

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
)
Plaintiff,)
)
v.) Civil Action No. 75-1996
)
U.S. DEPARTMENT OF JUSTICE,)
)
Defendant.)
_____)

MOTION FOR A PROTECTIVE ORDER

Defendant by its attorney, the United States Attorney for the District of Columbia, respectfully moves the Court for an order pursuant to Rule 26(c), Federal Rules of Civil Procedure, to stay the providing of answers to interrogatories served on counsel for defendant, as well as any other discovery procedure to which plaintiff may resort in relation to this action, pending the disposition of a motion to dismiss or, in the alternative, for summary judgment which defendant will promptly file herein.

In support thereof, defendant submits a memorandum of points and authorities and a proposed order.

EARL J. SILBERT
United States Attorney

ROBERT N. FORD
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Motion for a Protective Order, together with supporting Memorandum of Points and Authorities with attachment, and a proposed Order have been made upon counsel for plaintiff, James Hiram Lesar, Esq., 1231 Fourth Street, S.W., Washington, D.C. 20024, by mail on this 10th day of February, 1976.

JOHN R. DUGAN
Assistant United States Attorney
Room 3419 U.S. Courthouse
Washington, D.C. 20001
426-7261

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 75-1996

MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR A PROTECTIVE ORDER

Statement of the Case

In this action plaintiff seeks, under the Freedom of Information Act, 5 U.S.C. 552, as amended, access to records from the Department of Justice pertaining to the assassination of Dr. Martin Luther King, Jr.

On January 8, 1976, plaintiff filed a set of interrogatories which were received on January 12, 1976 by counsel for defendant.

Defendant submits, under applicable law and discretion vested in this Court, this discovery is inappropriate in this type of case. The interrogatories seek information which is both irrelevant and immaterial to the subject matter of this action. This is a Freedom of Information Act case seeking access to records and this discovery goes beyond the jurisdictional limitation of the Act, 5 U.S.C. 552(a)(4)(B).

Moreover, defendant will be filing a motion to dismiss or, in the alternative, for summary judgment on the grounds of mootness. Defendant's counsel expects to file the motion in approximately two weeks.

Argument

The discovery rules vest broad discretion in the District Courts with respect to control of the discovery process, and where necessary, such courts may grant appropriate protective orders to deny, limit or qualify discovery, in order to protect a party from undue burden and expense and to promote the ends of justice. Rule 26(c), Federal Rules of Civil Procedure; Associated Metals & Minerals Corp. v. S.S. Geert Howaldt, 348 F.2d 457 (5th Cir. 1965); Chemical and Industrial Corp. v. Duffel, 301 F.2d 126 (6th Cir. 1962). Such an order may provide that discovery not be had, or that it be delayed, or that it may be had only by a method of discovery other than that selected by the party seeking discovery. Rule 26(c)(1), (2) and (3).

One familiar basis for the Court's issuance of such a protective order is that when a motion which may be dispositive of the case is on file, or is about to be filed, discovery should be postponed until there has been a disposition of that motion. Momand v. Paramount Pictures Distributing Co., 36 F.Supp. 568, 571 (D. Mass. 1941); Canister Co. v. National Can Corp., 3 F.R.D. 279, 280 (D. Del. 1943), Pyle v. Pyle, 81 F.Supp. 207, 208 (W.D. La. 1948); O'Brien v. Equitable Life Assurance Society, 14 F.R.D. 141 (W.D. Miss. 1953), aff'd, 212 F.2d 383 (8th Cir. 1954), cert. denied, 348 U.S. 835 (1954); Allied Poultry Processors Co. v. Polin, 134 F.Supp. 278 (D. Del. 1955); Blair Holdings Corp. v. Rubenstein, 159 F.Supp. 14, 15 (S.D. N.Y. 1954); O'Brien v. Avco Corp., 309 F.Supp. 703, 705 (S.D. N.Y. 1969); Taylor v. Breed, 58 F.R.D. 101, 108 (N.D. Cal. 1973) (vacating protective order after summary judgment motions had been denied.

This is particularly the case in an action under the

the instant case, defendant will be taking the position that this action is moot in view of the disclosures granted the plaintiff after the filing of the instant action.

Recently, on October 8, 1975, Judge Robinson filed a memorandum opinion and order in a Freedom of Information Act case vacating the notice of taking a deposition of a government official in the Freedom of Information Act case. Church of Scientology of California, Inc. v. William E. Colby, Civil Action 75-1048. A copy of the memorandum is attached.

Conclusion

For the above reasons, defendant respectfully requests that its motion for a protective order be granted.

EARL J. SILBERT
United States Attorney

ROBERT N. FORD
Assistant United States Attorney

JOHN R. DUGAN
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, INC.,

Plaintiff

v.

WILLIAM E. COLBY, Director
Central Intelligence Agency,
et al.,

Defendants

CIVIL ACTION 75-1048

FILED

OCT 8 1975

JAMES E. DAVEY, CLERK

MEMORANDUM OPINION AND ORDER

Plaintiff brings this action pursuant to the Freedom of Information Act, 5 U.S.C. §552, as amended, seeking disclosure of various documents held by Defendant Central Intelligence Agency. On September 10, 1975, the Defendants filed affidavits of three individuals which together list the materials requested by Plaintiff and provide a cross-indexed, detailed justification for the refusal to disclose the documents or portions thereof in accordance with Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). Although Defendants claim that the materials requested fall within various exemptions of the Freedom of Information Act, their justification for nondisclosure relies heavily upon the uniquely sensitive nature of the work performed by this agency.

The case is currently before the Court upon

notice of the taking of the deposition of Mr. William E. Nelson, Deputy Director for Operations of the C.I.A. scheduled for October 6, 1975. Plaintiff agreed to postpone the deposition pending resolution of the Motion, filed Opposition thereto, and the Court heard oral argument on October 7, 1975.

The Defendants' contention is that their pending Motion for Summary Judgment, filed October 2, 1975, raises only legal issues and may be dispositive of all matters in this action; thus the Plaintiff should not be permitted to depose Mr. Nelson until that Motion has been resolved. Defendants contend that the affidavits submitted with the Motion for Summary Judgment adequately support the refusal to disclose. Therefore, the deposition of Mr. Nelson could produce no relevant evidence, and would only be a time consuming gesture.

In response, Plaintiff asserts rather generally that the deposition of Mr. Nelson is necessary to resolve several factual disputes raised by the affidavits. However, when pressed on this point in oral argument, Plaintiff could recite no specific instances of matters needing clarification which convince the Court that the deposition at this stage could produce any information relevant to the pending Motion for Summary Judgment.


The 1974 Amendments to the Freedom of Information Act broaden judicial inquiry into agency claims of exemption status by providing for a de novo determination

by the Court in these cases and an in camera review of documents where justified. 5 U.S.C. §552(a)(B). The legislative history makes clear, however, that Congress intended the Courts to grant substantial weight to affidavits submitted by agencies responsible for national defense and foreign policy matters supporting a decision to not disclose certain classified materials. Conference Report, H.Rept. 93-1380, p.11, 93rd Cong., 2nd Sess. (1974). In Alfred A. Knopf, Inc. v. Colby, 509 F.2d 1362 (4th Cir. 1975), the Court recognized this legislative view, and this Court finds it similarly persuasive. This is not to say, however, that agency affidavits will be accepted at face value without inquiry where some examination is justified. See, Schaffer v. Kissinger, 505 F.2d 389 (D.C. Cir. 1974). But on the face of the record currently before the Court, there is no evidence that such deposition could produce any material relevant to the pending Motion for Summary Judgment.

Based upon the foregoing, it is this 1st day of October, 1975,

ORDERED that Defendants' Motion for Protective Order be and hereby is GRANTED; and it is

FURTHER ORDERED that the notice of the taking of the deposition of Mr. William E. Nelson be and hereby is vacated.



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
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 Plaintiff,)
)
 v.) Civil Action No. 75-1996
)
 U.S. DEPARTMENT OF JUSTICE,)
)
 Defendant.)
 _____)

O R D E R

Upon consideration of the motion of defendant for a protective order, the memorandum of points and authorities in support thereof and the entire record herein, it is by the Court this ____ day of _____, 1976

ORDERED that defendant's motion be, and it hereby is, granted; and it is

FURTHER ORDERED that the providing of answers to plaintiff's interrogatories filed herein hereby is stayed pending further order of the Court.

JUNE L. GREEN
United States District Judge