

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CATO INSTITUTE,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION
and, UNITED STATES DEPARTMENT OF
JUSTICE,

Defendants.

Civil Action No. 1:20-cv-3338 (JEB)

DECLARATION OF AMIE MARIE NAPIER

I, Arnie Marie Napier, declare as follows:

I. I am the Section Chief of the Record/Information Dissemination Section (RIDS), Information Management Division, Federal Bureau of Investigation (FBI), located in Winchester, Virginia. I joined the FBI in April 2009, and prior to my current position, I was the Unit Chief of the Office of Internal Auditing's National Security Unit from July 2024 until September 2025; a Unit Chief, Acting Assistant Section Chief, and Acting Section Chief in the Information Technology Infrastructure Division from February 2020 to July 2024; an Auditor, Unit Chief, Assistant Section Chief, and Acting Section Chief in the Training Division from July 2012 to February 2020; an Auditor and Division Compliance Officer in the Security Division from September 2010 to July 2012; and an Auditor and Compliance Team Lead in the Threat Screening Center from April 2009 to September 2010. Prior to joining the FBI, I served as an Auditor with the Department of Defense's Office of Inspector General from September 2003 to April 2009.

2. In my official capacity as Section Chief of RIDS, I supervise approximately 212 FBI employees, supported by approximately 92 contractors, who staff a total of eight Federal Bureau of Investigation Headquarters units and two field operational service center units. RIDS' 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"), 5 U.S.C. § 552, 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 of 1974, 5 U.S.C. § 552a; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010) and the preparation of declarations in support of Exemption 1 claims asserted by the FBI under the FOIA. The Section Chief, RIDS, has been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to Executive Order 13526, §§ 1.3 and 3.1, respectively. The statements contained in this declaration are based upon my personal knowledge, including 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 and the Privacy Act of 1974. Specifically, I am familiar with the FBI's handling of Plaintiff's FOIA request that is the subject of this litigation.

4. In response to Plaintiff's request, the FBI processed a total of 959 pages of responsive records subject to the FOIA. Of these pages, the FBI released 372 pages in full, 76

pages in part, withheld 243 pages as duplicates, and 268 pages in full because the pages were exempt in full pursuant to one or more of the following applicable FOIA Exemptions 1,3,5, 6, 7(A), 7(C), and 7(E). 5 U.S.C. § 552(b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(E).

5. Overall, this is the FBI's third overall, and my first, declaration in this case. This declaration further supplements and incorporates the Declaration of Michael G. Seidel ("First Seidel Declaration") dated June 3,2022 (Did. No. 26) and the Second Declaration of Michael G. Seidel ("Second Seidel Declaration") dated August 11,2022 (Did. No. 31-3). The background of this matter is set forth in these prior declarations and will not be fully recounted here. Only information directly relevant to this declaration and the Court's Memorandum Opinion and Order ("Court's Order") entered January 9,2024, has been repeated or referenced. (Did. No. 45.)

6. On December 2, 2025, Plaintiff limited its remaining challenges in this litigation to the FBI's use of FOIA Exemptions 1, 3, 7(A), and 7(E). (December 2, 2025, JSR, Did. No. 64.) The FBI submits this declaration in further support of Defendant's Motion for Summary Judgment and to address certain issues raised in the Court's Order. Specifically, Part I of this declaration describes the supplemental targeted searches conducted by the FBI and provides an update to the administrative history and actions taken since the filing of the Second Seidel Declaration. Part II, in response to Plaintiff's narrowed challenges and in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), provides the FBI's justification for withholding information in full or in part pursuant to FOIA Exemptions 1, 3, 7(A), and 7(E).

THE FBI'S TARGETED SUPPLEMENTAL SEARCHES

7. Pursuant to the Court's Order, the FBI conducted additional searches for records subject to the FOIA and responsive to Plaintiffs request. Following discussions with Plaintiff, the FBI conducted a search for responsive records within the timeframe of January 1, 2012, to December 11, 2019, at the following FBI locations: FBI Policy Office Portal, Washington Field Office (WFO), New York Field Office (NYFO), Los Angeles Field Office (LAFO), Chicago Field Office (CGFO), Office of Congressional Affairs (OCA), Office of Public Affairs (OPA), Office of the Private Sector (OPS), Director's Office (DO), and Office of the Executive Secretariat (ExecSec) using the search term "Cato." Although Plaintiff requested the FBI also use the search terms "Cato Institute," "The Cato Institute," "Cato benefactor," "Cato employee," and "Cato contractor" the FBI determined that by using the broader search term Cato, the search would capture all other iterations provided by Plaintiff.

INTERNAL POLICY OFFICE POLICY PORTAL

8. The Internal Policy Office (IPO) Policy Portal is a centrally managed internal electronic library consisting of all FBI directives, notices and policy guides. On April 22, 2024, the FBI conducted a search of IPO's Policy Portal using the search term "Cato" and limited to the timeframe of January 1, 2012 to December 11, 2019. The FBI located no records subject to the FOIA as a result of this search.

OFFICE OF CONGRESSIONAL AFFAIRS

9. The Office of Congressional Affairs (OCA) is the FBI's primary liaison to Congress. RIDS requested that OCA conduct a search for records pertaining to Cato Institute and subject to the FOIA. OCA conducted a search of its shared drives, utilizing the term "Cato." OCA located no records that were subject to the FOIA and responsive to Plaintiffs request.

FBI OFFICE OF PUBLIC AFFAIRS

10. RIDS requested that the FBI's Office of Public Affairs (OPA) conduct a search for records pertaining to Cato Institute and subject to the FOIA. OPA uses public affairs tools and expertise to build public trust and support the FBI's mission. OPA informs and alerts members of the public to mobilize them to assist investigations and to empower them to protect themselves from ongoing threats and crimes. On April 29, 2024, OPA conducted a search of its unclassified and classified emails, and shared drives, utilizing the term "Cato." OPA located 17 pages subject to the FOIA and responsive to Plaintiffs request.

