

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JAMES LUTCHER NEGLEY,

Plaintiff,

v.

FEDERAL BUREAU OF  
INVESTIGATION,

Defendant.

Civil Case No. 03-2126 (GK)

REPLY IN SUPPORT OF PLAINTIFF’S MOTION FOR RECONSIDERATION  
OF COURT’S MARCH 1, 2011 ORDER DENYING PLAINTIFF’S MOTION  
FOR CONTEMPT FOR DEFENDANT’S FAILURE TO COMPLY  
WITH THE COURT’S SEPTEMBER 24, 2009 ORDER

Plaintiff James Lutcher Negley, by his undersigned attorneys, respectfully submits this reply in support of his Motion for Reconsideration of the Court’s March 1, 2011 Order. What is notable from the opposition brief submitted by Defendant Federal Bureau of Investigation (the “FBI”) is not the arguments it makes, but its failure to respond, because it cannot, to the assertions made by Negley in his Motion.

First, the FBI makes no attempt to address the fact that Negley’s FOIA request, as amended, specifically seeks “any other” files about Negley, with no geographic or file number limitation. Specifically, Negley amended his FOIA request as follows:

*Please amend my 1/16/2002 FOIA request* to your office to include [file no. 149A-SF-106204-Sub S-1575] as well as *any others*.

See Motion for Reconsideration (Dkt. No. 111), Exh. A (April 23, 2002 facsimile from Negley containing amendment to FOIA request) (emphasis added). This amendment, unlike the initial request to the SFFO, does not contain any geographic limitation or file number limitation.

Negley's reference to "any others" was referring to any other file numbers and the accompanying files about him, regardless of whether those files were maintained at and by the SFFO.

Rather than explain why the reference to "any others" is not dispositive of the issue, the FBI tries to focus on the clause "to your office." See Opp'n, at 4. Even when taken out of context, the FBI's interpretation does not make sense. Negley does not dispute that the FOIA request was sent to the SFFO (i.e., "your office") because *the FBI told Negley to send his FOIA request to that office*. Indeed, the FBI makes no attempt to explain the contradiction in, first, directing Negley, a non-attorney, to submit his FOIA request to the SFFO, but then using that fact against him by unilaterally limiting the scope of his request to the SFFO. Notably, when Negley initially made his FOIA request, he did so directly to FBI Headquarters. The FBI told Negley that its protocol required that Negley make the FOIA request directly to a field office. It was then, and only then, that Negley submitted the FOIA request to the SFFO. And when Negley appealed the initial response by the SFFO, Negley amended his FOIA request for "any other" files, because he had reasons to believe that there were files with records about him that the FBI was withholding (which proved to be correct).

Second, perhaps recognizing that the reference to "any other" files is dispositive of the pending issue, the FBI next tries to confuse matters by referencing an affidavit that Negley previously submitted in support of a prior motion. Again, the FBI seeks to have this Court view that document out of context. That affidavit was submitted specifically to address the FBI's then argument (since discredited by this Court) that the FOIA request did not seek what has been referenced as "File S-1575," regardless of its content. At that time, like now, the FBI sought to mischaracterize the scope of Negley's FOIA request to the SFFO. Negley submitted an affidavit specifically to address File S-1575. While the FBI seeks to read more into that affidavit, a

review of the accompanying motion shows that the focus, at that time, was solely on File S-1575, not whether Negley sought any other files about him.

Third, it is notable that the FBI makes no attempt to respond to this Court's previous finding that Negley appealed and amended his original FOIA request and ordered the FBI to conduct searches beyond the SFFO. See, e.g., Memorandum Opinion dated September 24, 2009 (Dkt. No. 91), at 13 (“[Negley] also provided specific file numbers in his appeals of Defendant’s initial decisions and *in his amended FOIA request, so as to allow the FBI to construe his FOIA request liberally and broaden its search beyond the main files in the UNI.*”).

Finally, and most importantly, the FBI does not mention or dispute that this Court ordered the FBI to search for and produce responsive documents from seven different sources, including sources that by definition are not limited to documents maintained at and by the SFFO. While the FBI may want to ignore this, the record is clear that the Court has already made rulings consistent with the fact that Negley’s FOIA request sought documents beyond those maintained by the SFFO. This is critical to this issue because if, as Negley has demonstrated, the FOIA request, as amended, sought records outside of the SFFO, then the FBI did violate the September 24, 2009 Order by producing documents only maintained by the SFFO.<sup>1</sup>

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<sup>1</sup> With respect to Negley’s second point in the Motion for Reconsideration – that there was a misunderstanding regarding the 2009 FOIA request – the FBI asserts that Negley seeks an Order “based on his contention that the FBI’s ongoing disclosure of certain records responsive to his 2009 FOIA request somehow fails to comply with the Court’s September 24, 2009 Order.” Opp’n at 1. This is simply incorrect. Negley has always maintained that the 2009 FOIA request has nothing to do with this case or the FBI’s compliance with the September 24, 2009 Order. In contrast, the FBI has wavered on whether the 2009 FOIA request is relevant to this case. Indeed, at the last status conference, when the FBI took the position that the 2009 FOIA request has nothing to do with this case, even the Court suggested that the FBI may regret taking a position that is the opposite of what it previously argued in this matter.

Negley’s position, more fully set forth in the Motion for Reconsideration, is that the FBI’s obligations under the September 24, 2009 Order should not be judged based on what it has or has not done in response to the 2009 FOIA request. The FBI completely ignores Negley’s actual position and instead argues an entirely different one.

For these reasons, and as set forth in the Motion for Reconsideration, Negley requests that the Court grant the Motion for Contempt for Defendant's Failure to Comply with the Court's September 24, 2009 Order (Dkt. No. 90) as it relates to producing documents maintained at and by the FBI outside of the San Francisco Field Office and documents created after April 2002.

Dated: April 1, 2011

Respectfully submitted,

/s/ Prashant K. Khetan

Prashant K. Khetan, D.C. Bar No. 477636

TROUTMAN SANDERS, LLP

401 9<sup>th</sup> Street, N.W.

Suite 1000

Washington, DC 20004-2134

Tel.: (202) 274-2950

Fax.: (202) 274-2994

*Attorneys for Plaintiff,*

James Lucher Negley