

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.)
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Plaintiffs' Corrected¹ Reply to Response to
Motion for Order Compelling Additional Search

“The fundamental principle underlying FOIA is public access to government documents. . . . ‘Without question, the Act is broadly conceived ... to permit access to official information long shielded unnecessarily from public view and ... to create a judicially enforceable right to secure such information from possibly unwilling official hands.’ . . . Indeed, FOIA reflects a general philosophy of ‘full agency disclosure unless information is exempted under clearly delineated statutory language.’”² This Court and others have admonished agencies not to “‘play cat and mouse’” with a requester.³ That is what appears to be happening here.

¹ The correction deletes a sentence fragment (DE-48 at 3) and the spelling of “PENTTBOMB.”

² *Times Publishing Co. v. U.S. Dep’t of Commerce*, 236 F.3d 1286, 1288-89 (11th Cir. 2001) (citations omitted).

³ *Ray v. U.S. Dep’t of Justice*, 725 F. Supp. 502 (S.D. Fla. 1989) (Dyer, S.J.) (compelling release of unredacted documents), *quoting Senate of the Commonwealth of Puerto*

Plaintiffs' motion suggested eight reasonable steps to ensure that responsive documents are found. The defendants have not shown why any of the requested steps could not be easily accomplished or that they are unlikely to locate responsive documents.

I.

Require the FBI to Use Sentinel for Search

Plaintiffs demonstrated in their motion that the FBI had admitted that its Central Records System ("CRS") is an antiquated, cumbersome, inefficient system that has been replaced by a computer system referred to as "Sentinel" at a cost to the taxpayers of \$440 million but that it was not used by the FBI in searching for documents responsive to the plaintiffs' request. The FBI explains that it did not do so because its search was completed "in November 2011, before the deployment of Sentinel." (DE-47 at 5). It then also claims, for the first time, that "a Sentinel search was conducted, prior to the filing of defendants' motion for summary judgment" and that no additional records were identified. (DE-47 at 6). This is surprising because the sole declaration the defendants submitted in opposition to the summary judgment motion made no claim to use of the Sentinel system or even any reference to it.

In support of this new claim, the defendants offer the Court no declaration attesting to the actual use of the Sentinel system or how it was used. If the defendants intend to rely upon use of Sentinel to establish the reasonableness of their search, they should be required, to submit a declaration explaining how that system operates and how the search was conducted, including a delineation of the search terms that were used and the data bases that were covered. Alternatively, the Court should allow the plaintiffs to depose the individuals who conducted the Sentinel search.

The defendants acknowledge that they did not search their ELSUR (electronic surveillance) or FISUR (physical surveillance) data bases and they assert as justification "there is no reason to believe that the FBI would have any ELSUR or FISUR records responsive to plaintiffs' request since the FBI only received reports of alleged suspicious activity at 4224 Escondito Circle after the residents had left the premises." (DE-47 at 3). This assertion assumes FBI surveillance of Saudi nationals is conducted only after reports of suspicious activity is received and that surveillance is not conducted even after such reports are received and the

Rico v. Dept. of Justice, 823 F.2d 574, 580 (D.C. Cir. 1987), *quoting Grumman Aircraft Engineering Corp. v. Renegotiation Board*, 482 F.2d 710, 722 (D.C. Cir. 1973).

suspects have fled. One would expect just the opposite to be true, but in any event the defendants have no contrary evidence.

Further, the defendants should be required to attest that they used the search terms suggested by the plaintiffs. As discussed below, the search terms used by the defendants were not reasonably calculated to locate the responsive documents.

II.

Require Manual Review of Documents in the Gap in the Tampa PENTTBOMB File

Plaintiffs' motion demonstrated that the FBI numbered documents related to the Tampa Field Office's investigation of matters related to the bombing of the Pentagon and the Twin Towers in New York City on September 11, 2001, referred to as the PENTTBOMB investigation. The first document responsive to plaintiffs' request that the FBI produced carries the suffix 2409 and the last carries the suffix 4959. The first document is dated September 19, 2001. The last document is dated September 25, 2001.

