

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN)	
)	
Plaintiff)	
)	
v.)	Civil Action No.
)	81-1206
FEDERAL BUREAU OF INVESTIGATION, et al.,)	
)	
Defendants)	
<hr/>		

AFFIDAVIT

I, John N. Phillips, being duly sworn, depose and say as follows:

(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. This affidavit was prepared in connection with defendants' response to plaintiff's motion for waiver of all search fees and copying costs. The statements made herein are based upon my familiarity with the procedures followed by the FBI in processing requests for information received pursuant to the Freedom of Information Act (FOIA) and upon information furnished to me by other individuals in the FBI.

(2) The following correspondence has been exchanged between plaintiff and the defendants in this case:

Attachment 1

(A) By letter dated December 12, 1980, plaintiff requested "all correspondence or any records of any communication between the U.S. House Select Committee on Assassinations and the Federal Bureau of Investigation relating to the Select Committee's investigation into the assassination of President John F. Kennedy." Plaintiff also requested a fee waiver for all search and copying fees. (A copy of this letter is attached hereto as Exhibit A.)

(B) By letter from Mr. Thomas H. Bresson, former Chief of the FBI's FOIPA Section at FBIHQ, dated January 30, 1981, plaintiff was advised that a determination on his fee waiver request was being held in abeyance pending a determination as to whether Congress maintained control over the documents responsive to plaintiff's FOIA request. (A copy of this letter is attached hereto as Exhibit B.)

(C) By letter dated March 13, 1981, plaintiff was advised that the FBI was in receipt of letters from the U.S. House of Representatives dated March 26, 1979 and March 2, 1981, indicating the Congressional viewpoint that material responsive to plaintiff's FOIA request could not be released. (A copy of this letter is attached hereto as Exhibit C. Also attached are the two congressional letters referred to in the letter.)

(D) By letter dated March 19, 1981, to the Office of Privacy and Information Appeals (OPIA), Department of Justice (DOJ), plaintiff appealed the determination of the FBI to deny the records requested in his December 12, 1980, request. (A copy of this letter is attached hereto as Exhibit D.)

(E) By letter dated April 1, 1981, from OPIA, DOJ, plaintiff was advised of the backlog of appeals and that he would be advised of the Associate Attorney General's decision concerning his appeal. (A copy of this letter is attached hereto as Exhibit E.)

(F) By letter dated April 6, 1981, to the FBI, plaintiff requested all records relating to the investigation of the HSCA into the assassination of President John F. Kennedy not covered by his FOIA request dated December 12, 1980. Plaintiff also requested a waiver of all copying and search fees. (A copy of this letter is attached hereto as Exhibit F.)

(G) By letter to plaintiff dated April 13, 1981, we reiterated our position that the requested material was exempt from disclosure pursuant to Title 5, United States Code, Section 551 (1)(A) (1976). (A copy of this letter is attached hereto as Exhibit G.)

(H) By letter dated April 15, 1981, to the Associate Attorney General, plaintiff appealed the denial contained in the FBI's letter of April 13, 1981. (A copy of this letter is attached hereto as Exhibit H.)

(I) By letter dated April 28, 1981, from OPIA, DOJ, plaintiff was advised of the backlog of appeals and that he would be notified of the Associate Attorney General's decisions concerning his appeal. (A copy of this letter is attached hereto as Exhibit I.)

(J) By letter dated December 31, 1981, plaintiff was advised that his request for a fee waiver for search and copying costs was denied. (A copy of this letter is attached hereto as Exhibit J.)

(3) Because of the FBI's initial determination that the records involved here were congressional records, it held plaintiff's fee waiver request in abeyance. Since it is now processing many of the records as "agency records", it became appropriate to consider plaintiff's fee waiver request. Such consideration required an inventory of the records involved. (See paragraph 4, infra.)

(4) Due to the stringent time constraints placed on the FBI, only a cursory examination has been made of all the material requested by plaintiff. This examination involved two experienced Miscellaneous Documents Examiners who are familiar with the Kennedy assassination investigation. They spent approximately 160 hours over the past two weeks inventorying the documents involved. This inventory mainly involved determining the subject of the files involved, the approximate dates the cases were opened and closed, the approximate number of pages in each case file and if the material in a file was related to the Kennedy assassination. Based upon that inventory, it was determined that the following general categories and records encompass the material requested in this case:

(A) Organized Crime - These investigations, in all instances, were started because of suspected involvement by individuals in organized crime type activities unrelated to the Kennedy assassination investigation. In most cases these investigations were opened before or years after the assassination. A very limited number were opened in close proximity in time to the date of the Kennedy assassination. However, they were not opened because of the assassination. There are approximately 139 cases in this category totaling approximately 138,500 pages.

(B) Foreign Counter Intelligence - These investigations are opened based on allegations that the individual or organization was involved in activities inimical to the national security of the United States with the support of individuals, organizations or governments of other countries. In all cases except one, these investigations were opened prior to the assassination. The one exception was opened three years after the assassination. None of these 13 cases, consisting of approximately 2600 pages, were opened in response to the assassination investigation.

(C) Internal Security - These investigations are opened based on allegations that the individual or organization, who may or may not have the support of individuals, organizations or governments of other countries, was involved in activities inimical to the national security of the United States. There are approximately 190 different cases totaling approximately 63,000 pages in this cate-

gory. In most cases in this category the case was opened before or long after the assassination. In a few instances the case was opened near the date of the assassination, however, they are unrelated to the assassination investigation.

(D) Other Criminal - This category includes all types of files which could not be placed in one of the above categories; i.e., Interstate Transportation of Stolen Property and Civil Rights. Most of these 131 cases were opened prior to or after the date of the assassination. However, none of these cases, including those opened in close proximity to the date of the assassination, are related to the assassination of President Kennedy. There are approximately 34,000 pages in this category.

(E) Administrative Records - This category of material includes ticklers of correspondence with the House Select Committee on Assassination (HSCA), news clippings, personnel matters, classification addenda and other purely administrative material. This material totals approximately 7200 pages.

(F) Correspondence file concerning the HSCA - This 25 volume files consists of letters to and from the HSCA, letters to and from FBI field offices and other agencies and internal FBI memoranda. This file consists of approximately 6300 pages.

(G) John F. Kennedy Assassination Investigation - This material, totaling approximately 100,000 pages, has been previously processed and is in the public domain. Plaintiff has reviewed this material as stated in his affidavit.

(H) Special File Room - One file cabinet containing copies of sensitive classified and informant documents prepared for the review of the HSCA, is maintained in the Special File Room, Records Management Division. The Special File Room's purpose is to limit access to very sensitive investigatory, informant and/or highly classified documents in a very secure area. Only certain personnel, with appropriate security clearances and need to know, are authorized admittance to the Special File Room.

A limited review of this material was conducted and the following is a description of its contents using the previously outlined categories. Included in this is one subject in the FCI category consisting of approximately 600 pages, a limited portion of which is related to the Kennedy assassination, four subjects in the Internal Security category consisting of approximately 235 pages, a limited portion of which is related to the Kennedy assassination, and three subjects in the Miscellaneous category consisting of approximately 704 pages, none of which is related to the assassination. None of these files were opened as a result of the assassination. Also, there are 15 cassette tape recordings and 31 - 7 inch tape reels which were made by the FBI of the television hearings of the HSCA on the John F. Kennedy assassination.

(5) The HSCA reviewed the material described in paragraph 4 supra, spending approximately five million dollars. At the conclusion of their investigation the HSCA published a 260 page report with 12 volumes of exhibits in which they included everything which could be deemed as relating to the assassination on President Kennedy. (House Report No. 95-1828, 95th Congress, 2nd Session, 1979)

(6) Duplication charges alone could be as high as \$30,000 to process all these records.

(7) Because of the FBI's initial position, based upon requests from Congress (see attachments to Exhibit C), that all of the records involved in this case were congressional records, there was no necessity to consider plaintiff's fee waiver request. Plaintiff was informed that his fee waiver request was being held in abeyance until the status of the responsive documents was determined (see Exhibits B, C, & E). When it was decided on December 7, 1981, that many of the responsive documents are agency records, the plaintiff's fee waiver request was reopened and considered by the FBI's Fee Waiver Committee. The factors considered by the fee waiver committee included the nature of the information requested; the purpose for which the information is sought; the size of the public to be benefited; the likelihood that some tangible public good will be realized as a result of this release; whether disclosure

is timely with regard to a matter of current public interest; its relevance to important legal, social or political issues; and whether the material is personal in nature or will serve only the private interests of the requester. After considering these factors and in light of the material described previously the fee waiver committee determined that a fee waiver was not applicable. Plaintiff was informed of this decision in a letter dated December 31, 1981, a copy of which is attached as Exhibit J.

(8) Plaintiff states that Mr. Harold Weisberg received a court ordered fee waiver for the material he obtained pertaining to the assassination of President Kennedy. The court, in *Harold Weisberg v. Griffin Bell*, Civil Action Number 77-2155 ordered that Mr. Weisberg be given a fee waiver for all Kennedy assassination materials released to him on January 17, 1978. Shortly after issuance of the Court ordered fee waiver, the Department of Justice expanded the fee waiver to include records "compiled pursuant to the investigations of the assassinations of President Kennedy and Dr. King", regardless of when released.

(9) Mr. Weisberg made a request similar to plaintiff's request on December 4, 1979. Pursuant to review of this request, the Associate Attorney General concluded, after reviewing memorandums from David G. Flanders, Alice Daniel and Quinlan J. Shea, Jr., that the expanded fee waiver of Mr. Weisberg should be terminated.

Thus, the documents described in paragraph (4) (G) supra have already been the subject of a fee waiver request, which was granted, and have been released to the recipient of the fee waiver (Mr. Weisberg); while the materials described in paragraph (4) supra other than those noted in paragraph (4) (G) supra have been the subject of a previous fee waiver denial by the DOJ.

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

Subscribed and sworn to before me this 12th day of January, 1982.

Lee Ann Wolostaghi
Notary Public

My Commission expires April 30, 1984.

WASHINGTON, D.C. 20535
December 12, 1980

Mr. Thomas Bresson
FOIA/PA Branch
Records Management Division
Federal Bureau of Investigation
Washington, D.C. 20535

Dear Mr. Bresson:

This is a request under the Freedom of Information Act, 5 U.S.C. 8552. Please furnish me all correspondence or any records of any communications between the U.S. House Select Committee on Assassinations and the Federal Bureau of Investigation relating to the Select Committee's investigation into the assassination of President John F. Kennedy.

I am requesting these records as part of a program of scholarly research into the work of the Assassinations Committee. As you may be aware, the performance and cooperation of the Bureau in this probe and previous investigations into the murder of President Kennedy has been a subject of considerable discussion throughout the years. For this reason I believe the public would be significantly benefited by the release of the requested records, which would clarify the Bureau's role in what may be the final official inquiry into the J.F.K. assassination. Accordingly, I request that all search and copying fees be waived as provided for in the Act.

If you do not make an initial determination to waive fees and costs, please furnish me with an estimate of the number of records involved and

EXHIBIT A

the cost of a thorough search, as provided in your published regulations.

Sincerely,

Mark A. Allen

Mark A. Allen

A

JAN 30 1981

Mr. Mark A. Allen
Post Office Box 9032
Washington, D. C. 20003

Dear Mr. Allen:

This is in response to your Freedom of Information-
Privacy Acts (FOIPA) request dated December 12, 1980, for
correspondence with the House Select Committee on Assassination
(HSCA) concerning the assassination of President Kennedy.

After reviewing the file concerning the HSCA it
was determined that Congress may retain control of the requested
documents. We are currently in the process of determining if
in fact they do maintain control and for this reason the fee
waiver determination is being held in abeyance.

You will be advised when a determination has been made
on the above matters.

Sincerely yours,

15)
Thomas H. Bresson, Chief
Freedom of Information-
Privacy Acts Branch
Records Management Division

EXHIBIT B

MAR 18 1981

Mr. Mark A. Allen
Post Office Box 9032
Washington, D. C. 20003

Dear Mr. Allen:

This is in further response to your Freedom of Information-Privacy Acts (FOIPA) request dated December 12, 1980, for "records of any communications between the House Select Committee on Assassinations and the FBI."

By letter dated March 26, 1979, to Honorable Griffin Bell from Congressman Stokes we were requested not to disclose this material.

By letter dated March 2, 1981, from the Office of the Clerk, U. S. House of Representatives, we were advised, again, that this material cannot be released pursuant to Title 5, United States Code, Section 551 (1) (A) (1976).

If you so desire, you may appeal to the Associate Attorney General from any denial contained herein. Appeals should be directed in writing to the Associate Attorney General (Attention: Office of Privacy and Information Appeals), United States Department of Justice, Washington, D. C. 20530, within thirty days from receipt of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

Sincerely yours,

KH
James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

EXHIBIT C

U.S. House of Representatives, D.C.
Franklin D. Roosevelt Hall, Capitol
Washington, D.C. 20540
Charles E. Goodstein
Chief of Staff
Office of the Clerk
U.S. House of Representatives, D.C.
Franklin D. Roosevelt Hall, Capitol
Washington, D.C. 20540
David L. ...

(202) 225-4444

Select Committee on Assassinations
U.S. House of Representatives
500 HOUSE OFFICE BUILDING, ANNEX B
WASHINGTON, D.C. 20513

March 26, 1979

The Honorable Griffin B. Bell
Attorney General of the U. S.
Department of Justice
Washington, D. C. 20530

Dear Mr. Attorney General:

As you are aware, H. Res. 222, as passed by the House of Representatives on February 2, 1977, authorized the Select Committee on Assassinations to investigate the deaths of Dr. Martin Luther King, Jr. and President John F. Kennedy. The Committee's work is now drawing to an end. I write this letter to draw to your attention a matter that I recognize will inevitably come up in the future.

A great deal of material has been generated by your Department in response to specific requests or concerns of the Select Committee. In addition, your Department is in physical custody of a variety of materials originating from the Select Committee. It can be anticipated that your Department will receive requests under the Freedom of Information Act for access to these materials. The purpose of this letter is to request specifically that this Congressional material and related information in a form connected to the Committee not be disclosed outside your Department without the written concurrence of the House of Representatives.

Sincerely,

LOUIS STOKES
Chairman

LS:dm
cc: Robert L. Keuch

C

Office of the Clerk
U.S. House of Representatives
Washington, D.C. 20515

March 2, 1981

Honorable William H. Webster
Federal Bureau of Investigation
J. Edgar Hoover Building
Washington, D.C. 20535

Dear Mr. Webster:

I am writing to you concerning a subject of considerable concern to me as the legislative branch officer charged with maintaining and preserving non-current House documents and records under the rules and precedents of the House of Representatives. Specifically, I call your attention to requests filed with the Bureau under the Freedom of Information Act for correspondence, records or any communications between the Bureau and the former House Select Committee on Assassinations ("HSCA").

By letter dated March 26, 1979 to the Honorable Griffin Bell, former Chairman Stokes specifically identified the problem which would result from requests under the Freedom of Information Act for material generated by the Bureau in response to specific requests by HSCA during its investigation. That letter requested that "this congressional material and related information in a form connected to the Committee not be disclosed outside your Department."

My purpose in writing is to reaffirm the congressional intent expressed by Chairman Stokes at the conclusion of HSCA's work in my capacity as archival and custodial agent for the House of HSCA's records. In this connection, my General Counsel has generally reviewed the congressional materials and has determined that none of the congressional materials can be released consistent with the letter from Chairman Stokes asserting the exemption for Congress under 5 U.S.C. §551(1)(A)(1976). This is our position notwithstanding the recent decision of a panel of the United States

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Court of Appeals in Holy Spirit Association For The Unification of World Christianity v. Central Intelligence Agency, Nos. 79-2143, 2202 (D.C. Cir. Dec. 23, 1980), petition for rehearing filed, (Jan. 21, 1981). We strongly believe that Chairman Stoke's letter, together with our reaffirmation by this letter, comes squarely within the standards articulated in the Holy Spirit case, because they predate both the request and any litigation which might arise therefrom, two factors cited by the panel in Holy Spirit as absent.

As constitutional officer of the House charged with preservation of House records, I cannot overemphasize the importance of maintaining the strictest confidentiality over records generated by the Bureau, as well as copies of congressional materials retained by the Bureau, in connection with HSCA. While I believe that these letters adequately serve to support the withholding of any of these documents under FOIA, I would appreciate being informed of any such requests. In this regard, please have appropriate personnel in the processing sections contact my General Counsel concerning requests for HSCA materials.

Sincerely

Edmund L. Henshaw, Jr.

EDMUND L. HENSHAW, JR., Clerk
U.S. House of Representatives

C

Washington, D.C. 20003
March, 1981

Office of Information and Privacy Appeals
U.S. Department of Justice
Washington, D.C.

Dear Sirs:

This is an administrative appeal under the Freedom of Information Act, 5 U.S.C. §552. I hereby appeal your determination of March 13, 1981 that the material requested in my letter of December 12, 1980 is not part of your agency's records. As you may recall, my request was for material relating to the investigation of the U.S. House Select Committee on Assassinations.

Your determination that all records relating to the Select Committee's investigation must be withheld is completely unacceptable. At the very least, correspondence originated by the Bureau and sent to the Select Committee should be provided. Furthermore, there is considerable doubt that even Congressional originated records can be withheld. Certainly the March 26, 1979 Stokes-Bell letter mentioned in your denial must be provided me before this matter can be resolved to my satisfaction.

