UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

MOTION TO PLACE DIRECTOR OF OFFICE OF PRIVACY AND INFORMATION APPEALS IN CHARGE OF CASE; OR, IN THE ALTERNATIVE FOR AN ORDER COMPELLING SAID DIRECTOR TO ACT UPON PLAINTIFF'S ADMINISTRATIVE APPEALS AND REQUIRING THE FEDERAL BUREAU OF INVESTIGATION TO REVIEW EXCISIONS COMPLAINED ABOUT BY PLAINTIFF

Comes now the plaintiff, Mr. Harold Weisberg, and moves the Court to place Mr. Quinlan J. Shea, Jr. in charge of this case for the purpose of bringing it to a completion.

Alternatively, plaintiff moves the Court for an order compelling the Office of Privacy and Information Appeals to act upon the administrative appeals noted by plaintiff and requiring the Federal Bureau of Investigation to review the excisions complained about by plaintiff as promised by the Bureau in its letter to him of August 30, 1977.

A Memorandum of Points and Authorities and proposed Orders are submitted herewith.

Respectfully submitted,

James H. Lesar

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

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of January, 1981, mailed a copy of the foregoing Motion to Place Director of Office of Privacy and Information Appeals in Charge of Case; Or, in the Alternative for an Order Compelling Said Director to Act Upon Plaintiff's Administrative Appeals and Requiring the Federal Bureau of Investigation to Review Excisions Complained about by Plaintiff to Mr. William G. Cole, Room 3137, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

James H. Lesar

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	:	

MEMORANDUM OF POINTS AND AUTHORITIES

Preliminary Statement

Some eight and a half months after this suit was filed, defendant ("the Department") moved to stay the proceedings. In support of its motion the Department advanced the argument that because the assassination of Dr. Martin Luther King, Jr. is a case of historical importance, processing of the records sought by plaintiff must be done more carefully and at a slower pace than in more ordinary cases. In describing the Department's standard for the release of records in historical cases and cases of sustained public interest, Mr. Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals, asserted that:

> . . . Attorney General Levi and Deputy Attorney General Tyler have directed that all non-exempt records in these files of public and/or historical interest are to be released, together with every exempt record that can possibly be released as a matter of discretion.

(July 15, 1976 Affidavit of Quinlan J. Shea, Jr., ¶12) Mr. Shea also stated that:

> It is my personal judgment that the policy of maximum possible release should be allowed to operate as to the records relating to the assassination of Dr. Martin Luther King.

(July 15, 1976 Affidavit of Quinlan J. Shea, Jr., ¶13)

The promise that the King assassination records sought by plaintiff would be processed according to the historical case standard is one of several major broken promises that have thoroughly defrauded plaintiff and turned this case into a travesty of the Freedom of Information Act. That the FBI did not follow the historical case standard in processing the King assassination reocords is an established fact. It has been acknowledged in several different ways.

First, in his January 12, 1979 testimony in this case, Mr. Shea stated that his review of some of the records released in this case had disclosed that they contain excised materials which don't qualify for withholding. Indeed, he even state that as a general proposition the FBI agrees with him on this. (Janaury 12, 1979 transcript, p. 6) He further testified that in his judgment the public interest requires that such materials should be restored to the documents from which they have been excised. (January 12, 1979 transcript, p. 30)

Second, in each of the two Vaughn index samplings that it submitted to the Court, the FBI was forced to restore information which was improperly withheld under various claims of exemption. The amount of important substantive information which has been withheld is quite large, particularly when one considers that the Vaughn sampling was very small, comprising only one-half of one percent of the MURKIN Headquarters documents processed. And this is based solely upon what the FBI has admitted in its Vaughn showing and does not take into account the fact that plaintiff has demonstrated that a large percentage of those excisions which the FBI continued to defend in its Vaughn samplings are also erroneously withheld.

Thirdly, the FBI promised plaintiff that it would review the excisions about which he had complained "when we have completed the initial processing of all the files involved in this request."

(See Attachment 1, August 30, 1977 letter from James M. Powers, Chief, Freedom of Information/Privacy Acts Branch, Records Management Division, to plaintiff Harold Weisberg) In fact, it was to facilitate just such a review, although one that encompassed more than just excisions, that the Department pressured plaintiff into acting as its consultant on the bogus promises that it would pay him to do so and then act upon the information he provided. Although the FBI has long since claimed that it has finished its initial processing of all the files involved in this case, and although plaintiff has long since submitted his two consultancy reports to the Department, no such review has been made.

