

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No.
78-322 & 78-420

FEDERAL BUREAU OF INVESTIGATION,
et al.,

(Consolidated)

Defendants.

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants, by their undersigned attorneys, hereby move, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for partial summary judgment. In support of this motion, the Court is referred to the attached affidavit, memorandum of points and authorities, and statement of material facts as to which there is no genuine issue.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
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Civil Action Nos.
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FEDERAL BUREAU OF
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Defendants.

DEFENDANTS' MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF THEIR
MOTION FOR PARTIAL SUMMARY JUDGMENT

I. PRELIMINARY STATEMENT

In their response to plaintiff's Settlement Proposal, the defendants suggested that the Court bifurcate this case, deciding first the issue of the adequacy of the FBI's search and then resolving the issue of the validity of the agency's exemption claims. By means of the instant motion and supporting papers, the defendants submit the search issue to the Court for determination.

II. STATEMENT OF THE CASE

A. Plaintiff's Requests And The
Resultant Searches By The FBI

On December 25, 1977, the plaintiff sent similar FOIA requests to the FBI's Dallas and New Orleans Field Offices. Essentially, these requests sought access to all records pertaining to the assassination of President John F. Kennedy.^{1/}

The Dallas Office forwarded plaintiff's request to FBI Headquarters (FBIHQ) since many of the documents involved had been previously processed pursuant to a separate FOIA request by

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for
file*

^{1/} See ¶¶ 5 and 11 of the Declaration of Special Agent John N. Phillips, attached hereto. Citations to that declaration will hereinafter be designated, "Phillips' Fourth Decl. ¶ ___."

plaintiff for FBIHQ records on the JFK assassination. Upon review of this latest FOIA request by plaintiff, Special Agent Thomas H. Bresson, then Assistant Chief of the FBI's Freedom of Information-Privacy Acts (FOIPA) Branch, determined that the following main files in Dallas were responsive to plaintiff's request: 89-43, 100-10461, 44-1639 and 62-3588. Moreover, as a result of an onsite review of Dallas records by Special Agents Horace P. Beckwith and John H. Hawkes of the FOIPA Branch, a fifth main file (i.e., 105-1435) and a 5x8 Special Index were determined to fall within the scope of plaintiff's FOIA request.^{2/}

fake

These five files and the Special Index were sent to FBIHQ where the FOIPA Branch processed the contents and released the nonexempt portions to plaintiff. (Phillips' Fourth Decl., ¶¶6-8).^{3/}

In the meantime, the New Orleans Field Office was conducting, under the direction of Special Agent Clifford H. Anderson, a search of its general indices to locate files and material responsive to plaintiff's FOIA request of it. That search located the following main files which were sent to FBIHQ for processing: 89-69, 100-16601, 44-2064 and 62-3702. Furthermore, "see" references in the following files were processed and nonexempt material released to plaintiff: 100-16926, 62-3914, 62-4448, 80-608, 100-17279, 100-17809, 175-0, 92-50 and 97-74.^{4/}

^{2/} The caption and contents of the five main Dallas files, as well as a description of the Dallas 5 x 8 Special Index, are set out in Phillips' Fourth Decl. ¶ 6.

*Comb. 10/11/82
made*

^{3/} Pursuant to a request by plaintiff's attorney in October 1978, the FBI also processed a 3x5 Special Index which related to "see references" in the Dallas Files. The purpose and contents of this 3x5 Special Index are described in the attached Phillips' Fourth Decl. ¶ 9, as well as in Special Agent Phillips' earlier declaration of March 2, 1982 ("Phillips' First Decl."), which was submitted in support of defendants' Motion Concerning the Adjudication of Certain Exemption Claims. In addition, "see" references are explained in Phillips' Fourth Decl. ¶ 3.

^{4/} The caption and contents of the four main New Orleans files on the JFK assassination are described in the attached Phillips' Fourth Decl. ¶ 12, whereas the captions of the "see" reference files are set out in ¶ 13 of that same declaration.

Although plaintiff's New Orleans FOIA request also sought records "pertaining to Clay Shaw, David Ferrie and any other persons or organizations who figured in District Attorney Jim Garrison's investigation into President Kennedy's assassination," the FBI did not locate any material on these individuals other than what was channelled into the main files on the assassination. (Id. at ¶¶12-14).

In addition to the above detailed searches, the FBI agreed, pursuant to a request by plaintiff's counsel, to search the Dallas and New Orleans offices for "lead cards"^{5/} which related to the JFK assassination. Neither of these searches were fruitful, however, for all lead cards had been destroyed in accordance with FBI regulations. (Id. at ¶¶10, 15).

Finally, the FBI also agreed to ascertain whether the New Orleans Field Office maintained any special indices on the Kennedy murder. The response from New Orleans was negative. (Id. at ¶16).

B. Plaintiff's Administrative Appeals And
The Resultant Searches In Dallas And New
Orleans.

On June 5, 1979, plaintiff, through his counsel, administratively appealed the FBI's processing of his Dallas and New Orleans FOIA requests. By letter dated June 16, 1980, the then Director of the Justice Department's Office of Privacy and Information Appeals, Quilan J. Shea, informed plaintiff's counsel that his office had completed the preliminary planning with respect to these administrative appeals and solicited input from plaintiff concerning the proposed methodology to be used in processing those appeals. On December 16, 1980, the Justice Department, through then Associate Attorney General John H. Shenefield, issued its decision on plaintiff's administrative appeals. (Id. at ¶17).

^{5/} See the attached Phillips' Fourth Decl., ¶10 for a description of "lead cards."

As to the scope of the FBI's search in Dallas, Mr. Shenefield stated that the Bureau would conduct an all-reference search on the assassination itself, on Lee Harvey and Marina Oswald, on Jack Ruby and on the Warren Commission. As a matter of agency discretion, the Associate Attorney General also directed the FBI to conduct all reference searches on George DeMohrenshildt and former Special Agent James P. Hosty, and to determine whether there were any other official or unofficial administrative files which pertained to the Kennedy case, with particular emphasis on seeking files on "critics" or "criticism" of the Bureau's assassination investigation. (Id.)

With respect to the New Orleans Field office, Mr. Shenefield stated that the FBI would undertake a further search for a possible main file on David Ferrie, as well as those portions of another possible file pertaining to Ferrie, Jim Garrison and Jack Ruby. As a matter of agency discretion, the Associate Attorney General also directed the FBI to conduct a new search for any existing official or unofficial administrative files which pertained to the Kennedy case. (Id.)

Lastly, Associate Attorney General Shenefield stated that various files and tapes pertaining to the JFK assassination in the Dallas and New Orleans Field Offices would be processed for possible release to plaintiff. (Id.)

Pursuant to the Associate Attorney General's decision, the Dallas Field Office conducted, under the direction of Special Agent Udo H. Specht, all reference searches on the topics listed ? in that decision. Indices searches were thus made for material on Jack Ruby, Lee Harvey Oswald, Marina Oswald, James Hosty, George DeMohrenshildt, and on the Warren Commission. Moreover, efforts were made to locate any official or unofficial administrative files on the Kennedy case, including files on "critics" or "criticism" of the FBI's investigation. In February 1981, the Dallas Office forwarded to FBIHQ the material located as a result of these new searches.^{6/} That material, in turn,

6/ The contents of this material is fully detailed in the attached Phillips' Fourth Decl., ¶¶18-19.

was processed by the FOIPA section and the releasable portions furnished to plaintiff. (Id. at ¶¶18-19).

Furthermore, as a result of the Associate Attorney General's decision on plaintiff's administrative appeals, the New Orleans Field Office conducted, again under the direction of Special Agent Clifford H. Anderson, new indices searches for all the subjects listed in that decision. Moreover, an all reference indices search was made for material on George DeMohrenschildt, as well as for "critics" or "criticism" of the assassination investigation. In February 1981, the New Orleans Office advised FBIHQ that no additional main files or "see" references had been located on the subjects listed by the Associate Attorney General. Likewise, no main files or "see" references had been found on George DeMohrenschildt or on "critics" or "criticism" of the FBI's assassination investigation. However, the New Orleans Field Office did forward to FBIHQ all material filed in 89-69 subsequent to that file having been sent to the FOIPA section for processing. Upon processing this new material, plaintiff was furnished the releasable portions. (Id. at ¶¶22-23).

How?

The FBI also conducted, pursuant to the Associate Attorney General's determination of plaintiff's administrative appeals, a search in the Dallas and New Orleans Field Offices for films and tapes pertaining to the JFK assassination. Six films and eight tapes were located and plaintiff was furnished with those that were releasable. (Id. at ¶¶20, 24).^{7/}

none from Dallas, none from New Orleans, none from FBIHQ

^{7/} Plaintiff was also furnished with all the indices search slips and worksheets which were prepared by the FBI in responding to plaintiff's FOIA requests, as well as all the "1A" envelopes and "1B" inventories. Accordingly, plaintiff has the capability for determining what files were searched and processed, as well as the disposition of any films and tapes contained in the Dallas and New Orleans Offices. See Phillips Fourth Decl., ¶¶21, 25. See also Declaration of John N. Phillips, dated April 15, 1982, attached to Defendants' Response to Plaintiff's Settlement Proposal.

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In sum, as a result of the above detailed searches, the following files have been processed by the FBI in response to plaintiff's FOIA Dallas and New Orleans requests: 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 files and references; DL search slips; New Orleans (NO) file 89-69; NO file 100-16601; NO file 44-2064; NO file 62-3702; NO miscellaneous files and references; NO search slips; DL 3x5 Special Index; and DL 5x8 Special Index.

14 m
affidavit

5 m
affidavit

III. ARGUMENT

Under the Freedom of Information Act, a federal agency has the burden of proving that it has searched for records responsive to the underlying request. Founding Church of Scientology v. National Security of Agency (NSA), 610 F.2d 824, 837 (D.C. Cir. 1979). That burden, however, is not without limits. Rather, the agency is merely required to make "reasonable efforts" to satisfy the FOIA request. Id.; see also Goland v. Central Intelligence Agency, 607 F.2d 339, 353-54 (D.C. Cir. 1978). An agency can meet this burden by submitting affidavits from responsible agency officials as to the scope of the search. Exxon Corporation v. Federal Trade Commission, 384 F. Supp. 755, 759-60 (D.D.C. 1974). But, these "affidavits must be relatively detailed and nonconclusory and must be submitted in good faith." Founding Church of Scientology v. NSA, supra, at 836. An agency thus meets its burden under the FOIA if its affidavits denote which files were searched and by whom, reflect a systematic approach to document location, and provide information specific enough to enable the requestor to challenge the procedures utilized. Weisberg v. Justice Department, 627 F.2d 365, 371 (D.C. Cir. 1980).

no ref to systematic or specific through info from my division

Applying these principles to this case, it is clear that the defendants have met their burden of showing that they made reasonable efforts to satisfy plaintiff's FOIA request. In the attached affidavit, Special Agent John Phillips describes in great deal ^{also he says all} what files were searched and by whom. He also explains the FBI's systematic approach to document location for FOIA requests in general, and for plaintiff's request in particular. In light of the specificity of Special Agent Phillips' declaration, as well as the fact that the FBI provided plaintiff with all of its ^{Dates?} indices search slips, worksheets, "1A" envelopes and "1B" inventories (see footnote 7, supra), there can be no question that plaintiff has enough information to challenge the procedures utilized.

how about this table

These have nothing to do with search slips

does not say no matter what facts in dispute

Moreover, the facts of this case establish that the FBI did far more than is required by the FOIA. Indeed, in conjunction with the Associate Attorney General's determination of plaintiff's administrative appeals, the agency undertook as a matter of discretion, indices searches on such tangential topics as George DeMohrenshildt, Special Agent James P. Hosty, etc.

Against this factual backdrop, the FBI has clearly demonstrated "the completeness" of its search. See Weisberg v. Justice Department, supra, at 370. Summary judgment in its favor is thus warranted.

CONCLUSION

For the reasons set forth above, defendants' motion for partial summary judgment should be granted.

Respectfully submitted,

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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 (FOIPA) Section, Records Management Division, FBI Headquarters (FBIHQ), Washington, D.C. Due to the nature of my official duties, I am familiar with the procedures followed in processing Freedom of Information Act (FOIA) requests received by the FBI, including plaintiff's requests for records on the assassination of President John F. Kennedy (JFK assassination) contained in the FBI's Dallas (DL) and New Orleans (NO) Field Offices.

much?

2. This declaration will address the procedures used to search for and process documents responsive to plaintiff's FOIA requests. In order to fully explain the multifacteted aspects of the FBI's search in this case, the declaration will be broken down into four parts:

This is not how they begin. FBI HQ decided to limit to HSC of necessary requests

- I. General Procedures Utilized To Search A Field Office's Central Records System
- II. Procedures Undertaken By The Dallas Field Office In Response To Plaintiff's FOIA Request.
- III. Procedures Undertaken By The New Orleans Field Office In Response To Plaintiff's FOIA Request.
- IV. Search Procedures Undertaken By The FBI Pursuant To The Administrative Appeal.

I. GENERAL PROCEDURES UTILIZED TO SEARCH
A FIELD OFFICE'S CENTRAL RECORDS SYSTEM.

3. The central records system of a FBI field office contains administrative, applicant, personnel, and investigative material compiled for law enforcement purposes. Consisting of files in numerical sequence and broken down according to subject matter, the record system enables a field office to maintain information which was acquired in the course of carrying out its responsibilities and which is deemed worthy of retention. The subject matter of a file, in turn, may relate to an individual, organization, company, publication or activity.

Access to the central records system is afforded by the field office's general indices, arranged in alphabetical order, consisting of index cards on various subject matters, including names of individuals. The decision to index is made by the investigative agent and the supervising agent, except for the names of subject(s), suspect(s) or victim(s) carried in the case caption which are automatically indexed. The index cards in the general indices fall into two general categories: "main" index cards and "see" index cards (i.e., cross references). A "main" index card contains the name of an individual, organization, activity, etc., which is the subject of a file contained in the records system. A "see" index card bears the name of an individual, organization, activity, etc., other than the main subject, but such name is referenced in a file maintained in the system. It should be noted that the FBI indexes neither all names of individuals contacted nor all information received during an investigation. Only those names and that information which is considered pertinent, relevant and necessary for future retrieval are indexed.

4. When a FOIA request is received at a field office, the general indices are searched to determine if there is any material located by name or other identifier in the records system which may be responsive to the request. If the indices search locates potentially responsive material, the actual files or documents are reviewed and, if pertinent to the request, processed. The requester is then advised of the results of the search and furnished any releasable material.

II. PROCEDURES UNDERTAKEN BY THE DALLAS
FIELD OFFICE IN RESPONSE TO PLAIN-
TIF'S FOIA REQUEST

A. Initial Search

5. By letter to the Dallas Field Office dated December 25, 1977, plaintiff's attorney requested "all records on or pertaining to the assassination of President John F. Kennedy," including "all records on or pertaining to persons or organizations who figured in the investigation into President Kennedy's murder that are not contained within the file(s) on that assassination, as well as those that are." Also requested were "all records on or pertaining to Lee Harvey Oswald regardless of date or connection with the investigation into President Kennedy's assassination." (A copy of this letter is attached to plaintiff's complaint in Case No. 78-322).

*Remove
order*

6. Because many of the Dallas documents had been previously processed pursuant to a separate FOIA request by plaintiff for FBIHQ records on the JFK assassination, plaintiff's request was forwarded to FBIHQ. Upon review of this latest request by plaintiff, Special Agent Thomas H. Bresson, then Assistant Chief of the FOIPA Branch, determined that four "main" files in the Dallas Field Office were responsive to plaintiff's FOIA request:

- add the
"all"*
- 89-43 - "Assassination of President John F. Kennedy, November 22, 1963." This file consists generally of allegations about individuals (other than Lee Harvey Oswald and Jack Ruby) or groups involved in the assassination, and other miscellaneous information.
 - 100-10461 - "Lee Harvey Oswald." This file consists of information developed about Lee Harvey Oswald before and after the assassination.
 - 44-1639 - "Jack Ruby, Lee Harvey Oswald-Victim." This file concerns the killing of Oswald by Ruby.
 - 62-3588 - "President's Commission on the Assassination of President Kennedy." This file consists of material concerning the Warren Commission and the report it issued.

*Not as
By memo
is done with
Report*

*Does not say shipped to FBI HQ in Wash, DC with Mr. Kupper by
Miss [unclear] what they did not do + not say it was better
by the name [unclear] [unclear] 4 D.C. files*

These four Dallas files corresponded to the four FBIHQ files which, as noted earlier, had been previously processed under the FOIA for plaintiff.

for [unclear]?

7. As a result of an onsite review of Dallas records by Special Agents Horace P. Beckwith and John H. Hawkes of the FOIPA Branch, a fifth "main" file and a Special Index were determined to be responsive to plaintiff's FOIA request:

- 105-1435 - "Marina Oswald." This file consists of investigative material on Marina Oswald.
- 5x8 Special Index - This index was prepared as an administrative aid by the Dallas Field Office to track documents placed in files 89-43; 100-10461 and 44-1639.

8. The five Dallas "main" files and the 5x8 Special Index were sent to FBIHQ and processed by the FOIPA Section. The releasable material was furnished to the plaintiff free of charge pursuant to a fee waiver granted plaintiff by Benjamin R. Civiletti, Acting Deputy Attorney General, on March 31, 1978, for material related to the assassination of President Kennedy (hereafter JFK fee waiver).

B. Additional Steps Taken By Dallas Beyond Those Taken In The Usual FOIA Case In An Attempt To Satisfy Plaintiff's FOIA Request.

9. Pursuant to a request by plaintiff's attorney in October 1978, the FBI agreed to include within the scope of plaintiff's FOIA request a 3x5 Special Index which related to "see" references in the Dallas files. This Special Index was prepared by the Dallas Field Office as an investigative aid and was constructed and used in much the same way as the Dallas Field Office's general indices (see paragraph 4, supra). The 3x5 Index afforded access to the four "main" files on the JFK assassination maintained by the Dallas Field Office: 89-43, 100-10461, 44-1639, 62-3588. As noted in my declaration of March 2, 1982 (attached to the Defendants' Motion Concerning the Adjudication of Certain Exemption Claims), this index was processed and the releasable material was furnished to plaintiff free of charge pursuant to the JFK fee waiver.

*main
July 4
[unclear]
[unclear]
[unclear]*

10. Subsequently, in August 1980, the FBI further agreed, pursuant to a request by plaintiff, to search for any "lead cards" in Dallas which related to the JFK assassination. "Lead cards" are prepared by a Supervising Agent to maintain administrative control over the investigative activities of agents assigned to assist the Case Agent in an investigation. In September 1980, James A. Abbott, Special Agent in Charge of the Dallas Field Office, advised that any lead cards related to the JFK assassination had been destroyed in accordance with FBI regulations. Plaintiff, in turn, was so informed by Special Agent Bresson in October 1980.

III. PROCEDURES UNDERTAKEN BY THE NEW ORLEANS FIELD OFFICE IN RESPONSE TO PLAINTIFF'S FOIA REQUEST.

A. Initial Search.

11. By letter to the New Orleans Field Office dated December 25, 1977, plaintiff's attorney requested "all records on or pertaining to the assassination of President John F. Kennedy," including "all records on or pertaining to persons or organizations who figured in the investigation . . . that are not contained with the file(s) on the assassination, as well as those that are." Also requested were "all records on or pertaining to Lee Harvey Oswald regardless of date or connection with the investigation into President Kennedy's assassination," as well as "all records on or pertaining to Clay Shaw, David Ferrie and any other persons or organizations who figured in District Attorney Jim Garrison's investigation . . ." (A copy of this letter is attached to plaintiff's complaint in Case No. 78-420).

12. After forwarding the request to FBIHQ for review, the New Orleans Office conducted, under the direction of Special Agent Clifford H. Anderson, a search of its general indices and determined that a group of files were potentially responsive to plaintiff's request. Those files were sent to FBIHQ in August 1978, and included the following "main files" on the JFK assassination:

89-69 - "Assassination of President John F. Kennedy, November 22, 1963." This file consists generally of allegations about individuals (other than Lee Harvey Oswald and Jack Ruby) or groups involved in the assassination, and other miscellaneous information.

- 100-16601 - "Lee Harvey Oswald." This file contains information about Lee Harvey Oswald both before and after the assassination.
- 44-2064 - Jack Ruby, Lee Harvey Oswald-Victim." This file concerns the killing of Oswald by Ruby.
- 62-3702 - "The President's Commission on the Assassination of President John F. Kennedy." This file contains information on the Warren Commission and the report it issued.

The material in these four New Orleans "main" files was processed by the FOIPA Section and the releasable parts furnished to plaintiff free of charge pursuant to the JFK fee waiver.

13. In addition, "see" references in the following New Orleans miscellaneous files were processed for material related to the JFK assassination:

copy sent also in Dallas

- 100-16926 - "Marina Oswald nee Prusakova"
- 62-3914 - "Sam Collier"
- 62-4448 - "Senstudy"
- 80-608 - "James Garrison"
- 100-17279 - "Marquerite Clavorie Oswald"
- 100-17809 - "Jim Garrison"
- 175-0 - "Threat Against President"
- 92-50 - "Crime Conditions In Louisiana"
- 97-74 - "Fair Play for Cuba Committee"

The pertinent and releasable material in these files was likewise furnished to plaintiff free of charge pursuant to the JFK fee waiver.

Not relevant

14. The New Orleans Field Office did not find any separate "main" files on Clay Shaw or David Ferrie. Nor did the New Orleans Office locate any material on Mr. Shaw or Mr. Ferrie pertaining to the JFK assassination or Jim Garrison's investigation other than what was channelled into the files on those subjects. Plaintiff was so informed of this in November 1978.

B. Additional Steps Undertaken By
New Orleans Beyond Those Taken
In The Usual FOIA Case In An
Effort To Satisfy Plaintiff's
FOIA Request.

15. Similar to its agreement to search for "lead cards" in Dallas (see paragraph 10, supra), the FBI agreed to search for such cards in New Orleans. In September 1980, Ervin L. Recer, Special Agent in Charge of the New Orleans Field Office, advised that all "lead cards" had been destroyed in accordance with FBI regulations. Plaintiff was so informed by Special Agent Bresson in October 1980.

16. The FBI also agreed to ascertain whether the New Orleans Field Office maintained any special indices pertaining to the investigation of the JFK assassination. In December 1978, the New Orleans Field Office advised FBIHQ that there were no other indices maintained in the office other than its general indices. Plaintiff's counsel was so informed by counsel for the defendants.

IV. Search Procedures Undertaken By The
FBI Pursuant To Plaintiff's Admini-
strative Appeal.

17. On June 5, 1979, plaintiff, through his counsel, administratively appealed the FBI's processing of his FOIA requests in these actions. By letter dated June 16, 1980, the former Director of OPIA, Quilan J. Shea, informed plaintiff's counsel that his office had completed the preliminary planning with respect to these administrative appeals and solicited input from plaintiff concerning the proposed methodology to be used in processing those appeals. Having obtained input from Mr. Weisberg concerning the methodology outlined by Mr. Shea, the Justice Department, through former Associate Attorney General John H. Shenefield, issued its decision on plaintiff's administrative appeals. As to the scope of the FBI's initial search, Mr. Shenefield stated in pertinent part as follows:

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 Mohrenschildt 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 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.

* * * * *

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.

See Exhibit A(3) attached to the Defendant's Reply to Plaintiff's Opposition to the Motion Concerning the Adjudication of Certain Exemption Claims, pp. 3-4.

A. Searches Undertaken In Dallas As A Result Of The Administrative Appeal

18. Pursuant to the Associate Attorney General's decision, the Dallas Field Office conducted, under the direction of Special Agent Udo H. Specht, all reference indices searches in an attempt to locate material on the topics listed in that decision. Indices searches, using standard search procedures (see paragraph 4, supra.), were thus made for material on Jack Ruby, Lee Harvey Oswald, Marina Oswald, James Hosty, George DeMohrenschildt, and on the Warren Commission. Moreover, efforts were made to locate any official or unofficial administrative files on the Kennedy case, including files on "critics" or "criticism" of the FBI's investigation. In February 1981, the Dallas Office forwarded to

FBIHQ the material located as a result of the searches conducted pursuant to the administrative appeal. That material was as follows:

*Folder 11-13
"Furnish information
Russian" (see) of*

*Why no "see" up in
this report for Ruby
help brought in the document*

a) Lee Harvey Oswald

1 "main" file: 9-1984 - "Unknown Subject; Lee Harvey Oswald, Victim Extortion." This file concerned an investigation to determine the writer of a letter, postmarked November 23, 1963, Pasadena, California, threatening Mr. Oswald's life.

1 "see" reference: 105-976 - the caption is classified, as well as all information in the document.

b) Jack Ruby

11 "see" references in the following files:

Informant file - Jack Ruby (2 "see references; the remainder of this file was processed pursuant to plaintiff's separate FOIA request for FBIHQ documents).

105-1280 - "Minutemen" (2 "see" references).

94-190 - "Gambling Activities Dallas Division" (1 "see" reference).

91-0 - Unsubs, aka., Lollipop Magazine; Unsub, aka, Jack Ruby, Home Trust Company, South Main Street, Kansas City, Missouri Bank-Robbery (2 "see" references).

Three files on confidential informants who furnished information regarding Ruby (4 "see" references).

c) Marina Oswald

1 "main" file: 66-1313 A. This file contains material on the technical and microphone surveillances of Mrs. Oswald.

3 "main" files pertaining to the technical surveillance of Mrs. Oswald.

3 "main" files pertaining to the microphone surveillance of Mrs. Oswald.

5 "see" references in file 66-1313: consist of cards prepared on individuals overheard on technical or microphone surveillances.

d) George DeMohrenschildt

1 "main" file: 105-632 - "George DeMohrenschildt."
This file consists of an internal security investigation on Mr. DeMohrenschildt beginning in 1940.

1 "see" reference in file 100-8149: caption withheld pursuant to privacy interests.

e) Administrative Files

152 "see" references in the following files:

67-425 - "Personnel Matters General."
This is the material on SA James P. Hosty.
(151 "see" references).

One file - captioned, "Inquiry Concerning Authenticity of Alleged Teletype Directed to All SACs 11/17/63 Captioned 'Threat To Assassinate President Kennedy, in Dallas, Texas 11/22/63, Miscellaneous Information Concerning.'" This file concerns the allegations of a William Walter that there was a teletype sent to all SACs about a threat to assassinate President Kennedy.
(1 "see" reference).

f) Warren Commission and Critics or Criticism of the FBI's Investigation

No additional "main" files or miscellaneous "see" references on the Warren Commission were located. Likewise, no material was found on "critics" or "criticism" of the FBI's assassination investigation.

discreet from witness

19. The additional Dallas material listed above was processed and the releasable parts were furnished to plaintiff. Plaintiff was also furnished with all releasable material filed in 89-43 and 44-1639 subsequent to those files having been sent to FBIHQ for processing by the FOIPA Section.

20. Furthermore, as a result of the administrative appeal, the FBI conducted a search for films and tapes contained in the Dallas Field Office pertaining to the JFK assassination. Six films and six tapes were located and processed. As noted in paragraph 3(g) of my declaration of April 15, 1982 (attached to the Defendants' Response to Plaintiff's Settlement Proposal), plaintiff was furnished those films and tapes that were releasable.

*Done and what
was made
Sally Kelly*

21. In addition, the FBI agreed, pursuant to a request by plaintiff's attorney, to furnish him all the indices search slips prepared by the Dallas Field Office. Thus, plaintiff has the capability for determining what files were searched and processed by the FBI in response to his Dallas FOIA request.

B. Searches Undertaken In The New Orleans Field Office As A Result Of The Administrative Appeal

22. As a result of the Associate Attorney General's decision on plaintiff's administrative appeals, the New Orleans Field Office conducted, again under the direction of Special Agent Clifford H. Anderson, new indices searches for all the subjects listed in that decision. (See paragraph 17, supra). Moreover, an all reference indices search was made for material on George DeMohrenschildt, as well as for "critics" or "criticism" of the assassination investigation.

23. In February 1981, the New Orleans office advised FBIHQ that no additional "main" or "see" references had been located on the subjects listed by the Associate Attorney General. Likewise, no "main" or "see" references had been found on George DeMohrenschildt (other than an FOIPA administrative instructional document) or on "critics" or "criticism" of the FBI's assassination investigation. However, the New Orleans Field Office did forward to FBIHQ all material filed in 89-69 subsequent to that file having been sent to the FOIPA Section for processing. Upon processing this new material, plaintiff was furnished the releasable portions.

24. Furthermore, as a result of the administrative appeal, the FBI conducted a search for films and tapes contained in the New Orleans Field Office pertaining to the JFK assassination. Two tapes were located and processed: one was released to plaintiff whereas the other was withheld pursuant to (b)(7)(C), (D) of the FOIA. (See paragraph 3(g) of my declaration of April 15, 1982.

25. In addition, the FBI agreed, pursuant to a request by plaintiff's attorney, to furnish plaintiff with all the indices search slips prepared by the New Orleans Field Office. Accordingly, similar to Dallas, plaintiff has the capability for

determining what files were searched and processed by the FBI in response to plaintiff's New Orleans FOIA request.

V. CONCLUSION

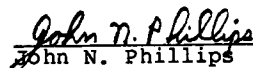
25. In sum, as a result of the above detailed searches, the following files were determined by the FBI to be responsive to plaintiff's FOIA request:

- (1) Dallas (DL) file 89-43
- (2) DL file 100-10461
- (3) DL file 44-1639
- (4) DL file 105-1435
- (5) DL file 67-425
- (6) DL file 105-632
- (7) DL file 66-1313A
- (8) DL file 9-1984
- (9) DL file on technical surveillance of Marina Oswald
- (10) DL file on technical surveillance of Marina Oswald (logs)
- (11) DL file on technical surveillance of Marina Oswald (transcripts)
- (12) DL file on microphone surveillance of Marina Oswald
- (13) DL file on microphone surveillance of Marina Oswald (logs)
- (14) DL file on microphone surveillance of Marina Oswald (transcripts)
- (15) DL file 62-3588
- (16) DL file on allegations of William Walter
- (17) DL miscellaneous files and references
- (18) DL search slips
- (19) New Orleans (NO) file 89-69
- (20) NO file 100-16601
- (21) NO file 44-2064
- (22) NO file 62-3702
- (23) NO miscellaneous files and references
- (24) NO search slips
- (25) DL 3x5 Special Index
- (26) DL 5x8 Special Index

See also paragraph 3 of my declaration of March 2, 1982, attached to the Defendant's Motion Concerning the Adjudication of Certain Exemption Claims.

I have read the foregoing statement consisting of 13 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.

Dated, this 29 day of April, 1982.



John N. Phillips
Special Agent
Federal Bureau of Investigation
Washington, D.C.

5/3/82

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, et al.,

Defendants.

Civil Action Nos.
78-322 and 78-420
(Consolidated)

DEFENDANTS' STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Local Rule 1-9(h), the defendants submit, in support of their motion for partial summary judgment, the following statement of material facts as to which they contend there is no genuine issue.

I. GENERAL PROCEDURES UTILIZED TO SEARCH
A FIELD OFFICE'S CENTRAL RECORDS SYSTEM
IN RESPONDING TO FOIA REQUESTS.

1. The central records system of a field office of the Federal Bureau of Investigation (FBI) contains administrative, applicant, personnel, and investigative material compiled for law enforcement purposes. Consisting of files in numerical sequence and broken down according to subject matter, the record system enables a field office to maintain information which was acquired in the course of carrying out its responsibilities and which is deemed worthy of retention. The subject matter of a file, in turn, may relate to an individual, organization, company, publication or activity. See Declaration of John N. Phillips, April 29, 1982, attached to the Defendants' Motion for Partial Summary Judgment ("Phillips' Fourth Declaration"), ¶3.

2. Access to the central records system is afforded by the field office's general indices, arranged in alphabetical order, consisting of index cards on various subject matters, including names of individuals. The decision to index is made by the investigative agent and the supervising agent, except for the names of subject(s), suspect(s) or victim(s) carried in the case caption which are automatically indexed. The index cards in the general indices fall into two general categories: "main" index cards and "see" index cards (i.e., cross references). A "main" index card contains the name of an individual, organization, activity, etc., which is the subject of a file contained in the records system. A "see" index card bears the name of an individual, organization, activity, etc., other than the main subject, but such name is referenced in a file maintained in the system. The FBI indexes neither all names of individuals contacted nor all information received during an investigation. Only those names and that information which is considered pertinent, relevant and necessary for future retrieval are indexed. Id.

*not
done
at
no*

3. When a Freedom of Information Act (FOIA) request is received at a field office, the general indices are searched to determine if there is any material located by name or other identifier in the records system which may be responsive to the request. If the indices search locates potentially responsive material, the actual files or documents are reviewed and, if pertinent to the request, processed. The requester is then advised of the results of the search and furnished any releasable material. Id.

*not
done*

II. PROCEDURES UNDERTAKEN BY THE DALLAS
FIELD OFFICE IN RESPONSE TO PLAIN-
TIFF'S FOIA REQUEST

4. By letter to the Dallas Field Office dated December 25, 1977, plaintiff's attorney requested "all records on or pertaining to the assassination of President John F. Kennedy," including "all records on or pertaining to persons or organizations who figured in the investigation into President Kennedy's murder that are not contained within the file(s) on that assassination, as well as

those that are." Also requested were "all records on or pertaining to Lee Harvey Oswald regardless of date or connection with the investigation into President Kennedy's assassination." See plaintiff's complaint, Case No. 78-322, ¶7.

5. Because many of the Dallas documents had been previously processed pursuant to a separate FOIA request by plaintiff for FBI Headquarters (FBIHQ) records on the Kennedy assassination, plaintiff's request was forwarded to FBIHQ. Upon review of this latest request by plaintiff, Special Agent Thomas H. Bresson, then Assistant Chief of the Freedom of Information-Privacy Acts (FOIPA) Branch, determined that four "main" files in the Dallas Field Office were responsive to plaintiff's FOIA request:

without search to check if that this info was responsive

- 89-43 - "Assassination of President John F. Kennedy, November 22, 1963." This file consists generally of allegations about individuals (other than Lee Harvey Oswald and Jack Ruby) or groups involved in the assassination, and other miscellaneous information.
- 100-10461 - "Lee Harvey Oswald." This file consists of information developed about Lee Harvey Oswald before and after the assassination.
- 44-1639 - "Jack Ruby, Lee Harvey Oswald-Victim." This file concerns the killing of Oswald by Ruby.
- 62-3588 - "President's Commission on the Assassination of President Kennedy." This file consists of material about the Warren Commission and the report it issued.

not what Phillips says. He says they were processed for me. also was not processed for me

These four Dallas files corresponded to the four FBIHQ files which had been previously processed under the FOIA for plaintiff. See Phillips' Fourth Declaration, ¶6.

6. As a result of an onsite review of Dallas records by Special Agents Horace P. Beckwith and John H. Hawkes of the FOIPA Branch, a fifth "main" file and a Special Index were determined to be responsive to plaintiff's FOIA request:

- 105-1435 - "Marina Oswald." This file consists of investigative material on Marina Oswald.
- 5x8 Special Index - This index was prepared as an administrative aid by the Dallas Field Office to track documents placed in files 89-43; 100-10461 and 44-1639.

Id. at ¶7; see also Declaration of John N. Phillips, March 2, 1982, attached to Defendants' Motion Concerning the Adjudication of Certain Exemption Claims ("Phillips' First Declaration"), ¶6.

7. The five Dallas "main" files and the 5x8 Special Index were sent to FBIHQ and processed by the FOIPA Section. The releasable material was furnished to the plaintiff free of charge pursuant to a fee waiver granted plaintiff by Benjamin R. Civiletti, Acting Deputy Attorney General, on March 31, 1978, for material related to the assassination of President Kennedy (hereafter JFK fee waiver). See Phillips' Fourth Declaration, ¶8.

8. Pursuant to a request by plaintiff's attorney in October 1978, the FBI agreed to include within the scope of plaintiff's FOIA request a 3x5 Special Index which related to "see" references in the Dallas files. This Special Index was prepared by the Dallas Field Office as an investigative aid and was constructed and used in much the same way as the Dallas Field Office's general indices. The 3x5 Index afforded access to the four "main" files on the JFK assassination maintained by the Dallas Field Office: 89-43, 100-10461, 44-1639, 62-3588. This index was processed and the releasable material was furnished to plaintiff free of charge pursuant to the JFK fee waiver. Id. at ¶9; see also Phillips' First Declaration, ¶7.

9. In August 1980, the FBI further agreed, pursuant to a request by plaintiff, to search for any "lead cards" in Dallas which related to the JFK assassination. "Lead cards" are prepared by a Supervising Agent to maintain administrative control over the investigative activities of agents assigned to assist the Case Agent in an investigation. In September 1980, James A. Abbott, Special Agent in Charge of the Dallas Field Office, advised that any lead cards related to the JFK assassination had been destroyed in accordance with FBI regulations. Plaintiff, in turn, was so informed by Special Agent Bresson in October 1980. See Phillips' Fourth Declaration, ¶10.

III. PROCEDURES UNDERTAKEN BY THE NEW ORLEANS FIELD OFFICE IN RESPONSE TO PLAINTIFF'S FOIA REQUEST.

10. By letter to the New Orleans Field Office dated December 25, 1977, plaintiff's attorney requested "all records on or pertaining to the assassination of President John F. Kennedy," including "all records on or pertaining to persons or organizations who figured in the investigation . . . that are not contained with the file(s) on the assassination, as well as those that are." Also requested were "all records on or pertaining to Lee Harvey Oswald regardless of date or connection with the investigation into President Kennedy's assassination," as well as "all records on or pertaining to Clay Shaw, David Ferrie and any other persons or organizations who figured in District Attorney Jim Garrison's investigation . . ." See plaintiff's complaint, Case No. 78-420, ¶7.

why does he not start only (main) files?

11. After forwarding the request to FBIHQ for review, the New Orleans Office conducted, under the direction of Special Agent Clifford H. Anderson, a search of its general indices and determined that a group of files were potentially responsive to plaintiff's request. Those files were sent to FBIHQ in August 1978, and included the following "main files" on the JFK assassination:

- 89-69 - "Assassination of President John F. Kennedy, November 22, 1963." This file consists generally of allegations about individuals (other than Lee Harvey Oswald and Jack Ruby) or groups involved in the assassination, and other miscellaneous information.
- 100-16601 - "Lee Harvey Oswald." This file contains information about Lee Harvey Oswald both before and after the assassination.
- 44-2064 - Jack Ruby, Lee Harvey Oswald-Victim." This file concerns the killing of Oswald by Ruby.
- 62-3702 - "The President's Commission on the Assassination of President John F. Kennedy." This file contains information on the Warren Commission and the report it issued.

The material in these four New Orleans "main" files was processed by the FOIPA Section and the releasable parts furnished to plaintiff free of charge pursuant to the JFK fee waiver. See Phillips' Fourth Declaration, ¶12.

12. In addition, "see" references in the following New Orleans miscellaneous files were processed for material related to the JFK assassination:

- 100-16926 - "Marina Oswald nee Prusakova"
- 62-3914 - "Sam Collier"
- 62-4448 - "Senstudy"
- 80-608 - "James Garrison"
- 100-17279 - "Marquerite Clavorie Oswald"
- 100-17809 - "Jim Garrison"
- 175-0 - "Threat Against President"
- 92-50 - "Crime Conditions In Louisiana"
- 97-74 - "Fair Play for Cuba Committee"

The pertinent and releasable material in these files was likewise furnished to plaintiff free of charge pursuant to the JFK fee waiver. Id. at ¶12.

insert
13. The New Orleans Field Office did not find any separate main files on Clay Shaw or David Ferrie. Nor did the New Orleans Office locate any material on Mr. Shaw or Mr. Ferrie pertaining to the JFK assassination or Jim Garrison's investigation other than what was channelled into the files on those subjects. Plaintiff was so informed of this in November 1978. Id. at ¶14.

14. Similar to its agreement to search for "lead cards" in Dallas, the FBI agreed to search for such cards in New Orleans. In September 1980, Ervin L. Recer, Special Agent in Charge of the New Orleans Field Office, advised that all "lead cards" had been destroyed in accordance with FBI regulations. Plaintiff was so informed by Special Agent Bresson in October 1980. Id. at ¶15.

15. The FBI also agreed to ascertain whether the New Orleans Field Office maintained any special indices pertaining to the investigation of the JFK assassination. In December 1978, the New Orleans Field Office advised FBIHQ that there were no other indices maintained in the office other than its general indices. Plaintiff's counsel was so informed by counsel for the defendants. Id. at ¶16.

IV. SEARCH PROCEDURES UNDERTAKEN BY THE
FBI PURSUANT TO PLAINTIFF'S ADMINI-
STRATIVE APPEAL.

16. On June 5, 1979, plaintiff, through his counsel, administratively appealed the FBI's processing of his FOIA requests in these actions. By letter dated June 16, 1980, the former Director of OPIA, Quilan J. Shea, informed plaintiff's counsel that his office had completed the preliminary planning with respect to these administrative appeals and solicited input from plaintiff concerning the proposed methodology to be used in processing those appeals. On December 16, 1980, the Justice Department, through former Associate Attorney General John H. Shenefield, issued its decision on plaintiff's administrative appeals. Id. at ¶17; see also Declaration of Richard L. Huff, March 22, 1982, attached to Defendants' Reply to Plaintiff's Opposition to the Motion Concerning the Adjudication of Certain Exemption Claims ("Huff's Declaration"), ¶3.

17. As to the scope of the FBI's search in Dallas, Mr. Shenefield stated that the Bureau would conduct an all-reference search on the assassination itself, on Lee Harvey and Marina Oswald, on Jack Ruby and on the Warren Commission. As a matter of agency discretion, the Associate Attorney General also directed the FBI to conduct all reference searches on George DeMohrenshildt and former Special Agent James P. Hosty, and to determine whether there were any other official or unofficial administrative files which pertained to the Kennedy case, with particular emphasis on seeking files on "critics" or "criticism" of the Bureau's assassination investigation. See Phillips' Fourth Declaration, ¶17; see also Huff's Declaration, ¶3.

18. With respect to the New Orleans Field Office, Mr. Shenefield stated that the FBI would undertake a further search for a possible main file on David Ferrie, as well as those portions of another possible file pertaining to Ferrie, Jim Garrison

and Jack Ruby. As a matter of agency discretion, the Associate Attorney General also directed the FBI to conduct a new search for any existing official or unofficial administrative files which pertained to the Kennedy case. Id.

19. In addition, Associate Attorney General Shenefield stated that various files and tapes pertaining to the JFK assassination in the Dallas and New Orleans Field Offices would be processed for possible release to plaintiff. Id.

A. Searches Undertaken In Dallas As A Result Of The Administrative Appeal

20. Pursuant to the Associate Attorney General's decision, the Dallas Field Office conducted, under the direction of Special Agent Udo H. Specht, all reference indices searches in an attempt to locate material on the topics listed in that decision. Indices searches were thus made for material on Jack Ruby, Lee Harvey Oswald, Marina Oswald, James Hosty, George DeMohrenschildt, and on the Warren Commission. Moreover, efforts were made to locate any official or unofficial administrative files on the Kennedy case, including files on "critics" or "criticism" of the FBI's investigation. See Phillips' Fourth Declaration, ¶18.

21. In February 1981, the Dallas Office forwarded to FBIHQ the material located as a result of the searches conducted pursuant to the administrative appeal. That material was as follows:

a) Lee Harvey Oswald

1 "main" file: 9-1984 - "Unknown Subject; Lee Harvey Oswald, Victim Extortion." This file concerned an investigation to determine the writer of a letter, postmarked November 23, 1963, Pasadena, California, threatening Mr. Oswald's life.

1 "see" reference: 105-976 - the caption is classified, as well as all information in the document.

b) Jack Ruby

11 "see" references in the following files:

Informant file - Jack Ruby (2 "see references; the remainder of this file was processed pursuant to plaintiff's separate FOIA request for FBIHQ documents).

*False - disallow
"FBIHQ transmitted
by Reinken (sic)"
Pursua"*

105-1280 - "Minutemen" (2 "see" references).

94-190 - "Gambling Activities Dallas Division" (1 "see" reference).

91-0 - Unsubs, aka., Lollipop Magazine; Unsub, aka, Jack Ruby, Home Trust Company, South Main Street, Kansas City, Missouri Bank-Robbery (2 "see" references).

Three files on confidential informants who furnished information regarding Ruby (4 "see" references).

c) Marina Oswald

1 "main" file: 66-1313 A. This file contains material on the technical and microphone surveillances of Mrs. Oswald.

3 "main" files pertaining to the technical surveillance of Mrs. Oswald.

3 "main" files pertaining to the microphone surveillance of Mrs. Oswald.

5 "see" references in file 66-1313: consist of cards prepared on individuals overheard on technical or microphone surveillances.

d) George DeMohrenschildt

1 "main" file: 105-632 - "George DeMohrenschildt." This file consists of an internal security investigation on Mr. DeMohrenschildt beginning in 1940.

1 "see" reference in file 100-8149: caption withheld pursuant to privacy interests.

e) Administrative Files

152 "see" references in the following files:

67-425 - "Personnel Matters General." This is the material on SA James P. Hosty. (151 "see" references).

One file - captioned, "Inquiry Concerning Authenticity of Alleged Teletype Directed to All SACs 11/17/63 Captioned 'Threat To Assassinate President Kennedy, in Dallas, Texas 11/22/63, Miscellaneous Information Concerning.'" This file concerns the allegations of a William Walter that there was a teletype sent to all SACs about a threat to assassinate President Kennedy. (1 "see" reference).

f) Warren Commission and Critics or Criticism of the FBI's Investigation

No additional "main" files or miscellaneous "see" references on the Warren Commission were located. Likewise, no material was found on "critics" or "criticism" of the FBI's assassination investigation.

See Phillips' Fourth Declaration, ¶18.

22. The additional Dallas material listed above was processed and the releasable parts were furnished to plaintiff. Plaintiff was also furnished with all releasable material filed in 89-43 and 44-1639 subsequent to those files having been sent to FBIHQ for processing by the FOIPA Section. Id. at ¶19.

23. Furthermore, as a result of the administrative appeal, the FBI conducted a search for films and tapes contained in the Dallas Field Office pertaining to the JFK assassination. Six films and six tapes were located and processed. Plaintiff was furnished the films and tapes that were releasable. Id. at ¶20; see also Declaration of John N. Phillips, March 22, 1982, attached to Defendants' Reply to Plaintiff's Opposition to Motion Concerning the Adjudication of Certain Exemption Claims ("Phillips' Second Declaration"), ¶5; Declaration of John N. Phillips, April 15, 1982, attached to Defendants' Response to Plaintiff's Settlement Proposal ("Phillips' Third Declaration"), ¶3(g).

24. In addition, the FBI agreed, pursuant to a request by plaintiff's attorney, to furnish him all the indices search slips prepared by the Dallas Field Office. Thus, plaintiff has the capability for determining what files were searched and processed by the FBI in response to his Dallas FOIA request. See Phillips' Fourth Declaration, ¶21.

B. Searches Undertaken In The New Orleans Field Office As A Result Of The Administrative Appeal

25. As a result of the Associate Attorney General's decision on plaintiff's administrative appeals, the New Orleans Field Office conducted, again under the direction of Special Agent Clifford H. Anderson, new indices searches for all the subjects listed in that decision. Moreover, an all reference indices search was made for material on George DeMohrenschildt, as well as for "critics" or "criticism" of the assassination investigation. Id. at ¶22.

26. In February 1981, the New Orleans office advised FBIHQ that no additional "main" or "see" references had been located on the subjects listed by the Associate Attorney General. Likewise, no "main" or "see" references had been found on George DeMohrenschildt or on "critics" or "criticism" of the FBI's assassination investigation. However, the New Orleans Field Office did forward to FBIHQ all material filed in 89-69 subsequent to that file having been sent to the FOIPA Section for processing. Upon processing this new material, plaintiff was furnished the releasable portions. Id. at ¶23.

27. Furthermore, as a result of the administrative appeal, the FBI conducted a search for films and tapes contained in the New Orleans Field Office pertaining to the JFK assassination. Two tapes were located and processed: one was released to plaintiff whereas the other was withheld pursuant to (b)(7)(C), (D) of the FOIA. Id. at ¶24; see also Phillips' Third Declaration, ¶3(g).

28. In addition, the FBI agreed, pursuant to a request by plaintiff's attorney, to furnish plaintiff with all the indices search slips prepared by the New Orleans Field Office. Accordingly, plaintiff has the capability for determining what files were searched and processed by the FBI in response to plaintiff's New Orleans FOIA request. See Phillips' Fourth Declaration, ¶25.

V. RESULTS OF SEARCH

29. In sum, as a result of the above detailed searches, the following files were determined by the FBI to be responsive to plaintiff's FOIA request:

- (1) Dallas (DL) file 89-43
- (2) DL file 100-10461
- (3) DL file 44-1639
- (4) DL file 105-1435
- (5) DL file 67-425
- (6) DL file 105-632
- (7) DL file 66-1313A
- (8) DL file 9-1984
- (9) DL file on technical surveillance of Marina Oswald


- (10) DL file on technical surveillance of Marina Oswald (logs)
- (11) DL file on technical surveillance of Marina Oswald (transcripts)
- (12) DL file on microphone surveillance of Marina Oswald
- (13) DL file on microphone surveillance of Marina Oswald (logs)
- (14) DL file on microphone surveillance of Marina Oswald (transcripts)
- (15) DL file 62-3588
- (16) DL file on allegations of William Walter
- (17) DL miscellaneous files and references
- (18) DL search slips
- (19) New Orleans (NO) file 89-69
- (20) NO file 100-16601
- (21) NO file 44-2064
- (22) NO file 62-3702
- (23) NO miscellaneous files and references
- (24) NO search slips
- (25) DL 3x5 Special Index
- (26) DL 5x8 Special Index


See Phillips' First Declaration, ¶3; see also Phillips' Fourth Declaration, ¶25.

Respectfully submitted,

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,
et al.,

Defendants.

Civil Action No.
78-322 & 78-420

(Consolidated)

ORDER

Upon consideration of the defendants' Motion for Partial Summary Judgment, the plaintiff's response, and the entire record herein, the Court finds that the Federal Bureau of Investigation has made every reasonable effort to search for records responsive to plaintiff's Freedom of Information Act requests in these cases. Accordingly, it is hereby

ORDERED and ADJUDGED that the defendants' motion for partial summary judgment on the search issue be, and the same is hereby, granted.

It is further 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 files and references; DL search slips; New Orleans (NO) file 89-69; NO file 100-16601; NO file 44-2064; NO file 62-3702; No miscellaneous files and references; NO search slips; DL 3x5 Special Index; and DL 5x8 Special Index.

(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 3x5 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) 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 3rd day of May, 1982, I have served the foregoing Defendants' Motion For Partial Summary Judgment, Memorandum Of Points And Authorities In Support Thereof, Statement Of Material Facts As To Which There Is No Genuine Issue, and Declaration Of John N. Phillips Dated April 29, 1982, by first class mail to:

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


HENRY A. LAHAIE