

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
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JAMES F. DREW, JR.

MARK A. ALLEN,

Plaintiff,

v.

Civil Action No. 78-1743

CENTRAL INTELLIGENCE AGENCY,
et al.,
Defendants.

MEMORANDUM OPINION AND ORDER

This matter came before the Court for hearing on defendants' Motion for Summary Judgment. Upon consideration of defendants' Motion for Summary Judgment, plaintiff's opposition thereto, the entire record herein, and oral argument of the parties in open Court, the Court concludes that it will grant defendants' motion for summary judgment.

In this Freedom of Information Act (FOIA) case the plaintiff seeks access to a single Central Intelligence Agency (CIA) fifteen-page document (consisting of a one-page cover memorandum and a fourteen-page memorandum attached thereto) dated July 31, 1974. This document contains information developed by the CIA concerning Lee Harvey Oswald's activities in Mexico City during the period of September 28th to October 3, 1963. On January 12, 1979, this Court entered an Order dismissing this action with prejudice. Thereafter, plaintiff filed a notice of appeal from this judgment, and on September 10, 1979, the CIA requested that the United States Court of Appeals for this Circuit remand this case for the purpose of supplementing the record. On October 31, 1979, the Court of Appeals remanded for proceedings not inconsistent with Founding Church of Scientology of Washington, D.C., Inc. v. Bell, No. 78-1391 (D.C. Cir. June 25, 1979). The Court of Appeals also observed that this matter should be considered as expeditiously as possible.

The defendants, pursuant to the remand instructions, supplemented the record by re-examining the withheld document, releasing portions thereof, and filing a new affidavit with regard to the withheld portions. The matter came before the Court on defendants' motion for summary judgment. The defendants rely on the affidavits of Robert E. Owen, Information Review Officer for the Directorate of Operations of the CIA, dated January 11, 1980, and January 9, 1979; the affidavit of Charles A. Briggs, formerly the Directorate of Operations of the CIA, dated April 14, 1977; a previous description of this document attached to the Briggs Affidavit; and the document itself with substantial portions released in support of their motion for summary judgment. The plaintiff opposes the granting of summary judgment, arguing that material facts are in dispute.

The Court has exhaustively reviewed the affidavits submitted in support of defendants' claim that portions of the document are properly exempt from disclosure and has reviewed defendants' and plaintiff's memorandums of law, and concludes that the defendants have properly withheld portions of the document pursuant to exemptions 1, 2 and 3 of FOIA, 5 U.S.C. 552(b)(1), (2), and (3).

The defendants urge the application of exemption (2) to certain filing instructions. The Court finds that the matters withheld pursuant to this exemption are merely intra-agency matters in which the public could not be reasonably expected to have a legitimate interest. Department of Air Force v. Rose, 425 U.S. 352, 369-70 (1976); Fensterwald v. CIA, 443 F. Supp. 667 (D.D.C. 1977). Accordingly, these matters are properly exempted from disclosure.

The defendants have withheld certain information to this document relying upon the application of exemption (1). This information is circumstantial information which, in combination with other information, could lead to the identification of an intelligence source or to the identification and compromise of an intelligence method used in the collection of intelligence information abroad, and information which is currently and properly classified in the interests of national security pursuant to Executive Order 12065.

The Court has applied the analysis set forth in Hayden v.

National Security Agency/Central Intelligence Agency, No. 78-1728

(D.C. Cir. October 29, 1979) to the defendants' claim of exemption for this information in the document. The Court has made a de novo review of the agency's classification, see Ray v. Turner, 587 F.2d 1187, 1191-94 (D.C. Cir. 1978) and, giving "substantial weight" to the affidavits from the agency, concludes that the portions of the document not released have been properly classified. Further, the Court is ever mindful of the requirement that the agency create as full a public record as possible, see Phillippi v. Central Intelligence Agency, 546 F.2d 1009, 1013

(D.C. Cir. 1976) and has concluded that the defendants have created an extensive and detailed public record. Further, the Court has examined the affidavits to determine if the defendants have released all reasonably segregable portions of the document. The Court concludes that the defendants have released all of those portions which do not fall within the exemption. Accordingly, the Court concludes that the CIA has met its burden and exemption 1 must be applied. Founding Church of Scientology v. NSA, No. 77-1975 (D.C. Cir. May 15, 1979), Goland v. CIA, 76-1800 (D.C. Cir. May 23, 1978), and Weissman v. CIA, 565 F.2d 692 (D.C. Cir. 1977).

Defendants have applied exemption 3 to certain information which, in combination with other information, could lead to the identification of an intelligence source, could lead to the identification and compromise of an intelligence method used in the collection of intelligence information abroad, and information which identifies CIA staff employees and organizational components. The defendants invoke Sections 403(d)(3) and 403(g) of Title 50 of the United States Code as exemption 3 statutes. It is clear that these statutes are exemption (3) statutes. Goland, supra; Phillippi, supra at 1015. Therefore, the determination for this Court is whether the withheld information falls within these "statutes' protective compass". Goland slip op. at 18.

The Court, after a detailed review of the affidavits filed in this matter concludes that the affidavits demonstrate in a nonconclusory and detailed fashion that the withheld material does describe intelligence sources and methods. Therefore, the CIA's withholding of this information pursuant to exemption 3 is appropriate and should be upheld.

Therefore, it is by the Court this 5th day of February, 1980,

ORDERED that defendants' motion for summary judgment be, and it hereby is, granted, and it is

FURTHER ORDERED that this action be, and it hereby is, dismissed with prejudice.


JOHN LEWIS SMITH, JR.
UNITED STATES DISTRICT COURT