

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

CIVIL ACTION

CLARENCE M. KELLEY, et al.

78-0249

Defendants.

ANSWER

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter inasmuch as no documents have been improperly withheld within the meaning of 5 U.S.C. §552(a)(4)(B).

SECOND DEFENSE

Defendants Clarence M. Kelley and Griffin Bell are not proper parties to this action.

THIRD DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

FOURTH DEFENSE

In answer to the numbered paragraphs of the Complaint, defendants admit, deny and aver as follows:

1. This paragraph contains plaintiff's characterization of this action and does not contain allegations of fact for which an answer is required, but insofar as an answer is deemed required it is denied.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph. Accordingly, they are denied.

3. Denied, except to admit that Clarence M. Kelley was formerly the Director of the Federal Bureau of Investigation.

4. Admitted.

5. Admitted.

6. Admitted.

7. Denied, except to admit that defendant Federal Bureau of Investigation received a letter from plaintiff dated December 6, 1977, a true and correct copy of which is attached hereto as Exhibit I, to which the Court is respectfully referred for a full and complete statement of the contents thereof.


8. This paragraph contains allegations of fact and a conclusion of law. Insofar as this paragraph contains allegations of fact they are admitted, and defendants further aver that letters dated February 21, 1978 and March 6, 1978, were sent to plaintiff. These letters are attached hereto as Exhibits 2 and 3, to which the Court is respectfully referred for a complete and accurate statement of the contents thereof. Insofar as this paragraph contains a conclusion of law, no answer is required, but insofar as an answer is deemed required, it is denied.

Any allegations not hereinbefore admitted or denied are denied.

Defendants deny that plaintiff is entitled to the relief sought in the Complaint or to any relief whatsoever.

WHEREFORE, defendants having fully answered, pray
that the action be dismissed with prejudice and that
defendants be granted their costs.

Respectfully submitted,


BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney


LYNNE K. ZUSMAN


EMORY J. BAILEY

Attorneys, Department of Justice
Information and Privacy Section
Washington, D. C. 20530
Tel: 739-3664

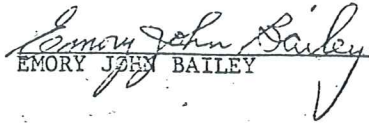
Attorneys for defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the foregoing Answer upon plaintiff by depositing a copy thereof in the United States mail, first class, postage prepaid, to:

James Hiram Lesar, Esquire
910 16th Street, N.W.
Suite 600
Washington, D. C. 20006

this 15th day of March, 1978.


EMORY JOHN BAILEY

Mr. Allen H. McBreight, Chief FOIA/PA Branch
Records Management Division, FBI
Wash., D.C. 20535

Exhibit I
Rt. 12, Frederick, MD, 21701
12/6/77

Dear Mr. McBreight,

Your letter of December 2, 1977 relating to the FBI's release of JFK assassination files came today. I regret that it requires further correspondence.

The first question I must raise, one I've raised more times than I can estimate, is why with all these reviews of JFK assassination records my many requests for precisely this public information remain without response. I have filed two dozen or more such FOIA requests. It is more than a year since your SA Howard testified in my C.A. 75-1996 that the FBI had by then had three reviews of this material. It is more than a year since I testified to these requests that were entirely without any compliance since. The FBI's counsel, AUSA and staff, were present at my testimony and at SA Howard's. Various FBI FOIA personnel were present. You obtained the transcript of this testimony. I have since the time of the testimony repeated prior appeals. But to date there is the same - total - silence from the FBI and from you who sign yourself as in charge of the FBI's FOIA work.

The Act requires the production of records, not their generation. However, my PA and FOIA requests that should have yielded these records years ago also are without your compliance. My appeals of this also without response. I therefore do not have all the records relevant to my FOIA and PA requests. I herewith repeat my requests under the Acts, intending by the repetition that you provide within the time limitations of the Acts all those records that relate to my requests. This means back to as I recall it 1968. I assume that this is your all-time record of non-compliance. Whether or not it is I want any and all such records of whatever source or nature, however generated and wherever filed or stored or described or classified by the FBI. I also solicit any explanation you would care to provide for this persisting non-compliance and the permeating disregard for the obligations imposed upon the Bureau and upon you personally by the Acts.

Aside from other and I believe obvious considerations it is a fact that some if not much or indeed all of what you are now making available should have been provided to me quite long ago. Not having complied with my requests and the Acts has, I believe, been hurtful to me and has constituted an interference with my right and ability to perform the work upon which I have for so long been engaged.

As you are aware long ago non-compliance with my requests was ordered and approved to the highest FBI levels, including the first Director. As you are also aware compliance is the present issue in my C.A. 75-1996 and because of the FBI's non-compliance I am at this very moment forced to forego other work and do the work of the FBI with regard to compliance in that case. With this non-compliance being total with regard to JFK assassination records and a major factor in the 1996 case and for other reasons I believe the request in my second paragraph above constitutes justification under the Acts for expedited compliance and I do ask that of you. I want to be able to incorporate what you should provide in the memoranda I am being compelled to prepare for you and at your request in C.A. 75-1996.

By the time of the date of your letter of December 2, 1977, a letter I take it was sent to many and is a sort of form letter, your representations in it were untruthful. You had in fact made an exclusive release or more than 500 pages of these "forthcoming" records to Radio Station WEMS and the AP at least. You thereafter and prior to the date of your letter made duplicates available to others in the press. Whatever the circumstances of these releases it is a fact and to my personal knowledge is a fact that within this release there are records I began to ask the FBI for going back to about 1968. But your first paragraph refers to your "forthcoming release" and your second begins, "The first segment of these materials will be made available beginning at 9:30 a.m. December 7, 1977, ..."

*Exhibit
continued*

Of course I am also troubled by your failure to notify me of your making these records available until a day prior to their availability. While I do not deceive you - I cannot use these records in your reading room - your unnecessary delay in this guaranteed that were it within my capabilities it would still be impossible for me because I have a medical appointment that precludes it.

Your fifth paragraph is also troubling. You say of these about 60,000 pages, "materials to be released are copies from the raw investigative files of the FBI..." This is the same FBI that forced me to go all the way to the Supreme Court in a case in which I did not request "raw investigative files" by falsely representing that I had asked for such raw files and that the release of any of them at any time and under any circumstances would utterly destroy the FBI or render it forever impotent.

When you follow this with "as they were compiled chronologically in our central records system during the investigation," I am further troubled, in general and as it relates to my own requests that remain without response. Most FBI records do not even reach your "central records system" at FBIHQ, and there is no such limitation in any of my requests for JFK assassination records. This can mean, for example, that if I had all the 60,000 pages you are to release you might still not have complied with my requests.

Your concluding paragraph states that "No index of our FBI materials is available to cross-reference these materials to the public record." This is a semantical representation. The public record is only part of the records that are involved. The raw materials are often incorporated in other records, like Letterhead Memoranda and other reports. From my personal experience in FBI cases I have learned that the FBI has a practice of noting on its field office raw materials what reports include that information. This should mean that through other than what you might describe as an index it is possible to correlate the raw materials with the other records into which parts are incorporated.

These records were processed under FOIA, I take it. This means that other records relevant to the processing were generated. These should include worksheets on which the records are listed and where exemptions are claimed the exemptions are noted. There are other records relevant to processing and review. I herewith ask for a copy of any and all records relating to the processing and release of all these records, whatever the form or origin of such records might be and wherever they may be kept, as in the Office of Origin or other points as well as in Washington. If there are other records that indicate the content of these released records I am especially interested in them because they can be a guide to content. If there is a separate list of records not yet released I ask for a copy of it also or if an inventory was made, a copy of the inventory.

Sincerely,

Harold Weistberg
Harold Weistberg



OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

Exhibit #2

FEB 21 1978

Mr. Harold Weisberg
Route 12
Frederick, Maryland 21701

Dear Mr. Weisberg:

This acknowledges receipt of your letter dated January 19, 1978, concerning the letter you received from Special Agent McCreight dated January 18, 1978, and the fact that you have received no determination on your request to the Federal Bureau of Investigation dated December 6, 1977, seeking access to the Bureau's worksheets on the Kennedy assassination records.

As you know, this Office ordinarily responds to appeals based on a lack of a component response to a request with a letter that merely expresses our inability to conduct initial record reviews, indicates that we will monitor the processing of the initial request, and advises the requester of his right to seek judicial relief. In this case, however, I intend to proceed somewhat differently and to maintain your appeal as to the December 6 request in an open status. It has been assigned Number 8-0242 and I intend to hold the file personally. Even prior to the receipt of your letter of January 19, I had been discussing with the Bureau the matter of the possible release of its worksheets; that was in a general sense -- not just the Kennedy case -- and resulted from my testimony before the Abourezk Subcommittee late last year. At that time, former Deputy Attorney General Flaherty and I assured the Subcommittee that we would give serious attention to the problem of giving requesters more information, at the initial stage, about the nature and quantity of records to which access is denied. I have given this problem considerable attention over the past several months, in discussions with personnel from the F.B.I. and other components of the Department as well. Pending resolution of the matter, I intend personally to hold appeals involving "explanatory" records.

With respect to the actual Kennedy assassination worksheets, it may possibly turn out not to be necessary for me to act formally. The Bureau is still considering whether to put



Exhibit #2
Continued

"clean" copies of the final version of these items into the reading room and otherwise to make them available to interested persons. A final decision should be made by the Bureau in the relatively near future. In the event the decision is negative, I will then treat your letter of January 19 as an appeal on the merits and we will adjudicate on a formal basis the issue of access to the worksheets.

With respect 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 -- there is no way my staff and I could do a line-by-line review of all excisions from all of these tens of thousands of pages. Accordingly, pending resolution of the worksheets issue, I will treat your letter of January 19 as a protective appeal encompassing any Kennedy assassination records as to which you ultimately decide to appeal.

As indicated above, I do not anticipate that the decision on access to the Kennedy worksheets will be overly delayed. Should there be any interim developments, I will keep you advised.

Because this response is not a grant of access to the worksheets, I remind you that you have the right to seek judicial relief in the United States District Court for the judicial district in which you reside or have a principal place of business, or in the District of Columbia, which is where the worksheets you seek are located.

Sincerely,

Benjamin R. Civiletti
Acting Deputy Attorney General

By:

Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

CC: James Lesar, Esquire

Exhibit #3

March 6, 1978

Mr. Harold Weisberg
Route 12
Frederick, Maryland 21701

Dear Mr. Weisberg:

Reference is made to your letter dated December 5, 1977, in which you sought access to the Federal Bureau of Investigation's (FBI) inventory worksheets on the Kennedy Assassination records pursuant to the Freedom of Information-Privacy Acts.

We have a large volume of requests similar to yours. In view of this, some delay in making a final response to your request may be anticipated. Please be assured that we are making every effort to process your request promptly. Your patience and understanding of this unavoidable delay will be appreciated.

Your request has been assigned number 62,054 which you are requested to utilize in any correspondence with this Bureau regarding your request.

Sincerely yours,

Allen H. McCraight, Chief
Freedom of Information-
Privacy Acts Branch
Records Management Division