

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

CITIZENS FOR RESPONSIBILITY)	
AND ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
v.)	No. 1:18-cv-1766-RBW
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
_____)	

MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant hereby moves for summary judgment under Federal Rule of Civil Procedure 56 with respect to the withholdings under Exemption 7(A) of the Freedom of Information Act in the sample documents that are currently the subject of litigation. The attached memorandum and the supporting declarations and exhibits provide the basis for this motion.

Date: March 21, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Branch Director

s/Justin M. Sandberg

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

CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

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No. 1:18-cv-1766-RBW

MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT
BASED ON EXEMPTION 7(A)

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INTRODUCTION

The Court instructed the parties to brief the application of Exemption 7(A) of the Freedom of Information Act (FOIA) to a sample of documents responsive to Plaintiff's FOIA request for materials related to any investigation of Andrew McCabe by the FBI's Office of Professional Responsibility.¹ (The parties agreed on a sample of 100 pages of documents responsive to Plaintiff's request.) The Court did so at this juncture – *i.e.*, even though the processing of documents in response to plaintiff's FOIA request is ongoing – to help resolve a dispute about the appropriate processing rate. The Court had asked the parties to submit a joint processing schedule, but the parties disagreed about the appropriate processing rate for documents referred by the FBI to the U.S. Department of Justice's Office of Inspector General (OIG) for processing. OIG argued that it could not process the documents at a higher rate, in part, because of the circumstances of this case. That is, much of the information in the responsive documents is exempt from disclosure under FOIA Exemption 7(A) because its release would interfere with enforcement proceedings. But some of the information that would otherwise be exempt from disclosure has been publicly acknowledged in an OIG report. *See* OIG, A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe, February 2018, at <https://oig.justice.gov/reports/2018/o20180413.pdf> ("OIG Rpt."). Thus, OIG must painstakingly compare the documents at issue to the 35-page OIG report to un-redact any otherwise exempt information that has been publicly acknowledged. This is a time-consuming process.

¹ Defendant invoked other exemptions where appropriate in the documents in the sample, but consistent with the Court's order, Defendants addresses only Exemption 7(A) in this brief.

Plaintiff has asserted that it is an unnecessarily time consuming process and is not born of necessity, but of Defendant's unnecessarily broad invocation of Exemption 7(A). That is, Plaintiff's argument goes, if Defendant did not try to apply Exemption 7(A) too broadly, then there would be no need to check as much information in the documents against the OIG report. Plaintiff's argument is flawed. This memorandum, and the accompanying declarations demonstrate that Defendant properly applied the exemption: (Defendant has separately sought leave to file the declaration of OIG Special Agent Stephen Lyons under seal and *ex parte*.) Defendant redacted material that would reasonably be expected to interfere with pending or reasonably anticipated enforcement proceedings, and no segregable, nonexempt information has been withheld. The validity of Defendant's application of Exemption 7(A) to this sample supports the processing schedule proposed by Defendant for documents referred by the FBI to OIG, and establishes the validity of Defendant's approach to invoking Exemption 7(A) with respect to the documents responsive to Plaintiff's FOIA request that were not included in the sample. It also entitles thus Defendant to summary judgment with regard to its withholding of information in the sample documents.

BACKGROUND

On March 19, 2018, Plaintiff submitted a FOIA request to the FBI for "all documents related to any investigation or inquiry conducted by the FBI's Office of Professional Responsibility ("OPR") of, involving, or relating to former FBI Deputy Director Andrew McCabe, who was fired by Attorney General Jeff Sessions on March 16, 2018[8]." *See* FOIA Request (attached to Declaration of David Hardy, Section Chief of the Record/Information

Dissemination Section, Information Management Division, FBI, March 21, 2019 (“Hardy Decl.”), which is attached to the brief as Ex. 1).

In early April 2018, the FBI completed its search. Hardy Decl. ¶ 7. It located the OPR file responsive to Plaintiff’s FOIA request and shortly thereafter began reviewing documents to determine what information could be released and what information, if any, was exempt from release under the FOIA. *Id.*.

In the course of its review of the OPR file, the FBI identified various documents that were compiled or created by OIG during its investigation of former Deputy Director McCabe. *Id.* ¶ 9. OIG had conducted a “misconduct investigation” of McCabe to determine whether he had lacked candor when questioned under oath by FBI agents and OIG investigators, whether he had lacked candor in a discussion with the FBI director, and whether he had improperly publicly disclosed an on-going investigation. *See* OIG Rpt. at 1-2. OIG determined that McCabe, in fact, had lacked candor on several occasions and had improperly revealed the existence of an ongoing investigation. *Id.* at 1-2.

The FBI contacted OIG to coordinate the processing of the OIG compiled documents, as required by one of the U.S. Department of Justice’s FOIA regulations, 28 C.F.R. § 16.4(d). That regulation provides, in part, that “[w]hen reviewing records . . . in response to a request, the component [of the Department of Justice] shall determine whether another component or another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA,” and shall consult with the other component or agency or refer the records to such component or agency, if appropriate. Under that regulation, if the component receiving the FOIA request determines that another agency or component is “best able to determine whether to disclose the record, [then] the component typically should refer the

responsibility for responding to the request regarding that record” 28 C.F.R. § 16.4(d)(2). Further, the regulation notes that, “[o]rdinarily, the component or agency that originated the record will be presumed to be best able to make the disclosure determination.” *Id.* Ultimately, after conferring with OIG, the records were referred to OIG for it to respond directly to Plaintiff. Hardy Decl. ¶ 9. Between October 31 and December 12, 2018 , the FBI referred to OIG the responsive records that had been created or compiled by OIG. *Id.* ¶ 10.

OIG began processing the records. In the course of doing so, it determined that significant portions of the record would be covered by Exemption 7(A) of the FOIA, *see* Declaration of Ofelia C. Perez, Government Information Specialist, OIG, March 21, 2019, ¶¶ 8-12 (‘Perez Decl.’) (attached as Ex. 2), under which an agency may withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). Redacting sensitive documents, such as those compiled or created by an OIG investigation, to account for FOIA exemptions is in and of itself time consuming work. *See Perez.* Decl. ¶ 13. But here that task is further complicated by the publicly issued OIG Report. To avoid withholding information already made public in the OIG Report, OIG must compare the redacted information with the 35-page report Report. *Id.* This is an extremely time consuming process. *Id.*

As a result of the labor intensive nature of this process, and OIG’s significant information-processing resource limitations, *See* Declaration of Deborah M. Waller, ECF No. 14-2, ¶¶ 2-6, Defendant proposed to plaintiff a 50-page-per-month processing rate for documents referred to OIG. Mtn. for Clarification and for Processing Schedule, Nov. 20, 2018, ECF No. 14, at 2. With regard to the resource limitations, OIG has four Government Information Specialists,

only three of whom process FOIA requests, and each of whom has other significant responsibilities, including processing documents responsive to congressional requests and processing the many hundreds of requests for *Giglio* information received by OIG each year. *See* Waller Decl. ¶¶ 2-6. Nonetheless, Plaintiff objected to this processing rate. Plaintiff's Opp. to Defendant's Mtn. for Clarification and for Processing Schedule, Nov. 26, ECF No. 15. The Court set a status conference. In conjunction with that conference, the Court ordered the parties to brief the "application of Exemption 7(A) to Plaintiff's FOIA request," Order, ECF No. 17, at 1, to assist it in determining an appropriate production schedule.

ARGUMENT

OIG PROPERLY APPLIED EXEMPTION 7(A) TO PROTECT NON-PUBLIC INFORMATION FROM INTERFERING WITH ENFORCEMENT PROCEEDINGS

Defendant properly applied Exemption 7(A) to the documents in the sample. The propriety of Defendant's application of Exemption 7(A) supports the processing schedule that Defendant has proposed for records referred to OIG, and accordingly, supports partial summary judgment with respect to the sample. It also supports using the same approach to Exemption 7(A) for documents that are not part of the sample.

I. LEGAL STANDARDS

A. Summary Judgment

FOIA cases are typically and appropriately decided on motions for summary judgment." *Dean v. U.S. Dep't of Justice*, 87 F. Supp. 3d 318, 320 (D.D.C. 2015) (citation omitted); *accord* *Brayton v. Office of the U.S. Trade Representative*, 641 F.3d 521, 527 (D.C. Cir. 2011) ("[T]he vast majority of FOIA cases can be resolved on summary judgment."). "An agency that has withheld responsive documents pursuant to a FOIA exemption can carry its burden to prove the applicability of the claimed exemption by affidavit" *Larson v. Dep't of State*, 565 F.3d 857,

862 (D.C. Cir. 2009) (citation omitted). “[S]ummary judgment is warranted on the basis of agency affidavits when the affidavits describe the justifications for nondisclosure with reasonably specific detail . . . and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007) (citation omitted). This is not a high bar: “Ultimately, an agency’s justification for invoking a FOIA exemption is sufficient if it appears ‘logical’ or ‘plausible.’” *Id.* at 374–75 (citation omitted).

B. Exemption 7(A)

Under Exemption 7(A), an agency may withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). Records of personnel investigations constitute records compiled for a law enforcement purpose if they center on “specific and potentially unlawful activity by particular employees” of a civil or criminal nature. *Stern v. FBI*, 737 F.2d 84, 89 (D.C. Cir. 1984).² Once the agency demonstrates that the records were compiled for a law enforcement purpose, it can withhold information under Exemption 7(A) if the disclosure of the information “(1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated.” *Mapother v. U.S. Dep’t of Justice*, 3 F.3d 1533, 1540 (D.C. Cir. 1993).

² See also *Jefferson v. U.S. Department of Justice*, Judgment, 04-5226 (D.C. Cir. Oct. 26, 2005), at 1-2 (affirming district court holding that documents compiled in course of misconduct investigation of Department of Justice attorney were compiled for law enforcement purposes) (attached as Ex. 3); *Jefferson v. U.S. Department of Justice*, Memo. Opinion, 01-cv-1418 (D.D.C. March 31, 2003), at 16 (holding that documents compiled in course of misconduct investigation of Department of Justice attorney were compiled for law enforcement purposes) (attached as Ex. 4); *Housley v. U.S. Dep’t of Treasury, I.R.S.*, 697 F. Supp. 3, 5 (D.D.C. 1988) (holding documents had been compiled for law enforcement purpose when “[t]he file at issue in this case was compiled as the result of an investigation of Special Agent Hageman, after he was accused of misconduct which, if proved, could have resulted in civil or criminal sanctions under federal law”).

To demonstrate the applicability of Exemption 7(A), Defendant need not, as it must with respect to other exemptions, “provide the requestor with a description of each document being withheld, and an explanation of the reason for the agency’s nondisclosure.” *Oglesby v. U.S. Dep’t of Army*, 79 F.3d 1172, 1176 (D.C. Cir. 1996). Rather, “[c]ategorical withholding is often appropriate under Exemption 7(A).” *Citizens for Responsibility & Ethics in Washington (“CREW”) v. U.S. Dep’t of Justice*, 746 F.3d 1082, 1098 (D.C. Cir. 2014). Thus, an “agency may satisfy its burden of proof by grouping documents in categories and offering generic reasons for withholding the documents in each category.” *Id.* (quotation marks omitted). Under this approach, the agency has three tasks:

First, it must define its categories functionally. Second, it must conduct a document-by-document review in order to assign documents to the proper category. Finally, it must explain to the court how the release of each category would interfere with enforcement proceedings.

Id. “The agency must define the categories in a way that allows the court to ‘trace a rational link between the nature of the document and the alleged likely interference’ with the investigation.” *Manning v. U.S. Dep’t of Justice*, 234 F. Supp. 3d 26, 35 (D.D.C. 2017) (quoting *Crooker v. Bureau of Alcohol, Tobacco and Firearms*, 789 F.2d 64, 67 (D.C. Cir. 1986)). Importantly, the courts should “give deference to an agency’s predictive judgment of the harm that will result from disclosure of information” under Exemption 7(A). *CREW*, 746 F.3d at 1098. Finally, even if the exemption applies, the agency must demonstrate that it has released any reasonably segregable non-exempt information. 5 U.S.C. § 552(b).

II. Defendant Appropriately Applied Exemption 7(A)

A. The Records Were Compiled for Law Enforcement Purposes.

First, the records have been gathered by the officials working on enforcement proceedings. Declaration of OIG Special Agent Stephen F. Lyons, March 21, 2019, ¶ 6 (“Lyons Decl.”) (attached to Motion for Leave to File Declaration Under Seal and *Ex Parte*);. No more is needed to satisfy the requirement that the records have been compiled for law enforcement purposes, especially as the Supreme Court has held that there is “no requirement that the compilation [have] be[en] effected at a specific time,” as long as it predates the invocation of the exemption. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989).

Second, in addition, OIG originally compiled the records for law enforcement purposes, as they were gathered in the course of an investigation of employee misconduct that centered on “specific and potentially unlawful activity by [a] particular employee[].” *Stern*, 737 F.2d at 89. “The OIG investigates alleged violations of criminal and civil laws by [Department of Justice or] DOJ employees and also audits and inspects DOJ programs.” U.S. Dep’t of Justice, OIG, About the Office, at <https://oig.justice.gov/about/>. Here, the records were compiled by OIG in the course of its investigation of allegations of misconduct against a “particular [DOJ] employee[]” – then FBI Deputy Director Andrew McCabe. Perez Decl. ¶ 11; OIG Report at 1 (describing the subject of the “OIG’s misconduct investigation”). As noted earlier, the OIG’s investigated whether McCabe misled FBI Director Comey, made false statements under oath to FBI agents, made false statements under oath to OIG investigators, and improperly revealed an on-going, non-public FBI investigation. OIG Report at 22-35. Documents compiled in an investigation of such misconduct qualify as records compiled a law enforcement purposes. *See, e.g., Jefferson*, 01-cv-1418 (D.D.C.), Memo. Opinion, at 16 (holding that OIG records of investigation of misconduct by a DOJ employee constituted records compiled for a law enforcement purpose);

Housley, 697 F. Supp. at 5. Thus, Defendant has satisfied the threshold requirement for invoking Exemption 7(A).

B. Disclosure Would Be Expected to Harm Enforcement Proceedings

Disclosure of the redacted information in the records “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). In his declaration, OIG Special Agent Stephen F. Lyons states that disclosure of the withheld information could reasonably be expected to interfere with enforcement proceedings. Lyons Decl. ¶ 8. This conclusion is more than amply supported. The declaration demonstrates that the documents fall into three functionally defined categories, and it explains how information from each category of documents would, if released, interfere with enforcement proceedings. Lyons Decl. ¶¶ 9-10.

These predictions of harm are eminently reasonable and would carry the day irrespective of any deference, but they certainly suffice to discharge the Agency’s obligation “to explain to the court how the release of each category would interfere with enforcement proceedings” given that the Court should “give deference to [the] agency’s predictive judgment of the harm that will result from disclosure of information.” *CREW*, 746 F.3d at 1098.

I. The Agency Must Reasonably Segregate Out Non-Exempt Information, and It Has Done So.

The Agency, of course, cannot withhold any reasonably segregable non-exempt information. 5 U.S.C. § 552(b) (requiring that an agency produce “[a]ny reasonably segregable portion” of a record “after deletion of the portions which are exempt”). And it has not withheld any such information, Perez Decl. ¶ 13; Lyons Decl. ¶ 11, though the process for making the necessary determinations is time consuming.

Segregability analysis “does not call for parsing the [documents] ‘line-by-line’ or segregating material ‘dispersed throughout the document.’” *Nat’l Ass’n of Crim. Defense*

Lawyers v. U.S. Dep't of Justice Exec. Office for U.S. Attorneys, 844 F.3d 246, 257 (D.C. Cir. 2016) (quoting *Mead Data Ctr. Inc. v. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977)). “Instead, the emphasis is on segregation of non-exempt material found in ‘logically divisible sections.’ ” *Id.* An agency is “entitled to a presumption that [it] complied with the obligation to disclose reasonably segregable material.” *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1117 (D.C. Cir. 2007). As part of this obligation, an agency must review the documents to determine whether any otherwise exempt information has been publicly and officially released. If it has, then there is no basis to withhold that information. “[W]hen an agency has officially acknowledged otherwise exempt information through prior disclosure, the agency has waived its right to claim an exemption with respect to that information.” *Am. Civil Liberties Union v. C.I.A.*, 710 F.3d 422, 426 (D.C. Cir. 2013)).

Even though the emphasis is on “logically divisible sections,” the agency here conducted a line-by-line review to determine whether there are any lines that can be drawn between logically divisible sections. Perez Decl. ¶ 13. It has also carefully compared the otherwise exempt text with the OIG Report to determine whether any otherwise exempt information has already been officially and publicly revealed. As noted earlier, this process is time consuming. *See id.* But it is also necessary, because statute and precedent require Defendant to release any reasonably segregable non-exempt information, including information that has been officially and publicly acknowledged. 5 U.S.C. § 552(b); *Sussman*, 494 F.3d at 1117. Plaintiff, of course, could waive its right to information that has already been publicly released, in the OIG Report or otherwise. If it did so, that would allow OIG to process records at a faster rate. But Plaintiff has not indicated that it would waive its right to this already available information.

CONCLUSION

For the reasons stated above, Defendant has properly applied Exemption 7(A) to the sample documents. Accordingly, Defendant is entitled to summary judgment with respect to its invocation of Exemption 7(A) over the sample documents. The propriety of Defendant's application of Exemption 7(A) also supports the processing schedule that Defendant has proposed for records referred to OIG.

Date: March 21, 2019

Respectfully submitted,

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U.S. DEPARTMENT OF JUSTICE,)	
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DEFENDANT’S STATEMENT OF MATERIAL FACTS

1. On March 19, 2018, Plaintiff submitted a FOIA request to the FBI for “all documents related to any investigation or inquiry conducted by the FBI’s Office of Professional Responsibility (“OPR”) of, involving, or relating to former FBI Deputy Director Andrew McCabe, who was fired by Attorney General Jeff Sessions on March 16, 201[8].” See FOIA Request (attached to Declaration of David Hardy, Section Chief of the Record/Information Dissemination Section, Information Management Division, FBI, March 21, 2019 (“Hardy Decl.”), which is attached to the brief as Ex. 1).
2. On or about April 3, 2018, the FBI completed its search. Hardy Decl. ¶ 7.
3. On or about April 4, the FBI began processing Plaintiff’s FOIA request to determine what information could be released and what information, if any, was exempt from release under the Freedom of Information Act. *Id.*
4. In the course of its review of the OPR file, the FBI identified various documents that were compiled or created by the U.S. Department of Justice’s Office of Inspector General (“OIG”) during its investigation of former FBI Deputy Director Andrew McCabe. *Id.* ¶ 9.

5. OIG had conducted a “misconduct investigation” of McCabe to determine whether he had lacked candor when questioned under oath by FBI agents and OIG investigators, whether he had lacked candor in a discussion with the FBI director, and whether he had improperly publicly disclosed an on-going investigation. *See* OIG, A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe, February 2018, at 1-2, available at <https://oig.justice.gov/reports/2018/o20180413.pdf> (“McCabe OIG Report”). OIG Rpt. at 1-2.
6. The FBI contacted OIG to coordinate the processing of the documents created or compiled by OIG, as required by 28 C.F.R. § 16.4(d). Hardy Decl. ¶ 9.
7. Ultimately, the records were referred to OIG for it to respond directly to Plaintiff. *Id.*
8. Between October 31 and December 12, 2018, the FBI referred to OIG the responsive records that had been created or compiled by OIG. *Id.* ¶ 10.
9. OIG determined, in the course of processing the records, that significant portions of the records are covered by Exemption 7(A) of the FOIA, *see* Declaration of Ofelia C. Perez, Government Information Specialist, OIG, March 21, 2019, ¶¶ 8-12 (“Perez Decl.”) (attached as Ex. 3).
10. At this stage, the parties are litigating the application of Exemption 7(A) to a sample of documents agreed to by the parties. *See* Perez Decl. ¶ 9.
11. The records fall into three functionally defined categories. Declaration of Steven F. Lyons, Special Agent, OIG, March 21, 2019, ¶ 7. (“Lyons Decl.”) (attached to Motion for Leave to File Declaration Under Seal and *Ex Parte*, March 21, 2019).

12. The Lyons declaration establishes that the material redacted from the documents in each category would, if released, risk interfering with ongoing and potential future enforcement proceedings. *Id.* ¶¶ 8-10.
13. The materials in the sample had been gathered by those working on enforcement proceedings prior to the invocation of Exemption 7(A) over the sample documents. Lyons Decl. ¶ 6.
14. No reasonably segregable, non-exempt information has been withheld. Perez Decl. ¶ 13; Lyons Decl. ¶ 11.
15. OIG has compared the sample documents against the McCabe OIG Report to release any information that would otherwise be exempt, but which has been publicly acknowledged. Perez Decl. ¶ 13.
16. The process of comparing the otherwise exempt material to the McCabe OIG Report was a labor-intensive and time-consuming one that required OIG to conduct a careful analysis of the underlying material. *Id.*

Date: March 21, 2019

Respectfully submitted,

JOSEPH H. HUNT
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Deputy Branch Director

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**INDEX OF EXHIBITS TO DEFENDANT’S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

- Exhibit 1 – Declaration of David Hardy, Section Chief of the Record/Information Dissemination Section, Information Management Division, FBI, March 21, 2019
- Exhibit 2 – Declaration of Ofelia C. Perez, Government Information Specialist, U.S. Department of Justice, Office of Inspector General, March 21, 2019
- Exhibit 3 – *Jefferson v. U.S. Department of Justice*, Judgment, 04-5226 (D.C. Cir. Oct. 26, 2005)
- Exhibit 4 – *Jefferson v. U.S. Department of Justice*, Memo. Opinion, 01-cv-1418 (D.D.C. March 31, 2003)

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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CITIZENS FOR RESPONSIBILITY)	
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Plaintiff,)	
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v.)	Civil Action No. 18-cv-1766 (RBW)
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
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DECLARATION OF DAVID M. HARDY

(1) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Information Management Division (“IMD”), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to my joining the Federal Bureau of Investigation (“FBI”), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 239 employees who staff a total of twelve (12) Federal Bureau of Investigation Headquarters (“FBIHQ”) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA as amended by the OPEN Government Act of 2007, the OPEN

FOIA Act of 2009, and FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures generally followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, and I am specifically aware of the FBI's handling of the FOIA request to FBI at issue in this litigation.

(4) This declaration is being submitted to support Defendant's partial motion for summary judgment based on the Department of Justice ("DOJ"), Office of the Inspector General's ("OIG's") assertion of Exemption (b)(7)(A).

(5) On March 19, 2018, Plaintiff faxed to the FBI a FOIA request for "all documents related to any investigation or inquiry conducted by the FBI's Office of Professional Responsibility ("OPR") of, involving, or relating to former FBI Deputy Director Andrew McCabe, who was fired by Attorney General Jeff Sessions on March 16, 201[8]." **See Exhibit A.** Plaintiff also sought expedited processing. **See Exhibit B.**

(6) On March 23, 2018, the FBI acknowledged receipt of Plaintiff's request, assigning it FOIPA Request No. 1399934-000. **See Exhibit C.** In a separate letter on March 27, 2018, the FBI notified Plaintiff that its request for expedition had been granted. **See Exhibit D.**

(7) On or about April 3, 2018, the FBI completed its search and obtained the OPR file responsive to Plaintiff's FOIA request, and on or about April 4, 2018, began processing it for

release to the public to the extent required by the FOIA.

(8) On April 18, 2018, it notified Plaintiff that that records responsive to its request would be released in the FBI's FOIA Library ("The Vault") on the FBI's public website.¹ *See Exhibit E.*

(9) As the FBI began reviewing the responsive file, the FBI located various documents originating from the DOJ OIG's investigation of former Deputy Director McCabe.² After identifying these documents, the FBI contacted the DOJ OIG to coordinate regarding the processing of these records, as required by DOJ FOIA regulation 28 C.F.R. § 16.4(d). Ultimately, the FBI referred these materials to the DOJ OIG for a direct response to the requesters.

(10) Between October 31, 2018 and February 11, 2019, the FBI referred to the DOJ OIG the responsive records that originated from the IG's office.³

(11) The FBI otherwise has continued to process the OPR file and has made interim productions on The Vault and releases to Plaintiff on October 15, November 15, and December 17, 2018, and February 15 and March 15, 2019. *See Exhibits F – J.*

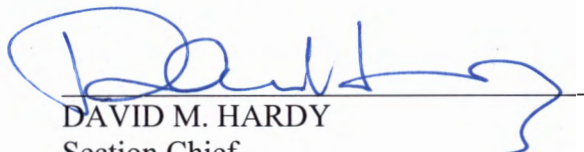
¹ Because the FBI received more than three requests for this information, it is required to publish any records it releases in whole or in part in its FOIA electronic public reading room. *See* 5 U.S.C. § 552(a)(2)(D)(ii)(II).

² The DOJ OIG's report regarding this investigation – "A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe" – was released to the public in April 2018.

³ There are other materials in the OPR file that have DOJ OIG equities but are not documents that originated from the DOJ OIG. The FBI is consulting with the DOJ OIG with respect to the disposition of those documents.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A and J attached hereto are true and correct copies.

Executed this 21st day of March, 2019.



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Information Management Division
Federal Bureau of Investigation
Winchester, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CTIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
Plaintiff,

v.

Civil Action No. 18-cv-1766 (RBW)

U.S. DEPARTMENT OF JUSTICE,
Defendant.

Exhibit A

CREW | citizens for responsibility and ethics in washington

455 Massachusetts Ave. NW
Washington, D.C. 20001
Phone: 202-408-5565
Fax: 202-588-5020

FACSIMILE TRANSMITTAL SHEET

TO:

FROM:

FOI/PA Request

Anne L. Weismann

COMPANY:

DATE:

FBI

MARCH 19, 2018

RECIPIENT'S FAX NUMBER:

PAGE 1 OF 6

540-868-4391

RECIPIENT'S PHONE NUMBER:

RE:

Expedited FOIA Request

NOTES/COMMENTS:

Pages transmitted are privileged and confidential.

CREW | citizens for responsibility and ethics in washington

March 19, 2018

BY FAX: (540) 868-4391

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this expedited request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and U.S. Department of the Justice ("DOJ") regulations.

Specifically, CREW requests all documents related to any investigation or inquiry conducted by the FBI's Office of Professional Responsibility ("OPR") of, involving, or relating to former FBI Deputy Director Andrew McCabe, who was fired by Attorney General Jeff Sessions on March 16, 2017.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as emails to which the subjects of this request were cc'ed or bcc'ed.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

FOIA Officer
March 19, 2018
Page 2

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and DOJ regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. See 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

On the evening of March 16, 2018, Attorney General Sessions announced he had fired Mr. McCabe less than two days before Mr. McCabe was to retire. The attorney general justified the firing by citing investigations by both DOJ's Office of Inspector General and the FBI's OPR that reportedly had found "that Mr. McCabe had made an unauthorized disclosure to the news media and lacked candor – including under oath – on multiple occasions."¹ Reportedly, OPR had recommended that Mr. McCabe be fired.² Since this announcement, there has been widespread speculation that the decision to fire Mr. McCabe was a political one made at the urging of President Donald Trump. The requested records will shed light on the underlying basis for Mr. McCabe's termination and allow the public to access the credibility of allegations of political motivation and the role the president may have played in the attorney general's decision. As a top FBI official, Mr. McCabe's privacy interests clearly are outweighed by the public interest in the requested information, especially given what the attorney general already has revealed in explaining his decision to terminate Mr. McCabe's employment.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989)

¹ Matt Zapotosky, *Andrew McCabe, Trump's Foil at the FBI, Is Fired Hours Before He Would Retire*, *Washington Post*, Mar. 17, 2018 (quoting Attorney General Sessions), available at https://www.washingtonpost.com/world/national-security/fbis-andrew-mccabe-is-fired-a-little-more-than-24-hours-before-he-could-retire/2018/03/16/e055a22a-2895-11e8-bc72-077aa4dab9ef_story.html?utm_term=.48644c46b565.

² *Id.* See also Associated Press, *Sessions Fires Former FBI Deputy Director McCabe*, *New York Times*, Mar. 16, 2018, available at <https://www.nytimes.com/aponline/2018/03/16/us/politics/ap-us-clinton-emails-inspector-general.html>.

FOIA Officer
March 19, 2018
Page 3

(holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blogposts that reports on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts documents it receives under the FOIA on its website, and that site has been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Request for Expedition


Finally, please be advised that CREW also has requested expedition of this request because its subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity that affect public confidence. Pursuant to 28 C.F.R. § 16.5(e)(2), CREW submitted a request to the Director of Public Affairs; a copy of this request is enclosed.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records on an expedited basis, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,


Anne L. Weismann
Chief FOIA Counsel

Encl.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CTIZENS FOR RESPONSIBILITY AND

ETHICS IN WASHINGTON,

Plaintiff,

v.

Civil Action No. 18-cv-1766 (RBW)

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Exhibit B

CREW | citizens for responsibility and ethics in washington

March 19, 2018

BY FACSIMILE: (202) 514-1009

Sarah Isgur Flores
Director, Office of Public Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Request for Expedition of Freedom of Information Act Requests

Dear Ms. Flores:

Pursuant to Department of Justice ("DOJ") regulations, 28 C.F.R. § 16.5(c)(2), Citizens for Responsibility and Ethics in Washington ("CREW") requests that you authorize the expedition of a Freedom of Information Act ("FOIA") request CREW made today to the FBI. I have enclosed a copy of this request.

The request seeks records related to the investigation by the FBI's Office of Professional Responsibility ("OPR") of former FBI Deputy Director Andrew McCabe. On the evening of March 16, 2018, Attorney General Sessions announced he had fired Mr. McCabe less than two days before Mr. McCabe was to retire. The attorney general justified the firing by citing investigations by both DOJ's Office of Inspector General and the FBI's OPR that reportedly had found "that Mr. McCabe had made an unauthorized disclosure to the news media and lacked candor – including under oath – on multiple occasions."¹ Reportedly, OPR had recommended that Mr. McCabe be fired.²

CREW seeks expedition because the subject matter of its request is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity, which clearly affect public confidence. Following the announcement that Mr. McCabe had been fired there has been widespread speculation, based on numerous presidential tweets dating back months, that the decision to fire Mr. McCabe was a political one made at the urging of President Donald Trump. The requested records will shed light on the underlying basis for Mr. McCabe's termination and allow the public to access the credibility of allegations of political motivation and the role the president may have played in the attorney general's decision. As a top FBI official, Mr. McCabe's privacy interests clearly are outweighed

¹ Matt Zapotosky, Andrew McCabe, Trump's Foil at the FBI, Is Fired Hours Before He Would Retire, *Washington Post*, Mar. 17, 2018 (quoting Attorney General Sessions), available at https://www.washingtonpost.com/world/national-security/fbis-andrew-mccabe-is-fired-a-little-more-than-24-hours-before-he-could-retire/2018/03/16/e055a22a-2895-11e8-bc72-077aa4dab9ef_story.html?utm_term=.48644c46b565.

