

AUG 17 1973

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Freedom of Information Appeal of [REDACTED]

[REDACTED] of documents dealing with the investigation of the death of President Kennedy. In this instance he is appealing from a denial by William D. Ruckelshaus, then Acting Director of the FBI, of a request for a FBI memorandum concerning one Sylvia Odio, who claimed to have information about Lee Harvey Oswald.

Attached is a proposed letter to [REDACTED], which affirms the denial. This denial accords with the general policy of the Justice Department to protect the files of the FBI as coming within the seventh exemption of the Freedom of Information Act, 5 U.S.C. § 552(b)(7), which protects investigative files. (This file does not come within the historical file exception. See 39 Fed. Reg. 19029 (1973).)

In this case we have what is called a "closed file", that is, there is no law enforcement proceeding contemplated. In cases involving other agencies there has been a split of authority over whether such files are exempted from disclosure under exemption seven, but there has been no case to date which has compelled the FBI to disclose such a file. However, the Weisberg case, (Weisberg v. Department of Justice, No. 71-1026 (D.C. Cir., Feb. 28, 1973)) which is pending after a rehearing en banc, suggests that the government, in order to withhold material in a "closed file", must demonstrate that harm would result from the release of the information there sought.

In this case, the nature of the memorandum makes it likely that the denial would be upheld even if a showing of "harm" were necessary. This is because this memo-

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ENCLOSURE

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randum contains an interview of a [redacted] by the FBI. [redacted] relates the life history of [redacted], including details of a private nature concerning [redacted]. This information if released would clearly constitute an unwarranted invasion of [redacted] privacy.

It is for this reason that the enclosed letter also claims the sixth exemption, 5 U.S.C. § 552(b)(6), as a basis for this affirmation of the denial. The Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act (1967), states this exemption also covers

all private or personal information contained in other files which, if disclosed to the public, would amount to a clearly unwarranted invasion of the privacy of any person, including members of the family of the person to whom the information pertains. Id. at 36.

The information related by [redacted] falls within this exemption.

A problem might arise because, in addition to [redacted] information, there are also several pages of names of persons who were interviewed by the FBI with negative results, evidently in an effort to check out a report that Oswald had been in the vicinity of a bus station. It is conceivable that a court, utilizing the "harm" test, might order such names released.

However, there is an interest in protecting the persons named from public disclosure both to protect the privacy of the individuals involved and to protect the integrity of the FBI investigative process. The release of names of persons interviewed might cause persons to hesitate to name other sources of information, and might cause persons interviewed to be resentful if they knew the fact of their being interviewed would be made public, subjecting them to harassment by other "investigators", both legal and literary.

An additional reason to withhold this memorandum is to maintain a position consistent with that taken by the Department of Justice in the Weisberg case, which also involves material from the President Kennedy Assassination Investigation file.

In short, it is our conclusion that this denial is meritorious and defensible both from a policy and a legal standpoint.

Robert G. Dixon, Jr.
Assistant Attorney General
Office of Legal Counsel