UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CHELSEA MANNING,

Plaintiff,

v. Case No.

UNITED STATES DEPARTMENT OF JUSTICE and the FEDERAL BUREAU OF INVESTIGATION,

Defendants.

COMPLAINT FOR REVIEW OF AGENCY ACTION PURSUANT TO THE FREEDOM OF INFORMATION ACT

Plaintiff Chelsea Manning, through undersigned counsel, brings this Complaint against the United States Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) for their categorical refusal to provide records under the Freedom Of Information Act (FOIA).

JURISDICTION

 This action seeks judicial review of Defendants' failure to comply with the requirements of FOIA by categorically denying Plaintiff's FOIA request.
 Therefore, this Court has jurisdiction over this action under 5 U.S.C. § 552.

VENUE

2. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

PARTIES

- 3. Plaintiff is currently incarcerated in the United States Disciplinary Barracks at Fort Leavenworth, Kansas.
- 4. Respondents are the United States Department of Justice and the FBI.

FACTUAL ALLEGATIONS

Background

- 5. In 2010, the United States Army charged Plaintiff, then known as Private First Class Bradley E. Manning, with various violations of the Uniform Code of Military Justice and the United States Code for disclosing classified and confidential information to the not-for-profit media organization, WikiLeaks.
- 6. On March 1, 2011, after a probable cause hearing, the Army referred Plaintiff's case to a general court-martial.
- 7. Plaintiff pled guilty to some of the charges in February 2013 and proceeded to trial on the remaining charges in June 2013.
- 8. At trial Plaintiff was acquitted of aiding the enemy, under UCMJ Art. 104, but convicted of charges related to espionage, theft, and computer fraud under the United States Code, as well as various other military-related offenses.
- 9. In August 2013, a military judge sentenced Plaintiff to 35 years of imprisonment and a dishonorable discharge from the Army. She is currently serving her sentence at the Fort Leavenworth Disciplinary Barracks in Fort Leavenworth, Kansas. Plaintiff's military appeal is pending.
- 10. Plaintiff has supporters world-wide who recognize that she acted for the public good to provide information of human rights abuses and other actions that had been secret.
- 11. Upon information and belief, the FBI investigated Plaintiff for the same conduct that formed the basis of the military's court-martial proceeding against her.

Plaintiff's FOIA Requests to the FBI

12. On February 20, 2014, Plaintiff wrote to the FBI under the FOIA requesting,

[] Documents, papers, reports, letters, memoranda, films, electronic data, photographs, audio and video recordings of or relating to investigation conduction by the Washington Field Office of the Federal Bureau of Investigation and the U.S. Attorney's Office of the Eastern District of Virginia into the alleged disclosures of classified and sensitive but unclassified information by Private First Class (PFC) Bradley E. Manning beginning in late 2010 and continuing until an unknown date, but as late as mid-2012.

[] Any other documents, papers, reports, letters, memoranda, films, electronic data, photographs, audio and video recordings of or relating to the investigation conducted by the Federal Bureau of Investigation and the U.S. Attorney's Office of the Eastern District of Virginia into alleged civilian co-conspirators of the disclosures of information by Manning.

In that request, Plaintiff indicated her willingness to pay fees associated with a burdensome search and requested expedited processing based on an "urgency to inform the public about an actual or alleged federal government activity" and a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 32 C.F.R. § 16.5(d)(1)(ii) and (d)(1)(iv).

13. On March 7, 2014, the FBI acknowledged Plaintiff's request, but stated that Plaintiff's "letter did not contain sufficient information to conduct an accurate search of the Central Records System." Consequently, Plaintiff submitted the requested information, by completing the FBI's form, to supplement her request on March 17, 2014.

- 14. On March 18, 2014, after filling out the FBI's form, Plaintiff further supplemented her request by providing additional personal information to the agency, including her full name, prior and current address, place of birth, and phone number. She also repeated the nature of the materials requested, their timeframe, and associated case number.
- 15. On March 21, 2014, the FBI acknowledged receipt of Plaintiff's request.
- 16. On April 3, 2014, the FBI denied Plaintiff's request for expedited processing, stating that she had "not provided enough information concerning the statutory requirements for expedition[.]" Regardless, the FBI concluded that "the topic of [Plaintiff's] request [was] not a matter 'in which there exist possible questions about the government's integrity which affect public confidence." (no citation for internal quotation provided).
- 17. On April 4, 2014, Plaintiff wrote to the Director of the Office of Information Policy and appealed the FBI's denial of her request to expedite.
- 18. On April 8, 2014, the FBI categorically denied Plaintiff's request for records, claiming that any records responsive to Plaintiff's request were exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A).

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.

The FBI went on to include a *Glomar* paragraph in its categorical denial, stating:

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). [Sic] This response is limited to those records that are subject 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 the excluded records do, or do not, exist.

- 19. On April 17, 2014, Plaintiff appealed the agency's denial of her request for records, including its *Glomar* provision, and its failure to substantively respond to her Privacy Act request.
- 20. On May 7, 2014, the DOJ, Office of Information Policy, acknowledged receipt of Plaintiff's appeal.
- 21. On August 7, 2014, the DOJ affirmed the FBI's categorical denial of Plaintiff's request for records and denied her appeal, relying on §552(a)(j)(2) of the Privacy Act and 5 U.S.C. § 552(b)(7)(A) of the FOIA. The Chief of the Administrative Appeals Staff for the DOJ's Office of Information Policy wrote, in relevant part:

After carefully considering your appeal, I am affirming the FBI's action on your request. In order to provide you with the greatest possible access to responsive records, your request was reviewed under both the Privacy Act of 1974 and the Freedom of Information Act. This Office has determined that the records responsive to your request are exempt from the access provision of the Privacy Act. *See* 5 U.S.C. § 552a(j)(2); *see also* 28 C.F.R. § 16.96 (2013). For this reason, I have reviewed your appeal under the FOIA.

The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that

provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly withheld this 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 proceedings.

(emphasis added).

- On January 5, 2015, Plaintiff sought the assistance of the Office of
 Government Information Services (OGIS) and asked the agency to "mediate
 and resolve the dispute between [Plaintiff] and the Attorney General regarding
 [Plaintiff's] Freedom of Information Act (FOIA) 5 U.S.C. § 552) [sic]
 request[.]"
- 23. The OGIS responded to Plaintiff's request for mediation by repeating the FBI's categorical and purported grounds for denial of Plaintiff's request and explained that

Exemption 7(A) is temporal in nature and not intended to "endlessly protect material simply because it is in an investigatory file," according the Department of Justice Guide to Freedom of Information Act. Courts have ruled that Exemption 7(A) remains applicable through long-term law enforcement investigations. It may be helpful to know that as part of the appeals process on cases such as yours, OIP confirms that Exemption 7(A) is still applicable to records sought at the time of the appeal.

- 24. As acknowledged by the DOJ in its letter responsive to Plaintiff's appeal,
 Plaintiff has exhausted her administrative remedies and is now permitted to
 "file a lawsuit in federal district court in accordance with 5 U.S.C. §
 552(a)(4)(B)."
- 25. Because the Army general court-martial and the FBI investigation arose from the same conduct, any attempt to prosecute Plaintiff in federal criminal court would violate Plaintiff's double jeopardy rights. *See United States v. Stoltz*,

720 F.3d 1127 (9th Cir. 2013) ("It is . . . well settled that a general or special court-martial conviction precludes a subsequent civilian criminal conviction for the same offense.") (citing *Grafton v. United States*, 206 U.S. 333, 345-48 (1907)). Without the ability to prosecute Plaintiff for the alleged conduct underlying their investigation, Defendants have no reasonable basis to withhold the requested records.

26. Nor will any privacy concerns be implicated by disclosing the records to Plaintiff because she is the subject of the FBI's investigation.

CAUSE OF ACTION

- A. Plaintiff repeats and re-alleges the foregoing allegations in this Complaint with the same force and effect as if hereinafter set forth at length.
- B. Plaintiff has made a lawful request for records and information from the FBI under the FOIA.
- C. The FBI has improperly failed to provide the records and information as provided by law, and instead claims categorical exemption under 5 U.S.C. § 552(b)(7)(A).
- D. Disclosing the requested records will not interfere with any enforcement proceedings that are pending or reasonably anticipated. Plaintiff has already been convicted at a court-martial for the underlying conduct investigated by the FBI.
- E. Plaintiff has exhausted her administrative remedies, and the Agency's decisions and actions are final.
- F. Plaintiff seeks judicial review of the FBI's wrongful and categorical failure to provide the records and information sought in her FOIA request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- 1) Order the FBI to provide the records and information improperly withheld from Plaintiff.
- 2) Award Plaintiff reasonable attorneys' fees and costs incurred in this action, as allowed under FOIA or by law.
- 3) Order any other relief this Court deems just and proper.

Respectfully Submitted,

FREEDMAN BOYD HOLLANDER GOLDBERG URIAS & WARD P.A

/s/ Nancy Hollander Nancy Hollander D.C. Bar No. TX0061 20 First Plaza, NW, Suite 700 Albuquerque, NM 87102 (505) 842-9960

Attorneys for Plaintiff

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CIVIL COVER SHEET

JS-44 (Rev. 7/13 DC)									
I. (a) PLAINTIFFS			DEFENDANTS						
CHELSEA MANNING			UNITED STATES DEPARTMENT OF JUSTICE and the FEDERAL BUREAU OF INVESTIGATION						
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Leavenw (EXCEPT IN U.S. PLAINTIFF CASES)			COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT(IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED						
` `	ME, ADDRESS, AND TELEPHONE NUMBER	•	ATTORNEYS	(IF KNOW	'N)				
Freedman Boyd Holl	llander Goldberg Urias & Ward	I, P.A.							
II. BASIS OF JURISDI (PLACE AN x IN ONE BO			CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR WIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!						
1 U.S. Government Plaintiff	3 Federal Question (U.S. Government Not a Party)	Citizen of		PTF O 1	O ₁	Incorp	orated or Principal Place iness in This State	PTF O 4	OFT 4
2 U.S. Government Defendant	4 Diversity (Indicate Citizenship of	Citizen of	Another State	O 2	O 2	Incorp	orated and Principal of Business in Another St	O 5	O 5
	Parties in item III)	Citizen or S Foreign Co	Subject of a ountry	O 3	O 3		n Nation	O 6	O 6
(Dlane on V.)	IV. CASE ASS in one category, A-N, that best rep						esponding Nature of	C.,;t)	
	_					a corre	_		
A. Antitrust	O B. Personal Injury/ Malpractice		C. Administrative Agency Review 151 Medicare Act Social Security 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) Other Statutes 891 Agricultural Acts 893 Environmental Matters 890 Other Statutory Actions (If Administrative Agency is Involved)			O D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*			
310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Medical Malpractice 365 Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Product Liability 368 Asbestos Product Liability		Social							
	(Other) OR) F. Pro	Se Gene	ral Civ	ril			
Real Property 210 Land Condemnation 220 Foreclosure 422 Appeal 27 USC 158 423 Withdrawal 28 USC 423 Withdrawal 28		SC 157 her s Conditions	Forfeiture/Penalty 625 Drug Related Seizure of Property 21 USC 881 690 Other Other Statutes		480 Consumer Credit 490 Cable/Satellite TV 850 Securities/Commodities/ Exchange 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes 890 Other Statutory Actions (if not administrative agency review or Privacy Act)				

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O G. Habeas Corpus/ 2255	O H. Employment Discrimination	O I. FOIA/Privacy Act	O J. Student Loan			
530 Habeas Corpus – General 510 Motion/Vacate Sentence 463 Habeas Corpus – Alien Detainee	442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)	895 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act)	152 Recovery of Defaulted Student Loan (excluding veterans)			
	(If pro se, select this deck)	*(If pro se, select this deck)*				
 ○ K. Labor/ERISA (non-employment) □ 710 Fair Labor Standards Act □ 720 Labor/Mgmt. Relations □ 740 Labor Railway Act □ 751 Family and Medical Leave Act □ 790 Other Labor Litigation □ 791 Empl. Ret. Inc. Security Act 	L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 440 Other Civil Rights 445 Americans w/Disabilities – Employment 446 Americans w/Disabilities – Other 448 Education	M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument Enforcement of Judgment 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholder's Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	O N. Three-Judge Court 441 Civil Rights – Voting (if Voting Rights Act)			
V. ORIGIN						
Original ○ 2 Removed ○ 3 Remanded from ○ 4 Reinstated or ○ 5 Transferred from ○ 6 Multi-district ○ 7 Appeal to Proceeding from State Appellate Court Reopened another district Litigation District Judge Court (specify) from Mag. Judge						
VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.) Plaintiff brings an action against the DOJ & FBI for their violations of the FOIA pursuant to 5 U.S.C. § 552						
	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND JUI	S Check Y YES [ES only if demanded in complaint NO X			
VIII. RELATED CASE(S) IF ANY	(See instruction) YES	NO X If yes, pl	lease complete related case form			
DATE: O.J. S. 2015 SIGNATURE OF ATTORNEY OF RECORD Well						

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed <u>only</u> if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the <u>primary</u> cause of action found in your complaint. You may select only <u>one</u> category. You <u>must</u> also select <u>one</u> corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

UNITED STATES DISTRICT COURT for the District of Columbia CHELSEA MANNING, Plaintiff(s) Civil Action No. 1:15-CV-01654 UNITED STATES DEPARTMENT OF JUSTICE and the FEDERAL BUREAU OF INVESTIGATION, Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) United States Department of Justice

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Freedman Boyd Hollander Goldberg Urias & Ward P.A. whose name and address are:

> Nancy Hollander 20 First Plaza, Suite 700 Albuquerque, NM 87102

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

	CLERK OF COURT
Date:	
	Signatura of Clark or Deputy Clark

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 1:15-CV-01654

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (1))

	This summons for (name	ne of individual and title, if any)				
was re	ceived by me on (date)					
	☐ I personally served	the summons on the individual a	t (place)			
	•		on (date)			
	☐ I left the summons at the individual's residence or usual place of abode with (name) a person of suitable age and discretion who resides there.					
	☐ I served the summons on (name of individual)					
	designated by law to	accept service of process on beha	lf of (name of organization)			
			on (date)			
	☐ I returned the summ	I returned the summons unexecuted because				
	☐ Other (specify):					
	My fees are \$	for travel and \$	for services, for a total of \$	0.00		
	I declare under penalty					
D-4						
Date:			Server's signature			
			Printed name and title			
			Server's address			

Additional information regarding attempted service, etc:

United States District Court

for the District of Columbia CHELSEA MANNING, Plaintiff(s) Civil Action No. 1:15-CV-01654 v. UNITED STATES DEPARTMENT OF JUSTICE and the FEDERAL BUREAU OF INVESTIGATION, Defendant(s) SUMMONS IN A CIVIL ACTION To: (Defendant's name and address) Federal Bureau of Investigation A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Freedman Boyd Hollander Goldberg Urias & Ward P.A. Nancy Hollander 20 First Plaza, Suite 700 Albuquerque, NM 87102 If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 1:15-CV-01654

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (1))

was re	This summons for (nanceived by me on (date)	ne of individual and title, if any)					
wasie	•	the summons on the individual at	t (place)				
	•				***		
	☐ I left the summons at the individual's residence or usual place of abode with (name) , a person of suitable age and discretion who resides						
	on (date)						
	I served the summons on (name of individual) designated by law to accept service of process on behalf of (name of organization)						
			on (date)	; or			
	☐ I returned the sum	mons unexecuted because			; or		
	☐ Other (specify):						
	My fees are \$	for travel and \$	for services, for a total of \$	0.0	<u>0</u> .		
	I declare under penalt	y of perjury that this information i	s true.				
Date:							
Dute.			Server's signature				
			Printed name and title	***************************************			
			Server's address				

Additional information regarding attempted service, etc: