APPENDIX A:

OPINION OF THE SEVENTH CIRCUIT

OCTOBER 22, 2021

In the

United States Court of Appeals

For the Seventh Circuit

No. 21-1229

WILLIAM A. WHITE,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF JUSTICE, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Illinois.
No. 16-cv-948-JPG — **J. Phil Gilbert**, *Judge.*

SUBMITTED OCTOBER 6, 2021* — DECIDED OCTOBER 22, 2021

Before ROVNER, BRENNAN, and SCUDDER, *Circuit Judges.*

PER CURIAM. William White sued several federal agencies under the Freedom of Information Act, 5 U.S.C. § 552, challenging the pace at which the agencies released responsive

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

records and their alleged failure to reveal other records. The district court granted summary judgment for the agencies. We affirm.

I. Background

For years, White was involved in the white-supremacist movement. Along the way he committed various crimes and is now in federal prison. At the heart of his hundreds of FOIA requests lies a conspiracy theory: that the racist movement he joined is really an elaborate sting operation by the government. His requests went to four agencies under the Department of Justice: the Federal Bureau of Investigation; the United States Marshals Service; the Bureau of Alcohol, Tobacco, Firearms and Explosives; and the Federal Bureau of Prisons. The details of the requests to the ATF and Bureau of Prisons are not important to our analysis, so we focus on the requests to the FBI and Marshals Service.

Although the FBI told White it had located about 100,000 pages of potentially responsive records on its investigations into White and white-supremacist groups, this did not mean White immediately received 100,000 pieces of paper. Rather, the FBI told White that its policies authorized the review, redaction, and copying of 500 pages per month because finite resources must be reasonably apportioned among different requesters. *See* 5 U.S.C. § 552(a)(6)(D)(i); 28 C.F.R. § 16.5(b).

Meanwhile, the FBI explained, some of White's search terms yielded no results. And as to requests for records about certain people, the FBI furnished *Glomar* responses—so named for the *Hughes Glomar Explorer*, the submarine-recovery ship at the center of *Phillippi v. CIA*, 546 F.2d 1009, 1010–11 (D.C. Cir. 1976). A *Glomar* response announces that, to

protect interests recognized by FOIA, the agency will neither confirm nor deny the existence of responsive records. *Bassiouni v. CIA*, 392 F.3d 244, 246 (7th Cir. 2004). A *Glomar* response is proper if, for instance, confirming or denying that records exist would reveal whether someone is an informant or otherwise intrude unduly on privacy. *Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007) (concluding *Glomar* responses are appropriate to safeguard interests protected by FOIA exemptions); *see* 5 U.S.C. § 552(b)(6), (7)(C) (listing FOIA exemptions based on threats to privacy).

Here, the FBI told White it would not disclose the existence of records that might threaten a third party's privacy by connecting that person to the FBI—unless White provided either a written waiver from the named person, proof that the person had died, or a showing that the public interest in disclosure outweighs the privacy interests of the target person. White also could have overcome the *Glomar* responses by showing that the FBI previously acknowledged an informant relationship or the existence of related records. *See ACLU v. CIA*, 710 F.3d 422, 426–27 (D.C. Cir. 2013).

As for the Marshals Service, two requests are relevant here. White first sought records that named him. Then, a few years later, he asked for records on dozens of other people and organizations. But the Marshals Service told him that records about individuals would not be released without those individuals' consent; meanwhile, the agency's records were indexed by named individual, so records on organizations were unavailable. On the other hand, records pertaining to White himself were available—the Marshals Service reported finding 1,500 pages of them—but no copies were sent to

White until October 2020, years after the 2016 filing of this lawsuit.

The lawsuit claimed that the agencies conducted inadequate searches, improperly withheld documents, and failed to promptly provide copies. On the parties' cross-motions, the district court granted summary judgment for the agencies.

First, the court found, based on affidavits by agency personnel, that the searches were reasonably calculated to locate responsive records. And White had not displaced FOIA's presumption of good faith regarding these searches because his allegations of bad faith boiled down to speculation and conspiracy theories.

Second, the court upheld the FBI's *Glomar* responses. To be sure, some people named by White had themselves asserted, in other settings, that they were affiliated with the FBI. So, White reasoned, their privacy interests were diminished. But the FBI had not itself confirmed those individuals' assertions, nor had White given the FBI any of the information it requested to challenge its *Glomar* responses. *See N.Y. Times v. CIA*, 965 F.3d 109, 121 (2d Cir. 2020) (acknowledgement of affiliation must come from the agency itself); *cf.* 5 U.S.C. § 552(c)(2) (exempting from FOIA any third-party request for information about an informant unless status as an informant has been "officially confirmed"). As for White's argument that the public interest supported disclosure, the court concluded that pursuing White's conspiracy theories to cast doubt on his criminal convictions was not a substantial public interest.

Third, the court rejected White's argument that the FBI's redaction-and-copying rate of 500 pages per month amounted

to an improper withholding of documents. White's request placed a substantial burden on the FBI, and neither FOIA's text nor the public interest required faster production of these 100,000 responsive pages—especially at the expense of slowing responses to other requesters.

After this adverse judgment, White moved for costs, arguing that his suit had substantially prevailed because it prompted the agencies to respond to his requests. But the court denied the motion because the Marshals Service alone was delinquent in responding—and the 1,500 pages held by that agency were an insubstantial piece of the litigation when measured against the 100,000 pages of FBI documents. In any event, the court alternatively exercised its discretion to refuse an award of costs because the transparent purpose of White's FOIA requests and lawsuit was to harass the government, not to obtain information useful to the public.

White then filed a timely motion to reconsider under Rule 59(e) of the Federal Rules of Civil Procedure. Although he himself had sought summary judgment, he now argued that the court should not render a final decision until the FBI had redacted, copied, and sent all 100,000 pages of responsive records—a process that will take more than a decade. He further claimed that the FBI wrongly omitted records on one of the groups he identified—the Aryan Strike Force—since an FBI agent testified in 2018 about an investigation into the group's members. The court, however, denied the motion on the grounds that it need not retain jurisdiction to monitor the FBI's production schedule and that the time for White to make these arguments was in the summary-judgment papers, not a post-judgment motion.

White next moved to hold the Marshals Service in contempt for telling the court in 2018 that it would soon start sending him records, whereas by 2020 White still had received nothing. The Marshals Service responded that the promise was made in good faith but inadvertently broken because of staff turnover and clerical errors. (The agency sent White his documents shortly after he filed his contempt motion.) The court, in turn, admonished the Marshals Service for these missteps, but determined that no judicial order had been violated and no contempt sanction was warranted.

Finally, White moved for relief from judgment under Rule 60(b). He posited several new conspiracies and demanded documents related to them. While that motion was pending, he filed a notice of appeal listing the entry of summary judgment and the orders issued before the appeal deadline. The district court later denied White's Rule 60(b) motion.

II. Discussion

At the outset, we agree with the agencies' contention that we lack authority to review the denial of Rule 60(b) relief here. Because White filed his notice of appeal before the court disposed of his Rule 60(b) motion, he needed to either amend his existing notice of appeal or file a new notice of appeal to include the later decision. *See* FED. R. APP. P. 4(a)(4)(B)(ii); *Ammons v. Gerlinger*, 547 F.3d 724, 726 (7th Cir. 2008). He did neither, so that order is not before us.

Instead, the first issue is whether the district court improperly entered judgment and relinquished jurisdiction before the FBI sent White all documents responsive to his FOIA requests. Judicial authority to devise a FOIA remedy depends on a finding "that an agency has (1) 'improperly';

(2) 'withheld'; (3) 'agency records.'" *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 150 (1980). Here, the FBI's 500-page-per-month schedule did not amount to an improper withholding of records, and the district court was given no evidence that the agency is not meeting that schedule.

To be sure, White's FOIA records must be released "promptly." 5 U.S.C. § 552(a)(3)(A). But FOIA does not define "promptly," and indeed it invites agencies to establish policies for equitably processing larger requests. *Id.* § 552(a)(6)(D)(i). And the FBI has held that large requests should be subject to a 500-page-per-month production rate. *See* 28 C.F.R. § 16.5(b). That kind of incremental-release schedule promotes efficiency and fairness by ensuring that the biggest requests do not crowd out smaller ones unless extraordinary circumstances warrant expedited production. *Nat'l Sec. Counselors v. DOJ*, 848 F.3d 467, 471–72 (D.C. Cir. 2017). We will not interfere with the agency's policy. *Cf. White v. FBI*, 851 F. App'x 624, 626 (7th Cir. 2021) (affirming denial of White's preliminary-injunction request seeking faster production in another case because "the district court reasonably concluded that the FBI was not improperly withholding documents by following its statutorily permissible policy").

Rather than engage with this policy, White argues that the district court's real reason for refusing to order faster production is its moral disapproval of his stated public interest: proclaiming that the white-supremacist movement is an elaborate sting operation. Although White denies that he seeks "expedited"—as opposed to routine, "prompt"—production, his thrust is that he is entitled to faster production because he is pursuing a topic of widespread interest as contemplated by 5

U.S.C. § 552(a)(6)(E)(i) and 28 C.F.R. § 16.5(e)(1)(iv). But White's pursuit is not of widespread interest; his principal aim is to cast doubt on his own criminal convictions by suggesting that he was entrapped or framed. *See Antonelli v. FBI*, 721 F.2d 615, 619 (7th Cir. 1983) (exploring whether Antonelli's conviction was obtained in violation of Constitution did not constitute a "public" interest under FOIA).

White next argues that the agencies did not conduct reasonable searches. But each agency submitted an affidavit detailing the FOIA process and the searches here, and these affidavits entitle the agencies to a presumption of good faith. *See Rubman v. U.S. Citizenship & Immigr. Servs.*, 800 F.3d 381, 387 (7th Cir. 2015). At summary judgment, White could prevail only by providing countervailing evidence of unreasonably overlooked materials. *Id.*

To do that, he needs more than speculation that additional documents must exist. *Matter of Wade*, 969 F.2d 241, 249 n.11 (7th Cir. 1992). To be sure, White contends that testimony by an FBI agent regarding an investigation into members of the Aryan Strike Force indicated the FBI must have had records on the group. *See generally United States v. Lough*, No. 4:17-CR-00139, 2019 WL 1040748, at *2 (M.D. Pa. Mar. 5, 2019). But that testimony detailed an investigation that occurred *after* the FBI responded to White's FOIA request. White also says two documents prove the ATF investigated him and thus should possess substantial records. But neither document even alludes to an ATF investigation of him: one, an FBI report, merely notes that ATF sent agents to a rally that White organized; the other, a Marshals Service report, detailed an FBI—not ATF—investigation of White. White further asserts that the Marshals Service, contrary to its statements, had the ability to

search its records for the names of organizations, not just individuals. Again, however, the document he cites as evidence (a declaration in opposition to White's contempt motion, explaining that district offices are tasked with searching for records of individuals incarcerated in their districts) says no such thing.

White also argues that the FBI improperly used *Glomar* responses for four people who had previously asserted a link to the FBI. But the supposed links were never asserted *by the FBI* and do not constitute official disclosures. *See N.Y. Times*, 965 F.3d at 121; *cf.* 5 U.S.C. § 552(c)(2) (exempting records of informants unless their status has been "officially confirmed"). Informally confirming some connection to the FBI may have diminished these individuals' privacy interests, *see Citizens for Responsibility & Ethics in Washington v. DOJ*, 746 F.3d 1082, 1092 (D.C. Cir. 2014), but it does not extinguish them for all purposes. Further, White provides no clear public interest to overcome even the diminished privacy interests here. *See Antonelli*, 721 F.2d at 619.

White next takes issue with the district court's decision not to award costs against the agencies. To obtain costs in a FOIA case, the plaintiff must "substantially prevail." 5 U.S.C. § 552(a)(4)(E). But even then, the district court has discretion to deny costs after considering, among other factors, the litigation's benefit to the public. *Stein v. DOJ & FBI*, 662 F.2d 1245, 1262 (7th Cir. 1981). Here, even if we might debate whether White substantially prevailed against the Marshals Service, the district court properly exercised its discretion to deny White's request because his purpose for seeking the records—chasing his conspiracy theory that the government

created the white-supremacy movement to entrap people like him—has provided no public benefit.

Finally, White argues that both the Marshals Service and FBI should be sanctioned. He says that the Marshals Service lied when it told the court in 2018 that it had resumed processing White's request and would finish soon, though no records were furnished until 2020. But the Marshals Service explained that it meant to abide by the self-imposed July 2018 deadline, and staff turnover and errors caused it to push that deadline back. The district court was not required to treat this as willful misconduct. White also says the FBI lied about not having records on the Aryan Strike Force and about not having investigated him. Yet, as previously noted, there is no indication that the FBI had files on the Aryan Strike Force at the time it responded to White's FOIA requests. Further, the FBI never denied that it investigated him; rather, it denied, as fanciful, White's assertions that the government fabricated the modern white-supremacy movement and used it to frame him.

* * *

We conclude by commending the district court on its handling of this case. The judge carefully parsed White's numerous and wide-ranging arguments and explained the result in a series of thorough and thoughtful orders.

We have considered White's other arguments, and none has merit.

AFFIRMED

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

October 22, 2021

Before
ILANA DIAMOND ROVNER, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*
MICHAEL Y. SCUDDER, *Circuit Judge*

No. 21-1229	WILLIAM A. WHITE, Plaintiff - Appellant v. UNITED STATES DEPARTMENT OF JUSTICE, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:16-cv-00948-JPG Southern District of Illinois District Judge J. Phil Gilbert	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

form name: **c7_FinalJudgment** (form ID: **132**)

APPENDIX B:

OPINION OF THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

MAY 20, 2020

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

WILLIAM A. WHITE,

Plaintiff,

v.

DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, UNITED STATES MARSHALS SERVICE, FEDERAL BUREAU OF PRISONS and BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES,

Defendants.

Case No. 16-cv-948-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff William A. White's Consolidated Third Motion for Summary Judgment (Doc. 90) and defendant Department of Justice's ("DOJ") Cross Motion for Summary Judgment (Doc. 98). The parties have responded to each other's motions (Docs. 95 & 108), and White has replied to the DOJ's response (Doc. 113).

I. Background

White brings this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.[1] He alleges that the Federal Bureau of Investigations ("FBI"), the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), the United States Marshals Service ("USMS"), and the Federal Bureau of Prisons ("BOP") did not respond properly to some of his requests for information under the FOIA. Specifically, White's claims fall into three categories:

[1] White also cites the Privacy Act, 5 U.S.C. § 552a, which grants individuals a right of access to information about themselves. In incorporates some FOIA requirements by providing that federal agencies may not disclose records except pursuant to written request or consent of the person to whom the record pertains unless one of several listed conditions are met, one of which is that the FOIA requires disclosure. 5 U.S.C. § 552a(b)(2).

- the agencies "administratively defaulted" because they failed to respond to his requests at all, failed to respond within the time periods set forth in the FOIA, or exceeded the permitted requests for clarification from the requesting party;

- the agency incorrectly denied having responsive records; and

- the agency improperly withheld responsive records pursuant to two statutory exemptions—Exemptions 6 and 7(C)—regarding invasion of personal privacy.

Am. Compl. (Doc. 25 at 9-10). The Court granted summary judgment for the DOJ on White's claims involving two requests; all of his other claims remain pending and are the subject of the pending cross motions for summary judgment.

II. Legal Standards

A. Summary Judgment Standard

Summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Spath v. Hayes Wheels Int'l-Ind., Inc.*, 211 F.3d 392, 396 (7th Cir. 2000). The reviewing court must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in favor of that party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Chelios v. Heavener*, 520 F.3d 678, 685 (7th Cir. 2008); *Spath*, 211 F.3d at 396.

The initial summary judgment burden of production is on the moving party to show the Court that there is no reason to have a trial. *Celotex*, 477 U.S. at 323; *Modrowski v. Pigatto*, 712 F.3d 1166, 1168 (7th Cir. 2013). Where the non-moving party carries the burden of proof at trial, the moving party may satisfy its burden of production in one of two ways. It may present evidence that affirmatively negates an essential element of the non-moving party's case, *see* Fed. R. Civ. P. 56(c)(1)(A), or it may point to an absence of evidence to support an essential

element of the non-moving party's case without actually submitting any evidence, *see* Fed. R. Civ. P. 56(c)(1)(B). *Celotex*, 477 U.S. at 322-25; *Modrowski*, 712 F.3d at 1169. Where the moving party fails to meet its strict burden, a court cannot enter summary judgment for the moving party even if the opposing party fails to present relevant evidence in response to the motion. *Cooper v. Lane*, 969 F.2d 368, 371 (7th Cir. 1992).

In responding to a summary judgment motion, the nonmoving party may not simply rest upon the allegations contained in the pleadings but must present specific facts to show that a genuine issue of material fact exists. *Celotex*, 477 U.S. at 322-26; *Anderson*, 477 U.S. at 256-57; *Modrowski*, 712 F.3d at 1168. A genuine issue of material fact is not demonstrated by the mere existence of "some alleged factual dispute between the parties," *Anderson*, 477 U.S. at 247, or by "some metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, a genuine issue of material fact exists only if "a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented." *Anderson,* 477 U.S. at 252.

B. The FOIA

1. Purpose

The Seventh Circuit Court of Appeals has described the FOIA generally:

> "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.,* 437 U.S. 214, 242, 98 S. Ct. 2311, 57 L.Ed.2d 159 (1978). Toward that end, FOIA provides that agencies "shall make ... records promptly available to any person" who submits a request that "(i) reasonably describes such records and (ii) is made in accordance with [the agency's] published rules." 5 U.S.C. § 552(a)(3)(A). The Act is "broadly conceived," and its "basic policy" is in favor of disclosure. *Robbins Tire,* 437 U.S. at 220, 98 S. Ct. 2311. Agencies are, however, permitted to withhold records under nine statutory exemptions and three special exclusions for law-enforcement records. *See* 5 U.S.C. § 552(b)-(c).

Rubman v. U.S. Citizenship & Immigration Servs., 800 F.3d 381, 386 (7th Cir. 2015).

In creating the exemptions to FOIA disclosure, "Congress sought 'to reach a workable balance between the right of the public to know and the need of the Government to keep information in confidence to the extent necessary without permitting indiscriminate secrecy.'" *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (quoting H.R. Rep. No. 1497, 89th Cong., 2d Sess., 6 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2418, 2423). "But these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." *Dep't of the Air Force v. Rose,* 425 U.S. 352, 361 (1976). Therefore, the Court must narrowly construe the exemptions, *id.*, and the agency bears the burden of showing they apply, 5 U.S.C. § 552(a)(4)(B). *John Doe Agency*, 493 U.S. at 152. In reaching its decision, the Court should take a practical approach to achieving the balance sought by Congress. *Id.* at 158.

2. FOIA Request

To establish a cause of action under the FOIA, a plaintiff must show that, in response to a valid FOIA request, "an agency has (1) 'improperly'; (2) 'withheld'; (3) 'agency records.'" *Kissinger v. Reporters Comm. for Freedom of Press*, 445 U.S. 136, 150 (1980) (quoting 5 U.S.C. § 552(a)(4)(B)). A valid FOIA request reasonably describes the records if the agency can determine exactly what records are being requested. 5 U.S.C. § 552(a)(3)(A); *Kowalczyk v. DOJ*, 73 F.3d 386, 388 (D.C. Cir. 1996). "A reasonable description of records is one that would allow an agency employee to locate the records 'with a reasonable amount of effort.'" *Moore v. FBI*, 283 F. App'x 397, 398 (7th Cir. 2008) (quoting *Marks v. USDOJ,* 578 F.2d 261, 263 (9th Cir. 1978)). A request seeking all records relating to a subject may not satisfy this standard and therefore may not trigger the agency's obligation to search for records. *See*

Freedom Watch, Inc. v. Dep't of State, 925 F. Supp. 2d 55, 61-62 (D.D.C. 2013). The request must also be made in compliance with the agency's rules on the time, place, fees, and procedures for making such a request. 5 U.S.C. § 552(a)(3)(A).

3. Search for Records

Agency records may be found to be improperly withheld if the agency failed to make "a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Rubman v. U.S. Citizenship & Immigration Servs.*, 800 F.3d 381, 387 (7th Cir. 2015) (internal quotations omitted); *accord Stimac v. USDOJ*, 991 F.2d 800, 1993 WL 127980, at *1 (7th Cir. 1993) (Table) (search must be "reasonably calculated to uncover all relevant documents"); *In re Wade*, 969 F.2d 241, 249 n. 11 (7th Cir. 1992) (question is whether search was "reasonably calculated to uncover all relevant documents"). The agency need not search all of its record systems, but only systems where responsive information is likely to be found, although it should explain why it believes such limits are reasonable. *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). "Good faith is presumed . . ., and it can be bolstered by evidence of the agency's efforts to satisfy the request." *Rubman*, 800 F.3d at 387 (internal citation omitted).

At the summary judgment stage, such information normally comes in the form of a "reasonably detailed nonconclusory affidavits submitted in good faith." *In re Wade*, 969 F.2d at 249 n. 11. The plaintiff may overcome the presumption of good faith by presenting "countervailing evidence as to the adequacy of the agency's search." *Rubman*, 800 F.3d at 387 (internal quotations omitted); *see Carney v. USDOJ*, 19 F.3d 807, 813 (2d Cir. 1994) (bare allegations and speculation insufficient to overcome presumption). Importantly, "[t]he issue is *not* whether other documents may exist, but rather whether the search for undisclosed documents

was adequate." *In re Wade*, 969 F.2d at 249 n. 11 (emphasis in original); *accord Rubman*, 800 F.3d at 387. Furthermore, "speculation that other documents might exist that are possibly responsive to the request is insufficient to overcome summary judgment." *Ferranti v. ATF*, 177 F Supp. 2d. 41, 48 (D.D.C. 2001), *aff'd*, No. 01-5451, 2002 WL 31189766 (D.C. Cir. Oct. 2, 2002).

4. Exemptions

Records may also be found to have been improperly withheld if the agency misapplies a statutory exemption. *See, generally, Solar Sources, Inc. v. United States*, 142 F.3d 1033 (7th Cir. 1998) (reviewing the application of certain exemptions). As with the question of the adequacy of a search, to satisfy its burden of showing an exemption applies, the agency must "provide detailed justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing." *Antonelli v. DEA*, 739 F.2d 302, 303 (7th Cir. 1984). "[T]he agency has the initial burden of demonstrating why it should not disclose the information." *Antonelli v. FBI*, 721 F.2d 615, 617 (7th Cir. 1983) (citing *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974)). If the agency meets its burden and there is a public interest in disclosure, the Court will balance the agency's reasons for withholding documents against that public interest. *Antonelli v. FBI*, 721 F.2d at 617.

The statutory exemptions relevant to this lawsuit are commonly known as Exemptions 6 and 7(C).[2] Those provisions exempt the following from disclosure:

(6) personnel and medical files and similar files the disclosure of which would constitute

[2] These are the only two exemptions to which White objects in the Amended Complaint and are therefore the only two exemptions within the scope of this case. Am. Compl. (Doc. 25 at 9). However, because both parties have cited other exemptions, the Court will also address other exemptions in the appropriate sections of this order.

a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy . . . .

5 U.S.C. § 552(b).

As for Exemption 6, the Supreme Court has construed it as not limited "to a narrow class of files containing only a discrete kind of personal information. Rather, '[t]he exemption [was] intended to cover detailed Government records on an individual which can be identified as applying to that individual.'" *U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982) (quoting H.R. Rep. 89-1497, at 11 (1966), 1966 U.S.C.C.A.N. 2428). When an individual can be identified, the Court must ask whether disclosure of that information would constitute a clearly unwarranted invasion of personal privacy. *Washington Post*, 456 U.S. at 602. The Court then balances the privacy interest against any public interest in the disclosure of the requested records. *U.S. Dep't of State v. Ray*, 502 U.S. 164, 175 (1991). Courts have found the exemption to apply to agent names and other file classification information. *Shapiro v. USDOJ*, 293 F. Supp. 3d 99, 118 (D.D.C. 2018) (file classification information could be used to "uncover certain private information, such as the existence of an individual's employment status or investigation, the type and nature of employment or investigation, the geographical area of the matter, and potentially the extent of someone's career with the FBI or amount of information obtained by the FBI"), *rev'd on other grounds in part, vacated in part*, 944 F.3d 940 (D.C. Cir. 2019).

Exemption 7(C) similarly protects personal information from disclosure and is often asserted along with Exemption 6. The "reasonably be expected" language in Exemption 7(C) potentially reaches more broadly than Exemption 6, which speaks of disclosure that "would

constitute" a privacy invasion. Under Exemption 7(C), the Court also balances an individual's privacy interest with the public's interest in disclosure. *Higgs v. U.S. Park Police*, 933 F.3d 897, 904 (7th Cir. 2019). Once the agency shows a protected privacy interest, the person seeking the disclosure bears the burden of demonstrating a significant public interest. *Id.*

5. *Glomar* Response

In the event even acknowledging whether responsive records exist would jeopardize the interests sought to be protected by FOIA exemptions, the agency may respond with a "Glomar response."[3] *See Bassiouni v. CIA*, 392 F.3d 244, 246-47 (7th Cir. 2004); *Antonelli v. FBI*, 721 F.2d at 617. For example, where a requester asks for documents concerning a law enforcement confidential source, an agency's confirming that a file on the individual exists and that it is exempt under the exemption for information that could expose the identity of a confidential source, 5 U.S.C. § 552(b)(7)(D), could lead the requester to deduce that the individual is a confidential source. *Antonelli v. FBI*, 721 F.2d at 618. Similarly, "revealing that a third party has been the subject of FBI investigations is likely to constitute an invasion of that person's privacy that implicates the protections of Exemptions 6 and 7," and it could jeopardize valuable FBI investigations by identifying FBI informants and ongoing investigations. *Id.* Indeed, the Supreme Court has held "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy." *USDOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1980).

A Glomar response neither confirms nor denies that responsive records exist. *Bassouni*,

[3] So named after "the *Hughes Glomar Explorer,* a ship built (we now know) to recover a sunken Soviet submarine, but disguised as a private vessel for mining manganese nodules from the ocean floor. See *Phillippi v. CIA,* 546 F.2d 1009 (D.C. Cir. 1976)." *Bassiouni v. CIA*, 392 F.3d 244, 246 (7th Cir. 2004).

392 F.3d at 246-47; *Antonelli v. FBI*, 721 F.2d at 617-18. However, when the interest to be protected is an individual's privacy interest, the agency may not use a Glomar response if the requester provides a waiver from the individual, proof that the individual is dead, or a showing that the public interest outweighs the individual's privacy interest. *See, e.g., Donato v. Exec. Office for U.S. Attys.*, 308 F. Supp. 3d 294, 306 (D.D.C. 2018) (acknowledging FBI policy not to issue Glomar response to FOIA request seeking third party information where "the requester submits a privacy waiver or proof of death, or demonstrates an overriding public interest in disclosure.").

"[T]he plaintiff can overcome a *Glomar* response by showing that the agency has already disclosed the fact of the existence (or nonexistence) of responsive records, since that is the purportedly exempt information that a *Glomar* response is designed to protect." *ACLU v. CIA*, 710 F.3d 422, 427 (D.C. Cir. 2013); *Wolf v. CIA*, 473 F.3d 370, 378 (D.C. Cir. 2007). This rule applies where the FBI has officially acknowledged a connection between the individual and the FBI such as, for example, when the individual was called as a government witness at trial and identified as an FBI informant. 5 U.S.C. § 552(c)(2) (criminal informant records not subject to FOIA unless informant has been "officially confirmed"); *see Pickard v. DOJ*, 653 F.3d 782, 786 (9th Cir. 2011); *Boyd v. Criminal Div. of USDOJ*, 475 F.3d 381, 388 (D.C. Cir. 2007). Where the existence of a relationship between the FBI and the individual—and logically the existence of records regarding the individual—has been officially recognized—the FBI can no longer rely on a *Glomar* response. *Pickard*, 653 F.3d at 786.

Three things are required to establish official acknowledgement by an agency: "First, the information requested must be as specific as the information previously released. Second, the information requested must match the information previously disclosed. . . . Third, . . . the

information requested must already have been made public through an official and documented disclosure." *Fitzgibbon v. CIA*, 911 F.2d 755, 765 (D.C. Cir. 1990); *accord Wolf*, 473 F.3d at 378. Further, a prior disclosure by a *different* agency does not waive the right of a responding agency to make a *Glomar* response, although it may bear on the merits of asserting such a response. *Florez v. CIA*, 829 F.3d 178, 186 (2d Cir. 2016).

6. Summary Judgment in FOIA Cases

An agency can carry its burden on summary judgment by submitting affidavits that "(1) describe[s] the withheld documents and the justifications for non-disclosure with reasonably specific detail, (2) demonstrate[s] that the information withheld falls logically within the claimed exemption, and (3) are not controverted by either contrary evidence in the record or by evidence of agency bad faith." *Kimberlin v. Dep't of Treasury*, 774 F.2d 204, 210 (7th Cir. 1985) (internal quotations omitted); *accord ACLU v. USDOD*, 628 F.3d 612, 619 (D.C. Cir. 2011). The agency is entitled to a presumption of good faith which cannot be rebutted by mere speculation. *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1201 (D.C. Cir. 1991); *see In re Wade*, 969 F.2d 241, 246 (7th Cir. 1992). Courts must give substantial weight to an agency's affidavit. *ACLU v. CIA*, 710 F.3d 422, 427 (D.C. Cir. 2013). The Court has discretion to review documents or an index of withheld documents (a "*Vaughn* index") *in camera* but is not required to do so where the agency has submitted a sufficient affidavit. *Kimberlin*, 774 F.2d at 210; *Antonelli v. DEA*, 739 F.2d 302, 303-04 (7th Cir. 1984). "Ultimately, an agency's justification for invoking a FOIA exemption, whether directly or in the form of a *Glomar* response, is sufficient if it appears logical or plausible." *ACLU v. CIA*, 710 F.3d at 427 (internal quotations omitted).

7. Judicial Relief

If an agency has improperly withheld agency records, the Court has the power "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B). The Court is not inclined, however, order wholesale production of all documents requested without regard to exemption eligibility. Such an approach, which appears to be what White seeks, "would eviscerate the many and genuine concerns underlying the FOIA exemptions," *Caifano v. Wampler*, 588 F. Supp. 1392, 1394 (N.D. Ill. 1984), and would utterly fail to achieve the balance between disclosure and privacy Congress intended to achieve through the FOIA.

8. Costs

The FOIA provides that the Court may assess costs against the United States if the complainant under the act substantially prevails in the action. *See* 5 U.S.C. § 552(a)(4)(E)(i). A *pro se* plaintiff, however, may only recover costs, not attorney's fees, since he had no attorney. *De Bold v. Stimson*, 735 F.2d 1037, 1042-43 (7th Cir. 1984). A plaintiff may substantially prevail, and thus be eligible for a fee or cost award, either by a judicial order, enforceable written agreement, or consent decree or by a voluntary or unilateral change in the agency's position if the complainant's claim is not insubstantial. 5 U.S.C. § 552(a)(4)(E)(ii). In order to be eligible because of a voluntary agency change, the plaintiff's lawsuit must have been a catalyst for—that is, it must have had a "substantial causative effect" on—the voluntary agency change. *First Amendment Coal. v. USDOJ*, 878 F.3d 1119, 1128 (9th Cir. 2017). The plaintiff carries the burden of proving he substantially prevailed under the foregoing standard, *Pyramid Lake Paiute Tribe v. USDOJ*, 750 F.2d 117, 119 (D.C. Cir. 1984), and he does not carry this burden simply by showing documents were released after a lawsuit was filed. *First Amendment Coal.*, 878

F.3d at 1128; *Calypso Cargo Ltd. v. U.S. Coast Guard*, 850 F. Supp. 2d 1, 4 (D.D.C. 2011), *aff'd*, No. 12-5165, 2012 WL 10236551 (D.C. Cir. Nov. 1, 2012). Even if the plaintiff substantially prevails, the Court has discretion as to whether he should be awarded fees or costs. *See Morley v. CIA*, 894 F.3d 389, 391 (D.C. Cir. 2018), *cert. denied*, 139 S. Ct. 2756 (2019).

C. Parties' Positions

1. Defendant

As a preliminary matter, the DOJ contends White's claims are frivolous because they seek records White wants in order to support an imagined, non-existent government conspiracy to prevent individuals from exercising their First Amendment rights.[4]

The Court starts with the DOJ's arguments because it carries the initial burden of showing its agencies' searches were reasonable and their claims of exclusions justified. The Court has stated the arguments in general terms but will discuss the specifics with respect to White's specific requests. Additionally, the DOJ asks the Court to disregard portions of White's declaration (Doc. 90, pp. 8-13) because they are not based on personal knowledge, contain inadmissible hearsay, or are irrelevant to the issues in the case.

a. Proper Request

The DOJ contends that White's requests directed to the ATF, FBI and USMS for information about certain groups of people are not proper requests. As noted above, a proper request must " (i) reasonably describe[] such records and (ii) [be] made in accordance with

[4] The DOJ criticizes the Court for failing to screen White's case for under 28 U.S.C. § 1915A(a). However, although the Court did not expressly mention § 1915A, before it allowed him to proceed *in forma pauperis* under § 1915(a), it implicitly considered whether White's pleading was subject to dismissal under § 1915(e)(2)(B) because it was frivolous, malicious, or failed to state a claim. The Court concluded it was not subject to dismissal for those reasons—the same criteria for review under § 1915A(b).

published rules stating the time, place, fees (if any), and procedures to be followed." 5 U.S.C. § 552(a)(3)(A). Specifically, the DOJ argues the requests do not reasonably describe the records sought because they are overbroad and would require unreasonably burdensome search efforts. Additionally, some of the requests to the USMS are not described in a way that is compatible with its search mechanisms.[5]

b. Adequate Search

The DOJ contends that, with respect to a number of White's requests to the FBI for information about groups, the FBI made good faith, reasonable efforts to locate information but found no responsive records. It notes White's argument that the searches must have been inadequate because he is sure responsive documents exist, but contends that White's position is based on speculation and/or hearsay. The FBI further construed a request for information relating to a specific address as implicating privacy interests for which White offered no countervailing public interest in disclosure.

With respect to White's request to the ATF for information about himself, the agency disclosed only one document. The DOJ notes White's argument that the ATF has targeted him in the past so must have investigative records, but argues that White's belief is speculative, and certainly not enough to outweigh evidence from the agency that it has no other responsive records.

[5] The DOJ notes that White's claim against the ATF complains of its response to a request for information about the American National Socialist Workers Party, but his FOIA request does not request information about this group. Because there is no genuine issue of material fact about whether the ATF responded appropriately to a request not made, the DOJ is entitled to summary judgment on this claim.

c. Exemptions

i. Third Parties

The DOJ argues that White's FOIA requests about third parties are exempt from disclosure because of the privacy interests involved and/or because they are related to law enforcement purposes. It believes White's assertion of an overriding public interest is pure speculation. The DOJ also maintains that some information about a number of third parties that appears in various public sources has not been officially acknowledged by the agency. Some of the agency responses have been *Glomar* responses, which the DOJ believes are justified. With respect to one individual, David Lynch, the FBI is apparently satisfied that he is deceased and is producing responsive records to White on a rolling basis.

ii. Law Enforcement

The DOJ argues the FBI's claims of exemption as personnel and law enforcement records are appropriate. Nevertheless, the agency is reviewing its prior claims of exemptions *de novo* in response to White's complaints about the documents withheld or redacted. It argues that the preparation of a *Vaughn* index would be premature until the review process is complete and that Court intervention is inappropriate in this ongoing process.

iii. Other Exemptions

The DOJ offers detailed explanations why the BOP withheld certain information from White under Exemptions 5, 6 and 7. *See* 5 U.S.C. § 552(b)(5), (6), (7)(C), (7)(E) and (7)(F).

d. Ongoing Searches

With respect to fourteen requests, the FBI is processing responsive records to White on a schedule of approximately 500 pages per month on a rolling basis. The DOJ argues that this is a reasonable schedule in light of the fact that there are approximately 100,000 responsive pages

that must be reviewed for exemption and/or redaction before they are released and that the Court should not intervene with the ongoing production.

With respect to White's 2013 request to the USMS for information about himself, the DOJ states that the request fell through the cracks because of a death, a resignation, and the inadvertent failure to reassign the matter. It is now processing White's request, along with his 2016 request, and, at the time of briefing, it anticipated a response within a month.

The DOJ further contends White is not entitled to a Court order directing expedited processing of his requests.

e. Summary

In sum, the DOJ asks for summary judgment in its favor based on White's requests to the FBI, ATF and BOP on the grounds that the declarations from the respective agencies show the agencies conducted a thorough search in response to all proper requests that was reasonably calculated to uncover responsive documents and provided a detailed explanation why withheld information falls within one or more exemptions. With respect to White's requests to the USMS, the DOJ contends it is entitled to summary judgment because an adequate search was done or is ongoing.

2. Plaintiff

White believes his requests serve the public interest because the DOJ has created and used "a network of notional 'white supremacist extremist' groups in a long running counter-intelligence, and, disruption, operation that targeted both American political dissidents, and, foreign nations." Pl's Mot. Summ. J. ¶ 1(a). He believes these operations involved "the commission of violent crimes, and, obstruction of justice," *id.* at ¶ 1(b), and "other wrongful activity," *id.* at ¶ 1(c), and resulted in framing him for the crimes of which he was convicted, *id.*

at ¶ 1(d). White contends that the DOJ's denial of any public interest in disclosing the records he seeks is faulty in light of this theory of government malfeasance. The public, he contends, has an interest in knowing about this misconduct, as evidenced by various attachments to his motion containing books, internet pages, and print articles mentioning the subjects of his requests.

With respect to searches for which no records were found, White argues that information in the public domain—such as, for example, information appearing in news publications—provides evidence that those searches performed were inadequate for failing to identify responsive records. He also believes that some responsive information has been officially disclosed and preserved in a public record, so the agencies can no longer withhold information on the basis of a FOIA exemption or give a *Glomar* response. Finally, he points to the public's demonstrated interest in the subjects of his requests to establish a public interest in disclosure.

He further contends that the DOJ has waived any justification for refusing to disclose records where the agency did not assert the currently claimed exemptions in its answer, which essentially incorporates the agency's response at the administrative level, or in its earlier motions for summary judgment.

White argues he has substantially prevailed in this litigation because, even before the Court issues its final ruling, this lawsuit is a catalyst to relief, that is, it caused the agencies to disclose records to him which they were not previously inclined to disclose. He points to several "no records" responses that an agency revisited when White provided further information or asked for a different kind of search, only to find numerous responsive records. He further contends he is entitled to costs as a prevailing party because the agencies have behaved in bad faith by failing to promptly process his requests and by withholding records from him without a

valid legal basis. He also contends he is a member of the media so the processing fees for his requests should be waived.

As for the agencies' responses to the requests themselves, White makes the following challenges in his summary judgment motion:

- the FBI's schedule for releasing documents for which searches are ongoing is too protracted;
- the ATF and FBI wrongfully failed to identify responsive records White believes must exist;
- the USMS wrongfully failed to disclose any records about White after identifying responsive records;
- the USMS wrongfully failed to locate any records about groups;
- the ATF unjustifiably asserted that White's requests did not reasonably describe the records he seeks;
- the agencies wrongfully made *Glomar* responses to requests for records about individuals where information had been publicly disclosed or officially acknowledged; and
- the BOP unjustifiably claimed certain exemptions.

III. Analysis

A. Procedural Issues

The Court first addresses general arguments made by the parties. It then addresses White's requests by agency, setting forth in each subsection the substance of the request, the agency's response, White's objection to that response, and the Court's analysis of the response.

1. Frivolity

The DOJ argues that White's requests are frivolous because his allegations of nefarious government activities are fanciful and that this lawsuit is sanctionable. The Court does not disagree that some of White's beliefs underlying his contention that there is a public interest in

the release of certain records are fanciful. However, White is entitled, as is any other citizen, to request records under the FOIA. As set forth below, to the extent those requests are unduly burdensome, they need not lead to searches or releases of records. To the extent an agency has prioritized the release of responsive records on a timetable reflective of the frivolity of the asserted underlying public interest, the Court will not disturb that release schedule. That being said, White is warned that if he bases any future FOIA requests on a public interest that has as little evidentiary support as the public interest he asserts in this case, the Court may construe them as frivolous or harassing and will consider summary dismissal and sanctions. *See Hoskins v. Poelstra*, 320 F.3d 761, 763 (7th Cir. 2003) ("District judges have ample authority to dismiss frivolous or transparently defective suits spontaneously, and thus save everyone time and legal expense.")

2. Three Strikes

The DOJ also asks the Court to dismiss White's lawsuit because he has accumulated three strikes under the Prison Litigation Reform Act, 28 U.S.C. § 1915(g). That statute states that a prisoner may not bring a civil action without prepaying the filing fee if he has, "on 3 or more *prior occasions*, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted. . . ." (emphasis added). As stated in the statute, the three dismissals must have occurred *before* the filing of the lawsuit potentially subject to dismissal under § 1915(g). *See Coleman v. Tollefson*, 575 U.S. 532, 135 S. Ct. 1759, 1763 (2015) (finding "prior occasion" refers to something that the plaintiff had "already experienced" when he filed suit).

White had not accumulated three strikes before filing the instant lawsuit. The cases the

DOJ points to include only one strike before White filed this lawsuit in August 2016, before he tendered the Amended Complaint in February 2017, or before it was actually filed on July 17, 2017—the 2010 dismissal of *White v. Secor, Inc.*, No. 7:10-cv-428-JCT-mfu (W.D. Va. Nov. 5, 2010). The other alleged "strikes" occurred after July 17, 2017, so could not count as "prior occasions"—*White v. Office of the Federal Defender for the Middle District of Florida*, No. 3:16-cv-971-JPG-DGW, (S.D. Ill. July 27, 2017) (dismissing case as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)), and the dismissal of the appeal of that decision, *White v. Office of the Federal Defender for the Middle District of Florida*, No. 17-2832, 2018 WL 1215569 (7th Cir. Jan. 26, 2018) (dismissing appeal at White's request pursuant to Federal Rule of Appellate Procedure 42(b)).[6] Without three prior occasions of filing lawsuits or appeals that were dismissed as frivolous, malicious or failing to state a claim, this lawsuit is not subject to dismissal under § 1915(g).

3. White's Declaration

The DOJ asks the Court to disregard assertions in White's sworn declaration he has submitted in support of summary judgment on the grounds that he has no personal knowledge of many of the things to which he testifies, the statements are hearsay, and the statements are irrelevant to the issues in this case. In ruling on a motion for summary judgment, the Court considers only evidence that would be admissible at trial, although it need not be presented at the summary judgment stage in a form that would be admissible at trial. *Cairel v. Alderden*, 821 F.3d 823, 830 (7th Cir. 2016); *Wragg v. Vill. of Thornton*, 604 F.3d 464, 466 (7th Cir. 2010); *see Gunville v. Walker*, 583 F.3d 979, 985 (7th Cir. 2009). Inadmissible hearsay cannot be used to

[6] It is unclear whether the voluntary dismissal of this appeal pursuant to White's request would even count as a strike where the voluntary dismissal occurred in the face of likely involuntary dismissal.

oppose a motion for summary judgment. *Cairel*, 821 F.3d at 830; *Gunville*, 583 F.3d at 985. Likewise, sworn statements that are not based on the declarant's personal knowledge may not be considered on summary judgment. Fed. R. Civ. P. 56(c)(4).

White has not established a valid basis for his personal knowledge of many statements in his declaration. In addition, some statements are irrelevant and/or hearsay. The Court has therefore disregarded those inadmissible statements in its consideration of the pending summary judgment motions.

4. Waiver of Exemptions

White argues that the DOJ has waived the right to assert certain exemptions because it did not specifically assert them all at once in its answer (Doc. 40) or its original motions for summary judgment (Docs. 38 & 50).

It is true that under the piecemeal litigation doctrine, an agency generally must assert all the FOIA exemptions it claims in the original proceedings in the district court and cannot assert new exemptions in later stages. *Citizens for Responsibility & Ethics in Washington ("CREW") v. USDOJ*, 854 F.3d 675, 679 (D.C. Cir. 2017) (citing *Maydak v. USDOJ*, 218 F.3d 760, 764 (D.C. Cir. 2000)). *CREW*, however, was in a different procedural posture than this case. There, the case had been before the district court, appealed, and then remanded to the district court for a second round, then appealed again. *CREW*, 854 F.3d at 679-80. The Court of Appeals for the District of Columbia Circuit held that the FBI's failure to assert Exemption 5 in the original district court proceeding precluded it from asserting it in the second district court round. *Id.* at 680-81.

The case at bar is before this Court for the first time, so the principle described in *CREW* does not limit the exemptions that the DOJ may assert. This *is* the "first time around" where the

CREW court found all arguments should be presented. *Id.* at 680. The DOJ has therefore not waived the assertion of any exemption.

5. Incorporation of Briefing

Finally, White complains that the DOJ has incorporated its summary judgment response by reference into its summary judgment motion. He cites a case in which the Court of Appeals for the Seventh Circuit exercised its discretion not to consider a brief from the trial court level that was incorporated by reference into an appellate brief. *DeSilva v. DiLeonardi*, 181 F.3d 865, 866 (7th Cir. 1999). The Court of Appeals noted that allowing incorporation would defeat the page limitation on appellate briefs and would be an imposition on the Court's time by requiring it to excavate briefing from another court's docket.

In this case, however, all the pertinent briefing is before the Court in support of or opposition to pending cross-motions that are all under consideration at the same time. In order to minimize the already voluminous briefing and avoid repetitive arguments, the Court exercises its discretion to allow both parties to incorporate freely all of their briefs, either in support or in opposition to summary judgment. The Court will consider all arguments, wherever they occur, and the admissible evidence cited with particularity in support of those arguments, to reach a just resolution.

B. Substantive Issues

1. FBI

a. FBI Records Systems

A brief overview of the FBI's records system is a good first step in analyzing its response to White's FOIA requests. The DOJ has submitted the declaration of David M. Hardy, the Section Chief of the FBI's Records/Information Dissemination System of the Records

Management Division to describe the FBI's record-keeping systems. Second Hardy Decl. ("Hardy Decl.") (Doc. 95-1). White has produced no evidence to contradict Hardy's declaration, so the Court accepts it as true for summary judgment purposes.

The FBI maintains the Central Records System ("CRS") for the entire FBI, including its headquarters, field offices and legal attaché offices worldwide. The CRS consists of "applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its integrated missions and functions as a law enforcement, counterterrorism, and intelligence agency to include performance of administrative and personnel functions." Hardy Decl. ¶ 346. The files in the CRS are organized by subject categories, referred to as "classifications," that include "types of criminal conduct and investigations conducted by the FBI, as well as categorical subjects pertaining to counterterrorism, intelligence, counterintelligence, personnel, and administrative matters." *Id.* at ¶ 347.[7]

Files in the CRS are indexed by subject matter, including "by individual (persons), by organization (organizational entities, places, and things), and by event (*e.g.*, a terrorist attack or bank robbery)." *Id.* at ¶ 349. This general index includes "main entries," that is, the main subject of a file such as an individual, organization, or other subject matter. *Id.* at ¶ 348. The index also includes "reference entries" or "cross-references," indicating that an individual, organization, or subject matter is mentioned or referenced in a "main file" about another subject matter. *Id.* Because the FBI indexes only information it considers relevant and necessary for

[7] Each classification corresponds to a numerical code. When a particular case file is opened, it is assigned a three-component code, the first indicating the classification number, the second indicating which FBI office initiated the file, and the third indicating the unique case file number within the subject matter. *Id.* Within each case file, each document is numbered. *Id.*

its future retrieval, not all names or subject matters in a file are recorded in the index. *Id.* at ¶ 349.

In 1995, the FBI began using Automated Case Support ("ACS"), an electronic document management system. *Id.* at ¶ 350. More than 105 million CRS records were converted and incorporated into ACS when it was first activated. *Id.* An ACS feature called the Universal Index ("UNI") allows searching of the CRS index in ACS. *Id.* at ¶ 351. Because the ACS includes indices that predate its activation in 1995, a UNI search in ACS can locate FBI records that were indexed even before 1995 as well as entries that have been added since ACS began, although some old records are not indexed and must be manually searched in a card index. *Id.* UNI currently can search approximately 119.7 million records. *Id.*

In 2012, the FBI began using Sentinel, a newer, web-based document management system which is also indexed to facilitate document retrieval. *Id.* at ¶ 352. When a record is created in Sentinel, its information is also placed into ACS. *Id.*

When the FBI needs to locate records in CRS in response to a FOIA request, it searches the ACS index using UNI and, if a record was possibly prepared after Sentinel was activated in 2012, it also searches the Sentinel index. The FBI believes that these index searches "are reasonably expected to locate responsive material within the vast CRS" because all information the agency believed was pertinent and necessary to be retrievable for its own agency functions was indexed in a way that it could retrieve. *Id.* at ¶ 353.

When the FBI gets a FOIA request, it conducts a search in ACS, and possibly Sentinel, using the exact subject used by the requester and similar permutations of the subject. *See id.* at ¶ 354 *et seq.* If it locates a main file record, that is, a file where the requested subject is indexed as the main subject of the file, it reviews the records in the file for responsiveness and for FOIA

disclosure exemption. *See, e.g., id.* at ¶ 58. If it is unable to locate a main file record where the requested subject is the main subject of the file but was able to locate potential cross-reference entries, it does not review the cross-reference files unless the requester specifically asks for cross-references because such review is unlikely to produce enlightening information about the subject of the request and would likely increase the requester's duplication fees, the agency's response time, and the administrative burden on the FBI. *See id.* at ¶¶ 26 & 354. It informs the requester of the potential increase in page count, charges and response time, in the event the requester asks for review of the files in which the cross-references appear. *See ,e.g., id.* at ¶ 354. It does not interpret a request for "all records" as including records in cross-reference files.

b. White's FOIA Requests

White submitted numerous letters to the FBI seeking various records. Those letters are dated:[8]

- August 9, 2013, Hardy Decl. Ex. M (Doc. 95-2 at 43);
- August 19, 2016, Hardy Decl. Ex. A (Doc. 95-2 at 2-3);
- August 24, 2016, Hardy Decl. Ex. P (Doc. 95-2 at 51);
- September 12, 2016, Hardy Decl. Ex. F (Doc. 95-2 at 18-20);
- November 20, 2016, Hardy Decl. Ex. H (Doc. 95-2 at 26-27); and
- December 1, 2016, Hardy Decl. Ex. EE (Doc. 95-2 at 104-06).

Some letters contain requests concerning multiple subjects. Often the FBI gave each separate

[8] White claims to have sent the FBI a FOIA request letter dated July 18, 2016. The DOJ has provided sworn testimony that the FBI never received the letter, and White has not provided a contrary affidavit or a copy of the letter. There is no evidence from which a reasonable jury could find the FBI received a FOIA request from White dated July 18, 2016.

subject request its own Freedom of Information Act/Privacy Act ("FOIPA") request number.

c. Propriety of Requests

Of the FOIA requests contained in those letters, the FBI indicated two were not proper requests because they did not reasonably describe the records sought or give enough information to allow the FBI to determine whether responsive records existed:

Date of Letter	FOIPA Number	Requested Information
12/1/16	1365412-000	Green Star
12/1/16	NFP-65643	Any person, or, entity in Lexington, SC, claiming affiliation with the government of North Korea; Any person, or, entity, in Lexington, SC, claiming affiliation with al-Qaeda or, any related group; Any person, or, entity, in Boston, MA, New York, or, Lexington, SC, claiming affiliation with Alexander Dugin, The Donetsk People's Republic, or, the Luhansk People's Republic; a sting operation run out of the Pahlevi Building in New York, NY, by informants claiming to be "the General", supposedly the Iranian Major General Khosrowdad (deceased 1979), the "twin brother of the Shah of Iran", "Princess Ashraf of Iran", and, "Iranian terrorists."· Time frame is at least 2008 to present; FBI-JTTF infiltration of Korean language classes in the New York City Area.

Green Star

On December 1, 2018, White requested "all records relating to" a group called "Green Star." The FBI asked White for additional information because the request did not contain enough identifying information about the group for the FBI to be able to locate responsive records. White did not provide any, so the request was closed.

On summary judgment, the DOJ maintains that a request for "all records relating to . . . Green Star" does not describe the information sought with the reasonably specific detail required by § 552(a)(3)(A). It argues that, without information about what the group is, where it may be located, what other groups or individuals it may be associated with, why it would be of interest to the FBI, or the time frame for which records may exist, a search would be overly burdensome. White does not attempt to counter these assertions in his summary judgment briefs.

The Court agrees that White's request was overbroad and did not trigger the FBI's duty

to search for records. Unlike some of White's other requests for information about certain groups, it is not self-apparent from the name "Green Star" what White is seeking. Indeed, a simple Google search for "Green Star" reveals it names a brewery, a home goods store, an art movement, an astrological phenomenon, an environmental rating system, a waste management company, a clean-burning fuel manufacturer, and likely much more. Without further information from White, which he failed to provide when asked, the request for "all records relating to . . . Green Star" did not reasonably describe the records sought. Therefore, the FBI was not obligated to search for them.

NFP-65643

Also on December 1, 2016, White requested "all records related to" a number of ill-defined subjects with international aspects. Three of them seek information about subjects "claiming affiliation" with groups or individuals.[9] Another requests information about a sting operation, and another requests information about Korean language classes. The FBI asked White for additional information because the requests did not contain enough identifying information for the FBI to be able to locate responsive records. White did not provide any.

On summary judgment, the DOJ maintains that a request for all records relating to these subjects does not describe the information sought with the reasonably specific detail required by § 552(a)(3)(A). It argues that, without more information—for example, names, organizations, events or specific locations for the "claiming affiliation" requests—a search would be overly burdensome. White does not attempt to counter these assertions in his summary judgment briefs.

[9] White broadened these descriptions in his Amended Complaint to encompass a larger geographic range than in his December 1, 2016, FOIA request. The Court considers only the information sought in White's letter request.

The Court agrees that White's requests were overbroad and did not trigger the FBI's duty to search for records. With respect to the "claiming affiliation" requests, White suggests no means of detecting "claimed affiliations" that would give the FBI something to search for. Searches for North Korea, al-Qaeda, Dugin (a Russian political philosopher), the Donetsk People's Republic (a Ukrainian independence movement) and the Luhansk People's Republic (another Ukrainian independence movement) promise to produce records too numerous to mention and too burdensome to review for responsiveness to White's vague "claimed affiliation" requests. Without further information from White, which he failed to provide when asked,[10] the "claiming affiliation" requests did not reasonably describe the records sought. Therefore, the FBI was not obligated to search for them.

With respect to White's requests for information about an unidentified sting operation and the infiltration of Korean language classes, those requests suggest no viable search terms the FBI could use to retrieve truly responsive documents, and any search of the words White used could produce numerous records with no discernable way of narrowing the scope to records responsive to White's request without an undue amount of effort. In the face of such requests, without any clarifying information, the requests were not proper, and the FBI was not obligated to conduct a search.

d. No Responsive Records

For a group of FOIA requests, the FBI indicates it located no responsive records after searching for the key words in the name of the group and various permutations of those words:

[10] White cites to exhibits he claims provide further information, but they either provide further information about a different request or the Court could not locate the exhibit in White's extensive and scattered exhibits submitted in this case.

Date of Letter	FOIPA Number	Requested Information
8/19/16	1357563-000/1/2	Outlaw Bikers in Osceola County, FL
8/19/16	1357558-000/1	Soul Survivors Motorcycle Club
8/19/16	1357582-000/1/2	League of the South
9/12/16	1359366-000, 1359389-000	Aryan Strike Force of Salem, Ohio/Buffalo, New York/any other location
9/12/16	1359377-000	Aryan Renaissance Society
9/12/16	1359397-000	Blue Lives Matter of Texas
9/12/16	1359403-000	White Lives Matter
9/12/16	1359414-000	Aryan Nationalist Alliance of Salem, Ohio
9/12/16	1359407-000	Traditional (or, Traditionalist) Workers Party
9/12/16	1359374-000	Golden State Skinheads of Sacramento, California
9/12/16	1359390-000	California Skinheads
9/12/16	1359401-000	Ohio Council of Concerned Citizens
12/1/16	1365415-000	Rural People's Party
12/1/16	1365410-000	New Resistance
12/1/16	1365433-000	Russian Defense League
12/1/16	1365418-000	US Songun Study Group
12/1/16	1365425-000	United Juche Front of North America
12/1/16	1365426-000	Swords of Songun
12/1/16	1365431-000	Manchuoko Temporary Government
12/1/16	1365432-000	US Juche Study Group
12/1/16	1365422-000	New Bihar Mandir Temple

The FBI states that it found no responsive main file or cross-reference file records with respect to the following groups: Outlaw Bikers in Osceola County, FL; Aryan Strike Force of Salem, Ohio/Buffalo, New York/any other location; Blue Lives Matter of Texas; White Lives Matter; Aryan Nationalist Alliance of Salem, Ohio; Ohio Council of Concerned Citizens; Rural People's Party; New Resistance; Russian Defense League; US Songun Study Group; United Juche Front of North America; Swords of Songun; Manchuoko Temporary Government; US Juche Study Group; and New Bihar Mandir Temple. With respect to California Skinheads, the FBI originally notified White that there were 17,750 pages of potentially responsive main file records. It then realized the search it had conducted was too broad because it returned results for any reference to Skinheads in the state of California and not results for the group specifically named "California Skinheads." The FBI stated that a search limited to that group yielded no responsive main file or cross-reference file records.

With respect to the following groups, the FBI states that it found no responsive main file records but that it determined there may be responsive cross-reference file records: Soul Survivors Motorcycle Club; League of the South; Aryan Renaissance Society; Traditional (or, Traditionalist) Workers Party; and Golden State Skinheads of Sacramento, California. The FBI states that it is in the process of reviewing potentially responsive cross-reference file records for League of the South because White has requested it to do so. It has not reviewed potentially responsive cross-reference file records for other groups for which no responsive main file records were found because White has not specifically asked it to do so.

As noted above, an agency must conduct a good faith search that is reasonably calculated to uncover all relevant documents. It must search its record systems where responsive information is likely to be located, *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990), using "methods which can be reasonably expected to produce the information requested," *Rubman v. U.S. Citizenship & Immigration Servs.*, 800 F.3d 381, 387 (7th Cir. 2015) (internal quotations omitted). Good faith is presumed and can be demonstrated by "[a] reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched." *Oglesby,* 920 F.2d at 68. However, the presumption of good faith can be overcome by countervailing evidence that raises substantial doubt that the search was adequate. *Rubman*, 800 F.3d at 387; *see Carney v. USDOJ*, 19 F.3d 807, 813 (2d Cir. 1994) (bare allegations and speculation insufficient to overcome presumption). Countervailing evidence can include "positive indications of overlooked materials" in response to well-defined requests. *Founding Church of Scientology v. NSA,* 610 F.2d 824, 837 (D.C. Cir. 1979). Importantly, "[t]he issue is *not* whether other documents may exist, but rather whether the search for undisclosed documents

was adequate." *In re Wade*, 969 F.2d 241, 249 n. 11 (7th Cir. 1992) (emphasis in original); *accord Rubman*, 800 F.3d at 387.

No Responsive Main File or Cross-Reference Records

White believes the FBI's searches yielding no responsive records were faulty because there are "positive indications of overlooked materials," that is, he believes there should be responsive records in FBI files that were not located. In support of this assertion, he points to media reports and publications that refer to various subject groups and his own assertions of facts he believes show responsive documents must exist within FBI files.

On the other hand, Hardy's declaration states that the CRS contains virtually all FBI records, that they are indexed to be useful for FBI functions, but that that the index is not exhaustive in that topics or references not anticipated to be relevant or necessary for FBI purposes may not be included in the index. Nevertheless, Hardy states that searches of the CRS index are "reasonably expected to locate responsive material within the vast CRS" as evidenced by the fact that the FBI uses index searches to retrieve information for its own operations. Hardy states that the FBI has searched the CRS index using searches of the overlapping database systems ACS/UNI and Sentinel. He also describes the specific query terms used for each group and the search methods. He further notes that, for a number of groups about which White inquired, the agency went back to double check its conclusion that there were no responsive main file or cross-reference file records.

The Court finds the FBI searches of main file and cross-reference files that yielded no responsive records appear to be reasonably calculated to locate responsive records. The FBI searched all of its files using a variety of terms that appear to be designed to detect records concerning the groups White lists in his requests. The index search tools are used by the FBI to

accomplish its law enforcement and administrative functions and return adequate results for those purposes, so there is no suggestion of rigging the index so that it would fail to find responsive records. Nor is there any suggestion the FBI has hampered the search by using inappropriate or insufficient queries. In sum, Hardy's declaration establishes that the FBI looked for responsive records in the places they would be expected to be found and in a way that would be expected to find them.

White's assertions that responsive records exist in FBI files which should have been produced are not enough to overcome the presumption of good faith created by Hardy's declaration. The media reports and publications to which he points are either irrelevant to proving anything exists in FBI files—a number of the reports do not even mention the FBI—and/or are hearsay and not officially attributable to the FBI. As for White's own assertions of fact, he has not described his basis for personally knowing the facts he asserts. Indeed, they appear to be his own speculation, based on hearsay and innuendo, about FBI activities. Finally, even if responsive records did exist within the FBI files, that fact, by itself, is not enough to demonstrate an inadequate search or bad faith. The FBI admits that its index is designed to be functional and is therefore not an exhaustive listing of every topic ever mentioned in an FBI file. It is possible there may be a responsive record not locatable through an index search, but that does not mean the search was inadequate so long as it was reasonably calculated to uncover all responsive records.

Specifically with respect to California Skinheads, the FBI has plausibly explained its erroneous initial response that there were 17,750 responsive documents and the revision of that number down to zero. White has not presented any evidence to cast doubt on this explanation.

No Responsive Main File Records; Cross-References Not Reviewed

To the extent the FBI was unable to locate responsive main file records, the reasoning in the previous section applies. Those searches were reasonably calculated to locate responsive records in main files, and the FBI was reasonable to limit its initial review to main file records, where relevant information was likely to be found. To the extent there may be responsive cross-reference records, the FBI was reasonable not to automatically search for those records in response to a request for "all records." Based on the FBI's method of keeping records, such a search is unlikely to yield records revealing meaningful information about the subject searched or the functioning of the Government and threatens to subject the requester to enormous additional fees and delays in disclosure.

