

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK TIMES COMPANY and :  
CHARLES SAVAGE, :

Plaintiffs, :

- against - :

10 Civ. 7920 (RPP)

FEDERAL BUREAU OF INVESTIGATION,

Defendant. :

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**DECLARATION OF DAVID M. HARDY**

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), formerly at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C., and currently located in Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001, to July 31, 2002, I was the Assistant Judge Advocate General of the United States 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 with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 276 employees who staff a total of ten (10) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to Federal Bureau of Investigation (“FBI”) records and information pursuant to the FOIA, 5 U.S.C. §

552; Privacy Act of 1974; Executive Order (“E.O.”) 13526; Presidential, Attorney General and FBI policies and procedures; judicial decisions; and other Presidential and Congressional directives.

(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 pursuant to the provisions of the FOIA, 5 U.S.C. § 552 and the Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the FBI’s response to plaintiffs’ November 3, 2009 FOIA request seeking access to Shooting Incident Review Team (“SIRT”) reports;<sup>1</sup> and plaintiffs’ November 4, 2009 FOIA request seeking access to statistics concerning the use of assessments to collect information about individuals or organizations that may be involved in national security threats.<sup>2</sup>

(4) The FBI has processed a total of 2,162 pages responsive to plaintiffs’ requests. Specifically, it has released to plaintiffs a total of 2,160 pages in full or in part. In accordance with Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), this declaration provides an explanation of the

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<sup>1</sup> SIRT reports relate to the shooting incidents of an FBI Special Agent or Task Force Officer on an FBI led task force who is performing work related to the task force mission. These incidents must be reported to the Inspection Division, where an investigation into the shooting is then conducted. Once the investigation is complete, the findings are presented to and reviewed by the Shooting Incident Review Group (“SIRG”) who then assess whether actions against the shooter will be taken and/or to identify and address other areas of concern.

<sup>2</sup> To carry out its central mission of protecting the national security, the FBI must proactively collect information from available sources in order to identify threats and activities and to inform appropriate intelligence analysis. This type of investigative activity is known as an “assessment.” Assessments may be used when an “allegation or information” or an “articulable factual basis” (the predicates for predicated investigations) concerning crimes or threats to the national security is obtained and the matter can be checked out or resolved through the relatively non-intrusive methods authorized in assessments. The checking of investigative leads in this manner can avoid the need to proceed to more formal levels of investigative activity, if the results of an assessment indicate that further investigation is not warranted. (See Domestic Investigations and Operations Guide (“DIOG”), Section 5, [http://foia2.fbi.gov/diog/domestic\\_investigations\\_and\\_operations\\_guide\\_part2.pdf](http://foia2.fbi.gov/diog/domestic_investigations_and_operations_guide_part2.pdf))

FBI's record-keeping system and the procedures used to search for records responsive to plaintiffs' requests, and provides justifications for the FBI's withholding of information from these records pursuant to FOIA Exemptions 6 and 7(C), 5 U.S.C. §§ 552(b)(6) and (b)(7)(C).<sup>3</sup>

### **PROCEDURAL HISTORY OF PLAINTIFFS' FOIA REQUESTS**

Set forth below is a chronology and description of the pertinent correspondence concerning plaintiffs' requests. Copies of this correspondence are attached hereto as **Exhibits A-X**.

#### **FOIA Request regarding SIRT reports - FOIPA Number 1139615**

(5) By letter dated November 3, 2009, plaintiff Charles Savage ("Savage"), on behalf of plaintiff The New York Times Company ("NYTC"), submitted a FOIA request through electronic mail for "copies of all Shooting Incident Review Team reports completed between Jan. 1, 1999, and the present." In his request, plaintiff Savage also sought a fee waiver because he is "a representative of the news media and this request is made as part of news gathering." (**See Exhibit A.**)

(6) The FBI responded to plaintiff Savage's request letter on November 13, 2009, and informed him that the indices to the Central Records System ("CRS") were being searched and he would be advised of the search results as soon as possible. Additionally, he was informed that his request had been assigned FOIPA Number 1139615. (**See Exhibit B.**)

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<sup>3</sup> In their Motion for Summary Judgment, plaintiffs are only challenging the application of Exemptions (b)(2) and (b)(7)(E) in regard to the assessment request and Exemptions (b)(6) and (b)(7)(C) in regard to the deletion of names of FBI Special Agents on the SIRT reports. As a result, although information was withheld pursuant to other exemptions throughout both requests, they are not addressed in this Vaughn declaration. Further, since the FBI has subsequently released information in regard to the assessment request, justification for Exemptions (b)(2) and (b)(7)(E) is no longer necessary.

(7) In an interim letter dated March 16, 2010, the FBI informed plaintiff Savage that the FBI was searching for, scanning, and evaluating files that may be responsive to his request.

**(See Exhibit C.)**

(8) Plaintiffs pursued an administrative appeal with the Office of Information Policy (“OIP”) based on the FBI’s inability to provide a timely response to his FOIA request.<sup>4</sup> **(See Exhibit D.)**

(9) By letter dated May 4, 2010, OIP advised plaintiffs that DOJ regulations provide for an administrative appeal only after there has been an adverse determination by a component. Since no adverse determination had been made, there was no reason for OIP to consider plaintiffs’ appeal wherein plaintiffs alleges the FBI failed to respond to their request for access to records. OIP went on to inform plaintiffs that they have forwarded plaintiffs’ letter to the FBI and suggested contacting the FBI directly. **(See Exhibit E).**

(10) By e-mail dated July 8, 2010, plaintiff Savage emailed the FBI to modify and expand the time frame of his “FOIA request for SIRT reports from 01/01/93 to the present.” However, he reduced the scope of the request to include only the summaries of the SIRT reports, any Electronic Communications (“ECs”) completed by the review panel containing its findings about each incident, and any section of the SIRT that contains investigator concerns. The FBI agreed to process this modified request rather than require plaintiffs to submit a new FOIA request. **(See Exhibit F).**

(11) The FBI sent plaintiff Savage an interim letter dated August 3, 2010, providing him with a case status. The FBI informed plaintiff Savage that it was continuing to search for, retrieve, scan, and

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<sup>4</sup> While the FBI had no record of this letter, a copy of it was obtained from OIP for inclusion in this declaration and the correspondence trail.

evaluate files that may be responsive to his request. The FBI also told plaintiff Savage that once the files had been evaluated as potentially responsive, the request would be forwarded to the “perfected backlog” where it would be assigned to an analyst. **(See Exhibit G.)**

(12) By e-mail dated August 31, 2010, plaintiff Savage inquired as to the progress on the SIRT reports. **(See Exhibit H).**

(13) By e-mail dated September 1, 2010, the FBI responded to plaintiff Savage's August 31, 2010 e-mail and advised him that the documents had been reviewed by the Inspection Division and a status check would be conducted. **(See Exhibit H).**

(14) By letter dated September 14, 2010, plaintiffs inquired as to the status of the request, stating that they had “not heard from the Department since receiving an acknowledgment on March 16, 2010.” **(See Exhibit I).**

(15) By letter dated September 27, 2010, the FBI responded to plaintiffs' September 14, 2010 letter and informed them that a considerable amount of internal coordination had been conducted to satisfy the request. Additionally, the FBI provided a time-line detailing the ongoing efforts. Finally, the FBI informed plaintiffs that the FBI had been in continuous contact to keep him informed of the status of this request. **(See Exhibit J).**

(16) The FBI sent plaintiffs an interim letter dated November 3, 2010, providing them with a case status. The FBI informed plaintiffs that their request was being reviewed by an analyst for review of applicable exemptions. **(See Exhibit K.)**

(17) By letter dated November 18, 2010, the FBI released 490 pages to plaintiff Savage. The FBI stated that it had reviewed 492 pages responsive to plaintiffs' request and that it was releasing

490 pages. Furthermore, the FBI indicated that it had withheld information pursuant to FOIA Exemptions (b)(2), (b)(3), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI advised plaintiff Savage that this was the first interim release. Finally, the FBI advised plaintiff Savage of his right to appeal the decision to OIP. **(See Exhibit L.)**

(18) By letter dated December 17, 2010, the FBI released 757 pages to plaintiff Savage. The FBI stated that it had reviewed 757 pages responsive to plaintiffs' request. There were no pages withheld in full. Furthermore, the FBI indicated that it had withheld information, in part, pursuant to FOIA Exemptions (b)(2), (b)(3), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI also advised plaintiff Savage of his right to appeal the decision to OIP. **(See Exhibit M.)**

(19) By letter dated December 20, 2010, the FBI released 70 pages to plaintiff Savage which consisted of a report entitled "Shooting Database Review." The FBI informed plaintiff Savage that the report was being released in its entirety. The FBI also informed plaintiff Savage that, while the report was finalized after the search cut-off date of the original November 12, 2009 request, the FBI made a discretionary determination to release the report in full without requiring a new FOIA request. Finally, although no information was withheld, the FBI provided the standard appeal language. **(See Exhibit N.)**

(20) By letter dated January 25, 2011, the FBI released three additional pages to plaintiff Savage. The FBI stated that it had reviewed these pages and indicated that it had withheld information pursuant to FOIA Exemptions (b)(6) and (b)(7)(C). The FBI advised plaintiff Savage that this was an interim release consisting of a 1993 Shooting Incident Review Team Report that was not included in the original FOIPA number 1139615 release. The FBI also advised plaintiff Savage that additional

documents were being processed and would be released upon completion of the review process.

Finally, the FBI advised plaintiff Savage of his right to appeal the decision to OIP. (See Exhibit O.)

(21) By letter dated February 16, 2011, the FBI released 838 pages to plaintiff Savage. The FBI stated that it had reviewed 838 pages responsive to plaintiffs' request. There were no pages withheld in full. Furthermore, the FBI indicated that it had withheld information, in part, pursuant to FOIA Exemptions (b)(2), (b)(3), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI advised plaintiff Savage that this release included the ECs (electronic communications) by the review panel that related to the SIRT reports that were previously disclosed. Finally, the FBI advised plaintiff Savage of his right to appeal the decision to OIP. (See Exhibit P.)

**FOIA Request regarding assessments - FOIPA Number 1140733**

(22) By letter dated November 4, 2009, plaintiff Savage, on behalf of plaintiff NYTC, submitted a FOIA request by electronic mail for “statistics on the aggregate results of assessments the FBI has conducted using the new authorities provided by the AG Guidelines that were put into effect in December 2008.” In making this request, plaintiffs referenced an FBI response to a question from Senator Feingold during a March 25, 2009 Senate Judiciary Committee Hearing. In his request, plaintiff Savage also sought a fee waiver because he is “a representative of the news media and this request is made as part of news gathering.” (See Exhibit Q.)

(23) The FBI responded to plaintiff Savage's request letter on December 11, 2009, and informed him that the indices to the Central Records System (“CRS”) were being searched and he would be advised of the search results as soon as possible. Additionally, he was informed that his request had been assigned FOIPA Number 1140733. (See Exhibit R.)

(24) By letter dated December 11, 2009, the FBI informed plaintiff Savage that his request for a fee waiver was denied.<sup>5</sup>

(25) By letter dated December 23, 2009, the FBI informed plaintiff Savage that the material he requested was currently in draft form and was exempt from disclosure pursuant to FOIA Exemption (b)(5). The FBI advised plaintiff Savage of his right to appeal the decision in the release to OIP.

**(See Exhibit S.)**

(26) By letter dated December 30, 2009, plaintiffs sent an appeal to OIP in response to the FBI's December 23, 2009 response letter. **(See Exhibit T.)**

(27) By letter dated January 13, 2010, OIP advised plaintiffs that the appeal had been received on January 7, 2010, and that plaintiffs' appeal had been assigned Appeal Number 2010-0811. **(See Exhibit U.)**

(28) OIP responded to plaintiffs on July 8, 2010. OIP affirmed the FBI's action to withhold the information pursuant to Exemption (b)(5). OIP advised plaintiffs that mediation services were available to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. OIP advised plaintiffs of their right to seek judicial review if they were dissatisfied with OIP's action. **(See Exhibit V.)**

(29) Subsequently, the pending draft pages relating to the assessment request became final. By letter dated December 1, 2010, the FBI released two pages to plaintiff Savage responsive to his

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<sup>5</sup> Due to a technical glitch, a copy of the letter did not save in the database that the FBI uses for FOI/PA requests. Therefore, the reason the fee waiver was denied is not accessible and a copy is not available to attach as an exhibit. However, this issue is moot since processing the request did not involve a fee.



request. The FBI indicated that it had withheld information pursuant to FOIA Exemptions (b)(2) and (b)(7)(E). Finally, the FBI advised plaintiff Savage of his right to appeal the decision to OIP.<sup>6</sup>

**(See Exhibit W.)**

(30) Subsequently, by letter dated March 7, 2011, the FBI re-released the two pages described above to plaintiff Savage. Upon further review, the FBI determined that certain additional information could be released following consultation and verification from one of FBI's operational equities who confirmed that release of these general numbers would not cause harm. The FBI stated that the material previously withheld under FOIA Exemptions (b)(2) and (b)(7)(E) could be released and the exemptions were removed. Finally, the FBI advised plaintiff Savage of his right to appeal the decision to OIP. **(See Exhibit X.)**

#### **EXPLANATION OF THE FBI'S CENTRAL RECORDS SYSTEM**

(31) The Central Records System ("CRS") enables the FBI to maintain 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, called FBI "classifications," which are 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, whereas records that are pertinent to specific field offices of the FBI are maintained in those field offices. Although the CRS is primarily

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<sup>6</sup> Although plaintiffs would have been normally required to file a new FOIA request, in the interest of resolving this litigation the FBI released the pages.

designed to serve as an investigative tool, the FBI searches the CRS for documents that are potentially responsive to FOIA/Privacy Act requests. The mechanism that the FBI uses to search the CRS is the Automated Case Support System (“ACS”).

(32) 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. ACS can be described as an internal computerized subsystem of the CRS. 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.

(33) The retrieval of data from the CRS is made possible through the ACS using the General Indices, which are arranged in alphabetical order.<sup>7</sup> 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 “cross-references,” are 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.

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<sup>7</sup> The General Indices, which became fully automated on September 24, 1987, also includes index cards which allow the FBI to conduct a manual search for records prior to that date.

(34) Searches made in the General Indices to locate records concerning a particular subject are made by searching the subject requested in the index.

(35) The 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 used by all FBIHQ, as well as all FBI field offices and Legats that are conducting or assisting in the investigation. Using the file number “157-SF-12345” as an example, an explanation of the UCFN is as follows: “157” indicates the classification for the specific type of investigation, in this case “Civil Unrest (Disorders and Demonstrators);” “SF” is the abbreviated form used for the OO of the investigation, in this case San Francisco Field Office; 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 109.8 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.

(36) The decision to index names other than subjects, suspects, and victims is a discretionary decision made by the FBI Special Agent (“SA”) – and on occasion, support employees – 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 and national security 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.

#### **SEARCH FOR RECORDS RESPONSIVE TO PLAINTIFFS' REQUESTS**

(37) FBI searched CRS for records responsive to plaintiffs’ requests. However, given the purpose, design and organization of the information stored in the CRS system and the subject and nature of plaintiffs’ FOIA requests, the FBI found no responsive records in CRS. Therefore, the FBI’s FOIA office consulted directly with the Inspection Division, the Division who maintained the responsive records. In response to plaintiffs’ November 3, 2009 FOIA request for SIRT reports, the FBI contacted the Inspection Division to search for and gather all Shooting Incident Review Team summaries and Electronic Communications (“ECs”) dated 1993 to the present.<sup>8</sup> As a result of this

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<sup>8</sup> Plaintiffs’ original request, dated November 3, 2009, asked for all “Shooting Incident Review Team reports completed between Jan. 1, 1999, and the present.” Through communications with the

search, the FBI identified numerous reports and ECs, as potentially responsive. The FBI also located a summary report, entitled "Shooting Database Review" of the shootings that occurred between 1993 and 2009.

(38) In response to plaintiffs' November 4, 2009 FOIA request for assessment statistics, the FBI contacted the Office of Congressional Affairs to search for and gather the questions for the record arising from the March 25, 2009 Senate Judiciary Committee hearing of oversight of the FBI. As a result of this search, the FBI identified two pages of material as potentially responsive.

#### **JUSTIFICATIONS FOR SPECIFIC DELETIONS OF INFORMATION**

(39) All documents have been thoroughly reviewed to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide plaintiffs with all reasonably segregable portions of releasable material. The paragraphs that follow explain the FBI's rationale for withholding particular categories of information under the specific exemptions described above. A review of this information will reveal that all material which the FBI has withheld is exempt from disclosure pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).<sup>9</sup>

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FBI, plaintiff Savage modified his request to date back to January 1, 1993. He also reduced the scope of his request to include only the summaries of these reports, any ECs completed by the review panel containing its findings about each incident, and any section of the SIRT that contains investigator concerns.

<sup>9</sup> While other exemptions were applied to these documents, the plaintiffs are only challenging the material that was withheld under Exemptions (b)(6) and (b)(7)(C) as it relates to the names of FBI Special Agents in the material that was responsive to plaintiffs' request for Shooting Incident Review Team reports.

Additionally, while plaintiffs are also challenging the assertion of (b)(2) and (b)(7)(E) as they were asserted on the assessment statistics, these pages were re-reviewed and it has been determined that the material withheld under these exemptions can be released. The additional release was made to achieve maximum disclosure consistent with the access provisions of the FOIA.

(40) In processing the documents, the FBI sought to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide plaintiffs with all material in the public domain and with all reasonably segregable portions of releasable material. No reasonably segregable, nonexempt portions were withheld from plaintiffs. The redactions to remove the names of the Special Agents, pursuant to Exemptions (b)(6) and (b)(7)(C), were applied to approximately 2,000 pages.

#### **EXEMPTION (b)(7) THRESHOLD**

(41) 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 invasion of personal privacy (b)(7)(C).

(42) 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 duties of that agency. Documents responsive to plaintiffs' November 3, 2009 request for SIRT reports relate to the FBI's investigation of shooting incidents of Special Agents. Due to the nature of these incidents, the responsive documents fall squarely within the law enforcement duties of the FBI. Accordingly, the information readily meets the threshold requirement of Exemption (b)(7). The remaining inquiry is whether disclosure "could reasonably be expected to constitute an unwarranted

invasion of personal privacy” under Exemption (b)(7)(C), as well as a “clearly unwarranted invasion of personal privacy” under Exemption (b)(6).<sup>10</sup>

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

(43) 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. Similarly, 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.

(44) When withholding information pursuant to these exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting this exemption, the FBI has scrutinized each item of information to determine the nature and strength of the privacy interest of each individual whose name appears in the documents at issue. In conducting this analysis, the public interest in disclosure of this information is determined by whether the information in question would shed light on the FBI’s performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the

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<sup>10</sup> The practice of the FBI is to assert Exemption (b)(6) in conjunction with (b)(7)(C). Although the balancing test for (b)(6) uses a “would constitute a clearly unwarranted invasion of personal privacy” and the test for (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.

criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. In this case, the FBI concluded that the information should be withheld under Exemptions (b)(6) and (b)(7)(C), and determined that the individuals' privacy interests were not outweighed by any public interest in disclosure.

**Names of FBI Special Agents**

(45) Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names of FBI Special Agents who were listed in the SIRT reports and released to plaintiffs in response to their request. These names of the agents redacted from these reports relate to agents who were involved in specific investigations as described in the reports. Publicity (adverse or otherwise) regarding any particular Special Agent may seriously prejudice his or her effectiveness in conducting other investigations. The privacy consideration is also to protect FBI Special Agents, as individuals, from unnecessary, unofficial questioning as to the course of an investigation, whether or not they are currently employed by the FBI.

(46) FBI Special Agents conduct official inquiries into violations of various criminal statutes and national security 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, and to 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. Thus, disclosure of this information would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an



unwarranted invasion of their personal privacy.

(47) There is no public interest in the disclosure of the names of the Special Agents listed in the reports. The public interest in the documents has been met through the release of the information in the SIRT reports and ECs without the need for releasing individual Agent names. These reports contain specific information on FBI shooting incidents and recommendations including recommended course of action. The released information does meet the FOIA's core purpose of shedding light on agency performance of its duties. There would be no additional public value in disclosing the names of the agents and thus, the strong privacy interest in withholding the names as outlined above outweighs the lack of public interest in disclosure of just the names.

(48) Plaintiffs agrees that the release of the complete name of FBI Special Agents would invoke privacy rights but argues for the release of the Special Agents initials. However, the pages do not contain simply the initials of the Special Agent but usually just the first and last name of the agents and on some pages just the last name of the agent. Reprocessing these pages would involve carefully redacting the first name and the last name to release only the first letter of the first name and the first letter of the last name. Even if the FBI were to agree to such re-processing, it would be a burdensome task involving the re-processing of approximately 2,000 pages. Further, after re-processing these pages, the release of the first letter of the first names and first letter of the last names would not necessarily add any significant public interest value, as defined by plaintiffs. There would be no verification that the same first letter and last letter reflect that it is the same agent.<sup>11</sup>

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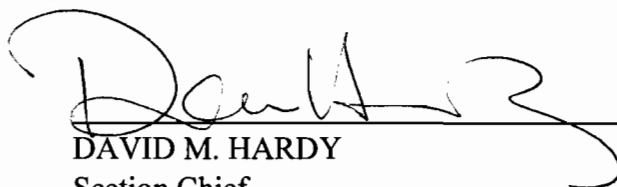
<sup>11</sup> Attached as Exhibit Y are a few samples of the excised SIRT reports with the names of the Special Agents redacted. Upon the request of the court, additional SIRT reports can be supplied.

## CONCLUSION

(49) The FBI has processed and released all reasonably segregable information from the documents responsive to plaintiffs' requests. The FBI has properly withheld information pursuant to FOIA Exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552(b)(6) and (b)(7)(C). The FBI has carefully examined the responsive documents and has determined that the information withheld from plaintiffs, if disclosed, could cause a clearly unwarranted and unwarranted invasion of personal privacy. The FBI has released all reasonably segregable, non-exempt information to plaintiffs in response to plaintiffs' FOIA requests.

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 Y attached hereto are true and correct copies.

Executed this 25<sup>th</sup> day of March, 2011.



DAVID M. HARDY  
Section Chief  
Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Winchester, Virginia