

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARVIN LEON HOLT	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 09-01515 (RBW)
	)	
	)	
UNITED STATES DEPARTMENT OF	)	
JUSTICE, et al.	)	
	)	
	)	
Defendants.	)	
_____	)	

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE  
 IS NO GENUINE ISSUE, PURSUANT TO LOCAL RULE 7(h), ON BEHALF  
 OF DEFENDANT EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS  
AND THE FEDERAL BUREAU OF INVESTIGATION

Pursuant to Local Rule 7(h), defendants the Executive Office for United States Attorneys (EOUSA) and the Federal Bureau of Investigation (FBI) submit the following statement of material facts as to which there is no genuine issue:

1. In an undated letter, received by EOUSA on March 14, 2002, plaintiff submitted a FOIA/PA request to the U.S. Attorney's Office for the District of Columbia (USAO DDC) that sought "all materials for the entire central file that your agency and any other agency(s) under your supervision, as may be referred to below, has compiled to date, relating to me . . ." Specifically, plaintiff requested "files of Mark Williams, Robert Smith and notes and summaries of Det.'s Vivian Colman, James F. Johnson & Michael Baylor." (See Luczynski Decl. ¶ 4 & Exhibit

EOUSA-A.)

2. By letter dated April 15, 2002, EOUSA acknowledged receipt of plaintiff's request and informed him that it assigned request number 02-856 to it. (See id. ¶ 5 & Exhibit EOUSA-B.) That letter advised plaintiff that EOUSA had interpreted his request as seeking records concerning a third party (or third parties) and that any responsive records could not be released absent express authorization and consent from the third party(ies) or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest. (See id.) EOUSA also advised plaintiff of his administrative appeal rights in this letter. (See id.)

3. With regard to that portion of plaintiff's request seeking access to his own records, EOUSA opened a separate file to address this part of the request and assigned request number 02-857 to it. By letter dated April 9, 2002, EOUSA advised plaintiff that it had assigned 02-857 to his request for access to his records maintained in the USAO DDC and that by making the request he had agreed to pay fees up to \$25.00 pursuant to 28 C.F.R. § 16.3(c). (See id. ¶ 6 & Exhibit EOUSA-C.)

4. In response to plaintiff's request, the United States Attorney's Office for the District of Columbia (USAO DDC) conducted a search of the Civil Division's Master Index System (MI). (See Dennis Decl. ¶ 4.) The MI allows the user to search all USAO matters using a specific name and is capable of cross-

referencing other related cases if such related case information is entered into the MI. (See id.) In this instance, USAO DDC used plaintiff's name, "Leon Holt," and alias name, "Marvin Holt," as a search terms. (See id. ¶ 5.) The USAO DDC also used Mr. Holt's date of birth and the criminal case number "F-8825-92" as search terms. (See id.) As a result of this search, USAO DDC located plaintiff's criminal case file. (See id.)

5. By letter dated April 11, 2007, EOUSA had advised plaintiff that the USAO DDC had located two boxes of material that were potentially responsive to his request and requested that plaintiff agree to pay processing fees that were estimated to exceed \$25. (See Luczynski Decl. ¶ 8 & Exhibit EOUSA-E.)

6. EOUSA received plaintiff's response to this letter on May 2, 2007, in which he reformulated his request to seek access to the testimony of thirteen third parties, and "every thing pertaining to this case [criminal number F-8825-92], with the exception of trial transcript, Michael Baylor and Carolyn grand jury statements. I am requesting the investigators notes of Michael Baylor, Jame F. Johnson, Vivan Coleman and Charles Culver." (See id. ¶ 9 & Exhibit EOUSA-F.)

7. In a letter dated April 2, 2008, EOUSA advised plaintiff that it had opened another request, number 08-869, to address his request for access to his records, and a separate request, number 08-870, to address his request for access to third party witness statements. (See id. ¶ 10 & Exhibit EOUSA-G.)

8. By letter dated April 17, 2009, EOUSA made a partial release of material to plaintiff in request number 08-869, releasing 6 pages in full and releasing 20 pages in part. (See Luczynski Decl. ¶ 11 & Exhibit EOUSA-H.) EOUSA withheld certain information pursuant to Exemptions (b)(7)(C), (b)(7)(D) and (b)(7)(F), 5 U.S.C. §§ 552(b)(7)(C), (b)(7)(D), and (b)(7)(F), and section (j)(2) of the Privacy Act of 1974, 5 U.S.C. § 552a(j)(2). (See id.) This letter also advised plaintiff of his administrative appeal rights. (See id.)

9. By letter dated February 4, 2009, EOUSA denied plaintiff's request for access to third party witness statements in request number 08-870 stating that in the absence of express authorization and consent from the third party, proof that the subject is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest, records pertaining to third parties are generally not released. (See Luczynski Decl. ¶ 15 & Exhibit EOUSA-L.) EOUSA also advised plaintiff of his administrative appeal rights in this letter. (See id.)

