

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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E. RANDOL SCHOENBERG,)

)
)
Plaintiff,)

)
-against-)

)
UNITED STATES DEPARTMENT OF)
JUSTICE, including its component the)
Federal Bureau of Investigation,)

)
Defendant.)
-----X

No. 16-CV-9445

COMPLAINT

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. §§552 *et seq.*, seeking the production of agency records improperly withheld by Defendant United States Department of Justice (“DOJ”), specifically its component the Federal Bureau of Investigation (“FBI”) (“Defendant”), in response to requests properly made by Plaintiff.

2. On October 28, 2016, FBI Director James Comey sent a letter to Congress explaining that, based on emails between Huma Abedin and Hillary Clinton found on Anthony Weiner’s computer in an unrelated investigation, he would re-open the investigation into whether there was evidence of illegal activity committed by Hillary Clinton that would warrant an FBI prosecution.¹

¹ Sari Horwitz, *Read the Letter Comey Sent to FBI Employees Explaining His Controversial Decision on the Clinton Email Investigation*, WASH. POST, Oct. 28, 2016, <https://www.washingtonpost.com/news/post-nation/wp/2016/10/28/read-the-letter-comey-sent-to-fbi-employees-explaining-his-controversial-decision-on-the-clinton-email-investigation>

3. On October 30, 2016, two days after the letter, the New York Times reported that the DOJ had obtained a search warrant to review the emails in question.²

4. Plaintiff has been unable to locate reporting on how or on what basis the search warrant was obtained.

5. On November 12, 2016, plaintiff submitted a FOIA request (“the Request”) seeking the search warrant and related application, affidavits, and receipts used by the FBI and Justice Department to obtain the review of Huma Abedin’s emails related to Hillary Clinton. See Ex. A.

6. The American public has a strong interest in the disclosure of the search warrant and related application, affidavits, and receipts. The FBI is the nation’s premier law enforcement agency. Access to the records that underlie criminal investigations is crucial to ensuring that the FBI is accountable for following the legal standards it is required to uphold.

7. Transparency and accountability are most important in cases such as this one, where the investigation in question is heavily politicized, dominated and continues to dominate national media and the national sphere of conversation, and may have significantly influenced the outcome of the election. Access to the search warrant and related materials that provided the basis for the investigation are of the utmost public importance.

8. Plaintiff seeks an injunction requiring defendant to process the Request immediately.

² Matt Apuzzo, Michael S. Schmidt, and Adam Goldman. *Justice Department Obtains Warrant to Review Clinton Aide’s Emails*, N.Y. TIMES, Oct. 30, 2016, <http://www.nytimes.com/2016/10/31/us/politics/justice-department-warrant-clinton-abedin-fbi.html>

Jurisdiction and Venue

9. This Court has subject matter jurisdiction of the FOIA claim and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(b). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

10. The FBI failed to respond to Plaintiff's FOIA request in the time allotted by statute. Therefore, Plaintiff is deemed to have exhausted all administrative remedies pursuant to 5 U.S.C. §522(a)(6)(c).

11. Venue lies in this district under 5 U.S.C. § 1331 as the computer and information in question was initially held in New York.

Parties

12. Plaintiff E. Randol Schoenberg is an attorney based in Los Angeles, California, widely known for his efforts to recover property stolen by the Nazis during the Holocaust. He has been a commentator on legal matters of national importance for decades, including the matter at hand.³

13. Defendant DOJ is a department of the executive branch of the U.S. government and an agency within the meaning of 5 U.S.C. § 552(f)(1). Defendant FBI is a component of DOJ. DOJ is headquartered in Washington, D.C.

Factual Background

14. In March 2015, the New York Times broke a story that Hillary Clinton used a private email server to conduct official State Department business.⁴

³ E. Randol Schoenberg, *Investigate the FBI*, November 14, 2016. <http://schoenblog.com/?p=1008>

⁴ Michael S. Schmidt, *Hillary Clinton Used Personal Email Account at State Dept., Possibly Breaking Rules*, N.Y. TIMES, Mar. 5, 2015, <http://www.nytimes.com/2015/03/03/us/politics/hillary-clintons-use-of-private-email-at-state-department-raises-flags.html>

15. The use of the private email server led to an FBI investigation into whether there was evidence of classified information being improperly stored or transmitted in violation of federal statutes.⁵

16. The FBI investigation revealed that out of 30,000 emails examined, there were 110 emails containing classified information.⁶

17. On July 5, 2016, the FBI concluded that there was no evidence Secretary Clinton intended to violate laws and merely acted carelessly; thus the circumstances did not warrant any further FBI action. The FBI closed the investigation.⁷

18. On October 27, 2016, an FBI investigative team briefed FBI director James Comey that, during its unrelated investigation in Anthony Weiner's child pornography case, the team had discovered emails on Weiner's computer between Secretary Clinton and Huma Abedin, Weiner's ex-wife and Clinton's top aide.⁸

19. The next day, on October 28, 2016, Comey wrote a public letter to Congress indicating that the FBI intended to re-open the July 2015 investigation, despite having no

⁵ *Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal Email System*, FBI NATIONAL PRESS OFFICE, July 5, 2016, <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>

⁶ *Id.*

⁷ *Id.*

⁸ Adam Goldman and Alan Rappoport, *Emails in Anthony Weiner Inquiry Jolt Hillary Clinton's Campaign*, N.Y. TIMES, Oct. 28, 2016, <http://www.nytimes.com/2016/10/29/us/politics/fbi-hillary-clinton-email.html>

way of knowing whether the material found on Weiner's computer was significant or even whether any of the emails in question contained classified information.⁹

20. Two days after Comey's letter to Congress, the Justice Department obtained a warrant to search the Abedin emails on Weiner's computer.¹⁰

21. Weiner's computer was initially processed in New York.¹¹

22. To plaintiff's knowledge, there has been no further reporting on the investigation that has revealed either the basis on which the search warrant was issued or who issued the warrant.

23. On November 6, 2016, nine days after Comey's letter to Congress and two days before the presidential election, the FBI announced that it would stand by its original finding that Clinton's actions did not warrant prosecution.¹²

24. Comey's public notification to Congress of the decision to re-open the investigation was contrary to ordinary protocol, as details of FBI investigations are typically kept secret.

25. For nine of the last eleven days before the election, Comey's announcement dominated the national media and conversation.

⁹ *Letter to Congress From F.B.I. Director on Clinton Email Case*, N.Y. Times, Oct. 28, 2016, <http://www.nytimes.com/interactive/2016/10/28/us/politics/fbi-letter.html>

¹⁰ Adam Goldman and Michael S. Schmidt, *Sorting Through the Clinton Email Case and What the F.B.I.'s, Options Are*, N.Y. Times, Nov. 3, 2016, <http://www.nytimes.com/2016/11/04/us/fbi-james-comey-hillary-clinton.html>

¹¹ *Id.*

¹² Kevin Johnson, Heidi Przybyla, and Fredreka Schouten, *FBI Declares it is Finally Done Investigation Hillary Clinton's Email*, USA TODAY, Nov. 6, 2016, <http://www.usatoday.com/story/news/politics/elections/2016/2016/11/06/fbi-not-recommending-charges-over-new-clinton-emails/93395808/>

26. Countless American citizens, including Secretary Clinton, believe that Comey's announcement and the re-opening of the investigation might have single-handedly swayed the election, due largely to the fact that voters who decided in the final week before the election voted strongly in favor of Donald Trump.¹³

27. Many members of the public have doubts about the propriety and legality of re-opening of the investigation. Senate Democratic leader Harry Reid wrote an open letter which accused Comey of using his official authority to influence the election, in violation of the Hatch Act.¹⁴

28. Access to the search warrant is critical for the public to learn the basis for the re-opening of the investigation to ensure that the FBI acted in a manner consistent with its constitutional obligations under the Fourth Amendment.

Plaintiff's FOIA Request and the Government's Response to the Request

29. On November 12, 2016, plaintiff submitted the Request for the search warrant and related application, affidavits, and receipts. Attached hereto as Exh. A.

30. By email dated November 14, 2016, the FBI acknowledged receipt of the Request and stated that it would be forwarded to Initial Processing for review. Attached hereto as Exh. B.

¹³ Nate Silver, *Why FiveThirtyEight Gave Trump A Better Chance Than Almost Anyone Else*, FIVETHIRTYEIGHT, Nov. 11, 2016, <http://fivethirtyeight.com/features/why-fivethirtyeight-gave-trump-a-better-chance-than-almost-anyone-else/>

¹⁴ Letter from Harry Reid, Senate Minority Leader, to James Comey, FBI Director (Oct. 30, 2016), *available at* http://www.reid.senate.gov/press_releases/2016-10-30-in-letter-reid-says-comey-may-have-broken-the-law#.WECELUerJBxblueb

31. The U.S. Department of Justice further acknowledged the Request in a letter dated November 29, 2016, assigning the FOIPA Request No. 1361976-000. Attached hereto as Exh. C.

32. The FBI has to date produced no records in response to the Request.

Cause of Action

33. Defendant's failure to promptly make available the records sought by the Request violates the FOIA, 5 U.S.C. § 552(a)(6)(A), and defendant's corresponding regulations.

Request for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Order defendant to immediately process all records responsive to the Request;
- B. Award plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- C. Grant such other relief as the Court may deem just and proper.

Dated: December 7, 2016
New York, New York



Respectfully submitted,



By: _____
David B. Rankin
Rankin & Taylor, PLLC
11 Park Place, Suite 914
New York, New York 10007
t: 212-226-45073
e: david@drmtlaw.com

Exhibits:
Ex. A: Email copy of original FOIA request
Ex. B: FBI email acknowledging receipt of the request
Ex. C: FBI mail acknowledging receipt of the request

Exhibit A

From: E. Randol Schoenberg [mailto:
Sent: Saturday, November 12, 2016 1:09 AM
To: FOIPARquest <FOIPARquest@ic.fbi.gov>
Cc: E. Randol Schoenberg <
Subject: Clinton e-mail search warrant FOIA request

To the FBI FOIA department,

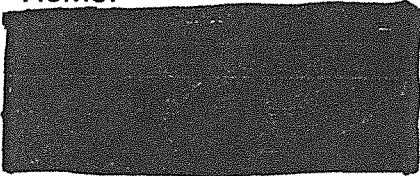
I have not seen it in any published reports online, so I would like to make a FOIA request for the **search warrant and related application, affidavits and receipts** used by the FBI and Justice Department to obtain the review of Huma Abedin's e-mails related to Hillary Clinton, as discussed in this New York Times story from October 30, 2016.

<http://www.nytimes.com/2016/10/31/us/politics/justice-department-warrant-clinton-abedin-fbi.html>

Randol Schoenberg

E. Randol Schoenberg, Of Counsel
Burriss, Schoenberg & Walden, LLP

Home:



Business Office:

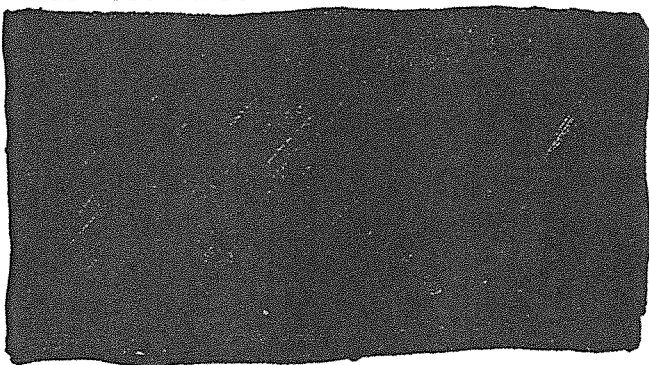



Exhibit B

From: FOIPARquest <FOIPARquest@ic.fbi.gov>
Subject: RE: Clinton e-mail search warrant FOIA request
Date: November 14, 2016 at 5:12:51 AM PST
To: "E. Randol Schoenberg" < >

Dear Mr. Schoenberg,

The FBI has received your Freedom of Information Act/Privacy (FOIPA) request and it will be forwarded to Initial Processing for review. Your request will be processed under the provisions of FOIPA and a response will be mailed to you at a later date.

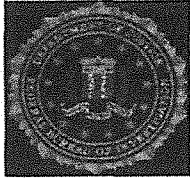
Requests for fee waivers and expedited processing will be addressed once your request has been assigned an FOIPA request number. You will receive written notification of the FBI's decision.

Information regarding the Freedom of Information Act/Privacy is available at <https://www.fbi.gov/>, by clicking on the **SERVICES** link at the top of the homepage and then click on the Freedom of Information Act/Privacy picture, or the direct link is: <https://www.fbi.gov/services/records-management/foia>, or by accessing the U. S. Department of Justice at <https://www.justice.gov/oip>. If you require additional assistance please contact us at foipaquestions@ic.fbi.gov.

Thank you,

David P. Sobonya
Public Information Officer/GIS
Record/Information Dissemination Section (RIDS)
FBI-Records Management Division
170 Marcel Drive, Winchester, VA 22602-4843
Ofc: [\(540\) 868-4593](tel:(540)868-4593)
Direct: [\(540\) 868-4286](tel:(540)868-4286)
Fax: [\(540\) 868-4391/4997](tel:(540)868-4391/4997)

Exhibit C



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

November 29, 2016

MR. E RANDOL SCHOENBERG
[REDACTED]

FOIPA Request No.: 1361976-000

Dear Mr. Schoenberg:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI which has been received for processing. For administrative tracking purposes, additional FOIPA numbers may be assigned if it is determined your request seeks records about multiple subjects. You will be notified of any additional tracking numbers if assigned.

- Your request for a fee waiver is being considered and you will be advised of the decision at a later date. If your fee waiver is denied, you will be charged fees in accordance with the category designated below.
- For the purpose of assessing fees, we have made the following determination:
 - As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(i)(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. 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@ic.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,



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