

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR

Plaintiff

v.

U.S. DEPARTMENT OF JUSTICE

Defendant.

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) Civil Action Number
) 82-3600
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MOTION OF DEFENDANT U.S. DEPARTMENT
OF JUSTICE FOR SUMMARY JUDGMENT

Defendant U.S. Department of Justice respectfully moves the court to grant Summary Judgment in its favor on the ground that there is no genuine issue of material fact and defendant is entitled to summary judgment as a matter of law. In support of this motion, defendant files the Declaration of Special Agent John N. Phillips with exhibits. Defendant files a Statement of Material Facts as to which there is no genuine issue, and a Memorandum of Points and Authorities, and submits a proposed Order.

Respectfully submitted,

STANLEY S. HARRIS
United States Attorney

ROYCE C. LAMBERTH
Assistant United States Attorney

NATHAN DODELL
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR

Plaintiff

v.

U.S. DEPARTMENT OF JUSTICE

Defendant.

Civil Action Number
82-3600

DEFENDANT U.S. DEPARTMENT OF JUSTICE'S
STATEMENT OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE

1) Plaintiff, by letter dated October 6, 1982, submitted a Freedom of Information Act request to FBI Headquarters for the FBI records pertaining to the alleged destruction of two sets of FBI Headquarters records on the assassination of President John F. Kennedy. (Phillips Declaration, paragraph 2.)

2) Defendant, through the FBI, responded to plaintiff's request by letters dated November 2, 1982, which acknowledged receipt of the request, and November 18, 1982, which informed plaintiff that "based upon a search of FBI Central indices no record of the subject of your request could be located." (Phillips Declaration, paragraph 2.)

3) The defendant has taken the additional step of inquiring of the persons who handled the destruction of the Kennedy Assassination materials as to whether they could recall the existence of any documentation concerning their destruction. These persons stated that to the best of their recollection no documentation exists. (Phillips Declaration, paragraph 5.)

Respectfully submitted,

STANLEY S. HARRIS
United States Attorney

ROYCE C. LAMBERTH
Assistant United States Attorney

NATHAN DODELL
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR

Plaintiff

v.

U.S. DEPARTMENT OF JUSTICE

Defendant.

Civil Action Number
82-3600

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION OF DEFENDANT U.S.
DEPARTMENT OF JUSTICE FOR SUMMARY JUDGMENT

INTRODUCTION

The defendant's Statement of Material Facts narrates the factual circumstances in which the issues presented for adjudication arise. To avoid repetition, defendant respectfully incorporates that factual account by reference.

Defendant has complied with plaintiff's request as required under Title 5, United States Code, 552. Defendant has acknowledged receipt of plaintiff's request and advised him that as a result of a search of the Indices of FBI Headquarters no record of material pertaining to the subject matter of his request could be located.

Defendant further states in the Declaration of Special Agent John N. Phillips (at p. 3) that additional inquiries were made to the persons who completed the destruction of the two sets of Kennedy Assassination records as to their recollection of the existence of any documentation relating to the destruction. This inquiry resulted in a response that to the best of their recollection no documentation exists.^{1/}

An agency in response to an FOIA request is required only to make reasonable efforts to find responsive material and is not required to reorganize its filing system. Goland v. Central Intelligence Agency, 607 F.2d 339, 370 (D.C. Cir. 1978) cert. denied, 445 U.S. 927 (1979).

^{1/} Plaintiff's letter of October 6, 1982, request number 2 pertains to FBI efforts to sell or donate the Kennedy Assassination records to various persons and organizations who would have an interest in this subject.

By FBIHQ letter dated November 18, 1982, plaintiff was advised that "based upon a search of FBI Central Indices no record could be located of any material pertaining to the subject of your request."

Defendant as stated is unable to locate through a search of its indices any material responsive to plaintiff's request. However plaintiff was previously provided in his capacity as counsel for G. Robert Blakey with copies of some correspondence dealing with this topic and a copy of that material is attached for the benefit of the Court.

The Declaration of Special Agent John N. Phillips submitted herewith establishes the General Indices as the method of retrieval of information contained in the FBI's Central Records System. The Phillips Declaration also establishes that a search of those indices resulted in a no record response regarding the subjects of plaintiff's FOIA request.

This Circuit has found that when an agency conducts a search of its indices which results in a no record response to any FOIA requestor, an affidavit/declaration to that effect submitted to the Court by the agency, absent a showing a bad faith, is sufficient grounds for granting summary judgment. Goland v. Central Intelligence Agency, 607 F.2d 339, 352-353 (D.C. Cir. 1978) cert. denied, 446 U.S. 927 (1979); Murphy v. Federal Bureau of Investigation, 490 F. Supp. 1134, 1137 (D.D.C. 1980); James P. Benvenuti, M.D. v. Department of Justice, Federal Bureau of Investigation, U.S.D.C. District of Columbia, Civil Action Number 81-1229 (1981); William J. Kazonis v. Shirley Stutely, U.S.D.C. District of Columbia, Civil Action Number 79-1195 (1979) and Joseph Stassi v. United States Department of Justice, et al., U.S.D.C., District of Columbia, Civil Action Number 78-967 (1978). Copies of unreported decisions are attached.

For the Court's information, Mr. Lesar, when counsel for plaintiff in G. Robert Blakey v. Department of Justice, Federal Bureau of Investigation, U.S.D.C., District of Columbia, Civil Action Number 81-2174, in a case also involving Kennedy assassination materials, conducted some discovery regarding the material which is the subject of his present litigation. The FBI in that case supplied substantially the same response as in the present litigation. Copies of the Declaration of Special Agent John N. Phillips, dated September 16, 1982, and of the Court's decision in the case of G. Robert Blakey v. Department of Justice, Federal Bureau of Investigation, are attached for the benefit of the Court. The attention of the Court is directed to the fact that plaintiff has now been informed by the defendant at least three times, twice under oath that no documentation relating to the destruction of the Kennedy Assassination records can be located in FBI files. These statements absent a showing of bad faith support defendant's Motion for Summary Judgment.

CONCLUSION

For these reasons, it is respectfully submitted that the Motion of the defendant U.S. Department of Justice for Summary Judgment should be granted.

Respectfully submitted,

STANLEY S. HARRIS
United States Attorney

ROYCE C. LAMBERTH
Assistant United States Attorney

NATHAN DODELL
Assistant United States Attorney

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

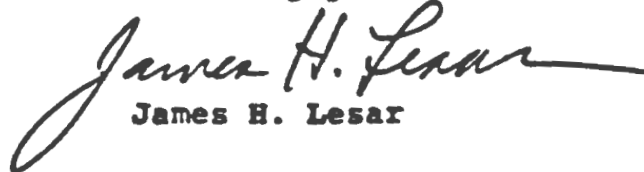
Mr. Benjamin Civiletti
Deputy Attorney General
U.S. Department of Justice
Washington, D.C. 20530

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

82-3600

February 27, 1978

James H. Lesar, Esq.
Suite 600
910 Sixteenth Street, N.W.
Washington, D. C. 20036

Dear Mr. Lesar:

Reference is made to your letter addressed to Mr. Benja in 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.

82-3600

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,

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
JAMES H. LESAR)	
)	
Plaintiff)	
)	
v.)	
)	Civil Action Number
)	82-3600
U.S. DEPARTMENT OF JUSTICE)	
)	
Defendant.)	
_____)	

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. Due to the nature of my official duties, I am familiar with the procedures followed in processing Freedom of Information Act (FOIA) requests, including plaintiff's request.

(2) The following is a descriptive chronology of correspondence with plaintiff relative to his FOIA request.

(A) By letter dated October 6, 1982, plaintiff requested records pertaining to the destruction of two

sets of FBIHQ records regarding the assassination of President John F. Kennedy. (A copy of this letter is attached hereto as Exhibit A.)

(B) By FBIHQ letter dated November 2, 1982, plaintiff was advised that a search of FBIHQ Indices would be conducted to determine if it had the requested materials. (A copy of this letter is attached hereto as Exhibit B.)

(C) By FBIHQ letter dated November 18, 1982, plaintiff was advised that no record of the material he requested could be located. (A copy of this letter is attached hereto as Exhibit C.)

Explanation of FBI Central Records
System and General Indices

(3) The "Central Records System" of the FBI contains applicant, personnel, general and investigative files compiled for law enforcement purposes. The system consists of a numerical sequence of files broken down according to subject matter. The subject matter of a file may relate to an individual, organization, company, publication or foreign intelligence activity. Access to the system is afforded by the FBI's General Indices, arranged in alphabetical order, consisting of approximately 66 million index cards on various subject matters, including names of individuals. The index cards fall into two general


categories: "main" index cards and "see" (Short for "see" references or "cross" references) index cards. A "main" card carries the name of an individual, organization, activity, or the like which is the subject of a file contained in the system. Generally, "see" references are only a mention or reference of an individual or organization and are located in the main file of another individual or organization.

(4) On November 9, 1982, a search was conducted of the General Indices of the FBI's Central Records System for the material requested by plaintiff. No record could be located for any material which was responsive to plaintiff's request.

(5) I have also taken the additional steps of contacting the persons assigned to me who handled the destruction of the two sets of Kennedy Assassination records, which are the subject of plaintiff's request. I was advised by them that to the best of their recollection no documentation exists relating to the destruction of the records.

I have read the foregoing statement consisting of 4 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 27 day of January, 1983



JOHN N. PHILLIPS
Special Agent
Federal Bureau of Investigation
Washington, D.C.

JAMES H. LESAR
ATTORNEY AT LAW
1000 WILSON BLVD SUITE 900
ARLINGTON, VIRGINIA 22209
TELEPHONE (703) 278-0404

FREEDOM OF INFORMATION ACT REQUEST

October 6, 1982

Mr. James K. Hall, Chief,
Information and Privacy Acts Section
Records Management Division
Federal Bureau of Investigation
Washington, D.C. 20535

Dear Mr. Hall:

In preparation for its public releases of December 7, 1977, and January 18, 1978, the FBI made multiple copies of its Headquarters records on the assassination of President John F. Kennedy. The FBI has recently submitted sworn declarations to the United States District Court for the District of Columbia disclosing that it destroyed two complete sets of these records. It also swears that it cannot determine when this destruction occurred.

