

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN FRIENDS SERVICE COMMITTEE, et al.,)
)
 Plaintiffs)
)
 v.)
)
 WILLIAM H. WEBSTER, et al.,)
)
 Defendants.)

CIVIL ACTION
NO. 79-1655

AFFIDAVIT

I, Paul L. Andrews, being duly sworn, hereby depose and say as follows:

(A) I have been a Special Agent of the Federal Bureau of Investigation (FBI) since January 15, 1962.

(B) I have been assigned to the Records Management Division at FBI Headquarters (FBIHQ), Washington, D.C., since August of 1975.

(C) On July 1, 1979, I was designated Section Chief, Records Systems Section, Records Management Division, and this is the position to which I am currently assigned.

(D) In my current capacity, I am responsible for over 600 FBI employees involved in the areas of records research, records processing and records maintenance.

(E) Because of my current and past assignments in the Records Management Division, I am familiar with the FBI Central Records System including the creation, maintenance and disposition of records which make up the system.

(1) The Code of Federal Regulations (C.F.R.), Title 41, Chapter 101-11, sets forth policies, standards and procedures for the economical and efficient management of Federal records and provides for effective controls over: (a) the creation; (b) organization, maintenance, and use; and (c) the disposition of all agency records. The FBI has established a Records Management Program to be in compliance with these regulations.

CREATION OF RECORDS

(2) All agencies are required to retain any material made or received during the course of public business which has been preserved or is appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities. The FBI, by its very nature and requirement to investigate violations of law within its investigative jurisdiction, and its responsibility for the internal security of the United States, collects information from a wide variety of sources. Basically, it is the result of investigative efforts and consists of information furnished by other Government agencies, law enforcement agencies, the general public, informants, witnesses, and public source material. Accordingly, the records are created and files are established to support the Bureau's investigative and administrative needs.

RECORD ORGANIZATION

(3) The FBI's Central Records System is a manual system designed to be responsive to the Bureau's needs by facilitating prompt retrieval of data previously filed. The FBI utilizes a Central Records System which maintain its investigative, personnel, applicant, administrative, and general files. The system includes not only records retained at FBIHQ in Washington, D.C., but also the above-described files located in the 59 field

divisions and 12 Legal Attaches operated by the Bureau. This system consists of subject matter filed in numerical sequence, an alphabetical index for access to the files, and a supporting abstract system to facilitate processing and accountability (internal) of all important mail placed in the file. Files kept in FBI field offices are structured in the same manner, however, they do not utilize an abstract system. The key to these numerically maintained files is the general indices, consisting of index cards on all manner of subject matters but primarily a name index of individuals. This index must be searched to determine what information, if any, the FBI may have in its files. It should be noted that the FBI does not index all individuals who furnish information or names developed in an investigation. Only that information that is considered pertinent, relevant and essential for future retrieval is indexed.

DISPOSITION OF RECORDS - General

(4) The disposition of FBI records is controlled by regulations of the National Archives and Records Service (NARS), General Services Administration. Title 44, Chapter 33, Section 3301, of the United States Code (U.S.C.) defines record and nonrecord material and Section 3302 directs the Administrator of General Services to promulgate regulations regarding procedures for destruction and standards for reproduction of records. Approval for the destruction of record material is sought on the basis that the records lack investigative, intelligence, historical, or research value; that the destruction would not affect current or future operations of the Bureau; or that microphotographic copies are satisfactory duplicates of the original material, as is the case when recorded matter is microfilmed prior to destruction. Requests are forwarded to the National Archivist; and, if approved, we will proceed accordingly.

(5) Additional guidelines for maintenance and destruction of records are included in the C.F.R., Title 41, Chapter 101, entitled "Federal Property Management Regulations" which is issued by the General Services Administration. Periodic revisions are received to update established programs or to initiate or regulate programs relating to advanced technology. Title 44, U.S.C., Section 3303a, Part (c), notes that the Administrator (of General Services) may request advice and counsel from the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives with respect to the disposal of any particular records.

DESTRUCTION OF RECORDS - Field Offices

(6) The FBI first obtained authorization to destroy its field office investigative files on April 9, 1945, when the Joint Committee on the Disposition of Executive Papers authorized disposal of investigative files, dating from 1910 through 1938, of closed field offices. The request for authorization for disposal was submitted to the Archivist of the United States in accordance with the Act of Congress approved July 7, 1943 (Public 115, 78th Cong.), and regulations promulgated by the National Archives Council pursuant to that Act. The National Archives in its appraisal of the disposal request noted that:

Case folders on individuals suspected of crimes falling within the sphere of the Federal Bureau of Investigation are kept at the central office, at the field division originating the case, and at any other field divisions participating in its evaluation. These folders are filled mainly with identical copies of investigative reports of special field agents and pertinent or transmittal correspondence. Occasional letters and memoranda of local individuals and agencies (such as the marshal, police, etc.) received at the field division are not copied or transmitted to headquarters because they are only incidental to the development of the case. It can be said, therefore, that these files of closed field divisions appear to contain nothing of lasting value not preserved in the corresponding case files kept at headquarters in Washington. (See Attachment A, Exhibit II-1) (emphasis added)

(7) On March 5, 1946, the FBI received continuing authority to destroy closed field office investigative files. The process for obtaining authorization for destruction was identical to that set forth above, and again, staff members of the National Archives evaluated the disposal request and noted that field office investigative files ". . . appear to contain nothing of lasting value not preserved in the corresponding case files kept at headquarters in Washington" (see Attachment A, Exhibit II-2). It is noted that this disposal schedule did not contain any standard retention period for field office investigative files and hence, under this schedule, the FBI was authorized to destroy field office investigative records at the time of the closing of the case.

(8) While authority to destroy all field office investigative files at the time they were closed was obtained by the FBI, this authority was not completely delegated to the field offices since they need to maintain certain files for investigative reference. Prior to 1974, field offices retained files for 25, and later 20, years. It should also be noted that field offices during this period of time were routinely destroying duplicate material located in files as such duplicate material is not considered record material according to the definition of record set forth in Title 44, Chapter 33, Section 3301, of the U.S.C. In November, 1974, all field offices were delegated authority to destroy files that were closed over 10 years; however, on January 29, 1975, at the request of Congressional Leaders involved in the Proposed Investigation and Study of Government Operations With Respect to Intelligence Activities, all field office destruction of records was halted (see Attachment B).

(9) On March 4, 1976, the FBI amended its schedule for destruction of field office investigative files. The revisions resulted from a change in investigative reporting requirements under which field offices were advised to forward only data of substance to FBI Headquarters. The revised schedule provided a retention period for field office investigative files of "10 years after date of case closing or when administrative needs have been met, whichever is earlier." NARS approved this schedule after determining that the change in reporting requirements did not necessitate a change in the retention standard for the files. Based on the disposal authority provided by this schedule, the FBI established a retention period of six months after close of case for investigative files maintained by auxiliary offices. Auxiliary office files are transitory files relating to the coverage of individual leads in an investigation, the results of which are forwarded to the office controlling the case (i.e., the "office of origin").

(10) The above-described revised schedule was submitted to NARS during the period when field office destruction was at a standstill based on the request of Congressional Leaders involved in the Investigation and Study of Government Operations With Respect to Intelligence Activities. However, the FBI was advised in April of 1976, that the revised schedule had been approved, subject of course, to the moratorium placed on destruction by Congress (see Attachment C).

(11) On March 24, 1976, the FBI was advised by Congress that the request for halting destruction was being rescinded and that the Bureau could resume its routine records disposal program. This was based on the understanding that the files involved in the destruction program do not relate to security and intelligence matters. Based on the above, the field offices were advised on April 27, 1976, that the moratorium on file destruction had been lifted and that the field office file destruction program should

be resumed. However, specifically excluded from destruction were documents relating to matters involved in litigation and matters relating to domestic intelligence; extremist; racial; and foreign counterintelligence, including duplicate copies of this material.

(12) On September 27, 1976, the Attorney General approved resuming the destruction of duplicate material as such material is not considered record material according to the definition of record set forth in Title 44, Chapter 33, Section 3301, of the U.S.C. On October 7, 1976, field offices were advised to resume destruction of duplicate material; however, field offices were advised that should any material of this nature contain pertinent action statements placed on a particular copy that is not also on the original copy, the copy should be retained (see Attachment D).

(13) On August 15, 1977, field offices were advised that the moratorium on destruction of security-type investigative field office files had been lifted and that the file destruction program should be resumed. However, based on instructions from the Attorney General, it was emphasized to the field offices that all records in litigation and those records which the Select Committee on Assassinations had asked to be retained must be preserved (see Attachment E).

(14) On August 31, 1977, NARS approved a second schedule for disposal of field office investigative files reducing criminal matters only to "5 years after date of case closing or when administrative needs have been met, whichever is earlier" (see Attachment F).

