UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v.

Civil Action No. 75-1996

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant

AFFIDAVIT OF THOMAS L. WISEMAN

I, Thomas L. Wiseman, being duly sworn, depose and say as follows:

I I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Freedom of Information - Privacy Acts (FOIPA) Section at FBI Headquarters (FBIHQ), Washington, D. C.

II Due to the nature of my official duties, I am familiar with the procedures we follow in processing Freedom of Information Act (FOIA) requests received at FBIHQ, and our full compliance with plaintiff's April 15, 1975, FOIA request. I am familiar with Plaintiff's First Set of Interrogatories, which deal with our response to his April 15, 1975, request, having answered same. I have read and am also familiar with the contents of plaintiff's affidavit dated March 23, 1976, which also concerns our methods of complying with his April 15, 1975, request and our answers to the interrogatories.

III The purpose of this affidavit, which is sub-

If, in the opinion of the Court, other allegations made by plaintiff are relevant to the issues presented here, a supplemental affidavit will be submitted which will furnish the Court the correct information concerning these allegations. Further, my affidavit treats only our method of compliance with plaintiff's FOIA requests. The allegations plaintiff has made regarding the general area of our Laboratory procedures, which I honestly do not believe are the proper subject of this litigation, are dealt with in the affidavit of Special Agent Kilty, since they are within his area of expertise.

IV The subparagraphs listed below are numbered to correspond to the paragraphs in plaintiff's March 23, 1976, affidavit:

1-22 These allegations are irrelevant to this litigation, and therefore no factual correction of them is deemed necessary.

23 The proper use of interrogatories and the proper subject matter of FOIA litigation are for the Court to determine, and it is therefore not deemed necessary to speculate on these matters in an affidavit.

24 The subject matter of this allegation is not within my personal knowledge.

25 Plaintiff's unsubstantiated characterization of Defendant's Answer to Plaintiff's First Set of Interrogatories is incorrect. Regarding plaintiff's claim in the last sentence of this allegation that he has "personal knowledge of documents which (he has) requested from the Department of Justice but which have not been yet given (him)," he has made this same claim in another

I never gave him the name he withheld

requests. He has never, to my knowledge, offered factual support for these claims. On March 23, 1976, the day plaintiff executed his affidavit, representatives of the FBI, whose services were desperately needed elsewhere in connection with their official duties, spent an entire afternoon with plaintiff and his attorney, furnishing plaintiff additional material he had requested, and attempting to explain it to plaintiff. At this meeting, which was the latest of those arranged between representatives of the FBI and plaintiff and/or his attorney, in which we have gone far beyond what is required by the FOIA in order to resolve plaintiff's various questions and requests, he once again claimed to possess "proof" that he had not been furnished all material he had requested. He was told, as he has been told in the past, that we would welcome any documentary assistance from him which would enable us to more completely comply with his request. As in past meetings, this offer was made several times during the March 23, 1976, meeting, but each time plaintiff would move to another subject, or make some further claim which had no basis in fact. Again, as in past meetings, plaintiff made his offer to immediately furnish his "proof" orally. Again, as in the past, we explained to him that we are receiving FOIA requests at a rate in excess of 55 per day, and it is impossible, because of the tremendous administrative problems involved, to respond to oral requests. We again invited him to furnish any written material which would assist our personnel who conduct the searches of our records, in locating any additional records he feels we possess which would be responsive to his request. We have never received any sort of written

that search. This is so because the interrogatories do not request this information. In response to plaintiff's allegation that the answers do not state they are based upon all information available from all FBI files pertaining to the assassination of Dr. King, I reiterate that the interrogatories did not request this information, which in any event would seem to be self-evident. However, for the information of the Court, the answers are of course based upon all information available in the files we reviewed. We conducted a complete and thorough search of all central records located at FBIHQ concerning the King assassination. We conducted the same search in response to plaintiff's request and interrogatories that we utilize in our own day-to-day retrieval of necessary information in connection with our normal duties, which, because of our uniform reporting rules and filing procedures, enable us to be certain that we maintain, in one centralized location, all pertinent information in possession of the FBI deemed worthy of retention which has been acquired in the course of fulfilling our investigative responsibilities. In view of this, I believe it would be extremely unreasonable to assume the FOIA requires the FBI, in order to respond to each of the 13,875 requests we received in 1975, each of which is at least as equally legitimate as plaintiff's, must conduct a search of the files of each of our 59 Field Offices. If this were to be required, I believe, based upon my knowledge and experience, that the FBI might as well be closed down, because our remaining resources would be completely inadequate to perform the official duties Congress has imposed upon us. However, with respect to plaintiff's FOIA request, we have once again gone beyond what we feel is required by the FOIA and have instituted

inasmuch as it was in Memphis that Dr. King was killed, and our Memphis Field Office had primary responsibility for the investigation. As plaintiff and his attorney were advised in Court over three weeks ago, any releasable material located in this search which is within the scope of plaintiff's request will be furnished him in the very near future. The final sentence of Paragraph 26 of plaintiff's affidavit alleges that I do not state that my answers to plaintiff's interrogatories "are based on information contained in files belonging to or in the custody or possession of the Department of Justice's Criminal, Civil, and Civil Rights Divisions." Plaintiff is entirely correct in this allegation, inasmuch as I, as a Special Agent of the FBI, supervising a search of FBI files, cannot swear to what information is contained in files other than the FBI's. As I stated above, and as I stated in the answer to Interrogatory No. 25, the files searched were FBIHQ files.

27 The first sentence of Paragraph 27, containing plaintiff's recollection of plaintiff's attorney's recollection of what I allegedly told plaintiff's attorney, is incorrect. Special Agent Kilty, who is assigned to the FBI Laboratory, personally conducted the review necessary to respond to certain categories of plaintiff's request, primarily those dealing with Laboratory matters. I, in my supervisory capacity in the FOIPA Section of FBIHQ, am responsible for the overall supervision of the processing of plaintiff's request, and therefore am the only representative of the FBI who is legally competent to answer plaintiff's interrogatories. The last sentence of Paragraph 27, to which the Court's attention is respectfully drawn for a further understanding of the problems we have encountered in this case, and as another example of the

get him to read my request + Tyler's letter

Tyler's December 1, 1975, letter "redefined" plaintiff's request and required a new information request, he properly states our position that the interrogatories are directed at information outside the scope of his FOIA request, and also properly states the fact that he did not give written assurance that he would pay the fees for the special search necessary to locate the additional records.

This is NOT what I said

29 On December 3, 1975, before we were notified by the Department of Justice that plaintiff had instituted this litigation, we furnished plaintiff's attorney, pursuant to plaintiff's FOIA request, 18 photographs and 73 pages of records, much of which was FBI Laboratory material setting forth the results of very complicated examinations which would require even an expert a great deal of time to review, digest, and comprehend. Yet, plaintiff admits in this allegation that as soon as he received this material he wrote Attorney General Levi and informed him that the FBI had not complied with his request. The attention of the Court is respectfully drawn to his December 4, 1975, letter (attached as Exhibit K to plaintiff's affidavit), in which plaintiff claims that the United States Department of Justice, the FBI, numerous and unnamed "Tennessee authorities" (presumably law enforcement and prosecutive officials connected with the James Earl Ray case) and even by implication, the Columbia Broadcasting System, have engaged in a conspiracy to keep James Earl Ray "in jail for the rest of his life when the FBI had and suppressed proof that he did not kill Dr. King." I cannot comprehend how any reasonable construction or interpretation of the FOIA could possibly result in a belief that a claim of this sort is the proper subject of litigation involving the FOIA.

30 This allegation is garmat, and no further

31 The first sentence of plaintiff's Paragraph 31 is incorrect. Deputy Attorney General Tyler did not "rewrite" plaintiff's request so as to "suppress the vital information" plaintiff allegedly seeks. Deputy Attorney General Tyler's December 1, 1975, letter states "... I have decided to ... grant access to every existing written document, photograph and sketch which I consider to be within the scope of Mr. Weisberg's request." The body of the letter goes on to describe the complete release being made of all records located falling within the various categories of plaintiff's FOIA request. The latter portion of the letter could not be more clear. Mr. Tyler states that he has not included the results of ballistic tests performed on rifles other than the one owned by Mr. Ray. The letter then states, as directly as possible:

> "If Mr. Weisberg wishes access to them, he should make a specific written request to Director Kelley, Attention: Special Agent Thomas Wiseman, agreeing to pay both the costs of reproduction and the special search fees which will be necessary to locate and identify the same as provided by 28 C.F.R. 16.9(b)(6). In addition, in an effort to save your client considerable expense, I have construed Item No. 6 so as not to encompass the several hundred photographs in Bureau files of Dr. King's clothes, the inside of the room rented by Mr. Ray, or various items of furniture and personal property. If Mr. Weisberg, does, in fact, wish copies of these photographs, he should make a further request for them and agree to pay the reproduction and special search costs which will be involved."

Plaintiff and his attorney did write letters to defendant in

of Justice or the FBI, who has been on notice since receipt of Mr. Tyler's letter of December 1, 1975, and yet he did not provide this assurance until nearly three months later, when by plaintiff's attorney's letter of February 23, 1976, these assurances were finally furnished.

32 Plaintiff is correct in his belief that several facts must be considered in order to judge whether the FBI and plaintiff have acted properly regarding plaintiff's FOIA requests. Plaintiff's allegation that Mr. Tyler's insistence on written assurance that the special search fees would be paid was "merely a pretext to deny and delay" his access to records is without merit. There was no "pretext to deny:" Mr. Tyler's December 1, 1975, letter could not have more clearly stated the fact that he would be given these records if he would agree in writing to pay for the search necessary to locate them. There was no "pretext to delay:" The sheer volume of thousands upon thousands of requests we have received has been more than sufficient to cause numerous delays in our responses to these requests; we have no reason to invent "pretexts" to cause us additional problems, by "delaying" access to records which are in fact subsequently furnished.

33 This paragraph is irrelevant to this litigation. Again, we have enough administrative problems in complying with the FOIA, and cannot afford to conduct special searches at everyone's request, only to find after we have conducted these searches that, if a requester is not satisfied with the results thereof, he refuses to pay for the time it took to conduct this search. This would even further delay our responses to the thousands of legitimate requests we receive.

the material furnished, and to require assurance that the reproduction and special search costs for any additional material plaintiff indicates he desires will be paid. Plaintiff admits that he promptly prepaid the 25 percent of estimated special search fees required by him by the Department of Justice Civil Rights Division, while at the same time arguing that it was burdensome for him to furnish the written assurance of payment which Mr. Tyler asked of him, when a prepayment was not even required. He promptly paid $80 to the Civil Rights Division, yet delayed for nearly three months furnishing us the written assurances requested, and then alleges that it is we who acted improperly.

35 All parties agree that plaintiff's attorney advised the Department of Justice and the FBI in his December 29, 1975, letter, as well as other letters, that plaintiff "wanted all the documents which Mr. Tyler had 'eliminated' from (his) original request." But in none of these letters did plaintiff or his attorney agree to pay for the search necessary to locate the documents, which was clearly requested in Mr. Tyler's letter of December 1, 1975. The attention of the Court is respectfully drawn to the second sentence of plaintiff's Paragraph 35 in which he states, "in the months that followed, Mr. Wiseman did not phone or write my attorney and remind him that he could not process my renewed request until he had received a written assurance of my willingness to pay the search fees and copying costs." Mr. Tyler's December 1, 1975, letter, states this; also, with the voluminous amount of requests which I am required to supervise the processing of, I know of no provision in the FOIA which additionally requires me to remind plaintiff's attorney

irrelevant. Subsection (c) of 28 C.F.R. 16.9, from which plaintiff cites, states in part: "... the requester shall be notified of the amount of the anticipated fee or such portion thereof as can be readily estimated. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it." (Emphasis supplied.) We advised him in our letter of March 9, 1976, that we were "unable to furnish an estimate of the special search fees which must be incurred," and neither plaintiff nor his attorney objected to this in any conversations with representatives of the defendant that I am aware of, and the fees were finally paid without protest at the March 23, 1976, meeting. Subsection (e) of 28 C.F.R. 16.9, from which plaintiff also cites, refers to advance deposits only, and is irrelevant since, as I stated above, in an attempt to further accomodate plaintiff we had requested no advance deposit, but only a written assurance that he would pay.

36 Plaintiff is again avoiding the basic issue here, which has been discussed in previous paragraphs. He was requested to provide written assurance he would pay the necessary special search fees; he did not do so. In an attempt to assist plaintiff in avoiding payment for material which Mr. Tyler felt he would really not be interested in, Mr. Tyler gave plaintiff simple directions to follow if he really wanted this material. Plaintiff waited nearly three months to comply with these directions. Once he complied, we advised him in eight working days that we were searching for the additional material, and in fact made it available to him two weeks later, at his convenience. Thus, were it not for plaintiff's delay, for the time necessary to write a one sentence letter plaintiff could have reviewed all this material before the

further on in Paragraph 37, concerning the point of whether the FBI had any doubt about his willingness to pay for any special search fees, one additional fact should be brought to the attention of the Court: On December 22, 1975, plaintiff's attorney called me and indicated that he expected us to initiate and complete this special search in one day, and to have the material available to plaintiff on December 23, 1975. Not only did plaintiff's attorney fail to give me even an oral promise during this conversation that the special search fees would be paid, but he indicated that he was not even sure that he would pay the $22.10 reproduction charges for the material we had already furnished him nearly three weeks prior to that conversation. Although the $22.10 fee was finally paid, with the thousands upon thousands of requests we must process, we cannot afford to make an exception to the law in a case like this when at one point the requester's attorney has expressed doubt as to whether he will pay properly assessed charges for material already furnished him. The final sentence of plaintiff's Paragraph 37 once again alleges that Mr. Tyler denied plaintiff access to these records. This is false. Mr. Tyler told him the records would be furnished him, and they were in fact furnished nearly one month ago.

38 I am unaware of any "gratuitous merging" of plaintiff's request with a later one filed by CBS News. Plaintiff is correct in his allegation "... that Director Kelley's March 9 letter did not deny my attorney's statement that he knows of at least two Freedom of Information lawsuits where well-known millionaires have not been charged a cent by the Department of Justice for searching for records requested by them." We do not,

would not provide details concerning this irrelevant issue. From my own personal knowledge, I can state that I know of no cases fitting those which he describes here, although if they did exist they would be meaningless to this litigation. With regard to plaintiff's allegation concerning "four years of costly litigation over records which the FBI now claims never existed," the complaint in this case was filed November 28, 1975. I cannot claim knowledge of what records exist or do not exist in our millions of files, and can only do so after a specific file has been searched pursuant to a specific request. Plaintiff was advised in Mr. Tyler's December 1, 1975, letter that he was being furnished all records located pursuant to his request, and I agree with plaintiff that the case should have been mooted then.

39 This paragraph is irrelevant, with the possible exception of the last sentence. The additional ballistic tests and photographs had not been compiled at the time of Mr. Tyler's letter of December 1, 1975, and Mr. Tyler's statements concerning them were simply rough estimates of the amount of material falling within these categories presumed to be located in FBIHQ files. The actual amount of records falling within these categories is somewhat smaller, as plaintiff is aware, since he reviewed these records at the March 23, 1976, meeting.

by whom? Ty for a FBI? And are they not all of one part, part of one search?

40 As I stated earlier, the affidavit of Special Agent Kilty, submitted herewith, sets out the scientific data we have already attempted to explain to plaintiff at our half-day meeting with him on March 23, 1976. In response to Paragraph 40 of plaintiff's affidavit, please refer to Special Agent Kilty's affidavit.

methods plaintiff would use to investigate the assassination of a President, nor do we wish to engage in a "battle of scientific experts" in an FOIA suit. In response to plaintiff's "documentary proof" claim in the last sentence of his Paragraph 41, as I have stated earlier, we have given plaintiff numerous opportunities to assist us in locating records identifiable with the subject matter of his requests by furnishing us written information, but he has never done so.

42 This paragraph is irrelevant to this litigation. As I stated earlier, if the Court desires the facts surrounding plaintiff's allegations concerning our processing of plaintiff's request for material concerning the assassination of President Kennedy, for its information in judging plaintiff's good faith in this litigation, we will provide them.

43 Please refer to Special Agent Kilty's affidavit for the correct information concerning this allegation. We are not in court to convict or acquit James Earl Ray; we are here to prove we have complied with plaintiff's FOIA requests.

See Serial 5978

44 Aside from the fact that plaintiff's request was never effectively received until he sent his letter dated February 23, 1976, finally agreeing to pay the special search fees, no further response is deemed necessary to this allegation. Plaintiff has been furnished the results of all firearms examinations conducted in this case, with the material which did not involve the "death bullet" or "Mr. Ray's rifle" having been furnished him at the March 23, 1976, meeting.

45 As demonstrated in Paragraph 44, supra, the allegations made in Paragraph 45 are false. Plaintiff has been furnished all notes and reports which were generated in the FBI

46 As plaintiff has been advised in meetings and correspondence, he has been furnished all material within the scope of his request. It is thus ipso facto that we have not conducted tests falling within the scope of his request of April 15, 1975, which have not been given to plaintiff. Therefore, he is in as good a position as the FBI "to list the tests or examinations performed on the King assassination evidence," and I believe it would be mere harassment to require us to do this again. Further, I fail to understand how stating the dates of these examinations would lead to a determination as to "whether or not the defendant has complied with (his) request." Please refer to Special Agent Kilty's affidavit for further correct information concerning this allegation.

47 Plaintiff's unsubstantiated allegations concerning the FBI's report-writing procedures are false. Also, as I stated above, I know of no rational reason why the dates of examinations would assist in a determination as to whether plaintiff has been given authentic copies of the documents he requested, even if his false allegations were true. Please refer to Special Agent Kilty's affidavit for further correct information concerning this allegation.

48 As stated previously, plaintiff has been given the results of all ballistic tests, including those examinations which did not involve the "death bullet" or "Mr. Ray's rifle," the results of which were furnished plaintiff on the day he executed his affidavit.

49 Please refer to Special Agent Kilty's affidavit for the correct information concerning this allegation.

50 Since plaintiff has been furnished all material

examinations inasmuch as this is exempt from mandatory disclosure as it would constitute an unwarranted invasion of personal privacy.

51 The repetitious allegations plaintiff makes in this paragraph have been dealt with in my immediately preceeding paragraphs. With respect to the last sentence in plaintiff's Paragraph 51, I believe that since we are now in litigation, it is for the Court to determine whether we have completely complied with his requests for all ballistic examinations, and it is for the very purpose of protecting our personnel from the time-consuming activities plaintiff admits to planning in his last sentence that I have asserted the (b)(7)(C) (privacy) exemption concerning their names. The FOIA does not require the FBI to release names of its personnel to assist a plaintiff in taking depositions, nor, as the Court is aware, are these names necessary.

52 The proper interpretation of the (b)(7)(C) (privacy) exemption is left to the Court; I do not feel it is proper to attempt to set out law instead of facts in an affidavit, but I believe that plaintiff's interpretation of the (b)(7)(C) exemption is obviously incorrect. The latter portion of plaintiff's Paragraph 52, in which the manner of our past compliance with other FOIA requests plaintiff has submitted to the FBI is alleged, is irrelevant to this litigation. I am familiar with plaintiff's prior FOIA request for Kennedy assassination material. I believe it is pertinent to note that, in dismissing plaintiff's suit (which plaintiff cites in his Paragraph 52), the Honorable John H. Pratt, United States District Court Judge, stated:

"Well, I have spend a good deal of time

"Accordingly, I am going to grant the Government's motion to dismiss this matter as moot.

"Mr. Lesar, you are familiar with going to the Court of Appeals, and you may have some gentlemen there who will tell me I am wrong. They have done this before.

"But let me say parenthetically, that you don't get cooperation from people by calling them liars and kicking them in the face. And I should think that you and Mr. Weisberg would have learned that by this time.

"I think the Government has been oppressed by a lot of the requests, which I think are completely above and beyond anything that you are entitled to. I don't think the Government is required in this type of a case to go out and take depositions of people and get affidavits from everybody under the sun.

"I think that in relying on Mr. Kilty for two affidavits and also on the gentleman from the Atomic Energy Commission, they did all that they were required to do."

53 Plaintiff's speculations as to our motives are incorrect and improper. In response, the Court is respectfully referred to Paragraph 51 of my affidavit.

54 In addition to my previous discussion concerning plaintiff's previous paragraphs, please refer to Special Agent Kilty's affidavit for further correct information concerning this allegation.

55 No factual response is deemed necessary to this allegation.

56(a) (in response to plaintiff's second paragraph numbered 56) No factual response is deemed necessary to this allegation.

57(a) (in response to plaintiff's second paragraph numbered 57) No factual response is deemed necessary to this allegation, other than reiterating that we are not going to engage in a "battle of scientific experts" in an FOIA suit.

58 No factual response is deemed necessary to this allegation.

59-73 Please refer to Special Agent Kilty's affidavt for the correct information concerning these allegations. I respectfully reiterate my belief that the purpose of this FOIA litigation is not to judge Mr. Ray's guilt or Mr. Weisberg's scientific knowledge.

74 Plaintiff is correct in that perhaps my answer to his Interrogatory No. 17 should have been more clear to avoid any incorrect inferences. I meant my answer to mean that we furnished plaintiff all photographs of the bathroom windowsill taken by the FBI Laboratory which had been located in our search of FBIHQ files. I did not mean to leave the implication, nor do I claim, that the FBI possesses every picture ever taken, no matter by whom, or when, of the windowsill. We complied with plaintiff's request by furnishing him all photographs we had located in our file search pursuant to his request.

75 Plaintiff has been furnished all photographs and reports concerning the FBI Laboratory examination of the windowsill. Conclusions drawn by plaintiff or anyone else from the material furnished plaintiff have no bearing whatsoever on

77 This allegation is also irrelevant, since plaintiff also knows that the examination he describes in Paragraph 77 was conducted. All results of this examination were furnished him, specifically in the FBIHQ report to our Memphis Field Office dated April 11, 1968. He was also furnished all notes concerning the FBI Laboratory examination of the windowsill.

78 My answers to plaintiff's interrogatories correctly state that "there were no other suspects in the case in addition to James Earl Ray." Plaintiff correctly stated in his interrogatories that "on April 17, 1968, FBI Special Agent Joseph H. Gamble filed a conspiracy complaint with the United States Commissioner in Birmingham, Alabama." The complaint states that "on or about March 29, 1968, at Birmingham, Alabama, ... Eric Starvo Galt (subsequently determined to be identical with Mr. Ray) and an individual whom he alleged (emphasis supplied) to be his brother, entered into a conspiracy which continued until on or about April 5, 1968, to injure, oppress, threaten, or intimidate Martin Luther King, Jr. ... In furtherance of this conspiracy, Eric Starvo Galt did, on or about March 30, 1968, purchase a rifle at Birmingham, Alabama,... ." This complaint was dismissed on December 2, 1971. There were no other suspects in the case in addition to James Earl Ray. In response to plaintiff's allegation in Paragraph 78 that "I personally delivered to the FBI a sketch and a picture of another suspect but these were not among the sketches and photographs provided me," with all due respect to plaintiff, I can only reiterate that, pursuant to his FOIA request, we conducted a complete and thorough search of all central records located at FBIHQ and, based on the data submitted by plaintiff with his

of our uniform reporting rules and filing procedures, enable us to be certain that we maintain, in one centralized location, all pertinent information in possession of the FBI deemed worthy of retention which has been acquired in the course of fulfilling our investigative responsibilities. In addition, as I have previously stated, in order to ensure that we have completely complied with plaintiff's requests, we have gone beyond that which we feel is required by the FOIA and advised plaintiff that we will also search the files of our Memphis Field Office and in the very near future furnish him all releasable information located in this search which is within the scope of his request. The final sentence of plaintiff's Paragraph 78 consists of another unsubstantiated claim for which he furnishes no factual support, and no response is deemed necessary. As with the material he claims he gave us, we offered him the opportunity at the March 23, 1976, meeting to assist us with documentation of this claim, but he failed to do so.

79 Plaintiff alleges in Paragraph 79 that my answer to his Interrogatory No. 27 is deliberately non-responsive, inasmuch as his interrogatory is not limited to cigarette remains found in the white Mustang. I quote from plaintiff's April 15, 1975, FOIA request: "On behalf of Mr. Harold Weisberg I am requesting disclosure of the following information on the assassination of Dr. Martin Luther King, Jr.: ... 4. The results of any scientific tests performed on the butts, ashes or other cigarette remains found in the white Mustang abandoned in Atlanta after Dr. King's assassination and all reports made in regard to said cigarett remains." (Emphasis supplied.) As plaintiff's attorney was advised in Mr. Tyler's December 1, 1975, letter, "the

and have no factual support furnished with them, I cannot, in a sworn affidavit, address any claims plaintiff makes concerning activities of individuals (in most cases unnamed) who have nothing to do with the FBI. I can only again reiterate, and swear to, the fact that we have done everything reasonably possible to comply completely with plaintiff's FOIA request of April 15, 1975.

84 The only allegation contained in this paragraph which is relevant has already been dealt with; the searches we conducted in response to plaintiff's FOIA request and in furnishing the answers to his interrogatories were made of all FBIHQ files pertaining to our investigation regarding the assassination of Martin Luther King, Jr.

V Although in this and Special Agent Kilty's affidavit we have in effect answered plaintiff's interrogatories, it is my belief that plaintiff is attempting to obtain through these interrogatories information to which he is not entitled pursuant to the FOIA. Portions of his interrogatories make requests for information which does not consist of "identifiable records." The interrogatories also request information which has to be created, inasmuch as we do not presently possess this information in record form. The interrogatories request that the identities of certain FBI personnel be disclosed, which I feel would be a violation of these individuals' right to privacy, and thus exempt from release pursuant to subsection (b)(7)(C) of the FOIA. Furthermore, the interrogatories would require that we furnish information which plaintiff did not even request access to in his April 15, 1975, FOIA request. Finally, answers to most of the questions propounded in the interrogatories are contained

logically be deemed responsive to his request, and to give the requester an opportunity to avoid payment of substantial special search fees for additional material, which even if located, would appear to bear only a peripheral relationship to the subject matter of his request. We follow both the letter and the spirit of this interpretation in our response to all FOIA requests, including plaintiff's. We do not interpret the FOIA as requiring the FBI to conduct an individual's scientific and/or historical research for him by creating information which we ourselves do not presently possess in record form.

VII The FBI is being placed in the near-impossible position of attempting to prove a negative. Plaintiff is now claiming, inter alia, that there is further information in our possession which he desires, but as I have stated, we simply do not possess the records which he claims we do. At the direction of the Deputy Attorney General, we furnished plaintiff, by our letter of December 3, 1975, all information we could locate and release which the Deputy Attorney General deemed responsive to plaintiff's request, and we had done this before we were notified by the Department of Justice that plaintiff had instituted this litigation. On March 23, 1976, we furnished plaintiff the further material which his attorney's letter of February 23, 1976, stated he was interested in and would pay the special search fees for. There is nothing more we can do in response to plaintiff's request except, as stated above, he will be furnished all non-exempt material falling within the scope of his request located in the search of our Memphis Field Office.

Thomas L. Wiseman

THOMAS L. WISEMAN
Special Agent