

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

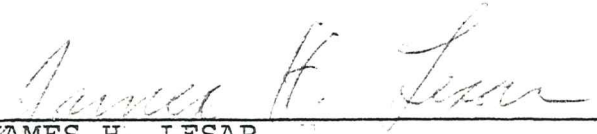
HAROLD WEISBERG, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 75-1996
 :
 U.S. DEPARTMENT OF JUSTICE, :
 :
 Defendant :

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

Plaintiff, pursuant to Local Rule 1-9(h), states the following material facts as to which he contends there is no genuine issue:

1. Defendant has withheld numerous documents and pages of documents in their entirety;
2. Defendant has not shown by competent evidence that these entirely withheld documents and pages of documents are exempt from disclosure under the Freedom of Information Act;
3. Defendant has made no claim that these entirely withheld materials contain no segregable, nonexempt portions; and
4. These entirely withheld materials do contain segregable, nonexempt parts.

Respectfully submitted,


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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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MEMORANDUM OF POINTS AND AUTHORITIES

In 1973 the United States Court of Appeals held that an agency may justifiably withhold materials sought under the Freedom of Information Act (FOIA) only if it proves

that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempted from the Act's inspection requirements.

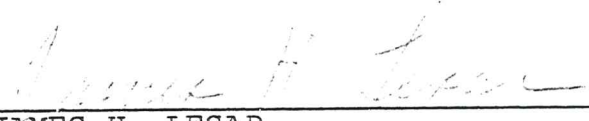
National Cable Television Association, Inc. v. F.C.C., 156 U.S.App.D.C. 91, 94, 479 F.2d 183, 186 (1973). The burden of proof rests on the agency to support an assertion of exemption. Schaffer v. Kissinger, 164 U.S.App.D.C. 282, 505 F.2d 389 (1976); 5 U.S.C. § 552(a)(4)(B). In addition, the agency must release all "reasonably segregable" portions of an otherwise exempt record. 5 U.S.C. § 552(b), last sentence.

Defendant has not complied with any of these requirements. Exhibit 1 to this motion is a list of documents and pages of documents, other than referrals, which have been withheld in their entirety from FBI Headquarters MURKIN records. It shows that nearly 700 pages of MURKIN Headquarters records have been withheld in their entirety. Defendant has made no showing that these materials are exempt under FOIA. All defendant has done to date is to list exemptions which allegedly apply to these materials on worksheets. The description of the withheld materials that appears on the worksheets is useless for purposes of determining whether

some or all of it is properly withheld under the cited exemption. For example, FBI Headquarters MURKIN serial 2000, which consists of four pages, all withheld under Exemption 7(C), is described on the worksheet only as "Indianapolis TT". (See, Exhibit 1) In addition, the information appearing on the worksheets has not been sworn to under oath and defendant has not asserted that the withheld materials contain no segregable, nonexempt portions. Indeed, the worksheets make no claim of exemption at all for some of the withheld documents. (See, for example, Serial 1427, a three page Los Angeles Teletype which is listed on the appropriate worksheet--reproduced here as Exhibit 2--as being entirely withheld without any claim of exemption being made.)

Defendant has had five years in which to justify the withholding of the materials sought by this motion. Since it has not met the burden of proof placed upon it by the Act, the Court should award summary judgment in plaintiff's favor and order that all such materials be promptly disclosed to plaintiff.

