

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

_____		)	
BROWARD BULLDOG, INC and		)	
DAN CHRISTENSEN,		)	
		)	
Plaintiffs,		)	
		)	
v.		)	Civ. A. No. 16-cv-61289-CMA
		)	
DEPARTMENT OF JUSTICE,		)	
		)	
Defendant.		)	
_____		)	

**SECOND DECLARATION OF DAVID M. HARDY**

I, David M. Hardy, declare as follows:

(1) I am 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 my 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 249 employees who staff a total of ten (10) Federal Bureau of Investigation Headquarters (“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 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. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order 13526,<sup>1</sup> and the preparation of declarations in support of Exemption 1 claims asserted under the FOIA. I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to Executive Order 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 plaintiffs' request for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552. Specifically, I am aware of the FBI's handling of plaintiffs' FOIA requests to FBIHQ, seeking access to records concerning the 9/11 Review Commission Report. This declaration explains the FBI's responses for two of three of plaintiff's FOIA requests on this topic (FOIPA Request Nos. 1335424 and 1332564).<sup>2</sup>

---

<sup>1</sup> 75 Fed. Reg. 707 (2010).

<sup>2</sup> As discussed in the declaration of Michael G. Seidel (*See* Docket No. 19, attachment #1 ), the FBI is still consulting with numerous other government agencies (OGAs) regarding the handling of their equities within the records at issue in FOIPA Request No. 1336525. The FBI has yet to send plaintiffs a final response for this request as the FBI is still awaiting responses to numerous OGA consultations, and cannot finalize its processing of all the responsive records, at this time. This has not stopped the FBI from diligently working to release as much information to plaintiffs as possible, in the timeliest manner possible (the FBI provided plaintiffs with a partial release of records from this FOIA request on (12/30/2016). The FBI will submit a separate declaration explaining its handling of FOIPA Request No. 1336525 once it receives final responses to its OGA consultations, and releases the remaining responsive records to

(4) This declaration supplements and incorporates by reference the information previously provided in the FBI's first two public declarations, ECF No. 17-1, Declaration of David M. Hardy ("1<sup>st</sup> Hardy Declaration") and ECF No. 19-1, Declaration of Michael G. Seidel (1<sup>st</sup> Seidel Declaration").

(5) In response to plaintiffs' requests (FOIPA Request Nos. 1335424 and 1332564), the FBI processed a total of 220 responsive pages. Of these pages, 148 pages were released in full ("RIF") and 72 pages were released in part ("RIP"). In accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), this declaration is being submitted in support of defendant's motion for summary judgment in order to provide the Court and plaintiffs with an explanation of the FBI's recordkeeping system, the procedures used to search for, review, and process the responsive records, and of the FBI's justification for withholding records in part pursuant to FOIA Exemptions (b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E). This declaration supplements and incorporates by reference the information provided in the FBI's

#### **ADMINISTRATIVE HISTORY OF PLAINTIFFS' FOIA REQUEST**

(6) Plaintiffs prioritized their three separate FOIPA requests for processing purposes. Plaintiffs' FOIPA Request Number 1335424-000 was the first FOIPA requested, followed by, FOIPA Request Number 1326525-000, and finally, FOIPA Request Number 1332564-000. The administrative history for FOIPA Request Number 1326525-000 will be addressed at a later date. Set forth below is a chronology and description of the correspondence concerning FOIPA Request Numbers 1335424-000 and 1332564-000. Copies of the correspondences are attached hereto as **Exhibits A-J.**

---

plaintiffs.

**FOIPA Request Number 1335424-000**

(7) By email dated July 4, 2015, plaintiffs submitted a FOIPA request pertaining to the FBI 9/11 Review Commission. Specifically, plaintiffs sought copies of documents cited in the final report, prioritized in the following order:

1. Memorandum for the Record, April 30, 2014, cited in footnoted 356-359 in the review commission's final report, page [sic] 105-107.
2. Personal Service Contracts between the FBI and the three 9/11 Review commissioners, executive director and three additional staff members, cited in footnote 5, page 4.
3. Memorandum for the Record, October 24, 2014, cited in footnote 337, page 103.
4. 2012 FBI summary report, cited in footnote 330, page 102.
5. Memorandum for the Record, November 10, 2014, cited in footnote 321, page 104.

Plaintiffs further requested the FBI provide only the first 500 pages if the documents totaled over 500 pages. Additionally, plaintiffs requested a fee waiver due to their being members of the news media intent on publishing the records sought. **(See Exhibit A.)**

(8) By email dated August 25, 2015, the FBI requested plaintiffs clarify if their July 4, 2015, request was a duplicate request of their April 8, 2015 request. Plaintiffs clarified that their July 4, 2015 request was not a duplicate, but instead should be considered a separate request.

**(See Exhibit B.)**

(9) By letter dated August 26, 2015 the FBI acknowledged plaintiffs' July 4, 2015, request. It was assigned FOIPA Request No. 1335424-000. The FBI advised that it was searching the indices to the Central Records System for information responsive to their request. The FBI also advised plaintiffs' request for a fee waiver was being considered and plaintiffs would be advised of the decision at a later date. The FBI also further advised in the event plaintiffs' request for a fee waiver was denied, applicable duplications fees would apply. **(See**

**Exhibit C.)**

(10) On June 15, 2016, plaintiffs filed his complaint in the instant action. **(See Docket Number 1.)**

(11) By letter dated October 31, 2016, the FBI made its release of records to plaintiffs. The FBI advised that 220 pages of records were reviewed and 220 pages of records were being released, with certain information withheld pursuant to FOIA Exemptions (b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI also advised that this release was being provided to them at no charge. Finally, plaintiffs was advised that although their request was in litigation, they could appeal the FBI's determination by filing an administrative appeal with the Department of Justice, ("DOJ"), Office of Information Policy, ("OIP") within ninety days. No appeal has been filed. **(See Exhibit D.)**

**FOIPA Request Number 1332564-000**

(12) By email and by letter dated July 4, 2015, plaintiffs submitted a FOIPA request pertaining to the FBI 9/11 Commission Report regarding, "findings regarding a special agent who wrote an FBI electronic communication ("EC") dated April 16, 2002. The report says the FBI informed the commission the EC was "wholly unsubstantiated" and that when questioned later by others in the FBI, the agent was "unable to provide any basis for the document or explain why he wrote it as he did." A fee waiver was also requested. **(See Exhibit E.)**

(13) By letter dated July 15, 2015, the FBI acknowledged plaintiffs' July 4, 2015, request. It was assigned FOIPA Request No. 1332564-000. The FBI advised plaintiffs they requested records concerning one or more third party individuals and the FBI recognizes an important privacy interest in the requested information. Plaintiffs may receive greater access to

these records if they exist by providing one of the following: (1) an authorization and consent from the individual(s) (*i.e.*, express authorization and consent of the third party); (2) proof of death (*i.e.*, proof that your subject is deceased); or (3) a justification that the public interest in disclosure outweighs personal privacy (*i.e.*, a clear demonstration that the public interest in disclosure outweighs personal privacy interests). In the absence of such information, the FBI can neither confirm nor deny the existence of any records responsive to plaintiffs' request, which, if they were to exist, would be exempt from disclosure pursuant to FOIA Exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C). Plaintiffs were also advised of the right to appeal to DOJ, OIP within sixty days. **(See Exhibit F.)**

(14) On August 6, 2015, plaintiffs submitted an appeal through OIP's eFOIA portal.

