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August 6, 1987

FREEDOM OF INFORMATION ACT APPEAL

Office of Information & Privacy  
United States Department of Justice  
Washington, D.C. 20530

*Harold - Cong & gov  
The client  
wrong.*

Dear Sirs:

By letter dated July 2, 1987, Mr. Richard M. Rogers, Deputy Counsel, Office of Professional Responsibility (OPR), advised me that the OPR was invoking Exemption 5, 5 U.S.C. § 552(b)(5), to deny my client, Mr. Mark A. Allen, access to a document which the FBI had referred to it. A copy of Mr. Rogers' letter is enclosed.

Mr. Rogers did not provide the date or subject matter of this document (FBI serial #62-117290-233), nor did he identify the sender or recipient of this "intra-agency" communication. I would appreciate it if you would provide this information so I can supplement Mr. Allen's appeal.

I should also be informed as to which Exemption 5 privilege the OPR is relying on as the basis for its claims.

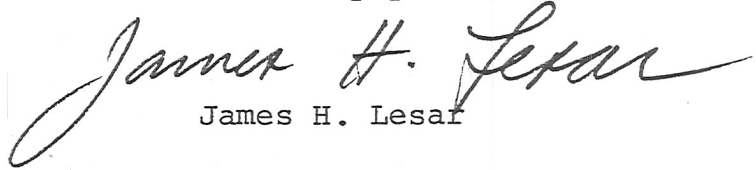
One privilege which the OPR may be relying on is the attorney work product privilege. This privilege protects documents prepared by an attorney which reveal the theory of his case or litigation strategy. FTC v. Grolier, Inc., 462 U.S. 19 (1983); NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975). It is limited to documents prepared by an attorney or his agent in anticipation of particular litigation or on the basis of some articulatable claim likely to lead to litigation. Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854 (D.C.Cir. 1980); Jordan v. Department of Justice, 591 F.2d 753 (D.C.Cir. 1978) (en banc). The only thing known about the document at issue is that it somehow relates to the investigation of the House Select Committee on Assassinations. This would seem to rule out the attorney work product privilege as the basis of a proper Exemption 5 claim.

Mr. Rogers also fails to state whether this document contains segregable factual material or was adopted by the agency.

I also note that in the past the Justice Department has not considered it appropriate to invoke Exemption 5 for matters per-

taining to the assassinations of President Kennedy and Dr. King. Given the historical nature of these subjects and the extensive public disclosures which already have been made concerning them and the investigation of the House Select Committee on Assassinations, it is inappropriate for the Department of Justice to continue to withhold these memoranda.

Sincerely yours,

A handwritten signature in cursive script that reads "James H. Lesar". The signature is written in dark ink and is positioned above the typed name.

James H. Lesar