I do not believe the FBI's claim that it is unable to determine when it destroyed these 200,000 pages of records. Thus, pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I request the following:

1. All letters, memoranda, notes (including notes on phone conversations) or any other form of written communication pertaining to the decision to destroy the above-mentioned sets of Kennedy assassination records.
2. All records pertaining to any effort made by the FBI to donate or sell the above-mentioned sets of Kennedy assassination records to libraries, scholars, news organizations or other persons and institutions who might have an interest in this subject.
3. All records reflecting the date, time and place of the destruction of the above-mentioned sets of Kennedy assassination records and the identity of the persons who actually carried out the destruction and their supervisors.

I request a search of all possible locations where such records might be found. This includes, but is not limited to, a search of tickler files and any files maintained by or in the offices of the person(s) responsible for the decision to destroy these records or who actually carried out the destruction.

EXHIBIT A

NOV 2 1982

JAMES H. BESAR ESQ
SUITE 900 P
1000 WILSON BOULEVARD
ARLINGTON VA 22209

Request No. 271224

RE: KENNEDY, JOHN F/HQ. ASSASSINA
TION FILES DESTRUCTION

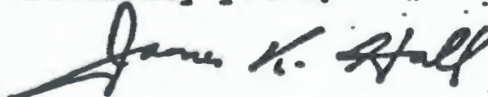
Dear Requester:

This is to acknowledge receipt by FBI Headquarters of your recent Freedom of Information-Privacy Acts (FOIPA) request and to advise you we will comply with your request according to Title 5, United States Code, Section 552 (a)(6)(A)(i) and other Federal statutes and regulations. Additional information, if needed, will be requested by separate letter.

A search of the indices to our records will be made to determine if we have the information you seek. If the search fails to locate record(s) pertaining to your request, you will be notified. If the search locates a record(s) which may be responsive to your request, it will be retrieved and processed according to the provisions of the FOIPA.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us.

Sincerely yours,



Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

EXHIBIT ~~ORIGINAL~~ R

NOV 18 1982

James H. Lesar, Esq.
Suite 900
1000 Wilson Boulevard
Arlington, Virginia 22209

Dear Mr. Lesar:

This is in further response to your Freedom of Information Act (FOIA) request dated October 6, 1982, for records pertaining to the destruction of extra copies of the Kennedy assassination materials.

As was stated in the affidavit of SA John W. Phillips dated September 16, 1982, in the suit of G. Robert Blakey, Civil Action Number 81-2174, the exact date of the destruction cannot be determined.

Additionally, based upon a search of FBI central indices no record could be located of any material pertaining to the subject of your request.

If you desire, you may submit an appeal from any denial contained herein. 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 and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the Freedom of Information-Privacy Acts number assigned to your request so that it may be easily identified.

Sincerely yours,

James K. Hall 1/82

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

EXHIBIT ~~IN~~ C

The records sought bear on the truth or falsity of the sworn statements of an FBI Agent and are urgently needed for possible use in connection with a pending lawsuit. Thus, if compliance is not made within ten working days of the receipt of this letter as required by law, suit will be brought.

Sincerely yours,

James H. Lesar

James H. Lesar

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES P. BENVENUTI, M.D., :

Plaintiff, :

v. :

Civil Action No. 81-1229

DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, :

Defendant. :

FILED

AUG 18 1981

ORDER

JAMES F. DAVEY, Clerk

This case is before the Court on defendant's motion to dismiss or in the alternative, for summary judgment and plaintiff's opposition thereto. For the following reasons, the defendant's motion to dismiss will be granted and this case will be dismissed with prejudice.

This action arises out of plaintiff's Freedom of Information Act ("FOIA") request pursuant to 5 U.S.C. § 552. By letter dated May 2, 1981, to the Los Angeles Field Office, Federal Bureau of Investigation ("FBI"), plaintiff requested a complete and thorough search of all filing systems and locations for all records pertaining to himself. By letter dated May 29, 1981, the Los Angeles Field Office of the FBI advised plaintiff that based on the information he provided, a search of the central and electronic surveillance ("ELSUR") indices failed to locate any records identifiable with plaintiff's request. From defendant's reply that there were no documents responsive to his request, the plaintiff commenced this litigation.

The defendant contends that this Court cannot order relief under FOIA where the records sought do not exist. The plaintiff contends that the defendant has not conducted a thorough file search in that only two of the more than eleven requested files were searched. However, the Court finds that the FBI has met its burden pursuant to the FOIA in conducting the file search of its Central Records System and its ELSUR indices. Marks v. United States (Dept. of Justice), 578 F.2d 261, 263 (9th Cir. 1978). Where the FBI found no records pertaining

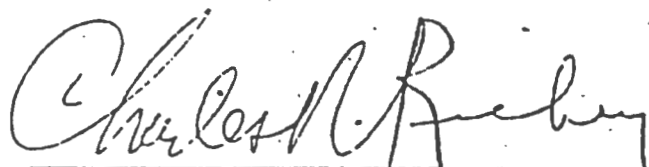
82-3600

to plaintiff's request, then they certainly cannot be compelled to produce the nonexistent documents. See Nolan v. Rumsfeld, 535 F.2d 890 (5th Cir. 1976), reh'g denied, 540 F.2d 1085 (1976), cert. denied, 429 U.S. 1104 (1977). Further, the plaintiff has not intimated any reason as to why the FBI would have such files which would lead him to the conclusion that the files were not maintained in the normal filing system.

