

was raised by the FBI, I had already provided all the information and documentation of which I am aware. It is not disputed that searches to comply with my actual requests are not made and not attested to. It is not disputed that the FBI needs no help from me to make searches responsive to my actual requests. My allegation that the search slips are entirely incomplete and that some are phony is unrefuted. (Emphasize that almost all New Orleans alleged searches in this litigation are dated almost a year before I filed my requests.)

Burdensomeness- not even addressed, leave alone refuted.

Not visualized in and contrary to Act - no briefing at all by FBI on this. The Act says the burden of proof is on the agency to sustain its action. It does not say under some condition. It says under all conditions, and without refutation I have stated that it has not made the required searches, has not provided even all the records identified on the so-called searches, has not justified any withholdings, and I have provided countless illustrations of this that almost without exception remain ignored. It isn't even denied that the FBI's record in this case assures me that even if I did its work, as it demands under the discovery guise, it would pay any more attention than it has, which means none at all. really. With at least what I have specified, there is no doubt that the burden of proof is on the FBI and it has not even pretended to have met this burden of proof.

Frivolousness, ulterior and improper purposes: The FBI does not even deny that it has not made searches responsive to my actual requests and in this has violated its own regulations (which I should have included above also); that it has not responded to the detailed and documented information I have provided, including in almost entirely undigested affidavits; that its attestations are incompetent; that in the specifics I provided it was untruthful (it hasn't even addressed these specifics, leave alone made an effort to refute them); that it has and knows it has pertinent information not yet searched for and not provided even when it was identified.

Can it possibly be that in the face of this case record it is other than frivolous, other than improper and for ulterior purposes that it now demands dismissal as a sanction? ~~AND~~ And that when it hasn't even bothered to refute my allegations relating to the basis of its claim for dismissal, that the discovery is not proper and is not necessary and is wrong?

This is in haste and far from inclusive. It represents some of what I think we need all drawn together at one point, succinctly, in the event of appeal.

Smith may try to cut you off as well as confuse you. Persist. This is important. If he refuses you, ask that his refusal be in form you can appeal. If he refuses, whatever your opposition to it in general, mandamus. Remember, the appeals court considers the issues on mandamus even if it turns that down. It gets the issues there. If you can't get it all in orally, you can in more or less factual outline form, and that can be used after you file it. This case lacks it and it is essential for more than use on appeal.

When I didn't hear from you by lunchtime about the purpose of Smith's Friday afternoon call to you, I ~~didn't~~ decided to rush this so I can get it in the evening mail.

Best,