

Louisiana  
Capital  
Assistance  
Center

*A Non-Profit Law Office*

March 6, 2019

Director, Office of Information Policy  
United States Department of Justice  
1425 New York Avenue, N.W.  
Suite 11050  
Washington, D.C. 20530-0001

**Re: Freedom of Information Act Appeal  
FOIPA Request No. 1271695-001  
Edgar Baltazar García**

Dear Director:

Through this letter, our office, the Louisiana Capital Assistance Center (“LCAC”), appeals the response of the Federal Bureau of Investigation (“FBI”) to a request we submitted under the Freedom of Information Act (“FOIA”) for records pertaining to Edgar Baltazar García. The LCAC represents Mr. García, who is currently facing the death penalty, in a pending legal proceeding. Mr. García has consented to the release of his records to the LCAC, as we informed the FBI when we submitted our request. *See Ex. A.*<sup>1</sup>

We set forth below the history of the LCAC’s request to the FBI, the grounds for the appeal, and the relief requested.

I. History of the LCAC’s Request to the FBI

On June 11, 2014, the LCAC submitted a FOIA request to the FBI seeking any and all records pertaining to Mr. García. *Id.* The LCAC attached a United States Department of Justice Certification of Identity signed by Mr. García consenting to the release of information to us. *Id.*

In a letter dated June 16, 2014, the FBI acknowledged receipt of the request and assigned it Request Number 1271695-000. *See Ex. B.* In subsequent correspondence, the FBI and the LCAC discussed expedited processing and fees.

In a letter dated September 11, 2014, the FBI stated that it located “approximately 4,023 pages potentially relevant” to Mr. García but that “[s]coping the files” “revealed only 1,830 pages responsive to [the] subject.” *See Ex. C.* Referencing a telephone conversation between an LCAC employee and an FBI employee, the letter confirmed that the LCAC “would like to receive all of those pages.” *Id.*

In three separate releases, the FBI provided records to the LCAC. The FBI simultaneously indicated that it was withholding records based on exemptions to FOIA.

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<sup>1</sup> The Bates numbering on the attached exhibits is the LCAC’s internal labeling of our records.

In a letter dated October 31, 2014, the FBI stated that “500 page(s) were reviewed and 210 page(s) are being released.” *See* Ex. D. The FBI attached to the letter 210 pages of records, which contain significant redactions.

In a letter dated November 25, 2014, the FBI stated that “495 page(s) were reviewed and 197 page(s) are being released.” *See* Ex. E. The FBI attached to the letter 197 pages of records, which contain significant redactions.

In a letter dated January 12, 2015, the FBI stated that “688 page(s) were reviewed and 155 page(s) are being released.” *See* Ex. F. The FBI attached to the letter 155 pages of records, which contain significant redactions.

In total, the FBI stated that it reviewed 1683 pages of responsive records, but it released only 562 pages. From these 562 pages, a great deal of information was redacted, leaving some pages with only a heading, date, and page number. The FBI explained the deletion of 1121 pages, or two-thirds, of records responsive to the request through two cursory means. First, in each of the three cover letters accompanying the release of records, the FBI checked off a number of boxes corresponding to the nine categories of information, and their subparts, that FOIA exempts from disclosure. *See* Ex. C-E. Second, before each portion of records released, the FBI included a “Deleted Page Information Sheet” stating which pages were withheld and under which exemption or exemptions. *See, e.g.,* Ex. G. Across the three releases, the FBI cited six exemptions: 5 U.S.C. § 552(b)(3); (b)(5); (b)(6); (b)(7)(C); (b)(7)(D); and (b)(7)(E). When the FBI redacted information, it simply noted, next to the excision, which exemption or exemptions it relied on to do so.

