

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

JENNIFER HAY

PLAINTIFF

v.

FEDERAL BUREAU OF INVESTIGATION

DEFENDANT

Case No. 3:24-cv-35

COMPLAINT

Plaintiff Jennifer Hay (“Ms. Hay”), by and through counsel, respectfully alleges as follows:

NATURE OF THE ACTION

1. This Freedom of Information Act (“FOIA”) suit challenges the alleged unlawful failure by Defendant Federal Bureau of Investigation (“FBI”) to disclose public records in response to Ms. Hay’s two FOIA requests.
2. In her First FOIA Request (“First Request”), Ms. Hay requested public records known to be within the FBI’s possession regarding the FBI’s investigation into an alleged arsonist, which were released to this Court in a federal indictment.
3. Regarding the First Request, FBI has denied all requests by Ms. Hay, including all available administrative appeals, most recently in a January 10, 2024 letter sent via email wherein the FBI asserted Exemption 7(C) and Exemption 7(E).
4. Regarding the First Request, FBI’s use of these exemptions cannot be rationally justified.
5. In her Second FOIA Request (“Second Request”), Ms. Hay sought to obtain information known to be in FBI’s possession regarding the subject property that was immolated by the alleged arsonist in the First Request.

6. FBI responded that the requested information would be made available, but later estimated it would be available in April 2026.

7. Ms. Hay therefore requests an order be issued directing FBI to disclose the records requested in the First Request and the Second Request.

JURISDICTION AND VENUE

8. This Court has proper jurisdiction over this FOIA action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §552(a)(4)(B).

9. Venue is proper within this Court under 5 U.S.C. § 552(a)(4)(B) as Ms. Hay resides in this Court's jurisdictional district.

PARTIES

10. Defendant FBI is a federal agency of the United States as defined by 5 U.S.C. § 551(1).

11. FBI has possession or control of the records at issue within this case.

12. Plaintiff Hay is an investigative reporter residing within the bounds of this Court who has pursued the requested records through formal administrative channels, and the appropriate appeals, through various federal agencies – including FBI.

13. FBI's unjustified refusal to provide the requested records runs afoul of the very reason for the enactment of the Freedom of Information Act.

14. As a result of FBI's actions and inactions, Ms. Hay has been directly aggrieved by FBI's failure to provide the requested records.

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A. MS. HAY'S FIRST FOIA REQUEST

15. On April 11, 2023, Ms. Hay filed an initial public records request relating to the investigation and indictment of a now deceased individual in the alleged arson of a Planned Parenthood facility in Knoxville, Tennessee.

16. A copy of Ms. Hay's FOIA request is attached as Exhibit 1.

17. On July 25, 2023, FBI responded by stating "...the records on third party individual(s) you requested are categorically denied pursuant to FOIA exemptions (b)(6) and (b)(7)(C)...and the material you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(E)".

18. A copy of this information is attached as Exhibit 2.

19. On July 26, 2023, the initial FOIA request was closed.

20. On August 3, 2023, Ms. Hay filed an appeal with the Office of Information Policy (OIP) based on the July 25, 2023 denial.

21. On January 10, 2024, Ms. Hay received a letter via email from FBI stating that the appeal was affirmed, citing that FBI was correct in their decision to withhold the requested records from disclosure under (7)(C) and (7)(E).

22. A copy of this letter is attached as Exhibit 3.

i. FOIA EXEMPTION 7(E)

23. A federal agency may lawfully withhold records from being disclosed under a narrowly defined statutory exemption.

24. However, the burden of proof is upon the agency to satisfy by showing they meet the statutory requirements to allow the withholding of requested information.

25. In the January 10, 2024 letter, FBI referenced that they were "...not required to conduct a search for the requested records..." under the 7(E) exemption.

26. A 7(E) exemption states the agency in question will provide the requested information, but that this requirement

"...does not apply to matters that are: (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...(E) 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..."

27. The January 10, 2024 letter's argument for this exemption is as follows:

"To the extent that non-public responsive records exist, disclosure of law enforcement records concerning techniques and procedures or guidelines for law enforcement investigations or prosecutions could reasonably be expected to risk circumvention of the law...Further, it is reasonably foreseeable that releasing any non-public records, to the extent such records exist, would harm the interests protected by this exemption..."

