

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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: :  
HAROLD WEISBERG, :  
: :

Plaintiff, :  
: :

v. :  
: :

Civil Action No. 75-226 :  
: :

UNITED STATES DEPARTMENT OF :  
JUSTICE, and :  
: :

U.S. ENERGY RESEARCH AND DEVEL- :  
OPMENT ADMINISTRATION, :  
: :

Defendants :  
: :  
.....

MOTION TO COMPEL ANSWERS TO INTERROGATORIES

Plaintiff moves the Court for an order requiring the defendants to file answers to the interrogatories served on them on May 2, 1975, on the ground that it cannot be determined that the defendants have complied with plaintiff's freedom of information request without first obtaining answers to said interrogatories.

Pursuant to Rule 37(a)(4) of the Federal Rules of Civil Procedure, plaintiff further moves the Court to award plaintiff the reasonable expenses, including attorney's fees, incurred in obtaining said order.

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JAMES HIRAM LESAR  
1231 Fourth Street, S. W.  
Washington, D. C. 20024

Attorney for Plaintiff

This is to certify that I have this 11th day of June, 1975, mailed a copy of the foregoing Motion to Compel Answers to Interrogatories to Assistant United States Attorney Michael J. Ryan, Room 3421, United States Courthouse, Washington, D. C. 20001.

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JAMES HIRAM LESAR

UNITED STATES DISTRICT COURT  
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HAROLD WEISBERG,

Plaintiff,

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MEMORANDUM OF POINTS AND AUTHORITIES

On May 2, 1975, plaintiff served different sets of inter-rogatories upon each of the defendants. The purpose of these inter-rogatories was to elicit information which would aid plaintiff in establishing the degree of noncompliance with his freedom of infor-mation request for all spectrographic and neutron activation analyses and other scientific tests conducted upon items of evi-dence pertaining to the shooting of President John F. Kennedy. As of June 11, 1975, no answers to any of the interrogatories have been served on plaintiff.

The government has the burden of showing that it has fully complied with a Freedom of Information Act request for nonexempt identifiable records. As the United States Court of Appeals for the District of Columbia has stated:

To prevail, the defending agency must prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements. [National Cable Television Association, Inc. v. F.C.C., 479 F. 2d 183 (1973) at 186]

In the National Cable Television case, the Court of Appeals noted that the language of the Freedom of Information Act "places part of the responsibility for identifying the records on the agency itself. The responsibility of the person requesting records is that he provide sufficient information to permit the agency to accomplish this duty." [National Cable Television, supra, p. 190] In the present case, plaintiff has met his burden of providing sufficient information for the identification of the records he seeks.

At issue, however, is the extent of noncompliance with plaintiff's request. The only way which this can be ascertained is by requiring the defendants to answer the interrogatories which plaintiff has addressed to them. This manner of proceeding has been sanctioned, indeed, mandated by the U. S. Court of Appeals:

For the future we think that these matters should be settled through the discovery process as much as possible. The civil rules governing pretrial discovery provide ample tools for use in compelling the agency to identify and disclose the documents it has that fall within the class or category requested. [National Cable Television, supra, at 193]

This directive of the Court of Appeals is the sensible way of proceeding in the instant case. The interrogatories filed are not oppressive and the government has not even contended that they are, nor has it raised any other valid objection to them. However, answered fully and honestly, these interrogatories will provide the means for the speedy, efficient, and inexpensive resolution of the instant case.

Respectfully submitted,

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