

IN THE
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,)
)
v.)
)
U.S. DEPARTMENT OF JUSTICE,)
950 Pennsylvania Avenue, NW)
Washington, DC 20530, and)
FEDERAL BUREAU OF INVESTIGATION,)
935 Pennsylvania Avenue, NW)
Washington, DC 20535,)
)
Defendants.)
_____)

Plaintiffs' Motion for Order Compelling Additional Search

In accordance with the Court's order of July 16, 2013, plaintiffs move for an order compelling the defendants to conduct a further search for documents responsive to the plaintiffs' Freedom of Information Act request in accordance with terms that are set forth below. By way of explanation of how the plaintiffs' have arrived at the proposed terms, they provide here for the Court a summary of the request that was made, the nature of the search that already had been conducted, and the information found in the documents that have been produced which suggests that a search using the suggested terms will produce additional documents responsive to the plaintiffs' request. This document also shows why the plaintiffs contend that the FBI has not used the appropriate FBI information retrieval system to locate the documents responsive to their request and how the Court may direct the FBI to do so.

The Request at Issue

The request that is the subject of this matter (DE 1-7) sought documents from the Federal Bureau of Investigation regarding “activities at the residence at 4224 Escondito Circle, in the Prestancia development near Sarasota, Florida prior to 9/11/2001. The activities involve apparent visits to that address by some of the deceased 9/11 hijackers.” (DE 1-7). The request also stated that “The FBI investigation began in the fall of 2001 and continued into at least 2003. Local FBI officials have said the investigation is closed.” (DE 1-7).

The request delineated that the documents sought were “all FBI 302 reports about the matter, as well as all related investigative reports or FBI memos or correspondence – including the FBI’s findings and conclusions as to what happened at that address.”¹ (DE 1-7). It also requested “reports, information or summaries obtained about the matter from any foreign law enforcement organization or intelligence service, to include Saudi intelligence.” (DE 1-7).

The request also specifically asked for “a search of the FBI’s indices to the Central Records System and the filings system of the bureau’s Tampa field office,” but did not limit the request to documents found as a product of that specific search. (DE 1-7).

From the terminology of the search request, it should have been clear to the FBI that the plaintiffs were seeking documents which would substantiate or disprove the FBI’s public statements that it had conducted an investigation of the Saudi family that had resided in Sarasota, Florida and had left the country suddenly just days before the September 11, 2001, attacks on the United States. The plaintiffs’ expectation was that the FBI would have no objection to release of

¹ An FD-302 form is used by FBI agents to “report or summarize the interviews that they conduct” and contains information from the notes taken during the interview by the agent. It consists of information taken from the subject, rather than details about the subject themselves.

the documents since the FBI already had made a public announcement regarding their contents and also had claimed that all of the records had been made available to the investigating congressional committees. Specifically, once the plaintiffs had reported that the Esam and Deborah Ghazzawi and Abdulaziz and Anoud al-Hijji has been investigated by the FBI, the FBI released to the press a statement that:

In order to address allegations reported in a September Miami Herald article, Link to 9/11 hijackers found in Sarasota, the FBI is furnishing the following statement to correct the public record. The FBI did follow up on the information about suspicions surrounding the referenced Sarasota home and family. Family members were subsequently located and interviewed. At no time did the FBI develop evidence that connected the family members to any of the 9/11 hijackers as suggested in the article, and there was no connection found to the 9/11 plot. The anonymous "counterterrorism officer" cited in the article apparently was not an FBI agent and had no access to the facts and circumstances pertaining to the resolution of this lead, otherwise this person would know this matter was resolved without any nexus to the 9/11 plot. Finally, all of the documentation regarding the 9/11 investigation was made available to the 9/11 Commission and the JICI.

(DE 29-4 at ¶61 & Ex. 3) (Statement of FBI Special Agent & Tampa FBI Field Office Public Affairs Officer Dave Couvertier on Sept. 15, 2011).

The Initial Search that the FBI Conducted

The declaration of David M. Hardy (DE 25-1) filed in support of the defendants' summary judgment motion describes two searches that were performed in response to this request. The first was performed prior to the filing of the lawsuit. The second afterwards.

According to the declaration, Search 1 was a search of the FBI's Central Records System ("CRS") to identify all potentially responsive documents indexed according to the following terms:

"Address 4224 Escondito Circle Sarasota FL" and

"Four Two Two Four Escondito Circle"

(DE 25-1 ¶23). The CRS consists of “files compiled for law enforcement purposes,” (DE 25-1 ¶17), but it is not claimed by the FBI to be its sole compilation of records. The declaration explains that the CRS is accessed by the FBI through General Indices, a set of index cards on various subject matters that are searched either manually or through automated indices. (DE 25-1 ¶18). “The mechanism that the FBI uses to search the CRS is the Automated Case Support System (‘ACS’)” and that consists of the Investigative Case Management, Electronic Case File (“ECF”), and Universal Index applications. (DE 25-1 ¶21).

Search 1 also included a text search of the FBI’s Electronic Case File. (DE 25-1 ¶23). The Electronic Case File is described as “the central electronic repository for the FBI’s official text-based documents.” (DE 25-1 ¶21(b)). This file also is not claimed by the FBI to claim a comprehensive collective of records. The Hardy declaration also does not explain whether any documents that are the subject of the plaintiffs’ request have been entered into this electronic system. The declaration does state that the FBI conducted a text search of the Electronic Case File to identify all potentially responsive main and cross reference files indexed under the following terms:

“Escondito Circle” and

“Escondito AND Sarasota.”

(DE 25-1 ¶23).

The Hardy declaration further states that the results of Search 1 yielded six documents and that they were withheld in their entirety in reliance on Exemptions 6 and 7(C). . (DE 25-1 ¶23).

According to the declaration, in Search 2, the FBI’s Tampa Field Office “canvassed people who were directly involved in the 2001 investigation to determine whether they have any

records that are potentially responsive to this particular FOIA request” and “personnel responsible for assisting in the FBI’s response to a prior Congressional request from Senator Graham related to 4224 Escondito Circle.” (DE 25-1 ¶24). The declaration also states these personnel conducted searches that “consisted of **additional text searches** of the ECF and searches of **known telephone numbers** in order to locate potentially responsive documents.” (DE 25-1 ¶24) (Emphasis added). (DE 25-1 ¶24). The Hardy declaration does not identify the terms used in the additional text searches or the “known telephone numbers.”

Search 2, according to the Hardy declaration, found 14 documents, including the 6 documents previously found, consisting of 35 pages. (DE 25-1 ¶24). The defendants produced 31 pages with redactions relying on Exemptions 1, 3, 6, 7(C), and 7(E). The defendants withheld in their entirety four pages relying on Exemptions 7(C), 7(D), and 7(E).

The Inadequacy of the Initial Two Searches

The two initial searches were not reasonably constructed to locate responsive documents in two ways: (1) they did not search for responsive documents using the FBI’s search technologies that could find the responsive documents, and (2) they did not use search terms reasonably formulated to locate the responsive documents.

As noted in the plaintiffs’ opposition to the defendants’ motion for a protective order (DE 39), Glenn A. Fine, Inspector General of the U.S. Department of Justice, testified in February, 2005, before the U.S. Senate that the ACS is an “antiquated case management system” and that it had been found that “the ACS system and the way search results were handled within the FBI resulted in incomplete data being provided.” (DE 39-1 at 2). Fine’s testimony noted that using this system, “the FBI had failed to turn over to defense attorneys hundreds of FBI documents that should have been disclosed” in two trials. (DE 39-1 at 2). He reported to Congress that “ACS

could not handle or retrieve documents in a useful, comprehensive, or efficient way.” (DE 39-1 at 2). His testimony concluded: “The archaic ACS system – which some agents have avoided using – is cumbersome, inefficient, and limited in its capabilities, and does not manage, link, research, analyze, and share information as effectively or timely as needed.” (DE 39-1 at 15). More recently, the U.S. Department of Justice Office of Inspector General issued a report describing ACS as “an antiquated 15-year-old paper-based case management system.” U.S. Dep’t of Justice Office of Inspector General, *Status of The Federal Bureau of Investigation’s Implementation of The Sentinel Project Report 11-01* (Oct. 2010)

The FBI’s website reports that as of January 2012, the legacy ACS system has been replaced by “the Sentinel application . . . a pivotal moment for the FBI . . . moving us from a primarily paper-based case management application to an electronic workflow-based recordkeeping system.” (<http://www.fbi.gov/about-us/itb/news-features/new-information-case-management-system-enhances-fbi-mission>). The FBI website further states the new Sentinel application “enhances FBI’s ability to link cases with similar information through expanded search capabilities.” <http://www.fbi.gov/news/pressrel/press-releases/fbi-announces-deployment-of-sentinel>. In a further announcement, the FBI website reported on June 3, 2013, that “The FBI’s Sentinel program was recently recognized by IDG’s Computerworld Honors Program as a 2013 Laureate. . . . Sentinel, the FBI’s case management system enables faster, more comprehensive, and more secure information sharing among Bureau agents, field offices, and analysts.” <http://www.fbi.gov/about-us/itb/news-features/sentinel-recognized-by-computerworld>. The Sentinel system was planned to allow access not only to new information created after its implementation, but also historical files. <http://www.fbi.gov/news/pressrel/press-releases/fbi-announces-award-of-sentinel-contract>

(“Existing information will be migrated to the new system”). Although the FBI altered this plan so that files would remain in the ACS system, millions of case files have been migrated to the Sentinel system. U.S. Dep’t of Justice Office of Inspector General, *Interim Report on the Federal Bureau of Investigation’s Implementation of the Sentinel Project*, Report 12-38 at 6 (Sept. 7, 2012). The FBI initially estimated the cost of the new system would be \$425 million, and the actual cost exceeded \$440 million. <http://www.fbi.gov/news/pressrel/press-releases/fbi-announces-award-of-sentinel-contract>

Notwithstanding that this huge public investment in better technology has now been made, that the technology has been implemented, and that the technology has been lauded in the press for its speed and accuracy, it apparently has not been used to find documents that would be responsive to the plaintiffs’ request. Instead, the defendants have used an index card system. The Court should direct the defendants to use the full capabilities of the Sentinel system to locate responsive documents. The Hardy declaration makes no reference to the inadequacies of the ACS system and provides no explanation of why the new Sentinel application has not been or could not be used to search for responsive documents.

The second inadequacy of the searches done relates to the limited search terms used in searching. Whether the search is done through the old CRS system, or the new Sentinel system, the search should seek documents that reference terms beyond the address terms that the defendants chose to use in conducting the initial searches and should employ search logic in a manner that is reasonably designed to locate the responsive documents.

The 31 pages of documents already produced by the defendants provide information from which searches can be conducted that are reasonably calculated to located documents relating to the Sarasota investigation at issue. Below is a table that summarizes information from those

documents, assigns a brief description to each document page, and arranges the document summaries according to document date. The documents were Bates numbered SARASOTA 1 through 35. In the chart, the Bates numbers are abbreviated S#.

Bates Doc	Date	Event Date	Brief Description	Universal Case File #	Control Form #
S12	9/19/01	9/18/01	Postal Inspector p.1	265D-NY-280350-TP-2409	TP2441
S13	9/19/01	9/18/01	Postal Inspector p.2	265D-NY-280350-TP-2409	TP2441
S14	9/19/01	9/18/01	Postal Inspector p.3	265D-NY-280350-TP-2409	TP2441
S15	9/20/01	9/19/01	Postal Inspector p.1	265D-NY-280350-TP-2641	TP2844
S16	9/20/01	9/19/01	Postal Inspector p.2	265D-NY-280350-TP-2641	TP2844
S17	9/20/01	9/19/01	Postal Inspector p.3	265D-NY-280350-TP-2641	TP2844
S19	9/21/01	9/13/01	Telephone Call to FBI p.1	265D-NY-280350-TP-3706	TP3181
S20	9/21/01	9/13/01	Telephone Call to FBI p.2	265D-NY-280350-TP-3706	TP3181
S21	9/21/01	9/14/01	World Trade Center p.1	265D-NY-280350-TP-3771	TP3167
S22	9/21/01	9/14/01	World Trade Center p.2	265D-NY-280350-TP-3771	TP3167
S18	9/25/01	9/20/01	Postal Inspector Interview	265D-NY-280350-TP-4962	TP2844
S23	9/25/01	9/25/01	PENTTBOMB p.1	265D-NY-280350-TP-4959	TP2844
S24	9/25/01	9/25/01	PENTTBOMB p.2	265D-NY-280350-TP-4959	TP2844
S25	9/25/01	9/25/01	PENTTBOMB p.3	265D-NY-280350-TP-4959	TP2844
S26	9/25/01	9/19/01	Jone Weist p.1	265D-NY-280350-TP-4959	TP2844
S27	9/25/01	9/19/01	Jone Weist p.2	265D-NY-280350-TP-4959	TP2844
S5	4/16/02	4/16/02	"Many Connections" p.1	Redacted (Pending)	
S6	4/16/02	4/16/02	"Many Connections" p.2	Redacted (Pending)	
S10	6/27/02	6/27/02	Larry Berberich p.1	None	
S11	6/27/02	6/27/02	Larry Berberich p.2	None	
S7	9/16/02	7/22/02	Anoud al-Hijji p.1	Redacted (Pending)	
S8	9/16/02	7/22/02	Anoud al-Hijji p.2	Redacted (Pending)	
S9	9/16/02	7/22/02	Anoud al-Hijji p.3	Redacted (Pending)	
S1	9/15/10	9/15/10	9/11 Prosecution Unit p.1	None	
S2	9/15/10	9/15/10	9/11 Prosecution Unit p.2	None	
S28	9/08/11	9/8/2011	Memo re articles	None	
S3	11/22/11	11/22/11	DOJ Letter to Leahy p.1	None	
S4	11/22/11	11/22/11	DOJ Letter to Leahy p.2	None	
S33	2/06/13	2/06/13	Memo re news articles p.1		
S34	2/6/2013	2/06/13	Memo re news articles p.2		
S35	2/6/2013	2/06/13	Memo re news articles p.3		
S29	Withheld	Withheld			
S30	Withheld	Withheld			
S31	Withheld	Withheld			
S32	Withheld	Withheld			

From this table, it can be seen that documents relating to this investigation were assigned a Case ID Number that begins "265D-NY-280350-TP" and has suffix numbers that begin with

2409 and end with 4959. It also can be seen that these documents are assigned Information Control Form Numbers TP2441, TP2844, TP3167, and TP3181.

The Hardy declaration explains the Universal Case File numbers as follows:

When a case is opened, it is assigned a Universal Case File Number ("UCFN"), which is utilized by all FBI field offices, Legats, and FBIHQ that are conducting or assisting in the investigation. Using a fictitious file number "111-HQ-I 2345" as an example, an explanation of the UCFN is as follows: "111" indicates the classification for the specific type of investigation; "HQ" is the abbreviated form used for the 00 of the investigation, which in this case is FBIHQ; and "12345" denotes the individual case file number for the particular investigation.

(DE 25-1 ¶21(a)). It thus appears that all of the documents that were a part of this investigation were assigned to the Universal Case File Number 265D-NY-280350-TP. Each document in the file appears also to have been assigned a unique suffix, the first of which was 2409 and the last of which was 4959. From this, it appears logical to assume that from September 19, 2001, until September 25, 2001, 2,550 documents were placed in file 265D-NY-280350-TP. Because the FBI has conceded that the CRS system is unreliable to locate documents responsive to plaintiffs' request, the Court should direct the defendants to review manually all documents assigned Universal Case File Numbers 265D-NY-280350-TP-2409 through 265D-NY-280350-TP-4959 for responsiveness to the request, not simply for whether those documents contain specific words.

In addition, the Court should direct the defendants to locate and manually review for responsiveness all documents contained the 265D-NY-280350-TP Universal Case File Number. This would ensure that responsive documents created or received after September 19, 2001, would be found.

