

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

PHILIP EIL,)	
Plaintiff,)	
v.)	C.A. No. 15-99M
)	
U.S. DRUG ENFORCEMENT)	
ADMINISTRATION,)	
Defendant.)	

DEFENDANT'S STATEMENT

Pursuant to the Court's Telephonic Rule 16(b) Scheduling Conference Notice, the defendant, U.S. Drug Enforcement Administration, submits this summary of the facts of the case and the legal issues that may arise.

In this action, Claimant Eil seeks disclosure under the Freedom of Information Act of exhibits that the government introduced during the 2011 criminal trial of Dr. Paul Volkman in the United States District Court for the Southern District of Ohio. A significant portion of these exhibits consists of patient medical records and other similar materials containing highly personal information about Volkman's victims.

There is no dispute that the DEA's collection of materials responsive to the FOIA request has been appropriate, and therefore, the sole issue is whether or not, as a matter of law, the patient medical records and related materials can be properly withheld or redacted. The DEA submits that these exhibits are not subject to disclosure because they fall within two enumerated FOIA exemptions – Exemption 6, pertaining to medical records; and Exemption 7(C), pertaining to law enforcement records. The limited disclosure of this information at trial did not extinguish the privacy rights of the third parties involved, i.e. Volkman's patients, and release of these records now would constitute an impermissible invasion of their personal privacy, which would expose their medical histories.

I. BACKGROUND

In 2011, Dr. Paul Volkman was convicted of unlawfully distributing and conspiring to distribute oxycodone and of operating several drug-involved premises. During the trial, the United States introduced approximately 15,000 pages of exhibits. As set forth in the trial court's exhibit list (attached to the FOIA

complaint), these exhibits include numerous patient medical records, toxicology reports, autopsy reports, and other sensitive material. (See, e.g., GX 84-88 (medical records), GX-44C and GX-66C (toxicology reports); and GX-40 B and GX-56B (autopsy reports).

In February 2012, Claimant Eil submitted a FOIA request to EOUSA, seeking copies of all of the government exhibits that were admitted at trial. Subsequently, the district court in Ohio and the court of appeals each denied Claimant Eil's separate requests for these exhibits. (See Compl. at ¶¶ 12 and 14.)

Between May 2013 and February 2015, the DEA made nine partial disclosures of records to Claimant Eil in response to his FOIA request.

On April 22, 2015, the claimant filed the FOIA complaint in this case. Claimant and the DEA subsequently agreed to several extensions of time for the DEA to answer the complaint, during which the DEA re-examined the records at issue. On July 29, 2015, the DEA produced 2033 pages of exhibits and advised claimant that it was withholding 6016 pages. Among other things, the DEA explained that redactions were made to remove identifying information of third parties, such as names, social security numbers, addresses, telephone numbers, and dates of birth. The DEA further explained why certain exhibits were withheld:

There are certain exhibits . . . that contain the medical records of an individual who is named in the transcript of the trial . . . such that the individual is associated with the specific exhibit number. These exhibits consist entirely of the individual's medical records. In these instances, redactions cannot protect the privacy interests of the individual.

On August 31, 2015, the DEA produced another 1780 pages of exhibits and withheld 4927 pages.

II. ISSUES

Summary judgment is the preferred procedural vehicle for resolving FOIA disputes, Bloomberg L.P. v. Bd. of Governors of Fed. Reserve Sys., 649 F.Supp.2d 262, 271 (S.D.N.Y.2009), because FOIA disputes generally "involve purely legal inquiries, and resolution of those inquiries is not contingent on resolution of any factual disputes." Nat'l Immigration Project of the Nat'l Lawyers Guild v. Dep't of Homeland Security, 868 F.Supp.2d 284, 290 (S.D.N.Y.2012). Therefore, Summary judgment in a FOIA case may be based

solely on information provided in an agency's supporting declarations if they are "relatively detailed and nonconclusory" Safecard Servs., Inc. v. SEC, 926 F.2d 1197, 1200 (D.C.Cir.1991).

In the FOIA context, "courts have repeatedly held that medical records are exempt from disclosure because '[t]he privacy interest in [medical records] is well recognized'" Prison Legal News v. Lappin, 780 F. Supp.2d 29, 41 (D.D.C. 2011). Moreover, Claimant Eil has not articulated a significant public interest that would be advanced through the disclosure of the medical records that he now seeks.

Therefore, the United States anticipates that Claimant's principal argument will be that the otherwise applicable FOIA exemptions have been waived because the exhibits were in the "public domain." First, the presentation of exhibits by the government at trial cannot constitute a waiver of the privacy rights of the third-party patients who were caught up in Volkman's illegal scheme. Second, even if there were some form of waiver, the limited disclosure of otherwise protected information at trial does not permanently vitiate an individual's privacy rights under the relevant FOIA exemptions. U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press, 489 U.S. 749, 763-70 (1989) (recognizing that privacy interests are not necessarily extinguished by previous limited public disclosures).

Based on the foregoing, in the interest of efficiency, the DEA proposes a bifurcated approach to summary judgment in which the parties first address the issue of whether or not FOIA's privacy protections remain viable here. If the Court concludes that the FOIA exemptions are available, then the parties can address the propriety of the DEA's invocation of those exemptions as to the various categories of personal information that have been withheld.

Respectfully submitted,

U.S. Drug Enforcement Administration

By Its Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2015, I electronically filed the within Defendant's Statement with the Clerk of the United States District Court for the District of Rhode Island using the CM/ECF System. The following participant has received notice electronically:

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