7/2/82

UNI STATES DISTRICT COURT
FOR E DISTRICT OF COLUMBIA

HA WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION, et al.,

Defendants.

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

FIFTH 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. As I have indicated in the four previous declarations I have filed in this case, I am familiar, due to the nature of my official duties, 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.

2. Government counsel asked that I read the memorandum brief filed by plaintiff's counsel in opposition to the defendant's motion for partial summary judgment (hereinafter "Pl. Opp."), and to respond to the four reasons given on pages 10-11 of that brief as to why the FBI's search was supposedly inadequate.

3. Plaintiff's counsel first claims that the FBI has failed to indicate that it has made a "search for all materials sought by [plaintiff's] requests." Pl. Opp. at 10. (Emphasis in the original). That is not accurate. In paragraph 3 of my first declaration, filed on March 2, 1982, I listed "all the files responsive to plaintiff's FOIA request [which] were searched and processed." (Emphasis added). Similarly, in paragraph 4 of my second declaration, filed on March 22, 1982, I indicated that

Exhibit A

"t[illegible] FBI searche[illegible] processed all the Dalla[illegible] and New Orle[illegible]ns files th[illegible] were re[illegible]nsive [illegible] [illegible]nt[illegible] FOIA request." (Emp[illegible]asis added) [illegible]nd fina[illegible], in paragra[illegible] 25 of my fourth declaration, filed on May [illegible] stated that th[illegible] same files set out in par[illegible]h 3 of m[illegible]irst [illegible]claration "were [the ones] determined b[illegible] FBI to be responsive to plaintiff's FOIA request." Notwithstanding these unequivocal statements, I will once again declare, in an attempt to satisfy plaintiff's concerns, that the records listed in paragraph 3 of my first declaration and paragraph 25 of my fourth declaration encompass all the records which were determined by the FBI to be responsive to plaintiff's FOIA request.

4. Plaintiff's counsel next raises a question whether the FBI searched its "tickler" records in Dallas or New Orleans on the Kennedy assassination. Before addressing that question, a brief explanation of "ticklers" is in order.

A "tickler" is a carbon copy of a document which is prepared for the information and temporary use of individuals at FBIHQ who need to follow the progress of a certain matter. There are no set policies or procedures for the retention or maintenance of "ticklers." Rather, each employee has his own system for handling "ticklers," depending on what is most convenient for him. In addition, each employee normally discards his "tickler" copy of a document once it is no longer of any use to him.

Not a search & proven false

Not all FBI divisions maintain "ticklers." Indeed, most FBI field offices, including the Dallas and New Orleans Field Offices, do not produce or maintain "ticklers."

false - case agents & supervisors Rabbi's Warren Commission memo with my little notations: not a search

Accordingly, the answer to plaintiff's question concerning "ticklers" is simply that there are no such documents in the Dallas and New Orleans Field Offices. But even if those field offices had maintained "ticklers", it would have been virtually impossible to search for the ones responsive to plaintiff's FOIA requests inasmuch as their maintenance varies among the employees who use them. Moreover, it would have been useless to do so since they are merely carbon copies of documents that have already been processed in response to plaintiff's requests.

The third criticism presented by plaintiff's counsel with respect to the adequacy of the FBI's search is the assertion that the agency failed to produce certain films, tapes and photographs contained in the Dallas files on the Kennedy assassination, "including tapes on 'critics' like Jim Garrison and the Dallas police radio broadcast." Pl. Opp. at 11. This assertion is false.

All photographs in the Dallas and New Orleans Field Offices' files on the Kennedy assassination, including those referenced by plaintiff's counsel, were processed in response to plaintiff's FOIA requests. Those photographs not subject to a FOIA exemption were provided to plaintiff in the form of photostatic copies.

In addition, I have indicated on a number of occasions that plaintiff has been furnished with all releasable films and tapes relative to the JFK assassination contained in the Dallas and New Orleans Field Offices. (See paragraph 5 of my second declaration, filed on March 22, 1982; paragraph 3(g) of my third declaration, filed on April 15, 1982; paragarph 20 of my fourth declaration, filed on May 3, 1982). In one last attempt to placate plaintiff's doubts, I reiterate that the FBI has notified plaintiff of all films and tapes in the Dallas and New Orleans Field Offices' files which pertain in any manner to the Kennedy assassination, and that he has been provided with copies of those films and tapes which are releasable.

6. The fourth accusation made by plaintiff's counsel in his opposition brief is that the FBI ignored certain parts of plaintiff's FOIA requests. This accusation, similar to the previous ones, has absolutely no foundation.

As I spelled out in great detail in my fourth declaration, filed on May 3, 1982, all records on or pertaining to persons or organizations who figured in the investigation of the Kennedy assassination -- as far as those records were related to that investigation -- were processed and, where appropriate, released

Evasion of request and even in this form violation not filed

...tiff, M... ga... I reiterate, with respect to any New Orleans r... ...ds ...n thos... ...ec... that the FBI found no sep... ate main file ...n Clay Shaw ... ...vid Ferrie. Nor did the FBI locate a... ...ate... on M... Shaw, Mr. Ferrie or Jim Garrison's investiga...on which pertai... to the JFK case, other than what was channelled into the files on the Bureau's assassination investigation. Furthermore, it should be noted that, inasmuch as the FBI was not connected with Mr. Garrison's investigation, it has no main file on that investigation.

No records reference a Garrison file w/ a number

7. Lastly, government counsel asked that I comment on plaintiff counsel's claim that "the Bureau only indexes under names, not topics." Pl. Opp. at 14. This is simply not accurate. As I indicated in paragraph 3 of my fourth declaration, filed on May 3, 1982, the subject matter topics of the FBI's files vary; indeed, they may reference an individual, organization, company, publication, event, activity, etc. A good example of this variety is reflected in the captions of the files listed in paragraphs 12 and 13 of my fourth declaration.

Nothing like "topics" who are filed by name & organization

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.

Dated, this 1 day of July, 1982.

John N Phillips

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