

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
Western DIVISION

FILED

AUG 10 2021

Richard W. Nagel
Clerk of Court. Dayton OH

David Esrati

(Enter Above the Name of the Plaintiff in this Action)

vs.

U.S. DEPARTMENT OF JUSTICE

Southern District of Ohio

(Enter above the name of the Defendant in this Action)

3:21 cv 218

MICHAEL J. NEWMAN

If there are additional Defendants, please list them:

Federal Bureau of Investigations

COMPLAINT

I. Parties to the action:

Plaintiff: Place your name and address on the lines below. The address you give must be the address where the court may contact you and mail documents to you. A telephone number is required.

David Esrati

Name - Full Name Please - PRINT

113 Bonner St.

Street Address

Dayton OH 45410

City, State and Zip Code

937-228-4433,2

Telephone Number

If there are additional Plaintiffs in this suit, a separate piece of paper should be attached immediately behind this page with their full names, addresses and telephone numbers. If there are no other Plaintiffs, continue with this form.

Defendant(s):

Place the name and address of each Defendant you listed in the caption on the first page of this Complaint. This form is invalid unless each Defendant appears with full address for proper service.

1. U.S. DEPARTMENT OF JUSTICE Southern District of Ohio
Name - Full Name Please

200 W. Second Street, Suite 600 Dayton OH 45402
Address: Street, City, State and Zip Code
2. Federal Bureau of Investigations
200 W 2nd St # 411 Dayton, OH 45402
3. _____

4. _____

5. _____

6. _____

If there are additional Defendants, please list their names and addresses on a separate sheet of paper.

II. Subject Matter Jurisdiction

Check the box or boxes that describes your lawsuit:

- Title 28 U.S.C. § 1343(3)
[A civil rights lawsuit alleging that Defendant(s) acting under color of State law, deprived you of a right secured by federal law or the Constitution.]
- Title 28 U.S.C. § 1331
[A lawsuit "arising under the Constitution, laws, or treaties of the United States."]
- Title 28 U.S.C. § 1332(a)(1)
[A lawsuit between citizens of different states where the matter in controversy exceeds \$75,000.]
- Title 5 United States Code, Section 552
[Other federal status giving the court subject matter jurisdiction.]

III. Statement of Claim

Please write as briefly as possible the facts of your case. Describe how each Defendant is involved. Include the name of all persons involved, give dates and places.

Number each claim separately. Use as much space as you need. You are not limited to the papers we give you. Attach extra sheets that deal with your statement claim immediately behind this piece of paper.

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant Department of Justice ("DOJ") and its components Federal Bureau of Investigation ("FBI"), concerning evidence (namely recordings) that was presented to the grand jury that Dayton Mayor, Nan Whaley, was under investigation and then may have become a confidential informant for the FBI as part of a plea deal. The precedent of Dayton City Commissioner Joey Williams, being allowed to run for office, after negotiating a plea deal, falls under the doctrine of "Capable of repetition, yet avoiding review" and should be considered as state supported fraud debasing the election process.

Freedom of Information Act Complaint

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT
OF OHIO
WESTERN DIVISION**

David Esrati *pro se*)
100 Bonner St..)
Dayton OH 45410)
)
Plaintiff,)
)
v.))
)
U.S. DEPARTMENT OF JUSTICE)
Southern District of Ohio)
200 W. Second Street, Suite 600)
Dayton, OH 45402)
)
and)
)
Federal Bureau of Investigations)
200 W 2nd St # 411)
Dayton, OH 45402)
)
Defendants.)

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant Department of Justice (“DOJ”) and its components Federal Bureau of Investigation (“FBI”), concerning evidence (namely recordings) that was presented to the grand jury that Dayton Mayor, Nan Whaley, was under investigation and then may have become a confidential informant for the FBI as part of a plea deal. The precedent of Dayton City Commissioner Joey Williams, being allowed to run for office, after negotiating a plea deal, falls under the doctrine of “Capable of repetition, yet avoiding review” and should be considered as state supported fraud debasing the election process.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff David Esrati is a citizen journalist and voter in Dayton Ohio. He has been publishing his blog, Esrati.com since 2005, to focus public attention on

emerging civil liberties issues esp. free and protected speech, sunshine laws, public meetings laws, and public corruption. He is intimately familiar with Ohio's Sunshine laws, open meetings laws, and requirements for public business to only be conducted in public unless falling under very narrow arguments defined by Ohio law.

4. Defendant DOJ is a Department of the Executive Branch of the United States Government, and includes component entities FBI, The DOJ and the FBI are agencies within the meaning of 5 U.S.C. § 552(f).

**Government Agencies' Collected Criminal Evidence Of
Public Officials Violating the Ohio Open Meetings Laws**

5. On April 30, 2019, the FBI, the DOJ and the State Attorney General had a press conference announcing the indictments of 4 Black men, 3 of which were at one time either elected officials or government employees and one who was a private citizen in what they called a prosecution of a "Culture of Corruption" investigation.
<https://esrati.com/a-culture-of-corruption-but-only-if-youre-black/17147>

6. On May 6, 2019, Esrati revealed the common thread to the four indicted- an FBI "Confidential informant" Mike Marshall, owner of "United Demolition." Marshall was a former foreman for Steve Rauch, who would later be indicted (the only non-Black person to be indicted). United Demolition had been granted a \$248K contract with the city to demolish homes in the summer of 2016. Note, it takes 3 commissioners to approve a contract, recommended to them by the City Manager. I suggested that City

Commissioner Joey Williams had “flipped” and had become a C.I. in exchange for leniency. <https://esrati.com/the-wire-dayton-edition/17167>

7. On May 13, 2019, I clearly stated that Williams had resigned his newly re-elected seat not because of his new job as a Bank President, but because the Feds had ordered him to. In that article, I cite a high placed former city employee about how Mayor Nan Whaley had been steering contracts. At some point, another informant had told me Whaley had retained private counsel, although I didn't post this confidential tip. <https://esrati.com/a-real-mayor-for-dayton/17225>

8. On March 1, 2020 the Dayton Daily News “broke the story” that “United Demolition” was the company involved and Marshall was the “Confidential Informant.” This is almost a year after I published the May 6, 2019 story exposing Marshall. At this point, still not having seen any other indictments of people in Dayton Government, I published 3 pages of the Brian Higgins Discovery documents that had been given to me, that clearly identified that Joey Williams had become a confidential informant for the FBI on or around Oct 2, 2015, four years before his public indictment. This means he was allowed to run for public office, already having admitted to the Feds that he had accepted bribes and had engaged in corrupt activity. Much of the interview seemed more concerned with Marlon Shackelford (another Black man in the community) and Willis Blackshear Sr. (another Black politician). They asked Williams about Whaley and CityWide Development. They also asked about County Commissioner Debby Lieberman, Whaley, former Mayor Rhine McLin and Former Director of Planning Aaron Sorrel- and their connections to Rauch and the

demolition contracts. <https://esrati.com/and-the-rest-of-the-williams-corruption-story/17659>

9. The implications of corrupt politicians being allowed to run for office, solicit donations, while already being indicted and agreeing to resign if they get elected (or in William's case- re-elected) must be examined under the established doctrine of the Supreme Court of "Capable of repetition, yet evading review." In cases like the Williams matter, the FBI and the DOJ committed fraud upon the taxpayers by allowing Williams to run, while some sort of plea deal had already been established. Esrati posits that Williams had asked for the Feds not to indict him or the others until his youngest son Max, had completed High School. The taxpayers had to foot the bill for the special election to fill his seat.

10. Sometime around August of 2020, Esrati was sent a "Court Protective Order" from the Feds to dispose of the Higgins Discovery Documents, which they claim, "Defendant and his counsel may use the Discovery Materials solely in the defense of this case and for no other purpose." Ostensibly, this was not due to my publication, but because Higgins had used part of his own discovery in the filing of a pro se civil case against FBI CI, "United Demolition" aka Mike Marshall for failing to perform the work Higgins had contracted him to do on his home after a fish tank had leaked.

***Brian Higgins V Michael Marshall, et al, Montgomery County Common Pleas Court
Case No 2020CV01219***

11. Just before the primary filing deadline for Whaley to run for her third term as Mayor in 2021, she announces that she will not be running for Mayor. Jeff Mims, who had to have voted to award the contract to United Demolition, pulls his petitions for

Commission and switches to the Mayoral race. He has yet to be implicated in any criminal misdoing in the Culuture of Corruption investigation, but has been knowingly willing to stand by and protect himself from Sunshine Law violations . These violations were well documented by Esrati.com in his conduct leading the “School closing task force” where he allowed the law to be broken, but stood outside and did nothing while a crime was committed. <https://esrati.com/dps-special-meetings-are-to-avoid-scrutiny/16236>

12. Whaley, proceeds to run for Governor, collecting hundreds of thousands of dollars from donors, while possibly facing future indictment as Williams was allowed to do.

13. A reliable confidential informant informs Esrati that a friend was serving on the original grand jury that indicted Williams, Luckie, Winburn and Higgins, and had been presented with multiple recordings of Nan Whaley engaged in criminal behavior- with the prosecution presenting her as part of this criminal proceedings. However, “all of a sudden, they stopped pursuing Whaley.” Esrati files a FOIA request for those recordings, contending that if Whaley is engaged in discussions of city business, outside of public meetings, she’s already committing a criminal act punishable by the nearly toothless Ohio Sunshine laws- which count on private citizens enforcing them.

Submission ID: 221821 May 28, 2021.

“In the grand jury where the Dayton Ohio "Culture of Corruption" facts were being presented against Joey Williams, Roshawn Winburn, Clayton Luckie- et al- "Culture of corruption" the jury heard tapes of Dayton Mayor Nan Whaley

recorded by a CI or the FBI or the DOJ. It seems clear that there is no longer an ongoing investigation of Ms. Whaley since she's being allowed to run for Governor. If there are recordings, the public has a right to hear them. They were collected with our tax dollars and she is an elected official- involved in doing the public's business.”

14. Esrati received a response from the US DOJ denying the request on June 24, 2021 tracking number EOUSA-2021-002369 claiming the following reasons:

“this Office has determined that any records responsive to your request for grand jury records are exempt pursuant to: 5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute (in this instance, Rule 6(e) of the Federal Rules of Criminal Procedure, which pertains to the secrecy of grand jury proceedings). There is absolutely no discretion for us or for the United States Attorney's Office to release a grand jury exhibit or evidence obtained as part of a grand jury investigation to you or other members of the public, and a violation of Rule 6(e) would be punishable as a contempt of court.”

I was instructed of my rights to appeal and did on June 10, 2021

15. Esrati received a response from the US DOJ denying my appeal on June 16, 2021 appeal number A-2021-01970 claiming the following reasons:

“I note that your appeal concerns the FBI's refusal to confirm or deny the existence of records.

After carefully considering your appeal, I am affirming the FBI's action on your request. 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 request. 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 agency's 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 person's privacy that implicates the protections of Exemptions 6 and 7").“

16. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to defendant DOJ and FBI and has asked for mediation. However, plaintiff has been advised that this should not preclude him from filing in Federal Court to gain access to these records.

On August 10, 2021, the OGIS- the Office of Government Information Services, the agency responsible for mediating appeals of FOIA denials, writes Esrati that:

“your case is in our complex queue pending assignment. Currently we are

assigning complex cases received in February 2021;”

17. In plaintiff’s appeal it was clearly stated that there are records, and that Mayor Whaley is not entitled to protection of privacy when discussing public business by the Ohio Sunshine laws- which she is violating.
- Plaintiff also said that confidential informants can easily be redacted, although it’s likely we already know who they are. As to revelations of procedure or process the FBI used in this investigation, all we know is that it apparently only works on Black people in public office. I have cited numerous examples of larger corruption cases in the Dayton area- particularly at Wright State University, where \$130M ostensibly disappeared, and no one was indicted- including a former congressman (Steve Austria) who was paid handsomely with no evidence of any tangible work product.
18. There is precedent for the production of grand jury evidence against public officials to support this filing:

Senate of Puerto Rico v. Department of Justice, 823 F.2d 574 (D.C. Cir. 1987).

In a decision seeming to narrow the scope of grand jury secrecy under Federal Rule of Criminal Procedure 6(e), as incorporated by Exemption 3, the D.C. Circuit Court of Appeals ruled that the mere fact that records compiled during a criminal civil rights investigation into the murder of two political activists had been presented to a grand jury did not necessarily require their withholding. Rejecting a test based on the literal language of the rule -- "matters occurring before [a] grand jury" -- the D.C. Circuit stated that the grand jury secrecy rule protects only information which would "tend to reveal some aspect of the grand jury's investigation," such as "the identities of

witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of jurors, and the like." Although purporting to acknowledge the "necessarily broad" scope of Rule 6(e), it held that an agency must provide an "affirmative demonstration of a nexus between disclosure and revelation of a protected aspect of the grand jury's investigation" in order to bring information within the rule's protective ambit.

Senate of P.R., 82 F.2d is commonly summarized as:

noting that the D.C. Circuit has "never embraced a reading of Rule 6(e) so literal as to draw 'a veil of secrecy ... over all matters occurring in the world that happen to be investigated by a grand jury.'"

In [Shapiro v. Dep't of Justice](#), the court ordered the Dept. of Justice to further justify their reason for not providing the requested information:

The government's explanation contains insufficient information for the Court to determine whether disclosure of these database search results would "increase the risks that a law will be violated *or that past violators will escape legal consequences.*" (emphasis added) Id . at 1193. See also *Defenders of Wildlife v. U.S. Border Patrol* , 623 F.Supp.2d at 89–90.

And

"holding that, where the government's declaration "says little more than that the material has been presented to the grand jury; unless this fact alone automatically exempts the material, a position we reject, it is incumbent upon [the Court] to require some affirmative

demonstration of a nexus between disclosure and revelation of a protected aspect of the grand jury's investigation"

In reviewing [Boehm v. Fed. Bureau of Investigation](#) that cites Senate of P.R., 82 F.2d:

He argues that “there is no blanket exception to all information that was before a grand jury” and that “[d]efendants have not shown that the substantive information they describe cannot be segregated from the identifying information.” Id. at 5, citing Senate of P.R., 82 F.2d at 582; see also id. at 2.

The key in this request follows Boehm, in that we are not trying to decipher the workings of the Grand Jury, but trying to preclude an elected official from committing fraud while under investigation- an investigation that seemed to be centered around her commission of criminal acts while in office- to wit: discussing public business in a private forum.

In Boehm, the plaintiff lost:

Based on the same reasoning provided by this Court in its June 10, 2013 Memorandum Opinion, the Court concludes that plaintiff failed to identify a public interest that would overcome the privacy interests of government sources in this case. See Boehm, 2013 WL 2477091, at * 18–19.

In this filing, we clearly identify a legitimate public interest: the integrity of candidates running for public office. If Whaley did in fact become a Confidential Informant, her right to privacy is nullified by her violations of the public trust in violating the Ohio Sunshine Laws. The voters bore the costs of the Williams deal by paying for a special election.

The reality of democracy is that “the rule of law is central to the governing system. As part of the system, the fair and impartial investigation into wrongdoing of those with whom the public has entrusted public monies and authority is essential for a democracy to work well. If public officials are not held accountable to the law, the basic tenets of democracy are eroded.”

~ **Investigative decision-making in public corruption cases: Factors**

influencing case outcomes. [Kristine Artello](#) & [J.S. Albanese](#), [Christopher](#)

[Crowther-Dowey](#) (Reviewing editor)

<https://www.tandfonline.com/doi/full/10.1080/23311886.2019.1670510>

If bad actors are allowed to trade insider government information in exchange for their personal freedom, our very confidence in the government becomes so deteriorated as to cause civil unrest and disobedience. Stated differently, when the government protects governmental bad actors, government loses the fundamental foundation of trust from which our democracy depends on.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendants to disclose the requested records in their entireties and make copies available to plaintiff;

- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully Submitted

/s/ David Esrati
113 Bonner St
Dayton OH 45410
937-228-4433,2
Pro Se

JURY DEMAND

I make the humble request of a trial by jury as to all issues raised herein.

/s/ David Esrati

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2021, this document was served by hand to the following:

U.S. DEPARTMENT OF JUSTICE
Southern District of Ohio
200 W. Second Street, Suite 600
Dayton, OH 45402

and

Federal Bureau of Investigations
200 W 2nd St # 411
Dayton, OH 45402