CASE No. ____________

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL A. HAGAR,

Petitioner,

v.

FEDERAL BUREAU OF INVESTIGATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

Michael A. Hagar
Oriana House, Inc.
Cleveland, Ohio
1829 East 55th Street
Cleveland, OH 44103

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 26, 2026
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Clerk

No. 25-40188

MICHAEL A. HAGAR,

Plaintiff—Appellant,

versus

FEDERAL BUREAU OF INVESTIGATION,

Appellee.

Before H

STEPHEN A. HIGGINSON, *Circuit Judge*:

Plaintiff Michael Hagar, proceeding pro se, brought this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, a statute Congress enacted to "ensure an informed citizenry," "check against corruption," and "hold the governors accountable to the governed," *N.L.R.B. v. Robbins Tire and Rubber Co.*, 437 U.S. 214, 242 (1978). Despite its lofty goals, FOIA's disclosure obligations have their limits. Relevant here, FOIA provides a cause of action only for records improperly withheld. Once a record has been turned over, a FOIA request becomes moot. Further, although the statute requires federal agencies to produce records not subject to exemptions, it does not require agencies to create new records.

Hagar sought from the Federal Bureau of Investigation (FBI) production of an email pertinent to his criminal case. He requested the email including unredacted "To" line information listing the names and email addresses of its recipients, as well as the email's complete "header information"—metadata containing time, server, sender and recipient, and other pertinent information. Because Hagar is now in receipt of the "To" line information he previously sought and because releasing the email's header information would require the creation of a new record, we AFFIRM the district court's grant of summary judgment in favor of the FBI. We also AFFIRM the district court's denial of Hagar's post-judgment motions and DISMISS Hagar's claims of judicial misconduct.

I.

Hagar was convicted of cyberstalking and making interstate threats in 2019. *See generally United States v. Hagar*, 822 F. App'x 361 (6th Cir. 2020). On October 23, 2020, he submitted a FOIA request to the FBI, seeking production of a June 2, 2016, email he sent to employees of two companies from which he had been terminated. Its subject line read, "<Michael Hagar> I AM GOING TO SHOOT ONE OF MY GUARDS SOON." The body of the email then stated, "AND THEN I WILL MAKES CERTAIN ALL OF YOU ARE SHOT ALSO," and continued with repeated profanities. The FBI obtained the email during its investigation of Hagar. Hagar sought production of the unredacted email and complete "header information"—metadata outlining the "path the email followed as it traveled through various mail servers" including times, senders and receivers, and additional information.

After an initial production of allegedly incorrect documents in April 2021, the FBI released the body of the June 2, 2016, email in September 2022—redacting the names and email addresses in the "To" line and asserting the redacted information was excepted from production under one of the Privacy Act's law-enforcement exceptions and FOIA Exemptions 6 and 7(C).[1] The FBI also declined to produce the email's header information, asserting that doing so would require the creation of a new record, which FOIA does not mandate. As the FBI's Acting Section Chief of the Record/Information Dissemination Sections (RIDS) Joseph Bender, Jr. explained in a declaration, the email's header information was not "plainly visible" on its face when viewed or printed. To produce that information, Bender asserted that the "FBI would have to copy and paste the header information into a separate text file or Microsoft Word document."

On March 10, 2022, Hagar filed a pro se complaint in the Eastern District of Texas. He then filed a summary judgment motion on August 3, 2022, which the magistrate judge terminated as premature through a scheduling order. Hagar never refiled the motion. Pursuant to the district court's scheduling order, the FBI subsequently moved for summary judgment on May 15, 2023, after which, on August 28, 2023, it sent Hagar an unredacted copy of the email.

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[1] The Privacy Act prohibits the production of certain records related to criminal matters. *See* 5 U.S.C. § 552a(j)(2).

FOIA Exemption 6 protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552(b)(6). FOIA Exemption 7(C) excludes records or information compiled for law enforcement purposes "but only to the extent that the production of such [materials] . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy." *Id.* § 552(b)(7)(C).

On March 7, 2024, the magistrate judge recommended granting the FBI's motion. The magistrate judge "[a]ssum[ed], without deciding," that, to share the header information with Hagar, the FBI would have to create a new record—a step beyond what FOIA requires. Alternatively, she concluded that the email header information would be subject to FOIA Exemptions 6 and 7(C) and the Privacy Act's law-enforcement exception. The FBI did not invoke these exemptions itself as applied to the header information, since it argued that the "metadata for the header information did not constitute a record for purposes of FOIA" to which an exemption would apply. The magistrate judge separately determined that the "To" line information—names and email addresses—were exempt under the same Privacy Act exception and FOIA Exemptions 6 and 7(C).

The district court adopted the magistrate's report and recommendation, entering final judgment on March 25, 2024. The district court subsequently granted Hagar relief from judgment to file objections to the decision, considered those objections along with several post-judgment motions, and denied all relief on March 18, 2025. Hagar timely appealed.

II.

We review a district court's grant of summary judgment *de novo*, *Batton v. Evers*, 598 F.3d 169, 175 (5th Cir. 2010), and may affirm a district court's ruling on any "legally sufficient ground," even if not relied on by the district court, *Jones v. Sheehan, Young & Culp*, 82 F.3d 1334, 1337 (5th Cir. 1996). However, in FOIA cases, when the court "necessarily has to determine facts as part of the FOIA withholding analysis, the clearly erroneous standard applies" to the district court's factual findings. *Batton*, 598 F.3d at 175 n.6. Denials of motions for reconsideration, motions for relief from judgment, and refusals to take judicial notice are reviewed for abuse of discretion. *See Alexander v. Wells Fargo Bank, N.A.*, 867 F.3d 593, 597 (5th

Cir. 2017) (motion for reconsideration under FED. R. CIV. P. 59); *Hall v. Louisiana*, 884 F.3d 546, 549 (5th Cir. 2018) (motion for relief from judgment under FED. R. CIV. P. 60(b)); *Taylor v. Charter Med. Corp.*, 162 F.3d 827, 829 (5th Cir. 1998) (refusal to take judicial notice). On the whole, we liberally construe briefs filed by pro se litigants. *See Collins v. Dallas Leadership Foundation*, 77 F.4th 327, 330 (5th Cir. 2023).

III.

On appeal, Hagar raises five issues: (1) whether the district court erred by dismissing Hagar's motion for summary judgment as premature; (2) whether the district court erred by granting the FBI's motion for summary judgment; (3) whether the district court erred by denying Hagar's motion for reconsideration; (4) whether the district court erred by denying Hagar's motion for relief from judgment; and (5) whether the district court erred by denying Hagar's motion for judicial notice. He levies judicial misconduct claims throughout. We first address the district court's dismissal of Hagar's summary judgment motion. We next cover the district court's grant of summary judgment in favor of the FBI. We then examine Hagar's post-judgment motions. Finally, we take up his judicial misconduct arguments.

A.

Magistrate judges may not "determine" motions for summary judgment under 28 U.S.C. § 636(b)(1)(A), but they may deal with ordinary, run-of-the-mill pretrial matters. *See id.*; *see also* FED. R. CIV. P. 72(a). Hagar argues that the magistrate judge exceeded her authority by terminating his summary judgment motion for "statistical purposes." He also asserts that the FBI forfeited its arguments in opposition to his summary judgment motion by not responding to its substance. Both contentions are unavailing.

Although we have little case law addressing the contours of the pretrial authority of magistrate judges, we cannot conclude that the magistrate judge ran afoul of her permissible role. The magistrate judge did not resolve Hagar's summary judgment motion on the merits. Instead, the magistrate judge issued a "scheduling order," setting a schedule for: (1) disclosures; (2) future summary judgment briefing to be initiated by the FBI, which has the burden to prove any exemption, *Batton*, 598 F.3d at 175; and (3) subsequent pretrial evidentiary mechanics, should they be necessary. The scheduling order did terminate Hagar's motion without prejudice. But it did not resolve any of Hagar's arguments, nor preclude him from making them at a later stage, whether in opposition to the FBI's future motion or by seeking leave to move for summary judgment himself. Rather, it set a course of action—disclosures and then summary judgment briefing initiated by the government—par for the course in FOIA actions. *See, e.g.*, *id.* at 173–74. We find this scheduling order to be a proper exercise of the magistrate judge's pretrial docket-management authority.

Hagar's waiver argument similarly falters. The FBI filed a "response and objections to" Hagar's motion, arguing that the motion was premature. It separately filed an answer, which, although cursory, indicated that the agency would raise affirmative defenses based on FOIA's exemptions and remedies. Together, the FBI's filings demonstrate an intention to address Hagar's merits arguments in due course, not to waive or forfeit them.

B.

Hagar raises many issues with the district court's grant of summary judgment in favor of the FBI that coalesce around two core contentions. First, he argues that the district court erred by ruling that the pertinent exemptions applied to the names and email addresses in the "To" line of the email. Second, he alleges the district court erred by ultimately concluding that the header information and metadata were exempted from disclosure, making multiple arguments about specific errors committed in reaching that conclusion. We address each in turn.

1. *FOIA Exemptions 6 and 7(C)—The "To" Line Redactions*

The district court determined that the FOIA Exemptions 6 and 7(C) applied to the names and email addresses in the "To" line of the sought-after email. Hagar contends that this conclusion was in error because the email was "already part of the public domain." We need not delve into this argument. While the FBI's summary judgment motion was fully briefed and pending, the government sent Hagar a copy of the email without redactions. Because Hagar has now received a copy of the email disclosing the previously redacted recipient names, his claim for this information is now moot. *See Ayanbadejo v. Chertoff*, 517 F.3d 273, 278 (5th Cir. 2008); *see also Calhoun v. F.B.I.*, 546 F. App'x 487, 490 (5th Cir. 2013) (determining that a FOIA action was rendered moot by the FBI's response to the request); *Raz v. Oakes*, No. 02-30054, 2002 WL 31049485, 1 (5th Cir. Sept. 5, 2002) (unpublished) ("The record shows that Raz eventually received the file, albeit through another defendant. Once Raz obtained the record, his FOIA claim for its production became moot.").

2. *Header Information*

Although FOIA favors disclosure, it "does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained." *Kissinger v. Reps. Comm. for the Freedom of the Press*, 445 U.S. 136, 152 (1980); *see also* 5 U.S.C. § 552(a)(3)(B).

The district court made a number of determinations about the header information that Hagar challenges on review. One is dispositive. The district court "[a]ssum[ed], without deciding," that the FBI would have to create a "new record"—in excess of FOIA's requirements—to share this information with Hagar. The district court credited RIDS Chief Bender's assertion that producing the header information would require the agency to "copy and paste the header information into a separate text file or Microsoft Word document, for viewing and processing purposes."[2] Hagar asserts on appeal that releasing the header information would not require the FBI to create a new document. Our case law, however, leads us to the opposite conclusion.

Although our court has not addressed the specific question of whether the copying of data not otherwise contained separately in agency records into a new document counts as the creation of a new record under FOIA, we have dealt with FOIA's no-creation-exception on a previous occasion. In *Rutila v. United States Department of Transportation*, we examined a FOIA plaintiff's request for certain individuals' application software profiles and Windows Explorer directories and folder structures from the Federal Aviation Administration (FAA). *See* 72 F.4th 692, 694 (5th Cir. 2023). There, the FAA explained in a declaration that its only avenue to comply with the request would be to take screenshots—digital images of what was displayed on a computer when Rutila's requests were queried. *See id.* at 696-97. Our court credited this declaration. *See id.* We recognized that, because the FAA did not maintain the requested information in a separate record form, to comply with Rutila's request, the FAA "would have to open the relevant software, display the requested data, and take a screenshot of the displayed information." *Id.* at 697. Citing a Tenth Circuit case reaching the same conclusion, we determined that the taking and production of a screenshot constituted the creation of a new record. *Id.* at 697–98 (citing *Brown v. Perez*,

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[2] As noted, we review factual determinations in FOIA cases for clear error. *See Batton*, 598 F.3d at 175 n.6. Hagar presents no issue of fact disputing RIDS Chief Bender's assessment. *Cf. Batton*, 598 F.3d at 179 ("[A]gency affidavits are generally accorded a 'presumption of legitimacy' unless there is evidence that the agency handled the FOIA request in bad faith." (citation omitted)).

835 F.3d 1223, 1237 (10th Cir. 2016)). The dividing line between what FOIA did and did not require boiled down to whether the request "merely require[d] [the agency] to produce information they retain and use, albeit in a slightly altered format" or "required [the agency] to produce a new record . . . of information it does not store." *Id.* at 698.

The district court did not examine *Rutila*, and the parties did not address the case below and do not before us. But the case guides us here. On the record before us, we cannot find a meaningful difference between the taking of a screenshot in *Rutila* and the production of the header information. Although the FBI has access to the header and IP information, it "does not maintain a record" of them. *Id.* at 697. To access the information Hagar seeks, an FBI employee would have to select "the 'File' tab in Microsoft Outlook," click a button seeking the email's "Properties," and locate "a box titled, 'Internet Headers.'" Because this information "is dynamic in electronic form, and not plainly visible on the body of the email when viewed or printed," RIDS Chief Bender averred that the only way to pass this information along to Hagar would be to "copy and paste the header information into a separate text file or Microsoft Word document." Much like taking a screenshot, doing so would require only a few steps. Yet even those steps would require the agency to create something new, which it would not have otherwise had before. As we said in *Rutila*, FOIA "does not obligate agencies to satisfy such requests." *Id.* at 698.

Accordingly, we AFFIRM the district court's grant of summary judgment in favor of the FBI. [3]

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[3] Because we do so based on the FBI's no-creation-exception argument, we do not address district court's alleged errors regarding FOIA Exemptions 6 and 7(C) nor *in camera* inspection, which centers around the applicability of Exemption 7(C).

C.

Hagar challenges the district court's denial of his motion for reconsideration, his motion for relief from judgment, and his motion to take judicial notice. As noted above, we review each for abuse of discretion. *See Alexander*, 867 F.3d at 597; *Hall*, 884 F.3d at 549; *Taylor*, 162 F.3d at 829.

Hagar's post-trial motions raise the same arguments we have already addressed or otherwise disposed of on appeal: (1) the magistrate judge lacked authority to "terminate[]" Hagar's motion for summary judgment; (2) the "To" line information is already public, so the district court erred in determining it was subject to FOIA Exemptions 6 and 7(C); (3) the district court erred in concluding that producing the header information required the creation of a "new" record; (4) the FBI was required to raise any FOIA exemptions affirmatively and the district court erred in applying FOIA Exemptions 6 and 7(C) to the header information; and (5) the district court failed to conduct an *in camera* inspection and should have conducted *in camera* review before granting summary judgment.

Because we conclude that the magistrate judge acted within her authority in dismissing Hagar's summary judgment motion as premature, the "To" line issue is moot, and that producing the header information would have required the creation of a new record in contravention of FOIA, we AFFIRM the district court's denial of Hagar's motion for reconsideration, motion for relief from judgment, and motion to take judicial notice.

D.

Finally, we examine the general misconduct allegations alleged throughout Hagar's briefing. Hagar's misconduct allegations amount to a disagreement with adverse rulings by the district court. For example, he describes the magistrate judge's recommendation to grant summary judgment in favor of the FBI as the "second" instance of "judicial misconduct" at issue in the case. Hagar, however, points to no record evidence or extrajudicial sources of prejudice or misconduct.[4]

"[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Hagar identifies no extrajudicial source of bias, no procedural irregularity beyond routine case management, and no conduct that would cause a reasonable observer to question the court's impartiality. Hagar's claims on this issue are meritless.

IV.

For the reasons explained above, the judgment of the district court is AFFIRMED.

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[4] The First Circuit case on which Hagar relies to set out a judicial misconduct standard—*United States v. Marquez-Perez*, 835 F.3d 153 (1st Cir. 2016)—concerned whether a district court's conduct during trial constituted a due process violation, *see id.* at 158, and is inapposite here.

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

MICHAEL A. HAGAR	§	
VS.	§	CIVIL ACTION NO. 1:22cv101
FEDERAL BUREAU OF INVESTIGATION	§	

MEMORANDUM ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Michael A. Hagar, an inmate at the Federal Correctional Complex located in Beaumont, Texas, proceeding *pro se*, brought this lawsuit pursuant to the Freedom of Information Act.

The Court referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The magistrate judge recommends granting the defendant's motion for summary judgment and dismissing this action.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. A copy of the Report and Recommendation was mailed to Plaintiff at the address provided to the Court. No objections to the Report and Recommendation of United States Magistrate Judge have been filed.

ORDER

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the Report and Recommendation of Magistrate Judge is ADOPTED. It is

ORDERED that the Defendant's motion for summary judgment is GRANTED. A separate Final Judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this 25th day of March, 2024.

Michael J. Truncale

Michael J. Truncale
United States District Judge

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

MICHAEL A. HAGAR	§	
VS.	§	CIVIL ACTION NO. 1:22-cv-101
FEDERAL BUREAU OF INVESTIGATION	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Michael A. Hagar, an inmate confined at the Federal Correctional Complex located in Beaumont, Texas, proceeding *pro se*, brings this lawsuit pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq*.

The above-styled action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Factual Background

Plaintiff claims the FBI violated the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, when it intentionally withheld IP addresses and email header information concerning a requested email. (Doc. #1 at 1.) On or around October 23, 2020, Plaintiff claims he mailed a request to the Department of Justice FOIA/PA Mail Referral Unit. Plaintiff claims he requested: "The email with the complete header information of the IP addresses, provided to, Special Agent Michael G. Gerfin of the FBI, on June 7, 2016 by Eaton Corporation." (Doc. #1 at 2.) Plaintiff claims the document is referred to in an affidavit for the Complaint filed against him on June 14, 2016. Plaintiff asserts that he provided the following information to facilitate locating the document: "The case number is 1:16CR273; United States of America v.

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Michael Hagar; in the United States District Court for the Northern District of Ohio, Eastern Division; Judge Donald Nugent." *Id.*

On or around November 6, 2020, Plaintiff states the FBI acknowledged receipt of the request, FOIAPA Request No. 1480404-000. Next, Plaintiff claims the FBI released incorrect documents to him on or around April 29, 2021. According to Plaintiff, the FBI released a copy of an email from April 26, 2016, which is referred to in paragraphs ten and fourteen of the affidavit for the Complaint. (Doc. #1 at 2.)

On or around June 4, 2021, Plaintiff states he mailed an administrative appeal to the Office of Information Policy ("OIP"), appealing the FBI's determination related to his FOIA request. (Doc. #1 at 2 and 19.) Plaintiff contended that the FBI intentionally provided the wrong documents in order to delay the release of the documents he actually requested. Additionally, Plaintiff claims he explained why the documents released were incorrect and provided documents to support his appeal. The OIP acknowledged receipt of Plaintiff's appeal on June 24, 2021.

Plaintiff claims the FBI intentionally withheld releasing the June 2, 2016[1] email with the complete header information to prevent the public from learning about improper behavior in the performance of their duties. Plaintiff claims the FBI used a false IP address to establish the email traveled to Eaton's server located in Beachwood, Ohio in order to establish that the offense occurred in the Northern District of Ohio. (Doc. #1 at 3.)

On September 14, 2021, the OIP affirmed the FBI's action on Plaintiff's request. (Doc. #1 at 25.) Plaintiff acknowledges that the appeal was determined by Christina D. Troiani. On May

[1] The initial search by the FBI did not reveal an email dated June 7, 2016. Plaintiff, however, subsequently clarified that the date of the email was June 2, 2016. (Doc. #1 at 3 and Doc. #23 at 3).

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15, 2021, Plaintiff states Christina D. Troiani also remanded his appeal of the denial of his request for the same information made to the Executive Office for the United States Attorneys ("EOUSA").

The Defendants' Motion

The Defendant has filed a Motion for Summary Judgment. (Doc. #23.) The Defendant asserts it conducted a reasonable search in response to Plaintiff's FOIA request. Additionally, the Defendant asserts it properly withheld information pursuant to the Privacy Act exemptions in response to Plaintiff's FOIA request. Finally, the Defendant states it properly withheld information pursuant to FOIA exemptions in response to Plaintiff's FOIA request.

Standard of Review

Summary Judgment

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED.R.CIV.P. 56(a). A fact is material if it could affect the outcome of the case under the governing law. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986); *Instone Travel Tech Marine & Offshore v. Int'l Shipping Partners, Inc.*, 334 F.3d 423, 427 (5th Cir. 2003). A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248; *Instone Travel Tech*, 334 F.3d at 427.

The party seeking summary judgment carries the initial burden of demonstrating that there is an absence of evidence to support the non-moving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Hart v. Hairston*, 343 F.3d 762, 764 (5th Cir. 2003). "Before the non-moving party is required to produce evidence in opposition to the motion, the moving party must first satisfy its obligation of demonstrating that there are no factual issues warranting trial." *Commander v. BASF Wyandotte Corp.*, 978 F.2d 924, 927 n.4 (5th Cir. 1992). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. FED.R.CIV.P. 56(e); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Malacara v. Garber*, 353 F.3d 393, 404 (5th Cir. 2003).

Because summary judgment is a final adjudication on the merits, courts must employ the device cautiously. *Hulsey v. State of Texas*, 929 F.2d 168, 170 (5th Cir. 1991); *Jackson v. Procunier,* 789 F.2d 307 (5th Cir. 1986). In prisoner *pro se* cases, courts must be careful to "guard against premature truncation of legitimate lawsuits merely because of unskilled presentations." *Naranjo v. Thompson*, 809 F.3d 793, 806 (5th Cir. 2015) (*quoting Murrell v. Bennett*, 615 F.2d 306, 311 (5th Cir. 1980)).

