

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG

Plaintiff

v.

U. S. DEPARTMENT OF JUSTICE

Defendant

Civil Action No. 75-1996

FILED

JAN 5 - 1982

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

MEMORANDUM ORDER

This Freedom of Information lawsuit for records on the assassination of Dr. Martin Luther King, Jr. is before the Court on two issues: (1) defendant's motion for reconsideration of orders on December 1, 1981 which granted plaintiff's motions for a consultancy fee and for determination that plaintiff has substantially prevailed; and (2) defendant's compliance with the Court's other orders of December 1, 1981 which required defendant to search and release certain documents to plaintiff and submit certain documents for in camera inspection. For the reasons expressed below, the Court denies defendant's motion for reconsideration, finds that defendant has complied with the Court's other orders of December 1, 1981, and dismisses this action.

Defendant contests the existence of a consultancy fee arrangement. This Court heard extensive testimony concerning it and ruled orally on November 28, 1979: ". . . (W)e certainly will give it [plaintiff's motion for consultancy fees] favorable consideration. I won't say what amount, because we haven't decided at this time, but certainly he [the plaintiff] is entitled to a reasonable amount for the agreement that they had with the Government for his consulting activities." Transcript of hearing, November 28, 1979 at 3. Defendant may contest, of

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course, the amount of time plaintiff alleges to have spent on the consultancy. The Court denies defendant's motion to reconsider the existence of the consultancy arrangement and whether a legally binding contract for a consultancy was entered into by the parties.

Defendant urges the Court to reconsider the determination that plaintiff has substantially prevailed in this action. The record in this action reflects that defendant stonewalled plaintiff's request for more than a year after plaintiff filed this complaint. There is no question that the prosecution of this action was necessary and that the action had substantial causative effect on the delivery of the information. See Vermont Low Income Advocacy Council v. Usefy, 546 F.2d 509, 512 (2d Cir. 1976). The proper procedure in this action is for defendant to respond to plaintiff's motion for an award of attorney fees when it is filed, rather than to seek reconsideration of the Court's determination that plaintiff has substantially prevailed.

Upon review of the affidavits and correspondence filed in attachments A through D on December 21, 1981, the Court is satisfied that defendant has searched and released records to plaintiff in compliance with the Court's orders of December 1, 1981. The Court has examined defendant's in camera submissions in envelopes A through C, accompanied by the public affidavit of special agent John N. Phillips. Of the six Murkin headquarters documents which plaintiff asserted were withheld in their entirety (envelope A), defendant had already released three to plaintiff. These were released once again. The Court upholds the withholding of the three remaining documents pursuant to exemptions 5, 6, 7(C) and 7(F) of the Freedom of Information Act, 5 U.S.C. § 552. The Court agrees with defendant that the three laboratory ticklers ordered for in camera inspection

(envelope B) are not responsive to plaintiff's request and need not be released.

Lastly, the Court upholds defendant's withholding of material in the other Murkin headquarters documents ordered for in camera inspection (envelope C). Deletions were made properly under exemptions 2, 5, 7(C) and 7(D). Murkin headquarters serial 3503 contains a record from the U. S. Probation Office which is not available under the Freedom of Information Act. See Cook v. Willingham, 400 F.2d 885 (10th Cir. 1968). Serial 3503 also contains a record referred to the U. S. Bureau of Prisons on August 17, 1977 for direct response to plaintiff. Three other documents, Murkin headquarters serials 3763, 5708 and 4761, had been released to plaintiff earlier. Defendant released these documents once again.

Defendant requests extensions of time to comply with two of the Court's orders of December 1, 1981. The Court grants defendant an extension of thirty days, or until January 21, 1982, to process and release Memphis field office file 100-4105. The Court grants defendant an extension of sixty days, or until February 21, 1982, to process and release the 382-page civil rights index identified in the Court's December 1, 1981 order. Defendant requested an extension of ninety days, but the Court considers an extension of sixty days sufficient time for referring the documents indexed to the originating agencies, and processing them for release to plaintiff.

Accordingly, upon consideration of defendant's motion for reconsideration of orders, defendant's affidavits filed on December 21, 1981, in camera submissions filed with the Court on December 9, 1981, defendant's motion for an extension of time to comply with December 1, 1981 order, plaintiff's reply, plaintiff's motion for extension of time to reply to defendant's motion for reconsideration, and the entire record in this action, it is by the Court this six day of January 1982,

ORDERED that defendant's motion for reconsideration of orders of December 1, 1981 in this action which granted plaintiff's motions for a consultancy fee and for determination that plaintiff has substantially prevailed is denied; it is further

ORDERED sua sponte that material withheld from plaintiff in documents submitted to the court for in camera inspection pursuant to the Court's orders of December 1, 1981 was withheld properly under the Freedom of Information Act; it is further

ORDERED that defendant's motion to extend time to comply with the Court's order of December 1, 1981 regarding Memphis field office file 100-4105 is granted; it is further

ORDERED that defendant's motion to extend time to comply with the Court's order of December 1, 1981 regarding the civil rights index is denied; it is further

ORDERED that defendant's time to comply with the Court's order regarding the civil rights index is extended to February 21, 1982; it is further

ORDERED that plaintiff's motion for extension of time to reply to defendant's motion for reconsideration is denied as moot; and it is further

ORDERED that this action is dismissed.


JUNE L. GREEN

U. S. DISTRICT JUDGE