

Attachment 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
RYAN NOAH SHAPIRO,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 13-729 (PLF)
)	ECF
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
_____)	

**DEFENDANT’S SUPPLEMENTAL REPLY IN SUPPORT OF DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

The United States Department of Justice (“Defendant” or “DOJ”), by and through undersigned counsel, respectfully submits this Supplemental Reply, responding to arguments raised in Plaintiff’s September 26, 2014 response to Defendant’s supplemental motion. This Supplemental Reply details the recent search efforts made by Defendant in searching for Plaintiff’s request pertaining to Aaron Swartz. Defendant has searched and located file number 288A-WF-238943, a file previously requested by another FOIA requestor, John Greenewald, Jr. (“Mr. Greenewald”). Plaintiff raised Defendant’s FOIA response to Mr. Greenewald for the first time in his response to Defendant’s supplemental summary judgment motion.

Via this filing, the DOJ Federal Bureau of Investigations (FBI) has processed an additional 68 pages referencing Aaron Swartz and is making the release to plaintiff pursuant to the applicable FOIA exemptions. As detailed in the Third Declaration of David M. Hardy, Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”) of the FBI (“Third Hardy Decl.”), the FBI has now provided

plaintiff with all records responsive to his FOIA request pertaining to Aaron Swartz that were located via a reasonable search.

I. Supplemental Procedural Background

On January 14, 2013, Plaintiff Ryan Shapiro (“Plaintiff”) submitted a Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) request to the FBI, seeking records on Aaron H. Swartz, a deceased computer programmer. Plaintiff’s Complaint, ECF No. 1. Thereafter, Plaintiff filed his complaint challenging the FBI’s response to his FOIA request. *Id.* After several filings of both parties and per the Court’s March 31, 2014 order, Defendant filed a supplemental motion for summary judgment on July 16, 2014 (ECF No. 22). After enlargements of time, Plaintiff filed his Response on September 26, 2014 (ECF No. 28). Some of the statements in Plaintiff’s response are misleading, and DOJ provides clarification below.

II. Supplemental Legal Argument

A. FBI Response to FOIA Requestor John Greenwald, Jr.

Plaintiff claims that a March 15, 2014, a FOIA request made by Mr. Greenwald for records pertaining to Aaron Swartz resulted in the release of “several hundred additional pages of records relating to Aaron Swartz.” However, the FBI identified only 68 additional pages referencing Aaron Swartz that, at the time, had not been processed and released to plaintiff in this case. The FBI is now releasing those pages to plaintiff as part of the Third Hardy Decl. *See* Exhibit B.

B. Indexing of Records

Plaintiff contends that the additional records released to Mr. Greenwald should have been released to Plaintiff as well. However, although the documents sent to Mr. Greenwald were contained within the same case file as the documents sent to plaintiff, these documents

were not indexed to the name “Aaron Swartz” in the Automated Case Support System (“ACS”). Third Hardy Decl. ¶ 8. Consequently, a search of the CRS using the Universal Index (“UNI”) application of ACS did not locate them. *Id.*

As indicated in the First Hardy Declaration, ¶ 17, the decision to index names of people who are not subjects, suspects, or victims, is a discretionary decision made by the FBI Special Agent (“SA”) assigned to work on the investigation, the Supervisory SA (“SSA”) in the field office conducting the investigation, and the SSA at FBI Head Quarters. The FBI does not index every name in its files; rather, it indexes only that information considered to be pertinent, relevant, or essential for future retrieval. Third Hardy Decl. at ¶ 8. In this case, some documents were not indexed and thus not identified in the search of CRS. *Id.* This is an indexing rather than a search issue.

C. Plaintiff’s Request for Additional Searches

Plaintiff requests that the FBI conduct additional searches for records related to Aaron Swartz. *See* Plaintiff’s Response to Defendant’s Supplemental Memorandum, page 3, ECF No. 28. According to plaintiff, searches should include, for example, electronic case file text-based searches, as well as searches of the Investigative Data Warehouse (“IDW”) and Sentinel. *Id.* at page 8.

Information that is important, or may become important in the future, to an investigation is indexed so that it can be easily retrieved in the CRS. Third Hardy Decl. ¶ 10. The FBI uses the ACS’s UNI function to search the CRS when responding to FOIA requests. *Id.*

Sentinel is the FBI’s next generation case management system. *Id.* As of July 1, 2012, all FBI generated records are created electronically in case files via Sentinel; however, Sentinel did not replace ACS and its component parts. *Id.* ACS remains the primary search mechanism that

RIDS employs to perform index searches of the comprehensive CRS because data--such as the names of individuals indexed into FBI records created in the Sentinel platform-- are replicated or “back-filled” into ACS. *Id.* Therefore, a Sentinel search is not necessary and would only constitute a duplication of efforts and a waste of time and resources. *Id.*

On December 1, 2012, the Investigative Data Warehouse application was retired and its functionality merged with the Data Integration and Visualization System (“DIVS”).¹ DIVS is an integrated search capability for repositories, such as the CRS, and returns search results to agents and analysts based upon their customized queries. *Id.* at ¶ 11. DIVS enables agents and analysts to conduct multiple data searches across data systems that are not connected to one another. *Id.* This systems merger permits the FBI to consolidate certain information. Thus, DIVS is just another mechanism to search the CRS and would yield duplicative search results. *Id.*

D. Released pages and redactions

The FBI located and processed a total of 68 pages in response to plaintiff’s response to Defendant’s supplemental memorandum. *Id.* at ¶ 13. Of these 68 pages, 35 pages have been released in full, 23 pages have been released in part, 9 pages have been withheld in full pursuant to FOIA exemptions, and one page has been withheld in full as it is a duplicate of a page previously processed and released to plaintiff. *Id.* The attached Third Hardy Declaration explains the withholdings and applicable FOIA exemptions.

The exemptions asserted by the FBI as grounds for non-disclosure of portions of documents from file 288A-WF-238943 are FOIA Exemptions 3, 6, 7(C), 7(E), and 7(F), 5 U.S.C. §§ 552 (b)(3), (b)(6), (b)(7)(C), (b)(7)(E), and (b)(7)(F). *Id.* at ¶ 12. The justifications

¹ DIVS is an access control system of records. Access is only granted to specific individuals on a need to know basis. Not all FBI employees have access to DIVS.

for Exemptions (b)(6), (b)(7)(C), and (b)(7)(F) were previously described in the First Hardy Declaration , ¶¶ 31-42 and 45-46.

Thus, the FBI has now provided plaintiff with all records responsive to his FOIA request pertaining to Aaron Swartz that were located via a reasonable search. *Id.* at ¶ 21. In addition, the FBI processed the additional 68 pages referencing the subject that were released to Mr. Greenwald in a separate administrative request and provided them to plaintiff pursuant to the applicable FOIA exemptions. *Id.* at ¶ 21. The FBI processed these records under the access provisions of the FOIA to achieve maximum disclosure and has properly exempted information from these records under applicable FOIA Exemptions. *Id.* Additionally, the FBI carefully examined the responsive documents and determined that the information withheld from plaintiff, if disclosed, would disclose information protected by statute, would cause a clearly unwarranted invasion of personal privacy, would disclose investigative techniques and procedures for law enforcement investigations, the disclosure of which could reasonably be expected to risk circumvention of the law, and could reasonably be expected to endanger the physical safety of individual(s). *Id.*

As detailed above, the FBI has now provided Plaintiff all records responsive to his FOIA request that were located via a reasonable search. The details above also demonstrate the reasonableness of FBI's search for pertinent records.

III. CONCLUSION

WHEREFORE, based on the foregoing, Defendant respectfully requests that the Court grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment.

Dated December 8, 2014

Respectfully submitted,

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