

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

DENNIS MONTGOMERY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	1:17-cv-1074-RJL
JAMES COMEY, <i>et al.</i> ,)	
)	
Defendants.)	

**GOVERNMENT DEFENDANTS’ STATEMENT OF MATERIAL FACTS IN SUPPORT
OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 7(h), the Government Defendants¹ hereby submit their Statement of Material Facts in Support of their Motion for Partial Summary Judgment:

1. Larry Klayman (“Mr. Klayman”) submitted a Privacy Act (“PA”) request to the Federal Bureau of Investigation (“FBI”), dated March 27, 2017. *See* Compl. ¶ 103.
2. The request sought: “any and all documents that refer or relate in any way to [] any and all 302 reports of the interview in which [Dennis] Montgomery participated in with Special Agents Walter Giardina and William Barnett.” *Id.*; Declaration of David M. Hardy (“Hardy Declaration”), ¶ 5.
3. By letter dated March 30, 2017, the FBI:

¹ The Government Defendants are the Federal Bureau of Investigation (“FBI”), the Central Intelligence Agency (“CIA”), and the National Security Agency (“NSA”), and the following current and former government officials sued in their official capacity: former President Barack Obama, Director of National Intelligence (“DNI”) Daniel Coats, former DNI James Clapper, CIA Director Mike Pompeo, former CIA Director John Brennan, NSA Director Michael Rogers, and former FBI Director James Comey. *See* Compl., ECF No. 1, at 1–2 (June 5, 2017).

- a. Acknowledged receiving Mr. Klayman's request for information;
- b. Advised Mr. Klayman that, although the request did not mention the Freedom of Information Act (FOIA), the request would be considered under the provisions of the FOIA, , and assigned it FOIPA Request Number 1370325-000;
- c. Issued a third-party unperfected response, also known as a Privacy "Glomar" denial. Specifically, the FBI advised that absent express authorization and consent from the third-party individual whose records are sought, proof of death, or a clear demonstration that the public interest in disclosure outweighs the privacy interest of the third-party, the "FBI can neither confirm or deny the existence of any records responsive to your request, which, if they were to exist, would be exempt from disclosure pursuant to FOIA Exemptions (b)(6) and (b)(7)(C);"
- d. Enclosed a Certification of Identity form, to be completed by the subject of the request, and;
- e. Notified Mr. Klayman of his right to appeal the FBI's decision to the Department of Justice's Office of Information Policy within sixty (60) days from the date of the response letter.

Id. ¶ 6.

4. By fax dated April 12, 2017, Mr. Klayman provided a completed Certification of Identity form for Mr. Montgomery. *Id.* ¶ 7.
5. By letter dated May 1, 2017, the FBI acknowledged receipt of Mr. Klayman's request and advised Mr. Klayman that it had been received for processing. For purposes of

- assessing fees, Mr. Klayman was advised he would be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III). *Id.* ¶ 8.
6. The FBI determined that the requested records are related to investigative matters and were compiled and are maintained per the FBI's primary law enforcement mission to investigate violations of federal laws. *Id.* ¶ 18.
 7. The FBI determined that the requested records are law enforcement records that would be stored in its Central Records System, a system of records specifically exempt from the access provisions of the Privacy Act per 5 U.S.C. § 552a(j)(2), as implemented by 28 C.F.R. § 16.96(a)(1). *Id.*
 8. Accordingly, the FBI has determined that the Plaintiffs have no individual right of access to the requested records pursuant to 28 C.F.R. § 16.96(a)(1) and the requested records are exempt from disclosure under 5 U.S.C. § 552a(j)(2). *Id.* at ¶¶ 18, 23.

Dated: August 1, 2017

Respectfully submitted,

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