

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
STEVEN J. HATFILL, M.D.,)	
)	
Plaintiff,)	
)	
v.)	Civ. A. No. 03-1793 (RBW)
)	(Judge Walton)
ATTORNEY GENERAL)	
JOHN ASHCROFT, et al.)	
)	
Defendants.)	
_____)	

AGENCY DEFENDANTS' ANSWER

Defendants U.S. Department of Justice (“DOJ”) and Federal Bureau of Investigation (“FBI”) (collectively, the “Agency Defendants”), by and through their attorneys, answer and otherwise respond to Count III of the Complaint, which alleges a violation of the Privacy Act, 5 U.S.C. § 552a, as follows:

FIRST DEFENSE

Count III of the Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

To respond to the allegations in Count III of the Complaint, and to adjudicate plaintiff’s claim in Count III, would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege.

THIRD DEFENSE

Using the same numbering as the Complaint, the Agency Defendants respond to the numbered paragraphs of the Complaint as follows:

1. This paragraph contains plaintiff's characterization of the Complaint, as well as legal theories and conclusions. Accordingly, no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in this paragraph.

2. The Agency Defendants deny the allegations in the first and second sentences of this paragraph, except to admit that the anthrax mailings created enormous public anxiety in the wake of the terror attacks of September 11, 2201. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the last sentence.

3. The Agency Defendants deny the allegations in this paragraph, except to admit that the government has always been, and remains, committed to apprehending the person or persons responsible for the anthrax mailings.

4. This paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in this paragraph.

5. This paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in this paragraph.

6. This paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in this paragraph.

7. The first sentence of this paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in the first sentence. This second sentence of this paragraph contains an

identification of the defendants in this action, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in this paragraph, except to admit that Attorney General John Ashcroft, FBI Supervisory Special Agent (retired) Van Harp, former DOJ Employee Darrell Darnell, former DOJ Employee Timothy Beres, the FBI, and DOJ are named as defendants in this action.

8. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

9. The first and second sentences of this paragraph contain legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in the first and second sentences.

a. The Agency Defendants admit the allegations in the first sentence of this sub-paragraph. The Agency Defendants deny the allegations in the second and third sentences of this sub-paragraph, except to admit that the general policy referred to in the first sentence serves to protect the name and reputation of persons who have not yet been or who will not be charged or convicted of crimes and to protect the integrity of investigations and potential prosecutions. The Agency Defendants admit the allegations in the fourth sentence of this sub-paragraph. The Agency Defendants deny the allegations in the fifth sentence of this sub-paragraph, except to admit that public comment by prosecutors or law enforcement officials on investigative procedures and evidence outside of formal criminal processes could, in some circumstances, compromise potential prosecutions by tainting the jury pool and creating prejudice against a future criminal defendant. The sixth sentence of this sub-paragraph contains legal theories and

conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in the sixth sentence. The Agency Defendants deny the allegations in the seventh and eighth sentences of this sub-paragraph. The Agency Defendants can neither admit nor deny the allegations in the ninth sentence of this sub-paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege.

b. The Agency Defendants can neither admit nor deny the allegations in this sub-paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege.

c. The Agency Defendants deny the allegations in the first sentence of this sub-paragraph, except to admit that one technique that law enforcement officers may use in order to determine whether a suspect was seen in a particular place is to present a photo array that includes others as well as the suspect. The Agency Defendants deny the allegations in the second sentence of this sub-paragraph, except to admit that one reason that law enforcement officers may present a photo array instead of a single photograph is to avoid being unduly suggestive. The Agency Defendants admit the allegations in the third sentence of this sub-paragraph, except deny that FBI special agents showed the photograph to over 200 residents of Princeton, and aver that FBI agents showed the photograph to over 200 individuals in the Princeton area, including residents and business owners and their employees. The Agency Defendants deny the allegations in the fourth sentence of this sub-paragraph. The Agency Defendants can neither admit nor deny the allegations in the fifth sentence of this sub-paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected

by the law enforcement privilege. The Agency Defendants deny the allegations in the sixth sentence of this sub-paragraph.

d. The Agency Defendants deny the allegations in this sub-paragraph.

