

November 20, 2019

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

Louisiana
Capital
Assistance
Center

A Non-Profit Law Office

Via [FOIAonline.gov](https://www.foiaonline.gov)

**Re: Freedom of Information Act Appeal (Expedited Processing Requested)
FOIPA Request No. 1272013-001
Gabriel Nathaniel Rhones**

Dear Director:

This is an administrative appeal from the first interim response by the Federal Bureau of Investigation (“FBI”) to a request we submitted on October 22, 2018 for records pertaining to Gabriel Nathaniel Rhones under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. We set forth below a history of our request to the FBI, the grounds for our appeal, and the relief requested.

I. Request History

On June 11, 2014, the Louisiana Capital Assistance Center (“LCAC”) submitted a FOIA request to the FBI, seeking records pertaining to Mr. Rhones and another subject. Ex. A.¹ As the request states, Mr. Rhones died at USP Beaumont on November 28, 2007. *Id.* The LCAC, a non-profit law office, requested these records in connection with our representation of Edgar García, an indigent defendant on death row. Mr. García and co-defendant Mark Snarr were convicted of Mr. Rhones’s murder.

In a letter dated June 17, 2014, the FBI acknowledged receipt of the request and assigned it tracking number 1272013-000. Ex. B. In a letter dated July 29, 2014, the FBI stated that it “located approximately 1318 pages of records potentially responsive to the subject of [the] request.” Ex. C. On August 4, 2014, the LCAC agreed to pay the estimated total cost for processing the request and reproducing records on CDs. Ex. D.

In a letter dated March 31, 2015, the FBI stated that “29 pages were reviewed and 29 pages are being released.” Ex. E. The FBI enclosed records with the letter, which contain redactions.

The LCAC initially 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 appeal the FBI’s determination. However,

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

we are now amending Mr. García's petition. To that end, our office again requested records pertaining to Mr. Rhones, among other subjects, from the FBI on October 22, 2018. Ex. F.

In two letters dated November 1, 2018, the FBI acknowledged receipt of the second request for Mr. Rhones's records, assigned it tracking number 1272013-001, and granted our request for expedited processing. Exs. G, H. In a letter dated February 22, 2019, the FBI stated that it "located approximately 1,241 pages of records potentially responsive to the subject of [the] request." Ex. I. It provided an estimated total cost for processing the request, including digital media files, of \$1,165. *Id.*

The LCAC discussed the scope of the request with a Public Information Officer at the FBI. Ex. J. On April 22, 2019, the FBI stated that it "located approximately 1,582 pages that are potentially responsive to this request." Ex. K. We declined to reduce the scope of the request, and agreed to pay the processing fees. *Id.*

On July 19, 2019, we asked the FBI when it would produce the responsive records. *Id.* The FBI replied, on July 22, 2019, that the request would be processed "as soon as practicable." *Id.*

On September 6, 2019, we again inquired about the October 22, 2018 request. Ex. L. On September 9, 2019, the FBI provided an estimated date of completion for the first interim release of October 2019. *Id.*

In a letter dated October 31, 2019, the FBI stated that "506 pages were reviewed and 249 pages are being released." Ex. M. The FBI enclosed records with the letter, which contain significant redactions. The agency stated that the records represent the first interim release of information responsive to the request. *Id.*

The FBI explained the deletion of 257 pages of responsive records through two cursory means. First, in its letter, the FBI checked a number of boxes corresponding to the nine categories of information, and their subparts, that FOIA exempts from disclosure. *Id.* Second, before each section of records the agency released, it included a "deleted page information sheet," stating which pages were withheld in their entirety and under which statutory exemption or exemptions. 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 FBI provided no information about the search the agency conducted in order to locate responsive records. An addendum to the letter states, under the heading "General Information," that:

The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching those systems or locations where responsive records would reasonably be found. A reasonable search normally consists of a search for main files in 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 law enforcement, intelligence, and

administrative 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 and includes Electronic Surveillance (ELSUR) records. For additional information about our record searches visit www.fbi.gov/services/information-management/foipa/requesting-fbi-records.

Id. The FBI invited the LCAC to appeal its determination within ninety (90 days). *Id.*

II. Grounds for 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.

FOIA strongly favors "broad disclosure," which is the statute's primary objective. *Milner v. Dep't of the Navy*, 562 U.S. 562, 571 (2011); *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1976). Agencies may not withhold documents or portions thereof unless they fall within a statutory exemption. *Milner*, 562 U.S. at 562; *Elliott v. USDA*, 596 F.3d 842, 845 (D.C. Cir. 2010). These exemptions must be "narrowly construed." *FBI v. Abramson*, 456 U.S. 615, 630 (1982). If any information contained in a record is exempt from disclosure, the reasonably segregable, non-exempt portion of the record must be released. 5 U.S.C. § 552(a)(8)(A)(ii); *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 U.S. 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); *King v. Dep't of Justice*, No. 15-1445, 2018 U.S. Dist. LEXIS 162273, *2 (D.D.C. Sept. 23, 2018).

Of the 506 pages the FBI reviewed, only 249 were released, and with significant redactions. *See, e.g.*, Ex. N. That the agency withheld more than half of the responsive records in their entirety, and redacted the vast majority of pages it did release, suggests the FBI has not discharged its obligations under FOIA. Further, the FBI has made only bare assertions that the exemptions it cited apply.

- B. A review of the records the FBI provided in part confirms that the agency improperly redacted information.

Reviewing the records the agency provided in part confirms that it failed to disclose certain non-exempt information. By way of example, the FBI redacted our client's name and Mr. Snarr's name from the case captions contained on subpoenas issued in connection with Case Number 1:09-CR-15 in eleven instances. *See, e.g.*, Ex. O. For these redactions, the agency cited Exemptions 6 and 7(C). *Id.*

Under Exemption 6, "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" are exempt from disclosure. 5 U.S.C. § 552(b)(6). Information must implicate a "significant privacy interest" to trigger the exemption. *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).

Hundreds of publically available court records identify Mr. García and Mr. Snarr as the co-defendants tried, convicted, and sentenced to death in Case Number 1:09-CR-15. Their names have also been widely reported in connection with this case, including in newspaper articles the FBI disclosed in this interim release. *See, e.g.*, Ex. P. Further, the LCAC attached a United States Department of Justice Certification of Identity signed by Mr. García to our October 22, 2018 request. The disclosure of Mr. García’s and Mr. Snarr’s names in this context would in no way constitute an unwarranted invasion of personal privacy.

C. The FBI has not provided any information about its search for records.

Under FOIA, it is ultimately the agency’s burden to establish that it made a good faith effort to conduct a search for records using methods reasonably calculated to uncover all relevant documents. *Campbell v. Dep’t of Justice*, 164 F.3d 20, 27 (D.C. Cir. 1998); *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). If a FOIA dispute between an agency and a requester proceeds to litigation, the agency must describe its search with detail sufficient for the reviewing court to determine whether the search was reasonable. *Nation Magazine v. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995). This burden is “consistent with congressional intent tilting the scale in favor of disclosure.” *Campbell*, 164 F.3d at 27.

For an agency’s search methodology to be sufficient, the agency must “aver[] that all files likely to contain responsive materials . . . were searched.” *American Immigration Council v. Dep’t of Homeland Security*, 950 F. Supp. 2d 221, 231 (D.D.C. 2013) (quoting *Oglesby v. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). An agency “cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Oglesby*, 920 F.2d at 68. “At the very least,” the agency is “required to explain . . . that no other record system was likely to produce responsive documents.” *Id.* Additionally, the search terms an agency uses must be “reasonably tailored to uncover documents responsive to the FOIA request.” *Bigwood v. Dep’t of Defense*, 132 F. Supp. 3d 124, 140 (D.D.C. 2015).

The FBI has provided no information about the search it conducted pursuant to this request. The agency simply stated that “[a] reasonable search normally consists of a search for main files in the Central Records System (CRS).” Ex. M. The agency did not state which records system or systems it actually did search, whether it performed a full text search, and which search terms it used to locate responsive records. The generic statement on search methodology contained in the addendum is not sufficient to permit the conclusion that the FBI’s search was reasonable.

Additionally, on July 29, 2014, February 22, 2019, and April 22, 2019, the FBI stated that it located varying numbers of pages potentially relating to Mr. Rhones. Exs. C, I, K. This discrepancy further warrants explanation by the agency of its search. Particularly because Mr. Rhones died in 2007, it is unclear why, between February and April of this year, the number of pages the FBI maintains that potentially relate to Mr. Rhones would have increased by 341 pages.

III. Relief Requested

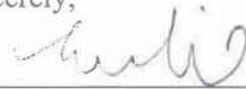
We request that the 257 pages of responsive records the FBI withheld in their entirety and the 249 pages the FBI released in part be reviewed to determine whether all information withheld or redacted falls within the exemptions the agency cited. If any records were improperly withheld or redacted, we request that the unredacted or appropriately redacted versions be released to us.

Additionally, we request that the FBI specify which records systems were searched and which search terms were used pursuant to our request. If the agency has not done so already, we request that it perform a supplemental search using all records systems that may contain main-file or cross-reference records pertaining to Mr. Rhones. 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. Rhones's name, including alternate spelling Gabriel Rhone, Social Security Number, and Bureau of Prisons Register Number, which we provided in the request, as well as any other search terms necessary to fulfill the request. Should the FBI locate additional records responsive to our request, we request that those records be released to us.

Please expedite processing of this appeal pursuant to 5 U.S.C. § 552(a)(6)(E)(v). We are seeking these records in connection with our representation of Mr. García, who is facing the death penalty. Pending litigation alleges that the death sentence he received in 2010 was wrongfully imposed. His death sentence was affirmed on direct appeal. In 2014, the United States Supreme Court denied his petition for certiorari. We submitted a petition for post-conviction relief in 2015. The petition is currently under review, and we have a limited period of time in which to amend it with records from the FBI. Because Mr. García faces criminal prosecution that could result in the loss of his freedom or life, an exceptional and urgent need exists justifying expedition. *Cleaver v. Kelly*, 427 F. Supp. 80, 81 (D.D.C. 1976). In accordance with 5 U.S.C. § 552(a)(6)(E)(ii)(I), please make a determination regarding expedited processing within ten (10) days.

If you have any questions or require further information, you may reach me by phone at (504) 558-9867 or by email at lkissel@thejusticecenter.org. Thank you for your attention to this matter.

Sincerely,



Lucy Kissel
Attorney Fellow
Louisiana Capital Assistance Center

Exhibit B



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

June 17, 2014

MR. STEVE MERLAN
LOUISIANA CAPITAL ASSISTANCE CENTER
636 BARONNE STREET
NEW ORLEANS, LA 70113

FOIPA Request No.: 1272013-000
Subject: RHONES, GABRIEL NATHANIEL

Dear Mr. Merlan:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the [_____] Resident Agency / [_____] Field Office] and forwarded to FBI Headquarters for processing.
- We are searching the indices to our Central Records System for the information responsive to this request. We will inform you of the results in future correspondence.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date.
- Please check for the status of your FOIPA request at www.fbi.gov/foia by clicking on Check the Status of Your FOIPA Request under Records Available Now located on the right side of the page. 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.

The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "D Hardy", is written over the typed name.

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

Exhibit C

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

July 29, 2014

MR. STEVE MERLAN
LOUISIANA CAPITAL ASSISTANCE CENTER
636 BARONNE STREET
NEW ORLEANS, LA 70113

FOIPA Request No.: 1272013-000
Subject: RHONES, GABRIEL NATHANIEL

Dear Mr. Merlan:

This is in reference to your Freedom of Information Act (FOIA) request.

The Federal Bureau of Investigation (FBI) has located approximately 1318 pages of records potentially responsive to the subject of your request. By DOJ regulation, the FBI notifies requesters when anticipated fees exceed \$25.00.

Releases are made on CD unless otherwise requested. Each CD contains approximately 500 reviewed pages per release. The 500 page estimate is based on our business practice of processing medium and large track cases in segments. DOJ regulations provide 100 pages or the cost equivalent (\$10.00) free of charge. If all potentially responsive pages are released, you will owe \$35.00 in duplication fees to receive the release on CD (3 CD's at \$15.00 less \$10.00). Should you request that the release be made in paper, you will owe \$121.80 in duplication fees.

Please remember this is only an estimate, and some of the information may be withheld in full pursuant to FOIA/Privacy Act exemption(s). Also, some information may not be responsive to your subject. Thus, the actual charges could be less. No payment is required at this time. However, you must notify us in writing within thirty (30) days from the date of this letter of your format decision (paper or CD) and your commitment to pay the estimated fee.

If we do not receive your format decision and/or commitment to pay within thirty (30) days of the date of this notification, your request will be closed. Include the FOIPA Request Number listed above in any communication regarding this matter.

You have the opportunity to reduce the scope of your request; this will accelerate the process and could potentially place your request in a smaller processing queue. This may also reduce search and duplication costs and allow for a more timely receipt of your information. The FBI uses a three-queue processing system to fairly assign and process new requests. Requests track into one of the three queues depending on the number of responsive pages - 500 pages or less (small queue), 501 pages to 2500 pages (medium queue), or more than 2500 pages (large queue). Small queue cases usually require the least time to process. Please advise in writing, if you would like to discuss reducing the scope of your request, and your willingness to pay the estimated search and duplication costs indicated above. Provide a telephone number, if one is available, where you can be reached between 8:00 a.m. and 5:00 p.m., Eastern Time. Mail your response to: Work Process Unit; Record Information/Dissemination Section; Records Management Division; Federal Bureau of Investigation; 170 Marcel Drive; Winchester, VA 22602. You may also fax your response to: 540-868-4997, Attention: Work Process Unit.

Sincerely,

A handwritten signature in black ink, appearing to read "D Hardy", is written over the word "Sincerely,".

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

Exhibit D

Louisiana

Capital

Assistance

Center

A Non-Profit Law Office

4 August 2014

David M. Hardy
Chief, Record/Information Dissemination Section
Records Management Division
Department of Justice
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843

Phone: 540.868.4593
Fax: 540.868.4997/4391
Email: foiparequest@ic.fbi.gov

Sent via fax

FOIPA Request No. 1272013-000

Gabriel Nathaniel Rhones¹

DOB [REDACTED]; SSN [REDACTED]²
FBI No. [REDACTED]; BOP no. [REDACTED]

Dear Mr. Hardy,

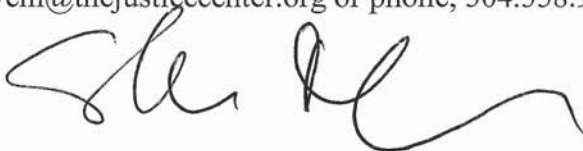
I received your letter yesterday indicating the Federal Bureau of Investigation has approximately 1.318 pages of records concerning Mr. Rhones. We are interested in all of the materials in your possession, and would prefer to receive those files on CD. Please consider this notice that we agree to pay the \$35 that your letter indicated it will cost to produce the CDs.

Please send the CDs, along with an invoice for payment to:

Steve Merlan
Louisiana Capital Assistance Center
636 Baronne Street
New Orleans LA 70113

Thank you for your assistance. If there are questions concerning this request I can be contacted via email at stevem@thejusticecenter.org or phone, 504.558.9867.

Sincerely,



Steve Merlan
Mitigation Investigator

¹ Many sources refer to Mr. Rhones as "Rhone," without the final "s."

² This Social Security number is indicated in a 1997 Presentence Report concerning Mr. Rhones. However, it appears likely that this is not actually the correct number for Mr. Rhones.

TRANSMISSION VERIFICATION REPORT

TIME : 08/04/2014 13:38
NAME :
FAX :
TEL :
SER.# : BROM4J166575

DATE, TIME	08/04 13:37
FAX NO./NAME	915408684997986
DURATION	00:00:36
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

Louisiana
Capital
Assistance
Center

A Non-Profit Law Office

FACSIMILE TRANSMITTAL SHEET

TO:

DAVID M. HARDY

FROM:

S. MERLAN

COMPANY:

FBI

DATE:

4 Aug 2014

FAX NUMBER:

540.868.4997

TOTAL # OF PAGES INCLUDING COVER SHEET:

2

PHONE NUMBER:

540.868.4593

RE:

1272013-000

COMMENTS:

Thank you!

WARNING: This fax message contains confidential legal material that is strictly privileged. It is intended solely for the confidential use of the designated recipient(s). If you are not the intended recipient, please be advised that any disclosure, copying, distribution, or use of the contents of this information is strictly prohibited. Please notify us immediately if you have received this communication in error.

Exhibit E

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

March 31, 2015

MS. HANNAH LOMMERS-JOHNSON
LOUISIANA CAPITAL ASSISTANCE CENTER
636 BARONNE STREET
NEW ORLEANS, LA 70113

FOIPA Request No.: 1272013-000
Subject: RHONES, GABRIEL NATHANIEL

Dear MS. LOMMERS-JOHNSON:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

- | Section 552 | | Section 552a |
|--|---|---------------------------------|
| <input type="checkbox"/> (b)(1) | <input type="checkbox"/> (b)(7)(A) | <input type="checkbox"/> (d)(5) |
| <input type="checkbox"/> (b)(2) | <input type="checkbox"/> (b)(7)(B) | <input type="checkbox"/> (j)(2) |
| <input type="checkbox"/> (b)(3) | <input checked="" type="checkbox"/> (b)(7)(C) | <input type="checkbox"/> (k)(1) |
| _____ | <input type="checkbox"/> (b)(7)(D) | <input type="checkbox"/> (k)(2) |
| _____ | <input checked="" type="checkbox"/> (b)(7)(E) | <input type="checkbox"/> (k)(3) |
| _____ | <input type="checkbox"/> (b)(7)(F) | <input type="checkbox"/> (k)(4) |
| <input type="checkbox"/> (b)(4) | <input type="checkbox"/> (b)(8) | <input type="checkbox"/> (k)(5) |
| <input type="checkbox"/> (b)(5) | <input type="checkbox"/> (b)(9) | <input type="checkbox"/> (k)(6) |
| <input checked="" type="checkbox"/> (b)(6) | | <input type="checkbox"/> (k)(7) |

29 pages were reviewed and 29 pages are being released.

- Document(s) were located which originated with, or contained information concerning, other Government agency(ies) [OGA].
 - This information has been referred to the OGA(s) for review and direct response to you.
 - We are consulting with OGA(s). The FBI will correspond with you regarding this information when the consultation is finished.
- In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited

to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely,



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

Enclosure(s)

In response to your Freedom of Information Act (FOIA) request to the Records Management Division in Winchester, VA, please find enclosed is a processed copies of Washington Field Office files 44A-WF-170877 (Section 1); 44A-WF-170877-Sub C (Section 2) and 88A-WF-206810 (Section 1).

The material has been placed on a CD-Rom and is being provided to you at no charge. This material represents the final release of responsive information regarding your subject and this request will be closed.

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.

Exhibit I



Federal Bureau of Investigation
Washington, D.C. 20535

February 22, 2019

MR. ANDREW STRENIO
LOUISIANA CAPITAL ASSISTANCE CENTER
636 BARONNE STREET
NEW ORLEANS, LA 70113

FOIPA Request No.: 1272013-001
Subject: RHONES, GABRIEL NATHANIEL

Dear Mr. Strenio:

This is in reference to your Freedom of Information/Privacy Acts (FOIPA) request.

By letter dated October 22, 2019, you indicated your willingness to pay \$0.00 in FOIA processing fees. The Federal Bureau of Investigation (FBI) has located approximately 1,241 pages of records potentially responsive to the subject of your request. By DOJ regulation, the FBI notifies requesters when anticipated fees exceed \$25.00. Below you will find check boxes and informational paragraphs about your request. Please read each one carefully.

Please be advised that you are entitled to the first 100 pages free of charge. If the release is made on Compact Disc (CD), you will receive the cost equivalent (\$5.00) as a credit.

If all potentially responsive pages are released on CD, you will owe \$40.00 in duplication fees (3 CDs at \$15.00 each, less \$5.00 credit for the first CD). Releases are made on CD unless otherwise requested. Each CD contains approximately 500 reviewed pages per release. The 500 page estimate is based on our business practice of processing complex cases in segments.

Should you request that the release be made in paper, you will owe \$57.05 based on a duplication fee of five cents per page. See 28 CFR §16.10 and 16.49.

The FBI cannot print digital media files, and they will need to be released on CD. The FBI located audio and video files that are potentially responsive to the subject of your request. If all of the potentially-responsive media is released, you will owe \$1,125.00 (75 CDs at \$15.00 each).

The estimated total cost for processing your request is approximately \$1,165.00 for CD releases (includes the media) or \$57.05 for paper releases (minus the media).

Please remember this is only an estimate, and some of the information may be withheld in full pursuant to FOIA/Privacy Act exemption(s). Also, some information may not be responsive to your subject. Thus, the actual charges could be less.

Requester Response

No payment is required at this time. You must notify us in writing within thirty (30) days from the date of this letter of your format decision (paper or CD) unless your request qualifies for eFOIPA releases. You must also indicate your preference in the handling of your request in reference to the estimated duplication fees from the following four (4) options:

I am willing to pay estimated duplication/ international shipping fees up to the amount specified in this letter.

I am willing to pay fees of a different amount.

Please specify amount: _____

Provide me 100 pages or the cost equivalent (\$5.00) free of charge. If applicable, I am willing to pay International shipping fees.

Cancel my request.

If we do not receive your duplication format decision and/or estimated duplication fee selection within thirty (30) days of the date of this notification, your request will be closed. Include the FOIPA Request Number listed above in any communication regarding this matter.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the Freedom of Information Act (FOIA). See 5 U.S. C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You have the opportunity to reduce the scope of your request; this will accelerate the process and could potentially place your request in a quicker processing queue. This may also reduce search and duplication costs and allow for a more timely receipt of your information. The FBI uses a multi-queue processing system to fairly assign and process new requests. Simple request queue cases (50 pages or less) usually require the least time to process.

Please advise in writing if you would like to discuss reducing the scope of your request and your willingness to pay the estimated search and duplication costs indicated above. Provide a telephone number, if one is available, where you can be reached between 8:00 a.m. and 5:00 p.m., Eastern Standard Time. Mail your response to: **Work Process Unit; Record Information/Dissemination Section; Information Management Division; Federal Bureau of Investigation; 170 Marcel Drive; Winchester, VA 22602.** You may also fax your response to: 540-868-4997, Attention: Work Process Unit.

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,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

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

Exhibit J

From: Lucy Kissel
To: ["foipaquestions@fbi.gov"](mailto:foipaquestions@fbi.gov)
Subject: FOIPA 1272013-001
Date: Friday, March 15, 2019 9:12:00 AM
Attachments: [2019-02-22 Ltr re FOIPA 1272013-001 RhonesG.pdf](#)
[2018-10-22 Fax re FOIPA.pdf](#)

Dear Ms. Ramsey,

As we discussed this morning by phone, I ask that you keep FOIPA Request No. 1272013-001, pertaining to Gabriel Rhones, open. Our initial request is attached in relevant part, as is the FBI's response dated February 22, 2019.

Our office consents to pay the \$57.05 estimated cost for paper releases. Please produce those pages.

Without knowing what media files the FBI located in response to our request, I am unable to agree to pay the \$1,165.00 estimated cost for CD releases at this time. I would like to learn more about the contents of those files to determine whether our office needs them. Therefore, I request to work with a member of the Negotiation Team with respect to the audio and video files.

Thank you very much for your time and assistance.

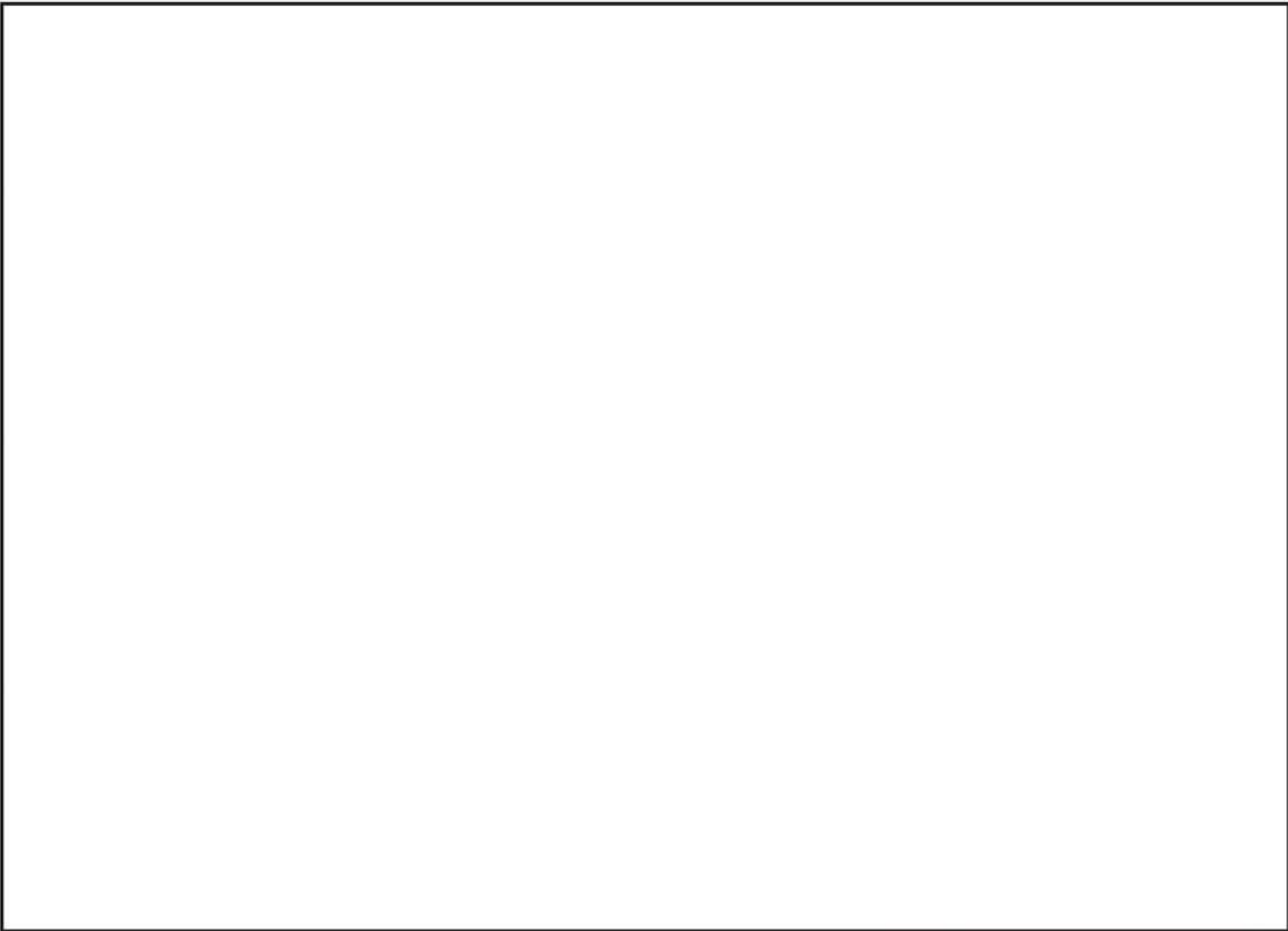
Sincerely,

Lucy Kissel
Legal Fellow
Louisiana Capital Assistance Center
636 Baronne Street
New Orleans, LA 70113
(504) 558-9867
lkissel@thejusticecenter.org

Exhibit N

UNCLASSIFIED

To: Houston From: Houston
Re: 281D-HO-67937, 10/27/2010



b6
b7C
b7D
b7E

On Tuesday, October 26, 2010, AUSAs [redacted]
[redacted] AUSAs for the Eastern District
of Texas, concurred [redacted]
[redacted]

◆◆

UNCLASSIFIED

Exhibit O

AO89 (Rev. 7/95) Subpoena in a Criminal Case

UNITED STATES DISTRICT COURT

Eastern

DISTRICT OF

Texas

United States of America

V.

[Redacted]

SUBPOENA IN A CRIMINAL CASE

Case Number: 1:09-CR-15

TO:

[Redacted]

b6
b7C

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below, or any subsequent place, date and time set by the court, to testify in the above referenced case. This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

PLACE

Jack Brooks Federal Building
300 Willow
Beaumont, TX 77701

COURTROOM

JUDGE CRONE

DATE AND TIME

5/10/2010 8:00 am

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

281D-140-67937-90

U.S. MAGISTRATE JUDGE OR CLERK OF COURT

David Malon

(By) Deputy Clerk



DATE

3/04/2010

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER:

[Redacted]

350 Magnolia, Suite 150
Beaumont, TX 77701

[Redacted]

b6
b7C

Exhibit P

Judge seeks change of venue in **oppression trial of police officer, 3A**

It's a jungle out there: **Tough times close Beaumont petting zoo, 7A**

Can you **give your jog a jolt** by chugging a sugary, icy beverage? **1B**

BEAUMONT **ENTERPRISE**

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TUESDAY, MAY 25, 2010

75 Cents

Inmates sentenced to death for stabbing

By Ken Fountain
kfountain@BeaumontEnterprise.com
(409) 880-0729

A federal jury Monday sentenced two Beaumont federal prison inmates to death for the 2007 slaying of a third inmate.

Michael Isaac Snarr, 34, and Edgar Baltazar Garcia, 30, repeatedly stabbed Gabriel Rhone outside of his cell in the prison's maximum-security Special Housing Unit.

The pair claimed they killed Rhone out of imminent fear

for their lives because Rhone threatened them within 48 hours prior to his death.

A surveillance video of the incident, which prosecutors played to jurors during the trial, shows the two inmates free themselves from their handcuffs as they were led from a recreation cage to their cells by three guards.

They then used handmade knives, or "shanks," which they had concealed, to attack two of the guards so that they could take the keys to

Rhone's cell.

The video also shows Snarr and Garcia repeatedly stab Rhone as he tried to flee toward a locked cell block door. Corrections officers are seen yelling at the men to stop their attack. Rhone was stabbed more than 50 times, and died of a puncture wound to his heart, according to an autopsy.

The two guards wounded in the attack were treated at nearby hospitals. One of them, Dwight Baloney, was

stabbed 23 times in the chest and shoulders. He has since resigned from the Federal Bureau of Prisons.

While tried together, Snarr and Garcia had separate defense teams. Gerald Bourque, one of Garcia's two lawyers, said by phone Monday that attorneys will confer over the next week to discuss reasons why they might file a motion for a new trial.

They have 14 days to do so, he said.