

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN CIVIL LIBERTIES UNION and))
AMERICAN CIVIL LIBERTIES UNION))
FOUNDATION,))
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Plaintiffs,))
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v.)	No. 13 Civ. 9198 (KMW)
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NATIONAL SECURITY AGENCY,))
CENTRAL INTELLIGENCE AGENCY,))
DEPARTMENT OF DEFENSE,))
DEPARTMENT OF JUSTICE, and))
DEPARTMENT OF STATE,))
))
Defendants.))
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FOURTH DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

1.) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), of the Federal Bureau of Investigation (“FBI”) in Winchester, Virginia. My previous declarations in this matter, dated February 26, 2016, June 8, 2016, and June 14, 2017, explain my employment history and responsibilities at the Federal Bureau of Investigation. *See* ECF Nos. 63, 78 and 102. This declaration supplements, and hereby incorporates by reference, the information previously provided in my prior declarations, and as with my third declaration, is being submitted in light of the Court’s March 27, 2017, Memorandum Opinion and Order, in support of the Government’s supplemental Motion for Partial Summary Judgment and to address issues raised by the Plaintiffs in their July 1, 2016, “Reply Memorandum of Law in Support of Plaintiffs’ Cross-Motion for Partial Summary Judgment,” and the Court’s Order.

2.) In their July 1, 2016, Reply and Cross-Motion, Plaintiffs argued that the FBI failed to conduct a proper search for responsive records; failed to provide any of the terms or combinations of terms it used to search its records; and improperly limited its search to only five agency offices. The Court's Order directed the FBI to detail its search with greater specificity, or, if it was unable to do so, to conduct and properly document additional searches. In addition, the Court directed the FBI to clarify the scope of the search of its Office of the General Counsel ("OGC"), to address whether the agency's Intelligence Branch is likely to possess responsive documents, and to clarify whether any other agency record system — as opposed to an agency office or division — was likely to contain responsive documents. I provide this additional information herein.

FBI'S ADDITIONAL SEARCHES

3.) The FBI has now concluded its additional searches. As I explained in my previous declaration, ECF No. 102, FBI elected to conduct additional searches in response to the Court's Order, and the parties agreed on search terms to be used in these additional searches.

4.) The FBI's additional searches were conducted in the following agency offices: the Counterintelligence Division; the Counterterrorism Division; OGC's Discovery Processing Units and National Security & Cyber Law Branch; the Training Division; and the Intelligence Branch, Directorate of Intelligence.¹ Each of these agency offices conducted searches utilizing the agreed-upon set of search terms agreed upon with Plaintiffs. These searches yielded no

¹ The Intelligence Branch is responsible for all intelligence strategy, resources, policies, and functions. The Directorate of Intelligence is the FBI's dedicated national intelligence workforce, with clear authority and responsibility for all Bureau intelligence functions. The directorate's mission is to provide strategic support, direction, and oversight to the FBI's Intelligence Program. It carries out this function through embedded intelligence elements at FBI Headquarters and in each field division.

additional records — *i.e.*, no records beyond those contained in the FBI’s earlier productions — that are responsive to Plaintiffs’ FOIA request as narrowed by the parties’ May 2014 stipulation.

5.) In addition, the FBI’s Internal Policy Office conducted a search of its electronic policy portal. The policy portal is an electronic database that is full-text searchable. An initial search was conducted using the terms “12333” and “12,333.” The resulting documents were then further searched for documents containing the terms “ELSUR” (the agency’s shorthand for electronic surveillance); “USPER” (the agency’s shorthand for U.S. person or persons); or the phrase “electronic surveillance.” The records resulting from these searches were then manually reviewed for responsiveness to Plaintiffs’ request, as narrowed by the parties’ stipulation. These searches yielded no additional responsive records.

SEARCHES CONDUCTED IN OGC AND THE INTELLIGENCE BRANCH

6.) Plaintiffs’ briefs to this Court mentioned two additional FBI divisions where they believed additional responsive documents could be located: the Intelligence Branch and the units outside of the Discovery Processing Units (“DPUs”) in OGC. The Court directed the agency to explain in more detail its decision not to include these divisions in its searches, or alternatively, to include them in its supplemental searches.

7.) With regard to OGC, the DPUs serve as the central contact for coordinating all of OGC’s responses and collecting records responsive to search requests directed to any OGC component. Given the passage of time and personnel turnover, RIDS was unable to confirm with certainty which OGC units were included in the initial search for records responsive to Plaintiffs’ request. As a result, when the FBI re-conducted its search, it specifically included OGC’s National Security & Cyber Law Branch, which is the office within OGC where responsive records were most reasonably likely to be found. As with the remaining searches,

this search yielded no additional responsive records that had not been located in the previous search.

8.) As for the Intelligence Branch, as stated in paragraph 4 *supra*, the FBI's additional search included the Directorate of Intelligence, which is the component within this Branch, if any, where responsive records were most reasonably likely to be found. This search yielded no responsive records to Plaintiffs' request.

SEARCHES OF FBI RECORD SYSTEMS


9.) Finally, the Court had directed FBI to indicate whether there were any agency record systems not previously searched that were reasonably likely to contain responsive records. As noted above, in paragraph 5, the agency searched (as it had done previously) its Internal Policy Office's electronic policy portal. With respect to other agency record systems, as I explained in paragraph 19 of my first declaration, ECF No. 63, the agency often searches its Central Records System ("CRS") in response to FOIA requests, but RIDS made a specific determination in this case not to do so because the types of documents Plaintiffs requested are not kept in this system. Instead, the agency directed particular offices to conduct targeted searches for responsive documents. Beyond the CRS and the Internal Policy Office's electronic policy portal, there is no other agency system of records that is reasonably likely to contain responsive records.

CONCLUSION

10.) The FBI has conducted supplemental searches for records responsive to Plaintiffs' FOIA request, as narrowed in the parties' stipulation, using agreed search terms. These additional searches were done in the same offices in which the agency previously searches, as well as, for the first time, in OGC's National Security & Cyber Law Branch and in the Intelligence Branch, Directorate of Intelligence. The methodology for these searches has been detailed with greater specificity. We have further confirmed that there is no other location or record system likely to contain responsive documents, beyond those that have been searched. As a result of these additional searches, the agency located no further documents that are responsive to Plaintiffs' request, as narrowed by the parties' stipulation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of July, 2017.


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