

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

MAY 23 1980

HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant

:
:
:
:
:
:
:
:
:
:
:

JAMES F. DAVEY, Clerk

Civil Action No. 75-1996

MOTION FOR PARTIAL SUMMARY JUDGMENT WITH
RESPECT TO CIVIL RIGHTS DIVISION RECORDS

Comes now the plaintiff, Mr. Harold Weisberg, and moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for partial summary judgment with respect to all records in the possession of, or subject to the control of, the Civil Rights Division of the Department of Justice that pertain to the assassination of Dr. Martin Luther King, Jr., any investigation into Dr. King's assassination, and related matters (the Memphis Sanitation Workers and the Invaders), including, but not limited to, all records in the following specified files:

1. DJ File No. 144-72-662;
2. DJ File No. 95-100-473;
3. DJ File No. 41-157-147;
4. DJ File No. 23680-4-1;
5. DJ File No. 144-19-0;
6. "Trial File"
7. "Inves. File"
8. Folder containing memoranda and FBI reports on the Memphis Sanitation Strike of March-April, 1968, described in July 13, 1976 affidavit of Mr. Stephen Horn;
9. Folder containing memoranda from Director J. Edgar Hoover to the Assistant Attorney General of the Civil Rights Division con-

concerning the progress of the investigation of Dr. King's assassination, as described in the July 13, 1976 affidavit of Mr. Stephen Horn;

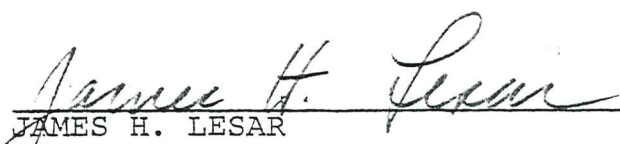
10. Reports of the Royal Canadian Mounted Police pertaining to their part of the investigation into the assassination of Dr. Martin Luther King, Jr., as described in the July 13, 1976 affidavit of Mr. Stephen Horn;

11. Reports of New Scotland Yard concerning their part of the investigation, as described in the July 13, 1976 affidavit of Mr. Stephen Horn;

12. Two loose folders of correspondence and memoranda pertaining to the assassination investigation, as described in the July 13, 1976 affidavit of Mr. Stephen Horn.

A Memorandum of Points and Authorities, a Statement of Material Facts Not in Dispute, a proposed Order, and an affidavit by James H. Lesar are attached hereto.


Respectfully submitted,


 JAMES H. LESAR
 2101 L Street, N.W., Suite 203
 Washington, D.C. 20037
 Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of May, 1980, mailed a copy of the foregoing Motion for Partial Summary Judgment With Resepct to Civil Rights Division Records to Mr. William G. Cole, Attorney, U.S. Department of Justice, Washington, D.C. 20530.


 JAMES H. LESAR

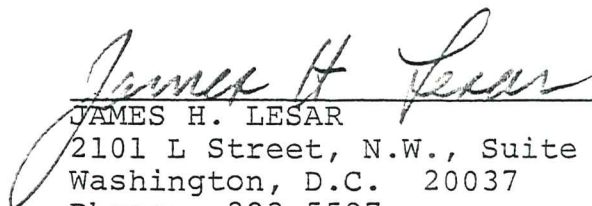
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

MEMORANDUM OF POINTS AND AUTHORITIES

It is axiomatic that in a Freedom of Information Act case the agency must prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt. National Cable Television Association v. F.C.C., 156 U.S.App.D.C. 91, 94, 479 F.2d 183, 186 (1973). In this case it is apparent from the facts set forth in the attached affidavit of James H. Lesar that there is a considerable volume of records pertaining to the assassination of Dr. King that remain withheld by the Civil Rights Division. For example, the April 17, 1980, letter of Mr. Quinlan J. Shea, Director, Office of Information and Privacy Appeals, to Mr. Weisberg relates that Department of Justice File No. 144-72-662 contains eight sections of records. (See Attachment 1 to Affidavit of James H. Lesar submitted herewith) This indicates that the some 1,400 to 2,200 pages in this file alone have been withheld from plaintiff. Records in other files which are described in the Lesar affidavit also remain withheld. Such records cannot properly remain withheld absent a particularized, nonconclusory, and detailed justification for such withholding. Vaughn v. Rosen, 157 U.S.App.D.C. 340, 484 F.2d 820 (1973), cert. denied, 415 U.S. 977 (1974). No such showing has been made. In the absence of such a showing, this Court has no alternative but to award summary judgment in Weisberg's favor and order prompt disclosure of the withheld records.

Respectfully submitted,



JAMES H. LESAR
2101 L Street, N.W., Suite 203
Washington, D.C. 20037
Phone: 223-5587

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

O R D E R

Upon consideration of plaintiff's motion for partial summary judgment with respect to Civil Rights Division Records, the opposition of defendant thereto, and the entire record herein, it is by the Court this ____ day of _____, 1980, hereby,

ORDERED, that plaintiff's motion for partial summary judgment be, and hereby is, GRANTED; and it is further

ORDERED, that within _____ days of the date of this Order the Civil Rights Division of the Department of Justice shall make available to plaintiff all records in its possession or subject to its control not previously given to plaintiff that pertain to the assassination of Dr. Martin Luther King, Jr., any investigation into Dr. King's assassination, the Memphis Sanitation Workers, and the Invaders, including, but not limited to, all records in the following specified files:

1. DJ File No. 144-72-662;
2. DJ File No. 95-100-473;
3. DJ File No. 41-157-147;
4. DJ File No. 23680-4-1;
5. DJ File No. 144-19-0;
6. The file referred to as "Trial File";
7. The file referred to as "Inves. File";
8. The "Folder containing memoranda and FBI reports on the Memphis Sanitation Strike of March-April, 1968," described in the

July 13, 1976, affidavit of Mr. Stephen Horn;

9. The "Folder containing memoranda from Director J. Edgar Hoover to the Assistant Attorney General of the Civil Rights Division concerning the progress of the investigation of Dr. King's assassination," as described in the July 13, 1976 affidavit of Mr. Stephen Horn;

10. The "Reports of the Royal Canadian Mounted Police pertaining to their part in the investigation into the assassination of Martin King, Jr.," as described in the July 13, 1976 affidavit of Mr. Stephen Horn;

11. The "Reports of New Scotland Yard concerning their part of the investigation," as described in the July 13, 1976 affidavit of Mr. Stephen Horn;

12. "Two loose folders of correspondence and memoranda pertaining to the assassination investigation," as described in the July 13, 1976 affidavit of Mr. Stephen Horn;