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

Telephone: (202) 514-3642

Morgan Yardis

Re: Appeal Nos. A-2023-01378 & A -2023-01379
Request Nos. 1585935 & 1585922

[redacted]

VIA: Email - 11/17/2023

Dear Morgan Yardis:

You appealed from the actions of the Federal Bureau of Investigation (FBI) on your Freedom of Information Act requests for access to: (1) records of communications between Yoel Roth and employees within the FBI's National Election Command Post from January 1, 2020 through November 30, 2022; and (2) records of communications between Patrick Conlon, Stacia Cardille, and the FBI employees within the National Electoral Command Post from January 1, 2020 through November 30, 2022. I note that your appeals concern the FBI's refusal to confirm or deny the existence of responsive records and its determination that your requests are too broad.

After carefully considering your appeals, I am affirming, on partly modified grounds, the FBI's actions on your requests. 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 refused to confirm or deny the existence of records responsive to your requests. Confirming or denying the existence of such records, including law enforcement records, concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6), (7)(C). Additionally, it is reasonably foreseeable that confirming or denying the existence of such records would harm the interests protected by these exemptions. See, e.g., People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535, 544 (D.C. Cir. 2014) (upholding agencys refusal to confirm or deny existence of records that would confirm whether investigation of third party had occurred); see also Antonelli v. FBI, 721 F.2d 615, 618 (7th Cir. 1983) (finding that confirming whether third party has been the subject of investigation would likely constitute an invasion of that persons privacy that implicates the protections of Exemptions 6 and 7).

Please be advised that this Office's decision was made only after a full review of these matters. Your appeals were assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeals, your underlying requests, and the actions of the FBI in response to your requests.

If you are dissatisfied with my action on your appeals, 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 [redacted], 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 appeals, you may contact this Office and speak with the undersigned agency official by calling [redacted].

Sincerely,

[redacted]

X _____

Christina Troiani
Chief, Administrative Appeals Staff