

Mr. Ira Glasser
ACLU
132 W 43 St.,
New York, N.Y. 10036

9/28/84

Dear Mr. Glasser,

You demean yourself and you insult me in writing me as you did on the 26th, in response to my letter of the 22d.

And if all you can do in response to that kind of letter is chew an ancient cud then you for the first time make me wonder. I had had no doubts about your (plural) intentions, but should I not if you can't be at all responsive?

For example, I asked why the rush, the Congress being close to ending?

Now I ask another question, suppose, just suppose, that you are wrong?

What then, now that the ACLU has endorsed the CIA's entirely incorrect position, that its operational files are and have been exempt anyway and are not disclosed? (I have thousands of pages of them, disclosed by them.)

What, then about the combination of Reagan assigning it domestic intelligence functions that are prohibited by law and now all those records will be forever immune, thanks only to the ACLU, the rest being conjecture?

Can you not see even the possibility that this will inspire the overly-dedicated to even great transgressions?

How can you possibly tell me when I have thousands of pages of operational records it has disclosed that "this bill will not lead to any loss of information?"

How can you possibly believe that when it has requests about a decade old that it continues to ignore that it suddenly will start disclosing in 4-6 weeks? Can you possibly, to yourself, explain away ignored requests of this age in terms of any backlog claimed, real or contrived?

And if you have had anything like the experiences I've had with them over the years, how can you possibly believe any word or promise they make, in or out of court or Congress?

I did not write you until after the House had acted. I've not campaigned against you or made any public criticism of you. If I wanted to, as I do not even now, I'm not able to. I had and have serious purpose in mind or I'd not have taken the time to write you at all. Your reply is not serious, not responsive and is not the kind of thing I'd want people reading about me years from now in a university archive.

Whether or not any bill would have passed without the lobbying and other support of the ACLU is only a conjecture. There appeared to be no chance in this Congress, and all I'd heard is that there was no chance at all for a total exemption to be enacted in the House.

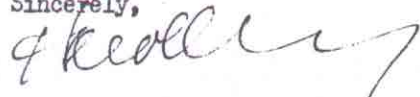
Whether or not you have done for the CIA what it could not do for itself only time will tell, but from my own experiences I would say and I do believe that you have given it what will amount to a total exemption for anything it does not want to disclose. That is what worries me, not for myself but for the country and, in fact, for the ACLU.

You should have learned long ago that when you act from fear you cripple yourself.

And if you reply at all, please don't send me more of what I'd read before I wrote you, which is all I could get. If you can't be responsive, or won't, leave it that way. That, at least, does not insult my intelligence.

Sincerely,

Harold Weisberg
7627 Old Receiver Rd.
Frederick, MD 21701





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NATIONAL ADVISORY COUNCIL

September 26, 1984

Mr. Harold Weisberg
7627 Old Receiver Rd.
Frederick, MD 21701

Dear Mr. Weisberg:

Thank you for your letter of September 22.

As to our reasons for supporting H.R. 5164, I am enclosing a copy of an article I wrote last June in The Nation, which explains our position.

We think this bill will not lead to any loss of information under the Freedom of Information Act and will force the CIA to release information within 4-6 weeks instead of the 2-3 years it now takes. Moreover, this bill derailed the CIA effort to completely exempt itself from the Freedom of Information Act, an effort that had a fair amount of support a few years ago when we began to work on this bill. Such a total exemption is now impossible, in part because of this bill, which I believe gives up nothing from our point of view.

Sincerely,


Ira Glasser

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enc.

The size of the food shortage can be debated; that there is hunger in Kampuchea cannot. A February 9 report from the State Department admitted that the food situation in Kampuchea is "precarious" and noted that malnutrition plagues many parts of the country. How will the United States respond?

Four years ago, Representative Millicent Fenwick urged her colleagues in the House to approve aid for Kampuchea: "We have never cared who sat in the palaces of the world; we have always been concerned about who is starving in the streets." Today, those who could make a difference do not share that sentiment. □

DISPUTE OVER C.I.A. FILES

The Case for the New F.O.I.A. Bill

IRA GLASSER

Later this month a bill that has evoked concern and disagreement among civil libertarians and critics of the Central Intelligence Agency will be sent to the floor of the House of Representatives. The bill, which would exempt certain kinds of C.I.A. files from normal requirements under the Freedom of Information Act, has been scrutinized and debated in a series of recent public hearings before various Congressional committees. After many revisions, the latest version of this bill, H.R. 5164, has a good chance of passing in the full House, partly because, after a long drafting process, it has gained the support of the American Civil Liberties Union.

The A.C.L.U.'s position has been attacked in several forums and publications, among them *The Nation* [see Angus Mackenzie, "The Operational Files Exemption," September 24, 1983]. Some of our critics have gone so far as to suggest that the A.C.L.U. has become, wittingly or unwittingly, an accomplice in weakening the F.O.I.A.

In light of those charges, it is important to understand what the American Civil Liberties Union has been doing, why it supports a much-changed version of legislation it originally opposed and why it thinks the legislation represents a modest victory for those who support the F.O.I.A.

The Freedom of Information Act is one of the most important laws enacted by Congress. By making government information available to the public, the act strengthens America's commitment to informed, robust debate on all public policies. The act is especially vital with respect to the C.I.A., whose illegal activities are encouraged by the shroud of secrecy that envelops them. While the shroud has not yet been sufficiently lifted, over the last decade the F.O.I.A. has been a significant tool in bringing the C.I.A.

Ira Glasser is national executive director of the American Civil Liberties Union.

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under increased public and Congressional scrutiny.

But most people who submit requests to the agency under the F.O.I.A. encounter two main problems: the C.I.A. withholds information it should release by hiding behind exaggerated claims of national security, which the courts have never had the courage to reject; and when it does decide to release information it takes an intolerable amount of time—often two to three years.

