

Cong. Robert B. Wise, Jr.
House of Representatives
Washington, D.C. 20515

7627 Old Receiver Road
Frederick, Md. 21701
2/13/90

Dear Congressman Wise,

George Lardner's recent story reporting Justice Department inflating of FOIA costs prompts this letter. I've had much such experience and am more than pleased that the Congress is getting interested.

Please forgive my typing. I'm almost 77, am in impaired health, and must sit and type with my legs elevated.

I was one of the earlier users of FOIA. I've been forced to file innumerable suits not one of which should have had to be litigated. The deliberately wasted costs to the government must be, and I mean this literally, in the millions. From the first the agencies from which I sought records forced litigation for two quite apparent purposes: to frustrate the will of Congress, the Act, and to inflate FOIA's costs to the government. As part of the first reason, there was the clear intent to frustrate use of the Act and compliance under it.

I am a writer. As a young man I was a reporter, investigative reporter, Senate investigator and editor, and a wartime intelligence analyst. I've written seven books on the political assassinations and they are regarded by scholars as the basic books on the assassinations of President Kennedy and Dr. King. I am not a conspiracy theorist. Mine is a rather large study of how the basic institutions of our society worked in those times of great stress and since. I have always taken FOIA literally, regarding requesters as surrogate for the people, and all I've obtained has always been freely available to anyone. For the most part, those using my materials are those whose views I do not agree with. All I have will be a public archive at local Hood College.

Congress amended the investigatory files exemption because of the Justice Department's dishonesty in one of my earlier suits. I do not have that issue of the Congressional record now but I enclose a story Lardner wrote in which a judge recalled that. Thereafter the Department, its FBI and the CIA stonewalled me even more, as is reflected in the enclosed pages of the Senate subcommittee's 1977 hearings. I did not call that to the subcommittee's attention and did not know about the hearings until after they ended. Those who called this to the subcommittee's attention picked the information up from a lawsuit I filed in 1975 and is still, on the matter of counsel fees, still before the courts. Both the Department and the FBI decided to ignore my requests, in small part reflected in the hearings ^{pages} enclosed.

On page 140 you will read the assurance to the Congress by the then head of the Civil Division that "we in the Civil Division are going to do something..." He didn't lie but what they did was not what would ordinarily be taken from his words. First they organized a "get Weisberg" crew of six lawyers and then they proceeded to continue to ignore those 25 requests that had until then been ignored. Not one has been processed since, although by other means I did obtain some of that information.

Even on the counsel fees in the King case that I filed in 1975 they are spending more money contesting the award than paying it would have cost. This, of course, is a prohibitive cost for most litigants while it inflates the government's costs that are then used to get "relief" from alleged burdensomeness.

(The "Mr. Shea" in the hearings is Quinlan J. Shea, then head of appeals.)

There is nothing too petty for these stonewallers if it delays or frustrates compliance and builds their dishonest statistics. I'm not able to do much but because so much defamatory misinformation was compiled and misused to defame me and thus to undermine the credibility of my work, I've been trying to get belated compliance with my requests for records on or about me. Some of these old records are being processed

for another. I had thought this was illegal under the Privacy Act. The copies sent to me state that I am the subject of the request. In any event, the FBI and the Department are disclosing to someone else records ^{about me} withheld from me since 1975, despite frequent renewals of the request and appeals. What I received most recently is two Department memoranda based on 17 large envelopes of materials I had given the FBI. There was a trial and Congressional hearings afterward in which all became public, as in fact it had earlier in the press - 50 years ago. Yet now, 50 years later, they withhold from me some of the information I gave them, all the names. Aside from the absurdity and unreasonableness of this I cite it as illustrative that nothing is too petty to limit disclosure and inflate costs.

The FBI sent those records to me without including the number it had assigned. I noted this in my appeal but did give the date I received those records, which effectively and specifically identifies the disclosure to the FBI. The appeals office wrote me that it had conferred with the FBI and hadn't the slightest idea what I was talking about. It asked for the case number, which the FBI had not included, and for the date of disclosure, which I had provided. And then said that if I provided this information they would assign a new appeals number to it. Or, would put my 1975 request, still not complied with, at the bottom of the stack. In 1990! (See enclosed letter.)

During the King case, Judge June Green asked me to cooperate with the appeals office, then Mr. Shea's office. He also asked me for help in my JFK assassination request. As a result I provided, as the Department later acknowledged, more information than any requester had ever provided. My copies, which include some duplications because some appeals dealt with several matters, are so voluminous they take up most of two full file cabinets. Almost all of this considerable effort, a considerable cost to me, was entirely wasted because it was and remains ignored.

It is my experience, and I can't think of any case in which this was not true, that misrepresenting to the courts is standard procedure. Lies are commonplace, and by this I mean knowing lies, and perjury is not eschewed. By perjury I mean sworn untruths about what is material and by one with personal knowledge.

They preferred to avoid perjury and if they had not resorted to using affiants without personal knowledge instead of those who were available and had personal knowledge perjury, too, would have been commonplace in all my litigation. What they dared do varied with the judges. They knew pretty well where they would be immune, where they had to be a little more careful, etc.

I have no way of knowing how typical my experiences are because my requests were for information the agencies would find could embarrass them. However, there are many information requests like this so I believe that in much FOIA litigation pretty much what I tell you was government practise. It was in case records I've read.

I believe that FOIA bespeaks what is unique in our political system, formalizing the right of the people to know what their government does. I think, too, that it can be a means for government to improve itself. But it does not want to. It would rather keep the closet of its soiled linens firmly locked.

I can't think of a single request I made that was not for information that should have been processed for disclosure, without any litigation. I also can't think of any that was complied with without litigation, and then was stonewalled and frustrated to the degree possible. The costs, the costs in government funds alone, were considerable. They are also unjustified. They were expended for improper purposes because the executive branch does not like and opposes the law as much as it can and because it wants to make use of the law difficult and overly costly to the people.

I hope you will pursue the abuses indicated in Gardner's story and perhaps make use of the law less difficult and less costly. If I have any information that you can use, you are more than welcome to it. If you were to get some of the FBI agents to repeat under oath what they have sworn to in court you could charge them with perjury. Sincerely

Harold Weisberg

