

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE JAMES MADISON PROJECT
1275 K Street, N.W.
Suite 770
Washington, D.C. 20005

Plaintiff

v.

NATIONAL ARCHIVES AND RECORDS *
ADMINISTRATION *
8601 Adelphi Road *
College Park, Maryland 20740-6001 *

Defendant *

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Civil Action No. _____

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COMPLAINT

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq., as amended, for the disclosure of agency records improperly withheld from plaintiff The James Madison Project by defendant National Archives and Records Administration.

JURISDICTION

1. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the defendants pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 28 U.S.C. § 1331.

VENUE

2. Venue is appropriate under 5 U.S.C. §§ 552(a)(4)(B) and 28 U.S.C. § 1391.

PARTIES

3. Plaintiff The James Madison Project (“JMP”) is a 501(c)(3), non-profit corporation organized under the laws of the District of Columbia and the Internal Revenue Code with the primary purpose of educating the public on issues relating to intelligence gathering and operations, secrecy policies, national security and government

wrongdoing. It maintains its principal place of business in the District of Columbia.

4. Defendant National Archives and Records Administration (“NARA”) is an agency within the meaning of 5 U.S.C. § 552 (e) and is in possession and/or control of the records requested by JMP which are the subject of this action.

BACKGROUND

5. In 1821, former President James Madison wrote that “A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

6. There is a place and a purpose for secrecy in order to protect national interests, but the United States government and its agencies has taken this notion to an extreme. “The best way to ensure that secrecy is respected, and that the most important secrets *remain* secret, is for secrecy to be returned to its limited but necessary role. Secrets can be protected more effectively if secrecy is reduced overall,” so concluded The Commission on Protecting and Reducing Government Secrecy in 1997.

7. The Commission correctly emphasized that “[g]reater openness permits more public understanding of the Government’s actions and also makes it more possible for the Government to respond to criticism and justify those actions....[By] allowing for a fuller understanding of the past, it provides opportunities to learn lessons from what has gone before - making it easier to resolve issues concerning the Government’s past actions and helping prepare for the future.”

8. In proposing a new statutory framework for declassifying information, the Commission suggested that “all information shall be declassified after 30 years, unless it is shown that demonstrable harm to an individual or to ongoing government activities will result from release.”

9. Current declassification procedures are governed by Executive Order 12,958 which was signed by President Clinton in 1995. Section 3.4 of this Order directs automatic

declassification of “all classified information contained in records that (1) are more than 25 years old, and (2) have been determined to have permanent historical value under title 44, United States Code.” This declassification process, which was to be completed by 2000, was undermined in October 1998 by Senatorial concern that nuclear data was being inadvertently released. A rider in the 1998 defense authorization bill requires government agencies to conduct a page-by-page review of all classified records more than 25 years old to determine whether any nuclear information is contained therein. As a result, approximately 100 million documents were not publicly released on time.

10. It is one of JMP’s objectives to reduce the amount of unnecessary secrecy that envelops this country. It will do so by, among other ways, challenging the classification of records for which the national security interest has long since passed.

11. The record sought by this litigation was drafted nearly six decades ago by an agency - The Office of Censorship - that has been defunct for nearly as long as the record is old. The subject matter: the historical use of secret ink, especially by the Germans during The Great War of 1914-1918.

12. Upon information and belief, the release of this record will not cause any harm to the national security or foreign relation interests of the United States, any individuals (all of whom are obviously long-since deceased) or, perhaps most importantly, any current sources or methods.

13. There exists no legitimate purpose for the continuing classification of records that are nearly sixty years old and, in particular, certainly not those that apparently discuss alleged espionage techniques used by an enemy that no longer exists during a war that has long-since ended.

COUNT ONE (FOIA REQUEST)

14. JMP repeats and realleges the allegations contained in paragraphs 1 through 13 above, inclusive.

15. By letter dated March 12, 2001, JMP submitted to NARA a FOIA request which

sought disclosure of “*Secret Ink Technical Manual (OCTMAN)* that was published in August 1945 by the Office of Censorship.”

16. By letter dated March 13, 2001, JMP informed NARA of the possible location of the requested record.

17. By letter dated April 3, 2001, NARA released a previously processed copy of the requested record that was replete with redactions, and informed JMP that the Manual was forwarded to the Central Intelligence Agency for review. No substantive decision was reached by NARA.

18. No further written responses have been received from NARA.

19. NARA has failed to comply with the requisite statutory periods which govern compliance under FOIA with respect to JMP’s request. Therefore, NARA has wrongfully withheld this document from JMP.

20. JMP has exhausted all required administrative remedies.

21. JMP has a legal right under the FOIA to obtain the information it seeks, and there is no legal basis for the denial by NARA of said right.

WHEREFORE, plaintiff The James Madison Project prays that this Court:

(1) Order NARA to disclose the requested records in their entireties and make copies promptly available to it;

(2) Award reasonable costs and attorney’s fees as provided in 5 U.S.C. § 552 (a)(4)(E) and/or 28 U.S.C. § 2412 (d);

(3) expedite this action in every way pursuant to 28 U.S.C. § 1657 (a); and

(4) grant such other relief as the Court may deem just and proper.

Date: June 7, 2001

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