

August 24, 2011

Office of Information Policy
U.S. Department of Justice, Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

FOIPA Request No.: [REDACTED]
Re: EPSTEIN, JEFFREY EDWARD

FREEDOM OF INFORMATION ACT APPEAL

Director of Office of Information Policy,

This is a timely appeal pursuant to 5 U.S.C. § 552(a)(6), concerning the U.S. Federal Bureau of Investigation's ("F.B.I." or "Agency") denial of a request for records within their control.

I am writing this letter on behalf of Jeffrey Edward Epstein. As noted in the original FOIA request, dated June 28, 2011, Mr. Epstein seeks disclosure of any,

"records, documents, files, communications, memoranda, orders, agreements and/or instructions created from January 1, 2000 to June 28, 2011, that were prepared, received, transmitted, collected and/or maintained by the Federal Bureau of Investigation or any of its components or field offices [...]"

See, original FOIA request, page 2, paragraphs 1-3.

The Agency, by a letter dated August 8, 2011, refused to disclose any and all of the requested material, asserting that the requested records are located in an investigative file exempt from disclosure pursuant to 5 U.S.C. §552(b)(7)(A). In applying this exemption the Agency has determined that the responsive records are law enforcement records, relevant to a pending or prospective law enforcement proceeding and that the release of the information contained in these records could reasonably be expected to interfere with the enforcement proceedings. We assert a good faith basis and believe that any ongoing FBI investigation ended on or about June 30, 2008, and therefore do not agree that the requested materials are exempt from disclosure under 5 U.S.C. § 552(b)(7)(A). Accordingly, we hereby ask that the Director reverse the denial of Mr. Epstein's FOIA request and waive all associated fees. We also contest the single sentence summary that every requested record falls within the enumerated exemption that requires a determination that the disclosure of such record, in whole or in part, will "interfere" with "a pending or prospective law enforcement proceeding".

It is by now well-established law, that a plaintiff in a FOIA case is entitled to an index of the documents and/or portions of documents that have been withheld by the defendant agency. Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). Moreover, the description of the withheld material must be “sufficiently specific to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” Founding Church of Scientology v. Bell, 603 F.2d 945, 949 (D.C. Dir. 1979). Accordingly, we further request that if any portions of the requested documents are withheld, that the Director should describe the deleted material in detail and specify the statutory justification applied in this instance. Finally, we request that those portions of the documents which may indeed be properly exempted from disclosure under 5 U.S.C. § 552(b)(7)(A) should be released pursuant to the Director’s powers of discretionary release under 36 C.F.R. § 200.11(b) and 7 C.F.R. § .17(b).

The Agency has erred in their denial of the requested material. The wholesale application of exemption 5 U.S.C. § 552(b)(7)(A) is inappropriate in this instance, and even those elements which might arguably be withheld under aforementioned exemption can not prevent the release of the rest of the requested materials. In the event that this appeal is denied, the Agency is required to provide a written response describing the reasons for denial, names and titles of each person responsible for the denial, and the procedures required to invoke judicial assistance in this matter. 5 U.S.C. § 552(a)(6)(ii), 7 C.F.R. § 1.8(d). If the appeal is denied or the Agency’s response is not forthcoming within 20 working days, my clients reserve their rights under FOIA to seek judicial review, including the award of attorney’s fees. I await your prompt reply.

Sincerely,

Martin G. Weinberg