28. FBI's basis for this exemption is seemingly non-sensical in that they refer to non-public records as the basis for their categorical denial, without conducting a search to see if these non-public records even exist.

29. FBI further states that it is reasonably foreseeable that "interests" would be harmed with the disclosure of the non-public records, without knowing if such non-public records even exist and, if they do, what interests specifically would be harmed and how they would be harmed.

ii. FOIA EXEMPTION 7(C)

30. FBI also refers to a 7(C) exemption by stating "...disclosure of such records, including law enforcement records, concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy".

31. The third-party records requested concern the individual indicted.

32. These records were introduced into this Court for the purposes of the indictment in the criminal case.

33. Further, the third-party has long been deceased, having died while in federal custody.

34. The deceased third-party therefore does not have any privacy interests.

35. Additionally, Plaintiff avers that the estate of the third-party has stated they also want the requested information released.

B. MS. HAY'S SECOND FOIA REQUEST

36. On August 4, 2023, Ms. Hay filed a second FOIA request for information related to a federal investigation of alleged arson, where the alleged arsonist was the subject of Ms. Hay's First FOIA Request.

37. A copy of this FOIA request is attached as Exhibit 4.

38. On August 14, 2023, FBI responded via letter stating that the information requested would be made available through an online FBI Vault.

39. A copy of this letter is attached as Exhibit 5.

40. After a month had lapsed with no information being made available nor any timeframe as when the information would be made available, as stated within the August 14 letter, Ms. Hay contacted The Honorable Tim Burchett, Member of Congress, for any assistance which his Office could provide.

41. On September 29, 2023, FBI responded to Congressman Burchett via letter in which FBI states that the information is estimated to be made available in April 2026.

42. A copy of this letter is attached as Exhibit 6.

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DISCLOSURE REQUIREMENTS

43. A Federal agency is required to provide the requested information within twenty (20) days, unless an unusual circumstance exists necessitating more time to respond, or if the agency states there is a valid exemption which is applicable.

44. If a public record is within the scope of a valid FOIA exemption, and if the agency in question has met their burden of proof to show that an exemption is valid and appropriate, the record must still be disclosed unless the agency can reasonably foresee that the release of the requested information would cause a harm to an interest the claimed exemption protects.

45. Notwithstanding the foregoing paragraph, an agency must take reasonable steps to release any non-exempt information.

ALLEGATION NO. 1 – VIOLATION OF THE FREEDOM OF INFORMATION ACT REGARDING MS. HAY’S FIRST FOIA REQUEST BY FAILING TO RELEASE THE REQUESTED RECORDS

46. Plaintiff incorporates paragraphs 1-45 by reference as if they were full restated herein.

47. Ms. Hay has a statutorily defined right to the receive the requested records in accordance with her First Request.

48. Ms. Hay has been injured by FBI’s refusal to release the requested information in full and/or in a redacted format.

49. FBI has not provided any specific basis for their refusal to provide the requested information.

50. FBI has not met their burden of proof to show that an exemption applies that would prevent the disclosure of the requested information.

51. By failing to produce any records in their entirety in any format, FBI has violated FOIA.

52. Unless ordered by this Court to disclose the requested records, FBI will continue to withhold the requested information from Ms. Hay improperly in violation of FOIA.

**ALLEGATION NO. 2– VIOLATION OF THE FREEDOM OF INFORMATION ACT
REGARDING MS. HAY’S SECOND FOIA REQUEST
BY FAILING TO RELEASE THE REQUESTED RECORDS**

53. Plaintiff incorporates paragraphs 1-52 by reference as if they were full restated herein.

54. FBI provided a response to the Second Request through their August 14 letter, but has yet to produce any documents nor have they claimed any exemption in which FBI would be allowed to delay the production of such documents until April 2026.

55. Of special note, Ms. Hay did not learn of the estimated April 2026 timeline until Congressman Burchett’s Office provided assistance.

56. Ms. Hay has a statutorily defined right to the receive the requested records in accordance with her Second Request.

57. Ms. Hay has been injured by FBI’s refusal to release the requested information in full and/or in a redacted format in a timely manner.

