

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' Motion to Modify Protective Order to Allow Discovery
Prior to Ruling on Defendants' Motion for Summary Judgment

Thomas R. Julin & Timothy J. McGinn, Jr.
Florida Bar Nos. 325376 & 1000377

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MOTION

Plaintiffs, Broward Bulldog, Inc., and Dan Christensen (collectively, “the Bulldog”), move pursuant to Federal Rules of Civil Procedure 26(c) and 56(d) for modification of the protective order entered in this case on March 31, 2014, DE-58, which, on the motion of the defendants, the U.S. Department of Justice and the Federal Bureau of Investigation (collectively “the FBI”), DE-33, precluded the taking of discovery in this case.

The Bulldog requests that the FBI be required to answer the interrogatories and request for production propounded by the Bulldog on May 20, 2013, DE-33-1, and that it be permitted to take the depositions of FBI Special Agents Jaqueline Maguire and Gregory J. Sheffield and FBI declarants David M. Hardy and Michael G. Seidel. Counsel for the Bulldog has consulted with counsel for the FBI, Dexter Lee, concerning this proposed discovery, and he has indicated that the FBI opposes the taking of any discovery in this case whatsoever.

MEMORANDUM OF LAW

As set forth in greater detail in the Bulldog’s opposition to the FBI’s motion for summary judgment, an important mystery remains unresolved. The persistence of this mystery is evidence that the FBI has not conducted a reasonable and adequate search for responsive records and that it has withheld responsive, non-exempt records that the Freedom of Information Act (“FOIA”) required it to disclose.

The mystery is: why did the FBI make two public statements on September 9 and 15, 2011, in which it claimed that its investigation of the al-Hijji and Ghazzawi families of Sarasota, Florida, had found “no connections” between them and the 9/11 plot and, furthermore, that it had disclosed the investigation to the Joint Intelligence Committees Inquiry (JICI) and the 9/11 Commission? *Julin Dec.* ¶¶ 28 & 50. This is a mystery because the FBI’s internal documents

showed that the FBI had actually found “many connections” between the al-Hijji and Ghazzawi families and “individuals associated with the terrorist attacks on 9/11/ 2001,” and the co-chair of the JICI, Sen. Bob Graham, insists that the FBI is lying about having disclosed these records to the JICI and the 9/11 Commission. *Julin Dec.* ¶¶ 33-34, 52-56 & 84.

Although FBI Special Agent Jacqueline Maguire advised the Meese Commission that the “many connections” memorandum by FBI Special Agent Gregory J. Sheffield¹ was “poorly written” and “wholly unsubstantiated” and that Sheffield, who wrote the memorandum on April 16, 2002, could not explain why he wrote it as he did, that explanation is no explanation at all. It also flies in the face of the evidence that the Bulldog itself gathered. That evidence showed that the al-Hijjis and Ghazzawis had not only connections to the 9/11 plot but a motivation to participate in the plot, that the FBI had learned of the connections early in its investigation of the events of 9/11, *Julin Dec.* ¶ 74-75, and that the FBI did not disclose this evidence to either the JICI, the congressional body charged in 2001 and 2002 with obtaining a complete understanding of all the information that our intelligence and law enforcement agencies had about 9/11, or the 9/11 Commission, which conducted a follow-up investigation from 2002 through 2004. *Julin Dec.* ¶¶ 7-14 & 33-34, 52-56.

“The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors

¹ The FBI still has not confirmed that Sheffield is the author of the April 16, 2002, memorandum, but Judge Altonaga noted in the case pending before her that “other media identified Gregory J. Sheffield as the author of the April 16, 2002 Report,” and she concluded that the FBI’s redaction of the name of the author of the April 16, 2002, report, in an FBI memo regarding the Meese Commission, had not been justified by the FBI and that the author’s name must be disclosed because the public interest outweighed privacy interests. *Broward Bulldog, Inc. v. U.S. Dep’t of Justice*, No. 16-61289-Civ-Altonaga/O’Sullivan, 2017 WL 746410, at *6 (S.D. Fla. Feb. 2, 2017), *appeal docketed*, No. 17-13787 (11th Cir.).

accountable to the governed.” *News-Press v. U.S. Dep’t of Homeland Sec.*, 489 F. 3d 1173 (11th Cir. 2007) (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)). “FOIA is often explained as a means for citizens to know ‘what the Government is up to.’ This phrase should not be dismissed as a convenient formalism. It defines a structural necessity in a real democracy.” *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171-72 (2004) (citation omitted). The unredacted records filed with the Court by the FBI may solve the mystery at issue in this case. If they reflect that the FBI has concealed misfeasance or malfeasance through its redaction and withholding of responsive records, it is vital that this information be disclosed to the public, and the Court should order the redactions lifted.

If, however, the unredacted records leave the mystery unresolved, the Court should allow the requested depositions to be taken, subject to appropriate limitations to ensure that no information which is exempt from FOIA and no testimony which might jeopardize national security is released before the Court has an opportunity to evaluate the records and information discovered.

In FOIA litigation, discovery is appropriate when, for example, the agency has presented factual contradictions that must be resolved.² Discovery can be allowed after the agency moves

² See, e.g., *Porter v. U.S. Dep’t of Justice*, 717 F.2d 787, 793 (3d Cir. 1983) (finding discovery in FOIA case was appropriate when “affidavit, and the redacted documents, demonstrate the need for further inquiry”); see also *Wash. Post Co. v. United States Dep’t of State*, 840 F.2d 26, 28 (D.C. Cir. 1988) (non-moving party produced hard evidence in the form of books and press accounts suggesting privacy exemption did not apply), *vacated on other grounds*, 898 F.2d 793 (1990); *Schaffer v. Kissinger*, 505 F.2d 389, 391 (D.C. Cir. 1974) (holding that government asserted inadequate justification for national security exemption and that “[a]ppellant should be allowed to undertake discovery for the purpose of uncovering facts which might prove his right of access to the documents which he seeks”).

for summary judgment if the plaintiff can show evidence of agency bad faith *or* that an asserted exemption should not apply to redacted or withheld materials.³

The plaintiff in a FOIA action is entitled to take discovery if it can “provide some *tangible evidence* that an exemption claimed by the agency should not apply.”⁴ The plaintiff’s burden is to “point to *evidence* of bad faith,” not to establish bad faith, when discovery is sought in a FOIA case.⁵ “[T]he entitlement to discovery occurs when there has emerged a genuine issue of material fact which can only be resolved by an evidentiary hearing.” *Asarco, Inc. v. U.S. Env’tl. Prot. Agency*, Civ. A. No. 08-1332 (EGS/JMF), 2009 WL 1138830, at *1 (D.D.C. Apr. 28, 2009). “[U]nder those circumstances, there is a genuine issue of material fact as to whether the agency officials have told the truth in the representations submitted in support of the agency’s motion for summary judgment, and it is appropriate to permit discovery to test the truthfulness of

³ See *Miccosukee Tribe of Indians v. United States*, 516 F.3d 1235, 1248, 1265 (11th Cir. 2008) (noting that five depositions of Environmental Protection Agency officials, *Vaughn* Index and affidavit still revealed contradictions concerning adequacy of the records search, thereby precluding summary judgment on that issue); *Weisberg v. U.S. Dep’t of Justice*, 627 F.2d 365, 370–71 (D.C. Cir. 1980); see also *Simmons v. U.S. Dep’t of Justice*, 796 F.2d 709, 711 (4th Cir. 1986) (ending further discovery efforts after government moved for protective order due because detailed affidavit permitted court to make a determination after reviewing documents *in camera*); *Tamayo v. U.S. Dep’t of Justice*, 544 F. Supp. 2d 1341, 1343–44 (S.D. Fla. 2008); but see *Sun-Sentinel Co. v. U.S. Dep’t of Homeland Sec.*, 431 F. Supp. 2d 1258, 1276 (S.D. Fla. 2006) (finding disputed issues of material fact made summary judgment in FOIA case inappropriate and concluding the court must hold an evidentiary hearing to resolve the factual issues).

⁴ *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 812 (2d Cir. 1994) (citations omitted).

⁵ *Justice v. IRS*, 798 F. Supp. 2d 43, 46 (D.D.C. 2011) (emphasis added) (citing *Moore v. Aspin*, 916 F. Supp. 32, 35-36 (D.D.C. 1996); see also *Porter*, 717 F.2d at 793 (finding discovery in FOIA case was appropriate when “affidavit, and the redacted documents, demonstrate the need for further inquiry”); *Schaffer v. Kissinger*, 505 F.2d 389, 391 (D.C. Cir. 1974) (although government asserted national security exemption, plaintiff “should be allowed to undertake discovery for the purpose of uncovering facts which might prove his right of access to the documents which he seeks”).

their contentions. *Id.*

Discovery also is allowed where there is evidence of (1) the agency's mishandling of the plaintiff's FOIA requests or (2) bad faith or illegality with regard to the agency's underlying activities that generated the documents at issue. *See Jones v. F.B.I.*, 41 F.3d 238, 242-43 (6th Cir. 1994). Such cases warrant different treatment than other FOIA cases. The Sixth Circuit stated the following regarding the policy behind such treatment when public interest concerns favor disclosure over concealment:

Even where there is no evidence that the agency acted in bad faith with regard to the FOIA action itself there may be evidence of bad faith or illegality with regard to the underlying activities which generated the documents at issue. Where such evidence is strong, it would be an abdication of the court's responsibility to treat the case in the standard way and grant summary judgment on the basis of Vaughn affidavits alone. It would risk straining the public's ability to believe—not to mention the plaintiff's—that the courts are neutral arbiters of disputes whose procedures are designed to produce justice out of the clash of adversarial arguments.

The instant case presents such evidence. COINTELPRO went beyond the detection and prevention of criminal activity; the program's infringements of civil liberties seem well documented; and because the FBI worked closely with local law enforcement and supplied the key prosecution witness, the program is tied to the tainted prosecution of plaintiff for murder. This does not prove that the FBI acted in bad faith with regard to the FOIA request, but it does mean that the courts of this circuit should not process this case in the same manner as they would a request for documents regarding a routine FBI investigation.

Jones, 41 F.3d at 242–43.

The decision in *Hawthorn Management Services, Inc. v. Department of Housing & Urban Development*, No. 3:96CV2435(AHN), 1997 WL 821767 (D. Conn. 1997), is illustrative of how these principles should be applied. There, the plaintiff, Hawthorn, an unsuccessful bidder at a government auction, made a FOIA request for records concerning the auction from the Department of Housing & Urban Development. HUD redacted and produced some documents and withheld others. *Id.* at *1. Hawthorn moved to depose a HUD employee, citing published

news reports asserting that the employee was aware that HUD “‘altered bids, changing the winners and losers.’” *Id.* at *2 (quoting a *Washington Times* article). The employee then submitted a declaration acknowledging an error in the auction process, but did not fully explain it. The district court ordered the employee to submit to the requested deposition, finding “Hawthorn has made a sufficient showing of bad faith entitling it to the limited discovery it seeks.” *Id.* at *3. The court did not require the plaintiff to prove bad faith as a prerequisite to obtaining the discovery that would be relevant to whether the agency asserted exemptions in bad faith in order to conceal its own wrongdoing.

Other FOIA decisions have ordered limited discovery regarding the propriety of the agency’s assertion of exemptions to redact or withhold records once evidence had been provided from which the Court could conclude that the agency might be asserting the exemptions only to conceal matters that would subject it to legitimate public criticism, rather than to advance the purposes for which Congress provided the asserted exemptions.⁶

The Court should allow the requested depositions to be taken because the record shows that the depositions likely would produce evidence relevant to whether the FBI has redacted or withheld in bad faith records that are not exempt from the disclosure requirements of FOIA. The

⁶ *E.g., Long v. U.S. Dep’t of Justice*, 10 F. Supp. 2d 205, 210 (N.D.N.Y. 1998) (denying agencies’ motion for protective order and requiring responses to plaintiff’s interrogatories due to the “direct contradictions, questions of fact, and questions of good faith that arise when reviewing the adequacy of the search for documents”); *Van Strum v. U.S. Env’tl. Protection Agency*, 680 F. Supp. 349, 352 (D. Or. 1987) (finding summary judgment inappropriate where plaintiff “raised sufficient questions as to the integrity of the [agency’s] affidavits to warrant discovery”); *Judicial Watch, Inc. v. U.S. Dep’t of Commerce*, 34 F. Supp. 2d 28, 46 (D.D.C. 1998) (analyzing contradictions and fact issues resulting from various depositions and ordering further, supervised discovery concerning “the removal and destruction of documents”); *see also Jones v. F.B.I.*, 41 F.3d 238, 242 (6th Cir. 1994) (recognizing that the presumption of good faith “may be overcome where there is evidence of bad faith in the agency’s handling of the FOIA request”).

record already reflects the fact that, after the Bulldog reported, on September 8, 2011, that the FBI had conducted an investigation in Sarasota, had found significant evidence that the al-Hijji family had contacts with individuals who carried out the 9/11 attacks, and had failed to disclose this evidence to the JICI or the 9/11 Commission, the FBI then falsely claimed, in two public statements, that its investigation had found nothing and had been reported to Congress. Julin Dec. ¶¶ 23, 28, 33-34, 50, 52-56 & 59-66.

The record further shows that the FBI, in violation of FOIA, refused to produce to the Bulldog any records of its Sarasota investigation, necessitating the filing of this lawsuit to compel production of those records and, when the Bulldog did sue to obtain those records, the FBI initially claimed, in further violation of FOIA, that it had no such records.⁷ Julin Dec. ¶¶ 76-81.

When confronted by Sen. Graham and the Bulldog, the FBI finally did produce, first to Sen. Graham and later to the Bulldog, the April 16, 2002, memorandum by Special Agent Sheffield. The memorandum revealed that the FBI's public statements were false and that, far from finding "no connections" to the 9/11 plot in Sarasota, the FBI had found "many connections" between the Sarasota families and the 9/11 hijackers. Julin Dec. ¶¶ 79-86. The record shows that release of this document persuaded this Court that the FBI might be concealing additional Sarasota records and that a further extensive search should be made for responsive records. DE-60. After the Court ordered that search, the FBI did find many additional

⁷ Delay of this sort is evidence of bad faith. *Miccosukee Tribe of Indians of Florida v. United States*, 516 F. 3d 1235, 1257 (11th Cir. 2008) (holding that while delay does not always show bad faith, it can demonstrate bad faith where the delay is unexplained); *Gilmore v. U.S. Dep't of Energy*, 33 F. Supp. 2d 1184, 1190 (N.D. Cal. 1998) (permitting discovery when plaintiff claimed existence of pattern and practice of unreasonable delay in responding to FOIA requests).

responsive, nonexempt records, some of which were produced, and 80,266 pages of records that the FBI claimed were classified and that the Court reviewed in camera. Julin Dec. ¶ 93. This further suggested intentional concealment by the FBI of its handling of the Sarasota matter.

Further evidence of bad faith then surfaced through the Meese Commission's effort to discredit the April 16, 2002, memo that Special Agent Sheffield had written, but without contacting Graham, the Bulldog, or the Bulldog's sources before doing so and without disclosing the basis for its dubious conclusions, Julin Dec. ¶¶ 95-104, and the FBI's refusal to produce any records regarding the Meese Commission's work in violation of FOIA, necessitating the filing of a second lawsuit to attempt to obtain those records. Julin Dec. ¶¶ 105-108. Only many months after lawsuit was filed did the FBI finally produce any records on October 31, 2017, Julin Dec. ¶ 112, and these reflected further bad faith concealment in that they showed that the Meese Commission had been told by FBI Special Agent Jacqueline Maguire that Sheffield's April 16, 2002, memorandum was "badly written," "a bad statement," "overly speculative," and "wholly unsubstantiated." Julin Dec. ¶¶ 112. From this memo, the FBI redacted both Maguire's and Sheffield's names, in further violation of FOIA, Julin Dec. ¶¶ 112, and also redacted other aspects of that memorandum in dubious reliance on privacy and other exemptions that seemed not to apply.

Only after the original trial date had been scheduled did the FBI produce a redacted form of a document which was not produced by the FBI in this case, but which clearly was responsive to the FOIA request that is the subject of this case: an FBI report reflecting its interview of Wissam Taysir Hammoud in April 2004, in which Hammoud told the FBI that Abdulaziz al-Hijji had visited a website containing information about Osama bin Laden, and that he spoke about going to Afghanistan to fight for the Mujahedin. Julin Dec. ¶ 118. Notably, in its July 6, 2013,

response to the FBI's motion for protective order at the outset of this case, the Bulldog specifically pointed out that FBI agent Leo Martinez had participated with the Florida Department of Law Enforcement in the interview of Wissam Hammoud on April 7, 2004, DE-39 at 13, but the FBI succeeded in preventing access to the document until almost four years later. Julin Dec. ¶ 118. As Congress stated, “[i]nformation is often useful only if it is timely. Thus, excessive delay by the agency in its response is often tantamount to denial.”⁸ The denial of access to government records in a timely fashion is precisely the harm FOIA is intended to prevent.⁹ It is axiomatic that “unreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.”¹⁰

On February 28, 2017, Judge Altonaga ruled that it had been “distressing to see the length of time that has elapsed, from the time these requests were presented to the time the agency turned over anything. It’s shocking, quite frankly. . . . It’s shameful.” Julin Dec. ¶ 113 (quoting *Broward Bulldog, Inc. v. U.S. Dep’t of Justice*, No. 16-61289-Civ-Altonaga/O’Sullivan (DE-73-6 at 14-15)).

The FBI ultimately conceded that it had no basis under FOIA for redacting Maguire’s

⁸ *Gilmore v. U.S. Dep’t of Energy*, 33 F. Supp.2d 1184, 1187 (N.D.Cal.1998) (quoting H. Rep. No. 876, 93d Cong., 2d Sess. (1974) (discussing “the intent of this bill that the affected agencies be required to respond to inquiries and administrative appeals within specific time limits”)).

⁹ *Brown v. U.S. Customs & Border Prot.*, 132 F. Supp. 3d 1170, 1172–73 (N.D. Cal. 2015).

¹⁰ *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982); see also *Our Children’s Earth Found. v. Nat’l Marine Fisheries Serv.*, Nos. 14–4365 SC and 14–1130 SC, 2015 WL 4452136, at *7 (N.D. Cal. July 20, 2015) (“ ‘an agency’s failure to comply with the FOIA’s time limits is, by itself, a violation of the FOIA’ ”) (quoting *Gilmore*, 33 F. Supp.2d at 1187); *S. Yuba River Citizens League v. Nat’l Marine Fisheries Serv.*, No. CIV. S–06–2845-LKK/JFM, 2008 WL 2523819, at *5 (E.D. Cal. June 20, 2008) (same).

name, Julin Dec. ¶ 114, but it did so only after discovery had closed. This revealed for the first time the identity of the person who likely would be able to explain the inconsistencies between the FBI's public assertions regarding its Sarasota investigation and its internal assessment of the events in Sarasota on April 16, 2002.

All of this is evidence of bad faith concealment of what the FBI found in Sarasota and how it thereafter conducted its investigation, through the improper redactions and withholding of documents responsive to the FOIA requests on which this lawsuit is based. It is this evidence which warrants entry of an order requiring the FBI to produce Agents Maguire and Sheffield for depositions at which counsel for the Bulldog can explore whether the FBI has redacted and withheld records of its Sarasota investigation to avoid public and press criticism of its handling of what it found, rather than to serve the legitimate purposes of the exemptions it asserts.

The Court also should require the FBI to produce David M. Hardy and Michael G. Seidel for deposition. Hardy has filed five declarations in this case with each successive declaration attempting to explain why the FBI had not earlier located the responsive, non-exempt records or could not do so as directed. DE-25-1, DE-61-1, DE-68-1, DE-69-1, DE-97-1. Seidel is identified as the FBI official who "personally supervised" the search for responsive records. DE-97 ¶ 7. He should be able to explain why the FBI continues to refuse to disclose to the Bulldog where it found documents such as the April 16, 2002, Sheffield memo, DE-97-3 at 3, and whether other responsive, non-exempt documents can be found there or elsewhere.

The Court also should require the FBI to answer the 24 interrogatories that the Bulldog propounded at the outset of this litigation almost five years ago on May 20, 2013, DE-33-1, and its request for production of the documents identified in response to the interrogatories. The interrogatories request basic information such as identification of the records which the FBI

reviewed in connection with the formulation of its statement in response to the FOIA request at issue that “a review of our records revealed that in the aftermath of the 9/11 attacks, the FBI received a large number of calls from the public reporting suspicious activity. At no time during the course of its investigation of the attacks, known as the PENTTBOM investigation, did the FBI develop credible evidence that connected the address at 4224 Escondido Circle, Sarasota, Florida to any of the 9/11 hijackers.” DE-33-1 at 6. The interrogatories also ask the FBI to describe any search for responsive records it conducted before stating in its initial disclosures on January 9, 2013, DE-12, that “defendant[s] have not located any records responsive to plaintiffs’ request.” DE-31-1 at 8. The full list of interrogatories and the request for production are attached.

CONCLUSION

“FOIA is often explained as a means for citizens to know ‘what the Government is up to.’ This phrase should not be dismissed as a convenient formalism. It defines a structural necessity in a real democracy.” *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171-72 (citation omitted). The Court should direct the FBI to make Jacqueline Maguire, Gregory J. Sheffield, David M. Hardy, and Michael G. Seidel available for deposition, and to respond to the interrogatories and request for production propounded on May 20, 2013..

Respectfully submitted,

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CERTIFICATE OF CONSULTATION

I hereby certify that I have consulted with counsel for the defendants, Dexter Lee, and he has indicated that the defendants oppose the granting of this motion.

s/ Thomas R. Julin

Thomas R. Julin

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and through that filing served:

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s/ Thomas R. Julin

Thomas R. Julin

Interrogatories

1. Plaintiffs made a Freedom of Information Request dated September 26, 2011 (DE 1-5). In your response dated October 6, 2011, you stated: “You have requested records concerning a third party (or third parties).” (DE 1-6). Please describe what steps, if any, you took to locate the requested documents and identify each document that you located in response to that request.

2. Plaintiffs made a Freedom of Information Request dated October 27, 2011. (DE 1-7). In your response dated February 7, 2012, you stated: “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. (DE 1-11). Please describe what steps, if any, you took to locate the requested documents and identify each document that you located in response to that request.

3. In your response dated February 7, 2012 (DE 1-11), you also stated:

[A] review of our records revealed that in the aftermath of the 9/11 attacks, the FBI received a large number of calls from the public reporting suspicious activity. At no time during the course of its investigation of the attacks, known as the PENTTBOM investigation, did the FBI develop credible evidence that connected the address at 4224 Escondido Circle, Sarasota, Florida to any of the 9/11 hijackers.

Please identify each document, if any, that you reviewed in connection with the formulation of this statement and state the basis for your conclusion that at no time during the course of its investigation of the attacks, known as the PENTTBOM investigation, did the FBI develop credible evidence that connected the address at 4224 Escondido Circle, Sarasota, Florida to any of the 9/11 hijackers.

4. Plaintiffs appealed your denial of their October 27, 2011, Freedom of Information Act Request on February 23, 2012. (DE 1-12). In your response to that appeal dated February 23, 2012 (DE 1-13), you stated:

To the extent that responsive records exist, without consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, disclosure of law enforcement records concerning an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. §552(b)(7)(C). I note that the FBI informed you that it conducted a search for responsive records but found “no credible evidence that connected the address at 4224 Escondido Circle, Sarasota, Florida to any of the 9/11 hijackers.” I further note that while the FBI conducted a search in this instance, the FBI properly asserted Exemption 7(C) and was not required to conduct a search for the requested records.

Please identify each document, if any, that you reviewed in the disposition of the appeal and in connection with the formulation of this statement.

5. In your initial disclosures filed in this action as Docket Entry 12 on January 9, 2013, you stated: “At this time, because defendants have not located any records responsive to plaintiffs’ request, defendants do not anticipate filing a *Vaughn* index.” Please describe any search that you conducted for documents responsive to the plaintiffs’ Freedom of Information Act requests prior to filing your initial disclosures on January 9, 2013.

6. The Hardy Declaration states at paragraph 24 “a prior Congressional request from Senator [Bob] Graham related to 4224 Escondito Circle.” Please identify each document that you provided to Senator Graham in response to the referenced prior Congressional request.

7. The Hardy Declaration states at paragraph 25: “the FBI took the extraordinary step of reviewing potentially responsive cross-reference material.” Please identify each document in the cross-referenced material you reviewed, specifying the indexes or collections of documents that you searched or otherwise reviewed in order to locate responsive documents.

8. David Couvertier, an FBI special agent, public affairs officer, and Tampa Field Office spokesman, sent an email sent on September 15, 2011, to reporter Susan Martin, which stated:

FBI Special Agent in Charge Steven E. Ibison, Tampa Field Office, has provided the following statement:

“In order to address allegations reported in a September Miami Herald article, Link to 9/11 hijackers found in Sarasota, the FBI is furnishing the following statement to correct the public record. 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. The anonymous “counterterrorism officer” cited in the article apparently was not an FBI agent and had no access to the facts and circumstances pertaining to the resolution of this lead, otherwise this person would know this matter was resolved without any nexus to the 9/11 plot. Finally, all of the documentation regarding the 9/11 investigation was made available to the 9/11 Commission and the JICI.”

Dave Couvertier, Special Agent
Public Affairs Officer
FBI - Tampa Field Office Spokesman
813/253-1033 (Direct)
813/253-1000 (Switch Board)
813/289-5627 (Media Cell)

Please identify all documents received or created by the FBI in the course of the referenced follow up and in reaching the conclusion that “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 here was no connection found to the 9/11 plot,” and state the basis for reaching that conclusion.

9. Please identify all documents regarding the 9/11 investigation referencing the persons residing at or owning the home at 4224 Escondido Circle, Sarasota, Florida that were made available to the 9/11 Commission and 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.

10. On March 28, 2013, you provided a further response to the Plaintiffs' Freedom of Information Request dated October 27, 2011 ("your supplemental response"), notwithstanding your prior denial of the request and your denial of the appeal from the denial of that request. The supplemental response stated that 35 pages were reviewed and 31 pages are being released. The response also asserted that various exemptions to the disclosure requirements of the Freedom of Information Act allowed or required the withhold of all or portions of responsive documents. The documents released were Bates numbered SARASOTA 1-28 and 33-35. Please identify all documents reviewed in connection with the formulation of your supplemental response and the name and title of all persons who participated in the formulation of the response.

11. In your supplemental response you stated: "Documents were located which originated with, or contained information concerning an Other Government agency [OGA). This information was referred to the OGA for consultation and their response had been incorporated in this release." Please identify the referenced Other Government agency, any persons at the Other Government agency with whom you communicated about Plaintiffs' request, and set forth the response that the Other Government agency provided.

12. The document Bates numbered SARASOTA-5 & SARASOTA 6, states:

Further investigation of the _____ family revealed many connections between the _____ and individuals associated with the terrorist attacks on 9/11/2001. More _____ & specifically, a _____ family member, _____, also known as, _____ DOB _____ last known address _____ Florida, was a flight student at Huffman Aviation.

Please identify all documents in your possession or control that show the "many connections" referenced in this statement.

13. Please state whether the FBI reviewed at any time records maintained by the gatehouse for the subdivision where 4224 Escondido Circle, Sarasota, Florida is located and who now has possession or control of those records or is believed by you to have possession or control of those documents.

14. Please state whether the FBI reviewed at any time any telephone or other communication records reflecting that any person who resided at or owned the home at 4224 Escondido Circle, Sarasota, Florida, contacted person who contacted or had contacted persons who are conducted or are believed by you to have conducted terrorist attacks on September 11, 2001, and who now has or is believed by you to have possession or control of those records.

15. With respect to the documents Bates numbered SARASOTA-1-35. please set forth all decisions made with respect to classification or declassification, the dates of each

decision, the reasons for each decision, and the name and title of the person who made each classification decision.

16. Please identify the documents that are Bates numbered SARASOTA 29-32.

17. Please identify all documents delivered by Jone Weist to the FBI in connection with its investigation of the persons residing at or owning the home at 4224 Escondido Circle, Sarasota, Florida. Ms. Weist was the managing agent for The Estates of Prestancia Homeowners Association, Inc., the subdivision where 4224 Escondido Circle, Sarasota, Florida, is located.

18. Please state the amount of time that David M. Hardy personally spent formulating the Hardy Declaration, the name and title of any other person who participated in the formulation of the Hardy Declaration, and the amount of time each participant spent in the formulation of the Hardy Declaration.

19. Please identify all documents in your possession or control reflecting any statements by or about Wissam Hammoud and relating to persons who resided at or owned the home at 4224 Escondido Circle, Sarasota, Florida, including but not limited to the statement given by Hammoud in the presence of FBI Special Agent Leo Martinez on or about April 7, 2004.

20. Please identify all documents in your possession or control relating to Essam A. Ghazzawi, Esam Arabian Project Est., Deborah G. Ghazzawi, Anoud Esam Ghazzawi, or Abdulaziz A. Al-Hijji.

21. Please identify all documents identifying in any manner any documents that have been destroyed relating to an investigation of the persons who resided at or owned the home at 4224 Escondido Circle, Sarasota, Florida.

22. For each document relating to your investigation of the persons who resided at or owned the home at 4224 Escondido Circle, Sarasota, Florida that has been destroyed, please state the reason that the document was destroyed, and the name and title of the person who destroyed each document.

23. For each document relating to your investigation of the persons who resided at or owned the home at 4224 Escondido Circle, Sarasota, Florida that you have knowledge of but that is not in your possession or control, please state the name, address, telephone number, email address, and any other contact information for any person to whom you delivered such document or who is known or believed by you to have possession or control of the document at this time.

24. Your statements referenced in interrogatories 3, 4, and 8 above, that (1) at no time did the FBI develop evidence that connected the family members residing at or owning the home at 4224 Escondido Circle, Sarasota, Florida, to any of the 9/11 hijackers as suggested in the article, and (2) there was no connection found to the 9/11 plot, appear to be inconsistent with (1) the statement in SARASOTA 5 & 6 that investigation of the family “revealed many connections between [the family] and individuals associated with the terrorist attacks on 9/11/2001, and (2) the assertions in the Hardy Declaration at paragraphs 35 through 43 that documents or portions of documents relating to the investigation of the family members residing at or owning the home

at 4224 Escondido Circle, Sarasota, Florida were properly classified as “Secret” and continue to warrant classification at the “Secret” level. If you contend that the former statements are not inconsistent with the latter, please explain the basis for your contention.

Definitions

1. “You” or “Your” refer to the Defendants, the U.S. Department of Justice and Federal Bureau of Investigation, and their predecessors, successors, affiliates, divisions, principals and all members, officers, employees, agents, representatives, attorneys and all other persons action (or who acted) or purporting to act (or who purported to act) on their behalf or under their direction or control.

2. “Document” means, without limitation, the original and all copies, prior drafts and translations of information in any written, typed, printed, recorded or graphic form, however produced or reproduced, of any type or description, regardless of origin or location, including without limitation all correspondence, records, tables, charts, analyses, graphs, schedules, reports, memoranda, notes lists, calendar and diary entries, letters (sent or received), electronic records, electronic mail (e-mail), telegrams, telexes, messages (including, but not limited to reports of telephone conversations and conferences), studies, books, periodicals, magazines, booklets, circulars, bulletins, instructions, papers, files, minutes, other communications (including but not limited to, inter- and intra-office communications), questionnaires, contracts, memoranda or agreements, assignments, licenses, ledgers, books of account, orders, invoices, statements, bills, checks, vouchers, notebooks, receipts, acknowledgments, computer disc, computer tape, other computer generated matter, microfiche, microfilm, photographs, motion pictures, video tapes, photographic negatives, phonograph records, tape recordings, wire recordings, other mechanical recordings, transcripts or logs of any such recordings, all other data compilations from which information can be obtained, or translated if necessary, and any other tangible thing of a similar nature. “Documents” and “other data compilations from which information can be obtained” requires that data or computer discs and in computers be captured and translated into reasonably usable form. “Document” includes “Electronic Memory” as defined below.

3. “Communication” means any written or oral transmission of information, including, by way of example and without limitation, personal conversations, telephone conversations, letters, meetings, memoranda, telegraphic and telex communications or transmittals of documents.

4. “Person” includes both the singular and plural, and means (a) any natural person, and (b) any entity, including, but not limited to, corporation, cooperatives, bureaus, public corporations, partnerships, joint ventures, groups, clubs, associations, institutes, societies, offices, organizations, and any governmental entities or departments, agencies, bureaus, or political subdivisions thereof.

5. “Relate to” or “Relating to” means referring to, concerning, constituting, supporting, confirming, disconfirming, identifying, pertaining to, evidencing or in any way relevant to.

6. The “Hardy Declaration” refers to the declaration of David M. Hardy filed in this action as Docket Entry 25-1.

Instructions

- A. In each instance where you are asked to identify or state the identity of a person (as defined above) state with respect to each person:
- a. his/her name;
 - b. his/her last known business and residence address and telephone number;
 - c. if a natural person, his/her business affiliation or employment and title and/or position, at the date of the transaction, event or matter referred to; and
 - d. if other than a natural person, the business or activity in which it was engaged as of the date of the transaction, event or matter referred to.
- B. In each instance where you are asked to identify a document, state with respect to each document:
- 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
 - g. the present and last known location and custodian of the document.
- C. If a privilege not to answer is claimed, identify each matter as to which the privilege is claimed, the nature of the privilege, and the legal and factual basis for each such claim.
- D. If any interrogatory cannot be answered in full, answer to the extent possible and specify reasons for inability to answer fully.

Request for Production

Plaintiff, Broward Bulldog, Inc., requests that the defendants produce pursuant to Federal Rule of Civil Procedure 34 all documents identified in response to Plaintiffs' Interrogatories served May 20, 2013.