

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant

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Civil Action No. 75-1996

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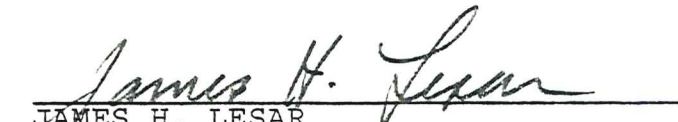
JAMES F. DAVEY, Clerk

MOTION FOR PARTIAL SUMMARY JUDGMENT WITH RESPECT
TO RECORDS OF THE OFFICE OF THE ATTORNEY GENERAL
AND THE OFFICE OF THE DEPUTY ATTORNEY GENERAL

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 of the Office of the Attorney General and the Office of the Deputy Attorney General that are pertinent to this lawsuit.

A Memorandum of Points and Authorities, a Statement of Material Facts as to Which Plaintiff Contends There Is No Genuine Issue, a proposed Order, and the supporting affidavit of James H. Lesar are attached hereto.

Respectfully submitted,



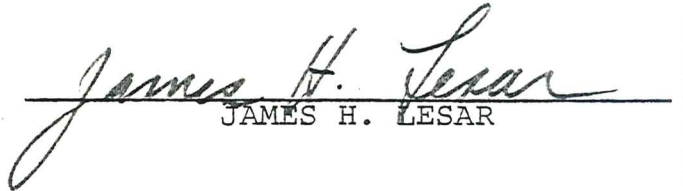
JAMES H. LESAR
2101 L Street, N.W., Suite 203
Washington, D.C. 20037
Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 4^B day of June, 1980, mailed a copy of the foregoing Motion for Partial Summary Judgment

With Respect to Records of the Office of the Attorney General and
Records of the Office of the Deputy Attorney General to Mr. William
G. Cole, Attorney, Civil Division, U.S. Department of Justice,
Washington, D.C. 20530.


JAMES H. LESAR

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 :

MEMORANDUM OF POINTS AND AUTHORITIES

This is a Freedom of Information Act lawsuit which seeks the disclosure of records pertaining to the assassination of Dr. Martin Luther King, Jr., the investigation of that assassination, and certain related matters. It is directed at the disclosure of such records by each unit of the Department of Justice which has them.

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 no documents have been produced from the files of the Office of the Attorney General or the Office of the Deputy Attorney General. (See June 3, 1980, Lesar Affidavit, ¶4) Yet there is abundant evidence that each of these offices compiled records on the assassination of Dr. King. First, the records of other Department of Justice components show that copies of King assassination documents were sent to the Attorney General and the Deputy Attorney General. (See June 3, 1980, Lesar Affidavit, ¶3, and Exhibit 1 thereto) Second, a staff report of the House Select Committee on Assassinations cites a "Memorandum to Attorney General re James Earl Ray Possible Evidence of Conspiracy." (See June 3, 1980, Lesar Affidavit, ¶5) Thirdly, Ramsey

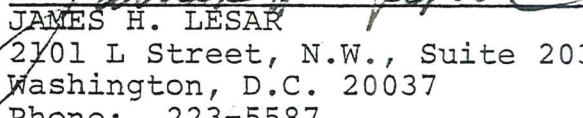
Clark, who was Attorney General at the time of the FBI's investigation into Dr. King's assassination, testified before the House Select Committee on Assassinations that:

I became personally and directly involved in the investigation, and received information directly about it in a way and to an extent that exceeded all others during my term as Attorney General."

(See June 3, 1980, Lesar Affidavit, ¶6)

There thus being no doubt whatsoever that the Office of the Attorney General and the Office of the Deputy Attorney General compiled records on the assassination of Dr. King and its investigation, such records cannot properly remain withheld absent a particularized, nonclusory, 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 should 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
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 U.S. DEPARTMENT OF JUSTICE, :
 :
 Defendant :

AFFIDAVIT OF JAMES H. LESAR

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

1. I am the attorney for plaintiff in the above-entitled cause of action.
2. Although plaintiff has previously sought to obtain a Vaughn v. Rosen inventory, index, and detailed justification of records of the Office of the Attorney General and the Office of the Deputy Attorney General that are pertinent to this lawsuit, his motions to this end have not been acted upon.
3. That both the Office of the Attorney General and the Office of the Deputy Attorney General should have records pertaining to the assassination of Dr. Martin Luther King, Jr. and its investigation is shown by the November 28, 1975 memorandum from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, to Richard L. Thornburgh, Assistant Attorney General, Criminal Division, which is attached hereto as Exhibit 1. This memorandum indicates that copies were sent to the Attorney General and the Deputy Attorney General.
4. Neither the Office of the Attorney General nor the Office of the Deputy Attorney General has provided any records responsive to this lawsuit.
5. Volume XIII of the Hearings on the Investigation of the Assassination of Dr. Martin Luther King, Jr. of the House Select

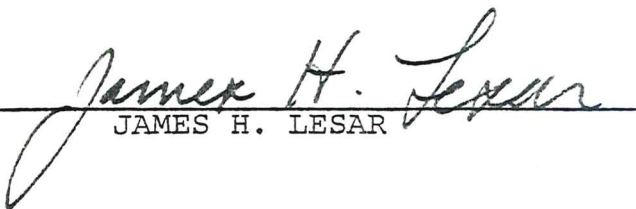
Committee on Assassinations cites a "Memorandum to Attorney General re James Earl Ray Possible Evidence of Conspiracy." No copy of this memorandum has been provided plaintiff by the Office of the Attorney General.

6. A Supplementary Staff Report of the House Select Committee on Assassinations states:

During his executive session testimony, Ramsey Clark recalled that he "caused a quite different relationship between the Office of the Attorney General and the Bureau in this (King) assassination * * * I became personally and directly involved in the investigation, and received information directly about it in a way and to an extent that exceeded all others during my term as Attorney General." Prior to Ray's arrest Clark's information came in the form of frequent briefings, either telephonically or in person, from Assistant to the Director Cartha DeLoach, as well as from written Bureau memoranda. * * * Despite Mr. Clark's efforts, however, it is clear that the written information received by the Attorney General and, in many ways more importantly, by the rest of the Justice Department, was often both superficial and untimely.

(Investigation of the Assassination of Martin Luther King, Jr., Appendix to Hearings Before the Select Committee on Assassinations of the U.S. House of Representatives, Vol. XIII, p. 171.)

7. This passage makes clear that the Office of the Attorney General did compile records on Dr. King's assassination. It also shows that obtaining these records is essential to any study of the way in which the Department functioned in response to that assassination.


 JAMES H. LESAR

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 3rd day of June,
 1980.


 NOTARY PUBLIC IN AND FOR
 THE DISTRICT OF COLUMBIA

My commission expires My Commission Expires August 31, 1984.

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

November 28, 1975

TO: Richard L. Thornburgh
Assistant Attorney General
Criminal Division

FROM: J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

SUBJECT: King/FBI Investigation

This is to confirm our telephone conversation of today on how we intend to proceed on this matter.

We will take the lead responsibility here, since the file is here, and we are already investigating matters related to the Attorney General's memorandum of November 24th. When we have completed our review as set forth below, I will sit down with you and your people. We will then, hopefully, make a joint recommendation to the Attorney General.

As I mentioned on the telephone, I have talked to counsel for the Senate Intelligence Committee, who assures me that they will provide their full cooperation in documents and other information. Specifically, I have requested the opportunity to have not only the testimony given by the Bureau, but the opportunity to interview the staff who have worked on this matter.

In addition, we are in the process of formalizing a request of the Bureau for all documents, tapes, transcripts, and other information relating to their surveillance of Dr. King, or any other activity which may have had some impact on him. I have alerted Mr. Mintz that this is coming. In addition, next week we will begin inventorying some FBI documents of which we have knowledge.

I will keep you informed on our progress as we go along.

CC: Attorney General
Deputy Attorney General

BCC: Jim Turner
Bob Murphy
Bill Gardner
Frank Allen
Steve Horn

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Civil Action No. 75-1996

O R D E R

Upon consideration of plaintiff's motion for partial summary judgment with respect to records of the Office of the Attorney General and the Office of the Deputy Attorney General, defendant's Opposition 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 the same hereby is, GRANTED; and it is further

ORDERED, that within _____ days of the date of this Order defendant shall make available to plaintiff all records of the Office of the Attorney General and the Office of the Deputy Attorney General that are pertinent to this litigation.

UNITED STATES DISTRICT COURT