

Appeals

Mr. Quinlan J. Shea  
Director, FA/FOIA Appeals  
Department of Justice  
Washington, D.C. 20530

Rt. 12, Frederick, Md. 21701

Dear Mr. Shea,

Your letter of the 13 with Ms. Robinson's list has not yet reached me. The copy Jim Lesar mailed me last night did come. I respond in haste so you can have this Monday morning. If your sailrook permits.

With regard to your letter, I accept the spirit but not the words. After you read what I will be sending you if you want to have any explanation of my unwillingness to take your words literally, I will be pleased to take the time.

Certain things were immediately apparent from a glance at Ms. Robinson's list. First it is woefully incomplete. Second it is limited to the period following the amending of the Act. And perhaps most important of all, Ms. Robinson has stayed away from the FBI or it regards you as the records I have reflect it regards all the rest of the Department, as just another enemy.

I regret having to tell you, in fairness to both of us, that your counsel did not serve you well. I begin with that.

Sept/

In an effort to establish that I am a special case for exceptional non-compliance Jim asked me to prepare a list of my requests to show how many remained without response as of the expected time of my testimony of ~~xxxx~~ 1976 in C.A. 75-1996. I did a rough draft of a list and because I expected Jim to be giving copies to the judge and the AUSA my wife retyped it. My only remaining copy is the poorest of the carbons. I know we gave at least John Dugan a copy. I think we gave several, including to the FBI representative(s). My recollection of how many were at that hearing is unclear. I do not recall if we gave the judge a copy. But I do recall testifying to it and cross examination on which Dugan pooped out and declined an offer to resume it at a later date.

If this copy is not clear enough Jim undoubtedly has a better one. I'll be enclosing several because if you recopy a poor copy it becomes more difficult to read.

I never anticipated the needs that have developed for these kinds of records. I also was pretty limited from early 1975 on, particularly after pneumonia and pleurisy in April of that year. I still have records from before that time that I have not been able to file. At first this was from a period of physical weakness, which lasted for a while, and then from what was finally diagnosed as thrombophlebitis, in both legs and thighs, for which I was hospitalized that October. So, I asked a college student to come here for a couple of weeks and try to establish a separate file for each request as well as a single chronological file of all requests. He was carried away with the words "due diligence" and "good faith" after reading several appeals court decisions, including in my No. 75-2021, and by liquor. So his work is incomplete, as the list states.

Perhaps in the near future I'll be able to add to it. When my wife has had time she has been doing over what this young man did. Her work is at about the point where I will have to go over it. If I can identify other requests I'll make a supplementary list for you and I suppose for Jim's use.

The Department did get the transcript of that hearing, so your lawyers knew all about this. If it is new to you and Ms. Robinson, as I am certain it must be, the fault is not Jim's or mine.

It is probable that all of the repetitions of these requests are not included.

The most casual examination of this list ought persuade you that my initial requests were other than you describe. Rather than being complex I made them quite narrow. In some instances I asked for only a single record.

In some instances I asked for the return of my own records. (In one of these it cannot be that both the FBI and the Criminal Division are truthful.) I have yet to obtain any of the records I provided, as it appeared to me my obligations as a citizen required. Not even a decent copy of any of them. Not even after Lynne Zusman became a bit exasperated with the FBI in November or after her subsequent assurances in camera and in the presence of FBI representatives.

You cannot get the full impact from this list. Here are a couple of examples:

The July 1967 request for a copy of an FBI press release - the FBI finally required Jim to seek it under FOIA. Only then did we obtain it, even though it had been printed verbatim in the New York Times. Aside from stonewalling me the FBI was inflating its FOIA statistics, filling the sacs with tears it would weep upon the Congress and people like you.

Your first item is the 4/18/75 King request. I first made a King request more than six years earlier, 3/24/69. I repeated it three times in the next couple of months. This matter has been before the judge in C.A. 75-1996. Her interpretation of the requests is that they amount to "everything." The AUSA's response, which did not move her, was that once the Act was amended requests made prior to the amending did not count.

You will find references to appeals that are not in Ms. Robinson's list, which is restricted to appeals. In noting this I am not attributing bad faith to her or to you. I am confident she did not find them. But that she could not find them ought tell you much - at the very least about what you appear to have inherited, about the fidelity of information provided to you and about those costs in time and money to which you have testified. (The testimony did come today-thanks.) To say nothing about the cost in time and money to me and to what work I was able and not able to do as a result of this.

