



UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

SEP 27 1978

Mr. Harold Weisberg
Route 12 - Old Receiver Road
Frederick, Maryland 21701

Dear Mr. Weisberg:

This responds to your letter of August 3, 1978, in which you appealed concerning the manner in which the Federal Bureau of Investigation responded to your request for access to records pertaining to the "Byers matter." You raised specific issues concerning this particular release, as well as other points pertaining generally to your various other pending requests and administrative appeals.

To the extent you specifically seek new copies of the Byers release containing the first portion of the informer's file number, I have decided to grant your appeal. Such copies, reflecting the filing of this material in a "137" File, will soon be released to you directly by the F.B.I. To the extent you seek access to any other content excised from the released records, your appeal must be denied. I have personally reviewed these materials again. Neither the case in which the records were generated nor the informant involved had any connection with Dr. King or his assassination, except as indicated in the released portions. Any additional release, assuming without conceding that the other portions of these records are within the scope of any request of yours, would disclose purely internal Bureau practices and would invade the personal privacy of other persons to an unwarranted extent, compromise the identity of a confidential source, and disclose confidential information furnished only by a confidential source. 5 U.S.C. 552(b)(2), (7)(C) and (7)(D). Although the manner in which this material was handled by the Bureau, both at the time the records were generated and when they were sent to Headquarters and the Select Committee, was unfortunate, the withheld portions are, nonetheless, wholly inappropriate for release as a matter of agency discretion.

In your letter of August 3, as on several previous occasions, you suggested that the fact that records which have been requested and which are to be released may be erroneous, incomplete, or misleading has some F.O.I.A. relevance. As a

matter of law this simply is not true. We are required by the Act to release to any member of the public any requested record to the extent that it is not legally exempt. If we are aware of a "defect" in such a record, we are sometimes able to put the matter into perspective by a comment in the letter effecting the release. Far more often, however, we have and can have no knowledge of the potential problem concealed in the content of the record. The possibility that such a situation exists is no basis to deny access to a record or to delay furnishing it to any requester. As to this particular release, I am personally satisfied that it was not mishandled by the Bureau.

Going beyond the release of the Byers material, however, there is the broader issue of just what are the "rights," if any, of the first person to request access to particular records, where other requests for the same records are received prior to any release actually being effected. As a technical matter, any release under the Act is a release to the public at large. Although the matter is not entirely clear, I have some doubt whether we have any legal right to favor the senior requester and delay the release to the other requesters. If possible, as a matter of simple fairness, we will usually make a reasonable effort to try and get the released records to the senior requester before they get to the junior requesters. In your case, however, it now appears that material as to which you are the senior requester is being released to junior requesters in certain instances, and that you are not even being sent a contemporaneous release. There are several different reasons why this has occurred, but I have concluded that the practice simply should not be allowed to continue. I have discussed this problem with Messrs. McCreight, Bresson and Beckwith of the Bureau's FOIPA Branch. We have agreed that such occurrences must be eliminated in the future to the maximum possible extent, and appropriate implementing instructions are being issued within the Branch. It is our joint hope and expectation that any future releases to other requesters of King or Kennedy records within the scope of any of your requests will be at least simultaneously released to you. There may, of course, be instances of human error, or cases in which the nature of material being processed is not apparent to a non-expert. Please inform me immediately of any future instances where material within the scope of any of your requests for King or Kennedy records is released to someone else and not to you.

You have made references in several letters to the fact that this Department has furnished information to the House Select Committee investigating the assassinations of Dr. King and President Kennedy. Providing information to Congress (or, in this case, to a committee of Congress on a matter within its jurisdiction) is absolutely not a release for purposes of the Freedom of Information Act, which specifically provides it does not authorize the denial of any information to Congress. 5 U.S.C. 552(c). Accordingly, the mere fact of our having furnished particular information to the Select Committee is irrelevant in passing on a request for that same information made under the Act by you or any other member of the public. If, on the other hand, information furnished to the Select Committee then passes into the public domain, that is a relevant fact we must consider when passing on the particular material in question.

Lastly, your letter of August 3 contains several new, specific requests for access to records. These were for copies of: (1) the identical records from the St. Louis Field Office; (2) any other records pertaining to the finding and release of the released records; (3) a special file search, and the results thereof, as to the "short stocky man who walked with a limp (and who) paid Ray \$10,000"; and (4) all records of any investigation into the "alleged oversight." By copy of this letter, I am referring these new requests of yours to the F.B.I. for consideration and direct response to you. I do wish to note, however, as to the first item, that the released records were copies of those furnished to Headquarters by the St. Louis Field Office. As to the second matter, you received the only records provided to Headquarters concerning the discovery of the released records, although it is possible that additional material exists at the Field Office. As to the fourth item, my assumption is that you are referring to any investigation of the initial failure to place the Byers material in, or at least reference it to, the MURKIN file. If I am wrong on this point, please notify either me or Mr. Beckwith as soon as possible.

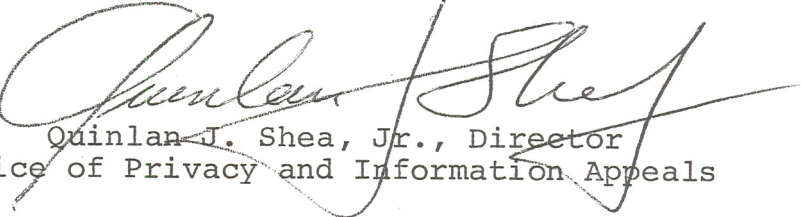
Judicial review of my action on this appeal is available to you in the United States District Court for the judicial district in which you reside or have your principal place

of business, or in the District of Columbia, which is also where the records you seek are located.

Sincerely,

Benjamin R. Civiletti
Deputy Attorney General

By:


Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

CC: James H. Lesar, Esquire
Betsy Ginsberg, Esquire