(3)

4/15/82

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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 submission of April 5, 1982. Having read those papers, I make the following statements in response to plaintiff's numbered assertions.

(a) Oswald-Mexico City materials. Any material which is referenced by plaintiff under this heading originated from the Central Intelligence Agency (CIA). All such material has been classified by the CIA and thus was withheld pursuant to section (b)(1) of the FOIA.

(b) Oswald income tax records. The income tax records of Lee Harvey Oswald originated from the Internal Revenue Service (IRS). Subsequent to the Associate Attorney General's decision of December 16, 1980 (attached as Exhibit A(3) to the defendant's

Reply to Plaintiff's Opposition to the Motion Concerning the Adjudication of Certain Exemption Claims), the IRS again determined that release of this material is barred by section 6103 of the Internal Revenue Code. Accordingly, the FBI has withheld the material on that basis. The tax returns of Jack Ruby were released to plaintiff because they were published by the Warren Commission. The FBI does not know of any instance where, as plaintiff asserts, income tax records of unspecified "relatives and friends" of Jack Ruby were released to him.

(c) Statement of FBI Special Agent James Hosty. As noted in my declaration of March 22, 1982 (attached to defendant's Reply to Plaintiff Opposition to the Motion Concerning the Adjudication of Certain Exemption Claims), 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 matter file (67-425) containing material on Mr. Hosty relative to the JFK assassination which was processed and, where appropriate, released to plaintiff.

There is a "67" personnel file in FBIHQ on every FBI employee, including Mr. Hosty. Since the "67" FBIHQ file on Mr. Hosty was clearly not within the scope of the instant FOIA request by plaintiff, it was not processed. At best, that file would be within the scope of plaintiff's separate FOIA request for FBIHQ documents, the administrative appeal of which is presently pending with the Justice Department's Office of Information and Privacy.

d) Weisberg report on Mafia threat. The FBI knows of no document withheld from plaintiff which could possibly be referenced by him under this heading. Rather, a review of the JFK assassination records reveals that Mr. Weisberg called the New Orleans Field office about the alleged threat on Mr. Garrison's life at 11:46 am. on December 14, 1967, and that by teletype dated

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December 14, 1967 at 3:55 p.m., the NO office advised FBIHQ of this matter. All of those records have been released to plaintiff.

Under this same heading, plaintiff insists that the FBI "search for any interceptions" of him. Pursuant to prior similar requests by plaintiff, it was determined that he has never been the subject of FBI surveillance. Plaintiff was so informed by letter to his attorney dated February 27, 1975. (See Exhibit 1 attached hereto). Accordingly, further searches on this subject would be futile.

False because FBI indeed made heard & those mentioned

(e) Garrison records. As noted in my declaration of March 22, 1982, the New Orleans Field office conducted -- pursuant to the Justice Department's determination of plaintiff's administrative appeals in these matters -- indices searches for material on Mr. Garrison. All file references located on Mr. Garrison were, in turn, written on a search slip, a copy of which was provided to plaintiff by letter dated August 3, 1981. (See Exhibit 2 attached hereto). The New Orleans office then reviewed each reference to determine if it pertained to the JFK assassination. Those that did concern the assassination were processed and, if releasable, were provided to plaintiff. References that did not pertain to Mr. Weisberg's FOIA request were not processed. Plaintiff can, of course, seek to obtain the latter records by submitting a new FOIA request along with the notarized authorization of Mr. Garrison permitting plaintiff to receive those documents which are releasable.

False - slip dated a year before my request

not in accord w/ the request

(f) Warren Commission Critics. As noted by plaintiff under this heading, the Associate Attorney General's determination of Mr. Weisberg's administrative appeals included, "as a matter of agency discretion," a directive to the FBI "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 FBI's investigation." (See Exhibit A(3) attached to Defendant's Reply to Plaintiff's

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Opposition to the Motion Concerning the Adjudication of Certain Exemption Claim). By putting the words critics and criticism in quotes, it seems clear that the Associate Attorney General meant that those were the topics for which the FBI was to search. At no time did the Associate Attorney General or his staff in the Office of Information and Privacy Appeals (OPIA) indicate that he actually intended the FBI to search for names of unspecified individuals. Not until the parties' private discussions during the last status call on March 25, 1982, did plaintiff's counsel ever suggest that the FBI should search for names of individuals. When asked to specify those individuals, plaintiff's counsel came up with only two: Harold Weisberg*/ and Mark Lane.

In order for the FBI to ascertain whether files exist on the individuals specified by plaintiff and to publicly acknowledge the existence of such files, plaintiff must comply with the requirements of the Privacy Act, 5 U.S.C. § 552a, and submit notarized authorizations of the named individuals, giving plaintiff access to their files. The FBI will then process for release to plaintiff only that information which he has been authorized to receive. If plaintiff is authorized to receive information that does not pertain to the JFK assassination, he must pay for any search and copying fees that are associated with such information.

(g) Films, tapes and pictures. By letter dated December 3, 1980 (see Exhibit 3 attached hereto), plaintiff was advised that the FBI had eight tape recordings pertaining to the JFK assassination, the location of these recordings and the disposition of each, as follows:

DL file	89-43-1A361	referred to DEA **/
DL file	89-43-1A362	referred to DEA
DL file	89-43-1A363	referred to DEA
DL file	89-43-1A364	referred to DEA
DL file	89-43-1A259	denied (b)(7)(C), (D)
DL file	89-43-1A343	denied (b)(7)(C), (D)
NO file	89-69-1A141	denied (b)(7)(C), (D)
NO file	89-69-1A132	released 12/3/80

*/ Pursuant to his Privacy Act request of December 5, 1975, Mr. Weisberg was furnished all FBI documents which pertained to him in any manner.

**/ The tapes referred to the Drug Enforcement Administration were for their direct response to plaintiff. (See Exhibit 3 attached hereto).

Plaintiff was also advised in that letter of the disposition of six films which had been located in the Dallas and New Orleans files:

DL file	89-43-1A232	released 3/30/81 */
DL file	100-10461-1A75	released 3/30/81
DL file	100-10461-1A137	released 3/30/81
DL file	44-1639-1A92	released 3/30/81
DL file	89-43-1A141	released 7/22/79
DL file	89-43-1A81	denied (b)(3) - copyright

The above materials encompass all of the films and tapes which were in the Dallas and New Orleans files at the time those files were processed in response to plaintiff's instant FOIA request. Although other films and tapes were sent to FBIHQ during the investigation, they are involved in the pending administrative appeal of plaintiff's separate FOIA request for FBIHQ material. Finally, some photographic material was returned to the contributor without a copy being retained by the field office. In no instance were files loaned out by the FBI.

To make a list -- as plaintiff requests -- of all films, tapes and pictures which were originally in the Dallas and New Orleans files would require the Bureau to review every evidence envelope which is prepared for every item in a "1A" enclosure and every Bulky Exhibit Inventory sheet which is prepared for every "1B" or "bulky" in the files. These envelopes and inventory sheets usually contain a written note as to the disposition of the item. Since the FBI has provided plaintiff with a copy of all the "1A" envelopes and "1B" inventories, he has the capability for determining for himself the disposition of any films, tapes, etc., which he claims are missing.

Finally, during the administrative appeal of the instant FOIA request, plaintiff complained to Quinlan J. Shea, Jr., Director of OPIA, that certain items were missing from the "1A's" and "bulkies." By letter dated July 6, 1979 (see Exhibit 5 attached hereto), plaintiff was provided with an explanation for the whereabouts of those items which he thought were missing. Notwithstanding that explanation, plaintiff still conclusorily

*/ See Exhibit 4 attached hereto.

insists that material is missing from the Dallas and New Orleans Field Offices' files.

I have read the foregoing statement consisting of 6 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 15 day of April, 1982.

John N. Phillips

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

February 27, 1975

1 - Mr. Mintz
1 - Mr. McCreight
1 - Mr. Bresson

James F [illegible], Esq.
1231 Fo[illegible] tree[illegible]
Washin[illegible]

Dear Mr [illegible]:

This is in reply to your letter of January 29th addressed to Mr. Laurence [illegible] of the Department of Justice, and thereafter referred to me and received on February 10th.

I [illegible] to reiterate to you my inquiry that FBI records contain no information to indicate your client, Mr. Weisberg, has been the subject of FBI surveillance. These records further do not disclose any reference to dissemination by us of information concerning him or his criticism of the Warren Commission along the lines you indicated in your letter.

With regard to your request for response to letters directed by Mr. Weisberg to former Attorney General Mitchell, our records reveal a copy of a letter dated March 12, 1969, has been referred to us, it having been acknowledged by the then Assistant Attorney General Will Wilson under date of March 20, 1969. The charges contained in the letter were general and made no specific allegations, and there is no record of further action being taken.

In a second letter, located in files of the Department of Justice under date of March 23, 1971, Mr. Weisberg alleged in nonspecific terms that he had suspicions of being "bailed" in Penn Station, New York. FBI records contain no reference to this letter.

Exhibit 1

James H. Lesar, Esq.

These are the only two instances of inquiries by Mr. Weisberg directed to former Attorney General Mitchell regarding alleged "intrusions into his life" that we have been able to locate. As stated by me above, our files contain absolutely no information to substantiate these allegations.

I trust the above will be of assistance to you and Mr. Weisberg.

Sincerely yours,

Clarence M. Kelley
Director

AUG 3 1981

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

Dear Mr. Weisberg:

Reference is made to our letter dated June 18, 1981, concerning the Dallas Field Office file 105-632 on George DeMohrenschildt.

Enclosed are 950 pages of releasable material from 105-632, and corresponding inventory worksheets, of which 946 pages are considered outside the scope of your request. Four pages, 105-632-1114, are considered within the scope of your request and are being released without charge. Eighty-nine pages have been withheld in their entirety. Sixty-five pages are considered previously processed and the cross reference is contained on the inventory worksheets. Three hundred and twenty five pages will be referred to other agencies for their review. The agencies to which referrals will be sent are listed on the inventory worksheets.

The entire Dallas Field Office file on George DeMohrenschildt has been processed. Including the material processed for our release on June 18, 1981, a total of 1,674 pages have been processed, 1,115 pages have been released, 89 pages have been denied in their entirety. 142 pages were considered previously processed, and 328 pages will be referred to other agencies. Please note that 163 pages rather than 161 pages were released on June 18, 1981, and the inventory worksheets have been adjusted.

Exhibit 2

Mr. Harold Weisberg

Also enclosed is a copy of the indices search slips prepared by the Dallas and New Orleans Field Offices. Forty-four of forty-four pages are being released.

Excisions were made from the enclosed documents or entire documents withheld from release in order to protect materials exempted from disclosure by the following subsections of Title 5, United States Code, Section 552:

(b)(1) information which is currently and properly classified pursuant to Executive Order 12065 in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;

(b)(2) materials related solely to the internal rules and practices of the FBI;

(b)(7) investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of the personal privacy of another person;

(D) reveal the identity of a confidential source or reveal confidential information furnished only by the confidential source;

(E) disclose investigative techniques and procedures, thereby impairing their future effectiveness;

The enclosed material has been reviewed by the Office of Privacy and Information Appeals, United States Department of Justice.

A copy of the inventory worksheets is being furnished to Mr. Lesar.

Sincerely yours,

James K. Hall Jgw

James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

DEC 3 1980

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

Dear Mr. Weisberg:

Reference is made to your Freedom of Information-Privacy Acts (FOIPA) request for the Dallas and New Orleans field office files pertaining to the assassination of President John F. Kennedy.

Eight tape recordings were located in the Dallas and New Orleans files. One tape contained in New Orleans file 89-69-1A132, is being released to you and is enclosed. Four tapes contained in Dallas file 89-43-1A361, 1A362, 1A363, 1A364 are being referred to the Drug Enforcement Administration for their review and they will respond directly to you. Three tapes contained in Dallas file 89-43-1A259, 89-43-1A343 and New Orleans file 89-69-1A161 are being withheld from release pursuant to Title 5, United States Code, Section 552:

(b)(7) Investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of the personal privacy of another person;

(D) reveal the identity of an individual who has furnished information to the FBI under confidential circumstances or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means.

1 Enclosure

Mr. Harold Weisberg

We have located six movie films in the Dallas and New Orleans files. Four of the films, contained in Dallas files 89-43-1A232, 100-10461-1A75, 100-10461-1A137, 44-1639-1A92, are presently being duplicated and will be furnished to you upon completion, free of charge. One film by Robert J. E. Hughes, contained in Dallas file 89-43-1A141, has previously been furnished to you. One film, by Abraham Zapruder, contained in Dallas file 89-43-1A81, is being withheld from release pursuant to Title 5, United States Code, Section 552:

(b)(3) information specifically exempted from disclosure by Title 17, United States Code, Section 101 (copyright material).

Any additional tapes and/or films located by the field offices will be processed and the releasable material will be furnished to you.

Sincerely yours,

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

Enclosure

MAR 30 1981

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

Dear Mr. Weisberg:

This is in response to your administrative appeal of the material pertaining to the assassination of President Kennedy.

Enclosed are 131 pages of material from our Dallas files pertaining to the assassination of President Kennedy. Please be advised that this is a portion of the new material which has not been previously released to you, and those previously released documents which have been declassified.

Excisions have been made in order to protect materials which are exempt from disclosure by the following subsections of Title 5, United States Code, Section 552:

(b)(1) information which is currently and properly classified pursuant to Executive Order 12065 in the interest of the national defense or foreign policy;

(b)(2) materials related solely to the internal rules and practices of the FBI;

(b)(7) investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of the personal privacy of another person;

(D) reveal the identity of an individual who has furnished information to the FBI under confidential circumstances or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means;

Exhibit 4

Mr. Harold Weisberg

(E) disclose investigative techniques and procedures, thereby impairing their future effectiveness.

Please be advised that the processing of this material was coordinated with the Office of Privacy and Information Appeals, Department of Justice.

Also enclosed are four films from the Dallas files which you were advised of by letter dated December 8, 1980.

Sincerely yours,

James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

Enclosures (6)

United States Department of Justice

OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

WASHINGTON, D.C. 20530

Mr. Harold Weisberg
Route 12 - Old Receiver Road
Frederick, Maryland 21701

JUL 6 1979

Dear Mr. Weisberg:

In the course of our most recent meeting, it was agreed that Mr. Mitchell would check two specific aspects of the processing of Kennedy assassination records and that we would inform you of the results.

The first point you raised was unexplained gaps in the worksheets pertaining to the Dallas "bulkies." Mr. Mitchell has been informed by Bureau personnel that "bulkies" (which are, as you know, merely items or groups of items too large to be placed in regular files) are routinely rearranged and transferred in files. On occasion, such items as exhibits and real evidence are destroyed, or otherwise disposed of, when it is determined that there is no (further) need for them. Mr. Mitchell conducted a random check of a few items that appeared to be missing, based on an examination of the worksheets. The results of Mr. Mitchell's efforts tend to corroborate the explanations previously furnished by the Bureau. Enclosed are two illustrative examples. The first FD-192 (Serial 100-10464-1B6) indicates that one brown sweater and one brown corduroy coat, acquired from a Mrs. M. A. Anderson on November 27, 1963, are no longer in the file because they were returned to her on March 6, 1964. The second FD-192 (Serial 100-10461-1B19) indicates that the listed items were sent to the laboratory on March 17, 1964, which explains why they are no longer present in the Dallas file. There is, however, a hand-written notation on the latter document which states that photographs of the items listed on the FD-192 make up Serial 100-10461-1A-370. That Serial was released to you. Based on the explanations we have received from the Bureau and the results of Mr. Mitchell's random check, I have concluded that there appears to be nothing irregular in the processing of the Dallas "bulkies"

Exhibit 5

by the Bureau. To whatever extent "missing" items still exist elsewhere in the Kennedy files, they would have been processed in their current locations. I do not feel that the Bureau is obliged by the F.O.I.A. to do any more than process its files as they exist at the time of processing. I specifically conclude that it is not required to do the kind of cross-checking and explaining that would be required to account for factual situations such as the ones covered by this paragraph.

The second point you raised at the meeting was whether the worksheets on the processing of Warren Commission documents might demonstrate that the Bureau withheld documents or portions of documents in the course of its F.O.I.A. processing which were already in the public domain. You must remember that the Warren Commission files were processed during "Project Onslaught," a time when it was not anticipated that worksheets were going to be released. One result is that these worksheets can be quite confusing. They appear in some instances, for example, to indicate that the same material was considered to be both exempt and non-exempt. What the worksheets really indicate is that judgments by initial processors to the effect that information was exempt were reversed upon review by supervisors, when it was determined that there was no basis for withholding. Mr. Mitchell reviewed several of these worksheets and compared them with the corresponding serials. He found no evidence that any public domain information had actually been withheld. Several of your recent letters to me have raised this same question with regard to possible classification of records put into the public domain by the Warren Commission. Because Mr. Mitchell was reviewing unclassified material, I am bringing your concern to the attention of Mr. Schroeder of my staff, who will look into the matter when and as classified Kennedy materials are being reviewed for consideration by the Department Review Committee.

I hope that this information is of some assistance to you.

Sincerely,

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

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 1982, I have served the foregoing Defendants' Response To Plaintiff's Settlement Proposal by first class mail to:

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

Henry J. LaHaie

HENRY J. LaHAIE

Crites - me - 3

garrison 3 - 0

grinnell 3 - 4