UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

JESSE C. TRENTADUE, Plaintiff–Appellant, v. INTEGRITY COMMITTEE, a subdivision of the President's Council on Integrity and Efficiency, Defendant–Appellee.	Nos. 04-4200 & 06-4129 (D.C. No. 2:03-CV-339-TS) (D. Utah)

ORDER

Filed November 20, 2007

Before **TACHA**, Chief Judge, **KELLY**, **HENRY**, **BRISCOE**, **LUCERO**, **MURPHY**, **HARTZ**, **O'BRIEN**, and **TYMKOVICH**, Circuit Judges.[1]

This matter is before the court on appellee Integrity Committee's petition for panel rehearing and rehearing en banc. The petition for rehearing en banc was transmitted to all judges of the court who are in regular active service. As no judge in regular active service requested that the court be polled, the petition for rehearing en banc is denied.

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[1] Judges Michael W. McConnell, Neil M. Gorsuch, and Jerome A. Holmes are recused in this case.

The petition for panel rehearing is also denied for the following reasons. First, relying on United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989), the Integrity Committee asserts that the panel undervalued the privacy interest that lower-level government employees have in protecting their identities. In Reporters Committee, however, the Supreme Court drew a distinction between those public records which are "hard to obtain," such as the criminal-history files underlying FBI rap sheets, and those records that are "freely available." Id. at 763-64. In so doing, the Court recognized a privacy interest only with respect to those individuals whose personal information appeared in the former class of documents. Id. at 764. In direct contrast, this case involved the ascertainment of the privacy interest of several individuals whose identities had been disclosed in "freely available" public records, including in the public litigation records related to Trentadue's earlier lawsuit against the government, see Estate of Trentadue ex rel. Aguilar v. United States, 397 F.3d 840 (10th Cir. 2005) ("Trentadue I"), and in the complaint Trentadue filed with the Integrity Committee ("IC Complaint").

Next, the Integrity Committee argues that by recognizing a diminished privacy interest in this case, the panel provides information-hungry plaintiffs with a categorical license to engage in unwarranted FOIA fishing expeditions so long as they first place the identities of government employees in the public sphere. This argument is also unpersuasive on the facts before us. Long before Trentadue

filed the IC Complaint, the identities of the relevant individuals were in the public sphere. For example, in Trentadue I, the actions of many of these employees were at issue in determining whether the United States should be held liable to Kenneth Trentadue's estate. See 397 F.3d 840. Several of these individuals were publicly named defendants or testifying witnesses. As to the remaining persons, Trentadue specifically based his allegations against them on information obtained from the November 18, 1999 report issued by the United States Department of Justice, Office of the Inspector General ("DOJ OIG Report"), provided to Trentadue by the government during the prior litigation.

Finally, relying on Hale v. United States Department of Justice, 973 F.2d 894 (10th Cir. 1992), vacated on other grounds, 509 U.S. 918 (1993), the Integrity Committee contends that the panel overvalues the public interest in ordering disclosure by ignoring the fact that Trentadue's allegations of wrongdoing are "unsubstantiated." Trentadue's allegations, however, were adequately supported by information he obtained either during the earlier litigation or from his version of the DOJ OIG Report.

ENTERED FOR THE COURT

Elisabeth A. Shumaker

ELISABETH A. SHUMAKER, Clerk