ARGUMENT

I. THE COURT SHOULD PLACE THE DIRECTOR OF THE OFFICE OF PRIVACY AND INFORMATION APPEALS IN CHARGE OF THIS CASE

From the very first status call in this case, held on February 11, 1976, the Department has sought to declare this case at an end. Had the Department made any effort to see that it was properly concluded, rather than seeking to end it without compliance with plaintiff's requests, it would have ended long ago. Given the manner in which this case has developed--a development so tortuously bizarre that no search has been made of most items of plaintiff's requests even now, more than five years after this suit was instituted--the only feasible manner of ending it properly and with reasonable dispatch is to place Mr. Quinlan J. Shea, Jr., Director of the Office of Privacy and Information Appeals, in charge of the case for the purpose of bringing it to an equable conclusion. By this plaintiff means that the Court should issue an order authorizing, empowering, and directing Mr. Shea to resolve the outstanding issues and to secure compliance with his instructions from the appropriate components of the Department of Justice.

The advantages to this are obvious. Mr. Shea is as knowledgeable in the Freedom of Information Act as any employee of the Department of Justice, if not more so, and he has also already acquired familiarity with the issues in this case, having reported to the Court on a review he and his staff made of the FBI's processing of MURKIN records. Indeed, at one point in the history of this case the Court herself suggested that placing Mr. Shea in charge of this case might be the way to expeditiously resolve the outstanding issues and inquired whether Department counsel would find out if Mr. Shea would perform this function. Although Department's counsel, at that time Betsy Ginsberg, promised to do so, so far as plaintiff is aware, she never reported back to the Court on this.

Mr. Shea has in effect performed this role in other cases. As a result of a review he conducted of administrative appeals taken by plaintiff Weisberg in Civil Action Nos. 78-322 and 78-420 (consolidated), Deputy Attorney General Shenefield has ordered the FBI to reprocess its Dallas and New Orleans field office records on the assassination of President John F. Kennedy. Both of these cases were instituted after the MURKIN records were processed in this case, so it might be expected that the quality of the processing had improved. Shenefield found, however, that the FBI was still withholding too much substantive information to comport with the historical case standard which should have been employed. In his letter of December 16, 1980, to plaintiff's counsel, he wrote that a substantial volume of material withheld under Exemption 1 had been declassified as a result of the review on administrative appeal and that the rest was being referred to the Department Review Committee for consideration as to whether it warrants continued classification under Executive Order 12065; that the FBI was being ordered to reprocess information withheld under Exemptions 7(C),

7(D) and 7(E); and that the Dallas and New Orleans field offices would be required to make additional file searches. (See, Attachment 2, December 16, 1980 letter from Deputy Attorney General John H. Shenefield to James H. Lesar) Thus, Shea's findings served as the basis for action by Shenefield which has hastened the completion of those cases without the sort of time-consuming and expensive litigation which has come to characterize this case.

Any other means of bringing this case to a conclusion is likely to prove more costly and time-consuming. Throwing plaintiff out of court, as the Department proposes, will be futile because plaintiff will go to the Court of Appeals. Since the Department has failed to establish that a good faith search has been made for records responsive to all items of plaintiff's requests, a sine qua non for an award of summary judgment in a Freedom of Information Act case, and since the Department's own Vaughn sampling shows that it cannot sustain its claims of exemption, the Court of Appeals will surely reverse. Thus the suggested disposition of this case proposed by the Department will only delay its completion, not hasten it.

Plaintiff will agree to be bound by any decisions reached by Mr. Shea if the Department will, subject only to the proviso that the Department must provide Mr. Shea with staff sufficient to insure that he will be able to accomplish the obligations placed upon him by the Court within a reasonable period of time.

II. ALTERNATIVELY, THE COURT SHOULD ISSUE AN ORDER COMPELLING THE OFFICE OF PRIVACY AND INFORMATION APPEALS TO DECIDE EACH OF PLAINTIFF'S ADMINISTRATIVE APPEALS AND REQUIRING THE FEDERAL BUREAU OF INVESTIGATIONS TO FILE A REPORT WITH THE COURT ON ITS REVIEW OF THE EXCISIONS COMPLAINED ABOUT BY PLAINTIFF

If the Court concludes that Mr. Shea should not be placed in charge of this case, then plaintiff demands that the Court compel the Office of Privacy and Information Appeals to act upon the many

appeals which plaintiff has lodged with that Office. The Office of Privacy and Information Appeals is required by Departmental regulations to act upon these appeals, but has not done so despite the passage of years. Examples of such appeals are found at Attachments 3-4.

In addition, if the Court determines to follow the route of not placing Mr. Shea in charge of this case, then plaintiff demands that the Court compel the FBI to make a review of all of the excisions about which he has made complaint and to file a report on its review with the Court. The FBI promised plaintiff that it would make such a review, but has not lived up to its word. (See Attachment 1) It is high time it was required to do so.

CONCLUSION

When plaintiff wrote FBI Director J. Edgar Hoover in 1969 and requested that he be provided with information on the assassination of Dr. Martin Luther King, Jr., it was determined that the FBI would deliberately refuse to respond to his requests. When this abuse of plaintiff was called to the attention of a congressional committee and Departmental representatives were asked about it, they acknowledged the mistreatment of plaintiff but promised the committee that they were "going to try to straighten out" the matter. (See Attachment 5)

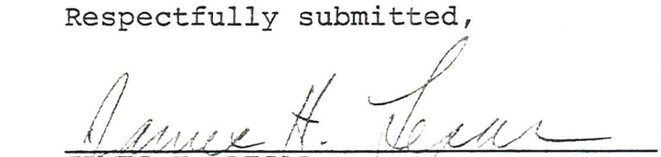
But the matter has not been straightened out. Instead the Department has resorted to making promises it has not kept and to refusing to perform even the basic search for responsive records that is among the most fundamental obligations placed upon it by FOIA. In what can only be described as utter disregard of the Act and insolent contempt for the Court, the Department has asked that the Court grant summary judgment on its behalf on the basis of a Vaughn sampling which concedes that substantive information has

been wrongfully withheld from the records released to plaintiff.

The Court must end this abuse of plaintiff and the FOIA now. Plaintiff has made an offer to be bound by the determinations of the Director of the Office of Privacy and Information Appeals if (1) the Court will authorize, empower, and direct said director to resolve the outstanding issues in this case; (2) the Department will agree to be bound by Mr. Shea's determinations and to follow his instructions; and (3) the Department will provide Mr. Shea with staff adequate to insure that he will be able to fulfill these obligations within a reasonable time frame. This is a unique and generous offer. Plaintiff urges the Court to adopt it as the fairest and most effective and expeditious way of bringing this long case to a close.

As an alternative to this proposal, plaintiff asks that the Court compel the Office of Privacy and Information Appeals to fulfill its obligations to act upon his appeals, and that the Court order the FBI to conduct the review of the excisions com-- plained about by plaintiff, as it promised it would do but has not, and to file a report of its review with the Court.

Respectfully submitted,



JAMES H. LESAR
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Washington, D.C. 20037
Phone: 223-5587

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

O R D E R

Upon consideration of Plaintiff's Motion to Place the Director of the Office of Privacy and Information Appeals in Charge of Case; Or, Alternatively, for an Order Compelling Said Director to Act Upon Plaintiff's Administrative Appeals and Requiring the Federal Bureau of Investigation to Review Excisions Complained About by Plaintiff, defendant's opposition thereto, and the entire record herein, it is by the Court this _____ day of _____, 1981, hereby

ORDERED, that Mr. Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals is authorized, empowered and directed to resolve all issues in this case which are presently unresolved and to secure compliance with his instructions from the appropriate components of the Department of Justice; and it is further

ORDERED, that the Department of Justice shall make available to Mr. Shea such staff as he requires to fulfill his obligations under this Order by the _____ day of _____, 1981.

_____
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

O R D E R

Upon consideration of Plaintiff's Motion to Place the Director of the Office of Privacy and Information Appeals in Charge of Case; Or, Alternatively, for an Order Compelling Said Director to Act Upon Plaintiff's Administrative Appeals and Requiring the Federal Bureau of Investigation to Review Excisions Complained About by Plaintiff, defendant's opposition thereto, and the entire record herein, it is by the Court this ___ day of _____, 1981, hereby

ORDERED, that on or before the ____ day of _____, 1981, the Office of Privacy and Information Appeals shall make a final determination regarding each and every administrative appeal lodged by plaintiff pertaining to this case; and is is further

ORDERED, that on or before the ____ day of _____, 1981, the Federal Bureau of Investigation shall file with the Court a detailed justification of each excision in MURKIN records complained about by plaintiff which sets forth: (a) the exemption claimed for each excision, a description of the type of information that is withheld, and the reason why the exemption claim is justified in the particular instance; (b) the reason why the excised material is not releasable under the historical case standard; and (c) the reason why the excised material is not releasable as a matter of agency discretion.

_____
UNITED STATES DISTRICT COURT

Attachment 1

Civil Action No. 75-1996

4-694 (Rev. 8-14-77)

1 - Mr. Long
Attn: Mr. Groover
1 - Mr. Grimsley
CIPU

REGISTERED

Subject of Request:
Assassination of
Dr. Martin Luther King, Jr.

AUG 30 1977

Mr. Harold Weisberg
Route 12
Frederick, Maryland 21701

1 - Mr. Mintz
Attn: Mr. Matthews

Dear Requester:

Enclosed are copies of documents from our files. Excisions have been made from these documents and/or entire documents withheld in order to protect materials which are exempted from disclosure by the following subsections of Title 5, United States Code, Section 552 and Section 552a. The exemption number(s) indicated by a mark appearing in the block to the left of the subsection cited constitutes the authority for withholding the deleted material. (See below and reverse side of this sheet for an explanation of these exemptions.)

Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☐ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☐ (b)(7)(C)	☐ (k)(1)
☐ (b)(4)	☒ (b)(7)(D)	☐ (k)(2)
☐ (b)(5)	☒ (b)(7)(E)	☐ (k)(3)
☐ (b)(6)	☐ (b)(7)(F)	☐ (k)(4)
	☐ (b)(8)	☐ (k)(5)
	☐ (b)(9)	☐ (k)(6)
		☐ (k)(7)

The decision to withhold exempt portions of our records is the responsibility of Clarence M. Kelley, Director of the FBI.

☐ If you believe your name may also have been recorded by the FBI incident to the investigation of other persons or some organization, please advise us of the details describing the specific incident or occurrence and time frame. Thereafter, further effort will be made to locate, retrieve and process any such records.

☐ Your request for information concerning yourself has been considered in light of the provisions of both the Freedom of Information Act (FOIA) (Title 5, United States Code, Section 552) and the Privacy Act of 1974 (Title 5, United States Code, Section 552a). It has been determined by the Attorney General that requests by individuals seeking information about themselves are governed by the Privacy Act. In addition, as a matter of administrative discretion, any documents which were found to be exempt from disclosure under the Privacy Act were also processed under the provisions of the FOIA. Through these procedures, you have received the greatest degree of access authorized by both laws.

☐ You have thirty days from receipt of this letter to appeal to the Deputy Attorney General from any denial contained herein. Appeals should be directed in writing to the Deputy Attorney General (Attention: Office of Privacy and Information Appeals), Washington, D. C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

☒ See additional information on continuation page.

1 - James H. Lesar
1231 Fourth Street, S.W.
Washington, D. C. 20004

James M. Powers, Chief
Freedom of Information-Privacy Acts Branch
Records Management Division

1 - Mr. John Ingram
United States Attorney's Office

1 - The Deputy Atty Gen
Attn: Mr. [illegible]

Enclosures (7)
Tolsons (10)

SEE NOTE PAGE 3

Mr. Harold Weisberg

This release is comprised of documents from Memphis Field Office files pertaining to James Earl Ray and the Memphis Sanitation Workers Strike. Memphis Field Office files pertaining to the other subjects of your request are currently being processed.

Documents currently being released consist of 1,429 pages. Pursuant to the $.06 per page duplication fee as established by the Department of Justice, the amount due for this material is $85.74. Please remit a check in the amount of $85.74, made payable to the Federal Bureau of Investigation in payment of these fees.

In reference to your letter dated August 17, 1977, the following information is provided. Duplicated copies of various photographs were furnished to you by our letter dated July 27, 1977. As explained in that letter, please advise us of the specific photographs of which you desire photographic reproductions and these will be provided to you. With the exception of those photographs which were identified to you and denied pursuant to the exemptions of the Freedom of Information Act, all those photographs located at Headquarters which pertain to the Purkin investigation have been made available to you. Any photographs located in the course of processing the various field office files will be made available to you subject to the provisions of the Freedom of Information Act.

A review of obliterations about which you have raised complaints will be conducted when we have completed the initial processing of all the files involved in this request. Documents such as the list of subpoenaed witnesses are released to you as they appear in FBI files. We are unable to make corrections on such documents as they are retained in their original form as they were received by the Bureau.

Various other issues raised in your August 17, 1977, letter do not pertain to the request for Purkin material. A copy of that letter has been provided to each analyst who is processing the requests pertaining to the matters mentioned in that letter.

Thank you for your patience and cooperation.

Attachment 2 Civil Action No. 75-1996

U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

December 16, 1980

James H. Lesar, Esquire
Suite 203
2101 L Street, N. W.
Washington, D. C. 20037

Dear Mr. Lesar:

This is in further response to the pending administrative appeals of your client, Mr. Harold Weisberg, from the actions of the Federal Bureau of Investigation on his requests for access to records of the Dallas and New Orleans Field Offices which pertain to the assassination of President John F. Kennedy.

As the result of extensive discussions between Bureau personnel and members of my staff, the F.B.I. has agreed to certain modifications of its initial actions on these requests. I have decided to affirm the Bureau's initial actions in part, to affirm the modified actions which will result from the discussions indicated, and to reverse the actions in one significant respect.

There was a relatively small amount of classified material which was actually processed by the F.B.I. pursuant to these two requests. Of the 113 pages and 142 individual paragraphs that were processed, the review on administrative appeal has resulted in the declassification of 29 entire pages and 36 additional paragraphs. As to the remaining classified material, the actions of the F.B.I. are affirmed. 5 U.S.C. 552(b)(1). This material has been referred to the Department Review Committee for consideration whether it warrants continued classification under Executive Order 12065. You will be notified of the results of this review.

Exemption 2 of the Act, 5 U.S.C. 552(b)(2), was used, either alone or in conjunction with 5 U.S.C. 552(b)(7)(D), to withhold source symbol numbers and informant file numbers. Such numbers are purely internal agency matters as to which the general public has no legitimate interest and the Bureau's use of this exemption for this purpose is affirmed. To the extent that exemption 3 of the Act, 5 U.S.C. 552(b)(3), was used, either alone or in conjunction with 5 U.S.C. 552(b)(7)(C), to withhold "rap sheets" and

the names of personnel of the Central Intelligence Agency, the actions of the F.B.I. are affirmed. 28 U.S.C. 534; 50 U.S.C. 403g. All uses of this exemption in conjunction with § 6103 of the Internal Revenue Code will be reconsidered. There is some question whether claims of exemption 6, 5 U.S.C. 552(b)(6), should not have been based instead upon exemption 7(C), 5 U.S.C. 552(b)(7)(C), given the investigatory nature of the file into which the records in question had been incorporated. On the other hand, the actual records are intrinsically exemption 6 material (medical records, etc.). In any event, the decision of the Bureau to withhold this information on personal privacy grounds is affirmed on the basis of both exemptions.

On a number of occasions, your client has questioned whether exemption 7 of the Act, 5 U.S.C. 552(b)(7), can properly be applied at all to records of the F.B.I. which pertain to the Kennedy assassination. In my judgment, these records of the Bureau do constitute investigatory records compiled for law enforcement purposes within the meaning of the Freedom of Information Act. Irons v. Bell, 596 F.2d 468 (1st. Cir. 1979). See also Weisberg v. Department of Justice, 489 F.2d 1195 (D.C. Cir. 1973), cert. denied, 416 U.S. 993 (1974).

The two exemptions most frequently cited by the Bureau to deny access to material within the scope of your client's requests were 7(C) and 7(D), 5 U.S.C. 552(b)(7)(C) and (7)(D). These exemptions were, however, used to deny access to two very different kinds of material. First, they were used to withhold the names of persons, or purely descriptive information pertaining to them, or minimal information furnished by them, to the limited extent necessary to prevent the disclosure of their identities. All such usages of these exemptions, specifically including the denials of access to the names of F.B.I. Special Agents in the more recent portions of the processed files, are affirmed. Second, these exemptions were used to deny access to significant quantities of substantive information. On the basis of the results of my staff's review, I am not persuaded that all such usages of these exemptions were justified. Accordingly, I am at this time reversing the F.B.I.'s actions as to all such withholdings and remanding them for de novo reconsideration, which will be carried on in close coordination with my staff. Prior to undertaking the actual review of these records, Bureau personnel will familiarize themselves thoroughly with the Report of the Warren Commission, the relevant publications of the House Select Committee on Assassinations, and the various other official, readily-available, authoritative reference sources pertaining to the Kennedy assassination. This kind of substantive information in these files will be released unless the need for continued withholding is clearly established. In

exercising the discretion which is vested in this Department whether or not to release material which is exempt from mandatory disclosure under the Act, I have concluded that the importance to the American public of the Bureau's investigation of the Kennedy assassination is too great for me to apply any less rigorous standard. All denials of access which were effected on the basis of exemption 7(E), 5 U.S.C. 552(b)(7)(E), will also be reprocessed, but the Bureau's reliance on exemption 7(F), 5 U.S.C. 552(b)(7)(F), to withhold the names of agents of the Drug Enforcement Administration was correct and is affirmed.

There are certain other aspects of these appeals as to which it has been agreed that further action by the F.B.I. is appropriate. With respect to the Dallas Field Office, the Bureau will now conduct an all-reference search on the assassination itself, on Lee Harvey and Marina Oswald, on Jack Ruby and on the Warren Commission. All hitherto unprocessed records on these subjects, whether contained in main files or see references, will be carefully screened and those which pertain to the assassination in any way will be processed. In addition, as a matter of agency discretion, the Bureau will conduct all-reference searches on George De Mohrenshildt and former Special Agent James P. Hosty, and will also attempt to determine whether there are any official or unofficial administrative files which pertain to the Kennedy case, with particular emphasis on seeking files on "critics" or "criticism" of the F.B.I.'s assassination investigation. Any records located as the result of these searches will also be carefully screened and, if appropriate, processed for possible release to your client. With respect to the New Orleans Field Office, the Bureau will undertake a further search for a possible main file on David Ferrie, and will forward to Headquarters for screening and possible processing those portions of another file which pertain to Ferrie, Jim Garrison and Jack Ruby. In addition, as a matter of agency discretion, the F.B.I. will conduct a new search in New Orleans for any existing official or unofficial administrative files which pertain to the Kennedy case. The action of the F.B.I. in not conducting a specific search for records pertaining to Gordon Novel is affirmed.

As you know, numerous records in Dallas and New Orleans files were referred to other agencies and components of the Department of Justice for their views, with the request that they be returned to the F.B.I. for action. As the result of efforts by Bureau personnel and members of my staff, virtually all of those records have now been returned with the exception of those

sent to the Central Intelligence Agency. The F.B.I. has agreed with my staff that all of the unclassified referred records should be reprocessed. Although appropriate weight will be given to the views of the other agencies and components, the Bureau, acting in conjunction with my staff, will consider these records for possible release in light of the same standards being applied to all of the other records within the scope of these requests. Particular attention will be given to claims that material is barred from release by § 6103 of the Internal Revenue Code. At this time, I am specifically finding that the denial of access on this basis to the requests for assistance in the Kennedy investigation which were sent from the F.B.I. to the Internal Revenue Service was improper.

