

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

20 September 1984

Office of General Counsel

James H. Lesar, Esquire
Attorney at Law
1231 Fourth Street, S.W.
Washington, D.C. 20024

Dear Mr. Lesar:

Re: Lesar v. CIA, C.A. No. 84-2891 (D.D.C.)

I am writing to you on behalf of the Central Intelligence Agency (CIA) with respect to your two FOIA requests, dated 28 June 1983 and 24 August 1984, respectively. As you are aware, these requests now form the basis for the above-referenced litigation and were the subject of a temporary restraining order (TRO) hearing before Judge Gesell on Monday, 17 September 1984.

During the hearing before Judge Gesell, at which your request for a TRO was denied, Mr. Dodell referred to the existence of a list of FOIA litigations which could be affected by passage of earlier versions of the CIA relief legislation. After Judge Gesell denied the TRO, he directed that the Agency include in its answer, which is due 17 October 1984, a statement of when it would complete processing of your requests. He also suggested, as reflected in his Order dated 17 September 1984, that "if in the meantime particular documents are located which can be readily released to Plaintiff, the Defendant may do so in its discretion without prejudice to the schedule it proposes when it files its answer."

In accordance with the spirit of the hearing and Order, we have searched for, located, and processed the list to which Mr. Dodell referred. As you are aware, the CIA's relief legislation has been embodied in a number of bills, each of which has differed somewhat from the other. At the present time, H.R. 5164 appears to be the operative bill and was voted out of the House of Representatives on 19 September. Significantly, section 4 of H.R. 5164 explicitly provides that the bill's provisions "shall apply to all civil actions not commenced prior to February 7, 1984." If H.R. 5164 ultimately becomes law, all FOIA litigations against the CIA filed prior to February 7, 1984 will continue, unaffected by the legislation.

Previous bills on this matter, i.e., H.R. 3460, H.R. 4431, and S. 1324, did not contain the "cutoff date" of H.R. 5164. In response to Congressional questions regarding the impact of those bills upon pending FOIA litigations, this Office prepared various

papers in an effort to answer these questions. Of course, our analysis of the impact changed as new provisions were added to those bills or when new developments occurred in the litigations.


The "list" to which Mr. Dodell referred was compiled just prior to the introduction of H.R. 5164. Therefore, the list is limited to an analysis of the impact of H.R. 3460, H.R. 4431, and S. 1324 upon then filed FOIA litigations. With the introduction of H.R. 5164, this issue became academic, since all the cases enumerated in the list were filed prior to 7 February 1984, and thus, would continue unaffected. In fact, the Director of the CIA's Office of Legislative Liaison, by letter dated 5 April 1984, stated his belief that the introduction of H.R. 5164 mooted the "impact" issue. A copy of this letter, which was included in the hearing report, is attached for your information.

With this context in mind, I am enclosing a slightly redacted copy of the list to which Mr. Dodell referred. Specifically, the document is a six (6) page memorandum from Chief, Litigation & Legislation Division, OGC, to Deputy Director, Office of Legislative Liaison, entitled "Impact of H.R. 3460, H.R. 4431, or S. 1324 on Current FOIA Litigation," and dated 9 February 1984. The only redactions are of employee names and internal organizational data, withheld pursuant to 50 U.S.C. § 403g and exemption (b)(3). As stated previously, this list was the final one prepared, since introduction of H.R. 5164 made this issue totally academic.

During the evolution of the various bills, we prepared various internal papers on the possible impact upon litigations. The 9 February 1984 "list" represented our final and most comprehensive thinking on the subject. In view of the colloquy at the 17 September hearing, and the current consideration of H.R. 5164, it seems that provision of the 9 February 1984 list reasonably satisfies your 28 June 1983 FOIA request and item #3 of your 24 August 1984 FOIA request, and the corresponding paragraphs of the Complaint. Please advise me if you agree with this view.

