

Rt. 8, Frederick, Md. 21701
8/2/75

Mr. Albert H. Leisinger Jr.
Acting Assistant Archivist
The National Archives
Washington, D.C. 20408

Dear Mr. Leisinger,

While much of your letter of July 31 is informative and helpful, and for this I do thank you, some of it is factually incorrect. In addition, the enclosures to which it refers were not enclosed. There was but one, a copy of which I return to you herewith, pages 5 and 6 of a document including marked exemptions of 5 U.S.C.552.

If you do not draft your own letters I think both our interests will be served by your reviewing all the correspondence to which your letter is supposed reply.

Your second paragraph, for example, refers only to my "original request" and goes on to say I had not asked for copies of all the documents released under the 1972-73 review. While there can be confusion about oral requests and I had requested this first orally, there cannot be any confusion about this. In another letter of July 9 to which you do not refer I wrote of these 1972-73 documents, "I also phoned to see if my deposit was sufficient to cover the costs of copying all of it." With that letter I enclosed a check for an additional \$100 because "When Mr. Leahy said you were copying this for me" he also reported my account would be about \$5 short.

Ignoring this and the check for the deposit, your letter of the 31st merely expresses a willingness to supply these documents. Under the circumstances, I do hope you will make the filling of this overdue request a priority item. I would also like to ask that if oversized envelopes are to be used, the contents should be wrapped. The lack ~~batch~~ of several hundred documents was severely mutilated.

Your review of this recent correspondence will also show that your (B) is the first response to a question I had asked often without any response.

The July 9 letter to which you respond does request copies of documents relating to the alleged reasons for both classification and declassification or withholding and releasing. You enclose no single such paper. You say of some that copies are being supplied and of others that copies can be. All of this, obviously, is an impediment to my work. So there will be no doubt, I did intend the request to cover these documents and I would appreciate copies as soon as you can supply them. All referred to.

When I do not have these and the enclosures basic to an understanding of your letter were not enclosed, I am largely foreclosed from carrying this further or even understanding what you are talking about in many cases.

As best without these I can understand the rest of your letter I do think there are going to be questions and I do think an inquiry by you or another person with a post of proper responsibility is appropriate.

One of the allegation that any document "related to... relations with Mexico" is properly exempt. This is neither the language nor the intent of Exemption (1)(A). That relates only "to matters that are — ...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." Separate from whether or not "properly classified," two of those to which you refer were never classified, GDS 434 and 702. There then remains the meeting of the requirements of (A) and there is no showing of it or reason to believe it. At no point does your language even suggest that all these criteria -- or any -- were met.

In (3) your formulation is "because relations with a foreign country were involved." This also is not the test. Even public mention of any foreign country by any public official by this standard could be withheld after utterance. Besides, if this had been a concern, there would not have been the diligent leaking, selectively, of what was prejudicial in this series of files. Nor would the Commission have published these files as extensively as it did.

From my reading of those of these documents that have now been released there never was any legitimate reason for withholding them and to suggest, as your formulation in (4) does, that "the question of foreign relations with Mexico" really is not reasonable.

Because until I receive the rest of what I have asked for it is not possible for me to file a formal appeal, I do hope you will make a personal inquiry into these questions and avoid the embarrassment I think can result if they are to go further.

(Perhaps this accounts for the lack of citation of any executive order or any provision of any?)

I suggest there is the same situation with regard to you/(7) and (9). I believe that if this material is to be withheld another exemption must be applicable. This is the inter- and intra-agency memo provision qualified by the "not be available by law" proviso. Now the memo for which this exemption might be claimed is not withheld. You have given me 111 pages plus some attachments. You are claiming the exemption for the entire memo for a few short passages. Some have been disclosed and do not qualify for this or any other exemption. Others still withheld from me have been provided to another. Were the exemption applicable you have waived it under controlling decisions. There is no exemption authorizing the withholding of what can embarrass an agency or an official. The law and its history could not be more explicitly to the contrary.

Whether or not an executive session transcript in itself qualifies for Exemption 5, and I do not think it does, your citation of it in (9)(1) says (emphasis added): "Perhaps pages 63-73 of transcript of executive session of the Commission, which relates to defectors without naming Nosenko." You give no date and there are more than one set of pages so numbered. However, I presume you refer to the transcript of 1/21/64. That would be something were it to relate to the defector Nosenko the month before he defected!

In any event, are you seriously claiming that the only exemption applicable to an intelligence defector is (5)? Or that this exemption is a license to withhold all memoranda?

You and I have had no prior dealings. I do not know what you have been told about me or the suits I have filed or their results. There is a long record of vigorous invocations of the right to withhold. There are court records of official dishonesties I detest having to make about my government, more when the subjects are the assassination of a President and official conduct thereafter. I would prefer that at some point all this stonewalling and worse come to an end. I would prefer not to have to carry this further. I certainly would prefer that if you have not made a personal inquiry and satisfied yourself personally and fully about those matters of which you write me you do it in your own interest. I think this letter, which is by no means full, ought give you an indication of the reasons that were I you I'd find compelling.

I will do nothing further until I receive what you say is to come and what I have asked for again in this letter, all records having to do with the withholding and releasing of those records cited. I do hope that these and the missing pages of the 1972-73 declassification will now be speeded up.

Sincerely,

Harold Weisberg