

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RECEIVED

NOV 10 1986

HAROLD WEISBERG, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF STATE,

Defendant

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CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

Civil Action No. 86-1547

PLAINTIFFS' OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

Preliminary Statement

General Background

After the Freedom of Information Act ("the FOIA") was enacted, the Federal Bureau of Investigation ("the FBI") began to receive a number of requests, mostly by plaintiff Harold Weisberg ("Weisberg"), for records on the assassination of President John F. Kennedy. Under the original FOIA, the FBI generally ignored these requests.

In 1974 Congress enacted amendments designed to make the FOIA more effective. After these amendments went into effect on February 19, 1975, the FBI received many more requests for materials pertaining to the Kennedy Assassination. <sup>1/</sup> Many, if not most,

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<sup>1/</sup> As of January 1982 the FBI had received 159 requests for Kennedy Assassination records. Defendant's answer to Interrogatory No. 3 in Blakey v. U.S. Department of Justice, Civil Action No. 81-2194. (Reproduced as Exhibit H to the Declaration of Angus B. Llewellyn ("Llewellyn Decl.") filed in support of Defendant's Motion for Summary Judgment in this case.)

were made by Weisberg. Again, these requests were generally ignored.

At an as yet unknown date, the FBI made a decision to make a public release of its main Headquarters files on the Kennedy Assassination.<sup>2/</sup> This culminated in two highly publicized public releases of Kennedy Assassination records, with each "batch" involving approximately 40,000 pages. The first batch was released on December 7, 1977, the second on January 18, 1978. These releases ("the general releases") were placed in the FBI Reading Room at FBI Headquarters.

In late 1977 Weisberg sued for a copy of the general releases. On January 16, 1978, this Court granted him a fee waiver for the second batch of 40,000 pages.<sup>3/</sup> Court's Order of January 16, 1978 in Harold Weisberg v. Griffin Bell, et al., Civil Action No. 77-2155. During this litigation the Justice Department represented to Weisberg (and to this Court) that arrangements had been made to place copies of the Kennedy Assassination general releases at a num-

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<sup>2/</sup> The FBI has stated that the personnel costs for processing through November 17, 1977 came to \$187,644, and that from October 1, 1977 to February 28, 1978 they were \$34,060. See defendant's answers to interrogatories 9 and 10 in Blakey (Exhibit H to the Llewellyn Declaration in this case.) The total cost of processing and producing the general releases is conservatively estimated at \$320,259. Id., answer to interrogatory No. 9. These figures suggest that this massive project began at least as early as 1976.

<sup>3/</sup> The FBI, without further litigation, also provided the first batch of 40,000 pages to Weisberg at no charge. Later, by letter dated March 31, 1978, the Department of Justice granted Weisberg a fee waiver for all Departmental records compiled in the investigation of the assassinations of President Kennedy and Dr. Martin Luther King.

ber of diferent public locations. See Attachment 7.

#### The Request

By letter dated May 22, 1980, Weisberg submitted a request to the FBI for all records pertaining to the 1977-1978 general releases of JFK Assassination records. The request also enumerated 12 specific categories of matters included within the general request. These twelve items included such matters as:

- all records pertaining to the decision to make the general releases (Item 1)
- all records pertaining to the reasons for making the decision to make the general releases (Item 2)
- all records pertaining to the reasons for inclusion or exclusion of files within the general releases (Item 3), such as field office files and particularly the major files of the Office of Origin (Item 4)
- lists of records and/or files pertinent to the general releases (Item 5)
- lists of withholdings made in the general releases, including lists of referrals and responses to referrals (Item 5)
- records pertaining to the disclosure or nondisclosure of the records in the general releases (Item 6)
- all records pertaining to access to and distribution of the general releases, including when, where and how any duplicate copies were deposited (Item 7)
- all records pertaining to the effects of the general releases on "any part or function of the Government, including litigation, ongoing or anticipated, and FOIA requests" (Item 8)
- all records pertaining to the costs of making the disclosures, and of not making them (Item 9)
- all records pertaining to the processing of the releases, including all worksheets not yet provided to Weisberg (Item 11)

--all records pertaining to any efforts to determine whether what was withheld from the general releases was public domain or had been disclosed by the FBI or other agencies (Item 12).

