

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
RYAN NOAH SHAPIRO,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 13-CV-00595
)	
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; Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General and FBI policies and procedures;

judicial decisions; and Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order (“E.O.”) 13526,¹ and the preparation of declarations in support of Exemption 1 claims under the FOIA.² I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to E.O. 13526, §§ 1.3 and 3.1. 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 familiar with the FBI’s handling of FOIA requests that were received from plaintiff seeking access to records pertaining to Occupy Wall Street-related protests in Houston, Texas.

(4) The purpose of this declaration is to provide the Court and plaintiff with an explanation of the FBI records keeping system, the procedures used to search for records responsive to plaintiff’s FOIA requests, and to provide a justification for the withholding of information from the records pursuant to applicable FOIA exemptions.

CHRONOLOGY OF PLAINTIFF’S FOIA REQUESTS

(5) Set forth below is a chronology and description of the pertinent correspondence concerning plaintiff’s FOIA requests. Copies of this correspondence are attached hereto as **Exhibits A - O.**

¹ 75 Fed. Reg. 707 (2010).

² 5 U.S.C. § 552 (b)(1).

FOIPA 1205920-000

(6) By letter dated January 4, 2013, plaintiff submitted a FOIA request to 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 a potential plan to ‘gather intelligence against the leaders of [Occupy wall Street-related protests in Houston, Texas] and obtain photographs, then formulate a plan to kill the leadership [of the protests] via suppressed sniper rifles.’” Plaintiff requested a search of the FBI’s Electronic Surveillance (“ELSUR”) Index. Plaintiff also sought expedited processing and a fee waiver. **(See Exhibit A.)**

(7) By letter dated February 28, 2013, the FBI informed plaintiff that a search of the Central Records System resulted in no main files being identified as responsive to the FOIA request. The FBI further advised plaintiff that if additional information pertaining to the subject was provided to the FBI, an additional search for potentially responsive records would be conducted. Plaintiff was also advised that he could appeal the FBI’s denials within sixty (60) days by writing to the Office of Information Policy (“OIP”). **(See Exhibit B.)**

(8) By letter dated March 6, 2013, plaintiff filed an appeal with OIP challenging the FBI’s no records response. **(See Exhibit C.)**

(9) By letter dated March 21, 2013, OIP acknowledged receipt of plaintiff’s appeal and notified him it had been assigned appeal number AP-2013-02378.³ **(See Exhibit D.)**

FOIPA 1206188-000

(10) By letter dated January 4, 2013, plaintiff submitted a FOIA request to FBIHQ for “any and all records that were prepared, received, transmitted, collected and/or maintained by

³ This appeal was closed June 26, 2013.

the FBI, the Terrorist Screening Center, the National Joint Terrorism Task Force, or any Joint Terrorism Task Force relating or referring to Occupy Houston, any other Occupy Wall Street-related protests in Houston, Texas, and law enforcement responses to the above protests.” Plaintiff sought expedited processing and a fee waiver. **(See Exhibit E.)**

(11) By letter dated February 28, 2013, the FBI informed plaintiff that a search of the Central Records System resulted in no main files being identified as responsive to the FOIA request. The FBI further advised plaintiff that if additional information pertaining to the subject was provided to the FBI, an additional search for potentially responsive records would be conducted. Plaintiff was also advised that he could appeal the FBI’s denials within sixty (60) days by writing to OIP. **(See Exhibit F.)**

(12) By letter dated March 6, 2013, plaintiff filed an appeal with OIP challenging the FBI’s no records response. **(See Exhibit G.)**

(13) By letter dated March 21, 2013, OIP acknowledged receipt of plaintiff’s appeal and notified him it had been assigned appeal number AP-2013-02377.⁴ **(See Exhibit H.)**

(14) By letter dated May 24, 2013, OIP informed plaintiff that after carefully considering his appeal, they were affirming the FBI’s no record response on his request. OIP further advised plaintiff that if he was dissatisfied with their action, the FOIA authorized requesters to file a lawsuit in federal district court. **(See Exhibit I.)**

(15) During the administrative processing of this request, the FBI interpreted the request to mean only “law enforcement responses to” Occupy Houston protests. Upon reconsideration, the FBI interpreted this request for all records related to Occupy Houston. Based on this revised interpretation, the FBI conducted another search and located responsive

⁴ This appeal was closed May 24, 2013.

pages. By letter dated June 24, 2013, the FBI released those pages and stated that it had reviewed 12 pages responsive to plaintiff's request and was releasing four (4) pages.

Furthermore, the FBI indicated that it had withheld information pursuant to FOIA Exemptions (b)(1), (b)(3), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI further advised plaintiff that he could appeal the FBI's denials within sixty (60) days by writing to OIP.

(See Exhibit J.)

FOIPA 1205920-001

(16) By letter dated February 8, 2013, plaintiff submitted a FOIA request to 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 information source redacted (by the FBI) and highlighted (by me) in the attached 19 October 2011 FBI document released in the course of a separate FOIA request." Plaintiff requested a search of the ELSUR Index. Plaintiff also sought a fee waiver and expedited processing. **(See Exhibit K.)**⁵

(17) By letter dated March 8, 2013, the FBI advised plaintiff that his request for records relate to someone else and disclosure of third party information is considered an unwarranted invasion of privacy. The FBI continued to inform plaintiff that absent proof of death or a privacy waiver from the individuals involved, the records are exempt from disclosure pursuant to Title 5, United States Code, Section 552, exemptions (b)(6) and (b)(7)(C). Plaintiff was advised that he could appeal the FBI's denials within sixty (60) days by writing to OIP.

(See Exhibit L.)

(18) By letter dated March 13, 2013, plaintiff filed an appeal with OIP challenging the

⁵ Plaintiff's highlighting does not appear on the pages that have been scanned. Therefore, the FBI has bracketed the information that was originally highlighted by plaintiff.

FBI's March 8, 2013 response. (**See Exhibit M.**)

(19) By letter dated April 3, 2013, OIP acknowledged receipt of plaintiff's appeal and notified him it had been assigned appeal number AP-2013-02550.⁶ (**See Exhibit N.**)

(20) Upon further review of the highlighted portions of plaintiff's request, the FBI identified records responsive to plaintiff's February 8, 2013 FOIA request. By letter dated June 24, 2013, the FBI released 1 page to plaintiff. The FBI stated that it had reviewed 5 pages responsive to plaintiff's request. Furthermore, the FBI indicated that it had withheld information pursuant to FOIA Exemptions (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI further advised plaintiff that this release was a revision of the FBI's response of March 8, 2013. Finally, the FBI informed plaintiff he could appeal the FBI's denials within sixty (60) days by writing to OIP. (**See Exhibit O.**)

(21) Plaintiff filed a lawsuit in the United States District Court of the District of Columbia on April 29, 2013.

EXPLANATION OF THE CENTRAL RECORDS SYSTEM

(22) 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

⁶ This appeal was closed June 26, 2013.

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”).

(23) 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.

(24) 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 Occupy Movement, are made by searching the subject requested in the index. FBI field offices have automated indexing functions.

(25) 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.

(26) 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.

(27) 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.

EXPLANATION OF THE FBI’S ELECTRONIC SURVEILLANCE INDICES

(28) The Electronic Surveillance (“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.

(29) 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.

(30) 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).

(31) 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 RECORDS RESPONSIVE TO PLAINTIFF'S REQUESTS

(32) In response to FOIPA 1205920-000, the FBI conducted a text search of the ECF to identify all potentially responsive main and cross-reference files indexed under the term "Occupy Houston" as it related to the plan that is described in plaintiff's request letter. It is not the FBI's current policy to conduct text searches of the ECF. However, because of the nature of plaintiff's request, the FBI erred on the side of caution in order to locate any responsive documents. Because the decision to index names in a specific document can vary from document to document, the text search provided a more comprehensive search of the CRS. As a result of this search, no records were located.

(33) The FBI also conducted an ELSUR search for records pertaining to plaintiff's requests. As a result of this search, no records were located.

(34) In response to FOIPA 1205920-001, the FBI reviewed the highlighted portions of

plaintiff's request again and contacted the appropriate unit who handles the reports referenced in the FBI document attached to plaintiff's request. As a result, 5 pages were identified as responsive to the request.

(35) In response to FOIPA 1206188, the FBI conducted a text search of the ECF to identify all potentially responsive main and cross-reference files indexed under the term "law enforcement responses and Occupy Houston." As a result of this search, no records were located.

