IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF MASSACHUSETTS, *Plaintiff,* v. FEDERAL BUREAU OF INVESTIGATION; and CARMEN ORTIZ, UNITED STATES ATTORNEY FOR THE DISTRICT OF MASSACHUSETTS, *Defendants.*	Civil Action No. 14-cv-11759-ADB ORAL ARGUMENT REQUESTED

ACLUM'S REPLY MEMORANDUM OF LAW IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

The FBI seeks, in effect, a categorical Freedom of Information Act (FOIA) exemption for all law enforcement information. It does not identify any specific technique or procedure that the withheld information would disclose. Instead, the FBI insists that case statistics, staffing and budget information can be withheld because the public is not entitled to know even the faintest outline of the "mission," "priorities," or "areas" of concentration of the Massachusetts Joint Terrorism Task Force (JTTF) and the Boston FBI Field Office. Dckt. No. 68 ("FBI Opp.") at 10-11.

FOIA simply does not contain such a sweeping exemption for law enforcement information. Instead, Congress preserved citizens' right to obtain this information, subject only to limited and narrowly-construed exemptions. This makes sense: no information is more central to FOIA's purpose to create "an informed citizenry" who "'hold the governors accountable to the governed'" than information regarding law enforcement. *Cf. Long v. U.S. Dep't of Justice*, 450 F. Supp. 2d 42, 53 (D.D.C. 2006) (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)); see also Erik Luna, *Transparent Policing*, 85 Iowa L. Rev. 1107, 1166 (2000) ("With a few reasonable, limited, and internally consistent exceptions, transparency is a prerequisite of legitimate, democratic government. Nowhere is this mandate more important – in terms of rights, interests, and costs – than in the criminal justice system."). The FBI's arguments ignore, and would thwart, this legislative balance.

Providing public access to aggregate information about a law enforcement agency's mission, resources and actions serves FOIA's goal to "open agency action to the light of public scrutiny," *Dep't of the Air Force v. Rose*, 425 U.S 352, 361 (1976), without creating a risk of circumvention of the law. It is therefore crucial to reiterate the generalized nature of the documents at issue here. Although the FBI repeatedly calls them "non-public"—which is true

only in the sense that the FBI has *decided* not to make them public—they are quintessential examples of documents that do not risk revealing information about a particular case or technique. Specifically, Plaintiff American Civil Liberties Union Foundation of Massachusetts (ACLUM) continues to challenge the FBI's assertion of Exemption 7(E) to withhold the following:

(1) *Staffing information* reflecting *the number of officers* in the Massachusetts JTTF, both in total in 2014 and broken down by state, local, and federal participants for fiscal years 2012 and 2013; and *overtime information* including the maximum overtime pay allowed per officer in 2010 and 2011, the number of officers entitled to receive overtime in 2012 and 2013 and the average monthly charge for overtime in 2012;[1]

(2) *Budget information* reflecting the amount of, and rates for, telephone and internet lines, secure video teleconference lines, telephones, GPS units, laptops, vehicle emergency lights, LCD televisions, digital cameras, and conference room table and chairs for fiscal years 2011 and 2012;[2] and

(3) *Statistical information* reflecting the number of assessments, enterprise, preliminary and full investigations; and open assessments in the FBI Boston office as of January 2014.[3]

There is no doubt this information serves a valuable purpose in enabling law-abiding citizens to "check against corruption" and hold their government accountable. *NLRB*, 437 U.S. at 242. The FBI warns, however, that criminals "armed" with this information "would have an idea as to where the FBI is focusing its limited resources" and "could then plan and structure their activities to avoid the FBI's investigative strengths, exploit its weaknesses, and circumvent the law." FBI Opp. at 3. Yet it is hard to fathom how the amount of money the JTTF spends on furniture, or the amount of overtime pay JTTF agents can earn, could allow a criminal to circumvent the law. If the FBI's argument applies to this kind of information, it could be applied

[1] Dckt. Nos. 62.05, 62.06, 62.07, 62.08, 62.09, 62.10, 62.11, 62.12.
[2] Dckt. Nos. 62.10, 62.11.
[3] Dckt. Nos. 62.03, 62.04.

to withhold *all* law enforcement information. Congress already rejected this approach. This Court should do the same.

ARGUMENT

To properly invoke Exemption 7(E), the government must demonstrate that the withheld information (1) was compiled for law enforcement purposes, (2) contains law enforcement techniques, procedures or guidelines that are generally unknown to the public and (3) can reasonably be expected to risk circumvention of the law if disclosed. 5 U.S.C. § 552(b)(7)(E); *Am. Immigration Council v. U.S. Dep't of Homeland Sec.*, 950 F. Supp. 2d 221, 245 (D.D.C. 2013). The FBI fails to establish both the second and third prongs of this test. Each of these failures is an independent basis to grant summary judgment in favor of ACLUM. See *Families for Freedom v. U.S. Customs & Border Prot.* (*Families I*), 797 F. Supp. 2d 375, 391 (S.D.N.Y. 2011); *Long*, 450 F. Supp. 2d at 79; *Pub. Employees for Envtl. Responsibility v. EPA* (*PEER*), 978 F. Supp. 955, 962 (D. Colo. 1997).

I. The FBI fails to identify a single technique or procedure that would be revealed by disclosing the withheld documents.[4]

The terms "technique" and "procedure" have specific—and limited—definitions within the context of Exemption 7(E). See *Allard K. Lowenstein Int'l v. U.S. Dep't of Homeland Sec.*, 626 F.3d 678, 682 (2d Cir. 2010) (citing *Webster's Third New International Dictionary* definitions of technique and procedure as "a technical method of accomplishing a desired aim," and "a particular way of doing or of going about the accomplishment of doing something,"

[4] ACLUM has shown that the information withheld here does not constitute a guideline, Dckt. No. 61 at 9-10, 15-16, and the FBI has made no attempt to carry its burden to prove otherwise. *Maine v. U.S. Dep't of Interior*, 298 F.3d 60, 65 (1st Cir. 2002); *Am. Immigration Council*, 950 F. Supp. 2d at 245.

respectively). The FBI's submission does not establish that either of these terms apply to the withheld information.

"The terms 'techniques' and 'procedures' refer to *specific* methods of law enforcement." *Families for Freedom v. U.S. Customs & Border Prot.* (*Families II*), 837 F. Supp. 2d 287, 299 (S.D.N.Y. 2011) (emphasis added). They do not encompass aggregate data. *Families I*, 797 F. Supp. 2d at 391-92 (arrest statistics are not techniques or procedures); *Long*, 450 F. Supp. 2d at 77-79 (program category information identifying the criminal activity that is the subject of every ongoing and deleted USAO investigation or prosecution is not a technique or procedure).[5] They do not encompass resource allocation. Cf. *Lowenstein*, 626 F.3d at 682. And they do not encompass "policy and budgetary choices about the assignment of personnel" or "staffing decisions defendants made years ago." *Families II*, 837 F. Supp. 2d at 299. Because all of the withheld information falls into one of these categories, none of it meets the definition of technique or procedure.

The FBI's contrary argument largely consists of a bullet-point list of cases, together with the assertion that "[t]he type of information at issue here is of the type that courts have protected from disclosure under Exemption 7(e)." FBI Opp. at 4. The FBI's statement is only half accurate. The listed cases are representative of instances in which courts upheld the application of Exemption 7(E). But they are not similar to the type of information withheld here.

The listed cases fall into two categories. *First*, there are cases upholding the use of Exemption 7(E) to withhold case-specific information, such as law enforcement records for a

[5] See also *Bartko v. U.S. Dep't of Justice*, 62 F. Supp. 3d 134, 148-49 (D.D.C. 2014) (refusing to uphold application of Exemption 7(E) where "[c]onspicuously absent from" the government's arguments "is any mention of how disclosure of the bare data contained in CART reports might reveal any technique, procedure or technological method the FBI uses").

particular individual,[6] the amount of money spent during a particular investigation,[7] the basis, dates, and designations of particular investigations,[8] or the efficacy of techniques used during a particular investigation.[9] *Second*, there are cases upholding the use of Exemption 7(E) to withhold detailed information about a specific technique,[10] such as a detailed technical analysis of law enforcement's use of the internet and social networking in criminal investigations,[11]

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[6] *Vazquez v. FBI*, 887 F. Supp. 2d 114, 117-18 (D.D.C. 2012) (withheld law enforcement database entries concerning plaintiff); *Adionser v. U.S. Dep't of Justice*, 811 F. Supp. 2d 284, 290, 300 (D.D.C. 2011) (withheld "contents of the FBI databases" where plaintiff sought "material to challenge collaterally convictions that resulted in his imprisonment"); *Miller v. U.S. Dep't of Justice*, 872 F. Supp. 2d 12, 17, 28-29 (D.D.C. 2012) (withheld NADDIS and TECS numbers related to plaintiff's requests for information about himself); *Abdelfattah v. U.S. Immigration & Customs Enf't*, 851 F. Supp. 2d 141, 143, 145 (D.D.C. 2012) (withheld "program codes, investigative notes and internal instructions" related to request for "all records about Plaintiff that were held in any record system under the jurisdiction of ICE").

