

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

NEW CIVIL LIBERTIES ALLIANCE )  
4250 N. Fairfax Drive )  
Suite 300 )  
Arlington, Virginia 22203 )

Plaintiff, )

v. )

Civil Action No. 25-974

FEDERAL BUREAU OF INVESTIGATION )  
935 Pennsylvania Avenue, NW )  
Washington, D.C. 20535 )

and )

DEPARTMENT OF JUSTICE )  
950 Pennsylvania Avenue, NW )  
Washington, D.C. 20530 )

Defendants. )

**COMPLAINT**

1. Plaintiff New Civil Liberties Alliance (“NCLA”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to obtain access to responsive records and information improperly withheld by Defendant Federal Bureau of Investigation (“FBI”), a component agency of Defendant Department of Justice (“DOJ”).

2. This Complaint concerns a FOIA request Plaintiff submitted to FBI on January 19, 2023, for records and documents related to payments FBI has reportedly made to X—formerly known as Twitter<sup>1</sup>—as well as to other social media platforms (*e.g.*, Facebook, Instagram, Snapchat, LinkedIn, Tik Tok, etc.), interactive computer services (*e.g.*, Google), think tanks,

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<sup>1</sup> For purposes of clarity, the social media company formerly known as Twitter will be referred to herein exclusively as X.

academic institutions, newspapers, media companies, and/or non-governmental organizations as reimbursement for time spent processing requests made by FBI since October 1, 2019.

3. By letter dated January 30, 2023, FBI administratively closed Plaintiff's FOIA request and refused to disclose—or even to confirm or deny the existence of—any of the requested records, relying exclusively on the FOIA exemption codified in 5 U.S.C. § 552(b)(7)(E). FOIA Exemption 7(E) is limited to “records or information compiled for law enforcement purposes,” but only to the extent that such materials “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.”

4. FBI did not indicate how any—let alone *all*—of the requested materials qualify as exempt from disclosure under FOIA Exemption 7(E).

5. Per FBI's direction and FOIA procedures, Plaintiff appealed FBI's response to Defendant DOJ by letter dated April 27, 2023.

6. Plaintiff received no further correspondence from FBI or DOJ until, by letter dated August 15, 2023, DOJ affirmed FBI's initial decision to refuse to confirm or deny the existence of any records responsive to Plaintiff's request, pursuant to FOIA Exemption 7(E), and to refuse to produce the responsive records, some of which Plaintiff (and the public) is already aware exist, as explained below.

7. As discussed further herein, it is implausible that each and every document responsive to Plaintiff's request falls under FOIA Exemption 7(E)—the sole exemption that Defendants cite to justify the categorical denial of Plaintiff's request. In any event, Defendants' perfunctory, boilerplate response fails to comply with FBI's legal obligations under FOIA, which,

among other things, require an agency to specifically identify the reasons why a particular exemption is applicable to a request and to correlate those reasons with the particular part of a withheld document to which they apply.

8. Further, FOIA requires that an agency provide a requesting party with the agency's determination of any appeal within twenty working days after receipt of such appeal. 5 U.S.C. § 552(a)(6)(A)(ii). DOJ was thus required to provide a formal determination of Plaintiff's appeal by May 25, 2023. Notwithstanding FOIA's clear deadline, DOJ failed to issue a determination of Plaintiff's appeal until August 15, 2023—nearly three months beyond the statutory time limit.

9. Defendants' failure to produce the requested responsive records (or, at minimum, to explain FBI's determination to withhold the requested materials in their entirety beyond simply reciting the statutory language of FOIA Exemption 7(E)), along with Defendants' failure to issue a timely determination of Plaintiff's appeal, violate Plaintiff NCLA's rights under FOIA.

### **PARTIES**

10. Plaintiff NCLA is a 501(c)(3) nonpartisan, nonprofit civil-rights organization that is devoted to defending constitutional freedoms from violations by the administrative state. In carrying out its mission, NCLA regularly requests access under FOIA to the public records of federal agencies and disseminates its findings, analyses, and commentary to the public.

11. Defendant FBI is an agency within the meaning of 5 U.S.C. § 552(f)(1) and has possession, custody, and control of records to which NCLA seeks access and which are the subject of this Complaint.

12. Defendant DOJ is a Department of the Executive Branch of the United States government. DOJ is an agency within the meaning of § 552(f)(1) and has possession, custody,

and control of records to which Plaintiff seeks access, and which are the subject of this Complaint. Defendant FBI is a component agency of DOJ.

### **JURISDICTION AND VENUE**

13. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

14. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

### **FACTS**

#### *A. Plaintiff's FOIA Request*

15. On January 19, 2023, Plaintiff (via NCLA litigation counsel Casey Norman) submitted a FOIA request to FBI through the online FOIA and Privacy Act (“FOIPA”) submission portal provided on FBI’s website. *See* Exhibit A.

16. Specifically, Plaintiff sought to obtain copies of FBI’s records and documents related to payments that the agency has reportedly made to X, as well as to other social media platforms (*e.g.*, Facebook, Instagram, Snapchat, LinkedIn, TikTok, etc.), interactive computer services (*e.g.*, Google), think tanks, academic institutions, newspapers, media companies, and/or non-governmental organizations as reimbursement for time spent processing FBI requests. As one example of such a reimbursement, Plaintiff cited the \$3,415,323 in taxpayer funds that FBI had reportedly paid to X since October 1, 2019. This FBI payment is described in an X employee’s February 10, 2021 email (released to the public on December 19, 2022) as an amount that X collected under a “statutory right of reimbursement” for X’s “time spent processing requests from the FBI.”<sup>2</sup> *See id.* (quoting Shellenberger, *supra* at note 2).

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<sup>2</sup> This payment was reported as a part of the “Twitter Files,” a series of internal documents that CEO Elon Musk made public starting in December 2022 with the aid of certain authors and journalists, including Michael Shellenberger,

17. In a statement on December 21, 2022—two days after the email noted above was made public—FBI described the \$3,415,323 payment to X as a “reimbursement” for the “reasonable costs and expenses associated with [X’s] response to a legal process... For complying with legal requests, and a standard procedure.”<sup>3</sup> FBI officials also stated that X is not the only social media company that is being paid by the federal agency, stating “We don’t just reimburse [X].”<sup>4</sup>

18. X’s guidelines for law enforcement state that “X may seek reimbursement for costs associated with information produced pursuant to legal process and as permitted by law (e.g., under 18 U.S.C. § 2706).”<sup>5</sup> The statute cited in X’s guidelines is the Stored Communications Act, which governs when and under what legal processes government entities may compel disclosures from electronic service providers, including social media companies. The statute also requires that the requesting government entity reimburse the service provider for “such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information.” 18 U.S.C. § 2706.

19. Plaintiff’s request seeks documents and records (*i.e.*, contracts, financial records or receipts, grants, email correspondence, internal memoranda, and other forms of communication) concerning the scope and nature of FBI’s requests or demands of X and other recipients (*i.e.*, other social media platforms, interactive computer services, such as Google, academic institutions,

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who posted the installments on X (then known as Twitter). Michael Shellenberger (@ShellenbergerMD), X (Dec. 19, 2022), <https://twitter.com/ShellenbergerMD/status/1604908670063906817>.

<sup>3</sup> Jake Gibson and Adam Sabes, *FBI responds to Twitter Files disclosures, says it didn’t request ‘any action’ on specific tweets*, Fox News (Dec. 21, 2022), <https://www.foxnews.com/politics/fbi-declines-list-other-social-media-companies-paid-says-twitter-payment-was-reimbursement>.

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

<sup>5</sup> *Guidelines for law enforcement*, X (accessed March 31, 2025), <https://help.x.com/en/rules-and-policies/x-law-enforcement-support#14>.

newspapers, think tanks, and non-government organizations), resulting in FBI reimbursements since October 1, 2019.

20. For example, are the FBI reimbursements in question limited to payments for routine specific subpoenas and targeted requests? Or is FBI funding modifications that X and others have made to their platforms in response to FBI's requests or demands to more closely align their policies with those of the government, such as, for example, combatting so-called "misinformation" and "disinformation" on social media? Is FBI directing funds toward media platforms and NGOs to monitor the speech of drug or human traffickers, organized crime syndicates, and foreign malign actors—or is it funding them to monitor the speech of American citizens whose views do not align with the federal government's preferred policies? Records concerning FBI's payments to third parties for the latter—or for other forms of surveillance, suppression, or censorship of First Amendment-protected speech on matters of public debate or concern—cannot reasonably be deemed to disclose law enforcement techniques, procedures, or guidelines in a way that would risk circumvention of the law, as required for withholding under FOIA Exemption 7(E).

*B. FBI's Response*

21. By letter to Plaintiff dated January 24, 2023, FBI acknowledged that it had received Plaintiff's FOIA request and assigned it FOIPA Request Number 1579372-000. FBI did not provide an estimated date of completion. *See* Exhibit B.

22. By letter to Plaintiff dated January 30, 2023, FBI administratively closed Plaintiff's FOIA request and declined to disclose—or even confirm or deny the existence of—any of the requested records. FBI stated that it "can neither confirm nor deny the existence of records responsive to [Plaintiff's] request pursuant to FOIA Exemption (b)(7)(E)" and that the "nature of

[Plaintiff's] request implicates records the FBI may or may not compile for law enforcement purposes." *See* Exhibit C.

23. FBI further stated that, "per standard FBI practice and policy, [FBI's] response neither confirms nor denies the existence of any records which would disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions and risk circumvention of the law by FOIA exemption (b)(7)(E)." *See id.*

24. FBI explained that it was "unnecessary to adjudicate [Plaintiff's] request for a Fee Waiver at this time, as no applicable fees were assessed." *See id.*

25. FBI did not provide Plaintiff with any further details to explain its decision to administratively close Plaintiff's request without providing or describing *any* of the requested materials—which, according to FBI, may or may not exist.

26. FBI advised Plaintiff of its right to submit an administrative appeal of the agency's determination to the Director of the DOJ's Office of Information Policy (the "OIP") through the OIP's online "FOIA STAR portal" within ninety days of the date of FBI's response to Plaintiff's request. *See id.*

### *C. Plaintiff's Appeal to DOJ*

27. On April 27, 2023, through the OIP's FOIA STAR portal, Plaintiff timely submitted to DOJ an administrative appeal of FBI's determination to administratively close Plaintiff's request. *See* Exhibit D.

28. On April 28, 2023, the OIP acknowledged receipt of Plaintiff's administrative appeal and assigned it appeal number A-2023-01171. *See* Exhibit E.

29. FOIA requires that an agency provide a requesting party with the agency's determination of any appeal within twenty working days after receipt of such appeal. 5 U.S.C.

§ 552(a)(6)(A)(ii). DOJ was thus required to provide a formal determination of Plaintiff’s appeal by May 25, 2023.

30. DOJ failed to issue a determination of Plaintiff’s appeal until August 15, 2023—nearly three months beyond the statutory time limit—on which date DOJ Chief of Administrative Appeals Staff Matthew Hurd informed Plaintiff by letter that he was “affirming the FBI’s action in refusing to confirm or deny the existence of any records responsive to [Plaintiff’s] request.” *See* Exhibit F.

31. The letter stated that “the FBI did not conduct a search for the requested records.” The letter further stated that the “existence of any responsive records would be protected from disclosure under FOIA pursuant to Exemption 7(E),” as it is “reasonably foreseeable that confirming or denying the existence of such records would harm the interests protected by this exemption.” *See id.*

32. DOJ did not provide Plaintiff with any further details to explain its resolution to affirm FBI’s decision to administratively close Plaintiff’s request without providing—or even conducting a search for—a single requested record.

33. Despite its acknowledgement that FBI had not conducted a search for *any* of the requested materials, DOJ nevertheless informed Plaintiff that confirming or denying the mere existence of even a single responsive record *would* harm the interests protected by FOIA Exemption 7(E) (namely, circumvention of the law by disclosing law enforcement techniques, procedures, or guidelines). *See id.*

34. Defendants improperly denied Plaintiff’s FOIA request, categorically withholding all requested materials without providing any explanation for their decision beyond a perfunctory recitation of the statutory language of FOIA Exemption 7(E), combined with an incoherent



assertion that materials that may or may not exist, and for which Defendants never actually searched, *would* risk circumvention of the law.

35. Additionally, Defendants failed to respond to Plaintiff's appeal within the statutory timeframe required by FOIA.

36. Defendants are thereby in violation of FOIA with respect to Plaintiff's January 19, 2023 request.<sup>6</sup>

### **CLAIM FOR RELIEF**

#### **COUNT I**

#### **Violation of FOIA: Improper Denial of Plaintiff's Request**

37. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

38. FOIA prescribes that "each agency, upon any request for records . . . shall make the records promptly available to any person" for "public inspection in an electronic format," unless the records fall within one of nine narrowly construed statutory exemptions. *See* 5 U.S.C. §§ 552(a)(2), (a)(3)(A).

39. Defendant FBI bears the burden of justifying its decision to withhold information pursuant to a FOIA exemption. *See, e.g.*, 5 U.S.C. § 552(a)(4)(B).

40. Even if parts of the requested records contain exempt information, "the agency must still release 'any reasonably segregable portion' after deletion of the non-disclosable portions." *Oglesby v. U.S. Dep't of Army*, 79 F.3d 1172, 1176 (D.C. Cir. 1996) (quoting 5 U.S.C.

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<sup>6</sup> By failing to provide a timely determination with respect to Plaintiff's appeal, Defendants have waived any ability to charge fees for processing NCLA's request. *Bensman v. Nat'l Park Serv.*, 806 F. Supp. 2d 31, 38 (D.D.C. 2011) ("[The] effect of the 2007 Amendments [to FOIA] was to impose consequences on agencies that do not act in good faith or otherwise fail to comport with any of FOIA's [deadline] requirements. *See* S. Rep. No. 110-59. To underscore Congress's belief in the importance of the statutory time limit, the 2007 Amendments declare that '[a]n agency shall not assess search fees . . . if the agency fails to comply with *any time limit*' of FOIA.") (alterations in original) (quoting 5 U.S.C. § 552(a)(4)(A)(viii)).

§ 552(b)). Only if non-exempt portions of requested materials are “inextricably intertwined with exempt portions” can the agency withhold the entire record. *Johnson v. Exec. Off. for U.S. Att'ys*, 310 F.3d 771, 776 (D.C. Cir. 2002) (quoting 5 U.S.C. § 552(b)).

41. Moreover, FOIA requires “a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.” *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977); *see also Strunk v. U.S. Dep't of State*, 845 F. Supp. 2d 38, 47 (D.D.C. 2012) (agency offered “too little detail” to justify its withholding of records under Exemption 7(E)).

42. FOIA Exemption 7(E) is the sole support that Defendants cite to justify FBI’s decision (and DOJ’s affirmation of that decision) to administratively close Plaintiff’s request. Exemption 7(E), however, is limited to “records or information compiled for law enforcement purposes,” but *only* to the extent that such materials “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.” 5 U.S.C. § 552(b)(7)(E).

43. Courts within the D.C. Circuit require that an Exemption 7(E) claimant “show a risk of circumvention of the law regardless of whether a law enforcement technique, procedure, or guideline is at stake.” *Advancement Proj. v. DHS*, 549 F. Supp. 3d 128, 142 n.5 (D.D.C. 2021) (citing *Pub. Emps. for Env't Resp. v. U.S. Section, Int'l Boundary & Water Comm'n, U.S.-Mex.*, 740 F.3d 195, 204 n.4 (D.C. Cir. 2014)); *see also Kolbusz v. FBI*, 2021 WL 1845352, at \*23 (D.D.C. Feb. 17, 2021); *Shapiro v. DOJ*, 239 F. Supp. 3d 100, 119 (D.D.C. 2017); *Blackwell v. FBI*, 646 F.3d 37, 40–42 (D.C. Cir. 2011).

44. Accordingly, to justify a withholding under Exemption 7(E), an agency must demonstrate that: “(1) the records were ‘compiled for law enforcement purposes,’ (2) the redacted information would ‘disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions,’ and (3) ‘the release of the requested information might create a risk of circumvention of the law.’” *Kolbusz*, 2021 WL 1845352, at \*23 (quoting *Shapiro v. DOJ*, 393 F. Supp. 3d 111, 115 (D.D.C. 2019)).

45. Courts have repeatedly rejected the argument that the records of law enforcement agencies, such as FBI and DOJ, per se satisfy FOIA Exemption 7(E)’s threshold requirement that any withheld records were compiled for a law enforcement purpose. *See, e.g., Shapiro v. DOJ*, 893 F.3d 796, 800 (D.C. Cir. 2018) (FBI was required under Exemption 7(E) to show that documents are compiled for law enforcement purposes *and* that their disclosure might risk circumvention of law); *Pratt v. Webster*, 673 F.2d 408, 415 (D.C. Cir. 1982) (rejecting FBI’s argument that all records held by FBI are compiled for law enforcement purposes). Indeed, “not every document compiled by a law enforcement agency is compiled for a law enforcement purpose.” *Advancement Proj.*, 549 F. Supp. 3d at 144 (quoting *100Reporters LLC v. DOJ*, 248 F. Supp. 3d 115, 159 (D.D.C. 2017)).

46. To establish that requested materials were compiled for law enforcement purposes, law enforcement agencies must show that “(1) a withheld record’s creation was ‘related to the enforcement of federal laws or to the maintenance of national security’ and (2) the nexus between the record’s creation and the agency’s law enforcement duties is ‘based on information sufficient to support at least a colorable claim of its rationality.’” *Id.* (quoting *Pinson v. DOJ*, 202 F. Supp. 3d 86, 102 (D.D.C. 2016)). Reliance on “unadorned statement[s] to establish a law enforcement

purpose for [withheld] records flouts more than 35 years of precedent that establishes that such bare contentions are simply not enough.” *Brick v. DOJ*, 293 F. Supp. 3d 9, 11 (D.D.C. 2017); *see also Oglesby v. Dep’t of Army*, 79 F.3d at 1184 (rejecting agency’s affidavits that “offer no functional description of the documents” and that “contain only sweeping and conclusory assertions that the agency withheld documents because they contained material which could reasonably be expected to cause damage to national security”).

47. Defendants have provided zero showing that the withheld records were compiled for law enforcement purposes. Defendants also did not indicate how any—let alone *all*—of the requested materials would disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions. Nor did Defendants provide any indication as to how all of the requested materials could “reasonably be expected to risk circumvention of the law.” FBI’s perfunctory, boilerplate response to Plaintiff’s request plainly fails to meet any of the three requirements, and DOJ’s conclusory affirmation of FBI’s decision falls equally short.

48. In this case, Defendants were obligated, at a minimum, to have conducted a segregability analysis to determine whether *any* of Plaintiff’s requested materials (*e.g.*, financial agreements, receipts, grants, email correspondence, memoranda, or contracts)—whether in whole or in part—between FBI and social media, news, or educational institutions could be disclosed without risking circumvention of the law. *See, e.g., Hidalgo v. FBI*, 541 F. Supp. 2d 250, 253–54 (D.D.C. 2008) (ordering FBI to disclose informant payment records where agency failed to show risk of circumvention of law from disclosure). In the absence of a showing that the disclosure of any one of the requested documents (for instance, records describing FBI’s payments to social media platforms as reimbursement for complying with the agency’s requests to modify their content moderation policies to flag, suppress, or remove certain content or viewpoints from the

platforms) would reveal law enforcement techniques, procedures, or guidelines, which would result in the circumvention of the law, FBI may not lawfully withhold such document. *See Advancement Proj.*, 549 F. Supp. 3d at 142 (requiring that agency disclose internal agency guidance documents unless it could show how their release would enable lawbreakers to circumvent law); *Reporters Comm. for Freedom of the Press v. FBI*, 3 F.4th 350, 369 (D.C. Cir. 2021) (holding that agencies must justify withholding records on a case-by-case basis and cannot categorically assert exemptions over entire documents without explanation). Defendants have failed to make any showing (beyond boilerplate recitations) that even a single document that Plaintiff requested is exempt under FOIA Exemption 7(E).

49. Instead, Defendants have offered only a “near-verbatim recitation” of Exemption 7(E)’s statutory standard that “does nothing to explain ‘what procedures are at stake’ or ‘how disclosure [of the withheld records] could reveal such procedures.’” *Advancement Proj.*, 549 F. Supp. 3d at 146 (alteration in original) (quoting *Citizens for Resp. & Ethics in Washington v. DOJ*, 746 F.3d 1082, 1102 (D.C. Cir. 2014) (DOJ failed to provide sufficient detail to justify FBI’s categorical withholding under Exemption 7(E)). *Cf. Hum. Rts. Def. Ctr. v. U.S. Park Police*, 126 F.4th 708, 714–16 (D.C. Cir. 2025) (requiring agency to provide Vaughn index listing the responsive documents, describing their contents, and explaining why each document (or portion thereof) is allegedly exempt to justify withholdings where agency asserts broad FOIA Exemption claim); *Dalal v. DOJ*, 643 F. Supp. 3d 33, 70 (D.D.C. 2022) (requiring agency to explain in as much detail as possible why it cannot confirm existence of certain records, to provide affidavits describing why documents were withheld, and to explain, with specificity, why disclosure would harm law enforcement interests); *Shapiro v. DOJ*, 153 F. Supp. 3d 253, 272 (D.D.C. 2016)

(ordering FBI to disclose all reasonably “segregable” portions of records even where parts of records were exempt under 7(E)).

50. To justify its decision to withhold information under Exemption 7(E), an agency cannot rely on declarations that are too conclusory or that merely recite the statutory standard. *See, e.g., Kolbusz*, 2021 WL 1845352, at \*24 (quoting *Am. Immigr. Council v. DHS*, 950 F. Supp. 2d 221, 246 (D.D.C. 2013) (FBI’s “generic, vague, and conclusory representations [were] not sufficient to invoke Exemption 7(E), as they [did] not permit the undersigned to ‘deduce [anything] of the nature of the techniques in question’ and mostly restate the statutory standard”)); *Clemente v. FBI*, 741 F. Supp. 2d 64, 88 (D.D.C. 2010) (for 7(E) Exemption, “FBI cannot rely upon the vaguely worded categorical description it has provided”); *Banks v. DOJ*, 700 F. Supp. 2d 9, 16 (D.D.C. 2010) (agency cannot meet its obligation “simply by quoting the statutory language of an exemption”).

51. Moreover, FOIA Exemption 7(E) is “subject to the foreseeable harm requirement,” meaning that *even if* the exemption does apply (Defendants have provided no valid indication that it does), an agency may withhold requested records only if it “reasonably foresees that disclosure would harm an interest protected by an exemption.” *Leopold v. DOJ*, 94 F.4th 33, 37–38 (D.C. Cir. 2024). That burden is “independent and meaningful.” *Id.* at 37 (the agency “must provide ‘a focused and concrete demonstration of why disclosure of the particular type of material at issue will, in the specific context of the agency action at issue, actually impede’ the interests protected by a FOIA exemption.”) (quoting *Reporters Comm.*, 3 F.4th at 370). Indeed, Congress added the distinct “foreseeable harm requirement” to foreclose the withholding of material *unless* the agency can “articulate both the nature of the harm [from release] and the link between the specified harm

and specific information contained in the material withheld.” *Reporters Comm.*, 3 F.4th at 369 (quoting H.R. Rep. No. 391, at 9).

52. Defendants’ blanket refusal to produce (or even to acknowledge the existence of) any of the requested records is particularly confounding given that, by Defendants’ own admission, Defendants did not conduct a search for a *single* document that Plaintiff requested. *See* Exhibit F. According to Defendants, the disclosure of records that may or may not exist, and for which Defendants never once searched, *would* risk circumvention of the law. Such obfuscation is not merely evasive, but devoid of any coherent meaning, rendering it impossible for Plaintiff—or this Court—to determine whether there exists any legitimate basis for withholding each and every record requested.

53. Further, Defendants have made no effort to explain how any of the requested materials—including FBI’s \$3,415,323 payment to X, which FBI itself described as a “reimbursement” to X for “complying with legal requests, and a *standard procedure*”<sup>7</sup> (emphasis added)—would disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions and risk circumvention of the law. The alleged “standard procedure” appears to refer to the Stored Communications Act cited in X’s guidelines for law enforcement, which outlines how and under what legal procedures government entities may compel disclosures from service providers, such as social media companies. 18 U.S.C. § 2706. However, to withhold requested records under Exemption 7(E), an agency “must show that the records contain law-enforcement techniques and procedures that are generally unknown to the public.” *Hansten v. DEA*, 2022 WL 2904151, at \*3 (D.D.C. July 22, 2022) (citing *Elkins v. FAA*, 134 F. Supp. 3d 1, 4 (D.D.C. 2015)). As described above, due to existing disclosures, the public is already aware of

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<sup>7</sup> Gibson and Sabes, *supra* at note 3.

certain payments related to Plaintiff's request. Further, it is unclear how disclosure would pose a risk of circumvention of the law with respect to any payment that has been made according to "standard procedures" and pursuant to a publicly known statute or policy that outlines those very procedures. If FBI made payments related to Plaintiff's request, which demonstrate, for example, FBI's involvement in actively managing the public flow of information through social media platforms and news outlets, such records would not be exempt under Exemption 7(E) and must be disclosed.

54. Even assuming that FBI may validly withhold *some* of the requested materials under Exemption 7(E), FBI is still required to produce all non-exempted materials, redacting only that information which qualifies for exemption. *Shapiro*, 153 F. Supp. 3d at 272 ("Under well-established law, an agency cannot justify withholding an entire document simply by showing that it contains some exempt material.").

55. Moreover, FOIA requires agencies to make a determination with respect to any appeal within twenty working days after receipt of such appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

56. An agency may seek additional time (no more than ten working days) to respond to an appeal only if there are "unusual circumstances" that justify the extension. 5 U.S.C. § 552(a)(6)(B)(i). Additionally, an agency may extend its time limit to respond to an appeal only by providing the requesting party with written notice setting forth the unusual circumstances for such extension and the date on which a determination is expected to be made. *Id.*

57. Defendant DOJ acknowledged receipt of Plaintiff's appeal of Defendant FBI's determination to administratively close Plaintiff's request on April 28, 2023. Defendants did not notify Plaintiff of any extension of the time limit to make a determination on the appeal (twenty working days after receipt of such appeal).



58. Defendants were required by law to provide a formal determination of Plaintiff's appeal by May 25, 2023, yet it was not until August 15, 2023—nearly three months beyond the statutory deadline—that Defendants issued such a determination. Defendants have thus failed to comply with FOIA's statutory time limit.

59. By failing to provide a timely determination with respect to Plaintiff's appeal, Defendants have waived any ability to charge fees for processing Plaintiff's request. *Bensman*, 806 F. Supp. at 38.

60. Plaintiff has exhausted all applicable administrative remedies with respect to Defendants' wrongful denial of Plaintiff's request and refusal to provide—or confirm or deny the existence of—a single requested document. There are no other means of compelling Defendants to comply with their statutory obligations under FOIA.

61. Plaintiff is therefore entitled to declaratory and injunctive relief with respect to the processing of its request, and the release and disclosure of the requested materials.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff NCLA respectfully requests and prays that this Court:

A. Declare that Defendants violated FOIA by failing to provide Plaintiff with any of the requested materials while, at the same time, refusing to provide Plaintiff with any explanation for their decision beyond perfunctory, near-verbatim recitations of the statutory language of FOIA exemption 7(E);

B. Declare that DOJ violated FOIA by failing to notify Plaintiff of a determination of its appeal within the statutory time limit;

C. Declare that, by failing to provide a timely determination with respect to Plaintiff's appeal, Defendants have waived any ability to charge fees for processing Plaintiff's request;

D. Order Defendants to process immediately the requested materials at issue in this Complaint in their entirety;

E. Order Defendants to produce all records responsive to Plaintiff's request within twenty (20) days of the Order, or at such other time as the Court deems proper;

F. Order Defendants, if necessary, to produce a Vaughn index and detailed affidavit explaining, with specificity, why Defendants believe any of the requested materials cannot be produced within twenty (20) days of the Order, or at such other time as the Court deems proper;

G. Award Plaintiff its costs and reasonable attorney fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E);

H. Grant such other relief as the Court may deem just and proper.

April 2, 2025

Respectfully submitted,

/s/ Casey Norman

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