

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALLAN J. FAVISH,
Plaintiff-Appellant/Cross-Appellee,

v.

OFFICE OF INDEPENDENT COUNSEL,
Defendant-Appellee/Cross-Appellant,

and

SHEILA FOSTER ANTHONY; ET AL.,
Defendants-in-intervention-
Appellees/Cross-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REPLY BRIEF FOR DEFENDANT-APPELLEE/CROSS-APPELLANT

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IN THE UNITED STATES COURT OF APPEALS
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Nos. 01-55487, 01-55788, 01-55789

ALLAN J. FAVISH,
Plaintiff-Appellant/Cross-Appellee,

v.

OFFICE OF INDEPENDENT COUNSEL,
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Defendants-in-intervention-
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REPLY BRIEF FOR DEFENDANT-APPELLEE/CROSS-APPELLANT

INTRODUCTION AND SUMMARY

In our opening brief, we explained that the district court failed to engage in the balancing of the privacy interests and public interests mandated by both this Court's remand order and FOIA exemption 7(C) (5 U.S.C. § 552(b)(7)(C)). In response, plaintiff does little to defend the district court's analysis. Instead, he argues that the

privacy claim of the family is not substantial because the family failed to submit affidavits from the surviving children. The affidavits from Mr. Foster's widow and his sister speak for the entire family and establish the emotional devastation that the public disclosure of these death-scene photographs would cause to the family.

Plaintiff also argues that, because the OIC is untrustworthy, there is a paramount public interest in permitting the public to see the death-scene photographs, no matter how damaging they may be to the privacy interests of the family. As we explained in our opening brief, however, there was no countervailing public interest here that outweighs the compelling privacy interests at stake. The public interest must be viewed in light of the nexus between the item sought and the interest asserted. Here, there is no such nexus as to the photographs that the district court ordered released. As to the photographs withheld by the district court, only one shows Mr. Foster's neck (which plaintiff wants to see so that he can determine whether Judge Starr, his staff, the Medical Examiner, and all of the experts and pathologists were all lying when they said that Mr. Foster was shot through the top of his mouth and that there was no neck wound). As we explain below, the public interest in that photograph, and the other photographs, must be assessed in light of the information that has already been disclosed to the public. Here, the public interest

in disclosure of is considerably weakened by the detailed and graphic disclosures regarding almost every aspect of Mr. Foster's suicide and the investigations thereof.

In his brief in reply, plaintiff refuses to acknowledge the nexus requirement, or the significance of the existing disclosures. He also fails to appreciate that his theory of public interest not only requires this Court to find that Judge Starr's investigation and report are untrustworthy, it also presupposes the existence of a conspiracy of unprecedented proportion. While plaintiff states (Favish Reply Br. 18) that nothing he relies upon "posits an intentional cover-up by the grand array of individuals and organizations," this statement is inconsistent with the nature of his own allegations. Plaintiff claims that the death-scene and autopsy photographs do not show what the Medical Examiner and his staff, the Park Police, Independent Counsel Fiske, and Independent Counsel Starr, and their teams of experts and pathologists, all say they show. Unquestionably, plaintiff's theory requires everyone who has seen the autopsy and death scene photographs to be lying about what they show.

At bottom, this appeal comes down to one question: Do plaintiff's allegations make the massive cover-up so likely that the public's need to see these death scene photographs outweighs the need of the Foster family not to have photographs of their deceased loved one released to the public and posted on the Internet. The answer is plainly no.

In his reply brief, plaintiff also raises new claims of a coverup, about maintenance records of the Medical Examiner's x-ray machine. There is no basis for raising new claims in a reply brief. In any event, like plaintiff's other claims of coverups, this matter is addressed by Judge Starr's report, and it has no relevance to the photographs at issue.

Accordingly, we ask this Court, after examining the photographs and weighing the interests at stake, to hold that all ten photographs are exempt from disclosure.

ARGUMENT

THE DEATH-SCENE PHOTOGRAPHS SHOULD BE DEEMED EXEMPT FROM DISCLOSURE UNDER EXEMPTION 7(C).

A. This Court, Like The District Court, Should Examine The Photographs In Camera.

Plaintiff begins his reply brief by objecting to our suggestion that this Court, in reviewing the district court's ruling on remand, should also examine the photographs in camera. Plaintiff argues that he should first have an opportunity to depose former OIC staff members to ensure that the photographs are the true originals. This contention is wholly without merit.

1. The district court was ordered by this Court to examine the photographs in camera, and then to balance the relevant privacy and public interests at stake to determine whether they are exempt from disclosure under Exemption 7(C).

Accordingly, on remand, the court examined the photographs, and they should now be considered part of the record in the case. In reviewing the court's order on remand, it is evident that this Court will also be required to examine that same record. As this Court observed in the prior appeal, “[b]alancing [the interests under Exemption 7(C)] without a knowledge of what the photos show would be an exercise in the air.” Favish v. Office of Independent Counsel, 217 F.3d 1168, 1174 (9th Cir. 2000).

2. There is no basis for suggesting that this Court should delay that in camera examination of the photographs until plaintiff conducts additional discovery. As explained in our opening brief, the district court properly denied plaintiff's discovery request. Plaintiff does not dispute the fact that the discovery cut off date established by the district court was October 29, 1997. Plaintiff argues that this Court's remand was an intervening event that rendered his belated discovery request timely. In 1997, however, plaintiff was seeking the very same photographs. The same materials he now cites to question whether the photographs are the originals were known to plaintiff in 1997. Thus, the remand order does not excuse the fact that the discovery request was untimely by four years.

Moreover, as we argued in our opening brief, it was not an abuse of discretion for the district court to conclude that the discovery was not warranted. The OIC submitted the declaration of Karl Gellert, ER 555-556, who under the penalty of

perjury, attested that the photographs delivered for in camera inspection were the actual originals. ER 556. We explained in our opening brief that in a FOIA case, such a declaration is accorded a presumption of good faith, which cannot be rebutted by plaintiff's speculative claims that the photographs may not be the originals.

Attempting to treat this as a criminal proceeding, plaintiff argues that Mr. Gellert did not establish a chain of custody from the time the Polaroids were taken by the OIC. In a FOIA case, however, that is not an issue. Mr. Gellert attested to the fact the photographs provided to the district are the original Polaroids identified by plaintiff in his FOIA request. That is more than sufficient, and the district court did not abuse its discretion in relying upon that declaration. Moreover, plaintiff's suggestion that a declaration from the FBI agent who transported the photographs was required to prove that he did not tamper with the photographs is patently absurd.

Finally, plaintiff has failed to explain how the persons whom he wishes to depose, who left the employ of the Office of the Independent Counsel ("OIC") in 1995, could possibly have knowledge relevant to whether the documents shown to the court in camera are responsive to his request.

B. Plaintiff Cannot Defend The District Court's Rationale.

On remand, the district court examined the photographs to determine whether they are "graphic, explicit and extremely upsetting." In our opening brief, we

explained that the district court's analysis was directly contrary to this Court's remand order – mandating that the district court engage in the balancing of the privacy interests and public interests.

In response, plaintiff does little to defend the district court's analysis. Plaintiff states that the district court's reliance upon the “graphic, explicit and extremely upsetting” test, “while not free from doubt,” “seems” correct. Favish Reply Br. 19. Plaintiff cannot, however, explain how that standard comports with this Court's mandate or how it can be reconciled with the governing Supreme Court precedent. As we discussed in our opening brief (pp. 19-20), the Supreme Court has held that FOIA's protection of privacy interests is not limited to “highly personal” matters, but can also include mundane information such as names, addresses, and place of birth. Under FOIA, the question has always been whether there is a legitimate expectation of privacy, not whether the information revealed would be shocking or gory. Here, even if not all of the photographs are deemed to be “graphic, explicit, and extremely upsetting,” they plainly implicate the strong privacy interests of the Foster family – privacy interests of the family that this Court held are protected by Exemption (7)(C). See Favish, 217 F.3d at 1173 (the “zone of privacy” protected by the Exemption 7(C) extends to “a spouse, a parent, a child, a brother or a sister” and “preserves the memory of the deceased loved one”). Thus, the photographs must be withheld from

disclosure absent a sufficient countervailing public interest supporting their disclosure.

C. Plaintiff's Challenges To The Family's Privacy Interest Are Without Merit.

Plaintiff argues that the privacy claim of the family is not great because the family failed to submit affidavits from the surviving children. This argument has already been refuted by the reply brief filed by Sheila Foster Anthony and Lisa Foster Moody. Plainly, the affidavits from Mr. Foster's widow and his sister speak for the entire family. These powerful affidavits establish the emotional devastation that the public disclosure of these death-scene photographs would cause to the family.

