

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KENNETH J. DILLON

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE

Defendant.

Case No. 1:17-cv-01716-RC

DECLARATION OF MICHAEL G. SEIDEL

I, Michael G. Seidel, declare as follows:

(1) I am the Assistant Section Chief (“ASC”) of the Record/Information Dissemination Section (“RIDS”), Information Management Division (“IMD”), in Winchester, Virginia and, in the absence of RIDS Section Chief, David M. Hardy, I serve as Acting Section Chief for RIDS. I have held this position since June 26, 2016. I joined the FBI in September 2011, and prior to my current position, I was the Unit Chief, RIDS Litigation Support Unit from November 2012 to June 2016; and an Assistant General Counsel, FBI Office of General Counsel, Freedom of Information Act (“FOIA”) Litigation Unit, from September 2011 to November 2012. In those capacities, I had management oversight or agency counsel responsibility for FBI FOIA and Privacy Act (“PA”) litigation cases nationwide. Prior to my joining the FBI, I served as a Senior Attorney, U.S. Drug Enforcement Administration (“DEA”) from September 2006 to September 2011, where among myriad legal responsibilities, I advised on FOIA/PA matters and served as agency counsel representing the DEA in FOIA/PA suits nationwide. I also served as a U.S. Army Judge Advocate General’s Corps Officer in various assignments from 1994 to

September 2006 culminating in my assignment as Chief, General Litigation Branch, U.S. Army Litigation Division where I oversaw FOIA/PA litigation for the U.S. Army. I am an attorney registered in the State of Ohio and the District of Columbia.

(2) In my official capacity as Acting Section Chief of RIDS, I supervise approximately 244 employees who staff a total of twelve (12) Federal Bureau of Investigation Headquarters (“FBIHQ”) 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 FBI records and information pursuant to the FOIA as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and the FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. My responsibilities as Acting Section Chief also include the review of FBI information for classification purposes as mandated by Executive Order 13526,¹ and the preparation of declarations in support of Exemption 1 claims asserted under the FOIA. The Section Chief, RIDS has been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to Executive Order 13526, §§ 1.3 and 3.1. Accordingly, when serving in the position of the Section Chief, RIDS in the absence of the incumbent, I assume the designated original classification and declassification authority. 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 requests for information from its files under the provisions

¹ 75 Fed. Reg. 707 (2010).

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 dated April 18, 2015 seeking all emails, laboratory notebooks, paper and computer files regarding the 2001 anthrax mailing investigation ("Amerithrax"), as well as his May 15, 2015 FOIA request seeking the Interim Major Case Summary ("IMCS") on the FBI's Amerithrax investigation.

(4) This declaration supports Defendant's Renewed Motion for Summary Judgment and includes the following: a brief administrative history of Plaintiff's FOIA requests; a description of the FBI's recordkeeping system; the procedures used to search for, review, and process records under the FOIA; an explanation of the FBI's withholdings under FOIA Exemptions (b)(6) and (b)(7)(C) in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973); and the FBI's justification for withholding portions of the IMCS under FOIA Exemption (b)(5), with underlying FOIA Exemptions (b)(1), (b)(3), (b)(6), (b)(7)(C), and 7(E). *See* 5 U.S.C. §§ 552 (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). Additionally, this declaration replaces the FBI's prior declarations previously filed in this instant matter. *See* ECF Nos. 14-3, 20-1, 23-2, and 32-1.

ADMINISTRATIVE HISTORY OF PLAINTIFF'S FOIA REQUESTS

FOIA Request No. 1329350

(5) By letter dated May 15, 2015, Plaintiff submitted a FOIA request for the IMCS which is a 2,000 page report on the Amerithrax investigation. Plaintiff also requested a waiver of fees and expedited processing. *See Exhibit A.*

(6) In a letter dated May 26, 2015, the FBI acknowledged receipt of the FOIA request and assigned FOIA Request Number 1329350. The FBI informed Plaintiff records responsive to his request were previously processed for another requester and were available on the FBI's

public website, <http://vault.fbi.gov>. The FBI also notified plaintiff of his right to appeal the FBI's determination by filing an administrative appeal with Department of Justice Office of Information Policy ("DOJ OIP") within sixty (60) days from the date of its letter. *See Exhibit B.*

(7) By letter dated June 1, 2015, Plaintiff filed an appeal with DOJ OIP stating "the "Interim Major Case Summary" is not in the Vault..." *See Exhibit C.*

(8) In a letter dated June 23, 2015, DOJ OIP acknowledged receipt of the appeal and assigned it number AP-2015-03626. *See Exhibit D.*

(9) By letter dated August 10, 2015, DOJ OIP remanded Plaintiff's request to the FBI for a search for responsive records. *See Exhibit E.*

(10) In a letter dated September 3, 2015, the FBI stated Plaintiff had not provided enough information concerning the statutory requirements for expedition; therefore, his request for expedited processing was denied. The FBI also notified Plaintiff of his right to appeal by filing an administrative appeal with DOJ OIP within sixty (60) days from the date of its letter. *See Exhibit F.*

(11) In a separate letter dated September 3, 2015, the FBI notified Plaintiff his request for a fee waiver was denied for failure to demonstrate the requested information is in the public interest and is likely to contribute significantly to public understanding of the operations and activities of the government. The FBI also reminded Plaintiff of his right to appeal with DOJ OIP within sixty (60) days from the date of its letter. *See Exhibit G.*

(12) By letter dated October 8, 2015, Plaintiff filed an appeal with DOJ OIP regarding the FBI's denial of expedited processing. Plaintiff's appeal was assigned appeal number AP-2016-00037. *See Exhibit H.*

(13) In a separate letter dated October 9, 2015, Plaintiff filed an appeal with DOJ OIP

regarding the FBI's fee waiver denial. *See Exhibit I.*

(14) By letter dated October 15, 2015, DOJ OIP acknowledged receipt of Plaintiff's October 9, 2015 appeal and assigned it number AP-2016-00078. *See Exhibit J.*

(15) In a letter dated November 3, 2015, DOJ OIP affirmed the FBI's determination to deny expedited processing in AP-2016-00037 and stated Plaintiff had "not established that the requested records are a matter of current exigency to the American public, nor that delaying a response would compromise a significant recognized interest." DOJ OIP informed Plaintiff of his right to contest their decision by filing a lawsuit in accordance with 5 U.S.C.

§552(a)(6)(E)(iii) or alternatively, seeking mediation services through OGIS. *See Exhibit K.*

(16) In a letter dated January 7, 2016, the FBI provided Plaintiff a cost estimate for processing the responsive records and requested written confirmation of his agreement to pay fees. The FBI also notified Plaintiff of the opportunity to reduce the scope of his request. Lastly, the FBI reminded Plaintiff of his right to appeal the FBI's determination by filing an appeal with DOJ OIP within sixty (60) days from the date of this letter. *See Exhibit L.*

(17) By letter dated January 28, 2016, Plaintiff confirmed his willingness to pay estimated duplication and international shipping fees. Additionally, Plaintiff requested receipt of the records on CD as well as through email attachments. *See Exhibit M.*

(18) On March 31, 2016, Plaintiff sent a message through the eFOIA portal indicating his willingness to pay associated duplication fees. *See Exhibit N.*

(19) Various email exchanges between Plaintiff and the FBI, dated April 3, 2016 through April 11, 2016, confirmed Plaintiff's interest in narrowing the scope of his request to the portion of the IMCS related to Bruce Ivins and the IMCS' table of contents. *See Exhibit O.*

(20) In a letter dated April 11, 2016, the FBI acknowledged the email exchanges and

confirmed the scope was narrowed to thirty-eight (38) pages which included material on Bruce Ivins and the table of contents. *See Exhibit P.*

(21) By letter dated May 23, 2016, DOJ OIP notified Plaintiff this request for a fee waiver was remanded to the FBI for further consideration. DOJ OIP also notified Plaintiff of his right to file a lawsuit in federal district court. *See Exhibit Q.*

(22) In a letter dated January 30, 2018, the FBI notified Plaintiff it had concluded its review of the IMCS' table of contents² and determined the records are categorically exempt from disclosure pursuant to FOIA Exemption (b)(5) and that portions are also exempt pursuant to Exemptions (b)(1), (b)(3), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). Lastly, the FBI notified Plaintiff of his right to appeal the FBI's determination by filing an administrative appeal with DOJ OIP within ninety (90) days from the date of its letter or alternatively, and/or seek dispute resolution services by contacting OGIS. *See Exhibit R.*

FOIA Request No. 1327397

(23) By letter dated April 18, 2015, Plaintiff submitted a FOIA request seeking records on the 2001 anthrax mailings. More specifically, Plaintiff sought "all email messages, laboratory notebooks, paper and computer files, and information about meetings and telephone conversations in September and October, 2001 of Dr. Bruce Ivins." Plaintiff also requested a waiver of fees and expedited processing. *See Exhibit S.*

(24) In a letter dated April 27, 2015, the FBI acknowledged receipt of the FOIA request and assigned FOIA Request Number 1327397. The FBI informed Plaintiff records responsive to his request were previously processed for another requester and were available on

² Though not noted in the FBI's letter, this review also included the portion of the IMCS pertaining to Bruce Ivins.

the FBI's public website, <http://vault.fbi.gov>. The FBI also notified Plaintiff of his right to appeal the FBI's determination by filing an administrative appeal with DOJ OIP within sixty (60) days from the date of its letter. *See Exhibit T.*

(25) By letter dated June 19, 2015, Plaintiff filed an appeal with DOJ OIP stating the FBI "has never released many records responsive to my request..." Plaintiff indicated the FBI needs to release the following records: Ivan's emails to or from various named individuals, Notebook 4010 as well as relevant pages from Notebooks 3655, 3945 and 4251, paper and computer files including files from Ivan's computer, information from meetings Ivan attended, as well as his telephone and credit card records. *See Exhibit U.*

(26) In a letter dated July 10, 2015, DOJ OIP acknowledged receipt of Plaintiff's appeal and assigned it number AP-2015-04047. *See Exhibit V.*

(27) By letter dated November 24, 2015, DOJ OIP remanded Plaintiff's request to the FBI for a search for responsive records. *See Exhibit W.*

(28) In a letter dated April 15, 2016, the FBI notified Plaintiff records responsive to his request were previously processed under the FOIA, and enclosed for Plaintiff a CD containing six (6) pages of previously processed documents and a copy of an Explanation of Exemptions sheet. The FBI also stated "[a]dditional records potentially responsive to your subject may exist" and to "submit a new FOIA request if [Plaintiff] would like the FBI to conduct a search of the indices to our Central Records System." The FBI notified Plaintiff of his right to appeal the FBI's determination by writing DOJ OIP within sixty (60) days from the date of its letter.³ *See*

³ Plaintiff eventually narrowed the scope of both requests to the IMCS' table of contents, email exchanges between Bruce Ivins and various named individuals, as well as Bruce Ivins' notebook no. 4282. *See Exhibit BB infra.* Thus, Plaintiff out scoped the six (6) pages of previously processed pages which included material from Notebook Nos. 3655, 3945, and 4251.

Exhibit X.

(29) By letter dated June 6, 2016, Plaintiff filed an appeal with DOJ OIP indicating the FBI released six (6) pages of records previously processed under a separate FOIA request. The FBI indicated Plaintiff should submit a new FOIA request if [he] would like the FBI to conduct a search of the indices to our Central Records. Plaintiff stated he refused to submit another FOIA request that would go to the back of the queue. *See Exhibit Y.*

(30) In a letter dated June 22, 2016, DOJ OIP acknowledged receipt of Plaintiff's second appeal and assigned it number AP-2016-003776. *See Exhibit Z.*

(31) By letter dated August 23, 2016, DOJ OIP affirmed the FBI's determination and indicated Plaintiff could file a lawsuit in federal district court in accordance with 5 U.S.C. §552(a)(4)(B). DOJ OIP also notified Plaintiff of his right to seek mediation services through OGIS. *See Exhibit AA.*

(32) In a letter dated December 22, 2016, Plaintiff narrowed his request further to two specific pieces of evidence - "Ivan's emails to or from Patricia Fellows and Mara Linscott; and Laboratory Notebook No. 4282." *See Exhibit BB.*

(33) By letter dated January 30, 2017, the FBI confirmed receipt of Plaintiff's request and indicated it was searching the indices to the Central Records System for information responsive to the request, and indicated Plaintiff was considered a general requester and would be charged applicable search and duplication fees. The FBI notified Plaintiff of his right to appeal the FBI's determination by filing an appeal with DOJ OIP within ninety (90) days from the date of its letter. Alternatively, Plaintiff could seek dispute resolution services by contacting OGIS. *See Exhibit CC.*

(34) In a letter dated December 19, 2017, the FBI notified Plaintiff it had reviewed

seven (7) pages of records on Bruce Ivins and released all pages either in full or in part. The FBI determined portions of the records, which consisted of emails between Bruce Ivins and third-party individuals, were exempt from disclosure pursuant to FOIA Exemptions (b)(6) and (b)(7)(C). Lastly, the FBI notified Plaintiff of his right to appeal the FBI's determination by filing an administrative appeal with DOJ OIP within ninety (90) days from the date of its letter or alternatively, seek dispute resolution services by contacting OGIS. *See Exhibit DD.*

(35) By letter dated January 30, 2018, the FBI notified Plaintiff it had reviewed an additional ninety-eight (98) pages of records regarding Bruce Ivins' laboratory notebook and released all pages either in full or in part. The FBI determined portions of the records were exempt from disclosure pursuant to FOIA Exemptions (b)(6) and (b)(7)(C). Lastly, the FBI notified Plaintiff of his right to appeal the FBI's determination by filing an administrative appeal with DOJ OIP within ninety (90) days from the date of its letter or alternatively, and/or seek dispute resolution services by contacting OGIS. *See Exhibit EE.*

(36) On August 23, 2017, Plaintiff filed a complaint in the United States District Court of the District of Columbia.

(37) By letter dated March 20, 2019, the FBI notified Plaintiff it was making a final release of information responsive to his request. 343 pages were reviewed and 102 pages were released in full or in part, with information withheld pursuant to FOIA Exemptions (b)(6) and (b)(7)(C). Additionally, the FBI informed Plaintiff duplicate copies of the same document were not processed. *See Exhibit FF.*

FBI'S SEARCH FOR RESPONSIVE RECORDS

Central Records System

(38) 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.

(39) 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 ("OO") initiating the file, and (c) the assigned individual case file number for that particular subject matter.⁴ Within each case file, pertinent documents of interest are "serialized," or assigned a document number in the order which the document is added to the file, typically in chronological order.

THE CRS GENERAL INDICES AND INDEXING

(40) 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

⁴ 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 FBI OO of the file, and "56789" is the assigned case specific file number.

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 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:

(A) Main entry. A main index entry is created for each individual or non-individual that is the subject or focus of an investigation. The main (subject) is identified in the title of most documents in the case file.

(B) Reference entry. A reference index entry is created for individuals or non-individuals associated with the case but not a known subject or focus of an investigation.

(41) FBI employees may 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 done at the discretion of FBI investigators when information is deemed of sufficient significance to warrant indexing for future retrieval. Accordingly, the FBI does not index every individual name or other subject matter in the general indices.

AUTOMATED CASE SUPPORT

(42) Automated Case Support ("ACS") was 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 had 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.⁵

(43) The Universal Index (“UNI”) was the automated index of the CRS and provided 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 were 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 encompassed data that was already indexed into the prior automated systems superseded by ACS. As such, a UNI index search in ACS was capable of locating FBI records created before its 1995 FBI-wide implementation in both paper and electronic format.⁶

ACS AND SENTINEL

(44) 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 were utilized in ACS. After July 1, 2012, all FBI

⁵ ACS was and the next generation Sentinel system is 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.

⁶ 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.

generated records are created electronically in case files via Sentinel; however, Sentinel did not replace ACS and 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. Additionally, in the time frame in which both systems were operation, any information indexed within Sentinel was backfilled in ACS.

(45) On August 1, 2018, ACS was decommissioned as a stand-alone investigative database. However, the index searching functionality, index records, and digitized investigative records formerly available in ACS were transferred into Sentinel. Currently, all index data (UNI) previously searched through ACS can be searched through a separate “ACS Search” function within Sentinel.

(46) Considering ACS was still operational at the time the FBI conducted searches for Plaintiff’s requests, RIDS practice was to begin its FOIPA searching efforts by conducting an index search/index searches in ACS/UNI. When appropriate (when records were reasonably expected to have been created on or after July 1, 2012) RIDS then built on its ACS index search by conducting an index search of Sentinel records to ensure it captured all relevant data indexed after the implementation of Sentinel. These two index searches, in most cases represented the most reasonable means for the FBI to locate records responsive to FOIPA requests. This is because these automated indices offered access to a comprehensive, agency-wide set of indexed data on a wide variety of investigative and administrative subjects. Currently, the FBI’s automated indices consist of approximately 120 million searchable records and are updated daily with material newly indexed in Sentinel.

(47) Additionally, it is important to note the location of records indexed to the subject

of a FOIPA request does not automatically mean the indexed records are responsive to the subject. Index searches are the means by which potentially responsive records are located, but ultimately, a FOIPA analyst must consider potentially responsive indexed records against the specific parameters of individual requests. Responsiveness determination are only made once indexed records are gathered, analyzed, and sorted by FOIPA analysts who then make informed, reasonable determinations as to the total pool of records responsive to an individual request.

Adequacy of Search

(48) Index Searching. To locate CRS information, 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 to serve its primary law enforcement and intelligence gathering functions. Given the broad range of indexed material in terms of both time frame and subject matter that it can locate in FBI files, the FBI automated indices available at the time of Plaintiffs request in both ACS and Sentinel was the mechanism RIDS employed to conduct CRS index searches.

(49) CRS Search and Results. RIDS conducted a CRS index search for responsive records employing the UNI application of ACS and a Sentinel index search by using the following search terms: “Bruce Edward Ivins,” “Interim Major Case Summary,” and “Amerithrax.” The search included a three-way phonetic⁷ breakdown of “Bruce Edward Ivins”

⁷ Three-way phonetic search (“TP” search)—the FBI used the phonetic search capabilities of ACS to conduct a TP search of subject’s name. This means that first, the computer automatically broke his name down and searched the index for three different breakdowns of the name entered. Then, the computer breaks names down based on their phonetic characteristics. The computer will return results based on whether or not they phonetically match a certain percentage of the first and last name searched.

which covered “Ivins, Bruce, Edward,” “Ivins, Bruce, E” and an on-the nose⁸ search for “Ivins, Bruce, Edward.” A CRS search encompassed records maintained in FBIHQ as well as all FBI’s field offices. The search resulted in records indexed under Bruce Edward Ivins and Amerithrax, and determined responsive to Plaintiff’s two FOIA requests.

(50) The CRS is structured in a way that information important to an investigation, or may be important to the FBI in the future, is indexed so that it can be easily retrieved. Thus, ACS and/or Sentinel would not function as an effective investigative application without such indexing.⁹ RIDS, in most cases, relies on index searches when conducting reasonable FOIA searches because all subjects of importance to the FBI can reasonably be expected to be located through an index search. Generally, names/subjects that are not indexed in the CRS via ACS and/or Sentinel are those deemed to have no long-lasting significance to the FBI. Such names/subjects are usually incomplete and are unaccompanied by any other identifying information.

(51) Scope of Search. RIDS conducted a search reasonably calculated to locate all responsive records and information subject to FOIA. Given its comprehensive nature and scope, the CRS is the principal records system searched by RIDS, to locate information responsive to most FOIPA requests, because the CRS is where the FBI indexes information about individuals, organizations, events, and other subjects of investigative interest for future retrieval. The CRS is the FBI system where records responsive to FOIA requests would reasonably be found.

⁸ On-the-nose phonetic search (“OTN” search)—this means the computer will search exactly the name entered in the name field and only that name.

⁹ FBI Special Agents and other employees index information that they can find that information in reference to other investigations or intelligence activities, in order to ensure that the CRS is an effective and efficient means to locating and accessing information.

**Search Results for FOIPA Request Number 1329350:
Table of Contents and the Bruce Ivins Portions of the IMCS**

(52) First, the FBI conducted a CRS search using the term “Interim Major Case Summary” and located no records. The FBI then conducted an index search using the term “Amerithrax” which resulted in one investigative file. The FBI electronically reviewed the investigative file and was unable to locate the IMCS. Next, the FBI contacted the subject matter experts at the Washington Field Office (“WFO”) and requested their assistance. WFO personnel reviewed the physical investigative file and were unable to locate the IMCS. WFO personnel reached out to the FBI’s Laboratory Services in Quantico, Virginia, who located the IMCS and sent it to IMD for processing.

**Search Results for FOIPA Request Number 1327397:
Ivins Emails with Coworkers dated September-October 2001 and Laboratory Notebook
No. 4282**

(53) In response to FOIPA Request Number 1327397, the FBI conducted an index search in ACS and Sentinel using the words “Bruce Edward Ivins.” The FBI located a responsive main investigative file (the Amerithrax investigative file) and reviewed the material for email communications between Bruce Ivins and specifically named individuals as well as Notebook No. 4282 as requested by Plaintiff. The CRS houses records and information from the entire FBI organization including FBI HQ, all fifty-six (56) FBI Field Offices including 380 resident agencies, as well as sixty-three (63) FBI Legal Attachés. Information within the CRS is organized under an indexing system where subjects are identified as a main subject or cross reference. The CRS was designed to allow FBI personnel to reasonably and adequately locate, retrieve, and maintain pertinent information in the performance of its law enforcement duties. Considering Plaintiff seeks records associated with the Bruce Ivins and Amerithrax investigation, the FBI’s index search of the CRS using the search terms above was reasonably expected to

locate any and all records responsive to Plaintiff's request. The FBI reviewed the Amerithrax file in an attempt to locate records responsive to the specific parameters of Plaintiff's narrowed request. To accomplish this, the FBI conducted a page-by-page electronic review of the entire file through ACS and Sentinel to locate records relating to Bruce Ivins, and then specifically his laboratory notebook no. 4282 and any emails between him and the colleagues specified in Plaintiff's narrowed request, for the time frame of September to October, 2001. Additionally, RIDS contacted Subject Matter Experts ("SMEs") in the Washington Field Office to request they also search through the Amerithrax file for any responsive emails and laboratory notebook no. 4282.

(54) Through the efforts described above, the FBI located notebook no. 4282 (Bates pages 17-cv-01716-8-105) and originally only seven pages of responsive emails (17-cv-01716-1-7). The FBI sought summary judgement based on its belief this search was reasonably likely to locate all records responsive to Plaintiff's narrowed requests. Considering RIDS' analysts electronically searched the file most likely to contain responsive records to Plaintiff's requests, and SMEs at WFO searched the actual physical file, RIDS had no indication such a search was deficient.

(55) In Plaintiff's Points and Authorities in Support of His Opposition to Defendant's Motion for Summary Judgment and Cross-Motion for Summary Judgment (ECF no. 16-1, *herein* "Plaintiff's Opposition"), Plaintiff challenged the FBI's search for responsive records by providing evidence of the existence of three additional emails Plaintiff believed the FBI should possess. Proof of these emails' existence was based on information within the final Amerithrax Major Case summary and information Plaintiff gleaned from the Affidavit in Support of Search Warrant signed by Postal Inspector Thomas F. Dellafera of the United States Postal Inspection

Service (“USPIS”) on October 31, 2007. This search warrant searched Ivins’ home, three vehicles, and safety deposit box. Within Postal Inspector Dellafera’s supporting affidavit, there were mentions of potentially responsive emails.

(56) In reviewing Plaintiff’s Opposition, the FBI determined its initial search was reasonably calculated to locate all records responsive to Plaintiff’s narrowed requests. This was due to the fact that RIDS analysts and SMEs at WFO had already searched the file where responsive records were most likely to be located. Furthermore, the Amerithrax investigation was a joint FBI and USPIS investigation and the affidavit used as proof of some of the emails’ existence was filed by a USPIS Postal Inspector. Thus, the FBI had no positive indication the emails in question were ever actually in the FBI’s possession and not only ever possessed by the USPIS. Furthermore, since Ivins worked for the United States Army Medical Research Institute of Infectious Diseases (“AMRIID”), the emails originated with a separate government agency, not the FBI. It appeared, based on its original search, the FBI only possessed select emails ingested into its records during the FBI’s investigation of Ivins, and this explained the small volume of responsive emails.

(57) In response to the Court’s Memorandum Opinion dated January 17, 2019 (ECF No. 27), the FBI contacted SMEs at WFO to cause another search of any locations where responsive email records should be located within the Amerithrax investigative file. RIDS provided WFO with the information provided by Plaintiff (evidence of the possible existence of additional emails) to assist in their search. WFO conducted an additional search of the file attachments (commonly referred to in the FBI as 1A attachments) for responsive emails. In WFO’s assessment, this was the location where records of this type (emails ingested by the FBI from an outside source) would most likely be located. Through this search, WFO was able to

locate binders¹⁰ of email records that, due to the massive size of the investigative file,¹¹ were apparently overlooked in the FBI's original search through this file. The WFO personnel combed this material for emails responsive to Plaintiff's request and sent all responsive emails located through their search to RIDS. Amidst this material were the emails specifically pointed to by Plaintiff. It is important to note the FBI processed *all emails* between Ivins and specified colleagues for the time period of September through October, 2001, not just the three emails explicitly mentioned by Plaintiff (Bates pages 17-cv-01716-106-448). Within this material, there was a high percentage of duplicates as a result of there being three copies of the same email collection within the additional email records located by the FBI. The FBI reviewed this material and established the duplicate email communications were the same email communications already accounted for in the FBI's productions. In instances where there were additional handwritten notes, those pages were processed for release instead of being withheld as a duplicate.

The FBI Completed a Reasonable Search for Responsive Records

(58) The CRS is the only records systems where records responsive to Plaintiff's FOIA requests would reside. This is because the records sought (portions of the IMCS and emails and a laboratory notebook ingested into FBI investigative records during the course of its Amerithrax investigation) are reasonably expected to be housed where the FBI typically houses such investigative records – the CRS. There is no other system where responsive records or information is likely to reside. Thus, RIDS searched the system reasonably calculated to locate responsive records, and specifically the only investigative file likely to contain the records

¹⁰ These binders include three copies of the same collection of emails titled "Review of Compaq Presario Hard Drive, [Redacted Name], 2001 Ivins and [Redacted Name] Email Exchanges."

¹¹ There are over 8,000 1A attachments in the investigative file.

Plaintiff seeks – the Amerithrax investigative file. Furthermore, the FBI has conducted multiple searches through this file, with its latest search leveraging key information provided by Plaintiff. Thus, the FBI performed an adequate search of those systems where responsive records would reasonably be found. Furthermore, the found no indications additional responsive records exist within the Amerithrax investigative file, or in any other location FBI records are housed.

JUSTIFICATION FOR NONDISCLOSURE UNDER THE FOIA

(59) All documents responsive to Plaintiff’s two FOIA requests were reviewed and processed to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide Plaintiff all reasonably segregable, non-exempt information within the responsive records. No reasonably segregable, nonexempt portions have been withheld from Plaintiff. Further description of the information withheld, beyond what is provided in this declaration, could identify the actual exempt information that the FBI has protected. Copies of the pages released in part and in full have been consecutively numbered “17-cv-01716 - 1-448” at the bottom of each page. The exemptions asserted by the FBI as grounds for non-disclosure are FOIA exemptions (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E).

(60) The Bates-numbered and categorically withheld documents contain, on their face, coded categories of Exemptions which detail 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 explanations of FOIA Exemptions asserted to withhold the material. Additionally, the FBI is including an index detailing where within the responsive records it asserted specific Exemptions. *See Exhibit GG*. The coded, Bates-numbered pages, together with this declaration and 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.

(61) Each instance of information withheld on the Bates-numbered documents and within the portions of the IMCS withheld in full pursuant to Exemption (b)(5) 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 names and/or information of third parties merely mentioned 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 Third Parties Merely Mentioned.” Listed below are the categories used to explain the FOIA exemptions asserted to withhold exempt material:

SUMMARY OF JUSTIFICATION CATEGORIES	
CODED CATEGORIES	INFORMATION WITHHELD
Exemption (b)(1)	CLASSIFIED INFORMATION
(b)(1)-2 ¹²	Intelligence Activities, Sources, and Methods (E.O. 13526 § 1.4(c))
Exemption (b)(3)	INFORMATION PROTECTED BY STATUTE
(b)(3)-1	Information Specifically Exempted by the National Security Act of 1947, 50 U.S.C. §3024(i)(1)
(b)(3)-2	Information Specifically Exempted by 18 U.S.C. §3123 (Pen Registers)
(b)(3)-3	Federal Grand Jury Information – Federal Rule of Criminal Procedure, 6(e)

¹² The first declaration in this matter described how information within the IMCS Table of Contents contained information classified pursuant to Executive Order 13526 §§ 1.4(b), 1.4(c), and 1.4(d). This resulted in the FBI placing the classified material within three Exemption justification categories – (b)(1)-1, (b)(1)-2, and (b)(1)-3, respectively. On further review of this information, the FBI determined 1.4(c) alone applies to the FBI classified information within the portions of the IMCS sought by Plaintiff. This resulted in the elimination of Exemption categories (b)(1)-1 and (b)(1)-3.

SUMMARY OF JUSTIFICATION CATEGORIES	
CODED CATEGORIES	INFORMATION WITHHELD
Exemption (b)(5)	PRIVILEGED INFORMATION
(b)(5)-1	Deliberative Process Privilege
Exemptions (b)(6) and (b)(7)(C)	CLEARLY UNWARRANTED INVASION OF PRIVACY AND UNWARRANTED INVASION OF PERSONAL PRIVACY
(b)(6)-1 and (b)(7)(C)-1	Names and/or Identifying Information of Third Parties Merely Mentioned
(b)(6)-2 and (b)(7)(C)-2	Names and/or Identifying Information of FBI Special Agents/Support Personnel
(b)(6)-3 and (b)(7)(C)-3	Names and/or Identifying Information of Non-FBI Federal Government Personnel
(b)(6)-4 and (b)(7)(C)-4	Names and/or Identifying Information of Third Parties of Investigative Interest
Exemption (b)(7)(D)	CONFIDENTIAL SOURCE INFORMATION
(b)(7)(D)-1	Identifying Information and the Information Provided by Confidential Sources under an Implied Assurance of Confidentiality
Exemption (b)(7)(E)	INVESTIGATIVE TECHNIQUES AND PROCEDURES
(b)(7)(E)-1	Information Concerning the Targets, Dates, Installation, Locations, Monitoring, and Types of Devices Utilized in Surveillance
(b)(7)(E)-2	Collection and/or Analysis of Information
(b)(7)(E)-3	Sensitive Investigative Techniques Used to Conduct National Security Investigations

EXEMPTION 7 THRESHOLD

(62) Exemption (b)(7) of the FOIA protects from mandatory disclosure records or information compiled for law enforcement purposes if disclosure could reasonably be expected to cause one of the six sets of harms enumerated in the subpart of the exemption. *See* 5 U.S.C. § 552 (b)(7). In this case, the harm that could reasonably be expected to result from disclosure

concerns: information which, if disclosed, could reasonably be expected to invade the personal privacy interests of third-party individuals and disclose law enforcement techniques or procedures which, if released, could be used to circumvent the law.

(63) Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must first demonstrate the records or information at issue were compiled for law enforcement purposes. Pursuant to 28 USC §§ 533, 534, and Executive Order 12333 as implemented by the Attorney General's Guidelines for Domestic FBI Operations ("AGG-DOM") and 28 CFR § 0.85, the FBI is the primary investigative agency of the federal government with authority and responsibility to investigate all violations of federal law not exclusively assigned to another agency, to conduct investigations and activities to protect the United States and its people from terrorism and threats to national security, and further the foreign intelligence objectives of the United States. Under this investigative authority, the responsive records herein were compiled for the following specific law enforcement purpose.

(64) The records at issue were compiled in connection with the FBI's investigation of bioterrorism attacks. The FBI worked along with the U.S. Postal Service ("USPS") in a joint investigation into the 2001 anthrax attacks which killed five (5) and hurt seventeen (17) others. The FBI and USPS investigated Bruce Ivins in connection with the anthrax attacks, and concluded its investigation on February 19, 2010. In 2010, the FBI issued an Investigative Summary which outlined the evidence and investigative conclusions. Therefore, the responsive records were compiled for a law enforcement purpose and fall squarely within the law enforcement duties of the FBI. Thus, the information meets the threshold requirement for Exemption (b)(7).

FOIPA REQUEST NO. 1327397

**EXEMPTIONS (b)(6) AND (b)(7)(C)
CLEARLY UNWARRANTED AND UNWARRANTED
INVASION OF PERSONAL PRIVACY¹³**

(65) 5 U.S.C. § 552 (b)(6) exempts from disclosure “personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552 (b)(7)(C) 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 constitute an unwarranted invasion of personal privacy.

(66) In withholding information pursuant to these two exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in the records against any public interest in disclosure. For purposes of this analysis, a public interest exists when information would shed light on the FBI’s performance of its mission to protect and defend the United States against terrorists and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. In each instance where information was withheld pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI determined the individuals’ privacy interests outweighed the public interest in the information.¹⁴

¹³ The practice of the FBI is to assert Exemption (b)(6) in conjunction with Exemption (b)(7)(C). Although the balancing test for Exemption (b)(6) uses a “would constitute a clearly unwarranted invasion of personal privacy” standard and the test for Exemption (b)(7)(C) uses the lower standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public’s interest in disclosure under the analysis of both exemptions.

¹⁴ Bruce Ivins died in 2008 and therefore, his name and identifying information were released throughout the responsive records.

(b)(6)-1 and (b)(7)(C)-1: Names and/or Identifying Information of Third Parties Merely Mentioned

(67) The FBI asserted Exemptions (b)(6) and (b)(7)(C) to withhold the names and/or identifying information of third parties merely mentioned, both within Bruce Ivins laboratory notebook and within the emails between him and his colleagues. These individuals are not of investigative interest to the FBI. Release of this type of information about private citizens, without notarized authorizations permitting such a release, violates their individual privacy interests. Disclosure of their names and/or other personal information would reveal they were at one time connected with an FBI investigation. Disclosure of their identities could subject them to possible harassment or criticism, and focus derogatory inferences and suspicion on them. Additionally, considering the emails between Ivins in his colleagues are often personal in nature, the FBI withheld any information that consisted solely of personal information about third parties. This includes, but is not limited to, discussions of personal medical information, discussions of career-related activities, discussion of marital issues, other family matters, and other topics completely unrelated to the Amerithrax investigation. Revelation of any of this information would expose highly personal information for public consumption and would undoubtedly result in invasions of personal privacy.

(68) In making a determination whether to release the names and personal information concerning third-parties merely mentioned, the public's interest in disclosure was balanced against the individual's right to privacy. The FBI determined release of this information would not significantly increase the public's understanding of FBI operations and activities. This is especially true with the solely personal information present within the responsive email records as this information has absolutely no potential to increase public knowledge of the FBI's fulfillment of its core duties. Therefore, these individuals maintain substantial privacy interests

greater than the public interest in disclosure, and disclosure of their information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy.¹⁵ Thus, the FBI withheld this information pursuant to FOIA Exemptions (b)(6) and (b)(7)(C) on small portions of 175 pages of Bruce Ivins' notebook and emails between him and his colleagues.

(b)(6)-2 and (b)(7)(C)-2: Names and/or Identifying Information of FBI Special Agents/Support Personnel

(69) The FBI asserted Exemptions (b)(6) and (b)(7)(C) to protect the names and identifying information of FBI personnel. These FBI personnel were assigned to handle tasks related to the Amerithrax investigation as reflected in the responsive records. These individuals are/were in positions of access to sensitive and classified information regarding the investigation. Therefore, they could become targets of harassing inquiries for unauthorized access to FBI investigations if their identities were released. Accordingly, FBI support personnel have personal privacy interests in not having their identities disclosed.

(70) The FBI examined the records containing the names and/or identifying information of FBI personnel to determine whether the public interest outweighed these individuals' substantial privacy interests. The FBI could not determine how disclosure of the names and identifying information of FBI personnel would shed light on the operations and activities of the FBI. Therefore, the FBI determined the privacy interests of the FBI personnel outweighed the public interest in disclosure, and disclosure would constitute a clearly unwarranted and unwarranted invasion of personal privacy. Thus, the FBI withheld this

¹⁵ For the convenience of the Court, rather than repeat the phrase "clearly unwarranted invasion of personal privacy" under the standard of Exemption 6 and "an unwarranted invasion of personal privacy" under the standard of Exemption 7(C) every time these two exemptions are asserted, the FBI will simply use the phrase "clearly unwarranted and unwarranted invasion of personal privacy" to refer to both standards.

information pursuant to FOIA Exemptions (b)(6) and (b)(7)(C) on small portions of 109 pages of Bruce Ivins' notebook and emails between him and his colleagues.

(b)(6)-3 and (b)(7)(C)-3: Names and/or Identifying Information of Non-FBI Federal Government Personnel

(71) The FBI asserted Exemptions (b)(6) and (b)(7)(C) to protect the names and/or identifying information of non-FBI federal government personnel whose names appear within the records. These employees were acting in their official capacities and aided the FBI in the law enforcement investigative activities reflected in these records. The relevant inquiry here is whether public access to this information would violate the privacy interest of these individuals and whether there is a public interest in releasing their identities. Disclosure of their identities and identifying information could subject them to unauthorized inquiries and harassment that would constitute a clearly unwarranted invasion of their personal privacy. The rationale for protecting non-FBI federal support personnel is the same as for FBI support personnel.

(72) In making a determination whether to release the names and personal information concerning non-FBI federal government personnel, the public's interest in disclosure was balanced against the individual's right to privacy. Thus, the FBI balanced the interests to determine whether the privacy interest of non-FBI federal government personnel outweighs the public interest in disclosing their names and identifying information. The FBI determined the release would not significantly increase the public's understanding of FBI operations and activities. Therefore, these individuals maintain substantial privacy interests greater than the public interest in disclosure, and disclosure would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. Thus, the FBI withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C) on small portions of 101 pages of Bruce Ivins' notebook and emails between him and his colleagues.

OTHER GOVERNMENT AGENCY (“OGA”) INFORMATION

United States Army

(73) The FBI referred one document, Bruce Ivins’ Notebook No. 4282, to the United States Army for consultation. The notebook appears on Bates pages 17-cv-01716 – 8 through 104. The U.S. Army instructed the FBI to partially withhold its equities pursuant to FOIA Exemptions (b)(6) and (b)(7)(C). The legal justification for withholding the information was discussed in ¶¶ 60-61, *supra*.

FOIPA REQUEST NO. 1329350

**FBI’S JUSTIFICATION FOR WITHHOLDING PORTIONS OF THE IMCS WITH
EXEMPTION (b)(5)
PRIVILEGED INFORMATION**

(74) Exemption (b)(5) allows the FBI to protect information contained in “inter-agency” or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” This exemption has been construed to exempt those documents or information normally privileged in the civil discovery context, including, as is the case here, the deliberative process privilege.

(75) Based on the fact the Court ordered a renewed Motion for Summary Judgment, the FBI is inferring the Court disagrees with a categorical Exemption (b)(5) on the IMCS. If this is true, large portions will remain exempt in part by other Exemptions described herein, however, the FBI still believes Exemption 5 applies to the document in full for the following reasons.

(b)(5)-1: Deliberative Process Privilege

(76) The FBI withheld in full the table of contents and the portions relating to Bruce Ivins from the Anthrax IMCS pursuant to Exemption 5, under the deliberative process

privilege.¹⁶ It is an interim investigative summary drafted in 2006 midway through the investigation. A statement at the beginning of the IMCS indicates it is privileged and should not be disseminated outside the FBI, U.S. Postal Services, or the Department of Justice. The full text of this statement reads:

The Interim Major Case Summary is a privileged communication. It is protected from disclosure by government privileges afforded to the Executive Branch. This report should not be disseminated outside the FBI, U.S. Postal Inspection Service, or Department of Justice without consultation with the applicable Attorney's Office and the FBI's General Counsel. The analysis, evaluations, assessments, and conclusions stated in this summary are pre-decisional and deliberative in nature. As a consequence, this report is protected from disclosure by the deliberative process privilege.

The IMCS was drafted in 2006, four (4) years before the FBI concluded its investigation and issued its final investigative report in 2010. The final report in 2010 consisted of ninety-two (92) pages and detailed the government's final evidence, findings, and conclusions. In contrast, the IMCS is a preliminary case summary drafted midway through the anthrax investigation and contains information, analyses, and suppositions based on the limited and incomplete evidence available at the time. It was an inter-agency communication, not intended for public dissemination. Therefore, the IMCS, including its table of contents and portion pertaining to Bruce Ivins, is predecisional, and inherently deliberative. The table of contents is twenty-two (22) pages and lists each section of the IMCS, the investigators' findings at the time, and proposed investigative steps moving forward. Thus, the table of contents is part and parcel to the entire IMCS and the facts within table of contents are inextricably intertwined with predecisional, deliberative, inter-agency opinions, recommendations, analyses, and conclusions.

¹⁶ Plaintiff narrowed the scope of FOIPA Request No. 1329350 to the IMCS' table of contents consisting of twenty-two (22) pages, and the IMCS portion related to Bruce Ivins consisting of sixteen (16) pages. *See* ¶¶ 19-20 *supra*.

The Bruce Ivins portion relates the investigators' findings as to Bruce Ivins at the time of the IMCS's creation. This information was unrefined, subject to change, and inconclusive at the time of its compilation. Like the table of contents, none of the information in this portion can be segregated from agency deliberations as any facts included in the IMCS reflect the findings currently under consideration by the investigators who were deliberating on how best to bring the Amerithrax investigation to a successful conclusion. These inter-agency deliberations are relevant, substantive, and within the last 25 years which meets the threshold established by the FOIA Improvement Act of 2016. Since the FBI found it was unable to segregate the facts from the deliberations without resulting in harm, the FBI determined releasing any part of the 2006 IMCS could reasonably be expected to cause harm.

(77) Harm in releasing the information is two-fold. First, releasing any information from the IMCS would inhibit inter-agency communications and stifle information sharing among federal agencies in joint investigations. The IMCS contains assessments, opinions, recommendations, and analyses by the FBI and USPS based on incomplete evidence gathered partially through the investigation. Releasing information from the IMCS would inhibit the free flow of information, assessments, and ideas expressed by FBI and other federal government employees. Federal employees would be reluctant to offer their candid opinions and assessments for purposes of drafting an interim case summary if they knew the same premature conclusions and assessments would later be publicly released. The hesitance created by releasing deliberative material would degrade the quality of inter-agency communications and deprive federal employees the ability to freely communicate opinions, assessments, and analyses. Second, releasing any part of the IMCS would disclose information which does not reflect final agency conclusions. When deliberating on a project, FBI and USPS personnel must consider

multitudinous facts, sort, evaluate, and analyze them in order to make recommendations and compile an interim report. The process requires agency personnel to examine, consolidate, and eliminate information to create a cohesive product such as the interim case summary. Releasing pre-decisional information like the 2006 IMCS would create public confusion because the FBI already released to the public a final investigative report in 2010. The public's confusion would come from the incomplete, conflicting, and inaccurate information in the IMCS because it does not reflect the FBI's ultimate investigative findings.

(78) Thus, release of the pre-decisional, deliberative, and non-public IMCS would stifle future FBI deliberations and inter-agency cooperation, and would ultimately create public confusion. The FBI could find no reason to segregate and release information from the 2006 IMCS considering the harms explained above and the fact the FBI released to the public a final report in 2010. The pre-decisional and deliberative nature of the IMCS readily falls under the deliberative process privilege and is exempt from disclosure pursuant to Exemption 5. Thus, the FBI withheld the IMCS' table of contents and portion of the IMCS pertaining to Bruce Ivins pursuant to Exemption 5 under the deliberative process privilege, as well as other underlying FOIA Exemptions.

**JUSTIFICATION FOR WITHHOLDING CERTAIN INFORMATION
PURSUANT TO OTHER UNDERLYING FOIA EXEMPTIONS**

(79) As previously explained, the FBI determined the IMCS is exempt from disclosure under Exemption (b)(5). The FBI is also asserting Exemptions (b)(1), (b)(3), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E) of the FOIA as additional grounds for withholding information within the table of contents and Bruce Ivins portion of the IMCS. Furthermore, the Central Intelligence Agency and United States Postal Service also asserted Exemptions to withhold information within these portions of the IMCS.

**EXEMPTION (b)(1)
CLASSIFIED INFORMATION**

(80) Exemption 1 protects records that are “(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and (B) are in fact properly classified pursuant to such Executive Order” 5 U.S.C. § 552(b)(1).

(81) Before I consider an Exemption 1 claim for withholding agency records, I determine whether the information in those records is currently and properly classified – *i.e.*, satisfies the requirements of Executive Order (“E.O.”) 13526 and complies with the various substantive and procedural criteria of the E.O. E.O. 13526, which was signed by President Barack Obama on December 29, 2009, is the E.O. that currently governs the classification and protection of national security information.¹⁷ I am bound by the requirements of E.O. 13526 when making classification determinations.

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

- (1) an original classification authority must have classified the information;
- (2) the information must be owned by, produced by or for, or be under the control of the United States Government;
- (3) the information must fall within one or more of the categories of information listed in § 1.4 of this order; and
- (4) the original classification authority must determine that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority must be

¹⁷ Section 6.1 (cc) of E.O. 13526, defines “National Security” as “the national defense of foreign relations of the United States.”

able to identify or describe the damage.

(83) In addition to these substantive requirements, certain procedural and administrative requirements of E.O. 13526, must be followed before information can be considered to be properly classified, such as proper identification and marking of documents.

Findings of the Declarant Regarding Exemption 1

(84) With the above requirements in mind, I personally and independently examined the information withheld from Plaintiff pursuant to FOIA Exemption 1, within the portions of the IMCS sought by Plaintiff. I personally reviewed the documents and determined the information is marked at the “Secret” level because “the unauthorized disclosure of which reasonably could be expected to cause serious damage to national security.” *See* E.O. 13526 § 1.2 (a)(2). I also determined the information satisfies the substantive requirements of the Executive Order – *i.e.*, that the classified information is owned by, was produced by or for, and is under the control of the U.S. Government and that it was classified by an original classification authority. I further determined the classified information continues to warrant classification at the “Secret” level, and is exempt from disclosure pursuant to E.O. 13526, § 1.4 (c), intelligence sources or methods, or cryptology.

(85) Additionally, I made certain that all procedural requirements of E.O. 13526 were followed in order to ensure that the information was properly classified. Specifically, I made certain that:

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

1.7 were adhered to;

- (d) the declassification policies set forth in E.O. 13526 §§ 3.1 and 3.3 were followed; and
- (e) any reasonably segregable portion of these classified documents that did not meet the standards for classification under E.O. 13526 were declassified and marked for release, unless withholding was otherwise warranted under applicable law.

(b)(1)-2: Intelligence Activities, Sources, and Methods (E.O. 13526 § 1.4(c))

(86) E.O. 13526 § 1.4(c) protects from disclosure intelligence activities (including covert action), intelligence sources or methods, and cryptology. An intelligence activity or method includes any intelligence action or technique utilized by the FBI against a targeted individual or organization that has been determined to be of national security interest. An intelligence method is used to indicate any procedure (human or non-human) utilized to obtain information concerning such individual or organization. An intelligence activity or method has two characteristics. First, the intelligence activity or method, and information generated by it, is needed by United States Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality must be maintained with respect to the activity or method if the viability, productivity and usefulness of its information is to be preserved. Information currently and properly classified pursuant to E.O. 13526 was withheld here pursuant to Exemption 1 to protect intelligence sources and methods utilized by the FBI for gathering intelligence data.

(87) Exemption 1 and E.O. 13526 protects from disclosure information that would reveal intelligence activities and methods used by the FBI against specific targets of foreign counterintelligence investigations or operations; identify a target of a foreign counterintelligence investigation; or disclose the intelligence-gathering capabilities of the activities or methods directed at specific targets. The information obtained from the intelligence activities or methods

is very specific in nature, provided during a specific time period, and known to very few individuals.

(88) The classified information details intelligence activities and information gathered or compiled by the FBI about a specific individual of national security interest. Disclosure could reasonably be expected to cause serious damage to the national security, as it would: (a) reveal the actual intelligence activity or method utilized by the FBI against a specific target; (b) disclose the intelligence-gathering capabilities of the method; and (c) provide an assessment of the intelligence source penetration of a specific target during a specific period of time. With the aid of this detailed information, hostile entities could develop countermeasures that would, in turn, severely disrupt the FBI's intelligence-gathering capabilities. This severe disruption would also result in severe damage to the FBI's efforts to detect and apprehend violators of national security and criminal laws of the United States. This information is classified at the "Secret" level and protected from disclosure by E.O. 13526 § 1.4(c). Thus, the FBI is asserting Exemption (b)(1) to protect intelligence activities, sources, and methods present on one paragraph on one page in the IMCS table of contents.

**EXEMPTION (b)(3)
INFORMATION PROTECTED BY STATUTE**

(89) Exemption 3 protects information that is specifically exempted from disclosure by statute . . . provided that such statute (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph. 5 U.S.C. § 552(b)(3). The following types of information are Exempt pursuant to (b)(3).

(b)(3)-1: Information Specifically Exempted by the National Security Act of 1947, 50 U.S.C. § 3024(i)(1)

(90) Exemption (b)(3) protects information covered by Section 102A(i)(1) of the National Security Act of 1947 (“NSA”), as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”), 50 U.S.C. § 3024(i)(1). This statute provides the Director of National Intelligence (“DNI”) “shall protect from unauthorized disclosure intelligence sources and methods.”¹⁸ On its face, this federal statute leaves no discretion to agencies about withholding from the public information about intelligence sources and methods. Thus, the protection afforded to intelligence sources and methods by 50 U.S.C. § 3024(i)(1) is absolute.

(91) In order to fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community (“IC”) for the classification of information under applicable laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. §§ 3024(i)(1). The FBI is one of 17 member agencies comprising the IC, and as such must protect intelligence sources and methods.

(92) As described above, Congress enacted the NSA, as amended by the IRTPA, to protect the IC’s sources and methods of gathering intelligence. Disclosure of such information presents the potential for individuals to develop and implement countermeasures, which would result in the loss of significant intelligence information relied upon by national policymakers and the IC. Given that Congress specifically prohibited the disclosure of information pertaining to intelligence sources and methods used by the IC as a whole, I have determined the FBI’s intelligence sources and methods are present within the responsive records and disclosing the

¹⁸ The National Security Act was enacted in 1947; the IRTPA was enacted in 2004.

information would reveal intelligence sources and methods which is prohibited from disclosure under 50 U.S.C. § 3024(i)(1). It is important to note, when it began the Amerithrax investigation, the FBI was unsure whether the culprit(s) was/were foreign or domestic. Additionally, the deployment of sophisticated biological weapons against high-profile targets within the United States was rightfully seen as a threat to the national security of the United States. Therefore, there exists descriptions of sources and methods used in the Amerithrax investigation the FBI typically uses to protect the national security of the United States. Revelation of this information would reveal key, non-public information about the FBI's use of these techniques, risking their circumvention by future investigative targets. Thus, the FBI is asserting Exemption 3 to protect intelligence sources and methods on small portions of all pages within the IMCS table of contents and the portion of the IMCS pertaining to Bruce Ivins, and large portions of four (4) pages within the IMCS table of contents, pursuant to 50 U.S.C. § 3024(i)(1).

(b)(3)-2: Information Specifically Exempted by 18 U.S.C. § 3123 (Pen Registers)

(93) Exemption (b)(3) protects pen register information specifically exempted pursuant to 18 U.S.C. 3123(d), the Pen Register Act, to protect from disclosure information pertaining to certain court “order(s) authorizing or approving the installation and use of a pen register or a trap and trace device; “and information pertaining to “the existence of the pen register or trap and trace device or the existence of the investigation.” Information within the portions of the IMCS sought by Plaintiff reveals the existence or use of a pen register or trap and trace device, and/or reveals the existence of an investigation involving a pen register or trap and trace device(s); thus, this information is protected from disclosure by Exemption 3. As relevant to 5 U.S.C. § 552

(b)(3)(B), the Pen Register Act is a statute¹⁹ enacted before the date of enactment of the OPEN FOIA Act of 2009.²⁰ In this case, the FBI determined the information would be specifically exempted from disclosure pursuant to statute, 18 U.S.C. § 3123. Thus, the FBI asserted (b)(3) to withhold this information on the majority of one page of the IMCS table of contents and in one paragraph of the portion of the IMCS pertaining to Bruce Ivins.

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

(94) The FBI asserted (b)(3), in conjunction with Federal Rules of Criminal Procedure, 6(e), to withhold information within the portions of the IMCS sought by Plaintiff is this information relates to the inner workings of a federal grand jury. As relevant to 5 U.S.C. § 552(b)(3)(B), Rule 6(e) is a statute²¹ enacted before the date of enactment of the OPEN FOIA Act of 2009.²² It is well established Rule 6(e) embodies a broad, sweeping policy of preserving

¹⁹ The Electronic Communications Privacy Act (ECPA) was passed in 1986 (Pub. L. No. 99-508, 100 Stat. 1848). There were three main provisions or Titles to the ECPA. Title III created the Pen Register Act, which included restrictions on private and law enforcement uses of pen registers. The United States statutes governing pen registers are codified under 18 U.S.C., Chapter 206. Section 216 of the 2001 USA PATRIOT Act expanded the definition of a pen register to include devices or programs that provide an analogous function with internet communications.

²⁰ The OPEN FOIA Act of 2009 was enacted October 28, 2009, Pub. L. No. 111-83, 123 Stat. 2142, 2184; 5 U.S.C. § 552 (b)(3)(B).

²¹ As prescribed by 18 U.S.C. § 3771, proposed rules become effective ninety days after the Chief Justice reports them to Congress. By order of April 26, 1976, the Supreme Court adopted amendments to the Federal Rules of Criminal Procedure which included Rule 6(e) and reported the amendments to Congress. Congress voted to delay the effective date of several of the proposed rules, to include Rule 6(e), “until August 1, 1977, or until and to the extent approved by Act of Congress, whichever is earlier.” Pub.L. No. 94-349 § 1, 90 Stat. 822 (1976). Subsequently, Congress, by statute, enacted a modified version of Rule 6(e). *See* Pub.L. No. 95-78, § 2(a), 91 Stat. 319 (1977), FED. R. CRIM. P. 6(e).

²² The OPEN FOIA Act of 2009 was enacted October 28, 2009. *See* Pub.L. 111-83, 123 Stat.

the secrecy of grand jury material regardless of the substance in which the material is contained. Information within the sixteen (16) pages of the IMCS at issue reflects a grand jury empaneled to deliberate issues arising from and related to the FBI's investigation. Specifically, the records describe specific records subpoenaed by the federal grand jury. The protected information directly relates to the work of this grand jury. Any disclosure of this information would clearly violate the secrecy of the grand jury proceedings and could reveal the inner workings of a federal grand jury, and thus, the FBI is precluded from disclosing it. Accordingly, the FBI asserted Exemption (b)(3) as an underlying Exemption to protect the inner workings of the federal grand jury on two (2) pages within the portion of the IMCS pertaining to Bruce Ivins.

**EXEMPTIONS (b)(6) AND (b)(7)(C)
CLEARLY UNWARRANTED AND UNWARRANTED
INVASION OF PERSONAL PRIVACY**

(95) As discussed *supra*, the FBI asserted FOIA Exemptions (b)(6)/(b)(7)(C) to protect the names and/or identifying information of third-party individuals with the portions of the IMCS sought by Plaintiff. *See* 5 U.S.C. § 552(b)(6) and (b)(7)(C). The FBI balanced the privacy interests of the third-party individuals against the public interest in disclosure and determined the information would not demonstrate how the FBI performs its statutory mission or significantly increase the public's understanding of the FBI's operations and activities. Therefore, the disclosure of their name or identifying information would constitute an unwarranted invasion of personal privacy. The FBI explains the individual coded categories below.

2142, 2184.

(b)(6)-1 and (b)(7)(C)-1: Names and/or Identifying Information of Third Parties Merely Mentioned

(96) Within the portions of the IMCS sought by Plaintiff, the FBI asserted Exemptions (b)(6) and (b)(7)(C) to protect the names and/or identifying information of third parties merely mentioned. See ¶¶ 56-57 *supra* for further explanation of the FBI's withholding of this information. The FBI balanced these individuals' personal privacy interests against the public interest in disclosure and determined the release of their information would not significantly increase the public's understanding of FBI operations and activities. Therefore, these individuals maintain substantial privacy interests greater than the public interest in disclosure, and disclosure would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. Thus, the FBI is asserting FOIA Exemptions (b)(6) and (b)(7)(C) to withhold this information on a name on one page and the majority of three (3) pages of the IMCS table of contents, and on nine (9) pages of the portion of the IMCS pertaining to Bruce Ivins.

(b)(6)-3 and (b)(7)(C)-3: Names and/or Identifying Information of Non-FBI Federal Government Personnel

(97) Within the portions of the IMCS sought by Plaintiff, the FBI asserted Exemptions (b)(6) and (b)(7)(C) to protect the names and/or identifying information of non-FBI federal government personnel. See ¶¶ 60-61 *supra* for further explanation of the FBI's withholding of this information. The FBI balanced their personal privacy interests against the public interest in disclosure and determined the release would not significantly increase the public's understanding of FBI operations and activities. Therefore, federal government personnel maintain substantial privacy interests greater than the public interest in disclosure, and disclosure would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. Thus, the FBI is

asserting FOIA Exemptions (b)(6) and (b)(7)(C) to withhold this information on small portions of six (6) pages within the IMCS pertaining to Bruce Ivins.

(b)(6)-4 and (b)(7)(C)-4: Names and/or Identifying Information of Third Parties of Investigative Interest

(98) Within the portions of the IMCS sought by Plaintiff, the FBI asserted Exemptions (b)(6) and (b)(7)(C) to protect the names and/or identifying information of third parties of investigative interest. The names and personal information within the IMCS include names and personal information of individuals targeted for investigation who were later determined not to have committed crimes. Release in this context could result in embarrassment, ridicule, and negative inferences regarding these individuals. This is especially unjustified considering these individuals were never found to have committed illegal acts. Thus, the FBI determined they maintain substantial privacy interests in not having their identities disclosed in this context. Additionally, the FBI compared the IMCS with the final, public Amerithrax Major Case summary and is only asserting Exemptions (b)(6) and (b)(7)(C) to withhold information not already publically available concerning these third parties of investigative interest. Considering these individuals were never convicted of wrongdoing, any information concerning how and what the FBI investigated in relation to them, outside of what was made publically available, would result in further, serious intrusions into their personal privacy.

(99) The FBI balanced these individuals' personal privacy interests against the public interest in disclosure and determined the release of these individuals' information would not significantly increase the public's understanding of FBI operations and activities. Therefore, these individuals maintain substantial privacy interests greater than the public interest in disclosure, and disclosure of their information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. Thus, the FBI is preserving underlying FOIA

Exemptions (b)(6) and (b)(7)(C) on large portions of eleven (11) pages and smaller portions of two (2) paragraphs on two (2) pages of the IMCS table of contents, and on two (2) paragraphs within two (2) pages of the portion of the IMCS pertaining to Bruce Ivins.

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

(100) 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 agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

(101) Within the portions of the IMCS sought by Plaintiff, the FBI asserted Exemption (b)(7)(D) as an underlying Exemption to withhold names, identifying information, and/or information provided by sources under an implied assurance of confidentiality. These third parties provided valuable, detailed information relevant the FBI's investigation of the mailing of anthrax to various individuals. The information they provided is singular in nature and unique to these sources due to their proximity to the activities on which they reported. Considering the malicious intent of the individual responsible for the mailings, the threat of retaliation against these individuals for providing assistance to the FBI, at the time the information was provided, was very real. In the FBI's experience, sources providing information to the FBI about violent crimes do so at great peril to themselves and have faced retaliation and threats (including death threats) if their assistance to the FBI is publicly known. Under these circumstances, it is reasonable to infer that these third parties cooperated with the FBI only with an expectation of confidentiality. Release of this information would immediately preclude these individuals from acting as confidential sources for the FBI in the future. Furthermore, should the FBI display a

willingness to release this type of information, potential future confidential sources may be dissuaded from assisting the FBI. This could greatly impact the FBI's ability to obtain critical information from confidential sources needed to fulfill its law enforcement mission. Thus, the FBI properly asserted Exemption (b)(7)(D) as an underlying Exemption to withhold this type of information. The FBI asserted this Exemption on several sentences on two (2) pages within the portion of the IMCS pertaining to Bruce Ivins.

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

(102) 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.

(103) Exemption (b)(7)(E) protects information containing sensitive investigatory techniques and procedures authorized for use by the FBI. This exemption affords categorical protection to these techniques and procedures used in such investigations; it protects techniques and procedures not well-known to the public as well as non-public details about the use of well-known techniques and procedures. The release of information within the IMCS would disclose techniques and/or procedures used in law enforcement and national security investigations or prosecutions, or would disclose guidelines for law enforcement and national security investigations or prosecutions that could reasonably be expected to risk circumvention of the law.

(b)(7)(E)-1: Information Concerning the Targets, Dates, Installation, Locations, Monitoring, and Types of Devices Utilized in Surveillance

(104) Within the portions of the IMCS sought by Plaintiff, the FBI asserted Exemption (b)(7)(E) to protect information concerning the installation, locations, monitoring, and types of devices utilized in surveillances by the FBI. Such information could provide details about surveillances used to obtain investigative intelligence relevant to this investigation. The law enforcement techniques used to conduct surveillances are the same techniques utilized by the FBI in other criminal and national security investigations. It is publicly known the FBI and other law enforcement agencies engage in different types of surveillance in investigations; however, disclosure of non-public details about when, how, and under what circumstances the FBI conducts surveillance would allow current and future subjects of FBI investigations to develop and utilize countermeasures to defeat or avoid surveillance; thus, rendering the investigative technique useless to the FBI and other law enforcement agencies. Therefore, the FBI asserted Exemption (b)(7)(E) to protect information concerning the installation, locations, monitoring, and types of devices used in surveillance and present within the responsive records. The FBI asserted Exemption (b)(7)(E) on the majority of one page and on several sentences on another page of the portion of the IMCS pertaining to Bruce Ivins.

(b)(7)(E)-2: Collection and/or Analysis of Information

(105) The FBI asserted Exemption (b)(7)(E) to protect methods the FBI uses to collect and analyze information obtained for investigative purposes. Release of the information would disclose the identity of methods used in the collection and analysis, including how and from where the FBI collects information and the methodologies employed to analyze it. The relative utility of these techniques could be diminished if the actual techniques were released in this matter. This in turn would facilitate the accumulation of information by investigative subjects

regarding the circumstances under which specific techniques are used or requested and the utility of the information. Disclosing the information would enable criminals to educate themselves on the techniques employed in the collection and analysis of information, and allow individuals to take countermeasures to circumvent the effectiveness of these techniques.

(106) It is important to note, when asserting Exemptions to the portions of the IMCS sought by Plaintiff, the FBI compared its processing with the information made available in the final Amerithrax Major Case Summary. The FBI found the use of a large portion of FBI investigative evidence collection and analysis techniques and procedures described within the IMCS were never revealed publically. This is because, though highly public, the Amerithrax investigation was a highly sensitive, technically-intricate investigation into deadly attacks against high-profile targets, involving a very sophisticated biological weapon. Revealing the totality of the FBI's collection and analysis techniques brought to bear in the Amerithrax investigation would risk undermining the FBI's ability to conduct similar investigations successfully in the future. The FBI needs to preserve its ability to use these types of collection and analysis techniques, in order to conduct similar investigations in the future. Revelation of this information in the context of the IMCS would essentially reveal the FBI's "playbook" for how it pursued this investigation and will likely pursue similar investigations in the future. Thus, as described above, release would enable criminals to predict FBI investigative efforts, develop effective countermeasures to avoid detection and/or disruption by FBI investigators, and continue to circumvent the law. Consequently, the FBI asserted Exemption (b)(7)(E) to protect sensitive techniques and procedures for the collecting and analyzing of information which appear on small portions of four (4) pages and on the majority or entire page of 15 pages within the

IMCS table of contents, and on small portions of two (2) pages and the majority of two (2) pages of the portion of the IMCS pertaining to Bruce Ivins..

(b)(7)(E)-3: Sensitive Investigative Techniques Used to Conduct National Security Investigations

(107) Within the portions of the IMCS sought by Plaintiff, the FBI asserted FOIA Exemption (b)(7)(E) to protect sensitive investigative techniques used to conduct national security investigations. As discussed *supra* in the FBI's justification for withholding information pursuant to Exemption (b)(3), National Security Act of 1947, the anthrax attacks were a threat to United States national security and the FBI utilized several national security intelligence sources and methods to pursue the investigation. Such techniques are also law enforcement techniques, as they are also used to prevent circumvention of federal laws. Due to the highly sensitive nature of these techniques, releasing information about them or discussing them in greater detail here would reveal their very nature, and when and how they are utilized by the FBI. This would enable criminals targeted by these techniques to predict and circumvent their use by the FBI, and could negatively impact the FBI's ability to effectively investigate criminal matters of this kind. Therefore, the FBI asserted Exemption (b)(7)(E) protect these sensitive investigative techniques on the majority of two (2) pages and a paragraph on two (2) pages of the IMCS table of contents, and on one paragraph of the portion of the IMCS pertaining to Bruce Ivins.

OGA INFORMATION

(108) The FBI identified equities from several OGAs within the requested portions of the IMCS. The FBI consulted with the Central Intelligence Agency ("CIA"), the United States Postal Service ("USPS"), the Defense Intelligence Agency ("DIA"), the Center for Disease Control's Department of Health and Human Services ("HHS"), the Office of Personal Management ("OPM"), the United States Citizenship and Immigration Services ("CIS"), the

United States Army Medical Research Institute of Infectious Disease (“USAMRIID”), and the Navy. The FBI identified information within the requested portions of the IMCS which originated with these OGAs and sent the records to the originating OGAs for consultation. The CIS, DIA, HHS, OPM, USAMRIID, and the Navy determined the information did not qualify for an underlying Exemption. However, the FBI is asserting Exemptions (b)(1), (b)(3) and (b)(6) per the request of the CIA as well as Exemptions (b)(5) and (b)(7)(C) per the request of the USPS. Thus, the FBI is also reserving Exemptions (b)(1), (b)(3), (b)(5), (b)(6) and (b)(7)(C) to protect OGA information.

CIA

(109) The CIA determined information within the records is protected from disclosure and asserted Exemptions 1, 3, and 6 as underlying Exemptions to protect its information within the requested portions of the IMCS. The CIA will file a separate declaration in this matter to justify its withholdings.

USPS

(110) The FBI identified information within the portions of the IMCS originating with the USPS. The FBI sent these records to the USPS for consultation. The USPS determined the records are protected from disclosure and affirmed Exemption 7 as an underlying Exemption to protect its information within the requested portions of the IMCS. Specifically, the USPS requested to protect information by Exemption (b)(7)(C) to protect the privacy of third parties involved in the investigation. The justification for withholding this material is the same as Exemption category (b)(6)-4 and (b)(7)(C)-4, described *supra* at ¶¶ 86-87. Accordingly, the FBI, per the request of the USPS, preserves the right to protect the privacy interests of the third parties pursuant to Exemption (b)(7)(C).

(111) Additionally, the USPS also requested the FBI preserve Exemption (b)(5), pursuant to the deliberative process and attorney work product privileges, to protect portions of the Bruce Ivins section of the IMCS from disclosure. See ¶¶ 63-66 for further description of Exemption (b)(5) and the deliberative process privilege. USPS determined the information requiring protection consists of inter-agency information that reflects the pre-decisional, deliberative processes of the agency, and consists of attorney work product prepared in anticipation of litigation.²³ As release of this internal information would harm the quality of agency deliberations and/or disclose internal attorney work product, it readily meets the requirements of the deliberative process and attorney work product privileges and is exempt from disclosure pursuant to Exemption (b)(5).

SEGREGABILITY

(112) The FBI provided all non-exempt records or portions of records to Plaintiff in responsive to his FOIA requests. During the processing of Plaintiff's requests, each responsive page was individually examined to identify non-exempt information that could be reasonably segregated from exempt information for release. All segregable information was released to Plaintiff. As demonstrated herein, the only information withheld by the FBI consists of information that would trigger reasonably foreseeable harm to one or more interests protected by the cited FOIA exemptions.

²³ The attorney work product privilege protects such tangible and intangible items as interviews, memoranda, correspondence, mental impressions, and personal beliefs prepared or developed by an attorney in anticipation of litigation. The privilege is predicated on the recognition that proper preparation of a case depends on an attorney's ability to assemble information, sort relevant from irrelevant facts, and prepare his/her legal theories and strategies without intrusive or needless scrutiny.

(113) In total, the FBI identified 486²⁴ responsive pages: 25 pages released in full (“RIF”), 182 pages released in part (“RIP”), and 279 pages withheld in full (“WIF”). Each of these categories is discussed below to further address segregability.

(a) Pages RIF. Following the segregability review, RIDs determined 25 pages could be released in full without redaction as there was no foreseeable harm to an interest protected by a FOIA exemption.

(b) Pages RIP. Following the segregability review, RIDs determined 182 pages could be released in part with redactions per the FOIA Exemptions identified herein. These pages comprise a mixture of material that could be segregated for release and material that was withheld as release would trigger foreseeable harm to one or more interests protected by the cited FOIA exemptions on these pages.

(c) Pages WIF. Following the segregability review, RIDs determined 38 responsive pages from the IMCS were Exempt in their entirety pursuant to Exemption (b)(5) and cited underlying FOIA exemptions. Additionally, within the responsive emails, the FBI identified 241 pages that are duplicates of emails provided to Plaintiff in part. This high percentage of duplicates is a result of there being three copies of the same email collection within the additional email records located by the FBI. The FBI reviewed this material and established the duplicate email communications were the same email communications already accounted for in the FBI’s productions. The FOIA and DOJ regulations do not require agencies to provide multiple copies of the same record to a requester. To do so would be an unduly burdensome exercise not calculated to provide additional responsive information to requesters. Accordingly,

²⁴ This includes the portions of the IMCS (38 pages), the emails (350 pages), and laboratory notebook #4282 (98 pages) responsive to Plaintiff’s narrowed requests.

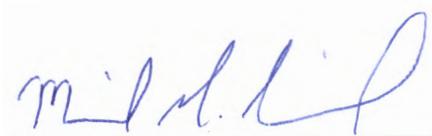
it is the well-settled practice of RIDS to withhold duplicate copies of a record already reviewed in order to speed processing and reduce duplication costs – all to the benefit of its requester community.

CONCLUSION

(114) The FBI conducted an adequate and reasonable search for responsive records; performed a segregability review; processed 448 and released in full or in part 207 pages of Bruce Ivins' notebook and email communications; and withheld 38 pages of the IMCS pursuant to Exemption (b)(5) and in conjunction with the deliberative process privilege. Within the documents released in part, the FBI asserted FOIA Exemptions (b)(6) and (b)(7)(C) to protect information the release of which would constitute unwarranted and clearly unwarranted invasions of personal privacy. Additionally, the FBI asserted underlying exemptions (b)(1), (b)(3), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E) for the portions of the IMCS sought by Plaintiff. The FBI determined there is no further non-exempt information that can be reasonably segregated and released.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and Exhibits A through GG attached hereto are true and correct copies.

Executed this 14th day of June, 2019.



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