

**Notices**

1:03-cv-02126-GK NEGLEY v. FEDERAL BUREAU OF INVESTIGATION  
APPEAL, TYPE-I

**U.S. District Court**

**District of Columbia**

**Notice of Electronic Filing**

The following transaction was entered by Khetan, Prashant on 8/24/2010 at 11:34 AM and filed on 8/24/2010

**Case Name:** NEGLEY v. FEDERAL BUREAU OF INVESTIGATION

**Case Number:** 1:03-cv-02126-GK

**Filer:** JAMES LUTCHER NEGLEY

**Document Number:** 105

**Docket Text:**

**NOTICE of Supplemental Filing in Support of Plaintiff's Motion for Contempt for Defendant Federal Bureau of Investigation's Failure to Complay with the Court's September 24, 2009 Order by JAMES LUTCHER NEGLEY re [102] MOTION for Order Motion for Contempt for Defendant Federal Bureau Of Investigation's Failure to Comply with the Court's September 24, 2009 Order (Attachments: # (1) Exhibit A)(Khetan, Prashant)**

**1:03-cv-02126-GK Notice has been electronically mailed to:**

Michelle Lo Michelle.Lo2@usdoj.gov

Prashant K. Khetan prashant.khetan@troutmansanders.com, judith.sebold@troutmansanders.com

**1:03-cv-02126-GK Notice will be delivered by other means to::**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**suppressed

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=973800458 [Date=8/24/2010] [FileNumber=2652806-0] [0668699b4c5c05c4c520ded96f5fad6bb1336360397b7d12d0f49ce0269c0766a2f80e312f8952f613d1ea45d3616d5c8f75146692033ebc3cb89e819ec0f45a]]

**Document description:** Exhibit A

**Original filename:**suppressed

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=973800458 [Date=8/24/2010] [FileNumber=2652806-1] [053b2d84b1099725ad58fdae1730b3e00e7962df732a3e855dc87e6cf24449321add

8f1e849a8884890316e59887a29c4bf3a4fdcf46ad332004ce9f73cdb210]]

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

<b>JAMES LUTCHER NEGLEY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>vs.</b>	)	
	)	<b>Civil Action No. 03-2126 (GK)</b>
<b>FEDERAL BUREAU OF INVESTIGATION,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	
	)	
	)	

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**NOTICE OF SUPPLEMENTAL FILING  
IN SUPPORT OF PLAINTIFF'S MOTION FOR CONTEMPT  
FOR DEFENDANT FEDERAL BUREAU OF INVESTIGATION'S  
FAILURE TO COMPLY WITH THE COURT'S SEPTEMBER 24, 2009 ORDER**

Plaintiff James Lutcher Negley previously filed a Motion for Contempt, dated April 5, 2010 (Doc. #102), based on Defendant, the Federal Bureau of Investigation's ("FBI"), failure to comply with this Court's September 24, 2009 Order (Doc. # 90) to produce responsive documents by December 23, 2009. Negley submits this Notice because further evidence of the FBI's contravention of that Order recently has come to Negley's attention in the form of an FBI production pursuant to a new FOIA request filed by Negley last year ("Negley's 2009 FOIA Request"). Indeed, the FBI's production in response to Negley's 2009 FOIA Request includes more than 500 pages of documents from more than 10 file/serial numbers never before identified or produced by the FBI in the pending lawsuit (and references an additional 3,000 pages to be processed).

By letter dated July 16, 2010, the FBI produced 716 pages of documents (and withheld an additional approximately 100 pages) relating to Negley – a significant number of these documents were located in files that the FBI failed to identify and produce responsive documents

from in direct violation of the Court's Order. See Letter from David M. Hardy to Prashant K. Khetan dated July 16, 2010 (attached hereto as Exhibit A). Only now (over eight and one-half years after Negley's 2002 FOIA request, which is the subject of the pending lawsuit), because of Negley's 2009 FOIA Request, has the FBI decided to produce these responsive documents.

The 716 pages of documents released by the FBI in response to Negley's 2009 FOIA Request were required to be produced to Negley pursuant to the Court's September 24, 2009 Order. In fact, the FBI located these documents when it conducted the searches required by the September 24, 2009 Order. See Def's Mem. of Points & Auth. in Opp. to Pl's Motion for Def. Fed. Bureau of Investigation's Failure to Comply with the Court's Sept. 24, 2009 Order, dated April 22, 2010 (Doc. # 103) ("Def's Opp'n"), at 9 (explaining that the searches run by the FBI in response to the September 24, 2009 Order were done contemporaneously with Negley's 2009 FOIA Request and therefore located "everything through 2009"). The FBI chose not to produce these documents by December 23, 2009 as required by the Order, instead relying on its own discretion as to what it typically produced in FOIA cases – an action previously condemned by this Court. See Mem. Op. dated September 24, 2009 (Doc. # 91), at 17 (disapproving of the FBI's failure to produce duplicates because of its "own exception to the clearly worded order ... because nothing in them 'suggested additional information would be revealed'").

As set forth in the Seventh Declaration of David M. Hardy, to date in the pending lawsuit, the FBI has released a total of 120 pages of documents, in full or in part, pursuant to Negley's 2002 FOIA Request and the searches ordered by the Court's September 24, 2009 Order. See Declaration attached to Def's Opp'n, at ¶ 4. In its production pursuant to Negley's 2009 FOIA Request, the FBI has produced not only 163 duplicate pages of material previously produced in this litigation, but also 553 pages of documents never produced to Negley. See Ex.

A. These additional documents, which should have been produced pursuant to this Court's September 24, 2009 Order, come from more than 10 file/serial numbers never previously identified by the FBI or Mr. Hardy in any of his eight declarations:

- 197A-SC-35435
- 190-SD-C60287 serial 64
- 190-LA-C2-E serials 597, 598, 611, and 612
- 190-HQ-C1189353 serials 558 and 603
- 190-NO-C266 serial 1135
- 62-HQ-C1077229
- 190-SA-C-14 serials 188 and 189
- 190-MM-C1-B serial 2406
- 190-SC-33911
- 190-SF-0 serial 3087
- 197A-SF-A135225 serial 8 and
- 263-HQ-0 serial 6529

Despite the unambiguous terms of the Court's Order, the FBI did not identify the above files/serials or produce over 500 responsive documents by December 23, 2009. Moreover, the FBI has indicated that it still needs to process and potentially release another approximately 3,000 pages of responsive documents (nearly 30 times the number of documents that the FBI has produced in more than eight years of the pending lawsuit). See Ex. A. In addition, the FBI has required Negley to pay a fee for production of these responsive documents, even though the Court ordered the FBI to produce the very same documents more than six months back.

For the above reasons, and as set forth more fully in prior briefing, Plaintiff James Lutchter Negley respectfully requests that the Court enter an Order finding the FBI in contempt of the September 24, 2009 Order and imposing sanctions against the FBI.<sup>1</sup>

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<sup>1</sup> Also pending before the Court is Plaintiff James Lutchter Negley's Motion for an Award of Attorneys' Fees and Costs filed on October 8, 2009 (Doc. # 92).

Dated: August 24, 2010

Respectfully submitted,

/s/ Prashant K. Khetan  
Prashant K. Khetan, D.C. Bar No. 477636  
TROUTMAN SANDERS, LLP  
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*Attorneys for Plaintiff,*  
James Lutcher Negley





U.S. Department of Justice

Federal Bureau of Investigation  
Washington, D.C. 20535

July 16, 2010 **RECEIVED**

JUL 20 2010

BY: \_\_\_\_\_

MR. PRASHANT K. KHETAN  
TROUTMAN SANDERS LLP  
ATTORNEYS AT LAW  
SUITE 1000  
401 9<sup>TH</sup> STREET NORTHWEST  
WASHINGTON, DC 20004 2134

FOIPA No. 1133487-000  
Subject: NEGLEY, JAMES LUTCHER

Dear Mr. Khetan:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-18a:

Section 552		Section 552a
<input type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (1)(2)
<input type="checkbox"/> (b)(3) _____	<input type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
_____	<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
_____	<input type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
_____	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

625 pages were reviewed and 715 pages are being released.

- Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:
  - referred to the OGA for review and direct response to you.
  - referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown, when



ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

☐ See additional information which follows.

Sincerely yours,



David M. Hardy

Section Chief  
Record/Information  
Dissemination Section  
Records Management Division

Enclosure(s)

Please be advised that this is the first interim release of documents responsive to your request for information pertaining to James Negley. The material consists of the following file numbers: 197A-SC-35438; 190-SD-C00287 serial 64, 190-LA-CZ-E serials 597, 598, 611, and 612; 190-HQ-C1189363 serials 558 and 603; 190-NO-C258 serial 1136; 62-HQ-C1077229; 190-SA-C-14 serials 168 and 180; 190-MM-C1-E serial 2408; 190-SC-33911; 190-SF-0 serial 3087; 197A-SF-A135225 serial 8; and 283-HQ-0 serial 6629. Also included in this release are 163 pages of material previously processed and released to you from the following files: 148A-SC-C27507-S serials 101 and 355; 148A-SF-108204-S serials 3041 and 3885; and the 148A-SF-108204 Zyrimage Documents. Additional interim releases will be made until processing is complete.

Pursuant to Title 28, Code of Federal Regulations, Sections 16.10 and 16.49, there is a fee of ten cents per page for duplication. No fees are assessed for the first 100 pages. Accordingly, please forward a check or money order, payable to the Federal Bureau of Investigation, in the amount of \$91.60 within 30 days. To insure proper identification, please include the FOIPA number assigned to this request with your payment. In addition, please be advised that an estimated 3,000 pages remain to be processed and that duplication costs will be assessed with each interim release. Should you fail to remit your payment within 30 days of a release, we will assume you are no longer interested in continuing the processing of this request and your case will be administratively closed. If you would like to reduce your duplication costs by limiting the scope of your request, please contact our Public Information Officer at 640-868-4593 immediately to discuss.