

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC FRONTIER FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

Case No. 1:17-CV-1039-DLF

THIRD DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Information Management Division (“IMD”), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to my joining the Federal Bureau of Investigation (“FBI”), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the 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 242 employees, supported by approximately 71 contractors, who staff a total of twelve FBI Headquarters (“FBIHQ”) units and two field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to

FBI records and information pursuant to the FOIA, as amended by the OPEN Government Act of 2007; the OPEN FOIA Act of 2009; the FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive Order 13526; 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 Executive Order 13526, 75 Fed. Reg. 707 (2010), and the preparation of declarations in support of Exemption (b)(1) claims asserted under the FOIA. I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to E.O. 13526, §§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 from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552. Specifically, I am familiar with the FBI's handling of Plaintiff's Freedom of Information Act ("FOIA") request to the FBI for records concerning use of informants and/or Confidential Human Sources ("CHSs")¹ at any Best Buy facility; records regarding FBI training of Best Buy personnel in the detection and location of child pornography on computers brought in for repair; recruitment material from the FBI directed to Best Buy personnel; and memoranda, guidance, directives, or policy statements concerning the use of

¹ In this context, the FBI considers the terms informant and CHS to be synonymous (i.e. CHS/Informant describes an individual with whom the FBI has an established relationship, who have a specific source identification number used to obscure their identify in investigatory records, and have a separate distinct file containing documentation of their informant history, which has restricted access within the FBI).

informants and/or CHSs at any computer repair facilities in the United States.

(4) This declaration supplements, and hereby incorporates by reference, the information previously provided in my declaration dated April 27, 2018 (“First Hardy Declaration”), my declaration dated July 20, 2018 (“Supplemental Hardy Declaration”), and declaration provided by FBI Special Agent Tracey L. Riley (“First Riley Declaration”) in support of Defendant’s Motion for Summary Judgment. *See* ECF, Document Nos. 13-3, 18-2, and 18-1.

(5) I am aware this Court’s Memorandum Opinion and Order dated April 17, 2019, granted FBI’s Motion for Summary Judgment in part and denied it in part, while denying Plaintiffs Cross-Motion for Summary Judgment. *See* ECF, Document No. 24, hereafter “Court’s Order.”

(6) In light of the Court’s Order, the FBI agreed to perform supplemental searches reasonably likely to locate responsive records as to the Plaintiff’s request, reconsider the withholding of the name of a convicted third party individual identified on eight (8) pages at issue, and process for segregable release four informant files of the four FBI CHSs publically identified in Court proceedings during the *Rettenmaier* prosecution.

(7) The FBI advised Plaintiff by letters dated August 5, 2019, and August 30, 2019, that it conducted supplemental searches for records responsive to all four parts of Plaintiff’s FOIA request. The FBI further disclosed that it had located materials responsive to item four of Plaintiff’s request, which were withheld in full, and the supplemental searches as to Plaintiff’s FOIA request item two and three located no responsive records.

(8) Overall, the FBI processed eight (8) pages for further segregable release of the name of the convicted individual from the original processing,² processed 454 pages of records

² *See Exhibit C*, Bates pages EFF-13, 16-17, 19, 20, 71-72, and 118, for the eight (8) pages with

responsive to FOIA request item one, and processed 10 pages responsive to item four.

(9) The FBI also located a responsive record or records concerning one or more informants that were not previously acknowledged. The FBI determined that such record(s) were exempt in full pursuant to FOIA Exemption (b)(7)(E). The FBI further determined that it could not provide any description as to the volume of such record(s) without risking the harms protected against by Exemption 7(E).³ Finally, the FBI concluded that portions of the underlying record(s) were exempt pursuant to Exemptions 1, 3, 5, 6, 7(A), 7(C), 7(D), 7(E) and 7(F). *See Exhibits A-B* for release letters, and *Exhibit C* for the Vaughn Coded Index for the processed records.

(10) I understand, by email dated November 6, 2019, Plaintiff narrowed the remaining issues in this litigation by determining to not challenge the adequacy of the FBI's supplemental searches. In addition, Plaintiff agreed that the records produced by the supplemental searches were compiled for law enforcement purposes, conceding that the records at issue meet the Exemption 7 (5 U.S.C. § 552(b)(7)) threshold requirement.⁴

(11) Concerning item one of Plaintiff's request, "[a]ll internal memoranda or other documentation regarding the use of informants and/or CHSs ["cooperating human sources"] at any Best Buy facility," following its supplemental searches, the FBI processed for segregable

the segregable release of the name of the convicted individual.

³ In its release letter, the FBI cited other bases justifying the withholding in full of the record(s) concerning one or more informants that were not previously acknowledged, but relies herein solely on Exemption 7(E) for this purpose.

⁴ As such, the FBI will not provide here a description of its supplemental searches or demonstrate their adequacy, nor will it provide a description as to how the records at issue were compiled for law enforcement purposes.

release the four informant files of those informants previously identified in the *Rettenmaier* litigation, along with certain records which discussed CHSs at Best Buy facilities generally, without reference to a specific CHS, totaling 454 pages. Of these 454 pages, 13 pages were released in part (“RIP”), while 441 pages were in full (“WIF”). Of these 441 pages WIF, 42 pages were WIF as duplicates of previously processed records, and 399 pages were WIF pursuant to the assertion of FOIA Exemptions.

(12) The FBI located no records responsive to items two and three of Plaintiffs’ request regarding training and recruiting material directed at Best Buy employees.

(13) Concerning item four of Plaintiff’s FOIA request, which seeks memoranda, guidance, directives, or policy statements concerning the use of informants and/or CHSs at any computer repair facilities in the United States,” the FBI located and processed for segregable release 10 pages of responsive records. Of these 10 pages, all 10 pages were WIF pursuant to the assertion of FOIA Exemption 7(E), and portions of the records were also withheld pursuant to other FOIA Exemptions.

FBI’S JUSTIFICATION FOR WITHHOLDING CERTAIN INFORMATION FROM RESPONSIVE RECORDS FOR FOIA REQUEST ITEMS 1 AND 4

Justification for withholdings under the FOIA: Explanation of the Coded Format Used to Describe and Justify Withholdings

(14) The informant files for the informants identified in the *Rettenmaier* prosecution responsive to FOIA request item one, certain records which discussed CHSs at Best Buy facilities generally, also responsive to item one, and the records responsive to Plaintiff’s FOIA request item 4, were processed to achieve maximum disclosure consistent with the FOIA. Every effort was made to provide Plaintiff with all reasonably segregable non-exempt information in the responsive records. No reasonably segregable, non-exempt portions have been withheld

from Plaintiff. Further description of any of the information withheld, beyond what is provided in this declaration, could identify the actual exempt information protected by the FBI. Copies of the pages released to the Plaintiff, in part and in full, were individually numbered "EFF-13, 16-17, 19-20, 71-72, 118, and EFF-244 through EFF-707" at the bottom of each page.

