

0322 - Records Not Searched

Dear Jim,

6/30/80

If the FBI does as Dan Metcalfe promises it will do in his letter of 6/25; if as he says "the administrative appeal process for all Dallas and New Orleans records should now be a very active one," and if the enormously overdue Dallas index is provided "in advance of the next status call" (which means no more than a day or two before it); and if all the cross-references for the improperly withheld field office records are "completed within approximately 1-2 months" (with Dallas the admitted error was of almost 2,500 pages, without reference to any referrals); we will all face an impossible situation and it will be impossible for Metcalfe to keep his word to the Court and to us. I believe he should be informed of this immediately. I explain.

I asked you to ask that we not face a situation in which all that has been withheld for so long, assuming all is provided by them, not be dumped on me at a time that makes my review of all of it impossible before the status call that at his request was set for six months later. His letter does not provide that assurance.

His letter reflects a lack of understanding of the realities. If as I do I assume his innocence in this and do not attribute any improper motive or intent to him, I state the reality and will explain it also below.

While I have no objection to his covering up for his client, as he does in his letter, I believe the record should be clear and unequivocal for the next status call, so that there will not be any question when we face the situation I anticipate and so that it will be clear to the Court.

The FBI has been stonewalling. It gave its word and it did not keep it. The situation with regard to the Dallas index is not merely one of compliance being "far slower than had been expected" but does it mean anything new to say that "any substantive objections to excisions made in the Dallas index cards ^{already released} should be considered by" the appeals office.

Compliance is not merely far slower than expected. The entire index was to have been provided long ago, perhaps as much as a year ago. My appeals, which were prompt, have been without response and I was never told when any additional part might be expected.

An agreement was reached. The FBI did not keep its word and did not once inform me

that it would not or could not or that it had any special problems it could not anticipate or even when to expect any additional sections of it - as of today. There were no special problems. The FBI wanted to stonewall me and it did that.

With regard to consideration by the appeals office, while I agree that objections to excisions in the copies of cards provided "should be considered by" it, the fact is that they have not been. It also has not informed me when they will be and it is already too late for this to be meaningful and to avoid the certain non-compliance ignoring what I wrote the FBI and it promptly now ignores.

As soon as I received the small proportion I did get I wrote the FBI about what I regard as improper withholdings. In part this was so that those problems could be eliminated in the major and unprocessed part of that index, an extraordinarily important record, if not the most important of all in that historical case.

The response of the FBI was to tell me to "Tell it to Sweeney." From Mr. Shea I heard nothing at all. And this was very months ago. This forecasts a repetition of what in my extensive experience in FBI SOP - that all of the records will be improperly processed, knowingly so, after which the FBI will complain about the cost of reprocessing, and there will be that cost of there will be violation of the Act and denial of the withhold public information.

The errors in the processing of what I have received have not been corrected. I have not been informed that they will be corrected. I expect them to be duplicated in what has not yet been provided. This creates the situation I state above. It presents the Court and us with a fait accompli. We are asked to rubber-stamp deliberate non-compliance.

I therefore would like the record to be condensed in clear form in advance, so I ask that Detroit provide a letter acknowledging the date on which the FBI agreed to provide what it had initially withheld, the index, when it would deliver the entire index, when I informed it of improper processing, and what, if anything, it then did.

There is a shorter index, known as the communications index. It has pages with obliterations for which no claim/exception is made. I informed the FBI of this

promptly, as I did Mr. Shea. As of today I have not received any replacement pages.

Most of the records of the two field offices were withheld as "previously processed" in the FBIHQ general releases, despite my proving in C.A. 75-1996, confirmed by the Shea office long before any records were processed in this case, that the two different sets of records are not identical. There is no basis for such withholding. I accommodated the FBI and agreed to accept cross-references as a substitute. It was to have provided them promptly. I take it from "etocalf's" letter that it has only now, many months late, begun the preparation of these cross-references. Again, I believe that a clear statement of the times involved, as above, should be incorporated in a letter and available for a clear record at the time of the next status call.

Many other serious problems exist. I have reason to believe that they will not be addressed prior to the next status call. In several years they have not been addressed. I have tried to confront all of these as soon as I became aware of them. The Department is aware and it has done nothing at all of which I have been informed - aside from replacing some of the almost 2500 improperly withheld Dallas records which I caught the FBI in not providing cross-references to them.

New Orleans withholds its inventories of pertinent records it was directed to provide FBIHQ. Dallas did not. From the Dallas inventory (only one of several provided) I established that the FBI did not provide copies of all pertinent files. Thereafter it did provide copies of some. Others, like those on the critics, remain withheld and I have had no response to my appeals from these denials. My appeals included even file numbers, which I was able to obtain by other means when Dallas did not provide them.

With regard to withheld New Orleans records and files not even searched, I was able to determine the precise identification of some. I provided them. These records have not been searched and no copies have been provided. Again, after a long time, almost two years, I have not had any response to my appeals.

As soon as I received the records that were provided I began to review them. As I reviewed them I provided Shea with detailed and documented appeals. This was greatly

time consuming and to me costly because in order to attempt to expedite and save Shea's and the FBI's time in most cases I provided copies of the records involved. I provided these appeals as soon as I received any records and thereafter as rapidly as I was able to review them. Despite this they have been virtually ignored.

All Shea now proposes to do is make a spot check, for which he has asked me to do more work I have declined to do, while offering him what cooperation is possible. If my first Dallas appeals had not been ignored files in the later New Orleans processing could have been avoided, if there had been any desire to avoid them.

I put it this way because in the processing the FBI violated its own policy, a policy it attested to under oath in G.A. 75-1996 and later at long before the processing of the first record in this case.

Hetschke says with regard to Dallas and New Orleans administrative appeals that if they may be "not processed satisfactorily in that or in any other regard, please notify me promptly." Insofar as anything other than an intent to make a spot check has not been communicated to me - and this eliminates all but those records provided, all the files not searched at all - I suggest that you notify him with a copy of this letter.

The FBI has created a situation which makes it impossible for Hetschke to keep his word to the Court. Shea has contributed to this by virtually ignoring all my appeals and the great amount of time I took to ease his problems. While it is not impossible for the FBI to stop stonewalling and to search and provide copies of records from the pertinent files it has not yet searched, I do not believe it stonewalled without intending it and do not believe it will end its stonewalling without compulsion. It is now impossible for understaffed Shea to address all the appeals I have filed, pertaining to specific withholdings. Some weeks ago I wrote him to this effect. He has not responded.

If you send copies of this to those who received a copy of Hetschke's letter I would like him to understand that my typing can't be any better because I am required to type with my legs horizontal. In order to comply with the request that we notify "immediately" I will have to mail this now, without readings and correcting, or it cannot