

7/7/86

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG and )  
JAMES H. LESAR, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 U.S. DEPARTMENT OF JUSTICE, )  
 )  
 Defendant. )  
 )

Civil Action No. 86-1547

A N S W E R

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

With the exception of a portion of the Freedom of Information Act (FOIA) request upon which this action is based, plaintiffs did not agree to pay search and duplication fees. They are not entitled to the processing and release of records as to which they made no such agreement.

Third Defense

In a separate FOIA lawsuit, Blakey v. Department of Justice, et al., C.A. No. 81-2194, the Federal Bureau of Investigation released information that is responsive to that portion of the FOIA request in the instant case as to which plaintiff Weisberg agreed to pay duplication costs.<sup>1/</sup> Plaintiff Lesar was counsel for the plaintiff in Blakey.

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<sup>1/</sup> To the extent that additional documents may be found responsive to said portion (item 7 of the May 22, 1980 request as modified by Weisberg) they will be processed for release to plaintiffs.

Fourth Defense

At least in part, plaintiff Weisberg's May 22, 1980 FOIA request does not reasonably describe the records sought.

Fifth Defense

Responding specifically to the numbered paragraphs of the complaint, defendant admits, denies and avers as follows:

1. Admit.
- 2.-3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of these paragraphs of the complaint.
4. Admit that defendant the United States Department of Justice is an agency of the United States and may have possession and control of records requested by plaintiffs.
5. Admit the existence of the letter dated May 22, 1980, to which the Court is respectfully referred for a full and accurate account of the contents thereof. Aver that, by letter dated July 1, 1980 (copy filed herewith as Attachment 1), the FBI dealt with the applicability, to pending FOIA requests, including the May 22, 1980 request, of the fee waiver previously granted to plaintiff Weisberg by this Court. Further aver that, by letter dated July 29, 1980 (copy filed herewith as Attachment 2), plaintiff agreed to pay duplication costs (without prejudice to his right to seek to recover such costs) only for item 7 of the May 22, 1980 request, and he limited the scope of item 7.
6. Deny, except admit the existence of the letter dated August 6, 1980, to which the Court is respectfully referred for a full

and accurate account of the contents thereof.

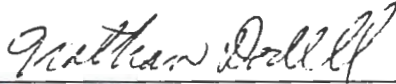
7.-8. These paragraphs state conclusions of law to which no response is required, but if response be deemed required they are denied.

All allegations in the complaint not specifically admitted herein are denied.

Respectfully submitted,

JOSEPH E. DIGENOVA, D.C. BAR #073320  
United States Attorney

ROYCE C. LAMBERTH, D.C. BAR #189761  
Assistant United States Attorney

  
NATHAN DODELL, D.C. BAR #131920  
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer has been mailed to James H. Lesar, Esquire, 918 F Street, N.W., Suite 509, Washington, D.C. 20004 on this 7th day of July, 1986.

*Nathan Dodel*

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NATHAN DODELL  
Assistant United States Attorney  
Judiciary Center, Room 4110  
555 4th Street, N.W.  
Washington, D.C. 20001  
(202) 272-9202

JUL 1 1983

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

Dear Mr. Weisberg:

On January 16, 1978, United States District Judge Gerhard Gesell 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 Gesell 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. Quinlan 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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Attachment 1

Mr. Harold Weisberg

of deciding an 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 (FBIEQ);
- (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 FBIEQ;
- (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 4, 1979, request for FBI records furnished to certain Congressional Committees during their investigations of the King and Kennedy assassinations, and your May 22, 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



Mr. Harold Weisberg

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. David Flanders, chief  
FOIPA Branch  
FBI  
Washington, D.C. 20535

7/29/80

FOIA Request

Dear Mr. Flanders,

In your 7/1/80 letter revoking the fee waiver that had been granted you specifically included my 5/22/80 request.

Item 7 of that request asks for all records pertaining to "Conditions and restrictions, access and distribution of what was disclosed, including duplicate copies, if any, and where, when and how deposited."

Here I further limit what this Item requests and, without prejudice to my rights to recover duplication costs, agree to pay the duplication costs.

The entire request pertains to the FBI's general releases pertaining to the assassination of President Kennedy. The quoted item pertains to any duplicate, public deposits of copies, if any.

Without regard to the other information requested in Item 7, I here request that copies of all records pertaining to the duplicate public deposits, if any, and where, when and how they were made, aside from the FBI's public reading room, be provided.

Sincerely,

  
Harold Weisberg

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Attachment 2