

Cunningham
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Assistant Director
Records Management Division

10/5/76

Legal Counsel

HAROLD WEISBERG v.
U.S. DEPARTMENT OF JUSTICE
(U.S.D.C., D. C.)
CIVIL ACTION NO. 75-1996

PURPOSE: To furnish copy of plaintiff's Notice of Filing of Attached Exhibits, and to advise of current status of captioned litigation.

SYNOPSIS: At a status call on 9/30/76, Judge Green indicated that the Government must produce the "three boxes of indices" referred to in the details, below, and on the same date plaintiff served attached Notice on Assistant United States Attorney (AUSA) John Dugan.

RECOMMENDATIONS: (1) That Special Agent Thomas L. Wiseman of the FOIPA Section, or the successor to Special Agent Wiseman's former position, ascertain if the three boxes of indices are in possession of the FBI, and if so, review them for the purpose of turning them over to plaintiff as soon as possible.

(2) That Special Agent John P. Cunningham of the FOIPA Section locate the FBI's copies of the correspondence attached to plaintiff's Notice, as well as all

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Enclosure

RECORDED - GENERAL

- 1 - Mr. Cochran (Attn: Mr. Kilty)
- 2 - Mr. Decker (Attn: Mr. Cunningham)
(Attn: Mr. Wiseman)
- 1 - Mr. Mintz
- 1 - Mr. Blake

CONTINUED - OVER

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Memorandum to Assistant Director
Records Management Division
Re: Harold Weisberg, v. U.S. Department of Justice,
(U.S.D.C., D. C.)
Civil Action No. 75-1996

FBI responses to this correspondence, so that the Court may be advised of the status of requests plaintiff made in 1969 and 1970.

DETAILS: During recent Court testimony in captioned litigation, Judge Green expressed the opinion that the FBI policy of handling FOIA requests on a "first in - first out" basis, which the Court of Appeals has recognized is the exercise of due diligence, may not be being strictly complied with. In addition, she seemed to express the opinion that if a requester had filed an FOIA request prior to the time when the FBI was required to comply, then, following our "first in - first out" policy, this requester should go to the head of the list of the backlog of requests which have built up since February of 1975, the date after which the FOIA did require the FBI to comply with FOIA requests. This of course is not the FBI's interpretation, but, after plaintiff stated that he had made numerous requests for the subject matter of this litigation (laboratory material concerning the Martin Luther King assassination investigation), as far back as 1969, Judge Green stated that she wished to see copies of these requests and the FBI's response thereto. Plaintiff indicated that he would furnish copies of his requests and has done so in the attached Notice of Filing. We must now indicate what our responses to those requests were.

Judge Green also indicated at a status call on 9/30/76 that the "three boxes of indices" should be furnished to plaintiff. It is not clear whether this material is actually in possession of the FBI, but AUSA

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John Dugan, who is handling this litigation in Court, stated that both the local District Attorney's Office in Memphis, Tennessee and the Civil Rights Division of the Department advised him that the FBI would have copies of this material, which the Civil Rights Division claims was prepared by the FBI. This material is referred to in Exhibit W of plaintiff's Request for Production of Documents filed 5/4/76, furnished Special Agent Wiseman by Special Agent Parle Thomas Blake of the Legal Counsel Division on 5/11/76. It is also referred to in Attachment One of plaintiff's Second Affidavit, filed with plaintiff's Motion to Compel Production of Documents on 8/12/76, which was furnished Special Agents Wiseman and Kilty by Special Agent Blake on 8/18/76.

Special Agents Donald L. Smith, John F. Cunningham, and John E. Howard of the FOIPA Section have all testified recently in this case concerning the FBI's due diligence in handling FOIPA requests, and Judge Green was furnished a copy of the FBI Proposal to the House Civil and Constitutional Rights Subcommittee concerning the FOIPA, by Special Agent Howard.

It has been represented in Court that the FBI will reach plaintiff's second, more broad request, submitted in December of 1975, concerning the King assassination, in October of 1976, and at that time an affidavit will be furnished setting forth an estimate as to how long it will take to process plaintiff's December request. Special Agent Blake furnished AUSA Dugan two additional copies of the FBI's Proposal, one for his own information, and the second for possible furnishing to plaintiff, since the Proposal was filed as an Exhibit with the Court.