

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RANDOLPH HOOKS : CIVIL ACTION
: :
v. : :
: :
RIDLEY TOWNSHIP, POLICE CHIEF :
JOHN DOE, CAPTAIN RICHARD :
HERRON, LIEUTENANT JOHN DOE, :
SERGEANT JOHN DOE, POLICE :
OFFICER "HOCKETT," and :
POLICE OFFICERS JOHN DOE #1-#5 : NO. 97-CV-4385

MEMORANDUM ORDER

Presently before the court is defendants' Motion for Discovery Order by which they seek to compel production by the Department of Justice of "a true and correct copy of the investigative file [of the FBI] including the statement of [plaintiff] made to the FBI concerning the incident on July 5, 1995," from which the instant civil claim arises. Plaintiff has not objected or otherwise responded to this motion.

Defense counsel represents that "the Department of Justice has reviewed the matter and authorized the release of the statement of Plaintiff," however, it has "requested that [defense counsel] secure an Order from the Court for release of the document" pursuant to 5 U.S.C. § 552a(b)(11).

Section 552 (b)(11) authorizes the release of otherwise protected materials upon the order of a court of competent jurisdiction. Whether evaluated "by balancing the need for the disclosure against the potential harm to the subject of the

disclosure,? see Perry v. State Farm Fire and Cas. Co., 734 F.2d 1441, 1447 (11th Cir. 1984), cert. denied, 469 U.S. 1108 (1985), or merely by employing the usual discovery standard of relevance consistent with Fed. R. Civ. P. 26(b)(1), see Laxalt v. C.K. McClatchy, 809 F.2d 885, 889 (D.C. Cir. 1987), the release of plaintiff's statement is clearly appropriate. Plaintiff has not objected to the release of his statement. The statement involves the same activities which form the basis of his civil suit. The individuals whose alleged conduct is discussed in the statement are parties to this suit and seek disclosure. Plaintiff's contemporaneous statement about the alleged events about which he is now suing is clearly relevant and likely to lead to other relevant evidence in this suit.

Defense counsel does not represent that the Department of Justice has authorized the release of the balance of any FBI investigative file related to plaintiff's claim or has yet made any decision in that regard pursuant to 28 C.F.R. § 16.21. The Department should have a fair opportunity to review any request for the balance of the FBI file pursuant to that provision and to assess whether it can or should assert a law enforcement privilege in the particular circumstances presented. See, e.g., Hunter v. Heffernan, 1996 WL 363842, *2 (E.D. Pa. June 28, 1996.)

ACCORDINGLY, this day of December, 1997, upon consideration of defendants' Motion for Discovery Order, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in part in that the Department of Justice shall produce for defendants a copy of plaintiff's statement to the FBI regarding the alleged incident

of July 5, 1995 and is otherwise **DENIED** without prejudice to renew, if necessary, after an appropriate administrative request to and decision by the Department regarding any other material which may exist in an FBI investigative file related to plaintiff's complaint.

BY THE COURT:

JAY C. WALDMAN, J.