

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

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STAR NEWS DIGITAL MEDIA, INC.,  
MICHAEL PATRICK LEAHY,  
and MATTHEW D. KITTLE,

Plaintiffs,

v.

Case No. 3:23-cv-00467  
Judge Aleta A. Trauger

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS’  
MOTION FOR SUMMARY JUDGMENT**

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**INTRODUCTION**

On March 27, Audrey Hale killed three children and three adults at The Covenant School in Nashville. Mass shootings, like this one, frequently ignite vigorous public debates about gun control and school safety policies. This shooting was no different: protestors in Nashville and elsewhere demanded that policymakers “do something” in response to the tragedy.

But this shooting was different in a critical way: we don’t know why Hale did what she did. Although law enforcement officials immediately announced that they have Hale’s “manifesto,” which according to several accounts is a collection of writings that reveal her motivation for the killings, neither the Metro Nashville Police Department nor the FBI shared the manifesto with the public.

Plaintiffs—a news organization, its Editor-in-Chief, and reporter—filed a Freedom of Information Act (FOIA) request with FBI. On April 25, 2023, FBI denied the request, claiming that releasing the manifesto would “reasonably be expected to interfere with enforcement proceedings” under 5 U.S.C. § 552(b)(7)(A). But FBI did not—and to this day still has not—identified exactly what “enforcement proceedings” are going on. Hale is dead; there is no criminal investigation; there will be no charges; there will be no trial. What this “enforcement proceeding” is remains a mystery.

Plaintiffs brought this lawsuit, and now this motion for summary judgment, to put FBI to the test. Under FOIA the burden rests on the government: FBI must either identify evidence supporting an ongoing “enforcement proceeding” or turn over the manifesto. Whatever FBI claims it is doing with the manifesto, it is not an “enforcement proceeding,” which is an exception that must be narrowly construed. The presumption under FOIA is openness; not secrecy. Plaintiffs are therefore entitled to summary judgment.

### **UNDISPUTED FACTS**

The following facts are undisputed and supported by the declarations attached to the Verified Complaint. *See* Dkt. 1.

1. On March 27, 2023, a shooter entered The Covenant School in Nashville and tragically killed three nine-year-old students and three adults—an administrator, a substitute teacher, and a custodian. Law enforcement officers bravely entered the building and killed the shooter, later identified as 28-year-old Audrey Hale. To this day, Hale’s motives remain unknown to the public. Dkt. 1:¶1.

2. On March 27, 2023, Metropolitan Nashville Police Chief John Drake did not give a specific motive for the attack, but said “we have a manifesto, we have some writings that we’re going over that pertain to this date, the actual incident.” See Jonathan Mattise, *Nashville shooter who drew maps, surveilled school*, Associated Press, March 27, 2023, <https://archive.ph/RhFoo>. Dkt. 1:¶2.

3. Within two days of the March 27 attack (and perhaps sooner), FBI came in possession of records that have been described as the “manifesto” by law enforcement officials. This document is believed to contain Hale’s notes, journal entries, plans, letters, writings, or other documents related to the March 27 attack and describing her motivations. Dkt. 1:¶¶3, 16.

4. On April 20, 2023, Plaintiffs requested a copy of the manifesto from FBI under the Freedom of Information Act, stating as follows: “This is a request under the Freedom of Information Act. I am requesting a copy of the following document: Audrey Hale Manifesto related to the Nashville Covenant School Shooting on March 27, 2023. The record came into FBI’s possession on or about that date. Media reports indicate that the report is in the possession of the FBI, specifically the Behavioral Analysis Unit. The purpose of my request is not for commercial use, but as a member of the news media. I am a reporter employed by Star News Digital Media, Inc. I have been reporting on the events related to the shooting for The Tennessee Star. The Manifesto is alleged to reveal the motivations of Audrey Hale. These motivations are not only relevant to my reporting, but important for public safety and therefore of intense national media interest. The release of these documents could not possibly

interfere with any pending law enforcement proceedings, especially since the killer is deceased and the threat to the public has abated. I am willing to pay the fees related to obtaining this document.” A true and accurate copy of this request is attached as Exhibit 1 to the Verified Complaint. Dkt. 1:¶14.

5. On April 24, 2023, FBI denied the request to expedite, stating that Plaintiffs had “not provided enough information concerning the statutory requirements permitting expedition.” A true and accurate copy of this decision is attached to the Verified Complaint as Exhibit 2. Dkt. 1:¶15.

