

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J. Gary Shaw,
Plaintiff,
v.
Federal Bureau of Investigation,
Defendant.

Civil Action NO. 82-0755

DECLARATION OF JOHN N. PHILLIPS

I, John N. Phillips make the following declaration:

(1) I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Freedom of Information-Privacy Acts (FOIPA) Section, Records Management Division (RMD), FBI Headquarters (FBIHQ), Washington, D. C. Due to the nature of my official duties, I am familiar with the procedures followed in processing Freedom of Information Act (FOIA) requests received by the FBI, including plaintiff's request for records concerning the assassination of President John F. Kennedy (JFK assassination).

(2) The purpose of this declaration is to address the procedures used to search for the records responsive to plaintiff's FOIA request.

(3) The following are items of correspondence with plaintiff pertaining to this FOIA request:

(A) By plaintiff's letter dated May 13, 1980, plaintiff requested a copy of six photographs mentioned in a Central Intelligence Agency (CIA) document attached to plaintiff's request letter. (A copy of this letter is attached hereto as Exhibit A.)

(B) By FBIHQ letter dated May 23, 1980, receipt of plaintiff's request was acknowledged. Plaintiff was further advised that a search of the FBI's indices would be made. (A copy of this letter is attached hereto as Exhibit B).

(C) By FBIHQ letter dated June 18, 1980, plaintiff was advised that based upon the information provided, a search of

our central indices could not be made. Plaintiff was requested to provide the FBI with any further information available concerning these photographs. (A copy of this letter is attached hereto as Exhibit C.)

(D) By plaintiff's letter dated June 25, 1980, plaintiff advised FBIHQ that he was unable to provide further information and asked the FBI to query the CIA regarding his request. (A copy of this letter is attached hereto as Exhibit D.)

(E) By FBIHQ letter dated July 9, 1980, plaintiff was advised that the FBI was still unable to determine if the photographs were in FBI files. Plaintiff was further advised that he should contact the CIA directly since it appeared that the photographs would be the property of the CIA. (A copy of this letter is attached hereto as Exhibit E.)

(F) By plaintiff's letter dated July 15, 1980, to the Department of Justice (DOJ), plaintiff appealed the decision of the FBI that the photographs could not be located. (A copy of this letter is attached hereto as Exhibit F.)

(G) By DOJ letter dated August 5, 1980, the DOJ acknowledged receipt of plaintiff's appeal. (A copy of this letter is attached hereto as Exhibit G.)

(H) By DOJ letter dated August 18, 1980, plaintiff was advised that the DOJ was affirming the initial action of the FBI. Plaintiff was further advised that he should contact the CIA concerning his request. (A copy of this letter is attached hereto as Exhibit H.)

(4) Explanation of the FBI's Central Records System and General Indices:

Access to the FBI Central Records System is afforded by the general indices, arranged in alphabetical order, consisting of index cards on various subject matters, including names of individuals. The decision to index is made by the investigative

Agent and the supervising Agent, except for the names of subject(s), suspect(s) or victim(s) carried in the case caption, which are automatically indexed. The Central Records System contains administrative, applicant, personnel, general and investigative files compiled for law enforcement purposes. The records system consists of a numerical sequence for classifying of files broken down according to subject matter. The subject matter of a file may relate to an individual, organization, company, publication, activity or foreign intelligence matter. The index cards in the general indices fall into two categories: "main" index cards and "see" index cards (i.e., cross references). A "main" index card carries the name of an individual, organization, activity, etc., which is the subject of a file contained in the records system. A "see" index card bears the name of an individual, organization, activity, etc., other than the main subject, which name is incidentally referenced to a portion of a document maintained in the system. Generally, "see" references are only a mention or reference to that individual or organization contained in a document (or in a portion of a document) located in the main file of another individual or organization.