If you should have any questions, please call me at (703) 351-6928.

Sincerely,



E. Page Moffett
Assistant General Counsel

Enclosures: as stated

cc: Nathan Dodell, Esq.
Assistant United States Attorney
for the District of Columbia

R84-888

Central Intelligence Agency



Washington, D.C. 20505

5 April 1984

The Honorable Edward P. Boland, Chairman
Permanent Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is to respond to your request that the Agency provide the Committee with certain information as to (1) the anticipated impact of the pending Freedom of Information Act (FOIA) legislation on current Central Intelligence Agency (CIA) FOIA litigation, and (2) the continued availability of information previously released to the public.

Concerning your request for a list of each of our pending FOIA cases and how each would be impacted, I understand that this is no longer a matter of concern. H.R. 5164, as introduced recently by you and Representatives Mazzoli, Robinson, and Whitehurst, limits the retroactivity of the legislation to cases filed after 7 February 1984, thus leaving all pending cases subject to the current law.

In response to the second part of your request, we have set forth in the enclosure our best analysis as to whether the documents referred to in the list you provided us would continue to be available under the FOIA legislation being considered. I trust that you will find this analysis to be helpful.

I look forward to working with you and the other Members of the Committee in securing enactment of meaningful legislative relief.

Sincerely,

Clair E. George
Director, Office of Legislative Liaison

Enclosure

9 February 1984

OGC 84-1453

MEMORANDUM FOR: Deputy Director, Office of Legislative Liaison
FROM: [REDACTED] (b)(3)
Chief, Litigation & Legislation Division, OGC
SUBJECT: Impact of H.R. 3460, H.R. 4431 or S. 1324
on Current FOIA Litigation
REFERENCE: Letter dated 2 February 1984, from
Edward Boland, Chairman HPSCI, to
Director of Central Intelligence

1. The reference requested the Agency to provide HPSCI with certain information in connection with hearings by the Subcommittee on Legislation on H.R. 3460 and other proposals to exempt certain CIA operational files from the search and review process of the Freedom of Information Act (FOIA). Specifically, you requested this Office to answer question (1) of the reference which reads: "List each pending FOIA case to which the CIA is a party and explain how and why each would be affected by passage of H.R. 3460, H.R. 4431, or S. 1324."

2. Attached is our analysis of the impact of the proposed FOIA legislation on active FOIA litigations involving the Agency. This analysis reflects our latest thinking on the impact of the bills on active litigations. It is important that this analysis not be misinterpreted by the Committee. First of all, the inclusion of any litigation in a particular category should not be interpreted as a commitment by the Agency with respect to future litigation strategy. The analysis is meant only to provide a general idea as to how various cases might be affected by the legislation. The analysis must be tentative because the legislation is not finalized and is subject to change as the legislative process proceeds. Additionally, it is impossible to give a more precise response without reviewing each and every document in each and every litigation. Many of the active litigations involve various kinds of documents derived from a variety of files. Thus an indication that a particular litigation would be affected by the legislation does not necessarily mean that the entire case would be affected. With these caveats in mind, the analysis responsive to this question is as follows:

Distribution:

1 - [REDACTED]
1 - [REDACTED] (b)(3)
1 - [REDACTED]

✓ 1 - [REDACTED]
[REDACTED] (9 February 1984)

Impact of H.R. 3460, H.R. 4431 or S. 1324 on
Current FOIA Litigation

I. FOIA/PA Litigation Which Would Not Be Affected by
Enactment of H.R. 3460, H.R. 4431 or S. 1324

<u>Afshar v. Dept of State</u>	C.A. No. 76-1421, D.D.C.
<u>Black v. CIA</u>	C.A. No. 83-3246, D.D.C.
<u>Clark v. FBI</u>	C.A. No. 78-2244, S.D.N.Y.
<u>Cohen v. Turner</u>	C.A. No. 77-3449, C.D. Cal.
<u>Crooker v. CIA</u>	C.A. No. 83-1426, D.D.C.
<u>Davis v. CIA</u>	C.A. No. 83-0505, E.D. Pa.
<u>DeAntonio v. Turner</u>	C.A. No. 75-761, D.D.C.
<u>Deleruyelle v. Casey</u>	C.A. No. 83-CV-8618, E.D. Mich.
<u>Elmquist v. CIA</u>	C.A. No. 82-0047, D.D.C.
<u>Ely v. CIA</u>	C.A. No. 83-826, M.D. Fla.
<u>Fellner v. DOJ</u>	C.A. No. 75-C-430, W.D. Wis.
<u>Hoffnung v. FBI</u>	C.A. No. N-92-211, D. Conn.
<u>Jaffe v. CIA</u>	C.A. No. 79-1394, D.D.C.
<u>Keith v. U.S</u>	C.A. No. 83-2488, E.D. Mich.
<u>Lasater v. CIA</u>	C.A. No. 83-1128, D. Utah
<u>Liberato v. CIA</u>	C.A. No. 82-2661, C.D. Cal.
<u>Mahshie v. DOJ</u>	C.A. No. 82-1245, N.D.N.Y.
<u>Marks v. CIA</u>	C.A. No. 75-1735, D.D.C.
<u>Muskett v. CIA</u>	C.A. No. G83-759, W.D. Mich.
<u>Sagona v. Miller</u>	C.A. No. 83-2-1070, D. Colo.
<u>Sagona v. Casey</u>	C.A. No. 83-1304, D. Colo.
<u>Salisbury v. FBI</u>	C.A. No. 81-6361, S.D.N.Y.
<u>Spock v. NSA</u>	C.A. No. 79-4977, S.D.N.Y.

II. FOIA Litigation Which Would Not Be Affected
by Enactment of H.R. 3460, H.R. 4431 or S. 1324

<u>Albertson v. DOJ</u>	C.A. No. 76-1302, D.D.C.	FOIA - Documents disseminated outside the Agency
<u>Allen v. DOD</u>	C.A. No. 80-0700, D.D.C.	FOIA - Documents disseminated outside the Agency
<u>Allen v. CIA</u>	C.A. No. 78-1743, D.D.C.	FOIA - Attorney fees only remaining issue
<u>Allen v. DOD</u>	C.A. No. 81-2543, D.D.C.	FOIA - Communications between HSCA and CIA
<u>Bevis v. CIA</u>	C.A. No. 83-0993, D.D.C.	FOIA - Documents from files that would not be designated
<u>CNSS v. CIA</u>	C.A. No. 83-3090, D.D.C.	FOIA - Documents from files that would not be designated
<u>Citizens Against UFO Secrecy v. CIA</u>	C.A. No. 83-2718, D.D.C.	FOIA - Documents from files that would not be designated
<u>Crooker v. CIA</u>	C.A. No. 83-1717, D.D.C.	FOIA - Fee waiver issue
<u>Dettman v. DOJ</u>	C.A. No. 82-1108, D.D.C.	FOIA - Documents disseminated outside of the Agency
<u>Donovan v. CIA</u>	C.A. No. 83-479, S.D.N.Y.	FOIA - Documents disseminated outside the Agen
<u>Dunaway v. Kelley</u>	C.A. No. 77-0907, N.D. Cal.	FOIA - CIA documents no longer at issue
<u>Green v. DIA</u>	C.A. No. 82-101, D. Vt.	FOIA - Documents disseminated outside the Agency
<u>Hoch v. CIA</u>	C.A. No. 82-0754, D.D.C.	FOIA - Documents from files that would not be designated

<u>Miller v. Casey</u>	C.A. No. 82-1101, D.D.C.	FOIA - Alleged special activity - unacknowledged
<u>Paisley v. CIA</u>	C.A. No. 80-0038, D.D.C.	FOIA - Documents from files that would not be designated
<u>Peterzell v. DOS</u>	C.A. No. 82-2853, D.D.C.	FOIA - Documents remaining at issue would not be solely contained in files that would be designated
<u>Rivkin v. CIA</u>	C.A. No. 82-3721, E.D.N.Y.	FOIA - CIA documents no longer at issue
<u>Schlesinger v. CIA</u>	C.A. No. 82-1749, D.D.C.	FOIA - Documents involve acknowledged special activity
<u>Sims v. CIA</u>	C.A. No. 78-2251, D.D.C.	FOIA - Subject matter involves Congressional investigation of alleged illegalities and improprieties
<u>Thompson v. CIA</u>	C.A. No. 83-1113, N.D. Ohio	FOIA - No CIA documents at issue in this case
<u>Truitt v. DOS</u>	C.A. No. 83-3592, D.D.C.	FOIA - Partial Glomar as to one part of the request. Remaining documents have been disseminated outside the Agency
<u>U.S. Student Assoc. v. CIA</u>	C.A. No. 82-1686, D.D.C.	FOIA - Subject matter involves acknowledged agency activity
<u>Weiner v. FBI</u>	C.A. No. 83-1720 C.D. Cal.	FOIA - Documents disseminated outside the Agency

III. FOIA Litigations Thought To Involve Files

Which May Be Designated

<u>Baxandall v. CIA</u>	C.A. No. 82-8736, S.D.N.Y.	FOIA - Certain documents come solely from files which could be designated
<u>CNSS v. CIA</u>	C.A. No. 80-1235, D.D.C.	FOIA - Documents possibly still at issue in Count V come solely from files which could be designated
<u>Daily Orange Corp. v. CIA</u>	C.A. No. 79-CV-411, N.D.N.Y.	FOIA - Case does not involve a special activity. Could be affected if Glomar response not upheld
<u>Fitzgibbon v. CIA</u>	C.A. No. 79-0956, D.D.C.	FOIA - Certain documents come solely from files which could be designated
<u>Kapsa v. CIA</u>	C.A. No. 2-78-1062, S.D. Ohio	FOIA - Case does not involve a special activity. Could be affected if glomar response not upheld
<u>Mackenzie v. CIA</u>	C.A. No. 82-1676, D.D.C.	FOIA - Search and review not completed. Certain documents may come solely from files which could be designated
<u>McGehee v. CIA</u>	C.A. No. 80-2997, D.D.C.	FOIA - Certain documents come solely from files which could be designated
<u>Meeropol v. Smith</u>	C.A. No. 75-1121, D.D.C.	FOIA - Certain documents could come solely from files which may be designated
<u>Reader's Digest v. FBI</u>	C.A. No. 79-4812, S.D.N.Y.	FOIA - Certain documents could come solely from files which could be designated
<u>Roberts v. CIA</u>	C.A. No. 83-6254, E.D.Mich	FOIA - Certain documents come solely from files which could be designate

Shaw v. CIA

"
"
"
"
"
"
"
"
"

C.A. No. 82-1603, D.D.C.
C.A. No. 82-1625, D.D.C.
C.A. No. 82-1667, D.D.C.
C.A. No. 82-1832, D.D.C.
C.A. No. 82-1833, D.D.C.
C.A. No. 82-1903, D.D.C.
C.A. No. 82-2388, D.D.C.
C.A. No. 82-2389, D.D.C.
C.A. No. 82-2410, D.D.C.
C.A. No. 82-2681, D.D.C.

FOIA - Multi-Count Litigations seeking documents in support of Plaintiff's Kennedy Assassination conspiracy theories. Documents were not relied on by Warren Commission. Search and review not completed. Some documents may come solely from files which could be designated.

Swike v. U.S.

C.A. No. H83-662, N.D. Ind.

FOIA - Certain documents come solely from files which could be designated

 (b)(3)