58. FBI’s statement that the records are estimated to be ready for production over thirty-two (32) months after Ms. Hay’s FOIA request is not supported by any reason at all.

59. By failing to produce any records in a timely manner, or in claiming an exemption or unusual circumstance, FBI has violated FOIA.

60. Unless ordered by this Court to disclose the requested records, FBI will continue to withhold the requested information from Ms. Hay improperly in violation of FOIA.

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PRAYER FOR RELIEF

Based upon the allegations and information provided above, Ms. Hay respectfully requests relief in the form of a Court order:

- a. declaring that FBI violated FOIA by improperly withholding records in the First Request and/or the Second Request;
- b. directing FBI to provide copies of the requested records, or copies with only those redactions deemed proper by the Court, as expeditiously as possible for the First Request and/or the Second Request;
- c. awarding Ms. Hay their reasonable attorney's fees and costs in accordance with 5 U.S.C. § 552(a)(4)(E); and
- d. awarding Ms. Hay other such relief as is deemed just and proper by the Court.

Respectfully submitted this 31st day of January, 2024.

/s/ Adam Strachn

Adam Strachn, TN BPR No. 033915

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Knoxville, TN 37929
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Fax: 865.328.0737
adam@strachnlaw.com
Attorney for Plaintiff Jennifer Hay

EXHIBIT 1

Date: April 11, 2023

FBI
Attn: FOIPA Request
200 Constitution Drive
Winchester, VA 22602

Dear FOIA Officer:

This is a request under the Freedom of Information Act. I am a U.S. citizen.

Date range of request: April 26, 2022

Description of request: I am requesting the recording of a conversation with Mark Reno as described in the enclosed affidavit made by FBI officer Thomas Calhoun. The requested recording is described in statements #26 and #27 on page 8 of this affidavit. I wish to have the recording itself. If a transcript exists, I am requesting a copy of the transcript as well, but the transcript alone is not acceptable. Any mode of transmission to me is acceptable.

As stated in the enclosed press release from the U.S Department of Justice, Mark Reno died on August 15, 2022.

Since an official of the Knoxville Fire Department (KFD) was involved in making this recording, I initially made a request to the city of Knoxville. However, Mr. Vreeland, in his email response (copy enclosed), said that the City of Knoxville is not the custodian of this recording.

I am willing to pay up to \$100 for the processing of this request. Please inform me if the estimated fees will exceed this limit before processing my request.

I am seeking information as a citizen journalist.

Thank you for your consideration,


Jennifer Hay

EXHIBIT 2



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

July 25, 2023

MS. JENNIFER HAY

FOIPA Request No.: 1589943-000
Subject: RENO, MARK THOMAS
(Recording of April 26, 2022 Conversation)

Dear Ms. Hay:

This letter is in response to your Freedom of Information/Privacy Acts (FOIPA) request. Please see the paragraphs below for relevant information specific to your request as well as the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

This letter is in response to your Freedom of Information/Privacy Acts (FOIPA) request. Please see the paragraphs below for relevant information specific to your request as well as the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

The FBI has completed its search for records subject to the FOIA that are responsive to your request. The records on third party individual(s) you requested are categorically denied pursuant to FOIA exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C). While the existence of FBI records is acknowledged, the records are exempt from disclosure as processing these third party records would constitute an unwarranted invasion of personal privacy.

Additionally, the material you requested is exempt from disclosure pursuant to 5 U.S.C. §552 (b)(7)(E). Release of records responsive to your request would disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions and risk circumvention of the law.

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. "Part 1" of the Addendum includes standard responses that apply to all requests. "Part 2" includes additional standard responses that apply to all requests for records about yourself or any third party individuals. "Part 3" includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

Additional information about the FOIPA can be found at www.fbi.gov/foia. Should you have questions regarding your request, please feel free to contact foipaquestions@fbi.gov. Please reference the FOIPA Request number listed above in all correspondence concerning your request.

