

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

JUDICIAL WATCH, INC.,

Plaintiff,

V.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Case No. 1:21-cv-1216 (RCL)

**PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Judicial Watch, Inc., by counsel and pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, respectfully submits this memorandum of points and authorities in opposition to the Motion for Summary Judgment of Defendant U.S. Department of Justice (ECF Dkt. No. 10). As grounds thereof, Plaintiff states as follows:

I. Factual Background.

This lawsuit arises from what appears to be an unprecedented abuse of the financial privacy of thousands of Americans. The FBI apparently sought and received records from financial institutions of anyone who used a credit card or engaged in other transactions in the Washington, DC area on January 5 or 6, 2021. One of these financial institutions, Bank of America, reportedly “actively but secretly engaged in the hunt for extremists in cooperation with the government” and, following the events of January 6, 2021, gave the FBI financial records of their customers who fit the following profile:

1. Customers confirmed as transacting, either through bank account debit card or credit card purchases in Washington, D.C. between 1/5 and 1/6.
2. Purchases made for Hotel/Airbnb RSVPs in DC, VA, and MD after 1/6.

3. Any purchase of weapons or at a weapons-related merchant between 1/7 and their upcoming suspected stay in D.C. area around Inauguration Day.
4. Airline related purchases since 1/6.

See Exh. A (Tucker Carlson: Bank of America Handed Over Customer Data to Feds Following Capitol Riot, Fox News (Feb, 4, 2021)); Exh. B (MailOnline, “Bye bye, Bank of America: Outraged customers boycott firm as it’s revealed the bank snooped through HUNDREDS of innocent people’s accounts looking for Capitol rioters - so who else is doing it?, Dailymail.com (Feb. 5, 2021)). Plaintiff seeks details on this unbounded fishing expedition into the records of persons in the Washington, DC area on January 5 or 6 without any reasonable suspicion they were engaged in criminal conduct.

On February 10, 2021, Plaintiff submitted a FOIA request to the FBI seeking:

All records of communication between the FBI and any financial institution, including but not limited to Bank of America, Citibank, Chase Manhattan Bank, Discover, and/or American Express, in which the FBI sought transaction data for those financial institutions’ debit and credit card account holders who made purchases in Washington, DC, Maryland and/or Virginia on January 5, 2021 and/or January 6, 2021.

On June 17, 2021, the FBI responded to Judicial Watch’s request, claiming that the request was “too broad” and asked for “further clarification and/or narrowing” of the request.

On June 24, 2021, Judicial Watch responded to this request by sending a news article detailing Bank of America’s handing over transaction records to the FBI of people in the Washington, DC area around the date of January 6.

On July 1, 2021, the FBI responded to Judicial Watch’s FOIA request with a letter stating that it accepts Judicial Watch’s narrowing of the search, but that it neither confirms nor denies the existence of these documents. The FBI states:

The FBI accepts this supplemental correspondence as evidence you are further clarifying and narrowing the subject of your request to records/financial transaction requests from financial institutions pertaining to the alleged riot on Capitol Hill on January 6, 2021, to include records/financial transactions from January 5, 2021 for the 3 jurisdictions.

Please be advised that it is the FBI's policy to neither confirm nor deny the existence of any records which would disclose the existence or non-existence of non-public law enforcement techniques, procedures, and/or guidelines. The acknowledgment that any such records exist or do not exist could reasonably be expected to risk circumvention of law.

This lawsuit then commenced.

II. Legal Standard.

Summary judgment may be granted if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A genuine issue of material fact is one that would change the outcome of the litigation. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.). FOIA cases typically and appropriately are decided on motions for summary judgment. *See Defenders of Wildlife v. Border Patrol*, 623 F. Supp. 2d 83, 87 (D.D.C. 2009); *Bigwood v. U.S. Agency for Int’l Dev.*, 484 F. Supp. 2d 68, 73 (D.D.C. 2007). In FOIA cases, the agency bears the ultimate burden of proof. *See DOJ v. Tax Analysts*, 492 U.S. 136, 142 n.3 (1989).

In limited circumstances, an agency is permitted to provide a *Glomar* response and “refuse to confirm or deny the existence of records where to answer the FOIA inquiry would cause harm cognizable under a FOIA exception.” *Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007) (internal quotation marks omitted). “The *Glomar* doctrine is in large measure a judicial construct, an interpretation of FOIA exemptions that flows from their purpose rather than their

express language.” *ACLU v. CIA*, 710 F.3d 422, 431 (D.C. Cir. 2013). The D.C. Circuit has cautioned that courts should not “stretch th[e] doctrine too far” and “give their imprimatur to a fiction of deniability that no reasonable person would regard as plausible.” *Id.* at 431.

III. Defendant’s *Glomar* Response is Unwarranted.

The D.C. Circuit has recognized two ways in which an agency’s invocation of the *Glomar* doctrine may be overcome. First, a plaintiff may challenge the agency’s assertion that confirming or denying the existence of responsive records would result in a cognizable harm under a FOIA exemption; “[t]he agency bears the burden of proving that the withheld information falls within the exemption it invokes.” *Elec. Privacy Info. Ctr. v. Nat’l Sec. Agency*, 678 F.3d 926, 932 (D.C. Cir. 2012); *see also People for the Ethical Treatment of Animals v. Nat’l Institutes of Health*, 745 F.3d 535, 540 (D.C. Cir. 2014); *Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007). To determine whether the existence or not of agency records “fits a FOIA exemption, courts apply the general exemption review standards established in non-*Glomar* cases.” *Wolf*, 473 F.3d at 374; *see also Am. Civ. Liberties Union v. CIA*, 710 F.3d 422, 426 (D.C. Cir. 2013).

Alternatively, a plaintiff may overcome a *Glomar* response by “showing that the agency has already disclosed the fact of the existence (or nonexistence) of responsive records,” because “[w]hen an agency has officially acknowledged otherwise exempt information through prior disclosure, the agency has waived its right to claim an exemption with respect to that information.” *ACLU*, 710 F.3d at 426–27; *see also Moore v. CIA*, 666 F.3d 1330, 1333 (D.C. Cir. 2011); *Wolf*, 473 F.3d at 374–75. The FBI’s assertion of a *Glomar* response in this case fails both tests.

