

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS (SAN ANTONIO)

JAMES LUTCHER NEGLEY,)
)
 Plaintiff,)
 v.) Civ. No. 5:12-CV-00362-OLG
)
 FEDERAL BUREAU OF INVESTIGATION,)
)
 Defendant.)
 _____)

DECLARATION OF JOHN F. BOSEKER

I, John F. Boseker, declare the following to be a true and correct statement of facts:

- 1) I am an Attorney Advisor in the Executive Office for United States Attorneys ("EOUSA"), United States Department of Justice ("DOJ"). I am specifically assigned to the component of EOUSA designated to administer the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 (1988), and the Privacy Act of 1974, 5 U.S.C. §552a(1988).
- 2) Due to the nature of my official duties, I am personally familiar with the FOIA/PA request made to the FBI, which resulted in a referral of records to EOUSA from FBI, which forms the basis for a portion of this litigation.
- 3) My official duties include: having the authority to make final disclosure determinations on records requested by an individual using the FOIA/PA, to assure compliance with the provisions of the FOIA and PA and DOJ Regulation 28 CFR §16.3 et seq., and §16.40 et seq., as well as to defend EOUSA's position in litigating challenges to EOUSA's actions.
- 4) My official duties also include: acting as liaison between EOUSA and the components within the DOJ regarding FOIA/PA requests; reviewing requests for records sought from EOUSA and /or the 94 U.S. Attorneys offices ("USAO's"); reviewing request-related

correspondence; reviewing searches performed in response to requests; and reviewing responses made to those requests.

5) The statements that follow are made on the basis of my review of EOUSA's official files and records, my own personal knowledge, and the information I acquired in performing my official duties.

BACKGROUND

FOIA No. 13-162-R

6) On February 1, 2013, EOUSA received a referral of records from FBI of 21 pages of records identified to a request made to the FBI by Prashant K. Khetan, Esq., Troutman Sanders, on behalf of Mr. James Lutcher Negley (the above captioned plaintiff) for records on the latter. EOUSA assigned the referral FOIA No. 13-162-R. **Exhibit A attached.**

7) On March 18, 2013, EOUSA sent Mr. Khetan, on behalf of Mr. Negley, 21 pages of records: 17 were released in part ("RIP"), and 4 were released in full ("RIF"). Those portions of the 17 pages released in part were withheld by application of FOIA Exemptions b7C, b6, and b5. **Exhibit B attached.**

8) Following a subsequent referral of more records (56 pages) from FBI, on April 23, 2013, EOUSA sent an additional release of 77 pages to Mr John Finbar Carroll, attorney at law, on behalf of Mr. Negley. **Exhibit C attached.** This release included revisions to the 21 pages initially released March 18, 2013 based upon updated information received from FBI, which enabled additional disclosures from portions previously withheld. In total, 59 pages were released in full ("RIF") and 18 pages were released in part ("RIP"). Only the 18 pages released in part are attached to **Exhibit C** because there should be no dispute regarding documents which have been released in full to Mr. Negley.

9) All withheld material is addressed in the attached Index, which I prepared and have attached as **Exhibit D**.

EOUSA'S DISCLOSURE DETERMINATION

Identification of Responsive Records

10) All of the records reviewed by EOUSA in response to Mr. Negley's request were located in an FBI litigation file related to Mr. Negley's prior FOIA litigation cases. (See Declaration of David Hardy)

JUSTIFICATION FOR NON-DISCLOSURE UNDER THE FOIA

EXEMPTION 5 U.S.C. §552(b)(5)

11) Exemption (b)(5) protects disclosure of privileged documents, which are not ordinarily available to a party in litigation. Principally, there are three such privileged documents or communications protected by this exemption: attorney work product, deliberative process, and attorney-client.

12) EOUSA asserted this exemption to protect information pursuant to the attorney work product and deliberative process privileges within the following documents listed in the Index: 10, 12, and 17. No document was withheld in full by application of this exemption.

13) The records or portions of records to which the attorney work product privilege was applied reflect such matters as trial preparation, trial strategy, interpretations, and personal evaluations and opinions pertinent to Mr. Negley's prior FOIA litigation cases. The records were prepared by or at the request or direction of an attorney, and made in anticipation of or during litigation. The substance of the records withheld in part or in their entirety are exempt from disclosure pursuant to this privilege.

14) In addition, these same records, in certain instances, contain deliberative process of the AUSA and the FBI pertaining to litigation strategy and discussions. To disclose this information would reveal pre-decisional communications among government personnel such as discussions of various litigation issues, alternatives, and strategies. Disclosure would jeopardize the candid and comprehensive considerations essential for efficient and effective agency decision-making. The attorney work product and deliberative process are so interwoven as to make all of the portions of the documents to which this exemption was applied, in essence, attorney work product.

EXEMPTION 5 U.S.C. §552(b)(7)(C)

15) Exemption (b)(7)(C) protects the release of records or information compiled for law enforcement purposes if such release could reasonably be expected to constitute an unwarranted invasion of personal privacy. All information at issue in this case was compiled for law enforcement purposes in order to defend against his prior civil lawsuits under FOIA pertaining to the release of records related to Mr. Negley contained within an FBI investigative file..

16) This exemption was applied to withhold the identities of and personal information about third party individuals, the release of which could subject such persons to an unwarranted invasion of their personal privacy. Release of the identifying information could result in unwanted efforts to gain further access to such persons or to personal information about them. It could also lead to harassment, harm, or exposure to unwanted and/or derogatory publicity and inferences arising from their connection to the case. In short, disclosure could be detrimental to the persons protected.

17) This exemption was also applied to withhold the identities of individuals such as special federal agents, other government employees, and local law enforcement personnel all of whom were in some manner involved with the litigation of Mr. Negley's prior FOIA lawsuits. Individual duties and assignments are not public and the publicity that could likely arise from disclosure would seriously impede, if not totally jeopardize, law enforcement effectiveness in subsequent cases, even subjecting these individuals to harassment or other harm. These persons have protected privacy interests in the conduct of law enforcement investigations.

18) EOUSA determined that there was no public interest in the information if released, because its dissemination would not help to explain the activities and operations of the EOUSA. In short, no public interest would counterbalance the protected individual(s)' privacy right in the information withheld under this exemption.

19) In addition, Mr. Negley provided EOUSA with no authorization or consents to release otherwise privacy protected materials from any of the third party individuals to whom this exemption was applied.

20) EOUSA applied this exemption to all documents listed in the Index in conjunction with Exemption (b)(6).

EXEMPTION 5 U.S.C. §552(b)(6)

21) Exemption (b)(6) permits withholding personnel, medical, and similar files, which if disclosed would constitute a clearly unwarranted invasion of personal privacy. This exemption has been interpreted broadly to qualify all information pertaining to a particular individual. In particular this exemption was applied to prevent disclosure of such information as names, telephone and fax numbers, and personal identifiers

22) Where names and identifying information pertaining to persons whose right to personal privacy outweighs the public's right to know, that information was either withheld in full or redacted from the document released. Release of this information was determined to constitute a clearly unwarranted invasion of personal privacy of other third party individuals in a manner that could subject these persons to harassment.

23) EOUSA applied this exemption to all documents in the Index in conjunction with exemption 7C.

SEGREGABILITY

24) Each referred document was evaluated to determine if any information could be segregated and released, and as demonstrated, no records were withheld in their entirety, and most were released without redactions.

25) Each step in the handling of the referral of records from the FBI in conjunction with the request at issue in the above captioned action has been entirely consistent with the EOUSA procedures adopted to insure an equitable response to all persons seeking access to records under the FOIA/PA.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 3, 2013.

A handwritten signature in black ink, appearing to read 'JFB', is written over a horizontal line. The signature is stylized and extends to the right of the line.

JOHN F. BOSEKER

Attorney Advisor, EOUSA