Now on this point you can learn other than you write. If you do not know then again your lawyers have not informed you because Jim has put some of my evidence into court records. It was ordered, on the highest levels, that my requests not be complied with. One of the new public records, in reporting this to Hoover, bears his initialed "OK." On providing any other records of this nature, which I do not really believe is necessary, I have to let Jim decide. However, I think it would be helpful all around if you were to try to obtain them from the FBI and not from it alone. If you do not receive records that state they want to "stop" me and that they actually considered filing spurious libel actions against me to this end you are not getting all the records.

I interpret your column heading "Final Agency Action" to be limited to administrative action. If I am correct then you have ignored a considerable amount of time I have invested in trying to inform you, in great detail in some instances, so that you may avoid unnecessary litigation. I get no joy from clobbering you (pl.) in court. But on the RA requests, take my word it will be something and it will be as soon as Jim can find time. Your list here is also incomplete. Example:

I filed suit over the damage, ultimately the ruin of our farm by low-flying military helicopters and sonic booms. I never received any response from anyone, including Civil. So my wife repeated the request, in her name. She received substantial if incomplete compliance. Neither my request nor this compliance is on your list. There is no reference to Civil, which handled all my FOIA cases and thus has to have records.

Your list is also incomplete on the more recent actions. An example is not having the RA request of the San Francisco FBI FO, which I believe has records, and some others I have appealed where I know they have records and have not been truthful. (Apply this also to the King case and to partial compliance, which I appealed, in both cases.)

Some information may have been late reaching you because several suits Jim has filed are not included. For your information in discussion with Department counsel Jim did say that the Department has created a situation in which we have no other choice. We then waited some time in the hope that the mountain would do more than labor.

With respect to your 4524 there can be unintended self-deception in this. Again I presume no more than that your records or those provided to you are incomplete. Although the final administrative action was as listed there was, prior to that date, the filing of the complaint in C.A. 77-2155 and the decision of 1/16/78. In today's mail I have a copy of the notice of appeal. I know from your earlier comments that this is not what you expected. And I assume that it is no longer your responsibility.

This to me is an incredible situation, one that would warm the cockles of a vindictive heart, exemplifies the problems of large bureaucracies and the lack of internal communication. You were, as I did not then know, in the courtroom. But I doubt you understood - nothing personal - all that transpired. Because this is now out of your hands I feel I can make further comment without offering you any problems. Maybe someone will save the Department more trouble.

When it was indicated to Jim that this might be appealed - after delivery of the records - I asked him to suggest to the Department that it get and study that transcript. I told Jim to get a copy for me and that I would annotate it. With the filing of the notice I suppose that anything else I might say could be subject to an interpretation other than I would intend so I restrict myself to saying that this is going to happen, one way or another, anyway.

There is a separate listing of AG and DAG records. It also is incomplete. Taking the PA request as an illustration, I did write the AG after receiving reports that FBI agents were intruding into my life and work. I received a non-responsive response from Criminal, I responded to that, and my complaint was sent to Hoover, who did not respond. But it did generate records. They also have not been provided. There should be copies of the many doses of special Hooverese poison that each and every AG and most of the DAGs had sent to them. I do have the proofs of this. In turn it is a reasonable presumption that these also generated other records. (P-114)

Your number for the 4/18/75 King request is 139. For the PA request of the FBI it is 1359. There is another to Criminal, 4526a-P, but an earlier one covering the entire Department is not listed. You have no 1359b but do have a, c and d.

In your letter you say you cannot speak to what transpired before your present office was established. I do not argue this. But I believe that someone must. Appeals were still made and I did make them.

I agree that it is best that we seek to put all we can on what you call a positive basis. I hope this letter and earlier efforts to provide you with detail contribute to this.

I can agree with your "Perhaps in the near future all of us will finally meet." I am willing if the preliminaries are by then behind us and we can address and record what can be done, constructively. Jim Lesar has informed me of an afternoon status call on April 6. I will probably be in Washington not much after 8:30 that morning if you and he believe this time has come. That case is 78-0249, for the worksheets of the JFK releases you said you'd monitor. More than the worksheets. This is shorthand.

I do hope you can see in this that I am willingly providing information I could save back and use by surprise in court and that its purpose is to avoid having to go to court.

I'll add the number in your 3/14/78 to this list and keep it somewhere in my desk - and hope I can remember both the fact and the location.

Sincerely,

Harold Washburn



OFFICE OF THE DEPUTY ATTORNEY GENERAL  
WASHINGTON, D.C. 20530

Mr. Harold Weisberg  
Route 2  
Frederick, Maryland 21701

MAR 13 1978

Dear Mr. Weisberg:

This responds to your letter of October 18, 1977, a copy of which is enclosed.

Your letter refers to departmental noncompliance with the Act. I must concede that the processing of your various requests and appeals has frequently been delayed. I cannot speak to, and will not accept any responsibility for what may have transpired between you and this Department before my Office became operational in March 1975. Since that time, however, I would attribute the delays to a combination of the magnitude and complexity of your actual requests and appeals, the voluminous ancillary correspondence and litigation they have generated, and the inescapable fact of the thousands and thousands of requests and appeals we have received from other individuals. Neither I nor any member of my staff has ever acted with any motive of impeding the processing of any of your appeals, or of depriving you of access to any records that can properly be released under our understanding of the law and the applicable departmental policies. I really do not believe that any other individual in the Department has acted with an improper motive. All of us have been literally overwhelmed and are trying to do the best we can to satisfy all requesters.

Confirming what Ms. Robinson has already discussed with you, it is my view that any further disputation between us as to motives or the past history of our dealings would be both pointless and counterproductive. In an effort to put our future dealings on a positive basis, we have reviewed our files and have located the cases on the enclosed list. They are listed in approximate chronological order, and include both closed and pending matters.

Each of the matters indicated as pending has been assigned for processing, except for the San Diego Field Office. You have stated to Ms. Robinson that you will check our list against your

*Mr. Lwar*

own and advise us of any discrepancies. Be assured that your cooperation in this regard is appreciated. It may be that you will be able to help her put her hand on some of the correspondence items for which gaps now appear on our list. Once we agree on which matters are still pending, I will try to get some more of them moving. It would help us tremendously if you, in further correspondence, would indicate the particular matter to which you are referring, by use of our appeal number.

I have noted several comments you have made relating to the (non)accuracy of the content of various records released to you. As an initial, general proposition, let me observe that this Office simply cannot be held responsible for the content of the records maintained by our components. In making access determinations, that factor is ordinarily irrelevant, as are such matters as allegations of misconduct by departmental personnel. We must make our decisions based on the records involved and usually cannot even take the time to do collateral research. Since I am a confirmed history "buff" myself (Central and Eastern Europe, post-Napoleon through the immediate aftermath of World War I and the Russian Revolution), I wish we did have the time and resources to become deeply involved in the substance of the records we review, as well as their superficial content. We simply cannot do it.

I hope you will view our efforts to work with you and Mr. Lesar as constructive. Perhaps in the near future all of us will finally meet.

Sincerely,

Quinlan J. Shea, Jr., Director  
Office of Privacy and Information Appeals

Enclosure

CC: James Lesar, Esquire



OFFICE OF THE DEPUTY ATTORNEY GENERAL  
WASHINGTON, D.C. 20530

Mr. Harold Weisberg  
Route 12  
Frederick, Maryland 21701

MAR 14 1978

Dear Mr. Weisberg:

This acknowledges receipt on March 9 of your letter dated March 8, 1978, appealing from the action of the F.B.I.'s San Diego Field Office on your request for access to records about yourself.

Your appeal has been assigned number 8-0398, to which you should refer in any further correspondence pertaining to this particular appeal. We will assign and process this appeal as quickly as possible, consistent with our general practice of giving priority based on the date of receipt by this Office.

Enclosed as I promised are copies of my testimony before the Abourezk Subcommittee on two occasions late last year. The transcripts are not necessarily complete, in the sense of having all testimony of other witnesses. What you are getting is everything I received for editing. As soon as I receive and clean up a copy of the transcript of last week's hearing before the Permanent Investigating Subcommittee of the Senate Judiciary Committee, I'll send you a copy.

As to the first batch of Kennedy records, I checked and discovered that the Solicitor General's Office has not yet decided whether to appeal Judge Gesell's order on the fees. It's not in my hands, but I'll keep an eye on it. Although I was the one actually found "arbitrary and capricious," I nonetheless advised against an appeal. Let's see what happens.

Sincerely,

Quinlan J. Shea, Jr., Director  
Office of Privacy and Information Appeals

Enclosures

CC: James Lesar, Esquire

