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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 CAITLIN KELLY HENRY and JESSE
13 STOUT,
14 Plaintiffs,
15 v.

16 UNITED STATES DEPARTMENT OF
17 JUSTICE,
18 Defendant.

) Civil Action No. C13-5924 DMR
)
) **DECLARATION OF GISELE BRYANT**
) **IN SUPPORT OF FEDERAL DEFENDANT'S**
) **MOTION FOR SUMMARY JUDGMENT**
)
) Date: January 8, 2015
) Time: 11:00 a.m.
) Place: Courtroom 4 - 3rd Floor
)
) Hon. Donna M. Ryu

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CAITLIN KELLY HENRY and JESSE STOUT,
Plaintiffs,)

v.)

Civil Action No. 13-5924 (DMR)

U.S. DEPARTMENT OF JUSTICE)
Defendant.)

_____)

DECLARATION OF GISELE W. BRYANT

I, Gisele W. Bryant, declare as follows:

1. I am a Freedom of Information Act (“FOIA”) and Privacy Act (“PA”) point of contact for the Civil and Criminal Divisions of the United States Attorney’s Office for the District of New Jersey (“USAO/NJ”). In this capacity, I serve as a liaison to the FOIA/PA Staff for the Executive Office for United States Attorneys (“EOUSA”) in Washington, D.C, which processes and responds to FOIA/PA requests located in the USAO/NJ.

2. My duties include receiving and reviewing requests made pursuant to FOIA, 5 U.S.C. § 552, and/or the PA, 5 U.S.C. § 552a, for records maintained by, or located in the USAO/NJ. I am responsible for the searches conducted by the USAO/NJ for records responsive to FOIA/PA requests.

3. The statements I make in this declaration are made on the basis of my review of the official files and records of the USAO/NJ, my own personal knowledge, or on the basis of knowledge acquired by me through the performance of my official duties.

4. I am familiar with the procedures followed by the USAO/NJ in conducting searches

for records responsive to FOIA/PA requests. Also, I am familiar with the FOIA/PA request submitted by plaintiff, Jesse Stout, dated April 30, 2013, and assigned Request No. 2013-1996. By correspondence dated July 8, 2013, the FOIA/PA Staff of EOUSA requested that members of my office conduct a search for records that were responsive to Mr. Stout's request. A true and correct copy of the correspondence is attached hereto as **Exhibit A** at p. 1 of Form 010.

5. Plaintiff Stout submitted a FOIA/PA request through his attorney, Caitlin Henry, that requested the following records: “[p]lease search both the automated and the older general (manual) indices for all records (in any form or format, including multimedia and all types of electronic records) related in whole or in part to Jesse Stout. This includes, but should not be limited to emails, Complaint Forms, Memorandums of Investigation, Reports of Investigation, Field Operation Worksheets, Arrest Reports, Agents' notes, arrest evaluations, and investigation.” Plaintiff Stout's FOIA/PA request sought records during the date range of July 17, 1984 to May 21, 2013. According to the FOIA/PA request, Mr. Stout resided in the following places between 1984 and the present: New Jersey (1984-2002), Rhode Island (2002-2009), and California (2009-Present). A true and correct copy of the FOIA/PA request I received is attached hereto as **Exhibit B**.

6. After reviewing plaintiff Stout's FOIA/PA request, in order to determine if there were records responsive to the request in the USAO/NJ, I conducted searches on two computer systems.

- a. First, I used the Legal Information Office Network Systems (“LIONS”), which is a system used by the USAO/NJ to track civil, criminal and appellate cases and investigations. The LIONS system can be searched by name and/or case number. The search conducted included the case name of Jesse A. Stout and variations

thereof. I searched this database by entering the name “Jesse A. Stout,” “Stout,” “Jesse,” “Jesse A.” These searches thereof took place on June 2, 2014 and June 3, of 2014. My searches of the LIONS system did not identify any records in the USAO/NJ that related to plaintiff Stout. Subsequently, I ran these searches again on September 11, 2014 to confirm the prior results.

- b. On September 24, 2014, I ran additional searches on LIONS using all the “associated key words” listed in the FOIA/PA request. *See Exhibit B.* I did not locate any responsive records through these searches of the LIONS system.
- c. In addition, I searched the Public Access to Court Electronic Records (“PACER”) system. PACER is an online system that provides the public with access to case and docket information from federal appellate, district, and bankruptcy courts, and the PACER Case Locator. The PACER Case Locator is a national index for U.S. district, bankruptcy, and appellate courts. I searched this system in order to confirm if there was a case in the District Court for New Jersey related to Mr. Stout. Although PACER allows me to conduct a nationwide search of federal court dockets, I limited my search for cases in the District of New Jersey. On June 2, 2014, I searched PACER using “Stout.” However, my search on PACER did not identify any federal cases regarding Jesse A. Stout as a plaintiff, defendant or attorney in the District of New Jersey.

7. At my request, Cheryl McKay, an Administrative Support Assistant in the Records Department of the USAO/NJ, conducted a search of an index on her computer of archived cases that may have been purged from the LIONS database in the USAO/NJ. In addition to searching her computer for archived records, Ms. McKay she searched through old index cards which

would identify any old and/or destroyed files purged from LIONS. On June 3, 2014, Ms. McKay searched the index on her computer and the index cards for "Jesse" as well as for "Stout." On September 11, 2013, Ms. McKay performed another search to confirm prior results. She was unable to locate any responsive records.

8. The searches that were conducted utilized methods which should identify any responsive records. To my knowledge, there is no other location in the District of New Jersey where any other records which might be responsive to Mr. Stout's requests are likely to be located. I am not aware of any other method or means by which a further search could be conducted, which would likely locate additional responsive records.

I declare under the penalty of perjury that the foregoing is true and correct. Executed this 24th day of September, 2014.



GISELE W. BRYANT
Paralegal Specialist
USAO/NJ

Exhibit A

EXHIBIT A

Memorandum

FOR RETURN TO: FOIA Staff, BICN Bldg.
600 E Street, N.W., Room 7300
Washington, D.C. 20530-0001

DATE RETURNED:



Subject:	Date
Requester: <u>Caitlin K. Henry</u>	JUL - 8 2013
Subject: <u>Jesse Stout</u>	
Number: <u>13-1996</u>	
District: <u>New Jersey</u>	

To: FOIA/PA CONTACT

Gisele Bryant

From:

Shirley Botts
EOUSA
TEL: 202-252-6024
FAX: 202-252-6047

PLEASE READ CAREFULLY

Attached is a FOIA/PA request for records thought to be maintained in your district. You must search all manual and computer systems and thoroughly complete the accompanying "Record of Search" form.

After you have expended two hours of search time, stop searching and contact us. We will need an estimate of how long you believe it will take you to complete the search, approximately how many pages are in the file, and whether it is a multi-defendant case.

This form and any applicable attachments must be completed and returned to this office within 10 days, unless otherwise advised. Incomplete forms will be returned to you for completion.

RESULT OF SEARCH:(CIRCLE WHERE APPROPRIATE)

RECORDS: NO RESPONSIVE RECORDS/MISSING/DESTROYED. (If destroyed, attach proof; if missing, explain.)

CASE STATUS: (ATTACH DOCKET SHEET; if too large select portions.)

CLOSED CASE:(Date)

PENDING/ANTICIPATED: INVESTIGATION/TRIAL/APPEAL/OTHER(explain and complete Form 007.)

ADDITIONAL INFORMATION: CLASSIFIED/SEALED/CO-DEFENDANTS/FUGITIVES/DANGEROUS PERSON(S)(explain)

LOCATED RECORDS: COMPLETE FOR ALL CASES AND ESTIMATE VOLUME

COLUMN A
DO NOT FORWARD ABSENT SPECIFIC REQUEST; CHECK BOX/ESTIMATE PAGE COUNT.

Court-Filed/Public Records
(includes Plea Agreements/Exhibits/PSRs/Appeals courts)

Grand Jury Records (Total)
(Broken Down): _____

GJ Transcripts: _____

GJ Subpoenas: _____

GJ Exhibits: _____

GJ Attorney Notes: _____

GJ other(specify): _____

SEALED RECORDS _____

OTHER (specify): _____

COLUMN B
COPY AND FORWARD WITH THIS PAGE ALL NON-PUBLIC RECORDS LISTED BELOW/ESTIMATE PAGE COUNT.

State/local/foreign law enforcement records

Confidential Informant _____

Correspondence _____

Attorney Work Product:(ex. handwritten notes, draft pleadings, memos, legal research, etc.) _____

Public source material. (ex. news clippings/press releases/articles, etc.) _____

Other federal agency (i.e., FBI,etc.) _____

Exhibit B

Caitlin Kelly Henry, Esq.
Attorney At Law
P.O. Box 641050
San Francisco, CA 94164

FOIA

FOIA/PA Mail Referral Unit
Justice Management Division
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001

Transmitted Via Post

April 30, 2013

Re: Freedom of Information and Privacy Acts Request

Dear FOIA Officer:

This is a request under the Freedom of Information and Privacy Acts. I hereby request the following on behalf of my client, Jesse Stout. Please search both the automated and the older general (manual) indices for all records (in any form or format, including multimedia and all types of electronic records) related in whole or in part to Jesse Stout. This includes, but should not be limited to, emails, Complaint Forms, Memorandums of Investigation, Reports of Investigation, Field Operation Worksheets, Arrest Reports, Agents' notes, arrest evaluations, and investigation.

This Jesse Stout resided in New Jersey 1984-2002, Rhode Island 2002-2009, and California 2009 to present. I request records in the date range of: July 17, 1984 to May 21, 2013.

Associated key words may include, but should not be limited to (comma indicating "or"):

- Jesse Stout, Jesse Abram Stout, Jesse A. Stout, Jessie Stout
- Alexander Muss High School in Israel, Americans for Safe Access, Board of Directors, Bradford Group, Brown University, California Corrections Crisis, California Department of Corrections and Rehabilitation, California State Assembly, Clarendon Group, Coalition for Cannabis Policy Reform, Council on Crime Prevention, Demonstration, Dorchester Publishing, Drug Policy Alliance, Drug Policy Committee, Evan Marshall Literary Agency, Legal Observer, Marijuana Policy Project, Moishe House, Multidisciplinary Association for Psychedelic Studies, National Lawyers Guild, National Organization for the Reform of Marijuana Laws, NoFly List, Occupy, Office of Legal Affairs, Public Defender, Public Safety Committee, Right to Vote Campaign, San Francisco Sheriff, San Quentin State Prison, Protest, Radical, Rhode Island Patient Advocacy Coalition, Students for Sensible Drug Policy, University of California Hastings College of the Law, Watchlist.

I also request a public interest fee waiver pursuant to 5 U.S.C. 552(a)(4)(A)(iii). I anticipate that the requested documents will be made available to the general public free of charge as public information on the Internet about surveillance of activists and advocates. This request is made in the process of news-gathering about surveillance, and not for commercial usage. The specific operations of government to which the request relates is about surveillance of people who advocate for prisoners and racial, criminal, and social justice. Publication of information about monitoring of advocates will contribute significantly to a public understanding of how to perform lawful advocacy on behalf of marginalized populations. In particular, attorneys would benefit from understanding of how traditionally legally privileged communications have been monitored. Both will significantly contribute to public understanding of government operations.

Caitlin Kelly Henry, Esq.
Attorney At Law
P.O. Box 641050
San Francisco, CA 94164

The following articles demonstrate the public interest in the subject matter, and my client's intended forum for dissemination:

- The Public Is Left in the Dark When Courts Allow Electronic Surveillance, New York Times, 7/23/2012 <http://www.nytimes.com/2012/07/24/us/politics/sidebar-public-in-the-dark-about-surveillance-orders.html? r=3&>
- FBI Surveillance Of Occupy Wall Street Detailed, Huffington Post, 01/05/2013 http://www.huffingtonpost.com/2013/01/05/fbi-occupy-wall-street_n_2410783.html
- The FBI Treated Occupy Like a Terrorist Group, Atlantic Wire, 12/23/2012 <http://www.theatlanticwire.com/national/2012/12/fbi-treated-occupy-terrorist-group/60289/>
- Revealed: how the FBI coordinated the crackdown on Occupy, Guardian, 12/29/12 <http://www.guardian.co.uk/commentisfree/2012/dec/29/fbi-coordinated-crackdown-occupy>

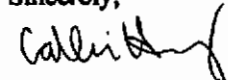
In the event that fees cannot be waived, please grant a reduced fee request in the news media category, based on the aforementioned grounds.

I would be grateful if you would inform me of the total charges in advance of fulfilling my request. My client is willing to pay up to \$50 initially. I would prefer the request filled electronically, by e-mail attachment if available, or CD-ROM if not. Likewise, if documents are not available electronically, please indicate the approximate cost of copying and shipping. As FOIA requires the release of all reasonably segregable portions of records, please release all segregable information and do not withhold an entire document if only a portion is exempt.

Because release of documents is in the public interest, but will initially be reviewed by my client and myself, I respectfully request the agency's exercise of discretion for disclosure of any documents typically exempt for release to third party. I have enclosed a release from my client.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires. Please feel free to contact me at (510) 277-2025 or ckh@caitlinkellyhenry.com.

Sincerely,



Caitlin Kelly Henry, Esq.

Enc:

1. Privacy Waiver
2. Proof of Identity

U.S. Department of Justice

Certification of Identity

FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/13

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester¹ Jesse Stout
 Citizenship Status² [REDACTED] Social Security Number³ [REDACTED]
 Current Address [REDACTED]
 Date of Birth [REDACTED] 1984 Place of Birth [REDACTED]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature⁴ Jesse Stout Date 4/30/2013

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Carlin Kelly Henry, Esq., P.O. Box 641050, SF, CA 94164
 Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

Caitlin Kelly Henry, Esq.
Attorney At Law
P.O. Box 641050
San Francisco, CA 94164

To: Whom It May Concern
Re: Privacy Waiver

I, Jesse Stout, hereby execute this Privacy Waiver. This waiver is valid through May 1st, 2015.

I authorize release of personal information to my attorney, Caitlin Kelly Henry by mail to P.O. Box 641050 San Francisco, CA 94164, or via internet to ckh@caitlinkellyhenry.com.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above. I understand that any falsification of this statement is punishable under law.

Name (Printed): Jesse Stout
Signature: Jesse Stout
Date: 4/30/2013

Attorney/Recipient Name (Printed): Caitlin Kelly Henry
Signature: Caitlin Henry
Date: 4/30/13