

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ARTHUR MARTIN,)
)
 Movant)
)
 v.) Misc. No. 96-0008-B
)
 UNITED STATES GENERAL)
 SERVICES ADMINISTRATION,)
)
 Respondent)

ORDER

Pending before the Court is a Motion for Order Pursuant to Customer’s Challenge Provisions of the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3401, et seq. Movant seeks to quash an administrative subpoena issued by Respondent for financial records relating to Movant’s accounts at the Maine Employees Credit Union.

The Court concludes that Movant has met his initial burden of providing the Court an affidavit in which he “1) states that he is a customer of the financial institution from which the financial records pertaining to him have been sought; and 2) [his] reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry, as stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of The Right to Financial Privacy Act of 1978.” In this case, Movant’s affidavit states that he is the customer of the Maine Employees Credit Union whose records Respondent seeks, and that he is unable to fashion a challenge to the relevancy of those records in light of Respondent’s

failure to describe with reasonable specificity the nature of the law enforcement investigation. The affidavit suffices to require the Government to respond to the Motion.¹

Inasmuch as Movant has met his initial burden, Respondent is now required to show that it has substantially complied with the provisions of the Right to Financial Privacy Act. 12 U.S.C. § 3410(c); *see Breakey v. Inspector General of the United States Dept. of Agric.*, 836 F. Supp. 422 (E.D. Mich. 1993). The Court concludes Respondent has not met this burden.

The notice of the subpoena, provided to Movant pursuant to 12 U.S.C. § 3405(2), described the nature of the law enforcement inquiry as follows:

Records or information concerning your transactions held by the financial institution named in the attached subpoena are being sought by the General Services Administration, Office of the Inspector General, in accordance with the Right to Financial Privacy Act of 1978, 12 U.S.C. §§ 3401 *et seq.*, for the purpose of assisting in an investigation into possible violation of federal law.

Customer Notice, att. 2 to Alderton Declaration (emphasis added). While the Court agrees that this vague description might be characterized as a “mere technicality” were it shown that Movant had knowledge of the nature of the investigation, *see Hunt v. United States Sec. and Exchange Comm.*, 520 F. Supp. 580, 603-04 (N.D. Tex. 1981), that is not the case here.

In *Hunt*, the Plaintiff sought to enjoin a reissuance of an administrative subpoena on the basis of its failure to comply with the provisions of the Right to Financial Privacy Act. The Court found the fact that the customer notices did not state with reasonable specificity the nature of the law enforcement inquiry was a mere technical defect, in light of the extent of the investigation prior to the issuance of the subpoena. *Id.* at 585-86, 603.

¹ Ordinarily, this would be accomplished by Order of the Court. 12 U.S.C. § 3410(b); *see Hancock v Marshall*, 86 F.R.D. 209 (1980). In this case, Respondent answered the Motion voluntarily.

In support of its contention that this Movant was aware of the nature of the investigation, Respondent has offered the Declarations of two of its employees. Thomas McGhie asserts that the investigation has been ongoing since March, 1995, and has included interviews with a number of individuals, “[m]any [of whom] are known by the movant.” Steven Alderton describes a conversation in which Movant asked him the nature of the investigation, so that Movant might challenge the subpoena, and he refused to provide further information. According to Alderton, Movant then indicated he had a “pretty good” idea what the investigation was about.

In the Court’s view, this evidence is wholly insufficient to establish Movant’s knowledge of the investigation such that the defect in the customer notice can be deemed a “mere technicality.” There is no evidence whatsoever that any of Respondent’s interviewees ever relayed information to Movant about the investigation. Nor is there any evidence that Movant’s “idea” about the nature of the investigation was correct. Under these circumstances, the Court finds that the notice provided Movant with an insufficient basis upon which to challenge the subpoena, as is required under the Right to Financial Privacy Act.

Further, Respondent concedes that at least some of Movant’s financial records were provided to the investigator, on the oral representation of an Assistant Counsel to the Inspector General that Movant would not challenge the subpoena, only eight days after the subpoena issued. Once again the Court concludes that a statement by Movant that he had “nothing to hide” is an insufficient basis upon which to violate the plain terms of the statute, which prohibits the Government from obtaining Movant’s financial records until the period in which Movant might have objected had passed. 12 U.S.C. § 3405(3).² This is particularly true when Movant made the statement after the Assistant

² Respondent does not challenge the timeliness of the Motion to Quash.

Counsel refused his reasonable request for a description of the investigation sufficient to permit Movant to assess its relevance to a “legitimate law enforcement purpose,” language drawn directly from the Customer Challenges section of the Act. Alderton Dec. at ¶ 6.

Conclusion

For the foregoing reasons, the Motion for Order Pursuant to Customer’s Challenge Provisions of the Right to Financial Privacy Act of 1978 is hereby GRANTED. It is hereby ORDERED that the Administrative Subpoena, issued March 20, 1996 and directed at the Maine Employees Credit Union, is QUASHED. All records provided to Respondent in violation of the provisions of the Right to Financial Privacy Act of 1978 are ORDERED to be returned to Movant within 5 days of the date of this Order.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated at Bangor, Maine on May 9, 1996.