Honorable Rex E. Lee
Assistant Attorney General
Civil Division

June 16, 1976

EJS:JRD:dmc

Earl J. Silbert
United States Attorney
for the District of Columbia

Harold Weisberg v. Department of Justice,
Civil Action No. 75-1996

Attention: Jeffrey Axelrad, Chief
Information and Privacy Section

We wish to bring to your attention an issue that has been raised in this FOIA case involving two requests by the plaintiff for access to various documents and photographs in the FBI files of the assassination of Dr. Martin Luther King.

Plaintiff's first request for seven (7) categories of evidence was dated April 15, 1975 and administratively reached the highest levels of the Department of Justice when [redacted] General Harold Tyler wrote to the plaintiff on December 1, 1975. A few days prior to this letter being sent, plaintiff filed the above-entitled action.

Plaintiff's second request was dated December 23, 1975 and the next day, plaintiff amended his complaint seeking access to twenty-eight (28) categories of evidence in the King files. Our answer to this amended complaint asserted that the Court lacked jurisdiction over this second request since plaintiff had not exhausted his administrative remedies.

This case is assigned to Judge June L. Green. The Court has held numerous status calls in this case with no end in sight. One issue continues to be raised at the status calls and that is when will the FBI be able to reach plaintiff's second request. We advised the Court that we are prepared to file a motion seeking a stay of proceedings as to the December 23, 1975 request and supported by an affidavit of an FBI official demonstrating that they are exercising due diligence in the processing of the thousands of FOIA requests.

REC-38 FY-112

57 SEP 20 1976

58 JUL 13 1976

F-113

17 JUN 30 1976

The FBI has submitted one to our office on June 7, 1975. (A copy of this affidavit is attached.) We did not file this affidavit since we had a status call set for June 10, 1976 and we wanted to see how the Court accepted another affidavit submitted pursuant to her oral order that we document the disclosures of the first request.

At the June 10, 1976 status call, Judge Green strongly expressed her position that FOIA requests that are of national importance should receive preferential treatment (see Transcript, pp. 20-22). For support of this position, Judge Green expressly relied upon the request for expeditious treatment by the Attorney General and Deputy Attorney General in the Rosenberg case. The Court did not order that plaintiff's second request be given preferential treatment, but we believe she may well be disposed to do this if we file this affidavit and request four (4) more months before the FBI even reaches this second request.

In order to avoid another order from Judge Green requiring the FBI to process this subsequent request immediately, we ask that you review the Court's comments and advise John R. Dugan (426-7261) of this office what position we should take. The Court has scheduled another status call for July 1, 1976 at 10:00 a.m.

Attachments

cc: Tom Blake
Legal Counsel
Federal Bureau of Investigation