

2/15/72

Mr. Robert W. Vawter, Director of Information
General Services Administration
Washington, D.C.

Dear Mr. Vawter,

I do appreciate your phone call yesterday afternoon and the offer that to you seems reasonable but to me at this moment is impossible. However, with my present physical handicap and the volume of correspondence that has been made necessary since what I regard as deliberate harassment began, it is beyond my capability.

Also, I appreciate your candor in telling me that you are not really familiar with the regulations which lead to appeals under the Freedom of Information law to you or with the law itself. Frankly, I do not see how you can be the person to whom appeals are made without this knowledge, not if the appeal is to have any meaning.

Where we disagree is in your view that I should just file endless suits. This is not the intent of the Congress or the law. The purpose of the law is to make public information available to all citizens. If the volume of correspondence has become burdensome, as it certainly has to be, I believe the remedy lies with the cause, which is on the lower level, not the level of appeals. One example is the challenge you would not accept, the inordinate delays in making response, not only to proper questions but to specific requests. Here I refer not to the language of the statute, for identifiable records, but for what is much easier to locate and supply, identified records. If you cause a search to be made of this correspondence, and I believe the obligation is the government's once I make the charge if its purpose is compliance with the law, you will find that repeatedly long periods of time pass without response.

As I said, I will make a few specific appeals to you from memory, having no other choice at the moment. I preface it by informing you of a ruling by the Attorney General in a letter to me, that long delay in itself constitutes denial and warrants appeal, the net effect being refusal.

Time for response. I appeal the Archivists's refusal to provide me with the time in which requests for identifiable public information is to be answered. I recognize that response to letters takes longer. I know, as the correspondence shows, that a time for response is indicated on receipt. I believe I am entitled to this information and it is required information if I am to use other alternatives available under the law.

Memorandum of Transfer. I am surprised that you know nothing of this document, for I think it was essential to rulings you have already made. Unless those upon whom you depend for knowledge essential to rulings supply it to you, what rulings can you make other than rubber-stamp ones? You, of course, have no way of knowing all that is or may be relevant, the point I tried to make in our conversation. And if you are deciding an appeal, who decides what is relevant knowledge for you to have in reaching a decision? Those who have already made the decision appealed? I appeal the repeated refusal to me of this document. Because you are entirely unaware of it, I make the following explanation, which should also assure compliance with the requirement that the application be for an identifiable document.

In or about April 1965 the Secret Service conveyed and received a receipt from Mrs.

Evelyn Lincoln for a number of items relevant to the assassination and its investigation, including three Warren Commission Exhibits, Nos. 393-5. This memorandum was used by the government in about January 1968. The use was made public about a year later in a report of which you also appeared to have no knowledge at all, that of the so-called Clark panel of experts who examined and reported upon various items. Use became a factor and relevant under the American Rail Lines Ltd. v. Gulick decision, of which you should also know if you are to decide appeals. This decision holds that by any use whatsoever, any pre-existing exemption from disclosure is waived. Thus, use in any way by this government panel eliminated any right to withhold that may have existed.

Upon publication of this panel report, I made a number of verbal and written requests for a copy of this memorandum of transfer. It required about three months for me to be told that this was a private paper entrusted to the Archives for safe-keeping by the Kennedy family, an explanation I found not only incredible but one it certainly did not require so long a time to determine. During this long interval, I was informed that I would be given a decision momentarily, including by the Archivist, in person, in Judge Halleck's courtroom. When I was so informed, I requested as an alternative a copy of the government's copy of this memorandum of transfer, say, specifically, not the copy held to be the private paper of the Kennedy family. After a lapse of time I was given the same "explanation" and was again refused. I then asked the Secret Service for a copy of its copy. The Secret Service decided to provide it, but elected to do so through the National Archives. It informs me that it sent a copy with a covering letter the day after my request. The Archives never informed me of this, not even after I learned of it by inquiry at the Secret Service. In response to my subsequent and specific inquiry at the National Archives, Mr. Marion Johnson told me a decision was pending as to whether or not the copy sent to the Archives for me would be given to me. After the lapse of more time and further inquiries, even this copy was refused me.

