

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 79-1700  
(C.A. No. 78-0249)

RAFOLD WEISBERG,

Appellant,

v.

WILLIAM B. WEBSTER, Director, Federal  
Bureau of Investigation, et al.,

Appellees.

NOTICE TO PUBLISH MEMORANDUM OPINION

Appellees respectfully move this Court to publish its memorandum opinion of May 12, 1980.

This appeal concerned a request under the Freedom of Information Act (FOIA) for documents related to the processing of Federal Bureau of Investigation (FBI) records concerning the assassination of President John F. Kennedy. In response to appellant's request, the FBI released 2,581 pages of inventory worksheets utilized in the processing of those records and detailed the legal basis for the few excisions made. During the ensuing District Court proceedings initiated by appellant, appellees filed detailed affidavits addressing the complete nature of their response, the general reason for the excisions, and the legal basis for each exemption invoked. Specifically, Exemption 1 was invoked for material properly classified as "confidential." Exemption 2 was asserted solely to remove FBI informant file and symbol numbers to protect the informant program and the adminis-

tration of informants. Exemption 7 (C) was cited to support the withholding of information identifying third parties and the FBI agents who produced the worksheets, thereby protecting them against unwarranted invasions of privacy. Exemption 7 (D) was asserted to protect the identity of a confidential source and information furnished only by that source, and to remove the file and symbol numbers of FBI informants which could reveal their identities. Finally, Exemption 7 (E) was invoked to protect two investigative techniques so as to avoid impairing their future effectiveness. The District Court, in an unpublished opinion and order, upheld appellees' claims of exemption on the asserted bases, ruling in addition that Exemption 7 (D) covered any confidential source, be it an individual, an agency, a business or an institution. In a judgment filed on May 12, 1980, this Court affirmed "on the basis of the opinion of the District Court . . . ."

The decision of this Court provides important clarifications of the scope of Exemptions 1, 2, 7 (C), and 7 (D), and thus should be available in published form for the guidance of the District Court and for other courts and litigants across the country. In particular, this Court's ruling concerning Exemption 7 (D) made clear for the first time that an FBI informant's file and symbol numbers, as well as his identity, are exempt from disclosure under Exemption 7 (D). This same issue was argued before the United States Court of Appeals for the Second Circuit approximately one month ago in the case of Keeney v. FBI, No. 79-6267. It has

also been raised before this Court in two pending appeals: Paez v. Department of Justice, No. 78-1581, and Leser v. Department of Justice, No. 78-2395.

This Court's holding that the privacy of third parties and the FBI agents producing worksheets is protected under Exemption 7 (C) also establishes a new and valuable precedent. Both this ruling and the determination that FBI file and symbol numbers are protected under Exemption 2 are dispositive of issues pending before this Court in Leser v. Department of Justice, supra. Further, this Court's ruling concerning the confidential nature of material so classified, while seemingly obvious, would affect several pending cases, including the appeals in Paez v. Department of Justice, supra, and Leser v. Department of Justice, supra.

It is thus evident that publication of this Court's memorandum<sup>1/</sup> would be of concrete assistance to the parties and the courts in pending and future litigation. District Courts could avoid allowing similar claims in the future, only to be reversed on appeal, and litigants would have some guidance in deciding whether to appeal from District Court rulings favorable to the Government. In either event, publication would serve the vital interests of the expeditious handling of FOIA cases, see 5 U.S.C. § 553 (a)(4)(D), and of judicial economy. We accordingly request

<sup>1/</sup> Since the District Court did not publish its opinion and since this Court explicitly endorsed that opinion, the present judgment could be published in the Federal Reporter with the District Court opinion attached as an appendix, as in Parker v. FCC, 175 U.S. App. D.C. 240, 534 F.2d 977 (1976).

this Court to order that its memorandum opinion in the instant case be published.

Respectfully submitted,

---

CHARLES F.C. RUFF  
United States Attorney

---

JOHN A. TERRY  
Assistant United States Attorney

---

CONSTANCE L. BELFIGRE  
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of the foregoing Motion has been mailed to counsel for appellant, James H. Lesar, Esquire, 910 16th Street, N.W., 500, Washington, D.C., 20036, this 10th day of June, 1980.

---

CONSTANCE L. BELFIGRE  
Assistant United States Attorney