

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of July, 1980, mailed a copy of the foregoing Motion for Partial Summary Judgment with Resepct to FBI Field Office Records Withheld as "Previously Processed" to Mr. William G. Cole, Trial Attorney, Federal Programs Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.


JAMES H. LESAR

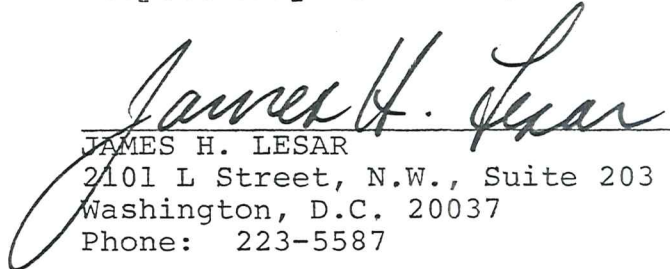
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

STATEMENT OF MATERIAL FACTS AS TO WHICH
PLAINTIFF CONTENDS THERE IS NO GENUINE ISSUE

Plaintiff, pursuant to Rule 1-9(h) of the Court's Local Rules, adopts and incorporates by reference as his Statement of Material Facts as to Which There Is No Genuine Issue the June 16, 1980, Affidavit of Mr. Harold Weisberg.

Respectfully submitted,



JAMES H. LESAR
2101 L Street, N.W., Suite 203
Washington, D.C. 20037
Phone: 223-5587

Attorney for Plaintiff

to the seven field offices, which directed them to forward to FBI Headquarters any document not directed to, nor received from, Headquarters or Memphis, as well as any document which had been submitted to, or received from, Headquarters or Memphis, but which contained "a substantive pertinent notation--other than an administrative type directive . . ." (See Attachment B) Under these instructions the field offices retained precisely those records said to be the same as records "previously processed" in connection with the Memphis and Headquarters releases; consequently, there was no possibility of comparing the field office records with what actually had been released.

The FBI's practice of routinely withholding field office records on the grounds that they have been "previously processed" is not unique to this case. For example, in Weisberg v. Webster, Civil Action No. 78-322, and Weisberg v. FBI, Civil Action No. 78-420, the same claim was made to withhold thousands of pages of records in the Dallas and New Orleans field office files on the assassination of President John F. Kennedy. Ultimately, however, the FBI was forced to admit that 2,369 pages of Dallas field office records had been withheld as "previously processed" when in fact they had not been provided and could not even be found at Headquarters. (See attached June 16, 1980, affidavit of Harold Weisber, ¶8)

It is apparent from the foregoing that the withhold of field office records in this case on the grounds that they were "previously processed" has no factual basis and cannot possibly be substantiated. Records which were supposed to have been provided under the Stipulation have in fact been wrongfully withheld under the guise that they were "previously processed". Accordingly, this Court should direct the defendant to make all such records available to plaintiff within a reasonable period of time. Plaintiff suggest that 60 days would be a reasonable period of time.

Respectfully submitted,



JAMES H. LESAR
2101 L Street, N.W., Suite 203
Washington, D.C. 20037
Phone: 223-5587

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

AUG 15 1977

HAROLD WEISBERG,

JAMES F. DAVEY, Clerk

Plaintiff,

v.

Civil Action No. 75-1996

U.S. DEPARTMENT OF JUSTICE,

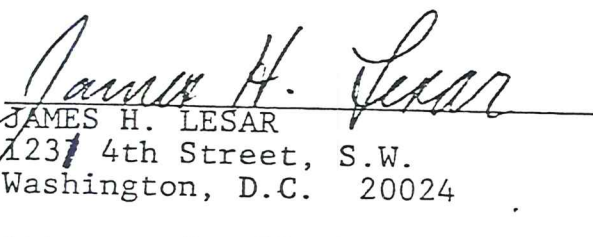
Defendants.