10. This entire paragraph contains legal theories, conclusions, and argument, to which no response is required. To the extent a response may be required, the Agency Defendants deny the allegations in this paragraph.

11. This paragraph contains plaintiff's characterization of this action, to which no response is required. In addition, to the extent that the allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending, no response by the Agency Defendants is required.

12. This paragraph contains plaintiff's statement of the jurisdiction over this matter and plaintiff's characterization of this action, which are legal conclusions to which no response is required. In addition, to the extent that the allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending, no response by the Agency Defendants is required. To the extent that a response may be required, the Agency Defendants admit that the Court has jurisdiction over Count III under Article III of the Constitution and 28 U.S.C. § 1331.

13. This paragraph contains plaintiff's statement of venue for this action and other legal conclusions to which no response is required. To the extent that a response may be required, the Agency Defendants admit that Dr. Hatfill resides in the District of Columbia and that venue in this district is proper.

14. The Agency Defendants admit the allegations in the first sentence of this paragraph. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the second sentence of this paragraph. The third sentence of this paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants lack sufficient knowledge or information to admit or deny whether Dr. Hatfill is currently unemployed and unemployable.

15. With respect to the first sentence, the Agency Defendants admit that Attorney General John Ashcroft heads the Department of Justice, which is an agency of the United States government responsible for enforcement of federal criminal laws and domestic terrorism investigations. The Agency Defendants admit the allegations in the second, third, and fourth sentences of this paragraph.

16. To the extent that the allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending, no response by the Agency Defendants is required. To the extent that this paragraph pertains to Count III, the Agency Defendants admit the allegations in the first and second sentences of this paragraph, deny the allegations in the third sentence of this paragraph, and state that the last sentence of this paragraph contains plaintiff's characterization of this action, to which no response is required.

17. To the extent that the allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending, no response by the Agency Defendants is required. To the extent that this paragraph pertains to Count III, the Agency Defendants admit that from July 5, 2001, to May

5, 2003, Van Harp was the Assistant Director in Charge of the Washington Field Office out of which the Amerithrax investigation was based, admit that Van Harp retired from the FBI effective May 5, 2003, and state that the last sentence of this paragraph contains plaintiff's characterization of this action, to which no response is required.

18. To the extent that the allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending, no response by the Agency Defendants is required. To the extent that this paragraph pertains to Count III, the Agency Defendants state that the last sentence of this paragraph contains plaintiff's characterization of this action, to which no response is required, and deny the allegations in the first two sentences, except to admit that, in 2002, Timothy Beres was serving as Assistant Director for the State and Local Operations Division of the Office of Domestic Preparedness ("ODP"), which was part of DOJ prior to November 25, 2002, and served as Acting Director of ODP on August 1, 2002, due to the absence of other personnel.

19. To the extent that the allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending, no response by the Agency Defendants is required. To the extent that this paragraph pertains to Count III, the Agency Defendants state that the last sentence of this paragraph contains plaintiff's characterization of this action, to which no response is required, and deny the allegations in the first two sentences, except to admit that, in 2002, Darrell Darnell was working at ODP, which was part of DOJ prior to November 25, 2002.

20. This paragraph contains plaintiff's characterization of this action, to which no response is required. To the extent that a response may be required, the Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in this paragraph.

21. This paragraph contains a legal conclusion, to which no response is required. To the extent that a response may be required, the Agency Defendants admit that the FBI is a component of DOJ, and that the FBI is subject to 5 U.S.C. § 552a.

22. This paragraph contains a legal conclusion, to which no response is required. To the extent that a response may be required, the allegations in this paragraph are admitted.

23. This paragraph does not state an allegation and requires no response.

24. The Agency Defendants admit the allegations in this paragraph.

25. With respect to the first and second sentences, the Agency Defendants admit that investigators have contacted scientists in various disciplines, admit that Dr. Hatfill willingly cooperated with the FBI in some respects, and otherwise can neither admit nor deny the allegations in the first and second sentences of this paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege. The Agency Defendants admit the allegations in the third sentence. The Agency Defendants deny the allegations in the fourth sentence.

26. The Agency Defendants deny the allegations in the first sentence of this paragraph and admit the allegations in the second and third sentences of this paragraph.

27. The Agency Defendants can neither admit nor deny the allegations in this paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege.

28. The Agency Defendants can neither admit nor deny the allegations in this paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege.

29. The Agency Defendants can neither admit nor deny the allegations in the first sentence of this paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege. The Agency Defendants admit the allegations in the second sentence of this paragraph, except lack sufficient knowledge or information to admit or deny whether the date of the meeting was June 18, 2002. With respect to the third sentence, the Agency Defendants admit that Van Harp, then the Assistant Director in Charge of the Washington Field Office out of which the Amerithrax investigation was based, attended the meeting. With respect to the fourth sentence, the Agency Defendants admit that, in this meeting, Ms. Rosenberg informed the Daschle and Leahy staff members that her suspicions led her to believe that Dr. Hatfill was the person most likely responsible for the mailings, and otherwise can neither admit nor deny the allegations in the fourth sentence because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege.

30. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in first two sentences of this paragraph. The Agency Defendants deny the allegations in the third sentence of this paragraph.

31. The Agency Defendants deny the allegations in the first sentence, except to admit that the FBI searched Dr. Hatfill's apartment on June 25, 2002, and that television and radio press were present outside Dr. Hatfill's apartment while it was being searched. The Agency

Defendants deny the allegations in the second sentence, except to admit that on June 25, 2002, the day of the search, Dr. Hatfill agreed to meet with FBI special agents assigned to the Washington Field Office. The Agency Defendants deny the allegations in the third sentence, except to admit that the meeting was held at an off-site office leased by the FBI in Frederick, Maryland, approximately 50 miles from Washington, D.C. The Agency Defendants deny the allegations in the fourth sentence, except to admit that, at the conclusion of the meeting, Dr. Hatfill consented to have FBI agents search his Frederick, Maryland apartment.

32. The Agency Defendants admit the allegations in the first sentence of this paragraph. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the second sentence, other than to admit that television and radio press were present outside Dr. Hatfill's apartment while it was being searched. The Agency Defendants deny the remaining allegations in this paragraph.

33. The Agency Defendants deny the allegations in the first and second sentences of this paragraph. The last sentence of this paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in the last sentence of this paragraph.

34. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the first and second sentences, and further aver that, after reasonable inquiry, the Agency Defendants are unable to admit or deny whether any employee of the FBI leaked information to the news media regarding the consensual search of Dr. Hatfill's apartment. With respect to the allegations in the third sentence, the Agency Defendants admit that they have contacted scientists in connection with the Amerithrax investigation; state that, after reasonable

inquiry, the Agency Defendants lack sufficient knowledge or information to admit or deny the allegations concerning whether DOJ and/or FBI officials had purposely leaked the name of a scientist to the media; and otherwise, can neither admit nor deny the allegations in this paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege.

35. This paragraph contains legal conclusions and theories, to which no response is required. To the extent that a response may be required, the Agency Defendants lack sufficient knowledge or information to admit or deny the allegation concerning Dr. Hatfill's ability to earn a living, and otherwise deny the allegations in this paragraph.

36. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in this paragraph, except to admit that Dr. Hatfill obtained a position at Louisiana State University after the anthrax attacks and that he was hired to train state and local first responders to identify and react to biological attacks.

37. The Agency Defendants admit that certain press reports in early August 2002 stated that FBI agents observed Dr. Hatfill putting items into a dumpster outside of his apartment building, and otherwise can neither admit nor deny the allegations in this paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege

38. The Agency Defendants deny the allegations in the first sentence, except to admit that, in late July 2002, Bob Roth phoned Dr. Hatfill. The Agency Defendants admit the allegations in the second sentence. With respect to the third sentence, the Agency Defendants deny the allegations, except to admit that Mr. Glasberg indicated in a voicemail that Dr. Hatfill

would be willing to sit down for an interview with FBI investigators at Mr. Glasberg's office with counsel present. The Agency Defendants admit the allegations in the fourth and fifth sentences.

39. The Agency Defendants admit the allegations in the first sentence of this paragraph. After reasonable inquiry, the Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the second sentence.

40. The Agency Defendants admit the allegations in the first, third, fifth, and sixth, sentences of this paragraph. The Agency Defendants deny the allegations in the second and fourth sentences of this paragraph. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the seventh sentence.

41. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

42. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

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45. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

46. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

47. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

48. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

49. The Agency Defendant deny the allegations in the first sentence of this paragraph. The Agency Defendants admit the allegations in the second, third, and fourth sentences of this paragraph. The Agency Defendants deny the allegations in the fifth sentence, except to admit that, on August 22, 2002, during a press conference at the Peter Rodino Federal Building in Newark, New Jersey, Mr. Ashcroft, in response to press inquiries, refused to identify Dr. Hatfill as a suspect and instead stated that “Mr. Hatfill is a person of interest to the Department of Justice, and we continue the investigation. For me to comment further, it would be inappropriate.”

50. This paragraph contains characterizations and arguments, not allegations of fact, and, accordingly, no response is required. To the extent that a response may be required, the allegations in this paragraph are denied.

51. This paragraph contains characterizations and arguments, not allegations of fact, and, accordingly, no response is required. To the extent that a response may be required, the allegations in this paragraph are denied.

52. The first sentence of this paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the allegations in the first sentence are denied. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the second sentence. The Agency Defendants deny the allegations in the third sentence of this paragraph.

53. The Agency Defendants deny the allegations in this paragraph.

54. The Agency Defendants deny the allegations in this paragraph.

55. This paragraph contains legal theories and conclusions, to which no response is required.

56. The Agency Defendants deny the allegations in this paragraph except to admit that the quoted language is contained in 5 U.S.C. § 552a(b), to which the Court is respectfully referred for a full and accurate statement of its contents, and that the FBI and DOJ are subject to the Privacy Act.

57. The first sentence of this paragraph contains legal theories and conclusions, to which no response is required. With respect to the second sentence, the Agency Defendants admit that

the quoted language is contained in the title of a DOJ regulation codified at 28 C.F.R. § 50.2, to which the Court is respectfully referred for a full and accurate statement of its contents.

58. The Agency Defendants deny the allegations in this paragraph except to admit that the quoted language is contained in a DOJ regulation codified at 28 C.F.R. § 50.2, to which the Court is respectfully referred for a full and accurate statement of its contents.

59. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in this paragraph in that, after reasonable inquiry, the Agency Defendants lack sufficient knowledge or information to admit or deny whether any employee of the Agency Defendants leaked information to the news media concerning searches of Dr. Hatfill's apartment.

60. The Agency Defendants admit that the quoted language is contained in a DOJ regulation codified at 28 C.F.R. § 50.2, to which the Court is respectfully referred for a full and accurate statement of its contents.

61. The Agency Defendants admit that the quoted language is contained in a DOJ regulation codified at 28 C.F.R. § 50.2, to which the Court is respectfully referred for a full and accurate statement of its contents.

62. This paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in this paragraph and respectfully refer the Court to the regulations at issue for a full and accurate statement of their contents.

63. The Agency Defendants deny the allegations in this paragraph except to admit that Section 9-27.760 of the U.S. Attorneys' Manual provides:

In all public filings and proceedings, federal prosecutors should remain sensitive to the privacy and reputation interests of uncharged third-parties. In the context of

public plea and sentencing proceedings, this means that, in the absence of some significant justification, it is not appropriate to identify (either by name or unnecessarily-specific description), or cause a defendant to identify, a third-party wrongdoer unless that party has been officially charged with the misconduct at issue. In the unusual instance where identification of an uncharged third-party wrongdoer during a plea or sentencing hearing is justified, the express approval of the United States Attorney or his designee should be obtained prior to the hearing absent exigent circumstances. See USAM 9-16.500. In other less predictable contexts, federal prosecutors should strive to avoid unnecessary public references to wrongdoing by uncharged third-parties. With respect to bills of particulars that identify unindicted co-conspirators, prosecutors generally should seek leave to file such documents under seal. Prosecutors shall comply, however, with any court order directing the public filing of a bill of particulars.

64. The Agency Defendants admit that the quoted language is contained in the U.S. Attorneys' Manual.

65. The Agency Defendants deny the allegations in the first sentence of this paragraph. After reasonable inquiry, the Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the last sentence of this paragraph. Otherwise, the Agency Defendants admit the allegations in this paragraph.

66. This paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in this paragraph.

67. This paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in this paragraph.

68. The Agency Defendants admit the allegations in the first sentence of this paragraph. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the second sentence of this paragraph. With respect to the third sentence, the

Agency Defendants admit that Dr. Hatfill declared publicly in his August 11, 2002, public statement that he had nothing to do with the anthrax attacks, and otherwise can neither admit nor deny the allegations in the third sentence paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege.

69. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the first sentence of this paragraph. The Agency Defendants deny the allegations in the second sentence, except to admit that, in his August 11, 2002, public statement, Dr. Hatfill identified particular instances in which he said he had agreed to FBI requests. The Agency Defendants deny the allegations in the third sentence, except to admit that, in his August 11, 2002, public statement, Dr. Hatfill stated that: he had a short interview with the FBI, sat for a polygraph, and was told by the polygraph examiner that he had passed. The Agency Defendants deny the allegations in the fourth sentence, except to admit that, in his August 11, 2002, public statement, Dr. Hatfill stated, “In due course, following an additional debriefing, the FBI confirmed to me and to my former counsel, Tom Carter, that I was not a suspect in this case.” The Agency Defendants deny the allegations in the fifth sentence, except to admit that, in his August 11, 2002, public statement, Dr. Hatfill stated: that the FBI contacted him again “within several days after Dr. Rosenberg’s reported comments in Congress,” that he agreed to FBI requests to “look at [his] apartment and swab the walls for anthrax spores,” and that he “volunteered to have the FBI search [his] car and a small, unrefrigerated storage area in Florida.”

70. The Agency Defendants deny the allegations in the first sentence of this paragraph, except to admit that, in his August 11, 2002, public statement, Dr. Hatfill noted his “surprise and

dismay” at the time of the search, during which, he stated in his August 11, 2002, public statement, “television cameras, satellite TV trucks, overheard helicopters were all swarming around [his] apartment block.” The Agency Defendants deny the allegations in the second sentence, except to admit that, in his August 11, 2002, public statement, Dr. Hatfill stated that he had never worked with anthrax, that he had “last been inoculated in [his] records beginning in ‘99, and since December 2000, [he is] as susceptible to anthrax as any of you,” and that his expertise was not in “bacteriology, as in the case of the anthrax organism.” The Agency Defendants deny the allegations in the third sentence, except to admit that, in his August 11, 2002, public statement, Dr. Hatfill said, among other things, that he “object[ed] to an investigation characterized, as this one has been, by outrageous official statements, calculated leaks to the media, and causing a feeding frenzy operating to [his] great prejudice.”

71. The Agency Defendants admit that Mr. Glasberg sent a letter dated August 13, 2002, to the FBI’s Office of Professional Responsibility and the DOJ’s Office of Professional Responsibility, which raised the issues described in paragraph 71.

72. The Agency Defendants admit that Mr. Glasberg sent a letter dated August 13, 2002, to the FBI’s Office of Professional Responsibility and the DOJ’s Office of Professional Responsibility, which raised the issues described in paragraph 72.

73. The Agency Defendants admit that Mr. Glasberg sent a letter dated August 21, 2002, to Hon. Patrick Leahy, Chairman, Committee on the Judiciary, United States Senate, and Hon. F. James Sensenbrenner, Jr., Chairman, Committee on the Judiciary, U.S. House of Representatives, which raised the issues described in paragraph 73.

74. The Agency Defendants deny the allegations in the first three sentences of this paragraph. The fourth sentence of this paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in the fourth sentence.

75. The Agency Defendants deny the allegations in the first sentence of this paragraph. With respect to the second and third sentences of this paragraph, after reasonable inquiry, the Agency Defendants lack sufficient knowledge or information to admit or deny whether government agents leaked to ABC News information concerning anything recovered from any government search of Dr. Hatfill's computer. The fourth sentence of this paragraph contains legal theories and conclusions, to which no response is required.

76. With respect to the first and third sentences of this paragraph, the Agency Defendants state that, after reasonable inquiry, they lack sufficient knowledge or information to admit or deny whether government officials leaked information to *Newsweek* concerning Dr. Hatfill; to the extent that a further response may be required, the Agency Defendants cannot provide such a response because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege. The second sentence of this paragraph contains legal theories and conclusions, to which no response is required; to the extent that a response may be required, the Agency Defendants admit that the quoted language is contained in 28 C.F.R. § 50.2, to which the Court is respectfully referred for a complete and accurate statement of its terms.

77. With respect to the first, second, and fourth sentences of this paragraph, the Agency Defendants state that, after reasonable inquiry, they lack sufficient knowledge or information to

admit or deny whether FBI and/or DOJ officials leaked information to Nicholas Kristoff concerning Dr. Hatfill; to the extent that a further response may be required, the Agency Defendants cannot provide such a response because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege. The third sentence of this paragraph contains legal theories and conclusions, to which no response is required; to the extent that a response may be required, the Agency Defendants admit that the quoted language is contained in 28 C.F.R. § 50.2, to which the Court is respectfully referred for a complete and accurate statement of its terms.

78. The Agency Defendants admit that FBI agents showed a single photograph of Dr. Hatfill to individuals in the Princeton, New Jersey, area, including residents and business owners and their employees. Otherwise, the Agency Defendants deny the allegations in this paragraph.

79. The Agency Defendants can neither admit nor deny the allegations in this paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege.

80. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

81. This paragraph contains legal theories and conclusions, to which no response is required.

82. With respect to the first two sentences, the Agency Defendants admit that the Complaint was filed one year after Dr. Hatfill's August 11, 2002, public statement and the first letters by his counsel to DOJ and FBI and that Dr. Hatfill maintains his innocence, and lack

sufficient knowledge or information to admit or deny whether Dr. Hatfill continued to keep oversight officials abreast of new government abuses. Otherwise, the Agency Defendants deny the allegations in this paragraph.

83. The Agency Defendants can neither admit nor deny the allegations in the first sentence of this paragraph because to do so would require the disclosure of sensitive information concerning an ongoing criminal investigation and protected by the law enforcement privilege. After reasonable inquiry, the Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the second sentence of this paragraph. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in the third sentence of this paragraph.

84. The Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in this paragraph.

85. The Agency Defendants admit that the first, second, and third sentences describe certain parts of the ABCNEWS.COM report. With respect to the fourth sentence, the Agency Defendants admit that ABCNEWS.COM reported that “[o]fficials attending the meeting also told ABCNEWS that FBI agents plan another round of interviews with other persons of interest, including some current and former government scientists. ‘It’s an attempt to rule out anybody else who has come across our radar,’ said one investigator. ‘Then, we can focus entirely on Hatfill,’ the investigator said.” To the extent that the allegations in this paragraph call for a further response, after reasonable inquiry, the Agency Defendants lack sufficient knowledge or information to admit or deny whether investigators with the FBI or DOJ provided information to ABCNEWS.COM concerning Dr. Hatfill.

86. The Agency Defendants lack sufficient knowledge or information to admit or deny what CBSNEWS.COM may have reported on May 8, 2003, but admit that, on May 8, 2003, CBS News reported on television that “agents say . . . they believe that they already have their man,” and that “sources suggest . . . that the government could bring charges against Hatfill unrelated to the anthrax attacks at all, if they become convinced that’s the only way to stop future incidents,” and that CBS News drew a comparison to charges brought against Al Capone. To the extent that the allegations in this paragraph call for a further response, after reasonable inquiry, the Agency Defendants lack sufficient knowledge or information to admit or deny whether employees of the FBI or DOJ provided information to CBS News or CBSNEWS.COM concerning Dr. Hatfill.

87. With respect to the first sentence, the Agency Defendants admit that, on May 11, 2003, the *Washington Post* published a front-page article on the anthrax investigation, which attributed certain reported information to “sources close to the investigation” and “sources close to the case.” With respect to the second sentence, the Agency Defendants admit that the article referred to “[a] piece of equipment and other evidence recovered this winter from . . . ponds in Frederick Municipal Forest,” that the alleged search of the pond was reported to have been “[b]ased on a tip,” and that the article stated that “the FBI now plans to drain one of the ponds.” The Agency Defendants admit that the quotation contained in the third sentence of this paragraph is contained in the *Washington Post* article. To the extent that the allegations in this paragraph call for a further response, after reasonable inquiry, the Agency Defendants lack sufficient knowledge or information to admit or deny whether employees of the FBI or DOJ provided information to *Washington Post* concerning Dr. Hatfill or any search of any pond in Frederick, Maryland.

