

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
STEPHEN BRAGA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 12-CV-0139-JEB
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
_____)	

DECLARATION OF DENNIS J. ARGALL

I, Dennis J. Argall, declare as follows:

(1) I currently serve as the Assistant Section Chief of the Record/Information Dissemination Service (“RIDS”), Records Management Division (“RMD”), at the Federal Bureau of Investigation Headquarters (“FBIHQ”). RIDS is physically located in Winchester, Virginia. In the absence of RIDS Section Chief David M. Hardy, I serve as Acting Section Chief for RIDS. I became the Assistant Section Chief on November 1, 2008. From August 18, 2008 until October 31, 2008, I was the Unit Chief of the Litigation Support Unit in RIDS. I have been employed by FBI since August 18, 2008. Prior to my joining the FBI, from July 11, 2005 until July 10, 2008, I was on active duty in the United States Navy and assigned to United States Fleet Forces Command, located in Norfolk, Virginia, as the Fleet Judge Advocate. In that capacity, I was responsible for reviewing all information being released under the Freedom of Information Act (“FOIA”). From August 17, 1983 to July 11, 2005, I served as an active duty Navy Judge Advocate at various commands and routinely dealt with FOIA matters, including a tour from January 1987 to September 1988 with the Department of the Navy Litigation Office, where I was

a litigation counsel for FOIA matters. I am also an attorney who has been licensed to practice law by the State of Wisconsin since 1983.

(2) In my official capacity as Acting Section Chief of RIDS, I supervise approximately 276 employees who staff a total of ten (10) FBIHQ 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, as amended by the OPEN Government ACT of 2007; the Privacy Act of 1974; 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, 5 U.S.C. § 552a. Specifically, I am aware of the FBI's treatment of the FOIA requests submitted by plaintiff concerning the assistance the FBI provided to the West Memphis Police Department in its investigation of the murders of Steven Branch, Michael Moore, and Christopher Byers on May 15, 1993.

(4) This is my first declaration in this case and the FBI's second declaration. My declaration supplements and incorporates by reference the information previously provided by RIDS Section Chief David M. Hardy in his declaration of July 19, 2012. *See* Dkt. No. 12-1 (hereinafter "Hardy Decl."). This declaration is submitted in further support of the FBI's motion for summary judgment.

(5) In his response, plaintiff argues that the FBI's search was inadequate because it did not locate FBI Laboratory ("Lab") documents, such as the one he attached to his Complaint. While the FBI's initial searches were adequate because they consisted of searches of the record systems that the FBI determined were the only systems likely to contain responsive records and while the Lab previously confirmed that RIDS had located the correct responsive file, the FBI took additional steps to ensure that the records responsive to plaintiff's FOIA requests had been located and processed.

(6) The Lab conducted additional searches to determine whether it had any responsive records that were not located in the case file. First, the Lab searched its database using the FBI case file number - 252B-LR-34807/62D-LR-34807¹ – as well as the Lab file number – 30701048 S ZG. That search showed that all records and materials related to the case were sent back to the Little Rock Field Office by the Lab, and are stored in the 34807 file. The Lab started with a search of its database in order to give personnel an idea of where to look for any additional records, by identifying which examiner(s) handled the case and which examinations were done. Next, using the file numbers, the Lab's file room clerk went to the place in the file room where the file would have been located numerically had it been there, and hand searched the files before and after the file number, but found nothing related to the case. Finally, the search of the computer database showed that the Lab conducted only soil analysis in this case, so the Lab's Trace Evidence Unit was contacted directly to determine whether responsive records were maintained in their offices. The soil analyst who conducted the tests in this case retired years ago. The Lab currently employs two mineralogists/soil analysts. Both current analysts explained that none of the retired analyst's records are retained in their space.

¹ In or around December 1993, the FBI administratively changed the classification for this file from 252 to 62. It is the same file.

The current analysts moved offices several years ago, and any records of the retired analyst that they located were sent to the Lab's file room or to the pertinent case file. Thus, had the current analysts located any records that would have been responsive to plaintiff's FOIA requests, those records would have been forwarded to the Lab's file room, which as we explained above, was searched without locating any responsive records, or to the pertinent case file, which RIDS processed and released to plaintiff.

(7) Plaintiff also suggested that an adequate search of the FBI's CRS should include the terms "West Memphis Police Department," "Inspector Gary Gitchell," and "Arkansas State Crime Laboratory." Those are not terms that the FBI would typically index, or that RIDS would typically use to search for responsive records. In an abundance of caution, however, the FBI conducted additional word searches of the CRS for "West Memphis Police Department" and "Arkansas State Crime Laboratory," and located no responsive records using those terms.² As to Inspector Gary Gitchell, it is the FBI's policy to neither confirm nor deny the existence of records indexed by third parties' names in the absence of privacy waivers or proofs of death, and where there is no overriding public interest, pursuant to FOIA Exemptions (b)(6) and (b)(7)(C). 5 U.S.C. § 552(b)(6), (b)(7)(C). Plaintiff did not provide a privacy waiver or proof of death for Inspector Gitchell, so the FBI cannot confirm or deny the existence of records indexed in his name because, as described in the Hardy Decl. at ¶ 53, there is no public interest in this case that would override the privacy interests of state or local law enforcement personnel.

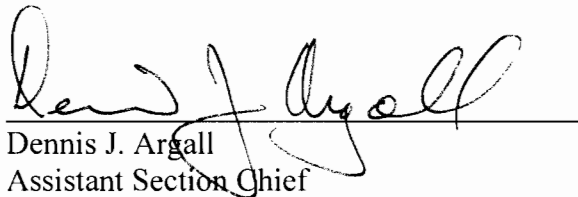
(8) Finally, to clarify, the FBI is withholding the VHS tape of the crime scene pursuant to FOIA Exemptions (b)(6), (b)(7)(C), and (b)(7)(D), under Coded Categories (b)(6)/(b)(7)(C)-3 ("State or Local Law Enforcement Personnel"), (b)(6)/(b)(7)(C)-5 ("Third Party Victims"), and (b)(7)(D)-2 ("Information Provided by a Local Law Enforcement Agency

² The CRS is described in the Hardy Decl. at ¶¶ 27 – 32.

Under an Implied Assurance of Confidentiality”). *See* Hardy Decl., ¶ 43. The FBI’s bases for applying these exemptions are set forth in the Hardy Decl. at ¶¶ 47-48, 53, 55, and 63.

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

Executed this 15th day of October, 2012.

A handwritten signature in black ink, appearing to read "Dennis J. Argall", is written over a horizontal line. The signature is cursive and somewhat stylized.

Dennis J. Argall
Assistant Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia