

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

YANPING CHEN
2122 21st Road North
Arlington, Virginia 22201

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION
935 Pennsylvania Ave. NW
Washington, DC, 20535

U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Ave. NW
Washington, DC, 20530

U.S. DEPARTMENT OF DEFENSE
The Pentagon
Washington, DC 20301

U.S. DEPARTMENT OF HOMELAND
SECURITY
245 Murray Lane, SW
Washington, DC 20528,

Defendants.

Civil Action No. 1:18-cv-3074

COMPLAINT

1. Plaintiff Yanping Chen brings this action against Defendants the Federal Bureau of Investigation, the United States Department of Justice, the United States Department of Defense, and the United States Department of Homeland Security (collectively, the “Government” or “Defendants”), for monetary, injunctive, and declaratory relief to rectify injuries she has suffered as a result of the Government’s illegal and unwarranted

public disclosure of her personal information in violation of the Privacy Act, 5 U.S.C. § 552a.

2. Enacted in the wake of the Watergate scandal, the Privacy Act balances the federal government's occasional need to collect sensitive information about U.S. citizens with those citizens' constitutional rights, including the right to privacy. The Privacy Act does this in relevant part by prohibiting government agencies from publicly disclosing private information about individuals without their consent. One or more of Defendants here violated these prohibitions by leaking to Fox News a wealth of private information and documents, including family photographs seized from Dr. Chen's home as part of an investigation that resulted in no charges. These leaks were unlawful and resulted in serious and ongoing harm to Dr. Chen, her family, and her business.
3. Defendants have disregarded the protections afforded by the Privacy Act—and by the Constitution—by using the federal government's investigatory powers to gather extensive information about Dr. Chen and then selectively releasing information to smear her reputation and damage her livelihood.

PARTIES

4. Plaintiff Yanping Chen is a citizen of the United States and a resident of the Commonwealth of Virginia.
5. Defendant Federal Bureau of Investigation ("FBI") is an executive agency of the United States of America and an "agency" within the meaning of 5 U.S.C. § 552a(a)(1).
6. Defendant United States Department of Justice ("DOJ") is an executive agency of the United States of America and an "agency" within the meaning of 5 U.S.C. § 552a(a)(1).

7. Defendant United States Department of Defense (“DOD”) is an executive agency of the United States America and an “agency” within the meaning of 5 U.S.C. § 552a(a)(1). The Naval Criminal Investigative Service (“NCIS”) is a civilian law enforcement agency within DOD.
8. Defendant United States Department of Homeland Security (“DHS”) is an executive agency of the United States of America and an “agency” within the meaning of 5 U.S.C. § 552a(a)(1).

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552a(g)(1)(D) because Dr. Chen alleges she has been adversely affected by the Government’s violations of the Privacy Act and of her rights under the U.S. Constitution.
10. The District of Columbia is a proper venue for this action pursuant to 5 U.S.C. § 552a(g)(5) and 28 U.S.C. § 1391.

STATEMENT OF FACTS

11. Dr. Chen was born in China. She came to the United States in 1987 to study as a visiting scholar at George Washington University, following on her work as a cardiologist and medical researcher with the Chinese astronaut program. Dr. Chen earned a Master’s Degree and a Ph.D. in Public Policy from George Washington University.
12. While at George Washington University, Dr. Chen met her now-husband, Dr. J. Davidson Frame, a U.S. citizen. Dr. Chen chose to make the United States her home, becoming a lawful permanent resident in 1993 and a U.S. citizen in 2001.

13. In 1998, Dr. Chen founded the University of Management and Technology, an educational institution that provides post-secondary and graduate education to working adults. The university is headquartered in Arlington, Virginia. More than 12,000 students have received degrees from the university over its 20-year history.
14. Dr. Chen wholly owns the University of Management and Technology and derives a substantial part of her income from its operations.
15. In 2010, Dr. Chen—like many Chinese-American scientists around that time—became the focus of an FBI investigation. The investigation appeared to focus on statements Dr. Chen made on immigration forms concerning her work in the 1980s as a scientist for the Chinese astronaut program.
16. Thereafter, over a six-year period, the FBI probed deeply into Dr. Chen’s personal and professional life. Agents of the U.S. Government conducted interviews of her family and colleagues, obtained her immigration records, monitored her travel, seized her computer from her as she was transiting through an airport, employed an undercover informant to covertly gather information about her, and secretly monitored and recorded her conversations.
17. During the course of the investigation, in 2012, FBI Special Agent Timothy S. Pappa applied to the U.S. District Court for the Eastern District of Virginia for warrants to search Dr. Chen’s home and the main office of the University of Management and Technology, both located in Arlington, Virginia.
18. On December 5, 2012, the FBI executed search warrants for Dr. Chen’s home and the main office of the University of Management and Technology. NCIS and DHS personnel were present during the FBI’s searches.

19. Even though the court had ordered that the warrant applications and warrants be kept secret and under seal, news media reported on the searches as they occurred.
20. During the searches, the FBI collected 51 boxes of materials from Dr. Chen's home and 24 items from her office. Those materials included tax records and business documents, family photographs, family and personal communications, business communications, personal memorabilia, computers and digital storage devices (including an iPad and two iPods), video tapes, and cell phones. The personal photographs seized from Dr. Chen's home included photographs that showed her at home with her husband; posing with her then-minor daughter, also a U.S. citizen; and paying respects at her father's gravesite.
21. The FBI labeled and stored the materials seized from Dr. Chen's home using labels that listed a specific file number, i.e., 200D-WF-240088; the date of seizure; a designated item number; a description of the item; and the location of the search (which, in the case of the searches of Dr. Chen's home, included her personal residential address). Those materials accordingly became part of "a group of any records ... from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned" to records related to Dr. Chen. 5 U.S.C. § 552a(a)(5) (definition of "system of records"). Attached hereto as Exhibit A is a copy of a photograph that fairly and accurately depicts one of the labels that the FBI used to identify seized materials.
22. After six years of investigation, in March 2016, the U.S. Attorney's Office for the Eastern District of Virginia informed Dr. Chen's attorney that no charges would be filed against her.

23. On information and belief, starting at some time before late February 2017, one or more agents of the FBI (or, possibly, other Defendants) unlawfully disclosed to one or more persons associated with Fox News various records and information pertaining to Dr. Chen and her private affairs that the FBI had collected or generated in the course of its investigation of her and that the FBI thereafter had stored in one or more of its systems of records (hereinafter the “Leaked Records”). On information and belief, some of the Leaked Records had also been stored in one or more systems of records of other Defendants.
24. As a direct and foreseeable result of the unlawful disclosure of the Leaked Records to Fox News, Fox News in turn published, broadcast, and otherwise disseminated much of the contents of the Leaked Records to its nationwide audiences, resulting in personal, professional, and financial harm to Dr. Chen.
25. On February 24, 2017, Fox News aired the first of three negative reports about Dr. Chen that drew heavily from contents of the Leaked Records. In an “exclusive” report during its primetime broadcast, which draws millions of viewers, Fox News used some of the Leaked Records as purported support for the report’s allegation that, many years earlier, Dr. Chen had lied on her immigration forms about whether she had previously worked for the Chinese military. The print version of the February 24 report is attached hereto as Exhibit B.
26. Among other things, the February 24, 2017 Fox News report revealed information derived from, and images of, an FBI FD-302 Form, bearing file number “200D-WF-240088,” that purported to memorialize an FBI interview of Dr. Chen’s daughter. Attached hereto as Exhibit C is an image of this form from the February 24, 2017 Fox

News Report. This Fox News Report also displayed images of personal photographs seized from Dr. Chen's home during the FBI search. On information and belief, before they were disclosed to Fox News, that FBI form and those photographs had been stored in one or more FBI system(s) of records.

27. The February 24, 2017 Fox News report also revealed data taken from, and images of, Dr. Chen's immigration and naturalization forms; Dr. Chen's certificate of U.S. Citizenship, which includes her birthdate, INS Registration Number, height, and marital status; and Dr. Chen's immigration application. On information and belief, before they were disclosed to Fox News, these documents were stored in one or more systems of records maintained by the FBI and/or in one or more systems of records maintained by the U.S. Citizenship and Immigration Services, a component of Defendant DHS.
28. The February 24, 2017 Fox News report stated that representatives of Fox News had reviewed other documents showing that the FBI searched Dr. Chen's home and the University of Management and Technology's main office as part of a counter-intelligence case. On information and belief, those documents were also among the Leaked Records and, before having been disclosed to Fox News, were stored in one or more systems of records maintained by the FBI and/or in one or more systems of records maintained by the other Defendants.
29. The February 24, 2017 Fox News report also selectively discussed details of FBI interviews of Dr. Chen and her daughter as well as information purportedly drawn from Dr. Chen's immigration paperwork. On information and belief, these aspects of the report were also drawn from or based upon some of the Leaked Records.

30. Fox News published and broadcast additional “exclusive” reports about Dr. Chen on April 28, 2017 and June 28, 2017. These reports, like the initial report, subsequently received additional coverage from other media sources. The print version of the April 28 report is attached hereto as Exhibit D and the print version of the June 28 report is attached hereto as Exhibit E.
31. The April 28, 2017 Fox News report publicly displayed the contents of additional personal photographs that the agents of one or more of the Defendants seized from Dr. Chen’s home, including photographs depicting Dr. Chen’s daughter and the gravesite of her father. The June 28, 2017 Fox News report publicly displayed similar material.
32. Fox News continues to host the reports based on the Leaked Records and images of some of the Leaked Records themselves on its website.
33. Before the government’s execution of the search warrant at Dr. Chen’s home, the only known copies of the photographs published by Fox News were kept in Dr. Chen’s home.
34. On May 8, 2017, James Gillis, an Assistant U.S. Attorney involved in the investigation of Dr. Chen and an agent of Defendant DOJ, conceded during a hearing before Magistrate Judge Anderson of the United States District Court for the Eastern District of Virginia that the photographs featured in the Fox News reports “came from the search take.”
35. On June 25, 2018, Dr. Chen, through her counsel, asked the Office of Inspector General for Defendant DOJ to investigate the illegal disclosure of the Leaked Records. The DOJ Office of Inspector General advised counsel for Dr. Chen that it would not conduct any such investigation.
36. On November 15, 2018, the Office of Inspector General for Defendant DOJ told counsel for Dr. Chen, as part of its purported rationale for declining to conduct the requested

investigation, that Defendants DOD and DHS (or components thereof) had also had access to the records in Dr. Chen's FBI file, and therefore could have been sources of any leak that resulted in the Fox News reports. This representation by a representative of Defendant DOJ is a part of the basis for naming DOD and DHS as additional defendants.

37. The widespread publication, broadcast, and dissemination of the Fox News reports that were initially aired on February 24, 2017, April 28, 2017, and June 28, 2017 (hereinafter the "Leak-Based Fox News Reports"), which were based on the unlawfully Leaked Records—which, in turn, had been obtained during the course of a U.S. government investigation of Dr. Chen that resulted in no charges whatsoever—upended Dr. Chen's personal and professional life.
38. The unwanted storm of negative media attention focused on Dr. Chen that resulted from Defendants' disclosure of the Leaked Records, and from the subsequent dissemination of the Leak-Based Fox News Reports, was so severe that it caused persons unknown to Dr. Chen to send hateful mail and other communications to, and direct death threats at, Dr. Chen and other staff at the University of Management and Technology.
39. Dr. Chen suffered financial harm as a result of the illegal disclosure of the Leaked Records by one or more of the Defendants.
40. The University of Management and Technology's enrollments and revenues sharply decreased in the wake of the Leak-Based Fox News Reports. This decrease has had a severe and negative effect on Dr. Chen's income and the value of her personal investment in the University of Management and Technology, which she wholly owns.

41. The illegal disclosures of the Leaked Records to Fox News also led to inquiries from Members of Congress and the DOD about Dr. Chen and the University of Management and Technology.
42. On January 23, 2018, and apparently as a direct consequence of the Leak-Based Fox News Reports, DOD suspended (and on March 28, 2018 ultimately terminated) the University of Management and Technology's long-standing participation in the DOD Tuition Assistance program. The Tuition Assistance program pays a significant portion of tuition expenses for military students and is a critical source of funding for servicemembers seeking to further their education. The termination of the university's participation in the Tuition Assistance program directly caused further decreases in enrollments and revenues to the University of Management and Technology, directly resulting in further substantial injury, including substantial personal financial losses, to Dr. Chen.
43. According to the Leak-Based Fox News Reports, the FBI and U.S. Attorney's Office refused to provide any comment on the record to Fox News regarding the matters discussed and disclosed in those reports. The reports did, however, cite anonymous sources who reportedly had described conflict between the FBI and the U.S. Attorney's Office over whether to bring charges against Dr. Chen. The same Fox News reports also cited (but did not name) a Special Agent in the FBI's Washington Field Office who, according to the reports, was upset that the University of Management and Technology was continuing to participate in the DOD's Tuition Assistance program. Attached hereto as Exhibit F is an image of an email from the unnamed Special Agent to an FBI informant displayed in the February 24, 2017 report.

44. Soon after Dr. Chen was informed that no charges would be brought against her, and in violation of federal law, one or more agents of the Defendants, who possessed or had access to confidential FBI records pertaining to the investigation, caused the Leaked Records to be disclosed to one or more employees or agents of Fox News.

COUNT ONE: VIOLATION OF THE PRIVACY ACT

45. Plaintiff hereby restates and incorporates by reference paragraphs 1-44 of this Complaint as if fully set forth herein.
46. The Privacy Act requires that “[n]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains,” subject to certain exceptions. 5 U.S.C. § 552a(b).
47. While there are limited exceptions to this prohibition on disclosure, *see* 5 U.S.C. § 552a(b)(1) through (12), none of those exceptions authorized or allowed the disclosure to Fox News of the records and information concerning Dr. Chen that are the subject of this suit.
48. At no time did Dr. Chen authorize any of the Defendants or their agents to disclose any information pertaining to her to anyone outside the federal government, including anyone associated with Fox News.
49. The United States is liable for actual damages, costs of the action, and attorneys’ fees if the court determines that an agency willfully or intentionally disclosed records pertaining to an individual without their permission. 5 U.S.C. § 552a(g)(4).

50. The Leaked Records broadcast in the Fox News reports included “records” within the meaning of the Privacy Act. These records could not have been obtained by Fox News except from the Defendants, either directly or indirectly.
51. At least some and likely all of the Leaked Records, before being unlawfully disclosed as described above, were contained in a system of records within, and under the control of, the FBI, the DHS, and/or other Defendants.
52. As a matter of policy and practice, the records and information that the FBI collects or creates during the course of an investigation are incorporated into and thereafter maintained in the FBI’s Central Records System, which the FBI has designated a “system of records” for Privacy Act purposes. *See* 63 Fed. Reg. 8659, 8671; *see also* 66 Fed. Reg. 17200; 66 Fed. Reg. 29994. Such records also may be accessed through the SENTINEL system, which allows for electronic case management. On information and belief, this policy and practice was followed with respect to at least some, if not all, of the Leaked Records.
53. Some of the Leaked Records (including but not necessarily limited to immigration forms and other records pertaining to Dr. Chen) were contained in, or derived from records contained in, a system of records maintained by DHS. Some or all of these DHS records were maintained in the Citizenship and Immigration Data Repository, which DHS has designated a “system of records” for Privacy Act purposes. *See* 75 Fed. Reg. 54642, 54644.
54. The disclosure or disclosures of the Leaked Records by one or more employees or agents of the Defendants was a willful and intentional violation of the Privacy Act.

55. As a direct and foreseeable result of the illegal leak or leaks of Dr. Chen's private information to Fox News, three Fox News reports were published and broadcast, leading to the destruction of Dr. Chen's livelihood and the termination of the University of Management and Technology's participation in DOD's Tuition Assistance program.
56. Although the government has never charged Dr. Chen in court with any misconduct, her reputation has suffered substantial harm and she has been financially damaged as a result of Defendants' unlawful conduct. The illegal leak of personal information has diminished Dr. Chen's income, limited her professional opportunities, and decreased the value of the university that she wholly owns and into which she has invested the last two decades.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court provide the following relief:

- a. Enjoin Defendants from further unauthorized and illegal disclosures of Dr. Chen's private information;
- b. Award Dr. Chen actual damages, the exact amount of which is to be determined at trial;
- c. Award Dr. Chen reasonable costs and attorney's fees as provided by the Privacy Act;
- d. Refer any Government officials responsible for violating the Privacy Act for prosecution under 5 U.S.C. § 552a(i)(1);
- e. Direct the Defendants to state publicly that the documents underlying the Fox News reports were illegally and selectively leaked with the intent to harm Dr. Chen; and
- f. Grant such further and other relief as this Court deems just and proper.

Dated: December 21, 2018

Respectfully submitted,

/s/ Patrick Carome

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