A. A *Glomar* Response Pursuant to Exemption 7(E) Cannot Shield Use of a Technique Well Known to the Public.

To justify its *Glomar* response pursuant to Exemption 7(E), the FBI must demonstrate that the records sought by Plaintiff were (1) “compiled for law enforcement purposes,” and (2) that confirming or denying their existence “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). The FBI must also show “logically” how the release of the requested information will “risk circumvention of the law.” *Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011) (citations omitted).

In this case, the FBI’s *Glomar* response fails to satisfy a fundamental requirement of Exemption 7(E), which only allows the government to withhold “material which describes secret investigative techniques and procedures.” *Jaffe v. CIA*, 573 F. Supp. 377, 387 (D.D.C. 1983) (emphasis added). Exemption 7(E) “extends to information regarding obscure or secret techniques,” and protects “documents which assertedly relate to law enforcement procedures not known to the public.” *Id.* (emphasis added); *see also Smith v. BATF*, 977 F. Supp. 496, 501 (D.D.C. 1997) (requiring agency to “provide greater detail as to why the release of the information . . . would compromise law enforcement by revealing information about investigatory techniques that are not widely known to the general public”).

Here, the FBI’s invocation of Exemption 7(E) fails as the FBI concedes that seeking records of financial transactions is a “commonly known” law enforcement technique. Def’s Mem. at 7. There is nothing “secret” or “obscure” about the technique to justify use of a *Glomar* response. This conclusion is entirely consistent with decisions evaluating attempts to use Exemption 7(E) to shield its use of an investigative tactic that is known to the public. *Reporters*

Comm. for Freedom of the Press v. FBI, 369 F. Supp. 3d 212 (D.D.C. Mar. 1, 2019) (rejecting FBI’s assertion of Exemption 7(E) regarding claim that impersonating media members is a secret technique); *Albuquerque Publishing Co. v. Department of Justice*, 726 F. Supp. 851, 857 (D.D.C. 1989) (Exemption 7(E)] pertains to investigative techniques and procedures generally unknown to the public.” (citations omitted). Moreover, disclosing the existence or nonexistence of records will not reduce or nullify the effectiveness of the technique as it so widely known. *See Reporters Comm. for Freedom of the Press*, 369 F. Supp. 3d 212, 223-224.

Defendant also fails to satisfy its burden to “demonstrate logically” how merely confirming or denying the existence of records responsive to Plaintiff’s request would “risk circumvention of the law.” *Blackwell*, 646 F.3d at 42. Defendant argues that it is not publicly known whether financial records were sought as part of the January 6 investigation. Def’s Mem. at 6-7. As there is nothing “obscure” or “secret” about the FBI seeking financial records, there is no reason to believe persons of interest to the FBI would be unaware that the FBI would seek to obtain such records. It is indisputably widely known that an extensive and ongoing investigation was launched after the events of January 6, 2021. Any potential target of that investigation undoubtedly is aware that a routine investigatory technique of law enforcement is to seek financial records.

B. A Glomar Response Under Exemption 7(E) Is Not a Shield for Improper Activity.

The FBI cannot use Exemption 7(E) to attempt to shield use of improper “techniques or procedures.” Government misconduct can prevent agencies’ use of FOIA exemptions and Glomar responses. *See e.g., Schrecker v. U.S. Dep’t of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (reaffirming that disclosure may be permitted when necessary to confirm or refute

evidence that the government is engaged in misconduct;); *Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1181-82 (D.C. Cir. 2011) (rejecting the FBI's *Glomar* challenge).

In this case, the FBI appears to have conducted an improper, broad sweep of financial records, not just those of persons it had reason to believe were involved in the events of January 6, but many more Americans. Detailed media reports not only indicate that the FBI sought financial records, but also set forth in detail the specific criteria and scope of the records obtained. *See* Exhibits A and B. As described in the attached declaration of Kevin R. Brock, former FBI Assistant Director for Intelligence, such a broad sweep of financial records would be improper. *See* Exh. C.

According to Mr. Brock, the FBI has several legal avenues available to it to pursue private individuals' financial information. These include "obtaining a federal grand jury subpoena, a court ordered search warrant, or National Security Letter." *Id.* ¶ 6. At all times the FBI is guided and governed by federal laws including the Attorney General Guidelines ("AGG"), now alternately referred to as the Domestic Investigations and Operations Guide ("DIOG"). *Id.*

As further explained by Mr. Brock, a request "by the FBI of certain banks to voluntarily turn over to the FBI the private financial transaction data of any bank customer who happened to be in a certain broad geographical area on a certain date could be interpreted as an effort to circumvent protection embedded in the AGG and DIOG." *Id.* ¶ 7. This is because, as set forth by the AGG, "the FBI may not collect and store intelligence information on an individual, especially when that individual is a U.S. citizen, without articulating reasonable suspicion that the individual was, is, or is about to be engaged in a violation of federal law." *Id.* Mr. Brock further states that a "blanket sweep of all bank customer transactions in a certain area at a certain time does not meet the bare minimum reasonable suspicion threshold since a significant amount

of data would logically include innocent and lawful transactions the FBI does not have the right to collect.” *Id.* As a result, “a request by the FBI for voluntary cooperation by the banks would net information the FBI would not otherwise be able to legally obtain.” If confirmed, the FBI’s efforts would constitute an “extra-constitutional work around” that “potentially enabled inappropriate government surveillance of lawful activities.” *Id.*

Only lawful and proper techniques and procedures are entitled to protection under Exemption 7(E). For this reason as well, Defendant’s *Glomar* response should be rejected.

C. The FBI Has Acknowledged the Existence of Records.

Even if the FBI established that it could properly invoke the *Glomar* doctrine pursuant to Exemption 7(E) – which it has not – the FBI has waived its right to assert a *Glomar* response through its own official acknowledgment regarding the records at issue in this case. “[W]hen an agency has officially acknowledged otherwise exempt information through prior disclosure, the agency has waived its right to claim an exemption with respect to that information.” *ACLU*, 710 F.3d at 426.

