

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BERNARD FENSTERWALD, JR.,

Plaintiff

v.

Civil Action No.
76-0432

DEPARTMENT OF JUSTICE,

Defendant

SECOND AFFIDAVIT OF JOHN E. HOWARD

I, John E. Howard, being duly sworn, depose 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 (FOI-PA) Section of the Records Management Division at FBI Headquarters (FBIHQ), Washington, D. C.

(2) Due to the nature of my official duties, I am familiar with the procedures the FBI follows in processing requests for records in FBI files received pursuant to Title 5, United States Code, Section 552, more commonly known as the Freedom of Information Act (FOIA), and I am personally familiar with these procedures as they apply to our response to plaintiff's FOIA request. A copy of plaintiff's request is attached as Exhibit A to my affidavit of April 16, 1976, which was previously filed with the Court in connection with this litigation.

(3) The purpose of this affidavit, which is submitted in conjunction with my prior affidavit, is to set forth in detail our response to plaintiff's request. The information furnished herein is based on my personal knowledge, obtained in my official capacity.

(4) In our effort to locate records in possession of the FBI which would be responsive to plaintiff's request (which consisted primarily of photographic materials, and documents concerning these materials, related to our investigation of the assassination of President John F. Kennedy), we conducted a page-by-page review of the entire FBI file concerning Lee Harvey Oswald. This file consists of 237 volumes, each of which averages approximately 150 to 200 pages. We additionally reviewed those portions of the FBI file concerning the Kennedy assassination, the FBI file concerning Jack Ruby, and the FBI's administrative file pertaining to the President's Commission on the Assassination of President Kennedy (more commonly known as the Warren Commission) which were referred to in the Oswald file and which appeared most likely to contain the records sought by the plaintiff. Page-by-page reviews of the entire Kennedy, Ruby and Warren Commission FBI files had previously been conducted in response to other FOIA requests and in fulfillment of other statutory responsibilities.

only
one?

back
channels?

(5) Absolutely no records whatsoever not already publicly available at the National Archives, which would be in any way responsive to any portion of plaintiff's request, were located during the course of any of the above enumerated file reviews. Set forth below is the detailed information concerning plaintiff's request which was generated by these extensive file reviews. This information consists of references to publicly available documents which appear to relate to the various portions of the plaintiff's request.

(A) Concerning that portion of plaintiff's request for photographs of the "unidentified man" in Mexico, and related materials: In July of 1972, we furnished plaintiff three photographs of the "unidentified man," which were the property of the Central Intelligence Agency (CIA) and had been given to the FBI by the CIA for the express purpose of furnishing them to plaintiff. The FBI does not now possess, nor has it since

Had there been any investigation before
"completion" of investigation? Whose investigation? Did it destroy a
Did not J.E.H. swear that by the FBI would never end? dispose of any?

completion of the Kennedy assassination investigation, possessed any photographs, or any records relating to these photographs, of the "unidentified man" not in the possession of the plaintiff or open to public review at the National Archives. The CIA was again contacted during the course of the recent review. It appears that the CIA received an identical request from the plaintiff for this material. The following publicly available Warren Commission documents make reference to the "unidentified man:"

- (1) Commission document 564
- (2) Commission Exhibits 237 and 3028
- (3) Odum Exhibit No. 1
- (4) The affidavits of Bardwell D. Odum and James R. Malley, as printed in Volume XI, Page 468, of the Hearings Before the President's Commission on the Assassination of President Kennedy.

Odum
deposition

(B) Concerning that portion of plaintiff's request for photographs taken of Lee Harvey Oswald in Mexico City, and related materials: No records whatsoever were located which would be responsive to this portion of plaintiff's request. The following publicly available Warren Commission documents appear to be relevant to the absence of such photographs:

- (1) Letter to The Honorable J. Lee Rankin from J. Edgar Hoover, dated June 11, 1964.
- (2) Letter from The Honorable J. Lee Rankin to J. Edgar Hoover, dated June 16, 1964.
- (3) Commission Exhibits 2121 and 2449.

