

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2575
Conference Calendar

RANDALL EUGENE ROLLINS and
CHRISTINA LEE ROLLINS,

Plaintiffs-Appellants,

versus

UNITED STATES DEPARTMENT
OF JUSTICE ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-90-3170
- - - - -
October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

The Rollinses contend that the district court erred in granting summary judgment without conducting an in camera inspection of documents withheld by the Department of Justice (DOJ) and the Department of the Treasury (DOT), asserting that an adequate factual basis was lacking. They are mistaken and the

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court's grant of summary judgment in favor of the defendants is AFFIRMED.

The Freedom of Information Act (FOIA) mandates that Government agencies make available to the public their records, and embodies a general philosophy of full disclosure by the agency. Halloran v. Veterans Admin., 874 F.2d 315, 318 (5th Cir. 1986). An agency has the burden of proving that particular documents are exempt from disclosure. Sharyland Water Supply Corp. v. Block, 755 F.2d 397, 398 (5th Cir.), cert. denied, 471 U.S. 1137 (1985). When an agency asserts that documents or portions thereof are exempt from disclosure, a district court conducts a de novo review to ascertain whether the claimed exemptions apply. 5 U.S.C. § 552(a)(4)(B). The district court may conduct an in camera review of the challenged documents but is not required to do so. Id.; see also NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 224, 98 S.Ct. 2311, 57 L.Ed.2d 159 (1978). Contrary to the plaintiffs' assertion, the district court was not required to conduct an in camera inspection.

Additionally, a sufficient factual predicate for summary judgment was provided by DOT and DOJ and was not challenged in the plaintiffs' response. Both DOJ and DOT described, in detail, the nature of the withheld documents. Those declarations identified which exemption or exemptions applied and explained why the information was exempted. The declarations and exemptions were not challenged by the plaintiffs. Thus, they did not meet their burden of establishing a genuine issue of material fact sufficient to withstand summary judgment.

The plaintiffs also contend that they should have been allowed to participate in the in camera inspection of documents submitted by the IRS, and that they should have had an opportunity to review the documents withheld by DOJ and DOT. This contention is facially frivolous and flies in the face of rational thought. It defies common sense and defeats the purpose of an in camera inspection to allow individuals who seek disclosure of certain documents to view those documents prior to a determination of whether the documents are exempt from disclosure. See United States v. Orozco, 982 F.2d 152, 155-56 (5th Cir. 1993). It would be ludicrous to allow an FOIA requester to view documents which an agency asserts are exempt from disclosure prior to a district court's de novo review of the documents. Once disclosed, the confidentiality and protection afforded by FOIA exemptions would be lost. Furthermore, the district court may determine that the materials are not disclosable.

Plaintiffs cite Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974) as authority for their position that they should have been allowed to participate in the in camera inspection. Vaughn is not persuasive authority for this Court. Additionally, Vaughn does not stand for proposition for which plaintiff cite it.

Plaintiffs also assert that Cooper v. Department of the Navy, 558 F.2d 274, modified, 594 F.2d 484, (5th Cir.), cert. denied, 444 U.S. 926 (1979) requires an in camera review. Cooper involved a safety report and a primarily factual investigative

report, the non-factual portions of which the defendant sought to withhold under exemption 5 of the FOIA, § 552(b), so as to protect its consultative and deliberative process. Cooper, 558 F.2d at 276-278. In the Rollinses' case, the documents which had been withheld were withheld for attorney-client and work-product privileges as well as various statutory exemptions, and there has been no showing that the items concern a factual report. In fact, the declarations filed by the defendants indicate to the contrary. Cooper is inapplicable.