

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

GAWKER MEDIA, LLC and
GREGG D. THOMAS,

Plaintiffs,

v.

Case No. 8:15-cv-01202-SCB-EAJ

THE FEDERAL BUREAU OF
INVESTIGATION and THE
EXECUTIVE OFFICE OF
UNITED STATES ATTORNEYS,

Defendants.

**DEFENDANT’S RESPONSE TO PLAINTIFFS’ DISPOSITIVE
MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW**

Defendants, the Federal Bureau of Investigation (“FBI”) and the Executive Office of United States Attorneys (“EOUSA”), hereby respectfully respond to plaintiff’s motion for summary judgment. Plaintiffs’ motion should be denied for the following reasons:

I. Undisputed Facts

1. On November 8, 2013, Gawker submitted a Freedom of Information Act (“FOIA”) request to the FBI and the EOUSA seeking documents and video footage related to an investigation conducted by the FBI in the fall of 2012. See Complaint [Doc. No. 1], ¶¶ 2, 13, 15.

2. The investigation concerned a video tape showing Terry Gene Bollea,

also known as Hulk Hogan (“Hogan”), engaging in a sexual affair with Heather Clem, who at the time was the wife of a local radio personality. See *id.*

3. According to plaintiff, these “records have been ruled to be critical to Gawker’s defense of a \$100 million lawsuit brought by Hogan [in state court] . . . arising from Gawker’s publication [of] a news report and commentary” regarding the above mentioned video. *Id.*, ¶¶ 2-3.

4. Because the records sought by Gawker involved third-party individuals, on November 19, 2013, the FBI sent Gawker a letter stating that Gawker must submit a Certification of Identity, Form DOJ 361, executed by each of the third-party individuals related to the records sought, namely Hogan, Hogan’s attorneys and Heather Clem. See Declaration of David M. Hardy, attached hereto as Exhibit A (“Exh. A”), Exh. E, pp. FBI031-32; Complaint, ¶¶ 16-17.

5. “After nearly a year of litigating the matter in the Florida Litigation, Hogan and his attorneys were eventually required to provide the authorizations” Complaint, ¶ 17.

6. Heather Clem voluntarily executed the necessary release form. See *id.*, ¶ 18.

7. On November 7, 2014, Gawker submitted a second FOIA request that was virtually identical to the request submitted a year earlier, but this time Gawker included the required Certifications executed by the affected third-parties. See *id.*, ¶ 18.

8. On November 17, 2014, the FBI acknowledged receipt of Gawker’s

new FOIA request, and, on January 29, 2015, the FBI “informed Gawker that it had located 1,168 pages of responsive records and two CDs containing responsive video material.” *Id.*, ¶ 19.

9. In its January 29, 2015 letter, the FBI asked Gawker if it would accept the charges that the FBI would incur in processing the records requested by Gawker. See Exh. A, Exh. E, pp. FBI031-32.

10. On February 3, 2015, Gawker responded and agreed to pay up to \$500.00. See Complaint, ¶ 20.

11. On or before February 4, 2015, the FBI learned that another, non-federal law enforcement agency had commenced a separate investigation related to the video tape and that the investigation was ongoing. See Exh. A, ¶ 11.

12. Accordingly, the FBI sent a letter informing Gawker that the responsive records were exempt from production pursuant to FOIA Exemption 7(A) because they “are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” Exh. A, Exh. G, p. FBI038; *Complaint*, ¶ 21.

13. The FBI did not produce any records.

14. On March 4, 2015, Gawker filed an administrative appeal with the Office of Information and Policy (“OIP”). See Exh. A, ¶ 12.

15. According to Gawker, it submitted “substantial evidence that there was no ongoing or prospective investigation . . .,” and claimed that there could be no

interference with a non-existing investigation. Complaint, ¶ 22.

16. However, while Gawker is correct that the FBI's 2012 investigation of the circumstances surrounding the video tape was no longer active, as noted above, the FBI learned that another law enforcement agency had opened an investigation related to the video tape. See Exh. A, ¶¶ 11, 28.

17. On March 4, 2015, plaintiffs appealed the FBI's decision. See Exh. A, ¶ 12.

18. By letter dated March 18, 2015, the Office of Information Policy ("OIP") acknowledged receipt of plaintiffs appeal and assigned it appeal number AP-2015-02411. See *id.*, ¶ 13.

19. On May 6, 2015, the OIP affirmed the FBI's determination and also informed Gawker that it was denying Gawker's request that the OIP itemize and justify each item of the information withheld, since it was not entitled to it at the administrative stage. See *id.*, ¶ 14.

20. In addition, the OIP advised plaintiff of its right to file a lawsuit in the federal district court if it was dissatisfied with its action on the appeal. See *id.* On May 19, 2015, plaintiffs filed their complaint in the present action. See *id.*, ¶ 15.

II. Argument

To prevail in a FOIA action, an agency that is withholds any information pursuant to FOIA Exemption 7(A) must first show that the documents were compiled for a law enforcement purpose. See *Antonelli v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 2005 WL 3276222, *1, *4 (D.D.C. Aug. 16, 2005) ("An

agency must prove that the withheld records were compiled for law enforcement purposes 'before [withholding] requested documents on the basis of any of [that exemption's] subparts.'") (quoting *Pratt v. Webster*, 673 F.2d 408, 416 (D.C. Cir. 1982). Here, plaintiff has acknowledged that all the documents at issue were collected by the FBI, a federal law enforcement agency, during an investigation into the source and distribution of the video at issue. See Complaint, ¶ 13. Thus, the FBI has satisfied the first test.

The next step is to analyze sub-part 7(A). Under Exemption 7(A), an agency may withhold from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). Plaintiffs argue that Exemption 7(A) does not apply because there is no active or ongoing law enforcement investigation, but that is not necessarily a requirement. See *Center for Nat. Sec. Studies v. United States Dept. of Justice*, 331 F.3d 918, 926 (D.C. Cir. 2003) ("Exemption 7(A) does not require a presently pending 'enforcement proceeding.' Rather, as the district court correctly noted, it is sufficient that the government's ongoing September 11 terrorism investigation is likely to lead to such proceedings.") (citation omitted). However, the Court need not reach that issue because there is an ongoing investigation here as further explained below. See Exh. A, ¶ 28 ("Upon receipt of plaintiffs lawsuit, the FBI contacted the Tampa Field Office ('TPFO') to request information pertaining to the current status of the investigation referenced in the records responsive to plaintiffs request. The TPFO

advised RIDS that another law enforcement agency has an on-going investigation.”). The final step in the analysis here is whether the release of the requested records could perceptibly interfere with the ongoing investigation by a non-federal law enforcement agency. The FBI states that it would interfere with that investigation. See *id.* (“Furthermore, TPFO indicated that release of any information from this file will interfere with that pending investigation; therefore, the information is exempt from disclosure pursuant to FOIA exemption (b)(7)(A), 5 U.S.C. § 552(b)(7)(A).”).

At this phase of the litigation, it is axiomatic that the Court must view the facts in the light most favorable to defendants, as the non-movants. See *Mudd v. United States Army*, 2007 WL 4358262, *1, *4 (M.D. Fla. Dec. 10, 2007) (“In ruling on a motion for summary judgment, if there is a conflict in the evidence the non-moving party's evidence is to be believed and all reasonable inferences must be drawn in favor of the non-moving party.”) (citing *Shotz v. City of Plantation, Fl.*, 344 F.3d 1161, 1164 (11th Cir. 2003)). Further, “[a]ffidavits submitted by an agency ‘are accorded a presumption of good faith.’” *Carney v. United States Dep’t of Justice*, 19 F.3d 807, 812 (2nd Cir. 1994) (citation omitted); *Florida Immigrant Advocacy Center v. National Sec. Agency*, 380 F. Supp.2d 1332, 1343 (S.D. Fla. 2005). Similarly, the decision of an agency that specializes in law enforcement, like the FBI, “to invoke exemption 7 is entitled to deference.” *Bilderbeek v. United States Dept. of Justice*, 2010 WL 1049618, *1, *3 (M.D. Fla. Mar. 22, 2010) (citing *Campbell v. United States Dep’t of Justice*, 164 F.3d 20, 32 (D.C. Cir. 1998)).

a. The Records Sought are the Subject of an Ongoing Law Enforcement Investigation

Plaintiffs state that “[t]hrough this lawsuit, Gawker seeks to compel the Agencies¹ to provide records it requested through FOIA relating to an FBI investigation, conducted in 2012, into the source and distribution of [the] video” discussed above. Complaint, ¶¶ 2, 13. In addition, plaintiffs correctly assert that the FBI investigation is no longer ongoing and that no criminal charges were ever issued. See *id.*, ¶ 14. To their credit, plaintiffs implicitly acknowledge that their initial FOIA request, filed on November 8, 2013, did not enclose the requisite Certification of Identifications from the necessary third-parties. See *id.*, ¶¶ 15-17. Accordingly, on November 19, 2013, the FBI sent plaintiffs a letter stating that they had to supplement their request with the Certifications, which were enclosed, executed by the third-parties. See *id.*, ¶ 16; Exh. A, ¶ 6. Because plaintiffs did not submit the Certifications, and their first FOIA request was therefore improper. Without the Certifications, defendants were under no obligation to produce or even process any documents.

Plaintiffs state that, originally, Hogan and his attorneys refused to sign the Certifications, but that they were compelled to sign them after one year of litigation in state court. See Complaint, ¶ 17. Thus, on November 7, 2014, plaintiffs submitted their second FOIA request and enclosed the Certifications executed by Hogan, his attorneys, as well as Heather Clem, who voluntarily signed her

¹ The EOUSA had some responsive documents that it referred to the FBI for processing and response. Accordingly, most of the communication relevant to this case is between plaintiffs and the FBI.

Certification. See *id.*, ¶ 18. The FBI acknowledged the second request by letter on November 17, 2014 and continued to process the request. See Exh. A, ¶¶ 8-9. On or before February 4, 2015, the FBI learned of a “pending or prospective law enforcement proceeding relevant to these records and release of the information could reasonably be expected to interfere with the enforcement proceedings,” so the FBI told plaintiffs that the records were subject to the protections of Exemption 7(A). *Id.*, ¶ 11. Because the FBI deemed the records exempted, it did not produce them to plaintiffs, but the FBI informed plaintiffs they could appeal the decision to the Office of Information Policy (“OIP”) within sixty days. See *id.*

One month later, on March 4, 2015, plaintiffs filed an appeal with the OIP. See *id.*, ¶ 12; Exh. A., Exh. H, pp. FBI042-91. Specifically, plaintiffs argued that the FBI had not made a sufficient showing of an ongoing law enforcement investigation. See Exh. A, Exh. H, p. FBI045. However, it is undisputed that on or before February 4, 2015 the FBI was made aware of an investigation related to the records sought by plaintiffs by another non-federal law enforcement agency that at this point does not want to be identified. Consequently, “[a]fter carefully considering [plaintiffs’] appeal,” the OIP affirmed the FBI’s decision. See *id.*, Exh. J, p. FBI096.

III. Releasing the Records Sought Would Interfere with an Ongoing Law Enforcement Investigation

According to plaintiffs, no investigation, whether ongoing or not, would be interfered with should the FBI be ordered to release the records at issue. See Plaintiff’s Motion for Summary Judgment [Doc. No. 5] (“MSJ”), p. 13. However, they are incorrect. First, the FBI does not need to show that the release of a “particular

document would actually interfere with an enforcement proceeding.” *Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1037 (7th Cir. 1998). Instead, it “need show only ‘that, with respect to particular kinds of enforcement proceedings, disclosure of particular kinds of investigatory records while a case is pending would generally interfere with enforcement proceedings.’” *Id.* (citation omitted). This burden has been explained as one where an agency only have to establish that “disclosure could reasonably be expected perceptibly to interfere with an enforcement proceeding.” *North v. Walsh*, 881 F.2d 1088, 1097 (D.C. Cir. 1989) (citation omitted).

The courts have long held that Congress intended that Exemption 7(A) apply “whenever the government's case in court would be harmed by the premature release of evidence or information,” the harm from disclosure is sufficient to support application of Exemption 7(A).” *Sussman v. United States Marshals Service*, 494 F.3d 1106, 1114 (D.C. Cir. 2007) (citation omitted); see, e.g., *Stolt-Nielsen Trans. Group, Ltd. v. Department of Justice*, 480 F. Supp.2d 166, 180 (D.D.C. 2007) (noting that release of information “would provide potential witnesses with insights into the Division's strategy and the strength of its position”), vacated and remanded on other grounds, 534 F. 3d 728, 733-34 (D.C. Cir. 2008); *Faiella v. Internal Revenue Serv.*, 2006 WL 2040130, *1, *3 (D.N.H. July 20, 2006) (stating that “disclosing information under active consideration” could undermine any future prosecution by “prematurely disclosing the government's potential theories, issues, and evidentiary requirements”); *Suzhou Yuanda Enter. Co. v. Customs and Border*

Prot., 404 F. Supp.2d 9, 14 (D.D.C. 2005) (agreeing that release of information "would interfere with an agency investigation [by] informing the public of the evidence sought and scrutinized by this type of investigation"); *Environmental Prot. Servs. v. EPA*, 364 F. Supp. 2d 575, 588 (N.D. W. Va. 2005) (explaining that disclosure "would prematurely reveal the EPA's case"); *Rosenglick v. Internal Revenue Serv.*, 1998 U.S. Dist. LEXIS 3920, at *7-8 (M.D. Fla. Mar. 10, 1998) (explaining that early access could "aid a wrongdoer"); *Durham v. United States Postal Serv.*, 1992 WL 700246, *1, *1 (D.D.C. Nov. 25, 1992) (deciding that release of investigative memoranda, witness files, and electronic surveillance material would substantially interfere with pending homicide investigation by impeding government's ability to prosecute its strongest case), *aff'd*, No. 92-5511 (D.C. Cir. July 27, 1993).

Like in those cases, disclosure here would interfere with the non-federal law enforcement agency's investigation. See Exh. A, ¶ 28. Plaintiffs have already identified the purpose for seeking these records. According to them, "Gawker wanted, for example, to determine whether what Hogan was telling the Agencies was consistent with his position in his lawsuit against Gawker and wanted to obtain the raw materials (video, emails, and the like)" MSJ, p. 2. As found by numerous courts over time, releasing records prematurely will interfere with the ongoing criminal investigation here. The FBI has interviewed a number of people including Hogan. If the public were made aware of such statements, people who have been named by him and could therefore potentially be called as witnesses will

obtain information that may provide them with “insights into the Division's strategy and the strength of its position” *Stolt-Nielsen Trans. Group*, 480 F. Supp.2d at 180. Such disclosure could therefore undermine the future prosecution under investigation by the non-federal law enforcement agency. *See Faiella*, 2006 WL 2040130, at *3. Not only could release of the records help potential defendants evade prosecution, *see Rosenglick*, 1998 U.S. Dist. LEXIS 3920, at *7-8, but it could also possibly chill people’s willingness to cooperate in the investigation and therefore prevent the agency from building its strongest case. *See Durham*, 1992 WL 700246, at *1. Clearly, the release of the records in this case could “reasonably be expected perceptibly to interfere with an enforcement proceeding.” *North*, 881 F.2d at 1097 (citation omitted).

IV. FOIA is Not a Litigation Tool for Private Individuals and Companies but is a Tool for the Public to be Able to Investigate the Work of Federal Agencies

The purpose of the FOIA is to ensure that the administrative process may be subject to scrutiny of the press and the general public. *See Roberts v. Internal Revenue Serv.*, 2014 WL 1724383, *1, *3 (M.D. Fla. Mar. 17, 2014) (citing *Federal Labor Relations Auth. v. United States Dep't of Defense*, 977 F.2d 545, 547 (11th Cir. 1992) (noting that “FOIA's central purpose is to ensure that the Government's activities be open to the sharp eye of public scrutiny.”)). While decided in the context of privacy and the balancing of private and public interests under Exemption 6, the legal analysis in *Cappabianca v. Commissioner, United States Customs Service*, 847 F.Supp. 1558, 1564 (M.D. Fla. 1994) should apply here as well. In

Cappabianca, the Court held that a “private interest in obtaining materials for personal reasons plays no part in the required balancing of interests [of public v. private interests]. Indeed, several courts have noted that FOIA is no substitute for discovery practice, nor do private needs for documents affect determination of whether disclosure is warranted.” *Id.* (citing *L & C Marine Transport, LTD. v. United States*, 740 F.2d 919 (11th Cir. 1984); *Nix v. United States*, 572 F.2d 998 (4th Cir. 1978)).

Here, plaintiff has an express interest in the release of the documents to use them in a lawsuit between two private entities. Plaintiff’s FOIA request is not intended to shed light on the workings and performance of the FBI. Thus, even though Gawker is a media company and provides services to the public, the interest involved here is purely private – to defend against a \$100 million law suit that is going on in state court. Accordingly, by analogy to *Cappabianca*, the non-federal law enforcement agency’s interest in its ability to conduct a criminal investigation related to the records that plaintiffs are seeking here clearly outweighs plaintiffs’ interest in using FOIA as a replacement for conducting discovery to be better able to defend itself in state court.

///

CONCLUSION

Based on the foregoing, defendants respectfully request that this Court deny plaintiffs' motion for summary judgment.

A. LEE BENTLEY, III
United States Attorney

Respectfully submitted,

By: s/ E. Kenneth Stegeby
E. KENNETH STEGEBY
Esquire Assistant U.S.
Attorney
USAO No. 112
400 North Tampa Street, Ste. 3200
Tampa, Florida 33602
Telephone: (813) 274-6087
Facsimile: (813) 274-6198
Email: kenneth.stegeby@usdoj.gov
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Alia L. Smith
Gregg Darrow Thomas
Patrick Kabat
Rachel E. Fugate
Seth D. Berlin
Plaintiffs' Counsel

s/E. Kenneth Stegeby
E. Kenneth Stegeby

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWKER MEDIA, LLC et al,

Plaintiff,

v.

THE FEDERAL BUREAU OF
INVESTIGATION and THE EXECUTIVE
OFFICE OF UNITED STATES
ATTORNEYS,

Defendant.

Case No. 8:15-CV-01202-SCB-EAJ

DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Federal Bureau of Investigation ("FBI") Record/Information Dissemination Section ("RIDS"), Records Management Division ("RMD"), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 21, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act ("FOIA") policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the state of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 224 employees who staff a total of ten (10) Federal Bureau of Investigation Headquarters (“FBIHQ”) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA, amended by the OPEN Government Act of 2007 and the Open FOIA Act of 2009; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and other Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the FBI’s handling of Plaintiff’s FOIA requests seeking records pertaining to an investigation concerning recording(s) of Terry Bollea aka “Hulk Hogan” engaged in sexual relations with Heather Clem.

(4) This declaration is submitted in support of the FBI’s response in opposition to plaintiffs’ motion for summary judgment. It will provide a brief administrative history of Plaintiff’s FOIA requests, a general description of the FBI’s recordkeeping system, and an overview of our search efforts.

ADMINISTRATIVE HISTORY OF PLAINTIFF’S
FOIA REQUEST

(5) By letter dated November 8, 2013, Plaintiff, through its attorney Gregg D. Thomas, submitted a FOIA request to FBIHQ requesting “[a]ll documents relating to an

investigation, or a request for investigation, in October 2012 regarding allegations of illegal recording(s) of Terry Bollea a/k/a Hulk Hogan engaged in sexual relations.” (**See Exhibit A.**)

(6) By letter dated November 19, 2013, the FBI acknowledged receipt of plaintiff's FOIA request and assigned it FOIPA Request Number 1238212-000. The FBI advised plaintiff that it could not release records concerning a third party, absent express authorization and consent of the third party, proof that the subject of his request is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest and that significant public benefit would result from the disclosure of the requested records.¹ The FBI enclosed a Certification of Identity form (form DOJ-361), to be completed by the subject of the request before it would conduct a search for records on a third party. The FBI stated if no response was received from plaintiff within 30 days from the date of the letter, plaintiff's request would be closed. Lastly, the FBI advised plaintiff of his right to appeal the FBI's determination by filing an administrative appeal with the Department of Justice (“DOJ”), Office of Information Policy (“OIP”) within sixty (60) days from the date of its letter. (**See Exhibit B.**)

(7) By email dated November 7, 2014, almost a year later since its initial request, Gawker Media, via its attorney Gregg D. Thomas, hereinafter referred to as plaintiff, submitted another FOIA request for records seeking “disclosure of any, and all records in the possession, custody, or control of the United States Department of Justice, including without limitation the agencies described below, relating to an investigation , and complaints or requests for investigation, concerning recording(s) of Terry Gene Bollea a/k/a “Hulk Hogan” engaged in sexual relations with Heather Clem.” Specifically, plaintiff sought:

- records reflecting any communication with Mr. Bollea and his counsel;

¹ Without the noted information, the requested records are exempt from disclosure pursuant to the FOIA, Title 5 U.S.C. § 552, Exemptions 6 and 7(C).

- any statement made by Mr. Bollea or is counsel;
- any records relating to video recording(s) of Mr. Bollea engaged in sexual relations with Heather Clem;
- any records concerning such video recording(s), including the recording(s) themselves;
- any records relating to the source and distribution of such video recording(s); and
- records relating to any attempt to disseminate such video recording(s), including any attempt to sell such video recording(s) to Mr. Bollea or his counsel.

Plaintiff provided a list of keywords they considered would reasonably assist the FBI in the search for responsive records and indicated the request included, but was not limited to, records from FBI HQ and Tampa Field office ("TPFO"). Plaintiff also included Certification of Identity Forms executed by Ms. Heather Dawn Cole, formerly Heather Clem, Mr. Bollea, three of his lawyers, namely David Houston, Charles Harder, and Kenneth Turkel. Furthermore, plaintiff agreed to pay up to \$ 500.00 in search and duplication fees. Finally, plaintiff provided specific instruction for the handling of any DVDs or other video footage provided in response to this request. **(See Exhibit C.)**²

(8) By letter dated November 17, 2014, the FBI acknowledged receipt of plaintiff's request and assigned it FOIPA Request Number 1238212-001. The FBI advised plaintiff it was searching the indices to the Central Records System for information responsive to the request. **(See Exhibit D.)**

² By letter dated November 10, 2014 sent via facsimile and mail, the law office of Harder Miller & Abrams informed the FBI they were representing Terry Bollea in a civil lawsuit against Gawker Media LLC, et al, and that in that case, the court determined that the materials within the possession of the FBI were potentially relevant to certain issues and ordered Mr. Bollea and his attorneys to sign FOIA waivers on that basis. Mr. Bollea's attorneys provided information pertaining to the civil action and raised concerns about the privacy of other third party individuals whose privacy rights may be implicated in the records responsive to Gawker Media's FOIA request.

(9) By letter dated January 29, 2015, the FBI informed plaintiff it located approximately 1168 pages of records potentially responsive to its FOIA request (FOIPA Request Number 1238212-001) and two compact discs; and pursuant to Department of Justice (“DOJ”) regulations, is required to notify requesters when anticipated fees exceed \$25.00. Plaintiff was advised that releases are made via CD unless otherwise requested; each CD contains up to approximately 500 reviewed pages; the first 100 pages or the cost equivalent (\$10.00) is free of charge; and if all potentially responsive pages were processed for release, plaintiff would owe \$50.00 in duplication fees (4CDs at \$15.00 less \$10.00), or \$136.80 if the plaintiff requested the release in paper. The FBI reminded plaintiff that the anticipated fees associated with its request were only an estimate, as some information may be withheld in full pursuant to FOIA exemptions, or may be non-responsive to the FOIA request. Thus, the actual charges could be less than the estimate provided. Plaintiff was instructed to notify RIDS in writing within thirty (30) days from the date of its letter of the desired release format (CD or paper) and the commitment to pay the estimated fees. RIDS noted that if plaintiff’s written format decision and commitment to pay fees was not received within thirty (30) days from the date of its letter, the request would be closed. Lastly, plaintiff was advised that if it wished to reduce the scope of the FOIA request, costs associated with the request would be less and receipt of the requested information would be timelier. (**See Exhibit E.**)

(10) By letter dated February 3, 2015, plaintiff advised the FBI it agreed to pay the estimated duplication fees. (**See Exhibit F.**)

(11) By letter dated February 4, 2015, the FBI advised plaintiff that the material requested was located in an investigative file which was exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A) because there was a pending or prospective law enforcement proceeding

relevant to these records and release of the information could reasonably be expected to interfere with the enforcement proceedings. The FBI advised plaintiff that it could appeal the FBI's determination by filing an administrative appeal with the Department of Justice ("DOJ"), Office of Information Policy ("OIP") within sixty (60) days from the date of its letter. **(See Exhibit G.)**

(12) By letter dated March 4, 2015, plaintiff submitted an appeal to OIP contesting the FBI's determination as described in its February 4, 2015 response letter. Plaintiff sent the same letter twice to OIP via facsimile and mail. **(See Exhibit H.)**

(13) By letter dated March 18, 2015, OIP acknowledged receipt of plaintiff's appeal and assigned it appeal number AP-2015-02411. OIP sent another letter dated March 20, 2015 acknowledging plaintiff's duplicate appeal and assigning appeal number AP-2015-02440. **(See Exhibit I.)**

(14) By letter dated May 6, 2015, OIP affirmed the FBI's determination. OIP advised plaintiff that it was denying its request that OIP itemize and justify each item of the information withheld, since it was not entitled to it at the administrative stage. Additionally, OIP advised plaintiff it was closing Appeal No. AP-2015-02440 administratively because it was a duplicate of Appeal No. AP-2015-02411. Finally, OIP advised plaintiff of its right to file a lawsuit in the federal district court if it was dissatisfied with its action on the appeal. **(See Exhibit J.)**

(15) On May 19, 2015, plaintiff filed his complaint in the instant action. **(See Docket Number 1.)**

EXPLANATION OF THE CENTRAL RECORDS SYSTEM

(16) The Central Records System ("CRS") is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its integrated missions and functions as a law

enforcement, counterterrorism, and intelligence agency to include performance of administrative and personnel functions. The CRS spans the entire FBI organization and encompasses the records of FBIHQ, FBI Field Offices, and FBI Legal Attaché Offices (“Legats”) worldwide.

(17) The CRS consists of a numerical sequence of files, called FBI “classifications,” which are organized according to designated subject categories. The broad array of CRS file classification categories include types of criminal conduct and investigations conducted by the FBI, as well as categorical subjects pertaining to counterterrorism, intelligence, counterintelligence, personnel, and administrative matters. For identification and retrieval purposes across the FBI, when a case file is opened, it is assigned a Universal Case File Number (“UCFN”) consisting of three sequential components: (a) the CRS file classification number, (b) the abbreviation of the FBI Office of Origin (“OO”) initiating the file, and (c) the assigned individual case file number for that particular subject matter.³ Within each case file, pertinent documents of interest are “serialized,” or assigned a document number in the order which the document is added to the file, typically in chronological order.

THE CRS GENERAL INDICES AND INDEXING

(18) The general indices to the CRS are the index or “key” to locating records within the enormous amount of information contained in the CRS. The CRS is indexed in a manner which meets the FBI’s investigative needs and priorities, and allows FBI personnel to reasonably and adequately locate pertinent files in the performance of their law enforcement duties. The general indices are arranged in alphabetical order and comprise an index on a variety of subject matters to include individuals, organizations, events, or other subjects of investigative interest

³ For example, in a fictitious file number of “11Z-HQ-56789,” the “11Z” component indicates the file classification, “HQ” indicates that FBI Headquarters is the FBI OO of the file, and “56789” is the assigned case specific file number.

that are indexed for future retrieval. The entries in the general indices fall into two category types:

- a. Main entry. This entry pertains to records indexed to the main subject(s) of a file, known as “main file” records. The “main” entry carries the name of an individual, organization, or other subject matter that is the designated subject of the file.
- b. Reference entry. This entry, or a “cross-reference,” pertains to records that merely mention or reference an individual, organization, or other subject matter that is contained in a “main” file record about a different subject matter.

(19) FBI Special Agents (“SA”) and/or designated support personnel may index information in the CRS by individual (persons), by organization (organizational entities, places, and things), and by event (e.g., a terrorist attack or bank robbery). Indexing information in the CRS is based on operational necessity, and the FBI only indexes that information considered relevant and necessary for future retrieval. Accordingly, the FBI does not index every individual name or other subject matter in the general indices.

AUTOMATED CASE SUPPORT

(20) Automated Case Support (“ACS”) is an electronic, integrated case management system that became effective for FBIHQ and all FBI Field Offices and Legats on October 1, 1995. As part of the ACS implementation process, over 105 million CRS records were converted from automated systems previously utilized by the FBI into a single, consolidated case management system accessible by all FBI offices. ACS has an operational purpose and design to enable the FBI to locate, retrieve, and maintain information in its files in the performance of its myriad missions and functions.⁴

⁴ ACS and the next generation Sentinel system are relied upon by the FBI daily to fulfill essential functions such as conducting criminal, counterterrorism, and national security investigations; background investigations; citizenship and employment queries, and security screening, to include Presidential protection.

(21) The Universal Index (“UNI”) is the automated index of the CRS and provides all offices of the FBI a centralized, electronic means of indexing pertinent investigative information to FBI files for future retrieval via index searching. Individual names may be recorded with applicable identifying information such as date of birth, race, sex, locality, Social Security Number, address, and/or date of an event. Moreover, ACS implementation built upon and incorporated prior automated FBI indices; therefore, a search employing the UNI application of ACS encompasses data that was already indexed into the prior automated systems superseded by ACS. As such, a UNI index search in ACS is capable of locating FBI records created before its 1995 FBI-wide implementation to the present day in both paper and electronic format.⁵ Currently, UNI consists of approximately 111 million searchable records and is updated daily with newly indexed material.

ACS and SENTINEL

(22) Sentinel is the FBI’s next generation case management system that became effective FBI-wide on July 1, 2012. Sentinel provides a web-based interface to FBI users, and it includes the same automated applications that are utilized in ACS. After July 1, 2012, all FBI generated records are created electronically in case files via Sentinel; however, Sentinel did not replace ACS and its relevance as an important FBI search mechanism. Just as pertinent information was indexed into UNI for records generated in ACS before July 1, 2012, when a record is generated in Sentinel, information is indexed for future retrieval. Moreover, there is an index data sharing nexus between the Sentinel and ACS systems whereby components of

⁵ Older CRS records that were not indexed into UNI as a result of the 1995 ACS consolidation remain searchable by manual review of index cards, known as the “manual indices.” A search of the manual indices is triggered for requests on individuals if the person was born on or before January 1, 1958; and for requests seeking information about organizations or events on or before January 1, 1973. Records created after these dates would be captured through a UNI search.

information indexed into Sentinel are also replicated or “backfilled” into ACS. In sum, the Sentinel case management system builds on ACS and shares its operational purpose; Sentinel provides another portal to locate information within the vast CRS for FBI records generated on or after July 1, 2012.

ADEQUACY OF SEARCH

(23) Index Searching. To locate CRS information, RIDS employs an index search methodology. Index searches of the CRS are reasonably expected to locate responsive material within the vast CRS since the FBI indexes pertinent information into the CRS to facilitate retrieval based on operational necessity. Given the broad range of indexed material in terms of both time frame and subject matter that it can locate in FBI files, the automated UNI application of ACS is the mechanism RIDS employs to conduct CRS index searches. If a request seeks records that may have been generated on or after July 1, 2012, an overlapping search of ACS via the UNI application and a Sentinel index search are performed at the litigation stage to ensure adequacy of the CRS index search.

(24) CRS Search. In response to Plaintiff’s request, RIDS conducted a CRS index search on November 14, 2014, for responsive records employing the UNI application of ACS and a Sentinel index search by utilizing the following terms: “Bollea, Terry Gene,” “Boella, Terry,” “Bolea, Terry,” “Hulk Hogan,” “Hogan Hulk,” “Houston, David,” “dhouston@houstonlaw.com,” “Harder, Charles, J,” “Harder, Charles,” “charder@hmafirm.com,” “charder @wrslawyers.com,” “Turtle, Kenneth,” “Turtle, Ken,” “kturtle@bajocuva.com,” “Gawker,” “sex tape,” “Clem, Todd, Alan,” “Clem, Bubba,” “Bubba The Love Sponge Clem,” “Bubba The Love Sponge,” “Clem, Heather,” “Cole, Heather, Dawn,” “Cole, Heather,” “Davidson, Keith,” “Duarte, Vilma,” “Lloyd, Matt,” and “Loyd, Matt.” The

FBI used information provided in the various waivers submitted by plaintiff, such as dates of birth and Social Security numbers, to facilitate the identification of potentially responsive records.

(25) Search Results. As a result of these search efforts, the FBI located a main file originated in the Tampa Field Office responsive to Plaintiff's request. It consisted of a pending main investigation file; 9B-TP-2534791.

(26) Main and Cross-Reference Files. RIDS policy is to search for and identify only "main" files responsive to most FOIPA requests at the administrative stage; therefore, RIDS conducted an additional search of the CRS and Sentinel to locate any "cross reference" material responsive to plaintiff's request. This search confirmed the results of the original search. The FBI did not locate any additional records responsive to plaintiff's specific request.

(27) On May 27, 2015, EOUSA made a referral of records to the FBI. EOUSA referred one page and two CDs for disclosure determination by the FBI and requested that the FBI correspond with plaintiff directly as of the result of this consultation.

PENDING INVESTIGATION

(28) Upon receipt of plaintiff's lawsuit, the FBI contacted the Tampa Field Office ("TPFO") to request information pertaining to the current status of the investigation referenced in the records responsive to plaintiff's request. The TPFO advised RIDS that another law enforcement agency has an on-going investigation. Furthermore, TPFO indicated that release of any information from this file will interfere with that pending investigation; therefore, the information is exempt from disclosure pursuant to FOIA exemption (b)(7)(A), 5 U.S.C. § 552(b)(7)(A).

PROPOSED PROCESSING SCHEDULE

(29) Under 5 U.S.C. § 552(b)(7)(A), an agency may categorically deny access to records if the records were compiled for law enforcement purposes and the production of such records could reasonably be expected to interfere with law enforcement proceedings. In this case, the responsive records the FBI located are indexed in a pending main file. As a result, the FBI is categorically denying access to these records pursuant to FOIA exemption (b)(7)(A), because the production of these records could interfere with the pending investigation(s).⁶

(30) When asserting FOIA Exemption 7(A) at the litigation stage, an agency is required to search for, locate, and conduct a review of all responsive documents. During this categorical review of documents, other than documents that can be segregated for release because they trigger no 7(A) harm, each document is reviewed and assigned a functional category whereby release of the document will trigger one or more harms to an ongoing investigation or pending prosecution. The process of reviewing the Exemption 7(A) material for additional underlying exemptions transforms the review process from a categorical document-by-document review, to a much lengthier page-by-page review to identify additional, underlying exemptions for assertion despite the blanket coverage of Exemption 7(A).

(31) At this time, the FBI requests an order permitting it to move for summary judgment based on the applicability of Exemption 7(A) to certain records covered by that exemption without waiving any allegation that those records are exempt from release for other reasons. If the Court grants the FBI's motion for this order, Exemption 7(A) would be litigated given its categorical applicability, and in the event that Exemption 7(A) would expire during the pendency of this FOIA litigation – or if the Court rejects the FBI's withholdings under Exemption 7A – the underlying exemptions would be preserved. If the FBI's motion is granted,

⁶ The pending investigation(s) at issue here are expected to continue for an undetermined amount of time.

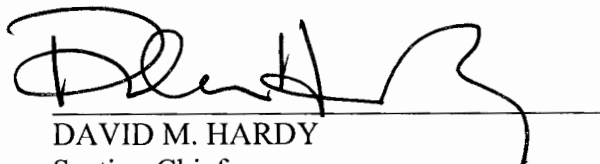
the FBI proposes a time period of thirty (30) days, namely until July 8, 2015, in which to process and release to Plaintiff all non-exempt material, identify documents for withholding under functional Exemption 7(A) categories, and propose a time period of fifteen (15) additional days, namely, until July 23, 2015, to prepare and file the *Vaughn* declaration fully explaining its assertion of Exemption 7(A).⁷

(32) If the FBI's motion is denied, then an additional three (3) months, namely, until September 8, 2015, will be needed to complete review and processing of the responsive records, assert all applicable underlying exemptions, and propose a time period of thirty (30) additional days, namely, until October 8, 2015, to prepare and file the *Vaughn* declaration. Based on our experience in Exemption 7(A) cases of this nature, the additional time required to complete a page-by-page review for underlying exemptions doubles the amount of time that is required to complete a categorical document review under 7(A). While performing the page-by-page review, the FBI will issue to Plaintiff interim responses/status reports every thirty (30) days beginning on July 8, 2015. Lastly, the FBI will prepare and file a *Vaughn* declaration on October 8, 2015 that not only details the FBI's FOIA Exemption 7(A) assertion, but also explains and justifies our assertion of each underlying FOIA Exemption.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A through G attached hereto are true and correct copies.

Executed this 8th-day of June, 2015.

⁷ For FY 2015, from October 2014 to June 1, 2015, there are a total of 5,114 pending requests, consisting of 5.35 million pages of information, currently assigned to the five FOIPA Disclosure Units for review.

A handwritten signature in black ink, appearing to read 'D. Hardy', is written over a horizontal line.

DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWKER MEDIA, LLC et al,

Plaintiff,

v.

THE FEDERAL BUREAU OF
INVESTIGATION and THE EXECUTIVE
OFFICE OF UNITED STATES
ATTORNEYS,

Defendant.

Case No. 8:15-CV-01202-SCB-EAJ

Exhibit A

Sobonya, David P.

From: Cherie Pacheco [cpacheco@tlolawfirm.com]
Sent: Friday, November 08, 2013 4:17 PM
To: FOIPARquest
Subject: FOIA Request
Attachments: FOIA request re Terry Bollea.pdf

Please see attached and respond. Thank you.

Cherie L. Pacheco
Paralegal
Thomas & LoCicero PL
Focused on Business Litigation, Media and IP Law

cpacheco@tlolawfirm.com | tlolawfirm.com

ph: 813.984.3060 | direct: 813.984.3074
fax: 813.984.3070 | toll-free: 866.396.7100
601 S. Boulevard, Tampa, FL 33606

Tampa | South Florida

CONFIDENTIALITY NOTICE: The information contained in this email message is intended for the personal and confidential use of the recipient(s) designated above. This message may contain information that is privileged, confidential and exempt from disclosure under applicable law and any unauthorized or inadvertent use, receipt, disclosure, dissemination or distribution of such information shall not waive any such privilege. If you are not an intended recipient of this message, and/or you have received this message in error, then please notify the sender at (813) 984-3060. Any unauthorized and/or unintended review, use, dissemination, distribution or reproduction of this message, or any of the information contained in it, is strictly prohibited.

11/08/2013

THOMAS &
LOCICERO

Tampa

601 South Boulevard, Tampa, FL 33606
ph 813-984-3060 fax 813-984-3070 toll free 866-395-7100

South Florida

401 SE 12th Street, Ste. 300, Fort Lauderdale, FL 33316
ph 954-703-3416 fax 954-400-5415

8461 Lake Worth Road, Ste. 114, Lake Worth, FL 33467
ph 561-340-1433 fax 561-340-1432

www.tlclawfirm.com

Rachel E. Fugate
Direct Dial: (813) 984-3065
rfugate@tlclawfirm.com

Reply to: Tampa

November 8, 2013

VIA foiparequest@ic.fbi.gov.

FBI
Record/Information Dissemination Section
Attn: FOIPA Request
170 Marcel Drive
Winchester, VA 22602-4843

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a formal request for information pursuant to the Freedom of Information Act. Our firm requests a copy of the following:

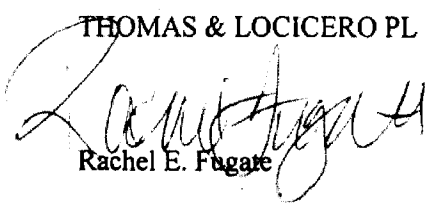
ALL documents relating to an investigation, or a request for investigation, in October 2012 regarding allegations of illegal recording(s) of Terry Bollea a/k/a Hulk Hogan engaged in sexual relations.

The Freedom of Information Act provides that if some parts of a requested document are exempt, "reasonably segregable" portions shall be provided. See 5 U.S.C. § 552(b). Consequently, if you determine that some or all of the information we have requested is exempt, please specify the exemption you believe applies and provide me a copy of the remainder of the information. We reserve the right to appeal any such decisions.

Thank you for your assistance.

Sincerely,

THOMAS & LOCICERO PL


Rachel E. Fugate

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWKER MEDIA, LLC et al,

Plaintiff,

v.

THE FEDERAL BUREAU OF
INVESTIGATION and THE EXECUTIVE
OFFICE OF UNITED STATES
ATTORNEYS,

Defendant.

Case No. 8:15-CV-01202-SCB-EAJ

Exhibit B



Federal Bureau of Investigation
Washington, D.C. 20535

November 19, 2013

Ms. Cherie L. Pacheco
Thomas & LoCicero PL
601 South Boulevard
Tampa, FL 33606

FOIPA Request No.: 1238212-0
Subject: BOLLEA, TERRY/INVESTIGATION
IN OCTOBER 2012 REGARDING
ALLEGATIONS OF ILLEGAL RECORDINGS
OF TERRY BOLLEA A/K/A HULK HOGAN
ENGAGED IN SEXUAL RELATIONS

Dear Ms. Pacheco:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI. The FOIPA number listed above has been assigned to your request.

You have requested records concerning one or more third party individuals. Because you have requested information about a third party and the FBI recognizes an important privacy interest in that information, to help us process your request we ask that you provide one of the following: (1) an authorization and consent from the individual(s) (*i.e.*, express authorization and consent of the third party); (2) proof of death (*i.e.*, proof that your subject is deceased); or (3) a justification that the public interest in disclosure outweighs personal privacy (*i.e.*, a clear demonstration that the public interest in disclosure outweighs personal privacy interests). In the absence of such information, the FBI can neither confirm nor deny the existence of any records responsive to your request, which, if they were to exist, would be exempt from disclosure pursuant to FOIA Exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C).

Express authorization and consent. If you seek disclosure of any existing records on this basis, enclosed is a Certification of Identity form. You may make additional copies of this form if you are requesting information on more than one individual. The subject of your request should complete this form and then sign it. Alternatively, the subject may prepare a document containing the required descriptive data and have it notarized. The original certification of identity or notarized authorization with the descriptive information must contain a legible, original signature before FBI can conduct an accurate search of our records.

Proof of death. If you seek disclosure of any existing records on this basis, proof of death can be a copy of a death certificate, Social Security Death Index, obituary, or another recognized reference source. Death is presumed if the birth date of the subject is more than 100 years ago.

Public Interest Disclosure. If you seek disclosure of any existing records on this basis, you must demonstrate that the public interest in disclosure outweighs personal privacy interests. In this regard, you must show that the public interest sought is a significant one, and that the requested information is likely to advance that interest.

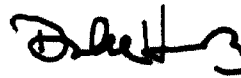
Fax your request to the Work Process Unit at (540) 868-4997, or mail to 170 Marcel Drive, Winchester, VA 22602. If we do not receive a response from you within 30 days from the date of this letter, your request will be closed. You must include the FOIPA request number with any communication regarding this matter.

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). As such, this response is limited to those records, if any exist, that are subject to 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.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

Enclosed for your information are copies of the FBI Fact Sheet and Explanation of Exemptions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", followed by a large, stylized flourish or "3" at the end.

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

Enclosures (3)



FBI FACT SHEET

- **The primary function of the FBI is national security.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identification record or "rap sheet" is NOT the same as an "FBI file."** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI, Criminal Justice Information Services (CJIS) Division, Record Request, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual's records are not disseminated to an unauthorized person. The fingerprint submission must include the subject's name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/background-checks/background_checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI's Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both "main" and "cross reference" files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several "hits" and "idents" on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking "reasonably described information." For a FOIPA search, the subject's name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a "main file search" and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT
www.fbi.gov

7/1/13

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (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, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ

U.S. Department of Justice

Certification of Identity

FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/13

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester ¹ _____Citizenship Status ² _____ Social Security Number ³ _____

Current Address _____

Date of Birth _____ Place of Birth _____

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature ⁴ _____ Date _____**OPTIONAL: Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

FORM DOJ-361

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWKER MEDIA, LLC et al,

Plaintiff,

v.

THE FEDERAL BUREAU OF
INVESTIGATION and THE EXECUTIVE
OFFICE OF UNITED STATES
ATTORNEYS,

Defendant.

Case No. 8:15-CV-01202-SCB-EAJ

Exhibit C

McGuinn, Lauren S.

From: Gregg D. Thomas [gthomas@tlolawfirm.com]
Sent: Friday, November 07, 2014 3:08 PM
To: FOIPARrequest
Cc: Mosakowski, Robert (USAFLM); Sekela, Andrew
Subject: Freedom of Information Request
Attachments: LTR to David Hardy.pdf

Please see the attached Freedom of Information Request.

Gregg D. Thomas
Thomas & LoCicero PL
Focused on Business Litigation, Media and IP Law

gthomas@tlolawfirm.com | tlolawfirm.com

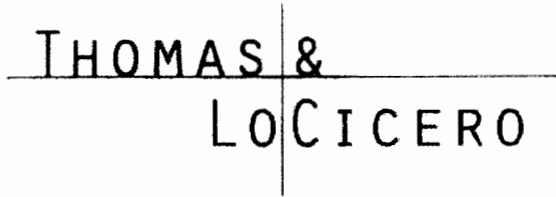
ph: 813.984.3060 | direct: 813.984.3072
fax: 813.984.3070 | toll-free: 866.396.7100
601 South Boulevard, Tampa, FL 33606



Tampa | South Florida

CONFIDENTIALITY NOTICE: The information contained in this email message is intended for the personal and confidential use of the recipient(s) designated above. This message may contain information that is privileged, confidential and exempt from disclosure under applicable law and any unauthorized or inadvertent use, receipt, disclosure, dissemination or distribution of such information shall not waive any such privilege. If you are not an intended recipient of this message, and/or you have received this message in error, then please notify the sender at (813) 984-3060. Any unauthorized and/or unintended review, use, dissemination, distribution or reproduction of this message, or any of the information contained in it, is strictly prohibited.