**(See Exhibit G.)**

(15) By letter dated August 14, 2015, OIP acknowledged plaintiffs' appeal, assigning it appeal number AP-2015-05083. **(See Exhibit H.)**

(16) By letter dated September 4, 2015, OIP advised plaintiffs that after carefully considering the appeal, it was affirming the FBI's actions on his request. **(See Exhibit I.)**

(17) On June 15, 2016, plaintiffs filed his complaint in the instant action. **(See Docket Number 1.)**

(18) By letter dated November 21, 2016, The FBI advised plaintiffs that it had performed a search for records concerning alleged disciplinary action taken on the case agent who drafted the EC identified as poorly written in the 9/11 Commission Report and found no responsive records. **(See Exhibit J.)**

### **THE FBI'S CENTRAL RECORDS SYSTEM**

(19) The Central Records System (“CRS”) is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its integrated missions and functions as a law enforcement, counterterrorism, and intelligence agency to include performance of administrative and personnel functions. The CRS spans the entire FBI organization and encompasses the records of FBI Headquarters (“FBIHQ”), FBI Field Offices, and FBI Legal Attaché Offices (“Legats”) worldwide.

(20) The CRS consists of a numerical sequence of files, called FBI “classifications,” which are organized according to designated subject categories. The broad array of CRS file classification categories include types of criminal conduct and investigations conducted by the FBI, as well as categorical subjects pertaining to counterterrorism, intelligence, counterintelligence, personnel, and administrative matters. For identification and retrieval purposes across the FBI, when a case file is opened, it is assigned a Universal Case File Number (“UCFN”) consisting of three sequential components: (a) the CRS file classification number, (b) the abbreviation of the FBI Office of Origin (“OO”) initiating the file, and (c) the assigned individual case file number for that particular subject matter.<sup>3</sup> Within each case file, pertinent documents of interest are “serialized,” or assigned a document number in the order which the document is added to the file, typically in chronological order.

---

<sup>3</sup> For example, in a fictitious file number of “11Z-HQ-56789;” the “11Z” component indicates the file classification, “HQ” indicates that FBI Headquarters is the FBI OO of the file, and “56789” is the assigned case specific file number.

### **THE CRS GENERAL INDICES AND INDEXING**

(21) The general indices to the CRS are the index or “key” to locating records within the enormous amount of information contained in the CRS. The CRS is indexed in a manner which meets the FBI’s investigative needs and priorities, and allows FBI personnel to reasonably and adequately locate pertinent files in the performance of their law enforcement duties. The general indices are arranged in alphabetical order and comprise an index on a variety of subject matters to include individuals, organizations, events, or other subjects of investigative interest that are indexed for future retrieval. The entries in the general indices fall into two category types:

- a. Main entry. This entry pertains to records indexed to the main subject(s) of a file, known as “main file” records. The “main” entry carries the name of an individual, organization, or other subject matter that is the designated subject of the file.
- b. Reference entry. This entry, or a “cross-reference,” pertains to records that merely mention or reference an individual, organization, or other subject matter that is contained in a “main” file record about a different subject matter.

(22) FBI employees may index information in the CRS by individual (persons), by organization (organizational entities, places, and things), and by event (*e.g.*, a terrorist attack or bank robbery). Indexing information in the CRS is based on operational necessity, and the FBI only indexes that information considered relevant and necessary for future retrieval. Accordingly, the FBI does not index every individual name or other subject matter in the general indices.

### **AUTOMATED CASE SUPPORT**

(23) Automated Case Support (“ACS”) is an electronic, integrated case management system that became effective for FBIHQ and all FBI Field Offices and Legats on October 1, 1995. As part of the ACS implementation process, over 105 million CRS records were converted from



automated systems previously utilized by the FBI into a single, consolidated case management system accessible by all FBI offices. ACS has an operational purpose and design to enable the FBI to locate, retrieve, and maintain information in its files in the performance of its myriad missions and functions.<sup>4</sup>

(24) The Universal Index (“UNI”) is the automated index of the CRS and provides all offices of the FBI a centralized, electronic means of indexing pertinent investigative information to FBI files for future retrieval via index searching. Individual names may be recorded with applicable identifying information such as date of birth, race, sex, locality, Social Security Number, address, and/or date of an event. Moreover, ACS implementation built upon and incorporated prior automated FBI indices; therefore, a search employing the UNI application of ACS encompasses data that was already indexed into the prior automated systems superseded by ACS. As such, a UNI index search in ACS is capable of locating FBI records created before its 1995 FBI-wide implementation to the present day in both paper and electronic format.<sup>5</sup> Currently, UNI consists of approximately 115.2 million searchable records and is updated daily with newly indexed material.

---

<sup>4</sup> ACS and the next generation Sentinel system are relied upon by the FBI daily to fulfill essential functions such as conducting criminal, counterterrorism, and national security investigations; background investigations; citizenship and employment queries, and security screening, to include Presidential protection.

<sup>5</sup> Older CRS records that were not indexed into UNI as a result of the 1995 ACS consolidation remain searchable by manual review of index cards, known as the “manual indices.” A search of the manual indices is triggered for requests on individuals if the person was born on or before January 1, 1958; and for requests seeking information about organizations or events on or before January 1, 1973. Records created after these dates would be captured through a UNI search.

### **ACS and SENTINEL**

(25) Sentinel is the FBI's next generation case management system that became effective FBI-wide on July 1, 2012. Sentinel provides a web-based interface to FBI users, and it includes the same automated applications that are utilized in ACS. After July 1, 2012, all FBI generated records are created electronically in case files via Sentinel; however, Sentinel did not replace ACS and its relevance as an important FBI search mechanism. Just as pertinent information was indexed into UNI for records generated in ACS before July 1, 2012, when a record is generated in Sentinel, information is indexed for future retrieval. Moreover, there is an index data sharing nexus between the Sentinel and ACS systems whereby components of information indexed into Sentinel are also replicated or "backfilled" into ACS. In sum, the Sentinel case management system builds on ACS and shares its operational purpose; Sentinel provides another portal to locate information within the vast CRS for FBI records generated on or after July 1, 2012.

### **ADEQUACY OF SEARCH**

(26) Index Searching: To locate CRS information, RIDS employs an index search methodology. Index searches of the CRS are reasonably expected to locate responsive material within the vast CRS since the FBI indexes pertinent information into the CRS to facilitate retrieval based on operational necessity. Given the broad range of indexed material in terms of both time frame and subject matter that it can locate in FBI files, the automated UNI application of ACS is the mechanism RIDS employs to conduct CRS index searches. If a request seeks records that may have been generated on or after July 1, 2012, an overlapping search of ACS via

the UNI application and a Sentinel index search are performed at the litigation stage to ensure adequacy of the CRS index search.

(27) CRS Search and Results – FOIPA Request No 1332564: In response to plaintiffs’ request, RIDS conducted a CRS index search for responsive records employing the UNI application of ACS and a Sentinel index search by searching the term “Disciplinary Action Taken Against an FBI Agent who Wrote an EC”. As a result of these search efforts, no responsive records were located. The FBI Office of Professional Responsibility (“OPR”) was also contacted via email to verify if any records exist concerning disciplinary actions taken against the FBI Special Agent who drafted the poorly written EC, referenced in the March 2015 9/11 Commission Report, Page 105.<sup>6</sup> The OPR located no responsive records.