If you are not satisfied with the Federal Bureau of Investigation's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,



Michael G. Seidel
Section Chief
Record/Information Dissemination Section
Information Management Division

Enclosures

EXHIBIT 3



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Jennifer Hay

Re: Appeal No. A-2023-01749
Request No. 1589943-000

heyjennyhay@yahoo.com

VIA: Email - 01/10/2024

Dear Jennifer Hay:

You appealed from the action of the Federal Bureau of Investigation (FBI) on your Freedom of Information Act (FOIA) request for access to a recording or recording transcript of Mark Thomas Reno on April 26, 2022. I note that your appeal concerns the withholdings made by the FBI.

After carefully considering your appeal, I am affirming the FBI's action on your request. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. To the extent that non-public responsive records exist, disclosure of law enforcement records concerning techniques and procedures or guidelines for law enforcement investigations or prosecutions could reasonably be expected to risk circumvention of the law. See 5 U.S.C. § 552(b)(7)(E). Further, it is reasonably foreseeable that releasing any non-public records, to the extent such records exist, would harm the interests protected by this exemption. Because any non-public records responsive to your request would be categorically exempt from disclosure, the FBI properly asserted Exemption 7(E) and was not required to conduct a search for the requested records. See, e.g., Citizens for Responsibility & Ethics in Washington v. DOJ, 746 F.3d 1082, 108889 (D.C. Cir. 2014) (finding that categorical denial may be used when the range of circumstances included in the category supports an inference that the statutory requirements for exemption are satisfied).

Additionally, to the extent that non-public responsive records exist, disclosure of such records, including law enforcement records, concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6), (7)(C).

Further, it is reasonably foreseeable that releasing any non-public records, to the extent such records exist, would harm the interests protected by these exemptions. Because any non-public records responsive to your request would be categorically exempt from disclosure, the FBI properly asserted these exemptions and was not required to conduct a search for the requested records. See, e.g., DOJ v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 780 (1989) (holding as a categorical matter pursuant to Exemption 7(C) that release of investigatory records concerning a third party can reasonably be expected to invade that persons privacy and that such an invasion is unwarranted in the absence of an overriding public interest).

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the FBI in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office and speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,



X

Christina Troiani

Chief, Administrative Appeals Staff

EXHIBIT 4

Date: August 4, 2023

FBI
Attn: FOIPA Request
200 Constitution Drive
Winchester, VA 22602

Dear FOIA Officer:

This is a request under the Freedom of Information Act. I am a U.S. citizen.

Date range of request: December 31, 2021 - present

Description of request:

- 1) All records held by the FBI pertaining to the fire which occurred on December 31, 2021, at 710 N. Cherry Street (Planned Parenthood facility).
- 2) All records held by the FBI pertaining to Mark Reno.

As stated in the enclosed press release from the U.S Department of Justice, Mark Reno died on August 15, 2022.

I am willing to pay up to \$1000 for the processing of this request. Please inform me if the estimated fees will exceed this limit before processing my request.

I am seeking information as a citizen journalist.

Thank you for your consideration,



Jennifer Hay



EXHIBIT 5



Federal Bureau of Investigation
Washington, D.C. 20535

August 14, 2023

MS. JENNIFER HAY



FOIPA Request No.: 1600615-000
Subject: RENO, MARK THOMAS

Dear Ms. Hay:

This is in response to your Freedom of Information Act (FOIA) request. Please see the paragraphs below for relevant information specific to your request as well as the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

Records responsive to your request will be made available in the FBI's electronic FOIA Library (The Vault) on the FBI's public website, <http://vault.fbi.gov>. You will be notified when releases are available.

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. "Part 1" of the Addendum includes standard responses that apply to all requests. "Part 2" includes additional standard responses that apply to all requests for records about yourself or any third party individuals. "Part 3" includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

Additional information about the FOIPA can be found at www.fbi.gov/foia. Should you have questions regarding your request, please feel free to contact foipaquestions@fbi.gov. Please reference the FOIPA Request number listed above in all correspondence concerning your request.

If you are not satisfied with the Federal Bureau of Investigation's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by emailing the FBI's FOIA Public Liaison at foipaquestions@fbi.gov. The subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified. You may also contact the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Michael G. Seidel
Section Chief
Record/Information Dissemination Section
Information Management Division

Enclosures

As referenced in our letter responding to your Freedom of Information/Privacy Acts (FOIPA) request, the FBI FOIPA Addendum provides information applicable to your request. Part 1 of the Addendum includes standard responses that apply to all requests. Part 2 includes standard responses that apply to requests for records about individuals to the extent your request seeks the listed information. Part 3 includes general information about FBI records, searches, and programs.

