

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 85-5728

SONIA DETTMANN,
Appellant,

v.

U.S. DEPARTMENT OF JUSTICE,
Appellee

On Appeal from the United States District Court for the
District of Columbia, Hon. Thomas F. Hogan, Judge

BRIEF FOR APPELLANT

STATEMENT OF ISSUES

1. Did the District Court err in holding that the FBI justifiably withheld portions of requested documents for which no claim of exemption was made on the ground that they were "not pertinent" to the requester?

2. Did the District Court erroneously award summary judgment to the FBI on certain exemption claims?

3. Did the District Court abuse its discretion by denying plaintiff the opportunity to take discovery pursuant to Rule 56(f) of the Federal Rules of Civil Procedure?

This case has not previously been before this Court, or any other court, under this or any other title. Counsel for appellant is unaware of any other related cases presently pending in this Court or any other court.

STATUTES AND REGULATIONS

The text of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and an applicable regulation, 28 C.F.R. § 16.10, are reproduced in the Addendum to this brief.

REFERENCES TO PARTIES AND RULINGS

The parties to this lawsuit are Sonia Dettmann ("Dettmann"), plaintiff-appellant, and the United States Department of Justice, defendant-appellee.

Dettmann appeals from the judgment for defendant entered on April 4, 1985 [App. 201] in accordance with the District Court's opinion issued on March 20, 1985 [App. 186-200].

STATEMENT OF THE CASEA. Background

On January 3, 1977, Dettmann submitted a FOIA request to the Federal Bureau of Investigations ("FBI") for copies of all documents "which contain my name or make references to me or any activities I have engaged in, either individually or in connection with my employment by Urban Planning Aid, Inc. . . ." Complaint, ¶4, Exh. 1 [App. 6, 9]. On October 26, 1978, she supplemented her request to make clear that it included "records located in any FBI Field Office, including but not limited to the FBI Field Offices in Boston, Chicago, Los Angeles, Philadelphia and New York." In her supplemental request, Dettmann also asked for a search of "see" references and ELSUR ("Electronic Surveillance") records both at FBI Headquarters and in these field offices. Complaint, ¶5, Exh. 2 [App. 6-7, 11]

By letter dated August 31, 1977, the FBI released 303 pages of materials from its Headquarters files. Declaration of David H. Cook ("Cook Declaration"), ¶8. [App. 19] On January 25, 1978, the FBI notified Dettmann that as a result of her administrative appeal, an additional 172 pages plus previously furnished documents that had been reprocessed were ready for release. Id., ¶10 [App. 20].

With respect to her request for field office records, Dettmann was advised that FBI regulations required her to make a di-

rect request to each of the field offices. Id., ¶¶17, 20 [App. 22-23]. In March-April, 1979, Dettmann submitted requests to the Boston, Los Angeles, Chicago, Philadelphia and New York Field Offices. Declaration of Walter Scheuplein, Jr. ("Scheuplein Declaration"), ¶¶11, 16, 19, 22, 25 [App. 50, 53-56]. These requests were worded similarly to her Headquarters request, asking for "all documents . . . which contain my name or make reference to me or any activities I have allegedly engaged in."

After receiving some materials from the field offices, see Scheuplein Declaration, ¶¶13-27 [App. 51-58], Dettmann remained dissatisfied with the responses of Headquarters and the field offices to her request. Believing that she was entitled to more material than had been released, she filed this suit on April 23, 1982.

B. Proceedings in the District Court

On November 19, 1982, the FBI filed a Vaughn Affidavit and moved for partial summary judgment as to its Headquarters records. [R. 11] On September 27, 1983, the FBI filed its Vaughn Affidavit for the field office records and moved for summary judgment. [R. 20]

Dettmann's opposition raised several legal issues relevant to this appeal. First, she noted that the FBI had withheld much material on the ground that it was "not pertinent to plaintiff." She contended that because she had plainly requested "all documents" containing her name or referencing her alleged activities, there was no legal basis cognizable under the FOIA for withholding por-

tions of those documents except one or more of the FOIA's nine exemptions.

A second major issue concerned whether the FBI had met the threshold requirements of Exemption 7. Although Dettmann conceded that these requirements were met as to the "see" references in one file, the GILROB file, she contended that the FBI had not sustained its burden of demonstrating that other records in other files were compiled for law enforcement purposes. She noted that two files, FBIHQ file 100-45711 and Boston file 100-40664 were opened as a consequence of the fact that she went to Cuba as part of the "Venceremos Brigade," and that this investigation, according to the FBI, was not closed until September, 1976, "when it was determined that it did not meet the criteria under the Attorney General's Guidelines on Domestic Security Investigations." Cook Declaration, ¶25. [App. 25-26] She argued that even assuming that her trip to Cuba as part of the Venceremos Brigade justified a national security investigation, it did not follow that the entire six-year investigation was warranted. In this regard she noted that the FBI itself, at least as early as June 23, 1972, supplied its field offices with criteria to use in determining whether to devote further investigatory attention to members of the Venceremos Brigade. [App. 115-117]

Additionally, Dettmann challenged the sufficiency of the FBI's showing as to other records in other files. By way of example, she pointed out that these records included such matters as