

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.)
)

SUPPLEMENTAL 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 processing and 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. This affidavit is offered as a supplementation and clarification of my January 6, 1978 affidavit filed with the Court on February 1, 1978.

2. I reviewed the documents sought under Item 2 of Plaintiff's February 7, 1977 Freedom of Information Act request and determined that, on the basis of their Secret classification, they were exempt from disclosure pursuant to Title 5, United States Code, Section 552(b)(1). I further determined that, regardless of their classified status, these documents were also exempt from mandatory disclosure pursuant to Title 5, United States Code, Section 552(b)(5), and that portions were exempt from mandatory disclosure pursuant to Title 5, United States Code, Section 552(b)(7)(C) and (E). I advised Plaintiff of my determination by letter of March 9, 1977. [A true copy of this letter is attached to and made a part of my January 6, 1978 affidavit as Exhibit A.]

3. As a result of Plaintiff's administrative appeal from my March 9, 1977 denial of the documents sought under Item 2 of Plaintiff's request, the classification of the subject documents was reviewed pursuant to Title 28, Code of Federal Regulations, Section 17.38(a)(2).

The subject documents were initially reviewed for classification propriety by Debra J. Kossow, Office of the Deputy Attorney General. In view of the fact that the classified information contained therein is derived from multiple source documents classified by the Federal Bureau of Investigation, the documents were also reviewed by William N. Preusse of the Document Classification and Review Section, Federal Bureau of Investigation.

As a result of the Department's Classification review, the determination was made that certain portions of the subject documents no longer required classification. Other portions of the documents were determined to warrant reclassification as

Top Secret since disclosure thereof would reveal the most sensitive of the Federal Bureau of Investigation's national security informants in certain organizations. Classification was then reviewed and endorsed by the Department of Justice Classification Review Committee which found the remaining classified information to warrant continued classification under sections 5(B)(2) and (3) of Executive Order 11652.

Inasmuch as multiple source and not single source derivative material was utilized in the documents responsive to Item 2 of Plaintiff's request, final reclassification authority rests with the First Deputy Assistant Attorney General for the Civil Rights Division, pursuant to Title 28, Code of Federal Regulations, Sections 17.23-28. Therefore, 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, Office of Management and Finance, I regraded the classification of certain national security information contained in the subject documents from Secret to Top Secret, downgraded the classification of certain national security information from Secret to Confidential and declassified most of the information contained in the subject documents, in accordance with Title 28, Code of Federal Regulations, Sections 17.23-28.

4. Upon further review of the declassified portions of the subject documents sought by Item 2 of Plaintiff's request, I determined that certain information contained therein should continue to be withheld pursuant to Title 5, United States Code, Section 552(b)(7)(C), since disclosure thereof would constitute a clearly unwarranted invasion of the personal privacy of Dr. King's family and/or certain third parties. This determination

was upheld by the Deputy Attorney General and Plaintiff was so advised by letter of October 31, 1977. [A true copy of this letter is attached to and made a part of the January 10, 1978 Affidavit of Salliann Messenger Dougherty as Exhibit H.]


5. On the basis of my reclassification and review action and the Deputy Attorney General's October 31, 1977 administrative appeal decision, Salliann M. Dougherty, Freedom of Information/Privacy Act Officer for the Civil Rights Division, again reviewed the documents responsive to Item 2 of Plaintiff's request. Pursuant to Title 5, United States Code, Section 552(b)(1) and (b)(7)(C), the Freedom of Information/Privacy Act Officer excised all exempt information from the copies of the subject documents to be disclosed to Plaintiff. I then reviewed the responsive Civil Rights Division documents for final supplemental release action.

6. By letter of December 15, 1977, I provided Plaintiff with copies of the April 9, 1976 and March 31, 1976 intra-agency memoranda responsive to Item 2 of Plaintiff's February 7, 1977 Freedom of Information Act request. Plaintiff was advised that portions of the April 9, 1976 memorandum and one of the two March 31, 1976 memoranda (the one consisting of 51 pages) would continue to be withheld pursuant to Title 5, United States Code, Section 552(b)(1) because those portions warrant continued classification under Subsections 5(B)(2) and (3) of Executive Order 11652. Those portions of the subject documents are currently and properly classified as is indicated in Paragraph 13 of the Affidavit of Lewis L. Small. The declassified portions of the April 9, 1976 and March 31, 1976 memoranda were released to Plaintiff, 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

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parties. This information is not known to be within the public domain and is exempt from mandatory disclosure pursuant to Title 5, United States Code, Section 552(b)(7)(C).

Plaintiff was also provided a copy of the other March 31, 1976 intra-agency memoranda sought under Item 2 of Plaintiff's request. As a result of my reclassification action, this document was completely declassified and was disclosed to Plaintiff in its entirety, since it contains no information protected under Title 5, United States Code, Section 552(b)(7)(C). [A true copy of the Civil Rights Division's December 15, 1977 letter and expurgated copies of the subject documents are attached hereto and made a part hereof as Exhibit A.]



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

Subscribed and sworn before me
this 11th day of May, 1978.


NOTARY PUBLIC

My commission expires on February 14, 1983.

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 A]

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