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U.S. DISTRICT COURT
ALEXANDRIA DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

BERNARD FENSTERWALD, JR., :

Plaintiff :

v. :

Civil Action No. 75-282-A

UNITED STATES CENTRAL
INTELLIGENCE AGENCY,

Defendant :

MEMORANDUM OPINION

This action was brought by the plaintiff under the Freedom of Information Act, as amended, 5 U.S.C. § 552, to obtain his "CIA" file.

After deleting certain classified material and the names of confidential foreign intelligence sources, CIA gave him a copy of its Fensterwald file.

Both parties filed motions for summary judgment which were heard by the Court -- At the hearing

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Civil Action No. 75-1897

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the plaintiff conceded the propriety of all of the deletions from the documents delivered to him except those which the defendant claims would constitute the clear invasion of the privacy of a third party. Except for these latter documents, which comprise only a small portion of the material originally at issue in this litigation, the case is now moot.

The parties have agreed that the documents containing deletions relating to privacy which remain at issue in this litigation are those numbered in the affidavit of Robert S. Young, filed with the defendant's motion for summary judgment, namely, Nos. 36, 37, 40, 44, 45, 47-49, inclusive, and 57 -- These deleted documents, together with undeleted copies, have been submitted to the Court for in camera inspection.

The Court has examined these documents and finds that the deleted material in Document No. 36 contains a significant amount of biographical material relating to third parties.

The deletion in Document No. 37 was the name of an individual who has a security file with the CIA.

The deletion in Document No. 40 consisted of the names of two individuals said to be well known to the FBI and an FBI memorandum concerning a subject, issued by the Bureau's New York field office.

The deletion in Document No. 44 was biographical information on one individual and the name of another individual who is the subject of an FBI report -- The identity of a third individual and the fact that he was the subject of an investigation because of alleged subversive activity was likewise deleted from this document.

Document No. 45 is a computer printout from which all references to third persons whose names were found in the plaintiff's file have been deleted.

Documents Nos. 47, 48 and 49 are computer printouts withheld in their entirety as they relate entirely to third parties indicating that the CIA had an interest in such individuals.

Document No. 57, withheld in its entirety, is search instructions for three named individuals having no relation to the plaintiff.

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The names of these third parties happened to be in the plaintiff's CIA file as well as in their own CIA files because of the sophisticated computer filing system used by the CIA.

The Government claims that the deleted items are exempted by § 552(b)(6) of 5 U.S.C. This section exempts personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This Court is of the opinion that the deleted documents come within the "similar files" above mentioned -- Clearly the release of information to the plaintiff that the CIA had a file on a named third party or that a third party was the subject of an FBI report or that a third party was the subject of an investigation because of alleged subversive activity would be an invasion of the personal privacy of that third party.

Therefore, this Court is of the opinion that the CIA was justified in deleting the material deleted from the documents in question before turning them over to the plaintiff.

The plaintiff next seeks nominal attorney fees and costs in this behalf expended. Since he did not obtain any of the material before filing this suit he would be entitled to reasonable attorney fees had he paid or contracted to pay any. Instead, he elected to file this suit "pro se." The Act does not provide attorney fees for attorneys who elect to proceed "pro se."

Therefore, even though the plaintiff asked only for a nominal fee of \$1.00, none will be awarded -- However, he is entitled to court costs and an order awarding him the amount thus expended will be entered upon presentation.

Counsel for the Government will forthwith prepare an appropriate order in accordance with this memorandum opinion, present it to the plaintiff for approval as to form, and then to the Court for entry -- Upon entry this case shall stand dismissed.

The in camera documents are this day being returned to the United States Attorney for this District for return to the CIA.

The Clerk will send a copy of this memorandum opinion to the plaintiff and to the United States Attorney for this District.

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19 / OREN R. REMIS

October 22, 1975

United States Senior Judge

A True Copy. Teste:
W. Farley Powers, Jr., Clerk

By [Signature]
Deputy Clerk