² *Id.* See also Associated Press, Sessions Fires Former FBI Deputy Director McCabe, *New York Times*, Mar. 16, 2018, available at <https://www.nytimes.com/aponline/2018/03/16/us/politics/ap-us-clinton-emails-inspector-general.html>.

Sarah Isgur Flores
March 19, 2018
Page 2

by the public interest in the requested information, especially given what the attorney general already has revealed in explaining his decision to terminate Mr. McCabe.

If the attorney general's decision to fire Mr. McCabe was done to placate the president and possible to interfere with Mr. Mueller's investigation, it could plunge the country into a constitutional crisis. At a minimum, the firing raises serious questions that go directly to the integrity of DOJ and the attorney general. CREW's request will help address these concerns and resolve the question of whether Mr. McCabe was fired for legitimate, non-political reasons.

CREW's primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials. Toward that end, CREW uses statutes like the FOIA to gather information the public needs to hold public officials accountable. The requests for which CREW seeks expedition will further those goals.

I certify the following is true and correct.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel

Encl.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CTIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
Plaintiff,

v.

Civil Action No. 18-cv-1766 (RBW)

U.S. DEPARTMENT OF JUSTICE,
Defendant.

Exhibit C



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

March 23, 2018

MS. ANNE L WEISMANN
CREW
455 MASSACHUSETTS AVENUE, NW
WASHINGTON, DC 20001

FOIPA Request No.: 1399934-000
Subject: MCCABE, ANDREW
(OPR INVESTIGATION)

Dear Ms. Weismann:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI. Below you will find check boxes and informational paragraphs about your request, as well as specific determinations required by these statutes. Please read each one carefully.

- ✓ Your request has been received at FBI Headquarters for processing.
- ☐ Your request has been received at the _____ Resident Agency / _____ Field Office and forwarded to FBI Headquarters for processing.
- ☐ The subject of your request is currently being processed and documents will be released to you upon completion.
- ☐ Release of responsive records will be posted to the FBI's electronic FOIA Library (The Vault), <http://vault.fbi.gov>, and you will be contacted when the release is posted.
- ✓ Your request for a public interest fee waiver is under consideration, and you will be advised of the decision at a later date. If your fee waiver is not granted, you will be responsible for applicable fees per your designated requester fee category below.
- ✓ For the purpose of assessing any fees, we have determined:
 - As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).
 - ☒ As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).
 - As a general (all others) requester, you will be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing questions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CTIZENS FOR RESPONSIBILITY AND

ETHICS IN WASHINGTON,

Plaintiff,

v.

Civil Action No. 18-cv-1766 (RBW)

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Exhibit D



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

March 27, 2018

MS. ANNE L WEISMANN
CREW
455 MASSACHUSETTS AVENUE, NW
WASHINGTON, DC 20001

FOIPA Request No.: 1399934-000
Subject: MCCABE, ANDREW
(OPR INVESTIGATION)

Dear Ms. Weismann:

This is in reference to your letter directed to the Federal Bureau of Investigation (FBI), in which you requested expedited processing for the above-referenced Freedom of Information Act (FOIA) request. Pursuant to the Department of Justice (DOJ) standards permitting expedition, expedited processing can only be granted when it is determined that a FOIPA request involves one or more of the below categories.

You have requested expedited processing according to:

- ☐ **28 C.F.R. §16.5 (e)(1)(i):** "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."
- ☐ **28 C.F.R. §16.5 (e)(1)(ii):** "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
- ☐ **28 C.F.R. §16.5 (e)(1)(iii):** "The loss of substantial due process of rights."
- ☒ **28 C.F.R. §16.5 (e)(1)(iv):** "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

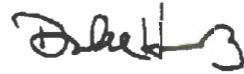
You have provided enough information concerning the statutory requirements permitting expedition; therefore, your request is approved.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CTIZENS FOR RESPONSIBILITY AND

ETHICS IN WASHINGTON,

Plaintiff,

v.

Civil Action No. 18-cv-1766 (RBW)

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Exhibit E



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

April 18, 2018

MS. ANNE L WEISMANN
CREW
455 MASSACHUSETTS AVENUE, NW
WASHINGTON, DC 20001

FOIPA Request No.: 1399934-000
Subject: MCCABE, ANDREW
(OPR INVESTIGATION)

Dear Ms. Weismann:

This is in response to your Freedom of Information Act (FOIA) request.

In order to avoid charging duplication fees unnecessarily, records responsive to your request will be made available in the FBI's FOIA Library (The Vault) on the FBI's public website, <http://vault.fbi.gov>. You will be notified when releases are available.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Enclosed for your information is a copy of the FBI Fact Sheet and Explanation of Exemptions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over a horizontal line.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)



FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identity history summary check or "rap sheet" is NOT the same as an "FBI file."** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual's records are not disseminated to an unauthorized person. The fingerprint submission must include the subject's name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/identity-history-summary-checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI's Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both "main" and "cross reference" files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several "hits" and "idents" on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking "reasonably described information." For a FOIPA search, the subject's name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a "main file search" and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT

www.fbi.gov

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CTIZENS FOR RESPONSIBILITY AND

ETHICS IN WASHINGTON,

Plaintiff,

v.

Civil Action No. 18-cv-1766 (RBW)

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Exhibit F



U.S. Department of Justice

Federal Bureau of Investigation
 Washington, D.C. 20535

October 15, 2018

MS. ANNE L. WEISMANN
 ADAM J. RAPPAPORT
 CREW
 455 MASSACHUSETTS AVENUE, NW
 WASHINGTON, DC 20001

FOIPA Request No.: 1399934-000
 Subject: McCabe, Andrew (OPR Investigation)

Citizens for Responsibility and Ethics in Washington
v. U.S. Department of Justice
 Civil Action No.: 18-cv-01766

Dear Ms. Weismann and Mr. Rappaport:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Below you will find check boxes under the appropriate statute headings which indicate the types of exemptions asserted to protect information which is exempt from disclosure. The appropriate exemptions are noted on the enclosed pages next to redacted information. In addition, a deleted page information sheet was inserted to indicate where pages were withheld entirely and identify which exemptions were applied. The checked exemptions boxes used to withhold information are further explained in the enclosed Explanation of Exemptions.

Section 552		Section 552a
<input type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (j)(2)
<input type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
	<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

521 pages were reviewed and 340 pages are being released.

Below you will also find additional informational paragraphs about your request. Where applicable, check boxes are used to provide you with more information about the processing of your request. Please read each item carefully.

- ☒ Documents were located which originated with, or contained information concerning, another Government Agency [OGA].
- ☒ This information has been referred to the OGA(s) for review and direct response to you. We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the Freedom of Information Act (FOIA). See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

For questions regarding our determinations, please contact the attorney representing the Government in this matter. Please also cite Civil Action No. 18-cv-01766 in all correspondence to it will be easily identified.

The enclosed material is from the main investigative file(s), meaning the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown such additional references, if identified to the same subject of the main investigative file, usually contain information similar to the information processed in the main file(s). As such, we have given priority to processing only the main investigative file(s) given our significant backlog. If you would like to receive any references to the subject(s) of your request, please submit a separate request for the reference material in writing. The references will be reviewed at a later date, as time and resources permit.



See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure(s)

The enclosed documents represent the first interim release of information responsive to the above referenced Freedom of Information/Privacy Acts (FOIPA) request.

Please be advised that we have also made these records available to the public in the FBI's electronic FOIA Library (The Vault) on the FBI's public website, <http://vault.fbi.gov>. On the right-hand side of the home page, under the heading "Vault Links" you can search for your subject alphabetically (click on "A-Z Index"), by category (click on "Categories"), or by entering text into our search engine (click on "Search Vault"). For records responsive to this request, please enter "Deputy Director McCabe Office of Professional Responsibility Investigation Part 1" as the search term.

Additional records responsive to your request are available for review on the following public website, <https://oig.justice.gov/reports/2018/o20180413.pdf>.

Inquiries regarding your OGA referrals may be directed to the following agency at:

Office of the Inspector General
Attn: FOIA Office
950 Pennsylvania Avenue
Washington, DC 20530-001

This material is being provided to you at no charge. It is unnecessary to adjudicate your request for a fee waiver, as no fees are being assessed.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CTIZENS FOR RESPONSIBILITY AND

ETHICS IN WASHINGTON,

Plaintiff,

v.

Civil Action No. 18-cv-1766 (RBW)

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Exhibit G



U.S. Department of Justice

Federal Bureau of Investigation
 Washington, D.C. 20535

November 15, 2018

MS. ANNE L. WEISMANN
 ADAM J. RAPPAPORT
 CREW
 455 MASSACHUSETTS AVENUE, NW
 WASHINGTON, DC 20001

FOIPA Request No.: 1399934-000
 Subject: McCabe, Andrew (OPR Investigation)

Citizens for Responsibility and Ethics in Washington
v. U.S. Department of Justice
 Civil Action No.: 18-cv-01766

Dear Ms. Weismann and Mr. Rappaport:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Below you will find check boxes under the appropriate statute headings which indicate the types of exemptions asserted to protect information which is exempt from disclosure. The appropriate exemptions are noted on the enclosed pages next to redacted information. In addition, a deleted page information sheet was inserted to indicate where pages were withheld entirely and identify which exemptions were applied. The checked exemptions boxes used to withhold information are further explained in the enclosed Explanation of Exemptions.

Section 552		Section 552a
<input type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (j)(2)
<input type="checkbox"/> (b)(3)	<input type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
	<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
	<input type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

752 pages were reviewed and 0 pages are being released.

Below you will also find additional informational paragraphs about your request. Where applicable, check boxes are used to provide you with more information about the processing of your request. Please read each item carefully.

- ☒ Documents were located which originated with, or contained information concerning, another Government Agency [OGA].
- ☒ This information has been referred to the OGA(s) for review and direct response to you.
- ☒ We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the Freedom of Information Act (FOIA). See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

For questions regarding our determinations, please contact the attorney representing the Government in this matter. Please also cite Civil Action No. 18-cv-01766 in all correspondence to it will be easily identified.

The enclosed material is from the main investigative file(s), meaning the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown such additional references, if identified to the same subject of the main investigative file, usually contain information similar to the information processed in the main file(s). As such, we have given priority to processing only the main investigative file(s) given our significant backlog. If you would like to receive any references to the subject(s) of your request, please submit a separate request for the reference material in writing. The references will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure(s)

The enclosed documents represent the second interim release of information responsive to the above referenced Freedom of Information/Privacy Acts (FOIPA) request.

Please be advised that we have also made these records available to the public in the FBI's electronic FOIA Library (The Vault) on the FBI's public website, <http://vault.fbi.gov>. On the right-hand side of the home page, under the heading "Vault Links" you can search for your subject alphabetically (click on "A-Z Index"), by category (click on "Categories"), or by entering text into our search engine (click on "Search Vault"). For records responsive to this request, please enter "Deputy Director McCabe Office of Professional Responsibility Investigation Part 02" as the search term.

Inquiries regarding your OGA referrals may be directed to the following agency at:

Office of the Inspector General
Attn: FOIA Office
950 Pennsylvania Avenue
Washington, DC 20530-001

To minimize costs to both you and the FBI, duplicate copies of the same document were not processed.

This material is being provided to you at no charge. It is unnecessary to adjudicate your request for a fee waiver, as no fees are being assessed.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CTIZENS FOR RESPONSIBILITY AND

ETHICS IN WASHINGTON,

Plaintiff,

v.

Civil Action No. 18-cv-1766 (RBW)

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Exhibit H



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

December 17, 2018

MS. ANNE L. WEISMANN
 ADAM J. RAPPAPORT
 CREW
 455 MASSACHUSETTS AVENUE, NW
 WASHINGTON, DC 20001

FOIPA Request No.: 1399934-000
 Subject: McCabe, Andrew (OPR Investigation)

Citizens for Responsibility and Ethics in Washington
v. U.S. Department of Justice
 Civil Action No.: 18-cv-01766

Dear Ms. Weismann and Mr. Rappaport:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Below you will find check boxes under the appropriate statute headings which indicate the types of exemptions asserted to protect information which is exempt from disclosure. The appropriate exemptions are noted on the enclosed pages next to redacted information. In addition, a deleted page information sheet was inserted to indicate where pages were withheld entirely and identify which exemptions were applied. The checked exemptions boxes used to withhold information are further explained in the enclosed Explanation of Exemptions.

Section 552		Section 552a
(b)(1)	<input checked="" type="checkbox"/> (b)(7)(A)	(d)(5)
(b)(2)	(b)(7)(B)	<input type="checkbox"/> (j)(2)
(b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	(k)(1)
	(b)(7)(D)	<input type="checkbox"/> (k)(2)
	<input checked="" type="checkbox"/> (b)(7)(E)	(k)(3)
	(b)(7)(F)	<input type="checkbox"/> (k)(4)
(b)(4)	(b)(8)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

770 pages were reviewed and 21 pages are being released.

Below you will also find additional informational paragraphs about your request. Where applicable, check boxes are used to provide you with more information about the processing of your request. Please read each item carefully.

- ☒ Documents were located which originated with, or contained information concerning, another Government Agency [OGA].
 - This information has been referred to the OGA(s) for review and direct response to you.
- ☒ We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the Freedom of Information Act (FOIA). See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

For questions regarding our determinations, please contact the attorney representing the Government in this matter. Please also cite Civil Action No. 18-cv-01766 in all correspondence to it will be easily identified.

✓ The enclosed material is from the main investigative file(s), meaning the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown such additional references, if identified to the same subject of the main investigative file, usually contain information similar to the information processed in the main file(s). As such, we have given priority to processing only the main investigative file(s) given our significant backlog. If you would like to receive any references to the subject(s) of your request, please submit a separate request for the reference material in writing. The references will be reviewed at a later date, as time and resources permit.

✓ See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure(s)

The enclosed documents represent the third interim release of information responsive to the above referenced Freedom of Information/Privacy Acts (FOIPA) request.

Please be advised that we have also made these records available to the public in the FBI's electronic FOIA Library (The Vault) on the FBI's public website, <http://vault.fbi.gov>. On the right-hand side of the home page, under the heading "Vault Links" you can search for your subject alphabetically (click on "A-Z Index"), by category (click on "Categories"), or by entering text into our search engine (click on "Search Vault"). For records responsive to this request, please enter "Deputy Director McCabe Office of Professional Responsibility Investigation Part 02" as the search term.

To minimize costs to both you and the FBI, duplicate copies of the same document were not processed.

This material is being provided to you at no charge. It is unnecessary to adjudicate your request for a fee waiver, as no fees are being assessed.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CTIZENS FOR RESPONSIBILITY AND

ETHICS IN WASHINGTON,

Plaintiff,

v.

Civil Action No. 18-cv-1766 (RBW)

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Exhibit I



U.S. Department of Justice

Federal Bureau of Investigation
 Washington, D.C. 20535

February 15, 2019

MS. ANNE L. WEISMANN
 ADAM J. RAPPAPORT
 CREW
 1101 K Street, NW
 SUITE 201
 WASHINGTON, DC 20005

FOIPA Request No.: 1399934-000
 Subject: McCabe, Andrew (OPR Investigation)

Citizens for Responsibility and Ethics in Washington
v. U.S. Department of Justice
 Civil Action No.: 18-cv-01766

Dear Ms. Weismann and Mr. Rappaport:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Below you will find check boxes under the appropriate statute headings which indicate the types of exemptions asserted to protect information which is exempt from disclosure. The appropriate exemptions are noted on the enclosed pages next to redacted information. In addition, a deleted page information sheet was inserted to indicate where pages were withheld entirely and identify which exemptions were applied. The checked exemptions boxes used to withhold information are further explained in the enclosed Explanation of Exemptions.

Section 552		Section 552a
<input type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
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<input type="checkbox"/> (b)(5)		<input type="checkbox"/> (k)(7)
<input checked="" type="checkbox"/> (b)(6)		

753 pages were reviewed and 8 pages are being released.

Below you will also find additional informational paragraphs about your request. Where applicable, check boxes are used to provide you with more information about the processing of your request. Please read each item carefully.

- ☒ Documents were located which originated with, or contained information concerning, another Government Agency [OGA].

This information has been referred to the OGA(s) for review and direct response to you.

- ✓ We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

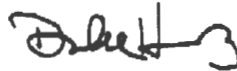
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the Freedom of Information Act (FOIA). See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

For questions regarding our determinations, please contact the attorney representing the Government in this matter. Please also cite Civil Action No. 18-cv-01766 in all correspondence to it will be easily identified.

The enclosed material is from the main investigative file(s), meaning the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown such additional references, if identified to the same subject of the main investigative file, usually contain information similar to the information processed in the main file(s). As such, we have given priority to processing only the main investigative file(s) given our significant backlog. If you would like to receive any references to the subject(s) of your request, please submit a separate request for the reference material in writing. The references will be reviewed at a later date, as time and resources permit.

- ✓ See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure(s)

The enclosed documents represent the fourth interim release of information responsive to the above referenced Freedom of Information/Privacy Acts (FOIPA) request.

Please be advised that we have also made these records available to the public in the FBI's electronic FOIA Library (The Vault) on the FBI's public website, <http://vault.fbi.gov>. On the right-hand side of the home page, under the heading "Vault Links" you can search for your subject alphabetically (click on "A-Z Index"), by category (click on "Categories"), or by entering text into our search engine (click on "Search Vault"). For records responsive to this request, please enter "Deputy Director McCabe Office of Professional Responsibility Investigation Part 04" as the search term.

To minimize costs to both you and the FBI, duplicate copies of the same document were not processed.

This material is being provided to you at no charge. It is unnecessary to adjudicate your request for a fee waiver, as no fees are being assessed.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
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- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
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Exhibit J



U.S. Department of Justice

Federal Bureau of Investigation
 Washington, D.C. 20535

March 15, 2019

MS. ANNE L. WEISMANN
 ADAM J. RAPPAPORT
 CREW
 SUITE 201
 1101 K STREET, N.W.
 WASHINGTON, DC 20005

FOIPA Request No.: 1399934-000
 Subject: McCabe, Andrew (OPR Investigation)

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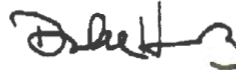
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David M. Hardy
Section Chief
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EXHIBIT 2

“[u]ndertak[ing] sensitive investigations of Department operations and/or personnel, often at the request of senior Department officials or Congress.” Id. at § 0.29a (b)(4). In particular, the OIG’s Oversight and Review Division blends the skills of attorneys, investigators, program analysts, and paralegals to conduct these special reviews and investigations of sensitive allegations involving Department employees and operations. One example of such an investigation is detailed in, “A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe” (McCabe Report), dated February 2018, and publicly released by the OIG on its website on April 13, 2018 (Exhibit 1).

3. In connection with its duties as stated above, the OIG maintains records relating to complaints of misconduct received by the OIG and to any investigations of those complaints conducted by the OIG.

4. Department of Justice regulations specify that when reviewing records located by a Department component in response to a request, the component shall determine whether another component or federal government agency is better able to determine whether the record is exempt from disclosure under the FOIA. 28 C.F.R. § 16.4(d). Department regulations further specify that, “[w]hen the component processing the request believes that a different component, agency, or Federal Government office is best able to determine whether to disclose the record, the component typically should refer the responsibility for responding to the request regarding that record,” and that “[o]rdinarily, the component or agency that originated the record will be

presumed to be best able to make the disclosure determination.” Id. at § 16.4(d)(2).

5. The OIG received a FOIA referral from the Federal Bureau of Investigation (FBI). The FBI indicated that the referral related to a March 19, 2018 FOIA request from the Plaintiff in this litigation, Citizens for Responsibility and Ethics in Washington (CREW), which request sought “all documents related to any investigation or inquiry conducted by the FBI’s Office of Professional Responsibility (“OPR”) of, involving, or relating to former FBI Deputy Director Andrew McCabe, who was fired by Attorney General Jeff Sessions on March 16, 2017.” The FBI stated that, while reviewing records responsive to Plaintiff’s FOIA request, it had located the enclosed documents that had originated with the OIG. The FBI further stated that the documents were being referred to the OIG for direct response to the requester.

6. Over a period of months, the FBI referred additional documents to the OIG in connection with Plaintiff’s FOIA request. In total, the documents that the FBI referred for processing by the OIG in connection with CREW’s FOIA request consist of over 1,000 pages of material. The FBI indicated that the referred documents consisted of transcripts of interviews; correspondence; notes; telephone records, emails, and texts; a memorandum of investigation; sworn statements (unsigned drafts and signed versions); and newspaper articles.

7. Of the materials referred to the OIG by the FBI in connection with Plaintiff’s FOIA request, I reviewed a representative sample of documents that

had been agreed upon by counsel in this litigation. This representative sample is comprised of a 50-page transcript; ten pages of correspondence; five pages of handwritten notes; 15 pages of phone records, emails and texts; a three page Memorandum of Investigation (MOI); and 20 pages of a sworn statement.

8. On December 21, 2018, the OIG provided an interim response to Plaintiff's request. The OIG released the transcript, consisting of 50 pages with redactions. (Exhibit 2) The redacted material was withheld from disclosure pursuant to exemptions 6, 7(A), and 7(C). On February 25, 2019, the OIG provided Plaintiff with the remainder of its response concerning the representative sample. The OIG released 53 pages of documents with redactions, comprised of the correspondence; the handwritten notes; the phone records, emails, and texts; the MOI; and the portion of a sworn statement. (Exhibit 3) The redacted material was withheld from disclosure pursuant to exemptions 6, 7(A), 7(C), and 7(E).

9. I understand that, at this time, the parties are only litigating the application of exemption 7(A) to the representative sample. Accordingly, I will address only the OIG's process in applying exemption 7(A) to this sample and will not presently address the OIG's application of exemptions 6, 7(C), or 7(E).

10. In processing the documents in the representative sample, I first reviewed the McCabe Report. Because the McCabe Report is publicly available, I determined that any portion of the documents in the representative sample that was the source for information in the McCabe Report was not subject to protection and must be released. With respect to the remainder of the

information in the documents, I considered whether the underlying information was properly exempt from disclosure under any FOIA exemptions.

11. FOIA exemption 7(A) protects from disclosure “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § (b)(7)(A). Thus, to invoke FOIA exemption 7(A), the OIG had to make a determination that the referred documents relating to Plaintiff’s request were compiled for “law enforcement purposes.” The OIG is vested with authority to investigate allegations of misconduct by Department employees. In this case, as detailed in the McCabe Report, the OIG’s investigation was a misconduct investigation. McCabe Report at 1. As stated in the Report, the FBI’s Inspection Division (INSD) had been investigating whether information published in the Wall Street Journal in an October 30 article was an unauthorized leak and, if so, who was the source of the leak. Id. The OIG opened an investigation of McCabe on August 31, 2017, following INSD’s referral of its matter to the OIG after the INSD became concerned that McCabe may have lacked candor when questioned by INSD agents about his role in the disclosure to the Wall Street Journal. Id. As detailed in the McCabe Report, in addition to addressing whether McCabe lacked candor, the OIG’s misconduct investigation addressed whether any FBI or Department of Justice policies were violated in disclosing non-public information to the Wall Street Journal. Id. As further detailed in the McCabe Report, through its investigation, the OIG

ultimately concluded that then-Deputy Director McCabe lacked candor, including under oath, on multiple occasions in connection with describing his role in connection with a disclosure to the Wall Street Journal. Id. at 35. The OIG records at issue in this litigation are records from the OIG misconduct investigation of McCabe. With this background, the OIG concluded that the documents qualified as having been compiled for “law enforcement purposes” under exemption 7(A).

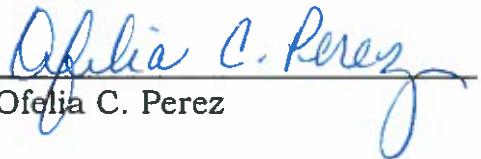
12. In addition, in order to invoke FOIA exemption 7(A), there must be a determination that production of the records or information could reasonably be expected to interfere with enforcement proceedings. OIG Special Agent Stephen Lyons has confirmed that disclosure of information in the documents of the representative sample could reasonably be expected to interfere with ongoing or future enforcement proceedings. In light of this conclusion, the OIG has concluded that the withheld information in the documents of the representative sample was properly exempt from disclosure under FOIA exemption 7(A), with one exception. OIG initially withheld several exhibits to a sworn statement under Exemption 7(A). It is withdrawing its invocation of Exemption 7(A) with respect to Exhibits 2 and 3 to the sworn statement, which OIG will re-process.

13. Pursuant to the above analysis, the OIG has released all portions of said documents that can reasonably be segregated from exempt material. Specifically, in determining what portions of the documents in the representative sample were publicly disclosed in the McCabe Report and,

therefore, were not subject to protection and must be released, I conducted a line-by-line review of each document. I compared the otherwise exempt portion of the document to the corresponding portions of the McCabe Report, to ensure that any material that was either quoted or fairly summarized in the McCabe Report was not redacted in each sample document, notwithstanding that it would otherwise be exempt from disclosure. This process was a labor-intensive and time-consuming one that required me to conduct a careful analysis of the underlying material. In addition, in my line-by-line review, I determined that certain information was not subject to any applicable exemption and could reasonably be segregated from exempt material. Such non-exempt material has also been segregated and released from the sample documents.

Pursuant to Title 28 U.S.C. § 1764, I declare under penalty of perjury
that the foregoing is true and correct.

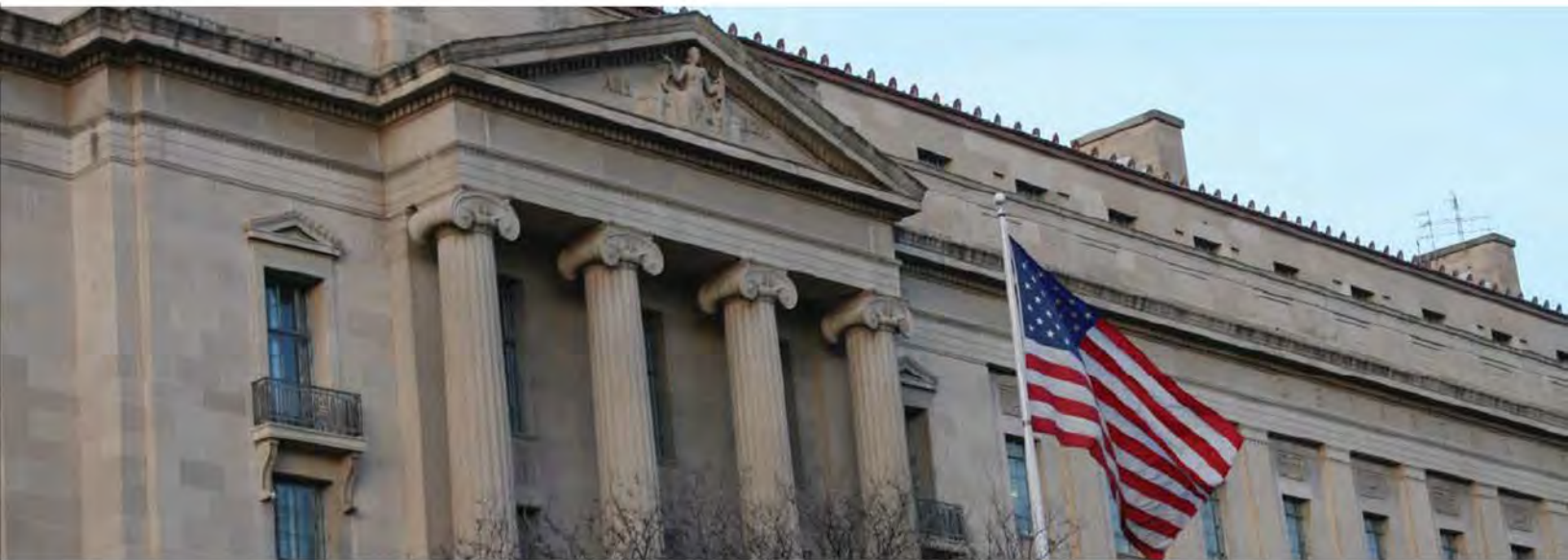
Dated: March 21, 2019
Washington, D.C.


Ofelia C. Perez



Office of the Inspector General U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



REDACTED

A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe

Redactions have been made based on privacy interests of individuals

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I. Introduction and Summary of Findings

This misconduct report addresses the accuracy of statements made by then-Federal Bureau of Investigation (FBI) Deputy Director Andrew McCabe to the FBI's Inspection Division (INSD) and the Department of Justice (Department or DOJ) Office of the Inspector General (OIG) concerning the disclosure of certain law enforcement sensitive information to reporter Devlin Barrett that was published online in the Wall Street Journal (WSJ) on October 30, 2016, in an article entitled "FBI in Internal Feud Over Hillary Clinton Probe." A print version of the article was published in the WSJ on Monday, October 31, 2016, in an article entitled "FBI, Justice Feud in Clinton Probe."

This investigation was initially opened by INSD to determine whether the information published by the WSJ in the October 30 article was an unauthorized leak and, if so, who was the source of the leak. On August 31, 2017, the OIG opened an investigation of McCabe following INSD's referral of its matter to the OIG after INSD became concerned that McCabe may have lacked candor when questioned by INSD agents about his role in the disclosure to the WSJ. Shortly before that INSD referral, as part of its ongoing Review of Allegations Regarding Various Actions by the Department and the FBI in Advance of the 2016 Election, the OIG identified FBI text messages by McCabe's then-Special Counsel ("Special Counsel") that reflected that she and the then-Assistant Director for Public Affairs ("AD/OPA") had been in contact with Barrett on October 27 and 28, 2016, and the OIG began to review the involvement of McCabe, Special Counsel, and AD/OPA in the disclosure of information to the WSJ in connection with the October 30 article.

In addition to addressing whether McCabe lacked candor, the OIG's misconduct investigation addressed whether any FBI or Department of Justice policies were violated in disclosing non-public FBI information to the WSJ.

The OIG's misconduct investigation included reviewing all of the INSD investigative materials as well as numerous additional documents, e-mails, text messages, and OIG interview transcripts. The OIG interviewed numerous witnesses, including McCabe, Special Counsel, former FBI Director James Comey, and others.

As detailed below, we found that in late October 2016, McCabe authorized Special Counsel and AD/OPA to discuss with Barrett issues related to the FBI's Clinton Foundation investigation (CF Investigation). In particular, McCabe authorized Special Counsel and AD/OPA to disclose to Barrett the contents of a telephone call that had occurred on August 12, 2016, between McCabe and the then-Principal Associate Deputy Attorney General ("PADAG"). Among the purposes of the disclosure was to rebut a narrative that had been developing following a story in the WSJ on October 23, 2016, that questioned McCabe's impartiality in overseeing FBI investigations involving former Secretary of State Hillary Clinton, and claimed that McCabe had ordered the termination of the CF Investigation due to Department of Justice pressure. The disclosure to the WSJ effectively confirmed the existence of the CF Investigation, which then-FBI Director Comey had

previously refused to do. The account of the August 12 McCabe-PADAG call, and other information regarding the handling of the CF Investigation, was included in the October 30 WSJ article.

We found that, in a conversation with then-Director Comey shortly after the WSJ article was published, McCabe lacked candor when he told Comey, or made statements that led Comey to believe, that McCabe had not authorized the disclosure and did not know who did. This conduct violated FBI Offense Code 2.5 (Lack of Candor – No Oath).

We also found that on May 9, 2017, when questioned under oath by FBI agents from INSD, McCabe lacked candor when he told the agents that he had not authorized the disclosure to the WSJ and did not know who did. This conduct violated FBI Offense Code 2.6 (Lack of Candor – Under Oath).

We further found that on July 28, 2017, when questioned under oath by the OIG in a recorded interview, McCabe lacked candor when he stated: (a) that he was not aware of Special Counsel having been authorized to speak to reporters around October 30 and (b) that, because he was not in Washington, D.C., on October 27 and 28, 2016, he was unable to say where Special Counsel was or what she was doing at that time. This conduct violated FBI Offense Code 2.6 (Lack of Candor – Under Oath).

We additionally found that on November 29, 2017, when questioned under oath by the OIG in a recorded interview during which he contradicted his prior statements by acknowledging that he had authorized the disclosure to the WSJ, McCabe lacked candor when he: (a) stated that he told Comey on October 31, 2016, that he had authorized the disclosure to the WSJ; (b) denied telling INSD agents on May 9 that he had not authorized the disclosure to the WSJ about the PADAG call; and (c) asserted that INSD's questioning of him on May 9 about the October 30 WSJ article occurred at the end of an unrelated meeting when one of the INSD agents pulled him aside and asked him one or two questions about the article. This conduct violated FBI Offense Code 2.6 (Lack of Candor – Under Oath).

Lastly, we determined that as Deputy Director, McCabe was authorized to disclose the existence of the CF Investigation publicly if such a disclosure fell within the "public interest" exception in applicable FBI and DOJ policies generally prohibiting such a disclosure of an ongoing investigation. However, we concluded that McCabe's decision to confirm the existence of the CF Investigation through an anonymously sourced quote, recounting the content of a phone call with a senior Department official in a manner designed to advance his personal interests at the expense of Department leadership, was clearly not within the public interest exception. We therefore concluded that McCabe's disclosure of the existence of an ongoing investigation in this manner violated the FBI's and the Department's media policy and constituted misconduct.

The OIG is issuing this report to the FBI for such action as it deems appropriate.

II. Relevant Statutes, Policies, and Practices

A. Lack of Candor

The Offense Codes Applicable to the FBI's Internal Disciplinary Process punish FBI employees for "lack of candor." Offense Code 2.5 (Lack of Candor – No Oath) prohibits "[k]nowingly providing false information when making a verbal or written statement, not under oath, to a supervisor, another Bureau employee in an authoritative position, or another governmental agency, when the employee is questioned about his conduct or the conduct of another person." Offense Code 2.6 (Lack of Candor – Under Oath) prohibits "[k]nowingly providing false information in a verbal or written statement made under oath." Under both offense codes, lack of candor is defined to include "false statements, misrepresentations, the failure to be fully forthright, or the concealment or omission of a material fact/information."

B. FBI Policies and Practices Regarding Media Contacts and Leaks

The then-existing FBI Policy on Media Relations, Section 3.1, authorized the FBI Director, the FBI Deputy Director, the Associate Deputy Director, and the Assistant Director for the Office of Public Affairs (OPA) to speak with the media on behalf of the FBI. Other FBI executives could only speak with the media "at OPA's request or following coordination with, and approval by, OPA at FBIHQ." Section 3.4 of this policy provided, in relevant part, that disclosures to the media "must not address an ongoing investigation" except as indicated in that section. The section provides two examples of when it "may be permissible to selectively release [non-classified] information to assure the public that an investigation is in progress" with prior approval of specific components at FBI headquarters:

- (1) to protect the public interest, welfare or safety
- (2) to solicit information from the public that might be relevant to an investigation.

Section 3.3 of the policy also provides that all releases must be consistent with all applicable laws and regulations and policy as itemized in Section 5, which includes the United States Attorneys' Manual (USAM), Title 1-7.000, "Media Relations." Title 1-7.000 of the USAM establishes specific guidelines for the release of information relating to criminal and civil cases by the FBI and other DOJ components. The USAM guidelines expressly state that they are consistent with 28 C.F.R. § 50.2, which provides that "where background information or information relating to the circumstances of an arrest or investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public." 28 C.F.R. § 50.2(a)(3)(iv).

Among other things, Section 1-7.530 of the USAM provides that:

- A. Except as provided in subparagraph B., of this section, components and personnel of the Department of Justice shall not respond to questions about the existence of an ongoing investigation or comment on its nature

or progress, including such things as the issuance or serving of a subpoena, prior to the public filing of the document.

- B. In matters that have already received substantial publicity, or about which the community needs to be reassured that the appropriate law enforcement agency is investigating the incident, or where the release of information is necessary to protect the public interest, safety or welfare, comments about or confirmation of an ongoing investigation may need to be made. In these unusual circumstances, the involved investigative agency will consult and obtain approval from the United States Attorney or Department Division handling the matter prior to disseminating any information to the media.

James Comey, who was the FBI Director at the time the WSJ article was published, told the OIG that the authority to disclose the existence of a pending investigation is “confined to the Director and the Deputy Director” and that in making such decisions “the default is we don’t talk” about pending investigations. He also told the OIG that “significant disclosures about investigations . . . always go through me” and that he could not remember any disclosure by any of the three Deputy Directors that served under him during his tenure that did not involve “close coordination” with him. Comey also told the OIG that the FBI does not disclose “a criminal investigation . . . anonymously sourced in a newspaper.”

III. Factual Findings

A. Background Facts

1. Andrew McCabe

McCabe began his career with the FBI in 1996 as a Special Agent in the New York Field Office. McCabe has served in a variety of leadership positions in the FBI during his career, including as the Assistant Director of the Counterterrorism Division, the Executive Assistant Director of the National Security Branch, and the Assistant Director in Charge of the FBI’s Washington Field Office. On February 1, 2016, McCabe was appointed Deputy Director of the FBI, overseeing all FBI domestic and international investigative and intelligence activities. McCabe became Acting Director of the FBI on May 9, 2017, when FBI Director James Comey was fired. McCabe served as Acting Director until August 1, 2017, when Christopher Wray was confirmed by the Senate as the new FBI Director. At that time, McCabe resumed his duties as Deputy Director, a position he held until January 29, 2018.

2. The Clinton E-mail Investigation

The Clinton E-mail Investigation began as a referral from the Inspector General of the Intelligence Community concerning Clinton’s use of a personal e-mail server during her time as Secretary of State. On July 5, 2016, Comey publicly announced the FBI’s recommendation to the Department that “no charges are appropriate in this case.” On July 6, 2016, Attorney General Loretta Lynch

announced that no charges would be brought related to the investigation. On October 28, 2016, two days before the online publication of the WSJ article at issue in this report, Comey informed Congress that the FBI had discovered additional Clinton-related e-mails in an unrelated investigation. On November 6, 2016, Comey announced that the FBI had completed its review of the additional e-mails and that “we have not changed our conclusions that we expressed in July with respect to Secretary Clinton.”

3. The Clinton Foundation Investigation

As detailed below, the disclosures by Special Counsel to the WSJ on October 27 and 28 included statements effectively confirming the existence of the CF Investigation. Prior to October 27 and 28, the FBI had not publicly confirmed the existence of the CF Investigation, or issued any statements to the media discussing the details of that investigation.

B. Events Leading to the October 30 Article and its Aftermath

1. Comey Refuses To Confirm the Existence of the CF Investigation (July 7) or Other Investigations (September 28)

In testimony before the House Oversight and Government Reform Committee on July 7, 2016, FBI Director Comey refused to answer questions about whether the FBI was investigating the Clinton Foundation. Comey stated that he was “not going to comment on the existence or nonexistence” of the CF Investigation. Similarly, in testimony before the House Judiciary Committee on September 28, 2016, Comey refused to confirm or deny two different investigations during an FBI oversight hearing. He stated: “our standard is we do not confirm or deny the existence of investigations.”

2. McCabe–PADAG Call on the CF Investigation (August 12)

McCabe told the OIG that on August 12, 2016, he received a telephone call from PADAG regarding the FBI’s handling of the CF Investigation (the “PADAG call”). McCabe said that PADAG expressed concerns about FBI agents taking overt steps in the CF Investigation during the presidential campaign. According to McCabe, he pushed back, asking “are you telling me that I need to shut down a validly predicated investigation?” McCabe told us that the conversation was “very dramatic” and he never had a similar confrontation like the PADAG call with a high-level Department official in his entire FBI career.

3. The October 23 WSJ Article and Aftermath

On October 23, 2016, the WSJ published online an article by reporter Devlin Barrett stating that a political-action committee (PAC) run by Virginia Governor Terry McAuliffe and the Virginia Democratic Party (over which the article reported McAuliffe “exerts considerable control”) collectively donated nearly \$675,000 to the

2015 unsuccessful state senate campaign of the wife of Andrew McCabe.¹ The article described McAuliffe as “an influential Democrat with long-standing ties to Bill and Hillary Clinton” and noted that McCabe was an FBI official “who later helped oversee the investigation into Mrs. Clinton’s email use.” The article contained an official FBI statement that McCabe “played no role” in his wife’s 2015 state senate campaign and was promoted to FBI Deputy Director months after his wife’s defeat “where, . . . he assumed for the first time, an oversight role in the investigation into Secretary Clinton’s emails.” According to the article, FBI officials stated that McCabe’s supervision of the Clinton E-mail case in 2016 did not present a conflict or ethics issues because his wife’s campaign was over by then. The article went on to note that when the Clinton E-mail Investigation was launched in July 2015, Mr. McCabe was “running the FBI’s Washington, D.C., field office, which provided personnel and resources to the Clinton email probe.”

Immediately following online publication of the article, there was substantial public discussion as to whether McCabe’s oversight of the Clinton E-mail Investigation had been appropriate in light of the information in the article.² Additionally, on October 24, 2016, Barrett e-mailed the AD/OPA about a follow-on story that he was working on. In that e-mail, Barrett asked AD/OPA a number of questions about McCabe’s involvement in certain matters, including the CF Investigation. In particular, Barrett’s e-mail said that he was told that:

in the summer, McCabe himself gave some instruction as to how to proceed with the Clinton Foundation probe, given that it was the height of election season and the FBI did not want to make a lot of overt moves that could be seen as going after [Clinton] or drawing attention to the probe.

Barrett’s e-mail asked AD/OPA “[h]ow accurate are those descriptions? Anything else I should know?” As detailed in Section 6 below, McCabe subsequently instructed Special Counsel to provide information to Barrett for the follow-on story.

4. The Attorney General Expresses Strong Concerns to McCabe and other FBI Officials about Leaks, and McCabe Discusses Recusing Himself from CF Investigation (October 26)

McCabe told the OIG that during the October 2016 time frame, it was his “perception that there was a lot of information coming out of likely the [FBI’s] New York Field Office” that was ending up in the news. McCabe told the OIG that he “had some heated back-and-forths” with the New York Assistant Director in Charge (“NY-ADIC”) over the issue of media leaks.

¹ A print version of the article was published in the WSJ on Monday, October 24, 2016.

² In January 2017, the OIG announced it would conduct a review of allegations regarding various actions by the Department and the FBI in advance of the 2016 election, including allegations that McCabe should have been recused from participating in certain investigative matters.

On October 26, 2016, McCabe and NY-ADIC participated in what McCabe described as “a hastily convened conference call with the Attorney General who delivered the same message to us” about leaks, with specific focus being on leaks regarding the high-profile investigation by FBI’s New York Field Office into the death of Eric Garner. McCabe told us that he “never heard her use more forceful language.” NY-ADIC confirmed that the participants got “ripped by the AG on leaks.”

According to NY-ADIC’s testimony and an e-mail he sent to himself on October 31, McCabe indicated to NY-ADIC and a then-FBI Executive Assistant Director (“EAD”) in a conversation after Attorney General Lynch disconnected from the call that McCabe was recusing himself from the CF Investigation. According to NY-ADIC’s e-mail, McCabe told them “he may make a more formal decision at a later time.” NY-ADIC stated during his OIG interview: “I think [McCabe] couched it as like, hey, this is not final . . . I don’t know, I think he says he still has to talk about it.” NY-ADIC stated that he clarified with McCabe that unless McCabe told him otherwise, NY-ADIC would begin reporting to EAD on the CF Investigation.

McCabe, however, told the OIG that he did not recall such a conversation. He said, “I suppose it’s possible that I may have referred to the concept if that was being discussed generally at the time. But I would not have said to [NY-ADIC], like, I’m thinking about recusing.”

5. McCabe Is Excluded from a Meeting Regarding Clinton E-mails Found on the Weiner Laptop (October 27)

On October 27, 2016 at 10:00 a.m., Comey held a meeting with the Clinton E-mail Investigation team to discuss obtaining a search warrant for a set of Clinton-related e-mails the FBI had discovered on a laptop belonging to Anthony Weiner, and taking additional steps in the Clinton E-mail Investigation. Special Counsel attended the meeting. McCabe was out of town, but joined the meeting via conference call. Shortly after the meeting began, the then-FBI General Counsel (“FBI-GC”) suggested, and Comey agreed, that McCabe should leave the call. Comey told us that he asked McCabe to drop off the call, and McCabe was “very unhappy about it.” Special Counsel also left the meeting. After discussions between FBI and Department leadership, on October 28, 2016, Comey sent a letter, over Department objections, informing Congress that the FBI was taking additional steps in the Clinton E-mail Investigation.

Accounts differ about the reason for excluding McCabe from the October 27 call. McCabe told the OIG that the reason stated on the call for dropping him related to the potential for discussion about classified information. However, Comey, [REDACTED], and Special Counsel all told us that Comey asked McCabe to leave the call out of an abundance of caution because of appearance issues following revelations in the WSJ October 23 article about the campaign donations from McAuliffe-associated PACs to McCabe’s wife. McCabe discussed the issue of his participation in the Clinton e-mail matter further with Comey and FBI-GC by telephone later that day. After these conversations, McCabe sent a text message to

Special Counsel stating: "I spoke to both. Both understand that no decision on recusal will be made until I return and weigh in."

On November 1, 2016, McCabe sent e-mails to FBI executives and officials overseeing the CF Investigation and the Clinton E-mail Investigation informing them that he was recusing himself from those investigations.

6. McCabe Authorizes Special Counsel and AD/OPA To Talk to Barrett Regarding CF Investigation and To Disclose August 12 McCabe-PADAG Call

a. McCabe's Authorization

By October 25, 2016, McCabe had been notified that Barrett was working on a follow-up story to the October 23 article that would cover McCabe's oversight of the CF Investigation and potential connections with McAuliffe campaign contributions to McCabe's wife. McCabe thereafter authorized Special Counsel and AD/OPA to talk to Barrett about this follow-up story. Special Counsel told us that the authorization from McCabe was done orally and it was "pretty general." Special Counsel further stated that she understood from AD/OPA that the first call with Barrett would be "receive mode" to understand what Barrett's story would cover and then they would develop a response.

b. Calls with Barrett and Special Counsel's Communications with McCabe (October 27 and 28)

At approximately 12:06 p.m. on October 27, 2016, shortly before Special Counsel was to speak with Barrett for the first time, McCabe texted Special Counsel asking "Are you in with wsj now".³ About 10 minutes later, at 12:19 p.m., Special Counsel texted McCabe back stating that she was "going there now" and would call him "immediately after re call with devlin." Special Counsel told the OIG that she and AD/OPA then had their first call with Barrett in "receive mode" regarding his follow-up story. According to Special Counsel's contemporaneous notes of the call and testimony to the OIG, she and AD/OPA learned during the first call that Barrett had sources who were adamant that McCabe gave a purported order to "stand down" on the CF Investigation before the 2016 presidential election, implying that McCabe wanted to shut down the investigation for improper reasons.

Special Counsel texted McCabe at 1:25 p.m. and stated "Can you talk now?" After some additional texts between them to arrange the call, telephone records reflect that McCabe and Special Counsel spoke by telephone at 2:54 p.m. for 51 minutes. According to Special Counsel, she briefed McCabe on the conversation with Barrett and the purported "stand down" order. Special Counsel told the OIG that McCabe responded by reminding her that the August 12 PADAG call was completely inconsistent with that allegation. Special Counsel told us that she understood McCabe wanted her to provide the account of this August 12 call as

³ By this time, McCabe had already left for [REDACTED] and he remained out of town from October 27 through 30, 2016.

rebuttal to that “stand down” allegation and made a large notation of “Fri. Aug. 12 with [PADAG]” at the top of her notes to remind herself to discuss it in the next call with Barrett.

When interviewed by the OIG on November 29, 2017, McCabe’s recollection of his call with Special Counsel was consistent with hers. Specifically, McCabe stated that he authorized Special Counsel and AD/OPA to provide to Barrett the account of his August 12 call with PADAG because McCabe thought it was the “best example” to counter the “incredibly damaging” narrative in Barrett’s intended story. McCabe said that he did not view the disclosure to the WSJ about the August 12 PADAG call as disclosing the existence of the CF Investigation because the purpose was to demonstrate the FBI’s independence, and “there really wasn’t any discussion of the case, of the merits of the case, the targets and subjects of the case.”

McCabe stated that this was the only time in his career where he had authorized the disclosure to the media of a one-on-one discussion that he had with a member of the Department’s leadership.

FBI text message and phone records show that, immediately before Special Counsel and AD/OPA spoke for the second time with Barrett, McCabe called Special Counsel at 4:38 p.m. and the two spoke for 6 minutes. E-mail and text message records show that, approximately 1 minute after the call between McCabe and Special Counsel ended, Special Counsel and AD/OPA began their second call with Barrett, which lasted from approximately 4:45 p.m. to 5:21 p.m. According to Special Counsel’s contemporaneous notes and testimony to the OIG, in this follow-up call with Barrett she responded to the claims regarding FBI leadership’s handling of the CF Investigation and provided the account of the August 12 McCabe-PADAG call as the “best evidence” to counter Barrett’s narrative.

Two minutes after the call ended, Special Counsel texted McCabe at 5:23 p.m. stating: “We’re done. He’s going to look at his story again and will circle back with him in the morning.” According to telephone records, McCabe thereafter called Special Counsel twice, once at 6:47 p.m., when they spoke for about 5 minutes, and again at 7:06 p.m., when they spoke for about 6 minutes.

During the early afternoon of October 28, 2016, Special Counsel and AD/OPA had an additional call with Barrett that lasted at least 15 minutes. According to Special Counsel’s contemporaneous notes and testimony to the OIG, Barrett provided them a preview of the revised story, which now incorporated aspects of the McCabe-PADAG call on August 12 to rebut the “stand-down” allegation.

After this call ended, Special Counsel texted McCabe at 1:33 p.m. stating: “Just got off with barrett. Give me a call here.” According to telephone records, at 1:38 p.m., McCabe and Special Counsel spoke for 23 minutes.

7. The October 30 WSJ Article

On October 30, 2016, prior to the article’s online publication, Special Counsel exchanged text messages with a then-FBI Deputy Assistant Director (“DAD”)

regarding the forthcoming article. DAD forwarded to Special Counsel a Washington Post article from the day before (October 29), entitled "Justice Officials Warned FBI that Comey's Decision to Update Congress Was Not Consistent With Department Policy." The article stated that Department officials told Comey that his decision to update Congress about the discovery of additional Clinton e-mails prior to the election was inconsistent with Department policy, and DAD observed in his text message that "This is all [PADAG]." Special Counsel responded "Yeah. I saw it. Makes me feel WAY less bad about throwing him under the bus in the forthcoming CF article." Special Counsel told us that she was referring in this text to her disclosure to Barrett about the August 12 conversation between McCabe and PADAG, and what she meant by "throwing [PADAG] under the bus" was that it was an "unfortunate sort of fact or consequence" but it was "necessary to rebut the notion that [Andy] was trying to kill the Clinton Foundation case for inappropriate or improper reasons."

Barrett's follow-up article was published online on Sunday, October 30, 2016, at about 3:34 p.m., and appeared in the WSJ print edition the next day under the title "FBI, Justice Feud in Clinton Probe." The article described how Comey's disclosure that FBI agents were taking another look at the Clinton e-mails "lays bare, just days before the election, tensions inside the bureau and the Justice Department over how to investigate the Democratic presidential nominee." The article discussed not only the FBI's handling of the Clinton E-mail Investigation, but "internal disagreements within the bureau and the Justice Department surrounding the Clintons' family philanthropy." It stated that "McCabe in particular was caught . . . [in] an increasingly acrimonious fight for control between the Justice Department and FBI agents pursuing the Clinton Foundation case." Thereafter, the article highlighted the campaign donations to McCabe's wife by PACs associated with McAuliffe, who was described as "a longtime ally of the Clintons and . . . a Clinton Foundation Board member." The article identified McCabe as the FBI official who "sought to refocus the Clinton Foundation probe," and reported that agents "further down the FBI chain of command" had been told to "[s]tand down" on the Clinton Foundation investigation with the understanding that "the order had come from the deputy director — Mr. McCabe." The article stated that "[o]thers familiar with the matter deny Mr. McCabe or any other senior FBI official gave such a stand-down instruction." The article recounted the August 12 conversation between McCabe and PADAG (identified as an unnamed "senior Justice Department Official"). It stated:

According to a person familiar with the probes, on Aug. 12, a senior Justice Department official called Mr. McCabe to voice his displeasure at finding that New York FBI agents were still openly pursuing the Clinton Foundation probe during the election season. Mr. McCabe said agents still had the authority to pursue the issue as long as they didn't use overt methods requiring Justice Department approvals.

The Justice Department official was "very pissed off," according to one person close to McCabe, and pressed him to explain why the FBI was still chasing a matter the department considered dormant. . . .

"Are you telling me that I need to shut down a validly predicated investigation?" Mr. McCabe asked, according to people familiar with the conversation. After a pause, the official replied "Of course not," these people said.⁴

8. McCabe Admonishes Two FBI Executives for Leaks in the October 30 WSJ Article Regarding the CF Investigation

Two FBI Executives, NY-ADIC and the then-Assistant Director in Charge of the Washington Field Division ("W-ADIC"), told us that they each received calls from McCabe admonishing them for leaks contained in the October 30 WSJ article about the CF Investigation. At no time did McCabe disclose to either of them that McCabe had authorized Special Counsel to disclose information about the CF Investigation to the WSJ reporter.

According to NY-ADIC's contemporaneous October 30 calendar notes and testimony to the OIG, McCabe called NY-ADIC on Sunday, October 30, at 5:11 p.m., to express concerns over leaks from the FBI's New York Field Office in the October 30 WSJ article. NY-ADIC told the OIG that McCabe was "ticked about leaks" in the article on the CF Investigation, but NY-ADIC "pushed back" a little to note that New York agents were not privy to some of the information in the article. Also according to NY-ADIC's calendar notes, as well as his testimony to the OIG, NY-ADIC spoke to EAD and other FBI managers after his call with McCabe to voice concerns "about getting yelled at about this stuff" when he was supposed to be dealing with EAD on Clinton Foundation issues because of his understanding that McCabe had recused himself from the matter.

W-ADIC told the OIG that he received a call from McCabe regarding the October 30 WSJ article and that McCabe admonished him regarding leaks in the article. According to W-ADIC, McCabe told him to "get his house in order."

McCabe told us that he did not recall calling either NY-ADIC or W-ADIC to reprimand them for leaks in the October 30 WSJ article.

9. Comey Expresses Concern About Leaks at his Staff Meeting and Discusses the October 30 WSJ Article with McCabe (October 31)

On Monday morning, October 31, 2016, Comey held a staff meeting, which Special Counsel attended. According to Special Counsel's contemporaneous notes, during the meeting Comey said "Need to figure out how to get our folks to understand why leaks hurt our organization." That same day McCabe and Comey had a face-to-face conversation about the October 30 WSJ article. The accounts they provided to the OIG of this discussion contradicted one another.

⁴ Both McCabe and PADAG told the OIG that the account of the August 12, 2016 telephone call given in the October 30, 2016 WSJ article was an accurate description of their discussion. However, PADAG told the OIG that he thought that "the Bureau was trying to spin this conversation as some evidence of political interference, which was totally unfair."

a. McCabe's Account

According to McCabe's testimony to the OIG on November 29, 2017, he and Comey discussed the October 30 WSJ article in person on October 31, 2016, when McCabe returned to the office from a trip [REDACTED]. McCabe said that he told Comey that he had "authorized AD/OPA and Special Counsel to disclose the account of the August 12th call" and did not say anything to suggest in any way that it was unauthorized. McCabe told us that Comey "did not react negatively, just kind of accepted it." McCabe also told us Comey thought it was a "good" idea that they presented this information to rebut the inaccurate and one-sided narrative that the FBI was not doing its job and was subject to DOJ political pressure, but the Department and PADAG were likely to be angry that "this information made its way into the paper."

McCabe told us that he did not recall telling Comey prior to publication of the October 30 article that he intended to authorize or had authorized Special Counsel and AD/OPA to recount his August 12 call with PADAG to the WSJ, although he said it was possible he did. When asked why he did not discuss it with the Director in advance, McCabe said the Director was "very, very occupied" at the time with the Weiner laptop issue. McCabe told us that if he had not been out of town, he would have talked to Comey about the disclosure in advance because it involved a significant issue. When questioned by the OIG as to whether, as Deputy Director, he had the capability to reach Comey wherever he was and whenever he needed, McCabe acknowledged that he did but added it was challenging to do so between October 27 and 28, given the Weiner laptop issue and the fact that Comey told him he did not want to discuss that issue with him.

b. Comey's Account

We questioned Comey specifically about the portion of the October 30 WSJ article that pertained to the PADAG call. Comey told us that he recalled seeing this article but did not know how the disclosure about the PADAG call in the October 30 article happened. He said that he was "very concerned" about that part of the article because he felt it would further poison the FBI's relationship with Department and it "explicitly confirms the existence of a criminal investigation" of the Clinton Foundation. Comey told us he considered the disclosure about the PADAG call "problematic" because it related to "sensitive FBI information" and was unauthorized, unless either he or McCabe authorized it and Comey knew that he did not authorize it.

Comey told us that, prior to the article's publication, he did not have any discussions with McCabe regarding disclosure of the August 12 PADAG call. According to Comey, he discussed the issue with McCabe after the article was published, and at that time McCabe "definitely did not tell me that he authorized" the disclosure of the PADAG call. Comey said that McCabe gave him the exact opposite impression:

I don't remember exactly how, but I remember some form or fashion and it could have been like "can you believe this crap? How does this

stuff get out" kind of thing? But I took from whatever communication we had that he wasn't involved in it.

. . .

I have a strong impression he conveyed to me "it wasn't me boss." And I don't think that was by saying those words, I think it was most likely by saying "I don't know how this shit gets in the media or why would people talk about this kind of thing," words that I would fairly take as "I, Andy, didn't do it." And I actually didn't suspect Andy, after conversations with [my chief of staff], my worry was, was his aide [Special Counsel] doing it.

When asked by the OIG about whether he would have approved the disclosure about the PADAG call to the WSJ, Comey stated: "[S]o just to make sure there's no fuzz on it, I did not authorize this. I would not have authorized this. If someone says that I did, then we ought to have another conversation because I, it doesn't make a lot of sense to me."

Comey said he believed that McCabe would have known from experience to discuss any disclosures regarding pending FBI investigations with Comey before releasing such information to the media. Comey told us that McCabe would have known that the disclosure of the existence of a specific investigation was a significant event "that he should discuss with me first" given Comey's responsibility as FBI Director for how the FBI interacts with the world. Comey told us that the disclosure of the existence of a specific investigation would require much internal discussion on the form and wording, and would not be done through "anonymous[] source[s] in a newspaper." Comey further told us that he would not have authorized the disclosure of the account of the McCabe-PADAG August 12 call, even if an argument had been made that it was in the best interest of the FBI. Comey said that such an argument would not have been persuasive for him in light of the following circumstances: (1) the disclosure involved publicly confirming the existence of the CF Investigation, which Comey had declined to do 3 months earlier during testimony before Congress; (2) the disclosure risked harming FBI-Department relations; and (3) the disclosure occurred 2 days after the firestorm surrounding the October 28 letter to Congress re-opening the Clinton E-mail Investigation.

10. Knowledge of Other FBI Executives

McCabe told us that among FBI executive managers "people knew that generally" he had authorized the disclosure to the Wall Street Journal, "because it was my conversation" and "the fact that [AD/OPA] and [Special Counsel] were engaging with Devlin Barrett over the article was not a secret." McCabe identified several FBI managers who he believed likely or possibly would have known, based on his interactions with them, that he authorized Special Counsel and AD/OPA to talk to the WSJ and disclose the account of his August 12 call with PADAG.

However, none of the potential witnesses identified by McCabe (FBI-GC, Comey's Chief of Staff, The Counterintelligence Assistant Director ("AD-CI"), and

McCabe's then-Chief of Staff) corroborated this or recalled knowing at the time, or even now, that McCabe had authorized the disclosure.⁵ FBI-GC told us that, had McCabe discussed the matter with him, he would have counseled McCabe to avoid anything related to the CF Investigation, including authorizing disclosures to the press, given FBI-GC's and Comey's pending concerns about McCabe's potential appearance issues on Clinton-related matters. Comey's Chief of Staff, AD-CI, and McCabe's Chief of Staff told us that had they heard about such an authorization they would have remembered it because it would have been significant and spurred conversation among other senior executive managers. These witnesses also told us that because the disclosure detailed a private conversation between two high-ranking officials at the FBI and the Department on a high-profile investigation, they did not believe that it was an authorized disclosure. McCabe's Chief of Staff told us that:

I just can't imagine that the Deputy would have authorized the leak. It just doesn't seem to serve, I mean, I guess it serves, it serves the purpose of the Deputy by saying, hey look, do you want us to shut this thing down? I guess it serves Andy in that way, but it really, it really highlights a dysfunction between the FBI and the, and DOJ. And to that end, it doesn't really serve the greater good.

11. McCabe Admonishes NY-ADIC for CF Investigation Leaks Following November 3 WSJ Article (November 4)

On November 3, 2016, the WSJ published another story by Barrett on the CF Investigation and it repeated parts of the account of the McCabe-PADAG call. That evening, McCabe e-mailed NY-ADIC and stated: "This is the latest WSJ article. Call me tomorrow." According to NY-ADIC's calendar notes on November 4 and testimony to the OIG, NY-ADIC and McCabe spoke for approximately 10 minutes around 7 a.m., regarding "leaks and WSJ article" and that McCabe was "angry." NY-ADIC's calendar notes also reflect that McCabe expressed to him: "will be consequence[s] and get to bottom of it post elect[ion]. Need leaks to stop. Damaging to org."

McCabe told the OIG that he did not recall the details of his conversation with NY-ADIC on November 4, but it was "probably about leaks" to the media.

12. INSD Opens an Investigation of the WSJ Leak (May 2017)

In May 2017, the FBI Inspection Division (INSD) expanded a pre-existing investigation of media leaks to include determining the source of the information in the October 30 WSJ article regarding the August 12 McCabe-PADAG call. INSD added the October 30 article to their pre-existing matter because it appeared to

⁵ FBI-GC told us that McCabe had told him recently in discussions on attending OIG interviews that the OIG was looking at the October 30 article and that he, McCabe, had authorized the disclosure of some unspecified information that appeared in that article.

involve an instance of someone at the FBI leaking the Deputy Director's private conversations to the media.

13. INSD Interviews McCabe under Oath on May 9

INSD interviewed McCabe under oath regarding the October 30 WSJ article on May 9, 2017.⁶ The INSD investigators documented the May 9 interview in contemporaneous notes and in a draft Signed Sworn Statement prepared shortly after the interview, and later provided testimony to the OIG regarding their recollections of McCabe's testimony. In his interview with the OIG on November 29, 2017, McCabe provided a starkly different account of what he believes he said and what occurred during this interview. Because these conflicting accounts are central to the issues addressed in this report, we address the INSD accounts and McCabe's account in detail in separate subsections below.

a. INSD Written Record of the Interview and Testimony by Interviewing Agents

Two INSD agents, a Supervisory Special Agent ("INSD-SSA1"), and the then-Chief of the INSD Internal Investigations Section ("INSD Section Chief"), interviewed McCabe under oath in his office on the afternoon of May 9 concerning the leak matters they were investigating.⁷ During the interview, after discussing with McCabe an unrelated media leak allegation, the INSD agents provided McCabe with a copy of the October 30 article to review, and which McCabe initialed. According to INSD SSA 1's contemporaneous notes and both agents' testimony to the OIG, INSD drew McCabe's attention specifically to the portion of the October 30 WSJ article regarding McCabe's August 12 call with the PADAG.

INSD-Section Chief told us that the entire interview, including the discussion on the October 30 article, was conducted in the privacy of McCabe's personal office with just McCabe, [REDACTED] and INSD-SSA1 in attendance, while they were sitting at a table in McCabe's office, where McCabe initialed the copy of the WSJ article. INSD-Section Chief told us that all of the INSD interviews with McCabe were conducted in the privacy of his office at his table "from beginning to end." INSD-Section Chief said that INSD's standard practice is to conduct an interview in a private setting solely with INSD agents and the particular witness involved in the matter.

INSD-SSA1 took two and half pages of contemporaneous notes during the interview, almost all of which concerned the October 30 article and the August 12 call between McCabe and PADAG. According to INSD-SSA1's notes and testimony to the OIG, McCabe was given an opportunity to review the article and he then told

⁶ Later in the day, after the interview, President Trump fired FBI Director Comey, and McCabe became Acting FBI Director, a position he remained in until Director Wray's confirmation on August 1, 2017.

⁷ INSD-Section Chief has since been promoted [REDACTED]

the agents that he remembered the article and said that the account in the article of his August 12 call with PADAG was accurate. Also according to INSD-SSA1's contemporaneous notes and testimony to the OIG, McCabe told them that he had "no idea where it came from," that was "who the source was" who disclosed the account of his August 12 call with PADAG to the WSJ. INSD-SSA1 further told the OIG that McCabe stated during the interview that he had related the account of the August 12 call to others numerous times, leaving INSD-SSA1 with the impression that INSD-SSA1 would "not get anywhere by asking" McCabe how many people could have known about what appeared to be a private conversation between him and PADAG. INSD-SSA1 told us that he didn't need to take many notes during the interview because, at that point, he viewed McCabe as "the victim" of the leak and McCabe had told the INSD agents that he did not know how this happened. INSD-SSA1 also told us that the whole interaction was short, maybe 5 to 7 minutes, and flowing because McCabe was seemingly the victim and claimed he did not know who did it. INSD-SSA1 said that McCabe's information could be summarized in one paragraph in his draft statement.

Similarly, INSD-Section Chief told us that the "overarching" take-aways from their interview with McCabe were that McCabe did not grant anyone permission to divulge the account of his August 12 call with PADAG to the media, he had not personally shared that information with the media, and he considered it a leak. INSD-Section Chief also told us that McCabe acknowledged that he had expressed the sentiment reflected in the quote "are you telling me that I need to shut down a validly predicated investigation," to PADAG, and was disappointed that it had appeared in the article. INSD-Section Chief further told us that their discussion with McCabe about the October 30 article was not rushed and that none of their discussions with McCabe on media leaks ended abruptly.

b. INSD Prepares a Draft Statement for McCabe To Sign, Which McCabe Fails To Do (May 12 and June 23)

Three days later, on May 12, 2017, INSD e-mailed McCabe a draft Signed Sworn Statement (SSS) for his review and signature that initially concerned an unrelated leak matter but that had been revised to include his comments at the May 9 interview about the October 30 WSJ article. The e-mail highlighted that a new paragraph had been added, starting on page 10, regarding statements made by McCabe about the October 30 article. This paragraph stated:

On 05/09/2017, [INSD-Section Chief] and [INSD-SSA1] provided me with a photocopy of a Wall Street Journal article, dated 10/30/2016, and requested I evaluate and assess the content of the first three paragraphs appearing on the last page for accuracy. My assessment of the referenced portion of the article is that it is basically an accurate depiction of an actual telephonic interaction I had with a Department of Justice (DOJ) executive. I do not know the identity of the source of the information contained in the article. Since this event, I have shared the circumstances of this interaction with numerous FBI senior executives and other FBI personnel. I gave no one authority to share

any information relative to my interaction with the DOJ executive with any member of the media. I initialed a photocopy of the article, which is attached to my statement as Exhibit Number 5.

This draft SSS paragraph is consistent with INSD's contemporaneous notes of the May 9 interview and the sworn recollections of both INSD agents who interviewed McCabe, as they described to the OIG.

As of approximately 1 month later, McCabe had failed to execute and return the draft SSS. Accordingly, on June 23, INSD again e-mailed it to him and again requested that he review and sign it. However, INSD accidentally sent it to a different FBI employee rather than to then-Acting Director Andrew G. McCabe. The unintended recipient forwarded the INSD e-mail to then-Acting Director McCabe. That same date, McCabe e-mailed INSD to note the error in the address. McCabe did not sign the draft SSS and did not communicate with INSD regarding the draft SSS until August 18, as described below.

c. McCabe's November 29, 2017 Account of the May 9 INSD Interview and His Response to Draft Statement

During his OIG interview on November 29, 2017, McCabe provided a very different account of his interactions with INSD on May 9. Specifically, McCabe told the OIG that the INSD agents "must have" gotten it wrong when they wrote in the draft SSS that he told them on May 9 that he did not authorize the conversation and that he did not know who the source was. McCabe said that he did not believe he told INSD that he did not authorize the disclosure, but added "I don't remember what I said to them." He added "I don't remember discussing authorization of that article" with INSD and that "the INSD folks and I walked away from that, from that exchange with a difference in understanding." However, he acknowledged to the OIG that his initials appeared on the copy of the WSJ article that INSD presented to him for review during the interview. McCabe told the OIG that he did not know and could not explain how INSD got the impression that he thought it was an unauthorized leak because he said he does not believe he told INSD that.

McCabe also asserted that the May 9 meeting concerned an unrelated leak matter and that the discussion about the October 30 article occurred near the end of the meeting when "one of the people on that team pulled me aside and asked me a question about the Wall Street Journal article." He elaborated by stating that as the INSD agents were "walking out of my office into the hallway, and [INSD-Section Chief] kind of grabbed me by the arm and said, hey, let me ask you about something else." McCabe said that he and INSD-Section Chief were still in his office, he thought standing, during the conversation but that the other two INSD agents (McCabe recalled there being three INSD agents present that day, not two) were outside his office. He said INSD-Section Chief showed him the October 30 WSJ article at that time and asked him "a question or two about it. And that was it. It was a very quick exchange." McCabe said he was confused as to why this article was even being raised because it did not relate to a different media leak matter that McCabe asserted was the main focus of their meeting on May 9.

McCabe told the OIG that he did not remember when he first reviewed the revised draft SSS addressing the October 30 WSJ article, but that "it could have been months later" after he received it. He said: "I don't remember reviewing the statement while I was Acting Director. It's possible, but I don't remember when I actually, I think it's possible I just put the entire thing aside and said I'll deal with that some other time. The other time ended up being when I was back as Deputy Director." McCabe returned to his position as Deputy Director after Director Wray was confirmed, on August 1, 2017.

14. McCabe's Initial Account under Oath to the OIG on July 28, 2017

On Friday, July 28, 2017, the OIG interviewed McCabe under oath in connection with its ongoing review of various FBI and Department actions in advance of the 2016 Election. The primary focus of the interview was to determine McCabe's awareness of the existence of certain text messages between Special Counsel and DAD that the OIG had recently discovered. During the course of the interview, the OIG showed McCabe text messages dated October 27, 28, and 30 from Special Counsel to DAD, indicating that Special Counsel had been in contact with WSJ reporter Barrett and appeared to have been a source for the October 30 WSJ article. At the time of the interview, the OIG was not aware of INSD's May 9 interview of McCabe.

The OIG showed McCabe a text exchange on October 30 in which DAD forwarded an article from the Washington Post to Special Counsel, entitled "Justice officials warned FBI that Comey's decision to update Congress was not consistent with department policy." DAD texted "This is all [PADAG]." Special Counsel responded "Yeah I saw it. Makes me feel WAY less bad about throwing him under the bus in the forthcoming CF article." These texts suggested that Special Counsel may have provided the information to Barrett concerning McCabe's August 12 call that eventually appeared in the October 30 WSJ article. After the OIG showed these text messages to McCabe, the following exchange took place:

OIG: . . . Which we're not sure what [CF] relates to, perhaps Clinton Foundation. Do you happen to know?

MR. MCCABE: I don't know what she's referring to.

OIG: Or perhaps a code name?

MR. MCCABE: Not one that I recall, but this thing is like right in the middle of the allegations about me, and so I don't really want to get into discussing this article with you.

OIG: Okay.

MR. MCCABE: Because it just seems like we're kind of crossing the strings a little bit there.

OIG: Was she ever authorized to speak to reporters in this time period, was [Special Counsel]?

MR. MCCABE: Not that I'm aware of.

Later in the interview, the OIG directed McCabe's attention to other texts from October 27 and 28 indicating that Special Counsel was talking to Barrett. McCabe stated "I was not even in town during those days. So I can't tell you where she was or what she was doing."

15. McCabe Calls the OIG on August 1 To Correct his Testimony

On Tuesday, August 1, 2017, McCabe placed a telephone call to an OIG Assistant Inspector General ("AIG") to correct the statement he gave on July 28. In an e-mail prepared the same day, AIG summarized the call, in relevant part, as follows:

McCabe stated that he believes that [Special Counsel] may have been authorized by him to work with [AD/OPA] and to speak with the WSJ for the late October article. He said he had worked with [Special Counsel] on a previous WSJ article earlier in the month when they spent the day trying to correct inaccuracies. At the time the second article was being prepared, McCabe was out of town [REDACTED]

[REDACTED] He believes he may have authorized [Special Counsel] to work with [AD/OPA] and speak to Devlin Barrett (the WSJ reporter) because she had previously worked with McCabe on the issues raised by his wife's political campaign and was very familiar with those issues He said [AD/OPA] would be familiar with Special Counsel's role and authority to speak.

The OIG questioned McCabe about his August 1 call during his OIG interview, on November 29. McCabe told the OIG that he called AIG on August 1 after spending "a lot of time thinking about it" over the weekend, and that "on further recollection, yeah, I remember authorizing [Special Counsel] and [AD/OPA] to talk to the Wall Street Journal." He said "it was important to me that [AIG] and you all did not have the misimpression about the authorization that I had given to, to [AD/OPA] and [Special Counsel] to interact with Devlin Barrett on that article." He further stated that it was important to him that the OIG not "start heading off in a direction on [AD/OPA] and [Special Counsel] that's not, that would not have been accurate."

When the OIG pointed out that McCabe's statement on July 28 that he didn't know where Special Counsel was or what she was doing on October 27 or 28 was inaccurate, he stated:

Yeah, and as I've said before, and she made clear, I, I was very concerned, as I think I said at that time, uncomfortable about discussing things that I thought were outside the scope that [AIG] had identified for me that day And I felt like that's the direction that the questions were coming from. I didn't feel comfortable saying, you know, vouching for what was in [DAD] and [Special Counsel]'s texts and saying what they meant. I had not thought about the Wall Street Journal article and the conversations we had around it in quite a long time. And so, I misspoke.

McCabe denied that being shown the text messages on July 28 that indicated Special Counsel had spoken to Barrett caused him to change his account in order to protect Special Counsel. McCabe told the OIG that this "thinking process" was done "on my own" without talking to any FBI employees or reviewing past e-mails or text messages. He stated that he did not discuss the Devlin texts with Special Counsel after the July 28 interview. While Special Counsel told the OIG that following McCabe's July 28 OIG interview, she and McCabe discussed her text messages, she said that McCabe did not discuss his OIG testimony about the WSJ article, or the WSJ article itself, at that time. Special Counsel stated that she and McCabe did not discuss "getting their stories straight" with respect to the WSJ article. Special Counsel told the OIG that the last time she spoke with McCabe about the WSJ article was in approximately October 2016 (when the article was published).

16. INSD and the OIG Interview Special Counsel under Oath Regarding the October 30 Article (August 7, September 7, October 26)

On August 7, 2017, INSD interviewed Special Counsel concerning the October 30 article. At that time, INSD investigators were not aware of Special Counsel's texts on October 27, 28, and 30 concerning her contacts with Barrett and they had not made progress uncovering who may have been the source of the account of the August 12 McCabe-PADAG call provided to the WSJ. During the interview, Special Counsel told INSD agents under oath that she was a source for the disclosure of the account of the August 12 McCabe-PADAG call, the disclosure was fully authorized by McCabe, and Special Counsel and AD/OPA provided the information to Barrett in a telephone call from the FBI OPA office. Special Counsel signed an SSS to this effect on August 15, 2017, which included as an exhibit her contemporaneous notes of the discussions with Barrett on October 27 and 28, 2016. Special Counsel gave the same account to the OIG in two subsequent interviews on September 7 and October 26, 2017.

17. INSD Interviews McCabe Again (August 18)

On August 18, 2017, INSD-SSA1 and a second SSA ("INSD-SSA2") re-interviewed McCabe after being told by Special Counsel that it was McCabe who had authorized the conversation with Barrett in advance of the October 30 WSJ article.

In light of Special Counsel's testimony, INSD-SSA1 told us that, during the re-interview, he affirmatively showed McCabe the WSJ article again and asked him again if he authorized the disclosure regarding the PADAG call because INSD had received conflicting information. INSD-SSA1 said McCabe "looked at it, and he read it. And as nice as could be, he said yep. Yep, I did," although he said he did not recall specifically doing it. INSD-SSA1 stated that McCabe said he did not recall authorizing the description of the PADAG call, but that McCabe "took responsibility, or he took ownership of it," and that he was "okay with it." According to INSD-SSA1's testimony:

I remember saying to him, at, I said, sir, you understand that we put a lot of work into this based on what you've told us. I mean, and I even

said, long nights and weekends working on this, trying to find out who amongst your ranks of trusted people would, would do something like that. And he kind of just looked down, kind of nodded, and said, yeah, I'm sorry.

INSD-SSA1's contemporaneous notes also reflected that he said to McCabe that INSD would have "taken a different approach" if McCabe "had told me and [INSD-Section Chief] that he authorized the article in WSJ." McCabe responded, according to INSD-SSA1's notes, "'I know' but there was a lot going on at the time."

According to INSD-SSA2, and consistent with █████ contemporaneous notes, McCabe stated that he did authorize Special Counsel and AD/OPA to speak "on background" to Barrett for the article. INSD-SSA2 said that McCabe told them that he did not specifically recall authorizing the disclosure of the PADAG call to the WSJ, but assumes he did.

McCabe told us that he convened the August 18 meeting with INSD "for the purpose of telling them that I would not sign the signed sworn statement" because, among other things, it inaccurately reflected that he had not authorized the disclosure to the WSJ. McCabe told us that the August 18 meeting was the first time he told INSD that the signed sworn statement was inaccurate.

18. The OIG Assumes Responsibility for the Investigation (August 31)

Following the INSD interviews of Special Counsel and McCabe in August 2017, INSD officials became concerned that there was a significant question of whether Deputy Director McCabe had testified truthfully to INSD on May 9. INSD-Section Chief told us that she recommended turning the matter over to the OIG because it was no longer appropriate for GS-14 agents in the Internal Investigations Section to continue the investigation of their Deputy Director, and that INSD "needed to turn this over to an independent authority to review and investigate." The Assistant Director for INSD agreed, and referred the matter to the OIG. The OIG formally accepted the referral on August 31, 2017.

19. The OIG Interviews McCabe under Oath on November 29

On November 29, 2017, the OIG interviewed McCabe under oath again, this time addressing the WSJ leak issue in detail. McCabe was represented by counsel during the interview, and, consistent with OIG practice, the interview was audio recorded. Among other things, and as detailed in prior sections, McCabe told the OIG:

- that he authorized Special Counsel and AD/OPA to disclose his August 12, 2016 conversation with PADAG to the WSJ and he had frequent contact and communication with Special Counsel about the WSJ article, before it was published, while he was out of town on October 27 and 28;

- that he did not recall discussing the disclosure with Comey in advance of authorizing it, although it was possible that he did;
- that after publication of the October 30 WSJ article he told Comey that he (McCabe) had authorized the disclosure, and that Comey “did not react negatively, just kind of accepted it” and thought it was “good” that they presented this information to rebut the inaccurate and one-sided narrative that the FBI was not doing its job;
- that other FBI executive managers knew generally that he had authorized the disclosure;
- that, notwithstanding the accounts of the INSD agents, contemporary notes, or the draft SSS, he did not tell INSD on May 9 that he had not authorized the disclosure to the WSJ about the PADAG call;
- that at the end of the May 9 meeting with the INSD agents on an unrelated leak matter he was pulled aside by INSD-Section Chief alone and asked a question or two about the October 30 WSJ article;
- that, despite being asked to sign the SSS on multiple occasions, he probably did not review the language in the draft SSS until after Director Wray was confirmed (which was on August 1, 2017);
- that the explanation for his inaccurate July 28 testimony to the OIG was that he was surprised to be asked about the WSJ matter during that interview;
- that between May 9 and August 18 he did not affirmatively tell INSD he had authorized the disclosure; and
- that he convened the August 18 meeting with INSD to tell them he would not sign the SSS because, among other things, the statement in it denying he had authorized the disclosure was not accurate.

IV. OIG Analysis

A. Lack of Candor

We concluded that McCabe lacked candor on four separate occasions in connection with the disclosure to the WSJ. Three of those occasions involved his testimony under oath.

1. Lack of Candor with Then-Director Comey on or around October 31, 2016

We concluded that McCabe lacked candor during his conversation with then-Director Comey on or about October 31, 2016, when they discussed the October 30 WSJ article. As detailed above, Comey and McCabe gave starkly conflicting accounts of this conversation. Comey said that McCabe “definitely” did not tell Comey that he had authorized the disclosure about the PADAG call. To the contrary, Comey told the OIG that, on or about October 31, McCabe led him to

believe “in form or fashion” that McCabe did not authorize the disclosure about the PADAG call to the WSJ. Comey described how McCabe gave Comey the impression that McCabe had not authorized the disclosure about the PADAG call, was not involved in the disclosure, and did not know how it happened. By contrast, McCabe asserted that he explicitly told Comey during that conversation that he authorized the disclosure and that Comey agreed it was a “good” idea.

While the only direct evidence regarding this McCabe-Comey conversation were the recollections of the two participants, there is considerable circumstantial evidence and we concluded that the overwhelming weight of that evidence supported Comey’s version of the conversation. Indeed, none of the circumstantial evidence provided support for McCabe’s account of the discussion; rather, we found that much of the available evidence undercut McCabe’s claim.⁸

First, Comey had pointedly refused to confirm the existence of the CF Investigation in testimony to Congress just 3 months earlier. Additionally, 1 month before McCabe authorized the disclosure, Comey also refused to confirm or deny two different investigations during an FBI oversight hearing before the House Judiciary Committee. Comey stated during the hearing: “our standard is we do not confirm or deny the existence of investigations.” Comey noted that there is a public interest exception, but “our overwhelming rule is we do not comment except in certain exceptional circumstances.” Comey told us that when the FBI made disclosures of this type during his tenure, such as occurred in connection with the Clinton E-mail and Russia investigations, it did so only after careful deliberations as to form and wording; he also noted that such a disclosure would not be made through an anonymously sourced quote given to a single reporter. We found it highly improbable that Comey would have been approving of a decision by McCabe to disclose to a reporter, on background, information essentially confirming the existence of an FBI investigation that Comey himself had refused to confirm when testifying before Congress.

Second, on the morning after the article appeared online (and the same day it appeared in print), Comey expressed concerns at his staff meeting about the volume of leaks, as evidenced by Special Counsel’s contemporaneous notes of the meeting. We found it highly unlikely that Comey, in a discussion with McCabe that same day, would have been accepting of a disclosure authorized by McCabe that looked exactly like the type of leak that he was condemning to his staff.

⁸ In comments submitted by his counsel in response to a draft of this report, McCabe stated “there is no indication that any of Director Comey’s comments were referring to the PADAG call.” To the contrary, as detailed in this report and made clear in the draft that was made available for McCabe’s and his counsel’s review, the OIG questioned Comey with specific reference to the portion of the WSJ article that related to McCabe’s call on August 12 with PADAG. There is no ambiguity. Comey told us that, at the time, he was “very concerned” about the disclosure for a number of reasons, including the impact of this disclosure on FBI-DOJ relations. And Comey told us that that McCabe led him to believe that McCabe had nothing to do with the disclosure, “most likely” by stating that McCabe didn’t know where the disclosure came from, and “definitely” did not state to Comey that he, McCabe, authorized the disclosure.

Third, the disclosure occurred less than 10 days before the presidential election and just 2 days after the firestorm surrounding Comey's letter to Congress about taking additional steps in the Clinton E-mail Investigation. Disclosure of the PADAG call risked subjecting the FBI to even more criticism about potentially affecting the imminent presidential election, by confirming the existence of a previously unconfirmed criminal investigation involving candidate Clinton. We highly doubt that Comey, who himself expressed concern to us that the WSJ disclosure occurred 2 days after his October 28 letter, would have countenanced such a disclosure by McCabe within days of the election if he had been told about it.

Fourth, publishing the account of the PADAG call risked further "poisoning" the FBI's relationship with DOJ leadership at a time it was already under great strain because of, among other things, Comey's decision to notify Congress on October 28 that the FBI was taking additional steps in the Clinton E-mail Investigation and the Department leadership's concern about leaks emanating from the FBI.⁹

Fifth, on October 27, Comey and FBI-GC expressed concerns to McCabe about whether McCabe should participate further in the Clinton E-mail Investigation because of the appearance created by the campaign contributions to his wife's campaign. The same logic applied to the CF Investigation. On that same date, McCabe authorized Special Counsel to discuss the August 12 PADAG call with the WSJ reporter, thereby confirming the FBI's criminal investigation. McCabe's text message to Special Counsel late on October 27 ("no decision on recusal will be made until I return and weigh in") shows that he knew the issue of recusal was clearly on the table; indeed, McCabe announced his recusal from both Clinton-related matters on November 1. Under these circumstances, McCabe had a strong reason not to tell Comey on October 31 that he had authorized the disclosure to the WSJ about the CF Investigation: it would have been an admission that McCabe had taken action relating to that investigation at exactly the time that McCabe's recusal from Clinton-related matters was under consideration by Comey. Further, we found it extremely unlikely, as McCabe now claims, that he not only told Comey about his decision to authorize the disclosure, but that Comey thought it was a "good" idea for McCabe to have taken that action.

Sixth, no other senior FBI official corroborated McCabe's testimony that, among FBI executive leadership, "people knew that generally" he had authorized the disclosure. Rather, multiple witnesses identified by McCabe told us that because of the information contained in the WSJ report, they did not believe it was an authorized disclosure. They also said that had they heard about such an authorization they would have recalled it because it would have been so unusual. Other than Special Counsel, *no* witness we interviewed told us that they knew that this disclosure had been authorized at the time. We think it likely that at least

⁹ Just a few days earlier, McCabe had participated in a conference call with then-Attorney General Lynch regarding leaks during which McCabe "heard her use more forceful language" than she had ever used at any other time.

some FBI executives would have been aware of McCabe's authorization if he had told Comey what he had done.

Finally, Comey's testimony that McCabe did not tell him that McCabe had authorized the disclosure to the WSJ is entirely consistent with McCabe's statement to INSD on May 9 that he had "no idea where [the disclosure] came from" or "who the source was," as well as his claim to the OIG on July 28 that he was not aware that Special Counsel had disclosed the information to the WSJ. Conversely, McCabe's claim that he told Comey is not only inconsistent with his May 9 and July 28 statements to the INSD and OIG, respectively, but there would be no reason for McCabe to not tell INSD and OIG about his actions on those dates if he had already admitted them to Comey. Indeed, McCabe contacted the OIG on August 1 to attempt to correct his July 28 testimony only after he was made aware on July 28 that the OIG had text messages from Special Counsel that would likely enable the OIG to soon learn the truth about who authorized Special Counsel's actions.¹⁰

Taking all of these factors into account, we concluded that McCabe did not tell Comey on or around October 31 (or at any other time) that he (McCabe) had authorized the disclosure of information about the CF Investigation to the WSJ. Had McCabe done so, we believe that Comey would have objected to the disclosure. McCabe's disclosure was an attempt to make himself look good by making senior department leadership, specifically the Principal Associate Deputy Attorney General, look bad. While the disclosure may have served McCabe's personal interests in

¹⁰ In a letter submitted by McCabe's counsel after reviewing a draft of this report, McCabe argues that "the OIG should credit Mr. McCabe's account over Director Comey's" and complains that the report "paints Director Comey as a white knight carefully guarding FBI information, while overlooking that Mr. McCabe's account is more credible for at least three key reasons. . . ." The first reason cited by McCabe as to why he should be believed over Comey is because he claims to have a "concrete recollection" of the conversation between the two of them on October 31, while he argues Comey does not. It is noteworthy that McCabe did not articulate such a "concrete recollection" during any of four prior interviews. That is, he did not mention it during his May 9 INSD interview, his July 28 OIG interview, his August 1 OIG call, or his August 18 INSD interview. It was not until his November 29 OIG interview – McCabe's fifth contact with INSD and the OIG about the WSJ article – that he first provided this "concrete recollection" of his conversation with Comey, which if true would have been critical for INSD and the OIG to know as soon as possible and in McCabe's interest to share as soon as possible. As we note in the report, none of the circumstantial evidence supports McCabe's claim, while the overwhelming weight of the circumstantial evidence supports Comey's recollection. In his submission, McCabe presented no evidence to corroborate his version of events. Instead, McCabe focuses entirely on attacking the credibility of Comey's recollection. We found his "concrete recollection" argument without merit. The second reason cited by McCabe as to why he should be believed over Comey is because Comey was distracted at the time because of his need on October 31 to deal with the Weiner laptop and Clinton E-mail Investigation issues. Given the significance of McCabe's disclosure, and the potential impact it had on FBI/DOJ relations, we have little doubt that, no matter how focused Comey was on the Clinton E-mail Investigation or Weiner laptop issues or other matters, Comey would have recalled McCabe telling him that he had been the source of the disclosure, if in fact McCabe had told Comey the truth. Finally, McCabe argues that Comey "would have every incentive to distance himself from this disclosure" due to McCabe's belief that the OIG is reviewing Comey's disclosure of other information to the media. However, McCabe provides no factual basis for this claim and fails to address the corroborating circumstances described in the report that support Comey's recollection. In the absence of any evidence supporting McCabe's claim, we do not credit it.

seeking to rebut the WSJ article on October 23 and to avoid another personally damaging WSJ story on October 30, it did so at the expense of undermining public confidence in the Department as a whole. We do not believe that Comey would have been approving of such a disclosure by McCabe if he had been told about it.

For the same reasons, we reject the suggestion that Comey simply forgot or misremembered what McCabe told him. If McCabe had told Comey that he had authorized this significant disclosure, we believe it would have surprised Comey and that Comey would have remembered it when the OIG interviewed him approximately 1 year later. Similarly, we believe the other FBI executives would have remembered it too had they been told about it.

