

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J. GARY SHAW
105 Poindexter Street
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. 82-1962

Cheney
7/9/82

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 April 13, 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 Perminex ("Permanent Industrial Exhibition") Corporation of Basel, Switzerland during the years 1958-1963. This company was dissolved by the Swiss government which had received information from President de Gaulle of France that it was engaging in anti-Gaullist activities of a criminal nature." 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 May 26, 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 1b, attached hereto)

7. On June 11, 1982, defendant replied to the effect that there having been no "formal denial" the appeal would not be processed. (See Exhibit 1c, attached hereto)

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

COUNT TWO

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

10. On April 21, 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 Nadine Bestougeff, a French national of Russian parentage who arrived in New York from Paris on Aug. 22, 1963. On November 23, 1963, she was interviewed by the FBI in New York. She possessed

French passport number 755315 and was issued a B-2 visa by the U.S. Embassy in Paris on July 17, 1963. Some information about her may be found in Warren Commission Document 1107; DC 14, pp. 37-39; CD 301, pp. 28-31; CIA No. 288-692. Ms. Bestougeff was born on Oct. 8, 1937." 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)

11. On May 14, 1982, defendant acknowledged receipt of the request, assigned it Number 8201576, but produced no records. (See Exhibit 2b, attached hereto)

12. On May 26, 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)

13. On June 11, 1982, defendant replied to the effect that there having been no "formal denial" the appeal would not be processed. (See Exhibit 2d, attached hereto)

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

COUNT THREE

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

16. On April 26, 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 Delesseps Morrison, for the years 1960-65. Morrison was Mayor of New Orleans and later connected with the Organization of American States. Morrison introduced Clay Shaw to President Kennedy in 1963. He died in a plane crash in Mexico on May 23, 1965." 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)

17. On May 7, 1982, defendant acknowledged receipt of the request, assigned it Number 8201458, but produced no records. (See Exhibit 3b, attached hereto)

18. On May 26, 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)

19. On June 11, 1982, defendant replied to the effect that there having been no "formal denial" the appeal would not be processed. (See Exhibit 3d, attached hereto)

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

COUNT FOUR

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

22. On April 27, 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 Enrique Ruedolo Concora, who was born in Guantanamo, Cuba on 3-11-18, for the years 1960-1964. Passport No. 17422. Once in training camp for Bay of Pigs. Concora arrived Madrid on 11-29-63, his passage having been paid by U.S. Held in Carabanchel Prison for lack of valid visa to leave Spain. Story found in CIA Documents 365-148, 414-163, and 356-143. (Declassified 1977)" 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)

23. On May 7, 1982, defendant acknowledged receipt of the request, assigned it Number 8201460, but produced no records. (See Exhibit 4b, attached hereto)

24. On May 26, 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)

25. On June 11, 1982, defendant replied to the effect that there having been no "formal denial" the appeal would not be processed. (See Exhibit 4d, attached hereto)

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

COUNT FIVE

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

28. On April 28, 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 Miguel Casas Saez who was born in Remedios, Las Villas, Cuba. Left Cuba on Sept. 26, 1963 by small boat, was caught in hurricane, and ended up in Puerto Rico, thence to Miami. Was in Dallas on Nov. 22, 1963. Flew to Tijuana, Mexico City, and Havana. See CIA declassified JFK documents 256-96; 510-199 and 491-201." 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)

29. On May 7, 1982, defendant acknowledged receipt of the request,

assigned it Number 8201452, but produced no records. (See Exhibit 5b, attached hereto)

30. On May 26, 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)

31. On June 11, 1982, defendant replied to the effect that there having been no "formal denial" the appeal would not be processed. (See Exhibit 5d, attached hereto)

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

COUNT SIX

33. On March 13, 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 Gloria Orsony, who is believed to have been from Caracas, Venezuela, and who stayed at the Carousel Motel in Dallas from Nov. 20-22, 1963. Her activities are described at pp. 16-18 of Warren Commission Document CD 14. A summary is attached." 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)

34. On March 23, 1982, defendant acknowledged receipt of the request, assigned it Number 8200908, but produced no records. (See Exhibit 6b, attached hereto)

35. On May 26, 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)

36. On June 11, 1982, defendant replied to the effect that there having been no "formal denial" the appeal would not be processed. (See Exhibit 6d, attached hereto)

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

COUNT SEVEN

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

39. On March 15, 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 activities of the "French secret army" (OAS) in Canada, the United States, and the Caribbean, 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 7a, attached hereto)

40. On March 23, 1982, defendant acknowledged receipt of the request, assigned it Number 8200911, but produced no records. (See Exhibit 7b, attached hereto)

41. On May 26, 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)

42. On June 11, 1982, defendant replied to the effect that there having been no "formal denial" the appeal would not be processed. (See Exhibit 7d, attached hereto)

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

COUNT EIGHT

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

45. On March 8, 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 Clemard Joseph Charles during the years 1959-1964. Charles was a Haitian citizen and was a banker. He was a close friend of "Papa Doc" Duvalier." 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 8a, attached hereto)

46. On March 23, 1982, defendant acknowledged receipt of the request, assigned it Number 8200916, but produced no records. (See Exhibit 8b, attached hereto)

47. On May 26, 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 8c, attached hereto)

48. On June 11, 1982, defendant replied to the effect that there having been no "formal denial" the appeal would not be processed. (See Exhibit 8d, attached hereto)

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

COUNT NINE

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

51. On March 9, 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 a visit by General de Gaulle to New

Orleans and the Caribbean in May, 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 9a, attached hereto)

52. On March 23, 1982, defendant acknowledged receipt of the request, assigned it Number 8200917, but produced no records. (See Exhibit 9b, attached hereto)

53. On May 26, 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 9c, attached hereto)

54. On June 11, 1982, defendant replied to the effect that there having been no formal denial the appeal would not be processed. (See Exhibit 9d, attached hereto)

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

COUNT TEN

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

57. On March 11, 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 W. Guy Banister for the years 1960-64. Mr. Banister was FBI SAC in charge until his retirement from the FBI in 1955. After a stint with the New Orleans Police Department, he opened a private detective agency called Guy Banister & Associates at 544 Camp St., New Orleans, La. Mr. Banister is deceased, having died of an apparent heart attack in New Orleans in 1964." 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 10a, attached hereto)

58. On March 23, 1982, defendant acknowledged receipt of the request, assigned it Number 8200921, but produced no records. (See Exhibit 10b, attached hereto)

59. On May 26, 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 10c, attached hereto)

60. On June 11, 1982, defendant replied to the effect that there having been no "formal denial" the appeal would not be processed. (See Exhibit 10d, attached hereto)

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

REQUESTED RELIEF

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

63. Plaintiffs have exhausted their administrative remedies.

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

65. 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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Dated: July 2, 1982