

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KENNETH J. DILLON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 17-1716-RC
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE,)	
)	
Defendant.)	

**PLAINTIFF’S RESPONSE TO DEFENDANT’S NOTICE OF SUBMISSION OF
DOCUMENTS FOR *IN CAMERA* REVIEW AND EXPLANATION OF ADDITIONAL
SEARCH EFFORTS**

On March 20, Defendant, United States Department of Justice, submitted documents for *in camera* review and explained additional search efforts that resulted in the location and release of additional responsive records in this case. Plaintiff, Kenneth Dillon, responds to the additional search and release of documents as inadequate under the FOIA.

While the FBI located and released "the three emails purportedly sent to Mara Linscott that Dillon identified in his February 2018 letter to government counsel" which were Ordered to be accounted for by this Court, see Court's Order of January 17, 2019, the FBI did not fully explain the origination of this material or the additional located material. The FBI only provided a cursory description of where the files themselves were physically located by the FBI upon the supplemental search. Fourth Declaration of David Hardy dated March 19, 2019, (hereinafter 4th Hardy Decl.), ¶3. The FBI did not provide any details on these 1A attachments, such as where they originated from. Further, the FBI determined that 241 pages located were duplicative without any description of why there were so many duplicate pages and how they were deemed to be duplicates of other pages in the files. Defendant has also continuously failed

to provide a description of Ivin's emails, as requested in Plaintiff's Counsel's February 2018 letter cited by the Court on January 17, 2019.

Additionally, the FBI withheld a large amount of the material in these pages pursuant to FOIA Exemptions 6 and 7(C). 4th Hardy Decl., ¶5. However, no Vaughn Index was provided for these heavily redacted pages, and it is not possible for Plaintiff or the Court to ascertain whether the redactions of the 102 pages of emails as well as of the 241 duplicates are excessive (are more than just the names of the individuals withheld). These withholdings prevent the public from learning possibly crucial information about the doings of Ivins in the days surrounding the mailings of the anthrax letters. There is a public interest in knowing what information the FBI had in reaching its conclusions in the investigation. Without additional information on these documents, Defendant has not fulfilled its duties under the FOIA. Defendant has the responsibility of justifying information withheld in response to a FOIA request. See 5 U.S.C. § 552(a)(4)(B); *Dep't of State v. Ray*, 502 U.S. 164, 173 (1991) (explaining that it is agency's burden "to justify the withholding of any requested documents"); *DOJ v. Tax Analysts*, 492 U.S. 136, 142 n.3 (1989) ("The burden is on the agency to demonstrate, not the requester to disprove, that the materials sought are not 'agency records' or have not been 'improperly' withheld."). At the very least, the FBI should submit these documents *in camera* so that the Court can determine whether the exemptions are invoked consistent with current holdings in this matter.

The discovery of Ivins's emails in 1A attachments clearly demonstrates that FBI's original searches, as set forth by previous declarations of David Hardy, were incomplete and raises the question of whether there are other originally requested records not located pursuant to FOIPA request number 1327397. Based on this finding, the FBI needs to provide descriptions of its

holdings of Ivins's laboratory notebooks, paper and computer files, phone calls, and meetings for September and October, 2001. Further, called into question are previous FBI assertions that its searches had yielded no responsive records, which misled Dillon into thinking that there may have been extensive destruction of evidence and led him to test this by focusing on Ivins's emails and laboratory notebook. Thus, due to its actions in this matter, Defendant should be Ordered to search for additional records responsive to Plaintiff's original request, and its submission of its latest search should not be found adequate for Plaintiff's request.

Dated: April 4, 2019

Respectfully Submitted,

/s/

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