The Court also should direct the defendants to search for and manually review for responsiveness all documents bearing or assigned to the Control Numbers TP2441, TP2844, TP3167, and TP3181.

The chart above also shows that the defendants have redacted the Universal Case File Number for the most significant document that they produced. That document, carrying Bates numbers SARASOTA 5-6, includes the statement: “Further investigation of the _____ family revealed many connections between the _____ and individuals associated with the terrorist attacks on 9/11/2001.” The Universal Case File Number for the documents Bates numbered SARASOTA 7-9 also has been redacted. It is far from clear why it was necessary to withhold from the plaintiffs these Universal Case File numbers, but the Court should require the defendants to search all documents assigned to the same Universal Case File Number prefix for responsiveness as well. For example, if the documents are assigned to Universal Case File Number prefix 265D-NY-280350-TP, the Court should direct the defendants to locate all documents assigned to that same prefix for responsiveness.

If that case number includes 265D-NY-280350-TP, it would be logical to require the defendants to review all documents containing that same number and any suffix number through the suffix numbers on SARASOTA 5-6, and SARASOTA 7-9, because they logically would contain the investigative documents that led the FBI to conclude that many connections existed between the persons under investigation and persons associated with the terrorist attacks.

Plaintiffs further propose to require the defendants to search for documents by any automated means that may be available containing the words Esam Ghazzawi, Deborah Ghazzawi, Abdulaziz al-Hijji, or Anoud al-Hijji. These searches should use search logic that reasonably ensures that responsive documents are found even if the names contain middle initials or minor misspellings. So, for example, searches should be performed for variations such as “Esam AND Ghazzawi” and “Esam AND Ghaz!” Specifically requested variations are set forth in the conclusion to this memo.

Although in other circumstances requiring a search for the names of individuals in law enforcement files might be an unwarranted invasion of the privacy of those individuals simply because it shows that their names were of interest to law enforcement authorities, that cannot be the case here because the FBI publicly acknowledged that it had conducted an investigation of these individuals after the plaintiffs reported that these individuals had been so investigated. (DE 29-4 at ¶61 & Ex. 3). A disclosure at this point that the defendants had located records containing the names of these individuals would do nothing more than reveal that which already has been revealed. This is not to say, however, that the defendants would be required to disclose the contents of the documents. They still could withhold any portion of those documents that were exempt from the disclosure requirements of the Freedom of Information Act, but they would have to disclose the existence of those documents and permit the plaintiffs to contest any asserted exemptions.

Plaintiffs also request that the defendants be directed to conduct text searches for certain combinations of the words Prestancia, Escondito, Huffman Aviation, Mohamed Atta, Terror!, gatehouse, phone records, PENTTBOMB, and Sarasota as set forth in the conclusion below. All of these terms are unique identifiers that logically would identify in proper combination records responsive to the plaintiffs' request.

If records responsive to the plaintiffs' request have not been migrated to the Sentinel system so that text searches can be conducted on those documents through that system, the defendants should be directed to conduct the text searches for responsive records on (1) the CRS/ACS/ECF systems; (2) the FBI's Electronic Surveillance (ELSUR) and Financial Surveillance (FISUR) databases; (3) on any shared drives in the FBI headquarters or the Tampa Field Office (such as drives labeled "I-Drive," "S-Drive," or "T-Drive"); (4) on the email system

in the FBI's headquarters and Tampa Field Office; (5) Infragard, (6) Law Enforcement Online, and (7) the FBI intranet.

The special agent who was in charge of the Sarasota investigation that is the subject of the plaintiffs' request is Gregory Sheffield. Upon information and belief, Mr. Sheffield is now assigned to the FBI's Honolulu Field Office. The defendants should be directed to ask Mr. Sheffield whether he is aware of the existence and location of any documents responsive to the plaintiffs request and, if so, to identify those documents. Specifically, Mr. Sheffield should be asked whether responsive documents are maintained at any specific physical locations in the FBI Honolulu Field Office or its Maui or Kona resident agencies; or the FBI Tampa Field Office or its Sarasota, Ft. Myers, Naples, Pasco/Hernando, Lakeland, Orlando, or Brevard resident agencies of the FBI Tampa Field Office; or any other physical locations such as the files of Southwest Florida Domestic Security Task Force referenced in SARASOTA 5-6.

The FBI agent who showed Sen. D. Robert Graham the documents that he identified in his declaration in this case (DE 29-5 ¶¶ 35-36, 47 & 50) as FBI documents that are responsive to the plaintiffs request but that have not been produced by the defendants is Supervisory Special Agent Jacqueline Maguire. As set forth in Sen. Graham's declaration, FBI Deputy Director Sean Joyce directed Special Agent Maguire to produce to Sen. Graham FBI documents that would explain the apparent inconsistency between the FBI's public statement that it found no connections between the 9/11 terrorists and the family residing at 4224 Escondito Circle, Sarasota, FL, and the statement in SARASOTA 4-5 that it found "many connections" between the family and those terrorists. The defendants should be directed to ask Ms. Maguire to locate and identify those documents that were shown to Sen. Graham and those documents that she had been directed to show to Sen. Graham.

Conclusion and Requests

In sum, the plaintiffs propose that the Court should direct the defendants to:

1. Use Sentinel. Use the Sentinel system to conduct searches for responsive documents.
2. Review the Documents in the Gap in the Tampa File. Manually review for responsiveness all documents containing Universal Case File Numbers 265D-NY-280350-TP-2409 through 265D-NY-280350-TP-4959.
3. Review All Documents in the Tampa File. Manually review for responsiveness all documents containing Universal Case File Numbers 265D-NY-280350-TP.
4. Review the Unidentified Tampa File. Manually review for responsiveness all documents containing the Universal Case File Number prefix assigned to documents SARASOTA 5-6 and 7-10.
5. Word Searches. Manually review for responsiveness all documents found by an automated text searches of all data bases referenced above, including any data bases accessible through the Sentinel system, or any other data bases where responsive documents might be found:
 - a. 265D-NY-280350-TP
 - b. TP2441 OR “TAMPA AND 2441”
 - c. TP2844 OR “TAMPA AND 2844”
 - d. TP3167 OR “TAMPA AND 3167”
 - e. TP3181 OR “TAMPA AND 3181”
 - f. “Esam Ghazzawi”
 - g. Esam AND Ghazzawi
 - h. Esam AND Ghaz!
 - i. “Deborah Ghazzawi”
 - j. Deborah AND Ghazzawi
 - k. Deborah AND Ghaz!
 - l. “Abdulaziz al-Hijji”

- m. Abdulaziz AND al-Hijji
 - n. Abdulaziz AND al-Hij!
 - o. “Anoud al-Hijji”
 - p. Anoud AND al-Hijji
 - q. Anoud AND al-Hij!
 - r. Prestancia AND “Huffman Aviation”
 - s. Prestancia AND “Mohamed Atta”
 - t. Prestancia AND Terror!
 - u. Prestancia AND gatehouse
 - v. Prestancia AND “phone records”
 - w. Prestancia AND PENTTBOMB
 - x. Escondito AND “Huffman Aviation”
 - y. Escondito AND “Mohamed Atta”
 - z. Escondito AND Terror!
 - aa. Escondito AND gatehouse
 - bb. Escondito AND “phone records”
 - cc. Escondito AND PENTTBOMB
 - dd. Sarasota AND PENTTBOMB
6. Sheffield Documents. Contact agent Gregory Sheffield to determine the existence and location of any documents responsive to the plaintiffs’ request that are not found by the searches above and, specifically, whether any responsive documents are located in the FBI’s Honolulu Field Office or its Maui or Kona resident agencies; or the FBI’s Tampa Field Office or its Sarasota, Ft. Myers, Naples, Pasco/Hernando, Lakeland, Orlando, or Brevard resident agencies; or other locations such as the files of Southwest Florida Domestic Security Task Force.
7. Maguire Documents. Contact Agent Jacqueline Maguire to determine the existence of and location of all documents shown to Sen. Graham in

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served before 12 noon on July 19, 2013, by filing with the CM/ECF system on all counsel or parties of record on the Service List below.

s/ Thomas R. Julin

Thomas R. Julin

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