

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No. 14-1589 (EGS)
DEPARTMENT OF DEFENSE, et al.,	)	
	)	
Defendants.	)	
	)	

PLAINTIFFS' RESPONSE TO DEFENDANT FBI'S  
STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Pursuant to Local Civil Rule 7(h)(1) and paragraph 13(c) of this Court's Standing Order, ECF No. 62, Plaintiffs file this Response to Defendant FBI's Statement of Material Facts Not In Dispute, ECF No. 97-7.

<b>Defendant's Undisputed Material Facts</b>	<b>Plaintiffs' Response</b>
1. Plaintiffs initiated this lawsuit in September 2014. <i>See generally</i> Compl., ECF No. 1.	Admit.
2. The case originally involved over 40 separate FOIA requests. <i>See generally</i> Compl., ECF No. 1; Second Am. Compl., ECF No. 31.	Admit.
3. The parties have worked together to narrow the issues requiring judicial resolution. <i>See</i> Joint Mot. to Am. Briefing Schedule at 2-6, ECF No. 65.	Admit.
4. The parties cross-moved for summary judgment in 2018. <i>See</i> Defs.' Mot. for Summ.	Admit.

J., ECF No. 68; Pls.' Cross-Mot. for Summ. J., ECF No. 71.	
5. Plaintiffs filed a motion for leave to propound an interrogatory to DOD. <i>See</i> Pls.' Mot. to Propound Interrogatory to DOD, ECF No. 73.	Admit.
6. The Court referred the case to a magistrate judge. <i>See</i> Minute Order (Jan. 7, 2019).	Admit.
7. The case was assigned to Magistrate Judge Deborah Robinson. <i>See</i> Docket Entry (Jan. 7, 2019).	Admit.
8. Plaintiffs further narrowed the issues in dispute during the pendency of the parties' cross-motions for summary judgment, including dropping their claims against the State Department. <i>See</i> Joint Status Report ¶ 3, ECF No. 81.	Admit.
9. Thereafter, only five issues remained to be decided by the Court: 1) whether DOD conducted an adequate search for certain records; 2) whether DOD properly withheld classified maps identifying the positions of military assets in the Mediterranean; 3) whether the CIA had properly redacted information contained in records relating to an investigation by the CIA Inspector General; 4) whether the FBI had properly issued a <i>Glomar</i> response regarding Plaintiffs' request for FD-302 reports and corresponding handwritten notes of certain interviews the FBI allegedly conducted following the Benghazi	Admit.

<p>attacks; and  5) whether to grant or deny Plaintiffs' motion to propound an interrogatory to DOD. <i>See</i> Magistrate's Report and Recommendation ("R&amp;R") at 2-3, ECF No. 83.</p>	
<p>10. Magistrate Judge Robinson recommended summary judgment be awarded to Defendants on all issues except with respect to the FBI's <i>Glomar</i> response, and also recommended that the Plaintiffs' motion to propound an interrogatory be denied. <i>See</i> R&amp;R at 33, ECF No. 83.</p>	Admit.
<p>11. The FBI subsequently withdrew its <i>Glomar</i> response and informed the Court that it would search for and process records that would have been covered by the <i>Glomar</i> assertion. <i>See</i> Defs.' Notice Regarding R&amp;R, ECF No. 86.</p>	Admit.
<p>12. By letter dated February 17, 2021, the FBI informed Plaintiffs that it had identified records responsive to their request. Seidel Decl. ¶ 8 &amp; Exhibit B.</p>	Admit.
<p>13. The FBI stated it had determined, after consultation with the State Department and the CIA, all of the identified responsive records are protected in full from disclosure pursuant to Exemptions 1, 3, 5, 6, 7(A), 7(C), 7(E), and 7(F). Seidel Decl. ¶ 8.</p>	Admit that the FBI's position is that the responsive records are protected in full from disclosure.
<p>15. The Court also denied Plaintiffs' motion to propound an interrogatory to DOD. Mem. Op. at 29, ECF No. 92; Order, ECF No. 93.</p>	Admit.
<p>16. The Court further ordered the parties to submit a status report by January 20, 2023,</p>	Admit.

<p>indicating whether any disputes remain regarding the FBI's FD-302 interview reports. Order, ECF No. 93.</p>	
<p>17. The parties informed the Court on January 20, 2023, that Plaintiffs challenge the FBI's withholding of the responsive FD-302 interview reports. <i>See</i> Joint Status Report at 2, ECF No. 94.</p>	Admit.
<p>18. The Court thereafter set a briefing schedule for the FBI's renewed motion for summary judgment. <i>See</i> Minute Order (Feb. 22, 2023).</p>	Admit.
<p>19. The FBI's <i>Glomar</i> response encompassed Plaintiffs' request for records reflecting survivors' accounts, including FD-302 interview reports and corresponding handwritten notes of interviews conducted 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 11th and 12th attacks on those facilities. <i>See</i> Seidel Decl. ¶ 5; Joint Mot. To Am. Briefing Schedule at 5, ECF No. 65; Second Am. Compl. ¶ 126(8), ECF No. 31.</p>	Admit.
<p>20. To locate records covered by its withdrawn <i>Glomar</i> response, "the FBI identified the pending investigative files pertaining to the Benghazi attacks" "[u]sing the results of the FBI's initial search of its databases for responsive records[.]" Seidel Decl. ¶ 9.</p>	Admit.
<p>21. The initial searches consisted of index searches of the FBI's case management systems—the Central Records System ("CRS") and Sentinel—utilizing a string</p>	Admit.

<p>search and a three-way phonetic breakdown of the following search terms:</p> <ul style="list-style-type: none"> <li>• Benghazi Attack;</li> <li>• Benghazi</li> <li>• Benghazi Special Mission and Annex Attacks;</li> <li>• Attack Consulate Benghazi;</li> <li>• Attack Benghazi;</li> <li>• Benghazi Assault;</li> <li>• John Christopher Stevens; and</li> <li>• Christopher Stevens.</li> </ul> <p>First Hardy Decl. ¶¶ 20, 22, ECF No. 18-1, attached to Seidel Decl. as Exhibit A.</p>	
<p>22. The FBI reviewed the pending investigative files and located responsive FD-302 interview reports and attachments, including handwritten interview notes. Seidel Decl. ¶ 9.</p>	<p>Deny that the FBI's investigative files regard "pending" matters.</p> <p>Admit that the FBI reviewed its investigative files.</p>
<p>23. The FBI confirmed with its Counterterrorism Division that all responsive FD-302 interview reports and attachments, including handwritten interview notes, had been located. Seidel Decl. ¶ 9.</p>	<p>Admit.</p>

Date: August 10, 2023.

Respectfully submitted,

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