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GEORGE M. CHAMLIN
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RONALD B. ROSEN
BRIAN BOYLE

June 15, 1971

Mr. Emory Brown
Route 4, Box 82
Farmingdale, New Jersey

Re: Brown vs. Mitchell

Dear Mr. Brown:

Enclosed please find a copy of
the Judge's Decision in the above matter.

Very truly yours,



MICHAEL D. SCHOTTLAND

MDS:klg
Enc.

1
2 UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

3 EMORY L. BROWN JR.,

4
5 Plaintiff

6 vs

Civil Action
No. 44-71

7 JOHN MITCHELL, Attorney General
of the United States, THE
8 JUSTICE DEPARTMENT OF THE UNITED
STATES, and J. EDGAR HOOVER,
9 Director of the Federal Bureau
of Investigation,

10 Defendants

11
12 Monday, June 7, 1971
13 Trenton, N.J.

14 Before the Hon. Clarkson S. Fisher, U.S.D.J.

15 APPEARANCES:

16 CHAMLIN & SCHOTTLAND ESQS.,
17 by: Michael D. Schottland Esq.
Attorneys for the Plaintiff

18 HERBERT J. STERN, ESQ.
19 United States Attorney,
20 By: Roger S. Steffens Esq.
Attorney for the Defendants

21 Lynne T. Attardi
22 Official Court Reporter
23 United States District Court

24 category. Once a report of

25 information is given to the

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2 THE COURT: This is a matter
3 brought pursuant to the Public Information
4 Act 5 U.S.C. 552, which Act orders
5 Federal Agencies to make available to
6 the public files compiled in the course
7 of the agency function. The Act,
8 however, provides several exemptions
9 from disclosure one of which is the
10 subject of the case.

11 5 U.S.C. 552 (4)

12 (6) This section does not apply

13 to matters that are -

14 (7) Investigatory files compiled for
15 law enforcement purposes except to
16 the extent available by law to a party
17 other than an agency.

18 agencies The government's position in this
19 case is that the F.B.I. files which are
20 sought by Mr. Brown are an investigatory
21 file compiled for law enforcement
22 purposes and thus falls under the above
23 category. Once a petition for such
24 information is filed the burden falls
25 upon the government to prove that their

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files come within the exemptions of 3.
the statute. Bristol Meyers Co. v F.T.C.
424 F.2d 934, (D.C., D.C., 1970). To
sustain this burden the government has
filed an affidavit by Special Agent
Schutz of the F.B.I. stating that the
Kennedy assassination case is still
under investigation and that it is
definitely an "open" file.
The defense counters that this
affidavit is of no value since its
allegations are vague and not binding
on the Court.
Agent Schutz' affidavit is far
from vague and it asserts that since the
material sought by the plaintiff was
mainly compiled by other law enforcement
agencies (Dallas Police) and since the
F.B.I. indexing systems of the Kennedy
Assassination files have failed to locate
the information, a detailed page by page
search of 384 volumes would have to be
done. Thus the information is not
readily available nor was it made
particularly identifiable by the plaintiff

as is required by law.

He also states that the file is still pending investigation and contains not only invaluable information concerning future assassinations, but the aspect of a conspiracy in the Kennedy assassination is still being investigated. It is also stated that there are informers who gave information believing their identity to be kept secret and opening of this file would destroy this and result in irreparable damage to the informers as such raw data coupled with the passage of time would make them unable to refute any damage to their reputation caused by disclosure.

In G.S.A. v Benson, 415 F.2d. 878 (9th Cir. 1969) the court held that in exercising equity jurisdiction conferred by the Freedom of Information Act, the court must weigh the effects of disclosure and non-disclosure, according to traditional equity principle and determine the best course to follow

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in given circumstances and in making such a determination the effect on the public is a primary consideration.

This line of reasoning is also found in

Consumer Union of U.S. Inc. v Veteran's

Administration, (D.C. N.Y. 1969),

301 F.Supp. 796.

The most recent case in this area

is Cowles Communication Inc. v Dept. of

Justice, April 26, 1971, U.S.D.C.,

N.D. California, (not yet reported).

The plaintiff in this case sought

Immigration Department files for one

Marino and claims that the exemption

(investigatory files) does not apply

since there are no proceedings pending

against him.

The court held that the

Freedom of Information Act's exemption

of investigatory files compiled for

law enforcement purposes entitled the

Department of Justice to withhold from

a non-party who requested them,

immigration records compiled for law

enforcement purposes, even though

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prosecution of the file's subject
was neither pending nor contemplated.

It therefore appears that the
plaintiff's complaint must be denied
because the information he seeks falls
specifically within categories exempted
by the statute. His arguments, though
well presented, are rejected and this
court refuses to order the F.B.I. to
open to him their confidential files on
the assassination of President Kennedy.
Defendant's motion granted - plaintiff's
motion denied.

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