“[I]n the context of a *Glomar* response, the public domain exception is triggered when ‘the prior disclosure establishes the existence (or not) of records responsive to the FOIA request,’ regardless of whether the contents of the records have been disclosed.” *Marino v. DEA*, 685 F.2d 1076, 1081 (D.C. Cir. 2012) (citations omitted) (emphasis in original). This is because, “[i]n the *Glomar* context, the ‘specific information’ at issue is not the contents of a particular record, but rather ‘the existence *vel non*’ of any records responsive to the FOIA request.” *ACLU*, 710 F.3d at 427 (quoting *Wolf*, 473 F.3d at 379 (emphasis omitted)). “Accordingly, the plaintiff can overcome a *Glomar* response by showing that the agency has already disclosed the fact of

the existence (or nonexistence) of responsive records, since that is the purportedly exempt information that a Glomar response is designed to protect.” *Id.*

Here, the FBI has acknowledged that records exist in response to another FOIA request. *See* Exh. D (Declaration of Dan Heily). Attached to Mr. Heily’s declaration is a copy of a FOIA request he submitted seeking records obtained by the FBI from “financial firms” before and after the events of January 6, 2021. Heily Decl. Exh. 1. The FBI did not assert a *Glomar* response. Instead, the FBI searched for records and stated that “the material you requested is being categorically denied as it is located in an investigative file” and purportedly exempt from disclosure under FOIA Exemptions 7(A) and 7(E). Heily Decl. Exh. 2. The FBI response further acknowledged that the requested records are “law enforcement records” and that their release allegedly would interfere with “pending” law enforcement matters. *Id.* This constitutes an official acknowledgment of the existence of at least some responsive records.

Accordingly, for this reason as well, the FBI’s *Glomar* claim must fail. *See Marino*, 685 F.3d at 1081 (official acknowledgment doctrine triggered by public disclosure of the existence of responsive records “regardless of whether the contents of the records have been disclosed”).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant’s motion for summary judgment, grant Plaintiff’s cross motion, and order the FBI to process Plaintiff’s request.

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ James F. Peterson

James F. Peterson

DC Bar No. 450171

JUDICIAL WATCH, INC.

425 Third Street, S.W., Suite 800

Washington, DC 20024

Tel: (202) 646-5175

Email: jpeterson@judicialwatch.org

Counsel for Plaintiff

October 28, 2021

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE.

Defendant.

Case No. 1:21-cv-1216 (RCL)

**PLAINTIFF’S RESPONSES TO DEFENDANT’S STATEMENT OF
MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE AND
PLAINTIFF’S FURTHER STATEMENT OF MATERIAL FACTS**

Plaintiff, by counsel and pursuant to Local Civil Rule 7.1(h), respectfully submits this response to Defendants’ statement of material facts as to which there is no genuine dispute and statement of undisputed material facts in support of its cross-motion for summary judgment:

1. On February 10, 2021, Plaintiff submitted a FOIA request to the FBI, seeking:
All records of communications between the FBI and any financial institution, including but not limited to Bank of America, Citibank, Chase Manhattan Bank, Discover, and/or American Express, in which the FBI sought transaction data for those financial institutions’ debit and credit account holders who made purchases in Washington, D.C., Maryland, and/or Virginia on January 5, 2021 and/or January 6, 2021.
Declaration of Michael G. Seidel (Seidel Decl.) ¶ 6 & Ex. A.

Response:

Undisputed.

2. By letter dated February 19, 2021, the FBI advised Plaintiff that “unusual circumstances” apply to Plaintiff’s FOIA request. *See* 5 U.S.C. § 552 (a)(6)(B)(iii). The FBI’s letter advised that these unusual circumstances would delay the FBI’s ability to make a determination on Plaintiff’s request within 20 days. Seidel Decl. ¶ 8 & Ex. C.

Response:

Undisputed.

3. On June 17, 2021, the FBI advised Plaintiff that the request did not comport with the requirements of 28 CFR § 16-3(b), as the request did not provide enough detail to enable FBI personnel to search for potentially responsive records with a reasonable amount of effort. As currently written, the FBI determined Plaintiff's FOIA request was overly broad and did not provide sufficient detail to allow the FBI to conduct a reasonable search within the FBI's Central Record System (CRS). The FBI advised Plaintiff it could clarify the request by providing additional information that would allow the FBI to conduct reasonable searches as needed. Seidel Decl. ¶ 10 & Ex. D.

Response:

Plaintiff disputes that its request was not sufficiently detailed, but does not dispute that this statement reflects the position taken by the FBI.

4. By email dated June 24, 2021, addressed to the DOJ attorney assigned to this case, Plaintiff provided a news article dated February 5, 2021, from Mail Online, which provided further details supplementing their FOIA request. *See* [dailymail.co.uk/news/article-9228367/BoA-snoopedhundreds-accounts-looking-Capitol-rioters](https://www.dailymail.co.uk/news/article-9228367/BoA-snoopedhundreds-accounts-looking-Capitol-rioters). The FBI accepted the supplemental correspondence as evidence that Plaintiff intended to narrow the scope of its request to records of FBI communications seeking financial transaction records, identified by the dates and locations specified in Plaintiff's request, as part of the investigation into the events at the Capitol on January 6, 2021. Seidel Decl. ¶ 11

Response:

Undisputed that this statement reflect the FBI's position.

5. By letter dated July 1, 2021, the FBI explained to Plaintiff that it could neither confirm nor deny the existence of records responsive to Plaintiff's request. Seidel Decl. ¶ 12 & Ex. E. That is, the FBI issued a *Glomar* response.

Response:

Plaintiff does not dispute that the FBI issued a *Glomar* response, but disputes that it had sufficient basis to do so.

6. The FBI's July 1, 2021, *Glomar* response letter invoked FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E). The letter also informed Plaintiff of its right to appeal the FBI's determination by filing an administrative appeal with the Department of Justice's Office of Information Policy within ninety days. Seidel Decl. ¶ 12 & Ex. E.

Response:

Undisputed.

7. The information protected by the FBI's *Glomar* response would have been "compiled for law enforcement purposes" because they would have been compiled as part of the publicly disclosed joint investigation into the January 6, 2021, U.S. Capitol riot conducted by the FBI together with the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives; the United States Marshals Service; the United States Capitol Police Department; and the D.C. Metropolitan Police Department. Seidel Decl. ¶¶ 15-16.