Respectfully submitted,



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Attorney for Plaintiff

MURKIN HEADQUARTERS RECORDS

<u>SERIAL</u>	<u>WORKSHEET DESCRIPTION</u>	<u>ACTUAL PAGES</u>	<u>PAGES RELEASED</u>	<u>EXEMPTIONS</u>
X	Kansas City letter	2	1	b1
31	AT to Birmingham	3	2	b7(C)(D)(F)
58	Letter to AG	1	0	b1,2,7(D)
102	Louisville TT	2	1	b7(C)(D)
123	Chicago TT	1	0	b7(D)
196	Jackson TT	6	5	b7(C)
209	Memphis TT	14	1	b7(C)
221	Philadelphia TT	3	0	b7(D)
316	Atlanta TT	1	0	b7(C)(D)
359	Philadelphia TT	3	0	b7(D)
413	AT to Legat, Santo Domingo	3	0	NONE
535	TT to Memphis	3	2	b2, 7(C)(D)
644	Memphis TT	8	7	b7(C)(D)(E)
665	San Antonio TT	2	0	b1
705	Sacramento TT	1	0	7(D)
711	Newark AT	1	0	7(C)(D)
727	Legat, Mexico City TT	3	1	b1
856	Legat, Mexico City TT	2	0	b1
861	Legat, Mexico City	2	1	b1, 7(C)
1057	Legat, Bonn AT	2	0	b1
1093	Sacramento TT	5	4	b7(C)(D)
11530G	AT to Washington	1	0	b1
1161	? letter	3	2	b7(C)
1196	Legat, Mexico City TT	1	0	b1
1219	Legat, Mexico City TT	2	0	b1
1251	Los Angeles TT	2	0	b7(C)(D)
1266	Internal Memorandum	1	0	b1
1302	CG to Legat, Ottawa	1	0	Classification review
1317	Louisville AT	14	13	b7(C)(D)

<u>SERIAL</u>	<u>DESCRIPTION</u>	<u>ACTUAL</u>	<u>RELEASED</u>	<u>EXEMPTIONS</u>
1327	Louisville AT	11	1	b7(C) (D)
1357	Sacramento AT	2	1	b7(C) (D)
1402	CG to Legat, Mexico City	1	0	Class. Rev.
1408	Legat, Paris TT	1	0	Class. Rev.
1417	Legat, Bonn TT	1	0	Class. Rev.
1427	Los Angeles TT	3	0	NONE
1439	Cincinatti AT	5	3	b2, 7(C) (D)
1440	San Antonio AT	4	2	b7(C)
1455	Legat, Bonn TT	1	0	Class. Rev.
1470	Legat, Mexico City AT	1	0	Class. Rev.
1500	Internal Memorandum	3	0	Class. Rev.; b7(C) (D)
1505	St. Louis TT	1	0	b7(D)
1517IC	Buffalo TT	2	0	Class. Rev.
1517OG	TT Legat, Ottawa	3	0	Class. Rev.
1529	Los Angeles TT	2	0	b7(C) (D)
1533	Legat, Mexico City	4	0	Class. Rev.
1547	Detroit AT	2	1	b2, 7(C)
1549	Memorandum	3	0	Class. Rev.
1686	Springfield TT	2	0	b7(C) (D)
1713	Baltimore AT	16	1	b7(C)
1781	Atlanta TT	11	4	b7(C)
1800	Legat, Ottawa Memorandum	4	1	b7(C) (D)
1804	Detroit TT	1	0	b7(C) (D)
1976	Los Angeles TT	1	0	b7(C) (D)
1980	Newark TT	5	4	b7(C) (D)
1989	Kansas City TT	1	0	b7(D)
2000	Indianapolis TT	4	0	b7(C)
2037	Los Angeles TT	1	0	b7(C) (D)
2057	TT to Kansas City	1	0	b7(D)
2126	New York TT	2	0	b1
2140	Legat, Ottawa AT	8	2	b1
2151	Chicago TT	1	0	b7(C)