(15) The Exemptions asserted by the FBI as grounds for non-disclosure for portions of FOIA request item one, where 13 pages were RIP, and 399 pages of the 441 pages WIF, are FOIA Exemptions 5, 6, 7(A), 7(C), 7(D) and 7(E), 5 U.S.C. §§ 552 (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D) and (b)(7)(E). The remaining 42 pages WIF were duplicates of previously released records. The Exemptions asserted by the FBI as grounds for non-disclosure for portions of FOIA request item four, where 10 pages were WIF, are FOIA Exemptions 6, 7(C), and 7(E), 5 U.S.C. §§ 552 (b)(6), (b)(7)(C), and (b)(7)(E).⁵

(16) The Bates-numbered documents contain, on their face, coded categories of Exemptions detailing the nature of the information withheld pursuant to the provisions of the FOIA. The coded categories are provided to aid the Court's and Plaintiff's review of the FBI's explanation of the FOIA Exemptions it has asserted to withhold material. Each instance of information withheld on the Bates-numbered documents is accompanied by a coded designation that corresponds to the categories listed below. For example, if (b)(7)(C)-1 appears on a document, the "(b)(7)(C)" designation refers to FOIA Exemption 7(C) protecting against unwarranted invasions of personal privacy. The numerical designation of "1" following the "(b)(7)(C)" narrows the main category into a more specific subcategory, such as "Names and/or Identifying Information of FBI Special Agents/Professional Staff." See the FBI's *Vaughn* Index, attached herein as **Exhibit C**, for further description of where within the responsive records these

⁵ See **Exhibit C**, for processed Bates pages 244-707.

coded categories of exemptions were asserted, and a description of each page of the processed documents. The coded, Bates numbered pages, together with this declaration and *Vaughn* Index, demonstrate that all material withheld by the FBI is exempt from disclosure pursuant to the cited FOIA exemptions, or is so intertwined with protected material that segregation is not possible without revealing the underlying protected material.

(17) Listed below are the categories used to explain the FOIA Exemptions asserted to withhold material:

<u>SUMMARY OF JUSTIFICATION CATEGORIES</u>	
CODED CATEGORIES	INFORMATION WITHHELD
Exemption (b)(5)	PRIVILEGED INFORMATION
(b)(5)-1	Deliberative Process Privilege
Exemption (b)(7)(A)	PENDING LAW ENFORCEMENT PROCEEDINGS
(b)(7)(A)-1	Information Which, if Disclosed, Could Reasonably be Expected to Interfere with Pending Law Enforcement Proceedings
Exemption (b)(6) and Exemption (b)(7)(C)⁶	CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY AND UNWARRANTED INVASION OF PERSONAL PRIVACY
(b)(6)-1 and (b)(7)(C)-1	Names and Identifying Information of FBI Special Agents and Professional Staff
(b)(6)-2 and (b)(7)(C)-2	Names and Identifying Information of Third Parties of Investigative Interest
(b)(6)-4 and (b)(7)(C)-4	Names and Identifying Data Regarding Third Party Victims

⁶ In its productions to Plaintiff, the FBI inadvertently relied on coded exemption categories (b)(6)-3, -6, and (b)(7)(C)-3, -6; therefore, these coded categories have been withdrawn. All information previously coded within these categories remains exempt within other Exemption categories.

(b)(6)-5 and (b)(7)(C)-5	Names and Identifying Information of Non-FBI Federal Government Personnel
(b)(6)-7 and (b)(7)(C)-7	Names and Identifying Information of Third Parties Merely Mentioned
(b)(6)-8 and (b)(7)(C)-8	Identifying Information of Third Parties who Provided Information to the FBI [cited at times in conjunction with 7(D)]
Exemption (b)(7)(D) ⁷	CONFIDENTIAL SOURCE INFORMATION
(b)(7)(D)-1	Identifying Data and Information Provided by Source Symbol Numbered Informants Under Express Assurances of Confidentiality
(b)(7)(D)-2	Confidential Human Source File Numbers
(b)(7)(D)-3	Confidential Human Source Symbol Numbers
Exemption (b)(7)(E) ⁸	LAW ENFORCEMENT INVESTIGATIVE TECHNIQUES AND PROCEDURES
(b)(7)(E)-1	Sensitive File Numbers and Sub-file Names
(b)(7)(E)-2	Non-Public Investigative Techniques and Procedures of the FBI's Informant Program
(b)(7)(E)-4	Internal FBI Secure Phone Number, Email or IP Addresses or Intranet/Web Addresses
(b)(7)(E)-5	Internal FBI Search Slips and Computer Generated Search Results
(b)(7)(E)-6	Collection Methodology and Analysis Techniques of the Collected Information
(b)(7)(E)-7	Identities and Locations of FBI or Joint Units, Squads, and Divisions
(b)(7)(E)-8	Database Identifiers, Printouts, and Search Results

⁷ In its productions to Plaintiff, the FBI inadvertently created coded exemption category (b)(7)(D)-4. Coded Exemption categories (b)(7)(D)-1 and (b)(7)(D)-4 have the same meaning; therefore, coded category (b)(7)(D)-4 has been withdrawn.

⁸ The FBI has determined the information originally protected within category (b)(7)(E)-3, was no longer exempt; therefore, coded exemption category (b)(7)(E)-3 has been withdrawn for Bates page EFF-71. A supplemental release of Bates page EFF-71, disclosing the previously withheld information, was provided to Plaintiff by email dated April 11, 2018.

Exemption 5—Privileged Information

(18) FOIA Exemption 5 has been construed to exempt documents or information normally privileged in the civil discovery context, and incorporates the deliberative process privileges. Generally, the deliberative process privilege protects pre-decisional, deliberative communications that are part of a process by which agency decisions are made. It protects opinions, advice, evaluations, deliberations, proposals, or recommendations that form part of an agency decision-making process, as well as the selection and sorting of factual information relied upon as part of the decision-making process.

(19) In order to apply FOIA Exemption 5, agencies must first satisfy the threshold requirement – *i.e.*, show the information protected was “inter-agency or intra-agency.” Once the threshold is satisfied, agencies must satisfy the elements of the pertinent privilege. With respect to the deliberative process privilege, agencies must show the withheld information is both pre-decisional – *i.e.*, antecedent to a final agency decision – and deliberative – *i.e.*, part of the process in which the agency engaged in an effort to reach a final decision (whether or not any final decision was ever reached).

(b)(5)-1 Deliberative Process Privilege

(20) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution, the FBI asserted Exemption 5 and the deliberative process privilege to withhold certain information. The information withheld warrants protection pursuant to the deliberative process privilege because it is: a) information shared inter-agency; b) it is pre-decisional; and c) deliberative.

(21) The only information withheld pursuant to the deliberative process privilege is contained within a two-page inter-agency email chain dated September 29, 2010, between a

Supervisor Special Agent (“SSA”) and a subordinate Special Agent (“SA”) of the FBI’s Louisville Field Office (“LSFO”), leading several investigations into child pornography crimes. See **Exhibit C**, Bates pages 314-315. Additionally, the information concerned a deliberative discussion between the LSFO SSA and a LSFO SA who discussed ways to convince the FBI Intelligence Directorate (“DI”) not to close a CHS the LSFO believed was providing substantive assistance for child pornography cases the LSFO was handling. Accordingly, the proposed plans were pre-decisional because they were discussed in reference to potential inclusion in an updated report to DI showing the assistance the CHS was providing. Finally, the information is deliberative because it involves the LSFO SSA and LSFO deliberating on plans of action to convince the DI of the importance of a specific CHS. The deliberative process privilege protects such internal deliberations by insulating recommendations, analyses, opinions, and other non-factual information comprising the decision-making process. In turn, Exemption 5 allows for the withholding of such privileged material—*i.e.*, material that contains, or was prepared in connection with the formulation of, opinions, advice, evaluations, deliberations, policies, proposals, conclusions, or recommendations.

(22) Exemption 5, when asserted in conjunction with the deliberative process privilege, is predicated on the recognition that release of this privileged information would inhibit the government’s development of policy and stifle its decision-making process. Furthermore, exempting such documents from disclosure also protects against public confusion that might result from preliminary disclosure of opinions and information that do not, in fact, reflect the final views or policies of the FBI. The exemption and privilege together protect not only documents, but also the integrity of the deliberative process itself where exposure of the process would result in harm. The FBI invokes Exemption 5 and the deliberative process

privilege because FBI employees would hesitate to offer their candid and conscientious opinions to superiors or coworkers if they knew that their opinions of the moment might be made a matter of public record at some future date; and because such self-censorship would, in turn, degrade the quality of agency decisions by depriving the decision-makers of fully-explored options developed from robust debate. Thus, the FBI properly withheld this information pursuant to FOIA Exemption 5.

**EXEMPTION (b)(7)(A)
PENDING LAW ENFORCEMENT PROCEEDINGS**

(23) 5 U.S.C. § 552 (b)(7)(A) exempts from disclosure:

Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings.

(24) 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 proceedings. In this case, the FBI has asserted Exemption 7(A) over certain records and portions of records as explained below.

(b)(7)(A)-1 Information Which, if Disclosed, Could Reasonably be Expected to Interfere with Pending Law Enforcement Proceedings

(25) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, the FBI asserted FOIA Exemption 7(A) to protect file numbers of pending FBI investigations which have not been revealed to the public (**Exhibit C**, Bates pages EFF-407, 409-410, 570-571, 573, 627-629, and 641), and investigative leads forwarded from the LSFO to other FBI Field Offices seeking further inquiry by those offices for potential opening of investigations (**Exhibit C**, Bates pages

EFF 269, 411, 616, 630-631, and 636). The investigative leads led to the opening of investigations concerning potential crimes related to child pornography, and these investigations are currently ongoing. The investigations have not been revealed to the public, and future enforcement proceedings are likely.

(26) The release of the file numbers and investigative leads pertaining to pending investigative activities could result not only in the acknowledgment of the existence of the investigations, but also in the identification of suspects; and/or it could provide investigative subjects an idea as to what and how the FBI gathered evidence of their wrongdoing and allow them to destroy or tamper with potential evidence. The FBI has accordingly determined the disclosure of the information, in the midst of these active and ongoing investigations, could reasonably be expected to interfere with these investigations as well as any resulting prosecutions. Therefore, the FBI withheld this information pursuant to FOIA Exemption 7(A).

**EXEMPTIONS 6 AND 7(C)
INVASIONS OF PERSONAL PRIVACY**

(27) Exemption 6 exempts from disclosure “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6).

(28) Exemption 7(C) similarly exempts from disclosure “records or information compiled for law enforcement purposes [when disclosure] could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).

(29) When withholding information pursuant to these two exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting these Exemptions, the FBI scrutinized each piece of information to determine the nature and strength of the privacy interest of every individual

whose name and/or identifying information appears in the documents at issue. When withholding the information, the FBI balanced the individuals' privacy interests against the public's interest in disclosure. For purposes of these Exemptions, a public interest exists only when information about an individual would shed light on the FBI's performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. In each instance wherein information was withheld pursuant to Exemptions 6 and 7(C), the FBI determined that the individuals' privacy interests outweighed any public interest in disclosure.

(b)(6)-1 and (b)(7)(C)-1 **Names and Identifying Information of FBI Special Agents and Professional Staff**

(30) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, and for a record processed in response to FOIA request item 4, the FBI asserted Exemption 6 and 7(C) to withhold the names and identifying information of FBI Special Agents and Professional Staff. FBI SAs and Professional Staff are responsible for conducting, supervising, and maintaining the investigative activities reflected in the documents responsive to Plaintiff's FOIA request. These responsibilities included conducting interviews, coordinating with other law enforcement officials, and compiling information, as well as reporting on the status of the investigation. Publicity (adverse or otherwise) regarding any particular investigation to which SAs and Professional Staff have been assigned may seriously prejudice their effectiveness in conducting other investigations. The FBI's justification for withholding names and identifying information of FBI Special Agents and Professional Staff is explained fully in my First Hardy Declaration at

¶¶ 78-81.⁹ For a complete list of the Bates pages containing information protected within these Exemption categories, *see* the attached *Vaughn* Index, **Exhibit C**.

(b)(6)-2 and (b)(7)(C)-2 **Names and Identifying Information of Third Parties of Investigative Interest**

(31) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, the FBI asserted Exemptions 6 and 7(C) to withhold the names and identifying information of third parties of investigative interest. Identifying information includes, but is not limited to, names, ages, dates of birth, social security numbers, addresses, telephone numbers, and/or other personal information. Being identified as a subject of a criminal investigation carries a strong negative connotation and a stigma. This is especially true for the individuals in the responsive records here, as the crimes for which they are being investigated pertain to child pornography. Release of the identities of these individuals to the public could subject them to harassment or embarrassment, as well as undue public attention. Accordingly, the FBI determined these individuals maintain substantial privacy interests in not having their identities disclosed. In contrast, disclosing personal information about these individuals would not significantly increase the public's understanding of the FBI's performance of its mission, and so the FBI concluded there was no public interest here sufficient to override these individuals' substantial privacy interests. For these reasons, the FBI properly withheld this information pursuant to FOIA Exemptions 6 and 7(C). For a complete list of the Bates pages containing information protected within these Exemption categories, *see* the attached *Vaughn* Index, **Exhibit C**.

⁹ The First Hardy Declaration defined FBI employees working with FBI Special Agents as "Support Personnel". The Third Hardy Declaration has updated these FBI employees designation as "Professional Staff" to better reflect their actual positions.

(b)(6)-4 and (b)(7)(C)-4 Names and Identifying Data Regarding Third Party Victims

(32) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, the FBI asserted Exemptions 6 and 7(C) to withhold the names and data regarding third party victims. To release a victim's identity could cause harm to the victim, such as personal distress or embarrassment. Thus, there is a strong privacy interest in the protection of such personal information. The FBI could identify no discernible public interest in the disclosure of this information because the disclosure of the victim's name and identifying information would not shed light on the operations and activities of the FBI. Thus, disclosure of this information would constitute a clearly unwarranted invasion of personal privacy and could reasonably be expected to constitute an unwarranted invasion of personal privacy. Accordingly, the FBI properly protected these individuals' privacy interests pursuant to FOIA Exemptions 6 and 7(C). For a complete list of the Bates pages containing information protected within these Exemption categories, *see* the attached *Vaughn* Index, **Exhibit C**.

