

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’ Response in Opposition  
to Defendants’ Motion for Protective Order

The plaintiffs’ oppose the defendants’ motion for a protective order (DE-33). Defendants acknowledge in their motion that in Freedom of Information Act cases “discovery has been allowed [where] a genuine issue was raised as to the adequacy of the agency’s search, its identification and retrieval procedures, or its good faith.” (DE-33 at 2) (citing cases). They argue that no genuine issue exists in this case and advance boilerplate arguments, citing a variety of cases arising from different factual circumstances and make no effort to apply the holdings of those cases to the facts of this case. The defendants studiously avoid discussing any of the evidence set forth in the declarations in opposition to their motion for final summary judgment or even the evidence set forth in their own declaration supporting their motion for final summary

judgment. The declarations collectively show that genuine issues of fact do exist with respect to the defendants' search, identification and retrieval procedures, and good faith.

The defendants also studiously avoid any discussion of the interrogatories and request for production of documents that the plaintiffs have served. As will be shown, those discovery requests have been carefully tailored to assist both the plaintiffs and the Court in its evaluation of the issues this case presents. No protective order should be issued and the defendants should be required to respond to the discovery requests.

#### The FOIA Request

For purposes of context, the FOIA request that is the subject of this lawsuit reads as follows:

This is a request under the Freedom of Information Act. I am a news reporter as I describe in more detail below. The information I seek pertains to the FBI investigation into the 9/11 terrorist attacks. Release is justified because the attacks are a matter of intense public interest and this material "is likely to contribute significantly to public understanding."

I request a search of the FBI's indices to the Central Records System and the filings system of the bureau's Tampa field office for information pertaining to an anti-terrorism 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.

The FBI investigation began in the fall of 2001 and continued into at least 2003. Local FBI officials have said the investigation is closed.

I request copies of 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. Likewise, I request copies of reports, information or summaries obtained about the matter from any foreign law enforcement organization or intelligence service, to include Saudi intelligence.

Please send a memo (copy to me) to the Tampa field office to assure that no records related to this request are destroyed. Please advise me of any destruction of records and include the date of and authority for such destruction.

If documents are denied in whole or in part, please cite the appropriate exemption.

I request a fee waiver. I am a contract reporter with *The Miami Herald*. I also operate the nonprofit news site *www.browardbulldog.org* I recently wrote about this matter, and intend to publish additional stories. Stories previously published by the *Herald* and *Broward Bulldog* generated enormous public interest about a matter of continuing public concern, the terrorist attacks of 2001. As such, the material I seek “is likely to contribute significantly to public understanding of the operations or activities of government,” specifically the FBI’s findings and conclusions about an investigation FBI spokesmen in Florida have said was closed years ago.

I can be reached on my cell phone, 954-242-2822. Please call rather than write if there are any questions or if you need additional clarification from me.

I expect a response to this request within ten (10) working days, as provided for in the Freedom of Information Act.

Sincerely,

Dan Christensen

P.S. – This request is a modified version of FOIPA request 1174909-000. Please note this new request concerns no third parties. I would appreciate an expedited response. Thanks.

(DE 1-7).

The defendants denied this request and denied an appeal. (DE 1-11 & DE 1-13). In doing so, they produced no documents and cited only Exemptions 6 and 7(C), 5 U.S.C. §552(b)(6) & 552(b)(7)(C), as justifying their actions. This necessitated the filing of this action.

#### The Defendants’ Evidence of Search Adequacy

Defendants filed with their motion for final summary judgment only the declaration of David M. Hardy. (DE-25-1). Plaintiffs have moved to strike the declaration (DE-26) in light of its reliance on hearsay and for lack of its specificity in describing the nature of the search conducted. The declaration is explicit in reciting that facts it sets forth are based *not* necessarily on personal knowledge, but also on “information provided” to him by other unspecified persons

and “conclusions and determinations reached and made in accordance therewith.” (DE-25-1 ¶2). Mr. Hardy does not identify which, if any, information in his declaration is derived from his personal knowledge of the search conducted or which information is based on hearsay provided to him by others. Moreover, his declaration does not even identify who has provided the information on which his declaration is based, when the search was conducted, why the search initially produced no documents, or why the search produced 35 pages of documents only after this lawsuit was filed. These are red flags from which an inference logically can be made that the defendants search was not adequate, that the defendants have not utilized identification or retrieval procedures that were properly designed to locate responsive documents, and that the defendants are not acting in good faith.

