

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED APR 13 1978  
JAMES F. [unclear]

.....  
: HAROLD WEISBERG,  
: Plaintiff,  
: v.  
: CENTRAL INTELLIGENCE AGENCY,  
: et al.,  
: Defendants  
: .....

Civil Action No. 77-1997

MOTION UNDER VAUGHN V. ROSEN TO REQUIRE  
DETAILED JUSTIFICATION, ITEMIZATION AND INDEXING

Comes now the plaintiff, Harold Weisberg, and moves the Court for an order requiring the defendants to provide, within 20 days of said order, a detailed justification for any allegations that the requested documents, or portions thereof, are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. §552, including an itemization and index which correlate specific statements in such justification with actual portions of the requested documents.

A Memorandum of Points and Authorities in support of this motion is attached hereto.

Respectfully submitted,

*James H. Lesar*  
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JAMES HIRAM LESAR  
910 Sixteenth Street, N.W.  
Washington, D.C. 20006  
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of April, 1978, mailed a copy of the foregoing Motion Under Vaughn v. Rosen For A Detailed Justification, Itemization And Indexing to Jo Ann Dolan, Attorney, Information and Privacy Section, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

James H. Lewis

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG,

Plaintiff,

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Civil Action No. 77-1997

CENTRAL INTELLIGENCE AGENCY,  
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Defendants  
.....

MEMORANDUM OF POINTS AND AUTHORITIES

In Vaughn v. Rosen, 157 U.S.App.D.C. 340, 484 F. 2d 820 (1973), cert. denied, 415 U.S. 977 (1974), the United States Court of Appeals for the District of Columbia Circuit noted that in essence the Freedom of Information Act provides that all government records "are available to the public unless specifically exempted by the Act itself." Vaughn, at 343. The Court also noted that these exemptions from disclosure must be construed narrowly, and that "when the Government declines to disclose a document the burden is upon the agency to prove de novo in trial court that the information sought fits under one of the exemptions to the FOIA." Id. Concluding that: "Thus the statute and the judicial interpretations recognize and place great emphasis upon the importance of disclosure," the Court then declared:

In light of this overwhelming emphasis upon disclosure, it is anomalous but obviously inevitable that the party with the greatest interest in obtaining disclosure is at a loss to argue with desirable legal precision for the revelation of the concealed information. Obviously the party seeking disclosure cannot know the precise contents of the documents sought; secret information is,

by definition, unknown to the party seeking disclosure. In many, if not most, disputes under the FOIA, resolution centers around the factual nature, the statutory category, of the information sought.

In a very real sense, only one side to the controversy (the side opposing disclosure) is in a position confidently to make statements categorizing information, and this case provides a classic example of such a situation. Here the Government contends that the documents contain information of a personal nature the disclosure of which would constitute an invasion of certain individuals privacy. This factual characterization may or may not be accurate. It is clear, however, that appellant cannot state that, as a matter of his knowledge, this characterization is untrue. Neither can he determine if the personal items, assuming they exist, are so inextricably bound up in the bulk of the documents that they cannot be separated out. The best appellant can do is to argue that the exception is very narrow and plead that the general nature of the documents sought makes it unlikely that they contain such personal information. Vaughn, supra, at 343-344.

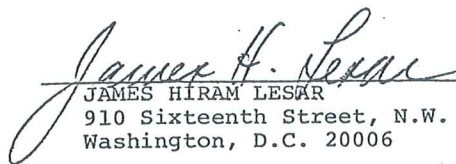
Holding that "This lack of knowledge by the party seeking disclosure seriously distorts the traditional adversary nature of our legal system's form of dispute resolution," the Court then mandated that henceforth this problem would be dealt with by requiring that contested documents in FOIA cases would be itemized in a way which "would correlate statements made in the Government's refusal justification with the actual portions of the document" sought to be withheld. Vaughn, supra, at 347.

The legal basis for plaintiff's Vaughn motion is now well-established, having been reaffirmed in many subsequent cases, as, for example: Cuneo v. Schlesinger, 484 F. 2d 1086 (D.C.Cir. 1973), cert. denied sub nom. Rosen v. Vaughn, 415 U.S. 977 (1974); Pacific Architects & Engineers, Inc. v. Renegotiation Board, 505 F. 2d 383 (D.C.Cir. 1974); Ash Grove Cement Co. v. FTC, 511 F. 2d 815 (D.C.Cir. 1975).

Because the defendants in this case are both charged with national security responsibilities, it is inevitable that these agencies, whether justifiably or not, will seek to withhold records and to excise portions of records on the grounds of national security. Because these grounds, which involve exemptions 1 and 3 to the Freedom of Information Act, are more politically sensitive and more difficult for a litigant to deal with than other exemptions usually are, the necessity of a Vaughn v. Rosen index is even greater than it ordinarily is.

In addition, it should be pointed out that the request in this case dates to June 11, 1976. In order to prevent further delay in the resolution of this controversy, it is necessary to require that a Vaughn v. Rosen index be provided quickly. Because a Vaughn index will likely be very helpful in connection with depositions which plaintiff intends to note in this case, and because this Court has preliminarily ruled that plaintiff must complete discovery by May 22nd, defendants should be required to provide a Vaughn index no later than 20 days from the date of this Court's order requiring it.

Respectfully submitted,

  
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