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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN CERVASE, :
Plaintiff, : Honorable H. Curtis Meanor
v. : Civil Action No. 76-2338
DEPARTMENT OF STATE, :
Defendant. : JUDGMENT

This matter having been opened to the Court by the plaintiff's motion for in camera inspection pursuant to S.D.S.C. § 552(a)(4)(B) and the defendant's cross-motion for summary judgment pursuant to Fed.R.Civ.P. 56, the Court having heard oral argument on March 28, 1977, and the Court having duly considered this matter and expressed its opinion on the record; it is on this 1 day of April, 1977;
ORDERED, that the plaintiff's motion for in camera inspection be, and hereby is, denied; and it is further
ORDERED, ADJUDGED AND DECREED, that the defendant's cross-motion for summary judgment be, and hereby is, granted.

H. Curtis Meanor
H. CURTIS MEANOR, Judge
United States District Court



APPENDIX F
Civil Action No. 77-1997

of Information Act and it wasn't in compliance with section one of the act.

Number two, it violated the Executive Order 11652.

Number three, it violated the defendant's own regulations; if you want me to point it out, I shall.

THE COURT: I have looked at all the papers and I am ready to rule.

Plaintiff, John Cervase, a member of the Bar, moves for an in camera inspection of a document he seeks under the Freedom of Information Act. The Government, i.e., the Department of State, cross-moves for summary judgment.

Mr. Cervase apparently read in the newspaper that in April, 1976, the United States State Department filed with the Union Of Soviet Socialist Republics a written protest about the harassment of the United States Embassy staff in Moscow.

Plaintiff, Cervase, filed with the Department of State a request for a copy of that written protest under the Freedom of Information Act.

The Department of State denied the request on the ground that the protest was exempt from disclosure under 5 United States Code, 552(b)(1), which excludes from the applicability of the statute, "Matters that are specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy, and are in fact properly classified pursuant to such

executive order."

Plaintiff, Mr. Cervase, then filed an administrative appeal, which resulted in the affirmance of the decision to deny release of the document.

This action was then commenced as authorized by 5 United States Code, 552(a)(4), in which the plaintiff seeks to compel disclosure of this protest. Plaintiff now moves for an in camera inspection by the Court of this document. 5-United States Code, 552(a)(4)(B) provides in cases such as this, "The Court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action."

The defendant, Department of State, cross-moves for summary judgment on the ground that the record as it now exists adequately demonstrates that Mr. Cervase is entitled to no relief as a matter of law.

As it now exists, the record is composed of an affidavit of one Richard D. Vine, a State Department Officer endowed with the title, "Deputy Assistant Secretary for European Affairs," and answers to interrogatories served on the Government by the plaintiff. These documents, read together, establish the following: Sometime in the springtime

of 1976, the United States Government sent a communication officially denominated as "Moscow telegram number 5985," to the Soviet Ministry of Foreign Affairs, protesting Soviet harassment of American Embassy staff members in Moscow.

The text of this communication has never been revealed to anyone outside of the Government. However, at the time of the communication, the State Department press officers were authorized to confirm that the American Embassy in Moscow protested the harassment of Embassy personnel, and that a protest note had been sent.

The practice of the State Department is that when harassment of Embassy personnel should occur, the incident is described in general terms, and a statement is issued that the matter has been brought to the attention of the Soviet authorities.

Reports of these incidents originate at the American Embassy in Moscow, and in the American press corps stationed in Moscow.

Texts of correspondences with Soviet authorities are not published.

Apparently, plaintiff's notice of a press report that the communication in question had been sent prompted his request for a copy of the document.

Upon receipt of plaintiff's request, the communication

was identified and located by the State Department. At that time, the document was not marked "Confidential," but rather, "Limited official use."

This is an internal State Department designation which affords the document the same degree of physical safeguard, including encryption and limited distribution, as documents marked "Confidential." The document and plaintiff's request were then referred to the Bureau of European Affairs for a mandatory review. In the course of this review, it became apparent to Bureau officers and legal advisers to the Bureau that the disclosure of the document could reasonably be expected to cause damage to national security, and that failure to classify the document with an appropriate national security designation had been through an administrative oversight.

Steps were then immediately taken to classify the communication as "Confidential," pursuant to Section 1(c) of Executive Order 11652. Once the document had been designated "Confidential," the Bureau notified plaintiff that the material he sought was exempt from disclosure under 5 U.S.C. 552(b)(1) and therefore would not be revealed.

Plaintiff, Mr. Cervase, then sought an administrative appeal. On receipt of plaintiff's letter of appeal, the Director of the Freedom of Information staff requested members of the Bureau of European Affairs to re-examine their official

-- their initial conclusions. The Bureau again concluded that the communication in question should be designated "Confidential," and so informed the chairman of the counsel on classification policy.

The counsel then undertook a de novo analysis of the propriety of the document's classification, and determined that the document was appropriately designated as "Confidential."

Plaintiff, Mr. Cervase, was so notified.

Ultimately, this suit was commenced under the Freedom of Information Act to compel the Government to disclose the document which plaintiff seeks. Plaintiff has moved to have the Court inspect the document in camera in order to determine whether it is properly exempt from disclosure under 5 U.S.C. 552(b)(1). In resistance to plaintiff's motion, and in support of its own motion for summary judgment, the defendant has submitted the Vine affidavit, which states in part, paragraph six:

"The document in question, Moscow telegram number 5985, is a protest note regarding harassment of the Embassy staff in Moscow, which is a current and very sensitive issue in U.S.-U.S.S.R. relations. To release the contents of this document would tantamount to publishing it. In my opinion, the Soviet Government would probably regard this as an escalation of the matter, which would require further action

on their part to the detriment of the professional career of the Embassy officer mentioned in the note. For example, the Soviet Government would feel impelled to engage in public polemics which would put an additional strain on U.S.-U.S.S.R. relations; and possibly lead to the consideration of the expulsion of the American Foreign Service officer mentioned in the protest note."

The statutory language authorizing this Court to make an in camera inspection of the materials alleged to be exempt from disclosure under the Freedom of Information Act clearly indicates that such inspections are not obligatory in every case.

To the contrary, a very recent decision of the Court of Appeals for the District of Columbia Circuit has stated that, "In camera proceedings are particularly a last resort in 'national security' situations."

Weissman vs. CIA, Number 76-1274 (District of Columbia Circuit, filed January 6, 1977).

This is for at least two very important reasons:

- 1) In camera inspections are burdensome and raise all the problems inherent to a non-adversary proceeding; and
- 2) Few Judges have the skill or experience to weigh the repercussions of disclosure of national security sensitive material.

The cases and legislative history amply set out

in the Government's brief, indicated that where the sworn statements of the Government indicate that the proper procedures have been followed in classifying a particular document, and that the classification is not pretextual and unreasonable, a Court need not, and indeed ought not, order an in camera inspection.

On the record before me, I am satisfied that the Government has made such a demonstration in this case.

Plaintiff's motion for an in camera inspection is therefore denied.

Moreover, I am satisfied that the document which plaintiff seeks properly falls within the scope of the (b) (1) exemption from disclosure.

Therefore, there is no legal basis on which I may grant plaintiff the relief he seeks.

Defendant's motion for summary judgment is granted.

I want the Government to submit an appropriate order to me within ten days.

MR. STASHEL: I will, your Honor.

MR. CERVASE: We plan to appeal the decision. Will you instruct the Reporter to give us that transcript as soon as possible?

THE COURT: I will if you agree to pay for it.

Pursuant to Section 753, Title 28, United States Code, the foregoing transcript is certified to be an accurate record as taken stenographically in the afore-entitled proceeding.

LEE B. BEAL