

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

ELECTRONIC PRIVACY INFORMATION
CENTER,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION

Defendant.

Civil Action No. 17-121

**PLAINTIFF’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE AND
RESPONSE TO DEFENDANT’S STATEMENT OF FACTS NOT IN DISPUTE**

Pursuant to Local Civil Rule 7(h) of the Rules of the United States District Court for the District of Columbia, Plaintiff Electronic Privacy Information Center (“EPIC”) hereby submits the following statement of material facts as to which EPIC contends there is no genuine issue in connection with its cross-motion for summary judgment, and EPIC’s response to defendant’s statement of material facts.

1. EPIC agrees that the matters set forth in ¶ 1 of defendant’s statement of material facts are not in dispute.
2. EPIC agrees that the matters set forth in ¶ 2 are not in dispute.
3. EPIC agrees that the matters set forth in ¶ 3 are not in dispute.
4. EPIC agrees that the matters set forth in ¶ 4 are not in dispute.
5. EPIC agrees that the matters set forth in ¶ 5 are not in dispute.
6. EPIC disputes the FBI’s claim in ¶ 6 that former Director Comey’s March 20, 2017, statement was the “first public, authorized, official FBI acknowledgement of the existence

of such an investigation.” *See* Exs. 6, 7.

7. EPIC agrees that the matters set forth in ¶ 7 are not in dispute.

8. As to the allegations set forth in ¶ 8, EPIC respectfully refers to the Hardy Declaration for a complete and accurate statement of its contents. EPIC submits that the whether the Hardy Declaration “details the process used by the FBI to search for responsive records” constitutes a legal conclusion which EPIC disputes, and EPIC disputes the material fact that the FBI search “was carried out by ‘subject-matter experts’ who were already familiar with the records in question.”

9. EPIC submits that ¶ 9 constitutes a legal conclusion, which EPIC disputes.

10. EPIC submits that ¶ 10 constitutes a legal conclusion, which EPIC disputes.

11. EPIC submits that ¶ 11 constitutes a legal conclusion, which EPIC disputes.

12. EPIC submits that ¶ 12 constitutes a legal conclusion, which EPIC disputes.

13. EPIC submits that ¶ 13 constitutes a legal conclusion, which EPIC disputes.

14. EPIC submits that ¶ 14 constitutes a legal conclusion, which EPIC disputes.

15. EPIC submits that ¶ 15 constitutes a legal conclusion, which EPIC disputes.

16. EPIC submits that ¶ 16 constitutes a legal conclusion, which EPIC disputes.

17. EPIC submits that ¶ 17 constitutes a legal conclusion, which EPIC disputes.

18. EPIC agrees that the matters set forth in ¶ 18 are not in dispute.

19. The FBI did not submit a ¶ 19.

20. EPIC agrees that the matters set forth in ¶ 20 are not in dispute.

21. EPIC submits that ¶ 21 constitutes a legal conclusion, which EPIC disputes.

22. EPIC agrees that the matters set forth in ¶ 22 are not in dispute.

23. EPIC agrees that the matters set forth in ¶ 23 are not in dispute to the extent that

the 86 out of 89 pages described as being released in full were publicly available documents provided by FBI via a list of website links.

24. EPIC submits that ¶ 24 constitutes a legal conclusion, which EPIC disputes.

25. EPIC agrees that the matters set forth in ¶ 25 are not in dispute.

26. EPIC agrees that the matters set forth in ¶ 26 are not in dispute.

27. EPIC submits that ¶ 27 constitutes a legal conclusion, which EPIC disputes.

28. EPIC submits that ¶ 28 constitutes a legal conclusion, which EPIC disputes.

29. EPIC submits that ¶ 29 constitutes a legal conclusion, which EPIC disputes.

30. EPIC submits that ¶ 30 constitutes a legal conclusion, which EPIC disputes.

31. EPIC agrees that the matters set forth in ¶ 31 are not in dispute.

32. EPIC submits that ¶ 32 constitutes a legal conclusion, which EPIC disputes.

33. FBI is “the lead federal agency for investigating cyber attacks by criminals, overseas adversaries, and terrorists.” FBI, *What We Investigate, Cyber Crime*, FBI.gov.¹

34. On December 29, 2017, FBI and the Department of Homeland Security published a Join Analysis Report on the Russian malicious cyber activity associated with the U.S. election. Dep’t of Homeland Sec. & Fed. Bureau of Investigation. GRIZZLY STEPPE – Russian Malicious Cyber Activity (2016), Ex. 6. The JAR formally attributed the attack to Russian intelligence services. While “[p]revious JARs have not attributed malicious cyber activity to specific countries or threat actors,” the report stated, this report immediately identified “Russian civilian and military intelligence Services (RIS)” as the actors who “compromise[d] and exploit[ed] networks and endpoints associated with the U.S. election, as well as a range of U.S. Government, political, and private sector entities.” *Id.* at 1.

¹ <https://www.fbi.gov/investigate/cyber>.

35. On January 6, 2017, the ODNI released to the public a joint U.S. intelligence assessment of the Russian interference. Office of the Dir. of Nat'l Intelligence, *Assessing Russian Activities and Intentions in Recent US Elections* (2017), Ex. 7. This Public Assessment “includes an analytic assessment drafted and coordinated among The Central Intelligence Agency (CIA), The Federal Bureau of Investigation (FBI), and The National Security Agency (NSA), which draws on intelligence information collected and disseminated by those three agencies.” *Id.* at i. The assessment indicated that: “When we use the term ‘we’ it refers to an assessment by all three agencies.” *Id.*

36. The assessment specifically states: “We assess Russian intelligence services collected against the US primary campaigns, think tanks, and lobbying groups they viewed as likely to shape future US policies. In July 2015, Russian intelligence gained access to Democratic National Committee (DNC) networks and maintained that access until at least June 2016.” *Id.* at 2. The document also states: “We assess with high confidence that the GRU relayed material it acquired from the DNC and senior Democratic officials to WikiLeaks.” *Id.* at 3.

37. On May 9, 2017, following Director Comey’s March 20, 2017, statement, President Trump terminated Director Comey. Hardy Decl. ¶¶ 12–13. Robert Mueller was subsequently appointed special counsel to take over the investigation referred to in Mr. Comey’s testimony. ¶ Hardy Decl. 13

38. The Special Counsel’s Office has issued two public indictments and unsealed one guilty plea. Indictments of former chair of President Trump’s campaign Paul Manafort and former campaign advisor Richard Gates charge that the two acted as unregistered foreign agents of Ukraine, its political parties, and leaders, laundered millions of dollars, and made false statements to the U.S. government. Indictment, *United States v. Manafort*, No. 17-cr-201

(D.D.C. Oct. 27, 2017). George Papadopoulos, a former foreign policy advisor for the campaign, pled guilty to making false statements to the FBI. Statement of the Offense, *United States v. Papadopoulos*, No. 17-cr-182 (RDM) (D.D.C. Oct. 5, 2017).

39. Mr. Papadopoulos's guilty plea states, "At the time of the interview [on Jan 27, 2017], the FBI had an open investigation into the Russian government's efforts to interfere in the 2016 presidential election" *Id.* at 1. The document details a timeline of Mr. Papadopoulos's contacts with Russian nationals and associates, and his contacts concerning "dirt" on then-candidate Hillary Clinton. *Id.* at 3–9.

40. The FBI's Foreign Intelligence Surveillance Act (FISA) minimization procedures have been released to the public. Minimization Procedures Used by the Federal Bureau of Investigation in Connection with Acquisitions of Foreign Intelligence Information pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, As Amended (2016), Ex. 4.

41. The National Security Agency's internal procedures compliance and minimization procedures have been released to the public. Nat'l Sec. Agency, USSID SP0018: Legal Compliance and U.S. Persons Minimization Procedures (2011), Ex. 5.

Dated: November 15, 2017

Respectfully submitted,

MARC ROTENBERG
EPIC President and Executive Director

/s/ Alan Jay Butler

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