

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

STAR NEWS DIGITAL MEDIA, INC.,
MICHAEL PATRICK LEAHY,
and MATTHEW D. KITTLE,

Plaintiffs,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

VERIFIED COMPLAINT

Plaintiffs allege the following as their verified complaint against Defendant Federal Bureau of Investigation (FBI):

INTRODUCTION

1. On March 27, 2023, a shooter entered The Covenant School in Nashville and tragically killed three nine-year-old students and three adults—an administrator, a substitute teacher, and a custodian. Law enforcement officers bravely entered the building and killed the shooter, later identified as 28-year-old Audrey Hale. To this day, Hale’s motives remain unknown to the public.

2. During a press conference that same day, Metropolitan Nashville Police Chief John Drake did not give a specific motive for the attack, but said “we have a manifesto, we have some writings that we’re going over that pertain to this date, the

actual incident.” See Jonathan Mattise, *Nashville shooter who drew maps, surveilled school*, Associated Press, March 27, 2023, <https://archive.ph/RhFoo>.

3. Despite law enforcement’s identification of the manifesto, it was not released to the public. Two days later, on March 29, The New York Post reported that the manifesto was in possession of the FBI’s Behavioral Analysis Unit. See Stephanie Pagonis, *Nashville shooter Audrey Hale’s manifesto to be released after FBI review: official*, The New York Post, March 29, 2023, <https://archive.ph/pTrlt>.

4. Days went by, and despite repeated promises by public officials that the manifesto would be released, it never was.

5. Plaintiffs—a news organization, its editor-in-chief, and reporter—requested the manifesto from FBI under the Freedom of Information Act (FOIA) on April 20, 2023. FBI denied the request, claiming that releasing the manifesto “could reasonably be expected to interfere with enforcement proceedings.” Plaintiffs then appealed to the Department of Justice Office of Information Policy, which affirmed FBI’s denial and paved the way for this lawsuit.

6. Hale is dead and no threat remains to the public related to the events of March 27. There is no criminal prosecution, investigation, or anything resembling an “enforcement proceeding.” FBI is apparently attempting to interpret the manifesto, but at this point, interpreting or reviewing the manifesto is an academic exercise and certainly not an enforcement proceeding. In short, there is simply no reason why FBI cannot release the manifesto. In fact, in the most recent mass shootings involving FBI, manifestos were released to the press sometimes within hours of the attack.

7. It has been long enough, and the public has an urgent right to know why this tragedy happened, how future events may be prevented, and what policies should be in place to address this and other similar tragedies. FBI has no right to retain a monopoly on this information.

PARTIES

8. Plaintiff Star News Digital Media, Inc. is a media and news company that owns and operates The Star News Network family of digital newspapers and Star News Radio. The company's headquarters are in Nashville, Tennessee.

9. Plaintiff Michael Patrick Leahy is the CEO, Editor-in-Chief, and majority owner of Star News Digital Media, Inc., which owns and operates a family of state-focused conservative news sites, including The Tennessee Star, The Ohio Star, The Michigan Star, The Minnesota Sun, The Virginia Star, The Georgia Star News, The Arizona Sun Times, The Florida Capital Star, The Wisconsin Daily Star, The Pennsylvania Daily Star, The Connecticut Star, and The Star News Network. He is also the host of The Tennessee Star Report with Michael Patrick Leahy. Leahy is a resident of Thompsons Station, Tennessee.

10. Plaintiff Matthew D. Kittle is an award-winning investigative reporter and 30-year veteran of print, broadcast, and online journalism. Kittle is The Star News Network's National Political Editor. He has written for The Tennessee Star about matters related to the March 27 shooting in Nashville and plans to report on the motivations of the shooting and the FBI's response and delay in releasing the manifesto. Kittle is a resident of West Des Moines, Iowa.

11. Defendant FBI is an agency of the United States within the Department of Justice.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this complaint under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Plaintiffs seek an injunction to prevent FBI from withholding agency records and to order the production of agency records improperly withheld from Plaintiffs. Plaintiffs have exhausted administrative remedies through an administrative appeal to the Department of Justice Office of Information Policy, which affirmed FBI's denial of Plaintiffs' request.

13. Venue is appropriate in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1). Plaintiff Leahy resides in this district and his principal place of business is in this district. Plaintiff Star News also resides in this district, with its headquarters in Nashville. Plaintiff Kittle is an independent journalist with Star News. Upon information and belief, the original version of the records at issue are situated in this district, as well as copies of those records. A substantial part of the events or omissions giving rise to the claims in this complaint occurred in this district.

FACTS

14. On April 20, 2023, Plaintiffs requested a copy of the manifesto from the FBI under FOIA.¹ The request was as follows: "This is a request under the Freedom of Information Act. I am requesting a copy of the following document: Audrey Hale

¹ While the original request identified Star News and Kittle as the requesters, a later clarification and the appeal confirm that the request was on behalf of all three Plaintiffs.

Manifesto related to the Nashville Covenant School Shooting on March 27, 2023. The record came into FBI's possession on or about that date. Media reports indicate that the report is in the possession of the FBI, specifically the Behavioral Analysis Unit. The purpose of my request is not for commercial use, but as a member of the news media. I am a reporter employed by Star News Digital Media, Inc. I have been reporting on the events related to the shooting for The Tennessee Star. The Manifesto is alleged to reveal the motivations of Audrey Hale. These motivations are not only relevant to my reporting, but important for public safety and therefore of intense national media interest. The release of these documents could not possibly interfere with any pending law enforcement proceedings, especially since the killer is deceased and the threat to the public has abated. I am willing to pay the fees related to obtaining this document." At that time, Plaintiffs requested expedited processing. A true and accurate copy of this request is attached as **Exhibit 1**.

15. On April 24, 2023, FBI denied the request to expedite, stating that Plaintiffs had "not provided enough information concerning the statutory requirements permitting expedition." A true and accurate copy of this decision is attached as **Exhibit 2**.

16. Later that same day, Plaintiffs sent a clarifying request to FBI. First, the request explained: "I am requesting a copy of the following records: the notes, journal entries, plans, letters, writings, or other documents making up what law enforcement officials have labeled as Audrey Hale's 'manifesto' related to the Nashville Covenant School Shooting on March 27, 2023." For the purposes of this

complaint, Plaintiffs' request for the "manifesto" includes all the items referenced in this clarification letter. Second, Plaintiffs added facts proving that Star News satisfied the criteria to expedite FOIA requests found at 28 C.F.R. § 16.5(e)(1)(ii) & (iv), and also sent a copy of this request to the Department of Justice Office of Public Affairs, as also required by those regulations. A true and accurate copy of this clarifying request is attached as **Exhibit 3**.

17. On April 25, 2023, FBI denied the request. FBI's response gave the following reason: "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." FBI further stated, "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 could reasonably be expected to interfere with enforcement proceedings. Therefore, your request is being administratively closed." A true and accurate copy of FBI's denial is attached as **Exhibit 4**.

18. That same day, April 25, Plaintiffs filed an administrative appeal with the Department of Justice Office of Information Policy. In this appeal, Plaintiffs argued that FBI had no basis to withhold the manifesto under 5 U.S.C. § 552(b)(7)(A) because production of the manifesto would not "reasonably be expected to interfere with enforcement proceedings." A true and accurate copy of Plaintiffs' administrative appeal is attached as **Exhibit 5**.

19. On May 5, 2023, the Department of Justice Office of Information Policy denied Plaintiffs' appeal, stating that releasing the manifesto is "reasonably foreseeable" to "harm the interests protected by [5 U.S.C. § 552(b)(7)(A)]." The letter further provided that "FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B)." A true and accurate copy of this decision by the Department of Justice Office of Information Policy is attached as **Exhibit 6**.

20. Despite FBI's claim that release of the manifesto could "interfere with enforcement proceedings," the Metro Nashville Police Department (MNPD), which is also in possession of the manifesto, has not made such a claim. On or about April 27, 2023, MNPD's Public Information Office was quoted by Fox News as saying, "The investigation has advanced to the point that the writings from the Covenant shooter are being reviewed for public release. That process is underway and will take a little while." See Michael Ruiz, *Nashville police to release manifesto in Christian school shooting massacre*, Fox News, April 27, 2023, <https://archive.ph/o8eDD>. In other words, on April 27, MNPD did not claim it could not release the manifesto because it would interfere with an enforcement proceeding. Just the opposite, MNPD said that the manifesto was being prepared for release.

21. Then again, on May 3, MNPD backtracked and said it would not release the manifesto but did not cite any interference with "enforcement proceedings." Instead, MNPD announced on Twitter, "Covenant investigation update: Due to pending litigation filed this week, the Metropolitan Nashville Police Department has been advised by counsel to hold in abeyance the release of records related to the

shooting at The Covenant School pending orders or direction of the court.” Twitter, @MNPDNashville, May 3, 2023, <https://archive.ph/a0IKk>. MNPD was referring to a pending lawsuit filed in state court. *See Hammond v. Metro. Gov’t of Nashville & Davidson Cnty.*, No. 23-542-III (Nashville Ch. Ct., May 1, 2023).

22. In addition to FBI’s claim of “enforcement proceedings” being contradicted by MNPD, FBI’s position contradicts its recent practice in mass shootings where the perpetrator has died.

23. On October 24, 2022, Orlando Harris killed two and injured seven people in St. Louis. FBI investigated the incident with other law enforcement authorities. The very next day, October 25, CNN obtained a copy of and reported on the details of his manifesto. *See Holly Yan, “St. Louis school shooter had an AR-15-style rifle, 600 rounds of ammo and a note saying ‘I don’t have any friends. I don’t have any family,’ police say,” CNN.com, Oct. 25, 2022, <https://archive.ph/DDdqw>.*

24. On November 22, 2022, Andre Marcus Bing killed seven people and injured four at a Walmart Supercenter in Chesapeake, Virginia. FBI investigated the incident with other law enforcement authorities. Within three days, the New York Times obtained the killer’s manifesto. *See J. David Goodman, “Walmart Gunman Bought Pistol Hours Before Killing and Left a ‘Death Note,’” New York Times, Nov. 25, 2022, <https://archive.ph/MmfAx>.*

25. On February 13, 2023, Anthony Dwayne McRae killed five and injured three on the campus of Michigan State University. FBI and Michigan law enforcement authorities jointly investigated the incident. Approximately three weeks

after the shooting, the Detroit News received a two-page handwritten manifesto describing his motives through a FOIA request. *See* Kim Kozlowski, “Note written by MSU shooter asked ‘why,’ outlined other targets,” The Detroit News, March 10, 2023, <https://archive.ph/ObMd6>.

26. FBI itself is proud of its history of releasing manifestos. In 1995, FBI famously released Ted Kaczynski’s manifesto to The Washington Post, The New York Times, and Penthouse magazine. FBI brags about this history on its website. *See* FBI, Unabomber Bomb Shrapnel, <https://www.fbi.gov/history/artifacts/unabomber-bomb-shrapnel>.

27. One could speculate as to why FBI has released so many other manifestos, but not this one. But such speculation is unnecessary for the purposes of this lawsuit. The simple fact is that FBI has not justified its refusal to release this manifesto under FOIA; there is no reasonable chance release would interfere with an “enforcement proceeding” under FOIA’s exception.

CAUSE OF ACTION: VIOLATION OF 5 U.S.C. § 552

28. Plaintiffs reallege and incorporate here all the preceding allegations.

29. “Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business.” *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1975).

30. FOIA requires federal agencies to provide access to all “records promptly available to any person,” subject to certain exceptions. 5 U.S.C. § 552(a)(3)(A).

31. “The burden of proof is on the agency to sustain its action” in response to a FOIA request. 5 U.S.C. § 552(a)(4)(B).

32. FOIA authorizes a court “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

33. FOIA “represents a balance struck by Congress between the public's right to know and the government's legitimate interest in keeping certain information confidential.” *Ctr. for Nat'l Sec. Studies v. U.S. Dep't of Justice*, 331 F.3d 918, 925 (D.C. Cir. 2003). Under FOIA, federal agencies must release records to the public upon request, unless one of nine statutory exemptions apply. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 136 (1975); 5 U.S.C. § 552(b). To prevail in a FOIA case, a plaintiff must show that an agency has improperly withheld agency records. *See Odland v. FERC*, 34 F.Supp.3d 1, 13 (D.D.C. 2014). The defending agency must demonstrate that its search for responsive records was adequate, that any invoked exemptions actually apply, and that any reasonably segregable non-exempt information has been disclosed after redaction of exempt information. *See id.*

34. Plaintiffs properly requested records that are within FBI's custody and control.

35. FBI is an agency subject to FOIA, and therefore must release in response to a FOIA request any non-exempt records and provide a valid and lawful reason for withholding any materials.

36. FBI improperly denied Plaintiffs' request, citing 5 U.S.C. § 552(7)(A). This exception provides that law enforcement records may be withheld if they "could reasonably be expected to interfere with enforcement proceedings."

37. "It is well recognized that, pursuant to this exemption, an agency may withhold documents stemming from an ongoing criminal investigation if disclosure would harm or interfere with a subsequent enforcement proceeding." *Manna v. USDOJ*, 815 F. Supp. 798, 805 (D.N.J. 1993), *aff'd*, 51 F.3d 1158 (3d Cir. 1995). The purpose of Exemption 7(A) is to protect FBI from being "hindered in their investigations or placed at a disadvantage when it came time to present their case." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978). Foremost among the purposes of this exemption was to prevent "harm [to] the Government's case in court." *Id.* This exemption does not "endlessly protect material simply because it was in an investigatory file." *Id.* at 230.

38. None of these factors apply here. Under the language of the statute, there are no "enforcement proceedings" contemplated. The shooter is dead. No crime is being investigated that would lead to a criminal prosecution. Therefore, disclosure would not "harm the Government's case in court." *Id.* at 224. But even if one interpreted "enforcement proceedings" to include FBI's evaluation of a manifesto after the death of the assailant, it is hard to understand how allowing the public to

see the manifesto would “interfere” with that investigation. Whatever “interference” exists must be supported by the FBI with evidence. FBI has identified no legitimate reason why the public should be prohibited from seeing the manifesto. And FBI’s own recent history, as well as public statements by MNP, demonstrate why there is no legitimate basis to withhold a manifesto from a deceased assailant.

39. Plaintiffs exhausted administrative remedies by appealing FBI’s decision to the Department of Justice Office of Information Policy, which was denied on May 5, 2023.

40. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief, including an order from this Court to enjoin FBI from withholding the manifesto and to order its production.

REQUEST FOR RELIEF

Plaintiffs therefore requests the following relief:

A. An order enjoining FBI from withholding the manifesto and ordering its production, including a preliminary and permanent injunction;

B. A declaration that FBI violated FOIA by denying Plaintiffs’ requests for the manifesto;

C. An order retaining jurisdiction to ensure that FBI’s release of the manifesto to Plaintiffs does not improperly withhold portions and FBI otherwise complies with FOIA in this matter;

D. An award to Plaintiffs of costs and reasonable attorneys’ fees pursuant to 5 U.S.C. § 552(a)(4)(E) and/or as otherwise provided by law considering the FBI’s

lack of good faith in refusing to comply with the statutory requirements and thereby requiring Plaintiffs to expend resources in this matter, and

E. Any and all other additional relief that the Court deems just, equitable, and proper.

Dated: May 9, 2023

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

s/ Daniel P. Lennington

Richard M. Esenberg (*pro hac vice forthcoming*)

Lucas T. Vebber (*pro hac vice forthcoming*)

Daniel P. Lennington (*pro hac vice forthcoming*)

330 East Kilbourn Avenue, Suite 725

Milwaukee, WI 53202

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MCCLANAHAN & WINSTON, PC

/s/ Matthew J. McClanahan

Matthew J. McClanahan (BPR #036867)

PO Box 51907

Knoxville, Tennessee 37950

Telephone: (865) 347-3921

Fax: (865) 444-0786

Email: matt@tennadvocate.com

Attorneys for Plaintiffs

VERIFICATION

1. I am a plaintiff in this case.
2. I have personal knowledge of myself, my activities, my intentions, and those of Star News Digital Media, Inc., including those set out in the foregoing Verified Complaint. If called upon to testify, I would competently testify as to the matters relevant to me, my claims, and those of Star News Digital Media, Inc.
3. I verify under the penalty of perjury under the laws of the United States that the factual statements in this Verified Complaint concerning myself, my activities, my intentions, my claims, and those of Star News Digital Media, Inc., are true and correct.

Dated:

Signature

Printed Name:

Michael Patrick Leahy *May 8, 2023*
Michael Patrick Leahy

VERIFICATION

1. I am a plaintiff in this case.
2. I have personal knowledge of myself, my activities, my intentions, and those of Star News Digital Media, Inc., including those set out in the foregoing Verified Complaint. If called upon to testify, I would competently testify as to the matters relevant to me, my claims, and those of Star News Digital Media, Inc.
3. I verify under the penalty of perjury under the laws of the United States that the factual statements in this Verified Complaint concerning myself, my activities, my intentions, my claims, and those of Star News Digital Media, Inc., are true and correct.

Dated: 5/16/23 Signature Matthew D. Kittle

Printed Name: Matthew D. Kittle

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

Subject: eFOIA Request Received

Date: 2023-04-20 13:01

From: efoia@subscriptions.fbi.gov

To: mkittle@thestarnewsnetwork.com

ORGANIZATION REPRESENTATIVE INFORMATION

Organization Name Prefix First Name Middle Name Last Name Suffix Email Phone Location

DOMESTIC ADDRESS

Address Line 1 Address Line 2 City State Postal

AGREEMENT TO PAY

How you will pay

I am requesting a fee waiver for my request and have reviewed the FOIA reference guide. If my fee waiver is denied, I am willing to pay additional fees and will enter that maximum amount in the box below.

Allow up to \$

PROOF OF AFFILIATION FOR FEE WAIVER

Waiver Explanation

I am a member of the news media reporting on a matter of utmost importance to my readers and the general public.

Documentation Files

NON-INDIVIDUAL FOIA REQUEST

Request Information

Dear FOIA Officer:

This is a request under the Freedom of Information Act.

I am requesting a copy of the following document: Audrey Hale's Manifesto related to the Nashville Covenant School Shooting on March 27, 2023. The record came into FBI's possession on or about that date. Media reports indicate that the report is in the possession of the FBI, specifically the Behavioral Analysis Unit.

The purpose of my request is not for commercial use, but as a member of the news media. I am a reporter employed by Star News Digital Media, Inc. I have been reporting on the events related to the shooting for The Tennessee Star.

The Manifesto is alleged to reveal the motivations of Audrey Hale. These motivations are not only relevant to my reporting, but important for public safety and therefore of intense national media interest. The release of these documents could not possibly interfere with any pending law enforcement proceedings, especially since the killer is deceased and the threat to the public has abated.

I am willing to pay the fees related to obtaining this document.

M.D. Kittle
National Political Editor
Star News Network
C - 608-445-0970
mkittle@thestarnewsnetwork.com

EXPEDITE

Expedite Reason

This is a matter of utmost important to our readers and the general public. It has been several weeks since the documents requested came into the possession of the FBI, raising questions and speculation in the public mind.

**

Please be advised that efoia@subscriptions.fbi.gov is a no-reply email address. Questions regarding your FOIA request may be directed to foipaquestions@fbi.gov. If you have received a FOIPA request number, please include this in all correspondence concerning your request. Please note eFOIPA requests are processed in the order that they are received. If you have not received a FOIPA request number, your request is in the process of being opened at which time it will be assigned a FOIPA request number and correspondence will be forthcoming. **

Upon receipt of your FOIPA request number, you may check the status of your FOIPA request on the FBI's electronic FOIA Library (The Vault) on the FBI's public website, <http://vault.fbi.gov> by clicking on the "Check Status of Your FOI/PA Request" tool link. Status updates are performed on a weekly basis. If you receive a comment that your FOIPA request number was not located in the database, please check back at a later date.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

April 24, 2023

MR. MATT D. KITTLE
THE TENNESSEE STAR/STAR NEWS NETWORK
STAR NEWS DIGITAL MEDIA INCORPORATED
95 WHITE BRIDGE ROAD
NASHVILLE , TN 37205

FOIPA Request No.: 1590230-000
Subject: The Nashville Covenant School Shooting
(Audrey Hale's Manifesto)

Dear Mr. Kittle:

This is in reference to your letter to the FBI, in which you requested expedited processing for the above-referenced Freedom of Information/Privacy Acts (FOIPA) request. Under Department of Justice (DOJ) standards for expedited processing, it can only be granted in the following situations:

28 C.F.R. §16.5 (e)(1)(i): "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."

28 C.F.R. §16.5 (e)(1)(ii): "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."

28 C.F.R. §16.5 (e)(1)(iii): "The loss of substantial due process of rights."

28 C.F.R. §16.5 (e)(1)(iv): "A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affects public confidence."

You have not provided enough information concerning the statutory requirements permitting expedition; therefore, your request is denied.

Additional information about the FOIPA can be found at www.fbi.gov/foia. Should you have questions regarding your request, please feel free to contact foipaquestions@fbi.gov. Please reference the FOIPA Request number listed above in all correspondence concerning your request.

If you are not satisfied with the Federal Bureau of Investigation's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by emailing the FBI's FOIA Public Liaison at foipaquestions@fbi.gov. The subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified. You may also contact the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, 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,

A handwritten signature in black ink that reads "Joseph E. Bender, Jr." in a cursive style.

Joseph E. Bender, Jr.
Acting Section Chief
Record/Information Dissemination Section
Information Management Division

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

Subject: eFOIA Request Received

Date: 2023-04-24 23:59

From: efoia@subscriptions.fbi.gov

To: mkittle@thestarnewsnetwork.com

INDIVIDUAL INFORMATION

Prefix First Name Middle Name Last Name Suffix Email Phone Location

DOMESTIC ADDRESS

Address Line 1 Address Line 2 City State Postal

AGREEMENT TO PAY

How you will pay

I am requesting a fee waiver for my request and have reviewed the FOIA reference guide. If my fee waiver is denied, I am willing to pay additional fees and will enter that maximum amount in the box below.

Allow up to \$

PROOF OF AFFILIATION FOR FEE WAIVER

Waiver Explanation

The purpose of my request is not for commercial use, but for use in reporting on news events of urgent interest to the public.

Documentation Files

NON-INDIVIDUAL FOIA REQUEST

Request Information

This is an updated request following rejection of my original expedited FOIA request, sent Thursday, April 20.

This is a request under the Freedom of Information Act. I am requesting a copy of the following records: the notes, journal entries, plans, letters, writings, or other documents making up what law enforcement officials have labeled as Audrey Hale's "manifesto" related to the Nashville Covenant School Shooting on March 27, 2023. During a press conference on that same day, Metropolitan Nashville Police Chief John Drake labeled these documents as a "manifesto," stating "we have a manifesto." On or about that same day, Nashville Police provided the FBI a copy of those documents for review, including review by the Behavioral Analysis Unit. For the purposes of this request, I will refer to this document or these groups of documents as the "manifesto."

The purpose of my request is not for commercial use, but for use in reporting on news events. Star News Digital Media, Inc. owns and operates The Star News Network, a family of news websites, including The Tennessee Star. Michael Patrick Leahy is CEO, Editor-in-Chief and reporter. Matt Kittle is the National Political Director and also a reporter.

We are requesting expedited processing under two criteria.

First, we are requesting expedited processing under 28 CFR 16.5(e)(1)(ii).

Under this criteria, there is “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.” Here, the federal government activity is FBI’s response to the Nashville Covenant Shooting. The public has an urgent right to know about the FBI’s response to the incident, the FBI’s handling of the manifesto, and the motivation of the shooter herself. We are “primarily engaged in disseminating information” as full-time reporters. Star News has reported on matters related to the Nashville Covenant School Shooting and plans to do so in the future.

Second, we are requesting expedited processing under 28 CFR 16.5(e)(1)(iv). Under this criteria, this is a “matter of widespread and exceptional media interest in which there exists possible questions about the government” integrity which affects public confidence.” There is no doubt that this shooting is of “widespread and exceptional medial interest.” National media outlets have covered this incident for weeks. Moreover, as reporters, we have a duty to report on the FBI’s integrity. We plan to report on the FBI’s delay in releasing this manifesto when, in many other recent circumstances, similar manifestos have been released.

For these two independently sufficient reasons, therefore, we request expedited processing of our request. We will pay fees associated with the release of these records, including reasonable copying costs.

Sincerely,
Michael Patrick Leahy
Matt Kittle
Star News Digital Media, Inc.
95 White Bridge Road, Ste 207,
Nashville, TN 37205

EXPEDITE

Expedite Reason

As a news outlet, we are reporting on a matter of urgent public interest. The immediate release of the information requested is necessary to the public's understanding of a troubling incident and for our overall coverage of federal law enforcement's conduct.

**

Please be advised that efoia@subscriptions.fbi.gov is a no-reply email address. Questions regarding your FOIA request may be directed to foipaquestions@fbi.gov. If you have received a FOIPA request number, please include this in all correspondence concerning your request.

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U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

April 25, 2023

MR. MATT D. KITTLE
THE TENNESSEE STAR/STAR NEWS NETWORK
STAR NEWS DIGITAL MEDIA INCORPORATED
95 WHITE BRIDGE ROAD
NASHVILLE , TN 37205

FOIPA Request No.: 1590230-000
Subject: The Nashville Covenant School Shooting
(Audrey Hale's Manifesto)

Dear Mr. Kittle:

This responds to your Freedom of Information/Privacy Acts (FOIPA) request. Please see the paragraphs below for relevant information specific to your request as well as the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

The FBI has completed its search for records subject to the FOIPA that are responsive to your 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 could reasonably be expected to interfere with enforcement proceedings. Therefore, your request is being administratively closed. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. **"Part 1"** of the Addendum includes standard responses that apply to all requests. **"Part 2"** includes additional standard responses that apply to all requests for records about yourself or any third party individuals. **"Part 3"** includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

Additional information about the FOIPA can be found at www.fbi.gov/foia. Should you have questions regarding your request, please feel free to contact foipaquestions@fbi.gov. Please reference the FOIPA Request number listed above in all correspondence concerning your request.

If you are not satisfied with the Federal Bureau of Investigation's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by emailing the FBI's FOIA Public Liaison at foipaquestions@fbi.gov. The subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified. You may also contact the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, 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,

A handwritten signature in black ink that reads "Joseph E. Bender, Jr." in a cursive style.

Joseph E. Bender, Jr.
Acting Section Chief
Record/Information Dissemination Section
Information Management Division

Enclosures

FBI FOIPA Addendum

As referenced in our letter responding to your Freedom of Information/Privacy Acts (FOIPA) request, the FBI FOIPA Addendum provides information applicable to your request. Part 1 of the Addendum includes standard responses that apply to all requests. Part 2 includes standard responses that apply to requests for records about individuals to the extent your request seeks the listed information. Part 3 includes general information about FBI records, searches, and programs.

Part 1: The standard responses below apply to all requests:

- (i) **5 U.S.C. § 552(c).** Congress excluded three categories of law enforcement and national security records from the requirements of the FOIPA [5 U.S.C. § 552(c)]. FBI responses are limited to those records subject to the requirements of the FOIPA. Additional information about the FBI and the FOIPA can be found on the www.fbi.gov/foia website.
- (ii) **Intelligence Records.** To the extent your request seeks records of intelligence sources, methods, or activities, the FBI can neither confirm nor deny the existence of records pursuant to FOIA exemptions (b)(1), (b)(3), and as applicable to requests for records about individuals, PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(1), (b)(3), and (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records is itself a classified fact protected by FOIA exemption (b)(1) and/or would reveal intelligence sources, methods, or activities protected by exemption (b)(3) [50 USC § 3024(i)(1)]. This is a standard response and should not be read to indicate that any such records do or do not exist.

Part 2: The standard responses below apply to all requests for records on individuals:

- (i) **Requests for Records about any Individual—Watch Lists.** The FBI can neither confirm nor deny the existence of any individual's name on a watch list pursuant to FOIA exemption (b)(7)(E) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (j)(2)]. This is a standard response and should not be read to indicate that watch list records do or do not exist.
- (ii) **Requests for Records about any Individual—Witness Security Program Records.** The FBI can neither confirm nor deny the existence of records which could identify any participant in the Witness Security Program pursuant to FOIA exemption (b)(3) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(3), 18 U.S.C. 3521, and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.
- (iii) **Requests for Confidential Informant Records.** The FBI can neither confirm nor deny the existence of confidential informant records pursuant to FOIA exemptions (b)(7)(D), (b)(7)(E), and (b)(7)(F) [5 U.S.C. § 552 (b)(7)(D), (b)(7)(E), and (b)(7)(F)] and Privacy Act exemption (j)(2) [5 U.S.C. § 552a (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records would reveal confidential informant identities and information, expose law enforcement techniques, and endanger the life or physical safety of individuals. This is a standard response and should not be read to indicate that such records do or do not exist.

Part 3: General Information:

- (i) **Record Searches and Standard Search Policy.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching systems, such as the Central Records System (CRS), or locations where responsive records would reasonably be found. The CRS is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled by the FBI per its law enforcement, intelligence, and administrative functions. The CRS spans the entire FBI organization, comprising records of FBI Headquarters, FBI Field Offices, and FBI Legal Attaché Offices (Legats) worldwide; Electronic Surveillance (ELSUR) records are included in the CRS. The standard search policy is a search for main entity records in the CRS. Unless specifically requested, a standard search does not include a search for reference entity records, administrative records of previous FOIPA requests, or civil litigation files.
 - a. *Main Entity Records* – created for individuals or non-individuals who are the subjects or the focus of an investigation
 - b. *Reference Entity Records*- created for individuals or non-individuals who are associated with a case but are not known subjects or the focus of an investigation
- (ii) **FBI Records.** Founded in 1908, the FBI carries out a dual law enforcement and national security mission. As part of this dual mission, the FBI creates and maintains records on various subjects; however, the FBI does not maintain records on every person, subject, or entity.
- (iii) **Foreseeable Harm Standard.** As amended in 2016, the Freedom of Information Act provides that a federal agency may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates, or (2) disclosure is prohibited by law (5 United States Code, Section 552(a)(8)(A)(i)). The FBI considers this foreseeable harm standard in the processing of its requests.
- (iv) **Requests for Criminal History Records or Rap Sheets.** The Criminal Justice Information Services (CJIS) Division provides Identity History Summary Checks – often referred to as a criminal history record or rap sheet. These criminal history records are not the same as material in an investigative “FBI file.” An Identity History Summary Check is a listing of information taken from fingerprint cards and documents submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. For a fee, individuals can request a copy of their Identity History Summary Check. Forms and directions can be accessed at www.fbi.gov/about-us/cjis/identity-history-summary-checks. Additionally, requests can be submitted electronically at www.edo.cjis.gov. For additional information, please contact CJIS directly at (304) 625-5590.

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.

Appeal Information

Received Date 04/25/2023 Agency OIP
Document Delivery Method Email

Request Information^{expand_more}

Request Number 1590230-000
Component FBI
Subject of Request The notes, journal entries, plans, letters, writings, or other documents making up what law enforcement officials have labeled as Audrey Hale's 'manifesto' related to the Nashville Covenant School Shooting on March 27, 2023.

Basis for Appeal^{expand_more}

Description Freedom of Information Act Appeal of Appeal

Star News Digital Media, Inc., Michael Patrick Leahy, and Matt Kittle (collectively "Star News") hereby appeal the Federal Bureau of Investigation's (FBI) denial of its expedited public-records request dated April 20, 2023, as clarified on April 24, 2023 (FOIPA Request No.: 1590230-000). FBI denied this expedited request on April 25, 2023.

Star News requests expedited processing of this appeal for all the reasons stated in the April 24, 2023, clarification request.

BACKGROUND

1. On March 27, 2023, a former student shot through the doors of The Covenant School in Nashville and tragically killed three nine-year-old students and three adults--an administrator, a substitute teacher, and a custodian. According to news reports, the shooter elaborately planned the massacre with surveillance and a detailed map.
2. Yet the killer's motives remain unknown to the public. Law enforcement officers bravely entered the building and immediately confronted the shooter. Later identified as Audrey Hale, the 28-year-old female shooter was shot and killed by responding officers.
3. During a press conference that same day, Metropolitan Nashville Police Chief John Drake did not give a specific motive for the attack, but said "we

have a manifesto, we have some writings that we're going over that pertain to this date, the actual incident." See Jonathan Mattise, "Nashville shooter who drew maps, surveilled school," Associated Press, March 27, 2023, <https://archive.ph/RhFoo>. (For purposes of this appeal, the term "manifesto" will refer to journal entries, notes, plans, or other writings explaining Audrey Hale's motivations for the March 27 attack.)

4. Despite law enforcement's identification of the manifesto, it was not released to the public. Two days later, on March 29, The New York Post reported that the manifesto was in possession of the FBI's Behavioral Analysis Unit.

5. Days went by, and despite repeated promises by public officials that the manifesto would be released, it never was. The shooter is dead and no threat remains to the public related to the events of March 27. There is no criminal prosecution, investigation, or other legal proceeding. FBI is apparently attempting to interpret the manifesto, but at this point, interpreting or reviewing the manifesto is an academic exercise. In short, there is simply no reason why FBI cannot release the manifesto. In fact, in the most recent mass shootings involving FBI, manifestos were released to the press sometimes within hours of the attack. It has been long enough, and the public has an urgent right to know why this tragedy happened, how future events may be prevented, and what policies should be in place to address this and other similar tragedies. The FBI has no right to retain a monopoly on this information.

RECORDS REQUEST

6. Star News Digital Media, Inc. is a media and news company that owns and operates The Star News Network family of digital newspapers and Star News Radio. The company's headquarters are in Nashville, Tennessee.

7. Michael Patrick Leahy is the CEO, Editor-in-Chief, and majority owner of Star News Digital Media, Inc., which owns and operates a family of state-focused conservative news sites, including The Tennessee Star, The Ohio Star, The Michigan Star, The Minnesota Sun, The Virginia Star, The Georgia Star News, The Arizona Sun Times, The Florida Capital Star, The Wisconsin Daily Star, The Pennsylvania Daily Star, The Connecticut Star, and The Star News Network. He is also the host of The Tennessee Star Report with Michael Patrick Leahy.

8. Matt Kittle is an award-winning investigative reporter and 30-year veteran of print, broadcast, and online journalism. Kittle is The Star News Network's National Political Editor and a reporter. He has written for The Tennessee Star about matters related to the March 27 shooting in Nashville

and plans to report on the motivations of the shooting and the FBI's response and delay in releasing the manifesto.

9. On April 20, 2023, Star News requested a copy of the manifesto from the FBI. The request read as follows: "This is a request under the Freedom of Information Act. I am requesting a copy of the following document: Audrey Hale Manifesto related to the Nashville Covenant School Shooting on March 27, 2023. The record came into FBI's possession on or about that date. Media reports indicate that the report is in the possession of the FBI, specifically the Behavioral Analysis Unit. The purpose of my request is not for commercial use, but as a member of the news media. I am a reporter employed by Star News Digital Media, Inc. I have been reporting on the events related to the shooting for The Tennessee Star. The Manifesto is alleged to reveal the motivations of Audrey Hale. These motivations are not only relevant to my reporting, but important for public safety and therefore of intense national media interest. The release of these documents could not possibly interfere with any pending law enforcement proceedings, especially since the killer is deceased and the threat to the public has abated. I am willing to pay the fees related to obtaining this document." At this time, Star News also asked for expedited processing.

10. On April 24, 2023, FBI denied the request to expedite, stating that Star News had "not provided enough information concerning the statutory requirements permitting expedition."