Response:

Disputed. Plaintiff disputes that the information was properly compiled for law enforcement purposes. See Declaration of Kevin R. Brock, attached as Exhibit C to Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

8. Confirming or denying the existence of FBI records seeking financial transactions as part of the January 6 investigation would reveal non-public law enforcement techniques or procedures. Seidel Decl. ¶ 19.

Response:

Disputed, as this statement consists solely of argument and disputed conclusions of law, which should be disregarded by the Court.

9. The FBI has never publicly acknowledged whether or not it sought financial transaction records from any financial institution pertaining to any known suspects of the U.S. Capitol riot on January 6, 2021. Seidel Decl. ¶ 19.

Response:

Disputed. See Declaration of Dan Heily, attached as Exhibit D to Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

10. Disclosing that the technique or procedure was or was not used in this investigation could reduce or nullify its effectiveness. Seidel Decl. ¶¶ 20-21.

Response:

Disputed, as this statement consists solely of argument and disputed conclusions of law, which should be disregarded by the Court.

11. Confirming or denying the existence of responsive records would inform potential subjects of any investigation into the events of January 6 whether the FBI has made use of financial transaction records as part of its investigation, and may allow them to take countermeasures to circumvent the effectiveness of the FBI's investigation, such as by altering or deleting certain records. Seidel Decl. ¶ 21.

Response:

Disputed, as this statement consists solely of argument and disputed conclusions of law, which should be disregarded by the Court.

12. The events at the U.S. Capitol on January 6, 2021, involved hundreds of people, many of whom have yet to be identified, including (as of August 6, 2021) over 300 individuals believed to have committed violent acts on Capitol grounds, over 200 of whom assaulted police officers. Seidel Decl. ¶ 21.

Response:

Plaintiff lacks knowledge to the specific facts in this statement.

13. If any of those individuals made debit- or credit-card purchases in the D.C. area on January 5 or 6, and were to learn that the FBI was attempting to identify them by seeking records of those purchases, they would be more likely to take compensating measures to destroy or obscure evidence of their activities on January 6, such as by deleting encrypted communications with coconspirators. Seidel Decl. ¶ 21.

Response:

Disputed, as this statement consists solely of argument and disputed conclusions of law, which should be disregarded by the Court.

14. Confirming or denying the existence of responsive records, especially concerning the FBI's collection methodology, would disclose the identity of methods used in collecting and analyzing information, including how and from where the FBI collects information, and the methodologies employed to analyze it. Such disclosures would enable investigative subjects to circumvent similar and currently used techniques. The relative utility of these techniques could be diminished if the actual techniques were released. In turn, this would facilitate the

accumulation of information by investigative subjects regarding the circumstances under which specific techniques were used or requested to collect certain information, how the information collected is analyzed, and the usefulness of the information obtained. Seidel Decl. ¶ 22.

Response:

Disputed, as this statement consists solely of argument and disputed conclusions of law, which should be disregarded by the Court.

15. These types of information or records, particularly when aggregated with any future acknowledgment in response to yet-to-come FOIA requests, could provide potential investigative targets insight into who may or may not be under investigative interest based on the use of a particular investigative technique, thereby decreasing the effectiveness of the FBI investigation(s) and increasing the vulnerability and effectiveness of specific investigatory tools at the FBI's disposal. Seidel Decl. ¶ 23.

Response:

Disputed, as this statement consists solely of argument and disputed conclusions of law, which should be disregarded by the Court.

**PLAINTIFF'S FURTHER STATEMENT OF FACTS IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND
IN SUPPORT OF PLAINTIFF'S CROSS-MOTION
FOR SUMMARY JUDGMENT**

1. The FBI has several legal avenues available to it to pursue private individuals' financial information. These include options like obtaining a federal grand jury subpoena, a court ordered search warrant, or National Security Letter. At all times the FBI is guided and governed by federal laws including the Attorney General Guidelines, now alternately referred to as the Domestic Investigations and Operations Guide.

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ James F. Peterson

James F. Peterson

DC Bar No. 450171

JUDICIAL WATCH, INC.

425 Third Street, S.W., Suite 800

Washington, DC 20024

Tel: (202) 646-5175

Fax: (202) 646-5199

Email: jpeterson@judicialwatch.org

Counsel for Plaintiff

October 28, 2021

EXHIBIT A

FOX NEWS FLASH • Published February 4

Tucker Carlson: Bank of America handed over customer data to feds following Capitol riot

At least one person was interviewed by agents based on info from America's second-largest bank



OPINION

By Tucker Carlson | Fox News



Tucker: Bank of America secretly turned over customer data to FBI

'Tucker Carlson Tonight' host warns anyone can be considered a 'domestic extremist'

There has been an enormous amount of talk -- not just this week, but over the last month -- about violent extremism and the people who embrace it. Those people, we're told, are domestic [terrorists](#) who must be put down by force. The war on terror has moved stateside. Extremists are inside our country, and we must hunt them down.

We're hearing those words nonstop, not just on cable news, but from elected officials, including some Republicans. We're hearing it from the leaders of federal [law enforcement](#) agencies and the intelligence agencies. We're hearing it from the [Pentagon](#). Just this week, Secretary of Defense Lloyd Austin ordered the entire U.S. military to "stand down" while investigators cleanse the ranks of political extremists.

And, of course, we're hearing it from the business establishment, from Wall Street and the tech monopolies, from the massive multinational corporations that increasingly control the contours of American life. All of them are now on the hunt for political extremists.

At one level, that does not sound bad. No sane person is for political extremism, especially violent extremism. We're for moderation, for incremental change and the consent of the governed. We've said that every day for four years and we mean it.

PENTAGON ORDERS 'STAND DOWN' ACROSS MILITARY TO INVESTIGATE EXTREMISM IN RANKS

But it's not enough to be against something. You have to be more precise than that. In order to root out a problem, you have to know what the problem is. You need a sense of what you're looking for, a clear picture. You have to define the terms. The remarkable thing about this public conversation we're having is that no one is doing that.

Have you noticed that none of these newly energized and highly empowered extremist hunters have told us exactly what an "extremist" is? We're left to guess, to look around nervously to see if we can spot one. They're not talking about us, are they? And if they are, what exactly are they doing? How are they hunting these "extremists" they keep telling us about, but will not describe? We now know part of the answer to that question.

