

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

<p>ACCURACY IN MEDIA, <i>et al.</i></p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES DEPARTMENT OF DEFENSE, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>
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No. 14-cv-1589 (EGS)

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

Pursuant to Local Civil Rule 7(h) and paragraph 13 of the Court’s Standing Order, ECF No. 62, Defendant, the Federal Bureau of Investigation, a component of the United States Department of Justice (“FBI”), hereby submits this response¹ to Plaintiffs’ Statement of Material Facts Not in Dispute, *see* ECF No. 98-3.

Plaintiffs’ Undisputed Material Facts	Defendant FBI’s Response
<p>1. Plaintiffs’ February 21, 2014, FOIA request seeks “September 15th or 16th FBI 302 Interview Reports, and corresponding handwritten notes, of interviews conducted 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.”</p> <p><i>Compl.</i>, ECF 31 ¶ 126 (8).</p>	<p>Admit.</p>

¹ In response to Defendant FBI’s Statement of Material Facts Not In Dispute, Plaintiffs deny that the FBI’s investigative files regard “pending matters.” *See* Pls.’ Response to Def. FBI’s Statement of Material Facts Not In Dispute ¶ 22, ECF No. 98-4. Plaintiffs, however, provide no basis for their dispute of this fact, and the Seidel Declaration explains that the FBI “contacted the case agents for the responsive investigative files” who confirmed that the “investigation into the 2012 Benghazi Attack remains ongoing.” Decl. of Michael G. Seidel ¶ 13, ECF No. 97-2.

<p>2. The Dec. 30, 2012 Report by the Senate Committee on Homeland Security And Governmental Affairs, <i>Flashing Red: A Special Report On The Terrorist Attack At Benghazi</i> relates: “On September 15th and 16th, officials from the FBI conducted face-to-face interviews in Germany of the U.S. personnel who had been on the compound in Benghazi during the attack . . . Information from those interviews was shared on a secure video conference on the afternoon of the 16th with FBI and other IC officials in Washington.”</p> <p><i>Compl.</i>, ECF 31 ¶ 126.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).</p>
<p>3. By letter dated February 17, 2021, the FBI informed Plaintiffs that it had identified records responsive to their request.</p> <p><i>Seidel Decl.</i>, ECF 97-2 ¶ 8.</p>	<p>Admit.</p>
<p>4. In September of 2014, Hatchette Book Group published “<i>13 Hours, The Inside Account of what Really Happened in Benghazi</i>” (“<i>13 Hours</i>”) by “Mitchell Zuckoff with the Annex Security Team.”</p> <p><i>13 Hours</i> excerpts, ECF 25-1 Ex 1 at 4-5.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).</p>
<p>5. The main sources of <i>13 Hours</i> were members of the CIA’s Quick Reaction Force (“QRF”) Dave Benton, Mark Geist, Kris Paronto, Jack Silva, and John Tiegen.</p> <p><i>13 Hours</i> excerpts, ECF 25-1 Ex 1 at 4-5.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).</p>
<p>6. <i>13 Hours</i> recounts that, after being ordered to stay in place three times, the CIA’s QRF disobeyed that order.</p> <p><i>13 Hours</i> excerpts, ECF 25-1 Ex 1 at 4-5.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit</p>

	under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).
<p>7. On January 15, 2016, Paramount Pictures released the movie, <i>13 Hours: The Secret Soldiers of Benghazi</i> (“<i>Secret Soldiers</i>”).</p> <p>This fact is in the public record.</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. See <i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).
<p>8. On January 15, 2016 the Wash. Post. Published <i>Former CIA Chief in Benghazi Challenges the Story Line of the New Movie “13 Hours”</i></p> <p>This fact is in the public record.</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. See <i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).
<p>9. On Dec. 2, 2014, Breitbart published <i>Benghazi Heroes Debunk House Intel Report as ‘Full of Inaccuracies’ with Firsthand Account.</i></p> <p>This fact is in the public record.</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. See <i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).
<p>10. The Senate Select Intelligence Committee’s Jan. 15, 2014 <i>Review of the Terrorist Attack on U.S. Facilities in Benghazi, Libya, September 11-12, 2012</i>, states:</p> <p>According to informal notes obtained from the CIA, the security team left for the Annex [sic] without the formal approval of the Chief of Base, see attachments to e-mail from CIA staff [redacted] to CIA staff [redacted] September 23, 2012.</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. See <i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).

<p>Excerpts ECF 15-7 Ex 7 at 6.</p>	
<p>11. The CIA Chief-of-Base testified before the <i>House Select Committee on Events Surrounding the 2012 Terrorist Attack in Benghazi</i> (“<i>Select Committee</i>”), “I did not tell anybody to stand down.”</p> <p><i>Clarke Decl.</i> Transcript ECF 71-1 at 58.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).</p>
<p>12. CIA Director David Petraeus testified to the House Intelligence Committee that he was unaware that any order to stand down had been given.</p> <p>ECF 71-1 at 36.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).</p>
<p>13. The DOD ordered its forces in Tripoli to stand down.</p> <p>House Oversight and Government Reform Committee testimony of Deputy Chief of Mission Gregory Hicks, ECF 71-1 at 61-64.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).</p>
<p>14. Senate Select Intelligence Committee’s Jan. 15, 2014 <i>Review of the Terrorist Attack on U.S. Facilities in Benghazi, Libya, September 11-12, 2012</i>, states:</p> <p style="padding-left: 40px;">The Committee explored claims that there was a “stand down” order given to the security team at the Annex . . . the Committee found no evidence of intentional delay or obstruction by the Chief of Base or any other party.</p> <p>Excerpts ECF 15-7 Ex 7 at 6.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).</p>

<p>15. On Dec. 2, 2014, Breitbart published <i>Benghazi Heroes Debunk House Intel Report as 'Full of Inaccuracies' with Firsthand Account</i>.</p> <p>This fact is in the public record.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).</p>
<p>16. The FBI interviewed John Tiegan on September 15 or 16, 2011, regarding the Benghazi attacks.</p> <p><i>Tiegan Aff.</i> Exhibit 1.</p>	<p>The FBI will neither confirm nor deny this fact because to do so would reveal information that is properly exempt from disclosure under Exemption 7(A).</p>
<p>17. John Tiegan memorialized his waiver of any privacy interest he may have in the subject Reports.</p> <p><i>Tiegan Aff.</i> Exhibit 1.</p>	<p>The FBI admits that Plaintiffs attached to their opening memorandum an affidavit signed by John Tiegan on August 9, 2023, that states he was interviewed by the FBI on September 15 or 16, 2011 [sic], regarding the Benghazi attacks.</p> <p>The FBI disputes this paragraph to the extent that it draws a legal conclusion regarding whether John Tiegan’s affidavit effectively waived any interest he may have in the subject FD-302 Interview Reports, which memorialize interviews the FBI conducted on September 15 and 16, 2012.</p>
<p>18. From September 11, 2012 through February 8, 2015, 52,404 news articles were published regarding the Benghazi attack, 32,185 newswires & press releases were issued, and the record of news transcripts is 14,698.</p> <p><i>Tappan Aff.</i> ECF 15-8.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).</p>

Dated: September 14, 2023

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