

ASSOCIATED ATTORNEYS OF NEW ENGLAND

March 15, 2018

VIA US MAIL CERTIFIED:
Fax (540) 868-4391
Federal Bureau of Investigation
ATTN: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

RE: Doctor Jeffery Isaacs
3553 West Chester Pike, Unit #177
Newton Square, PA 19073
FOIA Request No.: 1393644-000

APPEAL OF DENIAL FOR FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern,

My name is Keith Mathews; I am an Attorney practicing in New Hampshire and Maine. I represent Dr. Jeffrey Isaacs in the above matter. I am writing to you today under the Freedom of Information Act (FOIA) to request reconsideration to the request for all unclassified documentation related to the investigation, and/or choice not to investigate crimes reported by Dr. Jeffrey Isaacs.

This letter is a necessary step as the Bureau has provided a non-response to the original FOIA request. The form letter denial of those request is clearly arbitrary and further supplementation is required under the statute.

The sole purpose of the request, submitted on January 12, 2018, was to obtain information that would offer an explanation as to why the Bureau declined to pursue an investigation into the crimes reported or if the Bureau did initiate an investigation, what were the findings that lead the Bureau to the determination that no crimes were committed. The response sent by the Bureau failed to fully respond to this request. This appeal is being sent with the hopes

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of resolving these matters without litigation. If a response to this appeal is not made within 20 days then suit will be promptly initiated.

The response received from the Bureau represents an arbitrary denial of these requests. The Response appears to focus only on Dr. Isaacs' file. It may be helpful to clarify here that the request was for Dr. Isaacs' file as well as the files of Jim Yong Kim and Dartmouth. Please include these additional requests in any response.

According to the Bureau's website, only crimes that meet certain criteria will be investigated and the Bureau reserves the right to investigate at its discretion. In Dr. Isaacs' initial complaint, all the asserted crimes reported fall under the jurisdiction of the Bureau. These crimes include serious allegations of retaliation, fraud, due process, defamation, and infliction of emotional and physical distress. Dr. Isaac's complaint is testimonial evidence as to how he was treated by Dartmouth College and the injuries he suffers as a result. And yet, without explanation the Bureau has simply dismissed the allegations, closing the case, and offering a boilerplate explanation to its decision.

A. Title 5 § 552

In its letter, dated January 22, 2018, the Bureau lists several exceptions to the FOIA under Title 5 §552 for its justification in closing Dr. Isaacs' request. First, the Bureau cites subsection (b)(6), which applies to... "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The standard for disclosure under the FOIA is clearly outlined in the language of the Act and supported by case law. The Act provides that all documents are available to the public unless specifically exempted by the Act. These exemptions from disclosure must be narrowly construed. Dept. of Air Force v. Rose, 425 U.S. 352 (1976)), in such a way as to provide the maximum access consonant with the overall

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purpose of the Act. When the government declines to disclose a document the burden is upon the agency to prove de novo in trial court that the information sought fits within one of the exemptions to the FOIA. Thus the statute and the judicial interpretations recognize and place great emphasis upon the importance of disclosure.

Vaughn v. Rosen, 484 F.2d 820 Court of Appeals, Dist. of Columbia 1973. Leopold v. Department of Justice, Dist. Court, Dist. of Columbia, 2015. Dr. Isaacs contests that the Bureau improperly categorized the requested information and that the information does not fall under the (b)(6) exemption of the FOIA.

B. Title 5 § 552(b)(7)(C)

Second, the Bureau cites (b)(7)(C) which applies to... “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.” The Supreme Court held, in reference to (b)(7)(C), that in refusing foreclosure, the courts must first “consider the nature of the particular documents as to which exemption was claimed, in order to avoid the possibility of impermissible ‘comingling’ by an agency’s placing in an investigatory file material that did not legitimately have to be kept confidential.” NLRB v. Robbins Tire & Rubber Co., 437 U.S. at 229-230. And second, to “look to the reasons” for allowing withholding of information and that the government is required to “specify some harm in order to claim the exemption” rather than “affording all law enforcement matters a blanket exemption.” Should the Bureau again refuse to disclose the requested information and an appeal is denied, Dr. Isaacs is prepared to take the matter to trial court where the Bureau will have the burden of showing that it withheld the requested information because it was compiled for law enforcement purposes *and* disclosure of such information would constitute

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an unwarranted invasion of personal privacy. Federal Bureau of Investigations et al. v. Abramson, 456 U.S. 615. 628 (1982).