Accordingly, it is, by the Court, his 18 day of August, 1981,

ORDERED, that defendant's motion to dismiss be, and the same hereby is, granted; and it is

FURTHER ORDERED, that this case be, and the same hereby is, dismissed with prejudice.



Charles R. Richey
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

AUG 2 1971

WILLIAM J. KAZONIS, :
 :
Plaintiff, :
 :
v. : Civil Action No, 79-1195
 :
SHIRLEY STUTELY, :
 :
Defendant. :

JAMES F. DAVEY, Clerk

MEMORANDUM

Plaintiff William J. Kazonis, an inmate at Leavenworth Penitentiary, filed this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to obtain documents "being used as reasons for denying petitioner's request for transfer to an institution in closer proximity to his home."^{1/} Defendant Shirley Stutely, the Coordinator of the Inmate Monitoring Program of the Bureau of Prisons, maintains information on prisoners, like plaintiff, who are Central Monitoring cases. Her defense to this action is that no responsive documents exist in Kazonis' file.

The case comes before the Court on plaintiff's motion for summary judgment ("Dispositive Motion"), and defendant's motion to dismiss for lack of jurisdiction or for failure to state a claim.^{2/} Because the Court has considered the affidavit of defendant Stutely filed with her motion, and copies of correspondence filed by both parties, the Court treats the motion to dismiss as one for summary judgment. Rule 12(b), Fed. R. Civ. P. Upon consideration of the motions and oppositions, and the relevant law, the Court determines to enter summary judgment for defendant.

^{1/} While the reasons behind a plaintiff's FOIA request are irrelevant, the Court notes that Kazonis wants to reestablish a place in his community for release expected in October, 1979.

^{2/} As an alternative ground for dismissal, Stutely contends that she is an improper party defendant. It is true that FOIA grants the District Court jurisdiction over an agency allegedly withholding records, 5 U.S.C. § 552(a)(4)(B), and not over agency employees. However, the Court holds pro se pleadings to less stringent standards than those drafted by a lawyer, and will not dismiss Kazonis' complaint on this ground. The Court instead treats this as a suit against the Department of Justice. Fed. R. Civ. P. 21. Ott v. Levi, 419 F. Supp. 750 (E.D. Mo. 1976).

82-3600

BACKGROUND

The history of this case, not typical of FOIA proceedings, shows that Kazonis is more concerned with the merits of his placement at Leavenworth than in obtaining specific documents. In a letter to Stutely dated January 29, 1979, he objected to his continued Central Monitoring status, which prevents him from being transferred nearer his home. He had learned from someone that a Martin Boudreau^{3/} of the United States Attorney's Strike Force informed Stutely in writing that Kazonis' life was in danger if he were transferred to the east coast. Kazonis asked her for anything in his file from Boudreau or other source substantiating that statement.

Stutely's letter of March 9, 1979, was more a report on Kazonis' Central Monitoring status than a traditional FOIA response presumably because she is not authorized to receive FOIA requests. She informed him he was a Central Monitoring case because 1) he not to be confined with his codefendants, and 2) he had been involved in criminal activity of a sophisticated nature. Regarding a transfer to Danbury, a federal institution nearer his home, she had followed the routine of contacting the Criminal Division for comments and was told, on the telephone, that the Boston Strike Force objected to transfer because of Kazonis' prior criminal activities in that area. Therefore, she wrote him, his request for transfer could not be granted.

In the answer to Kazonis' FOIA complaint and in an affidavit in support of the motion to dismiss, Stutely states without qualification that no documents responsive to his request are in his Central Monitoring file. In his opposition, Kazonis insists su

^{3/} This name appears as Boudreau, Boudeau, Baudrou, and Baudreau at various places in the pleadings.

^{4/} See note 2 supra.

documents must exist because he "did not pick the name of Martin Boadreau or the types of documents requested out of the air," but learned the information from a case manager at Leavenworth who referred him to Stutely.

ANALYSIS

The Freedom of Information Act authorizes the District Court to enjoin an agency from improperly withholding agency records. 5 U.S.C. § 552(a)(4)(B). If no documents exist responsive to a FOIA request, there is nothing that the Court can do. Ott v. Levi, 419 F. Supp. 750 (E.D. Mo. 1976). See NLRB v. Sears, Roebuck & Co. 421 U.S. 132, 161-62 (1975).

Defendant Stutely states in her affidavit that she is responsible for Kazonis' Central Inmate Monitoring System file, that she has reviewed the file, and that no record matching his request exists. While Kazonis disputes this, there is no support in this record for his allegations. Ott v. Levi, 419 F. Supp. at 752-53. He has not seen or read any such documents, having heard of them only from some unidentified third party who had himself only heard of them.

There is no genuine dispute on the only material question of fact in this case, and the Court finds that there are no documents responsive to Kazonis' FOIA request in this action. The defendant is entitled to summary judgment as a matter of law. Fed. R. Civ. P. 56.

Ordered accordingly,

Entered: August 23rd, 1979

Barrington D. Parker

Barrington D. Parker
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

AUG 23 1979

WILLIAM J. KAZONIS,

:

JAMES F. DAVEY, Clerk

Plaintiff,

:

v.

:

Civil Action No. 79-1195

SHIRLEY STUTELY,

:

Defendant.

:

ORDER AND JUDGMENT

Based on the Memorandum entered this date, it is this 23rd
day of August, 1979,

ORDERED that plaintiff's motion for summary judgment is
denied, and it is

FURTHER ORDERED that defendant's motion for summary judgment
is granted, judgment is entered for defendant Shirley Stutely
against plaintiff William J. Kazonis, and the complaint is dis-
missed with prejudice.

Barrington D. Parker

Barrington D. Parker
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH STASSI, SR.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, et al.,

Defendants.

Civil Action No. 78-967 ✓

FILED

DEC 2 1978

MEMORANDUM

JAMES F. DAVEY, Clerk

This matter comes before the court on the defendants' motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure or, in the alternative, for summary judgment under Rule 56. The plaintiff, Stassi, brought this suit pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, in order to obtain access to certain documents allegedly contained in the files of the Criminal Division of the defendant Department of Justice ("Department"). Stassi requested all correspondence in the files of the Criminal Division pertaining to

. . . clemency and/or time cut, and/or
parole for . . . [Milton Abramson a/k/a
Milton Bennett].

Although the Criminal Division has located one document pertaining to Abramson, the document does not fall within the category of information described in Stassi's request. The Department has concluded that there are no records responsive to Stassi's request and contends that, inasmuch as there is no denial of access in this case, the court should dismiss this action as moot. Alternatively, the Department asserts that the defendants are entitled to judgment as a matter of law.

82-3600

The court agrees that the defendants are entitled to summary judgment in this suit. The Department's affiant, who is Attorney in Charge, Freedom of Information/Privacy Act Unit, states that "no records responsive to [Stassi's] request could be located in the files of the Criminal Division" (Buckley Affidavit, ¶10). In an affidavit submitted in support of his opposition to the motion for summary judgment, Stassi contends, on the basis of certain testimony of an Assistant United States Attorney in 1972, that "it is inconceivable that there are not numerous files in the Criminal Division in regards to Mr. Abramson." (Stassi Affidavit, ¶ 7). The court does not believe that Stassi's conjecture is sufficient to place into dispute the Department's assertion that it has no records responsive to his request. In a recent FOIA decision, the Court of Appeals for this Circuit rejected an appeal similar to that made by Stassi in this case. The plaintiffs in Goland v. CIA, Civil No. 76-1800 (D.C. Cir., May 23, 1978) argued that, notwithstanding the CIA's contention that it could find no documents responsive to their request, those documents "must exist." Id., slip op. at 26 (emphasis in original). The court held, however, that "[a]lthough appeals to common sense are not altogether to be condemned," id., speculation regarding the existence of responsive documents, without more, was insufficient to put in doubt the agency's good faith. Id. Similarly, the court finds nothing in the

record in the present case genuinely placing into dispute the Department's contention that it does not have documents responsive to Stassi' request. See Marks v. United States, 578 F.2d 261 (9th Cir. 1978).

In his opposition to the motion for summary judgment, Stassi seeks to broaden his original request to embrace "all records which refer to Milton Abramson" The defendants correctly point out that the plaintiff may not expand either the subject of his request or the files to be searched at this late stage in the present proceeding. See Fonda v. CIA, 434 F. Supp. 498, 501 (D.D.C. 1977).

An appropriate Judgment accompanies this Memorandum.

Thomas A. Flannery
UNITED STATES DISTRICT JUDGE

DATED: 12-27-78

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH STASSI, SR.,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF JUSTICE, et al.,

Defendants.

Civil Action No. 78-967

FILED

DEC 2 1978

JUDGMENT

JAMES F. DAVEY, Clerk

Upon consideration of defendants' Motion to Dismiss, or, in the Alternative, For Summary Judgment, the papers filed in support thereof and the entire record herein, and for the reasons set forth in the court's Memorandum filed herewith, it is, by the court, this 27th day of December, 1978,

ORDERED, ADJUDGED and DECREED that defendants' motion for summary judgment be, and hereby is, granted; and it is further

ORDERED, ADJUDGED and DECREED that this action should be, and hereby is, dismissed with prejudice.

