THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON LEOPOLD, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE Defendant.	Case No. 15-cv-02117 RDM

REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Defendant the United States Department of Justice's ("defendant") memorandum in support of its motion for summary judgment ("Summary Judgment Memorandum" or "Def.'s Summ. J. Mem."), ECF No. 7, demonstrated that the Federal Bureau of Investigation ("FBI") conducted a reasonable search for records responsive to plaintiff Jason Leopold's ("plaintiff") Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), request, properly withheld responsive information pursuant to FOIA Exemption 7(A), and released all non-exempt, reasonably segregable information. Rather than providing a persuasive basis to question these showings, plaintiff's opposition to defendant's motion ("Pl.'s Opp'n"), ECF No. 14, relies on inapposite legal standards and speculation. Therefore, defendant's motion for summary judgment should be granted.

II. ARGUMENT

A. The FBI Has Demonstrated that Responsive Records Were Compiled for Law Enforcement Purposes.

First, Plaintiff misstates the legal standard for demonstrating that records were "compiled for law enforcement purposes," and relies on pure speculation to challenge the FBI's showing in this regard. 5 U.S.C. § 552(b)(7). "According to the Supreme Court, the term 'compiled' in Exemption 7 requires that a document be created, gathered, or used by an agency for law enforcement purposes at some time before the agency invokes the exemption." *Pub. Emps. for Envtl. Responsibility v. Int'l Boundary & Water Comm'n*, 740 F.3d 195, 203 (D.C. Cir. 2014). "If the agency's principal function is law enforcement" a court is "'more deferential' to the agency's claimed purpose for particular records." *Id*. (citation omitted). "This less exacting judicial scrutiny of a criminal law enforcement agency's purpose in the context of the FOIA Exemption 7 threshold is . . . bolstered by Congress' concern that inadvertent disclosure of criminal investigations . . . might cause serious harm to the legitimate interests of law enforcement agencies." *Pratt v. Webster*, 673 F.2d 408, 418 (D.C. Cir. 1982).

Because the FBI's principal function is law enforcement, the FBI's claimed purpose for the withheld records is entitled to deference here. *See id*. at 421. Under the more deferential standard, the FBI must show, first, that the "activities that give rise to the documents sought [are] related to the enforcement of federal laws or to the maintenance of national security." *Id.* at 420. "The possible violation or security risk is necessary to establish that the agency acted within its principal function of law enforcement, rather than merely engaging in a general monitoring of private individuals' activities." *Id.*; *see also Keys v. DOJ*, 830 F.2d 337, 342 (D.C. Cir. 1987) (internal

quotation omitted) (saying that the relevant question is whether "the information is compiled for a 'federally *authorized* law enforcement purpose'" and citing cases holding that a law enforcement purpose includes, *inter alia*, a public policy interest in facilitating another country's efforts to bring to justice persons who murdered U.S. citizens). Therefore, the FBI is not required to identify a particular federal statute that it alleges has been violated in connection with the pending investigation, or the target(s) of the investigation, to meet the Exemption 7 threshold. *See Keys*, 830 F.2d at 342 ("There is . . . no requirement under exemption 7 that any violation of federal law be implicated . . . ."); *Pratt*, 673 F.2d at 420 ("the agency should be able to identify a particular individual *or a particular incident* as the object of its investigation") (emphasis added).[1] Moreover, "[t]he Exemption 7 'law enforcement purpose' includes both civil and criminal investigations and proceedings within its scope." *Id.* at 420 n.32. *See* Pl.'s Opp'n at 2-3.

Second, the "nexus" between the agency's activities "and one of the agency's law enforcement duties must be based on information sufficient to support at least 'a colorable claim' of its rationality." *Pratt*, 673 F.2d at 421. In other words, "the agency's basis for the claimed connection between the object of the investigation and the asserted law enforcement duty cannot be pretextual or wholly unbelievable." *Id.*

[1] When *Pratt* was decided, the language of Exemption 7 referred to "investigatory records compiled for law enforcement purposes." *See Keys*, 830 F.2d at 340 (quoting 5 U.S.C. § 552(b)(7) (1982)). "[T]he Freedom of Information Reform Act of 1986 broadened the scope of the Exemption 7 threshold by replacing 'investigatory records' with the more general term 'documents or information.'" *Id*. (quoting Pub. L. No. 99-570, § 1802(a), 100 Stat. 3207 (Oct. 27, 1986)). Therefore, *Pratt*'s reference to the identification of the "object" of an agency's "investigation," which plaintiff relies on in his opposition, must be understood in the context of the 1986 amendment and subsequent decisions interpreting *Pratt* in light of that amendment.

The FBI met both parts of the deferential standard here. The FBI has publicly stated that it is working on a referral from the Inspectors General of the Intelligence Community and the Department of State in connection with former Secretary of State Hillary Clinton's use of a private e-mail server. *See Oversight of the Federal Bureau of Investigation: Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 32 (2015) (statement of FBI Director James Comey); Declaration of David M. Hardy ("First Hardy Decl."), ECF No. 9-1, ¶ 15. The referral was "a security referral made for counterintelligence purposes." *Statement from the Inspectors General of the Intelligence Community and the Department of State Regarding the Review of Former Secretary Clinton's Emails* (July 24, 2015), ECF No. 14-1. Records responsive to plaintiff's FOIA request were obtained or created by the FBI in furtherance of a pending investigation being conducted as a result of this referral. First Hardy Decl. ¶¶ 16, 21. Finally, the investigation is "being conducted under the FBI's assigned law enforcement authorities and in accordance therewith." *Id.* ¶ 15.

