

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**PLAINTIFFS’ STATEMENT OF MATERIAL FACTS AS
TO WHICH THERE IS NO GENUINE DISPUTE**

Pursuant to Local Rule 7.1(h), Plaintiffs hereby submit this statement of material facts as to which there is no genuine dispute in support of their motion for summary judgment on the Department’s Revised Exemption Claims and Plaintiffs’ Claims Concerning Notice of Delay and Fee Waiver. The record materials cited herein are the Answer to the Second Amended Complaint (“Answer”), the Declarations and Exhibits submitted in support of Plaintiffs’ motion for summary judgment, the Declaration of Teresa Davis in the Declarations and Exhibits Accompanying Defendant’s Motion for Summary Judgment and Opposition to Plaintiffs’ Motion for Partial Summary Judgment (Tab A, “Davis Decl.”) and Defendant’s Exhibits submitted in support its Motion for Summary Judgment.

1. Defendant Department of Justice is an agency of the United States, and it has possession of and control over the records that Plaintiffs seek. Answer ¶ 4.

2. Each United States Attorneys Office maintains computerized record-keeping systems that track the investigations, civil and criminal cases, and debt collection matters within each office. In the normal course of business, each month the individual United States Attorneys Offices extract caseload information from their record keeping systems for case management records and send the information to the Executive Office for the United States Attorneys (“EOUSA”) in Washington, D.C. The EOUSA uses this information to compile centrally maintained case management databases. Answer ¶¶ 5, 6. These database records are used by the Department of Justice in the production of statistical reports that the government uses to support budget requests and law enforcement policies. Answer ¶ 1.

3. Plaintiffs have submitted FOIA requests to the EOUSA that, among other things, request release of the year-end data from the EOUSA’s case management databases for fiscal years 1974 through 1997 and 1999, and the data from the first-six months of fiscal years 1999 and 2000. See Defendant’s Declarations and Exhibits, Tab A, Davis Decl. ¶¶ 11, 23, 27, 44 and Exhibits 1, 12, 13, 21, 23.

4. Beginning on May 23, 2000, and intermittently thereafter through July 2002, the Department released copies of EOUSA case management data to Plaintiffs with certain fields and/or records withheld or redacted. Defendant’s Declarations and Exhibits, Davis Decl. ¶¶ 21, 22, 33-38, 49-50, 57-63, 64-71, and ¶ 90 (most recent description of fields redacted).

Challenged Exemption Claims

Lead Charge

5. In the copies of the database records from the Criminal Master Files that the EOUSA has released in response to Plaintiffs’ FOIA requests, the EOUSA has redacted the lead charge field from the files from FY99 and later periods if its databases showed that the record

relates to a matter that was still in an “investigative” stage as of the end of fiscal year 2001.

Defendant’s Declarations and Exhibits, Davis Decl. ¶¶ 107, 111 (describing how EOUSA defined “investigative” stage). These fields have been withheld because the Department claims that they are exempt from disclosure under 5 U.S.C. § 552(b)(7)(A). Id. ¶ 107.

6. The lead charge field in the criminal master files describes the principal charge against a suspect or defendant by the title and section number of the criminal statute in the U.S. Code. In some instances, the lead charge entry also includes the subsection of the code. Plaintiffs’ Declarations and Exhibits, Tab 3, Seventh Long Decl. ¶ 8.

7. The Department has released the lead charge entries in the EOUSA case management data in public access files deposited at the National Archives and Records Administration (for FY74-FY89); under the FOIA (for FY74-98); and through Department’s Federal Justice Statistics Program (for at least FY83-FY90, FY92-FY98). Seventh Long Decl. ¶¶ 11-13. The lead charge entries in the EOUSA case management data have been available to researchers since at least 1978. Id. ¶ 10.

8. The Criminal Master Files in which the lead charge entries appear (but have been redacted for FY99 and later years) do not contain a field for entering information that would identify the location of the suspect or target of the investigation by city, state, district, zip code or any other means. Seventh Long Decl. ¶ 15. The DIST field in these databases identifies the district of the United States Attorneys Office that has been given responsibility for the investigation; the BRANCH field identifies the location of the office within the district that is responsible for the investigation. Defendant’s Exhibit O, Field 1 (DIST); Plaintiffs’ Exhibit 4, LIONS Manual, Data Dictionary page B-3 (BRANCH).

9. It is not reasonable to expect that an individual could identify the target of an investigation from the combination of a lead charge entry and information in the Criminal Master Files identifying the office that is responsible for the investigation. The potential population of individuals covered by the data in the Criminal Master Files is too large, the information in the lead charge entries is too imprecise and does not give details about the crime being investigated, and the lead charge entries are not mutually exclusive identifiers. Plaintiffs' Declarations and Exhibits, Tab 1, Declaration of Michael D. Maltz ¶¶ 15-24.

Court Docket Information

10. In the copies of the database records from the Criminal and Civil Master Files that the EOUSA has released in response to Plaintiffs' FOIA requests, the EOUSA has redacted all entries in the fields for court number, caption of the case, name of the defendant in criminal cases, and name of litigant in civil cases because the Department contends that this information is exempt from disclosure under 5 U.S.C. § 552(b)(6) and (7)(C). Defendant's Declarations and Exhibits, Davis Decl. ¶ 94.¹

11. In the copies of EOUSA Criminal and Civil Master Files for FY74-FY89 deposited at the National Archives and Records Administration, the Department has made available to the public the information that appears in the fields for the court docket number, name of the defendant in criminal cases, and name of litigant in civil cases for those records that relate to a criminal or civil action filed in court. Seventh Long Decl. ¶¶ 6, 7. The Department

¹ These fields are identified in the Department's papers as the COURT NUMBER, FILE NAME, DEFENDANT NAME (criminal) and LITIGANT NAME (civil) in the criminal and civil master records. See Defendant's Exhibit O, Fields # 5, 23, 59, 163, 179, 194.

has redacted all of the entries in these fields from the versions of the criminal and civil database files that EOUSA has released to Plaintiffs during the course of this litigation. Id.

12. As part of the Public Access to Court Electronic Records (PACER) service, the Administrative Office of the United States Courts makes available a national index of docket information on cases in federal district, appellate and bankruptcy courts. Among other things, the PACER database discloses the court number, the names of the parties, and the caption of the case. See Plaintiffs' Exhibits 10, 11. PACER is available to the public through the Internet or a modem and the database can be searched electronically. Id.

13. There is a public interest in disclosure of the information in the fields for court number, caption of the case, name of the defendant in criminal cases, and name of litigant in civil cases, because this information will assist researchers in evaluating how law enforcement agencies have acted in cases involving different kinds of litigants, and assist researchers in correlating the EOUSA's data with data reported by the courts to obtain a broader and more accurate view of the government's actions in criminal and civil litigation. Maltz Declaration ¶¶ 13, 14; Second Burnham Declaration ¶ 6; Seventh Long Decl. ¶ 40.

Names of Institutions and Property

14. In the copies of the database records that the EOUSA has released to Plaintiffs, the EOUSA has redacted the names of property, corporations, businesses, governmental bodies, and other non-individual entities identified in the database fields concerning the name of the defendant, litigant or debtor because the Department contends that this information is exempt from disclosure under 5 U.S.C. § 552(b)(6) and (7)(C). Defendant's Declarations and Exhibits, Davis Decl. ¶¶ 94, 99. These redactions have been made in the database files for criminal, civil

and collection matters, and in copies of documentation concerning these records. Id.;
Declaration of Lynne M. Halbrooks, ¶ 17 (July 29, 2002).

15. LIONS system contains codes that distinguish entries that pertain to individuals from entries that do not identify individuals. These codes identify whether the subject of a record is an individual, property, business or agency. LIONS was fully implemented in the United States Attorneys' Offices by FY98 and the LIONS records in which these codes appear are associated with corresponding records in the EOUSA's civil and criminal case management database files for FY98 and later years. The LIONS codes can be used to distinguish the records within these EOUSA database files that concern individuals from records that do not. Seventh Long Decl. ¶ 21; Defendant's' Declarations and Exhibits, Tab C, Hamilton Decl. ¶ 13.; see also Plaintiffs' Exhibit 5 at A-41 and pages at 3-5, 3-26 to 3-33 (civil), 5-6 and 5-32- to 5-45 (criminal).

16. Collection records in the EOUSA case management databases known as TIGAS contain a field with codes that identify records in which the debtor is not an individual but a corporation, estate, sole proprietor, partnership, trust, fiduciary, or exempt organization. Seventh Long Decl. ¶ 24.

17. Collection records in the EOUSA case management databases for FY85 and later years contain a field with codes that identify records concerning property forfeiture actions Seventh Long Decl. ¶¶ 26, 28. The documentation for these databases states that in property forfeiture actions the debtor name field should contain a description of the property, not the name of an individual. Id. ¶ 30, 31.

18. There is a public interest in disclosure of the names of businesses and property in the EOUSA case management databases because this information will assist researchers in

evaluating how law enforcement agencies have acted in cases involving different kinds of litigants, and facilitate research on the role and effectiveness of property forfeiture actions.

Second Burnham Declaration ¶¶ 7, 8.

Agency File Numbers

19. In the copies of the criminal, civil and collections database records that the EOUSA has released in response to Plaintiffs' FOIA requests, the EOUSA has redacted all entries in the fields for agency file number, investigative agency file number, and program agency file number because the Department contends that the entries in these fields may be withheld under 5 U.S.C. § 552(b)(2), (6) and (7)(C). Defendant's Declarations and Exhibits, Davis Decl. ¶ 113.

20. The agency file number, investigative agency file number, and program agency file number fields are designed to store numbers used by a law enforcement agency involved in the case as part of that agency's administrative case tracking system. Id. ¶ 113. The Department uses these numbers "to reconcile cases with the different agencies" that refer cases to the United States Attorneys Offices. Plaintiffs' Exhibit 7.

21. Public disclosure of the agency file number, investigative agency file number and program agency file number would be valuable to the public because it would permit researchers to reconcile data reported by different agencies and identify the reasons for conflicting reports. See Plaintiffs' Declarations, Tab 1, Declaration of Michael D. Maltz ¶¶ 7-11; Tab 2, Second Burnham Decl. ¶¶ 3-5; see also Maltz Decl. ¶¶ 8, 9, 12 (examples of correlation of law enforcement data collected by different agencies).

22. For several of the database systems that provided the data for the EOUSA's centralized civil, criminal and collection files for FY90 and later years, the EOUSA's

documentation states that the agency required that agency file numbers be entered in the fields designated for these numbers, and that the EOUSA conducted quality control reviews to ensure that the numbers were properly entered. See Seventh Long Decl. ¶¶ 33, 34. A manual for the LIONS system (in use for civil and criminal records in FY98 and later) states that the agency number field is not required, but does not state that other information may be entered in this field. Id. ¶ 32.

23. In the copies of EOUSA Criminal and Civil Master Files for FY74-FY89 deposited at the National Archives and Records Administration, the Department has made available to the public the information that appears in the field for agency file number in the civil master records and in the field for investigative agency file number in the criminal master records. Seventh Long Decl. ¶ 6.b, 6.c.

Notices Concerning Delay

24. In response to Plaintiffs' FOIA requests of April 3, 2000, and May 2, 2000, the EOUSA sent Plaintiffs a "form letter," Davis Decl. ¶¶ 45, 73, which states in relevant part:

EOUSA makes every effort to process most requests within a month (20 working days). There are some exceptions, for example, Project Requests take approximately nine months to process. Requests for "all information about myself in criminal case files" are Project Requests. If you have made such a request, you may either write us and narrow your request for specific items, or we will consider that you have agreed to a due date of nine months from the date of this letter.

Defendant's Exhibits 22, 27.

25. The Department did not provide Plaintiffs with its determination in response to the requests of April 3, 2000, and May 2, 2000, within twenty working days, or within a ten day extension of the twenty working day deadline under the FOIA. Defendant's Declarations and Exhibits, Davis Decl. ¶ 49, 74.

Fee Waiver

26. In the FOIA requests at issue in this litigation, Plaintiffs have requested a waiver of fees and classification as an educational institution or representative of the news media.

Defendant's Declarations and Exhibits, Davis Decl. ¶ 77; Defendant's Exhibits, Exhibit 12.²

27. On March 21, 2000, the Assistant Director of the FOIA/PA Unit of the EOUSA sent a letter to Plaintiffs questioning their entitlement to a fee waiver and/or classification as an educational institution or representative of the news media. The letter requested that TRAC provide, within thirty days, "any and all records for the previous five years regarding all fee schedules utilized by TRAC, and any and all records of any fees proposed, charged and/or received by TRAC in the previous five years," and "any and all records regarding the sources of funding for TRAC, including but not limited to any grants, stipends, and private or commercial funding sources." Answer ¶ 35; Plaintiffs' Exhibits, Exhibit 14.

28. The Department of Justice has not requested that other applicants for fee waivers and classification as an educational institution or representative of the news media provide "any and all records" concerning fees or funding during the previous five years. Answer ¶ 36. The

² The Davis declaration states that Plaintiffs' requests for the FY74-97 central case management databases files were not accompanied by written requests for full waiver of applicable fees. Exhibit 12 to the same Declaration shows that this qualification is inaccurate. Plaintiffs requested the FY74-97 data files in a series of requests prior to June 1999, when the EOUSA acknowledged that much of the data that it had withheld from Plaintiffs in its responses to those FOIA requests should have been released. See Davis Decl. ¶¶ 6 24, 25. and Defs' Exhibit 6. The EOUSA acknowledged its obligation to re-release the FY74-97 database records so that the previously withheld information would be released. Davis Decl. ¶ 25. At the request of the EOUSA, Plaintiffs provided the EOUSA file number designations for each of the written FOIA requests for the FY74-FY97 data. Defendants' Exhibit 12. Fee waivers were requested and were granted in connection with each of these requests. Id. Although the Department asserts that the EOUSA has no documentation of previous FOIA requests for these records, Davis Decl. ¶ 23, it appears that the EOUSA either did not look for, or has discarded, the documentation regarding these requests.

Department's demand for any and all records concerning fees and funding is also new with respect to TRAC because, although TRAC has requested waivers of fees in its FOIA requests since 1989, until March 21, 2000, the Department had never requested that TRAC disclose any and all records concerning funding or fees. Declarations and Exhibits in Support of Plaintiffs' Motion for Partial Summary Judgment and Preliminary Injunctive Relief, First Long Declaration ¶ 22.

29. The Department of Justice's regulations regarding fee waivers, 28 C.F.R. § 16.11, do not require that a FOIA requester disclose five years of records concerning fees and funding, as the EOUSA has requested from TRAC. Answer ¶ 66.

30. Plaintiffs submitted materials to the EOUSA in support of their request for fee waiver and limitation on fees in On April 12 and May 15, 2000. Plaintiffs' Exhibits 15 and 16.

31. Plaintiffs informed the EOUSA on April 12, 2000, that they would not provide all of the fee and financing records requested in the EOUSA's March 21, 2000 letter. Plaintiffs' Exhibit 15 at 1; Defendant's Declarations and Exhibits, Davis Decl. ¶ 81.

32. The EOUSA has not granted Plaintiffs' a waiver of fees or classification as an educational institution or representative of the news media in connection with the agency's response to the FOIA requests at issue in this litigation. Answer ¶ 63.

33. The EOUSA has stated that it has not made a determination on Plaintiffs' fee waiver request and request for classification as an educational institution or representative of the news media because Plaintiffs have not provided the documentation needed to make a determination. See, e.g., Declaration of Suzanne Little ¶ 95 (filed Nov. 19, 2001). The only documentation that the EOUSA has requested from Plaintiffs is the five years of fee and funding

documents that EOUSA requested on March 21, 2000. Id.; Defendant's Declarations and Exhibits, Davis Decl. ¶ 80.

34. Plaintiffs are co-directors of the Transactional Records Access Clearinghouse ("TRAC"), an educational institution whose purpose is scholarly research and a representative of the news media under 5 U.S.C. § 552(a)(4)(A). See Plaintiffs' Exhibits 15 and 16.

35. Plaintiffs seek the records from the EOUSA case management databases under the FOIA in order to further TRAC's dissemination of reports and data concerning the activities of federal law enforcement agencies and to further TRAC's academic research. Id.

36. TRAC's sources of funding and ability to fulfill its commitments to foundations that have funded its activities are threatened by the EOUSA's new position since March 21, 2000, that the EOUSA questions whether TRAC qualifies as an educational institution or representative of the news media, and that Plaintiffs must disclose fee and funding records requested on March 21, 2000, for the EOUSA to make a determination. TRAC's relationships with funders and subscribers is threatened by the EOUSA's demand that TRAC disclose all records concerning fees and funding for the last five years in order to obtain a determination that it is properly classified as an educational institution or representative of the news media under the FOIA's fee waiver provisions. Seventh Long Decl. ¶¶ 37, 38.

Respectfully submitted,

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