

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RYAN NOAH SHAPIRO,)	
Plaintiff,)	
v.)	Civil Action No. 13-CV-0729
U.S. DEPARTMENT OF JUSTICE,)	
Defendant.)	

DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the Federal Bureau of Investigation (“FBI”), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 270 employees who staff a total of ten (10) FBIHQ units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA, as most recently amended by the OPEN Government ACT of 2007 and the OPEN FOIA Act of 2009; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General and FBI policies and

procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Specifically, I am aware of the handling of plaintiff Ryan Noah Shapiro's January 14, 2013 FOIA request to the FBI seeking access to records pertaining to Aaron H. Swartz.

(4) The FBI has processed a total of 23 pages responsive to plaintiff's request. In accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), this declaration provides an explanation of the FBI's record-keeping system and the procedures used to search for records responsive to plaintiff's request, and provides justifications for the FBI's withholding of information from these records pursuant to FOIA Exemptions 6, 7(C), 7(E), and 7(F), 5 U.S.C. §§ 552 (b)(6), (b)(7)(C), (b)(7)(E), and (b)(7)(F).

ADMINISTRATIVE HISTORY OF PLAINTIFF'S FOIA REQUEST

(5) By letter dated January 14, 2013, plaintiff submitted a FOIA request to FBI Headquarters ("FBIHQ") for "any and all records that were prepared, received, transmitted, collected and/or maintained by the FBI, the Terrorist Screening Center, the National Joint Terrorism Task Force, or any Joint Terrorism Task Force relating or referring to the deceased person Aaron H. Swartz." Plaintiff requested searches of the FBI's Electronic Surveillance ("ELSUR") Index and the Bureau Mailing List. Plaintiff also sought expedited processing and a fee waiver. **(See Exhibit A.)**

(6) By letter dated January 25, 2013, the FBI acknowledged plaintiff's request and assigned it FOIPA No. 1206993. The FBI advised plaintiff that a search of the Central Records System was being conducted and he would be advised of the results in future correspondence. Additionally, plaintiff was informed that his fee waiver was being considered and he would be advised of the decision at a later date. **(See Exhibit B.)**

(7) By letter dated January 25, 2013, the FBI informed plaintiff that his request for expedited processing had been granted. **(See Exhibit C.)**

(8) By letter dated February 14, 2013, the FBI released 21 pages to plaintiff in full or in part. The FBI stated that it had reviewed 23 pages responsive to plaintiff's request. Furthermore, the FBI indicated that it had withheld information pursuant to FOIA Exemptions (b)(6), (b)(7)(C), (b)(7)(E), and (b)(7)(F). The FBI further advised that a search of the FBI's ELSUR Index and Bureau Mailing List resulted in no records. Finally, the FBI advised plaintiff that he could appeal the FBI's denials within sixty (60) days by writing to the U.S. DOJ Office of Information Policy ("OIP"). **(See Exhibit D.)**

(9) By letter dated February 25, 2013, plaintiff filed an appeal with OIP, appealing the adequacy of the FBI's search for potentially responsive records, as well as the FBI's withholding of information. **(See Exhibit E.)**

(10) By letter dated March 14, 2013, OIP acknowledged receipt of plaintiff's appeal and notified him that his appeal had been assigned appeal number AP-2013-02254. **(See Exhibit F.)**

(11) On or about May 20, 2013 plaintiff filed this lawsuit in the United States District Court for the District of Columbia.

EXPLANATION OF THE CENTRAL RECORDS SYSTEM

(12) The Central Records System (“CRS”), which is utilized to conduct searches in response to FOIA and Privacy Act requests, enables the FBI to maintain all information which it has acquired in the course of fulfilling its mandated law enforcement responsibilities. The records maintained in the CRS consist of administrative, applicant, criminal, personnel, and other files compiled for law enforcement purposes. This system consists of a numerical sequence of files broken down according to subject matter. The subject matter of a file may relate to an individual, organization, company, publication, activity, or foreign intelligence matter (or program). Certain records in the CRS are maintained at FBIHQ. Records that are pertinent to specific field offices of the FBI are maintained in those field offices. Although the CRS is primarily designed to serve as an investigative tool, the FBI utilizes the CRS to conduct searches that are likely to yield documents responsive to FOIA and Privacy Act requests. The mechanism that the FBI uses to search the CRS is the Automated Case Support System (“ACS”).

(13) Access to the CRS is obtained through the General Indices, which are arranged in alphabetical order. The General Indices consist of index cards on various subject matters that are searched either manually or through the automated indices. The entries in the General Indices fall into two categories:

(a) A “main” entry -A “main” entry, or “main” file, carries the name corresponding with a subject of a file contained in the CRS.

(b) A “reference” entry -A “reference” entry, sometimes called a “cross-reference,” is generally only a mere mention or reference to an individual, organization, or other subject matter, contained in a document located in another “main” file on a different subject matter.

(14) Access to the CRS files in FBI field offices is also obtained through the General

Indices (automated and manual), which are likewise arranged in alphabetical order, and consist of an index on various subjects, including the names of individuals and organizations.

Searches made in the General Indices to locate records concerning a particular subject, such as Aaron Swartz, are made by searching the subject requested in the index. FBI field offices have automated indexing functions.

(15) On or about October 16, 1995, the ACS system was implemented for all field offices, Legal Attaches (“Legats”), and FBIHQ in order to consolidate portions of the CRS that were previously automated. Because the CRS cannot electronically query the case files for data, such as an individual’s name or social security number, the required information is duplicated and moved to the ACS so that it can be searched. Over 105 million records from the CRS were converted from automated systems previously utilized by the FBI. Automation did not change the CRS; instead, automation has facilitated more economic and expeditious access to records maintained in the CRS.

(16) ACS consists of three integrated, yet separately functional, automated applications that support case management functions for all FBI investigative and administrative cases:

(a) Investigative Case Management (“ICM”) - ICM provides the ability to open, assign, and close investigative and administrative cases as well as set, assign, and track leads. The Office of Origin (“OO”), which sets leads for itself and other field offices, as needed, opens a case. The field offices that receive leads from the OO are referred to as Lead Offices (“LOs”) formerly known as Auxiliary Offices. When a case is opened, it is assigned a Universal Case File Number (“UCFN”), which is utilized by all FBI field offices, Legats, and FBIHQ that are conducting or assisting in the investigation. Using a fictitious file number “111-HQ-12345” as an example, an explanation of the UCFN is as follows: “111” indicates the classification for the specific type of investigation; “HQ” is the abbreviated form used for the OO of the investigation, which in this case is FBIHQ; and “12345” denotes the individual case file number for the particular investigation.

(b) Electronic Case File (“ECF”) -ECF serves as the central electronic

repository for the FBI's official text-based documents. ECF supports the universal serial concept, in that only the creator of a document serializes it into a file. This provides a single-source entry of serials into the computerized ECF system. All original serials are maintained in the OO case file.

(c) Universal Index ("UNI") -UNI continues the universal concepts of ACS by providing a complete subject/case index to all investigative and administrative cases. Only the OO is required to index; however, the LOs may index additional information as needed. UNI, an index of approximately 116.2 million records, functions to index names to cases, and to search names and cases for use in FBI investigations. Names of individuals or organizations are recorded with identifying applicable information such as date or place of birth, race, sex, locality, Social Security number, address, and/or date of event.

(17) The decision to index names other than subjects, suspects, and 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 FBIHQ. 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. Without a "key" (index) to this enormous amount of data, information essential to ongoing investigations could not be readily retrieved. The FBI files would thus be merely archival in nature and could not be effectively used to serve the mandated mission of the FBI, which is to investigate violations of federal criminal statutes. Therefore, the General Indices to the CRS files are the means by which the FBI can determine what retrievable information, if any, the FBI may have in its CRS files on a particular subject matter or individual, Aaron Swartz.

EXPLANATION OF THE FBI'S ELECTRONIC SURVEILLANCE INDICES

(18) The ELSUR indices are used to maintain information on subjects whose electronic and/or voice communications have been intercepted as the result of a consensual electronic surveillance or a court-ordered (and/or sought) electronic surveillance conducted by the FBI. The ELSUR indices date back to January 1, 1960. On or about October 9, 1991, the ELSUR indices

were automated. Since that time, FBIHQ and all FBI field offices have electronically generated, maintained, modified and accessed all ELSUR records.

(19) The ELSUR indices are a separate system of records from the CRS. Prior to automation, the ELSUR indices consisted of index cards on individuals who had been the subject of a microphone or telephone surveillance by the FBI from 1960. As stated above, the previous manual index card system was converted to an automated system on or about October 9, 1991. These indices include individuals who were the (a) targets of direct surveillance, (b) participants in monitored conversations, and (c) owners, lessors, or licensors of the premises where the FBI conducted electronic surveillance. In addition to the names of individuals in the above categories, the cards in the ELSUR index contain the date the voice was monitored, a source number to identify the individual on whom the surveillance was installed, and the location of the FBI field office that conducted the monitoring.

(20) ELSUR indices are published as a separate records system in the Federal Register because not all names contained in the ELSUR index can be retrieved through the General Index and CRS. See 52 Fed. Reg. 8482 (1992).

(21) The FBI field offices that have conducted electronic surveillance at any time from 1960 to the present also maintain ELSUR indices. Since January 1, 1960, the field offices have been including in their ELSUR indices - and reporting to FBIHQ for inclusion in its index - the names of all persons whose voices have been monitored through a FBI microphone installation or a telephone surveillance. The names of monitored subjects are retrievable through the FBIHQ or local field office ELSUR indices.

**SEARCH FOR AND PROCESSING OF RECORDS RESPONSIVE
TO PLAINTIFF'S REQUEST**

(22) In response to plaintiff's FOIA request, the FBI conducted a search of the Request Tracking System ("RTS") of the FOIPA Document Processing System ("FDPS")¹ to locate previous requests for similar information. As a result of this search, the FBI determined that it had responded to a FOIA/Privacy Act request in 2009 made by Aaron Swartz for records relating to himself.

(23) It is the FBI's current policy to search for and identify only "main" files responsive to FOIA requests at the initial stage. However, since the FBI was unable to locate any responsive main files, it took the extraordinary step of reviewing potentially responsive cross-reference material from the previous request, which yielded a total of 23 pages of potentially responsive material from file 288A-WF-238943.

