

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	)	
	)	
Plaintiff, -	)	
	)	
v.	)	CIVIL ACTION NO.
	)	78-322 & 78-420
FEDERAL BUREAU OF INVESTIGATION,	)	
	)	(Consolidated)
Defendants.	)	
	)	

DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION  
TO DEFENDANTS' MOTION CONCERNING THE  
ADJUDICATION OF CERTAIN EXEMPTION CLAIMS

In his opposition to defendants' Motion Concerning the Adjudication of Certain Exemption Claims, plaintiff requests that the Court deny the motion and order the defendants to "act upon his pending [administrative] appeals." In support of this position, plaintiff argues that he has lodged numerous administrative appeals with the Justice Department's Office of Privacy and Information Appeals (OPIA)<sup>1/</sup> concerning the scope of the FBI's search and the alleged breach of an agreement to provide him with copies of all films and tapes pertaining to the assassination of President Kennedy, and that OPIA has refused or failed to act on these appeals. These claims are devoid of merit. As noted in the declaration of Richard L. Huff<sup>2/</sup> and the correspondence attached thereto, the plaintiff's omnibus Dallas and New Orleans administrative appeals were acted upon by the Justice Department on December 16, 1980. Significantly, that determination was made only after plaintiff was given an opportunity to have broad input into the administrative appeal procedures.<sup>3/</sup> Although plaintiff continued to send complaints to OPIA's then director Quinlan Shea about the FBI's processing of his FOIA requests, Mr. Shea made it clear to him that his appeals

<sup>1/</sup> On March 4, 1982, OPIA was consolidated with another office of the Justice Department and is now known as the Office of Information and Privacy (OIP). For sake of clarity, however, the defendants will refer to that Office by its former title.

<sup>2/</sup> See Exhibit A, attached hereto.

<sup>3/</sup> See Exhibit A(2).

had been ruled on and thus his recourse was "to the court in which [his] consolidated suits concerning these records are pending."<sup>4/</sup> Accordingly, since the Justice Department has acted upon plaintiff's administrative appeals, this Court should reject his request that it be ordered to do so again.

Because the FBI has completed the document reprocessing which the Justice Department directed on administrative appeal, the only remaining issue in this case is whether the agency acted properly in claiming that some or all of the documents are exempt under the FOIA from release.<sup>5/</sup> In light of the large number of documents and pages involved, the defendants suggested in their earlier motion that the Court resolve this issue by way of a sample Vaughn Index. In response to that suggestion, the plaintiff contends in the alternative that "certain modifications should be made to ensure that the sample is fair, adequate and representative."

First, plaintiff wants the FBI to include in the sample's universe the 94,965 pages of documents that are duplicative of those processed pursuant to his earlier FOIA request for FBI Headquarters records on the Kennedy assassination. As is explained by Special Agent John N. Phillips in paragraph 6 of his attached declaration,<sup>6/</sup> those documents should not be deemed within the scope of this litigation. Rather, they are within the ambit of plaintiff's separate FOIA request for Headquarters documents. If plaintiff is dissatisfied with the processing of the FBI Headquarters documents, his recourse is to file suit on

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<sup>4/</sup> See Exhibit A(4).

<sup>5/</sup> Plaintiff's assertions concerning the inadequacies of the FBI's search are quickly put to rest by Special Agent John Phillips' statements in paragraph 4 of his attached declaration. Likewise, in paragraph 5 of that declaration, Special Agent Phillips undercuts plaintiff's claim that the FBI has not provided him with all films and tapes in the Dallas and New Orleans Field Offices pertaining to the Kennedy assassination.

<sup>6/</sup> See Exhibit B.

that request. His recourse should not be to have the FBI duplicate its efforts by having those documents included in the instant litigation.

Plaintiff's second suggestion is that he be given an opportunity to select a certain number of documents for inclusion in the defendants' sample Vaughn Index.<sup>7/</sup> Defendants do not oppose this suggestion so long as there is a page limitation placed on plaintiff's selection for, as plaintiff is well aware, some documents are much longer than others. In this regard, the defendants propose a limitation of 50 documents or 300 pages, whichever is less. The defendants also propose that plaintiff be given 20 days to submit to the Court a list of those documents that he wants included in the sample; this list should include the serial number of each document and the corresponding number of pages involved. Once the plaintiff has filed his document list, the defendants request that they be given 10 days to review plaintiff's selection and to file with the Court an estimate of the amount of additional time it will take to "Vaughn" plaintiff's documents. Finally, the defendants still request that the Court adopt the random sampling procedures described in its Motion Concerning the Adjudication of Certain Exemption Claims. As noted therein, such a process would produce an approximate 118 document sample which, in turn, would enable the Court to examine the overall methodology used by the FBI in the application of the FOIA exemptions and to render a judgment on the validity of those claims.

<sup>7/</sup> Plaintiff also requests that the Court direct the defendants to serve a copy of any Vaughn Index directly upon him as well as his counsel. The defendants oppose this request because service directly upon the plaintiff would be duplicative of the service upon his counsel and thus is not contemplated by the Federal Rules of Civil Procedure. Moreover, the location of plaintiff's home, as well as his age and alleged poor health, is irrelevant to whether the defendants should be put to the extra burden and expense of serving both plaintiff and his counsel.

