OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES BORDER PATROL, HARLINGEN, TEXAS

Respondent

and Case No. DA-CA-20684

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, NATIONAL BORDER PATROL COUNCIL, LOCAL 1844

Charging Party

Scott David Copper, Esquire

William Owen, Esquire

on Brief

For the Respondent

Joseph T. Merli, Esquire

For the General Counsel

Mr. Dewell M. Richardson

For the Charging Party

Before: WILLIAM B. DEVANEY

Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq.[1], and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent's refusal to furnish, ". . . all correspondence between Mr.

Ruiz, a supervisor, and the District Director. . . ." concerning Mr. Ruiz' arrest and detention in Matamoros, Mexico, was contrary to § 14(b)(4) and in violation of §§ 16(a)(1), (5) and (8) of the Statute.

This case was initiated by a charge filed on March 25, 1992 (G.C. Exh. 1(a)). A Complaint and Notice of Hearing issued on June 30, 1992 (G.C. Exh. 1(c)) and an Amended Complaint and Notice of Hearing issued on September 25, 1992 (G.C. Exh. 1(e)) which set the hearing for a date, and at a place in Harlingen, Texas, to be determined; however, the Notice Scheduling the Date of Hearing (G.C. Exh. 1(a)), set the hearing for February 9, 1993, in McAllen, Texas, not Harlingen, pursuant to which a hearing was duly held on February 9, 1993, in McAllen, Texas, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, March 9, 1993, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, for good cause shown, to March 16, 1993. Respondent and General Counsel each timely mailed a brief, received on, or before, March 17, 1993, which have been carefully considered. Upon the basis of the entire record[(2)] , I make the following findings and conclusions:

Findings of Fact

1. The American Federation of Government Employees, AFL-CIO, Immigration and Naturalization Service Council (hereinafter, "AFGE") is the certified exclusive representative of a nationwide consolidated unit of employees appropriate for collective bargaining at the United States Immigration and Naturalization Service including employees located at Harlingen, Texas (G.C. Exhs. 1(e) and (g); 3, Art. 1).

2. Mr. Juan A. Garcia, a member of the bargaining unit (Tr. 16), is employed by Respondent at its Port Isabel Service Processing Center, Harlingen District, Los Fresnas, Texas, and lives in adjacent government housing (Tr. 16).

3. At the time in question, Mr. Garcia, who works rotating shifts, was assigned to the day shift - 8 a.m. to 4 p.m. On December 23, 1991, when Mr. Garcia was awakened to go to work, his wife told him that her nephew had brought his common-law wife to their home at about 3 a.m. Although his wife told him that her nephew had assured her that his common-law wife, Maria Guadalupe Barajas-Enriquez, had documents, Mr. Garcia did not think she had permission to be in the United States and, accordingly, told his wife to get them back to Matamoros, a town in Mexico on the other side of the Rio Grande river from Brownsville, Texas (Tr. 21, G.C. Exhs. 2, 5). Mr. Garcia went to work without having seen Maria. Mr. Garcia's wife did not comply with his instructions; at about 1:50 p.m. on December 23, 1991, Ms. Mattilde Reyes, Mr. Garcia's sister-in-law, called Respondent and reported that an undocumented alien was being housed in Mr. Garcia's residence, House No. 304. Respondent sent personnel to Mr. Garcia's residence and found an undocumented alien, Maria, on the premises. (G.C. Exh. 2).

4. By letter dated February 5, 1992, Respondent notified Mr. Garcia that it proposed to suspend him for 30 days for,

". . . Failing to report the presence of an undocumented alien at your residence, and instructing your

wife to transport said alien to Brownsville is contrary to the mission of this Service." (G.C. Exh. 2).

Although Mr. Garcia was charged with the specific offense of "Failing to report the presence of an undocumented alien at your residence. . . .", the offense was bottomed, as Respondent reminded him, on that portion of the Officers' Handbook which provides, "Any association, business, social or otherwise, which may obligate, or appear to obligate, you to an alien in any way should be carefully avoided. Such obligation can become a serious barrier to the proper enforcement of the law and may bring criticism both to you and to the Service." (G.C. Exh. 2). All employees are to follow the guidelines of the Officers' Handbook (Tr. 43).

5. On February 22, 1992, Mr. Garcia designated Mr. Dewell M. Richardson, Special Operations Inspector and President of Local 1944 (Tr. 15), as his representative (G.C. Exh. 4, Attachment) and Mr. Richardson, by letter also dated February 22, 1992 (G.C. Exh. 4), informed the District Director that he would be representing Mr. Garcia; in the same letter he requested, ". . . copies of all documents pertaining to the proposed action in order to prepare a reply"; and advised the District Director that, "We will reply both orally and in writing and also request an appointment for that purpose." (G.C. Exh. 4).

6. Mr. Richardson submitted a statement on February 26, 1992 (G.C. Exh. 5) but did not raise the defense of disparate treatment. By letter dated March 31, 1992, the District Director, Mr. E.M. Trominski, found that disciplinary action invoked was warranted but reduced the suspension from 30 days, as had been proposed, to fourteen days (G.C. Exh. 6). By letter dated April 7, 1992, Mr. Richardson invoked arbitration (G.C. Exh. 7); and, by letter also dated April 7, 1992, Mr. Garcia informed Respondent that his representative in the upcoming arbitration hearing would be: Ms. Mildred Williams (G.C. Exh. 7, Attachment).

7. In the meantime, by letter dated February 24, 1992, Mr. Richardson had made the request for information involved herein. He prefaced his request with the statement that, "It has come to the attention of the Union that a possible disparity of treatment has occurred between that proposed for a journeyman officer, Juan Garcia . . ., in a situation with an alien and that given to a supervisory officer, Celicio (sic) Ruiz . . ., for a similar, if not more serious situation. In October 1990, approximately, Mr. Ruiz was arrested in Matamoros,Tam, MX by Mexican police while in association with possible known felons and temporarily jailed." Mr. Richardson stated his request:

"In order to determine whether to include this incident in an arbitration brief the union requests. . .:

"A. Any and all correspondence between Mr. Ruiz and the District Director and/or his agents regarding this incident.

"B. Any record of counselling, either verbal or written, that may exist.

"C. Any proposals for disciplinary action served on Mr. Ruiz and copies of documents imposing

actual punishment awarded to him if not included in Request A.

"D. Any record of corrective action ordered by the District Director to alleviate that incident and prevent recurrence in the future by Mr. Ruiz, his subordinates, and all other employees in the Harlingen District." (G.C. Exh. 8).

Mr. Richardson also stated that, "The union also needs the above information in addition to the reason stated above in order to include it in a more general study of disparity in treatment between journeymen and supervisors[3]. . . ." (G.C. Exh. 8).

8. By letter dated March 5, 1992, the Regional Director denied Mr. Richardson's request of February 24, 1992. In denying the information, the Regional Director stated, in part, as follows:

"Mr. Ruiz is protected by the Privacy Act of 1974 [5 U.S.C. 552a]. Accordingly, your request is being handled under the provisions of the Freedom of Information Act [FOIA], Title 5 United States Code Section 552.

"We have identified seven (7) pages of material which relate to your request. I have reviewed these documents and have determined that they are exempt from mandatory disclosure to you without the consent of Mr. Ruiz. The seven pages . . . are being withheld in their entirety, in accordance with the following provisions of the FOIA:

"(1) 5 U.S.C. 552(b)(5). . .

"(2) 5 U.S.C. 552(b)(6). . .

"(3) 5 U.S.C. 552(b)(7)(C). . .

"Additionally, the Office of Professional Responsibility conducted an inquiry into this matter; however, my office was not provided copies of any records generated by that inquiry. To request copies of those documents, you may write to . . . . [Office of the Inspector General, Washington, D.C.] (G.C.

Exh. 10).

9. Mr. Richardson testified that he first learned that Mr. Ruiz was missing from Mr. Trominski, the District Director (Tr. 36), and thereafter rumors were rife concerning Mr. Ruiz' having been arrested with a group of people in Cano's Bar (Tr. 36-40). Upon Mr. Ruiz' release the story of his arrest and release from a Matamoros jail was reported in the Valley Morning Star of Wednesday, October 3, 1990, and in the San Antonio Express News for October 3, 1990 (G.C. Exh. 12). The Morning Star, for example, reported, in part, as follows:

"An Immigration and Naturalization Service official was released from a Matamoros jail Tuesday morning following his arrest during a weekend drug bust. . .

"INS detention and deportation director Cecilio Ruiz returned to the United States after spending more than a day behind bars in a Matamoros jail. . .

. . .

"Trominski emphasized that no charges were brought against Ruiz and said Mexican authorities cleared the supervisor of any wrong-doing.

. . .

"He apparently was arrested with several others in the lounge of the Hotel Del Prado in Matamoros late Sunday night. Some of the others were found to be in possession of cocaine, according to reports.

. . .

"Trominski called the arrest an 'unfortunate incident,' but was unable to explain why Ruiz was kept for over a day.

"'He just happened to be in the wrong place and (sic) the wrong times (sic),' Trominski said, 'Cecilio Ruiz was visiting with friends in a bar and a bust went down. He was among several people arrested.'" (G.C. Exh. 12).

10. Mr. Trominski testified that there had been no counselling, either oral or written, of Mr. Ruiz and, accordingly, there was no record as requested in Request B (Tr. 116); and, further, that there had been no proposal for disciplinary action and no corrective action taken and, accordingly, there was no data as requested in Requests C and D (Tr. 116-117, 118). Mr. Trominski further testified that the seven pages he had indicated in his letter of March 5, 1992, as related to Mr. Richardson's request (G.C. Exh. 10), consisted of two documents: first, the three pages of Mr. Ruiz' memorandum to the Regional Director, Mr. Trominski, which he, Trominski, had orally requested (Tr. 136); and, second Mr. Trominski's four page report to the Acting Regional Commissioner, his immediate supervisor (Tr. 136-137). Mr. Trominski stated that his four page report was not, strictly speaking, within the purview of Mr. Richardson's request, (Tr. 117-118), i.e. ". . . correspondence between Mr. Ruiz and the District Director and/or his agents . . ." (G.C. Exh. 8, Request A), and he included it only because he did not want to subject the agency to "splitting hairs" (Tr. 127) and elected to "err on the side of caution" (Tr. 137). Mr. Trominski testified that Mr. Ruiz' statement concerned law enforcement relations between Mexico and the United States (Tr. 141, 142, 143) and that its disclosure could damage law enforcement efforts along the border (Tr. 152, 156, 157, 160-161).

Mr. Trominski stated that Mr. Ruiz' statement contained ". . . nothing . . . that discussed any hint of criminal misconduct upon the part of Mr. Ruiz." (Tr. 123). Mr. Trominski further stated that Mr. Ruiz' statement was not needed by the Union because, "There is nothing in there that would assist them in the defense of any bargaining unit employee in any sort of disciplinary action because there was nothing in there to indicate that Mr. Ruiz had committed any kind of an offense of any sort that would subject him to disciplinary action." (Tr. 123-124). Further, in this regard, the incident of Mr. Ruiz' arrest was investigated by the Immigration and Naturalization Service and the Report of Special Agent Ernesto Gonzalez, of the Border Patrol in McAllen, Texas (Tr. 120), dated January 17, 1991 (Res. Exh. 1) concluded that: (a) Mr. Ruiz was not a suspect and was not charged with any violation by the Mexican Federal Judicial Police (MFJP), and (b) there was no evidence that Mr. Ruiz was associating with known criminals. Thus, Mr. Gonzalez' report[4] states, in part:

". . . Statements from the MFJP officials conclude that SUBJECT [Ruiz] was not a suspect in their investigation and no charges were filed.

. . .

". . . there is no evidence that any of persons arrested with SUBJECT are known criminals.

