

July 25, 1979

Dear Jim:

It is good that you phoned me today after your conversation with Dan Metcalfe. It also is good that you knew my thinking about all the FBI dirty tricks and delays from what I've been telling you recently. My thinking has gone further since our recent discussions.

Department FOIA attorneys, in my view, have responsibilities other than rubber-stamping whatever the FBI wants to do, law or no law, court decisions or no court decisions; and given what these government attorneys have cost me and done to the Act, I'm not reluctant to see whether I understand this correctly. It is hardly the same thing as prosecuting a case or defending other kinds of civil actions.

The letter and philosophy of the Act are that all information is to be available except for what is specifically exempt. Also, the Attorney General has issued a statement of policy that is binding on the Department, the FBI and its counsel. He has also found this to be an historical case, which requires more liberal disclosures of information and less claim to exemption except for real need. The FBI violates the standards required by the above and by decency.

This is what comes out of what you told me: The FBI has engaged in unjustifiable withholdings. They know I know it. They know I can catch them and expose this in court. So, to reduce the chances of their getting caught in many violations of the Act, they are making an item-by-item check in a 40-foot index to be certain that they perpetuate violation of the letter and the spirit of the Act. Their position is that their prior violations sanction perpetuated and new violations.

Whether or not the FBI is deceiving its counsel, as I believe it is, he can take my word or learn later that I don't need either a wrongly-processed or correctly-processed index to establish this. All I require is an appropriate occasion justifying the time it would take.

Besides, the Dallas index I now have provides more of this kind of thing than is necessary. There are also both versions of the King index, which they reprocessed.

As you know, I have been doing some rethinking lately. It is clear that the FBI's word is worse than worthless, that it has no intention of living within the Act, that it figures it can accomplish ulterior purposes through and with me, and that its counsel have been its accessories in all of this and more.

It also is clear that my appeals are not being acted on even though many have to be by far the oldest. Some of these appeals are years old. Some of the requests that have not been complied with are more than a decade old. Other requesters are getting JFK information I asked for years ago and have not gotten. Some appeals lack even acknowledgment.

As of now the JFK appeals I've set up in a separate file take up about three-quarters of a file drawer. In virtually all appeals I provided copies of records to illustrate improper withholdings, including those the FBI now plans to perpetuate.

When I provided proof that a recent requester is getting JFK records included within my cases, what I first requested more than a decade ago, while I do not have them and I do not receive even an acknowledgment of the appeal, I have to take another road.

I will be working this out as I go.

Until Shea starts to act on some, tentatively I've decided against filing more of the specific appeals I have filed. There will be exceptions if I believe the principle involved justifies it. Instead, I'll be giving you copies with explanations.

You know the amount of work I did in C.A. 75-1996 to inform the FBI. You know that its obduracy could hardly have been more total. There is no justification for and it has not justified the withholdings I called to its attention and appealed. This reduces my choices to accepting noncompliance or seeking justifications. Please ask for justification of all withholdings in both cases.

I started providing copies of records with the JFK appeals. I can't afford this, so I decided that the cost in time and copies was too great. Then I realized that this played the FBI's game, which is to waste the appeals process and limited staff to deter action on all appeals, most of which do not countenance FBI withholdings. So I started giving copies again.

Much time has now passed. If Shea doesn't make at least a decent token showing, I think it will take less time to litigate, much as I'd prefer not to. I'm not a bit concerned over the open partiality of Judge Smith because what I have should get to the appeals court as soon as possible. And if Metcalfe is going to be no more than another FBI rubber stamp, there just is no point in wasting any time trying to work anything out with him. All this seems to mean is that everyone must accept FBI wrongdoing. If he wants to be humiliated in court, I think I can accommodate him. If the FBI wants to make an even more disgraceful record for itself than now exists in many court records, they are making the choice and I'll provide more than is necessary. With the FBI's and Department's current efforts to amend the Act, the sooner we can get this into a court record the less easy will their course be in getting the kinds of amendments they want.

This vast bureaucracy avoids minimal internal communication, better to effectuate noncompliance. One result is that some components do not understand the meaning and possible consequences of what other components do and have done. I can see as a possible result that all the JFK records disclosed to date would have to be reprocessed. If the FBI wants to face this and any counsel wants to preside over it - if either wants to risk it - they are on the right road for getting there.

