

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)	
ELECTRONIC PRIVACY INFORMATION)	
CENTER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 17-cv-0121
)	
FEDERAL BUREAU OF INVESTIGATION,)	
)	
Defendant.)	
<hr/>)	

DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) (U) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to my joining the Federal Bureau of Investigation (“FBI”), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) (U) In my official capacity as Section Chief of RIDS, I supervise approximately 248 employees who staff a total of twelve (12) Federal Bureau of Investigation Headquarters (“FBIHQ”) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

information pursuant to the FOIA as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive Order (“E.O.”) 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by E.O. 13526, and the preparation of declarations in support of Exemption (b)(1) claims asserted under the FOIA. I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to E.O. 13526 §§ 1.3 and 3.1. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) (U) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to plaintiff’s December 22, 2016 request for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552. Specifically, I am aware of the FBI’s handling of plaintiff’s FOIA request to FBI at issue in this litigation. This declaration is being submitted in support of Defendant’s motion for summary judgment.

PLAINTIFF’S FOIA REQUEST

(4) (U) Plaintiff submitted a request via e-mail to the FBI on December 22, 2016, “seek[ing] records pertaining to the FBI’s investigation of Russian interference in the 2016 Presidential election.” The request seeks the following records:

- (1) All records including, but not limited to, memos, reports, guidelines, procedures, summaries, and emails pertaining to the FBI’s investigation of Russian-sponsored cyber-attack on the RNC, DNC, and DCCC;

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

- (2) All records of communications to the RNC, DNC, and DCCC regarding the threat of Russian interference in the 2016 Presidential election;
- (3) All records of communications with other federal agencies regarding Russian interference in the 2016 Presidential election;
- (4) All records including, but not limited to, memos, reports, guidelines, and procedures pertaining to the FBI's procedure to notify targets of cyber-attacks.

(See Exhibit A).

(5) (U) Plaintiff requested both expedited processing and a public interest fee waiver in their request. *Id.*

(6) (U) The FBI assigned this request FOIA Request No. 1364562.

(7) (U) Plaintiff filed this lawsuit on January 18, 2017, before the FBI could respond to the FOIA request. *See* ECF No. 1, Complaint.

(8) (U) As to Item 4 of plaintiff's request – for certain policy records – the FBI was conducting a search for responsive records. However, the FBI initially anticipated that it would be relying on a Glomar response to items 1-3, and thus would not be confirming or denying the existence or nonexistence of responsive records, based on FOIA Exemption (b)(7)(A).

(9) (U) Subsequent events occurred that, based on the FBI's assessment, required it to abandon its anticipated Glomar response, which it did effective March 20, 2017. Thus, on March 20, 2017, it initiated searches for records responsive to items 1-3.

(10) (U) In a series of rolling responses to plaintiff's FOIA request, the FBI produced non-exempt portions of records responsive to item 4 on May 11, 2017, and notified plaintiff it was withholding in full records responsive to items 1-3 on May 26, 2017 (Items 2-3) and July 21,

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

2017 (Item 1) pursuant to Exemption (b)(7)(A).¹ (*See Exhibits B-D, respectively.*)

(11) (U) Plaintiff has advised the FBI that it intends to challenge only the FBI's reliance on Exemptions (b)(1) and (b)(3) to protect information in response to item 4, and its reliance on Exemption (b)(7)(A) to withhold records in response to items 1-3. *See* ECF No. 18, Joint Status Report. Accordingly, the redactions that the FBI took pursuant to FOIA Exemption (b)(7)(E) in response to item 4 are not addressed further in this declaration. Plaintiff further advised that it would challenge the FBI's segregability efforts and the adequacy of the FBI's searches. *Id.*

THE RUSSIA INVESTIGATION

(12) (U) On March 20, 2017, then-FBI Director James B. Comey made the following statement in testimony before the House Permanent Select Committee on Intelligence:

I have been authorized by the Department of Justice to confirm that the FBI, as part of our counterintelligence mission, is investigating the Russian government's efforts to interfere in the 2016 presidential election, and that includes investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia's efforts. As with any counterintelligence investigation, this will also include an assessment of whether any crimes were committed.

Statement Before the House Permanent Select Committee on Intelligence (Mar. 20, 2017), *available at* <https://www.fbi.gov/news/testimony/hpsci-hearing-titled-russian-active-measures-investigation>. Director Comey further explained that “[b]ecause it is an open, ongoing

¹ (U) In response to item 4, the FBI reviewed 106 pages of responsive records. Of those, 86 pages were already publicly available and the FBI provided plaintiff the links to the public websites where they could be accessed. The remaining 20 pages were processed and released in part, with exempt information redacted on 17 of those pages pursuant to FOIA Exemptions (b)(1), (b)(3), and/or (b)(7)(E). (*See Exhibit B.*)

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

investigation and is classified, I cannot say more about what we are doing and whose conduct we are examining.” *Id.*

(13) (U) On May 9, 2017, President Trump terminated and removed Director Comey, effective immediately. On May 17, 2017, Deputy Attorney General Rod Rosenstein appointed former FBI Director Robert Mueller to serve as special counsel to oversee the Russia investigation. *See* DOJ Order No. 3915-2017, Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters (May 17, 2017). This appointment authorizes Special Counsel Mueller to “conduct the investigation confirmed by then-FBI Director James B. Comey in testimony before the House Permanent Select Committee on Intelligence on March 20, 2017, including: (i) any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and (ii) any matters that arose or may arise directly from the investigation; and (iii) any other matters within the scope of 28 C.F.R. § 600.4(a).” *Id.* In addition, “[i]f the Special Counsel believes it necessary and appropriate, the Special Counsel is authorized to prosecute federal crimes arising from the investigation of these matters.” *Id.*

(14) (U) The Russia investigation remains ongoing. However, other than disclosing the investigation’s existence neither the FBI, Special Counsel Mueller, nor any representative of the Department of Justice has publicly or officially acknowledged any other details about the investigation, including, for example, its subjects, scope, or focus.

THE FBI’S RESPONSE TO ITEMS 1-3 OF PLAINTIFF’S FOIA REQUEST

(15) (U) The FBI concluded that as a result of former Director Comey’s testimony before Congress, including in hearings on March 20, 2017 and May 3, 2017, a Glomar response

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

regarding items 1-3 of plaintiff's FOIA request would not be applicable but that it nevertheless must continue to protect information responsive to those items pursuant to FOIA Exemption (b)(7)(A).²

FBI'S SEARCH IN RESPONSE TO ITEMS 1-3

(16) (U) As a result of former Director Comey's March 20, 2017 acknowledgment of the existence of the Russia investigation, the FBI immediately began a search for responsive records.³

(17) (U) In most instances when searching for records to respond to a FOIA request, RIDS's first step is to conduct a search of the FBI's Central Records System ("CRS"). Such a search was not necessary in this case because the responsive records were located by other means. Due to the high profile and sensitive nature of the subject of Plaintiffs' request, counsel in the National Security and Cyber Law Branch ("NSCLB") of the FBI's Office of the General Counsel ("OGC") – subject-matter experts who were already familiar with the relevant records – were consulted to identify and locate any and all records responsive to items 1-3 of Plaintiff's FOIA request. NSCLB is the office within the OGC that provides legal support and advice on counterintelligence investigations. Through NSCLB counsel who were assigned to provide such support, the pending Russian interference investigation files were identified as those containing the records responsive to items 1-3, based on NSCLB counsel's pre-existing familiarity with the

² (U) The FBI relied on Exemption (b)(7)(A) on a categorical basis to protect records responsive to Items 1-3. Other FOIA exemptions, including Exemptions (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E) also protect some or all of the same information. The FBI cannot publicly address these exemptions in any detail without revealing the very information that is exempt under Exemption (b)(7)(A). The FBI explicitly reserves its right to fully assert and brief these exemptions should the Court conclude that all or any part of the FBI's Exemption (b)(7)(A) assertion is unsupported.

³ (U) Accordingly and consistently with DOJ FOIA regulation 28 C.F.R. § 16.4(a), the FBI used March 20, 2017 as the cut-off date for the search.

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

investigation and records compiled during it.⁴ NSCLB counsel then assisted in facilitating the FBI's review of the responsive records that existed in those files as of the search cut-off date – March 20, 2017 – for purposes of responding to this FOIA request.

(18) (U) That manual search and review of the entirety of the relevant investigative files as they existed as of March 20, 2017, confirmed that all records responsive to Plaintiff's request are part of the Russian interference investigation, which is an active, ongoing investigation being conducted by the FBI.

(19) (U) The FBI has concluded that no other locations or records repositories exist where responsive records would likely be maintained.

(20) (U) Accordingly, the FBI has determined that all responsive records are exempt from disclosure pursuant to FOIA Exemption (b)(7)(A).

FOIA EXEMPTION (b)(7)(A) – PENDING ENFORCEMENT PROCEEDINGS

(21) (U) FOIA Exemption (b)(7) exempts from mandatory disclosure records or information compiled for law enforcement purposes when disclosure could reasonably be expected to cause one of the harms enumerated in the subparts of the exemption. *See* 5 U.S.C. § 552(b)(7).

(22) (U) Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Law enforcement agencies such as the FBI must demonstrate that the

⁴ (U) On the face of Plaintiff's request, it is seeking records about the investigation into Russia's interference in the 2016 Presidential election. The preamble to the request and items 1-3 specifically reference that investigation. While Plaintiff describes that investigation as one into cyber-attacks on the RNC, DNC, and DCCC, the FBI does not understand item 1 as asking for something different than the Russian interference investigation or for only those records that might specifically reference particular cyber attacks. Rather, the FBI reasonably interpreted the request to be seeking all records from that investigation.

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

records at issue are related to the enforcement of federal laws and that the enforcement activity is within the law enforcement duty of that agency.

(23) (U) Pursuant to 28 U.S.C. §§ 533 and 534, Executive Order 12333 as implemented by the Attorney General's Guidelines for Domestic FBI Operations ("AGG-DOM"), and 28 C.F.R. § 0.85, the FBI is the primary investigative agency of the federal government, with authority and responsibility to investigate all violations of federal law not exclusively assigned to another agency; to conduct investigations and activities to protect the United States and its people from terrorism and threats to national security; and to further the foreign intelligence objectives of the United States.

(24) (U) The FBI concluded that records responsive to items 1-3 of Plaintiff's request are part of the FBI's investigation into the Russian Government's efforts to interfere in the 2016 Presidential Election, including the nature of any links and/or coordination between individuals associated with the Trump campaign and the Russian Government.⁵ The investigation is clearly within the law enforcement duties of the FBI to detect and undertake counterintelligence and national security investigations, and to investigate possible violations of Federal criminal laws. *See* 28 U.S.C. § 533. Thus, all of the records responsive to Plaintiff's FOIA were compiled for law enforcement purposes and readily meet the threshold for applying FOIA Exemption (b)(7)(A).

⁵ (U) The FBI's files contain potentially responsive records originating from other government agencies ("OGAs"). Because the FBI is withholding all records pursuant to Exemption (b)(7)(A), it has not referred these records to their originating OGAs for review and application of other exemptions. The FBI believes that these records are also subject to one or more of the other exemptions described in this declaration. If the FBI's Exemption (b)(7)(A) withholdings are not upheld, it will refer the records to the originating OGAs for review and a direct response to plaintiff.

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

(25) (U) Next, to apply Exemption (b)(7)(A), the FBI must establish the existence of a pending or prospective investigation or other enforcement proceeding. The FBI concluded that any records responsive to Plaintiff's request would be part of its investigation into Russian interference in the 2016 Presidential election. That investigation is actively pending, as of the date of this filing. Thus, this element is also readily established.

(26) (U) Finally, the FBI must establish that disclosure of responsive records could reasonably be expected to interfere with the pending enforcement proceeding. The FBI has determined that disclosure of any responsive records in the midst of this sensitive, on-going investigation could reasonably be expected to interfere with the investigation as well as any potential prosecutions or other enforcement proceedings that may ultimately result from the investigation.

