

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 12-cv-61735-WJZ

BROWARD BULLDOG, and)
DAN CHRISTENSEN,)
)
Plaintiffs,)
)
v.)
)
U.S. DEPARTMENT OF JUSTICE, and)
FEDERAL BUREAU OF INVESTIGATION,)
)
Defendants.)
_____)

THIRD DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), located in Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) This is the Third Declaration I have submitted in this case and incorporates the previous two declarations I submitted, dated May 9, 2013 (the “First Hardy Declaration”), and April 16, 2014 (The “Second Hardy Declaration”).

(3) I am familiar with the FBI’s responses to plaintiffs’ FOIA request in litigation

before this Court seeking access to records of a purported investigation pertaining to the address 4224 Escondito Circle, near Sarasota, Florida. I am also familiar with this Court's recent Order of April 4, 2014 (DE 60) (hereinafter, the "Order") and this Court's subsequent Order of April 18, 2014, Granting in part, and Denying in part, Defendants' motions for enlargement of time to make *in camera* submissions and partial reconsideration of search matters (hereinafter, the "Subsequent Order").

(4) The purpose of this declaration is two-fold: to provide additional information about the methodology employed to produce the entire Tampa Field Office PENTTBOM sub-file for *in camera* inspection which may assist the Court in its review, and explain the release of documents determined to be responsive (4 pages) to plaintiffs based on a manual review of the redacted file previously provided to the Court for *in camera* review per the Order.

**METHODOLOGY OF PRODUCTION OF THE TAMPA SUB FILE
(265D-NY-280350-TP) TO THE COURT**

(5) The Court's Order required the FBI to "provide photocopies of all documents containing the universal case file number 265D-NY-280350-TP," Order, pg. 22, which the Court graciously extended until noon, April 25, 2014 with production of the file in searchable format CDs by noon, May 2, 2014. As I advised the Court following its Order, the Tampa sub file was shipped by the FBI Tampa Field Office to the FBI Document Laboratory ("Doc Lab") in Winchester, Virginia in 23 boxes. Second Hardy Declaration, ¶ 9. Upon receipt, the file was removed from these boxes, prepared for digital conversion scanning, and scanning commenced immediately thereafter. See *Id.* The file itself, as received, was classified at the "Secret" level as it contains classified material at the "Secret" level interspersed throughout. Essentially, the FBI Doc Lab and RIDS personnel in Winchester took the file as they found it and did not undertake a process to segregate unclassified material from classified material as such would have unilaterally

altered the integrity of the file before its production to the Court. The result of Doc Lab's scanning of each page of the Tampa sub file for digital conversion produced a total of 80,266 pages of material.¹ The scanning process subdivided the 80,266 page file into 411 individual document sections. These 411 sections were burned to three CDs in .pdf searchable format. To comply with the Court's Order and Subsequent Order to produce material in hard-copy format, my staff worked over the weekend of April 19-20 to print, assemble, mark, and prepare the 80,266 page file for shipment to the U.S. Attorney's Office, Southern District of Florida ("USAO, SDFL") for the Court's *in camera* inspection. The 80,266 pages printed in hard-copy format were organized to retain the integrity of the 411 sections and were assembled in the same order as the sections appear digitally on the three CDs. To assist with identification between the hard copy and digital versions on CD, the FBI prepared cover pages for each of the 411 sections of the file, inserted a classified cover sheet behind each cover page, and assembled the material in boxes for shipment. Thus, the 80,266 page file plus 411 cover pages for identification and 411 classified cover pages (an additional 822 pages total) were assembled for the Court's inspection. The classified cover pages are required by Executive Order 13,526 as implemented by government protocols for the marking, handling, and shipment of records that contain classified material.²

¹ This is the precise number of pages of the file as identified via the Doc Lab digital conversion process. As noted earlier, the FBI initially estimated that there were approximately 92,000 pages. Second Hardy Declaration, ¶ 6. As characterized, the 92,000 page approximation was only an estimate.

² Executive Order 13,526, Classified National Security Information, December 29, 2009, Section 5, as implemented by the ISOO Implementing Directive for Executive Order 13526, June 25, 2010. The highest level of classification is determined by the highest level of any one portion within a document. ISOO Implementing Directive Pursuant to Executive Order 13526, Subpart C. Additionally, classified information, regardless of its form, shall be afforded a level of protection against loss or unauthorized disclosure commensurate with its level of classification. ISOO Implementing Directive Pursuant to Executive Order 13526, Subpart E. As further required by the FBI, the compilation of classified information will be classified, as a minimum, at the highest classification among the aggregated data. FBI National Security Information Classification Guide, March 1, 2013. Therefore, the entire Tampa sub file is marked and stored at the highest classification level, in this case at the "Secret" level.

This reassembly and packaging process resulted in 27 boxes of material.³ The FBI shipped the 27 boxes to the USAO, SDFL office on April 22, 2014. Also, the FBI shipped the CD copy of the Tamp sub file to USAO, SDFL on April 29, 2014 and has been advised the Court has received them.

**MATERIAL LOCATED THROUGH A MANUAL SEARCH
OF THE REDACTED FILE PROVIDED FOR *IN CAMERA* INSPECTION**

(6) Upon manual review of the redacted file that was provided to the Court for *in camera* review on April 18, 2014 per its Order, the FBI determined that four (4) additional pages are responsive to plaintiffs' request. Two (2) of these pages comprise report excerpts from the first serial in the redacted file (SarasotaManualR-36 - 37); two (2) of these pages comprise copies of the administrative envelopes (SarasotaManualR-38 - 39) that were attached to the second serial in the redacted file (Sarasota-7 - 8). These pages were not located in the initial search which used the 4224 Escondito Circle address search criteria as described in the First Hardy Declaration ¶¶ 23-24 because these pages do not reference that specific address. Also, as relevant to the copies of the envelopes, the substantive records within the envelopes, consisting of three (3) pages, were previously released to plaintiffs (Sarasota-9 - 11). The FBI has processed these four (4) pages, segregated non-exempt information from exempt information, and applied FOIA Exemptions to withhold exempt material as identified on the pages. Consistent with the Order, ¶ 7, these four (4) pages are being released to Plaintiffs under separate cover dated May 9, 2014. (**See Exhibit A.**)

CONCLUSION

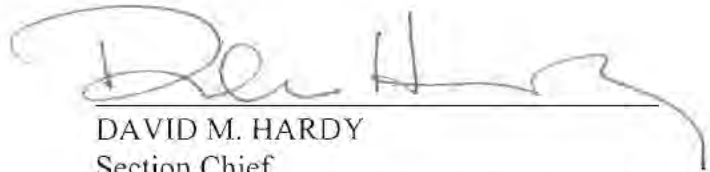
(7) The FBI has produced the Tampa sub file (265-NY-280350-TP) for the Court's

³ The 23 boxes received from Tampa measured 18x12x12. The boxes used by the FBI to transport the photocopies of file 265D-NY-280350-TP were smaller and measured 15x12x9. Thus, the additional 822 pages of cover sheets and the smaller box size account for the difference between the 23 boxes received and the 27 boxes shipped. An 80,266 page file was received from Tampa, and the 80,266 page file was produced.

inspection in hard copy and digital (CD) format. The FBI has processed and will release to plaintiffs four (4) pages from the redacted file previously provided to the Court *in camera*.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibit A attached hereto is a true and correct copy.

Executed this 9th day of May, 2014.



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

IN THE
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SOUTHERN DISTRICT OF FLORIDA

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Defendants.)
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Exhibit A

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

May 9, 2014

MR. DAN CHRISTENSEN



FOIPA Request No.: 1176403-003
Subject: ADDRESS 4224 ESCONDITO CIRCLE
SARASOTA FL (2001-2003)
*****IN LITIGATION*****

Dear Mr. Christensen:

The enclosed documents were reviewed under the Freedom of Information Act (FOIA), Title 5, United States Code, Section 552. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

Section 552		Section 552a	
<input type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)	
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (j)(2)	
<input type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)	
_____	<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)	
_____	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)	
_____	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)	
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)	
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)	
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)	

4 pages were reviewed and 4 pages are being released.

Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:

- referred to the OGA for review and direct response to you.
- referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

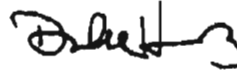
In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosures (2)

In response to your FOIA request, these 4 additional pages were located via manual review of the case file--case file number redacted--referenced in the Court's Order of April 5, 2014, page 22, ¶ 3. These pages are not part of the manual review of file number 265D-NY-280350-TP (the Tampa PENTTBOM sub file).

Duplication fees are assessed at the rate of ten cents per page, with the first 100 pages being free of charge. In addition, there are no fees assessed if the search and duplication costs for the remaining pages do not exceed \$14.10. Therefore, the enclosed documents are being forwarded to you at no charge.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ

~~SECRET~~ (U)
FEDERAL BUREAU OF INVESTIGATION

b7E

[REDACTED]

[REDACTED]

DECLASSIFIED BY: c28w34b64 NSICG
ON 08-06-2014

b6
b7C
b7E

[REDACTED]

b6
b7C
b7E

[REDACTED] DATED 04/03/2002

A SEARCH WAS CONDUCTED OF THE RESIDENCE OF [REDACTED] IN AN AFFLUENT SECTION OF SARASOTA FL. [REDACTED] IS ALLEGEDLY A WEALTHY INTERNATIONAL BUSINESSMAN. IT WAS DISCOVERED THE [REDACTED] FAMILY HAD APPARENTLY LEFT THEIR RESIDENCE, VALUED AT MORE THAN 500 THOUSAND DOLLARS, QUICKLY AND SUDDENLY. THEY LEFT BEHIND EXPENSIVE ITEMS INCLUDING CLOTHIN JEWELRY AND FOOD IN A MANNER SUGGESTING THAT THEY FLED UNEXPECTEDLY WITHOUT PRIOR PREPARATION AND PERMANENTLY.

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b7C

*****END OF REPORT*****

~~SECRET~~ (U)
CLASSIFIED BY 23
DECLASSIFY BY X1

PAGE 1

~~SECRET~~ (U)
FEDERAL BUREAU OF INVESTIGATION
[Redacted]

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[Redacted]

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b7E

*****CASE NARRATIVE*****

[Redacted]

[Redacted]

b7E

DATE-INFO: 04/16/2002

[Redacted] IS ALLEGEDLY A WEALTHY INTERNATIONAL BUSINESSMAN. ON OR ABOUT 8/27/01 HIS FAMILY FLED THEIR HOUSE IN SARASOTA LEAVING BEHIND VALUABLE ITEMS IN A MANNER INDICATING THEY LEFT QUICKLY WITHOUT PRIOR PREPARATION. THIS FOLLOWED AN INSPECTION OF THE HOME BY AGENTS OF THE SOUTHWEST FLORIDA DOMESTIC SECURITY TASK FORCE. FURTHER INVESTIGATION REVEAL MANY CONNECTIONS BETWEEN THE [Redacted] FAMILY AND INDIVIDUALS ASSOCIATED WITH THE TERRORIST ATTACKS ON 9/11/01.

b6
b7C

[Large Redacted Block]

b6
b7C
b7E

DECLASSIFIED BY n28w34b64
ON 05-05-2014

~~SECRET~~ (U)
CLASSIFIED BY G-3
DECLASSIFY BY X1

SarasotaManualR-2

FD-340 (Rev. 8-7-97)

Universal Case File Number [redacted] - 1A¹ b7E

Field Office Acquiring Evidence TP

Serial # of Originating Document 2

Date Received 7/23/02

From (Name of Contributor)

(Address of Contributor)

(City and State)

By [redacted] b6 b7C
(Name of Special Agent)

To Be Returned Yes No

Receipt Given Yes No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)

Federal Rules of Criminal Procedure

Yes No

Title: ESAM GHAZZAWI

Reference: (Communication Enclosing Material)

Description: Original notes re interview of:

copy of letter from [redacted] to [redacted]

[redacted] re: [redacted] and [redacted]

copy of list of phone numbers from [redacted] b6 b7C

[redacted] re: [redacted] and [redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-05-2014 BY 62863 JDB/ML NSI/CC

SarasotaManualR-4