

RECEIVED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUN - 5 1980


JAMES F. DAVEY, Clerk

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

MOTION FOR PARTIAL SUMMARY JUDGMENT
WITH RESPECT TO SIX MURKIN DOCUMENTS

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 MURKIN Headquarters serials 3374, 3400, 3509, 3763, 3764, and the 1st unrecorded serial after serial 6110. A Statement of Material Facts As To Which Plaintiff Contends There Is No Genuine Issue, a Memorandum of Points and Authorities, a proposed Order, and the June 4, 1980, 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 5TH day of June, 1980, mailed a copy of the foregoing motion for partial summary judgment 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,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant

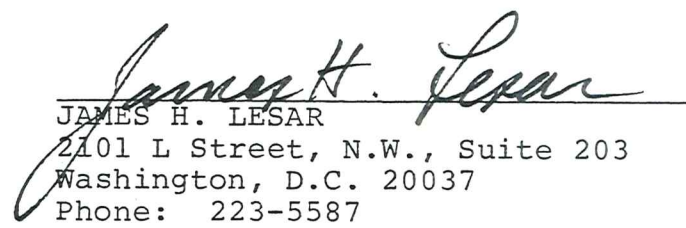
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Civil Action No. 75-1996

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

Plaintiff, pursuant to Rule 1-9(h) of the Court's Local Rules, adopts and incorporates by reference as his Statement of Material Facts As To Which There Is No Genuine Issue the June 4, 1980, Affidavit of James H. Lesar.

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

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 Defendant :

MEMORANDUM OF POINTS AND AUTHORITIES

In processing its MURKIN Headquarters records the FBI withheld three documents in their entirety on the basis of a claim that they are exempt from disclosure under 5 U.S.C. § 552(b)(5). Three more documents were withheld in toto on the assertion that they are immune from disclosure on the basis of Exemption 5 and one or more other exemptions.

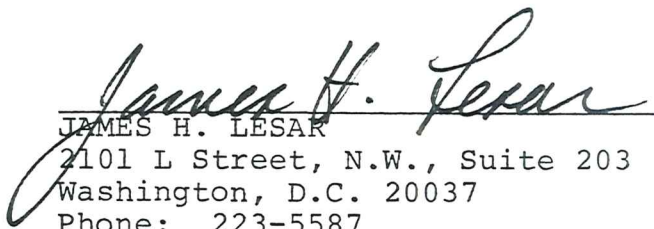
The FBI has not provided any justification for withholding these documents and the only description of them is the extremely minimal information recorded on the FBI worksheets. (The worksheet description for each of these serials is set forth in paragraph 2 of the June 4, 1980, affidavit of James H. Lesar)

Under the terms of the Freedom of Information Act, the Government must demonstrate that there are no segregable portions of such records that contain nonexempt material. 5 U.S.C. § 552(b). This is particularly important with respect to Exemption 5 claims because this exemption "requires different treatment for materials reflecting deliberative or policy-making processes on the one hand, and purely factual, investigative matters on the other." EPA v. Mink, 410 U.S. 73, 89 (1973). The FBI has not claimed that there are no segregable, nonexempt portions in these totally withheld serials. That they contain no segregable portions is highly un-

likely, even where their content is concerned. And certainly the date, title, file number, and administrative markings they contain are nonexempt.

Accordingly, since the FBI has failed to demonstrate that they serials are exempt in toto, plaintiff's motion for partial summary judgment should be granted.

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

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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:

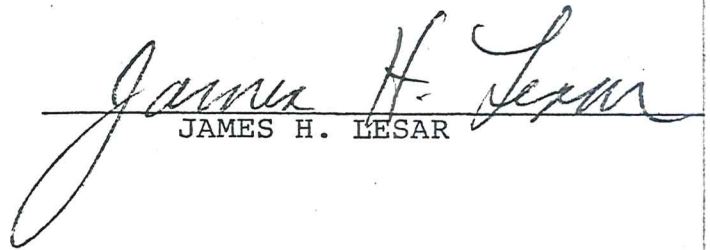
1. I am the attorney for the plaintiff in the above-entitled cause of action.

2. I have reviewed the worksheets for the MURKIN Headquarters records processed in this case. According to these worksheets, there are six MURKIN Headquarters documents which have been withheld in their entirety either on the basis of Exemption 5 standing alone or Exemption in conjunction with one or more other exemptions. These MURKIN serials are listed below with the entire description of them as it appears on the FBI worksheets:

<u>Serial</u>	<u>Description</u>	<u>Exemption</u>
3374	St.L. T/T, 3 pp., 0 pp. released	(b) (5)
3400	St.L. T/T, 3 pp., 0 pp. released	(b) (5)
3509	Letter to AG, 1 p., 0 pp. released	(b) (5), (b) (7) (C)
3763	Internal Memorandum, 2 pp., 0 pp. released	(b) (5)
3764	Internal Memorandum, 2 pp., 0 pp. released	(b) (5), (b) (7) (C)
1st unrec. after 6110	Internal Memorandum, 7 pp., 0 pp. released	(b) (5), (b) (6), (b) (7) (C), (b) (7) (F)

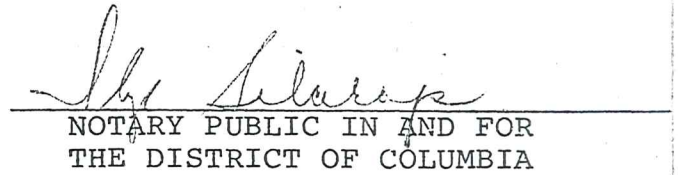
3. The FBI has not asserted that these documents contain no segregable nonexempt portions. Even if it could be assumed that all of the content of these documents is properly withheld under the exemption(s) claimed, which it can't, the dates, heading, file numbers, and administrative markings would at least be releasable.

4. The FBI has in fact made no sworn statement attesting to the fact that these documents contain information that is excepted from mandatory disclosure under the exemptions claimed.


JAMES H. LESAR

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 4th day of June,
1980.


NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires My Commission Expires August 31, 1984

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FOR THE DISTRICT OF COLUMBIA

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Plaintiff,	:	
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	:	
U.S. DEPARTMENT OF JUSTICE,	:	
	:	
Defendant	:	

O R D E R

Upon consideration of plaintiff's motion for partial summary judgment with respect to MURKIN Headquarters serials 3374, 3400, 3509, 3763, 3764, and the first unrecorded serial after serial 6110, defendant's opposition thereto, and the entire record herein, it is by the Court this ____ day of _____, 1980, hereby

ORDERED, that plaintiff's motion be, and the same hereby is, GRANTED; and it is further

ORDERED, that within ____ days of the date of this Order defendant shall make copies of these documents available to plaintiff.

UNITED STATES DISTRICT COURT