

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
)
 Plaintiff,)
)
 v.) Civil Action No. 75-1996
)
 DEPARTMENT OF JUSTICE,)
)
 Defendant.)

MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION
FOR AN ORDER RE: KELLEY LETTER

Plaintiff Harold Weisberg has filed with this Court a motion, memorandum and affidavit that purport to show that the FBI has failed to provide any of the documents offered by former FBI Director Clarence M. Kelley on September 14, 1977. Mr. Weisberg alleged that such an Order is necessary:

[b]ecause it is apparent that the FBI has no intention of dealing with this particular FOIA litigant in good faith [regarding this matter] and there is no reason to believe that any action will be undertaken in the absence of a specific Court order directing it. . . .

(Plaintiff's Memorandum, p. 2)

Defendant maintains that Mr. Weisberg's "Kelley Letter" motion makes apparent the opposite conclusion: that the FBI has acted in good faith towards him to a degree uncalled for by any statutory or judicial requirements.

The attached Third Affidavit of FBI Special Agent Martin Wood gives a detailed response to Mr. Weisberg's claims. In short, the affidavit shows that two years ago the documents referred to by Mr. Weisberg were processed and released to him pursuant to the August 12, 1977 Stipulation.

In his letter of September 14, 1977, Director Kelley described for Mr. Weisberg certain items from FBI field offices which were especially bulky or otherwise difficult

to produce. To avoid unnecessary copying expense, he asked Mr. Weisberg to enumerate from this list the items he wanted processed. (Exhibit A)

Mr. Weisberg responded on September 17, 1977, describing the items he wanted. (Exhibit B) Within six weeks the FBI processed these files and sent Mr. Weisberg the releasable documents along with the other field office documents called for by the August 12, 1977 Stipulation. The FBI met the November 1, 1977 deadline required by the Stipulation for all documents.

Five packets of documents were sent to Mr. Weisberg, one for each field office. Explanatory letters and inventory worksheets listing the enclosed documents were supplied with each packet. Photocopies of these letters and worksheets with the "Kelley letter" items circled in red are attached to the Wood affidavit. (Exhibits C, D, E, F and G)

From FBI records, it is clear that the records, letters and inventory worksheets were provided to plaintiff on five dates between October 17 and October 26, 1977. Is it possible that Mr. Weisberg did not receive these items? Of course it is possible but hardly likely. Many inventory worksheet pages list both items mentioned in the Kelley letter and other items from the same field office. Yet, Mr. Weisberg is allegedly missing only the "Kelley letter" documents from all five packets. It is also curious that Mr. Weisberg did not complain at the time that items referenced on the inventory worksheets were missing from the five packets.

A more likely explanation is that plaintiff has failed to inspect either the documents or the inventory worksheets and is simply unaware of what he has already received from

the FBI. If this is indeed the case, defendant hopes that Mr. Weisberg's eagerness to allege "bad faith" by the FBI will be more restrained in the future. If Mr. Weisberg has complaints about the excisions and withholdings noted on the inventory worksheets, then these will, of course, be best addressed with his other challenges to exemptions at a latter point in these proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing
Memorandum In Opposition To Plaintiff's Motion For An
Order Re: Kelley Letter was mailed, postage prepaid,
this 22nd day of January, 1980, to:

James H. Lesar, Esquire
910 16th Street, N.W.
Suite 600
Washington, D.C. 20006


WILLIAM G. COLE