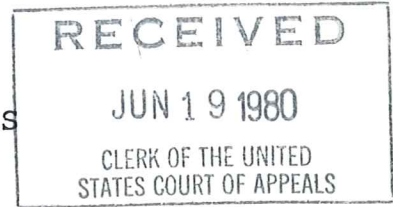


IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA



HAROLD WEISBERG, :
 :
 Plaintiff-Appellant, :
 :
 v. : Case No. 79-1729
 :
 :
 CENTRAL INTELLIGENCE AGENCY, :
 ET AL., :
 :
 Defendants-Appellees :

OPPOSITION TO AWARD OF COSTS TO APPELLEES

Comes now the appellant, Mr. Harold Weisberg, and opposes an award of costs to appellees in this case for the following reasons:

1. The legislative history of the Freedom of Information Act indicates that an award of costs against an FOIA requester is appropriate only where the lawsuit "is determined to be frivolous and brought for harrassment purposes . . ." S.Rep.No. 93-854, 3d Cong., 2d Sess., reprinted in Freedom of Information Act and Amendments of 1974: Source Book, at p. 172. The legislative history of FOIA is replete with acknowldgment of the fact that government agencies used the high costs of obtaining information as a means of delaying and denying access to information by those unable to afford to engage in expensive litigation. This lawsuit was not frivolous, nor was Weisberg's appeal of the District Court's decision. The effect of awarding costs against Weisberg

will be to discourage other such requesters from raising appealing questionable decisions.

2. The CIA has in effect admitted through an affidavit filed in another case, Weisberg v. U.S. Department of Justice, Civil Action No. 75-1996, that there is at least one document which should have been produced in response to this lawsuit that was not. Although the CIA represented as of April 30, 1980, that it was reviewing that three-page document for possible direct release to Weisberg, nearly two months have passed without the CIA informing Weisberg of the result of its determination. Under these circumstances, an award of costs would reward the CIA for its failure to identify to Weisberg and the district court all records responsive to his request which should have been so identified.

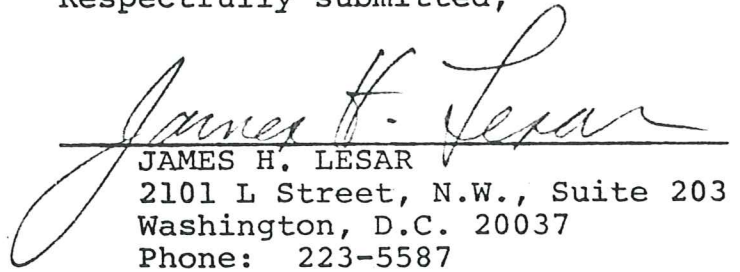
3. If the Government is to be awarded costs in this case, the order should specify that Weisberg does not have to pay these costs until the Government pays him the \$522.06 which was awarded to him by this Court on October 25, 1979, in the case of Weisberg v. General Services Administration, Case No. 77-1831 and Case No. 78-1731 (consolidated). (Weisberg's counsel has made more than a dozen phone calls to Government counsel to try and expedite the payment of that award. Although payment has repeatedly been promised since January, 1980, it has still not been made.)

4. Weisberg has been advised that this same issue has been raised in Thomas Hayden and Jane Fonda v. National Security Agency, Cases Nos. 78-1728 and 78-1729 (consolidated).

5. Appellees have filed an affidavit of costs for 50 copies of briefs. This is an excessive number of briefs and if appellees are awarded costs it should be divided in half.

For the foregoing reasons, the Court should not award appellees costs in this action.

Respectfully submitted,

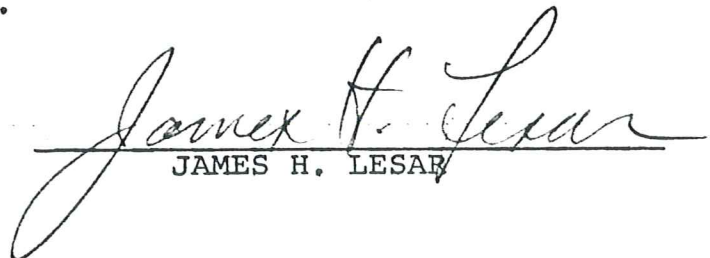


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CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of June, 1980, mailed a copy of the foregoing Opposition to Award of Costs to Appellees to Ms. Margaret E. Clark, Attorney, Department of Justice, Washington, D.C. 20530.



JAMES H. LESAR