

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

Washington, D.C. 20530

OCT 15 1982

Bernard Fensterwald, Jr., Esquire
Fensterwald & Associates
Suite 900, Twin Towers Building
1000 Wilson Boulevard
Arlington, Virginia 22209

Re: Appeal No. 82-1076
RLH:MMN:PLH

Dear Mr. Fensterwald:

You appealed on behalf of your clients, Mr. J. Gary Shaw and Mr. Mark Allen, from the actions of the Federal Bureau of Investigation in its letter dated June 23, 1982, on their requests for access to various records which they assert pertain to the assassination of President John F. Kennedy. This response is keyed to the five categories referred to in the Bureau's letter.

CATEGORY A REQUESTS

I have notified the Bureau of your communication. Although the Act authorizes you to treat the failure of the Bureau to act on your clients' requests within the specified time limit as a denial thereof, this Office, because it lacks the personnel resources to conduct the record reviews that are necessary to make initial determinations on requests for records, cannot act until there has been an initial determination by the component. Our function is limited to the review of those records to which access is in fact denied. If your clients are dissatisfied with the substantive action of the Bureau on their requests, simply advise this Office of that fact, and we will then open an appeal on the merits.

CATEGORY B REQUESTS

Subject to your clients' agreement to pay applicable search fees as set forth in 28 C.F.R. §16.9, the Bureau has agreed to conduct an all reference search of its files to determine whether records exist pertaining to the visit of Charles DeGaulle to New Orleans and the Caribbean in May 1963. The Bureau will contact you directly with the results of that search.

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CATEGORY C REQUESTS

Subject to your clients' agreement to pay applicable search fees, the Bureau has advised me that it will conduct additional searches for records in this category based on the information you provided in your appeal letter.

CATEGORY D REQUESTS

Again, subject to your clients' agreement to pay applicable search fees, the Bureau has agreed to look for records on any individuals listed under Category D who appear in the Master Index to the JFK Assassination Investigations compiled by Sylvia Meagher. If any information is located that is pertinent to the Kennedy assassination, the Bureau will process it for release to you.

As to any non-Kennedy related material that may exist on individuals in this category who are listed on the Meagher indices and as to the existence of files on any individuals in this category who are not listed on the Meagher indices, I have decided to affirm the Bureau's action on the ground that to reveal an investigatory interest by the Bureau in a third party, absent that individual's consent or some strong countervailing public interest, would constitute an unwarranted invasion of his personal privacy. 5 U.S.C. §552(b)(7)(C). If documents contained in systems of records on third parties are not required to be released under the FOIA, the Privacy Act then requires their withholding except in circumstances listed in that Act. 5 U.S.C. §552a(b). None of those circumstances allowing release is applicable here.

The case you cite, Greentree v. U.S. Customs, 674 F.2d 74 (D.C. Cir. 1982) is not relevant to this issue. Greentree requires release of records maintained in systems of records exempted from access pursuant to 5 U.S.C. 552a(j)(2) only when requested by the subject of the records and not independently exempt from access under the FOIA. Because your clients are not requesting information concerning themselves and because any investigatory records that do not relate to the Kennedy assassination that may exist on the third parties you have listed would fall within exemption 7(C), the holding in Greentree is inapplicable.

As to those individuals who are not located on the Meagher indices, we will reconsider our affirmance of the Bureau's actions if you submit credible evidence of a significant connection between any of them and the Kennedy assassination.

CATEGORY E REQUESTS

Bureau personnel have advised my staff that you have submitted proof of death for David G. Copeland and that they have agreed that sufficient public interest exists in Delesseps Morrison to warrant a search. As regards the other figures listed, the Bureau has agreed to determine whether any evidence exists in any files that may be maintained on these individuals to show that they are deceased or that they have waived their rights to privacy. If no such evidence exists, the Bureau will treat the records the same as those in Category D.

If your clients are dissatisfied with the Bureau's ultimate action on any of their requests, they may, of course, appeal again to this Office.

FEE WAIVER

With respect to your request for a "fee waiver," we have determined that there is not sufficient basis to require that the general public bear the substantial search and duplication costs involved and it, therefore, will be necessary for your clients to pay these costs.

This determination has been reached after careful consideration of the information provided in your individual FOIA requests and in a document captioned "A Possible French Connection" which you have filed with the Court. From these it appears that your clients are seeking information which they believe may be relevant to certain theories they have developed relating to the assassination of President John F. Kennedy. In our view, based upon the information you have provided and upon the extensive public investigations of the assassination of President Kennedy, the likelihood of any possible connection between the information you seek and the Kennedy assassination is extremely remote and theoretical. Although your clients are certainly entitled to pursue their interest at their own expense, we do not find sufficient basis for a conclusion that disclosure of the information requested would primarily benefit the general public such that public funds should be expended to subsidize your clients' personal theoretical inquiry.

Further, we are mindful that enormous amounts of public funds have already been expended in the investigation of the Kennedy assassination. As you know, the event was investigated by the Dallas Police, the FBI, the Warren Commission and the U.S. House Select Committee on Assassinations. Because of these enormous public expenditures and the body of information already developed, further public expenditure to subsidize personal investigations such as your clients, should be viewed with the closest scrutiny, especially during times of budgetary austerity. So doing, it is

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our conclusion that a waiver of fees for your clients simply cannot be justified.

Nevertheless, in the event that your clients in the future believe that they can demonstrate concretely that information they may obtain under the FOIA is significant new evidence directly pertinent to the Kennedy assassination, we would be willing to reconsider our position with regard to reimbursement to you of payments for the portions of the records containing such information. Should the Bureau itself identify such information, the Bureau would grant a fee waiver as to the relevant information.

Although I am aware that your clients have brought suit concerning these matters, I am required by statute and departmental regulation to advise you of your clients' right to judicial review. Such review is available to them in the United States District Court for the judicial district in which they reside or have their principal place of business, or in the District of Columbia, which is also where the records sought are located.

Sincerely,

Jonathan C. Rose
Assistant Attorney General

By: 
Richard L. Huff, Co-Director
Office of Information and Privacy