The LCAC requested records from the FBI in 2014 as part of our reinvestigation of Mr. García’s case on federal habeas corpus review. With a deadline to file a motion pursuant to 28 U.S.C. § 2255 in February of 2015, the LCAC did not initially appeal the FBI’s response to our FOIA request. However, the LCAC is now amending Mr. García’s petition. To that end, our office again requested records pertaining to Mr. García, among other subjects, on October 22, 2018. *See* Ex. H.<sup>2</sup>

In a letter dated November 8, 2018, the FBI acknowledged receipt of the request and assigned it Request Number 1271695-001. *See* Ex. I.

In a letter dated December 6, 2018, the FBI stated:

By letters dated October 21, 2014, November 19, 2014, and December 31, 2014, records responsive to your request were reviewed and released to you. The records you currently seek have already been properly reviewed and withheld pursuant to the provisions of the Freedom of Information and Privacy Acts, Title 28, Sections 552 and 552A.

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<sup>2</sup> The request included thirty-six additional pages of exhibits, which are not attached. The exhibits document the history of the LCAC’s requests to the FBI for records pertaining to Mr. García and others.

See Ex. J. The letter invited the LCAC to appeal the agency's determination within ninety days. *Id.*

## II. Grounds for the LCAC's Appeal

### A. The FBI's Decision to Withhold the Majority of Responsive Records in Their Entirety and Broadly Redact the Records It Released Suggests the Agency Failed to Narrowly Construe FOIA's Exemptions

The records we seek are relevant to pending litigation alleging the death sentence Mr. García received in 2010 was wrongfully imposed. There is a strong public interest in the thorough and fair adjudication of criminal matters. *Landano v. Dep't of Justice*, 873 F. Supp. 884, 892 (D.N.J. 1994); *Cleaver v. Kelley*, 427 F. Supp. 80, 82 (D.D.C. 1976). Further, FOIA's "goal" is "broad disclosure." *Milner v. Dep't of the Navy*, 562 U.S. 562, 571 (2011). For that reason, the Supreme Court has consistently held that exemptions must be narrowly construed. *Id.*; *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 7-8 (2001); *Dep't of Justice v. Tax Analysts*, 496 U.S. 136, 151 (1989); *FBI v. Abramson*, 456 U.S. 615, 620 (1982). FOIA requires that even when information contained in a record is exempt from disclosure, any reasonably segregable, non-exempt portion of the record be released. 5 U.S.C. § 552(a)(8)(A)(ii); see also *Arieff v. Dep't of the Navy*, 712 F.2d 1462, 1466 (D.C. Cir. 1983); *Ctr. for Int'l Envtl. Law v. Office of the United States Trade Representative*, 505 F. Supp. 2d 150, 158 (D.D.C. 2007). It is ultimately the agency's burden to support any claim of a right to withhold information. 5 U.S.C. § 552(a)(4)(B).

Of the 1683 pages the FBI reviewed, only 562 were released, and with significant redactions. Based on the agency's withholding of two-thirds of responsive records in their entirety and redaction of the remainder, we are concerned that it failed to narrowly construe FOIA's exemptions and segregate non-exempt information.

By way of example, the FBI withheld thirty-nine consecutive pages based on Exemption 5, as well as Exemptions 6 and 7(C). Exemption 5 exempts from mandatory disclosure "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). However, Exemption 5 does not exempt any "factual information" contained in the responsive records. *Public Citizen, Inc. v. OMB*, 598 F.3d 865, 876 (D.C. Cir. 2010). It is difficult to imagine that these thirty-nine pages contain no non-exempt "factual information." *Id.*

### B. Comparing Records the LCAC Obtained in Full Through Other Sources with Records the FBI Provided in Part Confirms the Agency Improperly Withheld Certain Information

Our belief that the FBI's deletions exceed the bounds of the exemptions the agency claimed has, in the case of several documents, been confirmed. Through other sources, the LCAC obtained copies of some of the records the FBI provided in part, allowing us to see what information the FBI declined to disclose.

For example, the FBI released to the LCAC a heavily redacted report by the Taylor County Sheriff's Department, of which the LCAC has an unredacted copy. By comparing the documents, we discovered that the FBI withheld a page in its entirety that includes facts about Mr. García's own arrest and detention. Given that this is basic information about our client, who has consented to the release of information to the LCAC, we know of no valid justification for its deletion. We must assume that the agency has improperly failed to disclose records of which we do not have other copies as well.

### C. Reviewing the Records the FBI Provided in Part Confirms the Agency Improperly Redacted Certain Information

Some documents were too heavily redacted for us to determine what broad category of information was redacted. Other documents, however, retained sufficient context for us to determine what information was redacted. In reviewing these documents, we noticed that the FBI failed to disclose certain non-exempt information.

For example, on at least eight occasions, the name of Mr. García's co-defendant in a previous case, Gilberto Jaramillo, was redacted under Exemptions 6 and 7(C). The date of the offense was also redacted under the same exemptions.

Exemption 6 exempts from mandatory disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The information must implicate a "significant privacy interest" to trigger protection. *Pinson v. Dep't of Justice*, 236 F. Supp. 3d 338, 362 (D.D.C. 2017). Further, for "a clearly unwarranted invasion of personal privacy" to justify non-disclosure, the government must demonstrate "a substantial probability that the disclosure will lead to the threatened invasion." *People for the Am. Way Found. v. Nat'l Park Serv.*, 502 F. Supp. 2d 284, 304 (D.D.C. 2007).

Exemption 7(C) exempts from mandatory 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 constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C).

The release of Mr. Jaramillo's name and the date of the offense would in no way constitute an unwarranted invasion of personal privacy. This information appears in publicly available court documents. As a defendant, Mr. Jaramillo's name appears in the case caption. The FBI appears to acknowledge that neither Mr. Jaramillo's name nor the date of the offense are exempt from disclosure when it provides the unredacted indictment containing that information in the same release. The repeated excision of Mr. Jaramillo's name indicates that the FBI was overzealous in redacting the documents it provided.

### D. The Limited Information the FBI Provided Regarding Its Search Methodology Suggests the Agency May Have Failed to Locate Responsive Records

In its September 11, 2014 letter, the FBI stated: "We are searching the indices to our Central Records System for the information responsive to this request." *See Ex. C*. There is no indication that the FBI performed a full text search in addition to an index search or searched any records

system other than the Central Records System (“CRS”). If the FBI did not perform a full text search or search any records system other than the CRS, it is possible that the agency failed to locate responsive records.

The FBI did not state which search terms it used to locate responsive records. Without that information, we are unable to evaluate the sufficiency of those keywords.

Finally, the FBI stated that it located “approximately 4,023 pages potentially relevant” to the request but that “[s]coping the files” “revealed only 1,830 pages responsive to [the] subject.” *Id.* However, the FBI did not provide an explanation as to why 2193 pages “potentially relevant” to the request were deemed non-responsive. Therefore, we are unable to evaluate the reasonableness of the FBI’s decision not to review these records.

#### E. There Is a Discrepancy in the Number of Responsive Pages the FBI Located and Reviewed

In its letter dated September 11, 2014, the FBI stated that it located 1830 pages responsive to the LCAC’s FOIA request. *See* Ex. C. According to letters dated October 31, 2014, November 25, 2014, and January 12, 2015, however, only 1683 pages were reviewed. *See* Ex. D-F. The FBI provided no explanation as to why the remaining 147 pages were not reviewed. This leads us to question the completeness of the FBI’s response.

### III. Relief Requested

We request that the appeals board review the 1121 pages of responsive records the FBI withheld in their entirety and the 562 pages the FBI released in part to determine whether all information withheld or redacted falls within the exemptions the agency cited. Should the appeals board determine that any records were improperly withheld or redacted, we request that the unredacted or appropriately redacted versions be released to us.