Aside from pure obstructionism, a primary cause for delay is the time-consuming search the agency undertakes through its "operational" files when processing an F.O.I.A. request. Basically, operational files contain documents an information related to the intelligence *process* rather than the intelligence *product*. For example, a document that describes the technical capacity and location of a sophisticated optics device is considered operational; the information obtained by that device is not. Similarly, how an intelligence source was spotted and recruited, how much he was paid, the details of where and when he meets with his case officer, are all considered operational; any information provided by that source is not.

Such operational information, with a few important exceptions described below, is invariably classified and therefore exempt from release under the provisions of the F.O.I.A. The courts have never ordered the release of such information, and are not likely to under any conceivable standard of classification. Nonetheless, every time a F.O.I.A. request is made to the C.I.A., all operational files have to be reviewed.

To alleviate the problem of delays, the A.C.L.U. set out to draft legislation that would spare the agency from searching through its operational files. At the same time we wanted to insure that the kind of information currently being released or likely to be released in the future would not be exempt or improperly hidden in operational files. We felt that such legislation would obligate the C.I.A. to respond to requests more quickly, while guaranteeing that no new curbs on information would result.

Of course, the C.I.A., already on record as favoring legislation that would exempt it from all provisions of the act, jumped at the opportunity to support a bill that would exempt it from searching its operational files. Our task, therefore, was to defeat the legislation unless its language strictly limited the exemption. That was not easy.

After much lobbying, the Senate passed S. 1324 which while much improved over the version that was introduced was not adequate in several important respects. If that had been the final version of the legislation, we would have opposed it and we believe our opposition would have killed it.

Fortunately, the legislative process is just that, a process. Accordingly, after the Senate approved its bill, we set to work on the House version. For us, the House is a much more hospitable forum, and we thought we stood a good chance of getting everything we wanted. We did. In its present form this bill differs markedly from the Senate's. We support this version because we believe it will obligate the C.I.A. to release information more quickly and prevent

from withholding any information it is currently obligated to release. Here is a summary of the major provisions of H.R. 5164:

§ Operational files in three divisions of the C.I.A.—the Directorate of Operations, the Directorate for Science and Technology and the Office of Security—would be exempt from search and review. (A few important exceptions are noted in the bill and summarized below.) The term “operational” is defined narrowly to include only files that document the means of acquiring information, as opposed to those that contain the information itself. All other C.I.A. files, including those in the three specified divisions, will be subject to search and review under the Freedom of Information Act.

§ All documents from operational files that are disseminated outside the three divisions, whether within the C.I.A. or elsewhere in the government, will be subject to search and review—even a document that concerns the most intimate details of an operation and is sent only to the director of Central Intelligence. Once disseminated, information cannot be exempt, even if it is kept in an otherwise exempt operational file. That includes any document shown to someone outside the three divisions on an “eyes only,” no-copy basis and returned to the operational file.

§ All information in operational files concerning covert operations will be subject to search and review, unless the very existence of the covert operation is properly classified information.

§ All information in operational files concerning the subject matter of an investigation of improper or illegal conduct by the C.I.A. will be subject to search and review. Such investigations may be conducted by the agency's inspector general or general counsel, by Congressional oversight committees or by the President's Intelligence Oversight Board. The C.I.A. also initiates an investigation whenever a private citizen makes an allegation of improper or illegal conduct: for example, that an organization has been illegally infiltrated. (It does not investigate claims of a clearly frivolous nature, such as “the C.I.A. is manipulating my brain waves.”) Regardless of an investigation's outcome, the C.I.A. will be required, in response to an F.O.I.A. request, to search its operational files for information concerning the alleged abuse. This provision insures that all information in the operational files concerning abuses investigated by the Church and Pike committees will continue to be accessible and that in the future, similar information on alleged abuses will be available.

§ Operational files must be searched in response to U.S. citizens or permanent resident aliens who request information about themselves. This provision preserves the access to information currently available to individuals.

§ Federal courts will have the right to review whether a particular file meets the legal definition of “operational” or whether particular documents are improperly kept solely in operational files. This guarantee significantly improves on the Senate version and clearly opposes the C.I.A. position, taken during Senate hearings last June, that no judicial review should be permitted.

§ Finally, the bill does not apply retroactively to any lawsuit pending on February 7, 1984, the day before the House began hearings on the bill.

Some critics of the A.C.L.U.'s position say the bill would allow the C.I.A. to withhold information it is currently obligated to release, or conceivably would be obligated to release under a more liberal standard of classification. That claim is false. Various people have shown us documents released under current law that arguably might not be released under the proposed legislation. We have examined them all, and in every case the document would still be released under one of the exceptions provided in H.R. 5164. Moreover, even a liberal administration would without doubt continue to classify the kinds of sources and methods the bill would exempt.

Others suggest that the A.C.L.U. has compromised important principles by lobbying for the bill. That, too, is false. If anyone has compromised in this process, it is the C.I.A., which initially opposed many of the provisions on which we insisted.

Our position was unflinching: from the beginning, we maintained that we would oppose the bill unless each of our concerns was adequately met. Although the Senate bill did not meet them all, H.R. 5164 does. As A.C.L.U. staff counsel Mark Lynch testified before Congress on May 10, “Any movement away from what has been achieved in H.R. 5164 would be unacceptable, and we would oppose any tinkering with this bill in a House-Senate conference.”

Such tinkering is unlikely because Senators Barry Goldwater and Daniel Moynihan, chair and vice chair, respectively, of the Senate Intelligence Committee which helped draft the Senate version, have informed the House



I. Glasser

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MR. HAROLD WEISBERG
7627 Old Receiver Rd.
Frederick, MD 21701

