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District Of Columbia District Court

Case No. 1:23-cv-01816-BAH

**GREENSPAN v. EXECUTIVE OFFICE FOR U.S.
ATTORNEYS et al**

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AARON GREENSPAN,)	
)	
Plaintiff,)	
v.)	
)	Civil Action No. 23-1816 (BAH)
EXECUTIVE OFFICE FOR U.S. ATTORNEYS,)	
et al.,)	
Defendants.)	
)	

MOTION TO CONFIRM EXEMPTIONS

Intervenor, Bola A. Tinubu, requests that the Court confirm that the agencies responding to Plaintiff’s remaining FOIA requests can and should withhold or redact records that identify Intervenor, pursuant to Exemption 7(c) and the Privacy Act.

There are two FOIA requests to the FBI (Request No. 1588244-000 and Request No. 1593615-000) and a FOIA request to DEA (Request No. 22-00892-F) that remain after this Court’s ruling on summary judgment. The DEA provided a response prior to the August 7 status report that included redactions and withholdings, and the FBI anticipates making an interim response by December 1, 2025. (*See* DE 51 and DE 54, Status Report.)

Plaintiff, however, has sought to “compel” the DEA and FBI to produce records with Intervenor’s “name on them,” claiming that is what this Court previously ordered. Plaintiff is incorrect about this Court’s prior ruling and Plaintiff’s motion should not be granted because his requests do not further the interests of FOIA. Plaintiff’s FOIA

requests seek information about a private individual, rather than the activities of the government – as his new motion to compel repeatedly confirms. (DE 55.) The exemptions and Privacy Act should prevail here because the privacy interests of the individual outweigh Plaintiff’s interest in publicizing information about Intervenor. The records sought by Plaintiff should be found to be exempt from disclosure pursuant to exemption 7(C) and the Privacy Act. 5 U.S.C. § 552(b)(7)(C); 5 U.S.C. § 552a(b).¹

Background

Plaintiff operates a for-profit website “plainsite.org” where he posts material to generate traffic to the website. (DE 35, SAC ¶ 12.) The information Plaintiff posted about Intervenor is the most trafficked on his website, “due to public interest in Tinubu’s background.” (DE 35, SAC ¶ 11; DE 19, Opposition to Motion to Intervene, pg. 2.)

Plaintiff’s original twelve FOIA requests sought records from the DOJ, FBI, IRS, CIA, and DEA about “Bola Ahmed Tinubu and associates.” (DE 38, 39, 40, and DE 41-1, pg. 5 and 43-1 pg. 1.) For example, Plaintiff’s FOIA request to the FBI seeks: “[t]he entire FBI file for Bola Ahmed Tinubu, DOB 3/29/1952, President-Elect of Nigeria as of February 2023.” (DE 35, SAC ¶ 54; DE 35-22, SAC Exh. 22.)

¹ Counsel for Intervenor previously consulted the parties about filing a motion regarding the exemptions, but decided to defer filing pending the DEA’s response. Plaintiff stated he opposed this motion for reasons similar to those described in his motion, and the United States indicated that the motion was premature since the agencies would apply exceptions on document-by-document basis.

After initial responses, eight requests to the CIA, FBI, and DEA remained at issue. (DE 41-1, pg. 5; DE 43-1, pg. 1.) The issue with Plaintiff's eight remaining requests focused on *Glomar* responses. (DE 48.) The Court found *Glomar* responses proper as to the CIA, and improper as to the FBI and DEA. (DE 48, pg. 2.) The Court directed the FBI and DEA to "search for and process non-exempt records." (*Id.*; DE 47.)

Argument

Plaintiff's requests – seeking records about Bola Tinubu – do not fall within the scope of FOIA. The purpose of FOIA is to provide access to information on government activities, not to obtain records on individuals compiled by the government. The "disclosure of records regarding private citizens, identifiable by name, is not what the framers of FOIA had in mind." *U.S. Dept. of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 765 (1989). Nor is FOIA's purpose furthered "by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct." *Id.* at 773.

Although Plaintiff claims that the requests are about the government's activities, Plaintiff's filings demonstrate the opposite is true. Plaintiff's filings state that: "Plaintiff's FOIA requests involve Bola Tinubu, the sitting President of Nigeria. Nigeria is a nation of over 230 million people whose daily lives are directly affected by President Tinubu's decisions." (Dkt. 41-1, Memo in Support of MSJ, pg. 11; *see also* Dkt. 35, SAC ¶ 10.) According to Plaintiff, "approximately 237 million people who can claim

Nigerian ancestry” have “an acute interest in the records at issue in this action.” (Dkt. 41-1, Memo in Support of MSJ, pgs. 11-12; DE 19, Opposition to Motion, pg. 4.) The Nigerian public’s interest in an individual is not a basis for a FOIA request. *See Reporters Committee*, 489 U.S. at 773-75 (finding that general public interest in the subject of the FOIA “falls outside the ambit of the public interest that the FOIA was enacted to serve.”).

Plaintiff also explained that his FOIA’s are intended to influence internal politics in a foreign nation. Plaintiff’s emergency motion and motion to reconsider asserted that there was an “immediate need for a hearing” for expedited production of documents responsive to his FOIAs because the Supreme Court of Nigeria was set to rule on issues related to the Nigerian presidential election. (DE 17, Emergency Motion; DE 27, Motion to Reconsider.) After this Court denied Plaintiff’s emergency request, Plaintiff lamented that the Supreme Court of Nigeria issued a final judgment because “unchallenged documentary evidence that should have been released within 20 business days of Plaintiff’s FOIA request” were not available. (DE 27, Motion to Reconsider, pg. 2; *see also* DE 28 Request for Judicial Notice; DE 28-1.) Utilizing FOIA to gather information to use in Nigerian politics does not further the purpose of FOIA. *See Reporters Committee*, 489 U.S. at 774 (“FOIA’s central purpose is to ensure that the Government’s activities be opened to the sharp eye of public scrutiny, not that

information about private citizens that happens to be in the warehouse of the Government be so disclosed.”).

1. The Court Can Consider the Issue Presented in This Motion

This Court granted the motion to intervene in a November 27, 2023 email Minute Order. In that ruling, the Court found that Intervenor had a privacy interest that could be impaired “because the FOIA requests at issue pertain to information about him.” (11/27/23 Minute Order.) The Court also found that Intervenor’s interests may not be shared by the government defendants. (*Id.*)

In conferring prior to filing this motion, Plaintiff asserted that the Court already resolved the issue of whether exempt records must be produced – despite not having heard from Intervenor. This assertion overlooks the language in the Court’s ruling about “process[ing] *non-exempt*” records. (DE 47, pg. 2 and DE 48, pg. 26, emphasis added.) The Court appears to have chosen this language because the agencies can still assert exemptions to the production of records.²

Plaintiff’s misunderstands the difference between the propriety of the invocation of *Glomar* and whether an exemption to production applies. (*See* DE 48, pgs. 21-24.) The Court drew a distinction between challenging the existence of the investigation and potentially keeping the contents in the files private: “Defendants’ briefing conflates two

² Although the DEA and FBI appear to be applying the exemptions, Intervenor raises the Privacy Act and makes arguments about the nature of Plaintiff’s requests under FOIA that the United States has not yet asserted.

“distinct privacy interest[s]” that might be at play: (1) Tinubu’s interest in ‘keeping secret the *fact* that he was under investigation,’ and (2) Tinubu’s ‘privacy interest in the *contents* of [any] investigative files.’” (*Id.* pgs. 23-24.) As this Court observed, *SafeCard* and other case law “supports the second privacy interest—protecting the contents of any investigatory records through individual withholdings and redactions.” (*Id.* pg. 24.) Therefore, Intervenor submits that any privacy interests with regard to the contents of records the agencies may provide was not addressed in the prior ruling.

2. FOIA Exemptions Preclude Disclosure.

Because the records sought by Plaintiff contain information about an individual, they should be protected from disclosure. *See Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 160 (2004) (“FOIA does not apply if the requested data fall within one or more exemptions.”). Information about an individual collected by federal law enforcement is exempt from disclosure under Exemption 7(C) and the Privacy Act. *See* 5 U.S.C. § 552(b)(7)(C) (records compiled for law enforcement purposes); 5 U.S.C. § 552a(b) (“No agency shall disclose any record which is contained in a system of records . . . except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.”); *Reporters Committee*, 489 U.S. at 766-67 (describing individual’s rights under the Privacy Act); *Emanuel v. United States Dept. of Justice*, 2017 U.S. Dist. LEXIS 179294 at *9 (D.D.C. Oct. 30, 2017) (“FOIA ordinarily does

not require disclosure of law enforcement documents (or portions thereof) that contain private information”) (citation and quotations omitted).

Plaintiff previously claimed that Intervenor has no privacy interests because he is currently a political figure in another country and was previously connected with a forfeiture. Neither of those arguments completely negate Intervenor’s privacy interests.

The limited disclosure of information in the 1993 forfeiture proceeding does not negate the privacy interest about the details of a possible criminal investigation (or its results). The Supreme Court explained that an individual retains a privacy interest in an entire file or document being produced, even where there are “scattered” disclosures of information from that same file. *See Reporters Committee*, 489 U.S. at 764-67 (“our cases have recognized the privacy interests inherent in the non-disclosure of certain information even where the information may have been public at one time.”); *accord Electronic Privacy Info. Center v. United States Dept. of Justice*, 18 F.4d 712, 719 (D.C. Cir. 2021) (“Although the names of Trump campaign officials appear in public portions of the Report, they retain a privacy interest in ‘avoiding disclosure of the details of the investigation.’”) (citation omitted).

Applying *Reporter’s Committee*, this Court explained that an individual retains a privacy interest even if they were previously publicly associated with criminal activity. *Judicial Watch, Inc. v. United States Dept. of Justice*, 898 F.Supp.2d 93, 104-05 (D.D.C. 2012); *see also Electronic Privacy*, 18 F.4d at 719 (describing the fact someone was under

investigation as “distinct” from the contents of the investigative files). Plaintiff seeks information through FOIA because the details about any criminal investigation are not public. (See DE 41-1, Memo in Support of MSJ, pgs. 11-12; DE 22, Motion to Reconsider, pgs. 6-9; DE 27, Reply in Support of Motion to Reconsider, pg. 4.) Intervenor retains a privacy interest in potential disclosure of the investigative files sought by Plaintiff.

Intervenor also retains a privacy interest even if he is *currently* a public figure. Although public officials “may have a somewhat diminished privacy interest,” even they “do not surrender all rights to personal privacy when they accept a public appointment.” *Citizens for Responsibility & Ethics in Washington v. United States Dept. of Justice*, 746 F.3d 1082, 1092 (D.C. Cir. 2014) (citation omitted); *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 864 (D.C. Cir. 1981) (“This Court has already explicitly rejected the proposition that government officials, by virtue of their positions, forfeit their personal privacy for FOIA purposes.”). *Am. First Legal Found. v. FBI*, Civ. A. No. 23-2172, 2024 U.S. Dist. LEXIS 195962, at *28-30 (D.D.C. Oct. 29, 2024) (finding that cabinet secretary still retained substantial privacy interests). A current public official still retains legitimate privacy interests in the context of criminal investigations, despite public interest. *Fund for Constitutional Government*, 656 F.2d at 865-66 (holding that “the legitimate and substantial privacy interests of individuals under these circumstances cannot be overridden by a general public curiosity.”).

Moreover, there is a distinction to be drawn where the information sought in the FOIA pertains to activities long *before* the individual became a public figure. Not only does Plaintiff's FOIA requests focus on past conduct, but everything the Plaintiff seeks occurred long before Intervenor was a public official. The decisions in *Crew I* and *Am. First Legal Found* demonstrate this distinction. In *Crew I*, the Court of Appeals noted that the FOIA request sought information about an investigation into the House Majority Leader's conduct in office. 746 F.3d at 1094. In *Am. First Legal Found*, this Court indicated that there was a difference between requests for historical or past information about a cabinet secretary, and requests that involved his current agency. *Am. First Legal Found*, 2024 U.S. Dist. LEXIS 195962, at *33 (observing that historical investigative information in governmental files would not show what the government was up to during the time period the cabinet member led the agency). There is a logical difference in FOIA requests that address a public official's actions in office or during the time the person was a public official, versus those from a time the person was a private individual. For a FOIA request seeking records in the latter category, the person's privacy interests should remain intact.

As Plaintiff concedes, Intervenor was a student in 1993 and not a public official. The Intervenor's subsequent involvement in *foreign* politics, three decades later, should not diminish his privacy interests in records about the past that the government may

possess. Moreover, Plaintiff's focus on what *the Intervenor* "was up to" in 1993 demonstrates the absence of a legitimate purpose for the FOIA requests.

3. There Is No Public Interest In Disclosure.

Because the Privacy Act and Exemption 7(C) apply, Plaintiff must show a significant public interest furthered by FOIA, more than "having the information for its own sake." *Favish*, 541 U.S. at 172. Plaintiff would also need to demonstrate that the information sought is likely to advance that interest. *Id.* at 173 (requiring a "nexus" between the public interest furthered by FOIA and the information requested). Plaintiff's requests do not advance a recognized public interest, such as seeing "what the government was up to." Interest in criminal records of individuals is generally not a public interest. *See Reporters Committee*, 489 U.S. at 774 ("although there is undoubtedly some public interest in anyone's criminal history . . . FOIA's central purpose is to ensure that the *Government's* activities be opened to the sharp eye of public scrutiny, not that the information about *private citizens* that happens to be in the warehouse of the Government be so disclosed.") (emphasis in original); *Piper v. United States Dept. of Justice*, 374 F.Supp.2d 73, 79 (D.D.C. 2005) ("On the other hand, there is generally no public interest in the disclosure of such information [about individuals mentioned in investigatory files] because this information sheds no light on an agency's performance of its duties.").

Plaintiff has not identified a public interest that his FOIAs further, nor has he explained how the FOIAs further that interest. Because Plaintiff has not identified a *public interest*, the Court need not balance the public interests with the privacy interests. *Emanuel v. United States Dept. of Justice*, Civil Action No. 17-63, 2017 U.S. Dist. LEXIS 179294 at *9 (D.D.C. Oct. 30, 2017).

The purpose of Plaintiff's FOIAs is to gather information about Intervenor and post that on his website. (See DE 19, Opposition to Motion, pg. 2; *see also supra* pg. 2.) Congress did not intend for FOIA to transform the federal government into a repository for information to distribute on the internet. *See Reporters Committee*, 489 U.S. at 773 ("In this case – and presumably in the typical case in which one private citizen is seeking information about another – the requestor does not intend to discover anything about the conduct of the agency that has possession of the requested records.").

In addition, the type of information Plaintiff seeks, about the activities of a private individual, are "simply not very probative of an agency's behavior or performance." *Schrecker v. United States Dept. of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (observing that the court previously "rejected similar claims in the past because the type of information sought") (citation and quotations omitted). There is no legitimate public interest in the records sought by Plaintiff.

4. There Is No Evidence Supporting Plaintiff's Conspiracy Theory.

Plaintiff previously sought to justify the FOIAs by speculating that there was some hidden criminal prosecution (or secret agreement not to prosecute). Plaintiff's current motion similarly implies some nefarious intent in not complying with his demands. Plaintiff's speculation does not provide a basis for the FOIAs either.

Information about a "decision not to prosecute a person, standing alone, does very little to 'shed[] light on the agency's performance of its statutory duties.'" *Judicial Watch*, 898 F.Supp.2d at 106-07 (citation omitted). And, "[o]n the other side of the scale, revealing that an individual was formally considered for criminal prosecution 'represents a significant intrusion on that individual's privacy.'" *Id.* (citation omitted).

Plaintiff's use of FOIA to look for "skeletons" in the closet of an individual is not a public interest. (DE 41-1, Memo in Support of MSJ, pg. 12); *Reporter's Committee*, 489 U.S. at 780 (holding that using FOIA to seek information about individuals in government records represents an "'unwarranted'" invasion of privacy)

Moreover, the speculation that the government may have some ulterior motive, or there may be some conspiracy, is unsupported. (DE 41-1, Memo in Support of Summary Judgment, pgs. 3, 12.) Unsubstantiated allegations are insufficient to justify a request for information about an individual. *Favish*, 541 U.S. at 173-74 ("the requestor must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred."); *Schrecker*, 349 F.3d at 661 ("In

Safecard Services, Inc. v. SEC we adopted a categorical rule permitting an agency to withhold information identifying private citizens mentioned in law enforcement records, unless the disclosure is ‘necessary in order to confirm or refute compelling evidence that the agency is engaged in illegal activity.’’); *Blackwell v. FBI*, 646 F.3d 37, 41 (D.C. Cir. 2011) (“To obtain private information under the *Favish* test, the requester must at a minimum ‘produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.’”).

Plaintiff has not provided evidence to support his speculation and to trigger the balancing of public interests against private interests. *Boyd v. Crim. Div. of the United States Dept. of Justice*, 475 F.3d 381, 387-88 (D.C. Cir. 2007) (explaining that “[u]nsubstantiated assertions of government wrongdoing . . . do not establish ‘a meaningful evidentiary showing.’”) (citation omitted).

Conclusion

For all the foregoing reasons, Intervenor requests that the Court confirm that the FBI and DEA can and should withhold or redact materials discussing or identifying him prior to producing any records, pursuant to exemption 7(C) and the Privacy Act. Intervenor also requests that the Court grant such other and further relief as deemed appropriate under the circumstances.

Respectfully submitted,

INTERVENOR BOLA AHMED TINUBU,

By: /s/Christopher Carmichael

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CERTIFICATE OF SERVICE

The undersigned certifies that on **September 4, 2025**, the foregoing **Motion to Confirm Exemptions** was electronically filed with the Clerk of the United States District Court for the District of Columbia by filing through the CM/ECF system, which served a copy of the foregoing upon all counsel of record.

By: /s/ Christopher Carmichael