

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : L. Patrick Gray, III
Acting Director
Federal Bureau of Investigation

DATE: JUL 18 1972

FROM : Roger C. Cramton
Acting Assistant Attorney General
Office of Legal Counsel

SUBJECT: Freedom of Information (FOI) Appeal to Attorney General by Robert P. Smith.

- Mr. Felt _____
- Mr. Rosen _____
- Mr. Sullivan _____
- Mr. Tavel _____
- Mr. Trotter _____
- Mr. Tele. Room _____
- Mr. Holmes _____
- Mr. Gandy _____
- Mr. Casper _____
- Mr. Callahan _____
- Mr. Conrad _____
- Mr. Felt _____
- Mr. Gale _____
- Mr. Rosen _____
- Mr. Sullivan _____
- Mr. Tavel _____
- Mr. Trotter _____
- Tele. Room _____
- Mr. Kinley _____
- Mr. Armstrong _____
- Ms. Herwig _____
- Miss Gandy _____

This is another effort to obtain records relating to the assassination of President Kennedy. Mr. Smith's request was accompanied by a check drawn on the account of the "Committee to Investigate Assassination". This Department is currently defending FOI litigation brought by the "Committee to Investigate Assassinations, Inc." It is not clear if the same committee is involved, but if it is, its willingness to litigate has been demonstrated. Even if Mr. Smith's committee is distinct from the other committee, our appraisal of Mr. Smith's request and of his general stance is that he will probably sue if his present appeal fails. Moreover, we believe the outcome of such a suit would be uncertain, and that it could result in a precedent damaging to the continued protection of FBI investigatory files generally.

The Department has thus far been successful in avoiding a defeat in court on the FOI status of FBI files, despite doctrines in this and some other circuits which would indicate that many such files are available. Our success has been partly due to a policy of granting discretionary access on appeals to the Attorney General where the prospects were doubtful for sustaining a final denial of the particular records sought and where no serious harm would flow from a release. We tentatively believe that the present case is one for a discretionary release of all or part of the records sought. We also believe that, with the passage of time, records pertaining to President Kennedy's assassination are likely to be increasingly viewed as a matter of historical rather than law enforcement significance, thus tending to make more difficult the successful assertion of an FOI exemption.

Being Dobby to L. H. 7/21/72
 Sent to Acting ASST. A.G. Office
 of Legal Counsel, 7/21/72 D.D. mfg

JUL 19 1972
 LEGAL COUNSEL
 DEC 1 1972

4 - ENCL
 REC-51
 SEP 11 1972
 LEGAL COUNSEL
 dtd 8/31/72

To assist us in preparing a recommended final disposition of this appeal, we would like to examine copies of the records sought by Mr. Smith, and request that you furnish us with same. We would also like an explanation, with respect to any requested record the release of which you believe might result in substantial injury to the FBI or others, of why such injury may be anticipated.

The requested explanation need not be in writing. As we stated in a memo to your predecessor dated October 2, 1970 in connection with two earlier FOI appeals involving FBI records:

"The above two appeals represent only the latest in a continuing flow of requests under the Freedom of Information Act seeking access to FBI records. This Office, in conjunction with the Civil Division, reviews a considerable number of Freedom of Information matters arising in various agencies and involving risk of litigation, pursuant to procedures adopted ten months ago. The volume and sometimes difficult nature of these problems, in conjunction with the limited time and staff available for the task of review, means that our procedures have necessarily become streamlined and informal. We have found that an informal meeting with agency representatives is often the quickest and most satisfactory way to arrive at a disposition of a troublesome Freedom of Information request.

"Since the protection of FBI records from adverse court decisions under this Act is of great concern to us, we would like to handle problems involving requests for FBI records in a manner comparable in speed and efficiency to the methods we use when records of other agencies are sought. In particular, we would like to minimize as far as practicable the time and effort required to prepare and exchange lengthy memor-

3 10

randa and related papers on these matters. Accordingly, we would appreciate it if you would designate one or more members of your staff with whom we might confer informally concerning the handling of pending and future requests under the Freedom of Information Act for FBI records."

We would like to renew the above request.

Copies of Mr. Smith's appeal and of his original requests are attached hereto.

Attachments

427



WASHINGTON, D. C. 20530

REQUEST FOR ACCESS TO OFFICIAL RECORD
UNDER 5 U.S.C. 552(a) and 28 CFR PART 16

In reply, please refer to: REG #1

See instructions for payment and delivery of this form at bottom of page

NAME OF REQUESTER Robert P. Smith		ADDRESS (street, city, state and zip code) 927 15th St. NW, Room 209 Washington, D. C. 20005	
DATE April 11, 1972			
DO YOU WISH TO RECEIVE COPIES? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF YES, SO INDICATE (no more than 10 copies of any document will be furnished).	NUMBER OF COPIES REQUESTED One (1)	OFFICE AND CITY WHERE RECORD IS LOCATED (if known) Dept. of Justice (FBI) Washington, D. C.	
DESCRIPTION OF RECORD REQUESTED (include any information which may be helpful in locating record) Any FBI Laboratory reports, quantitative test data, and detailed laboratory findings resulting from the neutron activation analyses (NAA) conducted on the paraffin casts taken by the Dallas Police of the hands and right cheek of Lee Harvey Oswald in connection with the investigation of the assassination of President Kennedy. Further description of these tests, but without the quantitative test data and detailed findings is found on page 562 of the Warren Report and in the testimony of Special Agent John P. Galleher on pages 716 - 752 of Volume XV of the Warren Commission Hearings.			
LITIGATION: DOES THIS REQUEST RELATE TO A MATTER IN PENDING OR PROSPECTIVE LITIGATION? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
FILL IN IF IN PENDING LITIGATION →	COURT (check one) <input type="checkbox"/> FEDERAL <input type="checkbox"/> STATE	DISTRICT	NAME OF CASE DOCKET NUMBER

Robert P. Smith
SIGNATURE

FOR USE BY DEPARTMENT OF JUSTICE ONLY THIS REQUEST IS:	A MINIMUM FEE OF \$3.00 MUST ACCOMPANY THIS REQUEST. OTHER CHARGES ARE AS FOLLOWS. (do not write in this box)
<input type="checkbox"/> GRANTED	FOR SECOND AND EACH ADDITIONAL ONE QUARTER HOUR SPENT IN SEARCHING FOR OR IDENTIFYING REQUESTED RECORD \$ 1.00 _____
<input type="checkbox"/> DENIED	FOR EACH ONE QUARTER HOUR SPENT IN MONITORING REQUESTER'S EXAMINATION OF MATERIAL \$ 1.00 _____
<input type="checkbox"/> REFERRED	COPIES OF DOCUMENTS: 50¢ FIRST PAGE, 25¢ EACH ADDITIONAL PAGE _____
	FOR CERTIFICATION OF TRUE COPY \$ 1.00 EACH _____
	FOR ATTESTATION UNDER THE SEAL OF THE DEPARTMENT \$ 4.00 EACH _____
	GSA CHARGE _____
	TOTAL CHARGE _____

Payment under this section shall be made in cash, or by United States money order, or by check payable to the Treasurer of the United States. Postage stamps will not be accepted.

This form may be delivered to any of the offices listed in 28 C. F. R. 16.2 or mailed to: Office of the Deputy Attorney General, Department of Justice, Washington, D. C. 20530

ENCLOSURE

428



WASHINGTON, D. C. 20530

REQUEST FOR ACCESS TO OFFICIAL RECORD
UNDER 5 U.S.C. 552(a) and 28 CFR PART 16

In reply, please
refer to: RFS #2

See instructions for payment and delivery of this form at bottom of page

NAME OF REQUESTER Robert P. Smith		ADDRESS (street, city, state and zip code) 927 15th St. NW, Room 409 Washington, D. C. 20005	
DATE April 11, 1972			
DO YOU WISH TO RECEIVE COPIES? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF YES, SO INDICATE (no more than 10 copies of any document will be furnished).	NUMBER OF COPIES REQUESTED One (1)	OFFICE AND CITY WHERE RECORD IS LOCATED (if known) Dept. of Justice (F) Washington, D. C.	
DESCRIPTION OF RECORD REQUESTED (include any information which may be helpful in locating record) a) Warren Commission Document No. 1269, otherwise described as a memorandum entitled "Le Harvey Oswald" and relating to the location of photographs of a bone specimen found in Dealey Plaza, Dallas, Texas on 11/23/63, forwarded with letter from Director, FBI, dated 7/21/64, and including attached photographs; b) Page 150A of the report of Special Agent Robert P. Gemberling dated 11/30/63 at Dallas, Texas, which page is referred to at page 52 of Warren Commission Document No. 1395 or at page 46 of Document No. 1518 but is not included in the materials filed at the Nat			
LITIGATION: DOES THIS REQUEST RELATE TO A MATTER IN PENDING OR PROSPECTIVE LITIGATION? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
FILL IN IF IN PENDING LITIGATION →	COURT (check one) <input type="checkbox"/> FEDERAL <input type="checkbox"/> STATE	DISTRICT	NAME OF CASE Arct DOCKET NUMBER

