

FBI Tries To Limit Info Searches

By Lloyd Vries CBS/AP January 21, 2005, 8:51 AM

The FBI is fighting in court to limit how hard it has to search for government documents requested by the public under the Freedom of Information Act, one of the main laws for ensuring openness in government.

If the bureau prevails, people could have a diminished chance of getting documents from the nation's most famous law enforcement agency, open records experts said.

In court, the [FBI](#) is defending a recent automated search that missed some documents that had been released years ago in a separate [FOIA](#) case.

Representing the FBI, the Justice Department asked a federal judge this month to dismiss this lawsuit and said its request should not be undermined "by an unsuccessful search for a document as long as the search was adequate." FBI officials declined to further address the ongoing litigation.

[Justice Department guidelines](#) say the law requires a search "reasonably calculated to uncover all relevant documents."

Legal and academic critics say the search in this case didn't meet that standard. They said they suspect the transfer of records from paper to electronic files has become an excuse for doing cursory searches that the government knows won't retrieve all relevant documents.

"We all thought that digitization of government documents and electronic FOIA would mean greater public access, but time and again we've seen government agencies use it as an excuse for obfuscation," said Jane Kirtley, a [University of Minnesota](#) journalism professor who has waged many FOIA battles. "They say, 'We don't have the software set up to find what you're looking for.'"

The lawsuit in question was filed by Salt Lake City lawyer Jesse Trentadue, who is pursuing a theory his brother Kenneth was murdered in a federal prison isolation cell in Oklahoma City on Aug. 21, 1995. Kenneth's bloody and bruised corpse raised questions of foul play among many officials, but local and federal investigations ruled his death a suicide.

Last summer, Trentadue requested:

- A Jan. 4, 1996, teletype from FBI Director Louis Freeh's office to the Oklahoma City and Omaha, Neb., offices that discussed the 1995 [Oklahoma City federal building bombers](#) (the FBI's OKBOMB case) and a Midwest gang of bank robbers (the FBI's BOMBROB case). He enclosed a newspaper story with excerpts from the teletype.
- The FBI's record of an interview Trentadue says he gave an agent and two Justice Department officials Aug. 12, 1996, discussing his dead brother and the bank robbery gang, including one member who resembled Kenneth.
- All documents about any connection between the [Southern Poverty Law Center](#) and eight named individuals from the OKBOMB and BOMBROB investigations or a white supremacist compound in Elohim City, Okla.

The FBI told Trentadue Nov. 18 it found no documents matching his requests.

Trentadue responded Nov. 30 by filing with the court a copy of the January 1996 teletype, which he had found in the meantime had been released under FOIA in 1997. Trentadue also submitted a copy of an August 1996 teletype from Freeh's office that said two of the bank robbers were present when Oklahoma City bomber Tim McVeigh called the Elohim City compound. That too was released years earlier under FOIA.

Trentadue asked the court to order another FBI search.

But this month, the Justice Department told the court that, despite not uncovering those documents, "the FOIA search in this case was reasonable."

David M. Hardy, chief of the FBI's record/information dissemination section, told the court the FBI had searched the general indices to its central records system and two shared computer drives in the Oklahoma City office.

Hardy, however, acknowledged the indices are not complete. "The FBI does not index every name in its files," Hardy told the court. The investigating agent and supervisors have discretion to index other names if they are "considered pertinent, relevant or essential for future retrieval."

It's not clear that any other federal agency has an index like the FBI's, and many federal agencies do paper rather than computerized FOIA searches.

Given the details Trentadue provided, Rebecca Daugherty, director of the FOI Service Center at the [Reporters Committee for Freedom of the Press](#), said the government's response "doesn't sound reasonable."

"To ignore the map given by the requester is something the FBI should not be doing," Daugherty said. "If a requester can accurately describe a case so the agency can easily find the file, then it's reasonable to search that case file."

Citing the litigation, FBI Assistant Director Cassandra Chandler declined to say how much detail requesters must supply to extend a search beyond FBI indices to case files.

She also declined to say how the "OKBOMB" search could fail to produce the January teletype, in which the first listed subject was "OKBOMB." Trentadue also supplied the correct date, sender, two accurate recipients and direct quotes.

Despite refusing in court this month to redo the search even after Trentadue supplied copies of two teletypes, the FBI changed its response once The Associated Press inquired about the case.

FBI spokesman Mike Kortan said that after Trentadue supplied the two documents the FBI was able to find them and would provide him copies.

By Michael J. Sniffen

© 2005 CBS Interactive Inc. All Rights Reserved. This material may not be published, broadcast, rewritten, or redistributed. The Associated Press contributed to this report.

Copyright © 2015 CBS Interactive Inc.
All rights reserved.