11. On that same day, Star News clarified its request in two ways. First, Star News re-stated its request as follows: "I am requesting a copy of the following records: the notes, journal entries, plans, letters, writings, or other documents making up what law enforcement officials have labeled as Audrey Hale's 'manifesto' related to the Nashville Covenant School Shooting on March 27, 2023. During a press conference on that same day, Metropolitan Nashville Police Chief John Drake labeled these documents as a 'manifesto,' stating 'we have a manifesto.' On or about that same day, Nashville Police provided the FBI a copy of those documents for review, including review by the Behavioral Analysis Unit." Second, Star News added facts proving that Star News satisfied the criteria to expedite FOIA requests found at 28 C.F.R. 16.5(e)(1)(ii) & (iv). Star News also sent a copy of this request to the Office of Public Affairs, as required by those regulations.

12. On April 25, 2023, FBI denied the request. FBI's response gave the following reason: "5 U.S.C. § 522(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." FBI further stated, "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 could reasonably be expected to interfere with enforcement proceedings. Therefore, your request is being administratively closed."

13. FBI has never explained what "law enforcement proceeding" could possibly exist and how releasing the manifesto would "interfere" with such a proceeding.

14. Star News also requested a copy of the manifesto from the Nashville Police Department under Tennessee law, but that request was denied on March 24, 2023.

LEGAL BASIS OF APPEAL

15. Star News appeals FBI's denial under 5 U.S.C. § 552(a)(6)(A)(ii) and 28 C.F.R. 16.8.

16. "Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1975).

17. The Freedom of Information Act (FOIA) requires federal agencies to provide access to all "records promptly available to any person," subject to certain exceptions. 5 U.S.C. § 552(a)(3)(A).

18. FOIA "represents a balance struck by Congress between the public's right to know and the government's legitimate interest in keeping certain information confidential." *Ctr. for Nat'l Sec. Studies v. U.S. Dep't of Justice*, 331 F.3d 918, 925 (D.C. Cir. 2003). Under FOIA, federal agencies must release records to the public upon request, unless one of nine statutory exemptions apply. See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 136 (1975); 5 U.S.C. § 552(b). To prevail in a FOIA case, a plaintiff must show that an agency has improperly withheld agency records. See *Odland v. FERC*, 34 F.Supp.3d 1, 13 (D.D.C. 2014). The defending agency must demonstrate that its search for responsive records was adequate, that any invoked exemptions actually apply, and that any reasonably segregable non-exempt information has been disclosed after redaction of exempt information. See *id.*

19. In this case, FBI invokes a single exception: 5 U.S.C. § 522(b)(7)(A). This exception provides that law enforcement records may be withheld if they "could reasonably be expected to interfere with enforcement proceedings."

20. "It is well recognized that, pursuant to this exemption, an agency may withhold documents stemming from an ongoing criminal investigation if disclosure would harm or interfere with a subsequent enforcement proceeding." *Manna v. U.S. Dep't of Just.*, 815 F. Supp. 798, 805 (D.N.J. 1993), *aff'd*, 51 F.3d 1158 (3d Cir. 1995). The purpose of Exemption 7(A) is to protect FBI from being "hindered in their investigations or placed at a disadvantage when it came time to present their case." *N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978). Foremost among the purposes of this exemption was to prevent "harm [to] the Government's case in court." *Id.*

21. None of these factors apply here. Under the language of the statute, there are no "enforcement proceedings" contemplated. The shooter is dead. No crime is being investigated that would lead to a criminal prosecution. Therefore, disclosure would not "harm the Government's case in court." *Id.* But even if one interpreted "enforcement proceedings" to include FBI's evaluation of a manifesto after the death of the assailant, it is hard to understand how allowing the public to see the manifesto would "interfere" with that investigation. Whatever "interference" exists must be supported by the FBI with evidence.

22. FBI has identified no legitimate reason why the public should be prohibited from seeing the manifesto. And FBI's own recent history demonstrates why there is no legitimate basis to withhold a manifesto from a deceased assailant.

23. On October 24, 2022, Orlando Harris killed two and injured seven people in St. Louis. FBI investigated the incident with other law enforcement authorities. The very next day, October 25, CNN obtained a copy of and reported on the details of his manifesto. See Holly Yan, St. Louis school shooter had an AR-15-style rifle, 600 rounds of ammo and a note saying 'I don't have any friends. I don't have any family,' police say, CNN.com, Oct. 25, 2022, <https://archive.ph/DDdqw>.

24. On November 22, 2022, Andre Marcus Bing killed seven people and injured four at a Walmart Supercenter in Chesapeake, Virginia. FBI investigated the incident with other law enforcement authorities. Within three days, the New York Times obtained the killer's manifesto. See J. David Goodman, Walmart Gunman Bought Pistol Hours Before Killing

and Left a "Death Note," New York Times, Nov. 25, 2022, <https://archive.ph/MmfAx>.

25. On February 13, 2023, Anthony Dwayne McRae killed five and injured three on the campus of Michigan State University. FBI and Michigan law enforcement authorities jointly investigated the incident. Approximately three weeks after the shooting, the Detroit News received a two-page handwritten manifesto describing his motives through a FOIA request. See Kim Kozlowski, Note written by MSU shooter asked 'why,' outlined other targets, The Detroit News, March 10, 2023, <https://archive.ph/0bMd6>.

26. FBI itself is proud of its history of releasing manifestos. In 1995, FBI famously released Ted Kaczynski's manifesto to The Washington Post, The New York Times, and Penthouse magazine. FBI brags about this history on its website. See FBI, Unabomber Bomb Shrapnel, <https://www.fbi.gov/history/artifacts/unabomber-bomb-shrapnel>.

27. One could speculate as to why FBI has released so many other manifestos, but not this one. But such speculation is unnecessary for the purposes of this appeal. The simple fact is that FBI has not justified its refusal to release this manifesto under FOIA.

REQUEST FOR RELIEF

Star News therefore requests the following relief:

A. Expedited consideration of this appeal for all the reasons stated in Star News' April 24, 2023, request clarifying its FOIA request and requesting expedited processing under 28 C.F.R. 16.5;

B. Waiver of all costs;

C. Immediate release of the manifesto.

Submitted on behalf of Star News by:

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
Daniel P. Lenington (WI Bar No. 1088694)
330 East Kilbourn Avenue, Suite 725
Milwaukee, WI 53202
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Dan@will-law.org

Attorney for Star News

Based on Denial of Fee Waiver No

Based on Denial of Expedited Processing Yes

Requester Item Type 1 Supplemental Information

Requester Items 1 [FOIA 1 Request 1 4 20 23.pdf](#)

Requester Item Type 2 Supplemental Information

Requester Items 2 [FOIA 2 March 24 2023.pdf](#)

Requester Item Type 3 Supplemental Information

Requester Items 3 [FOIA March 25 denial.pdf](#)

Requester Contact Informationexpand_more

Salutation		Address Type	Work
First Name	Matt	Country	United States
Middle Name		Address Line 1	95 White Bridge Road
Last Name	Kittle	Address Line 2	
Email Address	mkittle@thestarnewsnetwork.com	City	Nashville
Organization	Star News Digital Media, Inc.	State	Tennessee
Register Number		Zip/Postal Code	37205
Phone Number	608-445-0970		
Fax Number			

Other
Information

Expedited Processing Information[expand_more](#)

Expedited Processing Requested?	Yes	Expedited Justification	Matt Kittle and Star News request expedited processing under two criteria. They explained their position as follows on March 24, 2023:
Expedited Processing Request Date			
Expedited Processing Determination	Moot		
Standards for Expedition	2. An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information. 4. A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.		First, we are requesting expedited processing under 28 CFR 16.5(e)(1)(ii). Under this criterion there is "an urgency to inform the public about an actual or alleged federal government activity if made by a person primarily engaged in disseminating information." Here, the federal government activity is FBI's response to the Nashville Covenant Shooting. The public has an urgent right to know about the FBI's response to the incident, the FBI's handling of the manifesto and the motivation of the shooter herself. The only evidence of the motivations for the Nashville Covenant School Shooting are contained in the manifesto. The public has a right to know, and an urgent right to know, why this shooting took place. If the public knows the shooter's motivation, the public may take steps to keep itself safe in the event of future shootings. And the public also has an urgent right to know so that it may better inform public safety policy choices. Unless and until the public knows of the shooter's motivation(s), the public will be ill-informed and unable to advocate for policy changes that will keep them safe. And until the public sees the manifesto, as explained in more detail below, the public will not know why FBI has taken so long to release this manifesto. As for the second part of this criterion we are certainly "primarily engaged in disseminating information" as full-time reporters. Star News has reported on matters related to the Nashville Covenant School Shooting and plans to do so in the future.

Second, we are requesting expedited processing under 28 CFR 16.5(e)(1)(iv). Under this criterion

this is a "matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affects public confidence." There is no doubt that this shooting is of "widespread and exceptional medial interest." National media outlets have covered this incident for weeks. Moreover, as reporters, we have a duty to report on the FBI's integrity. We plan to report on the FBI's delay in releasing this manifesto when, in many other recent circumstances, similar manifestos have been released. On October 24, 2022, for example, Orlando Harris killed two and injured seven people in St. Louis. FBI investigated the incident with other law enforcement authorities. The very next day, October 25, CNN obtained a copy of and reported on the details of his manifesto. See Holly Yan, St. Louis school shooter had an AR-15-style rifle, 600 rounds of ammo and a note saying 'I don't have any friends. I don't have any family,' police say, CNN.com, Oct. 25, 2022, <https://archive.ph/DDdqw>. On November 22, 2022, for example, Andre Marcus Bing killed seven people and injured four at a Walmart Supercenter in Chesapeake, Virginia. FBI investigated the incident with other law enforcement authorities. Within three days, the New York Times obtained the killer's manifesto. See J. David Goodman, Walmart Gunman Bought Pistol Hours Before Killing and Left a "Death Note," New York Times, Nov. 25, 2022, <https://archive.ph/MmfAx>. On February 13, 2023, for example, Anthony Dwayne McRae killed five and injured three on the campus of Michigan State University. FBI and Michigan law enforcement authorities jointly investigated the incident. Approximately three weeks after the shooting, the Detroit News received a two-page handwritten manifesto describing his motives through a FOIA request. See Kim Kozlowski, Note written by MSU shooter asked 'why,' outlined other targets, The Detroit News, March 10, 2023, <https://archive.ph/0bMd6>. FBI itself is proud of its history of releasing

manifestos. In 1995, FBI famously released Ted Kaczynski's manifesto to The Washington Post, The New York Times, and Penthouse magazine. FBI brags about this history on its website. See FBI, Unabomber Bomb Shrapnel, <https://www.fbi.gov/history/artifacts/unabomber-bomb-shrapnel>. We can only report on FBI's motivations for delaying the release of the manifesto until we see the manifesto and learn about Audrey Hale's motivations. FBI's delay to date seriously undermines FBI's integrity, and this impacts public confidence. Several articles have already been written questioning FBI's integrity in its failure to release the manifesto, and public confidence has already been undermined. We want to write about this and cannot have a complete picture of the story until we see the manifesto.

For these two independently sufficient reasons, therefore, we request expedited processing of our request.



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Matt Kittle
95 White Bridge Road
Nashville, TN 37205
mkittle@thestarnewsnetwork.com

May 5, 2023
Re: Appeal No. A-2023-01147
Request No. 1590230-000
MWH:JKD

VIA: Online Portal

Dear Matt Kittle:

You appealed from the action of the Federal Bureau of Investigation on your Freedom of Information Act request for access to a copy of Audrey Hales Manifesto. I note that your appeal concerns the FBI's full denial of your request and denial of your request for expedited processing. You also requested expedited treatment of your appeal.

After carefully considering your appeal, I am affirming the FBI's action on your request. 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) and it is reasonably foreseeable that disclosure of this information would harm the interests protected by this provision. This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

Additionally, the FBI responded to your request by letter dated April 25, 2023. Because the FBI responded to your request, your appeal from the FBI's failure to grant expedited processing of your request is moot.

I also note that you requested expedited treatment of your appeal. Because I am closing your underlying appeal within ten calendar days, your request for expedited treatment of this appeal is moot.

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

If you are dissatisfied with my action on your appeal, the FOIA permits you 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 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; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office and speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

Matthew W. Hurd
X _____
Matthew W. Hurd
Chief, Administrative Appeals Staff