(28) CRS Search and Results – FOIPA Request No. 1335424-000: RIDS conducted a search reasonably calculated to locate records responsive to plaintiffs’ request. Given its comprehensive nature and scope, the CRS is the principal records system searched by RIDS, to locate information responsive to most FOIPA requests, because the CRS is where the FBI indexes information about individuals, organizations, events, and other subjects of investigative interest for future retrieval. *See supra* ¶ 19-22. Considering plaintiffs’ request seeks specific Documents relating to the 9/11 Commission Report, such information would not reasonably be expected to be located in the CRS via the index search methodology; therefore, RIDS contacted the FBI Director’s Office (“DO”) as it reasonably judged the DO to be the entity within the FBI most

---

<sup>6</sup> OPR’s stated mission is to ensure that the FBI maintains its core values and its high standards of integrity and professionalism by impartially adjudicating allegations of employee misconduct; therefore, RIDS reasonably determined that any records involving this matter would be in OPR’s possession.

likely to possess the records sought by Plaintiffs.<sup>7</sup> DO was able to locate the responsive records pertaining to the 9/11 Commission Report and provided them to RIDS for processing.

**JUSTIFICATION FOR NONDISCLOSURE UNDER THE FOIA**

(29) All documents responsive to plaintiffs' requests were processed to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide plaintiffs with all material in the public domain and with all reasonably segregable, non-exempt information in the responsive records. No reasonably segregable, nonexempt portions have been withheld from plaintiffs. Further description of the information withheld, beyond what is provided in this declaration, could identify the actual exempt information that the FBI has protected. Copies of the pages released in part and in full have been consecutively numbered "Broward Bulldog-1 through Broward Bulldog-220" at the bottom of each page. (**See Exhibit K.**) The exemptions asserted by the FBI as grounds for non-disclosure of portions of documents are FOIA exemptions (b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E).

***Explanation of the Coded Format Used to Describe and Justify Withholdings***

(30) The Bates-numbered documents contain, on their faces, coded categories of exemptions that 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 plaintiffs' review of the FBI's explanations of the FOIA exemptions it has asserted to withhold the material. The coded, Bates-numbered pages together with this declaration demonstrate that all material withheld by the FBI is

---

<sup>7</sup> The report of the Congressionally directed 9/11 Review Commission was specifically addressed to the Director of the FBI; and therefore, RIDS determined it was logical that records relating to the 9/11 Commission Report would reside with the DO.

exempt from disclosure pursuant to the cited FOIA exemptions, or is so intertwined with protected material that segregation is not possible without revealing the underlying protected material.

(31) Each instance of information withheld on the Bates-numbered documents is accompanied by a coded designation that corresponds to the categories listed below. For example, if “(b)(7)(C)-1” appears on a document, the “(b)(7)(C)” designation refers to FOIA Exemption 7(C) protecting against unwarranted invasions of personal privacy. The numerical designation of “1” following the “(b)(7)(C)” narrows the main category into a more specific subcategory, such as “Names and/or Identifying Information Pertaining to third parties of Investigative Interest.”

(32) Listed below are the categories used to explain the FOIA exemptions asserted to withhold the protected material:

<b>SUMMARY OF JUSTIFICATION CATEGORIES</b>	
<b>CODED CATEGORIES</b>	<b>INFORMATION WITHHELD</b>
<b>Category (b)(1)</b>	<b>CLASSIFIED INFORMATION</b>
(b)(1)-1	Intelligence Activities, Sources, and Methods (E.O. 13526 § 1.4(c)) [cited at times in conjunction with (b)(3) and (b)(7)(E)]
<b>Category (b)(3)</b>	<b>INFORMATION PROTECTED BY STATUTE</b>
(b)(3)-1	National Security Act of 1947 [50 USC Section 3024(i)(1)] [cited in conjunction with (b)(1) and (b)(7)(E)]
<b>Category (b)(4)</b>	<b>TRADE SECRETS AND COMMERCIAL OR FINANCIAL INFORMATION</b>
(b)(4)-1	Trade Secrets and Commercial or Financial Information
<b>Category (b)(5)</b>	<b>PRIVILEGED INFORMATION</b>
(b)(5)-1	Deliberative Process Privilege

<b>SUMMARY OF JUSTIFICATION CATEGORIES</b>	
<b>CODED CATEGORIES</b>	<b>INFORMATION WITHHELD</b>
<b>Category (b)(7)(A)</b>	<b>PENDING LAW ENFORCEMENT PROCEEDINGS</b>
(b)(7)(A)-1	Pending Law Enforcement Proceedings
<b>Categories (b)(6) and (b)(7)(C)</b>	<b>CLEARLY UNWARRANTED INVASION OF PRIVACY AND UNWARRANTED INVASION OF PERSONAL PRIVACY</b>
(b)(6)-1 and (b)(7)(C)-1	Names and/or Identifying Information of Third Parties of Investigative Interest
(b)(6)-2 and (b)(7)(C)-2	Names and/or Identifying Information of FBI Special Agents or Support Personnel
<b>Category (b)(7)(D)</b>	<b>CONFIDENTIAL SOURCE INFORMATION</b>
(b)(7)(D)-1	Names, Identifying Data, and/or Information Provided by Individuals Under Implied Assurances of Confidentiality
(b)(7)(D)-2	Information Provided by Local Law Enforcement under an Implied Assurance of Confidentiality
(b)(7)(D)-3	Foreign Government Agency Information Provided under an Express Assurance of Confidentiality
(b)(7)(D)-4	Foreign Government Agency Information Provided under an Implied Assurance of Confidentiality
<b>Category (b)(7)(E)</b>	<b>INVESTIGATIVE TECHNIQUES AND PROCEDURES</b>
(b)(7)(E)-1	Sensitive Investigative Techniques and Procedures
(b)(7)(E)-2	Dates and or Types of Investigations
(b)(7)(E)-3	Collection and Analysis of Information
(b)(7)(E)-4	Strategies for Utilizing Particular Evidence
(b)(7)(E)-5	Sensitive FBI File Numbers or Sub-file names
(b)(7)(E)-6	Identities and or Locations of FBI or Joint Units, Squads, or Divisions
(b)(7)(E)-7	Investigative Focus of a Specific FBI Investigation
(b)(7)(E)-8	Operational Directives

**EXEMPTION 1- CLASSIFIED INFORMATION**

(33) 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).

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.

(34) 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 Executive Order ("E.O."). 13526, which governs the classification and protection of information that affects the national security,<sup>8</sup> and whether the information complies with the various substantive and procedural criteria of the Executive Order. E.O. 13526, 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.

(35) 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

---

<sup>8</sup> Section 6.1 (cc) of E.O. 13526, defines "National Security" as "the national defense or foreign relations of the United States."

(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.

(36) All information I determined to be classified, and is under the control of the United States Government, is marked at the “Top Secret” or “Secret” level since the unauthorized disclosure of this information reasonably could be expected to cause exceptionally grave or serious damage 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:

(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)**

(37) With the above requirements in mind, I personally and independently examined the information withheld from plaintiffs pursuant to FOIA Exemption 1. As a result of this, I determined the classified information continues to warrant classification at the “Secret” level and



is exempt from disclosure pursuant to E.O. 13526, § 1.4, category (c). Specifically, the information pertains to “intelligence activities (including covert action), intelligence sources or methods, or cryptology.”

**INTELLIGENCE ACTIVITIES, SOURCES AND METHODS (E.O. 13526 § 1.4(c))**

(38) 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 are 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.

(39) 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.

(40) It is my determination the disclosure of the specific information describing the intelligence activities or methods withheld in this case are still used by the FBI today to gather intelligence information, and 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 exceptionally grave or severe damage to the FBI's efforts to detect and apprehend violators of the United States' national security and criminal laws.

(41) 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 exceptionally grave or serious damage to the national security of the United States.

#### **Detailed Intelligence Activities**

(42) The classified information withheld 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**

(43) 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.

(44) In those instances where, in my judgment, the disclosure of this information could reasonably be expected to cause exceptionally grave or 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, and as a result, further information concerning the withheld material and justifications for its withholding is being provided to the Court for its *ex parte, in camera* review.<sup>9</sup>

**EXEMPTION (b)(3)**  
**INFORMATION PROTECTED BY STATUTE**

(45) 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 of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

**(b)(3)-1 National Security Act of 1947 [50 U.S.C. § 3024(i)(1)]**

(46) 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. §3024(i)(1), which provides that the Director of National Intelligence (“DNI”) “shall protect from unauthorized disclosure intelligence sources and methods.”<sup>10</sup> As relevant to U.S.C. § 552(b)(3)(B), the National Security Act of 1947

---

<sup>9</sup> Exemption (b)(1)-1 has been asserted on Bates Numbered pages: Broward Bulldog-5-6, 9-12.

<sup>10</sup> Section 1024(i)(1) of the National Security Act was previously codified at 50 U.S.C. § 403(i)(1). As a result of the reorganization of Title 50 of the U.S. Code, Section 102A(i)(1) is now codified at 50 U.S.C. § 3024(i)(1).

was enacted before the date of enactment of the OPEN FOIA Act of 2009.<sup>11</sup> 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. § 3024(i)(1) is absolute. *See CIA v. Sims*, 471 U.S. 159 (1985).

(47) 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. § 3024(i)(1). The FBI is one of 17 member agencies comprising the IC, and as such must protect intelligence sources and methods.

(48) 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. § 3024(i)(1). Thus, this information was properly withheld pursuant to Exemption 3, as prescribed on 50 U.S.C. § 3024(i)(1). This harm justification applies to all (b)(3)-1 material

---

<sup>11</sup> 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).

withheld under 50 U.S.C. § 3024(i)(1).<sup>12</sup>

**EXEMPTION (b)(4)**  
**TRADE SECRETS AND COMMERCIAL OR FINANCIAL INFORMATION**

(49) Exemption (b)(4) of the FOIA protects the release of information that is “trade secrets” and commercial or financial information obtained from a person [that is] privileged or confidential.” 5 U.S.C. § 552(b)(4). This exemption is intended to protect the interest of both the government and submitters of information (e.g., private companies). Its very existence encourages submitters to voluntarily furnish useful commercial or financial information to the government and provides the government with an assurance that required submissions will be reliable. The exemption also affords protection to those submitters who are required to furnish commercial or financial information to the government for competitive bidding of contracts by safeguarding them from the competitive disadvantages that could result from disclosure.

(50) For purposes of Exemption 4, commercial information required to be furnished to the government is confidential if disclosure is likely to: 1) impair the government’s ability to obtain necessary information in the future; or 2) cause substantial harm to the competitive position of the person from whom the information was obtained. In this case, the FBI withheld the negotiated salaries of the individuals who served on the 9/11 Reports Commission board. Exemption (b)(4)-1 has been asserted because disclosure of these salaries would cause substantial harm to the competitive negotiation process. Release of this information would enable potential government contractors the opportunity to judge how they might underbid their those that served on the 9/11 Reports Commission board, when bidding for similar contracts in the future. This would provide them with an unfair advantage and harm the past board members’ competitive

---

<sup>12</sup> Exemption (b)(3)-1 has been asserted on Bates Numbered pages: Broward Bulldog-5-6, 9-12.

position. Therefore, the FBI has properly withheld this information pursuant to Exemption (b)(4).<sup>13</sup>

**EXEMPTION (b)(5)**  
**PRIVILEGED INFORMATION**

(51) FOIA Exemption (b)(5) has been construed to exempt documents or information normally privileged in the civil discovery context, and incorporates the attorney work product, attorney-client, and deliberative process privileges. Generally, the attorney work product privilege protects documents and other memoranda prepared by an attorney or under the direction of an attorney as part of, or in reasonable anticipation of litigation. The attorney-client privilege protects confidential communications from a client to an attorney and from an attorney to a client for the purpose of seeking and providing legal advice. The privilege covers client-supplied information and opinions given by an attorney based on and reflecting that information. The deliberative process privilege protects predecisional, deliberative communications that are part of a process by which agency decisions are made. It protects opinions, advice, evaluations, deliberations, proposals, or recommendations that form part of an agency decision-making process, as well as the selection and sorting of factual information relied upon as part of the decision-making process.

(52) In order to apply FOIA Exemption (b)(5), agencies must first satisfy the threshold requirement – *i.e.*, show the information protected was “inter-agency or intra-agency.” Once the threshold is satisfied, agencies must satisfy the elements of the pertinent privilege. With respect to the attorney-client privilege, agencies must show the withheld information concerns

---

<sup>13</sup> Exemption (b)(4)-1 has been asserted on Bates Numbered pages: Broward Bulldog-13, 19, 37, 43, 67, 86-87, 90, 92-93, 102, 108, 126, 132, 139, 150, 156, 174, 180, 197, 203.

confidential information shared by a client with an attorney for the purpose of obtaining legal advice or assistance, or legal advice or assistance provided by an attorney to a client reflecting confidential information. With respect to the deliberative process privilege, agencies must show the withheld information is both pre-decisional – *i.e.*, antecedent to a final agency decision – and deliberative – *i.e.*, part of the process in which the agency engaged in an effort to reach a final decision (whether or not any final decision was ever reached).

**(b)(5)-1**      **Deliberative Process Privilege**

(53) The FBI has asserted Exemption (b)(5)-1, for the deliberative process privilege. The deliberative process privilege protects certain inter- and intra- agency records when release would result in the premature disclosure of proposed policies. The information is withheld to avoid public confusion generated by draft or unadopted rationales/decisions, and to maintain the integrity of the agency decision-making process by encouraging open, candid discussions. Here, the FBI withheld material under the deliberative process privilege, containing or prepared in connection with the formulation of policies regarding another government agency’s pretrial proceedings of a third party individual and withheld preliminary recommendations on FBI policies that have not been implemented. Release of this information could not only generate confusion as to the final policy, it would have an inhibiting effect upon agency policy development. Disclosure would chill full and frank discussion between agency personnel regarding pertinent policy decisions. If agency personnel knew their preliminary opinions, evaluations, recommendations, and analytical comments would be released for public consumption, they may be more guarded in their suggestions and in what they put in writing, and thereby, impede candid discussions and consideration of issues surrounding the decision-making



and policy formulation process. The FBI properly withheld this information pursuant to FOIA Exemption (b)(5)-1.<sup>14</sup>

#### **EXEMPTION 7 THRESHOLD**

(54) 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. Pursuant to 28 USC §§ 533, 534, and Executive Order 12333 as implemented by the Attorney General’s Guidelines for Domestic FBI Operations (“AGG-DOM”) and 28 CFR § 0.85, the FBI is the primary investigative agency of the federal government with authority and responsibility to investigate all violations of federal law not exclusively assigned to another agency, to conduct investigations and activities to protect the United States and its people from terrorism and threats to national security, and further the foreign intelligence objectives of the United States. Under this investigative authority, the responsive records herein were compiled to memorialize, study, and scrutinize the United States government’s investigation of activities leading up to the terrorist attacks of September 11, 2001. These records serve the FBI’s law enforcement, national security, and intelligence gathering missions as they provide clear examples of past investigative successes and failures. Such studies and self-examinations are key to an agency’s development of best practices – in the case of the FBI, best practices that can be used to better enforce the laws of the United States. Thus, these records were compiled for a law enforcement purpose; they squarely fall within the law enforcement duties of the FBI; therefore, the information readily meets the threshold requirement of Exemption (b)(7).

