

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STEVEN A.W. de JARAY )  
and )  
PERIENNE de JARAY, )  
 )  
 *Plaintiffs,* )  
 )  
v. )  
 )  
FEDERAL BUREAU OF )  
INVESTIGATION, )  
 )  
 *Defendant.* )

Case No. \_\_\_\_\_

**COMPLAINT**

Plaintiffs, Steven A.W. de Jaray and Perienne de Jaray (collectively, “the de Jarays” or “Plaintiffs”), by and through their attorneys, and for their Complaint against Defendant, the Federal Bureau of Investigation (“FBI”), allege as follows:

**I. NATURE OF ACTION**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking the release of agency records requested by Plaintiffs from the FBI.

2. This action challenges the FBI’s unwarranted failure to disclose documents in response to a FOIA request that was submitted over three years ago, on August 8, 2016 (“FOIA Request”). The FOIA Request seeks records related to the FBI’s now-closed investigation of the de Jarays and businesses they controlled. The FBI’s investigation ended in or around December 2013, two years after Canadian prosecutors voluntarily dismissed charges against the de Jarays that were based on a Canadian investigation related to the same events. The de Jarays

were fully vindicated by the criminal justice systems in the United States and Canada, and the requested records are critical to Plaintiffs' related civil litigation with private parties.

3. The FBI has failed to comply with statutory deadlines. It has failed to disclose a single record, despite identifying only 1,518 potentially responsive records over two years ago. That is, the FBI has long completed the hard part of its task, identifying the universe of potentially responsive records within its vast information holdings. With the defined number of potentially responsive records known, the needs of Plaintiffs, and the commands of the statute, it is unclear why the FBI has to date delayed assignment and review by a Government Information Specialist for so long.

4. While several other federal agencies have long-fulfilled their lawful duty and produced records that were necessary to Plaintiffs' civil litigation, the FBI has refused to do so. If one agency can treat a FOIA request with this kind of unbounded delay, then the entire statutory purpose of the statute—prompt transparency in Government—will be defeated.

5. Therefore, Plaintiffs ask this Court to order that the FBI immediately (1) release those records within the 1,518 previously identified for which no FOIA exemptions are claimed by the agency and (2) specify which exemptions the agency believes apply to any remainder of those records not so released.

## **II. JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(A)(vii), (a)(4)(B), and (a)(6)(C)(i).

7. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2012) because this action arises under FOIA and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202 (2012).

8. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

### **III. PARTIES**

9. Plaintiff Steven A.W. de Jaray is a citizen of Canada. Mr. de Jaray was the founder and principal beneficial shareholder of an electronics manufacturing businesses with production operations in the United States, Canada, and around the world. Mr. de Jaray's businesses included, among others, APEX-Micro Manufacturing Corporation, Apex Micro America Inc., and Caliber Component Solutions Inc. (collectively, "Apex").

10. Plaintiff Perienne A.S. de Jaray is a resident and citizen of Canada. She was an executive of Apex and was a U.S. resident during the events at issue here.<sup>1</sup>

11. Defendant FBI is a component of the U.S. Department of Justice ("DOJ"). The DOJ is a Department of the Executive Branch of the U.S. government and an agency within the meaning of 5 U.S.C. § 552(f)(1). The FBI has already acknowledged that it is in possession and control of the records that Plaintiffs seek. It is headquartered in Washington, D.C. and, on information and belief, stores records responsive to the FOIA Request at that headquarters.

### **IV. STATUTORY BACKGROUND**

12. FOIA's basic purpose is facilitating government transparency. It establishes the public's right to access all federal agency records unless such records may be withheld pursuant to one of nine, narrowly construed FOIA exemptions. 5 U.S.C. § 552(b)(1)–(9).

13. FOIA imposes strict and rigorous deadlines on federal agencies that receive requests for records pursuant to FOIA. Specifically, an agency must determine whether to disclose responsive records and notify the requester of its determination within 20 working days of receiving a FOIA request, and it must make records "promptly" available unless it can establish that certain unusual circumstances are present or that it may lawfully withhold records, or portions

---

<sup>1</sup> In some correspondence with the FBI, Ms. de Jaray is also referred to as Perienne Sadler.

thereof, from disclosure. *Id.* §§ 552(a)(3)(A), (a)(6). FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

14. Under limited circumstances, federal agencies may obtain more time to make the determination that is required by 5 U.S.C. § 552(a)(6)(A)(i). First, an agency may toll the 20 working-day deadline to seek additional information or clarification from a requester, but that tolling period ends when the agency receives such information or clarification. *Id.* § 552(a)(6)(A)(ii). Second, an agency may extend the 20-working-day deadline for an additional ten working days by giving a written notice to the requester that sets forth “unusual circumstances” to justify a deadline extension, which also requires that it provide the date by which the agency expects to make the determination. *Id.* § 552(a)(6)(B)(i). However, to invoke such “unusual circumstances,” the agency must provide the requester with “an opportunity to limit the scope of the request so that it may be processed within [20 working days] or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii). In addition, when asserting unusual circumstances, the agency “shall make available its FOIA Public Liaison” to “assist in the resolution of any disputes between the requester and the agency.” *Id.*

15. FOIA requires each agency to make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records that are responsive to a FOIA request. *Id.* § 552(a)(3)(C)–(D).