(27) (U) Providing a document-by-document *Vaughn* index or description of the records responsive to Plaintiffs' request would undermine the very interests that the FBI seeks to protect under Exemption (b)(7)(A). Specifically, identifying the precise number of particular types of records and describing their contents would reveal non-public information about the targets and scope of the investigation, where the FBI is focusing or has focused its resources at any given period of time, and what investigative techniques and procedures are being or have been deployed. As further elucidated below, premature disclosure of such information in the context of this active and sensitive investigation could reasonably be expected to adversely affect it. Similarly, disclosing the total volume of responsive information protected by Exemption (b)(7)(A) would reveal information about the nature, scope, focus, and conduct of the

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

investigation, and thus cannot be publicly disclosed without undermining the law enforcement interests the FBI is seeking to protect by application of Exemption (b)(7)(A) in this case.

(28) (U) In order to protect the significant law enforcement interests here, and consistent with procedures explicitly endorsed by the U.S. District Court for the District of Columbia and the Circuit Court for the District of Columbia Circuit, the FBI has described the types of records in the investigative file that holds all records responsive to plaintiff's request, all of which are being withheld in full pursuant to Exemption (b)(7)(A). The FBI has assigned each type of record in that investigative file to a functional category, and has then explained how disclosure of records from that functional category is reasonably expected to interfere with the FBI's pending investigation and any resulting prosecutions/enforcement proceedings. In conducting this analysis, the FBI reviewed the responsive records in order to categorize them properly, assigned them to the appropriate functional categories, and determined that no non-exempt information exists that can be segregated and released without adversely affecting the FBI's pending investigation and any prospective prosecutions/enforcement proceedings, other than the information that is in the public version of this declaration.

(29) (U) The FBI is also filing, *ex parte* and *in camera*, a fully unredacted version of this declaration that includes information about certain types of documents, which is itself protected by Exemption (b)(7)(A). Because the release of that law enforcement sensitive information would itself interfere with the investigation for the reasons explained below, it is being filed only in redacted form on the versions of these filings that will appear on the public docket.

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

(30) (U) Because the full scope and focus of the FBI’s pending investigation has not been made public, specifying whether the entire investigative file or just parts are responsive to items 1-3 of plaintiff’s request would itself reveal non-public information about the investigation that could reasonably be expected to interfere with the investigation, for the reasons discussed herein. Accordingly, the paragraphs below describe the nature of the investigative file *in toto*. Any other response would tend to reveal, for example, information about the scope or focus of the investigation, the extent to and manner in which certain allegations or activities fit within the larger investigation as a whole, the relative significance of such allegations or activities (or lack thereof) to the investigation, and so on.

Types of Responsive Records

(31) (U) This table provides a partial listing of the types of records located in the investigative file determined to contain the records responsive to Items 1-3 of plaintiff’s FOIA request.⁶ There are some types of records located in the file that cannot be publicly disclosed because such disclosure would itself risk adversely affecting the pending investigation and/or revealing information that is otherwise exempt under one or more other FOIA exemptions. The remaining types of responsive records are included in my *in camera, ex parte* declaration.

(U) RECORD	(U) DESCRIPTION
(U) FD-1057 (Electronic Communications or “ECs”)	(U) ECs are the primary vehicle of correspondence within the FBI. The purpose of an EC is to communicate within the FBI in a consistent format that can be uploaded by the originating Division or office, transmitted, and downloaded by recipient Divisions or offices within the FBI’s internal computer network. They are generally used when no action is necessary and when the recorded information is non-testimonial. These forms are often utilized to record and disseminate

⁶ (U) The FBI has determined that records responsive to items 2-3 would only likely be found in the investigative files for the pending Russian interference investigation.

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

(U) RECORD	(U) DESCRIPTION
	intelligence/investigative information and for general investigation administration purposes.
(U) FBI Letters	(U) Formal correspondence in a format used by the FBI to communicate with DOJ, U.S. Attorneys' Offices, OGAs, other law enforcement agencies (including federal, state, local, and tribal), commercial businesses, and private citizens. Its format is identical to the business letters utilized by commercial agencies except that it contains the FBI Seal at the top of the first page, as well as specific identifying information regarding the originating office within the FBI that sent the letter (e.g., San Diego Division or FBIHQ).
(U) FD-302	(U) This form is used to record the results of FBI interviews, as well as interactions between FBI personnel and others during an investigation (such as telephone calls or in-person interactions that are not interviews). Information obtained through an interview may later be used as evidence in a criminal trial. These interview forms are often incorporated into FBI Investigative Reports. The contents of these forms may also be incorporated into ECs for purposes of setting/covering investigative leads.
(U) FD-340 (1A Envelope)	(U) This is an envelope used to hold materials other than formal FBI-created documents (such as ECs, letters, or 302s) in a case. The 1A envelopes can house items like DVD recordings, original notes taken by special agents during an interview (which are later relied on to create FD-302s), and any other materials such as photographs, receipts, tickets, etc.
(U) FD-542 (Investigative Accomplishment Form)	(U) This is an internal FBI form that employees use to claim investigative accomplishments, such as the use of particular investigative methods, in investigations.
(U) FD-941 (Consent to Search Computers)	(U) This form documents consent provided by individuals/entities/organizations for the FBI to search their computers.
(U) FD-999	(U) These forms are used to request assistance from a local, state, federal, tribal, or foreign law enforcement agency; to record dissemination of information to such other agencies; and to report significant liaison with such an agency.
(U) FD-1087 (Evidence Form)	(U) This administrative form is used to describe, document, and track each type/item of evidence gathered or obtained by the FBI during an investigation.
(U) FD-1036 (Import Form)	(U) This form is used to describe documents and materials imported into the electronic investigation files in the Sentinel system.

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

(U) RECORD	(U) DESCRIPTION
(U//LES) [REDACTED]	(U//LES) [REDACTED]
(U//LES) [REDACTED]	(U//LES) [REDACTED]
(U//LES) [REDACTED]	(U//LES) [REDACTED]
(U//LES) [REDACTED]	(U//LES) [REDACTED]
(U//LES) [REDACTED]	(U//LES) [REDACTED]

Functional Categories

(32) (U) After locating and reviewing the entirety of the relevant investigative file, and identifying each of the “types” of records described above, the FBI reviewed and categorized the records into the following functional categories: (1) records reflecting and discussing investigative methods or procedures being utilized by the FBI (“Investigative Records or Information”); (2) records reflecting, summarizing, or analyzing evidence obtained by the FBI or evidence to be obtained by the FBI (“Evidentiary Records or Information”); and (3) records reflecting various administrative types of information (“Administrative Records or Information”). Each responsive record in this case, and the information contained in each record, falls into one or more of these categories. For example, a single record – *e.g.*, an EC – may serve multiple purposes, such as documenting the use of a particular investigative technique

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

and the information gathered through it, as well as administrative directions. Therefore, the EC itself could be included in all three categories, as could particular pieces of information contained in the document.

(33) (U) The following paragraphs describe the harm that is likely to result from releasing (or even disclosing any further information about) the responsive records that fall within each functional category.

Reasonable Expectation of Harm from Disclosing Investigative Information

(34) (U) This category includes records of law enforcement methods or procedures undertaken in furtherance of the investigation, to include requests for authority to engage in various investigatory activities or employ particular methods or procedures; the results of such activities, methods, or procedures; and the collection, analysis, and dissemination of information obtained through utilization of these activities, methods, or procedures.

(35) (U) Exchange of Information Between FBI and Other Law Enforcement Agencies/OGAs: Release of information exchanged between the FBI and its partners would disclose evidence, investigative information, law enforcement methods and procedures being utilized in this investigation, and criminal intelligence developed by the FBI and OGAs/other law enforcement agencies that have cooperated with and provided information to the FBI, and that are still doing so, in the pending investigation. Inherent in this cooperative effort is the mutual understanding that information provided to the FBI by these agencies will not be prematurely released. This information was gathered, and is continuing to be gathered, to help identify subjects, suspects, and/or other individuals of potential investigative interest; to identify and assist in locating witnesses and/or confidential sources; and to further the progress of the

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

investigations. Release of this information at this point in the investigative process would reveal the scope and focus of the investigation; identify and tip off individuals of the FBI's interest in them; and provide suspects or targets the opportunity to destroy evidence and alter their behavior to avoid detection.

(36) (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

[REDACTED]

Reasonable Expectation of Harm from Disclosing Evidentiary Information

(37) (U) This category includes copies of records or evidence, analyses of evidence, and derivative communications discussing or incorporating evidence. A derivative communication describes, verbatim or in summary, the contents of the original record, how it was obtained, and how it relates to the investigation. Other derivative communications report this information to other FBI field offices, other law enforcement agencies, or OGAs, either to advise them about the progress of the investigation or to elicit their assistance in handling investigative leads.

(38) (U) Information Concerning or Reflecting Documentary Evidence: The responsive records include information about documentary evidence being gathered in the investigation; they discuss, describe, or analyze the documentary evidence; and they reflect the investigatory methods and procedures used to obtain the evidence. Disclosure of such information at this time would undermine the pending investigation and any pending or prospective prosecutions/enforcement proceedings by prematurely revealing: the scope and focus of the investigation; who the FBI is investigating, why, and for what specific activities; the identities of witnesses and cooperators; and the participation and cooperation of OGAs/other law enforcement agencies in the investigation. Disclosure of such information would arm subjects,

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

persons of interest, and others intent on obstructing the investigation with the information necessary to take defensive actions to conceal their activities; elude detection and surveillance; suppress, destroy, or fabricate evidence; and/or interfere or attempt to interfere with or intimidate witnesses, sources, and cooperators. The risk of such nefarious actions with respect to this specific investigation is particularly grave.⁷

(39) (U) Exchange of Information Between FBI and Other Law Enforcement Agencies/OGAs: As explained above, release of information exchanged between the FBI and its partners would not only reveal investigative information and law enforcement methods and procedures being used in the FBI's investigation, it would also reveal evidence and criminal intelligence developed by the FBI and OGAs/other law enforcement agencies that have cooperated with and provided information to the FBI, and that are still doing so, in the pending investigation. Such information would reveal the focus, scope, and targets of the FBI's investigation, which could also reasonably be expected to impede the investigation.

(40) (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷ (U) In addition, disclosure of many of these records, and the information contained in them, would also cause the harms outlined with regard to the functional category of "Investigative Information."

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

[REDACTED]

Reasonable Expectation of Harm from Disclosure of Administrative Information

(41) (U) While the other functional categories concern mostly extant records, this functional category includes administrative information contained in other records, such as case captions, serial numbers, identities of FBI field offices, dates of investigations, and administrative instructions designed to ensure that investigative procedures are conducted within the appropriate FBI and DOJ guidelines.⁸ The following subparagraphs describe the types of administrative information contained in records responsive to Plaintiffs' request and the harms that could reasonably be expected to result from the disclosure of such materials here.

(42) (U) Administrative Instructions and Information About Investigative Activities. Responsive records in this case include administrative instructions and information about investigative activities that have been conducted or are contemplated, in order to monitor the progress of the investigation and facilitate its conduct. Such administrative instructions and information have the potential to reveal or confirm: the use or contemplated use of particular law enforcement techniques and procedures, the effectiveness of those techniques and

⁸ (U) Administrative information is often contained at the beginning or end of correspondence or documents that also fall within the Investigative or Evidentiary Information categories, such that release of the administrative information would also reveal the investigative interests of the FBI and could enable suspects, targets, and individuals of interest to the FBI to discern a "road map" of the investigations. Accordingly, these functional categories are not entirely homogenous.

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

procedures; and guidelines or instructions for their use; the cooperation of OGAs/law enforcement agencies in the investigation; the identities of sources, witnesses, targets, and other individuals of potential investigative interest; the focus, scope, and anticipated trajectory of the investigation; any potential or perceived challenges in the investigation; and requests for specific investigative inquiries and affirmative taskings to various FBI field offices or to other government or law enforcement agencies (*i.e.*, investigative leads).

(43) (U) Disclosure of this information would provide a road map of the FBI's investigation – what has already occurred and what is being planned. Such disclosure has the potential of exposing actual and anticipated witnesses and sources, and arming adversaries with information necessary to avoid particular techniques and procedures, develop countermeasures, and destroy or fabricate evidence. Accordingly, disclosure of administrative instructions and information about investigative activities is reasonably expected to adversely affect the FBI's investigation and other prospective prosecutions/enforcement proceedings.

(44) (U) Other Administrative Materials. The FBI has also determined that disclosure of administrative materials such as storage envelopes, transmittal forms, and standardized forms used for a variety of particular purposes could reasonably be expected to adversely affect its investigation. These types of materials are used throughout investigations for many routine purposes in administratively documenting the investigative file as the investigation progresses. However, the manner in which they have been used and organized in the files in and of itself reveals information of investigative value. For example, a 1A envelope may be used to store records obtained from a confidential source or witness. While the generic envelope is not specific to this investigation, handwritten notations on the envelope identify dates, places, and

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

the identities of the sources providing the information. In addition, the mere fact that an FBI Special Agent used an envelope for the storage of records he/she has obtained from a source is revealing on its own. Thus, disclosure of these types of administrative materials could harm the investigation by providing details that, when viewed in conjunction with knowledge possessed by subjects or others knowledgeable about matters being investigated, would provide information useful in identifying witnesses and ascertaining investigative strategies and items of evidence.

(45) (U) For the reasons set forth above, therefore, the FBI has categorically protected all records responsive to items 1-3 of Plaintiff's FOIA request pursuant to FOIA Exemption (b)(7)(A).⁹

SEGREGATION

(46) (U) The responsive records in this case were reviewed to determine whether any existed that could be segregated and released to Plaintiff in response to items 1-3 of its FOIA request. However, given the on-going nature of the investigation, the sensitivities of the materials, and the reasonable expectation of harm from premature disclosure of investigative materials here, the FBI has concluded that no non-exempt information exists that can be reasonably segregated and released to plaintiff in light of the application of Exemption (b)(7)(A). To provide any further details about this determination, however, risks the very harms that the FBI is trying to avoid by relying on Exemption (b)(7)(A).

⁹ (U) On October 6, 2017, Defendant filed a Motion to Clarify Scheduling Order, ECF No. 20, following agreement by the parties that the FBI would brief only its categorical withholding of records responsive to items 1-3 pursuant to Exemption (b)(7)(A) at this time. If Exemption (b)(7)(A) were to expire or be found to be inapplicable to all or some of the responsive records, then the FBI would brief any other exemptions that applied to responsive records or information. Accordingly, this declaration only addresses the categorical application of Exemption (b)(7)(A) in response to items 1-3 of Plaintiff's FOIA request.

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~**THE FBI'S RESPONSE TO ITEM 4 OF PLAINTIFF'S FOIA REQUEST**

(47) (U) All documents responsive to item 4 of plaintiff's request were processed to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide plaintiff with all material in the public domain and with all reasonably segregable, non-exempt information in the responsive records. No reasonably segregable, nonexempt portions have been withheld from plaintiff. Further description of the information withheld, beyond what is provided in this declaration, could identify the actual exempt information that the FBI has protected.

(48) (U) In response to item 4, the FBI located and processed a total of 106 responsive pages, as represented in the following chart.

(U) Document Title/Description	(U) Total Number of Pages	(U) Disposition
(U) Attorney General Guidelines on Victim and Witness Assistance	(U) 66	(U) 66 pages Released in Full via a link to the publicly available version on the internet
(U) Cyber Division Policy Guide, Pages 38-43 (U) This is a multi-subject document. Those portions of the document containing information responsive to plaintiff's request (pages 38-43) were processed for release.	(U) 6	(U) 6 pages Released in Part with redactions pursuant to (b)(7)(E) ¹⁰
(U) Cyber Incident Severity Schema	(U) 1	(U) 1 page Released in Full via a link to the publicly

¹⁰ (U) The redactions on the top half of page 38 concern information that is not responsive to plaintiff's FOIA request but that was processed because it appeared on the same page as responsive information.

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

(U) Document Title/Description	(U) Total Number of Pages	(U) Disposition
		available version on the internet
<p>(U) Domestic Investigations and Operations Guide (“DIOG”), Section 14.7, Threat to Life – Dissemination of Information (Pages 14-8 to 14-11) (2016 ver.)</p> <p>(U) This is a multi-subject document. The portion of the document containing information responsive to plaintiff’s request (Section 14.7) was processed for release.</p>	(U) 4	(U) 4 pages Released in Part with redactions pursuant to (b)(7)(E) ¹¹
(U) Executive Order 13636 – Improving Critical Infrastructure Cybersecurity (Feb. 19, 2013)	(U) 8	(U) 8 pages Released in Full via a link to the publicly available version on the internet
(U) Foreign Intelligence Surveillance Act and Standard Minimization Procedures Guide, Pages 36-37 and 97-98 ¹²	(U) 4	(U) 4 pages Released in Part with redactions pursuant to (b)(1)/(b)(3)

¹¹ (U) The information redacted on page 14-8 is information that is not responsive to plaintiff’s FOIA request but was processed because it appeared on the same page as responsive information. No responsive information on page 14-8 was redacted.

¹² (U) The classified information redacted after the section identified as 5.9.3.12 on page 37 of the Foreign Intelligence Surveillance Act and Standard Minimization Procedures Guide is not responsive to Plaintiff’s request – *i.e.*, does not concern notifying targets of cyber attacks. The information was processed (and protected) because it appeared on the same page as responsive information.

(U) The classified information redacted preceding the section identified as 7.13.10 on page 97 of the Foreign Intelligence Surveillance Act and Standard Minimization Procedures Guide is not responsive to Plaintiff’s request – *i.e.*, does not concern notifying targets of cyber attacks. The information was processed (and protected) because it appeared on the same page as responsive information.

(U) The classified information redacted after the section identified as 7.13.11 on page 98 of the Foreign Intelligence Surveillance Act and Standard Minimization Procedures Guide is not responsive to Plaintiff’s request – *i.e.*, does not concern notifying targets of cyber attacks. The information was processed (and protected) because it appeared on the same page as responsive information.

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

(U) Document Title/Description	(U) Total Number of Pages	(U) Disposition
(U) Intelligence Community Directive 191 – Duty to Warn (July 21, 2015)	(U) 4	(U) 4 pages Released in Full via a link to the publicly available version on the internet
(U) Presidential Policy Directive 41 – United States Cyber Incident Coordination (July 26, 2016)	(U) 7	(U) 7 pages Released in Full via a link to the publicly available version on the internet
(U) Resolution 20 – Guidelines for Warning Persons and Notifying Law Enforcement Agencies of Threats to Life or of Serious Bodily Injury	(U) 6	(U) 3 pages Released in Part with redactions pursuant to (b)(7)(E) (U) 3 pages Released in Full
	(U) 106	(U) 89 pages Released in Full (U) 17 pages Released in Part

(49) (U) As reflected above, the FBI released 89 pages in full; 86 of the pages were publicly-available records, for which the FBI provided plaintiff links to internet web addresses where the records could be accessed, after confirming that the versions on-line were the same versions possessed by the FBI. In some instances, these records originated from other Federal agencies and were not actually FBI records, although they are records on which the FBI relies in conducting its business. The remaining three (3) pages released in full came from Resolution 20 - Guidelines for Warning Persons and Notifying Law Enforcement Agencies of Threats to Life or of Serious Bodily Injury, which was not already publicly available.

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

(50) (U) The FBI also redacted information on 17 pages, as reflected above. The Released in Part pages had redactions pursuant to Exemption (b)(7)(E) on three (3) pages of Resolution 20 - Guidelines for Warning Persons and Notifying Law Enforcement Agencies of Threats to Life or of Serious Bodily Injury; all four (4) responsive pages from the Cyber Division Policy Guide; and all four (4) responsive pages from the DIOG. The Released in Part pages also had redactions pursuant to Exemptions (b)(1) and (b)(3) on the four (4) responsive pages from the Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide.

(51) (U) No pages were withheld in full.

FBI'S SEARCH IN RESPONSE TO ITEM 4

(52) (U) As with the search for records in response to items 1-3 of Plaintiff's request, the FBI determined that its standard CRS search would not be appropriate because the records sought in item 4 relate to FBI procedures rather than investigative records.

(53) (U) Accordingly, in responding to item 4, RIDS conducted a search of the FBI's "Policy Portal." The Policy Portal is located on the intranet on the FBI's classified enclave, and is the official location where the FBI maintains current agency policies and policy guides/guidance. RIDS concluded that there is no other official repository for current agency policies and policy guides/guidance.

(54) (U) The Policy Portal has a search feature that allows users to search the titles of all official FBI policies for specific terms. Given that Plaintiff's request seeks information about cyber attacks, RIDS used the search feature in the portal with the term "Cyber Division Policy Guide." In addition, RIDS was advised by the Unit Chief of its National Security Unit, who served for 11 years as a Unit Chief in NSCLB FBI's Office of General Counsel, National

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

Security and Cyber Law Branch (“NSCLB”), that potentially responsive information may also exist in the Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide. Therefore, RIDS also conducted a search within the Policy Portal using “Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide.”¹³ Once each guide was located, their Tables of Contents were reviewed for sections discussing either a duty to warn or for procedures concerning notification of victims of cyber-attacks. In addition, RIDS conducted a text search within the guides using the following terms: victim notification, targets, notification, duty to warn, disclosure, cyber attacks, and computer intrusion. Responsive pages were located within each guide and processed.

(55) (U) In an abundance of caution, RIDS took the extra step of reaching out to the offices most likely to have knowledge of the requested policy related items responsive to item 4: OGC’s NSCLB and the Cyber Division. The Cyber Division is an FBI headquarters division whose mission is to address cyber crime in a coordinated and cohesive manner. The division heads the national effort to investigate cyber crimes, including cyber-based terrorism, espionage, computer intrusions, and major cyber fraud; accordingly, it serves as the subject matter expert on cyber crimes and investigations. RIDS therefore concluded that the Cyber Division could assist in identifying records responsive to item 4, which seeks policy and guidance records related notifications about cyber attacks, since investigating cyber attacks falls within the Cyber Division’s area of responsibility and expertise. Additionally, OGC’s NSCLB provides legal guidance and advice to, among others, the Cyber Division, about their operations and activities.

¹³ (U) RIDS also attempted to search the term “duty to warn.” However, this search returned no records because the term “duty to warn” does not occur within the title of any official FBI policy.

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

Accordingly, RIDS concluded that the Cyber Law Unit, which is part of NSCLB, would similarly have the expertise to identify records responsive to item 4 of Plaintiff's request, because such records would be the foundations of the legal advice it provides to its client, the Cyber Division, about a regular aspect of its work. The Cyber Division and Cyber Law Unit confirmed that the policies RIDS located on the Policy Portal were responsive to item 4 of Plaintiff's FOIA request and also identified several other policies governing their work that contain provisions regarding notifications of cyber attacks. In short, both the Cyber Division and Cyber Law Unit confirmed that the body of policies located by and provided to RIDS are those that govern the work of the Cyber Division with respect to notifying victims or targets of cyber attacks. They govern every day work of the Cyber Division and are the policies on which NSCLB relies in advising its clients. According to the subject matter experts consulted in the Cyber Division and NSCLB's Cyber Law Unit, the FBI does not rely on any other policies or guidance documents regarding notifications to targets or victims of cyber-attacks and thus, there are no other records responsive to item 4 of Plaintiff's request.

(56) (U) As a result of the above-described search efforts, the documents identified in the preceding table were located, processed, and released to Plaintiff in whole or in part, with information redacted pursuant to one or more FOIA exemptions. Plaintiff is challenging the FBI's redactions of information pursuant to Exemptions (b)(1) and (b)(3).

EXEMPTION (b)(1) – CLASSIFIED INFORMATION

(57) (U) The FBI's withheld classified information contained in one responsive document – *i.e.*, the Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide.

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

- (58) (U) Exemption (b)(1) protects from disclosure records that are:
- (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 pursuant to such Executive Order.

5 U.S.C. § 552(b)(1).

(59) (U) The FBI's analysis of whether Exemption (b)(1) permits the withholding of agency information consists of two significant steps. The FBI must determine first whether the information contained in the records qualifies for classification under the applicable Executive Order governing classification and protection of national security information, and second whether the information actually has been classified in compliance with the various substantive and procedural criteria of the Executive Order. E.O. 13526 presently governs the classification and protection of information that affects the national security (*i.e.*, "the national defense of foreign relations of the United States," § 6.1(cc)), and prescribes the various substantive and procedural criteria for classifying information. I am bound by the requirements of E.O. 13526 when making classification determinations.

(60) (U) For information to be properly classified, and thus properly withheld from disclosure pursuant to Exemption (b)(1), the information must meet the substantive requirements set forth in E.O. 13526 § 1.1(a), which requires:

- (1) an original classification authority must have classified the information;
- (2) the information must be owned by, produced by or for, or be under the control of the United States Government;
- (3) the information must fall within one or more of the categories of information listed in § 1.4 of this order; and
- (4) the original classification authority must determine that the unauthorized disclosure of the information reasonably could be expected to result in

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

damage to the national security, which includes defense against transnational terrorism, and the original classification authority must be able to identify or describe the damage.

(61) (U) The information covered by Exemption (b)(1) here is under the control of the United States Government, falls within applicable categories of E.O. 13526 §1.4, and requires a classification marking at the SECRET level because the unauthorized disclosure of this information reasonably could be expected to cause serious damage to the national security. *See* E.O. 13526 § 1.2(a)(2).

(62) (U) In addition to these substantive requirements, certain procedural and administrative requirements set forth in E.O. 13526 must be followed before information can be considered to be properly classified, such as proper identification and marking of documents.

Specifically, E.O. 13526 requires that:

- (a) Each document was marked as required and stamped with the proper classification designation. *See* E.O. 13526 § 1.6(a)(1) – (5).
- (b) Each document was marked to indicate clearly which portions are classified and which portions are exempt from declassification as set forth in E.O. 13526 § 1.5(b). *See* E.O. 13526 § 1.6(a)(5)(c).
- (c) The prohibitions and limitations on classification specified in E.O. 13526 §1.7 were followed.
- (d) The declassification policies set forth in E.O. 13526 §§ 3.1 and 3.3 were followed.
- (e) Any reasonably segregable portions of these classified documents that did not meet the standards for classification under E.O. 13526 were declassified and marked for release, unless withholding was otherwise warranted under applicable law.

(63) (U) With the above requirements in mind, I determined that the information protected pursuant to Exemption (b)(1) here is currently and properly classified at the SECRET level pursuant to E.O. 13526.

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

(64) (U) Specifically, this information satisfies the substantive requirements of the Executive Order: it is owned by, was produced by or for, and is under the control of the U.S. Government; was classified by an original classification authority; meets all of the procedural requirements of E.O. 13526; and continues to warrant classification at the SECRET level to protect “intelligence activities (including covert action), intelligence sources or methods, or cryptology” (*see* E.O. 13526 § 1.4(c)) because unauthorized disclosure of this information could be expected to cause exceptionally serious damage to national security. Further, the classified information protected here satisfies the procedural requirements for classification. Each category of classified information is discussed further below.

(65) (U) The information protected in this case pursuant to Exemption (b)(1) was examined in light of the body of information available to me concerning the national defense and foreign relations of the United States. This information was not examined in isolation. Instead, it was evaluated with careful consideration given to the impact that its disclosure will have on other sensitive information contained elsewhere in the United States intelligence community’s files. Equal consideration was given to the impact that other information – both in the public domain and likely known or suspected by present or potential adversaries of the United States – would have upon the information protected here.

§ 1.4(c) – Intelligence Activities, Including Intelligence Sources or Methods

(66) (U) E.O. 13526 § 1.4(c) authorizes the classification of “intelligence activities (including covert action), intelligence sources or methods, or cryptology.” An intelligence activity, source, or method includes any intelligence action or technique utilized by the FBI against a targeted individual or organization that has been determined to be of national security

UNCLASSIFIED//~~LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

interest, and includes any procedure (human or non-human) utilized to obtain information concerning such individual or organization. An intelligence activity, source, or method has two characteristics. First, the intelligence activity, source, or method, and information generated by it, is needed by United States Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality must be maintained with respect to the use or non-use of the activity, source, or method, including intelligence sources, if the viability, productivity, and usefulness of the activity, source, and method are to be preserved.

(67) (U) Intelligence activities, sources, and methods must be protected from disclosure in every situation in which a certain intelligence capability, technique, or interest – or its specific use – is unknown to the groups against which it is deployed, since those groups could take countermeasures to nullify its effectiveness. Intelligence activities, sources, and methods are valuable only so long as they remain unknown and unsuspected. Once an intelligence activity, source, or method – or the fact of its use or non-use in a certain situation – is discovered, its continued successful use is seriously jeopardized.

(68) (U) Moreover, the U.S. Government must do more than prevent explicit references to intelligence activities, sources, and methods; it must also prevent indirect references to them. One vehicle for gathering information about the U.S. Government's capabilities is by reviewing officially-released information. We know that terrorist organizations and other hostile or Foreign Intelligence groups have the capacity and ability to gather information from myriad sources, analyze it, and deduce means and methods from disparate details to defeat the U.S. Government's collection efforts. Thus, even seemingly innocuous, indirect references to an intelligence activity, source, or method could have significant adverse

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

effects when juxtaposed with other publicly-available data.

(69) (U) Here, the information withheld from pages 36-37 and 97-98 of the Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide pursuant to Exemption (b)(1) was withheld to protect intelligence activities and methods utilized by the FBI for gathering intelligence.

(70) (U) The FBI redacted this information to protect information that would reveal intelligence gathering capabilities of certain intelligence activities or methods directed at specific types of targets. The Foreign Intelligence Surveillance Act (FISA) is an intelligence activity or method. Disclosure of procedures for how the FBI conducts surveillance under the FISA, handles FISA-derived information, and otherwise implements and utilizes the technique would reveal classified information about this intelligence activity/method, and would undermine or potentially negate the effectiveness of this very important intelligence-gathering technique, thereby risking serious harm to the national security. Further explanation justifying the classification of the redacted information and application of Exemption (b)(1) to the Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide, pages 36-37 and 97-98, cannot be provided on the public record. The FBI can provide additional information and explanation through *in camera* submissions, if requested by the Court.

(71) (U) I have determined that disclosure of this specific and detailed information from Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide, which is still used by the FBI today to gather intelligence information, could reasonably be expected to cause serious damage to the national security.

(72) (U) Specifically, with the aid of this detailed information, hostile entities could

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

develop countermeasures that would severely disrupt the FBI's intelligence-gathering capabilities. Such disruption would, in turn, severely damage the FBI's efforts to detect and apprehend violators of national security and criminal laws of the United States.

(73) (U) Accordingly, I have determined that this information is currently and properly classified at the SECRET level, in accordance with E.O. 13526 § 1.4(c), and is exempt from disclosure pursuant to FOIA Exemption (b)(1). This same information is also protected pursuant to Exemption (b)(3), in conjunction with the National Security Act of 1947, 50 U.S.C. § 3024(i)(1).

(74) (U) In my judgment, the disclosure of this information could reasonably be expected to cause serious damage to the national security, and its withholding outweighed the benefit of disclosure. Consequently, I exercised my prerogative as an original classification authority and designated that information as classified in the interest of national security, and invoked FOIA Exemption (b)(1) to prevent disclosure. Likewise, the justifications for the withheld classified information have been prepared with the intent that they be read with consideration given to the context in which the classified information is found. This context includes not only the surrounding unclassified information, but also other information already in the public domain, as well as information likely known or suspected by hostile intelligence entities. It is my judgment that any greater specificity in the description and justification set forth with respect to information relating to intelligence activities (including special activities) or intelligence sources or methods could reasonably be expected to jeopardize the national security of the United States. As a result, the classified information appearing in these documents has been appropriately classified pursuant to E.O. 13526 and withheld pursuant to FOIA Exemption

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

(b)(1).

EXEMPTION (b)(3) – INFORMATION PROTECTED FROM DISCLOSURE BY ANOTHER STATUTE

(75) (U) Exemption (b)(3) protects information that is specifically exempted from public disclosure by a statute that :

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

5 U.S.C. § 552(b)(3).

(76) (U) Information about intelligence sources and methods are exempt under Exemption (b)(3), including those classified intelligence sources and methods previously described above and protected pursuant to Exemption (b)(1). Specifically, disclosure of information about intelligence sources and methods is prohibited pursuant to the National Security Act of 1947, as amended, which provides that the Director of National Intelligence (DNI) “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1).

(77) (U) Exemption (b)(3) was asserted in conjunction with the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), to withhold information on pages 36-37 and 97-98 of the Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide. As relevant to the FBI’s application of Exemption (b)(3), the National Security Act of 1947 was enacted before the date of enactment of the OPEN FOIA Act of 2009, and on its face, leaves no discretion to agencies about withholding from the public information about intelligence sources

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

and methods.

(78) (U) In order to fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community (“IC”) for the classification of information under applicable laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. §§ 3024(i)(1). Pursuant to this authority and in order to implement the requirement that intelligence sources and methods be protected, the DNI has promulgated Intelligence Community Directive (“ICD”) 700, mandating that the IC shall protect “national intelligence and intelligence sources and methods and activities from unauthorized disclosure.” *See* ICD 700, ¶ 2a (June 7, 2012). The FBI is one of the agencies comprising the IC, and as such must protect intelligence sources and methods.

(79) (U) The FBI has determined that intelligence sources and methods would be revealed if any of the withheld information is disclosed to plaintiff, and therefore, that it is prohibited from disclosing the information redacted on pages 36-37 and 97-98 of the Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide under the National Security Act of 1947, 50 U.S.C. § 3024 (i)(1).

(80) (U) Accordingly, the FBI applied Exemption (b)(3) to protect such information. The same information was also protected pursuant to Exemption (b)(1) because it is currently and properly classified, as demonstrated above.

SEGREGABILITY

(81) (U) As previously noted, the FBI located 106 pages of records there were responsive to item 4 of plaintiff’s FOIA request. Of those, 86 pages were already publicly

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

available, and 20 pages of which were processed for release to plaintiff. Of those 20 pages, 17 of them were released in part and three were released in full. Altogether then, 89 pages were released in full and 17 pages were released in part. Plaintiff is challenging the redactions on all 17 of the released in part pages.

(82) (U) Following its line-by-line review of the documents to identify exempt information and segregate any reasonably segregable, non-exempt information, RIDS determined that certain information on 17 pages responsive to item 4 was exempt but that the pages could otherwise be released once such information was redacted. Each of these pages is comprised of a mixture of non-exempt information that could reasonably be segregated for release; information that is exempt under one or more FOIA exemptions; and information that is so inextricably intertwined with exempt information that it was not reasonably segregable because once all exempt information was accounted for, the only remaining information would consist of disjointed words, phrases, or sentences that taken separately or together would have minimal or no information content. The non-exempt information that could be reasonably segregated for release was provided to plaintiff. The remaining information was determined to be exempt or not reasonably segregable.

CONCLUSION

(83) (U) The FBI performed adequate and reasonable searches for responsive records; processed all such records and released all reasonably segregable non-exempt information from documents responsive to plaintiff's FOIA requests that are subject to FOIA. The FBI processed the records under the access provisions of the FOIA to achieve maximum disclosure. Records responsive to items 1-3 of Plaintiff's request were properly withheld in a categorical fashion

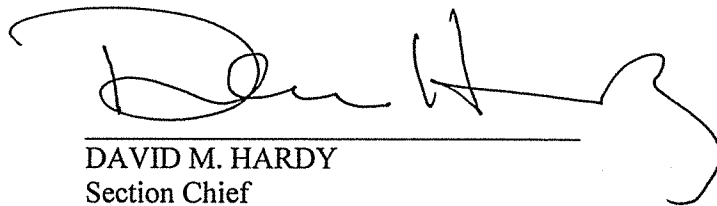
~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

under Exemption (b)(7)(A) to avoid adversely affecting the pending investigation into Russia's interference in the 2016 Presidential election. Moreover, records responsive to item 4 of Plaintiff's request were properly withheld pursuant to FOIA Exemptions (b)(1) and (b)(3), the two exemptions that Plaintiff is challenging. The FBI carefully examined these records and determined that the challenged information withheld in response to item 4 would, if disclosed, reveal classified and statutorily protected information. After extensive review of the documents at issue, I have determined that there is no further non-exempt information that can be reasonably segregated and released without revealing exempt information.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A through D attached hereto are true and correct copies.

Executed this 12th day of October, 2017.



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

~~UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE~~