(b)(6)-5 and (b)(7)(C)-5 Names and Identifying Information of Non-FBI Federal Government Personnel

(33) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, the FBI asserted Exemptions 6 and 7(C) to withhold the names and identifying information of non-FBI federal government personnel. The relevant inquiry involves whether public access to this information would violate a viable privacy interest of these individuals, and whether a public interest supports releasing their identities. Disclosure of their identities and identifying information could specifically subject these other Government Employees to unauthorized inquiries and harassment and would constitute a clearly unwarranted invasion of their personal privacy. The rationale for protecting

non-FBI federal employees is the same as that for FBI employees discussed at ¶¶ 78-81 of my First Hardy Declaration. In balancing the legitimate privacy interest of these individuals against any public interest in disclosure, the FBI determined that there is no bona fide public interest in this information because its disclosure will not shed light on the operations and activities of the federal government. Accordingly, the FBI concluded the disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. The FBI properly protected the names and identifying information of non-FBI federal government personnel pursuant to FOIA Exemptions 6 and 7(C). For a complete list of the Bates pages containing information protected within these Exemption categories, *see* attached *Vaughn* Index, **Exhibit C.**

(b)(6)-7 and (b)(7)(C)-7 Names and Identifying Information of Third Parties Merely Mentioned

(34) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, the FBI asserted Exemptions 6 and 7(C) to protect the names and identifying information of third parties merely mentioned. The FBI has information about these third-parties in its files because these individuals came into direct or indirect contact with the subjects of the FBI child pornography investigations. These individuals were not of investigative interest to the FBI or local law enforcement agencies. These third-parties maintain substantial and legitimate privacy interests in avoiding disclosure of this information and thereby being connected with a criminal investigation. Disclosure of these third-parties' names and/or identifying information in connection with an FBI or local law enforcement investigation of criminal activities carries an extremely negative connotation. Considering the nature of the FBI records at issue, disclosure of their identities would subject these individuals to possible harassment or criticism and focus derogatory inferences and

suspicion on them. The FBI also considered whether there was any public interest that would override these privacy interests, and concluded disclosing information about individuals merely mentioned in an FBI investigative file would not significantly increase the public's understanding of the operations and activities of the FBI. Accordingly, the FBI properly protected these individuals' privacy interests pursuant to FOIA Exemptions 6 and 7(C). For a complete list of the Bates pages containing information protected within these Exemption categories, see attached *Vaughn* Index, **Exhibit C**.

(b)(6)-8 and (b)(7)(C)-8 Identifying Information of Third Parties who Provided Information to the FBI

(35) This category refers to the identifying information of the four identified CHSs who provided information to the FBI. The names of the four CHSs were released during the *Rettenmaier* criminal prosecution, and accordingly, the FBI did not withhold the CHSs' names in the re-processed informant files pursuant to Exemptions 6 and 7(C). However, the FBI withheld from disclosure personal identifying information of these four individuals such as social security numbers, dates of birth, home and/or work phone numbers, home and/or work addresses, criminal background investigation information and/or records, payment records, personal email addresses, family and personal relationship information, and other personal identifiers. The release of these personal identifiers, used in conjunction with the name of these individuals already in the public domain, could potentially be used by criminals to impersonate the identities of these individuals. Furthermore, it would provide the means for individuals to harass or otherwise contact these informants about their involvement in these investigative matters. The FBI could identify no public interest in the disclosure of this information because disclosure of the CHSs' identifying information would not shed light on or significantly increase the public's understanding of the operations and activities of the FBI. For these reasons, the FBI properly

withheld this information pursuant to FOIA Exemptions 6 and 7(C). For a complete list of the Bates pages containing information protected within these Exemption categories, *see* the attached *Vaughn* Index, **Exhibit C**.

**EXEMPTION (b)(7)(D)
CONFIDENTIAL SOURCE INFORMATION**

(36) 5 U.S.C. § 552 (b)(7)(D) provides protection for:

records or information compiled for law enforcement purposes [which] could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

(37) Numerous confidential sources report to the FBI on a regular basis and are confidential “informants” within the common meaning of the term. Some of these sources provide information under an express assurance of confidentiality. Other individuals are interviewed under circumstances from which an assurance of confidentiality can reasonably be inferred. In either situation, these individuals are considered to be confidential sources since they furnished information only with the understanding that their identities and the information provided will not be released outside the FBI. As detailed above, Exemption 7(D) allows for the protection of information that “could reasonably be expected to disclose the identity of a confidential source” (hereafter, “7(D) prong one”) and, in the context of criminal or national security investigations, “information *furnished* by a confidential source” (hereafter “7(D) prong two”). In this instance, even though four CHS identities were identified during the *Rettenmaier* prosecution, the full scope of specific investigative assistance they provided to the FBI, and the nature of the informant program records located within each of their CHS files, was never revealed publicly. Indeed, the four identified CHSs here all provided information to the FBI

under an express assurance of confidentiality, and the FBI in fact used “source symbol numbers” and “source file numbers,” as described below, to further obscure their identifies in certain files. As a result, these individuals are considered to be confidential sources since they furnished information only with the understanding that their identifying information and the substantive information they provided will not be released outside the FBI.

(38) As such, the FBI withheld information provided by these CHSs in the context of criminal investigations, which has not been previously disclosed. Disclosing the specifics of the information the CHSs provided would allow the accused and/or convicted individuals on whom these CHSs provided information to know the identities of the individuals that enabled law enforcement to investigate and/or prosecute them for commission of crimes. Revealing this information would allow these criminals to potentially seek revenge, harass, or otherwise contact these CHSs. Furthermore, disclosure would show an unwillingness on the part of the FBI to do their utmost to protect current and former sources from possible reprisal based on their assistance to the FBI. This could dissuade current and future potential CHSs from assisting the FBI, and diminish the law enforcement effectiveness of the FBI’s CHS program.

(39) In addition, all identifying and personal information withheld under Exemption 7(C), under category 8 noted above, was also withheld pursuant to Exemption 7(D). As noted above, the four identified CHSs were identified by name as FBI CHSs, but other information relative to their identities was not disclosed publically, to include the following: social security numbers, dates of birth, home and/or work phone numbers, home and/or work addresses, criminal background investigation information and/or records, payment records, personal email addresses, family and personal relationship information, and certain other personal identifiers. The FBI withheld this information pursuant to Exemption 7(D), as it would reasonable identify

the CHSs at issue. Failing protect this information would allow for further identification of these individuals and increase the risk of their being harassed or targeted for retaliation by those on whom they provided information.

(40) In sum, the FBI found that significant portions of the informant files for the four CHSs publically disclosed in the *Rettenmaier* prosecution are properly exempt pursuant to Exemption 7(D). The specific categories of information withheld under Exemption 7(D) are as follows.

(b)(7)(D)-1 Identifying Data and Information Provided by Source Symbol Numbered Informants under Express Assurances of Confidentiality

(41) Within the informant records processed for FOIA request number one, the FBI asserted Exemption category 7(D) to protect certain identifying data and information provided by the four CHSs identified in the *Rettenmaier* prosecution. As discussed above, the FBI withheld information provided by these CHSs in the context of criminal investigations, which has not been previously disclosed. Disclosing the specifics of the non-public information the CHSs provided would allow the accused and/or convicted individuals on whom these CHSs provided information to know the identities of the individuals that enabled law enforcement to investigate and/or prosecute them for commission of crimes. Revealing this information would allow these criminals to potentially seek revenge, harass, or otherwise contact these CHSs.

(42) Additionally, the four identified CHSs were publically identified by name as FBI CHSs, but other information relative to their identities was not disclosed publically, to include the following: social security numbers, dates of birth, home and/or work phone numbers, home and/or work addresses, criminal background investigation information and/or records, payment records, personal email addresses, family and personal relationship information, and certain other personal identifiers. Failing to protect this information would allow for further identification of

these individuals and would increase the risk of their being harassed or targeted for retaliation by those on whom they provided information.¹⁰ For a complete list of the Bates pages containing information protected in this Exemption category, *see* the attached *Vaughn* Index, **Exhibit C**.