[7] *Frankenberry v. FBI*, No. 3:08-1565, 2013 WL 125779, at *4 (M.D. Pa. Jan. 9, 2013) (withheld information "related to expenditures made in the course of investigating Plaintiff"); *Concepcion v. FBI*, 606 F. Supp. 2d 14, 434 (D.D.C. 2009) (withheld "the amount of money used to purchase evidence" during investigation of Plaintiff).

[8] *Council on Am.-Islamic Relations v. FBI*, 749 F. Supp. 2d 1104, 1115-16, 1123 (S.D. Cal. 2010) (withheld "information relating to the dates and bases for the initiation of investigations, and the designation of individual investigations as 'Preliminary' or 'Full Field' investigations").

[9] *Frankenberry*, 2013 WL 125779, at *1-2 (withheld case-specific ratings of the effectiveness of techniques used during particular investigations); *Skinner v. U.S. Dep't of Justice*, 744 F. Supp. 2d 185, 214-15 (D.D.C. 2010) (same); *Span v. U.S. Dep't of Justice*, 696 F. Supp. 2d 113, 122 (D.D.C. 2010) (same): *Sellers v. U.S. Dep't of Justice*, 684 F. Supp. 2d 149, 164-65 (D.D.C. 2010) (same); *Tunchez v. U.S. Dep't of Justice*, 715 F. Supp. 2d 49, 55-56 (D.D.C. 2010) (same; noting that this rating would "identify which among the 27 techniques and procedures listed on the documents were used in investigating [Plaintiff] and the FBI's evaluation of those techniques and procedures"), *aff'd per curiam*, No. 10-5228, 2011 WL 1113423 (D.C. Cir. Mar. 14, 2011).

[10] See *ACLU of Mich. v. FBI*, No. 11-13154, 2012 WL 4513626, at *10 (E.D. Mich. Sept. 30, 2012) (withheld portions of the Domestic Investigation and Operations Guide that includes "*details*" including the capabilities, limitations and usage of surveillance tools; descriptions of the "treatment and storage" of incomplete FBI work; and the specific methods of collecting and analyzing investigative information) (emphasis in original).

[11] *Elec. Frontier Found. v. U.S. Dep't of Defense*, No. 09-05640, 2012 WL 4364532, at *4-*5 (N.D. Cal. Sept. 24, 2012) (withheld "detailed technical analyses of [] agencies' use of the internet" and "detailed instructions and guidance the agency internally uses" for its use of social networking sites in gang investigations).

detailed information about watchlists used to screen travelers,[12] or detailed information regarding the FBI's procedures governing whether and when certain activities can be used in an investigation.[13]

These cases bear no resemblance to the information withheld here. ACLUM seeks aggregate, generalized information such as the *total* number officers in the Massachusetts JTTF,[14] the cost of furniture and well-known technology for the *entire* Massachusetts JTTF,[15] and the *total* number of open assessments in the FBI Boston office.[16] None of this information involves an individual case or describes information about a particular practice. Thus, the FBI has failed to identify a single case in which a law enforcement agency has been permitted to use Exemption 7(E) to withhold the kind of records at issue here.

II. The FBI must demonstrate, but has not demonstrated, a reasonable risk of circumvention of the law.

Because the information withheld by the FBI does not concern a technique, procedure or guideline under the second prong of Exemption 7(E), this Court can grant summary judgment to ACLUM without addressing any questions about a reasonable risk of circumvention of the law. *Families I*, 797 F. Supp. 2d at 391; see also *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep't of Justice*, 746 F.3d 1082, 1102 n.8 (D.C. Cir. 2014) (refusing to address whether the risk of circumvention requirement applies to techniques and procedures "because the antecedent

[12] *Asian Law Caucus v. U.S. Dep't of Homeland Sec.*, No. 08-00842, 2008 WL 5047839, at *4 (N.D. Cal. Nov. 24, 2008) (withheld "more detailed information about these watchlists and the databases that relate to the watchlists").
[13] *Muslim Advocates v. U.S. Dep't of Justice*, 833 F. Supp. 2d 106, 109 (D.D.C. 2012) (withheld "detailed information regarding the FBI's procedures for investigation of and undisclosed participation in target organizations" including "whether and when a particular investigative activity may be undertaken in connection with an assessment, a predicated investigation and so forth").
[14] Dckt. No. 62.02.
[15] Dckt. Nos. 62.10, 62.11.
[16] Dckt. No. 62.03.

questions of what techniques and procedures are involved and how they could be disclosed have not been answered sufficiently"). If this Court chooses to reach the third prong of Exemption 7(E), however, ACLUM still prevails. The FBI argues that it does not need to demonstrate a reasonable risk of circumvention of the law and, alternatively, that it satisfies this requirement. Both of these assertions are wrong.

The weight of appellate authority—the Third, Fifth, Seventh and D.C. Circuits— as well as district courts in D.C., Texas, New Jersey, and Colorado, all hold that documents revealing a technique or procedure are exempt from disclosure only if they *also* present a reasonable risk of circumvention of the law.[17] This rule comports with "the need for courts to 'narrowly construe[]' FOIA exemptions 'to choose that interpretation most favoring disclosure,'" *Riser v. U.S. Dep't of State*, No. 09-3273, 2010 WL 4284925, at *5 (S.D. Tex. Oct. 22, 2010) (alteration in original), and this Court should follow it here.[18]

In this case, the FBI has failed to demonstrate that disclosure of the withheld information reasonably risks circumvention of the law. It relies primarily on hypothetical "nefarious" individuals who could supposedly combine the aggregated information sought in this case with information from hypothetical future releases of information, in order to plot hypothetical

[17] See *Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011); *Catledge v. Mueller*, 323 F. App'x 464, 466-67 (7th Cir. 2009); *Davin v. U.S. Dep't of Justice*, 60 F.3d 1043, 1064 (3rd Cir. 1995); *Benevides v. U.S. Marshals Serv.*, No. 92-5622, 1993 WL 117797, at *4 (5th Cir. Mar. 24, 1993); *Riser v. U.S. Dep't of State*, No. 09-3273, 2010 WL 4284925, at *5 (S.D. tex. Oct. 22, 2010); *ACLU of N.J. v. U.S. Dep't of Justice*, No. 11-2553, 2010 WL 4660515, at *9 (D.N.J. Oct. 2, 2012); *PEER*, 978 F. Supp. at 960-61; *Rosenberg v. ICE*, 959 F. Supp. 2d 61, 79-80 (D.D.C. 2013)*; but see Hamdan v. U.S. Dep't of Justice*, 797 F.3d 759, 778 (9th Cir. 2015); *Lowenstein*, 626 F.3d at 681-82; *ACLU of Mich.*, 2012 WL 4513626, at *9; *Banks v. U.S. Dep't of Justice*, 813 F. Supp. 2d 132, 146 (D.D.C. 2011).

[18] Additionally, no one disputes that the circumvention clause applies to guidelines. Thus, even if this Court holds that the withheld information is a guideline—though the FBI has failed to make that showing—ACLUM should still win on summary judgment because the FBI needs, and fails, to demonstrate that disclosure of the withheld information reasonably risks circumvention of the law.

terrorist attacks. FBI Opp. at 13-14. This argument must fail. The government could apply this Russian nesting-doll of hypotheticals to any and every FOIA request. Accepting this argument, however, "would eviscerate the principles of openness in government that the FOIA embodies." *Long*, 450 F. Supp. 2d at 76. Courts therefore reject risk-of-circumvention arguments hinging "on unreasonable speculation and hypothetical combinations . . . rather than particularized proof." *Id.* at 75.

The FBI's more tailored attempts to demonstrate a reasonable risk of circumvention of the law comprise (1) overlapping concerns about staffing and budget information, and (2) worries about case statistics. But these arguments, though more concrete than its far-fetched hypotheticals, are no more successful. That is because the aggregate information withheld here is fundamentally different from the case-specific examples cited by the FBI.

Staffing & Budget: The FBI argues that staffing and budget information "could reveal the priority of the JTTF and its mission," could enable individuals "to infer from the fluctuations in the resources devoted to the JTTF over the various years how FBI priorities shifted through the years," and could "reveal[] information about the FBI's investigative priorities." FBI Opp. at 10-11. Because the "fundamental purpose of the FOIA is to assist citizens in discovering what their government is up to," *Long*, 450 F. Supp. 2d at 52-53 (internal quotation marks omitted), the mere allegation that information could reveal the general, or shifting, priorities of law enforcement agencies cannot justify the application of Exemption 7(E). FOIA contemplates, and protects, the public's right to know what their law enforcement agencies are doing in their name and with their money. *See Families I,* 797 F. Supp. 2d at 391 (affirming disclosure of arrest statistics that were "important to enable the public to understand the role and significance of transportation-based arrests"). And even if information that provided insight into law

enforcement priorities could pose a reasonable risk of circumvention of the law, the aggregate information withheld in this case does not provide such insights. Nor does it provide information that "could allow individuals to circumvent the law by attacking those areas where resources are thin." FBI Opp. at 11.

The government's supporting cases all analyze the disclosure of case-specific information. FBI Opp. at 11, 13.[19] This type of data could theoretically reveal the priority the government places on investigating particular types of crimes. But such information is not at issue here. ACLUM challenges the withholding of the total number of officers in the Massachusetts JTTF in 2014,[20] and the number of state, local and federal participants from fiscal years 2012 and 2013;[21] the maximum amount of overtime pay allowed in 2010 and 2011,[22] the number of officers entitled to receive overtime in 2012 and 2013,[23] and the average monthly charge for overtime in 2012;[24] and the amount of, and rates for, well-known technology and furniture purchases for the entire Massachusetts JTTF in 2011 and 2012.[25] Risk of circumvention is particularly remote given that most of this information is more than two years old. See *Families II*, 837 F. Supp. 2d at 300. Moreover, this data is not broken down into allocations for

[19] See *Ortiz v. U.S. Dep't of Justice*, 67 F. Supp. 3d 109, 114, 123 (D.D.C. 2014) (withheld case codes related to Plaintiffs' criminal case); *Frankenberry v. FBI*, 567 F. App'x 120, 124-25 (3rd Cir. 2014) (withheld case-specific ratings of the effectiveness of techniques used during particular investigations); *Frankenberry*, 2013 WL 125779, at *4 (withheld information relating to monies expended in specific investigation); *Amuso v. U.S. Dep't of Justice*, 600 F. Supp. 2d 78, 100-01 (D.D.C. 2009) (withheld "the amount of money used to purchase evidence" in an investigation); *Concepcion*, 606 F. Supp. 2d at 43-44 (withheld case-specific ratings of the effectiveness of techniques used during particular investigations and "the amount of money used to purchase evidence").
[20] Dckt. No. 62.02.
[21] Dckt. Nos. 62.10, 62.11.
[22] Dckt. Nos. 62.07, 62.08, 62.09.
[23] Dckt. Nos. 62.10, 62.11.
[24] Dckt. No. 62.12.
[25] Dckt. No. 62.10, 62.11.

distinct subject areas or individuals cases. It is difficult to understand how this aggregate information could possibly reveal any exploitable weaknesses.

Given this context, the FBI's claim that the withheld information "could embolden an individual to commit, or attempt to commit, a criminal act if that person believes the resources dedicated to the JTTF is [sic] insufficient to prevent that person from committing a crime" does not make sense. FBI Opp. at 10. The FBI does not, and could not, explain how the cost of a table, the total number of officers within the Massachusetts JTTF or the maximum available pay for overtime could motivate or assist criminal behavior in anyway. Applied to the specific information withheld here, the FBI's "argument verges on illogical." *ACLU of Wash. v. U.S. Dep't of Justice*, No. 09–0642, 2011 WL 1900140, at *2 (W.D. Wash. May 19, 2011) (rejecting government's argument that if the minimum level of interest necessary to get on a watchlist was revealed, then individuals could estimate the government's level of interest in them and change their behavior).

Case Statistics: ACLUM challenges the application of Exemption 7(E) to two types of case statistics. The first is the total number of open assessments in the Boston Field Office in January 2014.[26] The FBI makes no real effort to defend this withholding, merely citing *ACLU of Wash. v. U.S Dep't of Justice*, No. 09-0642, 2011 WL 887731 (W.D. Wash. Mar. 10, 2011) *reconsidered*, 2011 WL 1900140 (May 19, 2011), for the general proposition that "Exemption 7(E) can be used to withhold statistical reports that reflect investigative trend information." FBI Opp. at 12. Yet that decision held that the government could withhold "statistical reports regarding terrorist-related trend information" that would disclose "hits and travel patterns by geographic area" that could allow suspected terrorists to "chang[e] target cities and locations."

[26] Dckt. No. 62.03.

ACLU of Wash., 2011 WL 887731, at *9 (internal citations and quotation marks omitted). That kind of comparative, detailed data bears no relation to the aggregate number of open assessments for a single FBI field office. Without any further attempt to demonstrate risk of circumvention of the law, and particularly as the government has already released nearly-identical information to the *New York Times*,[27] this information should be disclosed.

The second category of challenged case statistics is the number of full and preliminary investigations for particular types of crimes.[28] This information is strikingly akin to arrest statistics and to program codes that identify the type of criminal activity subject to investigation in each case referred to the U.S. Attorney's Office, both of which courts have ordered disclosed over government assertions of Exemption 7(E). *Families I*, 797 F. Supp. 2d at 391; *Long*, 450 F. Supp. 2d at 79.[29]

Notwithstanding the similarities, the FBI entirely ignores the comparison to program codes and discounts the comparison to arrest statistics by suggesting that arrest statistics are "essentially" public while the challenged statistics are not. FBI Opp. at 12. But the order to disclose arrest statistics did not even mention, let alone rest on, any supposed public nature of

[27] Dkt. Nos. 62.25, 62.26.
[28] Dckt. No. 62.04.
[29] *Long* initially addressed whether the program codes "could reasonably be expected to interfere with law enforcement proceedings," within the context of 7(A). "The 'program category' field contain[ed] approximately 90 individual codes that identify the type of criminal activity that is the subject of the investigation or prosecution." 450 F. Supp. 2d at 76. Releasing that information as attached to several years of ongoing investigations could therefore yield somewhat detailed statistics regarding the relative focus of the EOUSA prosecutions amongst different types of crimes. Nevertheless, the court found that the government failed to demonstrate that this information would interfere with law enforcement proceedings and concluded that Exemption 7(A) did not apply. *Id.* at 76-77. It went on to hold that Exemption 7(E) did not apply because the government failed to demonstrate that the codes were techniques or procedures, and thus never reached the question of a reasonable risk of circumvention. *Id.* at 79; see also *Long v. U.S. Dep't of Justice*, 479 F. Supp. 2d 23, 28-29 (D.D.C. 2007) (on reconsideration allowing the redaction of criminal charges from ongoing terrorism investigation files, but affirming the remainder of the order).

arrests; it focused on the fact that the revealed information did not risk circumvention of the law. *Families I*, 797 F. Supp. 2d at 391. Here, too, it is not at all apparent how a criminal could "manipulate" the total number of full and preliminary investigations of different types of general crimes to circumvent the law. Cf. FBI Opp. at 11.The level of generality in the publicly available case codes is fairly high.[30] Drug crimes, for instance, are not broken down into different types or amounts of narcotics. *Compare with Smith v. Exec. Office for U.S. Attorneys*, 69 F. Supp. 3d 228, 241 (D.D.C. 2014). The likelihood that an individual would choose between an admiralty crime, sedition and bank robbery based on the withheld statistics seems to fall far below the "reasonable risk" standard. As a result, FOIA requires the disclosure of this information.[31]

CONCLUSION

For all of these reasons, as well as those articulated in its opening brief, ACLUM respectfully requests that the Court deny the FBI's motion for summary judgment and grant ACLUM's cross-motion for summary judgment, or, in the alternative, order the FBI to supplement its Declaration or submit the documents for *in camera* review.

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[30] While the FBI website includes some of the individual case classification numbers, (e.g., 198 is "Crimes on Indian Reservations"), none of the subcategories (e.g., 198a-198w), are disclosed. See https://www.fbi.gov/foia/privacy-act/file-classifications. Thus, the publicly available information is at a high level of generality that would not risk circumvention of the law when combined with the number of preliminary and final investigations.

[31] If the FBI's emphasis of terrorism-related investigations changes any part of this Court's analysis—though it should not—the FBI should at least release all of the investigation statistics and case codes aside from those connected to the Terrorist Enterprise Investigations, or all of the investigation statistics with the case codes removed. 5 U.S.C. § 552 (b) ("Any reasonably segregable portion of a record shall be provided[.]"); *Families I*, 797 F. Supp. 2d at 391 (government can create a separate document to disclose segregable information while withholding nondisclosable information if it "finds it simpler . . .than to conduct extensive redactions"); *Long*, 450 F. Supp. 2d at 77 (notwithstanding its decision to withhold terrorism related data under 7(A), requiring the disclosure of all other information).

DATE: November 6, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was filed via the Court's CM/ECF system and that a copy will be sent automatically to all counsel of record on November 6, 2015.

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