

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40237
Summary Calendar

LYNN MURPHY CREEL,

Plaintiff-Appellant,

versus

DEPARTMENT OF STATE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
from the Eastern District of Texas
(6:92-CV-559 c/w 6:92-CV-560)

(December 5, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

By EDITH H. JONES, Circuit Judge:*

Appellant Lynn Creel, a Texas prisoner serving a life sentence for capital murder, commenced separate actions against the United States Department of State and Department of Health and Human Services ("HHS") requesting certain documents regarding the man he was convicted of murdering pursuant to the Freedom of Information Act. Those actions were consolidated in district court and referred to a magistrate judge.

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

During the pendency of the action, the State Department produced various responsive documents, some with portions redacted, and advised Creel of the procedures for administrative appeals. The district court then adopted the Magistrate's Report and Recommendation granting the State Department's Motion for Summary Judgment. Also while the action was pending, HHS produced responsive documents while withholding some information it claimed was attorney work product protected from disclosure. The district court adopted the Magistrate's Report and Recommendation dismissing Creel's action because the request had been satisfied. The Magistrate found that the documents that had been withheld were exempt from release.

Creel argues first that the district court erred by not finding that the State Department failed to comply with relevant time constraints. An agency's release of records in response to a request renders moot a challenge to the timeliness of the response. Voinche v. FBI, 999 F.2d 962, 963 (5th Cir. 1993).

Creel also challenges the district court's factual basis for the rulings that the documents withheld by HHS were exempt from disclosure. The court reviews the trial court's FOIA decision "to determine whether the trial court had an adequate factual basis, and, if so, whether the decision it reached was clearly erroneous." Villanueva v. Dep't of Justice, 782 F.2d 528, 530 (5th Cir. 1986). The record contains adequate factual basis for the district court's decision placing the contested documents within the protective shield of the work product doctrine.

Finding no error in the lower court's rulings, the judgments of the district court dismissing the action against HHS and granting summary judgment to the State Department are **AFFIRMED**.