

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

These consolidated actions arise under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. They involve FOIA requests for records memorializing conversations between former Director of the Federal Bureau of Investigation (“FBI”), James B. Comey, and President Donald J. Trump, referred to as the “Comey Memos,” as well as additional records. The FBI has withheld the Comey Memos in full in response to plaintiffs’ FOIA requests.

Defendants hereby move pursuant to Federal Rule of Civil Procedure 56 for partial summary judgment in their favor as to the Comey Memos. The reasons for this Motion are set forth in the accompanying Memorandum in Support of Defendants’ Motion for Partial Summary Judgment, the Statement of Material Facts as to Which There is No Genuine Dispute, the Declaration of David M. Hardy, and the additional FBI declaration that defendants are seeking leave to submit *in camera* and *ex parte*. A proposed order is filed concurrently herewith.

Dated: October 13, 2017

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

These consolidated actions arise under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. They involve FOIA requests for records memorializing conversations between then-Director of the Federal Bureau of Investigation (“FBI”), James B. Comey, and President Donald J. Trump, which this memorandum will refer to as the “Comey Memos.”

The FBI, under the oversight of Robert S. Mueller III, who has been appointed to serve as special counsel (“Special Counsel”), is currently conducting an investigation into the Russian government’s efforts to influence the 2016 Presidential election. Although this investigation has been the subject of intense public speculation and media reporting, in order to preserve the integrity of the investigation, neither the FBI nor the Special Counsel has officially confirmed any details regarding the investigation.

The Comey Memos at issue in these consolidated cases pertain to this sensitive investigation. The FBI and the Special Counsel have determined that the disclosure of these records at the current time, while this sensitive and high-profile investigation remains ongoing, would be reasonably expected to adversely affect the integrity of that investigation.

Accordingly, the Comey Memos have been properly withheld in full pursuant to FOIA Exemption 7(A), which protects documents compiled for law enforcement purposes where their disclosure “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A).

The FBI has also properly withheld portions of the responsive records pursuant to Exemptions 1 and 3, as they contain information that has been properly classified in accordance with the operative Executive Order, some of which also falls within the ambit of section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C. § 3024(i)(1). Information concerning

law enforcement techniques and procedures that have been used in connection with the Russian interference investigation is also being withheld pursuant to FOIA Exemption 7(E). Finally, identifying information of third parties mentioned in the documents has been properly withheld pursuant to Exemptions 6 and 7(C), because the disclosure of this personal information implicates significant privacy interests that are not outweighed by any cognizable public interest in disclosure.

Accordingly, summary judgment should be granted in favor of defendants FBI and the United States Department of Justice.

BACKGROUND

I. FACTUAL BACKGROUND

On March 20, 2017, then-FBI Director James B. Comey confirmed in public testimony before Congress “that the FBI, as part of our counterintelligence mission, is investigating the Russian government’s efforts to interfere in the 2016 presidential election, and that includes investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia’s efforts.” Statement Before the House Permanent Select Committee on Intelligence, *available at* <https://www.fbi.gov/news/testimony/hpsci-hearing-titled-russian-active-measures-investigation> (last visited Oct. 12, 2017). He added that “[a]s with any counterintelligence investigation, this will also include an assessment of whether any crimes were committed.” *Id.* Then-Director Comey declined to say more regarding the scope or focus of the investigation during that public hearing, as the investigation was still open and ongoing. *Id.*

Director Comey was terminated as FBI Director on May 9, 2017. *See, e.g.*, Compl. (No. 17-1167) ¶ 7 (Dkt. No. 1); Declaration of David M. Hardy, Section Chief, Record/Information Dissemination Section, Records Management Division, FBI (“Hardy Decl.”) ¶ 108 (submitted herewith). On May 17, 2017, Deputy Attorney General Rod Rosenstein named former FBI Director Robert S. Mueller III as Special Counsel to oversee the Russia investigation. DOJ Order No. 3915-2017, Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters (May 17, 2017). Under the terms of his appointment, Special Counsel Mueller is authorized to “conduct the investigation confirmed by then-FBI Director James B. Comey in testimony before the House Permanent Select Committee on Intelligence on March 20, 2017, including (i) any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and (ii) any matters that arose or may arise directly from the investigation; and (iii) any other matters within the scope of 28 C.F.R. § 600.4(a).” *Id.* In addition, “[i]f the Special Counsel believes it necessary and appropriate, the Special Counsel is authorized to prosecute federal crimes arising from the investigation of these matters.” *Id.*

The Russia investigation is ongoing. Hardy Decl. ¶ 66. No further information about the subjects, scope, or focus of the investigation has been officially acknowledged by the FBI, Special Counsel Mueller, or any representative of the Department of Justice. *Id.* However, as the complaints filed in these consolidated cases indicate, there has been much media speculation and information provided by unofficial sources circulating in the public domain.

On June 8, 2017, former Director Comey, then a private citizen, testified under oath in open session before the Senate Select Committee on Intelligence (“SSCI”). *See, e.g.*, Compl.

(No. 17-1167), ¶ 22 (Dkt. No. 1). In his Statement for the Record, released to the public on June 7, 2017, former Director Comey outlined how he had drafted contemporaneous memoranda after various meetings and conversations with President Trump in which he discussed matters pertaining to the Russia investigation. <https://www.intelligence.senate.gov/sites/default/files/documents/os-jcomey-060817.pdf> (“June 7 Statement”). In his live testimony on June 8, 2017, former Director Comey again discussed his communications with President Trump regarding, among other things, the Russia investigation, referencing again his contemporaneous memos.¹ *See, e.g.*, Compl. (No. 17-1167), ¶ 22 (Dkt. No. 1); Am. Compl. (No. 17-1175), ¶¶ 14-15 (Dkt. No. 9). With respect to his conversations with President Trump, former Director Comey stated that he had “not included every detail” in his testimony. June 7 Statement, at 1.

II. THE FOIA REQUESTS AND RESPONSES

A. Cable News Network’s (“CNN’s”) Request (Case No. 17-1167)

On May 16, 2017, CNN producer Greg Wallace submitted a FOIA request on behalf of CNN to the FBI for “copies of all records of notes taken by or communications sent from FBI Director James Comey regarding or documenting interactions (including interviews and other conversations) with President Donald Trump.” Compl. (No. 17-1167), ¶¶ 12, 13 & Exh. A (Dkt. No. 1). The FBI responded to CNN’s request by letter dated June 16, 2017, stating that the material requested was being withheld pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Hardy Decl. ¶ 13 & Exh. CNN-F. The FBI further stated that “[t]he records

¹ The video of former Director Comey’s testimony may be found at <https://www.intelligence.senate.gov/hearings/open-hearing-former-director-james-comey-fbi> (last visited Oct. 12, 2017). A transcript is published at <http://www.politico.com/story/2017/06/08/full-text-james-comey-trump-russia-testimony-239295> (last visited Oct. 12, 2017) (“Transcript”).

responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.”² *Id.*, Ex. CNN-F.

B. Gannett Satellite Info. Network, LLC, et al.’s Requests (Case No. 17-1175)

By letter dated May 12, 2017, USA TODAY (the business name of Gannett Satellite Information Network), along with USA TODAY reporter Brad Heath, submitted a FOIA request to the FBI requesting, *inter alia*, copies of “any reports, letters, memoranda, electronic mail messages, FD-302s or other records memorializing conversations between former Director Comey and President Trump.” Am. Compl. ¶¶ 17-18 (Dkt. No. 9). By letter dated May 17, 2017, the James Madison Project (“JMP”) and Garrett Graff submitted a FOIA request to the FBI, requesting, *inter alia*, “[a]ny memoranda, notes, summaries and/or recordings . . . memorializing conversations Director Comey had with President Trump.” *Id.* ¶¶ 27, 35-36. Also on May 17, 2017, JMP and Lance Markay submitted a FOIA request to the FBI seeking, *inter alia*, “[t]he memorandum drafted by Director Comey memorializing his conversation with President Trump on February 14, 2017.” *Id.* ¶¶ 44, 50-51.

The FBI responded to all three of the above requests by letters dated June 16, 2017. Hardy Decl. ¶¶ 19, 25, 33 & Exs. USA Today-D, JMP/Graff-D, JMP/Markay-C. In all three letters, the FBI stated that the material requested was being withheld pursuant to FOIA

² CNN also requested expedited treatment of its request. Compl. (No. 17-1167), ¶ 13 & Exh. A. However, this claim is now moot as the FBI has responded to the request. *See Muttitt v. Dep’t of State*, 926 F. Supp. 2d 284, 296 (D.D.C. 2013).

Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Hardy Decl., Exs. USA Today-D, JMP/Graff-D, JMP/Markay-C. The FBI further stated that “[t]he records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” *Id.*

JMP, Graff, and Markay filed administrative appeals challenging the FBI’s withholding, which were denied on July 12, 2017. Am. Compl. ¶¶ 38-39, 53-54.

The FOIA requests submitted by USA TODAY, JMP, Graff, and Markay also requested additional related records. Am. Compl. ¶¶ 27, 35-36, 44, 50-51; Hardy Decl. ¶¶ 14, 21, 30. The government is still conducting searches for documents responsive to the remaining portions of these requests, as well as the follow-up responsiveness review of documents identified as potentially responsive. Joint Status Report, at 2 (Dkt. No. 17). The present motion does not include these parts of plaintiffs’ FOIA requests. The parties will file a further report and proposed production schedule as to these parts of the requests by October 18, 2017. *Id.*

C. Judicial Watch’s Request (Case No. 17-1189)

On May 16, 2017, Judicial Watch electronically submitted a FOIA request to the FBI, seeking “[t]he memorandum written by former Director James Comey memorializing his meeting and conversation with President Trump regarding the FBI’s investigation of potential Russian interference in the 2016 United States presidential election. For purposes of clarification, this memorandum was reportedly written on or about February 13, 2017 and is the subject of a New York Times article (enclosed) dated May 16, 2017.” Compl. (No. 17-1189) ¶ 5 (Dkt. No. 1). The FBI responded to Judicial Watch’s request by letter dated June 16, 2017,

stating that the material requested was being withheld pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Hardy Decl. ¶ 41 & Ex. Judicial Watch-D. The FBI further stated that “[t]he records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” *Id.*, Ex. Judicial Watch-D.

D. Freedom Watch’s Request (Case No. 17-1212)

On May 18, 2017, Freedom Watch submitted a FOIA request to the FBI (along with an identical one to the Department of Justice’s Criminal Division)³ seeking access to “[a]ny and all documents and records as defined above, which constitute, refer, or relate in any way to any memoranda prepared, written and/or issues by former FBI Director James Comey concerning Barack Obama, Hillary Clinton, Bill Clinton, Lieutenant General Michael Flynn, and President Donald Trump.” Compl. (No. 17-1212) ¶ 6 (Dkt. No. 1). With regard to the part of Freedom Watch’s request for documents constituting “any memoranda prepared, written and/or issued by former FBI Director James Comey concerning . . . President Donald Trump,” the FBI responded by letter dated June 16, 2017, stating that the material requested was being withheld pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Hardy Decl. ¶ 48 & Ex. Freedom Watch-D. The FBI further stated that “[t]he records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to

³ The Court granted the Department of Justice’s motion for summary judgment as to the request addressed to DOJ’s Criminal Division on September 22, 2017 (Dkt. Nos. 18 & 19).

these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” *Id.*, Ex. Freedom Watch-D.

The FBI is still conducting searches for documents responsive to the remaining portions of Freedom Watch’s request, that is, for “[a]ny and all documents and records . . . , which constitute, refer, or relate in any way to any memoranda prepared, written and/or issues by former FBI Director James Comey concerning Barack Obama, Hillary Clinton, Bill Clinton, Lieutenant General Michael Flynn, and President Donald Trump,” excluding the Comey Memos, as well as the follow-up responsiveness review of documents identified as potentially responsive. Joint Status Report, at 2 (Dkt. No. 17); *see* Compl. (No. 17-1212) ¶ 6 (Dkt. No. 1). The present motion does not include these parts of Freedom Watch’s FOIA request. The parties will file a further report and proposed production schedule as to these parts of the requests by October 18, 2017. Joint Status Report, at 2 (Dkt. No. 17).

E. The Daily Caller’s Request (Case No. 17-1830)

On June 1, 2017, The Daily Caller News Foundation submitted a FOIA request to the FBI, seeking “all unclassified memoranda authored by former FBI Director James Comey that contemporaneously memorialized his discussions with President Donald Trump and his aides.” Compl. (Case No. 17-1830) ¶ 5 (Dkt. No. 1). The FBI responded by letter dated June 16, 2017, stating that the material requested was being withheld pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Hardy Decl. ¶ 55 & Ex. Daily Caller-D. The FBI further stated that “[t]he records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” *Id.*, Ex. Daily Caller-D.

ARGUMENT

The FOIA’s “basic purpose” reflects a “general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989). “Congress recognized, however, that public disclosure is not always in the public interest.” *CIA v. Sims*, 471 U.S. 159, 166-67 (1985). Thus, FOIA is designed to achieve a “workable balance between the right of the public to know and the need of the Government to keep information in confidence to the extent necessary without permitting indiscriminate secrecy.” *John Doe*, 493 U.S. at 152 (quoting H.R. Rep. No. 1497, 89th Cong., 2 Sess. 6 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2418, 2423). To that end, FOIA mandates disclosure of government records unless the requested information falls within one of nine enumerated exceptions. *See* 5 U.S.C. § 552(b). While these exemptions are to be “narrowly construed,” *FBI v. Abramson*, 456 U.S. 615, 630 (1982), courts still must respect the balance that Congress struck and give the exemptions a “meaningful reach and application.” *John Doe Agency*, 493 U.S. at 152.

For a defendant agency to prevail on a motion for summary judgment in FOIA litigation, it must satisfy two elements. First, the agency must “demonstrate that [it] conducted an adequate search which was reasonably calculated to uncover all relevant documents. Second, materials that are withheld must fall within a FOIA statutory exemption.” *Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 252 (D.D.C. 2005) (citations omitted). Courts review agencies’ responses to FOIA requests *de novo*. 5 U.S.C. § 552(a)(4)(B).

To demonstrate the adequacy of its search, “the agency may submit affidavits or declarations that explain in reasonable detail the scope and method of the agency’s search.”

Dorsey v. Exec. Office for U.S. Attorneys, 926 F. Supp. 2d 253, 255-56 (D.D.C. 2013) (citing *Perry v. Block*, 684 F.2d 121, 126 (D.C. Cir. 1982)). “In the absence of contrary evidence, such affidavits or declarations are sufficient to demonstrate an agency's compliance with the FOIA.” *Id.* at 256 (citing *Perry*, 684 F.2d at 127). To meet its burden of justifying withholding of documents, the government may submit an agency declaration that describes the withheld material with reasonable specificity and the reasons for non-disclosure. *See Armstrong v. Exec. Office of the President*, 97 F.3d 575, 577-78 (D.C. Cir. 1996).

The declarations submitted by the agency are accorded a presumption of good faith, *Safecard Servs., Inc. v. Securities & Exchange Comm’n*, 926 F.2d 1197, 1200 (D.C. Cir. 1991), and a presumption of expertise, *Piper v. U.S. Dep’t of Justice*, 294 F. Supp. 2d 16, 20 (D.D.C. 2003), *judgmt. aff’d*, 222 F. App’x 1 (2007). Summary judgment is to be freely granted where, as here, the declarations reveal that there are no material facts genuinely at issue and that the agency is entitled to judgment as a matter of law. *See Alyeska Pipeline Serv. Co. v. EPA*, 856 F.2d 309, 314-15 (D.C. Cir. 1988); *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981). Accordingly, “FOIA cases are typically and appropriately decided on motions for summary judgment.” *Moore v. Bush*, 601 F. Supp. 2d 6, 12 (D.D.C. 2009).

I. THE SEARCH FOR RESPONSIVE RECORDS WAS REASONABLE

“The adequacy of an agency’s search is measured by a standard of reasonableness and is dependent upon the circumstances of the case.” *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983) (internal quotation marks and citations omitted). An agency “fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents.” *Ancient Coin Collectors Guild v.*

U.S. Dep't of State, 641 F.3d 504, 514 (D.C. Cir. 2011) (citations and internal quotation marks omitted).

The FBI's search for records responsive to plaintiffs' requests is described in the declaration of David Hardy. Section Chief Hardy explained that, first, personnel in the FBI's Records Management Division ("RMD") responsible for compiling and preserving FBI records, including the records of former Director Comey after his removal, were consulted about the existence and location of any responsive records. Hardy Decl. ¶ 62. These personnel consulted their collection of former Director Comey's records and identified what they believed to be the set of records constituting the Comey Memos. *Id.* They then provided counsel from the FBI's Office of General Counsel ("OGC") and Record/Information Dissemination Section personnel access to the collection of former Director Comey's materials and the set of records therein that they had identified as the Comey Memos. *Id.* Counsel in OGC's National Security and Cyber Law Branch who were already familiar with the relevant records confirmed that the records identified by RMD as the Comey Memos were, in fact, the full set of memos. *Id.* This search protocol was "reasonably calculated" to uncover all relevant documents under "the circumstances of the case." Accordingly, the FBI conducted an adequate search.

II. THE COMEY MEMOS ARE EXEMPT FROM DISCLOSURE PURSUANT TO FOIA EXEMPTION 7(A)

As explained in the Declaration of David Hardy, as well as the additional declaration by the Federal Bureau of Investigation that has been submitted *in camera* and *ex parte* because it contains law enforcement sensitive information, the FBI and the Special Counsel have determined that the release of the Comey Memos, or the disclosure of any further information regarding the number, volume, or substance of the Comey Memos, could reasonably be expected

to interfere with the ongoing Russia investigation. Hardy Decl. ¶¶ 69-72. The FBI has made its assessment regarding the potential harm that would be caused to the integrity of the current investigation with full knowledge of the disclosures previously made by former Director Comey on this subject. *Id.* ¶ 71. As detailed further below, these agency declarations plausibly and logically explain how the disclosure of any portion of the memoranda could compromise this important law enforcement investigation. Accordingly, the FBI properly withheld these documents in their entirety pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A).

A. Exemption 7(A) Applies to the Comey Memos

FOIA Exemption 7(A) authorizes the withholding of “records or information compiled for law enforcement purposes . . . to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). Unlike with other exemptions, the government is not required to provide a *Vaughn* index to support its withholdings under Exemption 7(A) but may address the documents on a categorical basis. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978); *Campbell v. Dep’t of Health & Human Servs.*, 682 F.2d 256, 265 (D.C. Cir. 1982). To satisfy the government’s burden, a declaration need only describe the type of record at issue in terms sufficient to “allow[] the court to trace a rational link between the nature of the document and the alleged likely interference.” *Crooker v. Bureau of Alcohol, Tobacco & Firearms*, 789 F.2d 64, 67 (D.C. Cir. 1986). The government has met its burden to establish the applicability of this exemption here.

To establish the applicability of this exemption, the government must first show that the records were “compiled for law enforcement purposes.” Investigative documents qualify as

records “compiled for law enforcement purposes” if the agency’s declarations establish (1) “a rational nexus between the investigation and one of the agency’s law enforcement duties”; and (2) “a connection between an individual or incident and a possible security risk or violation of federal law.” *Ctr. for Nat’l Sec. Studies v. U.S. Dep’t of Justice*, 331 F.3d 918, 926 (D.C. Cir. 2003) (internal quotation marks omitted); *see also Quiñon v. FBI*, 86 F.3d 1222, 1228 (D.C. Cir. 1996). “[L]ess exacting proof” of a legitimate law enforcement purpose is required of law enforcement agencies such as the Department of Justice and the FBI. *Pratt v. Webster*, 673 F.2d 408, 418 & n.25 (D.C. Cir. 1982); *see also Ctr. for Nat’l Sec. Studies*, 331 F.3d at 926. Information initially obtained in a record made for law enforcement purposes continues to meet the threshold requirements of Exemption 7 where that recorded information is reproduced or summarized in a new document prepared for a non-law-enforcement purpose. *Abramson*, 456 U.S. at 631-32. In addition, records not initially obtained or generated for law enforcement purposes may qualify if they were subsequently assembled for a valid law enforcement purpose. *John Doe*, 493 U.S. at 154-55; *see also Kansi v. U.S. Dep’t of Justice*, 11 F. Supp. 2d 42, 44 (D.D.C. 1998) (“[O]nce [the records at issue] are assembled by the FBI for its law enforcement purposes, all documents qualify for protection under Exemption 7 regardless of their original source.”).

Here, the Comey Memos contain information compiled during the FBI’s Russia investigation, which is now being continued by the FBI and the Special Counsel. Hardy Decl. ¶ 67. That investigation is unquestionably within the law enforcement duties of the FBI, which include undertaking counterintelligence and national security investigations, and detecting and investigating possible violations of Federal criminal laws. *See* 28 U.S.C. § 533; Hardy Decl.

¶ 65. It is also within the authority of the Special Counsel, which has specifically been tasked with investigating Russian involvement in the election and prosecuting any federal crimes unearthed. DOJ Order No. 3915-2017. And the investigation is based on a viable connection between an “incident” (alleged Russian interference in the election) and a possible security risk or violation of federal law. *See* Transcript. Finally, further explanation of how the memos constitute records “compiled for law enforcement purposes” is included in the *in camera* and *ex parte* declaration submitted with this memorandum. Hardy Decl. ¶ 67.

For the second inquiry under Exemption 7(A), the government must show that production of the records at issue “(1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated.” *Mapother v. Dep’t of Justice*, 3 F.3d 1533, 1540 (D.C. Cir. 1993) (emphasis omitted); *see* 5 U.S.C. § 552(b)(7)(A). “Exemption 7(A) does not require a presently pending ‘enforcement proceeding’ – ‘an ongoing . . . investigation’ suffices. *Ctr. for Nat’l Security Studies*, 331 F.3d at 926; *see also Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Justice*, 746 F.3d 1082, 1098 (D.C. Cir. 2014) (“[A]n ongoing criminal investigation typically triggers Exemption 7(A).”); *Juarez v. Dep’t of Justice*, 518 F.3d 54, 59 (D.C. Cir. 2008) (“[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of that evidence, Exemption 7(A) applies.”).

These requirements are also met here. The FBI is limited in what it can say on the public record regarding the harms that would flow from the release of any portion of the Comey Memos. Although there has been extensive media coverage and speculation, little has been officially confirmed by the FBI, DOJ, or the Special Counsel about the investigation. The FBI

has generally explained, however, that the Comey Memos include information regarding confidential aspects of the Russia investigation, Hardy Decl. ¶ 67, and that disclosure of the Comey Memos and the information contained therein could reasonably be expected to adversely affect the ongoing investigation, as well as any law enforcement proceedings that may ultimately result from this investigation, by revealing the scope and focus of the investigation, and whether particular activities, information, or evidence is or is not of interest in the investigation. *Id.* ¶ 71. The FBI further explains that revealing additional information about the feared harms to the investigation will itself risk harm to the investigation. *Id.* The possible risks to the investigation from disclosure have therefore been further described in the *in camera* and *ex parte* declaration submitted herewith.

The investigators' conclusions about the possible harms are common to many investigations and are sufficient to support application of Exemption 7(A). The courts routinely recognize that Exemption 7(A) protects against the disclosure of information that would reveal the scope and focus of an investigation. *See Maydak v. U.S. Dep't of Justice*, 218 F.3d 760, 762 (D.C. Cir. 2000) ("The principal purpose of Exemption 7(A) is to prevent disclosures which might prematurely reveal the government's cases in court, its evidence and strategies, or the nature, scope, direction, and focus of its investigations, and thereby enable suspects to establish defenses or fraudulent alibis or to destroy or alter evidence."); *Swan v. SEC*, 96 F.3d 498, 500 (D.C. Cir. 1996) (the "records could reveal much about the focus and scope of the [agency's] investigation, and are thus precisely the sort of information exemption 7(A) allows an agency to keep secret"); *Suzhou Yuanda Enter., Co. v. U.S. Customs & Border Prot.*, 404 F. Supp. 2d 9, 14 (D.D.C. 2005) (upholding Exemption 7(A) claim where "disclosure of the information . . . could

inform the public of the evidence sought and scrutinized in this type of investigation”). Thus, the courts have routinely found that a disclosure that would reveal information such as the status of an investigation, the investigators’ “main concern,” “the material . . . thus far collected, [the investigators’] assessment of that information, and the information that [they] still required” could potentially jeopardize the investigation. *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 306 F. Supp. 2d 58, 75-76 (D.D.C. 2004) (internal quotation marks omitted); *see also Alyeska Pipeline Serv. Co.*, 856 F.2d at 312 (upholding assertion of Exemption 7(A) where disclosure would “prematurely reveal[] to the subject of this ongoing investigation the size, scope and direction of this investigation” and “expose the particular types of allegedly illegal activities being investigated”). The courts have recognized that not only would disclosure of such investigative progress and priorities chill witnesses and alert targets, but it would provide targets or witnesses with an opportunity to impede the investigation or formulate their testimony to rebut evidence already gathered. Moreover, the courts have recognized that the government, as here, often cannot provide detailed descriptions of the withheld information, but has upheld the withholdings nonetheless. *See Patino-Restrepo v. Dep’t of Justice*, 246 F. Supp. 3d 233, 250 (D.D.C. 2017) (finding the FBI’s justification of its withholding pursuant to 7(A) adequate even though it was unable to provide a “description of the information withheld” because a specific description could identify the information that the FBI sought to protect by invoking the exemption).

In sum, because release of the Comey Memos could reasonably be expected to reveal information about, and thus interfere with, the ongoing Russia investigation and any ensuing

enforcement proceedings, the documents are properly exempt from disclosure pursuant to FOIA Exemption 7(A).

B. There Has Been No Official “Prior Disclosure” of the Comey Memos

The government anticipates that plaintiffs will argue that former Director Comey’s testimony before Congress, and/or his asserted delivery of one or more memos to a friend, constitute prior disclosure of the contents of the memos, sufficient to compel disclosure here. However, that testimony and the release were made while Mr. Comey was no longer in the employ of the FBI but rather was a private citizen, and does not in any event constitute a disclosure of the exact contents of all of the memos. Mr. Comey’s testimony therefore does not constitute “official and documented” disclosure of the memos. Accordingly, the prior disclosure doctrine does not apply here.

The general rule is that, when “information has been ‘officially acknowledged,’ its disclosure may be compelled even over an agency’s otherwise valid exemption claim.” *Fitzgibbon v. CIA*, 911 F.2d 755, 765 (D.C. Cir. 1990). The D.C. Circuit applies a three-part test for whether information has been “officially acknowledged”: “(1) the information requested must be as specific as the information previously released; (2) the information requested must match the information previously disclosed; and (3) the information requested must already have been made public through an official and documented disclosure.” *ACLU v. U.S. Dep’t of Def.*, 628 F.3d 612, 620-21 (D.C. Cir. 2011). Notably, when assessing whether the third prong is met, the prior disclosure must be an official government disclosure – “the fact that information exists in some form in the public domain does not necessarily mean that official disclosure will not cause harm cognizable under a FOIA exemption.” *Wolf v. CIA*, 473 F.3d 370, 378 (D.C. Cir.

2007); *see also Afshar v. U.S. Dep't of State*, 702 F.2d 1125, 1130-31 (D.C. Cir. 1983) (drawing distinction between “[u]nofficial leaks and public surmise” and “official acknowledgment”). Moreover, “[p]rior disclosure of similar information does not suffice; instead, the *specific* information sought by the plaintiff must already be in the public domain by official disclosure.” *Wolf*, 473 F.3d at 378. Accordingly, the plaintiff asserting a claim of prior disclosure carries the burden of “pointing to specific information in the public domain that appears to duplicate that being withheld.” *Afshar*, 702 F.2d at 1130.

Here, Mr. Comey’s testimony or transmittal of the material to others, both of which occurred when he was acting as a private citizen, in no way constitutes “official disclosure” of the contents of the memos. *See* Transcript, at 7 (Comey answering “[n]o” to question of whether “the special counsel’s office review[ed] and/or edit[ed] [his] written testimony”). This case is thus similar to the cases involving, *e.g.*, memoirs by former government officials and the Wikileaks documents, in which waiver was not found. *See Afshar*, 702 F.2d at 1133 (concluding that none of the books by former CIA agents and officials is “an official and documented disclosure, as the release of CIA cables would be”); *ACLU v. Dep't of State*, 878 F. Supp. 2d 215, 224 (D.C. Cir. 2012) (“No matter how extensive, the WikiLeaks disclosure is no substitute for an official acknowledgement and the [plaintiff] has not shown that the Executive has officially acknowledged that the specific information at issue was a part of the WikiLeaks disclosure.”); *see also Hudson River Sloop Clearwater, Inc. v. Dep't of the Navy*, 891 F.2d 414, 421 (2d Cir. 1989) (“Admiral Carroll’s statements cannot effect an official disclosure of information since he is no longer an active naval officer.”). The government has not even previously confirmed the existence of any memos, and it does not confirm here that the memo or

memos allegedly provided by Mr. Comey to a friend, even if that occurred, was or were accurate copies of official memos he wrote while FBI Director.

Moreover, the actual contents of the memos themselves, including such critical details as the number of memos and their length, Hardy Decl. ¶ 72, have not been made public. Thus, even taking into account Mr. Comey's testimony, there has been no documented disclosure of the *specific* information at issue here. See *Muslim Advocates v. U.S. Dep't of Justice*, 833 F. Supp. 2d 92, 100 (D.D.C. 2011) (written chapters of an FBI guide did not become part of the public domain when the chapters were only shown to a select group of organizations at FBI headquarters, even though attendees were permitted to view and take notes); *Black v. U.S. Dep't of Justice*, 69 F. Supp. 3d 26, 35 (D.D.C. 2014) (plaintiff failed to meet his burden for invoking the prior disclosure doctrine as to certain recordings used in court where, although the attorneys arguing before the court reference the recordings and present their respective characterizations of the content of the recordings, at no point does the transcript "reflect that any portion of the recordings were played in court or that the actual content of the recordings were otherwise entered into the public record"), *aff'd*, No. 14-5256, 2015 WL 6128830 (D.C. Cir. Oct. 6, 2015). *Cf. Cottone v. Reno*, 193 F.3d 550, 555 (D.C. Cir. 1999) (ordering release of the specific tapes which had been played in open court and received into evidence, where requestor could document those facts, but recognizing that "it will very often be the case that some type of hard copy facsimile will be the only practicable way for a FOIA requester to demonstrate that the specific information he has solicited has indeed circulated into the public domain"). Further discussion of issues relevant to the prior disclosure doctrine is included in the *in camera* and *ex parte* declaration submitted herewith.

In sum, Mr. Comey's testimony does not constitute official acknowledgment of the specific contents of the memos. Accordingly, the prior disclosure doctrine does not apply.

C. Disclosure of the Comey Memos Will Still Interfere with the Russia Investigation, Notwithstanding Mr. Comey's Testimony

Plaintiffs may argue that, even if Mr. Comey's testimony did not constitute an official disclosure, its existence in the public domain negates any harm to the investigation from releasing the memos. However, the FBI considered the disclosures made by Mr. Comey in making the determination that the release of the Comey Memos could serve to compromise the pending investigation, and nonetheless concluded that the release of the Comey Memos would cause harm to the investigative efforts. Hardy Decl. ¶ 71. The Comey Memos themselves have never entered the public domain. Accordingly, despite the former Director's testimony, there is much that is not publicly known about these documents. Although former Director Comey testified that he memorialized certain conversations with the President, the number of records he created is not publicly known. Hardy Decl. ¶ 72. The level of detail contained in the memoranda is not publicly known. Any disclosure of this non-public information could reasonably be expected to reveal the scope and focus of the investigation and thereby harm the investigation. *Id.* ¶¶ 71-72.

Further details regarding the nature of these harms is provided in the *in camera* and *ex parte* declaration. Publicly explaining in any greater detail why the release of the Comey Memos would be detrimental to the pending investigation would itself disclose law enforcement sensitive information that could interfere with the pending investigation. Hardy Decl. ¶ 70. In such cases, the submission of an *in camera*, *ex parte* declaration is proper. *See Campbell*, 682

F.2d at 265. As the government has adequately articulated in that submission, in conjunction with the public declaration, how release of any portion of the Comey Memos could reasonably be expected to impede its ongoing investigation, the government has sufficiently demonstrated that Exemption 7(A) applies to these documents.

III. PORTIONS OF THE RECORDS ARE EXEMPT FROM DISCLOSURE PURSUANT TO EXEMPTION 1

Portions of certain of the records responsive to plaintiffs' requests include classified information that is also exempt from disclosure pursuant to Exemption 1. Hardy Decl. ¶¶ 75, 79. This information has been classified at the "Secret" or "Confidential" level. *Id.* This information is also properly withheld.

Exemption 1 allows an agency to protect records that are: (1) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and (2) are in fact properly classified pursuant to Executive Order. *See* 5 U.S.C. § 552(b)(1). As with the other exemptions, agencies may establish the applicability of Exemption 1 by declaration. *See ACLU v. U.S. Dep't of Def.*, 628 F.3d at 619.

The current operative classification order for the purposes of Exemption 1 is Executive Order No. 13,526, 75 Fed. Reg. 707 (Dec. 29, 2009) [hereinafter "E.O. 13,526"], which sets forth the substantive and procedural criteria that an agency must follow to properly invoke the exemption. Hardy Decl. ¶ 77. E.O. 13,526 provides that, for information to be properly classified: (1) an "original classification authority" must have classified the information; (2) the information must be "owned by, produced by or for, or be under the control of the United States Government;" (3) the information must fall within one or more of protected categories of information listed in section 1.4 of the E.O.; and (4) the original classification authority must

“determine[] that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security” and be “able to identify or describe the damage.” E.O. 13,526, § 1.1(a)(1)-(4). E.O. 13,526 also requires, in relevant part, that information should be classified as “Secret” only if its unauthorized disclosure could reasonably be expected to cause serious damage to the national security, and as “Confidential” only if its unauthorized disclosure could reasonably be expected to cause damage to the national security. E.O. 13,526, §§ 1.2(a)(2)-(3).

Here, Section Chief Hardy has determined that the information for which Exemption 1 protection is sought is currently and properly classified at the Secret or Confidential level pursuant to E.O. 13,526. Hardy Decl. ¶ 81. As an initial matter Section Chief Hardy has established that (1) the information is owned by, was produced by or for, and is under the control of the U.S. Government; (2) it was classified by an original classification authority; and (3) the withheld classified information falls within one or more of the categories described in Section 1.4 of E.O. 13,526, namely § 1.4(c), information pertaining to “intelligence activities (including covert action), intelligence sources or methods, or cryptology,” and § 1.4(d), information pertaining to “foreign relations or foreign activities of the United States, including confidential sources.” *Id.* ¶ 82.

Section Chief Hardy also confirms that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and describes the expected damage to the extent possible on the public record. Hardy Decl. ¶¶ 82, 85-91. Because agencies have “unique insights” into the adverse effects that might result from public disclosure of classified information, the courts must accord “substantial weight” to an agency’s affidavits

justifying classification. *Larson v. Dep't of State*, 565 F.3d 857, 864 (D.C. Cir. 2009) (citation omitted); *see also Military Audit Project*, 656 F.2d at 738. As the D.C. Circuit has noted, “in the FOIA context, we have consistently deferred to executive affidavits predicting harm to the national security, and have found it unwise to undertake searching judicial review.” *Ctr. for Nat'l Sec. Studies*, 331 F.3d at 927. Thus, the issue for the Court is whether “on the whole record, the [a]gency’s judgment objectively survives the test of reasonableness, good faith, specificity and plausibility in this field of foreign intelligence in which [the agency] is expert and has been given by Congress a special role.” *Gardels v. CIA*, 689 F.2d 1100, 1105 (D.C. Cir. 1982). Indeed, the D.C. Circuit has instructed that “little proof or explanation is required beyond a plausible assertion that information is properly classified.” *Morley v. CIA*, 508 F.3d 1108, 1124 (D.C. Cir. 2007).

Here, the FBI has determined that some of the information at issue is properly classified because it would, if disclosed, reveal otherwise non-public information regarding the FBI’s intelligence interests, priorities, activities, and methods. Hardy Decl. ¶ 88. Greater detail regarding the nature of these intelligence interests, priorities, activities and methods are provided in the *ex parte, in camera* declaration. *Id.* ¶ 84. As Section Chief Hardy explains on the public record, however, release of this information could reasonably be expected to cause harm to the national security because the use of such activities, sources and methods are valuable only insofar as their use is unknown by the intelligence targets against which they are deployed. *Id.* ¶ 86. Otherwise, the targets of such intelligence techniques would engage in countermeasures to nullify their effectiveness. *Id.* As he further explains,

[i]ntelligence activities, sources, and methods are valuable only so long as they remain unknown and unsuspected. Once an

intelligence activity, source, or method – or the fact of its use or non-use in a certain situation – is discovered, its continued successful use is seriously jeopardized.”

Id. “[E]ven seemingly innocuous, indirect references to an intelligence activity, source, or method could have significant adverse effects when juxtaposed with other publicly-available data.” *Id.* ¶ 87.

It is rational and plausible to predict that disclosing details concerning the FBI’s intelligence activities, sources, and methods would undermine the usefulness of those methods, to the detriment of national security, and thus the Court should sustain the agency’s withholding of this information. *See, e.g., Larson*, 565 F.3d at 863 (holding that “[t]he CIA has carried its burden to show that FOIA Exemption 1 applies where the agency “described with reasonably specific detail . . . the importance for continuing intelligence operations of keeping intelligence sources and methods classified and confidential”); *see also Sims*, 471 U.S. at 175.

The FBI has also determined that the other information at issue would, if disclosed, reveal otherwise non-public information about foreign relations or foreign activities of the United States, including confidential sources. Hardy Decl. ¶¶ 89-91. Specifically, the FBI has protected specific discussions and details concerning the United States’ foreign relations activities with identified foreign governments or officials, the disclosure of which, in the context of other surrounding information, could reasonably be expected to impair or adversely impact relations with those countries, and thus, cause harm to the national security. *Id.* ¶ 91. The FBI further explains that, for example, the unauthorized disclosure of such information can reasonably be expected to lead to diplomatic or economic retaliation against the United States; the loss of the cooperation and assistance of friendly nations; or the compromise of cooperative

foreign sources, which may jeopardize their safety and curtail the flow of information from these sources. *Id.* ¶ 90. The FBI’s assertion of Exemption 1 should be upheld here as well.

III. PORTIONS OF THE RECORDS ARE EXEMPT FROM DISCLOSURE PURSUANT TO EXEMPTION 3

FOIA Exemption 3 protects information that is specifically exempted from public disclosure by a statute that:

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

5 U.S.C. § 552(b)(3). As the Court of Appeals has explained, “Exemption 3 differs from other FOIA exemptions in that its applicability depends less on the detailed factual contents of specific documents; the sole issue for decision is the existence of a relevant statute and the inclusion of withheld material within the statute’s coverage.” *Fitzgibbon*, 911 F.2d at 761-62. Thus, “[a] specific showing of potential harm to national security . . . is irrelevant to the language of [an Exemption 3 statute]. Congress has already, in enacting the statute, decided that disclosure of [the specified information] is potentially harmful.” *Hayden v. Nat’l Sec. Agency*, 608 F.2d 1381, 1390 (D.C. Cir. 1979).

As explained above, the Comey Memos include information that is classified pursuant to E.O. 13526, § 1.4(c), to protect intelligence sources and methods. That same information is also exempt under Exemption 3. Hardy Decl. ¶ 93. Specifically, disclosure of information concerning intelligence sources and methods is prohibited pursuant to the National Security Act of 1947, as amended, which provides that the Director of National Intelligence (DNI) “shall

protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). As relevant to the application of Exemption 3, this provision was enacted before the date of enactment of the OPEN FOIA Act of 2009, and on its face, leaves no discretion to agencies about withholding from the public information about intelligence sources and methods. It is therefore “settled” that this statute falls within Exemption 3. *Gardels*, 689 F.2d at 1103 (discussing substantively similar predecessor statute applicable to CIA which provided that “the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure”); *accord Sims*, 471 U.S. at 167-68, 193; *Fitzgibbon*, 911 F.2d at 761 (“There is thus no doubt that [the predecessor CIA statute] is a proper exemption statute under exemption 3.”); *DiBacco v. U.S. Army*, 795 F.3d 178, 183 (D.C. Cir. 2015).

In order to fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community (“IC”) for the classification of information under applicable laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. § 3024(i)(1). The FBI is one of the member agencies comprising the IC, and as such must protect intelligence sources and methods. Hardy Decl. ¶ 95. Accordingly, information in the Comey Memos that reveals intelligence sources and methods is prohibited from disclosure pursuant to 50 U.S.C. § 3024(i)(1), *id.* ¶ 96, and thus properly exempt from disclosure under Exemption 3.

IV. PORTIONS OF THE RECORDS ARE EXEMPT FROM DISCLOSURE PURSUANT TO EXEMPTION 7(E)

Exemption 7(E) protects “records or information compiled for law enforcement purposes [when release] would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if

such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). This exemption affords categorical protection to techniques and procedures used in law enforcement investigations. *McRae v. U.S. Dep’t of Justice*, 869 F. Supp. 2d 151, 168 (D.D.C. 2012); *but see Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011) (applying, without analysis, “risk of circumvention” standard to law enforcement techniques and procedures). It protects techniques and procedures that are not well-known to the public as well as non-public details about the use of publicly-known techniques and procedures. *Vazquez v. U.S. Dep’t of Justice*, 887 F. Supp. 2d 114, 117 (D.D.C. 2012), *aff’d*, No. 13-5197, 2013 WL 6818207 (D.C. Cir. Dec. 18, 2013).

Exemption 7(E) applies to information in the Comey Memos reflecting the FBI’s use of particular investigative techniques or procedures in furtherance of the Russian interference investigation. Hardy Decl. ¶ 105. To date, neither the FBI, DOJ, nor Special Counsel has publicly confirmed or denied the use of any particular techniques or procedures in the ongoing investigation. *Id.* Moreover, although defendants do not believe they are required to show a risk of circumvention here, the FBI explains that publicly disclosing the particular techniques and procedures utilized in the investigation could reasonably be expected to risk circumvention of the law because it would arm those under investigation, and others intent on disrupting it, the information necessary to, *inter alia*: develop countermeasures to evade detection; destroy, adulterate, or otherwise compromise evidence; and interfere with witnesses and their testimony. *Id.*

Any further public description of the information protected here would disclose non-public information that is itself exempt under Exemption 7(E) and would trigger harm under

Exemption 7(A) by prematurely revealing the conduct, scope, and direction of the ongoing investigation. Hardy Decl. ¶ 106. Defendants have therefore provided additional reasons for assertion of this exemption in the *in camera* and *ex parte* declaration filed herewith. *Id.*

V. PORTIONS OF THE RECORDS ARE EXEMPT FROM DISCLOSURE PURSUANT TO EXEMPTIONS 6 AND 7(C)

The records at issue contain a small amount of personal information – namely, the names of, and some identifying information about: (a) FBI employee(s), (b) relative(s) of the FBI employee(s), (c) individual(s) providing information to the FBI during its investigation of Russian interference in the 2016 Presidential election, and (d) individuals who were merely mentioned in the Comey Memos. Hardy Decl. ¶ 101. This information has properly been withheld pursuant to FOIA Exemptions 6 and 7(C).

Exemption 6 exempts from disclosure information about individuals in “personnel and medical and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Exemption 6 was “intended to cover detailed government records on an individual which can be identified as applying to that individual.” *U.S. Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 602 (1982). It, therefore, protects personal information contained in any government file so long as that information “applies to a particular individual.” *Id.*; see also *N.Y. Times Co. v. NASA*, 920 F.2d 1002, 1006 (D.C. Cir. 1990) (en banc). Exemption 6 does not merely apply to files “about an individual,” but applies more broadly to “bits of personal information, such as names and addresses,” contained in otherwise releasable documents. *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 152 (D.C. Cir. 2006). Exemption 6 requires an agency to balance the individual’s right to privacy against the public’s interest in disclosure. See *U.S. Dep’t of Air Force v. Rose*, 425 U.S. 352,

372 (1976). However, in general, “the only relevant ‘public interest in disclosure’ to be weighed in this balance is the extent to which disclosure would serve the ‘core purpose of the FOIA,’ which is ‘contribut[ing] significantly to the public understanding of the operations or activities of the government.’” *U.S. Dep’t of Defense v. FLRA*, 510 U.S. 487, 495 (1994) (quoting *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 775 (1989)) (emphasis and alteration in original).

Exemption 7(C) protects from disclosure “records or information compiled for law enforcement purposes” to the extent that the production of such law enforcement records or information “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). In applying Exemption 7(C), the Court must “balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.” *Davis v. Dep’t of Justice*, 968 F.2d 1276, 1281 (D.C. Cir. 1992). Because Exemption 7(C) applies only to law enforcement documents, however, and because it protects documents that “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” rather than those that “would” constitute a “clearly unwarranted” invasion, courts have required a lesser showing under Exemption 7(C) than under Exemption 6. *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 166 (2004). As with Exemption 6, the public interest “must be assessed in light of FOIA’s central purpose,” which is “to open agency action to the light of public scrutiny.” *Nation Magazine, Wash. Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 894 (D.C. Cir. 1995) (quotation marks and citation omitted). However, in general, this purpose “is not fostered by disclosure about private individuals that is accumulated in various government files but that reveals little or nothing about an agency’s conduct.” *Id.*

The personal information at issue, the names of the FBI employee(s) and private individuals, falls within the scope of both of these exemptions.⁴ Hardy Decl. ¶¶ 101-103. The FBI concluded that all of these individuals maintain substantial privacy interests with respect to being associated with this investigation. *Id.* ¶ 102. The FBI considers that its employees – whether Special Agents or Professional Staff – enjoy substantial privacy protections by virtue of their FBI employment because, whether they are involved in investigating cases or providing other types of services and support, their employment can subject them to harassment, as well as unnecessary, unofficial questioning as to the conduct of agency business. *Id.* Moreover, relatives of such employees, like anyone merely mentioned in an FBI record, maintain similarly high privacy interests. *Id.* The individual providing information to the FBI in its investigation also has substantial privacy interests. *Id.* It is well settled that third parties “who may be mentioned in investigatory files” have a presumptive privacy interest in having their names and other personal information withheld from public disclosure. *Nation Magazine, Wash. Bureau*, 71 F.3d at 894; *Bast v. U.S. Dep’t of Justice*, 665 F.2d 1251, 1254-55 (D.C. Cir. 1981). In particular, the individuals whose information was withheld maintain a strong privacy interest in not being identified in connection with a high-profile investigation. Hardy Decl. ¶ 102; *see Reporters Comm. For Freedom of Press*, 489 U.S. at 763-66. On the other hand, the public interest in knowing the names of individuals mentioned in law enforcement records, as a general matter, is nil. *See Blanton v. Dep’t of Justice*, 63 F. Supp. 2d 35, 45 (D.D.C. 1999) (“The privacy interests of individual parties mentioned in law enforcement files are ‘substantial’ while

⁴ The FBI is not seeking to protect any information regarding former Director Comey’s under these exemptions. Hardy Decl. ¶ 101.

‘[t]he public interest in disclosure [of third party identities] is not just less substantial, it is unsubstantial.’” (quoting *Safecard Servs., Inc.*, 926 F.2d at 1205, alterations in original); *Safecard Servs.*, 926 F.2d at 1206 (“[T]here is no reason to believe that the incremental public interest in such information would ever be significant.”). There is no reason to believe here that disclosure of the identities of the individuals mentioned in the Comey Memos would shed any light on government conduct, Hardy Decl. ¶ 103, and therefore the balancing test weighs clearly in favor of withholding. This personal information is thus properly exempt from disclosure pursuant to Exemption 6 and 7(C).

CONCLUSION

For the reasons stated above, defendants’ motion for partial summary judgment should be granted.

Dated: October 13, 2017

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

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”), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to my joining the Federal Bureau of Investigation (“FBI”), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 248 employees who staff a total of twelve (12) Federal Bureau of Investigation Headquarters (“FBIHQ”) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive

Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order 13526,¹ and the preparation of declarations in support of Exemption 1 claims asserted under the FOIA. I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to Executive Order 13526, §§ 1.3 and 3.1. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Specifically, I am aware of the FBI's handling of plaintiffs' FOIA requests to FBI at issue in this litigation. The following lawsuits have been consolidated under Civil Action No. 17-cv-1167 (D.D.C.): *CNN v. FBI*, 17-cv-1167 (D.D.C.); *Gannett Satellite Information Network et al. v. DOJ*, 17-cv-1175 (D.D.C.); *Judicial Watch v. DOJ*, 17-cv-1189 (D.D.C.); *Freedom Watch v. DOJ & FBI*, 17-cv-1212 (D.D.C.); and *Daily Caller v. DOJ*, 17-cv-1830 (D.D.C.). See Civil Action No. 17-cv-1167 (D.D.C.), Minute Order dated July 26, 2017 (consolidating all lawsuits except the Daily Caller lawsuit) and Minute Order dated September 7, 2017 (consolidating the Daily Caller lawsuit).

(4) On August 15, 2017, the Court entered a briefing schedule whereby the FBI would brief the appropriateness of its withholdings of the so-called "Comey Memos" on or before October 11, 2017. This deadline was subsequently extended to October 13, 2017. The

¹ 75 Fed. Reg. 707 (2010).

remainder of the plaintiffs' FOIA requests for records other than the Comey Memos will be briefed/resolved separately. *See* Minute Order in 17-cv-1167 (D.D.C.) (Aug. 15, 2017).

(5) This declaration is being submitted in support of the FBI's partial motion for summary judgment with respect to the Comey Memos in the consolidated cases.

PLAINTIFFS' FOIA REQUESTS

CNN

(6) CNN submitted a FOIA request through the FBI's eFOIA portal on May 16, 2017, seeking "all records of notes taken by or communications sent from FBI Director James Comey regarding or documenting interactions (including interviews and other conversations) with President Donald Trump [from] January 20, 2017 [through] May 10, 2017." (**Exhibit CNN-A.**)

(7) CNN also sought a fee waiver and expedited processing. *Id.*

(8) The FBI acknowledged receipt of the request in a letter dated May 23, 2017, notifying CNN that the request had been assigned FOIPA Request No. 1374094-000 and that its fee waiver request was being considered. (**Exhibit CNN-B.**)

(9) In another letter dated May 23, 2017, the FBI denied CNN's request for expedited processing for failure to provide sufficient information to establish an entitlement for such processing under DOJ's regulations or under the FOIA. The letter notified CNN that it could appeal this determination to DOJ's Office of Information Policy ("OIP"). (**Exhibit CNN-C.**)

(10) CNN appealed to OIP and on June 2, 2017, OIP granted its request for expedited processing. (**Exhibit CNN-D.**)

(11) The FBI subsequently sent CNN a letter confirming the grant of expedited processing on June 13, 2017. (**Exhibit CNN-E.**)

(12) On June 15, 2017, CNN filed the present lawsuit. *CNN et al. v. FBI*, 17-cv-1167 (D.D.C.), ECF No. 1, Complaint.

(13) On June 16, 2017, the FBI responded to CNN's request, denying it in full based on FOIA Exemption (b)(7)(A). The letter further notified CNN that it could appeal this determination to OIP. **(Exhibit CNN-F.)**

**GANNETT SATELLITE INFORMATION NETWORK dba USA TODAY
and BRAD HEATH**

(14) Gannett Satellite Information Network dba USA Today (hereafter "USA Today") and Brad Heath submitted a FOIA request through the FBI's eFOIA portal on May 12, 2017, seeking:

1. Copies of any reports, letters, memoranda, electronic mail messages, FD-302s or other records memorializing conversations between former Director Comey and President Trump. Such records would have been generated since January 20, 2017"
2. Complete copies of any recordings in the possession of the FBI of conversations between former Director Comey and President Trump.

(Exhibit USA Today-A.)

(15) USA Today and Mr. Heath also sought a fee waiver and expedited processing. *Id.*

(16) The FBI acknowledged receipt of the request in a letter dated May 23, 2017, notifying USA Today and Mr. Heath that their request had been assigned FOIPA Request No. 1374159-000 and that its fee waiver request was being considered. **(Exhibit USA Today-B.)**

(17) On May 24, 2017, the FBI granted USA Today and Mr. Heath's request for expedited processing. **(Exhibit USA Today-C.)**

(18) On June 15, 2017, USA Today and Mr. Heath filed the present lawsuit. *See Gannett Satellite Information Network dba USA Today et al. v. DOJ*, 11-cv-1175 (D.D.C.), ECF No. 1, Complaint.

(19) On June 16, 2017, the FBI responded to USA Today and Mr. Heath's request, denying it in full based on FOIA Exemption (b)(7)(A). The letter further notified them that they could appeal this determination to OIP. **(Exhibit USA Today-D.)**

(20) On July 26, 2017, USA Today and Mr. Heath's lawsuit was consolidated into CNN's lawsuit. *See CNN et al. v. FBI*, 17-cv-1167 (D.D.C.), Minute Order dated July 26, 2017.

JAMES MADISON PROJECT and GARRETT GRAFF

(21) The James Madison Project ("JMP") and Garrett Graff submitted a FOIA request dated May 17, 2017 through the FBI's eFOIA portal, seeking:

- 1) Any memoranda, notes, summaries and/or recordings (hereinafter referred to jointly as "memoranda") memorializing conversations Director Comey had with President Trump;
- 2) Any records reflecting discussions – including written documentation memorializing verbal conversations – between Director Comey and FBI staff regarding memoranda referenced in category #1; and
- 3) Any records reflecting discussions – including written documentation memorializing verbal conversations – between Director Comey and DOJ staff regarding the memorandum [sic] referenced in category #1.

JMP and Mr. Graff limited their request to the period of November 8, 2016 through May 9, 2017. **(Exhibit JMP/Graff-A.)**

(22) JMP and Mr. Graff also sought a fee waiver and expedited processing. *Id.*

(23) The FBI acknowledged receipt of the request in a letter dated May 25, 2017, notifying JMP and Mr. Graff that their request had been assigned FOIPA Request No. 1374565-000; that their fee waiver request was being considered; and that their request for expedited processing was granted. **(Exhibit JMP/Graff-B.)**

(24) On June 12, 2017, the FBI notified JMP and Mr. Graff that it was assigning each part of their request separate FOIPA Request Nos.: 1374565-000 was remain assigned to Item #1 of their request; 1376068-000 was assigned to Item #2 of their request; and 1376070-000 was

assigned to Item #3 of their request. **(Exhibit JMP/Graff-C.)**

(25) On June 16, 2017, the FBI responded to Item #1 of JMP and Mr. Graff's request (1374565-000), denying it in full based on FOIA Exemption (b)(7)(A). The letter further notified them that they could appeal this determination to OIP.² **(Exhibit JMP/Graff-D.)**

(26) On June 28, 2017, JMP and Mr. Graff appealed the FBI's response to OIP. **(Exhibit JMP/Graff-E.)**

(27) On July 12, 2017, OIP affirmed the FBI's determination. **(Exhibit JMP/Graff-F.)**

(28) On July 19, 2017, plaintiffs in Civil Action No. 17-cv-1175 (D.D.C.) filed their First Amended Complaint, adding JMP and Mr. Graff's claims regarding the above-referenced FOIA request. *See Gannett Satellite Information Network dba USA Today et al. v. DOJ*, 11-cv-1175 (D.D.C.), ECF No. 9, First Amended Complaint.

(29) On July 26, 2017, JMP and Mr. Graff's lawsuit was consolidated into CNN's lawsuit. *See CNN et al. v. FBI*, 17-cv-1167 (D.D.C.), Minute Order dated July 26, 2017.

JAMES MADISON PROJECT and LACHLAN MARKAY

(30) JMP and Lachlan Markay submitted a FOIA request through the FBI's eFOIA portal on May 17, 2017, seeking:

- 1) The memorandum drafted by Director Comey memorializing his conversation with President Trump on February 14, 2017;
- 2) Any records reflecting discussions—including written documentation memorializing verbal conversations—between Director Comey and FBI staff regarding the memorandum referenced in category #1; and
- 3) Any records reflecting discussions—including written documentation memorializing verbal conversations—between Director Comey and DOJ staff regarding the memorandum referenced in category #1.

² As of the date of this declaration, no further correspondence has been sent to JMP and Mr. Graff by the FBI regarding FOIPA Request No. 1376068 and 1376070.

JMP and Mr. Markay limited their request to the period of February 14, 2017 through the date of the FBI's search for responsive records. **(Exhibit JMP/Markay-A.)**

(31) JMP and Mr. Markay also sought a fee waiver and expedited processing. *Id.*

(32) The FBI acknowledged receipt of the request in a letter dated May 25, 2017, notifying JMP and Mr. Markay that their request had been assigned FOIPA Request No. 1374542-000; that their fee waiver request was being considered; and that their request for expedited processing was granted. **(Exhibit JMP/Markay-B.)**

(33) On June 16, 2017, the FBI responded to JMP and Mr. Graff's request, denying it in full based on FOIA Exemption (b)(7)(A). The letter further notified them that they could appeal this determination to OIP. **(Exhibit JMP/Markay-C.)**

(34) On June 28, 2017, JMP and Mr. Markay appealed the FBI's response to OIP. **(Exhibit JMP/Markay-D.)**

(35) On July 12, 2017, OIP affirmed the FBI's determination. **(Exhibit JMP/Markay-E.)**

(36) On July 19, 2017, plaintiffs in Civil Action No. 17-cv-1175 (D.D.C.) filed their First Amended Complaint, adding JMP and Mr. Markay's claims regarding the above-referenced FOIA request. *See Gannett Satellite Information Network dba USA Today et al. v. DOJ*, 11-cv-1175 (D.D.C.), ECF No. 9, First Amended Complaint.

JUDICIAL WATCH

(37) On May 16, 2017, Judicial Watch submitted a request through the FBI's eFOIA portal seeking:

The memorandum written by former Director James Comey memorializing his meeting and conversation with President Trump regarding the FBI's investigation of potential Russian interference in the 2016 United States presidential election. For purposes of clarification, this memorandum was reportedly written on or

about February 13, 2017 and is the subject of a New York Times article dated May 16, 2017 and titled, "Comey Memo Says Trump Asked Him to End Flynn Investigation."

(Exhibit Judicial Watch-A.)

(38) Judicial Watch asked for expedited processing and a fee waiver. *Id.*

(39) The FBI acknowledged receipt of the request by a letter dated May 23, 2017, which notified Judicial Watch that the request was assigned FOIPA Request No. 1374122-000 and that its fee waiver request was being considered. **(Exhibit Freedom Watch-B.)**

(40) By letter dated May 24, 2017, the FBI granted Judicial Watch's request for expedited processing. **(Exhibit Judicial Watch-C.)**

(41) On June 16, 2017, the FBI denied Judicial Watch's request pursuant to FOIA Exemption (b)(7)(A). **(Exhibit Judicial Watch-D.)**

(42) Also on June 16, 2017, Judicial Watch filed the present lawsuit regarding its request. *See* Civil Action No. 17-cv-1189 (D.D.C.), ECF No. 1, Complaint.

(43) On July 26, 2017, Judicial Watch's lawsuit was consolidated into CNN's lawsuit. *See CNN et al. v. FBI*, 17-cv-1167 (D.D.C.), Minute Order dated July 26, 2017.

FREEDOM WATCH

(44) By letter dated May 18, 2017, that was mailed and faxed to the FBI, Freedom Watch submitted a FOIA request seeking "[a]ny and all documents and records...which constitute, refer or relate in any way to any memorandum prepared, written and/or issued by former FBI Director James Comey concerning Barack Obama, Hillary Clinton, Bill Clinton, Lieutenant General Michael Flynn, and President Donald Trump." **(Exhibit Freedom Watch-A.)**

(45) Freedom Watch also requested a fee waiver and expedited processing. *Id.*

(46) The FBI acknowledged receipt of the request by a letter dated May 25, 2017, which notified Freedom Watch that the request was assigned FOIPA Request No. 1374527-000 and that its fee waiver request was being considered. **(Exhibit Freedom Watch-B.)**

(47) In another letter on May 25, 2017, the FBI granted Freedom Watch's request for expedited processing. **(Exhibit Freedom Watch-C.)**

(48) On June 16, 2017, the FBI responded to the portion of Freedom Watch's request seeking records prepared by former FBI Director Comey regarding President Donald Trump. The FBI denied this portion of the request pursuant to FOIA Exemption (b)(7)(A). **(Exhibit Freedom Watch-D.)**

(49) Freedom Watch filed the present lawsuit regarding its request on June 20, 2017. *See* Civil Action No. 17-cv-1212 (D.D.C.), ECF No. 1, Complaint.

(50) On July 26, 2017, Freedom Watch's lawsuit was consolidated into CNN's lawsuit. *See CNN et al. v. FBI*, 17-cv-1167 (D.D.C.), Minute Order dated July 26, 2017.

DAILY CALLER NEWS FOUNDATION

(51) On June 1, 2017, the Daily Caller submitted a FOIA request to the FBI via the eFOIA portal seeking "unclassified memos authored by former FBI Director James Comey that contemporaneously memorialize his discussions with President Donald Trump and his aides." The Daily Caller went on to explain that it was particularly interested in obtaining "a specific memo reported by the New York Times on May 16, 2017." The time period of the request was specified as November 8, 2016 to former Director Comey's last day in office (*i.e.*, May 9, 2017). **(Exhibit Daily Caller-A.)**

(52) Daily Caller also requested expedited processing and a fee waiver. *Id.*

(53) The FBI acknowledged receipt of the request by a letter dated June 8, 2017, which

notified Daily Caller that the request was assigned FOIPA Request No. 1376135-000 and that its fee waiver request was being considered. **(Exhibit Daily Caller-B.)**

(54) In another letter on June 8, 2017, the FBI denied Daily Caller's request for expedited processing. **(Exhibit Daily Caller-C.)**

(55) On June 16, 2017, the FBI responded to Daily Caller's request, denying it in full based on FOIA Exemption (b)(7)(A). The letter further notified Daily Caller that it could appeal this determination to OIP. **(Exhibit Daily Caller-D.)**

(56) By letter dated June 20, 2017, Daily Caller appealed the FBI's determination to OIP. **(Exhibit Daily Caller-E.)**

(57) Daily Caller's appeal was assigned reference number DOJ-AP-2017-004573 by OIP. On September 21, 2017, OIP affirmed the FBI's determination. **(Exhibit Daily Caller-F.)**

(58) Daily Caller filed the present lawsuit regarding its request on September 7, 2017. *See* Civil Action No. 17-cv-1830 (D.D.C.), ECF No. 1, Complaint.

(59) On September 7, 2017, USA Today and Mr. Heath's lawsuit was consolidated into CNN's lawsuit. *See CNN et al. v. FBI*, 17-cv-1167 (D.D.C.), Minute Order dated September 7, 2017.

**SUMMARY OF PORTIONS OF PLAINTIFFS' REQUESTS AT ISSUE IN THE "COMEY MEMOS"
PORTION OF BRIEFING IN THIS CASE**

(60) The materials that have been colloquially referred to as the "Comey Memos" refer to a series of records that former-FBI Director Comey publicly stated he wrote following his one-on-one interactions with President Donald Trump in order to document/record those conversations. These memoranda, or some subset of this collection, is what the FBI understood each of the plaintiffs to be seeking, at least in part.

(61) The following are the portions of plaintiffs' requests that seek the "Comey

Memos” and are at issue in this stage of briefing in this case:

- A. **CNN:** Entire request – *i.e.*, “all records of notes taken by or communications sent from FBI Director James Comey regarding or documenting interactions (including interviews and other conversations) with President Donald Trump [from] January 20, 2017 [through] May 10, 2017.”
- B. **USA Today/Heath:** Item #1 – *i.e.*, “[c]opies of any reports, letters, memoranda, electronic mail messages, FD-302s or other records memorializing conversations between former Director Comey and President Trump. Such records would have been generated since January 20, 2017”
- C. **JMP/Graff:** Item #1 – *i.e.*, “[a]ny memoranda, notes, summaries and/or recordings (hereinafter referred to jointly as “memoranda”) memorializing conversations Director Comey had with President Trump.”
- D. **JMP/Markay:** Item #1 – *i.e.*, “[t]he memorandum drafted by Director Comey memorializing his conversation with President Trump on February 14, 2017.”
- E. **Judicial Watch:** Entire request – *i.e.*, “[t]he memorandum written by former Director Comey memorializing his meeting and conversation with President Trump regarding the FBI’s investigation of potential Russian interference in the 2016 United States presidential election.”
- F. **Freedom Watch:** Portion of the request regarding President Trump – *i.e.*, “[a]ny and all documents and records...which constitute, refer or relate in any way to any memorandum prepared, written and/or issued by former FBI Director James Comey concerning ... President Donald Trump.”
- G. **Daily Caller:** Entire request – *i.e.*, “unclassified memos authored by former FBI Director James Comey that contemporaneously memorialize his discussions with President Donald Trump and his aides,” and particularly “a specific memo reported by the New York Times on May 16, 2017.”

SEARCH

(62) In most instances when searching for records to respond to a FOIA request, RIDS’s first step is to conduct a search of the FBI’s Central Records System (“CRS”). Such a search was not necessary in this case because the records responsive to plaintiffs’ request – *i.e.*, “the Comey Memos” – were previously located by other means. First, personnel in the FBI’s

Records Management Division (“RMD”) responsible for compiling and preserving FBI records were consulted about the existence and location of any responsive records. These personnel were involved in compiling and preserving the records of former-Director Comey after his removal. They consulted their collection of former-Director Comey records and identified what they believed to be the set of records constituting the Comey Memos. They also provided agency counsel from the FBI’s Office of General Counsel (“OGC”) and RIDS personnel access to the collection of former-Director Comey’s materials and the set of records therein that they had identified as the Comey Memos. Agency counsel in OGC’s National Security and Cyber Law Branch (“NSCLB”) who were already familiar with the relevant records were consulted to confirm that the records identified by RMD as the Comey Memos were, in fact, the full set of memos, which NSCLB counsel did.

FOIA EXEMPTIONS

EXEMPTION (b)(7)(A) – PENDING ENFORCEMENT PROCEEDINGS

(63) The FBI withheld the Comey Memos in full pursuant to FOIA Exemption (b)(7)(A) to avoid harm to a pending investigation. *See* 5 U.S.C. § 552(b)(7)(A).

(64) The first step in applying any of Exemption (b)(7)’s subparts is to demonstrate that the records or information at issue were compiled for law enforcement purposes. 5 U.S.C. § 552(b)(7). Law enforcement agencies such as the FBI must demonstrate that the records at issue are related to the enforcement of federal laws and that the enforcement activity is within the law enforcement responsibility of the agency.

(65) Pursuant to 28 U.S.C. §§ 533 and 534, Executive Order 12333 as implemented by the Attorney General’s Guidelines for Domestic FBI Operations (“AGG-DOM”), and 28 C.F.R. § 0.85, the FBI is the primary investigative agency of the federal government, with authority and

responsibility to: investigate all violations of federal law not exclusively assigned to another agency; conduct investigations and activities to protect the United States and its people from terrorism and threats to national security; and further the foreign intelligence objectives of the United States.

(66) On March 20, 2017, then-FBI Director James B. Comey confirmed in public testimony before Congress “that the FBI, as part of our counterintelligence mission, is investigating the Russian government’s efforts to interfere in the 2016 presidential election, and that includes investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia’s efforts.” Statement before the House Permanent Select Committee on Intelligence, available at <https://www.fbi.gov/news/testimony/hpsci-hearing-titled-russian-active-measures-investigation>). He added that “[a]s with any counterintelligence investigation, this will also include an assessment of whether any crimes were committed.” *Id.* On May 17, 2017, Deputy Attorney General Rod Rosenstein named former FBI Director Robert S. Mueller, III as Special Counsel to oversee the Russia investigation. Under the terms of his appointment, Special Counsel Mueller is authorized to “conduct the investigation confirmed by then-FBI Director James B. Comey in testimony before the House Permanent Select Committee on Intelligence on March 20, 2017, including (i) any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and (ii) any matters that arose or may arise directly from the investigation; and (iii) any other matters within the scope of 28 C.F.R. § 600.4(a).” DOJ Order No. 3915-2017, Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters (May 17, 2017)). In addition, “[i]f the Special Counsel believes it necessary and appropriate, the

Special Counsel is authorized to prosecute federal crimes arising from the investigation of these matters.” *Id.* The Russia investigation remains ongoing. No further information about the subjects, scope, or focus of the investigation has been officially acknowledged by the FBI, Special Counsel Mueller, or any representative of the Department of Justice.

(67) The Comey Memos include numerous references to sensitive information directly related to the Russia investigation, including information which would reveal aspects of the investigation’s subjects, scope, and focus. That investigation is clearly within the law enforcement duties of the FBI to undertake counterintelligence and national security investigations, and to detect and investigate possible violations of Federal criminal laws. *See* 28 U.S.C. § 533. Thus, information contained in the memos was compiled as part of and in relation to an investigation within the FBI’s law enforcement duties; as such, that information and by extension the memos in which it is referenced were compiled for law enforcement purposes. The *in camera* and *ex parte* declaration being filed in support of the motion for summary judgment contains further information about the law enforcement purpose for which the information and memos were compiled.

(68) Next, to apply Exemption (b)(7)(A), the FBI must establish the existence of a pending or prospective investigation or other enforcement proceeding. The Russian interference investigation is pending as of the date of this filing. Thus, this element is also readily established.

(69) Finally, the FBI must establish that disclosure of responsive records could reasonably be expected to interfere with the pending investigation. The FBI and the Special Counsel’s Office have determined that disclosure of the Comey Memos while this sensitive, on-

going investigation is proceeding could reasonably be expected to interfere with the investigation as well as any law enforcement proceedings that may ultimately result from the investigation.

(70) The FBI is limited in the amount of information it can provide publicly about how the investigation may be adversely affected by disclosure of the Comey Memos without the explanation itself risking harm to the investigation or revealing information exempt under one or more other exemptions. This is because little has been officially confirmed or denied by the FBI, DOJ, or the Special Counsel about the investigation; although there has been extensive media coverage of the investigation, that coverage relies on speculation, assumptions, and anonymous/unnamed sources.

(71) Broadly speaking, disclosing the Comey Memos and the information contained in them could reasonably be expected to adversely affect the pending investigation by revealing the scope and focus of the investigation, and whether particular persons, activities, information, or evidence is or is not of interest in the investigation. The FBI considered the public statements made regarding the contents of the Comey Memos, including the testimony of former-Director Comey, in making this determination. Further explanation of the harms that the FBI has concluded may reasonably be expected to flow from disclosure of any portion of the Comey Memos at this time is being provided in the *in camera, ex parte* declaration accompanying the Government's motion for summary judgment in this case.

(72) Even providing a document-by-document *Vaughn* index or description of the Comey Memos would undermine the very interests that the FBI seeks to protect under Exemption (b)(7)(A). Specifically, identifying the precise number/volume of the particular – and very narrow universe – of records sought by plaintiffs could reasonably be expected to reveal non-public information about the scope and focus of the investigation. Additional information

about this is provided in the *in camera, ex parte* declaration being submitted in support of the FBI's motion for summary judgment.

OTHER APPLICABLE EXEMPTIONS

(73) As previously explained, the FBI has determined that the Comey Memos are exempt under Exemption (b)(7)(A). However, in light of the D.C. Circuit's ruling in *Maydak v. DOJ*, 218 F.3d 760 (D.C. Cir. 2000), the FBI is also asserting other applicable FOIA exemptions, in order to preserve those exemptions in the event that Exemption (b)(7)(A) expires or is found to be inapplicable.

(74) In the following paragraphs, the FBI justifies its withholding of information in the Comey Memos based on additionally applicable exemptions to the extent that such justification will not itself adversely affect the on-going investigation into Russia's interference in the 2016 Presidential election. Where public disclosure of any more detailed information about the FBI's application of these exemptions at this time would undermine the very interests the FBI seeks to protect through its application of Exemption (b)(7)(A) in this case, the FBI has justified its application of those exemptions in the *in camera, ex parte* declaration accompanying the Government's motion for summary judgment.

EXEMPTION (b)(1) – CLASSIFIED INFORMATION

(75) The FBI has protected a limited amount of information in the Comey Memos because it is classified. Exemption (b)(1) protects from disclosure records that are:

- (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and
- (B) are in fact properly classified pursuant to such Executive Order.

5 U.S.C. § 552(b)(1).

(76) The FBI's analysis of whether Exemption (b)(1) permits the withholding of

agency information consists of two significant steps. The FBI must determine first whether the information contained in the records qualifies for classification under the applicable Executive Order governing classification and protection of national security information, and second whether the information actually has been classified in compliance with the various substantive and procedural criteria of the Executive Order.

(77) E.O. 13526 presently governs the classification and protection of information that affects the national security (*i.e.*, “the national defense of foreign relations of the United States,” § 6.1(cc)), and prescribes the various substantive and procedural criteria for classifying information. I am bound by the requirements of E.O. 13526 when making classification determinations.

(78) For information to be properly classified, and thus properly withheld pursuant to Exemption (b)(1), the information must meet the substantive requirements set forth in E.O. 13526 § 1.1(a), which requires:

- (1) an original classification authority must have classified the information;
- (2) the information must be owned by, produced by or for, or be under the control of the United States Government;
- (3) the information must fall within one or more of the categories of information listed in § 1.4 of [the] order; and
- (4) the original classification authority must determine that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority must be able to identify or describe the damage.

(79) The information covered by Exemption (b)(1) here is under the control of the United States Government, falls within applicable categories of E.O. 13526 § 1.4, and requires a classification marking at the SECRET level because the unauthorized disclosure of this information reasonably could be expected to cause serious damage to the national security, or at

the CONFIDENTIAL level because the unauthorized disclosure of this information reasonably could be expected to cause damage to the national security. *See* E.O. 13526 § 1.2(a)(2)-(3).

(80) In addition to these substantive requirements, certain procedural and administrative requirements set forth in E.O. 13526 must be followed before information can be considered to be properly classified, such as proper identification and marking of documents.

Specifically, E.O. 13526 requires that:

- (a) Each document was marked as required and stamped with the proper classification designation. *See* E.O. 13526 § 1.6(a)(1) – (5).
- (b) Each document was marked to indicate clearly which portions are classified and which portions are exempt from declassification as set forth in E.O. 13526 § 1.5(b). *See* E.O. 13526 § 1.6(a)(5)(c).
- (c) The prohibitions and limitations on classification specified in E.O. 13526 § 1.7 were followed.
- (d) The declassification policies set forth in E.O. 13526 §§ 3.1 and 3.3 were followed.
- (e) Any reasonably segregable portions of these classified documents that did not meet the standards for classification under E.O. 13526 were declassified and marked for release, unless withholding was otherwise warranted under applicable law.

(81) With the above requirements in mind, I determined that the information protected pursuant to Exemption (b)(1) in the Comey Memos is currently and properly classified at the SECRET or CONFIDENTIAL level pursuant to E.O. 13526, and satisfies both the procedural and substantive requirements set forth in the Executive Order.

(82) Specifically, this information is owned by, was produced by or for, and is under the control of the U.S. Government; was classified by an original classification authority; meets all of the procedural requirements of E.O. 13526; and warrants classification at the SECRET or CONFIDENTIAL level to protect “intelligence activities (including covert action), intelligence

sources or methods, or cryptology,” *see* E.O. 13526 § 1.4(c), and “foreign relations or foreign activities of the United States, including confidential sources,” *see* E.O. 13526 § 1.4(d), because unauthorized disclosure of this information could be expected to cause damage to national security (for information classified at the CONFIDENTIAL level) or serious damage to national security (for information classified at the SECRET level). Each category of classified information is discussed further below.

(83) I examined the information protected in this case pursuant to Exemption (b)(1) in light of the body of information available to me concerning the national defense and foreign relations of the United States. This information was not examined in isolation. Instead, it was evaluated with careful consideration given to the impact that its disclosure could have on other sensitive information contained elsewhere in the United States Intelligence Community’s files. Equal consideration was given to the impact that other information – both in the public domain and likely known or suspected by present or potential adversaries of the United States – would have upon the information protected here.

(84) The justifications for protecting classified information here were prepared with the intent that they be read with consideration given to the context in which the classified information is found. This context includes not only the surrounding unclassified information, but also other information already in the public domain, as well as information likely known or suspected by other hostile intelligence entities. It is my judgment that any greater specificity in the descriptions and justifications set forth with respect to information relating to intelligence activities, sources, and methods and foreign relations/activities of the United States could reasonably be expected to harm interests that FOIA exemptions were designed to protect. Additional explanation about the FBI’s application of Exemption (b)(1) in this case has been

provided in the *in camera, ex parte* declaration submitted in conjunction with the FBI's motion for summary judgment.

E.O. 13526 § 1.4(c) – Intelligence Activities, Sources and Methods

(85) E.O. 13526 § 1.4(c) authorizes the classification of “intelligence activities (including cover action), intelligence sources or methods, or cryptology.” An intelligence activity, source, or method includes any intelligence action or technique utilized by the FBI against a targeted individual or organization that has been determined to be of national security interest, and includes any procedure (human or non-human) utilized to obtain information concerning such individual or organization. An intelligence activity, source, or method has two characteristics. First, the intelligence activity, source, or method, and information generated by it, is needed by United States Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality must be maintained with respect to the use or non-use of the activity, source, or method, including intelligence sources, if the viability, productivity, and usefulness of the activity, source, and method are to be preserved.

(86) Intelligence activities, sources, and methods must be protected from disclosure in every situation in which a certain intelligence capability, technique, or interest – or its specific use – is unknown to the groups against which it is deployed, since those groups could take countermeasures to nullify its effectiveness. Intelligence activities, sources, and methods are valuable only so long as they remain unknown and unsuspected. Once an intelligence activity, source, or method – or the fact of its use or non-use in a certain situation – is discovered, its continued successful use is seriously jeopardized.

(87) Moreover, the U.S. Government must do more than prevent explicit references to intelligence activities, sources, and methods; it must also prevent indirect references to them.

One vehicle for gathering information about the U.S. Government's capabilities is by reviewing officially-released information. We know that terrorist organizations and other hostile or Foreign Intelligence groups have the capacity and ability to gather information from myriad sources, analyze it, and deduce means and methods from disparate details to defeat the U.S. Government's collection efforts. Thus, even seemingly innocuous, indirect references to an intelligence activity, source, or method could have significant adverse effects when juxtaposed with other publicly-available data.

(88) Here, information covered by Exemption (b)(1) in conjunction with E.O. 13526 § 1.4(c) would, if disclosed, reveal otherwise non-public information regarding the FBI's intelligence interests, priorities, activities, and methods; the intelligence sources upon which it relies; and whether or not the FBI is or was using specific intelligence sources or activities in connection with the Russia investigation. All of this is information that is highly desired by hostile actors who seek to thwart the FBI's intelligence-gathering mission.

E.O. 13526 § 1.4(d) – Foreign Relations or Foreign Activities

(89) E.O. 13526 § 1.4 (d) authorizes the classification of information about foreign relations or foreign activities of the United States, including confidential sources. Such information includes information gathered from/with the assistance of and/or about foreign countries. It is sensitive due in part to the delicate nature of international diplomacy, and must be handled with care so as not to jeopardize the fragile relationships that exist between the United States and certain foreign governments.

(90) The unauthorized disclosure of information concerning foreign relations or foreign activities of the United States can reasonably be expected to lead to diplomatic or economic retaliation against the United States; the loss of the cooperation and assistance of

friendly nations; or the compromise of cooperative foreign sources, which may jeopardize their safety and curtail the flow of information from these sources.

(91) Here, the FBI protected specific discussions and details concerning the United States' foreign relation activities with identified foreign governments and officials, the disclosure of which, in the context of other surrounding information, could reasonably be expected to impair or adversely impact relations with those countries, and thus, cause harm to the national security.

EXEMPTION (b)(3) – INFORMATION EXEMPTED FROM DISCLOSURE BY STATUTE

(92) Exemption (b)(3) protects information that is specifically exempted from public disclosure by a statute that :

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

5 U.S.C. § 552(b)(3).

(93) As explained above, the Comey Memos include information that is classified pursuant to E.O. 13526 § 1.4(c) to protect intelligence sources and methods. Those same intelligence sources and methods are also exempt here under Exemption (b)(3). Specifically, their disclosure is prohibited pursuant to the National Security Act of 1947, as amended, which provides that the Director of National Intelligence (DNI) “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1).

(94) As relevant to the FBI's application of Exemption (b)(3), the National Security Act of 1947 was enacted before the date of enactment of the OPEN FOIA Act of 2009, and on its

face, leaves no discretion to agencies about withholding from the public information about intelligence sources and methods.

(95) In order to fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community (“IC”) for the classification of information under applicable laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. §§ 3024(i)(1). The FBI is one of the member agencies comprising the IC, and as such must protect intelligence sources and methods.

(96) Accordingly, information in the Comey Memos that reveals intelligence sources and methods is prohibited from disclosure pursuant to 50 U.S.C. § 3024(i)(1) and thus exempt from disclosure under Exemption (b)(3).

EXEMPTIONS (b)(6) AND (b)(7)(C) – UNWARRANTED INVASIONS OF PERSONAL PRIVACY

(97) Exemption (b)(6) exempts from disclosure “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). All information that applies to a particular person falls within the scope of Exemption (b)(6).

(98) Exemption (b)(7)(C) exempts from disclosure “records or information compiled for law enforcement purposes [when disclosure] could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).

(99) The practice of the FBI is to assert Exemption (b)(6) in conjunction with Exemption (b)(7)(C) as they provide overlapping protections for personal privacy. Although the balancing test for Exemption (b)(6) uses a “would constitute a clearly unwarranted invasion of personal privacy” standard and the test for Exemption (b)(7)(C) uses the lower standard of

“could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. Each exemption balances individuals’ privacy interests against the public’s interest in disclosure.

(100) For purposes of these exemptions, a public interest exists only when information would significantly increase the public’s understanding of the FBI’s performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats; uphold and enforce the criminal laws of the United States; and provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

(101) The FBI has relied on Exemptions (b)(6) and (b)(7)(C) here to protect the names of and any identifying information about (a) FBI employee(s), (b) relative(s) of the FBI employee(s), (c) individual(s) who has provided information to the FBI during its investigation of Russian interference in the 2016 Presidential election, and (d) individuals who were merely mentioned in the Comey Memos. The FBI is not relying on to Exemptions (b)(6) and (b)(7)(C) to protect information about former Director Comey.

(102) The FBI concluded that all of these individuals maintain substantial privacy interests with respect to being associated with this investigation. The FBI considers that its employees – whether Special Agents or Professional Staff – enjoy substantial privacy protections by virtue of their FBI employment because, whether they are involved in investigating cases or providing other types of services and support, their employment can subject them to harassment, as well as unnecessary, unofficial questioning as to the conduct of agency business. Moreover, relatives of such employees, like anyone merely mentioned in an FBI record, maintain similarly high privacy interests. The individual providing information to the FBI in its investigation also

has substantial privacy interests. The FBI considers that exposing the identities of individuals who cooperate with and assist in an FBI investigation could cause adverse consequences to the individual, such as harassment, intimidation, legal or economic reprisal, or even physical harm. Similarly, the third parties merely mentioned in the Comey Memos have substantial privacy interests in relation to being connected with the FBI's investigation, which could result in harassment, criticism, derogatory inferences, or suspicion. That is particularly true in high-profile and sensitive cases such as the investigation into Russian interference in the 2016 Presidential election.

(103) In contrast, the FBI could not identify any public interest in the disclosure of these individuals' names here because the disclosure of these names would not, itself, shed any light on the operations and activities of the FBI. Therefore, the FBI determined that the privacy interests of the individuals outweighed any public interest, and applied Exemptions (b)(6) and (b)(7)(C) to protect this information.

EXEMPTION 7(E) – INVESTIGATIVE TECHNIQUES AND PROCEDURES

(104) Exemption (b)(7)(E) protects “records or information compiled for law enforcement purposes [when release] would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). This exemption affords categorical protection to techniques and procedures used in law enforcement investigations. It protects techniques and procedures that are not well-known to the public as well as non-public details about the use of publicly-known techniques and procedures.

(105) Exemption (b)(7)(E) applies to information in the Comey Memos reflecting the

FBI's use of particular investigative techniques or procedures in furtherance of the Russian interference investigation. To date, neither the FBI, DOJ, nor Special Counsel has publicly confirmed or denied the use of any particular techniques or procedures in the on-going investigation. Moreover, publicly disclosing the particular techniques and procedures utilized in the investigation could reasonably be expected to risk circumvention of the law because it would arm those under investigation, and others intent on disrupting it, the information necessary to, *inter alia*: develop countermeasures to evade detection; destroy, adulterate, or otherwise compromise evidence; and interfere with witnesses and their testimony.

(106) Any further public description of the information protected here would disclose non-public information that is itself exempt under Exemption (b)(7)(E) and would trigger harm under Exemption (b)(7)(A) by prematurely revealing the conduct, scope, and direction of the on-going investigation. Additional explanation about the assertion of Exemption (b)(7)(E) is provided in the *in camera, ex parte* declaration accompanying the FBI's motion for summary judgment.

OFFICIAL ACKNOWLEDGMENT

(107) Public statements made by former agency officials or individuals who are not part of and cannot speak on behalf of an agency do not constitute official disclosures by an agency, and do not bind or govern the actions of an agency in response to a FOIA request. Similarly, newspaper and other media reports relying on unnamed or anonymous sources do not constitute official disclosures on behalf of the agency that then bind or govern the actions of the agency in response to a FOIA request. This is true regardless of the accuracy or inaccuracy of any given, unofficial public statement. Binding an agency when unofficial public statements are accurate would necessarily require the agency to confirm the accuracy of the information, which could

itself be harmful to interests protected under the FOIA.

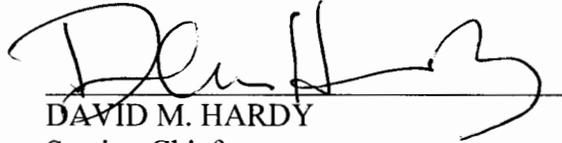
(108) The FBI has considered the public statements that have been made about the Comey Memos, including former-Director Comey's testimony about them during the June 6, 2017, hearing before the Senate Select Committee on Intelligence ("SSCI"). However, former-Director Comey was removed from his position on May 9, 2017. Because former-Director Comey was no longer an FBI official at the point that he provided his testimony before the SSCI, the FBI has concluded that his testimony did not and does not require any modification in its response to plaintiffs' FOIA request.

SEGREGATION

(109) The Comey Memos were reviewed to determine whether any portions could be segregated and released to plaintiffs. However, given that these records relate to an on-going investigation, and the reasonable expectation of harm from premature disclosure of them here, and after applying all applicable exemptions, the FBI has concluded that no non-exempt information exists that can be reasonably segregated and released to plaintiffs. To provide any further details about this determination risks the very harms that the FBI is trying to avoid by relying on Exemption (b)(7)(A), as well as the other exemptions that are applicable to these records

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits CNN-A – F, USA Today-A – D, JMP/Graff-A – F, JMP/Markay-A – E, Judicial Watch-A – D, Freedom Watch-A – D, and Daily Caller-A – F attached hereto are true and correct copies.

Executed this 13th day of October, 2017.



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT CNN-A

-----START MESSAGE----- Subject: eFOIA Request Received Sent: 2017-05-16T22:19:56.427909+00:00 Status: pending Message:

Organization Representative Information

Organization Name	<input type="text" value="CNN"/>
Prefix	<input type="text" value="Mr."/>
First Name	<input type="text" value="Gregory"/>
Middle Name	<input type="text"/>
Last Name	<input type="text" value="Wallace"/>
Suffix	<input type="text"/>
Email	<input type="text" value="gregory.wallace@cnn.com"/>
Phone	<input type="text" value="202-738-3113"/>
Location	<input type="text" value="United States"/>

Domestic Address

Address Line 1	<input type="text" value="820 First Street NE"/>
Address Line 2	<input type="text" value="8th Floor"/>
City	<input type="text" value="Washington"/>
State	<input type="text" value="District of Columbia"/>
Postal	<input type="text" value="20002"/>

Agreement to Pay

How you will pay

I am requesting a fee waiver for my request and have reviewed the FOIA reference guide. If my fee waiver is denied, I am willing to pay additional fees and will enter that maximum amount in the box below.

Allow up to \$

Proof Of Affiliation for Fee Waiver

Waiver Explanation**Documentation Files**

Non-Individual FOIA Request

Request Information

Pursuant to the Federal Freedom of Information Act, 5 U.S.C. Â§ 552 (the "Act"), Cable News Network, Inc. ("CNN") requests access to and copies of all records of notes taken by or communications sent from FBI Director James Comey regarding or documenting interactions (including interviews and other conversations) with President Donald Trump. The scope of this request is records between January 20, 2017 and May 10, 2017. Please see attached letter.

Expedite

Expedite Reason

----END MESSAGE----



May 16, 2017

Record/Information Dissemination Section

Records Management Division

Federal Bureau of Investigation

VIA eFOIPA portal

To Whom it May Concern:

Pursuant to the Federal Freedom of Information Act, 5 U.S.C. § 552 (the "Act"), Cable News Network, Inc. ("CNN") requests access to and copies of all records of notes taken by or communications sent from FBI Director James Comey regarding or documenting interactions (including interviews and other conversations) with President Donald Trump. The scope of this request is records between January 20, 2017 and May 10, 2017.

CNN agrees to pay reasonable duplication fees for the processing of this request in an amount not to exceed \$500. Please notify me prior to your incurring any expenses in excess of that amount.

As a member of a news organization, I am requesting that fees be waived because release of the information is in the public interest and will contribute significantly to public understanding of government operations and activities.

If CNN's request is denied in whole or part, we ask that you justify all deletions by reference to the specific exemptions of the Act. CNN will also expect you to release all segregable portions of otherwise exempt material. CNN reserves the right to appeal your decision to withhold any information.

If you have questions regarding this request, please contact me as soon as possible by email at gregory.wallace@CNN.com or by phone at 202-738-3113.

As I have made this request in the capacity as a journalist and this information is of timely value, I would appreciate your expediting the consideration of this request in every way possible. In any event, I look forward to your reply within 20 business days, as the Act requires.

Thank you for your assistance.

Sincerely,
Gregory Wallace

cc:
Drew Shenkman, Counsel, CNN
Johnita P. Due, Assistant General Counsel, CNN

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT CNN-B



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

May 23, 2017

MR. GREGORY WALLACE
CNN
820 FIRST STREET, NE
WASHINGTON, DC 20002

FOIPA Request No.: 1374094-000
Subject: All Memos, Emails, or Other Documents by
James Comey Regarding Conversations with Donald
Trump

Dear Mr. Wallace:

This is in reference to your letter to the FBI, in which you requested expedited processing for the above-referenced Freedom of Information Act (FOIA) request. Under Department of Justice (DOJ) standards for expedited processing, it can only be granted in the following situations:

28 C.F.R. §16.5 (e)(1)(i): "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."

28 C.F.R. §16.5 (e)(1)(ii): "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."

28 C.F.R. §16.5 (e)(1)(iii): "The loss of substantial due process of rights."

28 C.F.R. §16.5 (e)(1)(iv): "A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affects public confidence."

You have not provided enough information concerning the statutory requirements permitting expedition; therefore, your request is denied.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT CNN-C



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

May 23, 2017

MR. GREGORY WALLACE
CNN
820 FIRST STREET, NE
WASHINGTON, DC 20002

FOIPA Request No.: 1374094-000
Subject: All Memos, Emails, or Other
Documents by James Comey Regarding
Conversations with Donald Trump

Dear Mr. Wallace:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the _____ Resident Agency / _____ Field Office and forwarded to FBI Headquarters for processing.
- You submitted your request via the FBI's eFOIPA system.
 - We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIA request will be provided in an email link.
 - We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIPA request will be sent through standard mail.
- The subject of your request is currently being processed for public release. Documents will be released to you upon completion.
- Release of responsive records will be made to the FBI's FOIA Library (The Vault), <http://vault.fbi.gov>, and you will be contacted when the release is posted.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date. If your fee waiver is denied, you will be charged fees in accordance with the category designated below.
- For the purpose of assessing fees, we have made the following determination:
 - As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).
 - As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).
 - As a general (all others) requester, you will be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT CNN-D



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Drew E. Shenkman, Esq.
Cable News Network, Inc.
SE0911A
One CNN Center
Atlanta, GA 30303
drew.shenkman@turner.com

Re: Appeal No. DOJ-AP-2017-004349
Request No. 1374094
SRO:MTC

VIA: FOIAonline

Dear Mr. Shenkman:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received in this Office on May 26, 2017. You appealed from the FBI's denial of your request for expedited treatment of your Freedom of Information Act request.

After carefully considering your appeal, and based on the information presented, I believe that expedited processing of your request is warranted. Accordingly, I am remanding your request to the FBI, where it will be processed as quickly as practicable.

If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

If you are dissatisfied with my action on your appeal for expedited treatment of your request, you may file a lawsuit in accordance with 5 U.S.C. § 552(a)(6)(E)(iii).

Sincerely,

6/2/2017

X Handwritten signature of Sean R. O'Neill in black ink.

Sean R. O'Neill
Chief, Administrative Appeals Staff
Signed by: OIP

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

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DEPARTMENT OF JUSTICE,

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Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
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Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT CNN-E



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

June 13, 2017

MR. GREGORY WALLACE
CNN
820 FIRST STREET, NORTHEAST
WASHINGTON, DC 20002

OIP Appeal Number: DOJ-AP-2017-004349
FOIPA Request No.: 1374094-000
Subject: All Memos, Emails, or Other
Documents by James Comey Regarding
Conversations with Donald Trump

Dear Mr. Wallace:

This acknowledges your Freedom of Information/Privacy Acts (FOIPA) remanded appeal has been received by the FBI from the Office of Information and Policy for processing. Pursuant to the Department of Justice (DOJ) standards permitting expedition, expedited processing can only be granted when it is determined that a FOIPA request involves one or more of the below categories.

