

the agency resisting disclosure must present a "detailed justification" . . . for application of the exemption to the specific documents in dispute. Pacific Architects & Engineers, Inc. v. Renegotiation Board, supra, 505 F. 2d at 385 (citation omitted).

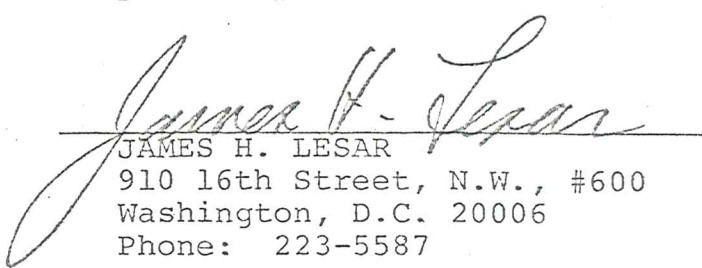
Vaughn recognized that "it is anomalous but obviously inevitable that the party with the greatest interest in obtaining disclosure is at a loss to argue with desirable legal precision for the revelation of the concealed information 484 F. 2d at 823-824. To avoid shifting the burden of proof from the agency to the plaintiff, the Vaughn court mandated a procedure which allows the lawsuit to proceed efficiently in the traditional adversary manner.

The need to use the Vaughn procedure in order to properly resolve the issues present in the instant case has become especially apparent since the government filed the affidavit of Bradley Benson and since plaintiff has filed the affidavits and exhibits which he attached to his motions for reconsideration and to vacate this Court's order of October 25, 1978 and set a schedule for discovery. In the first place, it now cannot be denied that there are records which are plainly within the scope of plaintiff's request which the defendants have not provided him. Secondly, plaintiff has demonstrated that the affidavits which the defendants have submitted to the Court are obfuscatory, misleading, and untrue.

Plaintiff has shown this most thoroughly with respect to the defendants' Exemption 1 claims, where it is now apparent that the purportedly classified information which has been withheld from him was not classified at the time of origination as required by Executive Order 11652. Other records have been withheld under other claims of exemption. However, these claims also require

that the government make specific factual showings. For example, defendants' reliance on Exemption 7(D) requires detailed proof of a number of points with respect to records which are claimed to fall within this exemption: (1) that disclosure would disclose the identity of a confidential source; (2) that the source is in fact a confidential source; and (3) if defendants allege that the record was compiled in the course of a criminal investigation or a lawful national security intelligence investigation, (a) that there was an actual criminal investigation or lawful national security intelligence investigation in progress; (b) that the information in the record is in fact confidential; (c) that such confidential information was furnished only by a confidential source; and (d) that the source was in fact a confidential source. A Vaughn showing is necessary if the government is to meet its burden on these point, especially since its affidavits have now been discredited. Such information is also essential if plaintiff is to have any opportunity to effectively subject the government's claims to adversarial testing.

Respectfully submitted,



JAMES H. LESAR
910 16th Street, N.W., #600
Washington, D.C. 20006
Phone: 223-5587

Attorney for Plaintiff

