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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
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8 SUSAN MAE POLK,
9 Plaintiff,

10 v.

11 FEDERAL BUREAU OF
12 INVESTIGATION,
13 Defendant.

Case No. 14-cv-4667-PJH

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT,
DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT, AND
DENYING PLAINTIFF'S MOTIONS TO
STRIKE**

14
15 Plaintiff Susan Mae Polk brings this action for injunctive relief pursuant to the
16 Freedom of Information Act, 5 U.S.C. § 552, against defendant Federal Bureau of
17 Investigation ("FBI"). Before the court are cross-motions for summary judgment filed by
18 plaintiff and defendant, and motions to strike filed by plaintiff. Having read the parties'
19 papers and carefully considered their arguments and the relevant legal authority, the
20 court hereby GRANTS defendant's motion, and DENIES plaintiff's motions.

21 **THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT**

22 The Freedom of Information Act ("FOIA") requires federal agencies to disclose
23 public information upon a citizen's request unless the information falls within exemptions
24 from disclosure identified in 5 U.S.C. § 552(b). See 5 U.S.C. § 552(a)(1), (2) and (3);
25 Oregon Natural Desert Association v. Locke, 572 F.3d 610, 614 (9th Cir. 2009). Where
26 an agency refuses to produce requested information, FOIA permits an aggrieved party to
27 file a civil action in federal district court requesting that the court order the agency to
28 produce the information. See 5 U.S.C. 552(a)(4)(B).

1 The nine statutory exemptions listed in 5 U.S.C. § 552(b)(1)-(9) “must be narrowly
2 construed.” Lion Raisins, Inc. v. U.S. Dep’t of Agriculture, 354 F.3d 1072, 1079 (9th Cir.
3 2004) (citation and quotation omitted). Moreover, even when material falls within one of
4 FOIA’s nine exemptions, an agency must disclose “any reasonably segregable portion of
5 a record . . . after deletion of the portions which are exempt.” 5 U.S.C. § 552(b). An
6 agency invoking an exemption bears the burden of proving that it applies. Yonemoto v.
7 Dep’t of Veterans Affairs, 686 F.3d 681, 688 (9th Cir. 2012).

8 The Privacy Act of 1974 (“Privacy Act”), 5 U.S.C. § 552a, regulates the disclosure
9 by federal agencies of information about individuals. In general, the purpose of the
10 Privacy Act is “to ‘protect the privacy of individuals’ through regulation of the ‘collection,
11 maintenance, use, and dissemination of information’ by federal agencies.” Rouse v. U.S.
12 Dep’t of State, 567 F.3d 408, 413 (9th Cir.2009) (citation omitted). The Privacy Act
13 allows individuals the opportunity to review information about themselves that is
14 maintained in federal agency records. Sussman v. U.S. Marshals Serv., 494 F.3d 1106,
15 1119-20 (D.C. Cir. 2007). An individual seeking information or records about
16 himself/herself must file a Freedom of Information Privacy Act (“FOIPA”) request with the
17 appropriate agency. See 5 U.S.C. § 552a(d).

18 The Privacy Act provides civil remedies to individuals aggrieved by a federal
19 agency’s failure to comply with the requirements of the Act. Rouse, 567 U.S. at 413.
20 Specifically, the Privacy Act permits two types of legal claims: (1) claims challenging the
21 accuracy of information maintained by an agency (5 U.S.C. §§ 552a(e)(5) and (6), and
22 552a(g)(l)(C)); and (2) claims seeking access to information maintained by an agency (5
23 U.S.C. §§ 552a(d)(l) and 552a(g)(l)(B)). Id. at 413-414.

24 Although FOIA and the Privacy Act are distinct, and each “has its own functions
25 and limitations,” Greentree v. U.S. Customs Serv., 674 F.2d 74, 76 (D.C. Cir. 1982), there
26 is considerable interplay between the two statutes vis-à-vis regulations concerning
27 individuals and public access to such information. The Privacy Act was “designed to
28 provide individuals with more control over the gathering, dissemination, and accuracy of

1 agency information about themselves,” while FOIA was “intended to increase the public's
2 access to governmental information and was drafted with a strong presumption for
3 disclosure to allow public scrutiny of government processes.” See Pierce v. Dep’t of U.S.
4 Air Force, 512 F.3d 184, 191 (5th Cir. 2007). Working in combination, the two statutes
5 restrict the disclosure of personal information about an individual that might violate his
6 right to privacy but provide for allowing access to an individual to obtain his own records.
7 Although each statute contains different exemptions and exclusions, requests under
8 FOIA and FOIPA are generally treated the same in terms of the administrative procedure.

9 BACKGROUND

10 This case arises from plaintiff Susan Mae Polk’s request pursuant to FOIA for an
11 order compelling the Federal Bureau of Investigation (“FBI”) to provide her with “all
12 records” to which she “may be entitled under the Freedom of Information Act in
13 connection with case No. 496768RB1.” Plaintiff submitted the original request, which
14 was dated June 18, 2013, to the FBI’s field office at 450 Golden Gate Avenue, in San
15 Francisco, California. She also provided her date of birth and social security number.

16 In 2006, plaintiff began serving a sentence in the custody of the California
17 Department of Corrections following a conviction for the second-degree murder of her
18 husband. In the June 18, 2013 letter, plaintiff stated that she had discovered the
19 reference to case No. 496768RB1 “in reviewing materials for preparation of” her petition
20 for writ of habeas corpus. She referred to case No. 496768RB1 as an “FBI case
21 number,” and stated that she “wasn’t aware [she] was under investigation or that there
22 was an FBI investigation associated with [her] name or [her] case.” She also stated that
23 she had submitted an earlier request in 2011, but had received no response. (She has
24 provided no copy of any earlier request.)

25 When plaintiff received no response to her request for records and information
26 relating to case No. 496768RB1, she filed a motion for injunctive relief in her federal
27 habeas case – Polk v. Hughes, C-12-5986 VC (N.D. Cal.) – on July 10, 2014. She
28 sought an order compelling the FBI to release copies of all records pertaining to its

1 investigation of her under case No. 496768RB1. On September 9, 2014, the court
2 denied the motion, on the basis that it was not filed in a lawsuit brought against the FBI.
3 On October 20, 2014, plaintiff filed the present action against the FBI.

4 In the “Application under the Freedom of Information Act (FOIA) for Injunction to
5 Compel FBI to Release Records to Applicant” (Doc. 1), which the court construes as the
6 complaint, plaintiff alleges that she was unaware she was “under investigation by the FBI”
7 until she found the reference to the “FBI investigation number in Bail Study prepared by
8 the Contra Costa County Probation Department in 2003.” Complaint (“Cplt”) ¶ III(3).¹

9 Plaintiff asserts that because she is “actually innocent and ha[s] never committed
10 any crimes,” she wants to know “what prompted the FBI investigation, what investigators
11 found, how extensive their investigation was or has been, when it was initiated, and why
12 there was or has been an investigation.” Cplt ¶ VI(1). In addition, she wants to know “if
13 FBI investigators were involved in the county’s investigation of [her] husband’s death, to
14 what extent, and the basis for the bureau’s involvement[,]” and whether “FBI investigators
15 interviewed any of the witnesses or potential witnesses, in that case, who said
16 investigators interviewed, and what transpired in those interviews.” Cplt ¶ VI(2).

17 Plaintiff also submitted a request for leave to proceed in forma pauperis, which
18 was granted in an order issued on November 14, 2014. The court directed that the Clerk
19 issue summons, and that the U.S. Marshall for the Northern District of California serve
20 the summons and complaint.

21 The FBI asserts that FOIA requests submitted to the FBI are processed at the
22 FBI’s Record/Information Dissemination Section (“RIDS”), Records Management Division
23 (“RMD”), in Winchester, Virginia. According to a declaration filed by David M. Hardy, the
24 Section Chief of RIDS, in support of the FBI’s motion for summary judgment, the FBI’s

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26 ¹ Plaintiff attaches two pages that she asserts are part of the 2003 Contra Costa Bail
27 Study. The second of these pages lists plaintiff’s name, date of birth, driver’s license
28 number, Social Security number, and the notation “FBI: 496768RB1.” (The complaint
was subsequently filed under seal because it included personal identifying information,
which under Federal Rule of Civil Procedure 5.2 was required to be redacted, and the
court was unable to redact only that information.)