---

<sup>14</sup> Exemption (b)(5)-1 has been asserted on Bates Numbered pages: Broward Bulldog-4.

**EXEMPTIONS 6 AND 7(C) –INVASION OF PERSONAL PRIVACY**

(55) Exemption 6 exempts from disclosure “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). All information that applies to a particular person falls within the scope of Exemption 6.

(56) Exemption 7(C) similarly exempts from disclosure “records or information compiled for law enforcement purposes [when disclosure] could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).<sup>15</sup>

(57) When withholding information pursuant to these two 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 these exemptions, each piece of information was scrutinized 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. When withholding the information, the individual's privacy interest was balanced against the public's interest in disclosure. For purposes of these exemptions, a public interest exists only when information about an individual 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 each instance where

---

<sup>15</sup> The practice of the FBI is to assert Exemption 6 in conjunction with Exemption 7(C). Although the balancing test for Exemption 6 uses a “would constitute a clearly unwarranted invasion of personal privacy” standard and the test for Exemption 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 both exemptions.

information was withheld pursuant to Exemptions 6 and 7(C), the FBI determined that the individuals' privacy interests outweighed any public interest in disclosure.

**(b)(6)-1 and (b)(7)(C)-1**      **Names and/or Identifying Information of a Third Party of Investigative Interest**

(58) In Category (b)(6)-1 and (b)(7)(C)-1, the FBI protected the name of a third party who was of investigative interest to the FBI. Being identified as a subject of a criminal investigation carries a strong negative connotation and a stigma. Release of the identity of this individual to the public could subject them to harassment or embarrassment, as well as undue public attention. Accordingly, the FBI has determined that this individual maintains substantial privacy interests in not having their identities disclosed. In contrast, disclosing personal information about this individual would not significantly increase the public's understanding of the FBI's performance of its mission and so the FBI concluded that there was no public interest here sufficient to override this individual's substantial privacy interests. For these reasons, the FBI properly withheld this information pursuant to Exemptions 6 and 7(C).<sup>16</sup>

**(b)(6)-2 and (b)(7)(C)-2**      **Names and/or Identifying Information of FBI Special Agents and Support Personnel**

(59) In Category (b)(6)-2 and (b)(7)(C)-2, the FBI protected the names and identifying information of FBI Special Agents ("SAs") and support personnel who were responsible for conducting, supervising, and/or maintaining the investigative activities reflected in the documents responsive to plaintiffs' FOIA request. These responsibilities included conducting interviews and compiling information, as well as reporting on the status of the investigation. Assignments of SAs to any particular investigation are not by choice. Publicity (adverse or otherwise) regarding

---

<sup>16</sup> The FBI cited Category (b)(6)-1 and (b)(7)(C)-1 on the following Bates pages: Broward Bulldog-1-3, 5-7, 9-11.

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, as individuals, from unnecessary, unofficial questioning as to the conduct of this or other investigations, whether or not they are currently employed by the FBI. FBI SAs conduct official inquiries into various criminal and national security violation 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. These individuals may seek revenge on the agents and other federal employees 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. Thus, SAs maintain substantial privacy interests in information about them in criminal investigative files. In contrast, there is no public interest to be served by disclosing the identities of the SAs to the public because their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities.

(60) The names of FBI support employees were also protected. Support personnel are assigned to handle tasks related to the official investigations reflected in the documents responsive to plaintiffs' FOIA request. They were, and possibly are, in positions of access to information regarding official law enforcement investigations, and therefore could become targets of harassing inquiries for unauthorized access to investigations if their identities were released. Thus, these individuals maintain substantial privacy interests in not having their identities disclosed. In contrast, the FBI concluded that no public interest would be served by disclosing

the identities of these FBI support employees to the general public because their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities. Accordingly, after balancing these employees' substantial privacy interests against the non-existent public interest, the FBI properly protected the names and identifying information of SAs and support personnel pursuant to Exemptions 6 and 7(C).<sup>17</sup>

**EXEMPTION 7(A) – PENDING ENFORCEMENT PROCEEDINGS**

(61) 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.

(62) 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 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 as explained below.

**(b)(7)(A)-1 Pending Law Enforcement Proceedings**

(63) Exemption (b)(7)(A)-1 was asserted to protect specific case information from a pending FBI investigations. The release of information pertaining to investigative activities of third parties of an on-going FBI investigation could result not only in the acknowledgment of the

---

<sup>17</sup> The FBI cited Category (b)(6)-2 and (b)(7)(C)-2 on the following Bates pages: Broward Bulldog-1-3, 5, 9-10, 13-14, 26, 36-38, 50, 60-62, 74, 84, 86, 90, 92, 102-103, 115, 125-127, 149-151, 163, 173-175, 187, 197-198, 210, 220.

existence of an investigation, but also in the identification of suspects and thus jeopardize the investigation. The FBI has concluded that this information is intertwined with other ongoing investigations of known and suspected third party terrorists. The FBI has determined that disclosure of the information, in the midst of this active and ongoing investigation, could reasonably be expected to interfere with these other investigations as well as any resulting prosecutions. As such, the release of this information would interfere with pending and prospective enforcement proceedings, including investigations and prosecutions; therefore, the FBI withhold this information pursuant to FOIA exemption (b)(7)(A)-1.<sup>18</sup>

**EXEMPTION 7(D) – CONFIDENTIAL SOURCE INFORMATION**

(64) Exemption 7(D) protects “records or information compiled for law enforcement purposes” when disclosure:

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 agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

5 U.S.C. § 552(b)(7)(D).

(65) Numerous confidential sources report to the FBI on a regular basis; they provide information under express assurances of confidentiality and are “informants” within the common meaning of the term. Others are interviewed and/or provide information under implied assurances of confidentiality (*i.e.*, under circumstances from which assurances of confidentiality may be inferred). In either situation, these sources are considered to be confidential because they

---

<sup>18</sup> The FBI cited Category (b)(7)(A)-1 on the following Bates pages: Broward Bulldog-10.

furnish information only with the understanding that their identities and the information they provided will not be divulged outside the FBI. Information provided by these sources is singular in nature, and if released, could reveal their identities. The FBI has learned through experience that sources assisting, cooperating with, and providing information to the FBI must be free to do so without fear of reprisal. The FBI has also learned that sources must be free to furnish information to the FBI with complete candor and without the understandable tendency to hedge or withhold information because of fear that their cooperation with the FBI will later be made public. Sources providing information to the FBI should be secure in the knowledge that their assistance and their identities will be held in confidence.

(66) The release of a source's identity would forever eliminate that source as a future means of obtaining information. When the identity of one source is revealed, that revelation has a chilling effect on the activities and cooperation of other sources providing information to the FBI. Such a result would eliminate one of the FBI's most important means of collecting information and thereby severely hamper law enforcement efforts to detect and apprehend individuals engaged in the violation of federal criminal laws.

**(b)(7)(D)-1 Names, Identifying Data, and/or Information Provided by Individuals under Implied Assurances of Confidentiality**

(67) In Category (b)(7)(D)-1, the FBI protected the names, identifying information about, and information provided by third parties under circumstances in which confidentiality can be inferred. These third parties provided information concerning the activities of subjects who were of investigative interest to the FBI or other law enforcement agencies. Specifically, within the responsive documents, the FBI inferred that individuals provided information to the FBI only

because they believed their cooperation with, and the information they provided, would remain confidential under the following circumstances:

(a) The FBI protected identifying information about and information provided by individuals who provided information over a period of time that had proven to be reliable. These individuals were positioned to have ready access to and/or knowledge about targets and others involved in terrorism activities. Such access exposed them to potential significant harms should their association and cooperation with the FBI be publicly disclosed. These third party sources provided specific, singular, detailed information concerning the activities of certain subjects, in furtherance of the FBI's investigation of terrorism activities. The disclosure of the identities of these sources and the information they provided could have disastrous consequences because disclosure could subject these third parties, as well as their families, to embarrassment, humiliation, and/or physical or mental harm.

(b) The FBI also protected the identifying information (name, address, employer, telephone number, and e-mail address, etc.) of individuals who volunteered information to the FBI related to terrorism investigations. These individuals had no apparent connection to the investigation. The FBI concluded that it is reasonable to infer, based on the fact that these individuals provided information concerning violent criminal activities (terrorism), these individuals did not believe that their identity would be publicly disclosed by the FBI, and would not have voluntarily provided information to the FBI otherwise..

(68) These third parties provided information of value to the FBI concerning its investigations, and in doing so, placed themselves in harm's way should their identities and cooperation with the FBI become known. Specifically, in the FBI's experience, sources



providing information to the FBI about extremist activities do so at great peril to themselves and have faced retaliation and threats (including death threats) when their assistance to the FBI has been publicly disclosed. Under these circumstances, it is reasonable to infer that these third parties cooperated with the FBI with an implied expectation of confidentiality. Thus, the FBI properly protected the sources' identities and the information they provided pursuant to Exemption 7(D).<sup>19</sup>

**(b)(7)(D)-2 Information Provided by Local Law Enforcement under an Implied Assurance of Confidentiality**

(69) In Category (b)(7)(D)-2, the FBI protected information provided to the FBI by a local law enforcement agency that obtained the information from their own confidential sources. The sources were in a position to have ready access to and/or knowledge about targets and others involved in extremist activities (*i.e.*, international terrorism). Such access exposed them to potential significant harms should their association and cooperation with local law enforcement – and by extension, the FBI – be publicly disclosed. Disclosure of this information could directly link the information to the sources that provided such information to the local law enforcement agency resulting in harm to the sources and possibly the sources' families. Publicity, adverse or otherwise, concerning these individuals' cooperation with law enforcement and the information they supplied in any particular criminal investigation (by local law enforcement or the FBI) would seriously impair their effectiveness in assisting with or participating in future investigations. The publicity associated with the release of this information in connection with this investigation could trigger hostility toward the persons providing the information.

(70) It is reasonable for the FBI to infer that local law enforcement agencies would not

---

<sup>19</sup> The FBI cited Category (b)(7)(D)-1 on the following Bates pages: Broward Bulldog-2-3, 7, 10.

share information about and from their sources without an expectation of confidentiality, precisely in order to avoid the harms described above. The FBI solicits and receives information regularly from state, local, and foreign agencies and authorities in connection with a wide variety of criminal and national security investigations. Inherent in this cooperative effort is the mutual understanding that the identities of the local law enforcement agency's sources and the information provided by them will be held in confidence by the FBI, and not released pursuant to FOIA and Privacy Act requests. If the FBI disclosed source information shared by local law enforcement agencies, cooperation between the FBI and those agencies and authorities would be greatly diminished, causing significant detriment to effective law enforcement. Accordingly, the FBI determined that the local law enforcement agency provided this information to the FBI with implied expectation of confidentiality; therefore, FBI properly withheld this information under FOIA Exemption 7(D).<sup>20</sup>

**(b)(7)(D)-3 Foreign Government Agency Information Provided under an Express Assurance of Confidentiality**

(71) Exemption (b)(7)(D)-3 has been asserted to protect the identify of and the information provided by a foreign government agency to the FBI under an “express” assurance of confidentiality. It is only with the understanding of complete confidentiality that the aid of such a source can be enlisted, and only through this confidence that foreign government agencies can be persuaded to continue providing valuable assistance in the future. To identify this source could subject it to unofficial inquiries not anticipated by its contact with the FBI. The FBI's ability to obtain information quickly and discreetly in future law enforcement investigations would be negatively affected. There is no public interest to be served by releasing this information.

---

<sup>20</sup> The FBI cited Category (b)(7)(D)-2 on the following Bates pages: Broward Bulldog-3.

(72) The FBI has many agreements with foreign governments under which security and/or criminal law enforcement information is exchanged. The agreements specify the extent of confidentiality requested by the respective foreign authorities. While one foreign law enforcement agency might request confidentiality for its identity and not necessarily the information provided, another agency might request confidentiality for both its identity and the information provided, and yet another agency may request that its information be protected while it does not object to the disclosure of its relationship with the FBI. The FBI asserted Exemption (b)(7)(D)-3 to withhold the identity of foreign government agencies, their personnel, and their information because this particular foreign government agency requested expressed a desire that their identity, information, and relationship with the FBI remain confidential.<sup>21</sup>

**(b)(7)(D)-4 Foreign Government Agency Information Provided under an Implied Assurance of Confidentiality**

(73) In Category (b)(7)(D)-4, the FBI protected information provided to the FBI by a foreign government agency under an implied assurance of confidentiality. This source was in a position to have ready access to and/or knowledge about targets and others involved in terrorism activities. Such access exposed them to potential significant harms should their association and cooperation with the United States of America – and by extension, the FBI – be publicly disclosed. Disclosure of this information could directly link the information to the foreign government agency that provided such information to the FBI, resulting in harm to the source, whether that harm is public scrutiny within their own country or retaliation against the agency or the populations they serve. Publicity, adverse or otherwise, concerning this agency's cooperation with the FBI and the information they supplied in any particular national security investigation

---

<sup>21</sup> The FBI cited Category (b)(7)(D)-3 on the following Bates pages: Broward Bulldog-9-10.

would seriously impair their effectiveness in assisting with or participating in future investigations. It is reasonable for the FBI to infer that foreign government agency would not share information this information without an expectation of confidentiality, precisely in order to avoid the harms described above. The FBI solicits and receives information regularly from foreign agencies and authorities in connection with a wide variety of criminal and national security investigations. Inherent in this cooperative effort is the mutual understanding that the identities of the foreign government agencies and the information provided by them will be held in confidence by the FBI, and not released pursuant to FOIA and Privacy Act requests. If the FBI disclosed such source information shared by foreign government agencies/authorities, cooperation between the FBI and those agencies/authorities would be greatly diminished, causing significant detriment to the FBI's ability to maintain national security. Accordingly, the FBI properly withheld this information under FOIA Exemption 7(D).<sup>22</sup>

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

(74) 5 U.S.C. § 552(b)(7)(E) provides protection for:

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.

(75) Exemption (b)(7)(E) has been asserted to protect information containing sensitive investigatory techniques and procedures authorized for use by the FBI. This exemption affords categorical protection to these techniques and procedures used in such investigations; it protects techniques and procedures not well-known to the public as well as non-public details about the

---

<sup>22</sup> The FBI cited Category (b)(7)(D)-4 on the following Bates pages: Broward Bulldog-11.

use of well-known techniques and procedures. While several documents could easily be characterized as consisting fully of information that would disclose investigative techniques and procedures, and thus would be eligible for protection under (b)(7)(E) in their entirety, the FBI endeavored to release as much segregable information as possible to plaintiffs. The release of additional information would disclose techniques and/or procedures used in law enforcement and national security investigations or prosecutions, or would disclose guidelines for law enforcement and national security investigations or prosecutions that could reasonably be expected to risk circumvention of the law.

**(b)(7)(E)-1 Sensitive Investigative Techniques and Procedures**

(76) In Category (b)(7)(E)-1, the FBI protected investigative techniques and procedures used by the FBI to conduct international terrorism investigations, including information that would reveal what types of techniques and procedures are routinely used in such investigations, and non-public details about when, how, and under what circumstances they are used. To describe this information in further detail on the public record would identify the very information that the FBI seeks to protect pursuant to this exemption. Specifically, revealing what techniques and procedures are commonly used in international terrorism investigations, and the details and circumstances under which they are used, would enable the targets of these techniques to avoid detection or develop countermeasures to circumvent the ability of the FBI and/or law enforcement authorities to effectively use these important law enforcement techniques in future investigations, therefore allowing for circumvention of the law. Several of these documents contain sensitive information about investigative methods used by the FBI in conducting international terrorism investigations. The methods are detailed within the documents in varying degrees of specificity.

Releasing information on these methods and use would, in essence, highlight the types of activities, facts, or occurrences that are of particular interest to the FBI in international terrorism investigations. Publicly disclosing investigative methods, analysis of information gleaned from the methods, or any other sort of details regarding these methods, would inform investigative targets of the kinds of information the FBI is interested in capturing and would afford them the opportunity to employ countermeasures to circumvent detection or alter behavior to mislead investigators. Accordingly, as release of this information would enable international terrorists to circumvent the law, the FBI properly withheld this information pursuant to FOIA Exemption 7(E).<sup>23</sup>

**(b)(7)(E)-2 Dates and Types of Investigations (Preliminary or Full Investigations)**

(77) In Category (b)(7)(E)-2, the FBI protected information pertaining to the types and dates of investigations referenced in the records at issue in this case. Specifically, the information withheld, when referenced in connection with an actual investigation and not in general discussion, pertains to the type of investigation, whether it is a “preliminary” or “full” investigation, and the date it was initiated. Disclosure of these non-public details would allow individuals to know the types of activities that would trigger a full investigation as opposed to a preliminary investigation, and the particular dates that the investigation covers, allowing criminals to adjust their behavior accordingly. Moreover, the knowledge that a specific activity in general warrants investigation could likewise cause investigative subjects to adjust their conduct to avoid further inquiry by the FBI. Because disclosure of this information could reasonably be expected to impede the FBI’s effectiveness and potentially aid in circumvention of the law, the FBI has

---

<sup>23</sup> The FBI cited Category (b)(7)(E)-1 on the following Bates pages: Broward Bulldog-2-3, 5-8, 10.

properly withheld this information pursuant to Exemption 7(E).<sup>24</sup>

**(b)(7)(E)-3 Collection and/or Analysis of Information**

(78) In Category (b)(7)(E)-3, the FBI protected methods that the FBI uses to collect and analyze the information that it obtains for investigative purposes. The release of this information would disclose the identity of non-public methods used in the collection and analysis of information, including how and from where the FBI collects information and the methodologies employed to analyze the information, once collected. This in turn would facilitate the accumulation of information by investigative subjects regarding the circumstances under which the specific techniques are used or requested and the usefulness of the information obtained. Release of this type of information would enable criminals to educate themselves about the techniques employed for the collection and analysis of information and therefore allow these individuals to take countermeasures to circumvent the effectiveness of these techniques, and to continue to violate the law. As release of these non-public collection and analysis techniques would allow criminals to avoid detection and disruption by the FBI, enabling them to circumvent the law, the FBI has properly withheld this information pursuant to FOIA Exemption 7(E).<sup>25</sup>

**(b)(7)(E)-4 Strategies for Utilizing Particular Evidence**

(79) Exemption 7(E) -4 has been asserted to protect the FBI's strategies for using a particular type of evidence gathered during its national security investigations. The details of these strategies have not been publically disclosed. Revealing the utility of this type of information to the FBI would essentially instruct criminals on how best to maintain operational

---

<sup>24</sup> The FBI cited Category (b)(7)(E)-2 on the following Bates pages: Broward Bulldog-2-3, 11.

<sup>25</sup> The FBI cited Category (b)(7)(E)-3 on the following Bates pages: Broward Bulldog-3, 5-6.

security when conducting their criminal activities, to deprive the FBI of this particular type of evidence. Furthermore, disclosing examples of how the FBI has been able to exploit such evidence to the detriment of certain terrorist organizations would educate criminals on how to avoid detection and disruption by the FBI, once they determine that the FBI has obtained this type of evidence. In summation, releasing this information would increase criminals' understandings of the FBI's investigative strategies, provide them with knowledge of how best to avoid detection and disruption by the FBI through its utilization of this type of evidence, and enable them to circumvent the law; therefore, this information has been redacted pursuant to Exemption 7(E).<sup>26</sup>

**(b)(7)(E)-5 Sensitive FBI File Numbers or Sub-file Names**

(80) In Category (b)(7)(E)-5, the FBI protected sensitive case file numbers. The FBI has not publically acknowledged these file numbers. The FBI has determined that this exemption is appropriate for protecting these file numbers as the release of these file numbering conventions 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. Exacerbating this harm, releasing these file numbers provides criminals with a tracking mechanism by which they can place particular files/investigations within the context of larger FBI investigative efforts. Continued release of sensitive investigative file numbers would provide criminals with an idea of how FBI investigations may be interrelated and when, why, and how the FBI pursued different investigative strategies. This would provide criminals with a means of judging where the FBI

---

<sup>26</sup> The FBI cited Category (b)(7)(E)-4 on the following Bates pages: Broward Bulldog-5-6.



allocates its limited investigative resources, how the FBI responds to different investigative circumstances, what the FBI knows and when/how they obtained that knowledge, and if there are knowledge-gaps in the FBI's gathered intelligence. Given this data, determined criminals could obtain an exceptional understanding as to how they might structure their behavior to avoid detection and disruption by FBI investigators, enabling them to circumvent the law. Thus, the FBI properly protected this information from disclosure pursuant to FOIA Exemption (b)(7)(E).<sup>27</sup>

**(b)(7)(E)-6 Identities and/or Locations of FBI or Joint Units, Squads, or Divisions**

(81) In Category (b)(7)(E)-6, the FBI protected the locations and identities of FBI units and/or joint units, squads or divisions that were involved in the investigations at issue in the responsive documents. The FBI office location and units are usually found in the administrative headings of internal FBI documents. These headings identify the locations of the office and unit that originated or received the documents. Disclosure of the location of the units conducting the investigation would reveal the targets, the physical areas of interest of the investigation, and, when taken together with the other locations if identified, could establish a pattern or "mosaic" that identification of a single location would not. If the locations are clustered in a particular area, it would allow hostile analysts to determine where geographically the FBI is focusing its investigative resources, and allow them to relocate their criminal activities elsewhere. This would disrupt the FBI's investigative processes and deprive the FBI of valuable information. The withholding of the units involved is justifiable as well under a similar rationale. As these specialized units focus on very specific crimes and/or intelligence gathering activities, once identified within the context of the records at issue, criminals could discern exactly the law

---

<sup>27</sup> The FBI cited Category (b)(7)(E)-5 on the following Bates pages: Broward Bulldog-10-11.

enforcement/intelligence gathering focus of the records. This knowledge could allow a subject to employ countermeasures targeted toward concealing particular types of behavior that would otherwise trigger investigation by these specialized units. As revealing the involvement of one or more FBI units, joint-units, squads or divisions with specific localities and focuses provides criminals with critical information, allowing them to adjust their behaviors and activities to avoid detection/disruption by the FBI and continue to circumvent the law, the FBI properly withheld this information pursuant to Exemption 7(E).<sup>28</sup>

**Exemption (b)(7)(E)-7**      **Investigative Focus of a Specific Investigation**

(82) Exemption 7(E)-7 has been asserted to protect the investigative focus of a specific FBI investigation. The specific investigative focus of this particular investigation has not been publically acknowledged. Revealing broader investigative focuses as they relate to interconnected investigations would reveal the scope of the FBI's programs and the strategies it plans to pursue in preventing and disrupting criminal activity. Release of this type of information would allow criminals to gauge the FBI's strengths and weakness within certain areas of the criminal arena and structure their activities in a manner that avoids detection and disruption by the FBI. For example, if criminals knew that certain individuals were being investigated based on their association with one particular individual, they would be able to discern that their association with this particular individual may cause them to be the subjects of an FBI investigation. They may then decide to cut ties with this individual and find different ways to pursue criminal activities, thus circumventing the FBI's efforts. As releasing the focus of specific FBI investigations would enable criminals to circumvent the law, this information is

---

<sup>28</sup> The FBI cited Category (b)(7)(E)-6 on the following Bates pages: Broward Bulldog-9-10.

exempt from disclosure pursuant to Exemption 7(E).<sup>29</sup>

**Exemption (b)(7)(E)-8**      **Operational Directives**

(83) Exemption 7(E)-8 has been asserted to protect FBI operational directives that provide FBI employees with guidance and instruction on the proper use of certain sensitive FBI procedures, techniques, and strategies for conducting investigations. In the course of providing these instructions, these directives identify the procedures, techniques, and strategies at issue. Releasing such information would not only provide sensitive, unknown investigative techniques, it would also reveal sensitive unknown uses of these specific techniques and procedures. If released in its entirety, the information would provide individuals and entities with a unique look inside the FBI's law enforcement and national security "playbooks." Armed with such information, criminals could predict how and when the FBI will respond to certain suspicious/criminal activities, and the investigative techniques the FBI is most likely to employ in those situations. This would afford criminals the ability to preemptively modify their behavior in a manner that avoids detection and disruption by the FBI through the very investigative procedures, techniques, and strategies that these FBI directives are intended to implement. Consequently, the release of this information in full would increase the risk that targets of these national security investigations could develop countermeasures and avoid detection by interfering with the FBI's ability to effectively use these important national security law enforcement techniques. Release of this information would allow individuals and entities seeking to commit crimes or threaten the United States' national security an opportunity to avoid detection and circumvent the law. Thus, the FBI properly withheld this information pursuant to FOIA

---

<sup>29</sup> The FBI cited Category (b)(7)(E)-7 on the following Bates pages: Broward Bulldog-9.

Exemption 7(E).<sup>30</sup>

**DOCUMENTS REFERRED TO OTHER GOVERNMENT AGENCIES (“OGAs”) FOR  
CORDINATION WITH THE FBI**

(84) As part of its search for and processing of records responsive to plaintiffs’ request, the FBI identified a number of pages containing information and/or equities originating with an OGA. In accordance with DOJ regulations, 28 C.F.R. § 16.4(c), the FBI consulted with this OGA to allow the OGA the opportunity to review their information pursuant to the FOIA.

***DOJ Civil Division (“DOJ-CD”)***

(85) On August 26, 2016, the FBI referred 2 pages to DOJ National Security Division (“DOJ-NSD”) for consultation. These are identifiable as Broward Bulldog-9-10. By letter dated September 9, 2016 DOJ-NSD advised the FBI that the referred information is under the purview of DOJ-CD; and therefore, the records were rerouted to DOJ-CD for a consultation. By email dated September 29, 2016, the FBI was instructed by DOJ-CD to partially withhold their equities pursuant to FOIA Exemptions (b)(5), (b)(6), and (b)(7)(C). These withholdings will be addressed in DOJ-CD’s *Vaughn* submission in this case. **(See Exhibit L.)**

***Central Intelligence Agency (“CIA”)***

(86) On August 26, 2016, the FBI referred 2 pages to the CIA for consultation. These are identifiable as Broward Bulldog-5-6. By letter dated September 20, 2016, CIA instructed the FBI to redact their information pursuant to FOIA Exemptions (b)(1) and (b)(3) (Section 102A(i)(1) of the National Security Act of 1947). These withholdings will be addressed in CIA’s *Vaughn* submission in this case. **(See Exhibit M.)**

---

<sup>30</sup> The FBI cited Category (b)(7)(E)-8 on the following Bates pages: Broward Bulldog-31-32, 55-56, 79-80, 120-121, 144-145, 168-169, 192-193, 215-216.

### **SEGREGABILITY**

(87) As discussed in ¶ 5 *supra*, there were 220 responsive pages identified: 148 pages RIF and 72 pages RIP. Each of these categories is discussed below to further address segregability.

- A. Pages RIF. Following the segregability review, RIDS determined that 148 pages could be released in full without redaction as there was no foreseeable harm to an interest protected by a FOIA exemption.
- B. Pages RIP. Following the segregability review, RIDS determined that 72 pages could be released in part with redactions per the identified FOIA exemptions herein. These pages comprise a mixture of material that could be segregated for release and material that was withheld as release would trigger foreseeable harm to one or more interests protected by the FOIA exemptions cited on these pages.

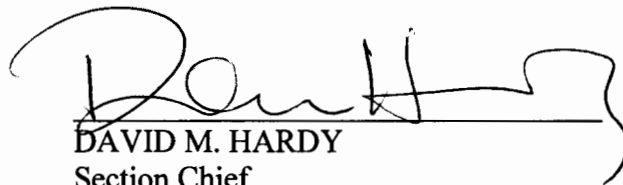
### **CONCLUSION**

(88) In response to plaintiffs' FOIPA Request Nos. 1332564 and 1335424, the FBI performed adequate and reasonable searches for responsive records, processed all such records, and released all reasonably segregable non-exempt information from documents responsive to these requests. The FBI processed the records under the access provisions of the FOIA to achieve maximum disclosure. Information was properly withheld pursuant to FOIA exemptions (b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI carefully examined the documents and determined that the information withheld from plaintiffs in this case, if disclosed, would reasonably be expected to reveal information that would cause serious damage to national security, would violate federal statutes governing release of information on national

security operations, would reveal trade secrets and commercial or financial information, would reveal privileged information, would interfere with pending law enforcement investigations, would cause a clearly unwarranted invasion of personal privacy and could reasonably be expected to constitute an unwarranted invasion of personal privacy, would reveal the identities of confidential sources and the information they provided, and would disclose techniques and procedures for law enforcement investigations or prosecutions, the disclosure of which, could reasonably be expected to risk circumvention of the law. After extensive review of the documents at issue, I have determined that there is no further non-exempt information that can be reasonably segregated and 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 L attached hereto are true and correct copies.

Executed this <sup>30<sup>th</sup></sup> day of December, 2016.



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