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.

ORAL ARGUMENT REQUESTED

Plaintiffs' Verified Motion for Interim Attorneys' Fee Award and Supporting Memorandum of Law

Thomas R. Julin
Florida Bar No. 325376

Hunton & Williams LLP
Attorneys for Broward Bulldog, Inc.
1111 Brickell Avenue – Suite 2500
Miami, FL 33131
30.810.2516
tjulin@hunton.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

MOTION

Plaintiffs, Broward Bulldog, Inc. and Dan Christensen, move pursuant to 5 U.S.C. § 552(a)(4)(E), for an interim award of attorneys' fees in light of the fact that the filing of the lawsuit has resulted in the production of 79 pages of documents previously unlawfully withheld, and has compelled the defendants to conduct a good faith search for responsive documents, an action that the defendants did not take prior to their denial of the plaintiffs' Freedom of Information Act request. Oral argument on this motion is requested.

FACTS ON WHICH THIS MOTION IS BASED

Plaintiffs have filed with this motion, a declaration by Thomas R. Julin, their lead counsel in this litigation as verification of the facts on which this motion is based. It shows that Broward Bulldog, Inc., a not-for-profit corporation, and Dan Christensen have extremely limited resources to prosecute this case and that the financial burden of the lawsuit has been borne by the law firm representing them. Julin Dec. ¶¶ 4-5 & 13-14.

It shows also that the plaintiffs sought the documents at issue not for their personal benefit, but rather because of their devotion to reporting about matters of high public interest, importance, and legitimate concern. Julin Dec. ¶ 6. It sets forth the facts that led up to the making of the Freedom of Information Act ("FOIA") requests at issue, the defendants' denial of those requests, and the basis for the filing of this lawsuit. Julin Dec. ¶¶ 7-10.

It shows that the defendants have resisted the lawsuit with a motion to dismiss, which was denied, and a motion for summary judgment, which also was denied. Julin Dec. ¶¶ 42 & 43.

The declaration further shows that the FBI denied multiple FOIA requests for records relating to the investigation, Julin Dec. ¶¶ 11-12, and that even long after this lawsuit was filed,

the defendants continued to claim that they had found *no* documents responsive to the FOIA requests, Julin Dec. ¶¶ 15-22, and that they ultimately admitted –six months after the lawsuit was filed – that they had found 35 pages of records. All of this took place only after the plaintiffs confronted the defendants with the threat that former U.S. Senator D. Robert Graham, co-chair of the Congressional Joint Inquiry into law enforcement agencies post-9/11 activities, would testify that responsive documents did in fact exist, had been found by the defendants, and had been shown to him, as well as the threat that other witnesses with knowledge of the investigation would testify regarding their knowledge of the investigation. Julin Dec. ¶¶ 23-30.

The declaration also shows that the records produced reflected that additional responsive documents probably also existed but that the defendants had not found those documents because they had not conducted a good faith search for the documents. Julin Dec. ¶¶ 31-34.

This led the plaintiffs to seek discovery from the defendants and to ask the Court to direct the defendants to conduct a more thorough search in accordance with a methodology that the Plaintiffs designed. The Court, over the strong objection of the defendants; agreed that a more thorough search should be conducted, and additional responsive, non-exempt records then were found and produced to the plaintiffs as a consequence of the Court's order. Julin Dec. ¶¶ 35-58

The declaration shows that the search ordered by the Court resulted in the defendants locating more than 80,000 pages of additional documents that also may be responsive to the plaintiffs' FOIA requests and that the Court is continuing the laborious process of reviewing those documents at this time. Julin Dec. ¶ 52.

The declaration also explains how the records sought in this case may be related to the 28 pages of a Congressional Joint Inquiry into the events of September 11, 2001, which may be declassified as soon as next month; that many members of Congress, victims of 9/11, and others

have called for disclosure of the 28 pages and the 80,000 pages that are the subject of this litigation, and that these developments have spurred the U.S. Senate to pass a bill that would allow foreign governments to be held liable to the victims of terrorism that they have supported on U.S. soil, and that the U.S. House of Representatives is expected to consider that bill shortly. Julin Dec. ¶¶ 59-65.

The declaration also shows that the attorneys who are prosecuting this lawsuit are well-qualified to do so, and that the value of the time that they have expended on this litigation is now $409,919.25. Julin Dec. ¶¶ 66-80.

ARGUMENT

I.

Interim Fee Awards are Appropriate in Protracted Cases

The Freedom of Information Act provides attorney's fees to parties who prevail against the United States:

> The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

5 U.S.C. § 552(a)(4)(E).

This provision has been interpreted as authorizing interim fee awards in protracted FOIA cases. For example, the Ninth Circuit held in *Rosenfeld v. United States*, 859 F. 2d 717 (9th Cir. 1988): "When citizens must litigate against the government to obtain public information, especially when, as here, release of the withheld records appears to be in the public interest rather than for merely private commercial gain, it is entirely appropriate that interim fee awards be available to enable meritorious litigation to continue." *Id.* at 725.

The Court further held: "We do not believe that Congress, after waiving sovereign immunity from attorney's fees for citizens seeking the release of information, would

countenance the government's dragging its heels, thereby forcing impecunious litigants to abandon their quest." *Id.* In rejecting an alternative argument that the government could not be required to pay an interim fee award, the Court ruled: "The FOIA embodies the important federal policy of "broad disclosure of government documents and maximum feasible public access to government information." . . . The crabbed position taken by the government in this case simply highlights the indispensability of citizen enforcement to the furtherance of that policy. The district court did not exceed its jurisdiction in ordering payment of an interim award." *Id.* at 727.

Subsequent to *Rosenfeld,* district courts have followed its holding. *See Raher v. Federal Bureau of Prisons,* No. 09-cv-526-ST (D. Ore. Jan. 2, 2013 (granting interim fee award); *Allen v. FBI*, 751 F. Supp. 255 (D.D.C. 1990) (entering interim fee award and 50-percent contingency enhancement); *Allen v. Dep't of Defense,* 713 F. Supp. 7, 12 (D.D.C. 1989) (granting interim fee and holding: "The government has simply failed to offer any convincing arguments that would lead it to disagree with the Ninth Circuit's result"). No contrary Eleventh Circuit authority exists.

The entry of an interim fee award will not slow the progress of this litigation in part because interim fee awards are not appealable. *Rosenfeld,* 859 F.2d at 720; *see also Shipes v. Trinity Indus.,* 883 F.2d 339, 344 (5th Cir. 1989) (interim fee award no appealable); *Hillery v. Rushen*, 702 F.2d 848, 848 (9th Cir. 1983) (granting motion to dismiss for lack of jurisdiction); *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin*, 829 F.2d 601, 602 (7th Cir. 1987) (Section 1988 interim fee award not appealable as final order); *Hastings v. Maine-Endwell Cent. Sch. Dist.*, 676 F.2d 893, 895 (2d Cir. 1982) (same); *Yackowicz v. Pennsylvania,* 683 F.2d 778, 782 (3d Cir. 1982) (denial of interim fees under § 2000e-5(k) not appealable final order); *Ruiz v. Estelle*, 609 F.2d 118, 118 (5th Cir. Jan. 2, 1980) (section 1988 interim fee award "patently not yet final").

An interim award is particularly appropriate in this case because the Broward Bulldog, Inc., a not-for-profit corporation that operates on a shoe-string budget provided by a small number of donors and it cannot afford to pay for the significant costs of litigation of this type. It is appropriate because the Broward Bulldog was established by veteran investigative reporter Dan Christensen, to engage in local news reporting. The entity relies on contributions for its existence and has had to rely on representation through Hunton & Williams LLP, which has agreed to be compensated only if fees are awarded to the plaintiffs in this litigation. In essence, Broward Bulldog, Inc. and Mr. Christensen are litigants who cannot afford to maintain this litigation, yet, as will be shown below, they already have established that they are eligible and entitled to receive an attorneys' fee award.

II.

The Court Should Grant an Interim Award

In order to make an award of fees, the Court must concluded that the plaintiffs are both "eligible" for an award of attorney's fees and "entitled" to it. *Fund for Constitutional Government v. National Archives & Records Serv.*, 656 F.2d 856, 870 (D.C. Cir. 1981). To be eligible for an award of attorney's fees, a party must be determined to have "substantially prevailed." *Id*. The issue in determining if a party has "substantially prevailed" is "largely a question of causation -- did the institution and prosecution of the litigation *cause* the agency to release the documents obtained during the pendency of the litigation?" *Church of Scientology v. Harris*, 653 F.2d 584, 587 (D.C. Cir. 1981) (emphasis in original).

In turn, once a party has demonstrated eligibility, attorney's fees will be awarded if in the court's discretion that party is so entitled. Among the factors a court should consider in granting attorney's fees in a FOIA case are: 1) the public benefit derived from the case; 2) the commercial

benefit to the successful plaintiff; 3) the nature of the successful plaintiff's interest in the records; and 4) whether the agency had a reasonable basis in law for withholding the records. *Davy v. CIA*, 550 F.3d 1155, 1159 (D.C. Cir. 2008); *Detroit Free Press, Inc. v. Dep't of Justice*, 73 F.3d 93, 98 (6th Cir. 1996); *Cotton v. Heyman*, 63 F.3d 1115, 1123 (D.C. Cir. 1995); *Fenster v. Brown*, 617 F.2d 740, 742 (D.C. Cir. 1979).

A. The Plaintiffs Have Substantially Prevailed.

Although the Supreme Court has rejected this "catalyst" theory as applied to federal fee-shifting statutes generally, *Buckhannon Bd. & Care Home, Inc. v. West Virginia*, 532 U.S. 598 (2001), the Freedom of Information Act was amended in 2007 to ensure that a plaintiff could recover fees where an agency unilaterally changes its position or voluntarily complies with the request in reaction to the filing of a lawsuit or developments within the lawsuit. *Warren v. Colvin*, 744 F.3d 841, 845 (2d Cir. 2014). The Second Circuit explained in *Warren*:

> Congress amended FOIA in 2007 to abrogate the Buckhannon holding, as applied to FOIA actions, and to define "substantially prevailed" to include, inter alia, "a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial." 5 U.S.C. § 552(a)(4)(E)(ii); see also Open Government Act of 2007, Pub. L. 110-175, 121 Stat. 2524 (2007). Congress intended this amendment to prevent federal agencies from denying meritorious FOIA requests, only to voluntarily comply with a request on the eve of trial to avoid liability for litigation costs. *Brayton v. Office of the U.S. Trade Representative*, 641 F.3d 521, 525 (D.C. Cir. 2011).

Id. at 845. The Eleventh Circuit recognized these principles in *Grabe v. United States Department of Homeland Security*, 440 F. App'x 687 (11th Cir. 2011) (unpublished); *see also American Ass'n of People with Disabilities v. Harris,* 605 F. 3d 1124, 1137 n. 26 (11th Cir. 2010) (noting that Congress had amended the fee shifting provision of FOIA after *Buckhannon*, but not other federal fee shifting acts). The Justice Department also has recognized that a requester becomes eligible for a fee award where "the change in the agency's position would not have occurred but for the filing of the lawsuit." *Department of Justice Guide to the Freedom of*

Information Act – Attorneys' Fees at 10 & n. 53 (2016) (hereinafter "*DOJ FOIA Guide*").[1]

In the instant case, the Justice Department and the FBI denied the plaintiffs' request for records, the plaintiffs were forced to bring this litigation, the defendants initially claimed in response to the litigation that they had no responsive records, the plaintiffs then confronted the defendants with evidence that responsive records did exist and had been found, and the defendants then admitted that they had found 35 responsive documents, and produced significant portions of 31 pages of those documents. Significantly, the released documents contradicted the public statements of the FBI that their investigation had not found any connections between the

