

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Willie Boyd,

Plaintiff,

v.

United States Marshal Service, et al.,

Defendants.

Civil Action No. 99-2712 (JR)

FILED

NOV - 6 2002

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

MEMORANDUM AND ORDER APPOINTING COUNSEL

All that remains at issue in this Freedom of Information Act case is whether defendant Bureau of Alcohol, Tobacco & Firearms ("BATF") has conducted an adequate search for, and produced all segregable non-exempt information contained in, records regarding plaintiff. This is BATF's third attempt to establish its compliance with the Freedom of Information Act. After its second attempt was denied, the Court advised BATF that if it was "unable to properly justify [its] responses to plaintiff's FOIA requests, the Court will consider *in camera* inspection or appointment of counsel for plaintiff." See Memorandum and Order Denying Summary Judgment for Defendants BATF and USMS, filed March 15, 2002 ("Order of March 15, 2002"). For the following reasons, defendant's renewed motion for summary judgment will be denied in part and counsel appointed for plaintiff.

I. BACKGROUND

Plaintiff, Willie Boyd, was convicted of drug and gun offenses in 1998 in the United States District Court for the Eastern District of Missouri. See United States v. Boyd, 180 F.3d 967 (8th Cir. 1999). In 1998, Mr. Boyd submitted FOIA requests for records maintained by

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several federal agencies, including the BATF, seeking to obtain records that would support a motion to vacate his sentence. After exhausting his administrative remedies, Mr. Boyd filed this FOIA action in October 1999 against the United States Marshals Service, the Executive Office for United States Attorneys, the Federal Bureau of Prisons and BATF. The other federal defendants have each complied with the requirements of the Freedom of Information Act and have had judgment entered in their favor.

The BATF initially denied Mr. Boyd's request in its entirety on the ground that it was exempt under 5 U.S.C. § 552(b)(7)(A) because disclosure of any such records could reasonably be expected to interfere with pending law enforcement proceedings. Shortly after filing the complaint in this action, the BATF notified Mr. Boyd that it would no longer rely on FOIA Exemption 7(A) for withholding responsive records and produced 80 pages, some or all of them redacted, and withheld 15 pages in their entirety, all of which were located in Mr. Boyd's criminal investigation file in BATF's Kansas City Field Division. The BATF's initial motion to dismiss was denied because it had not justified either its initial response that relied on FOIA Exemption 7(A), or its subsequent withholdings. See Memorandum and Order of September 25, 2000.

The BATF then filed a motion for summary judgment that relied on various declarations that did not adequately support a determination as to whether all reasonably segregable information had been disclosed. See Order for Defendants to Supplement Motion of August 9, 2001. Rather than simply deny the motion, BATF was ordered to either renew its motion based upon a single Vaughn index or supplement its motion with a copy of all records produced to plaintiff. Id. BATF's supplemented motion for summary judgment was

granted with respect to its withholdings under FOIA Exemptions 2, 3, 6, 7(C) and 7(D), but was denied with respect to its single withholding under FOIA Exemption 5 and the adequacy of its search for records regarding Mr. Boyd. See Order of March 15, 2002. In particular, the BATF had not located a Report of Interview of Albert Lee Greer made on June 6, 1997 by BATF Special Agent James Green. Id. BATF was ordered to file a renewed motion for summary judgment that contains "evidence establishing the adequacy of its search for records responsive to plaintiff's requests, the production of any information withheld exclusively under FOIA Exemption 5, and the production of all segregable portions of records currently being withheld in their entirety." Id.

Because the Court found that "BATF has justified its withholding of one page in its entirety," this portion of the order was directed only at defendant USMS. The BATF has withdrawn its use of FOIA Exemption 5 to withhold six lines of text regarding the grand jury testimony of a confidential source from a single document because this justification was redundant of withholdings under FOIA Exemptions 3, 7(C) and 7(D). See Fourth Declaration of Dorothy A. Chambers ("Chambers 4th Decl."), ¶ 15. Consequently, the agency has justified all of its withholdings from documents initially produced to plaintiff and the only issue remaining was the adequacy of BATF's search for responsive records.

In compliance with the Court's Order of March 15, 2002, the BATF conducted a new search of its Kansas City Field Division to verify that every location had been searched that could reasonably be expected to contain records regarding Mr. Boyd and, in particular, to locate the 1997 Report of Interview of Albert Lee Greer. During this inquiry, a "work file" containing 1188 documents regarding Mr. Boyd was located in the Kansas City Field Division.

See Chambers 4th Decl., ¶ 7. Nearly half of these documents have not been processed "because they are duplicates of documents previously released to the Plaintiff." Id., ¶ 12. BATF produced 384 documents to Mr. Boyd with portions withheld pursuant to FOIA Exemptions 2, 3, 4, 5, 7(C), 7(D) and 7(F), and referred another 212 documents to other federal agencies. Id., ¶ 13.

II. DISCUSSION

The BATF searched its Treasury Enforcement Communications System ("TECS") database using only plaintiff's last name as a search term. See Chambers 4th Decl., ¶ 4. TECS is a comprehensive database of criminal investigations used by the BATF to conduct criminal history checks. Id. This search confirmed that the only responsive records were located in BATF's Kansas City Field Division. Id. The BATF also searched its Seized Property Section and Firearms Trafficking Branch, but did not locate any responsive records. Id., ¶ 5. No other division of the BATF would likely contain records regarding Mr. Boyd. Id.

Defendant has demonstrated that its Kansas City Field Division is the only location that has records responsive to plaintiff's request by searching its automated database of investigations. Defendant makes no attempt whatsoever to explain the methodology or scope of its search of the Kansas City Field Division. Defendant's declarant does not even have personal knowledge of the search in the Kansas City Field Division, but states only that she requested that the office "again search every location where responsive records could reasonably be expected to be located." Chambers 4th Decl., ¶ 6.

Defendant's conclusory assurances that the Kansas City Field Division searched every location likely to contain responsive records using methods reasonably expected to uncover all relevant documents, Id., ¶ 6, 14, is precisely the type of "conclusory and unilluminating" evidence that has been rejected by the Court of Appeals. Steinberg v. United States Dep't of Justice, 23 F.3d 548, 552 (D.C. Cir. 1994) (description of search inadequate where it fails "to describe in any detail what records were searched, by whom, and through what process"). The Court will not permit defendant yet another bite at this apple, but will appoint counsel for plaintiff to conduct discovery on the adequacy of the BATF's search for responsive records. After resolution of this matter, the Court will consider whether to assess attorney fees against the agency reasonably incurred to establish the adequacy of its search for responsive records. 5 U.S.C. § 552(a)(4)(E); Oil, Chemical and Atomic Workers Int'l Union v. Department of Energy, 288 F.3d 452, 457 (D.C. Cir. 2002).

The Court will not consider at this time defendant's justification for its refusal to process 592 documents, its partial and complete withholdings from 343 documents, or its referral of 212 documents to other agencies. Appointed counsel may be of assistance in negotiating the production of all segregable portions of non-exempt information or, at the very least, in narrowing the issues to a finite set of records that can be set forth in a single document instead of referring to various declarations. Moreover, the inadequacy of defendant's search and the history of this case provides no assurance that additional records may exist for which some or all of these exemptions may apply.

Accordingly, it is hereby

ORDERED that plaintiff's motion for enlargement of time [#115] is DENIED as moot;
it is

FURTHER ORDERED that defendant Bureau of Alcohol, Tobacco and Firearms'
Renewed Motion for Summary Judgment [#109] is DENIED; and it is

FURTHER ORDERED that the Clerk appoint counsel for plaintiff from the Court's
Civil Pro Bono Panel, pursuant to Local Civil Rule 83.11.

SO ORDERED.



James Robertson
United States District Judge

DATE: *November 4, 2012*

U.S. Department of Justice



Roscoe C. Howard, Jr.
United States Attorney

District of Columbia

Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530

May 19, 2003

VIA HAND DELIVERY

Luba Shur, Esq.
Williams & Connolly, LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005

Re: Boyd v. U.S. Marshals Serv. et al. Civil Action No. 99-2712 (JR)

Dear Ms. Shur:

This letter responds to your April 9, 2003 letter concerning the discovery responses provided by defendant in the above-captioned case. Where appropriate, we are enclosing supplemental responses on behalf of the Bureau of Alcohol, Tobacco, and Firearms. With respect to other matters, our responses are contained in this letter.

As an initial matter, although the Bureau of Alcohol, Tobacco, and Firearms ("ATF") recognizes that the discovery phase of a case under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") requires it to provide information beyond that required to respond to a request under the FOIA, the scope of discovery in this case is limited to the agency's search for records in response to Mr. Boyd's FOIA request. See November 6, 2002 Order, at 5. Consequently, it is beyond the proper scope of discovery for ATF, for example, to provide a list of all current or past Special Agents assigned to the Kansas City Field Division because their actions are not at issue and their identities are irrelevant to the claims and defenses presented as well as the location of any discoverable documents. Moreover, based on ATF's law enforcement mission, public identification of such individuals can reasonably be expected to cause operational harm or endanger individual lives. Accordingly, ATF has properly identified those employees involved in document storage and retrieval and in responding to Mr. Boyd's FOIA request in its discovery responses. In addition, ATF has identified the current Special Agent in Charge and higher-level personnel in the Kansas City Field Division. Similarly, ATF has omitted information concerning its databases or information that clearly do not relate to the Bureau's enforcement responsibilities.

Luba Shur, Esq.
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under the Federal firearms law, e.g. alcohol and tobacco, management, and equal employment opportunity, because Mr. Boyd's conviction involved exclusively firearms and he has never been employed by ATF.

Application of the proper scope of discovery, for example, renders Plaintiff's Interrogatory No. 4's request for identification of "all persons... with knowledge and/or information relating to document storage" overly broad as drafted; however, contrary to the assertion in your letter, ATF has identified all managerial employees with such knowledge. The same is true with respect to Interrogatory No. 5. As previously noted in ATF's response to Interrogatory No. 4, the current management team of the KCFD consists of the Division Director/Special Agent in Charge, Mark James, who supervises all enforcement activities in the KCFD; two Assistant Special Agents in Charge, Paul Vido and Jeff Fulton, who assist Mr. James; the Director, Industry Operations, Bob Mosley, who supervises all regulatory activity regarding firearms and explosives licensees in the KCFD; and the Division Operations Officer, Cindy Cromer, who, among other things, reviews criminal reports for quality and compliance with laws and policies and is also responsible for the Division's filing system. The nature of their knowledge of ATF's document storage policies comes from the fact that each of these managers has been an ATF employee for more than a decade, has worked his or her way from entry-level employees to managers, and has demonstrated his or her abilities in the areas in which they perform.

Concerning your "surprise" with respect to Interrogatory No. 7, we note that ATF's response provided extensive detail regarding document retention and destruction policies for ATF's official files. In addition, the information provided detailed the procedures to be followed when opening an ATF case file. All ATF field division files are organized by Investigation Number (IN), whether in the main division office in Kansas City, or the branch office in St. Louis. These files are chronological only in the sense that when an agent opens an investigation and draws a IN, the INs are in a sequential order based on when the investigation is opened. For example, if an agent gets IN 779045 03 0001 today, then the next agent would get 779045 03 0002 when opening a case tomorrow. The KCFD operates under the same ATF Orders, which are discussed in greater detail herein, that all Field Divisions do which addresses the maintenance and filing procedures for cases.

Perhaps the source of your "surprise" lies in the fact that documents located in response to Mr. Boyd's request were contained in the "unofficial," "personal," or "work" file (these adjectives are fully interchangeable) kept by the Special Agent assigned to the investigation. As we have already acknowledged, documents in the Special Agent's files, which he believed were duplicates of documents contained in the official file, should have been included in the official files but were not. Generally, because personal records maintained by agency employees are not ordinarily subject to the FOIA, they are not searched in response to particular FOIA requests. See Bureau of Nat'l Affairs, Inc. v. United States Dep't of Justice, 742 F.2d 1484, 1492-93 (D.C.

Luba Shur, Esq.

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Cir. 1984) (factors relevant to distinguishing between official and personal records include the purpose for which the documents were created, the degree of integration of the record into the agency's filing system, and the extent to which the employee uses the record to conduct agency business); Clarkson v. Greenspan, No. 97-2035, slip. op. at 14 (D.D.C. June 30, 1998) (holding that documents neither shared with other agency employees nor placed in the agency files and were intended only for the employees' own use were "personal" records not subject to FOIA). That is the reason why the FOIA personnel did not search Special Agent Green's personal file during the initial search for records in response to Mr. Boyd's FOIA request. In a case where a similar error occurred, the Court also found the initial search inadequate. See Ethyl Corp. v. EPA, 25 F.3d 1241, 1247-48 (4th Cir. 1994). We are past that now, and Special Agent Green's account of the location of his file, its review in response to Mr. Boyd's FOIA request, and its production by the ATF is fully set forth in the ATF's response to Plaintiff's Interrogatory No. 11.

We are herewith producing under the Privacy Act Order the TECS records relating to a search of the system by entering "Boyd" for the last name "Boyd" and "Wil" for the first name. We requested this search record as part of the discovery in this case. Most of the information redacted from the document is computer codes which ATF does not release under FOIA and considers proprietary. For the Record-ID numbers, we have left in sufficient digits for you to be able to confirm the contents of the system. As you will see, there is only one record entry, in 1997 for Willie Boyd with a matching date of birth. The remarks portion of the record, which comes from the NCIC report previously produced to Mr. Boyd under the FOIA, notes a 1982 conviction for a narcotics offense but does not disclose that ATF had any involvement in that incident. When Special Agent Green recalled that ATF had been involved in the 1982 investigation, Mr. Orlow and Special Agent Green discussed that, given the age of the file, it had been transferred to the Federal Records Archives Center in St. Louis, Missouri. As ATF's Response indicated, ATF then requested that the hard copy file be expeditiously retrieved from Archives and sent to Mr. Orlow in Washington, D.C. Thus, retrieving Mr. Boyd's 1982 criminal case, as well as his 1997 criminal case file, were indeed "purely mechanical tasks."

Your assertion that ATF's response to Interrogatory No. 11 is "incomplete" is puzzling in any number of ways. Your specific questions appear to ignore common sense. It is implicit that Ms. LaBrie did not review the contents of any files in connection with the first search because she determined first that the investigation was still open. Thus, she did not search the official file (the one initially provided to Mr. Boyd), Special Agent Green's work file (which did not require review at that point and about which she was unaware), or the file associated with the 1982 investigation of Mr. Boyd (which came to light after the litigation was filed). When Ms. Blevins took over after Mr. Boyd filed the instant action, she did not repeat searches of any database because she already had the results of Ms. LaBrie's search indicating the existence of one investigation, IN 745519-97-0012. After she confirmed with Special Agent Green that the investigation was no longer open, she requested the official file by that investigation number.

Retrieval of that file from the file room was purely mechanical: matching the IN and name with the correct file.

With respect to the TECS system, ATF's previous response to Interrogatory No. 12 referred to "files of common interest." In short, those files would be any investigations by law enforcement agencies that may also be of interest to another agency looking for information on the same subject. Most, if not all, of ATF's investigations of federal firearms violations are considered of interest to other law enforcement based on the nature of the offenses involved. Other than in fields allotted for additional information, TECS does not contain the actual files relating to criminal investigations. Rather, TECS provides a access to such files by means of a link to a human point of contact (e.g., Special Agent Green) or other information (e.g., file number).

"Message-switching capability" refers to the ability a computer has to switch data from one point to another. Computers have always been ideal message switches due to their input/output and compare capabilities. When a computer acts as a message switch, it inputs the message, compares its destination with a set of stored destinations and then outputs it to a selected communications channel.¹ The consequences of this technology in the TECS system is that personnel in various components of the Department of Treasury can easily communicate with each other, electronically or telephonically.

ATF's previous response also referred to "interface capability." An "interface" is simply a connection between two devices. Hardware interfaces are the plugs, sockets and wires that carry electrical signals in a prescribed order. Software interfaces are the languages, codes and messages that programs use to communicate with each other, such as between an application program and the operating system. User interfaces are the keyboards, mice, joy sticks, light pens, tablets, dialogues, command languages, menus and display screens used for interactive communication between the user and the computer.² The TECS system has an interface with the National Law Enforcement Telecommunications System. Information about that system is contained in ATF's Supplemental Response to Interrogatory No. 12.

With regard to Interrogatory No. 9, we confirm that ATF Special Agent Jim Green was the sole agent who worked on the criminal case and investigation of Mr. Boyd in 1997. The only involvement of Special Agent Randy Bodenschatz was that he accompanied Special Agent Green to the interview of a witness. Special Agent Bodenschatz was there only for officer safety purposes and did not prepare any reports or take any notes regarding the interview, nor did he have any substantive involvement in the criminal case or investigation.

¹ See "The Computer Glossary," by Alan Freedman, Fourth Edition.

² See id.

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The privilege log we produced in ATF's initial responses includes all documents containing privileged information and these are the only documents being withheld. As you do not specify what additional information you would need to evaluate the applicability of the attorney-client and work product privileges, we are uncertain how to respond. Nevertheless, we respectfully suggest that the information provided is more than sufficient. Communications between our office and personnel in ATF's Chief Counsel's Office during the course of the litigation concerning analysis of legal issues, litigation strategy, and the mental impressions of the AUSA handling the case are clearly privileged. Moreover, we have never heard of and do not understand your request for a description of privileged information withheld in connection with interrogatory responses. ATF's interrogatory responses have provided all responsive factual information, none of which is privileged.

ATF has made especially diligent efforts to produce all responsive, non-privileged information to you as of this date. The language in our written responses is intended only to allow for appropriate supplementation if any additional information later comes to light. We can assure you that substantial amounts of time and effort have been expended in preparing discovery responses, and we have no reason to believe that any additional responsive information within the proper scope of discovery exists. As noted above, because your discovery was drafted in a manner calling for matters far outside the scope of the ATF's search for documents in response to plaintiff's FOIA request, we have responded with all non-privileged documents and information within that scope.

Specifically, ATF's production of e-mails has relied on copies from the relevant senders and/or recipients. ATF has not performed any search of archived or electronically stored e-mail in this case. We are uncertain at this time what search would be possible. If you wish to press for electronic discovery beyond that already produced, we will ascertain what more would be possible and discuss it with you further. Thank you for your patience in this case.

We trust that the foregoing, in conjunction with the enclosed Supplemental Responses, satisfies plaintiff's discovery requests as reasonably interpreted by the ATF. After you have had an opportunity to review this material, please contact me if there are any additional matters we need to discuss.

Sincerely,

ROSCOE C. HOWARD, JR.
United States Attorney



By: JANE M. LYONS
Assistant United States Attorney

cc: Barry Orlow, Esq., Office of Chief Counsel

CASE# DF-58822

Friday, March 21, 2003

EVENTS

DATE	TIME	EVENT	TIME SPENT (HRS)	
			Attorney	Review
03/09/2000	04:39 PM	Other - RE: Willie Boyd, Case #99-2712 JR [BlevinsMA] read affidavit again - make a few minor changes - finalize and mail to SA Jim Green	0.75	0.00
03/07/2000	10:49 AM	Phone Call - SA Jim Green RE: Willie Boyd, Case #99-2712 JR [BlevinsMA] called to say that he received my fax and that read affidavit and that it is all correct and if will mail, he will sign and return	0.25	0.00
03/06/2000	02:25 PM	Other - RE: Willie Boyd, Case #99-2712 JR [BlevinsMA] print on white and fax to Jim Green	0.50	0.00
03/06/2000	01:53 PM	Other - RE: Willie Boyd, Case #99-2712 JR [BlevinsMA] made edits. print yellow - submit to RI for review	0.25	0.00
03/06/2000	12:31 PM	Other - RE: Willie Boyd, Case #99-2712 JR [BlevinsMA] make revisions to Jim Green's affidavit - submit to RI for review	0.50	0.00
03/03/2000	12:16 PM	Phone Call - SA Jim Green [(314) 539-7448] RE: Willie Boyd, Case #99-2712 JR [BlevinsMA] he returned my call - wanted me to explain situation to him - explained about how wanted to make sure court understood that is Sharron Troupe's testimony and that had talked it over with AUSA - asked if he were present at trial, said yes - asked if he would sign affidavit saying that Sharron's testimony - said yes, that it is definitely hers - asked if could fax before and see if he needs to make any changes, said yes and that he would call me soon as receives - said great and he gave me fax number (314) 539-7996	0.50	0.00
03/03/2000	09:39 AM	Other - RE: Willie Boyd, Case #99-2712 JR [BlevinsMA] draft declaration for SA Jim Green and awaiting his call to know whether need to change name on declaration for signing	1.75	0.00
03/03/2000	09:32 AM	Phone Call - SA Jim Green [(314) 539-7448] RE: Willie Boyd, Case #99-2712 JR [BlevinsMA] called, no answer, left message that calling in regards to FOIA litigation of Boyd, that	0.00	0.00

CASE# DF-58822

Friday, March 21, 2003

EVENTS

<u>DATE</u>	<u>TIME</u>	<u>EVENT</u>	<u>TIME SPENT (HRS)</u>	
			<u>Attorney</u>	<u>Review</u>
		have sent him a copy in mail and that had spoken to him earlier and said that grand jury transcript - actually, this is Sharron Troupe's trial testimony, but it is kind of arcane, and I was need to know whether was present for the trial and can sign an affidavit, left hours of work and telephone number to call		
03/03/2000 09:31 AM		Phone Call - SA Jim Green RE: Willie Boyd, Case #99-2712 JR	0.00	0:00
	[BlevinsMA]	3/2 at 2:43 P.M. - called while at stepped away from desk a minute, said to call on Friday, because he is still in trial		SH JHW
03/02/2000 02:04 AM		Phone Call - SA Jim Green RE: Willie Boyd, Case #99-2712 JR	0.00	0:00
	[BlevinsMA]	called while at lunch - said sorry didn't call me sooner - in trial all week - at latest he will call me on Friday - if urgent call and leave message on voicemail, then press 8		
02/28/2000 09:32 AM		Phone Call - SA Jim Green [(314) 539-7448] RE: Willie Boyd, Case #99-2712 JR	0.00	0:00
	[BlevinsMA]	called to ask about affidavit per AUSA's request (had discussed with RI and RI said okay) - no answer, left message on voicemail to call		SH JHW
02/22/2000 11:20 AM		Phone Call - Jane Lyons, AUSA [(202) 514-7161] RE: Willie Boyd, Case #99-2712 JR	1.50	0:00
	[BlevinsMA]	Examined file more thoroughly and matched up paragraphs on prior complaint and amended complaint - contacted said that cross testimony was not our CI, but was someone related to CI (who is), told her that I thought was our CI at first - also pointed out letter to her regarding a different case where information about our CI was disclosed (one of Boyd's exhibits) - asked about Vaughn - said wait until Court orders it - he has not provided any proof of CI and that may want affidavit stating that not testimony of CI - asked if should be affidavit from agent - She said that would be best - asked if could fax before have signed - said that was great		SH JHW
02/18/2000 11:58 AM		Phone Call - SA Jim Green RE: Willie Boyd, Case #99-2712 JR	0.00	0:00
	[BlevinsMA]	returned my call - I told him the reason I called is because I received an amended		

CASE# DF-58822

Friday, March 21, 2003

EVENTS

DATE	TIME	EVENT	TIME SPENT (HRS)	
			Attorney	Review
		<p>complaint from Willie Boyd and he knows about informant, he attached an exhibit of Grand Jury Proceeding and quoted a section in his amended complaint (not under ATF's section), but that I wanted to let him know, because he said that if we released anything about informant to contact him - said he conscious were clear, said that this was crap, he said that he guess this is what FOIA is for - said not normally purpose of FOIA and agreed with rest of statement - asked what the deal was with the litigation - told him a Freedom Information Act litigation - he asked specifically what was going on with it - said that he made a request we denied it under 7(A), interference with an enforcement proceeding, because his appeals had not been exhausted, on administrative appeal we upheld it and later he filed this litigation, after the litigation we made a release to him, said but we didn't release info. On informant, and we have filed a declaration in support of summary judgment motion which we have not heard anything about status, he asked if I could send him a copy of amended complaint, I said I would but it will probably be Tuesday, he said that would be okay, asked for his address -</p> <p style="text-align: right;">1222 Spruce Room 6-205 St. Louis, MO 63103-2818</p>		
02/18/2000	11:25 AM	<p>Phone Call - Jane Lyons, AUSA [(202) 514-7161] RE: Willie Boyd, Case #99-2712 JR</p> <p>[BlevinsMA] called, no answer, said who I was and calling in reference in Willie Boyd case and asked he to please call me, said would not be in this afternoon and if don't speak with her today, please call on Tuesday</p>	0.00	0.00
02/18/2000	11:17 AM	<p>Phone Call - SA Jim Green [(314) 539-7448] RE: Willie Boyd, Case #99-2712 JR</p> <p>[BlevinsMA] called no answer, left message on voicemail explaining who I was, calling in regard to FOIA litigation of Willie Boyd (said had spoke to him about it in November 1999) - asked him to please give me a call that I needed to speak with him about this case, also said that I will not be in after 12:30 P.M. today</p>	0.00	0.00



U.S. Department of Justice

United States Attorney
Eastern District of Missouri

Organized Crime Drug Enforcement
Task Force - South Central Region

U.S. Court and Custom House
1114 Market Street, Room 421
St. Louis, Missouri 63101

314-539-6351

FAX 314-539-2312

February 21, 1997

Mr. Charles M. Shaw
Mr. John F. Garvey, Jr.
Via FAX

Subject: United States v. Miller and Kerr
4:96CR365CDP

The following information regarding the background of Government witness Bryant Troupe is being provided as Jencks and/or Brady material. You have previously been sent a copy of his RAP sheet. It is my position that none of the entries provides material appropriate for impeachment.

No formal written agreement exists between Troupe and the Government. The Government does not intend to prosecute Troupe for past drug-related, non-violent criminal conduct revealed in his testimony as long as he has been and remains truthful.

Funds have been provided to, or expended on behalf of, Troupe in the following amounts for the listed reasons by the listed agencies:

From approximately 1983 to 1988, Troupe worked as an informant for the Velda City Police Department, where he was employed as a reserve officer for a short time in 1983. During that time, he provided information on criminal activities in the community on approximately 20 or more occasions. He did not testify in any of these cases. In some instances, he received no consideration. In others, he received \$20 to \$50 per case.

From approximately 1988 to 1995, Troupe worked as an informant for the North County MEG Unit/ Northwoods Police Department. During that time, he provided information about narcotics and firearms which led to over 40 search warrants as well as other cases and other

arrests. His information was found to be consistently reliable. He did not testify in any of the resulting prosecutions. He received cash payments of from \$20 to \$50 per case.

In 1994, Troupe gave information to the Drug Enforcement Administration on one occasion. This led to the seizure of cocaine and marijuana. He did not testify. He received a \$200 cash payment.

Troupe began working with the Federal Bureau of Investigation in 1994. At this time, he was still working with the MEG Unit with the FBI providing some financial and manpower support. On one occasion, the FBI paid Troupe \$200 for a case he made for the MEG Unit.

From March of 1996 to the present time, Troupe has received the following consideration for his cooperation in the Miller/Kerr case: \$4,500 cash, \$750 expenses prior to 1/27/97, \$650 for credit debt, and \$1,160 for rental of secure housing as of 1/27/97.

Troupe has informed me that at various times since approximately 1989, he has participated in drug trafficking as a middleman or broker for Byron Miller. He received money for these services from Miller or others involved in the sales. This activity was not part of his supervised law enforcement cooperation.

Troupe has advised me that he has used and sold marijuana in the past.

Troupe also advised me that he did not report the above-described income as earnings, nor did he pay taxes on it. He has not been absolved of such tax obligation and has been so advised by me.

Blevins, Melissa A.

From: Blevins, Melissa A.
Sent: Tuesday, October 10, 2000 10:39 AM
To: Green, James M.
Cc: Graham, Averill P.
Subject: Willie Boyd Freedom of Information Act Litigation

Importance: High
Sensitivity: Confidential

Jim,

I have had contact with you over the past year regarding Willie Boyd's litigation. I don't know whether you remember me. I was a paralegal in Chief Counsel's Office, ATF Headquarters. About 5 1/2 months ago, I transferred to a disclosure specialist position in the Disclosure Division, ATF Headquarters.

An adequacy of the search argument has surfaced in Willie Boyd's litigation. Because I received the case file from you, I need to know whether the file was complete as to both the forfeiture and criminal aspects. Your immediate response would be greatly appreciated!

Thanks,
Melissa Blevins
(202) 927-8480

Appendix A-11

10/10/00 at 11:02 AM Jim Green called -
he said he could not be sure
complete copy, because administrative
assistant copied - I said actually
what I needed was whether
you had copy of everything
in your file - he said he
did + he wanted to
know why surfaced - I
told him Boyd addressed, but
that summary judgment motion
denied + we are going
to resubmit - he wanted
more - told him didn't know
not in CC anymore - he asked when
going to end - I said hopefully
soon - he said Boyd + Jim + also + no more kills

Four people

10/10 at Noon speak w/ DC - would
feel more comfortable checking
w/seized property + field division

10/10 at 12:06 PM Contact Barry
+ said DC would feel more
comfortable checking w/seized
property + field division -

I asked if he needed
by Friday, he said
no, but needed as soon
as possible

10/10 at 12:25 PM Fax request
to field w/ note to
please rush + prepare
req. for seized property

with note to please
rush + place in walkabout
box - ask RA if had
done walkarounds + where
seized prop. - he said rm. 335A and
that he would take down

ORAL ARGUMENT NOT YET SCHEDULED

BRIEF FOR APPELLEES

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5369

WILLIE E. BOYD,

Appellant,

v.

UNITED STATES MARSHALS SERVICE, ET AL.

Appellees.

No. 05-5142

WILLIE E. BOYD,

Appellant,

v.

CRIMINAL DIVISION OF THE UNITED STATES
DEPARTMENT OF JUSTICE, ET AL.

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KENNETH L. WAINSTEIN,
United States Attorney.

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

C.A. Nos. 99-2712 & 04-1100

FOIA request, but not suggesting any intent to withhold materials responsive to either a Brady order or a FOIA request. App. 1442-43. Indeed, because it is undisputed that these documents were later reviewed for release under FOIA, and that non-exempt, non-duplicative information was released, Green's opinion is immaterial. App. 1125-27.

Second, Boyd argues that since he speculates that Mr. Troupe was a confidential informant in his case, Mr. Troupe's background was relevant Brady material that was not disclosed. Appellant's Br. at 14, 17; Amicus 36. Yet Boyd is unable to demonstrate Mr. Troupe's relevance for Brady and Jencks purposes. He presents no evidence that Mr. Troupe was an informant in Boyd's case and, in fact, argues at times that Mr. Troupe was *not* an informant for the ATF. Appellant's Br. at 14, 16. Instead, Boyd relies on a letter from the United States Attorney's Office for the Eastern District of Missouri indicating that Mr. Troupe was an informant in another, unrelated case (United States v. Miller) – a letter that says nothing about Mr. Troupe's purported involvement in Boyd's conviction. Appellant's Br. at 17; Br. of Amicus at 33-34; App. 59-60. Boyd alternatively argues that Mr. Troupe is relevant because he, rather than Boyd, might have owned the incriminating drugs and gun. This overstates the relevant testimony, however, which established only

[REDACTED] owned another black gun and a similar [REDACTED]

[REDACTED] App. 1449-53.

Boyd has identified nothing withheld during his criminal case but produced under the FOIA that would suggest an actual Brady or Jencks violation. Importantly, even after discovery, Boyd has provided no proof of what was actually produced to Boyd or his attorney during the criminal case. Appellant's Br. at 17; Br. of Amicus at 36. Instead, Boyd and amicus present letters from Boyd's defense attorney indicating that he does not recall receiving certain documents, although ignoring letters from the AUSA stating that the documents were produced. Id.; App. 418-424. It is doubtful that a "reasonable person" would infer misconduct from the hearsay and lack of recollection in letters from Boyd's defense attorney, especially years after Boyd's 1998 conviction, and when the attorney apparently declined a request to make these statements in an affidavit. Compare App. 416 with App. 423-24.²⁰ Boyd and amicus also make much of Mr. Troupe's criminal history, suggesting that if Mr. Troupe were an informant in Boyd's case, his criminal history would taint the government's reliance on him.

A gun and black bag containing drugs were seized during Boyd's arrest. App. 1165, 1473-75. Grand jury testimony indicated that Mr. Troupe may have also possessed a black bag in which he transported clothing, a gun, and other personal belongings. App. 1450-51. However, Mr. Troupe's gun was apparently different from the gun discovered during Boyd's arrest. App. 1455.

Amicus also points to a letter from Boyd's defense attorney reporting the AUSA's two-year-old recollection of his Brady production. Br. of Amicus at 36; App. 424. Such a stale, conclusory recollection from Boyd's defense attorney would be entirely unpersuasive to a reasonable person.

extends to . . . witnesses and informants who provided information during the course of an investigation.” Nation, 71 F.3d at 894. If any information about Mr. Troupe or any other third party exists in law enforcement files (regardless of their role in Boyd’s case), they would have a strong privacy interest in its protection.²⁴ Senate of Puerto Rico v. DOJ, 823 F.2d 574, 588 (D.C. Cir. 1987); Bast v. DOJ, 665 F.2d 1251, 1254 (D.C. Cir. 1981). Mr. Troupe’s privacy interest is not diminished by appellant’s suspicion or unsupported speculation that Mr. Troupe was an informant in Boyd’s criminal case. See Weisberg v. DOJ, 745 F.2d 1476, 1491 (D.C. Cir. 1984) (belief about informants’ identities “in no way undermines the privacy interests of these individuals”).

Although the privacy interest here is strong, the public interest in the information is essentially non-existent. FOIA was not designed to promote “disclosure of records regarding private citizens.” Reporter’s Comm., 489 U.S. at 765. Boyd claims that disclosure would serve the public interest of exposing widespread misconduct at DOJ, Appellant’s Br. at 22, Br. of Amicus at 38, but as discussed above, Boyd has not demonstrated such widespread misconduct.²⁵ Moreover, his personal interest in showing misconduct that occurred during his own trial is insufficient. See Oguaju, 288 F.3d at 450; Cano, 2006 U.S. Dist. LEXIS 32729 at *8, *9. Boyd is asking the Court to balance a

²⁴ Boyd argues that “The Government has waived any privacy interest” by purportedly engaging in misconduct, but cites no authority for the remarkable proposition that Mr. Troupe’s privacy interest can be waived by the government. Appellant’s Br. at 22.

²⁵ By producing evidence of the government’s Brady disclosures in the Miller case, Boyd has affirmatively demonstrated that the DOJ complies with Brady.

Boyd also argues that the government's release of information about Mr. Troupe in an unrelated case obliged it to do so in Boyd's case. Appellant's Br. at 43-44. Importantly, this argument ~~speculates without evidence that Mr. Troupe was an informant in Boyd's case~~. Moreover, as discussed below, prior public disclosure of information does not necessarily bar a Glomar response, especially when, as here, the government has not disclosed the precise information sought by a FOIA requester. Military Audit Project v. Casey, 656 F.2d 724, 752-53 (D.C. Cir. 1981) (rejecting the argument that "because some information . . . is now in the public domain, nothing . . . can properly remain" subject to a Glomar response).

III. The District Court Correctly Upheld the Invocation of Exemption 7(D).

Amicus asserts that Exemption 7(D) does not apply "to the extent that Troupe's activities as an informant had been made public."²⁶ Br. of Amicus at 39. This argument is premised on the faulty assumption that the government's disclosure of Mr. Troupe's role in the Miller case, App. 59-60, somehow amounts to a statement regarding Boyd's case. On the contrary, unless the government has stated that Mr. Troupe was an

²⁶ It is puzzling that amicus supports this argument, Amicus Br. at 39, using Afshar v. Dep't of State, 702 F.2d 1125 (D.C. Cir. 1983). Although Afshar noted in dictum that "[a] number of courts have shown a willingness to accept the argument" that public release of information can invalidate the use of Exemptions 1 and 3, it did not hold that this is an acceptable objection. Id. at 1130, 1131. Rather, the Court held that the requester must show that there is no "material" difference between the withheld and disclosed information, and identify "specific information in the public domain that appears to duplicate that being withheld." Id. at 1132, 1130 (emphasis added). Boyd cannot meet this standard.

informant in Boyd's case (which it has not, and Boyd has not shown otherwise), Boyd cannot claim that the information he seeks has been released into the public domain. See Dow Jones & Co. v. DOJ, 917 F.2d 571, 577 (D.C. Cir. 1990) ("[I]f the exact information given to the FBI has already become public, and the fact that the informant gave the same information to the FBI is also public, there would be no grounds to withhold. But short of these extraordinary circumstances," the government's use of Exemption 7(D) is upheld.). Mr. Troupe's testimony in another case is irrelevant to the application of Exemption 7(D) here. See Davis, 968 F.2d at 1281 (government's right to invoke Exemption 7(D) is unaffected even by the source's testimony in court); Parker v. DOJ, 934 F.2d 375, 379 (D.C. Cir. 1991).

Amicus also conflates the Miller case with Boyd's in arguing that 5 U.S.C. § 552(c)(2) ("(c)(2)") somehow prevents the government from using a Glomar response to Boyd's request. As a threshold matter, amicus has proffered no evidence that the government excluded records from FOIA consideration under (c)(2). The government did issue a Glomar response to Boyd's request for information regarding Mr. Troupe, App. 1705-06, but a Glomar response does not establish that the government is invoking (c)(2).²⁷

²⁷ Although (c)(2) may have authorized the use of a Glomar response, the two concepts are neither coextensive nor necessarily connected. See Benavides v. DEA, 968 F.2d 1243, 1246 (D.C. Cir. 1992) (noting that (c)(2) authorizes a Glomar response), amended by 976 F.2d 751, 753 (D.C. Cir. 1992) (clarifying that (c)(2) does not require a Glomar response).

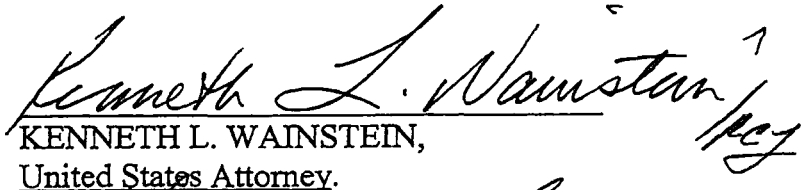
In any event, under Boyd's theory, (c)(2) would allow the government's use of a Glomar response in this case because it allows agency to exclude certain "informant records" from FOIA processing "unless the informant's status as an informant has been officially confirmed." 5 U.S.C. § 552(c)(2) (2000). But the government has never confirmed the status of any informant in Boyd's case, and the confirmation of Mr. Troupe's role in the Miller case does not change that fact. For information to be "officially confirmed" by the government, "it (1) must be as specific as the information previously released, (2) must match the information previously disclosed and (3) must already have been made public through an official and documented disclosure." Kirkorian v. Dep't of State, 984 F.2d 461, 467-68 (D.C. Cir. 1993) (quotation omitted); see also Military Audit, 656 F.2d at 752-53 (rejecting the argument that "because some information . . . is now in the public domain, nothing . . . can properly remain" subject to a Glomar response). Since the information requested by Boyd does not "match the information previously disclosed" and has not "been made public," a Glomar response was proper.

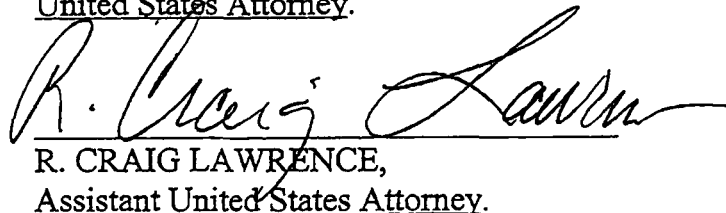
Boyd's reliance on DOJ v. Landano, 508 U.S. 165 (1993), is misplaced. Landano held that the government cannot categorically assert that Exemption 7(D) applies to information provided by all sources in a criminal investigation. 508 U.S. at 181. Accord Quinon, 86 F.3d at 1231. The Court emphasized that there may nonetheless be "conditions under which" an implied assurance of confidentiality fairly can be inferred," including: (1) "the character of the crime at issue"; (2) payment to the informant for


degree of its dissemination and public impact, are significant considerations. Blue v. BOP, 570 F.2d 529, 533 (5th Cir. 1978); see Tax Analysts, 965 F.2d at 1094-95. In this case about documents from a routine criminal prosecution, the public interest value is minimal. Similarly, since Boyd had a "sufficient private incentive" to bring a FOIA lawsuit without a potential award of costs, the second and third factors weigh against him. Tax Analysts, 965 F.2d at 1095. The fourth factor also weighs against an award, since the agency did not engage in "obdurate" or "recalcitrant" behavior in processing Boyd's requests; instead, its searches and withholdings ultimately complied fully and voluntarily with the FOIA. Id. at 1097.

CONCLUSION

For the foregoing reasons, appellees respectfully request that the decisions granting summary judgment in favor of appellees be affirmed.


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JANE M. LYONS,
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ny-wide policy violates the NLRA—Guardsmark distributed its handbook with the three unlawful rules to all employees nationwide—only a company-wide remedy extending as far as the company-wide violation can remedy the damage. *See, e.g., U.S. Postal Serv. v. NLRB*, 969 F.2d 1064, 1072 (D.C.Cir.1992) (enforcing NLRB's grant of nationwide relief where the employer's provisions constituting an unfair labor practice applied nationwide). Nationwide remedial notice thus "effectuate[s] the policies of the [NLRA]." *See Petrochem Insulation*, 240 F.3d at 34.

IV.

For the reasons given above, we deny Guardsmark's petition for review and grant the Board's cross-petition for enforcement with respect to the chain-of-command and solicitation rules, as well as the scope of the remedy. We grant the Union's petition for review as to the fraternization rule and, as to that rule, deny the Board's cross-petition for enforcement.

So ordered.



Willie E. BOYD, Appellant

v.

CRIMINAL DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE, et al., Appellees

Willie E. Boyd, Appellant

v.

United States Marshals Service, et al., Appellees.

Nos. 05-5142, 04-5369.

United States Court of Appeals, District of Columbia Circuit.

Argued Nov. 17, 2006.

Decided Feb. 6, 2007.

Background: Prisoner sued Criminal Division of the Justice Department and the United States Marshals Service under Freedom of Information Act (FOIA), seeking information in support of his theory that guns and drugs underlying his criminal convictions belonged to government informant rather than to himself. The United States District Court for the District of Columbia, Huvell, J., 2005 WL 555412, entered summary judgment for defendants. Prisoner appealed.

Holdings: The Court of Appeals, Rogers, Circuit Judge, held that:

- (1) documents purportedly supporting prisoner's theory were subject to interference exemption for law enforcement records;
- (2) prisoner failed to overcome privacy exemption for law enforcement records; and
- (3) confidential-source exemption for law enforcement records applied to prisoner's request for identity of informant.

Affirmed.

1. Records §§50, 54

Congress established the Freedom of Information Act (FOIA) to allow private persons to access government records and thereby be informed about what their government is up to; Congress also recognized, however, that the disclosure of cer-

tain information may harm legitimate governmental or private interests, and accordingly enacted several exemptions to FOIA disclosure requirements. 5 U.S.C.A. § 552 et seq.

2. Records ⇐65

Federal agencies have the burden of demonstrating that withheld documents are exempt from disclosure under the Freedom of Information Act (FOIA). 5 U.S.C.A. § 552 et seq.

3. Records ⇐65

The government meets its burden of demonstrating that documents are subject to the Freedom of Information Act (FOIA) interference exemption for law enforcement records by demonstrating that release of the requested information would reveal the size, scope, and direction of the investigation and thereby allow for the destruction or alteration of relevant evidence, and the fabrication of fraudulent alibis. 5 U.S.C.A. § 552(b)(7)(A).

4. Records ⇐60

Documents purportedly supporting prisoner's theory that guns and drugs underlying his criminal convictions belonged to government informant rather than to himself were subject to Freedom of Information Act (FOIA) interference exemption for law enforcement records, where government explained that disclosure would promote criminal activity of targets of investigation, government provided sufficient specificity regarding its investigation by identifying targets as individuals to some degree related to, controlled by, or influenced by prisoner, and government indicated that investigation was ongoing. 5 U.S.C.A. § 552(b)(7)(A).

5. Records ⇐58, 60

Notwithstanding the Freedom of Information Act (FOIA) privacy exemption for law enforcement records, the govern-

ment may be required to disclose the documents if the individual seeking the information demonstrates a public interest in the information that is sufficient to overcome the privacy interest at issue. 5 U.S.C.A. § 552(b)(7)(C).

6. Records ⇐60, 64

To trigger the balancing of public interests against private interests, so as to overcome the Freedom of Information Act (FOIA) privacy exemption for law enforcement records, a requester must: (1) show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake, and (2) show the information is likely to advance that interest. 5 U.S.C.A. § 552(b)(7)(C).

7. Records ⇐60

If the public interest cited by a requester in attempting to overcome the Freedom of Information Act (FOIA) privacy exemption for law enforcement records is government wrongdoing, then the requester must produce evidence that would warrant a belief by a reasonable person that the alleged government impropriety might have occurred. 5 U.S.C.A. § 552(b)(7)(C).

8. Records ⇐60

Prisoner failed to show that belief was warranted that government withheld *Brady* evidence purportedly supporting prisoner's theory that guns and drugs underlying his criminal convictions belonged to government informant rather than to himself, and he thus failed to overcome Freedom of Information Act (FOIA) privacy exemption for law enforcement records, in that prisoner failed to identify anything withheld at criminal trial but produced under FOIA that would suggest actual *Brady* violation, or to show that work discovered after criminal trial actually con-

tained *Brady* material that had not been disclosed. 5 U.S.C.A. § 552(b)(7)(C).

9. Records ⇨65

Unsubstantiated assertions of government wrongdoing do not establish a meaningful evidentiary showing that can overcome the Freedom of Information Act (FOIA) privacy exemption for law enforcement records. 5 U.S.C.A. § 552(b)(7)(C).

10. Records ⇨62

Where an informant's status has been officially confirmed, a Glomar response to a Freedom of Information Act (FOIA) request, refusing either to confirm or to deny the existence of responsive information, is unavailable, and the agency must acknowledge the existence of any responsive records it holds. 5 U.S.C.A. § 552(c)(2).

11. Records ⇨63

Any error that occurred when government provided Glomar response to prisoner's Freedom of Information Act (FOIA) request for information about confirmed informant, in which government refused either to confirm or to deny existence of responsive information, did not warrant remand to allow district court to determine whether government possessed requested information and, if so, whether withholding of information was justified, where government properly invoked exemption to protect the information, and prisoner thus was not entitled to it. 5 U.S.C.A. § 552(c)(2).

12. Records ⇨60

Confidential-source exemption for law enforcement records applied to prisoner's Freedom of Information Act (FOIA) request for identity of confidential informant and information furnished by informant in prisoner's criminal case, where informant received express grant of confidentiality, and, although certain individual's status as informant was confirmed in another crimi-

nal case, that confirmation was not admission that he was informant in prisoner's case as well. 5 U.S.C.A. § 552(b)(7)(D).

13. Records ⇨60

Wrongfully withheld *Brady* material may be protected under the Freedom of Information Act (FOIA) confidential-source exemption for law enforcement records. 5 U.S.C.A. § 552(b)(7)(D).

14. Records ⇨62

Government's failure to uncover or account for particular audio tapes did not demonstrate inadequacy of its search in response to Freedom of Information Act (FOIA) request. 5 U.S.C.A. § 552 et seq.

15. Records ⇨66

District court did not abuse its broad discretion in declining to conduct in camera inspection of government agent's work file and documents withheld under Freedom of Information Act (FOIA) confidential-source exemption for law enforcement records, where agency provided sufficiently detailed affidavits, there was no evidence of bad faith, and, upon discovering work file, agency released responsive non-exempt documents. 5 U.S.C.A. § 552(b)(7)(D).

16. Records ⇨62

District court did not abuse its discretion in declining to order government to disclose all segregable information in records withheld under Freedom of Information Act (FOIA) confidential-source exemption for law enforcement records, given presumption that agency complied with obligation to disclose any reasonably segregable portion of record, and fact that it segregated non-exempt information in documents withheld under other FOIA exemptions. 5 U.S.C.A. § 552(b)(7)(D).

17. Records 62

District court did not abuse its discretion in failing to require government to specify date on which it destroyed documents responsive to prisoner's Freedom of Information Act (FOIA) request, where documents' destruction, if performed in accordance with specified guidelines, would not support prisoner's theory that destruction was in bad faith. 5 U.S.C.A. § 552 et seq.

Appeals from the United States District Court for the District of Columbia (No. 04cv01100) (No. 99cv02712).

Steven H. Goldblatt, appointed by the court, argued the cause and filed the briefs as amicus curiae for appellant Willie E. Boyd.

Willie E. Boyd, pro se, filed briefs.

Jane M. Lyons, Assistant U.S. Attorney, argued the cause for appellees Criminal Division of the United States Department of Justice, et al. and United States Marshals Service, et al. With her on the brief were Kenneth L. Wainstein, U.S. Attorney at the time the brief was filed, and R. Craig Lawrence, Assistant U.S. Attorney. Julia K. Douds and Michael J. Ryan, Assistant U.S. Attorneys, entered appearances.

Before: GINSBURG, Chief Judge, and RANDOLPH and ROGERS, Circuit Judges.

Opinion for the Court filed by Circuit Judge ROGERS.

ROGERS, Circuit Judge.

Following his conviction of drugs and weapons charges, Willie Boyd filed a series of requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, in an attempt to uncover

alleged violations of *Brady v. Maryland*, 373 U.S. 83, 86, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), during his trial. Although various documents were disclosed, the government agencies withheld others pursuant to FOIA exemptions. On appeal, Boyd challenges the grants of summary judgment to the agencies, contending through court-appointed amicus curiae that the district court erred in ruling that the FOIA exemptions were properly invoked, in failing to grant other remedies and to award costs. We affirm.

I.

Boyd was arrested on a parole violation warrant at his girlfriend's house on February 1, 1997. Based on a gun and a black bag containing cocaine that were found in the master bedroom closet, Boyd was indicted and convicted of drugs and weapons charges, including being a felon in possession of a firearm and of possession with intent to distribute cocaine. His conviction was affirmed on appeal. *United States v. Boyd*, 180 F.3d 967 (8th Cir.1999). Following his trial, Boyd learned that his girlfriend's brother, Bryant Troupe, had been a government informant for several years and had sold drugs in the past. This information was contained in the prosecutor's *Brady* disclosure letter in a case in which Troupe had testified at trial as a government informant. See *Miller v. United States*, 135 F.3d 1254, 1255-56 (8th Cir.1998). Amicus contends that this information, which he believes could have been used to support Boyd's defense that the gun and drugs found in the closet belonged to Troupe and to suggest that the government may have failed to investigate that possibility because it had an interest in not jeopardizing convictions that Troupe, acting as an informant, had helped to obtain, was withheld from Boyd during his criminal trial in violation of *Brady*, 373 U.S. at 87, 83 S.Ct. 1194.

In 1998 Boyd filed the first of several FOIA requests seeking information about himself and Troupe from several federal agencies involved in Boyd's prosecution, including the Executive Office for United States Attorneys ("Attorneys' Office"), the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("BATF"), and the Bureau of Prisons ("BOP"). The agencies released some documents and withheld others pursuant to FOIA Exemptions 7(A), 7(C), and 7(D).¹ In 1999, Boyd filed a complaint, and later an amended complaint, challenging the agencies' invocations of FOIA exemptions and the adequacy of their searches. The district court granted summary judgment to the Attorneys' Office and BOP, but denied judgment to BATF based, in part, on its failure to demonstrate the adequacy of its search.

Upon a further search, BATF located a work file that had been kept by the BATF agent in charge of the investigation in Boyd's criminal case. Because the work file contained documents that were not part of the official case file, BATF processed it for release in accordance with Boyd's FOIA request. The district court, after appointing counsel for Boyd and ordering discovery, granted summary judgment to BATF. The district court denied Boyd's request for costs on the ground that he had not substantially prevailed.

Following new FOIA requests in 2003 and 2004 to the Criminal Division of the Justice Department ("Criminal Division") and the United States Marshals Service ("Marshals Service") for information about himself and Troupe, Boyd filed another complaint. The district court granted summary judgment to the agencies, find-

ing that they had demonstrated the adequacy of their searches and ruling that they had properly invoked exemptions to withhold information. By order of December 27, 2005, this court consolidated Boyd's appeals.

II.

[1, 2] Congress established FOIA to allow private persons to access government records and thereby be informed about "what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773, 109 S.Ct. 1468, 103 L.Ed.2d 774 (1989) (internal quotation marks omitted). Congress also recognized, however, that the disclosure of certain information "may harm legitimate governmental or private interests" and accordingly enacted several exemptions to FOIA disclosure requirements. *Summers v. Dep't of Justice*, 140 F.3d 1077, 1080 (D.C.Cir.1998); see also *Stern v. Fed. Bureau of Investigation*, 737 F.2d 84, 88 (D.C.Cir.1984). Upon *de novo* review of the grants of summary judgment, see *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 313 (D.C.Cir. 2003), this court must determine whether the agencies sustained their burden of demonstrating that the withheld documents are exempt from disclosure under FOIA, see *Johnson v. Executive Office for U.S. Attorneys*, 310 F.3d 771, 774 (D.C.Cir. 2002); *Summers*, 140 F.3d at 1080.

A.

[3] Exemption 7(A) authorizes the withholding of "records or information compiled for law enforcement purposes, but only to the extent that the produc-

1. The government also withheld documents pursuant to Exemption 3, which covers "matters that are ... specifically exempted from disclosure by statute." 5 U.S.C. § 552(b)(3). Because the government advised during oral

argument that these documents have been released to Boyd, Amicus's challenge to the invocation of Exemption 3 is moot. See *Perry v. Block*, 684 F.2d 121, 125 (D.C.Cir.1982).

tion of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). The government meets its burden by demonstrating that release of the requested information would reveal "the size, scope and direction of [the] investigation" and thereby "allow for the destruction or alteration of relevant evidence, and the fabrication of fraudulent alibis." *Alyeska Pipeline Serv. Co. v. U.S. Envtl. Prot. Agency*, 856 F.2d 309, 312 (D.C.Cir.1988) (internal quotation marks omitted).

[4] In Boyd's case, the government explained that disclosure would "promote the criminal activity of" the targets of the investigation, "allow [the targets] to avoid arrest and prosecution," and "provide them information that would allow them to change their operations to avoid detection." Because the individuals under investigation are all "related [to], controlled [by], or influenced by" Boyd, disclosure of the information could reasonably be expected to reveal to the targets "the size, scope, and direction of [the] investigation," *Alyeska*, 856 F.2d at 312, and allow them to destroy or alter evidence, fabricate fraudulent alibis, and take other actions to frustrate the government's case.

The government's explanation also adequately meets Amicus's contentions that the government has not identified "a concrete prospective law enforcement proceeding," see *Bevis v. Dep't of State*, 801 F.2d 1386, 1389 (D.C.Cir.1986) (quoting *Carson v. U.S. Dep't of Justice*, 631 F.2d 1008, 1018 (D.C.Cir.1980)) (internal quotation marks omitted), or specified that the enforcement proceeding is pending or reasonably anticipated, see *Mapother v. Dep't of Justice*, 3 F.3d 1533, 1540 (D.C.Cir. 1993). In *Bevis*, this court held that investigations related to potential prosecutions for the murders of several Americans in El

Salvador constituted concrete law enforcement proceedings. *Bevis*, 801 F.2d at 1387-89. Amicus maintains that here the government has asserted only that its investigation concerned "illegal activities" and "criminal activities" without specifying the type of criminal activity under investigation. Unlike in *Bevis*, however, sufficient specificity regarding the government's investigation is provided by its identification of the targets of the investigation: "individuals ... to some degree, related [to], controlled [by], or influenced by" Boyd.

Although Amicus implied during oral argument that no investigations involving Boyd were still active, the government's affidavit states that the investigation at issue involves the "ongoing collection of data" and that the withheld records relate to "potential criminal proceedings against individuals." See *Mapother*, 3 F.3d at 1540; *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 870 (D.C.Cir.1980). The duration of the investigation was brief; the documents at issue are dated 1997, Boyd was convicted in April 1998, and the government invoked Exemption 7(A) in early 1999. Therefore, Amicus fails to show that Exemption 7(A) was improperly invoked.

B.

[5-7] Exemption 7(C) authorizes the government to withhold "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). The government may nonetheless be required to disclose the documents if the individual seeking the information demonstrates a public interest in the information that is sufficient to over-

come the privacy interest at issue. See *Reporters Comm.*, 489 U.S. at 762, 776; 109 S.Ct. 1468. In order to trigger the balancing of public interests against private interests, a FOIA requester must: (1) "show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake," and (2) "show the information is likely to advance that interest." *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172, 124 S.Ct. 1570, 158 L.Ed.2d 319 (2004). If the public interest is government wrongdoing, then the requester must "produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." *Id.* at 174, 124 S.Ct. 1570.

Amicus posits district court error on the government's obligation under *Brady* to disclose exculpatory evidence in Boyd's criminal trial. In *Brady*, the Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment." *Brady*, 373 U.S. at 87, 83 S.Ct. 1194. The Court later explained that "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). Because the duty to disclose under *Brady* "encompasses evidence known only to police investigators," *Strickler v. Greene*, 527 U.S. 263, 280-81, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999) (quoting *Kyles v. Whitley*, 514 U.S. 419, 438, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)), "[i]n order to comply with *Brady* ... 'the individual prosecutor has a duty to learn of any favorable evidence known to [those] acting on the government's behalf,'" *id.* at 281, 119 S.Ct. 1936 (quoting

Kyles, 514 U.S. at 437, 115 S.Ct. 1555). Consequently, Amicus contends, the public has an interest in knowing both whether *Brady*-related misconduct occurred during Boyd's criminal trial and whether the government generally complies with its *Brady* obligations, including whether the Justice Department has adequate procedures to ensure that trial prosecutors are made aware of all *Brady* information in the government's possession.

[8] Even assuming Amicus has identified a sufficient public interest, we conclude that Exemption 7(C) was properly invoked because Amicus has failed to "produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." *Favish*, 541 U.S. at 174, 124 S.Ct. 1570. Of the two evidentiary showings that Amicus contends would warrant a belief of government misconduct, neither suffices. First, Amicus suggests that Boyd's discovery of the disclosure letter in the *Miller* case containing potentially exculpatory information about Troupe suggests the government failed to comply with its *Brady* obligations. Even after discovery, however, Amicus makes no showing that Boyd has identified anything withheld at his criminal trial but produced under FOIA that would suggest an actual *Brady* or Jencks violation, see 18 U.S.C. § 3500. Amicus also points to letters from Boyd's defense counsel indicating that he never received certain allegedly exculpatory documents and to the prosecutor's answer, when asked by defense counsel about his disclosures several years after the case, that no such documents had been disclosed because they did not constitute *Brady* material. However, letters the prosecutor wrote in 1998 suggest that the documents at issue were turned over and it is doubtful that a reasonable person would infer government misconduct from unsworn letters

from defense counsel years after Boyd's 1998 conviction. The record shows that the prosecutor in Boyd's criminal case turned over materials to Boyd's defense counsel pursuant to Federal Rule of Criminal Procedure 16, such as any statements made by Boyd and written summaries of expert testimony that the government intended to use at trial. Boyd acknowledges that the prosecutor also turned over exculpatory grand jury testimony that implicated Troupe. He offers no reason for the government to have been selective in its production.

Second, Amicus points to the discovery of the BATF agent's work file during Boyd's FOIA litigation as indicating that the government may not have complied with its Brady obligations. Amicus suggests that the prosecutor in Boyd's criminal case may have been unaware of the documents in that file and therefore may have mistakenly thought he had disclosed all material exculpatory evidence. Neither Amicus nor Boyd, however, produces any evidence that the work file actually contained Brady or Jencks material that had not been disclosed. Although Boyd had sought a report of an interview of a man named Albert Greer, because the report was located in the work file and subsequently disclosed, the issue is moot for purposes of this FOIA action. See *Perry v. Block*, 684 F.2d 121, 125 (D.C.Cir.1982). Boyd also suggests that the BATF agent deliberately concealed records based on an email revealing the BATF agent's personal views about releasing documents. These documents, however, were released, and the agent's opinion is immaterial.

[9] Thus both Amicus and Boyd fail to produce evidence sufficient to meet the *Favish* standard. Unsubstantiated assertions of government wrongdoing—e.g., re-

garding the seizure of Boyd's jailhouse phone conversations, lies by the prosecutor, and alleged perjury by a U.S. Marshal—do not establish “a meaningful evidentiary showing.” See *Favish*, 541 U.S. at 175, 124 S.Ct. 1570. Absent evidence to support most of the alleged improprieties, and clearly not enough for a reasonable person to conclude that the remaining allegations of government malfeasance might be true, see *id.* at 174, 124 S.Ct. 1570, there is no “counterweight on the FOIA scale for the court to balance against the cognizable privacy interests in the requested records,” *id.* at 174–75, 124 S.Ct. 1570, and thus the challenge to the government's invocation of Exemption 7(C) fails, see *id.* In any event, although Amicus stated during oral argument that the BATF agent's creation of a separate work file in Boyd's case suggests that the agent might be engaging in similar behavior in other cases, and more generally suggests a vulnerability in Justice Department procedures for ensuring that prosecutors are informed of all exculpatory evidence in the government's possession, a single instance of a *Brady* violation in Boyd's case would not suffice to show a pattern of government wrongdoing as could overcome the significant privacy interest at stake. See *Reporters Comm.*, 489 U.S. at 780, 109 S.Ct. 1468; *Beck v. Dep't of Justice*, 997 F.2d 1489, 1493 (D.C.Cir.1993).

[10] In addition to withholding and redacting information under Exemption 7(C), in response to Boyd's requests for information concerning Troupe, the Attorneys' Office and the Marshals Service also issued Glomar responses, refusing either to confirm or to deny the existence of responsive information, see *Phillippi v. CIA*, 546 F.2d 1009, 1011 (D.C.Cir.1976); 5 U.S.C. § 552(c)(2),² but claiming that, if such in-

2. Section 552(c)(2) provides:

Whenever informant records maintained by

formation existed, it would be protected under Exemption 7(C). Where an informant's status has been officially confirmed, a Glomar response is unavailable, and the agency must acknowledge the existence of any responsive records it holds. See *Benavides v. Drug Enforcement Admin.*, 1968 F.2d 1243, 1246 (D.C. Cir. 1992). Boyd's request for information concerning Troupe was not limited to his own criminal prosecution, but sought from the agencies "any and all information in your files on Bryant Troupe, as a confidential informant." His request thus encompasses information about Troupe's involvement in the *Miller* case, in which the government admits Troupe's status as an informant was officially confirmed.

[11] Although in other circumstances a remand might be required for the district court to determine whether the government possesses the requested information and, if so, whether its withholding of the information is justified, as was true in *Benavides*, *id.*, none is required here. The government properly invoked Exemption 7(C) to protect information concerning Troupe. Because Boyd was not entitled to this information, he was not harmed by the government's refusal to confirm or deny whether it possessed responsive information. Any error, then, in invoking Glomar would not entitle Boyd to anything more under FOIA. See also *Oguaju v. United States*, 288 F.3d 448, 451 (D.C. Cir. 2002), *vacated on other grounds sub nom. Oguaju v. Marshals Serv.*, 541 U.S. 970, 124 S.Ct. 1903, 158 L.Ed.2d 464, *judgment reinstated*, 378 F.3d 1115, *amended, reh'g denied*, 386 F.3d 273 (D.C. Cir. 2004).

a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not

C.

Exemption 7(D) authorizes the withholding of "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to disclose the identity of a confidential source ... and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation ... information furnished by a confidential source." 5 U.S.C. § 552(b)(7)(D). "[A] source is confidential within the meaning of Exemption 7(D) if the source provided information under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred." *U.S. Dep't of Justice v. Landano*, 508 U.S. 165, 172, 113 S.Ct. 2014, 124 L.Ed.2d 84 (1993) (internal quotation marks omitted).

[12] Amicus does not claim that the informant in Boyd's case did not receive an assurance of confidentiality. Boyd's assertion that the government's declarations are inconsistent, because one refers to an express assurance while another refers to an implied assurance, ignores the possibility that more than one informant may have been involved in his case or that the informant may have received both assurances, albeit at different times; in any event, Boyd offers nothing that would call into question the evidence cited in the BATF affidavit to demonstrate the informant received an express grant of confidentiality. Hence, the government may properly invoke Exemption 7(D) to withhold the identity of the confidential informant in Boyd's case and the information furnished by the

subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

5 U.S.C. § 552(c)(2).

informant. Although Amicus makes much of the fact that Troupe's status as an informant was confirmed in *Miller*, that confirmation does not amount to an admission that he was an informant in Boyd's case as well. We need not address Amicus's contention that the government is nonetheless required to disclose the same information that was officially disclosed in the *Miller* case, see *Wolf v. CIA*, 473 F.3d 370 (D.C.Cir.2007), because the Attorneys' Office advised Boyd that, upon request, it would provide him with all public information concerning Troupe in its possession.

Amicus also contends that the government is precluded from invoking Glomar in conjunction with Exemption 7(D) in response to Boyd's requests for information concerning Troupe because his status as an informant was officially confirmed in *Miller*. Because we concluded that the government's invocation of Glomar in conjunction with Exemption 7(C) deprived Boyd of no information to which he was entitled, there is no need to revisit the issue with regard to Exemption 7(D). Any information that may have been the subject of an erroneous invocation of Glomar was nonetheless properly withheld under Exemption 7(C).

[13] To the extent Amicus also contends that the government should not be able to withhold under Exemption 7(D) material exculpatory evidence that was wrongfully withheld at Boyd's trial, Amicus presents a policy argument for Congress's consideration. The disclosure obligation that *Brady* imposes at a defendant's criminal trial based on constitutional considerations is not the same disclosure obligation imposed under FOIA by Congress. To vindicate the former, a defendant may collaterally attack his conviction pursuant to 28 U.S.C. § 2255. See *Kyles*, 514 U.S. at 421–22, 115 S.Ct. 1555. To vindicate the latter, a defendant may appeal the

agency's withholding of requested information for failure properly to invoke a FOIA exemption or otherwise to comply with FOIA search obligations. In other words, the disclosure requirements are not coextensive. Amicus's suggestion that an agency's compliance with FOIA is nonetheless deficient where the agency may allegedly have failed to make the trial prosecutor aware of *Brady* material conflates two separate procedures by which a defendant may obtain information from the government. It ignores that "a disclosure made to any FOIA requester is effectively a disclosure to the world at large." *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 836 (D.C.Cir.2001); see also *Favish*, 541 U.S. at 174, 124 S.Ct. 1570. Congress, however, not only enacted section 2255 to allow correction of convictions imposed in violation of the law, it also enacted exemptions to FOIA disclosure obligations under specified circumstances. Amicus's contention that wrongfully withheld *Brady* material may never be protected under Exemption 7(D) would rewrite Congress's statutory scheme. In any event, this court has rejected a balancing of interests under Exemption 7(D). See *Parker v. Dep't of Justice*, 934 F.2d 375, 380 (D.C.Cir.1991).

D.

Amicus's other challenges to the grants of summary judgment fail. Boyd's *pro se* briefs also provide no basis for finding district court error.

[14] The affidavits filed by the agencies in response to Boyd's FOIA requests make clear that their "search[es] [were] reasonably calculated to uncover all relevant documents." *Weisberg v. U.S. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C.Cir. 1984) (internal quotation marks omitted); see *Perry*, 684 F.2d at 126–27. Although Amicus makes much of the failure to un-

cover or account for particular audio tapes, the fact that a particular document was not found does not demonstrate the inadequacy of a search. See *Iturralde*, 315 F.3d at 315; *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C.Cir.1999).

[15] The district court did not abuse its broad discretion in declining to conduct an *in camera* inspection of the BATF agent's work file and of the documents withheld under Exemption 7(D). See *Carter v. U.S. Dep't of Commerce*, 830 F.2d 388, 392 (D.C.Cir.1987); *Ctr. for Auto Safety v. Envtl. Prot. Agency*, 731 F.2d 16, 20 (D.C.Cir.1984). Although *in camera* review may be particularly appropriate if the agency affidavits do not describe the documents and justifications for withholding in sufficient detail to demonstrate that the claimed exemption applies, *Carter*, 830 F.2d at 392-93, Amicus has not demonstrated that the agencies failed to provide sufficiently detailed affidavits, nor offered evidence of bad faith. Upon discovering the work file, BATF released responsive non-exempt documents. Under the circumstances, Amicus fails to show the district court abused its discretion by failing to conduct *in camera* review of the withheld documents.

[16] Neither did the district court abuse its discretion by declining to order the government to disclose all segregable information in records withheld under Exemption 7(D). Observing that grand jury testimony associated Troupe with the gun and drugs found in his sister's home where Boyd was arrested, Amicus speculates that the government may have questioned Troupe about the items without giving him assurances of confidentiality, and thus segregable non-exempt documents may exist. The agencies are entitled to a presumption that they complied with their obligation to disclose "any reasonably segregable portion of a record," 5 U.S.C. § 552(b); cf.

U.S. Postal Serv. v. Gregory, 534 U.S. 1, 10, 122 S.Ct. 431, 151 L.Ed.2d 323 (2001) (citing *United States v. Chem. Found. Inc.*, 272 U.S. 1, 14-15, 47 S.Ct. 1, 71 L.Ed. 131 (1926)); *Fed. Trade Comm'n v. Invention Submission Corp.*, 965 F.2d 1086, 1091 (D.C.Cir.1992), and the record indicates that they did segregate non-exempt information in documents withheld under other FOIA exemptions.

[17] Nor did the district court abuse its discretion by not requiring the government to specify the date on which the Criminal Division destroyed responsive documents. Amicus, noting the several month delay between Boyd's request for documents and the Criminal Division's response, suggests that the Criminal Division may have acted in bad faith in destroying the documents and seeks the date of destruction to support its claims. This court has rejected the notion that an initial agency delay in responding to a FOIA request constitutes bad faith. See *Iturralde*, 315 F.3d at 314-15. But even if the documents were destroyed during the relevant time frame, their destruction, if performed in accordance with specified guidelines, would not imply bad faith. Amicus has made no proffer of a contrary records destruction schedule.

Finally, the district court did not err in denying Boyd's request for costs because he did not "substantially prevail[.]" 5 U.S.C. § 552(a)(4)(E). In neither of the March 15, 2002 orders on which Amicus relies did the district court order the government to turn over documents to Boyd. See *Edmonds v. Fed. Bureau of Investigation*, 417 F.3d 1319, 1321-23 (D.C.Cir.2005) (citing *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 601, 604-05, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001)); *Oil, Chem. & Atomic Workers Int'l Union, AFL-CIO*

v. Dep't of Energy, 288 F.3d 452, 456-57 (D.C.Cir.2002).

Accordingly, we affirm the grants of summary judgment.



**SECURITIES AND EXCHANGE
COMMISSION, Appellee**

v.

**WASHINGTON INVESTMENT
NETWORK AND ROBERT
RADANO, Appellants.**

No. 05-5433.

United States Court of Appeals,
District of Columbia Circuit.

Argued Oct. 16, 2006.

Decided Feb. 6, 2007.

Background: Securities and Exchange Commission (SEC) brought civil enforcement action against, inter alia, investment advisory firm and its co-owner, alleging that adviser had violated Investment Advisers Act and that co-owner aided and abetted those violations. Following bench trial, the United States District Court for the District of Columbia, 401 F.Supp.2d 43, sustained SEC's charges, enjoined firm and co-owner from future violations, and imposed penalties. Firm and co-owner appealed.

Holdings: The Court of Appeals, Brown, Circuit Judge, held that:

- (1) firm was "investment adviser" under Act;
- (2) firm violated Act provision prohibiting investment advisers from associating with parties known to have been

barred from investment advisory business;

- (3) acting on firm's behalf, co-owner engaged in fraudulent behavior violating Act provision barring fraud by investment advisers;
- (4) the record supported district court's holding that co-owner aided and abetted firm's violations;
- (5) enjoining future violations of Act was within bounds of district court's discretion;
- (6) injunction was overly broad; and
- (7) firm and co-owner forfeited their objections to penalties imposed.

Affirmed in part and remanded.

1. Federal Courts ⇌844, 850.1

District court's findings need only be plausible to satisfy rule providing that, in actions tried upon facts without jury, findings of fact should not be set aside unless clearly erroneous, with due regard given to court's opportunity to judge witness credibility. Fed.Rules Civ.Proc.Rule 52(a), 28 U.S.C.A.

2. Federal Courts ⇌776

District court's conclusions of law are subject to de novo review.

3. Federal Courts ⇌814.1

Court of Appeals reviews the decision to grant an injunction for abuse of discretion.

4. Securities Regulation ⇌223

Firm advised others "as to the advisability of investing in, purchasing, or selling securities," and thus was "investment adviser" under Investment Advisers Act, notwithstanding firm's contention that it merely acted as referral service for third-party administrator for several money managers, when services provided by firm to its clients included advising them in

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
vs.)	CASE NO.: 4:97CR301(DJS)
)	
WILLIE E. BOYD,)	
)	
DEFENDANT.)	

STATEMENT OF CARL L. EPSTEIN

I, Carl L. Epstein, hereby state and declare the following:

1. I was trial counsel and defended Willie E. Boyd in United States of America vs. Willie E. Boyd, Case Number 4:97CR301(SNL) from September 9, 1997 through October 22, 1998.

2. I was never given any documentation or information wherein Bryant Troupe was identified as a paid government informant.

3. That the two April 15, 1998 cover letters from then Assistant United States Attorney, Gary Gaertner, claimed to have been hand delivered to the undersigned during the trial, as discovery materials, were never delivered to me. I received no documents or information from the government regarding the trial in the case entitled United States vs. Miller, 4:96 CR365(CDP), as implied in the cover letters dated April 15, 1998. [See Exhibit "A" copy of April 15, 1998 cover letters].

4. That the undersigned never received a copy of the disclosure letter of Assistant United States Attorney Antoinette Decker dated February 21, 1997 from the above-mentioned

case, supposedly disclosed by Assistant United States Attorney Gary Gaertner. [See Exhibit "B", a two (2) page disclosure letter]. The undersigned subsequently reviewed this document at some point in time after the trial.

5. That the undersigned sent a letter to Willie E. Boyd on January 13, 2000, advising him that Assistant United States Attorney Gary Gaertner did not make available to me Grand Jury Jencks material, including the testimony of Detectives Joseph Custer, Bobby Garrett, and William Streckfus, said materials being necessary to impeach said government witnesses. Nor did Mr. Gaertner give the undersigned any materials concerning the employment of Bryant Troupe as a paid government witness.[See Exhibit "C"].

6. That on April 26, 2000, the undersigned responded to correspondence from Willie E. Boyd, regarding discovery materials alleged by Assistant United States Attorney Gary Gaertner in his correspondence of April 15, 1998 to have been hand delivered to me. In that letter, I advised said Willie E. Boyd that I had directed a call to Mr. Gaertner's voice mail for purposes of a further inquiry regarding the same. [See Exhibit "D"].

7. That on April 26, 2000, I directed another letter to said Willie E. Boyd, regarding a returned telephone from Mr. Gaertner, wherein he affirmed that he had not directed any materials to me regarding United States v. Byron James Miller, inasmuch as the foregoing did not constitute Brady, Jencks or Giglio materials, and that it would not have been material, relevant or exculpatory. [See Exhibit "E"].

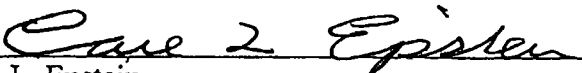
8. That the undersigned did not receive from the government, a copy of the Trial Transcript containing the testimony of Bryant Troupe from the case entitled United States of America v. Miller and Kerr, 4:96CR365(CDP) dated March 3-5, 1997, prior to or during the trial of Willie E. Boyd.

9. That the government never gave to the undersigned during discovery, documents that Willie Boyd eventually received through a Freedom of Information Act (FOIA) disclosure, from BATF Case File #02-1078, until said documents were directed to me by Mr. Willie Boyd for review, more particularly the following:

- a) St. Louis Prisoner Documentation, dated November 7, 1995, document numbers 38-39;
- b) St. Louis Police Teletype dated November 7, 1995, document number 41 labeled F(b);
- c) St. Louis Police Report, dated November 7, 1995, document numbers 43-46 and 48-53, labeled F(c);
- d) St. Louis Police Department Prisoner Process document dated November 7, 1995, document number 57 labeled Exhibit F(d)
- e) Copy of January 5, 1998 letter scheduling meeting for witness interviews, document number 98 labeled Exhibit F(e);
- f) Report of Interview of Albert Greer, document numbers 346 and 347, labeled Exhibit F(f);

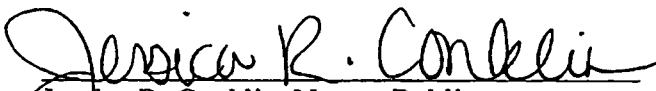
Affirmation

I declare under the penalty of perjury, that to the best of my knowledge, information, and belief, all of the foregoing is true, accurate, and correct.


Carl L. Epstein

State of Indiana)
)ss:
County of Marion)

Sworn to before me, a Notary public, in and for the County of Marion and the State of Indiana this 27th day of December, 2011


Jessica R. Conklin, Notary Public



U.S. Department of Justice

United States Attorney
Eastern District of Missouri

Gary M. Goetzner, Jr.
Assistant United States Attorney

U.S. Court and Custom House
1114 Market Street, Room 401
St. Louis, Missouri 63101

Direct Line (314)-339-6856
Office (314) 339-7200
Fax (314)-339-7309

April 15, 1998

Hand-Delivered
Mr. Carl Epstein
Attorney At Law

Re: Willie Boyd

Dear Mr. Epstein:

b7c

b7c

b7c

b7c

b7c

b7c

I have also provided you with
b7c b7c in the trial of United States v. Byron James Miller,
4:96CR365 CDP which you indicated to me in Court the other day that
you previously reviewed a copy, but you left your copy in
Indianapolis. I have also included Grand Jury testimony b7c b7c

b7c b7c have also included a copy of Agent b7c : report dated 10-9-
97 and a copy of b70 and


Exhibit-A

RIP
b7c

670 referenced in the report of

Respectfully submitted,

EDWARD L. DOWD, JR.
United States Attorney



GARY M. GAERTNER, JR.
Assistant United States Attorney

RIP
170



United States Attorney
Eastern District of Missouri

Direct Line (314)-539-6856
Office (314) 539-2206
Fax (314)-539-2305

April 15, 1998

Hand-Delivered
Mr. Carl Epstein
Attorney At Law

Re: Willie Boyd

Dear Mr. Epstein:

b7D On October 2, 1997, b7C b7E b7D b7D
b7C involving the case of United States v. Willie E.
Boyd, S1-4:97CR301 SNL. After October 2, 1997 date, the United
States Government b7C b7D b7E in the United States v.
Willie E. Boyd, S1-4:97CR301 SNL. The Government b7D
The Government has provided b7D
b7D regarding b7D the case of United
States v. Willie E. Boyd, S1-4:97CR301.

Respectfully submitted,

EDWARD L. DOWD, JR.
United States Attorney

GARY M. GAERTNER, JR.
Assistant United States Attorney

RIP
b7C, [redacted]



U.S. Department of Justice

United States Attorney
Eastern District of Missouri

Organized Crime Drug Enforcement
Task Force - South Central Region

U.S. Court and Customs House
1114 Market Street, Room 421
St. Louis, Missouri 63101

314-539-6851

FAX 314-539-2312

February 21, 1997

Mr. Charles M. Shaw
Mr. John F. Garvey, Jr.
Via FAX

Subject: United States v. Miller and Kerr
4:96CR365CDP

The following information regarding the background of Government witness Bryant Troupe is being provided as Jencks and/or Brady material. You have previously been sent a copy of his RAP sheet. It is my position that none of the entries provides material appropriate for impeachment.

No formal written agreement exists between Troupe and the Government. The Government does not intend to prosecute Troupe for past drug-related, non-violent criminal conduct revealed in his testimony as long as he has been and remains truthful.

Funds have been provided to, or expended on behalf of, Troupe in the following amounts for the listed reasons by the listed agencies:

From approximately 1983 to 1988, Troupe worked as an informant for the Velda City Police Department, where he was employed as a reserve officer for a short time in 1983. During that time, he provided information on criminal activities in the community on approximately 20 or more occasions. He did not testify in any of these cases. In some instances, he received no consideration. In others, he received \$20 to \$50 per case...

From approximately 1988 to 1995, Troupe worked as an informant for the North County MEG Unit/Northwoods Police Department. During that time, he provided information about narcotics and firearms which led to over 40 search warrants as well as other cases and other

Exhibit-B

arrests. His information was found to be consistently reliable. He did not testify in any of the resulting prosecutions. He received cash payments of from \$20 to \$50 per case.

In 1994, Troupe gave information to the Drug Enforcement Administration on one occasion. This led to the seizure of cocaine and marijuana. He did not testify. He received a \$200 cash payment.

Troupe began working with the Federal Bureau of Investigation in 1994. At this time, he was still working with the MEG Unit with the FBI providing some financial and manpower support. On one occasion, the FBI paid Troupe \$200 for a case he made for the MEG Unit.

From March of 1996 to the present time, Troupe has received the following consideration for his cooperation in the Miller/Kerr case: \$4,500 cash, \$750 expenses prior to 1/27/97, \$650 for credit debt, and \$1,160 for rental of secure housing as of 1/27/97.

Troupe has informed me that at various times since approximately 1989, he has participated in drug trafficking as a middleman or broker for Byron Miller. He received money for these services from Miller or others involved in the sales. This activity was not part of his supervised law enforcement cooperation.

Troupe has advised me that he has used and sold marijuana in the past.

Troupe also advised me that he did not report the above-described income as earnings, nor did he pay taxes on it. He has not been absolved of such tax obligation and has been so advised by me.

CARL L. EPSTEIN
ATTORNEY AT LAW
MARKET SQUARE CENTER, SUITE 1835
151 NORTH DELAWARE STREET
INDIANAPOLIS, INDIANA 46204
TELEPHONE (317) 631-1576

Also Admitted
in District of Columbia
and Pennsylvania

January 13, 2000

Mr. Willie E. Boyd
#18498-044
Federal Correctional Institution
P.O. Box 5000, 3-A
Greenville, Illinois 62246

Re: Your Correspondence of January 6, 2000

Dear Mr. Boyd:

In response to the above-mentioned letter, you are advised that Mr. Gaertner did not give me Grand Jury Jencks material such as the testimony of Detective Joseph Custer, Detective Bobby Garrett, or Mr. William Streckfus of the Casino Queen. You may recall that at trial, I relied on notes extracted from investigative reports and the Suppression proceedings to cross-examine or impeach those government witnesses. That was for want of anything else to utilize for that purpose.

He did not give me any materials concerning the employment of Bryant Troupe as a paid government witness. The only Grand Jury materials that I received were the testimony of Sharron Troupe and Muhammad Mateen.

I have reviewed Mr. Gaertner's letter to Kevin Schad today, for the first time. As previously indicated anything that I had received has already been made available to you.

You will recall that I wrote a rather lengthy motion regarding the government's obligation with respect to Grand Jury materials, all to no avail. I hope this letter adequately addresses your concerns.

Sincerely

Carl L. Epstein
Carl L. Epstein

Exhibit-C

CARL L. EPSTEIN
ATTORNEY AT LAW
MARKET SQUARE CENTER, SUITE 1835
151 NORTH DELAWARE STREET
INDIANAPOLIS, INDIANA 46204
TELEPHONE (317) 631-1576

Also Admitted
in District of Columbia
and Pennsylvania

April 26, 2000

Mr. Willie E. Boyd
#184980-044
Federal Correctional Institution
P.O. Box 5000, 3-A
Greenville, Illinois 62246

Dear Mr. Boyd:

As indicated in my letter to you dated January 3, 2000, I have already provided you with copies of every discovery related document that I received from Mr. Gaertner during the course of the case. I do not recall having received a hand delivered

You sent me an attachment dated April 15, 1998 that purports to be a letter hand delivering something to me. Most of the content of the letter is redacted and bears only the number "670". Consequently, I cannot discern the content of that letter.

I re-examined my case binder and I could not find anything directed to me by Mr. Gaertner regarding United States v Byron James Miller. I have directed a call to Mr. Gaertner's voice mail today, for the purpose of inquiring further. I have also put in a call to Mr Fabbri to see whether he might have received a hand delivery on my behalf.

Perhaps you can send me a complete copy of whatever he purportedly sent to me concerning the Miller case. Maybe I can then determine whether I recognize the item(s). As things stand, I am afraid that I cannot be of assistance to you.

I hope that this letter finds you well.

Sincerely,

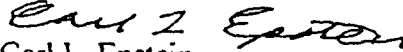

Carl L. Epstein

Exhibit-D

CARL L. EPSTEIN
ATTORNEY AT LAW
MARKET SQUARE CENTER, SUITE 1835
151 NORTH DELAWARE STREET
INDIANAPOLIS, INDIANA 46204
TELEPHONE (317) 631-1576

Also Admitted
in District of Columbia
and Pennsylvania

April 26, 2000

Mr. Willie E. Boyd
#184980-044
Federal Correctional Institution
P.O. Box 5000, 3-A
Greenville, Illinois 62246

Dear Mr. Boyd:

I received a return call today from Mr. Gaertner concerning materials supposedly sent to me regarding United States v Byron James Miller. Mr. Gaertner stated that nothing of the kind was ever directed to me as it would not have constituted Brady, Jencks or Giglio material. He also indicated that the material would not have been material, relevant or exculpatory.

Sincerely,

Carl L. Epstein

Carl L. Epstein

TRACKING NO 20 HOUR EXPIRATION DATE/TIME ADD'L A.R. # PROCESSED PAGE # ARREST NUMBER
11/07/95 18:00 1 of 1 95/6/0003334

CHARGES APPROVED BY: Ver # 1 Sgd ST. LOUIS METROPOLITAN POLICE ARREST REGISTER LID NUMBER OCN NUMBER

LAST NAME JACKSON FIRST NAME BILLY MIDDLE NAME M JR/SR LBNAME
RACE BLACK SEX MALE AGE 44 DATE OF BIRTH STATE MO OPERATOR'S LICENSE NUMBER-STATE MARITAL STATUS SIN COMPLAINT NUMBER

HEIGHT 508 WEIGHT 195 BUILD MEDIUM COMPLEXION MEDIUM BROWN EYES BLACK HAIR BLACK SOCIAL SECURITY NUMBER 493-62-5241 DOMESTIC INCIDENT NO

HOME ADDRESS 1403 E DESOTE CITY ST LOUIS STATE MO ZIP CODE (A.C.) HOME PHONE 63107 () 652-022

OCCUPATION CLERK UNEMPLOYED EMPLOYER (PRESENT OR LAST) COLES MOTEL

BUSINESS ADDRESS 4531 NATURAL BRIDGE CITY ST LOUIS STATE MO ZIP CODE (A.C.) BUSINESS PHONE 63115 385-5131

SCARS, MARKS, TATTOOS (DESCRIPTION AND LOCATION), ARTIFICIAL BODY PARTS, AMPUTATIONS, DEFORMITIES

EMERGENCY CONTACT-NAME ADDRESS (A.C.) PHONE CALL COMPLETED () OSN 22:30

PRISONER LOCATION RETURNED FROM AUTHORITY

TIME ARRESTED 22:00 DATE ARRESTED 11/06/95 ARRESTING OFFICER OSN ASSIGNMENT ASSIST OSN ASSIST OSN ASSIST OS

LOCATION OF ARREST 4531 NATURAL BRIDGE TIME BOOKED 01:26 DATE BOOKED 11/07/95 BOOKING OFFICER WEATHERSPOON

CHARGES DOC. NO. OFF. DATE COURT DATE TIME
1 POSS CONTROLLED SUBSTANCE(P) CN 95-164930 11/06/95

ISS/REF TIME DATE CHARGE REVISION F M C D INFO RECEIVED FROM INFO RECEIVED BY INFO.DISP.CN
Ref 19 9:47 11-7-95 95-164931
BOND-SURETY AGENT ADDRESS AMOUNT 5,000 DATE RET. 11-14-95 COURT 25

2 UNLAWFUL USE WRAP FEL (F) CN 95-164930 11/06/95
ISS/REF TIME DATE CHARGE REVISION F M C D INFO RECEIVED FROM INFO RECEIVED BY INFO.DISP.CN
Ref 9:47 11-7-95 95-164931
BOND-SURETY Same as line 1 AGENT ADDRESS TYPE INC AMOUNT DATE RET. COURT

3 ISS/REF TIME DATE CHARGE REVISION F M C D INFO RECEIVED FROM INFO RECEIVED BY INFO.DISP.CN
BOND-SURETY AGENT ADDRESS TYPE AMOUNT DATE RET. COURT

4 ISS/REF TIME DATE CHARGE REVISION F M C D INFO RECEIVED FROM INFO RECEIVED BY INFO.DISP.CN
BOND-SURETY AGENT ADDRESS TYPE AMOUNT DATE RET. COURT

HOW RELEASED BOND (BNDY) RELEASE LOC AREA PP TIME RELEASED 07:51 DATE RELEASED 11/7/95 RELEASED BY AUTHORITY FOR RELEASE
SIGNATURE OF OFFICER RECEIVING PRISONER AND PROPERTY DEPARTMENT/AGENCY 30

FORWARDED TO PRISONER PROCESSING DATE/TIME VERIFIED BY OSN REMARKS

I CERTIFY THAT MY NAME AND OTHER PERSONAL INFORMATION ON THIS FORM IS CORRECT.
I UNDERSTAND THAT FALSE STATEMENTS ARE PUNISHABLE BY LAW (RSNO 575.060).

PRISONER'S SIGNATURE BILLY JACKSON SEARCHING OFFICER'S SIGNATURE ENTERED BY: 01:26 11/07/95 Exhibit F-(a)

PRISONER'S PROPERTY

PROPERTY TAKEN WHEN BOOKED:

Money = NONE, Food stamps = NONE, 1pr-Shoelaces(s), Personal paper(s), 1-Watch(s), 2-Ring(s), 1-Bracelet/chain(s)
1-Necklace/chain(s)
BEEPER

PROPERTY SEIZED FROM PRISONER AS EVIDENCE:

775.00 DOLLARS

Prisoner's Signature for property taken

Searching Officer's Signature

Prisoner's Signature for Property
Received at Time of Release

PROPERTY RELEASED TO OTHER THAN PRISONER

Prisoner's Signature

Authorizing Release of Property

Signature of Person
Receiving Property

Address

Officer Releasing Property

PRISONER'S MEDICAL CONDITION

Do you have any medical conditions that we should be aware of, or are you currently taking any prescription medication? Yes

If yes, explain

PRISONER'S AUTO-TOWING OPTIONS

DISPOSITION OF PRISONER'S AUTO:

Towed to a police impoundment for safekeeping

Parked at


Turned over to

TOW OPTION FORM (GEN-145) PREPARED.

FINGERPRINTS

Right Hand, 4 Fingers Taken Simultaneously

1-8-98



PRISONER PROCESSING TIME S

CHECK IF NECESSARY TO PRINT LEFT HAND.

11/07/95 08:55 HSL PRINT FOR D MILLER

PAGES: 1 - 1

METROPOLITAN POLICE DEPARTMENT - CITY OF ST. LOUIS

TOPIC: Aliases/Lid Notification MSG NO: 74
SENDER:

PAGES: 1
TYPED BY:

AUTHORIZED BY: Sgt. Commander of I.D.
TO: Area III Detective, Det. DSN

Relative to arrested subject Billy M. Jackson, B/M.
~~DOB 08/19/51, AR#95/6/3334 and dated 11/06/95 and~~
processed as LID# Fingerprints reveal subject
to be identical to our LID# Subject uses aliases
of Willie Edward Boyd, Willie Edward Osborne and DOB
07/11/49, 07/04/49.

Pursuant to department regulations, special order
section page you are to check for
possible wanteds on above aliases and re-arrest if
necessary.

Please note correct LID#

Verification of prints made by FPT. DSN

41

95164900
PAGE 1

Following are the circumstances and events that led up to and surrounded the arrest of the herein named individuals.

At approximately 4:30 p.m., Detectives
DSN and J
Detective met rating
out on a motor cycle, 4533 Natural Bridge, were engaged
in the sale of Crack/Cocaine

Continuing with this investigation, at approximately 9-10 p.m., the herein named detectives set up and maintained a surveillance on the aforementioned motel. During this surveillance, we observed seven individuals approach the front door of the motel and being allowed entry, approached a door leading to a room situated on the west side of the premises. These individuals would knock on the door leading to this room, at which time a short transaction involving currency and other unknown items would take place. These individuals would leave the motel and walk from the area.

At approximately 10:00 p.m., myself, along with Detectives J entered the motel, which was open for business, and approached the aforementioned door, leading to what was later found to be an office. Upon knocking on this door, same was opened by an individual, later identified as Billy J. Upon seeing the officers, this subject attempted to close the door, pushing same towards the officers.

During this struggle to enter the premises, we could hear a toilet flushing inside this room.

At this point, the officers were allowed entry to the premises and almost immediately located the herein mentioned firearms and a plastic bag containing suspected Crack/Cocaine. During this incident, subject exited a restroom, which was located on the north side of the room.

Both subjects were placed under arrest and advised relative to their Constitutional Rights, as outlined in MPD Form GEN-19.

(43)

Exhibit F-(c)

S I D C C

L O O C

Subject Billy J. secured the premises by locking both doors, after which time the arrested subjects were conveyed to the Area III Command Station where they were booked and charged as indicated herein.

While at the Area III Station, the investigating officers seized \$775 from arrested subject Billy J. This currency was believed to be proceeds from the illegal sale of Crack/Cocaine. The currency was counted in the presence of the arrested subject and recorded on MPD Form GEN-74 (Property Receipt), which was signed by the arrested subject and hereto attached.

Both of the arrested subjects were reminded of their Constitutional Rights, and questioned relative to this incident. Subject Billy J. stated that he is friend's with the owner of the aforementioned hotel and that he was on the premises waiting for his friend, adding that he did not take part in any illegal activity. In response to questioning, this individual stated that he kept a firearm for his own protection.

Arrested subject

... and that he did not have a ... arm or any type of controlled substance, concluding in stating that he is on parole and feared that his parole would be violated.

A record and wanted search via REJIS computer revealed that both of the arrested subjects have extensive police records indicated with this department, with no active wanted on file.

Criminal Information Sheets and a Warrant Disposition Report were prepared, as warrants will be applied for in the a.m. of 11/7/95 by the herein named arresting officers.

ATTACHMENT:

PROPERTY RECEIPT.

44

11/07/95

ST. LOUIS METROPOLITAN POLICE DEPARTMENT
POLICE INCIDENT REPORTING SYSTEM
INCIDENT REPORT

CHPLT / 95164930

I N C I D E N T

Incident Type: 182999 VHC SL-GENERAL POSSESSION
Complaint / Status: CLEARED/ARREST
Orig./Supplement: ORIGINAL
Dist./Precinct/Beat:
Origination Desc: RA...J
Day of Week: MON
Date of Occurrence: 11/06/95 to 11/06/95
Time of Occurrence: 22:00 to 22:00
Location Name: COLLE'S MOTOR LODGE Ngh:
Street: 4531 NATURAL BRIDGE
City/State: ST. LOUIS MO
Type of Premises: HOTEL/HOTEL
Invest Followup(Y/N): N
Assignment:
Date: 11/07/95
Time: 22:00
Asgmt. Code:
DSN/Officer:
Assisted by:

Car No:

ANY WEAPONS DISCHARGED BY AN OFFICER(Y/N)? N

Summary: THE HEREIN NAMED DETECTIVES WHO ARE
MEMBERS OF THE AREA III SPECIAL OPERATIONS TASK FORCE
FOLLOWING A SHORT INVESTIGATION ARRESTED TWO INDIVIDUALS AND
SEIZED A QUANTITY OF SUBSTANCE, BELIEVED TO BE CRACK
COCAINE, THREE FIREARMS, AND \$775 IN U.S. CURRENCY.

V I C T I M

NAME: LAST STATE OF MISSOURI
DOMESTIC INCIDENT: NO
REL. TO SUSPECT: RELATIONSHIP UNKNOWN
BIAS INCIDENT: NO

P R O P E R T Y

Property Status: EVIDENCE
Damaged (Y/N): N
Held as Evidence: Y
Quantity: 1
Property Type: CONSUMABLE GOODS
Characteristics: ONE PLASTIC BAG CONTAINING
AN OFF WHITE ROCK LIKE

45

Estimated Value: \$ 0
Property Disp: TAKEN TO LABORATORY
Recovery:
Loc. Recovered: FLOOR
Date: 11/07/95
Address:
Street: 4531 NATURAL BRIDGE
City/State: ST. LOUIS MO
DSN/Officer:
Assignment Code:
Owner:
Name: J (SUSPECT)
BILLY

P R O P E R T Y

Property Status: OTHER
Damaged (Y/N): N
Held as Evidence: Y
Quantity: 1
Property Type: CURRENCY/NOTES
Characteristics: \$775 U.S. CURRENCY IN
VARIOUS DENOMINATIONS
Estimated Value: \$ 775
Property Disp: ASSET FORFEITURE
Recovery:
Loc. Recovered: PERSON OF SUSPECT
Date: 11/07/95
Address:
Street: 4014 N UNION
City/State: ST. LOUIS MO
DSN/Officer:
Assignment Code:
Owner:
Name: J (SUSPECT)
BILLY

P R O P E R T Y

Property Status: EVIDENCE
Damaged (Y/N): N
Held as Evidence: Y
Quantity: 7
Property Type: FIREARM
Brand: RUGER
Model: SECURITY 6
Characteristics: .357 MAGNUM BLUE STEEL
REVOLVER WITH 3" BARRELL
LOADED W/6 LIVE ROUNDS

46

Estimated Value: \$ 0
Property Disp: TAKEN TO LABORATORY
Recovery:
Loc. Recovered: FLOOR
Date: 11/07/95
Address:
Street: 4531 NATURAL BRIDGE
City/State: ST. LOUIS MO
DSN/Officer:
Assignment Code:
Owner:
Name: J (SUSPECT)
BILLY

