

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARVIN LEON HOLT,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, et al.

Defendants.

Civil Action No. 09-01515 (RBW)

DECLARATION OF DENNIS J. ARGALL

I, Dennis J. Argall, declare as follows:

(1) I currently serve as the Assistant Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Winchester, Virginia and, in the absence of RIDS Section Chief, David M. Hardy, I serve as Acting Section Chief for RIDS. I became the Assistant Section Chief on November 1, 2008. From August 18, 2008 until October 31, 2008, I was the Unit Chief of Litigation Support Unit. I have been employed by the FBI since August 18, 2008. Prior to my joining the FBI, from July 11, 2005 until July 10, 2008, I was on active duty in the United States Navy and assigned to United States Fleet Forces Command, located in Norfolk, Virginia, as the Fleet Judge Advocate. In that capacity I was responsible for reviewing all information being released under the Freedom of Information Act (FOIA). From August 17, 1983 to July 11, 2005, I served as an active duty Navy Judge Advocate at various commands and routinely dealt with FOIA matters, including a tour from January 1987 to September 1988 with the Department of the Navy Litigation Office where I was a litigation

counsel for FOIA matters. I am also an attorney who has been licensed to practice law in the State of Wisconsin since 1983.

(2) In my official capacity as Acting Section Chief of RIDS, I supervise approximately 256 employees who staff a total of ten (10) units and two field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA; Privacy Act of 1974 (“PA”); Executive Order 12958, as amended; Presidential, Attorney General and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. 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 FBI’s response to plaintiff Marvin Leon Holt’s request for records pertaining to himself.

(4) The FBI submits this declaration in support of its motion for summary judgment and to provide the Court and plaintiff an explanation of the procedures used to search for records responsive to plaintiff’s request, and justifications for the withholding of information from these releases in accordance with Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), pursuant to Privacy Act Exemption (j)(2), 5 U.S.C. § 552a (j)(2), and FOIA Exemptions 2, 6, 7(C), 7(D) and 7(E), 5 U.S.C. §§ 552 (b)(2), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E).

CRIMINAL HISTORY OF MARVIN LEON HOLT

(5) On August 17, 1992, the District of Columbia Superior Court issued a felony warrant for the arrest of Marvin Leon Holt for a shooting death which had occurred in Washington, D.C. The Washington Metropolitan Police Department (“MPD”) requested assistance apprehending the suspect from the FBI’s Washington Field Office (“WFO”). The plaintiff was arrested by an FBI/MPD Joint Fugitive Apprehension Team on August 20, 1992.

CHRONOLOGY OF PLAINTIFF’S FOIA/PRIVACY ACT REQUEST

(6) In a letter dated January 8, 2009, plaintiff submitted a request for “any and all records, information, reports, or other files that related to me specifically an/or make reference to me indirectly in regards to a homicide that occurred [sic] on or about May 14, 1992, in the Northeastern sector [sic] of Washington, DC, at about 1:30 AM. The victim’s name is LEWIS McCLAIN, but this request should not be construed as requesting information of personal nature related to Mr. McCLAIN. I was tried and convicted of Mr. McCLAIN’S murder in the Superior Court for the District of Columbia.” Plaintiff’s request was mailed to the WFO. (**See Exhibit FBI-A.**)

(7) The FBI acknowledged plaintiff’s request in a letter dated February 4, 2009, and assigned it FOIPA Number 1125838. (**See Exhibit FBI-B.**)

(8) The FBI located one WFO file containing approximately 24 pages of potentially responsive to plaintiff’s request. In a letter dated April 30, 2009, the FBI released 24 pages to plaintiff. Eleven of those pages were released in full and thirteen pages were released in part. Additionally, the FBI notified plaintiff of his right to appeal any denials in the release. (**See Exhibit FBI-C.**)

(9) In a letter to the U. S. Department of Justice Office of Information Policy (“OIP”), dated May 4, 2009, plaintiff appealed the FBI’s search for records pertaining to himself, stating that the records provided pertained to the fugitive investigation and not to the homicide investigation he had specified in his request letter. (See Exhibit FBI-D.)