(36) The FBI is aware of a request for similar information that had been made in 2011. Records were processed in response to that request. During the search for material for the 2011 request, the FBI conducted a search of the CRS to identify all potentially responsive main and cross-reference files indexed under the following terms: "Occupy Movement/Northern California," "Occupy Oakland," "Occupy San Francisco," "Occupy Cal," "Occupy UC Davis," "OWS," "Occupy Wall," "Occupy Movement," "Occupy Encampments," "Occupy Encampment," "Occupy McPherson," "Occupy Zuccotti Park," "Occupy New York City," "Occupy DC," "Occupy Oakland," "Occupy Portland," "Occupy San Francisco," "Occupy Sacramento," "Occupy Salt Lake City," "Occupy Seattle," "Occupy Atlanta," "Occupy San Jose," "Occupy Boston," "Occupy Los Angeles," "Occupy Indianapolis," "Occupy Baltimore," "Occupy St. Louis," "Occupy Cincinnati," "Occupy Providence," "Occupy Austin," "Occupy Denver," "Occupy Eugene," "Occupy Philadelphia," "Occupy Buffalo," "Occupy Las Vegas," "Occupy Charlotte," "Occupy Pittsburgh," "Occupy Dallas," "Occupy Houston," "Occupy Chicago," "Occupy Washington," "Occupy Washington DC," and "Occupy K." As a result of this search, no records were located. Additionally, in an abundance of caution, and because of the specific nature of the request, the FBI took the extraordinary step of conducting text searches of the ECF to identify all potentially responsive main and cross-reference files indexed under the search terms

identified above in response to the 2011 FOIA request. As a result of these text searches, the FBI identified 454 pages of potentially responsive records. The FBI conducted a page by page review of the 454 potentially responsive pages. As a result of this review, the FBI identified twelve pages that were found to be responsive to FOIPA request 1206188.

PROCESSING OF PLAINTIFF'S REQUEST

(37) Search efforts yielded a total of 17 pages of responsive material to plaintiff's requests. The FBI processed and released the responsive material to plaintiff in redacted form, and the pages considered for possible release included only those serials where the subject of the request was mentioned.

EXPLANATION OF CODED FORMAT USED FOR THE JUSTIFICATION OF REDACTED MATERIAL

(38) In processing the documents responsive to plaintiff's requests, 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 1, 3, 6, 7(A), 7(C), 7(D), and 7(E), 5 U.S.C. §§ 552 (b)(1), (b)(3), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E).

(39) The FBI has processed a total of 17 pages of responsive material. Of these 17 pages, five pages have been released in part and twelve pages have been withheld in their entireties pursuant to FOIA Exemptions. Each page of the processed documents is Bates-numbered sequentially - Shapiro-1 through Shapiro-17. (**See Exhibit P.**) Additionally, pages withheld in their entirety were replaced by a "Deleted Page Information Sheet" ("DPIS") which identifies the

reason and/or the applicable FOIA exemptions 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.

(40) 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."

(41) 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
Category (b)(1)	CLASSIFIED INFORMATION
(b)(1)	Classified Information
Category (b)(3)	INFORMATION PROTECTED BY STATUE
(b)(3)-1	National Security Act of 1947 [50 U.S.C. § 403-1(i)(1)]
Category (b)(7)(A)	PENDING LAW ENFORCEMENT INVESTIGATIONS
(b)(7)(A)	Pending Law Enforcement Proceedings
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
(b)(6)-2 and (b)(7)(C)-2	Names and/or Identifying Information of Third Parties Who Provided Information to the FBI. (May be cited in conjunction with (b)(7)(D).)
(b)(6)-3 and (b)(7)(C)-3	Names and/or Identifying Information of Third Parties Merely Mentioned
(b)(6)-4 and (b)(7)(C)-4	Name of a Non-FBI Federal Government Employee
Category (b)(7)(D)	CONFIDENTIAL SOURCE INFORMATION
(b)(7)(D)-1	Names, Identifying Data and/or Information Provided by Individuals Under an "Implied" Assurance of Confidentiality (May be cited in conjunction with (b)(6) and (b)(7)(C).)
(b)(7)(D)-2	Names, Identifying Data and/or Information Provided by Individuals Under an "Express" Assurance of Confidentiality (May be cited in conjunction with (b)(6) and (b)(7)(C).)
Category (b)(7)(E)	INVESTIGATIVE TECHNIQUES AND PROCEDURES
(b)(7)(E)-1	File Numbers
(b)(7)(E)-2	Collection and/or Analysis of Information
(b)(7)(E)-3	Specific Law Enforcement Techniques Utilized to Conduct National Security and Intelligence Investigations

JUSTIFICATIONS FOR SPECIFIC DELETIONS OF INFORMATION

(43) The paragraphs that follow explain the FBI's rationale for withholding each particular category of information under the specific exemption coded 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)(1), (b)(3), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E) 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)(1) CLASSIFIED INFORMATION

(44) The FBI's analysis of the withholding of classified information contained in these documents is based on the standards articulated in the FOIA statute, 5 U.S.C. § 552 (b)(1).⁷

⁷ Exemption (b)(1) has been cited on the following pages: Shapiro-9 and 10.

Exemption (b)(1) protects from disclosure those records that are:

(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 pursuant to such Executive Order.

(45) Before I consider an Exemption (b)(1) claim for withholding agency records, I determine whether the information in those records is information that satisfies the requirements of E.O. 13526, the Executive Order which governs the classification and protection of information that affects the national security,⁸ and whether the information complies with the various substantive and procedural criteria of the Executive Order. E.O. 13526, which was signed by President Barack Obama on December 29, 2009, is the Executive Order that currently applies to the protection of national security information. I am bound by the requirements of E.O. 13526, when making classification determinations.

(46) For information to be properly classified, and thus properly withheld from disclosure pursuant to Exemption (b)(1), the information must meet the requirements set forth in E.O. 13526 § 1.1 (a):

(1) an original classification authority is classifying the information;

(2) the information is owned by, produced by or for, or is under the control of the United States Government;

(3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and

(4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

(47) All information which I determined to be classified, and which is under the control

⁸ Section 6.1 (cc) of E.O. 13526, defines “National Security” as “the national defense or foreign relations of the United States.”

of the United States Government, is marked at the "Secret" level since the unauthorized disclosure of this information reasonably could be expected to cause serious damage ("Secret") to national security. See E.O. 13526 § 1.2 (a)(2). In addition to this substantive requirement, certain procedural and administrative requirements of E.O. 13526, must be followed before information can be considered to be properly classified, such as proper identification and marking of documents. I made certain that all procedural requirements of E.O. 13526, were followed in order to ensure that the information was properly classified. I made certain that:

(a) each document was marked as required and stamped with the proper classification designation;

(b) each document was marked to indicate clearly which portions are classified and which portions are exempt from declassification as set forth in E.O. 13526 § 1.5 (b);

(c) the prohibitions and limitations on classification specified in E.O. 13526 § 1.7, were adhered to;

(d) the declassification policies set forth in E.O. 13526 §§ 3.1 and 3.3 were followed; and

(e) any reasonably segregable portion of these classified documents that did not meet the standards for classification under E.O. 13526, were declassified and marked for release, unless withholding was otherwise warranted under applicable law.

FINDINGS OF DECLARANT REGARDING EXEMPTION (b)(1)

(48) With the above requirements in mind, I personally and independently examined the information withheld from plaintiff pursuant to FOIA Exemption 1. As a result of this, I determined that the classified information continues to warrant classification at the "Secret" level, respectively, and is exempt from disclosure pursuant to E.O. 13526, § 1.4, categories "(c) intelligence activities (including covert action), intelligence sources or methods, or cryptology."

INTELLIGENCE ACTIVITIES, SOURCES AND METHODS

(49) E.O. 13526, § 1.4(c), exempts intelligence activities (including covert action), intelligence sources or methods, or cryptology from disclosure. An intelligence activity or

method includes any intelligence action or technique utilized by the FBI against a targeted individual or organization that has been determined to be of national security interest. An intelligence method is used to indicate any procedure (human or non-human) utilized to obtain information concerning such individual or organization. An intelligence activity or method has two characteristics. First, the intelligence activity or method - and information generated by it - is needed by U. S. Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality must be maintained with respect to the activity or method if the viability, productivity and usefulness of its information are to be preserved. The information withheld in these documents pursuant to Exemption (b)(1) was withheld to protect detailed intelligence activity information compiled regarding a specific individual or organization of national security interest.

(50) The classification redactions were made to protect from disclosure information that would reveal the actual intelligence activities and methods used by the FBI against specific targets of foreign counterintelligence investigations or operations; identify a target of a foreign counterintelligence investigation; or disclose the intelligence gathering capabilities of the activities or methods directed at specific targets. The information obtained from the intelligence activities or methods is very specific in nature, provided during a specific time period, and known to very few individuals.

(51) It is my determination that the disclosure of the specific information which describes the intelligence activities or methods withheld in this case, which are still used by the FBI today to gather intelligence information, could reasonably be expected to cause serious damage to the national security for the following reasons: (1) disclosure would allow hostile entities to discover the current intelligence gathering methods used; (2) disclosure would reveal

current specific targets of the FBI's national security investigations; and (3) disclosure would reveal the determination of the criteria used and priorities assigned to current intelligence or counterintelligence investigations. With the aid of this detailed information, hostile entities could develop countermeasures which would, in turn, severely disrupt the FBI's intelligence gathering capabilities. This severe disruption would also result in severe damage to the FBI's efforts to detect and apprehend violators of the United States' national security and criminal laws.

(52) The FBI protected detailed intelligence activity information compiled regarding specific individuals or organizations of national security interest because disclosure reasonably could be expected to cause serious damage to the national security.

Detailed Intelligence Activities

(53) The classified information withheld on Shapiro-9 and 10 contains detailed intelligence activities information gathered or compiled by the FBI on specific individuals or organizations of national security interest. The disclosure of this information could reasonably be expected to cause serious damage to the national security, as it would: (a) reveal the actual intelligence activity or method utilized by the FBI against a specific target; (b) disclose the intelligence-gathering capabilities of the method; and (c) provide an assessment of the intelligence source penetration of a specific target during a specific period of time. This information is properly classified at the "Secret" level, withheld pursuant to E.O. 13526, § 1.4(c), and is exempt from disclosure pursuant to Exemption 1.

DEFENDANT'S BURDEN OF ESTABLISHING EXEMPTION (b)(1) CLAIMS

(54) The information withheld in this case pursuant to Exemption 1 was examined in light of the body of information available to me concerning the national defense and foreign relations of the United States. This information was not examined in isolation. Instead, each

piece of information was evaluated with careful consideration given to the impact that disclosure of this information will have on other sensitive information contained elsewhere in the United States intelligence community's files. Equal consideration was given to the impact that other information either in the public domain or likely known or suspected by present or potential adversaries of the United States, would have upon the information I examined.

(55) In those instances where, in my judgment, the disclosure of this information could reasonably be expected to cause serious damage to the national security, and its withholding outweighed the benefit of disclosure, I exercised my prerogative as an original classification authority and designated that information as classified in the interest of national security, and invoked Exemption 1 of the FOIA to prevent disclosure. Likewise, the justifications for the withheld classified information were prepared with the intent that they be read with consideration given to the context in which the classified information is found. This context includes not only the surrounding unclassified information, but also other information already in the public domain, as well as information likely known or suspected by other hostile intelligence entities. It is my judgment that any greater specificity in the descriptions and justifications set forth with respect to information relating to foreign activities and intelligence sources and methods of the United States could reasonably be expected to jeopardize the national security of the United States.

FINDINGS OF DECLARANT

(56) With the above requirements in mind, I personally and independently examined the FBI information withheld pursuant to Exemption (b)(1). As a result of this examination, I determined that this classified information continues to warrant classification at the "Secret" level, and is exempt from disclosure pursuant to E.O. 13526, §1.4, category (c) intelligence activities or methods and intelligence sources, as the unauthorized disclosure of the information could

reasonably be expected to cause serious damage to the national security.

EXEMPTION (b)(3)
INFORMATION PROTECTED BY STATUTE

(57) 5 U.S.C. § 552 (b)(3) exempts from disclosure information which is: specifically exempted from disclosure by statute ... provided that such statute

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue,; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment on the OPEN FOIA Act of 2009, specifically cites to this paragraph.

(b)(3)-1: National Security Act of 1947 [50 U.S.C. § 403-1(i)(1)]

(58) Exemption 3 was asserted to withhold information pursuant to Section 102A(i)(1) of the National Security Act of 1947 (“NSA”), as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”), 50 U.S.C. § 403-1(i)(1), which provides that the Director of National Intelligence (“DNI”) “shall protect from unauthorized disclosure intelligence sources and methods.” As relevant to U.S.C. § 552 (b)(3)(B), the National Security Act of 1947 was enacted before the date of enactment of the OPEN FOIA Act of 2009.⁹ On its face, this federal statute leaves no discretion to agencies about withholding from the public information about intelligence sources and methods. Thus, the protection afforded to intelligence sources and methods by 50 U.S.C. § 403-1(i)(1) is absolute. See CIA v. Sims, 471 U.S. 159 (1985).

(59) In order to fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community (“IC”) for the classification of information under applicable laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. §§ 403-1(i)(2)(A), (B).

⁹ The OPEN FOIA Act of 2009 was enacted October 28, 2009, Pub.L. 111-83, 123 Stat. 2142, 2184; 5 U.S.C. §552(b)(3)(B).

The FBI is one of 17 member agencies comprising the IC, and as such must protect intelligence sources and methods.

(60) As described above, Congress enacted the NSA, as amended by the IRTPA, to protect the IC's sources and methods of gathering intelligence. Disclosure of such information presents the potential for individuals to develop and implement countermeasures, which would result in the loss of significant intelligence information, relied upon by national policymakers and the IC. Given that Congress specifically prohibited the disclosure of information pertaining to intelligence sources and methods used by the IC as a whole, I have determined that the FBI's intelligence sources and methods would be revealed if any of the withheld information is disclosed to plaintiffs, and thus, the FBI is prohibited from disclosing the information under 50 U.S.C. § 403-1(i)(1). Thus, this information was properly withheld pursuant to Exemption 3, as prescribed on 50 U.S.C. § 403-1(i)(1).¹⁰

EXEMPTION (b)(7) THRESHOLD

(61) 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 pending law enforcement investigations (b)(7)(A), invasion of personal privacy (b)(7)(C), revealing the identity of confidential sources (b)(7)(D), and revealing sensitive law enforcement techniques (b)(7)(E).

