

Mr. Richard L. Huff, Director
Office of Information and Privacy
Department of Justice
Washington, D.C. 20530

2/1/84

Re: Appeal No. 80-1017 (LFE:PLH)

Dear Mr. Huff,

Unfortunately it is impossible for me to identify the appeal from your letter of the 26th. I filed many appeals, in large part because my information requests and appeals were usually ignored. I take it you refer to a Civil Division appeal from your referring me to it. But my first Civil Division appeal was not in 1980, and to the best of my recollection, all of them were ignored. As is my initial request of that Division of many, many years ago, and that appeal. And even if limited to CD records on or about me personally, your letter is entirely inaccurate, I presume because your staff has been misinformed by that Division. Moreover, I have questions about the conclusions you reached and I believe that the least desirable option for both of us is unnecessary litigation - which certainly costs much more than compliance.

Your letter states that 95% of CD's records consist of pleadings in my cases that are already in the public domain and most of the rest is related correspondence. You do not state that all of this correspondence is with me and you do not account for other CD records in which there is substantial public interest. One illustration of this is CD testimony before the Senate FOIA subcommittee, what led to it, what promises were made to the Senate, what followed, etc., because those promises were not kept.

There should be other records pertaining to my litigation, and even the lack of them can be significant and of public interest. For example, when CD presented falsely sworn attestations with phony documents attached ^{and} ~~as~~ that court banished that FBI FOIA supervisor. There are many of my affidavits in which I alleged and I think proved false swearing in FBI and other affidavits provided by CD. The presence or absence of CD records pertaining to such matters is of public interest. Another illustration and another ignored appeal relates to complete fabrications by CD to abrogate the fee waiver that had been granted. My appeal was not even acknowledged and no effort was made to dispute it and its allegations of fabrication, from anything provided to me. The presence or absence of such records is of considerable public interest.

Aside from FOIA litigation, back in the 1950s CD represented the Army in a torts suit I was forced to file when the Army welshed on a settlement negotiated by the office of the general counsel DoD, with Army concurrence. As a result a precedent that was quite costly to the government was established. To the best of my knowledge several Congressional efforts led to no solution to the Government's resultant problems, which were the direct result of litigating what should never have been litigated. (CD settled the second suit out of court.)

There was court-ordered discovery in the second suit but copies were not provided to me. I was allowed to examine those records only. This was about 10 years ago. Thereafter I requested copies under FOIPA and my request was not even acknowledged. My wife thereafter filed a similar request and did receive some of the records but not all. My appeal remains ignored.

There is, I believe, public interest in all aspects of litigation that was so clearly against government and thus public interest.

This is but a partial reflection of what I regard as a CD attitude and position with regard to those who litigate and particularly me and I believe is a matter of public interest.

To the extent that CD information is limited to pleadings and is within the public domain, I have no desire for copies. However, there are often non-exempt related records and you make no reference to them. Because of the nature, extent and cost of this FOIA litigation there is public interest and I do desire all such records.

The FBI distributed a version of its records that ranges from misleading and false to what is really mendacious. Any such information in CD is certainly of public interest as it relates to those described as "critics" of its solution to the assassinations of President Kennedy and Dr. Martin Luther King, Jr. Especially "critics" involved in litigation with CD. Some years ago your office and the Associate Attorney General agreed with this, but since then no records have been disclosed by any department component.

Your letter does not state whether the five factors you say you considered meet all the requirements of pertinent regulations and I believe they do not. I believe that there are other relevant considerations of which your office is aware that you did not consider.

The first of the factors you mention is subject-matter public interest. As this relates to the assassination I cannot see and you do not claim that there is any lack of public interest in either of these assassinations and anything in any way related to them. The Attorney General himself has held the exact opposite, as has the appeals court, and the AG determined that both are significant historical cases. As this relates to "critics" your office and the AAG have already held to the opposite.

In your second factor, "whether the documents in question will meaningfully contribute to the public development of that subject of public interest," you fail to identify "that subject" and you again are in conflict with the AG and AAG.

Your third is not relevant because I do not want what is already within the public domain. If my request and appeal had not been entirely ignored for so many years you would have known this. In fact, as a general proposition, it was known to your office years ago.

I cannot conceive how you could possibly have decided, with respect to an author, lecturer and regular source for all elements of the media that I am not able to disseminate the information to the public." My health is seriously impaired and I am approaching my 71st birthday but I am still active in "disseminating" and as recently as this past Sunday spent two hours doing exactly that to a large west-coast radio audience.

Nor can I possibly conceive how you could decide or on what basis you could decide, without inquiry which would have certainly refuted your conclusion, that I have "any personal interest. . . . which can reasonably be expected to be benefited." Because there is none it cannot "outweigh" the "public benefit." I think you refute yourself in the next sentence, "Financial status of a requester is not a dispositive factor." Obviously it is if there is no profit.

Because this is a 1980 appeal I would like to know if you have that long a backlog. I am also interested in knowing why you so belatedly addressed this one appeal while continuing to ignore so many very, very old ones. There is, for example, a list your office has (as CD also has) of some 25 ignored FOIA requests, all appealed and all appeals ignored. This list was the subject of questioning of Quin Shea by the Senate FOIA subcommittee, so your office additionally has knowledge

of it by that more dramatic means. Those ignored requests and appeals go back to 1969, although most were after the 1974 amending of FOIA.

You also state that "inasmuch as the subject of the requested records is yourself, it appears that the only person who will benefit to any discernible extent is yourself." This ignores the fact that I am a "critic" in these historical cases and the fact that your office has already held to the opposite. It also ignores the considerable public interest in the subject matter and the results of the litigation, not the least of which, you may recall, is the 1974 amending of the investigatory files exemption.

In this you also ignore the great and manifested public interest in knowing what the government did - and did not - do at those times of great stress and thereafter. I cannot recall a single one of my many public appearances in which this was not a major factor of audience interest and it is regularly expressed in my mail. I believe it is a conservative estimate to state that more than 15,000 total strangers have written me about this subject, and I respond to all. My FOIA litigation is the subject of one book, is included in others, has been the subject of law review articles and clearly is not a matter of interest to me only.

If you dispute anything I state above, I would like to hear from you. I also hope you will respond to the questions I ask about your office in this and the other matters I mention.

Sincerely,


Harold Weisberg

P.S. With regard to records on or about me, long before 1980 I filed a number of appeals that remain ignored, relating to all Department components. In some instances I attached records reflecting the existence of other and withheld records for which no claim to exemption was made. With regard to interest in me, the Department saw fit to disclose many false and defamatory records about me and it did this without response by the Attorney General who had been telegraphed by my counsel from Wisconsin when it was apparent that this would be done. I then invoked PA, without response, months before the disclosure. Aside from the Department's knowing violation of my rights under PA, I believe it could not and would not have made such disclosures if there is no public interest in me as a "critic" of the Department's and the Warren Commission's records in these assassinations.