

9/24/PA

Mr. David C. Fisher, Jr.  
Acting Assistant General Counsel  
GSA  
Washington, D.C. 20405

8/18/80

Dear Mr. Fisher,

It is not possible for me to retrieve and review all my pertinent files in response to your letter of the first. I respond from recollection. I am now 57 years old. Also, I suffer both arterial and venous insufficiencies. These limit what I may do.

From your letter I recognize that compliance presents problems to you. I do not assume other than your good faith in what you say.

There are policy considerations that to now have dominated responses to my requests. These range from dislike of my persistence in seeking information the government did not want to disclose to a determination not to disclose what could not properly be withheld. I can provide you with records reflecting this, records saying we cannot properly withhold what he wants and others saying that if we give him this he will spot something else we don't want him to have and can't properly withhold. Regulations were even revised to make it appear that those represented to a court were applicable when they were not. If you make a real search of your records you will find my request for the pertinent regulation that still remains without response.

It simply is not true that all pertinent records were provided to me. What was withheld from me was provided to another to whom I gave a privacy waiver. It also is obvious that there must be other and still withheld records that are pertinent.

If you reread your letter I think you will find inconsistency in what you say Mr. Garfinkle told you. On the one hand he says he personally provided everything. He then says that when DJ referred other records they also were provided. The second disproves the first. Meanwhile, I do not have your copies, which are not identical and which hold information of historical importance. Moreover, these belatedly provided records require that there be other and still withheld records. Mr. Garfinkle's recollection is not correct with regard to these DJ referrals.

These referrals were from one DJ component only. Others also should have pertinent

records. Some components now are complying with a 1977 request while others are not. There is overlap with a 1976 request that still lacks compliance. That/there are other pertinent records DJ has not provided can't be questioned because I have copies of them from another source, and these include your records.

Records disclosed inadvertently also disclose the existence of records not provided and some of these involve your office. If my recollection is correct one such name is Hastings. There was a time when archives stonewalled my requests for months and conferred with your office on all of them and all correspondence.

It is unfortunate that political considerations intruded upon disclosure of public information but it did. It is particularly unfortunate because of the subject matter and because this policy contributes and contributed in the past to disenchantment and disillusionment. Some of these questions will now linger forever and will forever plague the national conscience.

My major interest now is the completeness of the public archive I leave.

I'm sorry that your offer to let me or my counsel examine your files is not practical. Trips to Washington are now difficult for me and they tire me excessively. When your agency has even contacted the award of counsel fees to my lawyer I am sure you will understand that there is a practical limit to the time he can invest in such matters. However, I will provide him with copies of your letter and this one.

You should have a record of all that has been provided to me. It seems to me that the cheapest and best solution is to search for all pertinent records and merely xerox and send them.

Sincerely,

Harold Weisberg



AUG | 1980

Mr. Harold Weisberg  
7627 Old Receiver Road (Route 12)  
Frederick, MD 21701

Dear Mr. Weisberg:

I am writing in response to your letter of July 2, 1980, to Steven Garfinkel. Mr. Garfinkel is no longer in the General Counsel's Office, although he has provided much of the information contained in this response. Our delay in responding was caused by the requirement that we receive this information from him.

According to Mr. Garfinkel, several years ago you filed a Freedom of Information/Privacy Act request for access to all administrative records pertaining to you within GSA files, specifically in the files of the National Archives and Records Service and the Office of General Counsel. Mr. Garfinkel was involved in two aspects of your request: First, he gathered all of the records from the files of the Office of General Counsel which he considered within the scope of your request (all correspondence, memoranda, etc., excluding copies of briefs, affidavits, opinions and other formal documents filed in court, all of which were a matter of public record and which had been created by or provided to you or your attorney). He transmitted these documents to NARS for inclusion in the materials to be provided to you. He specifically recalls that we did not attempt to withhold any documents which fell within the scope of this request. To his knowledge, the only document remaining in Office of General Counsel files to which you continue to be denied access is the May 19, 1964 transcript of the Warren Commission executive session which pertained to the continued employment by the Commission of two staff members. As you are aware, this is the same transcript the withholding of which has been upheld by the United States Court of Appeals for the District of Columbia Circuit in Weisberg v. GSA.


Mr. Garfinkel's other involvement with your request concerned his role in providing legal advice to NARS with respect to the release of its pertinent records. It is his recollection that upon your filing of an administrative appeal, even the few documents or portions of documents which may have initially been denied to you were released in their entirety. To the best of his recollection, you were not denied access to any of the GSA documents which fell within your request to the extent these documents were uncovered by thorough searches of NARS and Office of General Counsel files.

Mr. Garfinkel also recalls one or two occasions more recently when the Department of Justice has referred to GSA records created by this agency and located in Justice Department files which had been the subject of requests by you. In each instance, we authorized complete disclosure of these documents by the Department of Justice. Mr. Garfinkel believed at the time of these referrals from the Justice Department that each of the documents had previously been released to you from GSA files.

In any event, at your request the General Counsel's Office is willing to have you or your representative review our files and determine which, if any, you wish to have reproduced. We note, however, that at the time of Mr. Garfinkel's departure from this office, most of the relevant files were retired to the Federal Records Center. We would need to retrieve these files for your examination, so a sufficient amount of advance notice would be required. The documents we presently have on hand are our litigation files.

Please contact Rebecca Thompson of this office at (202) 566-1460 to initiate arrangements for the examination of our files.

Sincerely,

  
for DAVID C. FISHER, JR.  
Acting Assistant General Counsel