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[COMMITTEE PRINT]

AGENCY IMPLEMENTATION OF THE 1974  
AMENDMENTS TO THE FREEDOM OF  
INFORMATION ACT

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REPORT ON  
OVERSIGHT HEARINGS

BY THE  
STAFF OF THE  
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE  
AND PROCEDURE

OF THE  
COMMITTEE ON THE JUDICIARY  
OF THE  
UNITED STATES SENATE



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*Inadequate Records Management and Filing Practices.*—Improvement in agency records management practices and filing procedures can also help speed the response to FOIA requests and appeals. Although the FOIA regulations of the Central Intelligence Agency, for example, call for “the prompt and expeditious processing” of requests,<sup>94</sup> the CIA has informed the Subcommittee that it is unable to comply with the 10-and 20-day response times, in large part, because the agency has “no single centralized records system” or index to record its holdings.<sup>95</sup> Thus, it often takes the agency several days just to locate requested documents.<sup>96</sup> The CIA, or any other agency without a centralized records system, needs to reassess and improve its filing and records system in order to respond to requests for information more expeditiously.<sup>97</sup>

*Deliberate Dilatory Tactics.*—The most questionable and objectionable causes of delay are those that stem from improper agency attitudes, including outright hostility to the FOIA, access to public information or the individual requester.<sup>98</sup> Where such attitudes exist, agency personnel can easily use delay “as a deliberate stalling tactic.”<sup>99</sup> Hoping, for example, “that the passage of time will exhaust the requester’s interest in documents that the agency is reluctant to produce,”<sup>100</sup> an agency may improperly delay any reply for a substantial period of time, only eventually to reject a request “for a reason that should have been apparent at the time it was received.”<sup>101</sup> Or the agency may not deny a request outright but deem it “inadequate for lack of specificity” or sufficient identifying information, “with the result that final action on the unpopular request is delayed while the requester attempts to reformulate it with more particularity.”<sup>102</sup>

It is difficult to determine precisely the extent to which the agencies and departments are employing deliberate, dilatory tactics to frustrate FOIA requests and appeals. At least one such case, however, was brought to the attention of the Subcommittee, and there well may be more.<sup>4</sup>

<sup>94</sup> See 32 C.F.R. § 1900.1(d); Hearings, p. 535.

<sup>95</sup> Hearings, p. 86; 1977 CIA Annual Report, p. 2, subcommittee files.

<sup>96</sup> *Id.*

<sup>97</sup> See also pp. 125-133, *infra*, on other CIA records management practices.

<sup>98</sup> See pp. 52-56, *supra*.

<sup>99</sup> Giannella, p. 14, note 8, *supra*, p. 244.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*, citing Nader, “Freedom From Information: The Act and the Agencies,” 5 *Harv. Civ. R.-Civ. Lib. L. Rev.* 1, 8 (1970).

<sup>102</sup> *Id.*

<sup>4</sup> See Hearings, pp. 129-141, 174-175, 941-942. One witness brought to the subcommittee’s attention three internal FBI memoranda regarding an FOIA request submitted to the FBI in 1969 by Harold Weisberg. In the words of the witness, the memo, dated October 20, 1969, stated that Mr. Weisberg “...was a leading critic of the FBI’s Warren Commission Report and various government law enforcement agencies. Referring to the request submitted by Mr. Weisberg, which sought information on the King murder case for use in a forthcoming book, the FBI memo conclude (d) that ‘it was approved that this letter not be acknowledged.’” Although it is now 8 years later, it is my understanding that despite Mr. Weisberg’s continuing efforts to obtain his requested information, it has never been received. In fact, Mr. Weisberg’s attorney informs me that there are approximately 25 of Mr. Weisberg’s FOIA requests which have never been answered, although some of this information has been generally released to the press. We hope the subcommittee will demand an explanation of these events from the FBI.” *Id.*, pp. 174-175. The Subcommittee attempted to obtain such an explanation from FBI and Justice Department witnesses. Acknowledging that Mr. Weisberg had “reason to complain about the way he was treated in the past,” the Department witness said the Civil Division was “going to try to straighten out” the matter. *Id.*, p. 140.

According to Mr. Weisberg, however, as of January 1979, neither the FBI nor the Department of Justice have begun to comply with his specific requests regarding both the King and Kennedy assassinations. In the King case, for example, Mr. Weisberg said the FBI “continues to make substitutes for my actual request,” and has “deliberately misinterpreted” his requests. He also claimed Allen H. McCreight, Chief, FOIA-Privacy Act Branch, FBI, continues not to respond to Weisberg’s FOIA correspondence. Telephone interview, Jan. 22, 1979.