IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BRIAN HUDDLESTON, Plaintiff, v. FEDERAL BUREAU OF INVESTIGATION and UNITED STATES DEPARTMENT OF JUSTICE, Defendants.	CIVIL ACTION No. 4:20CV447 JUDGE AMOS MAZZANT

FBI'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF SEARCH ADEQUACY RULINGS

Defendant, the Federal Bureau of Investigation, ("FBI") files this response in opposition to Plaintiff, Brian Huddleston's ("Plaintiff") Motion for Reconsideration of Search Adequacy Rulings, Doc. 257.

INTRODUCTION AND HISTORY OF PLAINTIFF'S CHALLENGES TO SEARCH

Plaintiff styles his filing as a motion for reconsideration, but that description dramatically understates what Plaintiff asks the Court to do. This is not Plaintiff's first challenge to the adequacy of the FBI's searches for documents responsive to his FOIA requests. It is not even his first effort to revisit the Court's prior resolution of the issue of the adequacy of the FBI's search. Over the course of this litigation, Plaintiff has repeatedly challenged the FBI's search methodology, repeatedly asserted that additional repositories of records must exist, repeatedly accused the FBI of bad faith, repeatedly sought additional searches, discovery, evidentiary development, or *in camera* review, and repeatedly lost on all issues. The Court has already considered Plaintiff's

arguments on multiple developed records, and with limited exceptions where the Court ordered additional processing or explanation, has repeatedly rejected Plaintiff's efforts to reopen the FBI's search. That brings us to the present Motion. Six years into this case, Plaintiff does not merely seek to reconsider an interlocutory order; the Plaintiff effectively seeks to relitigate years of orders regarding the adequacy of the FBI's search for documents. And for good measure, Plaintiff tacks on requests to revisit essentially every substantive ruling entered in this case, including prior evidentiary rulings. Many of those requests are not based on any intervening change in law or newly discovered evidence; they simply repackage arguments Plaintiff previously made and the Court previously rejected. The Plaintiff's disagreement with prior rulings is not, standing alone, a basis to relitigate them. The Court should reject his request.

History matters. In the Parties' original summary judgment briefing, Plaintiff challenged the FBI's reliance on its Central Records System and Sentinel, argued that responsive records could exist outside the systems the FBI searched, asserted that FBI should have searched additional sources such as emails and text messages, and argued that the FBI's prior failures to locate responsive documents the plaintiff *wanted* to exist demonstrated that the FBI's declarations could not be trusted. Doc. 46, at 7–10, Doc. 46, at 16–17, 31–32. Over the past six years, the FBI has addressed these arguments through multiple, detailed declarations that explained its search methodology and why the additional repositories of documents Plaintiff wanted to be included did not undermine the reasonableness of its search for records. Docs. 39, at 14–19; 54, at 3–11. After considering those competing positions, the Court held that "the FBI conducted a legally adequate search using 'methods which can be reasonably expected to produce the information requested' in Huddleston's FOIA requests." Doc. 70, at 26 (quoting *Batton v. Evers*, 598 F.3d 160, 176 (5th Cir. 2010)).

Plaintiff, nevertheless, continued to pursue the same basic theory—that FBI failed to adequately search for responsive records, which must have existed *somewhere*. His corrected motion for summary judgment sought searches of additional repositories, including FBI's Lync messaging system, Teleporter, email systems, and other sources. Doc. 112. Plaintiff again argued that FBI personnel could have created or maintained responsive communications outside Sentinel and attacked the proposition that significant federal records would necessarily have been preserved in the FBI's recordkeeping systems. *See* Doc. 112, at 2–3. The FBI responded to these arguments by showing that Plaintiff's position was based on speculation as opposed to concrete evidence that responsive records existed in additional repositories. *E.g.* Doc. 118, at 5. Plaintiff then, again, supplemented his arguments with the Durham Report and other material. The FBI responded that Plaintiff was recycling the "same arguments regarding the Lync messaging system with additional references to the Durham Report." Doc. 135, at 2. The Court again rejected Plaintiff's challenge, holding that Plaintiff failed to establish that FBI was required to conduct the additional searches he requested. *See* Doc. 174.

Plaintiff then shifted from challenging particular repositories to attacking the FBI's credibility more broadly. In connection with his motion to hold the FBI in contempt, Plaintiff argued that the treatment of Seth Rich's laptops, its *Vaughn* indices, metadata, and unreviewable files demonstrated lack of candor and bad faith. Docs 190, 198. He later sought to supplement the record with "evidence" concerning former FBI Director James Comey's purported misspelling of names to allegedly avoid searches, documents found in burn bags, and materials discovered in a previously undisclosed sensitive compartmented information facility (SCIF). Doc. 211. Plaintiff offered the evidence for the same purpose that he offers much of the evidence supporting the Motion: to establish institutional bad faith and to support his argument that the FBI has failed to

conduct reasonably adequate searches. *Id.* at 5. The FBI again opposed that effort as Plaintiff's speculation failed to establish the FBI's searches had not been adequate. Doc. 212, at 2. In his Reply, Plaintiff conceded that the FBI had confirmed that "Prohibited Access" designation would not have prevented the FBI Record/Information Dissemination Section (RIDS) from locating responsive records. Doc. 210, at 1. The Court thereafter denied the Plaintiff's request for additional searches, relying in part on FBI's explanation concerning Prohibited Access records. Doc. 215.

Considering this history, the Motion seeks something significantly broader than reconsideration of a discrete ruling based on subsequent changes in law or fact. Plaintiff asks the Court to revisit the September 2022 search-adequacy determination; the August 2024 rulings concerning Lync, email, and other repositories; the March 2026 ruling concerning Prohibited Access files; the Court's 2022 decision to decline a wholesale *in camera* review; and even its evidentiary rulings considering news articles. He seeks new searches of multiple repositories, supplemental *Vaughn* indices, renewed review of exemptions and redactions, an evidentiary hearing or discovery, and an *in examination* of broad categories of records, Doc. 257, at 34–35, Doc. 257-20. And through his separately filed motion for appointment of a special master, Plaintiff also seeks to place essentially the entire history of FBI's search and withholdings before an outside examiner to reassess the court's prior rulings. *See* Doc. 258.

Plaintiff's latest challenge derives from recently declassified records concerning OXFERD COMMA and MARCH TOLL. But, as Plaintiff makes clear, "this case is all about Crossfire Hurricane," Doc. 257, at 7, and OXFERD COMMA and MARCH TOLL are distinct investigations from Crossfire Hurricane. Thus, although FBI does not suggest that the Court should ignore genuinely new evidence because search adequacy has been previously litigated, these records should not cause the Court to reconsider years of rulings sustaining the adequacy of the FBI's

search. And even new evidence does make an old argument new. Much of the Motion uses the new records as a defibrator in an veiled attempt to resuscitate the same theories that the Court has already rejected: that records can exist outside Sentinel; that the FBI's recordkeeping practice cannot be trusted, that Lync and email must therefore be searched; that unrelated or institution-wide allegations of misconduct establish bad faith in this case; and that the FBI's declarations should no longer benefit from the treatment generally afforded agency declarations in FOIA actions. Nothwithstanding the Motion's 36 pages are chalked full of rhetoric, the question is simple—does the material the Plaintiff identifies undermine the searches the FBI conducted and the rulings the Court made. It does not.

LEGAL STANDARD

The Federal Rules of Civil Procedure do not recognize a general motion for reconsideration. Courts generally construe a motion seeking reconsideration under Federal Rules of Civil Procedure 54(b), 59(e), or 60(b), depending on the circumstances surrounding the motion. "Rule 59(e) governs motions to alter or amend a final judgment; Rule 54(b) allows parties to seek reconsideration of interlocutory orders and authorizes the district court to 'revise[] at any time' 'any order or decision ... [that] does not end the action.'" *Austin v. Kroger Texas, L.P.*, 864 F.3d 326, 336 (5th Cir. 2017) (quoting Fed. R. Civ. P. 54(b)).

Here, Plaintiff is seeking reconsideration of multiple interlocutory orders. For this reason, the Court should evaluate the Motion pursuant to Rule 54(b). Rule 54(b) provides that "any order or other decision, however designated, that adjudicates fewer than all of the claims or rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and the parties' rights and liabilities." Fed. R. Civ. P. 54(b). Under Rule 54(b), a court may reconsider and

reverse its decision for any reason it deems sufficient, even despite the lack of new evidence or a change in substantive law. *Austin*, 864 F.3d at 336 (quoting *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 185 (5th Cir. 1990)). The standard of review applicable to a motion for reconsideration of interlocutory orders is "as justice requires." *Contango Operators, Inc. v. U.S.*, 965 F.Supp.2d 791, 800 (S.D.Tex.2013); *Dos Santos v. Bell Helicopter Textron, Inc. Dist.*, 651 F.Supp.2d 550, 553 (N.D.Tex.2009) ("whether to grant such a motion rests within the discretion of the court").

ARGUMENT

Plaintiff's Motion can be resolved through four related points. First, neither public criticism of Crossfire Hurricane nor *Loper Bright* eliminated the treatment traditionally afforded agency declarations in FOIA litigation. Second, later public disclosures do not retroactively render completed searches inadequate or require perpetual reprocessing. Third, the OXFERD COMMA and MARCH TOLL materials do not demonstrate that the FBI failed to search locations reasonably likely to contain responsive records in this case or that restricted-access practices prevented RIDS from locating responsive material in this case. Fourth, Plaintiff's remaining requests largely repackage arguments and remedies that the Court has previously considered and rejected.

I. Plaintiff's attacks on the presumption for good faith afforded agency declarations based on White House tweets and the United States Supreme Court's overruling of *Chevron* deference in *Loper Bright* are not persuasive.

Plaintiff makes two unpersuasive attacks on the presumption of good faith afforded the FBI's declarations. First, Plaintiff argues that public statements criticizing Crossfire Hurricane constitute a repudiation of the FBI, which should preclude a good faith presumption in this case. Second, Plaintiff argues that the United States Supreme Court's decision in *Loper Bright v.*

Raimondo, 603 U.S. 369 (2024), precludes the "judge-made" presumption of good faith that has long been applied in FOIA litigation. Both arguments fail.

First, Plaintiff's reliance on public statements criticizing the Crossfire Hurricane investigation is misplaced. Whatever those statements may say about the conduct, purpose, or underlying investigation, they do not address the FBI's conduct in this case, the processing of Plaintiff's FOIA requests, the accuracy of the declarations submitted in this case, or the reasonableness of the searches the Court has repeatedly upheld. Generalized criticism of the investigation does not relate to the FBI's answering Plaintiff's FOIA request, nor does it establish that the Court should reconsider affording the FBI's declarations a presumption of good faith that has long underpinned FOIA litigation.

Plaintiff's separate reliance in *Loper Bright* fares no better. Plaintiff argues that *Loper Bright* provides a basis for reconsideration of FOIA's deference framework. But *Loper Bright* did not address the presumption of regularity afforded agency declarations in FOIA litigation. Indeed, District Judge Sean Jordan has previously rejected an attempt to invoke *Loper Bright* in a FOIA case where neither the Government nor the Magistrate Judge relied on *Chevron* deference. In *Ivanovskis v. Fed. Bureau of Investigation*, No. 4:23-cv-531-SDJ, 2025 WL 2778978 (E.D. Tex. Sept. 29, 2025), Judge Jordan explained *Loper Bright* formally overturned *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), and "'eliminated the 'judicial invention' of deference to administrative action and rulemaking,'" *Ivanovskis*, 2025 WL 2778978, at *1 (quoting *Van Loon v. Dep't of the Treasury*, 122 F.4th 549, 562 (5th Cir. 2024)). The court found that *Loper Bright* was inapplicable because the Government did not ask for, and the Magistrate Judge did not apply, *Chevron* deference. *Id.; see also Stevens v. United States Customs and Border Protection*, No. 25-c-2719, 2026 WL 2056856, *4 (N.D. Ill. July 16, 2026); *Brodsky v. FBI*, No. 24-2619,

2025 WL 1983885, *1 n.2 (7th Cir. July 17, 2025) ("[*Loper Bright*] has no applicability to the weight accorded to declarations made by agency officials in a FOIA case."). Plaintiff's request for reconsideration on the basis of *Loper Bright* should be denied.

Plaintiff's reliance on the later-assembled Crossfire Hurricane binder likewise does not undermine the adequacy of the FBI's prior searches. The January 19, 2021 Presidential Memorandum describes the binder as a collection of materials provided by the Department of Justice to the White House on December 30, 2020. The binder therefore did not exist as a discrete collection when the FBI conducted the searches challenged in this Motion. Its later creation cannot retroactively establish that the FBI failed to search a collection that had not yet been assembled.

Nor do the FOIA requests Plaintiff identifies establish otherwise. As to the portion of Plaintiff's April 9, 2020 request seeking records concerning "any other person or persons" involved in transferring DNC data to WikiLeaks, the FBI previously explained that the request failed to identify specific individuals with sufficient particularity to permit a reasonable search under 28 C.F.R. § 16.3(b). Corcoran Decl. ¶¶ 13–14.; Doc. 54-1, Fifth Seidel Decl. ¶ 18. And as to Plaintiff's code-name requests, the FBI issued a *Glomar* response and, consistent with its policy where *Glomar* applies, did not conduct a search that itself would reveal whether responsive records existed. Corcoran Decl. ¶ 14. Thus, the later assembly and declassification of the binder therefore does not show that the FBI's earlier searches were inadequate.

II. FOIA does not require the FBI to perpetually reevaluate completed searches as new information becomes public.

The Motion starts from the flawed premise that information first made public in 2026 can be used to measure the adequacy of searches the FBI conducted years earlier. In this vein, Plaintiff's argument is based on the incorrect belief that any time he subsequently identifies new information that he believes is relevant to his prior FOIA requests, that means that the FBI's

searches were inadequate, the Court should reconsider the entire history of litigation surrounding search, and that the FBI should be ordered to reopen its prior processing and search again. There is no support for Plaintiff's position, which is not grounded in the FOIA.

An agency's FOIA determination is generally evaluated based on the circumstances existing when the determination was made. *Bonner v. U.S. Dep't of State*, 928 F.2d 1148, 1152–53 (D.C. Cir. 1991). As the D.C. Circuit explained, requiring an agency to continually "adjust or modify its FOIA responses based on post-response occurrences could create an endless cycle of judicially mandated reprocessing." *Id.* at 1152. The court rejected the proposition that documents properly withheld when processed became evidence of agency error merely because subsequent events made some of the information releasable. *Id.* at 1152–53. As the D.C. Circuit stated in *Meeeropol v. Meese*, "[t]he government cannot be expected to follow an endlessly moving target." 790 F.2d 942, 959 (D.C. Cir. 1986).

The FBI's processing of Plaintiff's requests is consistent with this principle. The FBI ordinarily evaluates the information supplied with a request and the facts officially acknowledged at the time it processes that request. Corcoran Decl. ¶¶ 6, 10. Indeed, this litigation demonstrates why such a rule is necessary. Plaintiff's requests date to 2020. In the six years since, additional investigative records have been declassified, public officials have made additional statements, and additional information concerning matters relating in varying degrees to the 2016 election has become public. If each development required a new search or a reconsideration of the adequacy of the FBI's search, Plaintiff's requests may never reach an endpoint. *Id.* ¶ 11 ("FBI cannot respond in perpetuity as each new public revelation is disclosed to the public, especially when Plaintiff will already have that *publicly available* information, otherwise this litigation will proceed into

perpetuity to the unfair and disadvantage of other FOIA requesters who have submitted fully compliant requests.").

This commonsense principle does not mean that new information can never matter. For instance, subsequent official acknowledgement may alter whether a *Glomar* response remains appropriate going forward. That occurred in this case, where a subsequent official acknowledgement partially pierced the FBI's *Glomar* determination. Corcoran Decl. ¶ 8. In that instance, Plaintiff reached an agreement with the FBI to be provided a single record for each individual/file containing the code name that had been acknowledged and made a release to Plaintiff on June 24, 2021. *Id.* But the existence of new information does not retroactively change what locations were reasonably likely to contain responsive records when the FBI searched them or transformed an otherwise reasonable search into an inadequate one, especially, whereas here, the new information identified by Plaintiff is generally unrelated information to what he sought in his requests.

