

MARK A. ALLEN

Plaintiff

v.

CENTRAL INTELLIGENCE AGENCY

STANSFIELD TURNER

Defendants

Civil Action No. 78-1743

MOTION TO VACATE PROTECTIVE ORDER

On September 18, 1978 plaintiff instituted this action under the Freedom of Information Act to obtain CIA item 509-803. On October 18 defendants answered the complaint. On November 8 plaintiff served defendants with a set of Interrogatories pursuant to Rule 33 consisting of ten questions. The following December 8 defendants moved for a Protective Order under Rule 26(c). On or about December 8 defendants' motion for a Protective Order was granted. Plaintiff respectfully moves that the Court vacate this Protective Order and require defendants to answer the aforementioned Interrogatories.

Defendants mentioned two factors in moving for a Protective Order. First, they contended that the questions were irrelevant and second, that they would be an "undue burden and expense" in light of their "pending dispositive motion."

To defendants' first contention plaintiff submits that his questions are highly relevant to this case, and especially to whether the document sought is properly withheld from the public. The purposes of plaintiff's questions are set forth below:

Questions one and two of the Interrogatories deal with whether the document sought (CIA item #509-803) is identical with Warren Commission Document 347. As one can discern from plaintiff's initial complaint, plaintiff's purpose in bringing this suit was to obtain Warren Commission Document 347. Additionally, much of plaintiff's case will be based on references to Warren Commission Document 347 found in available Warren Commission and CIA documents. If Commission Document 347 is not CIA item 509-803 these references will be irrelevant. Plaintiff plans to withdraw this action if the two documents are not substantially the same.

Question 3 deals with CIA item 498-204, a January 29, 1964 CIA cable which mentions a report to the Warren Commission to be presented on February 1 on Oswald's activities in Mexico City. Warren Commission Document 347 is a CIA report to the Warren Commission dated January 31, 1964 which concerns Oswald's activities in Mexico City, giving plaintiff reasonable grounds for believing that the cable refers to this Commis-

ion document. Defendant is expected to invoke exemption (b)(3) of the Freedom of Information Act which exempts material "specifically exempted by statute." The statute which defendants are further expected to cite is the National Security Act of 1947, specifically 50 U.S.C. §403(d)(3) which provides "that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." CIA item 498-204 would be particularly relevant to this expected argument if the February 1 report is in fact CIA item 509-803. 498-204 reads: "On Saturday 1 Feb we will give Commission a report on Lee Oswald's activities in Mexico, presented so as to protect your sources and techniques." (emphasis added) In summary, if the answer to question 3 of the plaintiff's interrogatories is yes, then one of defendant's own documents show that 509-803 was written in a special way so as not to jeopardize any CIA source or method.

Question 4 simply seeks to establish the sender and receiver of CIA item 498-204 which does not appear on the publicly released version of this cable. 498-204 states that the CIA report to the Warren Commission will be presented so as to protect your (emphasis added) sources and techniques. It would further plaintiff's case if your referred to the CIA Mexico Station, whose sources and techniques would be exclusively at issue here, since presumably all of the intelligence gathering occurred in Mexico City. While plaintiff assumes this cable was sent from CIA Headquarters, it would be useful to confirm this to show the authoritative nature of the statements contained therein.

Question 5 simply asks for the defendants' grounds for withholding this document, clearly relevant to this action.

Questions 6 and 7 deal with whether the document in question mentions any source or method, clearly relevant to defendant's expected (b)(3) exemption claim, which deals with the CIA Director's statutory authority to protect sources and methods.

Questions 8 through 10 deal with what percentage of information found in CIA item 509-803 is now publicly available. Defendants' "Document Disposition Index", prepared by the defendants in connection with Fensterwald v. CIA, Civil Action No. 75-0897 (D.D.C.) already states that "most" of the substantive information in CIA item 509-803 is now publicly available. Plaintiff's study of available Warren Commission and CIA documents indicates the possibility that nearly all of the information in 509-803 is publicly available. Particularly plaintiff's research indicates that virtually all of Commission Document 347 dealing specifically with Oswald's activities in Mexico is now publicly available (See Question #8) The percentage of publicly available information in CIA item 509-803 would clearly shed light on defendants' expected claims that the release of this document would damage national security under (b)(1) and jeopardize sources and methods under (b)(3). It would also be relevant as to whether the defendants can reasonably segregate portions of this document under 5 U.S.C. §552(b)(9).

Defendants' second contention that answering the Interrogatories would be an "undue burden" in light of their "pending dispositive motion" is likewise unconvincing. First, the defendants' have yet to file their intended "dispositive motion". Secondly, plaintiff's questions are relatively few in number, simple and direct, and require little time or expense to answer. They would in no way be an undue burden.

For the foregoing reasons plaintiff respectfully moves that the Court vacate the previously granted Protective Order and compel the defendants to answer plaintiff's Interrogatories of November 8, 1978.

Dated: Washington, D.C.  
January 3, 1979

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