

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
8/22/77
JR Dugan

HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 75-1996

OPPOSITION TO PLAINTIFF'S MOTION UNDER VAUGHN v. ROSEN TO REQUIRE
DETAILED JUSTIFICATION, ITEMIZATION AND INDEXING BY OFFICE
OF PROFESSIONAL RESPONSIBILITY

This FOIA action has been pending since November 28, 1975 and as a result of several agreements with the plaintiff, it appeared reasonably likely that this action may in the near future be coming to an end. Plaintiff's latest motion, if granted, represents a step backward from that goal.

Defendant's counsel has reported to the Court that the Federal Bureau of Investigation has completed its headquarters review of the assassination file of Dr. Martin Luther King, Jr. In addition, on August 12, 1977 this Court approved a stipulation which represented an agreement with the Department of Justice and plaintiff with respect to an additional review of Federal Bureau of Investigation field office files relating to Dr. King and other related subjects.

Plaintiff has filed a motion entitled "Motion Under Vaughn v. Rosen To Require Detailed Justification, Itemization And Indexing By Office Of Professional Responsibility". The basis of this motion arises out of a separate action brought not by the plaintiff but by his attorney James Hiram Lesar. James Hiram Lesar v. Department of Justice, et al., Civil Action No. 77-0692. This latter action is pending before Judge Gerhard Gesell who on July 14,

allowing the government to and including September 15, 1977 to respond to plaintiff James Lesar's motion. (Defendant's Exhibit C).

In sum, the subject matter of the instant motion is presently before another Court and is not properly at issue in this case. We therefore strongly urge the Court/^{to}deny plaintiff's motion in the instant case.

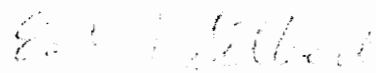
One final point is necessary in light of certain allegations made by the plaintiff in this action. Plaintiff brands as false the July 12, 1976 affidavit of Michael E. Shaheen, Jr., and claims that because of that affidavit plaintiff has been delayed access to certain Memphis Police Department records for more than a year. Based on this, plaintiff moves for a Vaughn v. Rosen production relative to the Memphis Police Department records.

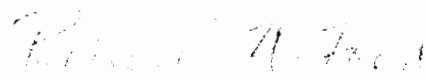
Mr. Shaheen's July 12, 1976 affidavit sets forth the then current posture of the task force review of the FBI's investigations of Martin Luther King, Jr. At that time, the review was in its early stages, and the Shaheen affidavit accurately reflected the scope of the review ordered by the Attorney General on April 26, 1976, and what was then contemplated by that order. Specifically, the Office of Professional Responsibility did not have any of its own records of the King investigation, but was reviewing in July 1976, only existing FBI and Civil Rights Division records.

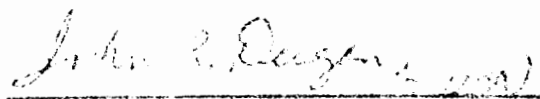
However, on or about October 21, 1976, the task force conducting the review, subpoenaed and received the Memphis Police Department's records of the King murder.^{1/} This task force's subsequent decision to review more than what the Attorney General and Mr. Shaheen had initially contemplated under the April 26, 1976 order is now offered by plaintiff as proof that Mr. Shaheen's affidavit of July 12, 1976 was false and misleading.

Defendant submits that plaintiff's claim is either grounded on assertions that plaintiff himself should know to be untrue or grounded on facts he either misapprehends or has sought to contrive. Defendant further submits that Mr. Shaheen's July 12, 1976 affidavit is true and correct as sworn to and is not misleading.

For these reasons defendant respectfully submits plaintiff's motion should be denied.

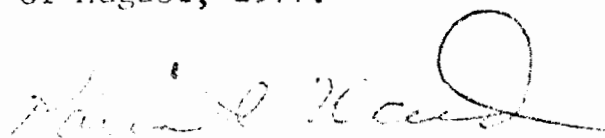

EARL J. SILBERT
United States Attorney


ROBERT N. FORD
Assistant United States Attorney


JOHN R. DEGAN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Opposition to Plaintiff's Motion Under Vaughn v. Rosen To Require Detailed Justification, Itemization and Indexing By Office of Professional Responsibility and proposed Order has been served upon plaintiff by mailing copies to his attorney James Hiram Lesar, 910 Sixteenth Street, N.W., Suite 600, Washington, D.C. 20006, this 22nd day of August, 1977.


JOHN R. DEGAN
Assistant United States Attorney
U.S. Courthouse - Room 3419
3rd & Constitution Avenue, N.W.
Washington, D.C. 20001
Telephone: 425-7261

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES HIRAN LESAR,

Plaintiff,

v.

Civil Action No. 77-0692

FILED

DEPARTMENT OF JUSTICE, ET AL.,

JUL 14 1977

Defendants.

JAMES F. DAVEY, Clerk

ORDER

This matter having come before the Court on Defendants' Motion to Stay, and the Court being fully advised in the premises and having concluded that defendants' Motion is well taken, it is this 14 day of ^{July} ~~June~~, 1977

ORDERED, that defendants' Motion to Stay further proceedings pending completion of review in this matter should be, and hereby is, granted and proceedings be, and hereby are, stayed, until further order of the Court, and it is

FURTHER ORDERED, that defendants shall report to the Court as to the current status of the administrative review ^{by October 17, 1977.} ~~within 120 days from the date of this order.~~

SO ORDERED:


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR,

Plaintiff,

v.

