

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 DENNIS J. ARGALL**

(1) I am currently the Assistant Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), formerly at Federal Bureau of Investigation Headquarters in Washington, D.C., and currently located 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 18, 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 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 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 reports; 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 (“First Assessment Statistics Request”).

(4) This declaration explains the FBI’s decision to release the information responsive to the First Assessment Statistics Request and provides a current status of plaintiffs’ April 14 and 15, 2011 requests for additional statistics on three types of assessments of criminal activity or national security threats conducted during different times periods.

(5) In the course of reviewing plaintiffs’ challenge to the assertion of FBI’s initial assertion of Exemptions (b)(2) and (7)(E) with respect to the First Assessment Statistics Request,

the FOIA Litigation Unit contacted the FBI's Office of Congressional Affairs ("OCA") on or about March 3, 2011. The OCA was the office that initially recommended that the number of assessments be withheld. The OCA ultimately deferred to the opinions and recommendation from two FBI subject matter experts who were more familiar with assessments. After the subject matter experts reviewed the one page responsive to the First Assessment Statistics Request and reviewed the numbers that were initially withheld on this page, they determined that the release in this particular instance would no longer harm any interest protected by either Exemption (b)(2) or (b)(7). Thus, Exemptions (b)(2) and (b)(7)(E) were removed from the page and the information was released to plaintiffs.

(6) On April 14, 2011 and April 15, 2011, plaintiffs electronically submitted two new FOIA requests to the FBI (collectively, the "Second Assessment Statistics Request"). True and correct copies of both requests are annexed hereto as Exhibits A and B. The Second Assessment Request seeks statistics on the numbers of Type 1, 2, and 3 assessments of criminal activity and national security conducted at various time periods. These are new requests that are separate from and do not overlap with the document sought in plaintiffs' First Assessment Statistics Request. In accordance with the FBI's standard FOIA procedures, the Second Assessment Statistics Request was treated as two separate requests, assigned FOIPA numbers 1164755 and 1164878, and logged into the RIDS FOIPA Document Processing System.

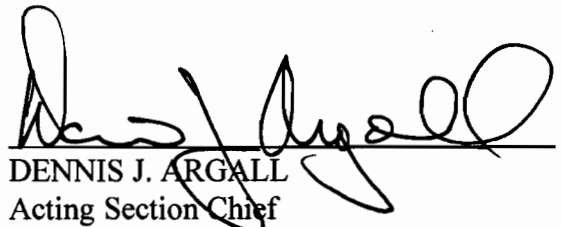
(7) The FBI provided a preliminary response to plaintiff Savage's Second Assessment Statistics Request on April 18, 2011 and April 19, 2011, respectively. True and correct copies are annexed hereto as Exhibits C and D. The FBI informed him that the indices to the Central Records System were being searched and he would be advised of the search results as soon as

possible. The FBI is currently searching for any potentially responsive material for both requests.

(8) Since RIDS is still searching for any potentially responsive documents relating to the Second Assessment Statistics Request , the FBI is unable to establish a position on whether or not any responsive documents can be released, or what exemptions may apply to such documents . All potentially responsive material located as a result of a FOIA request is reviewed on a document-by-document basis.

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 D attached hereto are true and correct copies.

Executed this 28<sup>th</sup> day of April, 2011.



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

**EXHIBIT A**

## FBI eFOIA Request Form

### Instructions:

- 1) Please use this form only to request information about an organization, a business, an investigation, a historical event, an incident, or a group. This form should not be used to submit Privacy Act requests for information about yourself or another living person.
- 2) Required fields are marked. If you do not enter accurate and complete information, we may not be able to process your request.
- 3) After filling out the information, submit your request electronically by clicking the SUBMIT button at the bottom of the page. Please note: This is not a secure form, and we cannot guarantee the confidentiality of communications sent via the Internet.
- 4) You also have the option of typing your information into this form, printing it, and: (1) faxing it to (540) 868-4997; or (2) mailing it to **FBI, FOI/PA Request, Record/Information Dissemination Section, 170 Marcel Drive, Winchester, VA 22602-4843**. You can also e-mail the information to foiparequest@ic.fbi.gov.
- 5) For more information on how to prepare and submit your request, please call the FOIA Requestor Service Center at (540) 868-1535 or see the Requesting FBI Records webpage:  
[http://foia.fbi.gov/requesting\\_records.html](http://foia.fbi.gov/requesting_records.html)

Dear FOIA Officer:

This is a request filed under the Freedom of Information Act.

### Reasonably Describe the Records

Describe the records you are requesting. Be as specific as possible with regard to names, dates, places, events, subjects, etc. Please include any known file designations or descriptions for the records you seek.

Bear in mind that the FBI was not established until 1908 and has very few records prior to the 1920s. The Freedom of Information Act clearly states that records must exist at the time the request is submitted to be considered.

**Enter description:** You must submit a separate request for each subject: (Required)  
Describe Subject/Incident of Request. Give Time Frame (if applicable).

1. Statistics on the number of Type 3 assessments of criminal activity conducted from December 2008 to March 2009 (the time period represented in the FBI's response to question 15 during the appearance of FBI Director Robert Mueller before the Senate Committee on the Judiciary on March 25, 2009), including the number of those assessments that are ongoing and the number of preliminary and full investigations opened based upon information developed in those Type 3 assessments.
2. Statistics on the number of Type 3 assessments of national security threats conducted from December 2008 to March 2009 (the time period represented in the FBI's response to question 15 during the appearance of FBI Director Robert Mueller before the Senate Committee on the Judiciary on March 25, 2009), including the number of those assessments that are ongoing and the number of preliminary and full investigations opened based upon information developed in those assessments.

**Type of Requestor**

Please provide information about yourself and the purpose of your request to help us determine your fee category: (Required)

I am a representative of the news media and this request is made part of news gathering and not for commercial use

**Fees and Fee Waivers**

Your request must include a statement that:

- (1) You agree to pay any fees that may be incurred to process the request;
- (2) Stipulates an amount you are willing to pay; or
- (3) Requests a specific waiver or reduction of fees.

Please select the statement that applies: (Required)

I agree to pay all applicable fees.

I agree to pay up to a specific amount for fees.  (Enter dollar amount)

I request a waiver or reduction of fees.

Explanation for request of waiver or reduction of fees:

I request a waiver of fees because I am a representative of the news media and this request is made as part of news gathering

**Expedited Processing**

If you are seeking expedited processing, please choose one of the options below and provide a justification.

I believe a compelling need exists to warrant expedited processing because there is an imminent threat to the life or physical safety of an individual.

I believe a compelling need exists to warrant expedited processing because there is an urgency to inform the public concerning actual or alleged federal government activity (Note: This option is available ONLY for requestors primarily engaged in disseminating information).

Please provide your specific justification for expedited processing:

Thank you for your consideration of my request.

Sincerely,

Title: (Mr. Mrs. Miss, etc.)

Name: (Required) Charlie Savage

Organization: (Required if applicable)

The New York Times

Street Address: (Required)

1627 I Street NW

City: (Required) Washington

State: (Required if applicable) DC

Or Country: (Required if applicable) USA

ZIP or Postal Code: (Required) 20006

Phone #1: 202-862-0317

Phone #2:

Fax Number:

E-mail address: savage@nytimes.com

Secondary address:

**Submit**

**Print Page**

**Clear Information**



**EXHIBIT B**

## FBI eFOIA Request Form

### Instructions:

- 1) Please use this form only to request information about an organization, a business, an investigation, a historical event, an incident, or a group. This form should not be used to submit Privacy Act requests for information about yourself or another living person.
- 2) Required fields are marked. If you do not enter accurate and complete information, we may not be able to process your request.
- 3) After filling out the information, submit your request electronically by clicking the SUBMIT button at the bottom of the page. Please note: This is not a secure form, and we cannot guarantee the confidentiality of communications sent via the Internet.
- 4) You also have the option of typing your information into this form, printing it, and: (1) faxing it to (540) 868-4997; or (2) mailing it to **FBI, FOI/PA Request, Record/Information Dissemination Section, 170 Marcel Drive, Winchester, VA 22602-4843**. You can also e-mail the information to [foiparequest@ic.fbi.gov](mailto:foiparequest@ic.fbi.gov).
- 5) For more information on how to prepare and submit your request, please call the FOIA Requestor Service Center at (540) 868-1535 or see the Requesting FBI Records webpage: [http://foia.fbi.gov/requesting\\_records.html](http://foia.fbi.gov/requesting_records.html)

Dear FOIA Officer:

This is a request filed under the Freedom of Information Act.

### Reasonably Describe the Records

Describe the records you are requesting. Be as specific as possible with regard to names, dates, places, events, subjects, etc. Please include any known file designations or descriptions for the records you seek.

Bear in mind that the FBI was not established until 1908 and has very few records prior to the 1920s. The Freedom of Information Act clearly states that records must exist at the time the request is submitted to be considered.

**Enter description:** You must submit a separate request for each subject: (Required)

Describe Subject/Incident of Request. Give Time Frame (if applicable).

1. Statistics on the number of Type 1 and 2 assessments of criminal activity initiated between March 25, 2009 and the present, the number of those assessments which remain open, and the number of preliminary and full investigations opened based on those types of assessments.
2. Statistics on the number of Type 1 and 2 assessments of national security activity initiated between March 25, 2009 and the present, the number of those assessments which remain open, and the number of preliminary and full investigations opened based on those types of assessments.
3. Statistics on the number of Type 3 assessments of criminal activity initiated between March 25, 2009 and the present, the number of Type 3 assessments which remain open, and the number of preliminary and full investigations opened based on each of those types of assessments.
4. Statistics on the number of Type 3 assessments of national security activity initiated between March 25, 2009 and the present, the number of Type 3 assessments which remain open, and the number of preliminary and full investigations opened based on each of those types of assessments.

**Type of Requestor**

Please provide information about yourself and the purpose of your request to help us determine your fee category: (Required)

I am a representative of the news media and this request is made part of news gathering and not for commercial use

**Fees and Fee Waivers**

Your request must include a statement that:

- (1) You agree to pay any fees that may be incurred to process the request;
- (2) Stipulates an amount you are willing to pay; or
- (3) Requests a specific waiver or reduction of fees.

Please select the statement that applies: (Required)

I agree to pay all applicable fees.

I agree to pay up to a specific amount for fees.  (Enter dollar amount)

I request a waiver or reduction of fees.

Explanation for request of waiver or reduction of fees:

I request a waiver of fees because I am a representative of the news media and this request is made as part of news gathering

**Expedited Processing**

If you are seeking expedited processing, please choose one of the options below and provide a justification.

I believe a compelling need exists to warrant expedited processing because there is an imminent threat to the life or physical safety of an individual.

I believe a compelling need exists to warrant expedited processing because there is an urgency to inform the public concerning actual or alleged federal government activity (Note: This option is available ONLY for requestors primarily engaged in disseminating information).

Please provide your specific justification for expedited processing:

Thank you for your consideration of my request.

Sincerely,

Title: (Mr. Mrs. Miss, etc.)

Name: (Required) Charlie Savage

Organization: (Required if applicable)

The New York Times

Street Address: (Required)

1627 I Street NW

City: (Required) Washington

State: (Required if applicable) DC

Or Country: (Required if applicable) USA

ZIP or Postal Code: (Required) 20006

Phone #1: 202-862-0317

Phone #2:

Fax Number:

E-mail address: savage@nytimes.com

Secondary address:

**Submit**

**Print Page**

**Clear Information**

**EXHIBIT C**



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

April 18, 2011

MR. CHARLIE SAVAGE  
NEW YORK TIMES  
1627 I STREET, NORTHWEST  
WASHINGTON, DC 20006

FOIPA Request No.: 1164755- 000  
Subject: STATISTICS OF TYPE 3 ASSESSMENTS OF  
CRIMINAL ACTIVITY/NATIONAL SECURITY THREATS DEC.  
2008 - MAR. 2009 ET. AL.

Dear Mr. Savage:

- This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant 28 U.S.C. § 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- We are searching the indices to our Central Records System for the information you requested, and will inform you of the results as soon as possible.
- Processing delays have been caused by the large number of requests received by the FBI. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your request for a fee waiver is being considered and you will be advised as to its status at a later time. Your patience is appreciated.

Very truly yours,

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division

**EXHIBIT D**



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

April 19, 2011

MR. CHARLIE SAVAGE  
NEW YORK TIMES  
1627 I STREET  
WASHINGTON, DC 20006

FOIPA Request No.: 1164878- 000  
Subject: TYPE 1, 2, AND 3 ASSESSMENTS  
MAR. 2009-PRESENT ET. AL.

Dear Mr. Savage:

- This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant 28 U.S.C. § 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- We are searching the indices to our Central Records System for the information you requested, and will inform you of the results as soon as possible.
- Processing delays have been caused by the large number of requests received by the FBI. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your request for a fee waiver is being considered and you will be advised as to its status at a later time. Your patience is appreciated.

Very truly yours,

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division