FBI OFFICE OF THE PRIVATE SECTOR

11. RIDS requested that the FBI's Office of the Private Sector (OPS) search for records subject to the FOIA pertaining to Cato Institute. OPS oversees the FBI's vital engagement and information-sharing efforts with businesses and industry. OPS works to enhance the FBI's understanding of the private sector's risks and needs. OPS conducted a search of its holdings utilizing the term "Cato." OPS located no records subject to the FOIA that were responsive to Plaintiffs request.

FBI's DIRECTOR'S OFFICE

12. RIDS requested that the Director's Office (DO) conduct a search for records subject to the FOIA pertaining to Cato Institute. The DO oversees all of the FBI's operations. On September 6, 2024, the DO conducted a search of its holdings, utilizing the term "Cato." The DO located no records subject to the FOIA and responsive to Plaintiffs request.

FBI's OFFICE OF THE EXECUTIVE SECRETARIAT

13. RIDS requested that the FBI's Office of the Executive Secretariat (ExecSec) conduct a search for records subject to the FOIA pertaining to Cato Institute. ExecSec serves the

FBI, the Department of Justice, and others by managing executive-level and public correspondence and communications. On May 2, 2024, ExecSec conducted a search of all correspondence between the FBI and Congress, utilizing the term "Cato." ExecSec located 111 pages subject to the FOIA and responsive to Plaintiffs request.

SEARCHES OF SPECIFIC FBI FIELD OFFICES

14. Washington Field Office: RIDS requested that the Washington Field Office (WFO) Chief Division Counsel (CDC) and Assistant Division Counsels (ADC) search for records subject to the FOIA and responsive to Plaintiffs request pertaining to Cato Institute. Between June 17, 2024 and June 18, 2024, WFO conducted a search of its CDC's and ADCs' shared drives, utilizing the term "Cato." WFO located no records responsive to Plaintiffs request and subject to the FOIA.

15. New York Field Office: RIDS requested that the New York Field Office (NYFO) CDC and ADCs conduct a search for records pertaining to Cato Institute. Between June 27, 2024 and July 1, 2024, the NYFO searched the shared drives and unclassified and classified email folders of its division's CDCs and ADCs,¹ utilizing the term "Cato." NYFO located 99 pages of records potentially responsive to Plaintiffs request and subject to the FOIA.

16. Chicago Field Office: RIDS requested that the Chicago Field Office (CGFO) CDC and ADCs conduct a search for records pertaining to Cato Institute and subject to the FOAL Between May 15, 2024 and May 20, 2024, the CGFO searched its division's CDC's and ADCs' unclassified and classified shared drives, utilizing the term "Cato." The CGFO located no records subject to the FOIA and responsive to Plaintiffs request.

¹ Although the NYFO took the extraordinary step of searching its email folders, NYFO located no additional emails to those found in an email search.

17. Los Angeles Field Office: RIDS requested that the Los Angeles Field Office (LAFO) CDC and ADCs conduct a search for records subject to the FOIA pertaining to Cato Institute. Between April 23, 2024 and June 2, 2024, the LAFO conducted a search of its division's CDC's and ADCs' unclassified and classified shared drives, utilizing the term "Cato." The LAFO located no records subject to the FOIA and responsive to Plaintiff's request.

18. As a result of the above targeted searches of systems maintained by the offices described above, including the IPO Policy Portal, OCA, OP A, OPS, DO, ExecSec, WFO, NYFO, CGFO, and LAFO, the FBI located 227 pages of records subject to the FOIA and responsive to Plaintiffs request.

**SEARCHES OF THE WFO, NYFO, CGFO, AND LAFO FIELD OFFICE CHIEF DIVISION
COUNSEL AND ASSOCIATE DIVISION COUNSEL EMAIL ACCOUNTS**

19. The FBI also conducted searches of unclassified and classified email accounts of the for the CDCs and ADCs of WFO, NYFO, CGFO, and the LAFO.

How FBI Email Accounts are Searched

20. Email communications are stored within the individual email accounts of FBI employees. These accounts include all emails sent to or from each employee. Typically, FBI employees have an unclassified email account (UNet), capable of communicating internally, with other government agencies (OGAs), with the public, and with non-governmental entities. FBI employees also have a classified account (FBINet) to communicate up to the "SECRET" classification level internally, with OGAs, and with other branches of the United States Government. Due to this structure, the FBI must first identify likely custodians of responsive records, and whether communications are likely to be stored within their unclassified and/or classified accounts.

21. Once the FBI identifies the likely custodians and the appropriate accounts (classified or unclassified) where responsive records are most likely to exist, the FBI must then develop appropriate search terms to search within each of these individual accounts. Since there is no index within FBI employees' email accounts, terms must be designed to efficiently search all text within each employee's email accounts. In doing this, the FBI also uses Boolean search limiters to craft appropriate searches of email records.² This combination of terms and limiters allows the FBI to conduct email searches for responsive records with a reasonable amount of effort and a reasonable likelihood of locating responsive records.

Email Searches Conducted by the FBI in Response to Plaintiff's FOIA Request

22. To locate email records responsive to Plaintiffs request, the FBI searched the unclassified and classified email accounts of the CDC and ADC of each of the following field office locations: WFO, NYFO, CGFO, and LAFO. The FBI determined these custodians to be the likely recipients/originators of responsive email records because these custodians provide legal advice and guidance on criminal and national security investigations. After identifying the relevant CDC and ADCs for each field office, the FBI conducted an electronic search of each CDC's and ADC's classified and unclassified email accounts for communications created or received between January 1, 2012 and December 11, 2019, containing the search term "Cato."

² Commonly the FBI will use the Boolean search limiter "AND" between two search terms. This will limit results to documents that contain both search terms. Additionally, the FBI uses "OR" between search terms to find documents that contain at least one of the search terms. Finally, and rarely, the FBI uses "NOT" between search terms to limit to documents that contain the first search term but not the second. For example, searching "investigation NOT robbery" would limit to documents containing "investigation," but not those documents that also contain term word "robbery."

23. As a result of these email searches, the FBI located 566 additional pages of email records subject to the FOIA and potentially responsive to Plaintiff's request. The FBI analyzed the results of the email searches and concluded that a search elsewhere would not reasonably be likely to locate any additional responsive records.

24. Following all search efforts, the FBI located a total of 959 pages of potentially responsive records. Plaintiff has provided no information for the FBI to reasonably conclude that records responsive under the FOIA would reside in any other location and there is no indication from the FBI's targeted search efforts that responsive records would reside in any other FBI location. Thus, the FBI has searched all locations and files reasonably likely to contain responsive records, and there is no basis for the FBI to conclude that a search elsewhere would reasonably be likely to locate responsive records under the FOIA.

ADDITIONAL PRODUCTIONS OF RECORDS

25. By letter dated January 6, 2025, the FBI provided a supplemental release of records to Plaintiff. The FBI advised Plaintiff it reviewed 566 pages of material, and 142 pages were released in full or part with certain information exempted pursuant to FOIA Exemptions 1, 3, 5, 6, 7(A), 7(C), and 7(E). Additionally, the FBI advised Plaintiff that if dissatisfied with the FBI's determination, it could appeal the FBI's response to OIP within 90 days of the date of its letter, contact the FBI's public liaison, and/or seek dispute resolution services by contacting Office of Government Information Services ("OGIS"). (Ex. A.)

26. By letter dated March 4, 2025, the FBI advised Plaintiff that its prior consultation with the Department of Justice ("DOJ"), Office of Information Policy ("OIP") was complete and as a result, OIP and FBI were withholding one page pursuant to FOIA Exemptions 5, 6, 7(C), and 7(E). The FBI also advised Plaintiff that although the request was in litigation, if dissatisfied

with the FBI's determination it could appeal the FBI's response to the DOJ, OIP, within 90 days of the date of its letter, contact the FBI's public liaison, and/or seek dispute resolution services by contacting 0018. (Ex. B.)

27. By letter dated June 13, 2025, the FBI provided a supplemental release of records to Plaintiff. The FBI advised Plaintiff it reviewed 227 pages of material, and 210 pages were released in full or part with certain information exempted pursuant to FOIA Exemptions 6, 7(C), and 7(E). Additionally, the FBI advised Plaintiff that if dissatisfied with the FBI's determination, it could appeal the FBI's response to OIP within 90 days of the date of its letter, contact the FBI's public liaison, and/or seek dispute resolution services by contacting 0018. (Ex. C.)

28. Plaintiff requested that the FBI conduct a secondary review of certain Bates stamped pages FBI(20-cv-3338)422 and FBI(20-cv-3338)844-860. After completing its review, the FBI provided another supplemental release of records to Plaintiff by letter dated September 10, 2025. The FBI advised Plaintiff that it had conducted a review of 18 pages of previously processed material, and that it was releasing 18 pages in full or part with certain information exempted pursuant to FOIA Exemptions 5, 6, 7(C), and 7(E).³ Additionally, the FBI advised Plaintiff that although its request was in litigation, the FBI was required to inform Plaintiff that if it was dissatisfied with the FBI's determination, it could appeal the FBI's response to DOJ, OIP, within 90 days of the date of its letter, contact the FBI's public liaison, and/or seek dispute resolution services by contacting 0618. (Ex. D.)

³ In its first review, the FBI inadvertently withheld in full bates numbered pages FBI(20-cv-3338)844-860. Upon further review, the FBI re-processed these pages for further segregability. The FBI also further coordinated with OIP and re-processed bates numbered page FBI(20-cv-3338)422.

NARROWING OF CONTESTED ISSUES

29. After the FBI's completion of the supplemental targeted searches and resulting productions, Plaintiff narrowed his challenges to the FBI's withholding of information within the records pursuant to FOIA Exemptions 1, 3, 7(A) and 7(E), 5 U.S.C. § 552(b)(1), (b)(3), (b)(7)(A), and (b)(7)(E). *See* JSR dated December 2, 2025, Dkt. No. 64)

JUSTIFICATION FOR NONDISCLOSURE UNDER THE FOIA

30. The FBI reviewed all records responsive to Plaintiffs request to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide Plaintiff with information available in the public domain and with all reasonably segregable, non-exempt information. The FBI did not withhold any reasonably segregable, non-exempt portions from Plaintiff. Further description of the information withheld, beyond what is provided in this declaration, could identify the actual exempt information withheld by the FBI.

BATES NUMBERING, JUSTIFICATION CODES, AND INDEX

31. Bates Numbering & Index: The FBI numbered all pages of its production consecutively as Bates pages FBI(20-cv-3338)1 through FBI(20-cv-3338)959. On the pages released in full and in part, these numbers are typically located at the bottom of each page. Additionally, included as an exhibit to this declaration is an index that identifies the pages that the FBI withheld in full or part and its justification for doing so. (Ex. E.) The index provides a description of each document withheld in full or part and also indicates the specific FOIA exemptions asserted on each page.⁴

⁴ If requested, the FBI can provide copies of all records processed to the Court for *in camera* inspection.

32. Justification Codes: On the Bates-numbered pages provided to Plaintiff and on pages withheld in full or part and accounted for in the FBI's index, the FBI further categorized its application of exemptions to better explain the nature of the information withheld pursuant to the provisions of the FOIA. Particularly, the FBI applied numerical codes that coincide with specific categories of exempt information. This declaration and index demonstrate that all information withheld by the FBI is exempt from disclosure pursuant to the cited FOIA exemptions or is so intertwined with non-exempt information that segregation is not possible without revealing the underlying exempt information.

33. Each instance of information withheld pursuant to a FOIA exemption is accompanied by a coded designation that corresponds to one of the categories listed below. For example, if "(b)(3)(C)-1" appears on a page, the "(b)(3)" designation refers to FOIA Exemption (b)(3) protecting information protected by statute. The numerical designation "1" following "(b)(3)" narrows the main category into a more specific subcategory, such as "Grand Jury Information - Federal Rule of Criminal Procedure (6)(e)."

SUMMARY OF EXEMPTION JUSTIFICATION CATEGORIES	
CODED CATEGORIES	INFORMATION WITHHELD
Exemption 1	Information Classified Per Executive Order 13526
(b)(1)-!	Information Properly Classified by an FBI Official Pursuant to Executive Order 13526
Exemption 3	Information Protected by Statute
(b)(3)-1	Grand Jury Information- Federal Rule of Criminal Procedure (6)(e)
(b)(3)-2	Protection of Intelligence Sources and Methods — 50 U.S.C. § 3024(h)(1)
Exemption 7(A)	Pending Law Enforcement Proceedings
(b)(7)(A)-1	Information Which, if Disclosed, Could Reasonably be Expected to Interfere with Pending Enforcement Proceedings
Exemption 7(E)	Investigative Techniques and Procedures

(b)(7)(E)-1/ (b)(7)(E)-4	Internal FBI Telephone Numbers, Email Addresses, Intranet/Web Addresses ⁵
(b)(7)(E)-2	Sensitive Investigative File Numbers
(b)(7)(E)-3	Database Identifiers
(b)(7)(E)-5	Collection and Analysis of Information
(b)(7)(E)-6	Identity and/or Location of FBI Units, Squads, Divisions

EXEMPTION 1 - CLASSIFIED INFORMATION

34. The FBI's analysis for withholding classified information contained in the records at issue is based on the standards articulated in the FOIA statute, 5 U.S.C. § 552(b)(1).

Exemption 1 protects from disclosure those records that are:

- a. specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and
- b. are in fact properly classified pursuant to such Executive Order.

35. Before I consider an Exemption 1 claim for withholding agency records, I determine whether the information in those records satisfies the requirements of Executive Order ("E.O.") 13526, the executive order governing the classification and protection of information that affects the national security, and whether the information complies with the various substantive and procedural criteria of that order. Executive Order 13526, signed by President Barack Obama on December 29, 2009, is the order that currently applies to the protection of national security information. I am bound by the requirements of E.O. 13526 when making classification determinations.

36. For information to be properly classified, and thus properly withheld from disclosure pursuant to Exemption 1, the information must meet the requirements set forth in E.O. 13526 § 1.1 (a):

⁵ The FBI combined these FOIA exemptions for greater efficiency.

1. an original classification authority is classifying the information;
2. the information is owned by, produced by or for, or is under the control of the United States Government;
3. the information falls within one or more of the categories of information listed in § 1.4 of [the] order; and
4. the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

37. As I will explain in further detail below, in my role as an original classification authority, I have determined that the information withheld pursuant to Exemption 1 is under the control of the United States Government, is classified, and requires a classification marking at the “Secret,” level since the unauthorized disclosure of this information reasonably could be expected to cause serious damage to national security. *See* E.O. 13526 § 1.2(a)(2). In addition to these substantive requirements, certain procedural and administrative requirements of E.O. 13526 must be followed before information can be considered properly classified, such as proper identification and marking of documents. In particular, I made certain that all procedural requirements of E.O. 13526 were followed:

- a. each document was marked as required and stamped with the proper classification designation;
- b. each document was marked to indicate clearly which portions are classified, which portions are exempt from declassification as set forth in E.O 13526 § 1.5(b);

- c. the prohibitions and limitations on classification specified in E.O. 13526 § 1.7 were adhered to;
- d. the declassification policies set forth in E.O. 13526 §§ 3.1 and 3.3 were followed; and
- e. any reasonably segregable portions of the classified documents that did not meet the standards for classification under E.O. 13526 were declassified and marked for release, unless withholding was otherwise warranted under applicable law.

Findings of the Declarant Regarding Exemption 1

38. With the above requirements in mind, I personally and independently examined the FBI information withheld pursuant to Exemption 1.1 determined that all of the substantive, procedural, and administrative requirements set forth above have been satisfied. As a result, I concluded that the information protected pursuant to Exemption 1 was properly classified, continues to warrant classification at the “Secret” level, and is exempt from disclosure pursuant to E.O. 13526 § 1.4(c) - “intelligence activities (including covert action), intelligence sources or methods, or cryptology.”

E.O. 13526 § 1.4(c) — Intelligence Activities, Sources and Methods

39. E.O. 13526 § 1.4(c), exempts intelligence activities (including covert action), intelligence sources and methods, and cryptology from disclosure. An intelligence activity or method includes any intelligence action or technique utilized by the FBI against a targeted individual or organization that has been determined to be of national security interest. An intelligence method is used to indicate any procedure (human or non-human) utilized to obtain information concerning such individual or organization. An intelligence activity or method has two characteristics. First, the intelligence activity or method — and information generated by it —

is needed by U. S. intelligence/counterintelligence agencies to carry out their respective missions. Second, confidentiality must be maintained with respect to the activity or method if the viability, productivity, and usefulness are to be preserved.

40. In the records at issue, the FBI withheld information pursuant to Exemption 1 to protect intelligence activities and methods utilized by the FBI to gather intelligence. This information is classified because its release would reveal actual intelligence activities and methods used by the FBI against specific targets of foreign counterintelligence investigations or operations; identify a target of a foreign counterintelligence investigation; and/or disclose the intelligence gathering capabilities of the activities and methods directed at specific targets. The information obtained from/concerning the intelligence activities and methods within the records at issue is very specific in nature, provided during a specific time period, and known to very few individuals.

41. It is my determination that disclosure of specific information describing the intelligence activities and methods within the records at issue, which are still used by the FBI to gather intelligence information in other investigations, could reasonably be expected to cause serious damage to the national security for the following reasons:

- a. disclosure would allow hostile entities to discover the current intelligence gathering activities and methods used by the FBI;
- b. disclosure would reveal current targets of specific FBI national security investigations;
and
- c. disclosure would reveal the criteria used and priorities assigned to current intelligence or counterintelligence investigations.

With the aid of this detailed information, hostile entities could develop countermeasures which would, in turn, severely disrupt the FBI's intelligence gathering capabilities. This severe disruption would also result in severe damage to the FBI's efforts to detect and apprehend those who violate national security and criminal laws of the United States. The FBI protected the following categories of information specific to intelligence activities and methods because disclosure reasonably could be expected to cause serious damage to the national security of the United States.

Detailed Intelligence Activities

42. The FBI withheld classified information concerning detailed intelligence activity information gathered or compiled by the FBI on a specific individual or organization of national security interest. The disclosure of this information could reasonably be expected to cause serious damage to the national security as it would: (a) reveal the actual intelligence activity or method utilized by the FBI against a specific target; (b) disclose the intelligence-gathering capabilities of the activity; and (c) provide an assessment of the intelligence source penetration of a specific target during a specific period of time. This information is properly classified at the "Secret" level pursuant to E.O. 13526 § 1.4(c) and is exempt from disclosure pursuant to FOIA Exemption 1.

43. File Numbers: The FBI withheld classified file number(s) assigned to specific intelligence activities, including channelization and dissemination instructions. Their release would lead to exposure of particular intelligence activities and methods. As described below in paragraph 62 individual file numbers are assigned by FBIHQ and field offices and contain a geographical prefix of the originating office and case number, which includes the numerical

characterization of the type of investigation, followed by a chronological number assigned to a specific investigation or activity.

44. The disclosure of an intelligence file number in the aggregate will enable adversaries to attribute any information released from the records, the file number, to that particular file. Through analysis of this information, in concert with other information, including publicly available information, adversaries could then identify the specific intelligence activity. Hence, a partial mosaic of the activity begins to appear as more information is identified as being associated with the particular file number, leading to the exposure of current activities. In other words, disclosure of the file number would allow the adversaries of the United States, or anyone not privileged to this information, to patch bits and pieces of information together until the activity is determined. The identification of the intelligence activity, which continues to be a source of intelligence to this day, will severely limit its use. In addition, disclosure will inform adversaries of the possible range of the FBI's intelligence capabilities, as well as the intelligence the FBI has gathered, or can collect, concerning them. This knowledge would provide violators of the national security laws of the United States with a means of avoiding lawful regulations by potentially implementing countermeasures, making future operations more difficult and compromising intelligence operations. Accordingly, release of this/these file number(s) can lead to the exposure of an intelligence activity utilized in FBI and can reasonably be expected to cause serious damage to national security. These file number(s) are properly classified at the "Secret" level pursuant to E.O. 13526 § 1.4(c) and are exempt from disclosure pursuant to FOIA Exemption 1.

EXEMPTION 3 - INFORMATION PROTECTED BY STATUTE

45. FOIA Exemption 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. Within the challenged records at issue here, the FBI applied Exemption 3 in conjunction with Federal Rule of Criminal Procedure 6(e) and with 50 U.S.C. § 3024(h)(1), as further described below.

(b)(3)-1: Grand Jury Information, Federal Rule of Criminal Procedure 6(e)

46. The FBI asserted coded Exemption category (b)(3)-1 to protect Federal Grand Jury information pursuant to Exemption 3 and Federal Rule of Criminal Procedure 6(e).⁶⁷ As relevant to 5 U.S.C. § 552(b)(3)(B), Rule 6(e) is a statute enacted before the date of enactment of the OPEN FOIA Act of 2009? It is well established Rule 6(e) embodies a broad, sweeping policy of preserving the secrecy of grand jury material regardless of the substance in which the

⁶As prescribed by 18 U.S.C. § 3771 (subsequently repealed by Pub.L. 100-702, Title IV, § 404(a)(1) (Nov. 19, 1988) and replaced by 28 U.S.C. § 2074), proposed rules become effective ninety days after the Chief Justice reports them to Congress. By order of April 26, 1976, the Supreme Court adopted amendments to the Federal Rules of Criminal Procedure which included Rule 6(e) and reported the amendments to Congress. Congress voted to delay the effective date of several of the proposed rules, to include Rule 6(e), “until August 1, 1977, or until and to the extent approved by Act of Congress, whichever is earlier.” Pub.L. No. 94-349 § 1, 90 Stat. 822 (1976). Subsequently, Congress, by statute, enacted a modified version of Rule 6(e). See Pub.L. No. 95-78, § 2(a), 91 Stat. 319 (1977), FED. R. CRIM. P. 6(e).

⁷ The OPEN FOIA Act of 2009 was enacted October 28, 2009. See Pub.L. 111-83, 123 Stat. 2142,2184.

material is contained. Records responsive to Plaintiffs request detail information about one or more federal grand juries empaneled in relation to the investigation (on a subject other than Cato) and were clearly marked on the document as related to a federal grand jury.

47. Specifically, as referenced in First Seidel Declaration Is 39, Cato is merely mentioned within an FD-302 documenting receipt of information as a result of a federal grand jury subpoena duces tecum issued concerning the subject of that investigation (not Cato). Specifically, Bates pages FBI(20-cv-3338)71-73, contain the name of the recipient of the federal grand jury subpoena and information that identifies specific records subpoenaed by a federal grand jury, both of which are undisclosed. The record carries a notation “GRAND JURY MATERIAL- DISSEMINATE ONLY PURSUANT TO RULE 6(E), FED. R. CRIM. P.” and the substance of the record further provides a clear nexus to a federal grand jury proceeding, both evident on the face of the responsive document.

48. Wherever the FBI protected the above categories of information, it found a clear nexus to federal grand jury proceedings on the face of the responsive documents. Disclosure of this information would clearly violate the secrecy of the grand jury proceedings and could reveal the inner workings of a federal grand jury, which the FBI is precluded from disclosing. This is because the information in the above categories relates to the information and evidence requested, collected, and reviewed by a federal grand jury in the scope of its investigation. Thus, the FBI properly withheld this information pursuant to Exemption 3, in conjunction with Rule 6(e).

(b)(3)-2- National Security Act of 1947, 50 U.S.C. § 3024(h)(1)

49. The FBI asserted coded Exemption category (b)(3)-2 to withhold information pursuant to Exemption 3 and Section 102A(h)(1) of the National Security Act of 1947 (NSA), as

amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). This statute provides that the Director of National Intelligence (DNI) “shall protect, and shall establish and enforce policies to protect, intelligence sources and methods from unauthorized disclosure.”⁸ 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(h)(1) is absolute. *See CIA v. Sims*, 471 U.S. 159 (1985).

50. 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, and other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. § 3024(h)(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.”⁹ The FBI is one of 18 member agencies comprising the IC, and as such must protect intelligence sources and methods. 50 U.S.C. § 3003(4).

51. 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

⁸ Section 102A(i)(1) of the National Security Act was previously codified at 50 U.S.C. § 403(i)(1). As a result of the reorganization of Title 50 of the U.S. Code, § 102A(i)(1) was later codified at 50 U.S.C. § 3024(i)(1) and was more recently codified at 50 U.S.C. § 3024(h)(1).

⁹ Intelligence Community Directive (ICD) 700, dated June 7, 2012, at U E.2.a.

revealed if any of the withheld information is disclosed to Plaintiffs. Therefore, the FBI is prohibited from disclosing such information under 50 U.S.C. § 3024 (h)(1).¹⁰

52. The FBI is asserting Exemption 3 in this case, at times in conjunction with Exemptions 1, to protect information that would reveal classified intelligence sources and methods. In some instances, information was protected under Exemptions 3 and 7(E) because unclassified intelligence sources and methods were employed as law enforcement techniques, procedures, or guidelines, and thus would qualify as both an intelligence source and method under Exemption 3 and a law enforcement technique under Exemption 7(E). Notably, § 3024 (h)(1) protects sources and methods regardless of whether they are classified. *See Sims*, 471 U.S. at 176.

EXEMPTION 7 THRESHOLD

53. 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 at issue

¹⁰ Although 50 U.S.C. § 3024 (h)(1) does not impose a requirement to articulate harm, disclosure of this information presents a bona fide opportunity for individuals to develop and implement countermeasures, resulting in the loss of significant intelligence information, sources, and methods relied upon by national policymakers and the IC to safeguard national security.

here which consist of references to the Cato Institute within the investigations of other subjects, were compiled in furtherance of the FBI's investigation of potential crimes alleged to have been committed by Cato Institute employees. Considering these records were compiled to document the FBI's investigation of potential crimes, they were compiled for law enforcement purposes.

EXEMPTION 7(A): PENDING LAW ENFORCEMENT PROCEEDINGS

54. Exemption 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." 5 U.S.C. § 552(b)(7)(A).

55. 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. In this case, however, the FBI asserted Exemption 7(A) in a limited fashion to protect ongoing investigation matters. The release of this information would reveal non-public information concerning pending enforcement procedures, to include the existence of unacknowledged investigations/and proceedings. 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. As such, revealing this information could reasonably be expected to interfere with pending enforcement proceedings. The FBI contacted the field offices from where these

investigations originated to determine whether the release of pending case files would cause harm to pending law enforcement proceedings. Based on this information, the FBI has determined that release of the records would reasonably interfere with potential law enforcement proceedings. Thus, the FBI has applied Exemption 7(A) to protect this information.

EXEMPTION (7)(E) INVESTIGATIVE TECHNIQUES AND PROCEDURES

56. FOIA Exemption 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).

57. The FBI asserted Exemption 7(E) to withhold 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.

58. Within the responsive documents, the FBI applied Exemption 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 7(E) to protect the following categories of information.

7(E)-1 and 7(E)-4: Internal FBI Telephone numbers, Email Addresses, Intranet/Web Addresses"

59. In Exemption categories 7(E)-1 and 7(E)-4, the FBI withheld secure fax numbers, internal e-mail addresses, non-public intranet web addresses and telephone numbers, and secure internal e-mail tools. More specifically, this type of information could provide criminals with specific targets for possible cyber-attacks and other types of attacks on FBI secure communications. Releasing this information would provide criminals with specific targets for attacks on FBI communications through “spoofing” or other illegal means.¹¹¹² For example, “spoofing” occurs when a criminal disguises a communication from an unknown source to appear as if the communication is coming from a known, trusted source. Spoofing occurs with emails, telephone calls, and websites. Criminals often use social engineering techniques to elicit sensitive information from the unsuspecting victims, his can be especially dangerous when criminals spoof numbers of law enforcement agencies so as to appear as if they are from official law enforcement agencies. Victims of such crimes often feel a higher responsibility to respond to questioning and have an expectation that the information they provide will only be used for official law enforcement purposes.

60. Considering the current cyber-security environment where government data breaches and other hacking attempts on government systems are prevalent, it is likely that the release of this type of information could provide hackers with avenues of exploitation. It is

¹¹ The FBI combined FOIA Exemptions (b)(7)(E)-1 and (b)(7)(E)-4 as the rationale behind the two are similar and it would be a more efficient to combine the two.

¹² As recently as June 5, 2024, the FBI’s Portland Field Office warned the public of scammers spoofing caller ID information in order to falsely represent themselves as FBI agents and demand payment from victims. FBI Portland advised that in 2023, 14,190 people were victims of government impersonation scams, with losses totaling more than 394 million dollars. See <https://www.fbi.gov/contact-us/field-offices/portland/news/fbi-warns-public-to-beware-of-scammers-impersonating-fbi-agents-and-other-government-officials>, last accessed March 29, 2026.

possible they could use social engineering to gain further unauthorized access to FBI systems, view and/or manipulate sensitive investigative data, interfere with the FBI's non-public intranet protocol, and/or hinder the FBI's ability to investigate, solve, and prevent crimes by disrupting the FBI's internal communications and by devaluing public trust. Releasing this information poses substantial risks to the FBI's ability to carry out its mission effectively, could potentially decrease the FBI's effectiveness, and could enable criminals to circumvent the law. Accordingly, the FBI asserted Exemption 7(E) to withhold this information.

7(E)-2: Sensitive File Numbers

61. In Exemption category 7(E)-2, 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 with 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.

62. 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.

63. 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.

64. 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.

7(E)-3: Database Identifiers

65. In Exemption category 7(E)-3, the FBI protected the identities of sensitive investigative databases and database search results of these non-public databases used for official law enforcement purposes by the FBI. Releasing the identities of these databases and any information located through queries of these databases would give criminals insight into the available tools and resources the FBI uses to conduct criminal and national security investigations (i.e., the scope of information stored within the databases, how the FBI uses the

databases to support its investigations, the types of information most valued by the FBI for particular investigations, and vulnerabilities of the databases).

66. Revealing the use of these databases in the context of FBI investigative records, and the information generated through queries of these databases, would reveal the nature of their utility to FBI investigators and the scope of information stored within the databases. Disclosing when and why the FBI queries these non-public databases would reveal key information about FBI investigative strategies. This is because different investigative databases contain varying datasets, and revealing the types of data sought by investigators in particular investigative circumstances would reveal the FBI strategies employed in response to different investigative circumstances. Additionally, disclosing the search results for particular subjects would provide criminals with an understanding of the scope of FBI collected intelligence on particular subjects. It would expose possible intelligence gaps and/or intelligence gathering strengths. This would allow criminals to make informed decisions on how they might structure their behavior to exploit these strengths and weaknesses and avoid detection and/or disruption by the FBI.

67. Revealing the types of information stored in these databases would also reveal the types of information most useful to FBI investigators. This would provide criminals with an understanding of how they might structure their behavior and/or deploy countermeasures to deprive the FBI of useful intelligence/evidence, thus jeopardizing the FBI's investigative mission.

68. Finally, revealing the identities of these databases could jeopardize the FBI's investigative mission by revealing exactly where the FBI is storing and obtaining valuable investigative data. Knowing the database names makes the original source data an attractive

target for compromise. It would allow criminals who gain access to FBI systems an idea of where they can go to discover what the FBI knows, how it gathered the information, and possible information regarding the FBI's investigative strategies. It would also offer these criminals the opportunity to corrupt or destroy information stored within these databases.

69. In summary, release of the identities of sensitive investigative databases and database search results would impede the FBI's effectiveness and potentially aid in circumvention of valuable investigative techniques. Therefore, the FBI withheld this information pursuant to Exemption 7(E).

7(E)-5: Collection and Analysis of Information¹³

70. In coded Exemption category 7(E)-5, the FBI protected the non-public methods the FBI uses to collect and analyze information it obtains for investigative purposes. The release of this information would disclose the identity of methods used in the collection and analysis of information, including how and from where the FBI collects information and the methodologies employed to analyze it once collected. These methods are still in use today. As relevant here, the search material gathered in response to requests under the FOIA are derived/compiled from and/or reflect information that would reveal FBI criminal investigation files, and investigatory documentation. The RIDS FOIA processing of the records detail underlying information relating to criminal records, which were compiled for a law enforcement purpose, and thus fall squarely within the law enforcement duties of the FBI. Therefore, the information readily meets the threshold requirement of Exemption 7.

¹³ The FBI asserted this (b)(7)(E)-5 exemption in combination with Exemption (b)(5). The Plaintiff is not challenging the FBI's assertion of (b)(5).

71. The FBI withheld portions of information pertaining to its internal strategies for responding to FOIA requests, specifically to portions that discuss vetting of investigative records. These vetting strategies are specifically designed to protect FBI investigative interests when the FBI responds to FOIA requests. In addition to being part of internal deliberations, these vetting strategies are specifically designed to protect FBI investigative interests when the FBI responds to FOIA requests, as FBI FOIA responses can negatively impact the FBI's law enforcement mission.

72. Vetting investigative records is a method by which the FBI determines whether or not a FOIA exclusion under § 552(c) is applicable. The particular methods by which the FBI conducts vetting of FBI investigative records is a law enforcement technique and procedure because it is used to determine the use or non-use of an authorized FOIA exclusion. The Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act, Dec. 1987, Is G, refers to the use of the newly enacted § 552(c) to remove certain records from FOIA's reach and its identified function as a mechanism to protect and preserve the most sensitive law enforcement investigations and activities. This translates to a "technique" or "procedure" for law enforcement investigations under Exemption 7(E).

73. Disclosure would enable subjects of FBI investigations to circumvent these or similar currently used techniques. The relative utility of these techniques could be diminished if the actual techniques were released in this matter. This in turn would facilitate the accumulation of information by investigative subjects regarding the circumstances under which the specific techniques were used or requested and the usefulness of the information obtained. Release of this type of information would enable criminals to educate themselves about the techniques employed for the collection and analysis of information and therefore allow these individuals to

take countermeasures to circumvent the effectiveness of these techniques and to continue to violate the law and engage in intelligence, terrorist, and criminal activities. The portions of the records that detail the FBI's internal vetting of investigative records were withheld to protect the FBI's use (or non-use) of exclusions as a technique and procedure. While the fact that the § 552(c) technique or procedure exists is known, its use in connection with any particular FBI FOIA request is not known; therefore, the release of this vetting process and the underlying non-public details could reasonably be expected to allow criminals to circumvent the law. The FBI withholds this type of vetting information, whether or not a § 552(c) exclusion is used, because release of this information in relation to specific cases and specific types of records would provide bits and pieces of information that could be pieced together in mosaic fashion to discern the FBI's use of exclusions. The effectiveness of the application of Exemption 7(E) in the context of this information is directly contingent on its application in mosaic fashion. If the FBI were to release vetting details in some cases, but not others, it could easily be gleaned by a savvy requester which cases and FOIA requests might be tied to FOIA exclusions. Thus, although details of vetting may seem harmless in one case, when combined with similar information in numerous other cases, a mosaic of information would form that would reveal when and how the FBI uses exclusions.

74. Because disclosure of collection methodologies, and analysis techniques and procedures would impede the FBI's effectiveness and potentially aid in circumvention of the techniques if disclosed, the FBI properly withheld this information pursuant to Exemption (b)(7)(E).

7(E)-6: Identities and/or Locations of FBI Units

75. In Exemption category 7(E)-6, the FBI protected methods and techniques involving the location and identity of FBI unit involved in the investigation of Cato Institute.

Such office locations and units are usually found in the administrative headings of internal FBI documents. These headings identify the locations of the office and unit that originated or received the documents, and these units/squads/divisions are still in use today. Disclosure of the location of these units conducting the investigation would reveal the targets, the physical areas of interest of the investigation, and when taken together with the other locations if identified, could establish a pattern or “mosaic” that identification of a single location would not. If the locations are clustered in a particular area, it would allow criminals to avoid those locations, especially if one or more locations appeared with frequency or in a pattern. This would disrupt the method of the investigative process and deprive the FBI of valuable information.

76. The withholding of the specific units involved is justifiable as well under a similar rationale. Once identified, the units’ areas of expertise would become known and the target of the investigation(s) would be able to discern the investigative strategies deployed by the FBI. For example, knowing that a unit whose focus is on financial crimes is involved in an investigation is quite different information than knowing that the unit involved has a focus on crimes of violence. This knowledge could allow a subject to employ countermeasures targeted toward concealing particular types of behavior and/or allow them to make informed decisions to avoid altogether certain activities in a particular location. Furthermore, certain FBI units/squads are highly specialized, and are involved in deploying particular investigative techniques and procedures. Revealing their involvement in an investigation would reveal non-public details concerning which techniques and procedures were deployed in certain investigative circumstances and

subsequently allow for criminals to predict the FBI's use of these techniques and procedures in similar investigative circumstances. This would allow them to discover and circumvent the deployment of these techniques and procedures, greatly reducing their effectiveness.

77. In summary, the FBI withheld the involvement of particular units and their locations to prevent criminals from adjusting their behavior and activities to circumvent FBI law enforcement efforts. Accordingly, the FBI properly asserted Exemption 7(E) to withhold this information.

FORESEEABLE HARM STANDARD

78. 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 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). For 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 FBI's foreseeable harm is more fully described within each of the above coded exemption justification categories.

SEGREGABILITY

79. As discussed in ¶ supra, the FBI identified a total of 959 responsive pages: 372 Released in Full (RIF), 76 Released in Part (RIP), and 511 Withheld in Full (WIF). Each of these categories is discussed below to further address segregability.

- a. *Pages RIF*. Following its segregability review, RIDS determined 372 pages could be released in full without redaction as there was no foreseeable harm to an interest protected by a FOIA exemption.
- b. *Pages RIP*. Following its segregability review, RIDS determined 76 pages could be released in part with redactions per the identified FOIA exemptions cited herein. These pages comprise a mixture of material that could be segregated for release and material that was withheld as release would trigger foreseeable harm to one or more interests protected by the cited FOIA exemptions on these pages.
- c. *Pages WIF*. Following its segregability review, RIDS determined 511 pages required withholding in their entirety. RIDS determined that all information on these pages was either fully covered by one or more of the cited FOIA exemptions and release of any exempt information would trigger foreseeable harm to one or more of the cited FOIA exemptions, or determined that any non-exempt information on these pages was so intertwined with exempt material, no information could be reasonably segregated for release. Any further segregation of this intertwined material would employ finite resources only to produce disjointed words, phrases, or sentences, that taken separately or together, would have minimal or no informational content. Also, of these 511 WIF pages, the FBI withheld 243 pages because they were duplicates of pages accounted for

elsewhere in the FBI's production. It is the FBI's standard practice not to process duplicate pages, as doing so expends finite processing resources with a net result of no additional information being released to requesters.

CONCLUSION

80. The FBI performed adequate and reasonable searches for responsive records, processed all such records, and released all reasonably segregable non-exempt information from documents responsive to Plaintiff's FOIA request that are subject to FOIA. Based on the narrowed remaining challenges by Plaintiff, the FBI determined that information was properly withheld pursuant to FOIA Exemptions 1, 3, 7(A), and 7(E). The FBI carefully examined the documents and determined the information withheld from Plaintiff in this case, if disclosed, would reveal classified information; would reveal statutorily protected information; and/or would disclose techniques and procedures for law enforcement investigations. After extensive line-by-line, page-by-page review of the documents at issue, the FBI determined that there is no further 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 E are attached hereto, are true and correct copies.

AMIE
NAPIER

Digitally signed by
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