"See" references may contain insufficient background or other identifying information by which a positive identification can be made with a given name. In many instances, receipt of specific additional identifying information from an FOIPA requester can assist in making a positive identification. Futhermore, it should be noted that the FBI indexes neither all names of individuals contacted or mentioned nor all information received during an investigation. Only names and information considered pertinent, relevant and necessary for future retrieval are indexed. Only that portion of a document pertaining to names or information indexed is considered to be the "see" reference.

(5) Indices and Records System Search for Records
Responsive to Plaintiff's Request

A search of the FBI's Central Indices could not be conducted based upon the limited information provided by plaintiff. However, an employee who is familiar with the files of the JFK assassination looked at known CIA photographs in the FBIHQ, Dallas Field Office and New Orleans Field Office files pertaining to the assassination, in an attempt to locate the photographs requested by plaintiff. The FBI was unable to determine if these photographs were the ones being requested by the plaintiff. The FBI also attempted to locate the photographs in specific places suggested by counsel for plaintiff. The photographs which were located and reviewed are the same ones that were previously provided to the plaintiff by the CIA in Shaw v. Central Intelligence Agency, No. 82-0757 (D.D.C. filed March 16, 1982).

(6) To do any further searching for photographs requested by the plaintiff would be unreasonably burdensome in that it would require a page-by-page hand search of the entire JFK assassination files from FBIHQ, Dallas Field Office and New Orleans Field Office.

It is estimated that this search would require approximately 720 man-hours to complete with no guarantee that the photographs requested could be located. It would be necessary, therefore, to charge search fees, as provided in Title 28, Code of Federal Regulations, Section 16.9, of \$2.00 per quarter hour in excess of the first quarter hour to do this search for a total cost of \$5,758. In addition, even if the photographs were located as a result of this search they would probably have to be referred to the CIA prior to any release. As plaintiff has already been advised, the photographs appear to have originated with the CIA.

I have read the foregoing statement consisting of five pages and fully understand its contents. I declare under penalty of perjury that the statement is true and correct.

Dated, this 16 day of August, 1982.

John N. Phillips
John N. Phillips
Special Agent
Federal Bureau of Investigation
Washington, D. C.

J. GARY SHAW & ASSOCIATES, ARCHITECT

May 13, 1980

United States Department of Justice
Federal Bureau of Investigation
Washington, D. C. 20535

Attn: F.O.I. Branch

Re: Files of the Kennedy assassination

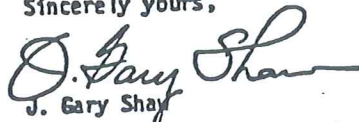
Dear Sir:

In a F.O.I.A. review of June 1976, the Central Intelligence Agency made available to the public document # 555-804. Page Five of this document (copy attached) says "...F.B.I. is bringing to Dallas two copies of six photographs of six persons one of which could be Oswald."

Under the provisions of the Freedom of Information Act please furnish me with a copy of each of the six photographs of the six people as well as the identity of the people if their identity was ever determined.

Please be assured of my firm commitment to pay any and all cost involved.

Sincerely yours,


J. Gary Shaw

Attachment

JGS/kw

CIVIL ACTION NO. 82-0755
Exhibit A

66896.

FBI is bringing to Dallas two copies of six photographs of six persons
one of which could be Oswald. These are people who were seen
in Mexico City.



UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

MAY 23 1980

Request No. 98,306

Mr. J. Gary Shaw
Post Office Box 722
Cleburne, Texas 76031

Re: J.F.K. Assassination-
Six Photographs

Dear Requester:

This is to acknowledge receipt by FBI Headquarters of your recent Freedom of Information-Privacy Acts (FOIPA) request and to advise you of our determination to comply with your request pursuant to Title 5, United States Code, Section 552 (a)(6)(A)(i) and other applicable Federal statutes and regulations. Additional information, if needed by us in this matter, will be requested of you by separate letter.

