

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HERITAGE FOUNDATION)
214 Massachusetts Ave. N.E.)
Washington, D.C. 20002)
))
MIKE HOWELL)
214 Massachusetts Ave. N.E.)
Washington, D.C. 20002)
))
Plaintiffs,)
))
v.)
))
U.S. DEPARTMENT OF JUSTICE)
950 Pennsylvania Ave. N.W.)
Washington, D.C. 20408)
))
Defendant.)

Case No. 23-cv-487

COMPLAINT AND PRAYER FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs THE HERITAGE FOUNDATION and MIKE HOWELL (collectively “Plaintiffs”) for their complaint against Defendant DEPARTMENT OF JUSTICE (“DOJ” or “Department”) allege on knowledge as to Plaintiffs, and on information and belief as to all other matters, as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel the production of information from DOJ component the Federal Bureau of Investigation (“FBI”) relating to the accuracy of Nellie Ohr’s (“Ohr”) transcribed interview before two Congressional Committees. Ohr worked to conduct opposition research for Fusion GPS and is thought to have had a part in creating the now infamous “Steele” dossier. It has also

been alleged that Ohr served as an intermediary between Christopher Steele and Ohr's husband Bruce Ohr who at the time was a senior DOJ official.

PARTIES

2. Plaintiff, The Heritage Foundation is a Washington, D.C.-based nonpartisan public policy organization with a national and international reputation whose mission is to “formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” Heritage Foundation, *About Heritage*, found at <https://www.heritage.org/about-heritage/mission> (last visited Feb. 5, 2023). Heritage is a not-for-profit section 501(c)(3) organization which engages in substantial dissemination of information to the public. Heritage operates a national news outlet, *The Daily Signal*.

3. Plaintiff Mike Howell leads the Heritage Foundation's Oversight Project and is an author for *The Daily Signal*. The Oversight Project is an initiative aimed at obtaining information via Freedom of Information Act requests and other means in order to best inform the public and Congress for the purposes of Congressional oversight. The requests and analysis of information is informed by Heritage's deep policy expertise.

4. Defendant DOJ is a federal agency of the United States within the meaning of 5 U.S.C. § 552(f)(1) whose mission is to “uphold the rule of law, to keep our country safe, and to protect civil rights.” About DOJ; Our Mission, found at <https://www.justice.gov/about#:~:text=Mission,and%20to%20protect%20civil%20rights>. (last visited Feb. 5, 2022).

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) because this action is brought in the District of Columbia and 28 U.S.C. § 1331 because the resolution of disputes under FOIA presents a federal question.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendant DOJ's principal place of business is in the District of Columbia.

PLAINTIFFS' FOIA REQUEST

7. Plaintiffs submitted their FOIA Request on November 2, 2022. FOIA Request No. 1573290 (Nov. 2, 2022) ("Request" or "Plaintiffs' FOIA Request") (Ex. 1).

8. The Request began by explaining that it sought to learn more about an apparent factual contradiction in Ohr's Congressional transcribed interview:

Nellie Ohr testified to Congress that she obtained her HAM radio license "well before" she was employed by Fusion GPS and that she was employed by Fusion GPS from October 2015 to September 2016. In May 2016, one month after the Hillary Clinton Presidential Campaign hired Fusion GPS to conduct opposition research, Nellie Ohr obtained her HAM radio license.

Id. at 1.

9. The Request sought all records from May 1, 2016 to the present that contain any of the following terms:

- "ham radio" AND "ohr"
- "ham radio" AND "nellie"
- "ham radio" AND "fusion gps"

Id.

10. The Request sought a fee waiver because of the public interest in instances of potential DOJ politization. *Id.* at 3–4.

DOJ'S INITIAL DENIAL

11. On November 23, 2022, the FBI denied the Request. Letter from Michael G. Seidel to Mike Howell (Nov. 30, 2022) (“Initial Denial”) (Ex. 2). The Initial Denial appears to be a “form” document. It denied the Request in full because: “Your request is overly broad and it does not comport with the requirements of 28 CFR § 16.3(b), as it does not provide enough detail to enable personnel to locate records ‘with a reasonable amount of effort.’” *Id.* at 1. The Initial Denial did not pass on the Plaintiffs’ application for a fee waiver. *Id.*

PLAINTIFFS’ ADMINISTRATIVE APPEAL

12. Plaintiffs administratively appealed the Initial Denial on December 2, 2022. Administrative Appeal, FOIA No. 1573290 (Dec. 2, 2022) (“Administrative Appeal”) (Ex. 3).

13. The Administrative Appeal clearly identified the deficiencies in the Initial Denial:

Legally “adequate” FBI FOIA queries must include searches of FBI employees’ email and all other communications on FBI systems reasonably likely to contain responsive records. Media reports have demonstrated that the subject matter of FOIA Request 1573290-000 was the basis of a Congressional criminal referral to the Department of Justice. Due to these facts, the FOIA Request 1573290-000’s requested search terms would invariably have been used in FBI documents and/or communications. The uncommon usage of the requested search terms renders not only the documents and/or communications easily identifiable but greatly limits the number of potential documents containing those terms that would not be relevant to the FOIA request. As such, had an adequate query been run, records would have been identified.

Id. at 1.

APPEAL DECISION AND REMAND

14. On December 15, 2022, the FBI responded to the Administrative Appeal with the following: “After carefully considering your appeal, and as a result of discussions between the FBI personnel and this Office, I am remanding your request to FBI for a search for responsive records.” Letter from Christina D. Troiani, at 1 (Dec. 15, 2022) (Ex. 4).

15. On December 20, 2022, the FBI informed Plaintiffs that “[w]e have opened your remanded appeal and will inform you of the results in future correspondence” and “[y]our request for a fee waiver is being considered and you will be advised of the decision if fees are applicable.” Letter from Michael G. Seidel to Mike Howell (Dec. 20, 2022) (Ex. 5).

16. Plaintiffs have received no further communication from DOJ concerning the Request.

17. Twenty business days from December 20, 2022 is January 20, 2023.

18. Thirty business days from December 20, 2022 is February 3, 2023.

FIRST CLAIM FOR RELIEF
Violation FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Responsive Records.

19. Plaintiffs re-allege paragraphs 1–18 as if fully set out herein.

20. FOIA requires all doubts to be resolved in favor of disclosure. “Transparency in government operations is a priority of th[e Biden] . . . Administration.” Attorney General, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).

21. Plaintiffs properly requested records within the possession, custody, and control of Defendant.

22. Defendant is subject to FOIA and therefore must make reasonable efforts to search for requested records.

23. Defendant has failed to promptly review agency records for the purpose of locating and collecting those records that are responsive to Plaintiffs’ FOIA Request.

24. Defendant’s failure to conduct searches for responsive records violates FOIA and DOJ regulations.

25. Plaintiffs have a statutory right to the information they seek.

26. Defendant is in violation of FOIA.

27. Plaintiffs are being irreparably harmed by reason of Defendant's violation of FOIA. Plaintiffs are being denied information to which they are statutorily entitled and that is important to carrying out Plaintiffs' functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

28. Plaintiffs have no adequate remedy at law.

29. Plaintiffs have constructively exhausted their administrative remedies.

SECOND CLAIM FOR RELIEF
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

30. Plaintiffs re-allege paragraphs 1–29 as if fully set out herein.

31. FOIA requires all doubts to be resolved in favor of disclosure. “Transparency in government operations is a priority of th[e Biden] . . . Administration.” Attorney General, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).

32. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

33. Defendant is subject to FOIA, and therefore must release to a FOIA requester any non-exempt records and provide a lawful reason for withholding any records.

34. Defendant is wrongfully withholding non-exempt records requested by Heritage by failing to produce any records responsive to Plaintiffs' FOIA Request.

35. Defendant is wrongfully withholding non-exempt-agency records requested by Plaintiffs by failing to segregate exempt information in otherwise non-exempt records responsive to Plaintiffs' FOIA Request.

36. Defendant's failure to provide all non-exempt responsive records violates FOIA and DOJ regulations.

37. Plaintiffs have a statutory right to the information they seek.

38. Defendant is in violation of FOIA.

39. Plaintiffs are being irreparably harmed by reason of Defendant's violation of FOIA. Plaintiffs are being denied information to which they are statutorily entitled and that is important to carrying out Plaintiffs' functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

40. Plaintiffs have no adequate remedy at law.

41. Plaintiffs have constructively exhausted their administrative remedies.

THIRD CLAIM FOR RELIEF
Violation of FOIA, 5 U.S.C. § 552
Wrongful Denial of Fee Waiver

42. Plaintiffs re-allege paragraphs 1–41 as if fully set out herein.

43. FOIA requires all doubts to be resolved in favor of disclosure. “Transparency in government operations is a priority of th[e Biden] . . . Administration.” *Attorney General, Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).

44. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

45. Defendant has constructively denied Plaintiffs' application for a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(ii) & (iii) and 28 C.F.R. §16.10(k).

46. The Request does not have a commercial purpose because Heritage is a 501(c)(3) nonprofit, Howell acts in his capacity as a Heritage employee, and release of the information sought does not further Plaintiffs' commercial interest.

47. Plaintiffs are members of the news media as they "gather[] information of potential interest to a segment of the public, use[] . . . [their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience" via Heritage's major news outlet, *The Daily Signal*. 5 U.S.C. § 552(a)(4)(a)(ii).

48. Disclosure of the information sought by the Request also "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

49. Defendant has "failed to comply with a[]time limit under paragraph (6)" as to the Request. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

50. Plaintiffs have a statutory right to a fee waiver.

51. Defendant is in violation of FOIA by denying a fee waiver.

52. Plaintiffs are being irreparably harmed by reason of Defendant's violation of FOIA. Plaintiffs are being denied a fee waiver to which they are statutorily entitled and that is important to carrying out Plaintiffs' functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

53. Plaintiffs have no adequate remedy at law.

54. Plaintiffs have constructively exhausted their administrative remedies.

FOURTH CLAIM FOR RELIEF
Violation of FOIA, 5 U.S.C. § 552
Statutory Bar Against Charging Fees

55. Plaintiffs re-allege paragraphs 1–54 as if fully set out herein.

56. FOIA requires all doubts to be resolved in favor of disclosure. “Transparency in government operations is a priority of th[e Biden] . . . Administration.” Attorney General, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).

57. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

58. The Request does not have a commercial purpose because Heritage is a 501(c)(3) nonprofit, Howell acts in his capacity as a Heritage employee, and release of the information sought does not further Plaintiffs’ commercial interest.

59. Plaintiffs are members of the news media as they “gather[] information of potential interest to a segment of the public, use[] . . . [their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience” via Heritage’s major news outlet, *The Daily Signal*. 5 U.S.C. § 552(a)(4)(a)(ii).

60. Disclosure of the information sought by the Request also “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii).

61. Defendant has “failed to comply with a[]time limit under paragraph (6)” as to the Request. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

62. Defendant has not determined “more than 5,000 pages are necessary to respond to this request,” or discussed with Plaintiffs how Plaintiffs “could effectively limit the scope of the request.” 5 U.S.C. § 552(a)(4)(A)(viii)(II)(cc).

63. Defendant is currently statutorily barred from charging fees related to Plaintiffs’ FOIA Request. Therefore, Plaintiffs have a statutory right to have their request processed without being charged any fees.

64. Plaintiffs are being irreparably harmed by reason of Defendant’s violation of FOIA. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

65. Plaintiffs have no adequate remedy at law.

66. Plaintiffs have constructively exhausted their administrative remedies.

WHEREFORE as a result of the foregoing, Plaintiffs pray that this Court:

- A. Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Plaintiffs’ FOIA Request;
- B. Order Defendant to produce, within twenty days of the Court’s order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Plaintiffs’ FOIA Request and indexes justifying the withholding of any responsive records withheld in whole or in part under claim of exemption;
- C. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiffs’ FOIA Request;
- D. Enjoin Defendant from assessing fees or costs for Plaintiffs’ FOIA Request;
- E. Retain jurisdiction over this matter as appropriate;

- F. Award Plaintiffs their costs and reasonable attorneys' fees in this action as provided by 5 U.S.C. § 522(a)(4)(E); and
- G. Grant such other and further relief as this Court may deem just and proper.

Dated: February 22, 2023

Respectfully submitted,

/s/ Samuel Everett Dewey
SAMUEL EVERETT DEWEY
(No. 999979)
Chambers of Samuel Everett Dewey, LLC
Telephone: (703) 261-4194
Email: samueledewey@sedchambers.com

ROMAN JANKOWSKI
(No. 975348)
The Heritage Foundation
Telephone: (202) 489-2969
Email: Roman.Jankowski@heritage.org

Counsel for Plaintiffs

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ JURY DEMAND:	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input type="checkbox"/>
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VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	If yes, please complete related case form
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DATE: <u>February 6, 2023</u>	SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Samuel Everett Dewey</u>
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

_____))
 Plaintiff))
))
 v.)) Civil Action No.
))
_____))
 Defendant))

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

_____)
 Plaintiff)
)
 v.) Civil Action No.
)
_____)
 Defendant)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

EXHIBIT 1



214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400
heritage.org

SENT VIA: <https://efoia.fbi.gov>

November 2, 2022

Michael G. Seidel, Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
200 Constitution Drive
Winchester, VA 22602

Dear FOIA Officer,

Nellie Ohr testified to Congress that she obtained her HAM radio license “well before” she was employed by Fusion GPS and that she was employed by Fusion GPS from October 2015 to September 2016.¹ In May 2016, one month after the Hillary Clinton Presidential Campaign hired Fusion GPS to conduct opposition research, Nellie Ohr obtained her HAM radio license.²

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the implementing FOIA regulations of the Department of Justice (“DOJ”), 28 CFR Part 16, I respectfully request all FBI records, communications and attachments from May 1, 2016 to the present that contain any of the following terms:

- “ham radio” AND “ohr”
- “ham radio” AND “nellie”
- “ham radio” AND “fusion gps”

The terms “pertaining to,” “referring,” “relating,” or “concerning” with respect to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

The term “record” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports,

¹CoreysDigs.com. (Accessed 2022, November 2). Nellie Ohr Interview. <https://www.coreysdigs.com/wp-content/uploads/2019/04/10.19.18-Nellie-Ohr-Interview.pdf>

² Federal Communications Commission. (Accessed 2022, November 2). Amateur License - KM4UDZ - Ohr, Nellie H. <https://wireless2.fcc.gov/UlsApp/LicArchive/license.jsp?archive=Y&licKey=12382876>



214 Massachusetts Avenue, NE
Washington, DC 20002

(202) 546-4400
heritage.org

working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (emails), MMS or SMS text messages, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise.

The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The terms “all,” “any,” and “each” should each be construed as encompassing any and all. The singular includes the plural number, and vice versa. The present tense includes the past and vice versa. The masculine includes the feminine and neuter genders.

The term “communication” means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, MMS or SMS message, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), regular mail, telexes, releases, or otherwise.

“Communications with,” “communications from,” and “communications between” means any communication involving the related parties, regardless of whether other persons were involved in the communication, and includes, but is not limited to, communications where one party is cc’d or bcc’d, both parties are cc’d or bcc’d, or some combination thereof.

Please consider all members of a document “family” to be responsive to the request if any single “member” of that “family” is responsive, regardless of whether the “family member” in question is “parent” or “child.”



214 Massachusetts Avenue, NE
Washington, DC 20002

(202) 546-4400
heritage.org

In the interest of expediency and to minimize the research and/or duplication burden on your staff, please send records electronically if possible. If this is not possible, please notify me before sending to the mailing address listed below. If access to this request will take longer than twenty business days, please let me know when I might receive records or be able to inspect the requested records. Please produce responsive documents as soon as they become available. In all cases, please communicate with me at the below email address.

Please comply fully with 5 U.S.C. § 552(b). Accordingly, without limitation to the foregoing, if any portion of this request is denied for any reason, please provide written notice of the records or portions of records that are being withheld and cite each specific exemption of the Freedom of Information Act on which the agency relies. Moreover, to the extent that responsive records may be withheld in part produce all reasonably segregable portions of those records. Additionally, please provide all responsive documents even if they are redacted in full.

Fee Waiver Request

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, Heritage Foundation does not have a commercial purpose and the release of the information requested is not in Heritage Foundation's commercial interest. Heritage Foundation's mission is to formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. Heritage Foundation uses the information requested and analyzes it in order to educate the public through social media,³ broadcast media⁴ (traditional and nontraditional) and press releases.⁵ The requested information is in the public interest as this is an issue of national controversy which has been covered extensively by national broadcast media and national print media.⁶ The purpose of this Freedom of Information Act request is to examine this controversial belief.

Because this is a request by a member of the news media for information of public interest, made in my capacity as an author for the Daily Signal⁷ (a major news outlet⁸), I actively gather

³ Heritage Foundation. [@ Heritage] (Accessed: 2022, February 18). 626.8K Followers Twitter. <https://twitter.com/Heritage>

⁴ Fox News. (Accessed: 2022, February 18). Heritage Foundation launches Conservative Oversight Project aimed at 'exposing' Biden admin, leftist policies. <https://www.foxnews.com/politics/heritage-conservative-oversight-project-biden-admin-leftist-policies>

⁵ Heritage Foundation. (Accessed: 2022, February 18). Press. <https://www.heritage.org/press>

⁶ Fox News. (Accessed 2022, November 2). FBI weaponized by Biden Justice Department in campaign against Trump. <https://www.foxnews.com/opinion/fbi-weaponized-biden-justice-department-campaign-trump>

⁷ Daily Signal. (Accessed: 2022, February 18). Mike Howell. <https://www.dailysignal.com/author/mike-howell/>

⁸ Daily Signal. [DailySignal] (Accessed: 2022, February 18). 73.7K Followers Twitter. <https://twitter.com/DailySignal>



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information of potential interest to our Daily Signal audience, and I use my editorial skills to turn raw materials into a distinct work, and I distribute that work to our Daily Signal audience through podcasts⁹ or articles. I request that you waive all applicable fees associated with this request.

If you deny this request for a fee waiver, please advise me in advance of the estimated charges if they are to exceed \$50. Please send me a detailed and itemized explanation of those charges.

Thank you in advance for considering my request. If you have any questions, or feel you need clarification of this request please contact me at oversightproject@heritage.org.

Sincerely,

Mike Howell
Senior Advisor and Author at The Daily Signal
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, D.C. 2000

⁹Apple. (Accessed: 2022, March 4). The Daily Signal Podcast.
<https://podcasts.apple.com/us/podcast/the-daily-signal-podcast/id1313611947>

EXHIBIT 2



Federal Bureau of Investigation
Washington, D.C. 20535

November 23, 2022

MR. MIKE HOWELL
HERITAGE FOUNDATION/DAILY SIGNAL
214 MASSACHUSETTS AVENUE, NORTHEAST
WASHINGTON, DC 20002

FOIPA Request No.: 1573290-000
Subject: All FBI Records, Communications
and Attachments that Contain the Terms
"HAM Radio," "Ohr," "Nellie," or "Fusion
GPS"
(On or After May 1, 2016)

Dear Mr. Howell:

This is in response to your Freedom of Information Privacy Acts (FOIPA) request. Your request is overly broad and it does not comport with the requirements of 28 CFR § 16.3(b), as it does not provide enough detail to enable personnel to locate records "with a reasonable amount of effort." Therefore, your request is being closed.

It is unnecessary to adjudicate your request for a Fee Waiver at this time, as no applicable fees were assessed.

For questions on how to reasonably describe your request, please email us at foipaquestions@fbi.gov. You may also visit www.fbi.gov and select "Services," "Information Management," and "Freedom of Information/Privacy Act" for additional guidance.

If you are not satisfied with the Federal Bureau of Investigation's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely

A handwritten signature in black ink, appearing to read "M. G. Seidel", is positioned above the typed name.

Michael G. Seidel
Section Chief
Record/Information
Dissemination Section
Information Management Division

EXHIBIT 3



214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400
heritage.org

SENT VIA: OIP's FOIA online portal <https://doj-foia.entellitrak.com/etk-doj-foia-prod/login.request.do>

December 2, 2022

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

RE: Freedom of Information Act Appeal

Dear FOIA Appeals Officer,

The Heritage Foundation is appealing the full denial of attached Federal Bureau of Investigation Freedom of Information Act (FOIA) Request 1573290-000, dated November 2, 2022, pursuant to 28 C.F.R. § 5.8(a)(1) because the search in question was inadequate. Because the FBI possesses records relevant to The Heritage Foundation's FOIA Request, the FBI's failure to disclose any relevant records is evidence of an insufficient search.

In attached letter dated November 23, 2022, the FBI advised that the request was overly broad, did not comport with 28 C.F.R. § 16.3(b), and does not provide enough detail to locate records. Each of these FBI objections is demonstrably false.

Legally "adequate" FBI FOIA queries must include searches of FBI employees' email and all other communications on FBI systems reasonably likely to contain responsive records. Media reports have demonstrated that the subject matter of FOIA Request 1573290-000 was the basis of a Congressional criminal referral to the Department of Justice. Due to these facts, the FOIA Request 1573290-000's requested search terms would invariably have been used in FBI documents and/or communications. The uncommon usage of the requested search terms renders not only the documents and/or communications easily identifiable but greatly limits the number of potential documents containing those terms that would not be relevant to the FOIA request. As such, had an adequate query been run, records would have been identified.

I respectfully request that the FBI and/or DOJ reassess its response, search for records, and provide responsive records. If any portion of this request is denied for any reason, please provide copies of the records or portions of records that are being withheld and cite each specific exemption of the Freedom of Information Act on which the agency relies.



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Washington, DC 20002

(202) 546-4400
heritage.org

Please provide partial responses when they are ready. Thank you in advance for considering my Appeal. If you have any questions, or feel you need clarification of this request please contact me at oversightproject@heritage.org.

Sincerely,

Mike Howell
Senior Advisor and Author at The Daily Signal
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, D.C. 20002

EXHIBIT 4



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Mike Howell

Re: Appeal No. A-2023-00360
Request No. 1573290-000
CDT:AMF

oversightproject@heritage.org

VIA: Email - 12/15/2022

Dear Mike Howell:

You appealed from the action of the Federal Bureau of Investigation (FBI) on your Freedom of Information Act (FOIA) request for access to records concerning communications from May 1, 2016 to present with the terms "HAM Radio," "Nellie," "Ohr," and "Fusion GPS." I note that your appeal concerns the FBI's determination that your request would require an unduly burdensome search.

After carefully considering your appeal, and as a result of discussions between the FBI personnel and this Office, I am remanding your request to FBI for a search for responsive records. If the FBI locates releasable records, it will send them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by the FBI. If you would like to inquire about the status of this remanded request or to receive an estimated date of completion, please contact the FBI directly at 540-868-1535.

If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in blue ink, appearing to read "Christina D. Troiani".

X

Christina D. Troiani,

Associate Chief, for Matthew W. Hurd, Chief,
Administrative Appeals Staff

EXHIBIT 5



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

December 20, 2022

MR. MIKE HOWELL
HERITAGE FOUNDATION/DAILY SIGNAL
214 MASSACHUSETTS AVENUE, NORTHEAST
WASHINGTON, DC 20002

OIP Appeal Number: A-2023-00360
FOIPA Appeal No.: 1573290-000
Subject: All FBI Records, Communications
and Attachments that Contain the Terms
"HAM Radio," "Ohr," "Nellie," or "Fusion
GPS"
(On or After May 1, 2016)

Dear Mr. Howell:

This acknowledges your Freedom of Information/Privacy Acts (FOIPA) remanded appeal has been received by the FBI from the Office of Information and Policy for processing. Below you will find check boxes and informational paragraphs about your request. Please read each one carefully.

- We have opened your remanded appeal and will inform you of the results in future correspondence.
- We have converted your NFP into a FOIPA appeal; therefore, the NFP number originally assigned to your request will now appear as the FOIPA appeal number listed above.
- Your request for a fee waiver is being considered and you will be advised of the decision if fees are applicable.

Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status**. Enter the OIP Appeal Number (ex. 201500123) listed above, **without hyphens**. 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.

The FOIPA Appeal Number listed above has been assigned to your request. Please reference the FOIPA Appeal Number and OIP Appeal Number in all future correspondence concerning your request.

Sincerely,

A handwritten signature in black ink, appearing to read "M. G. Seidel", is positioned above the typed name.

Michael G. Seidel
Section Chief
Record/Information
Dissemination Section
Information Management Division