

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RECEIVED

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 HAROLD WEISBERG,  
 :  
 : Plaintiff,  
 :  
 v. :  
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 CENTRAL INTELLIGENCE AGENCY,  
 : ET AL., :  
 :  
 Defendants :  
 :  
 .....

JAMES F. DAVEY, Clerk

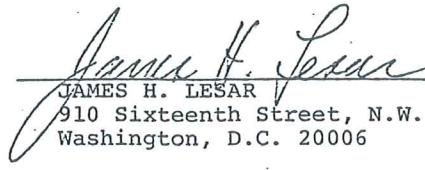
C.A. 77-1997  
Case No. 78-1107

NOTICE OF FILING

Comes now the plaintiff, Mr. Harold Weisberg, and gives notice of the filing of the attached Memorandum and Order filed by United States District Judge William B. Bryant on November 2, 1978 in Joan C. Baez v. National Security Agency, et al., Civil Action No. 76-1921.

Plaintiff calls Judge Bryant's Memorandum and Order to the attention of this court because it supports plaintiff's arguments in this case that the defendants are unlawfully withholding information which is in fact already publicly known.

Respectfully submitted,

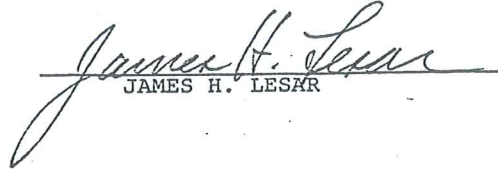
  
 \_\_\_\_\_  
 JAMES H. LESAR  
 910 Sixteenth Street, N.W., #600  
 Washington, D.C. 20006

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of November, 1978, mailed a copy of the foregoing Notice of Filing to Miss JoAnn

Dolan, Attorney, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

  
JAMES H. LESAR

Attachment

C.A. 77-1997

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JOAN C. BAEZ, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 NATIONAL SECURITY AGENCY, et al. )  
 )  
 Defendants. )

Civil Action No. 76-1921

FILED

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MEMORANDUM AND ORDER

JAMES F. DAVEY, Clerk

The National Security Agency has submitted an in camera affidavit which (1) describes the documents withheld from plaintiff and presents a justification for their withholding under the exemption to the Act, in the manner of a Vaughn index; and (2) explains why the release of any information about these withheld documents would reveal agency matters which the Freedom of Information Act has said does not need to be disclosed under the Act's various exemptions dealing with national security.

The Agency has presented basically three arguments why the disclosure of any information about these documents would threaten the national security or reveal the structure or activities of N.S.A. First of all, foreign governments do not know which international common carrier facilities the N.S.A. is capable of monitoring. Secondly, foreign governments do not know the actual intelligence targets of the N.S.A. And, thirdly, foreign governments do not know the particular communications circuits which the N.S.A. is now monitoring or has in the past monitored.<sup>1/</sup>

1/ These arguments have been made by the agency at oral argument in another F.O.I.A. case involving the National Security Agency, Founding Church of Scientology of Washington, D.C. v. National Security Agency, No. 77-1975 (D.C. Cir. argued March 27, 1978).

The Court finds all three arguments unconvincing. From news articles and congressional investigations the American public, and consequently any aware foreign government, knows that N.S.A. can and does collect most messages to or from the United States transmitted by international common carrier facilities, both private and commercial. This includes messages passed by radio, satellite or other electromagnetic means. Therefore, N.S.A.'s capability to perform this sort of function is public knowledge.

Similarly, as plaintiff points out, Congress has publicized the fact that N.S.A. is capable of targeting certain persons. It can select, by computer, information about these people from the massive number of collected messages. The N.S.A. did target certain antiwar activists in the past, and so the fact that Joan Baez may have been targeted is not a national security secret.

Furthermore, the agency is known publicly to be capable of monitoring all messages carried by electromagnetic means, to and from the United States. Even if plaintiff knows on which particular circuit the message was sent, she would know no more than at that particular time the N.S.A. intercepted that circuit. She already knows that the N.S.A. is capable of monitoring any such circuit which originates or ends in the United States.

Therefore, the Court orders to be made public all but two paragraphs of the in camera affidavit submitted by defendants.

This Court thinks that this Circuit Court of Appeals decision in Halkin v. Helms, No. 77-1922 (D.C. Cir., June 16, 1978) did not deal with the narrow issue presented in this F.O.I.A. case. In Halkin the Court of Appeals held that several intelligence agencies, including the National Security Agency, did have a state secrets privilege not to disclose international communications of plaintiffs acquired by N.S.A. and disseminated to other federal agencies. The plaintiffs consisted of 27 individuals and organizations who had formerly actively opposed United States' participation in the Vietnam war. Plaintiffs alleged that the N.S.A. through the MINARET and SHAMROCK programs, violated their constitutional and statutory rights in its interception of their international wire, cable and telephone communications.

The Court of Appeals held that N.S.A. did not have to disclose whether or not it intercepted the communications of these particular plaintiffs because "[d]isclosure of the identities of senders or recipients of acquired message would enable foreign governments or organizations to extrapolate the focus and concerns of our nation's intelligence agencies." Id., slip op. at 14. This case is not analogous since N.S.A. has already chosen to reveal to plaintiff that some of her communications were intercepted and recorded. Furthermore, a foreign country would find it impossible to determine the pattern of N.S.A. interception of foreign messages through information about this plaintiff's intercepted messages. A pattern might be discerned by studying the intercepted messages of a large group of antiwar activists, such as the plaintiffs in Halkin. No one could discern such a pattern from the simple description of the intercepted messages of Joan Baez. The fact that N.S.A. has revealed it does possess documents relating to the plaintiff indicates it does not consider these documents as sensitive as those having to do with the MINARET and SHAMROCK programs. Any

ness of the current state of world politics would alert foreign countries from which and to which were sent the communications involving plaintiff that their international cable, telephone and radio messages were monitored by American intelligence agencies.

Therefore this Court finds Halkin to have no effect on this action.

Two paragraphs have been excised in the affidavit submitted in camera to the Court because the Court does not know if the information contained therein is public knowledge or would reveal national security matters.

  
UNITED STATES DISTRICT JUDGE

Dated: November 2, 1978