Most FOIA cases are resolved on summary judgment. *Cooper Cameron Corp. v. U.S. Dep't of Labor*, 280 F.3d 539, 543 (5th Cir. 2002). "In the FOIA context, however, the traditional [summary judgment] standard is modified because 'the threshold question in any FOIA suit is whether the requester can even see the documents the character of which determines whether they can be released.' " *Batton v. Evers*, 598 F.3d 169, 175 (5th Cir. 2010) (quoting *Cooper Cameron Corp.*, 280 F.3d at 543). "FOIA's strong presumption in favor of disclosure places the burden on the agency to justify the withholding of any requested documents." *U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991).

When considering a motion for summary judgment, courts "must view the evidence in the light most favorable to the party opposing summary judgment." *Porter v. Houma Terrebonne Hous. Auth. Bd. of Comm'rs*, 810 F.3d 940, 942-43 (5th Cir. 2015) (internal quotation marks and footnotes omitted). If the summary judgment evidence shows that an actual controversy exists, then "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in [her] favor." *Id.* at 943.

"After the nonmovant has been given an opportunity to raise a genuine factual issue, if no reasonable juror could find for the nonmovant, summary judgment will be granted." *DIRECTV, Inc. v. Minor*, 420 F.3d 546, 549 (5th Cir. 2005). However, "[i]f there is contradictory evidence or evidence of agency bad faith, a court should not grant summary judgment for an agency." *Highland Capital Mgmt. v. Internal Revenue Serv.*, 408 F. Supp. 3d 789, 801 (N.D. Tex. 2019). The court will not assume "in the absence of any proof . . . that the nonmoving party could or would prove the necessary facts" and will grant summary judgment "in any case where critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (1994). "Rule 56 does not impose upon the district court a duty to sift through the record in search of evidence to support a party's opposition to summary judgment." *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006).

"[T]he traditional leniency afforded to a *pro se* plaintiff does not excuse [Plaintiff] from [his] burden of opposing summary judgment through the use of competent summary judgment evidence." *Malcolm v. Vicksburg Warren Sch. Dist. Bd. of Trustees.*, 709 F. App'x 243, 246 (5th Cir. 2017). "Although courts should advise *pro se* [parties] of procedural rules," the United States Court of Appeals for the Fifth Circuit has "held that they need not be given additional notice of the consequences of a summary judgment motion and the right to submit opposing affidavits as the notice given by Rule 56 and the local rules suffices." *Brown v. Megg*, 857 F.3d 287, 289 n.1 (5th Cir. 2017) (citing *Martin v. Harrison Cnty. Jail*, 975 F.2d 192, 193 (5th Cir. 1992)). Additionally, the complaint of a *pro se* litigant "can be considered as summary judgment evidence to the extent it comports with the requirements of [Rule] 56(e)." *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994).

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Analysis

"The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *N.L.R.B. v. Robbins Tire and Rubber Co.*, 437 U.S. 214, 242 (1978). The FOIA allows district courts "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld." 5 U.S.C. § 552(a)(4)(B). Congress has also recognized, however, "that public disclosure is not always in the public interest." *CIA v. Sims*, 471 U.S. 159, 166-67 (1985). The FOIA requires federal agencies to disclose documents within their control upon request unless the documents fall within one of nine enumerated exceptions. *See Id.*, § 552(b)(1)-(9). In a FOIA case, the agency has the burden of justifying nondisclosure. *See Id.*, § 552(a)(4)(B).

In this case, at issue is whether the FBI has met its summary judgment burden in justifying nondisclosure of Plaintiff's email by establishing: (1) the adequacy of its search and (2) the applicability of the exemptions. Alternatively, the court must determine whether Plaintiff has met his summary judgment burden by either: (1) pointing out a lack of evidence to support the FBI's case or (2) demonstrating that the FBI's actions were unconstitutional.

Adequate Search

"FOIA does not require an agency to show that it has identified every document that is responsive to a request, but only that 'it performed a search reasonably calculated to yield responsive documents.'" *Berk v. Executive Office of United States Attorneys*, No. 21-10693, 2022 WL 17337821 (5th Cir. Nov. 22, 2022) (quoting *Batton*, 598 F.3d at 176). "The agency can satisfy that requirement with affidavits that provide a detailed description of its search methods." *Id.*

Additionally, the reasons the agency provides have a "presumption of legitimacy." *Id.* "That presumption can be defeated only by showing that the agency acted in bad faith, and at summary judgment by presenting evidence that the affidavits do not describe an adequate search." *Id.*

Here, the FBI provided the declaration of Joseph E. Bender, Jr., made under the penalty of perjury, providing detailed descriptions of the agency's search methods along with the relevant records. As a result of its search, the FBI located the specific email of June 2, 2016 which is responsive to Plaintiff's request under the FOIA. (Doc. 23-1 at 10-11.) However, to obtain a document containing the header information requested by Plaintiff the agency asserts that it would have to create a new record. The FBI explains that header information is not plainly visible on the body of the email when viewed or printed and in order to respond to Plaintiff's request it "would have to copy and paste the header information into a separate text file or Microsoft Word document, for viewing and processing purposes. However, such action would constitute creating a new record where one does not exist." (Doc. 23-1 at 12.)

Assuming, without deciding, the FBI is correct that measures required to comply with Plaintiff's request would, in fact, constitute creating a new record, the agency would not be obligated to create such new record. "Although FOIA requires federal agencies to make 'reasonable efforts to search for' the records requested, . . . it does not require agencies to create new records." *Center for Investigative Reporting v. United States Dep't of Just.*, 14 F.4th 916, 937 (9th Cir. 2021) (quoting *Kissinger v. Reps. Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980)). FOIA "does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained." *Kissinger*, 445 U.S. at 152. In such case, the Defendant has met its burden concerning the adequacy of the search. Further, Plaintiff presented nothing but speculation that the FBI acted inappropriately. Thus, Plaintiff has not met his burden.

In the alternative, even assuming, *arguendo*, that production of a new document would not be required, as Plaintiff asserts, such finding would not be determinative of the issue in this case. Plaintiff would not be entitled to the email header information because of the exemptions explained below.

Applicability of Exemptions

The court must consider the applicability of the exemptions claimed by the Defendant. In this case, the Defendant excluded documents pursuant to exemptions under the Privacy Act Exemption (j)(2) and the FOIA Exemptions (6) and (7)(C).

a. Privacy Act

As the result of its search, the FBI made an initial release of records to Plaintiff on April 29, 2021, advising him that nine pages of records were reviewed, and five pages of records were being released with certain information exempted pursuant to Privacy Act Exemption (j)(2), 5 U.S.C. § 552a(j)(2). Next, on September 9, 2022, the FBI released an additional three pages of records including the June 2, 2016 email with certain information exempted pursuant to Privacy Exemption (j)(2). Following Plaintiff's appeal to the Office of Information Policy ("OIP") of both releases, the FBI's response to Plaintiff's requests were determined correct and their actions were affirmed. (Doc. 23-1 at 5).

Privacy Act Exemption (j)(2) protects from mandatory disclosure "any system of records within the agency . . . maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals." 5 U.S.C.A. § 552a(j)-(2). The FBI has exempted law enforcement investigative records maintained in the Central Records System ("CRS") from the Privacy Act's disclosure requirements pursuant to § 552a(j)(2). (Doc. 23-1 at 12-13.)

In this case, the record at issue was compiled during the FBI's investigation of Plaintiff for potential violations of 18 U.S.C. §§ 2261A(2)(B) and 2261(b)(6), Cyberstalking, and 18 U.S.C. § 875(c), Interstate Threatening Communication. Accordingly, Plaintiff's investigative record should be withheld as a law enforcement investigative record under this exemption. Although access to the record was properly denied as exempt under the Privacy Act, the FBI also reviewed the record under the access provision of the FOIA to achieve maximum disclosure. (Doc. 23-1 at 13.)

b. FOIA Exemptions

Title 18 U.S.C. § 552(b)(6) protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Plaintiff requested the email with the complete header information of the IP addresses, provided to, Special Agent Michael G. Gerfin of the FBI. Because "similar files" has a broad, rather than narrow meaning, originating IP addresses, User-Agent header data, and email addresses are "similar files" for Exemption 6 purposes. *See New York Times Co. V. Fed. Communications Comm'n*, 457 F. Supp. 3d 266, 273 (S.D, N.Y. (2020).

Title 18 U.S.C. § 552(b)(7)(C) protects from disclosure law enforcement records or information compiled for law enforcement purposes when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." *Schubert v. Fed. Bureau of Investigation*, No. 22-3658, 2024 WL 341173 (D.C.D.C. Jan. 29, 2024). While the two exemptions are similar, "Exemption 7(C) is more protective of privacy than Exemption 6 and thus establishes a lower bar for withholding material." *Id.* Where the agency relies on both exemptions for the same material, the court need not consider them separately. *Id.* (quoting *Roth v. Dep't of Justice*, 642 F.3d 675, 681 (D.C. Cir. 2017)).

"[W]hether disclosure of a private document under Exemption 7(C) is warranted must turn on the nature of the requested document and its relationship to the basic purpose of the Freedom of Information Act 'to open agency action to the light of public scrutiny . . . rather than on the particular purpose for which the document is being requested." *U.S. Dep't of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 772 (1989). A reviewing court "must balance the public interest in disclosure against the interest Congress intended the Exemption to protect." *Id.* at 776.

In this case, the FBI withheld the names and identifying information of third-party victims, including the email addresses in the "TO" line of the threatening email sent by Plaintiff to employees of Eaton Corporation, and others, with the subject line "{Michael Hagar} I AM GOING TO SHOOT ONE OF MY GUARDS SOON." (Doc. 23 at 22.) The FBI asserts that this was the only information withheld on the first page of the email, and the remainder of the email was released to Plaintiff.

The agency explains that "[t]he header information within an email is metadata that essentially provides a map of the path the email followed as it travelled (sic) through various mail servers, including times, sender, receiver, devices, and more. This metadata is automatically electronically generated when the emial is created and sent. An Internet Protocol (IP) address is a unique identifier of a specific device on a local network or the internet and is stored within the email header." (Doc. #23-1 at 11.) Further, [a]n email address can be traced to its sender by analyzing the metadata contained in the email header. This information is not typically displayed upon opening or printing of an email. Instead, several steps must be taken to view the metadata in an email header." *Id.* The FBI asserts that releasing these individuals' identities in the context of these investigative records would cause embarrassment, as well as unsolicited and unnecessary attention to be focused on these individuals. (Doc. #23 at 22.) The Defendant continues that these victims maintain strong privacy interests in the protection of such personal information because a release could force them to relive emotionally trying events, causing further invasion of their privacy, more than the harms they have already endured. *Id.* Given Plaintiff's charges for violations of 18 U.S.C. §§ 2261A(2)(B) and 2261(b)(6), Cyberstalking, and 18 U.S.C. § 875(c), Interstate Threatening Communication, the disclosure of IP addresses, User-Agent header data, and email addresses would compromise a substantial privacy interest in this case. Further, the disclosure of such information in this particular case would not contribute significantly to public understanding of the operations or activities of the government; thus, there exists only a *de minimis* public interest in disclosure which is significantly outweighed by the substantial privacy interests in nondisclosure in this case.

The Defendant states every effort was made to achieve maximum disclosure consistent with the access provisions of the FOIA and it did not withhold any reasonably segregable, non-exempt information. Additionally, the Defendant claims any further description of the information withheld, beyond what it provided in the declaration, could identify the actual exempt information.

"The exemptions to disclosure are explicitly limited by statute and should be construed narrowly." *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361, 96 S. Ct. 1592, 1599 (1976). The agency "may sustain its burden through the submission of detailed affidavits or declarations that identify the documents and explain why they fall within the claimed exemptions." *Payne v. Dep't of Just.*, 121 F.3d 704 (5th Cir. 1997). Courts "generally will grant an agency's motion for summary judgment only if the agency identifies the documents at issue and explains why they fall under exemptions." *Id.* The FBI complied with these requirements in this case and satisfied its burden for summary judgment. The agency produced lengthy documentation with specific explanations of what they withheld and why each exemption applied. Agency affidavits are generally accorded a presumption of legitimacy unless there is evidence that the agency handled the FOIA request in bad faith." *Batton*, 598 F.3d at 179. The information provided by the Defendant, contradicted only by Plaintiff's conclusory assertions, carried the Defendant's burden under FOIA. The agency reasonably excluded documents pursuant to exemptions under the Privacy Act Exemption (j)(2) and the FOIA Exemptions (6) and (7)(C). Accordingly, the Defendant's Motion for Summary Judgment should be granted.

Recommendation

The Defendant's Motion for Summary Judgment should be granted, and Plaintiff's complaint should be dismissed.

Objections

Within fourteen days after being served with a copy of the magistrate judge's report, any party may serve and file written objections to the findings of facts, conclusions of law and recommendations of the magistrate judge. 28 U.S.C. § 636 (b)(1)(C).

Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within fourteen days after service shall bar an aggrieved party from the entitlement of *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of factual findings and legal conclusions accepted by the district court except on grounds of plain error. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

SIGNED this the 7th day of March, 2024.

Christine L Stetson
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

MICHAEL A. HAGAR	§	
VS.	§	CIVIL ACTION NO. 1:22cv101
FEDERAL BUREAU OF INVESTIGATION	§	

MEMORANDUM OPINION AND ORDER

Plaintiff Michael A. Hagar, an inmate formerly at the Federal Correctional Complex located in Beaumont, Texas, proceeding *pro se*, brought the above-styled action. On March 7, 2024, the Magistrate Judge recommended granting the defendant's motion for summary judgment and dismissing the action. On March 25, 2024, after no objections had been filed by the parties, the court adopted the magistrate judge's report and recommendation.

Plaintiff has filed a motion for reconsideration [Dkt. 40], objections to the report [Dkt. 41], a motion for relief from final judgment [Dkt. 43], and a motion to take judicial notice [Dkt. 44]. This memorandum opinion and order considers such motions.

