



U.S. Department of Justice

United States Marshals Service

Office of General Counsel

*CG-3, 15th Floor
Washington, DC 20530-0001*

August 10, 2023

Mr. Mark Stephen Burke
46 Kingwood Greens Dr
Kingwood, TX 77339
Email: markburkeusa@gmail.com

Re: Freedom of Information Act Request No. 2023-USMS -APPEAL-000031
Subject: FOIA Request re 2023-USMS-000157

Dear Requester:

The United States Marshals Service (USMS) is responding to your Freedom of Information Act (FOIA) request received by USMS on April 13, 2023, for the following:

"(A-2023-00982; 2023-USMS-000157), See attached request (8-page PDF) Formally requests all case file(s), documents, video, phone call data, and recordings, audio or video pertaining to this event, the people involved and their respective information including resumes, along with any related information for the whole period of surveillance, including the time period wherein USMS formally requested removal of Judges data. This should include any judicial requests, whether denied or granted, where USMS sought any orders approving surveillance, not limited to wiretapping or monitoring of home office, residence, personal and business emails, websites, other data or data mining usually associated with a USMS investigation (Date Range for Record Search: From 1/1/2019 To 1/12/2023)"

Please note the previous response was dated incorrectly, the correct date should have been August 2, 2023. The USMS is amending the response letter to today's date, August 10, 2023, and providing an updated copy.

Pursuant to your request, the USMS conducted an additional search for records responsive to your request and located 6 pages of responsive documentation within the following offices/divisions:

Investigative Operations Division (IOD)
Judicial Security Division (JSD)

To withhold a responsive record in whole or part, an agency must show both that the record falls within a FOIA exemption, 5 U.S.C. § 552(b), and that the agency "reasonably foresees that disclosure would harm an interest protected by exemption." See § 552(a)(8)(A)(i)(I); *Machado Amadis v. U.S. Dep't of State*, 971 F.3d 364 (D.C. Cir. 2020). As described in this correspondence, the USMS reviewed responsive records to your request and asserted FOIA exemptions as appropriate. Further, the USMS has determined it is reasonably foreseeable that disclosure of the withheld information would harm an agency interest protected by the exemption. These pages are released to you with portions of 6 page(s) withheld and 0 page(s) withheld in full pursuant to the following Exemptions of the FOIA, 5 U.S.C. § 552(b):

(b)(6), FOIA Exemption (b)(6) allows an agency to withhold personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Records that apply to or describe a particular individual, including investigative records, qualify as “personnel,” “medical,” or “similar files” under Exemption 6. A discretionary release of such records is not appropriate. See *United States Department of Justice (DOJ) v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

(b)(7)(C), FOIA Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes to the extent that the production of such records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. A discretionary release of such records is not appropriate. See *United States Department of Justice (DOJ) v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). Accordingly, the personally identifiable information of law enforcement officers and government employees was withheld from the responsive documentation. The disclosure of such sensitive information contained in records compiled for law enforcement purposes to the public could subject law enforcement officers and other government personnel to harassment and unwelcome contact. This could disrupt and impede official agency activity, as well as endanger the safety of law enforcement officials. Additionally, the personally identifiable information of third parties named in the records was withheld. The disclosure of third-party information could constitute an unwarranted invasion of personal privacy and subject the individuals to embarrassment, harassment, and undue public attention. Individuals have a recognized privacy interest in not being publicly associated with law enforcement investigations, not being associated unwarrantedly with alleged criminal activity, and controlling how communications about them are disseminated.

(b)(7)(E), FOIA Exemption (b)(7)(E) exempts from release information that would disclose law enforcement techniques or procedures, the disclosure of which could reasonably be expected to risk circumvention of the law. Public disclosure of law enforcement techniques and procedures could allow people seeking to violate the law to take preemptive steps to counter actions taken by USMS during investigatory operations. Information pertaining to case selection, case development, and investigatory methods are law enforcement techniques and procedures that are not commonly known. The disclosure of this information serves no public benefit and would have an adverse impact on agency operations. Furthermore, public disclosure of information such as internal URLs, codes, and internal identifying numbers could assist unauthorized parties in deciphering the meaning of the codes and numbers, aid in gaining improper access to law enforcement databases, and assist in the unauthorized party’s navigation of these databases. This disclosure of techniques for navigating the databases could permit people seeking to violate the law to gain sensitive knowledge and take preemptive steps to counter actions taken by USMS during investigatory operations. The disclosure of this information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities.

(b)(7)(F), FOIA Exemption (b)(7)(F) protects law enforcement information that "could reasonably be expected to endanger the life or

physical safety of any individual.” 5 U.S.C. § 552(b)(7)(F) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524. Courts have routinely upheld the use of Exemption (b)(7)(F) to protect the identities of law enforcement agents, as well as protect the names and identifying information of non-law enforcement federal employees, local law enforcement personnel, and other third persons in connection with particular law enforcement matters. See *Rugiero v. DOJ*, 257 F.3d 534, 552 (6th Cir. 2001); *Johnston v. DOJ*, No. 97-2173, 1998 WL 518529, *1 (8th Cir. Aug. 10, 1998).

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you are not satisfied with the United States Marshals Service (USMS) determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account on the following website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may also contact Charlotte Luckstone or our FOIA Public Liaison at (703) 740-3943 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

/s/ TB for
Charlotte Luckstone
Senior Associate General Counsel
FOIA/PA Officer
Office of General Counsel

Enclosure