The FBI does not refuse to search for cross-reference records, it simply pauses to confirm that the requester indeed wants to incur the cost for the additional records and bear the delay before conducting such a search. For a number of subjects, White did not provide such confirmation, so the FBI did not complete the additional search. This does not constitute improperly withholding agency records, so White is not entitled to judgment on those FOIA requests. However, in this litigation, it has become clear that White indeed wants such a search to be done. The FBI has indicated that it is now conducting a search of responsive cross-reference files for the following: Soul Survivors Motorcycle Club; Traditional (or, Traditionalist) Workers Party; and Golden State Skinheads of Sacramento, California. In light of the briefing in this case, it should also conduct a search of potentially responsive cross-reference files for the Aryan Renaissance Society. The search shall be done in the regular course of the FBI's work in responding to White's FOIA requests and at the appropriate cost.

e. *Glomar* Responses

For another group of FOIA requests for information about third parties, the FBI has provided *Glomar* responses, that is, it has said it will not reveal whether responsive records exist because to do so would be to unduly sacrifice individuals' privacy interests:

Date of Letter	FOIPA Number	Requested Information
8/19/16	1357439-000	David Gletty, a federal informant in Florida; Gletty's Lover, "Joe" LNU, also informant; Maitland, Florida SA Kevin Farrington; Orange County Sheriff's Deputy, and JTTF Agent, Kelly Boaz of Sanford, Florida; Tom Martin of Florida; John Rock of Florida; Brian Klose of Florida; Deborah Plowman of Florida; Harold "Hippie" Kinlaw of Florida; Carlos "Gino" Dubose of Florida (collectively, the "Gletty group")
8/24/16	1358523-000	Robert Killian, an Orange County, Florida Sheriff who was assigned to the Joint Terrorism Task Force from 2003 to 2010; Jason Hall, an FBI Confidential Informant under JTTF Case Agent Kelly Boaz in 2012 (collectively, the "Killian group")
9/12/16	1359387-000	Matthew Heinbach/Heimbach, involved in [the Traditionalist Worker's Party]; Matthew Parrot, father of Brook Heinbach, and an informant for both your Bureau, and the Indiana State Police; Rick Tyler, congressional candidate in Cleveland, Tennessee; Steve Bowers of the National Socialist Movement of Springfield, Missouri; Rebecca Barnette, phone # [REDACTED], of Buffalo, New York, of the National Socialist Movement; Elisha Strom, an informant with the US Marshals, and possibly your Bureau; An informant in Augusta, Georgia using the name "Christopher Drake"; Erica Hardwick, aka Erica Hoesch, an informant with the US Marshals and possibly your Bureau; Kristy Pryzbylla, aka "Sin", of Kissimmee, Florida; Ronald Cusack of Kissimmee, Florida; Peter James of Chicago Illinois; Harold Turner of Bergen, New Jersey; James Logsdon of Peoria, Illinois; Rick Spring of the Aryan Nations, an informant for the FBI-JTTF (collectively, the "Heimbach group")
11/20/16	1362495-000	Jeff Schoep of the National Socialist Movement; Brian Holland, an informant; Ron Wolf of Toledo, Ohio, likely an ATF informant; FBI SA James Majeski of Florida; FBI SA Michelle Krempa of Florida; FBI SA Thomas David Church of Virginia; Seminole County Sheriff Debra Healy (collectively, the "Schoep group")
12/1/16	1365372-000	Any group affiliated with 480 Sherwood Drive, Lexington, SC
12/1/16	1365354-000	James Porrazzo, likely of Boston, Massachusetts; Joshua Caleb Sutter aka David Woods aka Tyler Moses aka Shree Kaliki-Kaliki Mandir aka Stephen Brown aka Thugee Behram; Jilian Hoy aka Comrade Morrison aka Jayalita Devi Dasi; John Paul Cupp; Jason Adam Tonis of Elizabeth, New Jersey; Kevin Walsh; Zaid Shakar al-Jishi; Emily Rotney; Chris Hayes; Kent McLellan; August Kreis III; Brett Stevens; FBI-JTTF Agent; David Lynch (deceased); and New York City Police Detective Peter Zaleski (collectively, the "Porrazzo group")

The FBI initially provided a *Glomar* response with respect to these requests. In other words, it refused to provide any records about any of the listed third parties—David Gletty, Joe

L/N/U, Kevin Farrington, Kelly Boaz, Tom Martin, John Rock, Brian Klose, Deborah Plowman, Harold Kinlaw, Carlos Dubose, Robert Killian, Jason Hall, Matthew Heinbach, Mathew Parrot, Rick Tyler, Steve Bowers, Rebecca Barnette, Elisha Strom, Christopher Drake, Erica Hardwich, Kristy Pryzbylla, Ronald Cusack, Peter James, Harold Turner, James Logsdon, Rick Spring, Jeff Schoep, Brian Holland, Ron Wolf, James Majeski, Michelle Krempa, Thomas David Church, Debra Healy; James Porrazzo, Joshua Caleb Sutter, Jilian Hoy, John Paul Cupp, Jason Adam Tonis, Kevin Walsh, Zaid Shakar al-Jishi, Emily Rotney, Kent McLellan, August Kreis III, Brett Stevens, David Lynch, and Peter Zaleski—and refused to acknowledge even whether it had any responsive records, until White provided (1) written authorization and consent from the individual, (2) proof of the individual's death, or (3) a justification that a significant public interest in disclosure outweighed the individual's personal privacy interests and that disclosure would advance that public interest. It further stated that if any such records existed, they would be subject to Exemptions 6 and 7(C). The FBI told White it would close his requests if he did not provide one of the three things requested within thirty days, and it provided him a sample consent form he could copy and provide to individuals about whom he sought records.

With respect to three letter requests regarding the Gletty, Killian, and Schoep groups, White proffered a purported public interest in disclosure of the personal information he requested: he needed it to expose in the national media alleged unlawful FBI domestic counterintelligence operations aimed at denying Americans' First Amendment rights. With respect to the letter request regarding the Heimbach group, White proffered a similar public interest justification on appeal. With respect to the letter request regarding the Porrazzo group, White never attempted to articulate any public interest justification.[11] For all the letter requests

[11] The FBI became satisfied White had produced information showing that David Lynch, an

except with respect to David Gletty, at the agency level and/or on appeal, the FBI rejected the notion that White had established any public interest that justified the requested disclosures or that the individuals lacked a substantial enough privacy interests because they were alleged to have been government employees or informants at the relevant times. With respect to Gletty, on appeal the FBI persisted in its *Glomar* response but added the additional justification that the existence or non-existence of records was protected from disclosure by Exemption 7(D) because it would reasonably be expected to disclose the identities of confidential sources and information furnished by such sources.

With respect to White's request for records regarding any group affiliated with 480 Sherwood Drive, Lexington, South Carolina, the FBI recognized that an address could be considered personally identifying information and that release of the requested records could infringe on an individual's personal privacy. It told White it could not confirm or deny the existence of any responsive records until White provided (1) written authorization and consent from the owners or residents of that address or (2) a justification that the significant public interest in disclosure outweighed the individuals' personal privacy interests and that disclosure would advance that public interest. It further stated that if any such records existed, they would be subject to Exemptions 6 and 7(C). The FBI provided him a sample consent form he could copy and provide to the relevant individuals.

White tried to establish the requisite public interest by sending an article from a news organization's website referencing violent white supremacists connected with 480 Sherwood Drive and one white supremacist's speculation that another was an undercover FBI informant

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individual included in the Porrazzo group of individuals, was deceased. The FBI renumbered White's claim for records regarding Lynch as FOIPA 1367279-00 and has added responsive records to the list of records to be processed and disclosed.

and was responsible for his wrongful incarceration. The FBI rejected the notion that White had established any public interest that justified the requested disclosures and administratively closed the request.

Steve Bowers and Emily Rotney

In their respective summary judgment motions, White concedes his claims for records relating to Steve Bowers and Emily Rotney (Doc. 90 at 34), and the DOJ requests summary judgment (Doc. 98 at 77). The Court will grant summary judgment for the DOJ on this portion of White's claims.

Lynch

Apparently the FBI is satisfied that Lynch is deceased and is producing responsive records but not as quickly as White would like. The Court will address the adequacy of that production later in this order.

Other Individuals

The DOJ argues that, with the exception of Lynch, White failed to provide the FBI with any of the additional information it needed to assure that disclosure would not reasonably be expected to invade the privacy of the subject individuals or the individuals associated with the subject address, the interest sought to be protected by Exemptions 6 and 7(C). It notes that, to the extent White claimed the individuals in question were law enforcement officers or government witnesses, they enjoy substantial privacy interests, and White has not demonstrated any public interest outweighing those privacy rights. Additionally, the DOJ justifies the *Glomar* responses by noting that there is no evidence the FBI officially acknowledged a relationship with any of the individuals, and that White's speculation of such a relationship is not based on any official acknowledgement by the agency.

White disagrees. He argues with respect to a number of individuals that their connection to the FBI has been officially acknowledged so the agency cannot give a *Glomar* response. He further argues that the public's interest in uncovering governmental wrongdoing outweighs any individual's privacy interest, which he believes are diminished for some subjects because of their positions as public officials or government employees.

As a preliminary matter, it is entirely appropriate for the FBI to issue a *Glomar* response until White could provide a consent for disclosure, proof of death, or a sufficient public interest before disclosing records containing private personal information. Even identifying whether an individual or an individual's address is either associated with the FBI or a subject on which the FBI maintains a file could be damaging to the third party in ways covered by Exemptions 6 and 7(C). *Antonelli v. FBI*, 721 F.2d 615, 618 (7th Cir. 1983). It could reveal that those individuals have been or are the subject of an FBI investigation, FBI informants, or involved in FBI investigations. Even acknowledged FBI agents have "a legitimate interest in preserving the secrecy of matters that conceivably could subject them to annoyance or harassment in either their official or private lives." *Lesar v. USDOJ*, 636 F.2d 472, 487 (D.C. Cir. 1980). Thus, the existence of records and the reasons for not disclosing them could put the individual's safety in jeopardy or compromise law enforcement investigations connected to the individual. Individuals undoubtedly have a privacy interest in not disclosing records in which they are named—or even whether such records exist.

Because White never attempted to offer the FBI consent, proof of death, or a public interest justifying disclosure in connection with his requests for records concerning the remaining third parties in the Porrazzo group—James Porrazzo, Joshua Caleb Sutter, Jilian Hoy, John Paul Cupp, Jason Adam Tonis, Kevin Walsh, Zaid Shakar al-Jishi, Chris Hayes, Kent

McLellan, August Kreis III, Brett Stevens, and Peter Zaleski—and because, as explained below, there is no evidence of any public interest outweighing an individual's privacy rights, the Court finds the FBI's response concerning these individuals was proper.

As for many of the others, White argues that a *Glomar* response is not available because the FBI has already disclosed the existence of responsive records by acknowledging a relationship with the subjects. As noted above, a *Glomar* response is unavailable where the FBI has officially acknowledged a connection between the individual and the FBI such as, for example, when the individual was called as a government witness at trial and identified as an FBI informant.

White points to the following types of documents he believes establish an official acknowledgment of relationship with the FBI[12]: documents he received from other non-federal government offices referencing alleged activities with federal law enforcement; a book authored by David Gletty and Joe LNU; news articles from the internet; unauthenticated documents allegedly reflecting the substance of phone calls; statements by individuals about their own

[12] Many exhibits submitted by White lack pinpoint citations and are nearly illegible. Just to provide one example, his Exhibit F(e)(x) (Doc. 91-1 at 26) contains what appears to be a three-page document printed on a single page (one quarter of the page devoted to each original page) in extremely small print with the ink smudged from, it appears, being recopied multiple times. On the first page of his motion for summary judgment, White cites to this document for the proposition that two FBI directors personally authorized a particular FBI operation. He does not point to any particular place in his three-page illegible document where such evidence exists or where it would be worth the Court's while to squint and decipher the writing. The Court has spent too many hours reviewing the entirety of many of White's difficult-to-read exhibits—and it assures the parties it has consulted each exhibit cited that it was able to find in the record—only to find they do not include evidence to support the propositions White says they support. It has had enough. It is White's burden to point the Court to specific evidence in support of his summary judgment motion, *N.W. Nat'l Ins. Co. v. Baltes*, 15 F.3d 660, 662-63 (7th Cir. 1994), and to refrain from making evidentiary documents more illegible by printing multiple documents on a page. The Court will continue to read what it can of White's exhibits, but it will ignore exhibits it cannot.

connection with the FBI; a blog post by a subject individual about his role as an FBI informant; and the appearance of a name on a Government witness list in a criminal case against White. White also presents statements in his own declarations that are either contradicted by court records or are hearsay and/or lack a foundation for his personal knowledge to testify to such matters: references to material from a case in the Western District of Louisiana that does not appear on that district's docket; alleged testimony from Gletty in the Middle District of Florida that is not reflected on the docket sheet as ever occurring; and a statement from a criminal defendant's counsel that Gletty was an FBI confidential source. None of these even come close to being an official acknowledgement *by the FBI* of information that there was a connection between the subject and the FBI such that the FBI essentially admitted that a file exists.

Other evidence from White is more probative of an FBI-acknowledged connection between the subject and the agency: a United States Attorney's unsealed motion for a downward departure for Rock based on his cooperation by providing sensitive information to law enforcement in *United States v. Martin*, No. 6:07-cr-26-GAP-KRS (M.D. Fla.); Strom's testimony as a Government witness in *United States v. Strom*, 3:07-cr-1-NKM-1 (W.D. Va.); and a United States Attorney's acknowledgement in a motion *in limine* in *United States v. Turner*, 1:09-cr-650-DEW-JMA (E.D.N.Y.), that Turner had been at one time an FBI confidential informant. The Court believes that, to the extent these public acknowledgements by the DOJ of a relationship between federal law enforcement and the subject were made on behalf of and with the authority of the FBI, they may be sufficient to render *Glomar* responses unavailable to the requests for records about those three individuals. However, the Court declines to order the FBI to respond to White's requests for records about Rock, Strom, and Turner because it is clear that their privacy interests, even if slight, are not outweighed by a public interest in disclosure

and thus would prevent disclosure. *See Boyd v. Criminal Div. of USDOJ*, 475 F.3d 381, 389 (D.C. Cir. 2007) (applying harmless error doctrine where *Glomar* response was improper but records were not subject to disclosure). As discussed below, White has not made the requisite showing of any public interest in disclosure.

With respect to each request for records concerning an individual or 480 Sherwood Drive, White argues that the public's interest in uncovering FBI wrongdoing targeting American citizens' exercise of First Amendment speech rights outweighs any privacy interests those individuals have. However, the evidence he presents in support of the asserted public interest does not substantiate White's theory. First, the nefarious nature of the alleged FBI activities amounts to nothing more than speculative characterizations based on hearsay and innuendo. Second, far from showing an agency's targeting of individuals peacefully exercising First Amendment rights, the hearsay indicates the FBI was conducting lawful counterintelligence activities targeting violent white supremacists or white supremacist hate groups planning to rid the nation of non-white individuals. The actual evidence White has presented is scant and is certainly not enough to "warrant a belief by a reasonable person that the alleged Government impropriety might have occurred," the standard for establishing a public interest in uncovering public officials' wrongdoing. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004). White has presented nothing that rebuts the presumption of legitimacy afforded government officials' conduct. *See, id.* Consequently, the Court finds that disclosure of records revealing FBI activity would not contribute significantly to the public's interest in uncovering governmental wrongdoing but would instead reasonably be expected to constitute an unwarranted invasion of privacy. Thus, the Court finds minimal public interest in the disclosures White requests. Balancing this against the privacy interests of the individuals

involved, discussed above, the privacy interests clearly prevail.

To the extent White suggests an alternative public interest in uncovering wrongful FBI activity that led to his wrongful conviction, that interest is purely private. *Peltier v. FBI*, 563 F.3d 754, 764 (8th Cir. 2009); *Antonelli v. FBI*, 721 F.2d 615, 619 (7th Cir. 1983). Thus, it cannot justify disclosure of records about individuals with even a minimal privacy interest.

f. Records Being Produced

Finally, for another group of requests, the FBI has indicated that there are responsive records and either that they have been produced or that the agency is reviewing the records prior to disclosure and is releasing responsive records at a rate of 500 pages per month by subject in the order White has indicated he would like them to be processed.

Date of Letter	FOIPA Number	Requested Information
8/9/13	1224695-000	William Alexander White
8/19/16	1357551-000/1	The 1st SS Cavalry Brigade, an FBI front group in Lexington, SC, and Florida
8/19/16	1357593-000/1/2/3/4	National Socialist Movement
8/19/16	1357585-000/1/2	Confederate Hammerskins
8/24/16	1358511-000	Operation Primitive Affliction
11/20/16	1362454-000/1	Vinlander Social Club
11/20/16	1362474-000	American National Socialist Workers' Party
12/1/16	1365406-000/1	American Front
12/1/16	1367279-00	David Lynch
12/1/16	1365428-000/1	Aryan Nations, or any related group in Pennsylvania or Lexington, SC

In addition, the FBI is reviewing cross-reference files for responsive records relating to League of the South, FOIPA number1357582-002, pursuant to White's follow-up request following the failure to locate any responsive main file records.

With respect to White's request for information about himself, he provided a signed consent form. The FBI informed White it had located approximately 14,537 pages of potentially responsive records. Because the request was likely to produce over 2,500 pages, the FBI placed the request in the "large track" of its multi-track FOIA response tracking system and

notified White that such placement would significantly delay the response time. The FBI indicated it would review the responsive records (at that time revised to 14,230 pages) at a rate of 500 pages per month for release of non-exempt portions of those records. White declined the offer to reduce the size of his request to possibly accelerate its processing.

The FBI notified White it had located approximately 8,500 pages of responsive pages for the 1st SS Cavalry Brigade, but that the records were subject to Exemption 7(A) because they are law enforcement records, there was a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information could reasonably be expected to interfere with enforcement proceedings. The FBI has indicated that it will review the files again when the request makes it to first priority on the disclosure priority list White has provided to see if the records are still exempt from production at that time.

With respect to White's request for records about the National Socialist Movement, the FBI produced responsive records in three batches of 63, 58, and 103 pages, respectively, but indicated there may be more potentially responsive records. The FBI claimed that there were unusual circumstances involved in locating responsive records that would delay those responses. The disclosed records included material withheld pursuant to a number of exemptions, all of which White challenged. Hardy Ex. X (Doc. 95-2 at 75-79). He also challenged the adequacy of the release on other grounds such as illegibility and unclean hands. Hardy Ex. NN, QQ (Doc. 95-2 at 133-37, 146-48). The FBI has indicated it is continuing to search for responsive records.

With respect to White's request for records about the Confederate Hammerskins, the FBI produced responsive records in two batches of 150 and 441 pages, respectively, but indicated there may be more potentially responsive records. The disclosed records included material

withheld pursuant to a number of exemptions. White challenged the same use of the exemptions that he challenged in connection with the National Socialist Movement, as well as other challenges. Hardy Ex. X, AA (Doc. 95-2 at 75-79, 92-93). The FBI has indicated it is continuing to search for responsive records and reviewing processed records *de novo*.

With respect to White's request for records about Operation Primitive Affliction, the FBI initially notified White it had located approximately 12,250 pages of potentially responsive records, but later revised that figure to approximately 7,267 pages plus audio and video files.

With respect to White's request for records about the Vinlander Social Club, the FBI was not able to identify any responsive main file records in response to White's original request. After White provided more details about what he was looking for, the FBI renewed its search efforts.

With respect to White's request for records about the American National Socialist Workers' Party, the FBI notified White it had located approximately 2,061 pages of potentially responsive records.

With respect to White's request for records about the American Front, the FBI notified White it had located approximately 47,850 pages of potentially responsive records. The FBI is continuing to search for responsive main file records.

With respect to White's request for records about Aryan Nations and related groups in Pennsylvania or Lexington, South Carolina, the FBI noted that responsive information was available on the FBI's public website, The Vault. Because White was an inmate with little access to the internet, the FBI copied the 121 pages of responsive records in The Vault and mailed it to the address to which White had instructed the agency to mail its FOIA responses. The FBI told White he could ask the agency to look for more if the information from The Vault

was not sufficient. White indicated he wanted more material than was on The Vault, so the FBI is searching for additional responsive records.

Finally, as for White's request for records about David Lynch, for whom White has provided satisfactory evidence of death, the FBI has located approximately 200 pages of potentially responsive records, all of which are awaiting processing.

With respect to all of the foregoing subjects (except Lynch) and others for whom the FBI has begun cross-reference file searches (as noted above), the FBI informed White that it had aggregated the requests because they were related and that it had found collectively approximately 100,000 responsive main file records. It stated that it would review them, and the request regarding Lynch, at a rate of 500 pages per month for release of non-exempt portions of those records in the order White has requested.[13] Indeed, except for a brief period in early 2019 during a government shut-down, there is no evidence to indicate the FBI is not producing documents on its anticipated schedule. The FBI has indicated that after this litigation began, it located potentially responsive cross-reference records and will process them as well as the responsive main file records.

Common themes emerge in White's objections to the foregoing. The Court addresses them in turn.

Processing Schedule

White objects to the FBI's schedule for processing 500 pages per month before releasing

[13] White has requested release of responsive documents in the following order: William A White; American National Socialist Workers' Party; National Socialist Movement; Traditionalist Workers' Party; League of the South; American Front; Operation Primitive Affliction; 1st SS Cavalry Brigade; Soul Survivors Motorcycle Club; Vinlander Social Club; Golden State Skinheads; Confederate Hammerskins; and Aryan Nations. *See* Pl.'s Mot. Summ. J. (Doc. 90 at 25-26). White has not indicated where responsive records regarding David Lynch fit into this list, so the FBI has given this request lowest priority.

them on a rolling basis. He notes that the FOIA requires records be made "promptly available" and that the FBI even aims to complete its response to every FOIA request within five years of receiving it. However, at the rate proposed by the FBI, he will not receive all responsive documents for anywhere from sixteen years, for production of all the records identified so far, to forty-five years, if the 270,000 responsive records he expects exist are actually located. He finds this untenable and outside the spirit of the FOIA, and asks the Court to order the FBI to expedite processing his requests at a faster rate until its responses are complete.

The FBI argues that exceptional circumstances exist that frustrate the FBI's efforts to process White's large requests more quickly. It further explains that its standard policy is to track requests by the size of the expected number of responsive records and to process requests on a first-in-first-out basis within each track. For larger requests, the FBI explains that its standard practice of processing 500 pages per month for large requests is rooted in its efforts to produce the most pages for the most FOIA requesters in the most efficient and equitable way. It explains that even urgent, compelling requests are not processed at a faster rate (unless ordered by a court), although they are placed first in line for responses regardless of where they would ordinarily fall in the FIFO line-up. The FBI argues that if the Court were to order faster processing of White's request, his would receive better treatment than even clearly urgent, compelling requests.

It is true that the FOIA requires a federal agency to make records "promptly available" once a proper request is received in the proper manner. 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i). The Court of Appeals for the District of Columbia Circuit has observed that "depending on the circumstances typically would mean within days or a few weeks of a 'determination,' [to comply with a records request,] not months or years." *Citizens for Responsibility & Ethics in*

Washington v. Fed. Election Comm'n, 711 F.3d 180, 188 (D.C. Cir. 2013).

However, it is also true that federal agencies are not private investigation agencies or copying factories for individuals seeking mountains of government documents for no articulable public purpose. It is true that it is improper to inquire into the requester's motive for his request when determining *whether* the agency must respond, but this Court believes it is entirely appropriate to consider it when determining *how* and *when* the agency must respond. This and other factors should be weighed: the existence of an articulable public interest in the records, the number of responsive records expected, the diligence of the agency in attempting to respond to the request, and potential disruption to the agency and delays to other FOIA requesters from a tighter production schedule. By enacting the FOIA, Congress could not have intended to allow a single requester to paralyze a federal agency by submitting thousands of FOIA requests for which there could be hundreds of thousands—even millions—of responsive records and then demanding the entire disclosure be made within a matter of weeks, or even a few years.

In this case, White seeks comprehensive information from the FBI about numerous subjects. He has refused to narrow his requests to make them more manageable or more likely to produce documents that actually shed light on the functioning of government. In fact, he has expanded his requests to include every traceable mention of his subjects regardless of relevance to government functioning. He has also failed to articulate any real public interest in the records he seeks. Instead, his requests amount to a fishing expedition designed to uncover information about those whom he believes have wronged him and his white supremacist affinity groups. While he may be entitled to all of the non-excluded or non-exempt records he seeks, he is not entitled to them next week, or even next year.

The Court finds that the FBI's schedule of producing 500 pages per month is reasonable,

in good faith, and in compliance with the FOIA. It is not unusual for a court to defer to a federal agency about its records release policies. *See Negley v. USDOJ*, 305 F. Supp. 3d 36, 46 (D.D.C.) (applying DOJ's 500-page interim release policy because the policy would "promote efficient responses to a larger number of requesters" and "the Court sees no basis to expedite release"), *aff'd*, No. 18-5133, 2018 WL 4148608 (D.C. Cir. Aug. 14, 2018). It is appropriate to defer to the FBI in this particular case which will require review of over 100,000 documents—as many as 270,000 if White is correct—balanced against the policy reasons set forth above and in the absence of any showing of a public interest in disclosure or a need for an expedited schedule. Indeed, other courts have come to similar conclusions. *See Nat'l Sec. Counselors v. USDOJ*, 848 F.3d 467, 471-72 (D.C. Cir. 2017) (recognizing FBI's 500-page-per-month policy "serves to promote efficient responses to a larger number of requesters"); *Freedom Watch v. BLM*, 325 F. Supp. 3d 139, 142 (D.D.C. 2018) (finding FBI's 500-page-per-month policy was justified where plaintiff's overall multi-subject request equated to in excess of 100,000 pages); *Middle E. Forum v. USDHS*, 297 F. Supp. 3d 183 (D.D.C. 2018) (finding DHS's 500-page-per-month policy was appropriate rate of production); *Colbert v. FBI*, No. 16-CV-1790 (DLF), 2018 WL 6299966, at *3 (D.D.C. Sept. 3, 2018) (refusing to order FBI to adjust its standard processing rate of 500-pages per month); *Energy Future Coal. v. OMB*, 201 F. Supp. 3d 55 (D.D.C. 2016) ("OMB shall continue to review 500 documents per month with respect to Plaintiffs' request").[14]

[14] After this order was in its final draft, the DOJ notified the Court that the FBI's 500 page per month production schedule has been delayed as a result of steps necessary to contain the spread of the COVID-19 pandemic (Doc. 141). The releases scheduled for March 2020 and April 2020 have not been made, and future scheduled releases will be delayed as the FBI resumes limited FOIA processing. The COVID-19 pandemic presents an unprecedented situation affecting all Federal Government operations, and litigants as well as agencies must have some leeway to adjust. Accordingly, as long as the FBI continues to work diligently on responding to White's requests and continues to treat them equitably and in the same general manner as other requests on the large request track, the Court will not interfere.

Objections to Claimed Exemptions

The FBI has asserted several exemptions to justify withholding records or redacting certain information from released records. White objects to the use of certain exemptions, particularly with respect to the National Socialist Movement and the Confederate Hammerskins, arguing that certain records are not personnel records (Exemption 6) or law enforcement records (Exemption 7), that the public interest in uncovering the FBI's unlawful activities outweighs any privacy interests of third parties (Exemptions 6 and 7(C)) or law enforcement interests in preserving the secrecy of its investigative techniques, procedures, or guidelines (Exemption 7(E)).

The DOJ notes that White has not pointed to any specific application of the claimed exemptions, instead relying on blanket assertions of error. In response to the blanket assertions, the DOJ notes generally that the FBI has redacted or withheld under Exemption 6 agent names as well as case numbers and reference information, which can be used in conjunction with other information to uncover private information about individuals. It also relies on Exemption 7(C) to withhold agency file numbers as they could reasonably be expected to constitute an unwarranted invasion of personal privacy by being used to reveal private information about individuals. Finally, it notes that the FBI records on specific individuals are, by virtue of the FBI's function as a law enforcement investigative agency and the kinds of files it keeps, law enforcement records potentially qualifying for Exemption 7. *See* Hardy Decl. ¶¶376-83 (Doc. 95-1 at 102-06).

Although White mentions other exemptions that the FBI has used to withhold material, the Court focuses on Exemptions 6 and 7(C). These are the only two exemptions to which White objects in the Amended Complaint and are therefore the only two exemptions within the

scope of this case. Am. Compl. (Doc. 25 at 9).

As explained earlier, Exemption 6 applies to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Exemption 7(C) applies to "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy . . . ." 5 U.S.C. § 552(b)(7)(C). With application of both exemptions, once the agency shows a privacy invasion, the burden is on the FOIA requester to show a public interest in disclosure, which the Court then weighs against the privacy interest involved. *U.S. Dep't of State v. Ray*, 502 U.S. 164, 175 (1991); *Higgs v. U.S. Park Police*, 933 F.3d 897, 904 (7th Cir. 2019).

The Court has reviewed generally the FBI's redactions of broad categories of information under Exemptions 6 and 7(C) and various other exemptions and finds no evidence the redactions were not logical, plausible, and in good faith. Furthermore, as the Court has already explained in connection with White's requests for which *Glomar* responses were provided, White has shown no public interest in disclosure of the records he request for the purpose of uncovering some speculative unlawful FBI activity. To show a public interest, "the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004); *accord Peltier v. FBI*, 563 F.3d 754, 763 (8th Cir. 2009). All White points to is speculation and mischaracterization. For example, White cites an October 3, 2008, memorandum (Exhibit F(s)(ii) (Doc. 113-1 at 7)) as evidence of operations to suppress his First Amendment rights. He mischaracterizes the memo, which is really just a notice to law

enforcement offices warning that White plans to distribute material that could possibly cause disturbances[15] and asking law enforcement to report any criminal action to a specific FBI office. Other such mischaracterizations to support allegations of unlawful FBI activity abound. They do not amount to any evidence a reasonable person would believe suggests improper FBI conduct. Thus, under the Exemption 6 and 7(C) balancing tests, protection from disclosure is warranted.

To the extent the FBI is reexamining its claimed exemptions for portions of records relating to the National Socialist Movement or the Confederate Hammerskins, the Court will not interfere with that ongoing process.

g. Conclusion

In light of the foregoing, the Court is satisfied that the DOJ has carried its summary judgment burden of showing that, in response to White's proper requests, the FBI has conducted or is conducting reasonable searches of main file records and cross-references designed to uncover responsive records, and is withholding only records or portions of records legitimately falling within FOIA exemptions. It is reviewing *de novo* certain searches after White questioned the results. It is processing White's requests at a rate of 500 pages per month and is producing the responsive records in the order White has requested. The FBI has not improperly withheld agency records. For these reasons, the Court will grant summary judgment for the DOJ and deny summary judgment for White on his claims based on his FBI FOIA requests.[16]

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[15] The material includes a magazine with a cover bearing the image of an African-American's head in the crosshairs of a rifle scope with the caption, "KILL THIS N*****?" (without the Court's redactions of the racial epithet).

[16] The Court rejects White's suggestion in the Amended Complaint that the Court should order wholesale production of all documents requested without regard to application of exemptions as a remedy for the FBI's uneven compliance with the FOIA. Instead, it would, at the most, order the FBI to do what it is already doing. In such circumstances, there is no more relief the Court

The Court declines to retain jurisdiction over the FBI's ongoing production of records responsive to White's requests. As White noted, at the rate the FBI is disclosing records, it may not be finished for decades if the volume of documents is as White expects. The Court is unprepared to provide continuous oversight of the FBI's on-going productions for that entire time. The FOIA was never intended to make the Court a perpetual supervisor of Executive Branch agencies. Instead, the Court is satisfied that the FBI is meeting its obligations under the FOIA, and if White has any further complaints about how those obligations are carried out—say, claims of specific exemptions—he should file an administrative appeal and then, after exhausting his administrative remedies, file a new lawsuit.

2. ATF

a. ATF Records System

Again, the Court starts with a brief overview of the agency's records system. The DOJ has submitted the declaration of Peter J. Chisholm, the Acting Chief of the ATF's Disclosure Division, to describe the ATF's record-keeping system. Chisholm Decl. (Doc. 95-3). White has produced no evidence to contradict Chisholm's declaration, so the Court accepts it as true for summary judgment purposes.

The ATF keeps information in the Criminal Investigation Report System of Records and maintains a case management system called NFORCE to enter data into and to facilitate access to agency information in that database. Together, they enable the agency to document its investigative activity and information. NFORCE is designed to support the ATF's law enforcement operations by enabling users to store, utilize, and query investigative information and prepare investigative documents. NFORCE allows access to uniquely numbered criminal

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can give.

investigation files that can be searched by an individual's name, date of birth, social security number; by a group's or organization's name; by property or a vehicle associated with an individual; or by a full text search using words found in ATF's reports database. Case files are marked either closed or open and may be restricted pursuant to Federal Rule of Criminal Procedure 6(e) if they contain information regarding grand jury proceedings. The ATF uses NFORCE to search for responsive records contained in the agency's database.

b. White's FOIA Requests

White submitted one letter to the ATF dated November 27, 2016. Chisholm Decl. Ex. A (Doc. 95-3 at 9-14). In it he requests "all records in your possession regarding" himself; thirty-four groups, operations, or organizations; and forty-eight individuals. The ATF assigned the letter request number 2017-0187. In sum, in a letter dated May 3, 2017, the ATF produced one redacted page in response to White's request for records about himself; found the requests for groups, operations, or organizations did not reasonably describe the records sought; and declined to disclose records regarding third parties until White obtained their consent, demonstrated that they were deceased, or showed a public interest outweighing the individuals' privacy interests. Chisholm Decl. Ex. B (Doc. 95-3 at 15-17). White responded in a letter dated May 8, 2017, disputing the ATF's conclusions and declining to narrow his requests (Doc. 43-1 at 4-5).

c. Propriety of Requests

In White's November 27, 2016, letter requested "all records in your possession regarding" the following groups:

> All storefront operations in Toledo, Ohio, since 2004; Any group, or operation associated with 480 Sherwood Dr., in Lexington, South Carolina; American Front; New Resistance; Green Star; Rural People's Party; US Songun Study Group; New Bihar Mandir Temple; United Juche Front of North America; Swords of Songun; The Aryan Nations, or, any related group, in Pennsylvania, or, South

> Carolina; Any group claiming affiliation with the government of North Korea in Massachusetts, New York, New Jersey, or, South Carolina; Any group claiming affiliation with Alexander Dugin, or the Donetsk, or, Luhansk, People's Republics in Massachusetts, New York, New Jersey, or, South Carolina; Any group claiming affiliation with al-Qaeda in South Carolina; Manchuoko Temporary Government; US Juche Study Group; Russian Defense League; 1st SS Cavalary Brigade; National Socialist Movement; Confederate Hammerskins; League of the South; Soul Survivors Motorcycle Club; Outlaw Bikers of Osceola County, Florida; Operation Primitive Affliction; Traditional, or, Traditionalist, Workers' Party; Aryan Renaissance Society; Blue Lives Matter; Golden State Skinheads; Aryan National Alliance; Aryan Strike Force; Ohio Council of Concerned Citizens; White Lives Matter; California Skinheads (poss. California State Skinheads); and Vinlander Social Club.[17]

In its May 3, 2017, letter, the ATF found that White's requests for information regarding these thirty-four groups were not proper requests because they were overbroad and did not reasonably describe the records sought. It informed White that if he was interested in information regarding those topics, he would need to narrow the scope of his request. It also invited him to contact the agency's FOIA liaisons for assistance or to discuss the requests or to seek special FOIA mediation. White responded by asserting that his requests were proper and declining to narrow them or explain them. At some point—it is unclear when—the ATF searched through NFORCE for the thirty-four groups (presumably using the group name or key words used in White's request) and found that none were the subject of an ATF investigation.

On summary judgment, the DOJ makes the same arguments with respect to some of White's requests to the FBI that the FBI found were overbroad: "all records in your possession regarding" does not describe the information sought with the reasonably specific detail required by § 552(a)(3)(A). The DOJ argues that, without more information about the groups, the ATF cannot find what White wants. Indeed, the ATF searched for records regarding the groups using identifying information it gleaned from White's letter request and found no investigation

[17] As noted in an earlier footnote, in the Amended Complaint, White claims the ATF failed to respond to a request about the American National Socialist Workers Party, Am. Compl. ¶ 49 (Doc. 25 at 48), but his November 27, 2016, letter request does not name that group. The Court considers only the ATF's response to records White actually sought in his letter.

files. White counters that the ATF did not specify in its letter what additional information it needed from White about the groups as the FBI and USMS had in their responses to requests they found overbroad.

The Court agrees that White's requests were overbroad and did not trigger the ATF's duty to search for records. A request seeking all records relating to a subject may not satisfy this standard and therefore may not trigger the agency's obligation to search for records. *See Freedom Watch, Inc. v. Dep't of State*, 925 F. Supp. 2d 55, 61 (D.D.C. 2013). Here, it is clear that the information White gave was not sufficient to ATF employees to locate responsive records with reasonable amounts of efforts.

This is especially true for requests that ask for broad, nebulous categories like "all storefront operations" in a large city, or all groups "associated with," "claiming affiliation with," or "related to." White suggests no means of detecting "claimed affiliations" that would give the ATF something to search for. As the Court noted with similar FBI requests from White, searches for North Korea, al-Qaeda, Dugin, the Donetsk People's Republic, and the Luhansk People's Republic promise to yield records too numerous to mention and too burdensome to review for responsiveness to White's vague "claiming affiliation" requests. Without further information from White, which he failed to provide, the "claiming affiliation" requests did not reasonably describe the records sought.

As for White's requests for records regarding specifically named groups, those requests are broadly for all records regarding those groups, which could potentially include any mention of those groups in any file for any ATF investigation. And while the ATF did not solicit further specific pieces of information from White to narrow his requests like the FBI and the USMS did, it invited him to contact a liaison or to commence mediation to work toward meaningful and

adequate requests. White cannot now complain that when he failed to pursue opportunities to work with the ATF, instead remaining obdurate in his insistence that the agency was wrong, he had an insufficient opportunity to fix his requests.

Furthermore, other agencies' ability to search for the groups using the same information White gave the ATF has no bearing on whether the information was sufficient for the ATF. Each agency maintains its own record-keeping system organized in unique ways and with different purposes and search requirements. The FBI's ability to locate responsive records by searching a group's name is irrelevant to whether the ATF can do the same.

And finally, the fact that these requests were overbroad is borne out by the fact that, even after the ATF conducted searches using information from White's requests, it found it had no records of investigations of those groups. Clearly, if there are responsive records, the ATF needs more details to find them without undue effort.

In sum, without further information from White, which he failed to provide when asked, his request for "all records in your possession regarding" did not reasonably describe the records sought. Therefore, the ATF was not obligated to search for them. Even if it had been obligated to search, the only relief the Court would order, the search produced no records using information in the current requests.

d. Not All Responsive Records Fount

White claims that the single page produced by the ATF in response to his request for records about himself was clearly incomplete. That document was an event narrative report indicating the ATF never generated a report of an investigation of White. White believes he was targeted by the ATF on at least three occasions.

As explained several times already earlier in this order, an agency must conduct a good

'faith search that is reasonably calculated to uncover all relevant documents and is entitled to a presumption of good faith in that search once it explains the search details. Only countervailing evidence such as "positive indications of overlooked materials" in response to well-defined requests can overcome that presumption. *Founding Church of Scientology v. NSA,* 610 F.2d 824, 837 (D.C. Cir. 1979).

Chisholm explained in his declaration that the ATF searched NFORCE using White's first and last names and retrieved case file 761040-11-0001. That information pointed to a field division office, which produced the one-page narrative indicating that no Report of Investigation on White existed. White claims that there are "positive indications of overlooked materials" based on an FBI report, on information he heard from another individual, and on one of his personal observations.

The Court finds the ATF's search that yielded one responsive record was reasonably calculated to locate responsive records. The search term—White's name—was appropriate, and the search was done where records concerning White would likely be found if they existed. In sum, Chisholm's declaration establishes that the ATF looked for responsive records in the place they would be expected to be found and in a way that would be expected to find them.

White's assertions that responsive records exist in ATF files which should have been produced are not enough to overcome the presumption of good faith created by Chisholm's declaration. After locating the FBI report on which White relies—White did not cite it using the correct exhibit number (Ex. X(a) (Doc. 25-4 at 46-47))—the Court sees that it did not suggest, much less indicate, that White had been the subject of an ATF investigation as White alleges. In fact, the document as redacted by the producing agency does not even contain White's name. Further, the content of the document indicates an ATF office *refused* to

'participate in a law enforcement meeting, not that it conducted an investigation of White.

As for White conversation with another individual that he claims shows he was the target of an ATF investigation such that there should have been a larger file on him, that conversation, even as relayed by White, does not indicate White was a target. Furthermore, it is hearsay and not sufficient to overcome the presumption of the ATF's good faith.

As for White's personal observation, he claims he saw three individuals that he suspects were ATF agents at two separate rallies White attended. It is absurd to think such speculation even suggests the ATF had a larger investigative file on White that should have been uncovered using a search for his name.

