

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JAMES LUTCHER NEGLEY	§	
Plaintiff	§	
v.	§	CIVIL ACTION NO.
	§	SA-12-CV-362
	§	
FEDERAL BUREAU OF	§	
INVESTIGATION,	§	
Defendant	§	

COMPLAINT FOR RELIEF UNDER THE FREEDOM OF INFORMATION ACT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff James Lutcher Negley (“Negley”), files this Complaint for Relief under the Freedom of Information Act against the Defendant Federal Bureau of Investigation (“FBI”) and in support thereof, would show the Court as follows:

I.

NATURE OF THE ACTION

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) seeking an order of the Court requiring the FBI to fully and properly respond to the request under FOIA for agency records made by Plaintiff on or about 2009. Plaintiff seeks an order of the Court compelling the FBI to produce responsive documents which are being withheld.

II.

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B). Plaintiff resides in Austin, Texas which is located within the Western District of Texas.

III.

FACTS

3. Plaintiff Negley is a resident of Travis County, Texas and is the requester of the withheld agency records.

4. Defendant is an agency of the United States within the definition of FOIA, and has possession of the records sought by Plaintiff.

5. By letter dated June 15, 2009, Negley, through authorized counsel, requested that the FBI “provide a copy of all records in the possession of the Federal Bureau of Investigation relating, in any way, to James Lutcher Negley (date of birth and address redacted), to the undersigned....This request includes all records related to any permutation of James Lutcher Negley’s name, as well as his business-Davis, Joseph & Negley (591 Redwood Highway, Suite 2155, Mill Valley, CA 94941). A copy of the letter request is attached as Exhibit “A”.

6. On July 22, 2009, the FBI acknowledged receipt of the request for information regarding James Lutcher Negley in a letter which identified the request as Number 1133487-

00. On that same date, the FBI sent a second letter acknowledging the request for information as to Davis, Joseph & Negley. That request was assigned number 1134498-000. The FBI later informed Plaintiff that there were no responsive records to disclose with respect to the business of Davis, Joseph & Negley, FOIPA No. 1134498-000.

7. The first production of records under FOIPA No. 1133487-000, regarding Mr. Negley, individually, was made as set forth in a letter from David M. Hardy, Section Chief, Record/Information Dissemination Section, Records Management Division of the FBI dated July 16, 2010. The letter was received by counsel for Plaintiff on July 20, 2010. A copy of the letter is attached as Exhibit "B". By this letter, the FBI notified Plaintiff that it had reviewed 825 pages and that 716 pages were being released. The basis for deletions of information were identified by reference to certain statutory provisions. The letter included a postscript notifying Plaintiff that more records would be produced pursuant to his request. The postscript stated:

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-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. Also included in this release are 163 pages of material previously processed and released to you from the following files: 149A-SC-C27507-S serials 101 and 355; 149A-SF-106204-S serials 3041 and 3865; and the 149A-SF-106204 ZyImage 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 \$61.60 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 540-868-4593 immediately to discuss.

The files identified by Mr. Hardy in his letter dated July 16, 2010 as those produced together with that correspondence are listed below. The subject of each file, based on its number, is also described. The file number classification was taken from the FBI's File Classification List published on the FBI's FOIA website:

<http://www.fbi.gov/foia/current-fbi-file-classification-list-1st-quarter-fy2008>

No.	File Number	FBI File Designation
1	197A-SC-35435	Civil Litigation
2	190-SD-C60287	Freedom of Information/Privacy Acts
3	190-LA-C2-E	Freedom of Information/Privacy Acts
4	190-HQ-C1189353	Freedom of Information/Privacy Acts
5	190-NO-C266	Freedom of Information/Privacy Acts
6	62-HQ-C1077229	Administrative Inquiries

7	190-SA-C-14	Freedom of Information/Privacy Acts-This file also contains the designation at the end of "14" which, according to the FBI File Classification List, is a sedition file. Plaintiff has not seen any sedition investigation files in the production of FBI files in response to his FOIA request. There is no basis for any sedition investigation of Plaintiff. If this file is indeed a sedition investigation, responsive documents should be produced.
8	190-MM-C1-B	Freedom of Information/Privacy Acts
9	190-SC-33911	Freedom of Information/Privacy Acts
10	190-SF-0	Freedom of Information/Privacy Acts
11	197A-SF-A-135225	Civil Litigation
12	263-HQ-0	Office of Professional Responsibility Matter
13	149A-SC-C27507	Destruction of Aircraft or Motor Vehicles
14	149A-SF-106204-S	Destruction of Aircraft or Motor Vehicles
15	149A-SF-106204	Destruction of Aircraft or Motor Vehicles

The "149" files identified reference the UNABOM investigation by the FBI. On September 19, 1995, Plaintiff was in Chico, California. He went to the California State University library and asked for a copy of the Washington Post article reprinting the so-called Unabomber's Manifesto. Later that evening, Plaintiff was in his hotel room when he received a phone call from an FBI agent who wanted to talk to him. Plaintiff was not involved in or in any way related to the conduct of the Unabomber. This became apparent to the investigators who questioned him. However, it appears to have led to the creation of the "149" files listed above.

8. On December 16, 2010, a second production was announced by correspondence from Mr. Hardy of the FBI. A copy of the letter is attached as Exhibit "C". By this letter, Plaintiff was notified that 1457 pages had been reviewed and that 1430 pages were being released. The letter stated that all the material being produced came from file 197-SF-A-A135225. No other files were mentioned. In the July 16, 2010 letter, Mr. Hardy gave notice that an additional estimated 3,000 pages remained to be processed. After the 1,457 pages referenced in the December 16, 2010 letter, there remained 1,543 additional pages to be processed. There has been no further disclosure of documents, or identification of documents reviewed or processed since December 16, 2010. Plaintiff has not been informed of what file number or numbers remain to be produced or their particular file designation within the FBI's classification system.

9. It has now been more than two years and eight months since Plaintiff made his request under FOIA to the FBI. The FBI waited almost one full year before producing the first set of pages pursuant to the request. A second release was made in December 2010. Since that time, there has been no further production from the FBI. This despite the fact that, by its own admission, the FBI is aware of an additional estimated 1,543 pages of records responsive to Plaintiff's request.

10. The FBI's lack of a timely response is all the more egregious when viewed in light of its representations in a prior FOIA lawsuit based on a FOIA request made in 2002: Civil No. 03-3126(GK), *James Lutcher Negley v. Federal Bureau of Investigation*, United

States District Court for the District of Columbia. In that case, the FBI took, and prevailed upon, the position that it was not required to include in its production, any records created after the date of the request. The FBI represented to the District Court in that case, on May 2, 2011, in its Motion for Summary Judgment (Document # 40, pp. 7-9) that the records responsive to the 2009 request had been located and collected for processing and release:

IV. PLAINTIFF'S 2009 FOIA REQUEST

By letter dated June 15, 2009, Plaintiff submitted a FOIA request for “all records in the possession of the Federal Bureau of Investigation relating, in any way, to James Lucher Negley (D.O.B. []/[]/[]: 3905 Laguna Vista Cove, Austin, Texas 78746).” *See* Eighth Declaration of David M. Hardy (“Eighth Hardy Decl.”) Ex. A. Three serials were from Plaintiff’s prior FOIA/FOIPA requests to the Miami, Los Angeles and San Antonio field offices. The fourth was a serial found not to concern Plaintiff. Seventh Hardy Decl. ¶ 39(b). Plaintiff stated that “[t]his request includes all records related to any permutation of James Lucher Negley’s name, as well as his business – Davis, Joseph & Negley (591 Redwood Highway, Suite 2155, Mill Valley, CA 94941).” *Id.* The FBI conducted searches in response to Plaintiff’s June 15, 2009 FOIA request at the same time that it was conducting the additional searches in response to the Court’s September 24, 2009 Order. *Id.* ¶ 14. The FBI applied a search cut-off date of June 24, 2009 to determine which records would be deemed responsive to Plaintiff’s 2009 request, *Id.* ¶ 13, but did not impose a temporal limitation on the searches themselves. Although some searches were conducted for Plaintiff’s 2009 request prior to the issuance of the Court’s September 24, 2009 Order, all searches performed after the issuance of the Court’s Order were conducted to find records responsive to both Plaintiff’s 2002 and 2009 requests. *Id.* ¶ 14. The searches conducted in response to Plaintiff’s 2009 request and the Court’s Order did not located any responsive FBI investigatory records that had not been previously released to Plaintiff. *Id.* ¶ 16. The only records discovered that had not previously been released to Plaintiff were “administrative” type files that are typically not processed as part of a FOIA request because most requestors typically do not want a copy of their request and in fact object to paying for it. *Id.*; Def.’s Ex. 3 at 27:19-28:21. In response to Plaintiff’s June 15, 2009 FOIA request, on November 30, 2009, the FBI sent a letter to Plaintiff’s counsel inquiring whether Plaintiff wished to “receive copies of his prior FOIA/PA request files, a copy of one serial in an Office of Professional Responsibility general file pertaining to his letter to Director Mueller, a copy of the litigation file related to Mr. Negley’s prior lawsuit in the Western District of Texas, and two serials within a control file concerning the Congressional Inquiry he previously made,” as well as “the materials he previously

received in response to his prior FOIA/PA requests.” *See* Eighth Hardy Decl. ¶ 17 & Ex. E. The FBI explained that it “does not routinely process this type of material unless it is specifically requested.” *Id.* Plaintiff did not respond to the FBI. *See* Def.’s Ex. 3 at 127:22-128:10. On January 8, 2010, the FBI sent a follow-up letter advising Plaintiff that it was still awaiting a response as to whether he wished to obtain the records described in the November 30, 2009 letter. *See* Eighth Hardy Decl. ¶ 18 & Ex. F. Plaintiff again did not respond to the FBI. *See* Eighth Hardy Decl. ¶ 19. Despite the fact that Plaintiff failed to respond to either of the FBI’s two inquiries regarding whether Plaintiff wished to receive the administrative and litigation files referred to in the November 30, 2009 letter, the FBI nevertheless collected these administrative and litigation files for processing and release. *Id.* ¶¶ 17-22.(emphasis added).

Excerpt from Document # 40, FBI’s Motion for Summary Judgment filed in Civil No. 03-3126(GK), *James Lutcher Negley v. Federal Bureau of Investigation*, United States District Court for the District of Columbia, pages 7-9.

11. That reference appears to state that the records responsive to the 2009 FOIA request had been located, collected and were ready for processing and release. Yet, it is now April of 2012, almost a full year since that statement was made to the District Court for the District of Columbia, and there has been no further production by the FBI of the additional 1,543 pages of documents that had been identified as of July 16, 2010 and which apparently had been collected for processing and release at least as early as May 2, 2011.

IV.

CLAIM UNDER FOIA

12. There is no reasonable basis for the failure of the FBI to timely produce the files and documents which are responsive to Plaintiff’s 2009 FOIA Request. Plaintiff has a right of access to the requested information under 5 U.S.C. § 552(a)(3), and there is no legal basis for the FBI’s failure to fully produce responsive documents and files which it has admitted

exist.

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor as follows:

1. Order the FBI to make the information available as requested based on reasonably estimated costs and non-commercial user fees, 5 U.S.C. § 552(a)(4)(B);
2. Award Plaintiff his costs and reasonable attorney's fees in this action, as provided under 5 U.S.C. § 552(a)(4)(E); and
3. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ John F. Carroll

John F. Carroll

Attorney at Law

Texas State Bar No. 03888100

111 West Olmos Drive

San Antonio, Texas 78212

Telephone: (210) 829-7183

Facsimile: (210) 829-0734

jcarroll@111westolmos.com

ATTORNEY FOR PLAINTIFF

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prashant.khetan@troutmansanders.com

TROUTMAN SANDERS

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Attorneys at Law
401 9th Street NW
Suite 1000
Washington, District of Columbia
20004-2134
202.274.2850 telephone
202.654.5824 facsimile
troutmansanders.com

June 15, 2009

VIA FIRST-CLASS MAIL

FOIPA Section
Federal Bureau of Investigation
Department of Justice
935 Pennsylvania Avenue, NW
Washington, DC 20535

Re: FOIA Request for James Lutchter Negley

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. Section 552 ("FOIA") and the attached April 28, 2009 letter from Department of Justice, we request that you provide a copy of all records in the possession of the Federal Bureau of Investigation relating, in any way, to James Lutchter Negley (D.O.B. 3905 Laguna Vista Cove, Austin, TX 78746), to the undersigned. Attached is a Certification signed by Mr. Negley authorizing the release of such records. This request includes all records related to any permutation of James Lutchter Negley's name, as well as his business - Davis, Joseph & Negley (591 Redwood Highway, Suite 2155, Mill Valley, CA 94941). If any additional information would permit other or more detailed searches, please notify me and we will provide that information promptly.

As provided under FOIA, we would appreciate a reply within the requisite time (as we understand it, that time frame is twenty (20) working days). In the event that a determination is made that some or all of the documents requested are exempt from disclosure under FOIA, please identify those documents withheld and the basis for the agency's exemption in each instance. Additionally, if for any reason the requested information is not in your possession, please so advise and indicate, if possible, where such information can be obtained.

If there are fees involved for searching or copying the records we requested, please notify us of the amount required and we will forward a payment. If you have any questions regarding this request, please contact me at 202-662-2028. Thank you for your assistance.

Sincerely,

Prashant K. Khetan

Enclosures

ATLANTA	CHICAGO	HONG KONG	LONDON	NEW YORK	NEWARK	NORFOLK	ORANGE COUNTY
RALEIGH	RICHMOND	SAN DIEGO	SHANGHAI	TYSONS CORNER	VIRGINIA BEACH	WASHINGTON, DC	
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U.S. Department of Justice

Certification of Identity



Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Failure to furnish this information will result in no action being taken on the request. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to Director, Facilities and Administrative Services Staff, Justice Management Division, U.S. Department of Justice, Washington, DC 20530 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester ¹ James Latcher Negley

Citizenship Status ² USA Social Security Number ³ FRCP 5.2/L.R. 5.4(f)(1)

Current Address PO Box 1028 Mill Valley, Ca 94942

Date of Birth FRCP 5.2/L.R. 5.4(f)(3) Place of Birth New Orleans, La.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature ⁴ James L Negley Date 11 May 09

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Prashant K Khetan esq. Troutman Sanders
Print or Type Name

¹ Name of individual who is the subject of the record sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

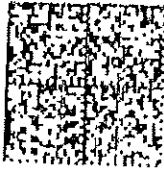
⁴ Signature of individual who is the subject of the record sought.

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

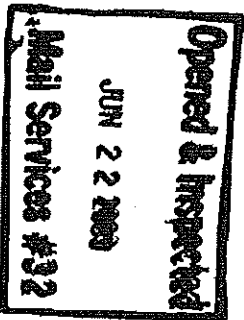
401 9TH STREET, N.W.
SUITE 1000
WASHINGTON, D.C. 20004-2134

FOIPA Section
Federal Bureau of Investigation
Department of Justice
935 Pennsylvania Avenue, NW
Washington, DC 20535



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06/15/2009
Ruled Form 28001
US POSTAGE





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 9TH 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-16a:

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

825 pages were reviewed and 716 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)

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U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

December 16, 2010

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

Subject: NEGLEY, JAMES LUTCHER

FOIPA No. 1133487- 000

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_____	<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 checked="" type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

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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 second interim release of documents responsive to your request for information pertaining to James Negley. The material consists of documents from file 197-SF-A135225. Additional interim releases will be made until processing is complete.

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