To further address subsections (b)(6) and (b)(7)(C), the information requested did not constitute the production or disclosure of *personnel* information or medical information that would amount to a clearly unwarranted invasion of privacy. If such information is furnished, it would be *personal* and medical records of Dr. Isaacs himself upon his request and with his consent. Furthermore, if the requested information was compiled for law enforcement purposes there would be no harm in its disclosure, unless there is a pending criminal investigation, in which case, it would not have made sense for the Bureau to close Dr. Isaacs' request.

C. Title 5 § 552(b)(7)(E)

Third, the Bureau cites (b)(7)(E), which applies to the publication of records or information compiled for law enforcement purposes, but only to the extent the production of such law enforcement records or information... "would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." In Milner v. Department of the Navy, 562 U.S. (2001) *supra* 12, The Court specifically addresses Congress' intention when it amended subsection (E). The Court held that the exemption "encompasses only records relating to issues of employee relations and human resources." Dr. Isaacs' request does not fall under this exemption; his request was not related to employee relations or human resources.

D. Title 5 §552(c)

Fourth, the Bureau cites 5 U.S.C §552(c), which states, "Whenever a request is made which involves access to records described in subsection (b)(7)(A) and –

(A) The investigation or proceeding involves a possible violation of criminal law; and

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(B) There is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, *and* (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section,” (emphasis added).

As understood, 5 U.S.C §552(c), an exemption to the Bureau’s obligation to furnish requested information, strictly applies to subsection (b)(7)(A) and more specifically to 3 (three) discrete categories- - criminal law violations and proceedings, informant records maintained by the criminal law enforcement agency, records maintained by the FBI pertaining to foreign intelligence or counter intelligence, terrorism, and (b)(1) executive order to keep records secret. The Bureau does not specifically cite (b)(7)(A) in their denial of request letter dated January 22, 2018. Furthermore, none of the 3 (three) discrete categories fall under the scope of the statute apply to Dr. Isaacs’ request. Dartmouth College is aware that Dr. Isaacs has notified law officials of the treatment he received while employed with the institution and is actively pursuing all available legal remedies; criminal and civil. If the Bureau is actively conducting a criminal investigation into the practices of Dartmouth College, Dr. Isaacs concedes to the refusal of disclosure of information that is directly related to such an investigation as not to impede the Bureau in its pursuit of justice.

E. Conclusion

The very purpose of the FOIA is to give citizens the right to access information from the federal government and was enacted with the intention to keep citizens in the know of what their government is up to. Dr. Isaacs feels that the severity of the asserted crimes and lifelong effects of his injuries warrant the Bureau to take a serious look into this matter. It doesn't make sense

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that the Bureau would dismiss a case where human and civil rights are at issue, even at its discretion. At the heart of his request, Dr. Isaacs is looking to understand the actions taken by the Bureau when first receiving his initial complaint and the Bureau's policies and procedures when determining whether or not to open an investigation of the reported crimes. Again, Dr. Isaacs acknowledges that the Bureau conducts investigations at its discretion; however, it is impossible to accept that the Bureau exercises this discretion arbitrarily. There must be policies and procedure in place to guide the Bureau when making its determination as to whether a report of federal crime warrants an investigation. This is the basis of the information my client seeks.

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Dr. Isaacs respectfully requests that your office produce, within 20 days, the following records:

1. All records of unclassified communications between the FBI workforces addressing any actions taken in reference to the crimes reported by Dr. Isaacs, including but not limited to emails, official statements, announcements, and memoranda.
2. All records of unclassified information relating to the timeline and the search conducted for this request.
3. All records of unclassified information that the Bureau discovered in relation to its search and initial assessment of the crimes reported, including but not limited to search results, emails, official statements, announcements, and memoranda.
4. All records of unclassified information addressing the Bureau's decision to not investigate the crimes reported by Dr. Isaacs and to close his case, including but not limited to emails, official statements, announcements and memoranda.

Dr. Isaacs acknowledges that the information requested shall be made available pursuant to 5 U.S.C. §552(a)(2)(E), which states, to the extent required to prevent a clearly unwarranted

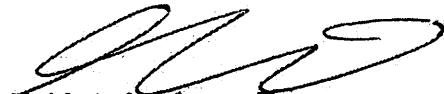
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invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. (D) However, in each case *the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published*, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made (emphasis added). See. Vaughn v. Rosen, 484 F.2d 820 (Court Appeals, Dist. Columbia 1973).

Sincerely,



Keith A. Mathews, Esq.