You have requested expedited processing according to:

- 28 C.F.R. §16.5 (e)(1)(i):** "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."
- 28 C.F.R. §16.5 (e)(1)(ii):** "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
- 28 C.F.R. §16.5 (e)(1)(iii):** "The loss of substantial due process of rights."
- 28 C.F.R. §16.5 (e)(1)(iv):** "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

You have provided enough information concerning the statutory requirements permitting expedition; therefore, your request is approved.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

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Civil Action No. 1:17-cv-01189-JEB

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UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

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FOUNDATION,

Plaintiff,

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UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT CNN-F



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

June 16, 2017

MR. GREGORY WALLACE
CNN
820 FIRST STREET, NE
WASHINGTON, DC 20002

FOIPA Request No.: 1374094-000
Subject: All records of notes taken by James Comey
regarding interactions with Donald Trump
(Between January 20, 2017 and May 10, 2017)

Dear Mr. Wallace:

This responds to your Freedom of Information Act (FOIA) request.

The material you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

It is unnecessary to adjudicate your request for a fee waiver.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosures



FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identity history summary check or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual’s records are not disseminated to an unauthorized person. The fingerprint submission must include the subject’s name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/identity-history-summary-checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI’s Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several “hits” and “idents” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking “reasonably described information.” For a FOIPA search, the subject’s name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a “main file search” and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT
www.fbi.gov

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT USA Today-A

-----START MESSAGE----- Subject: eFOIA Request Received Sent: 2017-05-12T16:01:07.209008+00:00 Status: pending Message:

Organization Representative Information

Organization Name

Prefix

First Name

Middle Name

Last Name

Suffix

Email

Phone

Location

Domestic Address

Address Line 1

Address Line 2

City

State

Postal

Agreement to Pay

How you will pay

I am willing to pay additional fees and will enter the maximum amount I am willing to pay in the box below.

Allow up to \$

200

Non-Individual FOIA Request

Request Information

This is a request for records under the Freedom of Information Act, 5 U.S.C. Â§ 552. In accordance with the act, I hereby request:

1. Copies of any reports, letters, memoranda, electronic mail messages, FD-302s or other records memorializing conversations between former Director Comey and President Trump. Such records would have been generated since January 20, 2017 and are likely to be kept in the office of the Director.
2. Complete copies of any recordings in the possession of the FBI of conversations between former Director Comey and President Trump.

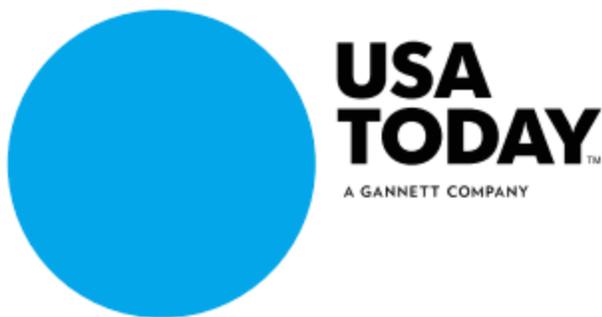
Expedite

Expedite Reason

Please expedite processing of this request. As you are no doubt aware, the President fired Director Comey on May 9. Director Comey had testified in an open session of the House Permanent Select Committee on Intelligence that the FBI was "investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia's efforts." In dismissing him, the President said Director Comey had assured him, on three occasions, that he was not the subject of an FBI investigation. On May 12, the President warned Mr. Comey on Twitter that he had "better hope that there are no "tapes" of our conversations before he starts leaking to the press!" <https://twitter.com/realDonaldTrump/status/863007411132649473> (last visited May 12, 2017). In addition, the acting Director of the FBI testified on May 11 that it would be unusual for the FBI to confirm to someone that he is not the target of an investigation. Given that apparent departure from FBI protocol, and the intense scrutiny surrounding Director Comey's firing, the public interest in these records is both obvious and extraordinary, and,

if they exist, the FBI should release them without delay.

----END MESSAGE----



May 12, 2017

VIA ELECTRONIC MAIL

Federal Bureau of Investigation
Record/Information Dissemination Section
170 Marcel Drive
Winchester, Virginia 22602-4843

Re: Freedom of Information Act request

Dear Sir or Madam:

This is a request for records under the Freedom of Information Act, 5 U.S.C. § 552. In accordance with the act, I hereby request:

1. Copies of any reports, letters, memoranda, electronic mail messages, FD-302s or other records memorializing conversations between former Director Comey and President Trump. Such records would have been generated since January 20, 2017 and are likely to be kept in the office of the Director.
2. Complete copies of any recordings in the possession of the FBI of conversations between former Director Comey and President Trump.

Please expedite processing of this request. As you are no doubt aware, the President fired Director Comey on May 9. Director Comey had testified in an open session of the House Permanent Select Committee on Intelligence that the FBI was “investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia’s efforts.” In dismissing him, the President said Director Comey had assured him, on three occasions, that he was not the subject of an FBI investigation. On May 12, the President warned Mr. Comey on Twitter that he had “better hope that there are no ‘tapes’ of our conversations before he starts leaking to the press!”

<https://twitter.com/realDonaldTrump/status/863007411132649473> (last visited May 12, 2017). In addition, the acting Director of the FBI testified on May 11 that it would be unusual for the FBI to confirm to someone that he is not the target of an investigation.

Given that apparent departure from FBI protocol, and the intense scrutiny surrounding Director Comey's firing, the public interest in these records is both obvious and extraordinary, and, if they exist, the FBI should release them without delay.

Please provide the data in an electronic format pursuant to 5 U.S.C. §§ 552(a)(3)(B)-(C).

Because this is a request by the news media for information of significant public interest, I ask that you waive any search fees, in accordance with § 552(a)(4)(A)(ii)(II). If the cost of reproducing these records will exceed fifty dollars (\$50.00), please notify me before filling this request. I may be reached at (703) 854-6505, or by electronic mail at bheath@usatoday.com.

As you know, the Act, in § 552(a)(6), grants an agency no more than twenty working days in which to respond to this request. *See Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990) ("Congress adopted the time limit provision in the FOIA in order to 'contribute to the fuller and faster release of information, which is the basic objective of the Act.'" (quoting H.R. Rep. No. 93-876, March 5, 1974., reprinted (1974) U.S. Code Cong. & Ad. News 6267 at 6271)).

I therefore look forward to your prompt reply.

Sincerely,

Brad Heath

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

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NETWORK, LLC, d/b/a USA TODAY, *et al.*,

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Defendant.

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FOUNDATION,

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UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT USA Today -B



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

May 23, 2017

MR. BRAD HEATH
USA TODAY
7950 JONES BRANCH DRIVE
MCLEAN, VA 22108-0605

FOIPA Request No.: 1374159-000
Subject: Records and Communication
between President Donald Trump and
Former FBI Director James Comey

Dear Mr. Heath:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the _____ Resident Agency / _____ Field Office and forwarded to FBI Headquarters for processing.
- You submitted your request via the FBI's eFOIPA system.
 - We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIA request will be provided in an email link.
 - We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIPA request will be sent through standard mail.
- The subject of your request is currently being processed for public release. Documents will be released to you upon completion.
- Release of responsive records will be made to the FBI's FOIA Library (The Vault), <http://vault.fbi.gov>, and you will be contacted when the release is posted.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date. If your fee waiver is denied, you will be charged fees in accordance with the category designated below.
- For the purpose of assessing fees, we have made the following determination:
 - As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).
 - As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).
 - As a general (all others) requester, you will be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT USA Today -C



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

May 24, 2017

MR. BRAD HEATH
USA TODAY
7950 JONES BRANCH DRIVE
MCLEAN, VA 22108-0605

FOIPA Request No.: 1374159-000
Subject: Records and Communication
between President Donald Trump and
Former FBI Director James Comey

Dear Mr. Heath:

This is in reference to your letter directed to the Federal Bureau of Investigation (FBI), in which you requested expedited processing for the above-referenced Freedom of Information Act (FOIA) request. Pursuant to the Department of Justice (DOJ) standards permitting expedition, expedited processing can only be granted when it is determined that a FOIPA request involves one or more of the below categories.

You have requested expedited processing according to:

- 28 C.F.R. §16.5 (e)(1)(i):** "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."
- 28 C.F.R. §16.5 (e)(1)(ii):** "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
- 28 C.F.R. §16.5 (e)(1)(iii):** "The loss of substantial due process of rights."
- 28 C.F.R. §16.5 (e)(1)(iv):** "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

You have provided enough information concerning the statutory requirements permitting expedition; therefore, your request is approved.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D Hardy", written in a cursive style.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
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Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT USA Today -D

U.S. Department of Justice



MS

Federal Bureau of Investigation
Washington, D.C. 20535

June 16, 2017

MR. BRAD HEATH
USA TODAY
7950 JONES BRANCH DRIVE
MCLEAN, VA 22108-0605

FOIPA Request No.: 1374159-000
Subject: Copies of any reports, letters,
memoranda, etc. between President Donald
Trump and former Director James Comey.

Dear Mr. Heath:

By letter dated May 23, 2017, we assigned you FOIA number 1374159 addressing the subject, "records and communication between President Donald Trump and former FBI Director James Comey."

This responds to the first portion of your May 23, 2017 request which will retain tracking number 1374159-000. The second portion of your request, "complete copies of any recordings in the possession of the FBI of conversations between former Director Comey and president Trump," dated May 12, 2017, will be assigned an additional tracking number.

The material you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

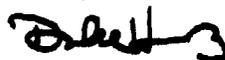
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S. C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

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Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosures



FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identity history summary check or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual’s records are not disseminated to an unauthorized person. The fingerprint submission must include the subject’s name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/identity-history-summary-checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI’s Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several “hits” and “idents” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking “reasonably described information.” For a FOIPA search, the subject’s name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a “main file search” and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT

www.fbi.gov

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

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Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

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UNITED STATES DEPARTMENT OF
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Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT JMP/Graff-A

-----START MESSAGE----- Subject: eFOIA Request Received Sent: 2017-05-18T03:41:35.451290+00:00 Status: pending Message:

Organization Representative Information

Organization Name

Prefix

First Name

Middle Name

Last Name

Suffix

Email

Phone

Location

Domestic Address

Address Line 1

Address Line 2

City

State

Postal

Agreement to Pay

How you will pay

I am requesting a fee waiver for my request and have reviewed the FOIA reference guide. If my fee waiver is denied, I am willing to pay additional fees and will enter that maximum amount in the box below.

Allow up to \$

25

Proof Of Affiliation for Fee Waiver

Waiver Explanation

see attached request

Documentation Files

Non-Individual FOIA Request

Request Information

See attached request

Expedite

Expedite Reason

see attached request

-----END MESSAGE-----

**The James Madison Project
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20010**

(202) 498-0011
(202) 330-5610 fax

E-Mail: FOIA@JamesMadisonProject.org
<http://www.JamesMadisonProject.org>

May 17, 2017

VIA ONLINE PORTAL

David M. Hardy
Chief, RIDS/RMD
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843

Re: FOIA Request

Dear Chief Hardy:

This is a request on behalf of The James Madison Project ("JMP") and Garrett Graff ("Mr. Graff") (hereinafter referred to jointly as "the Requesters") under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*

On May 9, 2017, FBI Director James Comey ("Director Comey") was informed that, by order of President Donald J. Trump ("President Trump"), he had been terminated and removed from office, effective immediately. <http://edition.cnn.com/2017/05/09/politics/james-comey-fbi-trump-white-out/index.html> (last accessed May 9, 2017). Later media reports indicated that President Trump had discussed with Director Comey the possibility of a pending investigation into the President himself on at least three occasions. <https://apps.washingtonpost.com/g/documents/politics/fbi-director-james-b-comeys-termination-letters-from-the-white-house-attorney-general/2430/> (last accessed May 12, 2017); <http://www.nbcnews.com/news/us-news/trump-reveals-he-asked-comey-whether-he-was-under-investigation-n757821> (last accessed May 12, 2017).

On May 16, 2017, media reports revealed that Director Comey had drafted an internal memorandum for his own records after a February 14, 2017, meeting with President Trump. That memorandum allegedly memorialized a conversation in which President Trump asked Director Comey to "shut down" the pending FBI investigation into former National Security Advisor Michael Flynn. https://www.nytimes.com/2017/05/16/us/politics/james-comey-trump-flynn-russia-investigation.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=span-ab-top-region®ion=top-news&WT.nav=top-news&_r=0 (last accessed May 16, 2017); <https://www.washingtonpost.com/world/national-security/notes->

"Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

James Madison, 1822

The James Madison Project

made-by-former-fbi-director-comey-say-trump-pressured-him-to-end-flynn-probe/2017/05/16/52351a38-3a80-11e7-9e48-c4f199710b69_story.html?hpid=hp_rhp-banner-main_comey-615pm%3Ahomepage%2Fstory&utm_term=.46300b9cd04b (last accessed May 16, 2017).

Subsequent reports indicated that Director Comey had drafted numerous such memoranda documenting his conversations with President Trump, and the Senate Select Committee on Intelligence formally requested that the FBI produce all such memoranda. <http://www.independent.co.uk/news/world/americas/us-politics/trump-comey-latest-news-russia-interactions-senate-intelligence-committee-a7741436.html> (last accessed May 17, 2017); https://www.nytimes.com/2017/05/17/us/politics/trump-comey-fbi.html?_r=0 (last accessed May 17, 2017). Director Comey has also been asked to testify in both open and closed sessions. <http://www.cbsnews.com/news/jason-chaffetz-invites-james-comey-to-testify-before-congress/> (last accessed May 17, 2017); <http://thehill.com/homenews/senate/333730-graham-asks-comey-to-testify-before-senate-panel> (last accessed May 16, 2017).

The Requesters seek copies of records created, received and/or maintained by the Federal Bureau of Investigation ("FBI"), including cross-references. Specifically, the Requesters are seeking:

- 1) Any memoranda, notes, summaries and/or recordings (hereinafter referred to jointly as "memoranda") memorializing conversations Director Comey had with President Trump;
- 2) Any records reflecting discussions – including written documentation memorializing verbal conversations – between Director Comey and FBI staff regarding the memoranda referenced in category #1; and
- 3) Any records reflecting discussions – including written documentation memorializing verbal conversations – between Director Comey and DOJ staff regarding the memorandum referenced in category #1.

The FBI should construe "DOJ staff" and "FBI staff" to encompass Government civilian employees, political appointees, Constitutional officers, and contract staff. The scope of the searches should include, but not be limited to, e-mail communications on unclassified and classified systems, as well as records stored on individual hard drives and/or shared drives.

The FBI can limit the timeframe of their searches from November 8, 2016, through May 9, 2017. The scope of the searches should not be limited to FBI-originated records and should be construed to include records that are currently in the possession of a U.S. Government contractor for purposes of records management.

The Requesters are pre-emptively waiving any objection to the redaction of the names of any U.S. Government officials below a GS-14 position or whom otherwise were not acting in a supervisory position. The Requesters similarly waive any objection to redactions of the names of

"Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

James Madison, 1822

The James Madison Project

any U.S. Government contractors in a position of authority similar to that of a GS-13 series civilian employee or below.

In terms of all other third parties who work or worked for the U.S. Government and whose names appear in records responsive to this request, the Requesters submits that the privacy interests of those individuals have been diminished by virtue of their involvement in one or more of the U.S. Government functions described above as falling within the scope of this request. There is a recognized inverse relationship between the position of authority that a government employee holds and the strength of that employee's privacy interests. See *Stern v. FBI*, 737 F.2d 84, 92 (D.C. Cir. 1984); *Jefferson v. Dep't of Justice*, 2003 U.S. Dist. LEXIS 26782, *11 (D.D.C. Nov. 14, 2003); see also *Perlman v. Dep't of Justice*, 312 F.3d 100, 107-109 (2d. Cir. 2002)(setting forth five factors to consider in weighing government employee's privacy interests against public interest in disclosure, including employee's rank and whether information sheds light on a government activity).

The work performed by these third parties was part of their official responsibilities on behalf of the U.S. Government and was not of a personal nature. They served in a position of trust and authority to, among other things, evaluate any potential legal concerns implicated by President Trump's discussions with Director Comey. Given that responsive records memorializing the work they performed will shed light on government activity, it would be reasonable to conclude that the relevant third parties' respective (and diminished) privacy interests are outweighed by the public interest in disclosure of the information indexed to their name.

We are requesting a waiver of or, at a minimum, a reduction in fees. The Requesters qualify – in their own respective rights – for designation as representatives of the news media.

JMP is a non-partisan organization dedicating to promoting government accountability and the reduction of secrecy. <http://jamesmadisonproject.org/> (last accessed May 9, 2017). The organization is a frequent FOIA requester and litigator and Federal agencies routinely and regularly grant JMP fee waivers. Mr. Graff is a distinguished magazine journalist and historian. <https://www.garrettgraff.com/biography/> (last accessed May 16, 2017).

The Requesters have the ability to disseminate information on a wide scale and intend to use information obtained through this FOIA request in an original work, particularly through news articles written by Mr. Graff. According to 5 U.S.C. § 552(a)(4)(A)(ii),

the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

The Requesters can demonstrate their intent and ability to publish or otherwise disseminate information to the public. See *Nat'l Security Archive v. Dep't of Defense*, 880 F.2d 1381, 1386

"Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

James Madison, 1822

The James Madison Project

(D.C. Cir. 1989). Mr. Graff maintains the ability to publish articles explaining the content of any responsive records received as part of this request. In the event that fees are ultimately assessed, do not incur expenses beyond \$25 without first contacting our office for authorization.

Relying upon the same reasons we provided above outlining a public interest in disclosure of responsive records, we are also requesting expedited processing. FOIA permits expedited processing when a "compelling need" exists. 5 U.S.C. § 552(a)(6)(E)(v). Specifically, "compelling need" means "with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." *Id.* at § 552(a)(6)(E)(v)(II). It borders on axiomatic that the public has a compelling need to learn exactly what the alleged memoranda actually say, as well as whether Director Comey discussed the details with anyone at the DOJ or the FBI prior to his termination.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible. However, the Requesters do not agree to pay an additional fee to receive records on a CD, and in the instance that such a fee is required, the Requesters will accept a paper copy of responsive records.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me at (202) 907-7945 or via e-mail at Brad@MarkZaid.com.

Sincerely,

/s/

Bradley P. Moss

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

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Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

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Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
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Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT JMP/Graff-B



Federal Bureau of Investigation
Washington, D.C. 20535

May 25, 2017

MR. BRADLEY P. MOSS
THE JAMES MADISON PROJECT
SUITE 200
1250 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20036

FOIPA Request No.: 1374565-000

Dear Mr. Moss:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI which has been received for processing. For administrative tracking purposes, additional FOIPA numbers may be assigned if it is determined your request seeks records about multiple subjects. You will be notified of any additional tracking numbers if assigned.

- You submitted your request via the FBI's eFOIA system.
- We have reviewed your request and determined that it is compliant with the terms and conditions of the eFOIA system. You will continue to receive correspondence online.
- We have reviewed your request and determined that it is not in compliance with the terms and conditions of the eFOIA system. Future correspondence will be mailed to you.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date. If your fee waiver is denied, you will be charged fees in accordance with the category designated below.
- For the purpose of assessing fees, we have made the following determination:
 - As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).
 - As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).
 - As a general (all others) requester, you will be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

You have requested expedited processing according to:

- 28 C.F.R. §16.5 (e)(1)(i): "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."
- 28 C.F.R. §16.5 (e)(1)(ii): "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
- 28 C.F.R. §16.5 (e)(1)(iii): "The loss of substantial due process of rights."

28 C.F.R. §16.5 (e)(1)(iv): "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

You have provided enough information concerning the statutory requirements permitting expedition; therefore, your request is approved.

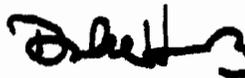
Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT JMP/Graff-C

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

June 12, 2017

MR. BRADLEY PRESCOTT MOSS
THE JAMES MADISON PROJECT
SUITE 200
1250 CONNECTICUT AVENUE, NORTHWEST
WASHINGTON, DC 20010

Dear Mr. Moss:

This is in response to your Freedom of Information Act (FOIA) request previously assigned FOIPA Request Number 1374565-000. We have determined that your request seeks records about multiple subjects. For administrative tracking purposes, additional FOIPA numbers were assigned to your request.

Original FOIPA Request No: 1374565-0
Subject: Memos by Former FBI Director James Comey
(Regarding Conversations with President Donald Trump)

Additional FOIPA Request No: 1376068-0
Subject: Records or Communications between Former FBI Director James Comey and FBI Staff
Regarding Memos (November 8, 2016 – May 9, 2017)

Additional FOIPA Request No: 1376070-0
Subject: Records or Communications between Former FBI Director James Comey and DOJ Staff
Regarding Memos (November 8, 2016 – May 9, 2017)

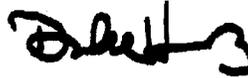
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Sincerely,

A handwritten signature in black ink, appearing to read "D Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
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THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

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UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT JMP/Graff-D

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

June 16, 2017

MR. BRADLEY PRESCOTT MOSS
THE JAMES MADISON PROJECT
SUITE 200
1250 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20036

FOIPA Request No.: 1374565-000
Subject: Records by Former FBI Director James
Comey
(Regarding Conversations with President Donald
Trump)

Dear Mr. Moss:

This responds to your Freedom of Information Act (FOIA) request.

The material you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A).
5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only
to the extent that the production of such law enforcement records or
information ... could reasonably be expected to interfere with
enforcement proceedings...

The records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

It is unnecessary to adjudicate your request for a fee waiver.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

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Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)



FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identity history summary check or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual's records are not disseminated to an unauthorized person. The fingerprint submission must include the subject's name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/identity-history-summary-checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI's Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several “hits” and “idents” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking “reasonably described information.” For a FOIPA search, the subject's name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a “main file search” and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT

www.fbi.gov

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

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Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

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Civil Action No. 1:17-cv-01189-JEB

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Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

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Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT JMP/Graff-E

10/12/2017

FOIA - Freedom of Information Act

Appeal Details**Status : Closed Due Date : N/A****Request Type : FOIA****0**

Submitted

Evaluation

Assignment

Processing

Appeal Details

Closed

005006

Tracking Number : DOJ-AP-
2017-

Submitted Date : 06/28/2017

Last Assigned Date : 06/29/2017

Requester : Brad Moss

Appeal Track : Expedited

Due Date : N/A

Organization : Mark S.
Zaid, P.C.Assigned To : Jillian
Warzynski

Requester Has Account : Yes

(Appeals)

Created on behalf of : N/A

Last Assigned By : Matthew
Hurd

Email Address :

(Appeals)

brad@markzaid.com

Phone Number : 202-907-
7945Fax Number : 202-558-
4432Address : 1250
ConnecticutAvenue, NW
Suite 200

City : Washington

State/Province : DC

Zip Code/Postal Code : 20036

Request DetailsTracking Number : 1374565-
000

Request Phase : Submitted

Requester : Bradley
Moss

Request Track : Simple

Final Disposition :

Date Submitted : 06/28/2017

Request Description :

see attached original request

10/12/2017

FOIA - Freedom of Information Act

[Submission Details](#)[Case File](#)[Admin Cost](#)[Assigned Tasks](#)[Comments \(2\)](#)[Review](#)**Appeal Handling**

Requester Info Available to the No

Public :

Appeal Received : No

Appeal Track : Expedited

Acknowledgement Sent Date:

Fee Category : N/A

Litigation : No

Based on Fee Waiver : Based on Expedited Processing :

Expedited Processing Requested : Yes

Expedited Processing Status : Grant

Basis for Appeal

Short Description : N/A

We are appealing the appropriateness of the FBI's denial (see attached) of the attached FOIA request in reliance upon Exemption 7(A).

Basis Available to the Public : No

Has Basis Been Modified? No 0/2000

Additional Information

Source Request Tracking N/A

Number :

Expedited Type : N/A

Sub-Office : Federal Bureau of Investigation

Attached Supporting Files

Attachments Available to the No

Public :

10/12/2017

FOIA - Freedom of Information Act

Attached File	Type	Size (MB)	Remove
<i>Eccfae18480936dbc72ace5ab91d07144311ad219_Q10134_D1857206.pdf</i>	PDF	1.16	
<i>FBI request.pdf</i>	PDF	0.06	



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

June 16, 2017

MR. BRADLEY PRESCOTT MOSS
THE JAMES MADISON PROJECT
SUITE 200
1250 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20036

FOIPA Request No.: 1374565-000
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David M. Hardy
Section Chief,
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Records Management Division

Enclosure(s)



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- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identity history summary check or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual’s records are not disseminated to an unauthorized person. The fingerprint submission must include the subject’s name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/identity-history-summary-checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI’s Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several “hits” and “idents” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
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www.fbi.gov

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

The James Madison Project
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20010

(202) 498-0011
(202) 330-5610 fax

E-Mail: FOIA@JamesMadisonProject.org
<http://www.JamesMadisonProject.org>

May 17, 2017

VIA ONLINE PORTAL

David M. Hardy
Chief, RIDS/RMD
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843

Re: FOIA Request

Dear Chief Hardy:

This is a request on behalf of The James Madison Project (“JMP”) and Garrett Graff (“Mr. Graff”)(hereinafter referred to jointly as “the Requesters”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*

On May 9, 2017, FBI Director James Comey (“Director Comey”) was informed that, by order of President Donald J. Trump (“President Trump”), he had been terminated and removed from office, effective immediately. <http://edition.cnn.com/2017/05/09/politics/james-comey-fbi-trump-white-out/index.html> (last accessed May 9, 2017). Later media reports indicated that President Trump had discussed with Director Comey the possibility of a pending investigation into the President himself on at least three occasions. <https://apps.washingtonpost.com/g/documents/politics/fbi-director-james-b-comeys-termination-letters-from-the-white-house-attorney-general/2430/> (last accessed May 12, 2017); <http://www.nbcnews.com/news/us-news/trump-reveals-he-asked-comey-whether-he-was-under-investigation-n757821> (last accessed May 12, 2017).

On May 16, 2017, media reports revealed that Director Comey had drafted an internal memorandum for his own records after a February 14, 2017, meeting with President Trump. That memorandum allegedly memorialized a conversation in which President Trump asked Director Comey to “shut down” the pending FBI investigation into former National Security Advisor Michael Flynn. https://www.nytimes.com/2017/05/16/us/politics/james-comey-trump-flynn-russia-investigation.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=span-ab-top-region®ion=top-news&WT.nav=top-news&_r=0 (last accessed May 16, 2017); <https://www.washingtonpost.com/world/national-security/notes->

“Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

James Madison, 1822

made-by-former-fbi-director-comey-say-trump-pressured-him-to-end-flynn-probe/2017/05/16/52351a38-3a80-11e7-9e48-c4f199710b69_story.html?hpid=hp_rhp-banner-main_comey-615pm%3Ahomepage%2Fstory&utm_term=.46300b9cd04b (last accessed May 16, 2017).

Subsequent reports indicated that Director Comey had drafted numerous such memoranda documenting his conversations with President Trump, and the Senate Select Committee on Intelligence formally requested that the FBI produce all such memoranda. <http://www.independent.co.uk/news/world/americas/us-politics/trump-comey-latest-news-russia-interactions-senate-intelligence-committee-a7741436.html> (last accessed May 17, 2017); https://www.nytimes.com/2017/05/17/us/politics/trump-comey-fbi.html?_r=0 (last accessed May 17, 2017). Director Comey has also been asked to testify in both open and closed sessions. <http://www.cbsnews.com/news/jason-chaffetz-invites-james-comey-to-testify-before-congress/> (last accessed May 17, 2017); <http://thehill.com/homenews/senate/333730-graham-asks-comey-to-testify-before-senate-panel> (last accessed May 16, 2017).

The Requesters seek copies of records created, received and/or maintained by the Federal Bureau of Investigation (“FBI”), including cross-references. Specifically, the Requesters are seeking:

- 1) Any memoranda, notes, summaries and/or recordings (hereinafter referred to jointly as “memoranda”) memorializing conversations Director Comey had with President Trump;
- 2) Any records reflecting discussions – including written documentation memorializing verbal conversations – between Director Comey and FBI staff regarding the memoranda referenced in category #1; and
- 3) Any records reflecting discussions – including written documentation memorializing verbal conversations – between Director Comey and DOJ staff regarding the memorandum referenced in category #1.

The FBI should construe “DOJ staff” and “FBI staff” to encompass Government civilian employees, political appointees, Constitutional officers, and contract staff. The scope of the searches should include, but not be limited to, e-mail communications on unclassified and classified systems, as well as records stored on individual hard drives and/or shared drives.

The FBI can limit the timeframe of their searches from November 8, 2016, through May 9, 2017. The scope of the searches should not be limited to FBI-originated records and should be construed to include records that are currently in the possession of a U.S. Government contractor for purposes of records management.

The Requesters are pre-emptively waiving any objection to the redaction of the names of any U.S. Government officials below a GS-14 position or whom otherwise were not acting in a supervisory position. The Requesters similarly waive any objection to redactions of the names of

any U.S. Government contractors in a position of authority similar to that of a GS-13 series civilian employee or below.

In terms of all other third parties who work or worked for the U.S. Government and whose names appear in records responsive to this request, the Requesters submits that the privacy interests of those individuals have been diminished by virtue of their involvement in one or more of the U.S. Government functions described above as falling within the scope of this request. There is a recognized inverse relationship between the position of authority that a government employee holds and the strength of that employee's privacy interests. See Stern v. FBI, 737 F.2d 84, 92 (D.C. Cir. 1984); Jefferson v. Dep't of Justice, 2003 U.S. Dist. LEXIS 26782, *11 (D.D.C. Nov. 14, 2003); see also Perlman v. Dep't of Justice, 312 F.3d 100, 107-109 (2d. Cir. 2002)(setting forth five factors to consider in weighing government employee's privacy interests against public interest in disclosure, including employee's rank and whether information sheds light on a government activity).

The work performed by these third parties was part of their official responsibilities on behalf of the U.S. Government and was not of a personal nature. They served in a position of trust and authority to, among other things, evaluate any potential legal concerns implicated by President Trump's discussions with Director Comey. Given that responsive records memorializing the work they performed will shed light on government activity, it would be reasonable to conclude that the relevant third parties' respective (and diminished) privacy interests are outweighed by the public interest in disclosure of the information indexed to their name.

We are requesting a waiver of or, at a minimum, a reduction in fees. The Requesters qualify – in their own respective rights – for designation as representatives of the news media.

JMP is a non-partisan organization dedicating to promoting government accountability and the reduction of secrecy. <http://jamesmadisonproject.org/> (last accessed May 9, 2017). The organization is a frequent FOIA requester and litigator and Federal agencies routinely and regularly grant JMP fee waivers. Mr. Graff is a distinguished magazine journalist and historian. <https://www.garrettgraff.com/biography/> (last accessed May 16, 2017).

The Requesters have the ability to disseminate information on a wide scale and intend to use information obtained through this FOIA request in an original work, particularly through news articles written by Mr. Graff. According to 5 U.S.C. § 552(a)(4)(A)(ii),

the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

The Requesters can demonstrate their intent and ability to publish or otherwise disseminate information to the public. See Nat'l Security Archive v. Dep't of Defense, 880 F.2d 1381, 1386

The James Madison Project

(D.C. Cir. 1989). Mr. Graff maintains the ability to publish articles explaining the content of any responsive records received as part of this request. In the event that fees are ultimately assessed, do not incur expenses beyond \$25 without first contacting our office for authorization.

Relying upon the same reasons we provided above outlining a public interest in disclosure of responsive records, we are also requesting expedited processing. FOIA permits expedited processing when a “compelling need” exists. 5 U.S.C. § 552(a)(6)(E)(v). Specifically, “compelling need” means “with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.” *Id.* at § 552(a)(6)(E)(v)(II). It borders on axiomatic that the public has a compelling need to learn exactly what the alleged memoranda actually say, as well as whether Director Comey discussed the details with anyone at the DOJ or the FBI prior to his termination.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible. However, the Requesters do not agree to pay an additional fee to receive records on a CD, and in the instance that such a fee is required, the Requesters will accept a paper copy of responsive records.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me at (202) 907-7945 or via e-mail at Brad@MarkZaid.com.

Sincerely,

/s/

Bradley P. Moss

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT JMP/Graff-F



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Brad Moss, Esq.
The James Madison Project
Suite 200
1250 Connecticut Avenue, NW
Washington, DC 20036
FOIA@JamesMadisonProject.org

Re: Appeal No. DOJ-AP-2017-005006
Request No. 1374565
MWH:JNW

VIA: FOIAonline

Dear Mr. Moss:

You appealed on behalf of your clients, the James Madison Project and Garrett Graff, from the action of the Federal Bureau of Investigation on their Freedom of Information Act request for access to records memorializing conversations between former Director James Comey and President Trump.

After carefully considering your appeal, I am affirming the FBI's action on your clients' request. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly withheld this information because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(A) and it is reasonably foreseeable that disclosure of this information would harm the interests protected by this provision. This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your clients' underlying request, and the action of the FBI in response to your clients' request. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

If your clients are dissatisfied with my action on your appeal, the FOIA permits them to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-

- 2 -

exclusive alternative to litigation. Using OGIS services does not affect your clients' right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

7/12/2017

X

Matthew Hurd, Associate Chief, for
Sean O'Neill, Chief, Administrative Appeals ...
Signed by: MATTHEW HURD

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT JMP/Markay-A

-----START MESSAGE----- Subject: eFOIA Request Received Sent: 2017-05-17T16:37:53.386269+00:00 Status: pending Message:

Organization Representative Information

Organization Name

Prefix

First Name

Middle Name

Last Name

Suffix

Email

Phone

Location

Domestic Address

Address Line 1

Address Line 2

City

State

Postal

Agreement to Pay

How you will pay

I am requesting a fee waiver for my request and have reviewed the FOIA reference guide. If my fee waiver is denied, I am willing to pay additional fees and will enter that maximum amount in the box below.

Allow up to \$

25

Proof Of Affiliation for Fee Waiver

Waiver Explanation

see attached request

Documentation Files

Non-Individual FOIA Request

Request Information

See attached request

Expedite

Expedite Reason

see attached request

-----END MESSAGE-----

**The James Madison Project
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20010**

(202) 498-0011
(202) 330-5610 fax

E-Mail: FOIA@JamesMadisonProject.org
<http://www.JamesMadisonProject.org>

May 17, 2017

VIA ONLINE PORTAL

David M. Hardy
Chief, RIDS/RMD
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843

Re: FOIA Request

Dear Chief Hardy:

This is a request on behalf of The James Madison Project ("JMP") and Lachlan Markay ("Mr. Markay") (hereinafter referred to jointly as "the Requesters") under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*

On May 9, 2017, FBI Director James Comey ("Director Comey") was informed that, by order of President Donald J. Trump ("President Trump"), he had been terminated and removed from office, effective immediately. <http://edition.cnn.com/2017/05/09/politics/james-comey-fbi-trump-white-out/index.html> (last accessed May 9, 2017). Later media reports indicated that President Trump had discussed with Director Comey the possibility of a pending investigation into the President himself on at least three occasions. <https://apps.washingtonpost.com/g/documents/politics/fbi-director-james-b-comeys-termination-letters-from-the-white-house-attorney-general/2430/> (last accessed May 12, 2017); <http://www.nbcnews.com/news/us-news/trump-reveals-he-asked-comey-whether-he-was-under-investigation-n757821> (last accessed May 12, 2017).

On May 16, 2017, media reports revealed that Director Comey had drafted an internal memorandum for his own records after a February 14, 2017, meeting with President Trump. That memorandum allegedly memorialized a conversation in which President Trump asked Director Comey to "shut down" the pending FBI investigation into former National Security Advisor Michael Flynn. https://www.nytimes.com/2017/05/16/us/politics/james-comey-trump-flynn-russia-investigation.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=span-ab-top-region®ion=top-news&WT.nav=top-news&_r=0 (last accessed May 16, 2017); <https://www.washingtonpost.com/world/national-security/notes->

"Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

James Madison, 1822

The James Madison Project

made-by-former-fbi-director-comey-say-trump-pressured-him-to-end-flynn-probe/2017/05/16/52351a38-3a80-11e7-9e48-c4f199710b69_story.html?hpid=hp_rhp-banner-main_comey-615pm%3Ahomepage%2Fstory&utm_term=.46300b9cd04b (last accessed May 16, 2017).

The Requesters seek copies of records created, received and/or maintained by the Federal Bureau of Investigation ("FBI"), including cross-references. Specifically, the Requesters are seeking:

- 1) The memorandum drafted by Director Comey memorializing his conversation with President Trump on February 14, 2017;
- 2) Any records reflecting discussions – including written documentation memorializing verbal conversations – between Director Comey and FBI staff regarding the memorandum referenced in category #1; and
- 3) Any records reflecting discussions – including written documentation memorializing verbal conversations – between Director Comey and DOJ staff regarding the memorandum referenced in category #1.

The FBI should construe "DOJ staff" and "FBI staff" to encompass Government civilian employees, political appointees, Constitutional officers, and contract staff. The scope of the searches should include, but not be limited to, e-mail communications on unclassified and classified systems, as well as records stored on individual hard drives and/or shared drives.

The FBI can limit the timeframe of their searches from February 14, 2017, up until the date upon which the FBI begins conducting searches for responsive records. The scope of the searches should not be limited to FBI-originated records and should be construed to include records that are currently in the possession of a U.S. Government contractor for purposes of records management.

The Requesters are pre-emptively waiving any objection to the redaction of the names of any U.S. Government officials below a GS-14 position or whom otherwise were not acting in a supervisory position. The Requesters similarly waive any objection to redactions of the names of any U.S. Government contractors in a position of authority similar to that of a GS-13 series civilian employee or below.

In terms of all other third parties who work or worked for the U.S. Government and whose names appear in records responsive to this request, the Requesters submits that the privacy interests of those individuals have been diminished by virtue of their involvement in one or more of the U.S. Government functions described above as falling within the scope of this request. There is a recognized inverse relationship between the position of authority that a government employee holds and the strength of that employee's privacy interests. See *Stern v. FBI*, 737 F.2d 84, 92 (D.C. Cir. 1984); *Jefferson v. Dep't of Justice*, 2003 U.S. Dist. LEXIS 26782, *11

The James Madison Project

(D.D.C. Nov. 14, 2003); see also *Perlman v. Dep't of Justice*, 312 F.3d 100, 107-109 (2d. Cir. 2002)(setting forth five factors to consider in weighing government employee's privacy interests against public interest in disclosure, including employee's rank and whether information sheds light on a government activity).

The work performed by these third parties was part of their official responsibilities on behalf of the U.S. Government and was not of a personal nature. They served in a position of trust and authority to, among other things, memorialize and evaluate any potential legal concerns implicated by President Trump's alleged request that Director Comey terminate the investigation into Mr. Flynn. Given that responsive records memorializing the work they performed will shed light on government activity, it would be reasonable to conclude that the relevant third parties' respective (and diminished) privacy interests are outweighed by the public interest in disclosure of the information indexed to their name.

We are requesting a waiver of or, at a minimum, a reduction in fees. The Requesters qualify – in their own respective rights – for designation as representatives of the news media.

JMP is a non-partisan organization dedicating to promoting government accountability and the reduction of secrecy. <http://jamesmadisonproject.org/> (last accessed May 9, 2017). The organization is a frequent FOIA requester and litigator and Federal agencies routinely and regularly grant JMP fee waivers. Mr. Markay is the White House Reporter for The Daily Beast. <http://www.thedailybeast.com/author/lachlan-markay> (last accessed May 16, 2017).

The Requesters have the ability to disseminate information on a wide scale and intend to use information obtained through this FOIA request in an original work, particularly through news articles written by Mr. Markay. According to 5 U.S.C. § 552(a)(4)(A)(ii),

the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

The Requesters can demonstrate their intent and ability to publish or otherwise disseminate information to the public. See *Nat'l Security Archive v. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989). Mr. Markay maintains the ability to publish articles explaining the content of any responsive records received as part of this request. In the event that fees are ultimately assessed, do not incur expenses beyond \$25 without first contacting our office for authorization.

Relying upon the same reasons we provided above outlining a public interest in disclosure of responsive records, we are also requesting expedited processing. FOIA permits expedited processing when a "compelling need" exists. 5 U.S.C. § 552(a)(6)(E)(v). Specifically, "compelling need" means "with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal

The James Madison Project

Government activity.” *Id.* at § 552(a)(6)(E)(v)(II). Since the emergence of the reports about Director Comey’s memorandum, and particularly the allegation that President Trump tried to interfere in a pending FBI investigation, calls have started to emerge for Director Comey to testify before Congress in open session. <http://thehill.com/homenews/senate/333730-graham-asks-comey-to-testify-before-senate-panel> (last accessed May 16, 2017). It borders on axiomatic that the public has a compelling need to learn exactly what the alleged memorandum actually says, as well as whether Director Comey discussed the details with anyone at the DOJ or the FBI prior to his termination.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible. However, the Requesters do not agree to pay an additional fee to receive records on a CD, and in the instance that such a fee is required, the Requesters will accept a paper copy of responsive records.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me at (202) 907-7945 or via e-mail at Brad@MarkZaid.com.

Sincerely,

/s/

Bradley P. Moss

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT JMP/Markay-B

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

May 25, 2017

MR. BRADLEY PRESCOTT MOSS ESQUIRE
SUITE 200
THE JAMES MADISON PROJECT
1250 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20036

FOIPA Request No.: 1374542-000
Subject: All Memos Prepared by Former
Director James Comey Detailing
Conversations, meetings, or interactions with
President Donald J. Trump

Dear Requester:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the _____ Resident Agency / _____ Field Office and forwarded to FBI Headquarters for processing.
- You submitted your request via the FBI's eFOIA system.
 - We have reviewed your request and determined that it is compliant with the terms and conditions of the eFOIA system. You will continue to receive correspondence online.
 - We have reviewed your request and determined that it is not in compliance with the terms and conditions of the eFOIA system. Future correspondence will be mailed to you.
- The subject of your request is currently being processed for public release. Documents will be released to you upon completion.
- Release of responsive records will be made to the FBI's FOIA Library (The Vault), <http://vault.fbi.gov>, and you will be contacted when the release is posted.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date. If your fee waiver is denied, you will be charged fees in accordance with the category designated below.
- For the purpose of assessing fees, we have made the following determination:
 - As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).

As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).

As a general (all others) requester, you will be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

You have requested expedited processing according to:

28 C.F.R. §16.5 (e)(1)(i): "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."

28 C.F.R. §16.5 (e)(1)(ii): "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."

28 C.F.R. §16.5 (e)(1)(iii): "The loss of substantial due process of rights."

28 C.F.R. §16.5 (e)(1)(iv): "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

You have provided enough information concerning the statutory requirements permitting expedition; therefore, your request is approved.

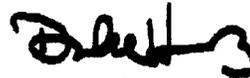
Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT JMP/Markay-C

U.S. Department of Justice



Federal Bureau of Investigation

Washington, D.C. 20535

June 16, 2017

MR. BRADLEY PRESCOTT MOSS, ESQUIRE
THE JAMES MADISON PROJECT
SUITE 200
THE JAMES MADISON PROJECT
1250 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20036

FOIPA Request No.: 1374542-000
Subject: All Memos Prepared by Former Director
James Comey Detailing Conversations, meetings, or
interactions with President Donald J. Trump

Dear Mr. Moss:

This responds to your Freedom of Information Act (FOIA) request.

The material you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

It is unnecessary to adjudicate your request for a fee waiver.

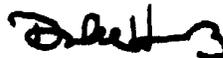
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

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Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosures



FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identity history summary check or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual’s records are not disseminated to an unauthorized person. The fingerprint submission must include the subject’s name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/identity-history-summary-checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI’s Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several “hits” and “idents” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking “reasonably described information.” For a FOIPA search, the subject’s name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a “main file search” and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT

www.fbi.gov

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT JMP/Markay-D

10/12/2017

FOIA - Freedom of Information Act

Appeal Details**Status : Closed Due Date : N/A****Request Type : FOIA****0**

Submitted Evaluation Assignment Processing

Appeal Details

Closed

005005

Tracking Number : DOJ-AP-
2017-Submitted Date : 06/28/2017
Last Assigned Date : 06/29/2017

Requester : Brad Moss

Appeal Track : Expedited

Organization : Mark S.
Zaid, P.C.

Due Date : N/A

Requester Has Account : Yes

Assigned To : Jillian
Warzynski

Created on behalf of : N/A

(Appeals)

Email Address :

Last Assigned By : Matthew
Hurd

brad@markzaid.com

(Appeals)

Phone Number : 202-907-
7945Fax Number : 202-558-
4432Address : 1250
ConnecticutAvenue, NW
Suite 200

City : Washington

State/Province : DC

Zip Code/Postal Code : 20036

Request DetailsTracking Number : 1374542-
000

Request Phase : Submitted

Requester : Bradley
Moss

Request Track : Simple

Final Disposition :

Date Submitted : 06/28/2017

Request Description :

see attached

10/12/2017

FOIA - Freedom of Information Act



Submission Details

Case File

Admin Cost

Assigned Tasks

Comments (2)

Review

Appeal Handling

Requester Info Available to the Public : No
 Appeal Track : Expedited
 Fee Category : N/A

Appeal Received : No
 Acknowledgement Sent Date:
 Litigation : No

Based on Fee Waiver :
 Based on Expedited Processing :
 Expedited Processing Requested : Yes
 Expedited Processing Status : Grant

Basis for Appeal

Short Description : N/A

We are appealing the appropriateness of the FBI's denial (attached) of the attached FOIA request in reliance upon FOIA Exemption 7(A).

Basis Available to the Public : No

Has Basis Been Modified? No 0/2000

Additional Information

Source Request Tracking Number : N/A

Expedited Type : N/A

Sub-Office : Federal Bureau of Investigation

Attached Supporting Files

Attachments Available to the Public : No

Attached File

Type

Size (MB)

Remove

10/12/2017

FOIA - Freedom of Information Act

Attached File	Type	Size (MB)	Remove
<i>FBI request.pdf</i>	PDF	0.06	
<i>FBI response 6.16.17.pdf</i>	PDF	1.08	



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

June 16, 2017

MR. BRADLEY PRESCOTT MOSS, ESQUIRE
THE JAMES MADISON PROJECT
SUITE 200
THE JAMES MADISON PROJECT
1250 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20036

FOIPA Request No.: 1374542-000
Subject: All Memos Prepared by Former Director
James Comey Detailing Conversations, meetings, or
interactions with President Donald J. Trump

Dear Mr. Moss:

This responds to your Freedom of Information Act (FOIA) request.

The material you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

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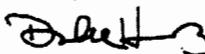
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Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosures



FBI FACT SHEET

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- **An identity history summary check or "rap sheet" is NOT the same as an "FBI file."** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual's records are not disseminated to an unauthorized person. The fingerprint submission must include the subject's name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/identity-history-summary-checks.
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FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT
www.fbi.gov

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

The James Madison Project
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20010

(202) 498-0011
(202) 330-5610 fax

E-Mail: FOIA@JamesMadisonProject.org
<http://www.JamesMadisonProject.org>

May 17, 2017

VIA ONLINE PORTAL

David M. Hardy
Chief, RIDS/RMD
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843

Re: FOIA Request

Dear Chief Hardy:

This is a request on behalf of The James Madison Project (“JMP”) and Lachlan Markay (“Mr. Markay”)(hereinafter referred to jointly as “the Requesters”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*

On May 9, 2017, FBI Director James Comey (“Director Comey”) was informed that, by order of President Donald J. Trump (“President Trump”), he had been terminated and removed from office, effective immediately. <http://edition.cnn.com/2017/05/09/politics/james-comey-fbi-trump-white-out/index.html> (last accessed May 9, 2017). Later media reports indicated that President Trump had discussed with Director Comey the possibility of a pending investigation into the President himself on at least three occasions. <https://apps.washingtonpost.com/g/documents/politics/fbi-director-james-b-comeys-termination-letters-from-the-white-house-attorney-general/2430/> (last accessed May 12, 2017); <http://www.nbcnews.com/news/us-news/trump-reveals-he-asked-comey-whether-he-was-under-investigation-n757821> (last accessed May 12, 2017).