1 website directs that requestors send their FOIA requests to RIDS in Winchester, Virginia.
2 See Declaration of David M. Hardy (Doc. 20-1 – “Hardy Decl.”) ¶ 8.

3 Mr. Hardy, who supervises the employees at FBI Headquarters (“FBIHQ”) who
4 plan, develop, direct, and manage responses to requests for access to FBI records and
5 information pursuant to FOIA, states that FBIHQ/RIDS did not learn of plaintiff’s June 18,
6 2013, request until after she had filed the present lawsuit. Id.; see also Supplemental
7 Declaration of David M. Hardy in support of FBI’s opposition to plaintiff’s motion for
8 summary judgment (Doc. 43-1 – “Supp. Hardy Decl.”) ¶ 6.

9 Mr. Hardy adds that because plaintiff’s request was mailed to the San Francisco
10 Field Office, “there was an apparent oversight in routing the request to FBIHQ/RIDS for
11 handling.” Hardy Decl. ¶ 8; see also Hardy Supp. Decl. ¶ 8. He asserts that RIDS took
12 action immediately upon receipt of plaintiff’s lawsuit to locate plaintiff’s request at the San
13 Francisco Field Office, and did locate the request through communication with the Field
14 Office. Hardy Supp. Decl. ¶ 8.

15 By letter dated January 20, 2015, the FBI acknowledged receipt of plaintiff’s
16 request, and stated that it was searching the indices to the Central Records System for
17 information responsive to her request. Hardy Decl. ¶ 9. In his declarations, Mr. Hardy
18 describes in considerable detail the FBI’s Central Records System (“CRS”)² and the
19 search for information responsive to plaintiff’s request, undertaken by RIDS in the CRS.
20 Id. ¶¶ 11-20; Supp. Hardy Decl. ¶¶ 5-9.

21 First, after unsuccessfully searching for any reference to “496768RB1,” RIDS
22 determined that the alleged “FBI case number” listed in the June 18, 2013 FOIA/FOIPA
23 request did not correspond to the case file numbers, or components thereof, that the FBI
24 uses when a case file is opened. Hardy Decl. ¶¶ 12, 19; Hardy Supp. Decl. ¶ 10.

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26 _____
27 ² Mr. Hardy explains that the CRS is comprehensive in nature and scope, as it is where
28 the FBI indexes information about individuals, organizations, events, and subjects of
investigative interest. Hardy Decl. ¶¶ 11-13. It “spans the entire FBI organization” and
encompasses the records of FBIHQ, FBI Field Offices, and FBI Legal Attaché Offices
worldwide. Id. ¶ 11.

1 Rather, as RIDS learned from an inquiry to the FBI's San Francisco Field Office and the
2 Criminal Justice Information Services ("CJIS") section, the number "496768RB1"
3 referenced a request made by local law enforcement to the FBI for a criminal history
4 summary (also known as a "rap sheet") of plaintiff. Hardy Decl. ¶ 19 & n.4; Supp. Hardy
5 Decl. ¶ 10.

6 Mr. Hardy explains that the arrest data included in a "rap sheet" is obtained from
7 information submitted to the FBI from agencies having criminal justice responsibilities.
8 Hardy Decl. ¶ 19 n.4. The FBI does not maintain copies of "rap sheets" requested by
9 local law enforcement, and the fact that the FBI may have received a request for an
10 individual's "rap sheet" does not mean that the individual is or ever was of investigative
11 interest to the FBI. Hardy Decl. ¶ 19 n.4; Supp. Hardy Decl. ¶ 10.

