

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 75-1996
 :
 U.S. DEPARTMENT OF JUSTICE, :
 :
 Defendant. :

MEMORANDUM IN OPPOSITION TO PLAINTIFF'S
MOTIONS TO COMPEL RELEASE OF (1) "WITHHELD"
FBI LAB TICKLER MATERIALS AND OF (2) NEUTRON
ACTIVATION AND SPECTROGRAPHIC MATERIALS

In motions filed on December 24 and December 29, 1980, plaintiff has requested this Court to compel the Department of Justice to release documents that are either not relevant to this case, not in existence, or already in plaintiff's possession. By filing these motions, plaintiff has once again ignored this Court's finding of February 26, 1980 "that [a] proper and good faith search has been made [by the FBI] for all items responsive to plaintiff's request."

In the motion to compel the release of "Withheld FBI Lab Tickler Materials," plaintiff requests the release of three documents that the FBI has stated have nothing to do with plaintiff's FOIA request or Martin Luther King in any manner whatsoever. According to the letter from the FBI attached to plaintiff's motion, the copies were merely misfiled in the tickler file of an individual FBI employee. The documents are available for in camera inspection to prove to the Court that they are not relevant to Mr. Weisberg's interests. However, since the FBI has categorically stated that the documents deal with matters of no concern to this case, such a review should be unnecessary.

Plaintiff's second motion requests this Court to compel the release of "neutron activation and spectrographic materials" to Mr. Weisberg. This matter was discussed exhaustively in the deposition of FBI Special Agent John Kilty on October 12, 1979.

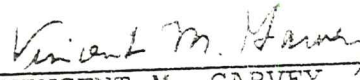
On pages 20 through 25 of that deposition, Mr. Kilty was asked about both neutron activation and spectrographic materials. As to neutron activation documents, he testified that these documents had already been provided to Mr. Weisberg (p. 22, 23), a recollection that is supported by a receipt for these documents signed by Harold Weisberg on March 23, 1976 (see Attachment A, item 8). The spectrographic plates, which are apparently the "spectrographic materials" referred to in his motion, do not exist, as indicated by a recent letter to Mr. Weisberg from the FBI (Attachment B). Although these plates have never been considered by the FBI to be part of plaintiff's Freedom of Information Act requests, they have been recently searched for to honor an informal promise by a Department of Justice employee to give copies of any plates that might be located to Mr. Weisberg. This search, as stated in Attachment B, has not resulted in the locating of any spectrographic plates.

Mr. Weisberg's most recent motions serve to demonstrate once again the propriety of this Court's 10-month-old order regarding "scope of search." These motions also fail to provide any basis for denial of defendant's pending motion for summary judgment.

Respectfully submitted,

ALICE DANIEL
Assistant Attorney General

CHARLES F.C. RUFF
United States Attorney


VINCENT M. GARVEY


WILLIAM G. COLE

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HAROLD WEISBERG,

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v.

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Civil Action No. 75-1996

ORDER

Upon review of plaintiff's motions to compel release of (1) "withheld" FBI lab tickler materials, and (2) neutron activation and spectrographic materials, and defendant's memorandum in opposition, it is hereby

ORDERED that plaintiff's motion is DENIED.

Date:

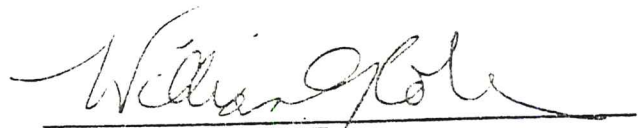
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum In Opposition To Plaintiff's Motions To Compel Release Of (1) "Withheld" FBI Lab Tickler Materials and of (2) Neutron Activation and Sepctrographic Materials was served by mailing a true copy, United States Mail first class postage prepaid to:

Mr. James H. Lesar
2101 L Street, N.W.
Suite 203
Washington, D.C. 20037

this 6th day of January, 1981.


WILLIAM G. COLE

On March 23, 1976, I Harold Weisberg received from Special Agent Thomas L. Wiseman of the Federal Bureau of Investigation (FBI) excised copies of the following documents:

(1) One-page memorandum from Atlanta to Director, FBI, Attention: FBI Laboratory dated May 8, 1968, captioned Murkin.

(2) One-page document to Director from Atlanta dated May 15, 1968 referencing Atlanta letter to Bureau dated May 8, 1968.

(3) Two-page FBI Laboratory report dated May 22, 1968, captioned Murkin to Atlanta.

(4) Two-page teletype dated April 5, 1968, to Director and Memphis from Birmingham captioned Assassination of Martin Luther King, Jr.

(5) Four-page FBI Laboratory report dated April 10, 1968, to Birmingham captioned Murkin.

(6) Three-pages of a four-page airtel from Legat, London to Director.

(7) Five-pages of FBI Laboratory report captioned Murkin to Memphis dated July 1, 1968.

(8) Nine pages of raw data calculations used in neutron activation results compiled in FBI Laboratory report dated April 29, 1968.

Specialty

ATTACHMENT A



I, Thomas L. Wiseman received on March 23, 1976,
a personal check from Harold Weisberg in the amount of
\$141.00 for non routine searches conducted and a personal
check in the amount of \$4.50 for reproduction charges
incurred regarding his Freedom of Information Act request
for copies of documents contained on the Murkin file.

Thomas L. Wiseman *HW*
~~*Harold Weisberg*~~ *HW*



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

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

Dear Mr. Weisberg:

Reference is made to your letter dated November 15, 1980, from your Attorney, Mr. Lesar, to Mr. William G. Cole, Civil Division, Department of Justice, wherein you requested in part spectrographic plates concerning the murder of Dr. Martin Luther King, Jr., noting that these plates were previously promised to you by the Department of Justice, Office of Privacy and Information Appeals (OPIA).

Please be advised that an extensive search for these materials was conducted when we became aware of the offer by OPIA to you of the plates. This search turned up no plates relative to the King case. We shall keep your request on file should such plates be located in the near future.

Sincerely yours,

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

1 - Assistant Attorney General
Civil Division
Attention: William G. Cole, Esq.

ATTACHMENT B