16. FOIA requires federal agencies to expeditiously disclose requested records and mandates a policy of broad disclosure of government records, with a presumption favoring disclosure. In limited instances, records may be withheld as exempt from FOIA’s broad mandate.

*Id.* § 552(b). Exemptions, however, are narrowly construed in light of FOIA’s policy preference towards disclosure.

17. The federal district courts have jurisdiction “to enjoin [an] agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

## V. FACTS

18. Here, Plaintiffs sought FBI records related to themselves and their affiliated business entities. The records pertain to a closed investigation and are now needed for ongoing civil litigation.

### A. *Unfounded criminal investigation and subsequent litigation*

19. On or around Monday, December 22, 2008, in the normal course of Plaintiffs’ business, two packages of electronic components bound for Hong Kong were detained by the Canadian Border Services Agency (“CBSA”) in British Columbia, Canada.

20. Later that day, the CBSA concluded that the electronic components in the packages might have required a Canadian export permit. The detainment was part of investigations by Canadian authorities into the de Jarays and Apex, eventually resulting in criminal charges being brought against the de Jarays, under the Canadian Export Import Permits Act.

21. On or about April 29, 2010, the CBSA criminally charged the de Jarays with violating Canadian export control laws. The charges carried a maximum prison sentence of ten years and large financial penalties.

22. In August 2011, with permanent harm to the de Jarays and others having already been done, Canadian prosecutors voluntarily dismissed the criminal charges against the de Jarays because the electronic components at issue in the investigation demonstrably did not require a Canadian export permit for shipment to Hong Kong.

23. U.S. authorities conducted a separate, similar criminal investigation into the de Jarays and Apex over the same electronic components, which had been shipped from the United States. Based on information and belief, the U.S. investigation continued until November 2013. After the de Jaray's had demonstrated the electronic components did not require an export permit, the U.S. investigation was promptly closed with no criminal charges being brought against the de Jarays.

24. In November 2011, Mr. de Jaray filed a civil suit in Canada against the Attorney General of Canada for harm caused by its investigation and improper prosecution of Mr. de Jaray. Mr. de Jaray favorably settled that suit in November 2013.

25. In April 2016, Ms. de Jaray brought a similar suit in the State of Washington against Canadian authorities. The case was dismissed in January 2017 and was re-filed against Canadian authorities in Canada. She is currently prosecuting her case against Canadian authorities through the Canadian justice system.

26. Plaintiffs Mr. and Ms. de Jaray are currently pursuing a civil action in the U.S. District Court for the District of Oregon against the manufacturer of the electronic components that were seized in Canada for wrongly causing injuries to Plaintiffs.<sup>2</sup>

**B. FOIA Request**

27. In an effort to further clear their name and to discover what private parties (if any) caused damages to them, Plaintiffs Mr. and Ms. de Jaray filed several FOIA requests with U.S. law enforcement agencies. Plaintiffs Mr. and Ms. de Jaray have received FOIA productions from

---

<sup>2</sup> See *De Jaray v. Lattice Semiconductor Corp.*, No. 3:19-cv-00086-SI, 2019 WL 4580041, at \*1 (D. Or. Sept. 20, 2019) (asserting claims for violations of the Lanham Act, 15 U.S.C. § 1125(a)(1), negligence, fraud, breach of duty of good faith and fair dealing, and negligent misrepresentation).

the Department of Homeland Security, U.S. Immigration and Customs Enforcement, and the U.S. Commerce Department's Bureau of Industry and Security.

28. On August 8, 2016, Plaintiffs Mr. and Ms. de Jaray submitted a FOIA request to the FBI through Ms. de Jaray's then-counsel. The FOIA Request was subsequently denominated as No. 1355904-001 by the FBI and sought records related to Plaintiffs Mr. and Ms. de Jaray and to Apex.<sup>3</sup> A copy of this request is attached hereto as Exhibit A.

29. On August 16, 2016, upon FBI request, Plaintiffs Mr. and Ms. de Jaray provided the FBI an executed Certification of Identity from Mr. de Jaray.

30. On June 20, 2017, the FBI notified Ms. de Jaray that it had identified 1,518 potentially responsive records. Ms. de Jaray offered (and continues to offer) to pay any reasonable fees associated with having those records promptly reviewed and released. A copy of Ms. de Jaray's email correspondence with the FBI is attached hereto as Exhibit B.

31. On September 18, 2017, upon FBI request, Ms. de Jaray again provided the FBI an executed Certification of Identity from Mr. de Jaray.

32. On September 19, 2017, as a result of an apparent misunderstanding, an FBI representative suggested in an e-mail that Ms. de Jaray had agreed to reduce the scope of the FOIA request and stated that there would be an interim release of 500 documents. The representative "estimated [that the] average time for completion of all materials is about 10 months." *See* Exhibit B at 5. Ms. de Jaray promptly replied that no reduction in scope was acceptable.

---

<sup>3</sup> The request was initially denominated No. 1355899-000 or No. 1355904-000. That request was administratively held after the FBI was unable to contact Ms. de Jaray due to the FBI's mistaking Ms. de Jaray's mailing address. On information and belief, after Ms. de Jaray re-established contact with the FBI and corrected the FBI's mistake regarding her address, the request was assigned a new number, 1355904-001. On November 3, 2017, Ms. de Jaray asked the FBI to expedite the FOIA Request because of the further delay caused by its error.

33. Throughout the summer of 2019, Plaintiffs' new counsel queried the FBI public database to check on the status of the FOIA Request, only to learn that it was being held in queue and had not even been assigned a Government Information Specialist to process any of the documents.

34. On September 17, 2019, Plaintiffs' counsel transmitted a letter to the FBI seeking a prompt resolution of this long-delayed FOIA Request. Counsel reminded the FBI that "FOIA imposes strict deadlines on federal agencies when they receive a request for records pursuant to FOIA" and requested documents by October 16, 2019—an accommodation offer years past the statutory deadline. Counsel stated, "If all responsive records have not been produced by that accommodative deadline, which is far beyond what statutes require, Requestors will be forced to pursue more formal legal relief to protect their rights with respect to this request." A copy of this letter is attached hereto as Exhibit C.

35. The following day, the FBI informed Plaintiffs that "the estimated date of completion for your request is August 2021"—five years after the Plaintiffs' submitted the FOIA Request. A copy of this communication is attached hereto as Exhibit D.

36. As of the date of this filing, neither a final determination of claimed exemptions nor any documents have been received by Plaintiffs.

**VI. CAUSE OF ACTION I  
VIOLATION OF THE FREEDOM OF INFORMATION ACT**

***FBI Failed to Disclose All Records that are Responsive to Plaintiffs' FOIA Request***

37. All preceding paragraphs are hereby incorporated by reference as if set forth fully herein.

38. Plaintiffs have a statutory right to a lawful final determination from the FBI on FOIA Request, No. 1355904-001, in a manner that complies with FOIA.



39. As described above, the FBI has failed to comply with statutory deadlines and failed to make responsive records available.

40. The FBI has violated Plaintiffs' rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i); 5 U.S.C. § 552(a)(3)(A).

41. Plaintiffs' ongoing activities and civil litigation will be adversely affected if the FBI is allowed to continue violating FOIA's decision deadlines as it has in this case.

42. Unless enjoined and made subject to a declaration of the Plaintiffs' legal rights by this Court, the FBI will continue to violate the Plaintiffs' rights to receive public records under FOIA.

43. Plaintiffs are entitled to injunctive relief compelling the release and disclosure of the requested agency records.

**VII. CAUSE OF ACTION II  
VIOLATION OF THE FREEDOM OF INFORMATION ACT**

*FBI Missed FOIA's Mandatory Determination Deadline for the Plaintiffs' FOIA Request*

44. All preceding paragraphs are hereby incorporated by reference as if set forth fully herein.

45. As described above, the FBI violated FOIA by failing to make a complete determination with respect to Plaintiffs' FOIA request within the twenty day time limit set forth in 5 U.S.C. § 552(a)(6)(A)(i).

46. Plaintiffs have exhausted the applicable administrative remedies. Plaintiffs are entitled to injunctive relief compelling the release and disclosure of the requested agency records.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

- A. Order Defendant to provide Plaintiffs, by a date certain, all responsive records for which no exemption is claimed;
- B. Order Defendant to provide Plaintiffs, by a date certain, all reasonably segregable portions of lawfully exempt records sought in this action and specify the basis for any accompanying redactions;
- C. Order Defendant to provide Plaintiffs, by a date certain, a listing of what exemptions are being claimed for wholly withheld documents so that the validity of those exemptions may be promptly reviewed by the Court;
- D. Declare that Defendant's failure to make a timely determination on Plaintiffs' FOIA Request is unlawful under 5 U.S.C. § 552(a)(6)(A)(i), and enjoin Defendant from further unlawful withholding of the records requested by Plaintiffs;
- E. Award Plaintiffs their costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and
- F. Grant such other and further relief as the Court may deem just and proper.

Date: October 18, 2019

Respectfully submitted,

BRACEWELL LLP

/s/ Stephen L. Braga  
Stephen L. Braga (DC Bar #366727)  
2001 M Street NW, Suite 900  
Washington, DC 20036  
Telephone: (202) 828-5840  
Facsimile: (800) 404-3970  
Email: stephen.braga@bracewell.com

and

Philip J. Bezanson (*pro hac vice pending*)  
Washington State Bar No. 50892  
701 5th Avenue, Suite 6200  
Seattle, Washington 98104  
Telephone: (206) 204-6206  
Facsimile: (800) 404-3970  
Email: philip.bezanson@bracewell.com

and

David B. Springer (*pro hac vice pending*)  
Texas State Bar No. 24088775  
111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4061  
Telephone: (512) 494-3680  
Facsimile: (800) 404-3970  
Email: david.springer@bracewell.com

**COUNSEL FOR PLAINTIFFS**  
**STEVEN A.W. DE JARAY AND PERIENNE A.S. DE JARAY**