

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

J. GARY SHAW, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 ) Civil Action No. 82-0756  
 FEDERAL BUREAU OF )  
 INVESTIGATION, )  
 )  
 Defendant. )  
 )  
 ----- )

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF DEFENDANT'S MOTION FOR PARTIAL RECONSIDERATION

Preliminary Statement

Plaintiff brought this action pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, as amended, to compel disclosure of certain photographs maintained by the Federal Bureau of Investigation (FBI) pertaining to the investigation of the assassination of President John F. Kennedy. On July 13, 1982, defendant filed its Motion For Summary Judgment, along with the Affidavit of FBI Special Agent John N. Phillips (hereinafter "Phillips Affidavit"), which provided defendant's justification for the withholding of the photographs pursuant to Exemption 7(D) of the FOIA, 5 U.S.C. §552(b)(7)(D). The FBI has invoked Exemption 7(D) to deny access to the photographs as investigatory records compiled for law enforcement purposes the release of which would disclose confidential information provided to the FBI by a non-federal law enforcement agency in connection with the assassination investigation. See Phillips Affidavit, paras. 6 and 7(A).

Plaintiff thereafter filed his 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.<sup>1</sup> Defendant opposed that motion on August 12, 1982, and additional briefs by the parties were filed on September 27, 1982, and on October 19, 1982. On December 22, 1982, pursuant to the Court's Order of December 17, 1982, defendant submitted for the Court's in camera inspection the ten photographs at issue along with the evidence envelope in which they were contained.<sup>2</sup>

By its memorandum opinion and Order, filed on January 13, 1983, this Court granted judgment to plaintiff as to the ten photographs, based upon the Court's conclusion that defendant had not shown that they were "compiled by a criminal law enforcement agency in the course of a criminal investigation."<sup>3</sup> Defendant has now respectfully moved the Court, pursuant to Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure, to reconsider its opinion and Order in this action with respect to the ten

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<sup>1</sup> The Court on July 6, 1982, had ordered that all discovery in this action be stayed until further Order of the Court.

<sup>2</sup> The documents were returned to defendant on December 23, 1982, but were resubmitted on January 5, 1983, at the Court's request.

<sup>3</sup> Memorandum at 2. The Court permitted the evidence envelope to be withheld, however, as a record compiled for law enforcement purposes which, if disclosed, would reveal the identity of a confidential source. 5 U.S.C. §552(b)(7)(D).

photographs ordered to be released.<sup>4</sup> In support of its motion, defendant respectfully refers the Court's attention to the Declaration of FBI Special Agent John N. Phillips (hereinafter "Phillips Declaration"), filed herewith. Based upon this submission, and for the reasons briefly set forth below, defendant respectfully urges that its Motion For Partial Reconsideration be granted.

Argument

As Special Agent Phillips indicated in his Affidavit of July 13, 1982, the photographs at issue in this action are investigative records compiled by the FBI in connection with its investigation to determine if the activities of the subject of the file (Lee Harvey Oswald) were in violation of law. See Phillips Affidavit, para. 6; see also Defendant's Opposition To 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," filed August 12, 1982, p. 5. While the statements on this issue contained in the Phillips Affidavit could have been more extensive, they were consistent with the statements made by the FBI in this regard in other cases.

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<sup>4</sup> It is clear that the Court has broad authority under the Federal Rules to grant the relief requested by defendant. See, e.g., Laguna Royalty Co. v. Marsh, 350 F.2d 817, 823 (5th Cir. 1965); Radack v. Norwegian America Line Agency, Inc., 318 F.2d 538, 542 (2d Cir. 1963); Barber v. Turberville, 218 F.2d 34, 36 (D.C. Cir. 1954).

Inasmuch as the Court concluded in its memorandum opinion of January 13, 1983, however, that defendant has not demonstrated that the photographs were "compiled by a criminal law enforcement agency in the course of a criminal investigation," defendant respectfully requests the Court to consider the Declaration of Special Agent Phillips, which attests more extensively and unequivocally to the nature of the records at issue. Special Agent Phillips states therein (para. 5(A)):

All of the photographs at issue in this case are contained in FBI Dallas Field Office file 100-10461-1A328, the subject of which is Lee Harvey Oswald, as part of the FBI's overall criminal investigation of the assassination of President John F. Kennedy. The photographs were received by the FBI on April 9, 1964, from a non-federal law enforcement agency which was cooperating in the FBI's assassination investigation. The FBI was continuing at that date to investigate many aspects of Oswald's activities and various other investigative leads concerning the assassination. Thus, these photographs were compiled by the FBI in the course of a criminal investigation and were furnished by a confidential source under an assurance of confidentiality.<sup>5</sup>

Thus, it is attested to without question that all of the records at issue were compiled by the FBI, a criminal law enforcement agency, in the course of its criminal investigation of the

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<sup>5</sup> Defendant notes that the evidence envelope containing the photographs also shows the date on which the FBI received the photographs, as well as the identity of the law enforcement agency. Only the latter was withheld from plaintiff when the envelope was released.

Kennedy assassination, part of which necessarily included investigation of Lee Harvey Oswald and his activities. Defendant accordingly submits that it has met all of the criteria for invocation of a claim of exemption under Exemption 7(D) and that it is entitled to summary judgment as to all of the records at issue in this action.

Conclusion

For the foregoing reasons and based on the entire record herein, defendant respectfully urges the Court to grant its Motion For Partial Reconsideration and its Motion For Summary Judgment.

Respectfully submitted,


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STANLEY S. HARRIS  
United States Attorney

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ROYCE C. LAMBERTH  
Assistant United States Attorney

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MIRIAM M. NISBET  
Attorney-Advisor  
Office of Information and Privacy  
United States Department of Justice  
550 11th Street, N.W. - 9th Floor  
Washington, D.C. 20530  
(202) 724-7400