

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff

v.

UNITED STATES GENERAL SERVICES
ADMINISTRATION

Defendant
.....

CIVIL ACTION NO. 2067-73

COMPLAINT

1. Plaintiff brings this action under the Freedom of Information Act, 5 U.S.C. 552.
2. Plaintiff is HAROLD WEISBERG, an author residing at Route 8, Frederick, Maryland.
3. Defendant is the UNITED STATES GENERAL SERVICES ADMINISTRATION, located at F Street, between 18th & 19th Streets, N. W., Washington, D. C.
4. The document which Plaintiff seeks is a transcript of the January 27, 1964, executive session of the Warren Commission. This transcript is in the possession of the United States Archives and Records Service, a division of the General Services Administration.
5. In 1968 Plaintiff several times requested access to the January 27, 1964, transcript. In his letter of May 4, 1968, to Dr. James B. Rhoads, Archivist of the United States, Plaintiff renewed his request for disclosure of the January 27 transcript. (See

Exhibit A) This request was denied by Dr. Rhoads in his letter of May 20, 1968. (See Exhibit B) .

6. In a letter to Plaintiff dated June 21, 1971, the then Acting Archivist, Mr. Herbert E. Angel, stated that the January 27, 1964, transcript was being withheld from research under the provisions of 5 U.S.C. 552(b)(1) and (b)(7). (See Exhibit C)

7. 5 U.S.C. 552(b)(1) exempts from disclosure matters that are:

"specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy"

5 U.S.C. 552(b)(7) exempts from disclosure matters that are:

"investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency"

8. Plaintiff has requested that he be provided with a copy of the executive order requiring that the January 27 transcript be kept secret in the interest of the national defense or foreign policy. No such order has been provided him.

9. Representative Gerald R. Ford's book, Portrait of the Assassin, contains many purportedly verbatim quotes from the January 27, 1964, transcript. Notwithstanding the fact that the National Archives has declared that the January 27 transcript is classified pursuant to executive order, Representative Ford testified before the Senate Rules Committee on November 5, 1973, that he did not use classified material in his book. In the New York Times of November 6, 1973, reporter Majorie Hunter gave the following account of Mr. Ford's testimony on this point:

Mr. Ford also defended himself against criticism that he had profited from his service on the Warren Commission that investigated the assassination of President Kennedy by writing a book and contributing to a magazine article.

He admitted receiving \$10,000 for the book, "Portraits of an Assassin," and \$5,000 for the

magazine article, but said the material was not classified and that he merely tried to make readable the information that later appeared in the commission's report. (Emphasis added)

10. Plaintiff avers that the January 27, 1964 transcript is improperly classified.

11. Plaintiff further asserts that, regardless of whether or not the January 27 transcript is properly classified, Representative Ford has been given what in effect is an exclusive literary copyright on government information not made available to other persons. Plaintiff believes this to be contrary to the intent of the Freedom of Information Act.

12. On January 6, 1972, Plaintiff appealed the decision to deny him access to the January 27, 1964, transcript. On February 8, 1972, Mr. Richard Q. Vawter, Director of Information of the General Services Administration, responded by stating that this and other transcripts of Warren Commission executive sessions:

. . . are now under further review by the Office of the General Counsel to determine whether recent developments in the state of the law are such as to require release of portions of the documents previously withheld. We are therefore treating your letter as a request to reconsider our decision regarding the transcripts rather than as an appeal therefrom. You will be notified shortly of our decision, and may then appeal any portion of that decision which denies you access to these transcripts. (See Exhibit D)

In a letter dated March 6, 1972, Mr. Vawter repeated this statement. To the best of his recollection, Plaintiff believes that there has been no further response from the Director of Information in the year and eight months since the March 6, 1972, letter.

13. Having exhausted his administrative remedies, Plaintiff now brings this complaint under the Freedom of Information Act.

Plaintiff alleges that under the terms of the Freedom of Information Act the records he seeks must be made available to him. Plaintiff notes that the Freedom of Information Act provides that the District Court shall determine the matter de novo, and that the burden is on the defendant to justify its refusal to disclose the requested documents.

WHEREFORE, Plaintiff prays this honorable Court for the following relief: that Defendant be ordered to produce and make available for copying the transcript of the January 27, 1964, executive session of the Warren Commission, and such other relief as this Court may deem just and equitable.

JAMES HIRAM LESAR
1231 4th St., S. W.
Washington, D. C. 20024
Telephone: 484-6023
Attorney for Weisberg

DATED: November 13, 1973

EXHIBIT A

May 4, 1968

Dr. James B. Rhoads
Archivist of the United States
Washington, D. C.

Dear Dr. Rhoads:

This is to tell you that I know enough about the transcript of the executive session of the Warren Commission of January 27, 1964, to express the opinion that it cannot in its entirety be denied me for the reason specified. I herewith renew my request for it. If there is any part of it that you withhold, I think, because of the knowledge I have, it is only fair to ask you to itemize the subjects discussed.

It is obvious that what was provided me that purports to be a verbatim transcript of the executive session of September 16, 1964, is not that and was not prepared by the until-then official reporter. After the first paragraph it is in the form of minutes. I respectfully renew my request for the stenographic transcript of this executive session.

Because of the misarrangement of these transcripts as supplied to me, in no order whatsoever, I would appreciate a list of all the sessions on which those that are denied are also indicated.

Sincerely,

Harold Weisberg

P.S. As additional executive-session transcripts are declassified, I would like to receive them. As similar materials are to be released, I should like to be informed of it.

In the past, I have been informed that you keep a list of what is sought that is denied, such as the spectrographic analysis, and that those interested will, when the decision is reached, be notified. If you intend additional departures from this policy, I would like to know.

HW

GENERAL SERVICES ADMINISTRATION



National Archives and Records Service

Washington, D.C. 20408

May 20, 1968

IN REPLY REFER TO: N

Mr. Harold Weisberg
Coq d'Or Press
Route 8
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in reply to your letter of May 4, 1968, concerning the records of the Warren Commission.

We believe that the transcript of the executive session of the Commission of January 27, 1964, is correctly withheld from research under the terms of existing law (5 U.S.C. 552).

No verbatim transcript of the executive session of September 18, 1964, is known to be among the records of the Commission.

It is our impression that the copies of the transcripts of executive sessions were in order when they were mailed to you and that copies of the charge cards which indicate the transcripts that are withheld from research were included. The transcripts or minutes for the following sessions are available for research, except certain pages in some of the transcripts which are withheld and are indicated within each transcript concerned: December 5 and 16, 1963; January 21, February 24, March 16, April 30, and June 4, 1964; and September 18, 1964 (minutes only). The transcripts for the following sessions are withheld from research: December 6, 1963; and January 27, May 19, and June 23, 1964.

You will be notified if any additional transcripts of executive sessions or specific records you have previously requested become available for research. We have not undertaken and cannot undertake to notify researchers of the availability of all material relating to particular subjects in which they may be interested, and we have made no departures from this policy. You have been notified orally of the availability of

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the transcript of the conference relating to a psychiatric evaluation of Lee Harvey Oswald held on July 9, 1964.

The transcripts of testimony before the Commission are available except certain pages which contain material deleted by the Commission in its published Hearings.

Sincerely yours,



James B. Rhoads
Archivist of the United States

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

Washington, D.C. 20408

June 21, 1971



Mr. Harold Weisberg
Coq d'Or Press
Route 8
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in reply to your letter of May 20, 1971.

The following transcripts of proceedings of executive sessions of the Warren Commission and parts of these transcripts are withheld from research under the provisions of the "Freedom of Information Act" (5 U.S.C. 552) which are cited for each item:

Transcripts

- | | |
|---------------------|--|
| 1. December 6, 1963 | 5 U.S.C. 552, subsection (b) (6). |
| 2. January 27, 1964 | 5 U.S.C. 552, subsections (b) (1) and (b) (7). |
| 3. May 19, 1964 | 5 U.S.C. 552, subsections (b) (1) and (b) (6). |
| 4. June 23, 1964 | 5 U.S.C. 552, subsections (b) (1) and (b) (7). |

Parts of Transcripts

- | | |
|-------------------------------|---|
| 1. Dec. 5, 1963, pages 43-68 | 5 U.S.C., subsection (b) (6). |
| 2. Dec. 16, 1963, pages 23-32 | 5 U.S.C., subsection (b) (6). |
| 3. Jan. 21, 1964, pages 63-73 | 5 U.S.C., subsection (b) (1) and (b) (7). |

As we have previously informed you, the transcripts withheld from research have not been made available to any researcher since they have been in our custody.

No additional material has been made available for research since the completion of the 1970 review, of which we informed you in our letter of February 5, 1971.

Sincerely,

A handwritten signature in cursive script that reads "Herbert E. Angel".

HERBERT E. ANGEL
Acting Archivist
of the United States

EXHIBIT D

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, D.C. 20405



FEB 8 1972

Mr. Harold Weisberg
Coq d'Or Press
Route 8
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in reply to your two letters dated January 6, 1972.

A review by the National Archives of its correspondence with you beginning July 24, 1971, failed to reveal a written request from you on that date for copies of pages in Commission Document 1408 or after that date until the request in your letter of December 17, 1971. A check of service orders prepared around July 24, 1971, however, disclosed that copies of pages 10, 11, and 26-28 in CD 1408 were mailed to you with copies of other records on August 10, 1971, presumably as a result of a telephone call from you. The examination of the service orders also disclosed that a copy of a strip of paper received with the WDSU film was mailed to you with copies of other records on July 15, 1971, as a result of a telephone call from you on July 13, 1971. Enclosed are new copies of the pages in CD 1408 and the strip of paper received with the WDSU film.

The only specific records mentioned in your letters that have been denied to you under the terms of 5 U.S.C. 552, subsection (b), are the transcripts of Warren Commission executive sessions. These transcripts were reviewed by our Office of General Counsel before they were denied to you by Acting Archivist Herbert E. Angel in his letter to you of June 21, 1971. These transcripts are now under further review by the Office of the General Counsel to determine whether recent developments in the state of the law are such as to require release of portions of the documents previously withheld. We are therefore treating your letter as a request to reconsider our decision regarding the transcripts rather than as an appeal therefrom. You will be notified shortly of our decision, and may then appeal any portion of that decision which denies you access to these transcripts.

Since 1966 the National Archives has corresponded with you concerning a great many individual documents among the records of the Warren Commission. This correspondence now comprises two thick files. Records that could be furnished to you under the procedures established by proper authority for the Commission's records were made available to you. Only records withheld under those procedures were denied to you. Some of the records that were originally denied to you in this

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correspondence were made available for research by the 1970 review. Lists of the material made available by that review were sent to you early in 1971.

Under these circumstances I think it is your responsibility to determine the individual documents other than the transcripts concerning which you wish to appeal and to prepare your own appeal. If you will submit a numerical list clearly identifying these documents, you will be given a specific response concerning each document.

During the more than five years that the National Archives has tried to be of service to you, its staff has often gone beyond normal limits in responding to your requests, and you have at times expressed your appreciation for the work done for you. In fairness to other researchers, however, the National Archives staff cannot perform an unlimited amount of work for you or carry on a constant correspondence with you.

I believe you have a copy of the letter agreement of October 29, 1966, concerning the clothing of President Kennedy and the X-rays and photographs relating to the autopsy of President Kennedy. Access to those materials is based on the terms of the agreement. I have been informed by the Archivist that if you will select a pathologist or any other qualified person and secure the approval of his application to examine the materials by the Kennedy family representative, Mr. Burke Marshall, the National Archives will be pleased to show the materials to him.

Sincerely,



Richard Q. Vawter
Director of Information

Enclosures