ANALYSIS

FED. R. CIV. P. 59 provides in pertinent part the following:

> **(a)(1)** ***Grounds for New Trial***. The court may, on motion, grant a new trial on all or some of the issues - and to any party - as follows:
>
> (A) after a jury trial, for any of reason for which a new trial has heretofore been granted in an action at law in federal court; or
>
> (B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

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> **(2)** ***Further Action After a Nonjury Trial.*** After a nonjury trial the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.
>
> **(b) Time to File a Motion for a New Trial.** A motion for a new trial must be filed no later than 28 days after the entry of judgment.
>
> **(e) Motion to Alter or Amend Judgment.** A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Rule 60(b), FED. R. CIV. P., provides in pertinent part:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud ..., misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

The court conducted a careful *de novo* review of all grounds raised by plaintiff in his motions, as well as his objections in relation to the pleadings and applicable law, and finds no meritorious ground for review.

Further, even affording the motions reconsideration under the more liberal Rule 60(b), the court is of the opinion that the motions fail to set forth a meritorious ground warranting relief. For the reasons set forth above and in the Report, the defendant's motion for summary judgment should be granted. Accordingly, plaintiff's claims should be denied and dismissed. Further, plaintiff's complaints of judicial misconduct are unfounded and lack merit. Therefore, plaintiff's motions for reconsideration should be denied.

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ORDER

For the reasons set forth above, plaintiff's pending motions are without merit. Accordingly, the motions should be denied. It is therefore,

ORDERED that plaintiff's motions [Dkt. 40, 41, 43 and 44] are DENIED.

SIGNED this 18th day of March, 2025.

Michael J. Truncale
Michael J. Truncale
United States District Judge

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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 16, 2025

#64124-060, Dorm 1
Mr. Michael A. Hagar
USP Pollock
P.O. Box 2099
Pollock, LA 71467-2099

No. 25-40188 Hagar v. FBI
USDC No. 1:22-CV-101

Dear Mr. Hagar,

We received your reply brief out of time. We will take no action on this document.

Sincerely,

LYLE W. CAYCE, Clerk

Roeshawn Johnson

By: _________________________
Roeshawn Johnson, Deputy Clerk
504-310-7998

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CERTIFICATE OF SERVICE

I, MICHAEL HAGAR, an inmate confined in an institution. Today September 29 2025, I am depositing the Appellant Michael Hagar's Reply Brief, in this case in the institutions internal mail system. First-class postage is being prepaid by me. This filing is addressed to the following:

Office of the Clerk
United States Court of Appeals
for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

In light of my pro se, prisoner litigant status, I respectfully request electronic service upon the attorney for the United States.

Michael A. Hagar

Michael A. Hagar
64124060
FCC Pollock
Satellite Camp
P.O. Box 2099 (Dorm 1)
Pollock, LA 71467-4050

I declare under penalty of perjury that to the best of my knowledge that the foregoing is true and correct (see 28 U.S.C. § 1746).

Signed: Michael A. Hagar Date: September 29, 2025

CERTIFICATE OF COMPLIANCE

I hereby certify the Appellant's Reply Brief contains 13 pages excluding the pages listed as exempt under Fed. R. App. P. 32(a)(7)(B)(iii). I further hereby certify this brief contains 352 lines, monospaced with 12 characters per inch, which is equal to 423 lines, monospaced with 10 characters per inch, (352 x 1.2). This brief was prepared on the available equipment at FCC Pollock Satellite Camp.

Michael A. Hagar

Michael A. Hagar

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF EASTERN DISTRICT OF TEXAS

MICHAEL A HAGAR, Plaintiff, v. FEDERAL BUREAU OF INVESTIGATION, Defendant.	Civil Action No. 1:22-CV-00101 (MJT-CLS)

DECLARATION OF JOSEPH E. BENDER, JR.

I, Joseph E. Bender, Jr., declare as follows:

1. I am currently serving as the Acting Section Chief (A/SC) of the Record/Information Dissemination Section (RIDS), Information Management Division (IMD), Federal Bureau of Investigation (FBI), Winchester, Virginia. I have served in this capacity since March 6, 2023. When not serving as the A/SC, I am an Assistant Section Chief (ASC) in RIDS and have served in that position since December 2020. I joined the FBI in October 2003 and, prior to my current position, I was an Acting ASC in RIDS from June 2020 to December 2020; Unit Chief, RIDS National Security Unit, from January 2017 to June 2020; and an Assistant General Counsel (2003-2006) and Unit Chief (2006-2017), FBI Office of the General Counsel (OGC), National Security and Cyber Law Branch. In those capacities, I provided legal support to operational units of the FBI's National Security Branch. Prior to joining the FBI, I served as a trial attorney in the U.S. Department of Justice, Tax Division, Southern Criminal Enforcement Section. In that role, I participated in federal criminal enforcement prosecutions. I am an attorney licensed in North Carolina and the District of Columbia.

2. In my official capacity as A/SC of RIDS, I supervise approximately 238 FBI employees, supported by approximately 103 contractors, who staff a total of nine (9) Federal Bureau of Investigation Headquarters (FBIHQ) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the Freedom of Information Act (FOIA) as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and the FOIA Improvement Act of 2016; the Privacy Act (PA) of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

3. Because of the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. Specifically, I am aware of the FBI's handling of Plaintiff's FOIPA request for records related to the criminal investigation of Plaintiff.

4. In response to Plaintiff's request, the FBI processed one responsive email record consisting of three pages subject to the FOIA. Of these three pages, two pages were released in full and one in part.

5. The FBI submits this declaration in support of Defendant's Motion for Summary Judgment. Part I of this declaration provides the Court with a summary of the administrative history of Plaintiff's request; Part II describes the procedures used to search for, review, and process the responsive email record; Part III, in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), explains the FBI's justification for withholding one block of information on page one of the email, containing the email addresses of third party victims within the header, Pursuant to Privacy Act Exemption (j)(2), 5 U.S.C. § 552a(j)(2) and FOIA Exemptions 6 and 7(C), 5 U.S.C. §§ 552 (b)(6), and (b)(7)(C)];

Targeted Search and Results

27. *Index Searching*. To locate CRS information, RIDS employs an index search methodology as described above. Index searches of the CRS are reasonably expected to locate responsive information within the vast CRS since the FBI indexes pertinent information into the CRS to facilitate retrieval to serve its primary law enforcement and intelligence gathering functions. Given the broad range of indexed information in terms of both time frame and subject matter that it can locate in FBI files, a search of the FBI automated indices available through Sentinel is the mechanism RIDS employs to conduct CRS index searches.

28. The FBI determined that the initial index search of Sentinel did not result in the location of the exact record responsive under the FOIA. Therefore, RIDS took the extraordinary step of conducting a targeted search outside the CRS. Specifically. RIDS conducted a targeted search of in response to the additional information provided by Plaintiff in both his appeal, and his complaint indicating the existence of a responsive June 2, 2016, email record. After not

immediately locating a copy of the June 2, 2016, email within the electronic case file, but finding a reference to additional emails stored on a jump drive, RIDS determined the Special Agent (SA) assigned to the investigation was reasonably likely to be able to provide the specific responsive record sought by Plaintiff. As a result of the targeted search conducted by the SA assigned to the case, the FBI located the specific June 2, 2016, email responsive to Plaintiff's request under the FOIA.

29. Plaintiff has provided no information for the FBI to reasonably conclude that records responsive under the FOIA would reside in any other location and there is no indication from the FBI's targeted search efforts that responsive material would reside in any other FBI location. Accordingly, there is no basis for the FBI to conclude that a search elsewhere could reasonably be likely to locate responsive material under the FOIA.