CONCLUSION

For the reasons stated above, defendants request that the Court grant their Motion Concerning the Adjudication of Certain Exemption Claims, as modified herein, and that it enter the attached proposed order.

Respectfully submitted,

J. PAUL McGRATH  
Assistant Attorney General

STANLEY S. HARRIS  
United States Attorney

  
VINCENT M. GARVEY

  
HENRY J. LAHAIE

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Telephone: (202) 633-4345

Attorneys for Defendants.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, )  
 )  
 Plaintiff, )  
 )  
 v. ) CIVIL ACTION NO.  
 ) 78-322 & 78-420  
 FEDERAL BUREAU OF INVESTIGATION, )  
 ) (Consolidated)  
 Defendants. )

DECLARATION OF RICHARD L. HUFF

I, Richard L. Huff, make the following declaration:

1. I am a Co-Director of the Office of Information and Privacy (OIP), Office of Legal Policy, United States Department of Justice. Until recently, the functions of this office were performed by the Office of Privacy and Information Appeals (OPIA) and the Office of Information Law and Policy. During the past five years, I have served in OPIA as an attorney-advisor, Deputy Director, and Acting Director. As a Co-Director of OIP, I am responsible, inter alia, for supervising the processing of administrative appeals from all components of the Department of Justice under the Freedom of Information Act (FOIA) and the Privacy Act of 1974.

2. The statements made herein are based upon knowledge obtained in the course of my official duties, including the review of correspondence and other documents in OIP's files.

3. On June 5, 1979, plaintiff, through his counsel, administratively appealed the Federal Bureau of Investigation's (FBI) processing of his FOIA requests in these actions. (See Attachment 1). On June 16, 1980, the former Director of OPIA, Quinlan J. Shea, Jr., informed plaintiff's counsel that OPIA had completed its preliminary work and planning with respect to those appeals and solicited input from plaintiff concerning the appeal procedures. (See Attachment 2). On December 16, 1980, then Associate Attorney General John H. Shenefield issued the Department's decision with respect to plaintiff's administrative appeals. (See Attachment 3). Subsequently, because plaintiff continued to send complaints to OPIA about the FBI's processing of

*Wrong processing. OPIA is always*

*processing. He had*

*will not be at all - m. v. to Amos*

*Exhibit A*


his requests, Mr. Shea wrote him and -- upon noting that "the process of adjudicating an appeal simply cannot be extended indefinitely" -- stated that plaintiff's administrative appeals had been ruled on and thus his recourse was "to the court in which [his] consolidated suits concerning these records are pending." (See Attachment 4).

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4. Recently, the FBI completed the <sup>only</sup> reprocessing of the documents pursuant to the December 16, 1980, determination by the Associate Attorney General. That reprocessing was coordinated and approved by OPIA. There is thus nothing further for this Office to do with respect to the processing of documents subject to plaintiff's administrative appeals of the Dallas/New Orleans documents.

I have read the foregoing statement consisting of 2 pages and fully understand its contents. I declare under penalty of perjury that the statement is true and correct to the best of my knowledge and belief.

Dated, this 22nd day of March, 1982.

  
RICHARD L. HUFF  
Co-director  
Office of Information and Privacy  
United States Department of Justice

**FILE**

JAMES H. LESAR  
ATTORNEY AT LAW  
910 SIXTEENTH STREET, N. W. SUITE 600  
WASHINGTON, D. C. 20006  
TELEPHONE (202) 223-3587

June 5, 1979

Mr. Quinlan J. Shea, Jr., Director  
Office of Information and Privacy Appeals  
Office of the Associate Attorney General  
United States Department of Justice  
Washington, D.C. 20530.

Re: Weisberg v. Webster, et al., Civil  
Action No. 78-322; Weisberg v. Fed-  
eral Bureau of Investigation, et al.,  
Civil Action No. 78-420 (Consolidated)

Dear Mr. Shea:

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By letter dated May 10, 1979, Mr. Thomas H. Bresson, Acting Chief, Freedom of Information-Privacy Acts Branch, Records Management Division, Federal Bureau of Investigation, advised me that the FBI has processed and released to Mr. Weisberg "all records within the scope of his requests" in the above cases, "with the exception of the 3 X 5 index cards, referrals from the Headquarters files and a portion of the referrals from the Dallas and New Orleans Field Office files." (A copy of Mr. Bresson's letter is attached hereto)

Mr. Weisberg hereby appeals from the FBI's processing of his requests in the above cases on the following points:

1. The scope of his requests. Mr. Weisberg maintains that the FBI has interpreted his requests in an unduly restrictive manner, thus denying him records that are within the scope of these requests.
2. The adequacy of the search. Mr. Weisberg asserts that the FBI has not located and processed all records which should have been located and processed. He has previously furnished the identity of relevant files which have not been searched in compliance with his requests.
3. Wrongful excisions and withholdings. Mr. Weisberg has advised me that the records which have been released to him contain wrongful excisions, and that other records have been wrongfully withheld in their entirety.
4. "Previously processed" records. The FBI has withheld voluminous records from the files of these two field offices on

*Exhibit A*

*Attachment 1*

the grounds that they were "previously processed" in connection with earlier releases that have been made of FBI Headquarters and field office records on the assassination of President John F. Kennedy. Mr. Weisberg contends that the FBI has withheld Dallas and New Orleans field office records which are not exact duplicates of Headquarters records (or of the records of any other field office) by labeling them as "previously processed"; that some of the records of the Dallas and New Orleans field offices that have been withheld as "previously processed" were not in fact released to him from Headquarters files or the files of other field offices; and that the documents released from Headquarters files contain many wrongful excisions which have not been challenged in court.

