

Department of the Treasury



Internal Revenue Service
Washington, DC 20224

Date: **AUG 2 1972** | In reply refer to: **CP:D**

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

— Dear Mr. Weisberg:

Your letter dated: July 28, 1972
In re: Appeal of the Denial of your
Request dated June 9, 1972.

Thank you for your letter.

It is receiving our attention, and we will send you a reply as soon as possible.

Sincerely yours,

D. O. Virdin

D. O. Virdin
Chief, Disclosure Staff
Office of Assistant Commissioner
(Compliance)

HK # JW

July 28, 1972

The Commissioner of Internal Revenue
1111 Constitution Avenue, NW
Washington, D. C. 20224

Dear Mr. Commissioner:

Under date of June 30, the Assistant Commissioner (Compliance) turned down my June 9, 1972, request for information under 5 U.S.C. 552. This is my appeal.

The same day I requested of your press office a copy of what was released to the press without cost, a copy of the affidavit of your Mr. Floyd D. Moore. It was filed in court and is thereby also a public document. I have not received this nor have I been written about it. It is not addressed in the letter of June 30. I would appreciate a copy of this and I assume that with its release to and publication by the press, this presents no problem.

My request under 5 U.S.C. 552 was for access to "documents supporting this affidavit, whatever exists in documentary form".

Rejection is based upon Exemptions 4-7 and 18 U.S.C. 1511, alleging a criminal prosecution now before the courts.

My appeal is in part based on the belief that if any of these exemptions were relevant, they have been waived, including by use, under a number of precedents.

I have not asked for any information about any of the defendants in the case "currently before the court". I have asked for information relating to Mr. Pershing Gervais only.

I believe the rejection is in error in claiming that "This act ... does not apply to matters that are inter-agency or intra-agency memorandums, investigatory files, information obtained in confidence, and information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." These exemptions themselves have exemptions that are here relevant (if and where exemptions may have been applicable) and are covered in both the legislative history and the Attorney General's Memorandum on this law.

Over and above all of this is the pretense that Mr. Gervais claims any right to privacy with regard to the public information I seek. It is he, in fact, as the government has complained, who has made all the details so far published a public matter. I do not believe a more public waiver is possible.

In addressing Exemption 4 the House Report says it is to "protect the confidentiality of information which is obtained by the Government", and then only when not "released to the public by the person from whom it was obtained". Mr. Gervais thus would seem to have taken the most explicit pain to eliminate any applicability of Exemp

tion 4.

Commissioner, IRS

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Exemption 5 applies to only that inter- and intra-agency "memorandums or letters which would not be available by law to a private party in litigation with the agency". On this, again, the House Report is explicit and specific: "Thus, any internal memorandums which would routinely be disclosed to a private party through the discovery process in litigation with the agency would be available to the general public."

Over and above this, the government has waived any right to withhold under this exemption by use, a matter confirmed by the courts in a number of decisions.

When Mr. Gervais has engaged in the extensive publicity he has on this matter and when the government has done exactly the same thing, the applicability of Exemption 6, which requires a "clearly unwarranted invasion" of the right to privacy, cannot seriously be alleged. The public records of each and both sides in this matter would seem to make the allegation - and the quoted words are from both the law and the letter of refusal - at best a frivolity.

The rejection does not say that the government regards Mr. Gervais as an employee.

There is no total immunity of "investigatory files". This exemption is carefully limited to only those "compiled for law enforcement purposes" and even these cannot be withheld if they are "available by law to a private party".

I have not asked for any records of any kind "compiled for law enforcement purposes". None of the information I seek relates to any of the defendants in the matter before the court. The only possible invocation of this provision would envision Mr. Gervais as a defendant in a criminal proceeding. That has not been alleged and were it now to be, I think it would raise the most serious questions about official perjury, for this has been sworn to by government agents over and over again.

Moreover, there seems to be no possibility that the information I seek would not be "available by law to a private party", each of the defendants, and none of what I seek can be damaging to them or to Mr. Gervais, the only exception of which I am aware.

Therefore, I respectfully request that you consider the denial.

Sincerely,

Harold Weisberg