



U.S. Department of Justice

Office of Legal Policy

Office of Information and Privacy

Washington, D.C. 20530

Bernard Fensterwald, Jr., Esq.
Fensterwald & Associates
Suite 900 Twin Towers Building
1000 Wilson Boulevard
Arlington, Virginia 22209

FEB 17 1984

Dear Mr. Fensterwald:

This letter concerns your request for "special access" to Department of Justice law enforcement records of historical interest pursuant to 28 C.F.R. §50.8 (1982). (As you are aware, your request for "special access" to classified information pursuant to Executive Order 12356 and 28 C.F.R. §17.111(e) (1982) is necessarily proceeding on a separate track.)

You should also be aware that the historical access regulation found at 28 C.F.R. §50.8 was promulgated in 1973, when the Freedom of Information Act permitted the Department of Justice to withhold virtually all investigatory records compiled for law enforcement purposes. Section 50.8 evinced the Department's policy interest, within that context, in providing additional access to certain portions of its law enforcement records, as a matter of administrative discretion. At the same time, however, the regulation reflected the Department's continued concern with always protecting certain types of law enforcement information from disclosure. See 28 C.F.R. §50.8(c) (1982). Significantly, these same concerns are reflected in the specific protections preserved for law enforcement records in the 1974 FOIA Amendments. Consequently, this "special access" regulation itself, being outdated, does not necessarily address access beyond that which is now generally available under the FOIA after the narrowing of Exemption 7 in 1974. Moreover, in many instances, the Department (particularly the FBI) has already processed records, including some in which you appear to be interested, using an "historical records" standard which goes beyond the reach of Section 50.8.

Nevertheless, the Department is willing to again review a reasonable amount of these records, as well as other records specifically described by you, in response to your "historical access" request. In the interest of accomplishing this efficiently and expeditiously, I suggest that we schedule a meeting as soon as conveniently possible between ourselves and representatives of the pertinent Department of Justice components. Such a face-to-face exchange, I believe, will best

allow you to specify concretely the particular records for which you request "special access" review, a necessary step which should be aided by your discussion of existing records systems with each component's representative.

I regret the delay in contacting you on this, but can assure you that the Department has been actively considering your unprecedented request. Please call me at your earliest convenience at 724-6278 so that we can schedule a meeting and move this matter toward a conclusion as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Fran L. Paver". The signature is written in dark ink and is positioned above the typed name.

Fran L. Paver
Attorney-Advisor
Office of Information and Privacy