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September 10, 2012

VIA E-MAIL: Rob.Shaw-Meadow@usdoj.gov
VIA REGULAR MAIL

Mr. Robert Shaw-Meadow
United States Attorneys Office
601 NW Loop 410, Suite 600
San Antonio, Texas 78216

RE: Case No. SA-12-CV-00362-OLG, *James Lutcher Negley v. Federal Bureau of Investigation*, United States District Court for the Western District of Texas

Dear Mr. Shaw-Meadow,

I am in receipt of your letter dated September 4, 2012 regarding discovery in this case. Mr. Negley does not agree to withdraw his appropriate discovery requests in this case.

Plaintiff has served on the Defendant, the "Plaintiff's First Requests for Admission and Requests for Production to Defendant Federal Bureau of Investigation". Contrary to the assertions in your letter, the discovery requests served by Plaintiff do not constitute an impermissible fishing expedition. Rather, the requests are limited and very specific. The requests do not seek to circumvent FOIA, rather, they seek appropriate threshold information necessary to a determination of the issues in this case. The FBI has taken the position that the only documents responsive to Mr. Negley's FOIA request which have not already been produced are administrative in nature. The requests for discovery seek responses that will shed light on a simple threshold question: Are there other documents that exist that have not been identified by the FBI as potentially subject to disclosure? That threshold question needs to be answered before Mr. Negley can proceed further in this case. The answer to that question is material to the issue of what final judgment is to be rendered in this case.

The authorities cited in the second paragraph of your letter, *Lane*, *Wheeler* and *Katzman*, do not support a complete bar to discovery in a FOIA case. Rather, they support the position that the Courts have authority to place limits on discovery in FOIA cases, which limitations may be greater than in other litigation matters. Mr. Negley does not disagree with

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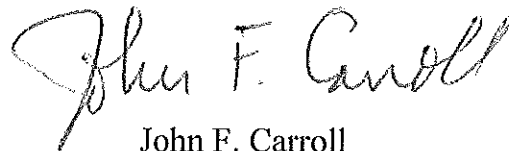
that legal principle. He does not seek to circumvent the FBI's right to withhold documents that are privileged or otherwise exempt from disclosure. However, the FBI seeks in this case to bar any discovery. That is not appropriate.

Mr. Negley does not seek to discover the reasons underlying FBI activity. He simply seeks to discover whether there has been FBI activity that a reasonable person would expect to result in the creation of documents. If so, such documents may be subject to disclosure under FOIA. They may be subject to some privilege or exemption. But we cannot make any such determination unless we know the answer to the threshold question, do any such documents exist? Rather than granting Mr. Negley the final relief he seeks, (a practice not allowed in the *Tax Analysts* case cited in your letter) these specifically tailored discovery requests merely seek to inform Mr. Negley of what sort of relief he may request.

Unlike the *Flowers* and *Williams* cases cited in your letter, the requests made by Mr. Negley do not seek the rationale for the FBI's activities, but rather, whether there have been any activities and whether they resulted in the creation of any documents that may be discoverable under FOIA.

If the FBI has particular concerns about the discovery requests and would like to discuss some reasonable limitations on the requests, I am willing to discuss such limits, however, I do not agree to a complete ban on discovery as you propose.

Very Truly Yours,

A handwritten signature in cursive script that reads "John F. Carroll". The signature is written in black ink and is positioned above the printed name.

John F. Carroll

JFC:mm