

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J. GARY SHAW, ET AL.,)
)
 Plaintiffs,)
)
 v.)
)
 CENTRAL INTELLIGENCE AGENCY,)
)
 Defendant.)

Civil Action Nos. 82-1667
82-1832
82-1833
82-2681

FILED

OCT 27 1982

MEMORANDUM AND ORDER

JAMES F. DAVEY, Clerk

At an earlier status conference in these FOIA cases, which is recorded in the Court's Order of October 7, 1982, it appeared that the remaining obstacle for further progress in these matters^{1/} was the resolution of plaintiffs' motion requesting a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A).^{2/} Briefs have now been filed and exchanged on this issue and the Court took testimony and heard argument on October 20, 1982.

Plaintiffs ask that search and copying fees be waived on the ground their FOIA requests meet the criteria for waiver established by the Agency's applicable regulation found at 32 C.F.R. § 1900.25(a). Plaintiffs belong to a group of doctors, architects, lawyers, and others committed

^{1/} Plaintiffs made general objections to the Agency's proper insistence that plaintiffs obtain privacy waivers or proof of death before data relating to some individuals covered by the search can be released. Since the whereabouts of some of these persons is unknown and formal proof of death may be impossible to obtain, the parties have been urged to work out reasonable methods for meeting Privacy Act restraints and have agreed to do so. If a concrete, specific dispute as to a particular request arises on this issue, it can be brought before the Court at that time.

^{2/} This section reads as follows:

In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

largely through their own private means to further the study of conspiracy theories that have been advanced concerning President Kennedy's assassination. Their interest is not commercial. They urge that their inquiries will primarily benefit the public interest.

Waiver of fees has been denied by the Agency's Information and Privacy Coordinator on grounds explicated by his affidavit and further elucidated by his testimony. There are two main reasons for denial. First, these 31 requests, which are but a portion of the 81 requests made by plaintiffs of the CIA at about the same time for the same purpose, explore many areas that have already been exhaustively examined as indicated by the public records of the Warren Commission, the Rockefeller Commission, and more recently of the House Select Committee on Assassinations. Second, the search requests are so broadly framed as to subject matter and the period of time covered that they necessarily will sweep into the search much material that cannot possibly relate to the assassination. Given these considerations, the appropriate officer of the CIA in his discretion denied a waiver but with a significant caveat. He ruled that the Agency is prepared to reconsider the denial of search and copying fees on any one of the plaintiffs' requests, if, on the basis of documents retrieved, the Agency concludes, independently or with the assistance of the plaintiffs, that release of the documents would benefit the general public.

The plaintiffs failed to show that that determination was arbitrary or capricious. While the sincerity of plaintiffs is not questioned they are testing novel and tenuous theories, and the possibility of significant benefit to the public interest is remote. Events or circumstances reflecting any possible nexus between most of the individuals and organizations mentioned in the requests and Kennedy's assassination been fully and often repeatedly explored and the information is already public. The Agency has responded fully to all prior official inquiries by

disclosing classified and unclassified material, and has processed many other requests made by the plaintiffs. There is clearly merit in the position taken by the Agency in this instance.

As to the amount of the fees, two categories of charges are involved: copy costs and search costs. The CIA charges ten cents per page for copying and the parties are agreed that plaintiffs will be charged no more than \$250 for copy costs per request, if copy costs are not waived. The search charges, estimated at \$90 per request -- an amount fixed at the average experienced by the Agency in handling comparable requests -- is disputed. Because plaintiffs suggested that the search charges are unreasonable and are being used to block disclosure, the Court explored the basis of the search charges which reflect hourly rates of clerical help and computer operators and return of amortized or rental costs of equipment. There is no reason to question the reasonableness of those charges. Copy costs of ten cents per page also are reasonable and consistent with current rates charged by other agencies. The enormous cost of processing the documents after the search will, of course, be born by the government.

The motion for waiver of search fees is denied.

SO ORDERED.


UNITED STATES DISTRICT JUDGE

October 27, 1982.