

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

J. GARY SHAW )  
P.O. Box 722 )  
Cleburne, Texas 76031, )  
) )  
and ) )  
) )  
MARK ALLEN )  
607 N. Carolina Avenue, S.E. )  
Washington, D.C. 20003, )  
) )  
Plaintiffs, )  
) )  
v. )  
) )  
DEPARTMENT OF STATE )  
Washington, D.C. 20530, )  
) )  
) )  
Defendant. )  
) )  
\_\_\_\_\_ )

Civil Action No. 82-1739  
Parker  
6/22/82

COMPLAINT  
For Declaratory and Injunctive Relief

1. This case is brought under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the Administrative Procedure Act, 5 U.S.C. 301 and 701-706, to require defendant to permit access to certain records in its possession and under its control.
2. This Court has jurisdiction over this cause of action pursuant to 5 U.S.C. 552(a)(4)(B) and 5 U.S.C. 702.
3. Plaintiff J. Gary Shaw is an individual residing in Cleburne, Texas; and plaintiff Mark Allen is an individual residing at 607 N. Carolina Avenue, S.E., Washington, D.C. 20003.
4. Defendant is an agency of the United States and has possession of the records to which plaintiffs seek access.

COUNT ONE

5. On March 25, 1982, plaintiffs made a formal request under FOIA to defendant for "all records (including "see references" or cross references) maintained by your agency pertaining to Herman Edward Kimsey who grew up in Gallup, New Mexico. He was a Special Agent (CIA). Kimsey was brought into the Central Intelligence Agency by Director Allen Dulles in 1953. Kimsey used the cover identity "Philip Harbin". Kimsey was dismissed from the CIA in 1963. Subsequently, he ran a private security agency in Washington, D.C. He died of a heart attack in the early 1970's." It was pointed out in the request that the records were sought in connection with an investigation of the John F. Kennedy assassination, and, because of the public concern with that matter, defendant was asked for a waiver of search and copying fees. (See Exhibit 1a, attached hereto)

6. On April 7, 1982, defendant acknowledged receipt of the request, assigned ti Number 8201105, but produced no records. (See Exhibit 1b, attached hereto)

7. On April 19, 1982, the statutory time for production or denial of access having passed, plaintiffs made an administrative appeal under 5 U.S.C. 552(a)(6)(A) and under the defendant agency's regulations. (See Exhibit 1c, attached hereto)

8. On April 23, 1982, defendant replied to the effect that the appeal would not be processed until after a formal denial. To date no records have been produced. (See Exhibit 1d, attached hereto)

9. Plaintiffs construe this as a further denial and assert that their administrative remedies have been exhausted.

COUNT TWO

10. Paragraphs 1-4 are herein incorporated by reference.

11. On March 16, 1982, plaintiffs made a formal request under FOIA to

defendant for "all records (including "see references" or cross references) maintained by your agency pertaining to Albert Osborne AKA John Bowen, who claimed to be a travelling "missionary". During WW II Bowen/Osborne was a fanatical pro-Nazi in the Knoxville, Tenn., area. He travelled on a bus from Loredo, Texas, to Mexico City with Lee Harvey Oswald in September of 1963. At that time his base of operations appeared to be Montreal, Canada. The FBI and the Warren Commission examined his activities extensively. He is believed to be deceased." It was pointed out in the request that the records were sought in connection with an investigation of the John F. Kennedy assassination, and, because of the public concern with that matter, defendant was asked for a waiver of search and copying fees. (See Exhibit 2a, attached hereto)

12. On April 13, 1982, defendant acknowledged receipt of the request, assigned it Number 8201170, but produced no records. (See Exhibit 2b, attached hereto)

13. On April 2, 1982, the statutory time for production or denial of access having passed, plaintiffs made an administrative appeal under 5 U.S.C. 552(a)(6)(A) and under the defendant agency's regulations. (See Exhibit 2c, attached hereto)

14. To date, no records have been produced.

15. Plaintiffs assert that their administrative remedies have been exhausted.

### COUNT THREE

16. Paragraphs 1-4 are herein incorporated by reference.

17. On March 24, 1982, plaintiffs made a formal request under FOIA to defendant for "all records (including "see references" or cross references) maintained by your agency pertaining to the "Organisation Renseignement Operation" (ORO) the intelligence branch of the French Secret Army (OAS) for the years 1961-1965. One of the top leaders in the ORO was Dr. Jean Claude



Perez." It was pointed out in the request that the records were sought in connection with an investigation of the John F. Kennedy assassination, and, because of the public concern with that matter, defendant was asked for a waiver of search and copying fees. (See Exhibit 3a, attached hereto)

18. On April 7, 1982, defendant acknowledged receipt of the request, assigned it Number 8201100, but produced no records. (See Exhibit 3b, attached hereto)

19. On April 16, 1982, the statutory time for production or denial of access having passed, plaintiffs made an administrative appeal under 5 U.S.C. 552(a)(6)(A) and under the defendant agency's regulations. (See Exhibit 3c, attached hereto)

20. On May 11, 1982, defendant replied to the effect that the appeal would not be processed until after a formal denial; to date, no records have been produced. (See Exhibit 3d, attached hereto)

21. Plaintiffs construe this as a further denial and assert that their administrative remedies have been exhausted.

#### COUNT FOUR

22. Paragraphs 1-4 are herein incorporated by reference.

23. On March 16, 1982, plaintiffs made a formal request under FOIA to defendant for "all records (including "see references" or cross references) maintained by your agency pertaining to anti-Gaullist activities in the Western hemisphere, 1961-64." It was pointed out in the request that the records were sought in connection with an investigation of the John F. Kennedy assassination, and, because of the public concern with that matter, defendant was asked for a waiver of search and copying fees. (See Exhibit 4a, attached hereto)

24. On March 31, 1982, defendant acknowledged receipt of the request, assigned it Number 8201019, but produced no records. (See Exhibit 4b, attached hereto)

25. On April 7, 1982, the statutory time for production or denial of access having passed, plaintiffs made an administrative appeal under 5 U.S.C. 552(a)(6)(A), and under the defendant agency's regulations. (See Exhibit 4c, attached hereto)

26. On April 14, 1982, defendant repeated that the backlog of 3,000 cases would prevent current processing of the case. (See Exhibit 4d, attached hereto)

27. Plaintiffs construe this as a further denial and assert that their administrative remedies have been exhausted.

#### COUNT FIVE

28. Paragraphs 1-4 are herein incorporated by reference.

29. On March 17, 1982, plaintiffs made a formal request under FOIA to defendant for "all records (including "see references" or cross references) maintained by your agency pertaining to Louis Mortimer Bloomfield, a partner in the law firm of Phillips, Bloomfield, Vineberg and Goodman of Montreal. Mr. Bloomfield was a Major in the OSS. Later, he was a principal shareholder in Permindex, a Swiss corporation." It was pointed out in the request that the records were sought in connection with an investigation of the John F. Kennedy assassination, and, because of the public concern with that matter, defendant was asked for a waiver of search and copying fees. (See Exhibit 5a, attached hereto)

30. On March 31, 1982, defendant acknowledged receipt of the request, assigned it Number 8201020, but produced no records. (See Exhibit 5b, attached hereto)

31. On April 8, 1982, the statutory time for production or denial of access having passed, plaintiffs made an administrative appeal under 5 U.S.C. 552(a)(6)(A) and under the defendant agency's regulations. (See Exhibit 5c, attached hereto)

32. On April 14, 15, 16 and 20, 1982, defendant replied to the effect that current processing of the request would not be possible. (See Exhibit 5d, attached hereto)

33. Plaintiffs construe this as a further denial and assert that their administrative remedies have been exhausted.

#### COUNT SIX

34. Paragraphs 1-4 are herein incorporated by reference.

35. On March 12, 1982, plaintiffs made a formal request under FOIA to defendant for "all records (including "see references" or cross references) maintained by your agency pertaining to American sympathizers with the anti Gaullist "French Secret Army" (OAS) 1961-64." It was pointed out in the request that the records were sought in connection with an investigation of the John F. Kennedy assassination, and, because of the public concern with that matter, defendant was asked for a waiver of search and copying fees. (See Exhibit 6a, attached hereto)

36. On April 1, 1982, defendant acknowledged receipt of the request, assigned it Number 8201026, but produced no records. (See Exhibit 6b, attached hereto)

37. On April 2, 1982, the statutory time for production or denial of access having passed, plaintiffs made an administrative appeal under 5 U.S.C. 552(a)(6)(A) and under the defendant agency's regulations. (See Exhibit 6c, attached hereto)

38. On April 9, 16, and 20, 1982, defendant replied to the effect that it would not be possible to process the request currently. (See Exhibit 6d, attached hereto)

39. Plaintiffs construe this as a further denial and assert that their administrative remedies have been exhausted.



COUNT SEVEN

40. Paragraphs 1-4 are herein incorporated by reference.

41. On March 10, 1982, plaintiffs made a formal request under FOIA to defendant for "all records (including "see references" or cross references) maintained by your agency pertaining to de Gaulle's attendance at the funeral of President Kennedy in November, 1963." It was pointed out in the request that the records were sought in connection with an investigation of the John F. Kennedy assassination, and, because of the public concern with that matter, defendant was asked for a waiver of search and copying fees. (See Exhibit 7a, attached hereto)

42. On March 31, 1982, defendant acknowledged receipt of the request, assigned it Number 8201018, but produced no records. (See Exhibit 7b, attached hereto)

43. On April 2, 1982, the statutory time for production or denial of access having passed, plaintiffs made an administrative appeal under 5 U.S.C. 552(a)(6)(A) and under the defendant agency's regulations. (See Exhibit 7c, attached hereto)

44. On April 14, 16 and 20, 1982, defendant replied to the effect that it would not be possible to process the request currently. (See Exhibit 7d, attached hereto)

45. Plaintiffs construe this as a further denial and assert that their administrative remedies have been exhausted.

REQUESTED RELIEF

46. Pursuant to 5 U.S.C. 552(a)(3), plaintiffs are entitled to access to the requested records.

47. Plaintiffs have exhausted their administrative remedies.

48. There is no legal basis for defendant's withholding of such access.

49. Defendant has abused its discretion and acted in an arbitrary and capricious manner in withholding records sought by plaintiffs.

WHEREFORE, plaintiffs pray that the Court:

a) Order defendant by a date certain to produce the requested documents to them for inspection and copying, and a draft order to this effect is appended for the Court's consideration;

b) In cases of withholding or deletions, order defendant by a date certain to prepare an index, description, and justification in accordance with the requirements of Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974), and a draft order to this effect is appended for the Court's consideration;

c) Provide for expeditious proceedings in this action as provided in 5 U.S.C. 552(2)(4)(D);

d) Because of the great public interest in the Kennedy assassination, order a fee waiver as to search and duplication costs;

e) Award plaintiffs their costs and reasonable attorneys' fees in this case; and



f) Grant such other and further relief as the Court may deem just and proper.



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Counsel to Plaintiffs

Dated: June 18, 1982