Finally, even if responsive records did exist within the ATF's files, that fact, by itself, is not enough to demonstrate an inadequate search or bad faith. The ATF conducted a search for White by his name and found a single page. While it is possible there may be a responsive record not locatable through that search, that does not mean the search was inadequate so long as it was reasonably calculated to uncover all responsive records.

e. *Glomar* Responses

In White's November 27, 2016, letter he requested "all records in your possession regarding" the following forty-eight individuals:

> James Porrazzo of the American Front—New Resistance; Joshua Caleb Sutter aka David Woods aka Tyler Moses aka Shree-Shree Kaliki-Kalki Mandir aka Stephen Brown aka Thugee Behram, an informant; Jilian Hoy aka Comrade Morrison aka Jayalita Devi Dasi, an informant; John Paul Cupp, advocate for North Korea; Jason Adam Tonis, advocate for North Korea; Kevin Walsh, advocate for North Korea; Zaid Shakir al-Jishi, advocate for North Korea; Emily Putney or Rotney, girlfriend of Porrozzo; Chris Hayes of the American Front; August Kreis III of the Aryan Nations; Brett Stevens of Houston, Texas; David Lynch of the American Front (deceased); David Gletty, an informant; Joe LNU, gay lover of Gletty; Kelly Boaz aka Kevin Post, Orange County Florida Sheriff and FBI-JTTF Agent; Tom Martin of the Confederate Hammerskins; John Rock of the Confederate Hammerskins; Brian Klose of the Outlaw Bikers; Deborah Plowman of the Outlaw Bikers; Harold "Hippie" Kinlaw of the Outlaw Bikers; Carlos "Gino" Dubose of the Outlaw Bikers; Robert Killian aka "Doc" aka Michael Schneider, Orange County, Florida, Sheriff, and, FBI-JTTF Agent; Jason Hall, informant; Matthew Heimbach of the Traditionalist Workers Party; Brook Heimbach of the Traditionalist Workers Party; Matthew Parrott, an informant; Rick

> Tyler, Congressional candidate in Cleveland, Tennessee; Dr. Matthew Raphael Johnson of the Traditionalist Worker's Party; Sonny Thomas of the Sonny Thomas Radio Show; Jeff Schoep of the National Socialist Movement; Steve Bowers of the National Socialist Movement; Rebecca Barnette of the National Socialist Movement; Paddy Tarleton of the Traditionalist Workers Party; Scott Hess of California; Tony Kovalis of California; Elisha Strom of Virginia, an informant; Chris Drake of Augusta, Georgia; Erica Hardwick, aka Erica Hoesch, originally of Hardy, Virginia; Kristy "Sin" Pryzbylla of the Outlaw Bikers; Robert Cusack of the Outlaw Bikers; Peter James of the Outlaw Bikers; Harold Turner, an informant; James Logsdon, aka James Langston aka James Lauston, an informant; Rick Spring of the Aryan Nations; Ron Wolf of Toledo, Ohio; Brian Holland, an informant; and Richard Brunson of the National Socialist Movement.

In its May 3, 2017, letter, the ATF provided *Glomar* responses, that is, it said it would not reveal whether responsive records exist regarding these third parties because to do so would be to unduly sacrifice the individuals' privacy interests. It refused to acknowledge even whether it had any responsive records until White provided (1) written consent of the third party, (2) proof of death of the third party, or (3) a demonstration that the public interest in the disclosure outweighs the personal privacy interest of the third party. It further stated that if any such records existed, they would be subject to Exemptions 6 and 7(C). In response, White asserted that some—he does not identify which—of the individuals were deceased. He also generally asserted that the public interest in uncovering corrupt government activities described in this lawsuit outweighed any privacy interests the individuals had. He provided no credible evidence to substantiate the deaths of any of the individuals[18] or to substantiate a legitimate public interest.[19]

In connection with the FBI's response to White's requests for records about third parties, the Court has already found and explained that a *Glomar* response is appropriate and that White

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[18] White points out that the FBI is satisfied that Lynch is deceased and is producing records relating to him. However, what one agency does not dictate what another must do. In order to obtain ATF records about Lynch, White must provide evidence of Lynch's death to the ATF, which he has not done.

[19] Again, White has conceded his claims for ATF records relating to Steve Bowers and Emily Rotney so the Court will grant summary judgment for the DOJ on this portion of White's claims.

has not demonstrated any public interest in the disclosure of personal information that outweighs the individuals' right to privacy, even where the third parties might have been government employees. White has supported his claim of a public interest with hearsay and speculation, which are not sufficient to support the level of public interest necessary to overcome an individual's privacy rights. Furthermore, White has not provided the ATF with evidence of the death of any of the forty-eight individuals or with their consent to disclose private information. Therefore, the Court finds the ATF's response concerning these individuals was proper.

To the extent White claimed the ATF officially revealed the existence of responsive records by acknowledging a relationship with any of the individuals, he is mistaken. The Court has already reviewed the few individuals for whom White has provided a suggestion of acknowledgment of a relationship with the FBI—Rock, Strom, and Turner—but none of those acknowledgements was by the ATF, was official, or otherwise satisfied the requirements to fall within the "official acknowledgement" exception to availability of a *Glomar* response.

The Court further approves the ATF's assertion that Exemptions 6 and 7(C) apply to the individuals about whom they have asserted a *Glomar* response. As a law enforcement agency, the ATF created its investigation files for law enforcement purposes, so those records clearly fall within Exemption 7. Disclosure of private information about the individuals would clearly be an unwarranted invasion of their privacy when balanced against a unsubstantiated and virtually non-existent public interest.

f. Conclusion

In light of the foregoing, the Court is satisfied that the DOJ has carried its summary judgment burden of showing that, in response to White's requests, the ATF conducted searches in response to all proper requests, that those searches were designed to uncover responsive

records, and that the agency is withholding only documents or portions of documents legitimately falling within FOIA exemptions. The ATF has not improperly withheld agency records. For these reasons, the Court will grant summary judgment for the DOJ and deny summary judgment for White on his claims based on his ATF FOIA requests.

3. USMS

a. USMS Records System

The DOJ has submitted the declaration of Katherine A. Day, Associate General Counsel of the USMS, to describe the USMS's record-keeping system. Day Decl. (Doc. 95-8). White has produced no evidence to contradict Day's declaration, so the Court accepts it as true for summary judgment purposes.

The USMS keeps information about pretrial detainees and prisoners in the Prisoner Processing and Population Management/Prisoner Tracking System ("PPM/PTS"). Information in that database is indexed by the names of individuals, which facilitates the agency's law enforcement purpose of maintaining custody of individuals charged with violation of federal law. The PPM/PTS is not indexed by the names of groups or organizations with which individuals may be associated.

b. White's FOIA Requests

On August 13, 2013, the USMS received a letter from White requesting records pertaining to himself.[20] The USMS assigned the letter request number 2013USMS24506. White claims that the USMS identified 1500 pages of responsive records, and the USMS does not provide evidence otherwise. The USMS never finished processing the records and, at the time of the DOJ's June 2018 response to White's motion for summary judgment, it had not

[20] Neither party has submitted a copy of the letter.

produced any responsive records, although it expected to finish processing the request within thirty days of that response. Day Decl. ¶ 4 (Doc. 95-8 at 2).

White also submitted a letter to the USMS dated December 15, 2016. Day Decl. Ex. A (Doc. 95-3 at 9-14). In it he requests "all documents, and, records in your possession" about thirty-three groups, operations, or organizations, and forty-nine individuals (Doc. 25-1 at 14-15).[21] The USMS assigned the letter request number 2017USMS31415. In a letter dated March 16, 2017, the USMS notified White it had received and was processing his request. Day Decl. Ex. C (Doc. 95-8 at 15). In a letter dated March 21, 2017, it invoked Exemptions 6 and 7(C) in issuing a *Glomar* response regarding named individuals until White obtained their consent, proof of death, an official acknowledgment of their investigation by the USMS, or an overriding public interest. It further indicated it had found no records responsive to his requests regarding groups, organizations, or operations because the USMS files is organized by individual names, not organizations. Day Decl. Ex. D (Doc. 95-8 at 17-18). No evidence suggests White responded to the USMS's March 21, 2017, letter or provided any of the materials the USMS requested before it would acknowledge the existence of responsive documents about individuals.

c. Propriety of Requests

White's December 15, 2016, letter, request number 2017USMS31415, requested "all documents, and, records in your possession" regarding the following groups:

> Any group, or operation associated with 480 Sherwood Dr., Lexington, South Carolina; American Front; New Resistance; Green Star; Rural People's Party; US Songun Study Group; New Bihar Mandir Temple; United Juche Front of North America; Swords of Songun; The Aryan Nations, or, any related group, in Pennsylvania, or, South Carolina; Any group claiming affiliation with the

[21] In this request, White also asks for "all documents, and, records in your possession" about "how your agency implements its obligations under the Convention Against Torture, and, 42 U.S.C. § 2000-dd, including, but, not limited to, as applied to federal detainees in local, or, state, facilities." However, in his Amended Complaint, he does not complain of the USMS's response to this request.

> government of North Korea in Massachusetts, New York, New Jersey, or, South Carolina; Any group claiming affiliation with Alexander Dugin, or, the Donetsk, or, Luhansk, People's Republics in Massachusetts, New York, New Jersey, or, South Carolina; Any group claiming affiliation with al-Qaeda in South Carolina; Manchuoko Temporary Government; US Juche Study Group; Russian Defense League; 1st SS Cavalary Brigade; National Socialist Movement; Confederate Hammerskins; League of the South; Soul Survivors Motorcycle Club; Outlaw Bikers of Osceola County, Florida; Operation Primitive Affliction; Traditional Workers' Party; Aryan Renaissance Society; Blue Lives Matter; Golden State Skinheads; Aryan National Alliance; Aryan Strikeforce; Ohio Council of Concerned Citizens; White Lives Matter; California Skinheads (poss. California State Skinheads); and Vinlander Social Club.

At the time it responded to White's request, the USMS reported it was unable to search for these groups because its records are indexed by names of individuals rather than names of groups. Now the DOJ also argues the requests are overbroad and do not reasonably describe the records sought because they seek "all documents, and, records in your possession" regarding the groups. For the same reasons the Court found White's similar requests to the FBI and AFT to be overbroad, it finds these requests improper as well.

Additionally, White's request was overly burdensome in that it requested information that was not able to be readily searched for in the USMS's files, which are not organized for searching by organization name. When a request does not describe the records in a way that they can be located with a reasonable amount of effort, they are not reasonably described for FOIA purposes. *See Moore v. FBI*, 283 F. App'x 397, 398 (7th Cir. 2008). Here, for the USMS to find the records White requests, it would have to review each individual file in its possession to locate references to the organization about which White asked. Such endeavors clearly exceed "a reasonable amount of effort" and are not required by the FOIA. Thus, the USMS was not obligated to undertake such a search.

White argues that it is inconceivable that the USMS would not have files organized by organization names rather than individual names, but he provides no evidence to support this speculation. He also faults the USMS for "inconveniently" organizing its files to make his

search burdensome. He fails to understand, however, that the agency does not keep records to serve White or any other FOIA requester. On the contrary, it maintains its records to serve its law enforcement purposes, and for the USMS, which is charged with searching for and maintaining custody of individuals, that system is indexed by the names of those individuals. If White wants the USMS to conduct a meaningful search, he has to provide meaningful requests, and this means requests by individual names.

d. *Glomar* Responses

White's December 15, 2016, letter, assigned request number 2017USMS31415, requested "all documents, and, records in your possession" about the following forty-nine individuals:

> James Porrazzo of the American Front—New Resistance; Joshua Caleb Sutter aka David Woods aka Tyler Moses aka Shree-Shree Kaliki-Kalki Mandir aka Stephen Brown aka Thugee Behram, an informant; Jilian Hoy aka Comrade Morrison aka Jayalita Devi Dasi, an informant; John Paul Cupp, advocate for North Korea; Jason Adam Tonis, advocate for North Korea; Kevin Walsh, advocate for North Korea; Zaid Shakir al-Jishi, advocate for North Korea; Emily Rotney, girlfriend of Porrozzo; Chris Hayes of the American Front; Kent McLellan of the American Front; August Kreis III of the Aryan Nations; Brett Stevens of Houston, Texas; David Lynch of the American Front (deceased); David Gletty, an informant; Joe LNU, gay lover of Gletty; Kelly Boaz aka Kevin Post, Orange County Florida Sheriffs' Deputy, and, FBI-JTTF Agent; Tom Martin of the Confederate Hammerskins; John Rock of the Confederate Hammerskins; Brian Klose of the Outlaw Bikers; Deborah Plowman of the Outlaw Bikers; Harold "Hippie" Kinlaw of the Outlaw Bikers; Carlos "Gino" Dubose of the Outlaw Bikers; Robert Killian aka "Doc" aka Michael Schneider, Orange County, Florida, Sheriff, and, FBI-JTTF Agent; Jason Hall, informant; Matthew Heimbach of the Traditional Workers Party; Brook Heimbach of the Traditional Workers Party; Matthew Parrott, an informant; Rick Tyler, Congressional candidate in Cleveland, Tennessee; Dr. Matthew Raphael Johnson of the Traditional Workers Party; Sonny Thomas of the Sonny Thomas Radio Show; Jeff Schoep of the National Socialist Movement; Steve Bowers of the National Socialist Movement; Rebecca Barnette of the National Socialist Movement; Paddy Tarleton of the Traditional Workers Party; Scott Hess of California; Tony Korvalis of California; Elisha Strom, an informant for your agency; Chris Drake of Augusta, Georgia; Erica Hardwick, aka Erica Hoesch, an informant for your agency; Kristy "Sin" Pryzbylla of the Outlaw Bikers; Robert Cusack of the Outlaw Bikers; Peter James of the Outlaw Bikers; Harold Turner, an informant for your agency; James Logsdon, aka James Langston, aka James Lauston, an informant; Rick Spring of the Aryan Nations; Ron Wolf of Toledo, Ohio; Brian Holland, an informant; Richard Brunson of the National Socialist Movement; and an operation in New York City involving informants, and/or, agents, impersonating relatives of the Shah of Iran, including an informant impersonating Maj Gen Manchuehr Khosrowdad, the Shah's twin, and, "Princess Ashraf", all at the Pahlevi Building.

In its March 21, 2017, letter, the USMS provided *Glomar* responses, invoking

Exemptions 6 and 7(C). It refused to acknowledge even whether it had any responsive records until White provided the individual's consent, proof of death, an official acknowledgement of a USMS investigation of the individual, or an overriding public interest. White did not respond.[22]

In connection with the FBI's response to White's requests for records about third parties, the Court has already found and explained that a *Glomar* response is appropriate and that White has not demonstrated any public interest in the disclosure of personal information that outweighs the individuals' right to privacy, even where the third parties might have been government employees. White has supported his claim of a public interest with hearsay and speculation, which are not sufficient to support the level of public interest necessary to overcome an individual's privacy rights. Furthermore, White has not provided the USMS with evidence of death of any of the individuals or with their consent to disclose private information. Therefore, the Court finds the USMS's response concerning these individuals was proper.

To the extent White claims the USMS officially revealed the existence of responsive records by acknowledging a relationship with any of the individuals, he is mistaken. The Court has already reviewed the few individuals for whom White has provided a suggestion of acknowledgment of a relationship with the FBI—Rock, Strom, and Turner—but none of those acknowledgements was by the USMS, was official, or otherwise satisfied the requirements to fall within the "official acknowledgement" exception to availability of a *Glomar* response.

The Court further approves the USMS's assertion that Exemptions 6 and 7(C) apply to the individuals about whom they have asserted a *Glomar* response for the reasons stated earlier in this order in conjunction with White's requests to other agencies.

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[22] Again, White has conceded his claims for USMS records relating to Steve Bowers and Emily Rotney so the Court will grant summary judgment for the DOJ on this portion of White's claims.

e. Records Being Produced

Finally, for White's request for records regarding himself in request number 2013USMS24506, the USMS has indicated there are responsive records, that as of June 2018 it was in the process of processing them, and that the release was expected to be completed within a month, that is, around July 2018. Nothing in the record suggests those documents have not been processed and released to White.

It is true that the disclosure to White of records about himself was inexcusably delayed because of the USMS's lack of diligence. White made his request in August 2013, and the records were likely produced, at the earliest, in July 2018, nearly five years later. The evidence shows the USMS searched its records promptly, on or around August 30, 2013, and located numerous responsive records. However, before the responsive records could be processed and non-exempt records could be released, the FOIA specialist assigned to White's request resigned, the previous FOIA officer died, and White's FOIA request fell through the cracks. This has been remedied, and the USMS is processing White's request.

In light of the foregoing, the Court is satisfied that the DOJ has carried its summary judgment burden of showing that, in response to White's request for records about himself, the USMS has conducted or is conducting a reasonable search of its records to uncover and process responsive records for release. Although it was delinquent in its initial efforts, that delinquency has been remedied, and the agency is processing—or has already processed—White's request, and it is no longer improperly withholding agency records. The Court is satisfied that the USMS is meeting its obligations under the FOIA, and there is nothing further the Court would order the agency to do. If White has any further complaints about how the USMS is carrying out its obligations under the FOIA—say, claims of specific exemptions—he should file an

administrative appeal and then, after exhausting his administrative remedies, file a new lawsuit.

f. Conclusion

For the foregoing reasons, the Court is satisfied that the DOJ has carried its summary judgment burden of showing that the USMS has conducted reasonable searches in response to all proper requests that were designed to uncover responsive records and that the USMS is withholding only documents legitimately falling within FOIA exemptions. The USMS is not improperly withholding agency records. For these reasons, the Court will grant summary judgment for the DOJ and deny summary judgment for White on his claims based on his USMS FOIA requests.

4. BOP

a. BOP Records System

Again, the Court starts with a brief overview of the agency's records system. The DOJ has submitted the declarations of John E. Wallace, a BOP Senior Attorney formerly assigned to the BOP Northeast Regional Office ("NERO"), Wallace Decl. (Doc. 95-7), and Erika Fenstermaker, a Government Information Specialist assigned to the BOP North Central Regional Office ("NCRO"), Fenstermaker Decl. (Doc. 95-4), to describe the BOP's record-keeping systems and the agency's responses to White two FOIA requests that remain in issue. Both declarations attach *Vaughn* indexes describing the records withheld. Wallace Decl. Ex. G (Doc. 95-7 at 30-38); Fenstermaker Decl. Ex. H (Doc. 95-4 at 28-49).

The BOP maintains over 180 record systems. The systems concerning inmates that most frequently yield documents responsive to FOIA requests include: the prison intelligence record system ("TRUINTEL"), the inmate administrative remedy record system, the inmate central records system, the inmate physical and mental health record system, the office of

internal affairs investigative records, and the Federal Tort Claims Act record system. The BOP also uses the SENTRY information indexing system that allows nationwide BOP access to information about inmates contained in the various databases maintained by the BOP. Wallace Decl. ¶ 5 (Doc. 95-7 at 3).

The inmate central records system contains what is referred to as inmates' "Central Files." An inmate's Central File is kept where he is or was last housed, if he has been released. It contains information in six sections that address an inmate's sentence, detainers, and inmate financial responsibility program; classification and parole material; mail, visits, and property; conduct, work, and quarters reports; release processing; and general correspondence. An inmate may look at and copy most of the documents contained in his Central File with the exception of records exempt under the FOIA. Wallace Decl. ¶ 8 (Doc. 95-7 at 4). Specific information about other BOP records systems is discussed below in the context of White's specific requests for information likely to be found in those systems.

When a FOIA request is received by the BOP Director, the designated person to receive such requests, a technician reviews it to determine where responsive records are likely to be located. If responsive records are likely to be found in the BOP's Central Office—say, because it requests policy development or contracting records—it will be assigned to the Central Office. Processors there will scan the request, upload it into the BOP's FOIA database, FOIAXpress, and assign a request number. Fenstermaker Decl. ¶ 7 (Doc. 95-4 at 3). If the technician determines that a majority of the records are likely to be located at a regional office or at an institution—say, because the records pertain to an individual inmate—the technician will email it to the appropriate regional office, where regional office staff will log it and assign it a request number. Fenstermaker Decl. ¶ 8 (Doc. 95-4 at 3). Regional office staff will then search the

regional office records or, if the records are likely to be at an institution, send the request to the institution. Fenstermaker Decl. ¶ 9 (Doc. 95-4 at 4). Responsive records are then provided for review for exemptions and/or redaction. Fenstermaker Decl. ¶ 10 (Doc. 95-4 at 4).

White has produced no evidence to contradict these declarations, so the Court accepts them as true for summary judgment purposes.

b. White's FOIA Requests

In a letter to the BOP dated August 3, 2013, White requested "all records relating to [his] imprisonments" in the BOP from October 17, 2008, to April 20, 2011, and from June 8, 2012, to the present. Wallace Decl. Ex. A (Doc. 95-7 at 20). Specifically, White listed (1) SIS [Special Investigative Services] investigations of his emails and contacts with Meghan White and Sabrina Gnos, (2) any other records relating to communications about Meghan White or Sabrina Gnos, (3) records relating to his confinement in the special housing unit ("SHU") during certain periods, including maintenance records relating to the heating and sewage systems in the unit of his confinement, and (4) all other records. The BOP assigned the letter BOP NERO Request # 2013-11705. It located 26 pages of responsive records and, on January 13, 2014, released twelve pages in their entirety, and released fourteen redacted pages relying on Exemptions 6, 7(C), and 7(F). Wallace Decl. Ex. C (Doc. 95-7 at 24-25). White appealed the redactions and claimed the BOP failed to locate all responsive records; he did not offer the information the BOP said it needed before it could release records relating to third parties or explain any public interest in disclosure of the records he sought. Wallace Decl. Ex. C (Doc. 95-7 at 26). The decision was affirmed on appeal.

