

EXHIBIT E



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Princess Masilungan, Esq.
Main Street Legal Services, Inc.
CUNY School of Law
2 Court Square
Long Island City, NY 11101
cunyclear@law.cuny.edu

Re: Appeal No. DOJ-AP-2020-001125
Request No. 1433703-000
JKD:PJA

VIA: Email

Dear Princess Masilungan:

You appealed from the action of the Federal Bureau of Investigation on your Freedom of Information Act request for access to records concerning your client, Fahmi Ahmed Moharam. I note that your appeal concerns the adequacy of the FBI's search.

After carefully considering your appeal, I am affirming the FBI's action on your request. The FBI informed you that it could locate no responsive records subject to the FOIA in its files. I have determined that the FBI's action was correct and that it conducted an adequate, reasonable search for such records.

To the extent that your request seeks access to records that would either confirm or deny an individual's placement on any government watch list, the FBI properly refused to confirm or deny the existence of any such records because their existence is protected from disclosure pursuant to 5 U.S.C. § 552(b)(7)(E). Exemption 7(E) concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures or guidelines for law enforcement investigations or prosecutions. Further, it is reasonably foreseeable that confirming or denying an individual's placement on any government watch list would harm the interests protected by this exemption. *See, e.g., Kalu v. IRS*, 159 F. Supp. 3d 16, 23 (D.D.C. 2016). This response should not be taken as an indication that records do or do not exist. Rather, this is the standard response made by the FBI.

Additionally, in your letter you also seek records "created, sent, or received, referenced, and/or used in fulfilling and/or responding to this request." By definition, no such records existed at the time of your request or when the searched started. Please be advised that the FOIA provides a right of access to agency records that exist at the time of the request. To the extent that you seek such records, you may wish to submit a new FOIA request directly to the FBI.

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In regards to your request for a waiver of fees, because the FBI has not assessed any fees in connection with the processing of your request, there is no adverse fee determination for this Office to consider on appeal.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the FBI in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

2/28/2020

X 

Matthew W. Hurd

Acting Chief, Administrative Appeals Staff

Signed by: MATTHEW HURD