

Route 12 - Old Receiver Road
Frederick, Md. 21701

February 27, 1978

Mr. Quinlan J. Shea, Jr.
Director, Office of Privacy and Information Appeals
Office of the Deputy Attorney General
Washington, D. C. 20530

Dear Mr. Shea:

If I cannot describe your letter of February 21 as a pleasant surprise, compared with what you have had to say in the past, it is pleasant and it does surprise me.

One surprise is that you write me at all. I had been led to believe that you preferred all communication between us to be indirect, through my attorney, Jim Lesar. (This has the effect of increasing the fee he can ask of the Department under FOIA.)

You refer to your testimony before the Abourezk Subcommittee. I would like to read that. I am aware that in some testimony before the Congress you worried aloud about the cost of FOIA to the government and about the alleged abuse of the FBI by FOIA.

(My experience, that the FBI abuses itself - and not alone itself - probably would not interest you.)

I, too, am concerned about costs - as a taxpayer and as one who has to meet those costs I face from noncompliance and from litigation that, to now, includes no single case in which some previously withheld information was not produced. There is no Treasury to repay my costs and there is no means by which I can recover the time.

To save you time and other costs, I quote from your letter.

Your second paragraph begins, "...this Office ordinarily responds to appeals based on a lack of competent response to a request...."

You are correct. There is never "competent response to a request" when I make it and what I have gotten from your office certainly constitutes "a lack of competent response to a request."

You then refer to your "inability to conduct initial record reviews." I believe you are too modest here. My experience is that in your office and in historical cases, what you describe as "project" cases, the "inability" of your office extends to reading - and comprehending - whether of books on the subject or of the records it does review.

My experience is that the inability extends to the review of the records your office does not have to review "initially."

You inform me that "Even prior to receipt of your (my) letter of January 19, I had been discussing with the FBI the matter of the possible release of its worksheets..." However, your letter of February 21, 1978, was written after the time for response to appeal had expired. This is consistent with the FBI's long record and its record in this present matter. It has not yet acknowledged receipt of my request of December 6, 1977.

Your letter does not state that the FBI has released its worksheets to me in the past. It has. No precedent is involved in responding to my request by merely providing the identical records it has provided in C.A. 75-1996. Your office has supposedly reviewed those worksheets.

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Your letter does not reflect that without these worksheets it is impossible for any requester to know the basis of any withholding, whether of complete records or by obliterations. Without the information the worksheets hold, it is impossible for any requester to appeal any withholding. The FBI follows the uniform practice of never indicating on any record the exemption it may be claiming. It has practiced withholdings on me without indicating any exemption was claimed.

You state that "With regard to the excisions from the released Kennedy records, it should be obvious that this Office would also prefer to address any possible issues in the context of specific exemptions and specific documents. This might permit an efficacious appeals procedure to operate — ..."

With almost 100,000 pages involved, 40,001 of which I have not yet received, I see no "efficacious" way in which your Office can address "any possible issues" (sic) except by the means you eliminate, "there is no way my staff and I could do a line-by-line review of all excisions from those tens of thousands of pages."

The reviews are supposed to be completed and you have stated under oath that the reviews are completed prior to release. I recall an affidavit of yours in which you stated that you overrule the FBI on withholding in about half of the cases. This means that with about half the FBI's withholdings in about 100,000 pages, from the FBI's prior record you knew there would be improper withholdings. You did nothing about it and the records were released with perpetuated noncompliance.

If there was no line-by-line review by your Office prior to release, then your Office performed no function other than that of a rubber stamp. Now you state that such a review is impossible. This is to state more than that your Office performed no function other than rubber-stamping. Rather than assuring compliance, you perpetuate noncompliance in the name of review and acting on appeals. It is an Orwellian self-description.

I find it Orwellian also that in belated response to a nonresponded-to request of two and a half months earlier you tell me that "I do not anticipate that the decision on access to the Kennedy worksheets will be overly delayed." It was "overly delayed" by two months before you wrote me.

It is good of you to tell me that "I intend to hold his file personally;" that "I intend personally to hold appeals involving 'explanatory' records;" that "it may possibly turn out not to be necessary for me to act formally;" that if the FBI decides in the "negative" (which under the Act it has already done), you will treat my appeal of January 19 as a "protective appeal encompassing any Kennedy assassination records as to which you ultimately decide to appeal;" and that "we will adjudicate on a formal basis the issue of access to the worksheets."

Considering that 10 days or so prior to your letter Mr. Lesar filed suit for me, C.A. 78-0249, your assurances are in no sense premature.

Mr. Lesar is away until week after next. He will have a carbon of this letter awaiting him on his return.

Meanwhile, if you do get to processing what you describe as "clean" copies of these worksheets and other relevant records, I trust it will not result in the withholdings of the past being approved, like the name of the city in which the FBI field office is located.

I do not know what is meant by "clean" copies. My request is for copies of the actual worksheets. In the past my requests have been rewritten within the Department, which then ignored my asking that my actual requests rather than its alterations of them be responded to. This resulted in long and very costly litigation, litigation that was entirely unnecessary.

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If you deem it necessary to withhold from the worksheets, the Act provides for those withholdings that are within the Act. (The Attorney General has issued statements of policy under the Act and you have distributed directives.)

If there are withholdings that I regard as other than necessary, I will want to be in a position to contest them as the Act provides. This means that I will have to know what if any exemptions are claimed and what withholding each claim relates to.

Sincerely,

Harold Weisberg