

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
JASON MOUNT,)	
)	
	Plaintiff,)	
)	
v.)	Civil Action No. 16-2532 (CRC)
)	
UNITED STATES DEPARTMENT)	
OF HOMELAND SECURITY and)	
JOHN F. KELLY, Secretary of Homeland)	
Security,)	
)	
	Defendants.)	
_____)	

**REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S CROSS-MOTION
FOR SUMMARY JUDGMENT**

Plaintiff, Mr. Jason Mount (hereinafter “Mr. Mount” or “Plaintiff”), submits this Reply Memorandum of Law in Support of the Cross-Motion for Summary Judgment submitted on April 28, 2017.

I. INTRODUCTION

The Defendants have failed to justify their decision to withhold the records pertaining to an alleged investigation. Further, the Defendants have failed to set forth enough evidence to show that their *Glomar* response was justified. Specifically, the affidavits submitted on behalf of the Defendants merely cite portions of case law and statutory language without any application to the facts. *See* ECF Doc. No. 7-2 (“Parnes Decl.”) at ¶¶14-16.

In order for the Court to make a proper determination the documents should be produced for *In Camera* review with a *Vaughn* index. Additionally, the Plaintiff requests that the Court

should order the production of the documents if it finds that redactions would mitigate any privacy concerns.

II. ARGUMENT

A. Case Law Compels A Review Of Foia Exemption 7(C) Using Review Standards Established In Non-Glomer Cases

The Defendants' rely heavily on *Wolf* to support their argument that disclosing the very existence of these documents would contravene Exemption 7(C). *See* ECF. Doc. No. 9 ("Reply in Support of Motion for Summary Judgment"). *Wolf* states that in order to determine "whether the existence of agency records vel non fits a FOIA exemption, courts apply the general exemption review standards established in non-Glomer cases." *Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007). Therefore, for a Court to determine that a FOIA exemption applies consequently making a *Glomar* response appropriate, the Court would first apply case law pertaining to the relevant exemption. Here, in conformity with the D.C. Circuit's ruling in *Wolf*, the Court should apply FOIA exemption 7(C) case law. It would be difficult for the Court to make such an analysis without viewing the relevant documents.

Further, the Defendants' affidavits fail to establish that FOIA exemption 7(C) is applicable. As stated in Plaintiffs' Opposition and Cross-Motion, the Parnes declaration recites portions of case law without stating why Plaintiff's request would apply to that case law, it is merely a recitation of the law and an attack on Mr. Mount's appeal. *See* ECF Doc. No. 7-2 ("Parnes Decl.") at ¶ 14-16; *see also* ECF Doc. No. 8-3 ("Mem. Points and Auth. Supp. Plt.'s Opp."). Therefore, the Defendants have not met their burden to avoid *In Camera* review as outlined in *Hayden*. *Hayden v. Nat'l Sec. Agency/Cent. Sec. Service*. 608 F.2d 1381, 1386-1387 (D.C. Cir. 1979). Consequently, as stated above, the Court should proceed to an *In Camera*

review in light of FOIA Exemption 7(C) case law, an analysis of such case law was addressed in Plaintiff's Cross-Motion. *See* ECF Doc. No. 8-3 ("Mem. Points and Auth. Supp. Plt.'s Opp.").

Finally, even if the agency can establish "an exemption, it must still disclose all reasonably segregable, nonexempt portions of the requested record." *Roth v. United States Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). In *Roth*, the FBI responded to a plaintiff's FOIA requests with a *Glomar* response. *Roth*, 642 F.3d at 1172-1173. The Court ultimately found that even though the FBI had established exemptions, "fuller disclosure" was necessary after an analysis of Exemption 7(C) case law. *Id.* at 1184. Therefore, even if the Defendants' can successfully argue for exemptions with regard to certain material, they would still need to produce nonexempt portions of the requested record.

CONCLUSION

For the reasons set forth herein, Plaintiff requests that his Cross-Motion for Summary Judgment be granted and the Court should order the Defendants' to, at the minimum, perform a lawful search and order the Defendants to provide records to the Court for *In Camera* review with a *Vaughn* index. A proposed order is attached.

Dated: July 5, 2017

Respectfully submitted,

/s/
Morris E. Fischer, Esq. Bar No. 490369
Morris E. Fischer, LLC
1400 Spring Street, Suite 350
Telephone: (301) 328-7631
Facsimile: (301) 328-7638
morris@mfischerlaw.com
Attorney for Plaintiff

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

<hr/>)	
JASON MOUNT,)	
)	
	Plaintiff,)	
)	
v.)	Civil Action No. 16-2532 (CRC)
)	
UNITED STATES DEPARTMENT)	
OF HOMELAND SECURITY and)	
JOHN F. KELLY, Secretary of Homeland)	
Security,)	
)	
	Defendants.)	
<hr/>)	

ORDER

Upon consideration of Defendants’ Motion for Summary Judgment, Plaintiff’s Opposition thereto, the Defendants’ Reply in Support of its Motion for Summary Judgment, and Plaintiff’s Reply Memorandum of Law in Support of its Cross-Motion, and the entire record herein, it is hereby **ORDERED** that Defendants’ Motion for Summary Judgment is **DENIED**, and the Plaintiff’s Cross-Motion for Summary Judgment is **GRANTED**. It is further ordered that the Defendants produce documents for the Court’s *In Camera* review with a *Vaughn* index.

It is **SO ORDERED** this ____ day of _____, 201__.

UNITED STATES DISTRICT JUDGE