<u>SERIAL</u>	<u>DESCRIPTION</u>	<u>ACTUAL</u>	<u>RELEASED</u>	<u>EXEMPTIONS</u>
2161	St. Louis TT	5	0	b7(C)
2165	Los Angeles TT	2	0	b7(C) (D)
2259	Chicago TT	1	0	b7(C)
2297	Los Angeles TT	1	0	b7(C) (D)
2336	Los Angeles TT	1	0	b7(C) (D)
2349	St. Louis TT	1	0	b7(D)
2376	Newark TT	2	0	b7(C) (D)
2383	New Orleans TT	7	0	b7(C) (D)
2438	TT to New Orleans	21	6	b2, 7(C)
2499	TT to St. Louis	2	0	b7(C) (D)
2534	Springfield TT	3	0	b7(C)
2571	Memphis AT	13	1	b7(C)
2573	Kansas City AT	9	2	b7(C) (D)
2650	San Francisco TT	2	0	b7(C) (D)
2723X3	Miami TT	3	0	b1, 2, 7(D)
2723X6	Miami AT	3	0	b1, 2, 7(D)
2736 unrec.	Atlanta AT	4	0	b1, 2, 7(C) (D)
2804	Kansas City TT	1	0	b7(C) (D)
2834	New Orleans TT	8	7	b7(C) (D)
2856	Kansas City AT	4	3	b7(C) (D)
2885	Springfield TT	5	2	b7(C) (D)
2898	AT to St. Louis	2	0	b7(C)
3024	Denver TT	2	0	b7(D)
3093IC	Denver AT	7	6	b7(C) (D)
3137	Legat, Ottawa	6	1	b7(D)
3196	Internal memorandum	3	0	b3 (28 U.S.C. § 534)
3332	Newark report	25	17	b7(C) (D)
3333	St. Louis report	422	360	b2, 7(C) (D)
3392	TT to St. Louis	2	0	b7(C)
3400	St. Louis Tt	3	0	b5
3422IC	Los Angeles AT	3	2	b7(C)
3424	San Francisco AT	2	1	b7(C)
3425	San Antonio AT	11	3	b7(C)

<u>SERIAL</u>	<u>DESCRIPTION</u>	<u>ACTUAL</u>	<u>RELEASED</u>	<u>EXEMPTION</u>
3436	St. Louis TT	4	0	b7(C) (D)
34440G	AT to Jackson	4	1	b3 (28 U.S.C. § 534), 6, 7(C)
3503 unrec	Detroit TT	7	0	NONE
3504 unrec	Memo to Director	5	1	b7(D)
3509	Letter to AG	1	0	b7(C) (D)
3542	St. Louis TT	1	0	b7(D)
3557	Los Angeles Field Office Report	182	178	b2, 7(C) (D) [2pp. USPO]
3618	St. Louis TT	1	0	b7(D)
3657	Detroit TT	1	0	b7(D)
3760	Legat, Ottawa AT	29	1	b7(C) (D)
3762	New Orleans Report	123	121	b7(C) (D)
3763	Internal memorandum	2	0	b5
3764	Internal memorandum	2	0	b5, 7(C)
3792	Legat, Ottawa	9	1	b7(D)
3941	Legat, Ottawa AT	4	1	b7(D)
3987	Springfield Report	220	218	b7(C) (D)
3997	Legat, Ottawa	7	1	b7(C) (D)
4058	Jacksonville AT	6	4	b7(C) (D)
4083	Springfield AT	1	0	b7(C) (D)
4142	Newark AT	2	0	b7(C) (D)
4193	Internal memorandum	2	0	b5
4251	RCMP Rpt.	2	0	b7(C) (D)
4289	Kansas City AT	2	1	b7(C)
4403	Minneapolis letter	2	0	b7(C)
4438	RCMP report	2	0	b7(C) (D)
4439	RCMP report	2	0	b7(C) (D)
4440	RCMP report	15	0	b7(C) (D)
4449	RCMP report	4	3	b7(C) (D)
4665	AT to Dir fm. WFO 6/13/68	3	2	b7(C)
4692	Report, 6/18/68	14	0	b7(C) (D)
4694	Report 6/17/68	10	0	b(7). (C) (D)

<u>SERIAL</u>	<u>DESCRIPTION</u>	<u>ACTUAL</u>	<u>RELEASED</u>	<u>EXEMPTIONS</u>
4695	AT to Dir. fm. Bureau 6/13/68	23	1	b7(C) (D)
4696	AT to Dir. fm. London 6/14/68	44	22	b7(C) (D)
4698	RCMP report	1	0	b7(C) (D)
4699	RCMP report	4	0	b7(C) (D)
4760	St. Louis Report 6/25/68	260	227	b3, 7(C) (D)
4761	DeLoach memorandum	3	2	NONE
4803 unrec.	Bern lit	4	1	b7(C) (D)
4803 unrec	RCMP report	2	0	b7(C) (D)
4811	Bu TT to Tokyo	4	2	b7(D)
4870	Toronto Police Report	4	0	b7(D)
4886 unrec.	RCMP report	8	0	b7(C) (D)
4915	RCMP report	15	0	b7(C) (D)
4917	Bu letter AG	9	5	b7(D)
4919	Bu AT	5	0	NONE
4925	St. Louis AT	19	3	b6, 7(C)
2962	RCMP report	2	1	b7(D)
4963	RCMP Report	2	0	b7(D)
4986	Internal Memorandum 7/31/68	1	0	b7(C) (D)
4994	Report 7/22/68	2	0	b7(C) (D)
4996	Report 7/25/68	2	0	b7(C) (D)
5028	RCMP material	36	4	b7(C) (D)
5035	Rosen memo	5	4	b7(C) (D)
5051 unrec.	OG AT	6(?)	4	b6, 7(C)
5084	SD TT	6	2	b3, 6
5095	N.O. 6/?	11	10	b7(C) (D)
5176	RCMP memorandum	2	0	b7(D)
5207	RCMP memorandum	5	0	b7(C) (D)
5212	ME AT	18	16	NONE
5230	RCMP memorandum	1	0	b7(D)
5270	Report 8/30/68	1	0	b7(D)
5271	Report 9/5/68	1	0	b7(D)

<u>SERIAL</u>	<u>DESCRIPTION</u>	<u>ACTUAL</u>	<u>RELEASED</u>	<u>EXEMPTIONS</u>
5273	Letter to Dir. fm. Ott. 10/17/68	3	1	b7(D)
5298	AT to Dir. fm. Ott. 10/23/68	6	2	b7(D)
5337	RCMP MOT	4	0	NONE
5338	RCMP MOT	2	0	NONE
5377	Report 6/11/68	2	0	b7(C)
5402	AT to ME fm. Dir. 11/29/68	12	2	b7(D)
5421	RCMP 11/26/68	3	0	b7(D)
5436	ME report 12/16/68	7	1	b7(C)
5437	Report 12/9/68	4	2	b7(D)
5457	AT Dir-ME 12/12/68	2	1	b7(D)
5474	AT Dir-ME 12/19/68	6	3	b7(D)
5485	Rpt. 1/3/69	1	0	b7(D)
5487	To Ottawa 12/23/68	2	1	NONE
5499	Rept. 1/3/69	1	0	b7(D)
5501	Rpt. 11/22/68	5	0	b7(D)
5510	NY TT to Dir. 1/21/69	6	2	b7(D)
5513 unrec.	AT to Dir. 1/22/69	4	0	b7(C) (D)
5522	Memorandum to AG 1/23/69	4	0	b7(C) (D)
5530	TT-Dir. 1/21/69	4	3	b1, 2, 7(C) (D)
5552	AT Dir fm. ME 2/13/69	11	8	b7(C) (D)
5580	AT Dir-ME 2/25/69	10	6	b7(C) (D)
5600	Rpt. 2/28/69	1	0	b7(D)
5612	TT Dir-ME 3/12/69	5	4	b7(C) (D)
5624	Internal memorandum 3/14/69	4	3	b7(C)
5646	RCMP Rpt. 3/5/69	4	3	b7(C) (D)
5647	RCMP Rpt. 2/36/69	5	0	RCMP Rpt. b7(D)
5663	RCMP Rpt. 3/10/69	1	0	NONE
5708	AT to Ott. fm. Dir. 4/15/69	6	0 (?)	b5
5716	RCMP	5	0	b7(C) (D)
5719	Rpt. 4/2/69	1	0	NONE

<u>SERIAL</u>	<u>DESCRIPTION</u>	<u>ACTUAL</u>	<u>RELEASED</u>	<u>EXEMPTIONS</u>
5819	AT to ? fm. Dir.	3	2	NONE
5847	From Dir. to LA 12/16/69	10	4	b7(C)
5917	Dir-ME AT	12	3	b7(C)
6010	AT to Dir. fm. Ott. 12/12/7?	3	-	b7(C) (D)
6033	To Dir. fm. Atl. 1/13/76	4	3	b3, 7(D) (D)
6034	Rap sheet 1/8/76	2	0	b7(C)
6069	Atlanta Rpt.	41	36	b3, 7(D) 28 U.S.C. § 534
6069 unrec.	Arrest record	3	0	3 (28 U.S.C. § 534)
6110	Atlanta report	49	46	3, 7(D), 28 U.S.C. § 534)
6110 unrec.	Internal memorandum	7	0	b5, 6, 7(C) (F)
6136	ME AT	22	9	b7(C) (D)
6154 unrec.	Ltr. AAG, CRD	39	32	b3, 7(D)
6172	Kansas City letters	12	2	b3, 7(D)
6181	Ottawa AT, 7(D)	3	2	b7(D)

SUBJECT - Martin Luther King Jr.
 FILE # - *Martin Luther King Jr.*

WORK SHEET - XEROX REQUEST
 ANALYST - *Thompson*
 EXT - *5775*
 TEAM # - *C*

Section 12

FILE #	SERIAL/ENC OR DATE	DESCRIPTION	XEROX INSTR.	# OF ACT.	PAGES REL.	EXEMPTIONS						REMARKS						
						b1	2	5	7C	D	OTHER		K1	2	5	6	OTHER	
<i>44-361 (2)</i>	<i>7422</i>	<i>LOS ANGELES TIT</i>		<i>6</i>	<i>6</i>													
	<i>1423</i>	<i>KANSAS CITY TIT</i>		<i>5</i>	<i>5</i>													
	<i>1424</i>	<i>ATLANTA TIT</i>		<i>1</i>	<i>1</i>													
	<i>1425</i>	<i>SMITHSONIAN TIT</i>		<i>2</i>	<i>2</i>													
	<i>1426</i>	<i>CONGRESSIONAL</i>		<i>1</i>	<i>1</i>													
	<i>1427</i>	<i>LOS ANGELES TIT</i>		<i>3</i>	<i>0</i>													
	<i>1428</i>	<i>MEMPHIS AT</i>		<i>1</i>	<i>1</i>													
	<i>1429</i>	<i>NEW YORK TIT</i>		<i>2</i>	<i>2</i>													
	<i>1430</i>	<i>MEMPHIS TIT</i>		<i>2</i>	<i>2</i>													
	<i>1431</i>	<i>PINEBLUFF TIT</i>		<i>9</i>	<i>9</i>													
	<i>1432</i>	<i>CL. TO BRIT, ACAD</i>		<i>1</i>	<i>1</i>													
	<i>1433</i>	<i>LESTER RICK TIT</i>		<i>3</i>	<i>3</i>													
	<i>1434</i>	<i>EL PASO TIT</i>		<i>1</i>	<i>1</i>													
	<i>1435</i>	<i>MEMPHIS TIT</i>		<i>2</i>	<i>2</i>													
	<i>1436</i>	<i>AT TO BRIT</i>		<i>1</i>	<i>1</i>													
	<i>1437</i>	<i>CONGRESSIONAL</i>		<i>5</i>	<i>5</i>													
	<i>1438</i>	<i>AT TO BRIT</i>		<i>1</i>	<i>1</i>													

REMOVED BY _____ DATE _____

XEROXED BY _____ DATE _____

REFILED BY _____ DATE _____

13