

GOVERNMENT EXHIBIT 1
FIFTH DECLARATION OF
DAVID M. HARDY

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 12-cv-61735-WJZ

BROWARD BULLDOG, and
DAN CHRISTENSEN,

Plaintiffs,

v.

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

Defendants.

FIFTH DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to my joining the Federal Bureau of Investigation (“FBI”), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 249 employees who staff a total of ten (10) Federal Bureau of Investigation Headquarters (“FBIHQ”)

units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and the FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order 13526,¹ and the preparation of declarations in support of Exemption 1 claims asserted under the FOIA. I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to E.O. 13526, §§1.3 and 3.1. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to Plaintiffs' requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552. Specifically, I am aware of the FBI's handling of plaintiff's FOIA requests to FBIHQ, seeking access to records pertaining to the address 4224 Escondido Circle, near Sarasota Florida.

(4) This declaration is being submitted in response to the Court's Order dated October 16, 2017 requiring the FBI to submit additional information in support of its renewed Motion for Summary Judgement.

¹ 75 Fed. Reg. 707 (2010).

PRODUCTION TIMELINE

(5) In its October 16, 2017 order, the Court directed an updated production time line for the documents at issue in this litigation. The proceeding paragraphs provide the dates and background for all of the documents provided to Plaintiff. Additionally, the Court directed the FBI to sequentially number the records starting with the FBI's original production. The responsive records are now sequentially numbers BULLDOG-1-81 and processed copies of the sequentially numbered documents can be located at Exhibit A.

(6) **BULLDOG-1-35 (originally SARASOTA-1-35)**: On March 28, 2013, the FBI reviewed 35 and released 31 pages to Plaintiff located through the FBI's original search. This two-pronged search consisted of searches by RIDS and assistance by the FBI's Tampa Field Office in ensuring that responsive documents were located. *See* the Declaration of David M. Hardy (Docket Number 25-1) at ¶23 for further description of this search.

(7) **BULLDOG-36-39 (originally SarasotaManualR-1-4)**: On May 9, the FBI released four pages to Plaintiff. These pages were located through a manual review of an FBI investigative file redacted on Bullsog-1-35 (SARASOTA-1-35) and provided to the Court for *in camera* inspection on April 18, 2014. This search was directed by the Court in its April 4, 2014 order. *See* the Third Declaration of David M. Hardy (Docket Number 68-1) at ¶6 for further description of this search.

(8) **BULLDOG-40-70 & BULLDOG-21 (SarasotaTPSub-1-31 & SARASOTA - 21)**: On June 6, 2014, the FBI released 31 additional pages to Plaintiff. These documents were located through a manual review of the Tampa sub-file of the FBI's September 11, 2001 terrorist attacks (herein referred to as the "9/11 attacks") investigation file, 265D-NY-280350-TP. This manual review was directed by the Court in its April 4, 2014 order. *See* the Fourth Declaration

of David M. Hardy (Docket Number 69-1) at ¶10 for further description of this search.

Additionally, on this same date, the FBI re-released BULLDOG-21 (SARASOTA-21) with fewer redactions than originally applied.

(9) **BULLDOG-71-81 and BULLDOG-6 (Originally SarasotaTrdPty-1-11 & SARASOTA -6):** On June 27, 2014, the FBI released 11 additional pages to Plaintiff. These documents were located through text searches of the FBI's case management systems, Automated Case System (ACS) and Sentinel. The search terms the FBI used were supplied by the Court in its April 4, 2014 order. *See* the Fourth Declaration of David M. Hardy (Docket Number 69-1) at ¶¶ 5-9 for further description of this search. Additionally, on this same date, the FBI re-released BULLDOG-6 (SARASOTA-6) as it was determined the information on this page no longer warranted classification. This page was released along with the first page of the serial (BULLDOG-5, originally SARASOTA-5) since the classification stamp (a stamp indicating the reasoning for classification, the individual making the classification decision, and the date classification expires – typically placed on the first page of classified documents) changed.

(10) Furthermore, as directed in the Court's October 16, 2017 order, the FBI is providing a separate index for the universe of responsive records described above (*See* Exhibit B). This index provides the Court with a description of the substance of these records as well as where they were located within the entirety of searched documents.

SEARCHES FOR RECORDS RESPONSIVE TO PLAINTIFFS' REQUEST

(11) In my previous declarations filed with the Court (*See* Docket Numbers 25-1, 61-1, 68-1, 69-1, and the two *in camera* declarations discussed at Docket numbers 70 and 71) I described in great detail the searches conducted by the FBI in response to Plaintiffs' request. To

supplement my own descriptions of the FBI's search efforts, the FBI is providing declarations from FBI personnel with direct and personal knowledge of these searches, as directed in the Court's October 16, 2017 order. *See* the declaration of Michael G. Seidel (Exhibit C). This declaration will provide the Court with this individual's first-hand account of the efforts I described previously.

Ambiguities Related to the Defendants' Filing System

(12) In its October 16, 2017 order, the Court requires the FBI to address "ambiguities related to Defendants' filing system." In relation to these ambiguities, my second declaration (See Docket 61-1), paragraphs 12-17, described the FBI's reliance on searches of its Central Records System (CRS), facilitated through the use of the Universal Index (UNI), accessed via ACC and Sentinel, when processing FOIA requests. UNI provides the FBI with means of conducting efficient index-based searches of the CRS, the most likely location of investigative data such as that requested by Plaintiffs. This allows the FBI to quickly and efficiently meet the reasonable FOIA search standards when processing the bulk of FOIA requests submitted to the FBI; however, when the FBI believes an index search of the CRS is not likely to meet the reasonable search standard required by the FOIA, the FBI supplements its searching with other efforts. In this case, originally, RIDS supplemented its UNI search through ACS with two additional efforts: 1) it conducted text searches of key terms within the Electronic Case File (ECF), a system that houses electronic, text-based FBI documents; and 2) it reached out to the Tampa Field Office and requested Tampa personnel assist with locating responsive documentation. Following completion of these efforts, the FBI located the original universe of responsive records consisting of 35 pages..

(13) In the Court's April 4, 2014 order, the FBI was directed to expand upon its search

efforts by conducting additional text searches in Sentinel. As explained in my second declaration, ACS preceded Sentinel as the FBI's primary case management system. Sentinel incorporates the information previously located within ACS, while still also backfilling indexing data into ACS, ensuring the UNI application within ACS is kept relevant. Sentinel did not become the FBI's official, primary case management system until July 1, 2012. This means any records created prior to this date, such as those requested by Plaintiff, would exist in both ACS and Sentinel – they would have been created in ACS and later merged into Sentinel when Sentinel became the FBI's primary case management system; therefore, searching Sentinel was somewhat redundant. However, the FBI conducted the searches directed by the Court within both ACS and Sentinel.

(14) When considering the merits of the FBI's searching practices, it is important to keep in mind the FBI's records keeping system is designed to first and foremost serve a law enforcement function. This means FBI investigators index and serialize records in a manner they deem most appropriate for law enforcement endeavors. Indexing is left to the discretion of these investigators who are often making quick, split-second, record-keeping decisions while also trying to prevent/investigate crimes and/or acts of violence. Though not perfect, the RIDS relies on the indexing of these investigators as the primary means to conduct efficient, reasonable FOIA searches – otherwise, without a reliance on indexing, RIDS would be forced to sift through thousands of records, line-by-line, in order to serve even the most basic of FOIA requests. Such a prospect would undoubtedly diminish the FBI's ability to respond to the thousands of FOIA requests it receives a year.

Results of the Court Ordered Searches

(15) While the Court ordered searches did result in the location of additional records, the information garnered through these efforts is largely cumulative of documents already produced. Further, the documents at BULLDOG-36-39 summarize information already provided to Plaintiffs – BULLDOG-36-37 describe a search of 4224 Escondito Circle, Sarasota, already described at BULLDOG-5; and BULLDOG-38-39 are envelopes that contained the documents at BULLDOG-9-11, and only bear minimal descriptions of these records. Also, the FBI's painstaking, manual review of 265D-NY-280350-TP located, for the most part, handwritten copies of FD-822s² already provided in the FBI's original production of records (BULLDOG-1-35). For example, BULLDOG-44-52 are handwritten copies of the FD-822 at BULLDOG-12-14; BULLDOG-53-55 are handwritten copies of the FD-822 at BULLDOG-15-17; BULLDOG-56-61 are handwritten copies of the FD-822 at BULLDOG-21-22; and BULLDOG-62-64 are handwritten copies of the FD-822 at BULLDOG-19-20. Though BULLDOG-65-70 is a handwritten copy of a FD-822 not located through the FBI's original search, it is merely an anonymous tip from a citizen reiterating information already summarized in the FBI's original production – the residents of 4224 Escondito Circle were wealthy Saudi Arabians who fled the country shortly after the 9/11 attacks. Additionally, BULLDOG-40-43 are exhibits for SARASOTA-23-27 and are summarized in detail on these pages.

(16) The text searches of third party names required by the Court's October 16, 2014 Order did result in the location of additional records; however, as I contended in my second

² An FD-822 is used to document incoming tips and leads associated with particular crisis/major case investigations, in this case, the FBI's investigation of the 9/11 terrorist attacks. The forms are originally created in a handwritten, paper format allowing for immediate handling during a crisis situation. They are later electronically imported in the FBI's case management system.

declaration (Docket Number 61-1) at ¶ 19, the FBI believes many of these searches violate these individuals' rights to privacy. Additionally, these searches located several serials already provided to Plaintiff within BULLDOG-1-35. Among the actual additional responsive records located through these searches, BULLDOG-77-78 is a duplicate copy of a serial already provided (BULLDOG-26-27) that was filed in a separate filing location. Two other serials (BULLDOG-71-73 and BULLDOG-79-81), which are duplicative of each other, merely relate that one of the occupants of 4224 Escondito Circle, a person of interest in the 9/11 attacks investigation, returned to the United States on a valid VISA in 2012. Additionally, the portions of BULLDOG-74-76 actually responsive to Plaintiffs' request merely summarize information about the occupants of 4224 Escondito Circle already released at BULLDOG-5-6 and at other locations within BULLDOG-1-35.

(17) In summation, the FBI's original searching efforts located the core information responsive to Plaintiffs' request. Through the additional efforts required by the Court, the FBI located small pieces of responsive information offering minimal to no additional information concerning the FBI's investigations of the 9/11 attacks and the occupants of 4224 Escondido Circle. RIDS has produced all records not exempt from disclosure and subject to the FOIA, located through these search efforts. The FBI has followed all logical leads in its searching efforts and has found no evidence that additional responsive material is located elsewhere within FBI records.

**WITHOLDING OF INFORMATION PURSUANT TO APPLICABLE FOIA
EXEMPTIONS**

(18) In my first declaration (*See* Docket Number 25-1) at ¶¶ 26-72, I explained the FBI's reasoning for withholding records from disclosure pursuant to FOIA Exemptions 1, 3, 6, 7(C), 7(D), and 7(E), 5 U.S.C. §§ 552(b)(1), (b)(3), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E),

within the original 35 page universe of records. Each withholding was accompanied by a numeric code corresponding to specific justifications for withholding information pursuant to the cited Exemptions. The coded categories of Exemptions were as follows:

SUMMARY OF JUSTIFICATION CATEGORIES	
CODED CATEGORIES	INFORMATION WITHHELD
Category (b)(1)	CLASSIFIED INFORMATION
(b)(1)	Classified Information
Category (b)(3)	INFORMATION PROTECTED BY STATUTE
(b)(3)-1	National Security Act of 1947 – 50 U.S.C. § 403-1(i)(1)
Categories (b)(6) and (b)(7)(C)	CLEARLY UNWARRANTED AND UNWARRANTED INVASION OF PERSONAL PRIVACY
(b)(6)-1 and (b)(7)(C)-1	Names and/or Identifying Information of FBI Special Agents and Support Personnel
(b)(6)-2 and (b)(7)(C)-2	Names and/or Identifying Information of Third Parties of Investigative Interest
(b)(6)-3 and (b)(7)(C)-3	Names and/or Identifying Information Concerning Third Parties Merely Mentioned
(b)(6)-4 and (b)(7)(C)-4	Names and/or Identifying Information Of Third Parties Who Provided Information to the FBI
(b)(6)-5 and (b)(7)(C)-5	Names and or Identifying Information of Local Law Enforcement
Category (b)(7)(D)	CONFIDENTIAL SOURCE INFORMATION
(b)(7)(D)-1	Information Provided by a Local Law Enforcement Agency Under an Implied Assurance of Confidentiality
(b)(7)(D)-2	Name, Identifying Information and/or Information Provided by an Individual Under an “Implied” Assurance of Confidentiality
Category (b)(7)(E)	INVESTIGATIVE TECHNIQUES AND PROCEDURES
(b)(7)(E)-1	File Numbers
(b)(7)(E)-2	Dates and Types of Investigations (Preliminary or Full Field Investigations)
(b)(7)(E)-3	Internal Non-Public Facsimile Numbers
(b)(7)(E)-4	Information Pertaining to Investigative Techniques and Procedures
(b)(7)(E)-5	Intelligence Analyst Analytical Techniques and Procedures
(b)(7)(E)-6	Database and Database Information

(19) As described *supra* ¶¶ 7-9, the FBI located additional responsive records through the search efforts directed by the Court. The FBI applied redactions to these documents and coded them similar to the original universe of documents. 42 of these pages were released in

part with redactions made pursuant to one or more FOIA Exemptions, and two (2) pages were released in full. Exemptions were applied to these pages as follows:

Bates Page	Original Bates Page	Exemptions Applied
BULLDOG-1	SARASOTA-1	(b)(6)/(b)(7)(C)-2,3
BULLDOG-2	SARASOTA-2	(b)(6)/(b)(7)(C)-2,3
BULLDOG-3	SARASOTA-3	None
BULLDOG-4	SARASOTA-4	None
BULLDOG-5	SARASOTA-5	(b)(6)/(b)(7)(C)-1,2,3; (b)(7)(E)-1,2
BULLDOG-6	SARASOTA-6	(b)(6)/(b)(7)(C)-2,3; (b)(7)(E)-1,4
BULLDOG-7	SARASOTA-7	(b)(6)/(b)(7)(C)-1,2,3; (b)(7)(E)-1
BULLDOG-8	SARASOTA-8	(b)(6)/(b)(7)(C)-3; (b)(7)(E)-1
BULLDOG-9	SARASOTA-9	(b)(6)/(b)(7)(C)-2,3; (b)(7)(E)-3
BULLDOG-10	SARASOTA-10	(b)(6)/(b)(7)(C)-2,3; (b)(7)(E)-1
BULLDOG-11	SARASOTA-11	(b)(6)/(b)(7)(C)-3
BULLDOG-12	SARASOTA-12	(b)(6)/(b)(7)(C)-1,3; (b)(7)(E)-4
BULLDOG-13	SARASOTA-13	(b)(6)/(b)(7)(C)-1,3
BULLDOG-14	SARASOTA-14	(b)(6)/(b)(7)(C)-1
BULLDOG-15	SARASOTA-15	(b)(6)/(b)(7)(C)-1,2,4
BULLDOG-16	SARASOTA-16	None
BULLDOG-17	SARASOTA-17	(b)(6)/(b)(7)(C)-1,4
BULLDOG-18	SARASOTA-18	(b)(6)/(b)(7)(C)-1,2,4
BULLDOG-19	SARASOTA-19	(b)(6)/(b)(7)(C)-1,3,4
BULLDOG-20	SARASOTA-20	None
BULLDOG-21	SARASOTA-21	(b)(6)/(b)(7)(C)-1,3,4
BULLDOG-22	SARASOTA-22	None
BULLDOG-23	SARASOTA-23	(b)(6)/(b)(7)(C)-1,2,3,4
BULLDOG-24	SARASOTA-24	(b)(6)/(b)(7)(C)-2
BULLDOG-25	SARASOTA-25	None
BULLDOG-26	SARASOTA-26	(b)(6)/(b)(7)(C)-1,2,3,4
BULLDOG-27	SARASOTA-27	(b)(6)/(b)(7)(C)-3,4
BULLDOG-28	SARASOTA-28	(b)(6)/(b)(7)(C)-1,5; (b)(7)(E)-3
BULLDOG-29	SARASOTA-29	(b)(6)/(b)(7)(C)-2,3,4,5; (b)(7)(D)-1 ; (b)(7)(E)-3
BULLDOG-30	SARASOTA-30	(b)(6)/(b)(7)(C)-1,2,3,4,5; (b)(7)(D)-1,2; (b)(7)(E)-3
BULLDOG-31	SARASOTA-31	(b)(6)/(b)(7)(C)-2,3,4; (b)(7)(D)-1,2; (b)(7)(E)-3
BULLDOG-32	SARASOTA-32	(b)(6)/(b)(7)(C)-2,3,4; (b)(7)(D)-1,2; (b)(7)(E)-3
BULLDOG-33	SARASOTA-33	(b)(6)/(b)(7)(C)-1; (b)(7)(E)-4
BULLDOG-34	SARASOTA-34	(b)(6)/(b)(7)(C)-1,2,3,4; (b)(7)(E)-1,5
BULLDOG-35	SARASOTA-35	(b)(1); (b)(6)/(b)(7)(C)-1,2,3; (b)(7)(E)-4,5,6
BULLDOG-36	SarasotaManualR-1	(b)(6)/(b)(7)(C)-2; (b)(7)(E)-1
BULLDOG-37	SarasotaManualR-2	(b)(6)/(b)(7)(C)-2; (b)(7)(E)-1
BULLDOG-38	SarasotaManualR-3	(b)(7)(E)-2
BULLDOG-39	SarasotaManualR-4	(b)(6)/(b)(7)(C)-1,2,3; (b)(7)(E)-2

BULLDOG-40	SarasotaTPSub-1	(b)(6)/(b)(7)(C)-3
BULLDOG-41	SarasotaTPSub-2	(b)(4)-1; (b)(6)/(b)(7)(C)-3
BULLDOG-42	SarasotaTPSub-3	(b)(4)-1; (b)(6)/(b)(7)(C)-3
BULLDOG-43	SarasotaTPSub-4	(b)(6)/(b)(7)(C)-3
BULLDOG-44	SarasotaTPSub-5	(b)(6)/(b)(7)(C)-1,3,4,5
BULLDOG-45	SarasotaTPSub-6	(b)(6)/(b)(7)(C)-3
BULLDOG-46	SarasotaTPSub-7	(b)(6)/(b)(7)(C)-1,3,5
BULLDOG-47	SarasotaTPSub-8	(b)(6)/(b)(7)(C)-1,3,4,5
BULLDOG-48	SarasotaTPSub-9	(b)(6)/(b)(7)(C)-3
BULLDOG-49	SarasotaTPSub-10	(b)(6)/(b)(7)(C)-1,3,5
BULLDOG-50	SarasotaTPSub-11	(b)(6)/(b)(7)(C)-1,3,4,5
BULLDOG-51	SarasotaTPSub-12	(b)(6)/(b)(7)(C)-3
BULLDOG-52	SarasotaTPSub-13	(b)(6)/(b)(7)(C)-1,3,5
BULLDOG-53	SarasotaTPSub-14	(b)(6)/(b)(7)(C)-1,3,4,5
BULLDOG-54	SarasotaTPSub-15	(b)(6)/(b)(7)(C)-1,3,4,5
BULLDOG-55	SarasotaTPSub-16	(b)(6)/(b)(7)(C)-1,3,4,5
BULLDOG-56	SarasotaTPSub-17	(b)(6)/(b)(7)(C)-1,4
BULLDOG-57	SarasotaTPSub-18	(b)(6)/(b)(7)(C)-3
BULLDOG-58	SarasotaTPSub-19	(b)(6)/(b)(7)(C)-1,4
BULLDOG-59	SarasotaTPSub-20	(b)(6)/(b)(7)(C)-3
BULLDOG-60	SarasotaTPSub-21	(b)(6)/(b)(7)(C)-1,4
BULLDOG-61	SarasotaTPSub-22	(b)(6)/(b)(7)(C)-3
BULLDOG-62	SarasotaTPSub-23	(b)(6)/(b)(7)(C)-1,3,4
BULLDOG-63	SarasotaTPSub-24	(b)(6)/(b)(7)(C)-1,3,4
BULLDOG-64	SarasotaTPSub-25	(b)(6)/(b)(7)(C)-1,3,4
BULLDOG-65	SarasotaTPSub-26	(b)(6)/(b)(7)(C)-1,3
BULLDOG-66	SarasotaTPSub-27	(b)(6)/(b)(7)(C)-3
BULLDOG-67	SarasotaTPSub-28	(b)(6)/(b)(7)(C)-1,3
BULLDOG-68	SarasotaTPSub-29	(b)(6)/(b)(7)(C)-3
BULLDOG-69	SarasotaTPSub-30	(b)(6)/(b)(7)(C)-1,3
BULLDOG-70	SarasotaTPSub-31	(b)(6)/(b)(7)(C)-3
BULLDOG-71	SarasotaTrdPty-1	(b)(1); (b)(3)-1; (b)(6)/(b)(7)(C)-1,2; (b)(7)(E)-2
BULLDOG-72	SarasotaTrdPty-2	(b)(6)/(b)(7)(C)-2,3; (b)(7)(E)-2
BULLDOG-73	SarasotaTrdPty-3	None
BULLDOG-74	SarasotaTrdPty-4	(b)(1); (b)(3)-1; (b)(6)/(b)(7)(C)-1,2,3; (b)(7)(E)-1 ³ ,3
BULLDOG-75	SarasotaTrdPty-5	(b)(1); (b)(3)-1; (b)(6)/(b)(7)(C)-2,3; (b)(7)(E)-1 ⁴ ,4
BULLDOG-76	SarasotaTrdPty-6	(b)(6)/(b)(7)(C)-2,3; (b)(7)(E)-1 ⁵
BULLDOG-77	SarasotaTrdPty-7	(b)(6)/(b)(7)(C)-1,3,4

³ The FBI inadvertently cited (b)(7)(E)-2 (Dates and Types of Investigations (Preliminary or Full Field Investigations)) when instead (b)(7)(E)-1 (File Numbers) should have been cited.