"No evidence or documentation was obtained that would substantiate the allegation that SUBJECT was associating with known criminal elements." (Res. Exh. 1).

Conclusions

1. Data not necessary within the meaning of § 14(b)(4)(B).

Wholly apart from the Privacy Act concerns which Respondent has raised, i.e. to the extent not prohibited by law, the Statute imposes, inter alia, the limitation that such data be necessary, i.e., that data, upon request, be furnished,

"(B) which is . . . necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. . . ."[(5)] (§ 7114(b)(4)(B)).

Discipline of Mr. Garcia had been proposed for his admitted failure to report the presence of an undocumented alien at his home. As a defense, the Union wanted to explore the possibility of disparity of treatment of a supervisor, Mr. Ruiz, following his arrest in Mexico about a year earlier for which Mr. Ruiz received no discipline, and the proposed discipline of Mr. Garcia. The difficulty was that neither the newspaper accounts, nor the Union's other sources of information (Tr. 78), had indicated any misconduct on the part of Mr. Ruiz, although, certainly, his mere arrest and detention for more than 24 hours had raised a question. But, the VALLEY MORNING STAR had reported, ". . . that no charges were brought against Ruiz . . . 'There are no allegations pending against Cecilio Ruiz. The Commandante of the Federal Judicial Police made it very clear they found him not be culpable of any charges' . . . He apparently was arrested with several others in the lounge of the Hotel Del Prado in Matamoros. . . ."; and the SAN ANTONIO EXPRESS NEWS had reported, "A high-ranking U.S. immigration officer was arrested in this border city after Mexican federal police found cocaine on a man with him at a hotel bar. . . 'Basically, it appears that Ruiz was socializing with some friends when the MFJP moved in with an investigation . . . One of his acquaintances was in possession of a small amount of cocaine . . . The police assured us that his name was cleared and that he had absolutely nothing to do with the possession or use of cocaine'" (G.C. Exh. 12).

In an effort to "bridge the gap", the Union requested, "Any and all correspondence between Mr. Ruiz and the District Director . . ." (G.C. Exh. 8). Mr. Ruiz had written a three page report of his incarceration incommunicado to the District Director. General Counsel concedes that the only "necessity" for Mr. Ruiz' report was to determine, "whether there was evidence of misconduct." (General Counsel's Brief, p. 9). Thus, General Counsel opines that there might have been "an admission, or acknowledgement of misconduct" (id); but there was none. District Director Trominski, who I found to be a wholly credible witness, in answer to my question, "Was there any statement in the written statement by Mr. Ruiz concerning any wrong doing by him?", testified,

"THE WITNESS: None whatsoever. The only wrong thing he did was to be in the wrong place at the wrong time.

"JUDGE DEVANEY: And he made no confession of dealing in any illicit activity?

"THE WITNESS: None whatsoever." (Tr. 166).

This was fully confirmed by Internal Affairs' (OIG) independent investigation whose Report showed, inter alia, that,

". . . Statements from the MFJP officials conclude that SUBJECT [Cecilio L. Ruiz, Jr.] was not a suspect in their investigation and no charges were filed.

"No clear reason was given as to why he was detained for that length of time, however, there is speculation that it was due to the nature of the SUBJECT's employment. Several other speculations could be made, to include that the harassment was planned, and that the cocaine found on one of the others was planted. . .

". . . there is no evidence that any of the persons arrested with SUBJECT are known criminals.

"No evidence or documentation was obtained that would substantiate the allegation that SUBJECT was associating with known criminal elements." (Res. Exh. 1).

The Union's request was specifically limited to ". . . correspondence between Mr. Ruiz and the District Director" (G.C. Exh. 8) and, accordingly, the Union did not ask for the District Director's report to his superior. Indeed, General Counsel stated at the hearing that, "And it sounds now like we are down to a three-page memo that Ruiz wrote" (Tr. 159); but, in any event, there was no showing whatever that the District Director's report was "necessary" within the meaning of § 14(b)(4)(B) of the Statute. Because the Union's request was not "necessary" within the meaning of § 14(b)(4)(B) of the Statute, Respondent's refusal to furnish the data was not contrary to § 14(b)(4) and did not violate §§ 16(a)(1), (5) or (8).

2. Release of Mr. Ruiz' Statement Prohibited by Law.

The Privacy Act(5 U.S.C. § 552a)provides that,

"(b) CONDITIONS of DISCLOSURE - No agency shall disclose any record which is contained in a system of records . . . except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be -

. . .

(2) required under section 552 of this title;

. . . . (5 U.S.C. § 552a(b)(2)).

The Freedom of Information Act (U.S.C. § 552) provides,

"(b) This section does not apply to matters that are --

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) investigatory records complied for law enforcement purposes. . . ."

(5 U.S.C. § 552(b)(5),(6),(7)).

(a) Clearly unwarranted invasion of personal privacy.

In United States Department of Defense v. Federal Labor Relations Authority, No. 92-1223, __ U.S. __, __S. Ct. __, 62 U.S.L.W. 4143, (hereinafter, "DoD"), the Supreme Court, on February 23, 1994, held that the disclosure of the home addresses of federal civil service employees by their employing agency pursuant to a request made by the employee's collective-bargaining representative under the Statute would constitute a "clearly unwarranted invasion" of the employees' personal privacy within the meaning of the Freedom of Information Act, 5 U.S.C. § 552. Although the precise data requested in DoD (names and home addresses) was different, the holding of the Court is fully applicable here. In DoD, the Court rejected the contention that in determining whether Exemption 6(6) applies to information requests under § 14(b)(4) of the Statute, the public interest in effective collective bargaining must be weighted against the interest of the employees' personal privacy. To the contrary, the Court held,

". . . We must weigh the privacy interest of bargaining unit employees in nondisclosure . . . against the only relevant public interest in the FOIA balancing analysis - the extent to which disclosure of the information sought would 'she[d] light on an agency's performance of its statutory duties' or

otherwise let citizens know 'what their government is up to.' Reporters Committee, supra, [489 U.S. 749 (1989)] at 773 (internal quotation marks omitted)." (62 U.S.L.W. 4146).

The Court further stated that the Freedom of Information Act,

". . .allows the disclosure of information necessary for effective collective bargaining only 'to the extent not prohibited by law.' 5 U.S.C. §7114(b)(4). Disclosure . . . is prohibited by the Privacy Act unless an exception to that Act applies. The terms of the Labor Statute in no way suggest that the Privacy Act should be read in light of the purposes of the Labor Statute. . . . Therefore, because all FOIA requestors have an equal, and equally qualified, right to information, the fact that respondents are seeking to vindicate the policies behind the Labor Statute is irrelevant to the FOIA analysis. . . ." (62 U.S.L.W. 4146).

Mr. Ruiz' statement concerning his arrest and detention in Mexico would not contribute to public understanding of the operations or activities of the United States government, which the Court has noted is the core purpose of FOIA, Reporters Committee, supra, 489 U.S. at 775; DoD, supra, 62 U.S.L.W. at 4146, 4147. As the Court held in DoD, supra, "Because a very slight privacy interest would suffice to outweigh the relevant public interest, we need not be exact in our qualification of the privacy interest. It is enough . . . that the employees' interest in nondisclosure is not insubtan- tial." (62 U.S.L.W. at 4147). Here, as in DoD, supra, the FOIA-related public interest in disclosure is virtually nonexistent, and Mr. Ruiz' interest in nondisclosure clearly is not insubstantial. Accordingly, Mr. Ruiz' statement is protected by the Privacy Act and its disclosure would constitute a clearly unwarranted invasion of personal privacy. DoD, supra.

(b) Prohibited by Exemption of the Freedom of Information Act.

It is undisputed that the requested statement was contained in a system of records, obtained for law enforcement purposes and identifiable by Mr. Ruiz' name (Tr. 125). The Supreme Court stated in Department of Justice v. Reporters Committee, supra, that,

"Exemption 7(C)'s privacy language is broader than the comparable language in Exemption 6 in two respects. First, whereas Exemption 6 requires that the invasion of privacy be 'clearly unwarranted,' the adverb 'clearly' is omitted from Exemption 7(C). This omission is the product of a 1974 amendment adopted in response to concerns expressed by the President [footnote omitted].

Second, whereas Exemption 6 refers to disclosures that 'would constitute' an invasion of privacy, Exemption 7(C) encompasses any disclosure that 'could reasonably be expected to constitute' such an invasion. This difference is also the product of a specific amendment [footnote omitted]. Thus, the standard for evaluating a threatened invasion of privacy interests resulting from the disclosure of records compiled for law-enforcement purposes is somewhat broader than the standard applicable to personnel, medical, and similar files." (id., at 756).

Here, as in Reporters Committee, supra, the potential disclosure of information related to unsubstantiated charges. It is also beyond question that Mr. Ruiz' statement contained no information as to what the Government was up to. The Court in Reporters Committee, supra, further stated that,

". . . when the information is in the Government's control as a compilation, rather than as a record of 'what the Government is up to,' the privacy interest protected by Exemption 7(C) is in fact at its apex while the FOIA-based public interest in disclosure is at its nadir . . . Accordingly, we hold as a categorical matter that a third party's request for law-enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no 'official information' about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is 'unwarranted.' . . . ." (id., at 780).

Accordingly, release of Mr. Ruiz' statement would constitute an unwarranted invasion of his personal privacy.

(c) No opinion expressed as to Exemption 5 of the Freedom of Information Act.

Although Respondent also relied on 5 U.S.C. § 552(b)(5) in denying the Union request for data, neither party addresses Exemption 5 and I express no opinion whatever concerning Exemption 5.

Having found that the data requested was not "necessary" within the meaning of § 14(b)(4)(B) of the Statute and/or, even if necessary, disclosure was prohibited by law, and that Respondent did not violate §§ 16(a)(1), (5) or (8) of the Statute by its refusal to furnish the data requested, it is recommended that the Authority adopt the following:

ORDER

The Complaint in Case No. DA-CA-20684 be, and the same is hereby, dismissed.

_____

WILLIAM B. DEVANE

Administrative Law Judge

Dated: May 11, 1994

Washington, DC

1. For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7114(b)(4) will be referred to, simply, as "§ 14(b)(4)".

2. General Counsel's motion to correct the transcript, which was unopposed, is granted and the transcript is hereby corrected by adding the appearance of Mr. Dewell M. Richardson on page 1. Mr. Richardson's appearance on behalf of the Charging Party was duly entered on page 7 of the transcript.

3. See, Mr. Richardson's request, dated December 23, 1991 (G.C. Exh. 9; Tr. 55).

4. Office of Professional Responsibility/Office of the Inspector General (Res. Exh. 1; G.C. Exh. 10; Tr. 133-134).

Although the Report confirms the report of the newspaper that cocaine was found, the Report states,

"No clear reason was given as to why he was detained for that length of time [over 35 hours], however, there is speculation that it was due to the nature of the SUBJECT's employment. Several other speculations could be made, to include that the harassment was planned, and that the cocaine found on one of the others was planted. However, due to the location of the arrest and the conflicting stories, there is no way to make a true deter- mination." (Res. Exh 1.)

5. Respondent concedes that the data in question is normally maintained, indeed, counsel for Respondent stipulated that, "I will at least maintain a copy of these documents during the pendency of this hearing so they will not be destroyed . . . I will say as an officer of the Court, we have no intention of destroying them, and there is no clock to run out." (Tr. 10) (§ 7114(b)(4)(A)); and that such data is reasonably available (§ 7114(b)(4)(B)). General Counsel asserts that the data does not constitute guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining" (7114(b)(4)(C)). Respondent does not assert that the data was guidance, advice or counsel, but does assert that it is "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency" within the meaning of 5 U.S.C. Code § 552(b)(5).

6. 5 U.S.C. § 552(b)(6), "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy".