

# CREW | citizens for responsibility and ethics in washington

Via Certified Mail

September 19, 2019

U.S Department of Justice  
Office of Information Policy  
441 G Street NW, Sixth Floor  
Washington, D.C. 20001

Re: Appeal of Freedom of Information Act/Privacy Acts Request No: 1437078-000

Dear Director,

Citizens for Responsibility and Ethics in Washington (“CREW”) hereby appeals the August 20, 2019 determination of the Federal Bureau of Investigation (“FBI”) in the above-referenced Freedom of Information Act/Privacy Acts (“FOIA”) request.

On August 20, 2019, CREW submitted a FOIA request to the FBI seeking two categories of records:

- (1) Copies of the non-disclosure agreement (“NDA”) the FBI required Florida Governor Ron DeSantis to sign when he met with officials from the FBI and the U.S. Department of Homeland Security on May 10, 2019, to discuss a breach of election information in 2016 in at least one Florida county that was revealed in the report by Special Counsel Robert Mueller; and
- (2) Documents sufficient to identify the county or counties in Florida that had their election information breached in 2016.<sup>1</sup>

A copy of this request is attached as Exhibit A.

## **Category (1) Records**

By letter dated August 20, 2019, Record/Information Dissemination Section Chief David M. Hardy asserted that the requested Category (1) records were exempt from disclosure under FOIA Exemption (b)(7)(E). A copy of this letter is attached as Exhibit B. As discussed below, the requested records do not fall within Exemption 7(E).

Exemption 7(E) protects “records or information compiled for law enforcement purposes when disclosure would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement guidelines or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). The term “guidelines” “generally consist[s] of ‘an indication of or outline for

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<sup>1</sup> We refer to these responses as “Category (1)” and “Category (2),” respectively.

future policy or conduct,” which in turn refers to “resource allocation.” The term “techniques and procedures” “refers to how law enforcement officials go about investigating a crime.”<sup>2</sup> Additionally, “[g]uidelines” refers to “an indication or outline of future policy or conduct,” rather than current or past conduct.<sup>3</sup>

Here, “guidelines” plainly are not at issue. Disclosure of Gov. DeSantis’s nondisclosure agreement would reveal nothing about future resource allocation. Rather, disclosing the contents of the NDA at most would disclose only how resources previously have been allocated to combat election hacking, but would shed no light on how resources might be allocated in the future.

Second, any relevant “techniques and procedures” that potentially would be disclosed as a result of disclosing the NDA could not reasonably or logically be construed as creating “a risk of circumvention of the law.” Any such method of criminal investigation would relate only to Florida counties that already have been hacked and would therefore not impact potential future hacking or other criminal activity.

In order to justify any withholding, the agency must “demonstrate logically how the release of the requested information might create a risk of circumvention of the law.”<sup>4</sup> Here, the agency failed to assert any facts that would demonstrate such a risk. “Under FOIA, a defendant agency is required to provide a specific basis for each withholding. ‘Boilerplate,’ in contrast, ‘will not do.’”<sup>5</sup> Yet here, the FBI’s justification for withholding Category (1) documents under (b)(7)(E) amounts to nothing more than “near-verbatim recitation[s] of the statutory standard” that the D.C. Circuit has explicitly precluded.

The agency’s initial determination classifying disclosure of Gov. DeSantis’s NDA as exempt under FOIA Exemption (b)(7)(E) is therefore plainly in error and must be reversed.

### **Category (2) Records**

With respect to Category (2) records, Mr. Hardy asserted that the “FBI can neither confirm nor deny the existence of records responsive to your request for documents . . . pursuant to FOIA exemptions 1, 3, 7(A) and 7(E),” This too was in error.

