

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUSAN B. LONG)
and)
DAVID BURNHAM)
)
Plaintiffs,) Civil Action No. 1:00CV00211 PLF
)
v.)
)
DEPARTMENT OF JUSTICE)
)
Defendant.)
_____)

**PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE
DEPARTMENT’S REVISED EXEMPTION CLAIMS, AND PLAINTIFFS’ CLAIMS
CONCERNING NOTICE OF DELAY AND FEE WAIVER**

In this action under the Freedom of Information Act, 5 U.S.C. § 552, Plaintiffs seek access to database records of the Department of Justice. Plaintiffs have already filed a Motion for Partial Summary Judgment that seeks a declaratory judgment rejecting the Department’s claim that it may withhold all data in the databases under the deliberative process privilege until the Executive Office of the United States Attorneys (“EOUSA”) completes year-end “verification” of its data. Plaintiffs’ challenge to the Department’s deliberative process claim is contained in Count Two of Plaintiffs’ Second Amended Complaint.

This Motion for Partial Summary Judgment seeks judgment on the remaining claims that are in dispute now that the Department has revised its exemption claims and has re-released copies of the database records to Plaintiffs in response to this Court’s directive that the Department correct prior errors. See Doc. No. 76, Order of September 25, 2001; Doc. No. 112, Memorandum Opinion and Order of April 30, 2001. Specifically, Plaintiffs move for summary judgment against the Department’s exemption claims for four categories of information that are

still being withheld: (A) the “lead charge” entries in the database files concerning criminal matters; (B) court docket numbers, case captions and names of litigants in federal civil and criminal actions;(C) the names of properties, businesses, and other non-individual entities; and (D) entries in the fields for the tracking numbers used by other agencies.

Plaintiffs also move for judgment on two disputed legal claims presented by Counts Four and Five of the Second Amended Complaint: (i) whether the Department failed to provide Plaintiffs with the notices required by FOIA, 5 U.S.C. § 552(a)(6), and the agency’s FOIA regulations, 28 C.F.R. § 16.5(c); and (ii) whether the Department has acted improperly in failing to grant Plaintiffs a favorable determination on their request for waiver of fees, and by demanding that Plaintiffs allow the Department to examine all records concerning fees and financial support for Plaintiffs’ activities during the past five years as a prerequisite to making a determination.

The basis for this Motion is set forth in the accompanying Memorandum In Opposition to Defendant’s Motion for Summary Judgment and in Support of Plaintiffs’ Motion for Partial Summary Judgment on the Department’s Revised Exemption Claims, and Plaintiffs Claims

Concerning Notice of Delay and Fee Waiver. This Motion is also accompanied by a Statement of Material Facts As To Which There Is No Genuine Dispute (pursuant to LCvR 7.1(h)), and Plaintiffs' Declarations and Exhibits submitted in support of Partial Summary Judgment.

Respectfully submitted,

Michael E. Tankersley
(D.C. Bar No. 411978)
Public Citizen Litigation Group
1600 20th Street, NW
Washington, DC 20009
(202) 588-1000

Counsel for Plaintiffs

August 5, 2002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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 DAVID BURNHAM)
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ORDER

Upon consideration of Defendants' Motion for Summary Judgment and Plaintiffs' Opposition thereto, and Plaintiffs' Motion for Partial Summary Judgment on the Department's Revised Exemption Claims and Plaintiffs' Claims Concerning Notice of Delay and Fee Waiver, and Defendant's response thereto, it is hereby

ORDERED that Defendants' Motion is DENIED; and it is further

ORDERED that Plaintiffs' Motion is GRANTED; and it is further

ORDERED that the Court declares that the Department of Justice has improperly withheld information from the EOUSA case management database records for fiscal years 1974-1997, 1999, mid-fiscal year 1999 and mid-fiscal year 2000; and it is further

ORDERED that, within thirty days of this order, the Department shall release to Plaintiffs copies of the EOUSA case management database records that include the information that it has improperly withheld: (i) the "lead charge" entries in the database files concerning criminal matters; (ii) court docket numbers, case captions and names of litigants that appear in

the civil and criminal master files in records associated with a federal civil or criminal case;(C) the names of properties, businesses, and other non-individual entities that appear in the civil, criminal and collection files from fiscal year 1999 and later periods, and the names of properties identified in forfeiture actions in the collections files from fiscal year 1985 through 1997; and (D) entries in the fields for the tracking numbers used by other agencies in the civil and criminal databases for fiscal year 1990 and later periods, and the collections databases; and it is further

ORDERED that the Department shall release any names of institutions on property redacted from database documentation that is responsive to Plaintiffs' FOIA requests; and it is further

ORDERED that the Court declares that the form letter that the EOUSA has used to notify Plaintiffs that it anticipates a delay in responding to Plaintiffs' requests does not comply with the requirements of 28 U.S.C. § 16.5(c) and 5 U.S.C. § 552(a)(6)(B)(i); and it is further

ORDERED that, where the EOUSA cannot meet the statutory time limits for processing a request because of "unusual circumstances," the EOUSA is hereby directed to include in its notice to Plaintiffs the "unusual circumstances" that preclude it from meeting the statutory deadline and the date when EOUSA expects to dispatch a response to Plaintiffs' request; and it is further

ORDERED that the Court declares that Defendant's request that Plaintiffs provide the Department of Justice with all records concerning TRAC's fees and funding for the past five years as a precondition to the EOUSA determining that TRAC qualifies for limitation of fees under § 552(a)(4)(A)(ii)(II); and it is further

ORDERED that the Court declares that Plaintiffs FOIA requests to the Department for EOUSA case management data are not for commercial use and Plaintiffs qualify for the fee limitation afforded to educational or noncommercial scientific institutions, whose purpose is scholarly or scientific research and to representatives of the news media, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

PAUL L. FRIEDMAN
UNITED STATES DISTRICT JUDGE

Copies to:

Elizabeth Goitein
Anne L. Weissmann
United States Department of Justice
Civil Division
Box 883
Washington, DC 20044

Michael E. Tankersley, Esq.
Alan B. Morrison, Esq.
Public Citizen Litigation Group
1600 20th Street, NW
Washington, DC 20009

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2002, I caused copies of Plaintiffs' Motion for Partial Summary Judgment on The Department's Revised Exemption Claims, and Plaintiffs Claims Concerning Notice of Delay and Fee Waiver, Plaintiffs' Memorandum in Opposition to the Department's Motion for Summary Judgment and In Support of Plaintiffs' Motion for Partial Summary Judgment on the Department's Revised Exemption Claims, and on Plaintiffs' Claims Concerning Notice of Delay and Fee Waiver, Plaintiffs' Statement of Material Facts As To Which There Is No Genuine Dispute, and Plaintiffs' Response to Defendants' Statement of Material Facts, to be served by hand delivery, addressed to:

Anne L. Weissman
Elizabeth Goitein
United States Department of Justice
Civil Division, Room 1040
901 E Street, N.W.
Washington, D.C. 20530

Michael Tankersley