Email Headers and Metadata

30. Plaintiff's request also sought the "the email, with complete header information of the IP addresses." The header information within an email is metadata that essentially provides a map of the path the email followed as it travelled through various mail servers, including times, sender, receiver, devices, and more. This metadata is automatically electronically generated when the email is created and sent. An Internet Protocol (IP) address is a unique identifier of a specific device on a local network or the internet and is stored within the email header.

31. An email address can be traced to its sender by analyzing the metadata contained in the email header. This information is not typically displayed upon opening or printing of an email. Instead, several steps must be taken to view the metadata in an email header.

32. RIDS consulted the SA assigned to the case, and he advised that in this case he was able to determine the IP address information associated to the email by selecting the "File"

tab in Microsoft Outlook, and then, at the bottom, clicking "Properties." Next, within that properties page is a box titled "Internet Headers."

33. Header information is dynamic in electronic form, and not plainly visible on the body of the email when viewed or printed. For the FBI to respond to that portion of Plaintiff's request, the FBI would have to copy and paste the header information into a separate text file or Microsoft Word document, for viewing and processing purposes. However, such action would constitute creating a new record where one does not already exist.

34. To the extent that Plaintiff is requesting the FBI create a new document containing the "Internet Headers," the FOIA does not require agencies to create records. There is no way to print or export the header information into a distinct document, without creation of a new record. The "Internet Header" information exists as dynamic metadata to the Outlook file used to view Plaintiff's email and is not available in a document or format that could be processed, reviewed, or reproduced for production to Plaintiff.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

MICHAEL A. HAGAR,	:	CIVIL ACTION NO. 1:22-CV-101
v.	:	
	:	JUDGE MICHAEL J. TRUNCALE
FEDERAL BUREAU OF INVESTIGATION	:	
	:	PLAINTIFF'S NOTICE TO COURT AND DEFENDANT OF CHANGE OF ADDRESS

Notice is hereby given that Plaintiff Michael Hagar's address has changed On October 21, 2025, Mr. Hagar was released from FCC Pollock Satellite Camp to the Residential Reentry Center at the address below. Please direct any future correspondences to the new address.

Respectfully submitted,

Michael A. Hagar

Michael A. Hagar
Oriana House, Inc.,
CCTC - Cleveland
1829 E. 55th Street
Cleveland, Ohio 44103

CERTIFICATE OF SERVICE

As a pro se prisoner litigant, Mr. Hagar respectfully request electronic service upon the attorney for the United States.

Michael A. Hagar

Michael A. Hagar
Oriana House, Inc.,
CCTC - Cleveland
1829 E. 55th Street
Cleveland, Ohio 44103

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Michael A. Hagar
Oriana House, Inc.,
CCTC - Cleveland
1829 E. 55th Street
Cleveland, OH 44103

CLERK, U.S. DISTRICT COURT
RECEIVED
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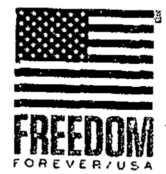
EASTERN DISTRICT OF TEXAS
BEAUMONT, TEXAS



Clerk
United States District Court
for the Eastern District of Texas
Jack Brook Federal Building and
United States Court House
300 Willow Street
Beaumont, TX 77701

77701$2296 C060

App. 39

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
F. EDWARD HEBERT BUILDING
600 S. MAESTRI PLACE
NEW ORLEANS, LOUISIANA 70130-3408

OFFICIAL BUSINESS

Mr. Michael A. Hagar
Oriana House, Incorporated
1829 E. 55th Street
Cleveland, OH 44103

App. 40

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

February 03, 2026

Mr. James Garland Gillingham
U.S. Attorney's Office
Eastern District of Texas
110 N. College Avenue
Tyler, TX 75702

No. 25-40188 Hagar v. FBI
USDC No. 1:22-CV-101

Dear Mr. Gillingham,

You must submit the **6 paper copies of your brief** required by 5th Cir. R. 31.1 within 5 days of the date of this notice pursuant to 5th Cir. ECF Filing Standard E.1.

The covers of your documents must be the following colors: Appellant's brief must be blue. Appellee's brief must be red. Appellant's Record excerpts must be white and contain physical tabs that extend beyond the edge of the document. Appellant's reply brief must be gray.

Please be sure that you print your paper copies **from this notice of docket activity** and not the proposed sufficient brief/record excerpts filed event so that it will contain the proper filing header. **Do not submit paper copies without a filing header.**

You may refer to Fed. R. App. P. 32 for guidance regarding paper copies of briefs and record excerpts.

Sincerely,

LYLE W. CAYCE, Clerk

Olivia Andry

By: ______________________
Olivia G. Andry, Deputy Clerk

cc:
Mr. Michael A. Hagar
Mrs. Andrea Lynn Hedrick Parker

App. 41

Michael Hagar
64124060
FCC Complex (Low)
P.O. Box 26020
Beaumont, TX 77720-6020

October 23, 2020
FOIA/PA Mail Referral Unit
Justice Managment Division
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Dear Sir or Madam,
I Michael Hagar request in accordance with the Freedom of Information Act, 5 U.S.C. § 552 the following document:
The email, with the complete header information of the IP addresses, provided to, Special Agent Michael G. Gerfin of the FBI, on June 7, 2016 by Eaton Corporation. This document is referred to in paragraph 13 of the affidavit for the Complaint, filed against Michael Hagar on June 14, 2016. A copy of this paragraph has been provided.
This document should be in possesion of the FBI field office in Cleveland, Ohio and/or the U.S. Attorney's Office for the Northern District of Ohio, in Cleveland, Ohio.
The document is the basis for Count Three of both the original indictment and the superseding indictment. The case number is 1:16CR 273: United States of America v Michael A. Hagar; In the United States District Court For The Northern District of Ohio, Eastern Division; Judge Donald Nugent.

Verification of Identity:
Michael Anthony Hagar
64124060
FCC Complex (Low)
P.O. Box 26020
Beaumont, TX 77720-6020
Born on December 1, 1970
Jackson County, Kansas City, Missouri

In accordance with 28 U.S.C. § 1746:
I declare under penalty of perjury that the foregoing is true and correct. Executed on October 23, 2020.

Signature

Thankyou

Michael A. Hagar

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approximately 14 individuals in the TO: line, which included approximately five individuals with email addresses ending in "@eaton.com."

13. On June 7, 2016, SA Gerfin received the full email communication from Eaton, to include the complete header information. This header information revealed that the email was sent from a hotmail.com server with IP address 65.55.90.200, located in San Antonio, Texas, and subsequently received by a server with domain etn.com, registered to Eaton, with IP address 151.110.126.183, located in Beachwood, Ohio. The originating email account was identified as ronin62474@hotmail.com.

14. On June 6, 2016, SA Gerfin conducted database checks for HAGAR near Portland, Oregon, and received results for a Michael Anthony Hagar, date of birth [redacted] residence [redacted] Salem, Oregon 97301-0143. These records included a mailing address of P.O. Box [redacted] alem, Oregon 97303-0172, which matched the address referenced in the April 26, 2016, email, discussed above.

15. On June 2, 2016, in addition to the email stating that he was going to shoot one of his guards, referenced above, HAGAR also used email account ronin62474@hotmail.com to send other threatening emails to the same recipients, including numerous Eaton employees. These emails included but were not limited to the following:

	SUBJECT LINE OF EMAIL	TEXT IN EMAIL MESSAGE
A.	"I ONLY HAVE TO SOOT YOUR KNEE CAP"	"AND YOU WILL NEVER WALK AGAIN?????????????" followed by "ASS HOLES" repeated several times
B.	"I AM GOING TO MAKE YOU FAMILY PAY FOR WHAT YOU HAVE DONE TO ME"	"ASS HOLES" repeated several times
C.	"YOU ARE GOING TO PAY	"ASS HOLES" repeated several times

App 43

U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 5.400, 3CON Building
175N Street, NE
Washington, DC 20530

(202) 252-6020

August 28, 2023

VIA EMAIL

Michael Hagar
#64124-060
FCC, P.O. Box 26020
Beaumont, TX 77720

Re: Request Number EOUSA-2021-002029
Date of Receipt: May 05, 2021
Subject of Request: Criminal complaint in case 1:16-cr-273

Dear Michael Hagar:

Your request for records under the Freedom of Information Act/Privacy Act has been processed. This letter constitutes a reply from the Executive Office for United States Attorneys, the official record-keeper for all records located in this office and the various United States Attorneys' Office. To provide you with the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes.

All of the records you seek are being made available to you. We have processed your request under the Freedom of Information Act and are making all records required to be released, or considered appropriate for release as a matter of discretion, available to you. This letter is a full release, totaling 1 pages.

This is the final action on this above-numbered request. If you are not satisfied with my response to your request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530 or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: https://www.justice.gov/oip/submit-and-track-request-or-appeal. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

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You may contact our FOIA Public Liaison at the telephone number listed above for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Kevin Krebs
Assistant Director

Enclosure(s)

U.S. Department of Justice
EOUSA/FOIA/PA
175 N St, NE
Rm. 5400, 3 CON Bldg.
Washington, D.C. 20530

Official Business
Penalty for Private Use $300

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neopost
11/09/2023
US POSTAGE $000.87
FIRST-CLASS MAIL
US OFFICIAL MAIL
$300 Penalty
For Private Use
ZIP 20530
041M12120109

UA

Michael Hagar
#64124-060
FCI, P.O. Box 26020
Beaumont, TX 77720

77720$6020 B099

EOUSA/DOJ/FOIA
175 N ST., NE
RM. 5400, 3 CON BLDG.
WASHINGTON, DC 20530

Penalty for Private Use $300

Michael Hagar

neopost
08/29/2023
US POSTAGE $000.63
FIRST-CLASS MAIL
US OFFICIAL MAIL
$300 Penalty
For Private Use
ZIP 20530
041M12120109

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resent

X-RAYED #5

OCT 27 2023

DOJ MAIL ROOM

WHITE ENVELOPES / WHITE PAPER ONLY
CONTAINS UNAUTHORIZED MATERIALS:
GLITTER, STICKERS, OILY SUBSTANCE, CRAYON,
LIPSTICK, OR MARKERS
NO LETTERS OR CARDS SPRAYED WITH FRAGRANCE
✓ NO LABELS AUTHORIZED
NO HOMEMADE GREETING CARD

RECEIVED
NOV 1 2023

NIXIE 773 DE 1 0010/14/23
RETURN TO SENDER
NO MAIL RECEPTACLE
UNABLE TO FORWARD
NMR BC: 20530 *2031-08266-29-41

21002029

77720$6020 B

App. 46

From: Michael Hagar <ronin62474@hotmail.com>
Sent: Thursday, June 02, 2016 6:13 PM
To: Mariel.Mota@mcda.us; Jeffrey.Lowe@mcda.us; Christopher.Wyrostek@mcda.us; Mary.Ryan@mcda.us; Diana.l.Fleming@doj.state.or.us; Elliott, Marc C; Gentle, Rebecca E; Burke, Cynthia S; Messih, Amir M; Raulino, Joseph; Ted Burwell; Erious.Johnson@doj.state.or.us; Michael.C.Kron@doj.state.or.us; Fred.Boss@doj.state.or.us
Subject: [Michael Hagar] I AM GOING TO SHOOT ONE OF MY GUARDS SOON

AND THEN I WILL MAKES CERTAIN ALL OF YOU ARE SHOT ALSO.

ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES
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U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Michael Hagar
Register No. 64124-060
FCI Beaumont
Post Office Box 26020
Beaumont, TX 77720-6020

Re: Appeal No: A-2024-00464
Request No. EOUSA-2021-002029

VIA: U.S. Mail - 4/9/2024

Dear Michael Hagar:

You attempted to appeal from the action of the Executive Office for United States Attorneys (EOUSA) on your remanded Freedom of Information Act (FOIA) request for access to records concerning an email with IP addresses provided to FBI special agent in criminal case 1:16-cr-273.

Pursuant to the FOIA, 5 U.S.C. § 552, and 28 C.F.R. § 16.8(a) (2023), an appeal must be postmarked or transmitted electronically within ninety calendar days after the date of the response. By letter dated November 23, 2021, EOUSA responded to your request and advised you of your appeal rights. Your letter attempting to appeal was postmarked on November 21, 2023, one year and nine months after the regulatory deadline. Therefore, I am closing your appeal file due to your failure to appeal timely.

If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office and speak with the undersigned agency official by calling 202-514-3642.

Sincerely,

X Rianna Barrett

Rianna Barrett
Associate Chief, for Christina Troiani, Chief,
Administrative Appeals Staff

App. 48

From: Keen, Ryan
Sent: Thursday, June 02, 2016 3:19 PM
To: Nelson Jennifer A.; Elliott, Marc C
Cc: Coberly, Matt
Subject: Fwd: [Michael Hagar] I AM GOING TO SHOOT ONE OF MY GUARDS SOON

This one is pretty threatening. Marc please forward to your contacts at clackamas and for becky to send to portland. Burwell was on this one so he will see it. Jennifer use as you see fit for tomorrows hearing.

Begin forwarded message:

> **From:** Michael Hagar <ronin62474@hotmail.com>
> **Date:** June 2, 2016 at 6:12:59 PM EDT
> **To:** "Mariel.Mota@mcda.us" <Mariel.Mota@mcda.us>, "Jeffrey.Lowe@mcda.us" <Jeffrey.Lowe@mcda.us>, "Christopher.Wyrostek@mcda.us" <Christopher.Wyrostek@mcda.us>, "Mary.Ryan@mcda.us" <Mary.Ryan@mcda.us>, "Diana.l.Fleming@doj.state.or.us" <Diana.l.Fleming@doj.state.or.us>, "marccelliott@eaton.com" <marccelliott@eaton.com>, "RebeccaEGentle@eaton.com" <RebeccaEGentle@eaton.com>, "cynthiasburke@eaton.com" <cynthiasburke@eaton.com>, "AmirMMessih@eaton.com" <amirmmessih@eaton.com>, "josephraulino@eaton.com" <josephraulino@eaton.com>, Ted Burwell <tburwell@co.marion.or.us>, "Erious.Johnson@doj.state.or.us" <Erious.Johnson@doj.state.or.us>, "Michael.C.Kron@doj.state.or.us" <Michael.C.Kron@doj.state.or.us>, "Fred.Boss@doj.state.or.us"

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<Fred.Boss@doj.state.or.us>
Subject: [Michael Hagar] I AM GOING TO SHOOT ONE OF MY GUARDS SOON

AND THEN I WILL MAKES CERTAIN ALL OF YOU ARE SHOT ALSO.

ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES ASS HOLES

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