Part 1: The standard responses below apply to all requests:

- (i) **5 U.S.C. § 552(c).** Congress excluded three categories of law enforcement and national security records from the requirements of the FOIPA [5 U.S.C. § 552(c)]. FBI responses are limited to those records subject to the requirements of the FOIPA. Additional information about the FBI and the FOIPA can be found on the www.fbi.gov/foia website.
- (ii) **Intelligence Records.** To the extent your request seeks records of intelligence sources, methods, or activities, the FBI can neither confirm nor deny the existence of records pursuant to FOIA exemptions (b)(1), (b)(3), and as applicable to requests for records about individuals, PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(1), (b)(3), and (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records is itself a classified fact protected by FOIA exemption (b)(1) and/or would reveal intelligence sources, methods, or activities protected by exemption (b)(3) [50 USC § 3024(i)(1)]. This is a standard response and should not be read to indicate that any such records do or do not exist.

Part 2: The standard responses below apply to all requests for records on individuals:

- (i) **Requests for Records about any Individual—Watch Lists.** The FBI can neither confirm nor deny the existence of any individual's name on a watch list pursuant to FOIA exemption (b)(7)(E) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (j)(2)]. This is a standard response and should not be read to indicate that watch list records do or do not exist.
- (ii) **Requests for Records about any Individual—Witness Security Program Records.** The FBI can neither confirm nor deny the existence of records which could identify any participant in the Witness Security Program pursuant to FOIA exemption (b)(3) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(3), 18 U.S.C. 3521, and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.
- (iii) **Requests for Confidential Informant Records.** The FBI can neither confirm nor deny the existence of confidential informant records pursuant to FOIA exemptions (b)(7)(D), (b)(7)(E), and (b)(7)(F) [5 U.S.C. §§ 552 (b)(7)(D), (b)(7)(E), and (b)(7)(F)] and Privacy Act exemption (j)(2) [5 U.S.C. § 552a (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records would reveal confidential informant identities and information, expose law enforcement techniques, and endanger the life or physical safety of individuals. This is a standard response and should not be read to indicate that such records do or do not exist.

Part 3: General Information:

- (i) **Record Searches and Standard Search Policy.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching systems, such as the Central Records System (CRS), or locations where responsive records would reasonably be found. The CRS is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled by the FBI per its law enforcement, intelligence, and administrative functions. The CRS spans the entire FBI organization, comprising records of FBI Headquarters, FBI Field Offices, and FBI Legal Attaché Offices (Legats) worldwide; Electronic Surveillance (ELSUR) records are included in the CRS. The standard search policy is a search for main entity records in the CRS. Unless specifically requested, a standard search does not include a search for reference entity records, administrative records of previous FOIPA requests, or civil litigation files.
 - a. *Main Entity Records* – created for individuals or non-individuals who are the subjects or the focus of an investigation
 - b. *Reference Entity Records*- created for individuals or non-individuals who are associated with a case but are not known subjects or the focus of an investigation
- (ii) **FBI Records.** Founded in 1908, the FBI carries out a dual law enforcement and national security mission. As part of this dual mission, the FBI creates and maintains records on various subjects; however, the FBI does not maintain records on every person, subject, or entity.
- (iii) **Foreseeable Harm Standard.** As amended in 2016, the Freedom of Information Act provides that a federal agency may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates, or (2) disclosure is prohibited by law (5 United States Code, Section 552(a)(8)(A)(i)). The FBI considers this foreseeable harm standard in the processing of its requests.
- (iv) **Requests for Criminal History Records or Rap Sheets.** The Criminal Justice Information Services (CJIS) Division provides Identity History Summary Checks – often referred to as a criminal history record or rap sheet. These criminal history records are not the same as material in an investigative "FBI file." An Identity History Summary Check is a listing of information taken from fingerprint cards and documents submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. For a fee, individuals can request a copy of their Identity History Summary Check. Forms and directions can be accessed at www.fbi.gov/about-us/cjis/identity-history-summary-checks. Additionally, requests can be submitted electronically at www.edo.cjis.gov. For additional information, please contact CJIS directly at (304) 625-5590.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (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 to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of 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 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, (E) 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, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ

EXHIBIT 6



U.S. Department of Justice

Federal Bureau of Investigation
Information Management Division
Washington, DC 20535-0001

September 29, 2023

The Honorable Tim Burchett
Member of Congress
Suite 110
800 Market Street
Knoxville, TN 37902

Dear Congressman Burchett:

I am responding to your inquiry concerning the status of either a Freedom of Information Act and/or Privacy Act (FOIPA) request.