(24) As a result, the FBI re-processed the 23 pages of documents and released the responsive material to plaintiff in redacted form. The pages considered for possible release included only those serials from file 288A-WF-238943 which mentioned the subject of the request.

(25) The FBI also conducted a search of the CRS to identify all potentially responsive main and cross-reference files indexed to Aaron Swartz, but located no additional records. Additionally, the FBI conducted an ELSUR search for records pertaining to plaintiff's request. As a result of this search no records were located.

¹ The FOIPA Document Processing System ("FDPS") is the FBI's internal computer application which serves, *inter alia*, as the repository of documents related to FOIPA requests received by the FBI for processing and tracking purposes.

**EXPLANATION OF CODED FORMAT USED FOR
THE JUSTIFICATION OF REDACTED MATERIAL**

(26) In processing the documents responsive to plaintiff's request, the FBI sought to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide plaintiff with all material in the public domain and with all reasonably segregable portions of releasable material. No reasonably segregable, nonexempt portions were withheld from plaintiff. The exemptions asserted by the FBI as grounds for non-disclosure of portions of documents are FOIA Exemptions 6, 7(C), 7(E), and 7(F), 5 U.S.C. §§ 552 (b)(6), (b)(7)(C), (b)(7)(E), and (b)(7)(F).

(27) The FBI has processed a total of 23 pages of potentially responsive material. Of these 23 pages, four pages have been released in full, 17 pages have been released in part, and two pages have been withheld in their entirety as they are duplicates of pages already processed. Each page of the processed documents is Bates-numbered sequentially "Swartz-1" through "Swartz-23." (**See Exhibit G.**) Additionally, pages withheld in their entirety were replaced by a "Deleted Page Information Sheet" ("DPIS") which identifies the reason and/or the applicable FOIA exemption(s) relied upon to withhold the page in full, as well as the Bates number for the withheld pages. The documents contain, on their faces, coded categories of exemptions which detail the nature of the information withheld pursuant to the provisions of the FOIA. The coded categories are provided to aid the Court's and plaintiff's review of the FBI's explanations of the FOIA exemptions it has asserted to withhold the material. Accordingly, a review of this information will demonstrate that all material withheld is exempt from disclosure pursuant to FOIA exemptions, or it is so intertwined with protected material that segregation is not possible without revealing the underlying protected material.

(28) Each withholding of information is accompanied by a code that

corresponds to the categories listed below. For example, if “(b)(7)(C)-1” appears on the page, the “(b)(7)(C)” designation refers to “Exemption (b)(7)(C)” of the FOIA concerning “Unwarranted Invasion of Personal Privacy.” The subcategory “1” narrows the main category into the more specific subcategory “Names and/or Identifying Information of FBI Special Agents (‘SAs’) and Support Personnel.”

(29) The coded categories of exemptions used in the processing of documents responsive to plaintiff’s request are set forth as follows:

SUMMARY OF JUSTIFICATION CATEGORIES	
CODED CATEGORIES	INFORMATION WITHHELD
Categories (b)(6) and (b)(7)(C)	CLEARLY UNWARRANTED AND UNWARRANTED INVASION OF PERSONAL PRIVACY
(b)(6)-1 and (b)(7)(C)-1	Names and/or Identifying Information of FBI Special Agents and Support Personnel (asserted in conjunction with (b)(7)(F))
(b)(6)-2 and (b)(7)(C)-2	Names and/or Identifying Information Concerning Third Parties Merely Mentioned
(b)(6)-3 and (b)(7)(C)-3	Name of a Non-FBI Federal Government Employee
(b)(6)-4 and (b)(7)(C)-4	Names and/or Identifying Information of Third Parties Who Provided Information to the FBI
Category (b)(7)(E)	INVESTIGATIVE TECHNIQUES AND PROCEDURES
(b)(7)(E)-1	Investigative Techniques and Procedures
Category (b)(7)(F)	DANGER TO LIFE OR PHYSICAL SAFETY
(b)(7)(F)	Danger to Life or Physical Safety (asserted in conjunction with (b)(6)-1 and (b)(7)(C)-1)

JUSTIFICATIONS FOR SPECIFIC DELETIONS OF INFORMATION

(30) The paragraphs that follow explain the FBI’s rationale for withholding each particular category of information under the specific exemption coded category or categories described above. A review of this information will reveal that all material which the FBI has withheld is exempt from disclosure pursuant to one or more FOIA exemptions, including Exemptions (b)(6), (b)(7)(C), (b)(7)(E), and (b)(7)(F) or it is otherwise so intertwined with

protected material that segregation is not possible without revealing the very underlying material the FBI is trying to protect.

EXEMPTION (b)(7) THRESHOLD

(31) Exemption (b)(7) of the FOIA protects from mandatory disclosure records or information compiled for law enforcement purposes, but only to the extent that disclosure could reasonably be expected to cause one of the harms enumerated in the subpart of the exemption. *See* 5 U.S.C. § 552 (b)(7). In this case, the harm that could reasonably be expected to result from disclosure concerns the invasion of personal privacy (pursuant to Exemption (b)(7)(C)), revealing sensitive law enforcement techniques (pursuant to Exemption (b)(7)(E)), and danger to life or physical safety (pursuant to Exemption (b)(7)(F)).

(32) Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Law enforcement agencies such as the FBI must demonstrate that the records at issue are related to the enforcement of federal laws and that the enforcement activity is within the law enforcement duties of that agency. Documents responsive to plaintiff's request relate to the FBI's investigation into computer intrusion of the U.S. Court's PACER system. The investigation of violations of computer intrusion as well as any possible violation of Federal criminal laws is clearly within the law enforcement duties of the FBI. *See* 28 U.S.C. § 531, *et seq.* Accordingly, the information readily meets the threshold requirement of Exemption (b)(7). The remaining inquiry is whether disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy," "could reasonably be expected to reveal sensitive law enforcement techniques," or "could reasonably be expected to endanger the life or physical safety of any individual."

FOIA EXEMPTIONS (b)(6) AND (b)(7)(C)
CLEARLY UNWARRANTED AND UNWARRANTED
INVASION OF PERSONAL PRIVACY

(33) 5 U.S.C. § 552 (b)(6) exempts from disclosure “personnel and medical files and similar files” when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Similarly, 5 U.S.C. § 552 (b)(7)(C) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.²

(34) When withholding information pursuant to these exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting this exemption, the FBI has scrutinized each item of information to determine the nature and strength of the privacy interest of every individual whose name and/or identifying information appears in the documents at issue. In conducting this analysis, the public interest in disclosure of this information is determined by whether the information in question would shed light on the FBI’s performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. In this case, the FBI concluded that the information should be withheld under Exemptions (b)(6) and (b)(7)(C), and determined that the individuals’ privacy interests were not outweighed by any public interest in disclosure.

² The practice of the FBI is to assert Exemption (b)(6) in conjunction with Exemption (b)(7)(C). Although the balancing test for Exemption (b)(6) uses a “would constitute a clearly unwarranted invasion of personal privacy” and the test for (b)(7)(C) uses the lower standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public’s interest in disclosure under the analysis of both exemptions.

Exemptions (b)(6)-1 and (b)(7)(C)-1:

**Names and/or Identifying Information of
FBI Special Agents and Support
Personnel**

(35) Exemptions (b)(6)-1 and (b)(7)(C)-1 have been asserted to protect the names and/or identifying information of FBI Special Agents (“SAs”) and support personnel who were responsible for conducting, supervising, and/or maintaining the investigative activities reported in the documents responsive to plaintiff’s request. Publicity (adverse or otherwise) regarding any particular investigation to which they have been assigned may seriously prejudice their effectiveness in conducting other investigations. The privacy consideration is also to protect FBI SAs and support personnel, as individuals, from unnecessary, unofficial questioning as to the course of an investigation, whether or not they are currently employed by the FBI.

(36) FBI SAs conduct official inquiries into violations of various criminal statutes and national security cases. They come into contact with all strata of society, conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. It is possible for an individual targeted by such law enforcement actions to carry a grudge which may last for years, and to seek revenge on the agents involved in a particular investigation. The publicity associated with the release of an agent’s identity in connection with a particular investigation could trigger hostility toward a particular agent. There is no public interest to be served by disclosing the identities of the SAs to the public. Thus, disclosure of this information would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of their personal privacy.³

³ For the convenience of the reader, rather than repeat this phrase “clearly unwarranted invasion of personal privacy under the standard of Exemption 6 and an unwarranted invasion of personal privacy under the standard of Exemption 7C” every time the FBI asserts Exemptions 6 and 7(C) we will simply use the phrase “clearly unwarranted and unwarranted invasion of personal privacy” to refer to both standards.

(37) The names of FBI support personnel are also withheld pursuant to FOIA Exemptions (b)(6) and (b)(7)(C). These employees were assigned to handle tasks related to the investigation into the computer intrusion of the U.S. Court's PACER system. They were, and possibly are, in a position to access information regarding official law enforcement investigations, and therefore could become targets of harassing inquiries for unauthorized access to investigations if their identities were released. These individuals maintain substantial privacy interests in not having their identities disclosed. There is no public interest to be served by releasing the identities of these individuals. Thus, disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. The FBI properly protected this information pursuant to FOIA Exemptions (b)(6)-1 and (b)(7)(C)-1.⁴

Exemptions (b)(6)-2 and (b)(7)(C)-2: **Names and/or Identifying Information Concerning Third Parties Merely Mentioned**

(38) Exemptions (b)(6)-2 and (b)(7)(C)-2 have been asserted to withhold the names and/or identifying information concerning third parties merely mentioned in records responsive to plaintiff's request. These third parties maintain significant personal privacy interests in not having their identities and identifying information disclosed. If the FBI were to disclose their names and other personally-identifying information, that disclosure would reveal that these third parties were connected in some way with the FBI. Disclosure of these third parties' names and/or identifying information in connection with the FBI carries an extremely negative connotation. Disclosure of their identities would subject these individuals to possible harassment or criticism and focus derogatory inferences and suspicion on them. Accordingly, the FBI has determined that these third parties have substantial privacy interests in not having

⁴ The FBI has asserted Exemptions (b)(6)-1 and (b)(7)(C)-1 on the following pages: Swartz-1, 3-4, 6-7, 10, 12, and 14-20.

information about them found in records of the FBI. After identifying the substantial privacy interests of these third party individuals, the FBI balanced these privacy interests against the minimal public interest in the disclosure of the information. The FBI determined that the personal privacy interests in non-disclosure outweighed the public in disclosure, as disclosure would not shed light on the operations and activities of the FBI. Disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. Accordingly, the FBI properly protected this information from disclosure pursuant to FOIA Exemptions (b)(6)-2 and (b)(7)(C)-2.⁵

Exemptions (b)(6)-3 and (b)(7)(C)-3: **Name of a Non-FBI Federal Government Employee**

(39) Exemptions (b)(6)-3 and (b)(7)(C)-3 have been asserted to protect the name of a non-FBI federal government employee. The relevant inquiry here is whether public access to this information would violate a viable privacy interest of this individual and whether there is a public interest in releasing his or her identity. Disclosure of his or her identity could subject this non-FBI federal government employee to unauthorized inquiries and harassment which would constitute a clearly unwarranted invasion of his or her personal privacy. The rationale for protecting non-FBI federal employees is the same as that for FBI employees, *supra*.

(40) In balancing the legitimate privacy interest of this individual against any public interest in disclosure, the FBI determined that there is a complete lack of bona fide public interest in this information because its disclosure will not shed light on the operations and activities of the federal government. Accordingly, the FBI has concluded that the disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of his or her

⁵ The FBI has asserted Exemptions (b)(6)-2 and (b)(7)(C)-2 on the following pages: Swartz-2, 5, 7, 12-13, and 17-19.

personal privacy. The FBI properly withheld this information pursuant to FOIA Exemptions (b)(6)-3 and (b)(7)(C)-3 on the following pages: Swartz-12 and 15.

Exemptions (b)(6)-4 and (b)(7)(C)-4: Names and/or Identifying Information of Third Parties who Provided Information to the FBI

(41) Exemptions (b)(6)-4 and (b)(7)(C)-4 have been asserted to protect the names and/or identifying information of third parties who provided information to the FBI during the course of its investigation.

(42) The FBI has found that information provided by individuals during an interview is one of the most productive investigative tools used by law enforcement agencies. The FBI's experience has shown that individuals interviewed by the FBI fear that their identities may be exposed and, consequently, that they could be harassed, intimidated, or threatened with legal consequences, economic reprisal, or possible physical harm. To surmount these fears, individuals interviewed by the FBI must be assured that their names and personally-identifying information will be held in the strictest of confidence. In this case, the FBI balanced the significant personal privacy interests of the third-party interviewees in not having their names and/or identifying information disclosed against the negligible public interest in the disclosure of their identities. Disclosure of these third parties' names and/or identifying information would shed no light on the operations and activities of the FBI. Accordingly, the FBI concluded that the disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. The FBI therefore properly withheld the names and/or identifying information concerning third parties who provided information to the FBI pursuant to Exemptions (b)(6)-4 and (b)(7)(C)-4.⁶

⁶ The FBI has cited Exemptions (b)(6)-4 and (b)(7)(C)-4 on the following pages: Swartz-12-13 and 15.

EXEMPTION (b)(7)(E)
INVESTIGATIVE TECHNIQUES AND PROCEDURES

(43) 5 U.S.C. § 552 (b)(7)(E) provides for the withholding of

law enforcement records which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

Exemption (b)(7)(E)-1: Investigative Techniques and Procedures

(44) The FBI has asserted Exemption (b)(7)(E)-1 to protect records concerning database and database information the disclosure of which would reveal law enforcement techniques and procedures being used in this investigation, as well as guidelines for the investigations and any pending or prospective prosecutions. In particular, the FBI has asserted Exemption (b)(7)(E)-1 to protect information that is not well known about public databases and data search results. The FBI's Guardian Thread Tracking System ("Guardian") is a reporting system used by the FBI to track threats and other intelligence information. It allows users to enter, assign, and manage terrorism threats and suspicious activities in a paperless environment. This allows all field offices and Joint Terrorism Task Force ("JTTF") members to view the information simultaneously. To reveal the characteristics and data that are collected and tracked using this system could allow offenders to circumvent discovery because the FBI will use the same or similar techniques and/or assistance to bring future investigations to successful conclusions.⁷

EXEMPTION (b)(7)(F)
DANGER TO LIFE OR PHYSICAL SAFETY

(45) Exemption (b)(7)(F) exempts from disclosure:

⁷ The FBI has cited Exemption (b)(7)(E)-1 on the following pages: Swartz-1-2, 3-4, and 7.

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to endanger the life or physical safety of any individual.

(46) The FBI has asserted Exemption (b)(7)(F)-1 in conjunction with Exemptions (b)(6)-1 and (b)(7)(C)-1, to protect the identities of FBI employees working on this investigation. Government employees who have worked on this investigation in the past, have been threatened and harassed in conjunction with this case. Based on these experiences, the FBI can reasonably expect that disclosure of the identities of FBI employees associated with this investigation could endanger their lives or physical safety. Accordingly, the FBI has properly withheld this information pursuant to Exemption (b)(7)(F)-1, in conjunction with Exemptions (b)(6)-1 and (b)(7)(C)-1.⁸

CONCLUSION

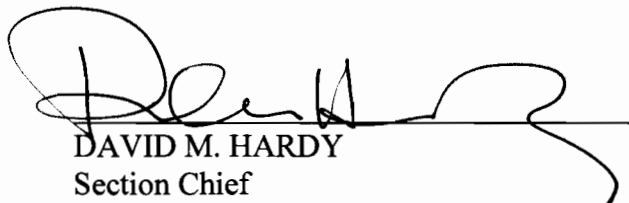
(47) The FBI has conducted a reasonable search for responsive records. The FBI processed and released all reasonably segregable information from the records responsive to plaintiff's FOIA/PA request to the FBI. The FBI has properly withheld information pursuant to FOIA Exemptions 6, 7(C), 7(E) and 7(F), 5 U.S.C. §§ 552 (b)(6), (b)(7)(C), (b)(7)(E) and (b)(7)(F). The FBI carefully examined the responsive documents and determined that the information withheld from plaintiff, if disclosed, could cause a clearly unwarranted and 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 life or physical safety. After extensive review of the documents at issue, the FBI has determined there is no further

⁸ The FBI has cited Exemption (b)(7)(F)-1 on the following pages: Swartz-1, 3-4, 6-7, 10, 12, and 14-19.

reasonably segregable information that can be released without revealing exempt information.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A through G attached hereto are true and correct copies.

Executed this 22nd day of July, 2013.

A handwritten signature in black ink, appearing to read "D. Hardy", written over a horizontal line.

DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RYAN NOAH SHAPIRO,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 13-CV-0729
)	
DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
_____)	

Exhibit A

01/14/13

Freedom of Information and Privacy Acts request:

To: Federal Bureau of Investigation
Record/Information Dissemination Section

This letter constitutes a formal request under the U.S. Freedom of Information and Privacy Acts (5 U.S.C. §552/552a) and the regulations promulgated thereunder. Please analyze the requested material under both 5 U.S.C. §552 and 5 U.S.C. §552a in order to produce the maximum number of results.

REQUESTER INFORMATION:

Name: Ryan Noah Shapiro

Affiliation: Doctoral Candidate, Massachusetts Institute of Technology

Address: 12 James Way

Cambridge, MA 02141

Email: ryannoah@mit.edu

Phone: 301-602-3063

Purpose of Requested information: Scholarly research/Public dissemination of analysis of requested disclosure.

Information Sought:

I request disclosure of any and all records that were prepared, received, transmitted, collected and/or maintained by the FBI, the Terrorist Screening Center, the National Joint Terrorism Task Force, or any Joint Terrorism Task Force relating or referring to the deceased person **Aaron H. Swartz**.

Date of Birth: **8 November 1986**

Place of Birth: **Chicago, Illinois**

Date of Death: **11 January 2013**

Place of Death: **Brooklyn, NY**

I have attached an article about Swartz's death as published by the *New York Times*.

Additional Background Information:

A digital luminary, Swartz was an eminent computer programmer, writer, political organizer, and internet activist. Swartz was a fellow at Harvard University and cofounder of the online activist group Demand Progress (known for its campaign against the federal Stop Online Privacy Act, aka SOPA). On 6 January 2011, Swartz was arrested in connection with systematic downloading of academic journal articles at the Massachusetts Institute of Technology from the online search engine JSTOR. Swartz understood his actions as acts of civil disobedience pursuant of the freedom of information. His alleged crimes became the subject of an intensive federal investigation. Swartz committed suicide in his Brooklyn apartment on or around 11 January 2013. His federal trial was scheduled to commence the following month.

Please note this is a request for new complete and thorough searches. The disclosure of previously released records will not satisfy this request.

Request for Expedited Processing:

I hereby seek expedited processing of this request because there is "urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552. I believe this request meets the criteria for expedited processing under 28 CFR 16.5(d)(1)(iv), as "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 CFR 16.5(d)(1)(iv). I urgently need these documents to inform the public about FBI and DOJ involvement in the events precipitating Swartz's suicide. The records sought here concern actual or alleged government activity because they pertain to the FBI and DOJ's controversial and fiercely criticized investigations and impending prosecution of Swartz. Swartz's activism, and FBI/law enforcement responses to it, is of tremendous media interest. Further, Swartz's recent suicide is already adding significantly to the widespread media coverage of Swartz's activism and FBI/law enforcement responses to it.¹ Many

¹ For a few examples among many, see the more than two dozen articles below:

<http://www.washingtonpost.com/blogs/wonkblog/wp/2013/01/12/aaron-swartz-american-hero/>

http://www.nytimes.com/2013/01/14/technology/aaron-swartz-a-data-crusader-and-now-a-cause.html?_r=0

<http://abcnews.go.com/Technology/wireStory/online-activist-programmer-swartz-dies-ny-18198875>

<http://online.wsj.com/article/SB10001424127887324581504578238692048200404.html>

http://gothamist.com/2013/01/13/aaron_swartzs_family_blame_his_deat.php

<http://www.businessweek.com/news/2013-01-12/aaron-swartz-programmer-turned-activist-dies-at-26-nyt-says>

http://www.huffingtonpost.com/dan-kennedy/aaron-swartz-carmen-ortiz_b_2469050.html

<http://lessig.tumblr.com/post/40347463044/prosecutor-as-bully>

http://www.theregister.co.uk/2013/01/13/anger_death_aaron_swartz/

<http://www.timeshighereducation.co.uk/story.asp?sectioncode=26&storycode=422380&c=1>

prominent voices are asserting the FBI and DOJ's investigations and impending prosecution of Swartz constituted grossly disproportionate responses to Swartz's relatively minor crimes. Many are also openly suggesting the FBI and DOJ's actions significantly contributed to Swartz's suicide, arguing that Swartz's death was "the product of a criminal justice system rife with intimidation and prosecutorial overreach." These voices include distinguished Harvard Law professor Lawrence Lessig.²

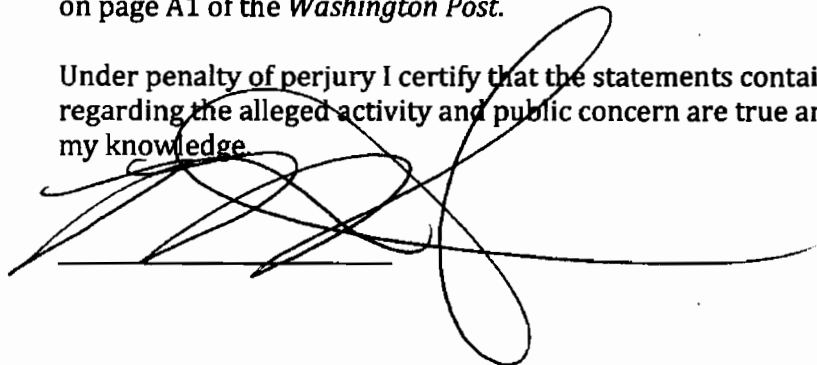
I have the intention and ability to disseminate this urgent information to the public. I am a doctoral candidate in my seventh year in the Department of Science, Technology, & Society at the Massachusetts Institute of Technology (MIT). An area of my particular research and analytical expertise is conflicts at the nexus of law enforcement and political dissent. My research has been funded by a host of elite academic and research institutions. These institutions include MIT, where I was granted a Presidential Fellowship, as well as the University of California, American University, the Mellon Fund, and the Social Sciences Research Council. I have been invited to present, and have presented, lectures pertaining to related issues at institutions including MIT, the National Institutes of Health, the Max Planck Institute

<http://au.news.yahoo.com/technology/news/article/-/15824533/anger-at-suicide-of-us-internet-activist/>
http://seattletimes.com/html/business/technology/2020128045_apusswartzprosecution.html
<http://thehill.com/blogs/hillcon-valley/technology/276897-news-bites-schwartzs-death-sparks-debate-on-open-access-to-data-online>
<http://www.theaustralian.com.au/business/wall-street-journal/family-blames-overreach-of-justice-system-for-pushing-web-activist-aaron-swartz-to-take-own-life/story-fnay3ubk-1226553857320>
<http://www.telegraph.co.uk/news/worldnews/northamerica/usa/9798974/Family-accuses-prosecutors-after-Internet-pioneer-Aaron-Swartz-kills-himself.html>
<http://www.ibtimes.com/aaron-swartz-found-dead-family-releases-statement-accuses-us-attorney-mit-causing-suicide-after>
<http://www.latimes.com/news/obituaries/la-me-0113-aaron-swartz-20130113,0,5232490.story>
<http://www.bbc.co.uk/news/world-us-canada-21001452>
<http://www.theatlanticwire.com/technology/2013/01/harsh-reaction-after-aaron-swartzs-death-prompts-mit-investigation/60935/>
<http://business.time.com/2013/01/13/tech-prodigy-and-internet-activist-aaron-swartz-commits-suicide/>
http://www.voanews.com/content/internet_activist_aaron_swartz_dies_at_26/1582882.html
<http://dailytimes.com.ng/article/aaron-swartz-internet-activist-commits-suicide>
http://www.huffingtonpost.com/ali-hayat/the-prosecution-of-aaron-swartz_b_2465851.html
<http://www.sfgate.com/technology/businessinsider/article/Now-MIT-Is-Investigating-Its-Role-In-Aaron-4190685.php>
<http://dailycaller.com/2013/01/13/aaron-swartzs-family-friends-blame-mit-federal-government-for-suicide/>
<http://timesofindia.indiatimes.com/tech/personal-tech/computing/Reddit-co-founder-Aaron-Swartzs-death-result-of-faulty-legal-system/articleshow/18020461.cms>
<http://www.guardian.co.uk/commentisfree/2013/jan/13/aaron-swartz-government-abuses-gilmor>
<http://www.thedailybeast.com/articles/2013/01/13/mourning-aaron-swartz-Internet-activist-and-free-information-advocate.html>
http://www.huffingtonpost.com/jesse-kornbluth/an-open-letter-to-aaron-s_b_2470647.html

² For Lessig's now widely reproduced statement on the matter, see <http://lessig.tumblr.com/post/40347463044/prosecutor-as-bully>

for the History of Science (Berlin), the University of California, Santa Barbara, the History of Science Society, the Society for the Social History of Medicine, the Conference on Policy History, the American Society for Environmental History, Suffolk University Law School, and University College Cork (Ireland). My next scheduled speaking engagement is at the Kennedy School of Government at Harvard University. Further, I regularly supply documents obtained through my FOIPA requests, and my expert analysis of those documents, to journalists. My research and analysis of FOIPA obtained documents has been featured in, among other media outlets, the *Los Angeles Times* and *GreenIsTheNewRed.com*, and has been referenced on page A1 of the *Washington Post*.

Under penalty of perjury I certify that the statements contained in this letter regarding the alleged activity and public concern are true and correct to the best of my knowledge.

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around itself, extending significantly to the right.

Request for FBI Headquarters, Field Office, and Task Force Office Searches:

I request that a complete and thorough search for any and all records relating or referring to the subject of my request be conducted in any and all indices, filing systems, and locations maintained by FBI headquarters, any and all FBI field offices and/or resident agencies, and any and all FBI and/or Joint task force offices.

Request for Main File and Cross-Reference Searches:

I request that a search of all main file *and cross-reference* indices, filing systems, and locations be conducted for any and all records relating or referring to the subject of my request. ***That my requested cross-reference searches be conducted is not only a requirement of FOIA, it is also the position of FBI FOIPA Public Liaison Officer Dennis J. Argall. Please refer any questions on this matter to Mr. Argall.***

Please note, this request does not pertain to animal rights/environmental protection matters nor to my animal rights/environmental protection FOIPA project. Please ***do not*** limit cross-reference searches for this request to animal rights/environmental protection matters. Please conduct full cross-reference searches for this request. Please contact me for any clarification on this point.

Instructions Regarding "Records":

For both main file and cross-reference searches, my request includes, but is not limited to, documents, reports, memoranda, letters, electronic files, "See Also" files,

"Do Not File" files, "Official & Confidential" files, numbered and lettered subfiles, 1A envelopes, enclosures behind files (EBF's), "Personal & Confidential" files, restricted files, photographs, audio tapes & videotapes, "JUNE" files, "Obscene" Files, "Subversive" Indexes, Bulky Exhibits, control files, mail covers, trash covers; and any index citations relating to the subject of my request or referencing the subject of my request ("see also") in other files.

When processing this request, please note the D.C. Circuit has previously held that agencies have a duty to construe the subject material of FOIA requests liberally to ensure responsive records are not overlooked. See *Nation Magazine, Washington Bureau v. U.S. Customs Service*, 71 F.3d 885, 890 (D.C. Cir. 1995). Accordingly, you are hereby instructed that the term "record" includes, but is not limited to: 1) all email communications to or from any individual within your agency; 2) memoranda; 3) inter-agency communications; 4) sound recordings; 5) tape recordings; 6) video or film recordings; 7) photographs; 8) notes; 9) notebooks; 10) indices; 11) jottings; 12) message slips; 13) letters or correspondence; 14) telexes; 15) telegrams; 16) facsimile transmissions; 17) statements; 18) policies; 19) manuals or binders; 20) books; 21) handbooks; 22) business records; 23) personnel records; 24) ledgers; 25) notices; 26) warnings; 27) affidavits; 28) declarations under penalty of perjury; 29) unsworn statements; 30) reports; 31) diaries; or 32) calendars, regardless of whether they are handwritten, printed, typed, mechanically or electronically recorded or reproduced on any medium capable of conveying an image, such as paper, CDs, DVDs, or diskettes.

Furthermore, in line with the guidance issued by the Department of Justice ("DOJ") on 9 September 2008 to all federal agencies with records subject to FOIA, agency records that are currently in the possession of a U.S. Government contractor for purposes of records management remain subject to FOIA. Please ensure that your searches comply with this clarification on the effect of Section 9 of the OPEN Government Act of 2007 of the definition of a "record" for purposes of FOIA.

In addition, the FBI should not interpret this request to exclude records sent to outside third parties, nor should the FBI interpret this request to exclude records originating with outside third parties.

Instructions Regarding "Leads":

As required by the relevant case law, the FBI is required to follow any leads it discovers during the conduct of its searches and perform additional searches when said leads indicate that records may be located in another FBI system. Failure to follow clear leads is a violation of FOIA.

Request for 190 Files, 197 Files, and (-0, -2, -5) Control Files:

For both main file and cross-reference searches, my request includes, but is not limited to, 190 files, 197 files, and (-0, -2, -5) control files.

Request for ELSUR, MISUR, and FISUR Searches:

For both main file and cross-reference searches, I request that searches of all electronic, microphone, and physical surveillance indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted.

Request for Electronic and Paper/Manual Searches:

For both main file and cross-reference searches, I request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted.

Request for Searches of the FBI's administrative records system:

For both main file and cross-reference searches, I request that searches of the FBI's administrative records system for any and all records relating or referring to the subject of my request be conducted.

Request for Searches of Laboratory Records:

For both main file and cross-reference searches, I request that searches of all laboratory indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted. My request includes, but is not limited to, searches for laboratory records.

Request for Searches for FOI/PA Records:

For both main file and cross-reference searches, I request searches for records relating or referring to Freedom of Information and/or Privacy Act's requests submitted by, on behalf of, or about the subject of my request. My request includes, but is not limited to, searches of indices of responses to previous FOI/PA requests.

Request for Confidential Searches:

For both main file and cross-reference searches, I request that searches of all confidential indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted.

Request for Searches of the Investigative Data Warehouse:

For both main file and cross-reference searches, I request that searches of any and all records systems and indices pertaining to the FBI's Investigative Data Warehouse for any and all records relating or referring to the subject of my request be conducted.

Request for Searches of Seized Asset Information:

For both main file and cross-reference searches, I request that searches of any and all records systems and indices pertaining to seized asset information for any and all records relating or referring to the subject of my request be conducted.

Request for Searches of the FBI's "Bureau Mailing Lists" records system:

For both main file and cross-reference searches, I request that searches of the FBI's "Bureau Mailing lists" records system for any and all records relating or referring to the subject of my request be conducted.

Request for Additional Filing Systems, Indices, and Locations Searches:

For both main file and cross-reference searches, please do not limit searches to the UNI (Universal Index), but please also search the ICM (Investigative Case Management) and ECF (Electronic Case File) indices, filing systems, and locations.

Indeed, for both main file and cross-reference searches, please search *all* of your indices, filing systems, and locations, including those I have not specified by name and those of which I may not be aware.

Request regarding Photographs and other Visual Materials:

I request that any photographs or other visual materials responsive to my request be released to me in their original or comparable forms, quality, and resolution. For example, if a photograph was taken digitally, or if the FBI maintains a photograph digitally, I request disclosure of the original digital image file, not a reduced

resolution version of that image file nor a printout and scan of that image file. Likewise, if a photograph was originally taken as a color photograph, I request disclosure of that photograph as a color image, not a black and white image. Please contact me for any clarification on this point.

Request for Ticklers:

For both main file and cross-reference searches, I request that searches for any and all "ticklers" relating or referring to the subject of my request be conducted.³

Request for Duplicate Pages:

I request disclosure of any and all supposedly "duplicate" pages. Scholars analyze records not only for the information available on any given page, but also for the relationships between that information and information on pages surrounding it. As such, though certain pages may have been previously released to me, the existence of those pages within new context renders them functionally new pages. As such, the only way to properly analyze released information is to analyze that information within its proper context. Therefore, I request disclosure of all "duplicate" pages.

Instructions regarding Scope and Breadth of Requests:

Please interpret the scope of this request broadly. The FBI is instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought.

Exemptions and Segregability:

I call your attention to President Obama's 21 January 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA [...] The

³ As articulated in *Campbell v. United States DOJ*, 164 F.3d 20, 27 n.1 (1998), "A 'tickler' is a duplicate [FBI] file containing copies of documents, usually kept by a supervisor. Such files can be of interest to a FOIA requester because they could contain documents that failed to survive in other filing systems or that include unique annotations."

presumption of disclosure should be applied to all decisions involving FOIA.⁴

In the same Memorandum, President Obama added that government information should not be kept confidential "merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Finally, President Obama ordered that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nonetheless, if any responsive record or portion thereof is claimed to be exempt from production, FOIA/PA statutes provide that even if some of the requested material is properly exempt from mandatory disclosure, all segregable portions must be released. If documents are denied in part or in whole, please specify which exemption(s) is (are) claimed for each passage or whole document denied. Please provide a complete itemized inventory and a detailed factual justification of total or partial denial of documents. Specify the number of pages in each document and the total number of pages pertaining to this request. For "classified" material denied, please include the following information: the classification (confidential, secret or top secret); identity of the classifier; date or event for automatic declassification or classification review or downgrading; if applicable, identity of official authorizing extension of automatic declassification or review past six years; and, if applicable, the reason for extended classification beyond six years.

In excising material, please "black out" the material rather than "white out" or "cut out." I expect, as provided by FOIA, that the remaining non-exempt portions of documents will be released.

Please release all pages regardless of the extent of excising, even if all that remains are the stationery headings or administrative markings.

In addition, I ask that your agency exercise its discretion to release records which may be technically exempt, but where withholding serves no important public interest.

Additionally:

Please produce all records with administrative markings and pagination included. Please place any "missing" files pertaining to this request on "special locate" and advise me that you have done this.

⁴ President Barack Obama, "Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act," January 21, 2009; <http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/>

Please send a memo (copy to me) to the appropriate units in your office to assure that no records related to this request are destroyed. Please advise of any destruction of records and include the date of and authority for such destruction.

Format:

I request that any releases stemming from the this request be provided to me in digital format (soft-copy) on a compact disk or other like media.

Payment:

I am willing to pay any reasonable expenses associated with this request, however, as the purpose of the requested disclosure is in full conformity with the statutory requirements for a waiver of fees, I formally request such a waiver. I request a waiver of all costs pursuant to 5 U.S.C. §552(a)(4)(A)(iii) ("Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309,1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'").

The disclosure of the documents I requested is in the public interest because the information is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in my commercial interest. 28 C.F.R. § 16.11(k)(2). As stated in the legislative history, "A requester is likely to contribute significantly to public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government." 132 Cong. Rec. H9464 (Reps. English and Kindness). This request amply satisfies these requirements.

I am a doctoral candidate at the Massachusetts Institute of Technology in my seventh year of the PhD program in MIT's Department of Science, Technology, & Society. My research explores conflicts at the intersections of political dissent and law enforcement, especially the policing of dissent by the FBI and other law enforcement entities.

Swartz was a digital luminary and eminent American computer programmer, writer, political organizer, and internet activist. Swartz's activism, and FBI/law enforcement responses to it, is of tremendous media and public interest. Further,

Swartz's recent suicide just prior to his federal trial is already adding significantly to the widespread media coverage of Swartz's activism and FBI/law enforcement responses to it. Many prominent voices are asserting the FBI and DOJ's investigations and impending prosecution of Swartz constituted grossly disproportionate responses to Swartz's relatively minor crimes. Many are also openly suggesting the FBI and DOJ's actions significantly contributed to Swartz's suicide, arguing that Swartz's death was "the product of a criminal justice system rife with intimidation and prosecutorial overreach." These voices include distinguished Harvard Law professor Lawrence Lessig.

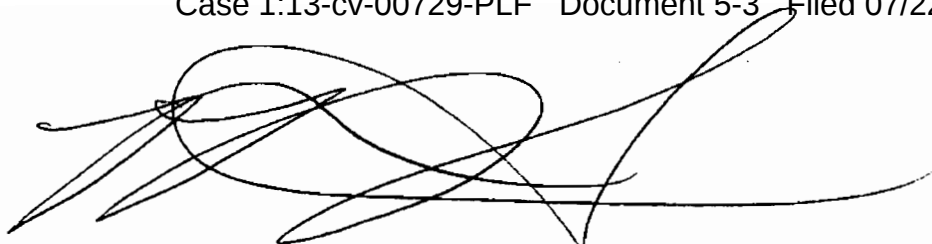
The disclosure of records relating or referring to the FBI's actions in relation to this sad and highly contested affair would be of great public interest.

For extensive additional fee waiver information pertaining to a) my intent and ability to disseminate analysis of the requested information, b) the non-commercial nature of my request, c) additional information on scholarly historical research and the public interest, d) additional information on journalistic research and the public interest, e) and letters of support for my research from leading historical scholars, a leading journalist, and a leading civil liberties attorney, please see my FOIPA request # 1170870-000 (Lynn, Gina). Please refer any questions on this point to FBI FOIPA Public Liaison Officer, Dennis J. Argall.

In summation, the disclosure of the requested information will significantly contribute to expanded public understanding of government operations and activities. I have the firm intention and ability to disseminate this significant expansion of public understanding of government operations and activities. The public interest in this significant expansion of public understanding of government operations and activities far outweighs any commercial interest of my own. Accordingly, my request for a full waiver of fees amply satisfies the rules of 28 C.F.R. § 16.11(k)(2). Legislative history and judicial authority emphatically support this determination. For these reasons, and based upon their extensive elaboration above, I request that a full waiver of search and duplication fees for my FOIPA request be granted. I will appeal any denial of this request for a waiver of fees to the Department of Justice's Office of Information Policy, and to the courts if necessary.

Please do not hesitate to contact me if you have any questions concerning this matter.

Thank you. I appreciate your time and effort.

A large, complex handwritten signature in black ink, consisting of multiple overlapping loops and lines, positioned above the printed contact information.

Ryan Noah Shapiro
Program in Science, Technology, and Society
Massachusetts Institute of Technology
ryannoah@mit.edu
301-602-3063

The New York Times

January 13, 2013

A Data Crusader, a Defendant and Now, a Cause

By NOAM COHEN

At an afternoon vigil at the Massachusetts Institute of Technology on Sunday, Aaron Swartz, the 26-year-old technology wunderkind who killed himself on Friday, was remembered as a great programmer and a provocative thinker by a handful of students who attended.

And he was recalled as something else, a hero of the free culture movement — a coalition as varied as Wikipedia contributors, Flickr photographers and online educators, and prominent figures like Julian Assange, the WikiLeaks founder, and online vigilantes like Anonymous. They share a belief in using the Internet to provide easy, open access to the world's knowledge.

"He's something to aspire toward," said Benjamin Hitov, a 23-year-old Web programmer from Cambridge, Mass., who said he had cried when he learned the news about Mr. Swartz. "I think all of us would like to be a bit more like him. Most of us aren't quite as idealistic as he was. But we still definitely respect that."

The United States government has a very different view of Mr. Swartz. In 2011, he was arrested and accused of using M.I.T.'s computers to gain illegal access to millions of scholarly papers kept by Jstor, a subscription-only service for distributing scientific and literary journals.

At his trial, which was to begin in April, he faced the possibility of millions of dollars in fines and up to 35 years in prison, punishments that friends and family say haunted him for two years and led to his suicide.

Mr. Swartz was a flash point in the debate over whether information should be made widely available. On one side were activists like Mr. Swartz and advocacy groups like the Electronic Frontier Foundation and Students for Free Culture. On the other were governments and corporations that argued that some information must be kept private for security or commercial reasons.

After his death, Mr. Swartz has come to symbolize a different debate over how aggressively governments should pursue criminal cases against people like Mr. Swartz who believe in "freeing"

information.

In a statement, his family said in part: "Aaron's death is not simply a personal tragedy. It is the product of a criminal justice system rife with intimidation and prosecutorial overreach. Decisions made by officials in the Massachusetts U.S. attorney's office and at M.I.T. contributed to his death."

On Sunday evening, M.I.T.'s president, L. Rafael Reif, said he had appointed a prominent professor, Hal Abelson, to "lead a thorough analysis of M.I.T.'s involvement from the time that we first perceived unusual activity on our network in fall 2010 up to the present." He promised to disclose the report, adding, "It pains me to think that M.I.T. played any role in a series of events that have ended in tragedy."

M.I.T.'s Web site was inaccessible at times on Sunday. Officials there did not provide a cause, but hackers claimed responsibility.

While Mr. Swartz viewed his making copies of academic papers as an unadulterated good, spreading knowledge, the prosecutor compared Mr. Swartz's actions to using a crowbar to break in and steal someone's money under the mattress. On Sunday, she declined to comment on Mr. Swartz's death out of respect for his family's privacy.

The question of how to treat online crimes is still a vexing one, many years into the existence of the Internet.

Prosecutors have great discretion on what to charge under the Computer Fraud and Abuse Act, the law cited in Mr. Swartz's case, and how to value the loss. "The question in any given case is whether the prosecutor asked for too much, and properly balanced the harm caused in a particular case with the defendant's true culpability," said Marc Zwillinger, a former federal cybercrimes prosecutor.

The belief that information is power and should be shared freely — which Mr. Swartz described in a treatise in 2008 — is under considerable legal assault. The immediate reaction among those sympathetic to Mr. Swartz has been anger and a vow to soldier on. Young people interviewed on Sunday spoke of the government's power to intimidate.

"Using certain people as poster children for deterring others from doing that same action, ultimately it won't work," Jennifer Baek, a third-year student at New York Law School, said by telephone, referring to Pfc. Bradley Manning, who has been charged with multiple counts in the leaking of confidential documents, and Mr. Swartz. Ms. Baek, a member of the board of Students

for Free Culture, said the comments on blogs and discussion boards she had visited since Mr. Swartz's death showed that "people aren't afraid to say this is what the injustice was."

The ingredients for trouble perhaps lay in Mr. Swartz's personal and direct approach to solving problems. As one mentor, Cory Doctorow of the popular Web site Boing Boing, wrote in tribute, he was highly impressionable and sought after and was forgiven by those he worked with and worked for.

A permanent "kid genius," Mr. Swartz had often put his skills to the task of making information more accessible. At 14 he was a co-creator of RSS, a tool that allows online content to be distribute, and then made a tidy sum as one of the creators of the social-news site Reddit, now part of Condé Nast.

But even before, and certainly after, he crusaded for open access to data. His projects include a range of influential efforts like the Internet Archive, Creative Commons, Wikipedia and the Recap collection of legal documents.

He also began more traditional projects for subjects he took an interest in. At 19, he volunteered to upload the archive of a defunct magazine he loved, *Lingua Franca*. In 2005, he called up the writer Rick Perlstein to offer to create a Web page for him after reading a book of his he liked.

"I smelled a hustle, asking him how much it would cost, and he said, no, he wanted to do it for free," Mr. Perlstein wrote in *The Nation* over the weekend. "I thought: 'What a loser this guy must be. Someone with nothing better to do.'" Mr. Perlstein writes that he ended up becoming friends, and he sent chapters of his next book, "Nixonland," to Mr. Swartz before he showed them to anyone else.

Mr. Swartz outlined his views in the manifesto: "It's called stealing or piracy, as if sharing a wealth of knowledge were the moral equivalent of plundering a ship and murdering its crew. But sharing isn't immoral — it's a moral imperative. Only those blinded by greed would refuse to let a friend make a copy."

And he said the stakes were clear: "We need to take information, wherever it is stored, make our copies and share them with the world. We need to take stuff that's out of copyright and add it to the archive. We need to buy secret databases and put them on the Web. We need to download scientific journals and upload them to file sharing networks."

Still, even many of his allies concede that Mr. Swartz's passion for free information may have taken

him too far in the Jstor downloads. According to the government's indictment, in September 2010 Mr. Swartz broke into a computer-wiring closet on the M.I.T. campus; when retrieving a computer he connected, he hid his face behind a bicycle helmet, peeking out through the ventilation holes. At the time, he was a student at nearby Harvard.

Some would say that perhaps a punishment for trespassing would have been warranted, but the idea that he could have seen serious prison time was infuriating. Lawrence Lessig, the Harvard Law professor who founded Creative Commons to advocate greater sharing of creative material online, called the prosecution's case absurd and said that boxing in Mr. Swartz with an aggressive case and little ability to mount a defense "made it make sense to this brilliant but troubled boy to end it."

E.J. Hilbert, a former cybercrimes investigator for the Federal Bureau of Investigation, said that the broader issues around such activist transgressions raise many complex questions that are subject to "a lot of discretion from prosecutors." He added that the United States Attorney's Office for the District of Massachusetts has long been renowned for a particularly aggressive pursuit of cybercrimes.

Jstor, for its part, declined to pursue the case and posted a note over the weekend describing Mr. Swartz as "a truly gifted person who made important contributions to the development of the Internet and the Web from which we all benefit."

Michael McCarthy, a 30-year-old animator from Providence who was also at the M.I.T. vigil, said Mr. Swartz was let down by the university. "If places like M.I.T. aren't safe for people to be a little miscreant in their quest for truth and understanding, then we're in a lot of trouble," he said.

It's unclear how much the impending case contributed to Mr. Swartz's decision to take his own life. Years back, he wrote about his struggle with depression in his blog, *Raw Thoughts*.

The last post he wrote on that blog, in November, was a detailed analysis of the final installment of the "Batman" series.

Having warned his readers that he was about to reveal the conclusion of the movies, he ended the post by writing: "Thus Master Wayne is left without solutions. Out of options, it's no wonder the series ends with his staged suicide."

Jess Bidgood and Ravi Somaiya contributed reporting.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RYAN NOAH SHAPIRO,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 13-CV-0729
)	
DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
_____)	

Exhibit B

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

January 25, 2013

Mr. Ryan Noah Shapiro
12 James Way
Cambridge, MA 02141

FOIPA Request No.: 1206993
Subject: Swartz, Aaron H

Dear Mr. Shapiro:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the [_____ Resident Agency / _____ Field Office] and forwarded to FBI Headquarters for processing.
- We are searching the indices to our Central Records System for the information responsive to this request. We will inform you of the results in future correspondence.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date.
- Please check for the status of your FOIPA request at www.fbi.gov/foia.

The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "D Hardy", is positioned below the word "Sincerely".

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

January 25, 2013

Mr. Ryan Noah Shapiro
12 James Way
Cambridge, MA 02141

FOIPA Request No.: 1206993
Subject: Swartz, Aaron H

Dear Mr. Shapiro:

This is in reference to your letter directed to the Federal Bureau of Investigation (FBI), in which you requested expedited processing for the above-referenced Freedom of Information Act (FOIA) request. Pursuant to the Department of Justice (DOJ) standards permitting expedition, expedited processing can only be granted when it is determined that a FOIPA request involves one or more of the below categories.

You have requested expedited processing according to:

- 28 C.F.R. §16.5 (d)(1)(i): "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."
- 28 C.F.R. §16.5 (d)(1)(ii): "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
- 28 C.F.R. §16.5 (d)(1)(iii): "The loss of substantial due process of rights."
- 28 C.F.R. §16.5 (d)(1)(iv): "A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affects public confidence."

You have provided enough information concerning the statutory requirements permitting expedition; therefore, your request is approved.

Sincerely,

A handwritten signature in black ink, appearing to read "D Hardy", is written over the typed name.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

February 14, 2013

Mr. Ryan Noah Shapiro
12 James Way
Cambridge, MA 02141

Subject: Swartz, Aaron H

FOIPA No. 1206993

Dear Mr. Shapiro:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

Section 552		Section 552a	
<input type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)	
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (j)(2)	
<input type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)	
_____	<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)	
_____	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)	
_____	<input checked="" type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)	
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)	
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)	
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)	

23 page(s) were reviewed and 21 page(s) are being released.

Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:

referred to the OGA for review and direct response to you.

referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) [5 U.S.C. § 552 (b)(7)(E)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard

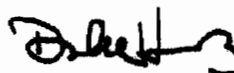
notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosures (2)

It is unnecessary to adjudicate your fee waiver request because there are no assessable fees.

A search of the Electronic Surveillance (ELSUR) Index as well as the Bureau Mailing List resulted in a no record.

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

02/25/13

Freedom of Information and Privacy Acts appeal:

To: Office of Information Policy
United States Department of Justice

This letter constitutes a formal appeal under the U.S. Freedom of Information and Privacy Acts (5 U.S.C. §552/552a) and the regulations promulgated thereunder.

Subject:

FOIPA # ~~1260~~6993 (SWARTZ, AARON H.)

REQUESTER INFORMATION:

Name: Ryan Noah Shapiro

Affiliation: Doctoral Candidate, Massachusetts Institute of Technology

Address: 12 James Way
Cambridge, MA 02141

Email: ryannoah@mit.edu

Phone: 301-602-3063

FOIPA # ~~1260~~6993 (SWARTZ, AARON H.)

Along with a letter (attached) dated 14 February 2013, the FBI released to me 21 pages of records in response to my request for records relating or referring to deceased internet luminary and activist Aaron H. Swartz.

i) *I appeal all withholdings and redactions in FOIPA # 12606993 and request OIP release to me all improperly withheld documents or portions thereof.*

ii) *The FBI performed an inadequate search for records responsive to my request. This is violative of the FOIA. I appeal the FBI's inadequate search for records responsive to my request. I request OIP compel the FBI to conduct a new complete and thorough search for records relating or referring to Mr. Swartz and to disclose any responsive records to me.*

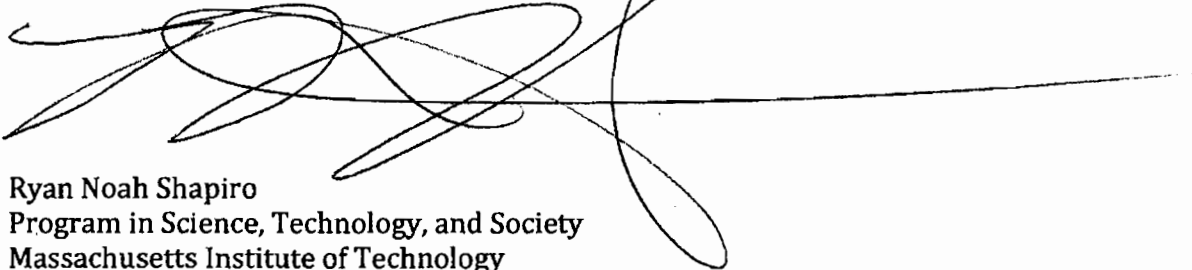
This new search should include, but not be limited to, text searches of the ECF (Electronic Case File).¹

This new search should also include, but not be limited to searches of/for: main file records, cross-reference records, ELSUR (electronic surveillance) records, laboratory records, FOI/PA records, 190 Files, 197 Files, and (-0, -2, -5) Control Files, the FBI's administrative records system, confidential indices and filing systems, the Investigative Data Warehouse, seized asset information, and the FBI's "Bureau Mailing Lists" records system.

As provided in the Freedom of Information Act, I will expect to receive a reply to this administrative appeal letter within twenty working days.

Please do not hesitate to contact me if you have any questions concerning this appeal.

Thank you greatly. I appreciate your time and attention to this matter.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Ryan Noah Shapiro
Program in Science, Technology, and Society
Massachusetts Institute of Technology
ryannoah@mit.edu
301-602-3063

¹ As stated by FBI Record/Information Dissemination Section Chief, David M. Hardy, in his 31 January 2013 Declaration to the U. S. District Court for the District of Columbia (Case 1:12-cv-01660-RMC), "Because the decision to index names in a specific document can vary from document to document, the text search [of the ECF] provide[s] a more comprehensive search of the CRS."



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

February 14, 2013

Mr. Ryan Noah Shapiro
12 James Way
Cambridge, MA 02141

Subject: Swartz, Aaron H

FOIPA No. 1206993

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In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) [5 U.S.C. § 552 (b)(7)(E)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard

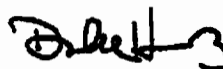
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See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosures (2)

It is unnecessary to adjudicate your fee waiver request because there are no assessable fees.

A search of the Electronic Surveillance (ELSUR) Index as well as the Bureau Mailing List resulted in a no record.



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

MAR 14 2013

Mr. Ryan N. Shapiro
12 James Way
Cambridge, MA 02141

Re: Request No. 1206993 - Aaron H. Swartz

Dear Mr. Shapiro:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received by this Office on March 4, 2013.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2013-02254**. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal you may contact me at the number above.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones".

Priscilla Jones
Supervisory Administrative Specialist

(Rev. 05-01-2008)

UNCLASSIFIED

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 02/06/2009

To: Chicago

Attn: North RA

From: Washington Field

CR-17 / NVRA

Contact: SA [REDACTED]

Approved By: [REDACTED]

b6 -1
b7C -1
b7F

Drafted By: [REDACTED]

Case ID #: 288A-WF-238943 (Pending)

Title: UNSUB(S);
US COURTS - VICTIM;
COMPUTER INTRUSION - OTHER

Synopsis: To set lead to locate Aaron Swartz.

Enclosure(s): Attached is an [REDACTED] Report for Swartz.

b7E -1

Details: The U.S. Courts implemented a pilot project offering free access to federal court records through the PACER system at seventeen federal depository libraries. Library personnel maintain login and password security and provide access to users from computers within the library. PACER normally carries an eight cents per page fee, however, by accessing from one of the seventeen libraries, users may search and download data for free.

Between September 4, 2008 and September 22, 2008, PACER was accessed by computers from outside the library utilizing login information from two libraries participating in the pilot project. The Administrative Office of the U.S. Courts reported that the PACER system was being inundated with requests. One request was being made every three seconds.

The login information was compromised at the Sacramento County Public Law Library (SPLL) and the Seventh Circuit Court of Appeals Library (SCCA). The two accounts were responsible for downloading more than eighteen million pages with an approximate value of \$1.5 million.

UNCLASSIFIED

Swartz-1

UNCLASSIFIED

To: Chicago From: Washington Field
Re: 288A-WF-238943, 02/06/2009

During the compromise, there was one continuous session with one log in and access was made every one to two seconds. The compromise took place during regular business hours. Data that was exfiltrated went to one of two Amazon IP addresses.

Investigation has determined that the Amazon IP address used to access the PACER system belongs to Aaron Swartz.

The following information was provided for the IP address:

Name: Aaron Swartz
Address: 349 Marshman Avenue
Highland Park, IL 60035
Telephone: 847-432-8857

A search in [redacted] and Swartz's personal webpage confirmed this information. Swartz's social security account number is 360-84-0493. The telephone subscriber for telephone number [redacted] is [redacted]

b7E -1

b6 -2
b7C -2

NCIC report for Aaron Swartz was negative. A search for wages for Swartz at the Department of Labor was negative.

UNCLASSIFIED

UNCLASSIFIED

To: Chicago From: Washington Field
Re: 288A-WF-238943, 02/06/2009

LEAD(s) :

Set Lead 1: (Action)

CHICAGO

AT NORTH RA

Washington Field Office requests that the North RA attempt to locate AARON SWARTZ, his vehicles, drivers license information and picture, and others, at 349 Marshman Avenue, Highland Park, IL 60035. Since SWARTZ is the potential subject of an ongoing investigation, it is requested that SWARTZ not be approached by Agents.

SA If there are any questions or concerns, please contact

b6 -1
b7C -1
b7F

◆◆

UNCLASSIFIED

(Rev. 05-01-2008)

UNCLASSIFIED

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 02/06/2009

To: Chicago

Attn: SSA [redacted]

From: Washington Field

CR-17 / NVRA

Contact: SA [redacted]

Approved By: [redacted]

Drafted By: [redacted]

b6 -1
b7C -1
b7F

Case ID #: 288A-WF-238943 (Pending)

Title: UNSUB(S);
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b7E -1

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UNCLASSIFIED

UNCLASSIFIED

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b7E -1

b6 -2
b7C -2

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UNCLASSIFIED

UNCLASSIFIED

To: Chicago From: Washington Field
Re: 288A-WF-238943, 02/06/2009

LEAD(s) :

Set Lead 1: (Action)

CHICAGO

AT CHICAGO, ILLINOIS

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If there are any questions or concerns, please contact
SA

b6 -1
b7C -1
b7E

◆◆

UNCLASSIFIED

(Rev. 05-01-2008)

UNCLASSIFIED

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 02/24/2009

To: Washington Field

Attn: CR-17 / NVRA
SA [redacted]

From: Chicago

North RA

Contact: SA [redacted]

b6 -1
b7C -1
b7F

Approved By: [redacted]

Drafted By: [redacted]

Case ID #: 288A-WF-238943

Title: UNSUB(S);
US COURTS - VICTIM;
COMPUTER INTRUSION - OTHER

Synopsis: Lead covered by Chicago North RA

Enclosure(s): Illinois DL/ID Image of Swartz and [redacted]
[redacted]

b7E -1

Details: Attempted to locate AARON SWARTZ, his vehicles, drivers license information and picture, and others at 349 Marshman Avenue, Highland Park, IL 60035.

Successfully located drivers license photo for SWARTZ. Drove by address in an attempt to locate SWARTZ or vehicles related to the residence, but was unsuccessful. House is set on a deep lot, behind other houses on Marshman Avenue. This is a heavily wooded, dead-end street, with no other cars parked on the road making continued surveillance difficult to conduct without severely increasing the risk of discovery. However, drivers license and [redacted] information lists address above. Other family members are listed as current residence and four vehicles are currently registered to [redacted] who resides at above address. Illinois database checks for SWARTZ yielded negative results. SWARTZ has no arrests, no registered vehicles or property.

b7E -1

b6 -2
b7C -2

UNCLASSIFIED

Swartz-7

UNCLASSIFIED

To: Washington Field From: Chicago
Re: 288A-WF-238943, 02/24/2009

Chicago considers this lead covered.

UNCLASSIFIED

UNCLASSIFIED

To: Washington Field From: Chicago
Re: 288A-WF-238943, 02/24/2009

LEAD(s) :

Set Lead 1: (Info)

WASHINGTON FIELD

AT WASHINGTON DC

Read and clear.

◆◆

UNCLASSIFIED

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 02/19/2009

AARON SWARTZ has a profile on the website LINKEDIN, at www.linkedin.com/in/aaronsw. SWARTZ is listed as a writer, hacker and activist based in the San Francisco Bay Area. SWARTZ's education includes Stanford University, Sociology, 2004. SWARTZ's experience includes the following:

Founder of watchdog.net
2008 - Present

Tech Lead at Open Library
2007 - Present

Co-founder of reddit
November 2005 - January 2007

Metadata Advisor at Creative Commons
2002 - 2004

Member of RDF Core Working Group
1999 - 2000

Member of W3C
1999 - 2000

The website watchdog.net: the good government site with teeth states that "We're trying to build a hub for politics on the Internet". This plan includes pulling all information about politics, votes, lobbying records, and campaign finance reports together under one unified interface. SWARTZ posted blogs on 07/30/2008, 06/16/2008, 05/07/2008, 04/21/2008, 04/16/2008, 04/14/2008.

SWARTZ has a profile on the website FACEBOOK. His networks include Stanford '08 and Boston, MA. The picture used in his profile was also used in an article about SWARTZ in THE NEW YORK TIMES.

SWARTZ's personal webpage, www.aaronsw.com, includes a section titled "Aaron Swartz: a lifetime of dubious accomplishments". In 2007, SWARTZ began working full-time as a

Investigation on 02/15/2009 at Manassas, VA

File # 288A-WF-238943

Date dictated _____

by SA

b6 -1
b7C -1
b7F

FD-302a (Rev. 10-6-95)

288A-WF-238943

Continuation of FD-302 of SWARTZ's online profiles , On 02/15/2009 , Page 2

member of the Long-Term Planning Committee for the Human Race
(LTPCHR) .

Swartz-11

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 02/19/2009

On February 17, 2008, SA [redacted] received an email from [redacted] Administrative Office of the US Courts, with links to two published articles regarding the compromise of the PACER system. b6 -1,4 b7C -1,4

On February 12, 2009, [redacted] published an article in THE NEW YORK TIMES titled "An Effort to Upgrade a Court Archive System to Free and Easy". For the article, [redacted] interviewed [redacted] and AARON SWARTZ regarding the compromise of the PACER system. b6 -2 b7C -2

The following information is found in the article:

[redacted] urged fellow activists to go to the seventeen libraries offering the free trial, download as many court documents as they could, and send them to him for republication on the Web. b6 -2 b7C -2

SWARTZ read [redacted] appeal and downloaded an estimated twenty percent (20%) of the PACER database. b6 -2 b7C -2

[redacted] a Government Printing Office official, told librarians that the security of the PACER service was compromised and the FBI was conducting an investigation. b6 -3 b7C -3

Lawyers for [redacted] and SWARTZ told them they had broken no laws. b6 -2 b7C -2

On February 13, 2009, [redacted] and [redacted] published an article in The LEDE, NOTES ON THE NEWS, FROM THE NEW YORK TIMES titled "Steal These Federal Records - Okay, Not Literally". b6 -2 b7C -2

The following information is found in the article:

[redacted] published an online manifesto about freeing PACER documents, where he called for a Thumb Drive Corps to go to libraries with small thumb drives, plug them into computers, download as many court documents as they could, and send them to [redacted] so that he can translate them into a format that GOOGLE's search software can read. b6 -2 b7C -2

Investigation on 02/17/2009 at Manassas, VA

File # 288A-WF-238943 Date dictated N/A

by SA [redacted] b6 -1 b7C -1 b7F

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

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FD-302a (Rev. 10-6-95)

288A-WF-238943

b6 -4
b7C -4

Continuation of FD-302 of

[REDACTED]

, 02/17/2009

, Page

2

SWARTZ received software that downloaded documents from the PACER database from [REDACTED] at the BERKMAN CENTER FOR INTERNET AND SOCIETY AT HARVARD. SWARTZ improved this software, saved it on a thumb drive, and had a friend in California take the thumb drive to one of the free libraries and upload the program.

b6 -2
b7C -2

When the PACER system was shut down with no notice, [REDACTED] told SWARTZ "You need to talk to a lawyer. I need to talk to a lawyer."

b6 -2
b7C -2

Lawyers told [REDACTED] and SWARTZ that they appeared to have broken no laws. At that point, [REDACTED] sent SWARTZ a text message saying "You should just lay low for a while."

b6 -2
b7C -2

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 03/09/2009

AARON SWARTZ posted a weblog titled "NYT Personals" at <http://www.aaronsw.com/weblog>. In the weblog, SWARTZ quotes the NEW YORK TIMES article in which he was interviewed. SWARTZ also posts "Want to meet the man behind the headlines? Want to have the F.B.I. open up a file on you as well? Interested in some kind of bizarre celebrity product endorsement? I'm available in Boston and New York all this month".

Investigation on 03/09/2009 at Manassas, VA

File # 288A-WF-238943 Date dictated N/A

by SA

b6 -1
b7C -1
b7F

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 03/23/2009

On March 10, 2009, [redacted] of THE ADMINISTRATIVE OFFICE OF THE US COURTS (US COURTS) provided the following information: b6 -4 b7C -4

US COURTS was relying on the Notice written on the login page of the PACER webpage, pacer.uscourts.gov, to advise users that unauthorized access to the PACER system is not allowed. When a user goes to the webpage and navigates to the login page, a Notice is shown at the bottom of the page that states "NOTICE: This is a Restricted Government web Site for official PACER use only. Unauthorized entry is prohibited and subject to prosecution under Title 18 of the U.S. Code. All activities and access attempts are logged."

When asked to clarify how a user knows what constitutes unauthorized access and how a user would have known that they had to be in one of the seventeen libraries to access PACER, [redacted] had [redacted] prepare a response. b6 -3,4 b7B -3,4

[redacted] provided the following information: b6 -3 b7C -3

AARON SWARTZ would have known his access was unauthorized because it was with a password that did not belong to him.

Library patrons did not sign up for accounts. One login and password were provided to each Federal Depository Library. Each library agreed to not share the password with any organization or individual user. Verification forms were signed by Depository Coordinators at each library and included statements regarding login and password security.

The Seventh Circuit Court of Appeals in Chicago had a one hour time limit on their public access computer and the computer was completely logged off after each session by a staff member.

[PACER homepage and login page print-outs, emails from [redacted] and [redacted] and Federal Depository Library/PACER Verification Forms are attached.] b6 -3,4 b7C -3,4

Investigation on 03/10/2009 at Manassas, VA

File # 288A-WF-238943 Date dictated N/A

by SA [redacted] b6 -1 b7C -1 b7F

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 04/14/2009

On 04/14/2009, SA [redacted] called (847) 432-8857 in an attempt to speak to AARON SWARTZ. A female answered the telephone and stated that SWARTZ was not available at that telephone number any longer and that SWARTZ did not have another number where he could be reached. SA [redacted] left a message for SWARTZ to return her call and the female stated that she would email that message to SWARTZ. b6 -1 b7C -1 b7F

SWARTZ called SA [redacted] and left a message on her voicemail stating he could be reached at (847) 877-8895. This number is a T-Mobile cellular number and returned negative results [redacted] b6 -1 b7C -1 b7E -1 b7E

SA [redacted] spoke to SWARTZ, at telephone number (847) 877-8895, and explained that the FBI is looking for information on how SWARTZ was able to compromise the PACER system so that the US COURTS could implement repairs to the system and get PACER running again. SWARTZ stated that he would have to talk to his attorney first and would call SA [redacted] back at a later time. b6 -1 b7C -1 b7F

Investigation on 04/14/2009 at Manassas, VA

File # 288A-WF-238943 Date dictated N/A

by SA [redacted] b6 -1 b7C -1 b7F

FD-302 (Rev. 10-6-95)

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 04/15/2009

On 04/15/2009, SA [redacted] returned a telephone call to [redacted] b6 -1,2
[redacted] who had left a voicemail message for SA [redacted] b7C -1,2
[redacted] telephone number is [redacted] and his email address b7F
is [redacted]

[redacted] asked if the FBI had an official investigation
open or if this was just information gathering. SA [redacted]
responded that there was an open investigation. [redacted] asked if
he needed an attorney and SA [redacted] responded that she could not
advise him on that matter. SA [redacted] told [redacted] that AARON b6 -1,2
SWARTZ was told in a conversation yesterday that we are looking for b7C -1,2
information into how the compromise occurred so that the US COURTS b7F
can get PACER operational again. [redacted] responded with "I can not
tell you how Aaron did it." [redacted] was a [redacted] and
understands the security system of PACER and can speak to that.

Investigation on 04/15/2009 at Manassas, VA

File # 288A-WF-238943 Date dictated N/A

by SA [redacted]

b6 -1
b7C -1
b7E

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 04/16/2009

On 04/16/2009, SA [redacted] returned a telephone call to [redacted] in Boston, MA. [redacted] wanted assurance that if SWARTZ was interviewed, what he said would not be used to jeopardize him. SA [redacted] explained that assurance could not be given but that we were in an information gathering phase. [redacted] refused the interview without the assurance.

b6 -1,2
b7C -1,2
b7F

Investigation on 04/16/2009 at Manassas, VA

File # 288A-WF-238943 Date dictated N/A

by SA [redacted]

b6 -1
b7C -1
b7F

(Rev. 05-01-2008)

UNCLASSIFIED

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 04/20/2009

To: Cyber

Attn: CIU-1/SSA [redacted]
SSA [redacted]

Washington Field

From: Washington Field
CR-17 / NVRA

b6 -1
b7C -1
b7F

Contact: SA [redacted]

Approved By: [redacted]

Drafted By: [redacted]

Case ID #: 288A-WF-238943 (Closed)

Title: UNSUB(S);
US COURTS - VICTIM;
COMPUTER INTRUSION - OTHER

Synopsis: To close case.

Details: For background, the U.S. Courts implemented a pilot project offering free access to federal court records through the PACER system at seventeen federal depository libraries. From September 4 - 22, 2008, PACER was accessed by computers from outside the library utilizing login information from two libraries participating in the pilot project. The login information was compromised at the Sacramento County Public Law Library and the Seventh Circuit Court of Appeals Library. The two accounts were responsible for downloading more than eighteen million pages with an approximate value of \$1.5 million.

Investigation determined that the Amazon IP address used to access the PACER system belongs to Aaron Swartz. Swartz refused an interview with the FBI. [redacted]

[redacted] Swartz on his website pacer.resource.org, was interview by the FBI on April 15, 2009. Both Swartz and [redacted] were interviewed by the New York Times, regarding the compromise of the PACER system.

b6 -2
b7C -2

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To: Cyber From: Washington Field
Re: 288A-WF-238943, 04/20/2009

CCIPS Attorney [redacted] closed the office's case.
Based on the CCIPS closing, Washington Field is closing this case
as of this communication.

b6 -1
b7C -1

UNCLASSIFIED

UNCLASSIFIED

To: Cyber From: Washington Field
Re: 288A-WF-238943, 04/20/2009

LEAD(s) :

Set Lead 1: (Info)

CYBER

AT CIU-1

Read and clear.

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UNCLASSIFIED

OPCA-20 (12-3-96)

XXXXXX
XXXXXX
XXXXXX

**FEDERAL BUREAU OF INVESTIGATION
FOIA/PA DELETED PAGE INFORMATION SHEET**

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Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552

Section 552a

- (b)(1)
- (b)(2)
- (b)(3) _____
- _____
- _____
- (b)(4)
- (b)(5)
- (b)(6)

- (b)(7)(A)
- (b)(7)(B)
- (b)(7)(C)
- (b)(7)(D)
- (b)(7)(E)
- (b)(7)(F)
- (b)(8)
- (b)(9)

- (d)(5)
- (j)(2)
- (k)(1)
- (k)(2)
- (k)(3)
- (k)(4)
- (k)(5)
- (k)(6)
- (k)(7)

Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.

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 2 Page(s) were not considered for release as they are duplicative of Swartz-10 to Swartz-11

_____ Page(s) withheld for the following reason(s): _____

The following number(s) is (are) to be used for reference regarding these pages:
Swartz-22 to Swartz-23

XXXXXX
XXXXXX

XXXXXXXXXXXXXXXXXXXXX
X Deleted Page(s) X
X No Duplication Fee X
X for this page X
XXXXXXXXXXXXXXXXXXXXX