6. On April 24, 2023, Plaintiffs sent a clarifying request to FBI providing a basis to expedite the request, clarifying that the request was on behalf of all Plaintiffs, and further explaining as follows: “I am requesting a copy of the following records: the notes, journal entries, plans, letters, writings, or other documents making up what law enforcement officials have labeled as Audrey Hale’s ‘manifesto’ related to the Nashville Covenant School Shooting on March 27, 2023.” A true and accurate copy of this clarification is attached to the Verified Complaint as Exhibit 3. Dkt. 1:¶16.

7. On April 25, 2023, FBI denied Plaintiffs’ request. FBI’s response gave the following reason: “5 U.S.C. § 552(b)(7)(A) exempts from disclosure: records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings.” FBI further stated, “The records responsive to your request are law enforcement records; there is a pending or

prospective law enforcement proceeding relevant to these responsive records, and release of the information could reasonably be expected to interfere with enforcement proceedings. Therefore, your request is being administratively closed.” A true and accurate copy of FBI’s denial is attached to the Verified Complaint as Exhibit 4. Dkt. 1:¶17.

8. On April 25, Plaintiffs filed an administrative appeal with the Department of Justice Office of Information Policy. In this appeal, Plaintiffs argued that FBI had no basis to withhold the manifesto under 5 U.S.C. § 552(b)(7)(A) because production of the manifesto would not “reasonably be expected to interfere with enforcement proceedings.” A true and accurate copy of Plaintiffs’ administrative appeal is attached to the Verified Complaint as Exhibit 5. Dkt. 1:¶18.

9. On or about April 27, 2023, MNPDP’s Public Information Office stated: “The investigation has advanced to the point that the writings from the Covenant shooter are being reviewed for public release. That process is underway and will take a little while.” See Michael Ruiz, *Nashville police to release manifesto in Christian school shooting massacre*, Fox News, April 27, 2023, <https://archive.ph/o8eDD>. Dkt. 1:¶20.

10. On May 3, MNPDP stated that it would not release the manifesto but did not cite any interference with “enforcement proceedings.” Instead, MNPDP announced on Twitter, “Covenant investigation update: Due to pending litigation filed this week, the Metropolitan Nashville Police Department has been advised by counsel to hold in abeyance the release of records related to the shooting at The Covenant School

pending orders or direction of the court.” Twitter, @MNPDNashville, May 3, 2023, <https://archive.ph/a0IKk>. MNPD was referring to a pending lawsuit filed in state court. *See Hammond v. Metro. Gov’t of Nashville & Davidson Cnty.*, No. 23-542-III (Nashville Ch. Ct., May 1, 2023). Dkt. 1:¶21.

11. On May 5, 2023, the Department of Justice Office of Information Policy denied Plaintiffs’ appeal, stating that releasing the manifesto is “reasonably foreseeable” to “harm the interests protected by [5 U.S.C. § 552(b)(7)(A)].” The letter further provided that “FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).” A true and accurate copy of this decision by the Department of Justice Office of Information Policy is attached to the Verified Complaint as Exhibit 6. Dkt. 1:¶19.

12. Hale is dead and no threat remains to the public related to the events of March 27. Dkt. 1:¶6.

13. In the most recent mass shootings involving FBI, manifestos were released to the press sometimes within hours of the attack. On October 24, 2022, Orlando Harris killed two and injured seven people in St. Louis. FBI investigated the incident with other law enforcement authorities. The very next day, October 25, CNN obtained a copy of and reported on the details of his manifesto. *See* Holly Yan, “St. Louis school shooter had an AR-15-style rifle, 600 rounds of ammo and a note saying ‘I don’t have any friends. I don’t have any family,’ police say,” CNN.com, Oct. 25, 2022, <https://archive.ph/DDdqw>. On November 22, 2022, Andre Marcus Bing killed seven people and injured four at a Walmart Supercenter in Chesapeake, Virginia. FBI

investigated the incident with other law enforcement authorities. Within three days, the New York Times obtained the killer’s manifesto. See J. David Goodman, “Walmart Gunman Bought Pistol Hours Before Killing and Left a ‘Death Note,’” New York Times, Nov. 25, 2022, <https://archive.ph/MmfAx>. On February 13, 2023, Anthony Dwayne McRae killed five and injured three on the campus of Michigan State University. FBI and Michigan law enforcement authorities jointly investigated the incident. Approximately three weeks after the shooting, the Detroit News received a two-page handwritten manifesto describing his motives through a FOIA request. See Kim Kozlowski, “Note written by MSU shooter asked ‘why,’ outlined other targets,” The Detroit News, March 10, 2023, <https://archive.ph/0bMd6>. Dkt. 1:¶¶23–25.

14. FBI itself is proud of its history of releasing manifestos. In 1995, FBI famously released Ted Kaczynski’s manifesto to The Washington Post, The New York Times, and Penthouse magazine. FBI brags about this history on its website. See FBI, Unabomber Bomb Shrapnel, <https://www.fbi.gov/history/artifacts/unabomber-bomb-shrapnel>. Dkt. 1:¶26.

## ARGUMENT

### I. The Freedom of Information Act

Congress enacted FOIA in order “to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation omitted). “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed

to check against corruption and to hold the governors accountable to the governed.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (citation omitted). The freedom of the press to publish information derived from public records is “of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business.” *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1975).

Under FOIA, “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules ... shall make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A). Federal courts may order the production of records that an agency improperly withholds. *See id.* § 552(a)(4)(B); *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 754–55 (1989). In making this determination, the court “[a]t all times ... must bear in mind that FOIA mandates a ‘strong presumption in favor of disclosure.’” *Nat’l Ass’n of Home Builders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002) (quoting *Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991)).

Certain exceptions may apply, such as records containing “national defense or foreign policy” information, “trade secrets,” or “personnel and medical files.” *See* 5 U.S.C. § 552(b). But “these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act.” *Rose*, 425 U.S. at 361. “[C]onsistent with the Act’s goal of broad disclosure, these exemptions have been consistently given a narrow compass,” *USDOJ v. Tax Analysts*, 492 U.S. 136, 151



(1989); *see also* *FBI v. Abramson*, 456 U.S. 615, 630 (1982) (“FOIA exemptions are to be narrowly construed”).

“Most FOIA cases are decided on summary judgment, since the primary question is a legal one: whether the withheld documents are covered by one of the statutory exemptions.” *ACLU of Michigan v. F.B.I.*, 734 F.3d 460, 465 (6th Cir. 2013). “This is due to the ‘peculiar posture’ of FOIA cases, in which plaintiffs, lacking access to the documents, can only challenge the application of the correct legal standard to the descriptions provided by the government, not the actual content of the underlying documents.” *Id.* (quoting *Jones v. FBI*, 41 F.3d 238, 242 (6th Cir.1994)). The government must support its position with detailed affidavits and a descriptive index with “a relatively detailed analysis” of “manageable segments” of the documents. *Vaughn v. Rosen*, 484 F.2d 820, 826 (D.C.Cir.1973).

## **II. FBI is not justified in withholding the manifesto under**

Under 5 U.S.C. § 552(b)(7)(A), an agency may withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings.” As this Court has explained, to determine whether release of the record could reasonably be expected to interfere with enforcement proceedings “requires a two-step analysis: a court considers, first, whether a law enforcement proceeding is pending or prospective, and second, whether disclosure of the requested records and information therein could reasonably be expected to cause some articulable harm to that proceeding.” *EEOC v. Whiting-*

*Turner Contracting Co.*, No. 3:21-CV-00753, 2022 WL 3221825, at \*4 (M.D. Tenn. Aug. 9, 2022) (citations omitted).

First, there is no evidence that an “enforcement proceeding” is pending or prospective. While the term “enforcement proceeding” is not defined in FOIA, the U.S. Supreme Court has explained that this phrase is meant to protect agencies from being “hindered in their investigations or placed at a disadvantage when it came time to present their case.” *N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978). In other words, exemption 7(A) is about preventing “harm to the Government’s case in court.” *Id.* (quoting Senate Report). The Court also described an “enforcement proceeding” as “an imminent adjudicatory proceeding.” *Id.* at 229, n.10. Given this description, there is no possible “enforcement proceeding” because there will never be any criminal “case in court.” Hale is dead. There is no criminal investigation, no grand jury investigation, no prosecutor considering charges. Whatever FBI may be doing with the manifesto, they are not conducting an “enforcement proceeding.”

