

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ELECTRONIC PRIVACY	)	
INFORMATION CENTER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. A. No 02-CV-0063 (CKK)
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
<u>et al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

**SECOND DECLARATION OF DAVID M. HARDY**

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C. I have held this position since August 1, 2002. Prior to my joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 242 employees who staff a total of ten (10) Units and a field operational service center whose collective mission is to effectively plan, develop, direct and manage responses to requests for

access to FBI records and information pursuant to the FOIA; Privacy Act; Executive Order 12958, as amended; Presidential, Attorney General and FBI policies and procedures; judicial decisions and other Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order 12958, as amended,<sup>1</sup> and the preparation of affidavits/declarations in support of Exemption 1 claims asserted under the FOIA.<sup>2</sup> I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to Executive Order 12958, as amended, §§ 1.3 and 3.1. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552 and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the treatment which has been afforded the June 22, 2001 FOIA request of plaintiff Electronic Privacy Information Center (“EPIC”) for documents pertaining to businesses, including ChoicePoint, Inc., that sell individuals’ personal information to the FBI.

(4) This declaration supplements, and hereby incorporates by reference eight previous declarations submitted in this case: the Declaration of Scott A. Hodes, then-Acting Unit Chief of the Litigation Unit, dated May 7, 2001; the two Declarations of Christine Kiefer, then-Acting Unit Chief of the FOIPA Litigation Support Unit, dated September 27, 2002, (hereinafter

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<sup>1</sup> 60 Fed. Reg. 19825 (1995) and 68 Fed. Reg. 15315 (2003).

<sup>2</sup> 5 U.S.C. § 552 (b)(1).

“Kiefer I”), and January 30, 2003, (hereinafter “Kiefer II”), respectively; the In Camera, Ex Parte Declaration of J. Stephen Tidwell, then-Deputy Assistant Director for the Department of Justice Criminal Investigative Division, dated December 30, 2003; the Public Declaration of J. Stephen Tidwell, dated December 31, 2003; the Declaration of Keith R. Gehle, then-Assistant Section Chief of RIDS in RMD, dated September 23, 2004, (hereinafter “Gehle I”); the Declaration of David M. Hardy, Section Chief of RIDS, dated September 30, 2004; and the Second Declaration of Keith R. Gehle, dated November 15, 2004, (hereinafter “Gehle II”). These declarations collectively discuss the FBI's treatment of documents responsive to plaintiff's FOIA request.

(5) In accordance with the Joint Status Report filed by the parties on January 24, 2006, and approved by the Court on February 2, 2006, the FBI hereby submits this declaration in consistent with Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), in order to justify the withholding of information from documents which were withheld in full pursuant to Exemption 4 pending direct consultation with ChoicePoint, Inc. These documents, although identified at the time the FBI made its January 31, 2003 and April 30, 2003 releases to plaintiff, were segregated from the remaining documents and were referred to ChoicePoint, Inc. for further review and consultation with regard to Exemption 4 protection. ChoicePoint completed that review and requested Exemption 4 protection over certain -- but not all -- of the documents which the FBI referred, and are now being released, in part, in conjunction with this Vaughn declaration, and attached hereto as Exhibit A.<sup>3</sup> The documents, which total 155 pages (37 pages are being

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<sup>3</sup> These pages, which are included in Exhibit A hereto, are identified as CHOICEPOINT pages 10, 11, 13, 21, 29, 40, 41, 45, 47, 48, 52, 57, 76, 85, 93, 98, 106, 110, 116, 117, 119, 121, 123, 132, 137, 138, 182, 187, 188, 214, 219, 288, 289, 297, 301, 324, 335, 336, 340, 344, 412, 424, 431, 433, 437, 438, 439, 440, 441, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 555, 601, 612, 613, 614, 615, 616, 617, 618, 619, 620,

released in full, 51 pages are being released in part; and 67 pages are being withheld in full), and which are referred to herein as “CHOICEPOINT page \_\_\_\_\_,” have been withheld pursuant to FOIA Exemptions 1, 2, 4, 6, 7(C) and 7(E), 5 U.S.C. §§ 552 (b)(1), (b)(2), (b)(4), (b)(6), (b)(7)(C) and (b)(7)(E).

### CORRESPONDENCE

(6) The previous correspondence in this matter is detailed in Kiefer I Declaration at ¶¶ 4-7; Tidwell’s In Camera, Ex Parte Declaration at ¶¶ 21-24, 26, 29, 30 and 32-35; Tidwell’s Public Declaration at ¶¶ 7, 10, 12-14, and 16-19; Gehle II Declaration at ¶ 7; and Hardy Declaration at ¶ 4.

### EXPLANATION OF THE CENTRAL RECORDS SYSTEM

(7) An explanation of the FBI’s Central Records System (“CRS”) is detailed in Kiefer I at ¶¶ 18-22.

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621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 804, 805, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 847A, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859 and 860.

ChoicePoint has requested protection under Exemption (b)(4) for certain information contained on CHOICEPOINT pages 57, 117, 412, 601, 612-656, 829-847 and 850-852. Conversely, based upon its review, ChoicePoint has waived its right to protect any information under Exemption (b)(4) on CHOICEPOINT pages 10, 11, 13, 21, 29, 40, 41, 45, 47, 48, 52, 76, 85, 93, 98, 106, 110, 116, 119, 121, 123, 132, 137, 138, 182, 187, 188, 214, 219, 288, 289, 297, 301, 324, 335, 336, 340, 344, 424, 431, 433, 437, 438, 439, 440, 441, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 555, 804, 805, 847A, 853, 854, 855, 856, 857, 858, 859 and 860.

