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Pro Se Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

JESSE C. TRENTADUE,

Plaintiff,

vs.

FEDERAL BUREAU OF
INVESTIGATION, UNITED STATES
DEPARTMENT OF JUSTICE OFFICE
OF INFORMATION AND PRIVACY,
and UNITED STATES CENTRAL
INTELLIGENCE AGENCY,

Defendants.

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:
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: **MEMORANDUM IN SUPPORT OF**
: **MOTION TO COMPEL**
: **PRODUCTION OF MURRAH**
: **BUILDING SURVEILLANCE TAPES**
: **AND RELATED EVIDENTIARY**
: **DOCUMENTS**

:
:
: Case No.: 2:08cv788 CW
: Judge Clark Waddoups
: Chief Magistrate Samuel Alba

Plaintiff, Jesse C. Trentadue, hereby submits this *Memorandum* in support of his *Motion to Compel* production of Murrah Building surveillance tapes and related documents.

(Doc. 48.)

STATEMENT OF MATERIAL FACTS

The facts necessary for the Court to rule upon this *Motion to Compel* are as follows:

1. In response to Plaintiff's *FOIA* requests, FBI Defendants produced 29 videotapes and related evidentiary documents.¹ These tapes were from surveillance cameras located on the Regency Tower Building, the Journal Record Building, Oklahoma City Public Library, the United States Post Office and the Southwestern Bell Building in Oklahoma City, Oklahoma. FBI Defendants also produced 302s related to their acquisition of this evidence.²

2. But FBI Defendants did not produce surveillance tapes taken by exterior cameras on the Murrah Federal Building. Neither did they produce any documents, either FD-302s or FD-192s for their seizure-collection of this evidence.

3. FBI Defendants do not, however, deny the existence of the Murrah surveillance tapes. Nor do they deny the existence of documents related to their

¹ An example of the documentary evidence, would be the FD-302 FBI Defendants produced recording their seizure of the Journal Record Building tapes, a copy of which is attached hereto as Exhibit 1.

² Exhibit 2 hereto.

having taken possession of those tapes. And the reason for this absence of denial by FBI Defendants is simple: They cannot.

4. FBI Defendants cannot deny the existence of the tapes or evidence of seizure-collection documents because attached hereto as Exhibits 3 and 4, respectively, are *Declarations* from Joe Bradford Cooley and Don Browning. Cooley and Browning have personal knowledge of the video security camera system in place at the Murrah Building on the morning of April 19, 1995.

5. Those surveillance cameras were monitored by the Federal Protective Services, now part of the Department of Homeland Security. The Federal Protective Service provide law enforcement and security services to federally owned and leased facilities such as the Murrah Building.³

6. Both men confirmed that the surveillance cameras in the Murrah Building would have recorded not only delivery of the Ryder truck containing the bomb, but also the “suspects” who got out of that truck.⁴ More importantly, both Cooley and Browning state that the Murrah Building cameras were recorded at an off site location.

³ Exhibits 3 and 4.

⁴ Exhibit 3, ¶ 17; Exhibit 4, ¶8.

Consequently, the tapes would not have been destroyed by the blast that destroyed the Murrah Building.⁵

7. Furthermore, on the morning of April 19, 1995, Browning was trying to rescue of a women trapped on the rubble of the Murrah Building when he was ordered by an FBI Agent to leave the scene. As Browning left the scene, he observed FBI personnel removing the surveillance cameras from the exterior of the Murrah Federal Building.⁶

8. Browning, an Oklahoma City police officer, thought this was part of the FBI's evidence gathering or chain of custody procedures since those exterior cameras would have shown and recorded delivery of the bomb in a Ryder truck that morning, as well as the person or persons who exited that truck.⁷ Nevertheless, Browning thought **“It was odd that the FBI’s removal of these cameras was taking place while many people were still trapped alive in the rubble of the Murrah Federal Building and so many of us were working desperately to find them.”**⁸

⁵ Exhibit 3, ¶ 17; Exhibit 4, ¶ 5.

⁶ Exhibit 4, ¶s 7 and 8.

⁷ Exhibit 4, ¶ 9.

⁸ Exhibit 4, ¶ 10 (emphasis added).

ARGUMENT

Admittedly, discovery is not a common litigation tool employed in a *FOIA* suit. Nevertheless, discovery is appropriate in a *FOIA* case when there is reason to believe, as in this case, that the agency is either withholding records or did not conduct an adequate “good faith” search for the materials.

Discovery in a Federal *FOIA* action is permitted in order to determine whether complete disclosure of documents has been made and whether those withheld are exempt from disclosure. Whether a thorough search for documents has taken place and whether withheld items are exempt from disclosure are permissible avenues for discovery. **If the Plaintiff or the Agency’s response raises serious doubts as to the completeness and good faith of the Agency’s search, discovery is appropriate.**

(37A *Am. Jur. 2d* Freedom of Information Acts, § 503)(emphasis added).⁹ The discovery permitted under *FOIA* also includes depositions designed to disclose the “malfeasance” of the government. See *In Trentadue v. FBI*, 572 F.3d 795 (10th Cir. 2009); *Judicial Watch, Inc. v. United States Dept. Of Commerce*, 127 F.Supp.2d 228 (D.C. D.C. 2000.)

⁹ See *Info. Acquisitions Corp. v. Dept. of Justice*, 444 F.Supp. 458 (D.C. 1978); *Murphy v. Fed. Bureau of Investigation*, 490 F.Supp. 1134 (D.C. 1980); *Giza v. Sec’y of Health, Educ. & Welfare*, 628 F.2d 748, 751 (1st Cir. 1980); *Niren v. INS*, 103 F.R.D. 10 (Or. 1984); *Weisberg v. Dept. of Justice*, 543 F.2d 308 (D.C. Cir. 1976); *Van Strum v. U.S. E.P.A.*, 680 F.Supp. 349 (D. Or. 1987). More importantly, even after an Agency claims that it has “complied substantially” with its *FOIA* obligations for discovery, including depositions, it is permissible to test the veracity of that claim. *Weisberg v. USDOJ*, 617 F.2d 365 D.C. Cir. 1980).

However, discovery would only be necessary in this instance if FBI Defendants refused to produce the Murrah Building videotapes and related evidence documents. If that occurs, then Plaintiff should be given the right to depose, by way of a *Rule 36(b) deposition*, designated representatives of FBI Defendants to determine what happened to this evidence. Meanwhile, the Court should grant Plaintiff's *Motion to Compel* and in doing so order FBI Defendants to immediately produce the Murrah Building surveillance tapes and related evidentiary documents.

DATED this 29th day of March, 2009.

/s/ jesse c. trentadue
Jesse C. Trentadue
Pro Se Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that this 29th day of March, the foregoing **MEMORANDUM
IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF MURRAH
BUILDING SURVEILLANCE TAPES** was served by electronic process upon:

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