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April 3, 1981

Mr. Dan Metcalfe  
Civil Division, Room 3513 Main  
U.S. Department of Justice  
Washington, D.C. 20530

Re: Weisberg v. Webster, Civil  
Action No. 78-322; Weisberg v.  
FBI, Civil Action No. 78-420

Dear Dan:

At Harold Weisberg's request I am enclosing a copy of his letter to Mr. James K. Hall of March 19, 1981. As I discussed with you yesterday, he complains that the worksheets which accompanied the March 12, 1981 release of 141 pages of materials on the surveillance of Marina Oswald are largely illegible, and that they bear no file number or section identification. In order to avoid repetition of these problems, which have occurred before, I urge you to instruct the FBI analysts to use a black felt tip pen in the future. This will eliminate problems due not to the quality of the xeroxing but to the type of pen or ink used on the originals.

Mr. Weisberg also complains about the excisions made under Exemptions 1, 2, 7(C), and 7(D). His objections appear to be well-founded. The use of Exemption 2 for file numbers or classification markings is unjustifiable. As the Court of Appeals recently reaffirmed in Allen v. Central Intelligence Agency, 636 F. 2d 1287 (1980), Exemption 2 applies only to "personnel" rules and practices of an agency. Neither file numbers nor classification markings are covered by this exemption.

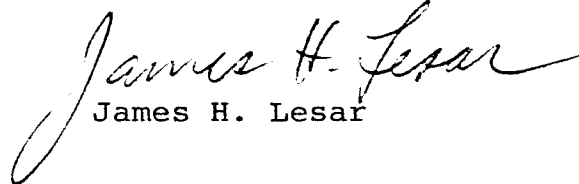
Exemption 7(D) is also being used to excise file numbers which designate files containing information collected by wire-tapping or bugging. Although it has been held that a non-human source may qualify for protection as a confidential source where the source is a local law enforcement agency, I do not recall any case holding that this provision either to the instruments of electronic surveillance or to information gathered as a consequence of their use. Furthermore, the purpose of the exemption, which is to protect the identity of confidential sources so that law enforcement agencies will continue to receive information from such sources, is not served by the application which the FBI has made of it in these records.

Mr. Weisberg writes that Exemption 7(C) has been applied to withhold what the FBI has already disclosed. The administrative appeal in this case having resulted in a remand for re-processing to eliminate such inconsistencies, they should not be countenanced in newly processed records either.

The FBI has also invoked Exemption 1. It is difficult to believe that after the passage of more than 17 years, this exemption is justifiably invoked for records of the nature sought here. As a threshold matter, Exemption 1 applies only to information classified in the interests of national defense or foreign policy. It would seem that neither was involved here. In addition, under the provisions of the present executive order, Executive Order 12065, a balancing of the public interest in disclosure against the damage to national security which might be expected from such disclosure is required. Did the FBI engage in this balancing? If not, then I think that it should be done, and done promptly.

I am enclosing copies of three pages which Mr. Weisberg has sent me so you can see the nature of some of the excisions.

Sincerely yours,

  
James H. Lesar