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In addition, Mr. Weisberg notes that where the FBI has failed to identify the record which is allegedly identical to the withheld Dallas or New Orleans field office record, it is impossible to determine that they are in fact identical. Yet in order to know that any withheld Dallas or New Orleans record was "previously processed" and did not contain any additional information not on the allegedly identical record that was processed earlier, the FBI was required to know the exact identification of the Headquarters or other field office record that was processed earlier and to examine and compare it with the Dallas or New Orleans record. He also notes that with respect to the records of the Newark and Litte Rock field office records that were processed for another requestor, where the FBI withheld records as "previously processed" it did provide the serial numbers of the allegedly identical records that had been released earlier from the Headquarters files.

Mr. Weisberg has previously lodged numerous appeals with your office on these matters. These prior appeals are expressly incorporated in this appeal by reference. Mr. Weisberg has also informed me that he has this date mailed you some additional appeals, and that a few more will be mailed to you shortly. These, too, are incorporated in this appeal by reference.

Mr. Weisberg asks that your office conduct a thorough review of these matters, keeping in mind that the release of files on the assassination of President Kennedy has been held to be a matter of great historical interest and is therefore one which deserves the most careful attention, in order that as much information be released to the public as is possible.

If either I or Mr. Weisberg can be of assistance to you, please do not hesitate to contact us.

Sincerely yours,

*James H. Lesar*  
James H. Lesar

cc: Mr. Daniel Metcalfe





UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

May 10, 1979

James H. Lesar, Esq.  
910 16th Street  
Washington, D. C. 20006

Dear Mr. Lesar:

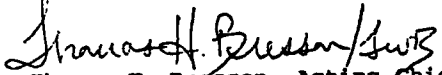
This is in response to your letter dated April 10, 1979, regarding Mr. Weisberg's requests concerning the assassination of President Kennedy, wherein you ask to be advised of "all records not yet supplied to Mr. Weisberg which are within the scope of his requests" for records pertaining to the Dallas and New Orleans Field Offices.

Please be advised that we have now processed and released to Mr. Weisberg all records within the scope of his requests, with the exception of the 3 X 5 index cards, referrals from the Headquarters files and a portion of the referrals from the Dallas and New Orleans Field Office files (as indicated in my letter to Mr. Weisberg of May 9, 1979.)

We are currently attending to these remaining documents and will forward them as expeditiously as possible.

Your continued patience and cooperation in this matter is appreciated.

Sincerely yours,

  
Thomas H. Bresson, Acting Chief  
Freedom of Information-  
Privacy Acts Branch  
Records Management Division





United States Department of Justice

OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

WASHINGTON, D.C. 20530

James H. Lesar, Esquire  
Suite 203  
2101 L Street, N. W.  
Washington, D. C. 20037

JUN 16 1980

Re: Weisberg v. Webster  
Civ. No. 78-322  
Weisberg v. F.B.I.  
Civ. No. 78-420

Dear Mr. Lesar:

*Why this long letter?*

This letter is to inform you that our Office has completed our preliminary work and planning with regard to the processing of Mr. Harold Weisberg's administrative appeals concerning records that pertain to the Kennedy assassination which fall within the subject court actions. In accordance with my assurance, expressed most recently in a meeting at my Office with Mr. Weisberg and Ms. Rae Barrett of his staff, I am providing you by this letter with advance notification of the methodology we have tentatively decided to apply in reviewing those records and am formally soliciting any suggestions you or your client might have for possible changes in that methodology.

We have already begun to focus on resolving certain preliminary issues you or your client has raised, such as the exact scope of Mr. Weisberg's requests, the adequacy of the Bureau's searches pursuant to those requests, the proper treatment of materials alleged to be in the "public domain," referrals and "previously-processed" records, and the appropriateness of the standards applied by the F.B.I. in actually processing these records. Feel free to bring to my attention any other preliminary matters you feel we should address.

*does not say what is not recorded on appeal*

The succeeding stage of our work will entail the review by my staff of an adequate sample of the documents actually processed by the Bureau pursuant to these requests. At this

*Exhibit A  
Attachment 2*

time I envision that our review will have two different elements -- incorporating both random and nonrandom selection processes in deciding which records to examine. The first element would consist of a review of a certain number of pages, selected on a more-or-less random basis, for the purpose of providing us with a reasonable picture of the excisions the Bureau made and the standards actually used in making them. One possibility for this phase would be for us to review the first and last sections of each Field Office main file, as well as some relatively small number of pages containing excisions in each other section of those files. Other approaches might be as good or better, and I would welcome any suggestions you or Mr. Weisberg might have for this phase of the work.

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The second element of the review is designed to insure that we consider the most important withholding decisions, that is, those involving material that might add to the public understanding of the case itself, or of the F.B.I.'s investigation thereof. To do this, I propose that we look very carefully at approximately 250-300 specific examples of excisions or denials of entire pages/records, to be chosen by you or your client. By selecting our sample of records to be reviewed under this dual process, or some mutually agreeable modification thereof, I would hope to make our participation in this process of maximum possible benefit to the parties and the Court.

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I hope I have made it clear that I am as willing to accommodate Mr. Weisberg's specific concerns as it is reasonably possible for me to do. For that reason, although I feel that at least some of the denials of access to be reviewed by my staff should be selected by us, I am willing, as indicated earlier, to let Mr. Weisberg play a very major role in that process. If, for example, there are several individual sections of records which he considers to be of critical importance, we would be willing to look at most or all of the material withheld from those sections. As a corollary to such a request, however, I would expect Mr. Weisberg to specify other sections which we could safely ignore, because the time constraints under which we are working limit both the degree to which I can accede to requests to review specific records and the total number of records we can include in our sample. I suggest that either you or Mr. Weisberg discuss this entire

matter further with Ms. Hubbell of my staff as soon as possible, because I intend to have the main review underway by the end of this month and our basic work completed by Labor Day or shortly thereafter. Only by adhering to this timetable can we be reasonably certain of meeting the commitment we have made to the Court in these cases. Review of the classified materials will be conducted by my Classification Review and Special Projects Unit, under the direction of Ms. Jean K. FitzSimon. Mr. Weisberg can, of course, bring any relevant matters to Ms. FitzSimon's attention to assist her staff in its review. It is unclear at this time whether the classification review can be completed simultaneously with the review of the unclassified material.

I sincerely hope that it will be possible for Mr. Weisberg to play an active role in the process of formulating our system and selecting the records to be included in the actual review. We could, to be sure, attempt to identify his principal concerns and complaints from the many letters we have already received from him. As I discussed with him recently, however, most of his letters to us about Kennedy records pertain to Bureau Headquarters records, not those of the Dallas and New Orleans Field Offices. Moreover, it would be difficult for us to determine which of these issues have since been resolved to his satisfaction. Whether and to what extent these concerns are still alive, and apply as well to Dallas and New Orleans records, is something that I feel he is far better able to judge than am I.

*copying and review of materials*

I do want to raise with you, right now, certain fundamental guidelines that I intend to follow in determining the scope of the initial requests filed in these cases and the processing of them by the Bureau. As you well know, as a general and threshold proposition, it is the responsibility of the requester reasonably to describe the records to which he seeks access. Although there may be some room for interpretation of this language, it is my opinion that neither the Bureau nor any other agency can be held to a standard of an open-ended, never-ending process of search, locate, review, and then search again based on what is contained in the reviewed records. In my judgment, the Act contemplates as to any individual request a fairly simple process: the filing of the request, the identification and collection of the records encompassed by that

*I did discuss this with [unclear] and [unclear] by [unclear] to do this work myself*

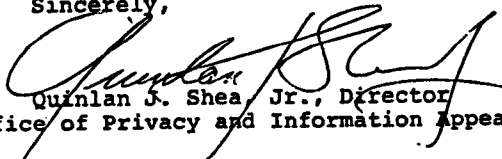
request, and the substantive processing of those records. There is nothing in the Act to prevent a requester from filing a follow-up request, based on the results of the processing of his first request, but there is also nothing in the Act to require one request touching on a subject involving large quantities of records to be constantly redefined and expanded by the agency, as the initial records are processed, so as to require the processing of additional records which were not in fact and law adequately described in the initial request.

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Until these two appeals are adjudicated, it will not be possible for us to devote any resources at all to other Kennedy-related appeals filed by your client and pending in this Office. There are two reasons for this. First, we are substantially below strength at this time. Second, it is my hope and expectation that our review of the Bureau's processing of its Dallas and New Orleans records will result in standards which will make the processing of other Kennedy appeals much easier. To the extent that there are, among the other matters Mr. Weisberg has pending in my Office, any of particular importance to him, I will try to be responsive. Even as to such matters, however, the fact that several members of my staff will be spending a substantial portion of their time this summer on these two appeals would make it unfair to hundreds of other requesters and administrative appellants for me to assign personnel to work on other Weisberg matters to any considerable extent.

I look forward to hearing from you in the near future and suggest that a meeting within the next week or ten days is essential.

Sincerely,



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

cc: Mr. Bresson  
Ms. FitzSimon  
Ms. Hubbell  
Mr. Metcalfe  
Mr. Weisberg



U.S. Department of Justice

Office of the Associate Attorney General

**FILE**

Washington, D.C. 20530

December 16, 1980

James H. Lesar, Esquire  
Suite 203  
2101 L Street, N. W.  
Washington, D. C. 20037

Dear Mr. Lesar:

This is in further response to the pending administrative appeals of your client, Mr. Harold Weisberg, from the actions of the Federal Bureau of Investigation on his requests for access to records of the Dallas and New Orleans Field Offices which pertain to the assassination of President John F. Kennedy.

As the result of extensive discussions between Bureau personnel and members of my staff, the F.B.I. has agreed to certain modifications of its initial actions on these requests. I have decided to affirm the Bureau's initial actions in part, to affirm the modified actions which will result from the discussions indicated, and to reverse the actions in one significant respect.

There was a relatively small amount of classified material which was actually processed by the F.B.I. pursuant to these two requests. Of the 113 pages and 142 individual paragraphs that were processed, the review on administrative appeal has resulted in the declassification of 29 entire pages and 36 additional paragraphs. As to the remaining classified material, the actions of the F.B.I. are affirmed. 5 U.S.C. 552(b)(1). This material has been referred to the Department Review Committee for consideration whether it warrants continued classification under Executive Order 12065. You will be notified of the results of this review.

Exemption 2 of the Act, 5 U.S.C. 552(b)(2), was used, either alone or in conjunction with 5 U.S.C. 552(b)(7)(D), to withhold source symbol numbers and informant file numbers. Such numbers are purely internal agency matters as to which the general public has no legitimate interest and the Bureau's use of this exemption for this purpose is affirmed. To the extent that exemption 3 of the Act, 5 U.S.C. 552(b)(3), was used, either alone or in conjunction with 5 U.S.C. 552(b)(7)(C), to withhold "rap sheets" and

*Exhibit A*  
*Attachment 3*

the names of personnel of the Central Intelligence Agency, the actions of the F.B.I. are affirmed. 28 U.S.C. 534; 50 U.S.C. 403g. All uses of this exemption in conjunction with § 6103 of the Internal Revenue Code will be reconsidered. There is some question whether claims of exemption 6, 5 U.S.C. 552(b)(6), should not have been based instead upon exemption 7(C), 5 U.S.C. 552(b)(7)(C), given the investigatory nature of the file into which the records in question had been incorporated. On the other hand, the actual records are intrinsically exemption 6 material (medical records, etc.). In any event, the decision of the Bureau to withhold this information on personal privacy grounds is affirmed on the basis of both exemptions.

On a number of occasions, your client has questioned whether exemption 7 of the Act, 5 U.S.C. 552(b)(7), can properly be applied at all to records of the F.B.I. which pertain to the Kennedy assassination. In my judgment, these records of the Bureau do constitute investigatory records compiled for law enforcement purposes within the meaning of the Freedom of Information Act. Irons v. Bell, 596 F.2d 468 (1st. Cir. 1979). See also Weisberg v. Department of Justice, 489 F.2d 1195 (D.C. Cir. 1973), cert. denied, 416 U.S. 993 (1974).

*continued  
by memo  
m. 1/27/74*

The two exemptions most frequently cited by the Bureau to deny access to material within the scope of your client's requests were 7(C) and 7(D), 5 U.S.C. 552(b)(7)(C) and (7)(D). These exemptions were, however, used to deny access to two very different kinds of material. First, they were used to withhold the names of persons, or purely descriptive information pertaining to them, or minimal information furnished by them, to the limited extent necessary to prevent the disclosure of their identities. All such usages of these exemptions, specifically including the denials of access to the names of F.B.I. Special Agents in the more recent portions of the processed files, are affirmed. Second, these exemptions were used to deny access to significant quantities of substantive information. On the basis of the results of my staff's review, I am not persuaded that all such usages of these exemptions were justified. Accordingly, I am at this time reversing the F.B.I.'s actions as to all such withholdings and remanding them for de novo reconsideration, which will be carried on in close coordination with my staff. Prior to undertaking the actual review of these records, Bureau personnel will familiarize themselves thoroughly with the Report of the Warren Commission, the relevant publications of the House Select Committee on Assassinations, and the various other official, readily-available, authoritative reference sources pertaining to the Kennedy assassination. This kind of substantive information in these files will be released unless the need for continued withholding is clearly established. In

exercising the discretion which is vested in this Department whether or not to release material which is exempt from mandatory disclosure under the Act, I have concluded that the importance to the American public of the Bureau's investigation of the Kennedy assassination is too great for me to apply any less rigorous standard. All denials of access which were effected on the basis of exemption 7(E), 5 U.S.C. 552(b)(7)(E), will also be reprocessed, but the Bureau's reliance on exemption 7(F), 5 U.S.C. 552(b)(7)(F), to withhold the names of agents of the Drug Enforcement Administration was correct and is affirmed.

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search  
step*

There are certain other aspects of these appeals as to which it has been agreed that further action by the F.B.I. is appropriate. With respect to the Dallas Field Office, the Bureau will now conduct an all-reference search on the assassination itself, on Lee Harvey and Marina Oswald, on Jack Ruby and on the Warren Commission. All hitherto unprocessed records on these subjects, whether contained in main files or see references, will be carefully screened and those which pertain to the assassination in any way will be processed. In addition, as a matter of agency discretion, the Bureau will conduct all-reference searches on George De Mohrenshildt and former Special Agent James P. Hosty, and will also attempt to determine whether there are any official or unofficial administrative files which pertain to the Kennedy case, with particular emphasis on seeking files on "critics" or "criticism" of the F.B.I.'s assassination investigation. Any records located as the result of these searches will also be carefully screened and, if appropriate, processed for possible release to your client. With respect to the New Orleans Field Office, the Bureau will undertake a further search for a possible main file on David Ferrie, and will forward to Headquarters for screening and possible processing those portions of another file which pertain to Ferrie, Jim Garrison and Jack Ruby. In addition, as a matter of agency discretion, the F.B.I. will conduct a new search in New Orleans for any existing official or unofficial administrative files which pertain to the Kennedy case. The action of the F.B.I. in not conducting a specific search for records pertaining to Gordon Novel is affirmed.

As you know, numerous records in Dallas and New Orleans files were referred to other agencies and components of the Department of Justice for their views, with the request that they be returned to the F.B.I. for action. As the result of efforts by Bureau personnel and members of my staff, virtually all of those records have now been returned with the exception of those



sent to the Central Intelligence Agency. The F.B.I. has agreed with my staff that all of the unclassified referred records should be reprocessed. Although appropriate weight will be given to the views of the other agencies and components, the Bureau, acting in conjunction with my staff, will consider these records for possible release in light of the same standards being applied to all of the other records within the scope of these requests. Particular attention will be given to claims that material is barred from release by § 6103 of the Internal Revenue Code. At this time, I am specifically finding that the denial of access on this basis to the requests for assistance in the Kennedy investigation which were sent from the F.B.I. to the Internal Revenue Service was improper.

*have found many items that were not worked*

Of the more than 100,000 pages of records to which access was in effect denied on a "previously processed" basis, it has been established that some 3,000 pages may not in fact have been processed as part of the Headquarters files. These pages have now been processed. With respect to all other documents in this category, the Bureau will entertain requests for specific items, subject to your client's willingness to pay for them at the rate of ten cents per page. When the substantive text of the second copy of a record is the same as that of a previously released record, it is my conclusion that there is insufficient presumptive benefit to the general public to warrant a fee waiver as to such materials. To the extent your client can show that any of these second copies have independent significance, I will consider granting a fee waiver as to them on a retroactive basis. My decision on this point is without prejudice to Mr. Weisberg's pending appeal from the termination of his general fee waiver for Kennedy records, but it is final as to previously processed documents, regardless of what may be the final decision on that other appeal.

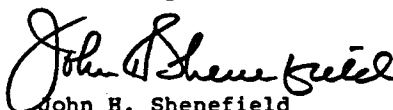
*examined all records that were not processed*

Lastly, there are various films and tapes in these files which were not processed for possible release to Mr. Weisberg. The Bureau will now consult with him regarding these materials and will process any which are of interest to him. Only in the event that he requests additional copies of items which have already been furnished to him will he be charged.

*not all of them that have been done they must have been*

Judicial review of my action on these appeals is available to your client in the United States District Court for the judicial district in which he resides or has his principal place of business, or in the the District of Columbia, or in the Northern District of Texas and the Eastern District of Louisiana, as to records in each of these districts.

Sincerely,



John H. Shenefield  
Associate Attorney General

cc: Mr. Harold Weisberg

U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

FEB 19 1981

Mr. Harold Weisberg  
7627 Old Receiver Road  
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in response to three letters from you dated January 26, 1981. The first of these dealt with records pertaining to Jack Ruby; the second, to James Garrison and yourself; and the third, to the Kennedy and King assassinations in general.

By copy of this letter, I am referring these letters to the Bureau. As to the first two letters, I am referring the originals, rather than copies, since both refer to the Dallas and New Orleans Kennedy assassination records which have been remanded to the Bureau for limited reprocessing. Absent truly extraordinary circumstances, any future correspondence concerning these records should be addressed to the Bureau. I believe you will agree that you were given ample opportunity to provide this Office with information concerning the Bureau's processing of these records prior to our action on your appeal, and that you in fact did so. Although I am very appreciative of the assistance you provided us by citing specific examples of what you considered to be improper processing, the process of adjudicating an appeal simply cannot be extended indefinitely. For example, in your recent letters you have cited what you consider to be improper withholding of a Special Agent's name, although such withholdings were specifically affirmed in Mr. Shenefield's letter to Mr. Lesar of December 16, 1980. Similarly, your appeal concerning New Orleans records pertaining to James Garrison and the Kennedy assassination was subsumed under the omnibus Dallas/New Orleans appeal and, with the exception

*Not at all  
That New Army  
Done*

*Exhibit A  
Attachment 4*

- 2 -

*but not  
March. I gave bill the*

of certain see references located in the course of our review, Mr. Shenefield affirmed the Bureau's processing in this regard. To the extent that a final agency action has been taken regarding any issue in this case, your recourse is now to the court in which your consolidated suits concerning these records are pending.

I have furnished copies of your third letter, pertaining to processing of both Kennedy and King records, to Messrs. Cole and Metcalfe, as well as to the Bureau.

Sincerely,

Robert N. Ford  
Acting Associate Attorney General

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

cc: Mr. James Lesar  
Federal Bureau of Investigation  
Mr. Dan Metcalfe  
Mr. William Cole

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, )  
 )  
 Plaintiff, )  
 )  
 v. ) CIVIL ACTION NO.  
 ) 78-322 & 78-420  
 FEDERAL BUREAU OF INVESTIGATION, )  
 ) (Consolidated)  
 Defendants. )

DECLARATION OF JOHN N. PHILLIPS

I, John N. Phillips, make the following declaration:

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 Section, Records Management Division, FBI Headquarters (FBIHQ), Washington, D.C.

2. As noted in my declaration of March 2, 1982 (attached to the defendants' Motion Concerning the Adjudication of Certain Exemption Claims), I am familiar with the procedures followed in processing Freedom of Information Act (FOIA) requests received at FBIHQ, including plaintiff's request for records on the assassination of President John F. Kennedy (JFK assassination) contained in the Dallas (DL) and New Orleans (NO) Field Offices of the FBI.

3. Government's counsel asked that I read plaintiff's opposition to defendants' above-referenced motion, including the attached affidavits of Harold Weisberg and James H. Lesar. Having read those papers, I make the following statements.

4. The statements in plaintiff's papers concerning the FBI's search and processing of the documents in this case are inaccurate. As pointed out in paragraph 3 of my earlier declaration, the FBI searched and processed all the DL and NO files that were responsive to plaintiff's FOIA request. In this regard, searches were made, inter alia, for documents on James P. Hosty, Jr., "Warren Commission critics" and Jim Garrison, and releaseable material was furnished to plaintiff.

*not sure if identified at this time. He refers to memo files only & should include other files*

*none not releasable identified & claimed to be at night  
my request is for all files in all persons who  
big deal in the communication  
recording of them, not for the communication  
same files only*

Exhibit B

Indices searches were made in the Dallas Field Office to locate material on Mr. Hosty. No main files or miscellaneous files on Mr. Hosty were located; however, there was a general personnel matters file (67-425) containing material on Mr. Hosty relative to the JFK assassination which was processed and, where appropriate, released to plaintiff. *does not include what I identified as well*

*These words are clearly out of context in all of these references.*

The New Orleans Field Office conducted indices searches for material on Mr. Garrison. Two files (included in the NO miscellaneous references) were located and processed for release. Two other documents relative to the JFK assassination which contained Mr. Garrison's name (*i.e.*, see references) were also located and processed. Because Mr. Garrison is a well know public figure in New Orleans, his name was found in numerous other documents, none of which pertained to the Kennedy assassination; accordingly, those documents were not processed.

*many of these words are taken from previous FOIA requests.*

Finally, no files were located on "critics" or "Warren Commission critics" in either the Dallas or New Orleans Field Offices. *The request is not for files of these titles.*

*There are many at FBI HQ but in FO files like of many examples, many names are given.*

5. Contrary to his assertions, plaintiff has been furnished with all releasable films and tapes relative to the JFK assassination contained in the Dallas and New Orleans Field Offices. *FBI has never responded to me on this*

*This is not true*

6. In his opposition papers, plaintiff contends that the 94,965 "previously processed" pages should be included in the proposed sample Vaughn Index. As noted in paragraph 4 of my earlier declaration, the "previously processed" documents consist of material in FBIHQ files on the JFK assassination. Those documents were processed prior to this litigation pursuant to a separate FOIA request by plaintiff for FBIHQ records on the Kennedy assassination. Accordingly, when plaintiff later requested DL and NO documents on the JFK assassination, the FBI reviewed all such documents and excluded records duplicative of those that had been processed in the FBIHQ request. To have

processed those records again would have required a tremendous amount of time yet would have served no useful purpose. The plaintiff administratively appealed the FBI's processing of both the FBIHQ\* and the DL/NO records on the Kennedy assassination to the Justice Department's Office of Privacy and Information Appeals (OPIA). With the plaintiff's knowledge, OPIA acted first upon his appeal of the DL/NO processing. The appeal of the FBIHQ processing is still pending. *after 4 yrs! But in doubt all previously processed*

In light of these facts, the FBI has always considered the "previously processed" documents to be within the scope of the plaintiff's FOIA request for FBIHQ documents, and not within the scope of the instant litigation over DL/NO records. Accordingly, those documents should not be included in the proposed sample Vaughn Index. *What then is not included? Not what is red*

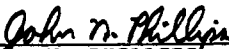
7. Plaintiff also suggests in his opposition papers that he should be allowed to select documents to be included in the sample Vaughn Index. Such a procedure is feasible only if plaintiff is required to list the serial number of each document and the corresponding number of pages involved. Because plaintiff has been furnished with all the FBI's worksheets, he has the capability for doing this. *Done in my appeal with pages attached*

Should the Court grant plaintiff's suggestion, the FBI requests that it impose a page limitation on plaintiff's selection, for some documents are considerably longer than others. The FBI also requests that it be given an opportunity to estimate to the Court the amount of additional time it will take to "Vaughn" the documents selected by plaintiff. *Some records are of several book volumes*

\*/ Although the FBIHQ appeal has been in the form of numerous complaint letters from plaintiff, the Justice Department has treated these complaints as one blanket appeal of the processing of the FBIHQ documents.

I have read the foregoing statement consisting of 4 pages and fully understand its contents. I declare under penalty of perjury that the statement is true and correct to the best of my knowledge and belief.

Dated, this 22 day of March, 1982.

  
\_\_\_\_\_  
JOHN N. PHILLIPS  
Special Agent  
Federal Bureau of Investigation  
Washington, D.C.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, )  
 )  
 Plaintiff, )  
 )  
 v. ) CIVIL ACTION NO.  
 ) 78-322 & 78-420  
 FEDERAL BUREAU OF )  
 INVESTIGATION, ) (Consolidated)  
 )  
 Defendants. )  
 )

ORDER

Upon consideration of defendants' motion concerning the adjudication of certain exemption claims, it is hereby ORDERED that:

1. As used herein, the following terms have the following meanings:

(a) "FOIA" means the Freedom of Information Act, 5 U.S.C. §552.

(b) "Document" means any document within the scope of plaintiff's FOIA request which is limited to those documents contained in the following files of the Federal Bureau of Investigation (FBI): Dallas (DL) file 89-43; DL file 100-10461; DL file 44-1639; DL file 105-1435; DL file 67-425; DL file 105-632; DL file 66-1313A; DL file 9-1984; DL file on technical surveillance of Marina Oswald; DL file on technical surveillance of Marina Oswald (logs); DL file on technical surveillance of Marina Oswald (transcripts); DL file on microphone surveillance of Marina Oswald; DL file on microphone surveillance of Marina Oswald (logs); DL file on microphone surveillance of Marina Oswald (transcripts); DL file 62-3588; DL file on allegations of William Walter; DL miscellaneous references; DL search slips; New Orleans (NO) file 89-69; NO file 100-16601; NO file 44-2064; NO file 62-3702; NO miscellaneous references; NO search slips; DL 3x5 Special Index; and DL 5x8 Special Index.

*This is not a request for records and is not a FOIA request.*

*This is extremely important.*

*If one would like they argue they would be allowed any way, most of these were withheld offer my doubt if they had wanted, by providing only the information, should, please + tomorrow files.*

(c) "Claim of Exemption" means any claim, asserted by the FBI, that a document or portion thereof need not be released to plaintiff by reason of 5 U.S.C. §552(b).

2. The FBI shall select a representative sample of documents which are subject, in whole or in part, to one or more claims of exemption. That sample shall consist of every one-hundredth document processed in response to plaintiff's FOIA request. If the one-hundredth document does not contain any deletions, the FBI shall include in the sample the first document containing a deletion after each one-hundredth document. If it materializes that a type of exemption is not contained in the sample, the FBI shall go back and randomly select three additional documents which contain the excluded exemption, and shall include those documents in the itemization and justification.

3. The FBI shall also prepare an itemization and justification for those 5x8 index cards that correlate with each document contained in the itemized justification referenced in paragraph 2 of this Order. In addition, the FBI shall prepare for in camera review the 3 x 5 index cards that likewise correlate with each document contained in the itemized justification.

4. Within one hundred twenty (120) days of the date of filing of this Order, the defendants shall file with the Court justifications, itemizations and indexing of the claims of exemption contained in the documents and index cards selected pursuant to paragraphs 2 and 3 hereof. Also, within one hundred twenty (120) days of the date of filing this Order, the defendants shall submit, for in camera inspection by the Court, unredacted copies of the documents and index cards referenced in paragraphs 2 and 3 hereof.

5. In addition to those materials randomly selected by the FBI pursuant to paragraphs 2 and 3 hereof, the plaintiff may select fifty (50) documents or three hundred (300) pages, whichever is less, for inclusion in the sample itemization and justification. If plaintiff chooses to select documents for inclusion in the sampling, he shall submit to the Court, within twenty (20)

*Some individual already on these this  
I have this page & I have full  
faded copies on them*

*1 cont. to p. 10*      *It will be limited to opposing affidavits*

days of the filing of this Order, his document list with copy to opposing counsel. That list shall contain the serial number for each document as well as the number of pages involved. Ten (10) days thereafter, the defendants shall file with the Court an estimate of the amount of time it will take to submit an itemized justification for those documents selected by plaintiff for inclusion in the sampling. Upon review of the defendants' estimate, the Court will enter an order allowing the defendants whatever additional amount of time it believes is necessary for the preparation and filing of an itemized justification for plaintiff's selection.

6. The Court will review the materials filed by defendants pursuant to paragraphs 4 and 5 hereof and will determine on the basis thereof whether all of the claims of exemption asserted by the FBI in this action may be sustained.

So ORDERED this \_\_\_\_ day of \_\_\_\_\_, 1982.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 23<sup>rd</sup> day of March, 1982, I have served the foregoing Defendants' Reply to Plaintiff's Opposition to Defendants' Motion Concerning the Adjudication of Certain Exemption Claims, and a proposed Order, by hand delivery to:

James H. Lesar, Esq.  
Suite 900  
1000 Wilson Boulevard  
Arlington, Virginia 22209

  
HENRY J. LAHALE