

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG )  
Plaintiff )  
v. ) Civil Action No. 81-0023  
U. S. DEPARTMENT OF JUSTICE )  
Defendant )

FILED

DEC 4 1981

MEMORANDUM OPINION

CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

On November 19, 1981, the Court granted plaintiff's motion for an order requiring the Department of Justice to submit the Murphy Report for in camera inspection. After careful examination in camera of the unexpurgated Murphy Report, the Court concludes that the portions withheld from plaintiff in exhibit A to the Turner affidavit of October 23, 1981 were withheld properly under exemptions 1, 7(C) and 7(D) of the Freedom of Information Act, 5 U.S.C. § 552 et seq.

The Court's role in an in camera inspection is to determine de novo whether withheld records or any portions thereof shall be withheld under any of the exemptions to the Freedom of Information Act. 5 U.S.C. § 552(a)(3)(B). Section 552(b)(1) exempts from disclosure "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." The bulk of the deletions in the Murphy Report released to plaintiff were withheld under this exemption. The Court finds that these deletions contain information classified properly under Executive order 12065. To disclose this information would adversely impact upon foreign counter-intelligence investigations of persons in the United States


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believed to be acting at the direction of, or on behalf of, certain foreign governments.

Sections 552(b)(7)(C) and (D) exempt from disclosure "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would . . . (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source." The Murphy Report is a record compiled for legitimate law enforcement purposes, e.g., to determine whether FBI action may have had an effect on the assassination of Dr. King or any other adverse effect on him. It is the Murphy Report, not the illegal FBI surveillance of Dr. King which the Report reviews, which is at issue in this freedom of information lawsuit. The Court holds that disclosure of the portions of the Report withheld pursuant to exemption 7(C) would constitute an unwarranted invasion of privacy of Dr. King's personal life. The Court holds that disclosure of the portions of the Report withheld pursuant to exemption 7(D) would disclose the identity of a confidential source.

Professor David Garrow asserts in an affidavit for the plaintiff that much of the information withheld from plaintiff in the Murphy Report is a matter of public knowledge, and therefore should be released. Professor Garrow is the author of The FBI and Martin Luther King Jr.: From "Solo" to Memphis. The Court recognizes that substantial cause exists to order disclosure of withheld information which is a matter of public knowledge.

However, other factors persuade the Court to uphold defendant's invocation of exemptions 1, 7(C) and 7(D). First, defendant has declassified several pages of the Murphy Report in response to plaintiff's action. This indicates a good faith effort by defendant to declassify and release to plaintiff as much information as possible under the Freedom of Information Act. Second, plaintiff is not harmed regarding nondisclosure of information that he already knows. Third, defendant has many persons working on freedom of information requests. The Court would excessively burden defendant if it required separate handling of each case. Finally, classified information and informants' identities not known to the public or plaintiff require protection. See Weisberg v. Department of Justice, 75-1996, memorandum opinion at 11 n.3 (D.D.C. December 1, 1981). Accordingly, the Court upholds defendant's use of exemptions 1, 7(C) and 7(D) in the Murphy Report.

  
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JUNE L. GREEN  
U. S. DISTRICT JUDGE

December 4, 1981