

EMPOWER OVERSIGHT

Whistleblowers & Research



August 29, 2024

VIA ELECTRONIC PORTAL

Section Chief Michael Seidel
Record/Information Dissemination Section
Information Management Division
Federal Bureau of Investigation
200 Constitution Drive
Winchester, VA 22602

**RE: FOIA REQUEST FOR RECORDS REGARDING THE FBI'S RETALIATION
AGAINST AN FBI WHISTLEBLOWER**

Dear FOIA Officer:

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. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

BACKGROUND

Federal Bureau of Investigation (“FBI”) Special Agent (“SA”) O’Boyle has a distinguished record of service to our country. He served our nation as an infantryman in the United States Army from 2006 to 2012 and deployed to both Iraq and Afghanistan. After exiting the military, he served as a police officer for the Waukesha Police Department for four years. As an American law enforcement officer, O’Boyle dreamed of one day becoming an FBI agent. He realized that dream when the FBI hired him in July 2018 and assigned him to the Kansas City Division’s Wichita Resident Agency and Joint Terrorism Task Force (“JTTF”). By 2020, SA O’Boyle had already established himself as a decorated agent and was chosen for the Kansas City Division’s SWAT team after a rigorous selection process. By the time the FBI retaliated against him, SA O’Boyle was also a Relief Supervisor, Training Agent, Assistant Weapons of Mass Destruction Coordinator, Defensive Tactics Instructor, and had been chosen for another selective new unit the FBI was establishing in Quantico, Virginia.

In spring 2020, Special Agent in Charge (“SAC”) Timothy Langan interviewed SA O’Boyle regarding the potential re-hiring of a particular agent. SAC Langan informed SA O’Boyle that the interview was confidential, and that it would be between him, SA O’Boyle, and FBI human resources. SA O’Boyle disclosed to SAC Langan several reasons the applicant agent should never have been hired in the first place, such as his work ethic, his overall attitude, and the mishandling of financial analysis on a case on which O’Boyle worked. SA O’Boyle believes SAC Langan memorialized these disclosures in an electronic communication saved to the applicant agent’s personnel file.

Starting in 2021, consistent with his oath to uphold and protect the U.S. Constitution, SA O’Boyle started making protected disclosures within the FBI and to Congress. These disclosures concerned what he reasonably perceived to be numerous violations of law, policies, and regulations, as well as gross mismanagement and abuse of authority by FBI personnel.

In June 2022, the FBI selected SA O’Boyle for its new National Surveillance Team, part of its Critical Incident Response Group (“CIRG”) in Virginia. Accordingly, he and his family made preparations to permanently move from Kansas to Virginia. Meanwhile, the FBI’s Security Division (“SecD”) apparently opened an investigation into SA O’Boyle on August 1, 2022. Consistent with this, the FBI ran a credit report on SA O’Boyle on August 2, 2022.

On approximately August 8, 2022, Supervisory Special Agent (“SSA”) Sean Fitzgerald angrily confronted SA O’Boyle about the spring 2020 interview that SA O’Boyle had with SAC Langan regarding the rehiring of an agent. O’Boyle knew Fitzgerald was friends with the applicant for rehire. SSA Fitzgerald proceeded to show SA O’Boyle an email chain which to O’Boyle’s astonishment contained nearly verbatim statements from his allegedly confidential interview approximately 18 months prior. Despite speaking with each other on a nearly daily basis beforehand, after this conversation, SSA Fitzgerald would barely speak to SA O’Boyle until his transfer.

It appeared to SA O’Boyle that SSA Fitzgerald had accessed the applicant agent’s personnel file—a violation of FBI policy—and found the 2020 electronic communication that contained the summary of SAC Langan’s interview with SA O’Boyle. Thus, on August 15, 2022, SA O’Boyle disclosed to SSA Charles Wilkes of FBI Inspection Division that he believed SSA Fitzgerald had violated FBI policy by inappropriately accessing personnel records and attempting to intervene in a personnel matter to help a friend.

In mid-August 2022, the O’Boyle family put all their belongings into storage to prepare to be moved. They also sold their Kansas home and moved into a temporary residence until their relocation. On August 23, 2022, SA O’Boyle attended the FBI’s Surveillance Certification Course in Manassas, Virginia in preparation for his transfer.

