

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.)
_____)

Response to the Defendants' Statement of Uncontroverted
Material Facts in Support of Renewed Motion for Summary Judgment

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Plaintiffs, Broward Bulldog, Inc. and Dan Christensen (collectively, “the Bulldog”) respond to the defendants’ Statement of Uncontroverted Material Facts as follows:

Facts Alleged by the Defendants to be Uncontroverted

1. Fact 1 set forth by the defendants, the U.S. Department of Justice and the Federal Bureau of Investigation (collectively, “the FBI”), contains several inaccuracies. The Freedom of Information Act (“FOIA”) request submitted to the FBI on September 26, 2011, was submitted by Dan Christensen on behalf of himself and Broward Bulldog, Inc., DE-29-4 ¶ 66, not simply by Christensen. The FOIA request, DE-1-5, did name four individuals, but the FBI has not spelled the names of two of the individuals in the same way that they were spelled in the request. The names set forth in the request are Abdulaziz al-Hijji and Anoud al-Hijji (with two “j’s”), not Abdulaziz al-Hijii and Anoud al-Hijji (with one “j”).

2. Fact 2 is not controverted.

3. Fact 3 is controverted in that it does not set forth the complete referenced request. DE-1-7. Specifically, the FOIA request also sought “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.”

4. Facts 4 through 6 are not controverted.

5. Fact 7 asserts that the search for documents responsive to plaintiffs’ FOIA request was personally supervised by Michael G. Seidel. On May 20, 2013, plaintiffs propounded interrogatories to the FBI asking, among other things, the FBI to describe the steps it took to locate the requested documents. DE-33-1 at 4. The FBI moved for a protective order, asserting no discovery should be allowed in this action. DE-33. The Court granted the motion on March 31, 2014. DE-58 at 3 ¶3. The Bulldog has not, therefore, had an opportunity to determine whether Fact 7 is accurate. It controverts the fact on this basis.

6. Fact 8 purports to set forth facts relating to how the FBI searched for responsive documents. The Bulldog controverts this fact on the same basis as set forth in paragraph 5, specifically, that it has not been able to conduct discovery on this issue.

7. Fact 9 purports to set forth facts relating to how the FBI searched for responsive documents. The Bulldog controverts this fact on the same basis as set forth in paragraph 5, specifically, that it has not been able to conduct discovery on this issue. The Bulldog also controverts that the FBI disclosed the 35 pages of records which it claims that its search yielded. David M. Hardy's first declaration admits that the FBI withheld four pages of those records in their entirety and reflects that the FBI redacted significant portions of the pages released. DE-25-1 & 25-2.

8. Facts 10-20 describe actions taken by the FBI in response to the Court's April 4, 2014, order to conduct a further search. The Bulldog controverts these facts on the same basis as set forth in paragraph 5, specifically, that it has not been able to conduct discovery on this issue.

9. The Bulldog does not controvert that the documents attached to the Fifth Declaration of David M. Hardy and now marked as BULLDOG-1 through 81 are the documents that were released to the Bulldog over the course of this litigation, but notes that the FBI has substantially altered its identification of the basis for the redactions it has made from when it initially produced the documents. For example, the last paragraph on BULLDOG-5-6 (originally SARASOTA-5-6) was redacted in its entirety when originally released in reliance on FOIA Exemptions 1, 3, 6, and 7C. DE-25-2 at 36. The document also contained a stamp on its first page dated March 14, 2013, indicating that a portion of the document had been classified pursuant to Executive Order 13,526 Sec. 1.4(c) on grounds that disclosure of the redacted information would reveal "intelligence activities (including covert action), intelligence sources or methods, or cryptology." DE-25-2 at 35. The stamp indicated the information would not be declassified for 25 years. The FBI has now withdrawn its claim of classification and all bases for the redaction. The FBI therefore should be ordered to lift that redaction to that document. The

re-release of this document also shows that in this case the FBI has claimed that information is classified when there was no basis to make that claim.

10. Fact 20 asserts information withheld under FOIA Exemption 1 is classified at the “Secret” level. The Bulldog controverts this because it has been unable to take discovery and because the FBI has admitted a prior claim of classification had no basis. DE-97-1 ¶ 9.

11. Fact 21 states that the FBI’s response to the FOIA request for records relating to its Sarasota investigation “falls within the FBI’s performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats, citing Fifth Hardy Dec. ¶ 39, DE-97-1. This assertion is inconsistent with the FBI’s public statements that its investigation found no connections to any threat to the United States or to the 9/11 plot. Julin Dec. ¶¶ 28 & 50 (quoting the FBI’s statements to *The Miami Herald* and *Tampa Bay Times*). Hardy’s declaration ignores this inconsistency. The Bulldog controverts Fact 21 on this basis and on the basis that it has not been permitted to take discovery in this case.

12. Fact 22 asserts the intelligence activities and methods in this case are still used by the FBI today, but does not assert that disclosure of them here could reasonably be expected to allow the evasion of law enforcement, as is required under Exemption 7C.

Additional Uncontroverted Facts

The FBI’s Statement of Uncontroverted Facts not only contains controverted facts, it entirely ignores most of the facts that are relevant to whether the FOIA exemptions the FBI has asserted allow its withholding and redaction of responsive records. It also ignores that these facts create such a substantial likelihood that the FBI is unlawfully withholding responsive non-exempt records that discovery, subject to appropriate limitations, should be permitted. Those additional facts are as follows:

13. Well before the Bulldog began its reporting about 9/11, Sen. Bob Graham, co-chair of the Joint Intelligence Committee Inquiry into 9/11, expressed serious concern that a network of Saudi agents throughout the United States had supported the terrorist attacks on the

United States. The families of the victims of the 9/11 attacks and insurers had filed lawsuits seeking billions in damages against the Kingdom of Saudi Arabia, and journalists, such as Anthony Summers, after years of work, were starting to find evidence that such a network may have been discovered by the FBI, but not disclosed to Congress. Summers asked for the Bulldog's help investigating one odd thing that he had come across during his research: Abdulaziz al-Hijji and his family had fled Sarasota, Florida, to return to Saudi Arabia just two weeks before the 9/11 attacks, suggesting the family knew what was coming. Julin Dec. ¶¶ 6-21.¹

14. The Bulldog agreed to assist and published the first report of its findings on September 8, 2011. The report confirmed that 9/11 hijackers had visited the subdivision where the family lived, that phone records showed the hijackers had contacted the family, that the family had fled the country before September 11, 2001, and that the family had left behind a recently purchased new car, food in the refrigerator, and other valuables. The Bulldog also confirmed that the owner of the home, Esam Ghazzawi, Anoud's father, was a very wealthy Saudi citizen. Most important, Sen. Graham claimed that the FBI had not disclosed its Sarasota investigation to the JICI, a fact that suggested the FBI was concealing its own misfeasance or malfeasance. Julin Dec. ¶¶ 22-27.

15. The FBI immediately reacted to this report on September 9, 2011. It told *The Miami Herald* that the FBI had investigated the al-Hijjis and Ghazzawis, that it had determined they were not related to any threat nor connected to the 9/11 plot, and that all records of the investigation had been made available to the JICI and 9/11 Commission—assertions which seemed incredible because they contradicted the Bulldog's reliable sources, including Graham. Julin Dec. 28-32

16. Graham told the Bulldog he believed the FBI was lying. Julin Dec. ¶¶ 33-34.

17. An FBI analyst conducted an internal analysis during the weekend of September

¹ The Declaration of Thomas R. Julin cited herein is Attachment 1 to this Statement.

10 & 11, 2011, and found that much of the Bulldog's report was correct, but could not confirm some aspects of it. Specifically, the analyst found FBI documents showing that in April 2002 an FBI Special Agent had found "many connections" between the al-Hijji family and the hijackers, including the fact that one of the family members had trained at the same flight school where the hijackers trained. Julin Dec. ¶¶ 35-42.

18. The Bulldog's disclosure of the FBI's Sarasota investigation was of such great importance that the FBI prepared a white paper on September 15, 2011, to brief FBI Director Robert Mueller about the situation. The white paper claimed that the FBI had no evidence to connect the al-Hijjis to the 9/11 plot but ignored the agency's April 2002 findings that the family had "many connections" to the 9/11 hijackers. It also said nothing about whether the FBI had disclosed its investigation of the al-Hijjis to the JICI and 9/11 Commission. Julin Dec. ¶¶ 36-49.

19. The same day the Director was briefed, the FBI told a reporter for the *Tampa Bay Times* that it had no evidence to connect the al-Hijjis to the 9/11 plot and that it had made the records of its investigation available to the JICI and the 9/11 Commission. Julin Dec. ¶¶ 50-51.

20. Graham told the Bulldog that the FBI's statement was "total B.S." and explained that the FBI may have concealed records of the Sarasota investigation by including them in large volumes of records "made available" to the JICI. Julin Dec. ¶¶ 52-56.

21. To try to get to the bottom of the matter, the Bulldog made a FOIA request on September 26, 2011, for records of the FBI's Sarasota investigation. It also asked the Florida Department of Law Enforcement for its records of the investigation. Julin Dec. ¶¶ 57-58.

22. While those requests were pending, Graham confirmed that the JICI and 9/11 Commission had no records of the FBI's investigation, confronted the FBI about this, and, ultimately, persuaded the FBI to produce to him records which had never been given to the JICI or the 9/11 Commission—the April 16, 2002, "many connections" memo, and a September 16, 2002, memo showing that the FBI had interviewed Anoud al-Hijji when she returned to the United States in June 2002 and that she had denied involvement in the 9/11 plot. Graham

viewed these records as contradicting the FBI's public statements both because they showed that the FBI had found connections between the family and the hijackers and because they proved that the FBI had kept these records from the JICI and the 9/11 Commission. The FBI promised to show Graham additional records that would reconcile the apparent conflict, but then refused to do so after Graham made attempts to contact directly the FBI agent who wrote the April 16, 2002, memo. *Julin Dec.* ¶¶ 59-73.

23. The Bulldog had greater success with its Public Records Law request when on December 21, 2011, the FDLE produced its records of an interview that the FBI had conducted of Wissam Taysir Hammoud. These records showed that Hammoud had said that al-Hijji knew some of the 9/11 terrorists, that he had introduced Hammoud to Al Qaeda leader Adnan el-Shukrijumah, that al-Hijji had said Osama bin Ladin was his hero, and that al-Hijji planned to become a jihadist in Afghanistan. The records also showed the FBI had identified Esam Ghazzawi as a wealthy, well-connected businessman in Saudi Arabia. *Julin Dec.* ¶¶ 74-75.

24. For its part, however, the FBI denied the Bulldog's FOIA request in its entirety, a decision which the FBI later acknowledged was in violation of FOIA by production of responsive, non-exempt records without a court order. *Julin Dec.* ¶¶ 76-78 & 83.

25. The FBI's violation of FOIA left the Bulldog no choice other than to file this lawsuit in order to obtain records it was entitled by law to have. The FBI's initial reaction to the suit was to deny that it had any responsive records, a fact it knew to be incorrect because the FBI analyst had reviewed at least some of the records during the weekend of September 10 & 11, 2011, FBI Director Robert Mueller had been briefed about the records on September 15, 2011, and Graham had been shown some of the records in October 2011. *Julin Dec.* ¶¶ 35-49, 62 & 79-81. After the Bulldog confronted the FBI with these inconsistencies, the FBI confessed that it had found 35 pages of records from its Sarasota investigation and produced, in redacted form, 31 of the 35 pages. The records included the April 16, 2002, "many connections" memo, revealing for the first time that its public statements were false. *Julin Dec.* ¶¶ 83-84. The Bulldog and

other media identified FBI Special Agent Gregory Sheffield as the author of the memo. The FBI redacted parts of the memo and other records on national security grounds, a decision which seemed inconsistent with its public assertions that it found “no connections” to the 9/11 plot. Julin Dec. ¶¶ 83-86.

26. At the same time that this record was released, Congress created a three-person commission (the “Meese Commission”) to review, among other things, evidence relating to the 9/11 attacks that had been developed since 2004, including the evidence that the Bulldog had amassed concerning the al-Hijji and Ghazzawi families. Julin Dec. ¶ 82.

27. After production of the first set of records, this Court ordered the FBI to conduct a more thorough search. That search uncovered additional records showing that the al-Hijjis and Ghazzawis had many connections to the 9/11 hijackers and no explanation for why the FBI publicly had claimed otherwise. The search also found 80,266 pages of records in the FBI’s Tampa Field Office which carried the PENTTBOM Case ID number. The FBI began submitting those records for *in camera review* on May 1, 2014. Julin Dec. ¶¶ 87-95.

28. The Meese Commission completed its work while this Court reviewed the FBI’s records. The Commission’s report savaged the April 16, 2002, memo as poorly written and unsubstantiated and said the agent who wrote it was unable to provide any basis for its content or explain why he wrote it as he did, but it made no mention of the FDLE records regarding the Hammoud interview. It appeared to the Bulldog that the report was just another attempt by the FBI to conceal the facts that it actually had found in Sarasota and to divert attention from its April 16, 2002, memo. Julin Dec. ¶¶ 96-104.

29. The Bulldog then made a FOIA request for the FBI’s Meese Commission records on April 8, 2015. The FBI violated FOIA by not timely responding to the request, necessitating the filing of a second lawsuit. The FBI delayed production of any records in that case until October 31, 2016, when it released just 12 pages of records showing the Meese Commission’s activities. One released record showed that an FBI agent had told the Commission the April 16,

2002, memo was “badly written,” “overly speculative,” and “wholly unsubstantiated,” but the FBI redacted the name of the agent giving this advice, and the memo said nothing about why the agent had reached these conclusions. Julin Dec. ¶¶ 105-112. Another record that the FBI should have produced to the Bulldog in its first FOIA lawsuit showed that the FBI had been told in 2004 that Abdulaziz al-Hijji was a follower of Osama bin Laden and that he planned to become an Islamic freedom fighter in Afghanistan. Julin Dec. ¶ 118. The Bulldog specifically had pointed out that the FBI must have such a document very early in this case, DE-39 at 13, but the FBI’s searches in this case apparently never located the document or, if they did, the FBI never identified it in any way or claimed it to be exempt. The document specifically names al-Hijji in it and therefore should have been located by the searches that the Court ordered, but it was not.

30. Judge Altonaga found the FBI’s defense of the Bulldog’s FOIA claim “distressing,” shocking,” and “shameful,” due to the delay and difficulty it had caused. After initial hearings, the FBI conceded that it should not have redacted the al-Hijjis’ name from documents it produced or the fact that it was Special Agent Jacqueline Maguire who had briefed the Meese Commission on the April 16, 2002, “many connections” memo. But Judge Altonaga also declined to allow Maguire to be deposed and entered a summary judgment requiring the FBI to produce some additional records, but upholding some of its redaction decisions. She stayed her final judgment pending appeal, and cross-appeals are now pending. Julin Dec. ¶¶ 113-124.

31. Sen. Graham has worked with the Bulldog on this case from its outset and his view has been that public disclosure of all records of the FBI’s Sarasota investigation would shed much light on why the FBI acted as it did and would allow the public to evaluate whether the FBI reacted appropriately to the evidence it found. He also has advised that national security would be enhanced, not harmed by these disclosures. Julin Dec. ¶¶ 125-127.

32. The families of the victims of the 9/11 attacks and the insurers who are pursuing their multi-billion claims against the Kingdom of Saudi Arabia in the U.S. District Court for the Southern District of New York have followed this litigation closely and, on January 18, 2018,