As noted in the plaintiffs’ motion to strike, Mr. Hardy’s effort to testify regarding the results of searches conducted in FBI field offices has been rejected for lack of personal knowledge.<sup>1</sup> The defendants say nothing about this problem in their motion for a protective order.

The 33-page Hardy declaration raises other red flags as well. It asserts that “The FBI has processed a total of 35 pages of potentially responsive material to plaintiffs’ October 27, 2011 request. (DE-25-1 ¶4). The declaration then claims that it “provides an explanation of the FBI’s record-keeping system and the procedures used to search for records responsive to plaintiff’s October 27, 2011, request and provides justification for the FBI’s withholding of information from the records.” (DE-25-1 ¶4). What follows, however, raises many serious questions

---

<sup>1</sup> See *Rosenfeld v. U.S. Dep’t of Justice*, No. C 07-03240 MHP, 2008 WL 3925633 at \*12 (N.D. Cal. Aug. 22, 2008) (“there is no evidence that Hardy directly supervises the field offices. And if he does, there is no evidence of the level of contact he has with those offices. Consequently, his declaration with respect to searches conducted at the field offices are inadmissible”).

concerning the nature of the search performed.

In its chronology of plaintiffs' FOIA requests, the declaration states "By letter dated February 7, 2012, the FBI advised plaintiffs that the records they sought are governed by the provisions of the Privacy Act and that disclosure of those records could constitute an unwarranted invasion of personal privacy pursuant to FOIA Exemptions (b)(6) and (b)(7)(C)." (DE-25-1 ¶11). The declaration does not disclose whether the FBI made any search before providing this response.<sup>2</sup> The declaration does, however, go on to state "the FBI informed plaintiffs that while they received a large number of calls concerning suspicious activity in the aftermath of the 9/11 attack, no credible evidence was developed to connect the address at 4224 Escondito Circle, Sarasota, Florida to any of the 9/11 hijackers." (DE-25-1 ¶11). This statement strongly suggests that the FBI had conducted a thorough investigation of suspicious events at 4224 Escondito Circle and that records in the FBI files showed both the calls that had been made, the steps taken to investigate the calls, and the conclusions reached. The FBI produced with this response, however, not a single page of records, and the Hardy declaration provides no explanation of why the FBI did not produce records reflecting the calls that had been made regarding suspicious activity at 4224 Escondito Circle specifically, why it did not produce records reflecting an investigation of those calls, or why it did not produce records reaching the conclusion that "no credible evidence was developed."

The Hardy declaration then recites that after the plaintiffs appealed the FBI's response, the Department of Justice Office of Information Policy noted in its affirmance on May 23, 2012, that "the FBI did conduct a search" that it claimed it was not required to make. (DE-25-1 ¶14).

---

<sup>2</sup> The declaration that in response to plaintiffs' FOIA request "the FBI conducted a search of the [Central Records System]," (DE 25-2 ¶23), but it does not state whether the search took place prior to this lawsuit being filed or afterward.

The Hardy declaration provides no description of this search, when it was made, by whom it was made, how it was made, the number of records found, or why the search was made even though the Department of Justice claimed that it had no obligation to make the search.

From the responses to the request and the response to the appeal it appeared that the defendants were attempting to discourage the plaintiffs from continuing to pursue their requests for records by communicating to them that records showed and investigation of the events in Sarasota had been undertaken and had concluded that the events had no connection to the terrorist activities on September 11, 2001, but without producing the records themselves. This created the appearance that the defendants might be withholding the referenced records because the records might be seen as contradicting the description of the information in the records.

Hardy's declaration further states that six months after the plaintiffs filed this lawsuit that "the FBI released 31 pages to the plaintiffs" on March 28, 2013. (DE-25-1 ¶16). The declaration provides no explanation of whether these documents had been found in the initial search referenced in the appeal letter or, if so, why these documents had not been produced to the plaintiffs at that time. This suggested that the defendants had found the documents previously but had made a decision not to produce them notwithstanding the FOIA requirement to produce them. The defendants' failure to produce the documents prior to the lawsuit being filed forced the plaintiffs to file this lawsuit in order to obtain those documents. This is a strong indication that the defendants have not been acting in good faith because many parties who make requests do not have the resources required to file a lawsuit. The defendants were aware that it was unlikely that the plaintiffs in this case would have resources to file suit because the plaintiffs asked the defendants for a fee waiver. (DE 25-1 ¶¶ 6 & 8).

The Hardy declaration provides the Court with an explanation of the FBI's "Central

Records System” (“CRS”) (DE 25-1 ¶¶ 17-22), and the search for records responsive to plaintiffs request (DE 25-1 ¶¶ 23-24). That description suggests why the FBI has not located hundreds or thousands of records that one might expect the FBI might have that are responsive to the request. The declaration explains that “The mechanism that the FBI uses to search the CRS is the Automated Case Support System (‘ACS’).” (DE 25-1 ¶17). In testimony in February, 2005, before the U.S. Senate Committee on Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, Glenn A. Fine, Inspector General of the U.S. Department of Justice (Attachment 1 and referred to herein as “Fine Testimony”), described the ACS as an “antiquated case management system” and that the Office of Inspector General (OIG) “noted that deficiencies in the ACS system and the way search results were handled within the FBI resulted in incomplete data being provided.” (Fine Testimony at 2). His testimony noted that “Another OIG review issued in March 2002 examined how the FBI had failed to turn over to defense attorneys hundreds of FBI documents that should have been disclosed” in two trials. (Fine Testimony at 2). He reported to Congress that “ACS could not handle or retrieve documents in a useful, comprehensive, or efficient way.” (Fine Testimony 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.” (Fine Testimony at 15).

The FBI’s website reports that as of January 2012, the legacy ACS system had 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>. 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 used to conduct a search for responsive documents.

The Hardy declaration explains that access to the CRS files in FBI field offices is “obtained through the General Indices” which consist of “index cards on various subject matters that are searched either manually or through automated searches.” (DE 25-1 ¶¶ 18 & 19). The General Indices are not a reliable search mechanism because, as the Hardy declaration explains: “The decision to index names other than subjects, suspects, and victims is a discretionary decision made by the FBI Special Agent (“SA”) assigned to work on the investigation, the Supervisory SA (“SSA”) in the field office conducting the investigation, and the SSA at FBIHQ.” (DE 25-1 ¶22).

Because of the inadequacies of the search systems used in this case, a search for documents related to “4224 Escondito Circle” would not produce many of the documents that related to the investigation of events that took place at that address. In order to obtain all responsive documents, it would be necessary to contact the special agents assigned to work on the investigation or the supervisory agents to ascertain how documents related to the investigation were indexed. For example, if documents were not indexed by the street address but rather by variables such as the names of the individuals who resided at or owned the residence at that address -- Abdulaziz al-Hijji, Anoud al-Hijji, Esam Ghazzawi, and Deborah Ghazzawi – the index search would have to be searched by those names. Nevertheless, the Hardy declaration asserts that the FBI confined its search to the following terms as they appear in

the FBI's Electronic Case File, one of three "separately functional, automated applications, that are said by the Hardy declaration to comprise the ACS system:

1. "Address 4224 Escondito Circle Sarasota FL"
2. "Four Two Two Four Escondito Circle"
3. "Escondito Circle"
4. "Escondito AND Sarasota"

(DE 25-1 ¶23). That this search was inadequate is shown by Hardy's declaration which states that the search located just six documents." (DE 25-1 ¶23).

Defendants withheld these documents in their entirety in reliance on FOIA exemptions (b)(6) and (b)(7)(C). Exemption 6 permits the government to withhold all information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." Exemption 7(C) protects 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 constitute an unwarranted invasion of personal privacy." Neither of these exemptions permits the wholesale withholding of records as the FBI did in response to the plaintiffs' request.

Only after this lawsuit was filed did the defendants undertake to correct the inadequacy of this initial search. But Hardy's declaration uses passive grammar and indefinite pronouns to conceal who took further action to locate additional responsive documents. It states, in pertinent part:

Subsequent to learning of this litigation, the Tampa Field Office ('TPFO') was contacted regarding this matter. . . . TPFO canvassed personnel who were directly involved in the 2001 investigation. . . . These personnel familiar with the investigation into 4224 Escondito Circle and/or the prior request from Senator

Graham conducted additional searches of FBI files. Included in this search for files were those specifically related to the 9/11 investigation to determine whether any additional documents existed. The searches conducted by these personnel also 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). The grammar does not reflect who contacted the Tampa Field Office, who at the Tampa Field Office was contacted, who the Tampa Field Office canvassed, how those persons were canvassed, how they conducted additional searches of FBI files, which FBI files were searched, how the searchers identified the files that they searched, or what search terms were used to conduct the “text searches.” In other words, the Hardy declaration effectively makes it impossible for the plaintiffs or the Court to determine the adequacy of the search conducted in the field offices. At a minimum, however, it is clear that no searches were made using the very terms that most likely would have located responsive documents– the names of the owners of and the persons residing at the address that was the subject of the request.

The Hardy declaration does report that “As a result of these searches, fourteen documents, consisting of 35 pages, were located. The 35 pages located as a result of this search included the pages previously located during the administrative phase.” (DE 25-1 ¶24). The defendants then produced redacted versions of 31 of the 35 pages. (DE 25-2 Ex. K). One of the documents, a Tampa FBI Field Office Memo dated April 16, 2002, states:

Details: Pursuant to the investigation into the 09/11/01 terrorist attacks, the Federal Bureau of Investigation in Tampa Division became aware of \_\_\_\_\_ is allegedly a wealthy and successful international businessman. \_\_\_\_\_ and his family resided in a \$530,000.00 in an affluent section of Sarasota, Florida. On or about 08/27/2001, the \_\_\_\_\_ fled their home.

Based upon **repeated citizen calls** following September 11, the FBI and the Southwest Florida Domestic Security task Force became aware of the \_\_\_\_\_ family. Following an inspection of their home by agents of the Southwest Florida Domestic Security Task Force, it was discovered that the \_\_\_\_\_ left their residence quickly and suddenly. They left behind valuable items, clothing, jewelry, and food in a manner that **indicated they fled**

**unexpectedly** without prior preparation or knowledge.

Further investigation of the \_\_\_\_\_ family **revealed many connections** between the \_\_\_\_\_ and **individuals associated with the terrorist attacks on 09/11/2001**. More specifically, a \_\_\_\_\_ family member, \_\_\_\_\_ also known as, \_\_\_\_\_ DOB \_\_\_\_\_ last known address \_\_\_\_\_ \_\_\_\_\_ Florida, was a flight student at Huffman Aviation.

Additionally, \_\_\_\_\_ also known as, \_\_\_\_\_ DOB \_\_\_\_\_ last known address \_\_\_\_\_ Florida, was arrested numerous times by Sarasota County Sheriff's Office. \_\_\_\_\_ lived with flight students at Huffman Aviation.

(DE 25-2 Ex. K at 35-36) (SARASOTA 5-6) (Emphasis added). This document revealed for the first time that public FBI claims that its investigation of 4224 Escondito Circle had found nothing of any import. The defendants justified the redactions from this document and others on the basis of Exemptions 1, 3, 6, and 7, but the Hardy declaration does not explain why these exemptions had not been cited initially.

Other documents among the 31 pages produced reflect that calls to the FBI regarding suspicious activity at 4224 Escondito Circle started just days after September 11, 2001. (DE 25-2 Ex. K at 35-36) (SARASOTA 12-27). Thus, the April 16, 2002, memo was a product of seven months of investigative work that took place in the aftermath of September 11. Because that investigative work uncovered "many connections" between the persons under investigation in Sarasota "and individuals associated with the terrorist attacks on 9/11/2001," it appeared that the FBI would have numerous records relating to the investigation, including items such as records of the "repeated citizen calls," an inventory of items found in the home, interviews of neighbors or others who may have known the persons under investigation, payments made to the homeowners' association for the gated Prestancia Estates subdivision, gatehouse records, telephone records, and interviews of employees of Huffman Aviation. But the defendants' production contained none of these items.

Thus, it is clear the FBI did not conduct an adequate and good faith search or did not produce many documents that would be responsive to the plaintiffs' request.

The Plaintiffs' Evidence Regarding Search Adequacy

The plaintiffs could have opposed summary judgment and sought discovery from the defendants on the basis of the inadequacies of the Hardy declaration alone. They went further, however, and submitted their own detailed declarations showing the FBI had not conducted an adequate search and was not acting in good faith.

The plaintiffs' declarations were from (1) former U.S. Senator D. Robert Graham who had chaired the congressional Joint Inquiry into intelligence community activities before and after the terrorist attacks of September 11, 2001 (DE 29-5), (2) Jone Weist, administrator for the Prestancia Estates homeowners' association (DE 29-3), (3) Larry Berberich, a senior administrator and security officer for Prestancia Estates (DE 29-2), (4) Patrick Gallagher, a man who resided next to 4224 Escondito Circle (DE 29-1), and (5) Dan Christensen, one of the plaintiffs in the case (DE 29-4). Together these declaration show that the FBI collected documents during its investigation that have neither been produced, identified, nor claimed to be exempt.

Sen. Graham's declaration shows that the defendants have not acted in good faith. He states that the Joint Inquiry attempted to obtain from the FBI documents regarding all of the work that it had done investigating the events of September 11 (DE 29-5 ¶14), that that FBI failed to tell the Joint Inquiry about its 4224 Escondito Circle investigation (DE 29-5 ¶¶ 20-23), that "the FBI was not forthcoming with the Joint Inquiry regarding its Sarasota investigation" (DE 29-5 ¶27), and that the FBI's actions "interfered with the Inquiry's ability to complete its mission." (DE 29-5 ¶53). When Sen. Graham reviewed the 31 pages of redacted documents that

the defendants produced after this lawsuit was filed, he testified through his declaration:

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. As is apparent from the small number of documents released, this was not an investigation of run-of-the-mill criminal matters it related to matters of paramount national importance.

(DE-29-5 ¶51). Sen. Graham also testified in his declaration that the 31 pages produced to the plaintiffs did not include one of the documents that the FBI had shown him when he asked it for documents relating to its Sarasota investigation. (DE-29-5 ¶51).

Jone Weist's declaration reflects that she produced documents to the FBI the "monthly and quarterly checks that had been received for payment of the homeowners' association dues on the property at 4224 Escondito Circle." (DE-29-3 ¶11). The defendants have not produced, identified, or claimed these documents to be exempt.

Dan Christensen's declaration shows that FBI agent Leo Martinez participated with the Florida Department of Law Enforcement in an interview of Wissam Hammoud on April 7, 2004, in which Hammoud stated that Abdulaziz al-Hijji, a resident of 4224 Escondito Circle, told him that that about taking flight training at the Venice Airport, that Osama Bin Laden was his hero, and that he was going to Afghanistan to become freedom fighter or Mujahedin and wanted Hammoud to join him. (DE 29-4 ¶55). The FBI did not produce any documents relating to this interview although such documents would be responsive to plaintiffs' request.

#### The Discovery Requests Made

Plaintiffs propounded 24 interrogatories (DE 33-1) and one request for documents (DE 33-2) to the defendants on May 20, 2013. The limited interrogatories were designed to obtain information that would allow the plaintiffs and the Court to assess whether the defendants had conducted a good faith search and whether the defendants had properly asserted exemptions for

documents or portions of the documents that they admittedly had located and withheld as exempt.

Interrogatories 1 and 2 ask the defendants to describe the steps, if any, they took to locate the requested documents, and to identify each document that they located in response to the plaintiffs' requests. (DE 33-1 at 4-5). As used in the interrogatories the term "identify" was defined to mean state:

- a. the date of the document;
- b. the number of pages in the document;
- c. the title, label, file number, or other identifying description of the document;
- d. the type of document, such as letter, memorandum, chart, or other descriptive term;
- e. the author of the document;
- f. the person(s) to whom the document was addressed or sent; and the present and last known location and custodian of the document.

Interrogatory 3 and 4 point out that the defendants' response to the plaintiffs' FOIA request and the denial of their appeal, the defendants asserted that the FBI did not "develop credible evidence that connected the address at 4224 Escondito Circle . . .to any of the 9/11 hijackers." The interrogatories asks for identification of the records reviewed in connection with the formulation of that statement.

Interrogatory 5 asks the defendants whether they searched for documents before filing initial disclosures on January 9, 2013, stating that they had found no documents responsive to plaintiffs' FOIA request. The answer to this would bear on whether the defendants have been acting in good faith.

Interrogatory 6 notes that the Hardy declaration states at paragraph 24 that "a prior

Congressional request from Senator [Bob] Graham related to 4224 Escondito Circle” and ask the defendants to identify each document that they provided to Senator graham in response to that request.

Interrogatory 7 notes that the Hardy declaration asserts at paragraph 25 “the FBI took the extraordinary step of reviewing potentially responsive cross-reference material” and asks the defendant to identify that “potentially responsive” material.

In an email to a reporter on September 15, 2011, FBI Special Agent in Charge Steven E. Ibison, Tampa Field Office, stated that “The FBI did follow up on the information about suspicions surrounding the referenced Sarasota home and family.” Interrogatory 8 asks for identification of the documents that FBI received or created in the course of the follow up.

Interrogatory 9 asks for identification of documents regarding the Sarasota investigation that the FBI publicly claimed that it had made available to the Joint Inquiry Into the Terrorist Attacks of September 11, 2001, by the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence.

Interrogatory 10 asks the defendants to identify the documents reviewed in connection with its production of 31 pages of documents produced on March 28, 2013, and the name and title of all persons who participated in the formulation of the response.

Interrogatory 11 asks for identification of the “Other Government agency” that the defendants state that they consulted in connection with their production of documents on March 28, 2013.

Interrogatory 12 refers the defendants to the document marked SARASOTA 5-6 and asks for identification of all documents in their possession or control that show the “many connections” referenced in the document.

Interrogatories 13 and 14 ask whether the FBI reviewed Prestancia gatehouse records and telephone records and, if so, who has possession or control of those records.

Interrogatory 15 seeks basic information concerning the decision to classify portions of the documents that have been released.

Interrogatory 16 asks for identification of the 4 pages of documents that the defendants have located and withheld in their entirety. The identification would provide basic information such as the date of the document, the author of the document, and the recipient of the document.

Interrogatory 17 asks for identification of documents delivered to the FBI by Jone Weist, the Prestancia subdivision manager who has stated in her declaration that she provided documents to the FBI in connection with its investigation of 4224 Escondito Circle.

Interrogatory 18 asks for the amount of time that Mr. Hardy spent formulating his declaration.

Interrogatory 19 seeks identification of documents reflecting statements by or about Wissam Hammoud and relating to persons who resided at or owned the home at 4224 Escondito Circle. Florida Department of Law Enforcement records reflect that Mr. Hammoud provided a statement to the FDLE in 2005 indicating that he had known Abdulaziz al-Hijji for a long period of time, that Osama Bin Laden was a hero of Mr. al-Hijji's, and that Mr. al-Hijji had said that he planned to become a freedom fighter in Afghanistan. (DE 29-4 ¶53).

Interrogatory 20 asks for identification of documents in the defendants' possession or control relation to Esam A. Ghazzawi, Esam Arabian Project Est., Deborah G. Ghazzawi, Anoud Esam Ghazzawi, or Abdulaziz A. Al-Hijji.

