

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



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 JESSE C. TRENTADUE, )  
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 Plaintiff, )  
 )  
 v. )  
 )  
 CENTRAL INTELLIGENCE AGENCY, et al. )  
 )  
 Defendants. )  
 \_\_\_\_\_)

Civ. A. No. 2:08-CV-00788

**FOURTH SUPPLEMENTAL DECLARATION OF DAVID M. HARDY**

I, David M. Hardy, declare as follows:

(1) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), formerly at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C., and now relocated to Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 21, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the state of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 276 employees who staff a total of ten (10) units and two field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for

access to FBI records and information pursuant to the FOIA; Privacy Act; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. 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 requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the treatment which has been afforded by the FBI in responding to plaintiff's October 12, 2008 FOIA request.

(4) I have reviewed the plaintiff's August 15, 2011, memorandum in support of his renewed 56(d) motion and in response to the FBI's supplemental brief, together with the exhibits attached thereto, and I submit this declaration in order to address certain points newly raised in plaintiff's filing. This declaration supplements and incorporates the information previously provided in the declarations of David M. Hardy, dated July 16, 2010 ("Hardy Declaration"), September 15, 2010 ("Supplemental Hardy Declaration"), January 28, 2011 ("Second Supplemental Hardy Declaration"), and June 30, 2011 ("Third Supplemental Hardy Declaration").

(5) Plaintiff references a public presentation that an FBI employee, Barry Black, gave describing certain aspects of the Oklahoma City bombing investigation, and summarizing how the FBI was able to identify and locate Timothy McVeigh. I have reviewed the relevant portion of Special Agent Black's presentation and have no reason to conclude that Special Agent Black's references to "three databases," or to an "evidence collection log," were intended to identify filing

systems that I have not already described in prior declarations submitted to the Court. Special Agent Black's presentation did not suggest any additional method of searching for videotapes collected during the OKBOMB investigation, and I have no reason to believe that Special Agent Black has any information regarding any additional videotapes responsive to plaintiff's FOIA Request. While Special Agent Black referenced a "photo log" in connection with the OKBOMB investigation, he did not reference any "videotape log." No separate videotape log was compiled in connection with the OKBOMB investigation; thus, no such log could serve as a separate source of information about videotapes potentially responsive to plaintiff's FOIA Request.

(6) Plaintiff and his declarant Mr. Johnson reference a "1B" or "bulky" subfile. The "1B" or "bulky" file is a term used to designate boxes in an Evidence Collection Center ("ECC") or Evidence Collection Room ("ECR"), in which evidence is stored. The evidence items or boxes are assigned 1B file numbers in order to aid in retrieval once the location of the evidence is determined using electronic search methodologies, as I have previously described. As I have previously explained, the ECR in the OKBOMB Warehouse is where the FBI currently stores all evidence in its possession related to the OKBOMB investigation. As I have also previously explained, the evidence in the OKBOMB ECR has already been manually searched. Second Supplemental Hardy Declaration ¶ 5. The FBI has therefore already searched the "1B" or "bulky" file that plaintiff references. No additional records responsive to plaintiff's FOIA Request were found during that search. *Id.*

(7) Plaintiff and his declarant Mr. Johnson reference an "ECC log," by which they appear to mean the copies of FD-192s that are kept in the ECR together with the evidence itself. As I have previously explained, FD-192s are indexed in the FBI's Automated Case Support

system (“ACS”),<sup>1</sup> and FD-192s related to the OKBOMB investigation were also uploaded in the OKBOMB ZyIndex. Supplemental Hardy Declaration ¶¶ 5-6; Third Supplemental Hardy Declaration ¶ 13. The physical copies of FD-192s in the OKBOMB ECR would therefore be additional copies of records that are already included in both ACS and in the ZyIndex.<sup>2</sup> Any FD-192s that reference videotapes responsive to plaintiff’s FOIA Request would have already been located during the electronic searches that have already been conducted. In addition, the

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<sup>1</sup> The entry into ACS of an FD-192 recording the collection of the evidence is what generates a 1B file number for that evidence. Thus, the existence of a 1B file number indicates that the FD-192 has been entered into ACS. For example, the plaintiff cites a FD-302 (which the FBI provided to him in response to his FOIA Request) that references the receipt of copies of certain evidence, including videotapes, related to OKBOMB, which were placed in the ECR and labeled as 1B2554. Plaintiff’s Memorandum at 12. In addition to the FD-302, the FBI’s electronic ZyIndex search also located the FD-192 associated with these materials, and the FBI also provided that record to plaintiff in response to his FOIA Request. See dkt. #23-6, at 4. The FD-192 indicates that the materials referenced had been used in grand jury proceedings and were now to be stored in the OKBOMB ECR. The materials themselves, if they remain in the FBI’s possession, would have been among the material searched during the manual search of the OKBOMB ECR. The same is true for the other videotapes referenced in the approximately 75 other FD-192s that the FBI located through its electronic search and provided to plaintiff. See dkt. #23-4, at 8, to 23-6, at 20.

<sup>2</sup>Plaintiff’s declarant Mr. Johnson states that one copy of a FD-192 is kept with the evidence and another copy is “placed in the Sub-file ‘1B’ or bulky sub-file.” Supplemental Johnson Declaration ¶ 12. This statement incorrectly suggests that the location where evidence is kept and the “1B” file are two separate things. As I have explained, a “1B” file number designates the physical evidence itself, or the box where it is kept. In the OKBOMB records, only one copy of a FD-192 was kept with the evidence; the same FD-192 would also have been indexed in the ACS and uploaded in the ZyIndex. The plaintiff is also mistaken in his assertion that FD-302s are kept in “Sub-file 1B.” Plaintiff’s Memorandum in Support of Renewed 56(d) Motion at 9 (citing Johnson Supplemental Declaration ¶ 25, which does not include that assertion). As I have explained, FD-302s prepared in connection with the OKBOMB investigation would have been indexed in the ACS and uploaded in the ZyIndex. While FD-302s (like other categories of FBI forms) sometimes reference evidence, they are not kept with the evidence itself. In the OKBOMB investigation file, FD-302s are in subfile D. Neither subfile D nor any other subfile in the OKBOMB investigation file is designated exclusively for information about videotapes.

evidence itself in the OKBOMB Warehouse ECR has already been manually searched. A manual search of the copies of FD-192s in the OKBOMB ECR would be very unlikely to locate any additional videotapes or other records responsive to plaintiff's FOIA Request.<sup>3</sup>

(8) Plaintiff now suggests that, in connection with the paper files stored in the OKBOMB Warehouse, he only wants the FBI to conduct a manual search of "entries/filings in Sub-File D" during the first 14 days of the OKBOMB investigation. Paragraph 4 of the Court's May 13, 2011, Order was not limited to subfile D. In response to the Court's Order, I have explained the burdens associated with manually searching the first 14 days' worth of paper files. Third Supplemental Hardy Declaration ¶ 11. I also explained that "documents referencing evidence collected during the first 14 days of the OKBOMB investigation could be anywhere in the paper files in the OKBOMB Warehouse." Id. I also explained that a manual search of these paper files would be unlikely to locate any additional responsive material. Id. ¶ 12. In order to estimate the burdens associated with the manual search proposed by the Court, it was necessary for an FBI OCFO employee to travel offsite to the OKBOMB Warehouse and physically examine and measure the paper files in question, including the various separate sets of paper files that came from other offices at the time that all OKBOMB material was consolidated in the

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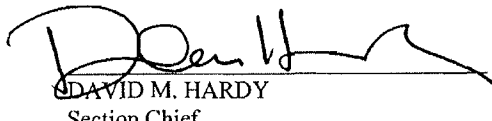
<sup>3</sup>To the extent plaintiff's declarant Mr. Johnson intended to suggest that there is an "ECC log" in some central location in the ECR that would "reflect[] the status of any evidence," Johnson Supplemental Declaration ¶ 12, that suggestion is incorrect. There is a sign-in log in the OKBOMB Warehouse ECR that records the names of individuals who enter or leave the ECR, but it does not record any information about evidence. Chain of custody information about evidence is recorded on sheets attached to the FD-192s that are kept with the evidence, and any chain of custody events recorded on these forms are also electronically entered into ACS. Again, a manual search of these records is very unlikely to locate any additional material responsive to plaintiff's Request, particularly when the evidence itself, with which these records are kept, has already been manually searched.

OKBOMB Warehouse. Because any of these separate sets of paper files might have "subfile D" material, the entire process would have to be repeated in order to assess the burdens associated with manually searching the first 14 days' worth of material in "subfile D." Because a manual search of the relevant portions of D subfiles would be unlikely to locate additional responsive material, and because the Court's May 13, 2011, Order did not request information about such a search, I have not requested that OCFO staff engage in the task of visiting the OKBOMB Warehouse once again and measuring the relevant D subfiles in order to estimate the burdens of plaintiff's new proposed search.

(9) Having reviewed plaintiff's latest filing, I remain satisfied that all locations reasonably likely to contain records responsive to plaintiff's FOIA Request have been searched and all responsive records located through these searches have been provided to plaintiff.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22<sup>nd</sup> day of September, 2011.

  
DAVID M. HARDY  
Section Chief  
Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
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