

Mr. James E. O'Neill  
Deputy Archivist  
The National Archives  
Wash., D.C. 20408

Rt. 12, Frederick, Md. 21701  
1/26/77

Dear Mr. O'Neill,

Your letter stamp dated 1/24/77 rejects my appeal of 12/8/76 for the deleted portions of CDs 651 and 1359. You conclude by telling me I can sue, as we both know I have. You may not realize it but I detest the very concept and abhor the need.

Between the beginning and the ending there is much. First of all you say you enclose a copy of CD 651 including additional portions that have been made public. There was no enclosure. I would appreciate a copy at your earliest convenience.

Court is a last resort save for those who misuse the Act for purposes contrary to its explicit intent. This is the history of my FOIA actions. The government, especially the Archives, uses the Act to stonewall, to delay compliance where it cannot be avoided entirely. This has been burdensome, costly to me and a serious interference with my work, the transparent intent of each and every case to reach a final determination. Because of my increasing age and limitations from illness I have asked counsel to explore not only the applicability of the punitive provisions of the Act but other laws that appear to me to be relevant. If I do not know what I can do I do know what I want to attempt to do. That is to hold to account, including by the demand for money damages, <sup>those</sup> who have denied me my rights under the Act.

I believe that your obligations as the reviewing authority are not met by consultations with others, notoriously those others who are in varying ways parti pris. I believe there is the affirmative obligation imposed upon you personally to be absolutely satisfied that each and every withholding is entirely justified and required. There is an option to disclose that which can be withheld under technical grounds if there is no need to withhold.

There are some tests you can apply to these two records that can and I believe should override any recommendation by the FBI. While you say you completed this consultation your letter does not say the FBI asked or demanded that these records continue to be withheld. You do imply it. To this I say that if I had a dollar for every withholding of the public domain from me by the FBI in the past less than a year I'd have a research assistant and these matters would proceed more rapidly. If the surplus remaining from this did not provide for it, as I'm confident it would, then were I to restrict myself to the same one dollar per on the withholding of names Director Kelley has said may not be withheld I could afford to take you and all these you might want to invite on a gourmet's night on the town.

These records, clearly covered by my much earlier FOIA requests, were given by the government to newspaper people when the government had propaganda objectives to attain. They are no secret except from those who might dispute this propaganda misuse of FOIA. I believe I am one. A number of reporters were involved, in this case beginning with the Department of Justice reporter for the Washington Post, one not a subject expert. This is not secret from the Archives and not only from publication. The press was in touch with the Archives, on this and received information withheld from me. As it is a basic principle of law that one may not be the beneficiary of one's misconduct, it is also in FOIA matters a fact that the government cannot still have its eaten cake.

Your citation of claimed exemptions is in disregard of the fact that more than a single provision must apply and in fact is not in the language of the exemptions. Over this there is waiver, a question I have repeatedly raised with the Archives going back to the time of the American Mail decision. There have been others since then but from the time of that decision the government may not withhold what is exempt after any use of it. Or, you cannot leak it to the Washington Post and then tell me I may not have it.

It is not only obvious, I make it specific that those who deny me records I ask for are those who give them to others without detailed subject knowledge. In this I do include the Archives.

You repeatedly misquote the privacy exemption, which is part of another exemption. The Congress in its wisdom denied bureaucrats the right to arbitrary decision. Not only must there be a question of privacy but it then must be "clearly unwarranted." With Cuebala, for example, aka ANLASH, there is not even a frivolous question of privacy. This is true of him as an official source - remember all those pages in the Post - it is true of others where these phoney claims to exemption have been made long after there was neither secrecy nor privacy.

Your claim to the investigatory exemption via the FBI also does not state what law was being enforced. After this test is met the other qualifications also must be. I was part of this change in the Act, you may recall. There certainly was no law-enforcement purpose having to do with killing a President because there was then no law against it.

The by this source only test cannot be met. There remains national security intelligence investigations from which the FBI is foreclosed abroad.

Your citations of EO 11652 both require what does not exist and is no longer possible because of the overt propaganda by the government that now would keep these records from me. In each case there must be a "disclosing." We are talking about what was in some cases the entire front page of major newspapers. There is now no "disclosing" after this.

I know you say that a document most of which is not withheld "is classified at the 'Top Secret' level." I do not believe you mean this. I also ask how what was published in newspapers at government behest can have any classification, most of all what meets the requirements for top secret.

While many suggestions are apparent the fact that the government took advantage of headline-hungry and underinformed reporters is the most obvious reason for the continued withholdings.

Because you did not enclose a copy, any copy, of CD 651 I am asking that you now provide every version, the basis for original withholding if any, the basis for partial withholding thereafter and the basis for releasing more of it now. I want in each case a citation of authority and I will want to check the content against the authority. Here I remind you of the specificity of the legislative history, that the Act is not to be used to hide official embarrassment.

Of course I can sue you. I don't want to. I would hope that you would not want to be sued or to burden the courts without need or piddle away so much of the tax money for which there is so great a need. The Act does impose a burden of proof upon you. I am asking you to meet it now.

Sincerely,

Harold Weisberg

UNITED STATES OF AMERICA  
GENERAL SERVICES ADMINISTRATION  
*National Archives and Records Service*  
Washington, DC 20408



JAN 24 1977

Mr. Harold Weisberg  
Rt. 12  
Frederick, MD 21701

Dear Mr. Weisberg:

This is in response to your Freedom of Information Act appeal dated December 8, 1976, for release of the deleted portions of Warren Commission Documents 651 and 1359. Your appeal was received in this office on December 13, 1976. On January 12, 1977, we informed you that a ten day time extension, as permitted by the Act, was needed to process your appeal.

We have now completed our consultation with the Federal Bureau of Investigation concerning CD 651 and CD 1359. Those portions of CD 1359 which were previously denied to the public remain restricted. CD 1359 is denied to you under 5 U.S.C. 552(b)(1) and (7) as matters that are:

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order; and

(7) investigatory records compiled for law enforcement purposes, the disclosure of which would: (C) constitute an unwarranted invasion of personal privacy.

A copy of CD 651 is enclosed. Additional portions of this document have been made public. The deleted portions of this document are denied to you under 5 U.S.C. 552(b)(1) and (7) as matters that are:

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order; and

(7) investigatory records compiled for law enforcement purposes, [which would] (C) constitute an unwarranted invasion of personal privacy; (D) disclose the identity of a confidential source and,



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in the case of records compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source.

Both documents were reviewed under the standards established by Executive Order 11652 and were exempted from declassification under Section 5(B)(2) and (3):

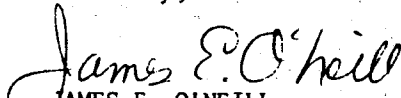
5(B)(2) - "Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods."

5(B)(3) - "Classified information or material disclosing a system, plan, installation, project or specific foreign relations matter the continuing protection of which is essential to the national security."

CD 651 is classified at the "Confidential" level and CD 1359 is classified at the "Top Secret" level.

This represents the final administrative consideration of your Freedom of Information Act appeal. You have the right to seek judicial review of this denial by filing a civil action in the Federal District Court for the District of Columbia or in the Federal District Court for the district in which you reside or have your principal place of business.

Sincerely,

  
JAMES E. O'NEILL  
Deputy Archivist  
of the United States

Enclosure