Until shortly before traveling to Virginia, SA O’Boyle had been working for approximately a year and a half as the case agent on four domestic terrorism cases. He had sworn to two search warrant affidavits for those cases and had already coordinated with the numerous entities and individuals involved including the relevant U.S. Attorney’s office and multiple FBI SWAT teams.

Prior to traveling to Virginia, SA O’Boyle informed SSA Fitzgerald that he was looking forward to bringing these four cases to a conclusion by executing the search warrants before his transfer. He also explained that he was looking forward to operating in a SWAT capacity one last time. But shortly before SA O’Boyle left for Virginia, SSA Fitzgerald—the subject of his August 15, 2022, protected disclosure to the FBI Inspections Division described above—ordered him to remove himself from these four cases. Then, unbeknownst to SA O’Boyle while he was in Virginia, SSA Fitzgerald changed the execution date for the search warrant to a date on which SA

O'Boyle would not be present. SA O'Boyle asked SSA Fitzgerald why he changed the date without conferring with him, as he was the investigator with by far the most knowledge about the investigations. Fitzgerald stated that one SA was out for military duties and another was taking leave on September 2, which was irrelevant to SA O'Boyle's importance to these cases.

On September 8, 2022, SA O'Boyle and his wife welcomed a new baby into their family. Both the Kansas City Field Office and the new National Surveillance Team were aware of this fact.

On September 23, 2022, SA O'Boyle spoke with SSA Mark Grado, who was to become O'Boyle's new supervisor on the National Surveillance Team. SA O'Boyle told Grado that he expected to be in Manassas by September 25 so that he would be ready to report on September 26, 2022.

On September 26, when O'Boyle attempted to report to his new FBI duty station in Stafford, Virginia, he was ushered to a side office where he was met by two agents and subjected to a surprise interview. These agents claimed they were "traveling around the country interviewing anyone who had accessed the Project Veritas case." (The FBI was investigating Project Veritas over the alleged theft of a diary belonging to President Biden's daughter.) They proceeded to ask questions regarding that case and about an alleged FBI employee who went to Project Veritas with information contradicting what the FBI and DOJ had claimed in court documents about Project Veritas. It seemed clear to SA O'Boyle that the FBI mistakenly believed him to be the source for Project Veritas. He explained to them that that he had made protected whistleblower disclosures outside the FBI, but that he had only done so to Congress, and that he had not provided anything to the media or any other organization. Regardless, then and there, SA O'Boyle was suspended.

At the conclusion of the interview, he was given a letter from FBI Security Division ("SecD"), which handles the security clearances of employees. The letter was dated September 23, 2022, *three days before the interview*, and indicated that his security clearance was being suspended. According to the letter, his clearance was suspended due to allegations that he "may have misused FBI information technology systems and records." At the same time, SA O'Boyle was handed a letter from the FBI's Human Resources Division notifying him of a "proposal" to indefinitely suspend him. It stated, in part, "an internal investigation was initiated concerning an allegation that Special Agent Garret J. O'Boyle allegedly made an unauthorized disclosure to the media."

The adverse personnel action against SA O'Boyle caused their home loan lender to cancel the loan for their Virginia home which was under contract, leaving him and his family—including his newborn child—homeless. They spent more than \$30,000 on moving preparations with the understanding that they would be reimbursed for their expenses by the FBI. The FBI has refused to reimburse them, likely in violation of their continuing services agreement.¹

The FBI violated its own policy by allowing an employee to transfer while under an administrative inquiry. The FBI's Employee Transfer Policy Guide explicitly provides that employees are only eligible for transfers if they "[h]ave no open administrative inquiries."² SA O'Boyle later learned that SAC Charles Dayoub, who had replaced SAC Langan in 2021, knew that O'Boyle was going to be suspended. It was reported to O'Boyle by another agent that despite this knowledge, SAC Dayoub had been ordered by SecD—contrary to FBI policy—to allow the

¹ This agreement was processed digitally, and SA O'Boyle does not have a copy.

² Federal Bureau of Investigation, Employee Transfer Policy Guide, 4.1 (2021).

transfer to proceed regardless of the investigation. SAC Dayoub later resigned in 2023, shortly after being interviewed by the House Judiciary Committee.

The FBI could have ordered SA O'Boyle to report to the Milwaukee Field Office, a mere 15-minute drive from where SA O'Boyle was staying on leave, to suspend him. Instead, it allowed SA O'Boyle to travel at his own personal expense from Milwaukee to Manassas, Virginia, approximately 800 miles one-way. Furthermore, not only did the suspension leave SA O'Boyle and his wife and young children without accommodations (and a few months later without income), for a period of six weeks in October and November SA O'Boyle also lost access to the storage unit containing nearly all of his family's belongings.

After an internal FBI review, on November 3, 2022, the FBI issued its decision suspending O'Boyle from duty indefinitely and without pay. The indefinite suspension was based on the same factors described in the proposal to suspend him indefinitely from duty—that as an FBI employee, it was impossible for SA O'Boyle to continue his employment at the FBI without an active security clearance. O'Boyle received a decision letter from the FBI on November 4, 2022, effective as of that date. His indefinite suspension without pay began January 1, 2023. Since that time, SA O'Boyle has been without FBI duties or pay despite the FBI claiming that he remains an FBI employee.

SA O'Boyle participated in a transcribed interview with the House Committee on the Judiciary on February 10, 2023. He was subsequently a witness at a public Judiciary Committee hearing on May 18, 2023.³

For 22 months after the FBI suspended SA O'Boyle, it failed to adjudicate his clearance, leaving him in an unpaid limbo during which he had no access to the basis for his clearance suspension. The FBI finally revoked SA O'Boyle's clearance on July 16, 2024—which was not long after other whistleblowers from SecD came forward to expose SecD's abuse of the clearance process, and shortly before both Director Christopher Wray and Inspector General Michael Horowitz were set to testify on Capitol Hill.⁴

RECORDS REQUEST

The public has a strong interest in learning about any misconduct committed by the FBI in this matter and by whom such misconduct was committed. Thus, Empower Oversight requests pursuant to the FOIA, 5 U.S.C. § 552:

1. All records of communications by or with Wichita Resident Agency SSA Sean Fitzgerald which reference SA O'Boyle in the period of September 1, 2021 to the present (except for communications to which SA O'Boyle was a party); and
2. All records of communications by or with Kansas City Field Office SAC Charles Dayoub which reference SA O'Boyle in the period of September 1, 2021 to June 30, 2023 (except for communications to which SA O'Boyle was a party); and
3. All records of communications by or with SSA Charles Wilkes of FBI Inspection Division which reference SA O'Boyle in the period of August 14, 2022 to the present (including communications to which SA O'Boyle was a party).

³ *Hearing on the Weaponization of the Federal Government: Hearing Before the Select Subcommittee on the Weaponization of the Fed Government*, 118 Cong. (2023).

⁴ SA O'Boyle received the revocation notice by FedEx the morning of July 18, 2024.

SA O'Boyle has executed a Form DOJ-361 authorizing the release of information to Empower Oversight, which is attached as Exhibit A.

DEFINITIONS

“COMMUNICATION(S)” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, Slack messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

“DOCUMENT(S)” or “RECORD(S)” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms “DOCUMENT(S)” or “RECORD(S)” include, but are not limited to, studies; papers; books; accounts; letters; diagrams; pictures; drawings; photographs; correspondence; telegrams; cables; text messages; emails; memoranda; notes; notations; work papers; intra-office and inter-office communications; communications to, between, and among employees; contracts; financial agreements; grants; proposals; transcripts; minutes; orders; reports; recordings; or other documentation of telephone or other conversations; interviews; affidavits; slides; statement summaries; opinions; indices; analyses; publications; questionnaires; answers to questionnaires; statistical records; ledgers; journals; lists; logs; tabulations; charts; graphs; maps; surveys; sound recordings; data sheets; computer printouts; tapes; discs; microfilm; and all other records kept, regardless of the title, author, or origin.

“PERSON” means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

“REFERS,” “REFERRING TO,” “REGARDS,” “REGARDING,” “RELATES,” “RELATING TO,” “CONCERNS,” “BEARS UPON,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

“INCLUDING” means comprising part of, but not being limited to, the whole.

INSTRUCTIONS

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact Mike Zummer by email at [REDACTED].

FEE WAIVER REQUEST

Empower Oversight agrees to pay up to \$25.00 in applicable fees but notes that it qualifies as a “representative of the news media” and requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which helps 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.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public’s understanding of the Department’s handling of allegations that it or its employees were negligent or engaged in wrongdoing.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that Empower Oversight receives that tends to explain the subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. Thank you for your time and consideration. Please do not hesitate to contact me with any questions.

Cordially,

[/Tristan Leavitt/](#)
Tristan Leavitt
President