Civil Action No. 77-0692

U.S. DEPARTMENT OF JUSTICE,

Defendant

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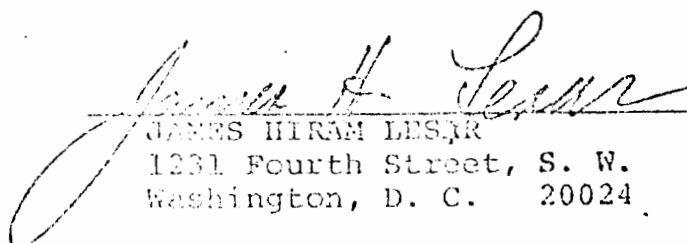
JAMES F. DAVEY, Clerk

MOTION UNDER VAUGHN V. ROSEN TO REQUIRE
DETAILED JUSTIFICATION, ITEMIZATION AND INDEXING

Plaintiff James H. Lesar moves the Court for an order requiring the defendant to provide, within 30 days of the date of said order, a detailed justification for any allegations that the documents contained in Volumes VII, XII-XVII, and XIX-XXI of Appendix C to the Shaheen Report are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552, including an itemization and index which correlate specific statements in such justification with actual portions of the requested documents.

A Memorandum of Points and Authorities is attached hereto.

Respectfully submitted,


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

Attorney pro se

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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JAMES F. DAVEY, Clerk

MEMORANDUM OF POINTS AND AUTHORITIES

In this Freedom of Information Act lawsuit plaintiff seeks records pertaining to reviews which units of the Department of Justice have made of the FBI's investigation into the assassination of Dr. Martin Luther King, Jr. While some documents have been made available, most have been withheld.

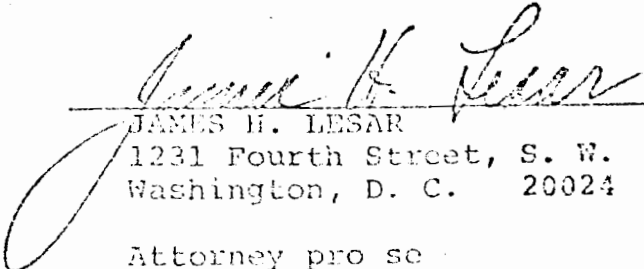
For the moment, those which are primarily at issue consist of the twenty chapters of documents which comprise Appendix C to the Shaheen Report (Report of the Department of Justice Task Force To Review The FBI Martin Luther King, Jr. Security and Assassination Investigations). The Office of Professional Responsibility, which maintains these records, has issued blanket claims of exemption for the Appendix C materials. The claim of exemption is so ludicrous that it extends even to materials which are public court records or which have already been released to the public by the

cause it is now obvious, much to plaintiff's surprise, that his request for "all appendix materials" to the Shaheen Report covers a great volume of documents, this motion has been limited to those materials which are of greatest importance and urgency to him. This means that this motion is largely confined to documents of the Memphis police department which are contained in Volumes XIII-XVII of Appendix C.

The legal basis for this motion is well-established. Vaughn v. Rosen, 484 F. 2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974); Ash Grove Cement Co. v. FTC, 511 F. 2d 815 (D.C. Cir. 1975); Pacific Architects & Engineers, Inc. v. Renegotiation Board, 505 F. 2d 383 (D.C. Cir. 1974); Cunco v. Schlesinger, 484 F. 2d 1086 (D.C. Cir. 1973), cert. denied sub nom. Rosen v. Vaughn, 415 U.S. 977 (1974). While it is apparent that the defendant has unjustifiably withheld documents which must be made available to plaintiff, the Freedom of Information Act places the burden of entitlement to exemption from disclosure upon the government, and the only way in which the defendant can be compelled to meet that burden is by order of this Court pursuant to this motion.

Accordingly, plaintiff requests that his motion be granted.

Respectfully submitted,


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

Attorney pro se

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR,

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v.

Civil Action No. 77-0692

DEPARTMENT OF JUSTICE, ET AL.,

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JAMES F. DAVEY, Clerk

STIPULATION

It is hereby stipulated by and between plaintiff pro se and counsel for the defendants that the time for defendants to respond to the plaintiff's Motion Under Vaughn v. Rosen to Require Detailed Justification, Itemization and Indexing, be, and the same hereby is, extended from August 5, 1977 to and including September 15, 1977.

James H. Lesar

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Attorney Pro Se

Lynne K. Zusman

LYNNE K. ZUSMAN
U.S. Department of Justice
Washington, D.C. 20530
Telephone: (202) 739-4544

Attorney for Defendants.

SO ORDERED:

[Signature]
UNITED STATES DISTRICT JUDGE

Dated: Aug. 8, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 75-1996

O R D E R

Upon consideration of plaintiff's motion under Vaughn v. Rosen to require detailed justification, itemization and indexing by Office of Professional Responsibility, defendant's opposition thereto, and it appearing to the Court that the information sought by that motion is a matter presently pending before another Court of this circuit, Civil Action No. 77-0692 and not properly before this Court, it is, therefore this _____ day of _____, 1977

ORDERED that plaintiff's motion under Vaughn v. Rosen, be and the same hereby is denied.

UNITED STATES DISTRICT JUDGE