

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1996

U.S. DEPARTMENT OF JUSTICE,

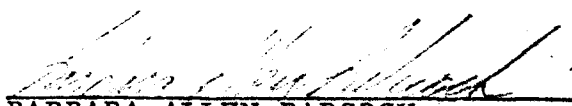
Defendant.

NOTICE OF FILING

Filed herewith, in response to the Court's Order and Opinion, dated March 2, 1978, is the Affidavit of Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals, Department of Justice.

Mr. Shea's affidavit explains, as required by the Court's March 2nd Order, the basis for reducing copying fees in the above-captioned litigation from \$.10 per page to \$.06 per page.

Respectfully submitted,


BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney


LYNNE K. ZUSMAN


BETSY GINSBERG

Attorneys, Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Defendant's Notice of Filing and Affidavit upon plaintiff's counsel by mailing a copy thereof to James H. Lesar, Esquire, 910 16th Street, N.W., Suite 600, Washington, D.C. 20006, on this 23rd day of March 1978.

Betsy Ginsberg
BETSY GINSBERG, Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG)
)
Plaintiff)
)
v.) Civil Action No. 77-1996
)
U. S. DEPARTMENT OF JUSTICE)
)
Defendant)
)

AFFIDAVIT OF

QUINLAN J. SHEA, JR.

1. My name is Quinlan J. Shea, Jr. I am the Director of the Office of Privacy and Information Appeals, Office of the Deputy Attorney General, U. S. Department of Justice.

2. My initial consideration of Mr. Weisberg's request for a fee waiver in connection with his requests for records pertaining to the assassination of Dr. Martin Luther King, Jr., was prior to the designation of me by Attorney General Griffin B. Bell to act on administrative appeals (and, at least impliedly, such ancillary matters as fee waiver requests). This designation was dated July 11, 1977. I had raised the matter of a partial waiver and had encountered considerable resistance to the idea. Notwithstanding that resistance, I formally recommended to (then) Deputy Attorney General Peter F. Flaherty that he waive reproduction costs by a factor of 40%, thereby reducing the cost to Mr. Weisberg from \$.10 per page to \$.06 per page. My belief was and is that no search fees had been assessed by the F.B.I. for these records, so I never specifically addressed the matter of search fees.

3. My formal recommendation was the subject of at least

was free to grant the partial waiver myself if I still saw fit to do so. By letter dated July 12, 1977 -- very deliberately the first formal action taken by me -- I granted Mr. Weisberg the 40% partial fee waiver I had previously recommended to Mr. Flaherty.

4. I have now reviewed my file and refreshed my recollection of the reasoning process by which I concluded that the 40% waiver was appropriate. I reached my conclusion in light of my knowledge of other fee waiver "appeals" that had been granted, granted in part, and denied during the period from March 1975 (when I joined the staff of the Deputy Attorney General) through July 1977, as well as my general attitude that a public servant charged with responsibility for the expenditure (or waiver of collection) of public funds owes to the taxpayers of this country the exercise of a degree of care to ensure that those funds are not expended improperly or imprudently. Moreover, because this particular case was somewhat different from other cases in which I had been involved, and because I felt there were some unusual factors that should be considered, I had a very lengthy discussion (well in excess of one hour) about this case with Mr. Robert L. Saloschin, Office of Legal Counsel (and Chairman of the Department's Freedom of Information Committee).

5. As contained in the letters from Attorney James H. Lesar to Deputy Attorney General Tyler (November 4, 1976) and Attorney General Bell (February 8, 1977), the only basis on which the requested waiver was sought was the statutory standard of "primary benefit to the general public" [5 U.S.C. 552(a)(4)(A)]. The facts of Mr. Weisberg's age, "scant financial resources"

conclusion that a partial waiver was appropriate, but, as indicated below [paragraph 8], I concluded that there was no independent "indigency" basis for a fee waiver in this case.

6. When I make a decision myself, I often do not articulate in written form my reasons for reaching a particular result. In this case, however, I did make a written recommendation to Mr. Flaherty (who was also familiar with the various "background" factors I have already mentioned). Two paragraphs in that memorandum set forth the reasons why I felt a partial fee waiver was appropriate:

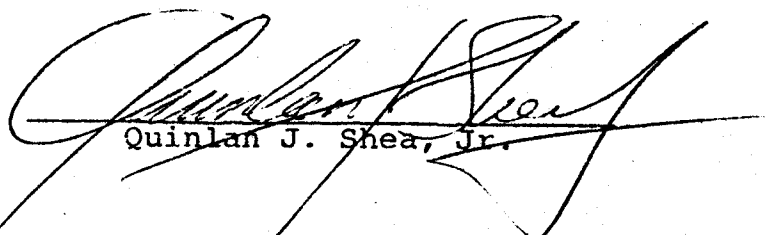
"Fees should be waived, according to the legislative history of the Freedom of Information Act, when it is in the public interest to do so because of public benefit flowing from the particular release. There can be no doubt that release of the King materials is of the greatest possible public interest. The Bureau itself recognized this fact very early and decided to put the releasable material in the public reading room and not to attempt to charge any search fees. The initial question is whether the grant of a full fee waiver to a private citizen who hopes to profit from the sale of his writings on the King murder can be considered as 'primarily benefiting the general public.' 5 U.S.C. 552(a)(4)(A). Although I am unconvinced that the answer to that question is yes, I have concluded that a partial fee waiver is justified in this case, in view of other pertinent and significant factors."

"Mr. Weisberg has devoted many years to a study of the assassinations of President Kennedy and Dr. King. He has written at least two books on the Kennedy assassination (neither of which has been overly favorable to the Department or the F.B.I.). Nevertheless, he does possess a wealth of knowledge and information on these cases and is recognized as something of an 'expert' on them in many circles. Mr. Weisberg is also unique in the sense that his early efforts to obtain access, and particularly this lawsuit, have contributed materially to the more ready accessibility of these materials to the general public. ^{2/} In sum, the efforts he has expended and the expense he has incurred are so significant that they will not reoccur in the person of any other requester. His familiarity with the case has also enabled the Bureau to evaluate more quickly the privacy interests of many of the hundreds of individuals involved. The public, therefore, has benefited both from Mr. Weisberg's tenacious efforts to make the King materials public and, to some extent, from a shortening of the time necessary to process the case. For these reasons, I feel that a reduction of the standard

7. To sum up, in light of all of the factors indicated above, it seemed to me that the F.B.I.'s position against any waiver of reproduction fees was wrong, but that Mr. Weisberg had not established that the release to him of these records could be said to be of primary benefit to the general public. Nonetheless, I felt that there was sufficient public interest present, viewed in the light of Mr. Weisberg's unique role in the history of freedom of information, to warrant a partial waiver. I can neither recall in any detail nor find any written record of why I had decided specifically that a 40% waiver would be appropriate. I do recall that I also considered 25%, one-third, and 50%. I recall that the first two seemed too low and that Mr. Weisberg's overall case for a waiver did not strike me as being as strong as another instance in which I had recommended a 50% waiver of reproduction costs, coupled with a total waiver of search fees. There were probably other factors as well, because I do recall that I spent a considerable amount of time, over a considerable period of time, thinking about both whether to recommend a fee waiver in this case and, then, just how much of a partial waiver to recommend.

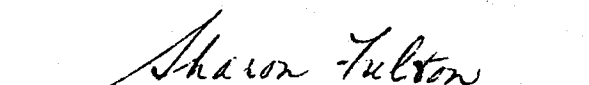
8. As indicated above, I did briefly consider the "indigency factor" in this case, even though the sole basis on which a waiver was requested was public benefit/interest. For purposes of fee waivers under the Freedom of Information Act, the consistent position of the Department of Justice has been that that "indigency" means a total (or, as appropriate, partial) inability to pay the fees properly assessed under the statute and our implementing regulations. Mr. Weisberg had in fact paid for

this Department has now decided not to appeal the Order pertaining to fees recently entered by Judge Gesell in the context of another case involving Mr. Weisberg and the Department of Justice. In view of Judge Gesell's Order and the decision not to appeal therefrom, it seems to me that I should, sua sponte, reconsider my own various prior actions on fee waivers sought by Mr. Weisberg, including the one now before this Court. I have begun that process and am consulting with the affected components within the Department. I will communicate my final decision to Mr. Weisberg not later than Friday, March 31, 1978.



Quinlan J. Shea, Jr.

Subscribed and sworn to before me this 23rd day of March, 1978



Sharon Tulston
Notary Public

My Commission Expires October 31, 1980