

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

G. ROBERT BLAKEY, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 81-2174  
 )  
 DEPARTMENT OF JUSTICE )  
 )  
 and )  
 )  
 FEDERAL BUREAU OF INVESTIGATION, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

DEFENDANT FBI'S SUPPLEMENTAL  
MEMORANDUM, RESPONDING TO PLAINTIFF'S  
AUGUST 16, 1982 REPLY ON THE FEE WAIVER ISSUE

Because there has been a considerable amount of paper filed in this case, and in particular on the fee waiver issue, we think it may be helpful to the Court if we put the issue of fee waiver in perspective as we see it. Plaintiff asks that the fee be waived so that he can have a copy for his use in connection with his teaching responsibilities at the University of Notre Dame Law School. We have offered a number of reasons why a waiver would not primarily benefit the public, the test which must be met in order that the fee be waived.

Thus, we have pointed out that the records sought have been public for some years, and are available in the FBI's reading room. Several other requesters, including a university, have paid for copies. Plaintiff has previously had the opportunity to review this material, and did review a substantial portion, when he was Chief Counsel for the House Select Committee on Assassinations. Not only that, he comes to Washington a dozen times a year, and has given no good reason why he could not visit the FBI reading room on such trips. Without reiterating all of our previous filings, these reasons show that it was not arbitrary or capricious

to deny a waiver. (The decision of course, is not one for the Court to make in the first instance; the Court's role is to ascertain whether there is a rational basis for the government's decision.)

In this context, plaintiff's latest filing concentrates on two items of minutia. He questions the chronology of destruction of two extra copies of the materials; and he seeks to throw back into the government's court the question of which libraries may have the documents. Neither of these points is of substantial significance in the disposition of the matter before the Court.

Taking the second point first, it appears to be plaintiff's position that nothing less than a copy of Notre Dame will suffice. Therefore, he has not checked libraries in Notre Dame's vicinity. The government's position, on the other hand, is that, based on the factors adduced above and in our earlier submissions, plaintiff is not entitled to have the public pay for a copy to be located at Notre Dame for his use.

As to the timing of the destruction, we file herewith the affidavit of John N. Phillips, which points out that the Disclosure Unit--which destroyed the two copies--had no knowledge of plaintiff's request prior to the filing of this suit, and the copies were destroyed prior to filing suit. The plain fact is that the records have been destroyed, and the destruction has been explained. Plaintiff's relish in the chronology is not material to the necessity that he show that waiver of fees for producing a new copy now would primarily benefit the public.

At a time when, for serious reasons of national need there are concerted efforts to keep down government spending, so that budgetary considerations affect social programs, we

submit that it would be especially inappropriate to overturn the agency's decision denying a fee waiver to plaintiff.

Respectfully submitted,


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STANLEY S. HARRIS  
United States Attorney

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ROYCE C. LAMBERTH  
Assistant United States Attorney

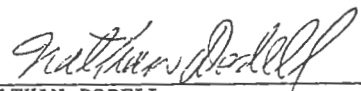
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NATHAN DODELL  
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FBI's supplemental memorandum and Phillips affidavit was mailed to James Lesar, Esquire, Fensterwald & Associates, 1000 Wilson Boulevard, Suite 900, Arlington, Virginia 22209, this 17th day of September, 1982.

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NATHAN DODELL  
Assistant United States Attorney  
United States Courthouse  
3rd & Constitution Avenue, N.W.  
Room 2814  
Washington, D.C. 20001  
(202) 633-4978

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FOR THE DISTRICT OF COLUMBIA

G. ROBERT BLAKEY, )  
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 Plaintiffs )  
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 v. ) Civil Action Number  
 ) 81-2174  
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 DEPARTMENT OF JUSTICE AND )  
 FEDERAL BUREAU OF INVESTIGATION )  
 )  
 Defendants. )

DECLARATION OF JOHN N. PHILLIPS

I, John N. Phillips, make the following  
declaration:

1) I am a Special Agent of the Federal Bureau of  
Investigation (FBI), assigned in a supervisory capacity to  
the Freedom of Information-Privacy Acts (FOIPA) Section,  
Records Management Division, FBI Headquarters (FBIHQ),  
Washington, D.C. 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) I am familiar with this litigation and have  
read Plaintiff's Reply to Defendant Federal Bureau of  
Investigation's Memorandum of Points and Authorities in  
Opposition to Plaintiff's Motion for Summary Judgment and in  
Further Support of Defendant's Motion for Summary Judgment  
(plaintiff's reply). This declaration is prepared in  
response thereto.

3) Plaintiff's attorney, in his affidavit attached  
to plaintiff's reply, quotes former Director of the FBI  
Clarence M. Kelley's (Mr. Kelley) letter to plaintiff's  
attorney dated January 9, 1978, regarding, "the FBI's plan to  
place additional sets of these records in public research  
facilities". Plaintiff's attorney then alleges that the FBI

made no arrangements for this material to be placed in public facilities.

4) In response to plaintiff's inquiry dated January 28, 1978, (copy attached) concerning this plan plaintiff's attorney was advised by Mr. Kelley in a letter dated February 27, 1978, that the decision to place sets of the FBI records in research facilities "was not made by the FBI but was simply in response to anticipated FOIA requests by scholars interested in placing the records in the purview of the general public." (Copy attached.)

5) The affidavit of Mr. Lesar further alleges that as plaintiff's request for the Lee Harvey Oswald and Jack Ruby (Kennedy Assassination) material was made on June 11, 1979, the "extra copies" of the records could not have been destroyed "a number of years" prior to plaintiff's request.

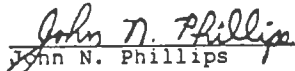
6) The exact date of the destruction of the two "extra copies" is not known. It cannot be ascertained if their destruction took place before or after the date of plaintiff's request. If the copies were destroyed after the date of plaintiff's request, the following information is provided for the benefit of the court.

7) Plaintiff's request for the Kennedy Assassination material and his request for a fee waiver, which were received by the FBI in June 1979, were handled by the Initial Processing Unit (IPU). This unit is responsible for preparing the initial response of the FBI to all FOIPA requests and for the dissemination of material which has already been processed as a result of prior FOIA requests (i.e. Kennedy Assassination, Unidentified Flying Objects, etc.). As this request concerned already processed material, his request remained with IPU through the FBI's denial of his fee waiver request and his appeal of that denial to the DOJ. At the filing of plaintiff's complaint, the request was transferred to the Disclosure Unit handling all litigation concerning Kennedy Assassination materials. Prior to the filing of this complaint the Disclosure Unit, which destroyed the "extra copies" had no knowledge

of plaintiff's request.

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

Dated this 16 day of September, 1982.

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

JAMES H. LESAR  
ATTORNEY AT LAW  
810 SIXTEENTH STREET, N. W. SUITE 800  
WASHINGTON, D. C. 20006  
TELEPHONE (202) 223-8887

January 28, 1978

FREEDOM OF INFORMATION REQUEST

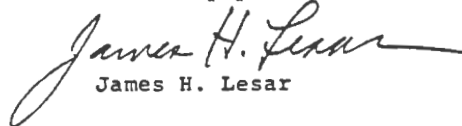
Mr. Benjamin Civiletti  
Deputy Attorney General  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Mr. Civiletti:

Pursuant to the Freedom of Information Act, 5 U.S.C. §552, I am requesting copies of the following:

1. All correspondence, notes, memorandums, reports or other forms of records pertaining to Director Kelley's decision to place sets of FBI records on the assassination of President John F. Kennedy in "other research facilities, such as the Library of Congress, in the near future." (See attached copy of Director Kelley's January 9, 1978 letter to me.)
2. Any report or memorandum detailing the expenditure of more than \$180,000 in processing the FBI's Headquarters' files on the JFK assassination.
3. Any document listing or summarizing Freedom of Information Act requests for materials on President Kennedy's assassination.
4. All Freedom of Information Act requests for records pertaining to the assassination of President Kennedy.

Sincerely yours,

  
James H. Lesar

February 27, 1978

James H. Lesar, Esq.  
Suite 600  
910 Sixteenth Street, N.W.  
Washington, D. C. 20006

Dear Mr. Lesar:

Reference is made to your letter addressed to Mr. Benjamin Civiletti, Deputy Attorney General, dated January 28, 1978.

In your letter you requested copies of records pertaining to four areas relative to the Federal Bureau of Investigation's (FBI) release of FBI records on the Assassination of President John F. Kennedy.

In response to your first request for all correspondence, notes, memorandums, reports or other forms of records pertaining to the decision to place sets of the FBI records in other research facilities: This decision was not made by the FBI but simply was in response to FOIA requests by scholars interested in placing the records in the purview of the general public.

With regards to your second request for any report of memorandum detailing the expenditure of more than \$180,000 in processing costs. Enclosed is the memorandum which was prepared to show a rough and conservative figure with regards to the direct costs involved in processing the JFK Assassination files.

In response to your third request for any document listing or summarizing FOIA requests for materials on President Kennedy's Assassination. Your request for copies of these documents is denied pursuant to Title 5, United States Code, ~~Section 552~~.



James H. Lesar, Esq.

(b) (6) materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.


With regards to your fourth request for all FOIA requests for records pertaining to the Assassination of President Kennedy, these requests have been sent to the FBI by interested third parties, both private citizens and interested scholars. Your request for copies of these requests is denied pursuant to Title 5, United States Code, Section 552:

(b) (6) materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Pursuant to Title 28, Code of Federal Regulations, Section 16.9, there is no fee for documents when the amount is less than \$3 as in this request.

You have thirty days from receipt of this letter to appeal to the Attorney General from any denial contained herein. Appeals should be directed in writing to the Attorney General (Attention: Office of Privacy and Information Appeals), Washington, D. C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Sincerely yours,

  
Allen H. McCreight, Chief  
Freedom of Information-  
Privacy Acts Branch  
Records Management Division