⁴ The FBI inadvertently cited (b)(7)(E)-2 (Dates and Types of Investigations (Preliminary or Full Field Investigations)) when instead (b)(7)(E)-1 (File Numbers) should have been cited.

⁵ The FBI inadvertently cited (b)(7)(E)-2 (Dates and Types of Investigations (Preliminary or Full Field Investigations)) when instead (b)(7)(E)-1 (File Numbers) should have been cited

BULLDOG-78	SarasotaTrdPty-8	(b)(6)/(b)(7)(C)-3,4
BULLDOG-79	SarasotaTrdPty-9	(b)(1); (b)(3)-1; (b)(6)/(b)(7)(C)-1,2; (b)(7)(E)-1 ⁶
BULLDOG-80	SarasotaTrdPty-10	(b)(6)/(b)(7)(C)-2,3; (b)(7)(E)-1 ⁷
BULLDOG-81	SarasotaTrdPty-11	None

EXEMPTION (b)(1)
CLASSIFIED INFORMATION

(20) The FBI's analysis of the withholding of classified information contained in these documents is based on the standards articulated in the FOIA statute, 5 U.S.C. § 552 (b)(1).

Exemption (b)(1) protects from disclosure those records that are:

- (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and
- (B) are in fact properly classified pursuant to such Executive Order.

(21) Before I consider an Exemption (b)(1) claim for withholding agency records, I determine whether the information in those records is information that satisfies the requirements of E.O. 13526, the Executive Order which governs the classification and protection of information that affects the national security,⁸ and whether the information complies with the various substantive and procedural criteria of the Executive Order. E.O. 13526, which was signed by President Barack Obama on December 29, 2009, is the Executive Order that currently applies to the protection of national security information. I am bound by the requirements of E.O. 13526, when making classification determinations.

(22) For information to be properly classified, and thus properly withheld from disclosure pursuant to Exemption (b)(1), the information must meet the requirements set forth in

⁶ The FBI inadvertently cited (b)(7)(E)-2 (Dates and Types of Investigations (Preliminary or Full Field Investigations)) when instead (b)(7)(E)-1 (File Numbers) should have been cited

⁷ The FBI inadvertently cited (b)(7)(E)-2 (Dates and Types of Investigations (Preliminary or Full Field Investigations)) when instead (b)(7)(E)-1 (File Numbers) should have been cited

⁸ Section 6.1 (cc) of E.O. 13526, defines "National Security" as "the national defense of foreign relations of the United States."

E.O. 13526 § 1.1 (a):

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in § 1.4 of this order;
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

(23) All information which I determined to be classified, and which is under the control of the United States Government, is marked at the “Secret” level since the unauthorized disclosure of this information reasonably could be expected to cause serious damage (“Secret”) to national security. See E.O. 13526 § 1.2 (a)(2). In addition to this substantive requirement, certain procedural and administrative requirements of E.O. 13526, must be followed before information can be considered to be properly classified, such as proper identification and marking of documents. I made certain that all procedural requirements of E.O. 13526, were followed in order to ensure that the information was properly classified. I made certain that:

- (a) each document was marked as required and stamped with the proper classification designation;
- (b) each document was marked to indicate clearly which portions are classified and which portions are exempt from declassification as set forth in E.O. 13526 § 1.5 (b);
- (c) the prohibitions and limitations on classification specified in E.O. 13526 § 1.7, were adhered to;
- (d) the declassification policies set forth in E.O. 13526 §§ 3.1 and 3.3 were followed; and
- (e) any reasonably segregable portion of these classified documents that did not meet the standards for classification under E.O. 13526, were declassified and marked for release, unless withholding was otherwise warranted under applicable

law.

FINDINGS OF DECLARANT REGARDING EXEMPTION (b)(1)

(24) With the above requirements in mind, I personally and independently examined the information withheld from plaintiffs pursuant to FOIA Exemption 1. As a result of this, I determined that the classified information continues to warrant classification at the “Secret” level, respectively, and is exempt from disclosure pursuant to E.O. 13526, § 1.4, categories “(c) intelligence activities (including covert action), intelligence sources or methods, or cryptology.”

INTELLIGENCE ACTIVITIES, SOURCES, AND METHODS

(25) E.O. 13526, § 1.4(c), exempts intelligence activities (including covert action), intelligence sources or methods, or cryptology from disclosure. An intelligence activity or method includes any intelligence action or technique utilized by the FBI against a targeted individual or organization that has been determined to be of national security interest. An intelligence method is used to indicate any procedure (human or non-human) utilized to obtain information concerning such individual or organization. An intelligence activity or method has two characteristics. First, the intelligence activity or method - and information generated by it - is needed by U. S. Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality must be maintained with respect to the activity or method if the viability, productivity and usefulness of its information are to be preserved. The information withheld in these documents pursuant to Exemption (b)(1) was withheld to protect an intelligence method utilized by the FBI for gathering intelligence data.

(26) The classification redactions were made to protect from disclosure information that would reveal the actual intelligence activities and methods used by the FBI against specific targets of foreign counterintelligence investigations or operations; identify a target of a foreign

counterintelligence investigation; or disclose the intelligence gathering capabilities of the activities or methods directed at specific targets. The information obtained from the intelligence activities or methods is very specific in nature, provided during a specific time period, and known to very few individuals.

(27) It is my determination that the disclosure of the specific information which describes the intelligence activities or methods withheld in this case which are still used by the FBI today to gather intelligence information, could reasonably be expected to cause serious damage to the national security for the following reasons: (1) disclosure would allow hostile entities to discover the current intelligence gathering methods used; (2) disclosure would reveal current specific targets of the FBI's national security investigations; and (3) disclosure would reveal the determination of the criteria used and priorities assigned to current intelligence or counterintelligence investigations. With the aid of this detailed information, hostile entities could develop countermeasures which would, in turn, severely disrupt the FBI's intelligence gathering capabilities. This severe disruption would also result in severe damage to the FBI's efforts to detect and apprehend violators of the United States' national security and criminal laws.

(28) The FBI protected detailed intelligence activity information compiled regarding a specific individual or organization of national security interest because disclosure reasonably could be expected to cause serious damage to the national security. Below is a more detailed discussion of this category.

Detailed Intelligence Activities

(29) The classified information withheld on BULLDOG-35 contains detailed intelligence activities information gathered or compiled by the FBI on a specific individual or

organization of national security interest. The disclosure of this information could reasonably be expected to cause serious damage to the national security, as it would: (a) reveal the actual intelligence activity or method utilized by the FBI against a specific target; (b) disclose the intelligence-gathering capabilities of the method; and (c) provide an assessment of the intelligence source penetration of a specific target during a specific period of time. This information is properly classified at the "Secret" level, withheld pursuant to E.O. 13526, § 1.4(c), and is exempt from disclosure pursuant to Exemption 1.

DEFENDANTS' BURDEN OF ESTABLISHING EXEMPTION (b)(1) CLAIMS

(30) The information withheld in this case pursuant to Exemption 1 was examined in light of the body of information available to me concerning the national defense and foreign relations of the United States. This information was not examined in isolation. Instead, each piece of information was evaluated with careful consideration given to the impact that disclosure of this information will have on other sensitive information contained elsewhere in the United States intelligence community's files. Equal consideration was given to the impact that other information either in the public domain or likely known or suspected by present or potential adversaries of the United States, would have upon the information I examined.

(31) In those instances where, in my judgment, the disclosure of this information could reasonably be expected to cause serious damage to the national security, and its withholding outweighed the benefit of disclosure, I exercised my prerogative as an original classification authority and designated that information as classified in the interest of national security, and invoked Exemption 1 of the FOIA to prevent disclosure. Likewise, the justifications for the withheld classified information were prepared with the intent that they be read with consideration given to the context in which the classified information is found. This context

includes not only the surrounding unclassified information, but also other information already in the public domain, as well as information likely known or suspected by other hostile intelligence entities. It is my judgment that any greater specificity in the descriptions and justifications set forth with respect to information relating to foreign activities and intelligence sources and methods of the United States could reasonably be expected to jeopardize the national security of the United States.

FINDINGS OF DECLARANT

(32) With the above requirements in mind, I personally and independently examined the FBI information withheld pursuant to Exemption (b)(1). As a result of this examination, I determined that this classified information continues to warrant classification at the “Secret” level, and is exempt from disclosure pursuant to E.O. 13526, §1.4, category (c) intelligence activities or methods and intelligence sources, as the unauthorized disclosure of the information could reasonably be expected to cause serious damage to the national security.

EXEMPTION (b)(3) INFORMATION PROTECTED BY STATUTE

(33) 5 U.S.C. § 552 (b)(3) exempts from disclosure information which is: specifically exempted from disclosure by statute ... provided that such statute

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment on the OPEN FOIA Act of 2009, specifically cites to this paragraph.

(b)(3)-1: National Security Act of 1947 [50 U.S.C. § 403-1(i)(1)]

(34) Exemption 3 was asserted to withhold information pursuant to Section 102A(i)(1) of the National Security Act of 1947 (“NSA”), as amended by the Intelligence

Reform and Terrorism Prevention Act of 2004 (“IRTPA”), 50 U.S.C. § 403-1(i)(1), which provides that the Director of National Intelligence (“DNI”) “shall protect from unauthorized disclosure intelligence sources and methods.” As relevant to U.S.C. § 552 (b)(3)(B), the National Security Act of 1947 was enacted before the date of enactment of the OPEN FOIA Act of 2009.⁹ On its face, this federal statute leaves no discretion to agencies about withholding from the public information about intelligence sources and methods. Thus, the protection afforded to intelligence sources and methods by 50 U.S.C. § 403-1(i)(1) is absolute. See CIA v. Sims, 471 U.S. 159 (1985).

(35) In order to fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community (“IC”) for the classification of information under applicable laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. §§ 403-1(i)(2)(A), (B). The FBI is one of 17 member agencies comprising the IC, and as such must protect intelligence sources and methods.

(36) As described above, Congress enacted the NSA, as amended by the IRTPA, to protect the IC’s sources and methods of gathering intelligence. Disclosure of such information presents the potential for individuals to develop and implement countermeasures, which would result in the loss of significant intelligence information, relied upon by national policymakers and the IC. Given that Congress specifically prohibited the disclosure of information pertaining to intelligence sources and methods used by the IC as a whole, I have determined that the FBI’s intelligence sources and methods would be revealed if any of the withheld information is

⁹ The OPEN FOIA Act of 2009 was enacted October 28, 2009, Pub.L. 111-83, 123 Stat. 2142, 2184; 5 U.S.C. §552(b)(3)(B).

disclosed to plaintiffs, and thus, the FBI is prohibited from disclosing the information under 50 U.S.C. § 403-1(i)(1). Thus, this information was properly withheld pursuant to Exemption 3, based on 50 U.S.C. § 403-1(i)(1).¹⁰

EXEMPTION (b)(7) THRESHOLD

(38) Exemption (b)(7) of the FOIA protects from mandatory disclosure records or information compiled for law enforcement purposes, but only to the extent that disclosure could reasonably be expected to cause one of the harms enumerated in the subpart of the exemption. See 5 U.S.C. § 552 (b)(7). In this case, the harm that could reasonably be expected to result from disclosure concerns the invasion of personal privacy (b)(7)(C), revealing the identity of confidential sources (b)(7)(D), and revealing sensitive law enforcement techniques (b)(7)(E).

(39) Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Law enforcement agencies such as the FBI must demonstrate that the records at issue are related to the enforcement of federal laws and that the enforcement activity is within the law enforcement duties of that agency. Documents responsive to plaintiffs' October 27, 2011 request relate to the FBI's investigation into the residence at 4224 Escondito Circle. This falls within the FBI's performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats. Accordingly, the information readily meets the threshold requirement of Exemption (b)(7). The remaining inquiry is whether disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy," "disclose the identity of confidential sources," or "reveal sensitive law enforcement

¹⁰ The FBI has withheld information pursuant to Exemption 3 on Bates-numbered pages BULLDOG 71, 74-75, and 79. This information was also withheld pursuant to Exemption 1 on Bates-numbered pages BULLDOG-71, 74-75, and 79.

techniques.”

FOIA EXEMPTIONS (b)(6) AND (b)(7)(C)
CLEARLY UNWARRANTED AND UNWARRANTED
INVASION OF PERSONAL PRIVACY

(40) 5 U.S.C. § 552 (b)(6) exempts from disclosure “personnel and medical files and similar files” when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Similarly, 5 U.S.C. § 552 (b)(7)(C) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to constitute an unwarranted invasion of personal privacy.¹¹

(41) When withholding information pursuant to these exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting this exemption, the FBI has scrutinized each item of information to determine the nature and strength of the privacy interest of every individual whose name and/or identifying information appears in the documents at issue. In conducting this analysis, the public interest in disclosure of this information is determined by whether the information in question would shed light on the FBI’s performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. In this case, the FBI concluded that the information should be withheld under Exemptions (b)(6) and (b)(7)(C), and determined

¹¹ The practice of the FBI is to assert Exemption (b)(6) in conjunction with (b)(7)(C). Although the balancing test for (b)(6) uses a “would constitute a clearly unwarranted invasion of personal privacy” and the test for (b)(7)(C) uses the lower standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public's interest in disclosure under the analysis of both exemptions.

that the individuals' privacy interests were not outweighed by any public interest in disclosure.

Exemptions (b)(6)-1 and (b)(7)(C)-1: **Names and/or Identifying Information of
FBI Special Agents and Support
Personnel**

(42) Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names and/or identifying information of FBI SAs and support personnel who were responsible for conducting, supervising, and/or maintaining the investigative activities reported in the documents responsive to plaintiffs' October 27, 2011 request. Publicity (adverse or otherwise) regarding any particular investigation to which they have been assigned may seriously prejudice their effectiveness in conducting other investigations. The privacy consideration is also to protect FBI SAs and support personnel, as individuals, from unnecessary, unofficial questioning as to the course of an investigation, whether or not they are currently employed by the FBI.