A search of the indices to our records will be made in an effort to determine if we have the information you seek. If the search fails to indicate the existence of any record(s) pertaining to the subject matter of your request, you will be notified. In the event the search reveals the existence of any record(s) which may be responsive to your request, it will be retrieved and processed pursuant to the provisions of the FOIPA at the earliest possible date.

Your request has been assigned the number indicated above, which you are requested to use in any further correspondence with this Bureau in this matter.

Sincerely yours,

David G. Flinders
DAVID G. FLINDERS
Chief
Freedom of Information-
Privacy Acts Branch
Records Management Division

RECEIVED
MAY 30 1980
J. GARY SHAW, ARCH.

JUN 18 1980

Mr. J. Gary Shaw
Post Office Box 722
Cleburne, Texas 76031

Dear Mr. Shaw:

This is in further response to your Freedom of Information Act (FOIA) request dated May 13, 1980, number 98,306, for copies of photographs of six people.

We are unable to conduct a search of our central indices based upon the limited information you provided. If you will provide us with any further information regarding these photographs which you may have we will conduct a search of our records.

Please be advised that if we do not hear from you within 60 days this request will be considered abandoned.

Sincerely yours,

~~DAVID G. FLANDERS~~
David G. Flanders, Chief
Freedom of Information-
Privacy Acts Branch
Records Management Division

J. GARY SHAW & ASSOCIATES ARCHITECT

June 25, 1980

United States Department of Justice
Federal Bureau of Investigation
Washington, D. C. 20535

Attn: David G. Flanders

RE: F.O.I. request # 98,306
JFK Assassination - six photographs

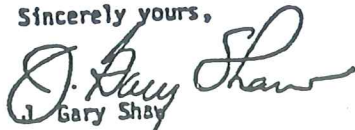
Dear Mr. Flanders:

Thank you for your letter dated June 18, 1980 regarding my Freedom of Information request for copies of photographs of six people.

You stated that a search of your central indices could not be conducted with the limited information provided. Unfortunately, my information is limited to the CIA document which was attached to my letter of request (attached is another copy of that document). As can be noted, the document has been sanitized so that any information of possible assistance in locating the photographs has been deleted. Please, on my behalf, query the Central Intelligence Agency as to these deletions. It is obvious from the document that the photographs would be a subject of memorandum both to the CIA and your agency.

Thank you for your continued patience.

Sincerely yours,


J. Gary Shaw

Enclosure

JGS/kw

CIVIL ACTION NO. 82-0755
Exhibit D

66896

FBI is bringing to Dallas two copies of six photographs of six persons
one of which could be Oswald. These are people who were seen
in Mexico City.

JUL 5 1980

Mr. J. Gary Shaw
Post Office Box 722
Cleburne, Texas 76031

Dear Mr. Shaw:

This is in response to your letter dated June 25, 1980, concerning your Freedom of Information Act request for photographs of six individuals.

We are still unable to determine if the photographs you requested are contained in our files. However, inasmuch as it appears these photographs are the property of the Central Intelligence Agency (CIA) we would have no authority to release them to you. Therefore, it is suggested you contact CIA directly concerning your request.

Sincerely yours,

~~DAVID G. FLANDERS~~

David G. Flanders, Chief
Freedom of Information-
Privacy Acts Branch
Records Management Division

J. GARY SHAW & ASSOCIATES, ARCHITECT

July 15, 1980

United States Department of Justice
Office of the Associate Attorney General
Washington, D. C. 20530

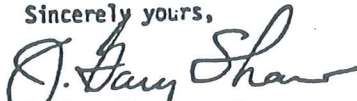
Re: F.B.I. F.O.I.A. Request # 98,306
JFK Assassination - Six photographs

Dear Sirs:

On May 3 of this year (see attached letter) I made request from the Federal Bureau of Investigation for copies of photographs pertaining to the President Kennedy assassination. I was informed by the Bureau that they were unable to determine the existence of the photographs in their files (see attached letters dated June 18, 1980 and July 9, 1980). In the Bureau's last correspondence they stated that the photographs appear to be the property of the Central Intelligence Agency but gave no basis for their determination.

