UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DULCIDIO QUIRINDONGO, *pro se,*	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 04-0814 (RCL)**
	)	
DRUG ENFORCEMENT ADMINISTRATION, *et al.*,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants hereby move for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure because there is no genuine issue as to any material fact and Defendants are entitled to judgment as a matter of law. In support of this motion, Defendant respectfully submits the attached memorandum of points and authorities with Exhibits 1 through 8 attached thereto, statement of material facts not in genuine dispute, and a proposed order.[1]

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[1] Plaintiff will take notice that any factual assertions contained in the accompanying declarations and other attachments in support of Defendants' motion for summary judgment may be accepted by the Court as true unless Plaintiff controverts them with his own affidavit or other documentary evidence. *See Neal v. Kelly*, 963 F.2d 453 (D.C. Cir. 1992), and LCvR 7.

As stated in Fed. R. Civ. P. 56(e):

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Respectfully submitted,

/ s /

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/ s /

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/ s /

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DULCIDIO QURINDONGO, pro se,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 04-1378 (RCL)**
	)	
	)	
DRUG ENFORCEMENT ADMINISTRATION, *et al.*,	)	
	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendant files this Memorandum in support of Defendants' Motion for Summary Judgment. Plaintiff's Complaint should be dismissed pursuant to Fed. R. Civ. P. 56 because there is no genuine issue as to any material fact and Defendants are entitled to judgment as a matter of law. Defendants' statement of material facts not in genuine dispute and Exhibits 1 through 8, attached hereto, support this memorandum.

I. INTRODUCTION

This case arises under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act ("PA"), 5 U.S.C. § 552a, and concerns the processing of Plaintiff's FOIA/PA requests involving eight federal agencies. Because of direct requests and referrals, the following agencies have been involved in processing Plaintiff's requests: (1) the Drug Enforcement Administration ("DEA"), (2) the Internal Revenue Service ("IRS"), (3) the United States Customs Service ("USCS"),[1] (4) the Executive Office for United States Attorneys ("EOUSA"),

[1] The former U.S. Customs Service ("USCS") has been reorganized with the former U.S. Immigration and Naturalization Service into, *inter alia*, U.S. Immigration and Customs Enforcement ("ICE") and the U.S. Customs and Border Protection ("CBP").

(5) the Federal Bureau of Investigation ("FBI"), (6) the Federal Bureau of Prisons ("BOP"), (7) the United States Marshals Service ("USMS"), and (8) the Criminal Division of the United States Department of Justice ("DOJ")("Criminal Division"). These eight agencies properly responded to Plaintiff's FOIA/PA requests as demonstrated by the attached declarations of: (1) Leila I. Wassom, Paralegal Specialist, Freedom of Information Operations Unit ("SARO"), DEA (Exhibit 1); (2) Anne M. Jensen, Senior Disclosure Specialist, Philadelphia Disclosure Office, IRS (Exhibit 2); (3) Gloria L. Marshall, Chief, Information Disclosure Unit, Mission Support Division, Office of Investigations for U.S. Immigration and Customs Enforcement ("ICE") (Exhibit 3); (4) John W. Kornmeier, Attorney Advisor, EOUSA, DOJ (Exhibit 4); (5) David M. Hardy, Section Chief, Record/Information Dissemination Section ("RIDS"), Records Management Division, FBI Headquarters ("FBIHQ"), DOJ (Exhibit 5); (6) Wilson J. Moorer, Paralegal Specialist, Office of General Counsel, FOIA Section, BOP (Exhibit 6); (7) Arleta D. Cunningham, Acting FOIA/PA Officer, USMS (Exhibit 7); and (8) Kathy Hsu, Litigation Attorney, FOIA/PA Unit, Criminal Division, DOJ (Exhibit 8) For the reasons set below, Defendants are entitled to summary judgment.

II. STATEMENT OF FACTS

See Defendants' Statement of Material Facts to which ther is no Genuine Dispute, *infra.*

III. STANDARD OF REVIEW

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Diamond v. Atwood*, 43 F.3d 1538, 1540 (D.C. Cir. 1995); *Molerio v. FBI*, 749 F.2d 815, 823 (D.C. Cir. 1984). Where no

genuine dispute exists as to any material fact, summary judgment is required. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

A genuine issue of material fact is one that could change the outcome of the litigation. *Id.* at 247. The party moving for summary judgment need not prove the absence of an essential element of the nonmoving party's case. *Celotex*, at 325. "The burden on the moving party may be discharged by 'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the non-moving party's case." *Id.* Once the moving party has met its burden, the non-movant may not rest on mere allegations, but must proffer specific facts showing that a genuine issue exists for trial. *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Fed. R. Civ. P. 56 requires the party opposing summary judgment go beyond the pleadings, and by affidavits, depositions, answers to interrogatories or admissions set forth "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324; *Banks v. C & P Tel. Co.*, 802 F.2d 1416 (D.C. Cir. 1986). To avoid summary judgment, the Plaintiff must state specific facts or present some objective evidence that would enable the court to find an entitlement to relief.

In an opinion issued the same day as *Celotex,* the Supreme Court explained the circumstances where summary judgment is appropriate: "if the evidence is merely colorable . . . or is not sufficiently probative . . . summary judgment may be granted. . . . (T)he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252. Unsupported speculation is not enough to defeat a summary judgment motion; the existence of specific material evidentiary facts must be shown. Fed. R. Civ. P. 56(e) (the nonmoving party may not rest on mere allegations but "must come forward with 'specific facts showing there is a

genuine issue for trial."). *See also Hayes v. Shalala*, 902 F.Supp. 259, 263 (D.D.C. 1995) (opposition to summary judgment must consist of more than mere unsupported allegations or denials); *Johnson v. Digital Equip. Corp.,* 836 F.Supp. 14, 18 (D.D.C. 1993) (evidence that is merely colorable or not sufficiently probative is insufficient to defeat summary judgment); *Baton v. Powell*, 912 F.Supp. 565, 578 (D.D.C. 1996).

The mere existence of a factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. *See Anderson*, 477 U.S. at 247-248. Perhaps most significantly, the court authorized weighing the evidence at the summary judgment stage of litigation, stating that the "purpose of summary judgment is to 'pierce the pleadings, and to assess the proof in order to see whether there is a need for a trial.'" *Id.* (citation omitted). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Id.* at 249-250 (citations omitted). If the evidence is "merely colorable, or is not significantly probative," or the record taken as a whole could not "lead a rational trier of fact to find for the nonmoving party, summary judgment is proper." *Id.*; *Matsushita*, 475 U.S. at 587.

Thus, the non-movant cannot manufacture genuine issues of material fact with "some metaphysical doubt as to the material facts," (*Matsushita* at 586), or with "conclusory allegations . . . unsubstantiated assertions, . . . or a scintilla of evidence." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (citations omitted). Importantly for this case, "[b]y pointing out the absence of evidence to support the nonmoving party's case, the moving party can demonstrate that there is no genuine issue as to any material fact, therefore entitling it to summary judgment." *Shelborne v. Runyon*, 1997 WL 527352 at **3, *citing Celotex*, 477 U.S. at 325.

In *Celotex,* the Supreme Court further instructed that the "(s)ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Celotex*, 477 U.S. at 327 (*quoting* Fed. R. Civ. P. 1).
A court should grant summary judgment if the moving party submits affirmative evidence that negates an essential element of the nonmoving party's claims or by demonstrating to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Celotex*, 477 U.S. at 331.

The Courts have held that FOIA cases should ordinarily be disposed of by motions for summary judgment. *Cappabianca v. Commissioner, U.S. Customs Serv.*, 847 F. Supp. 1558, 1562 (M.D. Fla. 1994) ("once documents in issue are properly identified, FOIA cases should be handled on motions for summary judgment") (*citing Miscavige v. IRS*, 2 F.3d 366, 368 (11th Cir. 1993)). In a FOIA lawsuit, an agency is entitled to summary judgement once it demonstrates that no material facts are in dispute and that each document that falls within the class requested either has been produced, not withheld, is unidentifiable, or is exempt from disclosure. *Students Against Genocide v. Dept. of State*, 257 F.3d 828, 833 (D.C. Cir. 2001); *Weisberg v. U.S. Dept. of Justice*, 627 F.2d 365, 368 (D.C. Cir. 1980).

An agency satisfies the summary judgment requirements under Rule 56 in a FOIA case by providing the Court and the plaintiff with affidavits or declarations and other evidence which show that the documents are exempt from disclosure. *Hayden v. National Security Agency Cent. Sec. Serv., 608 F.2d 1381, 1384, 1386 (D.C. Cir. 1979), cert. denied*, 446 U.S. 937 (1980); *Church of Scientology v. U.S. Dept. of Army*, 611 F.2d 738, 742 (9th Cir. 1980). Summary judgment may be awarded to an agency in a FOIA case solely on the basis of agency affidavits

[or declarations] "when the affidavits describe 'the documents and the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.'" *Trans Union LLC v. Federal Trade Commission*, 141 F. Supp. 2d 62, 67 (D.D.C. 2001) (*quoting Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981)); *see also Public Citizen, Inc. v. Dept. of State*, 100 F. Supp. 2d 10, 16 (D.D.C. 2000); *McGhee v. Central Intelligence Agency*, 697 F.2d 1095, 1102 (D.C. Cir. 1983); *Citizens Commission on Human Rights v. FDA*, 45 F.3d 1325, 1329 (9th Cir. 1995); *Bowen v. FDA*, 925 F.2d 1224, 1227 (9th Cir. 1991).

IV. ARGUMENT

A. DEFENDANTS HAVE SUBMITTED PROPER DECLARATIONS AND *VAUGHN* INDEX.

In moving for summary judgment in a FOIA case, agencies must establish a proper basis for their withholding of responsive documents. "In response to this special aspect of summary judgment in the FOIA context, agencies regularly submit affidavits . . . in support of their motions for summary judgment against FOIA Plaintiffs." *Judicial Watch v. U.S. Dept. of Health and Human Services*, 27 F. Supp. 2d 240, 242 (D.D.C. 1998). These declarations or affidavits (singly or collectively) are often referred to as a *Vaughn* index, after the case of *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977, 94 S. Ct. 1564 (1974). There is no set formula for a *Vaughn* index. "[I]t is well established that the critical elements of the *Vaughn* index lie in its function, and not in its form." *Kay v. FCC*, 976 F. Supp. 23, 35 (D.D.C. 1997). "The materials provided by the agency may take any form so long as they give the reviewing court a reasonable basis to evaluate the claim of privilege." *Delaney, Midgail & Young,*

Chartered v. IRS, 826 F.2d 124, 128 (D.C. Cir. 1987). *See also Keys v. U.S. Dept. of Justice*, 830 F.2d 337, 349 (D.C. Cir. 1987); *Hinton v. Dept. of Justice*, 844 F.2d 126, 129 (3d Cir. 1988).

The *Vaughn* Index serves a threefold purpose: (1) it identifies each document withheld; (2) it states the statutory exemption claimed; and (3) it explains how disclosure would damage the interests protected by the claimed exemption. *See Citizens Commission on Human Rights v. FDA*, 45 F.3d 1325, 1326 (9th Cir. 1995). "Of course the explanation of the exemption claim and the descriptions of withheld material need not be so detailed as to reveal that which the agency wishes to conceal, but they must be sufficiently specific to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

The eight Defendants have submitted supporting declarations and DEA a separate *Vaughn* index in support of this motion. Each agency or component's declaration was prepared by an individual familiar with the handling of the direct or referred request.

DEA has submitted a declaration prepared by Leila I. Wassom, Paralegal Specialist, Freedom of Information Operations Unit ("SARO"), Freedom of Information and Records Management Section, DEA Headquarters, Washington, D.C. Exhibit 1 (hereafter "Wassom Decl.") ¶ 1. Ms. Wassom reviews for litigation purposes both the initially processed and appealed FOIA and PA requests received by DEA. *Id.* ¶ 2. Ms. Wassom's duties require that she is familiar with the policies and practices of DEA regarding the processing and release of information requested under the FOIA/PA, and the application of the FOIA/PA and exemptions for which she has received formal and on the job training. *Id.* ¶ 3. In preparing this declaration, she has read and is familiar with the complaint in the above entitled action, and the records maintained by the DEA Freedom of Information Operations Unit (SARO). *Id.* ¶ 4. SARO is the

DEA office responsible for responding to, the search for, and the processing and release of information requested under FOIA and PA. Ms. Wassom is familiar with the policies, practices and procedures employed by SARO that relate to the search for, and the processing and release of information responsive to FOI/PA requests received by the DEA. *Id*. ¶ 5. Attached as Exhibit J to the Wassom Declaration is DEA's *Vaughn* Index.

IRS has submitted a declaration prepared by Anne M. Jensen, Senior Disclosure Specialist in the IRS, Philadelphia Disclosure Office located in Philadelphia, Pennsylvania. Exhibit 2 (hereafter "Jensen Decl.") ¶ 1. Ms. Jensen responsibilities include the processing of FOIA/PA requests. *Id*. ¶ 2.

ICE has submitted a declaration prepared by Gloria L. Marshall, Chief of the Information Disclosure Unit, Mission Support Division, Office of Investigations, ICE. Exhibit 3 (hereafter "Marshall Decl.") ¶ 2. Ms. Marshall's duties include general management oversight of the Information Disclosure Unit, which processes requests for information and records created and controlled by ICE. *Id*. Among the numerous requests processed by her office are the FOIA/PA requests received throughout the headquarters and field offices of all components within ICE. *Id*.

EOUSA has submitted a declaration prepared by John W. Kornmeier, Attorney Advisor with the Executive Office for United States Attorneys, United States Department of Justice. Exhibit 4 (hereafter "Kornmeirer Decl.") ¶ 1. Mr. Kornmeier responsibilities include: acting as a as a liaison with other divisions and offices of the DOJ in responding to requests and the litigation filed under both the FOIA and the PA; the review of FOIA/PA requests for access to records located in EOUSA and 94 U.S. Attorneys offices, and the case files arising therefrom; the review of correspondence related to requests; the location of responsive records; and preparation of responses thereto by EOUSA to assure that determinations to withhold (or release) such

responsive records are in accordance with the provisions of both the FOIA and the PA, as well as DOJ regulations (28C.F.R §§ 16.3 et. seq. and § 16.40 et seq.). *Id.* The Declaration also describes Plaintiff's request "to obtain expeditious processing of the requested records compiled in the Eastern and Middle districts of the EOUSA in Pennsylvania [*sic*]." Kornmeier Decl. ¶ 3.

The FBI has submitted a declaration prepared by David M. Hardy, Section Chief, Record/Information Dissemination Section ("RIDS"), Records Management Division ("RED") at FBI Headquarters ("FBIHQ"). Exhibit 5 (hereafter "Hardy Decl.") ¶ 1. Mr. Hardy is familiar with the procedures followed by the FBI in responding to FOIA and PA requests for information from its files pursuant to the provisions of the FOIA and PA. *Id.* Specifically, he is aware of the treatment which has been afforded Plaintiff's FOIA/PA request, which seeks access to records pertaining to Plaintiff at FBIHQ, and the Pennsylvania and Puerto Rico field offices. *Id.* ¶ 3.

The BOP has submitted a declaration prepared by Wilson J. Moorer, Paralegal Specialist, FOIA Section, Office of General Counsel, BOP. Exhibit 6 (hereafter "Moorer Decl.") ¶ 1. Mr. Moorer's duties include assisting the Chief, FOIA/PA Section and Freedom of Information Administrator in review and possible release of information requested from BOP. *Id.*

The USMS has submitted a declaration prepared by Arleta D. Cunningham, Acting FOIA/PA Officer, Office of General Counsel, USMS. Exhibit 7 (hereafter "Cunningham Decl.") ¶ 1. In this capacity Ms. Cunningham is experienced with the procedures for responding to requests made pursuant to the FOIA and PA. *Id.*

The DOJ Criminal Division has submitted a declaration prepared by Kathy Hsu, Litigation Attorney, FOIA/PA Unit, Criminal Division, DOJ. Exhibit 8 (hereafter "Hsu Declaration") ¶ 2. Ms. Hsu's duties are to review complaints in lawsuits filed under the FOIA and PA. Hsu Decl. ¶ 2.

As set forth above, the declarations submitted in support of this motion meet the requirements of *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974), and provide the Court with the requisite basis to grant Defendants' motion. Because Defendants here have released all non-exempt responsive documents on requests challenged by Plaintiff, the Court should grant summary judgment in favor of Defendants.

B. DEFENDANTS HAVE PERFORMED ADEQUATE SEARCHES AND HAVE DISCLOSED ALL NON-EXEMPT INFORMATION.

DEA, IRS, ICE, EOUSA, FBI, BOP, USMS and the Criminal Division of DOJ have performed adequate searches in response to Plaintiff's direct FOIA requests. In responding to a FOIA request, an agency is under a duty to conduct a reasonable search for responsive records. *Oglesby v. U.S. Dept. of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990); *Cleary, Gottlieb, Steen & Hamilton v. Dept. of Health, et al.*, 844 F. Supp. 770, 776 (D.D.C. 1993); *Weisberg v. U.S. Dept. of Justice*, 705 F.2d 1344, 1352 (D.C. Cir. 1983). This "reasonableness" standard focuses on the method of the search, not its results, so that a search is not unreasonable simply because it fails to produce relevant material. *Id.* at 777 n.4. An agency is not required to search every record system, but need only search those systems in which it believes responsive records are likely to be located. *Oglesby*, 920 F.2d at 68. Simply stated, the adequacy of the search is "dependent upon the circumstances of the case." *Truitt v. Dept. of State*, 897 F.2d 540, 542 (D.C. Cir. 1990).

The search standards under FOIA do not place upon the agency a requirement that it prove that all responsive documents have been located. *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 892 n.7 (D.C. Cir. 1995). It has been held that "the search need only be reasonable; it does not have to be exhaustive." *Miller v. Dept. of State*, 779 F.2d 1378, 1383 (8th Cir. 1985) *citing National Cable Television Association v. FCC*, 479 F.2d 183, 186 (D.C. Cir. 1973). Even

when a requested document indisputably exists or once existed, summary judgment will not be defeated by an unsuccessful search for the document so long as the search was diligent. *Nation Magazine*, 71 F.3d at 892 n.7. Additionally, the mere fact that a document once existed does not mean that it now exists; nor does the fact that an agency created a document necessarily imply that the agency has retained it. *Maynard v. CIA*, 982 F.2d 546, 564 (1st Cir. 1993).

The burden rests with the agency to establish that it has "made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby*, 920 F.2d at 68; *see SafeCard Servs. v. SEC*, 926 F.2d 1197, 1201 (D.C. Cir. 1991). "An agency may prove the reasonableness of its search through affidavits of responsible agency officials so long as the affidavits are relatively detailed, non-conclusory and submitted in good faith." *Miller,* 779 F.2d at 1383; *Goland*, 607 F.2d at 352. Though the "affidavits submitted by an agency are 'accorded a presumption of good faith,'" *Carney v. Dept. of Justice*, 19 F.3d 807, 812 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (*quoting SafeCard Servs. v. SEC*, 926 F.2d at 1200), the burden rests with the agency to demonstrate the adequacy of its search. Once the agency has met this burden through a show of convincing evidence, the burden shifts to the requester to rebut the evidence by a showing of bad faith on the part of the agency. *Miller*, 779 F.2d at 1383. A requester may not rebut agency affidavits with purely speculative allegations. *See Carney*, 19 F.3d at 813; *SafeCard*, 926 at 1200; *Maynard v. CIA*, 986 F.2d 547, 559-560 (1st Cir. 1993).

The fundamental question is not "whether there might exist any other documents responsive to the request, but rather whether the search for those documents was adequate." *Steinberg v. Dept. of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994) (*quoting Weisberg v. Dept. of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

DEA, IRS, EOUSA, FBI, BOP, USMS and the Criminal Division of DOJ conducted adequate searches for responsive records. ICE conduct an adequate search for a relevant request in its and CBP databases and found no record of a request from Plaintiff.

1. DEA

In Count I of Plaintiff's Complaint, Plaintiff seeks review of DEA actions on his request for information. Compl. Count I ¶¶ 1, 9. DEA received a letter from Plaintiff dated September 19, 2003, requesting all records that referenced his name, specifying a search of criminal investigatory files. *See* Wassom Decl. ¶ 6. and Exhibit A attached thereto. Records responsive to Plaintiff's direct request were reasonably likely to be found in the Investigative Reporting and Filing System ("IRFS"), JUSTCE/DEA-008. Wassom Decl. ¶ 18. IRFS is a DEA Privacy Act System of Records that contains all administrative, general and investigative files compiled by DEA for law enforcement purposes. *Id*. The DEA Headquarters file is the official file and investigative files maintained in the field are, by DEA practice, procedures and instructions, a duplicate of the Headquarters file. *Id*. ¶ 19. Therefore, no other records system within DEA would reasonably contain information responsive to Plaintiff's request. *Id.*

The DEA Narcotics and Dangerous Information System ("NADDIS") is the index to and the practical means by which DEA retrieves investigative reports and information from IRFS. Wassom Decl. ¶ 20. Individuals are indexed and identified in NADDIS by their name, Social Security Number and/or date of birth. *Id*. All the NADDIS information responsive to Plaintiff's request is investigatory data complied for law enforcement purposes. Wassom Decl. ¶ 22. DEA's law responsibility is the enforcement of federal drug laws, including the Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 801 et seq. *Id*. The records in NADDIS have been exempted from the access provisions of the Privacy Act, pursuant to 5 U.S.C. § 552a(j)(2).

See, 28 C.F.R. § 16.98 (2003). A description of responsive materials has been provided by DEA and a *Vaughn* Index has been prepared. Wassom Decl. ¶ ¶ 23 - 32 and Exhibit J attached thereto. DEA applied FOIA exemptions (b)(2), (b)(7)(C), (b)(7)(D) and (b)(7)(F) in withholding information. *Id.* ¶ 33.

Accordingly, the DEA has conducted an adequate search and has not improperly withheld any information from Plaintiff.. Therefore, the Court should grant Summary Judgment in favor of Defendant DEA and dismiss Count I with prejudice.

2. IRS

In Count II, Plaintiff seeks review of IRS actions on his request for records. Compl. Count II ¶¶ 1, 5. By letter dated October 21, 2003, IRS received a letter from Plaintiff requesting copies of his personal records for his personal use and all Criminal Investigatory records between years 1980 and the present. *See* Jensen Decl. ¶ 3.

The Integrated Data Retrieval System ("IDRS") is the IRS's primary resource for researching taxpayer account information. Jensen Decl. ¶ 9. Once a taxpayer's account has been retrieved on IDRS, the locations of tax returns and other paper documents which are pertinent to account transactions can be determined by listings of Transaction Codes with corresponding Document Locator Numbers ("DLN") included within the account information *Id*. If DLNs are listed, they indicate where certain types of documents may be physically located. *Id*.
In order to determine whether the IRS maintained any responsive records pertaining to Plaintiff's October 21, 2003 FOIA request IRS used codes command codes IMFOLI, IMFOLT & ENMOD (execution codes that directly access the IRS's databases which list locations of IDRS taxpayer accounts) to attempt to retrieve information responsive to Plaintiff's request. *Id.*

The IRS executed a search using Plaintiff's social security number. *Id*. ¶ 10. The results of the search was that no freeze or transactions codes existed pertaining to Plaintiff. *Id.* The lack of freeze or transaction codes on Plaintiff 's account is significant relevant to the existence of Criminal Investigation records) because it indicates that the IRS did not initiate any criminal investigations pertaining to Plaintiff. *Id*. By September 23, 2004 letter, the IRS informed Plaintiff that it maintained no criminal investigatory records for the tax years 1980 to the present pertaining to him. *Id*. ¶ 11. The only tax records the IRS discovered relating to Plaintiff were jointly-filed records for tax years 1994 through 1998. *Id*. ¶ 12. The IRS forwarded copies of transcripts of these records without charge to Plaintiff. *Id.*

Accordingly, the IRS has conducted an adequate search and has not improperly withheld any information from Plaintiff. Therefore, the Court should grant Summary Judgment in favor of Defendant IRS and dismiss Count II with prejudice.

3. ICE

In Count III, Plaintiff alleges that he requested records from the U.S. Customs Service and that the Customs Service did not respond. Compl. Count III ¶¶ 1, 2. ICE queried its databases for any record of receipt of a FOIA/PA request from Plaintiff, but found no record of receipt of a FOIA/PA request from or on behalf of Plaintiff. Marshall Decl. ¶ 4. ICE also requested that the Office of Regulations and Rulings, U.S. Customs and Border Protection ("CBP"), query its databases for any record of a FOIA/PA request or appeal from Plaintiff, but CBP found no record of a FOIA/PA request received from or on behalf of Plaintiff. *Id* ¶ 5.

Accordingly, ICE has conducted an adequate search and found no record of any request from Plaintiff, and hence has not withheld any information from Plaintiff. Therefore, the Court should grant Summary Judgment in favor of Defendant ICE and dismiss Count III with prejudice.

4. EOUSA

In Count IV, Plaintiff seeks expeditious processing of his request for records from the Eastern and Middle Districts of Pennsylvania. Compl. Count IV ¶¶ 1, 12. By letter dated September 19, 2003, Plaintiff requested a copy of all his records in the United States Attorney's Offices in Puerto Rico and all districts of Pennsylvania. Kornmeier Decl. ¶ 4 and Exhibit A attached thereto. EOUSA assigned four file numbers to his request: one for the District of Puerto Rico and one for each of the three districts of Pennsylvania. *Id.* ¶ 5. Plaintiff requested expeditious processing for two districts: the Middle District of Pennsylvania (assigned # 03-3176) and the Eastern District of Pennsylvania (assigned # 03-3174). *Id.* By November 25, 2003 letter, EOUSA responded to request 03-3176 informing Plaintiff that a search for records in the Middle District of Pennsylvania had revealed no records. *Id.* ¶ 6 and Exhibit B attached thereto. By March 22, 2004 letter, EOUSA responded to request 03-3174 for records from the Eastern District of Pennsylvania. *Id.*

In Count IV, Plaintiff's seeks only "expeditious processing of the requested records compiled in the Eastern and Middle Districts of . . . Pennsylvania." Compl. ¶ 12. EOUSA has fully responded to the requests identified in Count IV of Plaintiff's Complaint. Accordingly, EOUSA has conducted an adequate search and has not improperly withheld any information from Plaintiff. Therefore, the Court should grant Summary Judgment in favor of Defendant EOUSA and dismiss Count IV with prejudice.

5. FBI

In Count V, Plaintiff seeks review of FBI actions on his request for information in connection to his name. Compl. Count V ¶¶ 1, 7. By letter dated September 19, 2003, Plaintiff requested any and all documents, records and information that any part of the FBI has or had in

its possession that is in any way connected to, related to, or even remotely in reference to his name. *See* Hardy Decl. ¶ 5.

The FBI utilizes its Central Records System ("CRS") to maintain all information which it has acquired in the course of fulfilling its mandated law enforcement responsibilities. Hardy Decl. ¶ 10. The records maintained in the CRS consist of administrative, applicant, criminal, personnel, and other files compiled for law enforcement purposes. *Id*. The CRS system consists of a numerical sequence of files broken down according to subject matter, which may relate to an individual, organization, company, publication, activity, or intelligence matter. *Id*. Certain records in this system are maintained at FBIHQ, and records which are pertinent to specific field offices are maintained in those field offices. *Id.*

FBIHQ and each field office access the CRS through the General Indices, which are arranged in alphabetical order and consist of an index on various subjects, including the names of individuals and organizations. Hardy Decl. ¶ 11. Only information considered pertinent relevant, or essential for future retrieval is indexed. *Id*. Communication directed to FBIHQ from the various field offices and Legal Attaches ("Legats") are filed in the pertinent case files and indexed to the names of individuals, groups, or organizations which are listed in the case captions or titles as subjects, suspects, or victims. Hardy Decl. ¶ 12. Searches of the index to locate records concerning particular subjects are made by searching the names of the subject requested in the index. *Id*. The entries in the General Indices fall into two categories: (1) A "main" entry, or "main" file, carries the name corresponding with a subject requested in the index; and (2) "Reference" entries, sometimes called "cross references" are generally only mentioned or reference to an individual, organization, or other subject matter contained in a document located in another "main" file on a different subject matter. Hardy Decl. ¶ 13.