(10) The OIP acknowledged plaintiff’s appeal in a letter dated May 27, 2009, assigning it Appeal Number 09-1829. (See Exhibit FBI-E.)

(11) In a letter dated July 7, 2009, the OIP affirmed the FBI’s actions, including the search for responsive records, stating that “the FBI did not locate any additional responsive records indexed according to your name and social security number.” (See Exhibit FBI-F.)

EXPLANATION OF THE CENTRAL RECORDS SYSTEM

(12) The Central Records System (“CRS”), which is utilized to conduct searches in response to FOIA and Privacy Act requests, enables the FBI 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 (or program). Certain records in the CRS are maintained at FBIHQ. Records that are pertinent to specific field offices of the FBI are maintained in those field offices. Although the CRS is primarily designed to serve as an investigative tool, the FBI utilizes the CRS to conduct searches that are likely to yield documents responsive to FOIA and Privacy Act requests. The mechanism that the FBI uses to search the CRS is the Automated Case Support System (“ACS”).

(13) Access to the CRS is obtained through the General Indices, which are arranged in alphabetical order. The General Indices consist of index cards on various subject matters that are searched either manually or through the automated indices. 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 – A “reference” entry, sometimes called a “cross-reference,” is generally only a mere 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) Access to the CRS files in FBI field offices is also obtained through the General Indices (automated and manual), which are likewise arranged in alphabetical order, and consist of an index on various subjects, including the names of individuals and organizations. Searches made in the General Indices to locate records concerning a particular subject, such as Marvin Leon Holt, are made by searching the subject requested in the index. FBI field offices have automated indexing functions.

(15) On or about October 16, 1995, the ACS system was implemented for all field offices, Legal Attaches (“Legats”), and FBIHQ in order to consolidate portions of the CRS that were previously automated. Because the CRS cannot electronically query the case files for data, such as an individual’s name or social security number, the required information is duplicated and moved to the ACS so that it can be searched. Over 105 million records from the CRS were converted from automated systems previously utilized by the FBI. Automation did not change the CRS; instead, automation has facilitated more economic and expeditious access to records maintained in the CRS.

(16) ACS consists of three integrated, yet separately functional, 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 set, assign, and track leads. The Office of Origin (“OO”), which sets leads for itself and other field offices, as needed, opens a case. The field offices that receive leads from the OO 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”), which is utilized by all FBI field offices, Legats, and FBIHQ that are 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 OO of the investigation, which in this case is FBIHQ; and “12345” denotes 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, in that only the creator of a document serializes it into a file. This provides a single-source entry of serials into the computerized ECF 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 105 million records, functions to index names to cases, and to search

names and cases for use in FBI investigations. Names of individuals or organizations are recorded with identifying applicable information such as date or place of birth, race, sex, locality, Social Security number, address, and/or date of event.

(17) The decision to index names other than subjects, suspects, and victims is a discretionary decision made by the FBI Special Agent (“SA”) assigned to work on the investigation, the Supervisory SA (“SSA”) in the field office conducting the investigation, and the SSA at FBIHQ. The FBI does not index every name in its files; rather, it indexes only that information considered to be pertinent, relevant, or essential for future retrieval. Without a “key” (index) to this enormous amount 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 or individual, *i.e.*, Marvin Leon Holt.

SEARCHES FOR RECORDS RESPONSIVE TO PLAINTIFF’S REQUEST

(18) The FBI’s current policy is to search for and identify only “main” files responsive to FOIA/Privacy Act requests at the initial stage. *See supra* ¶13. In response to plaintiff’s request, the FBI searched the CRS for main files using the search terms “Marvin L. Holt,” “Marvin Holt” and “Leon Holt.” As a result of this search the FBI identified main file 88A-WF-182216 (HQ) as potentially responsive. *See supra* ¶8. Nonetheless, upon the receipt of the complaint in the present litigation, the FBI subsequently conducted a second search of the CRS to locate cross-references responsive to plaintiff’s request using the same search terms described above. As a result of the second CRS search the FBI located four files in which the

plaintiff is mentioned as a cross-reference only. Three of these cross-reference files have been processed, Bates-stamped, and Vaughn-coded in response to this litigation.¹ The fourth cross-reference file consists of three pages which originated within another federal government agency.²

**DOCUMENTS REFERRED TO ANOTHER AGENCY FOR
DIRECT RESPONSE TO PLAINTIFF'S REQUEST**

(19) The fourth cross reference file contains three pages, all of which originated with another DOJ component, the Federal Bureau of Prisons ("BOP"). In accordance with the DOJ regulations, 28 C.F.R. § 16.4, the FBI referred these documents to the BOP for direct response to plaintiff. A detailed accounting of the results of this referral is described in a Vaughn declaration being submitted separately by the BOP.

**EXPLANATION OF CODED FORMAT USED FOR THE
JUSTIFICATION OF DELETED MATERIAL**

(20) All documents were processed to achieve maximum disclosure consistent with the access provisions of the Privacy Act and the FOIA. Every effort was made to provide plaintiff with all material in the public domain and with all reasonably segregable portions of releasable material. No reasonably segregable, nonexempt portions were withheld from plaintiff.

(21) For the purposes of this Vaughn declaration, the FBI has processed a total of 86 pages. Copies of these pages are attached hereto as **Exhibit FBI-G**. Of these 86 pages, 11 pages have been released in full, 17 pages were released in part, and 58 pages have been denied in

¹ Files 92D-WF-176443-R-59 and 282A-WF-178445-101 are identified as Bates-stamped pages Holt-25 through Holt-28. File 252A-IR-C5625, consisting of Bates pages Holt-29 through Holt-86, has been withheld in its entirety.

² File 90C-RH-50644-1 contains a three page facsimile dated January 29, 2003, from a BOP Prison facility to the FBI's Richmond Field Office.

their entireties. The 58 pages withheld in their entireties are represented by the insertion of deleted page sheets. Each page of **Exhibit FBI-G** is Bates-stamped. The exemptions asserted by the FBI as grounds for non-disclosure of portions of documents are Exemption (j)(2) of the Privacy Act and FOIA Exemptions (b)(2), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E).

(22) Copies of the designated documents contain, on their face, coded categories of exemptions which detail the nature of the information withheld pursuant to the provisions of the FOIA. The coded categories are provided to aid the Court's and plaintiff's review of the FBI's explanations of FOIA exemptions used to withhold the protected material. Accordingly, a review of this information will reveal that all material withheld is exempt from disclosure pursuant to FOIA Exemptions.

(23) Each withholding of information is accompanied by a code that corresponds to the categories listed below. For example, if "(b)(7)(C)-1" appears on the page, the "(b)(7)(C)" designation refers to "Exemption (b)(7)(C)" of the FOIA concerning "Unwarranted Invasion of Personal Privacy." The subcategory "1" narrows the main category into the more specific subcategory "Names and/or Identifying Information of FBI Special Agents." The coded categories of exemptions used in the processing of documents responsive to plaintiff's request are as follows:

SUMMARY OF JUSTIFICATION CATEGORIES	
CODED CATEGORIES	INFORMATION WITHHELD
Category (b)(2)	INTERNAL AGENCY RULES AND PRACTICES
(b)(2)-1	Information Pertaining to FBI Techniques and Procedures for Law Enforcement (Cited in conjunction with (b)(7)(E)-1)
(b)(2)-2	Secure Internet Website Address of Law Enforcement Computer System

