

Harold

FILED

July 29, 1971

JAMES F. DAVEY
CLERK

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE :
ASSASSINATIONS, INC., :
Plaintiff :

vs. : Civil Action

UNITED STATES DEPARTMENT : No. 3651-70
OF JUSTICE, :
Defendant :

MEMORANDUM AND ORDER

This is an action for injunctive relief sought under the provisions of 5 U.S.C. § 552 (Supp. 1967), popularly known as the Freedom of Information Act. The plaintiff organization seeks an order of this Court directing the Justice Department to produce and make available for copying FBI Office File No. 56-156, Bureau File No. 62-587, the FBI study of the assassination of Senator Robert F. Kennedy. Pending before the Court at this time are Plaintiff's Motion to Determine the Sufficiency of Defendant's Responses to Requests for Admissions and cross motions for summary judgment. Upon consideration of these motions, the memoranda in support thereof and in opposition thereto, the statements of material facts as to which there is no genuine issue and the affidavits filed herein, it is the conclusion of this Court that plaintiff is not entitled to the relief sought.

Preliminarily, it should be noted that as this Court views the facts set forth in defendant's statement and the applicable law, defendant's answers to plaintiff's

requests for admissions are sufficient. As to the cross motions for summary judgment, the uncontested facts are that the FBI made this file available to the Los Angeles, California, law enforcement agency that prosecuted Sirhan B. Sirhan and that agency made available to Sirhan's defense counsel only those parts of the file which were ordered disclosed by the California Court as a result of a defense motion for discovery in that criminal trial. Plaintiff does not assert nor do the facts indicate that the FBI ever made the file available to the writer Robert B. Kaiser.

Plaintiff does contend, however, and the statements of fact of both parties indicate that the writer did gain access to the file as is evidenced by various passages in the book eventually written about the assassination. Plaintiff contends that because this writer somehow gained access to the file, the Freedom of Information Act exception relied upon by the defendant herein, no longer applies. Defendant Justice Department relies on exception (7), that is:

(b) This section does not apply to matters that are--

(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency.

10 U.S.C. § 552(b) (7) (Supp. 1967).

It is clear to this Court that the file sought by plaintiff herein is an investigatory file that was only made available to a party in criminal litigation as

required by law. It is still covered by exception (7) of the Act and is therefore, not subject to disclosure pursuant to that Act.

There may be some question of fact as to whether the file was made available to the writer through Sirhan's defense counsel. There is no question, however, that the FBI did not disclose it to the writer. This investigatory file is clearly within the exception as stated, and it is, therefore, by the Court this 29th of July, 1971,

ORDERED, that Plaintiff's Motion to Determine the Sufficiency of Defendant's Responses to Requests for Admissions be and the same hereby is denied; and it is

FURTHER ORDERED, that Plaintiff's Motion for Summary Judgment be and the same hereby is denied; and it is

FURTHER ORDERED, that Defendant's Motion for Summary Judgment be and the same hereby is granted; and it is

FURTHER ORDERED, that this case be and hereby is dismissed.


Judge

July 29, 1971
(Date)