

3/8/72

Mr. Richard W. Vawter, Director of Information
General Services Administration
Washington, D.C. 20405

Dear Mr. Vawter,

Your letter of the sixth provides an excellent illustration of the reasons the correspondence between the Archives and me has become so voluminous and burdensome. It is still not possible for me to comb all the files to give you precise citations in each case, but I will give you enough so that, unless the effort is obstructed, you may, should you so desire, learn the truth where that is in question.

1. Lines for response. "You can assist" in reducing what I will feel called upon to address by eliminating such self-serving declarations as that with which you conclude this paragraph. The quoted words are yours. What is explanation in your paragraph is reasonable and provides the answer I have to this moment sought without response. I thank you for that. But what you do not address is requests for identified individual documents. I gave you several examples. You said you would provide copies of the covering letters with which these things the Archives told you they had sent me and I said they had not. These are the documents recently sent with the claim they had been sent earlier, a claim I labelled false. I think that in fairness to the record you should have omitted what you learned to paper, and in writing to me.

2. Memorandum of Transfer. Your single sentence is accurate but inadequate. I have raised additional point to which there has been no response.

a) Under the American Rail Lines decision, were the reasons for withholding both true and applicable, they no longer obtain. The government waived its right to withhold under this decision by use in the Clark panel report.

b) The agency of paramount interest, the Secret Service, ruled otherwise and gave the Archives a copy for it to give me. If there is statutory authority for overruling the Secret Service on this I would appreciate a copy or citation of it. Without this authority, and as I read 5 U.S.C. 552 it is not there, I believe it is improperly withheld from me.

c) The contents of this memorandum have been described to me by the Secret Service and they are not of a nature to justify the interpretation in Mr. Johnson's letter. This is not a medical file but a receipt, and it is a receipt that covers the transfer of public property and official exhibits of a public, official proceeding. But were this the case, the medical contents have been made public by the government, in the Clark panel report and by other means, thus waiving that provision. Furthermore, this is a reason in contradiction to the earlier reason given me for refusing me this same receipt, that it was a "private" paper entrusted into the keeping of the Archives for safety.

d) The opening of Mr. Johnson's letter is imprecise. The decision was not a refusal "to make available" but a refusal to forward what had been made available, and I had been told by the Secret Service. I think the legal distinction is important and the factual distinction is obvious.

e) Even in the sense in which it is written, the penultimate paragraph of Mr. Johnson's letter fails to address what is controlling and is not subject to bureaucratic semantics. He makes no reference to the controlling court decisions. I have cited one.

f) The final paragraph of this letter reverses the roles in the matter in question. Under the law, should the government elect to seek such an opinion, it is up to the government to get it under the Attorney General's interpretation of the law, not the applicant. The memorandum is explicit on this point. But if there is a question of "invasion of privacy", as there is not and cannot be by the nature of this receipt, that has already been violated by the government by use of the document, a use that exceeds the requirement of the controlling decision in that it was a public use.

g) Even if all the claims made were relevant and applicable, they have now been rendered void by the granting of access to the material covered by the receipt and the attendant international publicity generated by Dr. John Lattimer.

h) Mr. Johnson's reservation of the right to overrule the opinion of "authorized representative" (f above) is, I believe, outside his discretion or authority and puts the entire matter in true perspective.

For the foregoing reasons, I file this as a new appeal for a copy of this document.

3. Pictures of Exhibits 393-5. You say the Archiver does not have the letter from Mr. Marshall I quoted. There are two relevant letters. I personally sent both to the archivist and he has both additionally because they are exhibits attached to my Complaint in Civil Action 2569-70.

According to the Attorney General's Memorandum, the obligation under the law is that of the agency to which I make application. If the agency to which I make application cannot or says it cannot comply with the request, it is obligated to refer it. The negatives in question are part of the record of the Warren Commission, not of the "Department of Justice. In my view they are required to have been transferred pursuant to the applicable executive order. If this was not done, the fault is not mine nor does the law impose your obligation upon me. It is a technical impossibility to make copies of what is in the Archives' files. I have paid for them and if you dispute this, I will bring them in as you can seek the opinion of the competent photographer who made those negatives at the Archives or your own USA photographer. The net effect is to deny me copies of official exhibits. These are not properly described as you do, "the original FBI negatives". I have a copy of the directive under which they were made for the Warren Commission.

If this is not now done for me, I ask that this be regarded as my appeal.

(Returning to 2 c) above, please include description to me by Mr. Burke Marshall.)

4. Refusal of copy of USA-family contract. You have been misinformed and incompletely informed on this, as I also was. The second paragraph of Dr. Bahner's letter of January 30, 1968 is deceptive. I am satisfied the deception was neither by nor intended by Dr. Bahner. I am also satisfied that he did not make the decision. There is more than one deception, but with regard to all, I do not believe Dr. Bahner was responsible. I have raised two separate questions where I think more than 5 U.S.C. 552 is applicable. One is the alleged conditions, which were not subject to change by the lapse of time. If they could be invoked to deny me a copy of this contract, they were forever applicable or every position the government has taken on ever other such record is spurious. The other is the violation of regulations in denying the first applicant at least equality of access. It was adding insult to injury to send me a copy and then charge me for that after and some time after publication.

5. Refusal to replace and provide copies of missing public information. 5 U.S.C. 552 is not, in my belief, all that obtains. It is all you address. I believe under other law, regulation and practice the Archiver does have this responsibility and obligation. The next statement you make you make, I am confident, in good faith, but it is utterly false. The Archives follows this practice generally, not just with me. The frequency of such requests from me, were even this true, is outside the law, which has no such exemption. I dispute that I have asked for so many copies of public information that the Archives claims to have lost. They keep records and can give you prompt proof. I challenge it. I regret your unfair familiarity with the law and regulations, to which I attribute the other irrelevancies. However

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even if for the sake of argument we accept the version you give, the law is unequivocal in requiring referral, as the Attorney General's Memorandum says. The Archives is without the right or authority to determine what it considers "appropriate". Referral by it is mandatory. In anticipation of what may be one response, I quote you this additional wording: "Every effort should be made to avoid encumbering the applicant's path with procedural obstacles when these essentially internal Government problems arise." The Archives loss of its own files, which is its explanation, is exclusively an internal matter. And, I interpret this language to place upon the Archives the responsibility for correcting its own mistakes and from the records it keeps refer each request for that public information it claims not to have or to replace its own missing files and supply copies from them.

If this is not done, then this letter is my appeal.

6. Executive Sessions. As a general statement, what you say is responsive. However, varying reasons were given for refusing my specific requests for specific pages. To these your explanation does not respond, for these specific requests are also separate from any "recent developments in the statute of the law." Also, varying reasons for given different applicants. I ask for a review of the specific refusals separate from any new interpretation.

There remains between us a question you said you would address when you phoned me. That is the question of truthfulness. I recognize it is possible for any of us with the best of intentions to make a mistake. I have recently learned that I made one, and the next time I see the person involved in the Archives, I will extend my personal apology. In this long correspondence, I am aware of but this single mistake by me. This is an important question because I prize my integrity. It is important to you because you really are dependant upon the information you are given. Even if you did not have a multitude of other duties, as I am sure you do, you cannot possibly have any personal knowledge of such matters. One of the obvious consequences of your being given false, incomplete or inadequate information is your making a wrong decision, which can then be followed by one by Mr. Johnson, which can then be followed by needless litigation. This has happened. I have gone to the very moment of hearing and then been given what had been improperly withheld from me. The enormous cost to the government alone should be of concern within the government, as should the waste of their time by those for whom it is wasted. Aside from this, there remains the question of the law and the obligation of everyone in the government to adhere to it. And under the law, such things are abusive and needlessly costly, in my case also damaging, to the applicant. So, I hope that at some point we will confront this question and resolve it.

You say that "uncomplicated" requests are usually filled within five days of receipt of the request by the proper branch. Today is the eighth day after a simple request I made by phone, for records filed under one particular name. I am not making a big deal out of it, and I recognize that such things as work-procedures, illness or leaves can account for it. The point I am making is that this just never happens with my requests.

Sincerely,

Harold Weisberg