First, the FBI’s *Glomar* response is broadly inapposite. An agency may, in response to a FOIA request, refuse to confirm the existence or non-existence of requested documents—a so-called *Glomar* response—when acknowledging the fact of existence or nonexistence would itself cause cognizable harm under a FOIA exemption.<sup>6</sup> A *Glomar* response is improper when the agency has already “officially acknowledged” the existence of a responsive record.<sup>7</sup>

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<sup>2</sup> *Brennan Ctr. for Justice v. Dep’t. of Homeland Sec.*, 331 F.Supp.3d 74, 98 (S.D.N.Y. 2018).

<sup>3</sup> *Allard K. Lowenstein Intern. Human Rights Project v. Dep’t. of Homeland Sec.*, 626 F.3d 678, 682 (2d. Cir. 2010).

<sup>4</sup> *Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011) (quoting *Mayer Brown LLP v. IRS*, 562 F.3d 1190, 1194 (D.C. Cir. 1194)).

<sup>5</sup> *Bartko v. U.S. Dep’t of Justice*, 62 F.Supp.3d 134, 146-47 (D.D.C. 2014) (quoting *Citizens for Responsibility and Ethics in Washington v. Dep’t of Justice*, 746 F.3d 1082, 1101 (D.C. Cir. 2014)).

<sup>6</sup> *People for the Ethical Treatment of Animals v. Nat’l Inst. of Health*, 745 F.3d 535, 540 (D.C. Cir. 2014).

<sup>7</sup> *Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007) (quoting *Gardels v. CIA*, 689 F.2d 1100, 1103 (D.C. Cir. 1982)).

In order to “overcome an agency’s *Glomar* response when relying on an official announcement, ‘the requesting plaintiff must pinpoint an agency record that both matches the plaintiff’s request and has been publicly and officially acknowledged by the agency.’”<sup>8</sup> Here, the FBI has already officially acknowledged that records identifying which counties in Florida had their election information breached in 2016 exist, thereby precluding a *Glomar* response. Specifically, the Department of Justice (“DOJ”), of which the FBI is a component, acknowledged in its indictment of Russian intelligence operatives accused of hacking the 2016 elections that the operatives “sen[t] over 100 spear phishing emails to organizations and personnel involved in administering elections in numerous Florida counties.”<sup>9</sup> Second, by asking Gov. DeSantis to sign an agreement requiring him not to disclose which counties had their election information hacked, the FBI has acknowledged that it gave Gov. DeSantis that information and therefore, possesses that information.<sup>10</sup> Therefore, the DOJ has “publicly and officially” acknowledged that it has knowledge of and records indicating which counties’ information was hacked.<sup>11</sup>

Therefore, the FBI’s *Glomar* response is improper as a general matter because the FBI cannot claim that the existence *vel non* of the records CREW seeks is exempt under FOIA.

Second, the FBI’s specific *Glomar* responses with respect to Exemptions 3 and 7(A) also fail.

According to the FBI’s response to CREW’s request, it cannot identify whether Category (2) materials exist because they implicate protected “intelligence sources and methods” protected by Exemption 3.<sup>12</sup> However, if requested documents “reveal[] nothing about the agency’s practices or [do not] concern[] its ‘intelligence sources or methods,’” a *Glomar* response is not warranted.<sup>13</sup> The burden here is on the FBI to prove that disclosing the identity of the counties in question would reveal information about agency practice, or concerns protected intelligence sources or methods.<sup>14</sup> The FBI has offered no facts that would support either of these contentions.

Third, the FBI also made a *Glomar* response under Exemption 7(A), refusing to identify whether Category (2) materials exist because they implicate “records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings.”<sup>15</sup> According to the FBI, “a confirmation by the FBI that it has or does not have responsive records would be tantamount to acknowledging the existence or nonexistence of a pending investigation it has not previously acknowledged.” In fact, however, the FBI already has

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<sup>8</sup> *James Madison Project v. Dep’t of Justice*, 302 F.Supp.3d 12, 21 (D.D.C. 2018).

<sup>9</sup> Indictment at 26, *United States v. Viktor Borisovich Netyksho, et al.*, No. 1:18-cr-00215-ABJ (D.D.C. July 13, 2018).

<sup>10</sup> Patricia Mazzei, *Russians Hacked Voter Systems in 2 Florida Counties. But Which Ones?*, *New York Times* (May 14, 2019), <https://www.nytimes.com/2019/05/14/us/florida-election-hacking-desantis.html>.

<sup>11</sup> *James Madison Project*, 302 F.Supp.3d, at 21.

<sup>12</sup> 5 U.S.C. § 552(b)(3); 50 U.S.C. § 3024(i)(1).

<sup>13</sup> *American Civil Liberties Union v. Dep’t of Defense*, 389 F.Supp.2d 547, 566 (S.D.N.Y. 2005).

<sup>14</sup> *See, e.g., Sussman v. U.S. Marshals Service*, 494 F.3d 1106, 1113 (D.C. App. 2007).

<sup>15</sup> *See* 5 U.S.C. § 552(b)(7)(A) (2016).

acknowledged the investigation in question. In a written statement the FBI “provided information involving the attempted intrusion into Supervisor of Elections networks throughout the state [of Florida]” and “provided assurance that **investigators** did not detect any adversary activity that impacted vote counts or disrupted electoral processes during the 2016 or 2018 elections.”<sup>16</sup> With this statement, the FBI officially acknowledged that an investigation into Florida election hacking during the 2016 election has been completed. Therefore, disclosing the Florida counties in which election records were breached would provide the public information about a prior-investigated event, but would not reveal information protected by Exemption 7(A).

In addition, courts in the D.C. Circuit have only upheld a *Glomar* response in the 7(A) context where disclosure has the potential to either “tip off subjects and persons of investigative interest” or harm potential testimony or witnesses.<sup>17</sup> Unlike in those cases, merely disclosing the identities of the counties in question could do no such harm. No further criminal activity could possibly occur as a result of disclosure, nor could witnesses or testimony be subject to threat. In order to assert a *Glomar* response in the 7(A) context, the circumstances must “‘characteristically support an inference’ that disclosure would interfere with any pending enforcement proceeding.”<sup>18</sup> Merely identifying already-investigated hacking targets does not remotely support this inference.

Accordingly, the agency’s initial determination refusing to confirm or deny the existence of records sought by CREW is plainly in error and must be reversed.

Moreover, a *Glomar* response cannot be used to withhold records that do not fall within a FOIA exemption.<sup>19</sup> Therefore, even if the agency’s *Glomar* response were proper -- which it is not -- the FBI may not refuse to disclose nonexempt documents.

Fourth, the FBI has invoked Exemptions(1), (3), (7)(A), and (7)(E) but has provided no explanation for why or how those exemptions apply beyond merely citing “‘bald assertion[s]’ that ‘amount[] to little more than recitation of the statutory standard[s].’”<sup>20</sup>

First, the FBI’s invocation of Exemption 1 lacks any support. Exemption 1 exempts from FOIA only documents “properly classified” “by an Executive order to be kept secret in the

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<sup>16</sup> Gary Fineout, *Russians hacked 2 Florida voting systems; FBI and DeSantis refuse to release details*, Politico (May 14, 2019) (emphasis added).

<sup>17</sup> See, e.g., *Leopold v. Dep’t of Justice*, 301 F.Supp.3d 13, 19 (D.D.C. 2018). (Upholding agency *Glomar* response where “disclosure “would tip off subjects and persons of investigative interest, thus giving them the opportunity to take defensive actions to conceal their criminal activities, elude detection, and suppress and/or fabricate evidence.”); *Buzzfeed Inc. v. Dep’t of Justice*, 344 F.Supp.3d 396, 404 (D.D.C 2018) (Upholding FBI *Glomar* response where acknowledgment of surveillance plane flight logs would “enable individuals involved in criminal activity to track planes, learn where the FBI is conducting an investigation, and alter their behavior to avoid detection or interrupt or impede ongoing law enforcement investigations.”); *James Madison Project v. Dep’t of Justice*, 330 F.Supp.3d 192, 203 (D.D.C. 2018) (Upholding agency *Glomar* response where confirmation of records’ existence would “arm [potential subjects and witnesses] with valuable information necessary to alter or offensively structure their testimony, and also to take defensive actions to conceal their activities, elude detection, and destroy, adulterate, or fabricate evidence [and] . . . would also expose any potential witnesses to harassment, intimidation, or coercion.”).

<sup>18</sup> *Citizens for Responsibility and Ethics in Wash. V. U.S Dep’t of Justice*, 749 F.3d 1082, 1099 (D.C. App. 2014).

<sup>19</sup> *Shapiro v. Dep’t of Justice*, 153 F.Supp.3d 253, 274 (D.D.C. 2016).

<sup>20</sup> *Bartko*, 62 F.Supp.3d at 147.

interest of national defense or foreign policy.<sup>21</sup> Therefore, in order for the FBI to invoke Exemption 1, information under Category (2) must have been “properly classified” pursuant to Executive Order 13,526. Under EO 13,526, only if “the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security . . . and the original classification authority is able to identify or describe the damage” can information be “properly classified.”<sup>22</sup> The FBI failed to identify whether it has classified the information in Category (2) and if the information has been classified, whether it conforms to the requirements set in EO 13,526.

Second, the FBI also failed to substantiate that Category (2) information is exempt under exemption 3. Exemption 3 precludes the disclosure of information prohibited by other federal statutes.<sup>23</sup> Here, the relevant statute is 50 U.S.C. § 3024(i)(1), which requires the “Director of National Intelligence [to] protect intelligence sources and methods from unauthorized disclosure.”<sup>24</sup> Nondisclosure under Exemption 3 requires “a logical explanation of how certain intelligence sources and methods would be revealed if” the requested information is released.<sup>25</sup> Here, the FBI provided mere “conclusory statements” that fail to substantiate that the requested information constitutes “intelligence sources and methods.”<sup>26</sup>

Finally, the FBI’s invocation of Exemption (7)(A) for the Category 2 records also must fail. Exemption 7(A) authorizes the withholding of “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records . . . could reasonably be expected to interfere with enforcement proceedings.”<sup>27</sup> Under this exemption, the “agency must show that release of the records reasonably could be expected to cause some distinct harm to [a] pending or imminent enforcement proceeding or investigation.”<sup>28</sup> Exemption 7(a) may not be used as a “blanket exemption”—disclosure of such records must “interfere in a ‘palpable, particular way’ with the investigation.”<sup>29</sup> Here, the FBI seems to be using 7(a) as such a “blanket exemption”—refusing to disclose any materials that are or ever have been under investigation, while failing to identify any facts that would support a contention that disclosure would interfere in any way with an investigation.

Moreover, agencies may not assert Exemption 7(A) when the targets under investigation already have access to the information in question.<sup>30</sup> Here, identification of the counties that had their election information breached in 2016 could not reasonably interfere with a law

<sup>21</sup> 5 U.S.C. § 552(b)(1)(A) (2016).

<sup>22</sup> Exec. Order No. 13,526 § 1.1(a)(1)(4), 3 C.F.R. 298 (2010).

<sup>23</sup> 5 U.S.C. § 552(b)(3) (2016).

<sup>24</sup> The Supreme Court has found this statute satisfies the requirements of Exemption 3. *CIA v. Sims*, 471 U.S. 159, 167 (1985).

<sup>25</sup> *Brick v. Dep’t of Justice*, 358 F.Supp.3d 37, 48 (D.D.C. 2019).

<sup>26</sup> *Nat’l Sec. Counselors v. CIA*, 320 F.Supp.3d 200, 216 (D.D.C. 2018).

<sup>27</sup> 5 U.S.C. § 552(b)(7)(A) (2016).

<sup>28</sup> *Lazaridis v. U.S. Dep’t of State*, 934 F.Supp.2d 21, 37 (D.D.C. 2013).

