

plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA, amended by the OPEN Government Act of 2007 and the Open FOIA Act of 2009; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and other 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) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the FBI's handling of plaintiffs' February 21, 2014, FOIA request submitted to FBIHQ for records pertaining to the FBI's investigation into the Benghazi attacks.

(4) This declaration is being submitted in response to plaintiffs' partial Motion for Summary Judgment, *see* Dkt. 25. Specifically, this declaration will address the FBI's response to plaintiffs' request for 302 Interview Reports for John Tiegen, Kris Paronto, and/or Mark Geist.¹ Specifically, this declaration provides justification for the FBI assertion of FOIA Exemption (b)(7)(A) to neither confirm nor deny the existence of any 302 Interview Reports of any witness, including the specific individuals listed by plaintiffs, as such acknowledgment could reasonably be expected to interfere with pending enforcement proceedings.²

¹ Plaintiffs did not obtain a privacy waiver via a completed Certification of Identify Form from these individuals, despite the FBI providing the opportunity for them to do so as requested by letter dated March 14, 2014.

² Information responsive to plaintiffs' request is also exempt pursuant to several other applicable underlying FOIA exemptions. The FBI filed an unopposed motion requesting the Court to allow the FBI to bifurcate this case by moving for summary judgment based on the applicability of Exemption 7(A) to certain records covered by that exemption without waiving any allegation that those records are exempt from release for other reasons. (ECF No. 18). The FBI will provide justifications for the assertion of any applicable underlying exemptions if the bifurcation motion is denied.

FOIA Exemption 7 Threshold

(5) FOIA Exemption 7 exempts from mandatory disclosure records or information compiled for law enforcement purposes when disclosure could reasonably be expected to cause one of the harms enumerated in the subparts of the exemption. 5 U.S.C. § 552(b)(7). In this case, the harm that could reasonably be expected to result from disclosure and/or the mere acknowledgment of specific witness interviews concerns interference with pending law enforcement proceedings.

(6) In order to assert Exemption 7, an agency first must demonstrate that the records or information it seeks to withhold were compiled for law enforcement purposes. Law enforcement agencies such as the FBI must demonstrate that the records at issue are related to the enforcement of federal laws and that the enforcement activity is within its law enforcement duties. In this case, any existing information responsive to plaintiffs' request is compiled for law enforcement purposes as it would be maintained in files related to the FBI's investigations into the attacks on U.S. Government personnel and facilities in Benghazi, Libya, resulting in the deaths of four American citizens, and the serious injury of several others. The investigations are ongoing and fall within the law enforcement duties of the FBI to detect and undertake investigations into possible violations of federal criminal and national security laws, such as 28 U.S.C. § 540A[b]; 28 U.S.C. § 533; 28 C.F.R. § 0.85. These investigations are currently open and active.

FOIA Exemption 7(A) – Pending Law Enforcement Proceedings

(7) 5 U.S.C. §(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.

(8) Application of Exemption (b)(7)(A) requires: the existence of law enforcement records; a pending or prospective law enforcement proceeding; and a reasonable expectation that release would interfere with the enforcement proceeding. As relevant here, the FBI is asserting FOIA Exemption (b)(7)(A) to neither confirm nor deny the existence of any particular witness statements within the records responsive to plaintiffs' request because the premature 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.

(9) Any existing records responsive to plaintiffs' request concern the FBI investigation into the attacks on U.S. Government personnel and facilities in Benghazi, Libya. The FBI has ongoing pending investigations into these attacks; therefore, any investigative records pertaining to this matter, specifically, the three 302s sought by plaintiffs, are exempt from disclosure pursuant to FOIA Exemption (b)(7)(A), as well as any applicable underlying exemptions. To protect the integrity of the pending law enforcement proceedings, the FBI can neither confirm nor deny the existence of any specific witness account, including the ones requested by plaintiffs, as the mere acknowledgement of the existence or nonexistence of these records would interfere with the pending investigation. While it's publically known the FBI is actively investigating the Benghazi attacks, specific details such as the direction, scope, pace, and focus of the investigation are not known. As such, the mere acknowledgement that a particular witness statement has been obtained or not obtained itself undermines the integrity of the ongoing investigation. If the FBI were to confirm or deny it has particular pieces of evidentiary information during the pendency of a criminal investigation, it would provide a premature piece of detailed information related to the scope of an open investigation. Simply

stated, trickling out specific investigative details about what the FBI has or has not gathered during the pendency of an investigation could have disastrous effects. As relevant here, revealing whether the FBI has or has not collected witness statements from certain individuals alone would reveal specific details about the scope of the Benghazi investigation. As a result, the premature release of such details could reasonably be exploited by criminal elements and terrorists, and potentially alert them to the fact that they are subject to law enforcement scrutiny. Moreover, acknowledgement that any individual has or has not provided the FBI with a statement as part of an open investigation interferes with the investigative process as those individuals may become the subject of harassment, ridicule, or even retaliation as acknowledgement would confirm or not confirm the identity of a potential cooperating witnesses. Lastly, acknowledgment that any individual has or has not provided the FBI with a statement would chill the FBI's investigative efforts as perspective witnesses would reasonably be reluctant to cooperate if they know the FBI will inform third party requesters about their involvement, if any, in an investigation.

(10) Finally, information responsive to plaintiffs' request is also exempt pursuant to several other applicable underlying FOIA exemptions. The FBI filed an unopposed motion requesting the Court to allow the FBI to bifurcate in this case, *see* Unopposed Motion for an Order Preserving Certain Allegations ECF. No. 18. The FBI respectfully reserves the right to assert underlying exemptions in the future, should the Court deny its motion to bifurcate.

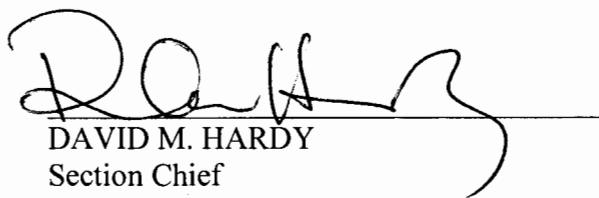
CONCLUSION

(11) In this case, plaintiffs sought law enforcement records on the attacks on U.S. Government personnel and facilities in Benghazi, Libya. Specifically, plaintiffs seek 302 Interview Reports for John Tiegen, Kris Paronto, and/or Mark Geist. For the reasons explained

above, the FBI can neither confirm nor deny the existence of these records, as the mere acknowledgment of these records could reasonably be expected to interfere with pending law enforcement proceedings and therefore are exempt from disclosure pursuant to FOIA Exemption (b)(7)(A).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that Exhibit A attached hereto is a true and correct copy.

Executed this 8th day of June, 2015.



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