As I've told you before, if they must provide an Axelrad, I can try to put wheels on. They force me into the effort and I think it can succeed. Their wiser course would be to stop the shenanigans with the index. There is no basis in the Act for improper withholdings in the index to protect past improper withholdings. This is what they are up to, as in the past, when they had to reprocess the King index that was disclosed under discovery.

If Metcalfe's position represents Lynne's directive, well, I owe Lynne a bit I'm willing to pay back, including for her Senate FOIA subcommittee testimony relating to me and my requests - total false representation that this compounds.

Beginning now I plan to start keeping separate files of horrible examples. It is clear that I'm going to need them. I'm not sending these things to Shea. While I'm quite willing for you to be as open with Metcalfe as you want, including, if you desire, by giving him a copy of this letter, I'm not willing to give him in advance what I'd rather have him face cold in court, there to defend his blind servitude to the FBI's indecencies under an Act that supposedly guarantees the people's right to know what government does, especially in that most subversive of crimes, the assassination of the President the FBI failed to keep alive.

This morning I read some FBIHQ records I'd not read before. They refer to Dallas and New Orleans records I did not get, which I'm sure Metcalfe will like to know. (He'll have an alternative to acknowledging withholding. He can claim that in what went upward at FBIHQ, the top echelon was lied to.) These records happen to involve people and events of interest to me. I know some of the people and my writing brought some of the events to light.

One case is of the FBI's not informing the Warren Commission, with information relating to a possible conspiracy, until the FBI knew it was too late and then not providing essential information until the Report, literally, was on the press and the presses were ready to roll.

Even FBIHQ's semantics in this record will be embarrassing. Also, in it the FBI beats its breast in boasting of its "extensive" investigation. This is not reflected in the records provided to me, nor is what I know the FBI did and kept secret. I've known for years from participants.

This "extensive" investigation is represented by a total of four records of which I made subject-filing copies. At least one of the four is from FBIHQ. (I went to the basement to see how few and forgot to note if Dallas provided more than three, if that many. I recall one was a letter to Rankin. I did not check the origin of the attachment.)

The HQ record is an LHM listing many interviews I do not recall reading and do not have in this subject file.

On the other hand, the long list does not include all who were interviewed.

It includes none of the other than Dallas interviews, and there were some in other places, including New Orleans. I do not recall reading them in the New Orleans files. I believe I'd have made separate copies.

This is a beautiful case for another reason - it was very embarrassing to the Commission lawyer involved after I brought it to light. He therefore felt impelled to defend what he wanted considered as a good name, he did this in public, and I have a tape of it. His remarks were of such great interest to me that I had the whole thing transcribed contemporaneously.

I've interviewed a number of the witnesses not listed, some on tape. I have detailed accounts of how the FBI tried to break down a witness whose story it did not want to have believed. In trying to destroy credibility, the FBI flunked its own test. So it withheld and withholds those records.

I might forget that I read the FBI's versions of what witnesses told it because it tailored the reports to omit what it did not want in them. But I'd never forget

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content that was of such great interest to me. If the FBI now wants to claim that when a President was assassinated and it investigated the crime it did not bother to include such information, with all the irrelevancies and nonsense it dumped in great quantities on everyone, I'll be happy to add this to the historical and court records. And if Metcalfe wants a proper remembrance for his children and grandchildren so they can fully appreciate his personal concern for the integrity of the country, its institutions and respect for the law, this and a few others may be quite suitable. I'm sure he'll be able to make them see that for a lawyer there is no such thing as right and wrong, good and bad, evil and decency.

Another of today's interesting records is of but two pages, a short LHM and an attachment. This reflects the FBI's consistency and its great concern for privacy - so great a concern that it withheld on the second page what was disclosed on the first: the race of a man described as white; the sex of a man identified as a man and by a man's name; his height, weight and the color of his eyes and hair, no doubt unique with him; his address, which also is on the first page; and his occupation, which is in the city directory.

The second page is a form on which information is to be provided under 11 headings. Withholding there is, total - everything under all headings. His name, however, is not withheld from either page. Nor the misidentification of him as a conspirator in the assassination.

Despite all those FBI affidavits attesting that it must and does withhold information it obtains from other police, of which Metcalfe has personal knowledge, the first page is of information obtained from a named New Orleans detective assigned to the prosecutor's office.

With this (and ever so much more like it) how can Metcalfe and the FBI justify all the 7D withholdings of like nature, withholdings that began after the Act and were not the practice prior to the Act?

From now I'll just start accumulating the many available instances as I come to them, without benefit of or need for the index to do this. I'll await the Metcalfe/FBI justification under oath. Then I'll provide these and, if necessary, more to establish the deliberateness of the false swearing. I'll title the file Metcalfe's Reward. If you like cryptonyms, how about an FBI-type combo, Metard, which rhymes with Petard?

Of these relatively few FBIHQ records I read today, another found worthy of highest-level attention at FBIHQ includes New Orleans information not provided in the underlying records. I'm sure I'd have made a separate subject file if this was provided under 78-0420.

Soviet expert T. N. Goble wrote W. A. Branigan's 3/28/67 memo to Assistant Director W. C. Sullivan. At FBIHQ it is filed in both the Oswald and the JFK assassination files, so there can be no question of relevance, including of "that there is a group of masochists numbering 70 prominent individuals," one of whom is Jim Garrison.

The source is said to be an undescribed attorney named Thomas Baumler. I know him. He'd make Genghis Khan look like Peter Pan. Goble says that "Bureau files contain no information identifiable with Baumler." I'd be surprised if this were true of New Orleans files from what I know about Tommy and some of his clients, cases and associates.

Consistent with the FBI's deep concern for privacy, as illustrated by its giving the names of alleged masochists, is its naming in this record of two persons, each described as "a mental case."

Among the other evidence of the genuineness of the FBI's other concerns in these few pages, particularly its representations to the Congress and the public statements of the Director, is its voluntary disclosure of the name, file number and symbol number of a criminal informer. This is not as unusual as it may appear to be. In at least four other cases I have, it was done in an obvious and successful cointelproing of the House assassins committee.

I've also just read the letter prepared for the Director's signature in which, after enactment of FOIA, it is stated that the FBI cannot make available (to an unliked component of the press) copies of what it acknowledges is within the public domain.

Please evaluate the significance of these illustrations in terms of the small volume of records from which they come, about a half-inch. Also, they are not all the records of this general character in that small group of just-read records. If this were uncommon, which it is not, it still means countless similar and worse examples when hundreds of Sections of records of more than 100,000 pages in extent are involved.

The real reason for unjustified withholdings from the major Dallas index is not to withhold proof of "inconsistencies" I might use against the FBI. I have more than I need. Moreover, the Dallas index already provided abunds in them. In it there also are withholdings without any claim to any exemption. My recollection is that this includes the public domain and includes what the Warren Commission disclosed. If Metcalfe wants to litigate this, need we deny him? I've been patient, waiting for action on the appeal but time on that expired months ago, so if they want me to rush, by all means let us rush.

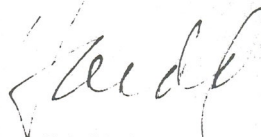
Metcalfe may have forgotten our meeting with him the day Oberdorfer recused himself minutes before the first calendar call in that case. I left that meeting with the understanding that the first 5,000 pages of Dallas records reviewed for processing would be submitted to the Shea office before any more were processed. I'd obtained Shea's agreement prior to our going to Metcalfe's office. Instead, all the many Dallas records were processed without this appeals office examination. When I received them, the reason was immediately apparent: that processing could not have been approved. There was large-scale unjustified withholding and many glaring "inconsistencies."

Among the problems - and costs - this meant and means is the present cost of eliminating the problem **created** by "previously processed." There will be much more from the reading I get from what you reported. It required many appeals not yet acted on and the cost of appeals review. This could have been avoided if the FBI had abided by the agreement. But then it could not have pulled off this to-be-perpetuated Cointelproing of the Act, me and history, which I do not intend to succeed. There are many other wasted costs. Improper processing of the major Dallas index is another and a very deliberate one. The long time without action on appeals, plus the extensiveness of the withholdings, not by any means limited to what is illustrated above, makes it clear that I will have to do what I can to protect my interests and meet the obligations imposed on me.

I think we require a Vaughn v. Rosen inventory and justification of all the withholdings from all JFK records ("previously processed" automatically includes all FBIHQ records disclosed) and assurances that cannot and will not be provided - that all known files have been searched for compliance. Please let me know what you think of this. Meanwhile, when and as I can, I will be doing more and providing you with copies.

Because of my references to Shea, you may want to send him a copy. I have no objection.

Sincerely,



Harold Weisberg

P.S. Lil was retyping this when you phoned to tell me that Metcalfe had spoken to the FBI and it had agreed to assign two more people to processing the index to get it processed sooner. My reaction was that this really means they will for the very first time speed processing up only in order to again confront all other parties with a fait accompli and will again, if pressed, claim that the cost of reprocessing is burdensome and prohibitive.

Please ask them to suspend all processing until all the problems the FBI has ^{want} deliberately created are resolved. I ~~want~~ Metcalfe personally to be involved because I am sick and tired of the lawyers acting as front men for wrong-doing and being immune because all they do is what the client wants.

There was an agreement to resolve problems and the FBI is again violating an agreement by expanding it.

Do you not recall that when Judge Green asked them to assign extra agents before returning agents to field posts they refused - and that case is still in court, without obviously necessary searches yet begun after almost four years in court? Why then do you think that now the FBI is willing to assign extra people?

Metcalfe has personal knowledge plus a caution, if by accident. I was in your office when he called and I spoke to him. I told him of the agreement when he referred to the processing of the index. I also told him that if any problems of fact came up to please feel free to get directly in touch with me to speed things up. (As distinguished from legal matters, which you would have to handle.) I then told Metcalfe what the resolution of the problem did not include, what they are not doing.

I also think it is quite wrong for the FBI to pretend that what it is now withholding is not under appeal. Some has been for a year or more, in all cases I can recall accompanied by proofs in the form of copies of records.

The entire matter is indecent. This is a matter that involves the integrity of our basic institutions; the most subversive of crimes, the assassination of a President; it is under an Act that supposedly reaffirms the right of the people to know what government does; and it is what the Attorney General has found to be an historical

case, meaning that even when exemptions can be claimed they will not be claimed without the most pressing need. Moreover, there is the Attorney General's policy statement of 5/5/77, which is also being violated and has never been complied with. Yet these people, who are hardly grade-schoolers, are looking for nits to pick, have withheld what is within the public domain, and are consciously doing so in an effort to hide the fact that they have been engaging in all these abuses all along.

The kinds of totally unnecessary, totally wrong withholdings I have appealed in the underlying records makes continuation of it under the existing circumstances a real indecency and I will not be part of it.

As I believe I have said, I want a record of all who are involved in it and if necessary I will undertake to file a civil suit in which each and every one is a defendant. I will also seek to use the punitive provisions of the Act. One way or another this endless effort to Cointelpro me and the Act and to waste my time and to exploit my situation for improper purposes and improper withholdings under the Act is going to stop.

These people have also forced me ~~into~~ into a public role, as the courts also have. I believe that now this can have other legal significances and I would like you to explore that when you can. One of the reasons is that I believe I have been damaged personally and that as surrogate for the people the people have been damaged. Those who knowingly persist in these improper acts are responsible for the damages, I believe. There is no sanction for improprieties under the Act ^{or} any part of its legislative history with which I am familiar. I am also somewhat familiar with recent Department testimony relating to compliance under the Act and in particular with my cases and others like them.

There is not now and there never was any real problem involving disclosure of what should not be disclosed. The only real problems involve disclosing the identities of undisclosed symbolled informers. When I did not realize that the FBI was making these disclosures for political purposes, despite the pontifications made by the Directors, I promptly notified it ^{of} its having made these disclosures. When the judge involved Shea in C.A. 75-1996 I promptly notified him because the FBI

~~disclose~~ it has sworn would crumble/^{it}into utter ruin. Only when I realized that the FBI was doing this on purpose, and now I know even more extensively than I'd spotted, did I stop wasting that time. (This is a reference to making available to the House assassins informers of whom I did not know and having them appear and testify and having all fully disclosed by that committee - actual Mafia informers, those the FBI and its Director claim are endangered by it. I have heard the Director state that this hazard is what requires amending of the Act. Yet I'm telling you that the FBI is doing it on purpose and I have more than enough cases to prove it.)

Even with informers there is no problem because I worked that out prior to the beginning of any processing of the index.

The rare other cases are not a problem except that the FBI wants problems. I have made many offers over the years of working these things out, none accepted by the FBI.

When Shea found a case of an FBI agent whose name he thought should not be disclosed and he started to address this circumlocutiously I interrupted him to make a correct identification of the incident, even giving him the name of a city involved, and told him that I agree to the withholding of that name.

The only real problems are created by the FBI in determined, persisting effort to violate the Act. I will not accept this.

With regard to the index I also suggested that after initial processing of a small part it be provided so I could go over it and thus help avoid exactly the problem with which I am now confronted.

Gird your loins, counsellor! This stops here and now. They cut out all this miserable business and process the index in accord with all standards for historical cases, in accord with the AG's policy statement and in accord with the intent of the Act, not all the FBI's unilateral rewritings of it, ~~or~~ or we litigate. I will not accept an improperly processed index and I will try to sue each and every person involved in processing and providing an improperly processed one.

You asked me to provide a few pages of illustrations so you could show them to Metcalfe. I won't have time to include them if Lil can get the copying done in time for

mail. She has not been well, is 67 years old and is still asleep. We've had several days of rain and as you know I require physical exertion of which I am still capable. The day is breaking clear and I'm not going to forego this exercise before it gets too hot and sticky for it to be within what I am permitted. Moreover, I want to think about this because I have done what you ask countless times and it has never made any difference. Besides, the burden of proof is not on me and I am unwilling to continue to accept it only to have it ignored.

If the FBI can't justify the withholding they have no right to withhold and they have the legal obligation to disclose.

There are also the appeals I have filed. The Department has them and can provide them to the FBI and to Metcalfe. Lil was complaining just last night about the cost to us of providing all these copies (and the time ~~it~~^{it} takes) and I've already told you that the service man has told me that we have made more copies on this machine than it was engineered to be capable of. I am not going to wear it out in doing what the FBI is supposed to do.

So whether it be a 7D or a 7C claim, first let them check the appeals, where I have provided information. I'm telling you that I don't recall a single such claim in the underlying records that does not involve what I can recognize is and was within the public domain or one that is not what was routinely disclosed prior to enactment of FOIA, that many are the withholding of information the FBI has disclosed in my cases, none that entails any real problems for the FBI in its operations, and that there simply cannot be anything more personal or private than the FBI has already disclosed with regard to so many people it is incredible details of womens' pregnancies, of nocturnal sexual fancies, of unmarried bedmates, of medical records of homosexuality and impotence and the rottenest of fabricated political libels. (Besides the Mark Lane pictures.)

I will not be inflexible but my present disposition is to hell with it - let them face it in court, those who want to defend what the FBI is doing after they have reason to believe it is improper and can learn if they want to other than by my having to take time from work I want to do to provide redundant information.

My belief is that my personal interest, which requires that they stop wasting my time and what remains of my life, and the interest of the Act that they are out to gut under false representations to the Congress, call for these kinds of issues getting to the appeals court as rapidly as possible. It is my belief that if I give them details they really do not need that will waste my time, delay getting a resolution and will not serve any useful purpose.

Metcalf does not have to believe me. He does not have to remember the affidavit I gave you in the OPR case, he does not have to remember any of my other affidavits and proofs. He has the option of facing it all in court. I'm inclined to prefer that and the kind of record it will require. If he prefers to believe the official mythologies about me and the nature of my work, that will merely provide needed dimension and perspective to the entire matter.

In addition, right now there is no one to go up and down the stairs for me and I can't make more than one trip at a time, so I'm not about to undertake the kind of searches that would be required until Rae is back. By then I'll have thought about this more. Then I'll have to ask myself why I should pay someone to do the FBI's work when my only regular income is Social Security.

I do not withdraw from my previous offers, to address any specific he or any of the others care to raise. But I am not now inclined to spend any more time on what has been useless in the past and I am not inclined to do the FBI's work for it when I know it knows that it is doing wrong, when in all these years it has not once raised any question of fact with me - even refused to accept an index to what was within the public domain in order to be able to withhold and then did extensively withhold what was within the public domain. This extends even to its phoney "national security" claims. Here also I have provided specifics on ignored appeals of more than a year ago.

Instinctively I feel that with their effort to gut the Act the best course is for this all to be aired in court and the index is the ideal vehicle. And to see if I cannot sue for the damage done.

H