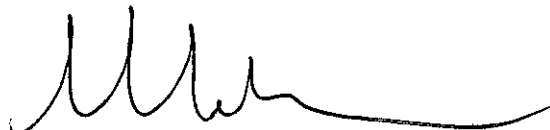
<sup>29</sup> *Cuban v. S.E.C.*, 744 F.Supp.2d 60, 85 (D.D.C. 2010) (quoting *North v. Walsh*, 881 F.2d 1088, 1100 (D.C. Cir. 1989)).

<sup>30</sup> See *Chesapeake Bay Found., Inc. v. U.S. Army Corps of Engineers*, 677 F.Supp.2d 101, 108 (D.D.C. 2009) (“[T]he Corps does not explain how its investigation will be impaired by the release of information that the targets of the investigation already possess.”).

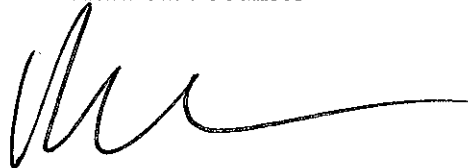
enforcement investigation or proceeding because any target of such an investigation or proceeding—a perpetrator of the breach—would already know which counties they breached.

All the agency's boilerplate explanations of the asserted FOIA exemptions therefore fail and its initial decision must be reversed.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Anne L. Weismann', written in a cursive style.

Anne L. Weismann  
Chief FOIA Counsel

A handwritten signature in black ink, appearing to be 'Ben Chang', written in a cursive style.

Ben Chang  
Legal Intern

# EXHIBIT A

# CREW | citizens for responsibility and ethics in washington

May 15, 2019

BY FACSIMILE: (540) 868-4391/4997

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

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this 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.

First, CREW requests copies of the non-disclosure agreement the FBI required Florida Governor Ron DeSantis to sign when he met with officials from the FBI and the U.S. Department of Homeland Security on May 10, 2019, to discuss a breach of election information in 2016 in at least one Florida county that was revealed in the report by Special Counsel Robert Mueller.

Second, CREW requests documents sufficient to identify the county or counties in Florida that had their election information breached in 2016.

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).



### 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).

It was just reported that last Friday, Governor DeSantis met with the FBI and the U.S. Department of Homeland Security following the revelation in the Mueller Report “that ‘at least one’ Florida county had its election information accessed by Russian hackers in 2016.”<sup>1</sup> At a subsequent press conference, Governor DeSantis revealed that while he had been briefed on the election breach by Russian hackers, he was not permitted to name the counties that had been breached because the FBI had required him to sign a non-disclosure agreement (“NDA”).<sup>2</sup> He indicated that but for that agreement, he would have been willing to identify the affected counties.<sup>3</sup>

The use by the federal government of non-disclosure agreements is highly unusual, of questionable legality, and contrary to public policy. Indeed, experts have suggested that Florida’s public records law makes NDAs non-enforceable.<sup>4</sup> The FBI’s use of an NDA here is even more questionable given that it prevented the public and, in particular, citizens of Florida, from better understanding how efforts to breach their election systems could be thwarted in future elections. At a minimum, providing them with the identities of the affected counties will advance their interests and the interests of the public at large in understanding our election vulnerabilities and how they can be addressed for the 2020 election. The requested records also will shed light on the nature of the NDA Governor DeSantis was required to sign and may explain why its use was necessary.

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

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<sup>1</sup> Emily L. Mahoney, Ron DeSantis ‘not allowed’ to disclose which two Florida counties were hacked by Russians, *Tampa Bay Times*, May 14, 2019, available at <https://www.tampabay.com/florida-politics/buzz/2019/05/14/which-florida-counties-had-election-hacks-russians-fbi-and-now-gov-ron-desantis-all-know-but-we-dont/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

FOIA Officer  
May 15, 2019  
Page 3

to the public through its website, [www.citizensforethics.org](http://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) (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.

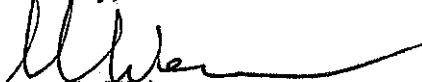
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

#### **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](mailto: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](mailto:aweismann@citizensforethics.org) or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann  
Chief FOIA Counsel

# EXHIBIT B



U.S. Department of Justice

Federal Bureau of Investigation  
Washington, D.C. 20535

August 20, 2019

MS. ANNE L. WEISMANN  
CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON  
SUITE 201  
1101 K STREET NW  
WASHINGTON, DC 20005

FOIPA Request No.: 1437078-000  
Subject: 2016 Election Information Breach  
(State of Florida)

Dear Ms. Weismann:

This responds to your Freedom of Information/Privacy Acts (FOIPA) request. Below you will find informational paragraphs relevant to your request. Please read each item carefully.

Regarding the portion of your request seeking copies of the non-disclosure agreement signed by Governor Ron Desantis, the material you requested is exempt from disclosure pursuant to FOIA Exemption (b)(7)(E) of 5 U.S.C. § 552.

Records responsive to your request are exempt per FOIA Exemption (b)(7)(E) which protects "records or information compiled for law enforcement purposes when disclosure 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." How the FBI applies its investigative resources against a particular allegation, report of criminal activity, or perceived threat, is itself a law enforcement technique or procedure that the FBI protects pursuant to Exemption (b)(7)(E) of 5 U.S.C. § 552.

Additionally, the FBI is an intelligence agency as well as a law enforcement agency. In its capacity as an intelligence agency, the FBI compiles records while carrying out its responsibilities to investigate threats to national security and gather foreign intelligence. The FBI can neither confirm nor deny the existence of records responsive to your request for documents sufficient to identify the county or counties in Florida that had their election information breached in 2016 pursuant to FOIA Exemptions (b)(1), (b)(3), (b)(7)(A), and (b)(7)(E) of 5 U.S.C. § 552.

The nature of your request implicates records the FBI may or may not compile pursuant to its national security and foreign intelligence functions. Accordingly, the FBI cannot confirm or deny the existence of any records about your subject as the mere acknowledgment of such records existence or nonexistence would in and of itself trigger harm to national security interests per Exemption (b)(1) and/or reveal intelligence sources and methods per Exemption (b)(3); 50 U.S.C. § 3024(i)(1).

Moreover, as a federal law enforcement agency, a confirmation by the FBI that it has or does not have responsive records would be tantamount to acknowledging the existence or nonexistence of a pending investigation it has not previously acknowledged. Therefore, the FBI neither confirms nor denies the existence of records pursuant to FOIA Exemption (b)(7)(A) of 5 U.S.C. § 552.

Finally, FOIA Exemption (b)(7)(E) protects "records or information compiled for law enforcement purposes when disclosure 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." How the FBI applies its investigative resources against a particular allegation, report of criminal activity, or perceived threat, is itself a law enforcement technique or procedure that the FBI protects pursuant to Exemption (b)(7)(E) of 5 U.S.C. § 552. Accordingly, a confirmation by the FBI that it has or does not have responsive records would be tantamount to acknowledging where the FBI is or is not applying investigative resources thus disclosing the scope of law enforcement techniques and procedures.

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.

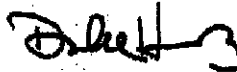
Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. "Part 1" of the Addendum includes standard responses that apply to all requests. "Part 2" includes additional standard responses that apply to all requests for records on individuals. "Part 3" includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

For questions regarding our determinations, visit the [www.fbi.gov/foia](http://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). 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](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing [foipaquestions@fbi.gov](mailto: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 it may be easily identified.

Sincerely,



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

Enclosure(s)

## FBI FOIPA Addendum

As referenced in our letter responding to your Freedom of Information/Privacy Acts (FOIPA) request, the FBI FOIPA Addendum includes information applicable to your request. Part 1 of the Addendum includes standard responses that apply to all requests. Part 2 includes additional standard responses that apply to all requests for records on individuals. Part 3 includes general information about FBI records. For questions regarding Parts 1, 2, or 3, visit the [www.fbi.gov/foia](http://www.fbi.gov/foia) website under "Contact Us." Previously mentioned appeal and dispute resolution services are also available at the web address.

