

**FEDERAL BUREAU OF INVESTIGATION
IN THE OFFICE OF INFORMATION MANAGEMENT DIVISION**

**No. NFP-168631
No. NFP-1655043-000**

AMERICAN CENTER FOR LAW AND JUSTICE

Requestor.

REQUEST NUMBER

**OIP Appeal No.: A-2024-00392
FOIPA Appeal No.: 1646728-000
No. NFP-153129**

FREEDOM OF INFORMATION ACT APPEAL

THE AMERICAN CENTER FOR LAW AND JUSTICE

JORDAN SEKULOW

COUNSEL OF RECORD
STUART J. ROTH

JOHN A. MONAGHAN

BENJAMIN P. SISNEY

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STATEMENT OF PROCEEDINGS

On August 28, 2023, the American Center for Law and Justice (ACLJ) submitted a Freedom of Information Act (FOIA) request via the FBI's official website, seeking records related to the FBI's statistical classification of domestic terrorism investigations.

On September 19, 2023, the FBI acknowledged receipt of the ACLJ's FOIA Request. The Acknowledgement stated, in part:

Your request is overly broad and it does not comport with the requirements of 28 CFR § 16.3(b), as it does not provide enough detail to enable personnel to locate records "with a reasonable amount of effort." Additionally, your request for the above referenced subject is not searchable in our indices. The FBI Central Records System (CRS) is indexed according to investigatory interests, and it is not arranged in a manner that allows for the retrieval of information in the form you have requested. Moreover, the FOIA does not require federal agencies to answer inquiries, create records, conduct research, or draw conclusions concerning queried information. Therefore, your request is being closed. Your request has been received at FBI Headquarters for processing.

The FBI also noted that the requested subject was not searchable in their indices, as the FBI Central Records System is indexed according to investigatory interests and is not arranged in a manner that allows for the retrieval of information in the form requested. Consequently, the FBI closed the request.

In response, ACLJ filed an administrative appeal on September 9, 2024, challenging the FBI's determination that the request was not reasonably described. The Office of Information Policy (OIP) affirmed the determination except as to Request Nos. (1) and (9) of the original FOIA. It remanded these Requests for a search for responsive records.

The two Requests are reproduced below:

1. The record outlining the "tags" to be used and the definitions of the "tags" in the electronic system mentioned in the SIADDT;

And

9. Records containing the current and previous grading rubric template for evaluating FBI agents' performance, including the weight conducting domestic terror crimes have on agents' work performance evaluations;

On remand following that appellate determination, on April 2, 2025, the FBI completed its review of responsive records to Request Nos. (1) and (9). The FBI withheld the records entirely under the following exemptions of 5 U.S.C. § 552:

(b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (b)(7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; and (b)(7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

This, now second, administrative appeal follows.

ARGUMENT

I. The FBI has a duty to produce and segregate the records.

Reasonably segregable records are to be produced. 5 U.S.C. § 552(b)(9) (“Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.”) The Requests seek a data classification record about “tags” and an employee “grading rubric template.” The relevant records are similar to the 2024 FBI Domestic Investigations and Operations Guide, available in the FBI FOIA Library (called the Vault), and redacted.¹ There are multiple Domestic Investigative and Operations Guides available in the FBI Vault and all are redacted.² Given this, it is simply not credible that the

¹ See 2024 Domestic Investigations and Operations Guide here: https://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29/fbi-domestic-investigations-and-operations-guide-diog-2024-version/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29%202024%20Version%20Part%2001/at_download/file

²The earliest Guide is from 2008. The most recent is from 2024. <https://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29>

responsive records are not reasonably segregable. The FBI's wholesale denial fails to satisfy the applicable jurisprudential requirements.

Furthermore, as outlined below, the asserted exemptions are not applicable.

II. The personnel and medical files exception under 5 U.S.C. § 552(b)(6) is inapplicable.

Under Exemption (b)(6), records may be withheld only if two conditions are met: (1) the record is a personnel, medical, or “similar files,” and (2), disclosure would constitute a clearly unwarranted invasion of personal privacy. *United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 598 (1982).

1. The records sought are not “personnel, medical,” or “similar files.”

The records sought are *not* about a particular person and so cannot be either personnel or medical files.

The term “similar files” is broadly interpreted to include any government records that can be identified as applying *to an individual*. *Judicial Watch of Fla., Inc. v. DOJ*, 102 F. Supp. 2d 6, 16 (D.D.C. 2000). “Information unrelated to any particular person presumably would not satisfy the threshold test.” *Wash. Post Co.*, 456 U.S. at 602 n.4.

Here, Request No. 1, outlining the “tags” used and their definitions in the electronic system mentioned in the SIADDT, seeks an administrative or operational guidance manual, *not* personal information. The request seeks only descriptive information about how a system categorizes data—without any tie to individuals.

Request No. 9 (the current and previous grading rubric template used to evaluate FBI agents, including how domestic terrorism investigations are weighted) is also not a “similar file.”

While it pertains to employee evaluation criteria, it does *not* seek information about a specific individual's performance.

Both Requests seek administrative forms similar to the IRS tax return forms made widely available even though disclosure of "returns and return information" is prohibited. *See generally*, Confidentiality and Disclosure of Returns and Return Information, 26 U.S.C. § 6103. A tax form tells nothing about an individual's tax return, just as here, the administrative forms requested tell nothing about an agent.

2. Even if the records are "similar files," the public interest in disclosure outweighs the privacy interest.

To determine if disclosure is required, the privacy interest is weighed against the public interest in disclosure. *Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976). The key inquiry centers on the degree of intrusion that would result from revealing details such as names, addresses, or other identifying data. *Campaign Legal Ctr. v. United States Dep't of Justice*, 373 F. Supp. 3d 160, 168 (D.D.C. 2019). However, not all personal information is considered highly sensitive; data such as place of birth, date of birth, date of marriage, employment history, and even a person's name is typically not seen as inherently private, as names are generally matters of public record. *Wash. Post Co.*, 456 U.S. at 600.

In *Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976), the Supreme Court, applying Exemption (b)(6), found Air Force Academy "summaries" of cadet discipline to be disclosable, subject to redaction of "identifying information." No such "identifying information" exists here.

Requests 1 and 9 seek blank forms and manuals. No personal information such as a place of birth, date of birth, date of marriage, employment history, or even a person's name would be contained in these records.

Thus, because neither request seeks information that is about a particular agent or person, there is no information that would, by its existence or nonexistence, constitute a “clearly unwarranted invasion of personal privacy,” rendering Exemption (b)(6) inapplicable.

III. The invasion of privacy exception under 5 U.S.C. § 552(b)(7)(C) does not apply.

Under Exemption (7)(c), an agency must first demonstrate that the records were compiled for law enforcement purposes. 5 U.S.C. § 552(b)(7)(C). If the law enforcement purpose is established, the agency must then show that release of the information “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).

1. The records are *not* law enforcement records.

“The purpose of the 'investigatory files' is thus the crucial factor . . . If the purpose of the investigation was . . . an inquiry as to an identifiable possible violation of law, then such inquiry would have been 'for law enforcement purposes' whether the individual were a private citizen or a government employee.” *Pratt v. Webster*, 673 F.2d 408, 419 (1982) (citations omitted). Oversight activities like internal surveillance or routine employee monitoring do not meet this standard, nor does the mere possibility of legal violations. *Stern v. F.B.I.*, 737 F.2d 84 (D.C. Cir. 1984).

Request No. 1 seeks the “record outlining the ‘tags’ to be used and the definitions of the ‘tags’ in the electronic system mentioned in the SIADDT.” SIADDT is the acronym for the STRATEGIC INTELLIGENCE ASSESSMENT AND DATA ON DOMESTIC TERRORISM manual. In other words, Request No. 1 seeks a data classification tool i.e. classifications of “violation[s] of law” and not an “identifiable possible violation of law.” Request No. 9 is similar. It seeks “the current and previous grading rubric template for evaluating FBI agents’ performance,” a record used for routine personnel oversight. Neither record is created to commence or further an investigation.

Here, the FBI has not met the threshold requirement of demonstrating that the requested records were compiled for law enforcement purposes.

2. Even if the records were compiled for law enforcement purposes, the public interest in disclosure outweighs the privacy interest.

A law enforcement file is subject to disclosure if the privacy interest is outweighed by the public's right to understand "what their government is up to." *Pinson v. Dep't of Justice*, 313 F. Supp. 3d 88, 115 (D.D.C. 2018).

a. No privacy interest exists here.

Neither Request seeks a record with personal information like place of birth, date of birth, date of marriage, employment history, or name about a particular agent or person. The STRATEGIC INTELLIGENCE ASSESSMENT AND DATA ON DOMESTIC TERRORISM manual is requested. An employee "grading rubric template" is requested. Neither manual nor template contain that kind of personal information.

Therefore, no privacy interest in the records exists to be weighed in the balance.

b. The public interest in disclosure is great.

"In FOIA, after all, a new conception of Government conduct was enacted into law, 'a general philosophy of full agency disclosure.' Congress believed that this philosophy, put into practice, would help 'ensure an informed citizenry, vital to the functioning of a democratic society.'" *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 16, (2001) (citations omitted). "Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773 (1989); compare *id.* at 780 (holding that a rap sheet of a "private citizen . . . in the Government's control as a compilation, rather than as a record of 'what the Government is up to'" . . . is exempt from disclosure.) with *Dep't of the Air Force v.*

Rose, 425 U.S. 352, (1976) (holding that case summaries of Air Force Academy cadets subjected to discipline must be disclosed after redaction of identifying information).

The records responsive to Requests 1 and 9 are more like the case summaries of *Dep't of the Air Force* instead of the rap sheet of *Reporters Comm. For Freedom of Press*. The information revealed is not about a private citizen but instead, shows what the government is up to.

Therefore, the public interest in disclosure outweighs the privacy interest and the records should be disclosed.

IV. The disclosure of law enforcement techniques exception under 5 U.S.C.

§ 552(b)(7)(E) is inapplicable.

5 U.S.C. § 552(b)(7)(E) allows federal agencies to withhold records compiled for law enforcement purposes if disclosure would reveal investigative techniques or procedures, or guidelines that could reasonably be expected to risk circumvention of the law.

Request No. 1 seeks the “record outlining the ‘tags’ to be used and the definitions of the ‘tags’ in the electronic system mentioned in the SIADDT.” The STRATEGIC INTELLIGENCE ASSESSMENT AND DATA ON DOMESTIC TERRORISM report is publicly available on the FBI’s website.³ The FBI is required to collect and classify general uniform crime reporting data. *See generally*, 28 U.S.C. § 534; *see also*, UCR Program—Summary of Authorities.⁴ Such data is publicly available at the FBI Crime Data Explorer.⁵ Just as the “data” of the UCR Program does not reveal the techniques or procedures of how or when the FBI investigates a crime, neither do the “tags” reveal the techniques or procedures of how or when the FBI investigates a crime. It does reveal how the FBI classifies a crime and that is of public interest.

³ <https://www.fbi.gov/file-repository/counterterrorism/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>

⁴ <https://ucr.fbi.gov/ucr-programsummary-of-authorities>

⁵ <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/about>

Data classification is not an investigative technique listed in the FBI Domestic Investigations and Operations Guides.⁶ If a jewel thief, for example, knows how he will be classified under the UCR Program or the SIADDT tags, it does not show him how to evade investigative techniques or procedures so as to risk circumvention of the law.

Request No. 9 seeks “the current and previous grading rubric template for evaluating FBI agents’ performance. . .” a record used for routine personnel oversight. Evaluation rubrics are not “techniques and procedures” used to investigate or detect violations of law, nor do they constitute “guidelines” that risk circumvention of the law. Grading rubric templates are human resource forms used for employee review and promotion. In order for the public to know what the government is up to, it needs to know how an agent is reviewed and managed.

Therefore, Exemption (7)(E) does not apply and the records should be disclosed.

CONCLUSION

For the foregoing reasons, the ACLJ respectfully requests that the FBI produce the responsive records.

DATED this 12 of June, 2025.

THE AMERICAN CENTER FOR LAW AND JUSTICE

JORDAN SEKULOW

[REDACTED]
COUNSEL OF RECORD

STUART J. ROTH

[REDACTED]

/s/ John A. Monaghan

JOHN A. MONAGHAN

[REDACTED]

BENJAMIN P. SISNEY

[REDACTED]

⁶ <https://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29>