

UNITED STATES DISTRICT COURT  
FOR

*Western District of N.Y.*

Déirdre McKiernan Hetzler

██████████  
Scottsville, NY 14546  
██████████

Plaintiff,

v.

07 CV 6399 CJS

Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Department of Justice  
935 Pennsylvania Avenue, NW  
Washington, DC 20535-0001

Director, Office of Information and Privacy  
U.S. Department of Justice  
1425 New York Ave. NW, Suite 11050  
Washington, D.C. 20530-0001

Defendants

2007 AUG 15 09 21 AM  
FILED  
U.S. DISTRICT COURT  
W.D. N.Y. ROCHESTER

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, to order the production of agency records, concerning **Dr. John Thomas (a/k/a Eoin) McKiernan** which Defendant has improperly withheld from Plaintiff.
2. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).
3. Plaintiff, **Déirdre McKiernan Hetzler**, is an author and the daughter of the subject (now deceased), and she is the requestor of the records which Defendant is now withholding. Plaintiff has requested this information for use in a biography of her father and time is of the essence in order to meet a publication deadline.
4. Defendant (Federal Bureau of Investigation, US Department of Justice) is an agency of the United States and has possession of the documents that Plaintiff seeks.
5. By letter dated **October 9, 2006**, Plaintiff requested access to any and all information relating to Dr. McKiernan's work as teacher, administrator, diplomat, linguist, peacemaker, consultant, politician, Irish scholar; and also any information that is in any way connected to the Irish American Cultural Institute, which he founded, and its varied activities. A copy of this letter is attached as **Exhibit 1**.
6. By letter dated **March 22, 2007**, Plaintiff was given 95 heavily redacted pages of a possible 97, and denied access to portions of the requested information on the grounds that it was exempt from disclosure under Section 552 (b) (1), (b) (2), (b) (6), (b) (7) (C), and (b) (7) (D). A copy of this letter is attached as **Exhibit 2**. Some of these redacted portions are a matter of public record, e.g.

the name of subject's wife, adding credence to the Plaintiff's claim that government agency has used its power of redaction in an overbroad and arbitrary manner. Plaintiff also questions whether items considered of national security sixty-seven years ago need still to be so considered.

7. By letter dated *April 27, 2007*, Plaintiff appealed the overbroad use of redactions, and requested full disclosure, pointing out that the Defendant had failed to meet the statutory requirements. A copy of this letter is attached as **Exhibit 3**.

8. By a letter dated *May 21, 2007*, Defendant's Office of Information and Privacy stated that the appeal backlog was so great that it would take a very long time to review Plaintiff's appeal. A copy of this letter is attached as **Exhibit 4**.

9. By letter dated *June 20, 2007*, Plaintiff's appeal was denied. A copy of this letter is attached as **Exhibit 5**. The short interval between Defendant's letters (Exhibits 4 and 5) RAISES A PRESUMPTION that the Plaintiff's appeal was rejected automatically and without due consideration.

10. Plaintiff has a right of access to the requested information under 5 U.S.C. § 552(a)(3). The Defendant has the burden to justify the denial and it has FAILED to satisfy that burden.

WHEREFORE, Plaintiff requests this Court:

- (1) Expedite this proceeding as provided for in 28 U.S.C. § 1657;
- (2) Order Defendant to provide access to the requested documents;
- (3) Award Plaintiff costs and reasonable attorneys fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief as it may deem just and proper.

Respectfully submitted,

  
Déirdre McKiernan Hetzler

Dated: *15 August 2007*

**EXHIBIT 1**

Deirdre McKiernan Hetzler

██████████  
Scottsville, NY 14546  
██████████

October 9, 2006

Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Department of Justice  
935 Pennsylvania Avenue, NW  
Washington, DC 20535-0001

FOIA REQUEST

Dear FOI Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of any and all records relating to Dr. John McKiernan, PhD. ((a/k/a Eoin McKiernan). I am writing his biography and wish to locate all information which have a bearing on such a biography. I am requesting any and all information relating to his work as teacher, administrator, diplomat, linguist, peacemaker, consultant, politician, Irish scholar; also any information that is in any way connected to the activities of the Irish American Cultural Institute (hereafter, IACI)(1962-1995), the publication Eire-Ireland, and the program entitled the Irish Way.

Here are some specifics:

McKiernan was in the National Guard in the mid-1930's, but, when he received a draft notice in 1944, applied for conscientious objector status. (He had worked with Dorothy Day in the Catholic Worker in NYC in the interim.)

McKiernan was picked up for questioning about his Irish activities (which may have included editing a news sheet and advertising a speaker from Ireland) either in the late '30's or early 40's.

He served as consultant to the US Department of Education, probably in the 1950s (and also the NY State Education Department)

He was the guest of at least three Presidents with regard to Irish matters.

He/the IACI received an NEH grant around 1981, after previously being denied.

He was invited by the Ditchley Foundation and possibly by the British government to participate in peace initiatives in Northern Ireland (probably between the 1970s and the early 1990's)

His name surfaced in some political circles as a possible nominee for Ambassador to Ireland in the 1990's.

If you deem that this request qualifies for any fee exemption, I would appreciate such being applied. Dr. McKiernan's work and life were acknowledged both in the US and in Ireland. (A "Google" search within hours of his death contained 18 pages of information; articles appeared in papers as far away as Japan.) He was known as the foremost authority on Ireland and Irish America, and the man who made Irish Studies an acceptable academic pursuit. I expect his biography to generate interest on both sides of the Atlantic, and to inspire others to dream big and make things happen. However, I want to pursue this FOI request, with or without any exemption.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as an author and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

Deirdre McKiernan Hetzler



Federal Bureau of Investigation

Washington, D.C. 20535

March 22, 2007

MS DEIRDRE MCKIERNAN HETZLER  
SCOTTSVILLE, NY 14546

Subject: MCKIERNAN, JOHN THOMAS

FOIPA No. 1063508- 000

Dear Requester:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Section 552

Section 552a

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <input type="checkbox"/> (b)(7)(A) | <input type="checkbox"/> (d)(5) |
| <input type="checkbox"/> (b)(7)(B) | <input type="checkbox"/> (j)(2) |
| <input type="checkbox"/> (b)(3)    | <input type="checkbox"/> (k)(1) |
| <input type="checkbox"/> (b)(7)(E) | <input type="checkbox"/> (k)(2) |
| <input type="checkbox"/> (b)(7)(F) | <input type="checkbox"/> (k)(3) |
| <input type="checkbox"/> (b)(4)    | <input type="checkbox"/> (k)(4) |
| <input type="checkbox"/> (b)(5)    | <input type="checkbox"/> (k)(5) |
| <input type="checkbox"/> (b)(9)    | <input type="checkbox"/> (k)(6) |
| <input type="checkbox"/> (b)(7)(G) | <input type="checkbox"/> (k)(7) |

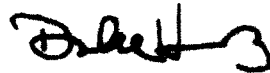
97 page(s) were reviewed and 95 page(s) are being released.

- Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:
  - referred to the OGA for review and direct response to you.
  - referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

\*  Appeals should be directed in writing to the Director, Office of Information and Privacy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001 within sixty days from the date of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown, when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

Sincerely yours,


A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy  
Section Chief  
Record/Information  
Dissemination Section  
Records Management Division

Enclosure(s)

For your additional information, records that may be responsive to your Freedom of Information Act request have been transferred to the National Archives. You may desire to direct a request to the National Archives, 8601 Adelphi Road, College Park, Maryland 20740-6001.

**EXHIBIT 3**

  
Scottsville, NY 14546  
27 April 2007

Director, Office of Information and Privacy  
U.S. Department of Justice  
1425 New York Ave. NW Suite 11050  
Washington, DC 20530-0001

Re: Information Appeal  
FOIPA No. 1063508-000  
John Thomas (a/k/a Eoin) McKiernan

Dear Sir or Madam:

I am appealing your redactions in the above file, released to me on 22 March 2007, in response to my FOIA request of 9 October 2006.

While I recognize your need to balance the interest of the public with an individual's right to privacy, I am making the case that the public's right to know in this case (and therefore mine, as a writer) outweighs, for the following reasons:

- 1) I am engaged in writing the biography of Dr. McKiernan, and therefore need the most complete information that can be made available;
- 2) Dr. McKiernan was a public figure, known around the world for his expertise on Ireland and Irish-America; his life is important in historical terms, and it is therefore important that all the facts be made available;
- 3) No personnel or medical files or those with similar characteristics are requested;
- 4) Exemptions are the exceptions to the rule, and the Agency's use of an otherwise good rule has been overly broad (even redacting my own birth!), offering no real supporting evidence;
- 5) Due to the very long passage of time, all those whose names have been redacted are dead, except for myself (and I waive my right to privacy in this case);
- 6) This case was thoroughly reviewed by the Bureau and closed, not once, but twice, finding that there was no security threat. Why now, then, is that cited?

I respectfully request that the full file be released to me without the current redactions.

Sincerely,

Deirdre McKiernan Hetzler

**Exhibit 4**



Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

Ms. Deirdre McKiernan Hetzler

**MAY 21 2007**

██████████  
Scottsville, NY 14546

Re: Request No. 1063508- John Thomas (aka Eoin) McKiernan

Dear Ms. Hetzler:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received by this Office on May 16, 2007.

The Office of Information and Privacy, which has the responsibility of adjudicating such appeals, has a substantial backlog of pending appeals received prior to yours. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **07-1485**. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. We regret the necessity of this delay and appreciate your continued patience.

Sincerely,

Priscilla Jones  
Supervisory Administrative Specialist



Exhibit 5



Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

JUN 20 2007

Ms. Deirdre McKiernan Hetzler  
[REDACTED]  
Scottsville, NY 14546

Re: Appeal No. 07-1485  
Request No. 1063508  
ADW:CL

Dear Ms. Hetzler:

~~You appealed from the action of the Headquarters Office of the Federal Bureau of~~  
Investigation on your request for access to records pertaining to John Thomas McKiernan.

After carefully considering your appeal, I am affirming the FBI's action on your request. Some of the information responsive to your request is classified. I am affirming the FBI's withholding of it pursuant to 5 U.S.C. § 552(b)(1), which protects classified information from disclosure. I am, however, referring this information to the Department of Justice's Department Review Committee (DRC) so that it may determine if this information should remain classified under Executive Order No. 12,958, as amended. Once the DRC completes its review, this Office will inform you if any of this information is declassified.

The FBI properly withheld other information that is protected from disclosure under the Freedom of Information Act pursuant to:

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency practices;

5 U.S.C. § 552(b)(6), which concerns information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties; and

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources.

-2-

Additionally, my staff has looked into this and found that the Charlotte Field Office might have records responsive to your request. If you have not done so already, I suggest that you submit a new request directly to the Charlotte Field Office. See 28 C.F.R. §§ 16.3(a), 16.41(a) (2006) (requests for records held by FBI field offices must be submitted to the field offices directly). You may appeal any future adverse determination made by the FBI. The address for the Charlotte Field Office is:

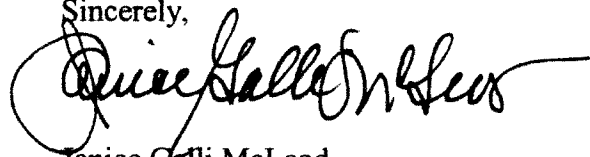
Federal Bureau of Investigation  
Charlotte Field Office  
400 South Tyron Street, Suite 900  
Charlotte, NC 28285-0001

~~It is possible that some of the records you seek were transferred to the National Archives and Records Administration (NARA). As a courtesy to you, I am providing you with the mailing address for NARA:~~

NARA FOIA Officer  
National Archives at College Park  
8601 Adelphi Road, Room 3110  
College Park, MD 20740-6001

If you are dissatisfied with my action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Janice Galli McLeod". The signature is written in a cursive style with a large initial "J" and "M".

Janice Galli McLeod  
Associate Director