Weisberg concluded his request by inviting the FBI to ask any questions it had. See Attachment 1.

The FBI did not respond to Weisberg's May 29, 1980 request. However, five weeks after it received this request the FBI did write Weisberg a letter revoking in part the general fee waiver for King and Kennedy assassination records which he had been granted in March 1978. The FBI's July 1, 1980 letter specifically declared that his fee waiver would not be extended to the documents responsive to his May 22, 1980 request. See Attachment 2.

On July 29, 1980 Weisberg wrote the FBI that he would agree to pay the duplication costs for Item 7 of the request, but without prejudice to his right to recover such costs. He also stated that he was limiting what Item 7 requested. Rephrasing this item, he requested "copies of all records pertaining to the public deposits [of the Kennedy Assassination general releases], if any, and where, when and how they were made, aside from the FBI's public reading room, be provided." See Attachment 3. This limited original Item 7 in two ways: First, it eliminated the need for the FBI to provide records relating to the FBI's deposit of a copy of the general releases in the FBI's public reading room. Second, it deleted language which requests records pertaining to conditions and restrictions on, and access to, the general releases.

A week later Weisberg, now represented by counsel, appealed the FBI's failure to respond to his May 22nd request. This letter, dated August 6, 1980, concluded with a request that the appeals office advise Weisberg's counsel if there were any questions concerning the scope or interpretation of Weisberg's request. See Attachment 4.

By letter dated August 25, 1980 the FBI acknowledged Weisberg's letter of July 29, 1980. Treating the latter as a new FOIA request rather than a modification of one item of the May 22nd request, the FBI announced that it had been assigned "to an employee who is familiar with the material pertaining to the assassination of President Kennedy," and that "[t]hese requests are being handled in chronological order based on the date of receipt at FBI Headquarters." It also informed him that his request would be handled "as expeditiously as possible" and solicited his "patience and cooperation in this matter." See Attachment 5.

By letter dated August 28, 1980 Weisberg replied to the FBI's August 25th letter. He protested the treatment of his July 29 letter as a new FOIA request, noting that in fact it related to his May 22, 1980 request. He asserted that the FBI had never handed FOIA requests in chronological order based on date of receipt and that some of his had been ignored for more than 12 years. Stating his understanding that his request should have been processed already as a non-project request, he asked that it be processed in chronological order. In the event that the FBI had not yet reached

nonproject requests dating to May 22, 1980, he asked that the FBI inform him of this fact and advise him when it expected to reach it. See Attachment 6.

In the ensuing six years the FBI made no response to the May 22, 1980 request, nor did it respond to the July 29, 1980 modification of Item 7 of that request. Nor did the Justice Department ever respond to Weisberg's August 6, 1980 appeal.

#### ARGUMENT

##### I. THE FBI HAS IMPROPERLY RESTRICTED THE SCOPE OF PLAINTIFF'S REQUEST

The FOIA requires a requester to "reasonably describe" the records sought. 5 U.S.C. § 552(a)(3). Once that burden is met, the agency's obligations are clear. Its mission is to provide the requester with the information he wants to the extent it is not exempt. In responding to a FOIA request an agency is "bound to read it as drafted, not as . . . agency officials . . . might wish it was drafted." Miller v. Casey, 730 F.2d 773, 777 (D.C. Cir.1984).

Even where there is some ambiguity in a request, an agency must either construe it liberally or secure the requester's consent to clarify or narrow it. "A FOIA request should not require the specificity and cunning of a carefully drawn set of discovery requests, so as to outwit narrowing legalistic interpretations by the government." Providence Journal Co. v. F.B.I., 460 F.Supp.

778, 792 (D.R.I.1978), rev'd on other grounds, 602 F.2d 1010 (1st Cir.1979), cert. denied, 444 U.S. 1071 (1980). Thus, "[w]here the requester has endeavored to carefully specify what documents were being requested, the Court will not allow an agency's quibbling to obscure the issues." Norwood v. F.A.A., 580 F.Supp. 994, 1001 (W.D.Tenn.1983).

The policy upon which such decisions are based is derived from the purpose of the FOIA: ". . . the fundamental objective of FOIA is to foster disclosure, not secrecy." Department of the Air Force v. Rose, 425 U.S. 352, 361 (1976). Thus:

Given the policy embodied in the FOIA requiring disclosure of information in government documents unless it falls within the reach of one of the specified exemptions, the agency should err on the side of liberally construing what material falls within the scope of the request.

Dunaway v. Webster, 519 F.Supp. 1059, 1083 (N.D.Cal.1981). And

the agency must be careful not to read the request so strictly that the requester is denied information the agency well knows exists in its files, albeit in a different form from that anticipated by the requester. To conclude otherwise would frustrate the central purpose of the Act.

Hemenway v. Hughes, 601 F.Supp. 1002, 1005 (D..D.C.1985). See also Sonia Dettmann v. U.S. Department of Justice, D.C.Cir. No. 85-5728, slip op. at 6-7 (issued October 14, 1986) (a request for "documents" is a request for "documents" and should not be read parsimoniously).

In this case the FBI has seized upon Weisberg's July 29, 1980 letter to argue that because he committed himself to pay for

the records described in Item 7 of his request, he thereby withdrew the remainder of his request. There is, however, nothing in Weisberg's letter to support this contention. He certainly did not expressly withdraw the remainder of his request, nor did he imply such a withdrawal. The most that can be inferred is that he singled out one item of particular and immediate importance<sup>4/</sup> to him which was not likely to generate large duplication costs.<sup>5/</sup>

Moreover, Weisberg's July 29 letter must be read together with his other correspondence. In his August 6, 1980 appeal Weisberg, now represented by counsel, argued that there must be a substantial body of documents responsive to his request. He specifically referred to matters additional to those enumerated in Item 7 of his May 22 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.

See Attachment 4. This clearly indicates that Weisberg did not

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<sup>4/</sup> Although documents responsive to other items of the request are important for the light they might shed on the FBI's administration of the FOIA, and particularly its response to the JFK assassination requests, Item 7 was of special interest because a failure to produce documents could indicate that the Department of Justice had misled the Court in Weisberg v. Bell, C.A. No. 77-2155.

<sup>5/</sup> Weisberg appealed the FBI's determination that his fee waiver was to be partially terminated and would not be extended to his May 22 request. A favorable decision on the appeal might render the issue of a commitment to pay for the other items of the request irrelevant. Also, if few documents responsive to the other items were found, there might be no charge for them in accordance with common administrative practice.



intend his July 29 letter to limit his May 22 request to Item 7. In further support of this point it should be noted that Weisberg's August 28, 1980 letter to the FBI characterized his request as being "for records pertaining to the FBI's general releases of 12/77 and 1/78 of assassination records," rather than describing it as limited to Item 7. See Exhibit F to Llewellyn Declaration.

There are two additional reasons why it was improper for the FBI to construe the July 29 letter as limiting the May 22nd request to Item 7. First, to the extent that Weisberg's letters created any ambiguity about what documents he wanted, the FBI was obligated under Departmental regulations to confer with him in order to clear up the ambiguity. See 28 C.F.R. § 16.3(b).

