

THOMAS S. HAY  
202.274.2916  
202.654.5609  
[thomas.hay@troutmansanders.com](mailto:thomas.hay@troutmansanders.com)

CLARENCE Y. LEE  
202.662.2021  
202.654.5826  
[clarence.lee@troutmansanders.com](mailto:clarence.lee@troutmansanders.com)

# TROUTMAN SANDERS

TROUTMAN SANDERS LLP  
Attorneys at Law  
401 9th Street, N. W., Suite 1000  
Washington, D.C. 20004-2134  
202.274.2950 telephone  
[troutmansanders.com](http://troutmansanders.com)

November 13, 2015

## VIA E-MAIL AND FIRST-CLASS MAIL

April Denise Seabrook, Esq.  
Assistant United States Attorney, Civil Division  
555 4th Street, NW  
Room 4288E  
Washington, DC 20530  
[April.Seabrook@usdoj.gov](mailto:April.Seabrook@usdoj.gov)

**Re: *Negley v. The United States Department of Justice*, No. 1:15-cv-01004 (D.D.C.)**

Dear Ms. Seabrook:

On behalf of our client, James L. Negley, we are writing to respond to your October 16, 2015 e-mail that, among other things, requests that Mr. Negley voluntarily dismiss his complaint in the above-captioned matter. For the reasons discussed in more detail below, Mr. Negley respectfully declines your request to voluntarily dismiss his complaint. If the United States Department of Justice (“DOJ”) is able to produce the documents discussed below then this matter can be resolved, but as you can see from the past history, Mr. Negley has not received documents to which he is entitled in a timely and cooperative fashion. If something has changed and requested documents regarding Mr. Negley will be released, then we can seek a resolution.

### **Background of Mr. Negley’s FOIA Action**

Over the past fifteen years, Mr. Negley has been involved in several Freedom of Information Act (“FOIA”) litigation matters with the United States Government, namely the Federal Bureau of Investigation (“FBI”). Mr. Negley commenced these actions in order to ascertain what information our government had collected on him based on him being a possible Unabomber suspect previously investigated by the FBI.<sup>1</sup> Throughout the years, despite persistent FOIA requests, the government – whether DOJ or FOIA – has consistently ignored, stonewalled, redacted, or outright refused to produce the information Mr. Negley is entitled to.

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<sup>1</sup> Indeed, Mr. Negley believes that either the FBI or the DOJ has also investigated him for other, unknown reasons, in the years following the Unabomber investigation, and thus has initiated a second, more inclusive, FOIA request to the DOJ for all documents relating to him.

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In general, he simply wants to know what information his government has collected on him and he is entitled to that information.

Because of the government's prior lack of cooperation, Mr. Negley has been forced to result to the court system. As you know, in one of the prior FOIA litigations, before Judge Kessler of the United States District Court for the District of Columbia, the FBI was ordered by the Court to produce a number of documents, including a facsimile cover sheet on DOJ letterhead sent by Daniel M. Castillo, Assistant U.S. Attorney, to the Chief Division Counsel of the Sacramento Division of the FBI on January 22, 2002. The facsimile cover sheet indicated in the "Re" line that it was regarding the matter captioned *John Lutcher Negley v. U.S. Dep't of Justice and F.B.I.*, No. A-01-CA-57-JN (W.D. Tex. – Austin Division). Towards the right hand margin of this document is a handwritten notes that states:

**Per 1**

**[Redacted]**

**1/7/02**

**case is still pending**

**500,000 pp. in file**

**42,000 misc**

**evidence**

In an effort to get further information on himself, as appears to be referenced in this handwritten notation, on April 7, 2014 Mr. Negley filed a new FOIA request with the DOJ requesting the contents of the file referenced in the handwritten notes on that facsimile cover sheet. As discussed in more detail in Mr. Negley's complaint, it was not until May 12, 2015 that Mr. Negley received a substantive response from the DOJ to his FOIA request. That correspondence – which was dated February 11, 2015 but which was initially incorrectly sent to counsel who no longer represented Mr. Negley – provided the following as the sole response to Mr. Negley's FOIA request:

A search for records located in the United States Attorney's Office(s) for the Western District of Texas has revealed no responsive records for documents referenced by handwritten notes on the fax sheet by AUSA Daniel Castillo.

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On May 27, 2015, Mr. Negley appealed the DOJ's determination and explained that the DOJ's search was inadequate for at least two reasons:

This search is inadequate for at least two reasons. As an initial matter, the search limits the scope of the inquiry to the handwritten notes on the facsimile cover sheet, when Mr. Negley requested 'all the contents of the file' referenced in this document. There is no Agency determination that such a file does not exist, or that the file is inaccessible. As set forth on the facsimile cover sheet, there is clearly a 'file.' As such, this reply from the Agency is non-responsive. Additionally, the Agency limits its inquiry only to the Western District of Texas, when the totality of the 'Unabomber' investigation (the context in which Mr. Negley was investigated) is, as you know, nationwide and beyond. Indeed, it is inconceivable that any file relating to Mr. Negley would be limited to one geographic region.

After not receiving a response to his appeal, on June 25, 2015, Mr. Negley was forced to file a complaint in the U.S. District Court for the District of Columbia against the DOJ under FOIA seeking an Order requiring the DOJ to produce responsive documents in response to his April 7, 2014 FOIA request.

### **The DOJ's Request that Mr. Negley Voluntarily Dismiss His Complaint**

In September 2015, the DOJ asked for time to further investigate Mr. Negley's FOIA request that is the subject of this litigation. On October 16, 2015, the DOJ asked Mr. Negley to "note the following facts" regarding his FOIA request:

- The issues of ownership, location and content of the 500,000 pages and the 'file' has already been addressed in the District Court in the Western District of Texas in the case that you cite in paragraph 13 of the Complaint.
- Attached to the Motion for Summary Judgment in that FOIA case against the FBI was a declaration of Brian Callihan, Chief Division Counsel of the FBI's Sacramento Division. (Note that this is the same individual whose name is redacted on the Fax coversheet at the "To" line).
- As Mr. Callihan explains in his declaration:
  - "[T]his file contains approximately 500,000 pages of material and approximately 42,000 pages of additional material including evidence...[T]he file is maintained by the San Francisco division... While there is some information referencing Mr. Negley in this file, the complete file does not pertain to him."

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The DOJ then concludes that “[i]t is clear to us – through the process of conducting two searches and based on the Agent Callihan’s declaration – that the Department of Justice has no documents responsive to plaintiff’s request.” The DOJ then requests that Mr. Negley voluntarily dismiss his complaint.

### **Mr. Negley’s Response to the DOJ**

Mr. Negley respectfully declines to dismiss his complaint. Indeed, Mr. Negley believes that the DOJ’s October 16, 2015 e-mail underscores why the DOJ’s initial search was inadequate. Further, given the lack of details regarding the DOJ’s “second” search, there is no way for Mr. Negley to adequately assess the reasonableness of that search.

“In responding to a FOIA request, an agency is under an obligation to conduct a reasonable search for responsive records.” *Negley v. FBI*, 658 F. Supp. 2d 50, 56 (D.D.C. 2009) (citing *Oglesby v. Dep’t of the Army*, 920 F. Supp. 2d 50, 56 (D.D.C. 2009)). “An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents.” *Parker v. United States DOJ Exec. Office for United States Attys.*, 68 F. Supp. 3d 218, 225 (D.D.C. 2014) (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999)). Here, as discussed above, the DOJ’s response to Mr. Negley’s FOIA request plainly was not reasonably calculated to uncover all relevant documents. First, the search limits the scope of the inquiry to the handwritten notes on the facsimile cover sheet, when Mr. Negley requested ‘all the contents of the file’ referenced in this document. Second, the search for records was only conducted in the U.S. Attorney’s Office for the Western District of Texas. The DOJ’s search was limited to that one office despite Mr. Negley never specifying that the search should be so limited and despite the totality of the “Unabomber” investigation clearly reaching beyond the Western District of Texas.

The fact that this initial search was unreasonable is now underscored by the DOJ’s second response, which cites a 2002 affidavit from Brian Callihan, a special agent of the FBI, regarding File #149A-SF-106204. Mr. Callihan avers in his affidavit that there is a file, maintained in the FBI’s San Francisco office, containing approximately 500,000 pages of material and 42,000 pages of additional material, including evidence. Mr. Callihan also avers that this file does contain information regarding Mr. Negley, although the complete file does not pertain to him. The DOJ, however, has not provided any information regarding (i) how it conducted its second search; (ii) how its second search differed from its initial search; or (iii) why the response from its second search differed from the response from its initial search. Moreover, Mr. Negley disagrees with your conclusion that Mr. Callihan’s affidavit makes it clear that the DOJ has no responsive documents to Mr. Negley’s FOIA request. Indeed, Mr. Callihan’s affidavit underscores that there *are* some responsive documents to Mr. Negley.

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Mr. Negley appreciates your assistance in attempting to resolve this matter. What he requires is a broad, comprehensive search, into all documents that DOJ has relating to Mr. Negley's investigation(s). That includes all documents, including files, whether official or investigatory, discussing or pertaining to Mr. Negley. He believes that these notations reference some of those documents and DOJ has our second FOIA request which, we hope, should uncover the rest of those documents. If DOJ is prepared to conduct the search requested and produce the entirety of Mr. Negley-related documents, this litigation need not proceed.

In the interim, Mr. Negley respectfully declines to voluntarily dismiss this matter.

Finally, Mr. Negley also respectfully requests a status update regarding his FOIA request dated July 13, 2015 that has been assigned Request No. FOIA-2016-00039. Mr. Negley would very much appreciate information regarding the status of that FOIA request.

If you have any questions regarding the foregoing, please do not hesitate to contact us.

Sincerely yours,

TROUTMAN SANDERS LLP



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Thomas S. Hay  
Clarence Y. Lee

cc: James Negley