

Cong. Glen English, Okla.  
House of Representatives  
Washington, D.C.

6/17/83

Dear Congressman English,

Ordinarily, I would not send more than 60 pages to a Member because from my prior experience on the Hill (Senate investigator and editor in the 1930s) and some knowledge of the volumes of Members' mail few on the staffs have or can find the time to read at such length without some compelling need. I believe that FOIA and preserving it represents such a need. If I did not as an unwell and handicapped septagenarian writer I would not take my time/. Nor, when my only regular income is \$335 in Social Security, would I go to the expense entailed.

Were it not for my physical and medical limitations I would have been in touch with you and other members long ago. However, the assault on the Act and on requesters like me, in and out of courts - my personal experiences - prompts the hope that this effort may not be wasted.

I send the latest in a long series of virtually unchallenged affidavits because of the form, because this is what I state subject to a charge of perjury if I am not truthful and accurate. As an affidavit it is not merely a statement of opinion. And in litigation, it is a challenge that the defendant, in this case the FBI, can attempt to refute if it is not truthful and accurate.

Based on my experience in this and in other litigation, there will be no effort to refute these allegations because they are truthful and cannot be refuted and because the agencies can and do get away with perjury and I believe its subornation. I recognize that these may seem to be excessive charges, but in all my FOIA litigation and particularly in this one consolidated case the defense, where it has any basis at all, is entirely of false and frequently knowingly incompetent attestations. In this litigation the judge has a record of being virtually an FBI rubber stamp, so they have been less inhibited in filing incompetent affidavits and in swearing falsely.

You may remember that in 1974 the investigatory files exemption was amended over one of my cases. Since then I can recall no voluntary compliance with any request I've made and even when the Department promised the Senate FOIA subcommittee in 1977 that some 25 requests would be responded to, they haven't been.

In this litigation the government is again seeking to rewrite the Act through me by demanding and getting an Order for discovery without addressing anything I've filed in opposition - without yet making the original searches, without any attestation to need, without denying that voluntarily I had already provided all such information and documentation I have (about two file drawers of it!!!), and without even pretending to address the exceptional burdensomeness or the language of the Act, which places

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the burden of proof exclusively on the government.

Having gotten the Order, issued without any finding of fact or taking of any testimony and without even pretending to offer any evidence, the vengeful FBI and its counsel also asked that it be awarded costs incurred in seeking this discovery. Once again, the judge found his rubber stamp and granted their demand.

However, despite my pro bono counsel's great fear, I refused to comply with either Order. The FBI's counsel phoned my lawyer to threaten me to promise to have me thrown in jail if I do not spend much of the rest of my life on his discovery trickery. But when I continued to refuse to comply, he backed off of contempt (on discovery only) and opted for a different assault on the Act - dismissal as a sanction. He has not yet done anything about my refusal to pay his counsel fees, but he and I will again face the matter of contempt, unless he backs down.

For all practical purposes, discovery and/or counsel fees awards negate the Act. I am without doubt that this is the only reason the government is taking that path, with me because I have no means and no support and because of the prejudice against the subject matter of my requests and work, political assassinations (I am not a conspiracy theorist. My study is of the working of our basic institutions in those times of great distress and thereafter.)

My counsel can't really afford to represent me, leave alone defend me against serious charges. I've told him I'll have no complaint if he resigns and do not want him to defend me if I am charged - which I really don't expect but know can happen. The government's stonewalling has been ruinous to him.

I don't think I'll be charged because it will dramatize all their abuses of the Act and of me, only some indicated in this affidavit.

Because of my age and health and because there is much I want to write I'd have dropped this litigation two years ago, but the FBI opposed that and refused a major compromise. Their improper and wrongful objectives are important to them, and rewriting FOIA is only <sup>one</sup> ~~some~~ of them.

From what I have learned that the FBI has done to me I fully sympathize with fear of retaliation, which can be a very serious matter for anyone who stands for election or reelection. But if your committee is not afraid, from my own prior experiences, which include preparing hearings, I can see an effective and dramatic means of defending the Act against amendments that from my experience will largely nullify it. Call the people who filed the FBI's attestations in this litigation and ask them, reading their attestations, "Is this true?" or "Did you know this of personal knowledge?" or "Are there those who have personal knowledge who could have provided the attestations instead of you?" And take up the contrary attestations/

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evidence and ask what was done after receipt of each. (Nothing was ever done, nothing was ever retracted, nothing was ever provided, no phony claims to exemption were ever withdrawn. And no searches were ever made. Except for one that I've proven was phony and involved new false swearing, to which there has been no response.)

The same is true about withholdings of the public domain, of what the FBI itself had disclosed, of what it had already disclosed in this litigation, of what it had even sworn in other litigation could not properly and would not be withheld.

Doing this would mean that the FBI's people would run a new risk of perjury, before the committee, and I'm inclined to believe they would be less willing to do so before a committee and especially if the press were present. I think the result would be that kicking and screaming, perhaps, they'd admit more or less all I'm telling you and thus indicate why they seek amending of the Act, how they've frustrated it and wasted great amounts of public moneys doing it and how and why FOIA is important to the nation.

Because what the FBI had been doing was more than merely clear, because I was aware of the prejudice and record of this particular judge and the FBI's uses and misuses of bad decisions, I decided at the outset of this case to address each and every allegation it made and establish untruthfulness. They've filed about a dozen declarations and I've done it with all of them and with some of their pleadings that are not sworn, of course. There thus is an existing and entirely unrefuted sworn record of their false swearing. It has taken much time and length, but for whatever use it can be, now or in the future, it exists.

Really, I've only indicated what is available if there is a real effort to protect the Act from what will amount to negation. And I'd rather spend what time I still have writing, putting what I've learned on paper for greater availability. I take this time and am willing to take more if desired because I regard the Act as that important.

I'm sorry I can't offer to drive to Washington because it has been wise for me to drive more than 20 minutes at a time/and I never do. While I can ride that far, my wife doesn't drive and all those I know who might work regularly and are not able to drive me. But I'll help in any way I can.

If this affidavit is not of interest to you, I'd appreciate its return. If you are interested and want the earlier ones on both side, please let me know.

Thanks for anything you can do for the Act. It bespeaks our unique contribution to self-government and, although I never hear it said, can be a remarkable instrument for correcting error and improving government.

Sincerely,  
Harold Weisberg