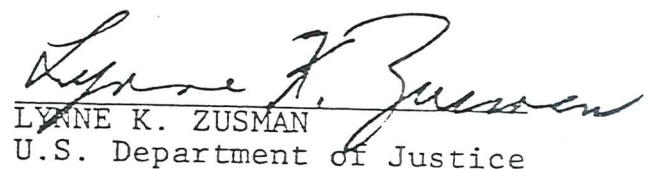
STIPULATION

It is hereby stipulated by and between counsel for the parties, that upon Federal Bureau of Investigation's representation to the Court herewith, that processing of the FBI Memphis Field Office files pertaining to "the Invaders", the Sanitation Workers Strike, James Earl Ray, and the MURKIN file is undertaken immediately by defendants, and will be completed by October 1, 1977; that defendants will provide a worksheet inventory of the released documents; that processing of MURKIN files from the FBI field offices in Atlanta, Birmingham, Los Angeles, New Orleans, and Washington, D.C., as well as the processing of files relating to John Ray, Jerry Ray, James Earl Ray, Carol and Albert Pepper in the Chicago and St. Louis field offices MURKIN files, will be completed by November 1, 1977; that duplicates of documents already processed at headquarters will not be processed or listed on the worksheets, but attachments that are missing from headquarters documents will be processed and included if found in field office files as well as copies of documents with notations; that releases of documents and accompanying worksheets will be made periodically as they are processed; that administrative appellate review of the documents will take place prior to their release; that in the course of this

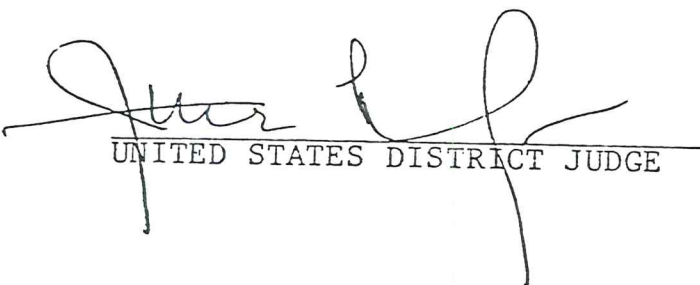
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processing all exemptions will only be assessed in strict conformance with the May 5, 1977, guidelines of Attorney General Griffin Bell relating to the Freedom of Information Act, and the provisions of the Freedom of Information Act itself; that in consideration of the foregoing commitment by the FBI and the Department of Justice, plaintiff will hold in abeyance filing a motion to require a Vaughn v. Rosen showing with respect to the foregoing FBI files, including the Headquarters files already processed; and further that, upon defendants' performance of these commitments by the specified dates, plaintiff will forego completely the filing of said motion; that plaintiff will hold in abeyance objections to specific deletions until the target dates specified above have passed, with the clear understanding of both parties that plaintiff has not waived his right to contest specific deletions after the passing of these dates.


JAMES H. LESAR
1237 4th Street, S.W.
Washington, D.C. 20024
Attorney for Plaintiff.


LYNNE K. ZUSMAN
U.S. Department of Justice
Washington, D.C. 20530
Attorney for Defendants.

SO ORDERED:


UNITED STATES DISTRICT JUDGE

Dated: Aug 12, 1977

[Handwritten initials]

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PRIORITY
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8/10/77

1 *[Handwritten signature]* Mr. Mintz
Attn: Mr. Mathews

1 *[Handwritten signature]* Mr. Fehl
Attn: Mr. Aldhizer

FM DIRECTOR
TO ATLANTA
BIRMINGHAM
LOS ANGELES
NEW ORLEANS
WFO
CHICAGO
ST. LOUIS
BT

CLEAR

HAROLD WEISBERG V.

U.S. DEPARTMENT OF JUSTICE

(U.S.D.C., D.C.)

CIVIL ACTION NO. 75-1996

FREEDOM OF INFORMATION ACT (FOIA) MATTER

BUDED AUGUST 31, 1977

JAH:tlm (6)

[Handwritten signature]

- Assoc. Dir. _____
- Dep. AD Adm. _____
- Dep. AD Inv. _____
- Asst. Dir.:
- Adm. Serv. _____
- Crim. Inv. _____
- Fin. & Pers. _____
- Ident. _____
- Intell. _____
- Laboratory _____
- Legal Coun. _____
- Plan. & Insp. _____
- Rec. Mgnt. _____
- Spec. Inv. _____
- Tech. Servs. _____
- Training _____
- Public Affs. Off. _____
- Telephone Rm. _____
- Director's Sec'y _____

AJD
HPB

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

AUG 10 1977
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Return to *[Handwritten initials]* Rm 6982
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MAIL ROOM

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PAGE TWO CLEAR

IN CONNECTION WITH CAPTIONED CIVIL ACTION THIS BUREAU HAS ENTERED INTO A STIPULATION TO PROCESS PURSUANT TO THE FOIA CERTAIN DOCUMENTS PERTAINING TO THE ASSASSINATION OF DR. MARTIN LUTHER KING, JR. (MURKIN) CONTAINED IN THE FILES OF YOUR FIELD DIVISIONS.

TO FACILITATE COMPLIANCE WITH THIS STIPULATION, EACH RECIPIENT SHOULD CONDUCT A SEARCH OF YOUR INDICES FOR ALL MAIN FILES IDENTIFIABLE WITH MURKIN. THEREAFTER, ATLANTA, BIRMINGHAM, LOS ANGELES, NEW ORLEANS, AND WFO SHOULD FORWARD TO FBIHQ ONE XEROX COPY EACH OF ALL DOCUMENTS, INCLUDING BULKY EXHIBITS AND]-A's WHICH MEET THE FOLLOWING CRITERIA: (1) ANY DOCUMENT IN THOSE FILES WHICH WAS NOT DIRECTED TO, NOR RECEIVED FROM, FBIHQ OR THE MEMPHIS FIELD DIVISION (FBIHQ FILES HAVE BEEN PROCESSED AND MEMPHIS FILES ARE CURRENTLY BEING PROCESSED FOR THE REQUESTER); (2) ANY DOCUMENT IN THESE FILES WHICH HAD BEEN SUBMITTED TO, OR RECEIVED FROM, FBIHQ OR MEMPHIS BUT WHICH CONTAINS A SUBSTANTIVE, PERTINENT NOTATION - OTHER THAN AN ADMINISTRATIVE TYPE DIRECTIVE FROM A SUPERVISOR TO AN AGENT - THAT WOULD NOT APPEAR ON THE FBIHQ OR MEMPHIS COPY. BULKY EXHIBITS OR]-A's, HOWEVER, WHICH CONTAIN MATERIAL OTHER

PAGE THREE CLEAR

PHAN DOCUMENTS, SUCH AS PHYSICAL EVIDENCE, SHOULD NOT BE COPIED FOR PROCESSING BUT SHOULD BE LISTED SEPARATELY IN YOUR COVER COMMUNICATION.

CHICAGO AND ST. LOUIS SHOULD FORWARD TO FBIHQ A XEROX COPY EACH OF ONLY THOSE DOCUMENTS, INCLUDING BULKY EXHIBITS AND 1-A's, IN THE MURKIN FILES WHICH (1) RELATE TO JOHN RAY, JERRY RAY, JAMES EARL RAY, CAROL PEPPER AND ALBERT PEPPER, AND WHICH WERE NOT SUBMITTED TO, NOR RECEIVED FROM, FBIHQ OR MEMPHIS AND (2) WHICH RELATE TO THOSE SAME PERSONS AND HAVE BEEN SUBMITTED TO, OR RECEIVED FROM, FBIHQ OR MEMPHIS BUT CONTAIN SUBSTANTIVE, PERTINENT NOTATIONS AS DESCRIBED ABOVE. FOLLOW THE SAME INSTRUCTIONS FOR BULKY EXHIBITS AND 1-A's AS DESCRIBED ABOVE.

ALL COPIES SUBMITTED SHOULD BE CLEARLY LEGIBLE, AND SHOULD BE SENT REGISTERED MAIL, MARKED TO THE ATTENTION OF RECORDS MANAGEMENT DIVISION, FREEDOM OF INFORMATION-PRIVACY ACTS BRANCH.