Thomas A. Hanney
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G. ROBERT BLAKEY,)
)
 Plaintiffs)
)
 v.) Civil Action Number
) 81-2174
 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

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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
910 SIXTEENTH STREET, N. W. SUITE 600
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:

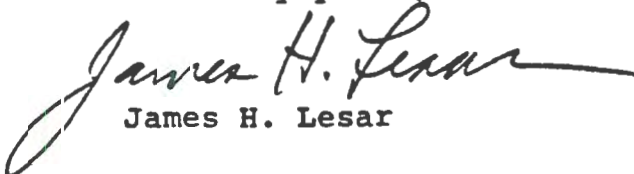
1. All correspondence, notes, memorandums, reports or other forms of records pertaining to Director Kelley's decision to place sets of FBI records on the assassination of President John F. Kennedy in "other research facilities, such as the Library of Congress, in the near future." (See attached copy 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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G. ROBERT BLAKEY

Plaintiff,

v.

DEPARTMENT OF JUSTICE, et al.,

Defendants.

Civil Action No. 81-2174

FILED

OCT 18 1982

MEMORANDUM AND ORDER

CLERK, U.S. DISTRICT COURT

This case, which commenced as an FOIA action to obtain vast quantities of FBI documents related to the assassination of President Kennedy and has provoked considerable acrimony during its course to date, had been distilled prior to hearing into a dispute over a single issue, viz., plaintiff's right to a waiver of defendant's customary charges for copying the remaining materials to which all agree he is entitled. At oral argument, however, controversy revived over two additional issues: the FBI's invocation of Exemption 7(C) to refuse to confirm or deny the existence of additional records concerning one Rogelio Cisneros, and the adequacy of its search for records relating to acoustical analyses conducted in the assassination investigation. These three issues are now before the Court on cross-motions for summary judgment supported by appropriate affidavits on both sides.

I. Fee Waiver

Plaintiff Blakey is currently a professor at the University of Notre Dame Law School, and a former Chief Counsel and Staff Director of the House Select Committee on Assassinations which investigated, inter alia, the assassination of President John F. Kennedy. In June of 1979 Blakey made a formal FOIA request of the Federal Bureau of Investigation for records relating to Lee Harvey Oswald and Jack Ruby, some 50,000 pages of documents in all, and asked for a waiver of all fees imposed for copying them which would otherwise total \$5,196.70.¹ The FBI denied Blakey's

¹ \$1,584.50 for 15,845 pages of Ruby documents and \$3,612.20 for 36,122 pages of Oswald documents at 10 cents per page.

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fee waiver request, initially in September, 1979, and the decision was ultimately affirmed by the Office of Privacy and Information Appeals in October, 1981, on Blakey's appeal.

The applicable provision of FOIA, 5 U.S.C., § 552(a)(4)(A), authorizes agencies to impose reasonable and uniform standard charges for document search and duplication, fixed to recover only the direct costs thereof, and continues to state:

Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

The implementing Department of Justice regulation, 20 C.F.R., § 16.9(a) (1981), provides that a determination that a fee waiver is in the public interest "shall ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the requester, or unless the requester is an indigent individual." Blakey disclaims indigency.

In its original denial of Blakey's fee waiver request, the FBI determined that "interests of the general public appear more likely to be served by the preservation of public funds." The Office of Privacy and Information Appeals reached the same conclusion, observing that the Kennedy assassination file had been made available to the public in the FBI reading room in Washington. (Although Blakey travels to Washington frequently, he resides in Indiana). Copies of the file have been requested and paid for in full by four news organizations, one university, and a microfilming firm (which Blakey says he cannot locate). The Department of Justice has consistently denied fee waivers for the Kennedy materials since the records were initially processed for release under FOIA, and they have been furnished without charge on only one occasion and that pursuant to court order.

Plaintiff contends he is uniquely situated to benefit the public in the uses he intends to make of these documents. He states that he expects to make recommendations to the FBI and Department of Justice for further investigation of Kennedy's

death, to teach a course at his law school on the subject, and to write "one or more publications." When his review is complete he anticipates donating the materials to Notre Dame's library.

As a general rule an agency has broad discretion concerning fee waivers, and its decision should not be overturned unless it is arbitrary, capricious or not otherwise in accordance with law. Eudey v. CIA, 478 F.Supp. 1175 (D.D.C. 1979); Lybarger v. Cardwell, 577 F.2d 764, 766 (1st Cir. 1978); Burke v. U.S. Department of Justice, 559 F.2d 1182 (10th Cir. 1977). Relying on Fitzgibbon v. CIA, No. 76-700 (D.D.C. January 10, 1977), however, plaintiff contends that the FBI must ignore the substantial cost incurred in providing him with a copy of the Kennedy materials in light of the public's inordinate and continuing interest in the assassination. But Fitzgibbon involved a request for a waiver of search fees in advance, and in a relatively modest amount, for information not yet in the public domain, not the considerably greater reproduction cost for the single copy of documents already located, assembled, and published which is involved here. ²

The Court finds that the FBI could (and did) rationally decide that the conservation of public funds better served the public interests than providing Blakey with his own personal copy of the Kennedy material. Granting his fee waiver would result in unequal treatment of requests for the same material from requesters at least as likely to benefit the public as Blakey, for several national news organizations, whose primary business it is to disseminate information (and who are, thus, more likely to reach the public with it than plaintiff), and another educational institution have already paid the full charge for it

² Fitzgibbon held that the agency's "perceived obligation" to collect fees for processing requests was irrelevant. In the instant case, the record indicates the agency's decision was not the result of a self-perceived duty but of balancing the relevant public interests. Plaintiff also relies on Allen v. FBI, No. 81-1206, (D.D.C. March 19, 1982) and Weisberg v. Bell, No. 77-2155 (D.D.C. January 16, 1978). Neither case is applicable here. The former involved records not available to the general public anywhere and the latter was expressly limited by the judge who ordered document production to the specific facts of that case.

apparently without objection. While plaintiff's credentials are impressive, there are undoubtedly many other potential document seekers throughout the country whose special abilities might provide unique illumination of any of the myriad subjects on which government agencies keep records. To hold that such abilities and worthy intentions alone require agencies to reproduce any and all records for free upon request would result in a precedent likely to result in a drain upon agency appropriations that Congress never intended or the taxpayers expected to underwrite.

II. Cisneros Records

In April, 1980, plaintiff requested all agency records concerning one Rogelio Cisneros.³ The FBI initially spurned the request altogether because plaintiff had not obtained Cisneros' written authorization, but several months later the request was processed and Blakey ultimately received all documents concerning Cisneros contained in files having to do with the Kennedy assassination. The FBI refuses to confirm or deny its possession of any other records relating to Cisneros which might be found elsewhere, i.e., indexed under topics other than the Kennedy assassination, claiming it has balanced the public's right to know against Cisneros' right to privacy and has determined the documents, if they exist, are exempt under 5 U.S.C., § 552(b)(7)(C), which permits the withholding of "investigatory records compiled for law enforcement purposes...to the extent that the production of such records would...constitute an unwarranted invasion of personal privacy."⁴

³ Plaintiff asserts that Cisneros was a member of JURE, an anti-Castro Cuban group and a participant in the "Odio incident," i.e., a visit to one Sylvia Odio, a Cuban emigree, with Lee Oswald and another man shortly before the assassination. Some Kennedy investigators speculate that those three people conspired for Kennedy's death in retaliation for the Bay of Pigs invasion.

⁴ Plaintiff has not sought a Vaughn index for such documents nor does he contend that records may exist which were not compiled for law enforcement purposes.

To determine the applicability of Exemption 7(C) the Court must conduct the customary de novo review by striking its own balance between the privacy interest at stake and the public interest in disclosure. Baez v. United States Department of Justice, 647 F.2d 1328, 1338 (D.C. Cir. 1980); Lesar v. United States Dept. of Justice, 636 F.2d 472, 486 (D.C. Cir. 1980). Blakey claims that Cisneros is a public figure and that the persistence of the public's interest in the Kennedy assassination outweighs Cisneros' interest in what remains of his privacy. But if Cisneros is a public figure in a context other than the Kennedy assassination investigation, it does not appear from the record before the Court.⁵ The FBI says that it has provided all records having to do with Cisneros in the Kennedy assassination file and is willing to provide anything else it may have about him upon receipt of written authorization from Cisneros himself. Plaintiff acknowledges that he has not attempted to obtain such authorization because he doesn't know where to locate him. The FBI says, correctly, that the FOIA does not impose a burden on it to track down an individual about whom another has requested information merely to obtain the former's permission to comply with the request. In the circumstance of the parties' stalemate over authorization, the Court presumes that Cisneros might at least be embarrassed or "experience some discomfort" from a disclosure of the existence of information about him in an FBI file unrelated to the Kennedy assassination, and it can discern no identifiable public interest in him otherwise. Baez v. United States Department of Justice, 647 F.2d 1328, 1338-39 (D.C. Cir. 1980); see also Fund for Constitutional Government v. National Archives, 656 F.2d 856, 863 (D.C. Cir. 1981). Indulging that presumption, the Court finds the FBI to have carried its burden with respect to the Exemption 7(C) claim for other Cisneros records.

⁵ At oral argument plaintiff's counsel suggested Cisneros may have some unspecified connection with "organized crime" but conceded that such notoriety as he may have derives from his mention in connection with the Kennedy assassination.

III. Adequacy of Search for Acoustical Records

In October, 1980, plaintiff requested copies of various documents having to do with an acoustical analysis of a sound recording of events contemporaneous with the Kennedy assassination conducted for the House Select Committee on Assassinations. He was provided with a copy of the FBI's own report on the subject in December, 1980.⁶ Plaintiff then requested all documents prepared in connection with a January 31, 1981, meeting between representatives of the FBI and the National Academy of Sciences Committee on Acoustics ("NASCA"). On May 21, 1981, the FBI informed Blakey it had no such material.

The FBI's affidavits explain that, when responding to a FOIA request, the FBI searches for responsive documents in its general indices which it alphabetizes by subject matter and individual. Those indices contain entries identifying "main files" carrying the name of the subject of the request and "see references" which cross-refer to other files in which the subject is mentioned.⁷ According to its affidavits the FBI could not make an indices search for the acoustical material due to the absence of identifying data. A verbal inquiry of the National Academy of Sciences liaison in the Technical Services Division did not disclose the existence of any documents in addition to the one already furnished to plaintiff, but a memorandum concerning the NASCA meeting in early 1981 enabled two other documents to be located and released to plaintiff in February, 1982. The FBI conducted yet another search after plaintiff filed his opposition to defendants' motion for summary judgment in April, 1982. No additional records were retrieved, and the FBI says, simply, that it has nothing else on the subject, exempt or not, which it is able to find.

⁶ The FBI analyzed a tape recording made at the time of the assassination by the Dallas Police Department.

⁷ The names of the subject, suspect or victim in the case caption are automatically indexed. All other indexing decisions are made by the investigating and supervising agents. Only names and information considered pertinent and necessary for future retrieval are indexed.

To prevail on an FOIA motion for summary judgment on the ground that all extant information has been accounted for, the agency must show that each document has been produced, is unidentifiable or is exempt from FOIA's disclosure requirements. The agency's affidavits, which should be relatively detailed and non-conclusory, are to be accorded substantial weight if submitted in good faith. Goland v. CIA, 607 F.2d 339 (D.C. Cir. 1978), cert. denied., 445 U.S. 927 (1980).⁸

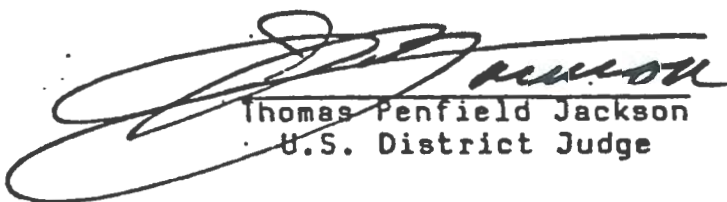
Plaintiff argues that an agency should not be permitted to frustrate the FOIA by hiding behind the limitations of its own filing system and that, at the least, defendant should have to inquire for documents at each of its division offices or wherever else common sense suggests they might be found. The issue, however, is not whether any further documents might conceivably exist, but, rather, whether the FBI's search for responsive documents was adequate. Id., 607 F.2d at 369. The FOIA was not intended to compel agencies to become ad hoc investigators for requesters whose requests are not compatible with their own information retrieval systems. A requester "must take the agency records as he finds them." Yeager v. Drug Enforcement Administration, 678 F.2d 315, at 323 (D.C. Cir. 1982); Goland, supra, 607 F.2d at 353; Marks v. United States Department of Justice, 578 F.2d 261, 263 (9th Cir. 1978). The FBI has conducted not one, but two, searches to comply with plaintiff's request. It has released those documents responsive to the request which its index search discovered and otherwise came to its attention. And it has offered to pursue any specific lead plaintiff can furnish to the whereabouts of any other documents. The Court finds this level of agency effort sufficient to constitute an adequate search in response to plaintiff's request.

⁸ Plaintiff has alleged the FBI's search was in bad faith because it initially denied controlling any documents responsive to his request and later released two documents. Any such inference, however, is expressly prohibited by Ground Saucer Watch, Inc. v. CIA, No. 80-1705 (D.C. Cir. August 17, 1981).

For the foregoing reasons, it is, this 14th day of
October, 1982,

ORDERED, that defendant's motion for summary judgment is
granted; and it is

FURTHER ORDERED, that plaintiff's cross-motion for summary
judgment is denied.



Thomas Penfield Jackson
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G. ROBERT BLAKEY,

Plaintiff,

v.

DEPARTMENT OF JUSTICE, et al.,

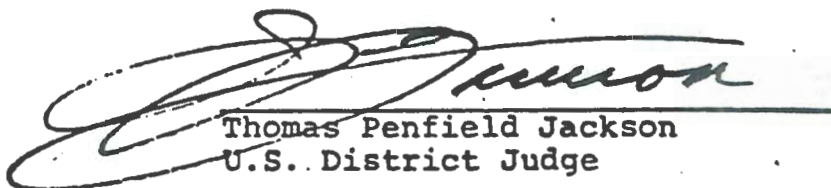
Defendants.

Civil Action No. 81-2174

JUDGMENT

For the reasons set forth in the Memorandum and Order of even date herewith, it is, this 14th day of October, 1982, .

ORDERED that judgment be, and it is hereby, entered for defendants, and the complaint is dismissed with prejudice.


Thomas Penfield Jackson
U.S. District Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Defendant U.S. Department of Justice for Summary Judgment, Statement of Material Facts, Memorandum of Points and Authorities, Declaration of John N. Phillips with Exhibits and Proposed Order, was mailed to James H. Lesar, 1231 4th Street, S.W., Washington, D.C. 20024.

On this 28th day of January, 1983.

NATHAN DODELL
Assistant United States Attorney
Room 2814-U.S. District Courthouse
Third and Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 633-4978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR

Plaintiff

v.

U.S. DEPARTMENT OF JUSTICE

Defendant.

Civil Action Number
82-3600

ORDER

This matter has come before the Court on Defendant U.S. Department of Justice's Motion for Summary Judgment.

It appears to the Court that there is no genuine issue as to any material fact and thus defendant is entitled to judgment as a matter of law. Accordingly, it is by the court, this _____ day of _____, 1983,

Ordered that summary judgment is granted in favor of the defendant U.S. Department of Justice, and this action is dismissed as to it with prejudice.

JOHN GARRETT PENN
United States District Judge