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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

FILED

1978

OPINION AND ORDER

JAMES F. DAVEY, Clerk

On November 2, 1977, plaintiff in this case moved the Court for an order waiving all search fees and copying costs for government records made available as a result of this action. Plaintiff moved also for an order requiring that all fees and costs previously charged the plaintiff in this action be refunded to him. On January 17, 1978, defendant filed its opposition to these motions.

The Freedom of Information Act at 5 U.S.C. § 552(a)(4)(A) provides:

Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

The Department of Justice has promulgated a regulation implementing this provision of the Act. Departmental officials may waive or reduce the charges if they find that these charges "are not in the public interest because furnishing the information primarily benefits the general public." 28 C.F.R. § 16.9(a).

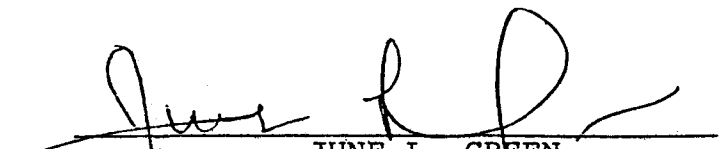
On November 4, 1976, plaintiff's counsel wrote the Deputy Attorney General, requesting that he make the determination pre-

Quinlan J. Shea, Jr., Director of the Office of Privacy and Information Appeals within the Office of the Deputy Attorney General, replied to plaintiff's request.

The letter stated that the investigation of the King assassination "is a matter of great public interest and historical importance," and that the Director of the FBI had "acknowledged this fact very early in the processing" of the records which are the subject of this lawsuit. Shea also recognized plaintiff's "extensive study of and long-standing interest in the assassination of Dr. King." However, he did not choose to waive all charges incurred by plaintiff. Instead, he determined that these charges would be reduced from 10 cents a page to 6 cents a page.

5 U.S.C. § 552(a)(4)(B) gives this Court jurisdiction to review violations of the FOIA. This authority to review extends to questions concerning the fee waiver provisions of § 552(a)(4)(A). Alan F. Fitzgibbon v. C.I.A., C.A. No. 76-700 (D.D.C. October 29, 1976). The issue before the Court is whether the government's decision to deny plaintiff a complete waiver of all search and copying charges was "arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law." 5 U.S.C. § 706.

The Court finds that no explanation was given as to how this sum was arrived at. Accordingly, the Court orders this matter remanded to the U.S. Department of Justice for full explanation. This information is to be filed in the Court within 8 days of this date.


JUNE L. GREEN
U.S. District Judge