

EXHIBIT 7



A-2023-01428

Requester: Shoemaker, John D

Status: Closed

Workflow

Appeal

Appeal Information

Received Date	06/12/2023	Agency	OIP
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Request Information

Request Number	1590504-000
Component	FBI
Subject of Request	<p>Subject of original request:</p> <p>Mark J. Gabriele, Henry Wojtaszek, Gabriele & Berrigan PC</p> <p>Text of original request:</p> <p>I request all records of financial transactions between Mark J. Gabriele and Henry Wojtaszek, as well as all records of financial transactions between Gabriele & Berrigan PC and Henry Wojtaszek, dated Jan. 1, 2010 through the present. I further request any financial analysis reports, and any other reports, related to the aforementioned financial transactions.</p>

Basis for Appeal

Description of Appeal

To whom it may concern,

My name is J. Dale Shoemaker. I am a journalist working at the nonprofit, investigative news outlet Investigative Post, based in Buffalo, New York. I cover economic development and labor issues across the Western New York region.

I write to you today to formally appeal the premature closing and denial of my recent request for records from the Federal Bureau of Investigation, Request No. 1590504-000 under the Freedom of Information Act. My request was denied April 26, 2023 and I am filing this appeal June 13, 2023, well within the 90-day time-frame allowed for such appeals. The exemptions cited by the FBI, specifically (b)(6) and (b)(7)(C) do not apply to my request and were inappropriately applied. I hereby ask that the FBI reopen my request, perform a diligent and complete search for the records I have requested and furnish them to me in a timely fashion. I have requested these records as part of the news-gathering process and on behalf of the public, not for private or commercial purposes.

The original text of my request is as follows:

"I request all records of financial transactions between Mark J. Gabriele and Henry Wojtaszek, as well as all records of financial transactions between Gabriele & Berrigan PC and Henry Wojtaszek, dated Jan. 1, 2010 through the present. I further request any financial analysis reports, and any other reports, related to the aforementioned financial transactions."

Upon information and belief, the FBI is in possession of these materials, gathered as part of the criminal investigation into former New York State Senator George Maziarz, a probe that is now closed and the details of which have been widely publicized. (See this Albany Times Union article for reference: <https://www.timesunion.com/local/article/FBI-files-detail-former-NY-senator-s-corruption-12768786.php>).

In its denial, the FBI cited exemption (b)(6) which, in the agency's own explanation, prevents the release of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." It is my assertion that this exemption does not apply in this case. For my request, I have not asked for personnel, medical or even personal documents. Rather, I have asked for financial records (for example, wire transfers, checks, etc.) between Mr. Gabriele and Mr. Wojtaszek. Those records do not constitute personnel records. Those records do not constitute medical records. The release of those records also would not constitute an unwarranted invasion of personal privacy, in part because both Mr. Gabriele and Mr. Wojtaszek are public figures and employees of public agencies. Mr. Gabriele has worked as an attorney for both the Niagara County Industrial Development Agency (a public agency based in Niagara County, New York) and Western Regional Off-Track Betting (a public agency based in Genesee County, New York). Mr. Gabriele has made numerous appearances at public meetings, in published news articles and other public forums, constituting the legal definition of a public figure. Mr. Wojtaszek is the CEO of Western Regional Off-Track Betting, a well-known gambling agency in Western New York that operates a popular hotel and casino. Similar to Mr. Gabriele, Mr. Wojtaszek has made numerous appearances at public meetings, has been quoted numerous times in news articles and has appeared on television numerous times as well, fitting the legal definition of a public figure. For these reasons, the records I have requested should not have been withheld under exemption (b)(6).

In its denial, the FBI further cited exemption (b)(7), which prohibits release of records gathered "for law enforcement purposes" under certain circumstances. Subsection (b)(7)(A) prohibits the release of records that could "reasonably be expected to interfere with enforcement proceedings." That subsection does not apply to my request. As mentioned above, the records I seek were gathered as part of a now-closed FBI investigation, meaning there is no way their release could interfere with law enforcement proceedings. For similar reasons, subsection (b)(7)(B) does not apply. That subsection, which bars release of records that could "deprive a person of a right to a fair trial or an impartial adjudication" does not apply because the FBI's case that involved Mr. Maziarz, Mr. Gabriele and Mr. Wojtaszek has been closed and all legal proceedings have finished. Subsection (b)(7)(C) also does not apply -- barring disclosure of records that would constitute "an unwarranted invasion of personal privacy" -- for reasons stated above. The records I am seeking would not amount to an invasion of personal privacy as they are transaction records between two public figures who are employed by public agencies. Similarly, subsection (b)(7)(D) does not apply to my request -- barring disclosure of information that could endanger a "confidential" source -- because I am not seeking information about the FBI's confidential sources. Rather, I am seeking records pertaining to two public figures who are employed by public agencies. Further, subsection (b)(7)(E), barring disclosure of investigative records, does not apply as I am not seeking records that detail the FBI's methods of investigation. And finally, subsection (b)(7)(F), barring disclosure of records that could "endanger the life or physical safety" of a person, does not apply because I am not requesting records that would put anyone at any risk. To restate an earlier argument, I am requesting records detailing financial transactions between two public figures who are employed by public agencies. The release of those records would not endanger the life, safety, privacy or rights of either individual named in my request.

In summary, my request for records pertaining to public figures employed by public agencies was wrongly denied by the FBI and an appeal officer ought to overturn that decision, order the FBI to conduct a diligent search for records and furnish them to me in a timely fashion.

If an appeals officer agrees that my request was wrongly denied, I ask that the FBI please conduct a search of its Central Records System, including but not limited to the Electronic Surveillance (ELSUR) Indices, the Microphone Surveillance (MISUR) Indices, the Physical Surveillance (FISUR) Indices, and the Technical Surveillance (TESUR) Indices, for both main-file records and cross-reference records for all relevant names, individuals, agencies and companies. This search should also include any responsive records held in offsite locations, such as the Alexandria Records Center. I ask that the agency please include both investigatory and non-investigatory records in its search.

I thank you for your time and consideration. To contact me with questions or to seek clarification, email me at jshoemaker@investigativepost.org.

J. Dale Shoemaker

Based on Denial of Fee Waiver

No

Based on Denial of Expedited Processing No

Requester Item Type 1

Requester Items 1

Requester Item Type 2

Requester Items 2

Requester Item Type 3

Requester Items 3

Requester Contact Information

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Expedited Processing Information

Expedited Processing Requested? No