(b)(7)(D)-2 Confidential Human Source File Numbers

(43) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, the FBI asserted Exemption category 7(D) to protect confidential human source file numbers. The FBI's reasoning for withholding confidential human source file numbers is explained fully in my First Hardy Declaration at ¶¶ 93-95. These confidential source file numbers are assigned to confidential informants who report information to the FBI on a regular basis pursuant to express assurances of confidentiality, and are unique to individual confidential informants. These numbers are used in documentation related to each individual informant. Here, in regards to the identified four informants, disclosure of this information at various times and in various contexts could reveal non-public details of these informants' assistance to the FBI. Consequently, release of this information would reveal information protected from disclosure by Prong 2 of Exemption 7(D). Furthermore, this information can be considered a unique identifier for these informants, qualifying for withholding under Prong 1 of Exemption 7(D). The harm in disclosing this

¹⁰ The First Hardy Declaration explained that coded exemption category (b)(7)(D)-1 is the same category of information as coded exemption category (b)(7)(D)-4. That is, the FBI inadvertently created two coded categories during the original processing for the same withholding justification. A combined withholding justification was provided at ¶¶ 91-92 of the First Hardy Declaration. For the current supplemental processing, the FBI inadvertently left coded exemption category (b)(7)(D)-4 on the Vaughn coding chart provided to Plaintiff by letters dated August 5, 2019 and August 30, 2019. Coded exemption category (b)(7)(D)-1 and (b)(7)(D)-4 have the same meaning; therefore, coded category (b)(7)(D)-4 has been withdrawn. The justification description detailed at ¶¶ 91-92, First Hardy Declaration, also applies to the information withheld in Exemption category (b)(7)(D)-1 in the FBI's supplemental production.

information would be to reveal further information about these informants' cooperation with the FBI by giving criminals the means to identify them in additional records, possibly resulting in harassment or retaliation against them by individual investigative subjects on whom they provided information. Furthermore, it would portray the FBI as unwilling to do its utmost to keep confidential CHS information, contrary to the promises of confidentiality it provided to these very CHSs. This could dissuade current and future CHSs from cooperating the FBI, thus jeopardizing the viability of a key FBI law enforcement technique. As such, these CHS file numbers are exempt from disclosure pursuant to Exemption 7(D). For a complete list of the Bates pages containing information protected in this Exemption category, *see* the attached *Vaughn* Index, **Exhibit C**.

(b)(7)(D)-3 Confidential Human Source Symbol Numbers

(44) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, the FBI asserted Exemption category 7(D) to protect confidential human source symbol numbers. For FBI's reasoning for withholding confidential human source symbol numbers is explained fully in my First Hardy Declaration at ¶¶ 96-97. Similar to CHS file numbers, these CHS symbol numbers are assigned CHSs who report information the FBI on a regular basis pursuant to express assurances of confidentiality, and are unique to individual confidential informants. These numbers are used in place of the CHSs' true identities within FBI investigative records, as a means of masking the CHSs' identities. Here, in regards to the identified four informants, disclosure of this information at various times and in various contexts could reveal non-public details of these informants' assistance to the FBI. Consequently, release of this information would reveal information protected from disclosure by Prong 2 of Exemption 7(D). Furthermore, this

information can be considered a unique identifier for these informants, qualifying for withholding under Prong 1 of Exemption 7(D). The harm in disclosing this information is the same as that for these individuals' CHS file numbers – it would be to reveal further information about these informants' cooperation with the FBI by giving criminals the means to identify them in additional records, possibly resulting in harassment or retaliation against them by individual investigative subjects on whom they provided information. Furthermore, it would portray the FBI as unwilling to do its utmost to keep confidential CHS information, contrary to the promises of confidentiality it provided to these very CHSs. This could dissuade current and future CHSs from cooperating the FBI, thus jeopardizing the viability of a key FBI law enforcement technique. As such, these CHS file numbers are exempt from disclosure pursuant to Exemption 7(D). For a complete list of the Bates pages containing information protected in this Exemption category, *see* the attached *Vaughn* Index, **Exhibit C**.

**EXEMPTION (b)(7)(E)
INVESTIGATIVE TECHNIQUES AND PROCEDURES**

(45) 5 U.S.C. § 552(b)(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.

(46) The FBI asserted FOIA Exemption 7(E) to protect information in 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. This exemption affords protection to techniques and procedures used in law enforcement investigations. It thereby protects techniques and procedures that are not well-known to the

public, and protects non-public details about the use of well-known techniques and procedures.

(47) Within the responsive documents, The FBI asserted FOIA Exemption 7(E) to withhold non-public investigative techniques and procedures utilized by the FBI to pursue its law enforcement and intelligence gathering missions, and also 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.

(b)(7)(E)-1 Sensitive File Numbers and Sub-file Names

(48) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, and for a record processed in response to FOIA request item 4, the FBI asserted Exemption 7(E), to protect sensitive FBI file numbers and sub-file names. The FBI's reasoning for withholding sensitive FBI file numbers and sub-file names is described fully in my First Hardy Declaration at ¶ 101. The release of the file names and numbers can be used to identify the investigative interest or priority given to such matters. Further, revealing the names of files or sub-files regarding sensitive techniques would obviously then reveal that the FBI used particular types of techniques during child pornography investigations. It would also show what types of investigative strategies the FBI uses in countering and/or investigating certain types of criminal behavior. Applying a mosaic analysis, suspects could use these numbers (indicative of investigative priority), in conjunction with other information known about other individuals and/or techniques, to change their pattern of activity to avoid detection, apprehension, or create alibis for suspected activities, *etc.* Thus, the FBI properly protected this information from disclosure pursuant to FOIA Exemption 7(E). For a complete list of the Bates pages containing information protected in this Exemption category, *see* the attached *Vaughn* Index, **Exhibit C**.

(b)(7)(E)-2 Non-Public Investigative Techniques and Procedures of the FBI's Informant Program

(49) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution, responsive to item one of Plaintiff's request, and for records within a Source Guidance Manual, responsive to item 4 of Plaintiff's request, the FBI asserted Exemption category 7(E) to protect non-public investigative techniques and procedures of the FBI's informant program. As detailed in my First Hardy Declaration at ¶ 102, in order for the FBI to pursue its law enforcement and intelligence gathering missions it is essential for the FBI to protect these program details from being disseminated to the general public. Under the FBI's investigative authority, it has created procedures and guidelines concerning the utilization of CHSs by FBI personnel to accomplish its dual investigative missions. These standardized practices and guidelines govern methods and techniques of CHS recruitment and utilization in the course of carrying out the FBI's mission to prevent/investigate violations of federal laws, gather intelligence on national security threats, and prevent terrorism. The FBI has established guidelines for these methods and techniques to ensure that its employees utilize these methods and techniques effectively, ethically, and within the parameters of federal law and DOJ guidelines. The information withheld within Exemption category (b)(7)(E)-2 are details reflecting the FBI's standardized CHS procedures and guidelines, and the release of this material would be detrimental to the continued practice of utilizing CHSs to collect intelligence on criminal behavior. The informant program information withheld for the current responsive records consists of the same sub-categories of information detailed in my First Hardy Declaration at ¶¶ 104-110. Namely, these subcategories are 1) operational directives and strategies for recruitment and utilization of CHSs; 2) approval limitations on utilizing CHSs; 3) confidential funding techniques and strategies; and 4) source recruitment and maintenance

techniques. Revelation of any of these sub-categories of information would enable criminals to circumvent the law; thus, the FBI asserted Exemption 7(E) to withhold this information. For a complete list of the Bates pages containing information protected in this Exemption category, *see* the attached *Vaughn* Index, **Exhibit C**.