In a letter to the BOP NCRO dated August 7, 2016, White requested a number of records about himself during his incarceration, as well as certain maintenance records and log books

during certain periods of his confinement in the SHU of the Metropolitan Correctional Center at Chicago, Illinois ("MCC-Chicago"). Fenstermaker Decl. Ex. B (Doc. 95-5 at 9-10). The NCRO informed White he was required to send his FOIA request to the BOP Director pursuant to BOP FOIA regulations. Fenstermaker Decl. Ex. C (Doc. 95-5 at 12-13). The BOP Director received the request on September 15, 2016, and assigned it to the NCRO for processing. The NCRO assigned the letter request number 2016-07558. In a letter dated September 26, 2016, the NCRO notified White it had received and was processing his request but that a response could take up to nine months. He was invited to narrow his requests to speed up the processing. Fenstermaker Decl. Ex. D (Doc. 95-5 at 15-16). With a letter dated February 9, 2018, the NCRO released some documents in full and some in part, invoking Exemptions 5, 6 and 7(C), and withheld others in their entirety. Fenstermaker Decl. Ex. E (Doc. 95-5 at 18-19). The NCRO produced supplemental releases on March 20, 2018, and June 6, 2018. Fenstermaker Decl. Exs. F & G (Doc. 95-5 at 21-23, 25-26).[23]

The Court addresses each of White's FOIA requests to the BOP that remain in issue, the relevant record repositories, and the BOP's response, in turn.

c. BOP NERO Request 2013-11705

Propriety of Request

The Court first considers White's general request in BOP NERO Request 2013-11705 for "all records relating to [his] imprisonments" in the BOP from October 17, 2008, to April 20, 2011, and from June 8, 2012, to the present, and with respect to his specific request in part (4) of his letter for "all other documents." Wallace Decl. Ex. A (Doc. 95-7 at 20). The BOP argues

[23] White also submitted a third set of requests in a letter dated November 20, 2016, which was assigned BOP request number 2017-01269. The Court has already granted summary judgment for the DOJ on that claim (Doc. 59 at 12).

these were not proper requests under § 552(a)(3)(A) because they did not reasonably describe the records sought with any degree of specificity. Without any details about the records White sought, the BOP argues, a search would be overly burdensome, so it was justified in not taking any action on the specific request.

The Court agrees that White's request for "all records" and "all other documents" was overbroad and did not trigger the BOP's duty to search for records based on such a vague request. The Court notes that in White's August 3, 2013, letter, he made other specific requests that the BOP did not consider overly broad because of a lack of specificity. In response to those requests, it searched White's Central File, the logical place for the requested records to be found. The BOP responded to those other specific requests appropriately, as explained elsewhere in this order. In addition, White's 2016 FOIA request cured some of the imprecision of his 2013 request by asking for specific types of documents. That request is addressed later in this order.

Adequacy of Search

In BOP NERO Request 2013-11705, White requests "(3) Records relating to my confinement in the SHU at MCC-Chicago from November to December 2008 and January-April 2011 and in the SHU at FCI-Beckley from August to December 2010, including maintenance records relating to the heating and sewage systems on the 11th Floor/Unite Z at MCC Chicago." Wallace Decl. Ex. A (Doc. 95-7 at 20). "The SHU" is the special housing unit the BOP uses as one form of restrictive housing, for example, for administrative detention or disciplinary segregation. In response, the BOP searched White's Central File because it believed this was the most likely place to find responsive documents concerning White's placement in the SHU. It located twenty-six pages of responsive records in White's Central File concerning his time in

the SHU at various BOP facilities. It released twelve pages in their entirety, and released fourteen redacted pages relying on Exemptions 6, 7(C), and 7(F). The BOP NERO and institutional personnel also searched records of the facilities department at MCC-Chicago to find records responsive to the building maintenance portion of White's request. They located no responsive records.

White suggests the BOP's searches were inadequate because the results did not include certain items such as, for example, SENTRY reports, incident reports, disciplinary records, and maintenance records. He speculates that these records must exist and that the failure to find them is evidence of the inadequacy of the BOP's search. The BOP argues that SENTRY reports are derivative of information in other databases and that the search of White's Central File and the institutional facilities department records was a sufficient response to White's requests.

As noted earlier in this order, an agency must conduct a good faith search that is reasonably calculated to uncover all relevant documents. It must search its record systems where responsive information is likely to be located, *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990), using "methods which can be reasonably expected to produce the information requested," *Rubman v. U.S. Citizenship & Immigration Servs.*, 800 F.3d 381, 387 (7th Cir. 2015) (internal quotations omitted). Where an agency explains that its search met these standards, its good faith is presumed and can be overcome by evidence that raises doubt about the adequacy of the search. *Rubman*, 800 F.3d at 387; *see Carney v. United States Dep't of Justice*, 19 F.3d 807, 813 (2d Cir. 1994) (bare allegations and speculation insufficient to overcome presumption).

The BOP has explained that information about White's SHU confinement was most

likely to be found in his Central File and that maintenance records for MCC-Chicago for the time White was in the MCC-Chicago SHU were most likely to be found in the MCC-Chicago facilities department files. That makes sense. That neither of these searched produced all the responsive records that might exist in the entirety of the BOP's many files or that White expected to exist does not mean the searches were inadequate under the FOIA. Absent some evidence that the BOP's search was not conducted in good faith—that is, evidence beyond White's speculation that certain documents "must exist"—the presumption of the agency's good faith prevails. "The issue is *not* whether other documents may exist, but rather whether the search for undisclosed documents was adequate." *In re Wade*, 969 F.2d 241, 249 n. 11 (emphasis in original); *accord Rubman*, 800 F.3d at 387. It was.

Exemptions

In BOP NERO Request 2013-11705, White requests "(1) SIS Investigations of my emails and contacts with Meghan White and Sabrina Gnos, conducted in June and July 2012 at FDC-Miami and FTC-Oklahoma; [and] (2) Any other records relating to communications about Meghan White or Sabrina Gnos, particularly in 2010 at FCI-Beckley." Wallace Decl. Ex. A (Doc. 95-7 at 20). The BOP did not conduct a search for responsive records because the requests sought information regarding third parties—the two individuals named in the requests—and White had not provided their consent, proof that the individuals were deceased, or any justification that the public interest in disclosing the records outweighed the individuals' privacy interests.

The Court finds this response by the BOP was reasonable and in compliance with the FOIA. The records White sought, if any exist, would fall under Exemption 7(C). They are records the BOP would have collected in performing its law enforcement functions by its Special

Investigative Services ("SIS"), the BOP's internal investigative unit, and generally by BOP personnel to appropriately execute sentences imposed in criminal cases, to protect inmates and staff within prisons, and to prevent further criminal activity. Any records referencing the two individuals "could reasonably be expected to constitute an unwarranted invasion of personal privacy" even if their names were redacted because the records would be associated with them by the very request. Additionally, White has not articulated any public interest in disclosure of these records. For these reasons, the records would not be subject to disclosure. It is true the BOP could have provided an express *Glomar* response or conducted a search and indicated records existed but were being withheld pursuant to Exemption 7(C). However, where it is clear the records could be withheld in the absence of consent, proof of death, or a public interest, it is enough that the agency assert the exemption.

White also complains about the redaction of the documents produced in response to BOP NERO Request 2013-11705 for "(3) Records relating to my confinement in the SHU at MCC-Chicago from November to December 2008 and January-April 2011 and in the SHU at FCI-Beckley from August to December 2010, including maintenance records relating to the heating and sewage systems on the 11th Floor/Unite Z at MCC Chicago." Wallace Decl. Ex. A (Doc. 95-7 at 20). The BOP located twenty-six pages of records in White's Central File, the database most likely to identify responsive records, about his SHU confinement, produced twelve full pages and produced fourteen pages in redacted form relying on Exemptions 6, 7(C), and 7(F).

The BOP has prepared a *Vaughn* index explaining the rationale for its redactions.[24] Wallace Decl. Ex. G (Doc. 95-7 at 30-38). That index indicates the redactions are of individual

[24] Although the BOP claims to have produced fourteen redacted pages, the *Vaughn* index explains redactions on fifteen pages.

inmate names and registration numbers, affiliations with disruptive groups (*i.e.*, prison gangs), separatee identities, and staff names. The BOP contends that, while it is in the public interest to know the BOP activities reflected in those documents, it would add nothing to the public's understanding of the government's performance of those activities to reveal the individuals involved, and it would threaten inmate and staff security to disclose their identities and any disruptive group affiliations.

White claims the BOP records are not law enforcement records so cannot qualify under Exemption 7 generally. He also claims any individual's right to privacy is outweighed by an overriding public interest in exposing the BOP's use of torture and disruption operations.

The Court has already explained Exemptions 6 and 7(C) earlier in this order. The threshold question for application of the categories in Exemption 7 is that the records are compiled for law enforcement purposes. It is clear that the BOP records in issue are compiled for law enforcement purposes. The BOP is the agency that executes most sentences of federally convicted criminals by confining them in penal institutions or otherwise supervising them during the service of their sentences. In executing those sentences, the BOP is further charged as part of its law enforcement mission with protecting and caring for inmates in its custody, preventing inmates from conducting further criminal activity, protecting agency employees that carry out the agency's functions, and protecting the general public from convicted criminals. All of these functions are law enforcement functions, and virtually all of the records created in accomplishing those functions are properly considered law enforcement records. White's threshold objection to application of Exemption 7 has no merit.

As for the privacy exemptions set forth in Exemptions 6 and 7(C), mentioning an individual or details about an individual such as their separatee status, their disruptive group

affiliation, or their involvement in specific prison incidents could reasonably be expected to constitute an unwarranted invasion of their personal privacy and could lead to their harassment. White has not provided the individuals' consent to disclosure and has not provided evidence of their death. Instead, he relies on his assertion of a public interest in uncovering BOP misconduct through the use of torture or other inhumane, degrading treatment of inmates.

However, White fails to cite any evidence from which a reasonable person would find such activities exist. White's citation of evidence to demonstrate the BOP's use of torture or other inhumane treatment is speculative. For example, he points to evidence that on one occasion when he was in the SHU at MCC-Chicago there was a sewage back-up that left the range in unsanitary condition (Ex. H(a)(i) (Doc. 90-1 at 52-56)). The records White submits show that the back-up occurred, that plumbers were summoned to fix it, and that measures were taken to sanitize the area afterward. White complains that several of the approximately thirty inmates on the range were moved to different cells, but he was not. He calls this torture when all the evidence really shows is that the BOP attempted to address a run-of-the-mill sewage flooding problem by moving some inmates and not others while the problem was being resolved. No reasonable person would construe such evidence to indicate torture or any other improper government activity. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004) (assertions of a public interest in uncovering government impropriety must "warrant a belief by a reasonable person that the alleged Government impropriety might have occurred").

Similarly, he points to psychological assessment from 2010 while he was in the FCI-Beckley SHU and from 2011 while he was in the MCC-Chicago SHU to argue BOP psychology staff was negligent (Ex. H(a)(ii) (Doc. 90-1 at 57-66)). Those records reflect monthly assessments of White's mental condition while in the SHU, including several assessments that

his psychological adjustment was unsatisfactory and his behavior was becoming disruptive to the institution. He also points to incident reports for his disruptive behavior and records of discipline imposed as a result (Ex. H(a)(vii) (Doc. 90-1 at 67-72)). Nothing in this evidence suggests torture or other improper government activity to satisfy the *Favish* standard for establishing a public interest in uncovering government impropriety.

In sum, as with White's conjecture about activities of the FBI, ATF, and USMS to target citizens' for exercising their First Amendment free speech rights, his assertions about the BOP's nefarious activity are not supported by evidence. He has further not explained how the disclosure of private information about individuals would shed any additional light on the functioning of government when the disclosed parts of the records adequately show what happened. Accordingly, the Court finds White has not established any public interest in disclosure of the redacted material that outweighs the privacy rights of the individuals whose privacy would be violated.

The Court also briefly addresses White's objection to the BOP's assertion of Exemption 7(F).[25] Exemption 7(F) applies to records compiled for law enforcement purposes that "could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F). Much of the redacted information is the type of information the BOP must monitor to keep inmates, staff, and the public safe because it is related to interpersonal and intergroup dynamics within the prison. Knowing who is involved in certain incidents, who has a history of animosity toward others, and who is affiliated with groups that have displayed

[25] Although objections to the assertion of Exemption 7(F) are technically not part of this lawsuit because they are not pled in White's Amended Complaint, which only complains of the use of Exemptions 6 and 7(C), the Court addresses Exemption 7(F) here simply in the interest of thoroughness.

animosity toward each other is critical to maintaining safety and order within the institution. This type of information is also subject to abuse or exploitation if it is used for other purposes and may reveal and endanger the prison's confidential sources for some of that information. Accordingly, it is appropriate for the BOP to withhold this information pursuant to Exemption 7(F) to protect the life and physical safety of inmates and staff.

The Court finds no fault with the BOP's assertion of exemptions for the redacted material in the documents produced in response to BOP NERO Request # 2013-11705.

d. BOP Request 2016-07558

In response to White's letter request dated August 7, 2016, the BOP released a total of 602 full pages and 495 redacted pages of responsive records, and it withheld 570 pages of responsive records. It justified the records withheld under Exemptions 5, 6, 7(C), 7(E), or 7(F) as explained in its *Vaughn* index.

As a preliminary matter, the Court finds the vast majority of White's complaints about the BOP's response to this FOIA request is outside the scope of this litigation. The BOP produced responsive records to White from February to June 2018, long after White tendered his Amended Complaint in February 2017 and the Court allowed it to be filed in July 2017. Thus, while White's Amended Complaint may have complained of the BOP's failure to timely respond to his request, it could not have included objections to the assertion of FOIA exemptions that had not even happened yet. The BOP has already responded to Request 2016-07558, and that is all the Court would have ordered. Thus, the BOP is entitled to summary judgment on White's claim based on this request. To the extent White complains about the adequacy of that response, he should administratively appeal those responses and file a new lawsuit. Alternatively, even if those issues had been included in this lawsuit, the Court would have

rejected them for the reasons explained below.

White's Medical and Psychological Records

In BOP Request 2016-07558, White requested "all medical records" and "all psychological records" regarding himself. When it received White's request, the BOP identified that responsive records were likely to be found in the inmate physical and mental health record system and assigned White's request to the legal liaison at the United States Penitentiary at Marion, Illinois ("USP-Marion"), where those records for White were kept. In that system, the BOP maintains an inmate's complete medical record in the electronic Bureau Electronic Medical Record ("BEMR") database and an inmate's psychological records in the Psychology Data System ("PDS") database, both of which are accessible by BOP health services staff at the institution where an inmate is confined. In response to White's request, a medical records technician at USP-Marion searched the BEMR and a psychologist at USP-Marion searched the PDS using White's register number. The technician located 435 pages of responsive medical records, 384 of which were released in full and 51 of which were released in part. The psychologist located thirty-two pages of responsive psychological records, twenty-six of which were release in full and six of which were released in part. The BOP withheld material in both sets of documents pursuant to Exemption 7(F).

White's Requests for Administrative Remedies and Tort Claims

In BOP Request 2016-07558, White asked for "all requests for administrative remedy and, tort claims" regarding himself. When it received White's request, the BOP decided that responsive records were likely to be found in the records accessible by the Administrative Remedy Section of the Office of General Counsel in the Central Office. In response to White's request, an administrative remedy specialist searched SENTRY to find information about

White's administrative remedies, tort claims, and appeals using White's register number and the proper SENTRY code. The specialist then used the information in SENTRY to locate copies of White's remedies, tort claims, and appeals, which are organized by year and by remedy number. Because the BOP has a policy of destroying administrative remedies three years after they are filed, the specialist was only able to locate remedies filed after 2014. The agency located seventy-three pages of responsive records of which forty-eight pages were produced in full, twenty-three pages were produced in part, and two pages were withheld. These documents included records of White's administrative remedies and his administrative tort claims. Upon further review, it was discovered that the search had omitted records regarding three requests for administrative remedies filed at the institutional level. Searches at the relevant institutions revealed twelve additional responsive pages, of which six were released in full and six were released in part in March 2018. The BOP withheld material pursuant to Exemptions 6. 7(C), 7(E), and 7(F).

Upon further review, the BOP discovered that the initial release also failed to include all administrative tort claims. Because administrative tort claims are maintained by BOP regional offices in a record system called Content Manager—Administrative Torts ("Content Manager"), the request was sent to the NCRO for a further search of Content Manager records. Content Manager was instituted before White became a federal inmate, so it included all of his administrative tort claims. A paralegal searched Content Manager using White's register number and located 6 administrative tort claims comprising 352 pages of records concerning those claims. The BOP produced 50 pages in full and 2 pages in part, and it withheld 300 pages. The BOP withheld material pursuant to Exemptions 5, 6. 7(C), 7(E), and 7(F).

White's Requests for Disciplinary Records

When it received White's request for his disciplinary records, the BOP decided that responsive records were likely to be found in White's Central File in the section devoted to his conduct, work, and quarters reports (Section Four), although expunged disciplinary records for the prior year may have been located elsewhere. Since an inmate's Central File is located at the institution where he is housed, this request was sent to the legal liaison at USP-Marion who then gave the request to White's case manager. The case manager searched by hand Section Four of White's Central File and located thirty-one pages of responsive records. Inquiries to two other institutions where White had received discipline resulted in locating twenty-three more pages of responsive records in the electronic files of disciplinary hearing officers at those institutions. The BOP released seven pages in full and forty-four pages in part, and withheld three pages. The BOP withheld material pursuant to Exemptions 6. 7(C), 7(E), and 7(F).

White's Requests for SENTRY Records

With respect to White's request for his SENTRY records, as explained above, SENTRY enables searching of other BOP databases by "transaction" or type of information. When an inmate does not specify what types of records he seeks from SENTRY, the BOP performs a standard set of SENTRY transaction inquiries using the inmates register number: discipline and incident report history; intake screening information (kept in the inmate's Central File); central inmate monitoring, security designation, and custody classification data; inmate load data; profile information; name and number history; assignment history; and administrative remedy, sentence monitoring, and financial responsibility data. Since some of this information must come from White's Central File, the request was sent to White's Unit Manager at USP-Marion The Unit Manager located White's intake screening information in his Central File and

searched SENTRY for the other standard transactions using White's register number. The search of SENTRY was completed by other BOP personnel. In all, the searches yielded 123 pages of responsive records (of which three pages were blank). The BOP released eighty-two pages in full and thirty-eight pages in part. It withheld material pursuant to Exemptions 6. 7(C), 7(E), and 7(F).

White's Requests for Intelligence and Communications Records

In BOP Request 2016-07558, White asked for "all Prison Security, and, Intelligence Record System [JUSTICE/BOP-001] records" regarding himself and "all communications between Bureau of Prisons personnel, and, between Bureau of Prisons personnel, and, other law enforcement agencies, any US Attorney's Office, or, any agency of the Attorney General, including the US Department of Justice Civil Rights Division" regarding himself.

The BOP's standard approach is to construe requests for intelligence records to seek TRUINTEL records maintained by SIS, the Special Investigative Services, about the inmate's current institution. SIS is the unit responsible for investigating inmate and staff misconduct, gathering intelligence on criminal activities, and investigating threats to the safety of inmates and staff. TRUINTEL can be searched by intelligence personnel by institution, date, type of incident, inmate name, and inmate register number. In White's case, because he was housed in the communications management unit ("CMU"), the BOP identified the Counterterrorism Unit ("CTU"), which monitors communications in and out of the CMU, as a potential source for responsive intelligence records. As for White's request for communications regarding himself, since he did not provide any parameters, the BOP construed this request also to seek records maintained by SIS and the CTU.

A search of TRUINTEL records by USP-Marion intelligence personnel yielded 100

pages of responsive records. A search of the additional CTU records by White's register number yielded sixteen pages of responsive records. The BOP withheld six pages in part and 110 pages in full pursuant to Exemptions 6. 7(C), 7(E), and 7(F).

White's Requests for MCC-Chicago SHU Maintenance Records

In BOP Request 2016-07558, White asked for "All maintenance records related to the 11th floor Special Housing Unit of the Metropolitan Correctional Center Chicago between October 17, 2008, and December 29, 2008, particularly, but not limited to, records related to heating problems, insect infestations, and, the flooding of cells with human fecal material." This request overlapped with records White sought in BOP NERO Request 2013-11705, addressed above for which no records were found. Because maintenance records regarding a specific facility are maintained at that facility, the request was sent to MCC-Chicago. The Facilities Manager searched the Total Maintenance System ("TMS"), a computer program used to track maintenance issues and work orders, but records from 2008 were not retrievable due to a 2014 change in the TMS and/or a records retention policy calling for destruction of documents after seven years. Not surprisingly, the search of TMS yielded no responsive documents.

