

# Memorandum

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JTD

TO : Mr. Felt

DATE: 8/14/72

- Bishop
- Callahan
- Campbell
- Cleveland
- Conrad
- Dalbey
- Jenkins
- Marshall
- Miller, E.S.
- Ponder
- Soyars
- Walters
- Tele. Room
- Mr. Kinley
- Mr. Armstrong
- Ms. Herwig
- Mrs. Neenan

FROM : D. J. Dalbey

*Oswald*

SUBJECT: PAUL L. HOCH  
FREEDOM OF INFORMATION

By memorandum D. J. Dalbey to Mr. Felt dated 7/28/72, captioned as above, it was reported that Legal Counsel had met with Robert Saloschin and John Gallinger of the Department's Office of Legal Counsel concerning proper disposition of the Freedom of Information Act request of Hoch. Our position was that the FBI would oppose releasing any information from our investigative files and that should the Department order us to release such information we would comply, but that we would need guidelines regarding the type of information to be released.

On August 8, 1972, a draft of materials proposed to be used in replying to Hoch was furnished Legal Counsel by Mr. Saloschin who requested that we review them and furnish him our comments. Ms. Herwig advised that she had heard the Department was considering releasing information from the FBI file concerning Lee Harvey Oswald and she requested an opportunity to read the draft of the letter the Department proposed to send Hoch. On August 10, 1972, we furnished a copy of the materials to Ms. Herwig who indicated that she would express her views to the Acting Director in regard to this matter.

In a note attached to the materials we indicated that the statements in the Department material were not entirely correct in that we did not agree to conduct a review of our files. The note further indicated that our position continues to be that we should oppose furnishing any information to Hoch. The Acting Director wrote on the note: "Either FBI files are exempt or they are not. Resist in the strongest possible manner with hard hitting, logical, legal, and practical reasons. If necessary I will take up with AG."

The Acting Director's comments were received at 1:00 p. m. on August 14, 1972. Mr. Saloschin was available for conference at 2:30 p. m. on the same date at which time he was advised that the Acting Director had

- 1 - Mr. Bishop
  - 1 - Mr. Dalbey
  - 1 - Ms. Herwig
  - 1 - Mr. Mintz
- JAM:mfd (5)

103-

14 AUG 22 1972

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42 AUG 22 1972

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57 AUG 24 1972

Section 237



Memorandum to J. Felt  
RE: PAUL L. HOCH

expressed the view that we should make the strongest possible resistance to disclosure in this matter and had indicated by this view that an extensive review of our files should not be undertaken. Mr. Saloschin was not advised of the Acting Director's comment that if necessary he would take the matter up with the Attorney General.

Mr. Saloschin was reminded that the conference he had with Mr. Dalbey resulted in an agreement only that the FBI would continue to oppose release of information from our files, but that we would comply with an order from the Department to disclose particularly described information. Mr. Saloschin agreed that that was the understanding resulting from the conference.

Mr. Saloschin said that he still has the opinion that some material should be furnished Mr. Hoch in order to satisfy his insistent demands for information. He said that his opinion was based on the fact that the investigative file involved in this matter concerned an inactive investigation and that it had been his experience in other such cases that the exception for investigative files would not protect the information in the courts. He said that this case is difficult to analyze because it is not known whether Mr. Hoch will or will not sue in an effort to enforce his request for information under the Freedom of Information Act. He said he fully understood the FBI's position resisting disclosure of material in our files, but that he would have to consider the matter further.

While we recognize that there may be decisions interpreting the Freedom of Information Act so that the exception for investigative files would not protect information originally compiled for investigative purposes, we are unaware of any such case relating to the FBI. We perceive a distinct difference between files compiled by regulatory agencies and investigative files compiled by the FBI. We note that among the decided cases interpreting the Freedom of Information Act is Cowles Communications, Inc. v. Department of Justice, 325 F. Supp. 726 (N. D. Calif. 1971). In this case, the plaintiff, anticipating a libel suit, requested certain records from the Immigration and Naturalization Service (INS) under the Freedom of Information Act. The Department of Justice declined to disclose the information and claimed that the INS files were exempt from disclosure under the exception for investigative files. The plaintiff claimed he was entitled to disclosure because no proceedings were pending to which the files related.



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The analogy between this case and the Hoch request for the files concerning Lee Harvey Oswald is clear. The Oswald file was compiled for investigative purposes, but no proceedings are anticipated. Therefore, the court's opinion in the Cowles case is highly pertinent to our consideration of the Hoch request. Moreover, the Cowles case is significant because it was decided in the Northern District of California, the district in which Mr. Hoch is located.

The court said:

"It protects investigatory files compiled for law enforcement purposes. A file is no less compiled for law enforcement purposes because after the compilation it is decided for some reason there will be no enforcement proceeding. I think no resort to legislative history is needed to clarify what the language of the Act itself makes clear. But if the legislative history is considered, in my opinion it confirms the existence of the privilege. The House Report (U.S. Code Congressional and Administrative News, 89 Cong. 1966, Vol. 2, p. 2418 et seq.) in describing the records which may be exempt from public disclosure says 'others cover materials such as Federal Bureau of Investigation Records which are not now protected by law.' (P. 2419) The Report shows great concern for the right of the public to know how the Government operates (Pp. 2422-2423) and speaks of a balancing of that right as against the need of the Government to keep information in confidence. Congress was concerned with the protection of individuals' privacy (House Report, p. 2425) and this concern finds expression in subsection (b)(5). For at least two reasons, of which Congress was undoubtedly aware, investigation files should be kept secret. The informant may not inform unless he knows that what he says is not available to private persons at their request, but more important in this day of increasing concern over the conflict between the citizen's right of privacy and the need of the Government to investigate it is unthinkable that rights of privacy should be jeopardized further by making investigatory files available to private persons. If these concerns are legitimate concerns, and I have no trouble in concluding that Congress regarded them as such, then at least a part of the purpose of enacting the investigatory file exemption is lost if the file ceases to be confidential as soon as the threat of a law enforcement proceeding disappears. Consequently I hold that 'investigatory files compiled for law enforcement purposes' need not be produced whether proceedings be contemplated or not."



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It is possible that Mr. Saloschin may continue to press his view that the FBI should release certain items of information from the Oswald investigative file. However, should such a request be forthcoming from the Department, or should the Department issue instructions requiring us to produce information from our files, we should continue to resist such disclosure. We feel that the precedent that would be established would be dangerous because the second request would be more difficult to defend against, and the second and third requests would probably seek information of an increasingly sensitive nature. Mr. Saloschin's concern that by declining to furnish information in a particular case we may be heading for trouble in the courts is an estimate which he has drawn from experience from cases arising in other agencies. We cannot predict the outcome of a lawsuit interpreting the Freedom of Information Act, however, common sense does tell us that the files of the FBI would be regarded as requiring greater protection than those of regulatory agencies.

RECOMMENDATION:

That no further action be taken in regard to the Hoch matter pending receipt of further communications from the Department.

I do not want to  
release & I will want  
to discuss with H.G.

Jin 5/16  
6:05 P

~~WGC/P~~