

## FOIA trial offers rare look into how FBI searches records, responds to requests

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Evidence from an ongoing Freedom of Information Act trial has shed light on how the Federal Bureau of Investigation handles FOIA requests from the public.

The case, *Trentadue v. FBI*, was filed by Jesse Trentadue in the U.S. District Court for the District of Utah after the FBI failed to turn over videotapes of the Murrah Federal Building bombing in Oklahoma City in 1995.

In the Reporters Committee's experience, it is rare for FOIA cases to go to trial - cases are usually settled or disposed of through pre-trial motions.

David Hardy, the chief of the FBI's Records Information Dissemination Section (RIDS) that manages FOIA requests, and other RIDS personnel testified publicly about how the FBI manages its records. In 2001, the FBI had been [sanctioned](#) after a judge determined Hardy had misrepresented the availability of FOIA records to the court.

In that case, the FBI had contended it could not find any records; later it admitted that it found documents, but could not disclose their existence to the court for national security reasons, although the court noted that the FBI could have requested in camera review.

"Simply put, the Government lied to the court," Judge Cormac Carney wrote.

The latest testimony from the *Trentadue* case shows that reporters and members of the public who send FOIA requests to the FBI might not know that there are a myriad of different records "systems" that they need to specify in order for a comprehensive search to take place. They might not know that the FBI typically only searches for the location of the main file related to an investigation as reported to headquarters, so reporters should also request cross-references, which are mentions of the subject of their request in investigations outside of the main file. While field offices have FOIA-trained personnel to assist RIDS, reporters should also send FOIA requests directly to individual field offices they think are relevant to the investigation, because RIDS may only request documents from the field office associated with the main file.

The FBI's Central Records System (CRS) contains the "universe of records" the FBI has acquired in its law enforcement operations. According to trial testimony in the *Trentadue* case, the Automated Case Support system ("ACS") searches the CRS, and the ACS is split into three components: the Investigative Case Management system ("ICM"), the Electronic Case File ("ECF"), and the Universal Index ("UNI").

The ICM is a case management tool for documents involved in an ongoing investigation. The ECF is broader and contains all FBI law enforcement documents uploaded to the CRS except for some aged documents, or documents not uploaded for unknown reasons. Importantly, the ECF searches the text of the documents themselves.

The testimony showed that the FBI did not conduct an ECF search to find records responsive to Trentadue's request, even though Hardy had testified that all of the records related to the Oklahoma City bombing had been uploaded into the ACS system. Instead, testimony revealed that it is the FBI's policy to conduct UNI searches in response to FOIA requests. FOIA requesters need to state specifically which databases they want searched if they want a search beyond UNI to be conducted, testimony showed.

UNI searches differ from ECF searches in that UNI does not search the text of the documents themselves. Instead, UNI searches for keywords, which are entered by agents working on the investigations.

UNI can indicate in which field office physical evidence is located if an entire investigation is encompassed by a keyword. However, an ECF search can help to reveal whether or not a given record exists at all with more specificity than UNI, because physical evidence is often referred to within the text of documents and UNI would typically only identify where the entirety of the evidence for an investigation is located, not whether a particular record exists.

Testimony revealed that the one search of the CRS was made using the generic UNI keyword "OKBOMB," even though there was a wide range of keywords that could have been used in a text-based ECF search.

Shawn Musgrave, projects editor at MuckRock, said that while the FBI is good about providing status updates to FOIA requests and responding to correspondence, the process is often surprisingly lengthy for the number of documents received.

"Sometimes they will just shoot me back a 'Didn't find anything in the CRS' answer, and then I'll have to go back and say, 'I didn't ask from the CRS,' " Musgrave said. " 'This is not a keyword search. I'm looking for a particular document that I know you have, that one of your own emails referred to. That's the document that I'm after.' "

The FBI sometimes appears to wait for requesters to sue before conducting a full search, Musgrave added.

"There should not be a disparity in tools" between what exists and what are used in FOIA requests, Musgrave said. "That really undercuts their argument that it's unreasonable to search [in some situations]."

Even in the rare case where a requester has known to ask for an ECF search, the FBI has occasionally [refused](#) to conduct it.

Testimony also revealed that Linda Vernon, a forensic accountant with the FBI in Oklahoma City who had no training in FOIA practices, conducted the search for records responsive to Trentadue's request. Vernon had previously helped to assemble the FBI's discovery evidence while the bombing was being investigated.

Trentadue has alleged in court filings that the FBI "created a situation of tactical ignorance whereby Ms. Vernon could reasonably be expected to fail in terms of locating and/or producing videotapes and documents responsive to Plaintiff's FOIA request."

In addition, testimony suggested that Vernon had conducted a search of records on what was essentially a personal database for the Oklahoma City bombing instead of on the wider universe of records held by the FBI. The statements made at trial had also shown that some requests for information are flagged for Hardy's attention at the beginning of the request process due to their potential for litigation.

Hearings before the House Oversight and Government Reform Committee last week [took aim](#) at political flagging of FOIA requests across the federal government, among other issues related to FOIA, specifically including political vetting of documents related to Hillary Clinton.

Journalists and attorneys have also expressed concern in the past that the FBI has withheld evidence from the discovery process by placing records outside the CRS.

John Solomon of the Associated Press in 2004 [documented](#) the existence of so-called "I-Drives" used by the FBI, which were file-sharing drives used in the course of case management but which defense lawyers said could be used to withhold evidence. Testimony showed that the I-Drives have been replaced by "S-Drives," which serve essentially the same function. Trentadue alleges the FBI failed to search S-Drives for records responsive to his FOIA request.

A database of electronic surveillance information outside the CRS, ELSUR, was also discussed at trial.

Notably, judgment in the trial — which is a bench trial — is being withheld after U.S. District Judge Clark Waddoups [appointed](#) U.S. Magistrate Judge Dustin Pead to investigate witness tampering claims that the FBI instructed a former FBI agent not to testify in this trial.

Christopher Allen, an FBI spokesman, declined to comment, citing ongoing litigation.

In the District of Utah, the case number is 2:08-cv-00788-CW-DBP.

Transcripts of testimony: