RE: Freedom of Information Act/Privacy Act Appeal from FBI FOIPA Request No. 1487229-000

To Whom It May Concern:

This letter constitutes a timely administrative appeal under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, Privacy Act, 5 U.S.C. § 552a, and applicable regulations, 28 C.F.R. § 16.8, for records I requested from the Federal Bureau of Investigation (FBI)—FOIPA Request No. 1487229-000—concerning any records the Bureau created or maintains about me. I am appealing the FBI’s determination that it did not find any records in response to my joint FOIA/Privacy Act request because FBI has not conducted an adequate search.¹

The FBI’s Search Was Not Adequate

The FBI’s “no record” response to my FOIA/Privacy Act request is inadequate under FOIA. My request was made after an FBI agent in the Los Angeles Field Office contacted me on January 12, 2021 concerning a blog post I published in July 2020.² The FBI agent later confirmed that this blog post was protected First Amendment activity. As detailed in the request, I sought records documenting or reflecting the FBI’s interest in my blog post, the communications and other actions taken by the FBI agent who contacted me, and any other records about me.

Given that I was directly contacted by an FBI agent, the Bureau’s “no records” response defies reason. An agency’s search in response to a FOIA request, must be “reasonably calculated to uncover all relevant documents.” Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 890 (D.C. Cir. 1995) (internal quotations and citations Richard omitted); Zemansky v. EPA, 767 F. 2d 569, 571 (9th Cir. 1985). The agency must demonstrate that it searched for documents in good faith, using methods that are reasonably expected to

¹ A copy of the FBI’s final determination is enclosed with this appeal.
² A copy of my FOIA/Privacy Act request is enclosed with this appeal.
produce the requested information. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (citing *Oglesby v. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)).

The FBI failed to conduct a reasonable search for responsive records as required by FOIA. As described above and in the original FOIA/Privacy Act request, the FBI took enough interest in one of my blog posts that it permitted an FBI agent to call me about it. Those actions generated FBI records that would be responsive to my FOIA request, including at minimum, some initial assessments or other reports by Bureau agents or other employees, notes and reports of the communications with me and my legal counsel, and any follow-up memoranda or other notes to other FBI personnel.

Against this reality, the FBI’s claim that it searched for records in “the places reasonably expected to have records” is not credible. More likely, the FBI conducted a high-level search in its Central Records Systems without following up directly with the FBI agent or Field Office that took an interest in my blog post.

The FBI cannot limit its searches to its Central Records System: An “agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Oglesby*, 920 F.2d at 68. There are other record systems and locations likely to turn up records here, including the FBI’s electronic surveillance index (ELSUR) and “tickler” files kept by FBI supervisors, see *Campbell v. DOJ*, 164 F.3d 20, 27-28 (D.C. Cir. 1998), and the Automated Case Support (ACS) system that it often searches in response to FOIA requests. See *Jett v. FBI*, 241 F. Supp. 3d 1, 8 (D.D.C. 2017); *Campbell*, 164 F.3d at 28 (collecting cases indicating that the agency regularly searches ELSUR without specifically being asked to do so). There is no indication that the FBI searched any of these records systems—or even inquired with anyone at the LA Field Offices—in response to my FOIA/Privacy Act request.

I therefore respectfully requests that you reverse the FBI’s “no records” determination and remand my request to the FBI with instructions that the Bureau conduct an adequate search, including querying the LA Field Office.

Thank you for considering this timely appeal of my request. FOIA requires a determination of this appeal within twenty (20) working days. 5 U.S.C. § 552(a)(6)(A) (ii).

Sincerely,

Cory Doctorow

Enclosures