P R O P E R T Y

Property Status: EVIDENCE
Damaged (Y/N): N
Held as Evidence: Y
Quantity: 5
Property Type: FIREARM
Brand: SMITH & WESSON
Serial Number: 58645
Characteristics: .45 CALIBER BLUE STEEL
REVOLVER WITH 6" BARRELL WITH
4 LIVE ROUNDS SHP951106-231241
Estimated Value: \$ 0
Property Disp: TAKEN TO LABORATORY
Reference Number:
Recovery:
Loc. Recovered: FLOOR
Date: 11/07/95
Address:
Street: 4531 NATURAL BRIDGE
City/State: ST. LOUIS MO
DSN/Officer:
Assignment Code:
Owner:
Name: J (SUSPECT)

P R O P E R T Y

Property Status: EVIDENCE
Damaged (Y/N): N
Held as Evidence: Y
Quantity: 1
Property Type: FIREARM
Brand: ACIER VICKERS
Model: ITALIAN

48

Serial Number: 4478
Characteristics: .20 GAUGE DOUBLE
BARRELL BLUE STEEL SHOTGUN
W/2 RNDS .9HP953306-231715
Estimated Value: \$ 0
Property Disp: TAKEN TO LABORATORY
Reference Number: G694127173
Recovery:
Loc. Recovered: IN CORNER IN SCUTHEAST CORNER
Date: 11/07/95
Address:
Street: 4531 NATURAL BRIDGE
City/State: ST LOUIS MO
OSN/Officer:
Assignment Code:
Owner:
Name: J (SUSPECT)
BILLY

49

S U S P E C T

NAME: LAST JACKSON
FIRST BILLY M
AGE 044 TO 044
WEIGHT 195 TO 195
HEIGHT 508 TO 508
RACE BLACK
SEX MALE
BUILD MEDIUM
COMPLEXION MEDIUM
EYE COLOR BROWN
HAIR COLOR BLACK
HAIR STYLE AFRO/NATURAL
HAIR LENGTH MEDIUM
FACIAL HAIR COMBINATION BEARD/MUSTACHE
CLOTHING BLUE SWEATER
CLOTHING BLACK SHIRT/BLOUSE

Birth:
Date: 08/19/51
Location: MO
Social Security No: 493-62-5241
Marital Status: SINGLE
Suspect Status: ADULT ARREST
Injury:
Description: NOT APPARENT
RESIDENCE ADDRESS:
Street: 1403 E DESOTO
City/State: ST. LOUIS MO 63107
Telephone: (Res) (314) 652-0222 Ext. 9000
Arrest:
Date: 11/07/95
Time: 22:00
Officer/Asgmt: ASGMT /
Assisted by:
Local ID Number:
Miranda:
Yes/No: Y
Officer:
Charge:
Charge Descr: 1) VMCSL POSSESSION
OF COCAINE
Crime Catgry: FELON Date: 11/07/95
Document No: CN 95-164930
Charge Descr: 2) UUV/CCW
Crime Catgry: FELON Date: 11/06/95
Document No: CN 95-164930

50

S U S P E C T

NAME: LAST
FIRST

AGE
WEIGHT 145 TO 145
HEIGHT 503 TO 503
RACE
SEX
BUILD
COMPLEXION
EYE COLOR
HAIR COLOR
HAIR STYLE
HAIR LENGTH
FACIAL HAIR
CLOTHING
CLOTHING

Birth:
Date:
Location: MO
Social Security No:
Marital Status:
Suspect Status: ADULT ARREST
Injury:
Description: NOT APPARENT

RESIDENCE ADDRESS:
Street:
City/State:
Telephone: (Res) Ext.

Arrest:
Date: 11/06/95
Time: 22:00
Officer/Asgmt: ASGMT /
Assisted by:

Local ID Number:
Miranda:

Yes/No: Y.
Officer:
Charge Descr: 1) VMCSL POSSESSION
COCAINE

Crime Catgry: PELON Date: 11/07/95
Document No: CN 95-164930
Charge Descr: 2) UOW CARRYING
Crime Catgry: PELON Date: 11/06/95
Document No: CN 95-164930

51

LAST PAGE

1-1
SUBMITTED BY

Sst.
Supervisor

Watch Commander

(52)

Best Copy Available

S E P 6 6

2 0 6 0

METROPOLITAN POLICE DEPARTMENT - CITY OF ST. LOUIS
PROPERTY RECEIPT

ORIGINAL REPORT ☒ SUPPLEMENTARY REPORT ☐
 (INDICATE 'X' IN APPROPRIATE BOX)

FILE NO. FOR REFERENCE

CLAIMANT NO. 1-10173

1. TYPE OF INCIDENT <u>V.C.S.T. Loss - COPIES</u>		2. ORIGINAL C.N. <u>45-16492</u>	3. DIST. REPORTING	4. DATE OF THIS REPORT <u>11-6-92</u>
5. DATE AND TIME OF OCCURRENCE <u>11-6-92</u>	6. LOCATION OF OCCURRENCE <u>1403 Bessie Ave. St. Louis, Mo.</u>		7. DISPICT	8. LOCATION CASE
9. VICTIM <u>State of Missouri</u>		10. HOME ADDRESS		
		11. BUSINESS ADDRESS		
12. DATE RECEIVED <u>11-6-92</u>		13. TIME RECEIVED		
14. RECEIVED FROM <u>Billy Jackson</u>		NAME (print)	DOB	ASSIGNMENT
15. RECEIVED BY <u>Dat</u>		NAME (print)	ADDRESS	
16. OWNER BY <u>Unknown</u>		ADDRESS		
17. QUANTITY	DESCRIPTION			
	<u>8775.00 U.S. Currency</u>			
<div style="position: relative; width: 100%; height: 100%;"> <div style="position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%); font-size: 40px; border: 1px solid black; border-radius: 50%; padding: 10px;">53</div> </div>				
18. REC'D	SIGNATURE <u>[Signature]</u>		DOB	19. RECEIVED BY
70.3	OFFICER	DSM	ASSIGNMENT	SIGNATURE <u>[Signature]</u>
51.	ATTN		PROPERTY ONLY	
23. REEPLY NO.		24. REFERENCE NUMBER		

TRACKING NO. 20 HOUR EXPIRATION 11/07/95 DATE/TIME 18:00 ADD'L A.R. # PROCESSED PAGE # 1 of 1 ARREST NUMBER 95/6/00033

CHARGES APPROVED BY: Ver # 1 ST. LOUIS METROPOLITAN POLICE ARREST REGISTER

LID NUMBER OCN NUMBER

LAST NAME JACKSON FIRST NAME BILLY MIDDLE NAME M JR/SR LBRAME

RACE BLACK SEX MALE AGE 44 DATE OF BIRTH STATE MO OPERATOR'S LICENSE NUMBER-STATE SIN MARITAL STATUS COMPLAINT NO

HEIGHT 508 WEIGHT 195 BUILD MEDIUM COMPLEXION MEDIUM EYES BROWN HAIR BLACK SOCIAL SECURITY NUMBER 493-62-5241 DOMESTIC INCIDENT NO

HOME ADDRESS 1403 E DESOTE CITY ST LOUIS STATE MO ZIP CODE (A.C.) HOME PHONE 63107 () 652-C

OCCUPATION CLERK UNEMPLOYED EMPLOYER (PRESENT OR LAST) COLES MOTEL

BUSINESS ADDRESS 4531 NATURAL BRIDGE CITY ST LOUIS STATE MO ZIP CODE (A.C.) BUSINESS PHONE 63115 385-5131

SCARS, MARKS, TATTOOS (DESCRIPTION AND LOCATION), ARTIFICIAL BODY PARTS, AMPUTATIONS, DEFORMITIES

EMERGENCY CONTACT-NAME ADDRESS (A.C.) PHONE CALL COMPLETED DSN 22:

PRISONER LOCATION RETURNED FROM AUTHORITY

TIME ARRESTED 22:00 DATE ARRESTED 11/06/95 ARRESTING OFFICER DSN ASSIGNMENT ASSIST DSN ASSIST DSN ASSIST

LOCATION OF ARREST NATURAL BRIDGE TIME BOOKED 01:26 DATE BOOKED 11/07/95 BOOKING OFFICER WEATHERSPOON

CHARGES	DOC. NO.	OFF. DATE	MO CHG	NCIC	RSMO
POSS CONTROLLED SUBSTANCE (P)	CN 95-164930	11/06/95			195.202, PAR
UNLAWFUL USE WEAP FEL (P)	CN 95-164930	11/06/95			571.030

TIME STAMP: RECEIVED

HT (inches) 68 WEIGHT 213 HAIR BLK EYES BRN
PHOTOGRAPH 4 x 5 8 x 10 GROUP PHOTO WITH ID NO.
Yes No

TIME STAMP: PROCESSED

PHOTO BY

PROCESSING OFFICE

PROCESSING CLERK

ST. LOUIS POLICE
LABORATORY SECTION
No Record
Record

NEW SCARS, MARKS, TATTOOS

SIGNATURE OF PERSON FINGERPRINTED

RIGHT FOUR FINGERPRINTS TAKEN SIMULTANEOUSLY

PROCESSING NOTES
ID RECORD

YES

NO

ID NO.

P & P LHM (DASH)

SS SHH NP NLC

NEW 16

CLASS

100 50 00 14

REF.

FBI #

Exhibit-F-(d)



U.S. Department of Justice

United States Attorney
Eastern District of Missouri

Gary M. Gaertner, Jr.

Assistant United States Attorney

U.S. Court and Custom House

1114 Market Street, Room 401

St. Louis, Missouri 63101

Direct Line (314)-539-685

Office (314)-539-770

Fax (314)-539-730

January 5, 1998

VIA FAX-314-425-5568

Special Agent

BATF

RE: Willie Boyd

Dear Jim:

I have arranged the following meetings with the employees from the Casino Queen:

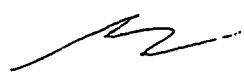
1. , January , 1998 at 9:30 a.m.;
2. January 1998 at 1 p.m.; and
3. January , 1998 at 9:30 a.m.

I am also setting up two more witness interviews.

Respectfully submitted,

EDWARD L. DOWD, JR.

United States Attorney


GARY M. GAERTNER, JR.

Assistant United States Attorney

98

745519 97 0012

REPORT OF INTERVIEW

With Albert Lee Greer, 1435 East DeSoto, St. Louis, Missouri, made on June 6, 1997, by Special Agent [REDACTED] Bureau of Alcohol, Tobacco & Firearms (ATF).

On June 6, 1997, at 4:31 p.m., Special Agent (SA) [REDACTED] and SA [REDACTED] contacted Albert Lee Greer at his residence, 1435 East DeSoto, St. Louis, Missouri, relative to the ongoing federal investigation of Willie E. BOYD for the violation of federal firearms and narcotics laws.

SA [REDACTED] and SA [REDACTED] responded to the address on DeSoto to serve a federal Grand Jury subpoena for Greer relative to the investigation. SA [REDACTED] had been advised by the Deputy U.S. Marshal (DUSM) [REDACTED] that he had just spoken with Greer and that Greer indicated that he was going to leave town for Kansas City. DUSM [REDACTED] stated that Greer advised him that Sharon Troupe (Willie Boyd's fiancée) had contacted Greer relative to the recovery of a firearm from the residence on DeSoto by St. Louis Metropolitan Police Department Mobile Reserve Officers.

Subsequent to the recovery of the firearms by the officers, Greer made an allegation to the Internal Affairs Division (IAD) of the St. Louis Metropolitan Police Department concerning the loss of \$3,500 in U.S. currency during the search warrant execution by the Mobile Reserve Officers.

Upon arrival at 1435 East DeSoto, SA [REDACTED] handed Greer his copy of the federal Grand Jury subpoena requiring his testimony on June 11, 1997, at 11:00 a.m. at the United States Court and Custom House, 1114 Market Street, St. Louis, Missouri. SA [REDACTED] advised Greer that he was under federal subpoena and his appearance would be required on that date and time. SA [REDACTED] advised Greer that any questions regarding the subpoena could be directed to Assistant United States Attorney (AUSA) Gary M. Gaertner, Jr. who is handling the prosecution of the BOYD case. Greer indicated that he understood the subpoena and would be at the courthouse on that date.

SA [REDACTED] advised Greer that the subpoena was in reference to the recovery of the firearm at 1435 East DeSoto. Greer stated that a neighbor had contacted him at the shop (3780 W. Florissant) and told him that the police were at his house. Greer stated that he came to the house and talked to the police on the front porch. Greer stated that he told the police that if there is something in the house, I don't know nothing about it. Greer stated that the firearm recovered by the police was not his gun. Greer stated that he told the police to check it for fingerprints, my prints aren't on it. Greer stated that he does not recall telling the police that the gun belonged to Willie (BOYD).

346

745519 97 0012

-2-

Greer stated that he had maybe \$1,200 to \$1,500 in cash in the house, but was not sure. Greer stated that the house was owned by Mary DeArmond. Greer stated that he was trying to find out if his cousin, Stanley Boyd, took the money. Greer stated that, "I don't believe the police took the money." Greer further stated that the cousin (Stanley Boyd) "might have taken the money to smoke some crack." Greer stated that Stanley is a crack cocaine user and that he had been up and down the street to see if his cousin had been buying any crack cocaine.

Greer stated that he and Sharon Troupe went to the Police Department IAD together. Greer stated that Sharon Troupe picked him up from work to take him to IAD. Greer stated that Troupe told him to "ride with me" and she asked about what was missing from the house. Greer stated that he told her that baseball cards were missing from the house. At that point of the interview, Greer stated, "I am scared to death." Greer stated that Willie (BOYD) didn't tell him to claim the money was missing. Greer stated that Sharon had told him to ride with her and that she estimated that \$3,500 was missing and told him that the police probably took it since he couldn't find it. Greer again stated regarding the missing money, "I don't think the police had anything to do with it, since I dug into it." Greer stated that he had last saw the money a week or so prior to the search warrant execution.

Greer stated that this is the second incident regarding missing money. Greer stated, "I bet Stanley took it." Greer stated that on a prior occasion, another brother had taken money from his wallet. Greer stated that he found the baseball cards and StarWars cards that he thought were missing from the residence.

The foregoing report of interview was reduced to writing following the interview by the undersigned agent.

SA [REDACTED]

ATT [REDACTED]

347