10. By letter dated April 21, 2009, plaintiff made an inquiry to the USAO DDC regarding the status of his FOIA/PA request dated January 19, 2009, and attached a copy of an undated request letter thereto. (See Exhibit EOUSA-M.) In this request, plaintiff sought access to "any and all records, information, reports, or other files that relate to me specifically and/or

make reference to me indirectly in regards to a homicide that occurred [sic] on or about May 14, 1992, in the Northeastern section of Washington, D.C., at about 1:30 AM." (See id.) In this letter plaintiff explained that he was not requesting "information of a personal nature related to Mr. McClain," the victim of the homicide, but rather, "evidence that may serve to exonerate me of Mr. McCLAIN's death, or serve to support my post-conviction litigation." (See id.)

11. By letter dated May 4, 2009, plaintiff appealed from EOUSA's partial release of material. (See id. ¶ 12 & Exhibit EOUSA-I.) By letter dated May 27, 2009, the Office of Information and Privacy (OIP), currently the Office of Information Policy, acknowledged receipt of plaintiff's appeal and assigned it appeal number 09-1828. (See id. ¶ 13 & Exhibit EOUSA-J.) By letter dated August 5, 2009, OIP advised plaintiff that it was affirming EOUSA action on his request. (See id. ¶ 14 & Exhibit EOUSA-K.)

12. In a letter dated May 18, 2009, EOUSA acknowledged receipt of plaintiff's request and assigned it number 09-1701, and advised plaintiff that it had interpreted this request as seeking access to his own records. EOUSA also advised plaintiff that he must provide a notarized example of his signature or a certification of identity, and that once he submits this authorization a new request file would be opened. (See id. ¶ 17 & Exhibit EOUSA-O.) Finally, EOUSA advised plaintiff of his

administrative appeal rights in this letter. (See id.)

13. On or about June 18, 2009, EOUSA received plaintiff's certification of identity in request number 09-1701, and opened a new request number 09-2392. After reviewing this request, EOUSA determined that it was duplicative of request number 08-869, and therefore, closed this request. (See id. ¶ 18 & Exhibit EOUSA-P.)

14. By letter dated January 8, 2009, plaintiff submitted a FOIA/PA request to the FBI seeking access to "any and all records, information, reports, or other files that relate to me specifically and/or make reference to me indirectly in regards to a homicide that occurred [sic] on or about May 14, 1992, in the Northeastern section of Washington, D.C., at about 1:30 AM." (See Argall Decl. ¶ 6 & Exhibit FBI-A.) In this letter plaintiff explained that he was not requesting "information of a personal nature related to Mr. McClain," the victim of the homicide, but rather, "evidence that may serve to exonerate me of Mr. McCLAIN's death, or serve to support my post-conviction litigation." (See id.) Plaintiff submitted a "Certification of Identity" form with his request. (See id.)

15. The FBI acknowledged receipt of plaintiff's request by letter dated February 4, 2009, and assigned it request number 1125836-000. (See id. ¶ 7 & Exhibit FBI-B.) In this letter, the FBI also advised plaintiff that it was searching its central records system at FBI Headquarters. (See id.)

16. By letter dated April 30, 2009, the FBI made a partial release of 24 pages of material to plaintiff. (See id. ¶ 8 & Exhibit FBI-C.) The FBI withheld certain information pursuant to Exemptions 6 and 7(C), 5 U.S.C. §§(b)(6) & (b)(7)(C), and section (j)(2) of the Privacy Act of 1974, 5 U.S.C. § 552a(j)(2). In this letter, the FBI also advised plaintiff of his administrative appeal rights. (See id.)

17. Plaintiff filed an administrative appeal from the FBI's action by letter dated May 4, 2009. (See id. ¶ 9 & Exhibit FBI-D.)

18. OIP acknowledged receipt of plaintiff's appeal in a letter dated May 27, 2009, and assigned it appeal number 09-1829. (See id. ¶ 10 & Exhibit FBI-E.)

19. By letter dated July 7, 2009, OIP affirmed the FBI's action on plaintiff's request. (See id. ¶ 11 & Exhibit FBI-F.)

20. By letter dated November 4, 2009, the Federal Bureau of Prisons (BOP) made a partial release of 3 pages of material that the FBI had referred there. The BOP withheld certain information pursuant to Exemption 7(C) and 7(F), 5 U.S.C. §§(b)(7)(C) and (b)(7)(F). (See Hill Decl. ¶ 2 & Exhibit BOP-B.)

21. The EOUSA, the FBI and the BOP determined that the material withheld in this case contained no meaningful portions that could be released without destroying the integrity of the document or without invading the personal privacy of a third party(ies). (See Luczynski Decl. ¶ 47 & Argall Decl. ¶ 43; Hill

Decl. ¶¶ 8 & 11.)

Respectfully submitted,

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Dated: November 23, 2009

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