

Dear Jim,

Attached letter to John Hartingh

10/20/77

John phoned me at a time I'd have thought he'd left for home. He said he called to ask if I was mad at them and I told him yes. But the rest of the conversation was not like that. He also said that they've mailed the records of another F.O. this afternoon. I think he said Birmingham.

I've got plenty to read. I'd just written you about an visit to the doctor, taken a walk and put the sheets of more interesting records back in the typewriter when he phoned. I wondered then why. And still do.

You can gather some of what we talked about from the letter to him, not the last part. That is to tell him that I'm expecting rectification and to give him reason to tell others that maybe if we force the issue the judge will hold that way. I think they'll not want to have to replace all this work and that we can reasonably ask for it.

He says they phoned NY FO and were told that NY FO has no "sensitive" pictures. I said news and he said same thing. He says that the FOs sent them what had not been provided from HQ files. On that it may be true but as you'll see I've noted some significant exceptions.

He said they have affidavits. So I've mentioned some of the affidavits I have known.

When we talked about lab reports he said the only alternative was to get the entire bulky of a 1000 copies and I agreed. When I thought it over I changed my mind, the initial reason for writing.

Perhaps another reason for his call was not to have me with a written acknowledgment that their claim not to have received checks I've sent were in error. They say the amount is square as of today. They found the missing checks.

He took a pretty farout position when I mentioned continued withholding if in greatly diminished volume - they didn't know what was public domain. I told him the law requires them to know and they'd refused help on knowing. That they can't withhold because some paranoid agent has a suspicion. And besides, there is the FD. He didn't like it when I used pointed language about withholdings of this nature subsequent to early key. He denied, naturally enough, my characterization of it as such the Attorney General - who is he anyway?

In this in that great volume of letters representing so much time there is a clear record. They kept doing what they know they should not do. They see that accustomed to doing what they damned well please.

I don't know what is up, if anything. If the FBI is being only friendly then there have been major changes in the FBI. If this morning's story about disciplining an agent for cohabitation out of wedlock does not indicate it. Who suits them right, though.

What is apparent is that they are flooding me with paper and appear to be doing it in the expectation of ending the case thereby. If this is in their mind I'm seeing records on continued non-compliance. I'll attend to compliance ahead of the record reading. But it does raise the wonder if there is a hiding operation afoot.

Meanwhile, we've got boxes of records all over the kitchen and livingroom.

They are going to accumulate more, too. I think he indicated that WFO is being copied or processed.

There is another factor. There are going to be more cases. They are going to have to learn that they are better off not pulling these kinds of things on me. Even if the next judge is another Pratt.

Maybe you have not noticed it but each time I have a new specific. The "trem" pix and the Dallas record; the Matt Brown stuff; Barter (I told him today I have Barter's writings but not how); and others.

He did not phone Memphis about earlier FBI pictures because he says they've seen had their records. Those not indexed, if their claim of not indexing is right. I said ask, he said all who could have known have retired. I said I know what they can't see a retired agent and I said Jensen is still in Memphis. He left it that way.

Best,

P.S. to John Harting,

10/20/77

Thanks for calling this evening. I hope it didn't have your wife holding supper. There was still time for me to do some walking. This gave me time to think a bit.

Don't copy the entire Memphis file on tests. This would be unnecessarily burdensome on both sides and would not yield what remains undelivered in any event. If Ralph went over the bulky I'm sure he would not lie about whether or not relevant records were there and not copied for me.

This business raises some basic questions. I've lived with some before and found answers before. The immediate question is one of resolving questions, including most of all of compliance.

I do not accept any lab report on what is now in lab files as representing even the possibility of full compliance. I'm not accepting any substitute for my requests as representing compliance. This means that because I have proof I do not have all the records I would like a written statement of what was searched and by whom. From what I have received I am pretty confident I can specify files that should have been searched and were not searched. If I have to I'll wind up taking my chances on that in court. I'd rather not have to. But I don't think the answer is in the bulky file or NFO and I do not for a minute believe that Ralph would lie. We undoubtedly disagree on what the Act requires of the FBI but I have no reason to believe he is less than honest. If he said he searched the bulky file and had all that I wanted copied I'm satisfied he did.

This would be true if I had not had my own experiences with some of the lab people. Those experiences. If they did all the searching for you in the lab or if they selected for you those files you'd search be assured I do want a list of all, this way or by making a case out for the need to the court. There are other relevant records, in and/or out of the lab. Those out of the lab your people should know about. They also should know where to search for them.

The cab driver's manifest, another illustration I gave you this evening, is one of which I cannot fairly expect FOIA agents to have knowledge. It raises an entirely different kind of problem. But again I assure you the problem simply will not go away. There is no question about it, the NFO did take that cab manifest. I can explain the reluctance to produce it. It confirms that the only alleged eyewitness was too drunk to know what was going on, too drunk to get into a cab. But Memphis did get it, it is relevant, I do want it, and they have it, they've destroyed it or they are lying. Or hiding it and other records.

I can't be as specific about Willie Anschutz, who under almost any conditions would have been a better witness to depend on. But I tell you frankly that because he was not used as Stephens was used there is reason to believe there are relevant records relating to him and to the reluctance to use him as the totally incredible Stephens was used.

In what I wrote before you phoned I gave you enough specifics about Matt Herron. There can be more. I have doubts of his taped interviews. He was concerned about the situation in Memphis, including the NFO's attitude. This is why he phoned me with a message that was of such a nature that when I called him back I was prepared to dub the tapes he did play to me over the phone.

There were relevant NFO records. You made reference to having affidavits. If I were a young man of 60 again I'd tell you they'll be a breakfast appetizer. I have more falsely sworn affidavits of compliance than should exist and I'm sure I don't have all. I also have other false FBI affidavits. I do take a liberty and suggest that someone in a policy position ought give this business of false swearing or having one without competence to execute an affidavit and expect to get away with it forever because it is FBI.

You know the amount of reading I have on hand so you know that I do not need to write letters just to pass time. My interest is in compliance and I do want as much of it as I can reasonably expect. This breaks into several parts.

In being forced to pay for FBI substitutions for my requests I did not in any sense waive my requests. There is a very clear court record to the contrary. It was brought about by the FBI's representations of compliance by the means it opted.

So, on the one hand I want what I paid for and on the other I still want what I requested under FOIA. If someone else above you cooked up what has kept me from doing what I wanted to do for more than a year, tough. Now if the time to reflect on what I think will be proven to be the unwisdom of that dodge. If there had not been a higher-level determination not to comply this matter would have ended very long ago and I'd be busy going other things.

Meanwhile, what was forced on me turns out to have value other than those I sought in my requests. I will be giving it all away. I have no personal use for a very large percentage of the records you've been providing. But I do want them to have the historical value that is possible and this means I want many of the holes filled back in. There never was an justification for those withholdings, they represent an enormous waste in time and money and what regardless of what was in anyone's mind is a campaign of non-compliance.

We've been through this before. I believe I reminded you yesterday of a judicial decision that you could not withhold agents' and similar names. This was much more than a year ago. They are as of recent records still withheld when they are not the name of your or police informers. When the FBI does this for more than a year after a judge says no then the FBI has the problem to face.

This is but one of many examples of what just is not going to go away. I mentioned several tonight, all in prior correspondence, all without rectification.

You said you consulted on the indexes and whether the language I read to you in the record I cited meant that the names improperly withheld would be provided later. All I had in mind is citing this was illustration. On that I believe I am correct. Assume that I am not. Do you want me to take the stand and tick off a large percentage of the withheld names and cite the public source? I've done this before and if I have to I'll do it again. There was no basis for withholding. The burden of proof of need to withhold is not mine. You can't show a single case of this in all those indexes. The same is true of the reports indexed.

On things like these we are on a collision course. If that is what the FBI wants then I have no choice. We'll collide. As what I've written you shows the more you do not provide, whatever the claimed reason, the more this spreads out and involves other searches. The matter of the Dallas pictures is one Wiseman would pay no attention to a year and a half ago. I've given you some of the history, they are within the requests and I expect them still. Muggan and Blake knew. I told them both. Jis was with me.

There are other specifics. I think I've provided enough of them. These represent non-compliance. Failure that there has been a review merely makes sport of the reviewer of such records as I've received. I don't know which is more ludicrous, withholding the name of the post-prize William Inn Hotel or approving that withholding on review. I've read those records. I know the concern for "privacy." For those not black or for those not white women seen with blacks, or white preachers spiritual leaders of blacks, or for unmarried pregnant women. Today's news provides another example with the hijacker and his demands. The first accounts I heard quoted the FBI as describing him as a homosexual. That is relevant to the hijacking or other crimes?

I'm still waiting for the replacement of the first unjustified withholding. That the judge found such withholdings unjustified also seems to have made no difference and not only because the unexpurgated records were not provided. The same offenses have been repeated. If in greatly diminished instances nonetheless in the last Memphis records I read and told you about relating to the Rays and their alleged privacy.

Of course I'm not going to take an issue of all of these and I do not. But who is going to resolve those that do make a difference to me when the government was on notice all the time and knew it was doing wrong. Persisting in an offense does not make it less of an offense, whatever the motive may be.

Sincerely, Harold Weisberg