

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v.

Civil Action No. 77-2155

GRIFFIN BELL, et al.,

Defendants

Washington, D. C.
January 16, 1978

The above-entitled cause came on for Hearing on Plaintiff's Motion for a Preliminary Injunction before the HONORABLE GERHARD A. GESELL, United States District Judge, at 11:00 a.m.

APPEARANCES:

JAMES H. LESAR, Esq.,
Counsel for Plaintiff

PAUL F. FIGLEY, Esq.,
DANIEL J. METCALFE, Esq.,
JO ANN DOLAN, Esq.,
Department of Justice,
Counsel for Defendants

COURT'S RULING

IDA Z. WATSON
Official Reporter
U. S. Court House
Washington, D. C.

COPY FOR:
MR. LESAR

P R O C E E D I N G S

* * * * *

THE COURT: In this case, Weisberg v. Griffin Bell, Civil Action No. 77-2155, Plaintiff seeks a preliminary injunction to enjoin the Department of Justice from going forward with its scheduled proposed release on Wednesday of this week of numerous documents relating to the assassination of President Kennedy.

The Department of Justice, responding to numerous overlapping Freedom of Information Act requests, has dealt with these requests on what it calls a project basis and is processing the requests as a group, leading to this broad disclosure of documents, which is the second such disclosure relating to the assassination.

Plaintiff initially sought the injunction resting substantially on the fact that he had some time ago sought a waiver of fee charges and the Department had not been responsive to his request.

It is Plaintiff's theory that as one early interested in the assassination and as having long ago sought access to these documents, he is entitled to priority or at least equal treatment and should receive the documents at least coincident with their disclosure in the manner the Court has previously described.

Responding to this complaint, the Department responde

promptly on the waiver of fee request to Plaintiff, which had been long overdue, advising that the documents would be made available to him at six cents, rather than ten cents a copy.

At this stage the Defendants continue to oppose the preliminary injunction and seek a partial summary judgment, at least with respect to the waiver of fee aspect of the case; and an amended complaint has been filed.

The matter was argued and has been thoroughly briefed. The Court has before it a number of affidavits, as well as the briefs.

Taking first the question of whether the disclosure on Wednesday, January 18, 1978, should be enjoined, the Court will not enter such an injunction.

The reasons are simply these: The great public interest in the disclosure of these documents seems to the Court the preeminent consideration. In addition, the Court is not satisfied that Plaintiff will be irreparably injured in any fashion by disclosure.

The whole purpose of the Freedom of Information Act is to bring about disclosures such as this; and it should go forward as scheduled.

The suggestion that the decision of our Court of Appeals in Open America is to contrary effect is rejected. That opinion, which did not involve a situation comparable to this, recognizes the desirability of the Government in matters

of broad public interest, such as this, to proceed on a project basis; and there is no first-come-first-served rule, established by Open America or any other decision, which should be allowed to interfere under these circumstances.

The Court then turns to the question of Plaintiff's request for complete waiver of fees with respect to these particular documents.

The equities are very substantially and overwhelmingly in Plaintiff's favor. He has long sought such a waiver. The Defendants delayed response to his request, perhaps purposefully due apparently to past dealings with him.

The Defendants acknowledge that there will be benefits to the general public and hence it is in the public interest for the Plaintiff to receive these documents under a partial waiver.

The Plaintiff has made a unique contribution in this area by his persistence through the courts and before the Congress, without which there would be no disclosure, as the Government recognizes.

I have before me the entire administrative record relating to this waiver. It is apparent that no consideration whatsoever was given to Plaintiff's claims based upon his established poor health and indigency. Yet the rules and regulations contemplate that these considerations should be given weight.

Under all the circumstances, the Court is of the view that the Defendants have forfeited any right to remand with respect to this matter; that it is before the Court on a proper record for determination; and that his prayer to receive this group of documents being released on January 18 without payment of any fee should be honored with reasonable dispatch.

In making this ruling, I am prompted largely by the special circumstances of this particular case. In no way is the Court suggesting that any precedent is involved with respect to any future problems that the Plaintiff may have with this or any other agency of the Government.

The Court also wants to make clear that he feels there are many matters raised in the papers, some of them totally irrelevant, some of them marginally relevant, in which Plaintiff has used sharp adjectives in his characterization of governmental conduct.

The Court in no way is influenced by these and makes no determination at all that such claims were appropriate in this case or are supported by any proof.

I think, gentlemen, you ought to confer and prepare a simple one-page order covering these two determinations, which can be submitted to the Court later this afternoon. Thank you.

MR. LESAR: Thank you, Your Honor.

CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on January 16, 1978, and that the foregoing Pages 1 to 5, inclusive, constitute the official transcript of the Court's Ruling.

Ida Z. Watson