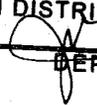


FILED

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

FEB 14 2013

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

JAMES LUTCHER NEGLEY,
Plaintiff,

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v.

Cause No. SA-12-CV-362-OLG

FEDERAL BUREAU OF INVESTIGATION,
Defendant.

ORDER

Currently pending before the Court is the Defendant's Motion for Protective Order (docket no. 19). After reviewing the Defendant's motion and Plaintiff's responses thereto, the Court is of the opinion that the motion should be GRANTED.

Generally, there is no discovery in a FOIA case, and whether discovery should be allowed is a matter within the discretion of the district court judge. *Schiller v. I.N.S.*, 205 F.Supp.2d 648, 653 (W.D.Tex. 2002) (citing *Broaddrick v. Executive Office of the President*, 139 F.Supp.2d 55, 63 (D.D.C. 2001)); see also, *Cooper Cameron Corp. v. U.S. Dep't of Labor Occupational Serv. & Health Admin.*, 280 F.3d 539, 543 (5th Cir. 2002) (finding that summary judgment resolves most FOIA cases). Even when discovery is allowed it is done so only sparingly. *Schiller*, 205 F.Supp.2d at 653 (citing *Public Citizen Health Research Group v. Food & Drug Admin.*, 997 F.Supp. 56, 72 (D.D.C. 1998), *aff'd in part, rev'd in part on other grounds*, 185 F.3d 898 (D.C. Cir. 1999)); see also, *Cooper Cameron Corp.* 280 F.3d at 543 (adopting the approach of the D.C. Circuit to FOIA requests as "[t]he D.C. Circuit, [is] the federal appellate court with the most experience in this field . . ."). Usually, "discovery is limited 'to investigating the scope of the agency search for responsive documents, the agency's indexing procedures, and

the like.” *Schiller* at 653 (quoting *Public Citizen Health Research Group*, 997 F.Supp. at 72–73.); see also *Batton v. Evers*, 598 F.3d 169, 176 (5th Cir. 2010) (determining under a *de novo* standard of review, that whether an agency’s search for responsive records is adequate is a threshold issue). As the Plaintiff’s discovery requests are directed at whether investigations were conducted and—assuming they were—whether they produced any records, Plaintiff’s discovery requests “exceed[] the limited scope of discovery usually allowed in a FOIA case concerning factual disputes surrounding the adequacy of the search for documents.” *Schiller* at 654.

Accordingly, IT IS ORDERED that Defendant’s motion for protective order (docket no. 19) is GRANTED. In accordance therewith, it is additionally ORDERED that:

1. Defendant is excused from responding to Plaintiff’s discovery requests of August 10, 2012;
2. Should Plaintiff believe that discovery is still necessary after Defendant submits its Motion for Summary Judgment, he may seek leave of the Court to submit discovery narrowly tailored to the issues of whether Defendant has conducted an adequate search for responsive documents and, if necessary, regarding the invocation of any privilege;
3. Defendant may submit an application for reasonable attorney’s fees relating to the protective order pursuant to FED. R. CIV. P. 26(c)(3) within 14 days following the final judgment of this case.

SIGNED this 12 day of Feb., 2013.



United States District Judge Orlando L. Garcia