

EXHIBIT 3

Rec 9/10/07
PJONES

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September 10, 2007

BY HAND

Director, Office of Information and Privacy
United States Department of Justice
1425 New York Avenue, NW
Suite 11050
Washington, D.C. 20530-0001

**Re: Freedom of Information Act Appeal
Federal Bureau of Investigation Files,
Richard L. Sealey, D.O.B.- 4/18/1964, SSN-580-04-0371
Bureau of Prisons Register Number 39154-066
FOIPA Number 1084225-000
This regards a Death Penalty Case; Expedited Processing Requested**

Dear Sir or Madam,

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 522 (hereinafter, "FOIA"). On June 22, 2007, I requested a copy of all documents, files, records, etc., in the possession or under the control of the Federal Bureau of Investigation and/or any institution, office, agency, or department under the direction of the Federal Bureau of Investigation relating to the above-referenced individual, including but not limited to:

any investigation, arrest, indictment, conviction, sentencing, incarceration, and/or parole of the above referenced individual.

I received a response to the request in a letter, dated July 12, 2007, signed by Mr. David Hardy, Section Chief, Record/Information Dissemination Section. The Federal Bureau of Investigation denied the request, stating that no records responsive to the FOIA request were located by a search of the automated indices.

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I hereby appeal that denial. I have enclosed a copy of the request letter, attached hereto as Exhibit A, and the denial that I

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September 10, 2007

Page 2

received, attached hereto as Exhibit B.

The denial of the request is improper on several grounds. First, it is not clear that the agency has made more than a perfunctory search to locate any responsive files. "An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was 'reasonably calculated to uncover all relevant documents.'" *Valencia-Lucena v. United States Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (citing *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). Accordingly, the agency cannot limit its search to "only one or more places if there are additional sources 'that are likely to turn up the information requested.'" *Id.* at 326 (citing *Ogelsby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). Thus, if there are alternative indices or search methods that are available to the Federal Bureau of Investigation, then the Federal Bureau of Investigation has failed to satisfy its obligation under FOIA. See *Biberman v. Federal Bureau of Investigation*, 528 F. Supp. 1140 (S.D.N.Y. 1982) (holding that defendant failed to satisfy obligation under FOIA to the extent that they have failed to search all available indices which are reasonably likely to contain references to plaintiffs).

Second, the denial of the request is improper given the context in which this request arises. The request was made in connection with a petition for habeas corpus where the sentence of death has been imposed. The petitioner, Richard L. Sealey, spent over ten years of his adult life in federal custody. Thus, any files that the Federal Bureau of Investigation has may contain information critical to the outcome of his petition, and therefore, to the continuation of his life. This information cannot be obtained from any other source. Under these circumstances, Mr. Sealey has clearly established a sufficient predicate to justify further searching for these highly relevant records. See *Campbell v. United States Dep't of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998) (stating that "[a]s the relevance of some records may be more speculative than others, the proper inquiry is whether the requesting party has established a sufficient predicate to justify searching for a particular type of record").

Finally, we have identified additional information for Mr. Sealey. We have located the following FBI number for Mr. Sealey, "955653v2." We also identified an alias for Mr. Sealey, the name "Jeff Simms." In addition, Mr. Sealey's name has also been spelled as "Sealy." We therefore request that the search for records relating to Mr. Sealey be expanded to include his alias, Jeff Simms, as well as the alternate spelling of Mr. Sealey's surname, "Sealy."

I look forward to a decision on this appeal of the denial of my FOIA request within twenty (20) working days, as the law provides. Thank you for your consideration of this appeal.

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September 10, 2007
Page 3

Very truly yours,

A handwritten signature in black ink, appearing to read "Seanna R. Brown", with a long horizontal flourish extending to the right.

Seanna R. Brown

EXHIBIT "A"

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June 22, 2007

BY FIRST CLASS MAIL

Freedom of Information Act Officer
Federal Bureau of Investigation
Record Information/ Dissemination Section
Service Request Unit, Room 6359
935 Pennsylvania Avenue, NW
Washington, D.C. 20535

Re: Richard L. Sealey, D.O.B.- 4/18/1964, SSN-580-04-0371
This Regards a Death Penalty Case; Expedited Processing Requested.

