

Rt. 12, Frederick, Md. 21701

Mr. Allen H. McCreight, Chief
FOIA-PA Branch
FBI
Washington, D. C. 20535

Dear Mr. McCreight:

Your letter of June 8, 1978, begins with description of enclosed Attachment A, "ten pages ... that had previously been classified and was withheld."

With regard to 44-38861-5510, you state that three paragraphs were declassified. With regard to Serial 5513, you state "paragraph 2."

Your new worksheets eliminate the kind of information that is not secret or even subject to classification. One of the changes is in the number of pages in the record and the number of pages released. You now have a single column that takes up more space than both columns did before revision of the worksheets.

This fact and the lack of clarification in what you added makes for, at the very least, confusion if not for misinterpretation.

For each of these records in this column you have the number "1" and nothing else.

Comparing this with the original worksheets leads to more questions.

Actually, Serial 5510 is of six pages. You earlier released two of these pages to me. In so doing you withheld the first of the six and with it withheld even the Serial Number. The single page you now provide is not one of those you provided initially. Your description of now releasing only "paragraphs 2, 3 and 4" does not appear to be accurate.

Because I was given no record bearing the Serial, I made this note for myself as the first note relating to Section 76: "5510 - what is probably this serial is not identified in any way."

The two pages I was provided bear no classification indication of any kind.

This also is true of Serial 5513 - no classification of any kind on the first and only page of mine according to your new list. However, as provided to me originally, there were two records under this Serial. And the worksheet does not mention the first or the one of which you now provide a new copy. The worksheets were altered and the identification of the second record only was added.

Your present exemption claims are to (b)(1) and (b)(7)(C) for 5510, (7)(C) for 5513 only. I do not know which of the exemptions you now believe is appropriate to the date of 5510, but because there is no privacy claim possible for Mr. Long, whose initials appear on the memo, I presume you claim (b)(1). Well, this is hardly the first time you have made a (b)(1) claim for public knowledge. I contest the designation of the date you withhold, 1/21/69, as a matter of "national security." By a carbon I am also appealing this and what follows.

In some respects - virtually all - the copy of 5513 originally provided to me is identical with the copy you now provide except that you remove one paragraph less and you also add a "TOP SECRET" stamp. Not only have you classified what was originally unclassified, meaning under E.O. 11652 as of the time you provided the original copy to me, you have classified the entire page at a classification higher than any of its parts.

All of this classification gall is divided into three parts. Two are marked with the letter "C" and one with the letter "S". (Now that you have declassified

the first paragraph of text, it is apparent that it was not properly classified to begin with, if it was classified without indication of this on the copy originally provided to me.)

This is the record that was memory-holed on the original worksheets by blacking out.

This record also bears the designation "JUNE" typed on both versions.

There are other relevant records you appear not to have classified. According to the notes I made relating to these other relevant records, your failures with regard to Serial 5510 having attracted my attention as the nonsensical content would not have, there is relevance in files designated Cominfil SCLC IS-C, HQ 100-438794 and NY 100-149194. Serial 5514 refers to NY TEL 1/26, which I do not see in what was provided to me.

The single one of the four missing pages of 5510 that you have now provided states that this person of British accent (about whom you later released more information) "allegedly has a tape of an interview between James Earl Ray and an unknown individual regarding the details of a pay-off of the assassination." This allegedly (was) "three months before the assassination."

As of that time Ray was in Los Angeles. The second record in 5513 is a HQ TT to LA telling it not to investigate. This does not make it appear that HQ took the dubious information seriously enough to justify initial withholding and subsequent classification.

As you are no doubt aware, my counsel, Jim Lesar, has just had oral argument before Judge Gesell in C.A. 76-0692, which relates to the records of what the Department likes to describe as its "reinvestigations" of the FBI's investigation of the King assassination and a few other FBI acts and matters. As you may also by now have heard, I provided an affidavit recently in which I allege that the FBI makes sport with affidavits and with the courts.

So I have checked page 353 of the OPR's notes on the FBIHQ MURKIN records. The FBI provided affidavits attesting to the proper classification of the OPR's records in Mr. Lesar's case.

The entire entry for each of 5510 and 5513 is obliterated on page 353. In each case there is a single claim to exemption, the same workhorse, (b)(1). "Affirmed," so to speak, by the enclosed copy.

Your workhorse plowed a crooked furrow with regard to 5513 in claiming (b)(1) for the note whereas the document itself is not classified (b)(1) and in not claiming (7)(C) whereas this claim is made for the document itself.

Your classification/exemptions plowman is also a bit schizo. In reviewing the OPR notes for release to Mr. Lesar, you did not withhold the name of this former BBC man whose name is withheld from Serial 5514 and other records as provided to me. It is Malcolm Davis. You withheld his address, too. It was then 142 E. 49 St., NYC.

You did make a privacy claim with regard to this in withholding from me and you have made numerous other privacy claims allegedly to withhold what can hurt or defame people. Perhaps you may appreciate the second enclosed page. The bottom caught my eye as I was turning pages to locate the beginning of the OPR's notes on Section 76: "5536 R. M. Gaines - see 5520; Gaines is an acute alcoholic and has mental illness; interview negative."

The FBI appears to regard Mr. Gaines' rights to privacy as it regards mine. Prithee, did Mr. Gaines write as the FBI does not like?

Because I believe that this is within the services asked of me by the Civil Division, I suspend response to your letter dated June 8 at this point to avoid billing the Civil Division for what may not be within what it had the Court direct me to do. Having read the other Attachments, I am certain I will be writing you further.

Sincerely,

Harold Weisberg

6/11/78 to Mr. McCreight, continued 6/12/78

Because of what emerged when I made the indicated comparisons of versions of 44-38861 records, it appeared to be worth doing the same with the remaining five items in your Attachment A. Your failure to indicate the source of the files has made this more difficult. I have located two of them. The other numbers are not familiar to me.

Of 157-9145-57 you state "'Note' at bottom of page," meaning (it) has been declassified. Your worksheets claims (7)(D) and "'Note' Declassified."

Except for the obliteration of the note and failure to cancel the classification on the record released to me earlier, these are identical copies.

It appears that there was no classification until after my request, indeed until long after this case was in court. It appears that on May 18, 1977, the record was classified Confidential by 6049 and held to be exempt from GDS by 6049 and that it was declassified on May 22, 1978, by 2333.

I believe this raises questions about the legitimacy of the use of classification in this and in many other records. While I am by no means expert in the relevant Executive Orders, I have read both several times. I believe that under the relevant E.O.s for purposes of my request, this and others like it are not classified records.

Your original claims on withholding were both (b)(1) and (7)(D). This, with your new claim, means that what you have released now is what you withheld under (b)(1).

Before addressing this I believe several explanations are appropriate.

Under most conditions I do not question the withholding of the identification of informants.

With regard to this particular record the withholding of what you now release could easily lead to a confusion with another released set of records relating to a Chicago informant. In historical cases I believe there should not be such confusion.

This is one of the many records that is not within my original request but was provided in the FBI's substitution for my actual request. I have no personal or writing interest in the content. But I do regard all the MURKIN records that have been released as having other and considerable values.

I recall very well that on the morning of November 11, 1977, in a conference attended by several of your staff, Mr. William Schaffer said he had gone over some of the withheld information and was completely satisfied that (it) met (b)(1) standards.

What was classified (b)(1) in this record is the following: "Negro sanitation workers have been on strike in Memphis, Tennessee, since early February. The Southern Christian Leadership Conference and Martin Luther King, Jr., have been supporting the strikers." After the remaining obliteration of about six lines, this is now disclosed: "Louisville requested authorization for \$75 expense money for informant if he requests same."

There appears to have been no basis for classifying this information under any criteria of which I know. This is consistent with all my fairly extensive experience with what was initially withheld under claim to (b)(1), that the reasons were other than those sanctioned by any E.O. If you can cite any criteria for (b)(1) applicability in this case, I would much appreciate it.

Your "EXPLANATION OF EXEMPTIONS" that you provide does not use the precise language of the statute. It reads "information which is currently and properly classified pursuant to Executive Order 11652 in the interest of the national defense or foreign policy." The statute reads, "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of the national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order."

Your alterations are significant. You have eliminated the statutory requirement that the record from the first was "in fact properly classified" and substituted "currently ... classified" for it. You also have eliminated both "specifically authorized" and the "criteria established by an Executive order." (There is also the standard of requiring that the record be kept secret which you eliminate.)

If your staff uses the FBI's rewording of the language of the statute, improper withholding, frustration of the Act and enormous wastes of time and money for the government, requesters and the courts (are) inevitable. This record, 157-9146-57, is a case in point.

In your revision of the Act you eliminate the distinction between the two parts of the statute. Because you do not eliminate the "foreign policy" part, I do presume that neither the sanitation strike nor the field offices involve any consideration of foreign policy. This reduces what can be applicable to "in the interest of the national defense" in your "explanation," which as I have noted eliminates the requirement of the statute of "under criteria established..."