III. The recent declassification and release of the OXFERD COMMA and MARCH TOLL records do not undermine the adequacy of FBI's prior searches.

Plaintiff's Motion rests on the recently declassified records from two different investigations (OXFERD COMMA and MARCH TOLL) compared to what Plaintiff requested in this case. As Plaintiff told the Court, "this case is all about Crossfire Hurricane." Doc. 257, at 7. OXFERD COMMA and MARCH TOLL are distinct investigations from Crossfire Hurricane. But from those two different investigations Plaintiff repeats two assumptions he has previously argued to the Court and lost: first, that responsive records existed in investigative files the FBI failed to search; and second, that the records' restricted or prohibited access status explains why the FBI's searches failed to locate them. Neither conclusion follows. The newly released records do not establish that OXFERD COMMA or MARCH TOLL were investigative files likely to contain

records responsive to Plaintiff's requests when the FBI conducted its searches, nor do they establish that restricted or prohibited status prevented the FBI RIDS from identifying potentially responsive records. The newly released records therefore do not justify the extraordinary remedy of reconsidering four years of orders concluding the FBI conducted an adequate search for records responsive to Plaintiff's requests.

a. OXFERD COMMA and MARCH TOLL were separate investigations from Crossfire Hurricane.

Plaintiff asserts that "this case is **all about Crossfire Hurricane**" and that his requests explicitly seek Crossfire Hurricane records." Doc. 257, at 7 (emphasis added). But OXFERD COMMA and MARCH TOLL are separate investigations from Crossfire Hurricane. *See* Declaration of Melissa A. Corcoran, attached hereto as Exhibit "A," ¶ 10.

The OXFERD COMMA opening electronic communication ("EC") certainly references Crossfire Hurricane and the DNC hack. It states that the FBI was predicating the new investigation on "predetermined criteria set forth by the CROSSFIRE HURRICANE investigative team" and recites background information concerning Russian intelligence's access to DNC networks and subsequent publication of material through DCLeaks and Wikileaks. Doc. 253-3, at 2–3. But the opening communication identifies the object of the new investigation as whether "President Donald J. Trump may be or has been, wittingly or unwittingly, involved in activities for or on behalf of the Government of the Russian Federation…." *Id.* at 2. It further identifies an investigative objective as determining "whether President Trump and other yet to be named obstructed and/or conspired to obstruct any associated FBI investigation." *Id.* at 5. The closing communication similarly describes OXFERD COMMA as an investigation of whether President Trump "may be or had been, wittingly or unwittingly, involved in activities for or on behalf of the Government of the Russian Federation." Doc. 257-5, at 2–3.

In her declaration, Melissa Corcoran confirms what the opening and closing documents themselves reflect. Although information developed from Crossfire Hurricane supplied a predication for OXFERD COMMA, it was not opened as part of Crossfire Hurricane. It was a new, different and separate investigation. *Id.*

MARCH TOLL is even further removed. Its opening communication provides:

> The FBI received the reference letter dated 20 March 2017 from two U.S. Senators regarding MARCH TOLL's representation to the Senate Judiciary Committee, both at his confirmation hearing and subsequent to it. The letter raises concerns about the extent of MARCH TOLL's contact with Russian officials, and requests the FBI investigate whether any laws were broken in the course of those contacts."

Doc. 257-6, at 4. The closing communication similarly makes clear that MARCH TOLL was a separate investigation from Crossfire Hurricane. It provided, "the SCO closed its investigation of potential false statements or perjury in the Attorney General's confirmation hearing testimony and related written submissions to Congress." Doc. 257-7, at 2. None of the MARCH TOLL documents provided by Plaintiff in his motion reference Crossfire Hurricane, and none discuss the DNC intrusion or transfer of DNC materials to Wikileaks. *See* Doc. 257-6, 257-7.

The Corcoran Declaration likewise confirms that MARCH TOLL arose from a separate congressional referral, explaining that it was "opened due to a referral from the Judiciary Committee based on a representation made by former Attorney General Sessions in Session's Senate confirmation hearing regarding contact with Russian officials." Corcoran Decl. ¶ 10.

Unable to show that either OXFERD COMMA or MARCH TOLL was part of Crossfire Hurricane, Plaintiff repeatedly characterizes OXFERD COMMA and MARCH TOLL as being part of the "Crossfire Hurricane family." *See, e.g.,* Doc. 257, at 11 n.3, Doc. 257, at 15 ("OXFERD COMMA – the Crossfire Hurricane-predicated investigation of the central figure, closed by the Special Counsel – is a core member of that family."). Despite Plaintiff's arguments, the undeniable

conclusion is that OXFERD COMMA, MARCH TOLL, and Crossfire Hurricane are separate investigations. Regardless of whether the investigations could have a familial relationship, whatever that means, Plaintiff did not seek documents from the Crossfire Hurricane "family". Plaintiff's FOIA request "is all about Crossfire Hurricane" (Doc. 257, at 7) and explicitly sought Crossfire Hurricane records:

> Documents, records, or communications revealing the code names assigned to any and all investigations **as part of the Crossfire Hurricane investigation**.
>
> Documents, records, or communications revealing the code names assigned to any and all **sub-sections of the Crossfire Hurricane investigation**.

Doc.3, ¶ 7 (emphasis added). Plaintiff did not seek records relating to Crossfire Hurricane investigation "families."

The distinction matters. A separate investigation does not become a component or subsection of Crossfire Hurricane merely because it relied on information developed by the Crossfire Hurricane team, involved overlapping personnel, or was later handled by the Special Counsel's Office. Plaintiff's newly coined "family" terminology cannot expand the scope of the requests that he actually submitted.

b. The released records do not establish that the OXFERD COMMA and MARCH TOLL investigative files are likely to contain records responsive to Plaintiff's requests.

Plaintiff also conflates the potential responsiveness of a portion of one newly released document with the separate question of whether an entire investigative file was a repository that the FBI was required to search.

For instance, the electronic communication opening the OXFERD COMMA investigation includes, as background, the assessment that Russian intelligence obtained DNC material and subsequently used DCLeaks and Wikileaks to publish it. Plaintiff argues that this passage falls

within his request for records indicating whether Seth Rich, Aaron Rich, or any "person or persons were involved in transferring data from the [DNC] to Wikileaks in 2016." Doc. 257, at 13–14. That the opening communication for OXFERD COMMA *mentioned* Russian intelligence and DNC material, it does not follow that the OXFERD COMMA investigative file was a repository of records that was likely to contain records responsive to Plaintiff's requests. OXFERD COMMA concerned a different investigative subject and purpose; the DNC intrusion appears in the opening communication as background explaining the investigative predicate.

The same distinction disposes of Plaintiff's reliance on the OXFERD COMMA closing communication. Plaintiff argues that the closing communication falls within his June 5, 2020 request because it the Special Counsel's Office authored it and it references the DNC-hack attribution. Doc. 257, at 15. Again, its existence does not establish that the FBI was required to identify and search the OXFERD COMMA investigative file for Plaintiff's other requests. The responsiveness of a document is not synonymous with the responsiveness of each record maintained in the investigative file where that document appears.

Plaintiff's theory regarding MARCH TOLL is even weaker. Plaintiff identifies no comparable passage in the MARCH TOLL opening or closing communications concerning the DNC intrusion or Wikileaks. Instead, he relies principally on MARCH TOLL to demonstrate how a restricted or prohibited investigation file could be maintained. But that does not demonstrate that the substantive MARCH TOLL investigative file was reasonably likely to contain records responsive to Plaintiff's requests.

To satisfy its burden under the FOIA, an agency must only show that it made a good faith effort to conduct a search for the requested records, using methods which can reasonably be expected to produce the requested information. *Ogelesby v. U.S. Dep't of Army*, 920 F.2d 57, 68

(D.C. Cir. 1990). And the mere fact that a singular document relating to OXFERD COMMA mentions the DNC hack as background does not demonstrate that the FBI's conclusion that OXFERD COMMA and MARCH TOLL would not be likely to contain responsive records was unreasonable or the searches were unreasonable. As the Court has previously explained, "an agency's failure to locate a few pages or a specific document is not alone sufficient to find the agency's search was inadequate." Doc. 70, at 21 (citing *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003) (finding agency's failure "to turn up one specific document in its search does not alone render a search inadequate.").

The Corcoran Declaration explains that, based on the subject matter and scope of Plaintiff's requests, the FBI did not identify the OXFERD COMMA and MARCH TOLL investigative files as locations reasonably likely to contain responsive records. Corcoran Decl. ¶ 15. Plaintiff's Motion attempts to reverse the relevant inquiry. Beginning with records publicly released years later, he works backward to argue that FBI should therefore have identified the entire underlying investigative files years earlier. But the existence of a later-released document containing arguably responsive information does not establish the search methodology used at the time was unreasonable, much less require a wholesale search of the complete investigative files now.

Here, the FBI reasonably concluded that the OXFERD COMMA and MARCH TOLL investigative files would not be reasonably expected to contain information responsive to Plaintiff's FOIA requests. Plaintiff's motion repeatedly jumps from the existence of a particular document to accusations that the FBI's search was not adequate and to demand for review of the entire underlying file. The Corcoran Declaration explains why those investigative files are not reasonably likely to contain records responsive to Plaintiff's requests.

c. The released records do not establish that Restricted Access or Prohibited Access status impacted the FBI's search for responsive records.

Plaintiff also contends that the newly released MARCH TOLL records prove that FBI's prior searches did not, in fact, encompass records maintained in prohibited access or restricted access status. Doc 257, at 10–13. This argument revives an argument the Plaintiff previously raised and the Court rejected. In 2025, Plaintiff sought an order compelling the FBI to search its "Prohibited Access" files. Doc. 206. In response, the FBI explained that RIDS personnel responsible for conducting FOIA searches possess Sentinel search access that includes prohibited cases and that RIDS searches therefore encompass prohibited files to the extent they exist. Doc. 209, at 3–4; Second Hammer Decl. ¶ 8. The Court denied Plaintiff's motion.

The newly released MARCH TOLL records do not contradict the FBI's prior representations regarding its search capabilities. Plaintiff argues that MARCH TOLL demonstrates that, in some prohibited matters, the substantive records may not be electronically available in Sentinel and may instead be maintained physically, with Sentinel only containing indexed information or placeholders. Doc. 257, at 11–12. From that premise, Plaintiff argues that FBI could not have located certain responsive records through search methodology previously described to the Court. But that conclusion conflates different functions—searching for a potentially responsive file through FBI's indices and obtaining the underlying contents of the file for review.

The Corcoran Declaration reiterates what the FBI has previously told the Court. The FBI has explained that the indices search is merely how the FBI locates potentially responsive records. Corcoran Decl. ¶ 17. If an electronic record is not within the system, the file must be located and requested in order for a RIDS employee to conduct a responsiveness review. *Id.* This is not unique to prohibited access files. The same methodology applies whether the file is a prohibited file, restricted file, or a fully viewable file. *Id.* Thus, the indices permit RIDS personnel to identify the

existence of restricted or prohibited investigation matters even when the full contents of the underlying file are not viewable in Sentinel. *Id.* The mere existence of physical originals, restricted electronic content, or a placeholder in Sentinel, does not therefore establish that the file was invisible to a RIDs search.