88. To the extent that this paragraph purports to allege that DOJ or FBI personnel improperly disclosed certain information to the media, the Agency Defendants state that, after reasonable inquiry, they lack sufficient knowledge or information to admit or deny such allegations. To the extent that this paragraph purports to contain allegations concerning the anthrax investigation itself, the Agency Defendants can neither admit or deny such allegations because to do so would require the disclosure of sensitive information protected by the law enforcement privilege.

89. The Agency Defendants admit that the *Washington Post* reported on August 1, 2003, that “[t]he FBI spent about \$250,000 and three weeks draining 1.45 million gallons of water from the pond in a search for evidence” and that “the search netted nothing more than a hodgepodge of items . . . none of which appeared to be linked to the case, sources said.”

90. The first sentence of this paragraph contains legal theories and conclusions, to which no response is required. To the extent that a response may be required, the Agency Defendants deny the allegations in the first sentence of this paragraph. The Agency Defendants can neither admit nor deny the allegations in the second sentence of this paragraph because to do so would require the disclosure of information concerning an internal investigation of the Office of Professional Responsibility protected by the law enforcement privilege and the deliberative process privilege.

91. The Agency Defendants can neither admit nor deny the allegations in the first sentence of this paragraph concerning the Amerithrax investigation because to do so would require the disclosure of sensitive information protected by the law enforcement privilege. The Agency Defendants can neither admit nor deny the allegations in the first sentence of this

paragraph concerning the investigation by the Office of Professional Responsibility because to do so would require the disclosure of sensitive information protected by the law enforcement privilege and the deliberative process privilege. With respect to the second sentence, the Agency Defendants deny the allegations except to admit that the language quoted is contained in an April 11, 2003, letter from Mr. Jarrett responding to complaints of leaks. With respect to the third sentence, the Agency Defendants admit that Mr. Jarrett did not reveal how many or which DOJ or FBI officials were interviewed or how many investigators or attendees of a joint FBI/USPIS status conference were or were not questioned.

92. The Agency Defendants deny the allegations in the first sentence, except to admit that Mr. Jarrett stated, “We regret that we were unable to determine the source(s) of the information published in the media. The Department is very concerned about the improper disclosure of information by its employees.” The Agency Defendants deny the remaining allegations in this paragraph.

93. The Agency Defendants deny the allegations in this paragraph, except to admit that OPR concluded that Mr. Ashcroft did not engage in professional misconduct or exercise poor judgment.

94. The Agency Defendants admit that DOJ has an Office of Public Affairs. The Agency Defendants deny the remaining allegations in this paragraph.

95. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

96. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

97. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

98. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

99. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

100. This paragraph contains legal theories and conclusions, to which no response is required.

101. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

102. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

103. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

104. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

105. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

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111. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

112. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

113. The responses to paragraphs 1 through 100 as set forth above are realleged and incorporated herein.

114. With respect to the first sentence in this paragraph, the Agency Defendants admit that the quoted language is contained in 5 U.S.C. § 552a(b), to which the Court is respectfully referred for a full and accurate statement of its contents. The second sentence of this paragraph contains legal theories and conclusions, to which no response is required.

115. The Agency Defendants admit the allegations in this paragraph.

116. After reasonable inquiry, the Agency Defendants lack sufficient knowledge or information to admit or deny the allegations in this paragraph.

117. The Agency Defendant lack sufficient knowledge or information to admit or deny the allegations in this paragraph.

118. This paragraph contains plaintiff's characterization of this action, to which no response is required.

119. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

120. The allegations in this paragraph do not pertain to Count III, but instead pertain to count(s) of the Complaint with respect to which a motion to dismiss has been filed and remains pending. Accordingly, no response by the Agency Defendants is required.

The Agency Defendants specifically deny each allegation of plaintiff's Complaint not otherwise responded to concerning any claim under the Privacy Act.

WHEREFORE, the Agency Defendants pray that Count III of the Complaint be dismissed, and that this Court grant such other relief as it may deem appropriate.

Dated: November 8, 2004

Respectfully Submitted,

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