

# EXHIBIT H



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August 10, 2017

## VIA OVERNIGHT MAIL AND FOIA PORTAL

Director, Office of Information Policy  
U.S. Department of Justice  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

**RE: Freedom of Information Act Appeal concerning “FOI/PA No. 16-00086-F”**

Dear Director,

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552 *et seq* (“FOIA”).

On December 28, 2015, Reed Smith LLP made a FOIA request to the U.S. Department of Justice – and specifically, the Civil Rights Division – on behalf of our client Mario Woodward (“Requester”), for the following records (the “Request”):

- All records in any way relating to, pertaining to, or mentioning Department of Justice investigations of law enforcement located in the County of Montgomery, Alabama for civil rights violations during the time period of January 1, 1994 through today, December 28, 2015, including but not limited to investigations of the Montgomery Police Department of the Montgomery District Attorney’s Office.
- All records in any way relating to, pertaining to, or mentioning the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts on September 28, 2006, by state and/or federal law enforcement located in the State of Alabama and/or the State of Georgia, including but not limited to the use of any GPS or “stingray” technology by the Alabama Bureau of investigations or the U.S. Marshals located in Alabama and Georgia.

The Civil Rights Division acknowledged receipt of this request by letter dated December 31, 2015, which letter also stated the above-referenced FOI/PA number and advised that some delay might be encountered in processing the Request.

On May 15, 2017 – nearly one year and half after the Request – the Civil Rights Division wrote to deny the Request (the “Denial Letter”), on the grounds that any responsive records would be exempt from FOIA’s disclosure obligations. Specifically, the request for records relating to investigations of law enforcement in Montgomery, Alabama was denied on the basis of 5 U.S.C. § 552(b)(5) as such

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documents “constitute predecisional deliberative material and attorney work product,” as well as 5 U.S.C. § 552(b)(7)(E), as “the records consist of sensitive investigative techniques which, if released, could reasonably be expected to risk circumvention of the law.” The Civil Rights Division further stated that it possesses no records pertaining to the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts. Copies of the Request and the Civil Rights Division’s Denial Letter are enclosed herein.

The Civil Rights Division, when in receipt of a request for documents pursuant to FOIA, is obligated to conduct a search reasonably calculated to uncover all responsive documents. *See* 5 U.S.C. § 552(a)(3)(C); *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). The Civil Rights Division is required to make more than a “perfunctory search” and must follow obvious leads to discover requested documents. *Valencia-Lucana v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). Importantly, the agency responding to the FOIA request bears the burden of demonstrating that it conducted an adequate search, as well as the applicability of any statutory exemption invoked as a basis for denying production of responsive documents. *See Roth v. U.S. Dep’t of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011); *Steinberg v. U.S. Dep’t of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994).

We appeal the Civil Rights Division’s determination as expressed in the Denial Letter for three reasons:

- First, the Civil Rights Division’s refusal to produce any documents whatsoever that relate in any way to investigations of law enforcement in Montgomery County, Alabama for civil rights violations appears to be an overbroad blanket denial. The necessary implication of the Denial Letter’s refusal to produce any documents is that the Civil Rights Division has concluded that *all* records within the scope of the Request, i.e. all records “in any way relating to, pertaining to, or mentioning” such investigations ***over a period of 21 years***, are statutorily exempt as either attorney work product or law enforcement records which could reasonably be expected to risk circumvention of the law. This is a generic and extremely broad refusal, and the Denial Letter provides no explanation for its extraordinarily-broad scope.
- Second, if any portions of the requested documents are withheld on the basis of privilege or an exemption, the Civil Rights Division should describe the withheld material in detail and specify the statutory basis for the denial as well as the reasons for believing that the alleged statutory justification applies in this instance. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).
- Finally, the Civil Rights Division represents that it has “no records pertaining to the use of any cell phone tracking technology during the investigation of the shooting death of Office [sic] Keith Houts” after “thorough search,” without specifying the nature or category of documents searched or clarifying that the documents searched included those named in the Request. Based on publicly-available resources, the federal government and local law enforcement entities have used “stingray” technology in Georgia, and we have a good-faith basis to believe that an adequate search will reveal the use of such technology as contemplated by the Request.

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Accordingly, consistent with the Requester's statutory rights under FOIA, we hereby appeal the denial of the Request on his behalf. We trust that the Office of Information Policy will seriously consider this appeal, and conduct an adequate search of all available document repositories and databases.

Because we have made this request as counsel on behalf of the Requester, Mr. Woodward, in connection with the action styled *State of Alabama v. Woodward*, 03-CC-2007-001388.60, which remains pending in the Alabama state court system as Mr. Woodward remains detained at the William E. Donaldson Correctional Facility on death row, time is of the essence. We would therefore appreciate the OIP expediting its consideration of this appeal in every way possible. In any case, we will expect to receive a decision regarding this appeal within twenty (20) business days, as required by 5 U.S.C. § 552(a)(6)(A)(ii).

Thank you for your assistance.

Respectfully submitted,

*Geoffrey G. Young*

Geoffrey G. Young

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Enclosures



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December 28, 2015

## FREEDOM OF INFORMATION ACT REQUEST

### By Electronic Mail and UPS Overnight Mail

FOIA/PA Mail Referral Unit  
Department of Justice  
Room 115, LOC Building  
Washington, D.C. 20530-00001  
[MRUFOIA.Requests@usdoj.gov](mailto:MRUFOIA.Requests@usdoj.gov)

Nelson D. Hermilla  
Chief, FOIA/PA Branch  
Civil Rights Division  
Department of Justice  
BICN Bldg., Room 3234  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
[CRT.FOIArequests@usdoj.gov](mailto:CRT.FOIArequests@usdoj.gov)

William E. Bordley  
Associate General Counsel  
Office of General Counsel  
United States Marshals Service  
FOIA/PA, CS4, 10th Floor  
Washington, DC 20530-1000  
[usms.foia@usdoj.gov](mailto:usms.foia@usdoj.gov)

Re: **FOIA Request for Information**

Dear FOIA Officer:

This firm represents Mario Woodward in connection with the action styled *State of Alabama v. Woodward*, 03-CC-2007-001388.60, which is pending in the Circuit Court of the State of Alabama, County of Montgomery (“State v. Woodward”). This request is submitted on behalf of Mr. Woodward (“Requester”), who is presently detained at the William E. Donaldson Correctional Facility.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”) and corresponding regulations, we hereby request that we be allowed immediate access to the following documents (the “Records”) or, in the alternative, that we be immediately provided with copies of such Records:

- All records in any way relating to, pertaining to, or mentioning Department of Justice investigations of law enforcement located in the County of Montgomery, Alabama for civil rights violations during the time period of January 1, 1994 through today, December 28, 2015, including but not limited to investigations of the Montgomery Police Department or the Montgomery District Attorney’s Office.

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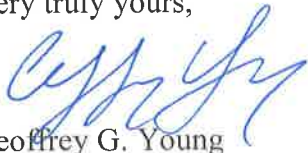
- All records in any way relating to, pertaining to, or mentioning the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts on September 28, 2006, by state and/or federal law enforcement located in the State of Alabama and/or the State of Georgia, including but not limited to the use of any GPS or “stingray” technology by the Alabama Bureau of Investigations or the U.S. Marshalls located in Alabama and Georgia.

The Records are being requested in connection with Mr. Woodward’s defense of the above-referenced action. We agree to pay reasonable fees for the Record(s) and understand that we will be notified before fees are incurred only where fees apply. This request is segregable, such that if any part is denied, the remaining part of the request should be complied with.

Pursuant to FOIA, please respond in writing within 20 (twenty) business days of this letter. If you decide to withhold any record(s) or redact any information from the record(s), please state the legal basis and specific exemption for that decision.

Please contact me if I may expedite your office’s satisfaction of its obligations under FOIA, or otherwise address any of your questions or concerns.

Very truly yours,



Geoffrey G. Young

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16-00086-F

Freedom of Information/Privacy Acts Branch - BICN  
950 Pennsylvania Ave., NW  
Washington, DC 20530

Mr. Geoffrey Young  
599 Lexington Avenue  
New York, NY 10022-7650

**MAY 15 2017**

Dear Mr. Young:

This is in further response to your December 28, 2015 Freedom of Information Act request, received by the Civil Rights Division, seeking access to records on "all record pertaining to the Department of Justice investigations of law enforcement located in the County of Montgomery, Alabama for civil rights violations during the time period of January 1, 1994 through December 28, 2015, included but not limited to investigations of the Montgomery Police Department or the Montgomery District Attorney's Office." You also request information pertaining to the use of any cell phone tracking technology during the investigation of the shooting death of Office Keith Houts.

After review of the responsive Civil Rights Division documents for information pertaining to investigations of law enforcement, I have determined that access to the documents should be denied pursuant to 5 U.S.C. §552(b)(5) since the records constitute predecisional deliberative material and attorney work product and pursuant to 5 U.S.C. §552(b)(7)(E) since the records consist of sensitive investigative techniques which, if released, could reasonably be expected to risk circumvention of the law.

In addition, after a thorough search, I have determined that the Civil Rights Division has no records pertaining to the use of any cell phone tracking technology during the investigation of the shooting death of Office Keith Houts.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 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."

Sincerely,

Nelson D. Hermilla, Chief  
Freedom of Information/Privacy Acts Branch  
Civil Rights Division