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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ANTHONY HASWELL,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>NATIONAL RAILROAD PASSENGER CORPORATION, d/b/a Amtrak,</p> <p>Defendant - Appellee.</p>
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No. 07-16121

D.C. No. CV-05-00723-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted January 13, 2009**

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Anthony Haswell appeals pro se from the district court's summary judgment in favor of Amtrak in his action under the Freedom of Information

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Act, 5 U.S.C. § 552, *et seq.* (“FOIA”), seeking documents related to Amtrak’s retention of McKinsey & Company. We have jurisdiction under 28 U.S.C. § 1291. We review the district court’s findings of fact for clear error, and its conclusions of law regarding the applicability of a FOIA exemption *de novo*. *Lane v. Dep’t of Interior*, 523 F.3d 1128, 1135 (9th Cir. 2008). We affirm.

The district court did not clearly err by concluding that Exemption 5 applies because the documents that Amtrak withheld are protected by the deliberative process privilege. *See* 5 U.S.C. § 552(b)(5) (exempting from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.”); *Nat’l Wildlife Fed’n v. U.S. Forest Serv.*, 861 F.2d 1114, 1118 (9th Cir. 1988) (explaining that Exemption 5 was intended to protect not simply deliberative *material*, but also the deliberative *process* of agencies) (emphasis in original); *see also Carter v. U.S. Dep’t of Commerce*, 307 F.3d 1084, 1088 (9th Cir. 2002) (stating that whether disclosure of the requested information would reveal anything about the agency’s decisional process “is a fact-based inquiry where deference to the district court’s findings is appropriate.”) (citation and internal quotation marks omitted).

The district court also did not clearly err by concluding that Exemption 4 applies because the documents that Amtrak withheld constitute confidential,

commercial information, the disclosure of which is likely to cause substantial competitive harm to McKinsey. *See* 5 U.S.C. § 552(b)(4) (exempting from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”); *Lion Raisins Inc. v. U.S. Dep’t of Agric.*, 354 F.3d 1072, 1079 (9th Cir. 2004).

AFFIRMED.