

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
)
 Plaintiff,)
)
 v.) CA No. 75-1996
)
 U.S. DEPARTMENT OF JUSTICE,)
)
 Defendant.)

MEMORANDUM OF POINTS AND AUTHORITIES
OPPOSING MOTIONS (1) TO COMPEL FURTHER
SEARCH AND (2) TO DISCLOSE FBI FIELD
OFFICE RECORDS WITHHELD AS "PREVIOUSLY PROCESSED"

On February 26, 1980, this Court issued a Finding as to Scope of Search in this case determining that "a good faith search has been made" of FBI files. That order was later modified in part by an order issued on September 11, 1980.

On November 15, 1980, plaintiff Harold Weisberg filed two motions. The first requests an order "to compel further search" and the second asks the Court to compel a search for copies of FBI Headquarters documents located in FBI field offices. Defendants oppose both motions for the reasons that they are contrary to this Court's order of February 26, 1980 as modified, and are not otherwise justified.

The question of the scope of search has been addressed in numerous hearings before this Court and has been the subject of many memoranda and affidavits presented to the Court prior to the entry of the February 26, 1980, Order. After the date of that order, in response to this Court's specific order of September 11, 1980 to check the files of the Attorney General and the Deputy Attorney General, defendant filed with the court the affidavit of Quinlan J. Shea, Jr., Director of the Office of Privacy and Information Appeals, Department of Justice attesting that a new search of those files had failed to reveal new documents.

(Appendix B, attached to Motion for Summary Judgment filed on December 10, 1980.) Also, questions which had been raised by Mr. Weisberg concerning specific documents in seven FBI field offices were addressed in detail in the affidavit of Special Agent John N.

Phillips (Appendix C, attached to Motion for Summary Judgment filed on December 10, 1980). These affidavits have fully addressed all questions which this Court has found still at issue regarding scope of search.

As to the "previously processed" issue, plaintiff must be aware that his request nullifies a provision of the August 12, 1977 Stipulation between the parties in this case that states:

[d]uplicates of documents already processed at headquarters will not be processed or listed on the worksheets.

As a result of this Stipulation, which was duly signed by the Court, the FBI has consistently processed and released only those field office records which were not processed at Headquarters. An exception has been to release from field office files "attachments that are missing from headquarters documents" and "copies of [Headquarters] documents with notations", as provided for by the Stipulation.^{1/} Mr. Weisberg now requests the Court to scrap this long-standing agreement by requiring a new search of all field office records to compare them with what has been released. The practical effect of plaintiff's request would be to require reprocessing of all field office MURKIN files, a truly monumental and time-consuming task.

In numerous affidavits, the FBI and the Department of Justice have attempted to show the high quality of searches they have performed for the information requested by plaintiff in this case. A showing of absolute perfection is not required by the FOIA. As was stated in Cerveney v. CIA, 445 F. Supp. 772, 775 (D. Colo., 1980):

Given the volume and complexity of the records . . ., there can be no absolute certainty that everything touching and concerning any specific subject has been located. The FOIA does not require an absolute guarantee of an exhaustive exhumation of records. The duty is to make a good faith effort to conduct a search using methods which can reasonably be expected to produce the information requested.

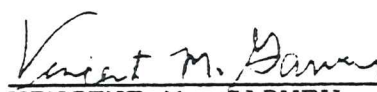
^{1/} Documents bearing routine administration markings were not processed as "documents with notations". Since all FBI field office documents have such markings, such an interpretation would have made the language of the Stipulation meaningless.

See also Goland v. CIA, 607 F.2d 339, 352-356, 197 U.S.App.D.C. 25 (D.C. Cir. 1978) cert. denied, 100 S.Ct. 1313 (1980); Exxon Corporation v. FTC, 384 F. Supp. 755, 760-61 (D.D.C., 1974). From the affidavits already submitted in this case, it is clear that the FBI and the Department of Justice have conducted an adequate search. Consequently, plaintiff's motions should be denied.

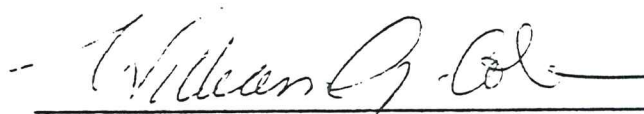
Respectfully submitted,

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ORDER

Upon considering plaintiff's motions (1) to compel further search and (2) to disclose FBI field office records withheld as "previously processed" and having considered defendant's memorandum in opposition, it is hereby

ORDERED that plaintiff's motions are denied.

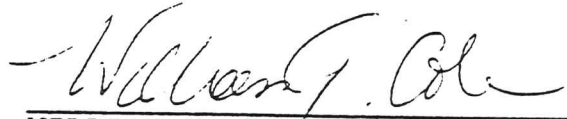
Dated: _____

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Memorandum
Opposing Motions (1) To Compel Further Search And (2) To Disclose
FBI Field Office Records Withheld As "Previously Processed" was
sent by mail, postage prepaid, on the 10th day of December, 1980
to:

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