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June 24, 2016

Via Certified Mail

Melanie Ann Pustay, Director
Freedom of Information Appeal
Office of Information Policy
U.S. Department of Justice
1425 New York Ave., NW
Suite 11050
Washington, [REDACTED]. 20530-0001

RE: FREEDOM OF INFORMATION APPEAL
Request No. 1203982-001

Dear Director Pustay:

I am writing to appeal the decision and determination to redact and exclude certain information and documents from production in the above referenced request pursuant to 5 U.S.C. § 552(a)(6). My initial request is attached hereto as Exhibit "G".

On May 2, 2016, I received an interim disclosure dated April 28, 2016, a copy of which is attached hereto as Exhibit "A", in relation to my ongoing FOIA request on behalf of my client, Jeffrey Edward Epstein. This appeal is timely having been postmarked within sixty (60) days of the date of the letter. The April 28, 2016, production was the fifth in a series of productions that resulted from the decision of the Office of Information Policy that the FBI's invocation of § 552(b)(7)(A) as a basis to deny the request in its entirety was "no longer applicable" and that the "FBI will process and send all releasable records" to me as Mr. Epstein's representative, *see* letter dated March 29, 2013 from OIP appended hereto as Exhibit "B".

Since the serial productions from the FBI commenced, the disclosed records have become increasingly more redacted and more and more pages have been fully deleted and withheld. For example, in the production dated January 20, 2016, the one just prior to the most recent, only 195 of the 1299 pages reviewed were released, *see* FBI letter appended hereto as Exhibit "C". In the production dated April 28, 2016, 221 pages of the 2,032 pages reviewed were released, *see* FBI letter appended hereto as Exhibit "A". Although prior productions released a higher percentage of reviewed documents, only roughly half of the documents reviewed in each of those productions were released. In the production dated December 16,

2014, attached hereto as exhibit "D", 371 documents of 538 reviewed were produced; in the production dated May 26, 2015, attached as exhibit "E", 327 documents were produced from a review of 765 documents; and in the production dated November 12, 2015, attached as exhibit "F", 131 of 287 documents were produced.

Of the documents that were withheld in the most recent production, 877 were withheld in their entirety based solely on exemptions codified in 5 U.S.C. § 552(b)(6) and (b)(7)(C), as an "unwarranted invasion of personal privacy."¹ Surely any information that would constitute an "unwarranted invasion of personal privacy" could be surgically redacted rather than subject to wholesale deletion of entire documents to ensure the greatest degree of access authorized by law. It should also be noted that the United States Attorney provided Mr. Epstein's counsel with a list of the identities of nearly 40 victim-witnesses immediately after his June 30, 2008, state plea, thus the identities of most of the primary witnesses interviewed by the FBI are not confidential.

Further, there are a number of redactions and exclusions that have been applied on the basis of § 552(b)(7)(D), a section that exempts disclosure of the identity of a confidential source, including any entities that have provided information on a confidential basis. In the most recent production, there were 835 documents withheld in their entirety on the basis of that exception. Again, wholesale deletion of documents based on that exception is inappropriate where surgical redactions would accomplish the same goal of protecting confidential sources while providing the greatest degree of access authorized by law. The Bureau's implementation of that exception appears far too broad, especially when, arguably, information in response to a subpoena for documents, absent any requests or assurances of confidentiality, is not necessarily "furnished on a confidential basis," and thus would not be covered under the exception in § 552(b)(7)(D).

Withholding 90% of the reviewed documents in their entirety appears to be facially inconsistent with the spirit of the FOIA to provide a citizen with full access to his files. I am deeply concerned that the FBI is over-redacting and over-withholding, relying on exceptions that require a more surgical redacting and, overall, acting in a manner to minimize the disclosures that a citizen would reasonably understand would occur as a result this Office's decision that wholesale withholding based on exemption § 552(b)(7)(A) of the FOIA is not appropriate. We request your review of the documents being withheld to determine whether or not the agency's determination to completely withhold so many of them is consistent with the proper application of the exceptions to the FOIA's disclosure imperatives. Regardless of who specifically is ordering the wholesale redactions of such an overwhelming number of the otherwise discoverable documents, we seek this Office's review of the necessity of the redactions and the appropriateness of withholding such a vast majority of documents in their entirety.

Yours truly,



Martin G. Weinberg

¹ § 552(b)(6) actually only protects "personnel, medical or similar files" and is arguably not relevant to any of the documents requested.