

B. Plaintiff's FOIA Request Of April 2014

Plaintiff's FOIA request that is the subject of this lawsuit ("Lawsuit FOIA Request") was submitted in April 2014. See Plf's FOIA Request of April 2014. Plaintiff's FOIA request was submitted to the DOJ's general FOIA/PA Mail Referral Unit and the request was ultimately assigned to the Executive Office of United States Attorneys ("EOUSA").

C. Plaintiff's FOIA Request Of July 2015

Outside of this litigation, on July 13, 2015, Mr. Negley filed a FOIA Request with the DOJ that has been assigned Request No. FOIA-2016-00039 (the "July 2015 FOIA Request"). The DOJ, through counsel, has informed Mr. Negley that it is in the process of locating documents responsive to Mr. Negley's July 2015 FOIA Request and can soon begin producing such documents. Upon information provided by the DOJ, through counsel, the Parties believe that the documents requested in Mr. Negley's April 7, 2014 FOIA Request, which are at issue in this litigation, may be part of the DOJ's production in response to his July 2015 FOIA Request.

D. Current Status of Proceedings

Accordingly, counsel for the Parties previously agreed on a framework for a temporary stay to permit production of documents responsive to the July 2015 FOIA request, because completion of this production may resolve some of the issues in this litigation. Following the expiration of the Stay, DOJ required additional time to complete its production. That date was set for February 23, 2017. It is the understanding of Mr. Negley and DOJ that DOJ has completed its production. This Court ordered the parties to file a joint status report on March 7, 2017. This report constitutes the statement of both parties with respect to this Court's Order of that date.

II. STATEMENT OF PLAINTIFF JAMES L. NEGLEY

For the sake of brevity and efficiency, Plaintiff James L. Negley respectfully refers this Court to the previous status report filed in April 2016 (Dkt. 27) for the voluminous past history of

this case and for context. For the purposes of this report, Mr. Negley narrows his focus solely to the lack of production of certain files, and the issues that Mr. Negley previously reserved for adjudication.

Upon completion of the document production, Mr. Negley's primary objection is the Agency's failure to produce over 800 pages previously withheld by DOJ sub-agency the Federal Bureau of Investigations ("FBI"), and in particular, the FBI File-1575. As the Court is aware, Mr. Negley alleges that he has been the victim of decades-long illegal surveillance and wiretapping from unknown government agencies and sources. Having no way to discern the identity of those responsible, Mr. Negley has initiated multiple FOIA actions in order to get answers. Mr. Negley has made his position on this issue clear on numerous occasions, most recently in correspondence to DOJ counsel on January 4, 2017. There, and in previous correspondence with DOJ counsel, Mr. Negley has reiterated the belief that the government's harassment of him could constitute racketeering in violation of Title 18 of the United States Code, and has sought to establish the root cause of his harassment in these various FOIA litigations.

Mr. Negley undertook this current FOIA request and subsequent litigation based, in part, upon notes regarding potential FBI/DOJ files on Mr. Negley. *See* Dkt. 1 at ¶ 9-12. Those files still have not been produced. However, in documents previously produced in this litigation, it appears that Mr. Negley was the subject of a DOJ/FBI file labeled S-1575 that originated in January 1994, *prior to Mr. Negley's involvement in the Unabomber investigation*. Accordingly, any resolution of his litigation – which concerns DOJ/FBI documents relating to Mr. Negley as noted on the Agency's own documents – necessarily entails an examination of documents relevant to Mr. Negley's surveillance by the Agency and/or FBI.

The documents produced in this litigation to date have shown that the FBI was surveilling, or had a file on, Mr. Negley that pre-dates his involvement in the “Unabomber” investigation, but that file has still not been produced, despite being specifically requested (see January 4, 2017 letter to DOJ counsel). As such, Mr. Negley is of the belief that:

1. The adjudication of documents relating to FBI File-1575 *are related directly to his initial 2014 FOIA Request*, and
2. his DOJ FOIA Request from July 2015 should be folded within this litigation for judicial economy and efficiency.

Given the current state of the production, Mr. Negley proposes the following:

1. Briefing by Mr. Negley and DOJ on the failure to produce FBI File-1575 and related requested documents followed by a hearing on this issue; and
2. Limited discovery, if necessary, relating to searches done with respect to those files.

Mr. Negley’s plan will resolve the central issue relating to Mr. Negley’s April 2014 FOIA Request.

III. STATEMENT OF DEFENDANT DOJ¹

A. DOJ’s Response To The Lawsuit FOIA Request

In compliance with the Court’s September 20, 2016 Order [ECF No. 32], DOJ completed its searches of locations reasonably likely to possess responsive materials and it has produced the non-exempt, responsive portions of collected documents related to this Lawsuit in a series of rolling productions beginning on March 15, 2016, and concluding with the production released on January 31, 2017. *See* Gov. Ex. A (attaching seven letters of production to Mr. Negley).

¹ Within this status report, DOJ focuses on advising the Court of the status of its processing of the FOIA request and responds only to the issues noted in Section II of this document (“Statement of Plaintiff James L. Negley”). For DOJ’s position on other matters previously addressed by Mr. Negley, DOJ respectfully refers the Court to the Parties’ joint status report filed in April 2016 [ECF No. 27].

In the previous Joint Status Report [ECF No. 31], filed on September 7, 2016, Mr. Negley complained that DOJ did not produce 1,519 pages of materials that EOUSA had referred to the FBI for processing and production. As explained in the FBI's August 26, 2016 letter to Mr. Negley, the FBI did not intend to produce the pages because, after review of the referred pages, it had determined the 1519 pages were duplicative of materials it had already provided to Mr. Negley in previous releases under FOIA No. 1133487, which has been fully adjudicated in Civil Action No. SA-12-cv-362 in the U.S. District Court for the Western District of Texas, and in the Fifth Circuit Court of Appeals in Case No. 13-50912. However, because FBI became aware that there was concern by Mr. Negley as to which pages were referred to the FBI, the FBI again verified that the pages referred to it by EOUSA are the same pages previously produced and adjudicated. To fully assist Mr. Negley in understanding which pages these are, on February 15, 2017, the FBI sent Mr. Negley another copy of the 1,519 pages that had previously been released. *See* Gov. Ex. B. The FBI received a second referral of documents from EOUSA; the referral contained eight pages, and on February 21, 2017, the FBI provided Mr. Negley with a copy of the pages.

Notably, nothing that Mr. Negley states in this Status Report – or any of the Parties' recent status reports – calls into question the adequacy of the search or the exemptions applied to materials with respect to the only FOIA request that is the subject of this lawsuit, *i.e.*, the January 2014 request seeking materials related to Mr. Negley's alleged involvement in the Unabomber investigation. DOJ believes that the Parties are ready to resolve this matter, through briefing or otherwise.

B. DOJ's Response to Mr. Negley's Proposal

Mr. Negley's reference to "800 pages previously withheld by [FBI], and in particular, the FBI File-1575" refers to materials that – if they exist, which DOJ does not concede that they do – are irrelevant to the case currently before the Court for at least two reasons. First, as Mr. Negley

has conceded, the alleged documents were withheld in response to a *previous* FOIA request that was submitted to the FBI, *not* the Lawsuit Request, which was submitted to DOJ in April 2014. Second, Mr. Negley asserts that the “File 1575 documents reflect an investigation that *pre-dates* the Unabomber investigation”, which means that these documents would necessarily be outside of the scope (and, therefore, non-responsive) to the Lawsuit FOIA Request, which only seeks documents related to the Unabomber investigation.²

Mr. Negley asks that “his DOJ FOIA Request from July 2015 ... be folded within this litigation for judicial economy and efficiency”. DOJ objects to this request on multiple grounds. First if, as Mr. Negley alleges, DOJ has conducted an inadequate search for responsive records and/or improperly withheld records responsive to the July 2015 FOIA Request, then judicial economy and efficiency are best served by *not* amending the claims in the suit to include the July 2015 Request because inclusion of those claims circumvents the very important goal of the administrative process, which is to permit the agency to correct any errors that may exist and build an administrative record before the Court reviews the matter.³ Second, when the Parties discussed agreeing to a Stay to permit DOJ to produce documents related to the July 2015 FOIA Request, Mr. Negley’s counsel proposed that the Complaint in this lawsuit be amended to include the July 2015 FOIA Request. DOJ counsel refused this request and reiterated that any challenges to the

² It is noteworthy that multiple Courts have repeatedly addressed Mr. Negley’s claims about the existence of the file he has adamantly stated was in FBI custody and that he now asserts – with no factual basis – should have been located in DOJ’s search of U.S. Attorney’s Offices. *See, e.g., Negley v. F.B.I.*, 169 F. App’x 591, 595 (D.C. Cir. 2006); *Negley v. F.B.I.*, 658 F. Supp. 2d 50, 54 (D.D.C. 2009); *Negley v. F.B.I.*, 825 F. Supp. 2d 63, 67 (D.D.C. 2011), *aff’d*, No. 11-5296, 2012 WL 1155734 (D.C. Cir. Mar. 28, 2012).

³ FOIA requires administrative exhaustion on the principle that permitting judicial review prior to exhaustion would cause premature interference with agency processes, would deny the court the benefit of the agency’s expertise, and would undermine the creation of an adequate record for review.” *Odland v. Fed. Energy Regulatory Comm’n*, 34 F. Supp. 3d 3, 14 (D.D.C. 2014). Accordingly, a FOIA requester should not be permitted to short circuit this scheme by prematurely haling an agency into court. “[I]t would be both contrary to orderly procedure and administration and unfair to those who are engaged in the tasks of administration to decide an issue which the [agency] never had a fair opportunity to resolve prior to being ushered into litigation.” *Dettman v. Dep’t of Justice*, 802 F.2d 1472, 1476 n.8 (D.C. Cir. 1986).

agency's processing of the July 2015 FOIA Request needed to be exhausted administratively and the request would not be part of this lawsuit. If Mr. Negley disagreed with DOJ's position regarding amending the complaint, he was free to file a motion for leave to amend with the Court. This lawsuit is now more than two years old and DOJ has completed the processing of records in connection with the Lawsuit FOIA Request; thus, the Court should deny this request.

Finally, Mr. Negley requests that the Court (i) order briefing and a hearing related to the "FBI File 1575" and (ii) permit discovery related to the completed searches. Both of these requests should be denied. As previously noted, if FBI File 1575 exists, it has no connection to the FOIA request in this lawsuit and the only issues to be briefed (if any) should be those that are related to the Lawsuit FOIA Request. With respect to discovery, not only has Mr. Negley not shown a need for discovery, but he has yet to identify or provide any basis for his assertion that the search related to the Lawsuit Request is deficient.

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Respectfully submitted,

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