On October 16, 1995, the Automated Case Support ("ACS") was implemented for all Field Offices, Legats, and FBIHQ. *Id*. Over 105 million records were converted from previously utilized automated systems used by the FBI. *Id*. ACS consists of three automated applications that support case management functions for all FBI investigative and administrative cases. *Id.* The first application is the Investigative Case Management ("ICM"), which provides the ability to open, assign, and close investigative and administrative cases, as well as to set, assign, and track leads. *Id*. ¶ 14(a). The second function is the Electronic Case File ("ECF"), which serves as the central electronic repository for the FBI's official text-based documents. *Id.* ¶ 14(b). The third function of ACS is the Universal Index ("UNI"), which permits the continuation of the "universal" concepts of ACS by providing a complete subject/case index to all investigative and administrative cases. *Id.* ¶ 41(c).

The decision to index names other than subjects, suspects and victims is a discretionary decision made by the investigative FBI Special Agent ("SA"), the supervisor in the field office conducting the investigation, and the supervising SA at FBIHQ. *Id.* ¶ 15. The FBI does not index every name in its files; it indexes only that information considered to be pertinent, relevant, or essential for future retrieval. *Id*. Without a "key" or index to this mass of data, information essential to ongoing investigations could not be readily retrieved. *Id*. The FBI files would thus be merely archival in nature and could not be effectively used to serve the mandated mission of the FBI, which is to investigate violations of federal criminal statutes. *Id.* Therefore, the General Indicies to the CRS files are the means by which the FBI can determine what retrievable information, if any, the FBI may have in its CRS files on a particular subject matter. *Id.*

In the absence of a specific request for a search of cross-references at the administrative level, the FBI's current policy is to search and identify only "main files" responsive to a

FOIA/PA request. *Id*. ¶ 16. When the RIDS staff at FBIHQ conducted a search of CRS for records responsive to Plaintiff's request, no "main" files were identified. *Id*.

Accordingly, the FBI has conducted an adequate search and has not improperly withheld any information from Plaintiff. Therefore, the Court should grant Summary Judgment in favor of Defendant FBI and dismiss Count V with prejudice.

6. BOP

In Count VI, Plaintiff seeks review of BOP actions on his request for records. Compl. Count VI ¶¶ 1, 8. By October 21, 2003 letter, Plaintiff submitted a FOIA request in which he requested the following information: "all SIS, SIA, Disciplinary, Custody, Security ITS, ISM, Education, Medical, Mental Health, and other records in all the following institutions and his Central file: Skulkill, Fairington, Terre Haute, Oklahoma City and USP Beaumont." Moorer Decl. ¶ 3 and Exhibit A attached thereto. Plaintiff's FOIA request was received at the BOP's FOIA Office, Washington, D.C. on November 3, 2003, and forwarded to BOP's South Central Regional Office (SCRO) for processing. *Id*. ¶ 4 and Exhibit B attached thereto. The request was received by the SCRO, logged in and assigned FOIA Request Number 2004-01217.

The SCRO responded to FOIA Request Number 2004-01217 on November 17, 2003 informing Plaintiff that the majority of the records created by the BOP regarding him were being maintained in his Central File at his current place of incarceration. *Id*. Plaintiff was informed that the appropriate BOP staff would provide him the opportunity to review the files he requested and obtain copies of any releasable documents. *Id*. Plaintiff was provided the opportunity to review his Central File on January 22, 2004 and he requested and received copies of documents in his Central File that totaled 90 pages. *Id*. and Exhibit C attached thereto.

On January 29, 2004, BOP received a referral of two documents that had originated with BOP from the USMS for BOP action and direct response to Plaintiff. *Id*. ¶ 6 and Exhibit D attached thereto. The referral was logged in and assigned FOIA Request Number 2004-03057, and BOP responded to FOIA Request Number 2004-03057 on March 19, 2004, releasing one page in its entirety and one page with redactions pursuant to 5 U.S.C. §552 (b)(7)(C) and (b)(7)(F). *Id*. and Exhibit E. attached thereto.

Accordingly, BOP has conducted an adequate search and has not improperly withheld any information from Plaintiff. Therefore, the Court should grant Summary Judgment in favor of Defendant BOP and dismiss Count VI with prejudice.

7. USMS

In Count VII, Plaintiff seeks expeditious processing of his request to USMS for records. Compl. Count VII ¶¶ 1, 5. On October 30, 2003, USMS Office of General Counsel ("OGC") received a letter dated October 21, 2003, by which plaintiff requested a copy of all records pertaining to him. *See* Cunningham Decl. ¶ 2.

A search for records pertaining to Plaintiff was conducted in USMS district offices for the locations identified in Plaintiff's request, i.e., Middle, Western, and Eastern Districts of Pennsylvania, District of New Jersey, Eastern District of Texas, Western District of Oklahoma, District of Puerto Rico, and Southern District of Indiana. Cunningham Decl. ¶ 4. As a result of this search, 20 pages of records pertaining to Plaintiff were located by the USMS Office in the Eastern District of Pennsylvania in the Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS), JUSTICE/USM-007, systems of records. *Id.* ¶ 5. Records maintained in these systems are compiled for law enforcement purposes in connection with

USMS receipt, processing, transportation and custody of federal prisoners, the execution of Federal arrest warrants, and the investigation of fugitive matters. *Id.*

By January 22, 2004 letter, USMS informed Plaintiff that after conducting a search of its files, 20 pages of records had been located which were indexed to his name. *Id.* ¶ 6. Two of these pages originated with the BOP and were referred to BOP for disclosure determination and direct response to Plaintiff in accordance with 28 C.F.R. § 16.42(c), 17 pages were released to Plaintiff in their entirety, and the remaining three pages were released to Plaintiff with minimal redactions based on FOIA exemptions 5and 7(C). Cunningham Decl. ¶ 14. No additional documents pertaining to Plaintiff were located and all nonexempt portions of responsive documents have been segregated and released to Plaintiff. *Id*.

Accordingly, the USMS did a adequate search and has not improperly withheld any information from Plaintiff. Therefore, the Court should grant Summary Judgment in favor of Defendant USMS and dismiss Count VII with prejudice.

8. Criminal Division, DOJ

In Count VIII, Plaintiff seeks review of Criminal Division actions on his request for information. Compl. Count VIII ¶¶ 1, 7. By letter dated March 11, 2004, the FOIA/PA Unit acknowledged receipt of Plaintiff's PA request and notified him that it had been assigned number CRM-200400372P. Hsu Decl. ¶ 6. Plaintiff also was advised that the FOIA/PA Unit was unable to search for the records requested because Plaintiff had not furnished a Privacy Act Identification and Request Form and did not indicate on the Criminal Division's List of Systems of Records Form which systems of records maintained by the Criminal Division Plaintiff wanted searched. *Id.* The March 11, 2004 letter went on to state that Plaintiff's October 21, 2003

request (CRM-200400372P) would be closed, but when the appropriate forms were completed and returned, a new case number would be assigned and the request processed. *Id*. The two above-mentioned forms were enclosed with the March 11, 2004 acknowledgment letter. *Id*. ¶ 6 and Exhibit 3 attached thereto.

On or about March 24, 2004, Plaintiff returned the Privacy Act Identification and Request Form and the Criminal Division's List of Systems of Records Form, on which he had indicated which systems maintained by the Criminal Division Plaintiff wanted searched. *Id*. ¶ 7 and Exhibit 4 attached thereto. By May 22, 2004 letter, the FOIA/PA Unit acknowledged receipt of Plaintiff's March 24, 2004 PA request and assigned it number CRM-200400628P. *Id.*. ¶ 8. and Exhibit 5 attached thereto.[2] By July 27, 2004 letter, the FOIA/PA Unit advised Plaintiff that the search he had requested of Criminal Division files had been completed and no records responsive to his request were located. *Id*. ¶ 9.

Accordingly, the Criminal Division of DOJ has conducted an adequate search and has not improperly withheld any information from Plaintiff. Therefore, the Court should grant Summary Judgment in favor of Defendant Criminal Division and dismiss Count VIII with prejudice.

C. DEFENDANTS PROPERLY WITHHELD CERTAIN RECORDS UNDER THE FOIA AND THE PA.

1. The Records Plaintiff Requested From DEA on Himself Are Exempt from Privacy Act's Disclosure Provisions.

Subsection (j)(2) of the PA allows an agency to promulgate regulations exempting from mandatory disclosure:

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[2] For clarification, the FOIA/PA Unit's May 22, 2004 letter addressed to Plaintiff, mis-stated that Plaintiff's PA request (CRM-200400628P) was *dated* March 31, 2004. The request was *received* by the Criminal Division on March 31, 2004, but was actually dated March 24, 2004. See Exhibits 4 and 5.

> records maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of ...(B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

5 U.S.C. § 552a(j)(2).

Plaintiff requested from DEA all records that referenced his name, specifying a search of criminal investigatory files. *See* Wassom Decl. ¶ 6. All the information responsive to Plaintiff's request on himself to DEA is investigatory data compiled for law enforcement purposes. Wassom Decl. ¶ 22. DEA's law enforcement responsibility is the enforcement of federal drug laws, including the Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 801 et seq. *Id*. The records requested have been exempted from the access provisions of the Privacy Act, pursuant to 5 U.S.C. § 552a(j)(2). *See* 28 C.F.R. § 16.98 (2003). Therefore, DEA properly applied PA Exemption (j)(2) to withheld this information from Plaintiff.

