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EMAIL ADDRESSES:

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NIGHT EMERGENCY

November 17, 2017

**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, D.C. 20530-0001

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

Dear Director Pustay:

I am writing to appeal, for the third time, the Federal Bureau of Investigation's ("FBI" or "Agency") 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(b). In response to each of the two prior appeals in this matter, the Department of Justice ("DOJ") remanded, instructing the Agency to further review certain documents that had been withheld. Undeterred, the FBI has continued its practice of blanket withholding. Accordingly, on behalf of my client Jeffrey Epstein, I now appeal the most recent November 13, 2017 production, in which an astonishing 0.3% of the responsive records were released.

My initial request, submitted almost five years ago in November 2012, represented Mr. Epstein's fourth attempt to obtain the relevant records. His three prior requests had been denied due to the existence of an open investigation. In the November 2012 letter, I asked the Agency to determine whether the relevant investigation had been terminated and accordingly whether the withheld documents should be produced. The Agency nonetheless responded by refusing to disclose any and all of the requested material, maintaining that the records were located in an investigative file exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A).

On December 12, 2012, I submitted an appeal letter (No. 2013-01397). The DOJ agreed with Mr. Epstein's position that the § 552(b)(7)(A) exemption was "no longer applicable to

withhold the records in full.” See Exhibit A. Accordingly, it remanded the matter to the FBI with instructions to “process and send all releasable records” to me. See *id.*

The Agency complied, for the most part, with the letter of the DOJ appeal decision but apparently has displayed a consistent disregard for its spirit. Save for one production letter, the FBI no longer cited § 552(b)(7)(A) as grounds for withholding or redacting documents. However, its practice of wholesale non-disclosure continued. In fact, in a series of interim productions, the Agency took an increasingly restrictive approach, releasing 371 of 538 pages (68.9%) on December 16, 2014; 327 of 765 pages (42.7%) on May 26, 2015; 131 of 287 pages (45.6%) on November 12, 2015; 195 of 1,299 pages (15.0%) on January 20, 2016; 221 of 2,032 pages (10.9%) on April 28, 2016; and 114 of 2,149 pages (5.3%) on June 28, 2016. In addition to the large number of pages withheld in their entirety, many of the produced pages were heavily redacted to the extent that they contained little to no discernable information.

In the face of the FBI’s increasingly grudging disclosures, Mr. Epstein was forced to file a second appeal (No. 2016-004027). In the appeal letter, I pointed out that the Agency’s proffered reasons for withholding the records could be achieved by surgical redaction rather than wholesale withholding. I also argued that the FBI’s restrictive approach to disclosure was inconsistent with the Freedom of Information Act (“FOIA”). This approach continued to manifest itself during the pendency of the second appeal. The FBI released 674 of 6,277 pages (10.7%) on May 10, 2017; 562 of 2,405 pages (23.4%) on July 5, 2017; and 626 of 4,103 pages (15.3%) on August 2, 2017. On August 29, 2017, the DOJ stepped in and again remanded to the FBI “for further processing of select portions of the responsive records.” See Exhibit B.

The FBI was undeterred by this second remand. On September 13, 2017, it produced a mere 838 of 5,334 pages (15.7%). Matters became even worse in the Agency’s next and most recent production, dated November 13, 2017, releasing just 10 of 3,579 pages (0.3%). See Exhibit C. The ten pages provided were so heavily redacted that they contain essentially no useful information.

As stated in my prior appeal letters, withholding 90% or more of the records reviewed is inconsistent with FOIA. The DOJ recognized as much by twice remanding to the Agency with instructions to revisit its withholdings. The FBI has nonetheless persisted in its complete refusal to disclose the vast majority of responsive records. Without waiving any aspect of Mr. Epstein’s initial request, or any arguments raised in the prior appeals, we ask that the Agency at least be required to comply with the DOJ’s remand instructions. Specifically, the Agency should be ordered to revisit each of its prior flawed productions in light of the guidance provided by the DOJ’s most recent remand letter, in addition to applying that guidance in all future productions.

Yours truly,

  
Martin G. Weinberg

# **Exhibit A**



U.S. Department of Justice  
Office of Information Policy  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

Telephone: (202) 514-3642

MAR 29 2013

Martin G. Weinberg, Esq.  
Martin G. Weinberg, P.C.  
Suite 1000  
20 Park Plaza  
Boston, MA 02116

Re: Appeal No. AP-2013-01397  
Request No. 1203982  
ADW:KRP

Dear Mr. Weinberg:

You appealed on behalf of your client, Jeffrey Epstein, from the action of the Federal Bureau of Investigation on his request for access to records concerning himself.

After carefully considering your appeal, and as a result of discussions between FBI personnel and this Office, I am remanding your client's request for further processing of the responsive records. Although the FBI invoked Exemption 7(A) of the Freedom of Information Act, 5 U.S.C. § 552(b)(7)(A), at the time your client's initial request was processed, that exemption is no longer applicable to withhold the records in full. Consequently, the FBI will process and send all releasable records 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 remand, please contact the FBI directly.

Furthermore, I am denying your request that we itemize and justify each item of the information withheld. You are not entitled to such a listing at the administrative stage of processing FOIA requests and appeals. See Bangoura v. U.S. Dep't of the Army, 607 F. Supp. 2d 134, 143 n.8 (D.D.C. 2009).

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

Sincerely,

[REDACTED]  
Chief  
Administrative Appeals Staff

By: [REDACTED]  
[REDACTED]  
Senior Counsel  
Administrative Appeals Staff

EFTA00802107

# **Exhibit B**



**U.S. Department of Justice**  
Office of Information Policy  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

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Telephone: (202) 514-3642

Martin G. Weinberg, Esq.  
Suite 1000  
20 Park Plaza  
Boston, MA 02116  
[owlmgw@att.net](mailto:owlmgw@att.net)

Re: Appeal No. DOJ-AP-2016-004027  
Request No. 1203982-001  
MWH:TAZ

**VIA: Email**

Dear Mr. Weinberg:

You appealed on behalf of your client, Jeffrey Epstein, from the action of the Federal Bureau of Investigation on his Freedom of Information Act request for access to records concerning himself. Please be advised that I am interpreting your appeal as challenging all withholdings made on the first through fifth interim releases of records responsive to your client's request.

After carefully considering your appeal, and as a result of discussions between FBI personnel and this Office, I am remanding your client's request in part to the FBI for further processing of select portions of the responsive records.<sup>1</sup> If the FBI determines that additional records are releasable, 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 remand, please contact the FBI directly. I am otherwise affirming the FBI's action on your client's request.

In order to provide your client with the greatest possible access to responsive records, your client's request was reviewed under both the Privacy Act of 1974 and the FOIA. I have determined that the records responsive to your client's 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 (2016). 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 certain information in full because it is protected from disclosure under the FOIA pursuant to:

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<sup>1</sup> This remand encompasses certain withholdings made pursuant to Exemptions 3 and 7(D) of the FOIA. On remand, the FBI is also verifying the applicability of court seals to certain responsive records.

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute (in this instance, Rule 6(e) of the Federal Rules of Criminal Procedure, which pertains to the secrecy of grand jury proceedings);

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency records protected by the deliberative process privilege;

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources; and

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures or guidelines for law enforcement investigations or prosecutions.

Please be advised that for each of these exemptions, it is reasonably foreseeable that disclosure of the information withheld would harm the interests protected by these exemptions.

Additionally, please be advised that a portion of the records maintained by the FBI are protected from disclosure by a court seal issued by a United States District Court. In this instance, the FBI lacks authority to consider the releasability of this information under the FOIA. See GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375, 384-86 (1980) (finding "no discretion for the agency to exercise" when records are sealed, thus no improper withholding).

Please note that the FBI is contacting the District Court to verify that the court seal continues to prohibit disclosure of the records you seek. In the event that the District Court informs the FBI that the court seal no longer prohibits disclosure of these records, the FBI will reopen client's your request and take further action as appropriate.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your client's underlying request, and the action of the FBI in response to

your client's request. 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 your client is dissatisfied with my action on your appeal, the FOIA permits him to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your client's right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

8/29/2017

X	
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Chief, Administrative Appeals Staff

Signed by: OIP

# **Exhibit C**



Federal Bureau of Investigation  
Washington, D.C. 20535

November 13, 2017

MR. MARTIN G. WEINBERG  
SUITE 1000  
20 PARK PLAZA  
BOSTON, MA 02116

FOIPA Request No.: 1203982-001  
Subject: EPSTEIN, JEFFREY

Dear Mr. Weinberg:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

Section 552		Section 552a
<input type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input checked="" type="checkbox"/> (j)(2)
<input checked="" type="checkbox"/> (b)(3) Rule 6(e), Federal Rules of Criminal Procedure	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
	<input checked="" type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

3,579 page(s) were reviewed and 10 page(s) are being released.

Document(s) were located which originated with, or contained information concerning, other Government Agency (ies) [OGA].

This information has been referred to the OGA(s) for review and direct response to you.

We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

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)). This response is limited to those records that are subject to 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 excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

For questions regarding our determinations, visit the [www.fbi.gov/foia](http://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. Your patience is appreciated.

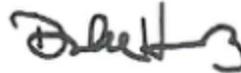
You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. 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 that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing [ogis@nara.gov](mailto:ogis@nara.gov). Alternatively, you may contact the FBI's FOIA Public Liaison by emailing [foipaquestions@ic.fbi.gov](mailto:foipaquestions@ic.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 that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely,



David M. Hardy  
Section Chief  
Record/Information  
Dissemination Section  
Records Management Division

Enclosure(s)

The enclosed documents represent the eleventh and final release of information responsive to your Freedom of Information/Privacy Acts (FOIPA) request. To minimize costs to both you and the FBI, duplicate copies of the same document were not processed.

Also, the enclosed documents responsive to your request are exempt from disclosure in their entirety pursuant to the Privacy Act, Title 5, United States Code, Section 552(a), subsection (j)(2). However, these records have been processed pursuant to the Freedom of Information Act, Title 5, United States Code, Section 552, thereby affording you the greatest degree of access authorized by both laws.