

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,  
Plaintiff,  
v.  
UNITED STATES GENERAL  
SERVICES ADMINISTRATION,  
Defendant.

Civil Action No. 2052-73

FILED

MAY - 5 1971

MEMORANDUM AND ORDER

JAMES F. DAVEY, CLERK

Plaintiff invokes the Freedom of Information Act, 5 U.S.C. § 552, in an effort to gain access to a transcript of the Warren Commission's January 27, 1964, executive session, presently in the custody of the National Archives. The defendant General Services Administration, which operates the Archives, has moved for summary judgment on the ground that the transcript at issue is shielded by the Act's first, fifth and seventh exemptions. 5 U.S.C. § 552(b)(1, 5, 7). The issues have been thoroughly briefed by all parties and are ripe for adjudication.

Initially, the Court probed defendant's claim that the transcript had been classified "Top Secret" under Executive Order 10501, 3 C.F.R. 979 (Comp. 1949-53), since such classification would bar further judicial inquiry and justify total confidentiality. 5 U.S.C. § 552(b)(1); E.P.A. v. Mink, 410 U.S. 73 (1973). However, defendant's papers and affidavits, supplemented at the Court's request, still fail to demonstrate that the disputed transcript has ever been classified by an individual authorized to make such a designation under the strict procedures set forth in Executive Order 10501, 3 C.F.R. 979 (Comp. 1949-53), as amended by Executive Order 10901, 3 C.F.R. 432 (Comp. 1959-63).

Defendant's reliance on the seventh exemption, on the other hand, appears to be fully justified by the record. The Warren Commission was an investigatory body assigned to look

into the assassination of President Kennedy and the subsequent murder of Lee Harvey Oswald. It can hardly be disputed that its findings would have led to criminal enforcement proceedings had it uncovered evidence of complicity in those events by any living person. The Archives' collection of Warren Commission transcripts therefore constitutes an "investigatory file . . . compiled for law enforcement purposes . . ." within the meaning of the seventh exemption. 5 U.S.C. § 552(b)(7).

The instant case is squarely controlled by the decision of this Circuit in Weisberg v. Dept. of Justice, 489 F.2d 1195 (D.C. Cir. 1973), in which the same plaintiff sought access to certain materials collected by the Federal Bureau of Investigation during its investigation into the assassination of President Kennedy. The Court concluded that the Bureau's intensive inquiry, undertaken at the special request of President Johnson, was clearly conducted for law enforcement purposes even if no violations of federal law were involved, so that the resulting investigatory files were protected. Id. at 1197-98. No less protection can be afforded to the files of the Warren Commission, which was also instituted by the President for the principle purpose of examining evidence of criminal conduct arising out of the assassination. See Executive Order No. 11130, 3 C.F.R. 795 (Comp. 1959-63).

It is therefore

ORDERED that defendant's motion for summary judgment is granted.

Richard A. Farrell  
UNITED STATES DISTRICT JUDGE

May 3, 1974.