

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. 82-1406

Joseph M. Green
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 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 Laszlo Varga, a Hungarian citizen who was involved in the attack upon General de Gaulle at Petit-Clamart on August 22, 1962. He was arrested and tried by a military court at Vincennes. On March 11, 1963, he was given a sentence of 10 years and was forbidden to reside in France for ten years." 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 27, 1982, defendant acknowledged receipt of the request, assigned it Number 8201340, but produced no records. (See Exhibit 1b, attached hereto)

7. 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 1c, attached hereto)

8. On June 11, 1982, defendant replied to the effect that there having been no "formal denial," the appeal would not be processed. (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 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 Gyula Sari, a Hungarian citizen who was involved in the attack upon General de Gaulle at Petit-Clamart on August 22, 1962. He was arrested on Feb. 22, 1963, and subsequently tried and sentenced." 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 23, 1982, defendant acknowledged receipt of the request, assigned it Number 8201303, but produced no records. (See Exhibit 2b, attached hereto)

13. 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)

14. 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)

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

COUNT THREE

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

17. 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 Sergeant Jean Petit of the French Army during the years 1960-65. Sergeant Petit deserted and joined the anti-Gaullist "secret army" (OAS) in 1961. He was the founder of "Ressurrection-Patrie." Sergeant Petit, who used the alias of "Petitjean", was sentenced by a French court to 15 years in 1962." 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 21, 1982, defendant acknowledged receipt of the request, assigned it Number 8201265, but produced no records. (See Exhibit 3b, attached hereto)

19. 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)

20. 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)

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 April 14, 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 Centro Mondiale Commerciale (CMC), an Italian Corporation, which was resident in Rome, for the years 1958-1965. It was organized as an international trade organization but was forced to move from Italy to South Africa circa 1963 because of alleged criminal activities." 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 April 27, 1982, defendant acknowledged receipt of the request, assigned it Number 8201341, but produced no records. (See Exhibit 4b, attached hereto)

25. 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)

26. 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)

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 April 19, 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 French anti-Gaullist M. Francois Duprat AKA Louis de Conde. Mr. Duprat was the leader of "Jeune Nation" organization in Algiers prior to the Algerian independence in June, 1962. He was a participant in the Petit-Clamart assassination attempt on de Gaulle. In 1974 he represented the Canadian Ukrainians in the World Anti-Communist League. Mr. Duprat died in approximately 1978." 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 April 27, 1982, defendant acknowledged receipt of the request, assigned in Number 8201368, but produced no records. (See Exhibit 5b, attached hereto)

31. 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)

32. 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)

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 April 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 Hungarian General Ferenc Farkas de Kisbarnak. The General was exiled from Hungary and was generally resident in Paris. He was a delegate for the preparation meetings in Mexico and Guatamala in 1958 which ultimately resulted in the formation of the World Anti-Communist League." 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 27, 1982, defendant acknowledged receipt of the request, assigned in Number 8201369, but produced no records. (See Exhibit 6b, attached hereto)

37. 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)

38. 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)

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 April 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 Dr. Carlos Bringuier for the years 1962-1964. Dr. Bringuier is an anti-Castro Cuban living in New Orleans. He was head of the Cuban Student Directorate. He scuffled with Oswald in the streets of New Orleans. Bringuier filed a defamation suit against Gambi Publications, Inc. and Harold Weisberg. Dr. Bringuier was born in Havana on June 22, 1934. He came to the U.S. on Feb. 8, 1961. He was trained as a lawyer in Cuba." 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 April 28, 1982, defendant acknowledged receipt of the request, assigned it Number 8201371, but produced no records. (See Exhibit 7b, attached hereto)

43. 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)

44. 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)

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

COUNT EIGHT

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

47. On April 23, 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 Gilberto Policarpo Lopez who was born in Cuba on Jan. 26, 1940. He came to the U.S. soon after Castro took power. In July 1960 he was issued U.S. Passport 310162. In 1962 he married an American woman and they lived in Key West, Florida. In 1963 he and his wife moved to Tampa. He was involved with the Fair Play for Cuba Committee. See Warren Commission Document 205 pp. 750-751, CIA 118, CIA 308-114, House Select Committee Report pp. 118-121." 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)

48. On May 5, 1982, defendant acknowledged receipt of the request, assigned it Number 8201408, but produced no records. (See Exhibit 8b, attached hereto)

49. 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)

50. On June 11, 1982, defendant replied to the effect that there having been no "formal denial" the appeal would not be processed.

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

COUNT NINE

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

53. On April 22, 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 Jean Denis Raingeard during the years 1960-1964. Mr. Raingeard was an anti-Gaullist officer who deserted from the French Army during the Algerian war. He became a member of the O.A.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 9a, attached hereto)

54. On May 5, 1982, defendant acknowledged receipt of the request, assigned it Number 8201412, but produced no records. (See Exhibit 9b, attached hereto)

55. 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)

56. 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)

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

COUNT TEN

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

59. On April 29, 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 Silvia Duran, a Mexican woman who worked in the Cuban Embassy in Mexico City in 1963 when the Embassy was visited by "Lee Harvey Oswald." After the assassination of President Kennedy, Ms. Duran was picked up by the Mexican police and questioned extensively. She is quoted at some length in the Warren Report." 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)

60. On May 6, 1982, defendant acknowledged receipt of the request, assigned it Number 8201265, but produced no records. (See Exhibit 10b, attached hereto)

61. On May 27, 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)

62. 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)

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

REQUESTED RELIEF

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

65. Plaintiffs have exhausted their administrative remedies.

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

67. 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.



BERNARD FENSTERWALD, JR.
Fensterwald & Associates
1000 Wilson Boulevard
Suite 900
Arlington, Virginia 22209
703-276-9297

Counsel to Plaintiffs

Dated: July 2, 1982