The enclosed report contains information regarding the status of the request made by your constituent. The following is an explanation of each field used in the report:

Tracking #: A unique Federal Bureau of Investigation (FBI) reference number for each inquiry. Please utilize this reference number for follow-up inquiries regarding the status of FOIPA requests.

Date of Congressional Request: The date of the original inquiry submitted by a Congressional representative.

Attention: The liaison contact identified in the original inquiry by the Congressional representative.

Constituent Name: Identifies the constituent.

Date FOIPA Request Received: Identifies the date the request was received by the FBI from the constituent or Congressional representative, as applicable.

Status: Indicates the state of the request.

- Finalized – Identifies the request as complete.
- In Process – Identifies the request as currently under review.
- Not Received – Request not received by the FBI.

Date Finalized: Indicates the date when the request was finalized or information was sent to your constituent.

Notes: Identifies pertinent data regarding the specific case.

The Honorable Tim Burchett
Page Two

The FBI processes thousands of FOIPA requests each year, with each request requiring careful research. We know how important this information is to your constituent; however, the nature of this information requires that our research process renders a thorough and accurate result.

The information provided on the enclosed report should assist you in responding to your constituent.

Sincerely,

A handwritten signature in black ink, appearing to read "J.T. Klipfer", with a long horizontal stroke extending to the right.

James T. Klipfer
Acting Deputy Assistant Director

Enclosure

Federal Bureau of Investigation

FOIPA Status Report

Trim # Ser 282, 115

Date of Congressional Inquiry: 9/11/2023

Attention: Madison Heinsohn

Constituent Name	Date Request Received In FOIPA	Status	Date Finalized	Notes
Jennifer Hay	4/19/2023	Finalized	7/25/2023	<p>On April 19, 2023, the FBI received Ms. Hay's request for records pertaining to Mark Thomas Reno (Recording of April 26, 2022 Conversation) and assigned it FOIPA request number 1589943-000. A search for responsive records was in process when Ms. Hay filed an appeal with the Office of Information Policy (OIP) on July 10, 2023, assigning it A-2023-01596. The FBI received a copy of her appeal the same day. As no adverse determination had been made by the FBI regarding the request, the appeal was not considered by OIP and was subsequently closed by letter dated August 7, 2023.</p> <p>By letter dated July 25, 2023, the FBI informed Ms. Hay that "the records on third party individuals(s) you requested are categorically denied pursuant to FOIA exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C), and the material you requested is exempt from disclosure pursuant to 5 U.S.C. §§ 552 (b)(7)(E)." FOIPA request 1589943-000 was subsequently closed on July 26, 2023, upon issuance of this letter.</p> <p>On August 3, 2023, Ms. Hay filed a second appeal with OIP based on the categorical denial, assigning it number A-2023-01749. For questions pertaining to the status of this appeal, Ms. Hay may contact OIP directly by tracking the status at https://www.justice.gov/oip/submit-and-track-request-or-appeal or by calling 202-514-3642.</p> <p>On September 15, 2023, Ms. Hay contacted your office regarding a second request, FOIPA request number 1600615-000. The FBI received this request on August 9, 2023. Ms. Hay was informed by letter dated August 14, 2023, that "records responsive to your request will be made available in the FBI's electronic FOIA Library (The Vault) on the FBI's public website, http://vault.fbi.gov. You will be notified when releases are available." Accordingly, Ms. Hay will be notified when releases are made available on the FBI's public website. The request's estimated date of completion is April 2026. Ms. Hay may contact the FBI FOIA Public Information Officer (PIO) with questions pertaining to her request at foipaquestions@fbi.gov or by phone at 540-868-4593.</p>