

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAWRENCE P. KEENAN,

Plaintiff,

v.

DEPARTMENT OF JUSTICE, et al.,

Defendants.

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: Civil Action No. 94-1909 (GM)
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FBI
MAY 24 1997
Clerk, U.S. District Court
District of Columbia

MEMORANDUM OPINION

Plaintiff brings this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 (1994), and the Privacy Act of 1974, 5. U.S.C. § 552a (1994), seeking to compel disclosure of information from the Central Intelligence Agency ("CIA") and the Department of Justice ("DOJ"). This matter is before the Court on Defendant's Motion for Summary Judgment ("Def.'s Mot.") [31] and Plaintiff's Cross-Motion for Summary Judgment and to Compel Defendant Federal Bureau of Investigation to Provide Supplemental Vaughn Index and to Conduct Further Search ("Pl.'s Cross-Mot.") [45], pursuant to Fed. R. Civ. P. 56.¹

I. BACKGROUND

Plaintiff was employed by the Federal Bureau of Investigation ("FBI") from 1951 to 1966. On July 17, 1992, Plaintiff submitted

¹ Plaintiff's action against the CIA was dismissed pursuant to Fed. R. Civ. P. 12(b)(1). This opinion pertains solely to Defendant DOJ's Motion with respect to the FBI and Plaintiff's Cross Motion with respect to DOJ.

C.A. No. 89-3016 RMU

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a FOIA and Privacy Act request to the FBI for "all documents . . . listed under my name . . . believed to be largely located in my personal [sic] file." On August 31, 1994, while his request was pending at DOJ, Plaintiff filed this action to compel production of all requested documents. On January 31, 1995, the FBI released 1,041 pages to Plaintiff, withholding limited portions of those documents. On February 7, 1995, DOJ's Department Review Committee ("DRC") reviewed the classification of the documents requested in this case. By letter dated March 20, 1995, the FBI re-released the documents to Plaintiff, along with some additional documents that the DRC had declassified. Eleven of the documents that DOJ released were redacted pursuant to FOIA Exemptions 1, 7(C), and 7(D), and Privacy Act Exemptions (j)(2), (k)(1), and (k)(5).²

Plaintiff challenges DOJ's withholding of the redacted information on the eleven documents, and seeks to compel disclosure of the withheld information. In addition, Plaintiff challenges the adequacy of the searches made by the FBI in response to his original request, and seeks to compel further searches. Finally, Plaintiff challenges the adequacy of DOJ's Vaughn Index and seeks to compel production of a supplemental Vaughn Index for the redacted information.

² The eleven documents in this case are listed in the exhibits as Documents 1-4, 9-12, 16 (encl. 1-5), 19, and 20. DOJ claims Exemption 1 for all the documents except for Document 13, Exemptions (j)(2) and 7(C) for Documents 11 and 19, and Exemptions (k)(5) and 7(D) for Documents 1 and 2.

II. STANDARD OF REVIEW

Under Fed. R. Civ. P. 56, a motion for summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In considering a motion for summary judgment, the "evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255.

FOIA's purpose is to facilitate public scrutiny of the government by mandating public disclosures of its records. Stern v. FBI, 737 F.2d 84, 88 (D.C. Cir. 1984). FOIA allows private citizens to request federal agency records, subject to certain statutory exemptions. See, e.g., Department of Air Force v. Ross, 425 U.S. 352, 360-361 (1976). The government carries the burden of justifying nondisclosure under any of the FOIA exemptions. 5 U.S.C. § 552 (a) (4) (B).

Under the law of this Circuit, an agency must submit to the reviewing court a listing of all materials withheld in whole or in part, detailing the justification for each withholding. Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).³ Because the agency alone has knowledge of the withheld

³ This listing is commonly referred to as the "Vaughn Index".

information, it bears the burden of producing a "relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply." Mead Data Cent., Inc. v. United States Dep't of Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977). Summary judgment cannot be supported by affidavit declarations that are "conclusory, merely reciting statutory standards, or if they are too vague or sweeping." Hayden v. National Sec. Agency/Cent. Sec. Serv., 608 F.2d 1381 (D.C. Cir. 1979), cert. denied, 446 U.S. 937 (1990).

The Privacy Act's primary purpose is to ensure that agencies maintain accurate record systems. 5 U.S.C. § 552a(e)(5). The Privacy Act provides an individual access to federal agency records that specifically pertain to him or her. See 5 U.S.C. § 552a(d). However, agencies are permitted to exempt certain systems of records from any access requirements. See 5 U.S.C. §§ 552a(j), 552a(k). An agency claiming exemptions under the Privacy Act must promulgate rules in accordance with the Administrative Procedure Act. 5 U.S.C. § 553 (1994).

III. ANALYSIS

A. FOIA Exemption 1 and Privacy Act Exemption (k)(1)

Under FOIA Exemption 1 and Privacy Act Exemption (k)(1), an agency need not disclose records containing information that is "specifically authorized under criteria established by an Executive

order to be kept secret in the interest of national defense or foreign policy" 5 U.S.C. § 552(b)(1) (FOIA); 5 U.S.C. 552a(k)(1) (Privacy Act).⁴ An agency may invoke Exemption 1 upon compliance with the classification procedures established by the executive order that is in effect at the time of classification. *Id.*; see, e.g., King v. United States Dep't of Justice, 830 F.2d 210, 214 (D.C. Cir. 1987).

1. Applicable Executive Order

The parties in this case disagree as to which Executive Order applies to Plaintiff's original request. On April 17, 1995, subsequent to DOJ's final classification of documents in this case and after the filing of this action, President Clinton issued Executive Order No. 12,958. 60 Fed. Reg. 19825 (1995) (The "1995 Executive Order"). The 1995 Executive Order supplanted Executive Order No. 12,356, 47 Fed. Reg. 14873 (1982) (The "1982 Executive Order"), upon which DOJ relied in making its final classification determination. Although the 1995 Executive Order retained all classification categories in place under the 1982 Executive Order, the 1995 Executive Order established a new standard of classification that favors a broader disclosure of documents. In particular, while the 1982 Executive Order requires classification of documents whose "unauthorized disclosure, either by itself or in

⁴ Because exemption (k)(1) of the Privacy Act wholly incorporates FOIA Exemption 1, the two exemptions are identical and will hereinafter be jointly referred to as "Exemption 1".

the context of other information, reasonably could be expected to cause damage to the national security," Exec. Order No. 12,356 ; 1.3(b), 47 Fed. Reg. at 14876, the 1995 Executive Order permits classification of only those documents whose "unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and the original classification authority is able to identify or describe the damage." Exec. Order No. 12958 § 1.2(a)(4), 60 Fed. Reg. at 19825 (emphasis added, 1995 amendment).

The Court of Appeals for the District of Columbia Circuit has held that "the Executive Order in effect at the time the classifying official acted states the relevant criteria for purposes of determining whether Exemption 1 properly was invoked." Lesar v. United States Dep't of Justice, 636 F.2d 472, 480 (D.C. Cir. 1980). If a new Executive Order is promulgated during the pendency of an action in a District Court, an agency is permitted, but not required, to re-examine its classification under the new Executive Order. See, e.g., Afshar v. Department of State, 702 F.2d 1125, 1136 (D.C. Cir. 1983); Baez v. United States Dep't of Justice, 647 F.2d 1328, 1334 (D.C. Cir. 1980).

In Baez, plaintiff brought an action under FOIA against DCJ and the Army to compel production of certain documents, some of which were withheld under Exemption 1. Id. at 1330-31. The pre-existing Executive Order in Baez, as here, was superseded by a new Executive Order during the case's pendency in district court. Id.

However, unlike the facts in this case, the defendant in Bae, voluntarily elected to re-examine its classification determination under the new Executive Order. Id. On appeal, this Circuit affirmed and held that defendant should be permitted to voluntarily re-examine its classification determination under the new Executive Order. Id. at 1333-34. In King, this Circuit made clear that only in instances when a court "contemplates remanding the case back to the agency to correct a deficiency in its classification determination" is the agency required to re-examine its classification under the new Executive Order. 830 F.2d at 217.⁵

In this case, DOJ made its final classification determination when the DRC met on February 7, 1995. Since the Executive Order in effect on that date was the 1982 Executive Order, it provides the relevant criteria for determining Exemption 1 classification. Although DOJ may voluntarily reassess its classification under the 1995 Executive Order, it does not seek to do so.

Plaintiff further argues that, because DOJ did not produce the supporting affidavit until July of 1995, the 1995 Executive Order should apply. This argument is without merit. The critical date for determining the applicable Executive Order is the date of final classification, not the date on which the agency produced its

⁵ The Court notes that a "deficiency" in document classification determinations is not synonymous with inadequacy of the Vaughn Index describing those documents. The latter situation requires an order for a supplementary Vaughn Index not a remand to the agency.

supporting affidavit. See, e.g., King, 830 F.2d at 217. Furthermore, since this Court is not contemplating remanding the case back to the agency to correct any deficiency in classification determination, Defendant DOJ is not required to re-examine its classification determination of the redacted documents in this case.

2. Sufficiency of the Vaughn Index

Although an agency carries the burden of proving justification for any Exemption 1 claims, a reviewing court must "accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record." Krikorian v. Department of State, 984 F.2d 461, 464 (D.C. Cir. 1993) (quoting Military Audit Project, 656 F.2d 724, 738 (D.C. Cir. 1981)). At the same time, the affidavit must "reveal as much detail as possible as to the nature of the document, without actually disclosing information that deserves protection." Oglesby v. United States Dep't of Army, 79 F.3d 1172, 1176 (D.C. Cir. 1996). A reviewing court should not accept generalized and conclusory affidavits. Id. at 1178 (citing Vaughn, 484 F.2d at 826); accord Goldberg v. Department of State, 818 F.2d 71, 78 (D.C. Cir. 1987) cert. denied, 485 U.S. 904 (1988). Rather, an adequate description of a withheld document should usually, but not always, contain information such as, date, author, length, and a brief description of the document's contents. Id. at 1181.

In Oglesby, this Circuit provided examples of adequate and inadequate descriptions of Exemption 1 documents. For example, the following description was adequate for purposes of claiming Exemption 1:

c. Document 3 is a cover letter originated by the 971th [sic] Counterintelligence Corps dated 19 May 1947 consisting of one page with one enclosure consisting of three pages. The subject of the cover letter is Organization Coburg, and is currently classified CONFIDENTIAL. Portions of paragraphs 2 and 3 of this cover letter were redacted to exempt classified information relating to intelligence methods and sources and foreign classified matters. The remaining paragraph and all three pages of the enclosure were regarded unclassified on 25 May 1986 and released to plaintiff.

79 F.3d at 1179.

In this case, DOJ claims that Exemption 1 covers ten of the eleven redacted documents.⁶ Specifically, DOJ claims that the redacted documents contain information pertaining to foreign relations, intelligence activities, cryptographic systems, and confidential sources. Under the 1982 Executive Order, each of these categories of information falls squarely within the protections of Exemption 1. See Exec. Order No. 12356 § 1.3(a), 47 Fed. Reg. at 14876.

Sherry L. Davis, FBI Supervisory Special Agent, authored the affidavit and Vaughn Index for the information withheld pursuant to Exemption 1 ("Davis Declaration"). The Davis Declaration used a coded Vaughn Index system, accompanied by a brief description of

⁶ See supra note 2.

each document.⁷ Coded Vaughn Indexes are permitted in this Circuit, so long as the index achieves the requisite goal of describing each withheld document with adequate and unambiguous specificity. See, e.g., Keys v. DOJ, 830 F.2d 337, 349 (D.C. Cir. 1987).⁸

Although the Davis Declaration provides an extensive justification for protecting certain categories of information included in the 1982 Executive Order, such as intelligence methods and confidential sources, its references to the specific information withheld are completely conclusory. For example, Document 16 and its enclosures contain information identifying "specific intelligence methods that were targeted against an individual of national security interest." Beyond the recitation of the Executive Order's language, the affidavit provides no information about the contents of the withheld information.

⁷ A coded Vaughn Index uses key-coded symbols to categorize types of information that may fall under any particular FOIA exemption. For instance, in this case, the Davis Declaration uses the key code of "(S)(I)" to denote any documents that may contain intelligence source information.

⁸ Plaintiff on many occasions cites to a novel decision by the Court of Appeals for the Ninth Circuit for support -- Weiner v. FBI, 943 F.2d 972 (9th Cir. 1991), cert. denied, 112 S. Ct. 3013 (1992). For instance, Plaintiff cites Weiner to support its contention that the Vaughn Index standard is not satisfied by using a code system such as the one used by the Davis Declaration. However, This Circuit has explicitly rejected the standard set forth by the Ninth Circuit. See, e.g., Simon v. United States Dep't of Justice, 980 F.2d 782, 784 (D.C. Cir. 1992); see also Assassination Archives & Research Ctr. v. CIA, 903 F. Supp. 131, 132 (D.D.C. 1995).

Although one may speculate as to the general nature of the materials by examining the characteristics of the redacted documents, such a method of review is unreliable and sometimes impossible.⁹ The Davis Declaration provides an inadequate justification for invoking Exemption 1.

Plaintiff further alleges, and Defendant does not deny, that the redacted documents in this case were compiled nearly three to four decades ago. See Declaration of Lawrence P. Keenan ("Keenan Declaration"). This Circuit holds a strong presumption against prolonged withholding of information whose sensitivity may have diminished with age. See, e.g., King, 830 F.2d at 227-28. However, passage of time alone is not a per se bar to Exemption 1 claims, so long as the agency provides a sufficiently detailed and persuasive affidavit that adequately demonstrates the national security concerns covered under the applicable Executive Order. Oglesby, 79 F.3d at 1183. In this case, the Davis Declaration does not indicate the dates during which the redacted documents were compiled, although portions of the redacted documents tend to indicate that the majority of the documents were compiled during the 1960s. However, the absence of such information in Defendant's affidavit further demonstrates the inadequacy of its affidavit.

⁹ The Court is not in a position to judge the nature of the withheld information based upon face-value examinations of the redacted documents. This is especially true where confidential documents containing encrypted information, which may only be understood by a special agent, are involved.

B. FOIA Exemption 7(C) and Privacy Act Exemption (j) (2)

Under the Privacy Act, an agency whose primary function is the enforcement of criminal laws may promulgate rules to exempt certain systems of records from the Privacy Act's access provisions. 5 U.S.C. § 552a(j) (2) ("Exemption (j) (2)"). In particular, an agency may exempt from access any system of records containing information compiled for purposes of law enforcement. *Id.* A related, but considerably narrower provision of FOIA, Section 552(b) (7) (C) ("Exemption 7(C)"), provides that an agency may refuse to disclose any "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 constitute an unwarranted invasion of personal privacy." When reviewing a claim under Exemption 7(C), a reviewing court must balance the privacy interest at stake against the public interest in disclosure. *See, e.g., Quinon v. FBI*, 86 F.3d 1222, 1230 (D.C. Cir. 1996) (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 776 (1989)). Where the privacy interest at stake is outweighed by the public interest, the court must permit disclosure. *Id.*

Under both exemptions, the agency carries the initial burden of demonstrating a law enforcement purpose for any information being withheld. *See, e.g., Doe v. FBI*, 936 F.2d 1346, 1353 (D.C. Cir. 1991). The Court of Appeals for the District of Columbia

Circuit has articulated a two-part test for determining whether a record was compiled for law enforcement purposes. Id. (citing Pratt v. Webster, 673 F.2d 408, 420-21 (D.C. Cir. 1982)). First, the agency must demonstrate that the investigation was conducted for purposes of enforcing federal laws or maintaining the national security. Id. Second, the agency must demonstrate a sufficient nexus between the investigation and one of the agency's law enforcement duties. Id. In determining whether the agency has fulfilled the second requirement, the reviewing court must give substantial deference to the agency's reason for conducting the investigation. Id.

In this case, DOJ claims that the redacted materials in two of the withheld documents are covered under Exemptions (j)(2) and 7(C). Specifically, as stated in the Declaration of Robert A. Moran ("Moran Declaration"), Documents 11 and 19 contain the "name of a third party who was of investigative interest to the FBI; this item of information was recompiled from information pertaining to a lawful criminal investigation." The ambiguous phrase "of investigatory interest" in the Moran Declaration does not indicate whether the investigation was conducted for purposes of enforcing any particular federal law or maintaining national security. Indeed, the statement is unclear as to whether an investigation was conducted at all. Furthermore, the declaration does not even attempt to demonstrate a nexus between the investigation and one of the FBI's law enforcement duties. As a result, the Moran

Declaration fails to demonstrate any law enforcement purpose for the information that was withheld in Documents 11 and 19.¹⁰

The Moran Declaration also fails to furnish sufficient detail concerning the information withheld. In reviewing claims to Exemptions 7(C) and (j)(2), a court must balance the privacy interest at stake against the public interest in disclosure. Reporters Comm., 489 U.S. at 776. Under Exemptions 7(C), privacy interests greatly diminish upon a person's death, and an agency must demonstrate "particularized need" to continue its withholding of that person's identity. Schmerler v. FBI, 696 F. Supp. 717, 722 (D.D.C. 1988), rev'd on other grounds, 900 F.2d 333 (D.C. Cir. 1990); see also Exner v. DOJ, 902 F. Supp. 240, 243 (D.D.C. 1995). Consequently, information as to whether a person is still alive greatly affects the balance between the privacy interest at stake and the public interest in disclosure. In this case, because the redacted information may have been compiled over three decades ago, Plaintiff may well be correct that the individual named in Documents 11 and 19 has since died. The Court does not purport to speculate on the age of the documents or on whether the third party identified in Documents 11 and 19 is deceased. Nevertheless, the

¹⁰ Plaintiff also alleges that Defendant DOJ is withholding the name of a high ranking FBI official. See Pl.'s Cross-Mot. at 26. However, Defendant has since released the name of the that FBI official, which was inadvertently withheld by mistake. See Supplemental Declaration of Robert A. Moran at ¶ 5. Defendant further contends that it is not withholding the names of any other high ranking officials. Id.

circumstances in this case require the agency to indicate in its affidavit whether the third party is alive or deceased.

Plaintiff in this case alleges that the redacted information in Documents 11 and 19 identifies an "American physician who had fled the country after a botched abortion he had handled resulted in the death of a young woman and the grisly disposal of her body via the garbage disposal." Keenan Decl. at ¶ 10. Plaintiff further alleges that the individual's name was displayed on "WANTED" posters across the nation, and that "massive" publicity surrounded the incident. *Id.* Consequently, Plaintiff argues, this individual was a high-profile fugitive, and therefore has waived his right to privacy. Again, notwithstanding Plaintiff's detailed descriptions, the Court simply cannot speculate as to the identity of that individual. However, again, the agency must indicate, in supplemental filings, *in camera* if absolutely necessary, whether Plaintiff is correct about the identity of the individual in question.

In sum, the Moran Declaration fails to show any law enforcement purpose for the information that was withheld in Documents 11 and 19, and fails to provide sufficient detail concerning the information being withheld under Exemptions (j)(2) and 7(C). Consequently, with respect to Exemptions (j)(2) and 7(C), the Court concludes that DOJ has failed to carry its burden of proof to satisfy the summary judgment standard.

C. FOIA Exemption 7(D) and Privacy Act Exemption (k) (5)

Under the Privacy Act, an agency may exempt from access any system of records that may contain any investigatory material compiled for purposes of determining federal employment suitability, eligibility, or qualifications, to the extent that disclosure of such material would reveal the identity of a confidential source. 5 U.S.C. § 552a(k)(5). A similar FOIA exemption, Exemption 7(D), permits an agency to withhold any documents compiled for law enforcement purposes that were furnished by confidential sources or that may identify a confidential source, including foreign agencies or authorities. 5 U.S.C. 552(b)(7). A source is considered confidential if it furnished information under an "express assurance of confidentiality." United States Dep't of Justice v. Landano, 508 U.S. 165, 171 (1993) (quoting S. Rep. No. 93-1200, at 13 (1974)).

In this case, DOJ claims that two of the withheld documents are exempt from disclosure under Exemptions (k)(5) and 7(D). As stated in the Moran Declaration, Documents 1 and 2 contain "information compiled during the background/suitability investigation of the plaintiff for government employment" and "the identities of cooperating foreign law enforcement agencies which provided information to the FBI under an express assurance of confidentiality."

Pursuant to Exemption (k)(5), the FBI has promulgated rules to

exempt from access its Central Records System, from which Documents 1 and 2 were retrieved. See 28 C.F.R. § 16.96(a) (1994). Because the information in Documents 1 and 2 was furnished by sources under "an express assurance of confidentiality", the sources may be properly considered confidential. Accordingly, because Documents 1 and 2 contain information that was compiled for purposes of background investigation, and because disclosure of the information would lead to the identification of a confidential source, the FBI has properly withheld Documents 1 and 2 under Privacy Act Exemption (k) (5).

Under FOIA Exemption 7(D), background security investigations for federal employment are deemed information compiled for law enforcement purposes. See, e.g., Mittleman v. Office of Personnel Management, 76 F.3d 1240, 1242 (D.C. Cir. 1996). Hence, because the redacted information in Documents 1 and 2 was compiled for law enforcement purposes, and because the information would reveal the identity of confidential sources, the FBI also satisfies its burden in withholding Documents 1 and 2 under FOIA Exemption 7(D).

D. Adequacy of the Searches

Under FOIA, an agency responding to any request for documents must conduct a search using methods that are "reasonably calculated to uncover all relevant documents." See, e.g., Steinberg v. DOJ, 23 F.3d 548, 551 (D.C. Cir. 1994) (quoting Weisberg v. DOJ, 75 F.2d 1476, 1485 (D.C. Cir. 1984)). The adequacy of the searches

judged by a standard of reasonableness and depends on the particular circumstances of the case. *Id.* The agency may demonstrate the adequacy of the search by providing "reasonably detailed, nonconclusory affidavits submitted in good faith." *Id.* Summary judgment for the government is not proper "if the record leaves substantial doubt as to the sufficiency of the search." *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990).

Plaintiff in this case contends that the FBI did not perform an adequate search in response to his original request. In particular, Plaintiff lists several items that he believes exist in the FBI records and that would have been retrieved if an adequate search had been undertaken.¹¹ For instance, Plaintiff contends that the FBI failed to adequately search for records pertaining to a 1963 French television documentary, allegedly containing interviews with him. Plaintiff supports his contention by pointing to the circumstances surrounding his interview, including the television crew's need to obtain permission from the head of the "Crime Records Division" at the FBI in order to interview Plaintiff. Based on these facts, Plaintiff suggests that the FBI should conduct searches in the "Crimes Records Division file" to retrieve records pertaining to this event.

DOJ asserts that all of Plaintiff's requests were processed through the Central Records System's General Indices, which

¹¹ The items are listed as Items 3, 4, 6, 8, 9, and 10 in Moran's Declaration.

categorize all information acquired by the FBI in the execution of its mandated duties. The Moran Declaration explains in detail the nature of the system, and states that the General Indices provide the only reasonable access to records in the CRS. In response to Plaintiff's request, the FBI searched the General Indices for Plaintiff's name. Although it did not retrieve any of the items that Plaintiff alleges exist, it did retrieve 1,041 pages of information responsive to his request.¹² In addition, the FBI contends that it does not currently maintain a "Crimes Records Division file", and therefore cannot possibly comply with Plaintiff's request to search such a file.

Thus, despite Plaintiff's claim that specific incidents occurred, no evidence has been presented that would suggest the existence of any record pertaining to those incidents. Since the FBI has submitted a detailed affidavit describing a reasonable search, and Plaintiff has presented no opposing evidence to the contrary, the FBI has satisfied its burden of demonstrating an adequate search of Plaintiff's original request.

IV. CONCLUSION

For the foregoing reasons, Defendant DOJ's Motion for Summary

¹² One of the items, item 8, is a seven-page document pertaining to the assassination of President John F. Kennedy. The FBI indicated that, pursuant to the President John F. Kennedy Assassination Records Collection Act of 1992, the document was among the material that was transmitted to the National Archives and Records Administration ("NARA"). Thus, the FBI is not withholding that particular document, and Plaintiff may request access to that document through NARA.

Judgment [31] is granted in part and denied in part. Plaintiff's Cross-Motion for Summary Judgment and to Compel Supplemental Vaughn Index and Further Search [45] is granted in part and denied in part. Defendant DOJ shall submit a supplemental affidavit containing a sufficiently detailed index of all information being withheld in Documents 3, 4, 9-12, 16 (with enclosures 1-5), 19, and 20. An Order will issue with this opinion.

March 24, 1997
Date

G. Gladys Kessler
GLADYS KESSLER
U.S. District Judge

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAR 25 1997
Clerk, U.S. District Court
District of Columbia

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ORDER

This matter is before the Court on Defendant's Motion for Summary Judgment [31] and Plaintiff's Cross-Motion for Summary Judgment and to Compel Defendant Federal Bureau of Investigation to Provide Supplemental Vaughn Index and to Conduct Further Search [45]. For the reasons stated in the accompanying Memorandum Opinion, it is this 24th day of March, 1997 hereby

ORDERED, that Defendant DOJ's Motion for Summary Judgment [31] is granted in part and denied in part. Specifically:

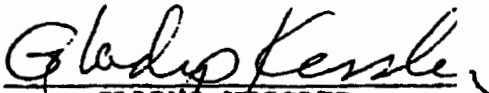
- a. with respect to Defendant's FOIA Exemption 1 and Privacy Act Exemption (k)(1) claims for Documents 1-4, 9-12, 16 (encl. 1-5), and 20, Defendant's Motion for Summary Judgment is denied;
- b. with respect to Defendant's FOIA Exemption 7(C) and Privacy Act Exemption (j)(2) claims for Documents 11 and 19, Defendant's Motion for Summary Judgment is denied; and
- c. with respect to Defendant's FOIA Exemption 7(D) and Privacy Act Exemption (k)(5) for Documents 1 and 2,

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Defendant's Motion for Summary Judgment is granted; and it is further

ORDERED, that Plaintiff's Cross-Motion for Summary Judgment and to Compel Supplemental Vaughn Index and Further Search [45] is granted in part and denied in part. Specifically:

- a. with respect to Documents 1 and 2, Plaintiff's Cross-Motion is denied;
- b. with respect to Documents 3, 4, 9-12, 16 (encl. 1-5), 19 and 20, Plaintiff's request to compel disclosure of the redacted information is denied;
- c. with respect to Documents 3, 4, 9-12, 16 (encl. 1-5), 19 and 20, Plaintiff's request to compel a supplemental Vaughn Index is granted. Defendant must submit its supplemental Vaughn Index within 30 days of this Order; and
- d. with respect to the adequacy of the FBI searches, Plaintiff's request to compel further search is denied.


GLADYS KESSLER
U.S. District Judge

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