

**EXHIBIT 3**



ROPES & GRAY LLP  
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June 10, 2011

FREEDOM OF INFORMATION APPEAL

Director, Office of Information Policy  
U.S. Department of Justice  
1425 New York Ave., NW, Suite 11050  
Washington, D.C. 20530-0001

RE: FOIPA Request No. 1166585-000

Dear Director:

By fax dated May 11, 2011, I sent to the FBI the FOIA request attached hereto as Exhibit A. By letter dated May 23, 2011, I received from David Hardy the FOIA response attached hereto as Exhibit B.

The thrust of Mr. Hardy's FOIA response is that the records requested in the May 11 FOIA request were previously processed and produced by letter dated March 24, 2011 in response to an earlier FOIA request. That March 24 response, however, is already subject to a pending FOIA appeal attached hereto as Exhibit C.

The May 11 FOIA request that is the subject of this appeal was specifically drafted to cover FBI evidence testing records from May 5, 1993 through May 11, 2011 in connection with the referenced cases. As demonstrated in Exhibit C, the March 24 FOIA response plainly did not address all of such records so simply referring back to that response as a means of responding to the May 11 FOIA request is patently insufficient. In addition, the time period covered by the May 11 request is also broader than the time period covered by the document production made on March 24 so – again – simply referring back to that production as a means of responding to the May 11 FOIA request is also patently insufficient.

For the foregoing reasons, I ask you to review this file on appeal and direct whatever further actions need to be undertaken to ensure the FBI's full and complete compliance with its obligations under the law in response to this FOIA request.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Braga", written over a horizontal line.

Stephen L. Braga

**EXHIBIT A**

SUB  
#3 faxed  
5/11/11

**FBI eFOIA Request Form**

Instructions:

- 1) Please use this form only to request information about an organization, a business, an investigation, a historical event, an incident, or a group. This form should not be used to submit Privacy Act requests for information about yourself or another living person.
- 2) Required fields are marked. If you do not enter accurate and complete information, we may not be able to process your request.
- 3) After filling out the information, submit your request electronically by clicking the SUBMIT button at the bottom of the page. Please note: This is not a secure form, and we cannot guarantee the confidentiality of communications sent via the Internet.
- 4) You also have the option of typing your information into this form, printing it, and: (1) faxing it to (540) 868-4997; or (2) mailing it to **FBI, FOI/PA Request, Record/Information Dissemination Section, 170 Marcel Drive, Winchester, VA 22602-4843**. You can also e-mail the information to [foiparequest@ic.fbi.gov](mailto:foiparequest@ic.fbi.gov).
- 5) For more information on how to prepare and submit your request, please call the FOIA Requestor Service Center at (540) 868-1535 or see the Requesting FBI Records webpage: [http://foia.fbi.gov/requesting\\_records.html](http://foia.fbi.gov/requesting_records.html)

Dear FOIA Officer:

This is a request filed under the Freedom of Information Act.

**Reasonably Describe the Records**

Describe the records you are requesting. Be as specific as possible with regard to names, dates, places, events, subjects, etc. Please include any known file designations or descriptions for the records you seek.

Bear in mind that the FBI was not established until 1908 and has very few records prior to the 1920s. The Freedom of Information Act clearly states that records must exist at the time the request is submitted to be considered.

**Enter description:** You must submit a separate request for each subject: (Required)  
Describe Subject/Incident of Request. Give Time Frame (if applicable).

All records relating to the FBI's testing and/or analysis of soil, fiber, hair, blood, tissue, semen, clothing, polygraph examinations or other evidence in connection with (1) the investigation of the murders of Steven Branch, Christopher Byers and Michael Moore on May 5, 1993 in West Memphis, Arkansas; (2) the 1994 prosecutions of Jessie Misskelley, Damien Echols and Jason Baldwin for the murders referenced above; and/or (3) any post-conviction proceedings in the Misskelley, Echols or Baldwin cases. This testing and/or analysis was likely requested by the West Memphis Police Department, the FBI Field Office in Little Rock, Arkansas and/or the Arkansas Attorney General's Office. FBI File Number 252B-LR-34807 was opened in response to early communications about this case.

Thank you for your consideration of my request.

Sincerely,

Title: (Mr. Mrs. Miss, etc.) Mr.

