

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
GRAEME SEPHTON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 00-30121-MAP
)	
FEDERAL BUREAU OF)	
INVESTIGATION,)	
)	
Defendant.)	
_____)	

SUPPLEMENTAL DECLARATION OF GRAEME SEPHTON

In accordance with 28 U.S.C. 1746, I, Graeme Sephton, do hereby declare as follows:

1. I am the Plaintiff in the above captioned action.

2. On September 21, 1998, I sent an FOIA request to the New York office of the Federal Bureau of Investigation (FBI), a true and correct copy of which has been previously filed in this action as Exhibit "A" to the April 29, 2003 Declaration filed by Defendant FBI employee Eileen Rawlinson. The general scope of documents that I sought in that FOIA request concerned the subject matter of FBI records and forensic science data and analysis related to foreign objects removed from the victims of the explosion of TWA Flight 800 on July 17, 1996 in New York. In particular, my September

21, 1998 FOIA request sought all documents in the possession or control of the FBI concerning foreign material or objects that pertained to:

- (a) any schedules or listings of such foreign material or objects given to the FBI;
- (b) the results of any analysis of those objects;
- (c) the identification of the origin of such material in relation to the Flight 800 aircraft's layout and location of those victims from which foreign objects or material was removed;
- (d) any documents which describe such materials as being of unknown origin; and
- (e) all documents that describe or discuss the size, weight, condition, general description and all other analytic results including composition as to such objects and materials.

3. I have carefully reviewed all four of the Declarations filed by Defendant FBI in this action to date that discuss or otherwise describe the FBI's search for records responsive to my September 21, 1998, FOIA request, including specifically (a) the Declaration of Scott Hodes dated October 19, 2000; (b) the Declaration of Christine Kiefer dated December 11, 2002; (c) the Declaration of Eileen Rawlinson dated April 29, 2003; and (d) the Declaration of Gregory A. Carl dated June 7, 2004. I have found that none of these four FBI Declarations contain an averment or assertion suggesting that a search for responsive records was undertaken in all locations or systems of records likely to contain documents responsive to my 1998 FOIA request. It is my position that the FBI has, to date, still not performed an adequate search of all record systems and record

locations which are likely to contain the types of agency forensic records responsive to my 1998 FOIA request.

4. From my review of the Declaration of Gregory A. Carl, dated June 7, 2004, I observed that this declaration does not discuss any search efforts made by the FBI regarding my 1998 FOIA request at issue in this action, but instead appears to describe only the FBI's search efforts as to a separate June 16, 2003 FOIA request I made to the FBI Headquarters which is not at issue in the present action. With respect to my June 16, 2003 FOIA request that is discussed by Mr. Carl, I still have not received a final response letter or decision from the FBI on this FOIA request to date. If Mr. Carl's position is ultimately articulated as the FBI's final determination to my 2003 FOIA request, the FBI would still be required to provide me with an opportunity to seek administrative appeal of that action by appealing the FBI's response decision to the Department of Justice ("DOJ") pursuant to the FOIA administrative appeal regulations found at 28 CFR § 16.9. Therefore, any issues concerning the 2003 FOIA request are not ripe or relevant in the present action. I also believe that there is no truth or merit to Mr. Carl's assertion that there are no FBI records responsive to my request within the FBI Lab, based upon the fact that the FBI's own records expressly indicate that there are many FBI Lab forensic analysis documents which are responsive to that FOIA request. See, Exhibit "C" (attached).

5. I am concerned that in responding to my FOIA request, the FBI has admitted that it has not searched for any responsive records in any other locations which are not accessible from the FBI's New York office, see, Declaration of Rawlinson ¶ 21, while the FBI nonetheless admits that the types of records concerning forensic analysis which I am seeking are generally stored in envelopes which are maintained at the FBI Lab in Washington DC, and concedes that the actual contents of such envelope records are not accessible for review via the CRS database from other locations. See, Declaration of Carl ¶ 5. Therefore, the FBI's search is clearly inadequate in failing and refusing to search for any responsive forensic analysis records in other locations, such as the FBI Lab and the FBI Headquarters, which are likely to have records responsive to my 1998 FOIA request for forensic analysis records.

6. I am also concerned that in responding to my FOIA request, the FBI has never indicated that it has searched through all Central Record System ("CRS") file systems within the Main File 265A NY-259028 that are likely to contain records responsive to my request. The FBI Declarations describe searches of only limited portions of the CRS Sub-Files to Main File 265A-NY-259028, and provide no explanation whatsoever as to why certain sub-files and main file classifications were searched, while other file systems likely to include responsive records were never searched in response to my FOIA request. In fact, the Declarations filed by the FBI do not ever describe or discuss the other file categories within the Main File or Sub Files of Main File 265A-NY-259028 with respect to the adequacy of search issue for my 1998 FOIA request.

