UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. U. S. DEPARTMENT OF JUSTICE, Defendant	Civil Action No. 75-1996

MOTION TO COMPEL FORTHWITH AND TOTAL COMPLIANCE AND FOR THE RECOVERY OF COSTS

Comes now the plaintiff, Harold Weisberg, and moves this Court for an order compelling defendant to comply in full and immediately with the Complaint and the Amended Complaint in this cause; to devote all the manpower required to assure complete and full compliance by not later than December 15, 1976; to deliver all records called for on a weekly basis; to search each and every office of any and all of defendant's components, wherever located; to list every record withheld; and to supply a first-person affidavit justifying each and every withholding, whether that withholding be in full or in part.

Plaintiff also moves this Court to direct defendant to complete compliance without further cost to plaintiff and to restore to plaintiff all charges already assessed by defendant and paid by plaintiff.

In support of this motion plaintiff supplies his affidavit executed October 7, 1976.

Respectfully submitted,

JAMES HIRAM LESAR
1231 Fourth Street, S.W.
Washington, D. C. 20024

Attorney John R. Dugan, United States Courthouse, Washington, D.C. 20001.

JAMES HIRAM LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. U. S. DEPARTMENT OF JUSTICE, Defendant	Civil Action No. 75-1996

MEMORANDUM OF POINTS AND AUTHORITIES

1. The decision of the United States Court of Appeals for the District of Columbia Circuit in the Open America case, entered on July 7, 1976.

2. The Freedom of Information Act, 5 U.S.C. §552.

JAMES HIRAM LESAR
1231 Fourth Street, S. W.
Washington, D. C. 20024

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. DEPARTMENT OF JUSTICE, Defendant.	Civil Action 75-1996

AFFIDAVIT OF HAROLD WEISBERG

1. My name is Harold Weisberg. I live at Route 12, Frederick, Maryland. I am the plaintiff in C.A. 75-1996.

2. I believe I am the requester who has made most use of the Freedom of Information Act. I have filed at least 75 requests under the Act. Most of these requests have been filed with the Department of Justice, the National Archives and the Central Intelligence Agency. I have located records of 29 such requests filed with the Department of Justice. These go back more than seven years. While the record of compliance is very poor with all agencies and compliance has without significant exception been stalled and delayed by numerous contrived devices, the record of the Department of Justice in the 29 requests I have located is a record of virtually total noncompliance.

3. In the seven cases I have filed in federal district court there is not a single one in which falsely sworn affidavits have not been presented to the courts, including this instant case. There is not one in which the Assistant United States Attorneys involved have not lied to, deceived or misrepresented to the courts, including this one. Depart ment of Justice lawyers and FBI agents have sworn to affidavits of compliance that are perjurious and were proved to be perjurious. In the first case I filed, C.A. 718-70, by the time I was awarded a summary judgment I had had to compromise my request still further to obtain partial compliance. In that case as in this instant case the result was to delay a book on the assassination of Dr. Martin Luther King, Jr.

about February 15, 1965. It was the first book on the Warren Commission. Seven of my books on political assassinations have gone into commercial distribution. Each and every one of these books exposes Department of Justice misconduct in these crimes of great historical significance.

5. Only a small minority of those working in this field work and write responsibly. Most of the speaking and writing is paranoid in the extreme, utterly irrational and commonly characterized by entirely unjustified criticisms, including of defendant. Such unjustified criticism builds sympathy for those criticized and destroys all credibility. The various agencies involved in the investigations of political assassinations thus tend to favor these irresponsibles.

6. One such illustration is in the record in this instant case. It relates to my requests of 1969 and 1970 having to do with pictures taken by and reports filed by an Army intelligence agent named Powell who was on the scene of the assassination of President Kennedy. The check required of me was cashed by defendant in 1970. Defendant has not since complied in any way. However, a year or so ago defendant did give a picture taken by Agent Powell to another requester who has a long record of making the most extreme allegations. His misuse was a clear possibility that became the reality. Thereafter my counsel called this to the attention of this Court as an illustration of special treatment of me and to AUSA Dugan as an example of noncompliance. When AUSA Dugan then did nothing, in June I wrote FBI Director Clarence Kelley reminding him that my request had not been complied with while there had been discriminatory compliance with this later request. In four months Director Kelley has not acknowledged my letter or complied with this request more than seven years old.

7. I am a special case to defendant and other government agencies in other ways also. I have a different background for this kind of work than any others working in the field. This background includes experience as a Senate investigator and intelligence analyst. This prior experience, which is well known to the defendant despite defendant's affidavits swearing otherwise, includes being the only officially recognized defense investigator in the Ray case.

8. I differ also in having devoted full-time to this subject since the

complain to me of being treated unfairly. While perfection is not a state of man, the accuracy of my writing is such that not one person has complained of a single inaccurate treatment. This includes employees of the Department of Justice, to whom I have attributed felonies.

9. My work in the King assassination has been subject to testing in local and federal courts and to cross-examination and rebuttal in a long evidentiary hearing in 1974. Not a single witness I produced was rebutted or refuted. There was not even the pretense of rebuttal with regard to most of these witnesses. The evidence I produced relating to those scientific tests sought in this instant case was not even cross-examined.

10. From the outset there has been a government campaign of obstructing my work once its accuracy and content were established. This took such extreme forms as denying me the public information I requested and then soliciting others to make the same request. This resulted in political misuse congenial to official interests.

11. Another illustration of this has to do with the purloining of a TOP SECRET. It was then sold commercially by the man now President Ford. On the one hand the government did nothing about this criminal offense while on the other it persisted in denying me that same record after it was published by then Congressman Ford. It required years of effort for me to obtain that record, as ultimately I did in C.A. 2052-73. It then turned out that in publishing that record then Congressman Ford and the ghost writer he had put on the public payroll had censored it extensively. They eliminated all the many unfavorable references to the FBI and CIA without indicating any editing or omissions.

12. The Department has even intercepted and denied me records released to me by other agencies when there was no basis for this denial. In that case it required several more years. By then the government was assured of the misuse of that record by others. It then was so misused, in ways politically helpful to the Department.

13. The record of noncompliance with my requests to which I have testified, the record of perhaps 10percent compliance by defendant, represents only part of this campaign of obstruction and of nullification of the Act.

14. Successful official efforts to perpetuate this in court have converted the

blackmail. This misuse of the courts has been burdensome to me and within my experience has, without exception, negated the Act and denied me my rights.

15. Because there has been false swearing, I believe to be perjurious in all my cases, I have sought to give the courts an opportunity to relieve themselves of these manufactured burdens and to give the Act viability while assuring me my rights under the Act. One means has been to allege and prove this false swearing. Another has been to show that the AUSAs have deceived, misrepresented and lied to the courts. From my extensive personal experience which I believe to be more extensive than that of any other requester and from my prior training and experience, I believe there will be no relief to the courts unless these transgressions are punished. On the same basis I believe that, without punishment where justified, the courts will continue to be instruments of further noncompliance with and nullification of the Act. In all my cases, including this instant one, the Department has contrived to so misuse the courts.

16. Every affidavit filed by defendant in this instant case has been deceptive, misleading and misrepresentative. I have already charged FBI SA Thomas Wiseman and Civil Rights Division attorney Stephen Horn with swearing falsely to what I believe is material. There has not yet been even pro forma denial. Others also have sworn falsely to and have misrepresented to this Court. These false swearings having to do with both compliance and defendant's alleged practice in FOIA/PA cases were by FBI SAs Donald Smith and John Howard.

17. The most recent of the deliberate misrepresentations to this Court by AUSA John Dugan was on September 30. He then lied to this Court. This was duplicated the very next day in another of my cases, C.A. 226-75, on remand under a decision directing speed. In that remand decision, No. 75-2021, the appeals court also held that the release of the information I seek serves the nation's interest.

18. In C.A. 226-75 there was a calendar call on July 28, after the remand decision of July 7. We then refiled the interrogatories this defendant had refused to answer. At the end of that calendar call AUSA Michael Ryan, Mr. Lesar and I conferred. A college student also was present. Mr. Lesar informed Mr. Ryan of his plan to be abroad and the period of his absence. I asked Mr. Ryan to have the FBI's

for his office's record in these respects. He said that in the past the repeated promises to provide me with copies of its various filings had been kept only in the breach. He assured me he would send me the FBI's responses promptly and on time. When Mr. Lesar was taken ill in Singapore and was hospitalized there, I wrote Mr. Ryan informing him of this and reminding him that the FBI's responses to our interrogatories were to be sent to me. Mr. Ryan never responded.

20. In court on July 28 Mr. Lesar noted that after two months we had not received the FBI's reponses to our interrogatories. Mr. Ryan then told that court he was unaware of our having filed any interrogatories. Not only did he know otherwise from what I state above, but it was in issue before the appeals court. When the clerk then produced for the court the interrogatories we had filed, Mr. Ryan again said he was unaware of them.

21. On this deliberately false representation he asked for and was given more time for the responses to the interrogatories already overdue. If I receive meaningful and honest responses, which my prior experience does not lead me to believe I will, there will have been this further delay.

22. These delays also nullify the Act. They deny me my rights under it. In that case reponses were also overdue from the Energy Research and Development Agency. ERDA's responses total about 85 pages. They are dated the day of the morning of that hearing, October 1, which seems on the face of it to be a physical impossibility. We were handed them in the courtroom, which prevented our addressing them. A cursory glance after that calendar call establishes they are not responsive. We were foreclosed from doing anyting about this by the delay in providing them. As a result we are further stonewalled in that case in which my initial request was a decade ago and in which the first civil action was filed in 1970.

23. In both these earlier suits there is a total defense, an affidavit swearing that what I seek does not exist. No such affidavit has ever been filed. For this long period of time the Department has dragged me through the courts, all the way to the Supreme Court and more recently again to the court of appeals, without once ever swearing that what I seek does not exist. Now to deny me this public information still again the AUSA lies to the Court and is immune from the consequences thereof.

to be false. Mr. Dugan feigned outrage over the request for the production of these indices when Mr. Lesar first mentioned their production. After that calendar call he, Mr. Lesar and I discussed them. We then told him their relevance to compliance with my April 15, 1975, request. This relevance to that request is established by Civil Rights Division records.

25. One is the Memphis prosecutor's September 27, 1968, complaint about FBI stonewalling. On October 22, the prosecutor thanked the Civil Rights Division for these "beautiful" indices in a manner indicating their relevance to compliance with my April 15 request. The description of these three boxes of indices and of the 25 numbered volumes of records they index is in the Civil Rights Division's letter of October 18, 1968, to the prosecutor:

> One, in alphabetical order, reflects an interview of or reference to the individual listed. The second box contains the testimony, chain of evidence, and physical evidence (when it has not been specifically designated by the FBI) relevant to each episode in the case. The third box contains all the physical evidence with "Q" numbers by the FBI, the chain of evidence to that item, and any laboratory examination done. There is also a section on all photographs and maps prepared, fingerprints examined, and "known" physical items used for comparison purposes.

26. This letter also includes "a key to the volumes indexed." Our request for their production also has not been met.

27. From this description there is no doubt these indices and volumes are relevant to my April 15 request. Producing either will prove deliberate noncompliance and still other false swearing. If Mr. Dugan knew this no other way, I told him. He knows there is no basis in fact for telling this Court I was on any kind of fishing expedition limited to my December 23 request.

28. This <u>is</u> relevant to compliance with my request of a year and a half ago. I have been before this Court about a dozen times over the past nine months without that request being complied with. The purpose of this lie and all the other tricks and false swearings is to avoid compliance or delay it to the degree possible for ulterior purposes outlawed by the Act.

29. When an AUSA can tell this Court a lie of this magnitude with impunity, the Act has no meaning and this Court fails to assure me of my rights under the Act. Within my personal experience this is one of a series of such lies and other means by which the Department of Justice misuses the courts to avoid compliance and to

25 numbered volumes indexed are further proof of the deliberateness of SA Wiseman's false swearing. The most obvious example in the record relates to pictures of the scene of the drime. AUSA Dugan assured this court there were none. SA Wiseman swore there were none.

31 One picture of the scene of the crime was given to me after summary judgment in C.A. 718-70. As has since been admitted, there are other pictures of the scene of the crime. I believe it is not possible for any FBI agent or AUSA not to know that pictures of the crime scene are normal and essential items of evidence in such criminal cases. There are also pictures provided by the Memphis police. I informed the FBI through SA Wiseman, in the presence of FBI SA Blake of the FBI Office of Legal Counsel, that I know from a ranking official of the Memphis police department that the FBI has these pictures. These pictures are withheld from me - not even shown to me - on the spurious sworn claim of need to protect a "confidential" source. This, too, is a deliberate false swearing. There is no confidentiality about the source. In addition, there is a published and public FBI Handbook for local police describing the pictures of crime scenes that the FBI wants. In addition, these records about which Mr. Dugan was untruthful to the Court contain "a section on all photographs." (Emphasis added) This clearly is in my April 15, 1975, request.

32. On September 17 I testified that to his knowledge Mr. Stephen Horn swore falsely to full compliance with my December 23 request. I was not cross-examined on this. Mr. Horn swore falsely in his description of the files he searched. He swore of his search that it "comprises all of the documents pertinent to Mr. Weisberg's Freedom of Information request. I am in possession of no information, direct or indirect, to lead me to believe that there are any other pertinent documents in the possession of the Civil Rights Division or any other Division of the Department of Justice."

33. This is deliberate false swearing on many counts. One is that at the time of my requests the Civil Rights Division had possession of some 3,500 such documents. Mr. Horn lists eight numbered items as the totality of the Department's relevant records. Two of these only are numbered files, he swears. Yet the records he personally provided list seven numbered files.

any of these four. As an example of relevance to my December 23, 1975, request I cite "2, A folder containing memoranda and FBI reports on the Memphis Sanitation Strike of March-April 1968." I have received no compliance with this item of my December 23, 1975, request.

35. There are other items of Mr. Horn's false swearing. These are consistent with his November 3, 1975, recommendation that there be no compliance and that some legal contraption be rigged for subsequent justification. His exact words are already in the record in this instant case.

36. The affidavit of Mark L. Gross may escape being perjurious in that it is based on hearsay. Its Attachment A further establishes the falsity of the Horn affidavit in stating that "The number of files compiled by this (Civil Rights) Division ... is substantial."

37. The affidavit of F. Ross Buckley of the Criminal Division does not attest to compliance with my December 23, 1975 request. It is so evasive it does not even identify the request it supposedly addresses, although attesting to compliance is its ostensible purpose. It is at the least deceptive. One example is in its paragraph 2, which concludes, "I also maintain copies of correspondence related to such requests which have been assigned to the Criminal Division for determination and response." One item of my December 23, 1975, request is for all correspondence with me. In 1968 the Attorney General referred my requests to the Criminal Division. That letter and the referral are among the numerous items in his possession that Mr. Buckley still withholds. I have put some into the record in this instant case as recently as September 30. Yet Mr. Buckley swears to possession of the files and "personal knowledge" in Paragraph 3 and to close supervision of compliance in Paragraph 2.

38. Had Mr. Buckley complied, he would have been forced to produce proof that my requests under FOIA in this matter go back to 1969, as is proven by my September 17, 1976, testimony and the records I filed September 30, 1976.

39. False swearing characterizes the other affidavits attached to Defendant's Motion to Stay, as it does SA Wiseman's earlier affidavits and those filed in my other FOIA cases. About these affidavits AUSA Dugan also misrepresented to this Court and thereafter lied to Mr. Lesar and me. In addition, not one of the affidavits

statistics are a major means of misrepresentation, exaggeration, evasion and deception, including of this and other courts. With the Warren Commission the FBI boasts of having provided it more than 15,000 written reports. It did, apparently, in its evasion of basic fact of that monstrous crime. It impressed that Commission with the capabilities of its laboratory sciences by proving that pubic hair recovered from Lee Harvey Oswald's blanket was the pubic hair of Lee Harvey Oswald alone. The FBI procured pubic hairs from the still-live Oswald for comparison. But with that blanket without question the blanket of Lee HarveynOswald, no evidentiary purpose was served by proving the hairs on Oswald's blanket were indeed Oswald's. However, in all this pseudo science and all those thousands of irrelevant reports that overwhelmed Commission minds, the FBI did not provide the results of its own basic work on the basic evidence, such as the spectrographic analysis of the ballistics and ballistics-related evidence. (I am still in court seeking these test results after six years of effort.) Nor did it provide what is also basic in a homicide, the certificate of death. That evidence this Commission never had. It became public through my FOIA efforts and subsequent facsimile publication. The FBI provided the Commission with no basic medical evidence. It deceived this Commission in countless ways. Nonetheless, it provided some 15,000 reports. These make impressive statistics but the statistics are a deception without the FBI's having given the Commission what it did not give it, the most basis evidence of that homicide. A current representation of statistics as Operation Mark Twain, the manner in which they are used before this Court, is contained in the Washington Post editorial of October 3, 1976. It reports General Accounting Office testimony to Congress on the FBI and its misuse of statistics. (Attached as Exhibit 1)

41. Stripped of its irrelevancies and traditional misuse of fabricated statistics, the affidavit of Quinlan J. Shea actually attests to noncompliance and the intent not to comply. It also is limited to my December 23, 1975, request, which was appealed January 18, 1975. What Mr. Shea actually swears to in his Paragraphs 5 and 6 is that my appeal of my April 15, 1975, request should have been processed long, long before I filed my Complaint. He states that there was a "closing rate" that in any interpretation should have included my appeal.

the Unit received 918 matters" of which "700 were closed." (Paragraph 6) Thus, by his own figures, "a closing rate of more than 76%," if taken in sequence, my appeal of January 18, 1976, also should have been completed long ago. He cites no provision of any Act authorizing skipping over my requests and appeals and I know of no such provision. Despite this, he states there is an "inherent unfairness in assigning cases for processing other than in turn." (Paragraph 14)

43. He then states falsely that "The priority of Mr. Weisberg's appeal will be determined by the date of receipt." (Paragraph 17) From this same paragraph the falsity of this representation is apparent because the FBI has not begun to process my December 23, 1975, request, whereas Mr. Shea also states "processing of plaintiff's appeal will not commence until there has been an initial determination by" all "the components to which the request was referred." Assuming that all components in possession of relevant files received referrals, as is not true, for example, with respect to the Office of Professional Responsibility, compliance is deliberately stalled in Mr. Shea's own representation.

44. The actuality is that both Mr. Shea's Unit and the Office of Professional Responsibility are part of the Office of the Deputy Attorney General, from which Office to date there has been no compliance.

45. This engine for perpetual noncompliance is fueled by the constant shuffling of relevant files from one component to another so that each can at some point claim not to have possession, whereas several had possession subsequent to my requests and failed to comply in any degree from those files.

45. Mr. Shea's affidavit is refuted by his and his deputy's letters. Under date of May 21, 1975, Mr. Shea took an extension of time on that appeal to "not later than June 5." On June 5 Mr. M. Richard Rogers wrote "we had fully expected that we would complete the processing of your client's appeal by today." He promised a further communication by "not later than June 19, 1975." The actuality is that to this day - more than a year later - there has not been compliance.

46. This is the Department's intent. The simplest proof of this is that the overwhelming percentage of the files of known relevance, some 200,000 by the Attorney General's own estimate, were not and to this day have not been searched for even

to an appeal almost six months old. With regard to that appeal he stated that "if the final response to you by the Bureau is other than a substantial grant ... we will then process" Director Kelley's letter as my "appeal on the merits." This is a claim that I may not even file my own appeal, as I did on January 18, 1976. It is a rewriting of the Act by the Department to permit endless noncompliance.

48. Mr. Shea's affidavit also is false because: the FBI has not yet begun to process my December 23, 1975, request; it refuses to state when it will complete processing that request; and only after it completes whatever it will designate as compliance will Mr. Shea's Unit commence its review. And at that unspecified time in the distant future, Mr. Shea still does not promise compliance. He again rewrites the Act to state he will determine whatever he may mean by "substantial compliance." Within my experience the Department has called total noncompliance "substantial compliance." This language is not in the Act. It was rejected by the court of appeals in my No. 75-2021 prior to Mr. Shea's affidavit. In itself this is still another machine for the nullification of the Act, a machine for perpetual noncompliance falsely described as compliance.

49. The foregoing does not represent all the Department's mechanism for perpetual noncompliance. From Mr. Shea's affidavit, at some unspecified date in the far distant future, that complex machine for noncompliance rumbles into reverse gear all over again. While Mr. Shea uses his statistics to boast about himself, they are in fact a true horror. He brags (Paragraph 11) of his "reversal or substantial modification of the initial response to the request for Justice Department records" in "over 50% of the cases appealed." If in this he is careful not to isolate those multitudinous FBI denials, Mr. Shea attests to a record of impressive and deliberate noncompliance. This is what I have experienced over the years in virtually all instances with regard to my many requests and in all cases filed in court, particularly in this instant case.

50. Mr. Shea swears that 10 years after enactment of FOIA and two years after it was amended to effectuate compliance there still has not been compliance in more than half those cases that reach him alone. This means that after 10 years of the Act, the Department begins with noncompliance in even more than half the cases. In

requests until after February 1975. It is grossly false in claiming "more than diligent efforts to comply with all requests, including plaintiff's, on an equitable basis." (Paragraph 6) I have some two dozen totally ignored requests going back more than seven years. By SA Smith's own figures (Paragraph 7), all my requests prior to October 1975 should have been processed when in fact these several dozen have not been.

52. By these same figures reporting the processing of 8,713 of 13,875 requests by the end of 1975 and a backlog of 5,172 requests, mine of last year all should have been processed by now. In fact, not one has been. Some of these requests require little time. They are for only a single file.

53. SA Smith also swears falsely in stating in Paragraph 8(d) that the allegedly impartial "procedure is followed without exception in every one of thousands upon thousands of requests." He then (Paragraph 9) swears falsely to the processing of "these requests in chronological order based on the date of their receipt" and that "this is the policy the FBI is presently following." Faithful to Orwell, SA Smith goes on (Paragraph 13) to claim that a record of virtually total noncompliance with regard to me and my requests proves that "the FBI has made every reasonable good faith effort to comply with the letter and spirit of the amended FOIA." Here he again swears falsely "to the processing of all requests in chronological order based on date of receipt."

54. SA Smith's affidavit of falsities is dated May 28, 1976. It was withheld until August 10. Mr. Shea's affidavit had been promised by AUSA Dugan for much earlier. It also was withheld until AUSA Dugan knew my counsel would be abroad for a month. He then filed both at a time when the earliest they would reach my counsel was the moment of departure, when he could in fact do nothing about them. This created many problems for me and an enormous waste of my time, four weeks of long days of it.

55. This is consistent with the Department's and Mr. Dugan's long records of such devices. They go back to 1970, in this instant case to prior to and immediately after the first calendar call of February 11. The FBI had violated its own regulations to withhold any compliance. SA Wiseman did this by writing a letter that demanded a blank check of me. However, under the provisions of 28 C.F.R. 16.9, especially

In the end Mr. Dugan promised to do no more than use his "good offices." He never did. In perpetuating this violation Mr. Dugan was part of this machine for continuing noncompliance.

56. Mr. Dugan's withholding of his Motion, Response and all their attached affidav its until to his certain knowledge I would be without counsel is one of the reasons I cannot be certain of having located all my relevant records.

57. This followed immediately upon the appeals court's Open America decision and the transparent possibilities it provides for the misuse attempted in this instant case. It also followed upon numerous claims to good faith and due diligence in this instant case. To be able to address these claims I had a college student start going over my files to segregate each request in a separate folder. In 10 days he did not complete this task. This left some of the files unsearched and the others all rearranged by the subject of the request. Only after my files were thus taken apart did Mr. Dugan file his Motion to Stay and his Response, with their attachments.

58. As I have testified, I am and have been without regular income or substantial means. I neither have nor can afford any regular help. I have no file clerk. In addition, I was first taken ill with pneumonia and pleurisy shortly after filing the April 15, 1975, request. Thereafter, acute thrombophlebitis caused hospitalization in October 1975. For some time I was not able to move around much. I remain limited in some physical capacities, including bending. This means that some filing going back more than a year and a half has been impossible for me. This incapacity compounds the problems set forth in the preceding paragraph.

59. As one consequence, there may be still more requests that I have not located. Mr. Dugan has refused to supply the Department's records of these requests. Those that are called for in the Complaint have not been provided. I filed an FOIA request for these records on January 30, 1976. There has been no response and no compliance. I have made every possible effort to locate every record for this Court's consideration. I have located 29 requests I made of the Department, with almost no compliance.

60. One of these is directly relevant to the foregoing accusations of deliberate

the Department's acknowledgments guarantee confusion. They do not disclose the subject matter of requests. I have made repeated complaints about this and in fact have had to trap the FBI into admission of having received requests it claimed not to have received. One of these is for these files on or about me. I believe I filed such a specific request on October 27, 1975, shortly after leaving the hospital. Back as far as 1969 I had complained about FBI intrusions into my life and work. I had been promised an investigation by Attorney General Mitchell. Thereafter I failed to receive even a pro forma denial from Director Hoover. References to this are included in the records the Criminal Division also withholds in this instant case.

61. There is no doubt that, whether or not I made an earlier request as I am confident I did, on November 28, 1975, I made an "all-inclusive" request of the Attorney General. This was not limited to the FBI. Because of the Department's long record of not acknowledging receipt of requests, to be certain of having a record, I used certified mail, Receipt Number 898,526.

62. I had no way of knowing what Director Kelley refers to in his letter of December 12, 1975, because he does no more than "acknowledge your Freedom of Information-Privacy Acts (FOIAPA) request by the FBI on December 5." (See attached Exhibit 2) His subsequent letter, dated January 26, 1976, pursuant to my request, makes partial identification of my requests of October 27, 1975. (See attached Exhibit 3) It makes no reference to my request of November 24, 1975. After further prodding, under date of February 13, 1976, Director Kelley acknowledged receipt of my November 24, 1975, request. He then told me to "be assured that there has been no 'deliberate creation of confusion' on the part of the FBI in connection with the accounting for, and processing of your requests." The plain and simple truth is that most were and remain entirely ignored. (See attached Exhibit 4)

63. At the end of the calendar call of September 30, I was faced with still another of the endless contrived delays in this matter now more than seven years old. Ordered to present a plan for compliance within 10 days, the Department had not done this, either, after 14 days. I was then seeking a dramatic representation of the deliberate falsity of the Department's representations to this Court. Based on my previous experiences, I was certain that random effort would produce such proof.

obtain the files on himself. By happenstance he had just received the CIA's files on himself that day. They were unopened on his desk after a delay of two months in reaching him. (His request of the CIA was much later than mine.)

65. With regard to his request of the Department, Mr. Whitten had a large collection of xeroxes that took up about half of the seating space on the sofa in his office. He pointed them out to me and told me to take what I desired. Without a page=by-page search of that part of what the Department supplied Mr. Whitten that was on his sofa, I did remove and he did have copies made for me of enough correspondence to establish further that I am a special case to the Department and that all its relevant representations under oath to this Court are false.

66. Mr. Whitten's request was made November 14, 1975, 10 days before mine of November 24. On December 5, Director Kelley acknowledged receiving Mr. Whitten's request on November 17. Director Kelley gave Mr. Whitten further assurances on December 24. On March 3, 1976, the same E.Ross Buckley who provided an affidavit in this instant case wrote Mr. Whitten that they were taking only "an additional fifteen days" and would make a "determination ... not later than March 16, 1976." On the 18th, Acting Deputy Assistant Attorney General Robert L. Keugh of the Criminal Division wrote Mr. Whitten. He began by reporting the locating of relevant records in 14 different and identified numbers of the Department's "system of records." In addition, by then he reported locating files in five field offices. He accompanied this letter with an itemization. He was also specific in declaring that there are other relevant files having to do with surveillance. Mr. Buckley wrote Mr. Whitten on March 24 about this surveillance. He then alleged Mr. Whitten's request was "defective" because Mr. Whitten did not "name any of the agents" who conducted this surveillance. Mr. Buckley's estimate of the time required for a search of the "chronological and unindexed" files on consensual surveillance was 120 hours. I note this with special reference to the testimony of SA John Howard on what makes a project determination as distinguished from a nonproject. With regard to Mr. Whitten's request, Mr. Buckley assured him of a "full response" that "will be forthcoming shortly." All this in about four months. (Exhibits 5, 6 and 7 attached.)

this letter there was an offer to search still more files, such as those of the FBI's Identification Division. Contrary to SA Howard's testimony about what is a project and what is not, there remained extensive withholdings under (b)(2) and (5) and under (b)(7) and four subsections thereof. (Exhibits 8 and 9 attached)

68. Also bearing on discrimination against me, noncompliance and the intent of not acting with due dilligence or good faith with regard to my requests is the experience I have had compared with that of Mr. Emory Brown. I received records by mail from him on October 2, 1976.

69. On December 20, 1975, under FOIA I requested the results of certain scientific tests in the murder of Dallas Police Officer J. D. Tippit. (See Exhibit 10 attached) Since then, after almost 10 months, only silence from the FBI despite SA Howard's testimony of August 16 that the lag in nonproject cases is about six months only.

70. On April 23, five months after my request, Mr. Brown wrote the FBI a letter in which he requested some of this information. Mr. Brown's letter is explicit in stating it is not an FOIA request. When he had received no more than an acknowledgment, being unaware of the FBI's Operation Mark Twain for the fabrication of statistics to defeat the Act, Mr. Brown wrote again on June 18, asking when he might expect an answer to his letter. (See Exhibit 11 attached)

71. Under date of July 7, Mr. Shea's Deputy, Mr. Rogers, retailed the form statistical response of Operation Mark Twain to Mr. Brown, solicited his patience, and told him his appeal number is 1755. (See attached Exhibit 12) There was no appeal. (See Exhibit 13 attached)

72. Under date of August 18, Director Kelley complied with Mr. Brown's nonFOIA request. In this compliance he provided Mr. Brown with information that has been withheld from me in two civil actions, one current. In them I have been forced to go to the court of appeals three times and the Supreme Court once. (See Exhibit 14 attached)

73. Five days later Mr. Brown complained to Director Kelley about the maskings of names. (See Exhibit 15 attached) Under date of September 17, one of the three days on which the FBI was lying to this Court under oath, Director Kelley wrote

of the FBI" when the name alone relates to neither. He claims the investigatory-files exemption when he, the Department, the Act and the courts have already held otherwise. He also claims that the withholding of the names of agents is necessary in order not to "endanger the life or physical safety of law enforcement personnel." (This magnifies the immune defamation of me by SA Wiseman whose affidavit attributes the identical masking in this instant case to the need to protect these enfeebled FBI agents from my "harassment.") However, with the logic of the Mark Twain project, Director Kelley holds that in historical cases there is no chance of hurt to his agents, whereas in cases not of historical importance their murders may be imminent. His explanation is carried further: "The assassination of John F. Kennedy (sic), of course, is historical and this information should not have been deleted since it is already a matter of public record."

74. Director Kelley did write Mr. Brown that these should not be the maskings in historical cases. That the Department persists in this unjustified masking illustrates another of its means of perpetuating noncompliance in this instant case. Mr. Shea confirms under oath that this is an historical case. This Court did direct that all maskings be justified, did say that frivolous maskings are not authorized by the exemptions. I did ask SA Wiseman for unexpurgated copies. He did refuse them, regardless of what Director Kelley says. He added, "I'll see you in court first." In the ensuing half-year neither he nor anyone else on behalf of the Department has complied with the expression of this Court, my request, the Act -or the Director's directive. Nor has AUSA Dugan, with whom I also raised this question.

75. In four months beginning in April 1976 Mr. Brown's nonFOIA request was treated as an FOIA request, his nonappeal was treated as an appeal and he received information without any cost for search or even xeroxing. In two and a half times longer I have heard no word, received no paper and had no acknowledgment of appeal after as long as the entire process required for Mr. Brown.

76. So anxious was the Department to breathe synthetic life into its Operation Mark Twain that it even processed Mr. Brown's original nonrequest as an appeal and did that before the FBI could respond. This was in four days according to the July 7 letter of Mr. Shea's deputy, Mr. Rogers. He wrote Mr. Brown of receipt of the non-

77. My appeal in this instant case is 1359, about 400 ahead of Mr. Brown's. But the processing of my request of last year has not even commenced.

78. There has been no compliance with many of my FOIA requests, all prior to Mr. Brown's nonFOIA request.

79. In this instant case it has been sworn repeatedly that all requests are processed in chronological order, in the order of their receipt. Mr. Brown's non-request, as well as Mr. Whitten's request, both of recent compliance, are long after mine.

80. The foregoing leaves no doubt that all live and affidavit testimony in this instant case with regard to compliance; procedures; nondiscrimination and chronological processing of both requests and appeals; good faith and due diligence; and the limitations imposed upon the Department by the volume of requests is false. There is no reasonable doubt that all those who testified knew they were swearing falsely.

81. From this record I should have had compliance with my last request for the files on me and full compliance with all requests made prior to it, some of which were for a single file only. Some were specifically identified by Director Kelley, for example, in his letter of December 12. In it he refers to requests of October 27. I have since heard not a word about any of them. I have received total noncompliance with regard to all of them. October 27 is prior to November 14, the date of Mr. Whitten's clearly complicated request. None of my October 27 requests is complicated. None required any extensive search. All could surely have been completed in less than the estimated 120 hours required for the search of a single one of the at least 19 sets of records searched prior to Mr. Whitten's appeal. Mr. Whitten received what is described as full response and an offer to search still other files in nine months. He had partial compliance in four months. By the Department's own definition his request was a "project." I have not had compliance with many nonproject requests. In this instant case there still has not been either compliance or certificaton of compliance with what the Department arbitrarily designates as my "project" request of seven months prior to Mr. Whitten's request.

82. There are many other illustrations of intent not to comply and refusal to

with any of my "nonproject" requests. Yet noncompliance remains the rule despite the abundant perjury about compliance and all related matters in this instant case.

83. There has been no claim to exceptional workloads outside the FBI, whether or not that one claim is true and justified. There also has not been compliance in this instant case by any component other than the FBI. There has been no promise of belated compliance. There has been no response to proof of noncompliance.

84. While compliance and noncompliance are here and now at issue, from my personal experience much more also is at issue. This stonewalling, this perjury, all of what I regard as contempt of this Court by and for the defendant, has other purposes. From my experience these purposes include again interfering with my work and for the second time delaying the book I had to lay aside almost a half-year ago. This is my second book on the King assassination.

85. There is an elaborate disinformation operation afoot. What I seek is embarrassing to defendant. What I have received in the minuscule compliance to date, this extremely limited compliance of months ago, is already embarrassing to defendant. Those few pages, however, do establish complicity in a fake solution to the most costly crime in our history. This complicity is by both the FBI and Divisions of the Department. From its prior experience, the Department knows that others who can in time receive what I sue for are certain to misuse it and provide the Department with a defense against their spurious charges. In the course of this, legitimate complaints against the Department will be lost. There will be exculpation of the Department from these devices. This becomes even more important with a House committee established and functioning, an uninformed House committee known to be riven by internal differences and known to be uninformed on this subject, which is specifically included in its mandate. Noncompliance with my requests thus becomes a means of misleading that House committee, as the Department has already succeeded in misleading other Congressional committees on this subject. What is particularly motivating to the Department with regard to me is its certain knowledge that I am not deceived by these ploys.

86. As one example of this, I cite the news stories by Les Payne I entered into the record in this instant case. Their origin was my correct analysis of the

in Memphis to be killed there. Mr. Payne's excellent journalism comes from these proofs and specific sources I turned over to him.

87. In this connection and to my personal knowledge, although there has been total noncompliance with that item of my December 23 request, Director Kelley caused an investigation to be made in February, after the appearance of Mr. Payne's stories. This investigation was completed more than six months ago. There has been testimony in piecemeal compliance. In these more than six months I have not received a single piece of paper as a result of this special investigation that is included in this item of my request. There could and should have been compliance with it, based on this special investigation ordered by Director Kelley, prior to the second of the many calendar calls in this instant case.

88. Were this Court to direct immediate compliance and order that all the Department's FOIA personnel be assigned to this instant case, from my personal experience even that drastic step, were it not to be appealed, still would not mean and would not delay compliance. It also would not mean an end to stonewalling and multitudinous contrived delays.

89. From my personal experience the courts have tolerated any and all abuses of the courts themselves, the Act and of me. Permeating perjury has been immune. Nonresponsiveness is accepted. It never ends. Lies by AUSAs are normal and without exception have been tolerated. Noncompliance with the courts' directives are commonplace, including those of this Court. I can recall no single instance of Departmental compliance with any directive of this Court. The most recent is this Court's September 16 directive that an acceptable plan for compliance in this instant case be filed within 10 days. It was not filed in the 14 days to the next calendar call. I have not since received it, whether or not on filing it will be meaningful.

90. Months ago, when through counsel I first displayed to this Court that maskings are of ridiculous frivolity and a means of stalling and of noncompliance, this Court directed that all maskings be justified. Through counsel I continued to prove to this Court that these maskings are without any basis at all. The most recent of many occasions was through the testimony of FBI agents on September 16. Despite my citations of this Court's words and repeated complaints, in person and in writing;

after my complaints on this point, the Civil Rights Division masked whole pages of what has been on coast-to-coast TV. No matter how often I prove the existence of still withheld records, they remain withheld, in toto or in part, through these extensive maskings. In not one instance of the many extending backward more than half a year has this Court been heeded by the Department on this point alone.

91. Another of these endless mechanisms for noncompliance is illustrated by the Department's perjury about pictures of the scene of the crime. This was followed by spurious and incompetent invocation of exemptions for those still withheld after possession of them was admitted. These do not include all pictures of the scene of the crime I have reason to believe the Department has. The Department claims there is a copyright immunity on the Louw/Time, Inc. pictures. No proof of this has been presented to this Court. I have asked Time, Inc. and the Department for this proof without response. Ultimately Time, Inc. gave me virtually useless prints about an inch in their larger dimension. This question now has been reduced, after months of wasted effort on my part, to whether I will pay Time, Inc. 25 times what the Department charges for individual prints.

92. Months after the false claim to an alleged "confidentiality" to those pictures given to the Department by the Memphis Police Department, months after this Court indicated otherwise and more than eight years after the Department's public use of these pictures - more than 17 months after my FOIA request for them = they have not even been shown to me. I have been refused copies. Were there legitimacy to the false claim to confidentiality of sources, showing these pictures to me would in no way disclose their source. Yet this Court has done nothing to require compliance with this item of my April 15, 1975, request, which is a repetition of my ignored request of March 1969.

93. It was sworn to this Court that there never were any other suspects in the King assassination. It is a fact and that fact is in evidence before this Court, the FBI filed conspiracy charges in the King assassination in Birmingham, Alabama, in April 1968. A one-man conspiracy is an impossibility. In addition on this point, I have specified to this Court, without any denial, that the files of the Washington Field Office of the FBI contain evidence of another suspect. I

compliance and deliberate false swearing there has been no response and this Court has not ordered any response. I have addressed this above in establishing that AUSA DUgan lied to this Court on just this point on September 30. Those relevant 25 numbered volumes of FBI reports covered by those three boxes of indices fall within my requests. Those volumes, actually 29 in number, remain withheld from me in the most overt and deliberate noncompliance.

95. At the outset of this long series of calendar calls and hearings that are so taxing and costly to me in all ways, I established that the Department had actually altered my April 15, 1975, request by rewriting it to limit it as I had not limited it. I had protested this rewriting and limiting of this request to the Department immediately. The Department has made no response after 11 months. This Court has done nothing about this Departmental rewriting of that request or the false swearing to compliance by SA Wiseman. It has required no proof of compliance from any other component.

96. SA John Kilty, who has an unpunished record of undisputed prior perjury in my C.A. 75-226, has sworn falsely to this Court, claiming full compliance with my April 15, 1975, request relating to the FBI laboratories. The aforementioned 25 numbered FBI volumes indexed in those three boxes of indexes prove the falseness of SA Kilty's swearing to full compliance. This Court as recently as September 30 refused to force the production of those records or to face this newest of SA Kilty's false swearings.

97. My FOIA requests in this instant case are addressed to the Department, the entire Department. The Department and AUSA Dugan have rewritten this, without any compulsion from this Court, to limit my requests to whatever may be meant by its "central index" as my requests relate to the FBI. The Department and AUSA Dugan have refused to comply from the FBI's field office files. Yet the record in this case, coming from the Attorney General himself, proves that <u>there are more than 500 times more relevant files in these field offices than there are in Washington</u>. It is the FBI's own testimony of September 16, 1976, that most of these records are in the field offices. Compliance with the Act and with my requests is impossible as long as this Court permits this added rewriting of my requests. This is even more true

committee.

98. With the already well publicized FBI abuses relevant to the King assassination, there is apparent political motive in all the many forms of non-compliance with my requests. These rewritings of them by the Department are only one such form. As one of many other examples of political motive, I refer to the FBI's Cointelpro/Invaders complicity as proven herein by the Les Payne stories that began with my work and Mr. Horn's listing of the relevant files from which there is total noncompliance despite his oath to the contrary.

99. My personal experiences with the Department's Divisions and the FBI go back to the 1930s. I then lived and worked with their personnel when I was borrowed by the Department from the Senate. Thereafter I worked with several Divisions when I was an investigative reporter. I had further such contact when I served in O.S.S. I have had extensive experience with the Department and the FBI with regard to records of the JFK assassination. This goes back to 1966. Aside from my personal experience in a large number of FOIA/PA requests, I have been in litigation with the Department itself and when it represented other defendants nine times that I recall. Seven of these are FOIA matters. I have also been a witness for the Department in prosecutions and an expert for it in the preparation and trial of a case. As a reporter I have had personal experience observing the workings of the Department and its various components, including the FBI. I have made what I believe is the largest study ever made of the FBI in my work on the JFK and King assassinations, in both of which the FBI conducted most of the so-called investigations. I believe this is an experience qualification matched by no other requester under FOIA.

100. From this long and multifaceted personal experience, I am certain that as long as courts are complacent about and impose no sanctions on those who abuse the courts, the Act and me, there will not be compliance with the Act. The courts will be abused until the Department succeeds in its unhidden campaign to nullify the Act and then compel its unnecessary amending. Mr. Shea was unable to testify before this Court on September 16 because on that day he made precisely this demand of the Congress, that the Act be amended. His demand was based on these phony statistics. If honored, it means the denial of public information to the electorate.

misrepresentation and false swearing impose on us are insurmountable. This in fact is one of its purposes, to frustrate my work and frustrate the Act. It also prevents other compliance while building still more phony statistics to justify still more noncompliance.

102. From my personal experience I see no end to this lawlessness and to the deliberate burdening, if not overwhelming, of the courts as a means of negating the Act the Department does not want to live with. In this the courts, intimidated and blackmailed by the enormity of the work with which they are confronted, have become the tool of errant officialdom in its noncompliance with and nullification of the Act. From my extensive personal experience and from my prior experiences, there will be no relief for the courts, no meaningful compliance with the Act, no end to the deliberate waste of time and money and no rights for me and other requesters unless some court punishes those who have committed punishable acts in the course of this lawless campaign to nullify the Act.

103. I believe that in this affidavit I have equipped this Court to follow such a course; to give the Act viability and meaning; and to offer a means of relief to all abused courts.

_____

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 7th day of October 1976 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires _____

_____

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

EXHIBIT 1

Understanding the FBI Post 10/3/76

THE OTHER DAY, Victor Lowe, an official of the General Accounting Office was testifying before Congress about GAO's progress in its systematic audit of the FBI. In the course of his testimony, he told the members of Congress a very revealing little story about the bureau. According to Mr. Lowe, "a suspect wrote 10 worthless checks totaling $887 at two military installations. The FBI investigated the case and presented it to the U.S. Attorney. The suspect was convicted of each of 10 complaints and the FBI reported 10 convictions."

Ten convictions? It doesn't take a statistician to see how quickly an agency's statistical portfolio can be improved by such practices, and Mr. Lowe came up with other examples from a GAO sampling of FBI cases:

• The bureau was asked to check the backgrounds of two plaintiffs who were suing the government for $1 million in a land transaction. Before the bureau could report back to the U.S. Attorney, the plaintiffs' claim was dismissed on the merits by the court. Nonetheless, FBI statistics record the case as a "$1 million saving" for the government by the bureau.

• The FBI recovered copies of a copyrighted film from a collector, who had made no money from showing the film. "However," Mr. Lowe testified, "the FBI claimed a recovery of $329,627, ascertained by applying a certain per cent to the original film's gross receipts to date."

Mr. Lowe went through various categories of statistical gyrations engaged in by the bureau to make itself look good. It was all part of the enormous public relations effort undertaken when the late J. Edgar Hoover was building the FBI's image as the most formidable police agency on earth, an agency that claimed annually to imprison "14,000 felons for 55,000 years." In many instances pointed out by Mr. Lowe and others before him, those claims bore little relation to reality. At the same time, there was a rule, "Don't Embarrass the Bureau," and to breach it might lead to banishment to Missoula or worse. So, naturally, FBI burglaries were not part of the annual statistical portfolio of bureau accomplishments, nor were the accumulations of instances of harassment of citizens whose ideology displeased Mr. Hoover.

But Mr. Lowe's testimony is part of an extremely encouraging development. The bureau as an institution is undergoing profound change, and the fact that Mr. Lowe was able to testify as he did is only one manifestation of that change. When GAO began to audit every important phase of the bureau's operations, the FBI (with the backing of the Department of Justice) resisted intrusion into the recesses of its operations. A great deal of negotiating was needed before the bureau agreed to permit GAO to sample the results of its cases. The reason we know about the details of some of the FBI's inflated claims is that it permitted GAO to look into its caseload. There was a time when such outside inspection was not only forbidden, but unthinkable.

It is this sort of outside examination that can recreate the FBI as an effective police agency. The outlines of this FBI-in-the-making are already visible in the call by FBI Director Clarence Kelley for "quality over quantity" in the cases his agents now handle. This transitional process is neither pleasant nor easy. But the end result is likely to be a real police agency, one that need not rely on cooked up figures for its prestige. Such an FBI would be one that people respected for its achievements, not for its phony claims.

EXHIBIT 2

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

December 12, 1975

Mr. Harold Weisberg
Route 12
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is to acknowledge receipt of your Freedom of Information-Privacy Acts (FOIPA) request by the FBI on December 5, 1975.

An exceedingly heavy volume of FOIPA requests has been received these past few months. Additionally, court deadlines involving certain historical cases of considerable scope have been imposed upon the FBI. Despite successive expansions of our staff responsible for FOIPA matters, substantial delays in processing requests continue.

The FBI has 5,544 FOIPA requests on hand. Processing has begun, and is in various stages of completion on 1,039 of those cases. In an effort to deal fairly with any request requiring the retrieval, processing and duplication of documents, each request is being handled in chronological order based on the date of receipt. Please be assured that your request is being handled as equitably as possible and that all documents which can be released will be made available at the earliest possible date.

To expedite release of any documents which may pertain to you, please submit your notarized signature. This procedure is designed to insure that information concerning an individual is released only to that person.

Your patience and cooperation will be appreciated.

Sincerely yours,

Clarence M. Kelley
Director

EXHIBIT 3

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

January 26, 1976

Mr. Harold Weisberg
Route 12
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in response to your letter dated January 12, 1976, addressed to Special Agent Thomas H. Bresson of our Freedom of Information-Privacy Acts (FOIPA) Section.

Our records indicate you have pending with this Bureau requests for information involving three separate subject matters. We have been unable to initiate processing of these requests due to a current heavy workload.

Your October 27, 1975, letter contains your request for information concerning the Silver Shirts and a request for certain film footage in connection with the John F. Kennedy Assassination. The third request was contained in your letter dated December 20, 1975, relative to certain laboratory data which may have pertinence to the murder of Officer J. D. Tippit in Dallas, Texas.

Each of your letters was responded to by communications dated November 24, 1975, and January 7, 1976, respectively. These letters advise in essence that we have a considerable backlog of FOIPA requests on hand and that in an effort to deal with all requests equitably, they are being treated in chronological order based on date of receipt. We have received nearly 14,000 FOIPA requests during the calendar year 1975, and this overwhelming volume has precluded us from handling them as promptly as we desire or in compliance with statutory requirements.

Your requests will be treated under the provisions of the Freedom of Information Act (FOIA), and are being handled in a section of the FBI that deals with both FOIA and Privacy Act requests. Please be assured that the FBI in no way intends to "stonewall" you with respect to your Freedom of Information Act requests.

Mr. Harold Weisberg

We will advise you further within the next 30 work days regarding the results of our search for the information you have requested and a determination as to its releasability.

You may, of course, treat the failure to respond within the statutory time period as a denial of your request. You may appeal to the Attorney General from any denial contained herein. Appeals should be directed in writing to the Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D. C., 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Following the Attorney General's decision, judicial review is available in the district of your residence or principal place of business, or in the District of Columbia, where the records are situated.

Sincerely yours,

Clarence M. Kelley
Director

EXHIBIT 4

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

February 13, 1976

Mr. Harold Weisberg
Route 12
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in response to your letter dated January 30, 1976, concerning your pending Freedom of Information-Privacy Acts (FOIPA) requests.

You may be assured there has been no "deliberate creation of confusion" on the part of the FBI in connection with the accounting for, and processing of your requests. As was previously stated there has been an overwhelming number of requests during the past year, and we are currently more than three months behind in responding to these requests. They are being handled in chronological order based on the date of receipt for this reason.

In those instances where a verbal request has been made, the requester has been informed that he must submit his request in writing before any action can be taken. This was explained to you by Special Agent Thomas H. Bresson of our FOIPA Section with regard to your verbal request made in March, 1975.

Your request directed to the Attorney General dated November 28, 1975, for information concerning you personally has been located. This request was referrred to the FBI on December 5, 1975, and our acknowledgement to you was dated December 12, 1975. We appreciate your bringing this to our attention in order to clarify the record in this regard.

Your request concerning the release of pictures of President Kennedy's clothing was contained in your letter dated October 27, 1975, which was referred to in our letter of January 26, 1976. Your October 27th letter further contains requests concerning the files on Lee Harvey Oswald, film footage on Lee Harvey Oswald in connection with the John F. Kennedy Assassination, and documents relating to the Silver Shirts.

Mr. Harold Weisberg

Our letter of January 26, 1976, also acknowledged receipt of your December 20, 1975, request for any laboratory data regarding the murder of Dallas Police Officer J. D. Tippit.

On December 31, 1975, we received a referral from the Department of Justice which was dated December 23, 1975. This was submitted by Mr. James H. Lesar on your behalf in connection with the assassination of Dr. Martin Luther King, Jr. This request in itself is far-reaching in scope and will entail considerable searching time once processing can be initiated.

I would like to reiterate that the FBI is not trying to circumvent the law, and request that you bring to our attention any other requests that have not been referenced in this letter.

We regret that FOIPA requests received from you and other individuals cannot be handled in a more expeditious manner, but as it has been previously explained, the voluminous number of requests received preclude this. We have increased our FOIPA staff to approximately 200 employees in an effort to alleviate the situation in this regard.

Sincerely yours,

Clarence M. Kelley
Director

EXHIBIT 5

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

3 MAR 1976

Mr. Leslie H. Whitten, Jr.
114 Eastmoor Drive
Silver Spring, Maryland 20901

Dear Mr. Whitten:

This is in reference to your letter requesting documents pertaining to you pursuant to the Privacy Act.

Pursuant to 28 C.F.R. §16.45 (b)(5), we are extending the time limits an additional fifteen days. A determination on your request will be made not later than March 16, 1976.

Sincerely,

RICHARD L. THORNBURGH
Assistant Attorney General
Criminal Division
by:

E. Ross Buckley

E. ROSS BUCKLEY
Attorney in Charge
FOI/Privacy Act Unit

CRM/PA 6

EXHIBIT 6

ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

Department of Justice
Washington 20530

[illegible] 3, 1978

Mr. Leslie H. Whitten
1401 16th Street, N.W.
Washington, D.C. 20036

Dear Mr. Whitten:

This is in response to your request pursuant to the Privacy Act for access to records concerning you in the following systems of records: Justice/CRM 001, 002, 003, 004, 006, 009, 010, 012, 014, 018, 019, 020, 021, 022, and field offices in Brooklyn, New York, Chicago, Miami, and Washington, D.C.

A search of the aforesaid systems of records has been conducted. Pursuant to the Privacy Act and 28 C.F.R. 16.57, the documents described in the attached Schedule will be made available to you, at a cost of $.10 per page according to current Department of Justice regulations.

The documents described as items 41 and 42 contain descriptions of a case involving you and cases involving others. The material which concerns others has been deleted as not pertaining to you. The documents described as items 1, 43-51 will be made available to you subject to deletions of material which would constitute an unwarranted invasion of personal privacy of third persons, or which would reveal pre-decisional material prepared before an agency's final determination is reached, or the deliberative processes of the Department. Finally, a deletion has been made of material which is prohibited from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure, which pertains to grand jury secrecy.

No other records are available to you pursuant to the Privacy Act or 28 C.F.R. 16.57.

If you would like any or all of the documents on the attached schedule, please forward a check payable to the Treasury of the United States to E. Ross Buckley, Attorney in Charge, FOI/Privacy Act Unit, Criminal Division, Department of Justice, Washington, D.C. 20530. However, pursuant to 28 C.F.R. 16.9(a), there will be no charge if you decide you want less than 30 pages of documents. We will forward the documents when we hear from you.

This response is not directed to your request relating to electronic surveillance of others, consensual surveillance of yourself or others, or to records related to you in files indexed in the names of others. Those matters are discussed in a separate letter to you.

If you deem this to be a denial of your request for access to records, you are advised that pursuant to the Code of Federal Regulations, Title 28, Section 16.45, you have a right to appeal. This appeal must be made within thirty days in writing and addressed to the Deputy Attorney General (Attention: Freedom of Information/Privacy Act Unit), Department of Justice, Washington, D.C. 20530. The envelope and letter should be clearly marked, "Privacy Act Access Appeal." If on appeal your request is denied, judicial review will thereafter be available to you in the district in which you reside or have your principal place of business, or the district in which the records denied to you are situated, or the District of Columbia.

Sincerely,

Robert L. Keuch

ROBERT L. KEUCH
Acting Deputy Assistant
Attorney General

EXHIBIT 7

Department of Justice
Washington 20530

MAR 24 1976

Mr. Leslie H. Whitten
1401 16th Street N.W.
Washington, D.C. 20036

Dear Mr. Whitten:

This is in further reference to your information request dated November 14, 1975, a full response to which will be forthcoming shortly under separate cover. We note that in processing your request we overlooked some aspects of the "Partial Check-List" attached to your letter.

In paragraphs 3 and 4 of the partial check-list you requested records of electronic and consensual surveillance of your attorneys, their agents and their employees. In as much as you did not name any of the agents or employees, your request is defective as to them since it fails reasonably to describe the records sought. Your request is also ineffective as to the five attorneys whom you name, since any disclosure to you of the information in question (if any exists) would be an unwarranted invasion of their privacy in violation of the Privacy Act (5 U.S.C. 552a(b)). In order to make this portion of your request effective, you must either furnish the written consent of the named attorneys to the disclosure of the information in question (if any exists) to you, or you must demonstrate that the named individuals are sufficiently public figures that disclosure would not be an invasion of their privacy.

Although neither consent nor consensual surveillance is referred to, we construe paragraph 2 of the partial check-list to constitute a request for records of consensual surveillance of you. Since our consensual surveillance file is chronological and unindexed, information concerning you (if any exists) cannot be located by reference to your name but only by a search of the entire file. Our experience is that such a search requires 120 or more hours. This portion of your request fails reasonably to describe the records sought because a 120 hour search is, in our view, unreasonably burdensome. You are free to reformulate your request pursuant to 28 C.F.R. 16.3(d)(2) by specifying a six month period during which you believe you might have been the subject of consensual surveillance. Since a six month period would embrace 8 sections of the file, the estimated search fee for such a search is $64.00 pursuant to 28 C.F.R. 16.9(a)(6).

The consensual surveillance file consists of requests from investigative agencies to conduct consensual surveillance or notifications of emergency use of such procedures, and is unindexed since the only use of it is related to the Department's supervisory role in authorizing the procedures. We suggest that you may be able to receive information concerning you, in this regard, at lesser cost and delay directly from the investigative agency you suspect may have conducted consensual monitoring of your conversations. Based on our records, the following are the investigative agencies or investigative components of Departments which have from time to time conducted consensual monitoring:

Bureau of Alcohol, Tobacco and Firearms
Bureau of Customs
Internal Revenue Service
Federal Bureau of Investigation
Drug Enforcement Administration
U.S. Postal Service
U.S. Secret Service
Department of Defense
United States Attorneys
Naval Investigative Service
Immigration and Naturalization Service
Department of Interior
Department of Agriculture

Finally, we noted your request at the close of your partial check-list for a search, for information concerning you, under the names Jack Anderson and Jack Anderson Enterprises. The Privacy Act does not require a search under the names of others for information concerning you. To the extent that this portion of your request is a Freedom of Information Act request, it fails reasonably to describe the records sought. Should you reformulate this portion of your request, we will undertake a further search for you.

In accordance with 28 C.F.R. 16.5(d), you have the right to treat our inadvertent delay as to the above mentioned portions of your request

as a denial, and to appeal to the Attorney General. We ask however, that you forgo the appeal and instead remedy the defects adverted to above.

Sincerely,

RICHARD L. THORNBURGH
Assistant Attorney General

by: E. Ross Buckley

E. ROSS BUCKLEY
Attorney in Charge
FOI/Privacy Act Unit

EXHIBIT B

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

PA/CRM 0757

APR 12 1976

Mr. Leslie Whitten
1401 16th Street N. W.
Washington, D. C. 20036

Dear Mr. Whitten:

This is in response to your letter dated March 22, 1976, addressed to Mr. Robert Keuch.

Enclosed are the 23 documents you requested, which are being made available to you at a cost of $.10 per page according to current Department of Justice regulations. We are returning your check in the amount of $.40 because it is an underpayment, and ask that you forward a check in the amount of $3.50(35 pages at $.10 per page-no charge is made when the total is less than $3.00) payable to the Treasury of the United States, to E. Ross Buckley, Attorney in Charge, FOI/Privacy Act Unit, Criminal Division, Department of Justice, Washington, D. C. 20530.

As to your question as to when your time to appeal will begin to run, we attempted to secure the advice of the Appeals Unit, but were unable to locate either Mr. Shea, the Chief of the unit or his Deputy. By telephone on March 31 we so advised you, and suggested that you direct your inquiry to that unit.

Finally you are advised that our second letter to you left the Department March 24, 1976.

Sincerely,

RICHARD L. THORNBURGH
Assistant Attorney General
CRIMINAL DIVISION

BY: E. Ross Buckley

E. ROSS BUCKLEY
Attorney in Charge
FOI/Privacy Act Unit

OFFICE OF THE DIRECTOR

EXHIBIT 9

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

September 20, 1976

Mr. Leslie Hunter Whitten, Jr.
114 Eastmoor Drive
Silver Spring, Maryland 20901

Dear Mr. Whitten:

Your request for information concerning yourself has been considered in light of the provisions of both the Freedom of Information Act (FOIA) (Title 5, United States Code, Section 552) and the Privacy Act of 1974 (Title 5, United States Code, Section 552a). It has been determined by the Attorney General that requests by individuals seeking information about themselves are governed by the Privacy Act In addition, as a matter of administrative discretion, any documents which are found to be exempt from disclosure under the Privacy Act will also be processed under the provisions of the FOIA. Through these procedures you receive the greatest degree of access authorized by both laws.

Pursuant to your FOIPA request files were processed and documents subject to disclosure are now ready for review or release. Excisions have been made from these documents, and other documents have been withheld in their entirety in order to protect materials which are exempted from disclosure by the following subsections of Title 5, United States Code, Section 552:

(b)(2) materials related solely to the internal rules and practices of the FBI;

(b)(5) inter-agency or intra-agency documents which are not available through discovery proceedings during litigation; or documents whose disclosure would have an inhibitive effect upon the development of policy and administrative direction; or which represent the work product of an attorney-client relationship;

(b)(7) investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of the personal privacy of another person;

(D) reveal the identity of an individual who has furnished information to the FBI under confidential circumstances or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means;

(E) disclose investigative techniques and procedures, thereby impairing their future effectiveness;

(F) endanger the life or physical safety of law enforcement personnel.

Several of the enclosed documents are those which were referred to us by the Department of Justice and United States Secret Service Agency. In addition, we have located documents in our files which originated with the Department of Justice and these documents have been referred to them for direct response to you.

Mr. Leslie Hunter Whitten, Jr.

Also in our files was a book and documents containing your testimony at the hearings before the Committee on the Judiciary of the United States Senate, 93rd Congress, 1st Session pertaining to the confirmation of L. Patrick Gray, III, for Director of the FBI. We feel you are undoubtedly aware of the contents of your testimony and are therefore not furnishing a copy to you. However, should you desire a copy of this please advise us.

Additionally, there are numerous documents in our files pertaining to you that are presently under permanent seal of the Court in the District of Columbia and can only be unsealed upon order of the court following notification to the parties and a hearing on any motion seeking disclosure.

The material being provided at this time represents the majority of the documents which can be furnished to you, however, it should not be construed as a complete review as we are continuing to process additional data pertaining to you. You will be notified when this material is available for release.

If you desire a search of our Identification Division records, please comply with the instructions set forth in Attorney General Order 556-73, a copy of which is enclosed.

Records contained in our system of records designated as Justice/FBI 001 (NCIC) were checked and no record was located concerning you.

You have thirty days from receipt of this letter to appeal in writing to the Deputy Attorney General, United States Department of Justice, Washington, D. C. 20530, (Attention: Privacy Appeal - Denial of Access).

Sincerely yours,

Clarence M. Kelley
Director

Enclosures

EXHIBIT 10

Rt. 12, Frederick, Md. 21701
12/20/75

Mr. Thomas Bresson FOIA REQUEST
FOIA Officer
FBI
Washington, D.C.

Dear Mr. Bresson,

This is my request under FOIA for copies of the spectrographic analyses, neutron activation analyses or any similar tests by the FBI in the case of the murder of Office J.D.Tippit in Dallas, Texas, 11/22/63.

By this I mean the reports of any and all such tests as may have been performed on the recovered bullets, all recovered shells, o n the ammunition found in the pistol and the pockets of Lee Harvey Oswald, on Officer Tippit's clothing and all comparisons between any of these and the pistol and any of the other objects.

For your information and that of any searchers, the FBI could not connect these bullets and the pistol ballistically.

The bullets did not match the shells (thus my interest in any testing of the powder in the discharged shells and the unfired ones).

One automatic shell was found at the scene.

In the absence of ballistics proofs I presume there was greater interest in the tests the results of which I seek because they could enable what was not possibly ballistically, connecting Oswald with that murder.

By clothing I mean to include such objects as buttons, one of which was struck by a bullet.

Sincerely,

Harold Weisberg

EXHIBIT 11

82 Squankum Road
Howell, New Jersey 07731
June 18, 1976

By Certified Mail 388972

Honorable Edward H. Levi
Attorney General
United States Department of Justice
Washington, D. C. 20535

COPY

Dear Mr. Attorney General:

As of the present, I have received no answer to my letter of April 23, 1976 which was received at the Justice Department on April 26, 1976. I believe that I should be entitled to a reply and trust that my request for such an answer will not be considered as a request under the Freedom of Information Act.

If the delay is due to financial reasons, I will be glad to forward a self addressed stamped envelope.

Yours truly,

Emory L Brown, Jr.

EXHIBIT 12

OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

JUL 7 1976

Mr. Emory L. Brown, Jr.
82 Squankum Road
Howell, New Jersey 07731

Dear Mr. Brown:

This is to advise you that your administrative appeal to the Deputy Attorney General from the action by the Federal Bureau of Investigation,

on your request under the Freedom of Information Act for information from the files of the Department of Justice was received by this Unit on April 27, 1976.

This Unit has a substantial backlog of pending appeals received prior to yours and a shortage of attorneys. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general policy of assigning appeals to Unit attorneys in the order of receipt. Your appeal is number 1755. Please mention this number in any future correspondence with this Office concerning this specific appeal. Over 1068 appeals have thus far been completed or assigned for processing.

We will notify you of the decision of the Deputy Attorney General on your appeal as soon as we can. We regret, however, that we have been unable to do so within the time limits specified by the Act. For that reason, I must advise you that you have the right to seek judicial review of this matter in an appropriate United States District Court.

The necessity for this delay is regretted and your continuing courtesy is appreciated.

Very truly yours,

Richard M. Rogers

Richard M. Rogers, Deputy Chief
Freedom of Information and Privacy Unit

EXHIBIT 13

82 Squankum Road
Howell, New Jersey 07731
July 12, 1976

Mr. Richard M. Rogers, Deputy Chief
Freedom of Information and Privacy Unit
Untied States Department of Justice
Washington, D. C. 20530

COPY

Dear Mr. Rogers:

Reference is made to your letter dated July 7, 1976.

My records do not reflect that any administrative appeal has been made to the Deputy Attorney General concerning a request made under the Freedom of Information Act. The fact of the matter is that no such request was made and I therefore fail to see the reason for your letter.

My letter was addressed to the Attorney General and I ask why Mr. Kelley would not furnish me with certain information which I was seeking. This particular information was not sought under the provisions of the Freedom of Information Act although at times Mr. Kelley had alluded to such having been the case and at other times that it was not. Now, once again, my request is being classified as one comming under the Freedom of Information Act. At this time let me state that such is not yet the case.

If you are in a position to make such a decision, I would like to be advised as to whether not my request is of such a nature that it should be filed under the Freedom of Information Act. It would be gratifying if the Department would stop beat-around the bush and and take a final position on the matter.

Sincerely,

Emory L Brown, Jr.

EXHIBIT 14

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

August 18, 1976

Mr. Emory L. Brown, Jr.
82 Squankum Road
Howell, New Jersey 07731

Dear Mr. Brown:

This is in reference to your letter of April 21, 1976, requesting documents pursuant to the Freedom of Information-Privacy Acts (FOIPA).

There were no Neutron Activation Analysis (NAA) examinations conducted on the lead smear found on Q609 nor any of the clothing from President Kennedy or Governor Connally.

Enclosed you will find 16 pages of documents pertaining to various examinations performed by the FBI Laboratory which may be of interest to you.

The first 4 pages are the NAA data and results on the paraffin casts from Lee Harvey Oswald's hands (Q53A through Q53G). The remaining documents pertain to spectrographic examinations conducted on President Kennedy's clothing (PC-78282), Governor Connally's clothing (PC-80185), a wrist watch and ring (PC-78339), and bullets from Officer Tippit (PC-79846).

Sincerely yours,

Clarence M. Kelley
Director

Enclosures (16)

EXHIBIT 75

82 Squankum Road
Howell, New Jersey 07731
August 23, 1976

Mr. Clarence M. Kelley, Director
Federal Bureau of Investigation
United States Department of Justice
Washington, D. C. 20535

COPY

Dear Mr. Kelley:

Reference is made to your letter dated August 18, 1976 and the enclosures concerning Spectrographic analysis.

It is apparent that on atleast six different pagesofcertain information has been deleted by overlaying pieces of blank paper on the original document before copying. This information relates to the F.B.I., file and lab numbers as well as the name of the examiner and in one instance, the lower half of a page has been deleted and in another, the name of the Special Agent delivering the evidence to be examined. Is there any particular reason why this information has been removed? If not, I would appreciate have it.

Since the bullets recovered from the body of Dallas police officer J. D. Tippit could not be identified as having been fired from Oswald's revolver to the exclusion of all others, were they compared to the six removed from the revolver and the five taken from Oswalds person, by means of Neutron Activation Analysis? If so, I would be interested in being furnished with a copy of that examination.

Thank you very much for the sixteen pages of documents sent with your recent letter.

Sincerely,

Emory L Brown, Jr.

Mr. Emory L. Brown, Jr.

As you may or may not be aware, Special Agents John F. Gallagher, Robert A. Frazier, Paul Morgan Stombaugh and Cortlandt Cunningham testified before the President's Commission concerning these examinations. Their testimony is printed in the "Hearings Before the President's Commission on the Assassination of President Kennedy," and a copy should be available at a local public library.

Sincerely yours,

Clarence M. Kelley
Director

Enclosures (6)