Name: (Required) Stephen L. Braga

Organization: (Required if applicable)

Ropes & Gray LLP

Street Address: (Required)

700 12th Street, NW, Suite 90

City: (Required) Washington

State: (Required if applicable) DC

Or Country: (Required if applicable) USA

ZIP or Postal Code: (Required) 20005

Phone #1: 202-508-4655

Phone #2: 617-304-7124

Fax Number: 202-383-9821

E-mail address: stephen.braga@ropesgray.com

Secondary address:

Submit

Print Page

Clear Information

**EXHIBIT B**

SLB

U.S. Department of Justice



Federal Bureau of Investigation

Washington, D.C. 20535

May 23, 2011

MR. STEPHEN L. BRAGA  
ROPES & GRAY LLP  
ONE METRO CENTER  
700 12TH STREET, NW, SUITE 900  
WASHINGTON, DC 20005-3948

Request No.: 1166585-000  
Subject: INVESTIGATION OF THE  
MURDERS OF STEVEN  
BRANCH, CHRISTOPHER BYERS,  
AND MICHAEL MOORE ON MAY 5,  
1993 IN WEST MEMPHIS, AR

Dear Mr. Braga:

This is in response to your request dated May 11, 2011 concerning your Freedom of Information-Privacy Acts (FOIPA) request.

By letter dated March 24, 2011, records responsive to your request were reviewed and 190 pages were released to you in FOIA # 1163053. The records your currently seek have already been properly reviewed and withheld to the provisions of the Freedom of Information and Privacy Acts, Title 28, Sections 552 and 552A.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, DC 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be identified easily.

Enclosed for your information is a copy of the FBI File Fact Sheet.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D Hardy", is written over the typed name.

David M. Hardy  
Section Chief,  
Records Information  
and Dissemination Section  
Records Management Division

## FBI FOIA/PRIVACY ACT FILE FACT SHEET

- The mission of the FBI is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920's.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, foreign counter-intelligence, organized crime/drugs, violent crime, white-collar crime, applicants, and civil rights.
- **The FBI does not issue clearances or nonclearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should write directly to that entity.
- **An FBI identification record or "rap sheet" is NOT the same as an FBI "file" - it is simply a listing of information taken from fingerprint cards submitted to the FBI in connection with arrests, federal employment, naturalization, or military service.** The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI, CJIS Division, Attn: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Each request must have proof of identity which shall consist of name, date and place of birth and a set of rolled-ink fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies, plus **payment of \$18.00** in the form of a certified check or money order, payable to the Treasury of the United States.
- **The National Name Check Program (NNCP)** conducts a search of the FBI's Universal Index to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to the requesting Federal, State or local agency. For the NNCP, a name is searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both "main" and "cross reference" files. A main file is an entry that carries the name corresponding to the subject of a file while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several "hits" and "idents" on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine whether it is applicable to the individual in question.
- **The Record/Information Dissemination Section/Freedom of Information-Privacy Acts (FOIPA)** search for records provides copies of FBI files relevant to a FOIPA request for information. FOIPA provides responsive documents to requesters seeking "reasonably described information." For a FOIPA search, the subject name, event, activity, business, or event is searched to determine whether there is an investigative file associated with the subject. This is called a "main file search" and differs from The National Name Check Program (NNCP) search.

FOR GENERAL INFORMATION ABOUT THE FBI,  
CHECK OUT OUR WEBSITE AT  
<http://www.foia.fbi.gov>



**EXHIBIT C**

SCB



ROPES & GRAY LLP  
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May 11, 2011

FREEDOM OF INFORMATION APPEAL

Director, Office of Information Policy  
U.S. Department of Justice  
1425 New York Ave., NW, Suite 11050  
Washington, D.C. 20530-0001

RE: FOIPA Request No. 1163053-000

Dear Director:

By fax dated March 17, 2011, I sent to the FBI the FOIA request attached hereto as Exhibit A. On March 24, 2011, I received from David M. Hardy the FOIA response attached hereto as Exhibit B, together with the 190 pages of documents referenced therein.

On April 4, 2011, I sent to Mr. Hardy the letter attached hereto as Exhibit C, asking certain questions about the FOIA response I had received. To date, I have received no reply from Mr. Hardy answering any of these questions.

I have obtained a number of other FBI documents relating to the subject matter of my FOIA request which are not included within the 190 pages of documents provided to me with the above-referenced FOIA response. A sampling of those non-produced documents are attached hereto as Exhibit D. Accordingly, I can only conclude that the search for documents responsive to my FOIA request was inadequate.

In addition, based upon my review of the redactions to the documents which have been produced, it appears that the b6 and b7(C) exemptions have been applied far too broadly, especially given that the general subject matter of the documents has been a subject of public court proceedings for most of the past 17 years.

Finally, I do think that I am entitled to answers to the questions I posed to Mr. Hardy in my April 4 letter, in order to meaningfully exercise my FOIA rights.

For all of the foregoing reasons, I ask you to review this file on appeal and direct whatever further actions need to be undertaken to ensure the FBI's full and complete compliance with its obligations under the law in response to this FOIA request.