7. I have independently received, from a research colleague, a copy of the FBI's index / file administration for all of the Sub Files within the CRS Main File 265A-NY-259028, a copy of which is attached hereto as Exhibit A. From my review of that FBI subfile index, I am concerned as to the adequacy of the FBI's search in response to my 1998 FOIA request, in that the FBI has apparently never searched for any responsive records to my FOIA request in Sub File "K" (Investigative reports of outside Agencies/Police Departments), notwithstanding substantial evidence of the FBI working with several outside Agencies/Police Departments with regard to the forensic analysis that is the subject matter of my 1998 FOIA. See Exhibit C (attached). I am also concerned by the FBI's failure to search Sub File "E" ("Secret") and Sub File " J" ("Top Secret") to determine if either contain responsive records, as apparently documents of minimal secretive value (such as the file index itself) are routinely designated by the FBI as "Secret" in Main File 265A-NY-259028. See Exhibit "A." I believe that both Sub File "E" ("Secret") and " J" ("Top Secret") are likely to contain at least some records which discuss the forensic analysis of foreign bodies at issue in my 1998 FOIA request, and I am concerned that the FBI has made no attempt to ever search these subfiles for records responsive to my request. In addition, I also believe that Sub File "A" (Outgoing Communications) and Sub-File "B" (Incoming Communications) are also likely to contain at least some records discussing the forensic analysis for foreign bodies at issue in my FOIA request, and would observe that the Declarations filed by the FBI indicate

that no effort was ever made to review either of these Sub Files for records responsive to my request.

8. I am also concerned as to the adequacy of the FBI's search of those records not located in designated Sub Files of CRS Main File 265A-NY-259028, but which are apparently either maintained within the Main File itself, or which are somehow annexed" to the Main File. See, Rawlinson Declaration ¶¶ 12 - 15. Apparently, some agency records responsive to my request were located in the Main File designation under FBI index category "1B" which, according to the Declaration of Rawlinson, either pertains to "collected items" or to "bulky items." See, Declaration of Rawlinson ¶ 12. It is unclear what other Main File subject matters also contain records responsive to my request, as none of the FBI declarations ever describe the structure of the Main File categories or subject matter, or aver that all Main File categories likely to include responsive records have ever been searched for my FOIA request.

9. I have observed that Ms. Rawlinson's description of the search of 1B records in the CRS is unclear as to:

(a) the nature and number of those 1B entries which she found responsive to my request;

(b) the search terms or methodology used by Ms. Rawlinson to select which "1B" records were likely to relate to my request;

(c) the reason that the FBI did not make an effort to ascertain the location of records for at least eight "1B" items which were found responsive to my request (see, Rawlinson Declaration ¶ 15); and

(d) whether the selected "1B" items have any additional analysis records which would not be found within the FD -192 Forms and their its attachments which were reviewed by the FBI's FOIA staff (see, Rawlinson Declaration ¶ 16).

10. I have also independently received from a research colleague a copy of an FBI document referencing the Main File 265A-NY-259028 for the Explosion of TWA 800 incident in 1996 which expressly notes the FBI has in its possession 185 distinct "folders" for each item of "1B" evidence, which contain the results of metallurgical and chemical analysis, and all other analytical results from the FBI Lab for these items, along with any lab photographs, and electronic communications documenting the movement of evidence, including any analysis of each of these "1B" objects performed by the FBI Lab and the labs of the NTSB, Brookhaven, DIA and Boeing. See, Exhibit B(attached). However, to date, the FBI has not indicated the scope of its search (if any) for responsive records within these "1B" folders, and to date, I have not been provided with the contents of these folders for any of the foreign body objects which pertain to the subject matter of my FOIA request, notwithstanding this document's notation that "each folder should be made a permanent part of the case file 265A-NY 259028." See, Exhibit B (attached). I have never suggested that these folders contents are located within the FBI's Sub FF files as suggested by Ms. Rawlinson, see Declaration of Rawlinson ¶ 19 n.2, as I have no

personal knowledge of where the FBI maintains these folders. However, regardless of their location, the FBI has never indicated that it has actually searched for the responsive 1B records among those 185 folders, nor has the FBI ever provided me with the contents of these folders responsive to my 1998 FOIA request.

11. I have also attached hereto copies of eight exemplar pages of some of the records that I received from the FBI in response to my 1998 FOIA request that I believe demonstrate a failure to undertake an adequate search for records responsive to my request, in that these records (and other similar documents provided in response to my FOIA) expressly cross reference other relevant documents which were also clearly responsive to my request. See, Exhibit C 1-8 (attached). The FBI has made no attempt to ever search for these expressly referenced records in response to my FOIA request.

12. For example, one of these documents provided in response to my 1998 FOIA request references National Transportation Safety Board (NTSB) and FBI "force vector analysis" of foreign bodies that impacted victims. See, Exhibit C 1-2. However, to date, the FBI has neither searched for nor provided the referenced NTSB analysis or force vector analysis of foreign bodies in victims in response to my 1998 FOIA request.

13. The documents provided to me also describe a thorough inter-agency forensic analysis for all foreign bodies of all victims found with such materials that were undertaken by the NTSB and FBI. See Exhibit C 3-4. Yet the FBI has never attempted to

search for, nor provided me with, any documents or records resulting from this NTSB / FBI forensic analysis of fragments removed from victim bodies to date described in FBI records provided in response to my FOIA request.

14. The documents provided to me by the FBI also reference to specific analysis of foreign body materials using an "energy dispersive spectrometer (EDS) analysis to determine its chemical composition. See, Exhibit C at 5. However, the FBI has made no attempt to search for or provide me with any of these referenced EDS analysis records responsive to my FOIA.

15. The materials provided to me by the FBI also indicate that 89 victims were found with foreign bodies in their remains, and indicate that "examinations of these recovered FBI's did not disclose anything that would be overtly indicative of an explosive device," and that "investigation is continuing to identify FBI's of unknown origin. See, Exhibit C at 6-7. However, with respect to this detailed analysis of all foreign bodies recovered from victims, I have to date only received one single page document describing forensic analysis of a single object by FBI technicians for all of the foreign bodies reviewed by the FBI investigators, a copy of which is attached hereto as Exhibit C at 8. I have not received any similar forensic analysis records or documents as to any of the other foreign bodies referenced in the above mentioned FBI investigation materials, although such forensic analysis records are clearly responsive to the subject matter of my

1998 FOIA request.

16. To date, in response to my 1998 FOIA request to the FBI's New York office, I have received FBI reports and summaries describing the general nature of some of the FBI Lab's investigation of this incident that identify or list other specific forensic analysis review and documentation responsive to my FOIA request. However, with one exception, the referenced underlying forensic analysis documents have not been released or provided to me by the FBI in response to my 1998 FOIA records request. To date, I have received only a single one-page document as the sole example of any direct forensic analysis/evaluation of foreign objects and materials found in the victims' bodies of the TWA Flight 800 incident. A copy of the only document of actual FBI forensic analysis or evaluation of foreign objects and materials found in the victims' bodies of the TWA Flight 800 incident provided to me to date is attached hereto as Exhibit C. The fact that I have received only one page of actual forensic evaluation and analysis is quite troubling to me in light of the subject matter of my FOIA request, and certainly suggests a lack of adequate search for responsive records to this FOIA request, particularly as other FBI records suggest that the FBI Lab technicians performed extensive forensic analysis of the Flight 800 explosion, including detailed analysis and evaluation of the foreign bodies and objects removed from the victims of the TWA Flight 800 explosion. See, Exhibit C 1-8 (attached) (FBI documents referencing extensive forensic analysis of foreign objects from victims by FBI Lab technicians).

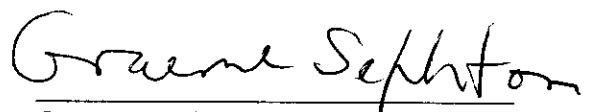
17. As a summary of the nature and type of records which have been provided to me by the FBI to date, I would observe that in February of 2000, the FBI initially provided me with only 14 pages of documents in response to my 1998 FOIA request, which comprised solely of general references to the FBI's efforts to collect, analyze and identify large numbers of foreign objects taken from the Suffolk County Medical Examiner during the course of autopsies. Seven pages were withheld claiming a grand jury exemption. At the time of filing a response to the Complaint in this action, the FBI provided seven (7) additional pages referenced by the FBI as an attachment to the original 14-page release, which consisted of a report merely summarizing the forensic analysis regarding foreign materials found in the bodies of the victims of TWA Flight 800, without providing any of the underlying actual forensic analysis evaluation records. In June of 2002, after I appealed the District Court ruling, the FBI abandoned its claimed statutory exemption for the Grand Jury materials, and released seven additional pages of material that had formerly been withheld. These seven pages were a cover memo, dated 5/6/97, and an attached five page summary report that gave only a partial listing of 50 of the 89 victims who had foreign material apparent in their X-rays. Once again, no direct forensic analysis information was provided. Finally, in May of 2003, I was provided approximately 536 additional pages of records from the FBI in response to the revised search described in the Declaration of Ms. Rawlinson. However, once again, I was not provided with any direct forensic evaluation or analysis records, but only lists and reports which referenced the actual forensic analysis undertaken, with the sole and

notable exception of the single page of forensic analysis attached as Exhibit C at page 8. No FBI Lab records were provided, as this response by the FBI suggested that all Sub Lab records responsive to my request would need to be referred to other agencies.

18. After four years of litigation in this matter, which included the Court having provided the FBI with four separate attempts to meet and describe its adequacy of search obligations for this FOIA matter, I am now seeking a final determination by the Court at this time as to the adequacy of the search undertaken by the FBI in response to my 1998 FOIA, as I believe the record demonstrates that the FBI has not undertaken an adequate search for records responsive to my FOIA request.

19. I declare, under penalty of perjury, under the laws of the United States, that the forgoing is true and correct.

Executed this 15th day of July, 2004.


Graeme Sephton