February 20, 2011

FBI
Attn: Section Chief David Hardy
Record Information/Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

      RE: FOIPA Request [REDACTED]-000
             Filed 12/1/2009
             My letter of December 6, 2010

Dear Section Chief Hardy,

This follows my prior letter to you of December 6, 2010.

By way of review, I filed a properly executed seven page FOIPA request with your office on December 1, 2009. It has now been almost fifteen months since I filed the request, and two months since I last wrote to you regarding this request.

The purpose of this letter is to make a final attempt to meet and confer with you on how long it will be until the records are produced, in order to avoid the possibility of FOIPA litigation. In order to facilitate your search for and redaction of responsive documents, I take the extraordinary step of providing a request-by-request breakdown of where I believe the information is most likely to be located within the FBI as well as the purpose of the request and what would be appropriate to withhold or redact. Please see attached table.

Request nos. 2-3 were previously withdrawn. Request nos. 15, 19, 20, 23, 31, and 32 are hereby withdrawn in my attempt to narrow the request. A revised copy of the FOIPA request is enclosed for your reference showing all of the withdrawn requests.

Please provide an estimate as to how long it will be before this request is completed. From publicly available data, it appears the typical completion time for "complex" requests is one year. It has now been one year and two months.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1

Request no.	Request, purpose, probable location, and comments
1.	"All policies, portions of manuals, directives, standing orders, regulations, and any other materials that describe, create, authorize, and/or enforce a method, process, or other manner in which a negative suitability determination made by the FBI on an applicant may be appealed, reconsidered, or otherwise contested by the applicant or others." The FBI maintains a review board to consider appeals from applicants of non-selection decisions. The request is intended to discover information on how I can appeal my non-selection dated 7/1/2009 to the review board. The Initial Clearance Section of the Security Division at FBIHQ has the necessary information. Supervisory Special Agent Mark A. Gant is the Section Chief and would be an appropriate point of contact.
2.	Withdrawn on 7/3/2010.
3.	Withdrawn on 7/3/2010.
4.	"The Adjudication Guidelines for Suitability." Personnel Security Specialists in the Initial Clearance section use established criteria in order to make Adjudicative Recommendations on applicants (aka suitability determinations). The request is for a specific document that is known to exist. The Initial Clearance Section of the Security Division at FBIHQ has the necessary information. Supervisory Personnel Security Specialist Valrie R. Kosh would be an appropriate point of contact.
5.	"All information showing any scores achieved by Requester ["Requester" means ░░░░░░░░░░░░░░░░░░░░] in the Special Agent Selection System, including but not limited to Phase I and Phase II (both the interview and written exercise)." According to MIOG, the Special Agent Selection System (SASS) is designed to measure an applicant's ability to serve in the FBI, and to predict an applicant's success in the FBI. The request is intended to discover my scores in the SASS so that I can use this information in my eventual appeal to the review board. The Bureau Personnel Management System (BPMS) contains this information and may be searched electronically by my FBI applicant file number, social security number, or name. My applicant file number is 67B-HQ-░░░░░░░ and my social security number is ░░░░░░░░░ I do not know who maintains BPMS but I do know that Field Office and Headquarters personnel both have the ability to search it. The information is also available from the Human Resources Division (HRD), which administers SASS. John Raucci, Assistant Director of HRD, would know who to contact to obtain this information.

Request no.	Request, purpose, probable location, and comments
6.	"All information showing Requester's Percentile Ranking Grade." According to MIOG, the Percentile Ranking Grade (PRG) is used to rank applicants according to their objectively tested merit, so that selections may be made in accordance with the merit system and the specialized needs of the FBI. The request is intended to discover my PRG so that I can use this information in my eventual appeal to the review board. The PRG may be obtained from either BPMS or HRD.
7.	"All Time Utilization and Record Keeping information (TURK), as follows: ...." TURK is Congressionally-mandated timekeeping information that permits a reviewer to determine what FBI personnel are working on, so that efficiency and use of resources may be monitored. The purpose of the request is to discover TURK for FBI employees who worked on my application, so that I may reconstruct who did what and when in my application process. The request is limited to TURK that pertains to my application, file no. 67B-HQ-▩▩▩. I do not know from where TURK may be obtained, but I do know that it is electronically searchable from headquarters and other locations. No redactions of names are appropriate, because redacting names of employees would defeat the purpose of having TURK in the first place. Redaction of employees' social security numbers, home addresses, and telephone numbers would of course be appropriate.
7. (duplicate number)	"The 'data flow' map referred to on this FBI webpage: http://foia.fbi.gov/webtapia.htm." I need the data flow map to understand the TURK that is produced.