It is my belief that regardless of any and all other considerations, in this matter the Secret Service is what the Attorney General's Memorandum describes as the agency of paramount concern, and that no other agency ^{has or} can attempt to exercise the decision-making authority for such an agency to make a document available to the applicant. The Archives has followed the practice of making available to me copies of such letters from the Secret Service. In this case I would like a copy of the covering letter also. While it may be felt that this letter can be held to be an internal communication, practice and American Rail, in this case, in my view, waive any such right, if it existed.

Moreover, the use documented above waives any right that may have existed to withhold from me the government's copy of this memorandum and any receipts part thereof or relevant thereto.

Pictures of Exhibits 393-5. I appeal the decision to deny certain pictures to me on the basis that all are, under the regulations as of the time of my initial request, guaranteed equal access. Access denied me was granted to another. On January 7 of this year, after I was denied and after it was sworn in court that nobody was permitted to view these exhibits. I also appeal the refusal of the Archivist to provide copies of existing pictures made from the existing color negatives exposed by the FBI as agent for and at the request of the Warren Commission. In this connection I remind you of the language of the Attorney General's Memorandum, page 24, which in my view requires this of the Archives.

The basis on which I was denied copies of pictures I had requested and described in detail was a withholding of and misrepresentation of existing regulations, subsequently reported in court, the result being the deception of the court. The Archives knew this and immediately after procuring this decision, changed the regulations so that under them it would not be required to grant this access. It then delayed providing me with a copy of the altered regulation, the only one applicable to my request being the one prior to this change. Thereafter, it again violated the regulations to provide the January 7 access. My letter of January 6 did not reach the Archivist in time for him to adjust the regulations to his new

and then-planned violation. Accordingly, after receipt of my letter and after this new violation, he again changed the same regulation, on January 10, 1972. I would like to hope that neither you nor anyone else in GSA can sanction such political misuse of regulations and the right to invent and promulgate them at will, ex post facto, particularly not with public information and in this case, with official exhibits of an official proceeding. And on such a subject.

I have been put to considerable cost and trouble on this matter, all of it improperly. The Archives' prints of the existing negatives are incapable of being copied by its competent photographers. While I should not have had to depend upon copies of copies to begin with, I believe I am within my rights in asking for the best possible prints made from the existing negatives, which are, in any event, required to be in the possession of the Archives or at the very least available to it under executive order of 10/29/31/66. I believe the money I have wasted on useless copies should be applied to the cost of complying with my original request, which was for prints made from the negatives. If those negatives are, as they should be, capable of enlargement, then I would like my request to be interpreted as for the areas of damage only, as described in my written requests, and to be certain that there is no unnecessary or wasted work or trouble for the government, I will go to whatever lab is used for this work at the time the enlargements are made at the time they are made, so that there can be no doubt of the limited area of my research interest, the area of damage to these exhibits.

With regard to pictures I requested be taken for me of this evidence and copies to be provided to me at my cost, I think you should take into consideration that despite contrary representations, at the time of my request both the GSA-family contract and regulations combined on this to guarantee me such pictures. I am, frankly, astounded that you would have made any ruling without knowledge, as you disclosed yesterday, of the existence of this contract. Because the record is clear that you are not sufficiently informed for the making of decisions, I will quote for you the relevant passages, although I think this should have been done for you within the government.

In this contract, I(2)(b) guarantees "access" to "any serious scholar or investigator of matters relating to the death of the late President for purposes relevant to his study thereof". The only right to deny is "in order to prevent undignified or sensational reproduction", an allegation never made or claimed and, in fact, never responded to when I made direct challenge for a showing of how the pictures I requested were susceptible of such misuse. As a matter of recorded fact, the representative of the executors of the estate, in writing, offered no objection to the providing of the pictures I requested. III(1) authorizes the taking of photographs for "persons authorized to have access under I(2).

Under 5. of the regulations in effect at the time of my request, I was guaranteed copies of the pictures I requested. The language is, "photographs of these materials will be furnished to researchers as a substitute for visual examination of the items themselves." (emphasis added) There is no doubt about intent or requirements: "In the event that existing photographs do not meet the needs of the researcher additional photographic views will be made. A charge may be made for unusually difficult or time-consuming photography. Photographs reproduced from existing negatives...will be furnished on request for the usual fees." The ensuing language authorizing the withholding of copies of such photographs was waived by the representative of the executors of the estate, in writing. And, as may be unknown to you, photographs of this clothing have been widely published by the government and others, are provided by the Archives regularly, and only "undignified or sensational" use is proscribed. In the absence of a showing that I intended such use or that it, indeed, was possible with the picture I requested, I believe I am entitled to the copies requested. You will note that it is the researcher who decides, as should be the case, what his needs are, under both the regulations and the contract. I am sorry, I copied the wrong regulations. The limitation on the providing of copies of the pictures was added July 6, 1971. The original and applicable regulations, those in effect at the time of my request, ended in the above quotation with the word "fees". This limitation did not exist at the time of my request. The Archivist can

and I think should supply you with his subsequent change in an effort to legalize his ~~own~~ violation of the amended regulations. Any examination of this record makes unavoidable the conclusion that the applicable regulations are altered to deny access, which is contrary to the law, in the first case to sanction refusal to me of that to which I was entitled and in the second to validate that which was specifically proscribed when a political purpose was to be served by the violation.

Refusal to me of copy of USA-family contract. I have asked at length and repeatedly for an explanation of how, with the reasons given for denying me a copy of this document when I asked for it on approximately November 1, 1966, it could ever be made available to anyone if the reason given were genuine, and how, under the regulations, which require equal access, it was then denied to me for a long period and until after it was given exclusively to another. Existence of my prior request is reflected in the letter of about January 9, 1968, from the Archivist. "It was not written until after exclusive rights were given to and exercised by another. Not only do I believe that I am entitled to this information, but I believe your understanding of what is involved and what practice has been is necessary to your rendering of proper judgments and decisions. Here you will find repeated violations of the regulations, to my (intended) damage.

Refusal to replace and provide copies of missing public information. The Archivist has repeatedly refused to obtain what he is required to have in his archive when he alleges copies are missing, documents that can in every case be provided and under the law must be provided by the agencies of origin. I appeal his refusal to do this, and I again call to your attention the cited language of the Attorney General's Memorandum, which further requires that he forward all such requests if he does not himself fill them. Because lists of all unfilled requests are supposed to be kept, he can immediately provide me with the copies I have asked and have not received.

Executive sessions. I have asked for certain withheld executive sessions of the Commission. In some cases I have specific knowledge of the content. I have repeated my requests in several ways, including for all of the sessions except the pages claimed to be properly withheld, which has been the practice with other executive sessions; and by showing that the authorization for withholding is not applicable. I have asked for explanations of how the cited authority to withhold can be applicable. Although the Archivist has not so informed me and has not, in fact, responded to the best of my recollection, I have reason to believe he has now changed his reasons and has not provided me with his changed reasons. I believe I am entitled to the transcripts except where they clearly fall within one of the exemptions of the law, as then entitled to all but those portions properly exempt under the law, and am entitled to the explanations requested, for all of which I herewith appeal.

These are specific requests of the nature you asked for yesterday. Until after consultation with an orthopaedic surgeon on March 1 it is not safe for me to use my left hand in searching such packed files as mine are. If all the dates are approximate except where what I needed to consult was not in my filing cabinets, where they are exact, I believe they are accurate or at the very least close enough to provide no problem to the Archivist in supplying you with such copies as you may desire. Until this consultation, I will not know whether surgery will be required, in which event the limitation on physical capability will continue longer. However, although you seem to be unaware of it, it is my understanding that there is supposed to be a list of all denied requests for identifiable information and, in fact, practice shows this to be the case, as the above-cited instances and your own letter disclose. It therefore should not be necessary for me to search this enormous correspondence to provide you with a list of what I have been refused.

I have undertaken to try and inform you fully. I hope you will understand this is the sole purpose of the length of this letter, and that the composing and typing of it requires much more time than the reading. You complained about length. I am its chief victim, as I think reflection will show you. Especially at a time of incapacity.

Sincerely,

Harold Weisberg