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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of February two thousand seven.

PRESENT:

HON. AMALYA L. KEARSE,
HON. JOSEPH M. McLAUGHLIN,
HON. CHESTER J. STRAUB,
Circuit Judges.

Leonard Peltier,
Plaintiff-Appellant,

-v.-

No. 06-1405-cv

Federal Bureau of Investigation,
Defendant-Appellee.

FOR PLAINTIFF-APPELLANT: Michael Kuzma, Buffalo, New York 14206

FOR DEFENDANT-APPELLEE: H. Thomas Byron III (Peter D. Keisler, on-the-brief),
Department of Justice, Washington D.C. 20530-0001

1 AFTER ARGUMENT AND UPON DUE CONSIDERATION IT IS HEREBY
2 ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is
3 AFFIRMED.

4 Leonard Peltier is currently serving two life sentences in federal prison in Lewisburg,
5 Pennsylvania, for, inter alia, the June 1975 murders of two FBI agents on the Pine Ridge Indian
6 Reservation in South Dakota. In November 2002, Peltier sent a Freedom of Information Act
7 (“FOIA”) request to the FBI’s Buffalo, New York field office, through which he sought
8 disclosure of records related to his arrest and prosecution.

9 In December 2003, Peltier brought this suit in the W.D.N.Y. (Skretny, J.) under FOIA to
10 compel production of any documents responsive to his November 2002 request. Shortly
11 thereafter, the FBI released 614 pages, but redacted portions of 183 pages and 15 entire pages,
12 relying on FOIA’s statutory exemptions. 5 U.S.C. § 552(b).

13 In July 2004, the FBI moved for summary judgment. In support of its motion, the FBI
14 explained its withholdings as follows: (1) under Exemption 1, which protects national security
15 information, the FBI withheld information classified as “secret” or “confidential”; (2) under
16 Exemption 3 and Fed. R. Crim. P. 6(e), which together protect grand jury materials, the FBI
17 withheld grand jury subpoenas, information identifying grand jury witnesses, information
18 identifying records subpoenaed by the grand jury, and the dates of grand jury testimony; (3)
19 under Exemption 7(C), which protects personal privacy interests that may be threatened by the
20 release of law enforcement documents, the FBI withheld names of individuals who were of
21 investigative interest to the FBI, third party rap sheets, and the names of third parties merely
22 mentioned in the responsive records; and (4) under Exemption 7(D), the FBI withheld material
23 provided by individuals and law enforcement agencies granted express and implied assurances of
24 confidentiality.

25 In February 2006, the district court granted the FBI summary judgment. We assume the
26 parties’ familiarity with all other relevant facts and the procedural history of the case, and agree
27 with the district court.

28 The district court held FOIA Exemption 1 applicable because the disclosure of the
29 information withheld would breach express promises of confidentiality made to a foreign
30 government, on which the provision of the information was expressly contingent. Disclosure
31 would also reveal an intelligence relationship and could threaten the flow of information between
32 the governments. The district court held FOIA Exemption 3 applicable because the information
33 withheld falls squarely within the framework of records protected by Exemption 3 and Rule 6(e).
34 The district court held FOIA Exemption 7(C) applicable because all of the information withheld
35 consisted of law enforcement records, the disclosure of which “could reasonably be expected to
36 constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). We also note
37 that disclosure of personal information about cooperating witnesses and other third parties
38 advances no cognizable public interest under FOIA. See, e.g., DOJ v. Reporters Comm. for
39 Freedom of the Press, 489 U.S. 749, 773 (1989). Finally, the district court held that FOIA
40 Exemption 7(D) was applicable because the information withheld thereunder “could reasonably
41 be expected to disclose the identity of a confidential source,” and was “information furnished by
42 a confidential source.” 5 U.S.C. § 552(b)(7)(D).

43
44 We AFFIRM for the same reasons relied upon by the district court.

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FOR THE COURT:
Thomas Asreen, Acting Clerk

By: _____