Request no.	Request, purpose, probable location, and comments
8.	"Produce the complete, unredacted version of Requester's applicant file #67B-HQ-[redacted] and all associated files, subfiles, and any other information associated with Requester." The request is a "catch all" request intended to discover information pertaining to me that the FBI may maintain in files other than my main applicant file. For example, I learned that Polygraph Results are a subfile of my applicant file. The purpose of requesting "complete, unredacted" files is so that I may challenge your redactions and withholdings under FOIPA. Please include cross-references and other information associations in your search. Of note, the phrase "any other information associated with requester" <u>does not</u> include [redacted] Of note, the phrase "any other information associated with requester" <u>does not include my Merit Systems Protection Board Appeal of September 2009.</u> I already have all of my filings and the FBI's filings in that case, and the matter is privileged in any event. Please do not produce any information from that case.
9.	"Produce all data in the Bureau Personnel Management System pertaining to Requester." The request is a "catch all" request that is intended to discover all of the BPMS screens that exist in my case. No redactions are appropriate.

Request no.	Request, purpose, probable location, and comments
10.	"Produce all recorded recollections, notes, reports, and all other writings and information pertaining to all communications between the Special Agent Clearance Unit and Requester at any time, including but not limited to FD-302's, drafts of FD-302's, notes of phone conversations and emails between Special Agent Grahm Coder and Requester." Special Agent Coder falsified and backdated a FD-302 that was relied upon by the Office of General Counsel and others in non-selecting me. The purpose of requesting drafts of FD-302's and his notes is to prove that SA Coder backdated a FD-302, which would therefore be a false writing under 18 U.S.C. sec. 1001. The information may be obtained from the Special Agent Clearance Unit (SACU) of the Initial Clearance Section, and from Special Agent Grahm L. Coder. It appears that the FD-302 was drafted electronically from a dictation by SA Coder, and there should be a version control system or other method of saving drafts, to prevent the type of misconduct that occurred in this case. SA Coder is stationed at the Fort Collins, Colorado Resident Agency and may be contacted at (970) 663-1028 for details.
11.	"Produce all communications, including but not limited to emails, phone calls, instant messaging, voicemails, and any other information between SA Grahm Coder and any other FBI personnel pertaining to applicant, including but not limited to the analyst responsible for applicant, the Acting Unit Chief, the Field Office, and so on." The request is intended to discover communications not filed in the applicant file, such as emails between SA Coder and Personnel Security Specialist Abby M. Halle, who made the negative suitability determination on my application. The information may be obtained from SA Coder (grahm.coder@ic.fbi.gov) at Fort Collins, Colorado; PSS Halle (email unknown) at FBIHQ; Acting Unit Chief Montchell Brice (montchell.brice@ic.fbi.gov) at FBIHQ; Program Manager Kevin Benson (email unknown) at FBIHQ; and SPSS Valrie R. Kosh (email unknown) at FBIHQ.
12.	"Produce all questions, including drafts of questions not actually used, prepared by SACU Analyst Abby M. Halle for use by other FBI personnel such as SA Grahm Coder at any time." The request is intended to discover instructions given to SA Coder by PSS Halle. This will help me determine the appropriate scope of SA Coder's communications with me, which will support my eventual appeal to the review board.
13.	"Produce all written matter and electronic data ever prepared by SA Grahm Coder pertaining to Requester, whether notes, a personal journal, intraoffice communications, web-based task management entries, or otherwise." The request is intended to discover information pertaining to me that is not filed in the applicant file.

Request no.	Request, purpose, probable location, and comments
14.	"Produce all written matter ever prepared by Analyst Abby M. Halle pertaining to Requester, whether notes, a personal journal, intraoffice communications, web-based task management entries, or otherwise." The request is intended to discover information pertaining to me that is not filed in the applicant file.
15.	"Produce all policies, manuals, guidelines, standing orders, and any other regulations controlling applicant processing from the date of the conditional offer to the applicant's Entrance On Duty at the FBI Academy, to the extent not contained in Section 67--Bureau Applicant Matters of the Manual of Investigative Operations and Guidelines." The request is hereby withdrawn.
16.	"All communications, including but not limited to email messages, letters, memoranda, faxes, notes, phone messages, voicemails, and any other correspondence between Acting Unit Chief Montchell Brice of the Special Agent Clearance Unit (or sent/ received at his direction) and any other person in the FBI pertaining to Requester's application." The request is intended to discover information that could have been considered by Acting Unit Chief Montchell Brice in discontinuing my application on 7/1/2009. This may well be limited to the Adjudicative Recommendation dated 6/30/2009. Information is available from AUC Brice of SACU, at headquarters.
17.	"Minutes of all internal meetings, notes of all phone calls, and records of all decisions made concerning Requester's application from 5/12/2009 to the date of this request." The request is intended to discover information that was not filed in the applicant file.
18.	"All records, directives, emails, memoranda, etc. that show how it came to pass that Special Agent Grahm Coder was assigned to Requester's case, including any instructions to SA Coder." The request is intended to discover "leads" and other directives to SA Coder, which will help me establish the permissible scope of SA Coder's communications with me. For example, SA Coder may have picked up a lead that told him to reinterview me on various subjects. I am trying to find which subjects were authorized, which I will use in my eventual appeal to the review board.

Request no.	Request, purpose, probable location, and comments
19.	"All information showing any review of Requester's application by a person in the FBI who has the ability to adjudicate applications and/or make suitability determinations, and any notes, comments, reports, or correspondence from such persons." Request no. 19 is hereby withdrawn.
20.	"All information, records, or any other materials showing or otherwise recording communications pertaining to Requester's application, Merit Systems Protection Board appeal, future litigation, or any other matter concerning Requester, between the Special Agent Clearance Unit and the San Francisco Field Office or Oakland Resident Agency...." Request no. 20 is hereby withdrawn.
21.	"Any and all records that show what the FBI considered during the "background initiation consideration" phase of Requester's application, as referred to in section 67-17.3.2(3) of the Manual of Investigative Operations and Guidelines." The purpose of the request is to discover information not contained in the applicant file that may be relevant to the decision to non-select me. The information may be obtained from the Initial Clearance Section at FBIHQ.
22.	"All Non-Disclosure Agreements ever signed by Requester." At the Phase I test in January 2009, I signed a non-disclosure agreement. I need the NDA to determine what I may or may not disclose about the application process to third parties or otherwise. The NDA may be obtained from the San Francisco Field Office, which is where I signed it.
23.	"All records showing a "go/no-go" type recommendation concerning Requester's application, such as a report of an analyst recommending discontinuation to his/her supervisor." Request no. 23 is hereby withdrawn.
24.	"Any and all reports prepared by FBI analysts concerning applicant's application, including but not limited to comparison of the SF-86, SF-86 Cover Sheet and attachments, and any other portion of the application against other applicants and/or established guidelines." The request is intended to discover information not contained in PSS Halle's Adjudicative Recommendation. For example, AUC Brice wrote in the letter reporting my non-selection that my application "was reviewed along with those of other applicants" and that the FBI application process is highly competitive. The request seeks to determine whether "competitiveness" includes moral character, which is not objectively testable.

Request no.	Request, purpose, probable location, and comments
25.	"Redacted of the actual questions asked by the interviewers, the complete audio recording of Requester's Phase II interview, in a lossless digital format such as WAVE/AIFF; or, in a lossy format such as (1) MPEG-1 Audio Layer 3 (MP3) if and only if the minimum quality is 160 kbps, stereo, 32-bit, 44.1 kHz, or (2) OGG Vorbis set to quality level -q5 or higher; with all metadata intact." The request seeks to discover information pertaining to my competitiveness in the Special Agent Selection System, namely my outstanding responses to Phase II interview questions. Clearly, the questions are proprietary and confidential, but my responses are not. My responses are statements that could be used against me, are not testing materials, are not classified, and are therefore not exempt under the Privacy Act.
26.	"Redacted of the actual questions asked by the interviewers, the complete Phase II interview booklets containing the interviewers' notes of Requester's Phase II interview conducted on 5/1/2009 in Phoenix, Arizona." The request seeks to discover information pertaining to my competitiveness in the Special Agent Selection System, namely my outstanding responses to Phase II interview questions. Clearly, the questions are proprietary and confidential, but my responses are not. My responses are statements that could be used against me, are not testing materials, are not classified, and are therefore not exempt under the Privacy Act.
27.	"Redacted of the actual questions if any, the complete Phase II interview narrative of Requester's Phase II interview." The request seeks to discover the basis for my Phase II interview score, which is requested in request no. 5.
28.	"All audio recordings of any telephone conversations between Special Agent Grahm Coder and Requester." The request is intended to conclusively determine the contents of my telephone conversations with SA Coder between 6/25/2009 and 6/30/2009, in order to prove that his FD-302 of 6/25/2009 is a false investigative record.
29.	"All complaints ever made by an applicant, interview subject, criminal suspect, or other person regarding Special Agent Grahm Coder, including but not limited to:...." The request is intended to establish a pattern or practice by SA Coder regarding his conduct in investigations.

Request no.	Request, purpose, probable location, and comments
30.	"All information that would be responsive to a Brady-Giglio motion regarding [SA Coder]...." The request is intended to discover allegations of acts of dishonesty or other moral turpitude by SA Coder, so that I may further discredit him in my eventual applicant appeal to the review board.
31.	"All information showing the chain of command of the Special Agent Clearance Unit as it existed at any time from 5/18/2009 to the date of this request, such as a roster." The request is hereby withdrawn.
32.	"All legal opinions, emails, letters, memoranda, and any other written matter prepared by the Office of General Counsel pertaining to Requester." The request is hereby withdrawn.
33.	"All time records of the Office of General Counsel pertaining to Requester at any time." The request is intended to discover how long attorney Edward M. Broussard of the Office of General Counsel spent developing a legal opinion in response to an email from PSS Halle between 6/25/2009 and 6/30/2009. This is relevant to my eventual appeal to the review board. The information may be obtained from the Office of General Counsel.