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14 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

15  
16 AIDAN MONAGHAN, )  
17 Plaintiff, )  
18 vs. ) Case No. 2:07-cv-01614-R CJ-(GWF)  
19 FEDERAL BUREAU OF )  
INVESTIGATION, )  
20 Defendant. )  
21

22 **DECLARATION OF DAVID M. HARDY**

23 I, David M. Hardy, declare as follows:

24 (1) I am currently the Section Chief of the Record/Information Dissemination Section  
25 ("RIDS"), Records Management Division ("RMD"), at Federal Bureau of Investigation  
26 Headquarters ("FBIHQ") in Washington, D.C. I have held this position since August 1, 2002.

1 Prior to my joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge  
2 Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom  
3 of Information Act ("FOIA") policy, procedures, appeals, and litigation for the Navy. From  
4 October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and  
5 routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law  
6 in the State of Texas since 1980.

7 (2) In my official capacity as Section Chief of RIDS, I supervise approximately 194  
8 employees who staff a total of ten (10) FBIHQ units and a field operational service center unit  
9 whose collective mission is to effectively plan, develop, direct, and manage responses to requests  
10 for access to FBI records and information pursuant to the FOIA; Privacy Act; Executive Order  
11 12958, as amended; Presidential, Attorney General, and FBI policies and procedures; judicial  
12 decisions; and Presidential and Congressional directives. The statements contained in this  
13 declaration are based upon my personal knowledge, upon information provided to me in my  
14 official capacity, and upon conclusions and determinations reached and made in accordance  
15 therewith.

16 (3) Due to the nature of my official duties, I am familiar with the procedures followed  
17 by the FBI in responding to requests for information from its files pursuant to the provisions of  
18 the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am  
19 aware of the treatment which has been afforded the FOIA request of Aidan Monaghan, who has  
20 requested all FBIHQ records related to the identification process for the debris recovered from  
21 the four aircraft destroyed during the terrorist attacks of September 11, 2001.<sup>1</sup>

22 (4) The purpose of this declaration is to provide the Court and plaintiff with an  
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24 <sup>1</sup> Plaintiff's Amended Complaint identified the four aircraft as American Airlines flight 11 (N334AA),  
25 United Airlines flight 175 (N612UA), American Airlines flight 77 (N644AA), and United Airlines flight  
26 93 (N591UA).

1 explanation of the search for records responsive to plaintiff's request, and the "no responsive  
2 records" search results.

3 **CORRESPONDENCE**

4 (5) By undated letter received at FBIHQ on September 12, 2007, plaintiff requested  
5 "documentation pertaining to any formally and positively identified debris by the FBI, from all 4  
6 civilian commercial aircraft used in the terrorist attacks of September 11, 2001." (**See Exhibit**  
7 **A.**)

8 (6) By letter dated September 24, 2007, FBIHQ acknowledged plaintiff's request and  
9 assigned it FOIA Request No. 1093127. The FBI advised plaintiff that his FOIA request for  
10 information regarding "documentation pertaining to the debris from 4 civilian commercial  
11 aircraft used in the terrorist attacks of September 11, 2001," was exempt from disclosure  
12 pursuant to 5 U.S.C. § 552(b)(7)(A). The FBI advised plaintiff of his right to file an  
13 administrative appeal to the U.S. Department of Justice, Office of Information and Privacy  
14 ("OIP"). (**See Exhibit B.**)

15 (7) By letter dated September 6, 2007 to FBIHQ, plaintiff submitted a duplicate FOIA  
16 request for records.<sup>2</sup> **See ¶ 5, supra.** (**See Exhibit C.**)

17 (8) By internet communication to FBIHQ on October 1, 2007, plaintiff submitted a  
18 third request letter for responsive records. **See ¶ 5, supra.** (**See Exhibit D.**)

19 (9) By letter dated October 30, 2007, FBIHQ again acknowledged plaintiff's request  
20 and informed plaintiff that the records responsive to his FOIA request were exempt from  
21 disclosure.<sup>3</sup> **See ¶ 6, supra.** (**See Exhibit E.**)

22 (10) By undated letter, received October 25, 2007, plaintiff submitted an appeal letter  
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24 <sup>2</sup> This letter was received by FBIHQ on September 28, 2007.

25 <sup>3</sup> This communication was undeliverable and returned by the postal service to FBIHQ on November 9,  
26 2007 with the notation, "insufficient address."

1 to OIP. (See Exhibit F.)

2 (11) By letter dated October 29, 2007, OIP acknowledged receipt of plaintiff's  
3 administrative appeal and advised that it had been assigned Appeal Number 08-0179. (See  
4 Exhibit G.)

5 (12) By letter dated November 26, 2007 to plaintiff, OIP affirmed FBI's action to  
6 withhold records in their entirety pursuant to 5 U.S.C. § 552(b)(7)(A). (See Exhibit H.)

7 (13) Plaintiff filed the complaint in this lawsuit on January 23, 2008. (Dkt. No. 11).  
8 Plaintiff filed an Amended Complaint on February 1, 2008. (Dkt. No. 15). Plaintiff's Amended  
9 Complaint sought access to "agency records, concerning documentation revealing the process by  
10 which wreckage recovered by defendant, from the aircraft used during the terrorist attacks of  
11 September 11, 2001, was positively identified by defendant (with the aid of the National  
12 Transportation Safety Board), as belonging to the said aircraft, presumably through the use of  
13 unique serial number identifying information contained by the said aircraft's wreckage, that was  
14 collected by defendant and which defendant has improperly withheld from plaintiff. The data  
15 sought by plaintiff is the basis for the F.B.I.'s current public position, that the following 4 flights  
16 were those that were involved in the terrorist attacks of September 11, 2001: American Airlines  
17 flight 11, United Airlines flight 175, American Airlines flight 77 and United Airlines flight 93."  
18 (Am. Compl. ¶ 1).

19 (14) In response to the request for new information contained in the Amended  
20 Complaint, by letter dated March 12, 2008 to plaintiff, the FBI advised that after a search and  
21 extensive research, no records responsive to his request were located. (See Exhibit I.)

22 (15) By letter dated March 19, 2008 to FBIHQ, plaintiff submitted a request for  
23 responsive records identical to the request contained in his Amended Complaint. See ¶ 13,  
24 supra. (See Exhibit J.)

1                   **EXPLANATION OF THE FBI'S CENTRAL RECORDS SYSTEM**

2           (16)   The CRS enables the FBI to maintain information which it has acquired in the  
3 course of fulfilling its mandated law enforcement responsibilities. The records maintained in the  
4 CRS consist of administrative, applicant, criminal, personnel, and other files compiled for law  
5 enforcement purposes. The CRS is organized into a numerical sequence of files called FBI  
6 "classifications," which are broken down according to subject matter. The subject matter of a  
7 file may correspond to an individual, organization, company, publication, activity, or foreign  
8 intelligence matter (or program). Certain records in the CRS are maintained at FBIHQ, whereas  
9 records that are pertinent to specific field offices of the FBI are maintained in those field offices.  
10 While the CRS is primarily designed to serve as an investigative tool, the FBI searches the CRS  
11 for documents responsive to FOIA and Privacy Act requests. The mechanism that the FBI uses  
12 to search the CRS is the Automated Case Support System ("ACS").

13           (17)   The ACS was implemented for all field offices, Legal Attaches ("Legats"), and  
14 FBIHQ in order to consolidate portions of the CRS that were previously automated. ACS can be  
15 described as an internal computerized subsystem of the CRS. Because the CRS cannot  
16 electronically query the case files for data, such as an individual's name or social security  
17 number, the required information is duplicated and moved to the ACS so that it can be searched.  
18 More than 105 million records from the CRS were converted from automated systems previously  
19 utilized by the FBI. Automation did not change the CRS; instead, automation has facilitated  
20 more economic and expeditious access to records maintained in the CRS.

21           (18)   The retrieval of data from the CRS is made possible through the ACS using the  
22 General Indices, which are arranged in alphabetical order.<sup>4</sup> The entries in the General Indices fall  
23 into two categories:  
24 \_\_\_\_\_

25           <sup>4</sup> The General Indices are not only automated but also include index cards which allow a manual search  
26 for records that pre-date the implementation of ACS on October 16, 1995.

1 (a) A "main" entry -- A "main" entry, or "main" file, carries the name  
2 corresponding with a subject of a file contained in the CRS.

3 (b) A "reference" entry -- "Reference" entries, sometimes called  
4 "cross-references," are generally only a mere mention or reference  
5 to an individual, organization, or other subject matter, contained in  
6 a document located in another "main" file on a different subject  
7 matter.

8 (19) Searches made in the General Indices to locate records concerning a particular  
9 subject, such as identification process for debris from all four civilian commercial aircraft used in  
10 the terrorist attacks of September 11, 2001 are made by searching the subject requested in the  
11 index.

12 (20) The ACS consists of three integrated, yet separately functional, automated  
13 applications that support case management functions for all FBI investigative and administrative  
14 cases:

15 (a) Investigative Case Management ("ICM") -- ICM provides the ability to open,  
16 assign, and close investigative and administrative cases as well as set, assign, and track leads.  
17 The Office of Origin ("OO"), which sets leads for itself and other field offices, as needed, opens  
18 a case. The field offices that receive leads from the OO are referred to as Lead Offices ("LOs").  
19 When a case is opened, it is assigned a Universal Case File Number ("UCFN"), which is used by  
20 all FBIHQ, as well as all FBI field offices and Legats that are conducting or assisting in the  
21 investigation. Using a fictitious file number "111-HQ-12345" as an example, an explanation of  
22 the UCFN is as follows: "111" indicates the classification for the specific type of investigation,  
23 "HQ" is the abbreviated form used for the OO of the investigation, which in this case is FBIHQ;  
24 and "12345" denotes the individual case file number for the particular investigation.

25 (b) Electronic Case File ("ECF") -- ECF serves as the central electronic repository  
26 for the FBI's official text-based documents. ECF supports the universal serial concept in that  
only the creator of a document serializes it into a file. This provides a single-source entry of

1 serials into the computerized ECF system. All original serials are maintained in the OO case file.