SUMMARY OF JUSTIFICATION CATEGORIES	
CODED CATEGORIES	INFORMATION WITHHELD
Categories (b)(6) and (b)(7)(C)	CLEARLY UNWARRANTED AND UNWARRANTED INVASION OF PERSONAL PRIVACY
(b)(6)-1 and (b)(7)(C)-1	Names and/or Identifying Information of FBI Special Agents
(b)(6)-2 and (b)(7)(C)-2	Names and/or Identifying Information of Local Law Enforcement Employees
(b)(6)-3 and (b)(7)(C)-3	Names and/or Identifying Data Regarding a Third Party Victim
(b)(6)-4 and (b)(7)(C)-4	Names and/or Identifying Data of Third Parties of Investigative Interest
(b)(6)-5 and (b)(7)(C)-5	Name and/or Identifying Information of a Third Party Merely Mentioned
Category (b)(7)(D)	CONFIDENTIAL SOURCE INFORMATION
(b)(7)(D)-1	Information Provided by a Local Law Enforcement Agency Under an Express Assurance of Confidentiality
Category (b)(7)(E)	INVESTIGATIVE TECHNIQUES AND PROCEDURES
(b)(7)(E)-1	Information Pertaining to Sensitive FBI Analytical Procedures for Criminal Investigations (Cited in conjunction with (b)(2)-1)

JUSTIFICATION FOR NON-DISCLOSURE UNDER THE PRIVACY ACT (j)(2)

(24) Section (j)(2) of the Privacy Act exempts from mandatory disclosure systems of 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 . . .”

(25) The investigatory records at issue are contained in the FBI’s CRS, which is a component of the FBI’s CRS Privacy Act Records System. Records responsive to the plaintiff’s request were compiled as a result of FBI criminal investigations of plaintiff, while he was a fugitive from justice. Accordingly, these documents are exempt from disclosure pursuant to

5 U.S.C. § 552a (j)(2), in conjunction with 28 C.F.R. § 16.96 (2003). Although access to these records was denied under the Privacy Act, the documents responsive to plaintiff's request were processed under the access provisions of the FOIA to achieve maximum disclosure.

JUSTIFICATION FOR NON-DISCLOSURE UNDER FOIA
EXEMPTION (b)(2)
INTERNAL AGENCY RULES AND PRACTICES

(26) 5 U.S.C. § 552 (b)(2) exempts from disclosure information “related solely to the internal personnel rules and practices of an agency.”

(27) Exemption 2 (low) protects routine internal administrative matters and functions of the FBI which have no effect on the public at large. Exemption 2 (high) protects internal information the disclosure of which would risk circumvention of a legal requirement. Under this aspect of Exemption 2, the public interest in disclosure is legally irrelevant. The FBI has invoked Exemption 2 (high) because disclosure of certain FBI techniques and procedures used by the FBI's Critical Incident Response Group, National Center for the Analysis of Violent Crime, Behavioral Analysis Unit's Violent Crime Apprehension Program (ViCAP) would impede the effectiveness of the FBI's internal law enforcement procedures. Furthermore, the disclosure of a secure law enforcement Internet website address could negatively impact on the effectiveness of the FBI's internal practices and procedures.

(b)(2)-1 **Information Pertaining to FBI Techniques and Procedures for Law Enforcement**

(28) Exemption (b)(2)-1 is cited in conjunction with Exemption (b)(7)(E)-1 to withhold certain information contained in a “ViCAP” file. The FBI's Critical Incident Response Group (“CIRG”), National Center for the Analysis of Violent Crime (“NCAVC”), Behavioral Analysis Unit's Violent Criminal Apprehension Program (“ViCAP”) is a law enforcement-

oriented behavioral science and data-processing center designed to provide assistance to local, state, federal and foreign law enforcement agencies investigating unusual, bizarre, and/or repetitive violent crimes. ViCAP collects, collates, and analyzes crimes of violence, specifically murder. To reveal the characteristics and data that are collected and tracked using this system could allow offenders to circumvent discovery because the FBI will use the same or similar techniques and/or assistance to bring future investigations to successful conclusions. All of these pages have been determined to be exempt in their entirety because release of any of the criteria or sources of information could allow for circumvention of the law. If a criminal knew the specific information collected by ViCAP and from where this information was collected, he/she would then be able to avoid detection by modifying or avoiding certain behavior/activities connected with his/her criminal conduct. There are no segregable portions available for release that would not contain pertinent information. Accordingly, because this information relates solely to the FBI's internal practices, because disclosure would allow offenders to circumvent the law, and because disclosure would impede the FBI's effectiveness and potentially aid in circumvention of the techniques if disclosed, the FBI properly withheld this information pursuant to Exemption (b)(2)-1.³