(62) 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

¹⁰ The FBI has withheld information pursuant to Exemption (b)(3)-1 on Bates-numbered pages Shapiro-9 and 10. This information was also withheld pursuant to Exemption 1.

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 mission to provide services and support federal, state, municipal, and international agencies and partners. In this instance, the FBI provided support to local law enforcement agencies in pursuing leads concerning potential investigations into criminal acts regarding the "Occupy" movement in Houston. The FBI's general investigative authority in 28 U.S.C. § 533, and its general authority to collect records in 28 U.S.C. § 534, provides the statutory basis for the FBI's role in providing services and support to state and local law enforcement agencies in investigating crimes and terrorism related to the enforcement of federal laws. The FBI is also assigned the lead role in investigating terrorism and in the collection of terrorism threat information within the United States by 28 C.F.R. § 0.85. Accordingly, the information readily meets the threshold requirement of Exemption (b)(7). The remaining inquiry is whether disclosure "could reasonably be expected to jeopardize pending law enforcement proceedings," "could reasonably be expected to constitute an unwarranted invasion of personal privacy," "could disclose the identity of confidential sources," or "could reveal sensitive law enforcement techniques."

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

(63) 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.¹¹

(64) 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.

Exemptions (b)(6)-1 and (b)(7)(C)-1: Names and/or Identifying Information of FBI Special Agents and Support Personnel

(65) Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names and/or identifying information of FBI SAs and support personnel who were responsible for conducting, supervising, and/or maintaining the investigative activities reported in the documents responsive to plaintiff's requests. Publicity (adverse or otherwise) regarding any particular investigation to which they have been assigned may seriously prejudice their effectiveness in conducting other

¹¹ The practice of the FBI is to assert Exemption (b)(6) in conjunction with (b)(7)(C). Although the balancing test for (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.

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.

(66) 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.¹²

(67) 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 assistance to local law enforcement agencies during their investigation into the "Occupy" movement in Houston. 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,

¹² 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.

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) and (b)(7)(C).¹³

Exemptions (b)(6)-2 and (b)(7)(C)-2: **Names and/or Identifying Information of Third Parties who Provided Information to the FBI**

(68) Exemptions (b)(6) and (b)(7)(C) have been asserted, at times in conjunction with Exemption (b)(7)(D), to protect the names and/or identifying information of third parties who provided information to the FBI.

(69) 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 identity 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 name and identifying information disclosed against the negligible public interest in the disclosure of their identities. Disclosure of the 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

¹³ Exemptions (b)(6)-1 and (b)(7)(C)-1 have been cited on the following pages: Shapiro-1,4, 11, and 16-17.

(b)(6) and (b)(7)(C), at times in conjunction with Exemption (b)(7)(D).¹⁴

Exemptions (b)(6)-3 and (b)(7)(C)-3: Names and/or Identifying Information of Third Parties Merely Mentioned

(70) Exemptions (b)(6) and (b)(7)(C) 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 identifying information disclosed. If the FBI were to disclose their names and other personal information, the 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 information about them found in records of the FBI. After identifying the substantial privacy interests of these third party individuals, who are merely mentioned in the investigative files, 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) and (b)(7)(C).¹⁵

¹⁴ Exemptions (b)(6)-2 and (b)(7)(C)-2 have been cited on the following pages: Shapiro-4-8, and 14-17.

¹⁵ Exemptions (b)(6)-3 and (b)(7)(C)-3 have been cited on the following pages: Shapiro-9 and 10.

Exemptions (b)(6)-4 and (b)(7)(C)-4: **Name of a Non-FBI Federal Government Employee**

(71) Exemptions (b)(6) and (b)(7)(C) 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 and identifying information could subject these federal law enforcement employees 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*.

(72) 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 personal privacy. The FBI properly withheld this information pursuant to Exemption (b)(6) and (b)(7)(C).¹⁶

EXEMPTION (b)(7)(A)
PENDING LAW ENFORCEMENT PROCEEDINGS

(73) 5 U.S.C. § 552 (b)(7)(A) 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 interfere with enforcement proceedings.

(74) Application of this exemption requires: the existence of law enforcement records; a pending or prospective law enforcement proceeding; and a determination that release of the

¹⁶ Exemptions (b)(6)-4 and (b)(7)(C)-4 have been asserted on Shapiro-9.

information could reasonably be expected to interfere with the enforcement proceeding. Typically, the FBI asserts Exemption (b)(7)(A) for a variety of different documents in an investigative file, which the FBI then groups into functional categories and describes in greater detail. In this case, however, the FBI has asserted Exemption (b)(7)(A) in a limited fashion to protect the names and file numbers of pending FBI investigations. The release of the file number and name of an on-going FBI investigation could result not only in the acknowledgment of the existence of the investigation but also in the identification of suspects and thus jeopardize the investigation. The FBI has applied Exemption (b)(7)(A) to protect the file numbers and names of these open investigations.¹⁷

EXEMPTION (b)(7)(D)
INFORMATION FROM CONFIDENTIAL SOURCES

(75) 5 U.S.C. § 552 (b)(7)(D) provides protection for:

records or information compiled for law enforcement purposes [which] could reasonably be expected to disclose the identity of a 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 a 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.

(76) Numerous confidential sources report to the FBI on a regular basis and are “informants” within the common meaning of the term. Some of these sources provide information under an express assurance of confidentiality. Other individuals are interviewed under circumstances from which assurances of confidentiality can reasonably be inferred. These individuals are considered to be confidential sources since they furnished information only with the understanding that their identities and the information provided will not be released outside the FBI. Information provided by these individuals is singular in nature, and if released, could reveal their identities.

¹⁷ Exemption (b)(7)(A) has been asserted on the following pages: Shapiro-1-3 and 11-17.

Exemption (b)(7)(D)-1: Names, Identifying Data and/or Information Provided by Individuals under an “Implied” Assurance of Confidentiality

(77) Exemption (b)(7)(D) has been asserted, at times in conjunction with Exemptions (b)(6) and (b)(7)(C), to protect the names, identifying information, and/or information provided by third parties under an implied assurance of confidentiality.

(78) The FBI has withheld information which the release of the information could clearly identify the sources. The sensitivity of the information, and the position of the sources, is such that it may be inferred that the information was provided with the expectation of confidentiality. These sources provided valuable information that is detailed and singular in nature. As discussed earlier, the disclosure of the identities of these individuals is in direct contradiction to the interests of the FBI. If the FBI were forced to disclose the identity of -- and information provided by -- a confidential source who provided information based on an expectation of confidentiality (whether express or implied), such disclosure would have a chilling effect on the activities and cooperation of this and other future FBI confidential sources. The FBI has released as much segregable information as possible without disclosing the sources' identities. As a result, the FBI has properly withheld this information pursuant to FOIA Exemption (b)(7)(D), at times in conjunction with Exemptions (b)(6) and (b)(7)(C).¹⁸

Exemption (b)(7)(D)-2: Names, Identifying Information, and/or Information Provided by Individuals under an “Express” Assurance of Confidentiality

(79) Exemption (b)(7)(D) has been asserted, at times in conjunction with Exemptions (b)(6) and (b)(7)(C), to protect the names, identifying information and/or information provided by individuals who assisted the FBI during the course of their assistance to local law enforcement into

¹⁸ Exemption (b)(7)(D)-1 has been cited on the following pages: Shapiro-1-2, 10, and 12.

their investigations of the “Occupy” movement in Houston, under an “express” assurance of confidentiality. These third parties have provided specific detailed information that is singular in nature. Prior to conducting the interview, the FBI expressly promised the third-party interviewees that their identity and the information they provided would not be disclosed. These individuals cooperated with the FBI and provided valuable information concerning the criminal activities currently under investigation with the express understanding that their identities and any information which would tend to identify them would only be used for law enforcement purposes and not released to the public.

(80) The FBI protected the contents of the interviews conducted with such third parties because individuals who have knowledge of the crimes which gave rise to the FBI’s investigation could clearly determine their identities. The sources provided valuable information that is detailed and singular in nature. As such, disclosing the identities of these individuals could have disastrous consequences, as detailed in the Exemption (b)(6) and (b)(7)(C) discussion above. Disclosure of the identities of these cooperating witnesses could subject them to violent reprisals. In addition, disclosure of the identities of these confidential sources, which were expressly promised confidentiality, has wider implications. If the FBI were to disclose the identities of confidential sources that entered into express agreements, that revelation would have a chilling effect on the activities and cooperation of these and other FBI confidential sources in the future. The FBI has found that it is only with the understanding of complete confidentiality that the aid of such sources can be enlisted, and only through this confidence that these sources can be persuaded to continue to provide valuable assistance in the future. Thus, the identity of, and the information provided by the sources who were expressly promised confidentiality was properly withheld pursuant to FOIA Exemption (b)(7)(D), at times in conjunction with Exemptions (b)(6) and