Comey did not testify that McCabe affirmatively and explicitly denied having authorized the disclosure, but rather that McCabe “in form or fashion” led him to believe that McCabe did not know how the WSJ got the account of the PADAG call, and “definitely didn’t tell [Comey] he authorized it.” The FBI Offense code 2.5 (Lack of Candor – No Oath) does not require an explicit false statement to establish lack of candor. It applies to “the failure to be fully forthright, or the concealment or omission of a material fact/information.” We concluded that McCabe lacked candor in concealing from Comey his role in authorizing the disclosure to the WSJ.¹¹

¹¹ In response to his review of a draft of this report, counsel for McCabe argued that the OIG failed to satisfy the elements of FBI Offense Code 2.5, because McCabe’s statements to then-Director Comey were part of a “casual interaction” and not as the result of “an interaction in which a supervisor was formally questioning an employee regarding his conduct.” We disagree. Comey’s testimony was that McCabe conveyed to Comey, in some form or fashion, that it was not McCabe who had disclosed to the WSJ the August 12 PADAG call confirming the existence of the previously unconfirmed CF Investigation. The OIG does not accept that the FBI’s Offense Code tolerates its Deputy Director’s deceptive statements to the Director on an issue of importance to the Director and the FBI because the Deputy Director’s lack of candor occurred in the context of a work conversation with the Director as opposed to “formal questioning.” In addition, although Offense Code 2.5 (Lack of Candor – No Oath) subjects employees to discipline for “[k]nowingly providing false information when making a verbal or written statement, not under oath, to a supervisor, . . . when the employee is questioned about his conduct or the conduct of another person,” the FBI’s Office of Professional Responsibility has previously taken the position in litigation that, “lack of candor is the generic term which has historically been used in FBI discipline which in its literal meaning means lack of forthrightness[.] . . . It can mean . . . lying to a supervisor, not under oath, about work performance.” See *Ludlum v. Department of Justice*, 278 F.3d 1280, 1284 (Fed. Cir. 2002). Compare FBI Offense Codes 2.10, 2.11 (identifying misconduct relating to employee behavior in a formal “administrative matter,” defined to include “internal disciplinary investigations, OIG investigations, OPR adjudications, or EEO Matters,” as distinguished from the broader “question[ing] about his conduct or the conduct of another person” in Offense Code 2.5). Moreover, the Preamble to the FBI’s Offense Codes and Penalty Guidelines Governing FBI’s Internal Disciplinary Process (Preamble) indicates that the Offense Codes and Penalty Guidelines “provide general categories of misconduct for which employees may be disciplined” and, further, stresses the “heightened behavioral and managerial expectations associated with SES personnel.” Preamble at 2, 4. Accordingly, the OIG stands by its finding that McCabe lacked candor with the Director under Offense Code 2.5 and is subject to disciplinary action for such misconduct.

2. Lack of Candor in Interview under Oath with INSD Agents on May 9, 2017

We concluded that McCabe lacked candor during an INSD interview under oath on May 9, 2017, when he falsely told the agents that he had not authorized the disclosure to the WSJ and did not know who did.

Two INSD investigators [REDACTED] testified to the OIG that they clearly recalled McCabe telling them under oath on May 9 that he did not know who authorized the disclosure of the PADAG call to the WSJ. The agents said that they provided McCabe with a copy of the article and had him initial it, gave him an opportunity to read it, and then discussed it with him. According to the agents, McCabe told them he recalled the article, yet claimed he had “no idea where [the account of the PADAG call] came from” or “who the source was” for it. Moreover, McCabe told the agents that he had previously told others about the August 12 call with PADAG, leaving INSD SSA1 with the impression that INSD would “not [] get anywhere by asking” McCabe how many people could have known about what appeared to be a private conversation between him and PADAG. The agents’ recollections are corroborated by contemporaneous notes of the May 9 interview taken by one of the agents and by the draft SSS that INSD prepared for McCabe’s signature within a few days of the interview (which McCabe never signed, despite INSD’s repeated efforts to get him to do so). Moreover, McCabe’s denial to the INSD agents was consistent with his responses to the OIG during his audio-recorded July 28 interview. We found that these FBI employees – who had nothing to gain and everything to lose if they did anything but tell the truth regarding the interview of the then-FBI Deputy Director – accurately and truthfully recounted the details of what occurred during McCabe’s May 9 interview.

By contrast, McCabe’s account of this May 9 interview, which he provided to the OIG during his November 29 interview, was wholly unpersuasive. McCabe claimed that the INSD agents “must have” gotten it wrong when they wrote that he told them on May 9 that he did not authorize the conversation and that he did not know who the source was. Although McCabe said he did not believe that he denied authorizing the disclosure of the PADAG call during the interview, he could not provide any alternative account about what he actually said. Rather, McCabe stated that he could not remember what he told the INSD investigators. McCabe did not question the competence or good faith of the INSD interviewers, and also admitted that he could not explain why the investigators got the impression that McCabe had told them the WSJ article was an unauthorized leak.¹²

¹² In a letter submitted by his counsel after reviewing a draft of this report, McCabe offers as an explanation for the inconsistent accounts of McCabe and the INSD agents that he was confused about what portion of the October 30 article he was being asked about, citing numerous other facts and quotes from anonymous FBI sources regarding the CF Investigation in the October 30 WSJ article. The investigative record is clear as to the portion of the WSJ article about which the INSD agents were questioning McCabe. According to INSD SSA 1’s contemporaneous notes and testimony to the OIG, INSD specifically drew McCabe’s attention to the portion of the October 30 WSJ article regarding the

However, in an apparent effort to provide an excuse for his untruthful responses to INSD, McCabe sought to portray the discussion about the October 30 article as essentially an afterthought by the agents. We found his description of the circumstances surrounding the interview to be demonstrably false. First, INSD-Section Chief flatly contradicted McCabe's claim that, at the end of an unrelated meeting, as the agents were walking out of his office, one of them (INSD-Section Chief) pulled McCabe aside and asked him a question or two about the October 30 article. Second, INSD-SSA1's two and half pages of notes of the meeting reflected that a significant portion of the interview related specifically to the account of the PADAG call that appeared in the October 30 article. Third, the agent that took the notes (INSD-SSA1) was not the agent (INSD-Section Chief) that McCabe claimed pulled him aside. Indeed, McCabe said that INSD-SSA1 and INSD-SSA2 (who did not attend the May 9 interview) were in the hallway outside of his office when he contends that INSD-Section Chief asked him about the disclosure of the PADAG call in the October 30 article, circumstances that INSD-Section Chief denied. Fourth, McCabe acknowledged that his initials were on a copy of the October 30 article that the agents gave him to review, as reflected in INSD-SSA1's notes.¹³

We also considered whether McCabe simply forgot that he had authorized the WSJ disclosure at the time of his May 9 INSD interview, and therefore made an honest mistake in telling INSD he did not know who did it. In three interviews under oath, including one with outside counsel, McCabe has never made this claim of a failed memory, and in any event we did not find this to be a persuasive explanation for his inaccurate statement given McCabe's other admissions.

First, McCabe acknowledged that the PADAG call was a very memorable event in McCabe's career. It involved a dramatic confrontation between McCabe and the Principal Associate Deputy Attorney General, one of the highest ranking officials in the Department. McCabe told the OIG that, despite his long career in the FBI, he had never had a conversation "like this one" with a high level Department of Justice official before or since August 12, 2016.

Second, McCabe told us this was the one and only time in his career that he authorized a disclosure to the media of an internal discussion with such a high level Department official.

Third, McCabe was deeply involved in the disclosure by Special Counsel to Barrett; this was not a fleeting event but rather one that McCabe was involved in for the entire week. McCabe learned by October 25 about Barrett's intention to write about the CF Investigation. By October 27, McCabe had authorized Special

August 12 PADAG call. SSA 1's testimony was further corroborated by INSD Section Chief who also noted that McCabe said he was disappointed that his conversation with the PADAG had appeared in the October 30 WSJ article. In addition, the draft SSS that the INSD agents sent to McCabe on May 12 stated that McCabe was "requested to evaluate and assess the content and accuracy of the first three paragraphs appearing on the last page" of the copy that McCabe acknowledged contained his initials, which was the portion of the article addressing the August 12 PADAG call.

¹³ McCabe erroneously testified that INSD-SSA2 was present at the May 9 interview, but [REDACTED] was not.

Counsel and AD/OPA to discuss the investigation with Barrett. McCabe then closely followed the progress of their discussions, including having a 51 minute call with Special Counsel on October 27 between Special Counsel's first and second calls that day with Barrett. McCabe also had conversations with Special Counsel on October 28 close in time to her call with Barrett that day. Then, on October 30, the day the article appeared, McCabe called both NY-ADIC and W-ADIC to admonish them for the leaks that appeared in the article. The next day, October 31, McCabe had a conversation with Comey about the article. Finally, on November 4, the day after another WSJ article concerning the CF Investigation, which again included information about the McCabe-PADAG call, McCabe again admonished NY-ADIC for leaks in that article.

Fourth, McCabe viewed the allegations that the WSJ reporter had told Special Counsel and AD/OPA that he would be writing about in the October 30 article as "incredibly damaging" to the credibility of the FBI, as well as an attack on his own integrity. The October 30 WSJ article challenged McCabe's leadership of the FBI directly and personally, specifically his oversight of the CF Investigation. We do not believe McCabe would have forgotten his own actions taken in connection with the publication of an article that was as memorable and personal as this one.

Fifth, McCabe acknowledged that INSD showed him the October 30 WSJ article at the outset of the discussion and gave him an opportunity to read it, and that he initialed the article and told the agents that he remembered it.

In light of the above circumstances, it seems highly implausible that McCabe forgot in May what he recalled in detail during his November OIG testimony: that he made an active choice to authorize Special Counsel and AD/OPA to disclose the PADAG call as the "best evidence" to rebut the assertion that McCabe and the FBI ordered the termination of a criminal investigation due to Department of Justice pressure. We therefore concluded that when McCabe told INSD in May that he did not know who authorized the disclosure to the WSJ, it was not due to a lack of memory. In our view, the evidence is substantial that it was done knowingly and intentionally.

For these reasons, we concluded that McCabe violated FBI Offense Code 2.6 (Lack of Candor – Under Oath) when he falsely told INSD agents on May 9, 2017, that he did not know who authorized the disclosure of the PADAG call to the WSJ.

3. Lack of Candor in Interview under Oath with OIG Investigators on July 28, 2017

We concluded that McCabe lacked candor during his OIG audio-recorded interview under oath on July 28, 2017, when he falsely stated that: (a) he was not aware of Special Counsel being authorized to speak to reporters around October 30 and (b) he did not know, because he was out of town, "where [Special Counsel] was or what she was doing" during the relevant time period.

First, with regard to McCabe's claim that he was not aware of Special Counsel being authorized to speak to reporters around October 30, that claim was

essentially the same false denial that McCabe made to the two INSD agents on May 9, except this time the false denial was made in an audio-recorded interview. Thus, McCabe cannot deny that he made the statement, as he has attempted to do with regard to his May 9 response to INSD agents. Instead, McCabe asserted in his November 29 OIG interview that he “misspoke” during the July 28 interview because he was surprised by the topic being raised during that interview and had not thought about the October 30 article in “quite a long time.” However, McCabe was shown the article and asked questions about it less than 3 months earlier in the May 9 INSD interview. Moreover, in neither the OIG July interview nor the May 9 INSD interview did McCabe indicate that he lacked recollection or needed more time to think about the matter. As Deputy Director, McCabe well knew the significance of OIG and INSD investigations, and of the importance of being truthful when questioned under oath by agents from those Offices. Moreover, McCabe was a trained law enforcement officer with roughly 20 years of law enforcement experience. On this record, we do not credit his claim that his unequivocal denials under oath, on two occasions within 3 months of one another, were the result of being surprised by the questions.

Second, with regard to McCabe’s claim that he did not know where Special Counsel was or what she was doing during the relevant time period, FBI records show that McCabe was in frequent telephone and text communication with Special Counsel during that time period and had several communications with her regarding her calls with Barrett, including a 51 minute call after her first call with Barrett and a 23 minute call after her final call with Barrett. McCabe’s own text messages reflect that McCabe was keenly interested to learn about the results of Special Counsel’s calls with Barrett. We therefore found that McCabe’s claimed ignorance regarding Special Counsel’s activities on those days was demonstrably false.

For these reasons, we concluded that McCabe violated FBI Offense Code 2.6 (Lack of Candor – Under Oath) when he falsely told the OIG on July 28, 2017, that: (a) he was not aware of Special Counsel being authorized to talk to reporters and (b) he did not know what Special Counsel was doing at the relevant time because he was out of town.¹⁴ In reaching this conclusion, we took note of the fact that

¹⁴ In response to review a draft of this report, counsel for McCabe argued that, in asking McCabe about the October 27-30 texts between Special Counsel and DAD regarding the WSJ article, the OIG engaged in improper and unethical conduct, and violated an allegedly explicit agreement with McCabe that when he was interviewed by the OIG on July 28 he would not be questioned outside the presence of counsel with respect to matters for which he was being investigated. McCabe provides no evidence in support of his claim, and based on the OIG’s review of the available evidence, including the transcript of McCabe’s recorded OIG interview on July 28 and the OIG’s contemporaneous notes, as described below, McCabe’s claim is contradicted by the investigative record.

As an initial matter, at the time of the July 28 interview, McCabe was not a subject of an OIG investigation of disclosures in the October 30 WSJ article, nor did the OIG suspect him of having been the source of an unauthorized disclosure of non-public information related to that article. The OIG did not open its investigation of McCabe concerning the WSJ article until August 31, after being informed by INSD that McCabe had provided INSD agents with information on August 18, 2017, that contradicted the information that he had provided to INSD agents on May 9.

Second, the OIG has no record that McCabe stated in advance of the July 28 interview that he was represented by counsel. Moreover, the recording of the July 28 interview shows that at no time

McCabe called the OIG 4 days later, on August 1, and indicated that he had been thinking about the questions he had been asked and believed that he may have authorized Special Counsel to work with AD/OPA and Barrett on the follow-up WSJ article. McCabe's call to the OIG on August 1 to attempt to correct his prior false testimony to the OIG was the appropriate course for him to take, and was a potentially mitigating factor in this misconduct. However, as detailed in the next section, we found that when McCabe was given the opportunity during his November 29 OIG interview to address and acknowledge his prior false statements to the INSD and the OIG, McCabe made additional false statements. Under these circumstances, we concluded that McCabe's August 1 call to the OIG does not alter our factual determination that his sworn testimony on July 28 lacked candor.

4. Lack of Candor in Interview under Oath with OIG Investigators on November 29, 2017

We concluded that McCabe lacked candor during an OIG interview under oath on November 29, 2017, when he falsely told the OIG in a recorded interview that: (a) he told Comey on October 31, 2016, that he (McCabe) had authorized the disclosure to the WSJ and that Comey agreed it was a "good" idea; (b) he did not deny to the INSD agents on May 9 that he had authorized the disclosure to the WSJ; and (c) the May 9 INSD interview occurred at the end of an unrelated meeting

did McCabe give any indication that he was represented by counsel. The transcript of the interview shows that the OIG informed McCabe, who has a law degree, that the interview was about "issues raised by the text messages" between Special Counsel and DAD, and that the OIG would not be asking McCabe questions about "other issues related to your recusal in the McAulliffe investigation . . . or any issues related to that." McCabe responded "Okay" and did not articulate or request any further limitations on the questions he would answer. The OIG added that "This is a voluntary interview. What that means is that if you don't want to answer a question, that's fully within your rights." That "will not be held against you" The recording of McCabe's interview further demonstrates that the OIG was entirely solicitous of McCabe's requests not to respond to certain questions. Towards the end of the interview, before beginning an area of questioning unrelated to Special Counsel/DAD texts or the WSJ article, the OIG prefaced his question to McCabe by stating "if you feel this is connected to the things that are making you uncomfortable, will you let me know?" McCabe responded, "Yes. Yeah, you can ask, I'll let you . . . If I don't feel comfortable going forward, I'll let you know." At a later point in the interview, after answering a number of questions unrelated to Special Counsel/DAD texts, McCabe expressed a preference for not answering further questions, and the OIG did not ask further questions on the topic.

Third, McCabe's submission mischaracterizes an October 4, 2017, email exchange with the OIG as evidencing that at the time of McCabe's July 28 OIG interview, McCabe was the subject of an OIG leak investigation. As noted above, the OIG did not know about McCabe's involvement in the disclosure to the WSJ at the time of the July 28 interview, and only opened an investigation into his actions related to that disclosure on August 31, 2017, after the lack of candor referral to the OIG by INSD.

Lastly, despite having been questioned at length by the OIG on November 29, 2017, about the reasons for his false statements to the OIG on July 28, McCabe never once raised any of these issues. Moreover, the same counsel who submitted on behalf of McCabe these accusations of impropriety by the OIG was present for the entire OIG interview on November 29 yet never once raised any of these issues. McCabe had every incentive to raise these issues as early as possible, and surely on November 29, when he was represented by counsel and was asked pointed questions by the OIG about his July 28 testimony denying that Special Counsel had been authorized to speak to reporters during that time period. McCabe did not do so until nearly 7 months after the July 28 interview and nearly 3 months after the November 29 interview.

when one of the INSD agents pulled him aside and asked him one or two questions about the October 30 article.

First, with regard to his claim of having told Comey that he had authorized the disclosure, Comey stated precisely the opposite in his OIG interview, and the chronology and circumstances then existing (as described above) make it extraordinarily unlikely that McCabe did so and that Comey would simply have agreed after the fact with McCabe's disclosure and thought it was a good idea. As detailed above, the overwhelming weight of evidence supported Comey's version of the conversation and not McCabe's.

Second, with regard to McCabe's claim that he did not deny authorizing the disclosure to the WSJ during the May 9 INSD interview, as noted previously the testimony of the INSD agents, the contemporaneous notes of the interview, the draft Signed Sworn Statement prepared 3 days later, and the similar false statements made by McCabe to the OIG on July 28 wholly undercut the contention by McCabe to the OIG on November 29.

Third, as explained above in Section A.2., we found that McCabe's description of the May 9 INSD interview about the October 30 WSJ article as essentially an afterthought, involving only a question or two from one of the INSD agents as the meeting was ending, was demonstrably false.

As such, we concluded that McCabe's testimony to the OIG lacked candor and violated FBI Offense Code 2.6 (Lack of Candor- Under Oath) when he falsely testified on November 29, 2017, that: (a) he told Comey on October 31, 2016, that he (McCabe) had authorized the disclosure to the WSJ and that Comey agreed it was a "good" idea; (b) he did not deny to the INSD agents on May 9 that he had authorized the disclosure to the WSJ; and (c) the May 9 INSD interview occurred at the end of an unrelated meeting when one of the INSD agents pulled him aside and asked him one or two questions about the October 30 article.

B. Media Policies

As the FBI's Deputy Director, McCabe was authorized to disclose the existence of the CF Investigation if the "public interest" exception found in Section 3.4 of the FBI's then-existing Policy on Media Relations applied. Similarly, the Department's U.S. Attorneys' Manual included a public interest exception to the general prohibition on disclosing information about an ongoing criminal investigation. However, we concluded that McCabe's decision to confirm the existence of the CF Investigation through an anonymously sourced quote, recounting the content of a phone call with a senior Department official in a manner designed to advance his personal interests, was clearly not within the public interest exception. We therefore concluded that McCabe's disclosure of the existence of an ongoing investigation in this manner violated the FBI's and the Department's media policy and constituted misconduct.

As an initial matter, we found entirely unpersuasive McCabe's claim to us that he did not view the disclosure to the WSJ about the PADAG call as disclosing

the existence of the CF Investigation, and that therefore the FBI's prohibitions on commenting about a case did not apply. He asserted that was not the purpose of the disclosure and "there really wasn't any discussion of the case, of the merits of the case, the targets and subjects of the case, so I did not see it as a disclosure about the Clinton Foundation case." We found this explanation lacking in credibility. The sole purpose for authorizing Special Counsel's and AD/OPA's disclosure about the August 12 PADAG conversation was to make the point that McCabe had stood up to the Department so that the FBI could continue to pursue its "validly predicated" CF Investigation. The only possible conclusion that anyone could take from such a disclosure was confirmation that the FBI was conducting a CF Investigation, a fact Comey had pointedly refused to confirm in public testimony several months earlier. McCabe himself acknowledged in his OIG testimony that his authorization of the disclosure of the PADAG call "clearly creates" the effect of confirming the existence of the CF Investigation. We therefore concluded that FBI and Department policies were plainly applicable to the disclosure.

In our view, McCabe's best argument that his decision to disclose the August 12 conversation was at least arguably consistent with the public interest exception in the FBI and Department policies is that it was in the public interest for the FBI to rebut the allegation, from unnamed sources, that FBI leadership had shut down or suppressed the CF Investigation because of improper pressure from the Department. This allegation was described by the WSJ reporter to Special Counsel and AD/OPA in the October 27 call and was ultimately reported in the October 30 WSJ article and in other press accounts.¹⁵ However, the manner in which McCabe addressed the anonymous allegations about the FBI's and the Department's handling of the CF Investigation reflected that McCabe was motivated to defend his integrity and objectivity in relation to the CF Investigation, which had been called into question, and not to advance any public interest.

Had McCabe's primary concern actually been to reassure the public that the FBI was pursuing the CF Investigation despite the anonymous claims in the article, the way that the FBI and the Department would usually accomplish that goal is through a public statement reassuring the public that the FBI is investigating the matter. Of course, that would have required McCabe to alert Comey to the reporter's inquiry and to defer to Comey's and the Department's judgment as to whether the "public interest" exception applied and, even if it did, whether any such statement would be appropriate within days of the election.¹⁶ McCabe did not follow that course. Instead, McCabe, without consulting Comey, authorized disclosure of the PADAG call on background to one news organization that was

¹⁵ See, e.g., *FBI Agents Pressed Unsuccessfully for Probe of Clinton Foundation*, Washington Post (Oct 30, 2016).

¹⁶ Moreover, had McCabe raised the issue with Comey at that time, we believe the same considerations that led Comey to exclude McCabe from the October 27 telephone call, and to McCabe's formal recusal on November 1 from the CF Investigation, would have caused Comey to prohibit McCabe from participating in any such discussions. Indeed, as discussed above, FBI-GC stated that, had McCabe conferred with him on this matter, he would have counseled McCabe to avoid anything related to the CF Investigation, including authorizing disclosures to the press, given FBI-GC's and Comey's pending concerns about McCabe's potential appearance issues on Clinton-related matters.

directed primarily at enhancing McCabe's reputation at the expense of PADAG. Rather than reassuring the public, the disclosure led to further questions about leaks emanating from the FBI within days of an election, was part of a WSJ story that was predictably headlined, "FBI, Justice Feud in Clinton Probe," and resulted in another WSJ article on November 3.

In his testimony to the OIG, Comey disputed the notion that this disclosure was "in the best interest of the FBI." Comey acknowledged that one could argue that the disclosure shows that FBI leadership "is battling the pencil-pushing bureaucrats across the street [at Main Justice]" and "trying to do the right thing by way of the investigators in New York and Andy [McCabe] is their champion," but Comey said he "wouldn't have bought this argument" because it is outweighed by the fact that the disclosure would confirm the existence of a criminal investigation and harm FBI-DOJ relations. Likewise, FBI-GC told us that the problem with the disclosure was that "to put it bluntly, it throws DOJ under the bus," while accomplishing very little in terms of countering the narrative that the FBI was politically motivated. In FBI-GC's view, disclosure of this single conversation amounted to "a lower level effort to influence the narrative when the narrative is at a much higher level and going at a trajectory that it was not possible to change through something like this."

The FBI senior executives we interviewed suspected that this disclosure was an unauthorized leak because it disclosed a high-level conversation that appeared to serve McCabe at the expense of making DOJ look bad. As McCabe's own Chief of Staff stated:

I just can't imagine that the Deputy would have authorized the leak. It just doesn't seem to serve, I mean, I guess it serves, it serves the purpose of the Deputy by saying, hey look, do you want us to shut this thing down? I guess it serves Andy in that way, but it really, it really highlights a dysfunction between the FBI and the, and DOJ. And to that end, it doesn't really serve the greater good.

We also found that McCabe's actions contemporaneous with the disclosure in October 2016, as well as those following it, reflected an understanding by McCabe that his authorization of the disclosure was not consistent with FBI policy. For example, on October 30 and November 4, following publication of the WSJ articles referencing his authorized disclosure about the PADAG conversation, McCabe called the NY-ADIC to complain about the CF Investigation leaks contained in those stories, without mentioning that he had authorized an anonymous disclosure rebutting the leaks and confirming the CF Investigation. Then, when questioned about the disclosure by INSD agents in May 2017, McCabe issued false denials regarding his involvement in it. Further, after it became apparent that the OIG knew about his role in the disclosure, McCabe sought to legitimize his actions by falsely claiming that he had told Comey that he authorized the disclosure and that Comey was fine with his decision.

We are mindful that McCabe was responding to anonymous, unauthorized leaks about the CF Investigation that may have originated from current or former

FBI agents. However, ongoing, non-public FBI investigations are sometimes the subject of media reports, yet the FBI's official response to such reports is typically to refuse to confirm or deny the existence of the investigation, as then-Director Comey did in his July Congressional testimony. Moreover, the FBI never officially confirms the existence of an ongoing criminal investigation through an anonymously quoted source. We concluded that McCabe's decision to confirm the existence of the CF Investigation through an anonymously sourced quote in the WSJ, recounting the content of a telephone conversation between him and a Department official, served only to advance McCabe's personal interests and not the public interest, as required by FBI policy. We therefore found that his actions violated applicable FBI and Department policies and constituted misconduct.¹⁷

C. Conclusion

As detailed in this report, the OIG found that then-Deputy Director Andrew McCabe lacked candor, including under oath, on multiple occasions in connection with describing his role in connection with a disclosure to the WSJ, and that this conduct violated FBI Offense Codes 2.5 and 2.6. The OIG also concluded that McCabe's disclosure of the existence of an ongoing investigation in the manner described in this report violated the FBI's and the Department's media policy and constituted misconduct.

The OIG is issuing this report to the FBI for such action that it deems to be appropriate.

¹⁷ We note also that section 1-7.530 of the USAM required McCabe to "consult and obtain approval from the United States Attorney or Department Division handling the matter prior to disseminating any information to the media." Because we concluded that the disclosure was not authorized by FBI and Department policies, we did not need to assess how this specific USAM provision impacted McCabe's action.



The Department of Justice Office of the Inspector General (DOJ OIG) is a statutorily created independent entity whose mission is to detect and deter waste, fraud, abuse, and misconduct in the Department of Justice, and to promote economy and efficiency in the Department's operations.

To report allegations of waste, fraud, abuse, or misconduct regarding DOJ programs, employees, contractors, grants, or contracts please visit or call the **DOJ OIG Hotline** at oig.justice.gov/hotline or (800) 869-4499.

U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL

950 Pennsylvania Avenue, Northwest
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Washington, DC 20530-0001

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U.S. Department of Justice

Office of the Inspector General

December 21, 2018

Anne L. Weismann
aweismann@citizensforethics.org

Subject: Freedom of Information/Privacy Act Request [19-OIG-102]

Dear Ms. Weismann:

This is in response to your March 19, 2018 request to the Federal Bureau of Investigation (FBI) under the Freedom of Information Act (FOIA). Specifically, your request seeks “all documents related to any investigation or inquiry conducted by the FBI’s Office of Professional Responsibility (“OPR”) of, involving, or relating to former FBI Deputy Director Andrew McCabe, who was fired by Attorney General Sessions on March 16, 2017.” The FBI located records that originated with the Department of Justice Office of the Inspector General (OIG) and referred those records to our office for direct response to you.

This is a partial response to your request. We have determined that certain portions of the records should be withheld from disclosure pursuant to FOIA exemptions (b)(6), which protects information about individuals that would constitute a clearly unwarranted invasion of personal privacy; (b)(7)(A), which protects records or information compiled for law enforcement purposes to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings; (b)(7)(C), which protects records or information compiled for law enforcement purposes to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy; and (b)(7)(E), which protects records or information compiled for law enforcement purposes to the extent that production of such records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. Consequently, please find enclosed that information which can be released pursuant to your request.

We are aware that this matter is in litigation and we will continue to process the referred records as expeditiously as possible and in compliance with all applicable court orders.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Deborah Waller at (202) 616-0646 for any further assistance of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at 1-877-684-6448.

Sincerely,

Ofelia C. Perez

Ofelia C. Perez
Government Information Specialist
Office of the General Counsel

Enclosure

(b) (6), (b) (7)(A), (b) (7)(C) Transcript
and Notes

(b) (6), (b) (7)(A), (b) (7)(C)

263D-1HQ- (b) (6), (b) (7)(C) 12

1 UNITED STATES DEPARTMENT OF JUSTICE

2 OFFICE OF THE INSPECTOR GENERAL

3
4 -----X
5 IN RE: :

6 INTERVIEW OF (b) (6), (b) (7)(A), (b) (7)(C) :
7 -----X

8 (b) (6), (b) (7)(A), (b) (7)(C)

9 Washington, D.C.

10 Interview of

11 (b) (6), (b) (7)(A), (b) (7)(C)

12
13 By the U.S. Department of Justice, Office of the Inspector
14 General, at the Department of Justice Building, beginning
15 at 2:30 p.m. before:

16
17 FOR THE OFFICE OF THE INSPECTOR GENERAL:

18 (b) (6), (b) (7)(C), Oversight and Review Division

19 (b) (6), (b) (7)(C) Oversight and Review Division
20

21 FOR THE WITNESS:

22 NONE
23
24
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Page 2

	I N D E X	
	EXHIBITS	
	EXHIBIT NUMBER	PAGE NUMBER
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4	None.	
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17	(b) (6), (b) (7)(A), (b) (7)(C) Currently, I am assigned to FBI
18	Headquarters Inspection Division, Internal Investigations
19	Section, as a Supervisory Special Agent.
20	(b) (6), (b) (7)(A), (b) (7)(C)
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Page 14

1 (b) (6), (b) (7)(A), (b) (7)(C)
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]

5 (b) (6), (b) (7)(A), (b) (7)(C) And this
 6 actually, as I understand it, is our notes from an
 7 interview with Mr. McCabe.

8 (b) (6), (b) (7)(A), (b) (7)(C) Um-hmm.

9 (b) (6), (b) (7)(C) Andrew G. McCabe. And just for
 10 the record, it is a three-page document, handwritten notes
 11 dated in the upper-right corner 5-slash-9-slash-17, 2:30
 12 P, for p.m. I believe.

13 (b) (6), (b) (7)(A), (b) (7)(C) Yes.

14 (b) (6), (b) (7)(A), (b) (7)(C)
 15 (b) (6), (b) (7)(A), (b) (7)(C) Um-hmm.

16 (b) (6), (b) (7)(C) Do you recognize this handwriting?

17 (b) (6), (b) (7)(A), (b) (7)(C) Yes, I do.

18 (b) (6), (b) (7)(C) Are these your handwritten notes?

19 (b) (6), (b) (7)(A), (b) (7)(C) Yes, they are my handwritten notes.

20 (b) (6), (b) (7)(A), (b) (7)(C)
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 16

1 (b) (6), (b) (7)(A), (b) (7)(C)
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]

16 (b) (6), (b) (7)(C) So then what prompted you or
 17 (b) (6), (b) (7)(A), (b) (7)(C) to discuss the October 30th, 2016 Wall
 18 Street Journal article at this interview?

19 (b) (6), (b) (7)(A), (b) (7)(C)
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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1 (b) (6), (b) (7)(A), (b) (7)(C)
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 17

1 (b) (6), (b) (7)(A), (b) (7)(C)
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]

6 (b) (6), (b) (7)(A), (b) (7)(C) And
 7 she brought out the article from the Wall Street Journal
 8 and handed it to him.

9 (b) (6), (b) (7)(A), (b) (7)(C)
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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 20 (b) (6), (b) (7)(C) But do you see how this one
 21 document you're looking at --
 22 (b) (6), (b) (7)(A), (b) (7)(C)
 23 (b) (6), (b) (7)(A), (b) (7)(C) but it does
 24 appear to have his initials (b) (6), (b) (7)(A), (b) (7)(C)
 25 (b) (6), (b) (7)(A), (b) (7)(C) Yes. And I would venture a guess

Page 23

1 (b) (6), (b) (7)(A), (b) (7)(C)
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 25 (b) (6), (b) (7)(C) Okay. So the first page in your

Page 25

1 why. Because this is the one that was provided to him by
 2 (b) (6), (b) (7)(A), (b) (7)(C)
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1 (b) (6), (b) (7)(C) -- that he is saying he remembers
 2 this and that it was an accurate conversation with (b) (6), (b) (7)(C)
 3 (b) (6), (b) (7)(C) the Principal Deputy Attorney
 4 General.
 5 (b) (6), (b) (7)(A), (b) (7)(C) Um-hmm. Yeah, I think I mention
 6 here, read article during interview that he, we paused and
 7 let him read, read the article. I mean, he read the
 8 article, not just that piece. (b) (6), (b) (7)(A), (b) (7)(C)
 9 (b) (6), (b) (7)(A), (b) (7)(C)
 10 (b) (6), (b) (7)(C) And then do the next two entries
 11 in your notes reflect that he, Mr. McCabe stated that he
 12 read the article when it came out and he remembered this?
 13 (b) (6), (b) (7)(A), (b) (7)(C) Yeah. That he had read it when it
 14 came out. (b) (6), (b) (7)(A), (b) (7)(C)
 15 (b) (6), (b) (7)(A), (b) (7)(C)
 16 (b) (6), (b) (7)(A), (b) (7)(C)
 17 (b) (6), (b) (7)(A), (b) (7)(C)
 18 (b) (6), (b) (7)(A), (b) (7)(C) And he, is he indicating
 19 that those, the last three paragraphs that you directed
 20 his attention were an accurate conversation?
 21 (b) (6), (b) (7)(A), (b) (7)(C): Yes. He remembered this, and I
 22 even put that in quotations. And accurate conversation,
 23 yes.
 24 (b) (6), (b) (7)(C) So when he said he remembered

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1 this, you think this is the article?
 2 (b) (6), (b) (7)(A), (b) (7)(C): I think he's talking about the
 3 article. Yes.
 4 (b) (6), (b) (7)(A), (b) (7)(C)
 5 (b) (6), (b) (7)(A), (b) (7)(C)
 6 (b) (6), (b) (7)(A), (b) (7)(C)
 7 (b) (6), (b) (7)(A), (b) (7)(C)
 8 (b) (6), (b) (7)(A), (b) (7)(C)
 9 (b) (6), (b) (7)(A), (b) (7)(C)
 10 (b) (6), (b) (7)(A), (b) (7)(C)
 11 (b) (6), (b) (7)(A), (b) (7)(C)
 12 (b) (6), (b) (7)(A), (b) (7)(C)
 13 (b) (6), (b) (7)(A), (b) (7)(C)
 14 (b) (6), (b) (7)(A), (b) (7)(C)
 15 (b) (6), (b) (7)(A), (b) (7)(C)
 16 (b) (6), (b) (7)(A), (b) (7)(C)
 17 (b) (6), (b) (7)(A), (b) (7)(C)
 18 (b) (6), (b) (7)(A), (b) (7)(C)
 19 (b) (6), (b) (7)(A), (b) (7)(C)
 20 (b) (6), (b) (7)(A), (b) (7)(C)
 21 (b) (6), (b) (7)(A), (b) (7)(C)
 22 (b) (6), (b) (7)(A), (b) (7)(C)
 23 (b) (6), (b) (7)(C) And who is, is anyone saying no
 24 idea where it came from? What's that notation?
 25 (b) (6), (b) (7)(A), (b) (7)(C) I believe, if memory serves me,

Page 28

1 that would be Mr. McCabe telling us that he had no idea
 2 where it came from what the source was from it.
 3 (b) (6), (b) (7)(A), (b) (7)(C)
 4 (b) (6), (b) (7)(A), (b) (7)(C)
 5 (b) (6), (b) (7)(A), (b) (7)(C)
 6 (b) (6), (b) (7)(A), (b) (7)(C)
 7 (b) (6), (b) (7)(C), (b) (7)(A) I remember that it was very, the
 8 whole interaction was very short, you know, with, with
 9 this article.
 10 (b) (6), (b) (7)(A), (b) (7)(C)
 11 (b) (6), (b) (7)(A), (b) (7)(C)
 12 (b) (6), (b) (7)(A), (b) (7)(C)
 13 (b) (6), (b) (7)(A), (b) (7)(C)
 14 (b) (6), (b) (7)(A), (b) (7)(C)
 15 (b) (6), (b) (7)(C) Roughly how much time was spent in
 16 total on this Wall Street Journal article discussion?
 17 (b) (6), (b) (7)(C), (b) (7)(A) If memory serves me, about five to
 18 seven minutes.
 19 (b) (6), (b) (7)(C) Okay.
 20 (b) (6), (b) (7)(C), (b) (7)(A) Because we, I, I don't know about
 21 (b) (6), (b) (7)(A), (b) (7)(C) but I walked in with the anticipation that he,
 22 he was a victim of that as well.
 23 (b) (6), (b) (7)(C) Um-hmm.
 24 (b) (6), (b) (7)(A), (b) (7)(C) And, you know, I, we present it to

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1 him, and he said that, no, he, he wasn't aware of the, the
 2 nature of it. He wasn't, he didn't know, when he read it,
 3 he, or the second time he recognized it, he didn't, he
 4 didn't know about the article. He didn't know who gave it
 5 out. He didn't authorize it. He didn't direct anybody to
 6 give it out. But it was like a flowing, did you, were you
 7 aware, did you authorize somebody? It was like a, I
 8 didn't even need notes on that part because what I
 9 reflected in his statement afterwards, along with his
 10 changes, was just like one paragraph that said, hey, we
 11 showed it to him, and, and again, he's the victim. He
 12 didn't know about this. He didn't authorize it. He
 13 didn't know who was the one that, who the source of the
 14 article was.
 15 (b) (6), (b) (7)(C) So a victim of the, of a leak,
 16 what seemed to be a leak.
 17 (b) (6), (b) (7)(A), (b) (7)(C)
 18 (b) (6), (b) (7)(A), (b) (7)(C) He just said that he
 19 didn't know, and it was my interpretation that, well if
 20 you didn't know, you didn't authorize it. (b) (6), (b) (7)(A), (b) (7)(C)
 21 (b) (6), (b) (7)(A), (b) (7)(C)
 22 (b) (6), (b) (7)(A), (b) (7)(C)
 23 (b) (6), (b) (7)(A), (b) (7)(C)
 24 (b) (6), (b) (7)(A), (b) (7)(C)
 25 (b) (6), (b) (7)(A), (b) (7)(C)

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 11 (b) (6), (b) (7)(A), (b) (7)(C) he almost, like, waved away when I said well, there's
 12 no way I can, I can remember how many people were in there
 13 or how many people I told the story to, because I had
 14 related the story so many times that I couldn't, he
 15 couldn't even begin to tell me how many people he told
 16 about. So, it's almost to me got the impression that I'm
 17 not going to get anywhere asking him, well, how many know
 18 of this, because he's told so many people about it
 19 already.
 20 And again, it was still, he's the victim. (b) (6), (b) (7)(A), (b) (7)(C)
 21 (b) (6), (b) (7)(A), (b) (7)(C)
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 14 (b) (6), (b) (7)(C) So does that paragraph that you
 15 just read, does that reflect an accurate statement that
 16 Mr. McCabe made to you at the time of the May 9th
 17 interview?
 18 (b) (6), (b) (7)(A), (b) (7)(C) That accurately reflects the
 19 information that he conveyed to me. (b) (6), (b) (7)(A), (b) (7)(C)
 20 (b) (6), (b) (7)(A), (b) (7)(C)
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1 (b) (6), (b) (7)(A), (b) (7)(C)
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1 (b) (6), (b) (7)(A), (b) (7)(C)
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1 (b) (6), (b) (7)(A), (b) (7)(C)
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1 (b) (6), (b) (7)(A), (b) (7)(C)
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1 (b) (6), (b) (7)(A), (b) (7)(C)
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1 (b) (6), (b) (7)(A), (b) (7)(C)
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1 (b) (6), (b) (7)(A), (b) (7)(C)
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1 (b) (6), (b) (7)(A), (b) (7)(C)
 2 (b) (6), (b) (7)(A), (b) (7)(C)
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 6
 7 (b) (6), (b) (7)(A), (b) (7)(C) And in light of
 8 what has transpired with the (b) (6), (b) (7)(A), (b) (7)(C) interview (b) (6), (b) (7)(A), (b) (7)(C)
 9 (b) (6), (b) (7)(A), (b) (7)(C)
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 17
 18 (b) (6), (b) (7)(A), (b) (7)(C) I want to look, I
 19 want to show you this article. (b) (6), (b) (7)(A), (b) (7)(C)
 20 (b) (6), (b) (7)(A), (b) (7)(C)
 21 (b) (6), (b) (7)(A), (b) (7)(C) I want to ask you about this article because
 22 we're, we're having conflicting information. And so I
 23 need to know from you, did you authorize this article?
 24 (b) (6), (b) (7)(A), (b) (7)(C) Did you authorize it?
 25 And he looked at it, and he read it. And as

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1 nice as could be, he said yep. Yep, I did. (b) (6), (b) (7)(A), (b) (7)(C)

2 (b) (6), (b) (7)(A), (b) (7)(C)

3 (b) (6), (b) (7)(A), (b) (7)(C)

4 (b) (6), (b) (7)(A), (b) (7)(C)

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10 (b) (6), (b) (7)(A), (b) (7)(C)

11 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

12 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

13 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

14 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

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16 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

17 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

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19 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

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21 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

22 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

23 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

24 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

25 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

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1 (b) (6), (b) (7)(A), (b) (7)(C), (b) (7)(E)

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19 (b) (6), (b) (7)(A), (b) (7)(C)

20 (b) (6), (b) (7)(A), (b) (7)(C)

21 (b) (6), (b) (7)(A), (b) (7)(C)

22 (b) (6), (b) (7)(A), (b) (7)(C) I remember saying to him, at, I

23 said, sir, you understand that we put a lot of work into

24 this based on what you've told us. I mean, and I even

25 said, long nights and weekends working on this, trying to

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1 find out who amongst your ranks of trusted people would,

2 would do something like that. And he kind of just looked

3 down, kind of nodded, and said, yeah, I'm sorry.

4 (b) (6), (b) (7)(A), (b) (7)(C)

5 (b) (6), (b) (7)(A), (b) (7)(C)

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22 (b) (6), (b) (7)(A), (b) (7)(C)

23 (b) (6), (b) (7)(A), (b) (7)(C)

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25 (b) (6), (b) (7)(A), (b) (7)(C)

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23 (b) (6), (b) (7)(A), (b) (7)(C)

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 16 (b) (6), (b) (7)(C) And his response to you after you
 17 gave him the article and you mentioned that you guys were
 18 getting conflicting info, you said his response was yep,
 19 yep, I did. What again was the question that you posed to
 20 him exactly? Did he authorize --
 21 (b) (6), (b) (7)(A), (b) (7)(C) Yes.
 22 (b) (6), (b) (7)(A), (b) (7)(C)
 23 (b) (6), (b) (7)(A), (b) (7)(C) Did you authorize, and I,
 24 the last page that we're looking at, did you, did you, did
 25 you authorize that? And he read it, and yes. (b) (6), (b) (7)(A), (b) (7)(C)

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<p>1 (b) (6), (b) (7)(A), (b) (7)(C)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 And then when I asked him about that, that part</p> <p>9 there where, you know, about that telephone conversation,</p> <p>10 he did say, yeah, he did say that, I don't recall</p> <p>11 specifically authorizing that, or telling that, but I said</p> <p>12 were you, you know, is that your authorization? And</p> <p>13 again, he still, he took, he took responsibility, or he</p> <p>14 took ownership of it.</p> <p>15 (b) (6), (b) (7)(A), (b) (7)(C)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 (b) (6), (b) (7)(A), (b) (7)(C)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 (b) (6), (b) (7)(A), (b) (7)(C)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 (b) (6), (b) (7)(A), (b) (7)(C), he, you have in quotes, okay with it?</p> <p>24 (b) (6), (b) (7)(A), (b) (7)(C) Yeah. That's his quote.</p> <p>25 (b) (6), (b) (7)(A), (b) (7)(C)</p>	<p>1 (b) (6), (b) (7)(A), (b) (7)(C)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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23 (b) (6), (b) (7)(A), (b) (7)(C) when I put in here in quotes, okay
24 with it. It must have been a question something like how
25 do you feel about that now, in hindsight? Well, how do

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1 you feel about this, this information and the, and the
2 level of, you know, detail in this? And he said he's okay
3 with it. (b) (6), (b) (7)(A), (b) (7)(C)
4 (b) (6), (b) (7)(A), (b) (7)(C)
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9 (b) (6), (b) (7)(A), (b) (7)(C)
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 14
 15 (b) (6), (b) (7)(A), (b) (7)(C) And I remember that
 16 (b) (6), (b) (7)(A), (b) (7)(C) sent it out, but she didn't send it to (b) (6), (b) (7)(A), (b) (7)(C)
 17 Andrew McCabe, sent it to the wrong (b) (6), (b) (7)(A), (b) (7)(C)
 18 (b) (6), (b) (7)(A), (b) (7)(C)
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1 CERTIFICATE
 2 DEPOSITION SERVICES, INC. hereby certifies that
 3 the foregoing pages represent an accurate transcript of
 4 the electronic sound recording of the proceedings before
 5 the Department of Justice, Office of Inspector General in
 6 the matter of:
 7
 8 Interview of (b) (6), (b) (7)(A), (b) (7)(C)
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 13 (b) (6), (b) (7)(C) Transcriber
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(b) (6), (b) (7)(A), (b) (7)(C)



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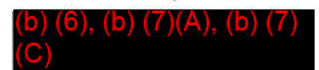


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U.S. Department of Justice

Office of the Inspector General

February 25, 2019

Anne L. Weismann
aweismann@citizensforethics.org

Subject: Freedom of Information/Privacy Act Request [19-OIG-102]

Dear Ms. Weismann:

This is in response to your March 19, 2018 request to the Federal Bureau of Investigation (FBI) under the Freedom of Information Act (FOIA). Specifically, your request seeks “all documents related to any investigation or inquiry conducted by the FBI’s Office of Professional Responsibility (“OPR”) of, involving, or relating to former FBI Deputy Director Andrew McCabe, who was fired by Attorney General Sessions on March 16, 2017.” The FBI located records that originated with the Department of Justice Office of the Inspector General (OIG) and referred those records to our office for direct response to you.

This is a partial response to your request, supplementing a partial response we previously made to you on December 21, 2018. We have determined that certain portions of the records should be withheld from disclosure pursuant to FOIA exemptions (b)(6), which protects information about individuals that would constitute a clearly unwarranted invasion of personal privacy; (b)(7)(A), which protects records or information compiled for law enforcement purposes to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings; (b)(7)(C), which protects records or information compiled for law enforcement purposes to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy; and (b)(7)(E), which protects records or information compiled for law enforcement purposes to the extent that production of such records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. Consequently, please find enclosed that information which can be released pursuant to your request.

We are aware that this matter is in litigation and we will continue to process the referred records as expeditiously as possible and in compliance with all applicable court orders.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Deborah Waller at (202) 616-0646 for any further assistance of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at 1-877-684-6448.

Sincerely,

Ofelia C. Perez

Ofelia C. Perez
Government Information Specialist
Office of the General Counsel

Enclosure

DO L. GABE
REINTERVIEW

(1-3)

5/9/17 2:30P

W/ SC (b) (6), (b) (7)(A),
(b) (7)(C)

(b) (6), (b) (7)(A), (b) (7)(C)

WST/DELL W. BARRETT ARTICLE (EXHIBIT #15)

PROVIDED W/ ARTICLE FOR REVIEW.

LAST Pg. 1-3 PARAGRAPHS.

READ ARTICLE - DURING INTERVIEW.

← READ WHEN CAME OUT.

(b) (7)(A)

AFTER READING PR
REMEMBERED THIS -

ACCURATE → CONVERSATION

(b) (6), (b) (7)(C)

PRIN - DAL SALLY BATES (RUGBY HAWK)

(b) (7)(A)

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(b) (6), (b) (7)(A), (b) (7)(C)

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2-2

(b) (6), (b) (7)(A), (b) (7)(C)



(b) (6), (b) (7)(A), (b) (7)(C)



OLD STORY OF INTERACTION —
MULTIPLE PEOPLE —

(b) (7)(A)



3-3

(b) (6), (b) (7)(A), (b) (7)(C)



MCCABE

08/18/2017

DID AUTHORE - BACKGROUND

DO OFFICE, SDOO
W/SSA

(b) (6), (b) (7)
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[REDACTED]

*

Authored -

(b) (6), (b) (7)(A), (b) (7)(C)

FOR INFO IN
BARRETT'S ALICES
0130/10

(b) (6), (b) (7)(A), (b) (7)(C)

[REDACTED]

OK WITH IT... → MCCABE RE CONTENTS OF ALICES

(b) (6), (b) (7)(A), (b) (7)(C)

[REDACTED]

(b) (6), (b) (7)(A), (b) (7)(C)



ADJ. MCCABE THAT IT'S WOULD TAKEN A
DIFFERENT COURSE HE HAD TOLD ME
& SC (b) (6), (b) (7)(A), (b) (7)(C) THAT HE AUTHORIZED THE
ARTICLE IN WEST -

SAID "I KNOW" BUT THERE WAS ALST
WENT ON AT THE TIME.

TOLD HIM A LOT OF EFFORT THE WEEKENDS
SPENT ON TRY TO ID THE LEADER -
SAID - "Sorry"

(b) (7)(A)



KOBRE & KIM LLP

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WASHINGTON, DC 20036
WWW.KOBREKIM.COM

TEL +1 202 664 1900

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SAN FRANCISCO
MIAMI
CAYMAN ISLANDS
BVI

(b) (6), (b) (7)(A), (b) (7)(C)

CONFIDENTIAL FOIA TREATMENT REQUESTED

BY ELECTRONIC MAIL

Michael E. Horowitz
Inspector General
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Draft Report Regarding FBI Deputy Director Andrew G. McCabe

Dear Mr. Horowitz:

Thank you for providing us with the opportunity to review the draft report (the "Draft Report") prepared by the Office of the Inspector General ("OIG") relating to FBI Deputy Director Andrew G. McCabe, (b) (6), (b) (7)(A), (b) (7)(C)

(b) (6), (b) (7)(A), (b) (7)(C)



CONFIDENTIAL FOIA TREATMENT REQUESTED

We request that this submission be handled confidentially pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a.

263D-HQ- (b) (6), (b) (7)(C) -5

Michael E. Horowitz

(b) (6), (b) (7)(A), (b) (7)(C)

Page 2.

I. Mr. McCabe's July 28, 2017 OIG Interview By Assistant Inspector General (b) (6), (b) (7)(C)

As discussed in further detail below, (b) (6), (b) (7)(A), (b) (7)(C) questioning of Mr. McCabe during the July 28, 2017 OIG interview was improper, unethical, and violated his explicit agreement with Mr. McCabe that he would not be questioned outside the presence of counsel with respect to the matters for which he was being investigated. (b) (6), (b) (7)(A), (b) (7)(C)

(b) (6), (b) (7)(A), (b) (7)(C)

CONFIDENTIAL FOIA TREATMENT REQUESTED

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Michael E. Horowitz

(b) (6), (b) (7)(A), (b) (7)(C)

Page 3

(b) (6), (b) (7)(A), (b) (7)(C)



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(b) (6), (b) (7)(A), (b) (7)(C)

Page 4

(b) (6), (b) (7)(A), (b) (7)(C)



(b) (6), (b) (7)(A), (b) (7)(C)

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(b) (6), (b) (7)(A), (b) (7)(C)

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(b) (6), (b) (7)(A), (b) (7)(C)



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(b) (6), (b) (7)(A), (b) (7)(C)

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(b) (6), (b) (7)(A), (b) (7)(C)



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Michael E. Horowitz

(b) (6), (b) (7)(A), (b) (7)(C)

Page 7

(b) (6), (b) (7)(A), (b) (7)(C)



CONFIDENTIAL FOIA TREATMENT REQUESTED

We request that this submission be handled confidentially pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a.

Michael E. Horowitz

(b) (6), (b) (7)(A), (b) (7)(C)

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(b) (6), (b) (7)(A), (b) (7)(C)

(b) (6), (b) (7)(A), (b) (7)(C)

In this case, a lack of candor finding is inappropriate because (b) (6), (b) (7)(A), (b) (7)(C) (b) (6), (b) (7)(A), (b) (7)(C) there are significant reasons to believe that there was room for misunderstandings during the interview.

First, the WSJ article at issue does not contain only a single "leak." To the contrary, there are approximately 24 separate facts and quotes from anonymous FBI sources in the article. (b) (6), (b) (7)(A), (b) (7)(C)

(b) (6), (b) (7)(A), (b) (7)(C)

CONFIDENTIAL FOIA TREATMENT REQUESTED

We request that this submission be handled confidentially pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a.

Michael E. Horowitz

(b) (6), (b) (7)(A), (b) (7)(C)

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(b) (6), (b) (7)(A), (b) (7)(C)

(b) (6), (b) (7)(A), (b) (7)(C) it is not clear that the INSD agents were specifically referring to the PADAG call when they generally asked Mr. McCabe about the source of "leaks" in the article. Even if that was the INSD agents' understanding at the time, it is not clear that Mr. McCabe understood them to be focused solely on the PADAG call, as opposed to any of the other disclosures that he expressed concern about. (b) (6), (b) (7)(A), (b) (7)(C)

(b) (6), (b) (7)(A), (b) (7)(C)

(b) (6), (b) (7)(A), (b) (7)(C)

CONFIDENTIAL FOIA TREATMENT REQUESTED

We request that this submission be handled confidentially pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a.

Michael E. Horowitz

(b) (6), (b) (7)(A), (b) (7)(C)

Page 10

(b) (6), (b) (7)(A), (b) (7)(C)



CONFIDENTIAL FOIA TREATMENT REQUESTED

We request that this submission be handled confidentially pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a.

(b) (6), (b) (7)(C), (b) (7)(A)

Interviews, Signed Sworn Statement, and Notes

263D-HQ-

(b) (6), (b) (7)(C)

-13

(b) (7)(A)
Washington, District Of Columbia

(b) (6), (b) (7)(C), (b) (7)(A) I, (b) (6), (b) (7)(C), (b) (7)(A) having been duly sworn by (b) (6), (b) (7)(C), (b) (7)(A)

(b) (6), (b) (7)(C), (b) (7)(A) hereby make the following statement to (b) (6), (b) (7)(C), (b) (7)(A) and (b) (6), (b) (7)(C), (b) (7)(A) whom I know to be (b) (7)(A) of the Federal Bureau of Investigation (FBI), assigned to the Inspection Division (INSD), Internal Investigations Section (IIS):

(b) (6), (b) (7)(C), (b) (7)(A)

I understand that this is an internal investigation regarding an allegation that Subject(s) Unknown may have provided information to the media concerning a statement made by FBI Executive Management (b) (7)(A), (b) (7)(E)

(b) (7)(A), (b) (7)(E)

(b) (6), (b) (7)(C), (b) (7)(A)

Washington, District Of Columbia

(b) (7)(A)

(b) (6), (b) (7)(C), (b) (7)(A)



(b) (7)(A)

Washington, District Of Columbia

(b) (6), (b) (7)(C), (b) (7)(A)



(b) (7)(A)

Washington, District Of Columbia

(b) (6), (b) (7)(C), (b) (7)(A)



(b) (7)(A)
Washington, District Of Columbia

(b) (6), (b) (7)(C), (b) (7)(A)



(b) (7)(A)
Washington, District Of Columbia

(b) (6), (b) (7)(C), (b) (7)(A)



(b) (7)(A)
Washington, District Of Columbia

(b) (6), (b) (7)(C), (b) (7)(A)



On August 7, 2017, I was interviewed (b) (7)(A) under oath and
pursuant to the terms of the previously signed (b) (7)(A)

(b) (6), (b) (7)(C), (b) (7)(A)



(b) (7)(A)
Washington, District Of Columbia

(b) (6), (b) (7)(C), (b) (7)(A)



The interviewing agents showed me the printout of an internet article entitled, "FBI in Internal Feud Over Hillary Clinton Probe," by Devlin Barrett, The Wall Street Journal (WSJ), dated October 30, 2016. I read and initialed the copy of the article, which is attached to my statement as Exhibit #4.

(b) (6), (b) (7)(C), (b) (7)(A)



(b) (7)(A)
Washington, District Of Columbia

(b) (6), (b) (7)(C), (b) (7)(A)

Due to the inaccuracies in the October 24, 2016 story, DD McCabe asked AD (b) (6), (b) (7)(C), (b) (7)(A) and me to work with Mr. Barrett "on background" basis and provide a framework to help shape his next article. (b) (7)(A)

(b) (7)(A)

To the best of my recollection and according to my notes, AD (b) (6), (b) (7)(C), (b) (7)(A) and I engaged in two telephone calls with Mr. Barrett on October 27, 2016 and October 28, 2016. I believe we spent approximately one hour on the telephone with Mr. Barrett each day. (b) (6), (b) (7)(C), (b) (7)(A)

(b) (6), (b) (7)(C), (b) (7)(A) At the request of the interviewing agents, I produced copies of my notes, which are attached hereto as Exhibit #6.

With respect to the three highlighted paragraphs on the last page of the exhibit, I presume the portions of those paragraphs

(b) (6), (b) (7)(C), (b) (7)(A)

(b) (7)(A)
Washington, District Of Columbia

(b) (6),
(b) (7)
(C), (b) that read, "[a]ccording to a person familiar with the probes,"
"according to one person close to Mr. McCabe," and "people
familiar with the conversation," are referring to me and AD.

(b) (6), (b) (7)(C), (b) (7)(A) The "validly predicated investigation" that DD McCabe
was referencing in the August 12, 2016 telephone call was the New
York Office (NYO) investigation into the Clinton Foundation. The
call referenced in the article is the same call with PADAG

(b) (6), (b) (7)(C) about which the interviewing agents asked me.

(b) (6), (b) (7)(C), (b) (7)(A)



(b) (7)(A)

Washington, District Of Columbia

(b) (6), (b) (7)(C), (b) (7)(A)



(b) (7)(A)
Washington, District Of Columbia

(b) (6), (b) (7)(C), (b) (7)(A)



Sworn to and subscribed before me on the 15th day of August, 2017, in Washington, District Of Columbia.

(b) (6), (b) (7)(C), (b) (7)(A)



(b) (6), (b) (7)(C), (b) (7)(A)



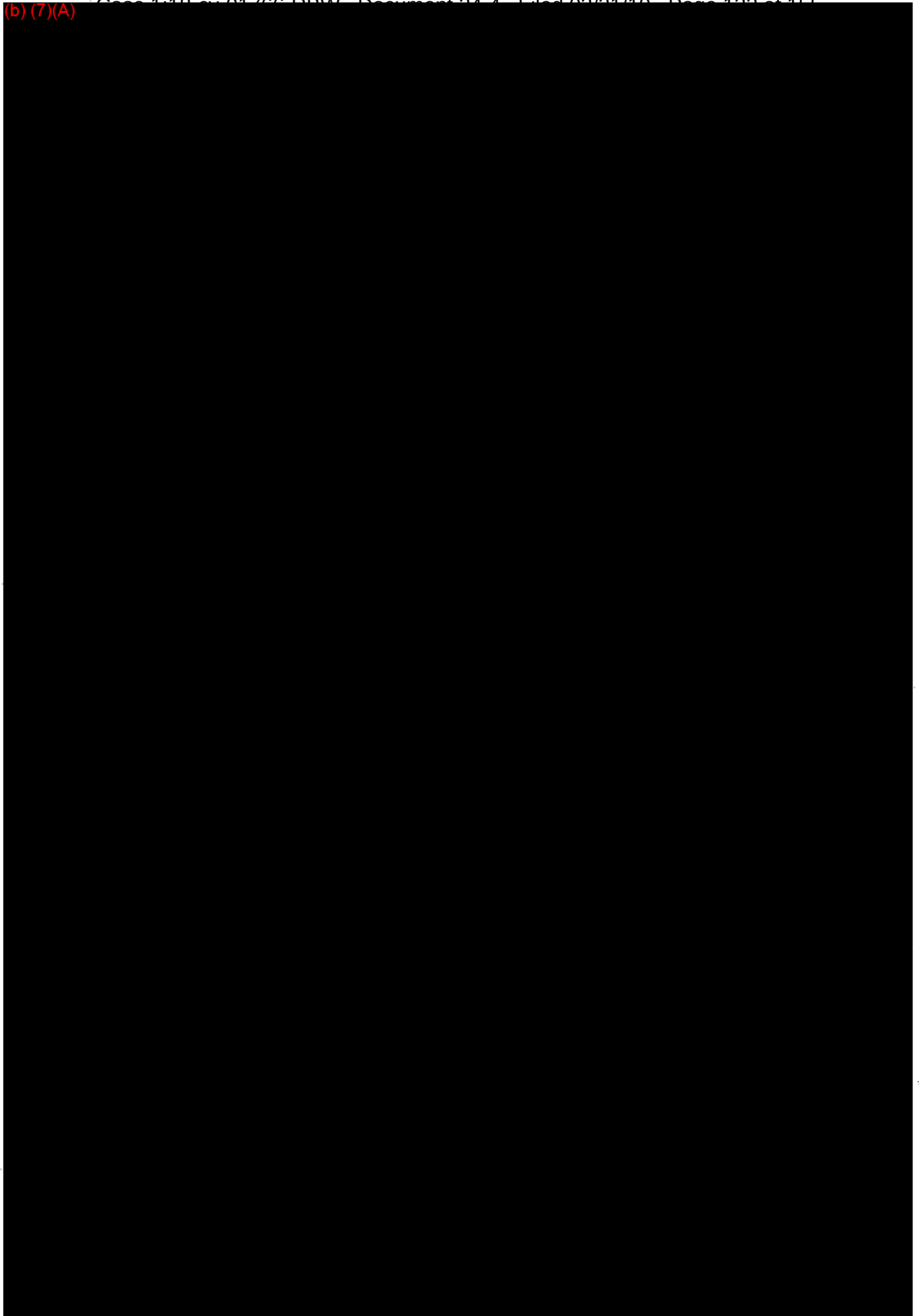
Ex 1

(b) (6), (b) (7)(A), (b) (7)(C)



(b) (6), (b) (7)(C), (b) (7)(A)





(b) (7)(A)

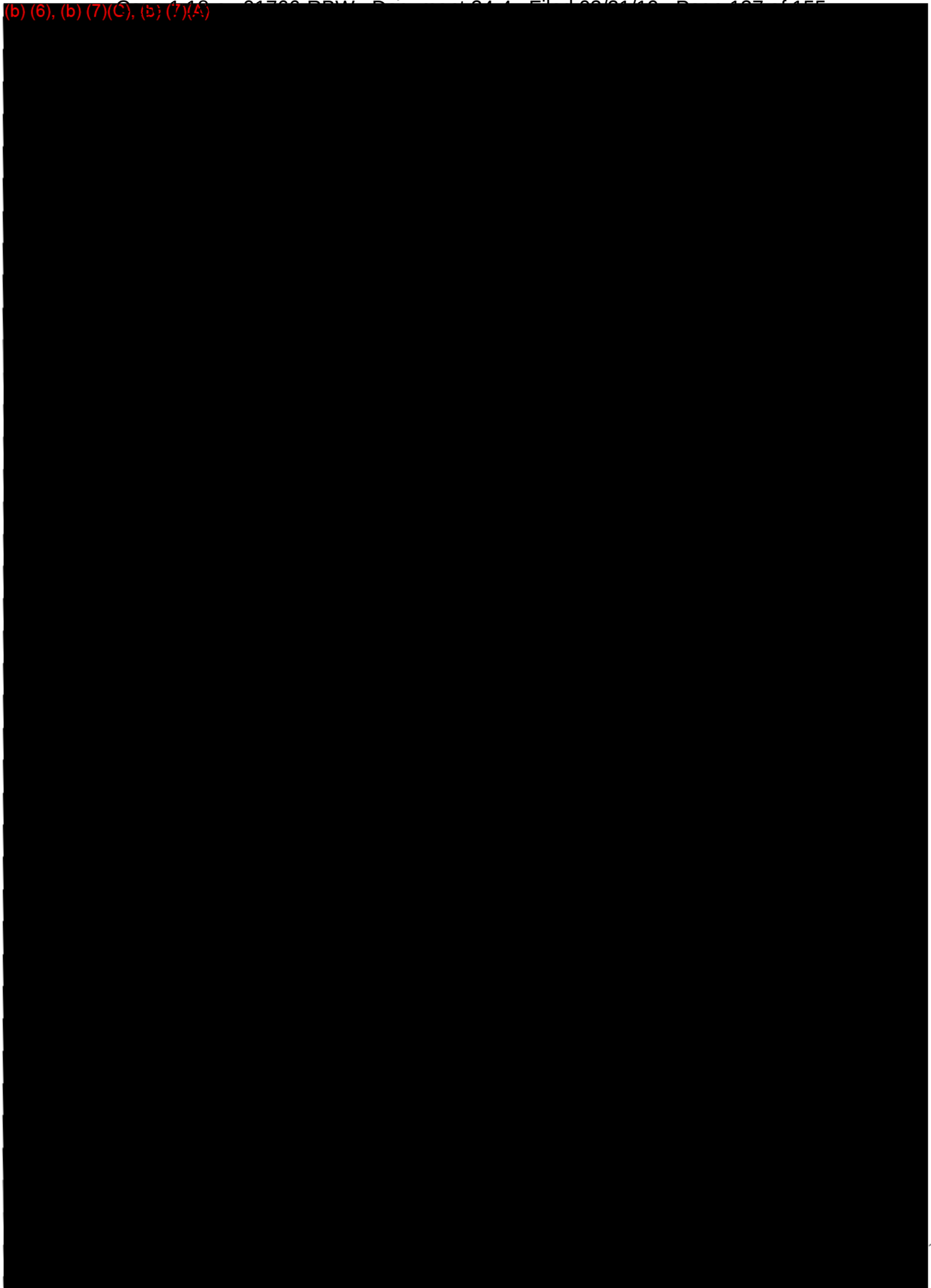


(b) (7)(A)



(b) (7)(A)





(b) (6), (b) (7)(C), (b) (7)(A)

MOI

(b) (7)(A)

263D-HQ

(b) (6), (b) (7)(C)

-18

U.S. Department of Justice
Office of the Inspector General

MEMORANDUM OF INVESTIGATION

Case Number: E2017012	Reporting Office: OFFICE OF OVERSIGHT AND REVIEW
---------------------------------	--

Re: Interview of (b) (6), (b) (7)(C), (b) (7)(A) Assistant Director of the Counterintelligence Division, FBI Headquarters.

On (b) (7)(A) Investigative Counsel (b) (6), (b) (7)(C) conducted a telephonic interview of (b) (6), (b) (7)(C), (b) (7)(A) to determine if he had any knowledge regarding the disclosure of the August 12, 2016 telephone conversation between FBI Deputy Director Andrew G. McCabe and an unnamed senior Department official on the Clinton Foundation investigation that appeared in the Wall Street Journal on October 30, 2016.

BACKGROUND

In his OIG interview on November 28, 2017, Deputy Director McCabe identified (b) (6), (b) (7)(C), (b) (7)(A) as someone who "possibly" knew that McCabe authorized (b) (6), (b) (7)(C), (b) (7)(A) and (b) (6), (b) (7)(C), (b) (7)(A) to disclose the account of his August 12, 2016 telephone call with (b) (6), (b) (7)(C) regarding the Clinton Foundation investigation to the Wall Street Journal.

(b) (6), (b) (7)(C), (b) (7)(A)


DISCUSSION

(b) (6), (b) (7)(C), (b) (7)(A) related the following with respect to the October 30, 2016 Wall Street Journal article:

1. (b) (6), (b) (7)(C), (b) (7)(A) did not know who the source was who disclosed the account of August 12 call between McCabe and the unnamed DOJ official re: Clinton Foundation investigation.

Investigative Counsel and Signature:	Date:
---	--------------

2. (b) (6), (b) (7)(C), (b) (7)(A)

[REDACTED]

3. (b) (7)(A) was never told and never heard that someone at the FBI had been authorized to disclose the account of the August 12 call to the Wall Street Journal. (b) (7)(A) "absolutely would have remembered" something like that.

4. (b) (7)(A) was never told and never heard that someone at the FBI had been authorized to talk to the Wall Street Journal about the Clinton Foundation case. (b) (7)(A) "would have remembered that because it's not the norm."

Memorandum of Investigation re: (b) (6), (b) (7)(C)

Date:

Case Number:

Item Number:

Toll Records, Texts, E-mails (including (b) (6), (b) (7)(C), (b) (7)(A) E-mail)

263 D-HQ- (b) (6), (b) (7)(C) 16

Date UTC	Internal Phone Number	Type of Message	From	To	Body
2016-10-27 16:06:39, Thu	(b) (6), (b) (7)(C), (b) (7)(A)	OUTBOX	(b) (6), (b) (7)(C), (b) (7)(A)		Are you in with wsj now?
2016-10-27 16:19:42, Thu	(b) (6), (b) (7)(C), (b) (7)(A)	INBOX	(b) (6), (b) (7)(C), (b) (7)(A)		Going there now. I WI call you immediately after re call with devlin. (b) (6), (b) (7)(C), (b) (7)(A)
2016-10-27 16:24:56, Thu		OUTBOX			(b) (7)(A)
(b) (7)(A)		(b) (7)(A)			
2016-10-27 17:25:41, Thu		INBOX			Can you talk now?

Date UTC	Internal Phone Number	Type of Message	From	To	Body
			(b) (6), (b) (7)(C), (b) (7)(A)		
2016-10-27 17:49:13, Thu	(b) (6), (b) (7)(C), (b) (7)(A)	INBOX			
2016-10-27 18:38:43, Thu		OUTBOX			
2016-10-27 18:39:14, Thu		INBOX			
2016-10-27 20:22:50, Thu		OUTBOX			
2016-10-27 20:23:17, Thu		INBOX			
2016-10-27 20:36:55, Thu		INBOX			

Date UTC	Internal Phone Number	Type of Message	From	To	Body
			(b) (6), (b) (7)(C), (b) (7)(A)		
2016-10-27 21:23:02, Thu	(b) (6), (b) (7)(C), (b) (7)(A)	INBOX			We're done. He's going to look at his story again and we'll circle back with him in the morning.
2016-10-28 17:33:46, Fri		INBOX			Just got off with barrett. Give me a call here.
(b) (7)(A)	(b) (7)(A)				(b) (6), (b) (7)(C), (b) (7)(A)

Date UTC	Internal Phone Number	Type of Message	From	To	Body
----------	-----------------------	-----------------	------	----	------

(b) (6), (b) (7)(C), (b) (7)(A)



	A	B	C	D	E	F	G	H
1	2016-10-27 21:23:02, Thu	(b) (6), (b) (7)(C), (b) (7)(A)	INBOX	We're done. He's going to look at his story again and we'll circle back with him in the morning.	sms		(b) (6), (b) (7)(C), (b) (7)(A)	

	A	B	C	D	E	F	G	H
				I spoke to both. Both understand that no decision will be made on recusal until I return and weigh in [REDACTED] (b) (6), (b) (7)(C), (b) (7)(A) [REDACTED] [REDACTED] [REDACTED] [REDACTED]				
10	2016-10-28 01:57:44, Fri	(b) (6), (b) (7)(C), (b) (7)(A)	OUTBOX		sms		(b) (6), (b) (7)(C), (b) (7)(A)	
(b) (6), (b) (7)(C), (b) (7)(A)								

	A	C	D	E	F	H
1	(b) (7)(A)	(b) (6), (b) (7)(A)	(b) (7)(A)	(b) (6), (b) (7)(C), (b) (7)(A)		
2		(7)(C), (b)				
3		(7)(A)				
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14	2016-10-27 21:08:58, Thu		OUTBOX			
15	(b) (7)(A)		(b) (7)(A)			
16	2016-10-27 21:21:08, Thu		OUTBOX			
17	(b) (7)(A)		(b) (7)(A)			
18						
19						
20						
21	2016-10-28 17:19:06, Fri		OUTBOX			
22	(b) (7)(A)		(b) (7)(A)			
23						
24						
25						
26						
27						
28						
29						
30						
31						
32						
33						

	A	C	D	E	F	H
						<p>This is all (b) (6), (b) (7)(C), (b) (7)(A) Justice officials warned FBI that Comey's 2019's decision to update Congress was not consistent with department policy - The Washington Post https://www.washingtonpost.com/world/national-security/justice-officials-warned-fbi-that-comes-decision-to-update-congress-was-not-consistent-with-department-policy/2016/10/29/cb179254-9de7-11e6-b3c9-f662ad9a0048_story.html?hpid=hp_hp-top-table-main_campaignprint-810pm%3Ahomepage%2Fstory</p> <p>Yeah, I saw it. Makes me feel WAY less bad about throwing him under the bus in the forthcoming CF article.</p>
34	2016-10-30 13:50:53, Sun	(b) (6), (b) (7)(C), (b) (7)(A)	INBOX	(b) (6), (b) (7)(C), (b) (7)(A)		
35	2016-10-30 13:56:06, Sun	(b) (6), (b) (7)(C), (b) (7)(A)	OUTBOX			
36	(b) (7)(A)		(b) (7)(A)			(b) (7)(A)
37						

[illegible]

	A	B	C	D	E	F	G	H	I	J
40	2016-10-28 17:38:16, Fri	(b) (6), (b)	OUTGOING	(b) (6), (b) (7)(C), (b) (7)(A)						00:23:40
41	(b) (7)(A)	(7)(C), (b) (b) (7)(A)								(b) (7)
42		(7)(A)								(A)
43										
44										
45										
46										

(b) (6), (b) (7)(C), (b) (7)(A)

From: (b) (6), (b) (7)(C), (b) (7)(A) (OIG)

Sent: Tuesday, August 01, 2017 5:43 PM

To: (b) (6), (b) (7)(C), (b) (7)(A)

(b) (6), (b) (7)(C), (b) (7)(A)

Subject: Call from A/Director McCabe

On Tuesday August 1 I received a call from Acting Director McCabe. He wanted to provide some additional recollections about matters we had discussed during his interview on July 27.

First, he stated that he believes that (b) (6), (b) (7)(C), (b) (7)(A) may have been authorized by him to work with AD (b) (6), (b) (7)(C), (b) (7)(A) (Public Affairs) and to speak with the WSJ for the late October article. He said he had worked with (b) (6), (b) (7)(C), (b) (7)(A) on a previous WSJ article earlier in the month when they spent the day trying to correct inaccuracies. At the time the second article was being prepared, McCabe was out of town (b) (6), (b) (7)(C), (b) (7)(A). He believes he may have authorized (b) (6), (b) (7)(C), (b) (7)(A) to work with (b) (6), (b) (7)(C), (b) (7)(A) and speak to Devlin Barrett (the WSJ reporter) because she had previously worked with McCabe on the issues raised by his wife's political campaign and was very familiar with those issues. (b) (6), (b) (7)(C), (b) (7)(A)

(b) (6), (b) (7)(C), (b) (7)(A)

(b) (6), (b) (7)(C), (b) (7)(A) He said (b) (6), (b) (7)(C), (b) (7)(A) would be familiar with (b) (6), (b) (7)(C), (b) (7)(A) role and authority to speak.

(b) (6), (b) (7)(C), (b) (7)(A)

(b) (6), (b) (7)(C), (b) (7)(A)



----- Original message -----

From: "McCabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>

Date: 11/3/16 9:36 PM (GMT-05:00)

To: (b) (6), (b) (7)(C), (b) (7)(A)

Subject: Wsj

Secret Recordings Fueled FBI Feud in Clinton Probe

This is the latest WSJ article.

Call me tomorrow.

1

0.7.453.76967

FBI-DOJ-OIG-UNET-ELEC-
0000051636

FBI-DOJ-OIG-UNET-ELEC-0000051636

Message

From: McCabe, Andrew G. (DO) (FBI) [/D=FBI/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AGAGMCCA]
Sent: 10/26/2016 12:45:57 AM
To: (b) (6), (b) (7)(C), (b) (7)(A)
Subject: RE: Wsj

Thanks

----- Original message -----

From: (b) (6), (b) (7)(C), (b) (7)(A)
Date: 10/25/16 7:48 PM (GMT-05:00)
To: "McCabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>
Subject: RE: Wsj
Not tonight or tomorrow's paper. Will have better idea tomorrow.

----- Original message -----

From: "McCabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>
Date: 10/25/16 7:42 PM (GMT-05:00)
To: (b) (6), (b) (7)(C), (b) (7)(A)
Subject: Wsj
Any news on the next article? Do we think anything else will break tomorrow?

(b) (6), (b) (7)(C), (b) (7)(A)



From: Barrett, Devlin [mailto:devlin.barrett@wsj.com]

Sent: Monday, October 24, 2016 11:58 AM

To: (b) (6), (b) (7)(C), (b) (7)(A)

Subject: Happy Monday

(b) (6), (b) (7)(C), (b) (7)(A)



Also, a followup:

(b) (7)(A)



I'm also told that in the summer, McCabe himself gave some instruction as to how to proceed with the Clinton Foundation probe, given that it was the height of election season and the FBI did not want to make a lot of overt moves that could be seen as going after her or drawing public attention to the probe.

How accurate are those descriptions?

anything else I should know?

(b) (7)(A)



--
Devlin Barrett
Wall Street Journal
o (202) 862-6624
c (202) 617-6330
t: @devlinbarrett

EXHIBIT 3

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5226

September Term, 2005

Filed On: October 26, 2005 [927440]

01cv01418

Willie Jefferson,
Appellant

v.

Department of Justice,
Office of the Inspector General,
Appellee

Appeal from the United States District Court
for the District of Columbia

Before: EDWARDS, HENDERSON, and RANDOLPH, *Circuit Judges*

J U D G M E N T

This cause was considered on the record from the United States District Court for the District of Columbia, briefed by *pro se* appellant, and briefed and argued by *amicus curiae* for appellant and by counsel for the Government. It is

ORDERED and **ADJUDGED** that with respect to appellant's principal claims, the decision and judgment of the District Court are affirmed substantially for the reasons given by the court. See *Jefferson v. U.S. Dep't of Justice*, CA No. 01-1418, Mem. Op. (Mar. 31, 2003), *reprinted in* App. of *Amicus Curiae* 29; *Jefferson v. U.S. Dep't of Justice*, CA No. 01-1418, Mem. Op. (Nov. 14, 2003), *reprinted in* App. of *Amicus Curiae* 101. Appellant filed a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking any and all records maintained by the Office of the Inspector General ("OIG") pertaining to a Department of Justice ("DOJ") attorney, Bonnie L. Gay. The District Court granted summary judgment to DOJ with respect to the responsive files found in OIG's investigative records database. The trial court found that DOJ's disclosure of certain documents from this database would amount to an unwarranted invasion of Ms. Gay's personal privacy. We affirm this judgment.

We affirm the District Court's holding that the responsive documents in the investigative database are "records or information compiled for law enforcement purposes" within the

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5226

September Term, 2005

meaning of FOIA Exemption 7, 5 U.S.C. § 552(b)(7). And we find no error in the District Court's holding that DOJ properly withheld the responsive documents in their entirety, on the grounds that their disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy" pursuant to FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C). *Jefferson v. U.S. Dep't of Justice*, CA No. 01-1418, Mem. Op. at 8-11 (Nov. 14, 2003), *reprinted in* App. of *Amicus Curiae* 108-11. We also affirm the District Court's judgment that DOJ's refusal either to confirm or deny whether OIG's investigative database holds any other documents responsive to appellant's FOIA request was reasonable. As the District Court noted, such confirmation would constitute an unwarranted invasion of personal privacy. See *id.* at 11-13, *reprinted in* App. of *Amicus Curiae* 111-13.

The District Court's holding on the adequacy of OIG's search for responsive records is reversed. Appellant argued in both the District Court and on appeal that DOJ's search was inadequate because it failed to search for any responsive records in OIG's audit and inspection database. During oral argument, counsel for the Government acknowledged that OIG maintains a separate database for its audit and inspection functions, *i.e.*, separate and apart from the investigative database. Counsel further acknowledged that there are situations when OIG compiles records in the audit and inspection database relating to DOJ employees, like Ms. Gay, who have had personnel disputes with DOJ. Counsel thus essentially acknowledged what appellant and the record suggest – OIG's audit and inspection database might have files pertaining to Ms. Gay.

The Government has offered no plausible justification for limiting its search for responsive records to its investigative database. OIG's failure to search for records pertaining to Ms. Gay in its audit and inspection database was therefore unreasonable under the circumstances. While "[t]here is no requirement that an agency search every record system[,] . . . the agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested." *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). Accordingly, the District Court's finding that "OIG's search properly was limited to its investigative records system," *Jefferson v. U.S. Dep't of Justice*, CA No. 01-1418, Mem. Op. at 12 (Mar. 31, 2003), *reprinted in* App. of *Amicus Curiae* 40, is reversed and the case is remanded for further proceedings. On remand, the agency must be required to search its audit and inspection database for information pertaining to Ms. Gay. It is of course possible that should the Government find any files pertaining to Ms. Gay in this

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5226

September Term, 2005

database, it will be able to assert that they are exempt from disclosure under FOIA. DOJ, however, is required to undertake an adequate search prior to asserting any exemptions.

The court thanks *amicus curiae* Amy Howe of Goldstein & Howe, P.C. for her assistance in this matter.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. See FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

By:

Michael C. McGrail
Deputy Clerk

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIE JEFFERSON,)
)
 Plaintiff,)
)
 v.) Civil Action No. 01-1418 (GK)
)
 UNITED STATES DEPARTMENT)
 OF JUSTICE, OFFICE OF THE)
 INSPECTOR GENERAL,)
)
 Defendant.)

FILED

MAR 31 2003

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

MEMORANDUM OPINION

This matter is before the Court on the renewed motion for summary judgment filed on behalf of the United States Department of Justice, Office of the Inspector General ("OIG").¹ Having reviewed the motion, plaintiff's opposition, the record in this case, and the applicable law, the Court will grant Defendant's motion in part, and deny the motion in part.

I. Background

Plaintiff submitted a Freedom of Information Act ("FOIA" or "the Act") request to the Inspector General of the United States Department of Justice by letter dated November 12, 2000. Compl., ¶¶ 1, 4. In relevant part, Plaintiff's letter stated:

This letter serves as a FOIA request pursuant to 5 U.S.C. § 552(a)(3) for copies of any and

¹ The federal agency, which in this case is the United States Department of Justice, is the proper defendant in a FOIA action. See 5 U.S.C. § 552(f)(1). For convenience, this memorandum will refer to Defendant as "OIG."

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all records created and/or received by the United States Department of Justice ("DOJ"), Office of the Inspector General ("OIG") in regards to Bonnie L. Gay, Attorney in the DOJ, Executive Office for United States Attorneys. In addition, this is a request for an index of any files maintained by OIG in regards to Bonnie L. Gay.²

Memorandum of Points and Authorities in Support of Defendant's Renewed Motion for Summary Judgment, Declaration of Deborah Marie Briscoe dated June 24, 2002 ("Briscoe II Decl."), Ex. 1.³

OIG responded to Plaintiff's request by letter dated December 19, 2000. Compl., ¶ 6. OIG neither confirmed nor denied the existence of the records Plaintiff sought, and stated that the information was exempt from disclosure under FOIA's Exemption 7(C), 5 U.S.C. § 552(b)(7)(C). Briscoe II Decl., Ex. 2. Plaintiff appealed OIG's response to the Department of Justice, Office of Information and Privacy ("OIP"). Compl., ¶ 7. By letter dated May 25, 2001, OIP affirmed OIG's initial response, and declined to confirm or deny the existence of the requested records without either Ms. Gay's consent, proof of her death, official acknowledgment of an investigation, or an overriding public interest. *Id.*, ¶ 9; Briscoe II Decl., Ex. 3. Plaintiff filed the

Ms. Gay was an employee of the Department of Justice who had responded to one of Plaintiff's previous FOIA requests. See *Jefferson v. Dep't of Justice*, Civil Action No. 96-1284 (GK).

Ms. Briscoe had supplied a declaration dated October 11, 2001, which was attached to Defendant's first motion for summary judgment [Dkt. #13]. In order to distinguish the declarations, this memorandum refers to the latter Briscoe declaration dated June 24, 2002 as the "Briscoe II Decl."

instant civil action on or about June 27, 2001.

In the interim, OIG became aware that an investigation of Ms. Gay was known publicly as a result of litigation in *Jefferson v. Reno*, 123 F.Supp. 2d 1, 7 (D.D.C. 2000). *Briscoe II Decl.*, ¶ 10. With a letter dated September 10, 2001, OIG released 123 pages of records responsive to Plaintiff's November 12, 2000 FOIA request, portions of which were withheld pursuant to Exemptions 6 and 7(C). *Id.*, Ex. 4. In addition, OIG's letter informed Plaintiff that 61 pages of records were withheld in their entirety pursuant to Exemptions 5, 6, and 7(C). *Id.* OIG neither confirmed nor denied the existence of any other records pertaining to Ms. Gay. *Id.*

OIG moves for summary judgment on the ground that there is no genuine issue in dispute as to its full compliance with the FOIA, and that it is entitled to judgment as a matter of law.⁴

II. Discussion

A. Plaintiff's Motions for Appointment of Counsel and for Discovery

Plaintiff seeks discovery and the aid of Court-appointed counsel to inquire into the agency's "bad faith" in responding to his FOIA request. As evidence of the agency's "bad faith," Plaintiff points to Defendant's statement that it did not become aware that OIG's investigation into Ms. Gay was known publicly

⁴ The Court denied OIG's previous motion for summary judgment without prejudice so that the parties could address the application of a recent decision, *Jefferson v. Dep't of Justice*, 284 F.3d 172 (D.C. Cir. 2002), regarding OIG's use of a *Glomar* response.

until after Plaintiff filed this action, despite the fact that Plaintiff's appeal of the agency's denial, dated January 3, 2001, notified Defendant of the public availability of the investigation. See Plaintiff's Motion for Rule 56(f) Discovery, Attach. 1. Plaintiff seeks discovery into whether OIG is a "mixed-function agency," the public interest of OIG's files pertaining to Ms. Gay, whether the Office of Information and Privacy is acting as a "rubber stamp" for the agency's FOIA decision, and the need for sanctions and disciplinary action against Defendant.

Although couched in terms of agency "bad faith," the crux of Plaintiff's argument is that, if the Office of Information and Privacy had done its job and not simply "rubber stamped" OIG's denial, Plaintiff would not have had to file this action and incur the costs of litigation. Plaintiff's concern, regardless of whether the agency's response was the result of "bad faith" or excusable oversight, is addressed adequately by judicial review. Plaintiff is entitled to a *de novo* review of OIG's compliance with FOIA in response to his request for records. He is not entitled to an investigation into Defendant's motives for its response. Plaintiff does not demonstrate the need for appointed counsel⁵ and discovery, and his motions will be denied.

⁵ Plaintiff has demonstrated his ability to adequately represent himself in the many cases he has filed in District Court and has appealed to the Circuit (see citations herein). His pleadings are very clear, well-written, and analytical, and contain appropriate and relevant citations to caselaw.

B. OIG's Renewed Motion for Summary Judgment

1. Standard of Review

The Court may grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show that there is no genuine issue of material fact in dispute, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the burden of demonstrating the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Factual assertions in the moving party's affidavits may be accepted as true, unless the opposing party submits his own affidavits or documentary evidence that contradict the movant's assertions. *Neal v. Kelly*, 963 F.2d 453, 456 (D.C. Cir. 1992) (citing *Lewis v. Faulkner*, 689 F.2d 100, 102 (7th Cir. 1982)); LCvR 7.1(h).

Generally, FOIA requires a federal government agency to make its records available to the public, unless those records or portions of those records are protected from disclosure by an enumerated exemption. See 5 U.S.C. §552(a). To obtain summary judgment in a FOIA action, an agency must show, viewing the facts in the light most favorable to the requester, that there is no genuine issue of material fact with regard to the agency's compliance with the Act. *Steinberg v. United States Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994) (quoting *Weisberg v.*

United States Dep't of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

The Court may award summary judgment based solely upon the information provided in affidavits or declarations when the affidavits or declarations describe "the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith." *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981).

In support of its motion for summary judgment, OIG submitted the declaration of Deborah Marie Briscoe, Paralegal Specialist and Freedom of Information Act Officer for OIG. Briscoe II Decl., ¶ 1. She makes her declaration based upon her knowledge of FOIA, OIG's procedures for processing FOIA requests, and information available to her in the course of performing her official duties. *Id.* She is familiar with Plaintiff's FOIA request seeking OIG records regarding Bonnie L. Gay. *Id.* ¶ 2.

2. Adequacy of OIG's Search

a. OIG's Obligation under FOIA

"An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was 'reasonably calculated to uncover all relevant documents.'" *Valencia-Lucena v. United States Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999)

(quoting *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). The agency is obligated to make "a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (citing *Weisberg*, 745 F.2d at 1485). An agency may meet its burden by providing an affidavit or declaration which sets forth "the search terms and the type of search performed, and averring that all files likely to contain responsive materials . . . were searched." *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 313-14 (D.C. Cir. 2003) (citing *Valencia-Luna*, 180 F.3d at 326).

An agency need not search every record system, but it cannot limit its search to one system if there are other records systems likely to contain responsive records. *Oglesby*, 920 F.2d at 68; see *Campbell v. United States Dep't of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). A search is not presumed to be unreasonable merely because it fails to locate all relevant documents. See *Meeropol v. Meese*, 790 F.2d 942, 952-53 (D.C. Cir. 1986). The applicable standard is reasonableness, not perfection. See *Rothschild v. Dep't of Energy*, 6 F.Supp. 2d 38, 40 (D.D.C. 1998). The question is not whether other documents possibly responsive to the FOIA request exist, "but rather whether the search for those documents was adequate." *Weisberg*, 745 F.2d at 1485 (emphasis in original); see also *Steinberg*, 23 F.3d at 551. Once the agency shows that its

search was reasonable, the burden is on the requester to rebut the agency's evidence by showing that the search was not conducted in good faith. See *Miller v. United States Dep't of State*, 779 F.2d 1378, 1383 (8th Cir. 1985). "Summary judgment would be improper if the adequacy of the agency's search were materially disputed on the record, for such a dispute would indicate that material facts were still in doubt." *Id.*

b. OIG's Search for Responsive Records

OIG conducts and supervises audits, inspections, and investigations relating to DOJ programs and operations. *Briscoe II Decl.*, ¶ 3. Among the types of investigations it conducts are investigations of allegations of criminal wrongdoing and administrative misconduct by DOJ employees. *Id.* ¶ 4. OIG maintains records regarding complaints of misconduct submitted to it and records regarding OIG's investigations of those complaints. *Id.* ¶ 6. These investigative records are maintained separately from records compiled in connection with OIG's audit and inspection functions. *Id.* With the exception of personnel records of OIG staff members, the only records maintained by OIG that pertain to particular DOJ employees are in its investigative records. *Id.* ¶ 7. The sole purpose for which OIG maintains records relating to a DOJ employee who is not a member of OIG's staff is in connection with "investigating individuals and entities suspected of having committed illegal or unethical acts and in conducting related

criminal prosecutions, civil proceedings, or administrative actions." *Id.* ¶ 67.

Plaintiff identified Ms. Gay as an attorney with DOJ's Executive Office for United States Attorneys. *Briscoe II Decl.*, Ex. 1. Because Ms. Gay was not a member of OIG's staff, OIG determined that it had no personnel records pertaining to her, and that the only records in which material responsive to Plaintiff's FOIA request likely would be found were its investigative records. *Id.* ¶¶ 7-8.