Plaintiff again reasserts his argument that the privacy interests of the surviving family should not count. This argument was squarely rejected by this Court in the prior appeal, Favish, 217 F.3d at 1173, and also was rejected by the D.C. Circuit in Accuracy in Media v. National Park Service, 194 F.3d 120, 122-123 (D.C. Cir. 1999, cert. denied, 529 U.S. 1111 (2000)).¹ While plaintiff refuses to come to grips with his

¹ Plaintiff cannot avoid the fact that he is asking this Court to go into direct conflict with the D.C. Circuit's ruling in Accuracy in Media, which held these same death-scene photographs (and the autopsy photographs) are exempt from disclosure under Exemption 7(C). In his reply brief, plaintiff asserts that the death-scene photographs at issue in Accuracy in Media were not really the "same" as those at issue here because those photographs were "less detailed copies." Favish Reply Br. 16. Of course, plaintiff has not seen the photographs and is simply speculating about the level of quality and detail. In any event, the D.C. Circuit held that the photographs
(continued...)

losses on that issue, he cannot avoid this Court's ruling that the family's privacy interests are cognizable under FOIA. Accordingly, plaintiff cannot obtain the disclosure of the death-scene photographs unless the public interest can overcome the compelling privacy interests of the surviving Foster family members. It is important to remember, in this regard, that Congress in granting public access to government files through the FOIA, equally valued and sought to protect privacy rights. See Dep't of the Air Force v. Rose, 425 U.S. 352, 360 (1976) (quoting S. Rep. 89-813, 89th Cong., 1st Sess. 3 (1965) (“it is necessary to protect certain equally important rights of privacy”)).

In his reply brief, plaintiff also asserts that Mr. Foster's surviving family members have diminished privacy interests because Mr. Foster was a public official. Favish Reply Br. 9. As this Court has recognized, however, “individuals do not waive all privacy interests in information relating to them simply by taking an oath of public office.” Lissner v. U.S. Customs Service, 241 F.3d 1220, 1223 (9th Cir. 2001) (quoting Nix v. United States, 572 F.2d 998, 1006 (4th Cir. 1978)). While in some instances the privacy interests of public officials “are somewhat reduced,” id. at 1223, the surviving family members are not themselves public officials and, as this

¹ (...continued)
were exempt from disclosure because the privacy interests were paramount over plaintiff's asserted public interest in the photographs, not because the photographs were “less detailed copies.”

Court has held, Favish, 217 F.3d at 1173, they each have their own right to privacy protected under Exemption 7(C). The fact that Mr. Foster was a government official is what makes his suicide and the investigations thereof notable and of interest to the public. It does not, however, change the fact that when the surviving children, widow, mother or sister are faced with the public disclosure of the death-scene photographs they will be “horrified and devastated.” ER 529.

D. Plaintiff's Conspiracy Theories And Speculation Cannot Overcome The Family's Privacy Interests.

1. As detailed in our opening brief, plaintiff has failed to demonstrate a public interest that can trump the privacy rights of the Foster family. Plaintiff's contentions about the public interest in disclosure of the photographs all center on his claim that the OIC is untrustworthy. Although the questions he raises about the suicide investigation were all addressed at length by Judge Starr's report, plaintiff claims that the report and the underlying investigation were so flawed that the public must be able to examine all of the evidence itself so it can reassess the conclusions drawn by the Independent Counsel. Plaintiff candidly admits to this extreme position in his reply brief. See Favish Reply Br. 21-22. There he states:

to serve the public interest, the photos do not have to contain information that would solve any of the specific proven areas of deception (largely by omission) in the Fiske and Starr reports. Rather it is sufficient that the government reports have been proven to be deceptively

written so as to create the impression that the cause of death was suicide in the park. Because that threshold has been crossed, all of the government's conduct in this case is a matter of the highest public interest because the government deceived the public. This means that the public cannot trust the government to accurately report all of the material facts about the case. Therefore, the public must see the evidence itself, without it being filtered by government officials * * *.

Ibid (emphasis added).

In essence, plaintiff is asking this Court to hold that because he does not trust Judge Starr's report, the public should have the right to review all of the underlying original material relating to the investigation of the suicide. As we explained in our opening brief (pp. 39-40), however, plaintiff's desire to personally reinvestigate and reexamine all of the evidence simply does not create a warranted invasion of the privacy rights of the surviving family members. Contrary to plaintiff's view, FOIA was never intended to deputize every citizen as a private independent counsel with the unlimited right to examine and reevaluate all of the original evidence in all criminal investigations, notwithstanding the compelling privacy interest at stake, so that they can assess whether the government's conclusions were correct.

Moreover, plaintiff's theory of public interest not only requires this Court to find that Judge Starr's investigation and report are so untrustworthy that all of the evidence must be publically disclosed, it also presupposes the existence of a

conspiracy of unprecedented proportion. While plaintiff states (Favish Reply Br. 18) that nothing he relies upon “posits an intentional cover-up by the grand array of individuals and organizations,” this statement is inconsistent with the nature of his own allegations. Plaintiff claims that the death-scene and autopsy photographs do not show what the Medical Examiner and his staff, the United States Park Police, Independent Counsel Fiske, and Independent Counsel Starr, and their teams of experts and pathologists, all say they show. Unquestionably, plaintiff’s theory requires everyone who has seen the autopsy and death scene photographs to be lying about what they show. Plaintiff also posits a cover-up being perpetrated by, at a minimum, the National Park Service, the United States Park Police, the FBI, the six persons present at the autopsy (including the Deputy Chief Medical Examiner of Virginia), two Independent Counsels and their staffs, the Department of Justice, and two Presidential administrations. As the D.C. Circuit observed in Accuracy in Media v. National Park Service, 194 F.3d at 122-123, this would require a massive cover-up.

Ultimately the question is: Do plaintiff’s allegations make the massive cover-up so likely that the public’s need to see these death scene photographs outweighs the need of the Foster family not to have these photographs of their deceased loved one released to the public and posted on the Internet. The answer is plainly no.

2. As we explained in our opening brief, when governmental misconduct is alleged as the justification for disclosure, as it is here, “the public interest is ‘insubstantial’ unless the requester puts forward ‘compelling evidence that the agency denying the FOIA request is engaged in illegal activity’ and shows that the information sought ‘is necessary in order to confirm or refute that evidence.’” Davis v. U.S. Dep’t of Justice, 968 F.2d 1276, 1282 (D.C. Cir. 1992) (quoting SafeCard Servs., Inc. v. SEC, 926 F.2d 1197, 1205-1206 (D.C. Cir. 1991)). Of course, a FOIA requestor has no duty to show that “he has knowledge of misfeasance by the agency,” Favish, 217 F.3d at 1172, in order to make a FOIA request. If a requestor, as here, is attempting to bolster the weight of the public interest in disclosure by asserting that the documents are needed to disclose government wrongdoing or some form of a cover-up, however, then the requestor has some duty to support those claims. As this Court, and every court of appeals to have addressed the issue, have recognized, the assertions of government wrongdoing and cover-ups cannot tip the balance under Exemption 7(C) in favor of disclosure absent some substantial basis for the allegations. See Schiffer v. Federal Bureau of Investigation, 78 F.3d 1405, 1410 (9th Cir. 1996); Davis v. U.S. Dep’t of Justice, 968 F.2d 1276, 1282 (D.C. Cir. 1992); Neely v. FBI, 208 F.3d 461, 464 (4th Cir. 2000); Silets v. U.S. Dep’t of Justice, 945 F.2d 227, 231 (7th Cir. 1991) (en banc), cert. denied, 505 U.S. 1204 (1992).

Plaintiff is asking that this Court go into conflict with this authority and to hold that his speculations of cover-up and wrongdoing are enough to trample the privacy interests of the Foster family. This Court should decline this invitation. At bottom, speculation, such as that asserted by plaintiff, “cannot outweigh a demonstrably significant invasion of privacy.” United States Dep't of State v. Ray, 502 U.S. 164, 179 (1991).

3. Plaintiff claims he has met his burden by raising doubts about the location of the fatal wound. Under the nexus requirement, the public interest here must be assessed in relationship to the requested photographs, see Senate of the Commonwealth of Puerto Rico v. U.S. Dep't of Justice, 823 F.2d 574, 588 (D.C. Cir. 1987) (R.B. Ginsburg, J.), and not by general attacks upon the OIC's report.

Plaintiff believes that Mr. Foster may have been shot in the neck. As we explained in our opening brief, however, none of the five Polaroid photographs that the district court has ordered to be disclosed shows Mr. Foster's neck or the wound in the back of Mr. Foster's head. Thus, there is no nexus between these photographs and the asserted public interest.

Of the five photographs that the district court ordered withheld because of their graphic nature, only one clearly shows Mr. Foster's neck. As will be confirmed by this Court's in camera examination, disclosure of this photograph (or any of the other

photographs) would add nothing to the public's knowledge of this matter or the investigations thereof. As detailed in our opening brief, the public interest in disclosure of the photographs must be viewed in light of the information that has already been disclosed. To the extent that there is some public interest in information relating to the nature of Mr. Foster's fatal wounds, the material already released contains extensive detailed information in that regard. Notably, Mr. Fiske's report included the detailed autopsy report, containing graphic descriptions of the gun shot entrance and exit wounds, numerous diagrams of the wounds (including diagrams drawn during the autopsy showing the exact location of the bullet entrance and exit wounds). See ER 99-103. Judge Starr's report also detailed the nature and location of the gun shot wounds. ER 311-314 & n.70. The Starr report also discusses the fact that there were no other wounds on Mr. Foster's body. ER 314 & n.77, 345 n.188, 376. Judge Starr noted and discussed the fact that two emergency medical technicians initially were reported as saying that they saw a wound on the neck or forehead.² Judge Starr concluded, as did Mr. Fiske, that those initial observations were mistaken. ER 314-315 n.77, 345 n.188.

² As noted in our opening brief (pp. 37-38 n.7), one emergency medical technician was reported as having seen a forehead wound, but later clarified that the report was not what he meant to say and not what he remembered. The other technician who said he saw a neck wound, when shown the autopsy photos, said he must have been mistaken. ER 314-315 n.77.

In light of these detailed and graphic disclosures about the investigation, the public interest asserted by plaintiff “has been adequately served.” See U.S. Dep't of State v. Ray, 502 U.S. at 178. Nothing is added to the “public interest” by disclosing this gruesome photograph to the public.

4. Plaintiff also argues that the photographs “may help solve the mystery about the blood flow patterns.” Favish Reply Br. 30. See also id. at 28-30. The evidence regarding the drainage of blood from Mr. Foster's head, however, was already graphically detailed in Judge Starr's report. ER 345-346.

As a reason for why the public needs to actually see the photographs, plaintiffs cites the “fact” that Judge Starr's failed to tell the public that a pool of blood was found under Mr. Foster's neck. Favish Opening Br. 64. The OIC Report, however, discusses the blood by the neck and shoulder that resulted from the pooling of blood in Mr. Foster's mouth and the drainage of that blood down his chin and neck. ER 345-346 & n.189. The expert pathologists examined all of this evidence and concluded that it was all consistent with Mr. Foster having committed suicide by shooting himself through the soft palate at the top of his mouth and through the back of his head. Ibid. This expert analysis is set out in the report and provides the public with ample information on this subject. There is nothing in the photographs at issue

that is inconsistent with the experts' conclusion or with the evidence described so graphically in the OIC Report.

Plainly, disclosure of the photographs – so that the public may itself see the blood flow evidence – does not support a substantial public interest that can trump the privacy rights of the surviving family members. Accordingly, the photographs should be held exempt from disclosure under Exemption 7(C).

5. In his reply brief, plaintiff raises a new ground to support the public interest in the disclosure of the photographs. Citing the x-ray repair records, plaintiff expresses his own doubts about why an x-ray was not taken of Mr. Foster's body. Favish Reply Br. 31-34.

As an initial matter, there is no basis for raising new matters in a reply brief. Although he says that the OIC “recently released” the invoices, those records were produced on June 26, 2000³ – fifteen months ago. Thus, there is no ground to introduce new material in the reply brief.

In any event, this issue – like the other issues raised by plaintiff – has already been raised and aired by Judge Starr's Report. See ER 356-357 (OIC Report 75-76).

³ Plaintiff has attached new material (the x-ray machine repair invoice) to his reply brief that was disclosed to counsel in Accuracy in Media v. Office of Independent Counsel, No. 99-CV-3448 (D.D.C.). The letter to counsel in that case (a copy is attached as an addendum to this brief) disclosing this material is dated June 26, 2000.

The report disclosed that the x-ray machine was new in June 1993, but was not used (according to those interviewed) because it was malfunctioning. Ibid.

Plaintiff asks: "Why don't the Fiske and Star reports discuss whether other autopsies by the Virginia Medical Examiner during 1993 had any x-ray problems?" Favish Reply Br. 34. The OIC report does. On page 76 (ER 357), it quotes the administrator, Dr. Beyer, and the assistant as stating that in 1993 there were numerous problems with the x-ray machine.

More importantly to this FOIA case, the functioning or malfunctioning of the x-ray machine has nothing to do with the photographs at issue. Even if there were any public interest regarding the alleged x-ray machine conspiracy, that public interest would not be served by disclosing the death-scene photographs. The disclosure will only cause trauma for the Foster family, and will add nothing to the public interest. Accordingly, the photographs should be held exempt from disclosure.

CONCLUSION

For the foregoing reasons, and the reasons set forth in our opening brief, this Court should hold that all ten photographs are exempt from disclosure, and it should, accordingly, reverse in part and affirm in part the judgment of the district court.

Respectfully submitted,

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NOVEMBER 2001

CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Fed. R. App. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached cross-appeal brief is proportionally spaced, has a typeface of 14 points or more and contains 4,269 words (which does not exceed the applicable 7,500 word limit).

A handwritten signature in black ink, appearing to read "Robert M. Loeb", written in a cursive style.

Robert M. Loeb
Attorney

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2001, I caused the foregoing "Reply Brief for Appellee-Cross-Appellant" to be served upon the Court and upon the following counsel by Fed Ex delivery (or by hand delivery as indicated below):

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ADDENDUM



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June 26, 2000

Mr. John H. Clarke, Esq.
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Dear Mr. Clarke:

Included with this correspondence is the third and final interim release for your Freedom of Information Act (FOIA) requests dated September 3, 1999. This release consists of requests 272 through 710.

This release contains information that has been withheld from disclosure in full or in part pursuant to 5 U.S.C. §552 (b)(3), (b)(5), (b)(7)(A), (b)(7)(C), and/or (b)(7)(D). These provisions pertain to: information exempted from release by statute, in this instance Rule 6(e) of the Federal Rules of Criminal Procedure, which pertains to the secrecy of grand jury proceedings (Exemption 3); inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency (Exemption 5); records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings (Exemption 7A); records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy (Exemption 7C); and records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to disclose the identity of a confidential source (Exemption 7D). In asserting only Exemptions (b)(3), (b)(5), (b)(7)(A), (b)(7)(C) and/or (b)(7)(D) with respect to these records, this Office does not waive its right or ability to assert other relevant exemptions if the case should arise. See, e.g., Young v. CIA, 972 F.2d 536, 538-39 (4th Cir. 1992); Gula v. Meese, 699 F.Supp. 956, 959 n.2(D.D.C. 1988).

FOIA request #400 was for a copy of two cassette tapes given to this Office by the United States Park Police (USPP). One of these tapes is being withheld in its entirety as third party privacy waivers have not been provided for the individuals who appear on the tape. The second tape received from the USPP consists of one side only and has been copied for you with redactions pursuant to exemption (b)(7)(C). These redactions appear at the following points on the tape counter: 78-79; 98-103; 161-162; 176-184; 197-198; 262-264; 284-286; and 288-290. The redacted material consists of automobile tag numbers; automobile owners names and addresses; VIN numbers; and/or names of third parties who have been identified as subjects in

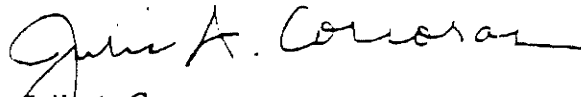
Mr. John H. Clarke, Esq.
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other investigative cases being conducted by the USPP on July 20, 1993.

As noted in our previous correspondence, there is a fee of ten cents (\$0.10) per page for duplication on any release over 100 pages. Our previous two releases to you consisted of 97 and 165 pages respectively. This final release consists of 753 pages. Also included in this release is a copy of a cassette tape. Please submit a check or money order in the amount of \$ 77.30 (\$2.00 for the cassette tape), made payable to the Treasury of the United States, for this release.

You may submit an administrative appeal for any of the exempted material by writing to Mr. Jay Apperson, Deputy Independent Counsel, Office of the Independent Counsel, 1001 Pennsylvania Avenue, N.W., Suite 490-North, Washington, D.C. 20004, within thirty (30) days of receipt of a denial. Both the letter and envelope should be clearly marked "Freedom of Information Act Appeal." In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in an appropriate United States District Court. See 5 U.S.C. § 552 (a)(4)(B).

Sincerely,


Julie A. Corcoran
Associate Independent Counsel

Enclosures