CHOICEPOINT pages 12, 34, 90, 178, 210, 346 and 347 were also referred to ChoicePoint for Exemption 4 review, but were ultimately determined to contain information redacted only pursuant to Exemption 1. These pages were previously addressed in the Gehle II Declaration -- see Gehle II Declaration at ¶¶ 19, 22, 29, and 30--and are being released within Exhibit A.

**RECORDS RESPONSIVE TO PLAINTIFF'S REQUEST**

(8) The details of records that are responsive to Plaintiff's request are discussed in Kiefer I Declaration at ¶ 23; Kiefer II Declaration at ¶¶ 4 and 5; Tidwell Declaration at ¶¶ 7 and 9-12; and Gehle I Declaration at ¶¶ 22-25.

**EXPLANATION OF FORMAT USED FOR THE  
JUSTIFICATION OF DELETED MATERIALS**

(9) All documents were processed to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide plaintiff with all material in the public domain and with all reasonably segregable portions of releasable material. Pages withheld in their entirety are replaced by "Deleted Page Information Sheets" that indicate the applicable FOIA exemptions relied upon as the basis for withholding the page in full. To further describe the information withheld could identify the material sought to be protected, thus negating the purpose of the exemptions. Copies of the processed pages are attached hereto as **Exhibit A**. Each page of Exhibit A is numbered in the lower right-hand corner based upon their position in the previous two releases of January and April, 2003. The exemptions asserted by the FBI as grounds for non-disclosure of information are FOIA Exemptions (b)(1), (b)(2), (b)(4), (b)(6), (b)(7)(C) and (b)(7)(E).

(10) Copies of the documents contain, on their face, coded categories of exemptions which detail the nature of the information withheld pursuant to the provisions of the FOIA. To further describe the information withheld in more detail could identify the very material that the FBI is protecting. No reasonably segregable, non-exempt portions were withheld from plaintiff. The coded categories are provided to aid the Court's review of the FBI's explanations of FOIA

exemptions used to withhold the protected material. Accordingly, a review of this information will reveal that all material withheld is exempt from disclosure pursuant to a FOIA exemption or it was so intertwined with protected material that segregation was not possible without revealing the underlying protected material.

**MECHANICS OF UTILIZING THE CODED FORMAT  
WITH THE EXEMPTION CATEGORIES**

(11) A coded format is used in this case to assist the Court and plaintiff in reviewing the information withheld within the context of the documents themselves. Each withholding of information is accompanied by a coded designation that corresponds to the categories listed below. For example, if “(b)(7)(C)-1” appears on the page, the “(b)(7)(C)” designation refers to exemption (b)(7)(C) of the FOIA concerning “Unwarranted Invasion of Personal Privacy.” The numerical designation “1” following the “(b)(7)(C)” narrows and specifically describes the material deleted, which, in this example, would be the “Names and/or Identifying Information of FBI Special Agents and Support Employees.” Listed below are the coded categories used to explain the FOIA exemptions asserted to withhold protected material.

**SUMMARY OF JUSTIFICATION CATEGORIES**

<i><b>CODED CATEGORIES</b></i>	<i><b>INFORMATION WITHHELD</b></i>
<b>Category (b)(1)</b>	<b>Classified Information</b>
<b>Category (b)(2)</b>	<b>Agency Personnel Rules And Practices</b>
(b)(2)-1	Sensitive FBI Administrative Practices and Procedures (Used in conjunction with (b)(7)(E)-1)
(b)(2)-2	Internal FBI Telephone Numbers
<b>Category (b)(4)</b>	<b>Trade Secrets/Commercial or Financial Information</b>

(b)(4)-1	Names and/or Financial Information Provided by Contractual Entities
<b>Category (b)(6)</b>	<b>Clearly Unwarranted Invasion of Personal Privacy</b>
(b)(6)-1	Names and/or Identifying Information of FBI Special Agents and FBI Support Employees (Used in conjunction with (b)(7)(C)-1)
(b)(6)-2	Names and/or Identifying Information Concerning Third Parties Mentioned (Used in conjunction with (b)(7)(C)-2)
<b>Category (b)(7)(C)</b>	<b>Unwarranted Invasion of Personal Privacy</b>
(b)(7)(C)-1	Names and/or Identifying Information of FBI Special Agents and FBI Support Employees (Used in conjunction with (b)(6)-1)
(b)(7)(C)-2	Names and/or Identifying Information Concerning Third Parties Mentioned (Used in conjunction with (b)(6)-2)
<b>Category (b)(7)(E)</b>	<b>Law Enforcement Investigative Techniques/Procedures</b>
(b)(7)(E)-1	Mention of an Investigative Technique and Related Information (Used in Conjunction with (b)(2)-1)

**JUSTIFICATION FOR REDACTED MATERIAL**

(12) Paragraphs 13-56, *infra*, explain the FBI's rationale for withholding each particular category of information under the specific exemption categories described above.

**APPLICATION OF FOIA EXEMPTION (b)(1)**

(13) 5 U.S.C. § 552 (b)(1) exempts from disclosure those records that are:

(A) specifically authorized under criteria established by an Executive Order to be kept Secret in the interest of national defense or foreign policy; and (B) are in fact properly classified pursuant to such Executive Order . . . .

(14) Before I consider an Exemption (b) (1) claim for withholding agency records, I determine whether the information in those records is information that satisfies the requirements of Executive Order (“E.O.”) 12958, as amended, which governs the classification and protection of information that affects the national security,<sup>4</sup> and complies with the various substantive and procedural criteria of the Executive Order. E.O. 12958, as amended on March 25, 2003, is the Executive Order that currently applies to the protection of national security information.<sup>5</sup> I am bound by the requirements of E.O. 12958, as amended, when making classification determinations.

(15) For information to be properly classified, and thus properly withheld from disclosure pursuant to Exemption (b)(1), the information must meet the requirements set forth in E.O. 12958, as amended, § 1.1(a):

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and

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<sup>4</sup> “National Security” as defined in E.O. 12958, as amended, § 6.1 (y) “means the national defense or foreign relations of the United States.”

<sup>5</sup> The implementation of § 1.6 of E.O. 12958, as amended, was delayed by 180 days to allow agencies to update their marking procedures and training manuals. However, the rest of the sections of the amended E.O. were effective as of March 25, 2003. As a result, all references in this declaration are to the sections in E.O. 12958, as amended. Documents at Exhibit A containing information withheld pursuant to (b)(1) were stamped pursuant to E.O. 12958 § 1.5 which is § 1.4 of 12958, as amended.



the original classification authority is able to identify or describe the damage.

(16) All information which I determined to be classified is marked at the "Secret" level, since the unauthorized disclosure of this information reasonably could be expected to cause serious damage (Secret) to the national security. See E.O. 12958, as amended, § 1.2 (a)(2). In addition to these substantive requirements, certain procedural and administrative requirements of E.O. 12958, as amended, must be followed before information can be considered to be properly classified, such as, proper identification and marking of documents. I made certain that all procedural requirements of E.O. 12958, as amended, were followed in order to ensure that the information was properly classified. I made certain that:

- (1) each document was marked as required and stamped with the proper classification designation;<sup>6</sup>
- (2) each document was marked to indicate clearly which portions are classified, which portions are exempt from declassification as set forth in E.O. 12958, as amended, § 1.5 (d), and which portions are unclassified;<sup>7</sup>
- (3) the prohibitions and limitations on classification specified in E.O. 12958, as amended, § 1.7, were adhered to;
- (4) the declassification policies set forth in E.O. 12958, as amended, § 3.1 were followed; and
- (5) any reasonably segregable portion of these classified documents that did not meet the standards for classification under E.O. 12958, as amended, was declassified and marked for release, unless withholding was otherwise warranted under applicable law.<sup>8</sup>

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<sup>6</sup> E.O. 12958, as amended, § 1.6 (a) (1) - (5).

<sup>7</sup> E.O. 12958, as amended, § 1.6 (c).

<sup>8</sup> 5 U.S.C. § 552 (b) provides in part: "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."

(17) In addition, my classification determinations were reviewed by the U.S. Department of Justice Department Review Committee (“DRC”) on December 11, 2003.<sup>9</sup> The DRC is the FBI’s appellate authority with regard to the implementation and administration of E.O. 12958, as amended, and related directives and guidelines concerning classified information. The DRC reviewed all of my classification determinations in the documents at issue and concurred with the classification actions taken. The face of each document has been appropriately stamped to indicate the date that the DRC review occurred.

### **FINDINGS OF DECLARANT**

(18) With the above requirements in mind, I personally and independently examined the FBI information withheld from plaintiff pursuant to FOIA Exemption (b)(1) in CHOICEPOINT pages 93, 98, 110, 288 and 324.<sup>10</sup> As a result of this examination, I determined that portions of information contained in documents previously classified and withheld no longer warrant continued classification pursuant to E.O. 12958, as amended, and, therefore, I declassified those portions. Those portions now declassified have been released to plaintiff unless subject to the assertion of other FOIA exemptions which, if applicable, are addressed later in this declaration. I also determined (and the DRC concurred) that the remaining portions of

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<sup>9</sup> See 28 C.F.R. § 17.14 (2003).

<sup>10</sup> The Gehle II Declaration included a discussion of FBI-originated information withheld pursuant to Exemption 1 on certain pages which the FBI held back from release and referred to ChoicePoint as part of the Exemption 4 consultation: CHOICEPOINT pages 10-13, 21, 29, 34, 40, 41, 45, 52, 57, 76, 85, 90, 106, 132, 178, 182, 210, 214, 335, 336, 346, 347, 859 and 860. However, five pages which contain FBI-originated information withheld pursuant to Exemption 1 and which were also referred to ChoicePoint for Exemption 4 consultation were not addressed in the prior Gehle II Declaration and are therefore being addressed at this time: CHOICEPOINT pages 93, 98, 110, 288 and 324.

classified information, warrant continued classification at the “Secret” level, pursuant to E.O. 12958, as amended, § 1.4, as the unauthorized disclosure of this information could reasonably be expected to cause serious damage to the national security,<sup>11</sup> (c) reveal intelligence activities (including special activities), intelligence sources or methods, or cryptology, and (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism.

### **INTELLIGENCE ACTIVITIES AND METHODS**

(19) E.O. 12958, as amended, § 1.4(c), exempts intelligence activities (including special activities), intelligence sources and methods, or cryptology. An intelligence activity or method has two characteristics. First, the intelligence activity or method and information generated by it is needed by U.S. Intelligence/Counterintelligence agencies to carry out their missions. Second, classification must be maintained with respect to the activity or method if the viability, productivity and usefulness of its information is to be preserved.

(20) The phrase “intelligence activities (including special activities), or intelligence methods” can be defined as information that could reveal or identify a present, past, or prospective intelligence method, procedure, mode, technique or requirement used or being developed to acquire, correlate, evaluate or process intelligence or counterintelligence information. This information could also reveal or identify research procedures or data used in the acquisition and processing of intelligence or counterintelligence information. Information

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<sup>11</sup> Information classified and withheld pursuant to Exemption 1 which has not been addressed in the previous declarations appears on the following CHOICEPOINT pages: 93, 98, 110, 288 and 324.

could reveal a particular intelligence interest, the value of the intelligence or extent of knowledge of a particular subject or target of intelligence interest.

(21) The classification redactions were made to protect from disclosure information that would reveal the actual intelligence activities or methods utilized by the FBI against specific targets of foreign counterintelligence investigations or operations; identify a target of a foreign counterintelligence investigation; or disclose the intelligence gathering capabilities of the activities or methods directed at specific targets. An intelligence activity or method includes any intelligence action or technique utilized by the FBI against a targeted individual or organization that has been determined to be of national security interest. An intelligence method is used to indicate any procedure (human or non-human) utilized to obtain information concerning such individual or organization.

(22) The FBI protected the following categories of information specific to intelligence activities and methods because disclosure reasonably could be expected to cause serious damage to the national security.<sup>12</sup>

**A. Squad/Units**

(23) The withheld information on CHOICEPOINT pages 93, 98 and 110 contains designations for foreign counterintelligence squads and/or the name of the operations unit which targets specific individuals and organizations of national security interest. The disclosure of these designations or the operations unit name could enable hostile intelligence services to determine the scope and thrust, or a portion thereof, of the FBI's counterintelligence activity in a specific area. It is my determination that disclosure of these designations or the operations unit

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<sup>12</sup> See CHOICEPOINT pages: 93, 98, 110, 288 and 324.

name could damage national security because it would reveal the existence of a particular intelligence or counterintelligence operation, as well as the nature, objectives, scope or thrust of the investigation, which could allow hostile assessment of the area of target. It could also allow countermeasures to be implemented, making future operations more difficult, or compromise other ongoing intelligence operations. This would severely disrupt the FBI's intelligence gathering capabilities and severely damage the FBI's efforts to detect and apprehend violators of the United States' national security and criminal laws and to fight the war on transnational terrorism. This information is properly classified at the "Secret" level and withheld pursuant to E.O. 12958, as amended, §1.4 (c) and exempt from disclosure pursuant to Exemption (b)(1).

(24) The intelligence activities or methods detailed in the withheld information are effective means for the FBI to gather, store or disseminate intelligence information. The criteria utilized by the FBI in these instances to decide what actions by an individual or organization warranted the commencement of an investigation, or caused a certain activity to be given investigative attention over others, could be revealed through disclosure of these intelligence methods. The criteria applied and priorities assigned in these records are used in the FBI's present intelligence and counterintelligence investigations, and are in accordance with the Attorney General's guidelines on FBI intelligence and counterintelligence investigations. The information obtained from the methods is very specific in nature, provided during a specific time period, and known to very few individuals. Disclosure of the specific information which describes the intelligence methods withheld in this case and still used by the FBI today to gather intelligence information could reasonably be expected to cause serious damage to the national security for the following reasons: (1) disclosure would allow hostile entities to discover the

current methods used; (2) disclosure would reveal current specific targets of the FBI's national security investigations; and (3) disclosure would reveal the determination of the criteria used and priorities assigned to current intelligence or counterintelligence investigations. Hostile entities could then develop countermeasures which could severely disrupt the FBI's intelligence-gathering capabilities. This would severely damage the FBI's efforts to detect and apprehend violators of the United States' national security and criminal laws.

**B. Code Name**

(25) The code name classified and withheld on CHOICEPOINT pages 288 and 324 is unique and assigned solely to a particular method or activity. It is used in lieu of the actual name, description, information concerning or the actual location of the application of the method or activity. Its use limits the knowledge of the investigative activity and methods to only those who actually possess knowledge of the correlation of the code name to the specific intelligence activities and methods. Utilization of code names gives even greater protection, if a document containing intelligence information was to fall into the hands of unauthorized persons.

(26) The information withheld is a code name that has never been publicly revealed and which, if disclosed, will reveal a sensitive operational intelligence program utilized by the FBI in conducting investigations concerning specific intelligence activities regarding International Terrorism, Foreign Counterintelligence ("FCI"), Domestic Security and Criminal cases. This code name is unique and assigned solely to this specific operational program. Code names are used in lieu of the actual name, description, or information concerning a specific intelligence activity to give even greater protection to intelligence information in the event of a breach of security. The specific code name withheld in this document is sensitive and

synonymous with one particular operational program which is still active today. Public disclosure of this code name will allow a hostile analyst, or one not privileged to this code name, to patch bits and pieces of information together until the actual operational program is identified.

( 27) The disclosure of this code name will inform hostile intelligence of the possible range of our intelligence capabilities, as well as the probable intelligence that the FBI has gathered, or can collect, concerning them. This knowledge provides potential or actual violators of the United States national security laws a means of deflection or avoidance of lawful regulations. It is my determination that disclosure of this code name will result in the loss or limitation of the FBI's ability to gather sensitive intelligence information, and would reasonably be expected to cause serious damage to the national security. This information is properly classified at the "Secret" level and withheld pursuant to E.O. 12958, as amended, § 1.4 (c) and exempt from disclosure pursuant to Exemption (b)(1).

**DEFENDANT'S BURDEN OF ESTABLISHING  
EXEMPTION ONE CLAIMS**

(28) The information withheld pursuant to Exemption (b)(1) was examined in light of the body of information available to me concerning the national defense and foreign relations of the United States. This information was not examined in isolation. Instead, each individual piece of information was evaluated with careful consideration given to the impact that disclosure of this information could have on other sensitive information contained elsewhere in the United States intelligence community's files. Equal consideration was given to the impact that other information either in the public domain or likely known or suspected by present or potential adversaries of the United States would have upon the information I examined.

(29) In those instances where, in my judgment, the disclosure of this information could reasonably be expected to cause serious damage to the national security and its withholding outweighed the public benefit of disclosure, I exercised my prerogative as an original classification authority and designated that information as classified in the interest of national security and invoked Exemption (b)(1) to prevent disclosure. Likewise, the justifications for the withheld classified information were prepared with the intent that they be read with consideration given to the context in which the classified information is found.

(30) This context includes not only the surrounding unclassified information but also other information already in the public domain, as well as information likely known or suspected by other hostile intelligence entities. It is my judgment that any greater specificity in the descriptions and justifications set forth with respect to intelligence activities, intelligence sources or methods or information relating to vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security, in this public declaration, could reasonably be expected to jeopardize the national security of the United States.

**EXEMPTION (b)(2)**  
**INTERNAL AGENCY RULES AND PRACTICES**

(31) 5 U.S.C. § 552 (b)(2) exempts from disclosure information “related solely to the internal personnel rules and practices of an agency.” This exemption protects routine internal administrative matters and functions of the FBI which have no effect on the public at large. This exemption also protects information that, if disclosed, would risk circumvention of agency regulations or statutes. Disclosure of this information could impede the effectiveness of the internal operations of the FBI and risk the circumvention of a regulation or a law.



**(b)(2)-1      Sensitive FBI Administrative Practices and Procedures**

(32) Exemption (b)(2)-1 is cited to withhold information related solely to the internal rules and practices of the FBI. This exemption protects routine internal administrative matters and functions of the FBI which have no effect on the public at large. In processing the documents responsive to plaintiff's request, numerous internal memorandums and letters contained designations for squads and operational units which target specific individuals and organizations of investigative interest to the FBI. The release of this information would reveal the nature, objectives and scope of investigations. Release could also allow countermeasures to be implemented that could harm the security of our nation and people which would seriously impair the FBI's efforts to apprehend violators of criminal and national security laws, as well as to fight the war on transnational terrorism. Every effort has been made to release all segregable information contained in these pages without revealing information which could harm investigative efforts.<sup>13</sup> Accordingly, the FBI properly protected its sensitive administrative practices and procedures pursuant to Exemption (b)(2)-1, in conjunction with Exemptions (b)(1) and (b)(7)(E)-1. (See supra and infra).

**(b)(2)-2      FBI Telephone Numbers**

(33) Exemption (b)(2)-2 has been asserted to protect telephone numbers of FBI Special Agents (SAs) and support personnel.<sup>14</sup> The business telephone numbers clearly relate to the

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<sup>13</sup> Information withheld pursuant to Exemption (b)(2)-1 appears on the following CHOICEPOINT pages: 10, 11, 13, 21, 29, 40, 52, 76, 85, 93, 106, 110, 119, 132, 137, 182, 187, 214, 219, 412, 424, 431, 433, 438, 441, and 555.

<sup>14</sup> Information withheld pursuant to Exemption (b)(2)-2 appears on the following CHOICEPOINT pages: 116 and 117.

internal practices of the FBI in that all of these tools are utilized by FBI personnel during the performance of their jobs. Disclosure of the telephone numbers of FBI SAs and support employees could subject these individuals to harassing telephone calls which could disrupt official business (including impeding SAs ability to conduct and conclude law enforcement investigations in a timely manner). Routine internal administrative information such as the numbers referenced above serves no public benefit, and there is no indication that there is a genuine public interest in the disclosure of these numbers. Accordingly, because these internal business phone numbers are related solely to the FBI's internal practices, because disclosure would not serve any public interest, and because disclosure would impede the FBI's effectiveness, the FBI withheld this information pursuant to Exemption (b)(2)-2.

**EXEMPTION (b)(4)**  
**TRADE SECRETS/COMMERCIAL OR FINANCIAL INFORMATION**

(34) 5 U.S.C. § 552 (b)(4) exempts from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” This exemption is intended to protect the interests of both the government and submitters of information.

**(b)(4)-1**      **Names and/or Financial Information Provided by Contractual Entities**

(35) The courts have held that for the purposes of Exemption 4, commercial information required to be furnished to the government is confidential if disclosure is likely to: 1) impair the government's ability to obtain necessary information in the future; or 2) cause substantial harm to the competitive position of the person from whom the information was obtained. As to information that is voluntarily furnished, the test is whether such information is “customarily” disclosed to the public. If information voluntarily disclosed to the government is

not customarily disclosed to the public, it may be withheld under Exemption (b)(4).

(36) In this case, ChoicePoint has requested that the FBI assert Exemption 4 for CHOICEPOINT pages 57, 117, 412, 601, 612-656, 829-847, and 850-852. This information includes specific language in the sole-source contract between ChoicePoint and the FBI (CHOICEPOINT pages 57, 117); an internal FBI announcement discussing specific services and details ChoicePoint will be making available to FBI users as part of its investigative efforts (CHOICEPOINT pages 412, 601); a ChoicePoint Training Guide for exclusive federal government use (CHOICEPOINT pages 612-656); a ChoicePoint-originated document which describes program and content capabilities (CHOICEPOINT pages 829-847); and a ChoicePoint pricing schedule for various searches (CHOICEPOINT pages 850-852). All of this withheld information relates to details of proprietary and confidential commercial and financial information which has originated with ChoicePoint, Inc. This information, including how ChoicePoint, Inc., prices certain services and products, the content and capabilities of the company's services and the substance of how the company can support the FBI's investigative efforts, has not been publicly disclosed, and ChoicePoint has affirmatively advised the FBI that disclosure of this information could cause substantial harm to the competitive position of ChoicePoint, Inc. As a result, the information appearing on CHOICEPOINT pages 57, 117, 412, 601, 612-656, 829-847, and 850-852 has been properly withheld pursuant to Exemption 4.

**EXEMPTION (b)(6)**  
**CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY**

(37) 5 U.S.C. § 552(b)(6) exempts from disclosure

personnel and medical files and similar files when disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

(38) When withholding information pursuant to this exemption, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting this exemption, each item of information was examined to determine the degree and nature of the privacy interest of every individual whose name and/or identifying data appears in these records. The public interest in disclosure of this information is determined by whether the information in question would inform plaintiff and the general public about the FBI's performance of its mission to enforce federal criminal and national security statutes and/or how the FBI actually conducts its internal operations and investigations. In each instance where information was withheld, it was determined that individual privacy interests were not outweighed by any public interest in disclosure. To reveal the names and/or identifying data of third party individuals in the context of these records could reasonably be expected to cause discomfort, and thus constitute a clearly unwarranted invasion of personal privacy. Every effort has been made to release all reasonably segregable information contained in these records without invading the privacy interests of third parties.

**(b)(6)-1      Names and/or Identifying Information of FBI Special Agents and Support Employees**

(39) Exemption (b)(6)-1 has been asserted to protect the names and identifying data of FBI SAs who were responsible for conducting, supervising, and/or maintaining the investigative activities reported in this investigation.<sup>15</sup> Publicity (adverse or otherwise) regarding any particular investigation they have been assigned may seriously prejudice their effectiveness

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<sup>15</sup> Information withheld pursuant to Exemption (b)(6)-1 appears on the following CHOICEPOINT pages: 10, 13, 21, 76, 116, 117, 119, 121, 123, 288, 289, 297, 324, 335, 336, 412, 424, 555, and 601.

in conducting other investigations. The privacy consideration is also to protect FBI SAs from unnecessary, unofficial questioning as to the conduct of an investigation, whether or not they are currently employed by the FBI. FBI SAs conduct official inquiries into violations of various criminal statutes and national security cases. They come into contact with all strata of society, conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. It is possible for an individual targeted by such law enforcement actions to carry a grudge which may last for years, and to seek revenge on the agents and other federal employees involved in a particular investigation. The publicity associated with the release of an agent's identity in connection with a particular investigation could trigger hostility toward a particular agent. Accordingly, SAs maintain a substantial privacy interest in not having their identities disclosed. The public would not be served by disclosure of the SAs' identities.

(40) The FBI next examined the records at issue to determine whether there was any public interest that outweighed the substantial privacy interest of the FBI SAs referenced in the responsive records. The FBI could not identify any discernible public interest. In particular, the FBI could not determine how the disclosure of the names and identifying information of these FBI SAs would shed any light on the operations and activities of the FBI. Thus, the FBI determined that the SAs' privacy interests outweighed any public interest in disclosure, and that disclosure of the names and identifying information of the FBI SAs would constitute a clearly unwarranted invasion of their personal privacy.

(41) The names of and/or identifying data of FBI support personnel are also withheld pursuant to Exemption (b)(6)-1. Support personnel are assigned to handle tasks relating to

official investigations. These individuals are in positions to have access to information regarding official law enforcement investigations. They could therefore become targets of harassing inquiries for unauthorized access to information relative to numerous investigations if their identities were released. These individuals maintain substantial privacy interests in not having their identities disclosed.

(42) The FBI next balanced the privacy interests of the FBI support employees against the public interest in disclosure. The FBI determined that the disclosure of the names of FBI support personnel would not demonstrate how the FBI conducts its internal operations and investigations. Disclosure of the names and related identifying information of FBI support employees in the documents at issue here would not shed light on the performance of the FBI's statutory duties. Accordingly, after balancing the competing interests, the FBI concluded that no public interest would be served by disclosing the identities of these FBI support employees to the general public. The disclosure of the names and related identifying information of the FBI support personnel would constitute a clearly unwarranted invasion of their personal privacy; and therefore, the FBI has properly asserted Exemption (b)(6)-1, in conjunction with Exemption (b)(7)(C)-1 to withhold this information.

**(b)(6)-2      Names and/or Identifying Information Concerning  
Third Parties Mentioned**

(43) Exemption (b)(6)-2 was asserted to withhold the names and identifying information of third parties merely mentioned within these records. Information concerning third-party individuals who are not of investigative interest, but rather who are merely mentioned, appears in the responsive records. These individuals were mentioned by name or

other identifying information. Disclosure of the names and other personal information about these individuals could cause unsolicited and unnecessary attention to be focused on them and disclosure may embarrass these individuals. The presence of their names in FBI files may cast them in an unfavorable or negative light to the public. These individuals maintain strong privacy interests in not having their personal information disclosed.

(44) After identifying the substantial privacy interests of the third parties mentioned in these files, the FBI balanced those interests against the public interest in disclosure. The FBI could identify no discernable interest in disclosure because the disclosure of the names would not shed any light on the FBI's performance of its statutory duties. Accordingly, the FBI determined that disclosure of information concerning these third parties would constitute a clearly unwarranted invasion of their personal privacy.<sup>16</sup> Thus, the FBI properly protected the names and identifying information of third parties mentioned pursuant to Exemption (b)(6)-2, in conjunction with Exemption (b)(7)(C)-2. (See infra.)

**EXEMPTION 7**  
**EXEMPTION 7 THRESHOLD**

(45) Exemption 7 of the FOIA protects from mandatory disclosure records or information compiled for law enforcement purposes, but only to the extent that disclosure could reasonably be expected to cause one of the harms enumerated in the subpart of the exemption. See 5 U.S.C. § 552(b)(7). In this case, harm that could reasonably be expected to result from disclosure concerns invasion of personal privacy, as well as revealing sensitive law enforcement investigative techniques/procedures. Under the FOIA, the law to be enforced within the meaning

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<sup>16</sup> Information withheld pursuant to Exemption (b)(6)-2 appears on the following CHOICEPOINT pages: 116, 119, 289, 297, 555, and 847A.

of the term “law enforcement purposes” includes both civil and criminal statutes as well as those statutes authorizing administrative or regulatory proceedings.

(46) Before an agency can invoke any of the harms enumerated in Exemption 7, it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Law enforcement agencies such as the FBI must demonstrate that the records at issue are related to the enforcement of federal laws and that the enforcement activity is within the law enforcement duty of that agency. In this case, the documents at issue relate to information in the possession of the FBI concerning businesses that sell individuals’ personal information, in particular ChoicePoint, Inc. Although the records at issue are not investigatory, they relate to sensitive law enforcement investigations and techniques for searching for and gathering information used for investigatory purposes. Thus, there is no doubt that these documents fall within the law enforcement duties of the FBI. Accordingly, the information readily meets the threshold requirement of Exemption 7. The remaining inquiry is whether its disclosure could “constitute an unwarranted invasion of personal privacy”, or “reveal law enforcement techniques/procedures.”

**EXEMPTION (b)(7)(C)**  
**UNWARRANTED INVASION OF PERSONAL PRIVACY**

(47) 5 U.S.C. § 552(b)(7)(C) exempts from disclosure

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 . . . .

(48) When withholding information pursuant to this exemption, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public



interest in disclosure. In asserting this exemption, each item of information was examined to determine the degree and nature of the privacy interest of every individual whose name and/or identifying data appears in these records. The public interest in disclosure of this information is determined by whether the information in question would inform plaintiff and the general public about the FBI's performance of its mission to enforce federal criminal and national security statutes and/or how the FBI actually conducts its internal operations and investigations. In each instance where information was withheld, it was determined that individual privacy interests were not outweighed by any public interest in disclosure. To reveal the names and/or identifying data of third party individuals in the context of these records could reasonably be expected to cause embarrassment and humiliation, and thus constitute an unwarranted invasion of personal privacy. Every effort has been made to release all reasonably segregable information contained in these records without invading the privacy interests of third parties.

**(b)(7)(C)-1 Names and/or Identifying Information of FBI Special Agents and Support Employees**

(49) Exemption (b)(7)(C)-1 has been asserted to protect the names and identifying data of FBI SAs who were responsible for conducting, supervising, and/or maintaining the investigative activities reported.<sup>17</sup> Publicity (adverse or otherwise) regarding any particular investigation to which they have been assigned may seriously prejudice their effectiveness in conducting other investigations. The privacy consideration is also to protect FBI SAs from unnecessary, unofficial questioning as to the conduct of an investigation, whether or not they are

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<sup>17</sup> Information withheld pursuant to Exemption (b)(7)(C)-1 appears on the following CHOICEPOINT pages: 10, 13, 21, 76, 116, 117, 119, 121, 123, 288, 289, 297, 324, 335, 336, 412, 424, 555, and 601.

currently employed by the FBI. FBI SAs conduct official inquiries into violations of various criminal statutes and national security cases. They come into contact with all strata of society, conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. It is possible for an individual targeted by such law enforcement actions to carry a grudge which may last for years, and to seek revenge on the agents and other federal employees involved in a particular investigation. The publicity associated with the release of an agent's identity in connection with a particular investigation could trigger hostility toward a particular agent. Accordingly, SAs maintain a substantial privacy interest in not having their identities disclosed. The public would not be served by disclosure of the SAs' identities.

(50) The FBI next examined the records at issue to determine whether there was any public interest that outweighed the substantial privacy interest of the FBI SAs referenced in the responsive records. The FBI could not identify any discernible public interest. In particular, the FBI could not determine how the disclosure of the names and identifying information of these FBI SAs would shed any light on the FBI's performance of its statutory duties. Thus, the FBI determined that the SAs' privacy interests outweighed any public interest in disclosure, and that disclosure of the names and identifying information of the FBI SAs could constitute an unwarranted invasion of their personal privacy.

