

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 82-3600  
 :  
 U.S. DEPARTMENT OF JUSTICE, :  
 :  
 Defendant :

DECLARATION OF JAMES H. LESAR  
PURSUANT TO RULE 56(f)

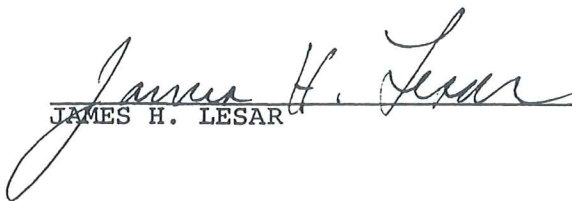
I, James H. Lesar, make the following declaration pursuant to Rule 56(f) of the Federal Rules of Civil Procedure.

1. I am the plaintiff in the above-entitled case.
2. I have read defendant's motion for summary judgment and the materials submitted in support thereof.
3. The January 27, 1983 declaration of FBI Special Agent John N. Phillips states that on November 9, 1982, a search was conducted of the General Indices of the FBI's Central Records Systems for the material which I requested, that is, for records pertaining to the destruction of 200,000 pages of FBI Headquarters documents on the assassination of President John F. Kennedy. I do not know who actually made this search or under what words, titles, phrases or subjects he or she searched. I need this information in order to effectively present facts in opposition to defendant's motion for summary judgment.
4. In addition, I do not have personal knowledge as to whether records pertaining to the destruction of records would

indexed in the FBI's General Index, in some other index, or not indexed at all. Because such information is within the knowledge and control of the FBI, I need to undertake discovery before I can present such pertinent facts in opposition to defendant's summary judgment motion.

5. The FBI also relies upon the double hearsay declaration by Agent Phillips that he has been advised by "the persons assigned to me who handled the destruction of the two sets of Kennedy assassination records" that "to the best of their recollection no documentation exists relating to the destruction of the records." I need to undertake discovery of these persons to determine whether it might be possible to refresh their recollection, whether there are other persons who might have pertinent knowledge, and whether the FBI followed its normal procedures in destroying these records.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 17, 1983.

  
JAMES H. LESAR

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 82-3600  
 :  
 U.S. DEPARTMENT OF JUSTICE, :  
 :  
 Defendant :

DECLARATION OF JAMES H. LESAR

I, James H. Lesar, make the following statement:

1. I am the plaintiff in the above case. I have read defendant's motion for summary judgment and the declaration of Special Agent John N. Phillips submitted in support thereof.

2. I have represented plaintiffs in several FOIA cases in which Agent Phillips has filed sworn declarations or affidavits. His sworn statements have repeatedly been found to be untrustworthy. In some cases they have been proven untrue; in others they have been found to be unreliable because they were not based on personal knowledge. In this declaration I detail some pertinent examples which I believe require this Court to disregard the declaration which he has filed in this action.

3. In the case of Weisberg v. Webster, et al., Civil Actions 78-322/420 (consolidated), Agent Phillips declared that a particular record on the assassination of President John F. Kennedy was classified. Indeed, he stated that "the caption is classified, as well as all the information in the document." April 29, 1982

Declaration of John N. Phillips. In fact, neither the caption nor document's content were classified. A copy of the document is attached hereto as Exhibit 1.

4. In Mark A. Allen v. Federal Bureau of Investigation, et al., Civil Action No. 81-1206, Phillips submitted an affidavit in support of the FBI's effort to deny Mr. Allen a fee waiver for records pertaining to the probe of the FBI's investigation of the Kennedy assassination conducted by the House Select Committee on Assassinations ("HSCA"). Phillips stated:

The HSCA reviewed the material described in paragraph 4 supra spending approximately five million dollars. At the conclusion of their investigation the HSCA published a 260 page report with 12 volumes of exhibits in which they included everything which could be deemed as relating to the assassination of President Kennedy.

January 12, 1982 affidavit of John N. Phillips, ¶5. However, as the HSCA's chief counsel and staff director averred in a counter-affidavit filed by plaintiff Allen:

Special Agent Phillips is in error. The Committee was not able to publish everything it wanted to publish or which was relevant to the President's assassination, as it ran out of time and appropriations. In fact, little of the F.B.I. files made available to the Committee was directly published. The Committee concentrated its efforts, in the main, on publishing original material not available elsewhere.

February 15, 1982 affidavit of Professor G. Robert Blakey, ¶4. Exhibit 2. Ruling in Allen's favor on the fee waiver issue, the District Court disregarded Phillips assertions and relied instead



upon Professor Blakey's "because it is based on personal knowledge." Allen v. FBI, 2 GDS ¶82,242.

5. Two other District Court judges have also rejected summary judgment motions based on affidavits submitted by Agent Phillips. In Weisberg v. Webster, 3 GDS ¶82,258, Judge John Lewis Smith, Jr. denied the FBI summary judgment on the search issue, ruling that the issues raised by Weisberg "are 'material,'" and that factual doubt does exist regarding those issues which is not dispelled by the Phillips affidavits." Id., n.2.

6. In J. Gary Shaw v. Federal Bureau of Investigation, Civil Action No. 82-0756, Judge Harold Greene similarly disregarded the affidavit of Special Agent Phillips which was submitted in support of the FBI's motion for summary judgment regarding its claim that certain photographs were exempt under 5 U.S.C. § 552(b) (7) (D). A copy of Judge Greene's decision is attached as Exhibit 3.

7. The declaration of Agent Phillips submitted in this case does not state that it is made on personal knowledge. The part of the affidavit which attests to what Phillips was told by those working under him is clearly double hearsay. Paragraph 4 of his declaration fails to state that he made the search described, nor does it state what subjects or titles in the index were searched, or even that the destruction of the records sought would be reflected in the General Indices to the FBI's Central Records System.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 17th day of February, 1983.

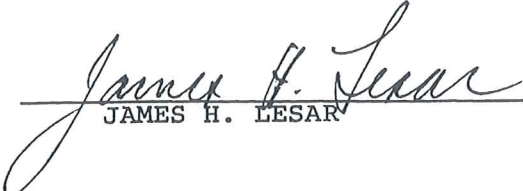
  
\_\_\_\_\_  
JAMES H. LESAR

Exhibit 1

Civil Action No. 82-3600

100-350493

Bureau file 100-350493

COPIES TRANSMITTED TO RESIDENTS OF RUSSIA

INTERNAL SECURITY - R

Mrs. MARGUERITE C. OSWALD, aka., Mrs. Edward Lee Oswald, is reported to have purchased "foreign money transfer No. 142,638" at the First National Bank of Fort Worth, Texas, on 1/22/60 by means of which she sent the sum of \$25 to her son, LEE HARTY OSWALD, in care of Hotel Metropol, Moscow, Russia. According to Mrs. OSWALD, her son LEE OSWALD, an ex-Marine aviator from the service on 6/3/59 visited her briefly in Ft. Worth and left town stating that he was en route to New Orleans, Louisiana, where he planned to resume employment with an import-export company. According to Mrs. OSWALD, she received a letter from LEE in September, 1959, from New Orleans, stating that he had booked passage on a ship to Europe. According to Mrs. OSWALD, she was subsequently checked to learn that he had gone to Moscow, Russia, where he is reported to have renounced his U. S. citizenship and where he sought Soviet citizenship.

- RUC -

DETAILS:

At Fort Worth, Texas:



This document contains neither recommendations nor conclusions of any kind. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Mark A. Allen,

Plaintiff

v.

Civil Action  
No. 81-1206

Federal Bureau of Investigations, et al.

Defendants

Affidavit

I, G. Robert Blakey, being duly sworn, depose and say as follows:

(1) I am currently a professor of law at the Notre Dame Law School, Notre Dame, Indiana 46556,

(2) From July of 1977 to January of 1979, I was the chief counsel and staff director of the U.S. House of Representatives Select Committee on Assassination that looked into the assassination of President John F. Kennedy, in which capacity I personally supervised and reviewed the compilation of all materials published by the Committee.

(3) I have also reviewed the affidavit of John N. Phillips, special agent, F.B.I., dated January 12, 1981, filed in this matter, including paragraph 5, which states:

The HSCA reviewed the material described in paragraph 4 supra spending approximately five million dollars. At the conclusion of their (sic) investigation the HSCA published a 260 page report with 12 volumes of exhibits in which they (sic) included everything which could be deemed as relating to the assassination of President Kennedy (emphasis added).

(4) Special Agent Phillips is in error. The Committee was not able to publish everything it wanted to publish or which was relevant to the President's assassination, as it ran out of time and appropriations. In fact, little of the F.B.I. files made available to the Committee was directly published. The Committee concentrated its efforts, in the main, on publishing original material not available elsewhere.



(5) Whatever the merits of the pending litigation, it should not be resolved, in whole or in part, on any contrary assumption.

G. Robert Blakey

G. Robert Blakey  
Professor of Law  
Notre Dame Law School  
Notre Dame, IN 46556

Subscribed and sworn to before me this 15<sup>th</sup> day of  
February, 1982.

Jacqueline M. Blanford  
Notary Public

My Commission expires October 19, 1984.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

J. GARY SHAW,	)
	)
Plaintiff,	)
	)
v.	)
	)
FEDERAL BUREAU OF INVESTIGATION,	)
	)
Defendant.	)

Civil Action No. 82-0756

**FILED**

JAN 13 1983

JAMES E. DAVEY, Clerk

MEMORANDUM

Ten black and white photographs and the manilla envelope that contains them are the subjects of this action brought under the Freedom of Information Act, 5 U.S.C. § 552. The Court has inspected the photographs and the envelope in camera, by agreement of the parties, and holds that the FBI must disclose the photographs to plaintiff. The envelope, on the other hand, is protected from disclosure because it would reveal the identity of a confidential law enforcement source. See 5 U.S.C. § 552(b)(7)(D).

In its motion for summary judgment<sup>1/</sup> the defendant maintains that the photographs themselves are covered by the confidential

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<sup>1/</sup> Although plaintiff has not submitted a formal response to the government's motion, the Court regards plaintiff's motion for an order vacating the Court's order of July 6, 1982, and extending time on plaintiff to oppose or otherwise respond to defendant's motion for summary judgment, and the supporting papers submitted therewith, as sufficient to put the defendant's motion in issue.

source exemption as "confidential 'information' furnished only by a confidential source." Duffin v. Carlson, 636 F.2d 709, 712 (D.C. Cir. 1980). The relevant statutory language exempts confidential information solely "in the case of a record compiled by a criminal law enforcement agency in the course of a criminal investigation." 5 U.S.C. § 552(b)(7)(D). Defendant has not satisfied this standard. Its pleadings are entirely devoid of any mention of a criminal investigation extant at the time the photographs were received by the government. The lone affidavit submitted with defendant's motion, that of Special Agent John N. Phillips, offers merely a general statement of the policy behind the confidential source exemption. Accordingly, the photographs cannot be withheld on the ground that they were "compiled by a criminal law enforcement agency in the course of a criminal investigation." Moreover, an inspection of the photographs shows that they contain nothing to reveal the existence of an investigation, let alone the agency which might have conducted such an investigation.

The envelope presents a different question. A document that would disclose the identity of a confidential source is shielded so long as it was "compiled for law enforcement purposes." 5 U.S.C. § 552(b)(7)(D). Defendant has satisfied this less stringent standard and the envelope should therefore be withheld from plaintiff.

For the foregoing reasons, judgment will accordingly be entered in favor of plaintiff on the issue of the photographs'

disclosure and in favor of defendant on the issue of the envelope's release.

*Harold H. Greene*

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Harold H. Greene  
United States District Judge

Dated: January 11, 1983



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant

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Civil Action No. 82-3600

O R D E R

Upon consideration of defendant's motion for summary judgment, plaintiff's opposition thereto, and the entire record herein, it is by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 1983, hereby

ORDERED, that defendant's motion for summary judgment be, and hereby is, DENIED.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE