

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

National Archives and Records Service
Washington, D.C. 20408



Mr. Harold Weisberg
Coq d'Or Press
Route 8
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is in reply to your letter of August 30, 1972.

By our letter to you dated December 8, 1970, we advised you that the "memorandum of transfer" to which your present letter refers was withheld from public examination under the terms of 5 U.S.C. 552(b)(6), "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" Unfortunately, that letter may have implied that the release of the document in question came within the discretion of the General Services Administration. If so, we would now like to clarify our position with regard to the "memorandum of transfer" as we have in other correspondence with regard to other similarly situated Kennedy assassination material.

The "memorandum of transfer" came into the possession of the National Archives pursuant to the authority cited in 44 U.S.C. 2107. This statute states in pertinent part:

[T]he Administrator of General Services . . . may accept for deposit the papers and other historical materials of a President . . . or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Administrator as to their use

[Emphasis added.]

It was the stated desire of the Kennedy Family Representative, Mr. Burke Marshall, that the "memorandum of transfer" document be included among those materials transferred to the National Archives, access to which would be governed by his approval. As of our latest communication, he has repeatedly denied requests for access to this document. Therefore, the General Services Administration is statutorily obliged to follow his direction in withholding the "memorandum of transfer" from public inspection.

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The Freedom of Information Act "does not apply to matters that are . . . specifically exempted from disclosure by statute" (5 U.S.C. 552(b)(3)). Therefore, it does not apply to the "memorandum of transfer", the disclosure of which is exempted by 44 U.S.C. 2107. For an extensive judicial interpretation of this point, see Nichols v. United States, 460 F.2d 671 (10th Cir. 1972).

Should Mr. Marshall reverse his previous position, we would be happy to provide you a copy of the requested document.

Sincerely,

JAMES B. RHOADS
Archivist of the United States