["Tucker Carlson Tonight"](#) has exclusively obtained evidence that Bank of America, the second-largest bank in the country with more than 60 million customers, is actively but secretly engaged in the hunt for extremists in cooperation with the government. Bank of America is, without the knowledge or the consent of its customers, sharing private information with federal law enforcement agencies. Bank of America effectively is acting as an intelligence agency, but they're not telling you about it.

In the days after the Jan. 6 riot at the Capitol, Bank of America went through its own customers' financial and transaction records. These were the private records of Americans who had committed no crime; people who, as far as we know, had absolutely nothing to do with what happened at the

Capitol. But at the request of federal investigators, Bank of America searched its databases looking for people who fit a specific profile.

BANK OF AMERICA COMMITS \$15B TO HOME OWNERSHIP EFFORTS

Here's what that profile was: "1. Customers confirmed as transacting, either through bank account debit card or credit card purchases in Washington, D.C. between 1/5 and 1/6. 2. Purchases made for Hotel/Airbnb RSVPs in DC, VA, and MD after 1/6. 3. Any purchase of weapons or at a weapons-related merchant between 1/7 and their upcoming suspected stay in D.C. area around Inauguration Day. 4. Airline related purchases since 1/6."

The first thing you should notice about that profile is that it's remarkably broad. Any purchases of anything in Washington, D.C.; any overnight stay anywhere in an area spanning three jurisdictions and hundreds of miles; any purchase not just of legal firearms, but anything bought from a "weapons-related merchant," T-shirts included; and any airline-related purchases -- not just flights to Washington, but flights to anywhere, from Omaha to Thailand. That is an absurdly wide net.

Bank of America identified a total of 211 customers who met these "thresholds of interest." At that point, "Tucker Carlson Tonight" has learned, Bank of America turned over the results of its internal scan to federal authorities, apparently without notifying the customers who were being spied upon. Federal investigators then interviewed at least one of these unsuspecting people. That person, we've learned, hadn't done anything wrong and was cleared.

Imagine if you were that person. The FBI hauls you in for questioning in a terror investigation, not because you've done anything suspicious, but because you bought plane tickets and visited your country's capital. Now they're sweating you because your bank, which you trust with your most private information, has ratted you out without your knowledge. Because Bank of America did that, you are being treated like a member of Al Qaeda.

FBI 'REVIEWING' REQUESTS FOR PROBES OF FACEBOOK, TWITTER, PARLER ROLES IN FBI RIOT

It doesn't matter how much you despise Donald Trump or how much you believe that hatred of Trump justifies suspending this country's ancient civil liberties, going through that experience would scare the hell out of you. *Does anyone else know about this? Is there a record of this interview? Will I lose my job because of it?* That actually happened to someone.

"Tucker Carlson Tonight" asked Bank of America about this. They confirmed it actually happened by not denying it. Here is their statement in full, which somehow manages to make the whole thing even creepier:

"We don't comment on our communications with law enforcement. All banks have responsibilities under federal law to cooperate with law enforcement inquiries in full compliance with the law."

The phrase "in full compliance with the law" implies that Bank of America had no choice, but that's not true. Bank of America did have a choice. It could have resisted turning over information on its innocent customers to federal investigators, but it did not.

YOUTUBE'S 'DANGEROUS' CRACKDOWN ON INDEPENDENT JOURNALISTS: 'IT DEFIES ALL LOGIC AND REASON'

It's not even clear that what Bank of America did is even legal. We spoke to a number of lawyers about this, and some of them told us that what Bank of America did might, in fact, not be legal and could, in fact, be challenged in court. One knowledgeable attorney pointed us to [12 U.S.C. 3403](#). That's a federal law that allows banks to tip off the feds to any information that "may be relevant to a possible violation of any statute or regulation."

Now, the Justice Department instructs federal agents to remind banks of that law and, of course, they do so with maximum aggression. But the question is, what legally constitutes information that may be relevant to a possible crime? Does buying a muffin in Washington, D.C. on Jan. 5 make you a potential domestic extremist?

According to Bank of America, yes. Yes, it does.

This is the moment when, for the sake of our country and our grandchildren who will live here, we need to pause, breathe deeply, avoid hysteria and ask, "What are the rules? What, for God's sake, is a political extremist?"

A lot hangs on that question, but they pointedly won't tell us. At the White House Thursday, for example, National Security Adviser Jake Sullivan told reporters that "domestic violent extremism" is the urgent crisis of our time. But Sullivan did not explain what it is.

SULLIVAN: So "Build Back Better" isn't just about economics, it's about national security as well, and then it's about the set of issues that working families in this country are facing every day that are challenging their lives and livelihoods: The pandemic, climate change, the threat of domestic violent extremism.

[CLICK HERE TO GET THE FOX NEWS APP](#)

We're starting to believe they're not defining it for a reason. On Wednesday, a New York Times op-ed asked this question: "[Are Private Messaging Apps the Next Misinformation Hot Spot?](#)" As the newspaper put it: "The shift to private messaging has renewed a debate over whether encryption is a double-edged sword. While the technology prevents people from being spied on, it might also make it easier for criminals and misinformation spreaders to do harm without getting caught."

Notice "criminals and misinformation spreaders" are in the same sentence. They're pretty much the same thing. What's a misinformation spreader? Someone who doesn't agree with The New York Times, obviously a violent extremist and dangerous.

If you think we're joking, we're not.

This article is adapted from Tucker Carlson's opening commentary on the Feb. 4, 2021 edition of "Tucker Carlson Tonight."

Tucker Carlson currently serves as the host of FOX News Channel's (FNC) Tucker Carlson Tonight (weekdays 8PM/ET). He joined the network in 2009 as a contributor.



Conversation 6.2K Comments

What do you think?

Sort by Best ▾



Rjahme

4 February, 2021

Banking regulations:

Regulation P governs the use of a customer's private data. Banks and other financial institutions must inform a consumer of their policy regarding personal information, and must provide an "opt-out" before disclosing data to a non-affiliated third party.[4] The regulation was enacted in 1999.

Reply 👍 1170 🗨 54



DJRoukan > Rjahme

5 February, 2021

"We don't comment on our communications with law enforcement. All banks have responsibilities under federal law to cooperate with law enforcement inquiries in full compliance with the law."

Citing Federal Law to cover up breaking federal law.

Know how we said it was going to get worse? It's worse.