---

[1] *See also Baker v. Dep't of Homeland Sec.,* No. 3:11-CV-588, 2012 WL 5876241, at *4 (M.D. Pa. Nov. 20, 2012) (finding casual nexus where documents released after lawsuit filed); *Rosenfeld v. Dep't of Justice*, 904 F. Supp. 2d 988, 998 (N.D. Cal. 2012) ("both the timing and the circumstances of [the defendant's] release of documents in this case indicate that [the plaintiff's] FOIA lawsuit was, at root, 'what actually triggered the documents' release'"); *Elec. Privacy Info. Ctr. v. Dep't of Homeland Sec.*, 892 F. Supp. 2d 28, 49 (D.D.C. 2012) ("the sequencing of DHS's disclosures as well as the department's change of position as to the propriety of withholding them suggests that this lawsuit was the catalyst for the record release); *Judicial Watch v. Dep't of Justice*, 878 F. Supp. 2d 225, 232 (reasonable to think that records would not have been released but for lawsuit); *Yonemoto v. Veterans' Admin.*, No. 06-378, 2012 WL 1980818, at *2 (D. Haw. June 1, 2012) (plaintiff substantially prevailed when there was "no indication that Plaintiff could have obtained the requested documents without filing the instant action"); *Calypso Cargo Ltd. v. United States Coast Guard*, 850 F. Supp. 2d 1, 4 (D.D.C. 2011) ("'he key question under the 'catalyst theory' is whether 'the institution and prosecution of the litigation cause[d] the agency to release the documents obtained during the pendency of the litigation . . . .'"); *Moffat v. Dep't of Justice*, No. 09-12067, 2012 WL 113367, at *1 (D. Mass. Jan. 12, 2012) (defendant's release of records discovered after "more thorough search . . . may be sufficient to establish that [plaintiff] substantially prevailed"); *ACLU v. Dep't of Homeland Security*, 810 F. Supp. 2d 267, 275 (D.D.C. 2011) (plaintiff substantially prevailed where "defendants' own submissions admit that at least some of the documents were produced as a result of preparing Vaughn indexes" and records would "not have been produced without the litigation"); *Elec. Priv. Info. Ctr. v. Dep't of Homeland Security*, 811 F. Supp. 2d 216, 232-233 (D.D.C. 2011) ("plaintiff's lawsuit has clearly elicited a 'voluntary or unilateral change in [the defendant's] position'" when documents were only produced after litigation was initiated); *Waage v. Internal Rev. Serv.*, 656 F. Supp. 2d 1235, 1239 (S.D. Cal. 2009) (finding plaintiff substantially prevailed where additional pages were released after litigation commenced); *Nulankeyutmonen Nkihtaqmikon v. Bureau of Indian Affairs*, 672 F. Supp. 2d 154, 174 (D. Me. 2009) (concluding plaintiff "substantially prevailed to the extent it forced [defendant] to unearth undisclosed documents buried within the agency").

subjects of the investigation and the terrorist attacks on the United States on September 11, 2001.

"A court order is not necessary for a litigant to have substantially prevailed 'if it demonstrates that the prosecution of the lawsuit was reasonably necessary to obtain requested information, and that the existence of the lawsuit had a causative effect upon the release of that information.'" *Hertz Schram PC v. FBI*, No. 12-CV-14234, 2015 WL 5719673 (E.D. Mich. 2015) (*quoting GMRI, Inc. v. E.E.O.C.*, 149 F.3d 449, 451-52 (6th Cir. 1998)). While "the mere filing of the complaint and the subsequent release of the documents is insufficient to establish causation," *Weisberg v. U.S. Dep't of Justice*, 745 F.2d 1476, 1496 (D.C. Cir. 1984), because administrative backlogs might explain the delay, *see, e.g., Simon v. United States,* 587 F. Supp. 1029, 1031-1032 (D.D.C. 1984*),* in this case, not only were no documents released until after the lawsuit was filed, the defendants withheld documents for months after the lawsuit was filed and only produced documents when confronted with hard evidence that the documents existed and that a motion to compel was about to be filed. Julin Dec. ¶¶ 23-28.

The plaintiffs had filed their complaint on September 5, 2012. DE-1. More than four months later, on January 9, 2013, the defendants had continued to insist that they "have not located any records responsive to plaintiffs request." DE-12 at 2 (defendants' initial disclosures). The defendants located responsive, non-exempt documents only after counsel advised the defendants that former U.S. Sen. Bob Graham was prepared to testify that he had seen responsive documents. Only then, and again after being ordered by the Court to do so, did the defendants locate and produce many responsive, non-exempt documents. Julin Dec. ¶¶ 43-58.

B. The Plaintiffs are Entitled to an Interim Fee Award

As stated, once a plaintiff is deemed eligible to receive an award, Courts have looked to a

variety of factors to decide whether the plaintiff is entitled to the award. All of those factors, lead to the conclusion that the plaintiffs should be granted an interim award in this case.

1. The Public Already Has Derived Benefit from the Case.

The important public interest already served by this litigation is readily apparent from the record now before the Court, including most notably the sworn declaration of former Senator Bob Graham, the former chair of the U.S. Senate Foreign Intelligence Committee who served as the co-chair of the Congressional Joint Inquiry into events of September 11, 2001. DE-29-5. Senator Graham's declaration is replete with statements highlighting the significant public interests that are served by disclosure of the documents sought in plaintiffs' FOIA requests. He testified:

- "Documents of this type have a direct bearing on the critical issues of whether the 19 individuals who are known to have carried out the attacks on September 11, 2001, did so with the support of a significant network of others living in the United States and, if so whether our law enforcement agencies have taken appropriate actions against those persons and to prevent them from supporting other terrorist attacks in the future." DE 29-5 at ¶ 52.

- "I am troubled by what appears to me to be a persistent effort by the FBI to conceal from the American people information concerning possible Saudi support of the September 11 attacks." DE 29-5 at ¶ 44.

- "The FBI's failure to call documents finding 'many connections' between Saudis living in the United States and individuals associated with the terrorist attack[s] to the attention of the Joint Inquiry interfered with the Inquiry's ability to complete its mission." DE 29-5 at ¶ 53.

- "[T]he 9/11 Commission was not provided with the information regarding the FBI's Sarasota investigation." DE 29-5 at ¶ 26.

In short, the documents sought, including those already obtained, bear directly on whether the FBI misled or withheld critical information from a joint congressional committee investigating the deadliest terror attacks in U.S. history. More importantly, the documents bear on the broader issue (of even greater public interest) of whether the 19 persons who attacked our nation on

September 11, 2001, were supported by persons living in Sarasota, Florida.

The public value of the documents already released is further demonstrated by the widespread reporting of the contents of the documents, not only by the plaintiffs, but also by numerous other media entities.

2. The Plaintiffs Derived No Commercial Benefit.

The plaintiffs have derive no commercial benefit from obtaining release of the documents at issue because their website is operated as a not-for-profit entity. Mr. Christensen himself earns a subsistence salary that barely enables him to continue operation of the Bulldog website. Julin Dec. ¶ 5.

3. The Plaintiff's Interest in the Records Serves the Public.

The plaintiffs brought this litigation not to advance their own interests, but to advance the public interest in understanding how U.S. law enforcement reacted to a suspicious event that preceded the 2001 attacks on the United States. The facts known to the plaintiffs prior to initiating this litigation were that an FBI investigation had been conducted of events that appeared to be directly related to the terrorist attacks, that the FBI claimed it had disclosed the investigation to Congress, that the Senator conducting the investigation claimed that this was not true, that the FBI claimed the investigation had found no connections to the terrorist attacks, and that the FBI refused to produce *any* records of its investigation. It appeared to the plaintiffs that the FBI was concealing its investigation and refusing to follow the procedures set forth in the Freedom of Information Act. The filing of this lawsuit compelled the disclosure of significant records and also revealed that the defendants had not conducted a good faith search for records that relate to what fairly can be described as the most heinous crime in U.S. history. It therefore is very clear that the plaintiffs' interest in the records and their pursuit of this litigation serves the

public interest.

