Route 12
Frederick, Md. 21701

September 24, 1976

Mr. James E. O'Neill
Deputy Archivist of the United States
National Archives and Records Service
Washington, D. C. 20408

Dear Mr. O'Neill:

Your self-serving letter stamp-dated September 21 came the 23rd.

Neither my medical situation nor my disgust has changed. You must have a whole crew of what used to be called "Philadelphia lawyers" to write the kind of letter this represents. They are so careful in their obfuscation that you do not even tell me to what you are responding. The law, I remind you, allows 10 days for response, 20 for appeals. Insofar as I have been able to file my correspondence with your agency, I find my most recent letter to you personally is dated August 7, in response to yours of August 3. On this basis alone, you are contemptuous of the law that you, not uniquely, do not like.

You apologize for this, of course, in your opening sentence, where you say you "regret the delay in responding to your inquiry about our response to your Freedom of Information Act appeal for certain records of the Warren Commission."

If I have only one appeal, I'm surprised. Why you can't be specific I don't know.

Your expression of alleged regret does not include an explanation. You do, however, admit that you have not been "deluged." This means you have no real explanation for the delay you profess to regret.

It is not at all difficult for me to be aware of other considerations. One is the overdue responses to my interrogatories in C.A. 75-1448, in which the Archives is the defendant and the CIA your claimed need to continue to withhold. Now that I have this self-serving letter and nonexplanation, I'm sure the interrogatory response can't be far behind.

This represents other than you claim to have, a "good record of meeting the legal time limits for response."

You provide seven enclosures. Of these the most recent is dated almost two months ago, July 28. One is dated in May, two in January and the others are all of 1975, going back to as early as January of last year.

These dates do not explain your delay nor do they justify an expression of alleged regret over the delay. Especially when you do not have a backlog.

In other ways the record between us is not as you represent. You forced me into totally unnecessary suits in C.A. 2569-70 and in C.A. 2052-73. I believe this to be true of C.A. 75-1448. When you refused compliance until there was judicial compulsion in these two suits, I believe "good record" is not in any sense applicable. As you well know, I can add many other instances where you ultimately complied when I was stalled to the point of filing a complaint.

I do not accept your formulation that you do "not have unilateral authority to declassify documents in our custody" under any circumstances. As a matter of law, you are the successor to the Warren Commission. As a matter of law, it had no authority of any kind to classify and you have not been able to produce any such authority. It does have records it did classify illegally. You do have the authroity to declassify them. An

example of this is reflected in C.A. 2052-73, where there is nothing in that suppressed transcript that required CIA approval for release. You persisted in this nonetheless, putting me to great trouble for political, not legal, reasons. There are many other such illustrations.

Your letter likewise lacks fidelity in pretending you must do as "the agency of paramount subject-matter interest" requires. The Secret Service released to me what you have intercepted and refused me for years, through all the stages of appeal to the filing of a complaint. Then you made an incomplete release, years late. By then there was the certainty that those others who later duplicated my request would put this incomplete release to officially desired political misuses. I refer to the so-called "Memo of Transfer."

There also is no fidelity in your claim that "Unfortunately, the agencies which must review classified Warren Commission records" are those "experiencing a very heavy load" under FOIA. My requests for what you have refused go back to 1967 and 1968, when there was no such "very heavy load" on any of them.

On page 2 you say, "concerning your request for justification of the Freedom of Information Act exemptions cited as the basis for continuing to withhold certain items which you have requested, we feel that lengthy, detailed discussions of the applicability of the exemptions would be unproductive."

Memory is imperfect but it is my recollection that the last time this particular non-response was pulled on me by the government, it was followed by a summary judgment in my favor in a suit I should never have had to file. You do not have a license to cook up contrivances for withholding. The Act does place affirmative obligations on you. In court the burden to justify is on you. In a long history there is no case in which any such claim to exemption has been supported. There is a long history between us that is 100 percent opposite to your self-serving and unfactual claim. If you can think of a single exception, I would like an immediate answer because in C.A. 75-1448 you have delayed your responses to my interrogatories. They are overdue.

I can also cite countless cases in which the exemptions did apply when you did not use them because you had political, not archival or legal, purposes to serve. These include the release of allegations of homosexuality against a number of named individuals, the records of Marina Oswald's pregnancy, and personal defamation about the sex life of Marguerite Oswald.

Do you regard forcing me to go to court without need as "productive?" You say you "feel" it "would be unproductive" to go into "lengthy, detailed discussions" of the applicability of the exemptions.

I have not asked for this. I have asked for what I believe to be right and proper, justifications. In no single case have you been able to sustain such claims in court. I have not asked for your feelings. I have asked that you meet your obligations under the Act. I do not recall that I asked for either "length" or "discussions." I want fact. The Act does entitle me to justification of the applicability of the exemption. I do believe that by now, if you were not dominated by political considerations, you would have learned that it takes less time to justify - assuming you can or dare - than to litigate.

The plain and simple truth is that you cannot justify.

I came across part of one example this morning. It is the memo of W. David Slawson on "Conference with the CIA on March 12, 1964." For 10 years it had been classified TOP SECRET. You declassified it 7/11/73. When you declassified it you masked, among other things, beginning after the seventh line on page 1. While I recognize the fragility of memory, more for me now, I am quite willing for you to write me and tell me what you masked is other than Richard Helms and the CIA conning the Warren Commission into stalling on Nosenko, which is in issue in C.A. 75-1448.

If I am correct, then please tell me how you can justify this under any exemption. Please also tell me if in fact there is any "lengthy" or other "discussion" that could satisfy either the Act or a rational person.

This is your politically motivated misuse of the exemptions, repeated in C.A. 75-1448. Here you are stalling through the election to deny what is embarrassing to President Ford, his self-portrayal as a successor to Joe McCarthy. You have no concern for the protection of the reputation of Dean Norman Redlich, as you claim. From one file I specified, you provided more than 300 pages that repeatedly refer to Dean Redlich in defamations. He is called everything from a "nigger-lover" to a communist. Your concern is President Ford, who tried to get Dean Redlich fired.

In the second full paragraph on page 2 you cite Executive Order 11652 only. That did not exist during the time of the Warren Commission, which had no authority to classify. It never sought this authority.

You conclude your third paragraph on page 2 with what, if I understand it at all, is at best a convolution of the Act and your obligations to me under it: "We must ask you to consult this correspondence and the various document copies in your possession to determine what additional information has been made public as a result of the review completed in response to your Freedom of Information Act appeal."

Were this my responsibility under the Act, as I believe it is not, it is also not now physically possible for me.

You write me about a request of 14½ months ago and an appeal more than nine months old. You admit error in the original withholding. Now you want me to make a word-by-word comparison of "those pages, paragraphs, lines or words which have been deleted from the documents" you sent when records do exist.

Besdies, the CIA regularly masks public knowledge. It does this to the Archives' knowledge. You have made available to me from another source what you deny me from the CIA. The CIA's reason is embarrassment.

You next say, "we are not able to accept from any researcher open-ended, standing requests for copies of all documents or portions of all documents which are released over a period of years."

I disagree with this entirely. Doing it would save you enormous amounts of time where people are willing, as I am and have been, to pay you in advance.

You do have a contrary practice and you have made me such promises in writing and then have not kept your promise. You have, in fact, later released to others what you first withheld from me and even then did not let me have this public information. I refer to the medical-autopsy evidence and to the Memo of Transfer. I do have your written promise when you denied me these records. I also have some of what you continue to withhold from me after seven years, after you gave it to a later requester.

You follow this with weeping over "our limited resources." What a tribute to an assassinated President and those who still mourn and have interest in that crime! But I remind you that when I wrote in 1966 that the Archives had assigned less than a corporal's guard to this, two employees, both part-time, Dr. Rhoads, the archivist, criticized me and said there was and would be no manpower shortage. Now you cite what he said did not and never would exist as justification for negating the Act.

You next claim it is your policy "to notify those researchers who have shown continuing interest ... when a significant group of documents are newly opened for research." You follow this with citation of an FBI group to which I return. Please tell me what your record is on such claimed notifications to me on this, particularly after you learned of my physical incapacities and limitations. Please also tell me what this could possibly mean to an American living in Alaska or Hawaii. All persons are entitled to equal access.

My recollection of the original Act is that meaningful records of what is made available are to be made available so all persons can use them. Not only have you not done this with me, but when I used the FOIA in an effort to obtain from the Department of Justice its list of what it had made available through you, it actually wrote me that under the Act the list itself is not a public document.

There are hundreds of pages I have received from the CIA, after some effort, of which you have never notified me. There are hundreds of more pages that are covered by my requests to the CIA that it has not sent me and it has not responded to my reminders after I learned of their being released to another.

You tell me you sent me a notice of the release of 3,000 FBI pages in February. Maybe you did. I was not able to file it. I'm sure you did not tell me anything that could have any meaning. I'm sure you did not tell me whether this responded to any request you had denied. I'm sure you did not tell me whether this included what the Department had denied me. This many pages of what? Have you any remote notion of how much I've paid for totally blank pages? Must a requester of public information, in your concept of the language and the spirit of the Act, pay for pigs in pokes?

When I have written you that I want every record released and have offered in writing to advance your own estimate of the deposit you would like for this, you write, "it appears that you are not actually interested in receiving copies of all Warren Commission records as they become available." I believe I am not unfair in denouncing this part of your letter as deliberately false.

With my record this becomes more indecent when you add, "We have no way of determining those records you do want copies of and those you do not. We must, therefore, ask you to submit new requests for those specific records for (sic) which you desire copies."

Now how am I supposed to know when you refuse to tell me?

What in the world can I do other than offer to pay you in advance for all of them, as I have?

Often as I have sued you, you dare say I am "not actually interested?" Can there be a more emphatic statement of genuine interest than that I do sue you?

Or is all this indecency keyed to that? To C.A. 75-1448, which involves your boss, our unelected President, in McCarthyism?

Now that you have retreated from your refusal to provide me copies of groups of documents as they are released, I enclose my check for $300.00 in payment for those 3,000 pages of FBI documents you say are released. If this and the amount I have on deposit are not adqeuate, let me know and I'll remit whatever the balance may be. However, given some of your packaging of the past, often nonpackaging, I'd rather not have so many pages mailed. I do get to Washington from time to time and people do come here from there. I would prefer that when you have completed the copying you phone Mr. Jim Lesar, who represents me in C.A. 75-1448, and let him know. He may be able to pick them up when he is near your building. I can then obtain them from him.

It is physically impossible for me to search all the records I would be required to search to make any complete response or commentary on the partial correspondence with the CIA that you enclose. For now I have to limit myself to what I can perceive without consultation with records, some of which I have not been able to file and some of which you have not provided.

In the July 28, 1976, letter of Mr. Gene Wilson, CIA FOIA/PA Coordinator, he waives objection to the release of certain lists, in all or in part. I would like to know why I have been denied this public information for so long and what changes there have been in the cited withholding authority, E.O. 11652, that enables release now and denied it earlier.

With regard to Mr. Wilson's claim to the need "for protecting intelligence sources and methods from unauthorized disclosure" and his other claimed citation of statutory authority, there are many obvious questions to which I want answers. There is no reason to believe that there would be any "disclosure," except to the American people, as distinguished from foreign intelligence agencies. The latter, not the former, are intended by the cited law. I want it understood that I am challenging any interpretation of any statute as giving the CIA a license to withhold from the American people what foreign intelligence agencies already know.

With regard to the defected KGB agent Nosenko, for one example, it is obvious that what he knew the KGB knew, as he was explicit in telling the FBI and it is explicit in repeating. Yet what the FBI does not withhold the CIA does. I believe this proves you do not meet the requirement of the statute cited for the CIA's withholding of what the FBI does not withhold.

You do not enclose your letter of January 15, 1976, to the CIA. Without it I cannot understand the response you do send, dated so much later, June 1, 1976. You also do not include the attachments to Mr. Wilson's letter, which denies me more understanding.

Thus, I have no way of knowing what he is talking about when, as one illustration, he writes you, "In regard to document #1 of your third paragraph, the Top Secret memorandum of Coleman and Slawson to Rankin (undated)..." Not even a subject to identify this one of the many memos those wrote?

Some pages have been released and there is a downgrading to as low as confidential. If this downgrading is justified now under (b)(1) and (b)(3), what changes justify this downgrading? I ask this with the certain knowledge that nothing I have seen that was originally classified met the requirements for any classification.

I am sure you must have known that much of this is meaningless to me and some is plain gibberish, like the item on page 2, "Insert 21," when there is no reference to or identification of what this can possibly mean or refer to.

There then follows the statement that there is no objection to the release of 7 items. This is explained with the statement that "this was the first review" by the CIA. That is hard to explain. You do not explain it. Yet you rejected my request when by then there were to have been several regular reviews of all that was withheld.

At this point I have no way of knowing whether or not these improperly withheld records were provided me. If you had included a record of providing them, I could have. Nor can I now know whether I was then advised of the right and means of appeal.. Therefore, at this late date, I make this appeal on the chance I have not in the past.

Dr. Rhoads' letter of July 14, 1975, to Director Colby refers to a mandatory review of the Warren Commission's numbered files only. Is there any authority for not having a regular review of those files arbitrarily not given numbers? I add by the National Archives? Does this not include information from the CIA?

I think you can realize that when you write me in this manner and so late, I would require a staff of librarians and file clerks to make sense of it within the purposes of the Act, to make public information available to any person. Not just those who may have large staffs, a minority of Americans. In itself, I believe this is purposeful and is intended as a nullification of the Act.

I am without these means and I have the other limitations of which you know. So I cannot further address these incomplete enclosures.

However, I do note the recurrence of the phrase, "subject-matter interest." This is used by the National Archives as an engine for noncompliance. A convenient illustration is the executive session transcript of 1/27/64. It was taken and used by President Ford. Thereafter, you denied it to me for years, until after I went to court. I have, of course, read it. I recall no single word in it that required the approval of the CIA for release or that met any provision for withholding at any time, and none that gave

the CIA any subject-matter interest. However, in it former CIA Director, Allen Dulles, offered it as his opinion that perjury is the CIA way of life. Is this what you mean by subject-matter interest justifying withholding?

I return to my denied request for all records as released=. If you can do it with these records, why can you not do it with all formerly withheld records? You do not inform me when you make such releases and I thus have no way of knowing.

Yours truly,

Harold Weisberg