

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 78-0249

CLARENCE M. KELLEY, ET AL.,

Defendants.

DEFENDANTS' MEMORANDUM IN SUPPORT
OF MOTION FOR A PROTECTIVE ORDER

Statement

Plaintiff brought this action pursuant to the Freedom of Information Act (5 U.S.C. § 552 - sometimes hereinafter referred to as FOIA), seeking the disclosure of the following documents regarding the Kennedy assassination:

A copy of any and all records relating to the processing and release of all these records, whatever the form or origin of such records might be and wherever they may be kept, as in the Office of Origin or other points as well as in Washington. If there are other records that indicate the content of these released records I am especially interested in them because they can be a guide to content. If there is a separate list of records not yet released I ask for a copy of it also or if an inventory was made, a copy of the inventory.

Plaintiff requested this data by letter dated December 6, 1977, addressed to Allen H. McCreight, Chief, Freedom of Information/Privacy Acts Branch, Records Management Division.

Plaintiff was notified by letter dated February 21, 1978, that release of the worksheets^{1/} was being discussed. Additionally, by letter dated March 6, 1978, plaintiff's request was acknowledged.

On April 12, 1978, 2,581 pages of worksheets were released to plaintiff pursuant to his request of December 6,

^{1/} It was determined that plaintiff was requesting the inventory worksheets since he had previously mentioned them and the information on the worksheets appeared to conform with the information requested by plaintiff.

1977. Defendants contend that portions of the worksheets are exempt from mandatory disclosure under the FOIA. The exemptions utilized by defendants in deleting data are as follows: Title 5, United States Code, Section 552(b)(1), (b)(2), (b)(7)(C), (b)(7)(D), and (b)(7)(E).

Plaintiff served his motion for summary judgment on March 31, 1978, and defendants served their opposition to said motion on April 18, 1978. Subsequently, on July 3, 1978, defendants served plaintiff with their motion to dismiss or in the alternative motion for summary judgment and plaintiff served his opposition to said motion on August 1, 1978.

Now, plaintiff seeks to depose Allen H. McCreight and Horace P. Beckwith.^{2/}

ARGUMENT

I. The Deposing Of Defendants' Employees Is Inappropriate At This Time.

Plaintiff seeks to depose two employees of defendant United States Department of Justice. Defendants assert that if discovery is proper this is not the appropriate time. Dispositive motions are now pending before the Court and these motions should be disposed of prior to any discovery.^{3/} In Klein v. Lionel Corporation, 18 F.R.D. 184 (D. Del. 1955), the Court stayed the taking of depositions pending the disposition of a motion for summary judgment and explained that:

^{2/} A copy of plaintiff's "Notice To Take Depositions" is attached hereto as Exhibit 1.

^{3/} It should be noted that plaintiff's complaint was served on February 13, 1978. Thus, plaintiff had ample opportunity to depose defendants prior to the filing of dispositive motions.

There could be no reason to undergo the expense and inconvenience of long depositions . . . until the disposition of the defendants' motions for summary judgment. . . .

See also, Allied Poultry Processors Company v. Polin, 134 F. Supp. 278 (D. Del. 1955).

The taking of depositions at this stage in the litigation would indeed be burdensome and possibly a waste of resources. The Court should have the opportunity to consider the motions before it since the decision of the Court could render discovery unnecessary.

The plaintiff's case will not be prejudiced if the taking of depositions is stayed pending the resolution of the motions presently before the Court.

II. Plaintiff's Request For The Production Of Documents Is Not Proper Discovery.

Even if the Court should decide that the depositions should be taken, the documents that plaintiff requests defendants to produce are not within the scope of proper discovery.

Defendants have given plaintiff all the data identifiable with his request with the exception of that data properly withheld pursuant to exemptions under the Freedom of Information Act. Thus, any data not already in the hands of plaintiff is data which defendants contend is exempt from disclosure and as a result is the subject matter of the complaint.

If defendants were to produce the requested data this in effect is a granting of the full, complete and final relief available to complainant under the Freedom of Information Act. The right of the Government to adjudicate its claim of exemptions would be lost, probably irreparably.

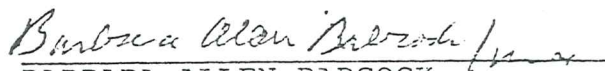
See Theriault v. United States, 504 F.2d 390 (9th Cir. 1974); Janner Motor Livery Ltd. v. Avis, Inc., 316 F.2d 804 (9th Cir. 1963), cert. denied, 375 U.S. 821 (1963).

The Government is entitled to due and regular process in the pleading, hearing, consideration and disposition of litigated claims. Martin v. Neuschel, 396 F.2d 759 (3rd Cir. 1968). Thus, any production of the exempt data would terminate the action at the discovery stage, thus depriving the Government of its right to thoroughly litigate the matter.

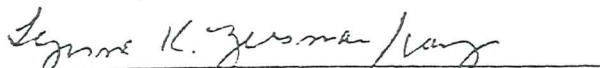
CONCLUSION

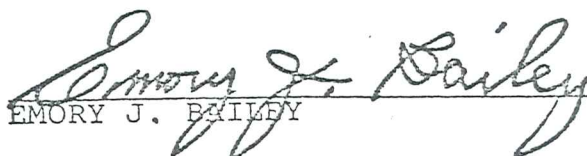
For the foregoing reasons, defendants Motion for a Protective Order should be granted.

Respectfully submitted,


BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney


LYNNE K. ZUSMAN


EMORY J. BAILEY

Attorneys, Department of Justice
10th & Pennsylvania, Ave., N.W.
Washington, D.C. 20530
Telephone 739-3423

Attorneys for Defendants.

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ORDER

This Motion having come before the Court on Defendants' Motion for a Protective Order and the Court being fully advised in the premises and having concluded that the Motion is well taken, it is by the Court on this _____ day of _____, 1978,

Ordered that Defendants' Motion for a Protective Order be and hereby is granted.

United States District Judge