

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GARY SHAW, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 80-1056  
 )  
 DEPARTMENT OF STATE, et al., )  
 )  
 Defendants. )

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AFFIDAVIT

JOHN E. BACON, being first duly sworn, does hereby  
depose and say:

1. I am the Information and Privacy Coordinator of the  
Central Intelligence Agency (CIA) and am responsible to  
insure that all appropriate records systems of the CIA are  
searched in response to requests under the Freedom of Infor-  
mation Act (FOIA) and Privacy Act. I have served as Chief of  
the Information and Privacy Division since June 1980 and have  
held executive positions with the CIA since 1966. The  
statements made herein are based upon my personal knowledge,  
upon information made available to me in my official capacity  
and upon conclusions reached in accordance therewith.

2. By letter dated 22 February 1978 (CIA Exhibit A),  
plaintiff requested CIA records concerning "one Jean  
Souetre aka Michal Roux aka Michal Hertz." By letter dated  
10 March 1978 (CIA Exhibit B), the CIA acknowledged receipt  
of plaintiff's FOIA request and requested a commitment to  
pay the processing fees. By letter dated 13 March 1978  
(CIA Exhibit C), plaintiff agreed to pay all reasonable  
fees. By letter dated 4 April 1978 (CIA Exhibit D),

plaintiff made an administrative appeal on the passage of the statutory deadline. A series of additional letters followed in which the Agency explained the processing backlog in handling its FOIA responsibilities. Plaintiff filed his Complaint in the above-styled litigation in May of 1980.

3. By letter dated 23 April 1979 (CIA Exhibit E), plaintiff requested CIA records on "Thomas Eli Davis, Jr. III." By letter dated 7 May 1979 (CIA Exhibit F), plaintiff's request was acknowledged, and he was advised of CIA's working backlog in FOIA requests. By letter dated 19 March 1980 (CIA Exhibit G), plaintiff's counsel appealed the constructive denials on all of plaintiff's requests as a consequence of the passage of the statutory deadlines. By letter dated 27 March 1980 (CIA Exhibit H), CIA acknowledged plaintiff's appeals.

4. By letter dated 8 May 1979 (CIA Exhibit I), plaintiff requested CIA records concerning "Michael Victor Mertz and Christian David." By letter dated 14 June 1979 (CIA Exhibit J), CIA acknowledged plaintiff's request and requested a commitment regarding search fees. By letter dated 18 June 1979 (CIA Exhibit K), plaintiff made a good faith deposit against estimated search costs. By letter dated 28 June 1979 (CIA Exhibit L), plaintiff's deposit was acknowledged, and he was alerted to the CIA's working backlog of FOIA requests. By letter dated 19 March 1980 (CIA Exhibit G), plaintiff's counsel appealed the constructive denial on all of plaintiff's FOIA requests as

a consequence of the passage of the statutory deadlines. By letter dated 27 March 1980 (CIA Exhibit H), CIA acknowledged plaintiff's appeals.

5. By letter dated 31 August 1979 (CIA Exhibit M), plaintiff requested a copy of a photograph of "Captain SOUETRE." By letter dated 12 September 1979 (CIA Exhibit N), CIA acknowledged the request. By letter dated 19 March 1980 (CIA Exhibit G), plaintiff's counsel appealed the constructive denial on all of plaintiff's FOIA requests as a consequence of the passage of the statutory deadlines. By letter dated 27 March 1980 (CIA Exhibit H), CIA acknowledged plaintiff's appeals.

6. When the requests were received in the Information and Privacy Division, which is the initial reception point for all such requests received by the CIA, a determination was made as to what components of the Agency might logically possess records which might be responsive to the plaintiff's request. Copies of the plaintiff's requesting letters were then forwarded to each such component with instructions that a search be made for any responsive documents. The request described in paragraph 5 above was handled as a part of the request described in paragraph 2 above since it concerned the same individual and would be among the records being searched if it had been filed. As it turned out, no such photograph was located.

7. In response to the searches conducted for plaintiff's FOIA request, a total of 207 CIA records were retrieved. The disposition of all of the CIA records retrieved is dealt with in the accompanying affidavit of Gerald L. Liebenau. In addition to the CIA-originated records, there were records originated with other United States Government agencies. Those documents have been referred to the originating agencies for a declassification review for possible release to the plaintiff. Those agencies will deal directly with the plaintiff on those records. The volume of records referred to other agencies is as follows: State Department - 32 documents; Drug Enforcement Agency - 12 documents; and Customs Service - 6 documents.

8. The nature and design of CIA records systems, like any other organization's records systems, are determined by the nature of the organization's activities and responsibilities. Documents are generally retrievable as a consequence of being in a file which contains a collection of documents on the same subject, and the subject is indexed in a system which alerts a searcher to the existence and location of the file, or the document is individually indexed in a system which alerts a searcher to the existence and location of the document. In instances in which information is stored in a manner other than on paper, the same general concept applies with respect to being able to retrieve the information; the information must be indexed in a manner which alerts the searcher to its existence and location. The

manner in which CIA indexes information for storage and retrieval purposes varies with the nature of the intelligence activity the records are intended to support. The nature of what can be retrieved from a given records system is determined by what information has been stored in the system and how the system is designed for retrieval purposes.

9. CIA records systems are varied. The records storage, processing and retrieval systems are designed and programmed to respond to the intelligence responsibilities and problems of the component employing the system. Since the intelligence responsibilities of the various components differ, the records systems differ. Many such systems are unique to the intelligence activity they are a part of and to which they serve. Some records systems are such an integral part of the associated intelligence activity that the records systems necessarily bear the same classification as the intelligence activity. Discussing such records systems in any substantive or programmatic detail would be tantamount to a discussion of the classified intelligence activity involved. Most of the records systems searched in response to the FOIA request in this litigation are classified, and a detailed discussion would entail the disclosure of classified information as well as information revealing intelligence sources and methods. Despite the limitation this imposes, some assurances are possible.

10. In each component, FOIA searches are routinely made among all the indices that might logically relate to the substance of the FOIA request. The techniques used in the search are the same used for any search request;

whether the request originates with the National Security Council, the Director of Central Intelligence, an intelligence analyst or an FOIA requester seeking information from a CIA records system. First, all available indices are reviewed to discover references to possibly responsive records. Any possibly responsive records are then retrieved and reviewed. Records that are determined to be responsive to the request are then reviewed to determine their releasability. This last step is the first action that distinguishes an FOIA search from most other searches of CIA records, since the documents must be reviewed to determine what, if any, material is exempt from release pursuant to provisions of the FOIA.

11. CIA's records systems are not only diverse; they are also decentralized. They are designed and managed by the components whose activities the records systems are designed to service. These decentralized records systems are intended to provide a compartmentation of the various systems which restrict access to those records and enhances their physical security. In the search process, this means that the searches are done by the component which is the custodian of the particular records systems.

12. As a consequence of the decentralized records systems and the resulting multitude of searches, a great deal of coordination between components is necessary to identify and eliminate extra copies of the same document. Normally, retrieved documents are referred to the originating component or its successor for review of releasability, regardless of

where or in what records system the record is found. The principal reason for this practice is that the most common problem to be resolved in releasing CIA documents relates to the responsibility to protect intelligence sources and methods from unauthorized disclosure. The component originating the record or the successor component is usually responsible for the conduct of the intelligence activity which produced the information in the record. That component is thus ultimately responsible for the security of the activity. The component is also uniquely knowledgeable of what kind of disclosures would put the source or method in jeopardy and, thus, best qualified to determine the releasability of the record.

13. The major components of the CIA whose records systems were searched in response to plaintiff's FOIA requests were the National Foreign Assessment Center, the Office of Security, the Office of Personnel, Policy, Planning and Management and the Directorate of Operations. I did not personally make the searches in the records systems of these components and, in fact, because of the security compartmentation of the various records systems in the Agency, I could not. I am, however, familiar enough with the records systems and the search procedures used to be satisfied that all logical systems were searched and that the search methods would have surfaced all reasonably responsive documents. There may be some responsive documents that have not been retrieved, but if there are, it is because they were not indexed to be retrieved in the terms set forth in plaintiff's

