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August 6, 1980

FREEDOM OF INFORMATION ACT APPEAL

Mr. Quinlan J. Shea, Jr., Director  
Office of Information and Privacy Appeals  
Office of the Associate Attorney General  
U.S. Department of Justice  
Washington, D.C. 20530

Re: May 22, 1980 FOIA request  
of Mr. Harold Weisberg

Dear Mr. Shea:

As you will recall, on December 7, 1977 and January 18, 1978, the Federal Bureau of Investigation released approximately 80,000 pages of its Headquarters records on the assassination of President John F. Kennedy. By letter dated May 22, 1980, Mr. Harold Weisberg made a request for all records pertaining to the decision to release the FBI Headquarters records on President Kennedy's assassination. (A copy of Mr. Weisberg's letter is attached.)

Although more than two months have passed since Mr. Weisberg made his request, he has yet to receive a response. He hereby appeals this de facto denial of his request.

It is obvious that there must be a substantial number of documents that would be responsive to his request. The decision to release such a large volume of records on a subject as important as the assassination of the President of the United States must necessarily have occasioned considerable discussion and surely was not made without generating notes, correspondence, lists, inventories, cost estimates, reports, and memoranda.

I note in this regard, that in his letter to Mr. Weisberg of January 9, 1978, then FBI Director Clarence M. Kelley indicated that the FBI was planning to place copies of the Kennedy Assassination release "in other research facilities, such as the Library of Congress, in the near future." (A copy of Mr. Kelley's letter is attached.) In your letter to me of January 12, 1978, which was submitted to the Court in connection with the litigation of Weisberg v. Bell, et al., Civil Action No. 77-2155, you stated that Director Kelley had "made arrangements for [the Kennedy Assassination release] to be made available at a number of different public locations. . . ." (A copy of your January 12, 1978, letter is

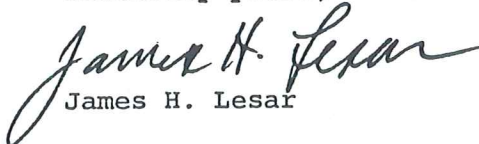
attached.)

Item 7 of Mr. Weisberg's request seeks materials pertaining to where, when, and how the Kennedy Assassination records were deposited. This is meant to include all records pertaining to any suggestion, plan or arrangements for the deposit of the Kennedy Assassination release at "different public locations," regardless of whether actually carried out.

Because such records may have a bearing on the FBI's recent attempt to rescind the waiver of copying costs which the Department granted Mr. Weisberg in 1978, and also because of Mr. Weisberg's advanced age and ill health, I request that you grant this appeal expedited consideration.

Finally, if you have any questions concerning the scope or interpretation of Mr. Weisberg's request, please let me know.

Sincerely yours,

  
James H. Lesar

Mr. David Flanders  
FOIPA Branch  
FBI  
Wash. D.C. 20535

5/22/80

FOIA request

Dear Mr. Flanders,

Beginning in 12/77 the FBI made what it referred to as general release of records pertaining to the assassination of President Kennedy and its investigation.

This request pertains to those releases and is for all records pertaining to them, to

- 1) The decision to make these releases
- 2) The reasons for making the decision and for making it when it was made
- 3) For including and excluding files that were included and excluded
- 4) For not including any field office files, particularly the major files of the Office of Origin
- 5) Lists of pertinent records and/or files, whether included or excluded and of withholdings, in part or in toto, including by referral, when referral was made and when responded to; and of justifications of withholdings
- 6) The disclosure of the records disclosed and the non-disclosure of the records not disclosed
- 7) Conditions and restrictions, access and distribution of what was disclosed, including duplicate copies, if any, and where, when and how deposited
- 8) Effects, including benefits or liabilities, to any part or function of the Government, including litigation, ongoing or anticipated, and FOIA requests
- 9) Costs of making and not making these disclosures
- 10) Any references to me in any of the records described in this request
- 11) The processing of the disclosures, including copies of all worksheets not yet provided to me, and approval or disapproval of higher or other authority
- 12) Efforts, if any, to determine whether what was withheld was public domain or had been disclosed by the FBI or other agencies, including by claim to classification

If you have any questions, please ask them. Sincerely, Harold Weisberg



OFFICE OF THE DIRECTOR



UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

January 9, 1978

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

Dear Mr. Lesar:

Your letter of November 19, 1977, on behalf of your client, Mr. Harold Weisberg, to the Deputy Attorney General, has been forwarded to the Federal Bureau of Investigation (FBI) for reply. You make request for waiver of fees for Mr. Weisberg for duplication of documents in the FBI Headquarters (FBIHQ) file on the assassination of President John F. Kennedy.

