

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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DANIEL A. ADAMS,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant.

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) Civil Action No. 02-320 (RMC)  
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**REPLY IN SUPPORT OF PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AND  
OPPOSITION TO DEFENDANT’S CROSS-MOTION FOR SUMMARY JUDGMENT**

Introduction

In February 2003, three months after Plaintiff’s Motion for Summary Judgment was filed, the Department of Justice re-released the file on the investigation of FBI Agent Paul Reynold’s death in 1929. In doing so, the Department abandoned all of the exemption claims challenged in Plaintiff’s motion for summary judgment except for redactions on page 395 of the file. See Doc. No. 25, [Second] Declaration of Christine Keifer ¶ 5(a) and Exhibit B (dated Feb. 20, 2003).<sup>1</sup> Although the Department has now released all of the other personal information that appears in the records from this 74-year old murder, it asserts that the redacted material on page 395 is properly withheld because it contains “sensitive, personal information about Mildred Reynolds, the wife of Agent Reynolds.” Id. The Department’s latest papers do not offer any evidence that Mildred Reynolds is still alive. Nor does the Department’s Cross-Motion it explain why the information that it has redacted should be withheld when all other personal information in this file has now been released.

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<sup>1</sup> The Second Keifer declaration identifies the material withheld as three paragraphs of page 390, but the redacted paragraphs actually appear on page 395 of the FBI file.

The Department's re-release of the file has narrowed the issues, but it has not cured the flaws in the Department's Exemption 7(C) claim that Plaintiff identified in his Motion for Summary Judgment. This Court should reject the Department's remaining redactions based on privacy interests because the agency has failed to satisfy its burden of proving that the person whose privacy it purports to be protecting is still alive more than 70 years after these records were created. Moreover, because the Department has now released Mildred Reynold's name, Plaintiff is able to show that government records indicate that she died in 1987. See Second Declaration of Daniel Adams ¶¶ 2, 4. Although the Department's memorandum speculates that disclosure might interfere with the personal privacy of "close, surviving family members," Defendant's Memorandum at 13, there is no evidence that such individuals exist, or that disclosure of the information at issue here would have any impact on the privacy of anyone other than Mildred Reynolds.

## **ARGUMENT**

### **THE DEPARTMENT HAS FAILED TO PRESENT ANY EVIDENCE TO SUPPORT WITHHOLDING THE PASSAGES THAT IT IS STILL REDACTING BASED ON PERSONAL PRIVACY.**

Plaintiff is entitled to summary judgment against the Department's remaining personal privacy claim because there is no evidence that disclosure of information concerning Mildred Reynolds would interfere with anyone's personal privacy. Because of the records at issue here concern events that occurred seventy-four years ago, statistics on longevity show that it is extremely improbable that the wife of Agent Reynolds is still alive today. See Plaintiff's Motion for Summary Judgment at 18. The Department has the burden of showing that, despite the age of the records, it is likely that she is still alive and disclosure would invade her personal privacy. Id. at 7-8, 17-18. The Department's latest papers contain nothing to satisfy this burden. Instead, the

Department simply asserts that it has redacted information on page 395 because the agency “cannot say with certainty” that Mildred Reynolds is deceased or over 100 years of age.

[Second] Declaration of Christine Keifer ¶ 5(a). However, the Department cannot satisfy its burden of proof under the FOIA by simply adopting an irrational assumption that individuals live perpetually unless the FBI has received evidence that shows with “certainty” that the individual is deceased or is more than an arbitrarily age. See Plaintiff’s Motion for Summary Judgment at 18-20.

Plaintiff’s Motion for Summary Judgment shows that a policy of withholding names of individuals unless it is shown that they are more than 100 years old is arbitrary and contrary to the evidence concerning longevity. Id. at 21-23. The Department’s cross-motion offers neither contrary evidence nor argument to defend applying a 100 year cut-off policy to the information about Mildred Reynolds on page 395. The Department’s cross-motion also does not provide any reason for rejecting the ruling in Hall v. Department of Justice, 26 F. Supp.2d 78, 81-82 (D.D.C. 1998), in which Judge Robertson established a rebuttable presumption that an individual was deceased if 50 years have passed since the date of the document or the event that it describes, whichever is earlier. Id. at 81-82; see also Hall v. Department of Justice, 63 F. Supp.2d 14 (D.D.C. 1999) (denying FBI’s motion to alter ruling establishing 50-year rebuttable presumption). A 50-year rule like that applied in Hall, or a presumption based on the longevity statistics discussed in Plaintiff’s Motion, would recognize that it is unlikely that Agent Reynold’s widow is alive and the privacy interests that the Department has invoked here only arise if the individual identified in the agency records is alive. See Plaintiff’s Motion for Summary Judgment at 13-15. As noted in Plaintiff’s Motion, the Court need not decide exactly how recent the records must be for the Department to be able to assume that the individuals mentioned in the

records are alive. The records at issue here are so old that it is not only unlikely, but highly improbable, that individuals mentioned in the records are still alive. See id. at 24-25.

The conclusion that Mildred Reynolds is deceased is re-enforced by an entry in the “Social Security Death Index,” that indicates that a Mildred Reynolds who may have been Agent Reynold’s wife died in Idaho in 1987. See Second Adams Declaration ¶ 2, 4.<sup>2</sup> The only general or specific information that the Department offers to suggest that Mildred Reynolds is not deceased is the statement that “Mrs. Reynolds is not listed as deceased in Who was Who, a book of famous individuals now deceased.” [Second] Declaration of Christine Keifer ¶ 5(a). Because very few of the individuals who have died since 1929 are notable enough to appear in Who was Who, the fact that Mrs. Reynolds is not listed in this book certainly does not justify the Department’s assumption that she is still alive despite the general and specific evidence to the contrary.

