

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NORMAN E. HOLLY,
Plaintiff,
v.
VERNON B. ACREE
and
THE UNITED STATES
CUSTOMS SERVICE,
Defendants.

Civil Action No. 75-2116

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FILED
MAR 2 3 1975

JAMES F. DAVEY, Clerk

MEMORANDUM AND ORDER

This action is now before the Court on plaintiff's and defendants' cross-motions for summary judgment and defendants' alternative motion to dismiss plaintiff's Freedom of Information Act case brought pursuant to 5 U.S.C. §552.

Facts

On January 2, 1975 plaintiff Norman Holly wrote to Vernon Acree, Commissioner of Customs, to formally complain about the manner in which he was treated by U. S. Customs Agents in Seattle, Washington on December 29, 1974. Holly's letter requested relief and compensation for the alleged mistreatment. By letter of May 20, 1975, Holly requested a complete transcript of the investigation concerning this January 2 complaint.

(4)

On June 3, 1975 R. Raymond, Regional Commissioner of Customs, informed Holly that the investigation had been completed with no further action contemplated by the Customs Service. In addition, the Raymond letter informed Holly that:

It is not our policy to provide members of the public a transcript of an investigation made by Customs officials concerning the performance of other Customs personnel. Therefore, your request for a complete transcript of the investigation is denied.

Holly renewed his request under the provisions of the Freedom of Information Act on July 1, 1975. The U.S. Customs Service did not release the requested information. Holly wrote a letter to Customs on July 22 asking them to inform him about their intentions to release the information. Again there was no response from Customs. On August 27, 1975 Holly sent a final letter requesting the release of information.

When the U. S. Customs Service continued to ignore his request, Holly interpreted its nonaction as an agency decision to withhold the requested material. Consequently, Holly sent a formal appeal dated September 26, 1976 to the Customs Service. Once more, the Customs Service was unresponsive.

Holly then brought this action on December 18, 1975 to compel defendants to produce the requested transcript. On January 12, 1976 (almost eight (8) months after the initial request and a month after this suit

was filed) the requested documents with certain deletions were released to Holly. The names of U. S. Customs Service law enforcement personnel and their home addresses, the names of airline personnel, the name of another passenger from whom a seizure was made and the name of the person acting as an interpreter for that passenger were deleted. Defendants then filed a motion to dismiss or in the alternative for summary judgment. Defendants claimed that the withheld names and identifying details were exempt pursuant to 5 U.S.C. § 552(b)(6) and 7(C) and 5 U.S.C. § 552(b)(7)(F).

On March 10, 1976 this Court, citing Vaughn v. Rosen, 484 F.2d 820 (1973), held that defendants' claims were conclusory and that they had therefore failed to meet their statutory burden of proof under 5 U.S.C. § 552(a)(3). The Court held that it was only due to the possibly sensitive nature of this information that it did not then grant summary judgment for plaintiff. The Court then ordered defendants to submit within seven (7) days detailed justifications for each deletion, and the transcript from which the deletions were made, to the Court.

In response to the Court's order, defendants submitted a copy of the material from which the deletions were made and an additional affidavit claiming statutory exemptions for the deletions.

Defendants withheld the following names and identifying information:

- (1) The names of U. S. Customs Service law enforcement personnel interviewed about their involvement in the alleged incident;
- (2) The home addresses of certain of these interviewed Customs personnel (identified in the material as (1));
- (3) The names of Northwest Airline agents interviewed as possible observers of the events in question (identified as (1A));
- (4) The name of another passenger aboard Holly's Northwest Flight who allegedly passed through Customs without incident (identified as (1C));
- (5) The name and address of the only other passenger aboard Holly's flight from whom a seizure was made (identified as (1D)); and
- (6) The name of the Port of Seattle interpreter (identified as (1B)) assigned to Sea-Tac Airport on the day of the incident and identified as the interpreter assigned to (1D).

Defendants have claimed that the release of names of Customs Service personnel would endanger their lives and that the names are therefore exempt pursuant to 5 U.S.C. § 552(b)(7)(F).^{1/} Defendants contend that all

^{1/} There is some indication that defendants will abandon this position and release these names. To date no document filed with the Court has so stated, although the affidavit filed in compliance with the Court's order fails to repeat the earlier justification and the transcript filed with the Court does not have these names deleted.

other deletions are withheld as constituting unwarranted invasions of personal privacy citing 5 U.S.C. §§ 552(b)(6) and (7)(C).

Conclusions of Law

Defendants claim that the names of Customs Service personnel are properly withheld under 5 U.S.C. § 552(b)(7)(F). Defendants offer no evidence or reasoning in support of their conclusory assertion that release of the names would endanger the lives of the personnel. In fact, defendants have totally omitted this claim in their second affidavit. Consequently, the Court holds that the names of U. S. Customs Service law enforcement personnel are not exempt from disclosure and must therefore be released to plaintiff.

Defendants have also deleted the home addresses of Customs personnel (1) on the grounds that release would constitute an unwarranted invasion of personal privacy. The Court agrees. U. S. Customs Service personnel were interviewed about either their involvement in or observation of the event in question. The release of their names makes it possible to reach them through those official capacities at their places of employment. Therefore, no purpose would be served by the release of their home addresses, and the resulting invasion of their personal privacy would be unwarranted. 5 U.S.C. § 552(b)(7)(C).

Defendants argue that the names of airline personnel (1A), a passenger on board Holly's flight (1C), the name of the passenger from whom a seizure was made (1D) and the name of the Port of Seattle interpreter (1B) are exempt pursuant to 5 U.S.C. §§ 552(b)(6) and (7)(C). In evaluating each of these claims the Court has balanced the potential intrusion into personal privacy against the possible justification for such an invasion. In doing so, the Court is cognizant of the congressional policy favoring disclosure which instructs the Court to tilt the balance in favor of disclosure. Getman v. NLRB, 450 F.2d 670 at 674 (D.C. Cir., 1971); Ditlow v. Shultz, 517 F.2d 166 (D.C. Cir., 1975).

The Court finds that release of names of airline personnel (1A) would result in a slight invasion of their personal privacy. However, the Court also finds that due to the unique position of these individuals as possible witnesses to the alleged incident release of the names is not unwarranted. The Court holds that the names of airline personnel interviewed (1A) are not exempt from disclosure.

The same reasoning is applicable to release of the names of the Northwest passenger (1C) and the Port of Seattle interpreter (1B). Both are possible witnesses to the disputed incident. The Court believes this warrants the slight invasion of privacy which could result from the release of their names, cf. Getman v. NLRB, supra.

The Court does find that release of the name and address of the only other passenger on Holly's flight from whom a seizure was made (1D) would be an unwarranted invasion of his personal privacy pursuant to 5 U.S.C. § 552(b)(6) and (7)(C). Release of the name and address of this passenger would make public the fact that a seizure was made from him. Such information is potentially embarrassing and therefore has some of the same characteristics of confidentiality that attach to medical and personnel files expressly exempt under 5 U.S.C. § 552 (b) (6). Robles v. Environmental Protection Agency, 484 F.2d 843 (4th Cir., 1973). This information presumably would ordinarily not be disclosed to the public. Since the experience of this passenger is not directly relevant to plaintiff's alleged mistreatment by the Customs Service, its release would constitute an unwarranted invasion of his personal privacy.

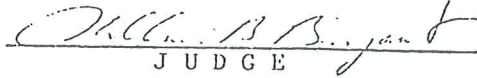
Finally, the Court finds, pursuant to 5 U.S.C. § 552(a)(4)(F), that the circumstances surrounding the withholding of this information (i.e. failure to respond to Holly's initial request, failure to respond to his numerous appeals, the delay in releasing the initial transcript with the deletions, the failure to provide proper justifications for these deletions) raises questions as to whether agency personnel acted arbitrarily or capriciously with respect to the withholding of the requested information.

Accordingly, it is this 29 day of March, 1976,
ORDERED, that plaintiff's Motion For Summary
Judgment be, and hereby is, granted to the extent
indicated herein, and otherwise denied; and it is

ORDERED FURTHER, that defendants release the informa-
tion specified above; and it is

ORDERED FURTHER, that plaintiff's motion for costs
be, and hereby is, granted. Plaintiff is directed to
file a proposed list of costs with the Court within
30 days; and it is

ORDERED FURTHER, that the U. S. Marshal shall serve
a certified copy of this order on the Chairman of the
Civil Service Commission so that he might promptly
initiate a proceeding to determine whether disciplinary
action is warranted against those primarily responsible
for the illegal withholding of documents discussed
above.


J U D G E

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MAR 29 1976

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JUDGMENT

In accordance with the Memorandum and Order attached hereto, judgment in the above-captioned case is this 29 day of March, 1976 entered in favor of the plaintiff.

William B. Bryant
J U D G E

(K)