To Quin Shea from Harold Weisberg re PA request 4/23/80
OPR

In his 4/11/80 letter Richard M. Rogers of the OPR states that OPR has pertinent records in two different files:

"...a Freedom of Information Act request filed on your behalf by Mr. James H. Lesar for the materials of the Martin Luther King Task Force (which has been the subject of litigation) and a letter of complaint filed by you against Special Agent Thomas Wiseman..."

He states that by "correspondence dated December 3, 1979, you requested copies of all records in each of these files," and that with regard to the former item I have been given everything "not exempt or releasable as a matter of discretion " and that with regard to the latter, that information is exempt under PA, not stating which provision. He then says that "as a matter of discretion, I have processed this information" and has "decided that this file is exempt from mandatory release." He cites (b)(2),(b)(5), (b)(7)(C) and (b)(7)(D), then adds, "This information is not appropriate for discretionary release."

With regard to the first matter, I appeal because some of the information withheld is within the public domain and not subject to withholding and because some of the withheld information is appropriate for release and is of public interest as it pertains to the King assassination, as it pertains to the performance of the FBI in its investigation of this assassination and as it pertains to the functioning of the OPR in its investigation of how the FBI functioned. There is great public interest in all these and related matters.

With regard to SA Wiseman, none of the exemptions claimed is appropriate. And if any allegation of any impropriety is laid against an FBI SA, that alsok is of considerable public interest because of the responsibilities of FBISAs and the trust imparted in them, in this case by the FBI, the Department and the Court in litigation. There is greater than usual public interest because the litigation is FOIA litigation, which is intended to let the people know what the Government does.

One of the charges I made is that SA Wiseman swore falsely in C.A. 75-1996. Mr. Rogers attaches my complaint of 8/23/76. However, he does not claim that my complaint is inaccurate. He does not alleged that SA Wiseman did not swear falsely. Nor does he allege that SA Wiseman withdrew any false affirmation.

In fact SA Wiseman did swear falsely and on a number of material issues of fact. One pertains to the non-existence of records the existence of which is disclosed by the files he allegedly searched. Another pertains to searches made in response to my FOIA request. He swore to the making of searches in response to specific Items of my request that in fact have not yet been made. That his affirmation was untruthful is now established by his own and SA John Kilty's deposition testimony in C.A. 75-1996.

Any false swearing is a serious matter. False swearing to the material is a felony, for mere mortals if not for FBI SAs.

It is the supposed purpose of the OPR to provide internal policing. Failure of OPR to inform me that my charges are unfactual raises substantial questions about its performance of its official responsibilities. There now is a question as to whether or not it is a whitewashing rather than a policing agency. There also is substantial public interest in this.

I also alleged that SA Wiseman misused the processes of the Court to defame me. This is undenied.

Also undenied are my charges that he failed to perform his public responsibilities by not complying with regulations in not providing me with an estimate of costs and any deposit required and that he used this as an excuse to stonewall. It may be that Mr. Rogers had a conflict of interest in exercising any judgement on this matter. If he was formerly on your staff and in that capacity acted on the request in issue then his record is identical with that of SA Wiseman and I attribute other offenses to him, as without denial I have in the past and in writing to Judge Tyler.

Mr. Rogers rewrote my request, which I protested immediately. I requested compliance with the request as I made it, not as the FBI or Department would have preferred it. He then wrote that I could have what had not been provided and when I requested it I

did not receive it. He did not provide the required estimate and when my lawyer gave written assurances that I would pay he appears not to have communicated this to the FBI of Department counsel for both alleged/to the Court the exact opposite. Department counsel, then AUSA John Dugan also failed to communicate this information to the FBI, according to the FBI.

Because of these failings to perform official responsibilities, at least in large measure, the Act was negated and costly litigation ensued. There is considerable public interest in these matters also because there is considerable public interest in official compliance with the Act and in officials not wasting public funds.

Some of the records to which I refer do not appear in the FBIHQ MURKIN file, where they belong. This coincides with a rather large number of slips indicating transfers of records from that file, to 62-117290. I have found a reference to this file number that pertains to requests for all my FOIA requests.

While I have no knowledge of this particular file and cannot state unequivocally that records that can be embarrassing were transferred out of a file that was to be provided,I believe it is appropriate that you search to determine this because those transferred records can be pertinent to both subject-matter and PA requests. Perhaps the easiest manner of ascertaining the facts of these shiftings of records would be to consult the FBI's copies of the abstracts it has just provided to me. You will find this there.

Mr. Rogers' claims to exemptions are not valid and appear to be another coat of OPR whitewash. (b)(2) is not appropriate because the matter is not "solely" a personnel matter. No case had been filed against SA Wiseman and the matter was outside C.A. 75-1996, therefore (b)(5) is not applicable. There is no question of privacy, the (7)(C) claim, and SA Wiseman was neither a confidential source nor an only source, therefore (7)(D) is not appropriate.

The changed MURKIN serials referred to on the preceeding page and the file numbers after the change, those listed in the last volume of abstracts, are:

6142 - 454X4
6189 -182X
6193 - 197X
6195 - 209X1
6197 - 454X6
6198 - 454X7
6199 - 197X1
6200 - 454X5
6201 - 454X10
6202 - 209X2
6203 - 209X3
6207 - 209X
6208 - 209X4
6215 - 454X22
6216 - 454X24
6219 - 243X
6220 - 243X1
6222 - 257X
6224 - 257X1
6226 - 257X2
6227 - 257X3
6231 - 257X5
6235 - 257X4

All this shifting from the MURKIN files was after the Department assured the Court I would be provided with all non-exempt MURKIN records.

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, D.C. 20530

APR 11 1980

Mr. Harold Weisberg
7627 Old Receiver Road
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in final response to your Privacy Act request to this Office in which you seek records pertaining to yourself.

As you were informed by Jerry A. Davis, Acting Counsel, on November 29, 1979, this Office has no records identifiable with you other than a Freedom of Information Act request filed on your behalf by Mr. James H. Lesar for the materials of the Martin Luther King Task Force (which has been the subject of litigation) and a letter of complaint filed by you against Special Agent Thomas Wiseman of the Federal Bureau of Investigation. By correspondence dated December 3, 1979, you requested copies of all records in each of these files. With respect to the King materials, you have been given access to everything which is not exempt or releasable as a matter of discretion. The information in the second file is exempt from release under the provisions of the Privacy Act. 5 U.S.C. 552a. However, as a matter of discretion, I have processed this information under the Freedom of Information Act, 5 U.S.C. 552. 28 C.F.R. 16.57. As a result of this review, I have decided that this file is exempt from mandatory release. 5 U.S.C. 552(b)(2), (b)(5), (b)(7)(C) and (b)(7)(D). This information is not appropriate for discretionary release. (As requested, we are enclosing a copy of your original allegation of misconduct on the part of Special Agent Wiseman.)

You may appeal from this denial within thirty days of your receipt of this letter by writing to the Associate Attorney General. Your letter should be addressed to the

attention of the Office of Privacy and Information Appeals. Both the letter and the envelope should be clearly marked "FREEDOM OF INFORMATION APPEAL" or "INFORMATION APPEAL". In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside, or in which you have your principal place of business, or in the District of Columbia, which is also the location of the records you seek.

Sincerely,

Richard M. Rogers

RICHARD M. ROGERS
Deputy Counsel