

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

Civil Action No. 14-cv-1589 (EGS)

DECLARATION OF MICHAEL G. SEIDEL

I, Michael G. Seidel, declare as follows:

1. I am the Section Chief of the Record/Information Dissemination Section (RIDS), Information Management Division (IMD), Federal Bureau of Investigation (FBI), Winchester, Virginia. I joined the FBI in September 2011, and prior to my current position, I was the Assistant Section Chief of RIDS from June 2016 to July 2020; Unit Chief, RIDS Litigation Support Unit, from November 2012 to June 2016; and an Assistant General Counsel, FBI Office of the General Counsel, Freedom of Information Act (FOIA) Litigation Unit, from September 2011 to November 2012. In those capacities, I had management oversight or agency counsel responsibility for FBI FOIA and Privacy Act (FOIPA) litigation cases nationwide. Prior to joining the FBI, I served as a Senior Attorney, U.S. Drug Enforcement Administration (DEA), from September 2006 to September 2011, where among myriad legal responsibilities, I advised on FOIPA matters and served as agency counsel representing the DEA in FOIPA suits nationwide. I also served as a U.S. Army Judge Advocate General's Corps Officer in various

assignments from 1994 to September 2006 culminating in my assignment as Chief, General Litigation Branch, U.S. Army Litigation Division, where I oversaw FOIPA litigation for the U.S. Army. I am an attorney licensed in the State of Ohio and the District of Columbia.

2. In my official capacity as Section Chief of RIDS, I supervise approximately 239 FBI employees, supported by approximately 107 contractors, who staff a total of nine (9) 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 Freedom of Information Act (FOIA) as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and the FOIA Improvement Act of 2016; the Privacy Act (PA) of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. 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. Because of 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 of 1974, 5 U.S.C. §552a. Specifically, I am aware of the FBI's handling of Plaintiffs' FOIA request that is the subject of this litigation.

4. This declaration is my first public declaration, and the fourth declaration filed in this case. This declaration incorporates and supplements the declaration of David M. Hardy dated March 3, 2015, at ECF No. 18-1 (hereinafter "First Hardy Declaration"); the declaration of David M. Hardy dated June 8, 2015, at ECF No. 29-1 (hereinafter "Second Hardy Declaration");

and the declaration of David M. Hardy dated May 10, 2018, at ECF No. 68-7 (hereinafter “Third Hardy Declaration”).

5. In response to Plaintiffs’ narrowed request for accounts from survivors about the September 11-12, 2012 attacks on U.S. facilities in Benghazi, Libya, including FD-302 Interview Reports and corresponding handwritten notes of interviews conducted on September 15-16, 2012 in Germany of U.S. personnel who had been in the Benghazi mission and the Benghazi CIA annex during the attacks , the FBI initially asserted a *Glomar* response, neither confirming nor denying the existence of any FD-302 report. Since then, the FBI filed a Notice that it no longer intends to maintain its prior *Glomar* response and would conduct a search for responsive records that would have been covered by the *Glomar* assertion. *See* Defs.’ Notice Regarding R.&R., ECF No. 86 at 1.

6. The FBI submits this declaration in support of Defendants’ renewed motion for summary judgment and to provide the Court with the procedures used to search for and review responsive records; and in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), provide the FBI’s justification for withholding information in full pursuant to FOIA Exemption (b)(7)(A) and in part pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

ADMINISTRATIVE HISTORY OF PLAINTIFFS’ REQUEST

FBI REQUEST NUMBER 1256410-0

7. The full administrative history related to the handling of Plaintiffs’ request is discussed the First Hardy Declaration, ¶¶ 5-13, ECF No. 18-1. (Ex. A.)

8. Additionally, by letter dated February 17, 2021, the FBI informed Plaintiffs that it had reviewed documents responsive to its request and it had determined that all documents

responsive to its request were exempt in full pursuant to Exemptions 1, 3, 5, 6, 7(A), 7(C), 7(E), and 7(F). Additionally, the FBI advised that redactions were made by the Department of State and the Central Intelligence Agency. Finally, the FBI informed Plaintiffs that it could appeal the FBI's response to the DOJ, Office of Information Policy (OIP) within ninety (90) days, contact the FBI's public liaison, or seek dispute resolution services by contacting the Office of Government Information Services (OGIS). **(Ex. B.)**

ADEQUACY OF SEARCH

9. The procedures for the FBI's search are explained in ¶¶ 21 through 24 of the First Hardy Declaration. Using the results of the FBI's initial search of its databases for responsive records, the FBI identified the pending investigative files pertaining to the Benghazi attacks. After a review of the contents of these files, the FBI was able to locate responsive FD-302 Interview Reports of witnesses within the files previously located in the FBI's search. Additionally, given the passage of time between the FBI's initial search and the change in the FBI's *Glomar* position, the FBI confirmed with its Counterterrorism Division that all responsive FD-302 Interview Reports and attachments, including handwritten notes, had been located.

JUSTIFICATION FOR NONDISCLOSURE UNDER THE FOIA

PART 1

JUSTIFICATION FOR WITHHOLDING RESPONSIVE RECORDS PURSUANT TO EXEMPTION 7(A)

EXEMPTION 7 THRESHOLD

10. Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Pursuant to 28 USC §§ 533, 534, and Executive Order 12,333 as

implemented by the Attorney General's Guidelines for Domestic FBI Operations (AGG-DOM) and 28 CFR § 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, to 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. Under this investigative authority, the responsive records herein were compiled in furtherance of the FBI's investigation of federal laws falling within its law enforcement mission to investigate attacks on U.S. Government personnel and facilities in Benghazi, Libya. Considering these records were compiled to document the FBI's investigation of potential crimes and/or possible threats to national security, the FBI determined they were compiled for a law enforcement purpose.

Exemption 7(A) - Pending Law Enforcement Proceedings

11. 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.

12. Application of this exemption requires: the existence of law enforcement records; a pending or prospective law enforcement proceeding; and a determination that release of the information could reasonably be expected to interfere with the enforcement proceeding. Often, the FBI asserts Exemption 7(A) categorically to withhold a variety of different documents in an investigative file, which the FBI then groups into functional categories and describes in greater detail.

13. Through searches of its records, the FBI located pending investigative files pertaining to the FBI's investigation into the Benghazi attacks. Included in the investigative files are one or more FD-302 Interview Reports with attachments, including handwritten notes, of interviews conducted on September 15-16, 2012, in Germany of United States personnel who had been in the Benghazi mission and the Benghazi CIA annex during the September 11-12, 2012, attacks on those facilities. The FBI, via RIDS, contacted the case agents for the responsive investigative files to determine whether the release of the information within these files, including the specific volume of responsive records and a more detailed description of their contents, would cause harm to pending investigation and anticipated enforcement proceedings. The FBI's case agents advised that the harm associated with the potential release of the records is that the information and evidence contained within the FBI's investigatory files, including records related to interviews of witnesses, could be used in the government's future prosecution of those involved in the Benghazi attacks. The FBI's case agents specifically noted that "The investigation into the 2012 Benghazi Attack remains ongoing. The FBI continues to pursue all logical leads to identify and investigate those individuals who helped perpetuate, assist, or otherwise support the 2012 attack. The widespread disclosure of information to the public through the FOIA process could potentially damage these ongoing FBI investigative activities."

14. In this case, the FBI asserted Exemption 7(A) to protect the FBI's ongoing investigation into the attacks on U.S. Government personnel and facilities in Benghazi, Libya. The release of the responsive FD-302 Interview Reports and attachments, including handwritten notes, would reveal unknown information concerning pending enforcement investigations, and the release of this information could reasonably be expected to interfere with the FBI's ongoing investigations into the attacks on U.S. Government personnel and facilities in Benghazi, Libya,

as detailed above. The FBI determined release of any of this material would provide criminals with information about the government's investigation/enforcement strategies in ongoing matters, allow them to predict and potentially thwart these strategies, and/or allow them to discover/tamper with witnesses and/or destroy evidence. Additionally, release of this information would alert specific individuals to the fact that they are of investigative interest to the FBI. While some information pertaining to the Benghazi attacks has been made public, the FBI has not disclosed the identities of the individuals that were interviewed within the scope of the investigation or revealed specific investigative information related to the focus and content of these interview reports. As such, revealing this information could reasonably be expected to interfere with pending enforcement proceedings. Thus, the FBI has applied Exemption 7(A) to protect this information.

Types of Documents Protected by FOIA Exemption (b)(7)(A)

15. Providing a document-by-document description or listing of the records responsive to Plaintiffs' request would undermine the very interests that the FBI seeks to protect under FOIA exemption (b)(7)(A). Specifically, release of the volume and/or scope of the responsive records may reveal what leads the FBI is pursuing and the scope of the investigation into the Benghazi attacks, permitting groups or individuals to change their behavior and avoid scrutiny. In order to protect these interests, the FBI has described the type of responsive records from the pending investigative files, which are being categorically withheld pursuant to FOIA exemption (b)(7)(A). The pending investigative files contain the following types of documents:

(i) Interview Forms (Form FD-302): FD-302s are internal FBI forms in which evidence is often documented, usually the results of FBI interviews. Such evidence and/or interview information may later be used as testimony or evidence in court proceedings/trials.

Additionally, these evidence/interview forms are often incorporated in other FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's investigative efforts.

(ii) Attachments to Interview Forms: These attachments include handwritten notes and other documents attached to FD-302s. Handwritten notes usually memorialize the recollections of a Special Agent during an interview and are later used to draft the interview summary in an official FD-302. Attachments to FD-302s are often documents pertaining to the topic of an interview or may be documents provided by the individual being interviewed.

Functional Category of Information Protected Under FOIA Exemption (b)(7)(A)

16. The FBI has reviewed each responsive record and grouped the records into a functional category for purposes of demonstrating why the information is exempt from disclosure under FOIA exemption (b)(7)(A). Each responsive document that was withheld falls into the functional category described in the following paragraph. Here, the primary functional category includes:

Evidentiary/Investigative Materials

17. Information Concerning Physical and Documentary Evidence: Information concerning physical and documentary evidence in this file may include records obtained through and/or summarizing information gathered through witness interviews. To more fully describe these records could reasonably lead to disclosure of the scope and focus of the pending investigative efforts related to the ongoing Benghazi investigation. Such a disclosure could be detrimental to success of the pending investigation and prospective enforcement proceedings by permitting subjects to estimate the scope of the FBI's investigation and judge whether their activities are likely to be detected; allowing investigative subjects to discern the FBI's

investigative strategies and employ countermeasures to avoid detection and disruption by law enforcement; and/or allow investigative targets to formulate strategies to contradict evidence to be presented in Court proceedings.

Reasonable Expectation of Interference

18. In processing requests, the FBI has established procedures to implement the FOIA as efficiently as possible. When the FBI receives a request for records regarding a pending investigation, it commonly asserts FOIA exemption (b)(7)(A) to protect the pending investigation and/or any related prospective investigations and prosecutions. Nonetheless, the FBI reviews the records to identify and release any reasonably segregable information contained in the responsive file that would not jeopardize any ongoing or future investigations or enforcement proceedings. The FBI has reviewed all responsive records and concluded that it cannot release or provide any specific information about the responsive records without potentially jeopardizing current or prospective investigations and/or prosecutions related to the Benghazi attacks.

19. The FBI is relying on FOIA exemption (b)(7)(A) to not only prevent interference with the ongoing proceedings, but to avoid disruption to prospective prosecutions that may arise as a result of the FBI's investigative efforts. Specifically, the potential harm from the release of this information in the midst of the pending investigation is as follows:

- (a) Would allow for identification of individuals, sources of information, witnesses, potential witnesses who possess information relative to the investigation, FBI/ other law enforcement personnel, i.e., local, state, and federal, and individuals otherwise associated with the investigation who could then be targeted for potential intimidation and/or physical harm;
- (b) Individuals and other third parties could improperly utilize the information to counteract evidence developed by investigators, alter or destroy potential evidence and/or create false evidence;

- (c) Individuals and other third parties could circumvent investigators if the targets and focus of the investigation were revealed, and suspects may be able to evade detection based on this information.

20. Moreover, once this information is released to the plaintiffs and in the public domain, its use and dissemination is unrestricted. Thus, the FBI concluded that a reasonable expectation of interference in the ongoing investigation of the Benghazi attacks and prospective prosecutions exists, and it asserted Exemption 7(A) to withhold the requested FD-302 Interview Reports.

PART II

JUSTIFICATION FOR WITHHOLDING CERTAIN INFORMATION PURSUANT TO OTHER APPLICABLE FOIA EXEMPTIONS

FOIA EXEMPTION (b)(3) – INFORMATION PROTECTED BY STATUTE

21. Exemption (b)(3) exempts from disclosure information “specifically exempted from disclosure by statute . . . if that statute (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (A)(ii) establishes particular criteria from withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552 (b)(3). The OPEN FOIA Act of 2009 established an additional requirement that any statute “enacted after the date of enactment of the OPEN FOIA Act of 2009, [must] specifically cite[] to this paragraph” in order to qualify under Exemption 3.

(b)(3): NATIONAL SECURITY ACT OF 1947, 50 U.S.C. § 3024 (i)(1)

22. The FBI asserted Exemption (b)(3) to withhold certain information pursuant to Section 102A(i)(1) of the National Security Act of 1947 (NSA), as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). 50 U.S.C. § 3024(i)(1) provides that the

Director of National Intelligence (DNI) “shall protect from unauthorized disclosure intelligence sources and methods.” As relevant to 5 U.S.C. § 552(b)(3)(B), the National Security Act of 1947 was enacted before the date of enactment of the OPEN FOIA Act of 2009. On its face, this federal statute leaves no discretion to agencies about withholding from the public information about intelligence sources and methods. Thus, the protection afforded to intelligence sources and methods by 50 U.S.C. § 3024(i)(1) is absolute. See *CIA v. Sims*, 471 U.S. 159 (1985).

23. 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). In implementing this authority, the DNI promulgated Intelligence Community Directive 700, which provides that IC elements shall protect “national intelligence and intelligence sources and methods and activities from unauthorized disclosure. The FBI is one of 17 member agencies comprising the IC, and as such must protect intelligence sources and methods.

24. Given the plain Congressional mandate to protect the IC’s sources and methods of gathering intelligence, the FBI has determined that intelligence sources and methods would be revealed if any of the withheld information is disclosed to Plaintiffs. The FBI protected material within the responsive FD-302s that, if disclosed, would reveal intelligence sources and methods used across the IC. Disclosure of the intelligence gained through interviews of the survivors of the Benghazi attack would reveal multi-faceted intelligence pertinent across the IC and crucial to the FBI’s ongoing investigation regarding the Benghazi attacks. Therefore, the FBI is prohibited from disclosing such information under 50 U.S.C. § 3024(i)(1).

EXEMPTION (b)(5) - PRIVILEGED INFORMATION

25. Exemption 5 of the FOIA exempts from mandatory disclosure “inter-agency” or “intra-agency” memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5).

26. Exemption 5 has been construed to exempt documents or information normally privileged in the civil discovery context, and incorporates the attorney work product and attorney-client privileges. Generally, the attorney work product privilege protects documents and other memoranda prepared by an attorney or under the direction of an attorney as part of, or in reasonable anticipation of litigation. The attorney-client privilege protects confidential communications from a client to an attorney and from an attorney to a client for the purpose of seeking and providing legal advice. The privilege covers client-supplied information and opinions given by an attorney based on and reflecting that information. The deliberative process privilege protects predecisional deliberative communications that are part of a process by which agency decisions are made. It protects opinions, advice, evaluations, deliberations, proposals, or recommendations that form part of an agency decision-making process, as well as the selection and sorting of factual information relied upon as part of the decision-making process.

27. In order to apply Exemption 5, agencies must first satisfy the threshold requirement – i.e., show that the information protected was “inter-agency or intra-agency.” Once the threshold is satisfied, agencies must satisfy the elements of the pertinent privilege. With respect to the attorney work product privilege, agencies must show that the withheld information was created by, or for, an attorney in reasonable anticipation of litigation. With respect to the attorney-client privilege, agencies must show that the withheld information concerns confidential information shared by a client with an attorney for the purpose of obtaining legal advice or

assistance, or legal advice or assistance provided by an attorney to a client reflecting confidential information. With respect to the deliberative process privilege, agencies must show that the withheld information was both predecisional – i.e., antecedent to a final agency decision – and deliberative – i.e., part of the process in which the agency engaged in an effort to reach a final decision (whether or not any final decision was ever reached).

(b)(5): DELIBERATIVE PROCESS PRIVILEGE

28. Pursuant to Exemption (b)(5), the FBI protected privileged, deliberative materials. The deliberative process privilege protects the internal deliberations of the government by insulating recommendations, analyses, opinions, and other non-factual information comprising the decision-making process. In turn, Exemption 5 allows for the withholding of such privileged material – i.e., material that contains, or was prepared in connection with the formulation of, opinions, advice, evaluations, deliberations, policies, proposals, conclusions, or recommendations. The privilege also protects records and information that if disclosed, would reveal the agency’s collection of multitudinous facts, and the sorting, evaluation, and analysis of those facts in order to make recommendations or reach a final agency decision. Exemption 5, when asserted in conjunction with the deliberative process privilege, is predicated on the recognition that release of this privileged information would inhibit the government’s development of policy and stifle its decision-making process. Furthermore, exempting such documents from disclosure also protects against public confusion that might result from preliminary disclosure of opinions and information that do not, in fact, reflect the final views or policies of the FBI. The exemption and privilege together protect not only documents but also the integrity of the deliberative process itself where exposure of the process would result in harm. The FBI invokes Exemption 5 and the deliberative process privilege because FBI

employees would hesitate to offer their candid and conscientious opinions to superiors or coworkers if they knew that their opinions of the moment might be made a matter of public record at some future date, and because such self-censorship would, in turn, degrade the quality of agency decisions by depriving the decision-makers of fully explored options developed from robust debate.

29. The FBI relied on Exemption 5 and the deliberative process privilege to protect internal draft documents, to include investigative handwritten interview notes attached to FD-302s. In compliance with the FOIA Improvement Act of 2016, all of this material was created less than 25 years before the submission of Plaintiffs' request.

Draft Materials

30. The FBI asserted Exemption 5, deliberative process privilege, to withhold draft documents. Draft documents, such as internal investigative handwritten interview notes, are inherently part of the deliberative process. They contain the Special Agent's shorthand notes containing thoughts, ideas, impressions and interpretations of the verbal interview of a third-party individual, as well as the information conveyed during the interview the Special Agent determined should be noted for purposes of further analysis and consideration. These thoughts, ideas, impressions, interpretations, and information are then fleshed out and distilled during the editorial process for the creation of the official FD-302 interview report, which reflects the FBI's final decision regarding the relevance of the impressions and information gleaned during the interview. The handwritten notes taken by a Special Agent during an interview may not reflect the entire scope of information covered during the interview as additional information may be added to the official FD-302 during the editing phase. Likewise, there could also be information contained within the handwritten interview notes that is not included in the official FD-302.

Information not appearing in the official FD-302 may be imperative to note at the time of interview for purposes of later analysis and consideration but may not necessarily be placed in the official record (i.e. final FD-302) if the Special Agent ultimately concludes during the FD-302 editorial process that the information is not pertinent to the investigation.

31. Agents rely heavily on individual assistance through interview, whether the person is an upstanding citizen or a criminal, and must have the freedom to take notes freely and quickly without the fear of release to the general public causing an opportunity to distort and/or misconstrue the words the special agent has penned. Accordingly, release of the handwritten interview notes would result in the following foreseeable harm: First, it would have a chilling effect on special agents' willingness to document their thoughts, impressions, interpretations, and in some instances, investigative strategies, which is imperative to their ability to prepare the official FD-302 interview report memorializing the interview. Such a result would lead to FD-302 reports that are less comprehensive and thus less helpful to the FBI's investigative process. Second, release of the handwritten interview notes would reveal special agents' internal deliberations and sorting of a multitude of ideas and, at times, investigative strategies considered at the time of the interview, but later determined not relevant or ineffective. Finally, release of the handwritten interview notes would also create public confusion as it will reveal information noted in the handwritten interview notes that special agents later determined was not necessary for inclusion in the final, official FD-302 interview report. Additionally, the handwritten interview notes, because they are not finalized, are considered a draft document, and until finalized in the official record FD-302, can change as the document is being edited. The handwritten interview notes predate the final agency decisions and reflect the give and take of deliberations, through the editing process, which leads to final, refined products. In the instances

where the FBI withheld draft material pursuant to Exemption 5, the FBI found the draft material was shared intra-agency, was pre-decisional (predated the final product), was deliberative (the material was shared to solicit feedback/edits), and release could potentially harm agency deliberations.

Conclusion on Exemption 5 – Deliberative Process Privilege

32. For the reasons discussed above, the FBI properly protected deliberative materials described under Exemption 5, in conjunction with the deliberative process privilege.

FOIA EXEMPTIONS (b)(6) AND (b)(7)(C) UNWARRANTED INVASION OF PERSONAL PRIVACY¹

33. Exemption 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 6.

34. Exemption 7(C) similarly 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).²

¹ See the Exemption 7 Threshold at ¶ 10, *supra*.

² The practice of the FBI is to assert Exemption 6 in conjunction with Exemption 7(C). Although the balancing test for Exemption 6 uses a “would constitute a clearly unwarranted invasion of personal privacy” standard and the test for Exemption 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. The privacy interests are balanced against the public’s interest in disclosure under both exemptions.

35. When withholding information pursuant to these two exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting these exemptions, each piece of information was scrutinized to determine the nature and strength of the privacy interest of every individual whose name and/or identifying information appears in the documents at issue. When withholding the information, the individual's privacy interest was balanced against the public's interest in disclosure. For purposes of these exemptions, a public interest exists only when information about an individual, their name, or their identifying information³ would shed light on the FBI's performance of its mission to protect the American people and uphold the Constitution of the United States, and its function to: protect the United States from terrorist attack; protect the United States against foreign intelligence, espionage, and nefarious cyber operations; combat significant criminal cyber activity, public corruption, transnational criminal enterprises, white-collar crime, and violent crime; and protect civil rights. In each instance wherein information was withheld pursuant to Exemptions 6 and 7(C), the FBI determined that the individuals' privacy interests outweighed any public interest in disclosure.

36. Furthermore, considering privacy concerns are typically obviated once an individual is deceased,⁴ when processing FOIPA requests, the FBI takes several steps to ascertain the current life/death status of the individuals whose names are withheld. The FBI uses

³ Hereafter, identifying information includes the following: dates of birth, places of birth, social security numbers, work addresses, and work numbers.

⁴ In some circumstances, surviving relatives of a deceased individual retain privacy interests in their information, even after the individual's death. *See generally National Archives v. Favish*, 124 S. Ct. 1570 (2004).

the birth date and/or the date of the investigation to determine whether an individual is living or deceased, to the extent either or both of these pieces of information are discernable from the file. The date of birth is used to apply the judicially-recognized “100-year rule,” i.e., if the individual was born more than 100 years ago, the FBI presumes that he or she is dead and the name is released. The FBI also uses institutional knowledge gained from prior FOIA requests or internal records. By using institutional knowledge, the FBI can identify with sufficient certainty the life/death status of certain individuals. If the FBI is unable to determine the life/death status of an individual through the use of these methods, the name of the individual is withheld pursuant to Exemptions 6 and 7(C), when it finds disclosure would constitute an unwarranted invasion of those individuals' privacy should they still be living and no public interest would be served in releasing the names. It is also the FBI's policy to release all names of high-ranking FBI officials in policy-making positions, as well as individuals in public positions, as they do not have privacy rights while acting in their official capacity. This policy is applied to the individual's position at the time of the document, and not the present.

(b)(6) AND (b)(7)(C): NAMES AND IDENTIFYING INFORMATION OF FBI SPECIAL AGENTS AND PROFESSIONAL STAFF

37. Pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI protected the names and identifying information of FBI Special Agents (SAs) and professional staff. These FBI SAs and professional staff were responsible for conducting, supervising, and maintaining the investigation related to the Benghazi attacks, as reflected in the documents responsive to Plaintiffs' request. These responsibilities included, but are not limited to, the following: coordinating/completing tasks in support of the FBI's investigative and administrative functions, compiling information, conducting interviews, and/or reporting on the status of the investigations.

38. Assignments of SAs to any particular investigation are not by choice. Publicity, adverse or otherwise, arising from a particular investigation and use of specific FBI investigative techniques, may seriously prejudice their effectiveness in conducting other investigations or performing their day-to-day work. The privacy consideration is also applied to protect FBI SAs, as individuals, from unnecessary, unofficial questioning as to the conduct of this or other investigations/investigative activities, whether or not they are currently employed by the FBI. FBI SAs conduct official inquiries into various criminal and national security violation cases. The publicity associated with the release of an SA's identity in connection with a particular investigation could trigger hostility toward a particular SA. During the course of an investigation, an SA may engage with all strata of society, conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. Persons targeted by such investigations, and/or those sympathetic to those targeted, could seek to inflict violence on an SA based on their participation in an investigation. This is because an individual targeted by such law enforcement actions may carry a grudge against those involved with the investigation, which may last for years. These individuals may seek revenge on SAs and other federal employees involved in a particular investigation. There is no public interest served by disclosing the SAs' identities because their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities. Rather, the FBI has determined that these SAs maintain a substantial privacy interest. Thus, disclosure of this information would constitute a clearly unwarranted invasion of their personal privacy; and the FBI properly withheld the names and identifying information of FBI SAs pursuant to Exemptions 6 and 7(C).

39. The FBI also withheld the names and identifying information of FBI professional staff pursuant to Exemptions 6 and 7(C). These FBI professional staff were assigned to handle tasks related to the investigation into the Benghazi attacks. Similar to FBI SAs, these FBI employees could be targeted for reprisal based on their involvement in specific investigations. Furthermore, these FBI professional staff were, and possibly are, in positions of access to information regarding official law enforcement investigations, and therefore could become targets of harassing inquiries for unauthorized access to investigations if their identities were released. Thus, these individuals maintain substantial privacy interests in not having their identities disclosed. In contrast, the FBI concluded that no public interest would be served by disclosing the identities of these FBI professional staff to the general public because their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities. Accordingly, after balancing these professional staff employees' substantial privacy interests against the non-existent public interest, the FBI determined disclosure of their identities would constitute a clearly unwarranted invasion of their personal privacy. Therefore, the FBI properly withheld the names and identifying information of FBI professional staff pursuant to Exemptions 6 and 7(C).

(b)(6) AND (b)(7)(C): NAMES AND IDENTIFYING INFORMATION OF PERSONNEL FROM NON-FBI,
FEDERAL AGENCIES

40. Pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI withheld the names and identifying information of personnel from non-FBI, federal, government agencies who provided information to or otherwise assisted the FBI in the investigation of the Benghazi attacks. The rationale for protecting the identities of other government employees is the same as the rationale for protecting the identities of FBI employees. See ¶¶ 37-39, supra. Publicity, adverse or

otherwise, concerning the assistance of these other agency employees in an FBI investigation would seriously impair their effectiveness in assisting or participating in future FBI investigations. The privacy consideration also protects these individuals from unnecessary, unofficial questioning as to the FBI investigation. It is possible for a person targeted by law enforcement action to carry a grudge which may last for years, and to seek revenge on the personnel involved in the investigation at issue in these FBI records. The publicity associated with the release of their names and identifying information in connection with these investigations could trigger hostility towards them by such persons. Therefore, these employees maintain substantial privacy interests in not having their identities disclosed in this context. In contrast, there is no public interest to be served by the disclosure of these employees' names and/or identifying information because their identities, by themselves, would not demonstrate how the FBI performed its statutory mission and thus, would not significantly increase the public's understanding of the FBI's operations and activities. Accordingly, the FBI properly protected these employees' privacy interests pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).

(b)(6) AND (b)(7)(C): NAMES AND IDENTIFYING INFORMATION OF THIRD PARTIES MERELY MENTIONED

41. Pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI withheld the names and identifying information of third parties who were merely mentioned in the investigative records responsive to Plaintiffs' request. The FBI has information about these third parties in its files because these individuals were tangentially mentioned in conjunction with FBI investigative efforts. These individuals were not of investigative interest to the FBI. These third parties maintain substantial and legitimate privacy interests in not having this information disclosed and thus, being connected with FBI law enforcement matters. Considering the FBI is an investigative

and intelligence agency, disclosure of these third parties' names and/or identifying information in connection with FBI records carries an extremely negative connotation. Disclosure of their identities would subject these individuals to possible harassment or criticism and focus derogatory inferences and suspicion on them. The FBI then considered whether there was any public interest that would override these privacy interests, and concluded that disclosing information about individuals who were merely mentioned in an FBI investigative file would not significantly increase the public's understanding of the operations and activities of the FBI. Accordingly, the FBI properly protected these individuals' privacy interests pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).

(b)(6) AND (b)(7)(C): NAMES AND IDENTIFYING INFORMATION OF PERSONS OF INVESTIGATIVE INTEREST

42. Pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI protected the names and identifying information of third parties who were of investigative interest to the FBI. Being identified as a subject of FBI investigative interest carries a strong negative connotation and a stigma, whether or not these individuals ever committed criminal acts. Release of the identities of these individuals to the public could subject them to harassment or embarrassment, as well as undue public attention. Furthermore, it could result in professional and social repercussions, due to resulting negative stigmas. Accordingly, the FBI determined these individuals maintain substantial privacy interests in not having their identities disclosed. In contrast, disclosing personal information about these individuals would not significantly increase the public's understanding of the FBI's performance of its mission and so the FBI concluded that there was no public interest here sufficient to override these individuals' substantial privacy interests. For these reasons, the FBI properly withheld this information pursuant to Exemptions 6 and 7(C).

(b)(6) AND (b)(7)(C): NAMES AND IDENTIFYING INFORMATION OF LOCAL LAW ENFORCEMENT
PERSONNEL

43. Pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI withheld the names and identifying information of local law enforcement employees. These employees were acting in their official capacities and aided the FBI in the law enforcement investigative activities reflected in the records responsive to Plaintiffs' requests. The rationale for protecting the identities of FBI SAs and professional staff discussed in ¶ 37-39, supra, applies equally to the names and identifying information of these local law enforcement employees. Release of the identities of these law enforcement employees could subject them as individuals to unnecessary and unwelcome harassment that would invade their privacy, and could cause them to be targeted for reprisal. In contrast, disclosure of this information would serve no public interest because it would not shed light on the operations and activities of the FBI. Accordingly, the FBI properly withheld this information pursuant to Exemptions 6 and 7(C).

EXEMPTION (b)(7)(E)
INVESTIGATIVE TECHNIQUES AND PROCEDURES

44. FOIA Exemption (b)(7)(E) provides protection for:

law enforcement records [which]...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).

45. Exemption (b)(7)(E) has been asserted to protect information from these records, the release of which would disclose techniques and/or 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.

46. Within the responsive documents, the FBI applied Exemption (b)(7)(E) to non-public investigative techniques and procedures utilized by the FBI to pursue its law enforcement mission, and also to non-public details about techniques and procedures that are otherwise known to the public. Specifically, the FBI asserted Exemption (b)(7)(E) to protect the following categories of information.

(b)(7)(E): Sensitive Investigative File Numbers

47. Pursuant to Exemption (b)(7)(E), the FBI protected sensitive investigative file numbers. The FBI determined this exemption is appropriate for protecting these file numbers as the release of file numbering convention identifies the investigative interest or priority given to such matters. The file numbers the FBI protected are not known to the general public. These file numbers contain three separate portions. The first portions of these file numbers consist of FBI file classification numbers which indicate the types of investigative/intelligence gathering programs to which these files pertain. Many of the FBI's classification numbers are public, which makes disclosure of this information even more telling. Release of known file classification numbers in the context of investigative records would immediately reveal the types of investigations being pursued, and thus the types of investigative techniques and procedures available to FBI investigators, and/or non-public facets of the FBI's investigative strategies. For example, revealing the FBI has a money laundering investigative file on a subject who was only known to be investigated for crimes related to public corruption, would reveal key non-public information about the FBI's investigative strategies and gathered evidence. Additionally, releasing non-public FBI file classification numbers would reveal critical information about non-

public investigative techniques and procedures, and provide criminals and foreign adversaries the ability to discern the types of highly sensitive investigative strategies the FBI is pursuing whenever such file classification numbers are present within these and other sensitive FBI investigative records.

48. The protected investigative file numbers also contain two letter office of origin codes, indicating which FBI field office or overseas FBI legal attaché originated the investigations at issue. Providing this information, in many instances, would provide critical information about where and how the FBI detected particular criminal behaviors or national security threats, and reveal key pieces about the FBI's non-public FBI investigations or intelligence/evidence gathering sources and methods. Revealing this information could also risk disclosing unknown FBI investigations or intelligence gathering initiatives, by revealing interests in varying areas of FBI investigative responsibility. Releasing this information could also possibly provide significant information about the FBI's failure to detect certain types of criminal behavior. For example, a criminal operating out of San Francisco, California with ties to a criminal organization under investigation in the FBI's Seattle Field Office, could request the FBI's Seattle Field Office's investigative file. If the FBI were to reveal all of the originating office codes in the investigative files present in Seattle's file, and there was no indication the FBI ever pursued an investigation in San Francisco, the criminal could reasonably assume the FBI failed to locate any evidence of their wrongdoing, emboldening them to continue their activities, undeterred.

49. The third portion of these investigative files consists of the numbers given to the unique investigative initiatives these files were created to memorialize. Releasing these singular file numbers would provide criminals and foreign adversaries with a tracking mechanism by

which they can place particular files/investigations within the context of larger FBI investigative efforts. Continued release of sensitive investigative file numbers would provide criminals with an idea of how FBI investigations may be interrelated and when, why, and how the FBI pursued different investigative strategies. This would provide criminals with a means of judging where the FBI allocates its limited investigative resources, how the FBI responds to different investigative circumstances, what the FBI knows and when/how they obtained the knowledge, and if there are knowledge-gaps in the FBI's gathered intelligence.

50. In summary, repeatedly releasing sensitive FBI investigative file numbers would allow determined criminals and foreign adversaries to obtain an exceptional understanding of the body of investigative intelligence available to the FBI; and where, who, what and how it is investigating certain detected activities. Release of this information would enable these criminals and foreign adversaries to predict FBI investigations and structure their behavior to avoid detection and disruption by FBI investigators, enabling them to circumvent the law. Accordingly, the FBI properly asserted FOIA Exemption 7(E) to protect this type of information.

(b)(7)(E): Focus of Specific Investigations

51. Pursuant to Exemption (b)(7)(E), the FBI protected the specific focuses of the investigation into the Benghazi attacks. These focuses have not been publicly disclosed. Revealing this information to investigative targets would alert them to the FBI's interest in their activities, allowing them to take active measures to conceal/destroy evidence or modify their behavior to avoid future investigative scrutiny. Additionally, release of this information in the context of the investigative records at issue would provide criminal elements, terrorists, and/or foreign adversaries a preview of how the FBI will respond to similar investigative situations,

allowing them to preemptively deploy countermeasures to disrupt FBI investigative efforts of their own, unrelated activities.

52. Release of this type of information would also reveal key information about FBI intelligence gathering capabilities. Revealing when and why the FBI pursues or shifts investigative focuses would reveal key information about the types of investigative intelligence the FBI possessed at particular points in time, and possibly when and how such information was obtained. This could enable terrorists to discover non-public details about FBI intelligence/evidence gathering methods, and help them determine how they might modify their operational security to deprive the FBI of such critical intelligence/evidence.

53. In summary, releasing the focus of specific FBI counterterrorism investigations would allow targets of these investigations to thwart FBI efforts to investigate their activities; stunt the FBI's broader strategies for pursuing interrelated investigations; provide key information about FBI investigative strategies for pursuing counterterrorism investigations; and reveal key information about the FBI's intelligence gathering capabilities. Therefore, as release of this information would enable criminals to circumvent the law, the FBI withheld this information pursuant to Exemption 7(E).

(b)(7)(E): Surveillance Techniques

54. Pursuant to Exemption (b)(7)(E), the FBI protected information concerning the targets, locations, and monitoring utilized in surveillance operations conducted by the FBI in relation to the investigation at issue here. The FBI utilized these surveillance operations to obtain investigative intelligence relevant to the investigation into the Benghazi attacks. The law enforcement techniques used to conduct these surveillance operations are the same techniques utilized by the FBI in current criminal and national security investigations. Certainly, it is

publicly known the FBI and other law enforcement agencies engage in different types of surveillance in investigations. However, disclosure of non-public details about who, when, how, and under what circumstances the FBI conducts surveillance would allow current and future subjects of FBI investigations and other potential criminals to develop and utilize countermeasures to defeat or avoid different types of surveillance operations, thus rendering the techniques useless to the FBI and other law enforcement agencies. This is especially true because the success of investigative surveillance hinges on investigators' abilities to remain undetected. Revealing any non-public details about the FBI's methodology for conducting surveillance could potentially jeopardize the FBI's ability to operate surveillance covertly, and risks circumvention of the law. Accordingly, the FBI properly asserted Exemption 7(E) to withhold this information.

FORESEEABLE HARM STANDARD

55. The FOIA Improvement Act of 2016 generally adopted the foreseeable harm standard and made it statutory, advising that agencies shall withhold information under the FOIA only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law. Accordingly, the FBI's analysis of records responsive under the FOIA is a two-part process. First, the FBI determines whether a record (or a portion of a record) is exempt pursuant to one or more FOIA exemptions. Second, if the record (or portion thereof) is exempt pursuant to one or more FOIA exemptions, the FBI then considers whether foreseeable harm would result from disclosure of the record (or portion thereof). In each of the withheld records at issue here (or portions of withheld records), the FBI conducted this two-part analysis and only withheld records (or portions of records) where it determined the withheld record (or portion) met both of these criteria. The foreseeable harm is more fully described under each exemption justification.

CONSULTATIONS WITH OTHER GOVERNMENT AGENCIES

56. The FBI consulted with Department of State concerning the records requested and the FBI asserted Exemptions (b)(1), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(E), and (b)(7)(F) to withhold the records on the Department's behalf. The Declaration of Timothy J. Kootz, attached hereto as **Exhibit C**, will address these withholdings.

57. The FBI consulted with the Central Intelligence Agency (CIA) concerning the records requested and the FBI asserted Exemptions (b)(1), (b)(3), and (b)(6) to withhold the records on the CIA's behalf. The Declaration of Vanna Blaine, attached hereto as **Exhibit D** will address these withholdings.

SEGREGABILITY

58. The FBI reviewed all responsive records for any segregable, public source information and determined that there was no segregable, public source information that could be released to Plaintiffs.

CONCLUSION

59. The FBI performed adequate and reasonable searches for responsive records and reviewed those records for segregable public source information. Information was properly withheld pursuant to FOIA Exemptions 3, 5, 6, 7(A), 7(C), and 7(E). The FBI carefully examined the documents and determined the information withheld from Plaintiffs in this case, if disclosed, would reveal statutorily protected information; would reveal privileged information; could reasonably be expected to interfere with pending or prospective enforcement proceedings; would cause a clearly unwarranted invasion of personal privacy, or could reasonably be expected to constitute an unwarranted invasion of personal privacy; and would disclose techniques and procedures for law enforcement investigations. After extensive review of the documents at issue,

the FBI determined that there is no non-exempt information that can be reasonably segregated and released without revealing exempt information.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A through D attached hereto are true and correct copies.

Executed this 29th day of June 2023.

A handwritten signature in blue ink, appearing to read "M. G. Seidel", written over a horizontal line.

MICHAEL G. SEIDEL
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