

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,
Plaintiff,

v.

WILLIAM H. WEBSTER, ET AL.,
Defendants

Civil Action No. 78-0322

HAROLD WEISBERG,
Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,
ET AL.,
Defendants

Civil Action No. 78-0420

OPPOSITION TO DEFENDANTS' MOTION FOR
AN ORDER COMPELLING DISCOVERY

Subsequent to the denial of their motion for partial summary judgment, defendants served interrogatories and a request for production of documents on plaintiff. Plaintiff moved for a protective order on the grounds that (1) defendant undertook discovery to further retaliate against plaintiff for prosecuting FOIA cases and to drive up the costs of FOIA litigation; (2) there is no need for the FBI to seek discovery from plaintiff on the search issue; and (3) the discovery sought by defendant would be extraordinarily burdensome to plaintiff.

On February 4, 1983, this Court denied plaintiff's motion for a protective order and directed him to answer defendants' interrogatories and request for production of documents. Plaintiff construed the Court's order as an order directing him to either answer or object to each item of defendants' discovery. This is the normal procedure in discovery matters of this sort, and at least insofar as interrogatories are concerned, is required by Local Rule 1-9(a). On March 8, 1983, plaintiff did file his particularized objections to defendants' interrogatories. On the same date he also filed a response setting forth the particular grounds why he should not be compelled to comply with the request for production of documents and supported it with a lengthy and detailed affidavit showing why it would be unduly burdensome and oppressive.

Although plaintiff's objections to many of defendants' interrogatories do overlap to a considerable extent, they are not all the same. Grounds which have been asserted for some interrogatories have not been asserted for others. Under the Federal Rules of Civil Procedure, this Court must rule on the merits of plaintiff's objections to each of these interrogatories.

Defendants' motion to compel fails to address the objections which plaintiff has interposed to their interrogatories. Defendants have made no showing that they need discovery on the search issue, nor have they in any way countered plaintiff's assertions that they already know or possess the very information they are

seeking of plaintiff. Nor do they in any way address plaintiff's sworn affidavit detailing just how burdensome it would be for plaintiff to comply with their requests. (Plaintiff's February 20, 1983 affidavit, which is attached to Plaintiff's Response to Defendants' First Request for Production of Documents is incorporated by reference in this opposition to defendants' motion to compel.)

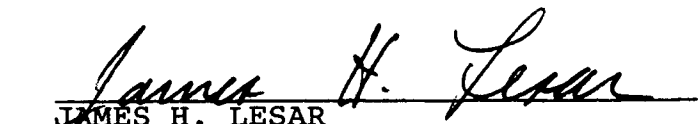
Most importantly, defendants make no attempt to justify the exercise of discovery by the government on the search issue in a Freedom of Information Act case. The text of the FOIA and its legislative history repetitively demonstrate that Congress intended that the government not be permitted to shift the burden of obtaining information to those requesting government records. That is precisely what defendants' discovery would sanction.

Plaintiff again repeats that he knows of no instance in which the government has sought discovery of an FOIA plaintiff except in the context of an attorneys' fees award. He has recently become aware of one FOIA case in which a non-governmental party named as a co-defendant sought to obtain records in the possession of the plaintiffs by means of a subpoena duces tecum. In that case, Cary Lacheen, et al., v. FDA, Civil Action No. 82-3405 (D.D.C.), plaintiff moved to quash and for a protective order on the grounds that the plaintiffs' need, interest or knowledge is irrelevant to the determination of whether records are releasable under FOIA. Although plaintiff has not yet obtained a copy of the

court's order, his counsel has been informed that in December, 1982, Judge Oliver Gasch granted the motion for a protective order. (Plaintiff will obtain and submit a copy of Judge Gasch's order and the other relevant papers in that case for this Court's consideration.)

For the reasons set forth above and in plaintiff's objections to interrogatories and response to production of documents, defendants' motion to compel should be denied.

Respectfully submitted,

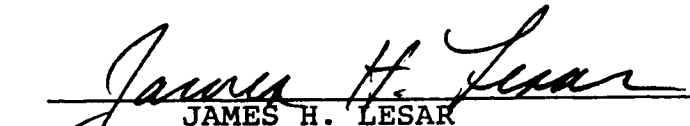


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CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of March, 1983, mailed a copy of Opposition to Defendants' Motion for an Order Compelling Discovery to Mr. Henry LaHaie, Room 3338, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.



JAMES H. LESAR

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FOR THE DISTRICT OF COLUMBIA

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 FEDERAL BUREAU OF INVESTIGATION, : (Consolidated)
 ET AL., :
 :
 Defendants :

Upon consideration of defendants' motion for an order compelling discovery, plaintiff's opposition thereto, and the entire record herein, it is by the Court this _____ day of _____, 1983, hereby

ORDERED, that defendants' motion be, and the same hereby is, DENIED.

UNITED STATES DISTRICT JUDGE