

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

_____)	
RAYMING CHANG, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Civil Action No. 02-2010 (EGS/AK)
UNITED STATES, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

MEMORANDUM ORDER

Pending before the Court are Plaintiffs’ Renewed Motion to Compel the Production of Materials Withheld by the District of Columbia (“Motion to Compel District documents”) [434], Defendants’ Opposition [444], Plaintiffs’ Reply [448], Plaintiffs’ Motion to Compel the Production of Federal Bureau of Investigation (“FBI”) Materials Withheld by the United States (“Motion to Compel FBI documents”) [449], Non-Party FBI’s Opposition [457], and Plaintiffs’ Reply [461].

I. Procedural Background

Plaintiffs filed their Motion to Compel District documents on March 9, 2009, and their Motion to Compel FBI documents on April 2, 2009. The District of Columbia (the “District”) filed its opposition on March 24, 2009, and the Federal Bureau of Investigation filed its opposition on April 22, 2009, each asserting law enforcement privilege and deliberative process privilege with respect to the documents requested by Plaintiffs. Plaintiffs replied to the District of Columbia on March 31, 2009, and to the FBI on May 1, 2009. By Memorandum Order [465],

dated May 27, 2009, the trial court ordered the District and the FBI to produce to the Court in unredacted form, documents identified in Exhibit H to Plaintiffs' Motion to Compel District documents and documents identified in Exhibit B to Plaintiffs' Motion to Compel FBI documents for an *in camera* review to determine the applicability of privileges asserted by the District and the FBI. This case was referred to the undersigned for an *in camera* review of the documents produced pursuant to the trial court's May 27, 2009 Order and in connection with Plaintiffs' motions to compel against the District of Columbia and the FBI to determine whether any documents should be produced to the *Chang* Plaintiffs. The contested documents were subsequently produced, and the Court has completed its *in camera* review.

II. Case Background

This case arises from events occurring on September 27, 2002, when approximately 3,000 to 5,000 people demonstrated in the District of Columbia against the policies of the World Bank, the International Monetary Fund, and the United States Government. (Pl. Am. Compl. ¶¶ 43, 46.) Plaintiffs, seven students from George Washington University, were arrested at or near a demonstration taking place in General John Pershing Park, located on Pennsylvania Avenue, N.W., between 14th and 15th Streets, N.W. (Pl. Am. Compl. ¶¶ 76-82.) Plaintiffs filed suit against the United States, the District of Columbia, the National Park Service, and officers of the Park Police and Metropolitan Police Department, alleging violations of their Constitutional rights, Conspiracy, Neglect to Prevent Conspiracy, False Arrest, and False Imprisonment. (Pl. Am. Compl. at 28-37.)

III. Legal Standard

The Federal Rules of Civil Procedure authorize discovery "regarding any non-privileged

matter, that is relevant to any party's claim or defense." FED. R. CIV. P. 26(b)(1). "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* The law enforcement privilege exists to "prevent disclosure of information that would be contrary to the public interest in the effective functioning of law enforcement." *Tuite v. Henry*, 181 F.R.D. 175, 176 (D.D.C. 1998). Specifically, the privilege serves to preserve the integrity of law enforcement techniques and confidential sources, protect witnesses and law enforcement personnel, protect the privacy of individuals under investigation, and prevent interference with ongoing investigations. *Id.* at 176-77.

The party claiming privilege has the burden of proving that the privilege protects specific documents from disclosure. *Alexander v. Fed. Bureau of Investigation*, 186 F.R.D. 154, 166 (D.D.C. 1999). To invoke the privilege, a party must provide: "(1) a formal claim of privilege by the 'head of department' having control over the requested information; (2) [an] assertion of the privilege based on actual personal consideration by that official; and (3) a detailed specification of the information for which the privilege is claimed, with an explanation why it properly falls within the scope of the privilege." *Landry v. Fed. Deposit Ins. Corp.*, 204 F.3d 1125, 1135 (D.C. Cir. 2000). The explanation of the privilege must be sufficiently specific to allow a plaintiff to reasonably assess the legitimacy of the asserted privilege. *Lundy v. Interfirst Corp.*, 105 F.R.D. 499, 504 (D.D.C. 1985).

The law enforcement privilege is qualified, not absolute. *Friedman v. Bache Halsey Stuart Shields, Inc.*, 738 F.2d 1336, 1342 (D.C. Cir. 1984). In determining whether a party has properly invoked the law enforcement privilege, the court weighs the public interest in nondisclosure against the need of a particular litigant to access the privileged information. *In re*

Sealed Case, 856 F.2d 268, 272 (D.C. Cir. 1988). Courts look to the following non-exhaustive set of factors when conducting this balancing test:

(1) the extent to which disclosure will thwart government processes by discouraging citizens from giving the government information; (2) the impact upon persons who have given information of having their identities disclosed; (3) the degree to which governmental self-evaluation and consequent program improvement will be chilled by disclosure; (4) whether the information sought is factual data or evaluative summary; (5) whether the party seeking discovery is an actual or potential defendant in any criminal proceeding either pending or reasonably likely to follow from the incident in question; (6) whether the police investigation has been completed; (7) whether any interdepartmental disciplinary proceedings have arisen or may arise from the investigation; (8) whether the plaintiff's suit is non-frivolous and brought in good faith; (9) whether the information sought is available through other discovery or from other sources; (10) the importance of the information sought to the plaintiff's case.

Id.

IV. In Camera Review

The District of Columbia and the FBI each produced to the Court a set of documents for *in camera* review pursuant to the trial court's May 27, 2009 Order. Both the District and the FBI assert law enforcement privilege with respect to these documents. In reviewing the documents submitted by the District of Columbia and the FBI this Court carefully weighed the factors identified by *Friedman, supra.* in balancing the public interest in nondisclosure against the needs of the Plaintiffs to access the information, and concluded that seven of the submitted documents should be produced to the Plaintiffs. This Court also found that the claim of law enforcement privilege with respect to those documents is at best marginal. This Court has determined which documents the District and FBI may withhold and which documents must be produced to the *Chang* Plaintiffs.

The Court's ruling regarding each document is listed in Appendices I and II.

Accordingly, it is on this 5th day of November, 2009,

ORDERED, that Plaintiffs' Motion to Compel the Production of Materials Withheld by the District of Columbia [434] is granted in part, and denied in part, and it is further,

ORDERED, that Plaintiffs' Motion to Compel the Production of Federal Bureau of Investigation Materials Withheld by the United States [449] is granted in part, and denied in part, and it is further,

ORDERED, that within [10] business days of this Memorandum Order, the District and FBI produce to the Plaintiffs the documents outlined in Appendices 1 and II.

_____/s/_____
ALAN KAY
UNITED STATES MAGISTRATE JUDGE

APPENDIX 1

Raymond Chang, et. al. v. United States, Civil Action No. 02-2010
Defendant District of Columbia Documents

Document Number	Ruling
DC-00226	Law Enforcement Privilege
DC-00335-37	Law Enforcement Privilege
DC-01782-83	Law Enforcement Privilege
DC-02703	Law Enforcement Privilege
DC-02705-07	Law Enforcement Privilege
DC-03162-63	Must produce
DC-03168	Must produce
DC-03171	Must produce
DC-03174	Law Enforcement Privilege
DC-03179-80	Law Enforcement Privilege
DC-03184	Law Enforcement Privilege
DC-03189	Law Enforcement Privilege
DC-03194	Law Enforcement Privilege
DC-03199	Law Enforcement Privilege
DC-03204	Law Enforcement Privilege
DC-03220-22	Law Enforcement Privilege
DC-03227-3234	Law Enforcement Privilege
DC-03235-36	Must produce
DC-03247-48	Law Enforcement Privilege
DC-03250	Law Enforcement Privilege
DC-03261-62	Law Enforcement Privilege
DC-03321	Must produce

DC-05570-71	Law Enforcement Privilege
DC-08389	Irrelevant

APPENDIX II

Raymond Chang, et. al. v. United States, Civil Action No. 02-2010
FBI Documents

Document Number	Ruling
FBI-00389-390	Law Enforcement Privilege
FBI-00497	Law Enforcement Privilege
FBI-00793	Law Enforcement Privilege
FBI-00849	Law Enforcement Privilege
FBI-00859	Law Enforcement Privilege
FBI-00920	Must produce
FBI-00932	Law Enforcement Privilege
FBI-00960-63	Law Enforcement Privilege
FBI-01012	Law Enforcement Privilege
FBI-01534-39	Law Enforcement Privilege
FBI-01540	Must produce
FBI-01541-51	Law Enforcement Privilege