

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,
Route 8
Frederick, Md. 21701
Phone: [301] 473-8186

Plaintiff,

v.

NATIONAL ARCHIVES AND RECORDS
SERVICE,
8th & Pennsylvania, N. W.
Washington, D. C. 20408

Defendant

ROBINSON, J.

Civil Action No. 75-1448

FILED SEP - 4 1975
JAMES F. DAVEY
CLERK

C O M P L A I N T

[Freedom of Information Act, 5 U.S.C. 552]

1. Plaintiff brings this action under the Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law 93-502, 88 Stat. 1561 [93 Cong., 2d Sess.].
2. Plaintiff is HAROLD WEISBERG, an author residing at Route 8, Frederick, Maryland.
3. Defendant is the NATIONAL ARCHIVES AND RECORDS SERVICE, 8th & Pennsylvania, N. W., Washington, D. C. 20408.
4. On March 12, 1975, plaintiff requested the disclosure of certain Warren Commission executive session transcripts. [See Exhibit A]
5. By letter dated April 4, 1975, Assistant Archivist Edward G. Campbell granted plaintiff's request in part but denied disclosure of the following materials:
 - A. The Warren Commission executive session transcript of May 19, 1964;

B. The Warren Commission executive session transcript of June 23, 1964; and

C. Pages 63-73 of the January 21, 1964, Warren Commission executive session transcript. [See Exhibit B]

6. On April 15, 1975, plaintiff appealed the denial of these materials to the Deputy Archivist. [See Exhibit C]

7. By letter dated May 22, 1975, Deputy Archivist James E. O'Neill affirmed the decision of the Assistant Archivist denying disclosure of these transcripts. [See Exhibit D]

8. Having exhausted his administrative remedies, plaintiff now brings suit for records which he alleges must be made available to him under the terms of the Freedom of Information Act. Plaintiff notes that the Freedom of Information Act provides that the District Court shall determine the matter de novo, and that the burden is on the defendant to justify its refusal to disclose the requested documents.

WHEREFORE, plaintiff prays this honorable Court for the following relief:

1. That the defendant be compelled to disclose the records which plaintiff has requested;
2. That the Court award plaintiff reasonable attorney fees and the costs of bringing this action; and
3. That the Court issue a written finding that the circumstances surrounding the withholding of these documents raise questions as to whether agency personnel acted arbitrarily and capriciously with respect to such withholding.

JAMES HIRAM LESAR
1231 Fourth Street, S. W.
Washington, D. C. 20024
Phone: 484-6023

Attorney for Plaintiff

EXHIBIT A

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 484-6023

March 12, 1975

FREEDOM OF INFORMATION REQUEST

Dr. James B. Rhoads
Archivist of the United States
The National Archives
7th & Pennsylvania Ave., N. W.
Washington, D. C. 20408

Dear Dr. Rhoads:

On behalf of Mr. Paul Hoch and Mr. Harold Weisberg, I am requesting the disclosure of the following Warren Commission documents:

1. The executive session transcripts of December 6, 1963, and May 19 and June 23, 1964;
2. Pages 43-68 of the December 6, 1963 executive session transcript;
3. Pages 23-32 of the December 16, 1963 executive session transcript;
4. Pages 63-73 of the January 21, 1964 executive session transcript; and
5. The reporter's notes for the January 22, 1964 executive session.

These requests for disclosure are made under the Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law 93-502, 88 Stat. 1561.

Sincerely yours,

Jim Lesar

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

Washington, DC 20408



EXHIBIT B

APR 04 1975

James H. Lesar, Esquire
1231 Fourth Street, SW
Washington, DC 20024

Dear Mr. Lesar:

This is in reply to your letter of March 12, 1975, requesting disclosure of certain Warren Commission documents on behalf of Mr. Paul Hoch and Mr. Harold Weisberg and citing the Freedom of Information Act (5 U.S.C. 552, as amended).

The following is in response to your requests:

1. Enclosed is a copy of the executive session transcript of December 6, 1963, of the Commission with deletions of names and identifying details of persons discussed in connection with the choice of the General Counsel of the Commission. The deleted information and your request for disclosure of the executive session transcript of May 19, 1964, which deals solely with a discussion of Commission personnel, are denied under 5 U.S.C. 552, subsection (b)(5) "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"; and subsection (b)(6), "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Your request for disclosure of the executive session transcript of June 23, 1964, is denied under 5 U.S.C. 552, subsection (b)(1)(A) and (B) matters "specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy and are in fact properly classified pursuant to such Executive Order" and subsection (b)(5), "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."

2. Enclosed is a copy of pages 43 and 46-58 of the executive session transcript of December 5 (the correct date, instead of December 6), 1963, with deletions, including all of pages 44 and 45, of names and other identifying information concerning persons named or discussed in connection with

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the choice of the General Counsel of the Commission. The information deleted is denied under 5 U.S.C. 552, subsection (b)(5), "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" and subsection (b)(6), "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."


3. Enclosed is a copy of pages 23-32 of the executive session transcript of December 16, 1963. On page 29 there are deletions under the same exemptions of 5 U.S.C. 552 stated in item 2 above.

4. Your request for disclosure of pages 63-73 of the executive session transcript of January 21, 1964, is denied under 5 U.S.C. 552, subsection (b)(1)(A) and (B), matters "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to each Executive order" and subsection (b)(5), "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."

5. Copies of a transcript of the reporter's notes of the executive session of January 22, 1964, have been sent to you, to Mr. Hoch, and to Mr. Weisberg.

You have a right to file an administrative appeal with respect to the material denied you. Such an appeal should be in writing and addressed to the Deputy Archivist of the United States, National Archives and Records Service, Washington, DC 20408. To expedite the handling of an appeal, both the face of the appeal and the envelope should be prominently marked, "Freedom of Information Appeal."

Sincerely,


EDWARD G. CAMPBELL
Assistant Archivist

Enclosure

EXHIBIT C

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 484-6023

April 15, 1975

FREEDOM OF INFORMATION APPEAL

Dr. James O'Neill
Deputy Archivist of the United States
National Archives and Records Service
Washington, D. C. 20408

Dear Dr. O'Neill:

By letter dated April 4, 1975, Assistant Archivist Edward G. Campbell has denied a request I made for the disclosure of the Warren Commission executive session transcripts of May 19 and June 23, 1964, and pages 63-73 of the January 21, 1964 executive session transcript. On behalf of Mr. Paul Hoch and Mr. Harold Weisberg, I hereby appeal that denial.

Sincerely yours,

Jim Lesar

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



EXHIBIT D

MAY 22 1975

James H. Lesar, Esquire
1231 Fourth Street, SW
Washington, DC 20024

Dear Mr. Lesar:

This is in response to your Freedom of Information appeal of April 15, 1975, on behalf of Harold Weisberg and Paul Hoch, seeking access to those portions of Warren Commission executive session transcripts denied your clients by Edward G. Campbell, Assistant Archivist for the National Archives, in his letter to you of April 4, 1975. We received your appeal in this office on April 17, 1975.

As a result of your appeal, we have reexamined the documents denied you, which included the transcript of June 23, 1964, pages 63-73 of the transcript of January 21, 1964, and the transcript of May 19, 1964. Our review of the first two of these documents, which remained at the time of the appeal security classified at the "Top Secret" level, involved consultation with the Central Intelligence Agency. We requested that the CIA review the transcripts to determine if they could be declassified. The CIA response, issued under the authority of Charles A. Briggs, Chief of the Services Staff, requested that the records remain security classified at the "Confidential" level and that they be exempted from the General Declassification Schedule pursuant to Subsections 5 (B)(2) and (3) of Executive Order No. 11652. The CIA further requested that should the authority of the Warren Commission to classify these documents be called into question, the documents were to be marked at the level of "Confidential" pursuant to the authority of the CIA to classify national security information.

Therefore, we have determined to uphold Dr. Campbell's decision to deny your clients access to the transcript of June 23, 1964, and pages 63-73 of the transcript of January 21, 1964, pursuant to the first, third and fifth exemptions to mandatory disclosure under the Freedom of Information Act, i. e., "matters that are . . . specifically authorized under criteria established by an Executive order to be kept secret in the interest of national

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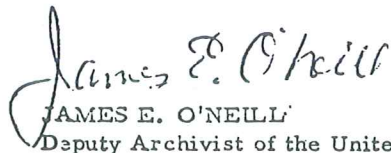
defense or foreign policy and are in fact properly classified pursuant to such Executive order . . . ; specifically exempted from disclosure by statute . . . ; inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency" (5 U.S.C. 552(b)(1), (3) and (5), respectively).

The statute which specifically exempts these transcripts from disclosure provides, "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure" (50 U.S.C. 403(d)(3)). Further, we have invoked the fifth exemption from mandatory disclosure on the basis that these transcripts reflect the deliberative process of the Warren Commission, and are not the written record of a Commission decision or opinion. To encourage free and full expression in the deliberative process, the Congress provided in the fifth exemption to mandatory disclosure a mechanism by which these records could be sheltered.

As stated in Dr. Campbell's letter, the transcript of May 19, 1964, is limited to a discussion of the background of Commission personnel. Therefore, we have determined to uphold Dr. Campbell's decision to deny your clients access to this transcript pursuant to the fifth and sixth exemptions to mandatory disclosure under the Freedom of Information Act, i.e., "matters that are . . . 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," and "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" (5 U.S.C. 552(b)(5) and (6), respectively).

This letter represents the final administrative consideration of your request for access to the withheld records. You have the right to seek judicial review of this decision by filing an action in the Federal District Court for the District of Columbia, or in the Federal District Court in which either of your clients resides or has his principal place of business.

Sincerely,


JAMES E. O'NEILL

Deputy Archivist of the United States