

1 MELINDA HAAG (CABN 132612)
United States Attorney
2 ALEX G. TSE (CABN 152348)
Chief, Civil Division
3 JENNIFER S WANG (CSBN 233155)
Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
5 San Francisco, California 94102-3495
Telephone: (415) 436-6967
6 FAX: (415) 436-6748
jennifer.s.wang@usdoj.gov

7 Attorneys for Federal Defendant
8

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,)
Defendant.)

) Civil Action No. C13-5924 DMR
)
) **DECLARATION OF SANDRA MASCOLA**
) **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 SANDRA MASCOLA

I, Sandra Mascola, declare as follows:

1. I am the Freedom of Information Act (“FOIA”) and Privacy Act (“PA”) point of contact for the United States Attorney’s Office for the District of Rhode Island (“USAO/RI). 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/RI.

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/RI. I am responsible for the searches conducted by the USAO/RI 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/RI, 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/RI in conducting searches for records responsive to FOIA/PA requests. Also, I am familiar with a FOIA/PA request on behalf of plaintiff, Jesse Stout, dated April 30, 2013. The request was assigned Request No. 2013-1997.

5. By memoranda 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 Request No. 2013-1997. A true and correct copy of the July 8, 2013 memoranda is attached hereto as **Exhibit A**.

6. Plaintiff Stout, through his attorney, Caitlin Henry, submitted a FOIA/PA request that sought 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 requested information in the date range of July 17, 1984 to May 21, 2013. A true and correct copy of the FOIA/PA request I received is attached as **Exhibit B**.

7. After reviewing plaintiff Stout’s FOIA/PA request, I took the following steps to search For potentially responsive records:

- a. The system utilized in searching for records pertaining to cases in the USAO/RI is the Legal Information Network System (“LIONS”). On July 9, 2013, I searched LIONS, which is a computer case tracking system that is used in our office to track civil, criminal, and appellate cases and investigations. The LIONS system can be searched by case name and/or case number. I searched this system to assist with my search for potentially responsive records to Mr. Stout’s request by

entering Mr. Stout's name into LIONS. In addition, I searched LIONS using the following search terms:

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 a Sensible Drug Policy; University of California Hastings College of the Law; and, Watchlist. However, these searches located no records related to Mr. Stout.

- a. Also, on July 9, 2013, I searched the Public Access to Court Electronic Records System ("PACER"), for the United States District Court for the District of Rhode Island. The PACER system provides case and docket information for trial, appellate, and bankruptcy court cases in federal court. PACER also contains PACER Case Locator, which allows me to search for cases in this system with, among other things, a person's name. I entered the names "Jesse Stout"; "Jesse Abram Stout"; "Jessie A. Stout"; and "Jessie Stout" into PACER to search for any court cases with the USAO/RI in which Mr. Stout was a party or attorney.

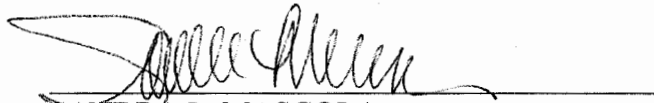
However, the search on PACER located no records related to Mr. Stout and USAO/RI.

- b. Also, on July 9, 2013, I sent an email to the Chiefs of the Criminal and Civil Division, as well as to the U.S. Attorney and First Assistant United States Attorney for the U.S. Attorney's Office for the District of Rhode Island, to ask if any of them knew of any cases in our office that pertained to Mr. Stout. My email included all the variations of Mr. Stout's name that were provided in his FOIA/PA request as well as the "associated key words" listed in the FOIA/PA request. See **Exhibit C**. I received "delivered" and "read" receipts from each addressee on July 9, 2013, although I received no response from any of the addressees.
- c. On October 29, 2013, I followed up by sending a second email to the above referenced individuals to confirm if there were any cases in our office that related to Mr. Stout and/or any of the suggested search terms that were provided in the FOIA/PA request. In my follow-up email, I advised the addressees that, "[i]f I don't hear from you by Friday, November 1st, I will assume that the answer is no. I will then reply to [EOUSA] that we have no responsive records." I received "delivered" and "read" receipts from each addressee on October 29, 2013, but no response from any of the addressees.
- d. On November 18, 2013, I provided EOUSA with a response stating that the USAO/RI located no records responsive records to plaintiff Stout's request.

10. The search was conducted utilizing methods which should identify any responsive records. To my knowledge, there is no other location in the USAO/RI where any other records

which might be responsive to plaintiff 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.



SANDRA L. MASCOLA
PARALEGAL SPECIALIST, USAO/RI

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: Requester: <u>Caitlin K. Henry</u> Subject: <u>Jesse Stout</u> Number: <u>13-1997</u> District: <u>Rhode Island</u>	Date: <u>JUL - 8 2013</u>
---	---------------------------

To: FOIA/PA CONTACT
Sandra Mascola

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>

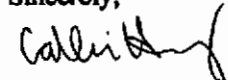
In the event that fees cannot be waived, please grant a reduced fee request in the news media category, based on the aforementioned grounds.

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

Exhibit C

Mascola, Sandra (USARI)

From: Mascola, Sandra (USARI)
Sent: Tuesday, July 09, 2013 3:42 PM
To: Iannotti, Michael (USARI); Dambruch, Stephen (USARI); Madden, Kenneth (USARI); Neronha, Peter (USARI)
Subject: FOIA Request Jesse Stout
Attachments: FOIA Request re Jesse Stout.pdf

Tracking:	Recipient	Delivery	Read
	Iannotti, Michael (USARI)	Delivered: 7/9/2013 3:42 PM	Read: 7/9/2013 3:43 PM
	Dambruch, Stephen (USARI)	Delivered: 7/9/2013 3:42 PM	Read: 7/9/2013 3:44 PM
	Madden, Kenneth (USARI)	Delivered: 7/9/2013 3:42 PM	Read: 7/9/2013 3:56 PM
	Neronha, Peter (USARI)	Delivered: 7/9/2013 3:42 PM	Read: 7/9/2013 5:02 PM

Today I received the attached FOIA request seeking all records (in any form or format, including multimedia and all types of electronic records) related in whole or in part to **Jesse Stout**. The same request was sent to several districts where Mr. Stout resided, so it is entirely possible that we have no records here in this district.

According to the requester, 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.

Mr. Stout may have been part of any potential "Occupy" movement matter or investigation.

I don't see anything in LIONS to verify any matter opened for either Jesse Stout or Occupy.

Is anyone aware of any potentially responsive records for this district?



Sandy