

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. )

FEDERAL BUREAU OF INVESTIGATION )  
Washington, D.C. 20535, )

Defendant. )

Civil Action No. 82-2108

7/28/82

*June L. Green*

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 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 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 1a, attached hereto)

6. On March 22, 1982, defendant acknowledged receipt of the request, assigned it Number 224134, but produced no records. (See Exhibit 1b, attached hereto)

7. 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 1c, attached hereto)

8. On May 11, 1982, defendant (FBI) replied to the effect that relevant records have been located and "will be assigned for processing in the near future." (See Exhibit 1d). To date no records have been produced.

9. On May 11, 1982, the Office of Legal Policy, in effect, denied the appeal of April 2, 1982. (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 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 Jacques Roy, a French naval lieutenant, who deserted from the French Navy to join the anti-gaullist "secret army" (OAS). He was arrested and tried for subversion. He was born in approximately 1915." 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 March 22, 1982, defendant acknowledged receipt of the request, assigned it Number 224133, but produced no records. (See Exhibit 2b, attached hereto)

14. 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)

15. On May 14, 1982, defendant replied to the effect that a search "revealed no information that he has been the subject of an FBI investigation." It was not stated that the FBI did not have records with respect to Mr. Roy; only that he had not been "the subject of an investigation." (See Exhibit 2d, 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 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 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 3a, attached hereto)

19. On March 23, 1982, defendant acknowledged receipt of the request, assigned it Number 224265, but produced no records. (See Exhibit 3b, attached hereto)

20. 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 3c, attached hereto)

21. On May 11, 1982, defendant's Office of Legal Policy replied to the effect that the appeal of April 2, 1982, was being denied. (See Exhibit 1e, attached hereto)

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

#### COUNT FOUR

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

24. 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 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 4a, attached hereto)

25. On March 23, 1982, defendant acknowledged receipt of the request, assigned it Number 224266, but produced no records. (See Exhibit 4b, attached hereto)

26. 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 4c, attached hereto)

27. On May 11, 1982, defendant's Office of Legal Policy replied to the effect that the appeal of April 2, 1982, had been denied. (See Exhibit 4e, attached hereto)

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

#### COUNT FIVE

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

30. 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 Eugene Barry Dinkin, who was a PFC in the "code section" of the 599th Ordnance Group stationed in Germany in the fall of 1963. Reference is made to Dinkin in Warren Commission document CD 1107, pp. 353-362. U.S. Army Serial No. RA-76710292. Born circa 1942. See also CD 943." 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)

31. On March 22, 1982, defendant acknowledged receipt of the request,

assigned it Number 224132, but produced no records. (See Exhibit 5b, attached hereto)

32. 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 5c, attached hereto)

33. On May 11, 1982, defendant replied to the effect that the request would not be processed until furnished a notarized written authorization from Mr. Dinkin. They also refused to indicate whether they do or do not have relevant records. (See Exhibit 5d, attached hereto)

34. On May 11, 1982, the Office of Legal Policy in effect denied the appeal of April 2, 1982. (See Exhibit 1e, 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 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 WWII Bowen/Osborne was a fanatical pro-Nazi in the Knoxville, Tenn., area. He travelled on a bus from Laredo, 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 6a, attached hereto)

38. On March 26, 1982, defendant acknowledged receipt of the request, assigned it Number 224393, but produced no records. (See Exhibit 6b, attached hereto)

39. 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 6c, attached hereto)

40. On May 11, 1982, defendant's Office of Legal Policy replied to the effect that the appeal of April 7, 1982, was denied. (See Exhibit 1e, 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 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 Ferenc Nagy for the years 1956-1964. Mr. Nagy was ousted as Premier of Hungary by a Communist coup in 1947. For a number of years, he made his home in Northern Virginia, but he moved to Dallas Texas in 1963. To the best of requesters' knowledge, Mr. Nagy died violently." 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 March 23, 1982, defendant acknowledged receipt of the request, assigned it Number 224264, but produced no records. (See Exhibit 7b, attached hereto)

45. 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 7c, attached hereto)

46. On May 11, 1982, defendant's Office of Legal Policy replied to the effect that the appeal of April 7, 1982, was being denied. (See Exhibit 1e, 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 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 Pierre Sergent, former French Army Officer, for the years 1960-64. Sergent 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 8a, attached hereto)

50. On March 26, 1982, defendant acknowledged receipt of the request, assigned it Number 224394, but produced no records. (See Exhibit 8b, attached hereto)

51. 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 8c, attached hereto)

52. On May 11, 1982, defendant's Office of Legal Policy replied to the



effect that the appeal of April 8, 1982, was being denied. (See Exhibit 1e, 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 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 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 of 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 9a, attached hereto)

56. On March 30, 1982, defendant acknowledged receipt of the request, assigned it Number 224507, but produced no records. (See Exhibit 9b, attached hereto)

57. On April 9, 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 May 11, 1982, defendant's Office of Legal Policy replied to the effect that the appeal of April 9, 1982, was being denied. (See Exhibit 1e, 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.

61. On March 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 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 10a, attached hereto)

62. On April 5, 1982, defendant acknowledged receipt of the request, assigned it Number 224856, but produced no records. (See Exhibit 10b, attached hereto)

63. On April 12, 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 May 11, 1982, defendant's Office of Letal Policy replied to the effect that the appeal of April 12, 1982, was being denied. (See Exhibit 1e, attached hereto)

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

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

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



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Dated: July 12, 1982