

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG,
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Plaintiff,
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v.
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U.S. DEPARTMENT OF JUSTICE,
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Defendant
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Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant

Civil Action No. 75-1996

RECEIVED

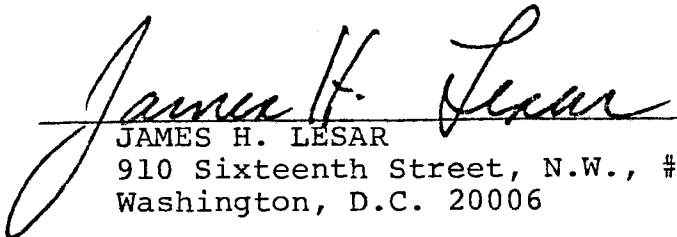
JUN 26 1978

JAMES F. DAVEY, Clerk

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

Plaintiff moves the Court for an order requiring the defendant to provide a detailed justification for any allegations that any records or portions thereof are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. §552, as amended by Pub. L. No. 93-502, 88 Stat. 1561, including an itemization and index which would correlate specific statements in such justification with actual portions of the requested documents.

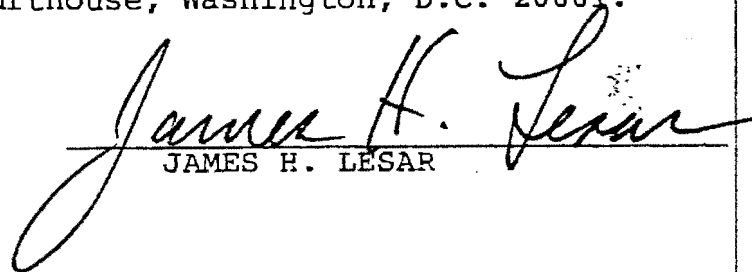
Respectfully submitted,


JAMES H. LESAR
910 Sixteenth Street, N.W., #600
Washington, D.C. 20006

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of June, 1978 hand-delivered a copy of the foregoing Motion under Vaughn v. Rosen To Require Detailed Justification, Itemization and Indexing By Office of Professional Responsibility to Miss Betsy Ginsberg at Courtroom 7, United States Courthouse, Washington, D.C. 20001.



JAMES H. LESAR

insistence, with worksheets which list most records and state what exemptions have been applied to each document, this does not sufficiently describe the nature of the material withheld nor necessarily correlate specific withholdings with the exemptions claimed. For example, in many cases the worksheets will simply show that exemption 7(C) and 7(D) have been applied to a document that is many pages long and has many excisions. Thus, Section 45 of the FBI Headquarters MURKIN file is 123 pages long and the worksheet shows that 121 pages of it have been released. (See Exhibit 13) But the worksheet cites two different provisions, exemption 7(C) and 7(D), without stating whether both apply to all excisions in that section, or only one.

It is well-established in this Circuit that the government must provide Freedom of Information Act plaintiffs with a detailed and specific justification, itemization, and indexing for their refusal to disclose requested documents. Vaughn v. Rosen, 484 F. 2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). See 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); Cuneo v. Schlesinger, 484 F. 2d 1086 (D.C. Cir. 1973), cert. denied sub nom. Rosen v. Vaughn, 415 U.S. 977 (1974).

Accordingly, plaintiff requests that defendant be required to file a Vaughn v. Rosen statement with respect to all records, or portions thereof, which it alleges are exempt from disclosure under the Freedom of Information Act.

Respectfully submitted,

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG, : :
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Plaintiff, : :
: :
v. : Civil Action No. 75-1996
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U.S. DEPARTMENT OF JUSTICE, : :
: :
Defendant : :
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AFFIDAVIT OF JAMES HIRAM LESAR

I, James Hiram Lesar, first having been duly sworn, depose and say as follows:

1. I am the attorney for the plaintiff in the above-entitled cause of action.
2. About two weeks after the May 24, 1978 status call in this case, Mr. Weisberg sent me a copy of his uncompleted report on the excisions from, and withholdings of, records sought in this case. Because of unexpected developments in other cases, I was not able to begin reviewing this 164 page report until Friday, June 24, 1978. Having now read this report and also done some checking of my own, the conclusions set forth below seem to me to be justified.
3. First, in processing these records, little or no weight appears to have been given to the fact that they are historically important and should therefore be processed according to a more liberal standard of disclosure than is ordinarily the case. Al-

termining whether or not to release information in this case.

4. Second, a large number of excisions are so so obviously baseless as to compel the conclusion that ulterior motives are the most likely explanation. For example, the FBI has frequently excised the name of public officials or publically-known persons under exemptions (b) (2) and (b) (7) (C) and/or (b) (7) (D). In serial 44-38861-5367, Mr. Weisberg informs me that the name of Leonard Rubin, the public information officer for Look Magazine is deleted. (Exhibit 1) In serials 5017 and 5018 the name of Kathy Ainsworth is deleted even though she was a well-known racist who was killed in a highly-publicized bombing incident. (Exhibits 2, 3) In Serial 5305, the FBI deleted the names of two suspects who were arrested in connection with robbery of the Bank of Alton, Illinois on July 13, 1967. (Exhibit 4) In Serial 4874 the FBI deleted the names of twelve police officers who lived in James Earl Ray's cell as they guarded him around the clock. In addition to being public officials, the names of these officers have all been introduced into evidence at James Earl Ray's habeas corpus hearing 1974. (Exhibit 5) In serial 1604, the FBI excised public information about John Ray, brother of James Earl Ray. (Exhibit 6) In serial 1816 the FBI has deleted the names of Bill Sartor, a reporter for Time Magazine, and John McFerren, a civil rights activist. This information is already publicly known. Yet the FBI even excised the name of a city in Tennessee! (Exhibit 7) In serial 5114, as in many other serials, the names of FBI Special Agents are excised. (Exhibit 8) In serial 3332, even descriptions of laboratory specimens have been deleted. (Exhibit 9) In serial 5947 the FBI de-

5. Third, many documents are either missing or are not provided. According to Mr. Weisberg's report, sometimes there is simply no explanation as to why a record has not been provided. In other instances the processor has simply jotted down "UTL", which apparently stands for "unable to locate."

6. Fourth, with respect to serial 3348, the reason for not providing it is plainly pretextual. The reason given is: "not with scope of request." Yet the FBI has provided Mr. Weisberg with all records in its Headquarters' MURKIN files, even though his requests did not require this. Moreover, I have reason to believe that this particular record is one which the FBI knew Mr. Weisberg was interested in.

7. Fifth, Mr. Weisberg's report shows that there were many more referrals than I had previously believed. Although most of these referrals were made more than a year ago, it seems apparent that only a small portion have been provided to date.

8. Sixth, although there would seem to be only a scant likelihood that any records pertaining to Dr. King or his assassination could qualify for security classification at this date, particularly in view of the fact that the Church Committee found that there was no basis in fact for the FBI's paranoid suspicion that Dr. King was under communist influence or control, the FBI claims that some records are exempt under 5 U.S.C. §552(b)(1). (See Exhibits 10, 11, and 12) Such claims must be supported, if they can be, by sworn statements that the records or portions thereof withheld under this guise are in fact properly classified under both the substantive and procedural standards of Executive Order 11652.

James H. Lesar

JAMES H. LESAR

WASHINGTON, D.C.

Subscribed and sworn to before me this 26th day of June,
1978.

Judith A. Hartill

NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires July 31, 1979.

