

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J. GARY SHAW,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 82-0756

FILED

JAN 13 1983

MEMORANDUM

JAMES E. DAVEY, Clerk

Ten black and white photographs and the manilla envelope that contains them are the subjects of this action brought under the Freedom of Information Act, 5 U.S.C. § 552. The Court has inspected the photographs and the envelope in camera, by agreement of the parties, and holds that the FBI must disclose the photographs to plaintiff. The envelope, on the other hand, is protected from disclosure because it would reveal the identity of a confidential law enforcement source. See 5 U.S.C. § 552(b)(7)(D).

In its motion for summary judgment^{1/} the defendant maintains that the photographs themselves are covered by the confidential

^{1/} Although plaintiff has not submitted a formal response to the government's motion, the Court regards plaintiff's motion for an order vacating the Court's order of July 6, 1982, and extending time on plaintiff to oppose or otherwise respond to defendant's motion for summary judgment, and the supporting papers submitted therewith, as sufficient to put the defendant's motion in issue.

source exemption as "confidential 'information' furnished only by a confidential source." Duffin v. Carlson, 636 F.2d 709, 712 (D.C. Cir. 1980). The relevant statutory language exempts confidential information solely "in the case of a record compiled by a criminal law enforcement agency in the course of a criminal investigation." 5 U.S.C. § 552(b)(7)(D). Defendant has not satisfied this standard. Its pleadings are entirely devoid of any mention of a criminal investigation extant at the time the photographs were received by the government. The lone affidavit submitted with defendant's motion, that of Special Agent John N. Phillips, offers merely a general statement of the policy behind the confidential source exemption. Accordingly, the photographs cannot be withheld on the ground that they were "compiled by a criminal law enforcement agency in the course of a criminal investigation." Moreover, an inspection of the photographs shows that they contain nothing to reveal the existence of an investigation, let alone the agency which might have conducted such an investigation.

The envelope presents a different question. A document that would disclose the identity of a confidential source is shielded so long as it was "compiled for law enforcement purposes." 5 U.S.C. § 552(b)(7)(D). Defendant has satisfied this less stringent standard and the envelope should therefore be withheld from plaintiff.

For the foregoing reasons, judgment will accordingly be entered in favor of plaintiff on the issue of the photographs'

disclosure and in favor of defendant on the issue of the envelope's release.

Harold H. Greene

Harold H. Greene
United States District Judge

Dated: January 11, 1983