This shows that the Tampa Field Office has in its possession 2,550 PENTTBOMB investigation documents all of which were filed during that one-week period.

Plaintiffs are unaware of any significant investigation conducted by the Tampa Field Office of the FBI that was unrelated to the events at 4224 Escondito Circle and the defendants have not argued that any such investigations did take place.⁴ The documents produced strongly suggest that that an intensive investigation would have been conducted because the investigation of the family had "revealed many connections between the _____ and individuals associated with the terrorist attacks on 9/11/2001." (DE 25-2 at 35) (SARASOTA-5). The documents also showed that a "family member . . . was a flight student at Huffman Aviation," where the terrorists trained." (DE 25-2 at 36) (SARASOTA-6). It seems highly likely that documents

⁴ Until plaintiffs' disclosure of the Escondito Circle investigation, the FBI had provided no indication that the Tampa area had any significant connection with the PENTTBOMB investigation. The word "Tampa" appeared just once in the Joint Inquiry Report) as a city through which Mohamed Atta arrived in January 2001. (DE 29-7 at 137). It also mentions that Atta and another terrorist trained at Huffman Aviation in Venice, Florida (DE 29-7 at 136), but SARASOTA 5-6 also shows that a member of the Escondito Circle family trained at Huffman Aviation too. In one footnote deep in the 9/11 Commission Report, Tampa is identified as a city from which three Saudis departed once the Tampa airport had reopened after September 11, 2001, but no other mention of Tampa appears. (DE 29-8 at 556 n. 25). Atta's training at Huffman Aviation in Venice also is noted. (DE 29-8 at 224 & 227).

filed by the FBI in the Tampa Field Office connection with the PENTTBOMB investigation would have related to the investigation of matters occurring at 4224 Escondito Circle. A manual review of these documents by a human being for responsiveness therefore should be required

Plaintiffs also request that this review be conducted either by the Court, a magistrate, or a special master to ensure the neutrality of the review. The plaintiffs already have shown that the FBI failed to produce responsive, non-exempt documents when it should have and that the responsive documents produced after the lawsuit was filed contradicted the FBI's public attacks on the plaintiffs' reporting about the investigation at issue. Under these unusual circumstances, review of the documents by a neutral party is warranted.

III.

Require Review of All Documents in the Tampa PENTTBOMB File

In their response to the plaintiffs' motion, the defendants have disclosed for the first time that their PENTTBOMB investigation⁵ of the attacks on the United States on September 11, 2001, included work done through its Tampa Field Office that amassed 15,342 documents. The defendants provide the Court with no information regarding the subject matter of this collection of documents and no reason to believe that these documents are not responsive to the request that is the subject of this litigation. A high degree of likelihood exists that many, if not all, of these documents would be responsive to the request because no significant PENTTBOMB investigation involving the Tampa Field Office of the investigation is known to exist other than the Tampa Field Office investigation of the persons residing at 4224 Escondito Circle, Sarasota, Florida. There is every reason to believe that that investigation would produce a large number of documents, just as former U.S. Senator Bob Graham attested to in his declaration filing in support of the plaintiffs' opposition to the defendants' motion for summary judgment. Specifically, Sen. Graham, who co-chaired the congressional Joint Inquiry into the events of 9/11 and chaired the U.S. Senate Foreign Intelligence Committee, testified based on his familiarity with the events of 9/11 and his own efforts to obtain FBI files: "On a matter of this magnitude and significance, my expectation is that the FBI would have hundreds or even thousands of pages of documents relating to the 4224 Escondito Circle investigation, and that those documents would be well indexed and easily retrievable to this day." (DE 29-5 ¶51). The likelihood that

⁵ PENTTBOMB is the code name assigned to the 9/11 investigation by the FBI. It is a compression of the words Pentagon, Twin Towers, and Bombing.

many of these documents are responsive to the request at issue also is borne out by the contents of the handful of documents that the FBI already has released to the plaintiffs. As noted, 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.” This document was dated April 16, 2002. That makes clear that the document was written after seven months of investigation. Because the FBI found “many connections,” it only stands to reason that the FBI would have conducted an extensive investigation of the family and those connections and amassed a file of some 15,000+ documents. Sen. Graham did not know of the specific volume of documents that the FBI had collected when he submitted his declaration to this Court because the FBI had not provided to his committee the files of its investigation, but he did have the experience and insight to understand the volume of records that would have been collected once such important connections had been uncovered and the defendants response now all but specifically affirms that Sen. Graham’s reasonable expectation is true.

Defendants do not and cannot deny that these documents are responsive to the request because they concede that they have not reviewed the documents by any method other than the use of search terms that likely would not locate most of the responsive documents. For example, if any one of the documents reflected that Abdulazziz al-Hijji, a resident of the home, was paid as an agent of the Saudi royal family to provide comfort and aide to Mohamed Atta while he learned to operate the Boeing 757 that he would fly into the Twin Towers, this document would not be found by the search conducted if it did not make reference to the Escondito address.

IV.

Require Review of All Documents in the Unidentified Tampa File

If the Court elects not to require a manual review of all documents in the Tampa Field Office file, it ought, at a minimum, require a manual review of all documents bearing the Universal Case File Number affixed to documents 5-6 and 7-10. As noted, the FBI has redacted that file number. It now claims that it has done so because the numbers “pertain to an individual(s).” (DE-47 at 7). This is not a justification for refusing to conduct a search for or review of documents bearing those Universal Case Numbers. Given that these documents specifically state that the FBI found many connections with the persons under investigation and persons associated with the 9/11 attacks, it appears highly likely that all documents bearing these numbers would be responsive to the plaintiffs’ request. Such documents should be reviewed for

responsiveness and if found to be responsive, they should be produced or shown by the defendants to be exempt from FOIA disclosure requirements.

V.

Require Better Word Searches

Defendants attempt to explain that they did not use search terms that logically would have located documents responsive to the plaintiffs request, such as the names of the Ghazzawis and the al-Hijjis, with the argument that they “did not interpret plaintiffs’ request as seeking information as to any findings regarding family members who resided at the Sarasota address . . . because plaintiffs modified their request to clarify that they were seeking ‘no information about any specific individuals.’” (DE 47 at 2). A brief review of the history of the request shows the disingenuous nature of this response.

Plaintiffs published in *The Miami Herald* and on the Broward Bulldog.com website on September 11, 2001, their conclusions that Esam and Deborah Ghazzawi and Abdulaziz and Anoud al-Hijji had been investigated by the FBI in 2001 due to their suspicious departure from Sarasota before the 9/11 attacks and evidence of many connections they had to the terrorists who carried out the attacks. (DE 1-4). The reports questioned why this investigation had not led to charges against the family members or disclosure of the investigation to congressional investigators. Four days later, the FBI released a statement “to address allegations reported in a September Miami Herald article, *Link to 9/11 hijackers found in Sarasota*,” and “to correct the public record.” (DE 29-4 at ¶61 & Ex. 3). It said: “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.” (DE 29-4 at ¶61 & Ex. 3). It also said “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).

This statement officially disclosed that the FBI had conducted an investigation of the Ghazzawis and al-Hijjis, ending any interest that the family members may have had in preventing official confirmation of the FBI investigation of them and simultaneously assuring the public that the investigation found nothing. Although the FBI statement did not include the names of the Ghazzawis and al-Hijjis, its direct allusion to the plaintiffs’ *Miami Herald* article

that did include the family names could not have been understood as anything other than an official confirmation of an investigation and negative results.

