

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JESSE C. TRENTADUE,

Plaintiff,

v.

**FEDERAL BUREAU OF
INVESTIGATION and FEDERAL
BUREAU OF INVESTIGATION'S
OKLAHOMA CITY FIELD OFFICE,**

Defendants.

ORDER

Case No. 2:04CV772 DAK

This matter is before the court on Plaintiff Jesse C. Trentadue's Motion for Partial Summary Judgment, Defendants Federal Bureau of Investigation and Federal Bureau of Investigation's Oklahoma City Field Office (collectively, the "FBI" or "Defendants") Motion for Summary Judgment, and Plaintiff's Motion to Continue. A hearing on the motions was held on February 24, 2005.¹ At the hearing, Plaintiff (who is a lawyer) represented himself. The FBI was represented by Carlie Christensen. Before the hearing, the court considered carefully the memoranda and other materials submitted by the parties. Since taking the motions under

¹ At the hearing, the court also heard argument on three additional motions. At that time, the court denied Plaintiff's Motion to Strike the FBI Defendants' Statement of Undisputed Facts and granted Plaintiff's Motion to Supplement the Record and Plaintiff's Second Motion to Supplement the Record.

advisement, the court has further considered the law and facts relating to the motions. Now being fully advised, the court enters the following Order.

I. BACKGROUND

Plaintiff claims that during the course of investigating his brother's alleged murder, Plaintiff discovered that the Southern Poverty Law Center ("SPLC") and the FBI had conducted a joint sting operation at a white supremacist compound in Oklahoma, known as Elohim City. He also claims that Tim McVeigh was a visitor to Elohim City (which was also a paramilitary training camp) and that another visitor to Elohim City was Richard Lee Guthrie. Prior to McVeigh's execution, Plaintiff received a message—allegedly from McVeigh—stating that McVeigh believed that Trentadue was killed because of the FBI's mistaken belief that Trentadue was actually Richard Lee Guthrie (they apparently looked alike). Guthrie was one of McVeigh's accomplices in the Oklahoma City bombing and a member of the Mid-West Bank Robbery Gang. Approximately nine months after Trentadue was murdered, Guthrie was found hanging in his cell while in federal custody. Plaintiff believes that the FBI knew, through its informant, that the Murrah Building would be bombed.

In pursuit of proving his theory, Plaintiff filed this action under the Freedom of Information Act ("FOIA") to obtain documents and/or records which directly or indirectly, reported upon, concerned, referenced or referred to Morris Dees' and/or the *Southern Poverty Law Centers'* involvement with and/or connection to the Elohim City, OKBOMB, BOMBROB, Tim McVeigh, Richard Guthrie, Terry Nichols, Dennis Mahon, Robert Millar, Michael Brescia, Peter Langan and/or Andreas Strassmeir, including all contacts Dees or the SPLC may have

indirectly had with the foregoing individuals through informants. In this action, Plaintiff also seeks the 302 Report of an interview he gave to the FBI on or about August 12, 1996, concerning the *Mid-West Bank Robbery Gang*, Kenneth Michael Trentadue, and Richard Lee Guthrie.

II. SUMMARY OF THE MOTIONS

Plaintiff initially moved for partial summary judgment as to two documents and/or records subject to this FOIA action. Specifically, he sought

- (1) an electronic *Memorandum* from FBI Headquarters to the FBI's Oklahoma City Field Office and Omaha Field Office discussing an undercover operation involving the SPLC at a white supremacist compound in Oklahoma, which *Memorandum* further states that the SPLC had an informant at that compound who was aware that Tim McVeigh and others intended to blow up the Murrah Federal Building. This *Memorandum* was dated approximately January 4, 1996 and addressed the subject of "DOMESTIC SECURITY/TERRORISM." It concerned FBI Case No. 174A-OC-56120 and FBI Case No. 91A-OM-41859, which were, respectively the Oklahoma City bombing investigation known as "OKBOMB" and the "Mid-West Bank Robbery Investigation known as "BOMBROB."
- (2) The form 302 Report of an August 21, 1996 interview Plaintiff gave to representatives of the DOJ, including Oklahoma City FBI Agent Tom Linn. The purpose of the interview was to discuss evidence regarding the murder of Plaintiff's brother Kenneth Trentadue who was killed four months after the Oklahoma City bombing. During the interview, Plaintiff told Agent Linn about an anonymous call he had received in approximately

December 1995 during which he was told by that caller that Kenneth Trentadue had been murdered because he fit a profile involving the Mid-West Bank Robbery Gang.

