

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-61735-CIV-ZLOCH

BROWARD BULLDOG, INC., a
Florida corporation not for profit; and
DAN CHRISTENSEN, founder, operator
and editor of the BrowardBulldog.com website,

Plaintiffs,

vs.

U.S. DEPARTMENT OF JUSTICE and
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

DEFENDANTS' STATEMENT OF UNCONTROVERTED MATERIAL
FACTS IN SUPPORT OF RENEWED MOTION FOR SUMMARY JUDGMENT

Defendants U.S. Department of Justice and Federal Bureau of Investigation, file their Statement of Uncontroverted Material Facts in Support of their Renewed Motion for Summary Judgment, and state:

1. On or about September 26, 2011, plaintiff Dan Christensen submitted to the Federal Bureau of Investigation (FBI) a Freedom of Information Act request, asking the FBI for “a search of the FBI’s indices to the Central Records System and the filing system of the bureau’s Tampa Field office for information pertaining to a closed anti-terrorism investigation into the activities of Saudi nationals who lived in and/or owned a residence at 4224 Escondito Circle, near Sarasota, Florida prior to 9/11.” D.E. 1-5. The request went on to name four individuals, Essam Ghazzawi; Deborah Ghazzawi; Abdulazziz al-Hijii; and Anoud al-Hijii, who purportedly resided at that location.

2. On October 6, 2011, David M. Hardy, Section Chief, FBI Record/Information

Dissemination Section, Records Management Division. acknowledged by letter plaintiff's request. Mr. Hardy told plaintiff that, since his request sought records concerning third parties, and there was no indication the third parties consented to release of information pertaining to them, plaintiff would be required to submit additional information. D.E. 1-6. Plaintiff could provide evidence that the third party was dead, or provide a Certificate of Identity completed by the third party.

3. On October 27, 2011, plaintiff Christensen submitted a letter modifying his earlier FOIA request. D.E. 1-7. The letter requested "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."

4. On February 7, 2012, the FBI responded to plaintiffs' FOIA request. D.E. 1-11. Referring to the Privacy Act and FOIA, the FBI advised plaintiff that "we have determined that disclosure of the records you have requested could constitute an unwarranted invasion of personal privacy, and as such, would be exempt from disclosure pursuant to exemptions (b)(6) and/or (b)(7)(C) of the FOIA."

5. On February 23, 2012, plaintiff filed his appeal to the U.S. Department of Justice, Office of Information Policy. D.E. 1-12.

6. On May 23, 2012, the DOJ denied plaintiffs' appeal. D.E. 1-13.

7. The search for documents responsive to plaintiffs' FOIA request was personally supervised by Michael G. Seidel, Assistant Section Chief, Record/Information Dissemination Section (RIDS), Records Management Division, Federal Bureau of Investigation, Winchester,

Virginia. Exhibit C, Declaration of Michael G. Seidel (“Seidel Decl.”), ¶ 4. At the time, Mr. Seidel was the Unit Chief of the RIDS’ Litigation Support Unit (LSU). Id., ¶ 3.

8. During the administrative phase of plaintiffs’ October 27, 2011 FOIA request, the FBI conducted a search of the Central Records System, to identify all potentially responsive main and cross reference files indexed under the terms: “Address 4224 Escondito Circle Sarasota FL” and “Four Two Two Four Escondito Circle.” Id., ¶ 5. The FBI also conducted additional text searching of the Electronic Case File, to identify all potentially responsive main and cross-reference files indexed under the search terms “Escondito Circle” and “Escondito AND Sarasota.” These searches yielded six documents. Due to privacy concerns, these pages were withheld in full during the administrative phase of the request. Id.

9. After the lawsuit was initiated, the RIDS contacted the FBI Tampa Field Office, since that office would handle any investigations in the Sarasota area. Seidel Decl., ¶ 6. FBI personnel in the Tampa office were canvassed to locate persons who had participated in the 2001 investigation of allegedly suspicious activity at 4224 Escondito Circle. Also, persons directly involved in answering congressional requests from Senator Graham related to the previous occupants of 4224 Escondito Circle were queried. These individuals informed the Litigation Support Unit that they searched through records gathered to respond to the congressional inquiry; conducted text searches in ECF of all known names, addresses and telephone numbers for the occupants at that address; searched through the Tampa Field Office PENTTBOM sub-file (265D-NY-280350-TP), and their personal e-mails. Id. This search yielded 14 documents, consisting of 35 pages. On March 28, 2013, these pages were disclosed to plaintiffs as Sarasota 1-35.

10. Upon receipt of the Court’s April 4, 2014 Order, the Litigation Support Unit

personnel conducted a line-by-line review of the redacted file. Seidel Decl., ¶ 7. This search located an additional 4 pages of responsive material. On May 9, 2014, the FBI released these with a “SarasotaManualR” prefix. They are now denominated Bulldog 36-39. These pages were not located during the initial search as they did not contain the address of the residence.

11. After receiving the Order, RIDS contacted the Tampa Field Office to coordinate the shipping of the entire Tampa Field Office PENTTBOM sub-file, which consisted of over 80,000 pages, to Winchester, Virginia. Seidel Decl., ¶ 8.

12. The Litigation Support Unit drafted instructions for manually searching the sub-file. Search terms were created based upon the FBI’s knowledge of the investigation, along with the terms ordered by the Court. Id., ¶ 9. The specific search terms used for the manual search were:

- a. Esam Ghazzawi
- b. Abbas F. Ghazzawi
- c. Deborah Ghazzawi
- d. Abdulaziz al-Hijji
- e. Anound al-Hijji
- f. 4224 Escondito Circle, Sarasota, FL

13. RIDS employees were assigned sections of the sub-file in which they were to search for these specific terms. Id., ¶ 10. LSU personnel created a search slip for each section of the sub-file and RIDS employees were then given the search slip for their corresponding assigned section. As each employee reviewed their section, the employee would record whether any of the specific search terms or a variation thereof, were located, along with the amount of time they spent reviewing each section and the number of pages each section contained. If any employee found any of the search terms during their search, they were to write down the serial number of the document(s) on the search slip. If no search terms were located in an assigned section, the employee placed a “no records” notation on the search slip for that section. All search slips were returned to LSU for final review; LSU made the final determination of whether a record was

responsive to plaintiffs' FOIA request. The employees were told that, if they were in doubt whether a term met the search criteria, they were to err on the side of inclusion and notate it on the search slip, so that LSU could make the final determination. In total, 127 RIDS employees spent approximately 596 hours conducting a page-by-page, line-by-line review of the sub-file for the search terms.

14. This manual search yielded 31 pages of documents not previously released to plaintiffs. Seidel Decl., ¶ 11. On June 6, 2014, these pages were released to plaintiffs and contained a "SarasotaTPSub" prefix. They are now denominated Bulldog 40-70. The LSU conducted a cross check by doing a text search of copies of the CDs of the sub-file that were prepared for the Court's review. This additional text search resulted in no new documents located.

15. Text searches of 28 terms provided by the Court were also conducted. Seidel Decl., ¶ 12. Each term was searched in the Sentinel and ACS systems, pursuant to the Court's order. The FBI placed these text searches into three distinct categories: (1) third party names (those that the search alone pierces individual privacy interests); (2) geographical terms (those that the search alone does not pierce individual privacy interest); and (3) global search terms (those that trigger redundant and burdensome searches). Id., ¶ 13,

16. The third party name text search yielded an additional 4 documents, totaling 11 pages, which were responsive to plaintiffs' request. Seidel Decl., ¶ 15. On June 27, 2014, these documents were released to plaintiff, bearing the "SarasotaTrdPty" prefix. They are now denominated Bulldog 71-81.

17. The text search using the geographical terms identified no additional material responsive to the request. Seidel Decl., ¶ 16.

18. The text search for global search terms generated over 1,300 hits. Seidel Decl., ¶ 17. LSU manually reviewed each document containing these “hits” to determine if the document was responsive to plaintiffs’ FOIA request. This review took approximately 45 hours to complete due to the number of “hits” generated. These searches yielded no additional material responsive to plaintiffs’ request.

19. The FBI located and identified 81 pages which were responsive to plaintiffs’ request, as a result of the multi-faceted searches conducted. 35 pages were released to plaintiffs on March 28, 2013. The additional manual and text searches ordered by the Court yielded an additional 46 pages.

20. The information withheld from plaintiffs under Exemption 1, 5 U.S.C. § 552(b)(1), are classified at the “Secret” level pursuant to Executive Order 13526, § 1.4. Fifth Hardy Decl., ¶ 24.

21. The documents responsive to plaintiffs’ October 27, 2011 FOIA request relate to the FBI’s investigation into the residence at 4224 Escondito Circle. This falls within the FBI’s performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats. Fifth Hardy Decl., ¶ 39.

22. The intelligence activities and methods withheld in this case are still used by the FBI today to gather intelligence information. Fifth Hardy Decl., ¶ 27.

DATED: November 27, 2017

Respectfully submitted,

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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 27, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Dexter A. Lee
DEXTER A. LEE
Assistant U.S. Attorney

SERVICE LIST

Broward Bulldog, Inc. v. U.S. Department of Justice, FBI,
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United States District Court, Southern District of Florida

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