On May 16, 2017, media reports revealed that Director Comey had drafted an internal memorandum for his own records after a February 14, 2017, meeting with President Trump. That memorandum allegedly memorialized a conversation in which President Trump asked Director Comey to “shut down” the pending FBI investigation into former National Security Advisor Michael Flynn. https://www.nytimes.com/2017/05/16/us/politics/james-comey-trump-flynn-russia-investigation.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=span-ab-top-region®ion=top-news&WT.nav=top-news&_r=0 (last accessed May 16, 2017); <https://www.washingtonpost.com/world/national-security/notes->

“Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

James Madison, 1822

made-by-former-fbi-director-comey-say-trump-pressured-him-to-end-flynn-probe/2017/05/16/52351a38-3a80-11e7-9e48-c4f199710b69_story.html?hpid=hp_rhp-banner-main_comey-615pm%3Ahomepage%2Fstory&utm_term=.46300b9cd04b (last accessed May 16, 2017).

The Requesters seek copies of records created, received and/or maintained by the Federal Bureau of Investigation (“FBI”), including cross-references. Specifically, the Requesters are seeking:

- 1) The memorandum drafted by Director Comey memorializing his conversation with President Trump on February 14, 2017;
- 2) Any records reflecting discussions – including written documentation memorializing verbal conversations – between Director Comey and FBI staff regarding the memorandum referenced in category #1; and
- 3) Any records reflecting discussions – including written documentation memorializing verbal conversations – between Director Comey and DOJ staff regarding the memorandum referenced in category #1.

The FBI should construe “DOJ staff” and “FBI staff” to encompass Government civilian employees, political appointees, Constitutional officers, and contract staff. The scope of the searches should include, but not be limited to, e-mail communications on unclassified and classified systems, as well as records stored on individual hard drives and/or shared drives.

The FBI can limit the timeframe of their searches from February 14, 2017, up until the date upon which the FBI begins conducting searches for responsive records. The scope of the searches should not be limited to FBI-originated records and should be construed to include records that are currently in the possession of a U.S. Government contractor for purposes of records management.

The Requesters are pre-emptively waiving any objection to the redaction of the names of any U.S. Government officials below a GS-14 position or whom otherwise were not acting in a supervisory position. The Requesters similarly waive any objection to redactions of the names of any U.S. Government contractors in a position of authority similar to that of a GS-13 series civilian employee or below.

In terms of all other third parties who work or worked for the U.S. Government and whose names appear in records responsive to this request, the Requesters submits that the privacy interests of those individuals have been diminished by virtue of their involvement in one or more of the U.S. Government functions described above as falling within the scope of this request. There is a recognized inverse relationship between the position of authority that a government employee holds and the strength of that employee’s privacy interests. *See Stern v. FBI*, 737 F.2d 84, 92 (D.C. Cir. 1984); *Jefferson v. Dep’t of Justice*, 2003 U.S. Dist. LEXIS 26782, *11

(D.D.C. Nov. 14, 2003); see also Perlman v. Dep't of Justice, 312 F.3d 100, 107-109 (2d. Cir. 2002)(setting forth five factors to consider in weighing government employee's privacy interests against public interest in disclosure, including employee's rank and whether information sheds light on a government activity).

The work performed by these third parties was part of their official responsibilities on behalf of the U.S. Government and was not of a personal nature. They served in a position of trust and authority to, among other things, memorialize and evaluate any potential legal concerns implicated by President Trump's alleged request that Director Comey terminate the investigation into Mr. Flynn. Given that responsive records memorializing the work they performed will shed light on government activity, it would be reasonable to conclude that the relevant third parties' respective (and diminished) privacy interests are outweighed by the public interest in disclosure of the information indexed to their name.

We are requesting a waiver of or, at a minimum, a reduction in fees. The Requesters qualify – in their own respective rights – for designation as representatives of the news media.

JMP is a non-partisan organization dedicating to promoting government accountability and the reduction of secrecy. <http://jamesmadisonproject.org/> (last accessed May 9, 2017). The organization is a frequent FOIA requester and litigator and Federal agencies routinely and regularly grant JMP fee waivers. Mr. Markay is the White House Reporter for The Daily Beast. <http://www.thedailybeast.com/author/lachlan-markay> (last accessed May 16, 2017).

The Requesters have the ability to disseminate information on a wide scale and intend to use information obtained through this FOIA request in an original work, particularly through news articles written by Mr. Markay. According to 5 U.S.C. § 552(a)(4)(A)(ii),

the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

The Requesters can demonstrate their intent and ability to publish or otherwise disseminate information to the public. See Nat'l Security Archive v. Dep't of Defense, 880 F.2d 1381, 1386 (D.C. Cir. 1989). Mr. Markay maintains the ability to publish articles explaining the content of any responsive records received as part of this request. In the event that fees are ultimately assessed, do not incur expenses beyond \$25 without first contacting our office for authorization.

Relying upon the same reasons we provided above outlining a public interest in disclosure of responsive records, we are also requesting expedited processing. FOIA permits expedited processing when a "compelling need" exists. 5 U.S.C. § 552(a)(6)(E)(v). Specifically, "compelling need" means "with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal

The James Madison Project

Government activity.” *Id.* at § 552(a)(6)(E)(v)(II). Since the emergence of the reports about Director Comey’s memorandum, and particularly the allegation that President Trump tried to interfere in a pending FBI investigation, calls have started to emerge for Director Comey to testify before Congress in open session. <http://thehill.com/homenews/senate/333730-graham-asks-comey-to-testify-before-senate-panel> (last accessed May 16, 2017). It borders on axiomatic that the public has a compelling need to learn exactly what the alleged memorandum actually says, as well as whether Director Comey discussed the details with anyone at the DOJ or the FBI prior to his termination.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible. However, the Requesters do not agree to pay an additional fee to receive records on a CD, and in the instance that such a fee is required, the Requesters will accept a paper copy of responsive records.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me at (202) 907-7945 or via e-mail at Brad@MarkZaid.com.

Sincerely,

/s/

Bradley P. Moss

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT JMP/Markay -E



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Brad Moss, Esq.
The James Madison Project
Suite 200
1250 Connecticut Avenue, NW
Washington, DC 20036
FOIA@JamesMadisonProject.org

Re: Appeal No. DOJ-AP-2017-005005
Request No. 1374542
MWH:JNW

VIA: FOIAonline

Dear Mr. Moss:

You appealed on behalf of your clients, the James Madison Project and Lachlan Markay, from the action of the Federal Bureau of Investigation on their Freedom of Information Act request for access to all memoranda prepared by Former Director James Comey detailing conversations, meetings, or interactions with President Trump.

After carefully considering your appeal, I am affirming the FBI's action on your clients' request. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly withheld this information because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(A) and it is reasonably foreseeable that disclosure of this information would harm the interests protected by this provision. This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your clients' underlying request, and the action of the FBI in response to your clients' request. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

If your clients are dissatisfied with my action on your appeal, the FOIA permits them to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-

- 2 -

exclusive alternative to litigation. Using OGIS services does not affect your clients' right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

7/12/2017

X 

Matthew Hurd, Associate Chief, for
Sean O'Neill, Chief, Administrative Appeals ...
Signed by: MATTHEW HURD

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Judicial Watch-A

-----START MESSAGE----- Subject: eFOIA Request Received Sent: 2017-05-16T21:56:58.157093+00:00 Status: pending Message:

Organization Representative Information

Organization Name

Prefix

First Name

Middle Name

Last Name

Suffix

Email

Phone

Location

Domestic Address

Address Line 1

Address Line 2

City

State

Postal

Agreement to Pay

How you will pay

I am requesting a fee waiver for my request and have reviewed the FOIA reference guide. If my fee waiver is denied, I would like to limit my request to the two free hours of searching and 100 duplicated pages.

Proof Of Affiliation for Fee Waiver

Waiver Explanation

Action, 799 F.3d at 1116 (quoting Carney v. U.S. Dep't of Justice, 19 F.3d 807, 815 (2d Cir. 1994)).

Documentation Files

Non-Individual FOIA Request

Request Information

The memorandum written by former Director James Comey memorializing his meeting and conversation with President Trump regarding the FBI's investigation of potential Russian interference in the 2016 United States presidential election. For purposes of clarification, this memorandum was reportedly written on or about February 13, 2017 and is the subject of a New York Times article dated May 16, 2017 and titled, "Comey Memo Says Trump Asked Him to End Flynn Investigation."

Expedite

Expedite Reason

The subject of this request is of intense public interest. The release of the requested record is likely to contribute to public understanding of what is arguably the most significant current domestic political issue.

----END MESSAGE----

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Judicial Watch-B



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

May 23, 2017

MR. SEAN A. DUNAGAN
JUDICIAL WATCH
SUITE 800
425 THIRD STREET SW
WASHINGTON, DC 20024

FOIPA Request No.: 1374122-000
Subject: A copy of former F.B.I Director
Comey's memorandum documenting his
February 14th meeting with President Trump
in the Oval Office of the White House

Dear Mr. Dunagan:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the _____ Resident Agency / _____ Field Office and forwarded to FBI Headquarters for processing.
- You submitted your request via the FBI's eFOIPA system.
 - We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIA request will be provided in an email link.
 - We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIPA request will be sent through standard mail.
- The subject of your request is currently being processed for public release. Documents will be released to you upon completion.
- Release of responsive records will be made to the FBI's FOIA Library (The Vault), <http://vault.fbi.gov>, and you will be contacted when the release is posted.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date. If your fee waiver is denied, you will be charged fees in accordance with the category designated below.
- For the purpose of assessing fees, we have made the following determination:
 - As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).
 - As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).



As a general (all others) requester, you will be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Judicial Watch-C



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

May 24, 2017

MR. SEAN A. DUNAGAN
JUDICIAL WATCH
SUITE 800
425 THIRD STREET, SOUTHWEST
WASHINGTON, DC 20024

FOIPA Request No.: 1374122-000
Subject: A copy of former F.B.I Director
Comey's memorandum documenting his
February 14th meeting with President Trump
in the Oval Office of the White House

Dear Mr. Dunagan:

This is in reference to your letter directed to the Federal Bureau of Investigation (FBI), in which you requested expedited processing for the above-referenced Freedom of Information Act (FOIA) request. Pursuant to the Department of Justice (DOJ) standards permitting expedition, expedited processing can only be granted when it is determined that a FOIPA request involves one or more of the below categories.

You have requested expedited processing according to:

- 28 C.F.R. §16.5 (e)(1)(i):** "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."
- 28 C.F.R. §16.5 (e)(1)(ii):** "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
- 28 C.F.R. §16.5 (e)(1)(iii):** "The loss of substantial due process of rights."
- 28 C.F.R. §16.5 (e)(1)(iv):** "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

You have provided enough information concerning the statutory requirements permitting expedition; therefore, your request is approved.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Judicial Watch-D



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

June 16, 2017

MR. SEAN A. DUNAGAN
JUDICIAL WATCH
SUITE 800
425 THIRD STREET, SW
WASHINGTON, DC 20024

FOIPA Request No.: 1374122-000
Subject: A copy of former F.B.I Director Comey's memorandum documenting his February meeting with President Trump in the Oval Office of the White House

Dear Mr. Dunagan:

This responds to your Freedom of Information Act (FOIA) request.

The material you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

It is unnecessary to adjudicate your request for a fee waiver.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S. C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)



FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identity history summary check or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual’s records are not disseminated to an unauthorized person. The fingerprint submission must include the subject’s name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/identity-history-summary-checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI’s Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several “hits” and “idents” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking “reasonably described information.” For a FOIPA search, the subject’s name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a “main file search” and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT
www.fbi.gov

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Freedom Watch-A



FREEDOM WATCH

www.FreedomWatchUSA.org

World Headquarters 2020 Pennsylvania Avenue, N.W., Suite 345, Washington, DC 20006-1811 (310) 595-0800 info@freedomwatchusa.com

! URGENT

May 18, 2017

VIA CERTIFIED MAIL, FACSIMILE. RETURN RECEIPT REQUESTED

U.S. Department of Justice

Amanda M. Jones
Acting Chief, FOIA/PA Unit
Criminal Division
Department of Justice
Suite 1127, Keeney Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
Phone: (202) 616-0307
Fax: (202) 514-6117
Email: crm.foia@usdoj.gov

Federal Bureau of Investigation

David M. Hardy, Chief
Attn: FOI/PA Request
Record/Information Dissemination Section
Records Management Division
170 Marcel Drive
Winchester, VA 22602-4843
Phone: (540) 868-4500
Fax: (540) 868-4391/4997
Email: foiarequest@ic.fbi.gov

Re: FREEDOM OF INFORMATION ACT REQUEST.

Dear Ladies and Gentlemen:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552), and its regulations, Freedom Watch, Inc. requests that that the U.S. Department of Justice, Criminal Division ("DOJ") and the Federal Bureau of Investigation ("FBI") produce the below requested documents.

DEFINITION

For the purposes of this Freedom of Information Act request, the term "document" is hereby defined expansively to include any or all of the following, whether existing as electronic, digital, or computer data, in electronic or digital form, or in paper form: correspondence, letters,

Rec. 5/22/17 VLH



FREEDOM WATCH

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memoranda, recommendations, statements, audits, list of names, applications, diskettes, expense logs and receipts, calendar or diary logs, folders, files, books, manuals, pamphlets, drawings, charts, photographs, records, orders, plans, proposals, meeting agendas, minutes of meetings, briefing materials, notes of phone messages or visits, routing slips, buck slips, standard government forms containing information filled in on lines or blank spaces, slide presentations, "card decks" (for presentations at meetings), power-point presentations, facsimiles (faxes), notes, handwritten notes, notes to the file, requests for decision, requests for authorization, tape recordings, video recordings, electronic mail (email) messages, summaries, briefs, orders, written decisions, applications, telephone records, tape recordings, and other documents and things.

Freedom Watch hereby requests that the DOJ as a whole, and the FBI produce all documents which refer or relate in any way to the specific request stated below:

Freedom Watch requests any and all information pertaining to the following:

- 1. Any and all documents and records as defined above, which constitute, refer or relate in any way to any memoranda prepared, written and/or issued by former FBI Director James Comey concerning Barack Obama, Hillary Clinton, Bill Clinton, Lieutenant General Michael Flynn, and President Donald Trump.**

LEGAL REQUIREMENTS

Both the Obama Administration and Trump Administration have announced its policy of compliance with Freedom of Information Act requests and directed Federal agencies to comply with the following policy: "President Obama and Attorney General Holder have directed agencies to apply a presumption of openness in responding to FOIA requests. The Attorney General specifically called on agencies not to withhold information just because it technically falls within an exception and he also encouraged agencies to make discretionary releases of records. The Attorney General emphasized that the President has called on agencies to work in a spirit of cooperation with FOIA requesters. The Office of Information Policy at the Department of Justice oversees agency compliance with these directives and encourages all agencies to **fully comply with both the letter and the spirit of the FOIA. President Obama has pledged to make this the most transparent Administration in history.**" (emphasis added)
<https://www.justice.gov/usao/resources/making-foia-request/foia-frequently-asked-questions>.

Similarly, President Clinton instructed agencies in October 1993 to ensure compliance with both the spirit and the letter of the Act. *See* President Clinton's FOIA Memorandum, U.S. Department of Justice, FOIA Update, Summer/Fall 1993, at 3.

In addition, Attorney General Reno issued a FOIA Memorandum in October 1993 which *inter alia* states, "I strongly encourage your FOIA officers to make 'discretionary disclosures' whenever possible under the Act," and orders "as presumption of disclosure." *See* Attorney



FREEDOM WATCH

www.FreedomWatchUSA.org

World Headquarters 2020 Pennsylvania Avenue, N.W., Suite 345, Washington, DC 20006-1811 > (310) 595-0800 > leklayman@gmail.com

General Reno's FOIA Memorandum, U.S. Department of Justice, FOIA Update, Spring 1994, at 1-2.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert denied*, 415 U.S. 977 (1974). Additionally, pursuant to law, any reasonably segregable portion of a responsive record must be provided after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

If any documents are withheld subject to any claim of privilege, Freedom Watch requests complete information about each document withheld, including which paragraph of the request to which the document is responsive; the author and title of the document; an explanation of the applicability of the claimed exemption to the contents of the document; and the name and title of each person responsible for the denial.

Freedom Watch requests a waiver of all fees for this request under 5 U.S.C. § 552(a)(4)(A)(iii); *see also*, *Larson v. Central Intelligence Agency*, 843 F.2d 1482, 1483 (D.C. Cir. 1988); *National Sec. Archive v. U.S. Dept. of Defense*, 880 F.2d 1381, 1385-87 (D.C. Cir. 1989); *see also*, *Judicial Watch, Inc. v. United States Dep't. of Commerce*, No. 95-0133 (D.D.C. May 16, 1995) (order granting Judicial Watch, Inc.'s request for fee waiver with regard to all responsive documents in proceeding).

Freedom Watch is a non-profit, non-partisan, tax-exempt 501(c)(3) organization that as a public interest law firm specializes in deterring, monitoring, uncovering, and addressing public corruption in government. Freedom Watch has and will hold Republicans, Democrats, and Independents equally accountable to ethical and legal standards for honest and open government. The disclosure of this information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of Freedom Watch.

The requester has no commercial purpose as a 501(c)(3) non-profit organization organized exclusively to improve the ethical and legal standards in government, accountability of government officials to the rule of law, and public understanding of government operations.

Freedom Watch will also use the requested material to promote accountable government as a representative of the news media and the public in accordance with 5 U.S.C. § 552(a)(4)(A)(ii)(II) and *National Sec. Archive v. U.S. Dept. of Defense*, 880 F.2d 1381, 1385-87 (D.C. Cir. 1989), by disseminating relevant information which may be uncovered. Information will benefit the public by identifying areas for future reform as well as deterring future abuses that could otherwise proliferate without scrutiny. Freedom watch disseminates into the public through its website www.freedomwatchusa.org, the U.S. mails and on the Internet.



FREEDOM WATCH

www.FreedomWatchUSA.org

World Headquarters 2020 Pennsylvania Avenue, N.W., Suite 345, Washington, DC 20006-1811 (310) 595-0800 leklayman@gmail.com

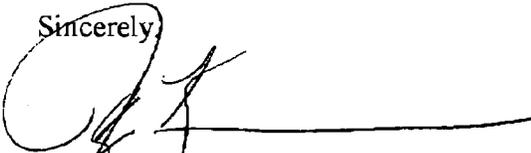
The subject of this request is information concerning the operations and activities of the government. Past experience of Freedom Watch demonstrates its success in uncovering important facts about government activities, integrity and operations, of broad concern to the public. Thus, Freedom Watch's request is likely to "contribute significantly" to the public's understanding of the operations of their government, satisfying the requirements of FOIA fee waiver provisions. Freedom Watch's capabilities and effectiveness are a matter of public record.

Immediate release of the requested information is in the public interest, including for promoting confidence in an honest democratic system, and furthering the integrity of the American national government by deterring and/or sanctioning corrupt activities. The failure to do so will likely result in the further compromise of important interests of the American people.

Freedom Watch hereby requests expedited processing of this request pursuant to 5 U.S.C. §552 (a)(6)(E)(ii)(I), as there is a compelling need for the information and time is truly of the essence in this matter.

I look forward to receiving the requested documents and a full fee waiver within twenty (20) business days.

Sincerely,



Larry Klayman
Chairman & General Counsel
2020 Pennsylvania Ave. Ste. 345
Washington, DC 20006

leklayman@gmail.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Freedom Watch-B



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

May 25, 2017

MR. LARRY KLAYMAN
FREEDOM WATCH
SUITE 345
2020 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20006

FOIPA Request No.: 1374527-000

Dear Mr. Klayman:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI which has been received for processing. For administrative tracking purposes, additional FOIPA numbers may be assigned if it is determined your request seeks records about multiple subjects. You will be notified of any additional tracking numbers if assigned.

- Your request for a fee waiver is being considered and you will be advised of the decision at a later date. If your fee waiver is denied, you will be charged fees in accordance with the category designated below.
- For the purpose of assessing fees, we have made the following determination:
 - As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).
 - As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).
 - As a general (all others) requester, you will be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

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UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Freedom Watch-C



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

May 25, 2017

MR. LARRY KLAYMAN
FREEDOM WATCH
SUITE 345
2020 PENNSYLVANIA AVENUE, NORTHWEST
WASHINGTON, DC 20006

FOIPA Request No.: 1374527-000

Dear Mr. Klayman:

This is in reference to your letter directed to the Federal Bureau of Investigation (FBI), in which you requested expedited processing for the above-referenced Freedom of Information Act (FOIA) request. Pursuant to the Department of Justice (DOJ) standards permitting expedition, expedited processing can only be granted when it is determined that a FOIPA request involves one or more of the below categories.

You have requested expedited processing according to:

- 28 C.F.R. §16.5 (e)(1)(i):** "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."
- 28 C.F.R. §16.5 (e)(1)(ii):** "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
- 28 C.F.R. §16.5 (e)(1)(iii):** "The loss of substantial due process of rights."
- 28 C.F.R. §16.5 (e)(1)(iv):** "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

You have provided enough information concerning the statutory requirements permitting expedition; therefore, your request is approved.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

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NETWORK, LLC, d/b/a USA TODAY, *et al.*,

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DEPARTMENT OF JUSTICE,

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JUDICIAL WATCH, INC.,

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UNITED STATES DEPARTMENT OF
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Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Freedom Watch-D



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

June 16, 2017

MR. LARRY KLAYMAN
FREEDOM WATCH
SUITE 345
2020 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20006

FOIPA Request No.: 1374527-000
Subject: Records and Documents on Former FBI
Director James Comey's Memos
(Regarding President Donald Trump)

Dear Mr. Klayman:

This responds to the part of your Freedom of Information Act (FOIA) request letter dated May 18, 2017, seeking records prepared by former FBI Director Comey regarding President Donald Trump.

The material you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A).
5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

It is unnecessary to adjudicate your request for a fee waiver. The other parts of your request dated May 18, 2017, will be addressed in separate correspondence.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

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Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)



FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identity history summary check or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual’s records are not disseminated to an unauthorized person. The fingerprint submission must include the subject’s name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/identity-history-summary-checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI’s Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several “hits” and “idents” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking “reasonably described information.” For a FOIPA search, the subject’s name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a “main file search” and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT
www.fbi.gov

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Daily Caller-A

----START MESSAGE---- Subject: eFOIA Request Received Sent: 2017-06-01T20:40:54.304560+00:00 Status: pending Message:

Organization Representative Information

Organization Name

Prefix

First Name

Middle Name

Last Name

Suffix

Email

Phone

Location

Domestic Address

Address Line 1

Address Line 2

City

State

Postal

Agreement to Pay

How you will pay

I am requesting a fee waiver for my request and have reviewed the FOIA reference guide. If my fee waiver is denied, I would like to limit my request to the two free hours of searching and 100 duplicated pages.

Proof Of Affiliation for Fee Waiver

Waiver Explanation

The requester is a nonprofit and accredited news organization based in Washington, D.C. We are invoking the FOIA fee waiver for members of the news media.

Documentation Files

Non-Individual FOIA Request

Request Information

We seek this memo and all other contemporaneous memos authored by Director Comey since the November Presidential election.

The DCFN is an accredited news organization based in Washington, D.C. and is the nonprofit reporting arm associated with the Daily Caller.