I appeal in the hope of an amicable settlement in this matter. However, if you persist in denying me all of the documents I seek there will be no alternative but to file suit.

Thank you very much for your kind consideration in this matter.

Sincerely,

Mark A. Allen

Mark A. Allen

EXHIBIT D

Office of the Associate Attorney General

Washington, D.C. 20530

01 APR 1981

Mr. Mark Allen
P. O. Box 9032
Washington, D. C. 20003

Dear Allen:

This is to advise you that your administrative appeal to the Associate Attorney General from the action by the Federal Bureau of Investigation on your request for information from the files of the Department of Justice was received by this Office on March 20, 1981.

This Office has a substantial backlog of pending appeals received prior to yours and a shortage of attorneys. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals to Office Attorneys in the approximate order of receipt. Your appeal has been assigned number 81-0422. Please mention this number in any future correspondence with this Office concerning this specific appeal.

We will notify you of the decision of the Associate Attorney General on your appeal as soon as we can. The necessity of this delay is regretted and your continuing courtesy is appreciated.

Sincerely,

Janice Adams
Administrative Staff Assistant
Office of Privacy and Information
Appeals

EXHIBIT E

P.O. Box 9032
Washington, D.C. 20003
April 6, 1981

Mr. Thomas Bresson
FOIA/PA Branch
Records Management Division
Federal Bureau of Investigation
Washington, D.C. 20535

Dear Mr. Bresson:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552. Please furnish me all records relating to the investigation of the U.S. House Select Committee on Assassinations into the murder of President John F. Kennedy not covered by my FOIA request of December 12, 1980. My request specifically includes, but is not limited to, all internal agency memoranda, inter-agency memoranda, records of telephone conversations and all material generated by the U.S. House Select Committee on Assassinations which does not qualify as a congressional record under the standards set down in the Coland, Eyan and Holy Spirit cases.

For the reasons given in my letter of December 12, I hereby request that all copying and search fees be waived under the Act. In the alternative, I request that these records be made available for inspection and copying at your public reading room.

In the event of an initial decision not to waive costs, please first furnish me with an estimate of the number of records involved and the approximate cost of a thorough search. If you need any additional information or clarification, please contact me at 653-5147.

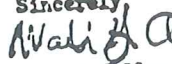
Sincerely,

Mark A. Allen

EXHIBIT F

APR 13 1981

Mr. Mark A. Allen
Post Office Box 9032
Washington, D. C. 20003

Dear Mr. Allen:

This is in response to your Freedom of Information-
Privacy Act (FOIA) request dated April 6, 1981, for "records
relating to the investigation of the U. S. House Select
Committee on Assassinations.....not covered by my FOIA request
of December 12, 1980."

In our letter to you dated March 13, 1981, we stated
that this material is not subject to the FOIA pursuant to Title 5,
United States Code, Section 551 (1) (A) (1976).

We again reiterate that no material can be released
which was generated in response to requests from the U. S. House
Select Committee on Assassinations pursuant to the above statute.

If you so desire, you may appeal to the Associate
Attorney General from any denial contained herein. Appeals
should be directed in writing to the Associate Attorney General
(Attention: Office of Privacy and Information Appeals), United
States Department of Justice, Washington, D. C. 20530, within
thirty days from receipt of this letter. The envelope and the
letter should be clearly marked "Freedom of Information Appeal"
or "Information Appeal." Please cite the Freedom of Information-
Privacy Acts (FOIPA) number assigned to your request so that it
may be easily identified.

Sincerely yours,

151

James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

EXHIBIT G

P. O. Box 9032
Washington, D.C. 20003
April 15, 1981

APR 17 1981

Associate Attorney General
United States Department of Justice
Washington, D.C. 20530

Dear Sir:

Reference is made to my Freedom of Information request of April 6, 1981 for FBI records relating to the investigation of the U.S. House Select Committee on Assassinations. By letter dated April 13, 1981, Mr. James K. Hall denied me these records, determining that this material was not subject to the Act.

I hereby appeal this determination. The court cases which I cited in my letter of request, Goland, Ryan and Holy Spirit, amply demonstrate that the material I seek cannot be considered congressional records.

Thank you very much for your kind attention in this matter.

Sincerely,

Mark Allen

Mark A. Allen

EXHIBIT H

Office of the Associate Attorney General

Washington, D.C. 20530

APR 20 1981

Mr. Mark A. Allen
P. O. Box 9032
Washington, D. C. 20003

Re: Assassinations Committee Records

Dear Mr. Allen:

This is to advise you that your administrative appeal to the Associate Attorney General from the action by the Federal Bureau of Investigation on your request for information from the files of the Department of Justice was received by this Office on April 17, 1981.

This Office has a substantial backlog of pending appeals received prior to yours and a shortage of attorneys. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals to Office Attorneys in the approximate order of receipt. Your appeal has been assigned number 81-0614. Please mention this number in any future correspondence with this Office concerning this specific appeal.

We will notify you of the decision of the Associate Attorney General on your appeal as soon as we can. The necessity of this delay is regretted and your continuing courtesy is appreciated.

Sincerely,

Janice Adams
Administrative Staff Assistant
Office of Privacy and Information
Appeals

EXHIBIT I

DEC 31 1981

Mr. Mark A. Allen
Post Office Box 9032
Washington, D. C. 20003

Dear Mr. Allen:

Reference is made to your Freedom of Information Act (FOIA) requests for material pertaining to the work of the House Select Committee on Assassinations and your request for a fee waiver for this material.

Your request for a waiver of fees has been considered in accordance with the provisions of Title 5, United States Code, Section 552 (a)(4)(A) which permits an agency to waive or reduce fees in the public interest when furnishing information is considered as primarily benefiting the general public. The principal question is whether release of the particular information which you have requested will result in primary benefit to the general public. We have concluded that it will not and, therefore, your request for a waiver of fees is denied. In reaching this decision, a number of factors were considered, including the nature of information requested; the purpose for which the information is sought; the size of the public to be benefited; the likelihood that some tangible public good will be realized as a result of this release; whether disclosure is timely with regard to a matter of current public interest; its relevance to important legal, social or political issues; and whether the material is personal in nature or will serve only the private interests of the requester.

If you disagree with the decision regarding fee waiver, or from any other denial contained herein, you may appeal. Appeals should be directed in writing to the Assistant Attorney General, Office of Legal Policy (Attention: Office of Information and Privacy), United States Department of Justice, Washington, D. C. 20530, within thirty days from receipt of this letter. The envelope

EXHIBIT J

Mr. Mark A. Allen

and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the Freedom of Information-Privacy Acts (FOIPA) number assigned to your request so that it may be easily identified.

Sincerely yours,

James K. Hall /gsp

James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

Office of the Associate Attorney General

Washington, D.C. 20530

April 21, 1980

MEMORANDUM TO: Alice Daniel
Assistant Attorney General
Civil Division

FROM: Nelson G. Dong
Deputy Associate Attorney General

SUBJECT: Termination of Fee Waiver in FOIA Request
to FBI by Harold Weisberg

John Shenefield has reviewed your memorandum of March 20, which concurred in the FBI's recommendation to terminate the fee waiver previously granted to Mr. Weisberg. He has also reviewed the memoranda submitted by Quin Shea to you and to Robert Saloschin on the same subject, plus the March 4 memorandum to Mr. Saloschin from David Flanders of the FBI.

On the basis of that review, Mr. Shenefield agrees with your conclusion and has asked me to tell you that the Department should cut off the fee waiver at the appropriate time. I assume that you or the FBI will take care to satisfy the procedural requirements, if any, under 28 C.F.R. § 16.9 and any other relevant regulations to ensure that the correct findings will be set forth and the proper notice given.

If there is anything else that needs to be done by this office, please let me know. Thank you.

cc: Robert L. Saloschin
Director, Office of Information
Law and Policy

Quinlan J. Shea, Jr.
Director, Office of Privacy
and Information Appeals

David G. Flanders, Chief
Freedom of Information-Privacy
Acts Branch
Records Management Division
Federal Bureau of Investigation

EXHIBIT K

Mr. Robert L. Saloschin
Director
Office of Information Law and Policy
David G. Flanders, Chief
Freedom of Information-Privacy Acts Branch
Records Management Division
Federal Bureau of Investigation

March 4, 1980

FREEDOM OF INFORMATION ACT REQUESTS OF MR. HAROLD WEISBERG

Mr. Harold Weisberg was one of the early requesters for records on the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr. After Mr. Weisberg had paid duplication fees and obtained a considerable amount of material from our Headquarters files on both the Kennedy and King cases, he obtained a court order (see Attachment A) giving him a fee waiver for the second large release being made of records from the Headquarters files on the Kennedy assassination. Primarily as a result of that order, by letter dated March 31, 1978 (see Attachment B), Director Guilford J. Shea, Jr., Office of Privacy and Information Appeals, granted Mr. Weisberg a fee waiver for "records of the Department of Justice compiled pursuant to the investigations of the assassinations of President Kennedy and Dr. King." That waiver included a refund of the amounts previously paid for duplication costs.

Since the granting of the waiver, we have completed processing and release of non-exempt records from the Headquarters main files on the Kennedy assassination (files on the assassination, on Lee Harvey Oswald and Jack Ruby, among others) and the King assassination (including files on related matters such as the Memphis Sanitation Workers strike), and from corresponding files in selected field offices. In addition to documents in those main files, we have, at Mr. Weisberg's request, searched for, located, and processed a folder of "clippings" (carbon copies) kept by our then Civil Rights Unit on the King assassination, as well as isolated documents he considered related to the assassinations which were copies of newspaper files. We are currently processing the special info maintained

- 1 - Mr. Mintz (Detached)
- 1 - Attn: J. J. Slicks
- 1 - Mr. Flanders (Detached)
- 1 - Mr. Bresson (Detached)

K

Mr. Robert L. Salochin

by our Dallas Field Office on its Kennedy assassination records for Mr. Weisberg, and have just received a court order in the King case to process the "abstracts" (summary cards maintained on each document) for every Headquarters document in the King assassination case for release to Mr. Weisberg. We are of the opinion that the Federal Bureau of Investigation (FBI) has, with this material, more than met any test of reasonableness which might be imposed on our search for records related to the Kennedy and King assassinations.

Mr. Weisberg does not agree, however, and within the past several months has considerably broadened his requests for records on both the Kennedy and King assassinations (see the two different requests comprising Attachment C). His requests include the estimated 700,000 pages of material which were compiled by the FBI for use in the recently concluded Congressional investigations of the two assassinations.

Partly because the Congress has exhaustively investigated the two assassinations and made a considerable body of additional information concerning them available to the public, and partly because, as stated previously, the FBI has more than met any test of reasonableness in its search for records related to the two assassinations, we are of the opinion that the public interest would not be served by making further records available to Mr. Weisberg at no charge. We propose, therefore, to complete the processing of materials described in the second paragraph of this letter on which processing has begun, including the special index from Dallas and the Headquarters abstracts on the King assassination, and release them to Mr. Weisberg at no charge. Any further requests, including those in Attachment C, would in our view be outside the fee waiver. The fees published in the Code of Federal Regulations for searches and duplication would apply, and Mr. Weisberg would be so advised.

Mr. Robert L. Salostin

We are seeking the concurrence of the Department regarding this matter. Since this does involve litigation, it may be appropriate for discussion at a regularly scheduled Monday Committee meeting.

Enclosures (3)

- 2 - Associate Attorney General - Enclosures (3)
Office of Privacy and Information Appeals
Attn: Guisela J. Shea, Jr.
- 1 - Assistant Attorney General - Enclosures (3)
Civil Division
Attn: Mr. Vincent Morgan Garvey

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

GRIFPIN BELL, ET AL.,

Defendants.

Civil Action No. 77-2185

ORDER

Upon consideration of plaintiff's motion for preliminary injunction and defendants' motion to dismiss and supplemental motion to dismiss or for partial summary judgment, the memoranda of points and authorities filed by the respective parties in support thereof and in opposition thereto, of the entire record herein, and of the argument of counsel in open Court on this day, and for the reasons set forth by the Court in its oral decision this day, it is by the Court this 16th day of January, 1978,

ORDERED that plaintiff's motion for preliminary injunction be, and it hereby is denied;

And it appearing that defendants' refusal to waive fees is arbitrary and capricious, it is

FURTHER ORDERED that defendants shall make a copy of the materials scheduled for release on January 18, 1978, available to plaintiff, without charge, with all reasonable dispatch and it is

FURTHER ORDERED that this decision is limited to the circumstances herein presented and should not be construed as establishing precedent for cases involving other circumstances.

Richard A. Jones
UNITED STATES DISTRICT

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UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D. C. 20530

MAR 31 1978

James H. Lesar, Esquire
Suite 500
910 Sixteenth Street, N. W.
Washington, D. C. 20006

Dear Mr. Lesar:

By letter dated July 12, 1977, I conveyed to you my decision to modify the action of Director Kelley on the request of your client, Mr. Harold Weisberg, for a waiver of fees assessed against him as a result of his request for access to records pertaining to the assassination of Dr. Martin Luther King, Jr. You will recall that my decision was to reduce by forty percent the reproduction fees Mr. Weisberg would be required to pay, that is, from \$.10 per page to \$.06 per page.

Subsequently, by letter dated January 12, 1978, I again modified a decision of Director Kelley on a fee waiver request submitted by Mr. Weisberg. This was in connection with his request for access to records pertaining to the assassination of President John F. Kennedy. My action in reducing the reproduction cost as to these records from \$.10 per page to \$.06 per page was eventually determined by Judge Gesell to have been inadequate. He ordered the Department of Justice to make the so-called second release of Kennedy records available to Mr. Weisberg at no cost to him. The Department of Justice has now determined not to appeal from Judge Gesell's Order. Under these circumstances it seems appropriate to me to reconsider my own action of January 12, 1978, and I have done so. In modifying the action of Director Kelley regarding the Kennedy records on January 12, 1978, I expressed the opinion that your client's case for a waiver regarding the King records on the basis of benefit to the general public had been even stronger than was his case for a waiver as to Kennedy records. Accordingly, I have also reconsidered my action on the King fee waiver.

In recognition of the unique role Mr. Weisberg has played in the history of freedom of information and the benefit to the general public being served by the release of these records to him, I have now determined that records of the Department of Justice compiled pursuant to the investigations of the assassinations of President Kennedy and Dr. King should be furnished

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to Mr. Weisberg without charge. This decision specifically includes, but is not limited to, the Federal Bureau of Investigation. To whatever extent this decision of mine will require the refund of fees already paid by your client, you should communicate directly with the appropriate components.

If you have any questions concerning this matter, do not hesitate to call me at (202) 739-4082. I am looking forward to meeting you and Mr. Weisberg on April 6.

Sincerely,

Benjamin R. Civiletti
Acting Deputy Attorney General

By: Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

CC: Mr. Harold Weisberg
Lynne Zusman, Esquire
All Freedom of Information
Coordinators, Department
of Justice

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FREEDOM OF INFORMATION REQUEST OF HAROLD W. ISIVRI

This request is for all information directly or indirectly related to the assassination of President John F. Kennedy, regardless of form, source or origin, no matter how or where filed or described or captioned and whether or not allegedly duplicated in any other FBI or other files anywhere.

This request includes all records of, provided to or pertaining to all investigations of the assassination, official or private, regardless of location or character, and all records pertaining directly or indirectly to all persons involved in or by such investigations and all records of any comment, analysis or any other reference to such investigations and/or persons, particularly but not limited to executive agencies, the Congress, writers, writing, publication or any other means or instrumentality of seeking or achieving information, conclusions, public attention or acquiring any information leading to such ends and copies of such records made available to anyone else at any time or place.

This request includes all the foregoing with regard to alleged conspiracies and investigations or any other records of or pertaining to them, those allegedly involved in them, those allegedly contributing to them, as for example the CIA-kickback and the Castro-kickback theories, including but not limited to alleged mobsters, Castroites, anti-Castroites.

This request includes copies of all relevant indexes, ticklers and/or any similar records or records serving similar purposes.

This request includes any and all records relating to any destruction of any records within this all-inclusive request, together with copies of all records relating to the seeking or failure to seek authorization for any destruction or any authority for any destruction.

This request includes any and all records described above relating directly or indirectly to those called "critics" of the official solution to the crime and any operations or other efforts to counter or rebut them and their allegations.

This request includes any and all records described above relating directly or indirectly to any other alleged crime or other related alleged activity, such as of reports of threats against the President.

This request includes any and all records of any source, form or origin in any way related to any form of surveillance related or allegedly related to anyone included in any part of this request, regardless of by whom or where or by what means any such surveillance was conducted or any alleged purpose of any such surveillance, including but not limited to personal and/or public appearances or any other form of communication with anyone, and any records in any way relevant to the foregoing.

This request includes any compilations of any records within this request regardless of purpose and whether or not duplicated in response to other parts of this request.

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7627 Old Receiver Road
Frederick, MD 21701

December 4, 1979

Mr. David C. Flanders
FOIA/PA Branch
Federal Bureau of Investigation
Washington, D.C. 20535

Dear Mr. Flanders:

Almost nine months ago I drafted the enclosed information request and the accompanying letter to Mr. Bresson, intending to discuss them with Mr. Lesar. It then was not possible to have this consultation. I then forgot until I came across a copy of the enclosed rough draft. It does not have the identified attachments referred to. If you desire them and cannot obtain them conveniently from your own records, I will search for them and provide them.

Our facilities and capabilities are limited and we are getting along in years, so I hope you will understand my use of a Xerox of the rough draft for this request rather than having my wife retype it.

Sincerely,



Harold Weisberg

Enclosure

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Information request of Harold Weisberg

This is my request under FOIA and PA for all records of any form, source or origin located and/or collected for and/or provided or not provided to the recent House Select Committee on Assassinations; for all such records directly or indirectly relating to political assassinations located and/or collected for and/or provided to or not provided to the Senate's intelligence committee and particularly the former Schweiker subcommittee; for all inventories asked of and/or provided by all field offices and offices of legal attaches and any other part of the FBI, including headquarters; for all indices, catalogues or inventories of any form or nature relating to the foreign; for all records relating directly or indirectly to the collecting and the providing and/or not providing of such records to these committees; and for any and all records prepared or compiled or to be compiled, prior to full and complete compliance with this request, relating to these committees and their work, particularly but not limited to what is believed to be error in or criticism of their work, conclusions, reports or any other published material, especially with regard to but not limited to executive agencies and their functioning and those known as critics of the official explanations of these assassinations and the agencies involved in these explanations and investigations.

Mr. John M. Shene, ^{aid}
Associate Attorney General

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ad
Ms. Alice Daniel
Assistant Attorney General
Civil Division

AP:DTA:WFCole:GJ
145-12-2590
Tel: 633-3768

Termination of Harold Weisberg's
FOIA Fee Waiver

On March 31, 1978, the Department of Justice granted Mr. Harold Weisberg a complete FOIA fee waiver for his assassination records requests. According to Quinlan Shea's letter to Mr. Weisberg's attorney (see Attachment A), "records of the Department of Justice compiled pursuant to the investigations of the assassinations of President Kennedy and Dr. King should be furnished to Mr. Weisberg without charge." This decision, according to the FBI, has resulted in release of 214,500 pages of documents free of charge. Another 103,354 pages are to be released to Mr. Weisberg soon. At 10 cents per page, the savings to Mr. Weisberg will total over \$30,000. In addition, the FBI estimates that the cost to them of processing only the documents already released has been over \$500,000.

In early December 1979, Mr. Weisberg filed a new FOIA request with the FBI for all records "provided or not provided" to the House Select Committee on Assassinations. (See Attachment B) The FBI estimates that, interpreting Mr. Weisberg's request reasonably (which is not necessarily the way he will ask that it be interpreted), 700,000 additional pages of documents will have to be processed. We are advised that the manpower cost of processing and releasing these documents could exceed one million dollars. I believe, consequently, that this is an appropriate time to consider terminating Mr. Weisberg's FOIA fee waiver.

It appears that Harold Weisberg is currently using his fee waiver to assemble the "Harold Weisberg Memorial Archives" at the University of Wisconsin-Stevens Point. These archives consist mostly, if not exclusively, of documents received by him from the FBI and Department of Justice. Prior to the granting of the fee waiver, Mr. Weisberg seemed content to search for documents that might "prove" government complicity in the Kennedy and King murders. More recently, however, he seems interested

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primarily in assembling duplicates of every piece of paper in the government's possession relating to the assassinations. This drive for "completeness", which has been made possible by the fee waiver, explains in part his otherwise inexplicable combativeness over minor issues.

Mr. Weisberg's current litigation with the Department of Justice will continue unabated whether the fee waiver is terminated or not. Without the fee waiver, however, he would have an incentive to limit his searches to items of real interest to him. In the case of the House Select Committee files, an end to the fee waiver would probably force Mr. Weisberg to cut back on his request for 700,000 or more pages of often irrelevant or duplicative documents.

Mr. Weisberg claims that his work (to quote from one of his affidavits to the D.C. District Court) "...results in the exposure of official misdeeds, particularly by employees and officials of the Department of Justice." Cancelling Mr. Weisberg's fee waiver may well bring more such accusations. However, another charge that may eventually be made is that the Department without a word of opposition allowed substantial tax dollars to be spent on the "Weisberg Memorial". This charge may well be more damaging where, as here, all the documents requested from the House Select Committee file have been released previously in their entirety to Congress.

Attachments (2)

cc: Robert L. Galoschin, Director
Office of Information Law and Policy

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United States Department of Justice

OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

WASHINGTON, D.C. 20530

MEMORANDUM

March 27, 1980

TO: Robert L. Saloschin, Director
Office of Information Law and Policy

FROM: *QJA* Quinlan J. Shea, Jr., Director
MS Office of Privacy and Information Appeals

SUBJECT: Freedom of Information Requests of Mr. Harold Weisberg

Reference is made to Mr. Flanders' memorandum to you dated March 4, subject as above.

I have no strong objection to placing this subject on the agenda of the Freedom of Information Committee, although I see no real need to do so. I disagree with many of the assertions in Mr. Flanders' memorandum. I do not agree that the Bureau has searched adequately for "King" records within the scope of Mr. Weisberg's numerous requests. In fact, I am not sure that the Bureau has ever conducted a "search" at all, in the sense I (and, I believe, the FOIA) use that word. It is confusing two totally different matters -- the scope of his requests administratively and the scope of a single lawsuit which we claim is considerably narrower than his administrative requests. Not really touched on in Mr. Flanders' memorandum, but very much involved in this matter, is the issue of what are "duplicate" documents for purposes of the Freedom of Information Act. The Bureau has rejected -- still informally, but very emphatically -- the position I espouse (and with which you agreed in your informal comments on my earlier memorandum to you). Lastly, but very important, is the matter of the scope of the fee waiver granted to Mr. Weisberg. In my view (and as intended by me at the time it was granted), the waiver extends to all records about the King assassination, about the Bureau's investigation of the King assassination (not at all the same thing), about the "security investigation" on Dr. King, and about the

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Bureau's dealings with and attitudes towards its "friends" and its "critics" as they relate to the King case. The key point is that it extends to records by virtue of their subjects and contents, to the extent they can be located with a reasonable effort -- and is not determined by where and how the Bureau has filed the records. Although the Bureau has departed from its initial position in both the King and Kennedy cases (that the only relevant records are those filed by the FBI in the main files on those cases and/or the very principal "players"), it has done so very reluctantly and to a very limited, factual extent. I am personally convinced that there are numerous additional records that are factually, logically and historically relevant to the King and Kennedy cases which have not yet been located and processed -- largely because the Bureau has "declined" to search for them.

It is perhaps unfortunate that Mr. Weisberg is the principal requester for King and Kennedy records. He has heaped so much vilification on the FBI and the Civil Division -- a considerable part of which has been inaccurate and some of which has been unfair -- that the processing of his efforts to obtain these records has almost become an "us" against "him" exercise. My view has always been that the two cases are too important to the recent history of this country for that attitude to have any permissible operation.

The problem I have is that, although I know that what the Bureau wants the Committee to approve would contradict or be inconsistent with promises made to Mr. Weisberg by Bureau and Department representatives, and to representations made in court, and to testimony before the Aboureszk Subcommittee, I do not have the time to carry out the extensive research that would be required for me adequately to represent Mr. Weisberg's interests before the Committee, in an effort to avoid the very real blot on the Department's Escutcheon which would result from the approval of the Bureau's position. Accordingly, if this matter is to be placed on the Committee's agenda, I strongly recommend that Mr. Weisberg and his lawyer, Jim Lesar, be invited to attend and participate in the discussions.

cc: Vincent Garvey, Esq.
Civil Division

Inspector Flanders
Federal Bureau of Investigation

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JUL 1 1980

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

Dear Mr. Weisberg:

On January 16, 1978, United States District Judge Gerhard Casell ordered the Federal Bureau of Investigation to make a copy of the materials concerning the assassination of President John F. Kennedy which were scheduled for release on January 18, 1978, available to you at no charge. By letter dated March 31, 1978, to your attorney, Mr. Lesar, the Department of Justice advised you that records of the Department of Justice compiled pursuant to the investigations of the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr., would be furnished to you pursuant to your requests under the Freedom of Information Act (FOIA) without charge. As a result, a considerable volume of material from our Headquarters and a number of our field offices has been furnished to you at no charge.

However, after the granting of this fee waiver you have made additional requests for material which you believe is related to the assassinations and for which fees should also be waived.

The fee waiver granted by Judge Casell was specific as to scope in that it particularly referred to the materials scheduled for release on January 18, 1978. The Department of Justice letter of March 31, 1978, did not specifically address to what extent the waiver would be applicable. This letter, signed by Mr. Guinan J. Shea, Jr., on behalf of Attorney General Civiletti, who was then the Acting Deputy Attorney General, described the waiver as being applicable to "records of the Department of Justice compiled pursuant to the investigations of the assassinations of President Kennedy and Dr. Martin Luther King, Jr." It is our understanding that this precise wording was not chosen for the specific purpose

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Mr. Harold Wolf

of deciding on issue as to the scope, since the question of scope was not a matter under consideration at the time. It is clear that a reasonable limit may be placed on the waiver granted after material contained in the records of our main case files of the Kennedy and King assassinations has been processed pursuant to the FOIA.

After a thorough consideration of this matter it has been determined to limit the fee waiver to the material which has already been sent to you, and the following specific items:

- (1) The Dallas Field Office special index (3 x 5 index) to the Kennedy assassination materials;
- (2) A cross-reference (to be prepared) of previously released New Orleans Kennedy assassination documents to those from Dallas and FBI Headquarters (FBIHQ);
- (3) Documents from the Dallas and New Orleans Kennedy assassination materials which you were advised had been previously processed at FBIHQ, but which we are unable to locate in the materials released from FBIHQ;
- (4) Documents concerning either assassination which were referred by the FBI to other government agencies, whenever those documents are returned to the FBI for release.

However, customary duplication and search fees will be assessed for all other materials requested by you such as, but not limited to, your December 6, 1979, request for FBI records furnished to certain Congressional Committees during their investigations of the King and Kennedy assassinations, and your May 23, 1980, request for documents pertaining to the processing and release of Kennedy assassination records previously disclosed under the FOIA.

Among the factors considered in reaching this determination were the amount of material already provided to you at no charge, the relationship of the records requested to the King and Kennedy assassinations investigations, and the thorough examination of both assassinations which

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Mr. Harold W. Borg

was recently conducted for the public's benefit at public expense by the United States Congress. With regard to the latter, for example, a report was published and made available to the general public by the House Select Committee on Assassinations. This report released a great deal of information from FBI files which had been reviewed by the committee in its inquiry. Therefore, further release of documents to you would not, in our opinion, be of any measurable benefit to the public.

In view of the above, and in conformance with the requirements set forth in Title 28, Code of Federal Regulations, Section 16.9, processing of material responsive to your pending requests, except as delineated above, is being suspended until you indicate those requests or parts of requests for which you are willing to pay customary search and duplication fees. To assist you in your decision, we are willing to provide you with cost estimates on any materials you designate, before you commit yourself to pay the required fees and tender any advanced deposit which may be necessary under the aforementioned section of the Code of Federal Regulations.

If you so desire, you may appeal this decision to terminate your fee waiver. Appeals should be directed in writing to the Associate Attorney General (Attention: Office of Privacy and Information Appeals), United States Department of Justice, Washington, D. C. 20530, within thirty days from receipt of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Sincerely yours,

DAVID G. FLANDERS

David G. Flanders, Chief
Freedom of Information-
Privacy Acts Branch
Records Management Division

Mr. Vincent Garvey
Federal Programs Branch
Civil Division

Mr. William J. Shea, Sr.
Director, Office of Privacy and
Information Appeals
Office of the Associate Attorney General

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