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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS MICHAEL LINEBARGER,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, et al.,

Defendants.

NO. C-76-1826-WWS

ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT

This action arises under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. It follows a request by plaintiff to the F.B.I. "to send me any and all documents you have gathered on me." The F.B.I. responded by sending plaintiff some but not all of such documents, and excising portions of some of the documents sent. Following plaintiff's administrative appeal to the Attorney General, additional documents were released. Not being satisfied with these responses, plaintiff filed this action on August 27, 1976. Defendants filed a motion for summary judgment. Upon review of the affidavits and memoranda filed by the parties, the Court on June 22, 1977, ordered the documents held by defendants submitted for in camera inspection by the Court. The documents have now been submitted and reviewed by the Court. For the reasons stated below, defendants' motion for summary judgment must be granted.

1 Initially, we may exclude from consideration a substantial
2 volume of material contained in the documents and excised by
3 defendants which, although it contains an occasional reference
4 to plaintiff, is not material within the request for "documents
5 you have gathered on me." Defendants have produced the
6 documents but have deleted from them everything but the
7 material which refers to plaintiff. The other material is
8 extraneous to the request and hence not required to be
9 produced. 5 U.S.C. § 552(a)(3).

10 The bulk of the other excisions made by defendants
11 consists of identification by name or code of the source of
12 information relating to plaintiff. Section 522(b)(7) exempts
13 from production

14 "investigatory records compiled for law enforcement
15 purposes, but only to the extent that the production
of such records would . . .

16 "(C) constitute an unwarranted invasion of
personal privacy;

17 "(D) disclose the identity of a confidential
18 source and, in the case of a record compiled
by an agency conducting a lawful national security
19 intelligence investigation, confidential informa-
tion furnished only by a confidential source; [or]

20 "(E) disclose investigative techniques and
21 procedures . . ."

22 The threshold question here is whether the particular
23 records of the F.B.I. were "compiled for law enforcement
24 purposes." No reported decisions shed light on the question
25 what showing is required to qualify F.B.I. records as such.
26 The decision of the Court of Appeals in Welsberg v. U. S.
27 Department of Justice, 489 F.2d 1195 (C.A. D.C., 1973),
28 cert. denied, 416 U.S. 993 (1974), appears to take a liberal
29 view, suggesting that inasmuch as the F.B.I. is an arm of
30 the Department of Justice, its investigatory activities are
31 conducted for law enforcement purposes. While the 1974
amendments to the FOIA were intended to overrule Welsberg

1 and certain other cases in other respects (see NLRB v.
2 Sears, Roebuck & Co., 421 U.S. 132, 163-164 (1975)), the
3 meaning of the term "law enforcement" was not changed.
4 Mezines, Stein & Gruff, Administrative Law, Sec. 10.06[3],
5 p. 10-199 (hereafter cited as "Mezines"). The documents
6 examined by the Court reveal that the investigations were
7 conducted by the F.B.I. for internal security purposes.
8 Although the documents do not indicate a suspected or
9 incipient violation of law, they reflect a sufficient nexus
10 between the conduct of the investigation and legitimate
11 concern for national and internal security as to warrant
12 their classification as being for law enforcement purposes.

13 The identification of persons, whether employed by the
14 government or not, who provided information to the F.B.I.
15 clearly falls within subsection (b)(7)(C). In addition,
16 that information, along with the information contained in
17 some of the documents revealing methods used in the investi-
18 gation, also falls within subsection (b)(7)(E). Finally,
19 the codes employed for identification of persons who were
20 sources are exempt under subsection (b)(2) as being "related
21 solely to the internal personnel . . . practices of the
22 agency . . ."

23 Defendants also rely on subsection (b)(7)(D), but the
24 extent to which that exemption applies is not clear. The
25 fact here seems to require not only that the source be
26 confidential but also that the information which would be
27 disclosed be confidential as well. Inasmuch as not all of
28 the documents claimed to fall under this subsection were
29 classified, there is no basis for determining whether the
30 information provided was "confidential information furnished
31 only by a confidential source . . ." This subsection presents
32 difficult questions of interpretation. Inasmuch as other

1 provisions of the act exempt the excised information, it is
2 not necessary for the Court to reach those questions.

3
4 Several of the documents are classified confidential.
5 Affidavits by intelligence personnel of the C.I.A., F.B.I.
6 and Army explain in some detail the reasons and necessity
7 for classification. Subsection (b)(1) exempts matters

8 "specifically authorized under criteria established
9 by an Executive Order to be kept secret in the
10 interest of national defense or foreign policy and
11 (B) are in fact properly classified pursuant to
12 such executive order."

13 Executive Order 11652 (March 8, 1972), authorizes classifica-
14 tion of the matters involved as national security information.
15 Disclosure would jeopardize sources of information vital to
16 national defense and foreign policy. The legislative
17 history of the 1974 amendments establishes that the Court
18 may order a withheld document released only if it finds "the
19 withholding to be without a reasonable basis . . ." Senate
20 Report No. 93-854, 93rd Cong. 2d Sess. (1974); Mezines, Sec.
21 10.02[2], p. 10-19. The Court finds that defendants have
22 met their burden of showing that a reasonable basis for
23 classification exists. See, Alfred A. Knopf, Inc. v. Colby,
24 509 F.2d 1362, 1368 (4th Cir., 1975).

25 Accordingly, the Court finds that the matter withheld
26 from production falls within one or more exemptions of the
27 FOIA and need not be produced. The complaint is therefore
28 dismissed and judgment granted in favor of defendants.

29 IT IS SO ORDERED.

30 DATED: August 1, 1977.

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WILFRED W. SCHWARZER
United States District Judge