

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Argued October 21, 2021

Decided August 12, 2022

No. 20-5378

TELEMATCH, INC.,  
APPELLANT

v.

UNITED STATES DEPARTMENT OF AGRICULTURE,  
APPELLEE

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Appeal from the United States District Court  
for the District of Columbia  
(No. 1:19-cv-02372)

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*Anand V. Ramana* argued the cause and filed the briefs for appellant.

*Johnny H. Walker*, Assistant U.S. Attorney, argued the cause for appellee. With him on the brief were *R. Craig Lawrence* and *Jane M. Lyons*, Assistant U.S. Attorneys.

Before: WILKINS, KATSAS, and JACKSON,\* *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* KATSAS.

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\* Circuit Judge, now Justice, Jackson was a member of the panel at the time the case was argued but did not participate in the opinion.

KATSAS, *Circuit Judge*: To administer its farm subsidy programs, the United States Department of Agriculture assigns numbers to plots of enrolled farmland and to their owners. The question presented is whether the Freedom of Information Act requires USDA to disclose these numbers.

I

A

FOIA requires federal agencies to disclose requested records unless one of nine exemptions applies. 5 U.S.C. § 552(a)(3), (b). Exemption 3 allows an agency to withhold records “specifically exempted from disclosure” by a statute that either “requires that the matters be withheld from the public” or “refers to particular types of matters to be withheld.” *Id.* § 552(b)(3)(A)(i). Exemption 6 allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552(b)(6).

B

USDA administers various programs offering financial assistance for farming. When a farm enrolls in such a program, USDA digitally draws its boundaries on a map or aerial photo. USDA then assigns either a farm number or tract number to the figure so drawn. Farm numbers refer to an entire farm, and tract numbers refer to a contiguous plot within a farm. USDA also assigns a customer number to each farm owner participating in one of its programs. In its records, USDA uses these numbers to track various information associated with the tracts and owners, such as the kind of crops planted or the land transactions of the owner.

In 2005, Multi Ag Media LLC, a commercial vendor of agricultural data, submitted a FOIA request for USDA records containing farm and tract numbers. We held that Exemption 6 did not cover those records. *Multi Ag Media LLC v. USDA*, 515 F.3d 1224 (D.C. Cir. 2008). We acknowledged that the records were similar to personnel or medical files and that their release would impair a privacy interest by making it possible to learn of the financial condition of individual farmers. *Id.* at 1228–30. But we also found a significant public interest in disclosure, which would allow the public to “more easily determine whether USDA is catching cheaters and lawfully administering its subsidy and benefit programs.” *Id.* at 1232. We thus concluded that release of the farm and tract numbers “would not constitute a clearly unwarranted invasion of personal privacy.” *Id.* at 1233 (cleaned up).

Judge Sentelle dissented. He argued that other available information made it possible to monitor program compliance, so disclosure of farm and tract numbers “would merely reveal information about private citizens, without shedding any light on the government’s activities.” *Multi Ag*, 515 F.3d at 1234 (Sentelle, J., dissenting) (cleaned up). Likewise, he concluded that the majority had overly discounted farmers’ privacy interests. *Id.*

Congress responded to *Multi Ag* in the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, § 1619, 122 Stat. 923, 1022–23. It provides that USDA “shall not disclose”:

(A) information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation

practices, or the land itself, in order to participate in programs of the Department; or

(B) geospatial information otherwise maintained by the Secretary [of Agriculture] about agricultural land or operations for which information described in subparagraph (A) is provided.

7 U.S.C. § 8791(b)(2).

This prohibition on disclosure has four exceptions. USDA may disclose information to assist other government agencies. *Id.* § 8791(b)(3)(A). It may disclose certain “payment information (including payment information and the names and addresses of recipients of payments).” *Id.* § 8791(b)(4)(A). It may disclose information that “has been transformed into a statistical or aggregate form without naming any ... individual owner, operator, or producer.” *Id.* § 8791(b)(4)(B). And it may disclose information with consent of the relevant owner or producer. *Id.* § 8791(b)(4)(C).

## D

Like Multi Ag Media, Telematch, Inc. is a commercial vendor of agricultural data. In 2018 and 2019, it submitted to USDA seven FOIA requests for records containing farm numbers, tract numbers, and customer numbers. USDA withheld the numbers under Exemptions 3 and 6. But it released or offered to release a statistical version of the files in accordance with section 8791(b)(4)(B). It also released payment information for the 2018 Conservation Reserve Program pursuant to section 8791(b)(4)(A).

Telematch sued to challenge USDA’s withholding of the farm, tract, and customer numbers. Both parties moved for summary judgment and attached statements of material facts to

their motions. Telematch did not file a statement of genuine issues controverting any of the government’s asserted material facts, which the district court then took as admitted. *Telematch, Inc. v. USDA*, No. CV 19-2372 (TJK), 2020 WL 7014206, at \*4 (D.D.C. Nov. 27, 2020). Telematch does not challenge this ruling on appeal.

The district court granted the government’s motion for summary judgment. The court held that USDA properly withheld the farm and tract numbers under Exemption 3, because the numbers are “geospatial information” covered by section 8791(b)(2)(B). *Telematch*, 2020 WL 7014206, at \*4–6. The court further held that USDA properly withheld the customer numbers under Exemption 6. It ruled that the numbers apply to individual farmers and so count as “similar files.” *Id.* at \*7. Accepting USDA’s statement of material facts, the court concluded that their disclosure would impair a substantial privacy interest while advancing no countervailing public interest. *Id.* at \*8–10.

Telematch appealed. We have jurisdiction under 28 U.S.C. § 1291. We review the grant of summary judgment *de novo*. *PETA v. HHS*, 901 F.3d 343, 349 (D.C. Cir. 2018).

## II

We begin with the farm and tract numbers. Exemption 3 applies to records “specifically exempted from disclosure” by a statute that “requires that the matters be withheld.” 5 U.S.C. § 552(b)(3). To withhold records under Exemption 3, an agency must show that “the statute is one of exemption” and that “the withheld material falls within the statute.” *Corley v. DOJ*, 998 F.3d 981, 984–85 (D.C. Cir. 2021) (cleaned up).

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