I hereby respectfully appeal this determination and request that a further search be conducted as to the existence, identity and location of these photographs.

Sincerely yours,


J. Gary Shaw

JGS/kw

Attachments

CIVIL ACTION NO. 82-0755
Exhibit F



U.S. Department of Justice
Office of the Associate Attorney General

Washington, D.C. 20530

AUG 5 1980

Mr. J. Gary Shaw
Post Office Box 722
105 Poindexter
Cleburne, Texas 76031

Re: President Kennedy Assassination

Dear Mr. Shaw:

This is to advise you that your administrative appeal to the Associate Attorney General from the action by the Federal Bureau of Investigation on your request for information from the files of the Department of Justice was received by this Office on July 21, 1980.

This Office has a substantial backlog of pending appeals received prior to yours and a shortage of attorneys. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals to Office attorneys in the approximate order of receipt. Your appeal has been assigned number 80-1458. Please mention this number in any future correspondence with this Office concerning this specific appeal.

We will notify you of the decision of the Associate Attorney General on your appeal as soon as we can. The necessity of this delay is regretted and your continuing courtesy is appreciated.

Sincerely,

Janice Adams
Administrative Staff Assistant
Office of Privacy and Information
Appeals



U.S. Department of Justice
Office of the Associate Attorney General

Washington, D.C. 20530

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Mr. J. Gary Shaw
Post Office Box 722
105 Poindexter
Cleburne, Texas 76031

Re: Appeal No. 80-1458
QJS:PLH

Dear Mr. Shaw:

You appealed from the action of the Federal Bureau of Investigation on your request for access to certain photographs pertaining to the John F. Kennedy assassination.

After careful consideration of your appeal, I have decided to affirm the initial action in this case. The F.B.I. properly refused to conduct a search for the photographs you seek on the grounds that you had not provided a reasonable description of them. 5 U.S.C. 552(a)(3). Without names of the subjects or the photographer and/or other identifying information, it would be impossible positively to identify the pictures as the ones requested by you, even if they were in fact located during a search. For your information, the Bureau has located no relevant information other than that provided by you in the attachment to your request letter. That record appears to suggest that the photographs you seek might possibly have originated with the Central Intelligence Agency. If you wish to pursue this matter, I can only suggest you write directly to the C.I.A.

Judicial review of my action on this appeal is available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, or in the District where the photographs you seek, if they exist, are located.

Sincerely,

John H. Shenefield
Associate Attorney General

By:
Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

RJM

11 SEP 1981

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

~~Green~~
Greene
dilig
FILED 4-81
AUG 27 1981
CLERK U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

JAMES A. DEVINE,
Plaintiff,

v.

CIVIL ACTION 81-0343-A

JOHN MARSH, Secretary of the
Army, et al.,
Defendants.

MEMORANDUM OPINION AND ORDER

This lawsuit brought pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, is before the Court on cross-motions for summary judgment. The plaintiff seeks a quantum of information relating to the solicitation, processing, and selection processes for the position of Staff Assistant on the Army Clemency Board. The plaintiff is currently a civilian employee of the Department of the Army.

Plaintiff's FOIA request sought "all material concerning the position of Staff Assistant Army Clemency Board, Announcement No. VA 80-355."

Initially, plaintiff was provided with four administrative documents relating to his request. He appealed; again citing an unparticularized request for more documents.

Subsequent to filing his appeal, the plaintiff filed a grievance regarding the selection process employed to select a candidate for the Staff Assistant position. The defendants, upon noting the grievance, broadened the search being made pursuant to plaintiff's FOIA request as they now knew something about his need for the materials.

More documents were then released. The plaintiff, an unsuc-



145-4-3999
J.P.

CIVIL ACTION NO. 82-0755
ATTACHMENT A

cessful and vexated applicant, then demanded release of the Standard Forms 52 and 172 relating to the successful applicant. These documents were then released along with a Vaughn index, together with some 26 documents released up to that time.

On July 20, 1981, the plaintiff informed the defendants other application material for the selectee appeared to be missing. Another search ensued and four additional documents were found and released.

To date, the entire 130 page file relating to the Army job, together with application material and other related documents found to be relocated in other files within the defendants' office have been released to the plaintiff with the Government's exemptions identified and justified.

During oral arguments the plaintiff was queried by the Court as to which document(s) he wanted that had not, therefore, been provided. Plaintiff indicated that he sought the selectee's standard qualifications form 171 because he only had the selectee's form 172 (the supplement or update to form 171). The Government indicated that the form 171 was not among those forms reviewed by the hiring committee.

The plaintiff asserts in his brief that: "A citizen should be able to make a brief and simple request to the government to make full disclosure or openly assert its reasons for the non-disclosure." This Court agrees; however, the Government should only be obligated to provide a requester with that relevant information discovered in its files as the result of a good-faith search based upon the information (including need, purpose, and particularized documents) provided by the requesting citizen.

Satisfying this plaintiff's request, to his standards, would require either an agency FOIA staff with clairvoyant capabilities (as to the needs of the individual requester) or an FOIA staff

willing to undertake a virtual advocacy position on behalf of the requester, spending countless numbers of personnel hours seeking needles in bureaucratic haystacks.

The Court finds that the Government has made a diligent and good-faith effort to retrieve those documents relevant to plaintiff's request.

Moreover, the plaintiff seeks personnel files. Those files lie within the umbrella of the exemption of (b) (6) of the Act, particularly when the information sought has information relating to a specific person or individual. Accord, Robles v. E.P.A., 484 F.2d 843, 845 (4th Cir. 1973).

Plaintiff's reliance upon Kurzon v. Department of Health and Human Services¹ is, in the case at bar, misplaced. In Kurzon, the Court found that federal grant applicants' files for scientific research could be released under an FOIA request. The Court noted, however, that:

[Federal grant applicants could not reasonably expect that their efforts to secure government funds, especially in a field so much in the public eye as cancer research, will remain purely private matters. There is an obvious public element to the process...."]

See 649 F.2d at 69.

Moreover, the Kurzon Court correctly observed that the federal grant applications were not "personnel" files; a classification requiring, in most cases, closer scrutiny.

For the reasons set forth above, the Court finds that plaintiff's request to the agency has been satisfied to the extent required by the FOIA. The request was ambiguous but a diligent effort was put forth to meet the requester's demands.

Plaintiff's motion for summary judgment is DENIED, and defendants' motion for summary judgment is hereby GRANTED.

IT IS SO ORDERED.

Should the plaintiff be advised to appeal this Order, written notice thereof must be received by the Clerk of this

L. 649 F.2d 65 (1st Cir. 1981).

Court within thirty (30) days from the date of this Order.

The Clerk is directed to forward a copy of this Order to the plaintiff (pro se) and the United States Attorney for this District.

August 27, 1981.



Senior United States District Judge

A True Copy, Teste:
W. Farley Powers, Jr., Clerk

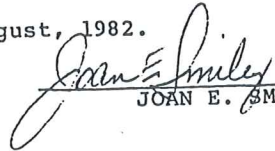
By Roxanne Cousin
Deputy Clerk

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Defendant's Motion To Dismiss -- with accompanying declaration, memorandum of points and authorities, exhibits, attachment and proposed order -- was served upon plaintiff by deposit of a copy thereof in the United States mail, postage prepaid, first class mail, addressed to:

James H. Lesar, Esq.
Fensterwald & Associates
1000 Wilson Boulevard
Suite 900
Arlington, Virginia 22209

on this 19th day of August, 1982.



JOAN E. SMILEY