

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 21-5167**

**September Term, 2021**

**1:20-cv-00244-CKK**

**Filed On: May 25, 2022**

Julian Okeayainneh,

Appellant

v.

United States Department of Justice, et al.,

Appellees

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Consolidated with 22-5053

**BEFORE:** Katsas, Rao, and Walker, Circuit Judges

**ORDER**

Upon consideration of the motions for other relief; the motion for default judgment; the motion for leave to file a motion for sanctions and the lodged motion for sanctions and supplements; and the motion to supplement the record and for summary affirmance, the opposition thereto and supplement, the reply, the motion for leave to file a surreply, and the lodged surreply, it is

**ORDERED** that the motions for other relief be denied. The rules of this court do not provide for the procedures that appellant seeks to initiate. Discovery is generally not permitted on appeal, and appellant has shown no basis for compelling answers to discovery or for granting the other relief requested. It is

**FURTHER ORDERED** that the motion for default judgment be denied. Appellant has not shown that such relief is warranted. It is

**FURTHER ORDERED** that the motion for leave to file a motion for sanctions be denied as unnecessary. A party may file a motion for sanctions without seeking leave of court. Cf. D.C. Cir. Rule 38. The Clerk is directed to file the lodged motion for sanctions. It is

**FURTHER ORDERED** that the motion for sanctions be denied. Appellant has not shown that such relief is warranted. It is

**APPENDIX 1**

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 21-5167**

**September Term, 2021**

**FURTHER ORDERED** that the motion for leave to file a surreply be denied. It is

**FURTHER ORDERED** that the motion to supplement the record and for summary affirmance be granted. Supplementing the record with the revised declaration of Adam Beaubouef, which adds a penalty-of-perjury statement, is in the interests of justice. See Colbert v. Potter, 471 F.3d 158, 165-66 (D.C. Cir. 2006). Additionally, the merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). Taking into account Beaubouef's declaration, appellees' search in response to appellant's Freedom of Information Act request was adequate. See Mobley v. CIA, 806 F.3d 568, 581 (D.C. Cir. 2015) ("Agency affidavits—so long as they are relatively detailed and non-conclusory—are accorded a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents.") (internal quotation marks omitted). Appellant has not presented any non-speculative argument that appellees have failed to release records responsive to his request. Additionally, appellant has not argued on appeal that the district court erred in denying his motions regarding appointment of a special master and motion for leave to file an opposition to the appellees' notice in lieu of a renewed motion for summary judgment. Accordingly, any such arguments are forfeited. See United States ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004). It is

**FURTHER ORDERED**, on the court's own motion, that the appeal in No. 22-5053 be dismissed as moot. With the record supplemented to include Beaubouef's revised declaration, there is no longer a live controversy about whether the original declaration was sufficient. Conservation Force, Inc. v. Jewell, 733 F.3d 1200, 1204 (D.C. Cir. 2013) ("Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies.") (citation omitted).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**

**APPENDIX 2**

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 21-5167**

**September Term, 2021**

**1:20-cv-00244-CKK**

**Filed On: July 13, 2022**

Julian Okeayainneh,

Appellant

v.

United States Department of Justice, et al.,

Appellees

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Consolidated with 22-5053

**BEFORE:** Srinivasan, Chief Judge, and Henderson, Rogers, Millett, Pillard, Wilkins, Katsas, Rao, and Walker, Circuit Judges

**ORDER**

Upon consideration of the amended petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

**ORDERED** that the petition be denied.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Daniel J. Reidy  
Deputy Clerk

**APPENDIX 3**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

## MEMORANDUM OPINION<sup>1</sup>

Julian Okeayainneh (“plaintiff”) brought this action under the Freedom of Information Act (“FOIA”), *see* 5 U.S.C. § 552, against the United States Department of Justice (“DOJ”) to obtain records maintained by the Federal Bureau of Prisons (“BOP” or “defendant”). On January 28, 2021, the Court issued a Memorandum Opinion and Order (ECF No. 25) granting in part and denying in part without prejudice defendant’s Motion to Dismiss or for Summary Judgment (ECF No. 16).

The sole unresolved matter pertains to 48 pages of records Unit Manager located in plaintiff's hard copy and electronic Inmate Central Files. *See* White Decl. (ECF No. 16-3), Ex. 4

<sup>1</sup> The Court will grant Plaintiff's Motion for Leave to File Proposed Judge's Order and Response and Memorandum in Opposition to Defendants' Notice of Filing in Lieu of Renewed Motion to Dismiss Claim on Mootness Grounds and Attached Exhibits (ECF No. 31), and has considered it as well as the following documents and all their exhibits/attachments:

- Motion to Dismiss or for Summary Judgment (ECF No. 16)
  - Notice of Disclosure in Lieu of Renewed Motion for Summary Judgment (ECF No. 27)
  - Motion for Leave to File Proposed Judge's Order and Response and Memorandum in Opposition to Notice of Disclosure in Lieu of Renewed Motion to Dismiss Claim on Mootness Grounds and Attached Exhibits (ECF No. 29), construed as plaintiff's amended response to defendant's Notice of Disclosure in Lieu of Renewed Motion for Summary Judgment (ECF No. 27)
  - Notice of Disclosure in Lieu of Renewed Motion for Summary Judgment (ECF No. 30)

## APPENDIX 4

(ECF No. 16-7, FOIA Request Worksheet). These records respond to “Item 2” of FOIA Request No. 2019-02952 for “[a] copy of All records of Information Ordering Restitution Vacated received on 5/15/2017 under Criminal Case No 11-CR-87(1) (MJD/JJK).” White Decl., Ex. 2 (ECF No. 16-5 at 2, Freedom of Information Act Request).

Beaubouef’s search yielded copies of a Judgment in Criminal Case, dated August 3, 2018 (ECF No. 1257) (2 pages), a Memorandum of Law and Order, dated August 1, 2018 (ECF No. 1256) (42 pages), and plaintiff’s SENTRY Sentence Monitoring Computation data, dated March 29, 2019 (4 pages). *See* Beaubouef Decl. (ECF No. 30-1) ¶ 3; *see id.*, Ex. A (ECF No. 30-2). BOP has released these 48 pages of records in full. *See generally* Notice of Disclosure in Lieu of Renewed Mot. for Summ. J. (ECF No. 27), Ex. A (ECF No. 27-1); Notice of Disclosure in Lieu of Renewed Mot. for Summ. J (ECF No. 30-2). Nevertheless, plaintiff has insisted that genuine issues of material fact are in dispute with respect to BOP’s search for responsive records and the wrongful withholding of the records Beaubouef located. He is mistaken.

On review of the parties’ submissions, it is apparent that 44 of the 48 pages of records Beaubouef located are duplicates of records located by Designation and Sentence Computation Center Operations Manager Robert C. Jennings in plaintiff’s computation folder and Public Access to Court Electronic Records (PACER). BOP demonstrates that the Judgment in a Criminal Case and Memorandum of Law and Order were among the records BOP has released in full:

- Judgment in Criminal Case, dated August 3, 2018 (ECF No. 1257) (2 pages);
- Memorandum of Law and Order, dated August 1, 2018 (ECF No. 1256) (42 pages);
- Second Amended Judgment in Criminal Case, dated December 23, 2015 (ECF No. 1158) (7 pages);
- Amended Judgment, dated August 29, 2013 (ECF No. 1001) (7 pages);
- Judgment in a Criminal Case, dated August 15, 2012 (7 pages);

- Order, dated May 10, 2017 (ECF No. 1217) (2 pages)
- Statement of Reasons (28 pages)<sup>2</sup>

See White Decl. ¶¶ 13-14, 16, 20.

Now that BOP has accounted for the 48 pages of records Beaubouef located, there remains no issue for the Court to resolve. *See, e.g., Plunkett v. Dep’t of Justice*, 249 F. Supp. 3d 73, 75 (D.D.C. 2017) (“Because the Department has now adequately addressed the Court’s outstanding concern, and because the [agency] has released all 25 pages of the remaining records, the Court has no further function to perform under FOIA.”), *aff’d sub nom. Plunkett v. Doe*, No. 17-5087, 2018 WL 1388574 (D.C. Cir. Feb. 21, 2018). Accordingly, JUDGMENT will be entered for defendants. An Order is issued separately.

DATE: June 25, 2021

/s/

COLLEEN KOLLAR KOTELLY  
United States District Judge

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<sup>2</sup> Although BOP policy prevented release of plaintiff’s Statement of Reasons in response to his FOIA request, had the opportunity to review the SOR (28 pages) with his Unit Manager on June 22, 2020. See White Decl. ¶¶ 18-20.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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JULIAN OKEAYAINNEH, )  
v. Plaintiff, ) Civil Action No. 20-0244 (CKK)  
U.S. DEPARTMENT OF JUSTICE, *et al.*, )  
Defendants. )  
\_\_\_\_\_  
)

**MEMORANDUM OPINION AND ORDER**

Julian Okeayainneh (“plaintiff”) brings this action under the Freedom of Information Act (“FOIA”), *see* 5 U.S.C. § 552, against the United States Department of Justice (“DOJ”) to obtain records maintained by the Federal Bureau of Prisons (“BOP”). This matter is before the Court on defendants’ Motion to Dismiss or for Summary Judgment (ECF No. 16). For the reasons discussed below, the motion is GRANTED IN PART and DENIED IN PART WITHOUT PREJUDICE.<sup>1</sup>

**I. BACKGROUND**

“On August 13, 2012, [p]laintiff was sentenced in the [United States District Court for the] District of Minnesota in Criminal Case No. 11-CR-87(1) (MJD/JJK) to a total term of 324

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<sup>1</sup> The Court considered the following documents and all their exhibits/attachments:

- \* Complaint (ECF No. 1)
- \* Motion to Dismiss or for Summary Judgment (ECF No. 16)
- \* Response and Memorandum in Opposition to Motion Dismiss Claim on Mootness Grounds (ECF No. 18)3
- \* Reply to Plaintiff’s Opposition to Defendants’ Motion for Summary Judgment (ECF No. 24)

months in federal prison for bank fraud conspiracy, aiding and abetting bank fraud, aiding and abetting and being aided and abetted in wire fraud, money laundering conspiracy, fraud identity theft, aiding and abetting aggravated identity theft . . . , aiding and abetting and being aided and abetted in trafficking in false authentication features[.]” Statement of Undisputed Material Facts (ECF No. 16-1, “SMF”) ¶ 1. The sentencing court’s August 29, 2013, Amended Judgment included restitution of \$4,368,192.01. *See United States v. Okeyainneh*, No. 11-CR-87, 2019 WL 4888880, at \*1 (D. Minn. Oct. 3, 2019); *see also* White Decl., Ex. 3 (ECF No. 16-6) at 52. Following the Eighth Circuit’s ruling in the appeal of plaintiff’s co-defendant Adetokunbo Olubunmi Adejumo, the sentencing court issued an Order on May 10, 2017, vacating Adejumo’s restitution obligation. *See* White Decl., Ex. 7 (ECF No. 16-10).<sup>2</sup>

On or about January 25, 2019, plaintiff submitted a FOIA request, addressed to “Matt Mangold – (CHIEF HUMAN RESOURCES)” at BOP’s Designation and Sentence Computation (“DSCC”), for the following information:

- \* A copy of ALL records of Information Order Adding Restitution Per Amended Judgment, updated on 09/4/2013 under Criminal No. 11-CR-87(1)(MJD/JJK)
- \* A copy of ALL records of Information Ordering Restitution Vacated received on 5/15/2017 under Criminal No. 11-CR-87(1) (MJD/JJK)

White Decl. (ECF No. 16-3), Ex. 2 (ECF No. 16-5) at 2 (emphasis removed) (page numbers designated by CM/ECF). Plaintiff addressed a similar FOIA request to Matt Mangold on or about February 1, 2019, for the following information:

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<sup>2</sup> According to defendant, “[p]laintiff appears to contend that an Order . . . vacates his restitution in the amount of \$4,368,192.01.” SMF ¶ 3 n.1. Defendant states that two federal district courts “have previously noted that [p]laintiff’s restitution has not been vacated.” *Id.* (citing *Okeyainneh v. Myers*, 2:19-cv-01052 (W.D. La. Dec. 11, 2019) and *United States v. Okeyainneh*, No. 11- CR-87, 2019 WL 4888880 at \*6-7 (D. Minn. Oct. 2, 2019)).

- \* A copy of ALL records of Information Order Adding Restitution Per Amended Judgment, updated on 09/4/2013 under Criminal No. 11-CR-87(1)(MJD/JJK).
- \*  A copy of ALL records of Information Ordering Restitution Vacated received on 5/15/2017 under Criminal No. 11-CR-87(1) (MJD/JJK) and accompanied documents Vacating Mandatory Amended Restitution Judgment in the amount of \$4,368,192.01, required to “Sustain Conviction” within the meaning of 18 U.S.C.S. § 1344-Bank fraud Statute.

*Id.*, Ex. 2 at 4 (emphasis removed).

Because BOP did not respond timely to either request, plaintiff filed an administrative appeal to the DOJ’s Office of Information Policy (“OIP”). Compl. ¶ 20.<sup>3</sup> OIP staff consulted with BOP staff and learned that BOP had not received plaintiff’s FOIA requests. *See id.*, Ex. E. Nevertheless, BOP agreed to open a single new request and assigned it Request Number 2019-02952.<sup>4</sup> *See* SMF ¶ 3; White Decl. ¶ 5; Compl. ¶¶ 21-22.

The search for “any ‘records regarding orders for restitution’ for Criminal Case No. 11-cr-00087,” SMF ¶ 5, began with a physical search of plaintiff’s Inmate Central File by Unit Manager Beauboeuf, *id.* ¶ 6; *see* White Decl. ¶ 10. Beauboeuf also searched plaintiff’s Electronic Central File (“e-ICF”) using his register number as a search term. *See* White Decl. ¶ 11. BOP’s declarant explained that both the hard copy and electronic versions of the Central File “contain sentence data to include the Pre-Sentence Investigative Report (PSR), Judgment and

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<sup>3</sup> Pages 1-3 and 19 of plaintiff’s complaint are presented on a preprinted form; pages 4 through 18 are presented in sequentially numbered paragraphs in a typewritten attachment. References to the preprinted form are by the page numbers designated by CM/ECF, and references to the typewritten attachment are by paragraph number.

<sup>4</sup> Plaintiff submitted administrative appeals to OIP but did not submit a FOIA request to OIP for records it maintained. The only FOIA claim presented in this case arose from BOP’s response to Request Number 2019-02952. To the extent plaintiff raises a FOIA claim against OIP, the claim is dismissed.

Commitment Orders (J&C), Statement of Reasons (SOR), state records, Central Inmate Monitoring Requests (CIMs), and the USMS 129 related to a specific inmate.” *Id.* Beauboeuf’s search, conducted on March 29, 2019, yielded 48 pages of potentially responsive records. *See* White Decl., Ex. 4 (ECF No. 16-7).

The declarant explained that DSCC is the office responsible for “inmate designations, classification, . . . transportation, and sentence computation.” White Decl. ¶ 6 n.2. DSCC’s Operations Manager conducted searches on April 4, 2019, for “copies of any information/records concerning Order adding restitution per amended Judgment under 11-CR-87(1)(MJD/JJK) and Order vacating restitution under same case,” SMF ¶ 6; *see* White Decl. ¶ 12, in plaintiff’s electronic DSCC file (“computation folder”) and Public Access to Court Electronic Records (“PACER”) using the search term “Okeayainneh, Julian; 11-CR-87(a)(MJD/JJK).” White Decl. ¶ 13; *see* SMF ¶ 7. These searches yielded 95 pages of records. SMF ¶¶ 7-8.

With a cover letter dated April 15, 2019, BOP notified plaintiff of its decision to release 65 pages of records in full:

- \* Judgment in Criminal Case, dated August 3, 2018 (ECF No. 1257) (2 pages);
- \* Memorandum of Law and Order, dated August 1, 2018 (ECF No. 1256) (42 pages);
- \* Second Amended Judgment in Criminal Case, dated December 23, 2015 (ECF No. 1158) (7 pages);
- \* Amended Judgment, dated August 29, 2013 (ECF No. 1001) (7 pages);
- \* Judgment in a Criminal Case, dated August 15, 2012 (7 pages)

*See id.* ¶ 8; *see generally* White Decl., Ex. 6 (ECF No. 16-9 at 34-98). BOP further notified plaintiff of its decision to withhold in full 30 pages of records, identified as a 28-page Statement of Reasons (“SOR”) and a two-page Order of the sentencing court dated May 10, 2017. SMF ¶¶

9-10; *see generally* White Decl., Ex. 6 (ECF No. 16-9 at 4-33). OIP upheld BOP's determination on administrative appeal. *See* SMF ¶¶ 11-12.

Plaintiff filed this civil action on November 14, 2019, against DOJ, DSCC's Director/Chief Human Resources, and the Attorney General of the United States. *See* Compl. at 1, 3. He alleged that defendants "failed to respond to certain of his FOIA requests or properly assert any exemption under FOIA which would justify withholding the requested records." *Id.* ¶ 31; *see id.* ¶¶ 39, 41. Among other relief, plaintiff has demanded "an injunction compelling each [d]efendant to provide him with copies of the records sought[.]" *Id.* ¶ 45.

After plaintiff filed this civil action, BOP released in full the sentencing court's two-page Order dated May 10, 2017. *See* SMF ¶¶ 13-14; White Decl., Ex. 7 (ECF No. 16-10). On June 22, 2020, "[p]laintiff was provided the opportunity to review his [28-page] SOR" with his Unit Manager. SMF ¶ 15.

## II. DISCUSSION

### A. Defendants' Motion to Dismiss

Plaintiff sues DSCC's Director/Chief Human Resources and the Attorney General of the United States, *see* Compl. at 3, and defendants move to dismiss on the ground that the Court lacks subject matter jurisdiction, *see* Defs.' Mem. (ECF No. 16-2) at 8.

FOIA confers upon federal district courts "jurisdiction to enjoin the *agency* from withholding agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B) (emphasis added). Because the proper defendant in a FOIA case is a federal government agency, plaintiff's claims against the individual defendants, DSCC's Director/Chief Human Resources and the Attorney General of the United States, will be dismissed. *See, e.g.*, *Martinez v. Bureau of Prisons*, 444 F.3d 620, 624 (D.C. Cir. 2006) (affirming dismissal of FOIA

claims against individual federal employees); *Khalid v. U.S. Citizenship & Immigration Servs.*, No. 1:09-CV-96, 2011 WL 4003204, at \*1 n.1 (D.D.C. Aug. 31, 2011) (“The Court lacks jurisdiction to adjudicate FOIA claims against individual defendants even if the plaintiff names such individuals in their official capacity.”); *Santini v. Taylor*, 555 F. Supp. 2d 181, 184 (D.D.C. 2008) (dismissing FOIA complaint for lack of subject matter jurisdiction because plaintiff named government employees as defendants rather than an agency). In addition, the Court will dismiss these individuals as party defendants.

## **B. Defendants’ Motion for Summary Judgment**

### **1. Summary Judgment in a FOIA Case**

Summary judgment is appropriate upon a showing 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). In a FOIA case, the Court may award summary judgment to an agency solely on the information provided in agency affidavits or declarations when they describe “the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record [or] by evidence of agency bad faith.” *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981); *accord Am. Civil Liberties Union v. U.S. Dep’t of Def.*, 628 F.3d 612, 619 (D.C. Cir. 2011). Such affidavits or declarations are accorded “a presumption of good faith, which cannot be rebutted by ‘purely speculative claims about the existence and discoverability of other documents.’” *SafeCard Servs., Inc. v. Sec. & Exch. Comm’n*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (quoting *Ground Saucer Watch, Inc. v. CIA*, 692 F.2d 770, 771 (D.C. Cir. 1981)). Rather, a plaintiff “must point to evidence sufficient to put the [a]gency’s good faith into doubt.” *Ground Saucer Watch*, 692 F.2d at 771. Otherwise, “uncontradicted,

plausible affidavits showing reasonable specificity and a logical relation to [a claimed] exemption are likely to prevail.”” *Schoenman v. FBI*, 841 F. Supp. 2d 69, 80 (D.D.C. 2012) (quoting *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 509 (D.C. Cir. 2011) (alteration omitted)).

On summary judgment, the district court conducts a “de novo” review of the record, 5 U.S.C. § 552(a)(4)(B), “to ascertain whether the agency has sustained its burden of demonstrating that the documents requested . . . are exempt from disclosure,” *Assassination Archives & Research Ctr. v. CIA*, 334 F.3d 55, 57 (D.C. Cir. 2003) (citation and internal quotation marks omitted). “Consistent with the purpose of [FOIA], the burden is on the agency to justify withholding requested documents,” *Beck v. Dep’t of Justice*, 997 F.2d 1489, 1491 (D.C. Cir. 1993), and only after an agency has proven that “it has fully discharged its disclosure obligations” is summary judgment appropriate, *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1350 (D.C. Cir. 1983).

## **2. Records Released In Full**

With regard to the 67 pages of records BOP has released to plaintiff in full, the Court grants summary judgment for defendants. BOP demonstrates that it released in full 65 pages of record on initial determination on plaintiff’s FOIA request, *see* SMF ¶ 8, and after this litigation commenced, it released an unredacted copy of the sentencing court’s two-page May 10, 2017, Order, *see id.* ¶¶ 13-14. There remains no controversy for the Court to resolve with respect to these disclosures. *See Williams & Connolly v. SEC*, 662 F.3d 1240, 1243-44 (D.C. Cir. 2011) (concluding that release of “eleven sets of notes pursued in this appeal” rendered “the controversy . . . moot with respect to those documents”); *Brown v. U.S. Dep’t of Justice*, 169 F. App’x 537, 540 (11th Cir. 2006) (finding that, where plaintiff “has received the documents, the

issue has become moot and [plaintiff] is not entitled to injunctive relief under the FOIA"); *Perry v. Block*, 684 F.2d 121, 125 (D.C. Cir. 1982) ("[H]owever fitful or delayed the release of information under the FOIA may be, once all requested records are surrendered, federal courts have no further statutory function to perform."); *Stelmaszek v. Dep't of Veterans Affairs*, No. 19-CV-0172, 2020 WL 4673415, at \*3 (D.D.C. Aug. 12, 2020) ("Defendant has since released all of the requested responsive records in full, thereby satisfying its obligations under FOIA and the Privacy Act and rendering moot any statutory functions of this Court.").

### **3. Plaintiff's Review of the Statement of Reasons**

BOP withheld in full plaintiff's 28-page SOR under FOIA Exemption 7(F). *See* SMF ¶ 9. It also relied in BOP Program Statement 1351.05 CN-2, *Release of Information* (effective March 9, 2016), which prohibits "inmates . . . from obtaining or possessing photocopies of their PSRs, SORs, or other equivalent non-U.S. Code sentencing documents[.]" White Decl. ¶ 18. According to the declarant, BOP implemented this policy for the following reasons.

- Many PSRs and SORs contain information regarding the inmates' government assistance, financial resources, community affiliations, etc.
- [BOP] has documented an emerging problem where inmates pressure other inmates for a copy of their PSRs and SORs to learn if they are informants, gang members, have financial resources, etc.
- Inmates who refuse to provide the documents are threatened, assaulted, and/or seek protective custody. Likewise, inmates providing PSRs and SORs containing harmful information are faced with the same risks of harm.

*Id.* Notwithstanding the policy, inmates are "provided reasonable opportunities to access and review their PSRs, SORs, or other equivalent non-U.S. Code sentencing documents" by making a request to their Unit Managers "in accordance with the Program Statement on Inmate Central File, Privacy Folder, and Parole Mini Files." *Id.* ¶ 19.

BOP demonstrates that, on June 22, 2020, plaintiff had an opportunity to review his SOR. SMF ¶ 15; *see* White Decl. ¶ 20. Where, as here, plaintiff has an alternate means for accessing his SOR, BOP does not run afoul of FOIA by refusing to release the SOR in response to his FOIA request. *See Martinez*, 444 F.3d at 625; *Allen v. Dep’t of Justice*, No. 17-CV-1197, 2020 WL 474526, at \*5 (D.D.C. Jan. 29, 2020), *appeal dismissed*, No. 20-5060 (D.C. Cir. Sept. 3, 2020); *Schotz v. Samuels*, 72 F. Supp. 3d 81, 89 (D.D.C. 2014) (finding “no improper withholding” of PSR which plaintiff “could access . . . by reviewing [it] in accordance with BOP policy”). And, defendant represents, “pursuant to the *Release of Information* Program Statement, [p]laintiff’s SOR is still available for [his] review upon request.” White Decl. ¶ 21.

#### **4. BOP’s Searches for Responsive Records**

An agency “fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents.” *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (citations and internal quotation marks omitted). The adequacy of a search is measured by a standard of reasonableness and depends on the individual circumstances of each case. *See Campbell v. U.S. Dep’t of Justice*, 164 F.3d 20, 27 (D.C. Cir. 1998); *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). The question is not whether other responsive records may exist, but whether the search itself was adequate. *See Steinberg v. U.S. Dep’t of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994).

“[T]he burden is on the agency to demonstrate that it made a good faith effort to conduct a search . . . using methods which can be reasonably expected to produce the information requested.” *DiBacco v. Dep’t of the Army*, 926 F.3d 827, 832 (D.C. Cir. 2019) (citation and internal quotation marks omitted). The Court may rely on 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.” *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (quoting *Oglesby v. U.S. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). If the record “leaves substantial doubt as to the sufficiency of the search, summary judgment for the agency is not proper.” *Truitt*, 897 F.2d at 542.

As described above, BOP searched plaintiff’s Inmate Central File, the e-ICF, the DSCL computation folder, and PACER for records responsive to his FOIA request. On review of the request itself and defendants’ supporting declaration, these were places where responsive records likely would be found. BOP’s declarant explained that the paper and electronic Inmate Central File would contain sentence-related information including a Statement of Reasons, and that DSCL “imports all sentencing impact documents into the e-ICF.” White Decl. ¶ 11. To the extent plaintiff sought Orders issued by the sentencing court, it was reasonable to have found them using PACER.

Plaintiff’s challenge to BOP’s searches for responsive records supposedly relies on the declaration of his Unit Manager, James McCollough, dated August 3, 2020. *See* Pl.’s Opp’n (ECF No. 18) at 2, 4, 11. The document to which plaintiff refers, *see id.*, Ex. App. 002 (ECF No. 18 at 32) (exhibit number designated by plaintiff), is not a declaration at all. Rather, it is plaintiff’s August 3, 2020, Inmate Request to Staff claiming that McCollough located documents responsive to “Item 2” of the FOIA request for a court Order vacating restitution and that BOP refused to release it. *See* Pl.’s Opp’n at 2-3. Plaintiff concludes from the so-called declaration that “there are other potentially responsive records . . . in the possession of [BOP.]” *Id.* at 3. In addition, plaintiff appears to argue that the 30 pages BOP withheld in full are responsive to “Item 2” of his request, and faults BOP for its alleged failure to “mention[] the context and substances

contained within the fully redacted 30-page records[.]” *Id.* at 4. The record of this case dispels any notion that these arguments have merit.

Plaintiff cannot rely on the declaration of James McCollough because he fails to produce the declaration. And BOP’s declarant does identify the contents of the 30 pages of records initially withheld in full: plaintiff’s 28-page SOR, *see* White Decl. ¶¶ 14, 20-21, and the sentencing court’s May 10, 2017, Order, *see id.* ¶¶ 14, 16. BOP demonstrates that it since has released the sentencing court’s May 10, 2017, Order in full, *see id.* ¶ 16; Pl.’s Opp’n at 9, and that plaintiff has had an opportunity to review the SOR, *see id.* Furthermore, the adequacy of an agency’s search is determined by the search’s scope and methods, not its results. *See, e.g.*, *Campbell*, 164 F.3d at 27. Even if BOP failed to produce a specific document of interest to plaintiff, plaintiff fails to undermine BOP’s showing that its searches of the Inmate Central File, the e-ICF, the DSAC computation file, and PACER were reasonable under the circumstances.

### **5. BOP’s Release of Responsive Records**

Notwithstanding the conclusion that BOP conducted reasonable searches, the Court finds that BOP failed to demonstrate that it completely fulfilled its FOIA obligations. Plaintiff identifies a discrepancy between the number of pages BOP’s searches yielded and the number of pages for which it has accounted in this motion. *See* Pl.’s Opp’n at 11-12. Defendants’ motion pertains only to the 95 pages of records located through searches of PACER and the DSAC computation file. *See* White Decl., Ex. 5 (ECF No. 16-8). The declarant states that Beauboeuf located 48 pages of records in the hard copy and electronic Inmate Central Files, *see* White Decl., Ex. 4 (ECF No. 16-7), yet defendant neither describes the records Beauboeuf located, indicates whether these records were responsive to plaintiff’s FOIA request, nor, if responsive, explains BOP’s reasons for withholding them. Further, as plaintiff notes, it is not clear whether

these 48 pages of records are in addition to the 95 pages of records located through searches of PACER and the DSAC computation file, *see* Pl.'s Opp'n at 13-14, 15-16, or, perhaps, that duplicates of these 48 pages of records are among the 95 pages of records disclosed to plaintiff either in hard copies or by access to the SOR. Without additional information, the Court cannot determine whether BOP properly withheld the 48 pages of records Beauboeuf found. For these reasons, the Court will deny defendants' motion in part without prejudice.

It is hereby

ORDERED that defendants' Motion to Dismiss or for Summary Judgment [16] is GRANTED IN PART. Plaintiff's claims against DSSC's "Director/Chief Human Resources" and the Attorney General of the United States are DISMISSED WITH PREJUDICE, and these individuals are DISMISSED WITH PREJUDICE as party defendants. Plaintiff's FOIA claim against OIP is DISMISSED, and JUDGMENT for defendants is GRANTED with respect to the adequacy of BOP's search for and the release in full of the August 3, 2018, Judgment in Criminal Case, August 1, 2018, Memorandum of Law and Order, December 23, 2015, Second Amended Judgment in Criminal Case, August 29, 2013, Amended Judgment, August 15, 2012, Judgment in a Criminal Case, and the sentencing court's May 10, 2017, Order, as well as plaintiff's access to the SOR pursuant to Program Statement 1351.05. In all other respects, defendants' motion is DENIED WITHOUT PREJUDICE. It is

FURTHER ORDERED that, by March 1, 2021, defendant shall file a renewed summary judgment motion.

SO ORDERED.

DATE: January 28, 2021

/s/  
COLLEEN KOLLAR KOTELLY  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JULIAN OKEAYAINNEH, :  
:   
Plaintiff, :  
:   
v. : Civil Action No. 20-0244 (CKK)  
:   
U.S. DEPARTMENT OF JUSTICE, *et al.*, :  
:   
Defendants. :  
:

**ORDER**

It is hereby

ORDERED that Plaintiff's Motion for Leave to File Proposed Judge's Order and Response and Memorandum in Opposition to Defendants' Notice of Filing in Lieu of Renewed Motion to Dismiss Claim on Mootness Grounds and Attached Exhibits [31] is GRANTED. It is further

ORDERED that JUDGMENT shall be entered for defendants.

The Clerk of Court shall TERMINATE this case.

This is a final appealable Order.

SO ORDERED.

DATE: June 25, 2021

/s/  
COLLEEN KOLLAR KOTELLY  
United States District Judge

**APPENDIX 19**

(Rev. 5/1/13)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

2:19-cv-1482 SEC P

**RECEIVED**

JULIAN OKEAYAINNEH #20515112

CASE NO.

NOV 14 2019

VERSUS

JUDGE

TONY R. MOORE CLERK  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT, LOUISIANA  
BY \_\_\_\_\_

U.S. DEPT. OF JUSTICE ET AL.,

MAGISTRATE JUDGE

COMPLAINT

BY PRISONER UNDER 28 U.S.C. '1331 OR BIVENS V. SIX UNKNOWN NAMED  
AGENTS OF THE FEDERAL BUREAU OF NARCOTICS, 403 U.S. 388 (1971)

I. Previous Lawsuits

a. Have you begun any other lawsuit while incarcerated or detained in any facility?  
Yes  No

b. If your answer to the preceding question is "Yes," provide the following information.

1. State the court(s) where each lawsuit was filed (if federal, identify the District, if state court, identify the county or parish):

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS, DALLAS

DIVISION.

2. Name the parties to the previous lawsuit(s):

Plaintiffs: Julian Okeayainneh

Defendants: US Department of Justice et al

3. Docket number(s): 3: 18-cv-1195-BK

4. Date(s) on which each lawsuit was filed: May 10, 2018

5. Disposition and date thereof [For example, was the case dismissed and when? Was it appealed and by whom (plaintiff or defendant)? Is the case still pending?]:

" CASE IS STILL PENDING "

c. Have you filed any lawsuit or appeal in any federal district court or appeals court which has been dismissed?

Yes  No

**APPENDIX 20**

(Rev. 5/1/13)

If your answer to the preceding question is "Yes," state the court(s) which dismissed the case, the civil action number(s), and the reason for dismissal (e.g., frivolity, malice, failure to state a claim, defendants immune from relief sought, etc.).

UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF MINNESOTA;

CIVIL NO. 12-CV-2200; Dismissed for failure to State a claim.

II. a. Name of institution and address of current place of confinement:

FCI-1, 2105 East Whatley Road, Oakdale, Louisiana [71463]

b. Is there a prison grievance procedure in this institution?

Yes  No

1. Did you file an administrative grievance based upon the same facts which form the basis of this lawsuit? Yes  No

If "Yes," what is the Administrative Remedy Procedure number?

NOT APPLICABLE

2. If you did not file an administrative grievance, explain why you have not done so.

NOT APPLICABLE

3. If you filed an administrative grievance, answer the following question. What specific steps of the prison procedure did you take and what was the result? (For example, for state prisoners in the custody of the Department of Public Safety and Corrections: did you appeal any adverse decision through to Step 3 of the administrative grievance procedure by appealing to the Secretary of the Louisiana Department of Public Safety and Corrections? For federal prisoners: did you appeal any adverse decision from the warden to the Regional Director for the Federal Bureau of Prisons, or did you make a claim under the Federal Tort Claims Act?)

N/A

N/A

Attach a copy of each prison response and/or decision rendered in the administrative proceeding.

III. Parties to Current Lawsuit:

- a. Name of Plaintiff: Julian Okeyainneh, c/o: 20515112

Address: FCI-1, 2105 East Whatley Road, Oakdale, Louisiana [71463]

b. Defendant, DIRECTOR / CHIEF HUMAN RESOURCES, is employed as  
 Regional Director - FBOP at 346 MARINE FORCES DRIVE, GRAND PRAIRIE, TEXAS [75051].

Defendant, ATTORNEY GENERAL, is employed as  
Attorney General - US DOJ at 950 PENNSYLVANIA AVENUE, N.W., WASHINGTON, D.C. [20530].

Defendant, N/A, is employed as  
N/A at N/A.

Additional defendants: N/A

#### IV. Statement of Claim

State the FACTS of your case. Specifically describe the involvement and actions of each named defendant. Include the names of all persons involved in the incident(s) or condition(s) giving rise to the lawsuit, and the dates upon which and the places where the incident(s) and/or condition(s) occurred. YOU ARE REQUIRED TO SET FORTH ONLY FACTUAL ALLEGATIONS. YOU ARE NOT REQUIRED TO SET FORTH LEGAL THEORIES OR ARGUMENTS.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

NOW COMES, Julian Okeayaimeh, proceeding pro se and in forma pauperis, and hereby files this Complaint against the various United States government agencies and components named herein as follows: Federal Bureau of Prisons ("FBOP"); the Office of Information Policy ("OIP"), and the United States Department of Justice ("DOJ") (collectively referred to as the ("Defendants").

#### NATURE OF ACTION

\*\*\* Please see attached pages for continuation ..( Pages 3a through 3o ).

Page 3 a of 4

**FOIA COMPLAINT**

**NATURE OF ACTION**

1. This is an action brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq, and the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552a et seq, to compel Defendants to comply fully with FOIA and the Privacy Act, including the production of records requested by Okeayainneh of each Defendant. Each Defendant is statutorily mandated to comply with FOIA and the Privacy Act.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(g)(5) and 28 U.S.C. § 1331.

3. Venue is proper in the Western District of Louisiana, Lake Charles Division under 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552(a)(g)(5), and 28 U.S.C. § 1391 because all of the events and omissions giving rise to this claim occurred in this judicial district. In addition, the Plaintiff is housed at FCI-1 Oakdale Federal Correctional Complex, in Oakdale, Louisiana [71463], within this judicial district.

**THE PARTIES**

4. Plaintiff Julian Okeayainneh, is presently housed at the FCI-1 Federal Correctional Complex [ In Care of Register Number: 20515112 ] in Oakdale, Louisiana [ 71463 ].

5. Each of the Defendants named in this Complaint are agencies or component of the United States of America and each is believed to have possession and control over the agency documents and records that are the subject of Okeayainneh's FOIA and Privacy Act requests which are the subject of this action and described below.

**FACIAL BACKGROUND AS TO ALL DEFENDANTS**

6. Over the course of the last several months within the year of 2019, Okeayainneh has made a series of proper, three written requests under FOIA and the Privacy Act to each of the named Defendants, the first TWO to the BOP (the "BOP Request") and the THIRD to the Director, the Office of Information Policy ("OIP").

Page 3b of 4

**FOIA COMPLAINT**

Throughout this Complaint, Okeayainneh's requests are collectively referred to as "FOIA Requests" and individually by inserting the name of the relevant Defendant agency as a pre-fix, i.e., "FBOP FOIA Request".

7. This Complaint has become necessary as a result of each of the Defendants having failed to comply with various aspects of FOIA and/or the Privacy Act, by having failed to produce any records described in Okeayainneh's FOIA Requests, with the sole exception of 30 pages of redacted records and must be withheld in their entirety delivered to Okeayainneh by the Defendant, Federal Bureau of Prisons ("FBOP") on April 15, 2019 along with a disclosure indicating that the FBOP located 95 pages of responsive records, after careful review, determined 65 pages are appropriate for release in full; 0 pages are appropriate for release in part; and, 30 pages must be withheld in their entirety. See paragraphs 17 through 29, infra.

8. In an Executive Order dated January 21, 2009 addressed to the "Heads of Executive Departments and Agencies," President Obama declared that "[a]ll agencies should adopt a presumption in favor of disclosure in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open government. The presumption of disclosure should be applied to all decisions involving FOIA." This Executive Order applies to each of the Defendants."

9. In response to the January 21, 2009 Executive Order, Attorney General Eric Holder issued a March 19, 2009 Memorandum for Heads of Executive Departments and Agencies addressing the presumption of openness. Attorney General Holder explained that "an agency should not withhold information simply because it may do so legally, or withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption." This guidance is currently still in effect and applies to each of the Defendants.

10. As of the date of filing of this Complaint, Okeayainneh, to the best of his knowledge and belief, has exhausted all required administrative remedies applicable as a condition precedent to the filing of this action with respect to each Defendant.

Page 3c of 4

**FOIA COMPLAINT**

11. FOIA and the Privacy Act require each of the Defendants, upon receipt of a properly framed request for agency records, to conduct a reasonable search for the records requested and to be able to demonstrate the reasonableness of its search if challenged by a requestor to do so. These statutes also provide certain exemptions to government agencies that enable the agency to withhold production of records based upon the nature of the request and the documents or records sought by the requestor. With respect to the FOIA Requests made to the Defendants by Okeayainneh, one or more of the Defendants has claimed that some or all of the records requested should not be produced under a claim of exemption that the information contained in the records constitute a clearly unwarranted invasion of the personal privacy of third parties; was compiled for law enforcement purposes under 5 U.S.C. §§ 552(b)(6) and § 552(b)(7)(C), and (F). Additionally, one or more of the Defendants have failed to respond timely to Okeayainneh's FOIA Requests as required by FOIA and the Privacy Act, which may be deemed to be improper withholding of agency records and violative of FOIA and the Privacy Act.

12. To the extent that the Defendants have claimed exemptions from production of the records requested by Okeayainneh, in each case, the Defendant has made an improper "blanket assertion" of the law enforcement records exemption; Defendants did not release any segregable portions of the withheld records; nor did the Defendants provide any itemization or listing of records that would enable Okeayainneh to determine the appropriateness and scope of the Defendants' claims of exemption.

13. To the extent Defendants have responded to Okeayainneh's FOIA Requests, each of the Defendants have claimed that responsive records may be withheld from production based upon one or more of the subparagraphs of exemption 5 U.S.C § 552 (b)(6) and § (b)(7), being 5 U.S.C. § 552(b)(7)(C) and (F). A threshold requirement of a valid claim of exemption from production of records under exemption (b)(7) of FOIA is that the material must be "records or information compiled for law enforcement purposes." Exemption (b)(7) also requires that the Defendant(s) that claim the applicability of the exemption must establish that disclosure of the records would cause harm as enumerated in any of the subparagraphs(C) and (F) of the (b)(7) exemption.

Page 3 d of 4

**FOIA COMPLAINT**

14. As described below, none of the Defendants that have claimed that exemption (b)(7) permits the withholding of records responsive to Okeayainneh's FOIA Requests, have adequately demonstrated that the records were properly withheld under one or more of the subparagraphs of exemption (b)(7)(C) and (F). As alleged below, the Defendants claiming exemptions allowing the withholding of records have merely recited conclusory references to one or more subparagraphs of the (b)(7) exemption, providing no facts or details on how and under what circumstances the responsive records fall within the claimed exemption. In fact, none of the Defendants have indicated that their claims of exemption have been made after a physical review of any records responsive to Okeayainneh's FOIA Requests. Defendants claiming that Exemption (b)(7)(C) permits the withholding of records responsive to Okeayainneh's FOIA Requests have failed to demonstrate that the privacy interests of third-parties which the exemption was designed to protect outweigh the public interest in disclosure. Based upon the following non-exclusive factors, there is a strong cognizable public interest in disclosing the records requested by Okeayainneh. The facts upon which this cognizable public interest rests includes the following:

A. There is a compelling public interest in scrutinizing federal criminal prosecutions that include allegations and evidence which reveal that such prosecutions were conducted with a failure to timely disclose exculpatory and impeachment evidence mandated by clearly established federal law, the Federal Rules of Criminal Procedure, Local Rules of each jurisdiction and principles of professional conduct binding on federal prosecutors;

B. Okeayainneh's FOIA Requests related not only to his own wrongful prosecution permeated by a series of Miranda/ Brady/ Giglio/ Napue violations perpetrated by the AUSAs responsible for his prosecution, but upon information and belief, Okeayainneh asserts that there has been a pattern of tainted prosecutions arising from the District of Minnesota ("DMN") which have included similar prosecutorial misconduct.

C. A Federal Bureau of Prisons ("BOP") Certified duplicate copy of sentence monitoring computation data sheet (Certified authentic federal government document CERTIFIED AUTOMATICALLY ON 05-26-2017) transmitted to FBOP - THE SOUTH CENTRAL REGION (DSCC) directly from U.S. District Court, District of Minnesota, print-dated as of January 21, 2019, and showing on page 3 of 8 that "REMARKS ... 'UPDATED 9-4-13 ADD RESTITUTION PER AMENDED JUDGMENT AP/T.-( a copy of this was served on Plaintiff after the fact). Thereafter, ON 5-15-2017 RECEIVED ORDER RESTITUTION VACATED. T/KAN'"-( Trial court failed to serve a copy of the Order along with accompanied document on Okeayainneh because it was filed SEALED on the record ).

Page 3 e of 4

**FOIA COMPLAINT**

D. The newly discovered evidence was discovered after the verdict was returned in Criminal File No. 11-CR-87(1)(MJD/JJK), District of Minnesota, when while in the custody of Federal Bureau of Prison (FBOP), FCI-2 Oakdale, Louisiana [71463], in the morning of January 21, 2019, with Plaintiff Okeayainneh's continuous due diligence, curiously demanded to have a copy of his Certified Sentence Computation Data Sheet from Counselor B. Senega, of Alexandria-A Building, to review and analyze the within contained substance information and context, thus, revealed and discovered that the Trial Court had since issued a Standing order and vacated the mandatory restitution Amended Judgment [Doc. No. 1001 filed 08/29/2013] in the amount of \$4,368,192.01, on or about May 15, 2017. See herein attached EXHIBIT "A".

E. The newly discovered evidence contains the "Loss Amount" area of controversy Okeayainneh submitted in his Post-Trial Motion for a New Trial [Doc. No. 635] and Post-Trial Motion for Judgment of Acquittal [Doc. No. 636], which clearly and convincingly support for Plaintiff Okeayainneh's Judgment of Acquittal defense.

F. The newly-discovered evidence is not merely cumulative of evidence already in the record, or merely impeaching in character, but is material and of such character that if received at the trial it would probably have resulted in a different verdict. Because, the substantial "element" of 18 U.S.C.S. § 1344 as required within the meaning of the bank fraud statute provide that: "scheme to defraud includes any plan or course of action intended to both deceive the bank and deprive it of something value," as held in Supreme Court's SHAW V. UNITED STATES, 137 S.Ct. 462 (December 12, 2016). also see Staples v. United States, 435 F.3d 860( 8th Cir. 2006).

G. Okeayainneh believes there is a strong and compelling public interest in identifying the scope where the instructions to the jury include elements that are not dictated by statute, the instructions nonetheless become the law of the case. In considering a challenge to the sufficiency of the evidence under those circumstances, courts must consider whether the evidence was sufficient to meet the elements as defined for the jury; the public has a cognizable interest in becoming aware of whether and the extent to which the prosecution arising in the DMN are fair, constitutional or rife with prosecutorial abuse resulting in the conviction of fundamentally innocent defendants;

H. Okeayainneh believes that accessing his own records described in his FOIA Requests will facilitate public discussion and awareness of these concerns.

15. Upon information and belief, there are no law enforcement proceedings pending or prospective in connection with the records described in Okeayainneh's FOIA Requests. In particular, Okeayainneh's criminal conviction has been final for

Page 3 f of 4

**FOIA COMPLAINT**

well over Two Years plus, since March 23, 2017, and the applicable statute of limitations for any prospective civil or criminal actions would bar any such proceedings. Further, prior to Okeayainneh's criminal conviction, much of the subject matter described as "records" in Okeayainneh's FOIA Requests were the subject of prior criminal proceeding related to third-parties whom are described in Okeayainneh's FOIA Requests. To the extent that records responsive to the FOIA Request have otherwise been released into the public domain. Defendants' claims of exemption are invalid and result in an improper withholding of the requested records.

16. Upon information and belief, none of the Defendants that have timely responded to Okeayainneh's Privacy Act Requests, have properly claimed the exemption found in 5 U.S.C. § 552a(j)(2), which authorizes an agency to withhold responsive records from production. As a result, the Defendants have waived any claim of exemption under the Privacy Act.

**FACTUAL BACKGROUND--FEDERAL BUREAU OF PRISONS & OFFICE OF INFORMATION POLICY**

17. Okeayainneh repeats and re-alleges all of the allegations in the foregoing paragraphs.

18. On January 25, 2019, Okeayainneh submitted a FOIA Request to the Defendant, United States Federal Bureau of Prisons ("FBOP") to the FBOP Office of the Regional Director/Chief Human Resources, DSCC - Grand Prairie, Texas [75051], which was not acknowledged as received by the FBOP by letter with the (20) twenty days provided within the FOIA/PA Acts, citing *Bartko v. DOJ*, 898 F.3d 51 (D.C. Cir. No. 16-5333, 2018, holding that: " To properly justify its invocation of the Exemption under 5 U.S.C.S. § 552(b)(7)(C), an affidavit has to offer an explanation that is full and specific enough to afford the FOIA requester a meaningful opportunity to contest, and the district court an adequate foundation to review, the soundness of the withholding. For Exemption 7(C), the United States Department of Justice's Office of Professional Responsibility is required to make an individualized showing that each record was actually compiled for law-enforcement purposes rather than internal attorney supervision.") See EXHIBIT "B".

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FOIA COMPLAINT

19. On February 01, 2019, Okeayainneh submitted to the FBOP Office of the Regional Director/Chief Human Resources, DSCC - Grand Prairie, Texas [75051], a second FBOP FOIA Request which significantly narrowed the scope of the records subject to Okeayainneh's request. which was also not acknowledged as received by the FBOP by letter with the (20) twenty days provided within the FOIA/PA Acts, citing in support Bartko v. DOJ, 898 F.3d 51 (D.C. Cir. No. 16-5333, 2018, holding that: "Because Exemption 7(C) shields from disclosure records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy, 5 U.S.C.S. § 552(b)(7)(C), to invoke Glomar, an agency has to make a threshold showing that the FOIA request seeks records compiled for law enforcement purposes. The agency also bears the burden of making an across-the-board showing that the privacy interest the government asserts categorically outweighs any public interest in disclosure.")(EXT. "C").

20. On March 05, 2019, Okeayainneh filed a proper administrative appeal from the action of inaction of the FBOP failure to comply with the (20) twenty working days provided within the FOIA/PA Acts to reply in writing to the foregoing Freedom of Information Act requests in paragraphs 18 and 19, to the OIP Office of the Director of Information Policy FOIA Services, which was acknowledged as received by the OIP by letter dated April 12, 2019. Okeayainneh's March 05, 2019 OIP FOIA Requests Appeal was assigned control numbers: DOJ-AP-2019-003044 and DOJ-AP-2019-003046 MWH: RCS. See EXHIBIT "D".

21. On April 12, 2019, and in response to Okeayainneh's administrative appeal numbers: DOJ-AP-2019-003044 & DOJ-AP-2019-003046 MWH: RCS, the OIP issued a determination on the appeal by Matthew Hurd, Associate Chief at the OIP. Mr. Hurd's response to Okeayainneh's appeal in short states that: "As a result of discussions with this Office, BOP has agreed to open a new request concerning Okeayainneh's subject under Request No. 2019-02952. The response also note that only one request has been opened since requests seek records concerning the same subject. Please contact BOP directly for the status of this request." See EXHIBIT "E".

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FOIA COMPLAINT

22. Based on Okeayainneh's March 05, 2019 OIP FOIA Appeal Request Nos: DOJ-AP-2019-003044 & DOJ-AP-2019-003046 MWH:RGS, the Defendant, Federal Bureau of Prisons ("FBOP"), to the FBOP Office of the Regional Director/Chief Human Resources, DSCC - Grand Prairie, Texas [75051], acknowledged as received by the FBOP by letter dated March 27, 2019. Okeayainneh's FBOP FOIA Requests and was assigned control number: FOIA/PA Request Number: 2019-02952, Processing Office: SCR. Okeayainneh's FBOP Requests specifically requested expedited handling. Okeayainneh's FBOP FOIA Request included records that are summarily described as: (i) relating to Court Order adding restitution per amended judgment updated on 09/4/2013 under Criminal No. 11-CR-87(1)(MJD/JJK); and (ii) relating to Court Ordering restitution vacated received on 5/15/2017 under Criminal Case No. 11-CR-87(1)(MJD/JJK) and accompanied documents vacating mandatory amended restitution judgment in the amount of \$4,368,192.01, required to "Sustain Conviction" within the meaning of 18 U.S.C.S. § 1344-Bank fraud Statute, citing in support Bartko v. DOJ, 898 F.3d 51 (D.C. Cir. No. 16-5333, 2018, holding that: "Exemption 6 shields personnel and medical files and similar files when their disclosure would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C.S. § 552(b)(6). Because Exemption 6 requires an even stronger demonstration of a privacy interest than Exemption 7(C), 5 U.S.C.S. § 552(b)(7), an agency's inability to justify withholding the latter often precludes it from satisfying Exemption 6's heightened requirements." See EXHIBIT "F".

23. By subsequent FBOP response dated April 15, 2019 sent to Okeayainneh by FBOP FOIA DSCC - Grand Prairie, Texas [75051] Branch Regional Counsel, Sonya Cole, for Jason A. Sickler, the Office of FOIA Services made a determination in connection with Okeayainneh's both January 25, 2019, and February 01, 2019 requests which was assigned request number 2019-02952-FOIA. Mr. Cole determined that 95 pages were possibly responsive to Okeayainneh's requests. See EXHIBIT "G".

24. The aforesaid FBOP response from Mr. Cole advised Okeayainneh that, after careful review, the FBOP determined 65 pages are appropriate for release in full; 0 pages are appropriate for release in part; and, 30 pages must be withheld in their entirety. The FBOP response further advised Okeayainneh that Copies of releasable records are attached. See EXHIBIT "G".

APPENDIX 30

Page 3 i of 4

**FOIA COMPLAINT**

25. Finally, the aforesaid FBOP response also purports to claim an exemption and permissible withholding of "other non-public records" that may be responsive to Okeayainneh's requests, under 5 U.S.C. Sections 552(b)(6), (b)(7)(C), and (b)(7)(F). Since the FBOP had at that time examined all and any of the potentially responsive records in the 30 pages withheld in their entirety, any claim of the exemptions (b)(7)(C) and (F) by the FBOP [MUST] be supported by an affidavit offering an explanation that is full and specific enough to afford Okeayainneh a meaningful opportunity to contest, and the district court an adequate foundation to review, the soundness of the withholding and the FBOP also bears the burden of making an across-the-board showing that the privacy interest the government asserts categorically outweighs any public interest in disclosure, as held in *Bartko v. DOJ*, 898 F.3d 51 (D.C. Cir. No. 16-5333, 2018, holding that: "The public has an interest in knowing that a government investigation itself is comprehensive, that the report of an investigation released publicly is accurate, that any disciplinary measures imposed are adequate, and that those who are accountable are dealt with in an appropriate manner. That is how FOIA, 5 U.S.C.S. § 552 et seq., helps to hold the governors accountable to the governed.") See EXHIBIT "G". This sort of FBOP "blind blanket claim of exemption" is a de facto improper withholding of agency records and violates FOIA and the Privacy Act.

26. On May 15, 2019, Okeayainneh filed a proper administrative appeal of the FBOP's April 15, 2019 determination. The essence of Okeayainneh's administrative appeal was two-fold. First, that since Okeayainneh had received some requested records from the FBOP in connection with a Court order vacating mandatory restitution on May 15, 2017 issued by Okeayainneh's Counselor B. Senega, of Alexandria-A Building FCI-2 Oakdale, Louisiana [71463] in connection with Okeayainneh's sentence monitoring, it was evident that the FBOP had possession or control of records responsive to Okeayainneh's FBOP FOIA Request. Secondly, Okeayainneh claimed that the FBOP's blanket claim of exemption (b)(7)(C) and (F) was inappropriate since there was no longer any reasonable expectation that disclosure of FBOP records to Okeayainneh could interfere with enforcement activities. See EXHIBIT "H".

FOIA COMPLAINT

27. On July 16, 2019, and in response to Okeayainneh's administrative appeal, the OIP issued a determination on the appeal by Matthew Hurd, Associate Chief, for Sean O'Neill, Chief, Administrative Appeals at the OIP. Mr. Hurd's response to Okeayainneh's appeal with assigned Appeal No: DOJ-AP-2019-005023; Request No. 2019-02952 MWH:EAH in short states that: "Okeayainneh appealed from the action of the Federal Bureau of Prisons (BOP) on his Freedom of Information Act request for access to specific restitution records concerning Case No. 11-CR-87." The response also states that: "Okeayainneh's appeal concerns the 30 pages that BOP withheld in full." This response after Okeayainneh's appeal was substantively inadequate under exemption (b)(7)(C) and (F), was unlawful and violative of FOIA.

28. The aforesaid OIP response from Mr. Hurd advised Okeayainneh that, after carefully considering Okeayainneh's appeal, and reviewing the records requested under both the Privacy Act of 1974 and the FOIA, Mr. Hurd affirm BOP's action on Okeayainneh's request and determined that the records-( 30 pages withheld in their entirety) responsive to the portion of Okeayainneh's request pertaining to himself are exempt from the access provision of the Privacy Act.

29. Finally, the aforesaid OIP response also purports to claim an exemption and permissible withholding of "other non-public records" that may be responsive to Okeayainneh's requests, under 5 U.S.C. § 552(b)(6), 5 U.S.C. § 552(b)(7)(C), and 5 U.S.C. § 552(b)(7)(F). Since the OIP had at that time also examined all and any of the potentially responsive records in the redacted 30 pages withheld in their entirety, any claim of the exemptions (b)(7)(C) and (F) by the OIP [MUST] be supported by an affidavit offering an explanation that is full and specific enough to afford Okeayainneh a meaningful opportunity to contest, and the district court an adequate foundation to review, the soundness of the withholding and the OIP, like the FBOP also bears the burden of making an across-the-board showing that the privacy interest the government asserts categorically outweighs any public interest in disclosure, as held in *Bartko v. DOJ*, 898 F.3d 51 (D.C. Cir. No. 16-5333, 2018, holding that: "The public has an interest in knowing that a government investigation itself is comprehensive, that the report of an investigation released publicly is accurate, that any disciplinary measures imposed are adequate, and that those who are accountable are dealt with in an appropriate manner. That is how FOIA, 5 U.S.C.S. § 552 et seq., helps to hold the governors accountable to the governed."). See EXHIBIT "I". Also this sort of OIP "blind blanket claim of exemption" is a de facto

Page 3 k of 4

**FOIA COMPLAINT**

improper withholding of agency records and violates FOIA and the Privacy Act.

**CLAIMS FOR RELIEF**  
**FIRST CLAIM FOR RELIEF**

30. Okeayainneh repeats and re-alleges all of the allegations of the foregoing paragraphs.

31. Okeayainneh is entitled to a declaration that each of the Defendants have failed to respond to certain of his FOIA requests or properly assert any exemption under FOIA which would justify withholding the requested records and as a consequence, Defendants have violated FOIA and their actions are unlawful in light of D.C. Circuit rulings in Bartko v. DOJ, 898 F.3d 51 (No. 16-5333, 2018.).

**SECOND CLAIM FOR RELIEF**

32. Okeayainneh repeats and re-alleges all of the allegations in the foregoing paragraphs.

33. Okeayainneh is entitled to a declaration that the Defendants' failure to respond to his Privacy Act requests or properly assert an exemption under the Privacy Act to justify withholding the requested records violates the Privacy Act and is unlawful in light of D.C. Circuit rulings in Bartko v. DOJ, 898 F.3d 51 (No. 16-5333, 2018.), See ¶ 18,19,22 & 25.

**THIRD CLAIM FOR RELIEF**

34. Okeayainneh repeats and re-alleges all of the allegations in the foregoing paragraphs.

35. Okeayainneh is entitled to a declaration that the Defendants' failure to provide details of the searches conducted by each to determine the existence of records responsive to certain of his FOIA and Privacy Act Requests violates FOIA and the Privacy Act and is unlawful in light of D.C. Circuit rulings in Bartko v. DOJ, 898 F.3d 51 (No. 16-5333, 2018). See ¶ 18,19,22 & 25.

Page 31 of 4  
**FOIA COMPLAINT**

**FOURTH CLAIM FOR RELIEF**

36. Okeayainneh repeats and re-alleges all of the allegations in the foregoing paragraphs.

37. Okeayainneh is entitled to a declaration that the Defendant FBOP's failure to respond to his FOIA Requests within the time frame set forth in FOIA and the Privacy Act and/or the regulations promulgated there under violates FOIA and the Privacy Act, 5 U.S.C. § 552(a)(3), and the DOJ's corresponding regulations, and constitutes wrongful withholding of agency records and is unlawful in light of D.C. Circuit rulings in *Bartko v. DOJ*, 898 F.3d 51, (No. 16-5333, 2018). See ¶ 18, 19, 22 & 25.

**FIFTH CLAIM FOR RELIEF**

38. Okeayainneh repeats and re-alleges all of the allegations in the foregoing paragraphs.

39. Upon information and belief, the records sought in Okeayainneh's FOIA Requests are in the custody and control of each of the agencies named herein as Defendants with respect to the specific records requested from each Defendant, and are not subject to any valid claim of exemption allowing them to be withheld from public disclosure.

40. Okeayainneh has exhausted all required and available administrative remedies against the Defendants.

41. Okeayainneh has a legal right under FOIA to obtain the information and records he seeks, and there is no legal basis for the Defendants' denial of his FOIA Requests.

42. An actual and justiciable controversy exists in that the Defendants have failed to disclose and produce the records sought in Okeayainneh's FOIA Requests although they each have a statutory duty to do so.

43. As a result of the foregoing, Okeayainneh is entitled to a declaration that each of the Defendants is obligated to provide him with copies of the records sought in his FOIA Requests.

Page 3m of 4

**FOIA COMPLAINT**

**SIXTH CLAIM FOR RELIEF**

44. Okeayainneh repeats and re-alleges all of the allegations in the foregoing paragraphs.

45. Okeayainneh is entitled to an injunction compelling each Defendant to provide him with copies of the records sought in his FOIA Requests in accordance with D.C. Circuit rulings in Bartko v. DOJ, 898 F.3d 51, (No. 16-5333, 2018). See ¶ 18,19,22 & 25.

**SEVENTH CLAIM FOR RELIEF**

46. Okeayainneh repeats and re-alleges all of the allegations in the foregoing paragraphs.

47. Upon information and belief, the records sought in Okeayainneh's Privacy Act Requests are in the custody and control of the Defendants named in this action and are not subject to any valid claim of exemption from public disclosure.

48. Okeayainneh has exhausted all required and available administrative remedies against the Defendants.

49. Okeayainneh has a legal right under the Privacy Act to obtain the information he seeks, and there is no legal basis for the Defendants' denial of his Privacy Act Requests.

50. An actual and justiciable controversy exists because the Defendants have each failed to disclose the records sought in Okeayainneh's Privacy Act requests although they each have a statutory duty to do so.

51. As a result, Okeayainneh is entitled to a declaration that each Defendant is obligated to provide him with copies of the records sought in his Privacy Act Requests.

**EIGHTH CLAIM FOR RELIEF**

52. Okeayainneh repeats and re-alleges all of the allegations in the foregoing paragraphs.

53. Okeayainneh is entitled to an injunction compelling the Defendants to provide him with copies of the records sought in his Privacy Act Requests.

FOIA COMPLAINT

CLAIMS FOR RELIEF

WHEREFORE, Okeayainneh requests that this Court:

- (A). Declare that the Defendants' failure to respond to certain of Okeayainneh's FOIA Requests or properly asserts any valid exemption under FOIA in accordance with D.C. Circuit rulings in Bartko (2018), to justify withholding requesteds, violates FOIA and is unlawful;
- (B). Declare that the Defendants' failure to respond to certain of Okeayainneh's Privacy Act Requests or properly asserts any valid exemption under the Privacy Act in accordance with D.C. Circuit rulings in Bartko (2018), to justify withholding requested records violates the Privacy Act and is unlawful;
- (C). Declare that the Defendants' failure to provide details of the searches they each undertook to determine that--" 0 pages are appropriate for release in part; and, 30 pages must be withheld in their entirety " for certain of Okeayainneh's FOIA and Privacy Act Requests, in light of D.C. Circuit rulings in Bartko (2018), violates FOIA and the Privacy Act and is unlawful;
- (D). Declare that certain of the Defendants, to wit: the FBOP have failed to properly and timely respond to Okeayainneh's FOIA Requests of the agency action and inaction, within the time frame set forth in FOIA and the Privacy Act and/or regulations promulgated there under, violates FOIA and the Privacy Act and is unlawful in accordance with the rulings in D.C. Circuit in Bartko (2018);
- (E) Declare that Okeayainneh is entitled to copies of the records sought by his FOIA Requests, and with respect to his FBOP FOIA Request and his OIP FOIA Appeal Request, that Okeayainneh is entitled to have production of the responsive records delivered to him on an expedited basis;
- (F). Declare that Okeayainneh is entitled to an injunction compelling the Defendants to produce copies of the records sought by his FOIA Requests in light of D.C. Circuit rulings in Bartko (2018). See ¶ 18,19,22 & 25.;
- (G). Declare that Okeayainneh is entitled to copies of the records sought by Okeayainneh's Privacy Act Requests in light of D.C. Circuit rulings in Bartko (2018). See. ¶ 18,19,22 & 25.;

Page 30 of 4

**FOIA COMELAINT**

(H). Issue an injunction compelling the Defendants to produce copied of the records sought by Okeayainneh's Privacy Act Requests in light of **D.C. Circuit rulings in Bartko** (2018). See. ¶ 18,19,22 & 25;

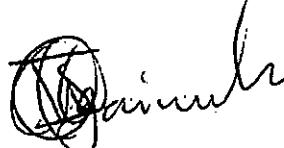
(I). Award Okeayainneh his costs and a reasonable attorney's fee in this action as provided by 5 U.S.C. Section 552(a)(4)(E) and 5 U.S.C. section 552a(g)(2)(B); and

(J). Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Dated: November 12, 2019.

"Without Prejudice"



By:

Julian Okeayainneh, c/o:20515112 (pro se Plaintiff)  
Federal Correctional Complex-1  
Post Office Box 5000  
Oakdale, Louisiana [71463]

**V. Relief**

State exactly what you want the court to provide to you or do for you. Make no legal arguments. Cite no cases or statutes.

\*\*\* Please see attached pages for continuation ... (Pages 3n through 3o).

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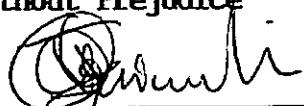
**VI. Plaintiff's Declaration**

- a. I understand that if I am transferred or released, I must apprise the Court of my address, and my failure to do so may result in this complaint being dismissed.
- b. I understand that I may not proceed without prepayment of costs if I have filed three lawsuits and/or appeals that were dismissed on grounds that the action and/or appeal was frivolous or malicious, or failed to state a claim upon which relief may be granted, unless I am in imminent danger of serious physical injury.
- c. If I am located in a prison participating in the Electronic Filing Pilot Program, I consent to receive orders, notices and judgments by Notice of Electronic Filing.

Signed this 12th day of November, 2019.

"Without Prejudice"

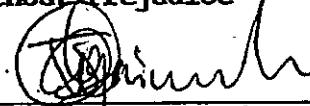
By:



Prisoner no. Louisiana Department of  
Corrections or Federal Bureau of  
Prisons

"Without Prejudice"

By:



Signature of Plaintiff

Julian Okeyainneh, c/o: 20515112 (pro se)  
Federal Correctional Complex-1  
Post Office Box 5000  
Oakdale, Louisiana [71463]

**APPENDIX 38**

**CERTIFICATE OF FILING AND SERVICE**

Page 1 of 1

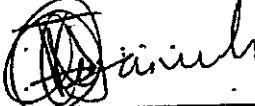
I, Julian Okeayainneh, hereby certify that I have served a true and correct copy of the following:

" COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF ( With Attached Exhibits "A" through "I" ); PLAINTIFF'S APPLICATION TO PROCEED IN FORMA PAUPERIS AND U.S. MARSHALS SERVICE OF PROCESS "

which is deemed filed at the time it was delivered to prison authorities for forwarding, Houston v. Lack, 487 U.S. 266 (1988), upon the (plaintiff/defendant) (petitioner/respondent) (appellant/appellee) and/or its attorney(s) of record by placing same in a sealed first-class postage prepaid envelope addressed to:  
Assistant U.S. Attorney  
U.S. ATTORNEY'S OFFICE  
WESTERN DISTRICT OF LOUISIANA  
300 FANNIN STREET  
SHREVEPORT, LOUISIANA [71463]

and deposited into this institution internal mail system located at FCI-1 Oakdale, Post Office Box 5000, Oakdale, Louisiana [71463], on this 12th th day of November, 20<sup>19</sup>

" Without Prejudice "

By: 

7018 1830 0000 5218 3070

Julian Okeayainneh, c/o: 20515112 (pro se Movant)  
Federal Correctional Complex-1  
Post Office Box 5000  
Oakdale, Louisiana [71463]

**APPENDIX 39**

\*Pursuant to Fed.R.App.P25(a)(2)(c), "A paper filed by an inmate confined in an institution is timely filed if deposited in the institution's internal mail system on or before the last day for filing."

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5167  
(C.A. No. 20-0244)

JULIAN OKEAYAINNEH,

Appellant,

v.

DEPARTMENT OF JUSTICE, et al.,

Appellees.

**APPELLEES' MOTION TO MODIFY THE RECORD ON APPEAL  
AND FOR SUMMARY AFFIRMANCE**

Pursuant to Rule 10(e)(2)(C) of the Federal Rules of Appellate Procedure, Appellees, the Department of Justice, the Attorney General of the United States, the Federal Bureau of Prisons and its Director (collectively, the "Department"), respectfully move to modify the record on appeal by supplementing the existing record with a sworn declaration containing the identical evidence considered and relied upon by the District Court. The Department also moves for summary affirmance of the Honorable Colleen Kollar-Kotelly's (1) January 28, 2021 Memorandum Opinion and Order, granting in part and denying in part defendants' motion to dismiss and for summary judgment; (2) June 25, 2021 Memorandum Opinion and Order, granting final judgment in favor of the Department; and (3) July 2, 2022 and July 6, 2022 Minute Orders.<sup>1</sup>

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<sup>1</sup> Copies of the January 28, 2021 and June 25, 2021 Memoranda Opinions and

The District Court correctly entered final judgment in favor of the Department in this routine Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) case, and summary disposition is appropriate because the “merits of this appeal are so clear as to make summary affirmance proper,” *Walker v. Washington*, 627 F.2d 541, 545 (D.C. Cir. 1980) (*per curiam*); and “no benefit will be gained from further briefing and argument of the issues presented.” *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297-98 (D.C. Cir. 1987) (*per curiam*). Because the main error Okeayainneh identifies on appeal concerns the form of one of the Department’s declarations, accepting the proffered sworn version of the same declaration would obviate the issue by removing any doubt about the admissibility of the evidence and potentially avoid an otherwise unnecessary remand.

## **BACKGROUND AND PROCEDURAL HISTORY**

Appellant Julian Okeayainneh brought<sup>2</sup> this action to challenge the Department’s response to his FOIA request for (1) “a copy of all records of information order adding restitution per amended judgment, updated on 09/4/2013 under Criminal No. 11-CR-87(1)” and (2) “a copy of all records of information

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Orders are attached as Exhibits 2 and 3, respectively.

<sup>2</sup> Okeayainneh filed this action in the United States District Court for the Western District of Louisiana, which granted his request to proceed *in forma pauperis* and *sua sponte* transferred the case to the District of Columbia pursuant to 28 U.S.C. § 1406(a) and prior to service of process. *See* R.5 (Memorandum Order).

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ordering restitution vacated received on 5/15/2017 under Criminal Case No. 11-CR-87(1)[.]” *See* R.16-5 at 2 (FOIA Request).<sup>3</sup>

Responding to the FOIA request by letter dated April 15, 2019, the Bureau of Prisons (“BOP”) indicated that it had located 95 pages of responsive documents and 65 pages were appropriate for release in full. *See* R.16-3 (Decl. of Meryl White) ¶ 14. This letter also explained that thirty (30) pages had been withheld in their entirety. *Id.* Specifically, BOP withheld a twenty-eight-page Statement of Reasons (SOR) in Criminal No. 11-cr-00087 under Exemption 7(F), and a two-page May 10, 2017 Order in Criminal No. 11-cr-00087 under Exemptions 6 and 7(C). *Id.* Okeyainneh appealed BOP’s final determination to the Office of Information Policy, which affirmed. *See* Complaint (R.1-2 at 54, 56).

Okeyainneh initiated this litigation in November 2019, and the complaint alleged the Department had “failed to respond to certain of his FOIA requests or properly assert any exemption under FOIA which would justify withholding the requested records.” *See* Complaint ¶¶ 31, 39, 41. During litigation, BOP released the two-page May 10, 2017, Order in Criminal No. 11-cr-00087 in its entirety. *See* Decl. of Meryl White ¶ 16. Additionally, on the same day, the BOP afforded

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<sup>3</sup> Citations to “R.” followed by a number are to the corresponding numerical entry in the District Court’s docket.

## APPENDIX 42

Okeayainneh the opportunity to review his twenty-eight-page SOR with the Unit Manager McCollough. *Id.* at ¶ 20.<sup>4</sup>

Subsequently, the Department moved to dismiss, or in the alternative, for summary judgement. *See R.16.* Okeayainneh opposed (R.18), and the District Court also granted him leave for three additional submissions (R.20–22) prior to the Department filing its reply (R.24). In a Memorandum Opinion and Order, the District Court dismissed all named defendants other than the Department of Justice because it is the only proper defendant under FOIA. *See R.25* at 5–6. The District Court also granted the Department’s motion for summary judgment “[w]ith regard to the 67 pages of records BOP has released to plaintiff in full,” and held that the Department properly withheld in full plaintiff’s 28-page Statement of Reasons under FOIA Exemption 7(F). *See R.25* at 7–9. The District Court also held that, “[n]otwithstanding the conclusion that BOP conducted reasonable searches, [the] BOP failed to demonstrate that it completely fulfilled its FOIA obligations.” *R.25* at 11–12. The District Court found that the declaration in support of the Department’s motion “states that [Unit Manager] Beauboeuf located 48 pages of records in the hard copy and electronic Inmate Central Files,” but “neither describes

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<sup>4</sup> BOP regulations prohibit inmates from retaining personal possession of such sensitive records. *See Bureau of Prisons Program Statement 1351.05 CN-2* at 16, *Release of Information* (effective March 9, 2016) (available publicly at [https://www.bop.gov/policy/progstat/1351\\_005\\_CN-2.pdf](https://www.bop.gov/policy/progstat/1351_005_CN-2.pdf)).

## APPENDIX 43

the records Beaubouef located, indicates whether these records were responsive to plaintiff's FOIA request, nor, if responsive, explains BOP's reasons for withholding them." R.25 at 11–12. As a result of this perceived ambiguity regarding the status of 48 pages of records, the District Court denied the Department's motion for summary judgement in part and ordered it to "file a renewed summary judgment motion." *Id.* at 12.

Subsequently, the Department submitted a Notice of Filing in Lieu of a Renewed Motion for Summary Judgment, attaching a Declaration of Adam Beaubouef and the forty-eight (48) pages of records released to Okeyainneh in full. *See* R.27, R.30, 30-1. Okeyainneh objected (R.28, R.31), and the District Court considered his response (R.29, R.33 & Apr. 29, 2021, Minute Order). Upon review of the supplemented record, in a Memorandum Opinion filed on June 25, 2021, the District Court held that because the "BOP has [now] accounted for the 48 pages of records Beaubouef located, there remains no issue for the Court to resolve." R.32 at 3. The District Court then entered final judgment in favor of the Department. *Id.*; R.33 (Order). Shortly thereafter, it denied Okeyainneh's request for appointment of a Special Master. *See* July 2, 2022, Minute Order; R.34.

Following the District Court's final judgment, Okeyainneh moved for leave to file an additional opposition to the Department's Notice of Filing. R.35. The

## APPENDIX 44

District Court granted leave by allowing the filing but denied relief. *See* July 6, 2022 Minute Order. This appeal followed.

After Okeyainneh filed a notice of appeal on July 6, 2022, he moved the District Court for post-judgment relief. R.39. Before the District Court addressed that motion, on July 23, 2022, Okeyainneh filed a second notice of appeal (R.40), identifying for review the July 2 and July 6, 2022, Minute Orders denying post-judgment relief. Next and simultaneously on February 16, 2022, the District Court granted Okeyainneh leave to file additional motions seeking relief from judgment and denied those motions (R. 43), and Okeyainneh filed still more motions seeking post-judgment relief (R.44 & R.45). As of the filing of this motion, the District Court has neither denied nor indicated an intention to grant the pending motions.

## **ARGUMENT**

Both notices of appeal (R.36, 40) as well as Appellant's Statement of Issues to be Raised (Document #1917598 at 2) challenge the consideration of the initial Declaration of Adam Beaubouef solely because it failed to include the statement that it was executed under penalty of perjury as required in 28 U.S.C. § 1746. Consequently, curing the form of the submission by considering the proffered sworn Beaubouef Declaration, which this Court may consider as part of its de novo review, either moots that issue or allows the Court to affirm summarily. The Court should grant the Department's motion to modify the record under Federal Rule of Appellate

## **APPENDIX 45**

Procedure 10(e)(2) to include the sworn Declaration of Adam Beaubouef, and based on that evidence, which is substantively identical to what the District Court reviewed, and the entire record, it is so clear that the District Court's entry of judgment in favor of the Department and denial of post-judgment relief were correct that this Court may summarily affirm.

#### **A. Modifying the Record on Appeal Is Both Allowed and Efficient**

Federal Rule of Appellate Procedure 10(e)(2) provides that, “[i]f anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded . . . by the court of appeals.” *Id.* Pursuant to this rule, it is appropriate for this Court to grant the Department’s motion to modify the record on appeal by including the attached sworn declaration of Adam Beaubouef (Ex. 1), which includes the statement that his declaration is made under penalty of perjury as required under 28 U.S.C. § 1746 and making no other changes, because it would resolve the sole issue Okeyainneh raises in this appeal. *See, e.g., Colbert v. Potter*, 471 F.3d 158, 166 (D.C. Cir. 2006).

In *Colbert*, the Court was reviewing the District Court’s dismissal of an action for failure to timely file suit. *Colbert*, 471 F.3d at 160. The District Court determined the plaintiff had filed the complaint based “on the date stamped on the back of a [Domestic Return Receipt].” *Id.* The appellant challenged the date on the

## **APPENDIX 46**

Domestic Return Receipt by arguing that the appellee had not “provided an image of the *reverse* side of the card” as evidence, which presumably would bear “a postmark with a later date.” *Id.* (emphasis added). The appellee stated that “time constraints” had prevented it from filing both sides of the Domestic Return Receipt in District Court, *id.* at 164, and moved under Federal Rule of Appellate Procedure 10(e)(2)(C) for leave to submit a complete copy of the Domestic Return Receipt. *Colbert*, 471 F.3d at 160–161. This Court “agreed . . . that the record should be supplemented to include the original receipt and therefore ordered [the appellee] to file the original Domestic Return Receipt with the court.” *Id.* at 166. Although recognizing that “[a]ppellate courts do not ordinarily consider evidence not contained in the record developed at trial,” “[i]t is within the discretion of the court of appeals . . . to make limited exceptions to this rule when ‘injustice might otherwise result,’” and “remand for such a ministerial task, which this court easily can perform itself, would serve no good purpose and would ultimately amount to a waste of judicial resources.” *Id.* at 165–66 (internal citations omitted). On the merits, after reviewing the complete copy of the Domestic Return Receipt unavailable to the district court, this Court determined that the reverse side disproved the appellant’s argument and affirmed. *See id.* at 166–67.

*Colbert* is illustrative and the Department seeks a similarly practical application of Rule 10 in this case. Okeyainneh faults the District Court’s decision

## APPENDIX 47

solely because the original version of the Beaubouef declaration it considered omitted a required statement made pursuant to 28 U.S.C. § 1746. This situation parallels *Colbert*, where the appellant argued that there was missing evidence before the District Court—the reverse side of a Domestic Return Receipt. Appellees now move pursuant to Rule 10(e)(2)(C) to submit an amended declaration of Adam Beaubouef which would resolve the sole issue on appeal, just as the appellee in *Colbert* moved to submit the reverse side of the Domestic Return Receipt. Consequently, Appellees motion should be granted for the same reason this Court granted the appellee’s motion in *Colbert*: because while “Appellate courts do not ordinarily consider evidence not contained in the record developed at trial . . . it is within the discretion of the court of appeals . . . to make limited exceptions to this rule when ‘injustice might otherwise result,’” and “remand for such a ministerial task,” such as submitting an amended declaration which only adds a single statement pursuant to 28 U.S.C. § 1746, “would serve no good purpose and would ultimately amount to a waste of judicial resources.” *Colbert*, 471 F.3d at 165–166.

Because there appears to be no genuine dispute that the substance of the declaration establishes the required elements of the government’s burden in a FOIA case, acceptance of the proffered amended declaration into the record would establish beyond any reasonable doubt “the proper resolution of the pending issues.”

*See Colbert*, 471 F.3d at 166 (internal citation omitted); July 6, 2020 Notice of

## APPENDIX 48

Appeal at 10–11 (stating that the District Court based its ruling on a “legally insufficient declaration” because the declaration failed to “comply with 28 U.S.C. § 1746.”); Ex. 1 at 2 (“I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.”). Consequently, should this Court grant the Department’s motion to supplement the record pursuant to Rule 10(e)(2)(C), the District Court’s judgment in favor the Department may be easily affirmed for the reasons set forth below.

**B. The Sworn Beaubouef and White Declarations Demonstrate the Adequacy of BOP’s Search and Justify Withholding in Full the Statement of Reasons**

As an initial matter, it is clear that only the Department of Justice is a proper defendant for claims brought under the FOIA. *See* 5 U.S.C. § 552; *Peralta v. FBI*, 136 F.3d 169 (D.C. Cir. 1998). Accordingly, because the complaint sought relief exclusively to compel a response to a request under the FOIA, all claims against defendants other than the Department of Justice were subject to ready dismissal. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Further, the Department demonstrated the adequacy of its searches for responsive records when the BOP provided evidence concerning their successful searches for information responsive to Okeayainneh’s FOIA request. *See* R.16-3 at ¶¶ 7–8, 10–11. The BOP searched Okeayainneh’s Central File—which contains Sentence Data and Judgment and Conviction Orders—Okeayainneh’s Designation

and Sentence Computation Center file, and PACER for the requested court records.

*Id.* at ¶¶ 11–13. The Designation and Sentence Computation Center file contained all responsive records regarding Okeayainneh’s restitution, to include the Judgment and Conviction Orders, the August 29, 2013, Amended Judgment, the May 10, 2017, Order, and his Statement of Reasons. *Id.*<sup>5</sup> Consequently, the BOP looked in all the places likely to contain responsive information and determined that 95 pages of records were responsive to the FOIA request. *Id.* at ¶ 13.

Okeayainneh responded to this evidence by claiming that “there are other potentially responsive records . . . in the possession of [BOP.]” R.18 at 3. His speculation was grounded in a supposed “declaration” of his Unit Manager, James McCollough, dated August 3, 2020. R.18 at 2–4, 11. This document is not a declaration by a BOP employee but rather a statement in Okeayainneh’s own Inmate Request to Staff, which claims that Mr. McCollough had located documents responsive to “Item 2” of the FOIA request and that BOP refused to release it. *Id.* at 32. Even crediting the statement and reading it in the light most favorable to Okeayainneh, the document fails to create a genuine issue of material fact because BOP subsequently confirmed that it released material related to “Item 2” (the restitution payments), and Okeayainneh failed to dispute that. *See* Ex. 1 ¶ 3; R.30-

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<sup>5</sup> Court orders dated September 4, 2013, and May 15, 2017, do not exist on the court docket for Criminal No. 11-cr-00087, despite Okeayainneh’s request for orders on those dates. R.16-3 at ¶¶ 5, 7–8.

2. In other words, Okeyainneh's evidence was overtaken by events, and the release of responsive information moots the issue. *See Crooker v. U.S. State Dep't*, 628 F.2d 9, 10 (D.C. Cir. 1980) ("Once the records are produced the substance of the controversy disappears and becomes moot since the disclosure which the suit seeks has already been made."). Because Okeyainneh failed to identify any other places that were likely to contain additional responsive information that BOP had not searched, merely speculating that more information might exist, the District Court correctly determined that BOP's search was adequate. *See Wilbur v. CIA*, 355 F.3d 675, 678 (D.C. Cir. 2004) (per curiam); *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003); *Weisberg v. Dep't of Just.*, 705 F.2d 1344, 1351-52 (D.C. Cir. 1983).

Further, the District Court correctly concluded that the BOP properly withheld the twenty-eight page Statement of Reasons in Criminal No. 11-cr-00087 under Exemption 7(F). R.16-3 ¶ 14 (White Decl.). This Court has found that an agency is permitted to withhold documents similar to a Statement of Reasons under Exemption 7(F) if the inmate requester is afforded an opportunity to review the documents. *Martinez v. Bureau of Prisons*, 444 F.3d 620, 622, 625 (D.C. Cir. 2006) (stating that the plaintiff "was afforded a meaningful opportunity to review his [presentence report] and to take notes on them," and thus concluded that "FOIA does not entitle him to have copies of his PSRs."); *see also Tax Analysts v. U.S. Dep't of Just.*, 845

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F.2d 1060, 1065 (D.C. Cir. 1988) (an agency “need not respond to a FOIA request for copies of documents where the agency itself has provided an alternative form of access.”). Okeayainneh never disputed that he was given the opportunity to review the full Statement of Reasons he requested. R.16-3 ¶ 20 (White Decl.). Thus, as in *Martinez*, the record supports upholding BOP’s withholding the statement of Reasons under Exemption 7(F).

Finally, the BOP properly released the remaining responsive records. The declaration of Adam Beaubouef, along with the record, clearly demonstrates that the BOP released in full the 48 pages of records located in Okeayainneh’s Inmate Central Files. *See* R.27; R.30-1; R.30-2; R.27-1. Okeayainneh failed to proffer evidence disputing the release, and because Beaubouef has now sworn that the statements in his original declaration were truthful and accurate, the District Court properly determined that the Department was entitled to final judgment. *See* Ex. 1.

**C. The District Court Acted Well Within Its Discretion By Denying Requests for Appointment of a Special Master and Other Post-Judgment Relief**

Okeayainneh’s second notice of appeal (R.40) challenges the District Court’s July 2, 2021, and July 6, 2021, Minute Orders, which denied Okeayainneh’s Motion for Leave to file Proposed Judge’s Order and Motion to Appoint Special Master (R.34), and for Leave to File Proposed Judge’s Order and Opposition to Appellees’ Notice of Filing (R.35). Both Minute Orders post-date the final judgment in this

**APPENDIX 52**

case. *See* R.33 (submitted on June 25, 2021).

The District Court acted comfortably within its discretion in denying post-judgment relief and its July 2, 2022 and July 6, 2022 Minute Orders should be affirmed. Okeayainneh's Motion for Leave to file Proposed Judge's Order and Motion to Appoint Special Master (R.34) argued in a purely conclusory fashion that the District Court should appoint a Special Master "for the sake of transparency" and in the interest of "openness," "justice," and "principles embodied in FOIA[.]" R.34 at 3. The District Court's de novo review under FOIA fully vindicates the purposes of the statute, and Okeayainneh failed to demonstrate any unusual or "exceptional" circumstances warranting using a special master. *In re U.S. Dep't of Def.*, 848 F.2d 232, 235 (D.C. Cir. 1988) (recognizing that a special master is appointed only in "exceptional FOIA cases."). Because Okeayainneh requested exceptional relief without justification, the District Court acted comfortably within its discretion by denying Okeayainneh's motion. *Meeropol v. Meese*, 790 F.2d 942, 961 (D.C. Cir. 1986) (stating that appointment of special masters are "the exception and not the rule," that the decision not to name one will "very rarely" constitute an abuse of discretion, and that "[w]e are aware of no FOIA case . . . in which an appellate court has ordered the appointment of a special master after the district judge decided against it.").

With respect to Okeayainneh's Motion for Leave to file Proposed Judge's

Order and Opposition to Defendant's Notice of Filing (R.35), the District Court properly denied this Motion as it appears to duplicate Okeayainneh's previously accepted Opposition. *See* R.35; R.33; R.31. In any case, nothing in the motion demonstrated any error in the District Court's reasoning that would not be cured by adding an identical, sworn Beaubouef Declaration to the record. Accordingly, the District Court clearly acted within its discretion in denying relief based on this duplicate filing. *See Columbia Plaza Corp. v. Sec. Nat'l Bank*, 525 F.2d 620, 626 (D.C. Cir. 1975) ("the wasteful expenditure of energy and money incidental to separate litigation of identical issues should be avoided.").

## **CONCLUSION**

For all these reasons, the Department respectfully requests that the Court modify the record on appeal by accepting the attached sworn Declaration of Adam Beaubouef and summarily affirm the judgment.

MATTHEW M. GRAVES  
United States Attorney

R. CRAIG LAWRENCE  
JANE M. LYONS  
Assistant United States Attorneys

/s/ Blake A. Weiner  
BLAKE A. WEINER  
Assistant United States Attorney  
555 Fourth Street, N.W.  
Washington, D.C. 20530

## **APPENDIX 54**

(202) 803-1604  
Blake.Weiner@usdoj.gov

*Attorneys for Appellees*

## APPENDIX 55

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the text of this Appellees' Motion for Summary Affirmance was prepared using 14-point Times New Roman typeface and consists of 3,467 words, as calculated by counsel's word processing software.

/s/ Blake A. Weiner

Blake A. Weiner  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28th day of February, 2022, the **APPELLEES' MOTION TO MODIFY THE RECORD ON APPEAL AND FOR SUMMARY AFFIRMANCE** has been served upon Appellant by first class United States mail, postage prepaid and addressed as follows:

Julian Okeayainneh  
Fed. Reg. No. 20515-112  
F C I - Oakdale  
P O Box 5000  
Oakdale, LA 71463

/s/ Blake A. Weiner

BLAKE A. WEINER  
Assistant United States Attorney

**APPENDIX 56**

## FOR THE DISTRICT OF COLUMBIA

JULIAN OKEAYAINNEH, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 20-0244 (CKK) (ECF)  
 )  
 DEPARTMENT OF JUSTICE, *et al.* )  
 )  
 Defendants. )

**DECLARATION OF ADAM BEAUBOUEF**

I, Adam Beaubouef, do hereby declare as follows:

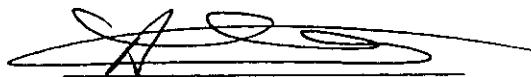
1. I am currently employed by the Federal Bureau of Prisons (BOP) as a Unit Manager at the Federal Correctional Complex in Pollock, Louisiana. I have served in this capacity since August 2019. I was employed at the Federal Correctional Complex in Oakdale, Louisiana from October 2016 to August 2019. I have been employed by the BOP since April 16, 2006.
2. This Declaration is submitted in support of the BOP's renewed motion for summary judgment with respect to the FOIA Complaint filed by Plaintiff Julian Okeayainneh, Federal Register No. 20515-112, on November 14, 2019.
3. I was Plaintiff's Unit Manager. Plaintiff was assigned to my caseload at the Federal Correctional Institution II in Oakdale, Louisiana. On March 29, 2019, I conducted a search for any records regarding orders for restitution for Criminal Case No. 11-cr-00087 in response to FOIA Request No. 2019-02952. A true and correct copy of Plaintiff's FOIA Request No. 2019-02952 is attached to the Agency's Motion to Dismiss or, Alternatively, for Summary Judgment, ECF No. 16-5. In response to Plaintiff's FOIA request, I searched Plaintiff's original hard copy

records, which were: Judgment in Criminal Case, dated August 3, 2018 (ECF No. 1257) (2 pages), Memorandum of Law and Order, dated August 1, 2018 (ECF No. 1256) (42 pages), and Plaintiff's SENTRY Sentence Monitoring Computation data, dated March 29, 2019 (4 pages).

Attached as **Exhibit A** is a true and accurate copy of the 48 pages of records which I located and the one page FOIA worksheet that I filled out on March 29, 2019. I documented my search on the FOIA worksheet, noting that I searched "Location of Records: Electronic central file/central file." Ex. A at 1. On the sheet, I indicated that the "US COURTS" may also have responsive records. Ex. A at 1. I provided the forty-eight pages of records and the FOIA worksheet to the Executive Assistant at FCC Oakdale to submit to the South Central Regional Counsel's office for FOIA processing.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 14th day of January, 2022, in Pollock, Louisiana



Adam Beaubouef  
Unit Manager

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5167

(1:20-cv-00244-CKK )

UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT

Julian Okeayainneh, Pro se,

Appellant,

v.

United States Department of Justice, et al.,

Appellees.

MAR - 4 2022

**RECEIVED**

APPELLANT'S RESPONSE AND MEMORANDUM IN OPPOSITION TO  
APPELLEES' MOTION TO MODIFY THE RECORD ON APPEAL AND FOR SUMMARY  
AFFIRMANCE AS ATTACHED DECLARATION OF ADAM BEAUBOUEF EXHIBIT 1 IS  
CLEARLY YET NOT IN COMPLIANCE WITH U.S. Dist. Ct., D.C., Civ. R.5.1(h)  
AND 28 U.S.C.S Section 1746.

Pursuant to this Court's February 01, 2022 extended Standing Special Order and Circuit Rule 28(a)(1), Appellant Okeayainneh hereby submits his response and memorandum in opposition to Appellees' motion to modify the record on appeal and for summary affirmance as the attached sworn declaration of ADAM BEAUBOUEF Executed on 14th of January, 2022, in Pollock, Louisiana submitted in support as Exhibit 1 and filed on February 28, 2022, is clearly yet NOT IN COMPLIANCE with Local Rule 5.1(h) and 28 U.S.C.S Section 1746, which contemplate as adequate certifications that are "substantially" in the form of the language of their provisions. A declaration or certification that includes the disclaimer "to the best of [ the declarant's] knowledge, information or belief" is sufficient under the local rule, the statute. See Cobell v. Norton, 391 F.3d 251 (D. D.C Cir. 2004). And also see example in Ms. White's Declaration at Appellant's Ex. 4 Prgph 22, App. 070.

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**APPENDIX 59**

**APPELLANT'S RESPONSE IN OPPOSITION**

Attached Sworn Declaration of Unit Manager ADAM BEAUBOUEF Executed on 14th of January, 2022, in Pollock, Louisiana submitted in support of Appellees' Motion to modify the record on appeal and for summary affirmance (Ex. 1 submitted and filed on February 28, 2022).

Appellees' ("DOJ" and "BOP"), has submitted yet a Declaration with Exhibit "1" in support of Appellees' motion to modify the record on appeal and for summary affirmance (Appellees' Ex.1 submitted and filed on 02/28/22). Unsworn declaration must at least substantially comply with the requirement of 28 U.S.C.S. Section 1746. See Commodity Futures Trading Comm'n v. Top worth Int'l, Ltd., 205 F.3d 1107, 1112 (9th Cir. 1999). Unit Manager ADAM BEAUBOUEF's Declaration does not substantially comply with Local Rule 5.1(h) and 28 U.S.C.S. Section 1746, which contemplate as adequate certifications that are "substantially "in the form of language of their provisions. A declaration or certification that includes the disclaimer " to the best of [ the declarant's] knowledge, information or belief ". Because it fails to contain and certification that it is based on personal knowledge, It also fails to comply with the Federal Rules of Civil Procedure 56(c)(4). (" An Affidavit or declaration used to support or oppose a motion must be made on personal knowledge ..."). Accordingly, the Honorable Court must decline to " consider " it on summary judgment. See Cobell v. Norton, 391 F.3d 251, (D. D.C Cir. 2004) (finding that Local Rule 5.1(h) and 28 U.S.C.S Section 1746 contemplate as adequate certifications that are "substantially" in the form of the language of their provisions. A declaration or certification that includes the disclaimer " to the best of [ the declarant's] knowledge, information or belief " is sufficient under the local rule, the statute. See United States v. Roberts, 308 F.3d 1147, 1154 - 55 (11th Cir. 2002). Likewise, the Court must decline to consider the Exhibits attached to Unit Manager ADAM BEAUBOUEF'S inadmissible Declaration. When ruling on a motion for summary judgment, " a trial court can only consider admissible evidence. " Orr v. Bank of America, NT & SA, 285 F.3d 764, 773 (9th Cir. 2002)." Authentication is a condition precedent to admissibility and this condition is satisfied by evidence sufficient to support a finding that the matter is what its proponent claims." Id.

**APPELLANT'S RESPONSE IN OPPOSITION**

The Ninth Circuit has "repeatedly held that unauthenticated documents cannot be considered in a motion for summary judgment." *Id.* In a summary judgment motion, documents authenticated through personal knowledge must be attached to an affidavit that meets the requirements of Fed.R.Civ. P.56, and the affiant must be a person through whom the exhibits could be admitted into evidence. *Id.* at 773-4. Unit Manager ADAM BEAUBOUEF fails to provide yet adequate authentication of his proposed Exhibits through his Declaration. The Declaration itself does not indicate that it is " based to the best of personal information, Knowledge, and belief,

Accordingly, the Court " MUST " also decline to " CONSIDER " any of the Exhibits attached to Unit Manager ADAM

BEAUBOUEF'S DECLARATION and Appellees' motion to modify the record on appeal and for summary affirmance MUST be denied.

Respectfully submitted,

Dated: February 28, 2022 " Without Prejudice "

By:/s/ Julian Okeayainneh, c/o: 20515112 ( pro se Appellant)

JULIAN OKEAYAINNEH

Federal Correctional Complex-1

Post Office Box 5000

Oakdale, Louisiana [ 71463]

**APPENDIX 61**

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5167  
(C.A. No. 20-0244)

JULIAN OKEAYAINNEH,

Appellant,

v.

DEPARTMENT OF JUSTICE, et al.,

Appellees.

**APPELLEES' REPLY IN SUPPORT OF ITS MOTION TO MODIFY THE RECORD ON APPEAL AND FOR SUMMARY AFFIRMANCE**

Appellant's opposition to Appellees' Motion to Modify the Record on Appeal and For Summary Affirmance argues only that the government's recently proffered sworn version of the Beaubouef declaration, Document #1936877, Ex. 1, still fails to comply with the requirement set forth in 28 U.S.C. § 1746 and the Federal Rules of Civil Procedure. *See* Document #1937909 ("Opposition") at 1–3. Okeayainneh is incorrect and misunderstands the governing law for evidence in cases brought under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

Okeayainneh faults the Beaubouef declaration as noncompliant with 28 U.S.C. § 1746 or the Federal Rules of Civil Procedure because it "fails to contain and [sic] certification that it is based on personal knowledge[.]" *See* Opposition at 2. This argument fails because an explicit assertion of "personal knowledge" is not required in a declaration in FOIA cases. *See Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1358 (D.C. Cir. 1983) (approving of testimony of a supervisor because

“he consulted with his colleagues who had personal knowledge” of the relevant aspects of the search). Rather, the declaration must simply “be made” on personal knowledge. *See* Federal Rule of Civil Procedure 56(c)(4).

A declaration is “made” on personal knowledge when the declarant is intimately involved in the events he describes. *DiBacco v. Dep’t of the Army*, 926 F.3d 827, 833 (D.C. Cir. 2019) (rejecting appellant’s argument that a “declaration was not based on personal knowledge as required by Federal Rule of Civil Procedure 56,” and finding that “much of the information contained within the declaration is based on [the declarant’s] personal knowledge,” because the declarant “has been intimately involved in this FOIA litigation,”); *Campbell v. U.S. Dep’t of Just.*, 164 F.3d 20, 35 (D.C. Cir. 1998) (holding that the court cannot conclude the declarant had personal knowledge “[g]iven that the declarant presumably lacks personal knowledge of the particular events that occurred more than 30 years ago[.]”).

In any event, Adam Beaubouef’s declaration asserts facts which are based on his own actions. *See generally* Document #1936877, Ex. 1, (stating, among other things, that “I conducted a search,” “I located three responsive records,” “[a]ttached...is a true and accurate copy...of the 48 pages of records I located,” and “I provided the 48 pages of records[.]”). Thus, Mr. Beaubouef is clearly “intimately involved” in these events, and there is no presumption that he “lacks personal knowledge of the particular events” that he describes. *See DiBacco*, 926 F.3d at 833

(D.C. Cir. 2019); *Campbell*, 164 F.3d at 35 (D.C. Cir. 1998). Consequently, “the information contained within the declaration is based on [Mr. Beaubouef’s] personal knowledge,” and Okeyainneh’s sole argument lacks merit.<sup>1</sup> *See DiBacco*, 926 F.3d at 833 (D.C. Cir. 2019).

Because this Court is reviewing the agency’s actions *de novo*, there is no legitimate reason for denying review based on the same evidence placed before the district court in a properly sworn format. *See Juarez v. Dep’t of Just.*, 518 F.3d 54, 60 (D.C. Cir. 2008) (upholding summary judgment for agency when the district court had committed reversible error by failing to address segregability). Because this straightforward issue is the only one Okeyainneh raises on appeal and the parties have fully addressed it, full briefing and oral argument would do little, if anything, to assist the Court.

\* \* \*

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<sup>1</sup> Okeyainneh cites *Cobell v. Norton*, 391 F.3d 251 (D.C Cir. 2004), in support of the proposition that a “declaration or certification that includes the disclaimer ‘to the best of the declarant’s knowledge, information or belief’ is sufficient under the local rule, the statute.” Opposition at 1. While this is accurate, Okeyainneh appears to conflate what is “sufficient” with what is “necessary.” The proffered sworn Beaubouef declaration explicitly contains the statement required in 28 U.S.C. § 1746. Document #1936877, Ex. 1. Thus, the Court need not consider whether it also contains language that is “substantially” in the form of the language of” 28 U.S.C. § 1746. *See Cobell*, 391 F.3d at 251.

**CONCLUSION**

For these reasons and for the reasons articulated in the Department's motion for summary affirmance, Appellees respectfully request that the Court consider the record in light of the properly sworn declaration and summarily affirm the judgment below.

Respectfully submitted,

MATTHEW M. GRAVES  
United States Attorney

R. CRAIG LAWRENCE  
JANE M. LYONS  
Assistant United States Attorneys

/s/ Blake A. Weiner

Blake A. Weiner  
Assistant United States Attorney  
555 4<sup>th</sup> Street, N.W. – Civil Division  
Washington, D.C. 20530  
(202) 803-1604  
[Blake.Weiner@usdoj.gov](mailto:Blake.Weiner@usdoj.gov)

**APPENDIX 65**

**CONCLUSION**

For these reasons and for the reasons articulated in the Department's motion for summary affirmance, Appellees respectfully request that the Court consider the record in light of the properly sworn declaration and summarily affirm the judgment below.

Respectfully submitted,

MATTHEW M. GRAVES  
United States Attorney

R. CRAIG LAWRENCE  
JANE M. LYONS  
Assistant United States Attorneys

/s/ Blake A. Weiner

Blake A. Weiner  
Assistant United States Attorney  
555 4<sup>th</sup> Street, N.W. – Civil Division  
Washington, D.C. 20530  
(202) 803-1604  
[Blake.Weiner@usdoj.gov](mailto:Blake.Weiner@usdoj.gov)

**APPENDIX 65**