(51) The names of and/or identifying data of FBI support personnel are also withheld pursuant to Exemption (b)(7)(C)-1. Support personnel are assigned to handle tasks relating to official investigations of the plaintiff and others. These individuals are in positions to have access to information regarding official law enforcement investigations. They could therefore become

targets of harassing inquiries for unauthorized access to information relative to other investigations if their identities were released. These individuals maintain substantial privacy interests in not having their identities disclosed.

(52) The FBI next balanced the privacy interests of the FBI support employees against the public interest in disclosure. The FBI determined that the disclosure of the names of FBI support personnel would not demonstrate how the FBI conducts its internal operations and investigations. Disclosure of the names and related identifying information of FBI support employees in the documents at issue here would not shed light on the performance of the FBI's statutory duties. Accordingly, after balancing the competing interests, the FBI concluded that no public interest would be served by disclosing the identities of these FBI support employees to the general public. The disclosure of the names and related identifying information of the FBI support personnel could constitute an unwarranted invasion of their personal privacy; and therefore, the FBI has properly asserted Exemption (b)(7)(C)-1, in conjunction with Exemption (b)(6)-1 to withhold this information. (See supra.)

**(b)(7)(C)-2    Names and/or Identifying Information Concerning Third Parties Mentioned**

(53) Exemption (b)(7)(C)-2 was asserted to withhold the names and identifying information of third parties merely mentioned within these records. Information concerning third-party individuals who are not of investigative interest, but rather who are merely mentioned, appears in the responsive records. These individuals were mentioned by name or other identifying information. Disclosure of the names and other personal information about these individuals could cause unsolicited and unnecessary attention to be focused on them and

disclosure could embarrass these individuals. The presence of their names in FBI files may cast them in an unfavorable or negative light to the public. These individuals maintain strong privacy interests in not having their personal information disclosed.

(54) After identifying the substantial privacy interests of the third parties mentioned in these files, the FBI balanced those interests against the public interest in disclosure. The FBI could identify no discernable interest in the disclosure because the disclosure of the names would not shed any light on the FBI's performance of its statutory duties. Accordingly, the FBI determined that disclosure of information concerning these third parties could constitute an unwarranted invasion of their personal privacy.<sup>18</sup> Thus, the FBI properly protected the names and identifying information of third parties mentioned pursuant to Exemption (b)(7)(C)-2, in conjunction with Exemption (b)(6)-2. (See supra.)

**FOIA EXEMPTION (b)(7)(E)**  
**INVESTIGATIVE TECHNIQUES AND PROCEDURES**

(55) 5 U.S.C. § 552 (b)(7)(E) provides protection for

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law . . . .

**(b)(7)(E)-1 The Mention of an Investigative Technique and Related Information**

(56) Exemption (b)(7)(E)-1 has been asserted to protect the identity and additional related information that would identify the type of technique discussed between the FBI and

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<sup>18</sup> Information withheld pursuant to Exemption (b)(7)(C)-2 appears on the following CHOICEPOINT pages: 116, 119, 289, 297, 555, and 847A.

ChoicePoint. In processing the documents responsive to the plaintiff's request in which investigative techniques are mentioned, the FBI has attempted to release as much of the information about the technique and/or the information derived from it as possible, without actually revealing the identity of the technique. The disclosure of this information would destroy the effectiveness of this technique, allowing circumvention of the law by the subjects of investigations wherein this specific technique is employed.<sup>19</sup> In addition to invoking Exemption (b)(7)(E)-1 to protect Sensitive FBI Administrative Practices and Procedures, the FBI is also asserting Exemption (b)(2)-1 to protect this information. (See supra.)

### CONCLUSION

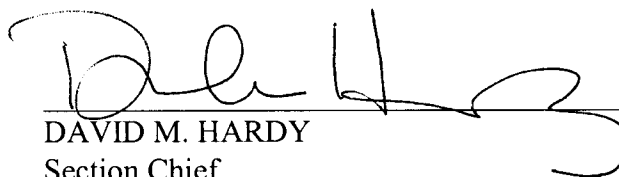
(57) Plaintiff has been provided all responsive records pursuant to its FOIA request to the FBI. Furthermore, all reasonably segregable information has been released to plaintiff, and no reasonably segregable portion of the withheld material can be released. Each of the documents was individually reviewed for segregability. As demonstrated above, the only information withheld by the FBI consists of information that would cause serious harm to the national security, reveal internal rules and practices of the FBI, infringe upon the privacy of third parties, or would disclose techniques and procedures for law enforcement investigations. This information cannot be further segregated without revealing the privileged information itself.

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<sup>19</sup> Information withheld pursuant to Exemption (b)(7)(E)-1 appears on the following CHOICEPOINT pages: 10, 11, 13, 21, 29, 40, 52, 76, 85, 93, 106, 110, 119, 132, 137, 182, 187, 214, 219, 412, 424, 431, 433, 438, 441, and 555.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibit A attached hereto is a true and correct copy.

Executed this 28<sup>th</sup> day of February, 2006.

A handwritten signature in black ink, appearing to read "D. Hardy", written over a horizontal line.

DAVID M. HARDY  
Section Chief  
Record/Information Dissemination Section  
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