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11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14 E. RANDOL SCHOENBERG,

) CASE NO. 2:18 -CV-01738

15 Plaintiff,

) **COMPLAINT FOR**
) **INJUNCTIVE RELIEF**

16 vs.

17 FEDERAL BUREAU OF
18 INVESTIGATION,

19 Defendant.

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INTRODUCTION

1. This case concerns one of the most consequential search warrants in the history of our nation — the FBI search warrant (the “Search Warrant”) issued by the Honorable Magistrate Judge Kevin Nathaniel Fox on October 30, 2016 regarding the e-mails between Hillary Clinton (“Clinton”) and Huma Abedin (“Abedin”) found on the laptop belonging to Abedin’s husband Anthony Weiner (“Weiner”). Many believe that the publicity surrounding the Search Warrant changed the outcome of the 2016 presidential election.

2. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, to order the production without redaction of the Search Warrant and related affidavits, which Defendant FBI has improperly produced to Plaintiff only in an incomplete, redacted form.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the parties and subject matter of this action pursuant to 5 U.S.C. § 552(a)(4)(B). Venue lies in this district under 5 U.S.C. § (a)(4)(B).

4. Plaintiff resides in Los Angeles, California.

5. Plaintiff, E. Randol Schoenberg, is an attorney, journalist and author with a blog entitled schoenblog.com, and is the requester of the records which defendant is now withholding. Plaintiff’s November 16, 2016 article concerning the Search Warrant, “Investigate the FBI,” was published in the Jewish Journal and was shared over 9,000 times.

6. Plaintiff has requested the unredacted Search Warrant for use in a news story. The prompt release of the unredacted Search Warrant is important because of the enormous public interest in this information.

7. Defendant FBI is an agency of the United States and has possession of the documents that Plaintiff seeks.

FACTUAL ALLEGATIONS IN SUPPORT OF INJUNCTIVE RELIEF

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2 8. On or about November 11, 2016, plaintiff made an online FOIA/
3 Privacy Act request to the FBI for “the search warrant and related application,
4 affidavits and receipts used by the FBI and Justice Department to obtain the
5 review of Huma Abedin’s e-mails related to Hillary Clinton, as discussed in this
6 New York Times story from October 30, 2016:

7 [http://www.nytimes.com/2016/10/31/us/politics/justice-department-warrant-](http://www.nytimes.com/2016/10/31/us/politics/justice-department-warrant-clinton-abedin-fbi.html)
8 [clinton-abedin-fbi.html.](http://www.nytimes.com/2016/10/31/us/politics/justice-department-warrant-clinton-abedin-fbi.html)”

9 A copy of this request is attached as Exhibit 1. The request was assigned No.
10 1361976-001.

11 9. On or about December 12, 2016, Plaintiff filed an action in the
12 Southern District of New York to unseal the Search Warrant in that Court. By
13 order dated December 19, 2016, Judge P. Kevin Castel ordered the release of the
14 Search Warrant, subject to certain redactions the FBI requested concerning
15 Abedin and Weiner (who are identified only as Subject 1 and Subject 2). A copy
16 of Judge Castel’s December 19, 2016 Order is attached as Exhibit 2.

17 10. The December 19, 2016 release of the redacted Search Warrant
18 received nationwide publicity, as a matter of great public interest.

19 11. Rather than litigate the redactions at that time, Plaintiff elected to
20 continue with the FOIA administrative process.

21 12. On or about May 11, 2017, the FBI responded to the FOIA request
22 by again releasing the Search Warrant with redactions. A copy of the May 11,
23 2017 release letter is attached as Exhibit 3.

24 13. A copy of the redacted Search Warrant, from In re Search of A
25 Laptop Computer, S.D.N.Y. 16 MAG 7063, which was produced by the FBI on
26 or about May 11, 2017, is attached as Exhibit 4.

27 14. In its May 11, 2017 response letter, the FBI cited just two grounds
28 for the redactions—Exemptions 5 U.S.C. §§552 b(6) and b(7)(C) relating to

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1 personal privacy. In addition, the FBI added, “For your information, sealed court
2 records are not eligible for release under the Freedom of Information Act. Some
3 of the material responsive to your request has been withheld and marked
4 ‘OTHER—Sealed.’”

5 15. On or about June 12, 2017, Plaintiff submitted an appeal contesting
6 the redactions. A copy of this appeal is attached as Exhibit 5. The appeal was
7 assigned No. DOJ-AP-2017-004605.

8 16. Plaintiff noted “the two principle subjects of the redaction are
9 presumably Huma Abedin and Anthony Weiner. Their identities have been
10 disclosed on numerous occasions and there can hardly be any privacy invasion as
11 the result of the disclosure of their names on this Search Warrant. The FBI has
12 previously released documents relating to Hillary Clinton, and did not redact
13 Abedin’s name. <https://vault.fbi.gov/hillary-r.-clinton> [see e.g. Part 3 of 15, page
14 84 et seq., released September 2, 2016, discussing the interview of Huma Abedin
15 and the production and review of her e-mails.] The Weiner case is also now
16 closed as a result of his recent guilty plea. So there is no reason any of this
17 should be hidden from view.”

18 17. Further, Plaintiff stated: “Your letter states: ‘For your information,
19 sealed court records are not eligible for release under the FOIA.’ If you merely
20 Google that phrase, you will find a link to the Justice Department website,
21 <https://www.justice.gov/oip/blog/foia-update-significant-new-decisions-22>,
22 where you cite *Morgan v. Department of Justice*, 923 F.2d 195 (D.C. Cir. 1991)
23 for the proposition that ‘the mere existence of a court seal is, without more,
24 insufficient to justify nondisclosure under the FOIA.’ There is no chance that the
25 sealing order in this case was issued with the intent to prohibit the agency [from]
26 disclosing any of the information in the search warrant. Please remove the
27 redactions based on the sealing order.”

28

1 18. Finally, Plaintiff averred: “Additionally, you have redacted the
2 names of the agents who were involved in this ill-fated search. I am unaware of
3 any case that permits the FBI to redact the names of its agents in a closed case
4 with no threat of violence, based solely on ‘privacy.’ Here, the public interest in
5 disclosure massively outweighs any privacy interest.”

6 19. By letter dated September 20, 2017, Sean O’Neill, Chief of the
7 Administrative Appeals Staff, affirmed the FBI’s action and refused to remove
8 any of the redactions. A copy of the September 20, 2017 letter is attached as
9 Exhibit 6.

10 20. O’Neill merely restated the privacy exemptions and did not explain
11 how the release of the redacted material could conceivably constitute a “clearly
12 unwarranted invasion of the personal privacy of third parties,” whose identity
13 and involvement in the matter were already widely known to the public.

14 21. O’Neill did not address the issue of disclosure of the identity of the
15 agent who signed the affidavit in support of the Search Warrant. If ever there
16 were a public interest in learning the identity of an agent, this would be the case.
17 The public has not only a right, but a need to know which FBI agent stated that
18 there was probable cause to believe that evidence of a crime by Hillary Clinton
19 would be found on the laptop. No such evidence was found. None of the
20 ordinary circumstances justifying redaction of the agent’s name (ongoing
21 investigation, risk of violence, etc.) arises in this case.

22 22. It should be noted that the purported purpose of the search requested
23 in the Search Warrant affidavit—identifying and securing classified e-mails, all
24 of which had already been reviewed by the FBI, although that fact was not
25 disclosed in the affidavit in support of the Search Warrant—does not match the
26 testimony of FBI Director James Comey on May 3, 2017 before the Senate
27 Judiciary Committee that his team was looking for “the golden missing e-mails
28 that would change this case.” The truth is that the FBI was most interested in

1 determining not whether the search would find additional copies of the
2 previously reviewed e-mails between Abedin and Clinton (which was, not
3 surprisingly, all that was found), but rather whether the search would find earlier
4 e-mail evidence to support or refute whether that private e-mail server had been
5 set up with the express intent to commit a crime. Comey stated on May 3, 2017:
6 “What they could see from the metadata was that there were thousands of
7 Secretary Clinton’s emails on that device, including what they thought might be
8 the missing emails from her first three months as secretary of state. We never
9 found any emails from her first three months. She was using a Verizon
10 BlackBerry then and that’s obviously very important, because if there was
11 evidence that she was acting with bad intent, that’s where it would be in the first
12 three months.” A review of the Search Warrant affidavit reveals that the agent
13 withheld the true focus of the search from Magistrate Judge Fox. (*See* Exhibit 4)

14 23. Although Magistrate Fox approved the issuance of the search
15 warrant, many have questioned whether the affidavit supported a finding of
16 probable cause. Recently released text messages from FBI attorney Lisa Page to
17 FBI agent Peter Sztrok on October 27, 2016—the very date Comey decided to
18 notify Congress of his decision to search the laptop—demonstrates that Page was
19 “completely INFURIATED [] with [FBI general counsel] Jim [Baker]” and was
20 concerned with whether there was probable cause to proceed. “Please, let’s
21 figure out what it is we HAVE first. What if we can’t make out PC? Then we
22 have no further investigate step.” (DOJ-PROD 0000303-304, pages 137-8 in
23 Appendix C – Documents released by the U.S. Senate Committee on Homeland
24 Security & Governmental Affairs on February 6, 2018 at
25 <https://www.hsgac.senate.gov/library>, a copy of which is attached hereto as
26 Exhibit 7.) Given the internal dispute at the FBI concerning probable cause for
27 the search warrant, and the fact that no incriminating evidence was ever found,
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1 the public should be permitted to review the unredacted warrant in full to
2 determine if the FBI handled the search properly.

3 24. The public has a right to know the name of the agent, so that further
4 inquiries can be made to determine what exactly happened and why. On or about
5 April 24, 2017, FBI Special Agent E. W. Priestap filed a lengthy declaration in
6 the case of Judicial Watch, Inc. v. Tillerson (Dist.D.C. Civil Action No. 15-cv-
7 0785) discussing his role in the Clinton e-mail investigation, a copy of which is
8 attached as Exhibit 8. There is no reason that his or another agent's names
9 cannot be disclosed on the Search Warrant affidavit. The Solicitor General of the
10 U.S. Department of Justice Michael Horowitz is also conducting an investigation
11 concerning pre-election actions by the FBI. Therefore, the public interest in
12 reviewing the conduct of governmental affairs is paramount and greatly
13 outweighs any privacy interest of the agent.

14 25. Finally, rather than address the 1991 holding of the D.C. Circuit in
15 Morgan v. Department of Justice, Mr. O'Neill instead stated that "the FBI lacks
16 authority to consider the releasability of this information under the FOIA," citing
17 the 1980 ruling in GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375, 384-
18 86 (1980). (See Exhibit 6) Mr. O'Neill did not mention that the GTE case
19 concerned a protective order, rather than a sealing order, and that the D.C.
20 Circuit had expressly distinguished and limited the holding in GTE in the
21 Morgan case, when it found that the mere existence of a sealing order was not
22 sufficient grounds for withholding information under FOIA.

23 26. Plaintiff has a right to receive an unredacted copy of the Search
24 Warrant and related documents under 5 U.S.C. § 552(a)(3), and there is no legal
25 basis for the FBI's refusal to remove the improper redactions.

26 **WHEREFORE**, Plaintiff requests this Court:

27 (1) Order Defendant FBI to provide unredacted copies of the requested
28 documents;

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- (2) Expedite this proceeding as provided for in 28 U.S.C. § 1657;
- (3) Award Plaintiff costs and reasonable attorneys’ fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief as may deem just and proper.

DATED: March 1, 2018 MURPHY ROSEN LLP

By: /s/ Paul D. Murphy
 Paul D. Murphy
 Jodi M. Newberry
 Attorneys for Plaintiff E. Randol Schoenberg

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