

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 08-2649 CW

HABEAS CORPUS RESOURCE CENTER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE
and ERIC H. HOLDER, JR., in his
official capacity as Attorney General
of the United States,

Defendants.

ORDER GRANTING IN
PART DEFENDANTS'
SUPPLEMENTAL MOTION
FOR PARTIAL SUMMARY
JUDGMENT ON FOIA
EXEMPTIONS

_____ /

The Court previously granted in part the motion of Defendants United States Department of Justice (DOJ) and Eric H. Holder, Jr. for partial summary judgment on the issue of the propriety of their withholding certain documents in response to Plaintiff Habeas Corpus Resource Center's Freedom of Information Act (FOIA) request. The request sought documents related to the DOJ's development of a proposed regulation detailing the certification process for state capital counsel systems. Since the Court ruled on the previous motion, Defendants have completed further document searches, disclosing some documents to Plaintiff and withholding others. Defendants move for a ruling that they have properly withheld the

1 (quoting NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975)).
2 Exemption 5 incorporates the executive "deliberative process"
3 privilege, the purpose of which is "'to prevent injury to the
4 quality of agency decisions' by ensuring that the 'frank discussion
5 of legal or policy matters' in writing, within the agency, is not
6 inhibited by public disclosure." Maricopa Audobon Soc'y v. U.S.
7 Forest Serv., 108 F.3d 1089, 1092 (9th Cir. 1997) (quoting Sears,
8 421 U.S. at 150-51.)

9 To qualify for the deliberative process privilege, a document
10 must be both "predecisional" and "deliberative." Carter, 307 F.3d
11 at 1089. "A 'predecisional' document is one prepared in order to
12 assist an agency decisionmaker in arriving at his decision, and may
13 include recommendations, draft documents, proposals, suggestions,
14 and other subjective documents which reflect the personal opinions
15 of the writer rather than the policy of the agency." Assembly of
16 the State of Cal. v. U.S. Dep't of Commerce, 968 F.2d 916, 920 (9th
17 Cir. 1992) (citations and internal quotation marks omitted). In
18 this case, the relevant decision was that of the DOJ to propose
19 promulgating the version of the certification regulation that was
20 published in the Federal Register. A document is "deliberative" if
21 its disclosure "would expose an agency's decisionmaking process in
22 such a way as to discourage candid discussion within the agency and
23 thereby undermine the agency's ability to perform its functions."
24 Id. (quoting Dudman Commc'ns Corp. v. Dep't of the Air Force, 815
25 F.2d 1565, 1568 (D.C. Cir. 1987)). The deliberative process
26 privilege "does not protect a document which is merely peripheral
27 to actual policy formation; the record must bear on the formulation
28 or exercise of policy-oriented judgment." Tigue v. U.S. Dep't of

1 Justice, 312 F.3d 70, 80 (2d Cir. 2002) (quoting Ethyl Corp. v.
2 EPA, 25 F.3d 1241, 1248 (4th Cir. 1994)). Although the
3 predecisional and deliberative requirements are distinct, "they
4 tend to overlap in practice." Carter, 307 F.3d at 1089.

5 The Court has reviewed the documents that were withheld under
6 FOIA Exemption 5 and concludes that the documents are both
7 predecisional and deliberative. The withholding was thus proper.

8 II. Exemption 6

9 FOIA Exemption 6 applies to "personnel and medical files and
10 similar files the disclosure of which would constitute a clearly
11 unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).
12 To determine whether an invasion of privacy is clearly unwarranted,
13 courts must balance four factors: "(1) the plaintiff's interest in
14 disclosure; (2) the public interest in disclosure; (3) the degree
15 of the invasion of personal privacy; and (4) the availability of
16 any alternative means of obtaining the requested information."
17 Multnomah County Medical Soc. v. Scott, 825 F.2d 1410, 1413 (9th
18 Cir. 1987).

19 Plaintiff maintains that the DOJ's decision to hire Jennifer
20 Goldstein, an attorney who played a key role in developing the
21 certification regulation, was politically motivated. Plaintiff's
22 FOIA request sought information concerning Ms. Goldstein's hiring
23 in order to determine whether the regulation's development may have
24 been tainted by bias. Invoking FOIA Exemption 6, Defendants have
25 withheld a number of documents related to the process by which Ms.
26 Goldstein was selected for an attorney position with the DOJ. The
27 Court has reviewed these documents and concludes that they were
28 properly withheld except as follows:

1 (1) Group 59, Document 255: The identity of the email
2 recipient is not confidential and must be disclosed. The
3 body of the email contains general information about
4 Jennifer Goldstein's professional background and its
5 disclosure would not constitute an invasion into Ms.
6 Goldstein's privacy. It must be disclosed.

7 (2) Group 45, Documents 27-30; Group 46, Documents 31 and 33-
8 36: The identity of the individual who was contacted for
9 information about the unsuccessful job applicant is not
10 confidential and must be disclosed. Defendants may
11 continue to withhold the other redacted portions of the
12 emails.

13 CONCLUSION

14 For the foregoing reasons, Defendants' supplemental motion for
15 partial summary judgment is granted in part and denied in part.
16 Defendants must forthwith disclose the portions of the documents
17 discussed herein.

18 IT IS SO ORDERED.

19
20 Dated: 6/30/09



21 CLAUDIA WILKEN
22 United States District Judge
23
24
25
26
27
28