The Department’s Memorandum offers an alternative justification for the Exemption 7(C) redactions by arguing that, even if Mrs. Reynolds is dead, the redactions protect the personal privacy of surviving family members. Remarkably, this justification appears only in the Memorandum and the Department’s FOIA officer makes no reference to surviving family members. See [Second] Declaration of Christine Keifer ¶ 5(a).

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<sup>2</sup> The Social Security Administration maintains a database known as the “Death Master File” or “Death Index” which includes approximately 70 million deaths that were reported to the Social Security Administration. The Court of Appeals has specifically mentioned the Social Security database as a source of information that agencies may be required to consult when they claim that information has been properly withheld to protect the personal privacy of individuals. Schrecker v. United States Department of Justice 254 F.3d 162, 167 (D.C. Cir. 2001). Plaintiff was unable to research entries in the Social Security Death Index prior to the November 2002 Motion for Summary Judgment because the Department was withholding Mildred Reynold’s first name. There is no indication in the Department’s submissions that the agency consulted the Social Security Death Index or has tried to identify Mildred Reynold’s Social Security number.

This alternative justification fails for two reasons. First, there is no evidence that there are any close, surviving family members whose personal privacy might be jeopardized by disclosure. Indeed, the evidence that is available suggests that Paul and Mildred Reynolds had one child, who was born in the 1920s and is deceased. See Second Adams Decl. ¶ 5.

Second, as discussed in Plaintiff's Motion for Summary Judgment, the case in which the Court of Appeals ruled that personal privacy interests may be invaded by disclosures about someone who is deceased involved circumstances in which surviving family members objected to the release of graphic details of a person's violent death, shortly after that death. See Plaintiff's Motion for Summary Judgment at 16 (discussing Accuracy in Media v. National Park Service, 194 F.3d 120, 123 (D.C. Cir. 1999)); see also New York Times Co. v. National Aeronautics & Space Administration, 920 F.2d 1002, 1005 (D.C. Cir. 1990)). The Department offers no evidence that such information is at issue here, or that disclosure would invade any interest that survives death. To the contrary, the Department's latest declaration states that its justification for withholding personal information is described in paragraphs 31-32 and 37 of the First Keifer Declaration, [Second] Declaration of Christine Keifer ¶ 5(a), and that Declaration describes the information that the Department has withheld as:

names, aliases, descriptive data, telephone numbers, addresses, employment information, political affiliations and unrelated civil or criminal information which would identify individuals who were only mentioned by persons who provided information to the FBI.

[First] Declaration of Christine Keifer ¶ 37 (dated Sept. 6, 2002). Disclosure of such information seventy-four years after the FBI's investigation would not constitute an invasion of the privacy of Mildred Reynold or her family members.

## CONCLUSION

The Court should grant Plaintiff's Motion for Summary Judgment, deny the Department's Cross-Motion for Summary Judgment and direct the agency to release the information redacted from page 395 of the FBI's investigative file on the death of Agent Reynolds.

Respectfully submitted,

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Counsel for Plaintiff

March 12, 2003

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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DANIEL A. ADAMS, )  
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 ) Civil Action No. 02-320 (RMC)  
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**RESPONSE TO DEFENDANT’S STATEMENT OF MATERIAL FACTS AS TO  
WHICH THERE IS NO GENUINE DISPUTE**

Pursuant to LCvR 7.1(h), Plaintiff does not dispute any of the facts set forth in Defendant’s Statement of Facts Not In Genuine Dispute. However, because none of those facts show that disclosure of the information redacted from page 395 would constitute an unwarranted invasion of the privacy of any living person, the Statement does not support Defendant’s Motion for Summary Judgment. See Doc. No. 14, Exhibit 2, Declaration of Daniel Adams ¶¶ 17-18; Second Declaration of Daniel Adams ¶ 2.

Respectfully submitted,

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Attorneys for Plaintiffs

Dated: March 12, 2003

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 )  
Defendant. )  
\_\_\_\_\_ )

**ORDER**

Upon consideration of Plaintiff's Motion For Summary Judgment, Defendant's opposition and cross-motion, Plaintiff's reply and opposition, and the entire record in this case, it is this \_\_\_\_ day of \_\_\_\_\_.

ORDERED that Plaintiff's motion is granted; and it is further

ORDERED that Defendant's cross-motion is denied; and it is further

ORDERED that, within ten days from the date of this Order, the Department of Justice shall release to Plaintiff a copy of page 395 of the records identified in response to Plaintiff's FOIA request concerning the investigation of the death of Paul Reynolds that reveals the information that the Department has previously redacted from those records based on 5 U.S.C. § 552(b)(7)(C).

\_\_\_\_\_  
JUDGE ROSEMARY M. COLLYER  
UNITED STATES DISTRICT JUDGE



Copies to:

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## **CERTIFICATE OF SERVICE**

I, Michael E. Tankersley, hereby certify that on March 12, 2003, I caused copies of Plaintiff's Reply in Support of Motion For Summary Judgment and Opposition to Defendant's Cross-Motion for Summary Judgment to be served by delivering an electronic copy to the CM/ECF system for the District Court for the District of Columbia.

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