(15) On January 16, 1978 (approximately 5 months after destruction of security-type files had resumed in field offices), destruction of all security-related field office files was again halted as the result of responding to the discovery order in the Kearney case and in anticipation of discovery in the Gray, Felt and Miller cases. This moratorium on destruction of security-type cases is still in effect (see Attachment G).

(16) In December of 1978, NARS issued a report as the result of a study of the disposition of FBI field office investigative files. The purpose of the study was to determine, through a review of the current disposition schedule and its application, whether revision to alter the schedule or procedures was necessary. This study was initiated through an exchange of correspondence in March of 1978 between James B. Rhoads, Archivist of the United States, and William H. Webster, Director of the FBI. NARS undertook the study because of its responsibility for oversight of records management practices in Federal agencies and its concern over the appearance of a number of newspaper and magazine articles critical of the current records disposal schedule for FBI field office investigative files.

(17) The in-depth study conducted by NARS focused on three related issues: (1) application of current disposal authority for field office investigative files, (2) reporting requirements and the FBI Central Records System and, (3) a comparison of Headquarters and field office investigative files. In its report, NARS issued the following general conclusions:

1. The FBI program for disposition of field office investigative files conforms fully with the disposition instructions approved by NARS. However, NARS has recommended that the FBI revise the wording of its approved disposition instructions to (a) define more clearly the retention periods actually in effect for disposal of field office files and (b) document more fully that the disposal of field office files is governed by the expiration of fixed retention periods. The FBI has accepted this recommendation and has submitted for NARS approval revised disposition instructions for field office investigative files.

2. Although FBI reporting procedures vary according to type of investigation, the procedures do provide for submission of full accounts of field office actions in substantive investigations. Moreover, those matters that are not reported to headquarters are so ephemeral and lacking in substance that it does not seem possible for them to meet the criteria set forth for designating investigative cases for permanent retention by the Federal Government.

3. On the basis of an examination of the records, FBI field office investigative files do not have sufficient historical or other research value to warrant permanent retention. This judgment is based on two major considerations: (a) the headquarters case files contain a more complete account of substantive investigations than the scattered and fragmentary field office files and (b) the headquarters case files contain field office accounts summarizing significant aspects of such investigations. Therefore, no change need be made in the current standard for temporary retention of field office investigative files. (See Attachment A).

(18) Based on the general conclusions set forth above, the FBI submitted to NARS an amendment to previous requests for disposal of records. This amendment was submitted to insure that field office destruction authority was commensurate with current field office procedures and further, to permit the retention of record material beyond a designated time period if needed for investigative reference. This amendment was approved by NARS on February 27, 1979, and as this is the destruction program currently in use by FBI field divisions, a summary is set forth as follows:

- (A) Files of Office of Origin (the office that controls an investigation). This pertains only to field office files where investigation has been reported to headquarters.
 - (1) Security and applicant files are destroyed 10 years after date of case closing or when administrative needs have been met, whichever is later.
 - (2) Criminal files are destroyed 5 years after date of case closing or when administrative needs have been met, whichever is later.
- (B) Files of Auxiliary Offices (Supporting or lead Offices). Files are destroyed 6 months after date of case closing or when administrative needs have been met, whichever is later.
- (C) Cases not Reported to Headquarters. These are cases where there was no prosecutive action taken; perpetrators of violations were not developed during the investigation (Unknown Subject cases); or where investigation revealed that allegations were unsubstantiated or not within the investigative jurisdiction of the FBI.

- (1) Security and applicant files are destroyed 10 years after date of case closing or when administrative needs have been met, whichever is later.
- (2) Criminal files are destroyed 5 years after date of case closing or when administrative needs have been met, whichever is later. (See Attachment H).

(19) It is noted that while the above file destruction program is presently in effect for field office investigative records, the portions dealing with the destruction of security-type files are not being implemented due to the moratorium on destruction of security-type investigative files imposed on January 16, 1978, as the result of the discovery order in the Kearney case and the expected discovery in the Gray, Felt and Miller cases. It is also noted that great care has been taken by the FBI to insure that files which are of interest to the Select Committee on Assassinations and files which are the subject of pending litigation are not destroyed. Additionally, field office files which become the subject of Freedom of Information and/or Privacy Act requests are identified at the time a valid request for access under the Act(s) is received so as to prevent destruction under the field office file destruction program.

DESTRUCTION OF RECORDS - Headquarters

(20) Records located at FBIHQ support the FBI's investigative and administrative needs and its obligation to act as a clearinghouse under Executive Order (E.O.) 10450 regarding the security of Government employees. Additionally, NARS, in connection with their Records Management Evaluation Program, established a Records Retention Plan for the FBI wherein they noted:

NARS plan for FBI

. . . . ordinarily the records of a Federal agency that are worthy of permanent retention amounts to a rather small percentage of a total volume of records generated. However, many of the records produced by the FBI relate to a number of controversial, if not important, aspects of history of the United States, particularly the role of the Federal Government in its relation to its citizens. Many years will pass before these records can be made available to the public for historical and other serious research. Nevertheless, the Archival value of these records will not decrease, nor will interest in them dissipate. (See Attachment I).

(21) While it may be established there may be certain categories of investigative records of substance that can be offered for destruction (by obtaining authority from NARS because they serve no continuing need), NARS may exercise their option to retain the records because of their future historical significance.

(22) In connection with the Records Retention Plan, NARS had previously placed an indefinite retention period on most of the basic violation categories. The destruction of the substance of any of this material has been prohibited. After it has been determined that files in the specific categories noted by NARS serve no continuing need, the Bureau will be obligated to offer them to NARS for permanent retention because of their historical value. This data, however, is always subject to reevaluation by NARS.

(A) Use of Federal Records Centers (FRC)

(23) While the FRC have not been utilized as a repository for investigative files, the FBI has forwarded material to the FRC which has been administrative in nature and applies only to payroll and voucher material. The only exception has been a court order placing certain documents from personnel files under seal in a National Personnel Records Center.

(24) Because of FBI obligation to disseminate pertinent data to other agencies in connection with E.O. 10450 or other "need-to-know" basis, these agencies have in turn deposited these records with NARS. However, in accordance with Title 41 of the C.F.R., no one else can have access to these records without the originating agency's approval until a restriction period determined by the agency and NARS has expired.

(B) Records Forwarded to NARS Because of their Historical Value

(25) The only FBI records that have been accessioned by NARS for their historical value which did not serve a continuing need for the FBI are those records created prior to 1924. They were referred to as the Old German, Bureau Section, Mexican and Miscellaneous files. The remaining records are administrative in nature.

(C) Court Order

(26) Records are also destroyed, returned to source or forwarded to the National Archives as a result of Court Orders. Based on the above, destruction of Headquarters files has been limited to certain nonessential records. Following is a discussion of file destruction programs authorized by NARS. On June 24, 1952, the FBI requested authority to destroy reports, letters, and related correspondence pertaining to investigations made by Special Agents of the FBI of violations of criminal statutes when these investigations had been closed and in an inactive status for 10 or more years and when they had been microfilmed and deemed to be adequate substitutes for the paper records. Authority was granted for this destruction program by the National Archives on July 9, 1952, after the Joint Committee on the Disposition of Executive Papers approved the request for disposal on June 26, 1952. As of January, 1975, the FBI had microfilmed over 1,700,000 files and destroyed the original material. At the present time, files subject to this destruction

program are not being destroyed. This program has been halted as the FBI presently has a new destruction program pending with NARS which is broader than the above-described program. Hence, the FBI is awaiting authority under the new program rather than continue the burdensome microfilming process. The new program pending with NARS will be discussed infra. (See Attachment J)

(27) On July 19, 1957, the FBI requested authority to destroy files, index cards, and related material more than 10 years old maintained at FBI Headquarters covering investigations performed under the Interstate Transportation of Stolen Motor Vehicle Act, in which there was no prosecution. Authority was granted for this destruction program by the National Archives on August 23, 1957, after the Joint Committee on the Disposition of Executive Papers approved the request on August 21, 1957. The FBI is not presently destroying records under this schedule. Additionally, these files are no longer growing as field divisions no longer report this type of activity to Headquarters. (See Attachment K)

(28) On November 23, 1959, the FBI requested authority to destroy files, index cards, and related material maintained at Headquarters over 10 years old covering investigations performed under the Selective Service Act of 1940 and the Selective Service Act of 1948 in which investigation disclosed that the delinquency was not willful or no aggravated circumstances involved and no prosecutive action taken. On January 19, 1960, the National Archives granted authority for this destruction program after the Joint Committee on the Disposition of Executive Papers approved the request on January 18, 1960. The FBI is not presently destroying under this schedule. (See Attachment L)

(29) On May 20, 1970, the FBI requested authority to destroy Passport and Visa Matter files, index cards and abstracts over 10 years old containing no derogatory information; concerning which no investigation was conducted by the FBI and information contained in these files is available at the U.S. Department of

State or the Immigration and Naturalization Service. On June 23, 1970, the National Archives granted authority for this destruction program. The FBI is not presently destroying records pursuant to this destruction program. (See Attachment M)

(30) On October 13, 1970, the FBI requested authority to destroy the following:

(a) Copies of reports of loyalty investigations of aliens employed in National Defense Plants during the period 1942-1945.

(b) Fingerprint cards and corresponding index cards of German, Italian, and Japanese prisoners of war, during World War II, who were subsequently repatriated.

(c) Files containing information secured in South America during World War II which no longer have intelligence or other value.

(d) Reports, letters, and related communications which are maintained at headquarters, pertaining to cases in which there was no criminal prosecution because identities of perpetrators of violations were not developed during the investigation.

On November 12, 1970, NARS authorized the above described records destruction program except that the items listed in (d) were not to be destroyed until completion of the investigation. The items listed in (a), (b) and (c) were nonexpanding records and they have been destroyed. The records listed in (d) which are "unknown subject" cases were destroyed by the FBI when 5 years old. There is no present destruction being carried out under the above destruction program. (See Attachment N)

(31) On May 4, 1973, the FBI requested authority to destroy the following:

(a) Files, index cards and related material over 25 years old maintained at FBIHQ pertaining to unfounded allegations of subversive activities.

(b) Files, index cards and related material, over 15 years old, maintained at FBIHQ relating to laboratory examinations requested by various local, state and federal law enforcement organizations in cases other than FBI cases wherein positive identification was not effected.

On May 11, 1973, NARS authorized the above described records destruction program. No destruction is currently taking place as to subsection (a) above because it is anticipated that the proposed disposal schedule, discussed infra, would authorize broader disposal authority for this record series. Destruction under subsection (b) above has been carried out, and will continue to be carried out as the described files become older than 15 years. (See Attachment O)

(32) On May 26, 1976, the FBI requested authority from NARS to destroy the following FBI Headquarters files:

(a) Attachments, enclosures and exhibits to investigative files, whose contents date from the early 20th Century and include literature, original evidence, photographs, latent fingerprints, and other miscellaneous items when 20 years old or when administrative needs have been met, whichever is earlier.

(b) Miscellaneous publications, the contents of which date from the late 19th Century and no longer serve a reference purpose. To be destroyed when 20 years old or when administrative needs have been met, whichever is earlier.

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On June 10, 1976, NARS approved the above destruction program. However, the security-related items listed in subsection (a) are not being destroyed because of the moratorium on security-type file destruction which has been in effect since January 16, 1978. The items listed in subsection (b) were, with NARS' knowledge, turned over to the Library of Congress instead of being destroyed. It is noted that the moratoriums placed on file destruction and discussed supra, equally apply to both FBIHQ and field office files. (See Attachment P)

(33) Approximately 70 separate requests have been made to NARS to authorize destruction of particular files on individuals pursuant to the Privacy Act of 1974. (Attachment Q is one example of this type of request.)

(34) Additionally, it should be noted that a variety of records (noninvestigative) are destroyed after a specified time in accordance with the General Records Schedules provided by NARS and applicable to all Federal agencies. Records which fall into this category are generally administrative in nature. While General Records Schedules were for many years only suggested destruction guidelines, they are now mandatory. Again, it is noted that FBI Headquarters investigative files are not controlled by these General Records Schedules and authority for destruction of investigative files must be based on a specific request from the FBI and approved by NARS.

(35) It should also be noted that in accordance with Title 41, C.F.R., 101-11.102-1, the FBI is in the process of reevaluating its Records Management Program particularly as it relates to the disposition of records. Representatives from NARS have been consulted and indicated it would be desirable to revise the Records Retention Plan to facilitate, on a broader basis, the disposal of records no longer timely and relevant to FBI needs. As a result, the FBI and NARS have established general guidelines for the permanent retention of those records that have a historical and enduring value and to identify and destroy those records that are obsolete. Generally, for FBI Headquarters, the retention period will be (a) 10 years for criminal files and (b) 30 years for applicant and security-related files. (Attachment R is a copy of the FBI's pending request for disposition authorization for Headquarters records.)

(36) It is noted that the above described pending request for authorization to destroy Headquarters files was received by NARS on May 10, 1977. While NARS approved the destruction program, it invoked Title 44, U.S.C., Section 3303a(c), which allows for Congressional review before final approval. The proposed destruction program has been in Congress up to the present time and hence, NARS is reluctant to give final approval until such time as the Congress makes its feelings known on the subject.

Paul L. Andrews

PAUL L. ANDREWS
Special Agent
Federal Bureau of Investigation
Washington, D.C.

Subscribed and Sworn to before me this 10th day
of August, 1979.

Ann Lee Balassa
Notary Public

My Commission Expires 4-30-83.