

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES of AMERICA	:	
	:	
v.	:	Criminal No. 3:02CR69 (CFD)
	:	
ARTHUR PUGH,	:	
Defendant.	:	

RULING

_____ Pending is the government’s motion for Reconsideration of the Court’s August 19, 2003 Ruling [Doc. # 93]. The motion for reconsideration is GRANTED. Upon reconsideration, the Court’s ruling of August 19, 2003 [Doc. # 89] is hereby VACATED and the government’s motion for a protective order under Brady¹ and Giglio² [Doc. # 69] is GRANTED.

In the motion for a protective order, the government seeks an ex parte order that a matter in the personnel file of one of its likely law enforcement witnesses is not discoverable by the defendant. See United States v. Orena, 145 F.3d 551, 560 (2d Cir. 1998) (holding that in some circumstances it is appropriate for the government to “take the Court into its confidence, through sealed and ex parte application, so that the need for disclosure can be adjudicated prior to trial.”). After reviewing the records that are the subject of the government’s ex parte motion, which were provided to the Court for in camera review on August 1, 2003, the Court finds that the records would not be admissible for impeachment purposes and are not relevant to the guilt or innocence of the defendant. Because this material is not relevant to the defendant’s guilt and could not be used to impeach the witness, the government is not required to disclose it under Brady or Giglio. See United States v. Coppa, 267 F.3d 132, 134 (2d Cir. 2001) (“The

¹Brady v. Maryland, 373 U.S. 83 (1963).

²Giglio v. United States, 405 U.S. 150 (1972).

government's obligations under [Brady] are seemingly well-established. The prosecution has a constitutional duty to disclose evidence favorable to an accused when such evidence is material to guilt or punishment. See [Brady]. This duty covers not only exculpatory material, but also information that could be used to impeach a key government witness. See [Giglio].”).

The clerk is ordered to file the government's motion, its supporting memorandum, and the documents submitted in response to the Court's order of July 29, 2003 under seal. However, the Court hereby orders that the existence of each be reflected on the public docket sheet, in order to preserve the defendant's right to appeal this order. In United States v. Yousef, 327 F.3d 56 (2d Cir. 2003) the District Court issued protective orders, ex parte, holding that certain documents were not discoverable by the defendant. On appeal, the Second Circuit found that the protective orders were appropriate because the information that was the subject of the orders would not have been discoverable. See id. at 168 (“Our in camera review of the sealed materials also demonstrates that they do not contain exculpatory information that would support a Brady claim.”) However, the Court was concerned that “the handling of these proceedings was such that the sealed documents . . . would not have come to the attention of this Court or [the defendants] but for fortuitous newspaper reporting.” Id. at 167. The Court cautioned district courts to include the existence of such orders on the public docket sheet so that the defendant's right to appeal them can be preserved. See id. at 168 (“[W]e conclude that the District Court did not err in issuing the protective orders although a public docketing reflecting the existence of the sealed proceedings should have been ordered at the time of the Government's applications and certainly no later than the date on which the judgments became appealable.”). The Court noted that

[t]he proper procedure to be followed in such cases is set out in our decision in In re Herald Co., 734 F.2d 93 (2d Cir.1984), which allows district court proceedings to occur ex parte and in camera based on sustainable findings regarding the need for confidentiality, but requires a public docketing to indicate that sealed proceedings have occurred. See id. at 102-03. Under no circumstances should either the District Court or the Government handle such proceedings in a way that prevents, or risks preventing, appellate review.

Id. at 167.

Therefore, in light of Yousef, it is hereby ordered that the government's motion and its supporting memorandum and documents be filed ex parte and under seal, but that their existence be reflected on the public docket sheet.

SO ORDERED this ____ day of August, 2003, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE