

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JAMES HIRAM LESAR, )  
 )  
 Plaintiff, )  
 ) Civil Action No. 77-0692  
 v. )  
 )  
 U.S. DEPARTMENT OF JUSTICE, ET AL. )  
 )  
 Defendants. )  
 )

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AFFIDAVIT OF JAMES P. TURNER

I, James P. Turner, being duly sworn, depose and say as follows:

1. I am the First Deputy Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice in Washington, D.C.

Pursuant to the memorandum dated July 7, 1975, I was designated by the Attorney General as a Top Secret Classifying Authority in accordance with Title 28, Code of Federal Regulations, Section 17.23.

By Civil Rights Division Memorandum 75-2, dated September 16, 1975, in accordance with Title 28, Code of Federal Regulations, Section 0.5, Appendix J, the authority previously delegated to the Assistant Attorney General, Civil Rights Division, to grant or deny requests made pursuant to the Freedom of Information Act, was delegated to the First Deputy Assistant Attorney General, Civil Rights Division.

The facts stated in this affidavit are based upon my personal knowledge of the reclassification of the Civil Rights Division documents which are the subject of Plaintiff's suit and upon information obtained by me in my official capacity.

2. By Item 2 of Plaintiff's February 7, 1977 Freedom of Information Act request, Plaintiff sought the report of the Civil Rights Division 1975-1976 review of the Martin Luther King, Jr. assassination investigation. The requested report is an intra-agency memorandum dated April 9, 1976, from the Assistant Attorney General, Civil Rights Division, to the Attorney General. Attached to this memorandum and incorporated in it by reference are two memoranda, dated March 31, 1976, from the Chief of the Criminal Section, Civil Rights Division, to the Assistant Attorney General of that Division. These documents were classified on April 9, 1976, pursuant to Executive Order 11652.

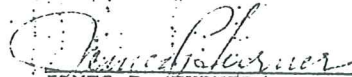
3. I reviewed the documents sought under Item 2 of Plaintiff's request, and determined that, on the basis of their classification, they were exempt from disclosure pursuant to Title 5, United States Code, Section 552(b)(1). In addition, I determined that these documents were exempt from mandatory disclosure pursuant to Title 5, United States Code, Section 552(b)(5), and that portions of the documents were also exempt from mandatory disclosure pursuant to Title 5, United States Code, Sections 552(b)(7)(C) and (F). I advised Plaintiff of my determination by letter of March 9, 1977. [A true copy of this letter is attached hereto and made a part hereof as Exhibit A.]

4. As a result of Plaintiff's administrative appeal from the Civil Rights Division's denial of the documents requested under Item 2 of Plaintiff's February 7, 1977 request, the classification of the subject documents was reviewed. With the guidance and concurrence of the Department of Justice Classification Review Committee, the Document Classification and Review Section of the Federal Bureau of Investigation and the Chief, Security Programs Group, I regraded the classification of the national security

information contained therein from Secret to Top Secret in accordance with Title 28, Code of Federal Regulations, Section 17.26. Pursuant to the same regulation and with the concurrence of the same individuals, I also declassified most of the information in the subject documents.

5. By letter of December 15, 1977, I provided Plaintiff with copies of the subject documents and advised him that portions thereof would continue to be withheld pursuant to Title 5, United States Code, Section 552(b)(1) because those portions warrant continued classification under Sections 5(B)(2) and (3) of Executive Order 11652. The declassified portions of the subject documents were released subject only to excisions of names and other identifying data the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of Dr. King's family and/or certain third parties. This information is not known to be within the public domain and is exempt from disclosure pursuant to Title 5, United States Code, Section 552(b)(7)(C).

[A true copy of this letter is attached hereto and made a part hereof as Exhibit B.]



JAMES P. TURNER  
First Deputy Assistant Attorney General  
Civil Rights Division  
U.S. Department of Justice

Subscribed and sworn before me  
this 6th day of January, 1978.

  
NOTARY PUBLIC

My commission expires on Feb. 14, 1982

MAR 9 1977

Mr. James H. Lesar  
Attorney at Law  
1231 Fourth Street, S.W.  
Washington, D.C. 20024

Dear Mr. Lesar:

This is in further response to your February 7, 1977 request pursuant to the Freedom of Information Act for copies of certain specified records concerning the Civil Rights Division's investigation into the assassination of Dr. Martin Luther King, Jr.

As indicated to you by letter of March 2, 1977, the Civil Rights Division processed your request with respect to Items 1 and 2 only, since Items 4, 5 and 6 were responded to by the Office of Professional Responsibility, and your request under Item 3 was referred to the Office of Public Information for processing and direct response to you.

Item 1 of your request seeks "Any orders, memorandums, or directives instructing the Civil Rights Division to review the investigation into the assassination of Dr. Martin Luther King, Jr." A search of the Civil Rights Division files has revealed one intra-agency memorandum from the Attorney General to the Assistant Attorneys General of the Criminal and Civil Rights Divisions responsive to this request.

Memoranda of this type are exempt from mandatory disclosure pursuant to 5 U.S.C. §552(b)(5) which exempts "inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency." It is, however, the policy of the Department of Justice to make a discretionary release of such intra-agency memoranda

[EXHIBIT A]

where it is determined that disclosure would not be detrimental to the interests of the Department. Accordingly, the following document is provided to you as a discretionary release:

Intra-agency memorandum, dated November 26, 1975, from Attorney General Edward H. Levi to Assistant Attorneys General Richard Thornburgh, Criminal Division, and J. Stanley Pottinger, Civil Rights Division.

The report on the 1975-76 Civil Rights Division review of the King assassination which you seek under Item 2 of your Freedom of Information request is an intra-agency memorandum, dated April 9, 1976, from the Assistant Attorney General, Civil Rights Division, to the Attorney General. Attached to that memorandum, and incorporated in it by reference, is a memorandum of March 31, 1976, from the Chief of the Criminal Section of the Civil Rights Division to the Assistant Attorney General of that Division.

I have concluded that your request, with respect to Item 2, should be denied in its entirety. First, the responsive memoranda are both classified pursuant to Executive Order 11652 and are, therefore, exempt from disclosure pursuant to 5 U.S.C. §552(b)(1) which specifically exempts such material from mandatory disclosure under the Freedom of Information Act. Second, the memoranda are intra-agency memoranda exempt from mandatory disclosure pursuant to 5 U.S.C. §552(b)(5). Third, portions of the memoranda are also exempt from disclosure under 5 U.S.C. §552(b)(7)(C) and (E) which exempt from mandatory disclosure investigatory records compiled for law enforcement purposes to the extent that production of such records would constitute an unwarranted invasion of personal privacy [subsection (C)], or disclose investigative techniques and procedures [subsection (E)].

Should you wish to appeal the denial of portions of your request, you may do so by writing, within thirty days, to the Attorney General (Attention: Freedom of Information Appeals Unit), United States Department of Justice, Washington, D.C. 20530. The envelope and letter should be clearly marked "Freedom of Information Appeal." Following review by the Department, judicial review of the decision of the Attorney General is available, pursuant to 5 U.S.C. §552(a)(4)(B), in the United States District Court in the judicial district in which you reside, in which you have your principal place of business, or in the District of Columbia.

Sincerely,

James P. Turner  
Deputy Assistant Attorney General  
Civil Rights Division

DEC 15 1977

James H. Lesar, Esquire  
c/o Mr. Harold Weisberg  
Route 12  
Frederick, Maryland 21701

Dear Mr. Lesar:

Pursuant to the decision of the Deputy Attorney General regarding your administrative appeal from the Civil Rights Division's partial denial of your February 7, 1977 Freedom of Information Act request, the previously withheld March 31 and April 9, 1976 memoranda are disclosed herewith, subject to certain excisions.

As you were advised by the Deputy Attorney General's letter of October 31, 1977, the Civil Rights Division has declassified most of the information in these documents. The remaining classified information has been found by the Federal Bureau of Investigation and the Department Classification Review Committee to warrant continued classification under Sections 5(B)(2) and (3) of Executive Order 11652. Therefore, the subject portions of these documents will continue to be withheld pursuant to 5 U.S.C. 552(b)(1) and are so indicated in your copies of the documents.

The declassified portions of the March 31 and April 9, 1976 memoranda are released subject only to excisions of names and other identifying data the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of Dr. King's family and/or certain third parties. This information is not known to be within the public domain and is exempt from disclosure pursuant to 5 U.S.C. 552(b)(7)(C). All excisions are clearly indicated in your copies of the documents.

Please find enclosed copies of the following intra-agency memoranda with excisions as described supra:

[EXHIBIT B]

1. Intra-agency Memorandum for the Attorney General dated April 9, 1976, from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division. (10 pages)

2. Intra-agency memorandum dated March 31, 1976, to J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, from Robert A. Murphy, Chief, Criminal Section. (51 pages)

3. Intra-agency memorandum dated March 31, 1976, to J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, from Robert A. Murphy, Chief, Criminal Section. (6 pages)

Pursuant to 28 C.F.R. §16.9(b)(1), a copying fee of \$0.10 per page, or \$6.70 for sixty-seven pages, may be charged for duplication of the documents responsive to this request. Since this copying fee is minimal, I have determined that the fee should be waived in this case.

As you know, judicial review of the action of the Deputy Attorney General and the Civil Rights Division on this administrative appeal is available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,

James P. Turner  
Deputy Assistant Attorney General  
Civil Rights Division