

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

_____ )	
ACCOUNTABILITY FBI, INC., )	
2337 Magazine St. Unit D )	
New Orleans, LA 70130 )	
)	
Plaintiff, )	
)	
v. )	Civil Action No.
)	
U.S. DEPARTMENT OF JUSTICE, )	
950 Pennsylvania Avenue, NW )	
Washington, DC 20530-0001 )	
)	
Defendant. )	
)	
_____ )	

**COMPLAINT**

Plaintiff Accountability FBI, Inc. (“Plaintiff”) brings this action against Defendant U.S. Department of Justice (“Defendant”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

1. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, as this action arises under 5 U.S.C. § 552(a)(4)(B).
2. Venue is proper in the District of Columbia pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).

**PLAINTIFF**

3. Plaintiff Accountability FBI, Inc. is a non-profit organization incorporated in Louisiana with a principal place of business in New Orleans, LA.

**DEFENDANT**

4. Defendant U.S. Department of Justice (“DOJ”) is a federal agency headquartered in Washington, DC. Defendant is a federal agency within the meaning of 5 U.S.C. § 552(f)(1), located at 950 Pennsylvania Avenue NW, Washington, DC, 20530. The Federal Bureau of Investigation (“FBI”) is a component of Defendant DOJ. Thus, upon information and belief, DOJ, through its component, has possession, custody, and control of the records, within the meaning of 5 U.S.C. § 552(f)(2), to which the Plaintiff seeks access.

**FACTS**

**A. FBI EXECUTIVE MISCONDUCT**

5. During its history, FBI executives, including longtime director J. Edgar Hoover, have allowed the FBI to engage in egregious misconduct. For example:

In early 1968, [FBI] headquarters explained to the field that Dr. [Martin Luther] King [Jr.] must be destroyed because he was seen as a potential “messiah” who could “unify and electrify” the “black nationalist movement”. Indeed, to the FBI he was a potential threat because he might “abandon his supposed ‘obedience’ to white liberal doctrines (non-violence).” In short, a non-violent man was to be secretly attacked and destroyed as insurance against his abandoning non-violence.

U.S. Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (“Church Committee”), *Intelligence Activities and the Rights of Americans, Book II, Final Report*, S. Rep. No. 94-755, at 11-12 (1976) (“Church Committee Report”). As part of its efforts against Dr. King, the FBI planted a series of derogatory articles with the media about Dr. King, the civil rights movement, and other progressive movements. *Id.* at 15-16.

6. Shortly after the Church Committee Report was published, the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111, was passed. However, the FBI was largely excluded from its reforms and continues to be excluded to this day. For example, non-preference eligible FBI employees have no right to appeal disciplinary actions against them to the Merit

Systems Protection Board, in contrast with every other federal law enforcement agency. *See* 5 U.S.C § 7511(a)(1)(B), (b)(8).

7. Since the vast majority of FBI disciplinary matters are decided by high-level FBI and DOJ executives, there appears to be a reasonable basis for FBI employees' perception that there is a double standard within the FBI where FBI managers are given less severe discipline than lower-level employees. *See* Griffin B. Bell, Lee Colwell, *Study of the FBI's Office of Professional Responsibility* (Feb. 2004) at 1-2, 28-29. Whether that perception is accurate or not, FBI executives are more likely to be eligible for retirement when investigated and can retire instead of facing punishment. *Id.* at 3.

8. Based on publicly available DOJ Office of the Inspector General ("OIG") investigative summaries in recent years, some FBI executives retire before or during investigations. *See e.g.* OIG, *Investigative Summary 22-107, Findings of Misconduct by an FBI Special Agent in Charge for Engaging in Sexual Contact with a Subordinate in an Official Government Vehicle and Sexual Communications with Two Other Subordinate Staff Members* (Sept. 20, 2022) available at <https://oig.justice.gov/sites/default/files/reports/22-107.pdf> (last visited Dec. 22, 2022); OIG, *Investigative Summary 22-088, Findings of Misconduct by a then Special Agent in Charge and two Assistant Special Agents in Charge for Engaging in Favoritism in the Workplace, Multiple Violations of Hiring Policies, and Related Misconduct* (Jul. 7, 2022) available at <https://oig.justice.gov/sites/default/files/reports/22-088.pdf> (last visited Dec. 22, 2022); OIG, *Investigative Summary 21-090, Findings of Misconduct by a then FBI Special Agent in Charge and two then FBI Assistant Special Agents in Charge for Their Roles in an Unauthorized \$2 Million Purchase of Intellectual Property Related to a Classified Undercover Operation and Related Misconduct* (Jul. 6, 2021) available at <https://oig.justice.gov/sites/default/files/reports/21-090.pdf> (last visited Dec. 22, 2022).

9. Former Special Agent in Charge of the FBI's Indianapolis field office, W. Jay Abbott, retired from the FBI before the OIG reviewed his misconduct related to the failure to investigate or communicate allegations against Larry Nassar, the USA Gymnastics doctor responsible for the abuse of dozens of girls and young women. OIG, *21-093 Investigation and Review of the Federal Bureau of Investigation's Handling of Allegations of Sexual Abuse by Former USA Gymnastics Physician Lawrence Gerard Nassar* (Jul. 2021) at v available at <https://oig.justice.gov/sites/default/files/reports/21-093.pdf> (last visited Dec. 22, 2022).

10. FBI executives are often accused of engaging in sexual abuse. In December 2020, an Associated Press investigation identified at least six sexual misconduct allegations involving senior FBI officials over the previous five years. Jim Mustian, *'Under the rug:' Sexual misconduct shakes FBI's senior ranks*, AP (Dec. 10, 2020) available at <https://apnews.com/article/fbi-sexual-misconduct-investigation-a0d33e4770acef8ff5f4a48f0267202c> (last visited Dec. 22, 2022).

11. According to a report from the FBI's Office of Disciplinary Appeals obtained and released by U.S. Senator Charles Grassley, as a result of the Associated Press investigation, the FBI conducted a review of 8,686 disciplinary precedent summaries in its database showing that 665 employees, including 45 Senior Executive Service ("SES") employees, retired or resigned following an FBI or OIG investigation into alleged misconduct, but prior to an FBI Office of Professional Responsibility ("OPR") issuance of a final disciplinary letter. FBI Office of Disciplinary Appeals, *Retirements and Resignations during Unwelcome Sexual Conduct Adjudications* (Dec. 23, 2020) available at [https://www.grassley.senate.gov/imo/media/doc/grassley\\_to\\_justice\\_deptinspectorgeneralsexualmisconductreview.pdf](https://www.grassley.senate.gov/imo/media/doc/grassley_to_justice_deptinspectorgeneralsexualmisconductreview.pdf) (last visited Dec. 22, 2022).

## **B. THE FBI'S DISCIPLINARY CASE MANAGEMENT SYSTEM**

12. According to the OIG, the FBI established a Case Management system in

November 2004 “to track the FBI’s misconduct allegations, investigations, and adjudications.” See OIG, *I-2009-002 Review of the Federal Bureau of Investigation's Disciplinary System* (May 2009) at v available at <https://oig.justice.gov/reports/FBI/e0902/final.pdf> (last visited Dec. 22, 2022).

13. According to the FBI’s Office of Disciplinary Appeals, the FBI’s disciplinary case precedent database is called “Javelin.” See *Retirements and Resignations during Unwelcome Sexual Conduct Adjudications*.

14. The Plaintiff does not yet know the total number of FBI SES personnel. However, based on the FBI’s Office of Disciplinary Appeals report *Retirements and Resignations during Unwelcome Sexual Conduct Adjudications*, out of 665 employees who retired or resigned while under investigation, 45 were SES, approximately 6.7% of that group of employees.

**C. PLAINTIFF’S FOIA REQUEST TO FBI FOR DISCIPLINARY RECORDS REGARDING SES PERSONNEL.**

15. On July 29, 2022, the Plaintiff submitted a FOIA request to the FBI for the following records:

All FBI Office of Professional Responsibility (‘OPR’) and Inspection Division files, including 263 files, adjudication files, and investigative files, regarding allegations of misconduct against FBI Senior Executive Service (‘SES’) officials that were open any time between January 1, 2015 and December 31, 2021.

16. In its request, the Plaintiff requested “263 files” as a reference to the investigative classification beginning with “263”. The FBI uses investigative classifications to categorize its files. (This is separate from classifying information to protect national security.) Based on information the Plaintiff has, “263” is an investigative classification for disciplinary matters.

17. On August 4, 2022, the FBI denied the Plaintiff’s request as follows:

The [Freedom of Information/Privacy Act] provides for access to Government records where the records sought are “reasonably described” [Title 5, United States Code, Section 552(a)(3)(A)]. Your letter does not contain enough descriptive information to permit a search of our records. Therefore, your request is being administratively closed. In accordance with Title 28, Code of Federal

Regulations, Part 16.3(b), please provide us more specific information.

18. On August 5, 2022, the Plaintiff filed an administrative appeal of the FBI's decision with DOJ.

19. On December 1, 2022, DOJ affirmed the FBI's decision as follows:

After carefully considering your appeal, I am affirming the FBI's action on your request. A proper FOIA request for records must reasonably describe the records sought. See 5 U.S.C. § 552(a)(3)(A); see also 28 C.F.R. § 16.3(b)(2021). The FBI informed you that your request for records related to the subject would require the FBI to conduct an unreasonably burdensome search. I have determined that the FBI's response was correct. Your request is not reasonably described because you did not characterize the records sought in such a way that they could be located without individually pulling thousands of files and conducting thousands of hours of search. Courts have consistently held that the FOIA does not require agencies to conduct unreasonably burdensome searches for records. See, e.g., Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 892 (D.C. Cir. 1995).

### **COUNT ONE**

#### **Violation of FOIA, 5 U.S.C. § 552**

20. The foregoing allegations are re-alleged and incorporated herein by reference.

21. Considering the Plaintiff only requested disciplinary and investigative files—providing an investigative classification for such files—of a small percentage of FBI employees, who are the highest-ranking employees in the FBI, and the FBI has a disciplinary case precedent database called “Javelin” which the Defendant can use to search for the requested records, the Defendant's denial of the Plaintiff's request under 5 U.S.C. § 552(a)(3)(A) was improper, and it is improperly withholding records from the Plaintiff.

### **RELIEF**

WHEREFORE, Plaintiff respectfully requests relief as follows:

22. An injunction requiring the Defendant to: 1) conduct a search for any and all records responsive to Plaintiff's FOIA request; and 2) produce, by a date certain, any and all records responsive to Plaintiff's FOIA requests.

23. Costs and reasonable attorneys' fees.
24. Such other relief as the Court deems just and equitable.

Respectfully Submitted,

December 22, 2022.

/s/ Michael S. Zummer

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