

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC PRIVACY)	
INFORMATION CENTER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 12-cv-00127 (RWR)
)	
U.S. DEPARTMENT OF JUSTICE)	
CRIMINAL DIVISION, et al.,)	
)	
Defendants.)	
)	

**DEFENDANTS’ MOTION FOR LEAVE TO FILE *EX PARTE* AND *IN CAMERA*
EXHIBITS CONCERNING WITHHOLDING OF INVESTIGATIVE RECORDS**

Pursuant to Local Civil Rule 5.1(j), Defendants U.S. Department of Justice Criminal Division, National Security Division (“NSD”), and the Federal Bureau of Investigation (“FBI”) hereby move the Court to allow Defendants to file certain materials *ex parte* and *in camera* in connection with Defendants’ Motion for Summary Judgment. Specifically, Defendants seek to file the following materials:

- *Ex Parte* and *In Camera* Declaration of David M. Hardy (FBI) (Exhibit 2 to Defendants’ motion);
- *Ex Parte* and *In Camera* Declaration of Mark A. Bradley (NSD) (Exhibit 4 to Defendants’ motion); and
- *Ex Parte* and *In Camera* Declaration of John E. Cunningham III (Criminal Division) (Exhibit 6 to Defendants’ motion).

The FBI, NSD, and the Criminal Division are also filing public declarations, which provide all information that can be disclosed on the public record. The *ex parte* and *in camera* declarations provide additional details concerning Defendants’ withholdings of materials contained in the Government’s files concerning an ongoing criminal law enforcement investigation. Specifically,

Mr. Hardy's *ex parte* declaration provides information concerning the FBI's withholdings under Exemptions 3 and 7(D); Mr. Bradley's declaration discusses NSD's withholdings under Exemptions 3, 6, 7(A), and 7(C); and Mr. Cunningham's declaration discusses the Criminal Division's withholdings under Exemption 3. In the estimation of the declarants, the disclosure of this information would undermine the interests protected by those exemptions. This information cannot be disclosed publicly without causing serious harm to the ongoing law enforcement investigation.

Because a disclosure to Plaintiff under the FOIA is a disclosure to the public at large, Defendants ask that the Court permit these materials to be filed *ex parte* and *in camera*. As other courts have recognized, this is an appropriate means of satisfying the Government's burden under FOIA while not jeopardizing the interests protected by the statute. *See, e.g., Hayden v. Nat'l Sec. Agency*, 608 F.2d 1381, 1391 (D.C. Cir. 1979) ("The agency stated as much detail publicly in this case as it reasonably could without revealing sensitive information, and presented further specifics *in camera*. This is the proper way to satisfy FOIA Exemption 3."); *Haddam v. FBI*, Case No. 01-cv-00434, Dkt. 51, Mem. Op. (D.D.C. Sept. 8, 2004) (upholding an assertion of Exemption 3 made only *in camera* and *ex parte*, and not disclosing the basis for the assertion).

The undersigned counsel conferred with Marc Rotenberg, counsel for Plaintiff, who indicated that Plaintiff does not consent to the relief requested herein.

A proposed order is attached.

Dated: January 31, 2013.

Respectfully submitted,

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Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Branch Director

/s/ Scott Risner

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