

Freddie Heard, #272097
Eastern Corr. Facility
200 Wallace Dr.
Clio, AL. 36017

Richard W. Moore
United States Attorney
Southern District of Alabama
63 S. Royal St #600
Mobile, AL. 36602

In re: 5 U.S.C. 552(a), Freedom of Information Act Request
And to present grievances to the Federal Grand Jury.

Dear Sir:

I have two requests:

1st, I request copies of whatever documents you have that would show me what the rules are for my being able to present my grievances to the federal grand jury in Mobile.

The case law on this issue appears to be fairly straightforward.

But in this country the common practice is for the grand jury to investigate any alleged crime, no matter how or by whom suggested to them, and after determining that the evidence is sufficient to justify putting the party suspected on trial, to direct the preparation of the formal charge or indictment.

Frisbie v. United States, 15 S. Ct. 586,
157 U.S. 160 (U.S. 1895)

It is the duty and right . . . of every citizen to assist in prosecuting, and in securing the punishment of any breach of the peace of the United States.

In re Quarles, 15 S.Ct. 959, 960-961 (1894).

The function of the grand jury is to investigate any alleged crime, no matter how or by whom suggested to them.

In re Hale, 139 F. 496, 498 (C.Ct. S.D.N.Y. 1905) (quoting *Frisbie v. United States*, 15 S.Ct. 586 (1895)).

[I]nforming is a right or privilege secured by the Constitution or laws of the United States.

Velarde-Villarreal v. United States, 354 F.2d 9 footnote 3 (9th Cir. 1965).

[A citizen] has a constitutional right to inform the government of violations of federal law . . . [a] privilege of citizenship guaranteed by the Fourteenth Amendment.

Equal Employment Opportunity Commission v. Pacific Press Publishing Association, 676 F.2d 1272 (9th Cir. 1982).

However, there appears to be a “fly in the ointment”, both in the federal statute and the case law addressing it.

It is worth noting that attempting to contact or influence a grand or petit juror constitutes a crime. See 18 U.S.C. § 1503 (criminalizing attempting to contact or influence a juror); see also 18 U.S.C. § 1504 (declaring that attempting to contact a juror in writing is a separate crime).

In re Application of the New York Times Company to Unseal Wiretap & Search Warrant Materials, No. 09-0854-cv (2d Cir. 2009)

The statues referred to reads:

18 U.S.C. § 1504. ***Influencing juror by writing***

Whoever attempts to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member,

or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined under this title or imprisoned not more than six months, or both.

Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury.

Alabama law is the *exact opposite*”

The grand jury is an integral part of our legal system, whose function it is to make investigations of all crimes committed within its jurisdiction. Public policy demands that the citizen, without hazard to himself, may freely bring before the grand jury the fact that a crime has been committed, request an investigation, and furnish such information as he had in aid of the investigation. In this the citizen is not a prosecutor. It is not essential that he have probable cause to believe any individual to be the guilty party. He is merely performing a duty in aid of the tribunal set up to ascertain whether there is probable cause to believe a crime has been committed, and if so, who is there probable cause to believe to be the guilty party. *American Surety Co. v. Pryor*, 217 Ala. 244, 115 So. 176; *Smith v. Dollar*, 223 Ala. 661, 138 So. 277; 38 C.J. p. 385, § 2. [Emphasis added.]

Alabama Power Company v. John K. Neighbors No. 80-217 (Ala 1981)

I.e., I desire to present my grievances to the federal grand jury but I'd prefer to avoid committing a crime in so doing.

The law regarding F.O.I.A. requests is quite clear:

FOIA requires agencies to make information available to the public subject to 9 exemptions that may be asserted. 5 U.S.C. § 552(b). To prevail in a FOIA case, plaintiff must show that the IRS improperly withheld agency records, and the Court may only order production of “erroneously withheld record.” *Cunningham*, 40 F.Supp.3d at 83.

“FOIA clearly requires a party to exhaust all administrative remedies before seeking redress in the federal courts, ” and exhaustion is a condition precedent to filing suit.

Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994) (collecting cases). “Courts have consistently confirmed that the FOIA requires exhaustion of this appeal process before an individual may seek relief in the courts.” *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 61-62 (D.C. Cir. 1990) (collecting cases).

“Exhaustion of administrative remedies is generally required before filing suit in federal court so that the agency has an opportunity to exercise its discretion and expertise on the matter and to make a factual record to support its decision. *Id.* at 61 (citing *McKart v. United States*, 395 U.S. 185, 194 (1969)). Under 5 U.S.C. § 552(a)(6)(A)(i), the agency has 20 days, excluding weekends and holidays, after receipt of a request in which to determine whether to comply with the request and to notify the person of that determination, the reasons, and the right to appeal any adverse determination to the head of the agency. In unusual circumstances, this time limit may be extended by written notice setting forth the date on which a determination is expected to be made, but no such notice shall specify a date that would result in an extension of more than 10 working days unless notice is provided allowing the requester to limit the scope of the request.

5 U.S.C. § 552(a)(6)(B)(i), (ii). Under 5 U.S.C. § 552(a)(6)(C)(i), “[a]ny person making

a request to any agency for records [] of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph.” “A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.” 5 U.S.C. § 552(a)(6)(E)(iv).

Two types of exhaustion exist. “Actual exhaustion occurs when the agency denies all or part of a party’s document request. Constructive exhaustion occurs when certain statutory requirements are not met by the agency,” like applicable time limits. *Id.* at 1368.

My 2nd Request

I wish to present my grievances to the Federal Grand Jury.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Implicit in the concept of representative government and express in the provisions of the first amendment, is the guarantee that Congress shall make no law abridging the right of the individual to petition the Government for a redress of grievances.

United States v. Hylton, 710 F.2d 1106 (5th Cir. 1983)

As the United States Supreme Court has held, the right to petition for redress of grievances is "among the most precious of the liberties safeguarded by the

bill of rights." See *United Mineworkers of America, District 12 v. Illinois State Bar Association*, 389 U.S. 217, 88 S. Ct. 353, 356, 19 L. Ed. 2d 426 (1967). Inseparable from the guaranteed rights entrenched in the first amendment, the right to petition for redress of grievances occupies a "preferred place" in our system of representative government, and enjoys a "sanctity and a sanction not permitting dubious intrusions." *Thomas v. Collins*, 323 U.S. 516, 65 S. Ct. 315, 322, 89 L. Ed. 430 (1945). Indeed, "[i]t was not by accident or coincidence that that rights to freedom in speech and press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition for redress of grievances." *Id.* at 323

United States v. Hylton, *id*

The right to petition extends to all departments of the Government.

California Motor Transport Co. v. Trucking Unlimited,
92 S.Ct. 609, 612 (1972)

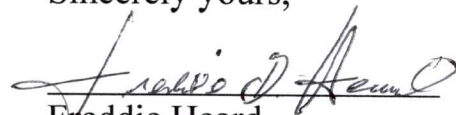
If the federal grand jury is a department of and/or an agency of government then - - at least according to the case law - - I should be able to petition it for a redress of grievances.

I am not asking to petition via your office. I am asking to speak face-to face to members of the grand jury. Members of the grand jury are officers of the court, not the Department of Justice. See, e.g., *Harold I. Cammer v. United States*, No. 12353,

Time limits under 5 U.S.C. § 552(a) are hereby invoked.

Thank you for your time and attention.

Sincerely yours,


Freddie Heard

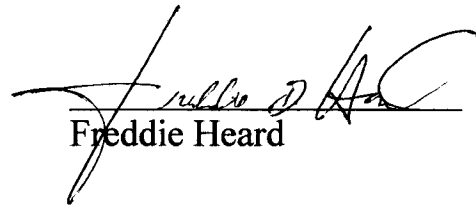
Certificate of Service

This certifies that I have on this 20th day of July, 2020, placed a true and exact copy of my

**Letter to Richard W. Moore, United States Attorney, dated 07-12-2020
In re appearing before the Federal Grand Jury**

in the U.S. Mail, first-class postage prepaid, addressed to:

Richard W. Moore, United States Attorney
Southern District of Alabama
63 S. Royal St #600
Mobile, AL 36602


Freddie Heard



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

*Suite 5.400, 3CON Building
175 N Street, NE
Washington, DC 20530*

*(202) 252-6020
FAX (202) 252-6048*

August 7, 2020

Freddie Heard
#272097; Eastern Corr.
Facility 200 Wallace Drive
Clio, AL 36017

Re: Request Number: EOUSA-2020-003875
Subject of Request: Grand Jury- Face to Face Grievance

Dear Freddie Heard:

The Executive Office for United States Attorneys has received your Freedom of Information Act request and assigned the above number to the request.

Grand jury material is exempt from mandatory release pursuant to 5 U.S.C. § 552(b)(3), which exempts from release “matters specifically exempted from disclosure by statute.” Since Rule 6(e) of the Federal Rules of Criminal Procedure (Pub. L. 95-78, 91 Stat. 319(1977)) provides that grand jury proceedings shall be secret, disclosure of grand jury information is prohibited by law. Therefore, this is a full denial.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

You may contact our FOIA Public Liaison at the Executive Office for United States Attorneys (EOUSA) for any further assistance and to discuss any aspect of your request. The contact information for EOUSA is 175 N Street, NE, Suite 5.400, Washington, DC 20530; telephone at 202-252-6020; or facsimile 202-252-6048. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail

Case 2:21-cv-00125-MHT-KFP Document 13-1 Filed 04/29/22 Page 14 of 31
at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Kevin Krebs
Assistant Director

Freddie Heard, #272097
Eastern Corr. Facility
200 Wallace Dr.
Clio, AL. 36017

Director
Office of Information Policy
United States Dept. of Justice
441 G Street, NW
6th Floor
Washington, D.C. 20530

"Freedom of Information Act Appeal"

Handwritten signature

RECEIVED

SEP 18 2020

Office of Information Policy

In re: EOUSA-2020 --3875

Dear Sir:

My F.O.I.A. Request is attached hereto as Exhibit A.

The response, dated August 7, 2020, is attached hereto as Exhibit B.

That response is unsatisfactory. Compare paragraph #2 of my objection, infra, to that response.

1. 5 U.S.C. § 552(B)(3) simply does not apply.

Petitioner also correctly notes that respondent errs in its understanding of grand jury secrecy, as required by Rule 6(e), Fed.R.Crim.P. Such secrecy applies only to materials presented to a grand jury. So far, apparently no grand jury has requested or obtained anything from respondent, so the secrecy rule need not apply yet. Here, no referral to the Justice Department for criminal prosecution has been made, and no grand jury has been called. While Rule 6(e) prevents disclosure of what is presented to the grand jury, it does not prevent an IG agent from disclosing to prosecutors, other agencies or a grand jury what the agent has discovered.

United States v. Medic House, Inc., 736 F. Supp. 1531 (W.D.Mo. 1989)

We decide, for the reasons explained below, that there is a limited right of access to grand jury records which interested members of the public have standing to assert. We also decide that the procedural device employed in the district court by the appellants was appropriate for the exercise of the access right, and that the order denying access was an appealable order. However, rather than attempting to specify the exact contours of the access right and to apply them to the request made in this case, we remand to the district court, which has custody of the documents sought and is in a better position to weigh the competing interests and fashion an appropriate order.

ANALYSIS

I. Standard

The district court denied the motion for access on the ground that the movants, as unindicted parties, were without standing to challenge the grand jury. One of the few points that is clear in this case is that such reasoning cannot support the district court's order. The error is plain: movants were not seeking to challenge the grand jury, but to inspect ministerial court records. Their standing, if they had standing, did not spring from any alleged right to challenge the grand jury, but from their alleged common-law right of access to court records. The outcome of the standing inquiry, therefore, must depend on the existence and scope of the alleged common-law right-questions which do not seem to have been addressed by the district court and to which we now turn.

II. Common-Law Right of Access to Public Records

A. Access to Court Records.

The Supreme Court recently observed:

It is clear that the courts of this country recognize a general right to inspect and copy public records and documents. In contrast to the English practice ..., American decisions generally do not condition enforcement on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen's desire to keep a watchful eye on the

workings of public agencies ..., and in a newspaper publisher's intention to publish information concerning the operation of government

Nixon v. Warner Communications, Inc., 435 U.S. 589, 597-98, 98 S. Ct. 1306, 1311-12, 55 L. Ed. 2d 570 (1978) (footnotes and citations omitted). The Court also noted that the access right is not often litigated,^{*fn3} and that "its contours have not been delineated with any precision." *Id.* at 597, 98 S. Ct. at 1311. The parties have not cited any case addressing the availability of such a right in the area of grand jury ministerial records, nor has our own research disclosed any. If such a right is available at all with respect to grand jury records, it must clearly be tempered by the long-standing rule of secrecy of the grand jury, and by the well-recognized policies behind that rule. Aside from whatever limitations that rule and its underlying policies suggest, however, we perceive no reason, nor has the Government offered any, why the public should not have access to the kind of records sought here. The importance of public access to judicial records and documents cannot be belittled. We therefore hold that, as members of the public, the appellants have a right, subject to the rule of grand jury secrecy, of access to the ministerial records in the files of the district court having jurisdiction of the grand jury. Absent specific and substantial reasons for a refusal, such access should not be denied.

