

In addition, the Bureau keeps a single "correspondence file" on each of the three plaintiffs. These are catch-all files, containing copies of all correspondence between the subject Congressman and the F.B.I., a brief biography of that Congressman, various internal memoranda written by Bureau personnel, and complaints and comments from private citizens. The correspondence has been fully disclosed, but the biographies and all other memoranda are still being withheld. The Bureau is also withholding at least two items concerning third parties: a letter written to the Bureau by a private citizen and a report by an F.B.I. agent describing another citizen's comments, both dealing with Congressman Koch.

The four employment files on Congressman Bingham constitute "investigatory files compiled for law enforcement purposes" within the seventh exemption to the Freedom of Information Act, 5 U.S.C. § 552(b)(7), in that they are maintained in aid of investigations into the possibility that applicants for government service have engaged in criminal activity or other conduct which would disqualify them from such employment. See Weisberg v. Dept. of Justice, 489 F.2d 1195 (D.C. Cir. 1973); Aspin v. Dept. of Defense, 491 F.2d 24 (D.C. Cir. 1973). Plaintiffs' narrower interpretation of that exemption is unjustified, since it would require disclosure of highly confidential information supplied to Bureau investigators. In order to insure such confidentiality, F.B.I. files may be withheld if law enforcement was a significant aspect of the investigation for which they were compiled, cf. Getman v. N.L.R.B., 450 F.2d 670, 673 (D.C. Cir. 1971); K. Davis, The Information Act: A Preliminary Analysis, 34 U. Chi. L. Rev. 761, 800 (1967), and this is true even if the laws being enforced were regulatory rather than criminal in nature. Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act 34 (1967) (file compiled by I.N.S. during investigation of

alien's application for adjustment of status said to fall within seventh exemption). See also H. Rep. No. 1497, 89th Cong., 2d Sess. 11 (1966); K. Davis, supra, at 799-800. These principles are not vitiated by the fact that the Bingham files were compiled more than ten years ago and have never led to enforcement proceedings, for the Court may only look to the Bureau's intentions at the time of compilation. Weisberg v. Dept. of Justice, supra, at 1198. Even inactive investigatory files may have to be kept confidential in order to convince citizens that they may safely confide in law enforcement officials. Aspin v. Dept. of Defense, supra, at 28-30; Frankel v. S.E.C., 460 F.2d 813, 817 (2d Cir.), cert. denied, 409 U.S. 889 (1972). These considerations apply with equal force to confidential information supplied by the person actually under investigation, since a finding by the Court that a Congressman may see his employment investigation file would necessarily mean that any other citizen could see it as well. Soucie v. David, 488 F.2d 1067, 1077 (D.C. Cir. 1971); Wine Hobby, U.S.A., Inc. v. U.S. Bureau of Alcohol, etc., 363 F. Supp. 231, 236 (E.D. Pa. 1973).

The correspondence files present a more difficult problem, because the documents within them have not been segregated according to use. The Bureau seeks, somewhat belatedly, to shield all of the material in these files under the seventh exemption, but there is no indication that the files (as opposed to particular documents within them) were maintained for investigatory purposes. The Court must therefore examine the individual documents themselves, a task which could have been avoided had the Bureau clearly segregated investigatory material from other documents, as contemplated by the Freedom of Information Act. Weisberg v. Dept. of Justice, supra, at 1198.

It is readily apparent that the third-party communications, including the letter and report concerning Congressman Koch, were in fact filed for law enforcement purposes.

Police agencies must depend upon reports from private citizens concerning suspected illegal activity, and the collection of such communications is an entirely legitimate law enforcement function.

The biographies and other internal memoranda in the correspondence files, on the other hand, cannot be classified as investigatory material because defendants have made no attempt whatever to indicate which, if any, of them "relate to anything that can fairly be characterized as an enforcement proceeding." Aspin v. Dept. of Defense, *supra*, at 27. Such documents, for example, might be maintained solely for public and congressional relations purposes or could be concerned solely with Bureau hiring policy or other organizational matters raised by an inquiring Congressman. Nor have defendants shown that any of these documents are deliberative rather than factual in nature, a prerequisite to confidentiality under the fifth exemption covering intra-agency memoranda. 5 U.S.C. § 552(b)(5); Montrose Chemical Corp. of Calif. v. Train, 491 F.2d 63 (D.C. Cir. 1974). These issues can only be resolved after an examination by the Court, *in camera*, of all material not otherwise exempted under this Order. Vaughn v. Rosen, *supra*, at 827.

It is therefore

ORDERED that defendants' motion for summary judgment is granted as to the four employment files on Congressman Bingham and all third-party communications to the F.B.I. concerning the plaintiffs, and it is further

ORDERED that all other material still in dispute shall be submitted promptly to the Court for its *in camera* inspection, and it is further

ORDERED that defendants' motion for summary judgment as to such other material shall be held in abeyance pending the Court's inspection, and it is further

ORDERED that no further discovery shall be conducted in this action until complete resolution of defendants' motion for summary judgment.

Richard A. Russo
UNITED STATES DISTRICT JUDGE

May 3, 1974.