DJ-PA

Mr. Charles W. Hinkle (John C. Kertz?) 6/21/80
Director, FOIA and Security Review
Asst. Secretary of Defense
Washington, D.C. 20301

Dear Mr. Hinkle ref: 79-DFOI-1044

Your letter of 6/18 is helpfulm if a bit bewildering, and I do thank you for the explanation of what remains inexplicable. In four years (under a 10-day law) I have not received the information/history you provide.

I think I have it straight, in part, and if you can provide any other information, because I have no idea what is being withheld and have been kept without any basis for appeal, I'd appreciate it.

It seems that all of what is now so convoluted began with a simple request of the Naval Intellegence Service for its records pertaining to the assassination of President Kennedy and its investigation. That was on May 21, 1977. My unclear recollection is that someone who responded seemed like a pretty OK kind of person and that I did get some records pertaining to Lee Harvey Oswald's half-brother and the investigation into the death of a fellow Marine named Martin Schrand, the latter quite worthwhile information.

NIS forwarded my request, you say, not records requiring its approval for release, to the Department of Justice. You do not say what Division. It just happens that at about the time of my NIS request, probably a little earlier, I made a PA request of the Department. No component has provided any record even indicating what you report. It also just happens that the Civil Division only provided copies of two of my letters to NIS in the past week, not in response to my PA request but in belated, incomplete and very indirect partial compliance with my request for information pertaining to the assassination. The indirection comes from the National Archives providing some - not all-of its half of correspondence with the Civil Division. It also just happens that in response to my ancient PA request the Archives managed not to provide those pertinent records.

After my request was at the Department of Justice, with which I had filed all-inclusive requests covering all components, it "found eight documents that contained information originated by the Department of Defense," which after review, "forwarded them to the Department of State for review and response" to me.

Phew! And I've just been reading in Department of Justice pleadings in court cases where all this can't happen under FOIA, that the agency which classifies alone can declassify.

Of these eight documents, all unidentified, of the many more in Justice files and pertinent to my requests and not provided, State denied seven, without, apparently, finding anything, not even a letterhead and a date, reasonably segregable. The eighth is the one you forward, not Secret Service, but you tell me that if I want to appeal the withholding of two pages, to do that to the Secret Service.

This document was classified SECRET. No authority for classification or declassification is included on the cover or any of the 63 once-classified pages. I do not contest the original classification but I do wonder why any government people ever cite the EOs to withhold and deny if they are not going to abide by their provisions, as those that pertain to classification and declassification. If this record is found in my possession it could be alleged, if anyone wanted to make trouble for me, that I merely inked out the classification stamps. This is not as extreme as you may think because there is a prior record, where one of the crazy people no agency can avoid, that one part of DoD, actually reported that I was going to shoot down a Presidential helicopter - DOD helicopter.

Your letter also states that if I appeal the burden of proof is on me, which is not my reading of the Act, and provide "detailed justification for reversal." Does not the Act put it exactly the opposite way, that withholdings have to be justified?

It happens that in this case I do not want to appeal. The record pertains to the protection of the President and, tragic as I regard it, the President certainly requires protection in what has come to be this country.

I think I understand what you report but I know I don't understand why it all had to happen. Is it possible that NIS had a DJ record which it got from DoD, which got it from State, which got it from Secret Service (where I also have an all-inclusive request that has not been responded to in a decade)?

How this also included the uninformative National Security Council, my letter to

which I forwarded to you, I still do not see.

However, what I do see is that all the DJ representations to the courts lack fidelity from the fact that it among many other agencies did not do as it represents to the courts all are required to do under the Act. As the last step in this you have just provided me with an improperly declassified document that from what Justice pretends only Secret Service could, and your tracing of this 1977 request does not include even asking the Secret Service.

Is it really possible that all those many agencies failed to return the original records to the State Department if they originated at State?

Is it possible that State can withhold all seven in their entirety if the records are not State records but do include information that originated at State?

How under the Act could these other agencies refuse to process their own information?

How under the Act can State assume authority for withholding the information of other agencies, which it did if those seven records did not originate with it?

If they did originate at State, is it possible that your NIS people are such nincompoops that they didn't realize this and referred State information to Justice?

And how in the world can any requester have the remotest notion of what is involved, to whom to appeal without being whipsawed forever, and what to appeal?

Is not all of this, among other things, a negation of the Act?

You know, I have requests that include those records filed with all the agencies involved. Not one has ever addressed them or these referrals, until now. And now it is convoluted beyond comprehension. It makes the Act additionally meaningless because I have filed appeals with all those agencies and the appeals include all pertinent records.

Rube Goldberg did not die. He is alive and well in all the government's FOIA machinery, which was designed on his patents.

Sincerely,

Harold Weisberg

P.S. It is even more convoluted than I've indicated!

As I got to the rest of today's mail I came to the 6/19 letter from IRS.

That letter begins by stating that my 5/21/77 request was to the Justice Department, not ~~IRS~~ NIS. It then states that Justice referred certain unspecified documents to IRS.

Because the records "contain ~~xxxxx~~ third party tax information" they are withheld in their entirety.

Now if these were tax returns, I could understand it, even though I'd wonder about the selective basis for disclosure and withholding. Like why should ~~xxxx~~ Jack Ruby's tax returns be disclosed and Lee Harvey Oswald's withheld? Particularly when the government, with IRS help, as well as with copies of the pertinent returns, engaged in a careful analysis of all of Oswald's income and evolved a completely impossible accounting that did not begin to account for all the money he spent?

Again, if the records are not tax returns and originate with other agencies, how can IRS withhold them in their entirety?

How under the Act, can it do more than withhold its own information?

Why this new four-year delay under a 10-day Act? Why not state when DJ referred?

Only because DJ stonewalled for four years, of course.

HW