This official statement appeared to contradict directly plaintiffs' published reports that the Ghazzawis and al-Hijjis had many connections to the terrorists. The plaintiffs had reported that "Phone records and the Prestancia gate records linked the house on Escondito Circle to the hijackers." (DE 1-4). According to plaintiffs' sources, agents had conducted "a link analysis, a system of tracking calls based on dates, times, and lengths of conversations – finding the Escondito calls . . . 'lined up with the known suspects.'" (DE 1-4). Plaintiffs sources also said the gate records showed that Mohamed Atta and other known terrorists visited the Escondito home of the Ghazzawis and al-Hijjis. (DE 1-4). Sen. Bob Graham also told plaintiffs that the FBI had not made any records of its Sarasota investigation available to congressional investigators, suggesting that the FBI deliberately had concealed the matter. (DE 1-4).

These contradictions led plaintiffs to make an FOIA request to try to understand why their sources were saying one thing and the FBI another.

Plaintiffs' initially submitted a request on September 26, 2011. It sought records of "an anti-terrorism investigation into the activities of Saudi nationals who lived in and/or owned a residence at 4224 Escondito Circle." (DE 1-5). To make sure the FBI could locate the records, it identified "Abdulazziz Al-Hijji and his wife, Anoud" and "Essam and Deborah Ghazzawi" as the residents and owners of the home at that address. (DE 1-5). Plaintiffs did not anticipate that the FBI would have any objection to searching for or disclosing the records since the FBI already had disclosed the existence of the investigation and its supposed negative results.

In response, the FBI refused to conduct a search, surprisingly asserting privacy grounds. (DE 1-6). Plaintiffs then modified their request on October 27, 2011, to omit any reference to the names of individuals, but they did not alter the substance of the request. (DE 1-7). Plaintiffs structured the request in this way, at the suggestion of the FBI, and believed that this would allow the FBI to search using the names of the residents and owners, locate the records containing the names, and produce records of the investigation with names of family members redacted, if that was regarded as required by the FOIA privacy exemptions.⁶ Neither the original

⁶ The request did not state, as the FBI incorrectly asserts, that it "sought no information any specific individuals" (DE 47 at 2) (misquoting the request). The request stated "this new request concerns no third parties." (DE 1-7). In plaintiffs appeal from the denial of

request nor plaintiffs' subsequent appeal suggested, by omitting names, that the FBI should disregard names of individuals in its efforts to locate records of the investigation. Omitting the names from the request way seemed to the plaintiffs wholly unnecessary because the FBI itself already had confirmed that the investigation of the specific family had been conducted, but plaintiffs' revised request sought to conform to the approach the FBI seemed to wish to take.

Instead of producing records with names redacted, the FBI again refused to produce any records, again asserted privacy grounds (DE 1-11), and like the FBI's earlier public announcement, affirmatively claimed "At no time during the course of its investigation of the attacks, known as the PENTTBOMB investigation, did the FBI develop credible evidence that connected the address at 4224 Escondido [sic] Circle, Sarasota, Florida to any of the 9/11 hijackers." (DE 1-11).

In their appeal from this decision, plaintiffs expressly explained that the records were being sought in part because "FBI spokesmen have said the FBI found no connection between the Saudi family in Sarasota and the hijacker. But it so far has refused specific requests by various newspapers to provide details that would support that assertion." (DE 1-9 at 3). This shows that defendants' current assertion of confusion or misunderstanding of the nature of the records sought by the plaintiffs has no basis in fact.

Only after the plaintiffs filed this lawsuit did the FBI produce a document that showed this statement was false. It stated, in relevant part, "Further investigation of the _____ family revealed many connections between the _____ and individuals associated with the terrorist attacks on 09/11/2001." (DE 29-2 at 30) (SARASOTA-5). That the document refers to the Ghazzawis and al-Hijjis of 4224 Escondito Circle is unmistakable from the fact that the document was deemed responsive to a request for records of the investigation of events at 4224 Escondito Circle, the residence of those families, and made other references that could have related solely to them.

