

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

MALIK RAHIM

Plaintiff

V.

Civil Action

FEDERAL BUREAU OF INVESTIGATION;
and U.S. DEPARTMENT OF JUSTICE

Defendants

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq., for declaratory, injunctive and other appropriate relief to compel an adequate search, the immediate processing and release of agency records improperly withheld from Plaintiff Malik Rahim by Defendant Federal Bureau of Investigation (“FBI”) and Defendant U.S. Department of Justice (“DOJ”) (collectively “Defendants”).

2. After Hurricane Katrina, on or around September 5, 2005, Malik Rahim, Plaintiff in this matter, organized a relief organization named Common Ground Relief, which included Common Ground Relief, Common Ground Collective, Woodlands Project and Common Ground Health Clinic (collectively “Common Ground”) in New Orleans, Louisiana.

3. Common Ground provided substantial relief supplies and tens of thousands of hours of volunteer assistance to devastated communities along the Gulf Coast.

4. Common Ground and Malik Rahim criticized government and corporate entities for failing to meet the needs of Gulf Coast communities after Hurricane Katrina.

5. Within weeks of Hurricane Katrina and the creation of Common Ground by Plaintiff, Brandon Darby appeared, spent considerable time at Common Ground, and became one of the active leaders of the organization.

6. Brandon Darby later admitted under oath that he was a confidential informant for the FBI and has admitted his relationship with the FBI to the New York Times, the Austin Chronicle, National Public Radio and in many other public forums; Brandon Darby has identified himself as an FBI confidential informant in open court.

7. Plaintiff submitted FOIA requests to Defendants on February 24, 2009 and subsequently connected to that request including request for fee waiver for production of responsive documents seeking information on the role of the FBI in Common Ground and with Brandon Darby after Hurricane Katrina.

8. Defendants FBI and DOJ have not produced documents in their possession which are lawfully available to Plaintiff under the Freedom of Information Act.

9. Administrative remedies have been exhausted.

JURISDICTION AND VENUE

10. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552(a)(6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1346(a)(2).

11. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) and § 1402(a), because the Plaintiff resides in the Eastern District of Louisiana.

PLAINTIFF

12. Plaintiff Malik Rahim is a citizen of the U.S. and resides in Louisiana.

DEFENDANTS

13. Defendant Federal Bureau of Investigation (FBI) is a component of the Department of Justice (DOJ), a Department of the Executive Branch of the United States, and each is an “agency” within the meaning of 5 U.S.C. § 552(f)(1).

FACTUAL ALLEGATIONS

14. Plaintiff submitted, by letter dated February 24, 2009, and later amended on July 30, 2009, a FOIA request to Defendant FBI for all documents relating to Malik Rahim or his organization Common Ground Relief. These requests were made by the law firm of Goodman & Hurwitz, P.C., through attorney Julie H. Hurwitz and assigned File # 1127584-000. These written requests are attached.

15. These requests asked for, among other things, “documents and things pertaining to Malik Rahim or his organization Common Ground Relief, from 2005 to the present. . . .”

16. Specifically, the FOIA request further sought “all records, documents and things . . .” related to surveillance, investigation, use of informants and agents, planting or gathering “evidence,” and any other activities pertaining to Malik Rahim including anything related to Common Ground Relief and Brandon Darby.

17. On March 17, 2009, the FOIA request of Malik Rahim was denied on the grounds that the FBI would not respond to a FOIA request concerning another individual in addition to Malik Rahim without a “privacy waiver” being filled out by Brandon Darby.

18. On July 30, 2009, an appeal was filed to the denial. This appeal set out several reasons why the records should be made public, including: “the public right to be informed about what their government is up to,” citing *U.S. Department of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 773 (1989); the fact that if Brandon Darby was an undercover informant for the FBI during his time at Common Ground, then that would be an act of such public concern that it would overcome personal privacy exemptions, citing *National Archives & Records Administration v. Favish*, 541 U.S. 157, 172 (2004). This appeal is attached.

19. On September 14, 2009, the FBI responded that it was still reviewing the original FOIA request.

20. On September 25, 2009, the U.S. Department of Justice Office of Information Policy stated it was affirming the original refusal of the FBI to release any information pertaining to Brandon Darby and further affirmed the refusal of the FBI to neither confirm nor deny the existence of any records responsive to the request. They said: “Without consent, proof of death, official acknowledgement of an investigation, or an overriding public interest, confirming or denying the existence of the records your client requested would constitute an unwarranted invasion of personal privacy.”

21. Defendant FBI has refused to produce any of the requested records.

22. Plaintiff has exhausted all applicable administrative remedies.

23. Defendants have wrongfully withheld the requested records from Plaintiff.

CAUSE OF ACTION

24. Defendants' failure to timely respond to Plaintiff's requests violates the FOIA, including:

(a) 5 U.S.C. Section 552(a) (1) to (3) for failure to promptly make records available to the Plaintiff;

(b) 5 U.S.C. Section 552(a)(3)(A) for failure to promptly make records available to Plaintiff;

(c) 5 U.S.C. Section 552(a)(6)(A)(i) and (ii) for failure to timely make records available to Plaintiff;

(d) 5 U.S.C. Section 552(a)(4)(A) for failure to grant fee waiver

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court:

1) Order Defendants to make a full, adequate, and expedited search for the requested records;

2) Order Defendants to immediately and expeditiously process Plaintiff's FOIA request;

3) Enjoin Defendants from assessing fees or costs for the processing of the FOIA request;

4) Order Defendants, upon completion of the expedited processing, to produce the requested records to Plaintiff no later than ten days after the Court's order;

5) Award Plaintiff costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

6) Grant such other relief as this Court decides is just and proper.

Respectfully submitted,

Dated: November 16, 2011

/s/ Davida Finger

Davida Finger, La. Bar No. 30889 (T.A.)
Bill Quigley, La. Bar No. 7769
Loyola University New Orleans College of Law, Law Clinic
7214 St. Charles Ave.
Campus Box 902
New Orleans, LA 70118
(504) 861-5596
dfinger@loyno.edu
duprestars@yahoo.com

Sunita Patel, NY Bar No. 4441382
Center for Constitutional Rights
666 Broadway, 7th floor
New York, NY 10012
(212) 614-6427
SPatel@ccrjustice.org

Julie Hurwitz, MI Bar No. P34720
Bill Goodman, MI Bar No. P14173
Goodman & Hurwitz
1394 Jefferson Avenue
Detroit, MI 48207
(313) 567-6170
jhurwitz@goodmanhurwitz.com
bgoodman@goodmanhurwitz.com

Miles Swanson, La. Bar No. 32053
Miles W. Swanson, Esq.
4000 Bienville St., Ste. A
New Orleans, LA 70119
(504) 383-4335
mws@mwsanson.com