Reply 👍 33 🗨

↩ 2 replies



towny > Rjahme

5 February, 2021

It does not apply though if they get a warrant or subpoena however that is supposed to be specific to a certain individual or account. Not a data mining request.

↩ Show 58 more replies
Reply 13 17



LanceBlinent

5 February, 2021

It's one thing if someone bought an item that is illegal to possess on a credit card. However simply going to DC or buying a firearm via gun shop are not illegal activities.

Reply 667 21



WhyOWhy321 > LanceBlinent

5 February, 2021

I don't even think DC has a gun shop.

Reply 31 1



BLloyd > LanceBlinent

5 February, 2021

They're in Marxist countries. Welcome to Biden's America.

Reply 36 4

↩ Show 5 more replies



Cassius5150

4 February, 2021

Can anyone say Class Action? Wish they turned over my private information :(I could use some extra money right now from a lawsuit.

Reply 913 54



patriots_against_leftism > Cassius5150

4 February, 2021

I have a BOA card. I only use it when doing online purchases from websites until I trust the website. I maintain a low balance for Credit Score purposes. However, Even though I have had that CC for over a decade I have been wanting to change up. It's time.

Reply 55 3

↩ 1 reply



boozer783 > Cassius5150

5 February, 2021

They voluntarily gave the information to the FBI, this information was not subpoenaed, big lawsuits coming.

Reply 147 3

↩ 4 replies

↩ Show 24 more replies

W Whiskeyman66

4 February, 2021

If you and your spouse have separate phones on the same phone plan, AT&T can't give you your spouses call and text records without a court order so why can BoA simply give financial data without a warrant?


Reply  102  6

D Denz > Whiskeyman66

5 February, 2021

Same with ATT - direct TV ! I cant ask questions on the account - in my husbands name! I'm on it too as an approved / authorized user!

Reply  9  2

 This comment violated our policy.

W Whiskeyman66

4 February, 2021

Yep.....for donations to the DNC (Edited)



Reply  10  1

 Show 3 more replies

S smkdn

4 February, 2021

Close any accounts you can with BoA. I left them yrs ago for different reasons but if you needed a reason now, you just got it.

Reply  760  26

N nottelling > smkdn

5 February, 2021

Me too...I cut ties with BofA for a smaller personable bank with great customer service, and they were eaten by a bigger fish.

Reply  1 

 Show 5 more replies

K Kcj67

4 February, 2021

As long as this investigation also includes all those who had bank activity related to the BLM/Antifa marches and riots of the summer. In cities like Portland, NYC, Chicago, Rochester, Philly, LA, Louisville. All planned and paid for by an unknown entity. Hotel rooms, Uhaul trucks that carried signage, bricks, weapons. Are they investigating them as well?

Reply  613  22


P ProudAmerican789 > Kcj67

5 February, 2021

BLM and antifa fit the definition of domestic terrorist to a T. But I never once heard any Democratic leader refer to them as domestic terrorists!

While I certainly don't condone the actions of those who broke into the Capitol (a hundred? A few hundred?), there were MANY THOUSANDS of people who were there peacefully protesting because they believed the election results were the result of fraud. But I've heard many Democrats refer to the whole bunch of them as terrorists simply for protesting the election results. I've even read that some people were fired from jobs because they had gone to DC to protest, even though they weren't among the lawbreakers. Assuming every person protesting the election is the equivalent of a domestic terrorist it's not just ludicrous, it is like something out of the history books. Will we be told to wear a yellow star next?


Reply  184  8
 2 replies

 **84engineer** > Kcj67
 4 February, 2021

You don't investigate those that are on your team.

Reply  73  3


 Show 8 more replies

 **jr2021c**
 4 February, 2021

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Reply  43  2

 **jr2021c**
 4 February, 2021

I am stunned by the number of posters here who have no problem with tossing out the 4th Amendment because it doesn't involve them...


... THIS TIME.

Reply  165  4

 **KineticZen** > jr2021c
 4 February, 2021

It is not that I don't have a problem with it, I do, but as long as the Patriot Act stays active...law enforcement and the government will continue to monitor and spy on our own citizens. *(Edited)*

Reply  66  1

 1 reply

**KenyanFBI**

4 February, 2021



I have 115k in a B of A checking account...tomorrow I am withdrawing 100k and will withdraw rest when I find a bank I trust. They crossed a line, unforgivable!

Reply 220 13

**gman09451** > KenyanFBI

5 February, 2021

Just make sure it is not cash. They may have to send another report to the government if depositing more than 10k in cash.

Reply 31

**cincinatus404** > KenyanFBI

5 February, 2021

keep \$115,000 in the checking account. Man you need a financial planner. *(Edited)*

Reply 33 13

↩ 1 reply

↩ Show 4 more replies

**rn65**

4 February, 2021

Seriously, there are 75 million people who do not agree with one thing that is going on with the liberal Democratic Party regarding their control on the media, school systems, big tech and the invasion of our privacy as American citizens. The lefts domestic war on homeland terror referring to the Republican Party is not going to end well for this country. This is a very dangerous time in this country and unfortunately, people will need to take a stand on what is happening. They are continually pushing their ideology and we are heading towards marshal law.

Reply 38 5

**patriot1amer** > rn65

4 February, 2021

....martial

Reply 7 1



This comment violated our policy.

**notgoingtohappentome**

4 February, 2021

Are we? Trump's approval rating was 41 percent when he left office, dementia joe is already down to 47 percent in just 2 weeks. How's that going for you? *(Edited)*

Reply 4

↩ Show 2 more replies

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EXHIBIT B

'Bye bye, Bank of America': Outraged customers boycott firm as it's revealed the bank snooped through HUNDREDS of innocent people's accounts looking for Capitol rioters - so who else is doing it?