The reason that the FBI has not located many additional records relating to this investigation has now been made clear. The FBI states in its response to the plaintiffs' motion to

the request, plaintiffs sought to persuade the Justice Department that release of the records of the investigation would not constitute an unwarranted invasion of personal privacy because "In fact, I sought no information about any specific individuals – and none are named in my request." (DE 1-12).

compel an additional search that it “did not interpret plaintiffs’ request as seeking information as to any findings regarding family members who resided at the Sarasota address.” (DE 47). In essence, this seems to say that the FBI specifically structured its search to exclude the very documents that the FBI knew that the plaintiffs were attempting to obtain and that might either explain the FBI’s public contradiction of the plaintiffs’ published reports or show the FBI’s public statements to be false.

One of the evident ways that the FBI accomplished this was to exclude as search terms the names of the individuals who owned and resided at the home under investigation. Since indexing of records on the basis of persons under investigation seems very likely and indexing by specific address unlikely, it is little wonder that the search that was conducted turned up so few records. At a minimum, then, the Court should direct the FBI to conduct the search that it should have done in the first instance, using the Ghazzawis and al-Hijjis names. At this point, it would be unreasonable to contend that such a search would constitute any sort of invasion of their privacy in light of the nature of the disclosures already made. Moreover, if specific records responsive to the request would invade their privacy by, for example, disclosing aspects of their private lives, redactions could be made from the records of that information, but the FBI should not be excused from searching on the basis of terms that would locate the responsive records.

In addition to suggesting name searches, plaintiffs have suggested other logical word searches that would locate documents specific to the investigation at issue. Utilization of these word searches in conjunction with the FBI’s Sentinel system should be required. The FBI speculates about the results of the searches. Until the searches are performed, however, it will not be known what they produce. The searches may, for example, produce a small group of highly relevant documents which then could be easily reviewed for responsiveness. If they produce nothing more than what already has been produced, nothing more will be lost than the few minutes they take to execute. The FBI has provided no indication that the proposed searches would be any more burdensome than typing the suggested words into their search engine and reviewing the results for relevance. In light of the importance of the issues raised by the inconsistencies between the FBI’s public statements and the documents that it initially withheld from production inappropriately (or failed to locate without conducting a reasonable search) and the broad concerns expressed by Sen. Graham that the FBI deliberately interfered with not just one but two congressional investigations of the events of 9/11, the Court should require the FBI

to use the word searches suggested, including the family names.

VI.

Contact Greg Sheffield

Defendants contend that Special Agent Gregory Sheffield already has been contacted and that “To Sheffield’s knowledge, any records regarding allegedly suspicious activities at 4224 Escondito Circle are contained in the Tampa field office file.” Plaintiffs agree that this obviate the need for further contact with Sheffield at this time.

VII.

Contact Jacqueline Maguire

Plaintiffs demonstrated in their opposition to the defendants summary judgment motion that the FBI Field Supervisor Jacqueline Maguire had shown Sen. Graham two documents that related to the FBI’s Sarasota investigation but that only one of these documents was contained in the 31 pages of documents that had been produced by the defendants. Accordingly, they suggested contacting Maguire to determine the whereabouts of the additional document. In response, defendants contend that Maguire provided copies of all responsive documents which were included in the package prepared for the briefing for Sen. Graham. This begs the question, Where is the missing document? Conceivably, the document could consist of the four-pages that the defendants have withheld in their entirety. Sen. Graham has identified the document as dated September 16, 2002. The Court should ascertain whether that is the date of the four pages withheld through in camera review. If this is not the date of that document, then the FBI should be directed to identify the document and any grounds on which it is being withheld.

VIII.

Produce Index of Documents Found But Not Produced

Once the FBI has conducted a further search, it should be directed to report to the Court and the plaintiffs by a date certain regarding the volume of responsive documents that have been located. The Court should then set a deadline for the defendants to produce those additional responsive documents are assert an exemption that allows withholding of all or part of the documents. In addition, the defendants should be required to provide a *Vaughn* index for all documents or portions of documents claimed to be exempt, especially if the defendants claim exemptions for voluminous documents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on August 14, 2013, by filing with the CM/ECF system on all counsel or parties of record on the Service List below.

s/ Thomas R. Julin

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