

Dear Jim, Shea's 5/26/77 on "ing cost waiver

6/2/77

Department of Justice lawyers are so attuned to abusing language it is impossible to be certain in interpretations of their language. This Shea letter is a case in point.

He does not merely address the "The fee waiver request." He adds "together with all other matters pertaining to my 1996 request. Then he says, "will be determined when the final action is taken on the appeal."

When will there be this "final action?" What is the nature of the appeal?

If he is talking about the initial appeal, that is a year and a half old and past time for "final action."

So he can't be talking about that. Not in the form in which it was filed.

This means they must have a continuing, a standing appeal on all matters involved, each page sent up for review as processed.

At the increased rate of processing this is still a point into the far-distant future.

Meanwhile, they are accumulating each protest I make that is an appeal. They have responded to none and acted on none save the replacement of Sections 57-9 as I recall. That is merely from bad wording, having nothing to do with an appeal.

I have many protests about this and I'd like them made, perhaps informally to begin with if you prefer.

First of all that there is no connection between the waiver and anything else.

There thus is no need to delay decision, which means delay my rights to litigate a negative decision. This has been determined to be an historical case I have designated all this material for a free public archive. There are other considerations but I think no more is needed to qualify.

Meanwhile, just putting in the money out is a great burden for me. The question has been hanging fire more than a year.

I say force it after telling Shea that if you do not have a determination by any date you select you'll go to court.

Of course their stalling has been enormously costly to me, as Green has even volunteered at hearings.

I am not content for regular appeals from withholdings to be postponed to the time in the distant future when there will be what they call "final action." I have individual appeals from denials about which nothing has been done for more than a year. This becomes a permanent denial even if ultimate decisions is favorable to me. The mechanics then make it impossible, as they really do know.

I regard this as an administrative use of the Act and the machinery to perpetuate improper withholding. It thus seems a license to violate the Act.

A simple example is my telling the FOIA personnel that they are withholding what is public domain. They have admitted this but have not released a single page to date. In fact they continue it, as my last complaint to Harting shows.

The real importance here is the value of the archive in future scholarship. Obviously if with some certainty I can specify what is withheld I have that knowledge. But others do not and I want this archive to hold all the information and all the minus possible.

With this kind of letter and with no response from any letter to Harting I think it is important to go back to Green as soon as possible. They'll do the same things perpetually unless we make the effort to end it.

If there is any action Mitchell has taken it is not apparent. If there has been any cleaning up of the Serials that also is not apparent. If he is reviewing them then he is approving the withholding of that he has already approved for release and has released. This can't be accepted.

All of this got worse as soon as you told Green we'd be patient.

From meeting Harting I did expect he'd be reasonable and correct these abuses. This is why I took all the time to write him. But he has done nothing. In this he has given my letters a different value, a record of refusal to correct the most outrageous withholdings.

Best,



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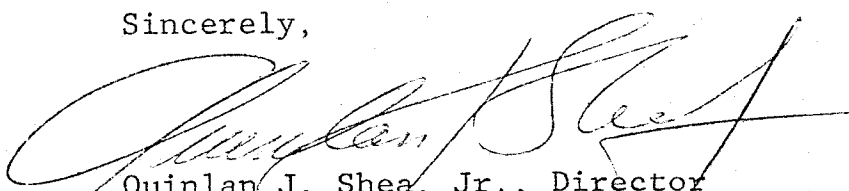
Mr. James H. Lesar  
1231 4th Street, S.W.  
Washington, D. C. 20024

Dear Mr. Lesar:

This responds to your inquiry as to the current status of your pending request for a fee waiver in conjunction with the request of your client, Mr. Harold Weisberg, for access to materials pertaining to the assassination of Dr. Martin Luther King, Jr.

The fee waiver request, together with all other matters pertaining to your client's pending appeal for access to the records themselves, will be determined when the final action is taken on the appeal. Interim payments by your client will in no way operate to prejudice full and fair consideration of the request for a fee waiver at that time. As you know, the appeal itself is being handled by Doug Mitchell of my staff [739-2866]. If you have any further questions, do not hesitate to contact him directly.

Sincerely,

  
Quinlan J. Shea, Jr., Director  
Office of Privacy and Information Appeals

