

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**ELECTRONIC PRIVACY
INFORMATION CENTER,**

Plaintiff,

v.

Case No. 1:17-cv-00121 (TNM)

**FEDERAL BUREAU OF
INVESTIGATION,**

Defendant.

ORDER GRANTING MOTION FOR LEAVE TO FILE IN CAMERA

Before the Court is the Federal Bureau of Investigation's Motion for Leave to Submit *Ex Parte, In Camera* Versions of the FBI's Summary Judgment Filings. The FBI has submitted redacted copies of its summary judgment filings on the public record. These filings argue that the FBI is entitled to summary judgment on Plaintiff's Freedom of Information Act (FOIA) claims in part because information related to the FBI's investigation of Russian interference in the 2016 presidential election is exempt from disclosure under FOIA Exemption 7(A). Because the FBI has adequately alleged that the limited redactions in its summary judgment filings are necessary to prevent disclosure of information that falls within the scope of Exemption 7(A) and because it is necessary for me to review the redacted material in order to determine whether this is in fact the case, the FBI's Motion for Leave is GRANTED.

Exemption 7(A) exempts from disclosure under FOIA "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). The FBI represents in its Motion for Leave that the redacted information that it seeks to provide to the Court in *ex parte, in camera* versions of its filings is "unclassified law-enforcement-sensitive information, the public disclosure of which would interfere with the pending Russia

investigation.” Mot. Leave ¶ 3. The FBI further represents that it is “unable to provide additional details about this particular information on the public docket without causing harm to the ongoing investigation.” *Id.* ¶ 4.

Plaintiff opposes the FBI’s motion on the basis of Circuit precedent stating that *in camera* declarations are generally disfavored and should be permitted only “where absolutely necessary.” Pl.’s Opp. to Mot. Leave ¶ 2 (quoting *Arieff v. Dep’t of the Navy*, 712 F.2d 1462, 1471 (D.C. Cir. 1983) (other citations omitted)). Plaintiff argues that courts should be particularly skeptical about the use of *in camera* declarations “in cases which do not involve national security.” *Id.* at ¶ 3 (quoting *Lykins v. Dep’t of Justice*, 725 F.2d 1455, 1465 (D.C. Cir. 1984)). Plaintiff also notes that the Government is generally required to “explain why it chose to use an *in camera* affidavit” and to “release as much as possible of the document to the other side.” *Id.* at ¶ 3 (quoting *Armstrong v. Exec. Office of the President*, 97 F.3d 575, 581 (D.C. Cir. 1996)).

However, Circuit precedent establishes that *in camera* declarations are necessary and should be permitted where: “(1) the validity of the government’s assertion of exemption cannot be evaluated without information beyond that contained in the public affidavits and in the records themselves, and (2) public disclosure of that information would compromise the secrecy asserted.” *Arieff*, 712 F.2d at 1471. This rule has never been limited to the national security context. *See Lykins*, 725 F.2d at 1465 (“[W]e have never limited the use of *in camera* affidavits to national security cases . . .”). In fact, Circuit precedent expressly holds that *in camera* declarations may be used to support the invocation of Exemption 7(A). *See, e.g., Campbell v. Dep’t of Health and Human Servs.*, 682 F.2d 256, 265 (D.C. Cir. 1982). The Government can satisfy its obligations to explain the need for *in camera* review and to release as much information as possible by releasing redacted versions of the documents in question and “indicat[ing] that no additional information concerning an ongoing investigation may be publicly disclosed without revealing precisely the information that the agency is entitled to withhold under the FOIA.” *See Order Granting Motion for Leave to File In Camera* at 3, *Leopold v. Dep’t of Treasury*, 16-cv-1827 (Aug. 1, 2017) (citing *Life Extension Found., Inc. v. IRS*, 915 F. Supp. 2d 174, 186 (D.D.C. 2013); *Barnard v. Dep’t of Homeland Sec.*, 598 F. Supp. 2d 1, 16 (D.D.C. 2009)).


In this case, the FBI has publicly released redacted copies of its summary judgment filings. As in *Leopold*, the redactions are relatively limited, a fact that weighs in favor of *in camera* review and suggests that the FBI has attempted to release as much information as possible. *See id.* at 3-4. As described above, the FBI has indicated that public disclosure of additional information would cause harm to an ongoing investigation, which is precisely the harm that the FBI is seeking to avoid by invoking Exemption 7(A) in its summary judgment motion. The FBI's representations in this case are nearly identical to the representations that sufficed to justify *in camera* review in *Leopold*, and I find that they are sufficient to justify *in camera* review here. *In camera* review is necessary to determine whether the redacted information is properly exempt from disclosure and necessary to a full evaluation of the FBI's invocation of Exemption 7(A). *See Arieff*, 712 F.2d at 1471. Upon review of the redacted information, the Court may conclude that some or all of the redacted information is relevant and properly withheld, may notify the parties that some or all of the redacted information will not be considered in the disposition of the case, or may order the FBI to show cause why some or all of the redacted information should not be disclosed. *See, e.g., id.* at 4-5 (citing *Ray v. Turner*, 587 F.2d 1187, 1218 n.81 (D.C. Cir. 1978)).

For the reasons stated above, it is hereby

ORDERED that the FBI's Motion for Leave to Submit *Ex Parte, In Camera* Versions of the FBI's Summary Judgment Filings is **GRANTED**. The FBI shall file unredacted versions of the redacted filings for this Court's *in camera* review, and shall arrange to do so promptly.

SO ORDERED.

Dated: March 1, 2018


TREVOR N. MCFADDEN
United States District Judge