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# TROUTMAN SANDERS

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December 1, 2015

## VIA E-MAIL AND FIRST-CLASS MAIL

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

Dear Ms. Seabrook:

Thank for your email of November 29, 2015. We also hope you and your family had a pleasant Thanksgiving holiday. On behalf of our client, James L. Negley (“Mr. Negley”), this letter serves as our response to your e-mail and the Department of Justice’s (“DOJ”) position set forth in that email.

As an initial matter, we would like to clarify your contention that there is a misunderstanding as to whom Mr. Negley’s FOIA request should be submitted. Of course Mr. Negley is not asking for Federal Bureau of Investigation (“FBI”) documents in his FOIA request to the United States Department of Justice (“DOJ”). Mr. Negley is well aware of the difficulty involved in securing responsive documents from the FBI, as his previous litigation and success should indicate. Indeed, Mr. Negley has never asked the DOJ to search for or provide documents in the FBI’s possession. Rather, Mr. Negley is asking the DOJ to search the DOJ’s files and, so far, there is no indication that the DOJ has performed a reasonable search – or even made an attempt at another search – for responsive documents.

The DOJ’s November 29 position supports Mr. Negley’s contention that the DOJ has not fulfilled its obligation of conducting a reasonable search for responsive records. *See Parker v. United States DOJ Exec. Office for United States Attys.* 68 F. Supp. 3d 218, 225 (D.D.C. 1999) (“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.”).

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As discussed in previous correspondence and in Mr. Negley's complaint, the DOJ's one and only search and 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 at issue in his FOIA request, 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. Third, your October 16, 2015 e-mail appended a declaration from Brian Callihan, Chief Division Counsel of the FBI's Sacramento division, and discussed a "second search" that was conducted by the DOJ, but did not provide any details regarding that search. Now, in your November 29 e-mail, you state that a second search was **not** performed "because the DOJ does not possess documents that you seek." This circular logic begs the question of how the DOJ can determine that it does not possess the documents that Mr. Negley seeks when it has only searched the U.S. Attorney's Office for the Western District of Texas.

In any event, Mr. Negley has identified a valid basis for performing a search and the DOJ must show that it fulfilled its obligations under FOIA to uncover all relevant documents. *See Campbell v. United States Dep't of Justice*, 164 F.3d 20, 27 (D.C. Cir. 1998) (explaining that under FOIA "the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested."); *Steinberg v. United States Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994) (explaining that the agency bears the burden of demonstrating "that it has conducted a search reasonably calculated to uncover all relevant documents") (citations omitted).

Further, it is not Mr. Negley's job or responsibility, nor should it be, to suggest places and areas for the DOJ to search. Mr. Negley was given a document by the government in which an Assistant United States Attorney states that there is a file with 500,000 pages in it and an additional 42,000 pages of evidence. The affidavit of Mr. Callihan acknowledges that some of those documents pertain to Mr. Negley and that those documents are maintained by the FBI's San Francisco field office. Given the DOJ's involvement in the Unabomber case and the interaction between the FBI and DOJ, it is almost inconceivable that no search has been run for responsive documents in, at the very least, relevant DOJ offices in California.

With respect to the DOJ's request for an extension until December 30 to file a motion for summary judgment, we note that Mr. Negley has already agreed to grant the DOJ two extensions in this matter. The first was a 30 day extension for the DOJ to file its Answer so that it could have more time to investigate this matter. The second was another extension, of 45 days, so that the DOJ could file its Answer and continue to investigate. As you know, we told you that our client would not allow us to grant any additional extensions, and part of the basis for the extensions was so that the DOJ could conduct a second search. After these multiple extensions, the DOJ has now informed us that it has never performed a second search for responsive records. Accordingly, Mr. Negley does not believe that a third extension is warranted under these

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circumstances and Mr. Negley respectfully declines the DOJ's request for an extension to file a responsive pleading.

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 and has been pending for many months. Mr. Negley would very much appreciate information regarding the status of that FOIA request. Accordingly, please provide us with an update as soon as possible.

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

Sincerely yours,

TROUTMAN SANDERS LLP

A handwritten signature in black ink, appearing to be a cursive combination of the names Thomas S. Hay and Clarence Y. Lee, written over a horizontal line.

Thomas S. Hay  
Clarence Y. Lee

cc: James Negley