Interrogatory 21 asks the defendants to identify any documents that have been destroyed relating to an investigation of the persons who resided at or owned the home at 4224 Escondito

Circle. Interrogatory 22 asks for the reasons of destruction of documents.

Interrogatory 23 seeks information concerning the whereabouts of documents relating to the investigation of 4224 Escondito Circle that are not in the possession of the defendants.

Interrogatory 24 asks for an explanation of the apparent contradiction between the FBI's public statements that its investigation found no credible evidence that persons living at or owning the residence at 4224 Escondito Circle had connections to the persons who carried out the terrorist attacks and the statements in the documents marked SARASOTA 5-6 that the FBI found many such connections.

The one request for documents asks the defendants to produce documents that are identified in their interrogatory answers.

## ARGUMENT

### I.

#### Defendants Should be Required to Answer the Interrogatories

Instead of responding to each of the interrogatories by asserting appropriate objections, the defendants have asserted a blanket objection by asking for protective order excusing them from any obligation even to respond to the interrogatories on an individual basis. Neither the United States Government nor the Eleventh Circuit generally tolerates blanket objections to discovery requests. *See In re Grand Jury Subpoena. Appeal of United States of America*, 831 F.2d 225, 226-27 (“Blanket asserts of privilege before a district court are usually unacceptable”) (quoting *United States v. Davis*, 636 F.2d 1028, 1044 n.20 (5<sup>th</sup> Cir. 1081)). The blanket objection here should not be tolerated here. Instead, the defendants should be directed to respond to each of the propounded interrogatories.

Defendants ask to be excused, asserting that plaintiffs are engaging in speculation

regarding the existence of additional responsive documents or the lack of good faith. To the contrary, the declarations on file affirmatively show that the defendants have not produced responsive documents that are in their possession and that they have not acted in good faith from the outset when they responded to the FOIA request by producing nothing, forcing the plaintiffs to file this lawsuit to obtain the few documents that have been produced. Moreover, when the defendants belatedly produced those documents, they contradicted the public statements that the FBI had made concerning the results of its Sarasota investigation. That production also showed that the FBI had not been forthcoming with Congressional inquiries as asserted by Sen. Graham.

In short, this is an extraordinary case warranting extraordinarily close judicial scrutiny of the actions taken by the defendants to locate and produce documents required by the FOIA to be produced and in asserting exemptions to redact and withhold documents. Responses to the interrogatories propounded will assist the plaintiffs and the Court in evaluating the plaintiffs' actions.

Defendants also contend that they should not be required to respond to discovery because the records "contain privacy-protected information regarding individuals associated with the investigation," "classified information, information protected from disclosure by statute, confidential source information, and information regarding investigative techniques and procedures." (DE-33 at 5). These bare assertions do nothing to explain why the defendants withheld documents that should have been produced before the filing of this lawsuit, why the defendants have not produced or claimed to be exempt responsive documents known to be in their possession, why the defendants have used a search program to locate documents that the FBI itself has admitted to be archaic and inadequate, or why the defendants should be excused from providing discovery that would not disclose the contents of documents claimed by them to



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on July 6, 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

SERVICE LIST

Thomas R. Julin, Esq.  
Patricia Acosta, Esq.  
Hunton & Williams LLP  
[tjulin@hunton.com](mailto:tjulin@hunton.com) / [pacosta@hunton.com](mailto:pacosta@hunton.com)  
1111 Brickell Avenue, Suite 2500  
Miami, Florida 33131  
Tel: (305) 810-2516 Fax 1601  
Counsel for Plaintiffs, Broward Bulldog, Inc., and Dan Christensen

Carole M. Fernandez  
Assistant U.S. Attorney  
[Carole.Fernandez@usdoj.gov](mailto:Carole.Fernandez@usdoj.gov)  
99 N.E. 4th St., Suite 300  
Miami, Florida 33132  
Tel: (305) 961-9333  
Fax: (305) 530-7139  
Counsel for Defendants, U.S. Department of Justice and Federal Bureau of  
Investigation