Thus, the FBI identified a particular incident in connection with the investigation, not merely "a general monitoring of private individuals' activities." *Pratt*, 673 F.2d at 420. And the referral from the Inspectors General to the FBI provided a rational nexus between the pending investigation and the FBI's law enforcement duties. *See* First Hardy Decl. ¶ 15; *Ctr. for Nat'l Sec. Studies v. DOJ*, 331 F.3d 918, 926 (D.C. Cir. 2003) (records were compiled for law enforcement purposes where the information came to the Government's attention as a result of the law enforcement investigation); *Pratt*, 673 F.2d at 418 ("the generally accurate assumption that federal agencies act within their legislated purposes implies that an agency whose principal mission is criminal law enforcement will

more often than not satisfy the Exemption 7 threshold criterion"); *Keys*, 830 F.2d at 344 (the D.C. Circuit has never read the Exemption 7 threshold test to "demand any more than that the gathering of information focused on a particular individual or a particular incident as the object, as opposed to routine matters that are ancillary to an agency's administrative task") (internal quotation marks and citation omitted).

Plaintiff responds by assuming the role of investigator and questioning whether there is a colorable basis to conclude that a crime was committed. *See* Pl.'s Opp'n at 4. But the FBI need show only a colorable claim of a rational nexus between the investigation and one of the FBI's law enforcement duties—which it has done through the referral from the Inspectors General—not a colorable basis for the investigation. *See Pratt*, 673 F.2d at 421 ("A court . . . should be hesitant to second-guess a law enforcement agency's decision to investigate if there is a plausible basis for its decision."). Therefore, defendant's showing "is refutable only by persuasive evidence that in fact another, nonqualifying reason prompted the investigation." *Keys*, 830 F.2d at 340. Yet Plaintiff does not even suggest that a reason other than the referral prompted the pending investigation. Pl.'s Opp'n at 4; *see also Elec. Privacy Info. Ctr. v. DOJ ("EPIC")*, 82 F. Supp. 3d 307, 319 (D.D.C. 2015) (plaintiff's speculation failed to rebut the presumption of good faith afforded to the statement in the FBI's declaration that it was not investigating individuals "who simply support or have an interest in WikiLeaks").[2] The FBI has demonstrated as a matter of law that the withheld records were compiled for law enforcement purposes.

[2] The information contained in the First Hardy Declaration is sufficient to establish that the withheld records were compiled for law enforcement purposes. However, the *in camera*, *ex parte* classified declaration submitted in support of defendant's motion for

B. The FBI Demonstrated that Disclosure of the Information Withheld Could Reasonably Be Expected to Interfere with a Pending Investigation.

Plaintiff also relies on distorted legal standards and speculation in responding to the FBI's showing that disclosure of the information withheld could reasonably be expected to interfere with the pending investigation. *See Ctr. for Nat'l Sec. Studies*, 331 F.3d at 928 ((("Exemption 7(A) explicitly requires a predictive judgment of the harm that will result from disclosure of information, permitting withholding when it 'could reasonably be expected' that the harm will result.") (quoting 5 U.S.C. § 552(b)(7)(A)).

First, plaintiff ignores the language of his own FOIA request in arguing that the functional category "Investigative and Evidentiary Materials" is too broad. This category cannot "encompass any and all information obtained during" the pending investigation, because plaintiff did not ask for all of these records in his FOIA request. Pls.' Opp'n at 5. Rather, the "Investigative and Evidentiary Materials" category used by the FBI is comprised of two subcategories that pertain to records actually requested by plaintiff: (1) materials retrieved from any server equipment and related devices obtained from former Secretary Clinton for the investigation, and (2) correspondence between the FBI and the Department of State regarding the investigation. First Hardy Decl. ¶ 19. FOIA does not require an agency to create additional, non-functional categories or subcategories of records when, as defendant explained in its Summary Judgment Memorandum, the same harm could reasonably be expected to result from disclosure. *See Bevis v. Dep't of State*, 801 F.2d 1386, 1389 (D.C. Cir. 1986) ("The hallmark of an

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summary judgment provides more details about the pending investigation, and supplements this showing. First Hardy Decl. ¶ 15.

acceptable category is . . . that it is *functional*; it allows the court to trace a rational link between the nature of the document and the alleged . . . interference.").[3]

Moreover, courts have repeatedly recognized that investigative and evidentiary materials can qualify as a functional category of records under Exemption 7(A), especially where the language of the FOIA request seeks precisely that type of records, as is the case here. *See Robbins, Geller, Rudman & Dowd, LLP v. SEC*, No. 3:14-cv-2197, 2016 WL 950995, at *4-5 (M.D. Tenn. March 12, 2016) (finding that "documents Walmart produced in response to SEC document[] requests and subpoenas" was a functional category, where plaintiff's FOIA request sought all documents provided by Walmart to the SEC, because "the type of harm caused by their release would be the same"); *Dillon v. DOJ*, 102 F. Supp. 3d 272, 291-92 (D.D.C. 2015) (FBI properly withheld category of records described as "Evidentiary/Investigative Materials," which included copies of evidence and derivative communications discussing evidence, under Exemption 7(A)); *Kidder v. FBI*, 517 F. Supp. 2d 17, 28-30 (D.D.C. 2007) (category of documents consisting of "evidentiary or investigative materials" which included "copies of records or evidence, and derivative communications discussing or incorporating evidence" was properly withheld under Exemption 7(A)); *Korkala v. DOJ*, Civ. A. No. 86-0242, 1987 WL 15693, at *2-3 (D.D.C. July 31, 1987) (FBI properly withheld requested information, materials in an individual's possession when he died, which the

[3] The Second Declaration of David M. Hardy ("Second Hardy Decl."), filed concurrently herewith, also makes clear that all of the materials retrieved from any electronic equipment obtained from former Secretary Clinton for the investigation are evidence, potential evidence, or information that has not yet been assessed for evidentiary value. *See* Second Hardy Decl. ¶ 13 & 13a.

FBI categorized as "evidentiary materials"); Def.'s Summ. J. Mem. at 13-14. Plaintiff fails to address, let alone refute, the force of these decisions.

Plaintiff also overreaches in asking this Court to conduct "a more focused and particularized review" of defendant's claim that the release of materials retrieved from any electronic equipment obtained from former Secretary Clinton for the investigation could reasonably be expected to harm the pending investigation. *See* Pl.'s Opp'n at 6-7. Plaintiff quotes extensively from the D.C. Circuit's opinion in *Campbell v. HHS*, 682 F.2d 256 (D.C. Cir. 1982), in advocating for this level of review,[4] but ignores that the D.C. Circuit later clarified that opinion after an intervening Supreme Court decision. In *Swan v. SEC*, 96 F.3d 498, 500 (D.C. Cir. 1996), the D.C. Circuit held that *Campbell* was decided before the Supreme Court's decision in *DOJ v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), which "set down the principle" that a FOIA requester's identity should be disregarded when determining whether information was properly withheld.

Read in the context of the *Reporters Committee* opinion, "*Campbell* . . . set[s] forth the unremarkable proposition that in an exemption 7(A) case it may be relevant who the target of an investigation is and what the target knows." *Swan*, 96 F.3d at 500. However, the question of "[w]hether exemption 7(A) applies depends . . . on the character of the records and the interference with 'enforcement proceedings' one could reasonably expect to result from releasing those records *to anyone*" not just the target(s) of the investigation at issue. *Id.* at 499-500; *id*. at 500 ("Agencies, and hence courts,

[4] While plaintiff cites to and purports to quote from *Citizens for Responsibility & Ethics in Washington v. DOJ*, 746 F.3d 1082 (D.C. Cir. 2014), on pages 6-7 of his opposition, the actual language appears in *Campbell*.

must evaluate the risk of disclosing records to some particular FOIA requester not simply in terms of what the requester might do with the information, but also in terms of what anyone else might do with it.").

In questioning whether the release of materials retrieved from any electronic equipment obtained from former Secretary Clinton for the investigation could reasonably be expected to interfere with the pending investigation, plaintiff relies on pure speculation that he knows who the target or targets of the pending investigation are, and who the potential witnesses are. *See* Pl.'s Opp'n at 6-7. Plaintiff also presumes that releasing the materials to persons other than the targets would not interfere with the pending investigation. *See id*. But plaintiff's speculation does not provide a basis for this Court to question the factual averments in the First Hardy Declaration regarding the harms that could reasonably be expected to result if the responsive records are disclosed.[5] *See SafeCard Servs. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) ("Agency affidavits are accorded a presumption of good faith, which cannot be rebutted by purely speculative claims . . . .") (internal quotation marks omitted); *Swan*, 96 F.3d at 500 (finding that the SEC correctly evaluated the FOIA request "on the basis that the information would become public and available to everyone, including others under Commission scrutiny"); First Hardy Decl. ¶ 20 (saying that disclosure of evidence, potential evidence, or information that has not been assessed for evidentiary value could reasonably lead to the

[5] Information appearing in second-hand sources, such as news outlets, does not constitute an official acknowledgement of whether particular individuals have been interviewed by the FBI in connection with the investigation or are a target of the investigation. *See Frugone v. CIA*, 169 F.3d 772, 774 (D.C. Cir. 1999); *Fitzgibbon v. CIA*, 911 F.2d 755, 765 (D.C. Cir. 1990).

public identification and compromising of potential witnesses, as well as defensive actions to conceal activities, elude detection, and/or suppress or fabricate evidence).[6]

Plaintiff also ignores the numerous court opinions cited in defendant's Summary Judgment Memorandum, which held that evidence in pending investigations is properly withheld under exemption 7(A), when disclosure could reasonably be expected to result in harms similar to those articulated in the First Hardy Declaration. *See, e.g., Alyeska Pipeline Serv. Co. v. EPA*, 856 F.2d 309, 312 (D.C. Cir. 1988) (copies of plaintiff's corporate records that were provided to the EPA by a third party were properly withheld pursuant to Exemption 7(A) where identification of the specific records submitted could reveal the scope and direction of the investigation); *Robbins, Geller*, 2016 WL 950995, at *5-6 (documents produced by Walmart to the SEC were properly withheld under Exemption 7(A) because their release could reveal potential witnesses, allow potential witnesses to shape their testimony or tamper with evidence, and reveal the focus and scope of the investigation); *EPIC*, 82 F. Supp. 3d at 319-20 (information was properly withheld under Exemption 7(A) where disclosure could reveal the documentary evidence gathered in the course of the investigation, identify potential witnesses, and expose the scope and methods of the investigation). As in these cases, disclosure of the withheld information could reasonably be expected to interfere with the pending investigation.

[6] While the First Hardy Declaration provides information sufficient to demonstrate that disclosure of the withheld records could reasonably be expected to interfere with the pending investigation, the classified declaration lodged for the Court's *in camera, ex parte* review in connection with defendant's motion for summary judgment provides additional information that supports this showing.

C. The FBI Released All Reasonably Segregable Records.

The FBI also demonstrated in its Summary Judgment Memorandum that it complied with its segregability obligations under FOIA. Plaintiff challenges that showing only with respect to two records responsive to plaintiff's request for correspondence between FBI personnel and Department of State regarding the investigation; however, like plaintiff's other challenges, these arguments are unpersuasive.[7]

The FBI determined that disclosure of these two records could reasonably be expected to interfere with the investigation and that there is no reasonably segregable responsive information that can be released without harming the investigation. *See* First Hardy Decl. ¶¶ 21, 23. This statement is sufficient. *Kidder*, 517 F. Supp. 2d at 32 (holding that, where defendant declared that all of the information withheld regarding the pending investigation was exempt under 7(A) in its entirety, defendant had satisfied its segregability burden); *Cucci v. DEA*, 871 F. Supp. 508, 512 (D.D.C. 1994) ("[b]ecause [the FBI] has met its burden of showing that all its records are exempt and relate to the continuing investigations . . . there are no non-exempt portions of the records to

[7] Plaintiff does not challenge the FBI's segregability showing with respect to the materials retrieved from any electronic equipment obtained from former Secretary Clinton for the investigation, and such a challenge would fail in any event. *See Robbins, Geller*, 2016 WL 950995, at *9 (given that FOIA request sought all documents provided by Walmart to the SEC and the fact that the SEC asserted exemption 7(A) over that category of materials, "the SEC's assertion that all responsive documents in its first category are exempt from disclosure and not reasonably able to be segregated satisfies FOIA's segregability requirements"). Moreover, the Second Hardy Declaration provides additional information to support the FBI's conclusion that disclosure of any portion of these materials could reasonably be expected to adversely affect the pending investigation. *See* Second Hardy Decl. ¶ 13a.

segregate"). Moreover, the Second Hardy Declaration provides additional information to support the FBI's segregability showing as to these two records.

The Second Hardy Declaration states that the contents of these two pieces of correspondence – including to/from information, dates, and their contents – reveal non-public information about the nature, focus, and scope of the FBI's pending investigation, as well as specific investigative activities and techniques and procedures utilized in furtherance of the investigation. Second Hardy Decl. ¶ 13b. Disclosure of this information could reasonably be expected to adversely interfere with the pending investigation. *Id.*; *see also* Def.'s Summ. J. Mem. at 16-18. In addition, any arguably non-exempt information contained in these two records is either inextricably intertwined with exempt information, or consists, at most, of disjointed words or phrases lacking any informational content. Second Hardy Decl. ¶ 13b. These statements are sufficient to demonstrate that the FBI released all reasonably segregable information from these two records, obviating the need for *in camera* review.[8] *See Mobley v. CIA*, 806 F.3d 568, 588 (D.C. Cir. 2015) (district court did not abuse its discretion in refusing to review a document *in camera* where it could conclude, based on the agency's declaration, that the document was properly withheld); *Juarez v. DOJ*, 518 F.3d 54, 61 (D.C. Cir. 2008) (agency satisfied obligation of demonstrating that no portions of the withheld documents could be segregated and released by stating that releasing any information "could still reveal the extent of the government's investigation, the acts on which it is focused, what evidence of wrongdoing it is aware of . . . and the agency's investigative techniques in

[8] These statements are also distinguishable from the conclusory assertions made by the agencies in *STS Energy Partners LP v. FERC*, 82 F. Supp. 3d 323, 332 (D.D.C. 2015), and *Gray v. U. S. Army Crim. Invest. Command*, 742 F. Supp. 2d 68, 76 (D.D.C. 2010), relied on by plaintiff in his opposition. *See* Pl.'s Opp'n at 9.

this investigation"); *Jarvik v. CIA*, 741 F. Supp. 2d 106, 121 (D.D.C. 2010) (relied on by plaintiff) ("the defendant provides a sufficiently detailed justification for the defendant's determination that there is no segregable material because all of the information is exempt"); *Lieff, Cabraser, Heimann & Bernstein, LLP v. DOJ*, 697 F. Supp. 2d 79, 86 (D.D.C. 2010) (relied on by plaintiff) (agency "describe[d] in sufficient detail why the disclosure of any portion of the correspondence would provide information properly withheld pursuant to exemption 7(A)").[9]

D. The FBI Performed An Adequate Search.

Plaintiff's challenge to the adequacy of the FBI's search is also based on unfounded speculation that other locations are likely to contain responsive records. Plaintiff first claims that the FBI's search was inadequate because it did not include a search of the Central Records System ("CRS"); however, the Second Hardy Declaration explains why such a search was unnecessary here. Due to the high profile nature of the subject of plaintiff's request, the FBI knew where to find the investigative file that would contain responsive records without having to search the CRS. Second Hardy Decl. ¶ 5.

The CRS is an extensive system of records that spans the entire FBI organization and consists of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its integrated

[9] This Court also explicitly permitted defendant to file a motion for summary judgment arguing that responsive records should be protected from disclosure under Exemption 7(A), without waiving its right to later assert other exemptions. *See* Feb. 9, 2016 Minute Order. Therefore, to the extent the FBI has not demonstrated that there are no reasonably segregable portions of the withheld records that can be released, or this Court were to conclude that any portion of the records withheld by the FBI are not otherwise protected from disclosure under Exemption 7(A), the FBI has preserved its right to assert other exemptions before the information is ordered disclosed. *See* Second Hardy Decl. ¶ 14.

missions and functions. *Id*. ¶ 6a. The investigative file identified as responsive to plaintiff's request is maintained in and is part of the CRS, as are all FBI investigative files. *Id*. ¶ 8 n.4. Generally, to locate information indexed in files in the CRS, the FBI uses an index search methodology. Index searches of the CRS are reasonably expected to locate responsive material within CRS because the FBI indexes pertinent information into the CRS to facilitate retrieval based on operational necessity. *Id*. ¶ 7. An index search to locate the investigative file at issue in the CRS was unnecessary here, however, because the FBI already knew where the file was. *Id*. ¶ 8. In other words, the FBI was able to cut out the middle step of searching for the investigative file in the CRS by going directly to the file itself. *Id*.

Nor was a CRS search necessary to locate any e-mails that would be responsive to Request No. 1340457 (seeking correspondence between the FBI and the State Department regarding any electronic equipment obtained), Request No. 1340454 (seeking records regarding authorization to disclose information), and Request No. 1340459 (seeking correspondence between the FBI and former Secretary Clinton or her representative regarding any electronic equipment obtained). Any e-mails that are pertinent to the pending investigation would be retained in the investigative file, and no emails responsive to these Requests were located in the file. *Id*. ¶ 9.

Plaintiff also relies on speculation when arguing that the FBI otherwise failed to conduct a systematic search. *See* Pl.'s Opp'n at 11-14. The FBI reasonably concluded that records responsive to plaintiff's request would be maintained as part of the FBI's investigation and thus, would be part of the CRS. *See* Second Hardy Decl. ¶ 10. Request No. 1340457 (seeking correspondence between the FBI and the State Department

regarding any electronic equipment obtained) and Request No. 1340459 (seeking correspondence between the FBI and former Secretary Clinton or her representative regarding any electronic equipment obtained) sought correspondence related to the FBI's investigation and investigative activities. The CRS, in which the FBI maintains all of its investigative files, is the only record system where such records would be maintained and it is not reasonably likely that such materials would be stored in any other FBI record system. *Id.* With respect to Request No. 1340457, the Supervisory Special Agent ("SSA") leading the investigation reviewed the case file to locate any correspondence between the FBI and Department of State. In addition to his review of the file, he also conducted a text search of the file for "Department of State." As a result of these efforts, he located two pieces of correspondence from the FBI to the Department of State, which were withheld in full. *Id*. ¶ 10; *see* Pl.'s Opp'n at 12 (citing cases finding that an agency's search was adequate where it relied on a search by a knowledgeable custodian).

The Office of the General Counsel ("OGC") search was prompted by the fact that FBI General Counsel James Baker corresponded with the Department of State in relation to other pending FOIA litigation, *Judicial Watch v. U.S. Dep't of State*, Civil Action No. 13-1363 (D.D.C.) (Sullivan, J.). Second Hardy Decl. ¶ 11. That correspondence, which is publicly available on PACER (the online docket for the case), was determined to be responsive to plaintiff's request, was retrieved, and was released to plaintiff. *Id.* OGC personnel who were involved in and have knowledge of the FBI's investigation and the *Judicial Watch* litigation were also contacted and asked to locate any other correspondence between the FBI and Department of State. They all advised that, other than the letters released to plaintiff in full, they did not have and were unaware of any

other correspondence between the Department of State and the FBI that would be responsive to Request No. 1340457. *Id*.; *see* Pl.'s Opp'n at 12 (citing case for the proposition that an agency's search was reasonable where the search included having the person most knowledgeable about the subject matter inquire into the existence of records).

In other words, where the FBI had a concrete lead as to the existence of potentially responsive records outside of the CRS – *i.e.*, the correspondence between General Counsel Baker and the Department of State – the FBI followed the lead to locate responsive records. Second Hardy Decl. ¶ 12; s*ee also Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 327 (D.C. Cir. 1999) (agency's failure to search a location it had identified as a likely place for the requested documents to be located raised a genuine issue of material fact as to the adequacy of the agency's search). Aside from the CRS and the Office of General Counsel, there are no other record systems where responsive records would be maintained and it is not reasonably likely that such records would be stored in any other FBI record system. Second Hardy Decl. ¶ 12.[10] These averments are sufficient to demonstrate that the FBI performed an adequate search. *See Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (discussing the need for "[a] reasonably

[10] The information provided in the First and Second Hardy Declarations is sufficient for this Court to determine that the FBI performed an adequate search. However, additional details about how the FBI determined that there were no records responsive to Request No. 1340454 (seeking records regarding authorization to disclose information), and Request No. 1340459 (seeking correspondence between the FBI and former Secretary Clinton or her representative regarding any electronic equipment obtained), are contained in the Third Overall and First *In Camera, Ex Parte* Declaration of David M. Hardy ("Third Hardy Declaration"), the submission of which is the subject of Defendant's Motion for Leave to Submit *In Camera, Ex Parte* Declaration. The details contained in the Third Hardy Declaration cannot be disclosed on the public record without compromising information that the FBI seeks to protect pursuant to Exemption 7(A). Second Hardy Decl. ¶ 12.

detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched").

Plaintiff's speculation that additional records responsive to his FOIA request "would likely be located in offices," that were not searched, Pl.'s Opp'n at 13, is not sufficient to raise an issue of material fact as to the adequacy of the FBI's search. *See Judicial Watch v. DOD*, 857 F. Supp. 2d 44, 53-54 (D.D.C. 2012) (plaintiff's speculation that locations not searched might contain responsive records did not rebut the presumption of good faith afforded the agency's declarations or proffer countervailing evidence that raised a substantial doubt as to the adequacy of the agency's search). The *Judicial Watch v. DOD* court rejected a challenge to the adequacy of the Department of Defense's search for records responsive to a FOIA request seeking "all photographs and/or video recordings of Osama (Usama) Bin Laden taken during and/or after the U.S. military operation in Pakistan on or about May 1, 2011." *Id*. at 49-50. The court held that:

> [T]his was not a request for some broadly defined class of documents the existence and whereabouts of which the agency was likely unaware and that might be maintained in any number of records systems. On the contrary, Judicial Watch's request related to a discrete set of extraordinarily high-profile records . . . . If DOD ha[d] possession of these records, the relevant individuals are well aware of that fact.

Id. at 54. For similar reasons, plaintiff's speculation fails to raise "a substantial doubt" as to the adequacy of the FBI's search here. *See id*. (citation omitted); Second Hardy Decl. ¶ 5.

III. CONCLUSION

For the foregoing reasons, and the reasons stated in Defendant's Summary Judgment Memorandum, the Court should grant defendant's motion for summary judgment.

Dated: June 6, 2016

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON LEOPOLD, Plaintiff, v. DEPARTMENT OF JUSTICE, Defendant.	Civil Action No. 1:15-cv-2117 (RDM)

SECOND DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section ("RIDS"), Records Management Division ("RMD"), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the Federal Bureau of Investigation ("FBI"), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the United States Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act ("FOIA") policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 239 employees who staff a total of ten (10) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests

for access to Federal Bureau of Investigation ("FBI") records and information pursuant to the FOIA, 5 U.S.C. § 552; Privacy Act of 1974; Executive Order ("E.O.") 13,526; Presidential, Attorney General and FBI policies and procedures; judicial decisions; and other Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by E.O. 13,526, 75 Fed. Reg. 707 (2010), and the preparation of declarations in support of FOIA Exemption 1 claims asserted under the FOIA, 5 U.S.C. § 552(b)(1). I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to Executive Order 13,526, §§ 1.3 and 3.1. 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 plaintiff's request for information pursuant to the provisions of the FOIA, 5 U.S.C. § 552. Specifically, I am aware of the FBI's handling of plaintiff's FOIA request for any e-mails and other records retrieved from any server, thumb drive, or other electronic equipment obtained from former Secretary of State Hillary Clinton that have not already been made public, as well as correspondence between specific individuals or organizations concerning any such server equipment/related devices, including authorizations for FBI personnel to disclose information to the media or any other outside person or entity regarding the FBI's possession of any such server equipment and related devices or information obtained therefrom.

(4) The FBI submits this declaration in support of defendant's motion for summary judgment. It incorporates by reference my first declaration in this case as well as the first *in camera, ex parte* classified declaration submitted by the FBI. *See* ECF No. 9-1, Declaration of David M. Hardy ("1st Hardy Decl.") and ECF No. 8, Notice of Lodging of Classified, *In Camera, Ex Parte* Declaration. It also incorporates by reference the second *in camera, ex parte* declaration that the FBI prepared in conjunction with the filing of its reply. *See* Motion for Leave to Submit *In Camera, Ex Parte* Declaration. This declaration addresses allegations in plaintiff's opposition to the FBI's motion for summary judgment regarding the FBI's search for and segregation of responsive records. *See* ECF No. 14, Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment.

SEARCH

(5) In my first declaration, I stated that a search of the FBI's Central Records System ("CRS") was not necessary in this case because RIDS was well-aware of the investigation underlying the subject matter of plaintiff's request, whether potentially responsive records existed, and the location of any such potentially responsive records. In other words, due to the high profile nature of the subject of plaintiff's request, RIDS knew where to find the investigative file that would contain any responsive records without having to search the CRS.

(6) To expand upon this explanation, it is pertinent to first describe what the CRS is and how RIDS typically searches it in responding to FOIA requests. The following sub-paragraphs describe the CRS, as well as the two mechanisms by which the CRS is searched: the Automated Case Support system (and its Universal Index) and Sentinel.

(a) The **Central Records System ("CRS")** is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its integrated missions and functions as a law enforcement, counterterrorism, and intelligence agency to include performance of administrative and personnel functions. The CRS spans the entire FBI organization and encompasses the records of FBI Headquarters ("FBIHQ"), FBI Field Offices, and FBI Legal Attaché Offices ("Legats") worldwide.

(b) The CRS consists of a numerical sequence of files called FBI "classifications," which are organized according to designated subject categories. The broad array of CRS file classification categories include types of criminal conduct and investigations conducted by the FBI, as well as categorical subjects pertaining to counterterrorism, intelligence, counterintelligence, personnel, and administrative matters. For identification and retrieval purposes across the FBI, when a case file is opened, it is assigned a Universal Case File Number ("UCFN") consisting of three sequential components: (a) the CRS file classification number, (b) the abbreviation of the FBI Office of Origin initiating the file, and (c) the assigned individual case file number for that particular subject matter.[1] Records in each case file are "serialized," or sequentially numbered as they are added to the file, typically in chronological order.

(c) The general indices to the CRS are the index or "key" to locating records within the enormous amount of information contained in the CRS. The CRS is indexed in a manner which meets the FBI's investigative needs and priorities, and allows FBI personnel to reasonably and adequately locate pertinent files in the performance of their law enforcement duties. The general indices are arranged in alphabetical order and comprise an index on a variety

[1] For example, in a fictitious file number of "11Z-HQ-56789," the "11Z" component indicates the file classification, "HQ" indicates that FBI Headquarters is the Office of Origin of the file, and "56789" is the assigned case specific file number.

of subject matters to include individuals, organizations, events, or other subjects of investigative interest that are indexed for future retrieval. The entries in the general indices fall into two category types:

i. Main entry. This entry pertains to records indexed to the main subject(s) of a file, known as "main file" records. The "main" entry carries the name of the individual, organization, or other subject matter that is the designated subject of the file.

ii. Reference entry. This entry, or a "cross-reference," pertains to records that merely mention or reference an individual, organization, or other subject matter that is contained in a "main" file record about a different subject matter.

(d) FBI Special Agents ("SAs") and designated support personnel index information in the CRS by individual (persons), by organization (organizational entities, places and things), and by event (*e.g.*, a terrorist attack or bank robbery). Indexing information in the CRS is based on operational necessity. The FBI only indexes that information considered relevant and necessary for future retrieval. It does not index every individual name or other subject matter in the general indices.

(e) The **Automated Case Support ("ACS")** system is an electronic, integrated case management system that became effective for FBIHQ and all FBI Field Offices and Legats on October 1, 1995. As part of the ACS implementation process over 105 million CRS records were converted from automated systems previously utilized by the FBI into a single, consolidated case management system accessible by all FBI offices. ACS has an operational purpose and design to enable the FBI to locate, retrieve, and maintain information in its files in the performance of its myriad missions and functions.[2]

[2] ACS and the next generation Sentinel system are relied upon by the FBI daily to fulfill essential functions such as conducting criminal, counterterrorism, and national security investigations; background investigations; citizenship and employment queries; and security screening, to include Presidential protection.

(f) The **Universal Index ("UNI")** is the automated index of the CRS and provides all offices of the FBI a centralized, electronic means of indexing pertinent investigative information to FBI files for future retrieval via index searching. Individual names may be recorded with applicable identifying information such as date of birth, race, sex, locality, Social Security Number, address, and/or date of an event. Moreover, ACS implementation built upon and incorporated prior automated FBI indices; therefore, a search employing the UNI application of ACS encompasses data that was already indexed into the prior automated systems superseded by ACS. As such, a UNI index search in ACS is capable of locating FBI records created before its 1995 FBI-wide implementation to the present day in both paper and electronic form.[3] Currently, UNI consists of approximately 111 million searchable records and is updated daily with newly indexed material.

(g) **Sentinel** is the FBI's next generation case management system that became effective FBI-wide on July 1, 2012. Sentinel provides a web-based interface to FBI users, and it includes the same automated applications that are utilized in ACS (including UNI). After July 1, 2012, all FBI generated records are created electronically in case files via Sentinel; however, Sentinel did not replace ACS, which retains its relevance as an important FBI search mechanism. Just as pertinent information was indexed into UNI for records generated in ACS before July 1, 2012, when a record is generated in Sentinel, information is indexed for future retrieval. Moreover, there is an index data sharing nexus between the Sentinel and ACS systems whereby components of information indexed into Sentinel are also replicated or "backfilled" into ACS. In sum, the Sentinel case management system builds on ACS and shares its operational

[3] Older CRS records that were not indexed into UNI as a result of the 1995 ACS consolidation remain searchable by manual review of index cards, known as the "manual indices." A search of the manual indices is triggered for requests on individuals if the person was born on or before January 1, 1958, and for requests seeking information about organizations or events on or before January 1, 1973. Records created after these dates would be captured through a UNI search.

purpose. Thus, Sentinel provides another portal to locate information within the vast CRS for FBI records generated on or after July 1, 2012.

(7) To locate information indexed in files in the CRS using either ACS or Sentinel, RIDS employs an index search methodology. Index searches of the CRS are reasonably expected to locate responsive material within the vast CRS since the FBI indexes pertinent information into the CRS to facilitate retrieval based on operational necessity. Given the broad range of indexed material in terms of both time frame and subject matter, the automated UNI application of ACS is the primary mechanism RIDS employs to conduct CRS index searches. If a request seeks records that may have been generated on or after July 1, 2012, an overlapping search using both ACS (via the UNI application) and Sentinel index search capabilities is performed if a FOIA request proceeds to litigation to ensure adequacy of the CRS index search.

(8) Here, it was unnecessary to rely on ACS and Sentinel to locate the investigative file at issue in the CRS because RIDS already knew where the file was and who had it.[4] In short, RIDS was able to cut out this middle step in the FOIA process and go directly to the file without first using ACS and Sentinel to search for it in the CRS because, as explained in my first declaration, this is not the first FOIA request or lawsuit related to or implicating this investigation.

(9) Plaintiff suggests that a CRS search was necessary because there is a reasonable likelihood that CRS would contain e-mails that would be responsive to plaintiff's request (items #2-#5). However, any e-mails pertinent to the pending investigation would be retained in the investigative file (*i.e.*, serialized in the investigative file by case agents or other members of the investigative team and placed in the CRS for record-keeping and future retrieval). It is precisely

[4] The investigative file identified as responsive to this request is maintained in and is part of the CRS, as are all FBI investigative files.

for this reason that, as plaintiff points out, the FBI has successfully argued that a search of separate e-mail systems is unnecessary – because any responsive e-mail records would be in the investigative file and thus would be located through a CRS search. As explained above, the FBI was able to locate the investigative file without conducting a CRS search. No e-mails responsive to items #2-#5 were located in the file.

(10) The FBI concluded that records responsive to plaintiff's request would be maintained as part of the FBI's investigation and thus, would be part of the CRS. Specifically, plaintiff sought materials retrieved from any server, thumb drive, or other electronic equipment obtained from former Secretary of State Hillary Clinton not already made public. He also sought various types of correspondence related to the FBI's investigation and investigative activities. The CRS, in which the FBI maintains all of its investigative files, is the only record system where such records would be maintained and it is not reasonably likely that such materials would be stored in any other FBI record system. With respect to the search for records responsive to Item #4, the Supervisory Special Agent ("SSA") leading the investigation reviewed the case file in Sentinel to locate any correspondence between the FBI and Department of State. In addition to his review of the file, he also used Sentinel to conduct a text search of the file for "Department of State." As a result of these efforts, he located two pieces of correspondence from the FBI to the Department of State, which were withheld in full.

(11) The Office of the General Counsel ("OGC") search was prompted by the fact that FBI General Counsel James Baker corresponded with the Department of State in relation to pending FOIA litigation in *Judicial Watch v. U.S. Dep't of State*, Civil Action No. 13-1363 (D.D.C.) (Sullivan, J.). That correspondence, which is publicly available on PACER (the online docket for the case), was determined to be responsive to plaintiff's request, was retrieved, and

was released without redaction to plaintiff. OGC personnel who were involved in and have knowledge of the FBI's investigation and also the *Judicial Watch* litigation were contacted and asked to locate any other correspondence between the FBI and Department of State.[5] They all advised that other than the letters released to plaintiff in full, they did not have and were unaware of any other correspondence between the Department of State and the FBI that would be responsive to item #4 of plaintiff's request.

(12) Therefore, where the FBI had a concrete lead that potentially responsive records might exist outside the CRS, the FBI followed the lead to locate responsive records. There are not other record systems where responsive records would be maintained and it is not reasonably likely that such records would be stored in any other FBI record system. Additional details about how the FBI determined that there were no records responsive to items #2, #3, and #5 are included in my *in camera, ex parte* declaration prepared in conjunction with the filing of defendant's reply. *See* Motion for Leave to Submit *In Camera, Ex Parte* Declaration. The FBI cannot provide this information on the public record without compromising the information that is exempt and that it seeks to protect under Exemption 7(A).

SEGREGABILITY

(13) As explained in my first declaration, two types of responsive records were identified here – materials retrieved from any server equipment and related devices obtained from former Secretary Clinton for the investigation (responsive to item #1 of plaintiff's request), and FBI correspondence with the Department of State regarding the investigation (responsive to item #4 of plaintiff's request) – both of which are functionally categorized as Evidentiary and Investigative Materials. FBI personnel have reviewed both types of responsive records. As a

[5] Due to the sensitive nature of the investigation, the number of FBI personnel involved in and having knowledge of the pending investigation is limited.

result of this review and discussions with personnel involved in the pending investigation who know and can attest to what harms disclosure could reasonably be expected to cause, including Special Agents, attorneys, and technical specialists, the FBI concluded that no information could be segregated and released to plaintiff in response to his request.[6] More specifically:

(a) As a result of the above-described review and discussions, the FBI concluded that the materials retrieved from any server equipment and related devices obtained from former Secretary Clinton for the investigation were, in their entireties, evidence, potential evidence, or information that has not yet been assessed for evidentiary value. As such, disclosure of any portion of these materials could reasonably be expected to adversely affect the pending investigation.[7] The FBI determined that any arguably non-exempt information contained in these materials is either inextricably intertwined with exempt information and thus cannot be segregated and released without causing the harms protected by Exemption 7(A), or consists, at most, of disjointed words or phrases lacking any informational content, which the FOIA does not require agencies to segregate and release.

(b) The FBI similarly concluded that there is no reasonably segregable information that can be released from the FBI correspondence with the Department of State regarding the investigation that it withheld in full. These pieces of correspondence, including to/from information, dates, and their contents, reveal non-public information about the nature, focus, and scope of the FBI's pending investigation, as well as specific investigative activities and techniques/procedures utilized in furtherance of the investigation. If disclosed, such

[6] The FBI cannot specifically identify these employees without revealing information that it has protected pursuant to Exemption 7(A) and that would also be subject to other FOIA exemptions.

[7] Indeed, even disclosing the total volume of responsive information protected by Exemption 7(A) could reasonably be expected to reveal information about the nature, scope, focus, and conduct of this on-going investigation, and thus cannot be publicly disclosed without undermining the law enforcement interests the FBI is seeking to protect by application of Exemption 7(A) in this case.

information could reasonably be expected to adversely interfere with the FBI's law enforcement efforts. The FBI determined that any arguably non-exempt information contained in these materials is either inextricably intertwined with exempt information, or consists, at most, of disjointed words or phrases lacking any informational content, which the FOIA does not require agencies to segregate and release.

(14) The FBI notes that in the unlikely event that the Court concludes that any portion of the records withheld by the FBI are not exempt under Exemption 7(A), other exemptions also apply to the responsive records. In a Minute Order dated February 9, 2016, the Court granted the FBI's request to brief its application of FOIA Exemption 7(A) to withhold records responsive to plaintiff's request, without waiving its ability to assert any underlying FOIA exemptions if Exemption 7(A) expires or is not upheld by the Court, and the FBI explicitly preserved the right to assert additional underlying FOIA exemptions that may apply, if necessary.

CONCLUSION

(15) The FBI has performed adequate and reasonable searches for responsive records and has determined that any records responsive to plaintiff's request are located in files pertaining to a pending investigation. The FBI has further determined that to the extent that there is any non-exempt information in any of the responsive records withheld in full under Exemption 7(A), such information is not reasonably segregable because either (a) it is inextricably intertwined with exempt information and cannot be segregated and released to plaintiff without revealing exempt information that, if disclosed, could reasonably be expected to adversely affect the FBI's pending investigation, or (b) consists of nothing more than disjointed words, phrases, or sentences without information content.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of June, 2016.

DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON LEOPOLD, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE Defendant.	Case No. 15-cv-02117 RDM

MOTION FOR LEAVE TO SUBMIT *IN CAMERA, EX PARTE* DECLARATION

Defendant hereby respectfully moves for leave to submit the Third Overall and First *In Camera, Ex Parte* Declaration of David M. Hardy ("Third Hardy Declaration") in support of its Reply in Support of Defendant's Motion for Summary Judgment, ECF No. 16.[1]

Defendant's Memorandum of Points and Authorities in Support of the Motion for Summary Judgment, ECF No. 7, the First Declaration of David M. Hardy, ECF No. 9-1, the Reply in Support of Defendant's Motion for Summary Judgment, ECF No. 16, and the Second Declaration of David M. Hardy, ECF No. 16-1, provide detailed information sufficient to establish, as a matter of law, that the Federal Bureau of Investigation ("FBI") conducted a reasonable search for records responsive to plaintiff's Freedom of Information Act ("FOIA") request and properly withheld responsive information

[1] No D.C. Circuit authority or Local Rule requires defendant to seek permission from or provide prior notice to plaintiff or the Court before submitting an *in camera* declaration, and this Court has not set forth a procedure for the submission of *ex parte, in camera* declarations in this case. However, defendant files this motion to avoid further motions practice on this issue.

pursuant to FOIA Exemption 7(A). Both the First and Second Hardy declarations were filed on the public record. The Third Hardy Declaration, which is the subject of this motion, contains additional details about how the FBI determined that there were no records responsive to Request No. 1340454 (seeking records regarding authorization to disclose information), and Request No. 1340459 (seeking correspondence between the FBI and former Secretary of State Hillary Clinton or her representative regarding any electronic equipment obtained from former Secretary Clinton). *See* Second Hardy Decl. ¶ 12 (describing Third Hardy Declaration). These details supplement defendant's showing that it conducted a reasonable search, but cannot be disclosed on the public record without compromising information that the FBI seeks to protect pursuant to Exemption 7(A). *Id*.; *see also Arieff v. U.S. Dep't of Navy*, 712 F.2d 1462, 1469 (D.C. Cir. 1983) ("[T]he receipt of *in camera* affidavits . . . when necessary . . . [is] part of a trial judge's procedural arsenal."); *Hayden v. NSA*, 608 F.2d 1381, 1388 (D.C. Cir. 1979). If the Court grants this motion, defendant will make the Third Hardy Declaration available to the Court for *ex parte*, *in camera* review.

Defendant notes that the only paragraphs of the Third Hardy Declaration that could be publicly released are paragraphs that provide information identical to that contained in the First and Second Hardy Declarations. *See* First Hardy Decl. ¶¶ 1-4, 10, 12, 24. Thus, if the Court grants this motion, the Court should not further order defendant to file a redacted version of the Third Hardy Declaration on the public record, because doing so would not provide plaintiff with additional information not already contained in the public record. *See Hayden*, 608 F.2d at 1385, 1388-89 (district court

reasonably decided not to order portions of classified affidavit disclosed when doing so would "merely duplicate[] material already in the public record").

Counsel for defendant has conferred with counsel for plaintiff regarding defendant's intent to file this motion, and counsel for plaintiff indicated that "Plaintiff has no objection to the Government's filing of a motion for leave to file an *ex parte, in camera* declaration in support of its reply brief, provided the public portion of the filing articulates the basis for the need to file *ex parte*, and contains all segregable, non-sensitive portions of the *ex-parte* filing."

Dated: June 6, 2016

Respectfully submitted,

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON LEOPOLD, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE Defendant.	)	Case No. 15-cv-02117 RDM

[PROPOSED] ORDER

Upon consideration of Defendant's Motion for Leave to Submit *In Camera, Ex Parte* Declaration, it is HEREBY ORDERED that:

The Motion is GRANTED.

It is SO ORDERED.

SO ORDERED, this _____ day of _____, 2016.

_____
The Honorable Randolph D. Moss
United States District Judge