Additionally, we request that the FBI perform a supplemental search using any and all records systems that may contain main-file or cross-reference records responsive to our request, including, but not limited to, the Electronic Surveillance Indices. We request that the FBI search the Electronic Case File using a full text search methodology in addition to conducting index searches. We request that the FBI use as search terms Mr. García’s name, Social Security Number, FBI identification number, and Bureau of Prisons Register Number, as well as any other search terms necessary to fulfill the request, including search terms relating to four FBI investigations involving Mr. García of which we are aware. This information can be found in our request. *See* Ex. A. Should the FBI locate additional records responsive to our request, we request that those records be released to us. We further request that the FBI specify which records systems were searched and which search terms were used pursuant to our request and this appeal.

We also request that the 2193 pages the FBI originally located but determined were non-responsive after “[s]coping the files” be reviewed. *See* Ex. C. If any of the information contained therein falls within the ambit of our request, we request that it be released to us. In the alternative, we request an explanation of why these documents were deemed non-responsive.

Finally, we request that the 147 pages the FBI determined were responsive to our request but did not review be reviewed and released to us.

We look forward to receiving your response to this appeal within twenty working days. 5 U.S.C. § 552(a)(6)(A)(ii). Please contact Lucy Kissel by phone at (504) 558-9867 or by email at lkissel@thejusticecenter.org with any questions or concerns. Thank you for your attention to this matter.

Sincerely,

  
Richard Bourke  
Director  
Louisiana Capital Assistance Center

## Exhibit G

FEDERAL BUREAU OF INVESTIGATION  
FOI/PA  
DELETED PAGE INFORMATION SHEET  
FOI/PA# 1271695-0

Total Deleted Page(s) = 268

- Page 4 ~ b6; b7C;
- Page 5 ~ b6; b7C;
- Page 6 ~ b6; b7C;
- Page 22 ~ b6; b7C;
- Page 23 ~ b6; b7C;
- Page 24 ~ b6; b7C;
- Page 26 ~ b6; b7C;
- Page 27 ~ b6; b7C;
- Page 28 ~ b6; b7C;
- Page 29 ~ b6; b7C;
- Page 30 ~ b6; b7C;
- Page 33 ~ b6; b7C;
- Page 34 ~ b6; b7C;
- Page 35 ~ b6; b7C;
- Page 36 ~ b6; b7C;
- Page 37 ~ b6; b7C;
- Page 38 ~ b6; b7C;
- Page 39 ~ b6; b7C;
- Page 40 ~ b6; b7C;
- Page 41 ~ b6; b7C;
- Page 43 ~ b6; b7C;
- Page 44 ~ b6; b7C;
- Page 45 ~ b6; b7C;
- Page 46 ~ b6; b7C;
- Page 47 ~ b6; b7C;
- Page 48 ~ b6; b7C;
- Page 49 ~ b6; b7C;
- Page 50 ~ b6; b7C;
- Page 51 ~ b6; b7C;
- Page 52 ~ b6; b7C;
- Page 54 ~ b6; b7C;
- Page 55 ~ b6; b7C;
- Page 56 ~ b6; b7C;
- Page 57 ~ b6; b7C;
- Page 58 ~ b6; b7C;
- Page 59 ~ b6; b7C;
- Page 60 ~ b6; b7C;
- Page 61 ~ b6; b7C;
- Page 62 ~ b6; b7C;
- Page 64 ~ b6; b7C;
- Page 65 ~ b6; b7C;
- Page 66 ~ b6; b7C;
- Page 67 ~ b6; b7C;
- Page 68 ~ b6; b7C;
- Page 69 ~ b6; b7C;
- Page 70 ~ b6; b7C;
- Page 71 ~ b6; b7C;
- Page 72 ~ b6; b7C;



Page 73 ~ b6; b7C;  
Page 75 ~ b6; b7C;  
Page 76 ~ b6; b7C;  
Page 77 ~ b6; b7C;  
Page 78 ~ b6; b7C;  
Page 80 ~ b6; b7C;  
Page 81 ~ b6; b7C;  
Page 82 ~ b6; b7C;  
Page 83 ~ b6; b7C;  
Page 84 ~ b6; b7C;  
Page 85 ~ b6; b7C;  
Page 86 ~ b6; b7C;  
Page 87 ~ b6; b7C;  
Page 88 ~ b6; b7C;  
Page 89 ~ b6; b7C;  
Page 109 ~ b6; b7C; b7E;  
Page 110 ~ b6; b7C; b7E;  
Page 111 ~ b6; b7C; b7E;  
Page 112 ~ b6; b7C;  
Page 113 ~ b6; b7C; b7E;  
Page 114 ~ b6; b7C; b7E;  
Page 115 ~ b6; b7C; b7E;  
Page 116 ~ b6; b7C;  
Page 117 ~ b6; b7C; b7E;  
Page 118 ~ b6; b7C; b7E;  
Page 119 ~ b6; b7C; b7E;  
Page 120 ~ b6; b7C;  
Page 121 ~ b6; b7C; b7E;  
Page 122 ~ b6; b7C; b7E;  
Page 123 ~ b6; b7C; b7E;  
Page 124 ~ b6; b7C;  
Page 126 ~ b6; b7C; b7E;  
Page 129 ~ b6; b7C; b7E;  
Page 130 ~ b6; b7C; b7E;  
Page 131 ~ b6; b7C; b7E;  
Page 132 ~ b6; b7C;  
Page 133 ~ b6; b7C; b7E;  
Page 134 ~ b6; b7C; b7E;  
Page 135 ~ b6; b7C; b7E;  
Page 136 ~ b6; b7C;  
Page 137 ~ b6; b7C; b7E;  
Page 138 ~ b6; b7C; b7E;  
Page 139 ~ b6; b7C; b7E;  
Page 140 ~ b6; b7C;  
Page 146 ~ b3; b6; b7C;  
Page 147 ~ b3; b6; b7C;  
Page 148 ~ b3; b6; b7C;  
Page 149 ~ b3; b6; b7C;  
Page 151 ~ b6; b7C;  
Page 152 ~ b6; b7C;  
Page 153 ~ b6; b7C;  
Page 154 ~ b6; b7C;  
Page 155 ~ b6; b7C;  
Page 156 ~ b6; b7C;

Page 157 ~ b6; b7C;  
Page 158 ~ b6; b7C;  
Page 159 ~ b6; b7C;  
Page 161 ~ OTHER - per SEALED COURT ORDER;  
Page 162 ~ OTHER - per SEALED COURT ORDER;  
Page 163 ~ OTHER - per SEALED COURT ORDER;  
Page 164 ~ OTHER - per SEALED COURT ORDER;  
Page 165 ~ OTHER - per SEALED COURT ORDER;  
Page 166 ~ OTHER - per SEALED COURT ORDER;  
Page 167 ~ OTHER - per SEALED COURT ORDER;  
Page 168 ~ OTHER - per SEALED COURT ORDER;  
Page 169 ~ OTHER - per SEALED COURT ORDER;  
Page 170 ~ OTHER - per SEALED COURT ORDER;  
Page 171 ~ OTHER - per SEALED COURT ORDER;  
Page 172 ~ OTHER - per SEALED COURT ORDER;  
Page 173 ~ OTHER - per SEALED COURT ORDER;  
Page 174 ~ OTHER - per SEALED COURT ORDER;  
Page 175 ~ OTHER - per SEALED COURT ORDER;  
Page 176 ~ OTHER - per SEALED COURT ORDER;  
Page 177 ~ OTHER - per SEALED COURT ORDER;  
Page 178 ~ OTHER - per SEALED COURT ORDER;  
Page 179 ~ OTHER - per SEALED COURT ORDER;  
Page 180 ~ OTHER - per SEALED COURT ORDER;  
Page 181 ~ OTHER - per SEALED COURT ORDER;  
Page 182 ~ OTHER - per SEALED COURT ORDER;  
Page 183 ~ OTHER - per SEALED COURT ORDER;  
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Page 196 ~ OTHER - per SEALED COURT ORDER;  
Page 197 ~ OTHER - per SEALED COURT ORDER;  
Page 198 ~ OTHER - per SEALED COURT ORDER;  
Page 199 ~ OTHER - per SEALED COURT ORDER;  
Page 200 ~ OTHER - per SEALED COURT ORDER;  
Page 201 ~ OTHER - per SEALED COURT ORDER;  
Page 202 ~ OTHER - per SEALED COURT ORDER;  
Page 203 ~ OTHER - per SEALED COURT ORDER;  
Page 204 ~ OTHER - per SEALED COURT ORDER;  
Page 205 ~ OTHER - per SEALED COURT ORDER;  
Page 206 ~ b6; b7C; b7E;  
Page 208 ~ b6; b7C; b7E;  
Page 209 ~ b6; b7C;  
Page 210 ~ b6; b7C;  
Page 211 ~ b6; b7C; b7E;  
Page 213 ~ b6; b7C; b7E;

