

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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

**DEFENDANT’S MOTION FOR LEAVE TO SUBMIT SUR-RESPONSE REGARDING
PLAINTIFF’S MOTION FOR RECONSIDERATION**

TO THE HONORABLE ORLANDO GARCIA, U.S. DISTRICT JUDGE:

NOW COMES the Federal Bureau of Investigation, Defendant herein, by and through the United States Attorney for the Western District of Texas, and respectfully submits this Motion for Leave to Submit Sur-Response. Defendant would show the Court the following:

1. On May 14, 2013, Plaintiff filed his Reply to Defendant’s Response to Motion for Reconsideration (DE 40). Plaintiff also attached to this Reply 23 pages of exhibits regarding the FBI’s processing of his FOIA requests under the Privacy Act.

2. The FBI seeks leave of court to submit a short Sur-Response to clarify the FBI’s reliance on the Privacy Act, and to crystallize the issues presented in the Motion for Reconsideration. Defendant’s proposed Sur-Response is attached hereto as Exhibit A.

3. Pursuant to Local Court Rule CV-7(f)(1), leave of court is required for the submission of any briefing beyond a Reply. The Court previously granted Plaintiff leave of court to file an additional response brief to Defendant’s Motion for Protective Order. (*See* DE 27, 27.1, and 29). The pending Motion for Reconsideration requests the Court’s reconsideration of its earlier ruling granting Defendant’s Motion for Protective Order. As the issue of whether any discovery should be allowed in this case was originally presented by Defendant, the FBI requests an opportunity to

respond to Plaintiff's Reply brief.

Certificate of Conference

4. I hereby certify that I conferred with Plaintiff's counsel, Mr. John Carroll, regarding this matter on May 20, 2013, and that Plaintiff is opposed to this Motion.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that this Motion be GRANTED, and that the Court allow the filing of the attached Sur-Response.

DATED: May 21, 2013

Respectfully submitted,

ROBERT PITMAN,
United States Attorney

AGENCY COUNSEL:
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Federal Bureau of Investigation
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's Motion for Leave was electronically filed via the Court's CM/ECF system on this 21st day of May, 2013, and was served via ECF as follows:

John F. Carroll
Attorney at Law
111 West Olmos Drive
San Antonio, Texas 78212

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

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ORDER

The matter before the Court is Defendant's Motion for Leave to Submit Sur-Response Regarding Plaintiff's Motion for Reconsideration, filed May 21, 2013 (DE 42).

After considering Defendant's Motion and the status of this case, the Court is of the Opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that the Clerk of Court shall allow the filing of Defendant's Sur-Response in the official record of this case.

SIGNED AND ENTERED this ____ day of _____, 2013.

HONORABLE ORLANDO GARCIA
UNITED STATES DISTRICT JUDGE