White's Requests for MCC-Chicago SHU Log Books

In BOP Request 2016-07558, White asked for "The green SHU log books from the Metropolitan Correctional Center's 11th floor for the period October 17, 2008, to December 29, 2008." Because institution log books are maintained at that institution, the request was sent to MCC-Chicago. A search of the archives of the closed log books located three responsive books containing 293 responsive pages. The BOP released two pages in full and 291 pages in part. Upon further review after White pointed out the missing documents in his summary judgment motion, the BOP discovered that the initial release was missing some pages. A new search for

the missing pages yielded twenty-seven additional pages, all of which were released in part. The BOP relied on Exemptions 6. 7(C), 7(E), and 7(F) for the withheld material.

i. Adequacy of Searches

The Court first addresses White's contention that the BOP did not conduct adequate searches because it did not release documents it believes the BOP has such as, for example, incident reports, disciplinary reports, maintenance records, and other general categories of records. As noted above, however, an agency need only conduct a good faith search of the records where they are likely to be found, and the Fenstermaker Declaration explains that this has been done, and even redone when it became apparent a search missed something. To the extent some of the records were not identified, it was the result of record destruction policies rather than inadequate searches. Furthermore, it appears after review of the *Vaughn* index that the general categories of records White claims are missing have, indeed, been accounted for among the records withheld in full pursuant to exemptions. White has not presented any evidence or argument that would raise doubt about the adequacy of the BOP's searches for responsive documents.

ii. Exemptions

In its releases, the BOP relied on Exemptions 6 and 7(C) to withhold staff names, signatures, initials, BOP identification numbers; staff telephone numbers and email addresses; inmate separatee names, register numbers, classification information, and release information; names, register numbers, housing assignments, addresses, medical status, classification assignments, and statements of other inmates; and names, addresses, telephone numbers and email addresses of third parties who are neither inmates nor BOP staff. It found the information would invade the privacy of privacy of staff, inmates and third parties, subjecting them to

, harassment, threats, attack, or other kinds of targeting, and that there was no countervailing public interest in disclosure of those details.

The BOP also claimed the ability to assert exemptions in subcategories of Exemption 7, which is applicable only to records compiled for law enforcement purposes. White misunderstands this requirement when he states that the records must have been compiled to further a law enforcement *investigation* or *proceeding*; they need only have been compiled for law enforcement *purposes*. The BOP offers many of the same explanations it offered in connection with its user of Exemption 7 subcategories in response to BOP NERO Request 2013-11705 and notes that the withheld records were included in White's official BOP records compiled for the purpose of its law enforcement mission of protecting inmates, staff, and the community.

With respect to Exemption 7(F), the BOP has withheld personal privacy information that it also withheld under Exemptions 6 and 7(C); White's AIDS or HIV status, sex offender status, court-related documents, and intake form risk assessments to prevent dangerous inferences[26] arising from possessing or not possessing that information in paper form; the position title of a psychology staff member because of dangerous inferences that may arise about inmates she sees; publication pages that contain information suggesting White's affiliation with a group that may

[26] The "dangerous inferences" mentioned in this order stem from a common practice among inmates in prison. Inmates will ask to see documentary evidence of other inmates' HIV/AIDS status, cooperator status, or other status/activity that might make them vulnerable to harassment, abuse, or retaliation by other inmates. If the BOP were to allow inmates to have documentary evidence of a negative HIV/AIDS status, non-cooperation with the Government, or other status/activity, inmates will infer that an inmate who is unable to provide such evidence is HIV/AIDS-positive, a "snitch," or other has an undesirable status. To prevent these dangerous inferences, the BOP has a blanket policy of forbidding inmates from possessing documentary evidence of these statuses or activities, although the BOP will disclose the information to the inmate orally or show him the documentary evidence without allowing him to keep a copy.

endanger him among other inmates and that are otherwise contraband for institutional security reasons because of their incendiary nature; the reasons for White's administrative detention status; information regarding BOP classification and monitoring of inmates to protect the safety of inmates, staff, and the community; information that could identify and endanger sources for BOP investigations; information about disruptive activities and responses within an institution; and the types of personnel and equipment or keys available in various prison areas that could be used by inmates to plan nefarious activities.

In its releases, the BOP relied on Exemption 7(E), which exempts records compiled for law enforcement purposes that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E). Under this exemption, it withheld inmate profile and security designation data for White because they would reveal management, tracking, classification, and monitoring criteria that could be manipulated if known to an inmate, that could allow an inmate to evade monitoring, or that could subject an inmate to threats, harassment, or assault by other inmates; information about the BOP's sources of information and methods of acquiring it; information about White's group affiliation that may subject him to threats or assault by other inmates; the reasons for White's administrative detention status and the methods for ascertaining threats to inmate safety; the BOP's assessment of and responses to potential institutional threats or disruptive activities; and the types of security personnel and equipment available on housing ranges.

In its releases, the BOP relied on Exemption 5, which exempts from release "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than

an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). Under this exemption, the BOP withheld intra-DOJ communications regarding White's administrative tort claims between BOP attorneys and other BOP staff members. It also withheld under the attorney work product doctrine, the attorney-client privilege, and/or the deliberative process privilege, staff memoranda and other documents for use by counsel regarding the investigation and resolution of White's tort claims in preparation for Federal Tort Claims Act lawsuits.

The Court has reviewed the BOP's claims of exemption as set forth in the *Vaughn* index for these releases and as thoroughly explained in the Fenstermaker Declaration. It finds that the subject records were compiled for the BOP's law enforcement purposes and finds the BOP has offered at least one legitimate reason for declining to release each piece of withheld information. This satisfies the agency's burden of explaining in detail its assertions of the exemptions. On the other side, White has not provided any public interest that would be served by the disclosure of the withheld information. He relies on speculation or his own personal interests in other litigation he is pursuing, neither of which, when balanced against the interests protected by the exemptions, are sufficient to justify release. To the extent the BOP has withheld in part certain records that were produced in full to White as discovery in another case, White has suffered no harm from the redactions to the records in this case since he already has unredacted copies.

e. Conclusion

For these reasons, the Court is satisfied that no reasonable factfinder could conclude that the BOP did not make a good faith search for the records requested in proper requests in a way that was reasonably calculated to locate those records. Nor could a reasonable factfinder conclude that the BOP improperly withheld agency records from White. Accordingly, the DOJ is entitled to summary judgment on White's claims based on his FOIA requests to the BOP.

IV. Costs

The Court declines to award costs to White because he has not carried his burden of showing he substantially prevailed in this litigation. *See* 5 U.S.C. § 552(a)(4)(E)(i). White has not obtained victory by judicial order; the Court has granted summary judgment for the DOJ on all counts. Nor has he obtained an enforceable written agreement with the DOJ or a consent decree. Finally, with one minor exception, there has been no voluntary or unilateral change in the agencies' positions. The responsive agencies have never taken the position that they would not respond to White's FOIA requests or that they would not release nonexempt responsive records. It is true that they have not always complied with the required timelines, but they have always indicated an intent to comply with FOIA in responding to White's requests and now either have or are on track to respond to those requests on an appropriate timeline. The simple fact that documents were released after White filed this lawsuit is not enough to establish that he substantially prevailed by obtaining a voluntary or unilateral change in position. *First Amendment Coalition v. USDOJ*, 878 F.3d 1119, 1128 (9th Cir. 2017).

The only exception is with respect to White's 2013 request to the USMS for information about himself, which fell through the cracks because of a death, a resignation, and the inadvertent failure to reassign the matter. The USMS did not detect this oversight until White filed this lawsuit, so the lawsuit was, indeed, a catalyst that caused the agency to search for and release documents it had no plans to release at that time. However, White's 2013 request to the USMS for records about himself is such a miniscule portion of this lawsuit, which complains of more than 200 FOIA requests to four different agencies, that victory on that one point cannot reasonably be construed as substantially prevailing in this litigation as a whole.

Even if it could be said that White's lawsuit was a catalyst for the agencies' ultimate

responses, the Court would exercise its discretion to deny White an award of costs. He has bombarded the agencies with vague requests for records, many of which are clearly exempt. He justifies those requests with fanciful assertions of a "public interest" that really amount to his own private interest in relief from his own sentence or revenge for perceived past wrongs done to him. He has caused the agencies an inordinate amount of work without any substantiated public interest in shedding light on the way government functions. The Court has found he is entitled to some release of responsive records even for those personal interests, but it will not force the DOJ to pay White's litigation costs in connection with obtaining those records.

For these reasons, the Court declines to award White his costs for this litigation.

V. Conclusion

The Court returns to the three categories of FOIA claims White raises in his Amended Complaint.

The first is that the agencies administratively defaulted by failing to respond to White's requests in the time periods set forth in the FOIA. These failures entitle White to responses that comply with the agencies' obligations to balance private and public interests under the FOIA, but they do not entitle White to wholesale production of every responsive document. Since White's Amended Complaint, the agencies have either completely responded or are in the process of responding to those requests. Having found that the FBI's ongoing processing and release schedule is adequate, the Court would order no more than is already being done. Accordingly, the DOJ is entitled to summary judgment on this category of White's claims. To the extent White objects to the assertion of any exemptions not already addressed in this order, he may file another lawsuit after exhausting his administrative remedies.

The second is that the agencies have not conducted adequate searches and thus have

falsely denied having any responsive records. The Court has noted, however, that an agency is not required to uncover every possible responsive record; it is only required to conduct good faith searches after being presented with a proper request. Each agency has explained how it has done this, and there are no indications of overlooked material. Therefore, the DOJ is entitled to summary judgment on this category of White's claims.

The third is that the agencies improperly withheld information pursuant to Exemptions 6 and 7(C). However, the agencies have explained how their assertions of these exemptions serve to protect the privacy interests of third parties, and White has not presented evidence of a countervailing public interest in sacrificing those privacy interests. Nor has he shown that any agency has officially acknowledged a relationship with an individual such that a *Glomar* response is inappropriate. Accordingly, the DOJ is entitled to summary judgment on this category of White's claims.

In his other filings, White has sought to expand this litigation beyond the claims articulated in his Amended Complaint. Because those claims were not pled, they are not at issue in this litigation. To the extent the Court has addressed them anyway, for the reasons set forth above, the DOJ would be entitled to summary judgment on those claims as well.

For all of these reasons, the Court:

- **DENIES** White's motion for summary judgment (Doc. 90);
- **GRANTS** the DOJ's cross-motion for summary judgment (Doc. 98); and
- **DIRECTS** the Clerk of Court to enter judgment accordingly.

IT IS SO ORDERED.
DATED: May 19, 2020

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE

APPENDIX C

DISTRICT COURT'S ORDER ON COSTS

JANUARY 21, 2021

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

WILLIAM A. WHITE,

Plaintiff,

v.

DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, UNITED STATES MARSHALS SERVICE, FEDERAL BUREAU OF PRISONS and BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES,

Defendants.

Case No. 16-cv-948-JPG

MEMORANDUM AND ORDER

I. Background

Plaintiff William A. White brought this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. He alleged that the Federal Bureau of Investigations, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the United States Marshals Service ("USMS"), and the Federal Bureau of Prisons did not respond properly to some of his requests for information under the FOIA. The Court entered judgment in favor of the defendant Department of Justice ("DOJ") (for and through its agencies named as defendants) on May 19, 2020 (Doc. 144).

This matter comes before the Court now on the remaining parts of three post-judgment motions filed by White:

- a motion for costs in the amount of $565.00 (Doc. 147), to which the defendant DOJ has responded (Doc. 151) and White has replied (Doc. 155);
- a motion to alter or amend the Court's May 19, 2020, judgment pursuant to Federal Rule of Civil Procedure 59(e) (Doc. 148), to which the DOJ has responded (Doc. 153) and White has replied (Doc. 164); and
- a motion to hold the USMS in contempt (Doc. 149), to which the DOJ has responded

(Doc. 152) and White has replied (Doc. 159).

The Court has ruled on many of the issues raised in these motions in a prior order (Doc. 168) and held a hearing on the remaining portions of the motions on November 18, 2020 (Doc. 181).

The only remaining parts of White's motions relate to the USMS's handling of his 2013 FOIA request and declarations dated June 21, 2018 (Docs. 95-8 & 151-2) and August 10, 2018 (Docs. 122-1 & 151-1) from USMS Associate General Counsel Katherine A. Day regarding the time in which she expected the agency would finish processing that request—July 2018 and June 2019, respectively. In May 2020, the Court relied on the June 2018 declaration in granting summary judgment for the USMS in support of its finding that the responsive records had already been released.

It turns out that no records had been processed or released at the time the Court entered judgment. However, the USMS began processing White's request again—more thoroughly than it ever had before—as soon as White pointed out the Court's error, and it finished the processing and release on October 29, 2020, a little more than five months after the Court entered judgment. The USMS's declarations and its subsequent failure to process his 2013 FOIA request before final judgment in this case are the bases for White's request to hold the USMS in contempt for perjury and for costs from the agency as well as for amendment of the judgment. He asserts that the declarations amounted to perjury and defrauded the Court.

The USMS explains its failures in a June 17, 2020, declaration by USMS Deputy General Counsel Lisa Dickinson (Doc. 152-1). Dickinson explains how White's 2013 request for records pertaining to himself got off track—a track that was fragile to begin with because it relied on individuals to conduct searches and track them in a shared spreadsheet rather than software specially designed to handle FOIA requests. The USMS received White's request in

2013. The USMS Office of General Counsel identified the databases that were likely to contain responsive records based on White's connections with the respective judicial districts and the types of information contained in each database. The request was assigned to a FOIA specialist ("FOIA Specialist 1"), who collected more than 2,500 documents from the identified databases. Before processing them, though, FOIA Specialist 1 resigned. Additionally, the USMS FOIA/PA Officer at that time died. White's request fell through the cracks and was not reassigned to other USMS staff until White made the USMS aware of the oversight through this lawsuit filed against the USMS in August 2016.

Once it learned of its delinquency, Day assigned White's request to a newly hired FOIA specialist ("FOIA Specialist 2") and attested in her declaration that the USMS would begin processing the collected records and expected to be finished in July 2018, then revised her estimate to June 2019. However, FOIA Specialist 2 left the agency in March 2019 without completing the response to White's request. Additionally, Day retired from the agency in May 2019 with little notice and without adequately informing her successor of the status of White's outstanding request and the need to appoint a new FOIA specialist. This and other turnover created a backlog of FOIA requests to the USMS. White's request languished until June 2020 when White filed his post-judgment motion indicating he had yet to receive any records responsive to his 2013 request. The USMS took immediate and extraordinary action to process White's request, including assigning two FOIA specialists—one-third of its FOIA specialist staff—to White's case. The processing was further delayed because a number of the records related to possible threats against federal judges, so they required additional review by the Administrative Office of the U.S. Courts before they could be released to White.

At the November 18, 2020, videoconference hearing, the Court heard argument from

Assistant United States Attorney Suzanne Garrison for the DOJ/USMS and from White on his own behalf. Dickinson and USMS FOIA/PA Officer Charlotte Luckstone were also present. White contended that the USMS has not, in fact, provided all of the documents they identified as responsive, has over-redacted its releases, has not conducted an adequate search for responsive documents, and has committed various other improprieties such as, for example, following up on allegedly false information from an informant. He also believes the USMS has withheld records improperly because only about 1,800 pages were released, but the original estimate of the number of responsive record pages was much higher.

In response, Garrison noted that no copy of the 2013 FOIA request or the original USMS response letter have been found by either party, and, although all agree it sought documents relating to White himself, tracing the exact path of that request is difficult. She noted that the two declarations from June and August 2018 that White alleges were fraudulent were actually honest statements of future intent that did not pan out as expected because of staff turnover, antiquated search capabilities, an unexpected volume and dispersal of documents, and the unanticipated need to consult the Administrative Office of the U.S. Courts before releasing documents. Garrison noted that as soon as she became aware of the failure to process White's 2013 request in June 2020, she immediately worked with the USMS to expedite the task, which included assigning fully one-third of the entire USMS FOIA specialist staff to White's request. She further explained the discrepancy in the estimated number of responsive documents in Day's August 2018 declaration was likely attributable to its being only an estimate and to the removal of duplicate documents.

II. Analysis

As a preliminary matter, the Court is appalled by the length of time it took the USMS to

respond to White's 2013 request. Taking seven years to respond to a FOIA request is in no way "mak[ing] records promptly available" to a requester, as the FOIA commands. 5 U.S.C. § 552(a)(3)(A). It is inexcusable that the USMS was unprepared for such foreseeable and regular complications as staff turnover, large numbers of requests, and the need for record review by other agencies before release. That it was able to marshal its resources and process White's request in four months makes the seven-year delay appear all that more egregious. The Court puts the USMS on notice that it must upgrade its FOIA processing protocols to avoid such delinquencies in the future. Indeed, future FOIA requesters should note this admonition and demand more from the agency in the future.

A. Motion to Hold USMS in Contempt

Nevertheless, the Court is unable to hold the USMS in contempt of court as White requests. A party can be held in civil contempt if the party seeking contempt proves (1) there was a decree from the Court that set forth in specific detail an unequivocal command, (2) there is clear and convincing evidence that the decree was violated, (3) the violation was significant in that it was not substantial compliance, and (4) the violator has not been reasonably diligent and energetic in attempting to accomplish what was ordered. *Lightspeed Media Corp. v. Smith*, 761 F.3d 699, 711 (7th Cir. 2014); *Stotler & Co. v. Able*, 870 F.2d 1158, 1163 (7th Cir. 1989).

White has not pointed to any detailed, unequivocal decree from the Court that the USMS violated. Furthermore, there is no clear and convincing evidence that the June and August 2018 declarations were false or intended to perpetrate a fraud on the Court. On the contrary, they were statements of opinion about when the USMS would be able to accomplish the task at hand. When it became clear that the June 2018 estimate was unrealistic, the agency promptly revised it in the August 2018 declaration. There is no clear evidence that the unfortunate staff turnover

without adequate succession planning, although foreseeable and avoidable, was an intentional—or even reckless—ploy to delay responding to White's FOIA request or that any related declarations were an attempt to defraud the Court. Furthermore, the USMS's post-judgment effort to process White's request was clearly "diligent and energetic" and was ultimately successful in producing the final releases. Again, White has not presented any clear and convincing evidence that that response was inadequate. He should take up any such allegations in the administrative review process.

B. Motion to Alter or Amend Judgment

Nor does the Court find it appropriate to alter or amend its May 19, 2020, judgment under Rule 59(e) even though one conclusion in its order of the same day has proved inaccurate. Under Rule 59(e), a court has the opportunity to consider newly discovered material evidence or intervening changes in the controlling law or to correct its own manifest errors of law or fact to avoid unnecessary appellate procedures. *Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir. 1996); *see A&C Constr. & Installation, Co. WLL v. Zurich Am. Ins. Co.*, 963 F.3d 705, 709 (7th Cir. 2020).

It is true that the Court misunderstood the factual situation based on the USMS's declaration that it would complete its response to White's 2013 FOIA request long before it actually did. However, that delinquency has since been remedied. Based on the current circumstances, the judgment in the case remains the correct resolution of this case, even if one conclusion in the supporting order is not. Accordingly, the Court declines to alter or amend the judgment in this case.

C. Motion for Costs

The Court further declines to award White any costs in this case. The FOIA provides

that the Court may assess costs against the United States if the complainant under the act substantially prevails in the action. *See* 5 U.S.C. § 552(a)(4)(E)(i). A plaintiff may substantially prevail, and thus be eligible for a cost award, either by a judicial order, enforceable written agreement, or consent decree or by a voluntary or unilateral change in the agency's position if the complainant's claim is not insubstantial. 5 U.S.C. § 552(a)(4)(E)(ii). In order to be eligible because of a voluntary agency change, the plaintiff's lawsuit must have been a catalyst for—that is, it must have had a "substantial causative effect" on—the voluntary agency change. *First Amendment Coal. v. USDOJ*, 878 F.3d 1119, 1128 (9th Cir. 2017). The plaintiff carries the burden of proving he substantially prevailed under the foregoing standard, *Pyramid Lake Paiute Tribe v. USDOJ*, 750 F.2d 117, 119 (D.C. Cir. 1984), and he does not carry this burden simply by showing documents were released after a lawsuit was filed. *First Amendment Coal.*, 878 F.3d at 1128; *Calypso Cargo Ltd. v. U.S. Coast Guard*, 850 F. Supp. 2d 1, 4 (D.D.C. 2011), *aff'd*, No. 12-5165, 2012 WL 10236551 (D.C. Cir. Nov. 1, 2012). Even if the plaintiff substantially prevails, the Court has discretion as to whether he should be awarded fees or costs. *See Morley v. CIA*, 894 F.3d 389, 391 (D.C. Cir. 2018), *cert. denied*, 139 S. Ct. 2756 (2019).

The Court's analysis in its May 19, 2020, order remains valid in its conclusion that White has failed to show he substantially prevailed in this litigation. To the extent he arguably was a catalyst for the USMS's response to his 2013 FOIA request, that success was such a miniscule part of this litigation that White otherwise lost that the Court will not deem him to have substantially prevailed in the litigation as a whole. Even had the Court deemed him to have prevailed as a catalyst in his claim relating to his 2013 FOIA request, the Court would still decline to award costs for the reasons stated in its original order.

III. Conclusion

For the foregoing reasons, the Court:

- **DENIES** the remainder of White's motion to alter or amend the judgment pursuant to Rule 59(e) (Doc. 148);
- **DENIES** White's motion for costs (Doc. 147); and
- **DENIES** White's motion to hold the USMS in contempt (Doc. 149).

IT IS SO ORDERED.
DATED: January 21, 2021

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE