

FBI Reverses Self on Existence of 'Black Bag File'

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The FBI found itself caught up in an embarrassing dispute this week over a 330,000-page file that it had described earlier this month as consisting of "break-in documents." Now, the FBI says, it made a mistake. And it is returning a \$10,690 check a history professor, Athan Theoharis of Marquette University, sent as a down payment for a set of the records plus other papers he has been seeking under the Freedom of Information Act.

FBI spokesman John Morrison insisted, "There is no file for 'black-bag jobs,' domestic security break-ins, surreptitious entries or whatever you want to call them."

The 330,000 pages, he said, are the "informants' file" maintained by FBI headquarters and going back "to the beginning when the informants' file was opened."

"There could be some [documents reflecting FBI] break-ins in that particular group, that 330,000 pages," Morrison continued, "but we have no way of telling."

A specialist in government surveillance practices during the Cold War years, Theoharis says he was told by another FBI official that there are at least some documents about break-ins in the file. Theoharis says he suspects that most of the documents fall into that category.

"I know the bureau disguises break-ins [in files] as 'confidential informants,'" he said

in a telephone interview. "At any rate, when they tell me it's an 'informants' file,' I surely don't accept it on faith."

He said it is also plain that he may have to sue to find out.

The question of FBI "black bag jobs," or surreptitious entries in the name of national security or some other ostensibly overriding purpose, has been a sensitive issue since 1975, when the Senate and House Intelligence committees came across scattered evidence of them.

But when congressional investigators sought to find out how many had been carried out, they were told "there is no central index, file or document" that would give a complete rundown.

Last year, however, in a long-delayed report to the Justice Department, FBI Director William H. Webster allowed that "this statement may have been misleading." Before mid-1966, he explained, surreptitious entries approved by FBI headquarters were recorded in what Webster described as "a symbol number sensitive source index maintained in the intelligence division." In 1970, the index was divided into two parts.

By happenstance, Theoharis, who finances research with foundation grants, came across indications that there were a lot of substantive documents about FBI break-ins "and not simply an index" within the bureau's control.

One hint came from a pretrial motion filed

by former acting FBI director L. Patrick Gray III, who was indicted, but never tried, on charges of authorizing secret break-ins in the early 1970s in search of the Weather Underground fugitives. Gray's lawyers asked for various documents from the FBI's so-called "June file," which they identified as having the number 66-1686.

Theoharis said that rang a bell for him because he had seen a 1950 FBI memo about a thinly disguised break-in to obtain membership lists of a controversial organization. The memo bore the file number "66-[deleted]."

"When Gray mentioned 66-1686, that led me to conclude that was the break-in document file," Theoharis said.

At first, he asked for all the FBI's "66 series" files, but was told they amounted to 2.5 million pages. As a result, in February, he narrowed his request to the "sensitive source index" Gray had mentioned, along with File No. 66-1686, and a number of other documents.

A reply came May 7 from James Hall of the FBI's records management division, who listed the approximate fees for each category. Theoharis wanted, and noted that a fourth of the amount would be required in advance. The letter went on to state, in part:

"Subject: Break-in documents. Cost: \$33,000. Down payment: \$8,250."

At the FBI's standard rate of 10 cents a page that comes to 330,000 pages.

Backed by grants from the Field Foundation, the Warsh-Mott Fund and the Fund for Investigative Journalism, Theoharis said he managed to put together the down payment for the file plus other documents he was seeking.

The bureau balked at that. Donald Smith, an FBI official who drafted the May 7 reply for Hall, told Theoharis Thursday that "it contained an error."

"He told me he was embarrassed," Theoharis said. "He said to me that there wasn't a break-in file, but an informant file . . . He said there are some break-in documents in this file, but the impression he gave me was that the vast majority of the records concern real-life informants, [but] I find that difficult to accept."

Somewhat later in the conversation, Theoharis added, the FBI man informed him that File No. 66-1686 was not among the 330,000 pages. That file, the professor was told, has been destroyed.

Theoharis is not sure what his next step will be, but he says a congressional inquiry would be justified. He also believes the episode underscores the value of the Freedom of Information Act.

"Congressional oversight didn't work" in tracking down these records, he said. "I found out about this and I found out about it by using the FOIA."

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