



2. The FBI is invoking Exemption 7(A), on a categorical basis, to withhold all records responsive to items 1 through 3 of Plaintiff's request, because the release of any responsive records would interfere with the FBI's ongoing investigation of Russian interference in the 2016 Presidential Election (which is now under the purview of Special Counsel Robert Mueller).

3. In order to include certain details and context for the Court's consideration of the FBI's categorical assertion of Exemption 7(A) over certain types of records, the Hardy Declaration includes some unclassified law-enforcement-sensitive information, the public disclosure of which would interfere with the pending Russia investigation.

4. For reasons that will be clear to the Court when it reviews the unredacted version of the Hardy Declaration, the FBI is unable to provide additional details about this particular information on the public docket without causing harm to the ongoing investigation.

5. For the same reasons that the FBI must redact the publicly filed version of the Hardy Declaration to prevent interference with the pending Russia investigation, the FBI must also redact the handful of passages in its summary judgment brief that quote or paraphrase the law-enforcement-sensitive paragraphs of the Hardy Declaration.

6. Were the FBI not permitted to proceed in this manner, its only alternative would be to edit the relevant filings to provide less information to the Court about the FBI's decision to invoke Exemption 7(A) over certain types of responsive records.

7. Accordingly, the FBI respectfully requests leave to file partially redacted versions of the Hardy Declaration and the FBI's summary judgment brief on the public docket, and to submit fully unredacted versions of those filings *ex parte* and *in camera*. The FBI is filing the redacted versions of the relevant filings on the public docket concurrently with this motion.

8. Two other courts in this district have recently granted identical motions by the FBI for leave to submit *ex parte* and *in camera* versions of its summary judgment filings in similar FOIA lawsuits. See *Judicial Watch, Inc. v. CIA*, Case No. 17-cv-397 (TSC), Sept. 30, 2017 Minute Order; *Leopold v. Dep't of Treasury*, Case No. 16-cv-1827 (KBJ), Order Granting Motion For Leave to File In Camera, ECF No. 20. The Court's Order in *Leopold* is particularly relevant here because that case also involved a request for records related to the FBI's investigation of Russian interference in the 2016 Presidential Election. In granting the FBI's motion, the Court noted that "the receipt of *in camera* declarations is appropriate" where "a law enforcement agency indicates that no additional information concerning an ongoing investigation may be publicly disclosed without revealing precisely the information that the agency is entitled to withhold under the FOIA." *Id.* at 3. The Court agreed that *in camera* inspection is necessary under the instant circumstances to prevent interference with an ongoing investigation, "and that revealing more about the redacted information on the public record would disclose the very information that Defendants seek to withhold." *Id.* Finally, the Court noted that the FBI's Hardy Declaration contained "relatively few redactions" and that "Defendants here appear to have sought to minimize interference with the normal adversary process by making a significant portion of the Hardy Declaration available to Plaintiffs and the public." *Id.* at 3-4.

9. This analysis applies with equal force to the instant case. The FBI has made the same representations to the Court regarding the risk of interference with an active, ongoing investigation and also notes that the redactions in the summary judgment filings are substantially limited so as to minimize any interference with the normal adversary process.

10. No D.C. Circuit authority or Local Civil Rule requires the FBI to seek permission from or provide prior notice to Plaintiff or the Court before submitting an *ex parte*, *in camera*

declaration. And “[t]he Freedom of Information Act specifically authorizes the courts to ‘examine the contents of . . . agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions.’ 5 U.S.C. § 552(a)(4)(B).” *Arieff v. U.S. Dep’t of Navy*, 712 F.2d 1462, 1469 (D.C. Cir. 1983). As a courtesy and out of an abundance of caution, however, the FBI is filing this motion to provide the Court and the Plaintiff with sufficient notice and justification. *See id.* at 1469 (“[T]he receipt of *in camera* affidavits . . . when necessary . . . [is] part of a trial judge’s procedural arsenal.”); *Hayden v. NSA*, 608 F.2d 1381, 1388 (D.C. Cir. 1979) (noting that affidavit submitted for *in camera* review “spells out the factors [addressed in the public affidavits] with greater specificity”); *see also e.g., Campbell v. HHS*, 682 F.2d 256, 265 (D.C. Cir. 1982) (suggesting that, on remand, district court could accept *in camera* submissions to support Exemption 7(A) claim)).

11. Before filing this motion, pursuant to Local Civil Rule 7(m), undersigned counsel for the FBI conferred with counsel for Plaintiff, who reported that Plaintiff does not consent to the relief requested in this motion.

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Respectfully submitted,

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