

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GREGORY STONE, et al.,)
)
 Plaintiffs,)
)
 v.) Civil Action No. 87-1346 CRR
)
 FEDERAL BUREAU OF)
 INVESTIGATION, et al.,)
)
 Defendants.)

DEFENDANTS' RESPONSE TO
PLAINTIFFS' LOCAL RULE 108(h) STATEMENT

1. This is not a material fact, and in any event, it is an incomplete and misleading statement. The issue here is whether plaintiffs have shown a public interest that warrants invading the privacy of hundreds of Special Agents. The answer, which is a determination of law, is that they have not. It is true that in two limited instances, and specific circumstances, there, the FBI has disclosed names of law enforcement personnel. Even then, not all names were released. There is no blanket policy or practice of releasing names of law enforcement personnel in cases of historical interest. Declaration of Richard L. Huff, filed herewith. Indeed, such a blanket practice would be violative of personal privacy, because it would not satisfy the requirement that there be a public interest under the "core purpose" of the Freedom of Information Act (FOIA) that outweighs the intrusion upon privacy.

2. This is not a material fact, because no such showing is required. See, e.g., Lesar v. Department of Justice, 636 F.2d

472, 488 (D.C. Cir. 1980); Halloran v. Veterans Administration, No. 88-6180 (5th Cir. June 6, 1989) (copy attached to defendants' memorandum of points and authorities) slip op. at 3997.

3. This is not a material fact. The actions of the Los Angeles Police Department (LAPD) have no bearing on the determination of the privacy interest of federal law enforcement personnel, or on the public interest in disclosure of their names. Nor does this statement bear on the protection of the privacy of LAPD employees whose names were not disclosed, or whose names were not disclosed in the context found in FBI files.

4. The fact that the names of some Special Agents may become available has nothing to do with the protection of the names of Special Agents and other law enforcement personnel whose names do not become publicly available.

5. This is a legal conclusion, not a fact, and it is incorrect. Furthermore, even if any public interest were deemed to exist in the disclosure of the names, it would be far outweighed by the invasion of privacy that would ensue from disclosure. This is particularly so because the substantive information has been disclosed, and because the names of FBI employees with knowledge of the FBI institutional activity in the investigation have been disclosed.

6. - 8. These are irrelevant assertions under U.S. Department of Justice v. Reporters Committee, 109 S. Ct. 1468 (1989).

9. The fact that some law enforcement personnel are willing to share information with researchers is irrelevant to the protection of others. Plaintiffs' paragraph 9 is similar to a putative contention that the attorney-client privilege does not exist for clients generally because some clients voluntarily disclose privileged information.

10. This assertion, is too attenuated to satisfy the "core purpose" of FOIA as described in Reporters Committee. Furthermore, it depends upon the use to which the information would be put, not the public interest in the disclosure of the information itself. The information would be equally available to the scoundrel and the scholar. Any possible minimal public interest arguably served is dwarfed by the fact that the names of FBI employees with knowledge of the FBI's institutional activity in the investigation have been disclosed; also, by the fact that the substantive information has been disclosed. See Halloran, supra, at 4001-4002; Miller v. Bell, 661 F.2d 623, 630-631 (7th Cir. 1981), cert. denied, 456 U.S. 960 (1982).

11. This is a legal conclusion which makes a generalization that is not necessarily so. One can readily hypothesize "other citizens" whose activities are of such notoriety and public importance that they have less protection than FBI personnel. Besides, the question is not one of comparing the relative privacy interests of law enforcement personnel and "other citizens". The relevant issue is the legal one, whether there is

any alleged public interest in disclosing the names of law enforcement personnel that outweighs their privacy interest.

Response to Plaintiffs' Statement
of Issues of Material Fact Genuinely in Dispute

The declarations submitted by defendants provide a more than adequate basis, under the authoritative case law, to resolve this case on summary judgment. There are no genuine issues of material fact.

Respectfully submitted.

JAY B. STEPHENS, D.C. BAR #177840
United States Attorney

JOHN D. BATES, D.C. BAR #934927
Assistant United States Attorney

Nathan Dodel

NATHAN DODELL, D.C. BAR #131920
Assistant United States Attorney