

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. 82-1407

Finney
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 March 18, 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 William George Gaudet, an informant for the CIA in New Orleans. For many years Gaudet edited and published the Latin American Newsletter. After the assassination of President Kennedy, he telephoned the FBI and gave them information relative to the activities of Jack Ruby. He had his office in the "old" International Trade Mart building in New Orleans. He lived in Waveland, Mississippi, until his recent death. He was born circa 1908. He is the subject of one report in Warren Commission Document 75." 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 March 31, 1982, defendant acknowledged receipt of the request, assigned it Number 8200957, 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 March 9, 1982, plaintiffs made a formal request under FOIA to the Legal Attache, U.S. Consulate, Montreal Canada, 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 2a, attached hereto)

12. On March 23, 1982, the Consulate acknowledged receipt of our request and advised that it had been forwarded to the Department of State for processing. (See Exhibit 2b, attached hereto)

13. On April 6, 1982, defendant acknowledged receipt of the request, assigned it Number 8201048, but produced no records. (See Exhibit 2c, attached hereto)

14. 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 2d, attached hereto)

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

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

COUNT THREE

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

18. On March 10, 1982, plaintiffs made a formal request to the Legal Attache, U.S. Consulate, Montreal, Canada, for "all records (including "see references" or cross references) maintained by your agency pertaining to Permindex ("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 3a, attached hereto)

19. On March 23, 1982, the Consulate acknowledged receipt of our request and advised that it had been forwarded to the Department of State for processing. (See Exhibit 2b, attached hereto)

20. On April 6, 1982, defendant acknowledged receipt of the request, assigned it Number 8201050, but produced no records. (See Exhibit 3c, attached hereto)

21. 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 3d, attached hereto)

22. On June 11, 1982, defendant replied to the effect that there having been no "formal denial" the appeal would not be processed. (See Exhibit 3e, 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 2, 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 de Menil during the years 1959-1964. Mr. de Menil was a resident of Houston and Paris during the referenced period. He had married into the famous French family Schlumberger and was President or Chairman of the Board of the Schlumberger Company of Houston. He was alleged to have been engaged in anti-Gaullist 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)

26. On April 13, 1982, defendant acknowledged receipt of the request, assigned it Number 8201173, but produced no records. (See Exhibit 4b, attached hereto)

27. 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)

28. 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)

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 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 attempts on the life of General de Gaulle, 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 5a, attached hereto)

32. On April 13, 1982, defendant acknowledged receipt of the request, assigned it Number 8201175, but produced no records. (See Exhibit 5b, attached hereto)

33. 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)

34. 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)

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

COUNT SIX

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

37. On April 1, 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 Marquis Brousse de Montpeyroux, a French officer who deserted from the French forces in Algeria in 1961. He was arrested for helping in the establishment of an anti-Gaullist force in Algeria." 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)

38. On April 13, 1982, defendant acknowledged receipt of the request, assigned it Number 8201177, but produced no records. (See Exhibit 6b, attached hereto)

39. 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)

40. 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)

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

COUNT SEVEN

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

43. On April 3, 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 Pierre Sergeant, former French Army Officer, for the years 1960-64. Sergeant was a Captain in the French Army who deserted and joined the OAS. Much of his OAS duty was seen in metropolitan France. He contacted CIA personnel in an attempt to get U.S. aid for the OAS." 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)

44. On April 15, 1982, defendant acknowledged receipt of the request, assigned it Number 8201205, but produced no records. (See Exhibit 7b, attached hereto)

45. 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)

46. 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)

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

COUNT EIGHT

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

49. On April 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 Schlumberger Well Services Company during the years 1959-1964. The company headquarters is in Houston, Texas. It is alleged that the company engaged in anti-Gaullist 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 8a, attached hereto)

50. On April 15, 1982, defendant acknowledged receipt of the request, assigned it Number 8201206, but produced no records. (See Exhibit 8b, attached hereto)

51. 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)

52. 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)

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

COUNT NINE

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

55. On April 7, 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 William Dalzell during the years 1960-64. Dalzell, a U.S. citizen who was a resident of New Orleans during the period referenced, was an international petroleum engineer and consultant and an advisor to the Ethiopian government. He was, among other things, an incorporator of the Friends of Democratic Cuba, a militant, anti-Castro organization. He was also alleged to be involved in anti-Gaullist 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 9a, attached hereto)

56. On April 15, 1982, defendant acknowledged receipt of the request, assigned it Number 8201207, but produced no records. (See Exhibit 9b, attached hereto)

57. 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)

58. 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)

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

COUNT TEN

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

REQUESTED RELIEF

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

67. Plaintiffs have exhausted their administrative remedies.

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

69. 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

61. On April 6, 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 Peter Paul Gregory, an exiled Russian working in the Texas oil business. He made his home in Dallas. He was telephoned by Lee Harvey Oswald a week after Oswald arrived home from the U.S.S.R. in June 1962. Mr. Gregory was born in Chita, Siberia and arrived in the U.S. on or about Aug 1, 1923. His testimony before the Warren Commission appears at p. 337 of Vol. II of the Hearings." 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)

62. On April 15, 1982, defendant acknowledged receipt of the request, assigned it Number 8201209, but produced no records. (See Exhibit 10b, attached hereto)

63. 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)

64. 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)

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

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

B. Fensterwald, Jr.

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Counsel to Plaintiffs

Dated: July 2, 1982