As a media organization, we seek a waiver of all fees.

The body of memos produced by Director Comey should not be voluminous and the location has already been identified by FBI as they are reviewing and preparing documents in advance of the Director's expected testimony on June 8 before the Senate Intelligence Committee.

Given the high public interest surrounding this memo and other contemporaneous memos, we seek an expedited review and release of these documents.

Please deliver these documents via electronic means.

I am available to discuss this FOIA request via phone or email.

Yours,

Richard Pollock

Expedite

Expedite Reason

This is a high profile issue involving the FBI's investigations of Gen. Michael Flynn, leaks of classified materials, unmasking of U.S. Persons, charges of possible collusion between Russia and the Trump campaign as well as allegations that President Trump tried to kill an investigation of Gen. Flynn. The memos authored by former Director Comey are of great public interest as Congressional and executive branch investigations are underway that touch on his contemporaneous memos.

----END MESSAGE----

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Daily Caller-B



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

June 8, 2017

MR. RICHARD POLLOCK
DAILY CALLER NEWS FOUNDATION
SUITE 900
1050 17TH STREET, NORTHWEST
WASHINGTON, DC 20036

FOIPA Request No.: 1376135-000
Subject: Memos by Former FBI Director
James Comey
(Regarding Conversations with President
Donald Trump)

Dear Mr. Pollock:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the _____ Resident Agency / _____ Field Office and forwarded to FBI Headquarters for processing.
- You submitted your request via the FBI's eFOIPA system.
 - We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIA request will be provided in an email link.
 - We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIPA request will be sent through standard mail.
- The subject of your request is currently being processed for public release. Documents will be released to you upon completion.
- Release of responsive records will be made to the FBI's FOIA Library (The Vault), <http://vault.fbi.gov>, and you will be contacted when the release is posted.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date. If your fee waiver is denied, you will be charged fees in accordance with the category designated below.
- For the purpose of assessing fees, we have made the following determination:
 - As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).
 - As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).
 - As a general (all others) requester, you will be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Daily Caller-C



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

June 8, 2017

MR. RICHARD POLLOCK
DAILY CALLER NEWS FOUNDATION
SUITE 900
1050 17TH STREET, NORTHWEST
WASHINGTON, DC 20036

FOIPA Request No.: 1376135-000
Subject: Memos by Former FBI Director James
Comey
(Regarding Conversations with President Donald
Trump)

Dear Mr. Pollock:

This is in reference to your letter to the FBI, in which you requested expedited processing for the above-referenced Freedom of Information Act (FOIA) request. Under Department of Justice (DOJ) standards for expedited processing, it can only be granted in the following situations:

28 C.F.R. §16.5 (e)(1)(i): "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."

28 C.F.R. §16.5 (e)(1)(ii): "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."

28 C.F.R. §16.5 (e)(1)(iii): "The loss of substantial due process of rights."

28 C.F.R. §16.5 (e)(1)(iv): "A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affects public confidence."

You have not provided enough information concerning the statutory requirements permitting expedition; therefore, your request is denied.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

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JUDICIAL WATCH, INC.,

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UNITED STATES DEPARTMENT OF
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Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Daily Caller-D



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

June 16, 2017

MR. RICHARD POLLOCK
DAILY CALLER NEWS FOUNDATION
SUITE 900
1050 17TH STREET NW
WASHINGTON, DC 20036

FOIPA Request No.: 1376135-000
Subject: Memos by Former FBI Director
James Comey (Regarding Conversations
with President Donald Trump)

Dear Mr. Pollock:

This responds to your Freedom of Information Act (FOIA) request.

The material you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

It is unnecessary to adjudicate your request for a fee waiver.

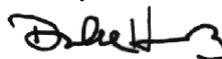
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)



FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identity history summary check or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual’s records are not disseminated to an unauthorized person. The fingerprint submission must include the subject’s name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/identity-history-summary-checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI’s Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several “hits” and “idents” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking “reasonably described information.” For a FOIPA search, the subject’s name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a “main file search” and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT
www.fbi.gov

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Daily Caller-E

June 20, 2017

The Daily Caller News Foundation
1050 17th Street, NW - Suite 900
Washington, DC 20036

JAW
Joia
FBI

Director
Office of Information Policy
U.S. Department of Justice
Suite 11050
1425 New York Ave, NW
Washington, DC 20530-0001

RECEIVED

AUG 02 2017

Office of Information Policy

FOIA #1376135-000

Re: Memos by Former FBI Director
James Comey regarding memos on
Conversations with President Donald
Trump

Dear sir/madam:

This is an appeal of a 16 June denial of a Freedom of Information Act request for all unclassified memos authored by former FBI Director James Comey concerning contemporaneous notes of his discussions with President Donald Trump.

We note that you have denied this request because the responsive documents may be used for a pending or prospective law enforcement action.

We respectfully disagree due to the fact Director Comey unilaterally released a portion of his memos to a colleague and leaked it to the New York Times.

The Director clearly released a specific document after leaving the employ of the FBI, thereby violating the Act by unilaterally releasing government property for his own personal gain.

The public cannot and should not be given selective portions of a memo Mr. Comey produced while a government employee. For justice to be served, the public deserves to see the full breadth of memos he authored.

The use of these memos is not compromised for use in any investigation or prosecution. It can be utilized if they are not adulterated and there are redactions that may violate personal privacy.

Given the historic nature of these documents and their importance to the lawful functioning of government, we hereby appeal the denial of these documents.

Release of the Comey memos are in the public interest as citizens of the Republic wish to have clarity about the numerous charges surrounding the President, his aides as well as his detractors.

We also request expedited processing of this request due to the intense public interest in this matter.

We are appealing this as an accredited media organization. The Daily Caller News Foundation is a nonprofit organization involved in daily reporting of events in the United States and abroad.

We also seek a waiver of fees related to research and copying.

Feel free to communicate with me via regular mail at the above address, by email at rpollockdc@gmail.com or by phone at 703-593-7287.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Pollock", with a long horizontal line extending to the right.

Richard Pollock
Senior Investigative Reporter
Daily Caller News Foundation

Red-LOCK
DIME
1070 17th St, NW #400
Wash, DC 20036

REJECTED 7

Director
Office of Information Policy
U.S. Dept. of Justice
Suite 1105D
125 New York Ave, NW
Washington, DC 20530-0001

CAPITAL DISTRICT 200/208
21 JUN 2017 PM 3 L

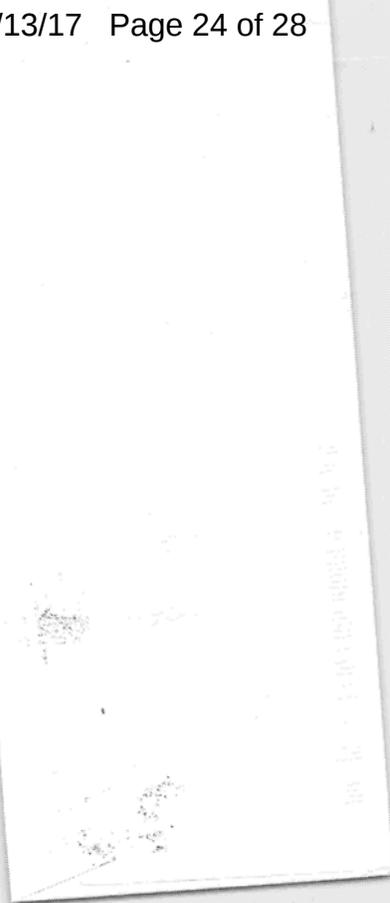
X-RATED
POSTERS
FOR EVERLASTING
JUN 28 2017
DOI MAIL ROOM



20530-0001



REJECTED 12



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

GANNETT SATELLITE INFORMATION
NETWORK, LLC, d/b/a USA TODAY, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01175-JEB

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01189-JEB

FREEDOM WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

Civil Action No. 1:17-cv-01212-JEB

THE DAILY CALLER NEWS
FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 1:17-cv-01830-JEB

DECLARATION OF DAVID M. HARDY

EXHIBIT Daily Caller-F



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Mr. Richard Pollock
The Daily Caller News Foundation
Suite 900
1050 17th Street, NW
Washington, DC 20036
rpollockdc@gmail.com

Re: Appeal No. DOJ-AP-2017-005814
Request No. 1376135
MWH:JNW

VIA: Email

Dear Mr. Pollock:

You appealed from the action of the Federal Bureau of Investigation on your Freedom of Information Act request for access to Director Comey's memos concerning communications with President Trump.

After carefully considering your appeal, I am affirming the FBI's action on your request. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly withheld this information because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(A) and it is reasonably foreseeable that disclosure of this information would harm the interests protected by this provision. This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the FBI in response to your request. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-

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exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

9/21/2017

X



Matthew Hurd, Associate Chief, for
Sean O'Neill, Chief, Administrative Appeals Staff
Signed by: MATTHEW HURD

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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Civil Action No. 1:17-cv-01830-JEB

**DEFENDANTS' STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE DISPUTE**

Pursuant to LCvR 7(h), Defendants, the United States Department of Justice and the Federal Bureau of Investigation ("FBI"), submit this Statement of Material Facts as to Which There is No Genuine Dispute in connection with their partial motion for summary judgment.

The Russian Interference Investigation

1. The law enforcement duties of the FBI include undertaking counterintelligence and national security investigations, and detecting and investigating possible violations of Federal criminal laws. *See* 28 U.S.C. § 533; Declaration of David M. Hardy, Section Chief, Record/Information Dissemination Section, Records Management Division, FBI ("Hardy Decl.") ¶ 65 (submitted herewith).

2. On March 20, 2017, then-FBI Director James B. Comey confirmed in public testimony before Congress "that the FBI, as part of our counterintelligence mission, is investigating the Russian government's efforts to interfere in the 2016 presidential election, and that includes investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the

campaign and Russia's efforts." Statement Before the House Permanent Select Committee on Intelligence, available at <https://www.fbi.gov/news/testimony/hpsci-hearing-titled-russian-active-measures-investigation> (last visited Oct. 12, 2017). He added that "[a]s with any counterintelligence investigation, this will also include an assessment of whether any crimes were committed." *Id.*

3. Director Comey was terminated as FBI Director on May 9, 2017. Hardy Decl. ¶ 108.

4. On May 17, 2017, Deputy Attorney General Rod Rosenstein named former FBI Director Robert S. Mueller III as Special Counsel to oversee the Russia investigation. DOJ Order No. 3915-2017, Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters (May 17, 2017). Under the terms of his appointment, Special Counsel Mueller is authorized to "conduct the investigation confirmed by then-FBI Director James B. Comey in testimony before the House Permanent Select Committee on Intelligence on March 20, 2017, including (i) any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and (ii) any matters that arose or may arise directly from the investigation; and (iii) any other matters within the scope of 28 C.F.R. § 600.4(a)." *Id.* In addition, "[i]f the Special Counsel believes it necessary and appropriate, the Special Counsel is authorized to prosecute federal crimes arising from the investigation of these matters." *Id.* This investigation is ongoing. Hardy Decl. ¶ 66.

5. No further information about the subjects, scope, or focus of the investigation has been officially acknowledged by the FBI, the Special Counsel, or any representative of the

Department of Justice. Hardy Decl. ¶ 66. Neither the FBI, DOJ, nor Special Counsel has publicly confirmed or denied the use of any particular techniques or procedures in the ongoing investigation. *Id.* ¶ 105.

The Comey Memos

6. On June 8, 2017, former Director Comey, then a private citizen, testified under oath in open session before the Senate Select Committee on Intelligence (“SSCI”). *See, e.g.*, Compl. (No. 17-1167), ¶ 22 (Dkt. No. 1). In his Statement for the Record, released to the public on June 7, 2017, former Director Comey outlined how he had drafted contemporaneous memoranda after various meetings and conversations with President Trump in which he discussed matters pertaining to the Russia investigation, among other things.

<https://www.intelligence.senate.gov/sites/default/files/documents/os-jcomey-060817.pdf> (“June 7 Statement”).

7. In his live testimony on June 8, 2017, former Director Comey again discussed his communications with President Trump regarding, among other things, the Russia investigation, referencing again his contemporaneous memos.¹ *See, e.g.*, Compl. (No. 17-1167), ¶ 22 (Dkt. No. 1); Am. Compl. (No. 17-1175), ¶¶ 14-15 (Dkt. No. 9). With respect to his conversations with President Trump, former Director Comey stated that he had “not included every detail” in his testimony. June 7 Statement, at 1.

¹ The video of former Director Comey’s testimony may be found at <https://www.intelligence.senate.gov/hearings/open-hearing-former-director-james-comey-fbi> (last visited Oct. 12, 2017). A transcript is published at <http://www.politico.com/story/2017/06/08/full-text-james-comey-trump-russia-testimony-239295> (last visited Oct. 12, 2017) (“Transcript”).

8. There has been no official confirmation as to the accuracy or completeness of Mr. Comey's descriptions of his memos or the conversations memorialized therein. Hardy Decl. ¶¶ 67, 70-72. The Comey Memos themselves have never entered the public domain, and their exact contents, or even the level of detail contained in the memoranda, is not publicly known. *Id.*

Cable News Network's ("CNN's") Request (Case No. 17-1167)

9. On May 16, 2017, CNN producer Greg Wallace submitted a FOIA request on behalf of CNN to the FBI for "copies of all records of notes taken by or communications sent from FBI Director James Comey regarding or documenting interactions (including interviews and other conversations) with President Donald Trump." Compl. (No. 17-1167), ¶¶ 12, 13 & Exh. A (Dkt. No. 1).

10. The FBI responded to CNN's request by letter dated June 16, 2017, stating that the material requested was being withheld pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Hardy Decl. ¶ 13 & Ex. CNN-F. The FBI further stated that "[t]he records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings." *Id.*, Ex. CNN-F.

Gannett Satellite Info. Network, LLC, et al.'s Request (Case No. 17-1175)

11. By letter dated May 12, 2017, USA TODAY (the business name of Gannett Satellite Information Network), along with USA TODAY reporter Brad Heath, submitted a FOIA request to the FBI requesting, *inter alia*, copies of "any reports, letters, memoranda,

electronic mail messages, FD-302s or other records memorializing conversations between former Director Comey and President Trump.” Am. Compl. (No. 17-1175) ¶¶ 17-18 (Dkt. No. 9).

12. By letter dated May 17, 2017, the James Madison Project (“JMP”) and Garrett Graff submitted a FOIA request to the FBI, requesting, *inter alia*, “[a]ny memoranda, notes, summaries and/or recordings . . . memorializing conversations Director Comey had with President Trump.” Am. Compl. ¶¶ 27, 35-36.

13. Also on May 17, 2017, JMP and Lance Markay submitted a FOIA request to the FBI seeking, *inter alia*, “[t]he memorandum drafted by Director Comey memorializing his conversation with President Trump on February 14, 2017.” Am Compl. ¶¶ 44, 50-51.

14. The FBI responded to all three of the above requests by letters dated June 16, 2017. Hardy Decl. ¶¶ 19, 25, 33 & Exs. USA Today-D, JMP/Graff-D, JMP/Markay-C. In all three letters, the FBI stated that the material requested was being withheld pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Hardy Decl., Exs. USA Today-D, JMP/Graff-D, JMP/Markay-C. The FBI further stated that “[t]he records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” *Id.*

15. JMP, Graff, and Markay filed administrative appeals challenging the FBI’s withholding, which were denied on July 12, 2017. Am. Compl. ¶¶ 38-39, 53-54.

16. The FOIA requests submitted by USA TODAY, JMP, Graff, and Markay also requested additional related records. Am. Compl. ¶¶ 27, 35-36, 44, 50-51; Hardy Decl. ¶¶ 14, 21, 30. The government is still conducting searches for documents responsive to the remaining

portions of these requests, as well as the follow-up responsiveness review of documents identified as potentially responsive. Joint Status Report, at 2 (Dkt. No. 17).

Judicial Watch’s Request (Case No. 17-1189)

17. On May 16, 2017, Judicial Watch electronically submitted a FOIA request to the FBI, seeking “[t]he memorandum written by former Director James Comey memorializing his meeting and conversation with President Trump regarding the FBI’s investigation of potential Russian interference in the 2016 United States presidential election. For purposes of clarification, this memorandum was reportedly written on or about February 13, 2017 and is the subject of a New York Times article (enclosed) dated May 16, 2017.” Compl. (No. 17-1189) ¶ 5 (Dkt. No. 1).

18. The FBI responded to Judicial Watch’s request by letter dated June 16, 2017, stating that the material requested was being withheld pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Hardy Decl. ¶ 41 & Ex. Judicial Watch-D. The FBI further stated that “[t]he records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” *Id.*, Ex. Judicial Watch-D.

Freedom Watch’s Request (Case No. 17-1212)

19. On May 18, 2017, Freedom Watch submitted a FOIA request to the FBI seeking access to “[a]ny and all documents and records as defined above, which constitute, refer, or relate in any way to any memoranda prepared, written and/or issues by former FBI Director

James Comey concerning Barack Obama, Hillary Clinton, Bill Clinton, Lieutenant General Michael Flynn, and President Donald Trump.” Compl. (No. 17-1212) ¶ 6 (Dkt. No. 1).

20. With regard to the part of Freedom Watch’s request for documents constituting “any memoranda prepared, written and/or issued by former FBI Director James Comey concerning President Donald Trump,” the FBI responded by letter dated June 16, 2017, stating that the material requested was being withheld pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Hardy Decl. ¶ 48 & Ex. Freedom Watch-D. The FBI further stated that “[t]he records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” *Id.*, Ex. Freedom Watch-D.

21. The FBI is still conducting searches for documents responsive to the remaining portions of Freedom Watch’s request, that is, for “[a]ny and all documents and records . . . , which constitute, refer, or relate in any way to any memoranda prepared, written and/or issues by former FBI Director James Comey concerning Barack Obama, Hillary Clinton, Bill Clinton, Lieutenant General Michael Flynn, and President Donald Trump,” excluding the Comey Memos, as well as the follow-up responsiveness review of documents identified as potentially responsive. Joint Status Report, at 2 (Dkt. No. 17).

The Daily Caller’s Request (Case No. 17-1830)

22. On June 1, 2017, The Daily Caller News Foundation submitted a FOIA request to the FBI, seeking “all unclassified memoranda authored by former FBI Director James Comey that contemporaneously memorialized his discussions with President Donald Trump and his aides.” Compl. (Case No. 17-1830) ¶ 5 (Dkt. No. 1).

23. The FBI responded by letter dated June 16, 2017, stating that the material requested was being withheld pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Hardy Decl. ¶ 55 & Ex. Daily Caller-D. The FBI further stated that “[t]he records responsive to your request are law enforcement records. There is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” *Id.*, Ex. Daily Caller-D.

The FBI’s Search for Responsive Records

24. Section Chief Hardy describes the FBI’s search for records responsive to plaintiffs’ requests in his declaration. First, personnel in the FBI’s Records Management Division (“RMD”) responsible for compiling and preserving FBI records, including the records of former Director Comey after his removal, were consulted about the existence and location of any responsive records. Hardy Decl. ¶ 62. They consulted their collection of former Director Comey’s records and identified what they believed to be the set of records constituting the Comey Memos. *Id.* They then provided counsel from the FBI’s Office of General Counsel (“OGC”) and Record/Information Dissemination Section personnel access to the collection of former Director Comey’s materials and the set of records therein that they had identified as the Comey Memos. *Id.* Counsel in OGC’s National Security and Cyber Law Branch who were already familiar with the relevant records confirmed that the records identified by RMD as the Comey Memos were, in fact, the full set of memos. *Id.*

Facts Relevant to the Claimed Exemptions

25. The Comey Memos contain information compiled for the Russia investigation. Hardy Decl. ¶ 67. The FBI's declarants state that disclosure of the Comey Memos and the information contained therein could reasonably be expected to adversely affect the ongoing investigation, as well as any law enforcement proceedings that may ultimately result from this investigation, by revealing the scope and focus of the investigation, and whether particular persons, activities, information, or evidence is or is not of interest in the investigation. Hardy Decl. ¶¶ 67, 70-72; *In Camera, Ex Parte* Declaration.

26. The FBI considered the disclosures made by Mr. Comey in making the determination that the release of the Comey Memos could serve to compromise the pending investigation, and nonetheless concluded that the release of the Comey Memos would cause harm to the investigative efforts. Hardy Decl. ¶ 71.

27. The Comey Memos contain information classified at the "Secret" or "Confidential" level that pertains to "intelligence activities (including covert action), intelligence sources or methods, or cryptology," and to "foreign relations or foreign activities of the United States, including confidential sources." Hardy Decl. ¶¶ 75, 81-82.

28. Confidentiality must be maintained with respect to the use or non-use of intelligence activities, sources, or methods, if the viability, productivity, and usefulness of the activity, source, and method are to be preserved. Hardy Decl. ¶ 85. Accordingly, intelligence activities, sources, and methods must be protected from disclosure in every situation in which a certain intelligence capability, technique, or interest – or its specific use – is unknown to the groups against which it is deployed, since those groups could take countermeasures to nullify its

effectiveness. *Id.* ¶ 86. Intelligence activities, sources, and methods are valuable only so long as they remain unknown and unsuspected. *Id.* Once an intelligence activity, source, or method – or the fact of its use or non-use in a certain situation – is discovered, its continued successful use is seriously jeopardized. *Id.*

29. One vehicle for gathering information about the U.S. Government’s capabilities is by reviewing officially-released information. Hardy Decl. ¶ 87. Terrorist organizations and other hostile or Foreign Intelligence groups have the capacity and ability to gather information from myriad sources, analyze it, and deduce means and methods from disparate details to defeat the U.S. Government’s collection efforts. *Id.* Thus, even seemingly innocuous, indirect references to an intelligence activity, source, or method could have significant adverse effects when juxtaposed with other publicly-available data. *Id.*

30. The unauthorized disclosure of information concerning foreign relations or foreign activities of the United States can reasonably be expected to lead to diplomatic or economic retaliation against the United States; the loss of the cooperation and assistance of friendly nations; or the compromise of cooperative foreign sources, which may jeopardize their safety and curtail the flow of information from these sources. Hardy Decl. ¶ 90.

31. Disclosure of information concerning intelligence sources and methods is prohibited pursuant to the National Security Act of 1947, as amended, which provides that the Director of National Intelligence (DNI) “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). In order to fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community (“IC”) for the classification of information under applicable

laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. *Id.*; Hardy Decl. ¶ 95. The FBI is one of the member agencies comprising the IC, and as such must protect intelligence sources and methods. *Id.*

32. Publicly disclosing the particular techniques and procedures utilized in an investigation could reasonably be expected to risk circumvention of the law because it would arm those under investigation, and others intent on disrupting it, the information necessary to, *inter alia*: develop countermeasures to evade detection; destroy, adulterate, or otherwise compromise evidence; and interfere with witnesses and their testimony. Hardy Decl. ¶ 105.

33. Individuals mentioned in the Comey Memos have a strong privacy interest in not being identified in connection with a high-profile law enforcement investigation. Hardy Decl. ¶ 102.

34. The public interest in knowing the names and other information of individuals mentioned in these law enforcement records is nil as disclosure of this information would not shed any light on government conduct. Hardy Decl. ¶ 103.

Dated: October 13, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

MARCIA BERMAN
Assistant Director, Civil Division

/s/Carol Federighi
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Counsel for Defendant

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**[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Upon consideration of the Defendants' Partial Motion for Summary Judgment, and response and reply thereto, and the entire record herein, and for good cause shown, it is hereby

ORDERED that, for the reasons set forth in Defendants' Motion:

1. Defendants' Motion is hereby **GRANTED**; and
2. Partial summary judgment is hereby **ENTERED** for Defendants as to the Comey Memos.

So ordered on this _____ day of _____, 2017.

James E. Boasberg
United States District Judge