

8/26/82

(4)

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)

EIGHTH 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 seven previous declarations that were filed in these consolidated cases, 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 and New Orleans Field Offices.

2. Government counsel asked that I read Plaintiff's Amended Statement of Genuine Issues of Material Fact in Dispute. Having read that pleading, I make the following statements in response to the fourteen issues of fact which plaintiff claims are in dispute in these cases.

(a) Whether the Dallas and New Orleans Field Offices maintain "ticklers."

In paragraph 4 of my fifth declaration filed on July 2, 1982, in support of the Defendant's Reply to the Plaintiff's Opposition to the Motion for Partial Summary Judgment, I explained that "ticklers" -- as that term is used to refer to potentially retrievable records -- are photostatic or carbon copies of documents and that these copies are prepared for the information and temporary use of individuals who need to follow the progress

Exhibit A

Phillips-sm

of a certain matter. I also stated that not all FBI divisions maintain "ticklers" and that indeed most FBI field offices, including the Dallas and New Orleans Offices, do not produce or maintain these types of records.

In response to those statements, plaintiff produced a document (i.e., Exhibit 2 attached to Harold Weisberg's affidavit of July 21, 1982) ("Weisberg Affidavit"), which he claims demonstrates that the Dallas Field Office does produce and maintain ticklers. That document indicates that a file on Marina Nikolaevna Porter was being closed on March 6, 1978, but that the agent wanted to reopen the case in six months "for verification of the address of subject and family." To remind him of the reopening, the agent directed a rotor clerk, per a notation at the end of the memorandum, to prepare a "six (6) months tickler for reopening."

In this context, it is clear that the agent was not requesting the production of a photostatic or carbon copy (i.e., a "tickler" copy) of the memorandum in question. He was instead directing a clerk to prepare a 3 x 5 card indicating the action that was to be taken six months hence. This card, in turn, would have been placed in a chronologically arranged system of other such cards which contained similar types of reminders. As each time period elapsed, the noted action would be taken and the "tickler" card would be thrown away.

Exhibit 2 attached to Weisberg's Affidavit thus does not refute the statement in paragraph 4 of my fifth declaration that most FBI field offices, including the Dallas and New Orleans Offices, do not produce or maintain "tickler" copies of the documents that they generate. Rather, it merely demonstrates that FBI agents often utilize an informal card system to remind them of certain actions that should be taken in the future.

Phillips & Th

(b) Whether the FBI searched for "ticklers."

In paragraph 4 of my fifth declaration, I stated that, because the Dallas and New Orleans Field offices did not produce or maintain "tickler" copies of documents, the FBI did not undertake a search for such records. I also explained that even if those field offices had maintained "tickler" copies, 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, I noted that it would have been a duplication of effort to search for "ticklers" (again assuming their existence) since they would have been merely carbon copies of documents that were already processed in response to plaintiff's requests.

(c) Whether the FBI searched "June files."

"June files" are what the FBI sometimes calls the files that encompasses the electronic surveillance conducted by a field office. These files, consistent with the FBI's filing system,^{*/} are index according to who or what organization or company was under surveillance. Information in the "June files," like all other FBI files, is thus retrievable through a search of a field office's general indices.

In the instant cases, the FBI utilized its general indices to identify material responsive to plaintiff's FOIA requests. If any of that material was located in a "June file," that file was searched and the releasable material pertinent to plaintiff's requests was furnished to him. However, not all of the "June files" in the Dallas and New Orleans Field Offices were searched for, as can be readily imagined, most of them have absolutely nothing to do with the JFK assassination.

^{*/} For a detailed explanation of the FBI's filing system, see paragraphs 3 and 4 of my fourth declaration attached to Defendant's Motion for Partial Summary Judgment, filed on May 3, 1982.

Phillips SM

(d) Whether the FBI searched for records referenced in a Dallas memorandum dated October 23, 1975, attached as Exhibit 11 to Weisberg's Affidavit.

As I indicated in paragraph 18(e) of my fourth declaration attached to Defendant's Motion for Partial Summary, filed on May 3, 1982, the FBI's search in these cases did locate records concerning the allegations of Mr. William Walter. By letter dated May 15, 1981, plaintiff was provided with the records pertaining to Mr. Walter's allegations that had not been previously processed in the FBIHQ files.*/

(e) Whether the FBI searched for all films and tapes.

As I have stated several times in these cases,**/ plaintiff has been furnished all releasable films and tapes in the Dallas and New Orleans Field Offices which pertain to the JFK assassination. Furthermore, as I indicated in paragraph 3(g) of my third declaration, some tapes and films (this includes the "Thomas Alyea film") were sent to FBIHQ during the investigation and thus are involved in the pending administrative appeal of plaintiff's separate FOIA request for FBIHQ material. Lastly, there are no tapes of "the recorded police radio broadcasts" in either the Dallas or New Orleans Field Offices.***/

*/ Most of the records surrounding Mr. Walter's allegations were previously processed pursuant to a separate FOIA request by plaintiff. That processing of the FBIHQ Kennedy files was explained in paragraph 6 of my second declaration attached to Defendant's Reply to Plaintiff's Opposition to the Motion Concerning the Adjudication of Certain Exemption Claims, filed on March 22, 1982.

**/ See Second Declaration of John N. Phillips, ¶ 5, attached to Defendant's Reply to Plaintiff's Opposition to the Motion Concerning the Adjudication of Certain Exemption Claims, filed on March 22, 1982; Third Declaration of John N. Phillips, ¶ 3(g), attached to Defendant's Response to Plaintiff's Settlement Proposal, filed on April 15, 1982; Fourth Declaration of John N. Phillips, ¶¶ 20 and 24, attached to Defendant's Motion for Partial Summary Judgment, filed on May 3, 1982; Fifth Declaration of John N. Phillips, ¶ 5, attached to Defendant's Reply to Plaintiff's Opposition to the Motion for Partial Summary Judgment, filed on July 2, 1982; and Seventh Declaration of John N. Phillips, ¶ 3, attached to Defendant's Opposition to Plaintiff's Motion for Order Compelling Photographic Copies of All Movie Films and Still Photographs in the FBI's Dallas and New Orleans Field Offices, filed on August 19, 1982.

***/ It should be noted that a tape of the recorded Dallas police radio broadcasts was made by an FBI official for use by the Warren Commission. However, a copy of that tape was not maintained by the Bureau in its files on the assassination.

Phillips & Th

(f) Whether the FBI searched for all records "pertaining to persons and organizations who figured in the investigation of President Kennedy's murder," as well as for New Orleans records "pertaining to Clay Shaw, David Ferrie and any other person or organization who figured in District Attorney Jim Garrison's investigation into President Kennedy's assassination."

As I spelled out in great detail in my fourth declaration and reiterated in paragraph 6 of my fifth declaration, all records on or pertaining to organizations or persons who figured in the FBI's investigation of the Kennedy assassination -- as far as those records related to that investigation -- were processed and, where appropriate, released to plaintiff. With respect to New Orleans records on David Ferrie, Clay Shaw or Jim Garrison's investigation, the FBI could find no main files or material on those subjects other than what was merged into the main files on the Bureau's investigation of the assassination. Those files, in turn, were processed and the nonexempt material was furnished to plaintiff.

As I indicated in my fifth declaration, the FBI was not involved in or connected with Mr. Garrison's investigation of the JFK assassination and thus maintained no main files on his investigation. Rather, as I explained above, any information or documents concerning Mr. Garrison's investigation was channelled into the New Orleans main files on the assassination. Notwithstanding this fact, plaintiff apparently believes that the FBI should have reviewed the documents in its Kennedy files which pertained to Mr. Garrison's investigation and then conducted new searches on the organizations and persons whose names appeared in those documents. According to plaintiff's counsel, those persons and organizations "include[d] but [are] are not limited to the following: the Free Cuba Committee, Double Check, Alpha 66, DRE, JURE, MNR, Sylvia Odio, Carlos Bringuier, Ronnie Caire, Dean Andrews, and Perry Russo."

The FBI acknowledges that it did not undertake new and independent searches on the organizations and persons whose names appeared in those Kennedy records which pertained in some

P Phillips SB

fashion to Jim Garrison or his investigation. The FBI believes that it was and is not required under the FOIA to do so. As Mr. Quinlan Shea, the former director of the Justice Department's Office of Privacy and Information and Appeals (OPIA), indicated to plaintiff's counsel, the FOIA does not contemplate "an open-ended, never-ending process of search, locate, review and then search again based on what is contained in the reviewed records."*/ This is precisely what plaintiff desires of the FBI in this case. If plaintiff wants a search conducted for records on the above detailed persons and organizations, he can file new FOIA requests with the agency and pay for any search and copying fees associated with the search for that material.

(g) Whether the FBI searched for files on "critics" or "criticism" of its assassination investigation.

In passing on plaintiff's administrative appeals in these cases, former Associate Attorney General John Shenefield decided that, "as a matter of agency discretion, the Bureau will conduct all-reference searches on George DeMohrenshildt and former Special Agent James P. Hosty, and will also attempt to determine whether there are any other 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 assassination investigation."**/ Per this directive, the FBI conducted a search for files on "critics" or "criticism" of its investigation. It did not attempt, however, to search for names of unspecified individuals. At no time did the Associate Attorney General or his staff in OPIA indicate to the FBI that it should search for records on any individuals, including those

*/ Letter of June 16, 1980, from Quinlan J. Shea to James H. Lesar, attached as Exhibit A(2) to Defendant's Reply to Plaintiff's Opposition to the Motion Concerning the Adjudication of Certain Exemption Claims, filed on March 22, 1982.

**/ See page 3 of Associate Attorney General Shenefield's decision of December 16, 1980, which is attached as Exhibit A(3) to Defendant's Reply to Plaintiff's Opposition to the Motion Concerning the Adjudication of Certain Exemption Claims, filed on March 22, 1982.

Phillips 87h

listed by plaintiff in his Amended Statement of Genuine Issues of Material Fact in Dispute. Rather, by putting the words critics and criticism in quotes, it seems clear that former Associate Attorney General Shenefield meant that those were the topics for which the FBI was to search. This conclusion is buttressed by the fact that in the same paragraph of his decision Mr. Shenefield specifically listed the names of several individuals on whom he wanted new searches conducted. Thus, if the Associate Attorney General wanted the FBI to search for records on specific individuals who were critical of the assassination investigation, it seems apparent that he would have listed their names in his decision.

(h) Whether the FBI searched for records referenced in Exhibit 4 attached to Weisberg's Affidavit.

Apparently, by this question, plaintiff is asking whether the FBI searched for the documents which Raymond Comstock provided to Special Agent Regis L. Kennedy. The answer is no. Inasmuch as these documents per se do not fall within plaintiff's FOIA requests in these cases, the FBI did not conduct an independent search for the material. As explained in paragraph 2(f) above, the FBI does not believe that the FOIA requires an agency to make additional searches based on what is contained in the records located as a result of the search conducted in response to a FOIA request. If plaintiff desires the "Comstock" records, he can file a new FOIA request and pay the fees associated with the search for that material.

(i) Whether the FBI searched for the record quoted in Exhibit 6 attached to Weisberg's Affidavit.

Although it is uncertain which record in Exhibit 6 plaintiff is referring to, the FBI acknowledges that it did not conduct an independent search for any of the records referenced in Exhibit 6 of Weisberg's Affidavit. Again, the reason is that none of those records per se fall within plaintiff's FOIA requests in these cases.

(j) Whether the FBI searched for records on Carlos Marcello.

Inasmuch as plaintiff's FOIA requests did not specify Mr. Marcello as someone on whom he wanted records, the FBI did not conduct an independent search for material on Mr. Marcello.

(k) Whether the FBI searched for records on former Special Agent James P. Hosty.

As I have stated before in these cases,^{*/} indices searches were made in the Dallas Field Office to locate material on Special Agent Hosty. No main files on Mr. Hosty were located; however, there was a general personnel matters file (67-425) containing documents on Mr. Hosty relative to the JFK assassination which were processed and, if nonexempt, were 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 requests 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.^{**/}

(l) Whether the FBI searched for records on Mrs. Marguerite Oswald.

The FBI acknowledges that it did not conduct an independent search for records on Mrs. Marguerite Oswald, mother of Lee Harvey Oswald. Plaintiff's FOIA request in these cases did not specify her as someone on whom he wanted records. Nor did Associate Attorney General Shenefield direct the FBI, as a matter of agency discretion, to conduct a search for material pertaining to Mrs. Oswald.

^{*/} See Second Declaration of John N. Phillips, ¶ 4, attached to Defendant's Reply to Plaintiff's Opposition to Motion Concerning the Adjudication of Certain Exemption Claims, filed on March 22, 1982; and Third Declaration of John N. Phillips, ¶ 3(c), attached to Defendant's Response to Plaintiff's Settlement Proposals, filed on April 15, 1982.

^{**/} Nothing in plaintiff's submissions contradict these facts. Instead, even plaintiff admits that the "Hosty records" he presently desires are contained in the FBIHQ files.

Phillips SA

(m) Whether the FBI has searched SAC confidential files and safes.

The FBI is unsure what plaintiff is referring to when he talks about SAC (i.e., Special Agent in Charge) confidential files. Plaintiff may be referring to materials on highly sensitive investigations and personnel matters which are maintained in the offices of the SACs. Those materials are kept in safes for security purposes.

In the instant cases, the FBI did undertake a search of the SAC safes in both the Dallas and New Orleans Field Offices. Any records that were located therein which pertained to the JFK assassination or which were responsive to the Associate Attorney General decision of December 16, 1980, were processed and, if nonexempt, were provided to plaintiff.

(n) Whether all records identified on "see" references have been provided.

As I have stated before in these cases,^{*} all releasable information pertinent to plaintiff's FOIA request has been provided to him. This includes records identified by way of "see" references. Furthermore, as I stated in paragraphs 21 and 24 of my fourth declaration, plaintiff was provided -- by agreement of the FBI -- with copies of all the indices search slips prepared by the Dallas and New Orleans Field Offices. Plaintiff thus has the capability for determining what files (including those identified by way of "see" references) were searched and processed by the FBI in these cases.

^{*}/ See, e.g., Fifth Declaration of John N. Phillips, ¶ 3, attached to Defendant's Reply to Plaintiff's Opposition to the Motion for Partial Summary Judgment, filed on July 2, 1982.

J. Phillips

3. In conclusion, I would like to note that the FBI's search in these cases was exhaustive. The agency not only undertook a systematic approach to locating records directly responsive to plaintiff's FOIA request, it also conducted, pursuant to the discretion exercised by former Associate Attorney General John Shenefield, a search for records on subjects which were, at best, remotely related to plaintiff's requests. As a result of the FBI multi-tiered search in these cases, nearly 12,000 documents and 53,000 index cards, together consisting of over 100,000 pages, were processed and the releasable information furnished to plaintiff.

I have read the foregoing statement consisting of 10 pages and fully understand its contents. In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 26 day of August, 1982.

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