(b)(2)-2 Secure Internet Website Address of Law Enforcement Computer System

(29) Exemption (b)(2)-2 has been asserted to protect the secure website address of the FBI's Law Enforcement Online ("LEO") computer system. The website addresses appear on 57 pages of the ViCAP file. See supra ¶28. LEO is a controlled-access communications and

³ Exemption (b)(2)-1 has been cited on the following pages: HOLT-29 through HOLT-86.

information-sharing data repository. It provides an Internet-accessible focal point for certain electronic communications and information sharing for the international, federal, state, local and tribal law enforcement agencies. LEO also supports antiterrorism, intelligence, law enforcement, criminal justice, and public safety communities worldwide. The website addresses specified clearly relate to the internal practices of the FBI in that they are utilized by FBI personnel during the performance of their jobs. Accordingly, because these website addresses are related to the FBI's internal practices and because disclosure could impede the FBI's effectiveness, the FBI properly withheld this information pursuant to Exemption (b)(2)-2.⁴

EXEMPTIONS (b)(6) AND (b)(7)(C)
CLEARLY UNWARRANTED AND UNWARRANTED
INVASION OF PERSONAL PRIVACY

(30) 5 U.S.C. § 552(b)(6) exempts from disclosure “personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552 (b)(7)(C) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.⁵

(31) When withholding information pursuant to these exemptions, the FBI is required

⁴ Exemption (b)(2)-2 has been cited on the following pages: HOLT-30 through HOLT-86.

⁵ The practice of the FBI is to assert Exemption (b)(6) in conjunction with Exemption (b)(7)(C). Although the balancing test for Exemption (b)(6) uses a “would constitute a clearly unwarranted invasion of personal privacy” standard and the test for Exemption (b)(7)(C) uses the lower standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public’s interest in disclosure under the analysis of both exemptions.

to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting these exemptions, each item of information was examined to determine the degree and nature of the privacy interest of every individual whose name and/or identifying information appears in these records. The public interest in disclosure of this information is determined by whether the information in question would inform plaintiff and the general public about the FBI's performance of its mission to enforce federal criminal statutes and protect the national security of the United States and/or how the information would shed light on the FBI's performance of its mandated statutory duties. In each instance where information was withheld, it was determined that individual privacy rights outweighed the public interest. The only recognized public interest is that which sheds light on the operations and activities of the federal government. Revelation of the names and/or identifying information of individuals in the context of the records of FBI criminal and counterterrorism investigations could reasonably be expected to cause harassment, embarrassment and/or humiliation, and thus constitute a clearly unwarranted and an unwarranted invasion of personal privacy.

EXEMPTION (b)(7) THRESHOLD

(32) Exemption (b)(7) of the FOIA protects from mandatory disclosure records or information compiled for law enforcement purposes, but only to the extent that disclosure could reasonably be expected to cause one of the harms enumerated in the subpart of the exemption. See 5 U.S.C. § 552(b)(7). In this case, the harm that could reasonably be expected to result from disclosure concerns the invasion of personal privacy, revealing the identity of confidential sources, and revealing sensitive law enforcement techniques.

(33) Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it

must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Law enforcement agencies such as the FBI must demonstrate that the records at issue are related to the enforcement of federal laws and that the enforcement activity is within the law enforcement duty of that agency. Some of the records responsive to plaintiff's request pertain to the FBI's investigation of plaintiff while he was a fugitive from justice. Other records pertain to an FBI investigation at a prison facility, and to entry of the plaintiff's criminal history into the FBI's ViCAP database. Thus, there is no doubt that this investigation falls within the law enforcement duties of the FBI, and that the information readily meets the threshold requirement of Exemption (b)(7). The remaining inquiry is whether its disclosure could reasonably be expected to constitute an unwarranted invasion of individuals' privacy, reveal the identity of confidential sources, and reveal investigative techniques and procedures.

