Com Indep Appeal

7627 Old Receiver Road
Frederick, Md. 21701
October 26, 1979

Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals
Department of Justice
Washington, D.C. 20530

Dear Mr. Shea:

You may not be aware of it but your letter of 10/18/79 relating to Dallas indices assures a Hobson's choice: complete reprocessing or perpetuated noncompliance.

You also do not address an agreement I believe we had: that only actual symbolled informants or other actual confidential sources would be excised and in some cases the entries redone to hide symbolled informants only.

It does little good to reach an agreement with or involving the FBI if it is forever to violate all its agreements as soon as they are entered into and the appeals machine does nothing but sanctify their violations.

In this case a rephrasing of your carefully phrased letter can be helpful in representing reality.

The FBI violated the Act, historical case standards and the Department's 5/5/77 FOIA policy first in processing the field office records and then in processing the index, therefore it was required to compare the index entries with the underlying records if it were to avoid open confession of its deliberate violatins of the standards and requirements noted above.

I provided you with proof of this as soon as I examined the first of the field office records. (And remember, with the FBI's "previously processed" device for withholding, it automatically involved an enormous number of FBIHQ records.) You did nothing about my appeals - in fact, nothing at all as of now. The FBI's violations and your abdications, you now say, require that improper withholding be perpetuated beyond what may be my lifetime. There is no other meaning in "process the cards to conform to the excisions made in the underlying records."

It may appear reasonable for you to pretend that the FBI cannot process the index as the separate record it is, but what you are actually saying is not reasonable. YOu are saying that the only way the FBI can hide its improprieties is by comparing each and every index entry with the wrongful excisions it has made in the underlying records. There can be no other meaning when all that was to be excised is actual confidential sources that might be disclosed.

I have read the underlying records and the bases of this are few.

You claim that not to do as you say "would necessitate, in effect, a complete reprocessing of those records."

While this is not true, what exemption to the Act permits the perpetuating of improper, often spurious and fraudulent, claim to exemption and the withholding of the public domain?

The flaws in this processing are not accidental. They are knowing and deliberate.

There was an understanding prior to the departure of the Washington FOIA crew for Dallas. This was prior to any examination of any record. The agreement was that after the first 5,000 pages were looked at and processed tentatively at FBIHQ they would be submitted for appeals review. My counsel and I discussed thiw with you and with Department counsel.

If you had questions, like was some withheld information within the public domain, I was to have been consulted.

The purpose was to prevent improper processing, th prevent the need for a complete reprocessing.

However, the FBI did not do this, Instead, it went ahead and processed all the records. Its open contempt for and disregard of the Department's 5/5/77 FOIA policy could not be more deliberate or more flagrant. Its contempt for and disregard of the Act could not have been more grossly flaunted.

It withheld - and still withholds - the public domain, what it had itself earlier disclosed and what the Warren Commission published and the FBI agreed to have disclosed in the Commission's records.

It classified what had not been classified for 13 years, despite many reviews, and in other ways also it violated the controlling E.O. In this it also classified what was within the public domain, one of the countless appeals on which you have not acted.

I requested review of the classifications under the new E.O.. In more than a year this has not been done, and the public domain remains classified.

You know all of this and have not disputed it.

And now you say that all of this and many other abuses are to be perpetuated and the processing of the important historical record, the Dallas case index, must conform to all these deliberate violations of the Act.

Without the record of the past, there would be no meaning in your assurance:

> "... to whatever extent the administrative review process results in additional releases of material from the underlying records, the relevant index cards will be reprocessed as well."

What "administrative review process" are you talking about? The one that has not yet started in the JFK records after almost two years? With requests going back more than a decade, when those appeals also were ignored?

Is it the "administrative review process" of the King records, where I still await compliance with the Court's 1976 order, which was issued before the processing of a single page of the MURKIN records, where I still await the reprocessing of the very first records provided in 1975, from which the public domain was withheld, as the FBI's own records disclose?

Or perhaps it is the "administrative review process" of my Privacy Act request and appeal, about which your abdication is also total after almost four years under a ten-day act?

Your position and your language are a cruel mockery of any appeals process, of the concept of "freedom of information," of "the right of the people to know what their government does," and of the Congress, which legislated these supposed rights. Stripped of its superficial reasonableness, which could be impressive to one not a subject expert and one without my prior experiences with the FBI and the Department in FOIA requests, appeals and litigation, what you now really say is that because the FBI has converted FOIA into a license to withhold what it did not withhold prior to FOIA in the underlying records, instead of performing your appeals function in a timely and proper manner, you are going to do nothing more until it has repeated the identical offenses throughout its processing of 14 lineaf feet of an invaluable historical record.

And then, at some remote distant date - perhaps - with more than 100,000 pages of underlying records involved, there may be an administrative review, after which, maybe, some of the index will be reprocessed to eliminate some of the improper withholdings.

By whom? Have you the capability of doing this, of confronting what you have avoided for all these years - many thousands of deliberate and endlessly repeated violations of the Act and of all standards? Indeed, of common decendy in a "historical" case?

You mock the Act in this, you make sport of the Congress and the courts, you ridicule the Attorney General, who gave his word, and you abuse me even more.

Neither your letter nor its underlying philosophy are acceptable. You and the FBI leave me no choice.

My appeal is for the reprocessing of the FBIHQ JFK releases, the reprocessing of the field office releases, the reprocessing of the communications index, and the reprocessing of the case index I do not have to see to be in a position to appeal, thanks to your letter, which guarantees that it is being and will continue to be processed improperly.

In this I am aware that the case is before a judge who is a rubber stamper of official transgressions against the Act, one who accepts proven false swearings as truth, one who was stated in open court that he takes his leads from the FBI. Not the Act or proven fact.

What you really now respond to is a half year old, not as recent as my 8/17/79 letter to which you refer. If accidental, your timing is perfect: you wrote me as soon as my counsel left on a trip that will have him out of the country for a month. After he returns he will be tied up for a long time. So I cannot consult him now and cannot expect to have any meaningful consultation for some time after his return.

He will have a copy of this awaiting him and with it he will be informed of my desire that, if this matter is not cleared up in some acceptable manner before his return, I desire that he press for litigating of the issues and then for the fastest possible consideration by the appeals court.

If I were 26 rather than 66 and in perfect rather than imperfect health, you would be leaving me no real alternative.

When you have not yet acted on my 1968 appeals, I take no assurance from any reference to any pie-in-the-sky future administrative review.

I cannot imagine that any FOIA Litigant has been more open, has gone to more expense or taken more time to inform, has provided as many copies of records as proofs, all to no end. From this record your assurance is no assurance at all.

Your explanation of the withholding from the communiaations index without even pro forma claim to exemption is, on its face, unacceptable and unreasonable. (I appealed this in April, despite your reference to August.) Your reference to "time constraints" also has no factual basis because I applied none, no pressures of any kind. Moreover, if the prowessing of that index required consultation with the underlying records, and it did not except for symbolled informants and the FBI's desire to protect its own transgressions, then once the underlying records were consulted phoeing the claimed exemption should have been automatic.

This is its own kind of assurance to me - no record is ever going to be processed faithfully because there is nobody with the guts to stand up to the FBI. There is no claim it can make, no matter how extreme and ludicrous, that the Department also will not accept. I regret you could not see the emperor's nakedness.

Sincerely,

Harold Weisberg