According to the caller, this gang was suspected by the FBI of being involved in a robbery of banks to fund attacks upon the government and that Trentadue was killed because things got out of hand during the FBI's interrogation of him

The FBI subsequently filed a motion for summary judgment, requesting that the court dismiss the instant case on the ground that it cannot produce document that it does not have.

Plaintiff then obtained—from other sources—two redacted teletypes from the Director of the FBI that fall squarely within the scope of his FOIA request but were not produced. These documents had previously been released years ago pursuant to some other FOIA request.

Plaintiff claims that this discovery calls into serious doubt the FBI's veracity concerning the alleged non-existence of these documents. Plaintiff's copies are redacted, but he believes that, if he is correct in filling in the redacted portions, then "not only does it appear that the FBI Defendants knew about and fail[ed] to prevent the attack upon the Murrah Building, but FBI Defendants may have also been responsible for training McVeigh and the others who planned and carried out that attack." Thus, he claims, it is clear why the FBI would maintain that they cannot find such documents. Plaintiff now seeks unredacted copies of these documents.

Plaintiff further contends that the FBI has not done a proper search for the *302 Report*. He correctly claims that it is simply not credible that an FBI agent and federal prosecutors would travel from Washington, D.C. to Salt Lake City to speak with Plaintiff and not document the interview on the requisite *302 Report*. Because of the FBI's bad faith regarding the

Memorandum, Plaintiff requests that the court order the FBI to conduct another search for this document. He also seeks an order requiring the FBI to conduct another search for documents responsive to his FOIA request.

The FBI claims that even though its computerized search did not turn up these documents, its search was reasonable, and that is all that is required under FOIA. Therefore, it claims, it is entitled to summary judgment. Further, it refuses to produce unredacted copies, relying on various exemptions under FOIA regarding privacy interests of third parties and FBI personnel.

To prevail, the FBI must demonstrate its “good-faith effort to conduct a search for the requested records, using methods which [could] be reasonably expected to produce the information requested.” *Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). Stated another way, the court must ascertain whether the agency’s search was “reasonably calculated to discover the requested documents.” *Maynard v. Central Intelligence Agency*, 968 F.2d 547, 559 (1st Cir. 1993).

The court finds that the FBI has failed to satisfy this standard. Given the specific nature of Plaintiff’s requests in this case—and Plaintiff’s specific evidence that at least some of the requested documents do exist and reasonably should have been found by the FBI—the court finds that the FBI’s search was not reasonably calculated to discovery the requested documents.²

² This is particularly true in this case where Plaintiff has obtained a teletype to field offices from FBI headquarters apparently directing field offices that, with respect to the Trentadue murder investigation, “documents/reports prepared during this investigation **must not be uploaded** into the Automated Case Support (ASC) system, until advised to the contrary by OPR.” Moreover, Plaintiff has produced evidence that the FBI lobbied former Senator Don

When the FBI's computer search did not identify any responsive documents, it was incumbent upon the FBI to review the actual files for such documents.

Further, the court finds no merit to the FBI's claims that certain documents are exempt under Exemptions 6 and/or Exemption 7 because of privacy concerns. Either the exemptions do not apply or, to the extent that the court is required to apply a balancing test, the court finds that the public's interest in knowing the information outweighs the interest of the individuals in keeping such information confidential.

Accordingly, the court hereby orders that, by June 15, 2005, (1) the FBI search files 17A-OC-5612 and 91A-OM-41859 for the SPLC-Bombing Memorandum and produce an unredacted copy of that document to Plaintiff; (2) the FBI search official case file 100A-PH-79375 for the BOMBROB-Funding Memorandum and to immediately produce an unredacted copy of that document to Plaintiff; (3) the FBI search files 70A-OC-56502, 90C-OC-60694 and 282-OC-56502 for the Linn FD-302 and Linn interview notes and produce unredacted copies of those documents to Plaintiff; (4) FBI search the foregoing files for other documents responsive to Plaintiff's FOIA Request and to produce them. Upon motion, the court will permit Plaintiff to conduct discovery should the FBI fail to produce documents and/or records responsive to his FOIA request.


III. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for Partial Summary

Nickels of Oklahoma to obtain his assurances that no Senate Judiciary Committee oversight would take place with respect to the FBI's handing of the Trentadue investigation.

Judgment (as modified by Plaintiff in his modified request set forth in his Memorandum in Support of his Rule 56(f) Motion) [docket # 8] is GRANTED, as set forth above. The FBI's Motion for Summary Judgment [docket # 14] is DENIED. Plaintiff's Rule 56(f) Motion for a Continuance [docket # 17] is MOOT.

DATED this 5th day of May, 2005.



DALE A. KIMBALL
United States District Judge