For your information, more than 80,000 pages of raw FBIHQ files concerning this investigation have been prepared for public release under the Freedom of Information Act (FOIA). Moreover, as you are aware, 40,001 pages of our JFK Assassination investigation materials are already in the public domain. A copy of the entire JFK Assassination release, including our first-segment release of December 7, 1977, and a second-segment release scheduled for mid-January, 1978, will be maintained for public review in our Reading Room.

One set of these documents, the duplication of which requires many days of duplication machine time, in addition to the cost of paper, binders and other material, fills numerous file cabinets. Additionally, labor costs in the reproduction, review and assembly are substantial. The entire budgetary expenditure of the FBI, to date, in processing this single FOIA release of JFK Assassination investigation files, has exceeded \$180,000.



James H. Lesar, Esq.

While we fully understand the public interest in these documents, we have taken into consideration the extraordinary volume of JFK Assassination file material, their availability to the public, and the material and manpower required to reproduce them. We have therefore concluded that the public interest would be best served by assertion of the duplication fees set by regulation rather than by waiver of these fees, and that additional copies reproduced at government expense should be made available to the general public, rather than individual requesters for their personal use. We anticipate that additional sets of documents will be produced and placed in other research facilities, such as the Library of Congress, in the near future.

The JFK Assassination investigation file material is being made available to other requesters on the same terms as are now available to Mr. Weisberg. In cases where these requesters for the total JFK Assassination investigation files have sought waiver of duplication fees, we have denied their requests for waiver for the same considerations and as a matter of general policy.

These file materials are available for Mr. Weisberg's review during business hours at our Reading Room located at FBIHQ, 10th and Pennsylvania Avenue, N. W., Washington, D. C.

You may of course, appeal my decision in this matter. Any appeals should be directed to the Deputy Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D. C. 20530, and should be clearly marked "Fee Waiver Appeal."

Sincerely yours,

  
Clarence M. Kelley  
Director



OFFICE OF THE DEPUTY ATTORNEY GENERAL  
WASHINGTON, D.C. 20530

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

JAN 12 1978

Dear Mr. Lesar:

On November 19, 1977, on behalf of your client, Mr. Harold Weisberg, you wrote to former Deputy Attorney General Flaherty requesting a waiver of all fees that might be assessed as a result of your client's request for access to records of F.B.I. Headquarters pertaining to the assassination of President John F. Kennedy. That request was forwarded to Director Kelley for initial consideration and response to you. I have now been informed that Director Kelley has decided not to waive reproduction charges (as in the case of records pertaining to the assassination of Dr. Martin Luther King, Jr., no search fees were assessed), and that he has communicated his decision to you.

The release to the public of the second portion of the Bureau's files on the Kennedy assassination is scheduled to occur on Wednesday, January 18. I am aware of the legal action you have filed on behalf of Mr. Weisberg, seeking, inter alia, to enjoin that release, or, in the alternative, to obtain a complete fee waiver on his behalf. Although no formal appeal from Director Kelley's denial of the fee waiver request has been received by me, it is my judgment that the circumstances of this particular case are now such that both simple fairness and the interests of justice would be served by my independent consideration of the fee waiver request.

There are certain obvious parallels between Mr. Weisberg's efforts to obtain access to the Kennedy assassination records and those pertaining to the King assassination. In each case we are concerned with records pertaining to an event of great historical importance and substantial interest on the part of the general public. It is in recognition of this that Director Kelley did not assess search fees in either case and, on his own initiative, made arrangements for the released materials to be made available

at a number of different public locations, which I do not believe has been done with the King records. There are other similarities and distinctions between the two cases as well.

In acting on Mr. Weisberg's appeal from Director Kelley's refusal to grant any fee waiver as to the King records, I modified that decision and granted a partial waiver, in the amount of forty cents on the dollar. I was well aware of the fact that Mr. Weisberg has a commercial motive in seeking access to those records. In my view, this is ordinarily a more than sufficient reason to deny any fee waiver under the Freedom of Information Act. This statute is intended to ensure that the public is informed as to the workings of its Government, not that individuals can profit thereby. On the other hand, I felt that there was a sufficient counterbalancing public interest in that case to grant him the partial waiver. By examining your most recent complaint filed on behalf of Mr. Weisberg, I have become considerably more aware of just how blatantly commercial is the nature of what appears to be Mr. Weisberg's primary goal in seeking access to all of these records. By means of the content of the attachments to that complaint, however, as well as similar information from other sources, I am also somewhat more aware of the real, albeit limited, extent to which Mr. Weisberg does function in this area in support of the public interest.

On balance, I have concluded that the case for any fee waiver on behalf of Mr. Weisberg in the instant case is weaker than was true with the King records, but that the distinction does not warrant a difference in result. Accordingly, it is my decision that, to whatever extent Mr. Weisberg chooses to obtain copies of the Kennedy assassination records, he will be charged therefor at the rate of six cents per page, rather than ten cents.

Sincerely,

Benjamin R. Civiletti  
Acting Deputy Attorney General

By:

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