

EMPOWER OVERSIGHT

Whistleblowers & Research



April 25, 2024

VIA DOJ OFFICE OF INFORMATION POLICY FOIA STAR PORTAL

Director Bobak Talebian
Office of Information Policy
U.S. Department of Justice
441 G Street, NW, Sixth Floor
Washington, DC 20530

RE: FOIA APPEAL OF FBI REQUEST NUMBER 1557326-001

Dear Director Talebian:

INTRODUCTION

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization, which is dedicated to enhancing independent oversight of government and corporate wrongdoing. It works to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

BACKGROUND

During April 2008 while he was off-duty, Santa Monica, California Police Sergeant Gary Steiner overheard an individual who claimed to have guns that had been owned by the bodyguard of James “Whitey” Bulger. Bulger was an organized crime figure from Boston, Massachusetts, who had a corrupt relationship with Federal Bureau of Investigation (“FBI”) officials and was then a fugitive. Sergeant Steiner reported the matter to the Los Angeles County Sheriff’s Department. He also reported it to the FBI Los Angeles field office duty agent around April 26, 2008. *See* Requester Item 2.

After Mr. Bulger was apprehended in Santa Monica during June 2011, Sergeant Steiner, who was then retired, reached out to the federal prosecutors on Mr. Bulger’s case. FBI agents interviewed Sergeant Steiner on July 7, 2011, and he provided the same information he had previously disclosed. An FBI agent notified him that a database check showed no record of the individuals named by Sergeant Steiner as having been associated with Mr. Bulger’s flight from justice.

On August 18, 2022, Empower Oversight submitted a Freedom of Information Act (“FOIA”) request for records related to Sergeant Steiner’s reports to the FBI. After difficulties receiving the FBI’s communications sent via U.S. Mail, Empower Oversight received a response from the FBI dated February 1, 2024, advising that Empower Oversight’s “request was reopened based on the additional information [it] provided. A new search was conducted, and we were unable to identify responsive records subject to the FOIPA that are responsive to your request.” See Requester Item 3.

On appeal, Empower Oversight challenges the adequacy of the FBI’s search for records.

ANALYSIS

With respect to an adequacy-of-search claim, “the agency must demonstrate that it has conducted a ‘search reasonably calculated to uncover all relevant documents.’” *Weisberg v. U.S. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). “[T]he agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” *Campbell v. U.S. Dep’t of Justice*, 164 F.3d 20, 27 (D.C. Cir. 1999). “When a request does not specify the location in which an agency should search, the agency has discretion to confine its inquiry to a central filing system if additional searches are unlikely to produce any marginal return....” *Id.* at 28.

Here, the FBI has not described the search it conducted. Presumably, it confined its inquiry to its Central Records System.

However, Empower Oversight’s request specifically identified a call made to the FBI Los Angeles field office duty agent during April 2008. The FBI’s Sentinel system was not in use Bureau-wide until 2012. Before Sentinel’s implementation, electronic searches of the FBI’s Central Records System would likely only identify documents where an individual’s name was indexed (specifically added to an electronic index of names). An FD-71 complaint form that was sent to a zero file (a file where no further action was being taken) would not likely have been indexed. Thus, considering Sergeant Steiner’s call to the Los Angeles duty agent took place four years before the implementation of Sentinel, a reasonable search for the requested records would include a manual search of Los Angeles field office zero files with the same investigative classification as the Bulger case for a complaint form written between April 26, 2008 and June 1, 2008.

Empower Oversight respectfully requests that the Department of Justice Office of Information Policy compel the FBI to conduct this limited manual search for the requested records.

Cordially,

/Tristan Leavitt/
Tristan Leavitt
Empower Oversight
Founder and Chairman