UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

GRAEME SEPHTON, Plaintiff	)	
v.	)	CIVIL ACTION NO. 00-30121-MAP
FEDERAL BUREAU OF INVESTIGATION, Defendant	)	

MEMORANDUM AND ORDER WITH REGARD
TO MOTIONS FOR SUMMARY JUDGMENT
(Docket Nos. 68 & 75)

March 29, 2005

PONSOR, D.J.

I. INTRODUCTION

At approximately 8:20 p.m. on July 17, 1996 a Trans World Airlines Boeing 747, Flight 800, carrying 212 passengers and a crew of eighteen left John F. Kennedy International airport bound for Charles DeGaulle International airport in Paris, France. About ten minutes later, the plane crashed into the Atlantic Ocean near East Moriches, New York. All 230 persons on board perished.

Following an investigation, the National Transportation Safety Board determined that the probable cause of the crash was an explosion in the center wing fuel tank. The source of ignition for the explosion could not be determined with certainty, but, according to the NTSB, it was "most likely" a short circuit that allowed excessive voltage to enter the tank

by the defendant specifically confirmed that all information relating to its investigations was catalogued and stored within the CRS. While there are other databases such as EXPeRT and ENF which serve as repositories for information, any documents relating to an investigation that may be located within them were also stored within the CRS. This case bears no resemblance to Oglesby.

Sephton argues that the FBI has turned over only one document that contains actual forensic evaluation and analysis. This, he says, is evidence of the inadequacy of the searches conducted. Plaintiff's argument is grounded on his assumption that, because he has not so far received documents he would like to have, they must exist elsewhere within the FBI. This form of speculation is of course always possible, and perhaps inevitable, but it is not adequate to rebut the presumption of good faith generated by the agency's affidavits in the context of litigation pursuant to FOIA.

Distilled from the affidavits, the FBI's position now is straightforward: apart from the actual physical material recovered from the bodies of the crash victims, it has given plaintiff all the information that it could reasonably locate responsive to his requests, including all analyses and underlying data. The submissions by the responsible officials describe in a nonconclusory fashion the records searched and

the method employed in making this reasonable effort. Under the law, that is enough.

Plaintiff understandably points to the release of additional documents subsequent to this lawsuit, and the FBI's shifting legal positions, in urging the court to be skeptical of its claim now that its job was adequate. Given the history of this case, the court has some sympathy for this argument. It is not surprising that the plaintiff finds it difficult to take the government at its word.

However, as the First Circuit has stated: "Delay in locating a document 'is significant only to the extent that evidence shows that the delay resulted from bad faith refusal to cooperate.'" Maynard, at 564 (quoting Miller v. United States Dep't of State, 779 F.2d 1378, 1386 (8th Cir.1985)). Moreover, courts have found that, to some extent, production of additional material may support the FBI's claim of good faith. "[T]he additional releases suggest a stronger, rather than a weaker, basis for accepting the integrity of the search." Meeropol v. Meese, 790 F.2d 942, 953 (D.C. Cir. 1986)(internal quotes removed).

The court has noted with sharp disappointment the most recent change in position by the FBI: agreeing, and then declining, to submit a further affidavit setting forth what was characterized at oral argument as "magic language," confirming

in conclusory terms that a reasonable search was performed for responsive documents. This latest change in position is most regrettable. It risks further deepening the skepticism of the plaintiffs at the FBI's good faith. The court has, however, reviewed the affidavits already submitted and finds that each one contains, explicitly or by clear implication, a sworn statement that a reasonable search has indeed been performed.

This litigation has long ago passed any possibility that the defendant could be playing with words to deceive the court or the plaintiffs. The FBI has for some time known exactly what plaintiff is seeking; it has now stated repeatedly under oath that it has made a careful search of all files where responsive documents might reside and has produced those documents. If the FBI has, in fact, not conducted a reasonable search, then four highly placed officials are either lying under oath, or (what amounts to the same) deliberately misleading the court -- thereby jeopardizing their careers and risking a citation for contempt. This record contains no evidence that any such inexplicably egregious misconduct has occurred.

Finally, it is not possible to conclude this memorandum without a statement of sympathy and respect for the plaintiff and the grieving families he represents. Although FOIA gives

the citizen the power to demand information from his or her government, that power is balanced by the standard of reasonableness. This standard recognizes the practical reality that, even in light of FOIA, some modicum of trust must, in the end, be afforded to conscientious officials sincerely attempting to comply with the law. On several occasions the responses of the FBI have unfortunately eroded that trust and made this case much harder. At this point, however, the law is clear that the end of the journey has been reached.

IV. CONCLUSION

For the reasons set forth above, plaintiff's Motion for Summary Judgment (Docket No. 68) is hereby DENIED, and defendant's Motion for Summary Judgment (Docket No. 75) is hereby ALLOWED. The clerk is ordered to enter judgment for the defendant. This case may now be closed.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge