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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREEDOM OF THE PRESS FOUNDATION and KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY,

Plaintiffs,

- against -

DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, CENTRAL INTELLIGENCE AGENCY, and OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE,

Defendants.

No. 17 Civ. 9343 (JGK)

DECLARATION OF STEPHEN CHA-KIM

Stephen Cha-Kim declares as follows pursuant to 28 U.S.C. § 1746:

1. I am an Assistant United States Attorney in the office of Geoffrey S. Berman, United States Attorney for the Southern District of New York. I am assigned to represent the Defendants in this action, and I am fully familiar with the facts and circumstances set forth herein. I make this declaration in order to put before the Court certain documents in support of Defendants' motion for summary judgment.

2. A true copy of a list of the remaining "issues and withholdings" Plaintiffs intended to challenge in this case, dated November 6, 2019, is attached hereto as Exhibit A.

3. A true copy of an amended list of the remaining issues and withholdings Plaintiffs intended to challenge in this case, dated January 22, 2020, is attached hereto as Exhibit B.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
January 23, 2020

/s/ Stephen Cha-Kim
STEPHEN CHA-KIM
Assistant United States Attorney

Exhibit A

Freedom of the Press Foundation v. Department of Justice, Case No. 1:17-cv-09343
November 6, 2019

Plaintiffs intend to challenge the following issues and withholdings:

CIA

1. Plaintiffs challenge the five documents withheld in full pursuant to (b)(1), (b)(3), (b)(5), and (b)(6) and referenced in the CIA's response letter dated July 31, 2018.

DOJ-Crim

10/1/2018 Interim Production

1. Plaintiffs challenge the withholding of the following information from the documents listed below: (1) all information in each package concerning enforcement proceedings that have already concluded, but only to the extent that the information is being withheld solely under Exemption 7(A); (2) any description of the requirements in 28 C.F.R. § 50.10 and/or the PPA; (3) any final authorization decision; and (4) the basic facts underlying any final authorization decision, specifically: (i) the name of any member of the news media targeted by the approved request; (ii) the name of any news organization with which a named news media member is affiliated; (iii) information regarding the news media member's relationship to the investigation; (iv) the approved method of information collection; (v) the documents, objects, or other information sought through the approved method of information collection; and, where relevant, (vi) the place(s) approved to be searched.

    a. Requests pursuant to 28 C.F.R. § 50.10 and/or PPA for authorization to obtain a search warrant where the request was approved, specifically documents no. 15, 16, 21, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 43, 45, 47, 48, 51, 54, 61, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, and 82.

    b. Requests pursuant to 28 C.F.R. § 50.10 for authorization to issue a subpoena where the request was approved, specifically documents no. 3, 4, 5, 6, 13, 14, 19, 20, 22, 26, 29, 30, 32, 33, 34, 35, 37, 40, 42, 44, 49, 50, 53, and 55.

    c. Requests pursuant to 28 C.F.R. § 50.10 for authorization to question a member of the news media where the request was approved, specifically documents no. 8, 17, and 46.

    d. Requests pursuant to 28 C.F.R. § 50.10 for authorization to arrest where the request was approved, specifically document no. 23.

e. Requests pursuant to 28 C.F.R. § 50.10 for authorization to seek a show cause order directed at a member of the news media where the request was approved, specifically document no. 41.

f. Requests pursuant to 28 C.F.R. § 50.10 for authorization to obtain orders under 18 U.S.C. § 2703(d) and 18 U.S.C. § 3123, and to issue a grand jury subpoena, where the request was approved, specifically document no. 57.

Note: The agency has provided much of this information in the form of draft *Vaughn* indices that are marked "for settlement purposes only." If the agency agrees to provide that information, in addition to the relevant information for Document 80, in official form that Plaintiffs can share publicly, Plaintiffs will drop their challenge to the withholding of this category of information.

10/31/2018 Interim Production:

2. Plaintiffs challenge pages 1 and 4 of a PowerPoint presentation titled "News Media Policy" and dated February 2018. These pages were withheld in full pursuant to (b)(5), as noted in DOJ-Crim's responses to Plaintiffs' questions from April 19, 2019.

11/30/2018 Interim Production:

3. Plaintiffs challenge 17-cv-9343 Third Production.pdf, page 6, form titled "News Media Policy Consultation." This form was withheld in part pursuant to (b)(5).

06/27/2019 Supplemental Production:

4. Plaintiffs challenge 17-cv-9343 Supplemental Release to Plaintiffs.pdf, pages 25–30, PowerPoint presentation titled "News Media Policy" and dated November 30, 2017. This presentation was withheld in part pursuant to (b)(5). Plaintiffs challenge only slide 8 of the presentation, titled "Obtaining information from, or Records of, MONM: Considerations."

FBI

1. FBI's search: FBI stated that it did not find any records responsive to item 1(e) of parties' Final Processing List, which sought all requests or statistical information concerning requests for approval to issue NSLs for the acquisition of records or information of or about members of the news media, submitted to a variety of FBI officials or pursuant to section G.12 of Appendix G of the DIOG.

    a. Plaintiffs challenge the agency's possible reliance on § 552(c) with respect to item 1(e) of the Final Processing List, as well as the adequacy of the agency's search with respect to item 1(e).

2. Withholdings: Plaintiffs challenge the following documents, which have been withheld in part pursuant to (b)(7)(E) unless otherwise noted:

    a. 17-cv-09343 (4-12).pdf, PowerPoint presentation titled "Legal Issues: First Amendment Protected Activity." Plaintiffs challenge only slide 3 of the presentation, Bates stamped FBI(17cv9343)-12 ("Is this protected speech?").

    b. 17-cv-09343 (20-35).pdf, PowerPoint presentation titled "Legal/Policy Issues: Domestic Terrorism Investigations CTIOPS Training – 2018." Plaintiffs challenge only slides 15 and 16, Bates stamped FBI(17cv9343)-34 ("Hypotheticals") and FBI(17cv9343)-35 ("Still protected speech?").

    c. 17-cv-09343 (36-44).pdf, PowerPoint presentation titled "Legal Issues in Domestic Terrorism Investigations." Plaintiffs challenge only slide 5, Bates stamped FBI(17cv9343)-40 ("The First Amendment").

    d. 17-cv-09343 (377-378).pdf, § 16.9.3 ([title redacted])

    e. 17-cv-09343 (383-384).pdf, § 18.5.6.4.8 ("Members of the New Media"), specifically:

        i. § 18.5.6.4.8.1 ("Approval Requirements")

        ii. § 18.5.6.4.8.2 ("Use of Subterfuge with a Member of the News Media")

    f. The following subsections of § 18.6.6.3:

        i. 17-cv-09343 -(387-388).pdf, § 18.6.6.3.3 of DIOG ("Approval Requirements")

        ii. 17-cv-09343 -(387-388).pdf, § 18.6.6.3.4 ("Standards for Issuing NSLs")

        iii. 17-cv-09343 -(387-388).pdf, § 18.6.6.3.5 ("Special Procedures for Requesting Communication Subscriber Information")

        iv. 17-cv-09343 (389).pdf, § 18.6.6.3.7.4 ("Contact with Members of the News Media by a [redacted]")

    g. 17-cv-09343 (393-394).pdf, § 19.10.1 ("Arrest of Members of the News Media – Exigent Circumstances")

    h. 17-cv-09343 (395-422).pdf, G.12 ("National Security Letters for Telephone Toll Records of Members of the News Media or News Organizations")

    i. FBI(17-cv-09343) 902-917.pdf, PowerPoint presentation titled "Privacy and Civil Liberties Training: Social Media Tools." Plaintiffs challenge only slides 2, 4,

6, and 10, Bates stamped FBI(17cv9343)-903 ("Overview"), FBI(17cv9343)-905 ("Free Speech"), FBI(17cv9343)-909 ("Public vs. Gov't Collection of 1st Amendment Activity"), and FBI(17cv9343)-914 ("Mitigating Privacy & 1st Amendment Concerns").

j. FBI(17-cv-09343) Bates 1013-1020.pdf, document titled "Counterintelligence Division Policy Directive and Policy Guide," specifically § 3.7.2 ("Standards to initiate an investigation"), § 3.7.3 ([title redacted]), § 3.7.5 ([title redacted]), § 3.7.6 ([title redacted]), § 3.7.7 ("Media"), and § 3.8 ([title redacted]).

k. FBI(17-cv-09343) Bates 1021-1037.pdf, PowerPoint presentation titled "FBI Media Leak Investigations." Plaintiffs challenge only slides 8 and 9, Bates stamped FBI(17cv9343)-1033 ("[redacted] Issues with Media Leak Cases") and FBI(17cv9343)-1034 ("[redacted] Obstacles").

l. FBI(17-cv-09343) Bates 1052-1054.pdf, document titled "Best Practices for Media Policy," withheld in part pursuant to (b)(1), (b)(3), and (b)(7)(E).

m. FBI(17-cv-09343) Bates 1065-1067.pdf, document titled "National Security Letters," withheld in part pursuant to (b)(1), (b)(3), and (b)(7)(E).

Exhibit B

Freedom of the Press Foundation v. Department of Justice, Case No. 1:17-cv-09343
January 22, 2020

Plaintiffs intend to challenge the issues and withholdings listed below. Plaintiffs also contend that the government has failed to release all reasonably segregable portions of these records.

DOJ-Crim

10/31/2018 Interim Production:

1. Plaintiffs challenge page 1 of a PowerPoint presentation titled "News Media Policy" and dated February 2018. This page was withheld in full pursuant to (b)(5), as noted in DOJ-Crim's responses to Plaintiffs' questions from April 19, 2019.

11/30/2018 Interim Production:

2. Plaintiffs challenge 17-cv-9343 Third Production.pdf, page 6, form titled "News Media Policy Consultation." This form was withheld in part pursuant to (b)(5).

FBI

1. FBI's search: FBI stated that it did not find any records responsive to item 1(e) of parties' Final Processing List, which sought all requests or statistical information concerning requests for approval to issue NSLs for the acquisition of records or information of or about members of the news media, submitted to a variety of FBI officials or pursuant to section G.12 of Appendix G of the DIOG.

    a. Plaintiffs challenge the agency's possible reliance on § 552(c) with respect to item 1(e) of the Final Processing List, as well as the adequacy of the agency's search with respect to item 1(e).

2. Withholdings: Plaintiffs challenge the following documents, which have been withheld in part pursuant to (b)(7)(E) unless otherwise noted:

    a. 17-cv-09343 (4-12).pdf, PowerPoint presentation titled "Legal Issues: First Amendment Protected Activity." Plaintiffs challenge only slide 3 of the presentation, Bates stamped FBI(17cv9343)-12 ("Is this protected speech?").

    b. 17-cv-09343 (20-35).pdf, PowerPoint presentation titled "Legal/Policy Issues: Domestic Terrorism Investigations CTIOPS Training – 2018." Plaintiffs challenge only slides 15 and 16, Bates stamped FBI(17cv9343)-34 ("Hypotheticals") and FBI(17cv9343)-35 ("Still protected speech?").

c. 17-cv-09343 (36-44).pdf, PowerPoint presentation titled "Legal Issues in Domestic Terrorism Investigations." Plaintiffs challenge only slide 5, Bates stamped FBI(17cv9343)-40 ("The First Amendment").

d. 17-cv-09343 (377-378).pdf, § 16.9.3 ([title redacted])

e. 17-cv-09343 (383-384).pdf, § 18.5.6.4.8 ("Members of the New Media"), specifically:

   i. § 18.5.6.4.8.1 ("Approval Requirements")

   ii. § 18.5.6.4.8.2 ("Use of Subterfuge with a Member of the News Media")

f. The following subsections of § 18.6.6.3:

   i. 17-cv-09343 -(387-388).pdf, § 18.6.6.3.3 of DIOG ("Approval Requirements")

   ii. 17-cv-09343 -(387-388).pdf, § 18.6.6.3.4 ("Standards for Issuing NSLs")

   iii. 17-cv-09343 -(387-388).pdf, § 18.6.6.3.5 ("Special Procedures for Requesting Communication Subscriber Information")

   iv. 17-cv-09343 (389).pdf, § 18.6.6.3.7.4 ("Contact with Members of the News Media by a [redacted]")

g. 17-cv-09343 (393-394).pdf, § 19.10.1 ("Arrest of Members of the News Media – Exigent Circumstances")

h. 17-cv-09343 (395-422).pdf, G.12 ("National Security Letters for Telephone Toll Records of Members of the News Media or News Organizations")

i. FBI(17-cv-09343) 902-917.pdf, PowerPoint presentation titled "Privacy and Civil Liberties Training: Social Media Tools." Plaintiffs challenge only slides 2, 4, 6, and 10, Bates stamped FBI(17cv9343)-903 ("Overview"), FBI(17cv9343)-905 ("Free Speech"), FBI(17cv9343)-909 ("Public vs. Gov't Collection of 1st Amendment Activity"), and FBI(17cv9343)-914 ("Mitigating Privacy & 1st Amendment Concerns").

j. FBI(17-cv-09343) Bates 1013-1020.pdf, document titled "Counterintelligence Division Policy Directive and Policy Guide," specifically § 3.7.2 ("Standards to initiate an investigation"), § 3.7.3 ([title redacted]), § 3.7.5 ([title redacted]), § 3.7.6 ([title redacted]), § 3.7.7 ("Media"), and § 3.8 ([title redacted]).

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l. FBI(17-cv-09343) Bates 1052-1054.pdf, document titled "Best Practices for Media Policy," withheld in part pursuant to (b)(1), (b)(3), and (b)(7)(E).

m. FBI(17-cv-09343) Bates 1065-1067.pdf, document titled "National Security Letters," withheld in part pursuant to (b)(1), (b)(3), and (b)(7)(E).