

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

CHELSEA MANNING,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE and the  
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

Case No. 1:15-cv-01654-APM

**DEFENDANTS' ANSWER**

Defendants U.S. Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”), through undersigned counsel, hereby answer Plaintiff’s Complaint.

First Defense

The FOIA request that is the subject of this lawsuit may implicate information that is protected from disclosure by one or more statutory exemptions. Disclosure of such information is not required.

Second Defense

In response to the numbered paragraphs of the complaint, Defendants admit, deny, or otherwise respond as follows:

1. The first sentence of this paragraph sets forth Plaintiff’s characterization of this action, to which no response is required. The second sentence of this paragraph consists of legal conclusions, to which no response is required.
2. This paragraph consists of legal conclusions, to which no response is required.

3. Defendants lack knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

4. Defendants admit that Plaintiff named both the United States Department of Justice and the FBI as Defendants, but aver that only DOJ is an “agency” under the FOIA and that it, not its component FBI, is the proper defendant in a FOIA lawsuit.

5-9. Admitted.

10. Defendants lack knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

11. This paragraph fails to aver facts in support of any cause of action pled in the complaint, and therefore requires no response.

12. Defendants admit this paragraph and respectfully refer the Court to Plaintiff’s February 20, 2014 FOIA request, which speaks for itself, for a complete and accurate statement of its contents.

13. Defendants admit the first sentence of this paragraph and respectfully refer the Court to the FBI’s March 7, 2014 acknowledgment letter, which speaks for itself, for a complete and accurate statement of its contents. As to the second sentence, Defendants admit that Plaintiff provided additional information as requested by the FBI and respectfully refer the Court to the completed form (dated March 7, 2014), which speaks for itself, for a complete and accurate statement of its contents.

14. Defendants admit this paragraph and respectfully refer the Court to Plaintiff’s March 18, 2104 letter, which speaks for itself, for a complete and accurate statement of its contents.

15. Defendants admit this paragraph and respectfully refer the Court to the FBI's March 21, 2014 letter, which speaks for itself, for a complete and accurate statement of its contents.

16. Defendants admit this paragraph and respectfully refer the Court to the April 3, 2014 letter denying expedited processing, which speaks for itself, for a complete and accurate statement of its contents. Defendants further aver that pursuant to DOJ FOIA regulation 28 C.F.R. § 16.5(e)(2), DOJ's Office of Public Affairs adjudicates requests for expedited processing based on 28 C.F.R. § 16.5(e)(1)(iv), which is the basis Plaintiff cited in requesting expedited processing.

17. Defendants admit that Plaintiff wrote to DOJ's Office of Information Policy ("DOJ-OIP") to appeal the FBI's denial of her request to expedite, but that such letter was dated April 11, 2014, not April 4, 2014. Defendants respectfully refer the Court to the April 11, 2014 letter, which speaks for itself, for a complete and accurate statement of its contents.

18. Defendants admit this paragraph and respectfully refer the Court to the FBI's April 8, 2014 response letter, which speaks for itself, for a complete and accurate statement of its contents.

19. Defendants admit this paragraph and respectfully refer the Court to Plaintiff's April 17, 2014 appeal letter, which speaks for itself, for a complete and accurate statement of its contents.

20. Defendants admit this paragraph and respectfully refer the Court to DOJ-OIP's May 7, 2014 acknowledgment letter, which speaks for itself, for a complete and accurate statement of its contents.

21. Defendants admit this paragraph and respectfully refer the Court to DOJ-OIP's August 7, 2014 response letter, which speaks for itself, for a complete and accurate statement of its contents.

22. Defendants admit this paragraph and respectfully refer the Court to Plaintiff's January 5, 2015 letter, which speaks for itself, for a complete and accurate statement of its contents.

23. Defendants admit this paragraph and refer the Court to the Office of Government Information Service's February 24, 2015 letter, which speaks for itself, for a complete and accurate statement of its contents.

24. Defendants admit that the DOJ-OIP advised Plaintiff of her right to sue in its August 7, 2014 letter. Defendants deny that DOJ-OIP "acknowledged [that] . . . Plaintiff has exhausted her administrative remedies," and respectfully refer the Court to the August 7, 2014 letter, which speaks for itself, for a complete and accurate statement of its contents.

25. The first sentence of this paragraph consists of a legal conclusion, to which no response is required. Defendants deny the second sentence.

26. Defendants deny this paragraph.

A. Defendants incorporate by reference their response to paragraphs 1 through 26.

B. Defendants admit only that Plaintiff requested records from the FBI under the FOIA.

C. Defendants admit only that the FBI denied Plaintiff's FOIA request pursuant to Exemption 7(A) and deny the remainder of the sentence.

D. Defendants deny the first sentence. As to the second sentence, Defendants admit that Plaintiff has been convicted at a court-martial and deny the remainder of the sentence.

E. This paragraph consists of a legal conclusion, to which no response is required.

F. This paragraph consists of a characterization of the lawsuit rather than an allegation of fact, to which no response is required. Defendant denies that it violated the FOIA.

The remainder of Plaintiff's complaint consists of a prayer for relief, to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiff is entitled to the requested relief or to any relief whatsoever.

Any other allegation not expressly responded to is hereby denied.

WHEREFORE, having fully answered Plaintiff's complaint, Defendants pray for a judgment dismissing the complaint with prejudice and for such further relief as the Court may deem just.

Dated: November 25, 2015.

Respectfully submitted,

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Principal Deputy Assistant Attorney General

CHANNING D. PHILLIPS  
United States Attorney

ELIZABETH J. SHAPIRO  
Deputy Branch Director  
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/s/ Aimee W. Brown  
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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CHELSEA MANNING,

Plaintiff,

v.

Case No.

UNITED STATES DEPARTMENT  
OF JUSTICE and the FEDERAL BUREAU  
OF INVESTIGATION,

Defendants.

**COMPLAINT FOR REVIEW OF AGENCY ACTION PURSUANT  
TO THE FREEDOM OF INFORMATION ACT**

Plaintiff Chelsea Manning, through undersigned counsel, brings this Complaint against the United States Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) for their categorical refusal to provide records under the Freedom Of Information Act (FOIA).

**JURISDICTION**

1. This action seeks judicial review of Defendants' failure to comply with the requirements of FOIA by categorically denying Plaintiff's FOIA request. Therefore, this Court has jurisdiction over this action under 5 U.S.C. § 552.

**VENUE**

2. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

**PARTIES**

3. Plaintiff is currently incarcerated in the United States Disciplinary Barracks at Fort Leavenworth, Kansas.
4. Respondents are the United States Department of Justice and the FBI.

## FACTUAL ALLEGATIONS

### Background

5. In 2010, the United States Army charged Plaintiff, then known as Private First Class Bradley E. Manning, with various violations of the the Uniform Code of Military Justice and the United States Code for disclosing classified and confidential information to the not-for-profit media organization, WikiLeaks.
6. On March 1, 2011, after a probable cause hearing, the Army referred Plaintiff's case to a general court-martial.
7. Plaintiff pled guilty to some of the charges in February 2013 and proceeded to trial on the remaining charges in June 2013.
8. At trial Plaintiff was acquitted of aiding the enemy, under UCMJ Art. 104, but convicted of charges related to espionage, theft, and computer fraud under the United States Code, as well as various other military-related offenses.
9. In August 2013, a military judge sentenced Plaintiff to 35 years of imprisonment and a dishonorable discharge from the Army. She is currently serving her sentence at the Fort Leavenworth Disciplinary Barracks in Fort Leavenworth, Kansas. Plaintiff's military appeal is pending.
10. Plaintiff has supporters world-wide who recognize that she acted for the public good to provide information of human rights abuses and other actions that had been secret.
11. Upon information and belief, the FBI investigated Plaintiff for the same conduct that formed the basis of the military's court-martial proceeding against her.

### **Plaintiff's FOIA Requests to the FBI**

12. On February 20, 2014, Plaintiff wrote to the FBI under the FOIA requesting,

[ ] Documents, papers, reports, letters, memoranda, films, electronic data, photographs, audio and video recordings of or relating to investigation conducted by the Washington Field Office of the Federal Bureau of Investigation and the U.S. Attorney's Office of the Eastern District of Virginia into the alleged disclosures of classified and sensitive but unclassified information by Private First Class (PFC) Bradley E. Manning beginning in late 2010 and continuing until an unknown date, but as late as mid-2012.

[ ] Any other documents, papers, reports, letters, memoranda, films, electronic data, photographs, audio and video recordings of or relating to the investigation conducted by the Federal Bureau of Investigation and the U.S. Attorney's Office of the Eastern District of Virginia into alleged civilian co-conspirators of the disclosures of information by Manning.

In that request, Plaintiff indicated her willingness to pay fees associated with a burdensome search and requested expedited processing based on an "urgency to inform the public about an actual or alleged federal government activity" and a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 32 C.F.R. § 16.5(d)(1)(ii) and (d)(1)(iv).

13. On March 7, 2014, the FBI acknowledged Plaintiff's request, but stated that Plaintiff's "letter did not contain sufficient information to conduct an accurate search of the Central Records System." Consequently, Plaintiff submitted the requested information, by completing the FBI's form, to supplement her request on March 17, 2014.

14. On March 18, 2014, after filling out the FBI's form, Plaintiff further supplemented her request by providing additional personal information to the agency, including her full name, prior and current address, place of birth, and phone number. She also repeated the nature of the materials requested, their timeframe, and associated case number.
15. On March 21, 2014, the FBI acknowledged receipt of Plaintiff's request.
16. On April 3, 2014, the FBI denied Plaintiff's request for expedited processing, stating that she had "not provided enough information concerning the statutory requirements for expedition[.]" Regardless, the FBI concluded that "the topic of [Plaintiff's] request [was] not a matter 'in which there exist possible questions about the government's integrity which affect public confidence.'" (no citation for internal quotation provided).
17. On April 4, 2014, Plaintiff wrote to the Director of the Office of Information Policy and appealed the FBI's denial of her request to expedite.
18. On April 8, 2014, the FBI categorically denied Plaintiff's request for records, claiming that any records responsive to Plaintiff's request were exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A).

The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive

records could reasonably be expected to interfere with enforcement proceedings.

The FBI went on to include a *Glomar* paragraph in its categorical denial, stating:

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). [Sic] This response is limited to those records that are subject the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that the excluded records do, or do not, exist.

19. On April 17, 2014, Plaintiff appealed the agency's denial of her request for records, including its *Glomar* provision, and its failure to substantively respond to her Privacy Act request.
20. On May 7, 2014, the DOJ, Office of Information Policy, acknowledged receipt of Plaintiff's appeal.
21. On August 7, 2014, the DOJ affirmed the FBI's categorical denial of Plaintiff's request for records and denied her appeal, relying on §552(a)(j)(2) of the Privacy Act and 5 U.S.C. § 552(b)(7)(A) of the FOIA. The Chief of the Administrative Appeals Staff for the DOJ's Office of Information Policy wrote, in relevant part:

After carefully considering your appeal, I am affirming the FBI's action on your request. In order to provide you with the greatest possible access to responsive records, your request was reviewed under both the Privacy Act of 1974 and the Freedom of Information Act. This Office has determined that the records responsive to your request are exempt from the access provision of the Privacy Act. *See* 5 U.S.C. § 552a(j)(2); *see also* 28 C.F.R. § 16.96 (2013). For this reason, I have reviewed your appeal under the FOIA.

The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that

provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly withheld this information *in full* because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(A). This provision concerns records or information compiled for law enforcement proceedings.

(emphasis added).

22. On January 5, 2015, Plaintiff sought the assistance of the Office of Government Information Services (OGIS) and asked the agency to “mediate and resolve the dispute between [Plaintiff] and the Attorney General regarding [Plaintiff’s] Freedom of Information Act (FOIA) 5 U.S.C. § 552) [sic] request[.]”
23. The OGIS responded to Plaintiff’s request for mediation by repeating the FBI’s categorical and purported grounds for denial of Plaintiff’s request and explained that  

Exemption 7(A) is temporal in nature and not intended to “endlessly protect material simply because it is in an investigatory file,” according the Department of Justice Guide to Freedom of Information Act. Courts have ruled that Exemption 7(A) remains applicable through long-term law enforcement investigations. It may be helpful to know that as part of the appeals process on cases such as yours, OIP confirms that Exemption 7(A) is still applicable to records sought at the time of the appeal.
24. As acknowledged by the DOJ in its letter responsive to Plaintiff’s appeal, Plaintiff has exhausted her administrative remedies and is now permitted to “file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).”
25. Because the Army general court-martial and the FBI investigation arose from the same conduct, any attempt to prosecute Plaintiff in federal criminal court would violate Plaintiff’s double jeopardy rights. *See United States v. Stoltz*,

720 F.3d 1127 (9th Cir. 2013) (“It is . . . well settled that a general or special court-martial conviction precludes a subsequent civilian criminal conviction for the same offense.”) (citing *Grafton v. United States*, 206 U.S. 333, 345-48 (1907)). Without the ability to prosecute Plaintiff for the alleged conduct underlying their investigation, Defendants have no reasonable basis to withhold the requested records.

26. Nor will any privacy concerns be implicated by disclosing the records to Plaintiff because she is the subject of the FBI’s investigation.

#### **CAUSE OF ACTION**

- A. Plaintiff repeats and re-alleges the foregoing allegations in this Complaint with the same force and effect as if hereinafter set forth at length.
- B. Plaintiff has made a lawful request for records and information from the FBI under the FOIA.
- C. The FBI has improperly failed to provide the records and information as provided by law, and instead claims categorical exemption under 5 U.S.C. § 552(b)(7)(A).
- D. Disclosing the requested records will not interfere with any enforcement proceedings that are pending or reasonably anticipated. Plaintiff has already been convicted at a court-martial for the underlying conduct investigated by the FBI.
- E. Plaintiff has exhausted her administrative remedies, and the Agency's decisions and actions are final.
- F. Plaintiff seeks judicial review of the FBI’s wrongful and categorical failure to provide the records and information sought in her FOIA request.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

- 1) Order the FBI to provide the records and information improperly withheld from Plaintiff.
- 2) Award Plaintiff reasonable attorneys' fees and costs incurred in this action, as allowed under FOIA or by law.
- 3) Order any other relief this Court deems just and proper.

Respectfully Submitted,

**FREEDMAN BOYD HOLLANDER  
GOLDBERG URIAS & WARD P.A**

*/s/ Nancy Hollander*

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