



U.S. Department of Justice

Office of Legal Policy

Office of Information and Privacy

Washington, D.C. 20530

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

Re: Appeal No. 80-1507
RLH:PLH

Dear Mr. Weisberg:

You appealed in a series of letters from the refusal by the Federal Bureau of Investigation to waive charges for certain additional records sought by you which you consider to be related to the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr. You specifically made reference to your request for all records relating to political assassinations compiled by the Bureau for use of the House Select Committee on Assassinations ("HSCA").

On the basis of the information available to me, I have concluded that a further waiver of fees to cover records not within your various requests made prior to the fee waiver grant in our letter of March 31, 1978, for materials only minimally relevant to the assassinations of Dr. King and President Kennedy, is not warranted. Moreover, I am specifically affirming the Bureau's determination that records it compiled for the HSCA and, as discussed later, the Bureau's Security investigation records concerning Dr. King, do not fall within the original fee waiver grant.

The statutory test for evaluating fee waiver requests is whether release of the information involved will redound to the primary benefit of the general public, in which event a waiver is required by law. 5 U.S.C. 552(a)(4)(A). I considered five factors in my determination as to whether sufficient public benefit would be derived from disclosures so as to warrant the granting of a fee waiver: (1) whether a genuine public interest exists in the subject matter of the request, (2) whether the documents in question will meaningfully contribute to the public development or understanding of that subject of public interest, (3) whether the information in question is already in the public domain, (4) whether the requester is able to disseminate the information to the public and (5) whether any personal interest of the requester which can reasonably be expected to be benefited by disclosure outweighs any public benefit to be gained.

File

In reaching my conclusion on your appeal, I have analyzed these five factors as they apply to the circumstances of your request. On the one hand, a clear public interest exists in the assassinations of Dr. King and President Kennedy. Moreover, I acknowledge your ability to disseminate this information to the public and concede that you are not seeking commercial benefit from receipt of this information. Nevertheless, I believe that the second and third factors are conclusive in this instance. It is the Bureau's position and my own that most of the records that do not fall within the scope of your various requests made prior to the fee waiver grant in our letter of March 31, 1978, for materials relating to the investigations of these assassinations, have minimal, if any, relevance to those subjects. In addition, much of the information you have requested has already been made public by the House Select Committee on Assassinations or by other sources. In fact, non-exempt portions of the Kennedy assassination records compiled for the HSCA are being made available for public review in the Bureau reading room as the Bureau completes its processing of those records. Thus, it is my opinion that extending your fee waiver to include additional documents would not be in the public interest.

With specific regard to your request for the Security files on Dr. King, it is my conclusion after review of the relevant correspondence between you and this office that those files were not included in the fee waiver granted to you in our letter of March 31, 1978, which expressly applied to "records of the Department of Justice compiled pursuant to the investigations of the assassinations of President Kennedy and Dr. King." It is unclear whether you ever expressly requested a fee waiver for these documents or if the Bureau ever denied such a request from you. In the interests of administrative efficiency, however, I have decided to treat the Bureau's request for fees as such a denial and hereby affirm that action.

Although there is a public interest in the Security files, the Bureau has placed those records already processed in the public reading room and will place the remaining documents there upon completion of processing. Although I am aware that your health problems make it difficult for you to visit the reading room, I cannot conclude that providing you personally with an additional free copy is in the public interest since these documents either are or will be available to the general public at this central location.

My action today does not address any "scope of request" issues that may exist concerning your still pending appeal for Bureau Headquarters records pertaining to the assassination of President Kennedy. The Bureau's position is that any additional

records that may be determined to be releaseable to you as a result of our review of that appeal would fall within the scope of the original grant and would thus be sent to you without charge.

If you wish to receive copies of any of the material you have requested, please notify the Bureau of the exact records you seek and indicate your willingness to pay the applicable fees. Should you obtain material pursuant to your requests that you consider to be significant, previously unreleased material relevant to either of these matters, the Bureau will reconsider its action as to that material and, if you are dissatisfied with its determination, you may appeal its action to this Office.

Pursuant to your request, I am enclosing a copy of an affidavit by John N. Phillips which discusses release of the records relating to the assassination of President Kennedy. That affidavit states that the only other substantial release of Kennedy materials that the Bureau made without charge was to the Library of Congress.

Finally, in response to your allegations that this Office has ignored your fee waiver appeal for four years I wish to remind you that in your attorney's appeal letter to this Office of July 25, 1980, he requested that no action be taken on this appeal until he had a chance to supplement his letter. On January 4, 1984, Ms. Hubbell of my office called Mr. Lesar concerning this appeal and he advised us that he had not had time to send the supplemental material but still considered the appeal open.

Judicial review of my action on this appeal is available to you in the United States District Court for the judicial district in which you reside, or have your principal place of business, or in the District of Columbia, or in the Districts where the records you seek are located.

Sincerely,

Richard L. Huff, Co-Director
Office of Information and Privacy

Enclosure

cc: James Lesar