

JAMES H. LESAR  
ATTORNEY AT LAW  
910 SIXTEENTH STREET, N. W. SUITE 600  
WASHINGTON, D. C. 20006  
TELEPHONE (202) 223-5587

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Hon. Richardson C. Preyer  
House of Representatives  
2344 Rayburn House Office Building  
Washington, D. C. 20515

Dear Congressman Preyer:

I am informed that at the organizational meeting held on March 24, 1977, members of the Government Information and Individual Rights Subcommittee expressed the view that priority emphasis should be given to the problem of obstruction of citizen access to government information by unwarranted security classification.

This issue concerns me deeply, both as a citizen and as a lawyer involved in Freedom of Information Act litigation.

In 1974, while the Supreme Court's Mink decision was still law, I won a ruling from United States District Judge Gerhard Gesell that Exemption 1 did not apply to the January 27, 1964, Warren Commission executive session transcript, purportedly classified "Top Secret," because the government had not shown that it had ever been properly classified pursuant to Executive Order. (Weisberg v. General Services Administration, Civil Action No. 2052-73)

Subsequently, after Congress amended Exemption 1 to override the Mink decision and make it easier to obtain records which are not validly classified, I filed suit on behalf of Mr. Harold Weisberg for the two remaining Warren Commission executive session transcripts said to be security classified. Without first ruling that these two transcripts are properly classified, United States District Judge Aubrey Robinson has recently ruled that they are nonetheless exempt from disclosure under 5 U.S.C. § 552(b)(3) as a result of 50 U.S.C. § 503(d)(3), which makes the Director of the Central Intelligence Agency responsible for protecting intelligence "sources and methods" from unauthorized disclosure. (Weisberg v. General Services Administration, Civil Action No. 75-1448)

The text of the now public January 27, 1964, Warren Commission executive session transcript which I obtained in 1974 shows that there never was any basis for security classifying it or claiming

that it had to be withheld because its disclosure would reveal intelligence "sources and methods." Yet records I obtained on discovery in Civil Action No. 75-1448 establish that the CIA once withheld this transcript on the pretext that it was doing so in order to protect intelligence sources and methods.

Ironically, if I brought suit today for the January 27 transcript, I would be unable to compel its disclosure because the courts would hold that it is protected by Exemption 3. Conversely, if I had brought suit for the remaining Warren Commission executive session transcripts before the Freedom of Information Act was amended, I would have been able to obtain them. I cannot now do so simply because the government has switched exemptions and the courts are again interpreting an exemption in a manner which eviscerates the Freedom of Information Act.

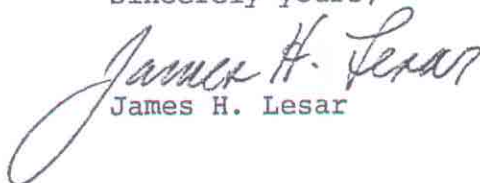
I have filed a motion for reconsideration and clarification of Judge Robinson's order. My motion relies upon the affidavits of two very able men who have had extensive experience with security classification of government documents, Mr. William G. Florence and Mr. Harold Weisberg. Mr. Florence is a security classification expert and was formerly employed by the Government Information and Individual Rights Subcommittee in 1975-1976. Mr. Weisberg, my client, has personally obtained and read thousands of spuriously classified government documents.

I am enclosing a copy of my motion, the affidavits of Messrs. Florence and Weisberg, and Judge Robinson's order. Because I do not have the facilities or resources to do so, I would like to request that your office copy and circulate these documents, and this letter, to the members of the Government Information and Individual Rights Subcommittee.

Mr. Florence, Mr. Weisberg, and I are all deeply interested in helping the Government Information and Individual Rights Subcommittee deal with the problems caused by unwarranted security classification, and in particular with the unjustifiable claim that the Central Intelligence Agency may withhold records purportedly disclosing intelligence "sources and methods" under the guise of Exemption 3 without being required to demonstrate that they have properly classified such information pursuant to the provisions set forth in Executive Order 11652.

If you feel that we can be of any assistance in this matter, I suggest that you contact Mr. Florence, who resides at 708 Sixth Street, S. W. His phone number is: 554-8024.

Sincerely yours,

  
James H. Lesar