4. The Defendants Had No Reasonable Basis for Withholding the Records

To date, the defendants have not articulated any reasonable basis for withhold of the records at issue. In its April 4, 2014, Order, on the other hand, the Court explained that it had ordered a more thorough search because the "Defendants' eagerness to assert exemptions and wooden method of interpreting plaintiffs' FOIA requests essentially deprives the Court of its role in examining any relevant documents and independently determining whether any exemptions may apply." DE-60 at 7. The Court further held that "Defendants' characterization of Plaintiffs' second request is literal to the point of being nonsensical." DE-60 at 9. The Court found "apparent gaps between the documents" that had been produced that seemed "highly unusual," DE-60 at 11-12, and that "[]o reports of underlying inspections and investigations have been produced," DE-60 at 12. The Court expressed concern that "an investigation took place during this time period that apparently resulted in certain findings, yet, seemingly, the search yielded no documentation of this investigation." DE-60 at 12. The Court also found that the documents produced "seem to contradict one another" yet nothing that had been produced "reconciles this stark contradiction." DE-60 at 13=14.

The Court also found it significant that the defendants had found responsive documents only "after the lawsuit had been filed," DE-60 at 14 (emphasis in original), and pointed out that "Defendants do not explain to the Court's satisfaction why additional steps were undertaken or were suddenly reasonable to undertake merely because a lawsuit was filed." DE-60 at 15. The Court stated it was "troubled by the fact that the filing of the above-styled caused appeared to be cited by Defendants as a rationale or at least a prompt for performing further searches." DE-60 at 15. The Court criticized the defendants' claim of having conducted a good faith search, noting

that their declarant's affidavit was "conspicuously vague." DE-60 at 17.

In addition, the Court noted that documents shown to Sen. Graham and others promised to be shown to Sen. Graham had not been accounted for. DE-60 at 19.

III.

The Plaintiffs Have Shown the Amount of a Reasonable Interim Fee

"If a court decides to make a fee award — either interim or otherwise — its next task is to determine an appropriate fee amount, based upon attorney time shown to have been reasonably expended. . . . The starting point in setting a fee award is to multiply the number of hours reasonably expended by a reasonable hourly rate — a calculation that yields the 'lodestar.'" *DOJ FOIA Guide – Attorney Fees* at 31 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1982) (civil rights case); *Copeland v. Marshall*, 641 F.2d 880, 891 (D.C. Cir. 1980) (en banc) (Title VII case); *Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 168 (3d Cir. 1973) (describing the product of a reasonable hourly rate and the hours actually worked as "the lodestar of the court's fee determination").

The Declaration of Thomas R. Julin filed in support of this motion provides detailed narrative descriptions of the work that was done in this case, the rates that each of the four lawyers who worked on the case ordinarily charge, the hours worked by each of the lawyers, and hourly rates ordinarily charged by other lawyers in this community. Julin Dec. ¶¶ 66-78 & Exs. A-C. The declaration shows that the plaintiffs' lawyers have worked 615.35 hours on this case, that their average hourly rates during the period of this work was $666.16, and that the product of these numbers is $409,919.25.

In *Perdue v. Kenny A.,* 559 U.S. 542, 546 (2010), the U.S. Supreme Court held that "the calculation of an attorney's fee, under federal fee-shifting statutes, based on the "lodestar," i.e.,

the number of hours worked multiplied by the prevailing hourly rates, may be increased due to superior performance and results." This may be done "in extraordinary circumstances." *Id.* "[T]here is a strong presumption that the lodestar is sufficient; factors subsumed in the lodestar calculation cannot be used as a ground for increasing an award above the lodestar; and a party seeking fees has the burden of identifying a factor that the lodestar does not adequately take into account and proving with specificity that an enhanced fee is justified." *Id.*

The Eleventh Circuit will "review an award of attorney's fees for abuse of discretion, reversing only if the court 'fails to apply the proper legal standard or to follow proper procedures in making the determination, or bases an award upon findings of fact that are clearly erroneous.'" *Hithon v. Tyson Foods, Inc.*, 566 F.. App'x 827, 829 (11th Cir. 2014) (*citing ACLU of Ga. v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999) (internal quotation marks omitted)).

