

IN THE UNITED STATE 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.

**THE SARASOTA HERALD TRIBUNE'S MOTION FOR LEAVE TO FILE AMICUS
CURIAE BRIEF & SUPPORTING MEMORANDUM OF LAW**

Halifax Media Holdings, LLC, d/b/a the *Sarasota Herald Tribune* (the "Herald-Tribune"), moves for leave to file an amicus curiae brief in support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment. This matter involves access to Federal Bureau of Investigation ("FBI" or "Bureau") records related to that agency's investigation of possible terrorist activity in the months leading up to the national tragedy of September 11, 2001. That investigation, handled by the Tampa field office, centered on activities occurring in the Herald-Tribune's core coverage area in and around Sarasota, Florida. The Herald-Tribune has covered, and will continue to cover, that field office's actions and inactions related to this investigation, as well as whether subsequent Bureau statements misled its readers and the public. The paper can offer the Court an additional perspective on the relevant facts and law. Grounds for this motion appear in the following memorandum.

Memorandum of Law

This Court has the inherent authority to allow an amicus curiae to participate and assist the Court. Resort Timeshare Resales, Inc. v. Stuart, 764 F. Supp. 1495, 1500 (S.D. Fla. 1991) (citations omitted). The Herald-Tribune's proposed brief will provide useful assistance to this Court in the midst of ongoing litigation, which has not yet been scheduled for trial. Cf. News & Sun-Sentinel Co. v. Cox, 700 F. Supp. 30, 31 (S.D. Fla. 1988) (denying motion for leave to file amicus brief, where motion was filed two weeks after completion of trial). The Herald-Tribune respectfully requests that this Court grant leave for its amicus curiae brief to be filed within 20 days.

The Herald-Tribune is a Pulitzer Prize-winning daily newspaper of general circulation that includes Sarasota County. The Herald-Tribune, as Southwest Florida's preeminent source of news, has a special interest in the release of FBI documents concerning investigations in and about its community. The records at issue involve Sarasota County real estate in the respected, gated Estates at Prestancia community. The Herald-Tribune has grave concerns about what role some former residents of the Prestancia property may have played in 9/11 -- or the relationship the residents may have had with two 9/11 terrorists. More importantly, the Herald-Tribune would like to examine the thoroughness and outcome of the FBI's investigation in the paper's primary coverage area, as well as determine whether the FBI misrepresented its findings to Congress or the public.

Although the Herald-Tribune's interests are similar to Plaintiffs', the Herald-Tribune has its own, independent newsgathering interest in access to the FBI records and wishes to present arguments that are not duplicative of those advanced by Plaintiffs. Of particular concern to the Herald-Tribune is the FBI's assertion of privacy interests under 5 USC §§ 552(b)(6) and

(b)(7)(C). The Herald-Tribune can assist the Court by providing the local newspaper's perspective on the substantial public interest outweighing any privacy interests the FBI has asserted.

When faced with an assertion that 5 USC §§ 552(b)(7)(C) applies, "the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157, 174 (2004). The Herald-Tribune shares Plaintiffs' reasonable belief that Government impropriety might have occurred and will provide additional support for Plaintiffs' argument on this front.

This alleged impropriety, of course, is at the heart of the public interest in this matter and simply outweighs the privacy interests the FBI asserts via both 5 USC §§ 552(b)(6) and (b)(7)(C). The public interest inquiry focuses on whether disclosure would shed light on the operations or activities of government. See Bibles v. Or. Natural Desert Ass'n, 519 U.S. 355, 355 (1997); Dobronski v. FCC, 17 F.3d 275, 278-80 (9th Cir. 1994) (finding public interest in uncovering corruption in government agency outweighed minimal privacy interest in employee sick leave records); cf. Fed. Labor Relations Auth. v. U.S. Dep't of Def., 977 F.2d 545, 548 (11th Cir. 1992) (finding government properly invoked Exemption 6 to withhold from union federal government employees' home addresses because union did not allege public interest that would shed light on government activities).