12 Second, RIDS conducted a search via its automated and manual indices for both
13 main files and cross-reference records relating to plaintiff's FOIA request for records on
14 herself and subject to FOIA, using variations of plaintiff's name in combination with her
15 Social Security number and date of birth. Hardy Decl. ¶¶ 17-20.

16 According to Mr. Hardy, the FBI's search located no main file records (records
17 from files in which plaintiff was the subject of investigation, but returned twelve cross-
18 reference records (records contained in a main file record about a different subject). Id.
19 ¶ 19. The records consisted of "Airtels" (FBI documents used to communicate
20 information between FBIHQ and the field offices regarding investigations) and letters
21 concerning the FBI's investigation of allegations of criminal activity involving a third-party
22 victim and third-party individuals of investigative interest during the period 1986-1988. Id.
23 ¶ 33 & Exh. D. Mr. Hardy states that there was no indication from the information located
24 as a result of the FBI's search of the automated and manual indices of the CRS that
25 responsive material would reside in any other FBI system or location. Id. ¶ 20.

26 By letter dated January 29, 2015, the FBI released records to plaintiff. Id. ¶ 10.
27 These were the twelve cross-referenced records described above. The FBI advised that
28 it had reviewed 47 pages of records and was releasing 45 pages in full or in part, with

1 certain information withheld pursuant to Privacy Act and FOIA exemptions. Id. In his
2 declaration, Mr. Hardy describes the documents and the basis for the exemptions under
3 which it redacted or withheld certain information. Id. ¶ 33. The redactions and
4 withholdings were based on FOIA exemptions 3 (pen register information protected by
5 statute), 6 and 7(C) (names and identifying information about third parties, the disclosure
6 of which would constitute an unwarranted invasion of personal privacy), and 7(D)
7 (information compiled for law enforcement purposes that would disclose techniques and
8 procedures of law enforcement investigations or prosecutions). See id. (citing 5 U.S.C.
9 § 552(b)(3), (6), (7)(C), and (7)(D)).

10 Plaintiff was informed she could appeal the FBI's determination by filing an
11 administrative appeal with the Department of Justice ("DOJ") Office of Information Policy
12 ("OIP") within 60 days from the date of the letter. Id. There is no evidence that plaintiff
13 did so.

14 Each side now seeks summary judgment. Plaintiff also seeks an order striking the
15 Hardy Declaration, and an order striking the FBI's opposition to her motion.

16 DISCUSSION

17 A. Legal Standard

18 A party may move for summary judgment on a "claim or defense" or "part of . . . a
19 claim or defense." Fed. R. Civ. P. 56(a). Summary judgment is appropriate when there
20 is no genuine dispute as to any material fact and the moving party is entitled to judgment
21 as a matter of law. Id.

22 "FOIA cases are typically and appropriately decided on motions for summary
23 judgment." Defenders of Wildlife v. U.S. Border Patrol, 623 F.Supp.2d 83, 87 (D.D.C.
24 2009); Bigwood v. U.S. Agency for Int'l Dev., 484 F.Supp. 2d 68, 73 (D.D.C. 2007).

25 However, because FOIA cases rarely involve issues of disputed fact, the court need not
26 utilize the typical summary judgment standard. See Hajro v. U.S. C.I.S., 807 F.3d 1054,
27 1065 (9th Cir. 2015); see also Yonemoto, 686 F.3d at 688; Minier v. CIA, 88 F.3d 796,
28 800 (9th Cir. 1996). Instead, the court conducts a two-step inquiry.

1 First, the court weighs whether the agency has established that it fully discharged
 2 its obligations under FOIA. Zemansky v. U.S. E.P.A., 767 F.2d 569, 571 (9th Cir. 1985).
 3 An agency can establish this by showing that it conducted a search reasonably
 4 calculated to uncover all relevant documents. Ancient Coin Collectors Guild v. U.S. Dep't
 5 of State, 641 F.3d 504, 5145 (D.C. Cir. 2011); Lahr v. Nat'l Transp. Safety Bd., 569 F.3d
 6 964, 986 (9th Cir. 2009); Weisberg v. U.S. Dep't of Justice, 705 F.2d 1344, 1350-51 (D.C.
 7 Cir. 1983). An agency may make this showing through “reasonably detailed,
 8 nonconclusory affidavits submitted in good faith.” Zemansky, 767 F.2d at 571 (citation
 9 omitted).

10 A search need not be exhaustive. See Miller v. U.S. Dep't of State, 779 F.2d
 11 1378, 1383 (8th Cir. 1985); Shaw v. U.S. Dep't of State, 559 F.Supp. 1053, 1057 (D.D.C.
 12 1983). As long as the agency conducts a reasonable search, it fulfills its obligations
 13 under FOIA, even if the search yields no responsive records. See Iturralde v.
 14 Comptroller of the Currency, 315 F.3d 311, 315 (D.C. Cir. 2003); Oglesby v. U.S. Dep't of
 15 Army, 920 F.2d 57, 68 (D.C. Cir. 1990). “[T]he issue to be resolved is not whether there
 16 might exist any other documents possibly responsive to the request, but rather whether
 17 the search for those documents was adequate.” Zemansky, 767 F.2d at 571. In
 18 considering whether an agency made an adequate search for records pursuant to FOIA,
 19 the facts must be viewed in the light most favorable to the requestor. Weisberg, 745 F.2d
 20 at 1485.

21 If the agency meets this burden, the court then considers whether the agency has
 22 shown that any information not disclosed falls within one of the FOIA exemptions. Where
 23 the government withholds documents pursuant to one of the nine enumerated
 24 exemptions, “the burden is on the agency to sustain its action.” 5 U.S.C. § 552(a)(4)(B);
 25 see U.S. Dep't of State v. Ray, 502 U.S. 164, 173 (1991); Dobronski v. F.C.C., 17 F.3d
 26 275, 277 (9th Cir. 1994). “A basic policy of FOIA is to ensure that Congress and not
 27 administrative agencies determines what information is confidential.” Lessner v. U.S.
 28 Dep't of Commerce, 827 F.2d 1333, 1335 (9th Cir. 1987). For this reason, the courts do

1 not give deference to a federal agency's determination that the requested information
2 falls under a particular FOIA exemption. Carlson v. U.S. Postal Serv., 504 F.3d 1123,
3 1127 (9th Cir. 2007).

4 B. Motions for Summary Judgment

5 In her motion, plaintiff argues that she is entitled to judgment as a matter of law
6 because the FBI has admitted in its answer to the complaint that it failed to respond to
7 her request within the time specified in 5 U.S.C. § 552(a)(6)(A)(i), and because the FBI
8 failed to provide a Vaughn index.

9 The FBI argues in its motion that it conducted an adequate search, and found no
10 records pertaining to any investigation of plaintiff; and that as to the records it located
11 regarding the third-party investigation in the period 1986-1988, it had properly redacted or
12 withheld certain information pursuant to FOIA exemptions 3, 6, 7(C), and 7(D), and had
13 met FOIA's segregability requirement.

14 The court finds that plaintiff's motion must be DENIED and that the FBI's motion
15 must be GRANTED. The primary issue raised in plaintiff's motion is that the FBI did not
16 produce records from a purported "active investigation by the FBI associated with
17 [plaintiff's] name," case number "496768RB1." The motion is thus based on the baseless
18 speculation that the reference to "FBI: 496768RB1" on a single page of an
19 unauthenticated bail study prepared during a state criminal case against plaintiff means
20 that she was or is under FBI investigation, and that an "FBI investigative file" pertaining to
21 such investigation exists.

22 The FBI has demonstrated that no such investigative file exists. The undisputed
23 evidence shows that "496768RB1" does not correspond to an FBI investigative file, and
24 that the number instead refers to a request made to the FBI by a local law enforcement
25 agency for a criminal history check (or "rap sheet") on plaintiff. Further, the evidence
26 shows that the FBI does not routinely maintain a copy of "rap sheets" within its
27 investigative files, and here, that the FBI did not locate a "rap sheet" on plaintiff in any FBI
28 investigative file.

1 It is also undisputed that the FBI conducted a reasonable and adequate search in
2 response to what it properly determined was a FOIA/FOIPA request. To meet its burden
3 in a FOIA case, an agency may submit affidavits or declarations that explain in
4 reasonable detail the scope and method of the agency's search. Anderson v. Fed.
5 Bureau of Prisons, 806 F. Supp. 2d 121 (D.D.C. 2011). These affidavits should generally
6 “set[] forth the search terms and the type of search performed, and aver[] that all files
7 likely to contain responsive materials (if such records exist) were searched.” Mobley v.
8 CIA, 806 F.3d 568, 580-81 (D.C. Cir. 2015) (citation and quotation omitted).

9 In the absence of contrary evidence, such affidavits or declarations are sufficient
10 to demonstrate the agency's compliance with FOIA. Perry v. Block, 684 F.2d 121, 127
11 (D.C. Cir. 1982); Anderson, 806 F. Supp. 2d at 126. Affidavits submitted by an agency to
12 demonstrate the adequacy of its response are presumed to be in good faith. Hamdan v.
13 U.S. Dep’t of Justice, 797 F.3d 759, 770-71 (9th Cir. 2015). This presumption of good
14 faith cannot be rebutted by “purely speculative claims about the existence and
15 discoverability of other documents.” SafeCard Servs., Inc. v. SEC, 926 F.2d 1197, 1201
16 (D.C. Cir. 1991) (internal quotation marks and citation omitted).

17 The court finds that the search as described by Mr. Hardy in his declarations was
18 reasonable and diligent, and sufficient to have located any files in which plaintiff was the
19 subject of FBI investigation (*i.e.*, an FBI main file on plaintiff), had any such files existed.
20 In addition, however, the FBI has shown, through Mr. Hardy’s declarations (signed under
21 penalty of perjury) that no such records were located. The only records located that
22 reference plaintiff involve what appears to have been a request in 1985 that the FBI
23 investigate what plaintiff and/or her husband believed was criminal activity involving third
24 parties.

25 Plaintiff’s entire argument is premised on her unsupported belief that the reference
26 to “496768RB1” in the Contra Costa County Probation Department Bail Study is a
27 reference to an FBI investigation of her. However, she fails to rebut the FBI’s showing
28 that “496768RB1” refers to the County’s request for a “rap sheet,” and more importantly,

1 fails to identify any deficiency in the FBI's search methodology and fails to challenge the
2 propriety of the exemptions claimed by the FBI in connection with the records it did locate
3 and provide to her.³

4 Plaintiff is not entitled to judgment on the grounds that the FBI was late in
5 responding to her June 18, 2013, FOIA/FOIPA request. Under 5 U.S.C. § 552(a)(6)(A),
6 "[e]ach agency, upon any request for records . . . shall . . . determine within 20 days
7 (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such
8 request whether to comply with such request, and shall immediately notify the person
9 making such request of such determination and the reasons therefor" The FBI has
10 established that because plaintiff did not submit the request to RIDS in Virginia, pursuant
11 to the detailed instructions on the FBI's website regarding FOIA/FOIPA requests, it was
12 unaware that plaintiff had submitted the request until the complaint in the present action
13 was served, with a copy of the request attached.

14 It is true that approximately eight weeks elapsed between the time the FBI was
15 properly served and January 20, 2015, when it sent plaintiff a letter acknowledging her
16 request. However, by January 29, 2015, the FBI had completed its search and had
17 provided plaintiff with the records located during that search. Given that plaintiff's sole
18 request was for "all records to which I may be entitled under the Freedom of Information

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20 ³ Instead, plaintiff argues at some length in her papers that the records provided by the
21 FBI relating to the 1985 investigation – as to which the FBI claimed the FOIA exemptions
22 – are "irrelevant" and non-responsive to her FOIA request. Thus, the court need not
23 consider the propriety and applicability of the claimed exemptions. Similarly, the court
24 need not consider plaintiff's claim that the FBI violated its FOIA obligations by failing to
25 provide a Vaughn index. A Vaughn index, derived from Vaughn v. Rosen, 484 F.2d 820
26 (D.C. Cir. 1973), is a list "identifying each document withheld, the statutory exemption
27 claimed, and a particularized explanation of how disclosure of the particular document
28 would damage the interest protected by the claimed exemption." See Wiener v. F.B.I.,
943 F.2d 972, 977 (9th Cir.1991). In Vaughn, the court held that an agency could be
required to produce an index when agency withholds information in its response to valid
FOIA request. 484 F.2d at 826-28. However, where a declaration explains in detail an
agency's justifications for withholding information, and establishes that the requested
information need not be disclosed, a Vaughn index is not required. See Fiducia v. U.S.
Dep't of Justice, 185 F.3d 1035, 1042-43 (9th Cir. 1999); Weiner, 943 F.2d at 978; King
v. U.S. Dep't of Justice, 772 F.Supp.2d 14 (D.D.C. 2010). Here, not only has plaintiff
failed to challenge the propriety of the claimed exemptions, but the Hardy Declaration
lays out in sufficient detail the justifications for the FBI's withholdings.

1 Act in connection with case No. 496768RB1,” and that RIDS located no investigative file
2 involving plaintiff, no file with the number “496768RB1,” and no records showing any
3 FOIA/FOIPA requests submitted by plaintiff prior to June 18, 2013, and also given that
4 RIDS promptly provided plaintiff with the only records it did locate that referenced her by
5 name – the 1986-1988 records involving the third-party investigation – the court finds no
6 basis for concluding that the FBI’s response constituted unreasonable delay.

7 In addition, plaintiff’s complaint requests injunctive relief in the form of an order
8 directing the FBI to respond to her request. The FBI has responded and has informed
9 plaintiff that no FBI case exists with the number “496768RB1.” “[F]ederal courts have no
10 further statutory function to perform” once all requested records are surrendered. Perry
11 v. Block, 684 F.2d 121, 125 (D.C. Cir. 1982). Moreover, a plaintiff who does not allege
12 any improper withholding of records fails to state a claim for which the court has
13 jurisdiction under FOIA. Goldgar v. Office of Admin., Executive Office of the President,
14 26 F.3d 32, 34, (5th Cir. 1994). It is the agency’s burden to prove the non-existence of
15 the records sought, id., and the court finds that the FBI has met this burden. Accordingly,
16 plaintiff’s claim for injunctive relief under FOIA is moot.⁴

17 CONCLUSION

18 In accordance with the foregoing, plaintiff’s motion for summary judgment is
19 DENIED, and the FBI’s motion is GRANTED. Plaintiff’s objections to the FBI’s reply to
20 plaintiff’s opposition to the FBI’s motion are OVERRULED.

21 The motion to strike the Hardy Declaration is DENIED as procedurally improper,
22 whether the motion is considered as an objection to evidence provided by the FBI in
23 support of its motion, see Civ. L.R. 7-3(a), or as a request for Rule 11 sanctions, see Fed.
24 R. Civ. P. 11(c)(2). Moreover, the court finds that the objections to the declaration are
25 baseless.

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27 ⁴ As for plaintiffs’ argument that she is entitled to an award of costs, FOIA allows for an
28 award of reasonable attorney fees and litigation costs only where a complainant “has
substantially prevailed.” 5 U.S.C. § 552(a)(4)(E). As plaintiff has not prevailed in this
action, she is not entitled to costs.

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The motion to strike portions of the FBI's opposition to plaintiff's motion is DENIED, as the court finds, pursuant to the discussion at 1-3, above, with regard to FOIA/FOIPA, that the FBI reasonably construed plaintiff's request for records pertaining to what she believed was a criminal investigation of herself as a FOIPA request. For the same reason, the motion to strike the references in the Supplemental Hardy Declaration to plaintiff's "FOIPA request" is DENIED. The remainder of the motion to strike the Supplemental Hardy Declaration is baseless, to the extent it is comprehensible, and is therefore DENIED.

IT IS SO ORDERED.

Dated: January 7, 2016



PHYLLIS J. HAMILTON
United States District Judge