MailOnline

February 5, 2021 Friday 2:07 PM GMT

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Section: NEWS; Version:1

Length: 955 words

Byline: Jennifer Smith For Dailymail.com

Body

- Bank of America gave the government the information of 211 people who they felt fit the 'criteria' of a suspicious involvement in the Jan 6 riot
- The bank had been asked to turn over the records of anyone who used a debit card or credit card on January 5th and 6th in Washington DC
- It was also asked for hotel or Airbnb purchases in DC, Maryland and Virginia
- Any weapons charges between January 7 and Inauguration Day were included
- Airline related purchases since January 6 were also requested by the feds
- BoA complied and won't say if they were issued with a subpoena or warrant
- One innocent person was hauled in for questioning as a result
- Now, people are demanding to know which other banks did the same
- There are also calls for people to boycott BoA because of the 'absurd overreach'
- The FBI and DoJ have been on the back foot since before the insurrection
- Many of the rioters plotted it in plain sight on social media and the FBI even issued an internal memo about it but it still wasn't prevented

Outraged Bank of America customers are boycotting the bank after learning it snooped through hundreds of innocent people's accounts at the request of the government as part of its investigation into the Capitol riot, using a broad criteria that meant anyone who made a transaction in DC that day came under a federal microscope. Tucker Carlson revealed the bank's involvement in the investigation on his FOX News show on Thursday night. After being contacted by the government, Bank of America handed over the information of 211 people who they felt fit an 'absurdly broad' criteria. The criteria asked for the information of;

- Customers confirmed as transacting, either through bank account debit card or credit card purchases in Washington, D.C. between 1/5 and 1/6.
- Purchases made for Hotel and Airbnb RSVPs in DC, VA, and MD after 1/6

'Bye bye, Bank of America': Outraged customers boycott firm as it's revealed the bank snooped through HUNDREDS of innocent people's accounts looking for Capitol....

- Any purchase of weapons or at a weapons-related merchant between 1/7 and their upcoming suspected stay in D.C. area around Inauguration Day
- Airline related purchases since 1/6

From the 211 people the bank turned over, one was interviewed by law enforcement and no one was arrested.

The bank has not confirmed how many accounts it went through to produce the 211 it turned over, nor has it confirmed whether it was compelled by a subpoena or search warrant to hand over the information.

Now, many are calling for a total boycott of the bank, calling their cooperation with the feds an 'overreach' which breaches consumer trust, and are demanding to know how other companies are cooperating.

DailyMail.com has asked Chase, Capital One, American Express, Citi, Mastercard, Airbnb, Uber and Lyft whether they too have handed over the information of people who were near the Capitol on January 6 to the feds. None have responded.

BoA is refusing to give details on exactly how many accounts it looked through, whether the government produced a subpoena or warrant for them, or even if it still going through them.

On Friday morning, the bank told DailyMail.com in a statement: 'We don't comment on our communications with law enforcement.

'All banks have responsibilities under federal law to cooperate with law enforcement inquiries in full compliance with the law.'

It's unclear who asked them to hand over the records, if it was the FBI or the Justice Department.

It's also unclear whether any banks were asked to hand over the records of rioters in the summer who descended on federal buildings in Portland, Oregon, or on the City Hall in New York City.

There is no broad, FBI or Justice Department investigation into those incidents.

Dozens of protests took place for months over the course of the summer and while collectively, thousands were involved, it's more difficult to pinpoint a single, large-scale event where there was as much violence as there was at the Capitol on January 6.

Now, many are boycotting the bank and calling their cooperation with the investigation an 'overreach'.

'If you're a Bank of America customer and you were in Washington DC on January 5 and bought a muffin, they along with the FBI, rummaged through your bank account to see if you were a domestic terrorist. Does it seem like overreach to you? Legal?' one person asked.

Another fumed: 'Customers at Bank of America who visited Capitol to voice their concerns should file suit FED Case against Law Enforcement and bank Overreach LAW! Civil Rights Violation!'

Others are urging the one person who was interviewed by the FBI as a result of Bank of America giving them their information to sue the bank.

Carlson, on Thursday night, said: 'These were the private records of Americans who had committed no crime; people who, as far as we know, had absolutely nothing to do with what happened at the Capitol.

'But at the request of federal investigators, Bank of America searched its databases looking for people who fit a specific profile,' he said.

'Bye bye, Bank of America': Outraged customers boycott firm as it's revealed the bank snooped through
HUNDREDS of innocent people's accounts looking for Capitol....

Of the one person who was hauled in for questioning, he said: 'The FBI hauls you in for questioning in a terror investigation, not because you've done anything suspicious, but because you bought plane tickets and visited your country's capital.

'Now they're sweating you because your bank, which you trust with your most private information, has ratted you out without your knowledge.

'Because Bank of America did that, you are being treated like a member of Al Qaeda.'

The government is yet to find even half of the 800 people who stormed the Capitol building on January 6.

Despite the rioters plotting much of the stunt on social media, and even though the FBI warned field offices about it, nothing was done to prevent it.

Five people died on the day and two Capitol cops - who were woefully outnumbered - killed themselves afterwards.

Load-Date: February 6, 2021

End of Document

EXHIBIT C
(Declaration of Kevin R. Brock)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,
Plaintiffs,
v.
U.S. DEPARTMENT OF JUSTICE,
Defendant.

DECLARATION OF KEVIN R. BROCK

I, Kevin R. Brock, declare as follows:

1. I have a long and extensive career in the field of counter-intelligence, intelligence collection, and criminal investigations to include financial crimes. My career began with the Federal Bureau of Investigation (“FBI”) which included directing complex, high risk, and high-profile investigations. Later in my FBI career I authored the founding justification documents for the new Cyber Division within the FBI and was named the FBI’s first Assistant Director for Intelligence. As the Assistant Director for Intelligence, I assisted in the start-up and establishment of a new Intelligence Directorate in the FBI, following 9/11 Commission recommendations and congressional directive. I also led an effort to re-engineer the FBI’s confidential human source program with a complete overhaul of policies and procedures.

2. In October 2005, I was asked to become the first Principal Deputy Director of the post 9/11 presidential initiative, the National Counterterrorism Center ("NCTC"). As Principal

Deputy Director, I helped establish NCTC's role within the intelligence community and was recognized with the Presidential rank Award for Meritorious Service to the Nation in 2006.

3. Following my federal employment, I stayed closely involved law enforcement, intelligence and cyber security, first at Booz Allen Hamilton, and then through two consulting businesses I founded. In 2014, I founded BrockCRS, LLC, to provide leaders advice on mitigating cyber threat risks. In 2015, I founded NewStreet Global Solutions, LLC, a collaboration of accomplished law enforcement executives providing expertise in leading edge technology to public safety and intelligence communities.

4. In addition to my work, I am a Senior Fellow for Cybersecurity Strategy at the Center for Financial Stability and sit in the advisory boards of several technology companies. I also maintain a current Top-Secret security clearance.

5. With this personal and professional background, and in particular in my field experience leading counterintelligence and counterterrorism investigations with the FBI, as well as my efforts to re-engineer the FBI's confidential human source program, I was required to be thoroughly knowledgeable of the Attorney General Guidelines that dictate what the FBI may and may not investigate.

6. The FBI has several legal avenues available to it to pursue private individuals' financial information. These include options like obtaining a federal grand jury subpoena, a court ordered search warrant, or National Security Letter. At all times the FBI is guided and governed by federal laws including the Attorney General Guidelines ("AGG"), now alternately referred to as the Domestic Investigations and Operations Guide ("DIOG").

7. A request, as described by Judicial Watch, Inc. in its FOIA request, by the FBI of certain banks to voluntarily turn over to the FBI the private financial transaction data of any bank customer who happened to be in a certain broad geographical area on a certain date could be interpreted as an effort to circumvent protection embedded in the AGG and DIOG. Under the AGG, the FBI may not collect and store intelligence information on an individual, especially when that individual is a U.S. citizen, without articulating reasonable suspicion that the individual was, is, or is about to be engaged in a violation of federal law. A blanket sweep of all bank customer transactions in a certain area at a certain time does not meet the bare minimum reasonable suspicion threshold since a significant amount of data would logically include innocent and lawful transactions the FBI does not have the right to collect. In other words, a request by the FBI for voluntary cooperation by the banks would net information the FBI would not otherwise be able to legally obtain. In my opinion, the Judicial Watch FOIA request is needed to help determine the precise nature of exchange of data between the government and the banks to ensure an extra-constitutional work around was not deployed that potentially enabled inappropriate government surveillance of lawful activities.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Leesburg, Virginia, on October 27 , 2021.

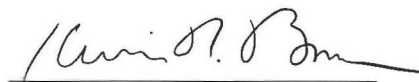

Kevin R. Brock

EXHIBIT D
(Declaration of Dan Heily)

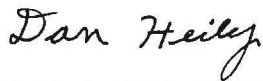
DECLARATION OF DAN HEILY

Dan Heily, pursuant to 28 U.S.C. § 1746, declares the following:

1. Attached as Exhibit 1 to this declaration is a copy of a FOIA request I submitted to the FBI on March 1, 2021.
2. Attached as Exhibit 2 to this declaration is a copy of a letter dated August 26, 2021 responding to my March 1, 2021 FOIA request.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on this day, October 25, 2021,

A handwritten signature in cursive script that reads "Dan Heily". The signature is written in black ink and is positioned above a horizontal line.

Dan Heily

EXHIBIT 1
(FOIA Request of Dan Heily)

DAN HEILY
9412 BRIAN JAC COURT
GREAT FALLS, VIRGINIA 22066
March 1, 2021

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Dr
Winchester, VA 22602-4843

Sent Certified
7013060000053891287

1. U.S. Code 5 U.S.C. § 552a (e)(4) requires you to do the following:

“ subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include —
(A) the name and location of the system;
(B) the categories of individuals on whom records are maintained in the system;
(C) the categories of records maintained in the system;
(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;
(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;
(F) the title and business address of the agency official who is responsible for the system of records;
(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;
(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and (I) the categories of sources of records in the system;”

2. I understand that you requested financial data from financial institutions in response to the January 6th event at the capital. And that you requested cell phone data also.

FOIA Request 1: Please provide all Federal Register data required by 5 U.S.C. § 552a (e)(4) for every system of records that you use to store data from the firms that you requested financial data from during the period December 5, 2020 through February 6, 2021.

FOIA Request 2: Please provide all Federal Register notices required by 5 U.S.C. § 552a (e)(4) for every system of records that you use to store data from cell phone providers that you requested data from in the period January 1, 2021 through January 31, 2021 for data near the Nations Capital.

3. U.S. Code 5 U.S.C. § 552a (e)(4) requires that you:

"inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual —

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;"

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;"

4. I understand that you asked financial institutions and cell phone companies for data associated with the events around the Nations Capital.

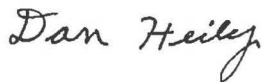
FOIA Request 3: Please provide the forms you issued to each financial institution to obtain financial data during the period December 5, 2020 through February 6, 2021.

FOIA Request 4: Please provide the forms you issued to obtain data from cell phone providers in January 2021 for data in the area around the Nations Capital. I assume that you requested name, address, phone number, texts, emails, GPS data and pen register data.

Please identify which FOIA request is associated with each data delivery.

If there any questions, please email me at dan@heily.com.

Respectfully,

A handwritten signature in cursive script that reads "Dan Heily".

Dan Heily

EXHIBIT 2
(FBI Response)



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

August 26, 2021

MR. DAN HEILY
9412 BRAIN JAC COURT
GREAT FALLS, VA 22066

FOIPA Request No.: 1491745-000
Subject: Data Requested Financial Institutions and
Cell Phone Companies Connected to Capital Riots

Dear Mr. Heily:

This responds to your Freedom of Information/Privacy Acts (FOIPA) request. Please see the paragraphs below for relevant information specific to your request as well as the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

The FBI has completed its search for records responsive to your request. The material you requested is being categorically denied as it is located in an investigative file which 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 could reasonably be expected to interfere with enforcement proceedings. Therefore, your request is being administratively closed. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

In addition, the material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(E). 5 U.S.C. § 552(b)(7)(E) 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 ... 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...

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. "Part 1" of the Addendum includes standard responses that apply to all requests. "Part 2" includes additional standard responses that apply to all requests for records about yourself or any third party individuals. "Part 3" includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

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.

If you are not satisfied with the Federal Bureau of Investigation's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. 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 it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. 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 it may be easily identified.

Sincerely,



Michael G. Seidel
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendants.

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Case No. 1:21-cv-1216 (RCL)

PROPOSED ORDER

Having considered the parties' respective motions for summary judgment, the oppositions, and all the pleadings herein:

It is hereby ORDERED that Defendant's motion for partial summary judgment is denied and Plaintiff's cross motion is granted.

SO ORDERED.

Dated: _____.

U.S. District Judge