Furthermore, although FBI has yet to make a public statement, public statements from MNPDP reveal that there is no ongoing “enforcement proceeding.” On or about April 27, 2023, MNPDP’s Public Information Office was quoted by Fox News as saying, “The investigation has advanced to the point that the writings from the Covenant shooter are being reviewed for public release. That process is underway and will take a little while.” See Michael Ruiz, *Nashville police to release manifesto in Christian school shooting massacre*, Fox News, April 27, 2023, <https://archive.ph/o8eDD>. In other words, on April 27, MNPDP did not claim it could

not release the manifesto because it would interfere with an enforcement proceeding. Just the opposite, MNPД said that the manifesto was being prepared for release.

Then again, on May 3, MNPД backtracked and said it would not release the manifesto but did not cite any interference with “enforcement proceedings.” Instead, MNPД announced on Twitter, “Covenant investigation update: Due to pending litigation filed this week, the Metropolitan Nashville Police Department has been advised by counsel to hold in abeyance the release of records related to the shooting at The Covenant School pending orders or direction of the court.” Twitter, @MNPДNashville, May 3, 2023, <https://archive.ph/a0IKk>. MNPД was referring to a pending lawsuit filed in state court. *See Hammond v. Metro. Gov’t of Nashville & Davidson Cnty.*, No. 23-542-III (Nashville Ch. Ct., May 1, 2023).

Based on these public statements, it is clear there is no “enforcement proceeding” that is going to result in a criminal “case in court” against Hale.

Second, even if there was such a proceeding (whatever that may be), the release certainly would not interfere. In determining whether Exemption 7(A) applies, the Sixth Circuit has recognized the following types of interference: the possibility that perpetrators of a crime, by learning of the investigative leads being pursued, the prime suspects, and the nature of the evidence, could “take steps to destroy or tamper with evidence, intimidate witnesses or construct a false alibi ...”; the possibility that public disclosure of the investigation would discourage new informants from coming forward; and the possibility that moving factual information into the public domain

will make it difficult to verify statements by future witnesses. *Dickerson v. Department of Justice*, 992 F.2d 1426, 1433 (6th Cir.1993).

None of these types of interference are present here. In fact, FBI has been involved in numerous mass-shooting events where the manifesto was released after the shooter died, therefore contradicting any notion that releasing a manifesto will “interfere” with anything. On October 24, 2022, Orlando Harris killed two and injured seven people in St. Louis. FBI investigated the incident with other law enforcement authorities. The very next day, October 25, CNN obtained a copy of and reported on the details of his manifesto. *See* Holly Yan, “St. Louis school shooter had an AR-15-style rifle, 600 rounds of ammo and a note saying ‘I don’t have any friends. I don’t have any family,’ police say,” CNN.com, Oct. 25, 2022, <https://archive.ph/DDdqw>.

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On February 13, 2023, Anthony Dwayne McRae killed five and injured three on the campus of Michigan State University. FBI and Michigan law enforcement authorities jointly investigated the incident. Approximately three weeks after the shooting, the Detroit News received a two-page handwritten manifesto describing his motives through a FOIA request. *See* Kim Kozlowski, “Note written by MSU shooter

asked ‘why,’ outlined other targets,” The Detroit News, March 10, 2023, <https://archive.ph/0bMd6>.

FBI itself is proud of its history of releasing manifestos. In 1995, FBI famously released Ted Kaczynski’s manifesto to The Washington Post, The New York Times, and Penthouse magazine. FBI brags about this history on its website. See FBI, Unabomber Bomb Shrapnel, <https://www.fbi.gov/history/artifacts/unabomber-bomb-shrapnel>.

One could speculate as to why FBI has released so many other manifestos, but not this one. But such speculation is unnecessary for the purposes of this lawsuit. The simple fact is that FBI has not justified its refusal to release this manifesto under FOIA; there is no reasonable chance release would interfere with an “enforcement proceeding” under FOIA’s exception. Therefore, summary judgment is appropriate.

### CONCLUSION

Plaintiffs respectfully request that their motion for summary judgment be granted.

Dated this 25th day of May, 2023.

WISCONSIN INSTITUTE FOR  
LAW & LIBERTY, INC.

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### **CERTIFICATE OF SERVICE**

Pursuant to L.R. 5.01 & 5.02 I certify that a copy of the Memorandum in Support of Plaintiffs' Motion for Summary Judgment will be served in accordance with Fed. R. Civ. P. 4 upon the following:

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Dated: May 25, 2023

*s/ Daniel P. Lennington*  
Daniel P. Lennington