

cerning 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; and

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.

Alternatively, plaintiff moves for an order requiring defendant to submit to the Court and to him an inventory and detailed justification, itemization and indexing under Vaughn v. Rosen, 157 U.S.App.D.C. 340, 484 F.2d 820 (1973), cert. denied, 415 U.S. 977 (1974), including a description of the contents of each document alleged not to be within the scope of plaintiff's April 15 and December 23, 1975 requests.

A Memorandum of Points and Authorities, proposed Orders, and affidavit by James H. Lesar are attached hereto.

Respectfully submitted,

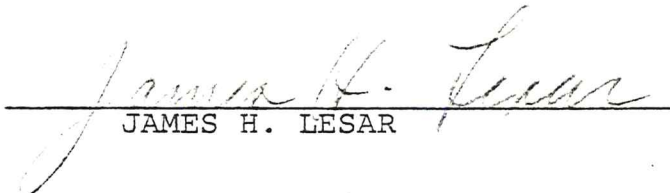


JAMES H. LESAR
2101 L Street, N.W., Suite 203
Washington, D.C. 20037
Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of January, 1981, mailed a copy of the foregoing Motion to Compel Defendant to Disclose Records of the Civil Rights Division; or, in the Alternative, to Require an Inventory and a Detailed Justification, Itemization and Indexing under Vaughn v. Rosen to Mr. William G. Cole, Attorney, Civil Division, Room 3137, 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, :
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 v. : Civil Action No. 75-1996
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 U.S. DEPARTMENT OF JUSTICE, :
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 Defendant :

MEMORANDUM OF POINTS AND AUTHORITIES

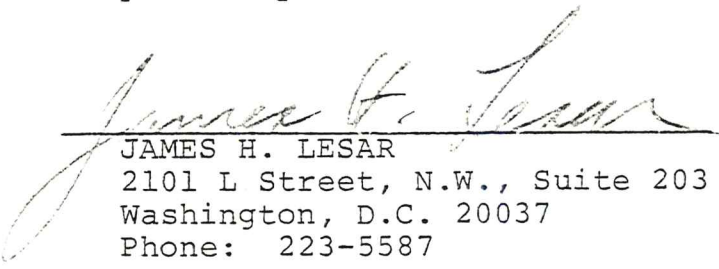
It is axiomatic that in a Freedom of Information Act case the agency must prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt. National Cable Television Association v. F.C.C., 156 U.S.App.D.C. 91, 94, 479 F.2d 183, 186 (1973). 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, Jr., Director, Office of Privacy and Information Appeals, to Mr. Weisberg relates that Department of Justice File No. 944-72-662 contains eight sections of records. (See Attachment 1 to Affidavit of James H. Lesar submitted herewith) This indicates that 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.

There is some reason to believe that defendant is contending that the records described in the Lesar and Horn affidavits that have not been provided to plaintiff are not within the scope of his December 23, 1975 request. Even if plaintiff's December 23rd request is construed as narrowly as possible, it is impossible that the withheld Civil Rights Division materials do not contain materials responsive to this request. For example, it is difficult to conceive how the "folder containing memoranda and FBI reports on the Memphis Sanitation Strike of March-April, 1968" cannot contain materials responsive to item 27, which is for reports on the unions, union officials, and union employees involved in the garbage strike. Similarly, it is not conceivable that three files containing reports of the Royal Canadian Police, the Memphis Police, and New Scotland Yard do not contain materials responsive to item 13 of the request, which is for "All records pertaining to any alleged or contemplated witness, including any statements, transcripts, reports, or memorandums from any source whatever." Even if this were not true, the affidavit of Stephen Horn attests only to having reviewed Civil Rights Division files in the light of plaintiff's December 23, 1975, and makes no mention of having subjected them to the scrutiny required by plaintiff's April 15, 1975 request. At a minimum, therefore, what is required is a Vaughn showing which will enable to the Court and plaintiff to determine which of the withheld CRD materials fall within the scope of his requests.

A preferable solution to the problem of defendant's recalcitrance regarding CRD files is for the Court to order defendant to promptly disclose all materials described in the Horn and Lesar affidavits. In the first place, early in this case the Court itself construed plaintiff's requests as including all materials on Dr. King's assassination. Second, the Federal Bureau of Investigation adopted a similar interpretation with regard to its Headquar-

ters MURKIN records, even though a narrower interpretation would have resulted in the release of fewer documents. Third, plaintiff has relied upon the broad construction placed upon his requests by the Court and will be detrimentally affected if the Court permits different components of the Department of Justice to construe his identical requests differently. For example, if plaintiff does not succeed in obtaining these records through this case he will be forced to make a new request in the broadest possible terms and then file suit, thus causing him additional expense and delay. Given plaintiff's age and ill health, the intent of Congress that FOIA should effect the speedy release of information, and the fact that defendant has acknowledged to a congressional committee that plaintiff has reason to complain about its refusal to process his Freedom of Information Act requests,^{1/} such a result would be unconscionable. Rather than continuing plaintiff's ordeal any longer, the just, speedy, and inexpensive determination of this case will be best served by ordering defendant to provide all the materials identified in the Lesar and Horn affidavits without further delay, subject only to the assertion of proper claims of exemption under 5 U.S.C. § 552(b).

Respectfully submitted,


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

Attorney for Plaintiff

^{1/} See "Agency Implementation of the 1974 Amendments to the Freedom of Information Act," Report on Oversight Hearings, Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary of the United States Senate, 95th Congress, 2d Sess., at p. 71. (Exhibit 1)

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

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. In preparation for this affidavit I reviewed the documents which the Civil Rights Division of the Department of Justice provided to plaintiff on April 24, 1976, July 16, 1976, and September 20, 1977. I also reviewed pertinent records filed in this case, such as the July 13, 1976, affidavit of Mr. Stephen Horn.

3. The records released by the Civil Rights Division (CRD) contain a number of references to other files which appear to be pertinent to the assassination of Dr. King and its investigation. Specifically, the documents released by CRD show the existence of the following files on the assassination of Dr. King and its investigation:

- a. DJ file No. 144-72-662;
- b. DJ file No. 95-100-473;
- c. DJ file No. 41-157-147;
- d. DJ file No. 23680-4-1;
- e. DJ file No. 144-19-0;
- f. a "Trial File" and
- g. "Inves. File"

4. Mr. Weisberg has been provided with approximately 200 pages of CRD records in this case. Most of these records appear to have come from DJ file No. 144-72-662.

5. On three occasions Mr. Weisberg has moved to require a Vaughn v. Rosen showing by CRD. The Department resisted each of these motions. None of the motions has been acted upon by the Court.

6. The attached April 17, 1980 letter from Mr. Quinlan J. Shea, Director, Office of Information and Privacy Appeals, to Mr. Harold Weisberg states that a member of Mr. Shea's staff "recently encountered a partially classified Civil Rights Division file, Number 144-72-662, consisting of eight sections and covering the period from late 1967 through the middle of 1969, which pertains to the King assassination" (See Attachment 1) Assuming that a section of Justice Department records is comparable in volume to a section of FBI records, this description indicates that there are between 1,600 to 2,400 pages contained in file No. 144-72-662. This would indicate that there are perhaps as many as 2,200 pages from this one CRD file alone which should have been provided plaintiff but have not.

7. In addition to listing two of the numbered files listed in paragraph 3 above, the July 13, 1976 affidavit of Mr. Stephen Horn includes the following files:

a. "A folder containing memoranda and FBI reports on the Memphis Sanitation Strike of March-April 1968."

b. "A 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."

c. "Reports of the Royal Canadian Mounted Police pertaining to their part of the investigation."

d. "Reports of the Memphis Police Department concerning their part of the investigation."

e. "Reports of New Scotland Yard concerning their part of the investigation."

f. "Two loose folders of correspondence and memoranda pertaining to the assassination investigation."

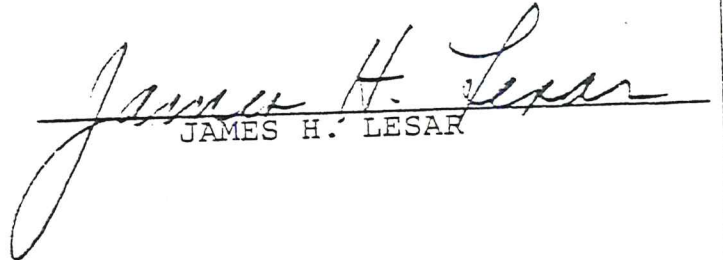
(See Attachment 2, Affidavit of Stephen Horn, executed July 13, 1976)

8. On the basis of the present record it is not possible to ascertain whether any materials have been provided Mr. Weisberg from any of the files listed in paragraph 7 above. However, I can state that it is not possible to identify any of the records which have been furnished as coming from the files described in paragraph 7(a) and 7(c) through 7(e).

9. Because neither Mr. Horn nor the Department of Justice has provided any description of the volume of records contained in the various files described in Mr. Horn's affidavit, it is not possible to ascertain their volume on the basis of the present record. And except for the revelation about the approximate volume of file No. 144-72-662 that is contained in Mr. Shea's April 17 letter, there is also no basis for estimating the volume of records contained in the files which I listed in paragraph 1 above.


10. On November 24, 1975, the Attorney General of the United States directed the Civil Rights Division to undertake a review of the files of the Department of Justice and the Federal Bureau of Investigation to determine whether the investigation of the assassination of Dr. King should be reopened. For the next four months CRD conducted a review of the FBI files on the assassination of Dr. King. CRD has provided no documents which were compiled as a result of that re-investigation of Dr. King's assassination.

11. From the foregoing it is clear that the Civil Rights Division of the Department of Justice possesses far more records on the assassination of Dr. King than the approximately 200 pages it has given Mr. Weisberg so far. The Department has not supplied any justification whatsoever as to why these additional records have not been provided.


 JAMES H. LESAR

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 21st day of May, 1980.


 NOTARY PUBLIC IN AND FOR
 THE DISTRICT OF COLUMBIA

My commission expires My Commission Expires August 31, 1984



United States Department of Justice

OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

WASHINGTON, D.C. 20530

Mr. Harold Weisberg
7627 Old Receiver Road
Frederick, Maryland 21701

17 APR 1980

Dear Mr. Weisberg:

Enclosed are copies of several documents which were located by Ms. Kisiel of my staff in a Criminal Division file -- Number 129-11 -- as the result of a request to this Office. You will note that they seem to be the sort of substantive records we were never able to locate in files of the Offices of the Attorney General and Deputy Attorney General. Based on my own very preliminary review of the extensive list of the records which comprise this file (a copy of which, I am informed, has already been provided to you by the Criminal Division), it seems quite likely that we have at last located the Department's repository of such records.

I do not now intend to direct any further effort to retrieve and review any other AG and DAG materials which may be in the Criminal Division file. This is because of my understanding that the Division is already engaged in processing a request from you and my belief that this more comprehensive approach -- in which "initial request" personnel from my Office will probably become involved, as the result of referrals, consultations, or both -- is most likely to serve the best interests of all concerned. If this creates any problems for you, let me know. For the time being, I hope that the enclosed documents will be of interest to you.

Ms. Kisiel also recently encountered a partially-classified Civil Rights Division file, Number 144-72-662, consisting of eight sections and covering the period from late 1967 through the middle of 1969, which pertains to the King assassination, and a partially-classified Criminal Division general investigative file pertaining to Dr. King, Number 146-1-7747, consisting of fifty-four sections and covering the period from late 1961 through

-2-

early 1971. Although you are probably already aware of these two files, I did want to mention them to you in accordance with my long-standing promise to notify you of any King or Kennedy materials of which we might become aware.

Sincerely,

Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

Enclosures

cc: James Lesar

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Harold Weisberg,

Plaintiff

v.

Department of Justice,

Defendant

Civil Action No. 75-1996

AFFIDAVIT

I, Stephen Horn, being duly sworn, do hereby depose and state as follows:

In the course of my duties as an attorney of the Civil Rights Division, I was given the general assignment to become familiar with the Civil Rights Division files pertaining to the assassination of Dr. Martin Luther King, Jr. Upon receipt of the Freedom of Information request of Harold Weisberg of December 23, 1975, I was assigned to review all pertinent documents in the possession of the Civil Rights Division to identify those documents within the purview of Mr. Weisberg's request. In the course of this review, I examined the following documents:

1. Department of Justice file number 144-72-662 concerning the assassination of Dr. King.
2. A folder containing memoranda and FBI reports on the Memphis Sanitation Strike of March-April 1968.
3. A 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.

4. Reports of the Royal Canadian Mounted Police pertaining to their part of the investigation.

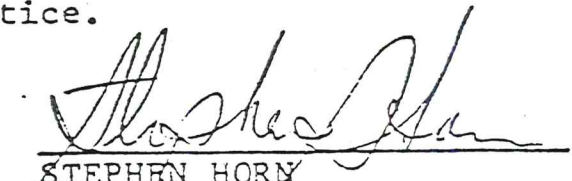
5. Reports of the Memphis Police Department concerning their part of the investigation.

6. Reports of New Scotland Yard concerning their part of the investigation.

7. Department of Justice file number 95-100-473, a Criminal Division file pertaining to the extradition of James Earl Ray from England.

8. Two loose folders of correspondence and memoranda pertaining to the assassination investigation.

To the best of my knowledge and belief, obtained during the performance of my assigned duties, the above list of materials comprises all of the documents pertinent to Mr. Weisberg's Freedom of Information request. I am in possession of no information, direct or indirect, to lead me to believe that there are any other pertinent documents in the possession of the Civil Rights Division or any other Division of the Department of Justice.


STEPHEN HORN

Attorney

Department of Justice

Washington, D.C. 20530

Subscribed and sworn
before me this 13 day of
July, 1976.


Notary Public

My Commission Expires January 31, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

O R D E R

This matter comes before the Court on plaintiff's motion to compel defendant to disclose records of the Civil Rights Division of the Department of Justice or, in the alternative, for an order requiring defendant to provide a Vaughn v. Rosen index of said records. Plaintiff contends that the Civil Rights Division has many records responsive to his Freedom of Information Act requests that have not been provided him. He has in fact specified many Civil Rights Division files which he contends contain records that are being improperly withheld from him.

The Court finds that it is indeed plausible that the files specified by plaintiff do in fact contain materials within the scope of his April 15 and December 23, 1975 requests. However, the available factual description of these materials is insufficient for the Court to make a determination as to whether all or only some of the materials are within the scope of plaintiff's requests. For this reason the Court concludes that defendant must be required to justify any contention that these materials are not within the scope of plaintiff's requests, or that they are exempt from disclosure pursuant to 5 U.S.C. § 552(b).

Therefore, it is by the Court this _____ day of _____, 1981, hereby

ORDERED, that plaintiff's Motion under Vaughn v. Rosen to Require a Detailed Justification, Itemization and indexing of Civil Rights Division documents pertaining to the assassination of Dr. Martin Luther King, Jr., any investigation into Dr. King's assassination, and related matters specified in plaintiff's FOIA requests, such as the Memphis Sanitation Workers and the Invaders, to the extent that such records have not heretofore been provided to plaintiff is hereby GRANTED; and it is further

ORDERED that defendant shall deliver, within _____ days of the date of this Order, to this Court and to counsel for plaintiff, a detailed justification for allegations that any of the above described materials are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b), or that they are not within the scope of plaintiff's requests, including an itemization and index which correlates specific statements in such justification with actual documents or portions thereof; and it is further

ORDERED, that the description of each document withheld in its entirety shall include its date, title, and subject heading, as well as the name of the addressee and addressor and a brief summary of its contents.

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

O R D E R

This matter comes before the Court on plaintiff's motion to compel defendant to disclose records of the Civil Rights Division of the Department of Justice or, in the alternative, for an order requiring defendant to provide a Vaughn v. Rosen index of said records. Plaintiff contends that the Civil Rights Division has many records pertinent to his Freedom of Information Act requests that have not been provided him. He has in fact specified many Civil Rights Division files which he contends contain records that are being improperly withheld from him. After careful consideration of all the circumstances, the Court concludes that the just, speedy, and inexpensive termination of this lawsuit will best be served by granting plaintiff's motion to compel disclosure of the specified records, subject, of course, to defendant's right to withhold materials that are properly exempt under the Act.

The Court's decision is compelled by the following findings. First, early in the long history of this case the Court construed plaintiff's requests as including all records pertaining to the assassination of Dr. Martin Luther King, Jr. Second, the Federal Bureau of Investigation adopted a similar interpretation of plaintiff's requests and processed all of its Headquarters MURKIN records, even though a narrower interpretation would have resulted in

the release of fewer documents. Third, plaintiff has relied upon the broad construction of his requests by the Court and will be detrimentally affected if the Court permits different components of the Department of Justice to construe his identical requests differently. For example, plaintiff would then be forced to make a new request in the broadest possible terms and then file suit, thus causing him additional expense and delay. Given plaintiff's age and ill health, the intent of Congress in enacting FOIA to secure the speedy release of nonexempt information, and the fact that defendant has acknowledged to a congressional committee that plaintiff has reason to complain about its refusal to process his Freedom of Information Act requests, such a result would be unconscionable. Fourth, the July 13, 1976 affidavit of Mr. Stephen Horn is defective. It fails to state how plaintiff's December 23, 1975 request was construed, yet under any reasonable construction of it, it seems likely that some of the materials described by Mr. Horn are well within the scope of this request. For example, it is difficult to believe that the "folder containing memoranda and FBI reports on the Memphis Sanitation Strike of March-April, 1968" described in Mr. Horn's affidavit does not contain materials falling within the scope of item 27 of the December 23rd request. Fifth, and most importantly, Mr. Horn's affidavit is defective because it states only that he reviewed the Civil Rights Division materials to determine whether they were responsive to the December 23, 1975 request; it does not state that they were reviewed in light of Mr. Weisberg's April 15, 1975 request.

Therefore, in accordance with the above findings, it is by the Court this _____ day of _____, 1981, hereby

ORDERED, that defendant shall, within _____ days of the date of this order disclose to plaintiff all records of the Civil Rights Division pertaining to the assassination of Dr. Martin Lu-

ther King, Jr., any investigation into Dr. King's assassination, and related matters specified in plaintiff's FOIA requests, such as the Memphis Sanitation Workers and the Invaders, to the extent such records have not heretofore been released to plaintiff. Provided, however, that defendant may withhold any materials, or portions thereof, which are properly subject to a claim of exemption under 5 U.S.C. § 552(b).

UNITED STATES DISTRICT COURT