Second, the FBI denied Weisberg due process by failing (1) to make any response to his request over a six-year period, (2) to notify of the restrictive interpretation it allegedly placed on his request, and (3) to advise him of the estimated fees he might incur with respect to his request as required by 28 C.F.R. § 16.10(c). See Shermco Industries v. Sec. of U.S. Air Force, 452 F. Supp. 306, 317 n.7 (N.D.Tex., Dallas Div.1978). Additionally, the failure of an agency to notify the requester of a restriction it has placed on the scope of a request may require that the restriction be held invalid. McGehee v. C.I.A., 697 F.2d 1095, 1105 (D.C.Cir.1983).

II. THE FBI HAS FAILED TO MEET ITS BURDEN OF SHOWING THAT IT HAS CONDUCTED AN ADEQUATE SEARCH FOR ITEM 7 MATERIALS

As modified by his July 29, 1980 letter, Item 7 of Weisberg's request seeks all records pertaining to the duplicate public deposits (other than to the FBI Reading Room) of the Kennedy Assassination general releases, including when, where and how they were made. The FBI asserts that it has conducted three searches for materials responsive to Item 7 but has located only one document. This document is a December 6, 1977 letter from the Director of the Congressional Research Service ("CRS") to then FBI Director Clarence M. Kelley which solicited a copy of "the F.B.I.'s 80,000 page report" so CRS could continue its assistance of the House Select Committee on Assassinations. See Llewellyn Declaration, Exhibit G.

The one document provided<sup>6/</sup> itself raises questions about the adequacy of the FBI's search. In letters dated January 12 and January 13, 1978, the Department of Justice represented, as part of its effort to deny Weisberg a fee waiver for the 80,000 page release, that FBI Director Kelley, on his own initiative, had made arrangements for the released Kennedy materials "to be made available at a number of different public locations." See Attachments 7-8. Unless these statements misrepresented the facts, there should be documents concerning arrangements made with several dif-

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<sup>6/</sup> The document was not provided in response to Weisberg's 1980 FOIA request, but supplied in 1982 to another requester in response to discovery requests. Of course, it should have been supplied to Weisberg long before that.

diferent repositories, not just the CRS. Additionally, if Director Kelley made these arrangements "on his own initiative," then there should be some communication from Director Kelley or a member of his staff to the CRS. No such communication has been supplied.

To prevail in a FOIA case, "the defending agency must prove that each document that falls within the class requested either has been produced, is unidentifiable or is wholly exempt from the Act's inspection requirements." National Cable Television Ass'n v. FCC, 479 F.2d 183, 186 (D.C.Cir.1973). It is clear that the FBI has not met this standard in this case.

The FBI has done some searching for materials responsive to Item 7, although no search was made in response to Weisberg's request until after this suit was filed. The problem, though, is that the searches which have been made are inadequate. In connection with the discovery request in the Blakey case, the FBI made both an index search and a page-by-page search of a portion of a JFK Assassination file. Another index search was made after this suit was filed. Whether these index searches differed in any way cannot be gleaned from the present state of the record, since the FBI has not submitted a copy of any search slip(s) employed in connection with the Blakey search. The search slip employed in the index search made after this suit was filed specifies a search under the subject "Public deposit of JFK Assassination records." See Llewellyn Declaration, Exhibit I. It is unclear from this

whether the searcher looked only under this exact title or whether all entries under "Kennedy Assassination" were checked to see if any of them might fit this description.

The fact that the one document responsive to Item 7 was located only after an index search had turned up nothing obviously indicates that a search of the FBI's general indices may prove inadequate to the task of locating extant documents. An index search in this case presents special problems. Here the records sought are records concerning an administrative matter, not an investigative matter. The FBI's general indices are generally organized according to the names of individuals and organizations involved in an investigation. In this case the subject matter is more abstract, and it is far from certain that the records sought would have been indexed under "Kennedy Assassination," much less "Public Deposit of JFK Assassination Records." They could have been indexed as a FOIA matter or even under some code name such as the FBI's "Project Onslaught," which was launched in 1976 in an effort to clear up the FBI's FOIA backlog. Because these records concern administrative matters rather than investigative matters, they may not be indexed in the FBI's general indices at all.

This does not mean that there are not ways of searching for them. An obvious possibility is to check for ticklers on the JFK Assassination releases project. In the past Weisberg has found that such ticklers contain materials related to his requests which

were not located as a result of searches made of the general indices or the ELSUR (electronic surveillance) indices.<sup>7/</sup> In light of this fact, the need to search for ticklers in this case is obvious.

Another plausible method of unearthing the missing records would be to search the FBI's files relating to the Weisberg v. Bell litigation. The Justice Department obviously got its information concerning Director Kelley's arrangements to have the Kennedy Assassination releases deposited "at a number of different locations" from the FBI in connection with that lawsuit. It is reasonable to believe, therefore, that a search of such files may turn up information which is either responsive to Item 7 or which will suggest some lead as to where such materials might be found.

Perhaps the simplest and quickest way to locate the missing records would be to phone some of the people who were involved in the project which produced the Kennedy Assassination releases. A few questions about who was involved in the project and who handled which aspects of it could soon turn up information about how the documents pertaining to it might have been indexed and filed.

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<sup>7/</sup> For example, a tickler kept by an FBI supervisor involved in the FBI's investigation of the assassination of Dr. Martin Luther King, Jr. had Weisberg listed in a number of bank robbery files. The information contained in them could only have come from interception of telephone conversations between Weisberg and Jerry Ray, the brother of James Earl Ray. The FBI attested in Weisberg v. Department of Justice, Civil Action No. 75-1996, that it had no electronic surveillance on Weisberg. Although the information in the tickler originated in the Springfield field office and was sent to the St. Louis field office, neither office provided this information in response to Weisberg's request for any and all information pertaining to him. Nor did these materials show up in the FBI's files on the King Assassination (code-named "MURKIN"), even though they bear the MURKIN caption and are the basis for the FBI's theory of a Ray family conspiracy to kill Dr. King.

III. SUMMARY JUDGMENT IS IMPROPER BECAUSE THERE IS A GENUINE  
ISSUE OF MATERIAL FACT

As the foregoing discussion indicates, the adequacy of the FBI's search for records responsive to Item 7 of the request is very much in dispute. The existence of a disputed issue as to the adequacy of the search precludes summary judgment in favor of the agency. Weisberg v. United States Dept. of Justice, 627 F.2d 365 (D.C.Cir.1980).

In addition, the affidavit submitted in this case is insufficient to support summary judgment. There is evidence that the FBI has not located all documents responsive to Item 7; the FBI's affidavit fails to address why certain logical search methods have not been employed (e.g., search of ticklers, examination of the Weisberg v. Bell file(s), consultation with persons who handled the Kennedy Assassination releases); and there is evidence suggestive of agency bad faith (failure to respond to the request or the appeal, failure to provide a routine estimate of costs which might be incurred before requiring a commitment to pay costs). Under these circumstances, summary judgment for the government based on its affidavit alone is inappropriate. Perry v. Block, 684 F.2d 121 (D.C.Cir.1982).

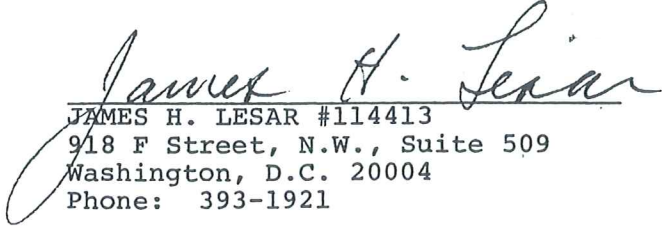
Given these facts, defendant's motion for summary judgment should be denied. This Court should either order a further search or it should permit plaintiffs to take discovery to determine how the FBI would have indexed and filed these records. On the latter point it should be noted that the Court of Appeals repeatedly has

held that discovery as to the adequacy of an agency's search is crucial to the FOIA plaintiff and to the proper judicial administration of the FOIA. See, e.g., Founding Church of Scientology of Washington, D.C., Inc. v. NSA, 610 F.2d 824, 836-837 (D.C.Cir. 1979) ("To accept its claim of inability to retrieve the requested documents in the circumstances presented is to raise the specter of easy circumvention of the Freedom of Information Act. . . and if, in the face of well-defined requests and positive indications of overlooked materials, an agency can so easily avoid adversary scrutiny of its search techniques, the Act will inevitably become nugatory." See also Weisberg v. Department of Justice, 543 F.2d 308, 311 (D.C.Cir.1976); Neugent v. Department of Interior, 640 F.2d 386 (D.C.Cir.1981).

CONCLUSION

For the reasons set forth above, defendant's motion for summary judgment should be denied.

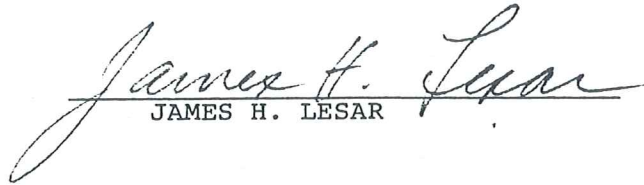
Respectfully submitted,

  
JAMES H. LESAR #114413  
918 F Street, N.W., Suite 509  
Washington, D.C. 20004  
Phone: 393-1921

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of November, 1986, mailed a copy of the foregoing Plaintiff's Opposition to Defendant's Motion for Summary Judgment to AUSA Nathan Dodell, 555 4th Street, N.W., Washington, D.C. 20001.

  
JAMES H. LESAR



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, et al.,

Plaintiffs

v.

U.S. DEPARTMENT OF STATE,

Defendant

Civil Action No. 86-1547

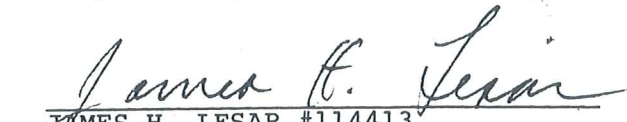
PLAINTIFFS' RULE 108(h) STATEMENT

Pursuant to Rule 108(h), plaintiffs list the following facts as to which he contends there is a genuine issue:

1. Whether defendant has conducted an adequate search for records responsive to Item 7 of plaintiff Harold Weisberg's request.

2. Whether by letter dated July 29, 1980 Mr. Weisberg limited the scope of his request to item number seven only of his May 22, 1980 request. See Attachments 3, 4 and 6 to Plaintiffs' Opposition to Defendant's Motion for Summary Judgment.

Respectfully submitted,

  
JAMES H. LESAR #114413  
918 F Street, N.W., Suite 509  
Washington, D.C. 20004  
Phone: 393-1921

Counsel for Plaintiffs

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

Attachment 1

C.A. 86-1547



JUL 1 1978

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

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 (FBIHQ);
- (3) Documents from the Dallas and New Orleans Kennedy assassination materials which you were advised had been previously processed at FBIHQ, but which we are unable to locate in the materials released from FBIHQ;
- (4) Documents concerning either assassination which were referred by the FBI to other government agencies, whenever those documents are returned to the FBI for release.

However, customary duplication and search fees will be assessed for all other materials requested by you such as, but not limited to, your December 4, 1977, 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

7/29/80

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

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

Attachment 3

Civil Action No. 86-1547

JAMES H. LESAR  
ATTORNEY AT LAW  
2101 L STREET, N.W., SUITE 203  
WASHINGTON, D. C. 20037  
TELEPHONE (202) 223-5587

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

Attachment 4

Civil Action No. 86-1547

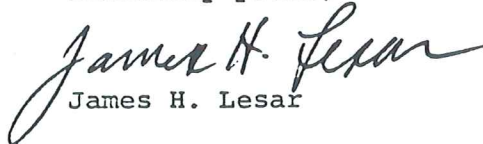
attached.)

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

JAN 12 1978

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

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

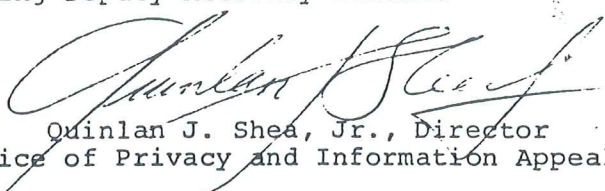
at a number of different public locations, which I do not believe has been done with the King records. There are other similarities and distinctions between the two cases as well.

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



UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

AUG 25 1980

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

Dear Mr. Weisberg:

This is in response to your Freedom of Information Act request dated July 29, 1980, for material relating to the release of documents pertaining to the assassination of President Kennedy.

Your request, along with requests from other individuals, has been assigned to an employee who is familiar with the material pertaining to the assassination of President Kennedy. These requests are being handled in chronological order based on the date of receipt at FBI Headquarters. Your request will be handled as expeditiously as possible.

Your patience and cooperation in this matter is appreciated.

Sincerely yours,

*Thomas H. Bresson/ghp*

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

Attachment 5

C.A. No. 86-1547

Mr. Thomas H. Bresson, Chief  
FOIPA Branch  
FBI  
Washington, D.C. 20535

8/28/80

Dear Mr. Bresson,

Your letter of the 25 states what is not true, that it "is in response to your Freedom of Information Act request dated July 29, 1980, for material relating to the assassination of President Kennedy."

My request, as the FBI knows very well, is of earlier date, the newest repetition of it being of 5/22/80.

This request also is not for "documents pertaining to the assassination." It states explicitly that it is, rather, for records pertaining to the FBI's general releases of 12/77 and 1/78 of assassination records.

The apparent reason for this newest of the FBI's long series of misrepresentations of my FOIA requests is to stonewall a request compliance with which will disclose that the FBI made deliberate misrepresentations to a federal court.

Having rewritten my request to make it one for JFK assassination records you then, according to your letter of the 25th, added it to your stack of requests for JFK assassination requests, where it certainly will be further stonewalled, and to assure this, "assigned (it) to an employee who is familiar with the material pertaining to the assassination of President Kennedy, which are being handled in chronological order, date of receipt at FBI Headquarters."

Even for you and the FBI the last is a rather tall one, for you are not and never have "handled in chronological order based on the date of receipt." I have simple requests of more than 12 years that remain ignored. I provided a list of these in 1976 and they also remain ignored, just about all of the two dozen of them.

The JFK assassination was 11/22/63. The information included within the instant request dates to 1977 and is not for assassination information. It therefore does not require the knowledge of the employee familiar with assassination information requests.

Attachment 6

Civil Action No. 86-1547

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The apparent purpose of these newest of your shenanigans is to hide the fact that the FBI, aided by the devotion of the time, effort and cost of not fewer than six Department lawyers, tried unsuccessfully to deceive and mislead Judge Gesell and to defraud me ( and the country through me) in C.A. 77-2155. In this newest of your dirty tricks you have also proven FBI testimony in my C.A. 75-1996, which is still in court, to be ~~the~~ <sup>false</sup> testimony. I believe the same is true of FBI testimony to the Congress.

In its efforts to defraud me the FBI informed Judge Gesell that it was making deposits of its general releases throughout the country. It is to this that my instant request pertains, not to the assassination.

In C.A. 75-1996 the FBI provided testimony that in response to the interest of Congressman Don Edwards and his committee it had instituted a first-in, first-out system in which requests were divided into project and non-project cases. This distinction was size, smaller requests being non-project. My instant request is a non-project request.

The FBI's testimony is that an initial search was made within 48 hours, to make this determination and to be able to inform the requester of the number of records involved and their cost. You have now written me twice, pertaining to this removal of an older and ignored and misrepresented request, without once meeting what is required of you by the FBI's 1976 testimony in C.A. 75-1996.

It is my understanding of the size of the FBI's backlog of non-project cases that without these dirty tricks you would have come to and pass this instant request.

If this is true, as I have every reason to believe it is, then it is quite apparent that the dishonesties cited above are intended not only to stonewall my requests and to "stop" me, the explicit FBI determination of 1967, its own word, but also to prevent proving that it deliberately misrepresented to Judge Gesell and Judge Green - and the Congress on more than one occasion.

When I first made this request, in early 1978, the FBI misrepresented it and deceived that Court. To accomplish this it obtained a false and misleading affidavit from SA Horace



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F. Beckwith. He was an ideal selection for his career of false and misleading FOIA affidavits because he was an unindicted co-conspirator in the Pat <sup>U</sup>ray case and thus was very vulnerable. He was nearing retirement and was subject to instant firing and other punishment.

Beckwith's sworn misrepresentations include that I did not request what I had requested. It is not until the FBI prevailed on the basis of sworn falsehood and misrepresentation that I renewed the request. As soon as it did prevail, as you very well know, I renewed this request in a manner that eliminated such false pretenses.

As long as the FBI is immune in such practices it can safely resort to the new dirty tricks outlined above.

Of course the cost is great, but then the FBI's campaign against compliance with the Act is based on wasting enormous sums of tax money, as my not inconsiderable experience leaves without doubt. In this it has the by-product of preventing disclosure of what can embarrass it.

You, personally, have demonstrated skills in these areas. You represented in my C.A. 75-226 that I had filed a request and a lawsuit only because I didn't want what I asked for in the request and included in the complaint. Since then that case has been remanded for the second time, a considerable cost to all parties, thanks to you. It is the first case filed under the amended Act as well as the case over which the investigatory files exemption was amended. (This also is to say that contrary to your cited letter the FBI still has not complied with my 5/23/66 request.)

I am filing a copy of this letter as an appeal, which means that you have again created artificial costs and added to all backlogs. I also ask that you now process this non-project request in its proper chronological sequence. You received it before the end of May, three months ago. If you have not yet reached requests of the date of 5/22 I ask that you inform me of this and when you expect to reach it, by that date.

Sincerely,





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:

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Attachment 7

Civil Action No. 86-1547

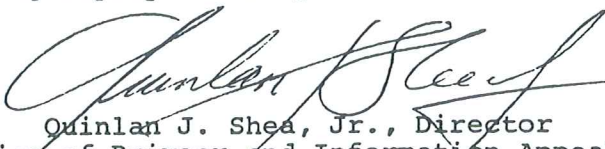
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Sincerely,

Benjamin R. Civiletti  
Acting Deputy Attorney General

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



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 13 1980

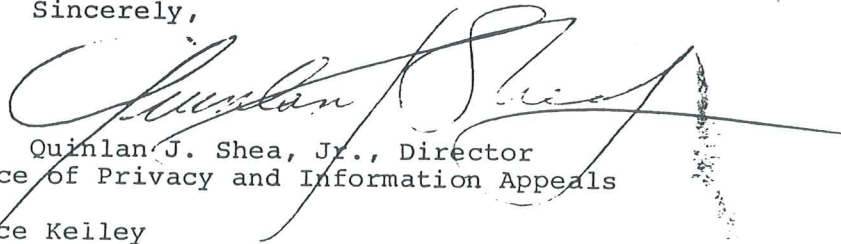
Dear Mr. Lesar:

My letter to you, dated yesterday and concerning the request of your client, Mr. Harold Weisberg, for a waiver of fees assessed in connection with his request for F.B.I. Headquarters records on the Kennedy assassination, had two inadvertent omissions in the last sentence beginning near the bottom of the first page.

That sentence should have read: "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 Kennedy materials to be made available at a number of different public locations, which I do not believe has been done with the King records, which have been made available only at the Bureau Headquarters reading room."

I regret any possible confusion.

Sincerely,

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

CC: Director Clarence Kelley  
Mr. Metcalfe

Attachment 8

Civil Action No. 86-1547