UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

V.

Civil Action No. 75-1996

U.S. DEPARTMENT OF JUSTICE,

Defendant

PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Local Rule 1-9(h), plaintiff adopts as his Statement of Material Facts as to Which There is No Genuine Issue, the attached affidavit of James H. Lesar executed on April 9, 1980.

Respectfully submitted,

JAMES H. LESAR

910 Sixteenth Street, N.W., #600

Washington, D.C. 20006 Phone: 223-5587

Attorney for Plaintiff

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

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Plaintiff,

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MEMORANDUM OF POINTS AND AUTHORITIES

This lawsuit arises under the Freedom of Information Act, 5 U.S.C. §552. Plaintiff seeks the disclosure of records related to the assassination of Dr. Martin Luther King, Jr. and certain other matters as specified in his requests of April 15 and December 23, 1975.

During its processing of the records found in its Headquarters
"MURKIN" file, the FBI referred some records to the Central Intelligence Agency on the grounds that they were the originating agency.

Most of these referrals are said by the FBI to have been made on

March 17, 1977; three out of the ten documents which remain entirely withheld are said to have been referred to the CIA some 5 or
6 months later. (See affidavit of James H. Lesar and Attachment 2
thereto)

On June 8, 1978, Mr. Allen H. McCreight, then Chief, Freedom of Information/Privacy Acts Branch, Records Management Division, Federal Bureau of Investigation, wrote Mr. Weisberg a letter in which he stated that the CIA would respond to him about these referrals. To date no response has been made and the records remain withheld in their entirety more than years years after they were

referred to the FBI.

The Freedom of Information Act, 5 U.S.C. § 552(a)(1976), provides that the government has an affirmative obligation to disclose public records. Unless the requested material falls within one of the nine specific statutory exemptions, "FOIA requires that records and material in the possession of federal agencies be made available on demand to any member of the general public." NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 221, 98 S.Ct. 2311, 2316, 57 L.Ed.wd 159 (1978). The Act expressly places the burden on the Government to establish the correctness of a claimed exemption in a trial de novo in District Court. 5 U.S.C. § 552(b)(1976).

In this case the Government has not even claimed an exemption for these withheld CIA referrals, much less attempted to meet its burden of establishing entitlement to an exemption. Accordingly, these records must now be disclosed.

Respectfully submitted,

9/10 Sixteenth Street, N.W., #600

Washington, D.C. 20006 Phone: 223-5587

Attorney for Plaintiff

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG,	:
Plaintiff,	:
V.	Civil Action No. 75-1996
U.S. DEPARTMENT OF JUSTICE,	: :
Defendant	:
••••••	•
ORDER	
Upon consideration of plaint	iff's Motion for Partial Summary
Judgment With Respect to Withheld	d CIA Referrals, Defendant's Oppo-
sition thereto, and the entire re	ecord herein, it is by the Court
this day of, 1980), herey
	otion for Partial Summary Judgment
is GRANTED; and it is	
further ORDERED, that within	days of the date of this
Order, Defendant shall disclose t	to Plaintiff all records referred
to the Central Intelligence Agend	cy in connection with this action
which remain withheld in their entirety.	
	UNITED STATES DISTRICT COURT