Page 214 ~ b7E;  
Page 215 ~ b6; b7C;  
Page 216 ~ b6; b7C; b7E;  
Page 217 ~ b6; b7C;  
Page 219 ~ b3; b6; b7C;  
Page 224 ~ b6; b7C; b7D;  
Page 229 ~ b6; b7C; b7D;  
Page 231 ~ b6; b7C; b7D;  
Page 269 ~ b6; b7C; b7D;  
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Page 271 ~ b6; b7C; b7D;  
Page 272 ~ b6; b7C; b7D;  
Page 273 ~ b6; b7C; b7D;  
Page 274 ~ b6; b7C; b7D;  
Page 275 ~ b6; b7C; b7D;  
Page 286 ~ b6; b7C;  
Page 287 ~ b6; b7C;  
Page 288 ~ b6; b7C;  
Page 289 ~ b6; b7C;  
Page 291 ~ b6; b7C;  
Page 292 ~ b6; b7C;  
Page 293 ~ b6; b7C;  
Page 294 ~ b6; b7C;  
Page 295 ~ b6; b7C;  
Page 296 ~ b6; b7C;  
Page 297 ~ b6; b7C; b7E;  
Page 299 ~ b6; b7C; b7E;  
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Page 303 ~ b6; b7C; b7E;  
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Page 309 ~ b6; b7C;  
Page 310 ~ b6; b7C;  
Page 312 ~ b6; b7C; b7D;  
Page 315 ~ b6; b7C;  
Page 317 ~ b6; b7C;  
Page 319 ~ b6; b7C;  
Page 320 ~ b6; b7C;  
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Page 342 ~ b6; b7C;  
Page 350 ~ b6; b7C;  
Page 351 ~ b6; b7C;  
Page 352 ~ b6; b7C;  
Page 353 ~ b6; b7C;  
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Page 356 ~ b6; b7C;  
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Page 369 ~ b6; b7C;  
Page 371 ~ b6; b7C; b7E;  
Page 372 ~ b7E;  
Page 373 ~ b6; b7C;  
Page 374 ~ b6; b7C;  
Page 376 ~ b6; b7C; b7E;  
Page 377 ~ b7E;  
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Page 402 ~ b6; b7C;  
Page 404 ~ b6; b7C;  
Page 405 ~ b6; b7C;  
Page 406 ~ b6; b7C;  
Page 407 ~ b6; b7C;

Page 409 ~ b6; b7C;  
Page 410 ~ b6; b7C;  
Page 411 ~ b6; b7C;  
Page 412 ~ b6; b7C;

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X Deleted Page(s) X  
X No Duplication Fee X  
X For this Page X  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
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