2 (c) Universal Index ("UNI") – UNI continues the universal concepts of ACS by  
3 providing a complete subject/case index to all investigative and administrative cases. Only the  
4 OO is required to index; however, the LOs may index additional information as needed. UNI, an  
5 index of approximately 99.1 million records, functions to index names to cases, and to search  
6 names and cases for use in FBI investigations. Names of individuals or organizations are  
7 recorded with identifying applicable information such as date or place of birth, race, sex, locality,  
8 Social Security number, address, and/or date of event.

9 (21) The decision to index names other than subjects, suspects, and victims is a  
10 discretionary decision made by the FBI Special Agent ("SA") assigned to work on the  
11 investigation, the Supervisory SA ("SSA") in the field office conducting the investigation, and  
12 the SSA at FBIHQ. The FBI does not index every name in its files; rather, it indexes only that  
13 information considered to be pertinent, relevant, or essential for future retrieval. Without a "key"  
14 (index) to this enormous amount of data, information essential to ongoing investigations could  
15 not be readily retrieved. The FBI files would thus be merely archival in nature and could not be  
16 effectively used to serve the mandated mission of the FBI, which is to investigate violations of  
17 federal criminal and national security statutes. Therefore, the General Indices to the CRS files  
18 are the means by which the FBI can determine what retrievable information, if any, the FBI may  
19 have in its CRS files on a particular subject matter or individual, i.e., identification process for  
20 debris from all four civilian commercial aircrafts used in the terrorist attacks of September 11,  
21 2001.

22 **SEARCH FOR RECORDS RESPONSIVE**  
23 **TO PLAINTIFF'S REQUEST**

24 (22) Plaintiff's original FOIA request sought "documentation pertaining to any  
25 formally and positively identified debris" from the aircraft used in the September 11<sup>th</sup> attacks. In  
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1 response to this request, RIDS personnel at FBIHQ understood that any potentially responsive  
2 records would have been compiled for law enforcement purposes and would be located in a  
3 pending file because of an ongoing law enforcement investigation. RIDS personnel therefore  
4 determined that any records would be withheld in their entirety pursuant to 5 U.S.C. §  
5 552(b)(7)(A).

6 (23) The FBI then received a copy of plaintiff's complaint for injunctive relief, later  
7 amended, wherein plaintiff requested the FBI to "produce agency records, concerning  
8 documentation revealing the process by which wreckage recovered by defendant, from the  
9 aircraft used during the terrorist attacks on September 11, 2001, was positively identified by  
10 defendant (with the aid of the National Transportation Safety Board) as belonging to the said  
11 aircraft, presumably through the use of unique serial number identifying information contained  
12 by the said aircraft wreckage, that was collected by defendant and which defendant has  
13 improperly withheld from plaintiff." In response to this request, RIDS conducted a search for  
14 potentially responsive records at FBIHQ on February 11, 2008. A search of the CRS was  
15 conducted using the following subjects: "Airline Debris," "Debris Identification," "Commercial  
16 Aircraft," "Aircraft Identification," "Aircraft Debris," "Aircraft Wreckage," "Aircraft,"  
17 "Recovered Debris," "National Transportation and Safety Bureau," "National Transportation  
18 Safety Board," "NTSB," "American Airlines," "American Airlines Flight," "American Airlines  
19 Flight Eleven," "American Airlines Flight Number 11," "American Airlines Flight 77,"  
20 "N334AA," "N612UA," "N644AA," "N591UA," "Flight 175," "Flight 11," "Flight 77," "Flight  
21 93," "Identifying Aircraft Parts," "Factual Report Aviation," "Federal Aviation Administration,"  
22 "Pentbomb," "Ground Zero," "Freshkills Landfill," and "Fresh Kills Landfill."

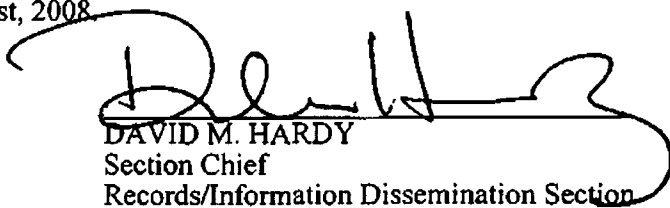
23 (24) Despite this extensive and detailed search effort, RIDS has been unable to locate  
24 any FBI records responsive to plaintiff's request. RIDS' search efforts included a verification by  
25 the case agent for the investigation. The case agent stated that since the identities of the four  
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1 hijacked aircraft have never been in question by the FBI, NTSB or FAA (evidence collected after  
2 September 11, 2001 has corroborated the fact that American Airlines Flight 11, United Airlines  
3 Flight 175, American Airlines Flight 77 and United Flight 93 were the aircraft hijacked), no  
4 records would have been generated responsive to plaintiff's request for documents.

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

7  
8 Executed this 8<sup>th</sup> day of August, 2008.

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10   
11 DAVID M. HARDY  
12 Section Chief  
13 Records/Information Dissemination Section  
14 Records Management Division  
15 Federal Bureau of Investigation  
16 Washington, D.C.

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