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Submitted online via FOIA STAR

Bobak Talebian, Director
Office of Information Policy
United States Department of Justice
441 G Street NW, 6th Floor
Washington, D.C. 20530

Dear Director Talebian,

On behalf of Animal Partisan, I submit the following appeal in response to the Federal Bureau of Investigation's ("FBI") denial of two separate requests made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, et al.

I. GROUNDS FOR APPEAL

The present appeal concerns the FBI's denial of multiple requests for public records. These requests and their respective grounds for appeal are discussed individually below.

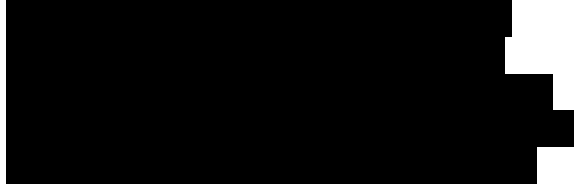
A. Privacy Exemptions

On October 27, 2022, Animal Partisan submitted a FOIA request¹ to the FBI seeking three categories of records. Of these three requests, only two are relevant here. These two requests, along with the corresponding FBI Request Number, are listed below.

- **(FBI Request No. 1570967-000) Any records involving communications or interactions between the FBI and any of the following named individuals:**

- [REDACTED] (Tyson Foods)
- [REDACTED] (Tyson Foods)
- [REDACTED] (Tyson Foods)
- [REDACTED] (Tyson Foods)
- [REDACTED] (Smithfield Foods)
- [REDACTED] (Smithfield Foods)
- [REDACTED] (JBS)

¹ Appendix A.



- **(FBI Request No. 1570969-000) Any emails sent by or received by the following Special Agents that include any of the following words: “agriculture”, “agricultural”, “animal”, “rights”, “activist”, “Tyson”, “JBS”, “Smithfield”, “alliance”, “meat”, “dairy”, “egg”, or “poultry”.**
 - FBI Special Agent Chris Ford (Texas)
 - FBI Special Agent C. Daniel Sturgill (Arkansas)
 - FBI Special Agent Scott Mahloch (Wisconsin)
 - FBI Special Agent Chris Andersen (Utah)

On November 2, 2022, the FBI responded to the above requests in separate letters² that included an identical Glomar denial, stating:

You have requested records on one or more third party individuals. Please be advised the FBI will neither confirm nor deny the existence of such records pursuant to FOIA exemptions (b)(6) and (b)(7)(C), 5U.S.C. §§552(b)(6) and (b)(7)(C). The mere acknowledgement of the existence of FBI records on third party individuals could reasonably be expected to constitute an unwarranted invasion of personal privacy. This is our standard response to such requests and should not be taken to mean that records do, or do not, exist. As a result, your request has been closed.

The FBI’s denial of these two requests was in error. First, FOIA requires that the FBI segregate or redact portions of the records that may be subject to the exemptions rather than categorically deny the entire request. FOIA states:

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.³

Thus, the FBI should have provided the requested records and redacted any information subject to privacy concerns such as name or other identifying information.

² Appendix B & C.

³ 5 U.S.C. § 552(b).

Second, the FBI failed to balance its privacy concerns with the public interest in disclosure as required by law.⁴ Federal courts interpreting FOIA have determined that “FOIA’s strong presumption in favor of disclosure *is at its zenith*” when considering the balance between privacy interests and public interest.⁵ The Supreme Court of the United States has held that “unless the invasion of privacy is clearly unwarranted, the public interest in disclosure must prevail.”⁶

Here, there is a strong public interest in the disclosure of these records for purposes of understanding the FBI’s involvement with the animal agriculture industry in investigating animal rights activists. In recent years, stories regarding the FBI’s collaboration with animal agriculture have been widely covered and viewed by thousands of Americans. For example, in 2017, award-winning journalist, Glenn Greenwald, reported on the FBI’s extensive efforts to retrieve two piglets taken from a Smithfield-owned Utah factory farm.⁷ Greenwald’s reporting was published by The Intercept, a news organization whose website is viewed by over 3 million visitors each month.⁸ The FBI’s efforts to retrieve these piglets was widely scrutinized in the recent trial of two animal rights activists; the cross-examination of the FBI agent involved has been viewed thousands of times on YouTube.⁹

In 2021, the Intercept reported on FBI’s coordination with Iowa Select in attempting to use an informant to infiltrate an animal rights organization.¹⁰ The FBI’s involvement in this matter was further covered by the Des Moines Register,¹¹ a news organization with a circulation of 33,000 newspapers and over 150,000 Facebook followers.¹² Even agriculture industry news sources have openly reported on interactions with the FBI.¹³

The FBI’s interactions with the animal agriculture industry in investigating animal rights activists are of significant public interest. Had the FBI properly balanced its privacy concerns with the public interest in disclosure, it would have released the requested records. Its failure to do so was in error and we respectfully request that the OIP intervene to remedy the FBI’s flawed decision.

⁴ *Jurewicz v. United States Dep’t of Agric.*, 741 F.3d 1326, 1331 (D.D.C. 2014)

⁵ *Ibid.* (emphasis added).

⁶ *Department of State v. Ray*, 502 U.S. 164, 177 (1991).

⁷ G. Greenwald, *The FBI’s Hunt for Two Missing Piglets Reveals the Federal Cover-Up of Barbaric Factory Farms*, The Intercept, <https://theintercept.com/2017/10/05/factory-farms-fbi-missing-piglets-animal-rights-glenn-greenwald/> (last visited Nov. 30, 2022).

⁸ SIMILARWEB, <https://www.similarweb.com/website/theintercept.com/#ranking> (last visited Dec. 1, 2022).

⁹ “Does this refresh your memory as to whether eight FBI agents were involved?”, Direct Action Everywhere, YOUTUBE, <https://www.youtube.com/watch?v=PNpLiEVgW3k> (last visited Nov. 30, 2022).

¹⁰ L. Fang, *After Pork Giant Was Exposed For Cruel Killings, The FBI Pursued Its Critics*, THE INTERCEPT, <https://theintercept.com/2021/02/17/fbi-iowa-select-pigs-whistleblower/> (last visited Nov. 30, 2022).

¹¹ M. Johnson, *Opinion: My arrest and aborted prosecution underlined 3 lies Iowa is propagating about animal agriculture*, DES MOINES REGISTER, <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2022/01/23/animal-abuse-vs-d-iowa-agriculture-state-tried-silence-me/6631339001/> (last visited Dec. 1, 2022).

¹² Des Moines Register, FACEBOOK, <https://www.facebook.com/DesMoinesRegister> (last visited Dec. 1, 2022).

¹³ *Livestock Farmers Should Note the Possibility of Increased Activist Activity*, OHIO COUNTRY JOURNAL, <https://ocj.com/2020/06/livestock-farms-should-note-the-possibility-of-increased-activist-activity/> (last visited Dec. 1, 2022); *Catfishing*, CYBERAG, <https://cyberag.org/2022/01/catfishing/> (last visited Dec. 1, 2022).

B. Investigative File Exemption

In addition to the two requests cited above, Animal Partisan's October 27, 2022 FOIA letter included the following request which was also denied in error:

- **(FBI Request No: 1570974-001) Any records related the FBI's involvement in any of the following conferences, including as presenters, consultants, panelists, or attendees:**
 - North American Meat Institute Animal Care and Handling Conference
 - Held at the Westin Kansas City at Crown Center, Kansas City, Missouri 64108 on September 13-14, 2022
 - North American Meat Institute Animal Care and Handling Conference
 - Held virtually on October 12-16, 2020.

On November 2, 2022, the FBI responded to this request¹⁴ and advised that it was “unable to identify records subject to the FOIPA that are responsive to your request.” That same day, Animal Partisan submitted another FOIA request¹⁵ and advised that on its information and belief, FBI Special Agent Chris Ford had attended and participated in the October 12-16, 2020 North American Meat Institute Animal Care and Handling Conference. Based on this information, Animal Partisan asserted that the FBI's conclusion that no responsive records existed was in error.

On November 15, 2022, the FBI responded¹⁶ and backtracked on its original November 2 conclusion that no records existed, but instead denied the request based on an exemption. The denial read:

The FBI has completed its search for records subject to the FOIPA that are responsive to your request. The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A).¹⁷

This denial is in error for several reasons. First, as stated in Section I(A), the FBI is obligated under 5 U.S.C. § 552(b) to redact any exempted material and provide the remainder. Under FOIA:

[a]n investigatory record must meet two criteria to fall within FOIA exemption 7(A): first, it must be compiled for law enforcement purposes, and second, its release must interfere with enforcement proceedings. The government has the burden of demonstrating that the exemption applies.¹⁸

¹⁴ Appendix D.

¹⁵ Appendix E.

¹⁶ Appendix F.

¹⁷ Appendix F

¹⁸ *Bevis v. Department of State*, 801 F.2d 1386, 1388 (D.C. Cir. 1986) (internal citations omitted).

Further, the exemption only applies to “concrete prospective law enforcement proceedings”¹⁹ that must “focus directly on specifically alleged illegal acts, illegal acts of particular identified officials, acts which could, if proved, result in civil or criminal sanctions.”²⁰

Here, the FBI could have redacted any information that interfered with a “concrete prospective law enforcement proceeding” and provided the remainder, much of which Animal Partisan believes was generalized information presented to the conference and not specific to any proceeding in particular.

Second, the request seeks—in part—information Animal Partisan believes was presented by Special Agent Ford to hundreds of attendees at the North American Meat Institute Animal Care and Handling Conference. Thus, the information has already been made public and is therefore not subject to the exemption as held by the District Court for the District of Columbia.²¹

The FBI erred by withholding this information. We urge the OIP to correct the FBI’s error and order the agency to provide the requested records.

II. CONCLUSION

As explained above, the FBI’s denial of these requests was in error. The FBI failed to redact or segregate information as required by FOIA and misinterpreted several exemptions. The OIP should intervene to remedy the FBI’s errors and order the agency to comply with FOIA in fulfilling Animal Partisan’s requests.

We appreciate your attention to this important matter and look forward to your response. Please contact me at wlowrey@animalpartisan.org or (804) 307-4102.

Sincerely,



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¹⁹ *Carson v. U. S. Dep't of Justice*, 631 F.2d 1008, 1018 (D.C. Cir. 1980); *see also Scheer v. DOJ*, 35 F. Supp. 2d 9, 12 (D.D.C. 1999).

²⁰ *Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.D.C. 1974).

²¹ *UtahAmerican Energy, Inc. v. United States Dep't of Labor*, 700 F. Supp. 2d 99, 108 (D.D.C. 2010).