Determining reasonable attorneys' fees is "committed to the sound discretion of a trial judge, but the judge's discretion is not unlimited." *Perdue*, 559 U.S. at 558 (citation omitted). The district court's findings of fact are reviewed for clear error. *Atlanta Journal and Constitution v. City of Atlanta Dep't of Aviation*, 442 F.3d 1283, 1287 (11th Cir. 2006).

The Supreme Court held in *Perdue* that "an enhancement for delay in the payment of attorney's fees . . . may be justified," *see Gray v. Bostic*, 613 F.3d 1035, 1045 (11th Cir. 2010), and recognized that courts compensating for delay in the payment of fees had done so either by using current rates for the entire fee calculation, or by using the rates in place when the work was performed and then adjusting that amount to reflect present value. *Id.* (*citing Perdue*). If *current* rates were used in this case to calculate the value of the work that was done over the three years of this litigation, the value of the work done would be $450,146.25. Julin Dec. ¶ 74 & Ex. A.

An enhanced award is justified in this case in light of the substantial delay attributable to

the defendants' initial failure to use reasonable search methods to locate the requested documents; the defendants assertion after the lawsuit was filed that no documents had been found; the defendants' effort to obtain dismissal of the lawsuit and summary judgment before conducting a good faith search; the defendants' strong resistance to conducting a good faith search even after it was evident that they had not done so; and the defendants' use of classification of the *entire* PENTTBOMB investigation file in the Tampa Field Office of the FBI to withhold documents responsive to the plaintiffs' FOIA request. Overcoming this sort of studied resistance to disclosure of records of the gravest public importance has required an extraordinary amount of time, effort, and creative lawyering.

CONCLUSION

The Court should grant the plaintiffs' motion and the plaintiffs should be awarded interim attorney's fees of either $409,919.25 if no enhancement is granted, or $450,146.25 if an enhancement is granted.

Respectfully submitted,

Hunton & Williams LLP
Attorneys for Broward Bulldog, Inc. and Dan Christensen

By s/ Thomas R. Julin
Thomas R. Julin & Paulo R. Lima
Florida Bar No. 325376 & 0064364
tjulin@hunton.com / plima@hunton.com
1111 Brickell Avenue - Suite 2500
Miami, FL 33131
305.810.2516 Fax 1601

CERTIFICATION OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3)(A), the undersigned counsel for plaintiffs certifies that he conferred with counsel for the defendants in this matter in a good faith effort to resolve the issues raised in the Motion by providing that counsel with a draft of this motion and the attached Declaration of Thomas R. Julin on May 23, 2016. On Friday, May 27, 2016, Dexter Lee, counsel for the defendants, advised that he had spoken with the Federal Bureau of Investigation , that the defendants would respond to the motion once it had been filed.

s/ Thomas R. Julin
Thomas R. Julin

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on May 31, 2016, by filing with the CM/ECF system on all counsel or parties of record on the Service List below.

s/ Thomas R. Julin
Thomas R. Julin

SERVICE LIST

Thomas R. Julin, Esq.
Hunton & Williams LLP
tjulin@hunton.com / pacosta@hunton.com
1111 Brickell Avenue, Suite 2500
Miami, Florida 33131
Tel: (305) 810-2516 Fax 1601
Counsel for Plaintiffs, Broward Bulldog, Inc., and Dan Christensen

Dexter Less
Assistant U.S. Attorney
Dexter.Lee@usdoj.gov
99 N.E. 4th St., Suite 300
Miami, Florida 33132
Tel: (305) 961-9333
Fax: (305) 530-7139
Counsel for Defendants, U.S. Department of Justice and Federal Bureau of Investigation