B. Grand Jury Secrecy

In *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 218, 99 S. Ct. 1667, 1672, 60 L. Ed. 2d 156 (1979), the Supreme Court stated that "the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings." In a footnote, the Court went on to explain:

Since the 17th century, grand jury proceedings have been closed to the public, and records of such proceedings have been kept from the public eye The rule of grand jury secrecy was imported with our federal common law and is an integral part of our criminal justice system Federal Rule Crim.Proc. 6(e) codifies the rule that grand jury activities generally be kept secret

Id. n.9. At issue now is whether the records sought by petitioners come within the scope of this secrecy doctrine as "records of such proceedings."

A starting point of analysis is the observation that the language of Rule 6(e), which the Court says "codifies" the secrecy rule, refers by its terms only to "matters occurring before the grand jury."

In re Special Grand Jury, 674 F.2d 778 (9th Cir.1982)

I.e., I could care less about what transpired in *other proceedings* before the grand jury. A F.O.I.A. request is not a "grand jury proceeding".

2. This type of response from government is not uncommon.

The bending of the meanings of words is symptomatic of a diseased institution, with the angle of linguistic deflection indicating the seriousness of the cancer within. The Spanish Inquisition represented an advanced case.

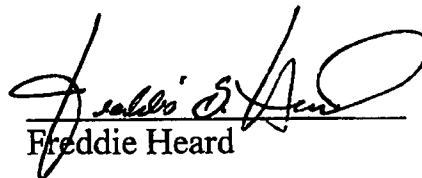
Rawson's Dictionary of Euphemisms and Other Doubletalk,
Revised Edition, page 35 (1995).

We next consider whether the Secretary has adequately demonstrated that the release of this return information to Chamberlain would "seriously impair Federal tax administration." The FOIA, of course, places the burden of sustaining a decision to withhold information on the agency.

Chamberlain v. Kurtz, 589 F.2d 827 (5th Cir. 1979)

3. If your agency is determined to block citizens' access to the grand jury, have the integrity to so state.

Sincerely yours,


Freddie Heard

Certificate of Service

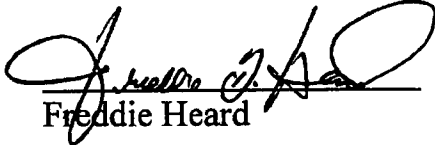
This certifies that I have on this 9th day of September, 2020, placed a true and exact copy of my letter headed

**Director, Office of Information Policy
United States Dept. of Justice
Washington, D.C. 20530**

In re: FOUSA-2020 --3875

in the U.S. Mails, first-class postage prepaid, addressed to:

Director
Office of Information Policy
United States Dept. of Justice
441 G Street, NW
6th Floor
Washington, D.C. 20530


Freddie Heard



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

Telephone: (202) 514-3642

Freddie Heard

No. 272097

Eastern Correctional Facility 200 Wallace Drive Re: Appeal No. A-2020-02089
Clio, AL 36017 Request No. EOUSA-2020-3875
CDT:KHK

VIA: U.S. Mail - 11/13/2020

Dear Freddie Heard:

You appealed from the action of the Executive Office for United States Attorneys (EOUSA) on your Freedom of Information Act request for access to records concerning the rules for presenting your grievances to the federal grand jury and your request to speak directly to the grand jury. I note that your appeal concerns the withholdings made by EOUSA.

After carefully considering your appeal, I am affirming, on modified grounds, EOUSA's action on your request. EOUSA does not maintain records such as those that you have described. Additionally, please be advised that the FOIA does not require federal agencies to answer questions, create records, or conduct research in response to a FOIA request, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records. See Students Against Genocide v. Dep't of State, 257 F.3d 828, 837 (D.C. Cir. 2001).

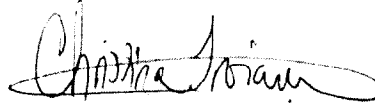
Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of EOUSA in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. §552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the

action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

A handwritten signature in black ink, appearing to read "Christina Troiani", written over a horizontal line.

X

Christina D. Troiani, Associate Chief,
for Matthew Hurd, Acting Chief,
Administrative Appeals Staff