UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES HIRAM LESAR, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE, Defendant	Civil Action No. 77-0692

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION UNDER VAUGHN V. ROSEN TO REQUIRE DETAILED JUSTIFICATION, ITEMIZATION AND INDEXING WITHIN THIRTY DAYS

On December 1, 1977, plaintiff was served with defendant's Opposition to his November 11, 1977 Vaughn v. Rosen motion. Defendant's Opposition asserts, inter alia, that "it is not possible for defendants (sic) to complete preparation of the index and justication in the thirty day period which plaintiff seeks. Defendants (sic) believe the task can be completed in sixty days."

Attached to defendant's Opposition is an affidavit by FBI Special Agent Horace P. Beckwith. Nowhere in his affidavit does Mr. Beckwith state that it will take longer than 30 days to complete a Vaughn v. Rosen showing, nor does the defendant state other relevant facts, such as the number of persons it intends to have review the documents absent a court order requiring more. Unless this Court accepts the unsupported "testimony" of counsel for the defendant, there is no basis for extending the time for defendant to file a Vaughn v. Rosen showing beyond thirty days.

Plaintiff respectfully reminds the Court that his Freedom of Information Act request was made on February 7, 1977, and this suit

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filed on April 21, 1977. Thus, 10 months have already elapsed without compliance with his request.

Plaintiff also reminds the Court that on July 14, 1977, it entered an Order which granted defendant's motion for a stay of all proceedings in this case until the review of plaintiff's administrative appeal had been completed. In granting the stay, this Court described the defendant's motion as "well taken." In so doing, the Court undoubtedly relied upon the affidavit of Mr. Quinlan Shea which the defendant submited in support of the motion for a stay. Paragraph "12" of Mr. Shea's affidavit swore that:

> 12. The processing of each of our matters is in so sense a "mechanical" operation. Each appeal, for example, receives the particularized treatment it requires. This depends, in large measure, on the nature and quantity of the materials to which access has been denied. Almost invariably, all of the records in question or a representative sampling are reveiwed de novo by a member of my staff. The advice memorandum to the Deputy Attorney General is then written to encompass the legal and factual issues of the specific case, in light of his overal guidance to me that, although he considers an exemption to be a legitimate basis to deny access to any record, I am nonetheless to examine all withheld materials to see if any of them might be appropriate for release as a matter of the Deputy's discretion.

Plaintiff opposed the motion for a stay on grounds that the defendant had not handled his request in good faith or with due dilligence and asserted that the review of his administrative appeal was a bureaucratic device which would serve only to waste vast amounts of time and paper. (Affidavit of James H. Lesar, ¶¶ 9-14)

That the review of plaintiff's administrative appeal is a largely meaningless rubber-stamp operation is demonstrated by both the results it produced--further stonewalling--and the affidavit of Mr. Horace Beckwith. Mr. Beckwith's affidavit states:

> (4) On November 29, 1977, the OPR contacted the FOIPA Branch of the FBI and requested assistance in complying with plaintiff's request. Plaintiff's request for the appendices to the "Report of the Department of Justice Task Force to Review the F.B.I. Martin Luther King, Jr. Security and Assassination Investigations." At the request of OPR the FBI had maintained custody of 12 volumes of Appendix C of the Task Force material. The FBI was asked to store this material because it contained classified information up to and including "Top Secret" material. OPR requested that the FBI review the material in its custody before it was released to plaintiff.

It is clear that if plaintiff's administrative appeal had received the kind of "particularized treatment" and "de novo review" sworn to in Mr. Shea's affidavit, there would have been no need, a month and a half after the completion of that administrative review, to ask the FBI to review the records. The meaningless of the administrative review of plaintiff's appeal is further demonstrated by the assertion in Mr. Beckwith's affidavit that "the current classification of certain portions of the material is deemed warranted." (Beckwith Affidavit, ¶6) Obviously this means that classification of some of the material is not warranted. Yet the administrative review of plaintiff's appeal upheld the OPR's blanket claim that these materials were classified.

By virtue of this Court's order staying proceedings in this case until completion of the administrative review, the defendant has achieved what is already at least a five month delay in complying with plaintiff's request. In view of that, the request for additional time in which to complete a Vaughn v. Rosen showing is particularly unseemly. It is past time for the courts to cease allowing governmental agencies to make sport of them through the variety of transparent bureaucratic devices which are used to delay and defeat implementation of the Freedom of Information Act. Accordingly, the defendant should be allowed no more than 30 days

to file its Vaughn v. Rosen showing.

Respectfully submitted,

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Attorney pro se

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of December, 1977 mailed a copy of the foregoing Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion Under Vaughn v. Rosen To Require Detailed Justification, Itemization and Indexing Within Thirty Days to Attorney Lynne K. Zusman, U.S. Department of Justice, Washington, D.C. 20530.

JAMES H. LESAR