Of the more than 100,000 pages of records to which access was in effect denied on a "previously processed" basis, it has been established that some 3,000 pages may not in fact have been processed as part of the Headquarters files. These pages have now been processed. With respect to all other documents in this category, the Bureau will entertain requests for specific items, subject to your client's willingness to pay for them at the rate of ten cents per page. When the substantive text of the second copy of a record is the same as that of a previously released record, it is my conclusion that there is insufficient presumptive benefit to the general public to warrant a fee waiver as to such materials. To the extent your client can show that any of these second copies have independent significance, I will consider granting a fee waiver as to them on a retroactive basis. My decision on this point is without prejudice to Mr. Weisberg's pending appeal from the termination of his general fee waiver for Kennedy records, but it is final as to previously processed documents, regardless of what may be the final decision on that other appeal.

Lastly, there are various films and tapes in these files which were not processed for possible release to Mr. Weisberg. The Bureau will now consult with him regarding these materials and will process any which are of interest to him. Only in the event that he requests additional copies of items which have already been furnished to him will he be charged.

Judicial review of my action on these appeals is available to your client in the United States District Court for the judicial district in which he resides or has his principal place of business, or in the the District of Columbia, or in the Northern District of Texas and the Eastern District of Louisiana, as to records in each of these districts.

Sincerely,

John H. Shenefield
Associate Attorney General

cc: Mr. Harold Weisberg

Attachment 3 Civil Action No. 75-1996

JL

King assassination records appeals Harold Weisberg 7/3/80
Oliver Patterson appeal
Susan Wadsworth request/appeal
Richard Geppert appeal
Informant appeals in general
Intent not to comply

The Department delayed delivery records called for on discovery in C.A. 75-1996 until it was too late to use them in deposing the FBI SAs who testified. I have just reviewed some I do not recall having time to review at the time of the depositions. One of these pertains to Oliver Patterson, Bresson to Bassett, 1/11/79, attached.

I draw your attention to the top of page 2, with emphasis I add:

"FOIPA Branch personnel held a conference with representatives of the Civil Division, FOIPA Litigation Section, DOJ, and Office of Privacy and Information Appeals, DOJ, and it was agreed, due to the public disclosures of Patterson's activities, to process and release portions of his Bureau files.

This states explicitly that Patterson records within the subject matter are withheld. (Privacy waiver provided.)

This also states that if such activity had been disclosed, basis for withholding does not exist. I have provided proofs of other public disclosures of other informants, like Richard Geppert, Morris Davis and Marjorie Fetter, yet all those pertinent records remain withheld. (In addition, there is disclosure to and by the HSCA.)

Mr. Bresson appears to be responsible for the withholding of pertinent Patterson records and to have done this with knowledge that he was withholding them. I recall no claim to exemption for any such pertinent records. Mr. Bresson also is factually incorrect in stating that Patterson's "informant activity was from January, 1970 to August, 1971." Over Patterson's written objections the FBI turned him over to HSCA, for which he was an informant and his informant information was delivered to the FBI and the Department.

His informant reports remain withheld, save for a prejudicial one he rewrote under FBI guidance to make it prejudicial.

Because Patterson was an FBI informant inside the defense of two Rays, James and John, it is even more important that all pertinent information be disclosed.

My appeals are quite old, about two years. In August 1978 Mr. Lesar wrote you after you had not responded to my earlier appeals. On Wadsworth, from whom also a privacy waiver, a year and a half.

One Item of my requests is for all information relating to any kind of surveillance on a list of persons, including all Rays a nd all counsel. Informants are an obvious and old, non-secret means of surveillances.

All this infor ation that is deliberataly withheld is within the requests and its disclosure is further required by disclosure to HSCA and by the Department's public statements about full disclosure in this historical case.

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

TO : Mr. Bassett

DATE: 1/11/79

FROM : T. E. Bresson

SUBJECT: FREEDOM OF INFORMATION-PRIVACY ACTS (FOIPA) RELEASE OF DOCUMENTS PERTAINING TO OLIVER BLOCK PATTERSON, JR.

PURPOSE:

To advise of release of documents to Harold Weisberg pertaining to former St. Louis informant Oliver Block Patterson, Jr.

DETAILS:

Oliver Block Patterson, Jr. publicly admitted being a former informant of the FBI in the St. Louis, Missouri, area. He was also identified as a former Bureau informant by the House Committee on Assassinations and identified in numerous news articles as a former Bureau informant who was cooperating with the House Committee on Assassinations concerning the assassination of Dr. Martin Luther King, Jr.

In connection with his lawsuit for King assassination material (Harold Weisberg vs. U. S. Department of Justice, Civil Action 75-1996, U.S.D.C., D.C.) Weisberg requested material on Patterson and provided a waiver of Patterson's privacy rights plus an extensive tape interview with Patterson in which Patterson discussed his informant activities primarily with the Minutemen and National States Rights Party organizations in St. Louis.

REC-138 176-709-108

1 - Mr. Boynton
1 - Mr. Steel
1 - Mr. Bassett
1 - Mr. McCreight
1 - Mr. Bresson

5 JAN 10 1979

HPB:vdp (8)

CONTINUED - OVER

6 FEB 9 1979

Memorandum to Mr. Bassett
Re: FOIPA Release of Documents
Pertaining to Oliver Block Patterson, Jr.

FOIPA Branch personnel held a conference with representatives of the Civil Division, FOIPA Litigation Section, DOJ, and Office of Privacy and Information Appeals, DOJ, and it was agreed, due to the public disclosures of Patterson's activities, to process and release portions of his Bureau files. A total of 93 pages of material on Patterson has been released. It includes material from two main files, a brief White Slave Traffic Act-kidnapping investigation and his informant file, plus several miscellaneous see references. The released material includes his informant activities which resulted in an association with Jerry Ray and John Ray, brothers of James Earl Ray. Material appearing in the St. Louis files relating to Patterson is currently being processed and subsequently will be released. His informant activity was from January, 1970, to August, 1971.

RECOMMENDATION:

None. For information.

APPROVED:
Director
Asst. Dir.
Dep. AD Inv.
Laboratory
Legal Coun.
Tech. Servs.
Public Affs. Off.

Attachment 4 Civil Action No. 75-1996

King assassination records appeals Harold Weisberg 7/3/80
Divisional files
Crime Records Division

This is to amplify a number of prior appeals. About them, in your last year's deposition testimony, you testified that I was about to receive a response. I haven't.

There has been no search to comply with Item 7 of my 4/15/80 request & - not even after the deposition testimony by FBI agents established there was never any search. SA Wiseman testified that all he did was speak to someone in the public relations office.

SA Hartingh, who had been assigned to Crime Records, testified that his duties included preparing "public domain" information.

My request is for any kind of information, in any form whatsoever. It does not use the word "secret" or anything like it.

Washington Star's Jeremiah O'Leary, who had cozy relationships with both the FBI and CIA, wrote a story for the Readers Digest that had the effect of turning the Ray case around before it came to trial. When the nature of his FBI relationship in connection with the Readers Digest was made public in the general JFK releases, O'Leary sought to explain that relationship away (it was prior censorship) by saying that it meant nothing at all because all of his information was provided by the FBI. O'Leary is one of those listed in my Item 7.

According to his book, "Will", Gordon Liddy was a supervisor in Crime Records. Liddy's description of the functions of "Crime Records" is that it performed the functions included in Item 7.

Refusal to search those records and the 94 files constitutes deliberate non-~~majx~~ compliance and I again appeal your refusal to cause the proper searches to be made. 80 files also need to be searched.

keep trying to get citizens to volunteer to help us find him. What d'you say?"

She gave us the name of a nearby ranch and we left. The resident agent was right about the madam's connections, though. The first thing Monday morning the Denver office got a complaint from the office of the governor of Wyoming. Meantime, though, the fugitive was apprehended.

In June 1961, when the news came that I had been promoted to Bureau Supervisior at "S.O.G." (for Seat of Government, as we called FBI national headquarters to distinguish it from "W.F.O.," Washington Field Office), Scott Werner and I were happy. Fran was not. Good soldier that she was, though, she swallowed her disappointment and looked at the bright side; she'd be back East where her mother and all her friends lived.

I was assigned to Division 8, the Crime Records Division, headed by an exceptionally able Assistant Director of the FBI named Cartha DeLoach, known throughout the Bureau as Deke.

Fran and I rented a brick house in Arlington that conformed to the regulation that Bureau Supervisors live within quick reach of headquarters. Unfortunately, a house that close did not conform to our budget. The FBI had the power to appoint me, at age twenty-nine, a Bureau Supervisor, but Civil Service regulations did not permit me to be paid accordingly. At about $8,000 a year Fran and I found ourselves living between an executive of the Associated Press on one side and a navy admiral on the other.

The Crime Records Division was a fascinating place. The actual keeping of records on crime was accomplished by just one section. The others handled such things as J. Edgar Hoover's correspondence; all FBI publications; congressional relations; press relations and public relations (though it was denied these last two activities existed); exhibits; requests for information about persons and activities or organizations that attracted Hoover's attention; his visiting schedule; FBI television programs, radio shows, movies, and, very important, ghostwriting for Hoover.

I was first put to work preparing memoranda responding to Hoover's inquiries—in the beginning the more mundane, then, as confidence in my ability grew, matters of increasing sensitivity. The rules were strict and easy to remember: absolutely no errors, of any kind or significance, were tolerated. Everything prepared for Hoover's signature went through the "reading room," staffed by a crew of spinster experts on grammar and spelling. I wasn't there more than two weeks before I got my first letter of censure for an error. It was occasioned by an incorrect initial on an envelope and I noted with amusement a psychological touch: letters from Hoover, with good news—a promotion, commendation, or raise—were on blue letter-

Attachment 5

Civil Action No. 75-1996

95TH CONGRESS
2d Session

[COMMITTEE PRINT]

AGENCY IMPLEMENTATION OF THE 1974 AMENDMENTS TO THE FREEDOM OF INFORMATION ACT

REPORT ON OVERSIGHT HEARINGS

BY THE

STAFF OF THE

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

OF THE

COMMITTEE ON THE JUDICIARY

OF THE

UNITED STATES SENATE

MARCH 1980

Printed for the use of the Committee on the Judiciary

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WASHINGTON : 1980

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Inadequate Records Management and Filing Practices.—Improvement in agency records management practices and filing procedures can also help speed the response to FOIA requests and appeals. Although the FOIA regulations of the Central Intelligence Agency, for example, call for "the prompt and expeditious processing" of requests,[94] the CIA has informed the Subcommittee that it is unable to comply with the 10-and 20-day response times, in large part, because the agency has "no single centralized records system" or index to record its holdings.[95] Thus, it often takes the agency several days just to locate requested documents.[96] The CIA, or any other agency without a centralized records system, needs to reassess and improve its filing and records system in order to respond to requests for information more expeditiously.[97]

Deliberate Dilatory Tactics.—The most questionable and objectionable causes of delay are those that stem from improper agency attitudes, including outright hostility to the FOIA, access to public information or the individual requester.[98] Where such attitudes exist, agency personnel can easily use delay "as a deliberate stalling tactic." [99] Hoping, for example, "that the passage of time will exhaust the requester's interest in documents that the agency is reluctant to produce," [1] an agency may improperly delay any reply for a substantial period of time, only eventually to reject a request "for a reason that should have been apparent at the time it was received." [2] Or the agency may not deny a request outright but deem it "inadequate for lack of specificity" or sufficient identifying information, "with the result that final action on the unpopular request is delayed while the requester attempts to reformulate it with more particularity." [3]

It is difficult to determine precisely the extent to which the agencies and departments are employing deliberate, dilatory tactics to frustrate FOIA requests and appeals. At least one such case, however, was brought to the attention of the Subcommittee, and there well may be more.[4]

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[94] See 32 C.F.R. § 1900.1(d); Hearings, p. 535.
[95] Hearings, p. 86; 1977 CIA Annual Report, p. 2, subcommittee files.
[96] *Id.*
[97] See also pp. 125–133, infra, on other CIA records management practices.
[98] See pp. 52–56, supra.
[99] Giannella, p. 14, note 8, supra, p. 244.
[1] Id.
[2] Id., citing Nader, "Freedom From Information: The Act and the Agencies," 5 Harv. Civ. R.-Civ. Lib. L. Rev. 1, 8 (1970).
[3] Id.
[4] See Hearings, pp. 139–141, 174–175, 941–942. One witness brought to the subcommittee's attention three internal FBI memoranda regarding an FOIA request submitted to the FBI in 1969 by Harold Weisberg. In the words of the witness, the memo, dated October 20, 1969, stated that Mr. Weisberg "...was a leading critic of the FBI's Warren Commission Report and various government law enforcement agencies. Referring to the request submitted by Mr. Weisberg, which sought information on the King murder case for use in a forthcoming book, the FBI memo conclude [d] that "it was approved that this letter not be acknowledged." Although it is now 8 years later, is is my understanding that despite Mr. Weisberg's continuing efforts to obtain the requested information, it has never been received. In fact, Mr. Weisberg's attorney informs me that there are approximately 25 of Mr. Weisberg's FOIA requests which have never been answered, although some of this information has been generally released to the press. We hope the subcommittee will demand an explanation of these events from the FBI." Id., pp. 174–175. The Subcommittee attempted to obtain such an explanation from FBI and Justice Department witnesses. Acknowledging that Mr. Weisberg had "reason to complain about the way he was treated in the past," the Department witness said the Civil Division was "going to try to straighten out" the matter. Id., p. 140.

According to Mr. Weisberg, however, as of January 1979, neither the FBI nor the Department of Justice have begun to comply with his specific requests regarding both the King and Kennedy assassinations. In the King case, for example, Mr. Weisberg said the FBI "continues to make substitutes for my actual request," and has "deliberately misinterpreted" his requests. He also claimed Allen H. McCreight, Chief, FOIA-Privacy Act Branch, FBI, continues not to respond to Weisberg's FOIA correspondence. Telephone interview, Jan. 22, 1979.