

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

Office of General Counsel
Washington, D.C. 20405



A. J. Brad

DEC 17 1970

Honorable Carl Eardley
Acting Assistant Attorney General
Civil Division
Department of Justice
Washington, D. C. 20430

Dear Mr. Eardley:

Subject: Harold Weisberg v. GSA and National Archives &
Record Service, U. S. D. C. D. D. C., Civil Action
No. 2569-70 (Your ref: WDR:JFA:paf 145-171-95)

By letter of November 25, 1970, your Division requested our comments on plaintiff's Motion for Summary Judgment and supporting papers. Such comments are offered by way of supplementing our litigation report of October 12, 1970.

It is our contention that plaintiff is not entitled to summary judgment and that his suit should be dismissed on two grounds. First, the materials he seeks, i. e., clothing, and the right to photograph clothing, are not "records" within the meaning of the Freedom of Information Act, 5 U. S. C. 552. Second, plaintiff has failed to exhaust his administrative remedy.

The matters set forth in plaintiff's "Statement of Material Facts as to Which there is no Genuine Issue" have been fully covered in our report and in the U. S. Attorney's Answer which was served upon plaintiff on October 27, 1970. The matters covered in plaintiff's "Memorandum of Points and Authorities," attached to his Motion for Summary Judgment, were similarly covered in the same report and answer, as well as our report of July 29, 1970 and your brief in the case of John Nichols v. United States of America, et al. D. Kansas Civil Action No. T-4761.

It should be emphasized that during the period since the filing of the reports and pleadings referred to above, plaintiff has still failed to exhaust his administrative remedy. Although he had made requests of the Archives' staff to view President Kennedy's clothes, and asked permission to photograph them, he has not appealed the denial of these requests as provided in 41 CFR 105-60.404.

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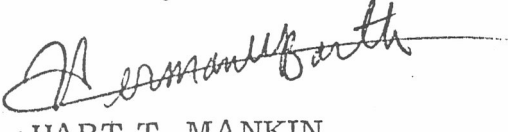
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In view of the foregoing, recommend consideration be given to Defendant's filing a Cross-Motion for Summary Judgment.

Sincerely,


for HART T. MANKIN
General Counsel