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. §552, I respectfully request certified copies of all records, documents, and/or files in the possession or under the control of your office or agency and/or any person, division, department or similar subsection of your office or agency, regarding the above referenced individual, including, but not limited to material relating to:

any investigation, arrest, indictment, conviction, sentencing, incarceration, and/or parole of the above referenced individual.

A comprehensive, HIPPA compliant, notarized, release is enclosed authorizing the release of all records, files, and/or information pertaining to this individual that might otherwise be deemed confidential.

For the purposes of the request, the terms "records," "documents," and "files" are intended to include, without limitation, any and all written, typed printed, recorded, graphic, computer-generated, or other matter of any kind from which information can be derived, whether produced, reproduced, or stored on paper, cards, tapes, films, electronic facsimiles, computer storage devices, or any other medium. They include, without limitation, letters, memoranda (including internal memoranda), calendars, schedules, books, indices, notes, printed forms, publications, press releases, notices, minutes, summaries or abstracts, reports, files, transcripts,

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Freedom of Information Act Officer
June 22, 2007
Page 2

computer tapes, printouts, drawings, photographs, recordings (including both videotapes and audiotapes), telegrams, and telex messages, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

Please certify all provided records. I understand that there may be a charge for certified records. Please provide an itemized statement of all incurred charges. Please note that this request is specifically for certified records and that no charges are authorized for the production of uncertified records.

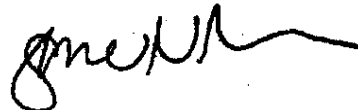
If your search produces no records please send a signed, dated letter on letterhead to that effect. Please include in that letter any other departments or offices known to you that could have documents responsive to this request.

Further, to the extent that your office determines that any materials related to these requests are not responsive to this request or will not be disclosed, I request that your office make an item-by-item catalog of those materials not disclosed and the reasons for the non-disclosure.

These records are being requested as they relate to pending legal proceedings. The time constraints of these legal proceedings are pressing and require that I request all possible expediency on the part of your office and agency.

Thank you very much for all of your assistance in this matter. If any questions should arise during the search for these records, please do not hesitate to contact me at the number listed above.

Very truly yours,



Seanna R. Brown

Privacy Waiver and Certification of Identity

FOIPA Request Number _____
 Full Name: Richard Leslie Sealey (if known)
 Current Address: P.O. Box 3077
Jackson, GA 30223
 Date of Birth: 4-18-1964 Place of Birth: St. Croix, Virgin Islands

(Optional: Prior addresses, employments, aliases, etc., which may assist the FBI in locating the requested information) _____

I hereby waive my right to privacy, and I authorize the FBI to release any and all information relating to me to :

(name, address, & phone of Attorney or other Designee)

Under penalty of perjury, I hereby declare that I am the person described above and understand that any falsification of this statement is punishable under the provisions of Title 18, United States Code (U.S.C.), Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years, or both; and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of Title 5, U.S.C., Section 552a (f)(3) as a misdemeanor and by a fine of not more than \$5,000.

Signature: Richard Sealey Date: 5-9-07

State of: Georgia
County of: Butts

AUTHORIZATION FOR RELEASE OF RECORDS AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

I, Richard L. Sealey, date of birth, 4/18/1964, Social Security number, 580-04-0371, hereby grant authorization to any public or private agency, institution, individual or corporation, including but not limited to any lawyer, law firm, school, youth facility, physician's office, hospital, mental health center, addiction treatment center, psychologist's or psychiatrist's office, department of family and children services, social service organization, jail, prison, correctional facility, bureau of investigation, department of probation and/or parole where I have been or currently am being educated, evaluated, treated, held or confined, or who has ever been involved in providing me with legal or other services, to release and disclose to the attorneys at the law firm of TROUTMAN SANDERS LLP and to any designated employee or representative of the firm, any and all of my files and records, or copies thereof, in their possession, including those files and records or portions thereof disclosing my protected physical and mental health information and to discuss with the afore-mentioned individuals and/or provide to them in writing confirmation of any medical and mental health treatment, condition, prognosis and any other information relevant to my health.

This authorization for release and disclosure to the above named attorney(s) or their designated representatives of my protected physical and mental health records, files, and information, (whether typed, handwritten, audiotaped, videotaped, electronically stored or transmitted, or otherwise generated or preserved), includes but is not limited to: emergency room records; x-rays; hospital inpatient records; hospital outpatient records; office based records; clinic records; institutional records; jail records; prison records; department of corrections records; behavioral and mental health treatment information; Medicaid records; laboratory and diagnostic findings; substance abuse treatment information; psychotherapy notes; doctors' notes; nurses' notes; counselors' notes; psychiatrists' notes; psychologists' notes; staff notes; correspondence; evaluations; test data and results; medication orders and prescriptions; reports; scans; measurements; transfers; assignments; admissions; discharges; and commitments.

I understand that the information in my records may include confidential AIDS/HIV test results, infection status, or treatment information; information regarding sexually transmitted diseases; information regarding other communicable diseases; information regarding treatment for alcohol and/or drug abuse; and information relating to behavioral and mental health diagnoses, care, and treatment. I authorize the release and disclosure of this information to the above named attorney(s) or their designated representatives.

I understand that the information used or disclosed pursuant to this authorization may be subject to re-disclosure by the recipient of the information and may then no longer be protected by federal privacy regulations. I understand that unless otherwise limited by state or federal regulations, I may revoke this Authorization at any time by presenting my revocation in writing, except to the extent that the entity disclosing such records has taken action in reliance on this authorization.

I agree that this authorization is as valid whether in the original, a photocopy, a facsimile, or in electronic form and expires one year from date of signature.

Richard Sealey

Sworn to or affirmed and subscribed before me this the 9 day of May, 2007.

[Signature]
NOTARY PUBLIC

My commission expires: Notary Public, Fulton County, Georgia
My Commission Expires June 28, 2008

EXHIBIT "B"

U.S. Department of Justice



Federal Bureau of Investigation

Washington, D.C. 20535

July 12, 2007

MS SEANNA R BROWN
TROUTMAN SANDERS LLP
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174

Request No.: 1084225- 000
Subject: SEALEY, RICHARD LESLIE

Dear Requester:

This is in response to your Freedom of Information-Privacy Acts (FOIPA) request noted above.

To promptly respond to requests, we concentrate on identifying main files in the central records system at FBI Headquarters. No records responsive to your FOIPA request were located by a search of the automated indices.

You may file an administrative appeal by writing to the Director, Office of Information and Privacy, United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, within 60 days from the date of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

Enclosed for your information is a copy of the FBI File Fact Sheet.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over the typed name.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure

FBI FILE FACT SHEET

- **The primary function of the FBI is law enforcement.
The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920's.**
- **FBI files generally contain reports of FBI investigations of a wide range of matters, including counterterrorism, foreign counter-intelligence, organized crime/drugs, violent crime, white-collar crime, applicants, and civil rights.**
- **The FBI does not issue clearances or nonclearances for anyone other than its own personnel or persons having access to FBI facilities. Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should write directly to that entity.**
- **An FBI identification record or "rap sheet" is NOT the same as an FBI "file" - it is simply a listing of information taken from fingerprint cards submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI, CJIS Division, Attn: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Each request must have proof of identity which shall consist of name, date and place of birth and a set of rolled-ink fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies, plus payment of \$18.00 in the form of a certified check or money order, payable to the Treasury of the United States.**
- **The National Name Check Program (NNCP) conducts a search of the FBI's Universal Index to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to the requesting Federal, State or local agency. For the NNCP, a name is searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both "main" and "cross reference" files. A main file is an entry that carries the name corresponding to the subject of a file while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several "hits" and "idents" on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine whether it is applicable to the individual in question.**
- **The Record/Information Dissemination Section/Freedom of Information-Privacy Acts (FOIPA) search for records provides copies of FBI files relevant to a FOIPA request for information. FOIPA provides responsive documents to requesters seeking "reasonably described information." For a FOIPA search, the subject name, event, activity, business, or event is searched to determine whether there is an investigative file associated with the subject. This is called a "main file search" and differs from The NNCP search.**

**FOR GENERAL INFORMATION ABOUT THE FBI,
CHECK OUT OUR WEBSITE AT
<http://www.fbi.gov>**