(b)(7)(E)-4 Internal FBI Secure Phone Numbers, Email or IP Addresses or Intranet/Web Addresses

(50) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, the FBI asserted Exemption 7(E), to protect non-public FBI secure phone numbers, email or IP addresses, and intranet web addresses for Sentinel.¹¹ The existence of internal phone numbers, Email and IP addresses, and Intranet/Web addresses, and their usage is publicly known, but not the specific secure phone numbers, email or IP addresses, and Intranet/Web addresses that are used by the FBI on a daily basis. It is likely the release of this type of information could allow criminals to exploit the FBI's Information Technology ("IT") system to gain unauthorized access, to view and manipulate data, or otherwise interfere with the FBI's non-public intranet protocol. Armed with these web addresses, criminals capable of cyber-attacks would know where to go in the FBI's computer system to disrupt or undermine FBI investigative initiatives. Disruption of the FBI's investigative programs could result in an increase in criminal activities, circumvention of ongoing FBI investigative efforts, and/or disruption of FBI internal communications.

(51) Additionally, the release of the FBI SA and Professional Staff personnel phone

¹¹ 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 the FBI's Automated Case Support ("ACS"). The ACS is an electronic, integrated case management system that became effective for FBIHQ and all FBI Field Offices and Legats on October 1, 1995.

numbers and email addresses could allow criminals to interrupt or interfere with the FBI's daily investigation work; thereby, impeding sensitive investigations. In this manner, release of this information would jeopardize the FBI's investigative programs, enabling criminals to circumvent the law. Thus, the FBI properly protected this information from disclosure pursuant to FOIA exemption 7(E). For a complete list of the Bates pages containing information protected in this Exemption category, *see* the attached *Vaughn* Index, **Exhibit C**.

(b)(7)(E)-5 Internal FBI Search Slips and Computer Generated Search Results

(52) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, the FBI asserted Exemption 7(E) to protect internal FBI search slips and computer generated search results. The FBI's reasoning for withholding internal FBI search slips and computer generated search results is explained fully in my First Hardy Declaration at ¶ 111. The search slips and printouts protected in part or in full by the FBI are related to vetting potential informants to become a CHS or CHSs receiving an annual review to establish a continued need of the informant. As recompilations of the underlying FBI Central Records System, and other local or state law enforcement agencies databases searched, the search slips and printouts all contain identifying information, including but not limited to, full name, alias, race, sex, weight, height, date of birth, place of birth, social security number, address/locality, telephone number, and other identifiers specific to the individual being investigated. A search slip may also contain details of where the FBI searched to locate potentially responsive material, the date of the search, FBI personnel names/initials, and specific details concerning potentially responsive material located through its search, such as file numbers and the current status of files (i.e., ongoing or closed investigations). Revealing this withheld information would provide key insight into the FBI's source vetting standards.

Providing any such information would also enable those wishing to gain the FBI's confidence and pose as a potential FBI CHSs the opportunity to judge what information they should manipulate/mask to avoid discovery of their nefarious intentions and ensure the FBI targets them for recruitment. Additionally, release in the context of the records at issue would provide criminals with an understanding as to who and why the FBI targets particular individuals for source recruitment. Release of any of this information would allow for identification of FBI sources by criminals, and/or would allow criminals an idea of how they might pose as false FBI CHSs to mislead FBI investigators and decrease FBI investigative effectiveness; thus, release of this information would be detrimental to the FBI's CHS-led investigations and would enable criminals to circumvent FBI efforts to enforce the law. The search criteria, and methods used to vet current and future informants are properly withheld pursuant to FOIA Exemption 7(E). For a complete list of the Bates pages containing information protected in this Exemption category, see the attached *Vaughn* Index, **Exhibit C**.

(b)(7)(E)-6 Collection Methodology and Analysis Techniques of the Collected Information

(53) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, the FBI asserted Exemption 7(E), to protect the techniques and procedures the FBI uses to collect and analyze information in connection with child pornography criminal investigations. While certain analytical techniques may be known by the public in a general sense, the technical analysis of these sensitive law enforcement techniques, to include the specifics of how and in what setting they are employed, is not generally known to the public. The release of this information would disclose the identity of methods used in collecting and analyzing information, including how and from where the FBI collects information, and the methodologies employed to analyze it. Such disclosures would

enable investigative subjects to circumvent similar and currently used techniques. The relative utility of these techniques could be diminished if the actual techniques were released. In turn, this would facilitate the accumulation of information by investigative subjects regarding the circumstances under which specific techniques were used or requested to collect certain information, how the information collected is analyzed, and the usefulness of the information obtained. Release of this information would enable criminals to educate themselves on techniques employed by the FBI in collecting and analyzing information, thus allowing them to take countermeasures to circumvent the effectiveness of these techniques.

(54) In particular, these documents contain sensitive information about investigative methods used by the FBI in conducting criminal child pornography investigations. The methods are detailed within the documents in varying degrees of specificity, and concern methods relating to electronic monitoring procedures, CHSs' detection abilities, and analyzing criminal patterns of behavior. Releasing information on these methods and their use would, in essence, highlight the types of activities, facts, or occurrences that are of particular interest to the FBI in criminal child pornography investigations. Publicly disclosing investigative methods, analysis of information gleaned from the methods, or the types of activities/evidence targeted by these techniques, would inform individuals of the kinds of information the FBI is capable of capturing and where it is focusing its investigative efforts in this arena. Release of such information would afford criminals the opportunity to employ countermeasures to circumvent detection or alter behavior to mislead investigators. Accordingly, the FBI properly withheld this information pursuant to FOIA Exemption 7(E). For a complete list of the Bates pages containing information protected in this Exemption category, *see* the attached *Vaughn* Index, **Exhibit C**

(b)(7)(E)-7 Identities and Locations of FBI or Joint Units, Squads, and Divisions

(55) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, and for a record processed in response to FOIA request item 4, the FBI asserted Exemption 7(E) to protect the methods and techniques involving the location and identity of certain specialized FBI units and/or joint units, squads and/or divisions that were involved in the investigations memorialized in the records responsive to Plaintiff's request. The office location and units are usually found in the administrative headings of internal FBI documents, but the informant program units and squads, at FBI Head Quarters ("FBI HQ"), are not publicly known. That is, it is known the FBI Louisville Field Office ("FBI LVFO") maintains a specific unit designated to maintain and monitor specific CHSs as revealed in the *Rettenmaier* prosecution, but the locations of specific squads and units at FBI HQ coordinating the FBI CHS program, other FBI FO units maintaining informants in their jurisdictions, joint task forces conducting investigations, and their involvement in these matters, are not known to the public. In addition, it is not publically known which FBI joint units assisted in specific criminal investigations. Disclosure of the location of the units conducting the investigations 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. For instance, if the locations are clustered in a particular area, it would allow criminals to determine where geographically the FBI is focusing its investigative resources, and allow them to relocate their criminal activities elsewhere. This would disrupt the FBI's investigative process and deprive the FBI of valuable information. The withholding of the FBI's resource allocation by revealing certain specialized units, squads and/or divisions involved is justifiable as well under a similar

rationale. As these specialized units focus on very specific crimes and/or intelligence gathering activities, once identified within the context of the records at issue, the units' areas of expertise is revealed, and an individual would then be aware of exactly what the FBI's interest is and where it chooses to focus additional resources. For example, knowing that a unit, squad and/or division whose focus is on financial crimes is involved in the investigation is quite different information than knowing that the unit, squad and/or division involved has a focus on crimes of violence and/or child exploitation. This knowledge could allow a subject to employ countermeasures targeted toward concealing particular types of behavior and/or to avoid altogether activities in a particular location. The revelation of the involvement of one or more units of differing focus in an investigation is critical information that can allow for adjustments of behaviors and activities by criminals, to avoid detection and/or disruption by the FBI. Accordingly, the FBI properly asserted Exemption 7(E) to protect this information. For a complete list of the Bates pages containing information protected in this Exemption category, *see* the attached *Vaughn* Index, **Exhibit C**.

(b)(7)(E)-8 Sensitive Database Identifiers, Printouts, and Search Results

(56) Within the informant records for the informants identified publically in the *Rettenmaier* prosecution processed for FOIA request number one, and for a record processed in response to FOIA request item 4, the FBI asserted Exemption 7(E) to protect the names of databases and database search results located through non-public databases used for official law enforcement purposes by the FBI and/or law enforcement personnel. These non-public databases serve as repositories for investigative data. They are essentially "one-stop" shops that allow law enforcement to query information and develop investigative leads from a variety of source data using state-of-the-art analytical tools. FBI personnel as well as law enforcement

members from local, state and other federal agencies have access to these databases. Disclosure of the information compiled from these search results would reveal the types of investigative data useful to the FBI, whether or not the FBI has detected criminal behavior by the subjects, and how the FBI might exploit this data to thwart the subjects' criminal activities. Criminals could use this information to employ countermeasures to deprive the FBI of useful law enforcement data and predict the FBI's investigative strategy to avoid detection and disruption by the FBI's use of this data.

(57) In addition, the FBI conducts background searches to validate potential specialized individuals to become CHSs. Releasing the specific database content, database access numbers and portal addresses, and collected search results, could allow criminals to predict the type of vetting conducted by the FBI, allowing them to successfully pose as faux CHSs to infiltrate FBI investigations and/or feed the FBI false information, disrupting its law enforcement effectiveness. Additionally, release of this type of information could allow potential cyber criminals enough information to infiltrate these FBI databases. Once infiltrated, information on individuals contained in the databases could be manipulated to either delete incriminating information, discover/expose the identities of FBI informants, or allow potential CHS candidates to change data to make them more likely to be chosen as a CHS for multiple types of investigations. Because disclosure would impede the FBI's effectiveness and potentially aid in circumvention of law enforcement efforts, the FBI properly withheld this information pursuant to Exemption 7(E). For a complete list of the Bates pages containing information protected in this Exemption category, *see* the attached *Vaughn* Index, **Exhibit C**.

Additional Justification the FBI's Determination to Withhold in Full the Document Responsive to Item 4, Pursuant to FOIA Exemption 7(E)

(58) The records located by the FBI, responsive to item four of Plaintiff's request are

comprised of ten pages of records from an internal FBI guide, known as a Source Guidance Manual, concerning the recruitment and utilization of CHSs in furtherance of a specific type of FBI law enforcement investigation. The responsive records within this guide pertain to CHSs at computer repair facilities, among other types of facilities. The withheld records constitutes information concerning the FBI's strategies and methodology for identifying, recruiting, and utilizing CHSs in furtherance of a specific type of investigation, both at computer repair facilities and other types of facilities. The withheld material in these records have not previously been made public.

(59) In essence, the guide is the FBI CHS "playbook" in regards to a specific type of law enforcement investigation. As such, the information withheld constitutes a quintessential law enforcement technique and procedure, and the release of this information would enable criminals to learn the FBI's methodology for utilizing CHSs in a particular type of law enforcement investigation. This would enable them to preemptively pursue informed, effective countermeasures to thwart the FBI's investigative efforts. It would also reveal to criminals the individuals most likely to be targeted by the FBI for CHS recruitment, allowing them to predict who they should avoid to limit investigative scrutiny by the FBI. This would provide criminals means to circumvent the law; therefore, the records are exempt in full pursuant to Exemption 7(E). Any segregation of non-exempt material would result in the release of meaningless, disjointed words and phrases, devoid of any informational content. Additionally, the FBI determined a personal identifier of an FBI employee on one page is Exempt pursuant to Exemptions 6 and 7(C). *See* the FBI's reasoning for withholding the identifiers of FBI employees described above at ¶ 30. Also, the FBI protected a sensitive file number on one page, the identities of sensitive FBI units involved in the implementation of particular facets of the

FBI's CHS program on five pages, and information concerning sensitive FBI databases used to implement its CHS program on four pages, pursuant to Exemption 7(E). For further description of the FBI's withholding of these categories of information, *see* ¶¶ 48, 55, and 56-57, respectively.

SUMMARY OF PROCESSED RECORDS FOR ITEM 1 AND 4

(60) As discussed in ¶¶ 10 and 12 *supra*, FBI processed for segregable release a total of 464 pages responsive to the Court ordered supplemental searches for Plaintiff's request items 1 and 4. Of these 464 pages, 13 pages were released in part ("RIP"), while 451 pages were in full ("WIF").

- Pages RIP. Following the segregability review of the processed records, the FBI determined that 13 pages could be released in part with redactions per the identified FOIA Exemptions herein. These pages comprise of a mixture of material that could reasonably be segregated for release, material that was withheld as release would trigger foreseeable harm to one or more interests protected by the cited FOIA exemptions on these pages, and information that was inextricably intertwined with such material and therefore could not reasonably be segregated for release.
- Pages WIF. Following the segregability review of the processed records, the FBI determined that 451 pages were required to be withheld in their entirety. Of these 451 pages, the FBI determined 42 pages were already previously processed for release to the Plaintiff; therefore, they were WIF as duplicates. For the remaining 409 pages the FBI determined all information on these pages was either fully covered by one or more of the cited FOIA exemptions, or 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 only produce disjointed words, phrases, or sentences, which taken separately or together, would have minimal or no informational content.

**FBI'S DETERMINATION FOR WITHHOLDING IN FULL CERTAIN RECORD(S)
RESPONSIVE TO REQUEST ITEM 1**

(61) The FBI determined and RIDS acknowledged by letter dated August 5, 2019, that it located one or more records concerning one or more CHSs who are/were employed by one or more Best Buy facilities, apart from those acknowledged during the *Rettenmaier* prosecution. The Human Intelligence ("HUMINT") Operations Section ("HOS"), HUMINT Services Unit ("HSU"), within the FBI's Directorate of Intelligence ("DI") Division, determined these one or more CHSs were never publically acknowledged by the FBI as being FBI CHSs.

(62) Documents concerning confidential, unacknowledged informants are among the most sensitive in the FBI's possession. This is because they involve human proxies for law enforcement, whose effectiveness and safety depend heavily on their ability to operate in close proximity with criminal elements without detection. Information concerning CHSs is generally kept confidential because CHSs, and the FBI's related law enforcement efforts, would be harmed if potential criminals knew details related to the FBI's CHS operations.

(63) Here, RIDS, with the assistance of Subject Matter Experts ("SMEs") within HSU, determined that the record(s) are exempt in full pursuant to FOIA Exemption 7(E). In addition, portions of the record(s) relating to one or more CHSs are exempt pursuant to FOIA Exemptions 1, 3, 5, 6, 7(A), 7(C), 7(D), 7(E), and 7(F).

(64) In addition to withholding such record(s) in full pursuant to the Exemption 7(E),

the FBI determined it cannot provide information about the number of records, or pages of records, or a specific list of the responsive records, which would indicate the volume. That information too is protected by Exemption 7(E). Disclosing this information would necessarily reveal the scope of the FBI's use of CHSs at Best Buy facilities, which is nonpublic, sensitive information that can readily be used by criminals to circumvent the law, which would in turn severely damage the effectiveness of the FBI's CHS program.

(65) For example, if the FBI revealed that there were 10,000 pages of responsive records, this would necessarily reveal that the FBI has extensive relationships with CHSs employed by Best Buy. Armed with this information, criminals would refrain from conducting business at Best Buy, or would distance themselves from associates who happen to be Best Buy employees, to evade FBI investigative scrutiny.

(66) Conversely, if the FBI revealed that there is only one or a small number of responsive records, this would necessarily reveal a very limited use by the FBI of CHSs at Best Buy facilities. Criminals would reasonably use this information to circumvent the law by frequenting Best Buy, or associating with employees of Best Buy, with minimal fear of FBI investigative scrutiny.

(67) While the FBI cannot disclose any information about the volume of these responsive records without revealing information protected by Exemption 7(E), it can describe the nature of the records sufficient to demonstrate that they are properly withheld in full under Exemption 7(E). These records about unacknowledged CHSs at Best Buy facilities are similar to the records described above for the four CHSs acknowledged during the *Rettenmaier* prosecution and consist of the following types of documents:

- CHS Maintenance Documents: These documents consist of records used to open,

validate, vet, evaluate, maintain, and close FBI CHSs.

- CHS Identification Documents: These documents consist of records relevant to a CHS's identity, such as photographs of drivers' licenses, photographs of the CHSs, and other relevant documents used to verify their identities.
- CHS Payment Documents: These documents are used to document FBI payments to CHSs as compensation for information provided to the FBI.
- CHS Reporting Documents: These records document reporting to the FBI by CHSs. CHS provided information may later be used as testimony or evidence in court proceedings/trials. Additionally, this information can be incorporated in other FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's investigative efforts.
- Documents Implementing Sensitive Investigative Techniques: These documents are utilized to implement specific, sensitive, investigative techniques. Describing these documents further would reveal the techniques or sensitive data concerning the techniques.
- Documentation Provided by CHSs: These records consist of information provided by CHSs to the FBI during the course of operations/investigations in which CHSs are utilized.
- Communications Regarding Use of CHSs: These documents consist of communications between FBI personnel, between FBI personnel and other law enforcement agencies, between FBI personnel and private citizens/corporations, and/or between FBI personnel and FBI CHSs discussing investigative matters and the use of FBI CHSs.

(68) Many of these documents, such as payment documents and those implementing sensitive investigative techniques, are exempt from disclosure under Exemption 7(E). As outlined above, such materials directly concern non-public law enforcement techniques and procedures, details of which have not been made public. In addition, their application to the unacknowledged CHS(s) at Best Buy facilities is also nonpublic. Disclosure of such information, such as those involving techniques and procedures involving CHS recruitment, utilization, and payment, would create a reasonable risk of circumvention of the law. Moreover, specific information in these documents is also individually exempt under Exemption 7(E). Namely, any information related to the localities the FBI has or has not recruited or utilized a CHS, the timeframe of the CHS(s) operation, the types of crimes on which the additional CHS(s) provided information, along with other sensitive details of CHS operations, would risk circumvention of the law. This information would allow criminals to structure their behavior to avoid detection or disruption by the FBI through the use of such CHSs. Such information would also allow criminals to discern whether any of their associates may or may not be FBI CHSs. Given the standardized nature of these files, any nonexempt records or portions of records within them must also be protected under Exemption 7(E), because producing them in the aggregate would again reveal the scope of the FBI's use of CHSs at Best Buy facilities, with the potential for circumvention of the law described above. For example, if each responsive file includes certain admonishments provided to CHSs, including certain nonexempt information, producing that information from each file would reveal how many unacknowledged CHSs, employed by Best Buy, the FBI is using or has used.

(69) In summary, the record(s) concerning one or more additional informants are fully exempt pursuant to Exemption 7(E).

UNDERLYING FOIA EXEMPTIONS

(70) Finally, the FBI determined that portions of the record(s) at issue, are also exempt pursuant to FOIA Exemptions 1, 3, 5, 6, 7(C), 7(D), 7(E), and 7(F)). However, the FBI cannot publicly set forth the justification for withholding the relevant portions of the record(s) at issue, as doing so would threaten to reveal the number and/or content of the nature of the record(s) at issue, information that is exempt pursuant to Exemption 7(E), as set forth above. That is, a description of the number of documents, or types of information at issue in the relevant record(s), and the reasons for their withholding, would inherently reveal the nature of the record(s) at issue, and thereby reveal details related to the extensiveness of the FBI's relationship with previously unacknowledged CHSs employed by Best Buy, and the nature of that relationship. However, if the Court requires additional information regarding the record(s) at issue, or justifications concerning the underlying Exemptions asserted, the FBI can provide additional information in an *in camera, ex parte* filing.

FBI'S WITHHOLDINGS OF INFORMATION

(71) All responsive records subject to FOIA were reviewed and processed under the access provisions of the FOIA to achieve maximum disclosure. Every effort was made to provide Plaintiff with all material in the public domain and with all reasonably segregable, non-exempt information in the responsive records. In total, the FBI was able to segregate information for release from 21 pages of the 472 pages located in response to the supplemental searches of the Plaintiff's four item request. No reasonably segregable, non-exempt portions have been withheld from Plaintiff.

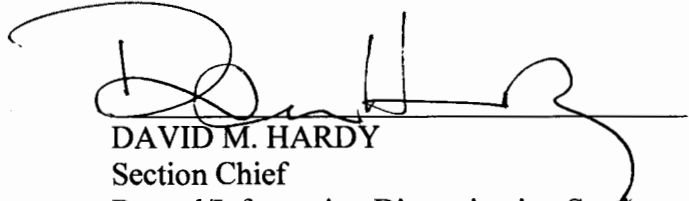
CONCLUSION

(72) The FBI performed adequate and reasonable supplemental searches to locate

records responsive to Plaintiff's four item FOIA request, and released all reasonably segregable non-exempt information to Plaintiff. Information and records were properly withheld pursuant to FOIA Exemptions 5, 6, 7(A), 7(C), 7(D), and 7(E). As to the one or more additional CHSs, outside the CHSs identified during the *Rettenmaier* prosecution, the FBI withheld in full this/these additional record(s) pursuant to FOIA 7(E). The withholding of these records and any information concerning them was proper due to the fact release of such record(s), or any additional information concerning them, would disclose non-public, validly exempt information. Finally, the FBI maintains that a portion(s) of this/these record(s) is/are also exempt pursuant to FOIA Exemptions 1, 3, 5, 6, 7(A), 7(C), 7(D), 7(E), and 7(F).

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 C attached hereto are true and correct copies.

Executed this 27th day of January, 2020.

A handwritten signature in black ink, appearing to read "D. Hardy", is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long tail that extends to the right.

DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
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Winchester, Virginia