### Part 1: The standard responses below apply to all requests:

- (i) **5 U.S.C. § 552(c).** Congress excluded three categories of law enforcement and national security records from the requirements of the FOIA [5 U.S.C. § 552(c) (2006 & Supp. IV (2010))]. FBI responses are limited to those records subject to the requirements of the FOIA. Additional information about the FBI and the FOIPA can be found on the [www.fbi.gov/foia](http://www.fbi.gov/foia) website.
- (ii) **National Security/Intelligence Records.** The FBI can neither confirm nor deny the existence of national security and foreign intelligence records pursuant to FOIA exemptions (b)(1), (b)(3), and PA exemption (j)(2) as applicable to requests for records about individuals [5 U.S.C. §§ 552/552a (b)(1), (b)(3), and (j)(2); 50 U.S.C. § 3024(i)(1)]. The mere acknowledgment of the existence or nonexistence of such records is itself a classified fact protected by FOIA exemption (b)(1) and/or would reveal intelligence sources, methods, or activities protected by exemption (b)(3) [50 USC § 3024(i)(1)]. This is a standard response and should not be read to indicate that national security or foreign intelligence records do or do not exist.

### Part 2: The standard responses below apply to all requests for records on individuals:

- (i) **Requests for Records about any Individual—Watch Lists.** The FBI can neither confirm nor deny the existence of any individual's name on a watch list pursuant to FOIA exemption (b)(7)(E) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (j)(2)]. This is a standard response and should not be read to indicate that watch list records do or do not exist.
- (ii) **Requests for Records for Incarcerated Individuals.** The FBI can neither confirm nor deny the existence of records which could reasonably be expected to endanger the life or physical safety of any incarcerated individual pursuant to FOIA exemptions (b)(7)(E), (b)(7)(F), and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (b)(7)(F), and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.

### Part 3: General Information:

- (i) **Record Searches.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching those systems or locations where responsive records would reasonably be found. A reasonable search normally consists of a search for main files in the Central Records System (CRS), an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling law enforcement, intelligence, and administrative functions. The CRS spans the entire FBI organization and encompasses the records of FBI Headquarters (FBIHQ), FBI Field Offices, and FBI Legal Attaché Offices (Legats) worldwide and includes Electronic Surveillance (ELSUR) records. For additional information about our record searches visit [www.fbi.gov/services/information-management/foipa/requesting-fbi-records](http://www.fbi.gov/services/information-management/foipa/requesting-fbi-records).
- (ii) **FBI Records.** Founded in 1908, the FBI carries out a dual law enforcement and national security mission. As part of this dual mission, the FBI creates and maintains records on various subjects; however, the FBI does not maintain records on every person, subject, or entity.
- (iii) **Requests for Criminal History Records or Rap Sheets.** The Criminal Justice Information Services (CJIS) Division provides Identity History Summary Checks – often referred to as a criminal history record or rap sheets. These criminal history records are not the same as material in an investigative "FBI file." An Identity History Summary Check is a listing of information taken from fingerprint cards and documents submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. For a fee, individuals can request a copy of their Identity History Summary Check. Forms and directions can be accessed at [www.fbi.gov/about-us/cjis/identity-history-summary-checks](http://www.fbi.gov/about-us/cjis/identity-history-summary-checks). Additionally, requests can be submitted electronically at [www.edo.cjis.gov](http://www.edo.cjis.gov). For additional information, please contact CJIS directly at (304) 625-5590.
- (iv) **The National Name Check Program (NNCP).** The mission of NNCP is to analyze and report information in response to name check requests received from federal agencies, for the purpose of protecting the United States from foreign and domestic threats to national security. Please be advised that this is a service provided to other federal agencies. Private citizens cannot request a name check.

## 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.