(b)(7)(C).¹⁹

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

(81) 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: File Numbers

(82) Exemption (b)(7)(E) was asserted to protect sensitive case file numbers. The FBI has determined that this exemption is appropriate for protecting these file numbers. The release of file numbering convention identifies the investigative interest or priority given to such matters. Applying a mosaic analysis, suspects could use these numbers (indicative of investigative priority), in conjunction with other information known about other individuals and/or techniques, to change their pattern of activity to avoid detection, apprehension, or create alibis for suspected activities, etc. Thus, the FBI properly protected this information from disclosure pursuant to FOIA Exemption (b)(7)(E).²⁰

Exemption (b)(7)(E)-2: Collection and/or Analysis of Information

(83) Exemption (b)(7)(E) was asserted to protect the investigative techniques associated with the collection and/or analysis of information gathered during the course of FBI investigations. The FBI Domestic Investigations and Operations Guide (“DIOG”) describes numerous methods that the FBI uses to collect and analyze the information that it obtains for investigative purposes. Although the fact that the FBI collects certain types of information is known to the public, the

¹⁹ Exemption (b)(7)(D)-2 has been cited on the following pages: Shapiro-4-8 and 13-17.

²⁰ Exemption (b)(7)(E)-1 has been asserted on the following pages: Shapiro-1, 11-12 and 16-17.

manner in which the FBI applies and analyzes this information for use in its investigations and for intelligence purposes is not publicly known. Since 9/11 and especially after the enactment of the Intelligence Reform and Terrorist Prevention Act of 2004 (“IRTPA”), the FBI has been transforming itself into an intelligence-driven agency to aid its paramount mission of detecting and preventing harm to the national security before it happens. Two essential components of this effort - indeed the sine qua non of this mission-- are the collection and analysis of information. The FBI has fully described this new mandate under IRTPA to the American public--but it has not disclosed the precise methods used in the collection and analysis of information. Such disclosures would enable subjects of FBI investigations to circumvent similar, currently used techniques. The relative utility of these techniques could be diminished if the actual techniques were released in this matter. This, in turn, would facilitate the accumulation of information by investigative subjects regarding the circumstances under which the specific techniques can be used or requested and the usefulness of the information obtained. To release this type of information would enable criminals, terrorists, and spies to educate themselves about the techniques employed for the collection and analysis of information that information would improve the ability of such individuals to take countermeasures to circumvent the effectiveness of the techniques and to continue to violate the law and engage in intelligence, terrorist, and criminal activities. Thus, the FBI properly protected this information from disclosure pursuant to FOIA Exemption (b)(7)(E).²¹

Exemption (b)(7)(E)-3:

Specific Law Enforcement Techniques Utilized to Conduct National Security and Intelligence Investigations

(84) Exemption (b)(7)(E) was asserted to withhold information pertaining to law enforcement techniques used to conduct national security and intelligence investigations.

²¹ Exemption (b)(7)(E)-2 has been asserted on Shapiro-4-17.

Release of the details of specific law enforcement techniques utilized by the FBI to conduct national security and intelligence investigations could aid individuals in circumventing the law and promoting the invention of countermeasures which would divert the FBI's investigative methods from its intended target.²² To provide any additional information regarding these law enforcement techniques would reveal the very information that the FBI is seeking to protect.

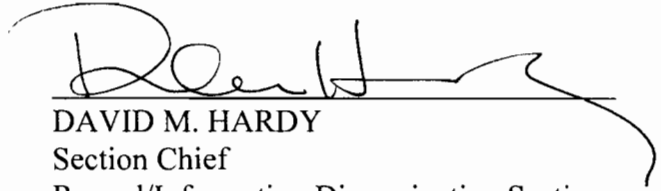
CONCLUSION

(85) The FBI has conducted a reasonable search for responsive records. Additionally, the FBI has processed and released all reasonably segregable information from the records responsive to plaintiff's requests to the FBI. Information has been properly withheld pursuant to FOIA Exemptions 1, 3, 6, 7(A), 7(C), 7(D) and 7(E), 5 U.S.C. §§ 552 (b)(1), (b)(3), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D) and (b)(7)(E). The FBI carefully examined the responsive documents and determined that the information withheld from plaintiff, if disclosed, could reasonably be expected to cause serious damage to national security; could reasonably be expected to interfere with enforcement proceedings; could cause a clearly unwarranted and unwarranted invasion of personal privacy; could reasonably be expected to disclose the identity of a confidential source; and would disclose techniques and procedures for law enforcement investigations, the disclosure of which could reasonably be expected to risk circumvention of the law.

²² Exemption (b)(7)(E)-3 has been asserted on Shapiro-9 and 10.

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 P attached hereto are true and correct copies.

Executed this 16th day of July, 2013.



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