

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG, : :  
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Plaintiff, : :  
: :  
v. : Civil Action No. 78-0249  
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CLARENCE M. KELLEY, et al. : :  
: :  
: :  
Defendants : :  
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MEMORANDUM OF POINTS AND AUTHORITIES

This suit arises under the Freedom of Information Act,  
5 U.S.C. §552.

On December 7, 1977 and January 18, 1978, the Federal Bureau  
of Investigation made releases of its Headquarters' records on the  
assassination of President John F. Kennedy totaling a reported  
98,755 pages. On December 6, 1977, plaintiff wrote to Mr. Allen  
H. McCreight, Chief of the Freedom of Information/Privacy Act  
Branch of the FBI's Records Management Division and requested four  
kinds of records:

1. All worksheets related to the processing  
of the records on the Kennedy assassination which  
were to be released.
2. All other records related to the processing,  
review, and release of the FBI Headquarters' files  
on the Kennedy assassination.
3. Any other records which indicated the con-  
tent of FBI Headquarters records on the assassina-  
tion of President Kennedy; and
4. Any separate list or inventory of FBI records  
on President Kennedy's assassination not yet released.

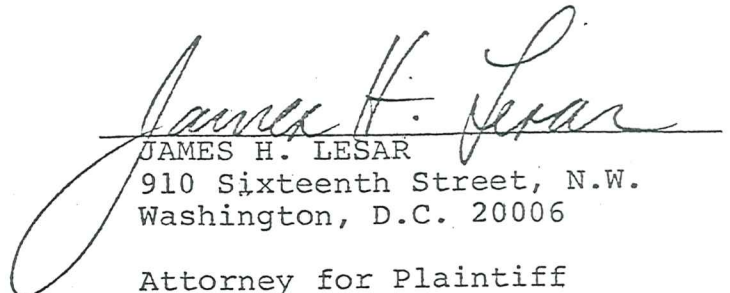
On February 13, 1978, no response to his December 6, 1977 request having been made, plaintiff filed suit.

Subsection (b) of the Freedom of Information Act creates nine exemptions from compelled disclosures. "These exemptions are explicitly made exclusive, 5 U.S.C. §552(c), and are plainly intended to set up concrete, workable standards for determining whether particular material may be withheld or must be disclosed." EPA v. Mink, 410 U.S. 73 (1973). As the Senate Committee stated in its report on the bill which became the original Freedom of Information Act:

It is the purpose of the present bill . . . to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language . . . . S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965).

Where an agency refuses to disclose its records, "the burden is on the agency to sustain its action." 5 U.S.C. § 552(a)(3). Unless it can demonstrate entitlement to an exemption, the records sought must be disclosed.

In the instant case the defendants have not claimed entitlement to a specific exemption to the Act's compulsory disclosure requirements. Nor do the records sought fall within any of the Act's nine specific exemptions. It follows, therefore, that the defendants have not, and can not, meet their burden under the Act of justifying nondisclosure under one or more of the Act's nine exemptions. Accordingly, plaintiff is entitled to judgment as a matter of law.

  
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Attorney for Plaintiff

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Civil Action No. 78-0249

ORDER

Upon consideration of plaintiff's motion for summary judgment and the entire record herein, and it appearing to the Court that defendants have not established that the records sought by plaintiff are exempt from disclosure under any of the nine specific exemptions to the Freedom of Information Act, and if further appearing that plaintiff is entitled to judgment as a matter of law, it is by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 1978,

ORDERED, that plaintiff's motion for summary judgment be, and hereby is, GRANTED; and it is

further ORDERED, that the defendants shall provide plaintiff with copies of the records sought by him within ten days of the date of this Order.

UNITED STATES DISTRICT COURT

DATED: \_\_\_\_\_