2. DEA Properly Applied Exemption 2.

FOIA Exemption 2 exempts from mandatory disclosure records "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. § 552(b)(2). Exemption 2 applies primarily to two types of materials: (1) internal agency matters so routine or trivial that they could not be "subject to . . . a genuine and significant public interest;" and (2) internal agency matters of some public interest "where disclosure may risk circumvention" of statutes or agency regulations. *Dept. of Air Force v. Rose*, 425 U.S. 352, 369-70 (1976); *National Treasury Employees Union v. U.S. Customs Service*, 802 F.2d 525, 528-30 (D.C. Cir. 1986); *Crooker v.*

Bureau of Alcohol, Tobacco and Firearms, 670 F.2d 1051, 1073-74 (D.C. Cir. 1981) (*en banc*). Depending upon the nature of the information, documents will fall within either the "high (b)(2) category" or the "low (b)(2) category."

"High (b)(2)" information relates to more substantive internal matters. *See Schiller v. NLRB*, 964 F.2d 1205, 1207 (D.C. Cir. 1992). Withholding is permitted in this category to the extent that disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, would disclose guidelines for law enforcement investigations, or would risk circumvention of an agency statute or impede the effectiveness of an agency's law enforcement activities. *See Crooker*, 670 F.2d at 1051; *Hardy v. ATF*, 631 F.2d 653, 656 (9th Cir. 1980).

"Low (b)(2)" information refers to internal procedures and practices of an agency the disclosure of which would constitute an administrative burden unjustified by any genuine and significant public benefit. *Martin v. Lauer*, 686 F.2d 24, 34 (D.C. Cir. 1982). "Low b(2)" information can be protected only if the information qualifies as a personnel rule or internal practice of an agency or is sufficiently related to such a rule or practice. *See Schwaner v. Dept. of the Air Force*, 898 F.2d 793, 795 (D.C. Cir. 1990). Thus, trivial administrative data, such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and similar administrative markings are exempt from disclosure, so agencies are not be burdened by responding to requests for trivial information unlikely to be the subject of public interest. *Martin*, 686 F.2d at 34.

Deference has been accorded to law enforcement matters under Exemption 2. Courts have interpreted this exemption to apply to a wide range of information, including general guidelines for conducting investigations (*See, e.g. HE, Inc. v. Dept. of Justice*, 983 F.2d 248, 251 (D.C. Cir. 1993)); guidelines for conducting post-investigation litigation (*Schiller v. NLRB*, 964

F.2d at 1207); a training manual with information pertaining to surveillance techniques (*Crooker*, 670 F.2d at 1073); criteria for prison gang-member classification (*Jimenez v. FBI*, 938 F. Supp. 21, 27 (D.D.C. 1996)); and DEA's drug-violator codes (*Albuquerque Publishing Co. v. Department of Justice*, 726 F. Supp. 851, 854 (D.D.C. 1989).

Pursuant to DEA rules and practices as indicated in the DEA Agents Manual, many of the pages in this case contain "violator identifiers" consisting of G-DEP codes and NADDIS numbers. Wassom Decl. ¶ 35. The G-DEP codes and NADDIS numbers are part of DEA's internal system of identifying information. *Id*. There is no public interest in the release of these codes. The release of the G-DEP codes would help identify priority given to narcotic investigations, types of criminal activities involved, and violator ratings. *Id*. Suspects could decode this information and change their pattern of drug trafficking in an effort to respond to what they determined DEA knows about them or avoid detection and apprehension create alibis for suspected activities. *Id*. Disclosure of the codes would, therefore, thwart DEA's investigative and law enforcement efforts. Exemptions (b)(7)(C) and (b)(7)(D) were used in conjunction with (b)(2) to withhold these items. Therefore, DEA properly applied Exemption 2 to withheld this information from Plaintiff.

3. USMS Properly Applied Exemption 5.

Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." 5 U.S.C. § 552(b)(5). In other words, this exemption protects documents normally privileged in the civil discovery context. *FTC v. Grolier Inc*., 462 U.S. 19, 26 (1983); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). This section of the FOIA incorporates the attorney-client privilege, the attorney work-product doctrine, and the executive "deliberative process privilege that protects candid

internal discussions of legal or policy matters." *Maricopa Audubon Soc'y v. United States Forest Serv.*, 108 F.3d 1082, 1084 n.1 (9th Cir. 1997).

USMS applied Exemption 5 to withhold information protected by the deliberative process privilege, which consists of predecisional information which would reveal frank opinions and recommendations among USMS personnel in deliberating the pros and cons of selling certain property to prospective purchasers. Cunningham Decl. ¶ 11. Disclosure of this information would inhibit these candid discussions in future USMS personnel involved in this decision making process and would hamper the ability of the Government to gain the best advantage in the sale of forfeited property. *Id*. Thus, USMS properly withheld information to Plaintiff pursuant to Exemption 5.

4. DEA, BOP and USMS Properly Applied Exemption 7(C).

Exemption 7(C) exempts from mandatory disclosure:

> (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy. . . .

5 U.S.C. § 552(b)(7)C). This exemption protects the identities of suspects and other persons of investigatory interest, who are identified in agency records in connection with law enforcement investigations. *Reporters Comm. for Freedom of the Press v. U.S. Dept of Justice*, 816 F.2d 730, 780 (D.C. Cir. 1987), *modified on other grounds*, 831 F.2d 1124 (D.C. Cir. 1987), *rev'd on other grounds*, 489 U.S. 749 (1989); *Computer Prof'ls for Social Responsibility v. U.S. Secret Serv.*, 72 F.3d 897, 904 (D.C. Cir. 1996). Indeed, an agency in a FOIA case may categorically assert Exemption 7(C) to protect the identities of witnesses or other persons mentioned in law enforcement files in such a way as to associate them with criminal activity. *Reporters Comm.,*

489 U.S. at 780; *Nation Magazine v. U.S. Customs Service*, 71 F.3d 885, 893, 895-896 (D.C. Cir. 1995); *SafeCard Services*, *Inc. v. S.E.C.*, 926 F.2d 1197, 1206 (D.C. Cir. 1991).

The names of law enforcement officers who work on criminal investigations have also traditionally been protected against release by Exemption 7(C). *Davis v. U.S. Dept. of Justice*, 968 F.2d 1276, 1281 (D.C. Cir. 1992); *Lesar v. U.S. Dept of Justice*, 636 F.2d 472, 487-488 (D.C. Cir. 1980). Similarly, individuals who provide information to law enforcement authorities, like the law enforcement personnel themselves, have protectable privacy interests in their anonymity. *Computer Prof'ls for Social Responsibility*, 72 F.3d at 904; *Farese v. U.S. Dept. of Justice*, 683 F. Supp. 273, 275 (D.D.C. 1987). The fact that the requester might ascertain the individuals' identities through other means, or that their identities have been disclosed elsewhere, does not diminish those individuals' privacy interests. *Fitzgibbon v. CIA*, 911 F.2d 755 (D.C. Cir. 1990); *Weisberg v. Dept. of Justice*, 745 F.2d 1476, 1491 (D.C. Cir. 1984).

Once a privacy interest has been established, as here, it must be balanced against the public interest, if there is any, that would be served by disclosure. *Albuquerque Publ'g*, 726 F. Supp. 851, 855 (D.D.C. 1989). The public interest in disclosure is limited to the FOIA's "core purpose" of shedd[ing] light on an agency's performance of its statutory duties." *Reporters Comm.*, 489 U.S. at 773. This standard is not easily satisfied when law enforcement information pertaining to individuals is sought, for there "is no reasonably conceivable way in which the release of one individual's name . . . would allow citizens to know 'what their government is up to.'" *Fitzgibbon,* 911 F.2d at 768. *See also Albuquerque Publ'g*, 726 F. Supp. at 855-56 (no public interest in disclosure of sensitive information DEA obtained about individuals and their activities, where such material would not shed light on DEA's conduct with respect to the

investigation). In order to overcome legitimate privacy interests, the requester must demonstrate not only the existence of a public interest, but also that the public interest is both significant and compelling. *Senate of Puerto Rico v. Dept. of Justice*, 823 F.2d 574, 588 (D.C. Cir. 1987); *Stone v. FBI*, 727 F. Supp. 662, 667-69 (D.D.C. 1990).

a. DEA

Some of the responsive DEA documents contain names and addresses and other identifying information which would reveal the identity of and disclose personal information about individuals who were involved or associated with Plaintiff. Wassom Decl. ¶ 38. The individuals are protected from the disclosure of their identities. *Id.* In making the determination to withhold this information, the individuals' privacy interests were balanced against any discernible public interest in disclosure of the individuals' identities. In this instance, the privacy interests outweighed any potential interest. *Id*. Thus, disclosure of certain identities would be an unwarranted invasion of their personal privacy.

When withholding information pursuant to exemption (b)(7)(C), DEA balances the privacy interests of the individuals mentioned in the responsive information against any public interest in disclosure. *Id.* ¶ 39. In asserting this exemption, each piece of information was examined to determine the degree and nature of the privacy interest of any individual whose name and/or identifying data appears in the documents at issue. *Id*. The public interest in disclosure of the information is determined by whether the information in question would inform Plaintiff or the general public about DEA's performance of its mission to enforce federal criminal and Controlled Substance Act statutes and/or how DEA conducts its internal operations and investigations. *Id*.

The Plaintiff has not submitted notarized authorizations for anyone other than himself, nor has he provided proof of death regarding any individual. *Id.* ¶ 40. Therefore, release of any information about a third party would constitute an unwarranted invasion of that third party's personal privacy. *Id.* The identities of government employees (including DEA Special Agents and a DEA non-drug evidence technician, a DEA drug evidence technician, a DEA forensic chemist, laboratory director, and evidence technician, Berks County, Pennsylvania Police Officers, a Pennsylvania State Police forensic scientist, and the names of a drug detection canine and handler were withheld. *Id.* ¶ 41. Releasing their identities would place each of these individuals in such a position that they may suffer undue invasions of privacy, harassment and humiliation from disclosure of their identities in a criminal law enforcement investigatory file. *Id.*

These individuals were assigned to handle tasks relating to the official investigation into the criminal activities of Plaintiff. *Id.* ¶ 42. They were, and possibly still are, in positions of access to information regarding official law enforcement investigations. *Id.* If their identities are released, they could become targets of harassing inquiries for unauthorized access to information pertaining to ongoing and closed investigations. *Id.* Also, release of their identities would constitute an unwarranted invasion of their personal privacy. *Id.* There is no public interest to be served by releasing the identities of DEA Agents or other government employees. *Id.*

The names of Task Force Agents, who are local law enforcement officers, and the names of Reading, Pennsylvania police officers, Berks County, Pennsylvania Narcotic Enforcement Team police officers, also were withheld. *Id.* ¶ 43. The identity of the law enforcement officers are withheld for the same reasons as those asserted for the withholding of the identities of DEA Special Agents. *Id.* Therefore, DEA properly withheld information in part to Plaintiff pursuant to Exemption 7(C).

b. BOP

In this case, BOP applied Exemption 7(C) to redact information from a document from USMS that was released in part to Plaintiff on March 19,2004. Names were redacted from the document compiled for law enforcement purposes, which could reasonably be expected to constitute an unwarranted invasion of privacy. Moorer Decl. ¶ 6 and Exhibit E attached thereto.

After a careful analysis and balancing of the interests at stake, BOP determined that there was no public interest in the release of information redacted/withheld because dissemination would not help explain activities and operations of the BOP. *Id.* and Exhibit E attached thereto. Therefore, BOP properly applied Exemption 7(C) to withhold information from Plaintiff.

c. USMS

USMS redacted information pursuant to Exemption 7(C) from one page released in part to Plaintiff. Cunningham Decl. ¶ 6 and exhibit C attached thereto. Exemption 7(C) was applied to withhold only the names of and/or information pertaining to federal law enforcement personnel, to other prisoners, and to third party individuals. *Id*. ¶ 12. Therefore, USMS properly applied Exemption 7(C) to withhold information from Plaintiff.

5. DEA Properly Applied Exemption 7(D).

Exemption 7(D) exempts from disclosure material that:

> could reasonably be expected to disclose the identity of a confidential source including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

5 U.S.C. § 552(b)(7)(D). Exemption 7(D) recognizes that information furnished by third parties cooperating with federal, state, or local law enforcement investigations is, by its very nature,

confidential. Significantly, the statute affords protection from disclosure to all the information furnished by third-party sources, as well as the actual identity of the cooperating individual, if there has been an explicit assurance of confidentiality, or circumstances exist from which such an assurance could reasonably be inferred. *U.S. Dept. of Justice v. Landano*, 508 U.S. 165 (1993).

This exemption recognizes the distinct likelihood that the identity of a source may often be determined from an analysis of the information furnished by the source. Indeed, this becomes more inevitable when the analysis is made by a person familiar with the facts and circumstances on which the investigation was predicated. Thus, to disclose the identity of a cooperating individual under such circumstances could be more than an unwarranted invasion of his privacy; it would breach the confidentiality under which he cooperated.

The *Landano* Court acknowledged that "[t]here may . . . be . . . generic circumstances in which an implied assurance of confidentiality fairly can be inferred." *Landano*, 508 U.S. at 181. The Court should take into consideration the informant's relation to the crime and the character of the crime for which information has been provided in determining implied grants of confidentiality. Since *Landano*, courts have identified various crimes which warrant an implied assurance of confidentiality. In *Mays v. Drug Enforcement Administration*, 234 F.3d 1324 (D.C. Cir. 2000), the Court of Appeals for this Circuit held that the crime of trafficking in cocaine is inherently so dangerous that individuals supplying information about such crimes generally should be entitled to an implied grant of confidentiality.

DEA withheld information compiled for law enforcement purposes the disclosure of which could reasonably be expected to reveal the identity of a confidential source and/or information furnished by a confidential source. Wassom Decl. ¶ 44 and *Vaughn* Index ¶¶ 45-110 attached thereto.

Plaintiff was convicted of conspiracy and distribution of heroin, in addition to possession with intent to distribute heroin. Wassom Decl. ¶ 111. It is reasonable to infer that the individuals who provided information about Plaintiff would fear for their safety if their identities or the information they provided was revealed. *Id*. Additionally, release of the name of the sources could jeopardize DEA operations. *Id*. Their cooperation and that of other similarly situated individuals could be needed in future criminal investigations. Id. Therefore, DEA properly withheld information in part from Plaintiff pursuant to Exemption 7(D).

6. DEA and BOP Properly Applied Exemption 7(F).

Exemption 7(F) protects from mandatory disclosure information compiled for law enforcement purposes if disclosure could reasonably be expected to endanger the life or physical safety of any individual. 5 U.S.C. § 552(b)(7)(F). Courts have consistently upheld the application of this exemption to protect information identifying law enforcement officers and special agents, who are especially likely to be in contact with violent suspects. *Maroscia v. Levi*, 569 F.2d 1000, 1002 (7th Cir. 1977); *Albuquerque Publ'g*, 726 F. Supp. at 858; *Docal v. Bennsinger*, 543 F. Supp. 38, 48 (M.D. Pa. 1981); *Nunez v. DEA*, 497 F. Supp. 209, 212 (S.D. N.Y. 1980). This Exemption applies to names and information of private citizens and third persons who provide information to law enforcement as well. *Garcia v. United States Department of Justice*, 181 F. Supp. 2d 356, 378 (S.D. N.Y. 2002). Although this exemption applies to information that is also subject to the protection of Exemption 7(C), *supra*, there is no balancing required for the application of Exemption 7(F). In any event, it is difficult to imagine any public interest that could outweigh the safety of an individual.

a. DEA.

The identities of DEA Special Agents, supervisory DEA Special Agents, and local law enforcement officers have been deleted in accordance with 5 U.S.C. § 552 (b)(7)(F), which sets forth an exemption for records or information compiled for law enforcement purposes the disclosure of which could reasonably be expected to endanger the life or physical safety of an individual. Wassom Decl. ¶ 112. DEA Special Agents, as well as members of other law enforcement entities, are frequently called upon to conduct a wide variety of investigations, including sensitive and dangerous undercover operations. *Id*. ¶ 113. Special Agents routinely approach and associate with violators in a covert capacity. *Id*. ¶ 114. Many of those violators are armed and many have known violent tendencies. *Id*. It has been the experience of DEA that the release of Special Agents' identities has, in the past, resulted in several instances of physical attacks, threats, harassment and attempted murder of undercover and other DEA Special Agents. *Id*. It may, therefore, be reasonably anticipated that other law enforcement officers would become targets of similar abuse if they were identified as participants in DEA's enforcement operations. *Id*. In addition, if the names of Special Agents and other law enforcement officers were released pursuant to the FOIA, DEA would be releasing this data to the public realm. *Id*. ¶ 115. DEA considers it to be within the public interest not to disclose the identity of Special Agents so that they may effectively pursue their undercover and investigatory assignments. *Id*. These assignments are a necessary element in support of DEA's objective -- the suppression of the illicit traffic of narcotic and dangerous drugs. *Id*. Public disclosure of the identities of investigatory personnel would have a detrimental effect on the successful operation of DEA, as well as risk harassment and danger to its agents and other law enforcement personnel. *Id*. Therefore, DEA properly withheld information in part from Plaintiff pursuant to Exemption 7(F).

b. BOP

BOP applied Exemption 7(F) to redact information from a document referred from USMS that was released in part to Plaintiff on March 19,2004. Names were redacted from a document compiled for law enforcement purposes which could endanger the lives or physical safety of an individual. Moorer Decl. ¶ 7 and Exhibit F attached thereto. Therefore, BOP properly withheld information in part from Plaintiff pursuant to Exemption 7(F).

7. Segregability

The Court of Appeals for the District of Columbia Circuit has held that a District Court considering a FOIA action has "an affirmative duty to consider the segregability issue *sua sponte*." *Trans-Pacific Policing Agreement v. United States Customs Service*, 177 F.3d 1022, 1028 (D.C. Cir. 1999). The FOIA requires that, if a record contains information that is exempt from disclosure, any "reasonably segregable" information must be disclosed after deletion of the exempt information unless the non-exempt portions are "inextricably intertwined with exempt portions." 5 U.S.C. § 552(b); *Mead Data Cent., Inc. v. United States Dept. of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

In order to demonstrate that all reasonably segregable material has been released, the agency must provide a "detailed justification" rather than "conclusory statements." *Mead Data*, 566 F.2d at 261. The agency is not, however, required "to provide such a detailed justification" that the exempt material would effectively be disclosed. *Id*. All that is required is that the government show "with 'reasonable specificity'" why a document cannot be further segregated. *Armstrong v. Executive Office of the President*, 97 F.3d 575, 578-79 (D.C. Cir. 1996). Moreover, the agency is not required to "commit significant time and resources to the separation of disjointed

words, phrases, or even sentences which taken separately or together have minimal or no information content." *Mead Data*, 566 F.2d at 261, n.55.

In this matter, each of the Defendant agencies that had responsive records has released to Plaintiff all reasonably segregable information, and only exempt information was withheld.

V. CONCLUSION

Defendants, DEA, IRS, ICE, EOUSA, FBI, BOP, USMS and Criminal Division of DOJ have demonstrated that they responded properly to Plaintiff's FOIA request, releasing to him all records and portions thereof not exempted from disclosure. Accordingly, Defendants respectfully request that their motion for Summary Judgment be granted and that Plaintiff's Complaint be dismissed with prejudice.

Respectfully submitted,

/ s /

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/ s /

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/ s /

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DULCIDIO QUIRINDONGO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 04-1378 (RCL)**
	)	
DRUG ENFORCEMENT ADMINISTRATION, *et al.*,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS'' STATEMENT OF MATERIAL FACTS
TO WHICH THERE IS NO GENUINE DISPUTE

Pursuant to LCvR 7(h) and in support of Defendants' Motion Summary Judgment, Defendants Drug Enforcement Administration ("DEA"), Internal Revenue Service ("IRS"), U.S. Customs Service ("USCS"),[1] Executive Office for United States Attorneys ("EOUSA"), Federal Bureau of Investigation ("FBI"), Federal Bureau of Prisons ("BOP"), United States Marshals Service ("USMS"), Criminal Division of the United States Department of Justice ("DOJ") ("Criminal Division") respectfully submit this statement of material facts as to which there are no genuine disputes. Exhibits 1 through 8, the declarations of: (1) Leila I. Wassom, Paralegal Specialist, Freedom of Information Operations Unit ("SARO"), DEA (Exhibit 1); (2) Anne M. Jensen, Senior Disclosure Specialist, Philadelphia Disclosure Office, IRS (Exhibit 2); (3) Gloria L. Marshall, Chief, Information Disclosure Unit, Mission Support Division, Office of Investigations for U.S. Immigration and Customs Enforcement ("ICE") (Exhibit 3); (4) John W. Kornmeier, Attorney Advisor, EOUSA, DOJ (Exhibit 4); (5) David M. Hardy, Section Chief,

[1] The former U.S. Customs Service ("USCS") has been reorganized with the former U.S. Immigration and Naturalization Service into, *inter alia,* U.S. Immigration and Customs Enforcement ("ICE") and the U.S. Customs and Border Protection ("CBP").

Record/Information Dissemination Section ("RIDS"), Records Management Division, FBI Headquarters ("FBIHQ"), DOJ (Exhibit 5); (6) Wilson J. Moorer, Paralegal Specialist, Office of General Counsel, Freedom of Information Act Section, BOP (Exhibit 6); (7) Arleta D. Cunningham, Acting Freedom of Information/Privacy Act Officer, USMS (Exhibit 7); and (8) Kathy Hsu, Litigation Attorney, Freedom of Information Act/Privacy Act Unit, Criminal Division, DOJ (Exhibit 8), support this statement.

A. DEA

1. In a September 19, 2003 letter, Plaintiff requested all records that referenced his name, specifying a search of criminal investigatory files. Exhibit 1 ("Wassom Decl.") ¶ 6 and Exhibit A attached thereto.

2. By October 15, 2003 letter, DEA informed Plaintiff that it had received his FOIA request, and informed him it would be handled in approximate order of receipt. *Id*. ¶ 7 and Exhibit B attached thereto.

3. By December 1, 2003 letter, DEA released-in-part 34 pages to Plaintiff and advised Plaintiff that 72 pages were withheld in their entirety. *Id*. ¶ 8. Information was withheld pursuant to FOIA exemptions (b)(2), (b)(7)(C), (b)(7)(D) and (b)(7)(F), and PA exemption (j)(2). *Id*. DEA also informed Plaintiff that he was mentioned in two other "related" files, and that if Plaintiff wished to have those files processed, he would have to agree to pay an estimated search fee of $56.00 by providing his signature at the bottom of the letter. *Id*.

4. By February 27, 2004 letter, Plaintiff appealed DEA's response to his FOIA request to the DOJ Office of Information and Privacy (OIP). *Id*. ¶ 10 and Exhibit D attached thereto.

5. By March 30, 2004 letter, OIP denied Plaintiff's appeal as untimely pursuant to *Oglesby v. Department of the Army*, 920 F.2d 57, 65 (D.C. Cir. 1990). *Id.* ¶ 11 and Exhibit E attached thereto.

6. By March 22, 2004 letter, EOUSA referred 370 pages to DEA for processing and direct response to Plaintiff.[2] *Id.* ¶ 12 and Exhibit F attached thereto. By March 25, 2004 letter, DEA informed Plaintiff that it had been asked to review the EOUSA materials which had originated within DEA. *Id.* ¶ 14 and Exhibit G attached thereto. Seventy-three of the referred pages previously had been processed and non-exempt portions released under DEA FOIA Req. No. 04-0052-P. *Id.* ¶ 13. Seventy-three pages were Puerto Rico criminal investigative documents written in Spanish. *Id.* The remaining 224 pages were processed. *Id.* DEA initially informed Plaintiff that one page was a duplicate; however, litigation review determined that the page was not a duplicate, and the page has been processed and withheld in its entirety pursuant to FOIA exemptions (b)(2), (b)(7)(C), (b)(7)(D) and (b)(7)(F), and PA exemption (j)(2). *Id*

7. By May 4, 2004 letter, DEA released portions of 16 pages to Plaintiff[3] and withheld 207 pages in their entirety. *Id.* ¶ 14 and Exhibit G attached thereto. DEA informed Plaintiff that one document was a duplicate (an error, *see* ¶ 6, *supra*) and that 73 documents previously had been processed pursuant to his direct request to DEA, request 04-0052-P. *Id.* DEA also informed Plaintiff that it was in the process of consulting with another DEA component regarding 60 Puerto Rico documents. *Id.* The total documents or pages was in error. *Id.* Thirteen of the 60 documents consisted of pages with information on both sides; however, and the correct total therefore is 73 pages. *Id.* and Exhibit H attached thereto.

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[2] The March 22, 2004 letter erroneously stated that 380 pages were referred. *Id.* Consultation with EOUSA pursuant to this litigation confirmed that the number "380" was a typographical error, and only 370 pages were referred.. *Id.* and Exhibit F attached thereto.

[3] Although the body of the letter indicated that "two hundred and twenty three (223) documents identified certain material that will be released to you," the enclosed explanation attached to the letter indicated that the number of pages withheld was 207 and the number released was 16, totaling 223 documents.

8. The 73 pages comprised Puerto Rico criminal investigative documents, which needed to be translated into English to enable processing. *Id.* ¶ 16. SARO consulted the DEA Caribbean and South America sections, where the documents were examined by a DEA Special Agent, who provided an estimated translation cost of $1, 920.00. *Id.*.

9. By October 5, 2004 letter, DEA informed Plaintiff that the 60 remaining documents (73 pages, *see* ¶ 7, *supra*) responsive to the referral from EOUSA were written in Spanish, and that in order for them to processed, translation would be necessary. *Id.* DEA informed Plaintiff that, pursuant to 28 C.F.R. 16.11(a)(2), Plaintiff would be responsible for cost of translation and that in order for processing to begin, it was necessary for him to remit the estimated fee of $1,920.00. *Id.* and Exhibit I attached thereto.

B. IRS

1. By January 20, 2004 letter, the IRS Headquarters Disclosure Office ("HDO") responded to Plaintiff's request that: (1) IRS Headquarters does not retain centralized files; (2) records concerning the processing, assessment, examination, collection and investigation of tax accounts, if any exist relative to Plaintiff, are maintained in the area offices where the action took place; and (3) Plaintiff's FOIA request should state his willingness to pay fees, if any, and include proper evidence of identity (such as a copy of his drivers license, state issued identification card or a notarized statement swearing or affirming identity). Exhibit 2 ("Jensen Decl.") ¶ 4 and Exhibit B attached thereto.

2. In a letter dated February 26, 2004 but not received in the IRS HDO until July 22, 2004, Plaintiff indicated that he wanted to "appeal" the IRS's non-process response to his October 21, 2003 FOIA request. *Id.* ¶ 5 and Exhibit C attached thereto. *Id.* Plaintiff added that

the records he was requesting were located in Philadelphia, Pennsylvania, and indicated he is willing to furnish additional evidence of his identity. *Id.*

3. By July 27, 2004 letter, the IRS HDO responded to Plaintiff's February 26, 2004 letter reiterating its position that Headquarters does not retain centralized files or records concerning the processing, assessment, examination, collection and investigation of tax accounts. *Id.* ¶ 6 and Exhibit D attached thereto. HDO also indicated that because Plaintiff alleged that the records he sought were located in Pennsylvania, HDO referred Plaintiff's FOIA request to the Philadelphia Disclosure Office. *Id.*

4. On July 27, 2004, the IRS HDO forwarded Plaintiff's October 21, 2003 FOIA request and accompanying documents, which included correspondence between HDO and Plaintiff, to the Philadelphia Disclosure Office. *Id.* ¶ 7 and Exhibit E attached thereto.

5. By September 2, 2004 letter, IRS informed Plaintiff that the Philadelphia Disclosure Office had received his FOIA request on August 6, 2004, but was unable to respond within the 20 workday period prescribed by law. *Id.* ¶ 8.

6. By September 23, 2004 letter, IRS informed Plaintiff that IRS maintained no criminal investigatory records for tax years 1980 to the present pertaining to Plaintiff. *Id.* ¶ 11 and Exhibit H attached thereto.

C. ICE

1. ICE queried its databases for any records of a FOIA/PA request received from Plaintiff. Exhibit 3 ("Marshall Decl.") ¶ 4. ICE found no record of receipt of a FOIA/PA request from or on behalf of Plaintiff. *Id.*

2. ICE also requested that U.S. Customs and Border Protection ("CBP"), Office of Regulations and Rulings, query its databases for a FOIA/PA request or appeal received from or on behalf of Plaintiff. Marshall Decl. ¶ 5. CBP found no record of a FOIA/PA request or appeal received from or on behalf of Plaintiff. *Id.*

D. EOUSA

1. By September 19, 2003 letter, Plaintiff requested a copy of all his records in the United States Attorney's Offices in the District of Puerto Rico and all the Districts of Pennsylvania. Exhibit 4 ("Kornmeier Decl.") ¶ 4 and Exhibit A attached thereto.