(43) FBI SAs conduct official inquiries into violations of various criminal statutes and national security cases. They come into contact with all strata of society, conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. It is possible for an individual targeted by such law enforcement actions to carry a grudge which may last for years, and to seek revenge on the agents involved in a particular investigation. The publicity associated with the release of an agent's identity in connection with a particular investigation could trigger hostility toward a particular agent. There is no public interest to be served by disclosing the identities of the SAs to the public. Thus, disclosure of this information would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of their

personal privacy.¹²

(44) The names of FBI support personnel are also withheld pursuant to FOIA Exemptions (b)(6) and (b)(7)(C). These employees were assigned to handle tasks related to the investigation into the residence located at 4224 Escondito Circle. They were, and possibly are, in a position to access information regarding official law enforcement investigations, and therefore could become targets of harassing inquiries for unauthorized access to investigations if their identities were released. These individuals maintain substantial privacy interests in not having their identities disclosed. There is no public interest to be served by releasing the identities of these individuals. Thus, disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. The FBI properly protected this information pursuant to FOIA Exemptions (b)(6)-1 and (b)(7)(C)-1.¹³

Exemptions (b)(6)-2 and (b)(7)(C)-2: **Names and/or Identifying Information Concerning Third Parties of Investigative Interest**

(45) Exemptions 6 and 7(C) have been asserted to protect the names and/or identifying information of third party individuals who were of investigative interest to the FBI and/or other law enforcement agencies. Identifying information withheld concerning these third parties may include addresses, dates of birth, social security numbers, and other personally identifying

¹² For the convenience of the reader, rather than repeat this phrase “clearly unwarranted invasion of personal privacy under the standard of Exemption 6 and an unwarranted invasion of personal privacy under the standard of Exemption 7C” every time the FBI asserts Exemptions 6 and 7(C) we will simply use the phrase “clearly unwarranted and unwarranted invasion of personal privacy” to refer to both standards.

¹³ Exemptions (b)(6)-1 and (b)(7)(C)-1 have been asserted on the following pages: BULLDOG-5, 7, 12-15, 17-19, 21, 23, 26, 28, 30, 33-35, 39, 44, 46-47, 49-50, 52-56, 58, 60, 62-65, 67, 69, 71, 74, 77 and 79.

information. Being linked with any law enforcement investigation carries a strong negative connotation and a stigma. To release the identities of these individuals to the public could subject them to harassment or embarrassment, as well as undue public attention. Accordingly, the FBI has determined that these individuals maintain a substantial privacy interest in not having their identities disclosed. In deciding whether to release the names and personal information concerning these third parties, the public's interest in disclosure was balanced against their privacy interests. It was determined that this information would not enlighten the public on how the FBI conducts its internal operations and investigations. Accordingly, the FBI concluded that the disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. The FBI properly withheld this information pursuant to FOIA Exemptions (b)(6)-2 and (b)(7)(C)-2.¹⁴

Exemptions (b)(6)-3 and (b)(7)(C)-3: **Names and/or Identifying Information of Third Parties Merely Mentioned**

(46) Exemptions (b)(6) and (b)(7)(C) have been asserted to withhold the names and/or identifying information concerning third parties merely mentioned in records responsive to plaintiffs' October 27, 2011 request. These third parties maintain significant personal privacy interests in not having their identifying information disclosed. If the FBI were to disclose their names and other personal information, the disclosure would reveal that these third parties were connected in some way with the FBI. Disclosure of these third parties' names and/or identifying information in connection with the FBI carries an extremely negative connotation. Disclosure of their identities would subject these individuals to possible harassment or criticism and focus derogatory inferences and suspicion on them. Accordingly, the FBI has determined that these

¹⁴ Exemptions (b)(6)-2 and (b)(7)(C)-2 have been asserted on the following pages: BULLDOG-1-2, 5-7, 9-10, 15, 18, 23-24, 26, 29-32, 34-37, 39, 71-72, 74-76, and 79-80.

third parties have substantial privacy interests in not having information about them found in records of the FBI. After identifying the substantial privacy interests of these third party individuals, who are merely mentioned in the investigative files, the FBI balanced these privacy interests against the minimal public interest in the disclosure of the information. The FBI determined that the personal privacy interests in non-disclosure outweighed the public interest in disclosure, as disclosure would not shed light on the operations and activities of the FBI. Disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. Accordingly, the FBI properly protected this information from disclosure pursuant to FOIA Exemptions (b)(6)-3 and (b)(7)(C)-3.¹⁵

Exemptions (b)(6)-4 and (b)(7)(C)-4: **Names and/or Identifying Information of Third Parties who Provided Information to the FBI**

(47) Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names and/or identifying information of third parties who provided information to the FBI. The FBI has found that information provided by individuals during an interview is one of the most productive investigative tools used by law enforcement agencies. The FBI's experience has shown that individuals interviewed by the FBI fear that their identity may be exposed and, consequently, that they could be harassed, intimidated, or threatened with legal consequences, economic reprisal, or possible physical harm. To surmount these fears, individuals interviewed by the FBI must be assured that their names and personally-identifying information will be held in the strictest of confidence.

¹⁵ Exemptions (b)(6)-3 and (b)(7)(C)-3 have been asserted on the following pages: BULLDOG-1-2, 5-13, 19, 21, 23, 26-27, 29-32, 34-35, 39-55, 57, 59, 61-70, 72, 74-78, and 80.

(48) In this case, the FBI balanced the significant personal privacy interests of the third party interviewees in not having their name and identifying information disclosed against the negligible public interest in the disclosure of their identities. Disclosure of the third parties' names and/or identifying information would shed no light on the operations and activities of the FBI. Accordingly, the FBI concluded that the disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. The FBI therefore, properly withheld the names and/or identifying information concerning third parties who provided information to the FBI pursuant to Exemptions (b)(6)-4 and (b)(7)(C)-4.¹⁶

Exemptions (b)(6)-5 and (b)(7)(C)-5: **Names and/or Identifying Information of State and/or Local Law Enforcement Officers**

(49) Exemptions (b)(6) and (b)(7)(C) have been asserted to withhold the names and/or identifying information of local law enforcement personnel. These law enforcement officers were acting in their official capacities and aided the FBI in its law enforcement efforts. Disclosure of the identities of these personnel could subject them, as individuals, to unofficial inquiries not anticipated in connection with their assistance to the FBI. Thus, these personnel have substantial interests in protecting their identities. There is no public interest to be served in releasing the identities of these third parties. Therefore, the FBI concluded that the disclosure of this information would constitute a clearly unwarranted invasion of their personal privacy and could reasonably be expected to constitute an unwarranted invasion of personal privacy. Exemptions (b)(6)-5 and (b)(7)(C)-5 have been asserted to protect the names and/or identifying

¹⁶ Exemptions (b)(6)-4 and (b)(7)(C)-4 have been asserted on the following pages: BULLDOG-15, 17-19, 21, 23, 26-27, 29-32, 34, 44, 47, 50, 53-56, 58, 60, 62-64, and 77-78.

information of local law enforcement officers.¹⁷

EXEMPTION (b)(7)(D)
INFORMATION FROM CONFIDENTIAL SOURCES

(50) 5 U.S.C. § 552 (b)(7)(D) provides protection for:

records or information compiled for law enforcement purposes [which] could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

(51) Numerous confidential sources report to the FBI on a regular basis and are “informants” within the common meaning of the term. Some of these sources provide information under an express assurance of confidentiality. Other individuals are interviewed under circumstances from which assurances of confidentiality can reasonably be inferred. These individuals are considered to be confidential sources since they furnished information only with the understanding that their identities and the information provided will not be released outside the FBI. Information provided by these individuals is singular in nature, and if released, could reveal their identities.

Exemption (b)(7)(D)-1: **Information Provided by a Local Law Enforcement Agency Under an Implied Assurance of Confidentiality**

(52) Exemption (b)(7)(D) has been asserted to protect police reports and information obtained by local law enforcement agencies that were provided to the FBI by law enforcement agencies. The police reports and information obtained by various law enforcement agencies were given to the FBI in conjunction with the local law enforcement agency’s investigation into suspicious

¹⁷ Exemptions (b)(6)-5 and (b)(7)(C)-5 have been asserted on the following pages: BULLDOG-28-30, 44, 46-47, 49-50, and 52-55.

activity at 4224 Escondito Circle. Confidentiality must be maintained to facilitate this type of law enforcement cooperation, which is necessary in criminal investigations. The release of such confidential information could have a chilling effect on the cooperation of various law enforcement agencies. In investigations such as this, which require multi-jurisdictional resources, the destruction of confidences among members of the law enforcement community could be disastrous. Furthermore, the precedent set by the FBI if this information were to be disclosed would have a significant impact and ripple effect -- other local law enforcement agencies could refuse to cooperate and refuse to provide the FBI with essential information during future investigations for fear the information might be released to the public at large. Accordingly, the FBI has properly withheld this information under FOIA Exemption (b)(7)(D)-1.¹⁸

Exemption (b)(7)(D)-2: Names, Identifying Data and/or Information Provided by an Individual under an “Implied” Assurance of Confidentiality

(53) Exemption (b)(7)(D)-2 has been asserted to protect the name, identifying information, and/or information provided by a third party under an implied assurance of confidentiality.

(54) The FBI has withheld information which the release of the information could clearly identify the source. The sensitivity of the information, and the position of the source, is such that it may be inferred that the information was provided with the expectation of confidentiality. This source provided valuable information that is detailed and singular in nature. As discussed earlier, the disclosure of the identity of this individual is in direct contradiction to the interests of the FBI. If the FBI were forced to disclose the identity of -- and information

¹⁸ Exemption (b)(7)(D)-1 has been asserted on the following pages: BULLDOG-29-32.

provided by -- a confidential source who provided information based on an expectation of confidentiality (whether express or implied), such disclosure would have a chilling effect on the activities and cooperation of this and other future FBI confidential sources. The FBI has released as much segregable information as possible without disclosing the source's identity. As a result, the FBI has properly withheld this information pursuant to FOIA Exemption (b)(7)(D)-2.¹⁹

EXEMPTION (b)(7)(E)
INVESTIGATIVE TECHNIQUES AND PROCEDURES

(55) 5 U.S.C. § 552 (b)(7)(E) provides for the withholding of:

law enforcement records which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

Exemption (b)(7)(E)-1: File Numbers

(56) Exemption (b)(7)(E) was asserted to protect sensitive case file numbers. The FBI has determined that this exemption is appropriate for protecting these file numbers. The release of file numbering convention identifies the investigative interest or priority given to such matters. Applying a mosaic analysis, suspects could use these numbers (indicative of investigative priority), in conjunction with other information known about other individuals and/or techniques, to change their pattern of activity to avoid detection, apprehension, or create alibis for suspected activities, etc. Thus, the FBI properly protected this information from disclosure pursuant to FOIA Exemption (b)(7)(E)-1.²⁰

¹⁹ Exemption (b)(7)(D)-2 has been asserted on the following pages: BULLDOG-30-32.

²⁰ Exemption (b)(7)(E)-1 has been asserted on the following pages: BULLDOG -5-8, 10, 34, 36-37, 74-76, and 79-80.

Exemption (b)(7)(E)-2: Dates and Types of Investigations (Preliminary or Full Investigations)

(57) Exemption 7(E) has been asserted to protect from disclosure information pertaining to the types and dates of investigations referenced in the records at issue in this case. Specifically, the information withheld, when referenced in connection with an actual investigation and not in general discussion, pertains to the type of investigation, whether it is a “preliminary” or “full” investigation and the date it was initiated. Disclosure of this information would allow individuals to know the types of activities that would trigger a full investigation as opposed to a preliminary investigation and the particular dates that the investigation covers, which would allow individuals to adjust their behavior accordingly. Moreover, the knowledge that a specific activity in general warrants investigation could likewise cause individuals to adjust their conduct to avoid detection. Because disclosure of this information could reasonably be expected to impede the FBI’s effectiveness and potentially aid in circumvention of the law, the FBI has properly withheld this information pursuant to Exemption 7(E)-2.²¹

Exemption (b)(7)(E)-3: Internal Non-Public Facsimile Numbers

(58) Exemption (b)(7)(E) has been asserted to protect internal non-public facsimile numbers of FBI SAs and support personnel. Internal non-public fax numbers are used daily and routinely by the FBI in order to transmit and receive investigatory records during the performance of the FBI’s law enforcement mission. The relative benefit of these techniques and/or procedures could be diminished if the actual numbers were revealed in these records. Release of the information could subject FBI SAs and support personnel to massive, disruptive,

²¹ Exemption (b)(7)(E)-2 has been asserted on the following pages: BULLDOG- 5, 39, and 71-72.

and misleading amounts of documents as well as harassment and threats. It could also enable circumvention of the law by allowing criminals to gain access to an internal communication channel used by the FBI to communicate and transmit information internally and externally with other law enforcement agencies. As such, release of these numbers would clearly disrupt official business by impeding the ability of SAs and support personnel to conduct and conclude law enforcement investigations in a timely manner. Because disclosure of this information could reasonably be expected to impede the FBI's effectiveness and potentially aid in circumvention of the law, the FBI has properly withheld this information pursuant to Exemption (b)(7)(E)-3.²²

Exemption (b)(7)(E)-4: Investigative Techniques and Procedures

(59) Exemption (b)(7)(E) has been asserted to protect procedures and techniques used by FBI agents to conduct national security investigations. Disclosure of this information could enable subjects of FBI investigations to circumvent similar currently used techniques and procedures by law enforcement. The relative benefit of these techniques and procedures could be diminished if the actual techniques and procedures were revealed in these records. This in turn could facilitate the accumulation of information by other investigative subjects regarding the circumstances under which these techniques and procedures were used or requested and the value of the information obtained.

(60) Release of this type of information could enable criminals to educate themselves about the law enforcement investigative techniques and procedures employed for the location and apprehension of individuals and therefore allow these individuals to take countermeasures to circumvent the effectiveness of these techniques and procedures and to continue to violate the law. Thus, the FBI properly protected this information from disclosure pursuant to FOIA

²² Exemption (b)(7)(E)-3 has been asserted on the following pages: BULLDOG – 28-32 and 74.

Exemption (b)(7)(E)-4.²³

Exemption (b)(7)(E)-5: Intelligence Analyst Analytical Techniques and Procedures

(61) Exemption (b)(7)(E) has been asserted to protect procedures and techniques used by the FBI to conduct national security investigations. Specifically, FOIA Exemption (b)(7)(E) is being asserted to protect an analyst's note in regards to his/her interpretation and/or analysis regarding the investigation at issue. FBI intelligence personnel undergo specialized training in order to develop and apply analytical skills to develop and support particular investigations. Disclosure of these analytical techniques and procedural methods could enable subjects of FBI investigations to circumvent the law by disclosing the very analytical processes, patterns, and techniques used by the FBI in its law enforcement mission to develop investigations. The relative benefit of these analytical techniques and procedures would be diminished if the actual techniques and procedures were revealed in these records. This in turn could facilitate the accumulation of information by other investigative subjects regarding the circumstances and direction under which these techniques and procedures were used or requested and the value of the information obtained. It could also enable criminals to educate themselves about the law enforcement investigative techniques and procedures employed for the location and apprehension of individuals and therefore allow these individuals to take countermeasures to circumvent the effectiveness of these techniques and procedures and to continue to violate the law. Thus, the FBI properly protected this information from disclosure pursuant to FOIA Exemption (b)(7)(E)-5.²⁴

²³ Exemption (b)(7)(E)-4 has been asserted on the following pages: BULLDOG- 6, 12, 33, 35, and 75.

²⁴ Exemption (b)(7)(E)-5 has been asserted on the following page: BULLDOG -35.

Exemption (b)(7)(E)-6: Database and Database Information

(62) Exemption (b)(7)(E) has been asserted to protect non-public databases and data search results. The FBI used databases in order to query information needed for its investigations using advanced software tools. These investigative tools and techniques provide a platform for Special Agents, support personnel, and Intelligence Analysts to develop investigative leads from a variety of source data using state-of-the-art analytical tools. In some circumstances access to these databases are restricted and limited only to FBI and/or members of the law enforcement community. The manner in which these databases are searched, organized and reported to the FBI is an internal technique that is not ordinarily known to the public. Disclosure of this information serves no public interest, and in fact, could enable criminals to employ countermeasures to undermine the effectiveness of the use of these databases, thus jeopardizing the FBI's investigative mission. Classified data could also be released if these databases were made available to the public. Because disclosure would not serve any public interest, and because disclosure would impede the FBI's effectiveness and potentially aid in circumvention of the techniques if disclosed, the FBI properly withheld this information pursuant to Exemption (b)(7)(E)-6.²⁵

Exemption (b)(4) : Trade Secrets and Commercial or Financial Information

(63) Within the FBI's supplemental productions, specifically at BULLDOG-41-42, the FBI applied Exemption (b)(4)-1 to protect the bank account number of The Estates of Prestancia Homeowners Association, Inc. 5 U.S.C. § 552(b)(4) is intended to protect "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." Traditionally, this exemption is designed to protect submitters/corporations who, for one reason

²⁵ Exemption (b)(7)(E)-6 has been asserted on the following page: BULLDOG -35.

or another, are required to submit proprietary information to the FBI. This exemption prevents disclosure of such information and any resulting competitive disadvantage – essentially preventing financial ramifications for submitters/corporations, ensuring the FBI is able to obtain similar information in the future.

(64) In this instance, release of this corporation’s bank account number could result in serious financial ramifications – criminals could use this information to steal or divert funds from this company; therefore, the FBI determined this information would not have been supplied to the FBI without an expectation this piece of information would remain confidential. Since this information could be interpreted as privileged and/or confidential, and release would cause competitive disadvantage for the homeowners association, the FBI determined Exemption (b)(4)-1 was appropriate to protect this information.

Additional Vaughn Indexes for the Total Universe of Responsive Records

(65) In the Court’s October 16, 2017 order, the FBI was tasked to provide “an updated and sequentially numbered universe of documents.” The FBI was to provide two copies – one redacted copy for the Plaintiffs and another un-redacted copy to be filed *in camera*. Furthermore, the Court requested the FBI “number each redaction within these documents sequentially and provide a separate appendix in which they specify any and all exemptions claimed for the numbered redactions.” Attached hereto as Exhibit A, the FBI has included the redacted version of this *Vaughn* index with its accompanying appendix. Additionally, the FBI is filing an un-redacted copy *in camera*.

SEGRABILITY

(66) Plaintiffs have been provided all responsive non-exempt records or portions of records responsive to their FOIA request to the FBI. During the processing of Plaintiffs’ request,

each responsive page was individually examined to identify non-exempt information that could be reasonably segregated from exempt information for release. All segregable information has been released to Plaintiffs. As demonstrated herein, the only information withheld by the FBI consists of information that would trigger reasonably foreseeable harm to one or more interests protected by the cited FOIA exemptions.

(67) In total, the FBI processed 81 responsive pages: ten (10) pages Released in Full (RIF), 67 pages Released in Part (RIP), and four (4) pages Withheld in Full (WIF). Each of these categories is discussed below to further address segregability.

a. Pages RIF. Following the segregability review, RIDs determined that ten pages could be released in full without redaction as there was no foreseeable harm to an interest protected by a FOIA exemption.

b. Pages RIP. Following the segregability review, RIDs determined that 67 pages could be released in part with redactions per the identified FOIA exemptions herein. These pages comprise a mixture of material that could be segregated for release and material that was withheld as release would trigger foreseeable harm to one or more interests protected by the cited FOIA exemptions on these pages

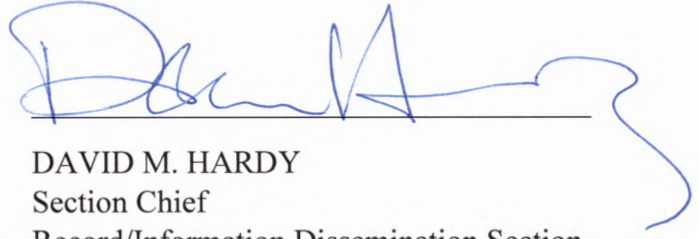
c. Pages WIF. Following the segregability review, RIDs determined that four pages were required to be withheld in their entirety. RIDS determined all information on these four pages is covered by one or more of the cited FOIA exemptions; therefore, there is no information that can be reasonably segregated for release without triggering foreseeable harm to one or more of the cited FOIA exemptions.

CONCLUSION

(68) Through its initial searching efforts and the additional searching efforts ordered by the Court, the FBI has conducted a search reasonably expected to locate all responsive records subject to the FOIA. The FBI located 81 pages of responsive records and processed and released all reasonably segregable information from these records. Information has been properly withheld pursuant to FOIA Exemptions 1, 3, 4, 6, 7(C), 7(D), and 7(E), 5 U.S.C. §§ 552(b)(1), (b)(3), (b)(4), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI carefully examined the responsive documents and determined the information withheld from Plaintiffs, if disclosed, could reasonably be expected to cause serious damage to national security; would reveal information protected by statute; would reveal confidential financial information; could cause a clearly unwarranted and unwarranted invasion of personal privacy; could compromise a confidential source; and could disclose investigative techniques and procedures for law enforcement investigations, the disclosure of which could reasonably be expected to risk circumvention of the law.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A through C attached hereto are true and correct copies.

Executed this 22nd day of November, 2017.



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, VA