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United States District Court, N.D. Illinois, Eastern
Division.

ALLIANCE TO END REPRESSION, et al.,
Plaintiffs,

Chicago Cispes, et al., Petitioners,

v.

CITY OF CHICAGO, et al., Defendants,
Federal Bureau of Investigation, Respondent.

Nos. 74 C 3268, 75 C 3295. | July 28, 1989.

Opinion

MEMORANDUM OPINION AND ORDER

ANN C. WILLIAMS, District Judge.

*1 The FBI has asked the court to withdraw the referral to Magistrate Lefkow with regard to discovery matters involving state secrets. The court denies this motion.

The FBI's main contention appears to be that Magistrate Lefkow lacks the necessary security clearance, as that term is defined in the executive branch, to be granted access to classified information. The FBI concedes that Magistrate Lefkow "has already undergone a full field investigation by the FBI prior to appointment to the Bench." FBI's brief, p. 4. However, the FBI claims that

Footnotes

¹ Nothing in this order prevents the FBI from implementing its "security clearance" procedures for Magistrate Lefkow, which, because of the FBI's apparent concession in its brief that Magistrate Lefkow has undergone a full background check, would probably take considerably less time than the usual 90 days. However long it takes, the FBI can begin that process now.

this was merely a "suitability determination," not a security clearance. Nowhere does the FBI explain what the difference is—if indeed there is any real difference—between these two procedures.

The FBI cites to 28 C.F.R. § 17.98, but this provision, besides applying to Department of Justice employees rather than the courts, does not mention the term "suitability determination." Neither does 28 C.F.R. § 17.96(f), which governs access to classified information by persons within the judicial branch. Section 17.96(f) does refer to the need to conduct a "full-field background investigation to allow a determination of eligibility for a security clearance to be made." This language sounds similar to the kind of investigation that the FBI concedes Magistrate Lefkow has already undergone, lacking only the *imprimatur* of the Department Security Officer. The only other authority provided by the FBI is the "Security Procedures ... For the Protection of Classified Information" developed by the Chief Justice under authority of 18 U.S.C. Appendix § 9(a). As the FBI acknowledges, however, these procedures only govern criminal cases. *Bowers v. U.S. Dept. of Justice*, 690 F.Supp. 1483, 1486 (W.D.N.C.1987).

In sum, the FBI has not provided the court with any authority for the Bureau's objection to disclosing state secrets to Magistrate Lefkow. Its appeal to an unexplained distinction between "suitability determination" and "security clearance" is not sufficient. The court denies the motion to partially withdraw the reference to Magistrate Lefkow.¹