

ATTACHMENT

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CIVIL ACTION NUMBERS:

82-1602
82-2108
82-2109
82-2110
82-2128
82-2130
82-2156
82-2379
82-2522
82-2523
82-2679
82-2680

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June 29, 1962

Mr. James K. Hall, Chief
Freedom of Information-Privacy
Acts Section
Records Management Division
Federal Bureau of Investigation
Washington, D.C. 20535

Dear Mr. Hall:

This will acknowledge and thank you for your very thorough letter of June 23rd re multiple FOIA requests on behalf of Messrs. Gary Shaw and Mark Allen.

My remarks shall be keyed to the five categories used in your correspondence.

Category A Requests

At the top of p. 2, you remarked: "Please be assured that all of the above-listed requests are being handled as equitably as possible and that all documents which can be released will be made available to you at the earliest possible date."

Unfortunately, this theory of "equitable" release does not fulfill the requirements of the FOIA, which requires a decision to release, release in part, or withhold in ten days after receipt of the request. I am more than a little familiar with the FOIA and its legislative history. One of the main impetuses for the Act was a desire for prompt and speedy release of records. The FBI's "backlog theory" has resulted in a system whereby, in the past, requesters have often been asked to wait for many months, often years, before receiving the requested records or a denial thereof. Often, the records are no longer of interest, and the system certainly dampens enthusiasm for proper use of the Act.

If some requesters are in no hurry and are willing to "wait their turn," well and good. Others, such as my clients, may feel an urgency and may not be willing to wait beyond the statutory period. They have discovered that the one way to get a request broken out of the "backlog" and into the active search category is to file suit in a District Court. This may clog court calendars, but it is a result, in my view, primarily of the agencies that refuse to recognize that some requesters are not willing to wait months and years beyond the response time specified by Congress.

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Therefore, your assurance of release "at the earliest possible date" in the instant cases is an insufficient response from the viewpoint of my clients.

Category B Requests

We certainly accept your explanation as to the Request Numbers 224,133 (Jacques Roy) and 224,889 (Dominique de Roux). And we shall proceed to make enquiries of certain field offices with respect to them.

As to Number 224,833 (visit of de Gaulle to New Orleans and Caribbean, May, 1963), we believe that there must be FBI records, as this visit was a major international event, with enormous security overtones for the U.S. The French sent a large security contingency with President de Gaulle, and it seems almost impossible that the FBI did not play a major role in providing protection to this important world leader, during a period in which more than thirty known attempts were made on his life. If the FBI did not participate, it would surely appear to be guilty of a serious breach of duty. Could we suggest that another search of records be made.

Category C Records

We apologize for not spelling out more clearly the meaning of "OAS." The letters stand for Organization Armee Secrete, or, in English, the Algerian Secret Army, which was formed in 1960-61 of both civilians and military deserters who were unalterably opposed to de Gaulle's decision to give independence to Algeria. This group fought both the Algerian "rebels" and de Gaulle's forces, killing and wounding many thousands of people in Algeria, France, and throughout Europe. The hardcore of 2,000-3,000 members of the OAS became a world-wide pool of mercenaries, assassins, etc., after Algerian Independence in July, 1962.

The OAS made a number of requests of the U.S. for military aid. Contacts were made at NATO headquarters between OAS colonels, who had served there, and U.S. military at the Headquarters. A meeting was held in Washington on December 7, 1960 between Richard Bissell (DDP at CIA) and Jacques Soustelle (an OAS leader). A tentative agreement was made on December 21, 1961, between OAS leaders in Algeria and the CIA Station Chief in Paris. Several attempts were made by Jean Rene Souetre and Pierre Sergent, OAS "politicians," and CIA personnel in Europe. Documents relating to these efforts are appended hereto as Attachment A. It is indicated that the FBI received copies of some of these documents.

The Independence for Quebec Movement (FLQ) was largely an OAS effort at its outset.

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In the Caribbean, the OAS attempted to separate the French Departments in the Caribbean, primarily Martinique and Guadeloupe, as a separate anti-Gaullist State.

There were a number of American sympathizers of the OAS. Among them were the well-known syndicated columnist, William Buckley; the President and Board Chairman of Schlumberger Corp. of Houston, Jean de Menil; CIA contract agent, Wm. George Gaudet in New Orleans; ex-FBI agent William Guy Banister in New Orleans; and General Edwin Walker in Dallas. A pro-OAS newsletter was published in New York; a copy is appended hereto as Attachment B.

The O.R.O. was the "intelligence branch" of the OAS. Two of its leading members were Pierre Sergent and Jean Claude Perez.

Category D and E Requests

My comments on D and E are similar, and I am taking the liberty of commenting on them jointly.

It has been the long held position of the FBI that requests for records concerning individuals under FOIA can be treated as requests under the Privacy Act, hence requiring either a waiver of privacy (for living persons) or proof of death (for deceased persons). In our strongly held view, there is absolutely no legislative authority for such an action. FOIA and the Privacy Act are separate statutes, with separate exceptions and standards and, again in our view, they must be so treated.

Fortunately, the Circuit Court of Appeals for our District agrees with our position. Very recently, in Greentree v. U.S. Customs Service, U.S. App. D.C. Nos. 81-1829 and 1830, the Circuit Court very clearly pronounced that 552a exemptions cannot be applied to 552 cases. "We must conclude . . . that section (b)(2) of the Privacy Act represents a Congressional mandate that the Privacy Act not be used as a barrier to FOIA access."

Furthermore, exemption 6 in 552 applies not to "invasions of privacy," nor even to "unwarranted invasions of privacy" but to "clearly unwarranted invasions of privacy." It is impossible for the FBI to know if disclosure of records would amount to a "clearly unwarranted invasion of privacy" until they locate the records and examine them in the light of the totality of circumstances under which they would be disclosed.

Also our Court of Appeals has held that investigation of the JFK murder is a matter of "interest to the nation," Weisberg v. U.S. Dept. of Justice, 543 F.2d 308 (1976); see also Mark Allen v. CIA, 636 F.2d 1287 (1980). And, in the D.C. Circuit, this must have a clear bearing on disclosure or withholding of a particular record.

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Hence, refusing even to process Category D and E Requests until receiving a waiver of privacy or proof of death is completely unauthorized under 5 U.S.C. 552. And 5 U.S.C. 552a has no applicability to these requests. In many cases, it is impossible to obtain such documentation; more important, the effort is not required by the FOIA. There may be requesters who are too naive to understand this; Mssrs. Shaw and Allen are not among them.

Let me reiterate my clients willingness to reimburse the FBI up to \$250.00 per request for duplicating fees, if their request for a waiver of fees is ultimately rejected by the FBI and the Courts. However, if a single request produces more than 2,500 pages, we would like to be informed before duplication begins, as we might prefer to examine the records to see which of them, from our viewpoint, is worth the duplication fee.

As we not going to "perfect" our requests by documented waivers of privacy or proofs of death, we request that you pass upon our request for a waiver of fees without further delay.

We have already submitted one appeal from denial for each of our requests. However, we shall submit a joint appeal as suggested by the last paragraph of your letter.

Sincerely yours,



Bernard Fensterwald, Jr.

BF/is
Enclosures

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