In even the FBI's revision of the Act there appears to be no "national defense" consideration in the information now released in the note. If you can show me any, and I suggest this in particular because the question is before a court of law, I certainly would like to know of any legitimate "national defense" issue or question.

This raises an additional question: did the FBI ever have any legitimate "national defense" purpose in compiling any of the records within my request or in the FBI's substitution for my actual request. I believe not. I am aware that the late Director Hoover was intensely dedicated to certain beliefs he held but I am also aware that the Department and the Senate and I believe the FBI's own witnesses before the Senate Select Committee on Intelligence all agreed that there never was any legitimate "national security" question. The record appears to be quite clear that this was a contrivance by which the FBI spent enormous amounts of time and money in an extraordinary and extralegal campaign against Dr. King and what is often forgotten in all of this, so many other Americans. I know of no legitimate basis for any claim to the "national defense" with regard to any of the many thousands of pages I have read. I would welcome any proofs of applicability the FBI can provide. Absent such proofs, there is no basis under the Act for any (b)(1) claims in any of these records.

Any claim to (7)(D) requires the meeting of the criteria of the Act. In your "explanation" you begin with the language of the Act as it applies to all the provisions of (b)(7), "investigatory files compiled for law enforcement purposes." Your "explanation" of (D) is not identical with the language of the statute. Your words are "reveal the identity of an individual who has furnished information to the FBI under confidential circumstances or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means." The way the Congress intended is "disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by any agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source."

Here your rewriting of the Act is extensive. You have completely altered the Act in an effort to make it apply to what it does not apply to. I believe explanation is not required so I do not take your time for what appears to be so obvious. I do again note, however, the extraordinary waste of time and money that results and has resulted.

Under the Act to claim (7)(D) the FBI is required first to have a law enforcement purpose. There was no law enforcement purpose with regard to the sanitation strike or to Dr. King or his SCLC. But if there had been a law enforcement purpose for any of the records compiled to meet the criteria of the Act, there would also have had to have been "a criminal investigation." This was part of a political rather than a criminal investigation. The file number itself indicates "racial matters."

Your withholding appears to be outside the provisions of the Act on all counts. That you do withhold despite the language of the Act seems to provide an explanation of your "explanation." It appears to be an effort to make the Act apply to what it does not apply to. The legality of what the FBI was doing is also a pertinent question. Your revision of the Act appears also to be intended to make what was not legal activity into legal activity.

My request does include the sanitation strike and other relevant records relating to a group calling itself the Invaders. The caption on this FBIHQ teletype includes "sanitation workers strike" and "racial matters." It neither states nor suggests a law enforcement purpose or an authentic criminal investigation.

I have read all of the records provided relating to the strike and the Invaders. There is much cross-over in content. Not only do these records not reflect any law enforcement purpose, they reflect the FBI's refusal to do anything about law violations within federal jurisdiction (as the strike was not) and its refusal to arrest those who were wanted on federal charges when informants identified and located those who were wanted. The reason is apparent in the records I have received and read: the FBI's interests were entirely political and it desired these "wanted" people to be free as part of the FBI's political interests.

I believe it is apparent that your claims to exemption are contradictory and in addition are not sanctioned by the language of the Act. I therefore believe that you have no right under the Act to have withheld what you now release to begin with and that you now have no right to withhold what you still obliterate.

At the same time I respect the right to withhold the identification of the informant even if he was engaged in activity for which there is no legal sanction. The withholding of anything else is, I believe, improper and I am appealing all other withholdings. The concession about withholding the identification does not mean that I believe the Act enables this. As a practical matter I do not contest it because of the possible consequences.

The next record you list in Attachment A is "157-1092-336- source notation after paragraph 3." Because you disclose nothing about the source this can be misleading.

Your present claim is to (7)(D) only. Originally you made no such claim at all. You claimed (b)(1) and (b)(2).

Originally the entire "source notation" was withheld by obliteration. What you have released now reads "Source is (obliterated) (New Orleans Division)." I see no basis for what you have now released to have been withheld. I also see no applicability of either of the exemptions originally claimed. This also is not exceptional. With regard to (b)(2), as any examination you may choose to make will disclose, (b)(2) was used often in substitution for (7)(D). This continued, even intensified, after your analyst told me that you should not be using (b)(2) at all, with which I agree. (Your revisions of the Act with regard to this exemption eliminate the controlling word "personnel.") In no case have I seen a record that meets the standard "related solely..."

In this case, while the source may be a human being, the language does not eliminate other possibilities. It could have been a newspaper. In context there does not appear to be any need for confidentiality although for other reasons that may be possible. The information itself is not confidential. A reporter, even for a publication the FBI did not like, is publicly known as a reporter.

Once again the content is political and not directly related to the sanitation strike. The criteria of the Act do not appear to be applicable.

As originally provided to me this record was not classified. The copy you provide now and state is now declassified was classified after my request and after the original copy was provided. What makes this even more interesting is that the date of classification was several months prior to your giving me this record, two months to the day if I read the partly obscured notation correctly. In turn, this would seem to indicate what I have already complained about to the FBI without response and I believe called to the attention of the Court as a violation of the stipulations sought by the FBI.

On July 30 or 31, 1977, 2040 classified this record Confidential and exempt from GDS. This and another stamped notation do not appear on the copy originally provided: "Appropriate Agencies and Field Offices Advised by Routing Slip(s) of," after which is written 2040 and the date.

The declassification is not clear. It appears to have been on May 23 of this year by 2333.

I do question the propriety of all of this from the original withholding to the ex poste facto classification and exemption from GDS after a copy was given to me to spreading political information about private citizens' political beliefs to other agencies and field offices and the claims to exemption.

I do not find the three remaining original records of Attachment A under the file numbers you have provided. If there are other file numbers and you provide them, I may be able to provide you and the Civil Division with information similar to the foregoing.

With regard to 157-6-28-1443- (which does not appear to be a Memphis designation from my recollection of the Memphis records provided) you state "third and fourth source notations after paragraph 3." Your exemption claim is now (b)(7)(D).

There is nothing to distinguish these "notations" from the two preceding them. All read, with numbers changing, "First Source - (obliterated)." If originally both "Third Source -" and "Fourth Source -" were withheld, this would seem to be far out. If this is not what you mean, then nothing new has been disclosed.

I do not recall this record in particular. I have seen many like it. In all cases they were attached to other records. This one stated there was an attached LHM. I do not recall that as released to me they were classified. I also see no basis for any classification.

It would be helpful all around if you would please provide me with copies of this and the two following records as they were originally provided to me because I recall no such classifications and because the classification on this was of 5-16-77, after my request and more than four months before the record was provided to me. The date, I note, of the original record is the day before Dr. King was killed.

This may have some relevance in what also may be an accidental error in your next listed record, 157-12709-127. You misdate it on the worksheet by a full year, from 1969 to 1970. The record reflects classification by 6049 on 5-20-77 and GDS exemption claimed. Declassification action recorded by 2333 on 5-23-78.

Without the original copy of 170-1067-12- "subject's name" means nothing to me because you do not provide it now. This also was classified by 6049 on 5-20-77, with GDS exemption claimed. It was declassified by 2333 on May 23, 1978. The

totality of elimination after "Subject" in the caption may also eliminate the subject matter as distinguished from the person who is "subject." The subject matter appears to relate to the "Poor Peoples Campaign" as of more than three months after Dr. King was killed, as of 7/17/68. The person who is the subject was organizing in the PPC. On page 2 you make a privacy claim for a city. (This reminds me, you made a similar privacy claim for a rundown hotel in Memphis, the Wm. Len. I recall no response to my appeal.) This claim may be for as many as three different cities on page 2. I do not believe it is possible for disclosure of any city to enable identification of the source. That the source was not an informant appears to be indicated by "NYO is closing this case on the subject" and "WFO may desire contacting subject for further development as a PRI."

The obliterations on the third page are not explained. It states it was declassified on 5/23/77 by 6049 but it bears no classification markings at all.

The LHM attached to the original record is stated to have been "classified 'Confidential' inasmuch as the source utilized therein should not be revealed, because the unauthorized disclosure of source's identity could be injurious to the national defense."

"National defense" sure does cover everything, but is this within the E.O.?

But it was not applied to the LHM that is attached to what you now provide, as stated above, because no classification appears on it. In addition, the subject appears to have been identified to the House Select Committee on Assassinations. This appears not to have been uncommon with regard to the undependable, in this case "with whom insufficient contact has been made to determine reliability."

Relevance to any legislative purpose is not apparent although an effort to misdirect the committee can be conceived. Especially if the Committee did not begin with knowledge of this record and the record was called to its attention by the FBI.

In what I wrote yesterday I indicated my reasons for laying other work aside to write you promptly about Attachment A. In order to be able to get this in the morning mail so that you and Mr. Lesar and if he so decides the Civil Division can know promptly, I have had to get up quite early. I will resume review of the other Attachments when I can.

Of course, I also want to register the appeal as promptly as possible, and I shall, including copies. I do hope you will consider what I have written in time to be able to respond to any questions that may be asked in the processing of the appeal. The Department has indicated its intention to move for summary judgment soon.

Sincerely,

Harold Weisberg