ADDITIONALLY, ONE AGENT IN EACH FIELD DIVISION SHOULD SUBMIT AN AFFIDAVIT WHICH CAN BE FILED IN COURT ATTESTING (1) THAT A SEARCH HAS BEEN MADE IN THE FIELD DIVISION FOR ALL FILES PERTAINING TO MURKIN IN ACCORDANCE WITH INSTRUCTIONS

PAGE FOUR CLEAR

FURNISHED ABOVE AND CITING THOSE FILES LOCATED; (2) THAT ALL THOSE MURKIN FILES HAVE BEEN REVIEWED AND COPIES OF ALL DOCUMENTS CONFORMING TO THE ABOVE CRITERIA HAVE BEEN FORWARDED TO FBIHQ.

BY SEPARATE COMMUNICATION, EACH RECIPIENT FIELD OFFICE WILL BE FURNISHED A SAMPLE AFFIDAVIT DETAILING THE FORMAT DESIRED.

INASMUCH AS PROCESSING OF THESE DOCUMENTS IS TO BE COMPLETED AT FBIHQ BY NOVEMBER 1, 1977, EACH OFFICE SHOULD INSURE THAT THE DOCUMENTS, TOGETHER WITH THE AFFIDAVIT, ARE FORWARDED TO FBIHQ BY AUGUST 31, 1977, OR AS SOON BEFORE THIS DATE AS POSSIBLE.

ANY QUESTIONS SHOULD BE RESOLVED BY CONTACTING SUPERVISOR JOHN ALLEN HARTINGH, EXTENSION 5565, OR UNIT CHIEF HORACE P. BECKWITH, EXTENSION 4086, POIPA BRANCH, FBIHQ.

BT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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: HAROLD WEISBERG, :
: :
: Plaintiff, :
: :
: v. : C. A. 75-1996
: :
: U. S. DEPARTMENT OF JUSTICE, :
: :
: Defendant. :
: :
.....

AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Old Receiver Road (Route 12), Frederick, Maryland. I am the plaintiff in this instant cause.

1. As soon as I examined the first records provided from FBI field offices in this instant cause, I complained to the FBI and appealed to Mr. Shea. I did this because most of the records were withheld under claim that they had been "previously processed" in FBIHQ records; because I knew this was not true; and because the FBI went out of its way to preclude confirmation.

2. Under the Stipulation the FBI was required to provide copies of all field office records that are not exact duplicates of FBIHQ records. Most field office records are not exact duplicates. They hold information not included on HQ copies.

3. In order to ascertain whether any field office record had been provided in HQ records and whether it is an exact duplicate, it is necessary to locate and examine the HQ records provided. This was not done. Instead, the FBI presumed that all records the field offices claimed to have sent to HQ were exact duplicates and were provided by HQ. This also is not true.

4. In order to know what HQ record is alleged to be a duplicate of any field office record, it is necessary to have the HQ serial number. The FBI failed to provide these necessary serial numbers on the worksheets. It continues not to provide them almost three years after I requested them.

5. Mr. Shea and his staff finally looked into this and the same problem when the FBI created it by withholding most of the JFK assassination records of

the Dallas and New Orleans field offices, which I had requested. Mr. Shea and Mr. Mitchell established that the withheld field office records are not exact duplicates and so testified on deposition in 1979.

6. In Mr. Shea's second "progress report," of October 26, 1978, he informed my counsel that "the issue should be resolved in favor of your client." (page 15) This has not been done.

7. In the two JFK cases, the FBI agreed to provide as cross-references copies of the field office worksheets annotated to include the pertinent HQ serial numbers. As soon as I received those pertaining to Dallas records, the only ones provided although New Orleans also is included, I checked them. This disclosed that in a large number of instances the cross-references were void. No serial identification was provided for a large number of records. I appealed immediately. It was apparent that, if the FBI's HQ records held these records that supposedly had been provided to me, their serial identifications were available and should have been included. The absence of serial numbers indicated that HQ records claimed to have been provided were not provided. This turned out to be the fact.

8. Under date of May 30, 1980, the FBI finally admitted that 2369 pages of Dallas records claimed to have been provided from FBIHQ records had not been provided and could not even be found at FBIHQ. (Exhibit 1)

9. The FBI phoned-up a cover-the-Bureau explanation, that "upon preparation of the cross-index and during the processing of the Dallas 3x5 index cards it was determined that these documents were not located in the Headquarters files."

10. The truth is that the Dallas 3x5 index has not yet been processed. What was provided under date of March 14, 1980, all that has been provided to date, does not include all of the second letter of the alphabet. When the FBI provided the single cross-reference I have received, on March 15, 1980, it did not report discovery of 2369 missing pages. It did not acknowledge that it had withheld an admitted 2369 pages of pertinent records until two and a half months later, after I provided it and Mr. Shea with proof that it had not listed all the required serial numbers on the cross-references.

11. As late as the FBI's letter of May 21, 1980 (Exhibit 2), it made no reference to allegedly having discovered, more than two months earlier, that these 2369 pages were missing or that they would be provided. Instead, it pretended that the exemptions claimed on the cross-references need not agree with the claims

made to withhold all or part of the underlying records. This led to the representation that claims to exemption other than are made for the underlying records can be made for them as indexed.

12. In Exhibit 2 the FBI refers to my letter of March 17, 1980, only in the sense of inconsistent claims to exemption. Actually, I reported that examination of "the worksheets themselves," meaning the cross-references, served "to raise serious questions about them" as well as the claims to exemption. I illustrated this by providing copies of the cross-reference worksheets and the original worksheets. I also informed Mr. Shea that "where the worksheets say nothing is withheld and no claim to exemption is made there is actual withholding." In what the FBI's May 21 letter does not refer to, my March 28 amplification of the appeal, I provided Mr. Shea with copies of Ms. Barrett's notes specifying the identifications of records allegedly "previously processed" that were not accounted for in the cross-references.

13. These missing 2369 pages are those that originated with only one of the FBI's 59 field offices. The FBI has not yet responded with respect to New Orleans JFK records. I have provided Mr. Shea with proof that pertinent New Orleans records are not included in FBIHQ records. The total number of missing records is not reported, if it is known.

14. With regard to the MURKIN field office records withheld as "previously processed," those without question missing from FBIHQ files include the inventories of 58 of the 59 field offices. Chicago's inventory was not withheld from FBIHQ MURKIN records. By the most remarkable of coincidences, if coincidence it is, not one of the field offices provided me with a copy of any of the inventories they provided the FBIHQ. These inventories disclose the pertinent holdings of each field office, by file identification and by volume. By means of the Dallas inventory, the only JFK one that escaped the censors, I was able to establish the existence of pertinent files that had not been searched and from which no records had been provided.

15. The withheld MURKIN inventories are certain to disclose records neither searched nor provided. I have already established this by other means, without cross-references or inventories, from correspondence between HQ and one field office. That field office did not send all its MURKIN records to HQ for

processing and disclosure to me. On an earlier occasion and for other purposes, it sent HQ MURKIN records it did not send in this instant cause.


16. In response to my appeal, two years ago the FBI did collect all these deliberately withheld inventories and was to have provided copies. To date it has not. They are MURKIN records and are so captioned at HQ and all the field offices.

17. The FBI has continued to withhold these inventories, two years after they were to have been provided, for the same reason it has not provided cross-references for the MURKIN field office records allegedly provided from HQ files. This is because, as with the 2369 pages of JFK records, the FBI withheld as "previously processed" records it did not provide from HQ files. I have reported that HQ MURKIN records are missing from the time the first of them were provided, beginning almost four years ago. Cross-references and inventories will disclose the deliberate withholding of what allegedly was "previously processed" and was not.

18. Proofs of the deliberate withholding of pertinent MURKIN records are included in my prior affidavits and remains entirely undisputed. These proofs include HQ directives to the field offices to limit the MURKIN records sent to HQ for processing. As a result the field offices did not send all their MURKIN records to FBIHQ for processing and release in this instant cause. FBIHQ therefore knows, without preparing cross-references, that all field office MURKIN records could not have been "previously processed" in HQ files and were not. It also knows that my examination of the withheld MURKIN field office inventories can produce additional proofs of deliberate withholding in this instant cause. Because the directives for the filing of inventories also include JFK assassination records and political records on Dr. King, the FBI also knows that these inventories will provide me with proof of noncompliance in JFK records litigation and with respect to the King political files it agreed to provide outside of this instant cause but, after more than three years, has not yet begun to provide.

19. The now admittedly withheld 2369 pages of Dallas field office records, earlier represented as already provided from HQ records, prove that in even important and delicate political cases of great historical significance large numbers of records do disappear from FBIHQ files, the FBI cannot account for them, and that the "previously processed" claim is entirely undependable. In this

instant cause the fact of withholding of pertinent information as "previously processed" when, in fact, it was not provided also remains without dispute in the case record and throughout my many documented appeals that, with the copies of pertinent FBI records I provided, fill two file drawers.

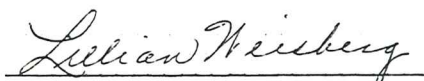


HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 16th day of June 1980 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.



NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND





UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

CA 75-1996
EXHIBIT 1

Mr. Harold Weisberg
7627 Old Receiver Road
Frederick, Maryland 21701

Dear Mr. Weisberg:

Reference is made to your letter dated May 17, 1980.

Enclosed is a copy of your letter to us dated March 29, 1980, of which you state you do not have a copy. In the above-referenced letter you also state you have two letters dated March 28, 1980. Please find enclosed, for your information, the March 28, 1980, letter to which we made reference in our letter dated April 25, 1980.

Also enclosed, under separate cover, are copies of Dallas Field Office documents (including inventory worksheets) which were listed as previously processed on the Dallas original inventory sheets. However, upon preparation of the cross-index and during the processing of the Dallas 3X5 index cards it was determined that these documents were not located in the Headquarters files.

This material consists of 2369 pages of which 1973 pages are being released.

Excisions have been made from this material or entire pages have been denied pursuant to the following subsections of Title 5, United States Code, Section 552:

- (b)(1) information which is currently and properly classified pursuant to Executive Order 12065 in the interest of the national defense or foreign policy;

Mr. Harold Weisberg

- (b)(2) materials related solely to the internal rules and practices of the FBI;
- (b)(3) information specifically exempted from disclosure by statute;
- (b)(6) materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (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.

The statute for which (b)(3) was cited is Title 28, United States Code, Section 534.

Documents which originated with other agencies or contained information from other agencies were referred to those agencies for a determination as to releasability. When these documents are returned to us you will be advised as to their releasability. Documents were referred to the following agencies:

Mr. Harold Weisberg

Department of State
Secret Service
Air Force
Internal Revenue Service

Central Intelligence Agency
Bureau of Prisons
Department of Energy
Department of Justice

If you so desire, you may appeal to the Associate Attorney General from any denial contained herein. Appeals should be directed in writing to the Associate Attorney General (Attention: Office of Privacy and Information Appeals), United States Department of Justice, Washington, D. C. 20530, within thirty days from receipt of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

Sincerely yours,

David G. Flanders/NSW

David G. Flanders, Chief
Freedom of Information-
Privacy Acts Branch
Records Management Division

Enclosures (3)



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

May 21, 1980

*CA 75-1996
EXHIBIT 2*

Mr. Harold Weisberg
7627 Old Receiver Road
Frederick, Maryland 21701

Dear Mr. Weisberg:

Your letter dated March 17, 1980, addressed to the Office of Privacy and Information Appeals, concerning the Dallas cross-reference lists, has been referred to me for direct response.

The cross-reference list was prepared in order to process the 3X5 special index. The exemptions placed on the cross-reference lists are being used only as a guide during the processing of the special index. It is not necessary for the processing of the special index that the exemptions placed on the cross-reference list agree entirely with the worksheets prepared when the underlying documents were processed. All that we need to know is whether or not a particular Dallas serial has any excisions.

When the FBI Headquarters and Field Office documents were processed changes may have been made when the documents were reviewed which should be reflected on the inventory worksheets but on rare occasions were not. Please note that every effort is made to ensure that notations on worksheets and the action taken on the processed documents are in agreement.

The list you furnished with your letter contained a notation concerning Dallas file 89-43-119 cross-referenced to FBI Headquarters file 62-109060-1029 with the exemptions

Mr. Harold Weisberg

cited as (b)(7)(C) and O/S (outside scope). No excisions were made from this document on the basis of outside the scope.

Sincerely yours,

David G. Flanders /w

David G. Flanders, Chief
Freedom of Information-
Privacy Acts Branch
Records Management Division