

CARTON 5:34

PELOSI, NANCY
FBI / FREEDOM OF INFO...

1996-1998

2017/193
c

3/6/98

Michelle Griffith

talked with FRST,
Lee Brown file in
final stages of processing.
Expect to send out
in ~~another~~ 2 months.

Michelle will

call them in

60 day - early May -
to follow up

(4/15)

556-4862

~~Mitch~~ 3/5/95

Michelle Griffith
(Wony Pelosi's office)
(405) 556-4862

Following up on
Lee Brown FOIA
case with phone
call to FBI FOIA
office

4/16 Sent her a copy of
Lee Brown's FOIA
letter 4/5/95

1034 Vallejo St.
San Francisco, CA 94133
January 23, 1998

Mr. Fred Ross
c/o The Honorable Nancy Pelosi's Office
450 Golden Gate Ave., 14th Floor
San Francisco, CA 94110
VIA FAX 861-1670

Dear Mr. Ross:

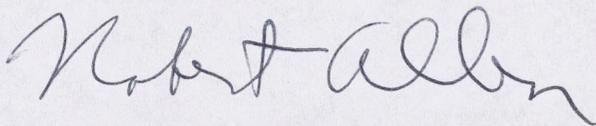
Thank you for your offer to assist in obtaining the FOIA files for Mr. Lee Brown. I am a university teacher (visiting professor in African American Studies at UC Berkeley) and writer (you may know of my book The Port Chicago Mutiny). For several years I have been working with Mr. Brown to prepare a memoir on his remarkable life as an African American labor leader in Louisiana and California.

On January 19, 1994 we requested his file from the FBI. We subsequently received a response (attached letter dated March 30, 1994) indicating that approximately 1,000 pages of records had been identified. We confirmed Mr. Brown's desire to secure the records and his willingness to pay the copying charge. Since then we have periodically renewed our request, and have received form letters indicating that that "a significant increase in the number of requests received has strained the resources" of the FBI's processing staff. Enclosed is a copy of the last communication from the FBI dated February 14, 1997, and Mr. Brown's response indicating his continued interest in obtaining the material.

As you know, we requested the assistance of Congresswoman Pelosi's office in 1996, and some correspondence with the FBI was initiated. You and I last spoke about the matter in April 1997. I have found a publisher who wishes to publish Mr. Brown's memoir, and it is important to obtain his FBI file in order to complete the manuscript.

I deeply appreciate your willingness to help. We would be very grateful for any assistance you can offer.

Sincerely,



Robert L. Allen, Ph.D.
(415) 771-0455 (Phone & FAX)

556-4862

FAX 861-1670

1034 Vallejo St.
San Francisco, CA 94133
April 21, 1997

Mr. Fred Ross
c/o The Honorable Nancy Pelosi's Office
450 Golden Gate Ave., 14th Floor
San Francisco, CA 94110

Dear Mr. Ross:

Pursuant to our recent telephone conversation I have enclosed some of the correspondence regarding my efforts to secure Mr. Lee Brown's FBI file through the FOIA (Request # 384976). Michelle Grifka and Norman Chesler in Congresswoman Pelosi's office have been very helpful, but I recently spoke with Harold Treskunoff who suggested that it might be useful to discuss the matter with you as well.

Mr. Brown and I would be very grateful for any assistance or advice you could offer.

Sincerely,

Robert L. Allen
Senior Editor
(415) 771-0455 (h)
(510) 547-6633 (o)

Called Fred
Ross 5/12
He said they
sending another letter
to FBI to try to
pull down a copy
in folder of Lee
Brown also

Fax him here Brown Cart letter
861-1670

(415) 556-7862

NANCY PELOSI
8TH DISTRICT, CALIFORNIA

2457 RAYBURN BUILDING
WASHINGTON, DC 20515-0508
(202) 225-4965

DISTRICT OFFICE:
FEDERAL BUILDING
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102-3460
(415) 556-4862

Congress of the United States
House of Representatives
Washington, DC 20515-0508

COMMITTEE ON APPROPRIATIONS

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HUMAN SERVICES-EDUCATION

FOREIGN OPERATIONS, EXPORT FINANCING
AND RELATED PROGRAMS

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RANKING MEMBER,
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TACTICAL INTELLIGENCE

COMMITTEE ON STANDARDS
OF OFFICIAL CONDUCT

CONGRESSIONAL WORKING
GROUP ON CHINA, CHAIR

AT-LARGE WHIP

November 6, 1996

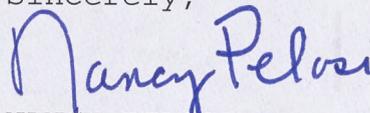
Mr. Robert L. Allen, Ph.D.
1034 Vallejo Street
San Francisco, CA 94133

Dear Dr. Allen:

Enclosed is a further response to my inquiry on Lee Brown's behalf from the Federal Bureau of Investigation (FBI). I have written again to Mr. O'Brien to ask him to specify a time in 1997 when Mr. Brown's documents will be released. His reply will be forwarded to you as soon as it is received.

If you have any questions in the interim, please do not hesitate to contact Norman Chesler of my district office staff at (415) 556-4862.

Sincerely,



NANCY PELOSI
Member of Congress

NP:npc
Enclosure

NOV 05 1996



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

October 29, 1996

Honorable Nancy Pelosi
Member of Congress
Federal Building
450 Golden Gate Avenue
San Francisco, California 94102-3460

Dear Congresswoman Pelosi:

Your communication dated September 24, 1996, concerning the Freedom of Information-Privacy Acts (FOIPA) request of your constituent, Mr. Lee Brown, has been referred to me for response.

I have enclosed a copy of my letter dated to you dated September 26, 1996, in response to your previous inquiry regarding this request. Apparently, our letters crossed in the mails.

Due to past budgetary restraints, we are not able to process requests in a timely manner. The FBI was granted additional FOIPA funding in the Fiscal Year 1997 budget, which should help us reduce the amount of work on hand. The only way of ensuring that requesters receive equitable attention is to process requests based on the date of receipt and this is the policy the FBI will continue to follow.

If I can be of any further assistance to you in this FOIPA matter, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in blue ink that reads "J. Kevin O'Brien".

J. Kevin O'Brien, Chief
Freedom of Information-Privacy
Acts Section
Office of Public and
Congressional Affairs

Enclosure



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

October 29, 1996

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Sincerely yours,

J. Kevin O'Brien, Chief
Freedom of Information-Privacy
Acts Section
Office of Public and
Congressional Affairs

Enclosure

9/25/

FBI called
Norman Chester

556-4862

to say they will
be getting out
response soon

~~to~~

OCT 03 1996



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

September 26, 1996

Honorable Nancy Pelosi
Member of Congress
Federal Building
450 Golden Gate Avenue
San Francisco, California 94102-3460

Dear Congresswoman Pelosi:

Your letter dated August 1, 1996, concerning the status of the Freedom of Information-Privacy Acts (FOIPA) request of your constituent, Mr. Lee Brown, for information in our files pertaining to him has been referred to me for response.

Unfortunately, your constituent's request is still pending in our backlog of unassigned requests based on the date of receipt, February 16, 1994. Due to our limited resources and thousands of requests on hand, I am unable to give you a definite date of when this FOIPA request will be assigned. At the end of July 1996, our total requests numbered over 15,400 with over 5.4 million estimated pages to review. In order to be fair, we assign our requests for processing based on the date of receipt consistent with sound administrative practices. We are currently assigning cases we received in October 1992, and therefore, your constituent can expect a continuing delay in assignment.

Although the FBI takes its responsibilities in the administration of the FOIPA program very seriously, the personnel resources allocated to FOIPA processing are simply unable to keep up with the large volume of requests on hand as well as those being received. In connection with the annual budget process, repeated requests for FOIPA resources over the past six years have not been successful. Without the allocation of additional resources, the processing of requests will continue at a much slower pace than we would like. The only way of ensuring that each request receives the equitable attention it deserves is to assign requests based on the date of receipt and this is the policy the FBI will continue to follow.

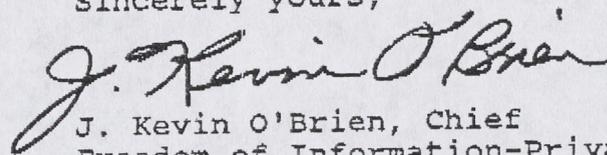
Honorable Nancy Pelosi

I hope your constituent will be understanding of our workload and patient with our efforts to respond to our FOIPA requests in an equitable manner. Enclosed please find a copy of the guidelines issued by the Department of Justice that set forth criteria for accelerated processing if a requester can demonstrate exceptional need or urgency. This request does not appear to meet the criteria, and to assign Mr. Brown's request out of turn would not be fair to those who made their requests earlier.

Your constituent may submit an appeal from our denial to expedite the processing of his request by writing to the Co-Director, Office of Information and Privacy, U. S. Department of Justice, Suite 570, Flag Building, Washington, D. C. 20530, within 30 days from receipt of this letter. The envelope and the letter should be clearly marked "Information Appeal." He should cite the FOIPA number assigned (384976) so this request may easily be identified.

If I can be of any further assistance to you in this FOIPA matter, please do not hesitate to contact me.

Sincerely yours,



J. Kevin O'Brien, Chief
Freedom of Information-Privacy
Acts Section
Information Resources Division

Enclosure

U.S. Department of Justice
Office of Information and Privacy

FOIA UPDATE

OIP Guidance

When to Expedite FOIA Requests

An issue bound to be confronted sooner or later by all federal agencies is whether to give certain requesters expedited treatment under the Freedom of Information Act. Because the granting of a request for expedition necessarily works to the direct disadvantage of other FOIA requesters, the merits of such requests should be assessed carefully.

The FOIA requires that federal agencies determine whether to release requested records within 10 working days, but that period may be extended for an additional 10 working days whenever any of three statutorily defined "unusual circumstances" exist. 5 U.S.C. §552(a)(6)(B). Many agencies are often unable to meet these deadlines due to such factors as the number of requests received, the volume of records sought, decentralized recordkeeping procedures, and limitations on resources—often coupled with the need for a line-by-line review of sensitive documents. The U.S. Court of Appeals for the D.C. Circuit has recognized this problem and has specifically approved the equitable practice of handling requests on a "first-in, first-out" basis. See *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 614-16 (D.C. Cir. 1976), citing 5 U.S.C. §552(a)(6)(C).

At the same time, however, the D.C. Circuit in *Open America* recognized that some FOIA requests necessarily involve a far greater degree of urgency than others and that when a requester can show "exceptional need or urgency," his request should be processed out of turn. 547 F.2d at 616. The *Open America* decision did not specify any particular circumstance which might constitute "exceptional need or urgency," so decisions on whether to grant expedition have been left for agency FOIA officers to make on a case-by-case basis. Several years of administrative practice in this area, though, together with at least some specific judicial precedents, have served to develop the following guidelines and considerations.

Threat to Life or Safety

First, FOIA processing should be expedited whenever it is demonstrated that an individual's life or personal safety would be jeopardized by the failure to process a request immediately. Of the handful of court decisions to have ordered expedited processing, almost all have fallen into this category. See, e.g., *Exner v. FBI*, 443 F. Supp. 1349, 1353 (S.D. Cal. 1978) (plaintiff obtained expedited treatment after leak of information exposed her to harm by organized crime figures), *aff'd*, 612 F.2d 1202 (9th Cir. 1980); *Cleaver v. Kelley*, 427 F. Supp. 80, 81 (D.D.C. 1976) (plaintiff faced multiple criminal charges carrying possible death penalty in state court). At the administrative level, the Department of Justice has expedited a request to facilitate disclosure of medical information about a child's father vital to the child's emergency medical treatment. Another agency agreed to process immediately a request from the parents of a young woman believed to be facing a serious threat to her life in the custody of a cult. To be sure, FOIA requests involving substantiated "life-or-death" matters are rare, but no more

compelling justification can exist for special FOIA treatment.

Loss of Substantial Due Process Rights

As a general rule, a request also should be expedited if it is shown that substantial due process rights of the requester would be impaired by the failure to process immediately and that the information sought is not otherwise available. Indeed, the practices of many federal agencies reflect such concern for the due process rights of requesters. At the Justice Department's Drug Enforcement Administration, for example, the portion of a drug offender's file that is relevant to an upcoming parole hearing is routinely processed for release out of turn under the FOIA. Similarly, other agencies regularly expedite FOIA requests for information needed in contract award protests so that filing deadlines can be met.

It is not sufficient, however, for a requester merely to allege that requested records are "needed" in connection with some judicial or administrative proceeding; rather, the immediate use of the FOIA must be shown to be critical to the preservation of a substantial right. See *Rivera v. DEA*, 2 GDS ¶81,365 at 81,953 (D.D.C. 1981) ("A pending civil suit does not generally qualify a FOIA demand for expedited processing."). Indeed, in *Mitsubishi Electric Corp. v. Department of Justice*, 39 Ad. L. Rep. 2d (P&F) 1133, 1140-42 (D.D.C. 1976), the court pointedly refused to order expedited processing where a requester had not availed itself of existing civil discovery mechanisms for obtaining the records sought. In connection with criminal proceedings, weak "due process" claims have likewise been found inadequate. See, e.g., *Gonzalez v. DEA*, 2 GDS ¶81,016 at 81,069 (D.D.C. 1980) (use of FOIA as discovery tool to aid standard post-judgment attack on criminal conviction held insufficient); *Bubar v. United States Department of Justice*, 3 GDS ¶83,227 (D.D.C. 1981) (need for documents for preparation as witness in criminal trial held insufficient).

Other Considerations

Beyond these two narrow categories, it is unclear to what extent agencies have the discretion to grant requests for expedition under any other circumstances. Only one judicial decision has ventured beyond these categories—*Schacter v. IRS*, 3 GDS ¶182,515 at 83,302-03 (D.D.C. 1982), where a court somewhat perfunctorily ordered immediate disclosure of a record related to imminent action by Congress. Moreover, agencies should not forget the interests of all requesters in having their requests treated equitably, as well as the public interest in the integrity of FOIA processing. See *Mitsubishi Electric Corp. v. Department of Justice*, *supra*, 39 Ad. L. Rep. 2d (P&F) at 1142 (Expedited processing, "if granted, will adversely impact upon the conflicting interests of numerous individuals whose requests and appeals were filed [earlier]."). Because a decision to take a FOIA request out of turn necessarily entails further delay for other requesters waiting patiently in line, simple fairness demands that it be made only upon careful scrutiny of truly exceptional circumstances.



Department of Justice

ATTORNEY GENERAL RENO MOVES TO EXPEDITE EXCEPTIONAL FOIA REQUESTS

WASHINGTON, D.C. -- Attorney General Janet Reno said today that she has authorized a change in Justice Department procedures to expedite the handling of Freedom of Information Act requests in certain cases of extraordinary interest to the news media.

Current law permits only two exceptions to normal first-in, first out processing: when information is needed to prevent a threat to life or safety, or when a delay would result in the loss of substantial due process rights such as the chance to file a claim.

The Justice Department's Office of Information and Privacy began studying whether a third category could be added after the Attorney General in December and January inquired why it was taking so long to process FOIA requests for the U.S. Park Service and FBI reports on the death of Vincent Foster? The reports were completed in August.

Under the new procedure, approved on February 1, ¹⁹⁹⁴ FOIA requests can be moved to the head of the line whenever the Justice Department's Director of Public Affairs expressly finds two things:

- there exists widespread and exceptional media interest in the requested information; and
- expedited processing is warranted because the information sought involves possible questions about the government's integrity which affect public confidence.

A memorandum communicating the Attorney General's new policy said "The goal of such expedited processing is to permit the public to make a prompt and informed assessment of the propriety of the government's actions in exceptional cases." However, it also cautioned that in some situations, especially involving active law enforcement investigations, the law may still prevent immediate disclosure no matter how quickly the request is processed.

The policy was implemented by a directive to Justice Department FOIA and Privacy Act coordinators from Richard L. Huff and Daniel J. Metcalfe, Co-Directors of the Office of Information and Privacy. They were assisted by Peggy Irving.

#####

A handwritten signature, possibly "J. Reno", written in dark ink.

NANCY PELOSI
8TH DISTRICT, CALIFORNIA

2457 RAYBURN BUILDING
WASHINGTON, DC 20515-0508
(202) 225-4965

DISTRICT OFFICE:
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SAN FRANCISCO, CA 94102-3460
(415) 556-4862

Congress of the United States
House of Representatives
Washington, DC 20515-0508

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CONGRESSIONAL WORKING
GROUP ON CHINA, CHAIR

AT-LARGE WHIP

August 1, 1996

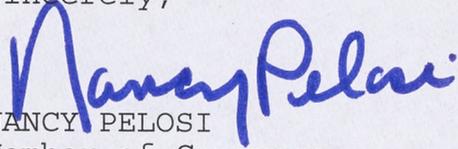
Mr. Robert L. Allen, Ph.D.
1034 Vallejo Street
San Francisco, CA 94133

Dear Dr. Allen:

Thank you for contacting my office on behalf of my constituent, Lee Brown. I will be pleased to initiate an inquiry with the Federal Bureau of Investigation to determine when copies of Mr. Brown's files can be released.

If you have any questions or wish to provide additional information, please do not hesitate to contact Norman Chesler of my district office staff at (415) 556-4862.

Sincerely,


NANCY PELOSI
Member of Congress

NP:npc

1034 Vallejo Street
San Francisco, CA 94133
July 30, 1996

Congresswoman Nancy Pelosi
450 Golden Gate Ave., 14th fl.
San Francisco, CA 94110

Attn: Michelle Grifka

Dear Congresswoman Pelosi:

I am writing to ask your assistance with regard to one of your constituents, Mr. Lee Brown, who resides at 810 Fulton Street. Mr. Brown, who is 75 years old, has a long history of involvement in the labor movement and progressive politics in San Francisco and New Orleans. For some time I have been helping him write his memoirs, which we hope to publish.

As part of our research, in January 1994 we submitted a Freedom of Information Act request to the FBI for any materials they might have regarding Mr. Brown. Subsequently, in March 1994 we received a reply from the FBI indicating that approximately 1,000 pages of documents were in their files. We requested that these files be processed for release and said that Mr. Brown would be willing to pay for having them copied.

We have still not received copies of these files. Every six months or so we write to the FBI inquiring about the status of our request, only to be told in a form letter that they have a great backlog of requests and will get to ours as soon as possible. Our request has been pending now for almost two and one-half years, and this seems an unusually long time to process it.

Is there anything your office can do to help expedite this request? Any help or advice you can offer would be greatly appreciated.

Thank you.

Sincerely,

Robert L. Allen, Ph.D.
(415) 771-0455

P.S. I have enclosed copies of our original request, the FBI's response, and their most recent response to our status inquiry.

OCT 03 1996

NR



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

September 26, 1996

Honorable Nancy Pelosi
Member of Congress
Federal Building
450 Golden Gate Avenue
San Francisco, California 94102-3460

Dear Congresswoman Pelosi:

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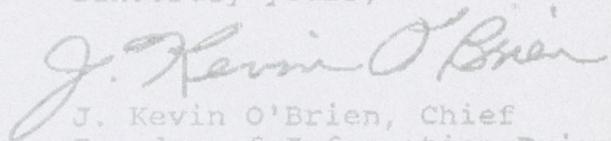
Honorable Nancy Pelosi

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J. Kevin O'Brien, Chief
Freedom of Information-Privacy
Acts Section
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U.S. Department of Justice
Office of Information and Privacy

FOIA UPDATE

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Other Considerations

Beyond these two narrow categories, it is unclear to what extent agencies have the discretion to grant requests for expedition under any other circumstances. Only one judicial decision has ventured beyond these categories—*Schacter v. IRS*, 3 GDS ¶82,515 at 83,302-03 (D.D.C. 1982), where a court somewhat perfunctorily ordered immediate disclosure of a record related to imminent action by Congress. Moreover, agencies should not forget the interests of all requesters in having their requests treated equitably, as well as the public interest in the integrity of FOIA processing. See *Mitsubishi Electric Corp. v. Department of Justice*, *supra*, 39 Ad.L. Rep.2d (P&F) at 1142 (Expedited processing, "if granted, will adversely impact upon the conflicting interests of numerous individuals whose requests and appeals were filed [earlier]."). Because a decision to take a FOIA request out of turn necessarily entails further delay for other requesters waiting patiently in line, simple fairness demands that it be made only upon careful scrutiny of truly exceptional circumstances.



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- there exists widespread and exceptional media interest in the requested information; and
- expedited processing is warranted because the information sought involves possible questions about the government's integrity which affect public confidence.

A memorandum communicating the Attorney General's new policy said "The goal of such expedited processing is to permit the public to make a prompt and informed assessment of the propriety of the government's actions in exceptional cases." However, it also cautioned that in some situations, especially involving active law enforcement investigations, the law may still prevent immediate disclosure no matter how quickly the request is processed.

The policy was implemented by a directive to Justice Department FOIA and Privacy Act coordinators from Richard L. Huff and Daniel J. Metcalfe, Co-Directors of the Office of Information and Privacy. They were assisted by Peggy Irving.

1034 Vallejo Street
San Francisco, CA 94133
July 30, 1996

Congresswoman Nancy Pelosi
450 Golden Gate Ave., 14th flr.
San Francisco, CA 94110

Attn: Michelle Grifka

Dear Congresswoman Pelosi:

I am writing to ask your assistance with regard to one of your constituents, Mr. Lee Brown, who resides at 810 Fulton Street. Mr. Brown, who is 75 years old, has a long history of involvement in the labor movement and progressive politics in San Francisco and New Orleans. For some time I have been helping him write his memoirs, which we hope to publish.

As part of our research, in January 1994 we submitted a Freedom of Information Act request to the FBI for any materials they might have regarding Mr. Brown. Subsequently, in March 1994 we received a reply from the FBI indicating that approximately 1,000 pages of documents were in their files. We requested that these files be processed for release and said that Mr. Brown would be willing to pay for having them copied.

We have still not received copies of these files. Every six months or so we write to the FBI inquiring about the status of our request, only to be told in a form letter that they have a great backlog of requests and will get to ours as soon as possible. Our request has been pending now for almost two and one-half years, and this seems an unusually long time to process it.

Is there anything your office can do to help expedite this request? Any help or advice you can offer would be greatly appreciated.

Thank you.

Sincerely,

Robert L. Allen, Ph.D.
(415) 771-0455

P.S. I have enclosed copies of our original request, the FBI's response, and their most recent response to our status inquiry.

PHONE CALL

FOR RA DATE 9/25 TIME 9 A.M.
~~P.M.~~

M Norman CHESLER

OF _____

PHONED

PHONE

415) 556-4862 FEDM 8-4:30 K

RETURNED
YOUR CALL

AREA CODE NUMBER EXTENSION

MESSAGE

Collingswood of FBI, in WA,
hasnt responded, Will call him
after you two talk.

PLEASE CALL

WILL CALL
AGAIN

CAME TO
SEE YOU

WANTS TO
SEE YOU

SIGNED

SS

TOPS



FORM 4003

9/25 Chesley
Contacted FBI
Congressional Affairs
Dept. and he
faxed stuff
to me today

Nancy Valeri
had sent letter
to FBI on 8/14
but got no
response

NOTES

9/23/24

(415) 556-4862

Spoke with Michelle Gilke

She said their staff member
Norman Chester sent inquiry
to FBI on Aug 1. Apparently
no response yet - will ask
Chester to call me tomorrow

Find Russ

Find him file with
closed

Y56 Oldrow Gate

SF

9/10/24

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San Francisco, CA 94133
July 30, 1996

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450 Golden Gate Ave., 14th flr.
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