

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 75-1966  
 )  
 U. S. DEPARTMENT OF JUSTICE, )  
 )  
 Defendant. )

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SUPPLEMENTAL POINTS AND AUTHORITIES  
IN SUPPORT OF DEFENDANT'S MOTION TO  
STAY AND IN RESPONSE TO PLAINTIFF'S  
MEMORANDUM TO COURT FILED ON NOVEMBER 19, 1976

On November 19, 1976, plaintiff's counsel filed a memorandum to the court containing several points which we deem appropriate to file a response. However, we will not attempt to respond to plaintiff's now familiar harangue about the FBI that plaintiff and his counsel have persisted to make throughout the proceedings in this case.

First, plaintiff contends the statistics relied upon by the FBI are "phony". Plaintiff relies on two separate affidavits of special FBI agents wherein an agent has indicated that the backlog in processing the FOIA requests is stated to be a certain date. We submit that the two affiants were presumably referring to backlogs that were then being handled by the team assignment that has been set up in the FBI in order to process the great volume of requests. The hearing held before this Court on September 16 and 17, 1976 explained the various breakdowns into project and nonproject sections and the various team assignments within the respective sections.

The second point raised by the plaintiff relates to a letter

to the Court the testimony given by Mr. Howard on September 16, 1976 at page 14. The number that is referenced in these two letters is a computer number but the actual processing of the FOIA request is not administered by the number but rather by the date upon which the request is received.

The third point relates to 47 crimescene photographs of the King assassination that plaintiff contends he is entitled to. In response thereto we submit that plaintiff was denied access to these photographs as previously stated in an FBI letter dated May 11, 1976 as well as more fully explained in a December 9, 1976 letter to the plaintiff and attached hereto as Defendant's Exhibit 1.

The fourth point relates to the amount of disclosures that have been made as a result of the FBI's current processing of plaintiff's December 23, 1975 FOIA request. As of December 10, 1976, plaintiff has received approximately 2,066 pages and the disclosures were made on the following dates: October 28, 1976 - 442 pages; November 26, 1976 - 505 pages; December 3, 1976 - 510 pages; and on December 10, 1976 - 609 pages.


Defendant's counsel has been further advised that following December 10, 1976, there was expected to be an additional disclosure of approximately 400 pages and this may well have taken place by the time of filing of this memorandum.

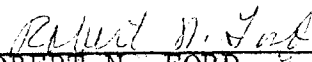
The fifth point which defendant wishes to respond to relates to the receipt by plaintiff of three boxes of indices sought by a motion to compel discovery. We have today filed a response to that wherein we indicate that the plaintiff's attorney received a copy of the indices on or about December 2, 1976.

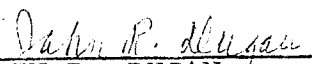
The sixth point relates to plaintiff's contention that the processing of plaintiff's FOIA request would interfere with the delivery of the King assassination files to the House Select

Finally, defendant respectfully takes issue with plaintiff's contention that he has demonstrated a need for access to these documents on an expedited basis under the dictates of Open America v. Special Watergate Prosecution Force, D.D.C. 76-1391, decided July 7, 1976. Plaintiff's testimony in that regard was not subject to full cross-examination nor on its face was it sufficient to be considered worthy of expedited processing.

In conclusion, defendant respectfully urges for the reasons previously stated, as well as those stated herein, that the defendant be granted a reasonable time within which to complete plaintiff's December 23, 1975 FOIA request.

  
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EARL J. SILBERT  
United States Attorney

  
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ROBERT N. FORD  
Assistant United States Attorney

  
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JOHN R. DUGAN  
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Supplemental Points and Authorities in Support of Defendant's Motion to Stay and in Response to Plaintiff's Memorandum to Court Filed on November 19, 1976 has been made upon plaintiff by mailing a copy thereof to the following on this 28th day of December, 1976:

James Hiram Lesar, Esq.  
1231 Fourth Street, S.W.  
Washington, D.C. 20024  
Attorney for Plaintiff

Harold Weisberg  
Route 12  
Frederick, Maryland 21701  
Plaintiff

December 9, 1976

Mr. Harold Weisberg  
Route 12  
Frederick, Maryland 21701

Dear Mr. Weisberg:

This will confirm the furnishing to you on October 29, 1976, by representatives of the FBI, 442 pages of documents pertaining to your request concerning the assassination of Dr. Martin Luther King, Jr. This release resulted from Special Agent Donald L. Smith's telephone call to your attorney, Mr. James Lesar, on October 27, 1976, to advise you that the 442 pages were available for your acquisition. Receipt of your check in the amount of \$44.29, in payment of these documents is acknowledged.

As you were advised, there were several serials which were missing either pages or photographs. The missing pages were located and subsequent review of these pages has resulted in eight additional pages which are currently available for your review. For your information, these pages are from the following documents: unrecorded behind serial 2, serial 109, and serial 180.

We have located and reviewed those photographs which are referred to in serials 146 and 209. The 47 photographs referred to in serial 146 are the same 47 photographs which you were denied in our letter dated May 11, 1976, in response to your April 15, 1975, Freedom of Information Act (FOIA) request. The photographs which are referred to in serial 209 are also being denied as they too were provided to the FBI by a non-Federal law enforcement organization which has specifically requested that this material continue to be held confidentially. This latter group of photographs is denied also because their disclosure would be an unwarranted invasion of the privacy of Dr. Martin Luther King's family. The content of these photographs is such that their public release might result in the use

C.A. 75-1996.

Defendant's Exhibit 1

Mr. Harold Weisberg

of these photographs in some manner which would cause great emotional and personal concern to both the family and friends of Dr. King and to the many American citizens who respect Dr. King as an important national figure.

The 442 pages of information furnished to you are releasable under the provisions of the Freedom of Information Act, Title 5, United States Code, Section 552. The deletions made in this material and documents exempted in their entirety are based on one or more of the following subsections of Section 552:

- (b) (1) information which is currently and properly classified pursuant to Executive Order 11652 in the interest of the national defense or foreign policy;
- (b) (2) materials related solely to the internal rules and practices of the FBI;
- (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.

Mr. Harold Weisberg

In order to expedite releases of information to you, we will continue to notify you on a periodic basis as it is processed as opposed to having you wait until the entire case has been processed.

You have the right to appeal to the Attorney General at this time from any denial contained herein, or you may hold your appeal in abeyance until all documents which can be released have been processed and made available to you. 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."

Your patience and cooperation are appreciated.

Sincerely yours,

Clarence M. Kelley  
Director