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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIARONALD J. MCINTOSH,
Plaintiff,
v.
ERIC H. HOLDER JR.,
Defendant.

No. C09-00750 CRB

**ORDER RE DISCOVERY REQUESTS
FOR UNDERCOVER OPERATION
FILES, AGENT NOTES, AND
WITNESS SECURITY
INFORMATION**

Now before the Court is McIntosh's request for additional discovery related to a certain undercover operation in Philadelphia, particular agent notes, and particular witness security information. See Sealed Motion and Declarations (dkt. 192). The Court previously ordered the FBI and United States Marshals Service ("USMS") to submit detailed declarations explaining their efforts to comply with McIntosh's previous discovery requests. See Discovery Orders (dkt. 187 and 190). The FBI and USMS have submitted the requested declarations. See Sealed Declarations (dkt. 197).

McIntosh again requests additional discovery. See Sealed Motion (dkt. 192). First, he argues that the USMS disregarded the Court's subpoena as it related to one category of information. See Sealed Declaration (dkt. 195-3) ¶ 10(a); Sealed Declaration (dkt. 192-4). The USMS requested clarification on the scope of the subpoena, misunderstanding that the sections immediately following the disputed language provided the requested level of specificity. See generally id. ¶ 10. Given that USMS provided responses to each of the

1 detailed requests for information that followed the disputed section, the Court concludes that
2 the USMS affidavit adequately responds to the Court’s prior Order. See id. ¶ 10.

3 Second, McIntosh asserts that the government (a) has not reviewed the Philadelphia
4 undercover operation files at issue here for Brady material, (b) has not stated whether it can
5 locate a particular agent’s notes related to conversations with a certain informant, and (c) has
6 withheld criminal history reports that the fall within the scope of the information that the
7 Court ordered produced to McIntosh. See Sealed Declaration (dkt. 192-3) ¶ 2 & 6; Sealed
8 Reply (dkt. 192-2) ¶ 4 & 7.

9 Upon review of the parties’ submissions and for good cause shown, the Court
10 ORDERS that the government review the Philadelphia undercover file in question for Brady
11 material and produce any Brady material found to McIntosh. See Sealed Declaration (dkt.
12 192-3) ¶ 6. The Court further ORDERS that the FBI state by declaration whether it has
13 found or whether it can find the agent’s notes requested by McIntosh, and if it has located
14 those notes, the government is ORDERED to provide a reason—separate from its assessment
15 of the notes’ relevance—for why the notes should not be disclosed to McIntosh. See Sealed
16 Motion (dkt. 192-2) ¶ 4. Furthermore, the Court ORDERS the government to disclose the
17 criminal history reports requested by McIntosh or to submit a declaration stating the
18 government’s reasons—separate from its assessment of relevance—for withholding those
19 reports. See Sealed Motion (dkt. 192-2) ¶ 7.

20 Finally, the Court orders that counsel for McIntosh may review the one arguably
21 relevant document identified in the Philadelphia undercover operation file thus far, see
22 Sealed Declaration (dkt. 197-1) ¶ 12, under the terms of the same protective order that
23 governed counsel’s review of the 174 pages of FBI documents discussed in this Court’s prior
24 Orders, see, e.g., Order Re Requests for Clarification (dkt. 190).

25 **IT IS SO ORDERED.**

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27 Dated: March 1, 2016



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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE