

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

SECOND AFFIDAVIT OF JOHN N. PHILLIPS

I, John N. Phillips, being duly sworn, depose and say as follows:

(1) I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Freedom of Information-Privacy Acts (FOIPA) Branch, Records Management Division, FBI Headquarters (FBIHQ), Washington, D. C.

Due to the nature of my official duties, I am familiar with the procedures followed in processing Freedom of Information Act (FOIA) requests received at FBIHQ. Although I was not initially involved with plaintiff's FOIA request, I am, however, familiar with all aspects of this request as it relates to the FBI. The information set forth herein is based upon my review of the records and correspondence with plaintiff as it relates to this litigation, and upon information provided to me in my official capacity, including information furnished by affected FBI field offices identified herein.

(2) This affidavit has been prepared in response to plaintiff's "Memorandum to the Court" of August 20, 1980, and his "Notice of Clarification" of August 27, 1980. In these documents, plaintiff lists files from seven FBI field offices which he claims were not provided to him pursuant to the Stipulation of August 5, 1977. (A copy of this Stipulation is attached hereto as Exhibit A.)

(3) This Stipulation, inter alia, provided that certain files from eight named FBI field offices would be made available to plaintiff under the FOIA within a certain order and time frame agreed to by the parties. With regard to the possibility that certain documents would be duplicative of materials already furnished to plaintiff under the FOIA, the parties agreed 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."

It should be noted that at the time the Stipulation was signed, processing of files maintained at FBIHQ which were responsive to plaintiff's FOIA requests of April 15 and December 23, 1975, was completed.

(4) Prior to the signing of the Stipulation, the Memphis Field Office had already been instructed (see Exhibit C, infra,) to forward its complete files pertaining to the assassination of Dr. Martin Luther King, Jr., (MURKIN) and other subject matters to FBIHQ for review and release under the FOIA. To avoid the processing of duplicate records, and to achieve the mutual intent expressed by the parties in the clause cited above from the Stipulation, any document bearing a designation that it had been received from or sent to FBIHQ was not processed under the FOIA for release to plaintiff unless it contained a substantive notation.

(5) For the information of the Court, the Memphis Field Office, as Office of Origin (OO), was responsible for coordinating the assassination investigation between all other FBI field offices and FBIHQ. (See also paragraph 14A, infra, for an additional description of an OO and related entities.) Therefore, when the other seven field offices named in the Stipulation

were to submit their responsive records to FBIHQ, to again avoid processing duplicate records, they were respectively instructed to conduct a review of the appropriate documents contained in their responsive files and forward to FBIHQ only those which had not been designated as having been received from or sent to FBIHQ or the Memphis Field Office, with the exception of those documents containing substantive notations.

(6) Several items listed in plaintiff's Memorandum to the Court are materials that had previously been reported to the Memphis Field Office or FBIHQ during the course of the investigation. These documents were not provided to plaintiff from the respective field office files, because they were made available or would be made available to plaintiff previously through release of FBIHQ and/or Memphis Field Office records. (Pursuant to the Stipulation, it was agreed that the Memphis Field Office records would be processed and released prior to the records of the other field offices identified therein.)

(7) In his Memorandum to the Court plaintiff lists several files which he states were not provided to him pursuant to the aforementioned Stipulation. The following paragraphs represent an itemization of each such file listed by plaintiff in the aforescribed Memorandum to the Court. After each itemization is then set forth the disposition of each group of records.

(8) Atlanta Field Office

(A) 44-2386-C: "1 vol., consists of xerox copies of transmittal letters of evidence to FBI Lab and single fingerprint section of FBIHQ."

Disposition: Documents contained in this file consist of submissions from the Atlanta Field Office to FBIHQ. These documents were provided to plaintiff from the Headquarters files. (See paragraph 4, supra.)

(B) 44-2386-D: "1 vol., consists of xerox copies of FBIHQ Lab reports and single fingerprint section reports regarding evidence submitted."

Disposition: Documents in this file consist of Laboratory reports from FBIHQ to Atlanta. Plaintiff received this material from the Headquarters files. (See paragraph 4, supra.)

(C) 44-2386-SF-1: "1 vol., consists of data relative to cost data in investigating case"

Disposition: Material in this file is made up of documents to or from the Memphis Field Office. Plaintiff was provided this data from the release of Memphis files on September 29, 1977. (See paragraph 5, supra.)

(D) 44-2386-SF-2: "1 vol., consists of newspaper articles relative to MURKIN case."

Disposition: Our records indicate that plaintiff was provided copies of these newspaper clippings along with other material from the Atlanta Field Office by letter dated October 19, 1977. It is noted, however, that due to a clerical error, the inventory worksheet for these documents (a copy of which is attached hereto as Exhibit B) incorrectly bears the Birmingham Field Office MURKIN file number, 44-1740, instead of the Atlanta file number 44-2386.

(9) Chicago Field Office

(A) Sub A: "7 vols., 18 serials, contains reports captioned 'James Earl Ray, AKA Fugitive, I.O. 4182, Dr. Martin Luther King, Jr.,--Victim, CR--Conspiracy and UFAC--Robbery' Re fugitive investigation 4/18/68 - 10/2/68"

Disposition: Documents in this file consist of reports, all of which were sent to FBIHQ during the course of the investigation. Plaintiff received this material through the disclosure of Headquarters records. (See paragraph 4, supra.)

(10) Los Angeles Field Office

(A) Sub G: "Cost data"

Disposition: Material in this file was either sent to or received from the Memphis Field Office. Plaintiff received this data from the release of the Memphis files on September 29, 1977. (See paragraph 5, supra.)

(B) Sub H: "reports from other offices, 13 serials."

Disposition: All reports in this file had been sent to FBIHQ during the investigation. Plaintiff was provided these reports through the release of the Headquarters files. (See paragraph 4, supra.)

(11) Memphis Field Office

(A) 100-4105: "Martin Luther King, Jr., Security Matters. Sub C 2 vols., 66 serials, includes activities in Memphis area March and April";

and (B), 149-121: "'Threat to American Airlines and Dr. Martin Luther King, Jr., Memphis, Tenn., April 1, 1968' DAMV, 3 serials on threat to bomb plane on which King would return to Memphis"

Disposition: These files were not retrieved by the Memphis Field Office during the search of their indices. By teletype dated July 7, 1977, from FBIHQ to Memphis, (a copy of which is attached hereto as Exhibit C) that office was instructed to conduct an indices search for all main files identifiable with the Martin Luther King Assassination (MURKIN), James Earl Ray, the Invaders, and the Memphis Sanitation Workers Strike, as required by the Stipulation. In the December 9, 1975, teletype (a copy of which is attached hereto as Exhibit D) on the other hand, the Memphis Field Office was instructed to furnish, inter alia, "all materials concerning King." (Emphasis added.) A review of the four applicable Memphis index cards (copies of which are attached hereto as Exhibit E) does not indicate that

the two above files would have been responsive to the above instructions from FBIHQ of July 7, 1977, which were established pursuant to the Stipulation.

(12) New Orleans Field Office

(A) 157-10673: "James Earl Ray, AKA, Dr. Martin Luther King, Jr., Victim; CR--Conspiracy; UAFC--Robery; (MURKIN) 72 items in exhibits envelope, 6 items in bulky section. Three sub-files, clippings, originals of FD-302s and inserts and copies of FD-302s and inserts marked for indexing. Main file, 18 sections, 1,308 serials, 72 1A exhibits, six bulky exhibits, besides three subs." Through his Memorandum to the Court and a later Notice of Clarification, plaintiff states that he received two rather than six bulky exhibits and that he did not receive a copy of the sub-file of records marked for indexing. He also states that he does not know whether he received duplicates of the copies of FD-302s and inserts that were marked for indexing.

Disposition: All FD-302s and inserts contained in the New Orleans subfiles were incorporated into reports that were submitted to FBIHQ prior to each FD-302 or insert being placed in the sub-file. Plaintiff thus received these FD-302s and inserts through release of the New Orleans reports contained in the Headquarters files.

With regard to the bulky exhibits, the New Orleans Field Office inventory represents that there are only six items in the New Orleans bulkies. This is incorrect inasmuch as there are neither six items in the bulky section nor six bulky exhibits. Actually, there are two bulky exhibits, one containing nine items from the hotel room of a James Earl Ray look-alike (157-10673-1B1) and the other (157-10673-1B2) containing toll records for five telephone numbers. "Bulky sheets" for these two exhibits (copies of which are attached hereto as Exhibit F) were provided to plaintiff with the other New Orleans documents by letter dated October 21, 1977, and notations regarding the disposition of the exhibits are contained thereon.

(13) St. Louis Field Office

(A) 44-775: "Sub II: Cost data"

Disposition: Material in this file was either sent to or received from the Memphis Field Office. Plaintiff received this information through the release of the Memphis files on September 29, 1977. (See paragraph 5, supra.)

(14) Washington D. C. Field Office (WFO)

(A) 44-703: "Sub C: 5 vols., 51 items"

Disposition: As is explained in the WFO inventory (a copy of which is attached hereto as Exhibit G) in the first paragraph on page 2, "1-A exhibits are maintained in the initial main volume unless they are numerous, in which latter case they are transferred to a Sub C volume(s)." Plaintiff received the documents filed in the Sub C, however, they were identified as 1-A exhibits. This material was released along with other WFO information by letter dated October 26, 1977.

