

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HONOLULU CIVIL BEAT INC.,

Plaintiff,

vs.

FEDERAL BUREAU OF
INVESTIGATION,

Defendant.

CIV. NO. 23-00216 SASP-WRP

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Before the Court is Defendant Federal Bureau of Investigation's ("FBI") Motion for Summary Judgment ("Motion"), filed on November 4, 2024. [ECF No. 67.] Honolulu Civil Beat Inc. ("Civil Beat") opposes the Motion and filed a combined Counter-motion and Opposition on December 20, 2024, challenging the categorical withholding of all records. [ECF No. 73 at PageID568.] The Motion came on for hearing on February 20, 2025. The Court, having reviewed the matter and for reasons to be discussed, finds that the FBI's Motion should be granted.

I. BACKGROUND

Nonprofit investigative journalism organization Civil Beat filed a lawsuit against the FBI under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking records related to the investigations and prosecutions of former State Representative Ty J.K. Cullen ("Cullen") and former State Senator Jamie Kalani English ("English"), both convicted of honest services

wire fraud.¹ [See ECF No. 1.] The operative pleading is the Complaint, which alleges a violation of FOIA. Civil Beat seeks an order requiring the FBI to provide access to the requested documents, award costs and attorney's fees, and grant any other relief deemed reasonable and just. [ECF No. 1.] The issue is whether the FBI properly withheld documents under FOIA Exemptions 3, 5, 6, and 7(A), 7(C), 7(D), and 7(E)² and whether it met its obligation to disclose any reasonably segregable and non-exempt information.

Cullen engaged in public corruption by accepting bribes for legislative support. From at least 2015, Cullen served in committees in the State House of Representatives. He received financial benefits from Milton Choy, a wastewater services company owner, in exchange for introducing and supporting legislation that benefited Choy's interests. Cullen's corrupt activities included accepting over \$22,000 in cash and casino chips from Choy in 2015 and \$13,000 in 2020 for legislative assistance. Under FBI supervision, Cullen accepted additional bribes totaling \$17,000 in 2020 and 2022. Following his arrest, he cooperated with the FBI, providing information on other public corruption cases. He resigned on February 8, 2022,

¹ The FBI's investigation of Cullen and English began when the FBI received information that both individuals received personal benefits from the subject of a public corruption investigation. [ECF No. 68-13 at PageID.527.] The FBI subsequently confirmed the information from a confidential source that English and Cullen received these personal benefits, including cash.

² **Exemption 3:** Information prohibited from disclosure by another federal law; **Exemption 5:** Privileged communications within or between agencies, including those protected by the Deliberative Process Privilege (provided the records were created less than 25 years before the date on which they were requested); **Exemption 6:** Information that, if disclosed, would invade another individual's personal privacy; **Exemption 7(A):** Information compiled for law enforcement purposes that could reasonably be expected to interfere with enforcement proceedings; **Exemption 7(C):** Information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy; **Exemption 7(D):** Information compiled for law enforcement purposes that could reasonably be expected to disclose the identity of a confidential source; and **Exemption 7(E):** Information compiled for law enforcement purposes that would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

pleaded guilty to honest services wire fraud on February 15, 2022, and was sentenced to 24 months in federal prison, along with a \$25,000 fine.

Like Cullen, English engaged in public corruption by accepting bribes for legislative support. He served on the Senate Committee on Ways and Means and was a member of the Cesspool Conversion Working Group. English accepted bribes from Milton Choy, including \$500 in cash and hotel accommodations in 2019, and \$1,000 in 2020 for introducing a cesspool conversion bill. English also accepted \$10,000 in 2020 and \$5,000 in 2021 for legislative assistance. He was arrested by the FBI shortly after receiving the \$5,000 payment and retired in May 2021. English was charged on February 8, 2022, pleaded guilty to honest services wire fraud on February 15, 2022, and was sentenced to 40 months in federal prison, along with a \$100,000 fine.

On February 25, 2022, Civil Beat submitted a FOIA request to the FBI for investigative reports related to Cullen's criminal case (1:22-cr-0013 SOM, District of Hawaii) covering materials from September 1, 2014, to February 15, 2022. [ECF No. 68 at PageID.411.] The FBI denied the request on March 8, 2022, under Exemptions 6 and 7(C), citing privacy concerns. [*Id.*] Civil Beat appealed to the Office of Information Policy ("OIP") on March 25, 2022. On July 29, 2022, the OIP affirmed the FBI's action in response. [*Id.*]

Similarly, on December 20, 2022, Civil Beat submitted a FOIA request seeking investigative reports regarding English's criminal case (1:22-cr-0012 SOM, District of Hawaii) for the same timeframe. [*Id.*] The FBI denied the request on December 27, 2022, under Exemptions 6 and 7(C), and Civil Beat appealed to the OIP on January 3, 2023. On January 10, 2023, the OIP affirmed the FBI's action in response. [ECF No. 68 at PageID.411-412.]

Civil Beat then filed its lawsuit on May 15, 2023. [ECF No. 1.] The FBI initially withheld production under Exemptions 6, 7(A), and 7(C), which exempt documents that would interfere with an ongoing investigation and documents that would implicate a third person’s privacy rights.

In its Motion, the FBI added that it appropriately withheld documents under Exemption 3, which excludes from production documents protected by another statute, Exemption 5, which protects privileged information, and Exemption 7(D), which protects confidential sources, and 7(E), which protects investigative techniques. [ECF No. 67-1 at PageID.386-387.] On November 1, 2024, the FBI informed Civil Beat that it identified 267 pages of segregable, public source information, would produce the non-duplicative documents, and would withhold documents under the applicable exemptions. [ECF No. 68 at PageID.412.]

II. STANDARD OF REVIEW

A principal purpose of summary judgment is to identify and dispose of factually unsupported claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). The moving party bears the initial burden of identifying relevant portions of the record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each claim upon which the nonmoving party seeks judgment. 477 U.S. at 323. The moving party does not need evidence negating or disproving every essential element of the nonmoving party’s case. 477 U.S. at 325. Instead, the moving party must merely “point [] out to the district court—that there is an absence of evidence to support the nonmoving party’s case.” *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir. 2000) (citing *Celotex Corp.*, 477 U.S. at 325).

Summary judgment shall be rendered “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). In making this assessment, the court must view the evidence in the light most favorable to the non-moving party. *Betz v. Trainer Wortham & Co.*, 519 F.3d 863, 865, 867 (9th Cir. 2008).

A dispute is “genuine” only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). “As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.* at 248. The bare existence of a “scintilla” of evidence in support of the non-moving party’s position is not sufficient. *Id.* at 252.

III. DISCUSSION

FOIA “was enacted to facilitate public access to Government documents” and “was designed to ‘pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.’” *Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991) (quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976)). It reflects “a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” *Id.* Federal agencies must disclose records upon request unless the records are exempt under one of nine specified exemptions. Withholding is permitted only if “reasonably foresees that disclosure would harm an interest protected by the exemption” or if disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A)(i).

The Court now turns to FBI’s motion regarding the seven FOIA exemptions at issue. The Court first reviews the agency’s denials de novo, with the agency bearing the burden

of proving that an exemption applies. 5 U.S.C. § 552(a)(4)(B). The agency must also show that it has conducted a search reasonably calculated to uncover all relevant documents. *Zemansky v. U.S. Env'tl. Prot. Agency*, 767 F.2d 569, 571 (9th Cir. 1985). “The issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate.” *Id.* Agencies may rely upon “reasonably detailed, nonconclusory affidavits submitted in good faith” to demonstrate that the search was adequate. *Id.* Once the agency satisfies this burden, the court must then assess whether the withheld information properly falls within one of the nine FOIA exemptions.” *Id.*

The FBI’s Motion, which addresses seven FOIA exemptions,³ argues that the requested records “are statutorily protected from production, would violate third person’s privacy rights, would interfere with an on-going investigation into public corruption, would reveal investigative techniques, and are otherwise privileged.” [ECF No. 67 at PageID.375.] In response, Civil Beat challenges the FBI’s categorical withholding of all records.

The Court finds Civil Beat’s arguments unpersuasive and concludes they do not overcome the FBI’s justifications for withholding. Accordingly, the Court grants the FBI’s Motion and permits categorical withholding, as disclosure of the requested records could reasonably be expected to interfere with ongoing enforcement proceedings and future investigations. Although the records are also protected under Exemptions 3, 5, 6, 7(C), 7(D), and 7(E), the Court’s analysis is guided primarily by Exemption 7(A), which most clearly supports withholding in this case.

³ Specifically, the FBI asserts Exemptions 3, 5, 6, 7A, 7C, 7D, and 7E apply in this case.

A. The Court affords deference to the FBI's declarations.

While the Court reviews this matter de novo, it recognizes that courts afford varying degrees of deference to government agencies when determining whether records meet FOIA's threshold requirement. *See, e.g., ACLU of N. Cal. v. FBI*, 881 F.3d 776, 779 (9th Cir. 2018) (“[L]aw enforcement agencies such as the FBI should be accorded special deference in an Exemption 7 determination.”). Courts do not defer to agency's legal conclusions and determinations that information is exempt from disclosure, *Carlson v. U.S. Postal Serv.*, 504 F.3d 1123, 1127 (9th Cir. 2007). Instead, they grant substantial weight to agency declarations explaining the factual basis for their withholdings. *See Am. C.L. Union of N. California v. Fed. Bureau of Investigation*, 881 F.3d 776,779 (9th Cir. 2018) (affording special deference to the FBI in Exemption 7 determinations); *see also Shannahan v. I.R.S.*, 672 F.3d 1142, 1148 (9th Cir. 2012) (“We accord substantial weight to an agency's declarations regarding the application of a FOIA exemption”) (citing to *Hunt v. CIA*, 981 F.2d 1116, 1119–20 (9th Cir. 1992)).

The Court acknowledges that law enforcement agencies have specialized expertise in determining whether disclosing certain records would interfere with investigations or compromise public safety. This deference is grounded in the agency's superior knowledge and understanding of the potential consequences of disclosure. In this case, the FBI conducted the underlying investigation leading to the convictions of Cullen and English. Thus, the Court grants deference to the FBI's assertions.

B. The FBI has provided a sufficient factual basis for withholding and has conducted a search that was reasonably calculated to uncover relevant information.

The FBI bears the burden of demonstrating that the claimed exemptions apply and that it has a sufficient factual basis for withholding documents. This burden may be satisfied

through detailed, non-conclusory affidavits submitted in good faith. 5 U.S.C. § 552. As the Ninth Circuit has held, these affidavits must provide tailored reasons for withholding, and cannot rely on boilerplate or vague statements. *Pac. Fisheries Inc. v. United States*, 539 F.3d 1143, 1148 (9th Cir. 2008); *Wiener v. FBI*, 943 F.2d 972, 978-79 (9th Cir. 1991). Where the affidavits are reasonably detailed and adequately support the claimed exemptions, the district court need look no further. *Harveys Wagon Wheel, Inc. v. NLRB*, 550 F.2d 1139, 1141-42 (9th Cir. 1976); *Lewis v. I.R.S.* 823 F.2d 375, 378 (9th Cir. 1987).

In addition to demonstrating the sufficiency of the factual basis for withholding, FOIA also requires the FBI to “demonstrate that it has conducted a search reasonably calculated to uncover all relevant documents.” *Hamdan v. U.S. Dep’t of Justice*, 797 F.3d 759, 770 (9th Cir. 2015). This ensures that the search is thorough and appropriately tailored to the request.

1. Adequacy of factual basis

Turning to the present case, the Court begins its review by assessing the adequacy of the FBI’s factual basis for withholding records. The FBI has sufficiently demonstrated that disclosure would interfere with ongoing investigations, as detailed in the supporting declarations.⁴ See *Hamdan*, 797 F.3d at 770. In support of its Motion, the FBI submitted two declarations: one from Michael G. Seidel (“Seidel”) and one from Aryn G. Nohara (“Nohara”).⁵

⁴ Specifically, the FBI characterized the responsive documents into three categories: 1) Evidentiary/Investigative; 2) Administrative; and 3) Public Records, with each category justifying the withholding of specific records.

⁵ Seidel is the Section Chief of the Record/Information Dissemination Section, Information Management Division at the FBI in Winchester, Virginia, and Nohara is a Special Agent with the FBI’s Honolulu Division.

Seidel's declaration outlines the administrative history of Civil Beat's FOIA requests, describes the FBI's recordkeeping system, and provides justifications for withholding certain records under applicable FOIA exemptions.

Seidel also addresses the foreseeable harm standard set forth in the FOIA Improvement Act of 2016. [ECF No.68-1 at PageID.481.] This statutory standard requires agencies to withhold information only if they reasonably foresee that disclosure would harm an interest protected by a FOIA exemption or if disclosure is otherwise prohibited by law. [*Id.*] Seidel explains that the FBI conducted a two-part analysis and withheld records only where both criteria were met.⁶ [*Id.*] The foreseeable harm analysis is applied within each applicable exemption category.

To further support its position, the FBI has provided additional declarations, particularly from Nohara, that elaborate on the specific risks and adverse consequences that could result from disclosure. Nohara explains that releasing the requested information would compromise ongoing investigations and prosecutions by revealing the scope and direction of those investigations, thereby alerting suspects, and enabling them to evade law enforcement. Additionally, disclosure could subject witnesses and law enforcement personnel to intimidation and increase the risk of third parties fabricating evidence. Nohara affirms that withholding this information is necessary to preserve the integrity of current investigations and to protect the viability of future prosecutions.

Together, the Seidel and Nohara declarations provide detailed, fact-based justifications for withholding, including the foreseeable harm that disclosure would pose to

⁶ First, the FBI determines whether a record is exempt pursuant to one or more FOIA exemptions. Second, if the record is exempt pursuant to one or more FOIA exemptions, the FBI then considers whether foreseeable harm would result from disclosure of the record.

ongoing investigations, law enforcement efforts, and protected interests under FOIA. Civil Beat offers no evidence to refute the reasons set forth in these declarations.

To further substantiate its position, the FBI submitted a Vaughn index. Although not required, the index serves to outline the results of the agency's search and provides specific justifications for withholding certain documents. The Vaughn Index reinforces the FBI's arguments by demonstrating how disclosure of the withheld records would reveal sensitive information regarding the scope, direction, and nature of the ongoing investigations.

Civil Beat, however, raises objections to the sufficiency of the Vaughn index, particularly in relation to the level of detail provided. Civil Beat contends that the Vaughn index lacks sufficient detail—particularly regarding dates and other information necessary to independently evaluate the applicability of the claimed exemptions. [ECF No. 73 at PageID.584.] Seidel's declaration addresses the deficiencies by explaining that revealing the dates of the various documents—while asserting Exemption 7(A)—could reveal the depth and scope of information collected and negatively impact the ongoing law enforcement proceedings [ECF No. 81-1 at PageID.840]. Seidel clarifies and accounts for the gaps in serial numbers, asserting they are due to the investigation involving matters beyond Cullen and English. [*Id.*]

Despite these challenges, the Court finds that the FBI's declarations, independent of the Vaughn index, sufficiently justify withholding the records. As the Court has noted, a Vaughn index is not mandatory, and the Seidel and Nohara declarations provide ample support for the FBI's position. Civil Beat's claim that the FBI's justifications rely on speculative fears is unpersuasive. Moreover, as this Court has previously stated, Civil Beat offers no evidence to refute the Seidel and Nohara declarations. Although the investigations resulting in Cullen and English's convictions concluded in 2022, the FBI has confirmed that related investigations are

ongoing and has sufficiently demonstrated that disclosure would harm interests protected by the FOIA exemptions.

Moreover, Civil Beat's request for additional information or formal discovery is unwarranted. The FBI's detailed, non-conclusory, and good-faith declarations establish a sufficient factual basis for withholding the records. *See Hamdan*, 797 F.3d at 770. As the Ninth Circuit has recognized, courts defer to agencies—particularly the FBI—in law enforcement matters when assessing their justification for withholding records. *See Am. C.L. Union of N. California*, 881 F.3d 776,779 (9th Cir. 2018) (affording special deference to the FBI in Exemption 7 determinations).

2. *Adequacy of search*

Finally, the FBI has met its burden of demonstrating the adequacy of its search. Seidel confirms that the FBI conducted its search using the comprehensive Central Records System (“CRS”) and affirms the adequacy of the methodology. The FBI searched indices⁷ through its case management system, Sentinel, using the terms “Ty Cullen” and “Jamie English” within the requested timeframe of September 1, 2014, to February 22, 2022, and found responsive records. [ECF No. 68-1 at PageID.426.] Civil Beat has not provided any information suggesting that responsive records would be located outside of the CRS, and Seidel asserts that there is no reasonable basis to believe that searching elsewhere in the system would yield additional responsive records. [*Id.* at PageID.428.] The FBI's search was reasonably calculated to locate all relevant documents, thereby satisfying FOIA requirements.

⁷ According to Seidel, these general indices provide access to a comprehensive, agency-wide set of indexed data on a broad array of investigative and administrative subjects and consist of millions of searchable records that are updated daily with newly indexed information. [ECF No. 68-1 at PageID.427.]

C. The records are properly withheld under Exemption 7(A)

Exemption 7(A) protects “investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would ... interfere with enforcement proceedings.” 29 U.S.C. § 552(b)(7)(A). To invoke this exemption, the agency must show that it is a law enforcement entity, the records were compiled for law enforcement purposes, and their release would interfere with pending enforcement proceedings. *See FBI v. Abramson*, 456 U.S. 615, 622 (1982)

The FBI meets these requirements. It is a law enforcement agency, specifically, a federal investigative agency. The records at issue were compiled during investigations into Cullen and English. Seidel’s declaration confirms that the records relate to enforcement proceedings.⁸ In applying Exemption 7(A), the Court evaluates whether disclosure would interfere with enforcement interests. The Court looks to the reasons for exemption from the disclosure requirements in determining whether the Government has properly invoked a particular exemption. *See e.g., NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 148–154 (1975). The FBI’s declarations demonstrate that releasing the records would risk compromising ongoing investigations and enforcement efforts. As such, withholding under Exemption 7(A) is appropriate.

The Ninth Circuit has affirmed that agencies need not make a specific showing for each document. A general showing that disclosure could interfere with enforcement suffices

⁸ According to the Seidel Declaration, the FBI has the requisite affidavits presented in this case to establish a rational nexus between enforcement of a federal law and the documents for which the exemption is claimed. Civil Beat questions the FBI’s invocation of Exemption 7(A), suggesting that the FBI’s investigation may not be ongoing or that the withheld records do not pertain to enforcement proceedings. The Cullen and English documents contain information related to enforcement proceedings.

Barney v. IRS, 618 F.2d 1268, 1273 (9th Cir. 1980) (ruling that “Under exemption 7(A) the government is not required to make a specific factual showing with respect to each withheld document that disclosure would actually interfere with a particular enforcement proceeding.”); *see also NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224–37 (1978) (recognizing congressional intent that courts allow categorical withholdings under Exemption 7(A) when disclosure of certain types of records would generally interfere with enforcement proceedings).

Here, the FBI made the required showing. Its affidavits establish that the records relate to law enforcement activities and that disclosure would risk compromising current and future investigations. Accordingly, withholding under Exemption 7(A) is proper.

D. In the alternative, the records are properly exempt under other exemptions.

Even if Exemption 7(A) does not entirely justify withholding the requested records, the FBI has properly withheld records under several other FOIA exemptions. Specifically, Exemptions 3, 5, 6, 7(C), 7(D), and 7(E) independently and collectively justify the nondisclosure of the records.

1. Exemption 3

Exemption 3 applies to records “specifically exempted from disclosure by statute” other than FOIA. 5 U.S.C. § 552(b)(3). The Court employs a two-step inquiry in deciding Exemption 3 questions: first, whether the statute identified by the agency is a statute of exemption within the meaning of Exemption 3, and second, whether the withheld records satisfy the criteria of the exemption statute. *Civ. Beat L. Ctr. for the Pub. Int., Inc. v. Centers for Disease Control & Prevention*, 929 F.3d 1079, 1084 (9th Cir. 2019); *Hamdan*, 797 F.3d at 776. The FBI properly withheld certain records pursuant to Exemption 3 in conjunction with four other

statutes: Rule 6(E) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”), the Pen Register Act, the National Security Act of 1947, and the Bank Secrecy Act.

First, the Fed. R. Crim. P. Rule 6(E) prohibits government attorneys and others from “disclosing a matter occurring before the grand jury.” *Proctor v. Nat’l Archives & Recs. Admin.*, 331 F.R.D. 508, 512 (N.D. Cal. 2019) (citing to *Lopez v. Dep’t of Just.*, 393 F.3d 1345, 1349 (D.C. Cir. 2005)). Because the requested records contain protected information that falls under this rule, the FBI properly withheld them. [See ECF No. 68 at PageID.413.]

Second, the Pen Register Act protects from disclosure information pertaining to certain court “orders authorizing or approving the installation and use of a pen register or a trap and trace device,” and information pertaining to “the existence of then pen register or trap and device or the existence of the investigation.” 18 U.S.C. § 3123(d). The FBI appropriately withheld the identities and phone numbers of the individuals targeted by the pen registers and/or individuals whose information was collected due to their contact with the target, the location of the devices, information gathered by the device, and related court documents. [See ECF No. 68-1 at PageID.444-445.]

Third, the National Security Act of 1947 requires the Director of National Intelligence (“DNI”) to protect intelligence sources and methods from unauthorized disclosure.⁹ *See Hunt v. C.I.A.*, 981 F.2d 1116, 1118 (9th Cir. 1992) (citing to *CIA v. Sims*, 471 U.S. 159 (1985)). Seidel’s declaration explains that the Intelligence Community Directive 700¹⁰ enforces

⁹ Section 102A(i)(1) of the National Security Act was previously codified at 50 U.S.C. 403(i)(1). As a result of the reorganization of Title 50 of the U.S. Code, Section 102A(i)(1) is now codified at 50 U.S.C. 3024(i)(1).

¹⁰ The DNI promulgated Intelligence Community Directive 700, which provides that the Intelligence Community (“IC”) elements shall protect national intelligence and intelligence sources and methods and activities from unauthorized disclosure.

this protection. [ECF No. 68-1 at PageID.447.] As a member of the Intelligence Community, the FBI must comply with this directive.¹¹ 50 U.S.C. § 3003(4). Thus, the FBI properly withheld the records.

Finally, the Bank Secrecy Act (“BSA”) exempts reports and records collected under its authority from FOIA disclosure. *See* 31 U.S.C. § 5319.¹² As Seidel explained, “within the documents at issue there exists information obtained through the BSA during criminal investigative activities.” [ECF No. 68-1 at PageID.449.] The FBI is therefore legally prohibited from disclosing any details related to this information.

2. *Exemption 5*

Exemption 5 shields “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.” 5 U.S.C. § 552(b)(5). This exemption incorporates traditional civil discovery privileges, including the attorney-client privilege, attorney work-product doctrine, and deliberative process privilege.

The FBI properly withheld deliberative materials that reflect internal agency recommendations, opinions, and legal analyses prepared in anticipation of litigation or investigative actions. These records include legal memoranda, internal communications, and draft reports which, if disclosed, would expose the agency’s deliberative processes and legal strategies. *See Am. C.L. Union of N. California v. Dep’t of Justice* 880 F.3d 473, 483 (9th Cir.

¹¹ The FBI is one of 18-member agencies comprising the IC, and as such must protect intelligence sources and methods.

¹² “A report and records of reports are exempt from disclosure under section 552 of [T]itle 5, and may not be disclosed under any State, local, tribal, or territorial ‘freedom of information’, ‘open government’, or similar law.” *Ctr. for Investigative Reporting v. United States Dep’t of Treasury*, No. 19-CV-08181-JCS, 2021 WL 229309, at *4 (N.D. Cal. Jan. 22, 2021) (citing to 31 U.S.C. § 5319).

2018). Exemption 5 thus safeguards the integrity of the FBI's internal deliberations and ensures the confidentiality of privileged communications.

3. *Exemption 6*

Exemption 6 protects “personnel and medical files and similar files” where disclosure “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The FBI appropriately withheld personal information of third parties—including witnesses, suspects, and law enforcement personnel—whose privacy interests outweigh any public interest in disclosure.^{13 14}

4. *Exemption 7(C)*

Similarly, Exemption 7(C) protects records or information compiled for law enforcement purposes when disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). Civil Beat argued for disclosure due to the FBI's involvement in state legislative affairs. [*See* ECF No. 79 at PageId.827.] However, the FBI justifiably withheld third-party identities connected to the investigation, as courts recognize strong privacy interests implicated by such disclosures, particularly in the context of law enforcement investigations.

5. *Exemption 7(D)*

Exemption 7(D) protects information compiled for law enforcement purposes that “could reasonably be expected to disclose the identity of a confidential source.” 5 U.S.C.

¹³ These FBI Special Agents and professional staff were responsible for conducting, supervising, and/or maintaining the investigations, and administrative activities related to the criminal investigations of Cullen and English. [ECF No. 68-1 at PageID.456.]

¹⁴ There is no public interest served by disclosing the Special Agents' identities because their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities. [*Id.*]

§ 552(b)(7)(D). The FBI demonstrated that certain information was provided by confidential sources with assurances of express or implied confidentiality. Disclosing this information could jeopardize ongoing investigations and deter future cooperation with law enforcement.

6. *Exemption 7(E)*

Finally, Exemption 7(E) protects law enforcement records that would reveal investigative techniques or procedures or risk circumvention of the law. 5 U.S.C. § 552(b)(7)(E). The FBI invoked this exemption to withhold non-public investigative methods and details, including certain aspects of publicly known techniques. [ECF No. 68-1 at PageID.469.]¹⁵ Disclosing this information would compromise the effectiveness of these techniques and hinder future investigations.

E. The FBI has released all reasonably segregable non-exempt information from documents responsive to Civil Beat's FOIA requests.

As this Court has acknowledged, the FBI identified 237 pages of public source material that could be segregated for disclosure. As Seidel's declaration reflects, the FBI determined that "145 pages could be released in full redaction as [there is] no foreseeable harm to an interest protected by a FOIA exemption." [ECF No. 68-1 at pageID.482.] Out of the 267 pages, the FBI determined that 122 pages are withheld in full as duplicates. Accordingly, there is

¹⁵ The FBI specifically asserted this exemption to protect the following categories: Sensitive Investigative File Numbers; Identities and/or Locations of FBI Units, Squads, and Divisions; FBI Secure Fax Numbers; Internal E-mail Addresses, and Non-Public Telephone Numbers; Collection and Analysis Information; Focuses of Specific Investigations; Database Information and Search Results; Surveillance Techniques; Investigation Code Names; Undercover Operations; Monetary Payments for Investigative Techniques; Investigative Techniques and Procedures Relevant to the FBI's Informant Program; and Tactical Information Contained in Operational Plans.

no further non-exempt information that can be reasonably segregated and released without revealing exempt information.

IV. CONCLUSION

For the reasons stated above, the Court finds that the FBI has met its burden for the asserted FOIA exemptions. Accordingly, the FBI's Motion is hereby GRANTED, Civil Beat's Counter-motion is DENIED, and the FBI may withhold the requested records under the applicable FOIA exemptions.

The Clerk of Court is instructed to enter Judgment in favor of Defendant FBI and CLOSE this case.

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, April 1, 2025.



Shanlyn A. S. Park

Shanlyn Park
United States District Judge

HONOLULU CIVIL BEAT INC., vs. FEDERAL BUREAU OF INVESTIGATION, CIV. NO. 23-00216 SASP-WRP; ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT