of Exemption 4 includes “an individual, partnership, corporation, association, or public or private organization other than an agency.” *Nadler v. FDIC*, 899 F. Supp. 158, 160 (S.D.N.Y. 1995) (quoting 5 U.S.C. § 551(2)).

On June 4, 2019, the Supreme Court issued *Food Mktg. Inst. v. Argus Leader Media*, ___ U.S. ___, 139 S. Ct. 2356 (2019), which altered the FOIA Exemption 4 test for confidentiality. It isolated two “senses” of “confidential” that provided “conditions” for the application of Exemption 4. First, “information communicated to another remains confidential whenever it is customarily kept private, or at least closely held, by the person imparting it.” Second, “information might be considered confidential only if the party receiving it provides some assurance that it will remain secret.” *Id.* at 2363. The Court held that the first condition must be satisfied for the material to be confidential in the meaning of FOIA Exemption 4, since “it is hard to see how information could be deemed confidential if its owner shares it freely.” *Id.* The Court, however, did not decide whether the second condition—whether the information was communicated to the government with assurances that it would be kept private—was also necessary for the material to be protected by FOIA Exemption 4. *Id.* In *Argus Leader*, such assurances were present so the Court did not need to reach the question. *Id.* Though the case involved an explicit assurance, the Court favorably cited to some early FOIA case law, including a Ninth Circuit

decision that approved of a definition of “confidentiality” that looked to whether there was an “express or implied promise by the government that the information will be kept confidential.” *Id.*; *GSA v. Benson*, 415 F.2d 878, 881 (9th Cir. 1969).

To be confidential in the meaning of Exemption 4, the information must be treated as confidential by the submitter. *Argus Leader* does not make satisfaction of this first “condition” sufficient for Exemption 4 protection. But it also does not fill in exactly what else must be present for the exemption to apply, except to say that an assurance of confidentiality at the time of submission will suffice. This aspect of *Argus Leader* has application here for documents submitted to OALJ by OFCCP. There is a protective order in this case, as well as OFCCP regulations governing disclosure of confidential material.¹³ Where OFCCP gave an assurance of confidentiality at the time of submission, the sealing question comes down to the first condition provided in *Argus Leader*, Oracle’s treatment of the information in the documents. The situation is different for documents submitted by Oracle, even if it is the same as a document provided to OFCCP or filed by OFCCP. The information in the document must be treated as confidential by Oracle. But Oracle cannot rely on the protective order or OFCCP regulations as an assurance of confidentiality. The protective order was entered by Judge Larsen, but it does not provide assurances of confidentiality for documents that Oracle willingly files with OALJ—it addressed documents that Oracle provided to OFCCP and its attorneys.

Unlike most institutions subject to FOIA, OALJ is adjudicatory agency and there is already an explicit presumption of public access to records. *See* 29 C.F.R. § 18.81(a); *cf. Nixon*, 435 U.S. at 597. OALJ’s Rules of Practice and Procedure provide a way in which a submitting party can receive an assurance of confidentiality when it submits a document: it can file a motion to seal under 29 C.F.R. § 18.85(b)(1). If a motion to seal is granted, the agency has given an assurance of confidentiality. Presently, Oracle is seeking an assurance of confidential treatment by OALJ by filing motions to seal. This creates some circularity. In ruling on a motion to seal under ARB precedent, an adjudicator looks to whether a FOIA exemption applies; but in determining whether or not Exemption 4 applies, the inquiry could lead back to the original question of whether a motion to seal has been granted.

The result is that at least for information that is described as confidential commercial or financial information, a motion to seal must be adjudicated on the merits applying the same law as a proper court. The Ninth Circuit has recently articulated the standard as follows:

“[C]ourts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978) (footnotes omitted). We therefore “start with a strong presumption in favor of access to court records.” *Foltz*, 331 F.3d at 1135. “A party seeking to seal a judicial record . . . must ‘articulate[] compelling reasons supported by specific factual findings.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto Ins. Co.*), 331 F.3d [1122,] 1135 [(9th Cir. 2003)]. “[C]ompelling reasons’ sufficient to outweigh the public’s interest in disclosure” exist when court records might “‘become a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* at

¹³ The limits of both were defined in reference to FOIA, but *Argus Leader* produced a peculiar dynamic in this regard. Whereas in the past an “objective” test defined the limits of Exemption 4, now agency assurances (coupled with confidential treatment by the submitter) can bring a document within Exemption 4. So an agency saying “we will treat your information as confidential so long as it is confidential in the meaning of Exemption 4” becomes circular—it is the indication that it will be treated as confidential that makes it confidential in the meaning of Exemption 4.

1179 (quoting *Nixon*, 435 U.S. at 598). “The mere fact that the production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records.” *Id.*

Demaree v. Pederson, 887 F.3d 870, 884-85 (9th Cir. 2018); *see also Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995). Further, a record may be sealed if it contains “business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 598; *see also Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 662 (3d Cir. 1991).

For documents attached to dispositive motions or produced at trial, “compelling reasons” are required to justify sealing. *Kamakana*, 447 F.3d at 1179-81. “A party seeking to seal a judicial record [] bears the burden of overcoming th[e] strong presumption [of public access] by meeting the ‘compelling reasons’ standard.” *Id.* at 1178. To justify sealing confidential financial information and trade secrets, a party must specifically identify where the material is found in the records. *Foltz*, 331 F.3d at 1137. A “trade secret” in this context¹⁴ is:

A formula, formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors; information — including a formula, pattern, compilation, program, device, method, technique, or process — that (1) derives independent economic value, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use, and (2) is the subject of reasonable efforts, under the circumstances, to maintain its secrecy.

Black’s Law Dictionary (11th ed. 2019), trade secret; *see also* Unif. Trade Secrets Act § 1(4); Cal. Civ. Code § 3426.1(d); *Imax Corp. v. Cinema Techs., Inc.*, 152 F.3d 1161, 1165 (9th Cir. 1998). Documents can contain confidential business information that are not trade secrets, but confidential information receives less protection than a trade secret. *Littlejohn v. BIC Corp.*, 851 F.2d 673, 685 (3d Cir. 1988).

III. DISCUSSION

There are seven pending motions to seal, along with a supplement to the last motion to seal various hearing exhibits. The underlying documents at issue often overlap, and the record presents voluminous proposed redactions. The parties, however, were able to come to agreement about the hearing exhibits in their entirety. An agreement does not resolve the issue—I must still independently evaluate the basis for sealing the exhibits at issue. But the agreement significantly narrows the discussion and provides a better starting point for an evaluation of the issues presented. Moreover, since the motions overlap in terms of the underlying documents involved, agreement as to later submissions is likely to simplify consideration of earlier submissions. As a result, I begin the analysis with the last motion to seal, Oracle’s February 6, 2020, Omnibus Motion to Seal Hearing Exhibits, and then move backwards in time sequentially, applying determinations made as to the later motions to the disputes presented in the earlier motions.

¹⁴ Under the FOIA case law “trade secrets” is defined more narrowly and in connection to the productive process. *See Ctr. For Auto Safety v. Nat’l Highway Traffic Safety Admin.*, 244 F.3d 144, 150-51 (D.C. Cir. 2001); *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). So some trade secrets in the “usual” and more generic sense might end up, for FOIA purposes, as privileged or confidential commercial or financial information.

A. Defendant's Omnibus Motion to Seal Hearing Exhibits

1. The Parties' Agreement

After considerable negotiations, the parties reached agreement about which exhibits should be sealed, in full or part, and which exhibits could be made publically available without any redactions. The pending Omnibus Motion to Seal Hearing Exhibits seeks approval of this agreement.

The parties agreed that the following 466 exhibits need not be sealed and could be released to the public as submitted:

- ALJ Exhibits: ALJX 1
- Joint Exhibits: JX 1 – JX 8; JX 11 – JX 13; JX 16 – JX 19; JX 22; JX 25 – JX 26; JX 28 – JX 39; JX 41 – JX 50; JX 52 – JX 69; JX 71 – JX 77; JX 79 – JX 87; JX 89 – JX 101; JX 112; JX 122 – JX 125; JX 128; JX 135; JX 142 – JX 145; JX 147 – JX 148; JX 151 – JX 152; JX 154 – JX 155; JX 157 – JX 159; JX 165.
- Plaintiff's Exhibits: PX 2 – PX 3; PX 5 – PX 7; PX 11; PX 13 – PX 20; PX 25 – PX 27; PX 31; PX 33; PX 35 – PX 36; PX 40; PX 42 – PX 44; PX 47 – PX 52; PX 54 – PX 59; PX 61 – PX 63; PX 66 – PX 71; PX 73; PX 78 – PX 81; PX 84; PX 87; PX 89; PX 107 – PX 110; PX 118 – PX 119; PX 130 – PX 131; PX 134 – PX 140; PX 142 – PX 145; PX 153; PX 160 – PX 161 – PX 162; PX 172 – PX 173; PX 179; PX 187; PX 191 – PX 197; PX 199 – PX 212; PX 214 – PX 218; PX 220 – PX 225; PX 227 – PX 235; PX 240 – PX 251; PX 253 – PX 257; PX 261 – PX 265; PX 268 – PX 273; PX 275 – PX 293; PX 295 – PX 297; PX 300; PX 302; PX 304 – PX 311; PX 323 – PX 329; PX 331 – PX 333; PX 336; PX 340 – PX 341; PX 343 – PX 344; PX 352; PX 354 – PX 356; PX 358 – PX 360; PX 378 – PX 379; PX 412 – PX 413; PX 416 – PX 422; PX 437 – PX 443; PX 448; PX 450 – PX 468; PX 471; PX 488; PX 494; PX 513 – PX 514.
- Defendant's Exhibits: DX 1 – DX 5; DX 9 – DX 11; DX 13 – DX 16; DX 18 – DX 20; DX 22 – DX 23; DX 33 – DX 39; DX 42- DX 44; DX 49; DX 51 – DX 55; DX 84 – DX 89; DX 92; DX 94 – DX 95; DX 98; DX 108 – DX 112; DX 114; DX 120 – DX 125; DX 203 – DX 204; DX 206 – DX 245; DX 248 – DX 261; DX 292 – DX 294; DX 317; DX 320; DX 329; DX 438 – DX 440; DX 442 – DX 443; DX 446 – DX 447; DX 450.

See JSR4 at 1-2; JSR 5 at 2; JSR 6 at 2; JSR7 at 2.¹⁵

The parties agreed that the following 484 exhibits should be partially sealed and released publically in redacted form:

- Joint Exhibits: JX 9 – JX 10; JX 15; JX 23 – JX 24; JX 27; JX 40; JX 70; JX 78; JX 88; JX 102 – JX 111; JX 113 – JX 121; JX 126 – JX 127; JX 138 – JX 141; JX 146; JX 149 – JX 150; JX 153; JX 160.

¹⁵ PX 162 was listed in the JSR7 as an exhibit that the parties had agreed to seal in part. However, it was not included in Oracle's motion to seal and no agreed redactions were provided. I instructed my staff to contact the parties to either receive clarification about the exhibit or procure the proposed redacted copy. Oracle informed my staff that the parties had agreed that no redactions were appropriate and that the status report was in error. In any event, since PX 162 is not part of the motion to seal, it would be released as is regardless of the agreement status.

- Plaintiff's Exhibits: PX 1; PX 4; PX 10; PX 12; PX 18; PX 20 – PX 24; PX 26; PX 28 – PX 30; PX 32; PX 34; PX 37 – PX 39; PX 41; PX 45 – PX 46; PX 52; PX 65; PX 72; PX 74 – PX 77; PX 82 – PX 83; PX 85 – PX 86; PX 90 – PX 92; PX 94 – PX 106; PX 111 – PX 117; PX 120 – PX 129; PX 141; PX 146 – PX 152; PX 154 – PX 159; PX 163 – PX 171; PX 174 – PX 178; PX 180 – PX 186; PX 188 – PX 190; PX 198; PX 213; PX 226; PX 252; PX 258; PX 266 – PX 267; PX 274; PX 294; PX 298 – PX 299; PX 301; PX 303; PX 312 – PX 318; PX 321; PX 334 – PX 335; PX 337 – PX 339; PX 342' PX 345 – PX 351; PX 353; PX 357; PX 415; PX 425; PX 449; PX 472 – PX 487; PX 489 – PX 493; PX 495 – PX 499; PX 501 – PX 507.
- Defendant's Exhibits: DX 6 – DX 8; DX 12; DX 17; DX 21; DX 24 – DX 32; DX 40; DX 46 – DX 48; DX 56 – DX 83; DX 113; DX 115 – DX 116; DX 126 – DX 202; DX 246 – DX 247; DX 258; DX 262 – DX 263; DX 267 – DX 289; DX 295 – DX 299; DX 307 – DX 308; DX 318 – DX 319; DX 323; DX 330 – DX 335; DX 441; DX 346 – DX 437; DX 440; DX 445; DX 449.

See JSR4 at 2; JSR 5 at 2-3; JSR 6 at 2-3; JSR7 at 2-3.

The parties agreed that the following 148 exhibits should be sealed in their entirety, with only a cover page made publically available:

- Joint Exhibits: JX 14; JX 20 – JX 21; JX 51; JX 129 – JX 134; JX 136 – JX 137; JX 156; JX 161 – JX 164.
- Plaintiff's Exhibits: PX 8 – PX 9; PX 64; PX 132 – PX 133; PX 219; PX 236 – PX 239; PX 259 – PX 260; PX 319 – PX 320; PX 322; PX 330; PX 361 – PX 377; PX 380 – PX 411; PX 414; PX 423 – PX 424; PX 426 – PX 436; PX 444 – PX 447; PX 469 – PX 470; DX 508 – PX 512.
- Defendant's Exhibits: DX 41; DX 45; DX 50; DX 117; DX 264 – DX 266; DX 290 – DX 291; DX 300 – DX 306; DX 309 – DX 316; DX 321 – DX 322; DX 324 – DX 328; DX 336- DX 341; DX 343 – DX 345; DX 444.

See JSR4 at 2-3; JSR 5 at 3; JSR 6 at 3-4; JSR7 at 2-3.

2. Oracle's Motion to Seal and Argument

On February 6, 2020, Oracle filed its Omnibus Motion to Seal Hearing Exhibits consistent with the parties' agreement as to which exhibits should be sealed in full and which should be sealed in part with redactions in the public copies. It cites two bases for its motion. First, it contends that some of the exhibits in question contain confidential business information or trade secrets that would negatively impact Oracle in the marketplace. "Such information includes trade secret and confidential business practices, corporate structures, strategies for evaluating and hiring employee candidates, and employee compensation programs," that, Oracle avers, it treats as private. DMSE at 1; *see also id.* at 3-6. The other basis for sealing portions of the exhibits is that a number of the exhibits contain personal information of Oracle employees or applicants to Oracle whose privacy interests would be compromised by public disclosure. Oracle avers that it is obligated to protect and closely guards this information. *Id.* at 1-2; *see also id.* at 2-3.

Oracle argues that it has met the "compelling reasons" standard for sealing confidential business information contained in some of the exhibits, adding that when there is little to no public interest in the

material, the standard is easily met. DMSE at 7-8. As to compensation related information, Oracle points to prior orders in this case and other cases finding that this sort of information may be sealed since disclosure would undermine Oracle's ability to attract and retain employees. *Id.* at 8-9. It asserts that its "job architecture" information should be sealed, via limited redactions, because full disclosure would divulge its business strategies and undermine its competitiveness. *Id.* at 9. It contends that the same holds as to information about its recruiting practices and strategies. *Id.* And it argues that "internal network and access information" has been recognized as properly sealed for compelling reason, explaining that this information would divulge how "Oracle has configured its network" and "integrated the network and applications into its internal information" such that disclosure would compromise the "economic value for the secret nature of its proprietary network configuration and integration of its systems into its core business and HR functions." *Id.* at 10. Oracle asserts that the material in question is exempt from disclosure under FOIA Exemption 4 as trade secrets and as privileged and confidential commercial or financial information.¹⁶ *Id.* at 14. In this context, it stresses that when the material was produced in discovery, the government had given an assurance of confidentiality via the agreed protective order in this case. *Id.*

As to private information about third parties in the exhibits potentially subject to FOIA Exemption 6, Oracle argues that compelling reasons exist for sealing information concerning compensation, employee assessment and performance evaluation, and personally identifying information. Unless the individual in question has waived the privacy interest, Oracle contends that genuine privacy interests are at stake and out-balance the little to no public interest in disclosure of these personal details. DMSE at 10-13. Oracle maintains that courts have standardly found that this sort of personal information is subject to FOIA Exemption 6 because the privacy interests far outweigh public interest in the material. *Id.* at 14-15.

Oracle seeks to seal portions of the exhibits as specified in the chart in Attachment A to this order, which catalogs the exhibits in question, the content of the exhibit, Oracle's request, and the asserted basis for sealing the exhibit in whole or in part. *See also* DMSE GDA at 2-54; DMSS at 2-3. Oracle represents that it has proposed only the minimal redactions required to protect the legitimate interests in sealing the record. Though in some instances it is asking that entire exhibits be sealed, it explains that these exhibits generally consist entirely of databases of compensation and personal information. Outside of these instances, Oracle asserts that it has only redacted what is needed to protect the privacy interests of the individuals or its confidential commercial or financial information. DMSE at 15-16.

3. Exemption 4 Documents

A document or portion thereof may be sealed under FOIA Exemption 4 if it contains "trade secrets and commercial or financial information obtained from a person and privileged and confidential." 5 U.S.C. § 552(b)(4). A "trade secret" in this context is "a secret, commercially valuable

¹⁶ In a note, Oracle represents that the information in question meets the "trade secret" prong of FOIA Exemption 4, though in doing so it cites to the more general use of "trade secret" discussed above. *See* DMSE at 14 n.6. Initially it is unclear that "trade secret" in the meaning of FOIA has the broad meaning that Oracle wishes to attach. The point might have theoretical interest, but under currently governing law, the potential distinctions are immaterial. Regardless of whether information that would constitute a trade secret in the general sense is also a trade secret under Exemption 4, in evaluating whether the information is privileged or confidential commercial or financial information under Exemption 4, the inquiry would look to (among other things) whether the information is a trade secret in the more general sense. So as the issue presents here, there is no need to explore the exact meaning and application of "trade secret" under Exemption 4.

plan, formula, process, or device that is used for making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983); *see also Ctr. For Auto Safety v. Nat’l Highway Traffic Safety Admin.*, 244 F.3d 144, 150-51 (D.C. Cir. 2001). Exemption 4 also applies to information that is (1) commercial or financial information; (2) obtained from a person; and (3) privileged or confidential. *See, e.g., Bowen v. U.S. FDA*, 925 F.2d 1225, 1227 (9th Cir. 1991). FOIA does not define “confidential,” so it is interpreted in line with its “‘ordinary, contemporary, common meaning’ [] when Congress enacted FOIA in 1966.” *Food Mktg. Inst. v. Argus Leader Media*, ___ U.S. ___, 139 S. Ct. 2356, 2362 (2019) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)). Confidentiality points to two considerations: 1) “information communicated to another remains confidential whenever it is customarily kept private, or at least closely held, by the person imparting it”; and 2) “information might be considered confidential only if the party receiving it provides some assurance that it will remain secret.” *Id.* at 2363. The first condition must be satisfied, and if the second condition is also satisfied, the information is confidential in the meaning of FOIA, though there may be other instances in which information is confidential absent an assurance. *Id.*

In this case, OFCCP gave Oracle some conditional assurances of confidentiality for some documents produced in the compliance review and during discovery pursuant to the agreed protective order. OALJ did not make any assurances when Oracle submitted documents to the adjudicator as part of the record. OALJ’s rules set forth a presumption of public access. *See* 29 C.F.R. § 18.81(a). Prior orders in this case, and in the FOIA context from the Chief ALJ¹⁷, have stressed this point. Currently Oracle is seeking an assurance of confidentiality via a motion to seal, the specified procedure for receiving such assurances when submitting a document to an adjudicator at OALJ. *See* 29 C.F.R. § 18.85(b)(1). In determining whether such assurances are proper, and whether the documents should be sealed, I look to how motions to seal information of the sort in question are generally decided.

There is a “general right to inspect and copy public records and documents, including judicial records and documents,” but it “is not absolute.” Among other limits, records may be properly sealed from access where they are “sources of business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns*, 435 U.S. 589, 597-98 (1978). Courts start with a “strong presumption” in favor of access, but will seal information when there are “compelling reasons” that are “sufficient to outweigh the public’s interests in disclosure.” *Demaree v. Pederson*, 887 F.3d 870, 884 (9th Cir. 2018). Release of trade secrets, in the general sense, is a compelling reason to seal information. *Id.* A trade secret must derive independent economic value from not being known and be subject to reasonable efforts to maintain secrecy. Black’s Law Dictionary (11th ed. 2019), trade secret; *see also* Unif. Trade Secrets Act § 1(4); Cal. Civ. Code § 3426.1(d); *Imax Corp. v. Cinema Techs., Inc.*, 152 F.3d 1161, 1165 (9th Cir. 1998). Private information that would impair a litigant’s competitive standing may also be sealed. *See Nixon*, 435 U.S. at 598. To justify sealing information, the compelling reasons for keeping the information private must outweigh the policies favoring public access. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006).

a. Oracle’s General Argument

Oracle’s argument for sealing confidential commercial or financial information pursuant to FOIA Exemption 4 leans heavily on the protective order in this case and a categorical list of confidential types of information that could, if taken seriously, license redaction of nearly any information about

¹⁷ *See In re Administrative Notice of Proactive Disclosure of Frequently Requested Records Under the Freedom of Information Act*, ALJ No. 2017-MIS-00006 (Henley, C.J. July 28, 2017).

Oracle: any “compensation-related” information, any “job architecture” information, any “recruiting” information, and any “internal network and access” information, whatever these broad terms end up meaning. DMSE at 7-10, 14. Oracle’s reliance on the protective order gets some traction in light of *Argus Leader*: if Oracle can show that *it* treats the information as confidential, then the protective order can step in and render the information supplied to OFCCP confidential for the purposes of FOIA Exemption 4 since the agency in question gave an assurance of confidentiality. There would still be limits on the broad language used in Oracle’s motion. Oracle is a publically traded company, openly recruits employees, and is active in the marketplace. Significant information about Oracle’s “job architecture,” recruiting, and compensation, for instance, is already public.

More importantly, reliance on the protective order and *Argus Leader* does not assist Oracle in many of its claims of confidentiality. It does have relevance to the Plaintiff’s Exhibits that Oracle seeks to seal—if Oracle treats the information contained therein as confidential and submitted to OFCCP or its attorneys subject to an assurance of confidentiality, then there is a case for sealing the document here. Otherwise an agency could abrogate an assurance of confidentiality simply by sharing the information with another agency without passing along the assurance. In prior motions to seal, this point has simplified the analysis. But in the current motion many of the exhibits that Oracle seeks to seal are Joint Exhibits or Defendant’s Exhibits. Those exhibits were submitted to OALJ by Oracle without any assurance of confidentiality. Oracle has been repeatedly advised that this is a public hearing, not a private arbitration, and there is a presumption of public access.

This is not to say that the information should be released or that the motion to seal fails on the grounds that whatever confidential treatment Oracle maintained was lost when it chose to submit it in what it proceeding open to the public. When Oracle submitted the information to OALJ, it sought an assurance of confidentiality. That is where we are now—Oracle provided the information at a public hearing but asked that it be treated as confidential by the agency when it indicated that it would file a motion to seal and then did so following the procedures set forth. It is at this point, however, that the inquiry imagined by ARB precedent and the application of *Argus Leader* becomes circular. As discussed above, in evaluating motions to seal, the ARB has pointed to application of FOIA Exemptions, since this is administrative adjudication before administrative agencies subject to FOIA. Post-*Argus Leader*, however, in determining whether FOIA Exemption 4 applies, the circumstances of the submission to the agency become important. When ruling on a motion to seal, an ALJ is *defining* the circumstances of the submission to the agency and making a determination about whether an assurance of confidentiality will be given or if the submitter will be told that the information will be considered available to the public.

As a result, it is necessary to turn elsewhere. As explained in the December 4, 2020, order, given the baseline point that hearings at OALJ are open to the public and allow parties to seek to seal documents, in evaluating material potentially subject to FOIA Exemption 4, I must look to the general principles that govern motions to seal. By regulation, in this proceeding the Federal Rules of Civil Procedure apply. *See* 41 C.F.R. § 60-30.1. OALJ’s procedural rules, which are applied in situations where the OFCCP regulations and Federal rules do not apply¹⁸, in many respects follow the federal rules. I therefore apply the legal standard for motions to seal that courts generally apply to the motion to seal here insofar as it seeks to seal confidential commercial or financial information.

Oracle presents an argument along these lines, asserting that it has provide compelling reason to seal the portions of the documents in question. *See* DMSE at 7-10. In a series of footnotes, however, it

¹⁸ *See* Pre-Hearing Order at 2 n.2

maintains that no such standard applies. First, it avers that a “good cause” standard should apply, relying on OALJ regulations pertaining to sealing PII (29 C.F.R. § 18.31(e)) and granting protective orders (29 C.F.R. § 18.52(a)). *See* DMSE at 7 n.3. This isn’t really an argument—it is an attempt to change the subject. In reference to the Exemption 4 related documents and redactions, Oracle isn’t trying to seal PII. Oracle isn’t asking for a protective order now. The agreed protective order was granted and concerns the exchange of information between the parties in discovery. Different considerations about public access come into play when the information is submitted to the adjudicator. Oracle further ignores the reason the compelling interest standard is pertinent—it is the application of case law governing motions to seal under 29 C.F.R. § 18.85 that leads to FOIA, and the application of FOIA Exemption 4 post-*Argus Leader* that leads back to the general principles governing motions to seal, and thus the compelling interest standard. The Ninth Circuit uses different tests in evaluating whether to seal a document for some of the reasons cited by Oracle—in dispositive motions and the like, a “compelling reasons” standard is used, but for non-dispositive motions a “good cause” standard is used. *Kamakana*, 447 F.3d at 1179-81. While this could assist Oracle in some of the *other* motions to seal, the motion here concerns documents presented for a bench decision on the merits of the case. The “compelling reasons” standard thus applies.

Next Oracle contends that there is no traditional right of public access to agency proceedings. DMSE at 8 n.4. The support for this proposition is *N. Jersey Media Grp., Inc. v. Ashcroft*, 308 F.3d 198, 209-16 (3d Cir. 2002), a case involving public access to deportation proceedings. There the Third Circuit upheld closing some deportation proceedings, finding that “a recently-created regulatory presumption of openness with significant statutory exceptions does not present the type of ‘unbroken, uncontradicted history’” that governing precedent forbidding closure of hearings requires.¹⁹ *Id.* at 201. The principle of public access to OALJ hearings is as old as the agency, and I am aware of no statutory, historical,²⁰ or other exceptions, let alone significant ones; Oracle does not point to any. Nor does this case involve any of the considerations against public access that were present in *N. Jersey Media Grp.*, i.e. concerns about national security and terrorism. That case also involves an adjudicative bodies’ ability to restrict access consistent with the First Amendment—not a situation in which a private litigant seeks to have an adjudicatory body restrict access after it has already made the decision that the proceedings will be open to the public. The point at issue in *N. Jersey Media Grp.*—the constitutional permissibility of an agency closing hearings—isn’t really relevant here. It would inform the permissibility of OALJ closing hearings generally or doing so in a certain category of cases. But OALJ already committed itself to open hearings as a general rule and in this case the hearing was open to the public.

Last, Oracle cites to *Argus Leader* for the point that it does not have to show any competitive harm in order to justify sealing a document. DMSE at 9 n.5. *Argus Leader* did reject the old “competitive harm” test for the application of Exemption 4 of FOIA. But Oracle’s line of argument here ignores why “competitive harm” or some similar sort of inquiry might become relevant now. It is not because a straightforward application of Exemption 4 requires such an evaluation. Instead, application of Exemption 4, under *Argus Leader*, draws focus to both the character of the information at issue and the circumstances of submission to the agency. To decide the circumstances of submission to the agency, I

¹⁹ The Sixth Circuit reached a contrary conclusion in *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002). Considering a related issue about public access to administrative proceedings, the Second Circuit observed that though the Third and Sixth Circuits disagreed on the application, they both adopted the same test under *Richmond Newspapers v. Va.*, 448 U.S. 555 (1980) that recognizes an underlying principle of public access to government proceedings. *New York Civil Liberties Union v. New York City Transit Auth.*, 684 F.3d 286, 299-300 (2d Cir. 2011).

²⁰ The Third Circuit found it significant that some deportation hearings were closed by statute and that historical practice also effectively closed the hearings, since they were often held in prisons or other areas where there is no public right of access. OALJ has no such history. Hearings are generally held in courtrooms in federal buildings that are open to the public.

must adjudicate the motion to seal. *That*, in turn, could lead into a consideration of competitive harm or a related concept as an independent justification for sealing a document in the face of a presumption of public access, which would derivatively lead to the proper application of FOIA Exemption 4 under *Argus Leader*, since assurances of confidentiality were given when the motion to seal was decided.

Although I find that Oracle’s arguments for sealing confidential commercial or financial information are presented in an over-broad manner and tend to confuse the relevant inquiry, this does not mean that the motion to seal fails. That, instead, turns on what Oracle is *actually* trying to seal. After review, the actual requests are *far* less expansive than the general argument or categorical listings initially suggest. Moreover, this is not a case where Oracle has unilaterally decided what information to redact, or one where the parties have aligned interests and may have “colluded” in redacting information that does not meet the general standard I must apply. Each of the redactions in the current motion to seal has been agreed to by OFCCP and its attorneys as proper under governing law. This agreement was reached only after months of negotiations in repeated meet and confers. The parties had opposed interests in these negotiations—OFCCP generally sought the publication of information, Oracle generally resisted it. The negotiations were arms-length and conducted by teams of skilled attorneys. So while Oracle’s general argument may be unconvincing because it would shield too much, OFCCP’s input into and negotiation of the actual redactions is an indication that they are more appropriate than the broad, categorical argument suggests.

b. Recruitment Strategy Material

Upon independent review, I find that the redactions are mostly appropriate. Oracle has submitted declarations to support its claims that the material in question is considered confidential. Mallory Cohn is a “Lead Sourcing Manager” and does work related to Oracle’s recruitment and hiring program. DMSE MCD at ¶ 2. She declares that a number of exhibits²¹ involve “confidential college recruiting training and process manual” and involve sensitive material available only on a restricted access basis. *Id.* at ¶¶ 4-6. She adds that the information is treated as sensitive because it is economically valuable and provides Oracle with competitive advantages. *Id.* at ¶ 7.

Some of the information in these exhibits²² would provide a vantage on Oracle’s particular proposed compensation packages for candidates fitting a certain background. Oracle has redacted such information, and I agree that doing so is appropriate since it reflects Oracle’s developed strategies for recruiting talent that would lose value if other companies could either appropriate Oracle’s work in developing the strategy, or use to minimally outbid Oracle in the market (to the disadvantage of Oracle and the candidate/employee). The relevant point in this case is that Oracle had such guidelines/strategies. The exact details are immaterial to the issues presented for adjudication in this matter. Redactions in some exhibits, such as PX 189, are more extensive. But here Oracle has obscured screenshots from its internal and proprietary recruitment system that is part of a tutorial. Basic information about recruitment, including charts documenting the recruitment process, remain un-redacted. PX 335 contains significant redactions as to the schools that Oracle focuses on in its recruitment, but this is a subject of internal strategy and, again, the important point in this case is the existence, not substance, of the strategy. PX 342 (among other similar exhibits) contains a recruitment overview and guide, and is redacted to only obscure details about recruitment strategy, leaving almost all information about the program generally.

²¹ PX 76; PX 147 – PX 149; PX 167 – PX 170; PX 177 – PX 178; PX 182 – PX 185; PX 189; PX 334 – PX 335; PX 337 – PX 339; PX 342; PX 345; PX 357; PX 349 – PX 351; PX 480; PX 489 – PX 492; DX 330.

²² *E.g.* PX 76, PX 147 – PX 149.

c. Compensation Strategy Material

Kris Edwards is Senior Director of U.S. Compensation at Oracle and is responsible for, among other things, “the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs (when offered); overseeing the maintenance of and updates to Oracle’s U.S. job table and salary ranges; and supervising all of the U.S. compensation consultants.” DMSE KED at ¶¶ 2-3. The declaration supports sealing/redacting a significant number of exhibits²³:

Multiple items among the redacted materials in [these exhibits] contain confidential and proprietary information about Oracle’s compensation structure, and more particularly, specific, detailed salary information and ranges for various positions, aggregate employee compensation figures, equity distribution strategies, bonus allocation strategies, employee retention strategies, strategies regarding initial offers to new employees, focal reviews and focal budgets, and compensation information for specific, non-party employees. Some of these items also include job architecture-related information, including product and team organization information.

Id. at ¶ 5. Further, “[t]he commercial value of [this] information [] hinges entirely on its remaining confidential.” *Id.* at ¶ 6. It is the Oracle “work-product” that is the result of considerable effort and is used to attract and retain talent in a competitive market. *Id.* Publicizing the information would allow “Oracle’s competitors [] to leverage Oracle’s information to develop compensation structures designed to outbid Oracle in hiring or entice Oracle employees to leave.” *Id.* at ¶ 7.

The persuasiveness of these assertions turns crucially on the level of generality found in the redactions. Not all compensation information can be sealed—this is a case about compensation. Compensation is discussed in the expert reports and was openly discussed at the hearings. I do credit that compensation information that would implicate strategies for recruiting and retaining employees—both in the aggregate form of ranges/targets and in the particular form of individual offers—is developed through considerable effort, is valuable to Oracle, and would lose some its value if publicly disseminated. As such, it can be properly sealed as confidential commercial information. Reviewing the redactions in the specified exhibits, I find that Oracle has properly drawn the line and redacted only the information that is properly sealed.

For example, DX 21 and DX 24 both contain “guidance” related to compensation. In both exhibits, only the particular numbers and formulas are redacted, leaving all general statements and all of the information that might be relevant to a decision in this case. Oracle has properly removed the small pieces of information that would allow someone to appropriate Oracle’s particular methods for recruitment and retention, while leaving almost all of the information intact and understandable. The

²³ It lists the following joint exhibits: 14, 20-21, 24-25, 27, 51, 70, 78, 88, 102-106, 109-111, 113-115, 127, 129, 132-134, 138, 140-41, 150, 156, 160-161, 164.

The following Plaintiff’s exhibits are listed: 1, 8-10, 12, 21-24, 28-30, 32, 34, 39, 41, 53, 64, 76-77, 82, 85-86, 92, 94-98, 100-106, 117, 123, 125, 132-133, 141, 146-149, 151-152, 156, 158-59, 163-171, 174-177, 183-184, 186, 188, 190, 198, 213, 219, 226, 236-239, 252, 259-260, 266-267, 274, 294, 298-299, 301, 303, 312-319, 321-322, 330, 348, 353, 396-410, 423-424, 426-427, 431, 434-435, 444-445, 447, 469-470, 472-473, 476-478, 481, 484-487, 493, 496, 498, 504, 506.

The following Defendant’s exhibits are listed: 12, 24, 45, 47, 50, 56-83, 115-117, 126-129, 132-143, 148-154, 157-163-165-173, 175-178, 181-184, 186-187, 189, 192-195, 197-202, 258, 262-263, 265, 291, 295-300, 303-304, 309-310, 312-318, 321-322, 324, 326-327, 332, 335-341, 345-346, 348, 350-354, 356, 369, 375-377, 379, 392, 398, 401-403, 405-406, 408-409, 412, 419, 429-430, 435, 437, 441, 444-445, 449.

same holds in most of the training documents²⁴ where particular compensation information and examples are removed, but the substance remains. In some training documents²⁵ more of the information has been redacted. But this is due to the training involving more particular numbers and formulas that get into the specifics of the operation of the compensation program. I also find that the compensation information redacted in depositions²⁶ is minimal, leaving the entire substance of the evidence.

Similarly, I find that information about Oracle's compensation ranges or guidelines in other internal documents²⁷ is properly redacted and that the redactions have been minimized to protect the legitimate proprietary interests without removing additional information that gives sense to the documents.²⁸ I accept that Oracle extends considerable effort to develop the ranges, models, formulas, and strategies it uses in compensation, that it maintains these materials in confidence, and that publication of the information would significantly reduce their value to Oracle and cause it competitive harm. In addition, information from personnel files²⁹ or HR justifications/requests/offers³⁰ that relates to compensation (individual or range) is properly redacted on this basis, since it would enable poaching of employees.³¹

Oracle asks that some exhibits be entirely sealed on this basis. This is properly done on spreadsheets like JX 129, PX 260, PX 330, PX 424, PX 426 – PX 427, PX 431, DX 303 – DX 304, and DX 444 (and others) that compile individual compensation information.³² Oracle proposes sealing some exhibits that are not individualized in this manner. For instance, DX 117 contains a spreadsheet documenting Oracle's salary ranges for various positions. I agree that this is confidential commercial information. It is proprietary information based on Oracle's work in determining the range of salaries it considers appropriate and competitive for the market. Publication would undermine the value of the information and permit others to appropriate Oracle's compensation strategies. There is thus compelling reason to seal the sensitive information. Derivatively, the same sort of information is properly redacted from exhibits that Oracle seeks to seal in part, such as a variety of "Dive/Save" requests that include ranges as a point of reference.³³ Some spreadsheets³⁴ are properly sealed as containing both Oracle's developed compensation metrics/ranges and individualized compensation data.

²⁴ *E.g.* JX 24, JX 78, JX 106, JX 110, JX 113 – JX 114, JX 127, JX 140, PX 28, PX 30, PX 34, PX 141, PX 152, PX 158 – PX 159, PX 163, PX 174 – PX 176, PX 353, DX 115, DX 116, DX 258, and DX 263.

²⁵ *E.g.* JX 70, JX 115, PX 29, PX 156.

²⁶ *E.g.* JX 102, PX 12, PX 21 – PX 24.

²⁷ *E.g.* PX 146 – PX 149, PX 164 (most redactions are in the original submitted, not added as part of the motion to seal), PX 167 – PX 168, PX 198, PX 274, PX 348, PX 478, PX 485.

²⁸ In some instances these redactions are also supported by the declaration of Anje Dodson, a Senior Vice President of Human Resources at Oracle, though it focuses on the privacy interests involved in individual data, which is the clearer basis to redact that particular information. DMSE ADD at ¶¶ 2, 4-6. Exemption 4 more directly applies to Oracle's compensation formulas, ranges, and strategies.

²⁹ *E.g.* PX 94, PX 100 – PX 101, DX 56 – DX 83

³⁰ *E.g.* JX 27, PX 76, PX 82, PX 85, PX 92, PX 95 – PX 98, PX 102 – PX 105, PX 117, PX 298 – PX 299, PX 301, PX 303, PX 476 – PX 477, PX 481, PX 484, PX 486 – PX 487, PX 496, PX 506, DX 149 – DX 153, DX 158, DX 161 – DX 162, DX 295 – DX 299.

³¹ Although the same information is also, and more clearly, properly redacted as protected by FOIA Exemption 6.

³² Though this information is (again) more obviously sealed on personal privacy grounds under FOIA Exemption 6.

³³ *E.g.* JX 160, PX 312 – PX 318, PX 321, DX 126, DX 128, DX 132 – DX 137, DX 139 – DX 140, DX 142, DX 295 – DX 299.

³⁴ *E.g.* JX 20 – JX 21, JX 51, PX 423.

d. Proprietary Internal Systems and “Job Architecture” Material

Several other types of redactions are supported by the declaration of Victoria Thrasher, who is a Senior Vice President of Human Resources at Oracle. DMSE VTD at ¶ 2. She states that some of the redacted material consists of “job-architecture-related information that includes proprietary information about Oracle’s human resources strategies for structuring job positions and promotions.” *Id.* at ¶ 4. She represents that disclosure of this information would permit competitors to gain insights into Oracle’s strategies and organizational structure. *Id.* Ms. Thrasher also declares that some of the redactions apply to “confidential internal, network-related material that provides a roadmap regarding the configuration, structure, architecture, access points, and methods for data entry and extraction to and from the internal network and HR-, Compensation-, and Budget-related databases and applications.” *Id.* at ¶ 5. This information is considered confidential by Oracle because of the underlying data contained in the systems and the economic value that Oracle receives from its proprietary internal systems. *Id.* The systems in question are solely inward facing and are password-protected, with internal access limited. *Id.* at ¶¶ 6, 8. Ms. Thrasher explains that Oracle has devoted time and resources into developing and integrating its internal systems, and that the economic value of this investment would be lost if others were able to gain insight into them. *Id.* at ¶ 7.

Ms. Thrasher’s declaration supports redactions to a variety of exhibits.³⁵ A number of these exhibits include screenshots/tutorials/instructions for Oracle’s internal HR-related systems.³⁶ Though these materials sometimes include significant redactions for screenshots and the like, even in these documents, for instance PX 189, the information about the process is retained—the redacted document still reveals what the steps are, just not how they are executed in the internal system. I accept that these systems are proprietary and that Oracle has invested significant resources in developing them. It is initially less clear that disclosure of screenshots compromises their value or would somehow permit a third party to appropriate Oracle’s work in developing the system. The record provides glimpses of what those systems look like to a user and instructions for a user on how to operate within them, not, say, the coding. Ultimately, however, the Thrasher declaration provides an adequate basis for sealing these documents and OFCCP has agreed that this limited information is properly sealed. The internal configuration or functionality of these systems are immaterial to this case, and the redactions are limited.

Some of the proposed redactions—for example, in JX 149 and DX 113—would obscure information about how Oracle has titled and codified the jobs within its workforce, including some organizational elements. As to DX 113, however, similar information is already being released in, for instance, page four of the redacted version of PX 154, or pages five and nine of the redacted version of PX 34, or page nine of the redacted JX 149. The unredacted chart in PX 154 even provides more information than what Oracle seeks to obscure in DX 113. I perceive no basis for the inconsistent treatment and find that the information in DX 113 is benign. Hence, the motion to seal is denied as to DX 113.

JX 149 raises questions as well. Page 10 (slide 9) in the redacted version is revealed, but the information on pages eleven and twelve (slides 10 and 11) is redacted. Page 10 gives examples of

³⁵ Joint Exhibits: 10, 15, 23, 40, 70, 78, 88, 105, 107-109, 116-121, 126, 129, 146, 149-150, 153.

Plaintiff’s Exhibits: 34, 37-38, 45-46, 65, 75, 77, 99, 150-151, 154-155, 157, 177, 180-181, 186, 189-190, 274, 322, 337, 339, 342, 345, 347, 350-351, 357, 415.

Defendant’s Exhibits: 17, 24-32, 40, 113, 116, 263, 349, 396, 404.

³⁶ *E.g.* JX 10, JX 40, JX 78, JX 88, JX 105, JX 107 – JX 109, JX 116 – JX 121, JX 126, JX 139, JX 146, JX 153, PX 37 – PX 38, PX 65, PX 75, PX 77, PX 99, PX 150, PX 155, PX 157, PX 181, PX 189 – PX 190, PX 274, PX 322. PX 345, PX 357, PX 415, DX 25 – DX 32, DX 116, DX 263, DX 396, DX 404.

functions, specialties, and job families—a quite broad overview of some of Oracle’s organization. Page 11 does the same thing, just for different functions. It is not clear to me why page 10 is treated differently than page 11. They provide the same sort of information; in fact, it is the continuation of the same chart. After reviewing the materials and the asserted basis for sealing this material, I find that the information on page 11 (slide 10) should not be sealed. Page 12 (slide 11) contains similar information, except that the new chart here goes into more narrative detail about how Oracle defines its specialty areas. This detail provides information on how Oracle divides workload/responsibilities in sales, and thus is much more evidently a matter of strategic value and the sort of job “structure” or “architecture” that Oracle has developed to attempt to be competitive. Given the Thrasher declaration and the nature of the material, I find that the details on page 12 (slide 11) are properly redacted. The motion to seal JX 149 is thus denied as to page 11 (slide 10) but granted as to page 12 (slide 11).

A variety of redactions³⁷ are listed as pertaining to Oracle’s “job architecture,” which I take to mean Oracle’s more fine-grained organization of its workforce for HR purposes, to include its internal reporting structures and movement of employees between positions and career levels. I accept, based on the declarations, that Oracle has a propriety interest in these functionalities and in detailed information about them that might be appropriated or otherwise used by competitors. And I agree that some of the exhibits, and in particular the backup files for the expert analyses,³⁸ could reveal significant information about Oracle’s organization and strategies in that it could disclose details not already public. Sealing this information is hence proper. The same holds for some of the detailed spreadsheets.³⁹ What this information shares would enable a fine-grained analysis of Oracle’s workforce and its organization. It is not information about Oracle’s general organization, much of which is part of the open record, but more detailed points about the internal structuring of employees and the company that could be copied or analyzed by competitors. Hence, though “job architecture” as generally understood is over-broad and problematic, based on the manner in which limited redactions on this basis are being made in the actual exhibits, I find these proposed redactions appropriate.

In most instances the documents discussed in reference to Ms. Thrasher’s declaration so far have fairly minimal redactions that do not obscure material information, as it related to this case. There are several documents that Ms. Thatcher’s declaration addresses that are more heavily redacted, such as JX 70. Upon review, however, I find this appropriate since the information in question reflects Oracle’s internal research into and strategizing about its compensation practices and business challenges that it faces. Similarly, the redactions in a document like PX 151, which covers compensation strategies, are proper. Further, recruitment strategies⁴⁰ are also properly redacted since they represent Oracle’s confidential approach to securing talented employees in a competitive market. If divulged, other companies would be able to appropriate the value of this proprietary information. Those companies would then gain an unfair strategic advantage by knowing Oracle’s approach, or Oracle would have to expend resources to develop new strategies.

³⁷ *E.g.* JX 103 – JX 104, JX 131, JX 134, JX 136, JX 162 – JX 164, PX 219, PX 238, PX 260, PX 267, PX 320, PX 374 – PX 375, PX 380, PX 434 – PX 435, PX 469 – PX 470, DX 24, DX 307 – DX 316, DX 321, DX 323 – DX 328, DX 336 – DX 341, DX 345. The expert reports (JX 103 – JX 104) are discussed separately. DX 24 is coded in this manner by Oracle (DMSE GDA at 2), but does not fit for the others. Reviewing the minimal redacted content in DX 24, the proper basis for the redaction is that the particular information in question divulges Oracle’s compensation strategies and formulas. It is proper on that basis. It does not, however, provide information about “architecture.”

³⁸ *E.g.* DX 336 – DX 341, OX 434 – PX 435, PX 469 – PX 470.

³⁹ *E.g.* DX 307 – DX 316, DX 321, DX 323 – DX 328, DX 345, JX 131, JX 134, JX 136, JX 162 – JX 164, PX 219, PX 238, PX 260, PX 320, PX 374 – PX 375, PX 380

⁴⁰ *E.g.* PX 178, PX 337, PX 339, PX 342, PX 345, PX 347, PX 350, PX 351.

e. Expert Reports and Background Material

Expert evidence will be important in the resolution of this case, and so I have carefully scrutinized the redactions proposed for the expert reports and the supporting material. For some of the expert material submitted, the parties seek to seal the exhibit entirely. But this relates to the backup data for the reports, which provides the raw data and mechanics of the analyses. If this information is not sealed, it would reveal a great deal of personnel information about individual employees and confidential commercial information about Oracle. While the expert reports are central to this case, the backup data/files will play no role in the adjudication. I am not equipped to perform some sort of independent statistical analysis or manipulation, and it would be improper for an adjudicator to do so. I thus find that sealing this backup file / raw data material proper.

The outcomes of the expert analyses and the explanation/justification of the expert opinions as present in the reports and testimony, however, are quite different. They will be central to the case and there is significant public interest in the opinions. The redactions proposed, however, are minimal. PX 1 contains Dr. Madden's expert report. It is 137 pages long. Redactions are proposed on only two pages. On page 26, Oracle seeks to redact a number from a footnote. On page 44 it proposes redacting several numbers in the text. I accept that the numbers could provide competitors with insights into the details of Oracle's compensation strategy. The redactions do not obscure the sense of the point being made or any material information. PX 2 contains Dr. Madden's rebuttal report absent the appendices and DX 449 contains the full report. PX 2 has no proposed redactions. Oracle seeks a redaction of one column on a table on one page of DX 449 that tracks "Average Pay Growth." This column reflects raw compensation numbers and thus could provide insight into Oracle's compensation strategies. Importantly, the columns that track the gender/race coefficient and standard deviation—and thus the information of interest in *this* case—are not obscured.

Dr. Saad's expert report is in JX 103 and his rebuttal report is in JX 104. Oracle seeks more extensive redactions to these reports than to the reports of Dr. Madden, as catalogued in Attachment A. The underlying principle behind the redactions, however, is the same. Oracle seeks to redact what can be understood as "raw" numbers—figures like "average pay" that provide information in dollar amounts about what it pays particular, or particular groups of, employees. It does not seek to redact any "comparative" numbers—figures that analyze the raw numbers to determine percentages, coefficients, or standard deviations. Hence, the analysis as relevant to this case remains available for public scrutiny. The path to that analysis is somewhat obscured, since the base numbers as given in the text and charts are redacted. There is not a significant difference in what Oracle seeks to seal in the reports of Dr. Madden and Dr. Saad, there just happens to be more of it in Dr. Saad's reports given the manner in which the two experts chose to explain their opinions.

While I find most of the redactions in Dr. Saad's reports appropriate, there are several that cannot be sustained. In ¶ 38 spanning pages 18-19 of the report, Oracle has properly redacted the salary ranges for Oracle employees, found on the second to last line on p. 18 and the second line of p. 19. But on the last line of p. 18 Oracle also redacts a narrative explanatory point being made by Dr. Saad. This redacted narrative point is not a trade secret and does not divulge any details about Oracle's compensation strategies. The redacted portion simply states that bonus and equity awards are a large part of compensation at Oracle for high-level individual contributors and managers. This is benign and obvious. It says nothing about sizes of the compensation packages or the relative make-up. It only states a fact that is likely true of most publically traded companies. Compensating high-level employees with higher proportions of equity and bonus is not a trade secret or novel strategy that Oracle developed and has hidden from other companies. There is no good reason to redact this line.

Generally Oracle has properly redacted the base salary figures and ranges, which I agree is confidential. Since Dr. Saad discusses these more directly than Dr. Madden, the result is more redactions. In ¶ 43 on page 23, however, Oracle also redacts the narrative point being made by Dr. Saad on the third to fourth line of the paragraph, the fifth line of the paragraph, the sixth line of the paragraph, the eighth to ninth line of the paragraph, and the tenth line of the paragraph. The *only* point being made here is that there is overlap in the ranges that apply to different levels within Oracle. This is a potentially significant point that gets lost in the redactions, and I fail to see, after reviewing the materials submitted, why it should be sealed. It doesn't provide any particular information about Oracle that could be used to its competitive disadvantage or provide even particularly interesting or unexpected information about the company. Oracle has stressed at times in this litigation that its categorizations are rough and broad. That natural implication of this is that there is overlap in the compensation ranges. Oracle elicited testimony from Kate Waggoner, Oracle's Senior Director of Global Compensation Programs, at the hearing that Oracle's salary ranges overlap⁴¹, so the same point cannot be sealed in Dr. Saad's report. Details about the overlap and its extent would be a different matter and are properly redacted in the charts on the subsequent pages, but the redactions in question in paragraph 43 do not go to any such details. For the same reason, the last line of ¶ 139 is improperly redacted. The numbers earlier in the paragraph bearing out the point are correctly obscured, but the narrative conclusion does not appear in any way to be confidential information.

I further find that the redactions in ¶ 126 and the accompanying charts are too broad. The redactions on these pages not only obscure the details of the basis for the claim, they obscure the substance of the claim since Oracle has removed what the chart is supposed to show. In this section, Dr. Saad is comparing the compensation make up of various employees, and particularly managers and individual contributors. The chart detailing the exact make-ups of compensation, and the numerical basis provided for it in Attachment C, C-8, are properly redacted. I accept that the exact percentages of compensation type for different sorts of employees, the percentages receiving things like stock and bonus, and the average pay, stock, and bonus amounts, are confidential and proprietary, reflecting Oracle's particular compensation strategies. But this is quite different from the overall point contained in the first sentence of ¶ 126 and in the titles to the charts—which here is just that for individual contributors compensation is mostly base salary while for higher manager levels stock awards play a more significant role. That information does not need to be redacted in this section. That point is, again, no surprise and isn't some propriety trade secret or novel stratagem of Oracle. Absent the mechanics and numerical basis, the material does not reveal anything special or confidential about Oracle. Indeed, Oracle is not consistent on this point. While this information is redacted in the main report, the *same* information is left un-redacted in the chart underlying the point on page C8 or Attachment C. For the same reason, the redactions in ¶ 190 cannot be sustained—they again refer to the same point that those in higher career levels and management tend to receive more stock awards.

I also find that the redaction in ¶ 76 cannot be supported. It does not refer to anything in particular about Oracle or even about this case. Rather, it is part of a topic sentence making a general point about statistical analysis and the choice of independent variables in a regression analysis. The example of the point, which does refer to Oracle, is left as is and I do not follow why the portion that is redacted is confidential or private.

The redactions in Dr. Saad's rebuttal report, JX 104, are mostly appropriate. There are significant redactions in ¶ 28 and the following table and discussion related to two particular employees. Some of these redactions are appropriate under Exemption 6, some under Exemption 4. I do not

⁴¹ See Hearing Transcript at 1189, 1219.

follow, however, why the “Job Descriptor,” “Global Career Level,” and “Job Title” rows in the chart need to be redacted. Alone they are very general items of information—and the information I take it Dr. Saad and Oracle want me to attach significance to—that do not reveal anything personal, do not identify the employees, and cannot be understood as confidential commercial information. Those three rows should thus not be redacted, though I approve of the rest of the redactions here. The same holds in the charts following through page 29 of the report. I find the remaining redactions in the Dr. Saad’s rebuttal report proper.

f. Aggregate Employee Demographic Information

Several exhibits contain proposed redactions involving “internal employee demographic information.” While particularized information of this sort, i.e. information linked to specific employees, will be discussed below in reference to the FOIA Exemption 6 redactions, some exhibits contain aggregate employee demographic information and thus do not implicate FOIA Exemption 6. Any redactions of this aggregate, high-level information about the workforce as a whole must be justified under FOIA Exemption 4 if it is to be redacted. Upon my review, parts of five exhibits involved in Oracle’s Omnibus Motion to Seal Hearing Exhibits contain information of this sort that Oracle is seeking to redact.

DX 40 contains a portion of Oracle’s 2012-14 EEO-1 forms, which provides a listing of the number of employees in broad “job categories” who fit into various demographic groups. The job categories are not Oracle’s—they are imposed by the form and do not reflect the way Oracle has organized its workforce. The document contains no compensation information. It contains no individual information. The exhibit also includes a similar VETS100A for those three years in question, which provides aggregate data on the employment of veterans. It also contains some analysis of recruitment progress. The proposed redactions obscure all of the aggregate data in each set of forms/charts. JX 15 and PX 46 contain Oracle’s January 2014 Affirmative Action Plan. Oracle seeks to redact the aggregated analyses, i.e., the distribution of various demographic groups into job categories. JX 23 contains a similar job group analysis providing aggregate snapshots of Oracle’s workforce, which Oracle again seeks to redact. In DX 17 most of the redactions are in the original, but Oracle proposes adding redactions that would obscure aggregate demographic data.⁴²

Although the parties reached agreement on the proposed redactions for these exhibits, I have an independent obligation to evaluate the merits of the motion to seal. After reviewing the material submitted and the redactions proposed, I had doubts about the redaction of high-level aggregate demographic information. I was particularly concerned by a recent decision in a FOIA case in the Northern District of California, *Center for Investigative Reporting v. United States DOL [CIR v. DOL]*, No. 4:19-cv-01843-KAW, 2019 U.S. Dist. LEXIS 213793, 2019 WL 6716352 (N.D. Cal. Dec. 10, 2019). That case involved a FOIA request to OFCCP for EEO-1 forms submitted by federal contractors. EEO-1 data is collected by the EEOC and shared with OFCCP for federal contractors. The EEOC is prohibited, by statute, from releasing this information. See 42 U.S.C. § 2000e-8(e). OFCCP is not subject to this prohibition. See *Sears, Roebuck & Co. v. General Services Admin.*, 509 F.2d 527, 529 (D.C. Cir. 1974). The information may still be withheld, but only if it qualifies under an exception to the Freedom of Information Act.

⁴² The redactions for each of these exhibits are supported by the declarations from Ms. Thrasher (discussed above) and Mr. Dodson. Mr. Dodson’s declaration is more relevant to the personnel-file type information in some of the exhibits and will be discussed below.

In *CIR v. DOL*, the Department withheld the information on the basis of FOIA Exemption 4. The district court, however, granted summary judgment for the plaintiff requester and ordered the Department to produce the EEO-1 reports without redaction. The district court found that the EEO-1 reports were not “commercial or financial” in the meaning of FOIA Exemption 4 and that even if the reports were commercial in nature, there was a “significant possibility” that the reports would not be confidential in the meaning of FOIA Exemption 4. The court also held that the Department did not carry its burden under the “foreseeable harm” standard to justify withholding the material. Though the decision in *CIR v. DOL* has been stayed while an interested party seeks to intervene⁴³, the order staying the decision and available briefing indicates that the Department decided not to appeal the case.

The documents in this case differ in some respects, but *CIR v. DOL* has some close parallels that cannot be ignored. To begin with, *CIR v. DOL* concerned EEO-1 reports from ten companies—one of which was Oracle. If the Department is on the verge of releasing EEO-1 information from Oracle that overlaps with the filings here, the same information should not be sealed in this case. This could mean that at the least the redactions here must be narrowed. More generally, in deciding whether to approve the redactions and partially seal the exhibits in question, I must determine the FOIA Exemption 4 applies to this particular information. Insofar as there is overlap between the information in these five exhibits and the information at issue in *CIR v. DOL*, I must come to a contrary ruling on the merits of the issue or discern some distinguishing feature.

The district court decision in *CIR v. DOL* is not binding precedent in this adjudication, but it does have some persuasive value. The parties here reached agreement and addressed the Exemption 4 issue regarding aggregate demographic information in a large omnibus motion. The particular question had not been adequately briefed and supported with declarations or other materials that would assist me in making the relevant determinations. Accordingly, on March 17, 2020, I issued an order requesting additional briefing. I set forth the exhibits at issue, explained the interplay of *CIR v. DOL*, and informed the parties that I needed more information and argument concerning why this aggregate demographic data should be sealed. I directed Oracle to file a response and gave OFCCP the opportunity to do so. After one adjustment, any responsive briefs were due on April 3, 2020. No responsive briefs were filed.

CIR v. DOL involved EEO-1 Consolidated/Type-2 Reports that provide information about the number of employees at a company by race/ethnicity, gender, and job category.⁴⁴ Similar types of documents are at issue here. Three pages in DX 40 contain Oracle’s EEO-1 Type-3 report from 2012, 2013, and 2014, related specifically to the headquarters facility. These pages, two through four of the exhibit, are substantially similar to an EEO-1 Type-2 report. Oracle seeks to redact distribution information. The next three pages, five to seven, contain Oracle’s VETS-100A from 2012, 2013, and 2014. This form uses the same job categories as the EEO-1, but asks for distribution information by veteran status. Oracle again seeks to redact its distributions. Pages eight and nine differ in that they refer to specific “goals” in particular jobs, with Oracle’s progress to those goals. Oracle seeks to redact the distribution information as well as information about its numerical goals. The last two pages of the document, eleven to twelve, contain similar information about Oracle’s recruitment into particular job groups, with Oracle seeking to redact “Area Distribution Percent” information.

JX 15 and PX 46 contain Oracle’s January 2014 Affirmative Action Plan. The part at issue is a 181-page fine-grained work force analysis by individual job code, categorizing demographic information about employees in that job title. JX 23, in the relevant part, contains a January 1, 2014, “Job Group

⁴³ See *Center for Investigative Reporting v. United States DOL*, 4:19-cv-01843-KAW, 2020 U.S. Dist. LEXIS 19166, 2020 WL 554001 (N.D. Cal. Feb. 4, 2020).

⁴⁴ A sample form can be found here: <https://www.eeoc.gov/employers/eeo1survey/upload/eeo1-2-2.pdf>

Analysis” that provides demographic distributions by Oracle’s job title. Oracle seeks to redact the distribution information from the 19-page chart in the document. No other redactions in the document are sought. Only one redaction is sought in DX 17, which is a “Standard Compliance Evaluation Report (SCER) Form completed by OFCCP on July 29, 2016. The document itself already contains significant redactions made by OFCCP when it was provided to Oracle. Those redactions are in the original that is part of the hearing record and so are irrelevant to the motion to seal. The single additional redaction comes on the first page, where Oracle seeks to obscure a line reporting the percentage of its headquarters employees who are categorized as part of different demographic groups.

For a document to be exempt under Exemption 4, it must be a trade secret or involve “commercial or financial information.” 5 U.S.C. § 552(b)(4). *CIR v. DOL* reasoned that EEO-1 data is not commercial or financial because it provides only company-wide data for general job categories, not information about the organization of a company or the allocation of resources and the like. The district court reasoned that instances where demographic information was commercial or financial involved more detail and insight into the entities operations, structure, and strategies. Since the EEO-1 reports were general and used pre-set categories, the court reasoned that to find them to be commercial or financial information would make any statistical information about a business commercial. 2019 U.S. Dist. LEXIS 213793 at *10-16.

In FOIA, “commercial” and “financial” are given their ordinary meanings and although not every piece of information from a business will qualify as commercial or financial, information meets this standard when the submitting entity has “a commercial interest in the requested information.” *Public Citizen Health Research Grp. v. Food & Drug Admin.*, 704 F.2d 1280, 1290 (D. C. Cir. 1983); *see also Baker & Hostetler LLP v. United States DOC*, 473 F.3d 312, 319 (D.C. Cir. 2006) (Exemption 4 may apply, if the other facets are satisfied, “when the provider of the information has a commercial interest submitted to the agency”). So, for instance, information related to compliance efforts, analyses of a compliance program, and related training materials are “commercial” in the meaning of Exemption 4 because a company has a commercial interest in material that is instrumental to the way in which it operates. *See 100Reporters LLC v. United States DOJ*, 248 F. Supp. 3d 115, 136-37 (D.D.C. 2017).

With one potential exception that will become irrelevant below⁴⁵, I find that the exhibits at issue here are commercial or financial in nature. Although the categories used on the EEO-1 and similar forms are not Oracle’s and do not reveal Oracle’s organization of its workforce, they do provide information about the workforce according to a more general organization/categorization. That is, the categories are not entirely arbitrary—they are the categories that the government has decided is useful to understanding the demographic distribution at a company. While simple lists of employees might not be commercial information, *see Getman v. NLRB*, 450 F.2d 670, 673 (D.C. Cir. 1971), and, by analogy, mere headcounts wouldn’t be either, the information at issue here is somewhat more, reflecting some categorization, however, imperfect. It doesn’t provide very *good* information about Oracle’s organization and structure, but it does provide some information. As such, I find that Oracle does have *some* “commercial interest” in this information.

Moreover, reviewing the documents at issue in these five exhibits, the information is generally more detailed than that at issue in *CIR v. DOL*, which concerned only bare EEO-1 Type 2 reports. In the context of the larger documents at issue in this case, the information in question is commercial

⁴⁵ DX 17 is the exception, which is a document created by OFCCP and, in the relevant part, redacts demographic percentages for the whole headquarters facility. This may not be commercial in nature, even under the broad understanding of “commercial” in FOIA Exemption 4, but regardless, I find below that this information is not confidential and so should not be sealed.

insofar as it plays a role in Oracle's Affirmative Action Plan and compliance efforts etc. That makes a difference in that the information sheds more light on Oracle's operations and organization. This important difference brings the documents here more in line with *100Reporters LLC*, 248 F. Supp. 3d at 136-37 (D.D.C. 2017), the case *CIR v. DOL* viewed as the contrast where this sort of information would become commercial in nature.

The district court in *CIR v. DOL* also found it doubtful that the information in an EEO-1 was confidential; pointing out that the information was sometimes publically broadcast. 2019 U.S. Dist. LEXIS 213793 at *17-18. This discussion was brief, but, as the court observed, some of the prior discussion concerning the commercial nature of the documents was more properly a discussion of confidentiality. *See id.* at *12-13.

I find that the fine-grained analysis of Oracle's workforce found in the 2014 Affirmative Action Plan, found in JX 15 and PX 46, is confidential. This material is far more detailed than an EEO-1 and, crucially, uses very particular job titles employed by Oracle within the organization. The proposed redactions leave the job titles, but obscure the raw numerical distributions as well as salary codes. In an unredacted form, this chart would provide significant information about Oracle's organization and structure in terms of how it categories each of its employees and distributes its workforce among various functions, levels, and individual titles. The declarations submitted establish that Oracle keeps this sort of information confidential and has a proprietary interest in so doing. Because this analysis uses Oracle's categories, and very specific job titles, it is different in kind from an EEO-1 report, which uses generalized categories applied to all employers. The chart at issue in JX 23 is shorter, but the same considerations apply. This chart uses Oracle's job titles and organization, and so in its unredacted form provides significant information about Oracle's internal organization and distribution of its employees in different job titles and levels. I find this this information is properly redacted.⁴⁶ I thus grant the motion to seal as to JX 15, PX 46, and JX 23.

By contrast, Oracle has not shown compelling reason, or really any genuine reason, to seal the far more general aggregate demographic information found in DX 17 and DX 40. Only one redaction is sought in DX 17. Page one contains a one chart listing the percentage of Oracle's headquarters employees in several demographic categories. This reveals nothing about Oracle's structure or organization. It simply states the percent of headquarters employees, in all functions, that are female, etc. I do not follow what genuine danger or risk Oracle faces by the release of this information. It is not a trade secret. It does not say anything about Oracle's strategies or how Oracle configures its workforce or its organization. It could not possibly be used to poach employees—a competitor gains no advantage is seeing that such and such percentage of Oracle's total headquarters workforce was female, for instance, as of a certain date. Perhaps Oracle seeks to redact the information because it worries that it may be embarrassing in some sense, but the potential for embarrassment is an inadequate basis for sealing an exhibit submitted for a decision on the merits of an action. *See, e.g., Kamakana*, 447 F.3d at 1179. I will therefore deny the motion to seal as to DX 17.

DX 40 is more complicated. To begin with, it contains the EEO-1 Type 3 and VETS-100A reports and so is most similar in kind to the documents at issue in *CIR v. DOL*. These two types of forms provide more information than the percentages at issue in DX 17—they provide distributive headcounts for specified demographic categories in each job type on the form. However, unlike JX 15, PX 46, and JX 23, these are not *Oracle's* categories and there is no fine-grained description or analysis. I

⁴⁶ The analysis of this information on a statistical basis would not be properly redacted, and those redactions aren't even being sought. What is at issue here is not the analysis relevant to the case, but the raw base data that could also be used to learn a number of other things about Oracle's internal structure and organizational strategy.

found this sort of information commercial in nature, but I do not perceive any compelling reason to keep it confidential. It says something about Oracle, but nothing particularly useful in terms of how Oracle organizes itself and distributes employees in particular job functions. Though more informative than the information in DX 17, it is still not very informative and would not be useful to a competitor of Oracle. Oracle bears the burden of providing compelling reason to seal the information, and as to the charts on pages two through seven of the document, I find the declarations and arguments deficient in spelling out how exactly this sort of high-level aggregate data is properly confidential even when submitted to an adjudicator for a decision on the merits. It was this deficiency in the motion to seal and supporting declarations that Oracle was directed to address in the brief it was ordered to file, but that it never submitted.

On the other hand, the redactions of the information in the rest of the document, on pages eight to nine and eleven to twelve, are different and different considerations apply. These pages deal with Oracle's analysis of its compliance efforts. They use Oracle's job groups, not the broad categories imposed by the EEO-1. Oracle very clearly marked them as confidential when they were produced in discovery (which is true of most documents) but also when these analyses were first created. Since the information here sheds more light on Oracle's internal processes and compliance efforts, I find that the parties' agreement to seal some of the information is appropriate. Accordingly, the motion to seal in reference to DX 40 is denied as to pages two through seven but granted as to pages eight to nine and eleven to twelve.⁴⁷

4. Exemption 6 Documents

The remaining redactions and requests to seal exhibits are premised on FOIA Exemption 6 and the privacy interests that would be compromised by publication of some of the material submitted in this case. A record or portion thereof may be withheld under Exemption 6 if it is a "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The initial question is whether the information in question is contained in a personnel, medical, or similar file. If it is, it must be determined whether disclosure would constitute a clearly unwarranted invasion of personal privacy. *United States Dep't of State v. Wash. Post Co.*, 456 U.S. 595, 598 (1982); *N.Y. Times Co. v. NASA*, 920 F.2d 1002, 1004 (D.C. Cir. 1990) (en banc). "Congress' primary purpose in enacting Exemption 6 was to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Wash. Post Co.*, 456 U.S. at 599. It is a "general exemption" and "similar files" is given a broad meaning. *Id.* at 600. The information need not be "intimate" in nature; rather, "[w]hen disclosure of information which applies to a particular individual is sought from Government records, courts must determine whether release of the information would constitute a clearly unwarranted invasion of that person's privacy." *Id.* at 601-02.

To make that determination, the privacy interests residing in the information in question must be weighed against "the core purpose of FOIA," which is "contributing significantly to public understanding of the operations or activities of the government." *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 495 (1994) (quoting *Department of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 775 (1989)) (emphasis removed). So while "[o]fficial information that sheds light an agency's

⁴⁷ The findings here also eliminate any potential that information DOL is poised to release pursuant to the district court's order in *CIR v. DOL* will be sealed in this case. That case concerned the EEO-1, and the information that would be found on that form is not being sealed here. While all of the information here goes to aggregate employee demographics, the important distinction in this analysis is whether or not the manner of carving up the workforce reflects Oracle's fine-grained categories or some imposed general categorization. Only the former are being sealed here. *CIR v. DOL* concerned only the latter.

performance of its statutory duties falls squarely within [FOIA's] statutory purpose," FOIA's 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." *Reporters Comm. For Freedom of Press*, 489 U.S. at 773.

The Ninth Circuit has recently explained that

Balancing these interests involves two steps. "First, we evaluate the personal privacy interest at stake to ensure that disclosure implicates a personal privacy interest that is nontrivial or . . . more than [] de minimus." "Disclosures that would subject individuals to possible embarrassment, harassment, or the risk of mistreatment"—including disclosures of an individual's identity—"constitute nontrivial intrusions into privacy under Exemption 6."

Civil Bear Law Ctr. For the Pub, Interest, Inc. v. Centers for Disease Control & Prevention, 929 F.3d 1079, 1091 (9th Cir. 2019) (quoting *Camerasani v. United States DOD*, 856 F.3d 626, 637-38 (9th Cir. 2017) (alternations in original) (internal quotations omitted)) (internal citations omitted).

Second, "the requester must show that the public interest sought to be advanced is a significant one and that the information [sought] is likely to advance that interest." For this second step, "the only relevant public interest in disclosure to be weighed in this balance is the extent to which disclosure would serve the core purpose of the FOIA, which is contribut[ing] significantly to public understanding of the operations or activities of the government."

Id. (quoting *Camerasani*, 856 F.3d at 637 (alternation in original) (internal quotation omitted); *Federal Labor Relations Auth.*, 510 U.S. at 495 (alternation in original) (internal quotation omitted)) (internal citation omitted). "[T]o determine whether a record is properly withheld, [an adjudicator] must balance the privacy interest protected by the exemption[] against the public interest in government openness that would be served by disclosure." *Labr v. NTSB*, 569 F.3d 964, 973 (9th Cir. 2009).

Oracle presents a compelling argument for sealing material under Exemption 6. This case is about allegations of systemic discrimination by Oracle against women and minorities in certain job functions. It does not involve, and the decision will not turn on, any details about individual employees or applicants. At the most, that sort of information provides anecdotal evidence to compliment what is in large part of statistical case based on expert evidence. In those instances, privacy interests have been waived. Oracle and OFCCP do not seek to seal that evidence. Instead, the Exemption 6 claims relate to a host of individualized information—demographic information, compensation information, performance information, etc.—that stands behind the expert analyses or is otherwise contained in the files obtained from Oracle. Adjudicating this case will not, and could not, involve independent analysis of this personnel-file type information—that is why both sides engaged experts. This is a case alleging systemic intentional discrimination by Oracle; it is not a case about individual discrimination. Hence, the troves of individualized personnel data that have found their way into the record will shed little to no light on OALJ's performance of its duties.⁴⁸

⁴⁸ Again, the exception concerns individuals who testified or in some way offered more specific evidence that could inform the decision. But that information is not being withheld, insofar as privacy interests were waived.

These un-involved third parties have a genuine interest in keeping details from their personnel files (or similar files) private, including individualized compensation information, evaluations of their performance or application for employment, and personal identifying information. None of this information—as it pertains to individuals rather than in the aggregate analyses—has been put at issue in this case. There is thus little cognizable public interest in this information that would be recognized under FOIA, since these ancillary details will not shed light on the agency’s performance of its duties. This case isn’t about individuals and revealing individual information will not inform the public about OFCCP’s investigation, OFCCP’s allegations, Oracle’s defenses, or the eventual decision. The genuine puzzle I am presented with in much of the material in question is not whether it should be sealed as properly withheld under Exemption 6, but why the parties found it necessary to overburden the record with so much immaterial private and often sensitive personnel information in the first place.

Oracle’s proposed redactions and wholly sealed exhibits pursuant to FOIA Exemption 6 are generally supported by the declaration of Anje Dodson, who is a Senior Vice President of Human Resources at Oracle. DMSE ADD at ¶ 2. Mr. Dodson states that the information contained in these exhibits⁴⁹ was derived from Oracle’s personnel and similar files and databases that the company goes to lengths to protect. *Id.* at ¶ 4. They include job performance evaluations/assessments as well as other personal information that these uninvolved individuals have legitimate interests in protecting and that Oracle keeps in confidence. *Id.* at ¶¶ 5-6. Kris Edwards’ declaration also supports sealing individual compensation information for Oracle employees on this basis.⁵⁰ The third-party individual employees in question have a privacy interest in their particular compensation numbers and Oracle takes significant steps to protect this information and retain its confidentiality. DMSE KED at ¶¶ 8-11.

Upon review, I find the redactions related to information about individual employees and applicants appropriate. For instance, in DX 330, Oracle has proposed redacting only information that could serve to identify the candidate being discussed, leaving the substance of the email in the exhibit. The redacted copy provides the information that might be relevant to the case, and is thus of public interest, without compromising the legitimate privacy interests of the individual in question, who would otherwise have private, internal evaluations of his candidacy publically aired. In documents like DX 7 and PX 185, Oracle proposes redacting the material that would give the interviewee or candidate’s name and contract information. The substance of the exhibit, and the portions that could be relevant to the adjudication, remain.

⁴⁹ The following joint exhibits are listed: 9, 14-15, 20-21, 23, 27, 51, 103-104, 130-134, 136-137, 160-164.

The following Plaintiff’s exhibits are listed: 8-10, 21, 244, 39, 46, 64, 72, 74, 83-84, 86, 90-92, 94-98, 100-106, 111-117, 120-129, 132-133, 151, 180-181, 190, 213, 226, 236-239, 258-60, 266-267, 294, 298-299, 301, 303, 312-321, 330, 346, 361-411, 414, 423-435, 444-447, 449, 469, 470, 472, 473-479, 481-499, 501-503, 505-512.

The following Defendant’s exhibits are listed: 6-8, 12, 17, 26, 40-41, 45-48, 50, 56-83, 116, 126-202, 246-247, 263-291, 295-303, 305-319, 321-328, 331-341, 343-348, 350-437, 440, 444-445.

⁵⁰ The Edwards Declaration generally pertains to the following joint exhibits: 14, 20-21, 24-25, 27, 51, 70, 78, 88, 102-106, 109-111, 113-115, 127, 129, 132-134, 138, 140-41, 150, 156, 160-161, 164.

It relates to the following Plaintiff’s exhibits: 1, 8-10, 12, 21-24, 28-30, 32, 34, 39, 41, 53, 64, 76-77, 82, 85-86, 92, 94-98, 100-106, 117, 123, 125, 132-133, 141, 146-149, 151-152, 156, 158-59, 163-171, 174-177, 183-184, 186, 188, 190, 198, 213, 219, 226, 236-239, 252, 259-260, 266-267, 274, 294, 298-299, 301, 303, 312-319, 321-322, 330, 348, 353, 396-410, 423-424, 426-427, 431, 434-435, 444-445, 447, 469-470, 472-473, 476-478, 481, 484-487, 493, 496, 498, 504, 506.

And it lists the following Defendant’s exhibits: 12, 24, 45, 47, 50, 56-83, 115-117, 126-129, 132-143, 148-154, 157-163-165-173, 175-178, 181-184, 186-187, 189, 192-195, 197-202, 258, 262-263, 265, 291, 295-300, 303-304, 309-310, 312-318, 321-322, 324, 326-327, 332, 335-341, 345-346, 348, 350-354, 356, 369, 375-377, 379, 392, 398, 401-403, 405-406, 408-409, 412, 419, 429-430, 435, 437, 441, 444-445, 449.

Some of the exhibits in question contain printouts from Oracle's internal personnel/applicant files.⁵¹ A large number involve internal justifications/approvals for hires, promotions, or raises at Oracle.⁵² Others are resumes from applicants.⁵³ In these sorts of documents, Oracle has properly redacted personal identifying information. I also find that the information redacted from depositions is appropriate. For instance, in PX 10 Oracle seeks to redact information that would identify employees who made complaints. The substance of the testimony potentially related to this case remains (that there were complaints and the process for addressing them) and the redactions properly obscure only identifying information and details. Similarly, the redactions of identifying information from documents involving investigations of complaints is appropriate.⁵⁴ The individuals in question made what were private complaints or raised private questions and have a significant interest in keeping their inquiries private. The basic substance of the complaint and the HR response might have some bearing on the issues in the case, but the proposed redactions do not obscure this sort of information.

In some instances Oracle seeks to seal an entire exhibit pursuant to Exemption 6. So, for instance, DX 41 consists of several spreadsheets that would be sealed. Doing so is appropriate. The spreadsheets at issue consist of lists of names with information pertaining to the individual in question. The information is private in nature and nothing meaningful would remain if the private information were removed. DX 50 contains a massive database of personal information as well as individual compensation numbers. A number of other exhibits⁵⁵ are similar in containing large amounts of individualized personnel type information and nothing else. Some of the exhibits in question⁵⁶ contain large amounts of individual appraisal data. In addition, a number of spreadsheets submitted by OFCCP represent internal coding and tracking of candidates/hires to Oracle.⁵⁷ Another group⁵⁸ consists of spreadsheets tracking college hires. I agree that these are properly sealed in their entirety, as they consist solely of records of private information about candidates/employees. If the private information were removed, nothing meaningful would remain.

Some spreadsheets⁵⁹ contain database coding of personnel information for individual employees that could serve as a basis for further analysis. While the results of such analysis are public, the underlying base data for individuals would not serve a public interest by being disclosed and would compromise a variety of legitimate privacy interests of the employees listed, none of whose individual situation is at issue in this litigation. The same holds for the backup data files for the expert reports (and earlier statistical analyses). These exhibits⁶⁰ represent the mechanics of the various statistical analyses that ultimately produced the reports. Since the aggregate results involved the manipulation and analysis of large amounts of individualized data, these backup files contain a host of private information about uninvolved individuals' identity, demographics, compensation, performance, and more. With these files, and all of the large data files containing individual information, the public interest would not be served by publicizing the trove of private information. The expert reports will be very important in the adjudication. But I am not equipped to do my own sort of analysis and development of competing

⁵¹ *E.g.* DX 56-83.

⁵² *E.g.* PX 39, PX 74, PX 90 – PX 92, PX 94 – PX 98, PX 301, PX 303, PX 425, PX 472 – PX 479, PX 481 – PX 487, DX 126 – DX 202.

⁵³ *E.g.* DX 269-289.

⁵⁴ *E.g.* PX 111 – PX 116, PX 120 – PX 128.

⁵⁵ *E.g.* JX 20, JX 21, JX 51, PX 423, PX 436 – PX 437, DX 290, DX 291, DX 303, DX 313DX 314, DX 315, DX 316 and DX 444.

⁵⁶ *E.g.* DX 301, DX 302, and DX 305.

⁵⁷ *E.g.* PX 361 – PX 373, PX 396 – PX 410, PX 414.

⁵⁸ *E.g.* PX 508 – PX 512.

⁵⁹ *E.g.* JX 131, JX 132, JX 161 – JX 164, PX 236 – PX 239, PX 330, PX 375, PX 445 – PX 447, and DX 321 .

⁶⁰ *E.g.* PX 434 – PX 436, PX 469 – PX 470, DX 336 – DX 341

expert opinions and even if I were, it would be improper for an adjudicator to do so. The underlying data and mechanics were important to the experts in conducting their own analyses and critiquing the analyses of the other, but will play no role in my adjudication and will thus not shed light on the activities of the agency.

In sum, I find that the exhibits in question contain private information about individuals from personnel and similar files and that these individuals have a non-trivial (and often quite substantial) privacy interest in protecting that information. The record contains information identifying uninvolved employees and applicants along with significant amounts of demographic information, compensation information, and other employment-related information, such as performance appraisals. Given the nature of this litigation, these sorts of private, individualized information will play little to no role in the decision and will not shed light on the activities of the agency. As a result, in balancing the interests, even slight privacy interests in private personal information outweigh the public interest in disclosure. Reviewing the redactions and requests to seal entire exhibits, generally consisting of individualized databases, I find the parties' agreement proper. Oracle's omnibus motion to seal the hearing exhibits as to the Exemption 6 material is thus granted.

5. Summary

For the reasons stated above, Oracle's Omnibus Motion To Seal Hearing Exhibits is granted in part. The parties reached agreements about the appropriate redactions consistent with FOIA Exemption 4 and FOIA Exemption 6. After independently reviewing the parties' agreements and Oracle's arguments, I agree that the redactions pursuant to FOIA Exemption 6 are proper and that most redactions pursuant with FOIA Exemption 4 are proper. With several exhibits, however, I find that the agreement cannot be sustained and that the exhibit can be partially sealed with reduced redactions. Accordingly, it is hereby ordered that:

1. Consistent with the parties' agreement, the following exhibits are sealed in their entirety, with the exhibit cover page left in the public file:
 - a. JX 14; JX 20 – JX 21; JX 51; JX 129 – JX 134; JX 136 – JX 137; JX 156; JX 161 – JX 164.
 - b. PX 8 – PX 9; PX 64; PX 132 – PX 133; PX 219; PX 236 – PX 239; PX 259 – PX 260; PX 319 – PX 320; PX 322; PX 330; PX 361 – PX 377; PX 380 – PX 411; PX 414; PX 423 – PX 424; PX 426 – PX 436; PX 444 – PX 447; PX 469 – PX 470; DX 508 – PX 512.
 - c. DX 41; DX 45; DX 50; DX 117; DX 264 – DX 266; DX 290 – DX 291; DX 300 – DX 306; DX 309 – DX 316; DX 321 – DX 322; DX 324 – DX 328; DX 336- DX 341; DX 343 – DX 345; DX 444.
2. Consistent with the parties' agreement, the following exhibits are sealed in part, with the proposed redacted exhibit submitted by the parties replacing the unredacted exhibit in the public file.
 - a. JX 9 – JX 10; JX 15; JX 23 – JX 24; JX 27; JX 40; JX 70; JX 78; JX 88; JX 102; JX 105 – JX 111; JX 113 – JX 121; JX 126 – JX 127; JX 138 – JX 141; JX 146; JX 150; JX 153; JX 160.
 - b. PX 1; PX 4; PX 10; PX 12; PX 18; PX 20 – PX 24; PX 26; PX 28 – PX 30; PX 32; PX 34; PX 37 – PX 39; PX 41; PX 45 – PX 46; PX 52; PX 65; PX 72; PX 74 – PX 77; PX 82 – PX

83; PX 85 – PX 86; PX 90 – PX 92; PX 94 – PX 106; PX 111 – PX 117; PX 120 – PX 129; PX 141; PX 146 – PX 152; PX 154 – PX 159; PX 163 – PX 171; PX 174 – PX 178; PX 180 – PX 186; PX 188 – PX 190; PX 198; PX 213; PX 226; PX 252; PX 258; PX 266 – PX 267; PX 274; PX 294; PX 298 – PX 299; PX 301; PX 303; PX 312 – PX 318; PX 321; PX 334 – PX 335; PX 337 – PX 339; PX 342; PX 345 – PX 351; PX 353; PX 357; PX 415; PX 425; PX 449; PX 472 – PX 487; PX 489 – PX 493; PX 495 – PX 499; PX 501 – PX 507.

- c. DX 6 – DX 8; DX 12; DX 21; DX 24 – DX 32; DX 40; DX 46 – DX 48; DX 56 – DX 83; DX 115 – DX 116; DX 126 – DX 202; DX 246 – DX 247; DX 258; DX 262 – DX 263; DX 267 – DX 289; DX 295 – DX 299; DX 307 – DX 308; DX 318 – DX 319; DX 323; DX 330 – DX 335; DX 441; DX 346 – DX 437; DX 440; DX 445; DX 449.

3. The following exhibits are sealed in part, consistent with the determinations of the proper redactions above, with versions containing only the reduced redactions approved above replacing the unredacted exhibit in the public file:

a. JX 103; JX 104; JX 149.

b. DX 40.

4. Oracles Omnibus Motion to Seal Hearing Exhibits is denied as to DX 17 and DX 113.

B. Defendant’s Motion to Seal #6

1. The Documents at Issue

Oracle’s Motion to Seal #6 involves documents submitted with three separate filings: 1) OFCCP’s reply to Oracle’s opposition to OFCCP’s Motion for Summary Judgment (“PRSJ”), filed on November 8, 2019; 2) OFCCP’s reply to Oracle’s opposition to OFCCP’s motion to exclude the evidence of Dr. Saad (“PREE”), also filed on November 8, 2019; and 3) OFCCP’s motion in limine (“PMIL”), filed on November 15, 2019. It seeks to seal portions of the following

Document	DMS6 Location	Underlying Location	Redaction and Basis	Subsequent Location
OFCCP Reply Brief on Motion for Summary Judgment	DMS6 Ex. A	PRSJ	a) Comp info on p. 9 (FOIA 4 & 6); b) Termination date of employee on p. 9 (FOIA 6)	None
OFCCP Reply Brief on Motion to Exclude Expert Evidence	DMS6 Ex. B	PREE	a) Comp info on p. 9 n.18 (FOIA 4 & 6); b) Termination date of employee on p. 9 n.18 (FOIA 6)	None
Declaration of Janet Herold Re: PREE	DMS6 Ex. C	PREE JHD	a) Comp info at ¶¶ 2, 3, 5 (FOIA 4 & 6); b) Termination date of employee at ¶¶ 4-5 (FOIA 6)	None
US College Recruiting Manual (7/21/15)	DMS6 Ex. D	PREE DJD Ex. B	Confidential Network Info at 383687-90	PX 189

Declaration of Priyanka Jampana Re: PREE	DMS6 Ex. E	PREE PJD	a) Comp info at ¶ 9 (FOIA 4 & 6); b) Personally-identifying and sensitive info at ¶¶ 7, 10, 12 (FOIA 6)	None
Except from Deposition of Tamerlane Baxter	DMS6 Ex. F	PMIL LBD Ex. C	Personally-identifying information	PX 10

DMS6 at 2-4.

2. Application of Prior Determinations

DMS6 Ex. D. is the same document found in PX 189. The parties reached agreement on the proper redactions in PX 189 in the January 17, 2020, status report. JSR5 at 2. PX 189 was part of motion to seal the hearing exhibits, and the agreement of the parties as to the redacted portions was approved above. PREE DJD Ex. B should thus be replaced by the redacted version of PX 189. In addition, DMS6 Ex. F is an excerpt from a deposition contained in PX 10. The redactions to PX 10 were decided above. The page in question in PMIL LBD Ex. C shall thus be sealed and replaced by the redacted version of the page found in both PX 10 and DMS 6 Ex. F.

3. Disputed Redactions

DMS6 Ex. A involves OFCCP’s Reply Brief to Oracle’s Opposition to OFCCP’s Motion for Summary Judgment. Oracle proposes two sorts of redactions on page nine of the document, which have the effect of obscuring the exact compensation figures for the individual under discussion as well as the termination date of the employee. DMS6 Ex. A at 9. The discussion relates to a dispute over the correct metric for measuring compensation, and the effect that has in this particular employee’s situation. The employee is not named, but she is described and given an ID number. *Id.* Oracle contends that the particular compensation figures should be redacted under FOIA Exemptions 4 and 6 and the termination date should be redacted under Exemption 6. OFCCP, in this briefing, agrees to the redaction of the termination date, as this would tend to identify the employee, but not the compensation numbers. DMS6 at 2; POS6 at 7-11.

OFCCP’s position on this sort of information changed insofar as its ultimate position agreed to the redaction of individual compensation figures. The parties’ agreement was accepted above. I find that the redaction of both the termination and compensation information is appropriate under Exemption 6. This material is derived from personnel records or databases involving the employment history and pay of an individual. Though the individual is not named, enough identifying characteristics are provided that could enable identification. That risk may be slight, but it is cognizable. There is no indication that this individual has waived the privacy interests in question. On the other hand, there is no public interest in the particular compensation figures or the date of termination. Neither had any bearing whatsoever on the disposition of the motion for summary judgment. Even if the point in question had played a role, and thus could conceivably shed light on the decision-making of the adjudicator, the limited particular information being redacted here wouldn’t have been part of that determination. The point being made is about how differences in measuring compensation can produce different amounts, and result in different comparisons to others in the statistical analysis. That point is fully made in the redacted version—the specific dollar amounts are not important. Weighing the privacy interests in question (with the slight but cognizable risk they would be compromised) against the lack of public interest in disclosure, I find that redacting the information is appropriate.

DMS6 Ex. B relates to OFCCP's reply brief to Oracle's opposition to OFCCP's motion to exclude Dr. Saad's evidence. It concerns one footnote. DMS6 Ex B. at 9 n.19; PREE at 9 n.19. The footnote uses the same example used in OFCCP's reply brief on summary decision to make essentially the same point. *Id.* The same resolution applies—I conclude that the particular numbers and termination date are subject to Exemption 6 and should be redacted. Though the motion at issue here is different, the particular example played no greater role in the resolution. OFCCP's point involved the different methods for measuring compensation being used by the experts and the implications of those methods for the analyses. That point is still made without the particular numbers or identifying information. DMS6 Ex. C involves a declaration submitted with the reply brief on the motion to exclude expert evidence. The proposed redactions involve the same information about an individual employee's compensation and termination date just discussed. *See* DMS6 Ex. C at ¶¶ 2-5. For the same reasons, I find the proposed redactions appropriate.

Last DMS6 Ex. E pertains to a declaration from Priyanka Jampana submitted with OFCCP's reply brief to Oracle's opposition to OFCCP's motion to exclude the evidence of Dr. Saad. Oracle avers that compensation information about another employee is subject to Exemptions 4 and 6 and should be redacted. It also seeks to redact personally identifying information about other employees—to include description of the work performed, team make-up, retirement dates, and race. DMS6 at 3. OFCCP agreed to some of the redactions, but opposed others. *Id.* OFCCP's opposition to the motion to seal only briefly discusses the Exemption 6 redactions, but tends to indicate that it does not think that some of the information, like a reference to the form and timing of compensation, represents a clearly unwarranted invasion of personal privacy because when other information is obscured, the individual in question cannot be identified. POS6 at 10-11.

The parties have shifted positions on identifying information. During discovery, OFCCP asserted the government informant's privilege to obscure large blocks of information based on the position that even small pieces of information concerning an individual's experience could be used to identify the informant. Oracle opposed this, seeking release of all but strictly identifying information. Here, Oracle seeks to redact descriptive information about the work performed, the history of employment, and the composition of the team. Ms. Jampana waived her privacy interests in the content of the declaration when she executed it for inclusion with the filing. Oracle does not seek to redact the name or other information about the manager. Rather, it seeks to redact information that would tend to identify and describe other employees at Oracle who are not involved in this case and have not waived their privacy interests. The basis for this is that publication of the information could reveal personal details about them or make them a part of the case. OFCCP agrees that the names at least should be redacted, as well as some other potentially identifying characteristics, but disputes the scope of the redactions on the grounds that they are not identifying and would thus not represent an invasion of personal privacy.

In the context of the government informant privilege, several orders directed OFCCP to make more limited redactions and not to use the privilege to obscure information that was not identifying. This culminated in an October 7, 2019, Order Granting in Part and Denying in Part Defendant's Motion to Compel OFCCP to Comply with the Court's Discovery Orders. That order determined that OFCCP was over-redacting, and it took particular issue with redactions that obscured whole paragraphs or sentences when only portions thereof were potentially identifying. That is not what Oracle has proposed here—the redactions in question are limited and do not obscure the sense of the narrative. *See* DMS6 Ex. E at ¶¶ 7, 10, 12. The October 7, 2019, order did not take issue with OFCCP's redaction of potentially identifying information so long as it was limited to the particular information, left the context, and there was a reasonable basis for concluding that the information could be identifying (e.g. at p. 11).

I do not see why a different result should follow now. The parties are in agreement that it would be an unwarranted intrusion on personal privacy for a third-party employee to be identified as “at issue” in this litigation, with personal characteristics and history described. The question was essentially the same in the prior orders concerning the government informant privilege. Both parties appear to want to push in the opposite direction now that their litigation interests are shifted, but the same careful balance should apply here. So the question becomes whether or not the information in this declaration is actually identifying in some way, which appears to be disputed by the parties to some degree.

The exact scope of the disagreement, however, is unclear. My understanding of OFCCP’s proposal is based on the chart submitted by Oracle reflecting the meet and confer prior to the motion to seal. That meet and confer and a statement of the areas of agreement and disagreement was required by the terms of the November 12, 2019, Order Regarding Motions to Seal (at ¶ 3). The November 12, 2019, order also required that “all opposition to a motion to seal must contain the opposing party’s proposed redactions to the same documents,” except that this was not required “if the party agrees or disagrees with *all* of the redactions of the moving party—doing so is only necessary where a different set of redactions is proposed” (at ¶ 5). In this instance, OFCCP proposes a different set of redactions. It has not, however, provided a copy of those redactions. Nor can I tell exactly what the proposed redactions would be—based on the meet and confer, OFCCP opposes redacting “a word at ¶ 7, line 21.” DMS6 at 3. But there are eight redacted words on that line. I don’t know which one OFCCP believes can be un-redacted, and though I could guess, the November 12, 2019, order was designed to eliminate any need to guess and to prevent the parties from shifting their workload to the adjudicator by generally making claims and suggestions and then hoping that this office would figure out and make the relevant applications.

Nonetheless, I have an independent duty to review the proposed redactions. I find most proper in that they obscure potentially identifying or personal information and could draw these uninvolved third parties into the public litigation. The public interest in disclosure is slight, and as to the identifying information nonexistent. The declaration supported a peripheral point in the reply brief and played no role in the resolution of the motion. However, I find the redactions of race information in the last sentence of ¶ 7 and the race and sex information in the first sentence of ¶ 12 are not appropriate. It is not clear to me why this information alone presents a risk to personal privacy and it is similar to the sort of information provided by anecdotal witnesses at the hearing in open court. Hence, the motion is denied as to “White” and “White male” in ¶¶ 7 and 12, but otherwise granted on the basis of Exemption 6.

4. Summary

Oracle’s Motion to Seal #6 is granted in part and denied in part. It is granted as to DMS6 Ex. D and DMS6 Ex. F with the redactions supplied from the agreed and approved redactions of the hearing exhibits. It is granted as to DMS6 Ex. A, DMS6 Ex. B, and DMS6 Ex. C. As to DMS6 Ex. E, the motion is granted in part and denied in part—it is denied as to the race and sex information in ¶¶ 7 and 12; it is otherwise granted. Accordingly:

1. The redacted version of DMS6 Ex. A is substituted in the public file for PRSJ.
2. The redacted version of DMS6 Ex. B is substituted in the public file for PREE.
3. The redacted version of DMS6 Ex. C is substituted in the public file for PREE JHD.
4. The redacted version of PX 189 is substituted in the public file for PREE DJD Ex. B.
5. The redacted version of DMS6 Ex. E is substituted in the public file for PREE PJD except that the race and sex information in ¶¶ 7 and 12 is not redacted.

6. The redacted version of the relevant portions of PX 10 is substituted in the public file for PMIL LBD Ex. C.

C. Defendant’s Motion to Seal #5

1. The Documents at Issue

Oracle’s Motion to Seal #5 concerns filings made on November 1, 2019: OFCCP’s Opposition to Oracle’s Motion for Summary Judgement (“POSJ”) and OFCCP’s opposition to Oracle’s motion to exclude Dr. Madding’s evidence. Based on the documents subject to the motion to seal, however, Oracle is only seeking redactions to documents filed along with the opposition to summary judgment. DMS5 at 2-8. Oracle seeks redactions as follows:

Document	DMS5 Location	Underlying Location	Redaction and Basis	Subsequent Location
Evidentiary Objections to Declaration of Kate Waggoner	DMS5 Ex. A	Submitted with POSJ	Salary range information on p. 12 (FOIA 4)	None
OFCCP’s Statement of Genuine Disputes of Material Fact	DMS5 Ex. B	Submitted with POSJ	a) Information related to focal budgets, salaries and bonuses: pp. 7, 26, 101, 114-15, 118 (FOIA 4) b) Information regarding equity grants: pp. 35, 100, 118 (FOIA 4) c) Compensation and offer information for non-party job candidate: pp. 37, 175 (FOIA 4 &6) d) Info on college recruit compensation structure: pp. 37, 175 (FOIA 4) e) Compensation info of non-party employees: p. 115 (FOIA 4 & 6) f) Identifying information of non-party job candidates, including names: pp. 27, 43, 120, 174-76, 186 (FOIA 6) g) Identifying personnel information of non-party employee: p. 106 (FOIA 6)	PX 266
OFCCP’s Statement of Additional Uncontested Material Facts	DMS5 Ex. C	Submitted with POSJ	Identifying information of non-party job candidates, including names on p. 9 (FOIA 6)	None
Declaration of Laura C. Bremer in Support of Opposition to Oracle’s	DMS5 Ex. D	POSJ LBD	Identifying information of non-party job candidates at ¶ 32 and on exhibit list on p.	None

Motion for Summary Judgement...			2 (FOIA 6)	
30(b)(6) Deposition of Kate Waggoner taken on July 19, 2019	DMS5 Ex. E	POSJ LBD Ex. 8	a) Confidential information related to focal budgets: pp. 247-48, 263, 308 (FOIA 4) b) Confidential information regarding equity grants: pp. 272-74 (FOIA 4)	PX 24
Declaration of Wilbur A. Colin McGregor	DMS5 Ex. F	POSJ LBD Ex. 10	Identifying personnel information of non-party employees at ¶¶ 9, 13 (FOIA 6)	None
June 14, 2019, Deposition of Juan Loaiza	DMS5 Ex. G	POSJ LBD Ex. 11	a) Race info about non-party employee: p. 27 (FOIA 6) b) Identifying personnel info of non-party employee: pp. 282, 290 (FOIA 6) c) Info regarding focal salary increases: p. 131 (FOIA 4) d) Information related to compensation strategies, levels, and allocations: p. 306 (FOIA 4)	PX 21
Declaration of Avinash Pandey	DMS5 Ex. H	POSJ LBD Ex. 12	Identifying personnel information of non-party employee in ¶ 12 (FOIA 6)	None
Declaration of Donna Kit Ng	DMS5 Ex. I	POSJ LBD Ex. 15	Identifying personnel information of a non-party employee in ¶ 12 (FOIA 6)	None
May 1, 2019, Deposition of Kate Waggoner	DMS5 Ex. J	POSJ LBD Ex. 17	Confidential salary range information on page 88 (FOIA 4)	JX 102
Declaration of Lynn Snyder	DMS5 Ex. K	POSJ LBD Ex. 21	Identifying personnel information of non-party employees in ¶¶ 9, 14, 16 (FOIA 6)	None
8/25/2016 internal email re: recruiting and compensation packages	DMS5 Ex. L	POSJ LBD Ex. 22	Confidential college recruit compensation structure information (FOIA 4)	PX 76
9/11/2013 internal email re: recruiting and compensation packages	DMS5 Ex. M	POSJ LBD Ex. 23	Confidential college recruit compensation structure information (FOIA 4)	PX 147
9/24/2013 internal email re: recruiting and compensation packages	DMS5 Ex. N	POSJ LBD Ex. 24	Confidential college recruit compensation structure information (FOIA 4)	PX 148
4/16/2015 internal email re: recruiting and compensation packages	DMS5 Ex. O	POSJ LBD Ex. 25	Confidential college recruit compensation structure information (FOIA 4)	PX 149
9/14/2013 internal	DMS5 Ex. P	POSJ LBD	Identifying personnel	PX 182

email re: university offer approval		Ex. 26	information about non-party job candidate and confidential college recruit compensation structure information (FOIA 4 and 6)	
3/14/2014 internal email re: university offer approval	DMS5 Ex. Q	POSJ LBD Ex. 27	Identifying personnel information about non-party job candidate and confidential college recruit compensation structure information (FOIA 4 and 6)	PX 183
5/17/2013 internal email re: university offer approval	DMS5 Ex. R	POSJ LBD Ex. 28	Identifying personnel information about non-party job candidate and confidential college recruit compensation structure information (FOIA 4 and 6)	PX 184
10/25/2013 email with recruit re: MAP program and offer	DMS5 Ex. S	POSJ LBD Ex. 29	Identifying personnel information about non-party job candidate (FOIA 6)	PX 185
Declaration of Bhavana Sharma	DMS5 Ex. T	POSJ LBD Ex. 30	Identifying personnel information about non-party employees (FOIA 6)	None

DMS5 at 2-8.

2. Application of Prior Determinations

As listed on the chart above, 12 of the documents at issue in Oracle's Motion to Seal #5 were also submitted as exhibits at the hearing. After the hearing, the parties were able to negotiate agreed appropriate redactions for each of those exhibits. Starting from that agreement, I decided the appropriate redactions for these documents above. Therefore, Oracle's Motion to Seal #5 is granted as to the documents also submitted at the hearing. The versions submitted with OFCCP's opposition to Oracle's motion for summary judgment should be replaced in the public record with the redacted versions of the hearing exhibits.

So, applying the agreed redactions that eliminate the earlier disputes:

1. OFCCP's Statement of Genuine Disputes of Material Fact is sealed as redacted in PX 266.
2. POSJ LBD Ex. 8 is sealed as redacted in PX 24.
3. POSJ LBD Ex. 11 is sealed as redacted in PX 21.
4. POSJ LBD Ex. 17 is sealed as redacted in JX 102.
5. POSJ LBD Ex. 22 is sealed as redacted in PX 76.
6. POSJ LBD Ex. 23 is sealed as redacted in PX 147.
7. POSJ LBD Ex. 24 is sealed as redacted in PX 148.
8. POSJ LBD Ex. 25 is sealed as redacted in PX 149.
9. POSJ LBD Ex. 26 is sealed as redacted in PX 182.
10. POSJ LBD Ex. 27 is sealed as redacted in PX 183.
11. POSJ LBD Ex. 28 is sealed as redacted in PX 184.

12. POSJ LBD Ex. 29 is sealed as redacted in PX 185.

POSJ LBD Ex. 8, POSJ LBD Ex. 11, and POSJ LBD Ex. 17 are all excerpts of depositions. The redacted versions of these documents for the public file shall only contain the pages of PX 24, PX 21, and JX 102, respectively, that were originally submitted as parts of the excerpted depositions.

3. Undisputed Redactions

Of the remaining documents in question, OFCCP agreed with Oracle as to the redactions suggested in DMS5 Ex. C, DMS5 Ex. D, DMS5 Ex. F, DMS5 Ex. H, DMS5 Ex. I, DMS5 Ex. K, and DMS5 Ex. T. DMS5 at 3-8; POS5 at 1-2, 10-11. All of these redactions are made pursuant to FOIA Exemption 6 to protect the identities and personnel information concerning non-party employees or applicants who have not become involved with this litigation. Independently reviewing the proposed redactions, I agree with the parties that the information in question is properly obscured. The redactions are minimal and leave the general sense of the document intact. None of the identifying information had bearing on the adjudication of the motion in question and will not be at issue in the ultimate decision in this case. The public interest in disclosure is thus very minimal and is outweighed by the privacy interests of these individuals. Accordingly,

13. OFCCP's Statement of Additional Uncontested Facts is sealed as redacted in DMS5 Ex. C.
14. POSJ LBD is sealed as redacted in DMS5 Ex. D.
15. POSJ LBD Ex. 10 is sealed as redacted in DMS5 Ex. F.
16. POSJ LBD Ex. 12 is sealed as redacted in DMS5 Ex. H.
17. POSJ LBD Ex. 15 is sealed as redacted in DMS5 Ex. I.
18. POSJ LBD Ex. 21 is sealed as redacted in DMS5 Ex. K.
19. POSJ LBD Ex. 30 is sealed as redacted in DMS5 Ex. T.

4. Remaining Dispute

Only one document remains: OFCCP's Evidentiary Objections to the Declaration of Kate Waggoner that Oracle contends contains information on its salary ranges and should be redacted as proposed in DMS5 Ex. A. DMS5 at 2. The underlying document is organized as a chart with the portion of the declaration at issue in one column and the objections being made in the next. Oracle seeks to seal a few words/numbers from one of the quoted portions of the declaration. DMS5 at 12. The proposed redactions only obscure the number ranges at issue—the span of the ranges generally and an example of one particular range. *Id.*

Oracle argues that salary ranges are developed through considerable effort, are kept confidential, and would lose their value to Oracle if publicized since others could appropriate Oracle's investment in developing competitive ranges and competitors could use knowledge of Oracle's compensation strategies to lure talent away from Oracle. DMS5 at 11-12. In opposition, OFCCP makes a variety of arguments concerning both Oracle's actual practices of keeping information private and the propriety of keeping salary strategy and range confidential generally. POS5 at 4-10.

Some of these arguments might be persuasive if Oracle were seeking to seal information that generally described the strategies and ranges. But that is not what is occurring with the particular redactions at issue in DMS5 Ex. A. Here Oracle is only obscuring the particular numbers that define one particular salary range and the spans generally. While some aspects of Oracle's compensation strategies and practices are highly relevant to this litigation, the details and particular numbers are not.

Though this particular document was not among the hearing exhibits, the sort of information that Oracle seeks to seal here was present in a number of the hearing exhibits. After negotiation, OFCCP agreed that particular ranges could be sealed and that agreement was approved above in the discussion of the motion to seal as to the hearing exhibits. On the narrow issue relevant here, I accept that Oracle has a proprietary interest in the dollar figures that it arrives at for its salary ranges and that it keeps these details confidential. I further agree that the value of this work product would be impaired and Oracle would be at a competitive disadvantage if its particular ranges were publically available for others to use for their own purposes or to out-compete Oracle in attracting talent. Therefore, I find that the Oracle's Motion to Seal #5 should be granted as to this document such that:

20. OFCCP's November 1, 2019, Evidentiary Objections to the Declaration of Kate Waggoner is sealed as redacted in DMS5 Ex. A.

5. *Summary*

Defendant's Motion to Seal #5 is granted, as modified by the subsequent agreement on redactions to the hearing exhibits. OFCCP's November 1, 2019, Statement of Genuine Disputes of Material Fact and Exhibits 8, 11, 17, 22, 23, 24, 25, 26, 27, 28, and 29 to the Declaration of Laura Bremer in support of OFCCP's November 1, 2019, opposition to Oracle's motion for summary judgment are sealed as specified in the corresponding redacted versions of the hearing exhibits, as listed above. OFCCP's November 1, 2019, Evidentiary Objections to the Declaration of Kate Waggoner, November 1, 2019, Statement of Additional Uncontested Material Facts, the Declaration of Laura Bremer in support of OFCCP's November 1, 2019, opposition to Oracle's motion for summary judgment, and Exhibits 10, 12, 15, 21, and 30 to that declaration are sealed as specified in the corresponding redacted versions submitted with Oracle's Motion to Seal #5, as listed above.

D. Defendant's Motion to Seal #4

On November 8, 2019, Oracle filed its Motion to Seal #4, which pertains to documents attached to its contemporaneously filed reply brief in support of its motion for summary judgment or partial summary judgment ("DRSJ"). Oracle seeks to seal portions of three documents

Document	DMS4 Location	Underlying Location	Redaction and Basis	Subsequent Location
Oracle's Response to OFCCP's Statement of Disputed Facts in Opposition to Oracle's Motion for Summary Judgment or Partial Summary Judgment	DMS4 Ex. A	Submitted with DRSJ	a) Identifying info of non-party job candidates: pp. 50, 59, 168, 245, 247, 260 (FOIA 6); b) Identifying info of non-party-employee: p. 151 (FOIA 6) c) Info related to budgets, bonuses and/or raises: pp. 12, 13, 45-47, 64, 104, 113, 121, 131-32, 142-46, 158-59, 163-64 (FOIA 4) d) Salary range info: pp. 23-24 (FOIA 4) e) Internal job structure: pp.	DNAR Ex. 12

			33-36 (FOIA 4) f) Info regarding equity grants: pp. 46, 141-42, 164 (FOIA 4) g) Offer information of non-party job candidate: pp. 50, 246 (FOIA 4 & 6) h) Compensation info of non-party employee: pp. 160-61 (FOIA 4 & 6)	
Oracle's Response to OFCCP's Statement of Additional Uncontested Facts in Opposition to Oracle's Motion for Summary Judgment of Partial Summary Judgment	DMS4 Ex. B	Submitted with DRSJ	Identifying information of non-party job candidates: p. 37 (FOIA 6)	PX 449
Oracle's Responses to OFCCP's Objections to Evidence in Support of Oracle's Motion for Summary Judgment	DMS4 Ex. C	Submitted with DRSJ	Salary range information: p. 13 (FOIA 4)	None

DMS4 at 2-3.

Two of these documents can be addressed quickly, the second and third. Oracle's Response to OFCCP's Statement of Additional Uncontested Facts in Opposition to Oracle's Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment was submitted at the hearing as PX 449. The parties subsequently negotiated an agreement as to the proper redactions in PX 449, which was approved above. Therefore, Defendant's Motion to Seal #4 is granted in reference to this filing as to the redactions made in PX 449. The public copy of the filing shall reflect the redacted version of PX 449.

Oracle's Responses to OFCCP's Objections to Evidence in Support of Oracle's Motion for Summary Judgment were not submitted as a hearing exhibit. Oracle did not submit any amended redactions for this document following the parties' meet and confer. The redaction in question is limited to one page and several particular dollar amounts referring to a specific salary range and the breadth of salary ranges generally. DMS4 Ex. C. The underlying document is organized as a chart, with statements of the portion of the evidence objected to in the first column, OFCCP's objection in the second column, and Oracle's response in the third column. The redaction occurs in the first column and comes in a quote from a Kate Waggoner's declaration submitted in support of Oracle's motion for summary judgment. Though this particular document was not submitted elsewhere, the proposed redactions come in a portion of the chart copied from OFCCP's Evidentiary Objections to Declaration of Kate Waggoner, which was discussed above as DMS5 Ex. A. The material was sealed in that filing, and for the same reasons is sealed in this filing as well. Oracle's Motion to Seal #4 is granted as to this document and the redacted version in DMS4 Ex. C shall replace the copy in the public file.

The first document at issue here, Oracle's Response to OFCCP's Statement of Disputed Facts in Opposition to Oracle's Motion for Summary Judgment or Partial Summary Judgment, requires more

discussion, though it ultimately does not present any difficult questions. On November 26, 2019, Oracle submitted amended, reduced redactions for Oracle's Response to OFCCP's Statement of Disputed Facts in Opposition to Oracle's motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment. DNAR at 5. The revised redactions are submitted as DNAR Ex. 12. In its opposition, OFCCP generally opposed sealing the compensation strategy and salary information in question, but agreed to some of the redactions under FOIA Exemption 6 on the basis that it would tend to identify the otherwise uninvolved third-party. POS4 at 4-11; POS4 BOD Ex. 1. The November 26, 2019, Joint Status Report provides OFCCP's updated position in response to Oracle's amended redactions. JSR2 at 34-37. Though I consider the arguments in the motion to seal and opposition, as well as Oracle's November 21, 2019, reply brief on this motion, the starting point for the discussion is the amended redactions and updated position statements of the parties following their meet and confer efforts.

The document in question is structured as a table with three columns. The first lists Oracle's asserted uncontested material facts, the second lists OFCCP's response, and the third lists Oracle's reply to that response. The document that Oracle is replying to is OFCCP's Statement of Genuine Disputes of Material Fact, which was the same document at issue in Motion to Seal #5 as DMS5 Ex. B. It is also the same document as PX 266, an exhibit at the hearing that the parties negotiated an agreement on post-hearing. That document is composed of a table with two columns—the first lists Oracle's asserted uncontested material fact and the second lists OFCCP's response.

All but two sets of redactions at issue in Oracle's Response to OFCCP's Statement of Disputed Facts in Opposition to Oracle's Motion for Summary Judgment or Partial Summary Judgment / DNAR Ex. 12 are in the second column, which is simply a verbatim restatement of the second column from PX 266. Comparing the agreed and approved redacted copy of PX 266 and the redactions in the second column of DNAR Ex. 12, with one exception the redactions in PX 266 are identical to or more limited than the redactions proposed in DNAR Ex. 12, reflecting the outcome of the parties' post-hearing negotiations. The exception comes on page 143 of DNAR Ex. 12, which corresponds to page 102 of PX 266, where a '%' is revealed in DNAR Ex. 12 that is obscured in the redacted PX 266. In both instances, the number is redacted. Aside from that inconsequential difference where Oracle already released the less-redacted version, all of the redactions in the second column of OFCCP's Statement of Disputed Facts in Opposition to Oracle's Motion for Summary Judgment or Partial Summary Judgment should correspond to the agreed and approved redactions in the second column of PX 266. There is no need to discuss these redactions further, or to consider the earlier disputes between the parties on the issues.

Two sets of redactions found in OFCCP's Statement of Disputed Facts in Opposition to Oracle's Motion for Summary Judgment or Partial Summary Judgment / DNAR Ex. 12 are found in the third column, Oracle's reply to OFCCP's response. This material is not in PX 266, or any other subsequent filing, and so must be discussed directly. On pages 33-36 of the document, Oracle seeks to redact names of categories that describe its internal HR job structuring. DNAR Ex. 12 at 33-36; DMS 4 at 2-3, 6-8; JSR2 at 35. OFCCP agrees to sealing this information. JSR2 at 36. In the discussion of the hearing exhibits above, I accepted the parties' agreement that information about Oracle's internal structuring and organization of its workforce could be sealed under FOIA Exemption 4. The same rationale applies here and there is no dispute between the parties.⁶¹

The remaining set of redactions concerns internal salary range information that is found on pages 23-24 of Opposition to Oracle's Motion for Summary Judgment or Partial Summary Judgment /

⁶¹ In addition, the particular information being redacted is immaterial to the disputes in this case.

DNAR Ex. 12. Oracle seeks to redact a dollar amount of a salary range, which appears as part of the same information given on both pages. DNAR Ex 12 at 23-24. It contends that this information is sealable under FOIA Exemption 4 on the grounds that the ranges reflect internal investments and proprietary information which would lose value if publically disclosed. DMS5 at 2, 6; *see also* JSR2 at 35; PRS4 at 1-2. OFCCP opposes this redaction on the grounds that the information is not truly maintained in confidence. JSR 2 at 36; POS4 at 7-10; POS4 BOD Ex. 1 at 23. There is nothing left to adjudicate here that has not already been decided above. The parties ultimately came to an agreement that this sort of information was actually kept in confidence and was properly kept confidential. Salary ranges reflect market research and strategies for attracting and retaining talent. If other companies could appropriate that research and those strategies for free, they would lose value, and likely lead to competitive harm. I thus find that these redactions are appropriate.

As a result, Defendant’s Motion to Seal #4 is granted as modified by the subsequent agreements of the parties:

1. As to Oracle’s Response to OFCCP’s Statement of Disputed Facts in Opposition to Oracle’s Motion for Summary Judgment or Partial Summary Judgment, which has redacted versions at DMS4 Ex. A and DNAR Ex. 12, the motion is granted in part. The second column of this document shall be redacted consistent with the redactions to the second column of PX 266, with the one exception noted above. The third column of this document shall be redacted consistent with the redactions in DNAR Ex. 12.
2. As to Oracle’s Response to OFCCP’s Statement of Additional Uncontested Facts in Opposition to Oracle’s Motion for Summary Judgment of Partial Summary Judgment, with proposed redactions at DMS4 Ex. B, the motion is granted in part. The document shall be redacted consistent with the redactions in PX 449.
3. As to Oracle’s Responses to OFCCP’s Objections to Evidence in Support of Oracle’s Motion for Summary Judgment, with proposed redactions at DMS4 Ex. C, the motion is granted. DMS4 Ex. C shall replace the public version of the document.

E. Defendant’s Motion to Seal #3

1. The Documents at Issue

Defendant’s Motion to Seal #3 concerns various documents filed with 1) OFCCP’s motion for summary judgment (“PMSJ”), submitted on October 21, 2019; 2) OFCCP’s motion to exclude the evidence of Dr. Ali Saad (“PMEE”), also submitted on October 21, 2019; 3) Oracle’s opposition to OFCCP’s motion for summary judgment (“DOSD”), filed on November 1, 2019; and 4) Oracle’s opposition to OFCCP’s motion to exclude the evidence of Dr. Ali Saad (“DOEE”), also filed on November 1, 2019. Oracle seeks to seal portions of the following

Document	DMS3 Location	Underlying Location	Redaction and Basis	Subsequent Location
OFCCP’s Motion for Summary Judgment and Memorandum	DMS3 Ex. A	PMSJ	a) Internal job structure, responsibilities, and organization on pp. 7-9 (FOIA 4); b) Compensation	None

			information of non-party employees on p. 26, n. 34 (FOIA 6)	
OFCCP's Statement of Undisputed Facts	DMS3 Ex. B	Attached to PMSJ	a) Internal job structure, responsibilities, and organization: Nos. 78, 79, 82 (FOIA 4); b) Confidential info on salary ranges: Nos. 89-90 (FOIA 4); c) Confidential info of non-party employees, Nos. 132-34, 136, 165-66 (FOIA 4) d) Identifying information of non-party job candidate, No. 167 (FOIA 6)	DNAR Ex. 4
OFCCP's Motion to Exclude Expert Testimony of Dr. Ali Saad and Memorandum	DMS3 Ex. C	PMEE	Internal job structure, responsibilities, and organization, p. 14 n.67 (FOIA 4)	None
Decl. and Corrected Decl of Norman E. Garcia in Support of PMSJ	DMS3 Ex. D	Attached to PMSJ	Information identifying non-party job candidates, ¶¶ 49, 50, 55 (FOIA 6)	None
OFCCP's Exhibit List for PMSJ	DMS3 Ex. E	Attached to PMSJ	Identifying information of non-party job-candidates, p. 3 (FOIA 6)	None
Except from May 1, 2019, Deposition of Kate Waggoner	DMS3 Ex. F	PMSJ NGD Ex. 7	Strategies re: application of salary ranges, pp. 87-89 (FOIA 4)	JX 102
Managing Compensation Powerpoint	DMS3 Ex. G	PMSJ NGD Ex. 13	a) Internal job structure, responsibilities, and organization, pp. 5, 9-10 (FOIA 4); b) Salary, salary range, and compa-ratio info, pp. 29, 31, 32, 34-36 (FOIA 4)	DX 24; JX 114; PX 34; PX 152
Managing Compensation at Oracle training	DMS3 Ex. H	PMSJ NGD Ex. 14	a) Confidential information regarding budgets, p. 6 (FOIA 4); b) Confidential information related to pay structure, p. 43 (FOIA 4); c. Strategy for setting starting pay, pp. 57-58 (FOIA 4)	PX 141
Compensation Training: Salary Ranges at Oracle	DMS3 Ex. I	PMSJ NGD Ex. 16	a) Salary ranges, p.16 (FOIA 4); Pay structure and pay level exemplar, p. 18 (FOIA 4)	JX 140; PX 28
Declaration of Jung	DMS3 Ex. J	PMSJ NGD	Internal job structure and	None

Atkins		Ex. 17	organization, Ex. A, pp. 1-5; Ex. B, pp. 1-5 (FOIA 4)	
Global Compensation Training: Managing Pay Module	DMS3 Ex. K	PMSJ NGD Ex. 18	Confidential compensation structure, pp. 16-17 (FOIA 4)	JX 24; DX 258; PX 53
Managing Compensation, April 2016	DMS3 Ex. L	PMSJ NGD Ex. 21	Internal job structure at 11, 22 (FOIA 4)	JX 113
Annual Bonus Program and Workforce Compensation Manager Training	DMS3 Ex. M	PMSJ NGD Ex. 24	Confidential Internal Network Configuration and Access on 3, 15-20, 23-26, 31-37, 39-44, 47-48, 51-52, 55-64, 67-76, 81, 83, 85, 87, 89 (FOIA 4)	JX 153; PX 38
Manager Training: Compensation Process for Global Corporate Bonus & Fusion Workforce Compensation	DMS3 Ex. N	PMSJ NGD Ex. 25	Confidential Internal Network Configuration and Access at pp. 11-14, 16, 18-10, 23-27, 29, 31-34, 36-38, 40-41, 42-49, 54-56 (FOIA 4 and 6)	JX 108; PX 75
New Manager Training: Comp Processes/Comp Workbench:	DMS3 Ex. O	PMSJ NGD Ex. 26	Confidential Internal Network Configuration and Access at pp. 10-14, 16-17, 19-21, 23-31, 33-34, 36-37, 39, 41, 44-47, 49-51, 53-57 (FOIA 4 and 6)	JX 105; PX 37
Excerpts from July 19, 2019, Kate Waggoner Deposition	DMS3 Ex. P	PMSJ NGD Ex. 27	a) Confidential info regarding focal, bonus, or other compensation budgets, pp. 192-93, 263, 275-76, 297, 307-08, 328 (FOIA 4) b) Info about bonus awards, pp. 247-48 (FOIA 4) c) Compensation info about non-party employees, pp. 246, 307 (FOIA 6)	PX 24
Recruit & Hired at Oracle Module 6	DMS3 Ex. Q	PMSJ NGD Ex. 28	Compensation structure, pp. 23, 27, 33, 35 (FOIA 4)	PX 176
iRecruitment Candidate Details for Applicant #452780	DMS3 Ex. R	PMSJ NGD Ex. 29	Identifying and compensation info for non-party job candidate, pp. 1729-31 (FOIA 6)	None
Email Chain re: Dive and Save Approval	DMS3 Ex. S	PMSJ NGD Ex. 30	Identifying and compensation info for non-party job candidate, pp. 432004-06 (FOIA 6)	PX 104
Excerpts from Juan Loaiza June 14, 2019, deposition	DMS3 Ex. T	PMSJ NGD Ex. 31	Confidential compensation structure and strategies and processes for making	PX 21

			compensation decisions, pp. 160, 283-84, 305-06, 321 (FOIA 4)	
Investigation Results Memorandum	DMS3 Ex. U	PMSJ NGD Ex. 32	Identifying info of non-party employee, p. 416837 (FOIA 6)	PX 116
Request for Dive and Save Salary Adjustment	DMS3 Ex. V	PMSJ NGD Ex. 33	a) Identifying info of non-party employee, pp. 437696-701 (FOIA 6) b) Compensation info of non-party employee, pp. 437696, 437698 (FOIA 6)	PX 103
Out of Cycle Salary Adjustment Proposal	DMS3 Ex. W	PMSJ NGD Ex. 34	Compensation information of non-party employee , 434971-72 (FOIA 6)	PX 102
Oracle Recruiting Program Manager Training Manual	DMS3 Ex. X	PMSJ NGD Ex. 39	a) Confidential internal network configuration and access, pp. 56907-08, 56919, 56923 (FOIA 4 and 6) b) Confidential recruiting strategies and practices, pp. 56911-13 (FOIA 4)	PX 177
Oracle College Recruiting	DMS3 Ex. Y	PMSJ NGD Ex. 40	a) Confidential internal network configuration and access, pp. 20140, 20173, 20179 (FOIA 4 and 6) b) Confidential recruiting strategies and practices, pp. 20127-31, 20133, 20135-41, 20156-60, 20170-77 (FOIA 4) c) Sensitive personal information, p. 20179 (FOIA 6)	PX 178
Candidate Offer Information	DMS3 Ex. Z	PMSJ NGD Ex. 48	a) Identifying and compensation information non-party job candidate, pp. 472274, 472276, 472278,472280 (FOIA 6) b) Identifying information of non-party employees, pp. 472276, 472278, 472280 (FOIA 6)	PX 95
Candidate Offer Information	DMS3 Ex. AA	PMSJ NGD Ex. 49	a) Identifying and compensation info of non-party job candidate, pp. 464341, 464343 (FOIA 6) b) Personal information of non-party employees, p.	PX 97

			464344 (FOIA 6)	
Opening a Vacancy	DMS3 Ex. BB	PMSJ NGD Ex. 51	Compensation structure, p. 24 (FOIA 4)	None
Candidate Profile Summaries	DMS3 Ex. CC	PMSJ NGD Ex. 52	a) Identifying info of non-party job applicants, pp. 29001, 33810 (FOIA 6) b) Personal information of non-party employee, p. 33810 (FOIA 6)	PX 74
Email exchange between recruiter and candidate	DMS3 Ex. DD	PMSJ NGD Ex. 54	Identifying info of non-party job applicant, pp. 34106, 34109 (FOIA 9)	PX 72
Global Compensation Guidelines Training North America: US	DMS3 Ex. EE	PMSJ NGD Ex. 59	Confidential pay and salary-setting strategy information, pp. 11-13, 16, 23, 25-28, 31, 35, 39, 41, 47, 58, 60, 64, 66, 68 (FOIA 4)	JX 106; PX 41
Excerpt from HQCA Compensation Report Spreadsheet	DMS3 Ex. FF	PMSJ NGD Ex. 68	Compensation and identifying information of non-party employees, pp. 2, 4-11, 14-16, 19-20, 22 (FOIA 4 and 6)	PX 259
Screenshots from "Workforce Compensation Hints and Tips" Video	DMS3 Ex. GG	PMSJ NGD Ex. 76	Confidential internal network configuration and access, pp. 2-5 (FOIA 4 and 6)	PX 99; PX 322
Email re: "Stock process FY14"	DMS3 Ex. HH	PMSJ NGD Ex. 84	Confidential guidelines and strategy regarding stock awards, p. 22961 (FOIA 4)	PX 146
Excerpt of Dr. Saad's Backup Data	DMS3 Ex. II	PMSJ NGD Ex. 88	Compensation and identifying info of non-party employees, pp. 1-2, 5-8, 17-24 (FOIA 4 and 6)	PPR Ex.8
Transcript of Dr. Saad's deposition and corrected transcript	DMS3 Ex. JJ	PMSJ NGD Ex. 89	a) Information about stock awards, 289 (FOIA 4); b) Oracle compensation information, Depo Ex. 9, Ex. C (FOIA 4)	PX 7
Transcript of Dr. Madden deposition	DMS3 Ex. KK	PMSJ NGD Ex. 90	a) Salary range information, pp. 55, 121 (FOIA 4); b) Information about bonus and stock awards, pp. 1128-29 (FOIA 4)	PX 3
Expert Report of Dr. Madden	DMS3 Ex. LL	PMSJ NGD Ex. 91	a) Info about bonus awards, pp. 11, 26 (FOIA 4); b) Info about stock awards, pp. 11, 23-24, 36, 44 (FOIA 4)	PX 1
Expert Report of Dr.	DMS3 Ex.	PMSJ NGD	a) Oracle salary, bonus, and	JX 103

Saad	MM	Ex. 93	equity information, ¶¶ 14, 38-40, 43-44, 46, 51, 53-54, 57-58, 68-69, 71-72, 82, 85-89, 118, 126, 136-37, 139-41, 162-63, 166, 186, 199; pp. C2-C3, C8, E6-E9 (FOIA 4); b) Compensation and promotion strategies for particular teams, ¶ 115 (FOIA 4); c) Compensation information for specific non-party employees, ¶¶ 51, 53-54, 68, 71-72, 85-89, 106-07, 139, 141 (FOIA 6); d) Identifying info of non-party employees: ¶¶ 87, 103, 106-07, 110, 111, 115; pp. B6-B7 (FOIA 6)	
Expert Rebuttal Report of Dr. Saad	DMS3 Ex. NN	PMSJ NGD Ex. 94	a) Oracle compensation information, ¶¶ 38-39, 41 (FOIA 4); b) Personnel info of non-party employees, ¶¶ 28-30 (FOIA 6)	JX 104
Oracle's Opposition to PMSJ	DMS3 Ex. OO	DOSJ	Compensation and identifying info for non-party employees, pp. 16-17 (FOIA 6)	None
Oracle's Opposition to PMEE	DMS3 Ex. PP	DOEE	Salary range info, p. 16 (FOIA 4)	None
Oracle's Response to OFCCP's Statement of Uncontested Facts	DMS3 Ex. QQ	Attached to DOSJ	a) Internal job structure, responsibilities, and organization, Nos. 78-79, 82 (FOIA 4); b) Confidential info re: establishing salary ranges, Nos. 89-90 (FOIA 4); c) Confidential info re: focal, bonus, or other comp budgets, Nos. 110-11, 127-29, 137-38 (FOIA 4); d) Confidential comp structure, No. 130 (FOIA 4) e) Comp info of non-party employees, Nos. 132-34, 136, 165-66 (FOIA 4); f) Identifying info of non-party job candidate, No. 167	PX 267

			(FOIA 6).	
Oracle's Objections to Evidence in Support of PMSJ	DMS3 Ex. RR	Attached to DOSJ	a) Identifying info of non-party job candidates, p. iv (FOIA 6); b) Confidential info regarding establishing salary ranges, pp. 70-72, 87, 91, 98 (FOIA 4); c) Confidential info re: focal, bonus, or other compensation budgets, pp. 5, 122-26, 138-39, 146 (FOIA 4); d) Confidential pay and salary-setting strategy info, pp. 124-27, 130, 138-40, 145, 147 (FOIA 4); e) Compensation info for specific non-party employee, p. 147 (FOIA 6) f) Identifying info of non-party job candidate, pp. 168-69, 175 (FOIA 6).	DNAR 11
Excerpts from July 19, 2019, deposition of Kate Waggoner	DMS3 Ex. SS	DOSJ ECD Ex. E	Confidential budget info: p. 309 (FOIA 4)	PX 24
Excerpts from Dr. Madden's deposition	DMS Ex. TT	DOEE KMD Ex. D	Salary range info, p. 55 (FOIA 4)	PX 3
Q4FY15 HR Webinar Oracle Compensation	DMS Ex. UU	PMSJ NGD Ex. 8	Confidential pay and salary-setting strategy info, pp. 49-50 (FOIA 4)	JX 111
Customer Service Comp Training	DMS Ex. VV	PMSJ NGD Ex. 12	Confidential pay and salary-setting strategy info, pp. 45-46 (FOIA 4)	DX 262; JX 127; PX 30

DMS3 at 2-9.

Oracle seeks to seal portions of the above 48 documents on the basis of FOIA Exemption 4 and/or FOIA Exemption 6. *See generally id.* at 11-19. Initially, OFCCP opposed many of these redactions, and in particular the redactions pursuant to FOIA Exemption 4, though it agreed with some of the redactions proposed pursuant to FOIA Exemption 6. *See* POS3 at 4-10; *see also* POS3 BOD Ex. 1. After meeting and conferring, both Oracle and OFCCP proposed alternative redactions for some of these documents. *See* DNAR at 2-5; PPR at 2-3. Disputes about the appropriate redactions, however, continued. *See* JSR2 at 19-34. Many of these documents, however, were also submitted at the hearing, and further negotiations produced agreement as to the proper redactions. The documents here thus fall into three categories: a) those submitted at the hearing where subsequent agreement was reached; b) those not submitted at the hearing where there was agreement as of the November 26, 2019, status report; and c) those not submitted at the hearing where disputes remain.

2. Application of Prior Determinations

Oracle's Motion to Seal #3 involves 48 documents. Most of these documents, however, were also submitted as exhibits at the hearing, as catalogued in the chart above. Since the parties were able to reach agreement about the proper redactions in the hearing exhibits and the appropriate redactions were decided above, those determinations can be applied here, with the redacted versions of the corresponding hearing exhibit substituting in for the underlying document here in the public case file. As a result, the proposed redactions in the following exhibits in the motion to seal are rendered moot, with the approved redacted versions of the hearing exhibits replacing the proposed redactions here: DMS3 Ex. F – DMS3 Ex. I; DMS3 Ex. K – DMS3 Ex. Q; DMS3 Ex. S – DMS3 Ex. AA; DMS3 Ex. CC – DMS3 Ex. HH; DMS3 Ex. JJ – DMS3 Ex. NN; DMS3 Ex. QQ.

3. Additional Agreed Redactions

The parties also reached agreement on additional redactions to documents that were not part of the hearing exhibits. In DMS3 Ex. C, Oracle seeks to seal some words in a footnote on one page of OFCCP's Motion to Exclude Expert Testimony of Dr. Ali Saad and the supporting memorandum (p. 14 n.67). OFCCP agrees that this particular information should be sealed. JSR2 at 20. Oracle and OFCCP also agree that the names in three paragraphs on one page of the declaration of Norman Garcia in support of OFCCP's motion for summary decision should be sealed, as suggested in DMS3 Ex. D. The same redaction applies to the amended declaration filed on October 30, 2019. *See* JSR2 at 20. The same redactions carry over into the exhibit list submitted by OFCCP⁶² with its motion for summary decision, which contains the same three names that the parties have agreed should be redacted, as set forth in DMS3 Ex. E. I find each of these redactions appropriate and seal the unredacted documents as agreed and requested.

4. Disputed Redactions

DMS3 Ex. A is OFCCP's Motion for Summary Judgment. Oracle proposes several redactions on pp. 7-9 and 26. OFCCP agrees with the redactions on pages 7-8 and with the redaction of the employee names on page 26, but opposes the redaction on page 9 and the other redactions on page 26. JSR2 at 19. The sole redaction on page 9 is to the specific numbers corresponding to a salary range. This is the sort of particular information that the parties came to agree was properly redacted, and I find that the numbers are properly redacted here. The proposed redactions on page 26 involve a footnote (n.34) discussing two employees. The parties agree that the names should not be made public. Oracle seeks to obscure some of the other particular details from these anecdotes. Given the particular details in question, there is some chance that including the numbers in question could serve to identify or flag the employee OFCCP is discussing. This privacy interest isn't great, since the likelihood is slight, but there is no public interest in divulging these details. The small point being made played no role in the adjudication of the motions and these particular briefings will play no role in future decisions. Redaction is thus appropriate.

Next, some disputes remain over OFCCP's Statement of Uncontested Material Facts, which was filed in support of its motion for summary decision. Oracle originally proposed redactions in DMS3 Ex. B, but revised and reduced its proposed redactions in DNAR Ex. 4. I consider the revised redactions, which abandons some of the claims from the chart above. *See* DNAR at 3. OFCCP does not oppose redacting the candidate name in No. 167, *see* JSR2 at 19, and I agree that Exemption 6 justifies

⁶² The exhibit list is found at the beginning of each of the bound volumes of exhibits submitted with the motion.

withholding the name of the individual in question, which does not contribute to public understanding of this case at all.

OFCCP opposes the remaining redactions. *Id.* These fall into three categories. First, Oracle seeks to redact internal job structure, responsibilities, and organization information from Nos. 78-79, and 82. DNAR at 3. The motion is denied as to No. 78-79. In the underlying exhibit that is the source of the information, the parties agreed that no redactions were appropriate as to the pertinent information. The motion is granted as to No. 82. This fact relates to an analysis conducted of Oracle's classifications and how job classifications fit into salary grades. The underlying data is not public. The analysis reflects Oracle's internal HR strategies and processes as to how these two different sorts of descriptions come together.

Second, Oracle seeks to redact information about focal, bonus, and other compensation budgets from Nos. 127 and 129. DNAR at 3. The underlying document for No. 127 is the deposition in PX 24. The parties agreed to redact the information in question in PX 24, so it should be redacted in No. 127 here as well. For No. 129, the underlying source is a different deposition found in PX 21. In that document, the parties agreed that the information should not be redacted. Hence, Oracle's motion is granted as to No. 127 but denied as to No. 129.

Third, Oracle seeks to redact compensation information for non-party employees, which is found in Nos. 132-34, 136, and 165-66. DNAR at 3. Nos. 132-34 are based on documents that became PX 24, PX 103, and PX 102, respectively. In PX 24 the information redacted in No. 132, is redacted, so I find the redaction in No. 132 proper as well. The relevant information in PX 103 is redacted, except for the percentage that the individuals' direct reports were over-earning her by. No. 133 will thus be redacted as proposed, except that this percentage range shall not be sealed. Similarly, in PX 102 most of the relevant information is redacted, except that the agreed version reveals that the aim was to put the individual's salary to "up to within" the band. That information should thus be revealed in No. 134 as well, but the remaining redactions are adopted. No. 136 is based on the document that became PX 104. In line with the redactions in PX 104, the dollar amount in No. 136 will be redacted, but the percentage and quartile will not. In No. 165, the redactions in question do not obscure any important information. The information on its own is relatively innocuous, but when coupled with the information in the underlying document, this information would divulge Oracle's recruiting strategies. It is thus properly sealed. No. 166 is based on what became PX 74. The relevant information is not being redacted in PX 74, and so should not be redacted in No. 166 either.

Next, the parties dispute the redactions in a Declaration of Jung Atkins, submitted as PMSJ NGD Ex. 17 with redactions proposed as DMS3 Ex. J. Oracle contends that the declaration divulges confidential information about its internal job structure and organization while OFCCP opposes any sealing. JSR2 at 22. This declaration represents an analysis conducted by OFCCP of confidential data from Oracle. I agree with Oracle that if presented without redactions, this information could reveal confidential aspects of Oracle's internal HR strategies and organization insofar as different sorts of classifications are being compared and then sorted into groupings. I thus grant the motion to seal as to this document.

PMSJ NGD Ex. 29 is an internal printout of an approval process for an offer. With DMS3 Ex. R, Oracle seeks to redact identifying information about the candidate, the monetary details of the offer, and some of the details in the explanation of the offer/recruiting strategy. OFCCP agrees with some of these redactions but opposes redacting the particular compensation information. *See* JSR2 at 25. I find the redactions appropriate. They are minimal, obscuring only the identifying information and financial

details. This poses a privacy threat to the individual and also raises concerns about publication of Oracle's particular recruiting strategies and processes. I thus find sealing the document as requested proper.

PMSJ NGD Ex. 51 is an HR training. In DMS3 Ex. BB, Oracle seeks to redact a small part of one page/slide, number 24. OFCCP opposes this redaction. *See* JSR2 at 28. The small pieces of information redacted would divulge Oracle's salary range and a calculation of compa-ratio. The information is not pertinent to anything at issue. Subsequent negotiations between the parties resulted in this sort of salary-range information being sealed. The same should hold here, so I grant the motion as to this document.

PMSJ NGD 88 is part of Dr. Saad's backup data. Oracle contends that portions of this data should be sealed as containing compensation data and identifying information for non-party employees. It thus proposes redactions to the document, which it contends are justified by both FOIA Exemptions 4 and 6. *See* DMS3 Ex. II. OFCCP does not oppose sealing parts of the document, but proposes its own redactions. *See* JSR2 at 30; PPR at 2-3; PPR Ex. 8. Comparing the two, Oracle proposes redacting somewhat more, but they also differ on which columns to redact to protect the identities and confidential information of the third parties. More extensive backup data was submitted as PX 469 and PX 470. As discussed above, the parties agreed to seal those exhibits in their entirety. Above I agreed that this sort of detailed trove of information about Oracle employees did not belong in the public record. In this instance, the parties are attempting to find a way to redact in order to leave something public, but the result may well be somewhat useless and meaningless—in part because to a non-expert even the un-redacted version is somewhat useless and meaningless. I will accept Oracle's redactions. It, with the benefit of Dr. Saad's input, is in a better position to know what might be done to reverse engineer the analysis and identify employees.

DMS3 Ex. OO involves Oracle's Opposition to OFCCP's motion for summary judgment. Oracle seeks to redact information from a chart on pp. 16-17 that compares two employees—in terms of compensation and other characteristics—as part of an argument against the opinion of Dr. Madden. OFCCP agrees to sealing some of the information on page 17, but not other information or the salary listings on page 16. JSR2 at 30-31. OFCCP did not submit a copy with its own redactions. Oracle's motion is granted in part. I agree that the exact salary numbers and most of the other identifying characteristics are properly redacted. However, I cannot accept, in this context, the redaction of the Job Title or Global Career Level. Both are non-identifying and the continuation of the chart on page 18 reveals the pertinent differences. Revealing Job Title and Global Career Level has no tendency to make what is already public more identifying than it already is. Thus, pages 16-17 of Oracle's Opposition to OFCCP's motion for summary judgment will be replaced as redacted, except for the information in the Job Title and Global Career Level rows of the chart.

DMS3 Ex. PP concerns Oracle's Opposition to OFCCP's motion to exclude the expert evidence of Dr. Saad. It can be discussed quickly. Oracle seeks to redact salary range information on page 16. OFCCP opposes this redaction. JSR2 at 31. However, salary range information has already been discussed above and found to be properly redacted. The same considerations apply here, so the motion is granted as to the document in DMS3 Ex. PP.

Finally, DMS3 Ex. RR proposes redactions to Oracle's Objections to Evidence, which was filed along with Oracle's opposition to OFCCP's motion for summary decision. Oracle proposes a series of redactions. OFCCP agrees to the redactions of the names of employees or applicants, but not to the other redactions. JSR2 at 32-33. Oracle filed an updated and less redacted version of this document as

part of its revised redactions. DNAR at 5; DNAR Ex. 11. Most of the document in question is organized as a chart with two columns—one quoting the material objected to and one stating the objection. The only proposed redaction outside of the “chart” portion of the document is on page iv, where Oracle seeks to redact names. OFCCP agrees to this redaction, and so do I.

The remaining proposed redactions in DMS3 Ex. RR all come from quotes of or direct references to information in other documents discussed above: JX 102 (a deposition of Ms. Waggoner), PX 24 (another deposition of Ms. Waggoner), OFCCP’s Statement of Undisputed Facts submitted in support of its motion for summary judgment (with proposed redactions at DNAR Ex. 4), PX 21 (deposition of Mr. Loaiza), PX 95 (candidate offer information), PX 97 (candidate offer information), and PX 72 (email between recruiter and candidate). There is thus nothing further to decide. Reviewing the redactions proposed in DNAR Ex. 11, most are present in the underlying documents under discussion, but some are not. The appropriate redactions to Oracle’s Objections to Evidence will replicate the approved redactions in the underlying documents under discussion.

5. *Summary*

Oracle’s Motion to Seal #3 is granted in part and denied in part. The following redactions are made in the public record:

1. The redacted pages 7-9 and 26 in DMS3 Ex. A shall be substituted in the public file for those pages in PMSJ.
2. The redacted versions in DNAR Ex. 4 shall be substituted for Nos. 82, 127, 132, 165, and 167 in OFCCP’s Statement of Undisputed Facts. For No. 133, the requested redactions are adopted except for the percentage that the individual’s direct reports were out-earning her by. In No. 134, the requested redactions are adopted with the exception of the “up to within” that is revealed in PX 102. For No. 136, the dollar amount given is redacted, but the other information is not sealed.
3. Page 14 of DMS3 Ex. C is substituted in the public file for page 14 of PMEE.
4. The relevant page of DMS3 Ex. D is substituted in the public file for the corresponding pages in the Declaration and Corrected Declaration of Norman E. Garcia in support of PMSJ.
5. The relevant page of DMS3 Ex. E is substituted for the page of the exhibit lists in the bound volumes of exhibits submitted with PMSJ.
6. The relevant portions of the redacted version of JX 102 are substituted in the public file for PMSJ NGD Ex. 7.
7. The redacted version of PX 34⁶³ is substituted in the public file for PMSJ NGD Ex. 13.
8. The redacted version of PX 141 is substituted in the public file for PMSJ NGD Ex. 14.
9. The redacted version of PX 28 is substituted in the public file for PMSJ NGD Ex. 16.
10. The redacted version in DMS3 Ex. J is substituted in the public file for PMSJ NGD Ex. 17.
11. The redacted version of DX 258 is substituted in the public file for PMSJ NGD Ex. 18.
12. The redacted version of JX 113 is substituted in the public file for PMSJ NGD Ex. 21.
13. The redacted version of PX 38 is substituted in the public file for PMSJ NGD Ex. 24.
14. The redacted version of JX 108 is substituted in the public file for PMSJ NGD Ex. 25.
15. The redacted version of JX 105 is substituted in the public file for PMSJ NGD Ex. 26.
16. The relevant portions of the redacted version of PX 24 are substituted in the public file for PMSJ NGD Ex. 27.

⁶³ Where multiple hearing exhibits contain the same underlying document, I have chosen the hearing exhibit that most closely matches, in its ancillary markings, the document submitted in the filings at issue here.

17. The redacted version of PX 176 is substituted in the public file for PMSJ NGD Ex. 28.
18. The redacted version in DMS3 Ex. R is substituted in the public file for PMSJ NGD Ex. 29.
19. The redacted version of PX 104 is substituted in the public file for PMSJ NGD Ex. 30.
20. The redacted version of PX 21 is substituted in the public file for PMSJ NGD Ex. 31.
21. The redacted version of PX 116 is substituted in the public file for PMSJ NGD Ex. 32.
22. The redacted version of PX 103 is substituted in the public file for PMSJ NGD Ex. 33.
23. The redacted version of PX 102 is substituted in the public file for PMSJ NGD Ex. 34.
24. The redacted version of PX 177 is substituted in the public file for PMSJ NGD Ex. 39.
25. The redacted version of PX 178 is substituted in the public file for PMSJ NGD Ex. 40.
26. The redacted version of PX 95 is substituted in the public file for PMSJ NGD Ex. 48.
27. The redacted version of PX 97 is substituted in the public file for PMSJ NGD Ex. 49.
28. The redacted version of the relevant page (p. 24) in DMS3 Ex. BB is substituted in the public file for the page in PMSJ NGD Ex. 51.
29. The redacted version of PX 74 is substituted in the public file for PMSJ NGD Ex. 52.
30. The redacted version of PX 72 is substituted in the public file for PMSJ NGD Ex. 54.
31. The redacted version of JX 106 is substituted in the public file for PMSJ NGD Ex. 59.
32. The redacted version of PX 259 is substituted in the public file for PMSJ NGD Ex. 68.
33. The redacted version of PX 99 is substituted in the public file for PMSJ NGD Ex. 76.
34. The redacted version of PX 146 is substituted in the public file for PMSJ NGD Ex. 84.
35. The redacted version in DMS3 Ex. II is substituted in the public file for PMSJ NGD Ex. 88.
36. The redacted version of PX 7 is substituted in the public file for PMSJ NGD Ex. 89 and the corrected version of PMSJ NGD Ex. 89 submitted on October 30, 2019.
37. The redacted version of PX 3 is substituted in the public file for PMSJ NGD Ex. 90.
38. The redacted version of PX 1 is substituted in the public file for PMSJ NGD Ex. 91.
39. The redacted version of JX 103 is substituted in the public file for PMSJ NGD Ex. 93.
40. The redacted version of JX 104 is substituted in the public file for PMSJ NGD Ex. 94.
41. The redacted version on pages 16-17 of DMS3 Ex. OO are substituted in the public file for pages 16-17 of DOSJ except that Job Title and Global Career Level on page 17 shall not be redacted.
42. The redacted version on page 16 of DMS3 Ex. PP is substituted in the public file for page 16 of DOEE.
43. The redacted version of PX 267 is substituted in the public file for Oracle's Response to OFCCP's Statement of Uncontested Facts, attached to DOSJ.
44. Oracle's Objections to Evidence submitted with DOSJ is redacted in the public file on p. iv as provided in DNAR Ex. 11. As to the rest, the information in the public file is redacted consistent with the approved redactions to the underlying documents under discussion in the chart.
45. The relevant portions of the redacted version of PX 24 are substituted in the public file for DOSJ ECD Ex. E.
46. The relevant portions of the redacted version of PX 3 are substituted in the public file for DOEE KMD Ex. D.
47. The redacted version of JX 111 is substituted in the public file for PMSJ NGD Ex. 8.
48. The redacted version of PX 30 is substituted in the public file for PMSJ NGD Ex. 12.

F. Defendant’s Motion to Seal #2

Oracle’s Motion to Seal #6 was filed on October 31, 2019,⁶⁴ and involves five documents filed with OFCCP’s October 17, 2019, opposition to Oracle’s October 11, 2019, motion for a protective order (“POPO”).⁶⁵ Oracle’s motion is to either exclude the materials altogether or to seal certain portions of them. The rationale for “excluding” them is that in ruling on the motion, it was unnecessary to consider the documents, so they need not be made part of the record. DMS2 at 1, 7. “Excluding” could have multiple meanings here. It might just mean that they were not considered in ruling on the motion. That already occurred. What Oracle seeks, instead, is an order striking and returning the material to OFCCP as inappropriately submitted and thus made not part of the record at all. While in one prior instance I followed this tack, I will not do so here. It was unnecessary to consider the submissions to rule on the motion, but they were not irrelevant. More importantly, subsequently the same material was submitted and is part of the record, so it would serve no purpose to outright strike the material here. I thus focus on Oracle’s motion to seal the documents in question. These documents are as follows:

Document	MSE2 Location	Underlying Location	Redaction and Basis	Subsequent Location
Expert Report of Dr. Madden	DMS2 Ex. A	POPO LBD Ex. A	a) Info about bonus awards, pp. 11, 26 (FOIA 4); b) Info about stock awards, pp. 11, 23-24, 36, 44 (FOIA 4).	PX 1
Expert Rebuttal Report of Dr. Madden	DMS2 Ex. B	POPO LBD Ex. D	Pay growth data, p. 52 (FOIA 4).	DX 449
Declaration of Janice Madden dated October 11, 2019	DMS2 Ex. C	POPO LBD Ex. E	Oracle compensation info, Ex. C (FOIA 4).	PX 4
Expert Rebuttal Report of Dr. Saad	DMS2 Ex. D	POPO LBD Ex. G	a) Oracle compensation info, ¶¶ 38-39, 41 (FOIA 4); b) Personnel information of non-party employees, ¶¶ 28-30, 48; p. B3 (FOIA 6); c) Compensation information of non-party employees, ¶¶ 28-30, 37-38, 41, 48, 86 (FOIA 6); d) Identifying information of non-party employees, ¶¶ 28-30; p. B3 (FOIA 6).	JX 104
Expert Report of Dr. Saad	DMS2 Ex. E	POPO LBD Ex. H	a) Oracle salary, bonus, and equity info, ¶¶ 14, 38-40, 43-44, 46, 51, 53-54, 57-58, 68-69, 71-72, 82, 85-89, 118, 126, 136-37, 139-41 162-63, 166, 186, 190; pp. C2-C3, E6-	JX 103

⁶⁴ Oracle filed notice that it would be filing the motion on October 22, 2019.

⁶⁵ The motion was denied by order of October 18, 2019.

			E9 (FOIA 4); b) Compensation and promotion strategies that related to specific teams, ¶ 115 (FOIA 4); c) Comp info for specific non-party employees, ¶¶ 87, 103, 106-07, 110-11, 115; pp. B6-B7 (FOIA 6); d) Identifying information of non-party employees, ¶¶ 87, 103, 106-07, 110-11, 115; pp. B6-B7 (FOIA 6)	
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DMS2 at 3-4.

Oracle contends that parts of each of the above exhibits should be sealed pursuant to FOIA Exemptions 4 and 6. *See id.* at 7-13. Initially, OFCCP opposed most of the proposed redactions, generally agreeing to some redactions to protect personally identifying information but opposing other redactions. *See* POS2 at 1-13. These disagreements persisted through the first round of meeting and conferring—the November 26, 2019, status report reflects continuation of largely the same disputes. *See* JSR2 at 10-18. Oracle, however, did amend and reduce its redaction to the material. *See* DNAR at 2-4.

Each of these documents was identified as an exhibit at the hearing. The October 11, 2019, declaration from Dr. Madden was not admitted, but it remains present in the record. The other four documents—the expert reports and expert rebuttal reports—were admitted into evidence. Through the additional rounds of meeting and conferring, the parties were able to reach agreement on the appropriate redactions for each of the hearing exhibits corresponding to these documents. The proper redactions for these exhibits were decided above. Accordingly, there are no further disputes to resolve here. Oracle’s Motion to Seal #2 is granted in part and denied in part and the redactions approved of for the corresponding hearing exhibits are also applied to the public versions of these documents. Hence:

1. The redacted version of PX 1 is substituted in the public file for POPO LBD Ex. A.
2. The redacted version of DX 449 is substituted in the public file for POPO LBD Ex. D.
3. The redacted version of PX 4 is substituted in the public file for POPO LBD Ex. E.
4. The redacted version of JX 104 is substituted in the public file for POPO LBD Ex. G.
5. The redacted version of JX 103 is substituted in the public file for POPO LBD Ex. H.

G. Defendant’s Motion to Seal #1

Finally, Oracle’s Motion to Seal #1, filed on October 21, 2019, concerns documents that were attached to Oracle’s contemporaneously filed Motion for Summary Judgement, or, in the Alternative, For Partial Summary Judgment (“DMSJ”) and Motion to Exclude the Testimony of Janice Fadding Madden, Ph.D. (“DMEE”). Oracle seeks to seal documents as follows:

Document	DMS1 Location	Underlying Location	Redaction and Basis	Subsequent Location
Declaration of Frank Abushaban	DMS1 Ex. A	DMSJ FAD	a) Identifying info of non-party employee, ¶¶ 10-13, 18	None

			(FOIA 6) b) Compensation and performance info of non-party employees, ¶ 18 (FOIA 6)	
Declaration of Balaji Bashyam	DMS1 Ex. B	DMSJ BBD	Personally-identifying info about non-party employee including compensation and performance info, ¶ 13 (FOIA 6)	None
Declaration of Janet Chan	DMS1 Ex. C	DMSJ JCD	a) Equity distribution strategy that likely divulges the identities of individuals and their compensation, ¶ 12 (FOIA 6); b) Identifying information of non-party employees, ¶¶ 8-10 (FOIA 6)	None
Declaration of Jon Tyler Eckard	DMS1 Ex. D	DMSJ JED	Identifying information of non-party employees, ¶¶ 8-10 (FOIA 6)	None
Declaration of Barbara Fox	DMS1 Ex. E	DMSJ BFD	a) Identifying info of non-party employees, ¶¶ 10-13, 15 (FOIA 6); b) Performance info of non-party employees, ¶¶ 11, 15 (FOIA 6); c) Compensation info of non-party employee, ¶ 15 (FOIA 6)	None
Declaration of Sachin Shah	DMS1 Ex. F	DMSJ SSD	a) Identifying info of non-party employees, ¶¶ 8-10, 17-18 (FOIA 6); b) Performance information about non-party employee, ¶ 18 (FOIA 6)	None
Declaration of Harmohan Suri	DMS1 Ex. G	DMSJ HSD	a) Bonus and equity allocation strategy, the details of which personally identify non-parties and reveal their compensation, ¶ 21 (FOIA 6); b) Identifying info of non-party employees, ¶¶ 10-15 (FOIA 6)	None
Declaration of Chandna Talluri	DMS1 Ex. H	DMSJ CTD	Identifying info of non-party employees, ¶¶ 12-13 (FOIA 6)	None
Declaration of	DMS1 Ex. I	DMSJ NYD	Identifying info of non-party	None

Nackiketa Yakkundi			employees, ¶¶ 14-15, 18 (FOIA 6)	
Declaration of Kate Waggoner	DMS1 Ex. J	DMSJ KWD	Salary range info, ¶ 23 (FOIA 4)	PX 274
Annual Focal Program (Sales & Non-sales) and Workforce Compensation	DMS1 Ex. K	DMSJ KWD Ex. A	a) Salary increase strategy, pp. 12-13 (FOIA 4); b) Internal Oracle network access instructions and images, pp. 18-22, 27-32, 34, 36-37, 40-44, 46, 48, 50-54, 56-61, 64-65, 67-68 (FOIA 4 & 6).	JX 110; PX 274
Global Compensation Training: Managing Pay Module	DMS1 Ex. L	DMSJ KWD Ex. B	Compensation strategies regarding offers to new hires, p. 9 (FOIA 4).	JX 138; PX 274
Global Compensation Training: Salary Ranges at Oracle	DMS1 Ex. M	DMSJ KWD Ex. C	a) Salary ranges, p. 9 (FOIA 4); b) Pay structure and grade level exemplar, p. 10 (FOIA 4).	JX 140; PX 28; PX 274
Global Compensation Training	DMS1 Ex. N	DMSJ KWD Ex. D	Internal job structure from Oracle internal network, p. 6 (FOIA 4).	PX 274
Managing Compensation, July 2016	DMS1 Ex. O	DMSJ KWD Ex. E	a) Internal job structure, responsibilities, and organization, pp. 4, 6-7 (FOIA 4); b) Salary, salary range and compa-ratio info, pp. 17-18, 20 (FOIA 4)	JX 114; PX 34; PX 152; PX 274; DX 24
Transcript of July 19, 2019, Kate Waggoner Deposition	DMS1 Ex. P	DMSJ ECD Ex. C	a) Strategies regarding application of salary ranges, pp. 174, 178 (FOIA 4); b) Confidential information re: focal budgets, pp. 192-93, 252, 266 (FOIA 4)	PX 24
Oracle Compensation & Mapping	DMS1 Ex. Q	DMSJ ECD Ex. I	Internal job structure, functions, and organization as they appear on Oracle's internal network, pp. 399998-400001 (FOIA 4)	DX 113
Expert Report of Ali Saad, Ph.D	DMS1 Ex. R	DMSJ ECD Ex. M; DMEE KMD Ex. A-23	a) Oracle salary, bonus, and equity info, ¶¶ 14, 38-40, 43-44, 46, 51, 53-54, 57-58, 68-69, 71-72, 82, 85-89, 118, 126, 136-37, 138-41, 162-63, 166, 186, 190; pp. C2-C3, E6-E9 (FOIA 4); b) Compensation and	JX 103

			promotion strategies that relate to specific teams of employees, ¶ 115 (FOIA 4); c) Comp info for specific non-party employees, ¶¶ 51, 53-54, 68, 71-72, 85-89, 106-07, 139, 141 (FOIA 6); d) Identifying info of non-party employees, ¶¶ 87, 103, 106-07, 110-11, 115; pp. B6-B7 (FOIA 6)	
Expert Report of Janice Madden, Ph.D	DMS1 Ex. S	DMSJ ECD, Ex. N; DMEE KMD, Ex. A-2	a) Info about bonus awards, pp. 11, 26 (FOIA 4); b) Info about stock awards, pp. 11, 23-24, 36, 44 (FOIA 4).	PX 1
Expert Rebuttal Report of Ali Saad, Ph.D	DMS1 Ex. T	DMSJ ECD Ex. O; DMEE KMD Ex. A-5	a) Oracle compensation info, ¶¶ 38-39, 41 (FOIA 4); b) Personnel info of non-party employees, ¶¶ 28-30, 48; p. B3 (FOIA 6); c) Compensation info for specific non-party employees, ¶¶ 28-30, 37-38, 41, 48, 86 (FOIA 6); d) Identifying info of non-party employees, ¶¶ 28-30; p. B3 (FOIA 6)	JX 104
Expert Rebuttal Report of Janice Madden, Ph.D.	DMS1 Ex. U	DMSJ ECD Ex. P; DMEE KMD Ex. A-3	Pay growth data, p. 52 (FOIA 4)	DX 449
Transcript of the Deposition of Janice Madden, Ph.D.	DMS1 Ex. V	DMEE KMD Ex. A	Salary range info, pp. 55, 121 (FOIA 4)	PX 3

DMS1 at 2-7.

Oracle argues that each of these documents should be sealed pursuant to either Exemption 4 or Exemption 6 of FOIA. *See id.* at 9-16; *see also* DRS1 at 1-5. OFCCP generally argues against any of the Exemption 4 redactions and contends that the Exemption 6 redactions are overbroad. *See* POS1 at 4-10; *see also* POS1 BOD Ex. 1. At the time of the November 26, 2019, status report, the parties reached agreement as to sealing each of the standalone declarations involving Exemption 6 issues—DMS1 Ex. A through DMS1 Ex. I—with the exception of two paragraphs in DMS1 Ex. G. *See* JSR2 at 5-8. The parties continued to dispute most of the proposed redactions in the remaining documents. *See id.* at 8-18. Oracle filed amended redactions for some of these documents. *See* DNAR at 2-3. OFCCP filed proposed redactions to DMS1 Ex. K. *See* PPR at 2.

The documents here are best discussed in two categories. The first involves the standalone declarations that did not attach any exhibits, identified in the motion to seal as DMS1 Ex. A through DMS1 Ex. I. Only Exemption 6 redactions are at issue, and with one exception in DMS1 Ex. G, the parties are in agreement. Having reviewed the proposed redactions in this group of documents that the parties have agreed to, I find that they are reasonable and appropriate. The redactions are generally very limited and do not obscure the sense of the sentence and paragraph in question. Rather, they obscure personally identifying information or descriptions of non-party employees who are discussed in the declarations.

In DMS1 Ex. G, the parties dispute redactions in two paragraphs, ¶¶ 20-21, of the declaration of Harmohan Suri. *See* JSR 2 at 7. The paragraphs in question discuss the way Mr. Suri compensates individuals on his team, and the redactions obscure some of those details. Since Mr. Suri is publically named and members of his team thus generally could be identified, I agree that details about the compensation provided could reveal personal compensation details about uninvolved employees, such as the sorts of compensation received and general amounts. There is little to no public interest in the details in question—they did not play any role in the resolution of the underlying motions and will not be part of the record for decision. I thus find that the information is properly redacted pursuant to FOIA Exemption 6.

The second category involves the rest of the documents at issue: DMS1 Ex. J through DMS1 Ex. V. Though the parties sharply disputed the proper redactions to these documents, if any, in the earlier briefing, all of these documents were submitted as exhibits at the hearing, sometimes, multiple times. The declaration of Kate Waggoner and its attached filings, covered by DMS1 Ex. J to DMS1 Ex. K to DMS1 Ex. O, was submitted as one exhibit at the hearing, PX 274. Post-hearing, the parties were able to reach agreed redactions for all of the exhibits. Starting with that agreement, the appropriate redactions were determined above. Those findings apply here and resolve the earlier disputes as to the proper redactions in these documents.

Applying the finds above Oracle's Motion to Seal #1 is granted in part and denied in part:

1. The redacted version in DMS1 Ex. A is substituted in the public file for DMSJ FAD.
2. The redacted version in DMS1 Ex. B is substituted in the public file for DMSJ BBD.
3. The redacted version in DMS1 Ex. C is substituted in the public file for DMSJ JCD.
4. The redacted version in DMS1 Ex. D is substituted in the public file for DMSJ JED.
5. The redacted version in DMS1 Ex. E is substituted in the public file for DMSJ BFD.
6. The redacted version in DMS1 Ex. F is substituted in the public file for DMSJ SSD.
7. The redacted version in DMS1 Ex. G is substituted in the public file for DMSJ HSD.
8. The redacted version in DMS1 Ex. H is substituted in the public file for DMSJ CTD.
9. The redacted version in DMS1 Ex. I is substituted in the public file for DMSJ NYD.
10. The redacted version of the relevant portion of PX 274 is substituted in the public file for DMSJ KWD.
11. The redacted version of the relevant portion of PX 274 is substituted in the public file for DMSJ KWD Ex. A.
12. The redacted version of the relevant portion of PX 274 is substituted in the public file for DMSJ Ex. B.
13. The redacted version of the relevant portion of PX 274 is substituted in the public file for DMSJ KWD Ex. C.
14. The redacted version of the relevant portion of PX 274 is substituted in the public file for DMSJ KWD Ex. D.

15. The redacted version of the relevant portion of PX 274 is substituted in the public file for DMSJ KWD Ex E.
16. The redacted version of the relevant portion of PX 24 is substituted in the public file for DMSJ ECD Ex. C.
17. The redacted version of DX 113 is substituted in the public file for DMSJ ECD Ex. I.
18. The redacted version of JX 103 is substituted in the public file for DMSJ ECD Ex. M and DMEE KMD Ex. A-23.
19. The redacted version of PX 1 is substituted in the public file for DMSJ ECD Ex. N and DMEE KMD Ex. A-2.
20. The redacted version of JX 104 is substituted in the public file for DMSJ ECD Ex. O and DMEE KMD Ex. A-5.
21. The redacted version of DX 449 is substituted in the public file for DMSJ ECD Ex. P and DMEE KMD Ex. A-3.
22. The redacted version of PX 3 is substituted in the public file for DMEE KMD Ex. A.

H. Proposed Redactions

Both parties submitted proposed redactions on November 26, 2019. Oracle's proposed redactions reduced the prior requests and implicate no additional confidentiality concerns. OFCCP's proposed redactions addressed eight documents pending at that time. PPR at 2-3. The proper redactions to the underlying eight documents were decided above. Insofar as the eight exhibits submitted by OFCCP on November 26, 2019, contain less redactions than those approved, they should be sealed and replaced by the copy of the documents approved above. However, doing so would add no information, since all of those documents are already present in the public file. Hence, the attachments to OFCCP's proposed redactions filed on November 26, 2019, are sealed. The cover letter and proof of service will be made available as part of the public file.

ORDER

1. Oracle's Motion to Seal #1, filed on October 21, 2019, is granted in part and denied in part, as specified above (§ III.G).
2. Oracle's Motion to Seal #2, filed on October 31, 2019, is granted in part and denied in part, as specified above (§ III.F).
3. Oracle's Motion to Seal #3, filed on November 1, 2019, is granted in part and denied in part, as specified above (§ III.E.5).
4. Oracle's Motion to Seal #4, filed on November 8, 2019, is granted as modified by subsequent agreements between the parties (§ III.D).
5. Oracle's Motion to Seal #5, filed on November 18, 2019, is granted as modified by the subsequent agreements between the parties (§ III.C.5).
6. Oracle's Motion to Seal #6, filed on November 25, 2019, is granted in part and denied in part, as specified above (§ III.B.4).
7. The exhibits containing OFCCP's proposed redactions filed on November 26, 2019, are sealed insofar as all publically releasable material in those exhibits is already being released under the terms of this order.

8. Oracle's Omnibus Motion to Seal Hearing Exhibits, filed on February 6, 2020, as corrected and supplemented on February 7, 2020, and March 13, 2020, is granted in part and denied in part, as specified above (§ III.A.5).

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge