

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF
JUSTICE,

Defendant.

Civil Action No. 75-1996

DEFENDANT'S RESPONSE TO PLAINTIFF'S
NOVEMBER 30, 1976 NOTICE OF FILING OF
ATTACHED EXHIBITS

During the course of the hearings held before this Court on defendant's motion to stay proceedings in this case relating to plaintiff's December 23, 1975 Freedom of Information Act request, this Court became concerned over whether plaintiff's prior requests for materials in the Dr. Martin Luther King, Jr. assassination file would have placed plaintiff first in line for review by the Federal Bureau of Investigation. These hearings were held on September 16, and 17, 1976, and at the conclusion of the proceedings this Court required plaintiff's counsel to document prior requests for records on the assassination, and any response thereto.

On September 30, 1976, plaintiff filed a "Notice Of Filing Of Attached Exhibits" and attached thereto were five letters from the plaintiff to various officials of the Department of Justice. Three of the letters were sent in 1969 and two were sent in 1970.

In response thereto, defendant submits the affidavit of Donald L. Smith, a Special Agent of the Federal Bureau of Investigation (Defendant's Exhibit 1). An examination of the affidavit reveals that only two of the five letters were found to be in FBI files at this time. Only one of the letters were directed to the former Director of the FBI, J. Edgar Hoover. All other letters were directed to the Department of Justice and the former Attorney Generals of the Department.

Defendant respectfully submits that plaintiff's requests in 1969 and 1970 are not relevant to the instant proceedings and form no basis to conclude the FBI has not properly handled plaintiff's Freedom of Information Act requests. Plaintiff himself has filed several Freedom of Information suits that were prior to the recent amendments, and the Court of Appeals for this Circuit in an en banc decision expressly held that the records relating to the assassination of President John F. Kennedy were properly exempt under the then existing law, §5 U.S.C. §552(b)(7) of the Act. See Weisberg v. U. S. Department of Justice, 160 U.S.App.D.C. 71, 489 F.2d 1195 (1973), cert denied, 416 U.S. 993 (1974). The records plaintiff sought in the 1969 and 1970 letters to the Department of Justice related to the assassination of Dr. Martin Luther King, Jr., would also have been exempt under the prior law, §552(b)(7), that is "investigatory files compiled for law enforcement purposes"

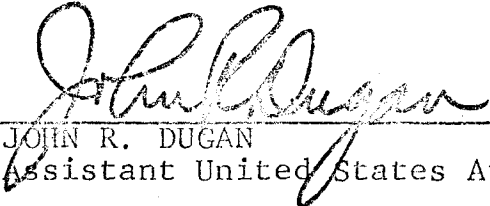
The 1974 amendments to the Freedom of Information Act became effective in February of 1975 and Congress prescribed the withholding of investigatory records had to be based upon one or more of six specified types of harm. Persons

a new request and the agencies would have to consider the request under the new standards. In fact, for the matters relating to the assassination of President Kennedy, plaintiff filed a new action seeking the same materials he previously requested that was the subject of the en banc decision, see Weisberg v. U. S. Department of Justice, Civil Action No. 75-226. This subsequent action was filed following the effective date of the amendments. In the instant case, plaintiff filed a request with the FBI for information relating to the assassination of Dr. Martin Luther King, in April of 1975.

In conclusion, defendant respectfully submit that plaintiff's requests in 1969 and 1970 relating to materials in the Dr. Martin Luther King, Jr., assassination file were not properly disclosable under the then existing law. These prior requests would form no basis for this Court to conclude that plaintiff's Freedom of Information Act request were not properly handled by the FBI.

EARL J. SILBERT
United States Attorney

ROBERT N. FORD
Assistant United States Attorney


JOHN R. DUGAN
Assistant United States Attorney

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Plaintiff,)
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_____)

AFFIDAVIT

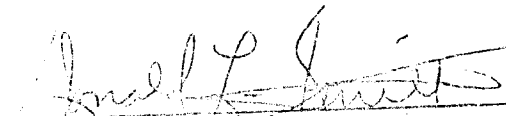
I, Donald L. Smith, being duly sworn, depose and say
as follows:

(1) 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) Branch, Records
Management Division, at FBI Headquarters (FBIHQ), Washington, D. C.

(2) I have caused a search of FBI records to be made
to locate correspondence concerning the letters listed in Plaintiff's
Notice Of Filing Of Attached Exhibits, filed with the court in
connection with this litigation on or about September 30, 1976.


(3) Plaintiff's letter to the FBI dated March 24, 1969,
has been located, and FBI records do not indicate that this letter
was acknowledged. Regarding Plaintiff's letter dated March 31,
1969, to Mr. Carl Belcher, Criminal Division, Department of
Justice, and Plaintiff's letters dated June 2, 1969, and August 20,
1970, to Attorney General John Mitchell, no record can be located
indicating these letters were ever received by the FBI. A copy of
Plaintiff's letter dated March 16, 1970, to Deputy Attorney General
Richard Kleindienst has been located, and FBI records do not indicate
that this letter was acknowledged by the FBI.

Order 528-73, certain FBI investigatory records over 15 years old would be subject to limited release as a matter of agency discretion; it was not until February of 1975 that, pursuant to Public Law 93-502 (the 1974 Amendments to the FOIA) FBI investigatory records would be subject to release under the FOIA as a matter of law.



Donald G. Smith
Special Agent
Federal Bureau of Investigation
Washington, D. C.

Subscribed and Sworn to before me this 19th day
of December 1976.

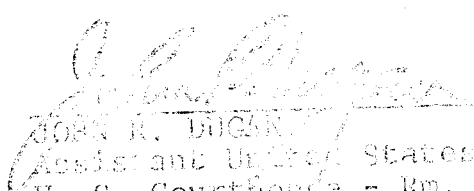


Notary Public

My commission expires 4-30-78.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Defendant's Response To Plaintiff's November 30, 1976 Notice Of Filing Of Attached Exhibits, with attached exhibit, has been made upon plaintiff by mailing a copy to him, Harold Weisberg, Route 12, Frederick, Maryland 21701, and also to plaintiff's attorney, James H. Loefer, Esq., 1231 Fourth Street, S.W., Washington, D.C. 20024, this 15th day of December, 1976.


JOHN R. DUGAN
Assistant United States Attorney
U. S. Courthouse - Rm. 3419
3rd & Constitution Ave., N.W.
Washington, D.C. 20001