whereas (b)(7)(D)-4 is "Information Provided on a Regular Basis under an Expressed Assurance of Confidentiality," the switch from (b)(7)(D)-4 to (b)(7)(D)-2 "is particularly troublesome since it was originally said to be based on an expressed assurance of confidentiality, something sufficiently definite and tangible that a mistake about it ought not be made." Id., ¶8, Att. 17 [App. 141, 177-178].

Because the changes in the FBI's code designations involved Exemption 7(D) quite extensively, Dettmann sought to undertake discovery regarding its application. Plaintiff's Supplemental Response to Defendant's Motion for Summary Judgment [R. 36], p. 4.

C. The District Court's Opinion

By its Memorandum Opinion and Order issued March 20, 1985 [App. 186-200], the District Court awarded summary judgment in favor of the FBI except as to one minor issue not challenged on this appeal. By its order of April 4, 1985, the District Court dispensed with the remaining issue and entered summary judgment for the FBI. [App. 201]

With respect to Dettmann's contention that the FBI had to process for release the entirety of each document she had requested, not merely the pages on which her name was mentioned, the District Court held to the contrary on the grounds that this "could be prohibitively costly and furthermore could overwhelm the requester with a vast amount of useless material." [App. 191]

the Court stated that it disapproved of "these evasive games," it ruled that the FBI "has finally complied fully with the FOIA requests and not withheld materials on well-known techniques. Id.

Although the District Court noted at the outset of its opinion that Dettmann also questioned whether segregable, non-exempt materials have been wrongfully withheld under Exemption 7(E), it made no finding with respect to this issue. Moreover, its phrasing of the issue ignored the fact that Dettmann had raised this issue with respect to not only 7(E), but also 7(C) and 7(D). Plaintiff's Supplemental Response to Defendant's Motion for Summary Judgment [R. 36], p. 3.

ARGUMENT

I. THE DISTRICT COURT ERRED IN HOLDING THAT THE FBI JUSTIFIABLY WITHHELD PORTIONS OF DOCUMENTS WITHOUT CLAIM OF EXEMPTION ON THE GROUND THAT THEY WERE "NOT PERTINENT TO PLAINTIFF"

Dettmann's several FOIA/PA requests were phrased similarly. They asked, inter alia, for "all documents . . . which contain my name or make reference to me or any activities I have allegedly engaged in." The import of these requests is plain and unambiguous: Dettmann wants all documents containing her name or making reference to her or to any activities in which she allegedly engaged, not just that information which might be deemed "pertinent" to her.

Notwithstanding this, the FBI withheld much material on the ground that it was "not pertinent to plaintiff." Although no claim of exemption was made to support this withholding, the District Court upheld it on grounds that "release of the complete document where only the name of the subject of the request is mentioned could be prohibitively costly and furthermore could overwhelm the requester with a vast amount of useless material." Slip Op. at 6 [App. 191].

The FOIA specifies only two requirements for access requests: first, that they "reasonably describe" the records sought, 5 U.S.C. § 552(a)(3)(A); second, that they be made in accordance with an agency's published procedural regulations, 5 U.S.C. § 552(a)(3)(B). There is no dispute here over whether Dettmann complied with these prerequisites. She plainly did.

The basic concept of the Freedom of Information Act is that all records of the federal government must be made available to the public unless they are specifically exempt from disclosure. S.Rep.No.813, 89th Cong., 1st Sess. 3 (1965). The FOIA provides for nine exemptions from the otherwise mandatory disclosure requirements, "[b]ut unless the requested material falls within one of these nine statutory exemptions, FOIA requires that records and material in the possession of federal agencies be made available on demand to any member of the general public." NRLB v. Robbins Tire & Rubber Co., 437 U.S. 214, 220-221 (1978). The exemptions are "specifically made exclusive. . . ." Dept. of the Air Force

v. Rose, 425 U.S. 352, 361 (1976).

In the absence of a statutory exemption, a court has no general equitable power to prevent disclosure of documents. Washington Post Co. v. U.S. Dept. of State, 222 U.S.App.D.C. 248, 250, 685 F.2d 687 (1982); Getman v. NLRB, 450 F.2d 670 (D.C.Cir. 1971). Only Congress, not the judiciary, may establish exceptions to the Act's disclosure commands. Doyle v. United States Dept. of Justice, 215 U.S.App.D.C. 333, 668 F.2d 1365 (1981), citing Soucie v. David, 448 F.2d 1067, 1076 (D.C.Cir. 1971).

The District Court rested its decision upholding the "not pertinent to plaintiff" deletions on the grounds that release of the entire document (1) could be prohibitively costly, and (2) could overwhelm the requester with a vast amount of useless material. Neither of these reasons constitutes a ground for withholding under the Freedom of Information Act.

The amended FOIA provides that agencies can only charge for the direct costs of search and duplication. 5 U.S.C. § 552(a)(4)(A). This provision was added to the Act in 1974 so that "fees should not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information." S.Rep.No.1200, 93rd Cong., 2d Sess. 7 (1974). "The clear implication of this is that agencies are expected to bear the cost of editing." Long v. U.S. Internal Revenue Service, 596 F.2d 362, 367 (9th Cir. 1979). Indeed, the Justice Department's own regulations recognize this, providing that "no charge shall be made for

the time involved in examining records in connection with determining whether they are exempt from mandatory disclosure and should be withheld as a matter of sound policy." 28 C.F.R. § 16.10(b)(7).

The District Court's second reason, that the requester could be overwhelmed by a vast amount of useless material, rests on unfounded assumptions and smacks of a Big Brother attitude that is alien to the FOIA. It intrudes into prohibited areas.

Under the FOIA a request can be made "for any reason, as no showing of relevancy or purpose is required. The law is clear that persons seeking information under the FOIA do not have to state a reason." "Short Guide to the Freedom of Information Act," Freedom of Information Case List (September 1984 Edition)(published by the Office of Information and Privacy, U.S. Department of Justice), at p. 243. The fact that one has, or lacks, a greater or lesser interest in the records than that of an average member of the general public "neither increase[s] nor decrease[s] his basic right of access. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 143, n.10 (1975).

The District Court's holding threatens a return to the subjective requirement of Section 3 of the Administrative Procedure Act of 1946, 60 Stat. 238 (1946), that requesters must show that they are "properly and directly concerned." But "the [FOIA] eliminated the requirement that a requester of information be directly concerned with the information sought." Afshar v. Department of State, 226 U.S.App.D.C. 388, 405, 705 F.2d 1125, 1142 (D.C.Cir.