

Mark Allen

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.

CENTRAL INTELLIGENCE AGENCY
Washington, D.C. 20505

Defendant.

Civil Action No. 82-1463

Pratt
7/7/83

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 20, 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 any relationship or communication during the years 1961-64 between the O.A.S. (French secret army) or its adherents on the one hand and any U.S. Department or agency or its employees or agents on the other hand." 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 16, 1982, defendant acknowledged receipt of the request, but produced no records. Defendant's reply stated that, as far as records relating to other departments and agencies were concerned, compliance with the request would require unauthorized research; as to a CIA-O AS relationship, they refused to even search for records. They would not confirm or deny the existence of such records. (See Exhibit 1b, attached hereto)

7. On April 13, 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 22, 1982, defendant replied to the effect that the appeal of April 13 would be considered (see Exhibit 1d, attached hereto).

9. On June 15, 1982, the Information Review Committee confirmed the previous denial, refusing to confirm or deny the existence of sought records. (See Exhibit 1e, attached hereto)

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

COUNT TWO

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

12. 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 visit by General de Gaulle to Mexico City in March, 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 2a, attached hereto)

13. On April 16, 1982, defendant acknowledged receipt of the request, but produced no records. (See Exhibit 2b, attached hereto)

14. 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 2c, attached hereto)

15. On April 22, 1982, defendant replied to the effect that "prior to processing the appeal, we will await the appropriate Agency components' determination as to whether you have described the records you are seeking in sufficient detail for us to conduct a search of our systems." (See Exhibit 2d, attached hereto)

16. On May 10, 1982, defendant replied further as follows:

The components have responded and it has been determined that your request as stated cannot be searched within our records systems without engaging in extensive research which, under the provisions of the FOIA, we are neither authorized nor required to do on behalf of a requester. In most instances, our searches must be limited to those that can be conducted under a name of an individual, organization, title or other specific entity. In general, our records systems are neither organized nor indexed by event, incident, activity or other occurrence.

(See Exhibit 2e, attached hereto)

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

COUNT THREE

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

19. On March 31, 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 use of Lee Harvey Oswald's birth certificate by an imposter while Oswald was in the U.S.S.R. See letter of June 3, 1960 from J. Edgar Hoover to the Office of Security of the Department of State (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 3a, attached hereto)

20. On April 14, 1982, defendant acknowledged receipt of the request, but produced no records. Defendant asked for more specificity in the request and added "we are neither authorized nor required to engage in research on behalf of a requester." (See Exhibit 3b, attached hereto)

21. On May 24, 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)

22. On June 2, 1982, defendant replied to the effect that "we are awaiting your revised request. . . . On this basis we are unable to accept your appeal." (See Exhibit 3d, attached hereto)

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

COUNT FOUR

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

25. On April 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 raid which was made in July or August, 1963, by agents of the U.S. Government upon an anti-Castro training camp which was on the shores of Lake Pontchartrain, Louisiana, and which was on property owned by the McLaney family. During the raid eleven men were taken into custody." 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)

26. On April 14, 1982, defendant acknowledged receipt of the request, but produced no records. Defendant asked for more specificity, and gave its standard phrase about no requirement to do research. (See Exhibit 4b, attached hereto)

27. On May 24, 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)

28. On June 9, 1982, defendant replied to the effect that "we still are awaiting your revised request . . . We are unable to accept your appeal." (See Exhibit 4d, attached hereto)

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

COUNT FIVE

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

31. On May 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 ownership in November, 1963, of a 1955 green Ford (California plates KVV 191) which was parked near Soviet Embassy in Mexico City and was references in a CIA document of November 24, 1963 (copy 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 5a, attached hereto)

32. On May 28, 1982, defendant acknowledged receipt of the request, but produced no records. Defendant stated as follows:

We must advise you that this type of request, couched in its present phraseology, lacks the specificity prescribed in the FOIA and would require us to perform research which, under the FOIA, we are neither authorized nor required to do on behalf of a requester. Therefore, we cannot process your request.

Thank you for your understanding in this matter."

(See Exhibit 5b, attached hereto)

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

COUNT SIX

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

35. On April 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 visit(s) by Lee Harvey Oswald to Mexico, 1962-63." 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 16, 1982, defendant acknowledged receipt of the request, but produced no records. (See Exhibit 6b, attached hereto)

37. On May 13, 1982, defendant, in a "final response," replied to the effect that:

As we stated we would in our letter of 16 April 1982, we contacted the appropriate Agency components to determine if a search was feasible. We must advise you that this type of request, couched in its present phraseology, lacks the specificity prescribed in the FOIA and would require us to perform research which, under the FOIA, we are neither authorized nor required to do on behalf of a requester. Therefore, we cannot process your request.

Thank you for your understanding in this matter.

(See Exhibit 6c, attached hereto)

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

REQUESTED RELIEF

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

40. Plaintiffs have exhausted their administrative remedies.

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

42. 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: June 25, 1982