

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' RESPONSE TO THE MIAMI HERALD'S MOTION FOR LEAVE TO
FILE AMICUS CURIAE BRIEF & SUPPORTING
MEMORANDUM OF LAW**

Defendants, U.S. Department of Justice ("DOJ"), and its component, Federal Bureau of Investigation ("FBI"), respectfully respond as follows to the motion filed by Miami Herald Media Company, d/b/a the *Miami Herald* ("*Miami Herald*") [D.E. 52] for leave to join the *Sarasota Herald-Tribune* in filing an amicus curiae brief in this action:

The *Sarasota Herald-Tribune* previously filed a motion for leave to file an amicus curiae brief in this action. Defendants have opposed the *Sarasota Herald-Tribune*'s motion, which is pending, and oppose the *Miami Herald*'s motion for the same reasons stated in their opposition to the *Sarasota Herald-Tribune*'s motion.

There is no Federal Rule of Civil Procedure governing motions to appear as amicus curiae in federal district court. *Washington Gas Light Company v. Prince George's County Council*, Civil Action No. DKC 08-0967, 2012 WL 832756, *3 (D. Md., Mar. 9, 2012), *aff'd*, 711 F.3d 412 (4th Cir. 2013). “[I]t is solely within the discretion of the court to determine the fact, extent, and manner of participation by an amicus.” *News and Sun-Sentinel Co. v. Cox*, 700 F. Supp. 30, 31 (S.D. Fla. 1988)(citation omitted); *Conservancy of Southwest Florida v. United States Fish and Wildlife Service*, No. 2:10-cv-106-FtM-SPC, 2010 WL 3603276, *1 (M.D. Fla. 2010).

“[A]cceptance of an...amicus brief should be allowed only sparingly, unless the amicus has a special interest, or unless the Court feels that existing counsel need assistance.” *News and Sun-Sentinel Co.*, 700 F. Supp. at 32 (quoting *Donovan v. Gillmor*, 535 F. Supp. 154, 159 (N.D. Ohio 1982)). Amicus curiae status is granted, generally, where: “(1) the petitioner has a ‘special interest’ in the particular case; (2) the petitioner’s interest is not represented competently or at all in the case; (3) the proffered information is timely and useful; and (4) the petitioner is not partial to a particular outcome in the case.” *Conservancy of Southwest Florida*, 2010 WL 3603276 at *1 (quoting *Liberty Resources, Inc. v. Philadelphia Housing Authority*, 395 F. Supp.2d 206, 209 (E.D. Pa. 2005)).

The *Miami Herald*, like the *Sarasota Herald-Tribune*, has failed to show that amicus curiae status should be granted based upon the factors that are generally considered.

First, the *Miami Herald* has not shown that it has a “special interest” distinct from that of the plaintiffs. Like the *Sarasota Herald-Tribune*, it makes the bare assertion that it can offer and “additional perspective.” Attached to the *Miami Herald* motion is a September 16, 2011, *Miami Herald* article. Although the author of the article is not indicated, the allegations and information contained in the article mirror those in the Broward Bulldog.org articles attached in exhibit 1 to

plaintiffs' complaint.

There is no reason to believe that the *Miami Herald's* interest has not been, or will not continue to be, competently represented by plaintiffs' counsel or that plaintiffs' counsel is in need of assistance, particularly at this late stage of litigation.

Defendants filed their motion for summary judgment on May 13, 2013; plaintiffs responded on May 31, 2013; and defendants replied on June 10, 2013. Multiple other motions, responses, and replies have been filed by the parties as well, and both parties submitted proposed findings of fact and conclusions of law on July 11, 2013. The *Miami Herald's* motion was not filed until September 27, 2013. It is not timely.

The issues in this case have already been addressed extensively by both plaintiffs and defendants. The *Miami Herald* has not identify any specific issue or argument that it would raise that has not already been raised by plaintiffs. There is no reason to believe that its "perspective" will be useful to the Court in its analysis of the issues in this case, nor is it impartial to the outcome of this case. It asserts that it can assist the Court as to the plaintiffs' argument that there is a public interest which outweighs the privacy interests in the records requested. However, it merely reiterates plaintiffs' speculations and conclusory allegations that "Government impropriety might have occurred" (emphasis added). Such arguments and speculation are not sufficient to outweigh FOIA-protected privacy interests – there must be an evidentiary showing of government misconduct to outweigh FOIA-protected privacy interests. *National Archives & Records Admin. v. Favish*, 541 U.S. 157, 175 (2003).

For the reasons stated above, defendants respectfully request that the Court, in the exercise of its discretion, deny the *Miami Herald's* motion.

Dated: October 9, 2013
Miami, Florida

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that, on October 9, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Carole M. Fernandez
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