

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HAROLD WEISBERG, )  
 )  
 Plaintiff-Appellant, )  
 )  
 v. ) No. 79-1729  
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 CENTRAL INTELLIGENCE AGENCY, et al., )  
 )  
 Defendants-Appellees. )  
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MOTION TO PUBLISH THIS COURT'S OPINION

Defendant-appellee Central Intelligence Agency (CIA) respectfully moves this Court to publish its recent opinion in the above case. In this case, appellant filed a request under the Freedom of Information Act, 5 U.S.C. §552 et seq., for seven categories of documents pertaining to James Earl Ray and to the assassination of Dr. Martin Luther King.

In the course of processing appellant's request, the CIA located in its files and forwarded to the Federal Bureau of Investigation (FBI) certain classified documents originated by the FBI that appeared to be responsive to appellant's request. Under Executive Order, only the agency that classified such documents can declassify them. Executive Order 12065, 3 CFR at p. 196 (1979). Accordingly, these FBI documents were returned to the Bureau so that it could review them for possible declassification and respond directly to appellant.

After producing those of its own documents that were responsive to appellant's request and that were not exempt under any of FOIA's provisions, appellees moved for summary judgment. In opposing that motion, appellant contended, inter alia, that the FBI's failure to respond to him with respect to the classified documents referred to it by the CIA precluded the district court from granting summary judgment for appellees.

In an unpublished opinion, the district court granted appellees' motion for summary judgment, expressly rejecting appellant's contention that the CIA remained responsible under FOIA for the processing of the classified documents. Under these circumstances, the district court held, "the originating body should decide whether to make a document public."

Appellant appealed the district court's decision. After full briefing, oral argument was held before this Court on May 19, 1980, at which time the referral issue was fully explored. Thereafter, on May 30, 1980, this Court filed its judgment affirming the decision below "for the reasons stated in [the district court's] opinion, filed January 4, 1979."

The decision of this Court recognizes for the first time the obligations placed on an agency by Executive Order when dealing with classified documents originating outside the agency that have been sought under the Freedom of Information Act. By its ruling, this Court has clarified

the principle that because of the provisions of Executive Order 12065, documentary material contained in one agency's files that has been classified by another agency must be considered an "agency record" of the latter rather than the former for purposes of the Freedom of Information Act.

If published, this decision would provide great assistance to other courts facing this issue, and would aid FOIA litigants in similar cases arising in the future. Publication would thus serve the vital interests of expeditious handling of FOIA cases and of judicial economy. For these reasons, we ask that this Court order that its opinion be published.<sup>1/</sup>

Respectfully submitted,

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<sup>1/</sup> Since the district court did not publish its opinion and since this Court explicitly endorsed that opinion, the present judgment could be published in the Federal Reporter with the district court opinion attached as an appendix. This is the procedure used by this Court in Amolsch & Madden, Inc., d/b/a/ FTC: Watch v. Federal Trade Commission, 192 U.S. App. D.C. 200, 591 F.2d 809 (1978).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Publish This Court's Opinion was served by first-class mail, postage prepaid, this 18th day of June 1980, on James H. Lesar, 2101 L Street, N.W., Suite 203, Washington, D.C. 20037.

Margaret E. Clark  
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