Robert P. Smith
SIGNATURE

FOR USE BY DEPARTMENT OF JUSTICE ONLY THIS REQUEST IS:	<input type="checkbox"/> GRANTED	A MINIMUM FEE OF \$3.00 MUST ACCOMPANY THIS REQUEST. OTHER CHARGES ARE AS FOLLOWS. (do not write in this box)
	<input type="checkbox"/> DENIED	
<input type="checkbox"/> REFERRED	FOR SECOND AND EACH ADDITIONAL ONE QUARTER HOUR SPENT IN SEARCHING FOR OR IDENTIFYING REQUESTED RECORD \$ 1.00	
	FOR EACH ONE QUARTER HOUR SPENT IN MONITORING REQUESTER'S EXAMINATION OF MATERIAL \$ 1.00	
	COPIES OF DOCUMENTS: 50¢ FIRST PAGE, 25¢ EACH ADDITIONAL PAGE	
	FOR CERTIFICATION OF TRUE COPY \$ 1.00 EACH	
	FOR ATTESTATION UNDER THE SEAL OF THE DEPARTMENT \$ 3.00 EACH	
	GSA CHARGE	
	TOTAL CHARGE	

Payment under this section shall be made in cash, or by United States money order, or by check payable to the Treasurer of the United States. Postage stamps will not be accepted.

This form may be delivered to any of the offices listed in 28 C. F. R. 16.2 or mailed to: Office of the Deputy Attorney General, Department of Justice, Washington, D. C. 20530

ENCLOSURE

429



WASHINGTON, D. C. 20530

In reply, please refer to: RFB #3

REQUEST FOR ACCESS TO OFFICIAL RECORD UNDER 5 U.S.C. 552(a) and 28 CFR PART 16

See instructions for payment and delivery of this form at bottom of page

NAME OF REQUESTER Robert P. Smith	ADDRESS (street, city, state and zip code) 927 15th St. N.W., Room 409 Washington, D. C. 20005
DATE April 11, 1972	

DO YOU WISH TO RECEIVE COPIES? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF YES, SO INDICATE (no more than 10 copies of any document will be furnished).	NUMBER OF COPIES REQUESTED One (1)	OFFICE AND CITY WHERE RECORD IS LOCATED (if known) Dept. of Justice (F) Washington, D. C.
---	---------------------------------------	---

DESCRIPTION OF RECORD REQUESTED (include any information which may be helpful in locating record)

a) The advertisement referred to and described on page 40 of Warren Commission Document No. 206 (report of Special Agent Robert P. Gemberling dated 1/7/61 at Dallas, Texas), which item bears the handwritten notation "October, 1959". Neither the original nor any copy of this advertisement appears to be on file at the National Archives.

b) Any reports of FBI Laboratory examinations or other reports of investigation of the advertisement described above, or of its reverse side, whether or not furnished to the Warren Commission.

LITIGATION: DOES THIS REQUEST RELATE TO A MATTER IN PENDING OR PROSPECTIVE LITIGATION? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
FILL IN IF IN PENDING LITIGATION →	COURT (check one) <input type="checkbox"/> FEDERAL <input type="checkbox"/> STATE	DISTRICT	DOCKET NUMBER
		NAME OF CASE	

Robert P. Smith
SIGNATURE

FOR USE BY DEPARTMENT OF JUSTICE ONLY	A MINIMUM FEE OF \$3.00 MUST ACCOMPANY THIS REQUEST. OTHER CHARGES ARE AS FOLLOWS. (Do not write in this box)
THIS REQUEST IS:	
<input type="checkbox"/> GRANTED	FOR SECOND AND EACH ADDITIONAL ONE QUARTER HOUR SPENT IN SEARCHING FOR OR IDENTIFYING REQUESTED RECORD \$ 1.00
<input type="checkbox"/> DENIED	FOR EACH ONE QUARTER HOUR SPENT IN MONITORING REQUESTER'S EXAMINATION OF MATERIAL \$ 1.00
<input type="checkbox"/> REFERRED	COPIES OF DOCUMENTS: 50¢ FIRST PAGE, 25¢ EACH ADDITIONAL PAGE
	FOR CERTIFICATION OF TRUE COPY \$ 1.00 EACH
	FOR ATTESTATION UNDER THE SEAL OF THE DEPARTMENT \$ 3.00 EACH
	GSA CHARGE
	TOTAL CHARGE

Payment under this section shall be made in cash, or by United States money order, or by check payable to the Treasurer of the United States. Postage stamps will not be accepted.

This form may be delivered to any of the offices listed in 28 C. F. R. 16.2 or mailed to: Office of the Deputy Attorney General, Department of Justice, Washington, D. C. 20530

ENCLOSURE

430

1st. Floor in Dealey Plaza,

CERTIFIED MAIL

Robert P. Smith
927 15th St. NW, #107
Washington, D. C. 20005

June 13, 1972

Hon. Richard Kleindienst
Attorney General
Department of Justice
Washington, D. C. 20530

Dear Mr. Kleindienst:

This is a request for review of the decision of the Deputy Attorney General dated May 18, 1972, which decision denied my request dated April 11, 1972 for access to certain records of the Justice Department compiled during the investigation of the assassination of President Kennedy. A copy of the Deputy Attorney General's decision is enclosed.

This decision was not delivered to me until June 2, 1972. In the meantime, I had already directed a request for review dated June 1, 1972 to your office. My letter of June 1 mistakenly presumed that there had been no action taken on my original request. Please consider this letter as a replacement or supplement.

The denial of my request by the Deputy Attorney General states that the records I seek "consist of investigatory files compiled for law enforcement purposes". I contend that while this characterization may have been true in the past, it is no longer true because all conceivable law enforcement purposes have now been served and are no longer in effect. Bristol v. Connors v. F. T. C., 424 F.2d 935, 939 (1970); Waldford v. Hamlin, 315 F.Supp. 175, 178 (1970); Connors v. Sun Shisbuilding & Driveway Company, 268 F.Supp. 708 (1963).

The word "purpose", whether as defined in Webster, Black, or any other dictionary, always connotes substitut, something to be attained or achieved at a time which is subsequent to the time when the purpose was conceived. One cannot have retroactive purposes; once the event aimed at is achieved, or the time for it has passed, the "purpose" ceases to operate.

The position of the Justice Department seems to be that investigatory files are exempted from disclosure for all time -- hundreds of years conceivably. If that had been the legislative intent of Congress in formulating exemption (b)(7), surely the words "purposes" would not have been included. A clear and unambiguous formulation would have been: "investigatory files compiled by law enforcement agencies", and that wording would have been exactly in accord with the Justice Department's present interpretation.

The records I seek have no current law enforcement "purpose" ^{any more} than do those pertaining to the assassination of President Lincoln. They may well have less, inasmuch as the items I seek are impersonal, objective matters that would not embarrass any persons, living or dead, or identify any informants. I cannot conceive how the records I have requested could in any way influence any pending or prospective law enforcement action.

One of those requested items is an advertisement clipped from some magazine with a handwritten date on the bottom. Another consists of laboratory test results from a scientific test of the paraffin casts from Oswald's hands and right shoe

CONTINUED

715-572

90-11177-14 ENCLOSURE

DEPUTY ATTORNEY GENERAL

JUN 14 1972

431

Still another is report on a piece of bone purposefully found in Dealey Plaza, which report conceivably contains laboratory test results on a page which might or might not establish its origin. The disclosure of such records could not possibly compromise informants, injure innocent persons, or impair the administration of justice.

I note that in respect to one of my requests, "RFP #2(b)", concerning a page missing from Commission Document 5, the letter from the Deputy Attorney General states that it is understood that this page is available at the National Archives. Immediately after receipt of the Deputy Attorney General's letter on June 2, 1972 I made further inquiry at the Archives and was informed that this page has still not been received there. I shall make further inquiry later this week, but I would appreciate it if this matter would be verified.

I could discuss at some length why each of the items I seek is potentially of significance in clearing up certain questions left unanswered by the Warren Report. However, I do not think such discussion is appropriate for this review, which I assume is confined to the largely formal question of whether or not any of the requested records is properly exempt from disclosure.

Nevertheless, each of the requested records is substantively different from the others. If, in your review, any current law enforcement purposes are found to apply, I should like to be informed as to what specific purpose or purposes are held applicable to each itemized request, treated separately and independently. In other words, I do not want to see all three requests lumped together and held to be exempt from disclosure merely because one of them might compromise confidential informants. That is why I filed separate Forms DJ 118 in the first place, in addition to wishing to comply with the final sentence in 28 CFR 16.3(a) as nearly as possible.

In any case, if your review concludes that any of the records requested is exempt from disclosure as being part of a file compiled for law enforcement purposes I wish to know what those purposes are, and whether they are current purposes or purposes conceived in some earlier time period and no longer operative. A mere reiteration of the reason given by the Office of the Deputy Attorney General, without specifics, will not enable me to assess the validity of the denial.

I should like to point out that I originally attempted to obtain information on these matters through direct inquiry of the cognizant personnel within the FBI. They politely declined and referred me instead to the Justice Department. I have now been pursuing these items formally for two months, and am beginning to feel like I have been caught in a quagmire. I hope that your office will give this more than per forma consideration (but within a reasonable time) and not force me to conclude that this has been an exercise in futility.

Respectfully yours,

Robert P. Smith

Robert P. Smith

927 1514 11 114

Washington, DC

411 11 157

Enclosure

432