

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

STEVEN J. HATFILL, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. A. No. 03-1793 (RBW)
	)	
ATTORNEY GENERAL	)	
ALBERTO GONZALES, et al.	)	
	)	
Defendants.	)	
	)	

**DEFENDANTS’ RESPONSE TO THE OPPOSITION OF ABC, THE  
WASHINGTON POST, NEWSWEEK, MICHAEL ISIKOFF, DANIEL KLAIDMAN,  
AND ALLEN LENGEL TO PLAINTIFF’S MOTION TO COMPEL DOCUMENTS**

In their Opposition to Plaintiff’s Motion to Compel Documents (Docket No. 181, at 4-5 & n.5), media companies ABC, the Washington Post, and Newsweek and journalists Michael Isikoff, Daniel Klaidman, and Allen Lengel renew attacks that have previously been made against this Court’s observation that the “wealth of case law suggests that in order to prove that a violation of the Privacy Act has occurred, the actual source of the information must be identified.” Order, at 3 (Mar. 30, 2007).

Defendants have previously discussed at length the various reasons why the Court’s March 30, 2007 observation was correct, and hereby incorporate the arguments made in Defendants’ Consolidated Response, and Memorandum in Support, to Reporters’ Opposition to Plaintiff’s Motion to Compel, filed on June 4, 2007. See Docket No. 185. In sum, without the identities of the sources of the alleged “leaks,” plaintiff cannot carry his burden of proof of showing (1) that Privacy Act protected information was retrieved from a record in a system of record and disclosed in violation of the Act, see id. at 16-17, or (2) that information was

disclosed in a “willful and intentional manner” as that term is construed under the Privacy Act, see id. at 11-16. The availability of a “safeguards” claim does not change this analysis, as (1) any safeguards claim would be meritless, and (2) a safeguards claim would still require proof that any inadequate safeguard led to an “adverse effect” on plaintiff, something that could only be established with knowledge of the identity of the “leaker” and the circumstances of the “leak.” See id. at 17-25. Finally, if the reporters do not divulge the identities of their sources, defendants will be unable to meaningfully cross examine the reporters, and their testimony will be inadmissible. See id. at 5-10.

Respectfully submitted,

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