Cong. Robert E. Wise, Jr.
House of Representatives
Washington, D.C. 20515

7627 Old Receiver Road
Frederick, Md. 21701
2/13/90

Dear Congressman Wise,

George Lardner's recent story reporting Justice Department inflating of FOIA costs prompts this letter. I've had much such experience and am more than pleased that the Congress is getting interested.

Please forgive my typing. I'm almost 77, am in impaired health, and must sit and type with my legs elevated.

I was one of the earlier users of FOIA. I've been forced to file innumerable suits not one of which should have had to be litigated. The deliberately wasted costs to the government must be, and I mean this literally, in the millions. From the first the agencies from which I sought records forced litigation for two quite apparent purposes: to frustrate the will of Congress, the Act, and to inflate FOIA's costs to the government. As part of the first reason, there was the clear intent to frustrate use of the act and compliance under it.

I am a writer. As a young man I was a reporter, investigative reporter, Senate investigator and editor, and a wartime intelligence analyst. I've written seven books on the political assassinations and they are regarded by scholars as the basic books on the assassinations of President Kennedy and Dr. King. I am not a conspiracy theorist. Mine is a rather large study of how the basic institutions of our society worked in those times of great stress and since. I have always taken FOIA literally, regarding requesters as surrogate for the people, and all I've obtained has always been freely available to anyone. For the most part, those using my materials are those whose views I do not agree with. All I have will be a public archive at local Hood College.

Congress amended the investigatory files exemption because of the Justice Department's dishonesty in one of my earlier suits. I do not have that issue of the Congressional record now but I enclose a story Lardner wrote in which a judge recalled that. Thereafter the Department, its FBI and the CIA stonewalled me even more, as is reflected in the enclosed pages of the Senate subcommittee's 1977 hearings. I did not call that to the subcommittee's attention and did not know about the hearings until after they ended. Those who called this to the subcommittee's attention picked the information up from a lawsuit I filed in 1975 and is still, on the matter of counsel fees, ~~still~~ before the courts. Both the Department and the FBI decided to ignore my requests, in small part reflected in the hearings pages enclosed.

On page 140 you will read the assurance to the Congress by the then head of the Civil Division that "we in the Civil Division are going to do something..." He didn't lie but what they did was not what would ordinarily be taken from his words. First they organized a "get Weisberg" crew of six lawyers and then they proceeded to continue to ignore those 25 requests that had until then been ignored. Not one has been processed since, although by other means I did obtain some of that information.

Even on the counsel fees in the King case that I filed in 1975 they are spending more money contesting the award than paying it would have cost. This, of course, is a prohibitive cost for most litigants while it inflates the government's costs that are then used to get "relief" from alleged burdensomeness.

(The "Mr. Shea" in the hearings is Quinlan J. Shea, then head of appeals.)

There is nothing too petty for these stonewallers if it delays or frustrates compliance and builds their dishonest statistics. I'm not able to do much but because so much defamatory misinformation was compiled and misused to defame me and thus to undermine the credibility of my work, I've been trying to get belated compliance with my requests for records on or about me. Some of these old records are being processed

for another. I had thought this was illegal under the Privacy Act. The copies sent to me state that I am the subject of the request. In any event, the FBI and the Department are disclosing to someone else records about me withheld from me since 1975, despite frequent renewals of the request and appeals. What I received most recently is two Department memoranda based on 17 large envelopes of materials I had given the FBI. There was a trial and Congressional hearings afterward in which all became public, as in fact it had earlier in the press - 50 years ago. Yet now, 50 years later, they withhold from me some of the information I gave them, all the names. Aside from the absurdity and unreasonableness of this I cite it as illustrative that nothing is too petty to limit disclosure and inflate costs.

The FBI sent those records to me without including the number it had assigned. I noted this in my appeal but did give the date I received those records, which effectively and specifically identifies the disclosure to the FBI. The appeals office wrote me that it had conferred with the FBI and hadn't the slightest idea what I was talking about. It asked for the case number, which the FBI had not included, and for the date of disclosure, which I had provided. And then said that if I provided this information they would assign a new appeals number to it. Or, would put my 1975 request, still not complied with, at the bottom of the stack. In 1990! (See enclosed letter.)

During the King case, Judge June Green asked me to cooperate with the appeals office, then Mr. Shea's office. He also asked me for help in my JFK assassination request. As a result I provided, as the Department later acknowledged, more information than any requester had ever provided. My copies, which include some duplications because some appeals dealt with several matters, are so voluminous they take up most of two full file cabinets. Almost all of this considerable effort, a considerable cost to me, was entirely wasted because it was and remains ignored.

It is my experience, and I can't think of any case in which this was not true, that misrepresenting to the courts is standard procedure. Lies are commonplace, and by this I mean knowing lies, and perjury is not eschewed. By perjury I mean sworn untruths about what is material and by one with personal knowledge.

They preferred to avoid perjury and if they had not resorted to using affiants without personal knowledge instead of those who were available and had personal knowledge perjury, too, would have been commonplace in all my litigation. What they dared do varied with the judges. They knew pretty well where they would be immune, where they had to be a little more careful, etc.

I have no way of knowing how typical my experiences are because my requests were for information the agencies would find could embarrass them. However, there are many informations requests like this so I believe that in much FOIA litigation pretty much what I tell you was government practise. It was in case records I've read.

I believe that FOIA bespeaks what is unique in our political system, formalizing the right of the people to know what their government does. I think, too, that it can be a means for government to improve itself. But it does not want to. It would rather keep the closet of its soiled linens firmly locked.

I can't think of a single request I made that was not for information that should have been processed for disclosure, without any litigation. I also can't think of any that was complied with without litigation, and then was stonewalled and frustrated to the degree possible. The costs, the costs in government funds alone, were considerable. They are also unjustified. They were expended for improper purposes because the executive branch does not like and opposes the law as much as it can and because it wants to make use of the law difficult and overly costly to the people.

I hope you will pursue the abuses indicated in Gardner's story and perhaps make use of the law less difficult and less costly. If I have any information that you can use, you are more than welcome to it. If you were to get some of the FBI agents to repeat under oath what they have sworn to in court you could charge them with perjury. Sincerely

Harold Weisberg

Critic to Get Free FBI Set Of JFK Files

By George Lardner Jr.
Washington Post Staff Writer

U.S. District Court Judge Gerhard Gesell refused yesterday to delay the FBI's impending release of thousands of additional documents bearing on the assassination of President Kennedy, but agreed that author-critic Harold Weisberg should get a free set "with all reasonable dispatch."

The FBI plans to make public on Wednesday some 40,000 pages of headquarters documents on the 1963 assassination at a cost of 10 cents a page for those who want their own copies. The bureau released an initial 40,000 pages last month on a similar basis.

An outspoken critic of the Warren Commission and author of six books on the JFK murder, Weisberg noted that he has had freedom-of-information requests for such documents pending for years and that he had asked for a waiver of fees in mid-November. He filed for a federal court injunction in late December, arguing that he was entitled to a free set at least by the time the final batch was made public.

Charging that such voluminous FBI releases amounted to "media events" that effectively camouflage unjustifiable deletions and paper over "a very careful job of sifting and concealing," Weisberg said the Justice Department and the FBI had completely ignored his request for a waiver of the fees, which he said he could not afford.

Announcing his decision from the bench after an hour-long hearing, Gesell was sharply critical of the government's delay in responding to Weisberg's request for more than 50 days. The Justice Department offered him a reduced rate of 6 cents a page last week, but Gesell said "it is apparent no consideration whatever" was given to Weisberg's claims of poor health and indigency.

"The equities are very substantially and overwhelmingly in plaintiff's favor," Gesell said. He said that the records would not be coming to light now were it not for earlier freedom-of-information litigation by Weisberg. This led to a congressional change in the law, opening the door to FBI investigatory records.

The judge, however, declined to hold up the Wednesday release, on grounds that the disclosure of the documents was the "pre-eminent consideration." Weisberg's lawyer, James H. Lesar, said later that he understood the FBI would mail Weisberg copies of the forthcoming 40,000 pages the same day.

FREEDOM OF INFORMATION ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

OVERSIGHT OF THE FREEDOM OF INFORMATION ACT

SEPTEMBER 15, 16, OCTOBER 6, AND NOVEMBER 10, 1977

Printed for the use of the Committee on the Judiciary

Mr. SHEA. I still would not exclude the possibility of——

Senator ABOUREZK. If you think the implementation of the new policy took a while let's consider the September 30, 1977, supplementary response to my request. That was several months after your memo and the same policy was being espoused by the FBI in June.

Are you saying that the Justice Department cannot control one of its components, namely the FBI?

Mr. SHEA. No, sir; I am not going to say that.

I am going to say I would hope that would indicate that at the time they made the second release, there was a judgment made that was in compliance with the policy directive on May 25.

Senator ABOUREZK. The same arguments are advanced in the September 30 response as in the June 17 response.[1] There obviously was no change in FBI policy.

Mr. SHEA. Then I am going to have to say I can only assure you that we will look very hard at these questions when we are processing the appeal.

Senator ABOUREZK. Documents released by the FBI to Mr. Harold Weisberg under the Freedom of Information Act indicate an attitude regarding the act that is, at a minimum, very disturbing.[2] The FBI memorandum indicates that requests from Mr. Weisberg under the act were totally ignored.

Let me read a sentence or two from the document. This is a memorandum dated October 20, 1969, to Mr. Deloch from Mr. Rosen.

> By letter in April 1969, Weisberg requested information on the King murder case for a forthcoming book. It was approved that his letter not be acknowledged.

The subject of another memorandum[3] to Mr. Deloch from Mr. Bishop of the FBI, dated June 24, 1970, was the assassination of Dr. Martin Luther King. The memo reads in part:

> Accordingly, copies of these documents were furnished to Weisberg. King advised that, in view of the fact that the Department had released the documents to Weisberg, the Department did not wish Weisberg to make a profit from his possession of the documents and accordingly has decided to make similar copies available to the press and others who might desire it. King stated that the documents to be released consisted of approximately 200 pages of copies, or affidavits, autopsy reports, affidavits with regard to fingerprint examinations, and ballistics tests and copies of other documents which served to link Ray with the assassination of Martin Luther King.

So, there was an eventual shift in position by the FBI.

Mr. SHEA. That was 1969?

Senator ABOUREZK. And 1970, yes.

Mr. SHEA. From a strictly legal point of view on what was and was not released in that timeframe, I point out that, first, that was the time that the investigatory file exemption existed. As I had occasion to comment yesterday in front of the Civil Service Commission training seminar, the Department of Justice expired in the Halls of Congress in 1974 when you overruled the court decisions that approved our withholding of that sort of material. We died in the Halls with the words on our lips, "We were legally right." We were stupid, but we were legally right.

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[1] See exhibits 119, 122, pp. 878, 880 of the appendix.
[2] See exhibit 133, p. 941 of the appendix.
[3] See exhibits 134, 135, pp. 941, 942 of the appendix.

So, that was our position.

Beyond that, about not acknowledging letters and that sort of thing, Mr. Chairman, if you are looking for a Department of Justice representative to defend that sort of practice in 1969, 1970, or any other time, I am not going to do it.

Senator ABOUREZK. I understand that you would not want to, but we are informed that Mr. Weisberg still has 25 FOIA requests that to date have not been answered.

Mr. SCHAFFER. Mr. Chairman, I can respond to that in part.

We had a meeting in my office with Mrs. Zusman, the Chief of the Information and Privacy Section in the Civil Division, Mr. Weisberg, and his attorney. Cases like Mr. Weisberg's are not the routine freedom of information requests. I can assure you that the Department is going to try to do something about his requests as a whole rather than treating them piecemeal and processing them in strict chronological order, and this sort of thing.

It is a unique request. It is a case of unique historical importance. Mr. Weisberg does have reason to complain about the way he was treated in the past. We in the Civil Division are going to try to do something to straighten out all of those cases.

Mrs. ZUSMAN. Mr. Chairman, I would like to expand on Mr. Schaffer's comments. I am Chief of the litigating section that you referred to and have been in charge of the section for approximately 7 weeks. I would like to explain a little bit of the background of that meeting so that you can understand how importantly we in the Civil Division take our responsibilities under the Attorney General's guidelines sent to the Federal agencies as a memorandum on May 5. I am sure you and your staff are familiar with this document.

Mr. Weisberg has had for some time a number of lawsuits pending. I became acquainted with him in the late spring—early summer when I was asked to assist the assistant U.S. attorney who was primarily responsible for one of the pending Weisberg lawsuits. I did meet in my office with Mr. Weisberg and his attorney, Mr. Lesar, and representatives of the FBI. We had several sessions. Excuse me; Mr. Weisberg did not come. It was his counsel, Mr. Lesar who met with us. Then we had a subsequent meeting involving a number of hours where we drafted a stipulation by the parties setting forth a variety of tasks and how they would be performed by the client agency, the Bureau, in trying to satisfy the types of information and the timing of the release of the information, and so forth, in Mr. Weisberg's very voluminous request.

This fall Mr. Lesar and Mr. Weisberg contacted me and said that they had some problems in regard to the stipulation—which is being carried out and is being fulfilled by the FBI as well as other questions. I invited them to my office. At that time I discussed with them a number of problems. I picked up the phone and called Mr. Schaffer's secretary. I said, "If Mr. Schaffer is in now, we are coming downstairs. Hold him there. I think there is somebody that he should meet."

Mr. Schaffer did make the time to see Mr. Weisberg and Mr. Lesar. We spent quite a bit of time discussing the problems. This is the type of effort that we are now putting forth. We are a little bit hampered because, of course, primarily the Civil Division is in the litigation business. But, in this particular area of the law, we have to also put a lot of our efforts into a
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Ms. Miriam M. Nisbet, Deputy Director
OIP
Department of Justice
Washington, D.C. 20530

2/10/90

Dear Ms. Nisbet,

AG/89-R0287 -appeal

Your yesterday's mailing reminds me still again that in dealing with your office and your Department patience - INFINITE patience - is required and is helped by an appreciation of the ridiculous. In this instance, really ridiculous.

You sent me two memoranda to Mr. (Adrian) Fisher, who I'd met earlier, dated in 1940, February 9 and March 6, and assert two privacy claims for the names you withheld. The one legislated for this ostensible purpose, of protecting privacy, (b)(7)(c), was not enough. You had to invoke (b)(6), which as legislated was not for this purpose. But the Department was able, over the years, to extend its meaning.

Now what did you find it necessary to withhold from me, after 50 years? As the second paragraph of the first memo states you withheld these names - that I gave you! Names that were nationally all over the front pages. Names that figured in public and thoroughly reported Congressional hearings that in transcript were themselves published. The names of people who there, in public, testified, and of their organization, which hasn't existed for almost 50 years. (Do organizations have privacy rights, too?) And the names of people who figured prominently, particularly one as a defendant, in a public trial in the federal district Court in Washington. There also was a grand jury, with news accounts almost daily.

So, assuming that David D. Mayne and William Dudley Pelley, whose names you withhold, are still alive, which I believe they have not been for years, and assuming that Pelley's native-nazi Silver Shirts of America were extant, as for five decades it has not been, and forgetting for the moment that you are withholding from me information I gave you, what "privacy" is there to be protected?

I have no clear recollection of all that was in those 12 large envelopes I loaned the FBI but I have a clear picture in my mind still of the carton that had held whiskey I got to put all those vicious, racist, pro-nazi pamphlets in. I gave them to the University of Wisconsin in the same box 10 years or more ago.

I hope you will not disagree with my referring to this as ridiculous that unfortunately is so typical of what is referred to as your appeals function. You should not, really, be surprised that what you now withhold the FBI disclosed only recently. Not ridiculous?

You have in this also underscored the Department's great concern for living with both the word and the spirit of two laws, freedom of information and privacy, the latter act as it pertains to me and my requests under it and under FOIA.

My first request for all records on or about me, made of all Department components, including the FBI, was made shortly after the Act was amended. You should recall that the investigatory filed exemption was amended over the Department's and the FBI's -permit me to be excessively polite - misrepresentations to the courts of one of my earlier FOIA requests and the nature of the information sought. Over the years I renewed this request often and filed a number of detailed and thoroughly documented appeals, all of which were ignored - by your office. What I state above is in considerable detail in those appeals. I spent a considerable amount of time conferring with the FBI and your office about this. If Ms. Phyllis Hubbell is still there, she should remember at least some of that.

At one point, when - had counsel, my counsel wrote the attorney general and the FBI director, both without any response at all. With regard to this particular matter, the same request was made of the United States Attorney for the District of Columbia, without any response, as was true also of the office of all the United States Attorneys.

I describe some of the information that did exist and in some form should still exist so you can understand the determination with which all components violated both Acts.

The then House Committee on Un-American activities, known as the Dies committee, got Mayne, then Washington representative of Pelley and his gang, to entrap me with forgeries he fabricated when he was in their pay. Rather than, as the second memo states, being "various papers which also were purportedly taken (my emphasis) from the files of (obliterated) by Weisburg (sic) they were voluntarily, as part of his conspiracy with the Dies committee, given to me by Mayne. It wasn't my idea even. The Dies committee sent him to me. They knew I was researching a book about them.

However, and neither the FBI nor any Department component has produced its copy, I required Mayne to attest to his truthfulness and to the authenticity of the records he and the Dies gang thought they could use to hurt me. He sat in my apartment, before a court reporter, I asked questions, he answered them knowing he'd be under oath, and we then went to a notary and he did attest to his truthfulness and the authenticity of the documents he'd given me.

I believed then and still believe that I was not the primary target of those who cooked up and engaged in this conspiracy and that their primary target was the union labor movement. I was associated with the late Gardner Jackson and he was the legsiative representative of Labor's Non-Partisan League, which was the political arm of John L. Lewis' United Mine Workers.

But even had we been guilty of anything at all, as we were not, there was no law to cover what would be alleged against us. So, Dies et al, got one passed. It is still on the books and it is the law cited by Senator Weicker when he threw Mr. Nixon's Charles Colson out of his office. It is a law to make it a crime to interfere with the proper functioning of a Congressional committee. (Those characters considered conspiring and entrapping and uttering and forging and false pretense to be the proper functioning of a Congressional committee, apparently.)

The late Judge David Pine was then USA and, given the disgusting demand made of him, was reluctant to prosecute Jackson and me. He also knew me well because I had helped him and his office when I worked for the Senate. So, Dies et al delayed consideration of his nomination for the judgeship until there was a prosecution. Pine did not handle the grand jury. The one assistant I recall clearly in that role was the late Ed Fihelly. I think he was later war-crimes prosecutor in Tokyo. He had me before the grand jury pretty often, for quite some time, and we had quite a tussle. But in the end I took his grand jury away from him, it refused to indict Jackson and me and it did indict Dies' creature, Mayne, for false pretense and for forgery. To keep Mayne's mouth closed, Dies appeared in person and copped a plea for him - two years suspended. (I had obtained documentary proof that Mayne was in his pay and did present it to the grand jury, only it did not get public because it was before the grand jury only so Dies was somewhat protected.)

As I'm sure you can imagine, this was all very, very public yet you now, after 50 years, withhold it.

Despite the historical nature of the records involved, depite my many repetitions of the requests and of the appeals, I received nothing, after all these many years, except what the FBI disclosed recently with the false assurance that it has nothing more about me than it has disclosed. Why the very records it just processed identifies some it still withholds and are not immune. If your office paid any attention to my appeals it would have seen to it that those pertinent records were processed for disclosure. Instead it wrote me that after consulting with the FBI it and the FBI hadn't the slightest idea what I was talking about. It requested the date of disclosure, which I had already provided, and the FBI's case number, which it did not provide with the records. As I told it.

Aside from the determination to corrupt the Acts into withholding rather than disclosing laws there seems to be the determination to make me appear as anti-government.

I'd known O. John Rogge and several other AAGs in charge of Criminal and other Divisions in those days and did make many efforts to help them. The late Brien McMahon borrowed me from the Senate less than three years earlier, to help with the prosecution in the "Bloody Harlan" case, U.S. v. Mary Helen et al, and I lived with him and his assistants amd with the FBI detail in Harlan and London, Kentucky, and worked with them for four months without a single penny in pay from the Department. I knew these AAGs slightly or very well. Later I gave the Department a great amount of documentation when I was exposing Nazi cartels. A little later I gave George McNulty, who was a friend and with whom I'd worked in the Senate, documentation for a Nazi putsch in Chile, for the FBI. I'm sure there were other efforts on my part to help the Department then, In any event, the FBI has come up with but a single refrence to me in the Harlan case and no component has provided any record relating to the rest. (FDR used those Chile documents in a fireside chat.)

Before the FBI succeeded in easing Quinn Shea out he got interested in the Nazi-cartel part and concluded that Joe Borkin had taken all I'd given Anti-Trust with him when he left the Department.

In what ~~wound~~ found up as the Mayne case, which you seem to have obliterated in the Swiss-cheesed pages you sent, the FBI Washington field office was involved. I filed FOIPA requests of each and every field office and Washington did not find and disclose any of the records it has, including the few FBIHq sent me relatively recently.

You people sure are the models of diligence in handling appeals! You see, none of what I tell you is new to your office. I provided it and much more. I still got no records and your office still ignores the irrefutable proof I've provided with regard to the recent disclosures of the existence of relevant records that are referred to in the disclosures. Instead I got the shameful, the shabby false pretenses that you and the FBI hadn't the slightest idea what I was talking about when I identified those records by date of disclosure, then only a few days earlier.

Of course it did offer to enter a new appeal, with a still later date, for my request of a decade and a half earlier. Right on! In two months I'll be 77 and you offer to put me on the bottom of the stack once again.

As I wrote one of your co-directors recently, we are none of us Merlins and we can't remember the future. But the political assassinations and their investigations will forever be of interest, as the appeals court itself has stated, and in addition to my copies, which will be a permanent archive, and any copies the Department and its components do not destroy, I've provided copies to others that will be available and, I think, will be studied and used. I am not a conspiracy theorist and there is nothing like that in any of my seven books. Mine has been a study of how our institutions worked in those times of great stress and since and official stonewalling and other improprieties are illustrative and informative. Those involved also characterize themselves for our history. All of you write your own histories. In the dishonesties with which my requests and appeals are and have been treated you attempt also to write my history by defaming me with selective disclosures and withholdings. This concept of American belief does not coincide with mine.

I apologize for my typing, which can't be better under my limitations. And now that you are involved in the processing of Mayne-case records, I ask again that they all be processed and disclosed in accord with my 1975 and subsequent requests under both Acts.

Sincerely,

Harold Weisberg