**(b)(6)-1 and (b)(7)(C)-1: Names and/or Identifying
Information of FBI Special Agents**

(34) Exemptions (b)(6)-1 and (b)(7)(C)-1 have been asserted to protect the names and identifying information (such as social security numbers) of FBI SAs who were responsible for conducting, supervising, and/or maintaining the investigative activities reported in the documents concerning plaintiff and others. These responsibilities included interviewing cooperating witnesses, sources, and reviewing materials compiled as a result of the investigation of plaintiff and others. Assignments of SAs to any particular investigation are not by choice. Publicity (adverse or otherwise) regarding any particular investigation to which they have been assigned may seriously prejudice their effectiveness in conducting other investigations. The privacy consideration is also to protect FBI SAs, as individuals, from unnecessary, unofficial questioning as to the conduct of this or other investigations, whether or not they are currently employed by

the FBI. FBI SAs conduct official inquiries into various criminal and national security violation cases. They come into contact with all strata of society, conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. It is possible for an individual targeted by such law enforcement actions to carry a grudge which may last for years. These individuals may seek revenge on the agents involved in a particular investigation. The publicity associated with the release of an agent's identity in connection with a particular investigation could trigger hostility toward a particular agent. The FBI could identify no discernible public interest in the disclosure of this information because the disclosure of the names and identifying information of FBI SAs would not shed light on the operations and activities of the FBI. Thus, disclosure of this information would constitute a clearly unwarranted and an unwarranted invasion of their personal privacy. The FBI has properly protected this information pursuant to FOIA Exemptions (b)(6)-1 and (b)(7)(C)-1.⁶

**(b)(6)-2 and (b)(7)(C)-2: Names and/or Identifying Information
of Local Law Enforcement Employees**

(35) Exemptions (b)(6)-2 and (b)(7)(C)-2 have been asserted to withhold the names of local law enforcement employees. These employees were acting in their official capacity and aided the FBI in the law enforcement investigative records responsive to plaintiff's request. The rationale for protecting the identities of FBI SAs discussed in ¶34, supra, applies equally to the names of these local law enforcement employees. Release of the identities of these law enforcement employees could subject them as individuals to unnecessary and unwelcome

⁶ Exemptions (b)(6)-1 and (b)(7)(C)-1 are cited on the following pages: HOLT-3, 5-7, 9-11, 15, 18-20, and 24-26.

harassment which would constitute an unwarranted invasion of privacy. Furthermore, these individuals could become a prime target for compromise if their identities were known. The FBI could identify no discernible public interest in the disclosure of this information because the disclosure of the names of local law enforcement employees would not shed light on the operations and activities of the FBI. Accordingly, the FBI concluded that the disclosure of this information would constitute a clearly unwarranted and an unwarranted invasion of their personal privacy. The FBI properly withheld this information pursuant to Exemption (b)(6)-2 and (b)(7)(C)-2.⁷

**(b)(6)-3 and (b)(7)(C)-3: Names and/or Identifying Information
Regarding a Third Party Victim**

(36) Exemptions (b)(6)-3 and (b)(7)(C)-3 have been asserted to protect the name, address, telephone number, date of birth and nickname of a victim of a crime. To release a victim's identity could cause harm to the victim, such as personal distress or embarrassment. Thus, there is a strong privacy interest in the protection of such personal information. The FBI could identify no discernible public interest in the disclosure of this information because the disclosure of the victim's name and identifying information would not shed light on the operations and activities of the FBI. Therefore, disclosure would constitute a clearly unwarranted and an unwarranted invasion of personal privacy and, accordingly, the FBI properly protected this information pursuant to FOIA Exemptions (b)(6)-3 and (b)(7)(C)-3.⁸

⁷ Exemptions (b)(6)-2 and (b)(7)(C)-2 are cited on the following pages: HOLT-4, 14, 18, and 26-27.

