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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

(Phillips 34)

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.

(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.

(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 DL file DL file DL file DL file DL file NO file NO file	89-43-1A361 89-43-1A362 89-43-1A363 89-43-1A364 89-43-1A259 89-43-1A343 89-69-1A141 89-69-1A132	referred to DEA **/ referred to DEA referred to DEA referred to DEA denied (b)(7)(C), (D) denied (b)(7)(C), (D) denied (b)(7)(C), (D)
	03-03-IA132	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

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

DI	file	00 43 1-000		
		89-43-1A232	released 3/30/81 */	
DL	file	100-10461-1A75	released 3/30/81	
DI.	file	100-10461-1A137		
			released 3/30/81	
	file	44-1639-1A92	released 3/30/81	
DL	file	89-43-1A141	released 7/22/79	
DI.	file	89-43-1A81	1016d3ed 1/22/19	
		03-43-TW0T	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 <u>originally</u> in the Dallas and New Orleans files would require the Bureau to review every evidence envelope which is prepared for every item in a "lA" enclosure and every Bulky Exhibit Inventory sheet which is prepared for every "lB" 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 "lA" envelopes and "lB" 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 "lA'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. PHILLIPSI
Special Agent
Federal Bureau of Investigation
Washington, D.C.

February 27, 1975

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

Dear Mr Lora.

This is in reply to your letter of Jameiry 29th. addressed to Er. Laurence of Arrivan of the Lepertment of Justice, and thereafter referred to me and received on February 17th.

contain no information to indicate your client, here well services been the subject of the surveillance. These records further do not disclose any reference to discontinuition by us of information concerning the criticist of the warren Commission along the lines you indicated in your letter.

Fill regard to your request for response to letters directed by Mr. Welsberg to former Attorney General Mitchell, our records reveal a copy of a letter calculation 12. 1969, had been referred to as, it having been accommissed by the then Assistant Attorney General Will wilson under calculationally 1960, "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 starch 23, 1971, A.r. Weisberg alleged in manapocific terms that he had suspicious of being 'billed' in Penn Station, New York. Fix records contain no reference to this letter.

Exhibit 1

. James H. Lesar, Esq.

These are the only two instances of inquiries by Weisberg directed to former Attorney General Mitchell Ferneding alleged 'intrusions into his life" that we have been able to lessite. 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. Welsberg.

Sincerely yours,

as la. . Clarence M. Kelley Director

Mr. Marold Weisberg - 7627 Old Receiver Road Frederick, Maryland 21701

Pear Mr. Helsberg:

Reference is made to our letter dated while a property of the Dellas Field Office file 105-632 on George Derohrenschildt. Reference is made to our letter dated June 18, 1981,

Enclosed are 950 pages of releasable material from Inclosed are 950 pages of releasable material from pages are considered outside the scope of your request. Four pages, 185-632-1214, are considered within the pages, 185-632-1214, 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 contained on the inventory worksheets. Three hundred and twent The agencies to which referred to other agencies for their review. Inventory worksheets.

The agencies to which referrals will be sent are listed on the inventory worksheets.

Nohrenschildt has been processed. Including the material pro-cessed 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 dunied in their entirety, 142 pages were considered previously processed, and 328 pages will be referred to other squecies. Please note that 163 pages rather than 161 pages were released on June 18, 1981, and the inventory worksheets have been adjusted.

Ellit 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 PBI;
- (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. Hell 19m

James K. Hall, Chief Proedom of Information-Privacy Acts Section Records Management Division DEC 3 1980

St. Marold Weigherg

7527 Did Deceiver Road

From Mr. Meigherg:

Deference 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 W. Mennedy. John F. Kennedy.

Bight tape recordings were located in the Dallas sed New Orleans files. One tape contained in New Orleans file

\$39-69-18132, Is being released to you and is enclosed. Four
tapes contained in Dallas file \$9-43-18361, 18362, 18363, 18364 33-69-13132, Is being released to you and is enclosed. Four
tapes contained in Delias file 89-43-13461, 13362, 13364

Bro being referred to the Drug Enforcement Administration For
their review and they will respond directly to you. Three
their review and they will respond directly to you. Three
lapses contained in Delias file 89-43-13259, 89-43-13343 and
personant 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 awarranted invasion
of the personal privacy of another
parsons

(D) reveal the identity of an individual
who has furnished information to
the FMI under confidential circums
ethances or reveal information
for the purpose of an apparently thrown by the public of otherwise accessible
public of otherwise accessible
to the FMI by overt means.

Mr. Harold Weisberg

We have located six movie films in the Dallas and New Orleans files. Four of the films, contained in Dallas files \$9-43-1A232, 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

Inclosure

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

Dear Mr. Weisberg:

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

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 PBI:
- (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;

Exhlit 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,

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)



State Secretary in the latest the secretary

The second secon

in the course of our most recent meeting, it was agreed that Mr. Mitchell would check two specific aspects of the processing the process of t

issing of Jennedy assassingtion records and that we would inform you et the results.

The first point you raised was memplained gaps in the morkshoets pertaining to the Dallas bulkies. Mr. Mitchell has been informed by Bureau personnel that "bulkies" (which are 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 that there is no (further) need for them. Mr. Mitchell conducted that there is no (further) need for them. Transcon theck of a few items that appeared to be missing, based in an examination of the worksheets. The results of Mr. Mitchell's elforts tend to corroborate the explanations previously furnished the Bureau. Enclosed are two illustrative examples. The trial 100-10464-186) indicates that one bross. breater and one brown cordurey coat, acquired from a Mrs. W. M. inderson on Bovenber 27, 1963, are no longer in the file become they were returned to her on march 5, 1964. The second Pp-Di2 and partial 100-18461-1819) indicates that the listed items were most to the laboratory on March 17, 1964, which explains why they are No longer present in the Dellas file. There is, however, a hind pritten actation on the latter Socument which states that photois too in the TD-192 make no Perial 100

If you have the pure and the remits and concluded that the pure and the remits are concluded that the pure and the pure and the remits are concluded that the pure and the p

Ellit 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 15 th 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 T. LaHAIE

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garrison3-0
gannel3-4