

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YASIR AFIFI ,

Plaintiff,

v.

ERIC H. HOLDER, Attorney General of
the United States; ROBERT MUELLER,
Director of the Federal Bureau of Investigation
(in their official capacities), *et al.*,

Defendants.

CIVIL ACTION NO.
1:11-cv-00460 (BAH)

**DEFENDANTS' MOTION FOR PRIVACY ACT PROTECTIVE ORDER
AND LEAVE TO FILE UNDER SEAL**

Pursuant to Local Rules of Civil Procedure 5.1(j) and 5.4(e), defendant Eric H. Holder, Attorney General of the United States, and defendant Robert Mueller, Director of the Federal Bureau of Investigation ("FBI"), sued in their official capacities, respectfully move for an order permitting defendants to file under seal, in connection with their Motion to Dismiss and for Summary Judgment, certain documents that may contain material protected from disclosure under the Privacy Act.

Plaintiff's Complaint alleges violations of the First and Fourth Amendments, the Administrative Procedure Act, and the Privacy Act based on the placement of a GPS tracker on his vehicle by the FBI. The Complaint incorporates, refers to, or otherwise implicates information about plaintiff that may be subject to the Privacy Act, 5 U.S.C.

§ 552a. Defendants' response to the Complaint through their Motion to Dismiss and for Summary Judgment, in turn, refers to and discusses information that may be subject to the Privacy Act.¹ Accordingly, defendants request that, pursuant to 5 U.S.C.

§ 552a(b)(11), the Court enter a Privacy Act protective order for the limited purpose of permitting defendants to file under seal parts of Defendants Holder and Mueller's Motion to Dismiss and for Summary Judgment and Memorandum in Support of the Motion, defendants' Statement of Material Facts, and the Declaration of Joel Dabisch ("Dabisch Declaration"). Defendants are separately serving the unredacted versions of these documents on plaintiff and are preparing redacted versions of these documents that excise discussion of the information they seek to file under seal.

Pursuant to Local Rule 7(m), the undersigned counsel conferred with counsel for plaintiff and was informed that plaintiff does not oppose this motion. A proposed order is attached.

¹ Whether the information defendants seek to file under seal is in fact subject to the Privacy Act may be addressed, as needed, in further proceedings. Even if it does fall under the Act, defendants believe that it would be subject to a "routine use" exception for disclosure in the course of litigation, pursuant to 5 U.S.C. § 552a(b)(3). Nevertheless, out of an abundance of caution, defendants bring this motion to file that information initially under seal pending further review and order of the Court.

Respectfully submitted this 16th day of June, 2011.

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*Attorneys for Defendants Holder and Mueller in
Their Official Capacities*