OIG's investigative records can be searched electronically using an individual's name and other personal identifiers. *Briscoe II Decl.*, ¶ 7. OIG conducted an electronic search of its investigative records using Ms. Gay's name, and that search yielded a file containing 184 pages of records. *Id.* ¶ 8. These records pertained to an OIG investigation into Ms. Gay's involvement in the Justice Department's failure to comply with an order issued by this Court in *Jefferson v. Reno*, Civil Action No. 96-1284 (GK).

c. Plaintiff's Challenges to the
Adequacy of OIG's Search

Plaintiff challenges the adequacy of OIG's search on two grounds. First, Plaintiff contends that OIG's declaration is deficient. It "fail[s] to outline the basic structure of OIG's Master Central Index computer system," and it fails to "aver that all files likely to contain responsive materials were searched."

Plaintiff's Opposition to Defendant's Renewed Motion for Summary Judgment ("Plaintiff's Opposition"), pp. 3-4, 5. Because of the deficiencies in the agency's declaration, OIG cannot show that it made a good faith effort to conduct a reasonable search for records responsive to his FOIA request. *Id.* To grant summary judgment on this record, Plaintiff argues, would be improper. *Id.* at p. 4.

Second, Plaintiff contends that OIG improperly narrowed its search for records responsive to his FOIA request to its investigative files.⁶ Plaintiff's Opposition, p. 4. By limiting the search to investigative files only, it is not possible to determine whether Ms. Gay or the component for which she worked, the Executive Office for United States Attorneys, was investigated by OIG's Audit Division, Inspection Division, Management and Planning Division, or Special Investigations and Review Unit. *Id.* at p. 5. For these reasons, Plaintiff contends that OIG's search was not tailored to his FOIA request for "any and all" records about Ms. Gay. *Id.* at p. 4.

The adequacy of a search depends on the circumstances of each case. *See Rugiero v. United States Dep't of Justice*, 257 F.3d 534, 547 (6th Cir. 2001), *cert. denied*, 524 U.S. 1134 (2002) (FOIA requires a reasonable search tailored to nature of request);

⁶ In presenting this challenge to the adequacy of OIG's search, Plaintiff places great emphasis on Defendant's status as a "mixed-function agency." Plaintiff's Opposition, p. 4. OIG's multiple functions are less relevant to the Court's determination of the adequacy of its search for records responsive to Plaintiff's FOIA request than to the applicability of FOIA Exemption 7. These matters are discussed elsewhere in this Memorandum Opinion.

Maynard v. CIA, 986 F.2d 547, 559 (1st Cir. 1993). In this case, OIG focused its attention on the one records system, its investigative records, which the agency declares is "the only place it would have records relating to Ms. Gay." *Briscoe II Decl.*, ¶ 8. OIG's declaration does not state precisely, borrowing Plaintiff's language, that "all files likely to contain responsive materials were searched." Plaintiff's Opposition, p. 5. The exact language of the declaration is not dispositive, however. OIG's declaration explains in sufficient detail its reasons for focusing exclusively on this particular system of records, describes the purposes and contents of that system of records, and describes the means by which it conducted a search of that system of records for material responsive to Plaintiff's FOIA request.

Based on Plaintiff's clearly written request, OIG demonstrates that it properly narrowed its search for records responsive to Plaintiff's FOIA request to its investigative records. Ms. Gay is not an OIG employee over whom the Inspector General had supervisory authority, therefore OIG did not maintain her personnel records. *Briscoe II Decl.*, ¶ 8. The records most likely to contain materials pertaining to Ms. Gay, an individual DOJ employee who was not a member of the OIG staff, are OIG's investigative records. *Id.* ¶¶ 7-8.

The fact that OIG's declaration does not describe at length records systems that were not likely to contain records responsive

to Plaintiff's FOIA request does not undermine the sufficiency of the declaration. See *Oglesby*, 920 F.2d at 68 (at a minimum, agency is "required to explain in its affidavit that no other record system was likely to produce responsive documents"); see *Marks v. United States Dep't of Justice*, 578 F.2d 261, 263 (9th Cir. 1978) (agency need not search every division when agency believes responsive documents likely to be located in one place). OIG's declaration states that its investigative records were the "only place it would have records relating to Ms. Gay." *Briscoe II Decl.*, ¶ 8. Plaintiff's allegations to the contrary are mere speculation, and are not sufficient to overcome OIG's showing that its search was reasonable under the circumstances. See *Maynard*, 986 F.2d at 560 (citing *Miller*, 779 F.2d at 1383) (mere speculation about the existence or discoverability of other documents does not rebut agency's affidavit showing good faith search).

The Court concludes that OIG's search properly was limited to its investigative records system, and that the search used methods reasonably expected to produce the information requested. See *Oglesby*, 920 F.2d at 68.

3. Exemptions

a. Exemption 7

OIG invokes Exemption 6 in conjunction with Exemption 7(C) to withhold records or portions of records responsive to Plaintiff's FOIA request for information about Ms. Gay. Both exemptions are

designed to protect the personal privacy interests of individuals named or identified in government records. Although the language of these exemptions is similar, the protection offered differs in scope. See *Beck v. Dep't of Justice*, 997 F.2d 1489, 1492 (D.C. Cir. 1993) ("Exemptions 6 and 7(C), though similar, are not coextensive."). Generally, the language of Exemption 7(C) is broader than that of Exemption 6, and allows an agency to withhold categorically certain information in law enforcement records if its disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy, whereas Exemption 6 requires "a balancing of the individual's right of privacy against the preservation of the basic purpose of the Freedom of Information Act 'to open agency action to the light of public scrutiny.'" *Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976); see *United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 756 (1989); see also *Stern v. FBI*, 737 F.2d 84, 91 (D.C. Cir. 1984) (greater emphasis on protecting personal privacy under Exemption 7(C) than under Exemption 6).

With respect to the Court's inquiry into the privacy interest and public interest at stake, the inquiry under the two exemptions is substantially similar. See, e.g., *National Ass'n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 875 (D.C. Cir. 1989), cert. denied, 494 U.S. 1078 (1990) (analysis set forth in *Reporters Committee* on balancing personal privacy interest and public

interest controlling in case involving Exemption 6); see *Reed v. National Labor Relations Board*, 927 F.2d 1249, 1251 (D.C. Cir. 1991); see *Stern*, 737 F.2d at 91 (in identifying privacy interest at stake, decisions addressing Exemption 6 are relevant in Exemption 7(C) analysis).

For the reasons discussed below, the Court finds that the records at issue were compiled for law enforcement purposes, and that the public interest in their disclosure outweighs Ms. Gay's privacy interest.

i. Law Enforcement Records

Exemption 7 protects from disclosure "records or information compiled for law enforcement purposes," but only to the extent that disclosure of such records would cause an enumerated harm. 5 U.S.C. § 552(b)(7); see *FBI v. Abramson*, 456 U.S. 615, 622 (1982). In order to withhold materials under Exemption 7, an agency first must establish that the records were compiled for law enforcement purposes, and that the material satisfies the requirements of one of the subparts of Exemption 7. See *Pratt v. Webster*, 673 F.2d 408, 413 (D.C. Cir. 1982). In assessing whether records are compiled for a law enforcement purpose, the "focus is on how and under what circumstances the requested files were compiled, and whether the files sought relate to anything that can fairly be characterized as an enforcement proceeding." *Jefferson v. Dep't of Justice*, 284 F.2d 172, 176-77 (D.C. Cir. 2002) (citations and

internal quotations omitted).

In order for an agency to demonstrate that the records at issue are law enforcement records, two conditions must be met. First, there must be a relationship between the investigatory activity giving rise to the records sought and the enforcement of federal laws. *Pratt*, 673 F.2d at 420. The agency "should be able to identify a particular individual or a particular incident as the object of its investigation or the connection between the individual and incident and a possible . . . violation of federal law." *Id.*

Second, "the nexus between the investigation and one of the agency's law enforcement duties is based on information sufficient to support at least 'a colorable claim' of its rationality." *Pratt*, 673 F.2d at 421; see *Quiñon v. FBI*, 86 F.3d 1222, 1228 (D.C. Cir. 1996). A finding of such a nexus "is refutable only by 'persuasive evidence that in fact another nonqualifying reason prompted the investigation.'" *Keys v. Dep't of Justice*, 830 F.2d 337, 340 (D.C. Cir. 1987) (quoting *Shaw v. FBI*, 749 F.2d 58, 63 (D.C. Cir. 1984)). Records compiled "in connection with investigations that focus directly on specific alleged illegal acts which could result in civil or criminal sanctions" are records compiled for law enforcement purposes. *Jefferson*, 284 F.3d at 177 (quoting *Rural Housing Alliance v. Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1973)).

As stated earlier, OIG located in its investigatory records a file responsive to Plaintiff's FOIA request; that file pertained to OIG's investigation into Ms. Gay's involvement in the Justice Department's failure to comply with an Order issued by this Court. *Briscoe II Decl.*, ¶ 9. Among the documents in that file was the OIG's report of its investigation. *Id.* OIG investigations that lead to findings of potential criminal misconduct or civil liability are referred to an appropriate prosecutorial or litigating office for further action. *Id.* ¶ 5; 28 C.F.R. § 0.29e(b). Investigations that lead to findings of administrative misconduct are reported to management for disposition. *Briscoe II Decl.*, ¶ 5; 28 C.F.R. § 0.29e(d). OIG declares that these responsive records "are investigatory law enforcement records pertaining to allegations of a violation of law (a court order) and do not constitute oversight records from internal agency monitoring." *Id.* OIG thus establishes that the responsive records were compiled in connection with an investigation which "focus[ed] directly on specific alleged illegal acts which could result in civil or criminal sanctions." *Jefferson*, 284 F.3d at 177. These records are law enforcement records within the meaning of Exemption 7.

ii. Exemption 7(C)

Exemption 7(C) protects from disclosure information in law enforcement records that "could reasonably be expected to

constitute an unwarranted invasion of personal privacy."⁷ 5 U.S.C. § 552 (b)(7)(C). In determining whether this exemption applies to particular material, the Court must balance the interest in privacy of the individuals mentioned in the records against the public interest in disclosure. *Beck*, 997 F.2d at 1491. Exemption 7(C)'s balancing test is applied to the specific facts of each case. *Kimberlin v. Dep't of Justice*, 139 F.3d 944, 948 (D.C. Cir.), cert. denied, 525 U.S. 891 (1998); *Stern*, 737 F.2d at 91.

Exemption 7(C) recognizes that the stigma of being associated with any law enforcement investigation affords broad privacy rights to those who are connected in any way with such an investigation. See *Reporters Committee*, 489 U.S. at 773-775; *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1205-06 (D.C. Cir. 1991). Ms. Gay, like any individual, has a strong interest "in not being associated unwarrantedly with alleged criminal activity." *Fitzgibbon v. CIA*, 911 F.2d 755, 767 (D.C. Cir. 1990) (quoting *Stern*, 737 F.2d at 91-92).

Ms. Gay's privacy interest is diminished somewhat because she was a federal government employee. See *Stern*, 737 F.3d at 92.

⁷ OIG invoked Exemption 7(C) to protect the names of and identifying information regarding the OIG special agents conducting the investigation, witnesses interviewed in the course of the investigation, DOJ employees whose names appeared in the records, and the names of individuals other than Plaintiff who had submitted FOIA requests to the Executive Office for United States Attorneys on specific dates. Because Plaintiff does not challenge OIG's decision to withhold this information, see Plaintiff's Opposition, p. 8, these matters are conceded. In any event, the withholding of information that identifies third parties in law enforcement records generally is upheld. See *Reporters Committee*, 489 U.S. 748 (1989).

Even a federal government employee maintains at least some privacy interest in records regarding her employment. *Beck*, 997 F.2d at 1494; accord *Kimberlin*, 139 F.3d at 949 (government officials have diminished privacy interest, but do not surrender all privacy rights by accepting government employment); see *Stern*, 737 F.2d at 91 (employee has at least a minimal privacy interest in employment history and performance evaluations). In particular, a government employee "has a privacy interest in any file that 'reports on an investigation that could lead to the employee's discipline or censure.'" *Mueller v. United States Dep't of the Air Force*, 63 F.Supp. 2d 738, 742 (E.D. Va. 1999) (citing *Hunt v. Federal Bureau of Investigation*, 972 F.2d 286, 287 (9th Cir. 1992)). That interest "extends to 'not having it known whether those records contain or do not contain' information on wrongdoing, whether that information is favorable or not." *Beck*, 997 F.2d at 1494 (quoting *Dunkelberger v. Dep't of Justice*, 906 F.2d 779, 782 (D.C. Cir. 1990)).

Although OIG admits that it could not withhold the fact that Ms. Gay was the subject of an OIG investigation, it defends her substantial privacy interest in protecting the details of that investigation. *Briscoe II Decl.*, ¶ 69. In addition, OIG asserts that Ms. Gay has a strong privacy interest in her own personnel records and in information gathered in connection with her work-related conduct. *Id.* The information in these records includes not simply personal information such as Ms. Gay's address,

telephone number, and pay grade. See *id.* ¶ 17. It also includes serious allegations of wrongdoing, details of an internal agency investigation of the allegations, and personnel actions that were considered or, perhaps, were taken as a consequence of OIG's investigation. See *id.* ¶¶ 22-23. Public interest in disclosure of this information, OIG argues, does not outweigh Ms. Gay's privacy interest in these records." *Id.* ¶¶ 69-70.

Against Ms. Gay's privacy interests the Court balances the public interest in disclosure of the records at issue. "[T]he only public interest relevant for purposes of Exemption 7(C) is one that focuses on 'the citizens' right to be informed about what their government is up to.'" *Davis v. U.S. Dep't of Justice*, 968 F.2d 1276, 282 (D.C. Cir. 1992) (quoting *Reporters Committee*, 489 U.S. at 773). The Court ordinarily "consider[s], when balancing the public interest in disclosure against the private interest in exemption, the rank of the public official involved and the seriousness of the misconduct alleged." *Kimberlin*, 139 F.3d at 949; see *Stern*, 737 F.2d at 94 (noting difference between knowing participation of high-level government official and negligent

Plaintiff, predictably, opposes OIG's position. He states that OIG cannot "hide behind Exemption 7(C) in this case without first demonstrating that 'every' record it maintains on Ms. Gay was compiled for law enforcement purposes and not for one of the many other functions that Defendant performs." Plaintiff's Opposition, pp. 7-8. This argument harkens back to Plaintiff's unsuccessful challenge to the adequacy of OIG's search. The Court concluded that OIG properly limited its search to investigative records to which Exemption 7(C) may apply.

performance of duties by lower-level government employees).

In identifying the public interest at stake, the Court "look[s] to the nature of the requested document and to the FOIA purpose to be served by its disclosure." *Dunkelberger*, 906 F.2d at 781. The public interest "must be defined with sufficient specificity to enable a court to determine the nature of the public interest that it is required to balance against the privacy interests Exemption 7(C) was intended to protect." *Id.* A FOIA requester does not prevail in his efforts to obtain information about which an agency claims Exemption 7(C) protection merely by identifying a public interest. Rather, the public interest in disclosure must be so compelling that, on balance, it outweighs the individuals' legitimate privacy interests. See *Senate of Puerto Rico v. Dep't of Justice*, 823 F.2d 574, 588 (D.C. Cir. 1987).

Plaintiff states - without contradiction by the government - that Ms. Gay was "Assistant Director, Acting Assistant Director, Senior Counsel, and Attorney-in-Charge FOIA/Privacy Act (PA) staff," who in that capacity "directly oversaw DOJ responsibility under FOIA/PA and personally handled thousands of FOIA/PA requests during her tenure."⁹ Plaintiff's Opposition, p. 6. Plaintiff further contends that Defendant either failed to detect or affirmatively concealed Ms. Gay's illegal activity, thereby

⁹ Ms. Gay "served as the 'Attorney-in-Charge' of EOSA's FOIA/Privacy Act Unit for over seven years and briefly as Assistant Director." *Jefferson v. Reno*, 123 F.Supp. 1, 6 (D.D.C. 2000). She was "directly responsible for the agency's compliance with its statutory obligations" under FOIA. *Id.*

justifying disclosure of the records to expose these government activities to public scrutiny. *Id.* at p. 8

Ms. Gay was not simply an entry-level attorney. She had succeeded in reaching a position in which she exercised management and supervisory authority with respect to a DOJ unit's compliance with FOIA. Indeed, she managed the very unit charged with the administration of FOIA requests to the Executive Office for United States Attorneys ("EOUSA"). She was, as "Attorney-in-Charge," responsible for deciding whether and how EOUSA responded to FOIA requests; she supervised staff responsible for reviewing, processing and responding to FOIA requests; she shaped EOUSA's positions in matters before the Court. The allegations of her misconduct stem from her possible involvement in DOJ's failure to comply with a Court Order in a FOIA matter. In this case, the public interest in disclosure of this information is "defined with sufficient specificity," *Dunkelberger*, 906 F.2d at 781, and could not be more directly related to the "citizens' right to be informed about what their government is up to." *Reporters Committee*, 489 U.S. at 773.

The public is entitled to know whether its government and high-level government officials are taking seriously their obligations to open an agency's operations and non-exempt records to public scrutiny. The public also is entitled to know whether a senior attorney who managed a FOIA unit committed acts of

misconduct in the performance of her official duties, whether she was investigated, how the investigation proceeded, and the results of the investigation. Disclosure of this information is consistent with the core purpose of FOIA: "to 'open[] up the workings of government to public scrutiny' through disclosure of government records." *Stern*, 737 F.2d at 88 (citing *McGehee v. CIA*, 697 F.2d 1095, 1108 (D.C. Cir. 1983)).

iii. *Glomar* Response

If an individual is the target of a FOIA request, the agency to which the FOIA request is submitted may provide a *Glomar* response, that is, a refusal to confirm or deny the existence of records or information responsive to the FOIA request, on the ground that even acknowledging the existence of responsive records constitutes an unwarranted invasion of the targeted individual's personal privacy. See *Phillippi v. CIA*, 546 F.2d 1009, 1014-15 (D.C. Cir. 1976) (CIA refused to confirm or deny existence of secret vessel, the "Glomar Explorer").

Citing these privacy concerns, OIG provides a *Glomar* response as to whether Ms. Gay is mentioned in any OIG records other than the one investigative file released in part pursuant to Plaintiff's FOIA request. Briscoe II Decl., ¶¶ 12, 70. If any other such records exist, OIG claims that they are protected under Exemption 7(C) because disclosure is a clearly unwarranted invasion of Ms. Gay's personal privacy. "[M]embers of the public may draw adverse

inferences from the mere fact that the name of a particular Department employee appears in OIG records." *Id.* ¶ 70.

Plaintiff objects to the *Glomar* response because OIG has not established "that those particular records, unlike some other records in the Defendant's possession, were in fact compiled for law enforcement purposes. If they were not so compiled, Exemption 7(C) is inapplicable." Plaintiff's Opposition, p. 10. Plaintiff again focuses on the agency's multiple functions, which include, but are not exclusively, law enforcement functions. He maintains that all the records OIG receives or maintains are not necessarily compiled for law enforcement purposes. *Id.*

Plaintiff requested "copies of any and all records created and/or received by the United States Department of Justice ("DOJ"), Office of the Inspector General ("OIG") in regards to Bonnie L. Gay, Attorney in the DOJ, Executive Office for United States Attorneys." Briscoe II Decl., Ex. 1. His request can be read to encompass information or records which were not compiled for law enforcement purposes.

When a FOIA request seeks agency records that may be either enforcement or non-law enforcement records, the agency may not provide a categorical *Glomar* response. Rather, the agency may provide a *Glomar* response only with respect to those records that in fact were compiled for law enforcement purposes. *See Jefferson*, 284 F.3d at 179. With respect to any other records, the agency

proceeds as it would with any other FOIA request by conducting an adequate search for responsive records, and either disclosing them or withholding them under a recognized FOIA exemption. See *Grove v. Dep't of Justice*, 802 F.Supp. 506, 510-11 (1992) (bifurcated approach wherein agency searched administrative personnel files, and provided *Glomar* response only with respect to criminal investigative records).

A review of OIG's regulations indicates both that its functions are not limited to law enforcement, and that all the records it receives or creates are not necessarily law enforcement records.¹⁰

¹⁰ OIG is an independent entity within the United States Department of Justice that "conducts and supervises audits, inspections, and investigations relating to the programs and operations of the Department." 28 C.F.R. § 0.29a(a); see *Briscoe II Decl.*, ¶ 3. The Inspector General, among other things, is authorized to:

(a) Conduct investigations and issue reports relating to criminal wrongdoing and administrative misconduct of Department employees and administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable;

b) Receive and investigate complaints or information from an employee of the Department concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to the public health and safety . . . ;

(d) Have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the Department and its components that relate to programs and operations with respect to which the OIG has responsibilities . . . ;

(e) Request such information or assistance as may be necessary for carrying out the duties and responsibilities from any office, board, division, or component of the Department, and any Federal, State, or local governmental agency or unit thereof . . .

28 C.F.R. § 0.29h. To carry out its responsibilities, OIG performs the following

The Court concludes that OIG has produced an evidentiary record to support a finding that any OIG records regarding Ms. Gay are law enforcement records. See *Jefferson*, 284 F.3d at 178; see also *Dunkelberger*, 906 F.2d at 781 (upholding *Glomar* response regarding existence of letters of reprimand or suspension of FBI agent for alleged misconduct in connection with investigation of prominent state senator). OIG's declaration establishes that the only system of records maintained by OIG which would contain records regarding an individual who is not a member of OIG's staff,

functions:

- (1) Audits and inspects Department programs and operations as well as non-Department entities contracting with or receiving benefits from the Department;
- (2) Investigates allegations of criminal wrongdoing and administrative misconduct on the part of Department employees, as provided in [28 C.F.R. § 0.29c];
- (3) Investigates allegations that individuals and entities outside of the Department have engaged in activity that adversely affects the Department's programs and operations;
- (4) Undertakes sensitive investigations of Department operations and/or personnel . . .

28 C.F.R. § 0.29a(a). With respect to its investigative functions, OIG receives reports of "[e]vidence and non-frivolous allegations of criminal wrongdoing or serious administrative misconduct by Department employees." 28 C.F.R. § 0.29c(a).

If the evidence or non-frivolous allegations pertain to "serious misconduct by Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice," such matters are reported to the Department's Office of Professional Responsibility. 28 C.F.R. § 0.29c(b) (emphasis added); see 28 C.F.R. § 0.29e(a)(5).

The Office of Professional Responsibility refers to OIG "allegations involving misconduct by Department attorneys or investigators that do not relate to the exercise of an attorney's authority to investigate, litigate, or provide legal advice." 28 C.F.R. § 0.29e(a)(3). If the results of an OIG investigation "reflect[] upon the ethics, competence, or integrity of a Department attorney," OIG advises the Office of Professional Responsibility of these results. 28 C.F.R. § 0.29e(b).

such as Ms. Gay, is its investigative records system.¹¹ Briscoe II Decl., ¶¶ 7-8. "[T]o the extent the OIG had any other records pertaining to Ms. Gay, whether obtained from sources outside of OIG or generated by the OIG, they would be located in the OIG's investigative records, all of which qualify as 'law enforcement' information" under Exemption 7(C). *Id.* ¶ 63. Thus, OIG meets the threshold requirement for the application of Exemption 7 and for providing a *Glomar* response: that any responsive records were compiled for law enforcement purposes.

A *Glomar* response at this stage is not justified, however. Such a response may have been appropriate as an initial response to Plaintiff's FOIA request. At this point, it is inconsistent for OIG to refuse to acknowledge the existence of records about Ms. Gay because it indeed has produced such records. OIG is obligated to acknowledge the existence of any other records responsive to Plaintiff's request for "any and all" records about Ms. Gay. If such records exist, FOIA requires that OIG either disclose them, or justify its decision to withhold all or portions of the records.

¹¹ The investigative records system is maintained in order for OIG to perform its statutory duties. In its investigative records system, OIG maintains records on individuals "who are or have been the subject of inquiries or investigations conducted by the OIG including current and former employees of the Department of Justice." 57 Fed. Reg. 8476 (1992) (describing categories of individuals covered by OIG's investigative records system (JUSTICE/OIG-001)); Briscoe II Decl., ¶ 6. In addition, the records may include letters or memoranda "citing complaints or alleged criminal, civil, or administrative misconduct," and investigative files containing reports of investigations, related exhibits, affidavits, or records obtained during investigations, and public source materials. 57 Fed. Reg. 8476-77 (1992) (describing categories of records in OIG's investigative records system).

If no other records exist, OIG may so state.

b. Exemption 5

Exemption 5 protects from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). This provision protects documents "normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975); see also *FTC v. Grolier, Inc.*, 462 U.S. 19, 26 (1983). As a threshold matter, OIG demonstrates that the records at issue are inter-agency or intra-agency memoranda or letters. These records are electronic mail messages among DOJ staff, and notes and documents prepared by an OIG agent in preparation for witness interviews. See *Briscoe II Decl.*, ¶¶ 26, 48, 50, 57.

At issue in this case is the deliberative process privilege, the purpose of which is to "prevent injury to the quality of agency decisions." *NLRB v. Sears*, 421 U.S. at 151. The process is designed not only to protect documents, but also the deliberative process itself where exposure of the process would cause harm. See, e.g., *Dudman Communications Corp. v. Dep't of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987) (Exemption 5 protects executive's deliberative processes, not specific materials). To invoke the deliberative process privilege, the agency must meet two requirements. First, the records at issue must be predecisional,

that is, "antecedent to the adoption of agency policy." *Jordan v. Dep't of Justice*, 591 F.2d 753, 774 (D.C. Cir. 1978) (en banc). To satisfy this requirement, the agency must identify the deliberative process involved, and the role that the records played in that process. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980). Second, the records must be deliberative, that is, "a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters." *Vaughn v. Rosen*, 523 F.2d 1136, 1143-44 (D.C. Cir. 1973). Ordinarily the privilege does not protect purely factual matters, or factual portions of records that otherwise are deliberative. *Coastal States*, 617 F.2d at 867.

OIG invokes Exemption 5 to justify its decision to withhold information contained in four documents. Two internal electronic mail messages reflect OIG's internal deliberations about the scope of its investigation of Ms. Gay, and its deliberations about Ms. Gay's culpability. *Briscoe II Decl.*, ¶¶ 26, 48. Two documents prepared by an OIG agent reflect, among other things, OIG's deliberations about the scope and direction of its investigation of Ms. Gay. *Id.* ¶¶ 50, 57.

OIG asserts that disclosure of these records "would reveal discussions between OIG managers regarding the scope of the OIG investigation as well as the investigator's thought process regarding the scope of the investigation, including lines of

questioning and topics to be explored with particular witnesses." *Id.* ¶ 71. This information is predecisional, OIG contends, because it was part of the process leading to the OIG's investigative report, and also is deliberative because it reflects OIG's decisionmaking process in conducting and completing the investigation and report. *Id.* Disclosure of such information, OIG asserts, "could stifle honest and frank communication within the agency and affect the quality of future OIG investigations." *Id.*

Plaintiff contends that OIG improperly withheld "notes pertaining to witness interviews" described in paragraphs 49, 50, and 57 of the Briscoe II declaration.¹ Plaintiff's Opposition, pp. 5-6. "A witness answer to an investigator's question is not a deliberative process," Plaintiff argues. *Id.* at p. 5. With respect to the material described in paragraph 48 of the Briscoe II declaration, Plaintiff contends that "the document is not a part of the deliberative process merely because it contains only those facts that the person making the report thinks material." *Id.* at pp. 5-6.

OIG invokes Exemption 5 in conjunction with Exemption 7(C) to justify its decision to withhold these four documents in full. The Court accepts OIG's explanation that portions of these documents

¹ Plaintiff's purpose for referring to Paragraph 49 of the Briscoe II Declaration is unclear. Paragraph 49 does not describe material withheld under Exemption 5. See Briscoe II Decl., ¶ 48. Plaintiff likely intended to refer to paragraph 48 instead, though the information described in paragraph 48 does not mention witness interviews.

contain predecisional and deliberative information regarding the investigation of allegations of Ms. Gay's misconduct. This showing may not be sufficient in light of the Court's ruling on disclosure of records for which OIG asserted Exemption 7(C). The records to be disclosed include information regarding the scope and direction of the investigation, details of the investigation, the topics investigated, and information concerning Ms. Gay's culpability. Because the same types of information appear in documents that are to be disclosed, there may be no basis for withholding these four documents in their entirety because they contain information about OIG's internal deliberations. Before the Court will make any determination with respect to Exemption 5, the Court will review these documents *in camera*.

4. Segregability

If a record contains information that is exempt from disclosure, any reasonably segregable information must be released after deleting the exempt portions, unless the non-exempt portions are inextricably intertwined with exempt portions. *Trans-Pacific Policing Agreement v. United States Customs Service*, 177 F.3d 1022 (D.C. Cir. 1999); 5 U.S.C. § 552(b). The court errs if it "simply approve[s] the withholding of an entire document without entering a finding on segregability, or the lack thereof." *Powell v. United States Bureau of Prisons*, 927 F.2d 1239, 1242 n.4 (D.C. Cir. 1991) (quoting *Church of Scientology v. Dep't of the Army*, 611 F.2d 738,

744 (9th Cir.1979)).

Having reviewed the record in this case, the Court concludes that the following information is protected under Exemption 7(C) and must be redacted from any records to be disclosed to Plaintiff: the identity of any OIG agent who conducted the investigation, the name of and identifying information about any witness, the names of FOIA requesters other than Plaintiff, and Ms. Gay's date of birth, home address, telephone numbers, and Social Security number. With the exception of four records containing information which may be protected under Exemption 5, the remaining records and portions of records are segregable and must be disclosed to Plaintiff.¹³


III. Conclusion¹⁴

The Court concludes that OIG's search for records responsive to Plaintiff's FOIA request properly was limited to its investigative records system. Disclosure of the records identified thus far as a result of OIG's search is warranted because the extraordinary public interest articulated by Plaintiff outweighs Ms. Gay's privacy interest in the investigation of allegations of her misconduct.

¹³ The Court makes no segregability determination with respect to four records containing information which may be protected under Exemption 5. These records will be reviewed *in camera* and shall not be disclosed at this time.

¹⁴ Plaintiff seeks reimbursement of his costs of litigation, \$185.00, for OIG's alleged failure to process his FOIA request properly. Plaintiff's Opposition, p. 11. The Court defers its ruling on this matter, and will address this issue at the close of this case. Defendant may file an opposition or other response to Plaintiff's motion.

An Order consistent with this Memorandum Opinion will be issued separately.


GLADYS KESSLER
United States District Judge

DATE: *March 29, 2003*