

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant

Civil Action No. 77-0692

FILED
JUL 13 1977
JAMES F. DAVEY CLERK

OPPOSITION TO DEFENDANT'S MOTION TO
STAY JUDICIAL PROCEEDINGS PENDING
REVIEW OF ADMINISTRATIVE APPEAL

Defendant has moved to stay judicial proceedings in this case pending a review of plaintiff's appeal from the initial denial of his Freedom of Information Act request for records pertaining to the Justice Department's reviews of the FBI's investigation into the assassination of Dr. Martin Luther King, Jr. Defendant wrongly relies upon Open America, et al. v. The Watergate Special Prosecution Force, et al., (C.A.D.C., No. 76-1371, July 7, 1976) as support for such a stay. However, Open America involved a situation where the unit initially processing the information request claimed an enormous backlog and not, as here, a claim that a FOIA lawsuit should be stayed pending a review of an administrative appeal.

This case does involve a question as to whether or not this Court will sanction bureaucratic procedures which defeat the spirit and letter of the Freedom of Information Act. This decision must take place against a background which demonstrates that the primary initial processing unit, the Office of Professional Responsibility,

has not dealt with plaintiff's request with the requisite "good faith" and "due diligence," but has instead spuriously invoked Exemptions 1, 5, and 7(D) in blanket fashion. Absurdly, these claims of exemption are advanced even for documents which are public court records or have otherwise been made available to the public, including by release from the Federal Bureau of Investigation. [See attached affidavit of James Hiram Lesar, ¶¶ 3-7] Moreover, the appeals procedure employed by the Department of Justice has little function but to stall cases until the Department can discern what a requestor or a court will do. It does not benefit the the efficacy with which requests are initially handled but serves only to waste vast amounts of time and paper. [Affidavit of James H. Lesar, ¶¶9-14]

As noted above, Open America is not a precedent for this case because it did not involve a stay so that the Department of Justice could review an appeal. Even if that were the case, it should be pointed out that Open America came into being on the basis of misinformation and only because the attorneys representing Open America did not choose to challenge the FBI's affidavits setting forth facts and figures which allegedly justified their claims. Subsequent to the decision of the Court of Appeals in Open America, the FBI's claims were challenged in Weisberg v. Department of Justice, Civil Action No. 75-1996, and a three-day evidentiary hearing disclosed that the plaintiff's FOIA requests were not been processed in "good faith" or with "due diligence," and that the FBI had in fact created procedures which were designed to delay and obstruct compliance with the Freedom of Information Act.

More recently, another court has eloquently addressed the issues presented by the government's requests for stays in FOIA suits. Noting that "the Senate Report indicates that Congress deliberately removed from the agencies the authority to delay FOIA

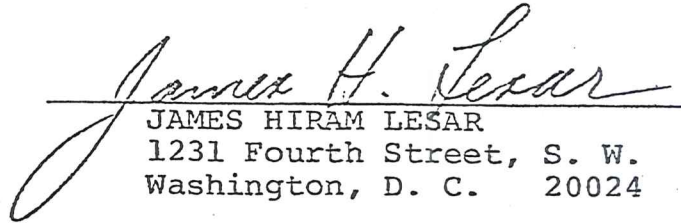
requests for the reasons now raised because the agencies could not be trusted to keep their affairs regular with respect to these requests," the court went on to excoriate the FBI's argument that "court-ordered compliance in other cases prevents timely compliance here, and that the requests involved here would be given an unfair preference should this court order the FBI to follow the statutory mandate." It concluded:

This is an extraordinary argument. Defendants have not only delayed plaintiff's request for more than a year in clear violation of the statutory time limits, but now suggest that this court become a party to their denial of documents and violation of the statute by holding plaintiff in his place in the line of those awaiting the agencies' convenience. Court intrusion to enforce the law, it is suggested, further complicates the agencies' problems and increases the delay for those seeking information.

The fact of pervasive non-compliance as an argument to justify and sustain further non-compliance is bad law and worse logic. Congress established strict time limits to prevent the present practices of defendants, and it is Congress' decision in law and not the agencies in delay which governs this case. [D.C.N. Ill. Hamlin v. Kelley, June 2, 1977, 45 USLW 2596]

The Department of Justice is asking that this Court sanction and become a party to its violation of the law by staying proceedings in this case. The documents which are sought in this request are urgently needed, both for possible court use in defense of a man who claims he was wrongfully incarcerated for a crime he did not commit, as well as to provide information to the public on a subject that is of immediate public and Congressional interest. If they are not made available in the near future it is possible, and perhaps likely, that the public and history will both be cheated by the fact that the leading authority will have died prior to receiving and evaluating them. Therefore, there are the strongest reasons why this Court should deny the motion for a stay.

Respectfully submitted,


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Attorney pro se

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of July, 1977, mailed a copy of the foregoing Opposition to Defendant's Motion to Stay Judicial Proceedings Pending Review of Administrative Appeal to Lynne K. Zusman, attorney for the defendant, U.S. Department of Justice, Washington, D. C. 20530.