Plaintiff also states that the WFO inventory discloses the existence of an auxiliary unit of WFO which may have pertinent records which have not been provided plaintiff. This is a basic misinterpretation of the term "Auxiliary Office" (AO). An AO is a field office which has not been designated the OO for a particular case, but which is conducting some phase of the investigation to assist the OO. The OO can then coordinate the investigative efforts of the auxiliary offices. In the WFO inventory it is noted that whenever the term "Auxiliary Office investigation" is used, one of the other field offices is listed as "OO." (See, again, Exhibit G where examples of the above are highlighted in red.)

By means of further explanation, any sub-office of a field office is known in the FBI as a "Resident Agency" (RA). For example, the Hagerstown, Maryland, RA is a sub-office

of the Baltimore Field Office. In each instance where any of the 59 FBI field offices operates an RA, the records of the cases pertinent to that RA are maintained in the Field Office Headquarters city. In addition, there are no RA's of the Washington Field Office.

(15) Savannah Field Office

The materials described by plaintiff in the Savannah Field Office files, (see plaintiff's "Memorandum to the Court," at page 4) consists of some 14 "serials," or in this instance, separate documents totaling 24 pages. Since the Savannah Field Office was not one of the FBI Field Divisions identified in the afore-described Stipulation, a search was conducted of the Savannah file 44-1768 (captioned MURKIN) (subsequent to plaintiff's Memorandum to the Court) for the purpose of identifying for review all items pertaining to J. B. Stoner's defense of James Earl Ray and contacts with Ray's brother, Jerry William Ray. As a result of my review of the materials retrieved, the following comments are being made:

(A) Out of the 14 total documents relating to this subject matter, 11 documents are copies of documents designated for either FBIHQ and/or the Memphis Field Office, copies of which were furnished to plaintiff during the respective processing of these materials. (See paragraphs 4 and 5, supra.)

(B) One of the remaining three documents was an internal Savannah Field Office memorandum dated August 6, 1968, which partially contained information pertaining to this particular subject matter. Although a copy of this item was not designated for either the Memphis Field Office or FBIHQ, a review of a preceding document in this same group determined that the substantive information was furnished to both FBIHQ and the Memphis Field Office in a Savannah airtel to FBIHQ, dated July 31, 1968.

(C) The remaining two documents are also internal Savannah Field Office memoranda which also did not have copies designated for either FBIHQ or the Memphis Field Office. One of these items, a memorandum dated August 28, 1968, related only partially to the subject matter addressed in plaintiff's August 20, 1980, "Memorandum to the Court." The other document, a memorandum dated June 5, 1969, relates in its entirety to Jerry Ray and refers peripherally to J. B. Stoner. A review of each reveals that the information contained therein may not have been determined by the originator to be of such significance to warrant a separate communication to either the Memphis Field Office or FBIHQ inasmuch as the substantive information relates to personal descriptive data on Jerry Ray which one could logically assume was already available and known through other sources. This assumption is consistent with the fact that neither of these documents were marked for indexing these subjects to the MURKIN file.

(D) For plaintiff's assistance in locating previously released items from the materials provided to him in connection with this litigation, the following is an itemization of the documents reviewed by me in connection with these Savannah Field Office materials:

	<u>Document Description</u>	<u>Paragraph Reference</u>
1.	7/25/68 FBIHQ airtel to Memphis and Savannah	15(A)
2.	7/31/68 Savannah airtel to FBIHQ	15(A)
3.	8/6/68 Internal Savannah memo	15(B)
4.	8/16/68 Savannah airtel to FBIHQ	15(A)
5.	8/28/68 Internal Savannah memo (FD-209)	15(C)
6.	5/1/69 St. Louis airtel to FBIHQ	15(A)
7.	5/7/69 Savannah airtel to FBIHQ	15(A)
8.	5/14/69 Newspaper article from "Savannah Morning News" (CC to FBIHQ)	15(A)

	<u>Document Description (Cont.)</u>	<u>Paragraph Reference</u>
9.	5/14/69 Memphis Airtel to FBIHQ	15(A)
10.	5/22/69 Savannah teletype to FBIHQ	15(A)
11.	5/23/69 Memphis teletype to FBIHQ	15(A)
12.	6/5/69 Internal Savannah memo	15(C)
13.	8/16/69 Columbia airtel to FBIHQ	15(A)
14.	10/21/69 FBIHQ airtel to Memphis and Savannah	15(A)

John N. Phillips
 JOHN N. PHILLIPS
 Special Agent
 Federal Bureau of Investigation
 Washington, D. C.

Subscribed and sworn to before me this 17th day of
November, 1980.

Richard W. [Signature]
 NOTARY PUBLIC

My Commission expires April 30, 1984.