

FBI agent in charge of McVeigh case says he knew of withheld evidence in January

by Todd Bensman and Michelle Mittelstadt
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DALLAS-The Dallas FBI special agent at the center of the controversy over belatedly produced Oklahoma City bombing investigation documents acknowledged Thursday that he first learned in January of the possibility that evidence had been withheld from Timothy McVeigh's legal team.

Special Agent Danny Defenbaugh, who headed the Oklahoma City investigation, said through a spokeswoman that the Oklahoma City FBI office notified him on Jan. 29 that it had uncovered a set of investigative notes that might not have been shared with McVeigh's lawyers.

That discovery triggered a bureau-wide request to produce every document related to the case, ultimately resulting in 100 boxes of material being shipped to Oklahoma City, where the archivist compared the evidence against computerized files to see if it had been passed on to the McVeigh defense team.

The FBI acknowledged last week that more than 3,100 pages were not turned over to lawyers in violation of an evidence-sharing agreement struck by prosecutors and McVeigh's attorneys before his 1997 trial.

That mishandling of evidence led Attorney General John Ashcroft to step in last week and grant McVeigh a 30-day stay of execution, which he rescheduled for June 11. The attorney general also ordered a Justice Department inspector general investigation of how the document debacle occurred and whether error or wrongdoing was at play.

Defenbaugh, who has been in Washington briefing FBI and congressional officials about the mixup, said he received the 100 boxes of material in mid-April or slightly thereafter-but did not share word of the possible problem with bureau higher-ups until days before McVeigh's scheduled execution.

A spokeswoman for Defenbaugh, Special Agent Lori Bailey, said Thursday that her boss did not notify higher officials initially because it was unclear what the documents were and whether they were required to be shared.

The timing is at odds with the chronology laid out Wednesday by FBI Director Louis Freeh, who told Congress that Defenbaugh received the materials May 7 and notified bureau higher-ups and federal prosecutors the following day.

FBI Deputy Director John Collingwood said Thursday night that Freeh's description of the timing was the accurate one.

"FBI Director Freeh testified in an open session before a House committee and outlined the sequence of events involving discovery of the documents in question and who knew what when. And we believe that's an accurate depiction of precisely what occurred," Collingwood said in an interview.

In an interview with The Dallas Morning News last week, Agent Defenbaugh defended his decision not to disclose the material to his superiors while the clock was ticking on the McVeigh execution until he could analyze the records.

"I did nothing wrong," he told the newspaper.

Forty-six of the FBI's 56 field offices belatedly produced Oklahoma City bombing documents despite 16 previous requests to send everything to the archivist in Oklahoma City.

Asked whether anyone will be held accountable for bungling the instructions, an FBI official speaking on condition of anonymity said: "We will await the inspector general's inquiry before reaching any conclusions. We'll take action as appropriate."

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