(C) Concerning that portion of plaintiff's request for photographs of Lee Harvey Oswald in New Orleans in 1963, and related materials: No records whatsoever were located which would be responsive to this portion of plaintiff's request which are not already in the public domain. The following publicly available Warren Commission documents make reference to Lee Harvey Oswald in New Orleans in 1963:

(1) Commission documents 6, 30, 595, and
596

(6) By way of further explanation, it should be noted that when the Warren Commission concluded its investigation of the assassination of President John F. Kennedy, evidentiary items which had been provided to the Commission by various agencies were transferred to the custody of the National Archives and Records Service. This was accomplished under Public Law 89-312, November 2, 1965, which authorized the Attorney General to designate which records of the Warren Commission should be acquired and preserved by the United States Government. By a memorandum from Attorney General Katzenbach dated August 19, 1966, the FBI was authorized to transfer to the National Archives and Records Service the approximately 1,000 Warren Commission records in the FBI's possession relating to the assassination investigation. The Department of Justice, in consultation with the agencies which furnished records to the Warren Commission, prepared "Guidelines for a Review of Materials Submitted to the President's Commission on the Assassination of President Kennedy." Under these guidelines it became the responsibility of the Archivist of the United States to arrange for successive reviews of these records to determine which of them could be made available for research. As I stated in paragraph 13 of my prior affidavit, the FOI-PA Section of the FBI has been involved in processing these records, and most FBI originated

documents are open for public research and copying at the National Archives. The Warren Commission documents which originated with the FBI and which are not available for public research, primarily because they remain classified or, in some cases, cannot be released pursuant to exemptions of the FOIA, comprise only a minute portion of the total. We have recently reviewed the majority of these documents, and many additional documents, in whole or in part, are now available through the National Archives for public research. Additionally, however, in response to plaintiff's request, a review of all of the non-public documents was made, and none were found to contain information in any way responsive to any portion of the request.

*entire was a
list refused
HW?*

(7) By letter from Director Kelley dated July 6, 1976, plaintiff was advised that the processing of his request had been completed, and he was furnished the results thereof. A true and correct copy of this letter is attached hereto as Exhibit A and incorporated herein by reference.

*all - any
F.D. files?
Dallas?
M.H. City?
(L.S. & AT)
Back channel
Hels files?
Mr. Rosen's?*

(8) In summation, I have supervised a thorough and careful search of all files which could possibly contain any records responsive to plaintiff's request, and absolutely no such records have been located, which are not publicly available or in possession of plaintiff.

John E. Howard
JOHN E. HOWARD
Special Agent
Federal Bureau of Investigation
Washington, D. C.

Subscribed and Sworn to before me this 31st day
of August, 1976.

Jann Lee Balaban
Notary Public

My Commission expires 1-30-78.



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

July 6, 1976

Bernard Fensterwald, Jr., Esq.
1707 H Street, N. W.
Washington, D. C. 20006

Dear Mr. Fensterwald:

This letter is in direct response to your Freedom of Information-Privacy Acts (FOIPA) request of August 21, 1975, to which I replied by letter dated September 19, 1975, and which led to litigations between you and the United States Department of Justice in the District Court for the District of Columbia on March 16, 1976.

We have completed the review of all files wherein the photographs and documents you seek relating to the "unidentified man" in Mexico could reasonably have been located, and have found nothing responsive to your request which has not previously been furnished to you or turned over to the President's Commission on the Assassination of President Kennedy. The records and exhibits of the latter, of course, were transferred to the custody and control of the National Archives and Records Service, General Services Administration, pursuant to Public Law 89-312.

The photographs of the "unidentified man" in Mexico which were provided to you in 1972, as you are probably aware, were not the property of the Federal Bureau of Investigation, but were borrowed from and subsequently returned to the Central Intelligence Agency.

We have also completed our search for photographs and/or related documents concerning Lee Harvey Oswald in Mexico City and in New Orleans, Louisiana. Once again, this search has failed to locate the existence of anything responsive to your request which was not turned over to the Warren Commission.

Sincerely yours,


Clarence M. Kelley
Director

