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FOR FREEDOM OF THE PRESS

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

August 15, 2019

Via FOIAOnline

**RE: FREEDOM OF INFORMATION ACT APPEAL, FOIPA Request No.
1440326-000**

Dear FOIA Appeals Officer,

This letter constitutes an administrative appeal under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA” or the “Act”), and is submitted on behalf of the Reporters Committee for Freedom of the Press (“Reporters Committee”) regarding a blanket denial from the Federal Bureau of Investigation (the “FBI”) under Exemption 7(A).

I. Factual and Procedural History

On June 21, 2019, the Reporters Committee submitted a FOIA request to the FBI via fax (the “Request”). A true and correct copy of the Request is attached hereto as Exhibit A. The Request sought records about journalist Bryan Carmody, whose home and office were raided by the San Francisco Police Department (SFPD) and the FBI in May 2019. *See Ex. A.* The SFPD said that a search warrant was executed as part of an inquiry into the release of a police report concerning the death of San Francisco public defender Jeff Adachi. *Id.* Mr. Carmody stated that inspectors with the SFPD asked for his source on the police report in April 2019, which he declined to reveal. *Id.* Mr. Carmody has further stated that during the May 2019 search of his home, FBI agents tried to interview him, but he declined to speak with them and asked for a lawyer. *Id.*

The Reporters Committee’s Request sought the following records:

1. All records mentioning or referring to Bryan Carmody.

2. All records, including email correspondence, text messages, and other electronic messages, that include the term “Carmody” (case insensitive) and any of the following keywords (case insensitive):
 1. Shield
 2. Privacy Protection Act
 3. PPA
 4. Leak
 5. Leaks
 6. Subpoena
 7. Newsgathering
 8. Question
 9. Questions
 10. Questioning
 11. Media
 12. Warrant
 13. Search
 14. Seize
 15. Seizure;
3. All communications, including email correspondence, text messages, and other electronic messages between any individual at the Department of Justice and
 1. the San Francisco Police Department
 2. the District Attorney’s Office for the City and County of San Francisco
 3. the San Francisco Sheriff’s Department
 4. the California Bureau of Investigation
 5. the California Office of the Governor, and/or
 6. the California Highway Patrolthat mention, refer to, or discuss Bryan Carmody; and
4. All records mentioning, referring to, or constituting the memorandum sent from the United States Attorney’s Office for the Northern District of California seeking approval for questioning, arresting, or charging Bryan Carmody.

The Request was accompanied by a signed DOJ-361 form from Bryan Carmody.

By letter dated June 25, 2019, the FBI acknowledged receipt of the Reporters Committee’s Request and assigned it tracking number 1440326-000. A true and correct copy of that acknowledgement letter is attached hereto as Exhibit B.

By letter dated July 26, 2019, the FBI denied the Reporters Committee’s Request in its entirety, asserting that all responsive records are exempt from disclosure under Exemption 7(A) (the “Denial”). A true and correct copy of the FBI’s Denial is attached hereto as Exhibit C.

II. Argument

The Freedom of Information Act, 5 U.S.C. § 552 (“FOIA” or the “Act”), was enacted to enable citizens to monitor “what their government is up to.” *United States DOJ v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989). Its basic purpose is “to open agency action to the light of public scrutiny.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 372 (1976) (internal quotation marks omitted). Accordingly, FOIA “mandates a strong presumption in favor of disclosure[.]” *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991)), and the Act’s statutory exemptions, which are exclusive, must be “narrowly construed[.]” *Rose*, 425 U.S. at 361.

By withholding all records responsive to the Reporters Committee’s Request, the FBI is in violation of the Act. Among other things, the FBI has not adequately justified its decision to invoke Exemption 7(A), has not made any attempt to satisfy FOIA’s foreseeable harm standard, and has not engaged in a segregability analysis as required by the Act. Therefore, the requested records must be disclosed.

A. The FBI Fails to Justify its Withholdings Under Exemption 7(A) and the Foreseeable Harm Standard.

An agency seeking to withhold records under FOIA Exemption 7(A) must demonstrate that (1) the records were compiled for law enforcement purposes and, if so, (2) how release of the records “could reasonably be expected to interfere with law enforcement proceedings.” 5 U.S.C. § 552(b)(7). Exemption 7(A) cannot be invoked unless the material withheld relates to an ongoing or a “concrete prospective law enforcement proceeding.” *Carson v. U.S. Dep’t of Justice*, 631 F.2d 1008, 1018 (D.C. Cir. 1980). Additionally, the “government must show, by more than conclusory statement, *how* the particular kinds of investigatory records requested

would interfere with a pending enforcement proceeding.” *Campbell v. Dep’t of Health & Human Servs.*, 682 F.2d 256, 259 (D.C. Cir. 1982) (emphasis added).

In its Denial letter, the FBI has done nothing beyond perfunctorily asserting that all records responsive to the Reporters Committee’s Request fall within the scope of Exemption 7(A) and reciting the statutory language. *See* Ex. C. Such a conclusory statement does not satisfy the FBI’s obligations under FOIA. *See, e.g., Larson v. Dep’t of State*, 565 F.3d 857, 864 (D.C. Cir. 2009) (agency’s justifications of claimed exemptions must not be “conclusory” or “merely recite statutory standards, or [be] overly vague or sweeping”—as such justifications will not “carry the government's burden” to justify exemptions); *Hayden v. Nat’l Sec. Agency/Cent. Sec. Serv.*, 608 F.2d 1381, 1387 (D.C. Cir. 1979); *Cable News Network, Inc. v. Fed. Bureau of Investigation*, 384 F. Supp. 3d 19, 33 (D.D.C. 2019).

Moreover, following the enactment of the FOIA Improvement Act of 2016, Pub. L. No. 114-185, an agency may withhold records that fall within one of the Act’s discretionary exemptions “*only* if the agency reasonably foresees that disclosure would harm an interest protected by an exemption” 5 U.S.C. § 552(a)(8) (emphasis added). Here, the FBI has made no effort to satisfy the foreseeable harm standard. *See* Ex. C. And, indeed, it is entirely unclear how the release of records regarding Mr. Carmody could harm an interest protected by Exemption 7(A), especially when the FBI has failed to identify what law enforcement proceeding is imminent or ongoing, the status of such investigation, or how the specific records requested by RCFP relate to it. Accordingly, as the FBI has failed to satisfy the foreseeable harm standard, the requested records must be released.

B. The FBI Has Failed to Release All Segregable Information.

FOIA mandates that any “reasonably segregable” non-exempt portion of a record be

released even if other portions are exempt from disclosure. 5 U.S.C. § 552(b). Thus, an agency “may not sweep a document under a general allegation of exemption, even if that general allegation is correct with regard to part of the information.” *Vaughn v. Rosen*, 484 F.2d 820, 825 (D.C. Cir. 1973).

Here, the FBI did not conduct any segregability review, as required by law. 5 U.S.C. § 552(b). Accordingly, even assuming, *arguendo*, that some records responsive to the Reporters Committee’s Request may be withheld, all segregable records or portions thereof must be released. The FBI’s failure to conduct a segregability analysis violates FOIA.

C. Disclosure of the Requested Records is Warranted in Light of the Public Interest in Understanding the Federal Government’s Involvement in Obtaining Information from a Member of the News Media.

Even assuming, *arguendo*, that (1) Exemption 7(A) applies to the records sought by the Reporters Committee in its Request, (2) the foreseeable harm standard is met, and (3) there is no segregable information in the requested records, the FBI should nonetheless exercise its discretion to release them in light of the public interest in understanding the agency’s actions with respect to Mr. Carmody. *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (“The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”).

An “agency’s decision to release [requested records] normally will be grounded either in its view that none of the FOIA exemptions applies, and thus that disclosure is mandatory, or in its belief that release is justified in the exercise of its discretion, even though the data fall within one or more of the statutory exemptions.” *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1134 n.1 (D.C. Cir. 1987). Application of Exemption 7(A), like most of FOIA’s exemptions, is entirely

discretionary. *See, e.g., Chrysler Corp. v. Brown*, 441 U.S. 281, 294 (1979) (“Congress did not limit an agency’s discretion to disclose information when it enacted the FOIA.”); *Pinson v. Dep’t of Justice*, 236 F. Supp. 3d 338, 359 (D.D.C. 2017) (“FOIA permits agencies to make ‘discretionary disclosures’ of information that is exempt from mandatory disclosures.”).

Given the tremendous public interest in the records at issue here, the FBI should exercise its discretion to release them, even assuming, *arguendo*, they are otherwise exempt under the Act. Recently, three San Francisco Superior Court judges ordered warrants obtained in the search of Mr. Carmody’s phone, home and office to be nullified and their contents unsealed due to the San Francisco Police Department’s violation of California’s shield law that protects journalists. Evan Sernoffsky and Michael Cabanatuan, *Three judges nullify more search warrants in San Francisco police raid on journalist* (Aug. 2, 2019), <https://perma.cc/63PX-W6D3>. The rulings follow a judge’s order last month to quash and unseal the first of five search warrants police obtained before raiding Bryan Carmody’s home and office. *Id.* San Francisco Chief of Police Bill Scott, who had previously defended the raid on Mr. Carmody, stated that he was “concerned by a lack of due diligence by department investigators in seeking search warrants and appropriately addressing Mr. Carmody’s status as a member of the news media.” *Id.* The Reporters Committee’s Request seeks information about the treatment of members of the news media by law enforcement, an issue of enormous public interest. *See* Ex. A. Because “[t]he Constitution specifically selected the press . . . to play an important role in the discussion of public affairs,” *Mills v. Alabama*, 384 U.S. 214, 219 (1966), the public has a right to know more about law enforcement actions that affect the media, including actions that implicate a wide variety of Constitutional, statutory, and regulatory rights. *See* U.S. Const. Am. 1; 28 C.F.R. § 50.10; United States Attorneys’ Manual § 9-13.400; 42 U.S.C. § 2000aa *et seq.*; C.A. Const.,

article I, § 2(b); Cal. Evid. Code § 1070; Cal. Penal Code § 1524(g). The records responsive to the Request should, accordingly, be released.

III. Conclusion

By improperly withholding responsive records, the FBI is in violation of its obligations under FOIA, and the records responsive to the Reporters Committee's Request must be released.

If you have any questions regarding this appeal, please do not hesitate to contact me at amarshall@rcfp.org. I look forward to your determination with respect to this appeal within twenty business days, as provided by FOIA. 5 U.S.C. § 552(a)(6)(A)(ii).

Sincerely,

/s/ Adam A. Marshall

Adam A. Marshall

Reporters Committee for Freedom of the Press

EXHIBIT A

Fax Transmission

To: Federal Bureau of Investigation

From: Reporters Committee for Freedom of the

Fax: 15408684391

Date: 6/21/2019 7:04:47 AM PDT

RE: FOIA Request

Pages: 6

Comments:

To whom it may concern:

Please see the attached request under the Freedom of Information Act, 5 U.S.C. 552, from the Reporters Committee for Freedom of the Press.

Sincerely,

Adam A. Marshall

REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

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KAREN KAISER
The Associated Press

DAVID LAUTER
Los Angeles Times

DAHLIA LITHWICK
Slate

MARGARET LOW
The Atlantic

JANE MAYER
The New Yorker

MAGGIE MULVIHILL
Boston University

JAMES NEFF
Philadelphia Media Network

CAROL ROSENBERG
The New York Times

THOMAS C. RUBIN
Quinn Emanuel

CHARLIE SAVAGE
The New York Times

BEN SMITH
BuzzFeed

JENNIFER SONDRAG
Bloomberg News

PIERRE THOMAS
ABC News

SAUNDRA TORRY
Freelance

VICKIE WALTON-JAMES
NPR

JUDY WOODRUFF
PBS/The NewsHour

SENIOR ADVISORS

CHIP BOK
Creators Syndicate

JOHN C. HENRY
Freelance

TONY MAURO
National Law Journal

ANDREA MITCHELL
NBC News

PAUL STEIGER
ProPublica

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for purposes of identification*

Adam A. Marshall
Reporters Committee for Freedom of the Press
1156 15th St. NW, Suite 1020
Washington, DC 20005
amarshall@rcfp.org

Federal Bureau of Investigation (FBI)
Record/Information Dissemination Section (RIDS)
170 Marcel Drive
Winchester, VA 22602-4843
Fax: 540-868-4391

June 21, 2019

VIA FAX

RE: Freedom of Information Act/Privacy Act Request

This letter constitutes a request under the federal Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) and is submitted on behalf of the Reporters Committee for Freedom of the Press (“Reporters Committee” or “RCFP”) to the Federal Bureau of Investigation (“FBI”). The Reporters Committee is a nonprofit association dedicated to protecting First Amendment freedoms and the newsgathering rights of journalists.¹

I. Background

For nearly three decades, Bryan Carmody has worked in the Bay Area as a journalist and videographer.² On May 10, 2019, San Francisco police raided Mr. Carmody’s home and office, taking a sledgehammer to the gate of his house and seizing his computers, phones and other devices.³ A spokesman for the San Francisco Police Department said that a search warrant was granted by a judge and executed as part of an inquiry into the release of the “Adachi police report.”⁴ The “Adachi police report” is the police report concerning the death of San Francisco public defender Jeff Adachi in February, who died at age 59.

¹ See generally www.rcfp.org.

² Amir Vera and Keith Allen, *San Francisco police seize equipment of freelance journalist who refused to identify a source* (June 11, 2019), <https://www.cnn.com/2019/05/14/media/california-journalist-equipment-seized/index.html>.

³ Laurel Wamsley, *San Francisco Police Raid Journalist's Home After He Refuses To Name Source* (May 13, 2019), <https://www.npr.org/2019/05/13/722745266/san-francisco-police-raid-journalists-home-after-he-refuses-to-name-source>.

⁴ *Id.*

Mr. Carmody has said that two inspectors with the San Francisco Police Department's Internal Affairs Bureau initially asked for his source on the Adachi report in April 2019, but he declined to reveal the person's name.⁵ Mr. Carmody has further stated that during the May 2019 search of his home, two men who identified themselves as FBI agents tried to interview him, but he declined to speak with them and asked for a lawyer.⁶

Please note the additional background information which is provided to facilitate the location of records responsive to this request:

- In January 2015, the Attorney General issued an updated policy, codified at 28 C.F.R. 50.10, regarding obtaining information from and questioning members of the news media (the "News Media Policy"). The News Media Policy mandates robust review and evaluation by the DOJ Criminal Division of requests for authorization to use covered law enforcement tools to question and obtain information from members of the news media, and requires oversight by senior DOJ officials. Under the News Media Policy, Attorney General approval is required before members of the DOJ can question or execute a search warrant against a member of the news media based on conduct related to newsgathering activities, among other things.
- Section 9-13.400 of the United States Attorneys' Manual and the News Media Policy require members of the DOJ to submit a memorandum to the Policy and Statutory Enforcement Unit ("PSEU") describing the relevant facts and considerations required to determine whether the DOJ may obtain information from, or records of, members of the news media, question or arrest members of the news media, or execute a search warrant against members of the news media. Submission of this memorandum is part of the mandatory consultation requirement wherein the Attorney General can evaluate whether law enforcement tools may be used with respect to members of the news media.
- Additionally, § 9-13.400 of the United States Attorneys' Manual states that when there is a question regarding whether an individual or entity is a member of the news media, "members of the Department must consult with the PSEU before employing the use of a covered law enforcement tool. Members of the Department must also consult with the PSEU regarding whether the conduct at issue of the affected member of the news media constitutes or relates to 'newsgathering activities.'"
- The Privacy Protection Act ("PPA"), codified at 42 U.S.C. § 2000aa *et seq.*, protects journalists from the search or seizure by law enforcement of any work product and documentary materials before dissemination to the public.
- The California Shield Law—found in California, Article I, § 2(b) of the California Constitution, California Evidence Code § 1070, and California Penal Code § 1524(g)—provides immunity from being held in contempt to reporters, editors, publishers, and other

⁵ Evan Sernoffsky, *SF police raid journalist's home in probe over leaked Adachi report* (May 10, 2019), <https://www.sfchronicle.com/crime/article/SF-police-raid-journalist-s-home-in-probe-over-13837363.php?psid=4xXNM>.

⁶ *Id.*

people connected with or employed by newspapers, magazines, press associations and wire services, as well as radio or TV news reporters. California Penal Code § 1524(g) states that no warrant shall issue for any item or items described in §1070 of the California Evidence Code. The California Shield Law applies to both the source of information (“confidential sources”) and to “unpublished information” such as notes, out-takes, unpublished photographs and tapes.

II. Requested Records

Pursuant to the FOIA, I, on behalf of the Reporters Committee, request access to and copies of the following records:

1. All records mentioning or referring to Bryan Carmody. A signed DOJ-361 form from Mr. Carmody is attached hereto.
2. All records, including email correspondence, text messages, and other electronic messages, that include the term “Carmody” (case insensitive) and any of the following keywords (case insensitive):
 - a. Shield
 - b. Privacy Protection Act
 - c. PPA
 - d. Leak
 - e. Leaks
 - f. Subpoena
 - g. Newsgathering
 - h. Question
 - i. Questions
 - j. Questioning
 - k. Media
 - l. Warrant
 - m. Search
 - n. Seize
 - o. Seizure;
3. All communications, including email correspondence, text messages, and other electronic messages between any individual at the FBI and
 - a. the San Francisco Police Department
 - b. the District Attorney’s Office for the City and County of San Francisco
 - c. the San Francisco Sheriff’s Department
 - d. the California Bureau of Investigation
 - e. the California Office of the Governor, and/or
 - f. the California Highway Patrol,that mention, refer to, or discuss Bryan Carmody;

4. All records mentioning, referring to, or constituting the memorandum sent from the United States Attorney's Office for the Northern District of California seeking approval for questioning, arresting, or charging Bryan Carmody.

RCFP requests that the FBI's San Francisco Field Office be searched in responding to this request, in addition to all other locations likely to contain responsive records.

Please note that email correspondence, as referred to in this request, includes the entire email chain in which the FBI is a sender or recipient (including a "cc" or "bcc") of one or more emails in the chain. This request also includes any email attachments. This request also includes official communications sent or received using any non-governmental email account or other electronic messaging account.

III. Fees and Fee Categorization

As a representative of the news media, the Reporters Committee is only required to pay for the direct cost of duplication after the first 100 pages. 5 U.S.C. § 552(a)(4)(A)(ii)(II). This information is being sought on behalf of the Reporters Committee for *inter alia*, analysis and free dissemination to the general public through multiple avenues, including RCFP's website,⁷ social media accounts,⁸ and email newsletter.⁹

In the event that there are duplication fees for responding to this request, the Reporters Committee is willing to pay up to \$50. Please let me know in advance if fees for responding to this request will exceed that amount before proceeding.

IV. Conclusion

If this request is denied in whole or part, please justify all such denials by reference to specific exemptions and explain why the FBI "reasonably foresees that disclosure would harm an interest" protected by that exemption or why "disclosure is prohibited by law[.]" 5 U.S.C. § 552(a)(8). Please also ensure that all segregable portions of otherwise exempt material are released.

If you have any questions regarding this request, please feel free to contact me at (202) 795-9308. Thank you in advance for your assistance.

Sincerely,
Adam A. Marshall
Knight Foundation Litigation Attorney
Reporters Committee for Freedom of the Press
amarshall@rcfp.org

⁷ <https://www.rcfp.org/>.

⁸ See, e.g., <https://twitter.com/rcfp> (~16.3 thousand followers as of May 14, 2019); <https://www.facebook.com/ReportersCommittee/> (8,148 "likes" as of May 14, 2019).

⁹ <https://rcfp.us15.list-manage.com/subscribe?u=682100887bbcff066b451132&id=8f701b284f>.

EXHIBIT B



U.S. Department of Justice

Federal Bureau of Investigation
 Washington, D.C. 20535

June 25, 2019

MR. ADAM A. MARSHALL
 REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
 SUITE 1020
 1156 15TH STREET NW
 WASHINGTON, DC 20005

FOIPA Request No.: 1440326-000
 Subject: CARMODY, BRYAN CARL

Dear Mr. Marshall:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI. Below you will find check boxes and informational paragraphs about your request, as well as specific determinations required by these statutes. Please read each one carefully.

- Your request has been received at FBI Headquarters for processing.
- You submitted your request via the FBI's eFOIPA system.
 - We have reviewed your request and determined it is consistent with the FBI eFOIPA terms of service. Future correspondence about your FOIPA request will be provided in an email link unless the record's file type is not supported by the eFOIPA system.
 - We have reviewed your request and determined it is not consistent with the FBI eFOIPA terms of service. Future correspondence about your FOIPA request will be sent through standard mail.
- The subject of your request is currently being processed and documents will be released to you upon completion.
- Release of responsive records will be posted to the FBI's electronic FOIA Library (The Vault), <http://vault.fbi.gov>, and you will be contacted when the release is posted.
- Your request for a public interest fee waiver is under consideration and you will be advised of the decision if fees are applicable. If your fee waiver is not granted, you will be responsible for applicable fees per your designated requester fee category below.
- For the purpose of assessing any fees, we have determined:
 - As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).
 - As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).
 - As a general (all others) requester, you will be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. 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) at 877-684-6448, or by emailing ogis@nara.gov. 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,



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

EXHIBIT C



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

July 26, 2019

MR. ADAM A. MARSHALL
REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
SUITE 1020
1156 15TH STREET NW
WASHINGTON, DC 20005

FOIPA Request No.: 1440326-000
Subject: CARMODY, BRYAN CARL

Dear Mr. Marshall:

This responds 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 responsive to your request. The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

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 interfere with enforcement proceedings...

The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information could reasonably be expected to interfere with enforcement proceedings. Therefore, your request is being administratively closed. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

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 on individuals. "Part 3" includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. 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) at 877-684-6448, or by emailing ogis@nara.gov. 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,



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

Enclosure(s)

FBI FOIPA Addendum

As referenced in our letter responding to your Freedom of Information/Privacy Acts (FOIPA) request, the FBI FOIPA Addendum includes information 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 on individuals. Part 3 includes general information about FBI records. For questions regarding Parts 1, 2, or 3, visit the www.fbi.gov/foia website under "Contact Us." Previously mentioned appeal and dispute resolution services are also available at the web address.

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 FOIA [5 U.S.C. § 552(c) (2006 & Supp. IV (2010))]. FBI responses are limited to those records subject to the requirements of the FOIA. Additional information about the FBI and the FOIPA can be found on the www.fbi.gov/foia website.
- (ii) **National Security/Intelligence Records.** The FBI can neither confirm nor deny the existence of national security and foreign intelligence records pursuant to FOIA exemptions (b)(1), (b)(3), and PA exemption (j)(2) as applicable to requests for records about individuals [5 U.S.C. §§ 552/552a (b)(1), (b)(3), and (j)(2); 50 U.S.C § 3024(i)(1)]. 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 national security or foreign intelligence 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 for Incarcerated Individuals.** The FBI can neither confirm nor deny the existence of records which could reasonably be expected to endanger the life or physical safety of any incarcerated individual pursuant to FOIA exemptions (b)(7)(E), (b)(7)(F), and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (b)(7)(F), and (j)(2)]. 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.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching those systems or locations where responsive records would reasonably be found. Most requests are satisfied by searching the Central Records System (CRS), an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its dual law enforcement and intelligence mission as well as the performance of agency administrative and personnel functions. The CRS spans the entire FBI organization and encompasses the records of FBI Headquarters (FBIHQ), FBI Field Offices, and FBI Legal Attaché Offices (Legats) worldwide. A CRS search includes Electronic Surveillance (ELSUR) records.
- (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) **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 sheets. 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.
- (iv) **The National Name Check Program (NNCP).** The mission of NNCP is to analyze and report information in response to name check requests received from federal agencies, for the purpose of protecting the United States from foreign and domestic threats to national security. Please be advised that this is a service provided to other federal agencies. Private citizens cannot request a name check.

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.