⁸ Exemptions (b)(6)-3 and (b)(7)(C)-3 are cited on the following page: HOLT-27.

**(b)(6)-4 and (b)(7)(C)-4: Names and/or Identifying Information
of Third Parties of Investigative Interest**

(37) Exemptions (b)(6)-4 and (b)(7)(C)-4 have been asserted to protect the names and identifying information of third parties who are of investigative interest to the FBI and/or other law enforcement agencies. Identifying information withheld concerning these third parties includes names and addresses where alleged criminal activities occurred. Being linked with any law enforcement investigation carries a strong negative connotation and a stigma. Release of the identities of these individuals to the public could subject them to harassment or embarrassment, as well as undue public attention. Accordingly, the FBI has determined that these individuals maintain a substantial privacy interest in not having their identities disclosed. In making a determination whether to release the names and personal information concerning these third parties, the public's interest in disclosure was balanced against the individual's right to privacy. The FBI could identify no discernible public interest in the disclosure of this information because the disclosure of the third parties' names and identifying information would not shed light on the operations and activities of the FBI. Accordingly, the FBI concluded that the disclosure of this information would constitute a clearly unwarranted and an unwarranted invasion of their personal privacy. The FBI properly withheld this information pursuant to Exemptions (b)(6)-4 and (b)(7)(C)-4.⁹

⁹ Exemptions (b)(6)-4 and (b)(7)(C)-4 are cited on the following pages: HOLT-27-28.

**(b)(6)-5 and (b)(7)(C)-5: Name and/or Identifying Information
Concerning a Commercial Institution Employee**

(38) Exemptions (b)(6)-5 and (b)(7)(C)-5 have been asserted to withhold the name and title of a commercial employee who cooperated and provided assistance to the FBI by entering data into the ViCAP database. This source provided information to the FBI in his official capacity, and to identify him could subject him to unofficial inquiries not anticipated by his contact with the FBI. This would result in a clearly unwarranted and an unwarranted invasion of personal privacy inasmuch as this individual would be subjected to unnecessary public attention, harassment, retaliation, and/or physical harm. Moreover, the FBI's ability to obtain information quickly and discreetly in future law enforcement investigations would be negatively affected because individuals would be reluctant to cooperate with the FBI in future investigations. There is no public interest to be served by releasing the identity of this individual. Accordingly, the FBI concluded that the disclosure of this information would constitute a clearly unwarranted and an unwarranted invasion of their personal privacy. The FBI properly withheld this information pursuant to FOIA Exemptions (b)(6)-5 and (b)(7)(C)-5.¹⁰

**EXEMPTION (b)(7)(D)
CONFIDENTIAL SOURCE INFORMATION**

- (39) 5 U.S.C. § 552 (b)(7)(D) provides protection for:
records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . 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

¹⁰ Exemptions (b)(6)-5 and (b)(7)(C)-5 are cited on the following page: HOLT-31.

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.

(b)(7)(D)-1 Names and/or Information Provided by a Local Law Enforcement Agency Under an Express Assurance of Confidentiality

(40) Exemption (b)(7)(D)-1 has been asserted to protect confidential source material contained in the ViCAP file, as well as in a reference file concerning a Racketeering Enterprise Investigation (“REI”) of gang activity. The ViCAP information was provided to the FBI from a local law enforcement agency with an express understanding of confidentiality. The FBI’s Rules of Behavior for the ViCAP Web, (“the Rules”) specify, *inter alia*, the following:

4. All information in ViCAP Web is law enforcement sensitive and should not be distributed outside of federal, state, or local law enforcement agencies.
5. Information contributed by ViCAP Web users remains under the control of the submitter but may be shared with other users upon the expressed assurance that it will be treated as sensitive law enforcement information. Any sharing of information in ViCAP Web must be compatible with the purpose for which the information was collected. In no case shall the information be shared outside of ViCAP Web without the expressed and informed consent of the original submitter of the information.
10. The ViCAP Web database is a confidential system. The database qualifies as a system of records for the purposes of the Privacy Act, Title 5, United States Code, Section 552a.
13. Any unauthorized access of ViCAP Web or unauthorized use of the information contained in ViCAP Web by authorized users or others is prohibited and is subject to criminal and civil penalties under federal laws.

These Rules of Behavior clearly evidence an express grant of confidentiality to the local law enforcement entities that provide information to the ViCAP. The FBI, in connection with a wide variety of criminal investigations, solicits and receives information regularly from state, local, and foreign agencies and authorities. Inherent in the cooperative effort is the mutual

understanding that the information provided by such a source will be held in confidence by the FBI, and not released pursuant to FOIA and Privacy Act requests. If disclosure of information provided in confidence were to be made public pursuant to FOIA and Privacy requests, cooperation between the FBI and the local agencies and authorities would be greatly diminished, causing great impairment to its law enforcement mission. Accordingly, the FBI has properly withheld this information pursuant to FOIA Exemption (b)(7)(D)-1.¹¹

EXEMPTION (b)(7)(E)
INVESTIGATIVE TECHNIQUES AND PROCEDURES

(41) 5 U.S.C. § 552 (b)(7)(E) provides for the withholding of:

law enforcement records which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(b)(7)(E)-1 Information Pertaining to Sensitive FBI Analytical Procedures for Criminal Investigations

(42) The FBI's ViCAP is a law enforcement-oriented behavioral science and data-processing center designed to provide assistance to local, state, federal and foreign law enforcement agencies investigating unusual, bizarre, and/or repetitive violent crimes. See supra ¶28. ViCAP is a state-of-the-art behavior-based crime analysis tool which contains detailed administrative, investigative and behavior-oriented data. Data types include modus operandi, crime scene information, and types of trauma inflicted on the victim. To reveal the characteristics and data that are collected and tracked using this system could equip offenders

¹¹ Exemption (b)(7)(D)-1 is cited on the following pages: HOLT-27-31, 34-37, 40-41, 43-44, 46-47, 49-50, 55, 65-70, 72-74, 76, and 80-82.

with information that would allow them to avoid detection and/or take evasive action. Furthermore, release of the ViCAP analytical techniques would reduce their effectiveness. Consequently, because ViCAP is utilized for law enforcement investigations, because ViCAP's analytical procedures are not well-known to the public, and because disclosure of these procedures could reasonably be expected to risk circumvention of the law because disclosure of these techniques would negatively impact their effectiveness, the FBI has properly withheld this information pursuant to FOIA Exemption (b)(7)(E).¹²

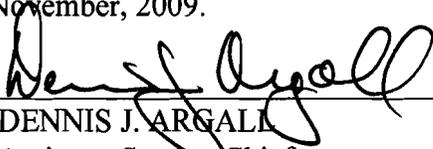
CONCLUSION

(43) The FBI has processed and released all reasonably segregable information from the records responsive to plaintiff's requests to the FBI. The remaining information has been withheld pursuant to FOIA Exemptions 2, 6, 7(C), 7(D) and 7(E), 5 U.S.C. §§ 552 (b)(2), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E). The FBI has carefully examined the responsive documents and has determined that the information withheld from plaintiff, if disclosed, could reasonably be expected to reveal internal administrative information; could cause unwarranted and clearly unwarranted invasion of the personal privacy interest of third parties; could disclose information provided by confidential sources, and could disclose techniques and procedures for law enforcement investigations. Accordingly, the FBI has released all reasonably segregable, non-exempt information to plaintiff in response to his FOIA request to the FBI.

¹² Exemption (b)(7)(E)-1 is cited on the following pages: HOLT-29 through HOLT-86.

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

Executed this 19th day of November, 2009.



DENNIS J. ARGALL
Assistant Section Chief
Records/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia