

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK TIMES COMPANY and CHARLES SAVAGE,	:	
	:	
Plaintiffs,	:	
	:	No. 10 Civ. 7920 (RPP)
- against -	:	
FEDERAL BUREAU OF INVESTIGATION,	:	
	:	
Defendant.	:	
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SECOND DECLARATION OF DAVID E. McCRAW

I, DAVID E. McCRAW, declare as follows:

1. I am Assistant General Counsel of The New York Times Company, the publisher of *The New York Times* and a plaintiff in this action along with *Times* reporter Charles Savage (plaintiffs jointly, "NYT"). I make this declaration upon personal knowledge.

2. Currently at issue in this case is a request submitted by NYT in 2009 under the Freedom of Information Act, 5 U.S.C. §552 *et seq.*, to the Federal Bureau of Investigation ("FBI") for 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" (the "Assessment Statistics"). The FBI conducts "assessments" to "proactively" collect information about individuals or organizations that may threaten national security, according to the FBI's *Domestic Investigations and Operations Guide*, 40 (Dec. 16, 2008) available at:

http://foia.fbi.gov/diog/domestic_investigations_and_operations_guide_part2.pdf (the "FBI Guide").

3. On March 7, 2010, while NYT's motion for summary judgment in this case was pending, the FBI released the Assessment Statistics to NYT.

4. Subsequently, I spoke by telephone to Amy Barcelo, the Assistant United States Attorney who was then handling this litigation. I requested clarification whether the FBI was conceding that the Assessment Statistics were a public record under FOIA.

5. Ms. Barcelo said she needed to consult with the FBI. Later, she contacted me and said the FBI was not taking the position that FOIA required the release of the Assessment Statistics.

6. On April 15, 2011 *Times* reporter Charles Savage filed a second FOIA request, seeking additional assessment statistics. (*See* Declaration of Charles Savage, dated April 15, 2011, ¶ 13 & Ex. E.)

7. Because NYT has sought additional assessment statistics, we do not believe that the issue is moot as a result of the discretionary release of the data made by the FBI on March 7, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY
April 15, 2011



David E. McCraw