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

2/7/76

Dear Mr. O'Neill,

Your letter of the 30th is still a new Archives mechanism for denying access to public information. It is a departure from the past practise and I believe is a violation of the law.

The law requires the applicant to request an identifiable record or records. You do not say I have not met this requirement and in fact I have.

Moreover, in each instance you make it impossible for me to know what you are withhold and when you stop withholding it. There simply is no other way I can put the request. The Archives has seen to this.

As of today, with countless illustrations, including a number of actions under the law, I can t remember a single instance in which what was withheld from me was properly withheld. Once the withheld records could be examined it became immediately apparent that the withholding was improper.

The record, especially with regard to me because I have published more in opposition to the official explanation of President Kennedy's assassination, is so bad that as of today I have not received any response to repeated requests aimed at learning s if my requrst for every page released as a result of the 1972 review has been sent me. I have substantial reason to believe, from the number of pages alone, that my request was not met. This request is now close to a year old.

If I were to sue for merely the costs of this stonewalling the amount would be considerable. With it the record is clear, including instances of my having requests rejected and then having the identical records given on an exclusive basis to one not in a position to comprehend them and indeed on the Archives solitiction that he ask for them.

To date, with counless cases to illustrate, I can't think of a single instance in which classifications up to and including Top Secret was proper. In most cases it was illegal. There has been a judicial determination on this question, as you know or should now. I believe it covers every paper in this archive that was not originally classified by an agency other than the Commission. In every case the sole reason for classification and withholding was outside the exemptions of the law and was to avoid reddening official faces. This is not an exemption under FOIA and the legislative history is directly opposite on this point.

It has been and should be your practise and I believe your regulations require that when a record is requested and the request refused and when that record is subsequently made available it be sent automatically to the requester. Only you have the knowledge required. Particularly is this true of a closed archive, one to which physical access is denied. I can't go over this stack of records in person, as you know.

This record and this new position are entirely inconsistent with Dr. Rhoads' recent representations to the Abzug subcommittee. I was unable to be there but I have spoken with others who heard him. He professed a determination to make everything possible available, the intent of the law and his personal dedication, as he put it. Your letter taken an opposite position.

Aside from correspondence between us I have spoken with Dr. Rhoads on several occasion. When I wrote with some bitterness of the decination of this archive in 1966 and of the government's stinginess in assigning only two men, both on a part-time basis to it, Dr. Rhoads assured me there was no manpower problem. This is not what he testified to recently. He said the opposite - after ten years in which the result was

an automatic machine for automatic withholding. The practise was opposite what Dr. Rhoads has sworn to. The result was to withhold what could not be withheld under the law simply by not providing enough manpower to examine the records. As an illustration I cite the staff papers, made available in 1967. Yet the Commission ended its work in 1964 and you had supposedly all its records and were its inheritor not later than a965.

Another example is in Mr. Johnson's testimony, having to do with lost records. If indeed they were lost. In each and every instance when I asked the Archives to obtain a copy, as in each case it could from the agency of origin, it refused. There is a long record on this.

In 1966 I request access to CD 102. It is broken into 29 separate files of which 21 were missing. If you have replaced a single sheet of paper in this basic file you have neither informed me nor sent it.

This also illustrates the impossibility of the conditions you now impose in this letter, new conditions. Nobody outside your agency has any way of knowing what your letter requires as a precondition of obtaining access to public information.

When I ask for a record you can identify I have met all the obligation the law imposes on me. If it is burdensome to you I have still met the requirements. In all cases now in question any burden imposed on the government is of its own creation.

As further illustration I cite the case of the executive session transcripts. Before the Abzug subcommittee the date of this request was given falsely. It was years earlier than given, 1967 rather than 1973. The written refusal is entirely inconsistent with the sworn testimony on it. With regard to both aspects there was false swearing. And I did much, much before 1973 raise questions about the legality of the classification and withholding, yet the Archives' representatives swore there had been no legal review to determine the legality or the propriety of this withholding dating to 1967, when it cited the law as the basis for withholding. In the case testified to, the 1/27/64 transcript I even cited court decisions. Yet you stonewalled me for the sole purpose of hiding what was embarrassing and I think lied deliberately to the Abzug subcommittee under oath about all aspects of this illustration. The written record certainly proves lying under oath and by those who wrote me these letters.

Aside from questions of misfeasance, malfeasance and nonfeasance the cost to the government of all this impropriety and all the unnecessary litigation has to have been and continue to be fantastic. The cost to me, in my circumstances, has been enormous and in every case decided in court I received what I asked of you, access you had denied.

Were it my intention to embarrass you I'd go to court now. I can under the law. I am aware of the possibility held out by the Administrative Conference of the United States for recovery of these damages. But I do not want to litigate needlessly. I want my government to live within the law as it requires citizens to do. Yet in these cases violations of the law are all official. Perjury, including by those in the Archives, is commplace and immune because the government does not prosecute its agents. I would think that you also would want an end to this and to the artifical contriving of mechanisms for continued violation of the law. Your letter represents this to me and I am not now asking counsel to file because I think you should reconsider this impossible and extra-legal condition you now impose. I am asking this reconsideration herewith.

I believe all the other responses in this letter represent further official stonewalling. All those requests you referred to the CIA are months old. Your 1/31 statement is that after all this time they will require "at least another month." So I would like to know when you made your request of the CIA, how long after my requests of so long ago. I wrote the CIA about this months ago. Their time to respond to my appeal expired two weeks before you wrote me. Between the two of you you put any requester in an impossible position. The result if not the intent is official violation of the law.

You conclude with the promise "We will provide a substantive decision on the docu-

ments...at the earliest possible moment." Yet I have no way of knowing those to which you refer or how. Individually? Not until you can reply to all? Or which you earlier call only "investigatory records." Investigatory records per se are not exempt. Only those compiled for a law enforcement purpose. The Commission had no law enforcement reponsibilities or capabilities nor does or did the CIA. I do not believe this exemption is applicable to anything I requested. So, I ask that you specify in each case which requests are in which categgwy in your letter.

Your last sentence, consistent with the reGowd partially explained above, is a new attempt to rewrite the law by violating it. You say you will "respond" only to "requests for reasonably described records." The law gives you no such right. In fact its sole intent was to end forever this kind of suppression you envision. My request was for identifiable records and your filing system makes it a lead-pipe cinch to comply with a request in this form, as you have for years done. There is no provision of the law giving you the right to interpret or describe or define "reasonably described" as whatever at any moment you may prefer to. The standard is "identifiable" and that standard I have met.

This ploy is entirely consistent with other efforts to rewrite the law by other agencies, using me because of prejudice and this subject for the same reason as a means. If there is no choice I will contest it in court. The choice is yours. If I have to take this course I will ask counsel to seek to invoke the punitive provisions of the amended law and perhaps the possibility held forth by the Administrative conference.

Two of my requests, both partly met earlier, are not covered by your letter. I repeat my accepted request for all documents of the cited review and all declassified by the CIA.

Sincerely,

Harold Weisberg