Former Florida Governor and U.S. Senator Bob Graham has long expressed concern about the pre-9/11 activities occurring in Florida. Senator Graham has alleged that the FBI made false statements to the public about the results of its Sarasota investigation related to those pre-9/11 activities. The results of that investigation were not reported to Congress or mentioned in

the 9/11 Commission Report. Documents released in the course of this litigation have revealed information that directly contradicts the FBI's prior public statements asserting that no connections between the Sarasota Prestancia property and 9/11 exist. In fact, private security and public law enforcement in Sarasota were among those to notify the FBI of suspicious activity in the Estates at Prestancia. At least one resident of Prestancia also contacted the FBI with suspicions that the Prestancia property residents might have been linked in some way to 9/11. Anthony Summers and Dan Christensen, See FBI investigated Sarasota Saudis in 9/11 attacks, Sarasota Herald-Tribune, Sept. 8, 2011 (attached). Sarasota residents have been invested in understanding what happened in their midst from the outset; they maintain a strong interest in the results of the FBI's investigation and in scrutinizing the FBI's actions.

Seeking and reporting the truth about this investigation and the FBI's conduct related to it remain the core duty of the Herald-Tribune as a newspaper. The constitutional guarantee of a free press was intended "to create a fourth institution outside the Government as an additional check on the three official branches." Justice Potter Stewart, "or of the Press", 26 Hastings L. J. 631 (1975), reprinted in 50 Hastings L.J. 705, 708 (1999). Even if the FBI investigation concluded no links existed between the Sarasota Prestancia property and 9/11, this finding would not diminish the public's right to scrutinize the adequacy of the government's investigation and subsequent actions to determine *for itself* the propriety of its government's behavior. See Nat'l Ass'n. of Atomic Veterans v. Dir., Def. Nuclear Tech., 583 F. Supp. 1483, 1487 (D.D.C. 1984) (duplication of government's prior investigation does not diminish FOIA's goal of allowing public to "decide *for itself* whether government action is proper"). That is the very purpose of FOIA. The Herald-Tribune's interest in and perspective on this matter justify the exercise of the Court's inherent authority to permit amicus participation.

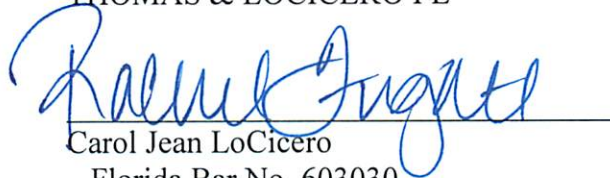
WHEREFORE, the Herald-Tribune respectfully requests this Court grant it leave to file, within 20 days of this Court's order on this issue, an amicus curiae brief in support of the Plaintiffs' Opposition to Defendant's Motion for Summary Judgment.

LOCAL RULE 7.1 CERTIFICATE OF GOOD FAITH

The undersigned contacted all parties via telephone or email in a good faith effort to resolve the issues raised in the motion. Plaintiffs Broward Bulldog, Inc., and Dan Christensen consent to the granting of this motion and the filing of an amicus curiae brief by the Herald-Tribune. The Herald-Tribune has been unable to resolve the issues raised with Defendants U.S. Department of Justice and Federal Bureau of Investigation; they do not agree to this motion.

Respectfully submitted,

THOMAS & LOCICERO PL



Carol Jean LoCicero

Florida Bar No. 603030

Rachel E. Fugate

Florida Bar No. 144029

601 S. Boulevard

Tampa, FL 33602

cloricero@tlolawfirm.com

rfugate@tlolawfirm.com

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

Attorneys for the Sarasota Herald-Tribune

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 10, 2013, I electronically filed with the Clerk of Court using CM/ECF The Sarasota Herald Tribune's Motion For Leave To File Amicus Curiae Brief & Supporting Memorandum Of Law. I also certify that the same document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.



Attorney