

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PROPERTY OF THE PEOPLE, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 17-1193 (JEB)
)	
DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	

THIRD DECLARATION OF MICHAEL G. SEIDEL

I, Michael G. Seidel, declare as follows:

(1) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Information Management Division (“IMD”), Federal Bureau of Investigation (“FBI”), Winchester, Virginia. This declaration is the fourth overall and my third declaration in this case. It incorporates my previous declaration of October 6, 2020 at ECF No. 55-2, explaining my employment history and responsibilities at the FBI (hereinafter “First Seidel Declaration”), the Declaration of David M. Hardy dated November 15, 2017 at ECF No. 12 (hereinafter “First Hardy Declaration”), the Second Declaration of David M. Hardy dated January 29, 2018 at ECF No. 18 (hereinafter “Second Hardy Declaration”), and the Second Declaration of Michael G. Seidel dated November 18, 2020 at ECF No. 59 (hereinafter “Second Seidel Declaration”). The background of this matter is set forth in these prior declarations and will not be fully recounted here. Only information directly relevant to this declaration has been repeated or referenced.

(2) The FBI submits this declaration to address issues raised in the Court’s Memorandum Opinion entered July 20, 2021 (hereinafter “Opinion”) (ECF No. 68) concerning

the Government's attempt to withhold certain law-enforcement documents at file level for two files (137-22152 and 137-NY-19967) without providing a categorical or document-by-document explanation.

CATEGORICALLY EXEMPT RECORDS

(3) As stated previously in the First Seidel Declaration, paragraphs 152-165 and the Second Seidel Declaration, paragraphs 26-38, in light of the D.C. Circuit's ruling in *Maydak*, 218 F.3d 760 (D.C. Cir. 2000), the FBI conducted a document-by-document review of the records located in the two informant files (137-22152 and 137-NY-19967) at issue here. The FBI continues to withhold these records under Freedom of Information Act ("FOIA") Exemptions 7(D) and 7(E), 5 U.S.C. §§ 552(b)(7)(D) and (b)(7)(E), as well as underlying Exemptions 3, 6, and 7(C), 5 U.S.C. §§ 552(b)(3), (b)(6), and (b)(7)(C). Release of any information or documents from within these informant files, even if it is a document-type we would normally process in a standard investigative file, could and would harm both individual confidential sources who provide critical information, as well as the FBI Confidential Human Source ("CHS") program.

(4) The FBI reviewed each document within the two informant files. In doing this document-by-document review, the FBI categorized each document into two functional categories: 1) Evidentiary/Investigative Materials and 2) Administrative Materials. Additionally, the FBI placed each type of document (e.g., interviews, reports, administrative forms, etc.) into one or both of the two functional categories. At times, some of the types of records fall within both functional categories.

Functional Category I: Evidentiary/Investigative Materials

(5) The Evidentiary/Investigative Materials category includes copies of records or evidence, analyses of evidence, and derivative communications discussing or incorporating evidence. A derivative communication describes, verbatim or in summary, the content of the original records, how it was obtained, and how it relates to an investigation. Other derivative communications report investigative information to other FBI field offices, other law enforcement agencies, or other federal agencies to advise of the progress of information or elicit help for an investigation. In addition to the information provided in the First Seidel Declaration, paragraphs 164 and sub-paragraph (i), below is a list by category of document types contained within files 137-22152 and/or 137-NY-19967 categorically exempted from disclosure pursuant to FOIA Exemptions 7(D), 7(E), as well as underlying Exemptions 3, 6, and 7(C) as noted in paragraph 3.¹

Type of Documents	Number of Each Type
Source Interviews (FD-302) / Handwritten Interview Notes	13 documents
1A Envelope (FD-340) re contact with Source and Info Provided	37 documents
Contents of 1A Envelope / Source Provided Records	17 documents
Source Info Shared with Law Enforcement (FD-159)	1 document
Memorandum (FD-209) re Source Contact & Reporting	156 documents

¹ Underlying FOIA Exemptions 3, 6 and 7(C) were also applied to withhold statutorily protected information, and names or identifying information of individuals mentioned in the records for the reasons stated in paragraphs 63-67, 72-77, 86-99, 152, and 170 of the First Seidel Declaration.

Letterhead Memorandum (LHM) re Source Contact/Rpt	147 documents
Teletype (FD-36) re Source Handling/Contact/Reporting	27 documents
Electronic Communication (“EC”) re Source Contact/Rpt	2 documents
Cover Sheet (FD-350) for Source Provided Info	1 document
Routing Slip (O-7) re handling source or info provided by source	4 documents

(6) As previously explained in the First and Second Seidel Declarations, the referenced documents were received from a confidential source or compiled in furtherance of the FBI’s CHS program which allows the FBI to leverage Human Intelligence to obtain investigative leads to progress FBI cases. Release of the documents described in this category would cause foreseeable harm pursuant to FOIA Exemptions 7(D) and 7(E) as explained below.

(7) Regarding information withheld under Exemption 7(D)—documents reasonably expected to disclose the identity of a confidential source—release of the information would reveal the identities and personal information about CHSs, and singular information provided by sources under an express agreement of confidentiality. This determination extends to the volume of records in these two files because such information would reveal the scope and extent of the FBI’s use and strategies for CHSs in particular law enforcement investigations. Moreover, release of any records within this category would be contrary to FBI’s confidential agreement with these sources and thereby undermine the public trust in the FBI’s Informant program and impact the FBI’s ability to recruit sources in the future, hence negatively impacting the FBI’s investigative mission.

(8) Regarding Exemption 7(E), the FBI's CHS program is a technique and procedure for law enforcement programs. Release of the referenced information would also reveal key information about the FBI CHS program, its strategies and procedures utilized when tasking and recruiting sources, and the documentation and types of information the FBI gathers through its CHS program. Release of such information would disclose non-public techniques and procedures used by the FBI for law enforcement investigations. This would alert criminals as to when they should most likely expect FBI CHSs to be employed and allow them to judge when they should shore up any weaknesses in their operations to prevent penetration by FBI CHSs. Moreover, revealing the FBI's strategies and documentation for CHS implementation would also reveal to criminals which individuals are or may be subject to recruitment to potentially become FBI informants, based on what types of information the FBI plans to gather through its CHS program. The viability of the FBI's informant program is directly connected to the FBI's ability to keep its information operations covert so they cannot be detected/predicted and exploit by criminals. To safeguard the integrity of the program, the FBI protects how it covertly communicates with CHSs, the investitive initiatives for which the FBI uses CHS intelligence gathering. Disclosing sensitive techniques, strategies, and procedures utilizing CHS could undermine the law enforcement purpose of the FBI's CHS program, thus enabling criminal to risk circumvention of the law by providing them with insight information they can use to conceal criminal activity, avoid detection and mislead investigations.

Functional Category II: Administrative Materials

(9) The Administrative Materials category maintains records located within an informant file where most, if not all, of the records contain vital information associated with the

investigation such as case captions, serial numbers, identities of FBI field offices, dates of investigations, CHS identities (source symbol number/source file number/source code name), CHS expenses, CHS handling/suitability forms and documentation, information or detailed instructions designed to ensure that CHSs and/or investigative procedures are conducted within the appropriate FBI and Department of Justice guidelines. In addition to the information provided in the First Seidel Declaration, paragraph 165 and sub-paragraph (ii), below is a list by category of document types contained within 137-22152 and/or 137-NY-19967 categorically exempted pursuant to FOIA Exemptions 7(D) and 7(E) as well as underlying Exemptions 3, 6, and 7(C) as noted in paragraph 3.²

Type of Documents	Number of Each Type
Routing Slip (O-7) re handling source or info provided by source	4 documents
Source Expenditures/Reports (FD-221a & FD-536)	4 documents
Source Interviews (FD-302) / Handwritten Interview Notes	13 documents
1A Envelope (FD-340) re contact with Source and Info Provided	37 documents
Contents of 1A Envelope / Source Provided Records	17 documents
Source Info Shared with Law Enforcement (FD-159)	1 document
Memorandum (FD-209) re Source Contact & Reporting	156 documents
Letterhead Memorandum (LHM) re Source Contact/Rpt	147 documents

² *see* footnote 1.

Teletype (FD-36) re Source Handling/Contact/Reporting	27 documents
Electronic Communication (“EC”) re Source Contact/Reporting	2 documents
Cover Sheet (FD-350) for Source Provided Info	1 document
Routing Slip (O-7) re handling source or info provided by source	4 documents
Source Expenditures/Reports (FD-221 a & FD-536)	4 documents
Source Info Shared with Law Enforcement (FD-159)	1 document
Source Handling/Suitability Checks (FD-160)	12 documents
Informant File Charge Outs (FD-5) (doc removed/refiled)	17 documents
Field Office Notice (FD-165) re Identity and Info of Source	3 documents
Miscellaneous Administrative CHS Records & Info (e.g., Source Handling, Instructions/Checklist, Assignment of Source File No / Source Code Name, Status of Source, Reassignment of Source Handler, Source Suitability Checks, Periodic Reviews of Source File & Reliability/Suitability of Source, Source Expenditure, Source Rating)	65 documents

(10) As previously explained in the First and Second Seidel Declarations, the referenced documents were received from a confidential source or compiled in furtherance of the FBI’s CHS program which allows the FBI to leverage Human Intelligence to obtain investigative leads to progress FBI cases. Release of the documents described in this category would cause foreseeable harm pursuant to FOIA Exemptions 7(D) and 7(E), as release of the

information would reveal the identities and personal information about confidential human sources (CHSs), singular information provided by the sources under an express agreement of confidentiality and compiled for law enforcement purposes. Additionally, release of such records would reveal key information about the FBI CHS program, non-public details about the scope of the CHS cooperation, the full scope of information provided by these CHSs, as well as specific information about the FBI's Informant Program, including CHS vetting for suitability, source handling/monitoring, expenditures, and payments. Additionally, release of any documents within this category would jeopardize the integrity of CHS program by providing currently used techniques and procedures including details about CHS recruitment, maintenance, and its use in specific types of law enforcement investigations. Furthermore, release of any records within this category would be contrary to FBI's confidential agreement with sources with whom the FBI had an express agreement of confidentiality. It will also undermine the public trust in the FBI's Informant program, thus hindering the FBI's ability to recruit sources in the future, hence negatively impacting the FBI's investigative mission

(11) Following the FBI's document-by-document review, the FBI reiterates that all source-related records located within 137-22152 and/or 137-NY-19967 are exempt from disclosure as they were compiled for law enforcement purposes and release could reasonably be expected to disclose the identity of confidential sources, and the information furnished by them under assurances of express confidentiality, as well as reveal law enforcement techniques, procedures and guidelines, thus creating reasonable expectation of circumvention of the law, as described above.

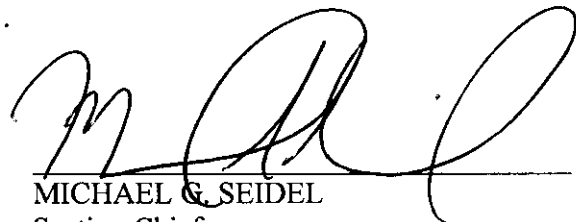
HUMAN INTELLIGENCE DOCUMENT UNAUTHORIZED DISCLOSURE

(12) Plaintiff provided a 1981 report human intelligence (“HUMINT”) document which appears to have been released in full. Upon receipt of Plaintiff’s Complaint, and considering the unlikelihood the FBI would officially release records of such nature, RIDS contacted the FBI’s division which oversee the Informant Program: HUMINT. The FBI also contacted the New York Field Office. Both the HUMINT Division, as well as the New York Field office advised RIDS they have no knowledge of any official authorized disclosure of these records. Based on the information provided by HUMINT and the New York Field office and as stated in the Second Seidel Declaration, paragraph 25, the FBI reasonably concluded the documents were leaked. Given this determination, RIDS concluded the records warrant protection under Exemptions 7(D) and 7(E).

(13) Therefore, after additional extensive review of the files at issue, the FBI determined that there is no further non-exempt information that can be reasonably segregated and released without revealing exempt information.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of September 2021.



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