NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 17, 2025*
Decided July 17, 2025

Before

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-2619

JOEL A. BRODSKY,
Plaintiff-Appellant,

v.

FEDERAL BUREAU OF INVESTIGATION,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:22-cv-06462

Sharon Johnson Coleman,
Judge.

O R D E R

Joel Brodsky, a former lawyer, appeals the grant of summary judgment rejecting his effort to obtain documents withheld or redacted by the FBI under the Freedom of Information Act's (FOIA) exemptions. *See* 5 U.S.C. § 522. We affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

In October 2020, Brodsky submitted a FOIA request to the FBI seeking all records concerning his work as a confidential informant from January 1, 2000, to October 11, 2020. He stated that he was an informant for two investigations: one into corruption in the Domestic Relations Division of the Circuit Court of Cook County, Illinois and the second into the murder of a member of an organized crime outfit in Chicago, Illinois. In emails to the FBI, he stated that he needed confirmation that he was a confidential informant for two unrelated cases.

The FBI eventually identified a total of 564 pages of responsive records, releasing to Brodsky 14 pages in full, 84 pages in part, and withholding 466 pages in full. *See id.* § 522(b)(3)–(7). In November 2022, Brodsky sued the FBI for wrongfully withholding the responsive records.

The FBI moved for summary judgment and explained that it withheld or redacted the documents because one or more FOIA exemptions applied, and it could not segregate or disclose the documents without risking foreseeable harm. The FBI supported its motion for summary judgment with a declaration from Michael Seidel, the Section Chief of the FBI's Record/Information Dissemination Section, explaining the foreseeable harm that disclosure of each category of exempted information would risk. The FBI also filed a *Vaughn* index describing the withheld documents cross-referenced with the relevant exemptions. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). The FBI gave Brodsky a redacted *Vaughn* index and filed a *Glomar* response,[1] declining to confirm or deny the existence of some responsive records because the acknowledgment of their existence or non-existence could jeopardize the interests the FOIA exemptions are intended to protect.

Brodsky filed a cross-motion for summary judgment, objected to the *Vaughn* index, and moved for an in camera inspection of the redacted documents. But after reviewing the unredacted documents, *Vaughn* index, *Glomar* response, and declaration, the court entered summary judgment for the FBI because it had properly withheld the records under the relevant exemptions. In effect, the district court adopted the FBI's asserted legal bases for the withholdings and redactions in the *Vaughn* index as its own rationale. Brodsky now appeals.

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[1] The term "Glomar" derives from the D.C. Circuit's decision in *Phillippi v. CIA*, 546 F.2d 1009, 1011 (D.C. Cir. 1976), where the court upheld the CIA's refusal to confirm or deny its ties to Howard Hughes' submarine retrieval ship, the *Glomar Explorer*.

We have an unusual standard of review in FOIA cases: We first review de novo whether the court had an adequate factual basis to make a legally sound decision, and then review for clear error the court's conclusions that the documents were properly withheld or redacted under the exemptions. *Libarov v. ICE*, 138 F.4th 1010, 1018 (7th Cir. 2025). Brodsky first argues that we should overturn our precedent and instead review de novo the district court's conclusions that the FBI properly withheld the documents.[2] Because we have recently reaffirmed our standard of review in FOIA cases, we decline to adopt a new standard of review. *See id*. As to the first prong of the FOIA standard, the district court had an adequate factual basis to make a legally sound decision because the court reviewed Seidel's declaration, the *Vaughn* index, and conducted an in camera review of all of the unredacted documents. *Id.* at 1019; *see also Vidal-Martinez v. U.S. Dep't of Homeland Sec.*, 84 F.4th 743, 748 (7th Cir. 2023) (noting in camera review of all challenged documents is "more than an adequate factual basis").

With respect to the second prong of the FOIA standard, Brodsky makes two legal challenges before addressing the propriety of the withholdings under specific exemptions. First, he claims that the court erred when it allowed him to view only a redacted version of the *Vaughn* index because the FBI merely speculated that he would be able to deduce the identities of people named in the documents. We disagree. The FBI may submit a redacted *Vaughn* index when it fears that inferences from the *Vaughn* index could reveal classified sources or methods of obtaining intelligence. *See Bassiouni v. CIA*, 392 F.3d 244, 246–47 (7th Cir. 2004). And the court did not clearly err when it determined that revealing the existence of certain documents could jeopardize classified sources and intelligence methods. *See id.*

Brodsky also contends that the court should not have allowed the FBI to submit a *Glomar* response because it is only appropriate in cases involving national security. Brodsky cites no authority for this proposition and merely asserts that there has never been a non-national security case where a *Glomar* response was submitted. He is

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[2] Brodsky contends that because *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), eliminated the *Chevron* doctrine, our bifurcated standard of review affords too much deference to the FBI's declarations. But *Loper Bright* concerned the deference to agency interpretations of law under the Administrative Procedure Act. *See* 5 U.S.C. § 701 *et seq.* It has no applicability to the weight accorded to declarations made by agency officials in a FOIA case—a fact question—particularly here, where Brodsky has adduced no countervailing facts.

incorrect. *See, e.g.*, *Donato v. Exec. Off. for U.S. Att'ys*, 308 F.Supp.3d 294, 310 (D.D.C. 2018).

With respect to the specific exemptions, Brodsky maintains that nearly every assertion of an exemption could have been applied more narrowly by redacting specific pieces of information (names, phone numbers, addresses, etc.) and disclosing the remainder of the documents. By making this argument, Brodsky concedes that the FBI had reasonable grounds to withhold at least portions of the documents. The question, then, is whether the district court clearly erred when it concluded that the FBI properly withheld the remainder of those documents because they contained information—beyond easily redactable data—that could be used to deduce facts that would invade privacy interests, *see* § 522(b)(6), (b)(7)(C), interfere with enforcement proceedings, *see* § 522(b)(7)(A), identify confidential sources, *see* § 522(b)(7)(D), or risk circumvention of the law, s*ee* § 522(b)(7)(E).

As an initial matter, we note that "federal courts have credited the mosaic concept in the Freedom of Information Act (FOIA) context," *Doe v. Gonzales*, 546 U.S. 1301, 1305 (2005) (Ginsburg, J., in chambers), under which "'bits and pieces of data may aid in piecing together bits of other information even when the individual piece is not of obvious importance itself,'" *Connell v. CIA*, 110 F.4th 256, 269 (D.C. Cir. 2024) (quoting *CIA v. Sims*, 471 U.S. 159, 178 (1985)). As noted above, we review the applicability of an exemption only for clear error. *Libarov*, 138 F.4th at 1018. Under this standard, the district court's conclusions need only be "plausible in light of the entire record" and "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Anderson v. City of Bessemer City*, 470 U.S. 564, 573–74 (1985). Brodsky's suggestion that the redactions could have been more surgical does not establish clear error in the district court's application of the exemptions, particularly in light of the possibility that disclosure would risk unauthorized persons to deduce protected information by compilation.

Moving next to exemption (b)(3)[3], Brodsky argues that the FBI improperly withheld documents under the National Security Act, 50 U.S.C. § 3024(i)(1), because only the intelligence element of the FBI is a statutory member of the Intelligence

[3] Exemption (b)(3) applies to information "specifically exempted from disclosure by statute" if that statute "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue" or "establishes particular criteria for withholding or refers to particular types of matters to be withheld." § 522(b)(3).

Community, and the records at issue pertained to the FBI's law enforcement function, not its intelligence function. We disagree. An agency may withhold information pursuant to exemption (b)(3) by establishing the existence of a statute that meets the requirements of exemption (b)(3) and the inclusion of the withheld material within that statute's coverage. *Baldridge v. Shapiro*, 455 U.S. 345, 352–53 (1982); *Morley v. CIA*, 508 F.3d 1108, 1126 (D.C. Cir. 2007). The Supreme Court has held that the National Security Act is a qualifying withholding statute for purposes of exemption (b)(3). *CIA v. Sims*, 471 U.S. 159, 167 (1985)[4]; *see also ACLU v. Dep't of Def.*, 628 F.3d 612, 619 (D.C. Cir. 2011). Seidel's declaration informed the court that the documents at issue contained sensitive information pertaining to intelligence sources and methods protected by the National Security Act. The FBI was thus statutorily required to prevent the unauthorized disclosure of those intelligence sources and methods. *See Connell*, 110 F.4th at 268–69 (discussing § 3024(i)(1)). Regardless, the FBI also withheld the documents under exemption (b)(7)(E)[5] because the intelligence sources and methods were employed as law enforcement techniques and procedures. The court did not clearly err because the FBI established a risk that investigation subjects could circumvent the law if the documents were disclosed. *See Fogg v. IRS*, 106 F.4th 779, 788 (8th Cir. 2024).

Brodsky argues that the FBI's investigative techniques and procedures are publicly known through its webpage that publishes indictments, and therefore there is no risk of circumvention of law. But simply pointing to an unrelated webpage does not suffice to show that the techniques and procedures contained in the withheld documents are publicly known. *Cf. Kowal v. DOJ*, 107 F.4th 1018, 1033 (D.C. Cir. 2024) (rejecting plaintiff's contention that the withheld information was publicly available

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[4] *Sims* addressed section 102(d)(3) of the National Security Act of 1947, Pub. L. No. 80-253, 61 Stat. 495, 498 (July 26, 1947), previously codified at 50 U.S.C. § 403(d)(3). The relevant language was transferred and renumbered as 50 U.S.C. § 3024(i), following the establishment of the Office of the Director of National Intelligence. The statutory requirement to protect intelligence sources and methods from disclosure remains unaltered. *See Berman v. CIA*, 501 F.3d 1136, 1140 n.1 (9th Cir. 2007).

[5] Exemption (b)(7)(E) protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information … would disclose techniques and procedures for law enforcement investigations or prosecutions … if such disclosure could reasonably be expected to risk circumvention of the law." § 522(b)(7)(E).

through an outdated DEA manual); *see also Broward Bulldog, Inc. v. DOJ*, 939 F.3d 1164, 1191–92 (11th Cir. 2019).

Brodsky also maintains that the documents he requested are 20 years old and the passage of time eliminated any risk of circumvention of the law. But the passage of time, without more, cannot overcome Seidel's declaration that disclosure would risk circumvention of the law. *Cf. Brant Const. Co., Inc. v. EPA*, 778 F.2d 1258, 1265 n.8 (7th Cir. 1985) (holding that the passage of time was insufficient to obtain disclosure of documents exempted under 7(D)); *Campbell v. DOJ*, 164 F.3d 20, 32 (D.C. Cir. 1998).

With respect to exemptions (b)(6) and (b)(7)(C),[6] Brodsky argues that the public interest outweighs the privacy interests asserted by the FBI. *See Higgs v. U.S. Park Police*, 933 F.3d 897, 904 (7th Cir. 2019). We disagree. Brodsky suspects that there are people attempting to injure him in retaliation for his cooperation with the FBI and the public has an interest "in knowing if the FBI disclosed the identity of a cooperating witness to persons who then maliciously injured that witness." To prevail on this point, Brodsky must point to evidence that would "warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." *Id.* at 904 (citing *Nat'l Archives and Records Admin. v. Favish*, 541 U.S. 157, 174 (2004)). But his "bare suspicion" that he is being targeted because of the FBI's impropriety is insufficient to establish that the district court clearly erred in its assessment of the FBI's withholdings. *Favish*, 541 U.S. at 174. And his contention that the public shares his interest in identifying people who are trying to injure him does not outweigh the FBI's asserted privacy interests. *See Higgs*, 933 F.3d at 905.

Regarding exemption (b)(5),[7] Brodsky argues that the FBI improperly withheld handwritten interview and investigation notes because the notes were not part of a deliberative process and were not taken when an Assistant United States Attorney

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[6] Exemption (b)(6) protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." § 522(b)(6). Exemption (b)(7)(C) protects "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information … could reasonably be expected to constitute an unwarranted invasion of personal privacy." § 522(b)(7)(C).

[7] Exemption (b)(5) protects from disclosure "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency." § 522(b)(5).

(AUSA) was present. We need not address either of Brodsky's contentions, because the notes were also properly withheld under exemptions (b)(6), (b)(7)(C), and (b)(7)(E).

Regarding exemption (b)(7)(D),[8] Brodsky argues that there was no adversary process to ensure that the FBI met its burden to show that the withheld documents were confidential. But he was not entitled to participate in the in camera inspection of the documents because that would compromise the confidentiality of the information that was in dispute. *See Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1040 (7th Cir. 1998) (citation omitted). And the FBI met its burden because it provided the court with specific information in the Seidel declaration explaining that the sources were confidential. *See Kowal*, 107 F.4th at 1032. Brodsky has not shown that the Seidel declaration was made in bad faith. *See In re Wade*, 969 F.2d 241, 246 (7th Cir. 1992). The court did not clearly err in its finding regarding the applicability of exemption (b)(7)(D).

Brodsky also maintains that the court did not conduct a sufficient inquiry into the age of the information, whether the sources were deceased, the reasonableness of any fear of adverse action, and whether redaction could disclose sources' identities. But the court did not clearly err because it conducted a sufficiently "granular inquiry" when it reviewed the documents in camera and relied on the Seidel declaration to conclude that exemption (b)(7)(D) applied. *Higgs*, 933 F.3d at 905–06.

Lastly, Brodsky contends that the court clearly erred because the FBI did not identify the particular proceedings that would be interfered with by disclosure of documents exempted under (b)(7)(A).[9] But because Seidel's declaration informed the court that the documents contained information relevant to ongoing and prospective investigations, the court did not clearly err when it concluded that disclosure would interfere with those investigations. *See Libarov*, 138 F.4th at 1019.

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[8] Exemption (b)(7)(D) protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information … could reasonably be expected to disclose the identity of a confidential source [who] furnished information on a confidential basis" § 522(b)(7)(D).

[9] Exemption (b)(7)(A) protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information … could reasonably be expected to interfere with enforcement proceedings." § 522(b)(7)(A).

We have considered Brodsky's other arguments, and none merits discussion.

AFFIRMED