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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG,

Plaintiff,

v.

GRIFFIN BELL, et al.,

Defendants
.....

77- 2155

Civil Action No. _____

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff moves the Court for a preliminary injunction enjoining defendants Griffin Bell, Benjamin Civiletti, and Quinlan Shea, Jr. from further withholding a determination of plaintiff's November 19, 1977 request for a waiver of all search fees and copying costs for copies of FBI Headquarters records pertaining to the assassination of President John F. Kennedy; and

Plaintiff further moves the Court for a preliminary injunction enjoining defendant Clarence M. Kelley from withholding the remaining batch of 40,000 pages of FBI Headquarters records on the assassination of President Kennedy until after the FBI has made them available to other requestors.

Unless restrained by this Court, the defendants will provide copies of said documents to other, successor Freedom of Information Act requestors without providing them to plaintiff, all in violation of Open America v. Watergate Special Prosecution Force, 178 U.S.App.D.C. 308, 547 F. 2d 605 (1976), and cause plaintiff irreparable loss and damage.

A Memorandum of Points and Authorities and proposed Order are attached hereto.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG, : :
: :
Plaintiff, : :
: :
v. : Civil Action No. _____
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GRIFFIN BELL, et al., : :
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Defendants : :
: :
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MOTION FOR PRELIMINARY INJUNCTION

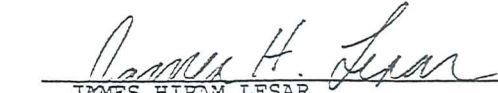
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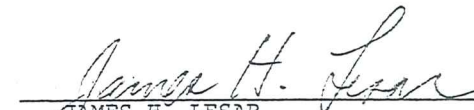
Respectfully submitted,



JAMES HIRAM LESAR
910 16th Street, N.W., #600
Washington, D.C. 20006
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of December, 1977, served a copy of the foregoing Motion for a Preliminary Injunction on United States Attorney Earl J. Silbert by hand-delivering it to his office in the United States Courthouse, Washington, D.C.



JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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MEMORANDUM OF POINTS AND AUTHORITIES

This case arises in the context of more than a decade of vicious abuse of plaintiff by government agencies trying to prevent, obstruct, and delay his access to government information to which he was, and is, entitled. During this period the former Director of the Federal Bureau of Investigation, Mr. J. Edgar Hoover, approved a policy of not responding to plaintiff's information requests. (See Exhibit 4 to the Complaint) When, after needless litigation, the government admitted that it would have to provide plaintiff with copies of public court records, it then maliciously decided to make them available to others in order to keep plaintiff from garnering any profit from the fact that he had obtained them. (See Complaint Exhibit 2)

Past practices continue to this date. In September, 1976 plaintiff testified that the Department of Justice had nor complied with over twenty-five Freedom of Information Act requests he had made for records pertaining to the assassinations of President Kennedy and Dr. Martin Luther King, Jr., some of them dating back to the late 1960s. Despite that testimony, no real attempt has been made to bring the Department and the FBI into compliance with

with the law. He has violated the mandate of the United States Court of Appeals for the District of Columbia Circuit by failing to process his requests on a first-in, first-out basis as required by Open America v. Watergate Special Prosecution Force, 178 U.S.App.D.C. 308, 547 F. 2d 605 (1976).

Instead of processing plaintiff's request when they were received, or in the numerical order in which they were received, the FBI has contrived to process these records all at once and use them to stage media events. The manner of release, 80,000 pages of records in two batches of 40,000 each, is reminiscent of the FBI's tactic of deluging the Warren Commission with reams of irrelevant material. It made it impossible for the press to fulfill its obligations to the public properly, since no one in the media could digest and evaluate this mass of material in time to meet newspaper deadlines. The predictable result was a spate of one-day stories filled with false and misleading information.

Plaintiff has been irreparably harmed by the failure of the FBI to process his requests at the time he made them and in the order in which they were received. Plaintiff's livelihood comes from the income he receives from books, lectures, and consultancies on the assassinations of President Kennedy and Dr. King. By depriving him of copies of government records at the time when they should have been provided him, the FBI has severely damaged him.

The FBI is scheduled to release an additional 40,000 pages of Headquarters records on the assassination of President Kennedy to representatives of the news media sometime in January, 1978. Unless plaintiff is granted a waiver of the copying charges for such records, he will be unable to purchase them and, consequently,

unable to fulfill his role as advisor to the news media and unable to commercially profit from his use of the information contained in such records.

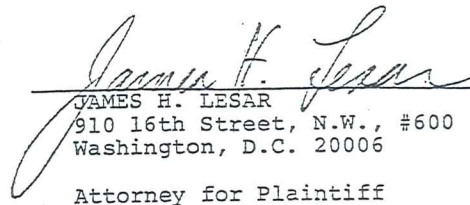
In general, four factors must be considered in deciding whether to issue a preliminary injunction: 1) the likelihood that plaintiff will prevail on the merits, 2) irreparable harm to plaintiff in the absence of relief, 3) whether issuance of the injunction will substantially harm other parties interested in the proceedings, and 4) the public interest.

In respect to these criteria, plaintiff urges that the FBI's refusal to process his Freedom of Information Act requests in accordance with applicable law, including the standards laid down by a decision of the U.S. Court of Appeals which it procured, is sufficiently egregious to demonstrate that plaintiff is likely to prevail on the merits of his complaint. Secondly, irreparable harm will be done plaintiff, as he cannot use documents which he does not have to earn his livelihood. With respect to the third criterion, it appears that no substantial harm will be done to other parties. Plaintiff does not seek prior access to these records, though by right he should be entitled to it. There is no harm to the government in requiring it to do what by law it is required to do: a) determine whether or not it is going to grant plaintiff's request for a waiver of search fees and copying costs, and b) provide him with copies of records at least as soon as it provides them to other requestors. Finally, with respect to the fourth factor, the public interest, it is clear that the public interest is not well served by allowing the FBI to exploit its control over the release of records for purposes of misinforming and confusing the public mind. This is antithetical to the purposes of the Freedom of Information Act, but it is inevitable

where the where the most knowledgeable authority on this subject does not have in hand the records in question at the time they are being provided to other requestors and therefore cannot properly evaluate the full significance of items which receive instant nationwide publicity. On a subject as important as this, such a degradation of the Freedom of Information Act should not be countenanced. A number of decisions hold that public interest is a highly relevant factor where an injunction would aid it. Benson Hotel Corp. v. Woods, 168 F. 2d 694 (8th Cir. 1948), United States v. United Mine Workers of America, 330 U.S. 258 (1947).

Finally, it should be pointed out that the FBI's refusal to timely provide plaintiff with copies of these records and the failure to make a timely determination that plaintiff is entitled to a waiver of copying charges discriminate against plaintiff and deny him his rights under the First Amendment to the Constitution. Without copies of the records which are being provided to others, plaintiff cannot knowledgeably and responsibly make full exercise of his constitutional right to voice his opinion of matters pertaining to the assassination of President Kennedy. It has been held that a district court has no discretion to deny relief by preliminary injunction when the undisputed evidence has established the denial of a constitutional right. Henry v. Greenville Airport Comm'n, 284 F. 2d 631 (C.A. 4, 1960).

For the foregoing reasons, plaintiff's motion for a preliminary injunction should be granted.


JAMES H. LESAR
910 16th Street, N.W., #600
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Attorney for Plaintiff

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O R D E R

Upon consideration of the complaint, plaintiff's motion for a preliminary injunction, and the entire record herein, it is by the Court this _____ day of _____, hereby

ORDERED, that defendant CLARENCE M. KELLEY is enjoined from withholding FBI Headquarters records on the assassination of President Kennedy from plaintiff until after the FBI has made them available to other requestors; and it is

further ORDERED, that defendants BELL, CIVILETTI, and SHEA are enjoined from further withholding a determination of plaintiff's November 19, 1977 request for a waiver of all search fees and copying costs for for copies of FBI Headquarters records pertaining to the assassination of President John F. Kennedy.

UNITED STATES DISTRICT COURT