

UNITED STATES GOVERNMENT

Memorandum

TO : The Director

DATE: 12/18/73

FROM : Legal Counsel *JLW*

SUBJECT: HAROLD WEISBERG v.
U.S. DEPARTMENT OF JUSTICE
FREEDOM OF INFORMATION ACT

- Mr. Tolson
- Mr. DeLoach
- Mr. Mohr
- Mr. Bishop
- Mr. Casper
- Mr. Callahan
- Mr. Conrad
- Mr. Felt
- Mr. Gale
- Mr. Rosen
- Mr. Sullivan
- Mr. Tavel
- Mr. Trotter
- Tele. Room
- Miss Holmes
- Miss Gandy

Attached is a copy of the decision of the United States Court of Appeals for the District of Columbia Circuit which was decided on 10/24/73 in captioned case.

Plaintiff in this civil action had requested under the Freedom of Information Act material from our investigative file relating to the assassination of the late President John F. Kennedy. Weisberg's request was denied and he subsequently filed a civil action in the United States District Court in Washington. His complaint was dismissed by the District Court and he appealed to the United States Circuit Court. The initial opinion by the Circuit Court was adverse to the Government in that it would require the Government to justify the withholding of information in investigative files on the basis that some ongoing investigative matter would be prejudiced by disclosure. The Government petitioned the Circuit Court for a hearing en banc, which was granted. The decision handed down on 10/24/73, with only Chief Judge Bazelon dissenting, interpreted the seventh exception in the Freedom of Information Act relating to investigatory files compiled for law enforcement purposes as covering all materials in an investigatory file. This decision will permit us to deny access to those materials which are clearly contained in one of our investigatory files.

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RECOMMENDATION:

None; for information.

Enc.

- 1 - Mr. Franck
- 2 - Mr. Mintz
- 1 - Mr. Williamson

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JLW:msl
(5)

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Section 177

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Miller

DATE: 5-15-74

FROM : Legal Counsel *J.M.*

SUBJECT: HAROLD WEISBERG v. U. S. DEPARTMENT OF JUSTICE
FREEDOM OF INFORMATION ACT (FOIA)

ASSASSINATION OF PRESIDENT JOHN F. KENNEDY

- Asst. Dir. _____
- Dep. AD Adm. _____
- Dep. AD Inv. _____
- Asst. Dir. _____
- Admin. _____
- Comp. Syst. _____
- Ext. Affairs _____
- Files & Com. _____
- Gen. Inv. _____
- Ident. _____
- Inspection _____
- Intell. _____
- Laboratory _____
- Plan. & Eval. _____
- Spec. Inv. _____
- Training _____
- Off. of Cong. & Public Affairs _____
- Director Sec'y _____

The U. S. Supreme Court on 5-13-74 denied certiorari in captioned suit and let stand a District of Columbia Circuit Court decision which sanctioned withholding information contained in FBI investigatory files pursuant to the FOIA.

In 1970, Harold Weisberg requested, through the Department of Justice, FBI records concerning the results of spectrographic analyses of bullets, bullet fragments, garments and other objects connected with the assassination of President Kennedy. His request was denied on the ground that the records were part of an investigatory file compiled for law enforcement purposes and exempt from disclosure pursuant to exemption (b) (7) of the FOIA.

He subsequently filed suit in the U. S. District Court, Washington, D. C., lost, and appealed to the United States Circuit Court. A three-judge panel of that Court ruled against the Government, holding that information must be disclosed from FBI investigatory files unless an ongoing investigative matter would be prejudiced thereby. The Government petitioned the Circuit Court for a hearing *en banc*, which was granted. The full Court affirmed the District Court opinion, interpreting exemption 7 as mandating that as long as materials were contained in investigatory files, they were exempt from public disclosure. *62-109060-7118*

With this denial of certiorari by the Supreme Court, the FBI could operate within the statutory parameters of the FOIA even with the imminent passage of S. 2543 which will amend

- 1 - Mr. Callahan
- 1 - Mr. Jenkins
- 1 - Mr. Miller
- 1 - Mr. Adams
- 1 - Mr. Campbell
- 1 - Mr. Cleveland
- 1 - Mr. Franck
- 1 - Mr. Gebhardt

- 1 - Mr. Jacobson
- 1 - Mr. Jamieson
- 1 - Mr. Marshall
- 1 - Mr. Thompson
- 1 - Mr. Walsh
- 1 - Mr. Wannall
- 1 - Mr. White
- 1 - Mr. Mintz

CONTINUED - OVER

RD:law (18)

Legal Counsel to Mr. Miller memo
Re: Harold Weisberg v. U. S. Department of Justice

that Act. It must be pointed out, however, the FBI remains under Attorney General Order 528-73 which directs release of our files older than 15 years to historical researchers.

RECOMMENDATION:

For information.

JCF

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MS

PH

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UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Miller
FROM : Legal Counsel

DATE: 6-5-74

- Assoc. Dir. _____
- Dep. AD Adm. _____
- Dep. AD Inv. _____
- Asst. Dir. _____
- Admin. _____
- Comp. Syst. _____
- Ext. Affairs _____
- Files & Com. _____
- Gen. Inv. _____
- Ident. _____
- Inspection _____
- Intell. _____
- Laboratory _____
- Plan. & Eval. _____
- Spec. Inv. _____
- Training _____
- Telephone Rm. _____
- Director Sec'y _____

SUBJECT: DEPARTMENT OF JUSTICE POLICY FOR RELEASE OF
FBI INVESTIGATORY FILES MORE THAN 15 YEAR OLD
(DEPARTMENTAL ORDER 528-73)

My memorandum to you of 5-15-74 captioned, "Meeting with James A. Wilderotter, Associate Deputy Attorney General, Re: Departmental Order 528-73," reported the results of a meeting between Mr. Wilderotter and representatives of this Bureau concerning the Freedom of Information Act (FOIA) and specifically, Departmental Order 528-73. Mr. Wilderotter was briefed on the difficulties encountered by the FBI in attempting to implement the provisions of this Order. He appeared to be sympathetic towards our position and suggested that we prepare a "White Paper" setting forth these difficulties and reasons why the Attorney General should rescind this Order.

Attached is a "White Paper" prepared along those lines. We are cognizant of the fact that it would be unwise for the Attorney General to rescind this Order while H. R. 12471 and S. 2543 are currently pending. As will be recalled, S. 2543, with amendments by Senators Philip A. Hart and Edmund S. Muskie, was passed by the Senate on 5-30-74. However, from observations we have received from Administration representatives, there is a good chance President Nixon will now veto this bill. Consequently, any action on the part of the Attorney General at this time could be counterproductive. However, the suggestion is made to consider rescinding this Order once this legislation has been resolved.

RECOMMENDATION:

That the attached memorandum be sent to Mr. Wilderotter.

- Enclosure - Sent 6-10-74
- 1 - Mr. Cleveland - Enclosure
 - 1 - Mr. Gebhardt - Enclosure
 - 1 - Mr. Marshall - Enclosure
 - 1 - Mr. McDermott - Enclosure
 - Attention: Mr. Bowers
 - 1 - Mr. Thompson - Enclosure
 - 1 - Mr. Walsh - Enclosure
 - 1 - Mr. Wannall - Enclosure
 - 1 - Mr. Mintz

JCF:law (11)

62-109060

Handwritten initials: JCF

Stamp: JUN 11 1974

Handwritten signature: J. J. ...

20 JUN 20 1974