

Exhibit 5

**Declaration of David M. Hardy
Chief, Record/Information Dissemination Section (“RIDS”)
Records Management Division
FBI Headquarters (“FBIHQ”), DOJ**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
DULCIDIO QUIRINDONGO,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-CV-1378 (RCL)
)	
DRUG ENFORCEMENT)	
ADMINISTRATION, <u>et al.</u> ,)	
)	
)	
Defendant.)	
_____)	

DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

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

(2) In my current capacity as Section Chief, I supervise the Freedom of Information/Privacy Acts (“FOIPA”) Litigation Support Unit. The statements contained in this

declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the treatment which has been afforded the FOIA/Privacy Act request of plaintiff Dulcidio Quirindongo, who seeks access to records pertaining to himself at FBIHQ, and the Pennsylvania and Puerto Rico Field Offices.

(4) The purpose of this declaration is to provide the Court and plaintiff with an explanation of the procedures used to search for records responsive to plaintiff's request.

CORRESPONDENCE

(5) By letter dated September 19, 2003, plaintiff submitted a FOIA/Privacy Act 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." Mr. Quirindongo also requested the FBI to search the field offices in Pennsylvania and Puerto Rico for responsive records.² (See Exhibit A).

² The DOJ regulations, 28 C.F.R. §§ 16.3(a) and 16.41 (2004), 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 the RIDS staff, a search was in fact conducted for records in the Philadelphia and Pittsburgh (the Pennsylvania Field Offices) and San Juan (the Puerto Rico Field Office), despite plaintiff's failure to file separate FOIA/Privacy Act 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 event.

(6) By letter dated October 8, 2003, FBIHQ advised plaintiff that a search of the automated indices to its Central Records System at FBIHQ and the Pittsburgh, Philadelphia, and San Juan Field Offices had located no records responsive to his request. Plaintiff was also advised that he could appeal the FBI's determination to the U.S. Department of Justice, Office of Information and Privacy ("OIP"). (See Exhibit B).

(7) By letter dated October 21, 2003, plaintiff appealed the FBI's decision to OIP. (See Exhibit C).

(8) By letter dated November 12, 2003, OIP acknowledged receipt of plaintiff's appeal on October 29, 2003. (See Exhibit D).

(9) By letter dated March 9, 2004, OIP affirmed the FBI's action. (See Exhibit E).

EXPLANATION OF THE CENTRAL RECORDS SYSTEM

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

(11) Through the General Indices, FBIHQ and each field office can access the CRS. The General Indices are arranged in alphabetical order and consist of an index on various subjects, including the names of individuals and organizations. Only information considered pertinent,

relevant, or essential for future retrieval is indexed.

(12) Communications 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. Searches of the index to locate records concerning particular subjects are made by searching the name of the subject requested in the index.

(13) The entries in the General Indices fall into two categories:

(a) A “main” entry — A “main” entry, or “main” file, carries the name corresponding with a subject of a file contained in the CRS.

(b) A “reference” entry — “Reference” entries, sometimes called “cross-references” are generally only a mention or reference to an individual, organization, or other subject matter contained in a document located in another “main” file on a different subject matter.

(14) On or about October 16, 1995, the Automated Case Support (“ACS”) system was implemented for all Field Offices, Legats and FBIHQ. More than 105 million records were converted from automated systems previously used by the FBI. ACS consists of the following three automated applications that support case management functions for all FBI investigative and administrative cases:

(a) Investigative Case Management (“ICM”) – ICM provides the ability to open, assign, and close investigative and administrative cases as well as to set, assign, and track leads. A case is opened by the Office of Origin (“OO”), which sets leads for itself and other field offices as needed. The field offices that receive the leads are referred to as Lead Offices (“LOs”), formerly known as Auxiliary Offices. When a case is opened, it is assigned a Universal Case File Number (“UCFN”), that is used by FBIHQ and all field offices or Legats

conducting or assisting in the investigation. Using a fictitious file number "111-HQ-12345" as an example, an explanation of the UCFN is as follows: "111" indicates the classification for the specific type of investigation; "HQ" is the abbreviated form used for the Office of Origin of the investigation, which in this case is FBI Headquarters; and "12345" indicates the individual case file number for the particular investigation.

(b) Electronic Case File ("ECF")– ECF serves as the central electronic repository for the FBI's official text-based documents. ECF supports the universal serial concept, where only the creator of a document serializes it into a file, providing single source entry of serials into the computerized system. All original serials are maintained in the OO case file.

(c) Universal Index ("UNI") – UNI continues the universal concepts of ACS by providing a complete subject/case index to all investigative and administrative cases. Only the OO is required to index; however, the LOs may index additional information as needed. UNI, an index of approximately 86.1 million records, functions to index names to cases, and to search names and cases for use in FBI investigative and administrative cases. Names of individuals or entities are recorded with identifying information such as date or place of birth, race, sex, locality, Social Security number, address, or date of event.

(15) 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. 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. Without a "key" or index to this mass of data, information essential to ongoing investigations could not be readily retrieved. 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. Therefore, the General Indices 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.

FBI RIDS POLICY CONCERNING ROUTINE AUTOMATED SEARCHES/CRS SEARCHES FOR RECORDS RESPONSIVE TO PLAINTIFF'S REQUEST

(16) 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 for and identify only "main" files responsive to a FOIA/Privacy Act request. As a result, when the RIDS staff at FBIHQ conducted a search of CRS for records responsive to plaintiff's request, no "main" files were identified.

(17) I have reviewed plaintiff's Complaint for Declaratory and Injunctive Relief filed in this action on or about August 13, 2004. In Count V of the Complaint, ¶ 5, plaintiff states that OIP never ruled on this appeal and six (6) months has passed. By letter dated March 29, 2004, OIP responded to plaintiff and affirmed the FBI action on his request. (See Exhibit E).

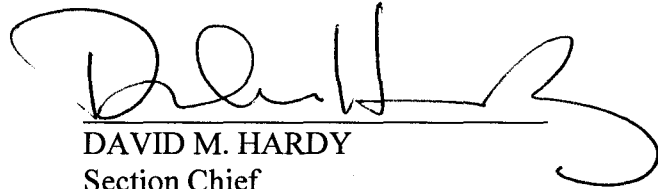
(18) In preparation for this declaration, the RIDS staff at FBIHQ conducted another search of the CRS in order to locate any records, including both main files and cross-references, responsive to plaintiff's FOIA/Privacy Act request. In addition, even though the RIDS staff's original search of the field offices should not have been made, since plaintiff's request for records from FBIHQ, Pennsylvania and Puerto Rico Field Offices was only directed to FBIHQ, RIDS once again searched the Pittsburgh, Philadelphia and San Juan Field Offices. This second search once again uncovered no records responsive to plaintiff's FOIA/Privacy Act request.

Accordingly, the FBI has conducted an adequate search and has not improperly withheld any

information from plaintiff.

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

Executed this 18th day of October, 2004.



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Washington, D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

EXHIBIT A

To: Director

Date: September 19, 2003

Federal Bureau of Investigation

J. Edgar Hoover Building

Washington, D. C. 20535

Dear Sir:

This is a request under the Freedom of Information Act.

I request 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.

The following particulars may assist you in your search :

All Records. I will pay fees incurred. Please search all see reference files. Please search the Field Offices in Pennsylvania & Puerto Rico

My biographical data is as follows:

FULL NAME: ~~SK~~ DULCIDIO JOSE QUIRINDONGO

DATE OF BIRTH : October 28, 1954

PLACE OF BIRTH: Peñuelas, Puerto Rico

SOCIAL SECURITY NUMBER: 583-86-0469

I declare under penalty of perjury that the aforementioned data is that of my person and that the signature below is my true and correct signature under oath.

Executed this 19th day of September, 2003

(28 USC Section 1746)

By X Dulcidio Quirindongo

DULCIDIO QUIRINDONGO

Peison Number 51943-066

United States Penitentiary
Box 26030
Beaumont, Texas 77720

JK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DULCIDIO QUIRINDONGO,

Plaintiff,

v.

DRUG ENFORCEMENT
ADMINISTRATION, et al.,

Defendant.

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) Civil Action No. 04-CV-1378 (RCL)
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EXHIBIT B



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

MR DULCIDIO JOSE QUIRINDONGO
**51943-066
POST OFFICE BOX 26030
BEAUMONT, TX 77720

October 8, 2003

Request No.: 0984572- 000
Subject: QUIRINDONGO, DULCIDIO JOSE

Dear Mr. Quirindongo:

This is in response to your Freedom of Information-Privacy Acts (FOIPA) request to the Pittsburgh, Philadelphia and San Juan Field Office. These requests were forwarded to FBIHQ for handling.

Based on the information furnished, a search of the automated indices to our central records system files at FBI Headquarters and our Pittsburgh, Philadelphia and San Juan Field Offices located no records responsive to your FOIPA request to indicate you and/or the subject(s) of your request have ever been of investigatory interest to the FBI. The automated indices is an index to all records created since January 1, 1958, in security, applicant, and administrative matters, as well as to all records created since January 1, 1973, in criminal matters.

If you have reason to believe records responsive to your request exist prior to the above dates, you will have to request another search. In order to respond to our many requests in a timely manner, our focus is to identify responsive records in the automated indices that are indexed as main files. A main index record carries the names of subjects of FBI investigations.

Although no main file records responsive to your FOIPA request were located in our automated indices, we are required to inform you that you are entitled to file an administrative appeal if you so desire. Appeals should be directed in writing to the Co-Director, Office of Information and Privacy, U. S. Department of Justice, Suite 570, Flag Building, Washington, D. C. 20530, within 60 days from receipt of this letter. The envelope and the letter should be clearly marked "Information Appeal." Please cite the FOIPA request number assigned to your request so that it may easily be identified.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned below the "Sincerely yours," text.

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

Co-Director
Office of Information & Privacy
Department of Justice
FLAG BUILDING, Suite 570
Washington, D. C. 20530

October 21, 2003

RE: FOIA to FBI No. 0984572-000

Dear Sir:

This is an appeal under the FOIA.

I requested on September 19, 2003 a copy of all records in the Central Office of the FBI in Washington, D. C. and in the Field Offices in Puerto Rico and Pennsylvania, in any way connected to my name.

By letter dated October 8, 2003 the FBI in Washington, D.C. stated it could find no records in Pittsburg and San Juan. (Pennsylvania and Puerto Rico)

I hereby appeal that "no records" response.

Sincerely,

X Dulcidio Quirindongo

app
Dulcidio Quirindongo
51943-066
United States Penitentiary
Box 26030
Beaumont, Texas 77720

cc : file

OFFICE OF INFORMATION
AND PRIVACY

OCT 29 2003

RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DULCIDIO QUIRINDONGO,

Plaintiff,

v.

DRUG ENFORCEMENT
ADMINISTRATION, et al.,

Defendant.

Civil Action No. 04-CV-1378 (RCL)

EXHIBIT D



U.S. Department of Justice

Office of Information and Privacy

Telephone (202) 514-3642

Washington, D C 20530

NOV 12 2003

Mr. Dulcideo Quirindongo
Register No 51943-066
United States Penitentiary
Box 26030
Beaumont, TX 77720

Re FOI/PA No. 984572

Dear Mr Quirindongo

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation on your request for information from the files of the Department of Justice was received by this Office on October 29, 2003

The Office of Information and Privacy, which has the responsibility of adjudicating such appeals, has a substantial backlog of pending appeals received prior to yours. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **04-0242**. Please mention this number in any future correspondence to this Office regarding this matter

We will notify you of the decision on your appeal as soon as we can. The necessity of this delay is regretted and your continuing courtesy is appreciated

Sincerely,

A handwritten signature in cursive script that reads "Priscilla Jones".

Priscilla Jones
Administrative Specialist

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DULCIDIO QUIRINDONGO,

Plaintiff,

v.

DRUG ENFORCEMENT
ADMINISTRATION, et al.,

Defendant.

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) Civil Action No. 04-CV-1378 (RCL)
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EXHIBIT E



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

MAR -9 2004

Mr. Dulcidio Quirindongo
Register No. 51943-066
United States Penitentiary
Post Office Box 26030
Beaumont, TX 77720

Re: Appeal No. 04-0242
Request No. 984572
RLH:ADW:MJS

Dear Mr. Quirindongo:

You appealed from the actions of the Headquarters Office and the San Juan, Pittsburgh, and Philadelphia Field Offices of the Federal Bureau of Investigation on your request for access to records concerning you.

After carefully considering your appeal, I have decided to affirm the FBI's action on your request.

The FBI informed you that it could locate no records responsive to your request. It has been determined that this response is correct.

If you are dissatisfied with my action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Richard L. Huff
Co-Director