

MORE FOIA REFUSALS HIDING DOJ'S INFORMANT PRACTICES

The Center for Constitutional Rights is helping former Black Panther, community activist, and Common Ground founder Malik Rahim sue to get the FBI's records on FBI informant Brandon Darby's infiltration of Common Ground.

Today, the Center for Constitutional Rights (CCR), in collaboration with the Loyola Law School's Clinic in New Orleans, filed a federal lawsuit against the U.S. Department of Justice and the Federal Bureau of Investigation demanding records related to Brandon Darby's collaboration with the FBI during his involvement with Common Ground, a New Orleans relief organization that provided supplies and assistance in the aftermath of Hurricane Katrina and worked on rebuilding the New Orleans community from the ground up. Darby, who notoriously infiltrated protest groups at the 2008 Republican National Convention, co-founded Common Ground only to then infiltrate and disrupt the group. The lawsuit, filed in the District Court for the Eastern District of Louisiana on behalf of New Orleans community organizer and Common Ground Relief founder Malik Rahim, follows repeated unsuccessful requests by Mr. Rahim to have the FBI release documents detailing warrantless surveillance that he and other activists might have been subject to while working alongside Mr. Darby.

Darby's work—and his work as an informant has been repeatedly documented (see also this report on the FBI file of Scott Crow, who started Common Ground with Darby and Rahim). But when

Rahim tried to FOIA his own file in 2009, the FBI refused to turn over anything related to Darby's work as an informant.

Plaintiff submitted, by letter dated February 24, 2009, and later amended on July 30, 2009, a FOIA request to Defendant FBI for all documents relating to Malik Rahim or his organization Common Ground Relief.

[snip]

Specifically, the FOIA request further sought "all records, documents and things . . ." related to surveillance, investigation, use of informants and agents, planting or gathering "evidence," and any other activities pertaining to Malik Rahim including anything related to Common Ground Relief and Brandon Darby.

On March 17, 2009, the FOIA request of Malik Rahim was denied on the grounds that the FBI would not respond to a FOIA request concerning another individual in addition to Malik Rahim without a "privacy waiver" being filled out by Brandon Darby.

On July 30, 2009, an appeal was filed to the denial. This appeal set out several reasons why the records should be made public, including: "the public right to be informed about what their government is up to," citing U.S. Department of Justice v. Reporters Committee for Freedom of Press, 489 U.S. 749, 773 (1989); the fact that if Brandon Darby was an undercover informant for the FBI during his time at Common Ground, then that would be an act of such public concern that it would overcome personal privacy exemptions, citing National Archives & Records Administration v. Favish, 541 U.S. 157, 172 (2004). This appeal is attached.

[snip]

On September 25, 2009, the U.S. Department of Justice Office of Information Policy stated it was affirming the original refusal of the FBI to release any information pertaining to Brandon Darby and further affirmed the refusal of the FBI to neither confirm nor deny the existence of any records responsive to the request. They said: "Without consent, proof of death, official acknowledgement of an investigation, or an overriding public interest, confirming or denying the existence of the records your client requested would constitute an unwarranted invasion of personal privacy."

The FBI response to Rahim's FOIA is interesting on two counts. Rahim FOIAed for these records before Comac Carney ruled in the Islamic Shura Council FOIA case; the first denial, in which the FBI invoked privacy concerns, came before Carney's June 23, 2009 ruling; the final denial came after it (remember it was two years before that ruling would be made public). But rather than excluding these files by pretending that no such files existed as they would under the Meese Memo, they responded using something like a Glomar response, "neither confirming nor denying" the records existed. And the denial is particularly odd given the hodge podge of reasons the FBI offered that might convince them to release the documents. Would Rahim get the same packet of documents, redacted the same way, if FBI released them with a privacy waiver as they would with a public interest waiver?

One thing seems clear. The FBI is using all manner of dumb excuses to avoid handing over details of its infiltration of groups exercising their First Amendment rights. We can debate how they'll respond under FOIA, but it's clear their informant files exist.