

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-5108

September Term, 2018

1:16-cv-01450-RJL

Filed On: June 26, 2019

Samuel Knowles,

Appellant

v.

United States Department of State,

Appellee

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Pillard, Katsas, and Rao, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court’s order filed March 29, 2018, be affirmed. The United States Department of State (“State Department”) properly withheld materials under Exemption 1 of the Freedom of Information Act (“FOIA”) on the ground that disclosure could harm national security and foreign relations. See Larson v. Dep’t of State, 565 F.3d 857, 864-65 (D.C. Cir. 2009).

Additionally, the State Department and the U.S. Department of Justice Criminal Division (“Criminal Division”) properly withheld documents pursuant to FOIA Exemption 5 under the attorney-client, attorney work-product, and deliberative process privileges. The documents withheld included confidential attorney-client communications, documents prepared for Appellant’s prosecution, and documents containing preliminary opinions and deliberations of agency employees regarding underlying decisions or policies. See Coastal States Gas Corp. v. Dep’t of Energy, 617 F.2d 854, 862 (D.C. Cir. 1980) (attorney-client privilege protects “a client’s confidences to his or her attorney”); Judicial Watch, Inc. v. Dep’t of Justice, 432 F.3d 366, 369 (D.C. Cir. 2005) (“The work-product doctrine shields materials prepared in anticipation of litigation.”) (internal citations and quotation marks omitted); Loving v. Dep’t of Def., 550 F.3d 32, 38 (D.C. Cir. 2008) (“The deliberative process privilege protects documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by

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which governmental decisions and policies are formulated.”) (internal citation and quotation marks omitted).

Moreover, the State Department, the Criminal Division, and the Drug Enforcement Administration (“DEA”) appropriately invoked FOIA Exemption 7(C) to withhold certain individuals’ identifying information where those individuals were involved in law enforcement activities pertaining to Appellant. Appellant has not put forth a “meaningful evidentiary showing” to establish misconduct. Nat’l Archives & Records Admin. v. Favish, 541 U.S. 157, 175 (2004). Additionally, disclosure of the individuals’ identities would not confirm or refute Appellant’s allegations of misconduct. See SafeCard Servs., Inc. v. SEC, 926 F.2d 1197, 1206 (D.C. Cir. 1991).

Further, despite Appellant’s assertions to the contrary, the Vaughn index and supporting declarations are sufficiently detailed. See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Justice, 746 F.3d 1082, 1088 (D.C. Cir. 2014). Because of the sufficiency of the Vaughn index and the agency declarations, the district court properly exercised its discretion in declining an in camera review of the withheld documents. See Am. Civil Liberties Union v. U.S. Dep’t of Def., 628 F.3d 612, 626 (D.C. Cir. 2011); Juarez v. Dep’t of Justice, 518 F.3d 54, 60 (D.C. Cir. 2008). Finally, Appellant has forfeited any challenge to the remainder of the district court’s decision. See United States ex rel. Totten v. Bombadier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004) (“Ordinarily, arguments that parties do not make on appeal are deemed to have been waived.”); Am. Wildlands v. Kempthorne, 530 F.3d 991, 1001 (D.C. Cir. 2008) (“Issues may not be raised for the first time in a reply brief.”) (internal citation and quotation marks omitted).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam