

4/29/82
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)

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.

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:

- 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.

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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).

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:

- 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.

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

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.

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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:

- 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.

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:

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With respect to the Dallas Field Office, the Bureau will now conduct an all-reference search on the assassination itself, on Lee Harvey and Marina Oswald, on Jack Ruby and on the Warren Commission. All hitherto unprocessed records on these subjects, whether contained in main files or see references, will be carefully screened and those which pertain to the assassination in any way will be processed. In addition, as a matter of agency discretion, the Bureau will conduct all-reference searches on George De Mohrenshildt and former Special Agent James P. Hosty, and will also attempt to determine whether there are any official or unofficial administrative files which pertain to the Kennedy case, with particular emphasis on seeking files on "critics" or "criticism" of the F.B.I.'s assassination investigation. Any records located as the result of these searches will also be carefully screened and, if appropriate, processed for possible release to your client. With respect to the New Orleans Field Office, the Bureau will undertake a further search for a possible main file on David Ferrie, and will forward to Headquarters for screening and possible processing those portions of another file which pertain to Ferrie, Jim Garrison and Jack Ruby. In addition, as a matter of 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

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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).

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.

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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.

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.

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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

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