9 4 NOV 2014



Tampa

601 South Boulevard, Tampa, FL 33606
ph 813-984-3060 fax 813-984-3070 toll free 866-395-7100

South Florida

401 SE 12th Street, Ste. 300, Fort Lauderdale, FL 33316
ph 954-703-3416 fax 954-400-5415

8461 Lake Worth Road, Ste. 114, Lake Worth, FL 33467
ph 561-340-1433 fax 561-340-1432

www.tlclawfirm.com

Gregg D. Thomas
Direct Dial: (813) 984-3066
gthomas@tlclawfirm.com

Reply to: Tampa

November 7, 2014

VIA ELECTRONIC MAIL

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
170 Marcel Drive
Winchester, VA 22602-4843
Phone: (540) 868-4500
Fax: (540) 868-4997
foiparequest@ic.fbi.gov

Re: Freedom of Information / Privacy Act Request

Dear Mr. Hardy:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a.

I am an attorney who represents Gawker Media, LLC in connection with a lawsuit filed against it by Terry Gene Bollea, known professionally as "Hulk Hogan," in Florida state court. *See Bollea v. Clem, et al.*, No. 12012447-C1-011 (Fla. Cir. Ct.).

I hereby request disclosure of any and all records in the possession, custody or control of the United States Department of Justice, including without limitation the agencies described

David M. Hardy
November 7, 2014
Page 2

below, relating to an investigation, and complaints or requests for investigation, concerning recording(s) of Terry Gene Bollea a/k/a "Hulk Hogan" engaged in sexual relations with Heather Clem. This request includes, but is not limited to:

- records reflecting any communications with Mr. Bollea or his counsel;
- any statements made by Mr. Bollea or his counsel;
- any records relating to video recording(s) of Mr. Bollea engaged in sexual relations with Heather Clem;
- any records concerning such video recording(s), including the recording(s) themselves;
- any records relating to the source and distribution of such video recording(s); and
- records relating to any attempt to disseminate such video recording(s), including any attempt to sell such video recording(s) to Mr. Bollea or his counsel.

To assist you and your components in tailoring your searches, the following keyword search protocol is reasonably likely to return responsive records:

["Terry Bollea" OR "Terry Gene Bollea" OR "Hulk Hogan" OR "Hogan"
OR "David Houston" OR "dhouston@houstonatlaw.com" OR "Charles
Harder" OR "Charles J. Harder" OR "charder@HMAfirm.com" OR
"charder@wrslawyers.com" OR "Ken Turkel" OR "Kenneth Turkel" OR
"KTurkel@bajocuva.com"]

-AND-

["Gawker" OR "Sex Tape" OR "Todd Alan Clem" OR "Bubba Clem" OR
"Bubba the Love Sponge Clem" OR "Heather Clem" OR "Heather Cole"
OR "Keith Davidson" OR "Vilma Duarte" OR "Matt Lloyd" OR "Matt
Lloyd"]

This request includes, but is not limited to, records maintained by the Federal Bureau of Investigation, both at its Headquarters in Washington, D.C. and its Tampa field office (the "FBI Records"). In connection with the FBI Records, we request that in addition to searching all files and communications in the records of its field offices reasonably likely to contain responsive records, the FBI perform the above-mentioned keyword searches in both the "main" and "cross-reference" files in its Central Records System. For your information, similar requests have been sent to the Executive Office for U.S. Attorneys and the Criminal Division of the Department of Justice.

David M. Hardy
November 7, 2014
Page 3

I have enclosed Certifications of Identity and Authorization to Release Information (Form DOJ-361) that have been executed by Mr. Bollea and three of his lawyers, David Houston, Charles Harder, and Ken Turkel. *See* Exhibit A (Certifications). Please note, Mr. Bollea believes that records relating to the investigation are not relevant to his litigation against Gawker Media, but he and his counsel have provided the signed Certifications based on a court order in the above referenced action. *See* Exhibit B (Special Discovery Magistrate's Report and Recommendation ordering Certifications to be signed, Order of the Court adopting that Recommendation, and Order of the Second District Court of Appeal dismissing Mr. Bollea's petition for a writ of certiorari appealing from that Order).

I also have enclosed a Certification of Identity and Authorization to Release Information (Form DOJ-361) that has been executed by Heather Dawn Cole f/k/a Heather Clem. *See* Exhibit C (Certification).

Please produce copies of the records in the original form in which they are maintained. We consent in advance to pay search and duplication charges up to \$500. In order to avoid delay, if you have any questions about this request, please contact me by email, telephone or fax, rather than relying upon regular mail. You may reach me by email at gthomas@tlolawfirm.com. by telephone at (813) 984-3060, or by fax at (813) 984-3070.

Finally, in connection with the ongoing litigation in Florida, Gawker Media and Mr. Bollea have agreed, and the court has ordered, that any DVDs or other video footage that is provided in response to this request should be placed in a sealed envelope addressed to Judge James R. Case (Ret.), the Special Discovery Magistrate who is overseeing all discovery in this case. Consequently, please allow Judge Case to personally pick up the sealed envelope containing any DVDs or other video footage from either the FBI's Tampa field office or the office of the United States Attorney for the Middle District of Florida. All other documents can and should be provided directly to me.

When you complete your work on this request, please call me so that I can alert Judge Case that he can pick up any DVDs or other video footage and can arrange for a courier to pick up the other documents.

Thank you for your assistance with this request.

THOMAS & LOCICERO PL

By: /s/ Gregg D. Thomas
Gregg D. Thomas

601 South Boulevard
P.O. Box 2602 (33601)
Tampa, FL 33606
Telephone: (813) 984-3060

David M. Hardy
November 7, 2014
Page 4

Facsimile: (813) 984-3070
gthomas@tlolawfirm.com

Enclosures

**cc: Hon. James R. Case, Special Discovery Magistrate, Circuit Court of the Sixth Judicial
District, Florida**
Charles J. Harder, Esquire, Counsel for Terry Bollea
Mr. Robert Mosakowski, Office of the U.S. Attorney for the Middle District of Florida
Mr. Andrew Sekala, Federal Bureau of Investigation, Tampa Field Office

Exhibit A

U.S. Department of Justice

Certification of Identity

**CONFIDENTIAL**FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/15

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester¹ Terry Gene Bollea

FRCP 5.2

Citizenship Status² U.S. citizen Social Security Number³

FRCP 5.2

Current Address

Date of Birth FRCP 5.2 Place of Birth FRCP 5.2

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(1) by a fine of not more than \$5,000.

Signature⁴

Date

8-20-14

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(h), I authorize the U.S. Department of Justice to release any and all information relating to me to:
Any video footage, including DVDs, that are produced should be released to Judge James Case (Ret.) in Tampa, Florida
Any non-video records that are produced should be released to Gregg Thomas of Thomas & LoCicero in Tampa, Florida.

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

FORM (XJ) 361

U.S. Department of Justice

Certification of Identity

**CONFIDENTIAL**FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/17

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester¹ Charles John Harder

Citizenship Status² U.S.A. Social Security Number³ FRCP 5.2

Current Address Harder Mirrell & Abrams LLP 1925 Century Park East #500
Los Angeles CA 90067

Date of Birth FRCP 5.2 Place of Birth FRCP 5.2

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature⁴ [Signature] Date 9/29/14

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:
Any video footage, including DVDs, that are produced should be released to Judge James Case (Ret.) in Tampa, Florida.
Any non-video records that are produced should be released to Gregg Thomas of Thomas & LoCicero in Tampa, Florida.

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

FORM DOJ-361

U.S. Department of Justice

Certification of Identity

**CONFIDENTIAL**FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/13

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester¹ David R HoustonCitizenship Status² US CitizenSocial Security Number³ _____

FRCP 5.2

Current Address _____

FRCP 5.2

Date of Birth _____

FRCP 5.2

Place of Birth _____

FRCP 5.2

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature⁴ _____

Date _____

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:
Any video footage, including DVDs, that are produced should be released to Judge James Case (Ret.) in Tampa, Florida.
Any non-video records that are produced should be released to Gregg Thomas of Thomas & LoCicero in Tampa, Florida.

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(n)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

FORM DOJ-361

U.S. Department of Justice

Certification of Identity

FORM APPROVED OMB NO. 1104-0016
EXPIRES 10-31-15

Privacy Act Statement. In accordance with 28 C.F.R. Section 16.41(b) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(f)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester¹ Kenneth G. TurkelCitizenship Status² U.S. CitizenSocial Security Number³ FRCP 5.2

Current Address

FRCP 5.2

Date of Birth

FRCP 5.2

Place of Birth

FRCP 5.2

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(f)(3) by a fine of not more than \$5,000.

Signature⁴

Date

9/30/14

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

I further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Any video footage, including DVDs, that are produced should be released to Judge James Case (Ret.) in Tampa, Florida.
Any non-video records that are produced should be released to Gregg Thomas of Thomas & LoCicero in Tampa, Florida.

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

CONFIDENTIAL

FORM 1001-101

Exhibit B

**NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED**

**IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT**

**TERRY GENE BOLLEA, professionally
known as HULK HOGAN,**

Petitioner,

v.

Case No. 2D14-1079

**HEATHER CLEM; GAWKER MEDIA,
LLC, aka GAWKER MEDIA; GAWKER
MEDIA GROUP, INC. a/k/a GAWKER
MEDIA; GAWKER ENTERTAINMENT,
LLC; GAWKER TECHNOLOGY, LLC;
GAWKER SALES, LLC; NICK DENTON;
A.J. DAULERIO; KATE BENNERT; and
BLOGWIRE HUNGARY SZELLEMI
ALKOTAST HASZNOSITO KFT aka
GAWKER MEDIA,**

Respondents.

Opinion filed August 15, 2014.

**Petition for Writ of Certiorari to the Circuit
Court for Pinellas County; Pamela A.M.
Campbell, Judge.**

**Kenneth G. Turkel and Christina K.
Ramirez of Bajo, Cuva, Cohen & Turkel,
P.A., Tampa; and Charles J. Harder of
Harder, Mirell & Abrams, LLP, Los Angeles,
California, for Petitioner.**

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

TERRY GENE BOLLEA professionally
known as **HULK HOGAN**,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM, et al.,

Defendants.

REPORT & RECOMMENDATION

This cause came before Special Discovery Magistrate James Case on January 31, 2014, on the Motion of Gawker Media, LLC ("Gawker") to Compel FBI Authorization or, in the Alternative, for an Order of Preclusion. After reviewing the Court file, reviewing and considering the Motion and response papers, and hearing the argument of counsel, the Special Discovery Magistrate **RECOMMENDS** that Gawker's Motion be **GRANTED** and that Plaintiff (and any counsel acting on his behalf) be compelled to provide the requested release to Gawker within three days.

The parties shall have 10 days from the date of this Report and Recommendation to file objections with the Circuit Court.

Dated: 2-5, 2014

/s/ JAMES R. CASE
James R. Case
Special Discovery Magistrate

Copies furnished to:
Counsel of Record

Gregg D. Thomas and Rachel E. Fugate of Thomas & LoCicero, PL, Tampa; and Seth D. Berlin, Alla L. Smith of Levine, Sullivan, Loch & Schulz, LLP, Washington, District of Columbia; and Julie B. Ehrlich of Levine, Sullivan, Koch & Schulz, LLP, New York, New York; and David R. Houston of The Law Office of David R. Houston, Reno, Nevada, for Respondent Gawker Media, LLC.

No appearance for remaining Respondents.

PER CURIAM.

Dismissed.

NORTHCUTT, CRENSHAW, and SLEET, JJ., Concur.

RECEIVED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM, *et al.*,

Defendants.

ORDER

This cause came before Special Discovery Magistrate James Case on January 31, 2014,
on the Motion of Gawker Media, LLC ("Gawker") to Compel FBI Authorization or, in the
Alternative, for an Order of Preclusion. After reviewing and considering the REPORT &
RECOMMENDATION of the Special Discovery Magistrate, IT IS HEREBY ORDERED AND
ADJUDGED that Gawker's Motion is GRANTED and that Plaintiff (and any counsel acting on
his behalf) must provide the requested release to Gawker within three days.

Report and Recommendation dated February 5, 2014 is approved.
DONE AND ORDERED in Chambers at Pinellas County, Florida this 26 day of

James, 2014.

Pamela A.M. Campbell
Circuit Court Judge

Copies furnished to:
Counsel of Record

Original Signed
FEB 11 2014
Pamela A.M. Campbell
Circuit Judge

Exhibit C

U.S. Department of Justice

Certification of Identity

FORM APPROVED OMB NO. 1103-0016
EXPIRES 03/31/17

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester ¹ HEATHER DAWN COLE F/K/A HEATHER CLEM

FRCP 5.2

Citizenship Status ² U.S. CITIZEN Social Security Number ³ _____Current Address FRCP 5.2Date of Birth FRCP 5.2 Place of Birth FRCP 5.2**OPTIONAL: Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Any video footage, including DVDs, that are produced should be released to Judge James Case (Ret.) in Tampa, Florida.
Any non-video records that are produced should be released to Gregg Thomas of Thomas & LeClerc in Tampa, Florida.

Print or Type Name
HEATHER DAWN COLE

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature

Date

Oct. 30, 2014

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

FORM DOJ-361

CONFIDENTIAL

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWKER MEDIA, LLC et al,

Plaintiff,

v.

THE FEDERAL BUREAU OF
INVESTIGATION and THE EXECUTIVE
OFFICE OF UNITED STATES
ATTORNEYS,

Defendant.

Case No. 8:15-CV-01202-SCB-EAJ

Exhibit D

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

November 17, 2014

Mr. Gregg D. Thomas
Thomas & LoCicero PL
601 South Boulevard
Tampa, FL 33606

FOIPA Request No.: 1238212-001
Subject: BOLLEA, TERRY

Dear Mr. Thomas:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI.

- ☒ Your request has been received at FBI Headquarters for processing.
- ☐ Your request has been received at the [_____] Resident Agency / [_____] Field Office] and forwarded to FBI Headquarters for processing.
- ☒ We are searching the indices to our Central Records System for the information responsive to this request. We will inform you of the results in future correspondence.
- ☐ Your request for a fee waiver is being considered and you will be advised of the decision at a later date.
- ☒ Please check for the status of your FOIPA request at www.fbi.gov/foia by clicking on **Check the Status of Your FOIPA Request** under **Records Available Now** located on the right side of the page. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", is placed below the word "Sincerely,".

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

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWKER MEDIA, LLC et al,)
)
)
 Plaintiff,)
)
 v.)
)
)
 THE FEDERAL BUREAU OF)
 INVESTIGATION and THE EXECUTIVE)
 OFFICE OF UNITED STATES)
 ATTORNEYS,)
)
 Defendant.)
)
)

Case No. 8:15-CV-01202-SCB-EAJ

Exhibit E

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

January 29, 2015

Mr. Gregg D. Thomas
Thomas & LoCicero PL
601 South Boulevard
Tampa, FL 33606

FOIPA Request No.: 1238212-001
Subject: BOLLEA, TERRY

Dear Mr. Thomas:

This is in reference to your Freedom of Information Act (FOIA) request.

This letter is in response to your letter dated November 7, 2014. The Federal Bureau of Investigation (FBI) has located approximately **1168** pages of records potentially responsive to the subject of your request. Per your request, you have also asked for copies of video material related to your subject. Information in the files reveal that there are 2 Compact Discs (CDs) consisting of video material that is potentially responsive to the subject of your request. By DOJ regulation, the FBI notifies requesters when anticipated fees exceed \$25.00. There is a duplication fee for the release of information in CD format (See 28 C.F.R. §16.11 and 16.49). Per DOJ regulation, the FBI notifies requesters when anticipated fees exceed \$25.00.

Releases are made on Compact Disc (CD) unless otherwise requested. Each CD contains approximately 500 reviewed pages per release. The 500 page estimate is based on our business practice of processing medium and large track cases in segments. DOJ regulations provide 100 pages or the cost equivalent (\$10.00) free of charge. If all potentially responsive pages are released, you will owe **\$50.00** in duplication fees to receive the release on CD (4 CDs at \$15.00 less \$10.00 credit). Should you request that the release be made in paper, you will owe **\$136.80** in duplication fees.

Please remember this is only an estimate, and some of the information may be withheld in full pursuant to FOIA/Privacy Act exemption(s). Also, some information may not be responsive to your subject. Thus, the actual charges could be less. **No payment is required at this time. However, you must notify us in writing within thirty (30) days from the date of this letter of your format decision (paper or CD). You must also indicate your preference in the handling of your request in reference to the estimated duplication fees from the following four (4) options:**

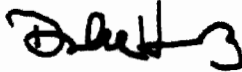
- ☐ I am willing to pay estimated duplication fees up to the amount specified in this letter.
- ☐ I am willing to pay duplication fees of a different amount.
Please specify amount: _____
- ☐ Provide me 100 pages or the cost equivalent (\$10.00) free of charge.
- ☐ Cancel my request.

If we do not receive your duplication format decision and/or estimated duplication fee selection within thirty (30) days of the date of this notification, your request will be closed. Include the FOIPA Request Number listed above in any communication regarding this matter.

You have the opportunity to reduce the scope of your request; this will accelerate the process and could potentially place your request in a smaller processing queue. This may also reduce search and duplication costs and allow for a more timely receipt of your information. The FBI uses a three-queue processing system to fairly assign and process new requests. Requests track into one of the three queues depending on the number of responsive pages - 500 pages or less (small queue), 501 pages to 2500 pages (medium queue), or more than 2500 pages (large queue). Small queue cases usually require the least time to process.

Please advise in writing if you would like to discuss reducing the scope of your request and your willingness to pay the estimated search and duplication costs indicated above. Provide a telephone number, if one is available, where you can be reached between 8:00 a.m. and 5:00 p.m., Eastern Standard Time. Mail your response to: **Work Process Unit; Record Information/Dissemination Section; Records Management Division; Federal Bureau of Investigation; 170 Marcel Drive; Winchester, VA 22602.** You may also fax your response to: 540-868-4997, Attention: Work Process Unit.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

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

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWKER MEDIA, LLC et al,

Plaintiff,

v.

THE FEDERAL BUREAU OF
INVESTIGATION and THE EXECUTIVE
OFFICE OF UNITED STATES
ATTORNEYS,

Defendant.

Case No. 8:15-CV-01202-SCB-EAJ

Exhibit F

**THOMAS &
LoCICERO**

601 South Boulevard • Tampa, FL 33606
813-984-3060 (Phone) • 813-984-3070 (Fax)
Toll Free: 866-395-7100

facsimile transmittal

To: **Work Process Unit** Fax: **540-868-4997**
Records Management Div.

From: **Gregg D. Thomas, Esq.** Date: **02/03/2015**

Re: **FOIPA Req. No. 1238212-001** Pages: **3**

Urgent <input type="checkbox"/>	For review <input type="checkbox"/>	Please comment <input type="checkbox"/>	Please reply <input type="checkbox"/>	Please recycle <input type="checkbox"/>
--	--	--	--	--

Please see attached correspondence. Thank you. ^

CONFIDENTIALITY STATEMENT

This electronic message transmission contains information from the law firm of Thomas & LoCicero PL and is confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this electronic transmission in error, please notify us by telephone (813) 984-3060 immediately. Thank you for your cooperation.

IRS Circular 230 Disclosure. To the extent this correspondence contains federal tax advice, such advice was not intended to be used, and cannot be used by any taxpayer, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein. If you would like us to prepare written tax advice designed to provide penalty protection, please contact us and we will be happy to discuss the matter with you in more detail.

confidential

THOMAS & LOCICERO

Tampa

601 South Boulevard, Tampa, FL 33608
ph 813-984-3060 fax 813-984-3070 toll free 866-395-7100

South Florida

401 SE 12th Street, Ste. 300, Fort Lauderdale, FL 33318
ph 954-703-3416 fax 954-400-5415

8461 Lake Worth Road, Ste. 114, Lake Worth, FL 33467
ph 561-340-1433 fax 561-340-1432

www.tlclawfirm.com

Gregg D. Thomas
Direct Dial: (813) 984-3066
gthomas@tlclawfirm.com

February 3, 2015

VIA FACSIMILE

Work Process Unit
Record Information/Dissemination Section
Records Management Division
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602
Facsimile: (540) 868-4997

Re: FOIPA Request No. 1238212-001
Subject: Bollea, Terry

To Whom It May Concern:

I write in response to the correspondence sent by David M. Hardy on January 29, 2015 concerning FOIPA Request No. 1238212-001. I would like to receive the records on CD, and I am willing to pay for the complete cost of duplication, estimated to be \$50 for four CDs. (As noted in my original request dated November 7, 2014, I am willing to pay estimated duplication fees up to \$500.)

I would greatly appreciate the Bureau expediting my request. As I explained in my November 7 request, I am an attorney who represents Gawker Media, LLC in connection with a lawsuit filed against it by Terry Gene Bollea, known professionally as "Hulk Hogan," in Florida state court. *See Bollea v. Clem, et al.*, No. 12012447-CI-011 (Fla. Cir. Ct.). Since the time that I submitted my request, the court has scheduled the trial in the case to begin on July 6, 2015. And, the requested records are relevant to depositions currently scheduled for early April, in connection with a discovery cut-off of April 10, 2015.

Work Process Unit, FBI
02/3/2015
Page 2 of 2

Finally, please note that in connection with the ongoing litigation in Florida, Gawker Media and Mr. Bollea have agreed, and the court has ordered, that any video footage that is provided in response to my request should be placed in a sealed envelope addressed to Judge James R. Case (Ret.), the Special Discovery Magistrate who is overseeing all discovery in this case. Judge Case will personally pick up the sealed envelope containing any video footage from either the FBI's Tampa field office or the office of the United States Attorney for the Middle District of Florida. All other documents can and should be provided directly to me.

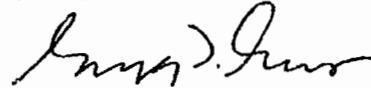
When you complete your work on this request, please call me so that I can alert Judge Case that he can pick up the video footage and can arrange for a courier to pick up the other documents.

In the meantime, to avoid delay, if you have any questions about this request, please contact me by email, telephone or fax, rather than relying upon regular mail. You may reach me by email at gthomas@tlolawfirm.com, by telephone at (813) 984-3060, or by fax at (813) 984-3070.

Thank you for your assistance with this request.

Sincerely,

THOMAS & LOCICERO PL



Gregg D. Thomas

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWKER MEDIA, LLC et al,

Plaintiff,

v.

THE FEDERAL BUREAU OF
INVESTIGATION and THE EXECUTIVE
OFFICE OF UNITED STATES
ATTORNEYS,

Defendant.

Case No. 8:15-CV-01202-SCB-EAJ

Exhibit G

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

February 4, 2015

Mr. Gregg D. Thomas
Thomas & LoCicero PL
601 South Boulevard
Tampa, FL 33606

FOIPA Request No.: 1238212-001
Subject: BOLLEA, TERRY

Dear Mr. Thomas:

This responds to your Freedom of Information/Privacy Act (FOIPA) request.

The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E)/ 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.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", is placed below the word "Sincerely,".

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

Enclosures (2)



FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **A criminal history summary check or "rap sheet" is NOT the same as an "FBI file."** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI, Criminal Justice Information Services (CJIS) Division, Record Request, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual's records are not disseminated to an unauthorized person. The fingerprint submission must include the subject's name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/background-checks/background_checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI's Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both "main" and "cross reference" files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several "hits" and "idents" on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking "reasonably described information." For a FOIPA search, the subject's name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a "main file search" and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT
www.fbi.gov

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (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, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWKER MEDIA, LLC et al,

Plaintiff,

v.

THE FEDERAL BUREAU OF
INVESTIGATION and THE EXECUTIVE
OFFICE OF UNITED STATES
ATTORNEYS,

Defendant.

Case No. 8:15-CV-01202-SCB-EAJ

Exhibit H

* May be a Dup - *

SRC

THOMAS &
LOCICERO

Tampa

601 South Boulevard, Tampa, FL 33606
ph 813-984-3060 fax 813-984-3070 toll free 866-395-7100

South Florida

401 SE 12th Street, Ste. 300, Fort Lauderdale, FL 33316
ph 954-703-3416 fax 954-400-5415

8461 Lake Worth Road, Ste. 114, Lake Worth, FL 33467
ph 561-340-1433 fax 561-340-1432

www.tlolfirm.com

Gregg D. Thomas
Direct Dial: 813-984-3065
gthomas@tlolfirm.com

Boiana
fbi

March 4, 2015

VIA FEDEX AND FACSIMILE

Melanie Ann Pustay
Director, Office of Information Policy (OIP)
1425 New York Ave., NW, Suite 11050
Washington, D.C. 20530-0001
Fax: (202) 514-1009

RECEIVED

MAR 11 2015

Office of Information Policy

Re: **Freedom of Information Appeal of FOIAPA Request No. 1238212-001**

Dear Ms. Pustay:

This is an administrative appeal from the denial of my Freedom of Information/Privacy Act request.

Factual Background

I am an attorney who represents Gawker Media, LLC in connection with a lawsuit filed against it by Terry Gene Bollea, known professionally as "Hulk Hogan," in Florida state court. *See Bollea v. Clem, et al.*, No. 12012447-CI-011 (Fla. Cir. Ct.) (the "Florida Litigation"). I made this request in connection with that lawsuit.

The Florida Litigation arises out of Gawker's publication of a commentary (the "Gawker Story") about a video recording of Bollea having sex with Heather Clem, the wife of radio shock jock Bubba The Love Sponge Clem, with Mr. Clem's blessing. (The Clems are now divorced, and Mrs. Clem is now known as Heather Cole). Prior to Gawker's publication, the video recording(s) of Bollea and Ms. Cole was the subject of a pre-existing controversy. The Gawker Story was accompanied by brief excerpts from one of what we understand are more than one video. In the Florida Litigation, Bollea asserted claims for tortious publication of private facts, misappropriation of his publicity rights, intrusion upon his seclusion, violation of the Florida wiretap act, and intentional infliction of emotional distress, and he seeks \$100 million in damages. Bollea also named Bubba The Love Sponge Clem and Ms. Cole as defendants in the lawsuit, alleging that they filmed him without his consent and that they were responsible for

M. Pustay
3/4/15
Page 2

disseminating the tape. Shortly after the suit was filed, Bollea and Mr. Clem reached a settlement. Bollea continues to pursue his claims against Ms. Cole and my client, Gawker.

In the context of adjudicating Bollea's motion for a preliminary injunction to enjoin Gawker's publication, the Florida courts have concluded that Gawker's report and accompanying video excerpts involved a matter of public concern and were therefore protected by the First Amendment. *See Gawker Media, LLC v. Bollea*, 129 So. 3d 1196 (Fla. 2d DCA 2014). In an earlier federal action by Bollea against Gawker arising out of the same report, a federal judge repeatedly reached the same conclusion. *See Bollea v. Gawker Media, LLC*, 2012 WL 5509624 (M.D. Fla. Nov. 14, 2012); *Bollea v. Gawker Media, LLC*, 913 F. Supp. 2d 1325 (M.D. Fla. 2012).

Prior to the lawsuit, Bollea and his personal attorney, David Houston, made various statements about their intent to pursue a criminal investigation, and, during the lawsuit, they have made additional public statements about their request that the FBI conduct an investigation into the source and distribution of the video(s), and the fact that the FBI had undertaken that investigation. During the civil suit, Bollea refused to provide documents relating to his communications with law enforcement authorities and others concerning the criminal investigation. But, the presiding court ordered Bollea to turn over copies of any communications involving him or his counsel relating to any criminal investigation concerning the video(s). In addition, the court ruled that the federal government's records concerning its criminal investigation are relevant to Bollea's civil lawsuit.

In connection with those proceedings, the United States Attorney's Office for the Middle District of Florida advised us in writing that

- (a) Bollea could disclose any communications involving him and his counsel, or any other documents in his possession concerning the investigation, without interfering with any law enforcement investigation;
- (b) Gawker would not be interfering with any investigation if it contacted any witness who might have provided information to the government; and
- (c) Gawker was not a target or subject of any investigation.

See Exhibit 1 (Affidavit of Seth Berlin, Gawker's co-counsel, attaching communications with U.S. Attorney's Office and describing communications with FBI agent Jason Shearn of the FBI's Tampa, Florida field office confirming same facts); Exhibit 2 (letter and email from U.S. Attorney's Office to Mr. Berlin, confirming same). Once Bollea was ordered to produce his communications, we learned that the United States Attorney's Office has declined to prosecute anyone following the government's investigation, *see* Exhibit 3, and had exchanged correspondence with Mr. Houston about the disposition of evidence collected during the investigation, ultimately advising that the government would retain certain evidence pending the outcome of Bollea's case against Gawker and Ms. Cole, *see* Exhibit 4. Please note that Exhibits

M. Pustay
3/4/15
Page 3

3 and 4 were designated as "Confidential – Attorney's Eyes Only" under a Protective Order entered in the Florida Litigation, but are being provided to you with Bollea's consent.

On November 7, 2014, I requested records in the custody of the FBI relating to statements or communications between Bollea and his counsel with the FBI; any records relating to video recordings in the custody of the FBI depicting Bollea engaged in sexual relations with Ms. Cole, including the recordings themselves; statements by Bollea; and records pertaining to the source and distribution of the video recordings, or attempts to disseminate or sell those video recordings (hereinafter, the "Requested Records"). (A copy of that Request is annexed hereto as Exhibit 5.)

With my Request, I enclosed Certifications of Identity and Authorization to Release Information (Form DOJ-361) signed by Bollea and his counsel, as well as by Ms. Cole. In addition, consistent with an order entered in the Florida Litigation and an agreement between counsel for Gawker and Mr. Bollea, the Request asked that any video recordings be placed in sealed envelopes and delivered to or held for pickup by the Special Discovery Magistrate overseeing discovery in the civil lawsuit, The Honorable James R. Case (Ret.).

On January 29, 2015, I received a letter from David M. Hardy informing me that the FBI had located 1168 pages of responsive records, and 2 CDs containing responsive video material. (A copy of that letter is annexed hereto as Exhibit 6.) I responded by letter dated February 3, 2015, accepting all duplication charges and requesting expedited treatment on the basis of discovery deadlines in the Florida Litigation. (A copy of that letter is annexed hereto as Exhibit 7.)

By letter dated February 4, 2015, the FBI denied the request in full and declined to produce any records, citing only Exemption 7(A). (A copy of that letter is annexed hereto as Exhibit 8.) In relevant part, the FBI stated:

The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). . . . The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.

The FBI did not provide any explanation why any particular record satisfied any of the criteria required to invoke Exemption 7(A), other than the foregoing conclusory invocation of the bare legal elements of the exemption. Given the passage of more than two years, the communications described above indicating that the U.S. Attorney's Office had declined to prosecute anyone, and the exchange of correspondence concerning the disposition of evidence that was no longer needed, the claim that there is a pending or prospective investigation seems fanciful. Moreover, the FBI did not state whether any of the 1168 pages of responsive records could be redacted to withhold only demonstrably protected information, for example, about the FBI's investigative techniques. And, the FBI did not state how the release of communications with Bollea or his

M. Pustay
3/4/15
Page 4

counsel, statements made by Bollea, or the video recordings, at least some of which already have been released, widely reported on and published in excerpted form, could reasonably be expected to impair any ongoing enforcement proceedings – if any investigation concerning this matter were even pending or prospective.

Argument

The FBI invokes Exemption 7(A) as its sole basis for withholding responsive records. Under Exemption 7(A), an agency may withhold from disclosure “records or information compiled for law enforcement purposes, *but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.*” 5 U.S.C. § 552(b)(7)(A) (emphasis supplied). The FBI has the burden of showing two elements: (1) that a law enforcement proceeding is underway or actually prospective, and (2) that the release of responsive records “could reasonably be expected to interfere” with those current or prospective proceedings. *Id.*

“An agency cannot meet its statutory burden of justification by conclusory allegations.” *Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 258 (D.C. Cir. 1977). Rather, responsive records may properly be withheld from disclosure only where agencies provide “relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.” *Id.* at 251 (citation omitted); *Senate of the Commonwealth of P.R. on Behalf of Judiciary Comm. v. DOJ*, 823 F.2d 574, 585 (D.C. Cir. 1987) (to justify withholding records under FOIA, an agency must assert an exemption “with ‘specificity and [in] detail.’”).

The FBI has not made an adequate showing that it may properly withhold the Requested Records. With respect to the first element of Exemption 7(A), the FBI has only stated that “there is a pending or prospective law enforcement proceeding relevant to these responsive records.” Ex. 8. But, a claim that there is an ongoing or prospective investigation must be “more than [a] conclusory statement” to satisfy FOIA. *Cudzich v. INS*, 886 F. Supp. 101, 106 (D.D.C. 1995); *Linn v. Department of Justice*, No. 92-1406, 1995 WL 417810, at *9 (D.D.C. June 6, 1995) (rejecting agency’s assertion of law enforcement exemption where agency averred only that “some unspecified investigation against a fugitive . . . was ongoing,” and the release of the information sought would interfere with it).

The FBI simply did not address the second element of Exemption 7(A) at all. It did not explain how providing copies of communications with Bollea or his counsel, the video recordings themselves, or statements made to the government by Bollea would interfere with a law enforcement proceeding, let alone provide “specific information about the impact . . . the disclosures” would have on the investigation. *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1114 (D.C. Cir. 2007); *Kuffel v. U.S. Bureau of Prisons*, 882 F. Supp. 1116, 1126 (D.D.C. 1995) (agency must be “specific as to what information is being withheld and the distinct harm that could result from its disclosure,” to justify withholding); *see also Cuban v. SEC*, 744 F. Supp. 2d 60, 85 (D.D.C. 2010) (law enforcement exemption “is not meant to be a ‘blanket exemption’ for

M. Pustay
3/4/15
Page 5

any files or records that are relevant to an investigation – their disclosure must be reasonably expected to interfere in a ‘palpable, particular way’ with the investigation”).

In any event, neither element can be satisfied here. First, no concrete law enforcement proceeding against a knowable defendant is under way. It is our understanding that the United States Attorney’s Office has declined to bring charges relating to the video recordings or anything else relating to Bollea’s original complaint to the FBI concerning the recordings. Indeed, as indicated above, the U.S. Attorney’s Office exchanged correspondence with Bollea’s counsel about the fact that it was not prosecuting anyone and about the disposition of evidence collected, negating any claim that a pending or prospective investigation is underway. And, even if the underlying investigative file has not formally been closed, the FBI cannot meet its burden of establishing a “concrete prospective law enforcement proceeding,” *Carson v. U.S. Dep’t of Justice*, 631 F.2d 1008, 1018 (D.C.Cir.1980); *Nat’l Sec. Archive v. F.B.I.*, 759 F. Supp. 872, 883 (D.D.C. 1991) (same), against a cognizable target, see *Playboy Enterprises, Inc. v. U.S. Dep’t of Justice*, 516 F. Supp. 233, 246 (D.D.C. 1981) (withholding under Exemption 7(A) inappropriate where the DOJ “itself is not proceeding against” a particular defendant).

Second, release of the Requested Records – most notably, communications with Bollea and his counsel, any statements made by Bollea, and the video recordings themselves – could not interfere with any concrete investigation. *E.g. Scheer v. U.S. Dep’t of Justice*, 35 F. Supp. 2d 9, 14 (D.D.C. 1999) (agency “cannot successfully claim that disclosure of the same information . . . would have resulted in distinct harm.”). Indeed, Bollea already has turned over certain communications between his counsel and the government (as well as communications with third parties relating to the video recordings and the crime Bollea asked the government to investigate), and the U.S. Attorney’s Office has said that the disclosure of those communications would not interfere with the investigation. Likewise, Bollea and his counsel have made a number of statements about the video recordings in the press and during the course of his civil litigation. And, the release of the video recordings themselves – portions of which already have been publicly disclosed and all of which have been the subject of news reports – would not interfere with any investigation (if one is even pending). Indeed, the source and dissemination of these recordings are at the heart of Bollea’s civil lawsuit. Moreover, under the circumstances of this case, any claim of interference is particularly implausible because the parties have agreed, and the presiding court has ordered, that any video footage provided in response to this request should be placed in a sealed envelope addressed to the Special Discovery Magistrate who is overseeing all discovery in this case. The Magistrate would review any footage to determine whether it is relevant to Bollea’s lawsuit and whether it should be provided to the parties’ counsel.

The FBI’s blanket denial of my Request is improper for another reason: It has failed to show a particularized basis for withholding any particular information in any of the categories of records I requested. To justify withholding batches of records like this, “the FBI has a three-fold task. First, it must define its categories functionally. Second, it must conduct a document-by-document review in order to assign documents to the proper category. Finally, it must explain . . . how the release of each category would interfere with enforcement proceedings.” *Bevis v.*

M. Pustay
3/4/15
Page 6

Dep't of State, 801 F.2d 1386, 1389-90 (D.C. Cir. 1986). The FBI has not undertaken any of these three tasks.

Moreover, though the Request itself provided initial categories for particularized consideration, the FBI did not explain with *any* degree of precision why any information in those categories should be withheld. For example, it did not state why certain categories of information in records or communications pertaining to the video recordings must be withheld, or why certain categories of content in communications between Bollea or his counsel and the FBI should be redacted from responsive documents.

Certain categories of information in the government's records cannot possibly interfere with a law enforcement investigation. Documents reflecting communications between Bollea or his counsel and the FBI likely reveal information already disclosed in discovery in the pending lawsuit or known to him and his counsel (and thus should have been disclosed by them). As the United States Attorney's Office already has explained, disclosing those records cannot interfere with an investigation. They should be promptly disclosed. The same holds true for statements that Bollea has given to the government.

There simply is no suggestion that any of the requested records are properly withheld, and "the FBI has not met its burden." *Putnam v. U.S. Dep't of Justice*, 873 F. Supp. 705, 714 (D.D.C. 1995); *Jefferson v. Reno*, No. CIV.A 96-1284 GK, 1997 WL 135723, at *4 (D.D.C. Mar. 17, 1997) (agency "failed to show how [its] categorical withholding was limited 'to the extent that' production could reasonably be expected to interfere with that proceeding.>").

Finally, even if adequate showings could be made for certain records or categories of records, it is incumbent upon the FBI to ensure that "any 'reasonably segregable' information from those [properly exempted] documents [is] disclosed after redaction of the exempt information." *Johnson v. Exec. Office for U.S. Attorneys*, 310 F.3d 771, 776 (D.C. Cir. 2002). "In order to demonstrate that all reasonably segregable material has been released, the agency must provide a 'detailed justification' for its non-segregability." *Id.* (citation omitted). The FBI has failed to fulfill its obligation to segregate and redact responsive records, if, in light of the dubious fact of an ongoing enforcement proceeding, any information may properly be withheld at all.

Conclusion

I respectfully request that you reverse the blanket denial of disclosure and direct the FBI to release the requested records in full. If you are inclined to remit the request to the agency for further finding as to the existence of a law enforcement proceeding, I respectfully request:

- (1) That you order expeditious compliance, as discovery in the Florida Litigation closes April 10, 2015; certain remaining factual discovery turns on the disclosure of the FBI's records; and trial begins on July 6, 2015; and

M. Pustay

3/4/15

Page 7

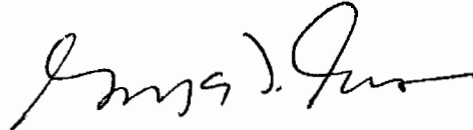
- (2) That you direct immediate disclosure of the three categories of responsive records that cannot interfere with any extant law enforcement proceeding: records of communications with Bollea or his counsel, statements made by Bollea, and the video recordings.

To the extent that the FBI continues to refuse to release the requested information, in whole or in part, I ask that you direct it to provide an itemized list describing with specificity each document or portion thereof that is withheld and explaining in detail the grounds for the withholding. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

I request that you provide us with a decision within 20 business days, as required by the statute. *See* 5 U.S.C. § 552(a)(6)(A)(ii). Thank you for your attention, and I look forward to your response.

Respectfully,

THOMAS & LoCICERO PL

A handwritten signature in black ink, appearing to read "Gregg D. Thomas", written in a cursive style.

Gregg D. Thomas

EXHIBIT 1

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

Case No.: 12012447-CI-011

vs.

HEATHER CLEM; GAWKER MEDIA,
LLC aka GAWKER MEDIA; et al.,

Defendants.

AFFIDAVIT OF SETH D. BERLIN

I, Seth D. Berlin, hereby affirm under penalty of perjury that the following is true and correct:

1. The statements made in this affidavit are based on my personal knowledge.
2. I am a partner with the law firm Levine Sullivan Koch & Schulz, LLP, counsel to defendants Gawker Media, LLC ("Gawker") and A.J. Daulerio (together, "Defendants"), as well as the other Gawker defendants in the above-captioned action. I am admitted *pro hac vice* in this action.
3. I submit this affidavit in connection with Defendants' Response to Plaintiff's Exceptions Regarding Defendants' Fifth Motion to Compel and, in particular, Special Discovery Magistrate James R. Case's recommendations that (a) Defendants' Motion be granted and (b) plaintiff be directed to produce information and documents referring or relating to communications involving any law enforcement agency. This affidavit is substantively identical to the affidavit I previously submitted on March 14, 2014 in connection with Gawker's Opposition to Plaintiff's Motion for a Stay of the Court's February 26, 2014 order directing

plaintiff to provide a release for records maintained by the FBI, except that I have updated Paragraph 7 below and attached a new Exhibit B, to reflect correspondence I received from the United States Attorney's Office after that earlier affidavit was submitted to the Court.

4. On March 11, 2014, I spoke with Robert Mosakowski, Esq., Chief of the Economic Crime Section for the United States Attorney's Office for the Middle District of Florida. On March 14, I spoke again with Mr. Mosakowski, this time joined by Sara Sweeney, Esq., an Assistant United States Attorney in the United States Attorney's Office for the Middle District of Florida.

5. During those conversations, they advised that Ms. Sweeney had reviewed both the Affidavit of David Houston that accompanied the Motion to Stay and the ten-page privilege log served by plaintiff asserting a law enforcement privilege in connection with 162 documents in plaintiff's possession, custody and control (the "Privilege Log," a true and correct copy of which is attached hereto as Exhibit A).

6. During those conversations, Mr. Mosakowski and Ms. Sweeney also advised that:
- a. The U.S. Attorney's Office is not asserting any law enforcement privilege in connection with any documents in Mr. Bollea's or his counsel's possession, including those listed on the Privilege Log,
 - b. Although they could neither confirm nor deny the existence of any investigation in light of U.S. Department of Justice policies, Gawker would not be interfering in any way with any investigation if either (1) documents in Mr. Bollea's or his counsel's possession, including those listed on the Privilege Log, were disclosed, or (2) Gawker or its counsel contacted

witnesses who may have provided information to the FBI or the United States Attorney's Office, and

- c. To the extent that Mr. Bollea or his counsel believed that they had been instructed not to speak about the above subjects, that belief was incorrect and likely the result of a misunderstanding or miscommunication.

7. During the March 14, 2014 conversation, Mr. Mosakowski also confirmed that Gawker is "neither a target nor a subject of any investigation by the Middle District of Florida." On March 18, 2014, I received a letter from Ms. Sweeney confirming that information. A true and correct copy of that March 18, 2014 correspondence is attached hereto as Exhibit B.


8. During the March 14, 2014 conversation, Ms. Sweeney also advised that, after Mr. Houston's affidavit was submitted to the Court and provided to her, she advised Mr. Houston that the U.S. Attorney's Office was not asserting a law enforcement privilege with respect to any documents in Mr. Bollea's or his counsel's possession, including the documents listed on the Privilege Log.

9. At Mr. Mosakowski's suggestion, I also contacted the Tampa office of the Federal Bureau of Investigation. Specifically, on March 11, 2014, I spoke with FBI agent Jason Shearn, and described what Mr. Mosakowski had said on behalf of the United States Attorney's Office. He described the FBI's position as "echoing" that of the United States Attorney's Office, including that: (a) the FBI is not asserting a law enforcement privilege as to any documents that Mr. Bollea or his counsel might have relating to the FBI's investigation, including those listed on the Privilege Log, and (b) although the FBI could neither confirm nor deny the existence or status of any investigation, Gawker could "do what it needed to do" without in any way interfering with any investigation by the FBI.

10. Based on the foregoing, and for the other reasons set forth in its Defendants' Response to Plaintiff's Exceptions, Gawker believes that the Court should affirm Judge Case's Report and Recommendation on Defendants' Fifth Motion to Compel Discovery from Plaintiff and enter the proposed Order filed herewith.


Seth D. Berlin

Sworn before me this 18th day of March 2014:


Notary Public

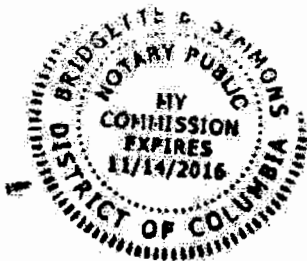


EXHIBIT B

to Affidavit of Seth D. Berlin

2110 First Street, Suite 3-137
Fort Myers, Florida 33901
239/461-2200
239/461-2219 (Fax)



300 N. Hogan Street, Suite 700
Jacksonville, Florida 32202
904/301-6300
904/301-6310 (Fax)

35 SE 1st Avenue, Suite 300
Ocala, Florida 34471
352/547-3600
352/547-3623 (Fax)

U.S. Department of Justice
United States Attorney
Middle District of Florida

400 West Washington Street, Suite 3100
Orlando, Florida 32801
407/648-7500
407/648-7643 (Fax)

Main Office
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
813/274-6000
813/274-6358 (Fax)

Reply to: Tampa, FL

SCS

March 18, 2014

VIA EMAIL

Mr. Seth Berlin, Esq.
Levine Sullivan Koch & Schulz, LLP
sberlin@lskslaw.com

Re: Gawker

Dear Mr. Berlin,

Pursuant to our telephone conversation on March 14, 2014, this is to confirm in writing that your client, Gawker, is neither the target nor the subject of any criminal investigation conducted by the United States Attorney's Office for the Middle District of Florida

Sincerely,

A. LEE BENTLEY, III
United States Attorney

By:


Sara C. Sweeney
Assistant United States Attorney

EXHIBIT 2

From: Sweeney, Sara (USAFLM) 1 <Sara.Sweeney@usdoj.gov>
Sent: Wednesday, March 19, 2014 12:53 PM
To: Seth Berlin
Subject: RE: Contact Information

Hi Seth,

I confirm everything you wrote below, with one addition: on subpoint (c), it is possible that someone may have said requested that of Mr. Bollea or his counsel in the past. But that request, if given, is no longer in force.

Thanks,
Sara

Sara C. Sweeney
Assistant United States Attorney
Middle District of Florida
400 N. Tampa St., Suite 3200
Tampa, Florida 33602
Tel: (813) 274-6145
Fax: (813) 274-6178

From: Seth Berlin [<mailto:SBerlin@lskslaw.com>]
Sent: Tuesday, March 18, 2014 4:33 PM
To: Sweeney, Sara (USAFLM) 1
Cc: Seth Berlin
Subject: RE: Contact Information

Ms. Sweeney,

Thank you very much for the letter. Following our conversation last week, I also just wanted to confirm my understanding that (a) the Government is not asserting any privilege with respect to documents that Terry Gene Bollea or his counsel have in their possession, including the documents on the privilege log supplied to you (and so informed Mr. Bollea's counsel), (b) we would not be interfering in any way with any investigation if those documents were disclosed or if we contact witnesses who may have provided information to the Government, and (c) Mr. Bollea and his counsel have not been instructed by the Government not to speak about these subjects or any investigation. Could you please confirm that I have that correct? Thank you.

Seth

Seth D. Berlin

LSKS LEVINE SULLIVAN
KOCH & SCHULZ, LLP
1899 L Street, NW
Suite 200

Washington, DC 20036
(202) 508-1122 | Phone
(202) 861-9888 | Fax
www.lskslaw.com

From: Sweeney, Sara (USAFLM) 1 [<mailto:Sara.Sweeney@usdoj.gov>]
Sent: Tuesday, March 18, 2014 8:01 AM
To: Seth Berlin
Subject: RE: Contact Information

Hi Seth,
Attached is the letter you requested.

Thanks,
Sara

Sara C. Sweeney
Assistant United States Attorney
Middle District of Florida
400 N. Tampa St., Suite 3200
Tampa, Florida 33602
Tel: (813) 274-6145
Fax: (813) 274-6178

From: Seth Berlin [<mailto:SBerlin@lskslaw.com>]
Sent: Friday, March 14, 2014 10:28 AM
To: Sweeney, Sara (USAFLM) 1
Cc: Seth Berlin
Subject: Contact Information

Ms. Sweeney -- As requested, my contact information is below. Thank you for your assistance.

Seth Berlin

Seth D. Berlin

 **LEVINE SULLIVAN
KOCH & SCHULZ, LLP**
1899 L Street, NW
Suite 200
Washington, DC 20036
(202) 508-1122 | Phone
(202) 861-9888 | Fax
www.lskslaw.com

EXHIBIT 3

CONFIDENTIAL-ATTORNEY'S EYES ONLY

Kristy Rosser

From: Shearn, Jason R. <Jason.Shearn@ic.fbi.gov>
Sent: Tuesday, July 23, 2013 5:36 AM
To: David Houston
Subject: USAO Contact Information

Dave-

Per our conversation, any questions regarding the case declination should be directed to Bob Mosakowski, 813-274-6129. He is the supervisor of the Economics Crime Section and Sara Sweeney's boss.

Please get me your expenses asap so I can get the request in the system.

Regards,

SA Jason R. Shearn
Tampa Division, Pinellas RA
Office 727-796-7055

EXHIBIT 4

Kristy Rosser

From: Shearn, Jason R. <Jason.Shearn@ic.fbi.gov>
Sent: Tuesday, September 03, 2013 8:28 AM
To: David Houston
Cc: Sweeney, Sara (USAFLM) 1
Subject: FW: Davidson investigation
Attachments: I_evidence_Houston 8 28 2013.pdf

Dave-

Please see the attached e-mail from AUSA Sara Sweeney. She attempted to send to your but it was returned undeliverable.

Regards,

SA Jason R. Shearn
Tampa Division, Pinellas RA
Office 727-796-7055

-----Original Message-----

From: Sweeney, Sara (USAFLM) 1 [<mailto:Sara.Sweeney@usdoj.gov>]
Sent: Tuesday, September 03, 2013 10:58 AM
To: dhouston@houstonatlaw.com
Subject: Davidson investigation

Mr. Houston,
Attached please find a letter regarding the property in the above investigation. You will also receive a copy via U.S. mail.

Thanks,
Sara

Sara C. Sweeney
Assistant United States Attorney
Middle District of Florida
400 N. Tampa St., Suite 3200
Tampa, Florida 33602
Tel: (813) 274-6145
Fax: (813) 274-6178

2110 First Street, Suite 3-137
Fort Myers, Florida 33901
239/461-2200
239/461-2219 (Fax)



300 N. Hogan Street, Room 700
Jacksonville, Florida 32202
904/301-6300
904/301-6310 (Fax)

35 SE 1st Avenue, Suite 300
Ocala, Florida 34471
352/547-3600
352/547-3623 (Fax)

**U.S. Department of Justice
United States Attorney
Middle District of Florida**

400 West Washington Street, Suite 3100
Orlando, Florida 32801
407/648-7500
407/648-7643 (Fax)

Main Office
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
813/274-6000
813/274-6358 (Fax)

Reply to: Tampa, FL

SCS

September 3, 2013

VIA EMAIL AND U.S. MAIL
Mr. David R. Houston, Esq.
432 Court Street
Reno, Nevada 89501

Re: Keith M. Davidson, USAO No. 2012R02418

Dear Mr. Houston:

I am writing regarding the disposition of the following pieces of evidence from the above-stated investigation:

- The following documents: an assignment and transfer of copyright; a Settlement agreement and mutual release; Exhibit B to settlement agreement; and a side letter agreement to the settlement agreement;
- Check #1127 in the amount of \$150,000.00 made out to Keith Davidson from David R. Houston, LTD, a professional corporation; and
- A silver/black case with key containing 3 DVD recordings labeled as follows: (1) DVD-R - Hogan 7-13-07; (2) DVD-R - Hootie 7-13-07; (3) DVD-R - Hootie.

As to the documents and the check (items # 1 & 2 above), possession of these items will be turned over to you, with a copy provided to Mr. Davidson.

As to the case and the DVDs within (item # 3 above), the government intends to retain possession of this evidence pending the outcome in *Terry Gene Bollea v. Heather Clem et al*, case no. 12-012447-CI, currently pending in the Sixth Judicial Circuit Court of Florida, in and for Pinellas County, Florida. The evidence will be provided to whichever party is found to be the rightful possessor of the recordings in that suit.

CONFIDENTIAL-ATTORNEY'S EYES ONLY

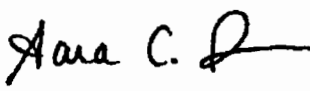
BOLLEA001351

Mr. David R. Houston, Esq.
September 3, 2013
Page 2

Please let me know by September 13, 2013, if you object to the above resolution. If you have any questions, please contact me at (813) 274-6000.

Sincerely,

A. LEE BENTLEY, III
Acting United States Attorney

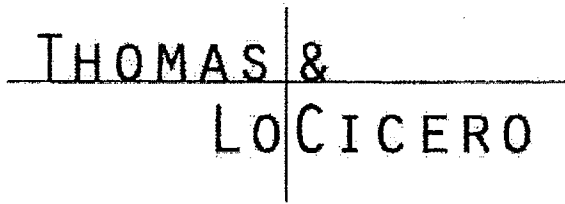
By: 
Sara C. Sweeney
Assistant United States Attorney

\\USAF\LM\FILE21\Users\Criminal Cases\O'Daydon, Keith_2012R02418_SCN_evidence_Houston 6 28 2013.wpd

~~CONFIDENTIAL-ATTORNEY'S EYES ONLY~~

BOLLEAU001352

EXHIBIT 5



Tampa

601 South Boulevard, Tampa, FL 33606
ph 813-984-3060 fax 813-984-3070 toll free 866-395-7100

South Florida

401 SE 12th Street, Ste. 300, Fort Lauderdale, FL 33316
ph 954-703-3416 fax 954-400-5415

8461 Lake Worth Road, Ste. 114, Lake Worth, FL 33467
ph 561-340-1433 fax 561-340-1432

www.tlclawfirm.com

Gregg D. Thomas
Direct Dial: (813) 984-3066
gthomas@tlclawfirm.com

Reply to: Tampa

November 7, 2014

VIA ELECTRONIC MAIL

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
170 Marcel Drive
Winchester, VA 22602-4843
Phone: (540) 868-4500
Fax: (540) 868-4997
foiparequest@ic.fbi.gov

Re: Freedom of Information / Privacy Act Request

Dear Mr. Hardy:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a.

I am an attorney who represents Gawker Media, LLC in connection with a lawsuit filed against it by Terry Gene Bollea, known professionally as "Hulk Hogan," in Florida state court. *See Bollea v. Clem, et al.*, No. 12012447-CI-011 (Fla. Cir. Ct.).

I hereby request disclosure of any and all records in the possession, custody or control of the United States Department of Justice, including without limitation the agencies described

David M. Hardy
November 7, 2014
Page 2

below, relating to an investigation, and complaints or requests for investigation, concerning recording(s) of Terry Gene Bollea a/k/a "Hulk Hogan" engaged in sexual relations with Heather Clem. This request includes, but is not limited to:

- records reflecting any communications with Mr. Bollea or his counsel;
- any statements made by Mr. Bollea or his counsel;
- any records relating to video recording(s) of Mr. Bollea engaged in sexual relations with Heather Clem;
- any records concerning such video recording(s), including the recording(s) themselves;
- any records relating to the source and distribution of such video recording(s); and
- records relating to any attempt to disseminate such video recording(s), including any attempt to sell such video recording(s) to Mr. Bollea or his counsel.

To assist you and your components in tailoring your searches, the following keyword search protocol is reasonably likely to return responsive records:

["Terry Bollea" OR "Terry Gene Bollea" OR "Hulk Hogan" OR "Hogan"
OR "David Houston" OR "dhouston@houstonatlaw.com" OR "Charles
Harder" OR "Charles J. Harder" OR "charder@HMAfirm.com" OR
"charder@wrslawyers.com" OR "Ken Turkel" OR "Kenneth Turkel" OR
"KTurkel@bajocuva.com"]

-AND-

["Gawker" OR "Sex Tape" OR "Todd Alan Clem" OR "Bubba Clem" OR
"Bubba the Love Sponge Clem" OR "Heather Clem" OR "Heather Cole"
OR "Keith Davidson" OR "Vilma Duarte" OR "Matt Lloyd" OR "Matt
Lloyd"]

This request includes, but is not limited to, records maintained by the Federal Bureau of Investigation, both at its Headquarters in Washington, D.C. and its Tampa field office (the "FBI Records"). In connection with the FBI Records, we request that in addition to searching all files and communications in the records of its field offices reasonably likely to contain responsive records, the FBI perform the above-mentioned keyword searches in both the "main" and "cross-reference" files in its Central Records System. For your information, similar requests have been sent to the Executive Office for U.S. Attorneys and the Criminal Division of the Department of Justice.

David M. Hardy
November 7, 2014
Page 3

I have enclosed Certifications of Identity and Authorization to Release Information (Form DOJ-361) that have been executed by Mr. Bollea and three of his lawyers, David Houston, Charles Harder, and Ken Turkel. *See Exhibit A (Certifications)*. Please note, Mr. Bollea believes that records relating to the investigation are not relevant to his litigation against Gawker Media, but he and his counsel have provided the signed Certifications based on a court order in the above referenced action. *See Exhibit B (Special Discovery Magistrate's Report and Recommendation ordering Certifications to be signed, Order of the Court adopting that Recommendation, and Order of the Second District Court of Appeal dismissing Mr. Bollea's petition for a writ of certiorari appealing from that Order)*.

I also have enclosed a Certification of Identity and Authorization to Release Information (Form DOJ-361) that has been executed by Heather Dawn Cole f/k/a Heather Clem. *See Exhibit C (Certification)*.

Please produce copies of the records in the original form in which they are maintained. We consent in advance to pay search and duplication charges up to \$500. In order to avoid delay, if you have any questions about this request, please contact me by email, telephone or fax, rather than relying upon regular mail. You may reach me by email at gthomas@110lawfirm.com, by telephone at (813) 984-3060, or by fax at (813) 984-3070.

Finally, in connection with the ongoing litigation in Florida, Gawker Media and Mr. Bollea have agreed, and the court has ordered, that any DVDs or other video footage that is provided in response to this request should be placed in a sealed envelope addressed to Judge James R. Case (Ret.), the Special Discovery Magistrate who is overseeing all discovery in this case. Consequently, please allow Judge Case to personally pick up the sealed envelope containing any DVDs or other video footage from either the FBI's Tampa field office or the office of the United States Attorney for the Middle District of Florida. All other documents can and should be provided directly to me.

When you complete your work on this request, please call me so that I can alert Judge Case that he can pick up any DVDs or other video footage and can arrange for a courier to pick up the other documents.

Thank you for your assistance with this request.

THOMAS & LOCICERO PL

By: /s/ Gregg D. Thomas
Gregg D. Thomas

601 South Boulevard
P.O. Box 2602 (33601)
Tampa, FL 33606
Telephone: (813) 984-3060

David M. Hardy
November 7, 2014
Page 4

Facsimile: (813) 984-3070
gthomas@tlolawfirm.com

Enclosures

cc: Hon. James R. Case, Special Discovery Magistrate, Circuit Court of the Sixth Judicial District, Florida
Charles J. Harder, Esquire, Counsel for Terry Bollea
Mr. Robert Mosakowski, Office of the U.S. Attorney for the Middle District of Florida
Mr. Andrew Sekala, Federal Bureau of Investigation, Tampa Field Office

Exhibit A

U.S. Department of Justice

Certification of Identity

**CONFIDENTIAL**FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/15

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester¹ Terry Gene BolleaCitizenship Status² U.S. citizen Social Security Number³

FRCP 5.2

Current Address

FRCP 5.2

Date of Birth

FRCP 5.2

Place of Birth

FRCP 5.2

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature⁴

Date

8-20-14

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:
Any video footage, including DVDs, that are produced should be released to Judge James Case (Ret.) in Tampa, Florida.
Any non-video records that are produced should be released to Gregg Thomas of Thomas & LoCicero in Tampa, Florida.

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

FORM DOJ-361

FBI071

U.S. Department of Justice

Certification of Identity

**CONFIDENTIAL**FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/13

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester Charles John HarderCitizenship Status U.S.A. Social Security Number FRCP 5.2Current Address Harder Mirell & Abrams LLP 1925 Century Park East #800
Los Angeles CA 90067Date of Birth FRCP 5.2 Place of Birth FRCP 5.2

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature [Signature] Date 9/29/14**OPTIONAL: Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:
Any video footage, including DVDs, that are produced should be released to Judge James Case (Ret.) in Tampa, Florida.
Any non-video records that are produced should be released to Gregg Thomas of Thomas & LoCicero in Tampa, Florida.

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

FORM DOJ-361

U.S. Department of Justice

Certification of Identity

**CONFIDENTIAL**FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/13

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester¹ David B. HoustonCitizenship Status² U.S. Citizen Social Security Number³ FRCP 5.2Current Address FRCP 5.2Date of Birth FRCP 5.2 Place of Birth FRCP 5.2

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature⁴ [Signature] Date 9/19/2011**OPTIONAL: Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to: Any video footage, including DVDs, that are produced should be released to Judge James Case (Ret.) in Tampa, Florida. Any non-video records that are produced should be released to Gregg Thomas of Thomas & LoCicero in Tampa, Florida.

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

FORM DOJ-361

FBI073

U.S. Department of Justice

Certification of Identity

FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/13

Privacy Act Statement. In accordance with 28 C.F.R. Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester¹ Kenneth G. TurkelCitizenship Status² U.S. Citizen Social Security Number³ FRCP 5.2Current Address: FRCP 5.2Date of Birth FRCP Place of Birth FRCP 5.2

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature⁴ [Signature] Date 9/30/14**OPTIONAL: Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(h), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Any video footage, including DVDs, that are produced should be released to Judge James Case (Ret.) in Tampa, Florida.
Any non-video records that are produced should be released to Gregg Thomas of Thomas & LoCicero in Tampa, Florida.

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

CONFIDENTIAL

FORM DOJ-301

Exhibit B

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

**TERRY GENE BOLLEA professionally
known as HULK HOGAN,**

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM, et al.,

Defendants.

REPORT & RECOMMENDATION

This cause came before Special Discovery Magistrate James Case on January 31, 2014, on the Motion of Gawker Media, LLC ("Gawker") to Compel FBI Authorization or, in the Alternative, for an Order of Preclusion. After reviewing the Court file, reviewing and considering the Motion and response papers, and hearing the argument of counsel, the Special Discovery Magistrate **RECOMMENDS** that Gawker's Motion be **GRANTED** and that Plaintiff (and any counsel acting on his behalf) be compelled to provide the requested release to Gawker within three days.

The parties shall have 10 days from the date of this Report and Recommendation to file objections with the Circuit Court.

Dated: 2-5, 2014

/s/ JAMES R. CASE

James R. Case
Special Discovery Magistrate

Copies furnished to:
Counsel of Record



IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM, *et al.*,

Defendants.

ORDER

This cause came before Special Discovery Magistrate James Case on January 31, 2014,
on the Motion of Gawker Media, LLC ("Gawker") to Compel FBI Authorization or, in the
Alternative, for an Order of Preclusion. After reviewing and considering the REPORT &
RECOMMENDATION of the Special Discovery Magistrate, IT IS HEREBY ORDERED AND
ADJUDGED that Gawker's Motion is GRANTED and that Plaintiff (and any counsel acting on
his behalf) must provide the requested release to Gawker within three days.

Report and Recommendation dated February 5, 2014 is affirmed.
DONE AND ORDERED in Chambers at Pinellas County, Florida this 26 day of

February, 2014.

Pamela A.M. Campbell
Circuit Court Judge

Copies furnished to:
Counsel of Record

Original Signed
FEB 26 2014
Pamela A.M. Campbell
Circuit Judge

**NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED**

**IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT**

**TERRY GENE BOLLEA, professionally
known as HULK HOGAN,**

Petitioner,

v.

Case No. 2D14-1079

**HEATHER CLEM; GAWKER MEDIA,
LLC, aka GAWKER MEDIA; GAWKER
MEDIA GROUP, INC. a/k/a GAWKER
MEDIA; GAWKER ENTERTAINMENT,
LLC; GAWKER TECHNOLOGY, LLC;
GAWKER SALES, LLC; NICK DENTON;
A.J. DAULERIO; KATE BENNERT; and
BLOGWIRE HUNGARY SZELLEMI
ALKOTAST HASZNOSITO KFT aka
GAWKER MEDIA,**

Respondents.

Opinion filed August 15, 2014.

**Petition for Writ of Certiorari to the Circuit
Court for Pinellas County; Pamela A.M.
Campbell, Judge.**

**Kenneth G. Turkel and Christina K.
Ramirez of Bajo, Cuva, Cohen & Turkel,
P.A., Tampa; and Charles J. Harder of
Harder, Mirell & Abrams, LLP, Los Angeles,
California, for Petitioner.**

Gregg D. Thomas and Rachel E. Fugate of Thomas & LoCicero, PL, Tampa; and Seth D. Berlin, Alia L. Smith of Levine, Sullivan, Loch & Schulz, LLP, Washington, District of Columbia; and Julie B. Ehrlich of Levine, Sullivan, Koch & Schulz, LLP, New York, New York; and David R. Houston of The Law Office of David R. Houston, Reno, Nevada, for Respondent Gawker Media, LLC.

No appearance for remaining Respondents.

PER CURIAM.

Dismissed.

NORTHCUTT, CRENSHAW, and SLEET, JJ., Concur.

Exhibit C

U.S. Department of Justice

Certification of Identity

FORM APPROVED OMB NO. 1103-0016
EXPIRES 03/31/17

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester ¹ HEATHER DAWN COLE F/K/A HEATHER CLEMCitizenship Status ² U.S. CITIZEN Social Security Number ³ FRCP 5.2Current Address FRCP 5.2Date of Birth FRCP 5.2 Place of Birth FRCP 5.2**OPTIONAL: Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Any video footage, including DVDs, that are produced should be released to Judge James Carr (Ret.) in Tampa, Florida.
Any non-video records that are produced should be released to Gregg Thomas of Thomas & LoCicco in Tampa, Florida.

Print or Type Name
HEATHER DAWN COLE

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature Heather Dawn Cole Date Oct. 30, 2014

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

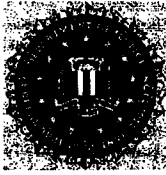
⁴ Signature of individual who is the subject of the record sought.

FORM DOJ-361

CONFIDENTIAL

EXHIBIT 6

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

January 29, 2015

Mr. Gregg D. Thomas
Thomas & LoCicero PL
601 South Boulevard
Tampa, FL 33606

FOIPA Request No.: 1238212-001
Subject: BOLLEA, TERRY

Dear Mr. Thomas:

This is in reference to your Freedom of Information Act (FOIA) request.

This letter is in response to your letter dated November 7, 2014. The Federal Bureau of Investigation (FBI) has located approximately 1168 pages of records potentially responsive to the subject of your request. Per your request, you have also asked for copies of video material related to your subject. Information in the files reveal that there are 2 Compact Discs (CDs) consisting of video material that is potentially responsive to the subject of your request. By DOJ regulation, the FBI notifies requesters when anticipated fees exceed \$25.00. There is a duplication fee for the release of information in CD format (See 28 C.F.R. §16.11 and 16.49). Per DOJ regulation, the FBI notifies requesters when anticipated fees exceed \$25.00.

Releases are made on Compact Disc (CD) unless otherwise requested. Each CD contains approximately 500 reviewed pages per release. The 500 page estimate is based on our business practice of processing medium and large track cases in segments. DOJ regulations provide 100 pages or the cost equivalent (\$10.00) free of charge. If all potentially responsive pages are released, you will owe \$50.00 in duplication fees to receive the release on CD (4 CDs at \$15.00 less \$10.00 credit). Should you request that the release be made in paper, you will owe \$136.80 in duplication fees.

Please remember this is only an estimate, and some of the information may be withheld in full pursuant to FOIA/Privacy Act exemption(s). Also, some information may not be responsive to your subject. Thus, the actual charges could be less. **No payment is required at this time.** However, you must notify us in writing within thirty (30) days from the date of this letter of your format decision (paper or CD). You must also indicate your preference in the handling of your request in reference to the estimated duplication fees from the following four (4) options:

- ☐ I am willing to pay estimated duplication fees up to the amount specified in this letter.
- ☐ I am willing to pay duplication fees of a different amount.
Please specify amount: _____
- ☐ Provide me 100 pages or the cost equivalent (\$10.00) free of charge.
- ☐ Cancel my request.

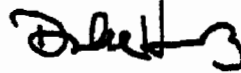
If we do not receive your duplication format decision and/or estimated duplication fee selection within thirty (30) days of the date of this notification, your request will be closed. Include the FOIPA Request Number listed above in any communication regarding this matter.

You have the opportunity to reduce the scope of your request; this will accelerate the process and could potentially place your request in a smaller processing queue. This may also reduce search and duplication costs and allow for a more timely receipt of your information. The FBI uses a three-queue processing system to fairly assign and process new requests. Requests track into one of the three queues depending on the number of responsive pages - 500 pages or less (small queue), 501 pages to 2500 pages

(medium queue), or more than 2500 pages (large queue). Small queue cases usually require the least time to process.

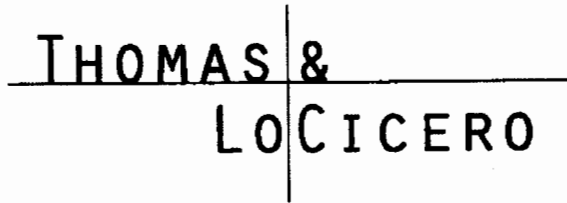
Please advise in writing if you would like to discuss reducing the scope of your request and your willingness to pay the estimated search and duplication costs indicated above. Provide a telephone number, if one is available, where you can be reached between 8:00 a.m. and 5:00 p.m., Eastern Standard Time. Mail your response to: **Work Process Unit; Record Information/Dissemination Section; Records Management Division; Federal Bureau of Investigation; 170 Marcel Drive; Winchester, VA 22602.** You may also fax your response to: 540-868-4997, Attention: Work Process Unit.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

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

EXHIBIT 7



Tampa

601 South Boulevard, Tampa, FL 33606
ph 813-984-3060 fax 813-984-3070 toll free 888-395-7100

South Florida

401 SE 12th Street, Ste. 300, Fort Lauderdale, FL 33316
ph 954-703-3416 fax 954-400-5415

8461 Lake Worth Road, Ste. 114, Lake Worth, FL 33467
ph 561-340-1433 fax 561-340-1432

www.tlclawfirm.com

Gregg D. Thomas
Direct Dial: (813) 984-3066
gthomas@tlclawfirm.com

February 3, 2015

VIA FACSIMILE

Work Process Unit
Record Information/Dissemination Section
Records Management Division
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602
Facsimile: (540) 868-4997

Re: FOIPA Request No. 1238212-001
Subject: Bollea, Terry

To Whom It May Concern:

I write in response to the correspondence sent by David M. Hardy on January 29, 2015 concerning FOIPA Request No. 1238212-001. I would like to receive the records on CD, and I am willing to pay for the complete cost of duplication, estimated to be \$50 for four CDs. (As noted in my original request dated November 7, 2014, I am willing to pay estimated duplication fees up to \$500.)

I would greatly appreciate the Bureau expediting my request. As I explained in my November 7 request, I am an attorney who represents Gawker Media, LLC in connection with a lawsuit filed against it by Terry Gene Bollea, known professionally as "Hulk Hogan," in Florida state court. *See Bollea v. Clem, et al.*, No. 12012447-CI-011 (Fla. Cir. Ct.). Since the time that I submitted my request, the court has scheduled the trial in the case to begin on July 6, 2015. And, the requested records are relevant to depositions currently scheduled for early April, in connection with a discovery cut-off of April 10, 2015.

Work Process Unit, FBI
02/3/2015
Page 2 of 2

Finally, please note that in connection with the ongoing litigation in Florida, Gawker Media and Mr. Bollea have agreed, and the court has ordered, that any video footage that is provided in response to my request should be placed in a sealed envelope addressed to Judge James R. Case (Ret.), the Special Discovery Magistrate who is overseeing all discovery in this case. Judge Case will personally pick up the sealed envelope containing any video footage from either the FBI's Tampa field office or the office of the United States Attorney for the Middle District of Florida. All other documents can and should be provided directly to me.

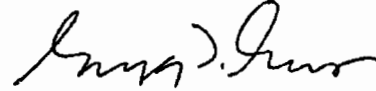
When you complete your work on this request, please call me so that I can alert Judge Case that he can pick up the video footage and can arrange for a courier to pick up the other documents.

In the meantime, to avoid delay, if you have any questions about this request, please contact me by email, telephone or fax, rather than relying upon regular mail. You may reach me by email at gthomas@tlolawfirm.com, by telephone at (813) 984-3060, or by fax at (813) 984-3070.

Thank you for your assistance with this request.

Sincerely,

THOMAS & LOCICERO PL

A handwritten signature in dark ink, appearing to read "Gregg D. Thomas", written in a cursive style.

Gregg D. Thomas

EXHIBIT 8

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

February 4, 2015

Mr. Gregg D. Thomas
Thomas & LoCicero PL
801 South Boulevard
Tampa, FL 33606

FOIPA Request No.: 1238212-001
Subject: BOLLEA, TERRY

Dear Mr. Thomas:

This responds to your Freedom of Information/Privacy Act (FOIPA) request.

The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E)/ 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.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over the word "Sincerely,".

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

Enclosures (2)



FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.**
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **A criminal history summary check or "rap sheet" is NOT the same as an "FBI file."** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI, Criminal Justice Information Services (CJIS) Division, Record Request, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual's records are not disseminated to an unauthorized person. The fingerprint submission must include the subject's name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/background-checks/background_checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI's Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both "main" and "cross reference" files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several "hits" and "idents" on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking "reasonably described information." For a FOIPA search, the subject's name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a "main file search" and differs from the NNCP search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT
www.fbi.gov

1/8/14

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (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, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWKER MEDIA, LLC et al,

Plaintiff,

v.

THE FEDERAL BUREAU OF
INVESTIGATION and THE EXECUTIVE
OFFICE OF UNITED STATES
ATTORNEYS,

Defendant.

Case No. 8:15-CV-01202-SCB-EAJ

Exhibit I



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

March 18, 2015

Gregg D. Thomas, Esq.
Thomas & LoCicero
601 South Boulevard
Tampa, FL 33606
gthomas@tlolawfirm.com

Re: Request No.1238212-001

Dear Mr. Thomas:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received by this Office on March 4, 2015.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2015-02411**. Please mention this number in any future correspondence to this Office regarding this matter. Please note that if you provide an e-mail address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at the number above. If you have submitted your appeal through this Office's online electronic appeal portal, you may also obtain an update on the status of your appeal by logging into your portal account.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones".

Priscilla Jones
Supervisory Administrative Specialist



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

March 20, 2015

Gregg D. Thomas, Esq.
Thomas & LoCicero
601 South Boulevard
Tampa, FL 33606
gthomas@tlolawfirm.com

Re: Request No. 1238212-001

Dear Mr. Thomas:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received by this Office on March 11, 2015.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2015-02440**. Please mention this number in any future correspondence to this Office regarding this matter. Please note that if you provide an e-mail address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at the number above. If you have submitted your appeal through this Office's online electronic appeal portal, you may also obtain an update on the status of your appeal by logging into your portal account.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones".

Priscilla Jones
Supervisory Administrative Specialist

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWKER MEDIA, LLC et al,

Plaintiff,

v.

THE FEDERAL BUREAU OF
INVESTIGATION and THE EXECUTIVE
OFFICE OF UNITED STATES
ATTORNEYS,

Defendant.

Case No. 8:15-CV-01202-SCB-EAJ

Exhibit J



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

Telephone: (202) 514-3642

Gregg D. Thomas, Esq.
Thomas & LoCicero
601 South Boulevard
Tampa, FL 33606
gthomas@tlolawfirm.com

Re: Appeal Nos. AP-2015-02411 &
AP-2015-02440
Request No. 1238212-001
CDT:TAZ

VIA: E-mail

Dear Mr. Thomas:

You appealed on behalf of your client, Gawker Media, LLC, from the action of the Federal Bureau of Investigation on its request for access to certain records concerning Terry Gene Bollea, otherwise known as "Hulk Hogan," and Heather Clem. I note that your appeal concerns the FBI's withholding of records under Exemption (7)(A).

After carefully considering your appeal, I am affirming the FBI's action on your client's request. The Freedom of Information Act 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 5 U.S.C. § 552(b)(7)(A). This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

Furthermore, I am denying your client's 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).

Finally, I note that by letter dated March 23, 2015, this Office informed you that your additional administrative appeal from Request No. 1238212-001 had been received by this Office and would be assigned for adjudication under Appeal No. AP-2015-02440. However, this Office subsequently learned that your appeal file was a duplicate of Appeal No. AP-2015-02411. In light of these circumstances, I am administratively closing Appeal No. AP-2015-02440 in this Office. This Office inadvertently opened two appeal files for the faxed and mailed copies of your appeal letter.

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

- 2 -

analyzed your appeal, your client's underlying request, and the action of the FBI in response to your client's request.

If your client is dissatisfied with my action on your appeal, the FOIA permits it 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; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

5/6/2015

X 

Sean R. O'Neill
Chief, Administrative Appeals Staff
Signed by: Sean O'Neill