UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| ANDRE THURSTON,<br><br>Plaintiff,<br><br>v.<br><br>UNITED STATES BUREAU OF PRISONS *et al*,<br><br>Defendants. | ) | Civil Action No. 03-2629 (RWR) |

MEMORANDUM OPINION

The remaining issue in this Privacy Act case is whether under the circumstances presented, the Bureau of Prisons ("BOP") has waived its exemption from liability for damages. *See* Memorandum Opinion and Order of August 4, 2005 (granting motion to dismiss on all claims except the claim for damages based on the Act's accuracy provision). Upon consideration of the parties' supplemental submissions, no waiver may be reasonably found. The case therefore will be dismissed.

The concern arose from the fact that notwithstanding BOP's proper exemption of its Inmate Central Records System from damages liability, it could waive the exemption "[w]here compliance [with the Act's accuracy provision] would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected." 28 C.F.R. § 16.97(k). *See* Mem. Op. at 4-5. Plaintiff challenges the accuracy of his presentence report prepared by the United States Probation Office, which is an arm of the court. *See* 18 U.S.C. § 3602 (authorizing

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appointment of probation officers by the district court). In justifying the exemption, BOP explains that "many of these records come from the courts and other state and local criminal justice agencies, it is administratively impossible for them and the Bureau to ensure compliance with this provision." 28 C.F.R. § 16.97(k)(2). Clearly, presentence reports fall into the category of documents for which a waiver under subsection (k) was not intended. Plaintiff therefore has no redressable claim for damages under the Privacy Act.

For the foregoing reasons and the reasons stated in the previous memorandum opinion, judgment will be entered for defendants and this case will be dismissed by separate Order to be issued contemporaneously.

_____/s/_____
RICHARD W. ROBERTS
United States District Judge

DATE: April 27, 2006