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SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES DEPARTMENT OF JUSTICE ET AL. v. LANDANO

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

No. 91-2054. Argued February 24, 1993—Decided May 24, 1993

Respondent Landano was convicted in New Jersey state court for murdering a police officer during what may have been a gang-related robbery. In an effort to support his claim in subsequent state-court proceedings that the prosecution violated *Brady v. Maryland*, 373 U. S. 83, by withholding material exculpatory evidence, he filed Freedom of Information Act (FOIA) requests with the Federal Bureau of Investigation (FBI) for information it had compiled in connection with the murder investigation. When the FBI redacted some documents and withheld others, Landano filed this action in the Federal District Court, seeking disclosure of the requested files' contents. The FBI claimed that it withheld the information under Exemption 7(D), which exempts agency records compiled for law enforcement purposes by law enforcement authorities in the course of a criminal investigation if the records' release "could reasonably be expected to disclose" the identity of, or information provided by, a "confidential source." The court held that the FBI had to articulate case-specific reasons for nondisclosure of information given by anyone other than a regular informant, and the Court of Appeals affirmed in relevant part. It held that a source is confidential if there has been an explicit assurance of confidentiality or circumstances from which such an assurance could reasonably be inferred. However, it rejected the Government's argument that a presumption of confidentiality arises whenever any individual or institutional source supplies information to the FBI during a criminal investigation and declined to rule that a presumption may be based on the particular investigation's subject matter. Rather, it held that, to justify withholding under Exemption 7(D), the Government had to provide detailed explanations relating to each alleged

confidential source.

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Held:

1. The Government is not entitled to a presumption that all sources supplying information to the FBI in the course of a criminal investigation are confidential sources within the meaning of Exemption 7(D). Pp. 5-13.

(a) A source should be deemed "confidential" if the source furnished information with the understanding that the FBI would not divulge the communication except to the extent it thought necessary for law enforcement purposes. Contrary to respondent's position, Congress could not have intended to limit the exemption to only those sources who are promised complete anonymity or secrecy, because at the time an interview is conducted, neither a source nor the FBI ordinarily knows whether a communication will need to be disclosed. Pp. 7-8.

(b) Nonetheless, the presumption for which the Government argues in this case is unwarranted, because it does not comport with common sense and probability. During the course of a criminal investigation, the FBI collects diverse information, ranging from the extremely sensitive to the routine, from a variety of individual and institutional sources. While most individual sources may expect confidentiality, the Government offers no explanation, other than administrative ease, why that expectation always should be presumed. The justifications for presuming the confidentiality of all institutional sources are even less persuasive, given the wide variety of information that such sources are asked to give. Considerations of fairness also counsel against the Government's rule. Its presumption is, in practice, all but irrebuttable, because a requester without knowledge about the particular source or the withheld information will very rarely be in a position to offer persuasive evidence that the source had no interest in confidentiality. While Exemption 7(D)'s "could reasonably be expected to" language and this Court's decision in *United States Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U. S. 749, may support some inferences of confidentiality, they do not support the presumption that all FBI criminal investigative sources are exempt. Nor does the FOIA's legislative history indicate that Congress intended to create such a rule. Pp. 8-13.

2. Some narrowly defined circumstances can provide a basis for inferring confidentiality. For example, it is reasonable to infer that paid informants normally expect their cooperation with the FBI to be kept confidential. Similarly, the character of the crime at issue and the source's relation to the crime may be relevant to determining whether a source cooperated with the

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FBI with an implied assurance of confidentiality. Most people would think that witnesses to a gang-related murder likely would be unwilling to speak to the FBI except under such conditions. The Court of Appeals erred in declining to rely on such circumstances. This more particularized approach is consistent with Congress' intent to provide workable FOIA disclosure rules. And when a document containing confidential source information is requested, it is generally possible to establish the nature of the crime and the source's relation to it. Thus, the requester will have a more realistic opportunity to develop an argument that the circumstances do not support an inference of confidentiality. To the extent that the Government's proof may compromise legitimate interests, the Government still can attempt to meet its burden with *in camera* affidavits. Pp. 13-14.

956 F. 2d 422, vacated and remanded.

O'CONNOR, J., delivered the opinion for a unanimous Court.