1983).

The FOIA places no limits on what records a person can ask for, only on what records he can obtain; nor does it restrict who can ask for records, only that he reasonably describe identifiable records. FOIA requests can be made by "any person," 5 U.S.C. § 552(a)(3), Afshar, supra, 702 F.2d at 1142, and "an agency must disclose wholly useless, meaningless and misleading information unless it is exempted." Morton-Norwich Products, Inc. v. Matthews, 415 F. Supp. 78 (D.D.C. 1978).

For these reasons this major encroachment upon "any person's" right of access under the FOIA must be rejected, and the FBI must be directed to process those portions of the records requested by Dettmann regardless of whether or not they contain her name.

## II. THE DISTRICT COURT ERRED IN SUSTAINING THE FBI'S SUMMARY JUDGMENT MOTION

### A. Summary Judgment Standard

The District Court granted summary judgment in favor of the FBI. Before proceeding to discuss the challenged applications of his ruling, a brief review of summary judgment standards is in order.

A motion for summary judgment is properly granted only when no material fact is genuinely in dispute, and then only when the movant is entitled to prevail as a matter of law. Fed.R.Civ.P. 56(c); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Bouchard v. Washington, 168 U.S.App.D.C. 402, 405, 514 F.2d 824,

827 (1974). The movant must shoulder the burden of showing affirmatively the absence of any meaningful factual issue. Bloomgarden v. Coyer, 156 U.S.App.D.C. 109, 113-114, 479 F.2d 201, 206-207 (1973). That responsibility may not be relieved through adjudication since "[t]he court's function is limited to ascertaining whether any factual issue pertinent to the controversy exists [and] does not extend to the resolution of any such issue." Nyhus v. Travel Management Corp., 151 U.S.App.D.C. 269, 271, 466 F.2d 440, 442 (1972).

Moreover, in assessing the motion, all "inferences to be drawn from the underlying facts contained in [the movant's] materials must be viewed in the light most favorable to the party opposing the motion." United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).

Finally, these stringent standards are augmented by a further provision, set forth in Rule 56(f), which affords the opponent of a summary judgment motion an opportunity to engage in discovery if he has been denied access to relevant facts that are needed to make his case. The purpose of Rule 56(f) is to permit the party opposing summary judgment to "fully develop" the facts relevant to the summary judgment motion. Rule 56(f) discovery is essential because "[t]here is . . . an inherent danger of injustice in granting summary judgment to the moving party on his own version of the facts within his exlusive control as set out only in ex parte affidavits." Donofrio v. Camp,

152 U.S.App.D.C. 280, 470 F.2d 428 (D.C.Cir. 1972).

"Under Rule 56(f) the adversary need not even present the proof creating the minimal doubt on the issue of fact which entitles him to a full trial; it is enough if he shows the circumstances which hamstring him in presenting the proof by affidavit in opposition to the motion." Prof. B. Kaplan, Amendments to the Federal Rules of Civil Procedure, 1961-1963 (II), 77 Harvard L. Rev. 801, 826 (1964). Unless dilatory or lacking in merit, a motion for a continuance to take discovery under Rule 56(f) should be liberally treated," Littlejohn v. Shell Oil Co., 483 F.2d 1140 (5th Cir. 1973)(en banc), and where facts are solely in the possession of the defendants, a continuance should be granted "as a matter of course," Ward v. United States, 471 F.2d 667, 670 (3rd Cir. 1973).

For reasons set forth below, the District Court's ruling fails to comply with these standards and therefore must be reversed.

B. Summary Judgment on Exemption 7 Claims Was Improperly Granted

1. Threshold Ruling

All of the exemption claims still at issue in this litigation arise under 5 U.S.C. § 552(b)(7), Exemption 7. The FOIA prescribes a three-part test for withholding information under Exemption 7. In order to be withheld, the material (1) must be an "investigatory record," (2) must have been "compiled for law enforcement purposes," and (3) must satisfy the requirements of one of the six subparts of Exemption 7. Pratt v. Webster, 218 U.S.App.D.C. 17,

22, 673 F.2d 408, 413 (1982). The FBI, like any other federal agency, must meet the threshold requirements of Exemption 7 before it may withold requested documents on the basis of any of its subparts. Id., 673 F.2d at 416.

The FBI declarations asserted that three "main" files on Dettmann had been compiled for law enforcement purposes and cited possible statutory violations.[2/] No federal prosecution was undertaken with respect to any of the possible statutory violations. Scheuplein Declaration, ¶36 [App. 65-66]. A similar showing was made for "see" references on Dettmann in the "GILROB" files.[3/]

These declarations failed, however, to specify the law enforcement purpose of records which originated in other files. In addition, they failed to address the "law enforcement purpose" status of the individual records within the "main" files on Dettmann. Because Exemption 7 refers to "records" rather than files, "the location of a non-exempt document in an investigatory file does not necessarily make that document exempt from FOIA's disclosure requirements." Pratt, 218 U.S.App.D.C. at 31. Thus, the District Court erred in ruling that, on the basis of the record before him, all of the records at issue met Exemption 7's thresh-

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2/ See Cook Declaration, ¶¶25-26 [App. 25-26] re FBIHQ File 100-457511; Scheuplein Declaration, ¶¶35-36 [App. 64-65] re Boston File 100-40664; and Scheuplein Declaration, ¶40 [App. 67-68] re Los Angeles File 100-79764.

3/ See Scheuplein Declaration, ¶38 [App. 66], ¶41 [App. 68-69].

old test. A court cannot permit nonexempt records not compiled for a law enforcement purpose to escape the FOIA's disclosure mandate simply because they have been commingled in a file with records that were compiled for a law enforcement purpose. Hatcher v. United States Postal Service, 556 F. Supp. 331 (D.D.C. 1982).

Furthermore, the District Court abused its discretion in refusing to permit Dettmann to take discovery regarding the law enforcement purpose of the records. Dettmann raised in her Rule 56(f) affidavits a sufficient possibility that she would be able to establish a material fact in dispute through discovery that some form of discovery was warranted.

Dettmann pointed, for example, to the fact that although the "main" files on her were created in February, 1970, they were not closed until September, 1976, without any federal prosecution having been initiated. Additionally, she noted that at least as early as June 23, 1972, the FBI supplied its field offices with criteria to use in determining whether to devote further investigatory attention to members of the "Venceremos Brigade," and that in September, 1976 this investigation was closed because it failed to comply with the Attorney General's Guidelines on Domestic Security Investigations. These facts provided a realistic basis for believing that discovery focused on when the investigation first failed to comply with the Attorney General's Guidelines and what records were compiled thereafter might enable Dettmann to establish the existence of a material fact in dispute.