

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION**

<b>DR. JERRY FALWELL, <u>et al.</u>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Civil Action No. 6:00-CV-0005</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>THE EXECUTIVE OFFICE OF THE</b>	)	<b>By: Samuel G. Wilson,</b>
<b>PRESIDENT, <u>et al.</u>,</b>	)	<b>Chief United States District Judge</b>
	)	
<b>Defendants.</b>	)	

This is a suit for damages and injunctive relief pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, by plaintiffs, Dr. Jerry Falwell, Liberty Bible Institute, Liberty Baptist Theological Seminary, Liberty University, Liberty Godparent Foundation, Liberty Federation, Moral Majority, Thomas Road Baptist Church, Elim Home for Alcoholics & Drug Addicts, Hope Aglow Prison Outreach, National Liberty Journal, Old-Time Gospel Hour, Listen America, Liberty Alliance, W19BC Television, WRVL Radio, and Mat Staver’s Liberty Counsel (collectively referred to as “Falwell”), against defendants, The Executive Office of the President (“EOP”) and the Federal Bureau of Investigation (“FBI”). The court has jurisdiction pursuant to 5 U.S.C. §§ 552(a)(4)(B), 552a(g)(1) and 28 U.S.C. §§ 1331, 1346(a)(2). This action is before the court on Falwell’s self-styled Rule 60(b) motion for relief from this court’s September 11, 2000 order, which granted the EOP’s motion to dismiss Falwell’s Privacy Act claim. For the reasons stated below, the court denies the motion.

## I.

On August 26, 1999, plaintiff Dr. Jerry Falwell made written requests to the EOP and FBI under the FOIA and the Privacy Act for any documents that might pertain to him or any of the other named plaintiffs. His request to the EOP was directed to 1600 Pennsylvania Avenue, Washington, D.C. (Compl., Exhibit 1.) The Office of the President responded on October 6, 1999, denying Falwell's request on the ground that Falwell had no statutory right to the records he requested from the White House, if such records exist. (Compl., Exhibit 2.)

On January 20, 2000, Falwell filed suit in this court, claiming that the EOP and FBI violated the Privacy Act, that the FBI violated the FOIA, and that both defendants conspired to accomplish these violations. On April 14, 2000, the EOP filed a motion to dismiss Falwell's Privacy Act claim on the ground that the Act does not apply to the Office of the President, which is a subset or component of the EOP.<sup>1</sup> Then, on May 4, 2000, Falwell filed a cross motion for partial summary judgment on the same issue. On July 5, 2000, in oral argument, Falwell stated that the only documents held by the EOP in which he was interested were those held by the Office of the President. (Transcript of Motions Hearing at 15.)

On September 11, 2000, the court granted the EOP's motion to dismiss and denied Falwell's cross motion, finding that the Privacy Act does not apply to the Office of the President. See Falwell v. Executive Office of the President, 113 F. Supp. 2d 967 (W.D. Va. 2000). In so holding, the court interpreted Falwell's actions and his counsel's remarks at the July 5, 2000 hearing as indicating that Falwell was only interested in documents held by the Office of the

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<sup>1</sup>There are several offices within the EOP, and the Office of the President, also called the White House Office, is but one of these subsets.

President and no other offices within the EOP. As a result, the court did not have to reach the issue of whether the other offices of the EOP were subject to the Privacy Act requirements.

On November 3, 2000, Falwell filed what he called a Rule 60(b) motion for relief from this court's September 11, 2000 order, alleging that the court inadvertently misunderstood Falwell's position. On September 14, 2001, the court granted the FBI's motions for summary judgment and motions to dismiss. Therefore, Falwell's motion for relief, which the court decides today, is the only issue remaining in the case.

## II.

Federal Rule of Civil Procedure 60(b) provides that "upon such terms as are just, the court may relieve a party . . . from a *final judgment*, order or proceeding for . . . (1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other reason justifying relief from the operation of the judgment." F.R.C.P. 60(b) (emphasis added). By its own terms, a Rule 60(b) motion cannot be filed until after a final judgment has been entered. Here, final judgment had not been entered when Falwell filed his self-styled Rule 60(b) motion. Although, Falwell cannot seek to modify an interlocutory order under Rule 60(b), the court does possess an inherent equitable power to modify an interlocutory order at any time prior to final judgment. Thus, the court will examine the merits of Falwell's motion to determine if it should modify its September 11, 2000 order.

Falwell argues that the court was mistaken in its finding that the only documents held by the EOP in which Falwell was interested were those held by the Office of the President, also called the White House Office. However, the record supports the court's conclusion that Falwell's complaint alleges violations of the Privacy Act by the Office of the President and not by

other offices within the EOP. First, Falwell directed his original request for documents under FOIA and the Privacy Act to the White House at 1600 Pennsylvania Avenue, Washington, D.C. (Compl., Exhibit 1) The Office of Counsel to the President responded that if Falwell sought records from entities within the EOP other than the White House Office, he needed to contact those entities directly. (Compl., Exhibit 2) In fact, federal regulations require that individuals seeking documents from offices within the EOP submit their requests directly to such offices. See e.g. 5 C.F.R. § 1302.2(b); 15 C.F.R. § 2005.2(b). However, Falwell did not send a Privacy Act request to any office within the EOP other than the White House Office. Also, in his complaint, Falwell claims that the “Clinton EOP” violated the Privacy Act. Falwell’s specific reference to President Clinton indicates that Falwell was alleging violations of the Privacy Act by the Office of the President and not by other offices within the EOP. Furthermore, in oral arguments counsel for Falwell indicated that Falwell’s request was directed only to the White House Office. (Hearing Transcript at 15, lines 20-25). For these reasons, the court does not believe that it was mistaken in finding that the only documents held by the EOP in which Falwell was interested were those held by the Office of the President.

Since the court found that Falwell’s complaint did not allege violations of the Privacy Act by EOP offices other than the Office of the President, the court’s September 11, 2000 order dismissing Falwell’s claims against the EOP was without prejudice as to claims against offices in the EOP apart from the Office of the President. Therefore, if Falwell actually wants records from offices in the EOP other than the Office of the President, then he should make requests to such offices. If Falwell believes that offices in the EOP other than the Office of the President are somehow violating the Privacy Act, then he should file a new complaint and so allege in language

that makes it clear which office within the EOP violated the Act.

**III.**

For the reasons stated above, Falwell's motion for relief from this court's September 11, 2000 order is denied. The court will enter an appropriate order on this day.

ENTER: This \_\_\_\_\_ day of September, 2001.

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CHIEF UNITED STATES DISTRICT JUDGE

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<b>DR. JERRY FALWELL, <u>et al.</u>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Civil Action No. 6:00-CV-0005</b>
	)	
<b>v.</b>	)	<b><u>FINAL ORDER</u></b>
	)	
<b>THE EXECUTIVE OFFICE OF THE</b>	)	<b>By: Samuel G. Wilson,</b>
<b>PRESIDENT, <u>et al.</u>,</b>	)	<b>Chief United States District Judge</b>
	)	
<b>Defendants.</b>	)	

In accordance with the Memorandum Opinion entered this day, it is **ORDERED** and **ADJUDGED** that Plaintiffs' motion for relief from the court's September 11, 2000 order is **DENIED**.

It is further **ORDERED** that this case is stricken from the docket of the court.

ENTER: This \_\_\_\_\_ day of September, 2001.

\_\_\_\_\_  
CHIEF UNITED STATES DISTRICT JUDGE