

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

James Lutchter Negley, Plaintiff,	§	
	§	
	§	
vs.	§	Civil Action No. SA-12-CV-00362-OLG
	§	
Federal Bureau of Investigation, ¹ Defendant.	§	
	§	

DEFENDANT’S ANSWER

Defendant, the U.S. Department of Justice, by and through the United States Attorney for the Western District of Texas, hereby answers each numbered paragraph of Plaintiffs’ Complaint for Relief Under the Freedom of Information Act (“Complaint”) filed on April 18, 2012, as follows:

1. Paragraph 1 states the Plaintiff’s characterization of his action against Defendant, to which no response is required.
2. Paragraph 2 states Plaintiff’s allegations of jurisdiction and venue and not averments of facts to which an answer is required. Defendant does not challenge venue in the Western District of Texas, however.
3. Defendant lacks sufficient knowledge to admit or deny this paragraph.
4. Denied, except Defendant admits that pursuant to 5 U.S.C. § 552(f)(1), the Federal Bureau of Investigation (“FBI”) is a component of the Department of Justice. Defendant further avers that the FBI is not an agency under 5 U.S.C. § 552(f)(1), such that the proper party defendant is the U.S. Department of Justice.
5. Admit.

¹ The FBI is not a proper defendant in this action. The proper party defendant is the U.S. Department of Justice. Defendant respectfully requests that the Court correct the caption of this case to reflect the proper named defendant. *See* 5 U.S.C. § 552(f)(1).

6. Defendant admits that the FBI sent acknowledgment letters dated July 22, 2009 pertaining to Plaintiff's requests for records related to himself and Davis, Joseph & Negley assigned FOIA/Privacy Act ("FOIA/PA") numbers 1133487-000 and 1134498, respectively. Defendant further avers that by letter dated October 14, 2009, the FBI informed Plaintiff that no responsive main file records were located based on a search for Davis, Joseph & Negley and that he could appeal this determination to the Office of Information and Policy ("OIP").

7. Defendant admits that the FBI made its first interim release in FOIA/PA number 1133487-000 by letter dated July 16, 2010 of 716 pages of 825 pages reviewed. Defendant further admits that this letter indicated that additional releases would be made until processing was complete and further avers that Plaintiff was informed of his right to appeal the FBI's actions taken in connection with this release to OIP. In response to the last sub-paragraph at page 5 of the Complaint, these allegations contain Plaintiff's characterizations of the facts, to which no response is required. To the extent a response is required, Defendant is without sufficient information to admit or deny the allegations contained in this sub-paragraph, except that Defendant admits that at some point an FBI agent contacted Plaintiff, and it was ultimately determined Plaintiff was not involved with the Unabomber. The remaining allegations in this paragraph either contain Plaintiff's characterization of the content of the letter, which document speaks for itself, or contain information that the Defendant is without knowledge or information sufficient to form belief as to the truth of the allegations, and such allegations are therefore denied.

8. Defendant admits that the FBI made a second release of documents in FOIA/PA number 1133487-000 by letter dated December 16, 2010 of 1430 pages of 1437 pages reviewed. Defendant further avers that this letter informed Plaintiff of his right to appeal the FBI's actions in connection with the release and indicated that additional releases would be made until processing

was complete. Defendant further avers that this letter informed plaintiff that he owed the FBI \$143.00 for this release, and that if payment was not received within 30 days, the processing of the request would be discontinued and closed. Defendant admits that Plaintiff has not received another release of records from FOIA/PA number 1133487-000, but further avers that the case was administratively closed for non-payment of fees on or about January 16, 2010, until Plaintiff remitted payment by letter dated August 29, 2011.

9. This paragraph contains characterizations of the FBI's actions taken in response to plaintiff's FOIA/PA requests, to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

10. This paragraph contains characterizations of the FBI's response to Plaintiff's FOIA/PA response, to which no response is required, but Defendant admits that a summary judgment brief was filed in Civil Action No. 03-3126 in the District of Columbia case captioned, James Lucher Negley v. Federal Bureau of Investigation, on May 2, 2011, which document speaks for itself.

11. This paragraph contains characterizations of the FBI's response to plaintiff's FOIA/PA response, to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations in this paragraph.

12. This paragraph contains legal conclusions and characterizations of the FBI's response to Plaintiff's request, to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations in this paragraph.

The remaining paragraphs of the Complaint comprise Plaintiff's prayer for relief, to which an answer is not required, but insofar as an answer may be required, Defendant denies that Plaintiff is entitled to the relief requested or to any other relief.

Except to the extent expressly admitted or qualified above, Defendant denies each and every allegation in the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over this case as Plaintiff failed to exhaust his administrative remedies.

THIRD AFFIRMATIVE DEFENSE

The Complaint seeks to impose upon the FBI obligations that exceed those imposed by the Freedom of Information Act (“FOIA”).

FOURTH AFFIRMATIVE DEFENSE

The Complaint seeks to compel the production of records protected from disclosure by applicable exemptions.

FIFTH AFFIRMATIVE DEFENSE

The FBI is not a proper defendant in this action. Pursuant to 5 U.S.C. § 552(f)(1), the proper party defendant is the U.S. Department of Justice.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that all of Plaintiff’s requested relief be denied, that this action be dismissed with prejudice, that costs be awarded to Defendant pursuant to Rule 54, and for such other and further relief as the Court deems just and proper.

DATED: May 23, 2012

Respectfully submitted,
ROBERT PITMAN,
United States Attorney

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's Answer was electronically filed via the Court's CM/ECF system on this 23rd day of May, 2012, and was served via ECF as follows:

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/s/ *Robert Shaw-Meadow*
ROBERT SHAW-MEADOW
Assistant United States Attorney