

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-61735-CIV-ZLOCH

BROWARD BULLDOG, INC., a Florida
corporation not for profit, and DAN
CHRISTENSEN, founder, operator and editor
of the BrowardBulldog.com website,

Plaintiffs,

vs.

U.S. DEPARTMENT OF JUSTICE and
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

**DEFENDANTS' REPLY TO PLAINTIFFS' MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS COMPLAINT**

Defendants, U.S. Department of Justice (DOJ), and its component, Federal Bureau of Investigation (FBI), respectfully reply as follows to plaintiffs' memorandum opposing defendants' motion to dismiss plaintiffs' Complaint without prejudice for failure to comply with FED. R. CIV. P. 8.

Plaintiffs argue that their Complaint should not be dismissed because it consists of only one count and only 25 pages, unlike the more lengthy multi-count "shotgun" pleadings typically dismissed by the courts. However, the requirements of FED. R. CIV. P. 8 are not limited to multi-

count complaints or to complaints that exceed a specific page limit.¹ Plaintiffs' 25-page single-count Complaint is not "short and plain" as required by FED. R. CIV. P. 8.

Plaintiffs argue that the allegations regarding Broward Bulldog, Inc., are necessary to allege that it is a corporation of respected journalists. However, corporations and journalists have no more entitlement to records or information under FOIA than any other member of the public, even an individual seeking information for his own personal use. *See U.S. Dept. of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 771 (1989).

Plaintiffs also contend that their allegations are necessary to show a "public interest" in the records they are seeking. As indicated in defendants' motion to dismiss, a general public interest in the subject matter of the request is not the type of public interest which is considered in determining whether information about private individuals should be disclosed. *See Id.* at 775; *National Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004); *Schrecker v. Department of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003).

While plaintiffs' Complaint includes allegations regarding individuals, it is defendants' position that the only request for which plaintiffs have exhausted their administrative remedies is their request for records concerning investigation of activities at 4224 Escondito Circle, near Sarasota, Florida. *See* plaintiff's Complaint [D.E. 1], exhibits 4, 10. In fact, plaintiffs indicated explicitly that they were not seeking information concerning individuals. *See* plaintiffs' Complaint [D.E. 1], exhibits 4, 9. Despite this, records or information responsive to the request, if any, may

¹ Although there is no specific page limitation on the length of complaints, S.D. Fla. Local Rule 56.1 provides that statements of fact filed in support of or opposition to a motion for summary judgment be limited to no more than ten (10) pages in length. Thus, plaintiffs' Complaint is two and a half times the page limit considered adequate under the Local Rules to state facts sufficient to support or oppose summary judgment.

pertain to individuals and may be exempt from disclosure pursuant to FOIA's privacy-based exemptions.²

The allegations which plaintiffs contend are necessary to their claim contain numerous alleged statements made in books, articles, reports, internet publications, and other publications or public records, including comments and opinions. Media reports, speculation, and opinion do not constitute "facts" for purposes of establishing that there is a public interest under FOIA in requested records. *See National Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2003)(finding that a FOIA requester's beliefs or suspicions that a government official acted improperly in the performance of his duties are not sufficient to show that there is a public interest in disclosing records for purposes of establishing the alleged impropriety or misconduct); *U.S. Dep't of State v. Ray*, 502 U.S. 164, 179 (1991)("mere speculation about hypothetical public benefits cannot outweigh a demonstrably significant invasion of privacy"); *Manna v. U.S. Dep't of Justice*, 51 F.3d 1158, 1166 (3rd Cir. 1995), *cert. denied*, 516 U.S. 975(1995)(upholding district court's finding of no public interest in disclosure of records based on speculation of government misconduct during criminal prosecution).

Moreover, as indicated in defendants' motion, many of the allegations in the Complaint pertain to named individuals. Defendants should not be required to respond to allegations which

² Plaintiffs are asserting that there was a connection between 9/11 and the residence at 4224 Escondito Circle, near Sarasota, Florida. Defendants' counsel has advised plaintiffs' counsel that FBI has located no records pertaining to an investigation of activities at 4224 Escondito Circle. The FBI informed plaintiffs, in response to their request, that it had received calls regarding this address but that "[a]t no time during the course of its investigation of the attacks, known as the PENTTBOM investigation, did the FBI develop credible evidence that connected the address at 4224 Escondido [sic] Circle, Sarasota, Florida to any of the 9/11 hijackers." Complaint [D.E. 1], exhibit 8.

concern information pertaining to private individuals which may be exempt from disclosure under FOIA's privacy-based provisions, Exemptions 6 and 7(C), 5 U.S.C. §§ 552(b)(6) and (b)(7)(C).

As indicated by the case law cited in defendants' motion, courts have the power to enforce the requirements of FED. R. CIV. P. 8. Defendants are requesting that the Court require plaintiffs to comply with FED. R. CIV. P. 8 in order to proceed with this action.

Dated: December 13, 2012
Miami, Florida

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that, on December 13, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Carole M. Fernandez
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