

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

MONTGOMERY BLAIR SIBLEY,  
  
PLAINTIFF,

Case. No.: 2012-CA-008644 B  
Judge: John M. Mott  
Next Hearing: February 15, 2013  
10:00 a.m.

VS.

YVETTE ALEXANDER, DON R. DINAN AND  
WILLIAM LIGHTFOOT,  
  
DEFENDANTS.

**PLAINTIFF’S FIRST MOTION FOR ORDER  
TO RELEASE PRIVACY ACT-PROTECTED  
RECORDS AND EXPEDITED  
CONSIDERATION**

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Plaintiff, Montgomery Blair Sibley, pursuant to 5 U.S.C. §552a(b)(11), moves this Court for (i) an Order directing the Department of State to release the passport applications and supporting evidence of United States nationality of Barack Hussein Obama, II, which documents are protected by the Privacy Act of 1974 codified at 5 U.S.C. §552a, and (ii) for expedited consideration of this Motion and for grounds in support thereof states:

In order to obtain a United States Passport, an applicant must furnish the Department of State proof of the United States Nationality of the applicant.<sup>1</sup> The Department of State: “maintains United States passport records for passports issued from 1925 to the present. These records normally consist of applications for United States passports and supporting evidence of United States citizenship, and are protected by the Privacy Act of 1974, (5 U.S.C. §552a).”<sup>2</sup>

Title 5 U.S.C. §552a(b) “Conditions of Disclosure” states: “No agency shall disclose any

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<sup>1</sup> 22 C.F.R. Part 51 – Evidence of U.S. Citizenship or Nationality – Passports, Subpart C – Evidence of U.S. Citizenship or Nationality, § 51.40 Burden of proof. “The applicant has the burden of proving that he or she is a national of the United States.” § 51.41 “Documentary evidence. Every application shall be accompanied by evidence of the U.S. nationality of the applicant.”

<sup>2</sup> [http://www.travel.state.gov/passport/npic/npic\\_872.html](http://www.travel.state.gov/passport/npic/npic_872.html)

record which is contained in a system of records by any means of communication to any person, or to another agency, 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 . . . (11) pursuant to the order of a court of competent jurisdiction.”

Unlike similar provisions in other federal confidentiality statutes, *see, e.g.*, 42 U.S.C. §290dd-2 (listing “good cause” factors to be weighed by court in evaluating applications for orders permitting disclosure of records pertaining to substance abuse), subsection §552a(b)(11) contains no standard governing the issuance of an order authorizing the disclosure of otherwise protected Privacy Act information. As the Privacy Act does not itself create a qualified discovery “privilege,” a showing of “need” is not a prerequisite to initiating discovery of protected records. In *Laxalt v. McClatchy*, 809 F.2d 885 (D.C. Cir. 1987) the Court held:

The Privacy Act, however, does not create a qualified discovery privilege as that concept is generally understood, and we find no basis in the statute or its legislative history for inferring one. Nor does the Act create any other kind of privilege or bar that requires a party to show actual need as a prerequisite to invoking discovery. Rather, the plain language of the statute permits disclosure “pursuant to the order of a court of competent jurisdiction.” 5 U.S.C. § 552a(b)(11) (1982). Neither the statute nor anything in its legislative history specifies the standards for issuance of such a court order. We therefore find no basis for inferring that the statute replaces the usual discovery standards of the FRCP – in particular, Rules 26 and 45(b) -- with a different and higher standard.

*Id.* at 888-90.

In providing direction to the lower courts on handling §552a(b)(11) requests, the Court went on to state: “Procedurally, then, when the District Court considers a request for a Privacy Act order in the discovery context it must consider the use of protective orders and the possibility of *in camera*

inspection. It should also consider, in its discretion, the wisdom of notifying the affected parties. . . [T]he broad authority of the District Court in supervising discovery surely affords it the discretion to give such notice itself and ask the affected parties to appear.” *Id.* at 890. Thus *Laxalt v. McClatchy* established that the only test for discovery of Privacy Act-protected records is “relevance” under Rule 26(b)(1) of the Federal Rules of Civil Procedure. *Id.* at 888-90.

Here, the “relevance” under Rule 26(b)(1) of the Passport application materials of Barack Hussein Obama, II, are manifest as such records will reveal the “evidence of the U.S. nationality” of Barack Hussein Obama, II. That “evidence” will address the seminal question of whether Barack Hussein Obama, II, is indeed a “natural born Citizen” eligible – under Article II, §1, clause 5 of the United States Constitution – to be President. Upon such determination of ineligibility, the Defendants will be legally barred from casting their Twelfth Amendment votes for Barack Hussein Obama, II.

WHEREFORE, Plaintiff respectfully requests an order from this Court pursuant to 5 U.S.C. §552a(b)(11) directing the Department of State to release to Plaintiff the applications for United States passports and supporting evidence of United States nationality of Barack Hussein Obama, II. Given that the Twelfth Amendment votes is a few days away and is due to be counted on January 6, 2013, Plaintiff respectfully requests expedited resolution of this Motion.

**RULE 12.I(A) STATEMENT**

The undersigned has consulted with Defendants' counsel who has indicated that he **does/does not** oppose the relief requested herein.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served by U.S. Postal Service first class mail this December 3, 2012, on Andrew J. Saindon, Assistant Attorney General, Equity Section, 441 Fourth Street, N.W., 6th Floor South, Washington, D.C. 20001, Telephone: (202) 724-6643, Facsimile: (202) 730-1470, E-mail: [andy.saindon@dc.gov](mailto:andy.saindon@dc.gov).

**MONTGOMERY BLAIR SIBLEY**

**PLAINTIFF**

4000 Massachusetts Ave, NW, #1518

Washington, D.C. 20016

Voice/Fax: 202-478-0371

By: \_\_\_\_\_  
Montgomery Blair Sibley

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**[PROPOSED]  
ORDER ON PLAINTIFF'S FIRST MOTION FOR ORDER  
TO RELEASE PRIVACY ACT-PROTECTED RECORDS**

THIS MATTER came on to be heard on Plaintiff's First Motion for Order to Release Privacy Act-Protected Records, and the Court being advised in the premises, it is hereby:

ORDERED AND ADJUDGED that the motion is Granted. By the authority vested in this Court by 5 U.S.C. §552a(b)(11), the Department of State shall forthwith release to Montgomery Blair Sibley at the address below all records in its possession relating to the applications for United States passports and supporting evidence of United States nationality of Barack Hussein Obama, II.

DONE AND ORDERED in Chambers this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Judge John M. Mott

Copies to:

Montgomery Blair Sibley  
Plaintiff  
4000 Massachusetts Ave, N.W., #1518  
Washington, DC 20016

Andrew J. Saindon  
Attorney for Defendants  
Assistant Attorney General, Equity Section  
441 Fourth Street, N.W., 6th Floor South  
Washington, D.C. 20001