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September 4, 2012

VIA: Regular U.S. Mail and E-mail
John F. Carroll
Attorney at Law
111 West Olmos Drive
San Antonio, Texas 78212

RE: James Lutcher Negley v. Federal Bureau of Investigation;
Civil Action No. SA-12-CV-0362-OLG; USDC W.D.TX (San Antonio Division)

Dear Mr. Carroll:

I have reviewed Plaintiff's August 10, 2012 written discovery requests, and have discussed them with the F.B.I. The discovery requests are improper under controlling law, and constitute an impermissible fishing expedition. In compliance with Fed. R. Civ. P. 26(c)(1), I write this letter in the hope that we may avoid unnecessary litigation regarding Plaintiff's discovery requests.

As we have discussed previously, there is a very strong general rule exempting defendants from discovery in a FOIA case. *See, e.g.,* ***Lane v. Dep't of Interior***, 523 F.3d 1128, 1134 (9th Cir. 2008) ("While ordinarily the discovery process grants each party access to evidence, in FOIA and Privacy Act cases, discovery is limited because the underlying case revolves around the propriety of revealing certain documents."); ***Wheeler v. CIA***, 271 F. Supp.2d 132, 139 (D.D.C. 2003) (cited in Defendant's Motion to Extend Dispositive Motion Deadline); ***Katzman v. Freeh***, 926 F. Supp. 316, 319 (E.D.N.Y. 1996) ("[D]iscovery in a FOIA action is extremely limited..."). If you are aware of authority to the contrary authorizing the discovery Plaintiff has propounded, please advise me at your earliest convenience.

As you are well aware, your client's FOIA request at issue in this case is extremely broad, encompassing "**all** records in the possession of the [FBI] **relating, in any way, to James Lutcher Negley** … as well as his business – Davis, Joseph & Negley…" (Plaintiff's Complaint, Exhibit A, emphasis added). Accordingly, Plaintiff's requests for production are redundant of the underlying basis for the entire lawsuit. Under such circumstances, discovery is particularly inappropriate. *E.g.,* ***Tax Analysts v. IRS***, 410 F.3d 715, 722 (D.C. Cir. 2005) (denying requested discovery, reasoning that "[Appellant's] demand for further inquiry into the substance of the documents would, if granted, turn FOIA on its head, awarding Appellant in discovery the very remedy for

which it seeks to prevail in the suit. The courts must not grant FOIA plaintiffs discovery that would be 'tantamount to granting the final relief sought.'") (citation omitted).

The requests for admission are nothing more than a fishing expedition. As we discussed some time ago by telephone, the FBI has already advised you that there were no break-ins to Mr. Negley's residence, nor are there any documents in the FBI's possession other than documents pertaining to the underlying 1995 investigation, or regarding the subsequent FOIA requests by your client and administrative documents generated to comply with those requests. Moreover, by letter dated June 13, 2012, I specifically asked "[i]f you have evidence of alleged FBI authorized break-ins to Mr. Negley's residence, or evidence of some other contact or activity by the FBI regarding Mr. Negley -- other than the now 17 year-old investigation arising out of access to materials regarding the Unabomber at the California State University Chico library -- please provide same to me at your earliest convenience." You have not provided the good faith, factual basis for the requests for admission.

Contrary to general civil discovery practice, it will be Plaintiff's burden, rather than Defendant's, to show the Court that he is entitled to discovery in a FOIA case. The sole purpose of a FOIA case is to obtain government documents -- not to undertake collateral discovery regarding government investigations which may have aggrieved Plaintiff. Thus, even assuming that there were any additional investigations of Plaintiff – which the FBI adamantly denies, and which would already be encompassed by Mr. Negley's underlying FOIA request – there is no legal basis to take discovery regarding the FBI's investigative activities. *See, e.g.,* ***Flowers v. IRS***, 307 F. Supp. 2d 60, 72 (D.D.C. 2004) (FOIA did not authorize Plaintiff to seek discovery regarding agency's rationale for conducting tax audit); ***Williams v. FBI***, No. 90-2299, 1991 WL 163757, at *3 (D.D.C. Aug. 6, 1991) ("An agency's rationale for undertaking an investigation of the Plaintiff is not the proper subject of FOIA discovery requests.").

Mr. Carroll, I understand that your client has a long-standing suspicion that the FBI has been watching him for the last 17 years. Under controlling law, however, unsupported suspicion, provides no legal basis for undertaking discovery in a FOIA case.

Please let me know by close of business **Monday September 10** if Plaintiff will withdraw the written discovery requests, or if the FBI will be required to seek relief from the Court. If we are required to file a motion with the Court, I will seek reimbursement of attorney's fees under Fed. R. Civ. P. 37.

Sincerely,

ROBERT PITMAN
United States Attorney

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