This is consistent with the FBI's prior representation to the Court. The Hammer Declaration did not state merely that ordinary investigators could view every document maintained in every prohibited file. It explained that, "[b]ecause of RIDs statutory duties to respond to FOIA request, RIDS employees have search access in Sentinel that includes access to prohibited cases." Doc. 209-9, ¶ 8. At that time, the FBI also explained that the evidence plaintiff then relied on regarding limitations on access by other FBI personnel did not contradict RIDS's search access. Doc. 209, at 6. The newly released MARCH TOLL materials do not prove otherwise.

Plaintiff's own description of the MARCH TOLL similarly recognizes the distinction. Plaintiff argues that Sentinel contained a placeholder associated with the prohibited matter while the underlying records were maintained elsewhere. Doc. 257, at 11–12. But the presence of the placeholder demonstrates that the investigative matter was represented in the system. Contrary to Plaintiff's argument, it does not establish that the records could not be identified through an appropriate RIDS search. Whether the full contents could be immediately reviewed is a separate question, which applies both to prohibited files and to other fully viewable files. Corcoran Decl. ¶ 17.

Plaintiff's argument also fails for a separate reason. As explained above, OXFERD COMMA and MARCH TOLL were separate investigations from Crossfire Hurricane and also were not focused on the DNC hack. As such, they were not identified as likely repositories of

records responsive to Plaintiff's requests. The restricted or prohibited access status was not why the FBI did not produce their contents.

Moreover, even assuming a responsive record happened to reside in one of those investigative files, Plaintiff has still not shown that the restricted or prohibited status would have prevented the FBI's search from identifying the record. The Corcoran Declaration explains that indexed information available to RIDS permits the identification of restricted and prohibited matters and, where a file is potentially responsive, RIDS can seek to retrieve the underlying material for review. Corcoran Decl. ¶ 17. Plaintiff's newly released theories do not establish the false-negative mechanism he posits.

Nor were the FBI's searches limited to solely electronic records through Sentinel. In the Fourth Seidel Declaration, the FBI explained that RIDS also directed FBI Headquarters, the Office of Public Affairs, and the Washington Field Office to search relevant database systems as well as paper and manual files. Doc. 39-1 (Fourth Seidel Decl.), ¶ 65; Doc. 70, at 19. Plaintiff contends that the MARCH TOLL materials were maintained physically at the Washington Field Office, but that fact does not establish that the FBI's prior search methodology excluded physical records. It included physical records.

For these reasons, the newly released OXFERD COMMA and MARCH TOLL records do not contradict the FBI's prior representations regarding RIDS search access and do not undermine the Court's prior holding. Simply put, these records and Plaintiff's arguments regarding prohibited access and restricted access status files do not provide a legitimate basis for reconsideration of the Court's prior search rulings. Moreover, recall that Plaintiff even conceded that the FBI had confirmed that "Prohibited Access" designation would not have prevented the RIDS personnel from locating responsive records. Doc. 210, at 1.

IV. The OXFERD COMMA and MARCH TOLL records similarly do not undermine the Court's *Glomar* ruling and Plaintiff's remaining code-name arguments largely reprise arguments previously rejected.

Plaintiff also asks the Court to reconsider its prior rulings considering the FBI's *Glomar* response and the withholding of code name information. *See* Doc. 257, at 17–20. Again, these newly declassified records do not establish that the *Glomar* response to Plaintiff's requests has been further pierced, and Plaintiff's remaining arguments largely rehash theories he previously advanced and the Court rejected.

The Motion devotes substantial attention to the treatment of investigative code names and asks the Court to reconsider the prior *Glomar* and FOIA Exemption 7(E) rulings. *See* Doc. 257, at 17–20. But much of that argument is not based on the newly released OXFERD COMMA or MARCH TOLL records at all. Instead, Plaintiff largely reprises an argument he made before the Court entered its September 29, 2022 Order: that the FBI should be required to search using any undisclosed code names internally while continuing to withhold the code names themselves from the Plaintiff. The Court has already considered the Parties' positions on that issue.

Plaintiff made the same point expressly during the 2022 summary judgment briefing. He argued that "the FBI may be hiding responsive documents by assigning code names and then omitting those code names from its search parameters," and then asked the Court to order the FBI to search "email accounts, text accounts, databases, any search indices, CART, ODT, DITU, etc. using any and all code names assigned to Seth and Aaron Rich." Doc. 46, at 17. Plaintiff further argued that the searches could occur without revealing the code names because the FBI could simply produce responsive documents with the code names redacted. *Id.*

Plaintiff's position is now the FBI never responded to that proposal. In fact, the FBI directly addressed Plaintiff's argument. The FBI explained that where a *Glomar* response is warranted, the

FBI does not conduct a search for the requested records because the agency's response does not depend on what a search would reveal. Doc. 54, at 10–11; Doc. 39-1 (Fourth Seidel Declaration) ¶ 70. The FBI also explained the converse. After an official acknowledgement partially pierced the *Glomar* concerning Carter Page and Michael Flynn, the FBI conducted searches using their names and publicly acknowledged code names. Doc. 54, at 11; Doc. 39-1, ¶ 42–46; 71.

The Court considered that dispute in resolving the parties' summary judgment motions. In discussing Plaintiff's code-name request, the Court specifically cited Plaintiff's argument, Doc. 46, at 17, and then sustained the FBI's position. Plaintiff's present proposal–that the FBI conduct searches using the undisclosed code names internally while maintain *Glomar* publicly—is therefore not a new consequence of the 2026 releases. It is the same basic proposal Plaintiff presented in 2022 and there is no reason to reconsider that ruling here.

The newly released OXFERD COMMA and MARCH TOLL records do not provide a basis for revisiting its prior analysis. Plaintiff relies on those records to argue that FBI's use of code names can cause records to escape searches conducted using an individual's true name. Doc. 257, at 17–18. But neither investigation falls within the code-name request at issue. Plaintiff requested code names assigned to individuals "as part of the Crossfire Hurricane investigation," and code names assigned to "sub-sections of the Crossfire Hurricane investigation," and code names assigned to Seth Rich and Aron Rich. Doc. 3, ¶ 7. As explained above, OXFERD COMMA and MARCH TOLL were separate investigations, nor components or subsections of Crossfire Hurricane. Corcoran Decl. ¶ 10. Their existence therefore does not demonstrate that an undisclosed code name within the scope of Plaintiff's requests existed and was omitted from the FBI's search.

Also, the declassification of OXFERD COMMA and MARCH TOLL does not undermine the Court's 7(E) ruling from the FBI having publicly disclosed those particular code names.

Plaintiff uses these disclosures to argue that disclosure of code names associated with closed investigations demonstrates that no cognizable 7(E) harm can attach to the disclosure of other closed-investigation code names. Doc. 257, at 19. But the disclosure of particular information from a particular investigative matter does not establish that the disclosure of different code name information in a different investigation context presents no protected harm. In fact, as the Court recognized in its ruling September 2022 Order, code name fall squarely within the protections of FOIA Exemption 7(E), which has a relatively low bar for the agency to satisfy in justifying its withholdings. Doc. 70, at 51 (citing *Canning v. D.O.J.*, No. 11-1295, 2017 WL 2438765m at *11 (D.D.C. June 5, 2017); *Rios v. United States*, No, 15-CV-1183-TSC, 2021 WL 430053, at *1 (D.D.C. Feb. 8, 2021)). And it bears repeating that OXFERD COMMA and MARCH TOLL were not code names responsive to Plaintiff's Crossfire Hurricane request. Their disclosure therefore does not constitute an official acknowledgement of any code name assigned to Seth Rich or Aaron Rich or any other responsive Crossfire Hurricane code name.

Plaintiff's reference to CROSSFIRE RAZOR doesn't change the analysis. The public acknowledgement that Michael Flynn has been assigned a code name was precisely the type of public acknowledgement that caused FBI to reassess its *Glomar* position as to Flynn and to conduct further searches based on the acknowledged information. Doc. 54, at 11; Doc. 39-1, ¶¶ 42–46, 71. The FBI's treatment of Flynn shows that the FBI distinguishes between acknowledged code-name information and information that remains subject to *Glomar.*

Plaintiff's next challenge to the *Glomar* rulings then repackages the same dispute as a broader challenge to *Glomar* itself. He argues that after *Loper Bright Enterprises v. Raimondo*, the "logical or plausible" framework cannot coexist with FOIA's *de novo* standard. Doc. 257, at 18–19. For the reasons discussed above, *Loper Bright* is not applicable here. It concerned judicial

deference to agency interpretations of law, not the evidentiary treatment of information whose existence or nonexistence is itself protected. It therefore provides no intervening change in law requiring the Court to reopen its *Glomar* ruling.

The remainder of Plaintiff's argument in Subsection F likewise does not materially depend on OXFERD COMMA and MARCH TOLL. Referencing FBI's prior productions of records regarding Seth Rich, Plaintiff declares that the privacy interests associated with whether a code name was assigned or was not assigned have been diminished and that the acknowledgment of other code names demonstrates that no technique-protection interest applies to code names in this "family" of investigations. Of course, the Motion does not identify a new factual development that undermines the premise of the Court's prior *Glomar* ruling. OXFERD COMMA and MARCH TOLL are separate investigative matters outside the scope of the relevant Crossfire Hurricane code-name request. The proposition that FBI should nevertheless search internally using undisclosed code names while preserving *Glomar* publicly was expressly advanced years ago in Plaintiff's response to the FBI's Motion for Summary Judgment, Doc. 46, which the FBI opposed, and the Court ultimately rejected. And Plaintiff's broader attacks on the privacy Exemption 7(D) and *Glomar* either repeated previously available arguments or rest on *Loper Bright*, which does not alter the governing analysis. These arguments provide no sufficient basis to reconsider.

V. Plaintiff's remaining arguments do not warrant reconsideration.

The balance of the Motion takes a shotgun approach that attempts to place before the Court a collection of issues that extend well beyond the newly released OXFERD COMMA and MARCH TOLL records or the *Loper Bright* decision. Effectively, the Plaintiff asks the Court to revisit *every* ruling in this case—including evidentiary rulings, search-adequacy rulings, exemption determinations, the denial of *in camera* review, and the denial of additional discovery-

related relief. But reconsideration requires more than repackaging previously rejected arguments alongside new materials that do not bear on them. Because Plaintiff does not identify a new factual or legal basis that undermines the prior rulings, the requests should be denied. Defendants nevertheless address them briefly.

a. The Court should not reconsider its ruling concerning Plaintiff's reliance on news articles.

Plaintiff argues that the Court should reconsider its August 15, 2024 evidentiary ruling that excluded the news articles he offered as summary judgment evidence as inadmissible hearsay. Doc. 174, a 5–6. In reaching this conclusion, the Court relied on Fifth Circuit authority describing newspaper articles offered to prove their contents as "classic inadmissible hearsay." *Id.* (citing Fed. R. Evid. 801(c); *Roberts v. City of Shreveport*, 397 F.3d 287, 295 (5th Cir. 2005)). The Motion concedes that *Roberts* is "not a FOIA case" and fails to identify any FOIA-specific exception to the Federal Rules of Evidence. Nor does the fact that courts in other cases have cited or discussed news reports establish that hearsay contained in such reports may be sued for its truth to establish summary judgment. Simply put, none of Plaintiff's argument demonstrates the Court's conclusion was wrong or that it should be reconsidered.

Rule 56(c)(2), which Plaintiff did not raise in his Reply in support of his Corrected Motion for Summary Judgment, *see* Doc. 133, does not alter the result. Although summary judgment evidence need not necessarily be presented in trial-admissible form at the summary judgment stage, the relevant content must be capable of being presented in an admissible form. At the time, Plaintiff did not identify admissible evidence establishing the factual propositions for which he offered the articles, and he fails to do so now. He merely argues generally that some of the information might be capable of proof through other sources. That does not cure the issue, let alone compel reconsideration more than two years after the Court made the evidentiary ruling.

Plaintiff also overstates the impact of the evidentiary ruling on the resolution of his summary judgment motion. Doc. 257, at 27–28 (claiming that the evidentiary ruling was the gatekeeper to the ultimate resolution). After addressing the newspaper articles, the Court separately considered Plaintiff's individual search challenges and the FBI's explanations for the searches that were actually conducted. By way of example, as to Lync, the Court considered the FBI's representation that qualifying records would be entered into Sentinel and referenced its prior adequacy determination and found that Plaintiff had offered only speculation rather than specific facts showing that responsive records had been missed. Doc. 174, at 7–8. The Court conducted similar analyses of Plaintiff's other proposed repositories. *Id.* at 6–16. Plaintiff has therefore not shown that the Court's evidentiary ruling was erroneous. He also fails to provide a basis to reconsider that ruling more than two years later when none of the request for reconsideration is based on factual or legal developments that occurred in the interim.

b. The Sensitive Compartment Information Facility materials.

Plaintiff also argues that the FBI has failed to provide information to the Court regarding a review of materials located in a sensitive compartment information facility (SCIF). But in the order denying the Plaintiff's motion for partial summary judgment on this issue, the Court stated that "the FBI will not be ordered to produce any additional materials at this time." Doc. 215, at 2. Therefore, there is no unfulfilled judicial directive. Nor do the OXFERD COMMA or MARCH TOLL records supply the "further evidence" necessary to disturb that ruling. Again, reconsideration is not appropriate.

c. The Court need not reconsider its July 28, 2022 denial of Plaintiff's request for *in camera* review.

Plaintiff's renewed request for sweeping *in camera* review likewise does not warrant reconsideration. His *Loper Bright* argument fails for the same reasons addressed above. His

alternative argument—that the newly release records now constitute "tangible evidence of a government cover-up," Doc. 257, at 32, rests on the same premises rejected elsewhere in this response: OXFERD COMMA and MARCH TOLL were responsive Crossfire Hurricane files, that prohibited or restricted access made those files invisible to RIDS, and that the new records discredit the FBI's prior declarations. For the same reasons explained above, they do not. Without that predicate, Plaintiff identifies no basis for reopening the Court's 2022 ruling that declined broad *in camera* review.

d. Discovery, evidentiary hearing, and special master.

Plaintiff's alternative requests for discovery, an evidentiary hearing, and an examination of the FBI declarants fare no better. These remedies are derivative of his assertion that the FBI declarations are unreliable and that the existing record cannot be trusted. But the Court has *repeatedly* declined to find bad faith on behalf of the agency and the new materials should not alter that conclusion as they do not discredit the declarations. Plaintiff has not shown a basis for converting this FOIA case into discovery or an evidentiary proceeding on issues the Court has prior considered. And the Plaintiff's separate request for a special master will be addressed in Defendant's response to that separate motion. Needless to say, it provides no independent basis for reconsideration here.

CONCLUSION

The Motion does not identify a defect in the FBI's prior searches that warrants reopening years of litigation. The newly released records concern investigations separate from Crossfire Hurricane, which in Plaintiff's own words, this case is "all about." Doc. 257, at 7. The newly released records do not show that restricted or prohibited access prevented the FBI—through RIDS—from identifying responsive records, and do not transform previously rejected theories into

new ones. Nor do *Loper Bright*, public criticism of Crossfire Hurricane, or Plaintiff's renewed requests for discovery, *in camera* review, and additional searches call the Court's prior rulings into question in a manner that justifies the extreme remedy of reconsideration at this late state.

At the end of the day, Plaintiff asks this Court to treat every later disclosure of information Plaintiff contends is relevant as a reason to restart the FOIA process from the beginning. FOIA requires a reasonable search—and the Court has repeatedly found that the FBI's search was reasonable—not perpetual reprocessing. The Court should deny the Motion for Reconsideration.

Respectfully submitted,

JAY R. COMBS
UNITED STATES ATTORNEY

/s/ James Gillingham
JAMES GILLINGHAM
Assistant United States Attorney
Texas Bar No. 24065295
110 N. College Ave.; Suite 700
Tyler, Texas 75702
Tel: (903) 590-1400
Fax: (903) 590-1436
Email: James.Gillingham@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2026, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ James Gillingham
JAMES GILLINGHAM
Assistant United States Attorney