2. EOUSA assigned four file numbers to Plaintiff's request: one for the District of Puerto Rico and one for each of the three districts in Pennsylvania. *Id.* ¶ 5. For the two districts for which Plaintiff requests expeditious processing, EOUSA assigned the following numbers: Middle District of Pennsylvania: 03-3176; Eastern District of Pennsylvania: 03-3174. *Id.*

3. By November 25, 2003 letter, EOUSA responded to request 03-3176 informing Plaintiff that a search for records in the Middle District of Pennsylvania had revealed no records. *Id.* ¶ 6 and Exhibit B attached thereto.

4. By March 22, 2004 letter, EOUSA responded to request number 03-3174 for records from the Eastern District of Pennsylvania. *Id.* ¶ 7. EOUSA released records to Plaintiff and stated the reasons for any withheld information. *Id.* ¶ 7 and Exhibit C attached thereto.

E. FBI

1. By September 19, 2003 letter, Plaintiff submitted a FOIA/PA request to FBIHQ for a copy of "any and all documents, records and information that any part of your agency has or had in its possession that is in any way connected to, related to, or even remotely in reference to my name." Exhibit 5 ("Hardy Decl.") ¶ 5. Plaintiff also requested the FBI to search its field offices

in Pennsylvania and Puerto Rico for responsive records.[4] *Id.*

2. By October 8, 2003 letter, FBIHQ advised Plaintiff that a search of the automated indices to its Central Records System ("CRS") at FBIHQ and the Pittsburgh, Philadelphia, and San Juan Field Offices had located no records responsive to his request. Hardy Decl. ¶ 6 and Exhibit B attached thereto. Plaintiff was advised that he could appeal the FBI's determination to the DOJ Office of Information and Privacy ("OIP"). *Id.*

3. By October 21, 2003 letter, Plaintiff appealed the FBI's decision to OIP. *Id.* ¶ 7 and Exhibit C attached thereto.

4. By letter dated November 12, 2003, OIP acknowledged receipt of Plaintiff's appeal on October 29, 2003. *Id.* ¶ 8 and Exhibit D attached thereto.

5. By letter dated March 9, 2004, OIP affirmed the FBI's action. *Id.* ¶ 9 and Exhibit E attached thereto.

F. BOP

1. By letter dated October 21, 2003, Plaintiff submitted a FOIA request ito BOP for "all SIS, SIA, Disciplinary, Custody, Security ITS, ISM, Education, Medical, Mental Health, and other records in all the following institutions and his Central file: Skulkill, Fairington, Terre Haute, Oklahoma City and USP Beaumont." Exhibit 6 ("Moorer Decl.") ¶ 3 and Exhibit A attached thereto.

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[4] DOJ regulations require a request for FBI field office records to be made separately to each field office which the requester believes has responsive records. Due to a misapplication of the FOIA regulations by RIDS staff, a search was in fact conducted for records in Philadelphia and Pittsburgh (the Pennsylvania Field Offices) and San Juan, Puerto Rico field offices, despite Plaintiff's failure to file separate FOIA/PA requests with each of these field offices. In this case, the RIDS staff's misapplication of the DOJ regulations is of no consequence, since the Central Records System ("CRS") search revealed no records responsive to Plaintiff's request in any field office. 28 C.F.R. §§ 16.3(a) 16.41.

2. Plaintiff's FOIA request was received at the BOP's FOIA Office, Washington, D.C. on November 3, 2003 and was mailed to the BOP's South Central Regional Office (SCRO) for processing. *Id.* ¶ 4 and Exhibit B attached thereto. The request was received by the SCRO, logged in and assigned FOIA Request Number 2004-01217. The SCRO responded to FOIA Request Number 2004-01217 on November 17, 2003 informing Plaintiff that the majority of the records created by the BOP regarding him were being maintained in his Central File at his current place of incarceration. *Id.* Plaintiff was informed that the appropriate BOP staff would provide him the opportunity to review the files he requested and obtain copies of any releasable documents. *Id.*

3. Plaintiff was provided the opportunity to review his Central File on January 22, 2004 and Plaintiff requested and received copies of documents in his Central File that totaled 90 pages. *Id.* ¶ 5 and Exhibit C attached thereto.

4. On January 29, 2004, the BOP's FOIA Office received a referral from USMS of two documents that had originated with BOP or BOP action and direct response to Plaintiff. *Id.* ¶ 6 and Exhibit D attached thereto.

5. The referral was logged in and assigned FOIA Request Number 2004-03057. *Id.* BOP responded to FOIA Request Number 2004-03057 on March 19, 2004, releasing one page in its entirety and one page with redactions pursuant to 5 U.S.C. §552 (b)(7)(C) and (b)(7)(F). *Id.* ¶ 6 and Exhibit E attached thereto.

G. <u>USMS</u>

1. On October 30, 2003, the USMS received an October 21, 2003 letter, by which Plaintiff requested a copy of all records pertaining to him. Exhibit 7 ("Cunningham Decl.") ¶ 2 and Exhibit A attached thereto.

2. On November 5, 2003, USMS acknowledged receipt of Plaintiff's request and advised him that a search for responsive documents had commenced, and he would be contacted when the processing of his request was completed. *Id.* ¶ 3 and Exhibit B attached thereto.

3. A search for records pertaining to Plaintiff was conducted in USMS district offices for the locations identified in Plaintiff's request, i.e., the Middle, Western, and Eastern Districts of Pennsylvania, the District of New Jersey, the Eastern District of Texas, the Western District of Oklahoma, the District of Puerto Rico, and the Southern District of Indiana. *Id.* ¶ 4.

4. As a result of the USMS search, 20 pages of records pertaining to Plaintiff were located by the Eastern District of Pennsylvania USMS Office in the Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS), JUSTICE/USM-007, systems of records. *Id.* ¶ 5. Records maintained in these systems are compiled for law enforcement purposes in connection with USMS receipt, processing, transportation and custody of federal prisoners, the execution of Federal arrest warrants, and the investigation of fugitive matters. *Id.*

5. By January 22, 2004 letter, USMS responded to Plaintiff's request and informed Plaintiff that after conducting a search of its files, 20 pages of records had been located which were indexed to his name. *Id.* ¶ 6. Two of these pages originated with BOP and were referred to BOP for disclosure determination and direct response to Plaintiff in accordance with 28 C.F.R. § 16.42(c). The USMS released 17 pages in full to Plaintiff and one page with minimal deletions pursuant to exemption (b)(7)(C) of the FOIA, 5 U.S.C. § 552 (b)(7)(C). *Id.* ¶ 6 and Exhibit C attached thereto.

G. DOJ CRIMINAL DIVISION

1. By October 21, 2003 letter, Plaintiff requested for records concerning his name. Exhibit 8 ("Hsu Declaration") ¶ 4 and Exhibit 1 attached thereto.

2. Plaintiff's request was initially routed to DOJ Justice Management Division, and was not forwarded to the Criminal Division's FOIA/PA Unit until on or about February 23, 2004. *Id.* ¶ 5 and Exhibit 2 attached thereto.

3. By March 11, 2004 letter, the FOIA/PA Unit acknowledged receipt of Plaintiff's PA request and notified him the case had been assigned case number CRM-200400372P. *Id.* ¶ 6. Plaintiff also was advised that the FOIA/PA Unit was unable to search for the records requested because Plaintiff had not furnished a Privacy Act Identification and Request Form, and he did not indicate on the Criminal Division's List of Systems of Records Form which systems of records maintained by the Criminal Division he wanted searched. *Id.* The March 11, 2004 letter went on to state that Plaintiff's initial October 21, 2003 request (CRM-200400372P) would be closed, but when the appropriate forms were completed and returned, a new case number would be assigned and the request processed. *Id.* The two above-mentioned forms were enclosed with the March 11, 2004 letter. *Id.* and Exhibit 3 attached thereto.

4. On or about March 24, 2004, Plaintiff returned the Privacy Act Identification and Request Form and the Criminal Division's List of Systems of Records Form on which he had indicated which systems maintained by the Criminal Division he wanted searched. *Id.* ¶ 7 and Exhibit 4 attached thereto.

5. By May 22, 2004 letter, the FOIA/PA Unit acknowledged receipt of Plaintiff's March 24, 2004 PA request, and assigned it case number CRM-200400628P. *Id.* ¶ 8. Plaintiff was also advised that the FOIA/PA Unit would conduct a search to determine what records the Criminal Division had within the scope of the request and that this search would encompass only Criminal Division records and that he would be notified of the result of the search once it

was completed.[5] *Id.* and Exhibit 5 attached thereto.

42. By a July 27, 2004 letter, the FOIA/PA Unit advised Plaintiff that the search he had requested of Criminal Division files had been completed and no records responsive to his request were located. *Id.* ¶ 9. The letter also informed Plaintiff that he had a right to pursue an administrative appeal and informed him of the procedures to follow should he elect to do so. *Id.* and Exhibit 6 attached thereto.

Respectfully submitted,

/ s /

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[5] For clarification, the FOIA/PA Unit's May 22, 2004 letter to Plaintiff stated that Plaintiff's PA request (CRM-200400628P) was *dated* March 31, 2004. The request was *received* by the Criminal Division on March 31, 2004, but was actually dated March 24, 2004. *See* Exhibits 4 and 5 to Hsu Declaration.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January, 2005, I caused a true and correct copy of the foregoing Defendants' Motion for Summary Judgment, statement of material facts not in genuine dispute, exhibits, and proposed order to be served by first class mail, postage prepaid, on:

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/ s /

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