

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. 82-2128

7/29/82

Blannery

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 the FBI Field Office in Dallas, Texas, 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 1a, attached hereto)
6. On March 12, 1982, defendant acknowledged receipt of the request, but produced no records. The letter stated that the FBI office "can neither confirm nor deny the existence . . . without a notarized statement from Mr. Roy (See Exhibit 1b, attached hereto)
7. On March 22, 1982, plaintiffs responded that the FOIA contained no such provisions. (See Exhibit 1c, attached hereto)
8. On April 2, 1982, defendant wrote again, insisting that the request be handled under the Privacy Act and not under FOIA. They refused to make a search. (See Exhibit 1d, attached hereto)
9. On May 24, 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 1e, attached hereto)
10. On June 21, 1982, defendant's Office of Legal Policy replied to the effect that the appeal could not currently be considered and assigned it Number 82-0771. (See Exhibit 1f, attached hereto)
11. Plaintiffs construe this as a further denial and assert that their administrative remedies have been exhausted.

12. To date, no records have been produced.

COUNT TWO

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

14. On April 9, 1982, plaintiffs made a formal request under FOIA to the FBI Field Office in Dallas, Texas, for "all records (including "see references" or cross references) maintained by your agency pertaining to Paul M. Raigorodsky of Dallas, Texas, who was born in Russia circa 1899. He came to the U.S. in 1920. He served in the U. S. Army briefly and then became a civil engineer. He befriended Lee Harvey Oswald when he came to Dallas in 1962. His testimony appears at p. 1, Vol. IX of the Warren Commission Hearings. 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 2a, attached hereto)

15. On April 16, 1982, defendant acknowledged receipt of the request, but produced no records. The reply stated that the FBI would neither confirm or deny the existence of records until a notarized waiver of privacy was produced. (See Exhibit 2b, attached hereto)

16. On May 24, 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)

17. On June 21, 1982, defendant's Office of Legal Policy replied to the effect that the appeal could not be currently considered and assigned it Number 82-0781. (See Exhibit 2d, attached hereto)

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

19. To date, no records have been produced.

COUNT THREE

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

21. On April 10, 1982, plaintiffs made a formal request under FOIA to the FBI Field Office in Dallas, Texas, for "all records (including "see references" or cross references) maintained by your agency pertaining to Robert Perrin, AKA Jack Starr, who was born in Kirkhoven, Minnesota, on Oct. 11, 1914 or Oct. 11, 1920. His social security number is believed to have been 458-50-1541. Among other things, he was a gun runner. He was married to Nancy Perrin who worked for Jack Ruby. He died in New Orleans in 1962 of arsenic poisoning. 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)

22. On April 21, 1982, defendant acknowledged receipt of the request, but produced no records. The reply stated that no search would be made without "proper documentation" of Mr. Perrin's death. (See Exhibit 3b, attached hereto)

23. On May 24, 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)

24. On June 21, 1982, defendant's Office of Legal Policy replied to the effect that the appeal could not be currently considered and assigned it Number 82-0783. (See Exhibit 3d, attached hereto)

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

26. To date, no records have been produced.

COUNT FOUR

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

28. On April 12, 1982, plaintiffs made a formal request under FOIA to the FBI Field Office in Dallas, Texas, for "all records (including "see references" or cross references) maintained by your agency pertaining to Gloria Orsony, who is believed to have been from Caracas, Venezuela, and who stayed at the Carousel Motel in Dallas from Nov. 20-22, 1963. Her activities are described at pp. 16-18 of Warren Commission Document CD 14. A summary is attached." 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)

29. On April 21, 1982, defendant acknowledged receipt of the request, but produced no records. The reply stated that the FBI could neither confirm or deny the existence of records without a waiver of privacy. (See Exhibit 4b, attached hereto)

30. On May 24, 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)

31. On June 15, 1982, defendant's Office of Legal Policy replied to the effect that it could not currently consider the appeal and assigned it Number 82-0779. (See Exhibit 4d, attached hereto)

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

33. To date, no records have been produced.

COUNT FIVE

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

35. On March 9, 1982, plaintiffs made a formal request under FOIA to the FBI Field Office in Dallas, Texas, for "all records (including "see references" or cross references) maintained by your agency pertaining to Manuel Rodriguez Orcarberro, who was born in Santiago de Cuba, Oriente, Cuba, 11-8-28. He entered the U.S. on Nov. 29, 1960. Upon arrival he lived at 1541 S.W. 4th St., Miami, Florida. An FBI rap sheet dated 1-11-61 indicates that he was printed by INS on 12-30-60 for violation of immigration laws. Miami Police show him under file no. C-303-752. Agent Ellsworth of ATF interviewed him on 1-16-64. His FBI (Dallas) file is DL 105-1740." 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)

36. On March 19, 1982, defendant acknowledged receipt of the request, but produced no records. The reply stated that the FBI could neither confirm nor deny the existence of records without a privacy waiver. (See Exhibit 5b, attached hereto)

37. On May 24, 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)

38. On June 15, 1982, defendant's Office of Legal Policy replied to the effect that the appeal of May 24, 1982, could not be currently considered and assigned it no. 82-0775. (See Exhibit 5d, attached hereto)

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

40. To date, no records have been produced.

COUNT SIX

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

42. On March 18, 1982, plaintiffs made a formal request under FOIA to the FBI Field Office in Newark, New Jersey, for "all records (including "see references" or cross references) maintained by your agency pertaining to Spas T. Raikin, a representative of the Travelers Aid Society who met the Oswald family when they arrived in Hoboken from the U.S.S.R. in 1962. Raikin was the secretary-general of the American Friends of the Anti-Bolshevik Bloc of Nations, an emigre group in direct touch with the FBI and American military establishment. Relevant FBI files are: Bureau 105-82555; Newark 105-15291; Cincinnati 105-2505; N.Y. 105-38431." 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)

43. On March 23, 1982, defendant acknowledged receipt of the request, but produced no records. The reply stated that no search would be made without a privacy waiver. (See Exhibit 6b, attached hereto)

44. On May 24, 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)

45. On June 21, 1982, defendant's Office of Legal Policy replied to the effect that the appeal could not be currently considered and assigned it no. 82-0780. (See Exhibit 6d, attached hereto)

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

47. To date, no records have been produced.

COUNT SEVEN

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

49. On March 9, 1982, plaintiffs made a formal request under FOIA to the FBI Field Office in Cincinnati, Ohio, for "all records (including "see references" or cross references) maintained by your agency pertaining to Elizabeth Catlett Mora, who allegedly had knowledge of Oswald's activities with "training men to fight Cuba". See FBI Bureau file #105-82555; Warren Commission documents CD 181, pp. 1-2, CD 794; CD 794.2." 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)

50. On March 17, 1982, defendant acknowledged receipt of the request, but produced no records. The reply, insisting that the request be handled under the Privacy Act (not FOIA), required a privacy waiver before processing. (See Exhibit 7b, attached hereto)

51. On March 23, 1982, plaintiffs wrote defendant stating that the requests were made under FOIA, not the Privacy Act. (See Exhibit 7c, attached hereto)

52. On April 8, 1982, defendant restated its position. (See Exhibit 7d, attached hereto)

53. On May 24, 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 7e, attached hereto)

54. On June 15, 1982, defendant replied to the effect that the appeal could not be currently processed and assigned it no. 82-0776. (See Exhibit 7f, attached hereto)

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

56. To date, no records have been produced.

COUNT EIGHT

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

58. On March 8, 1982, plaintiffs made a formal request under FOIA to the FBI Field Office in Cincinnati, Ohio, for "all records (including "see references" or cross references) maintained by your agency, pertaining to Spas T. Raikin, a representative of the Travelers Aid Society who met the Oswald family when they arrived in Hoboken from the U.S.S.R. in 1962. Raikin was the secretary-general of the American Friends of the Anti-Bolshevik Bloc of Nations, an emigre group in direct touch with the FBI and American military establishment. Relevant FBI files are: Bureau 105-82555; Newark 105-15291; Cincinnati 105-2505; N.Y. 105-38431." 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)

59. On March 16, 1982, defendant acknowledged receipt of the request, but produced no records. (See Exhibit 8b, attached hereto)

60. On March 23, 1982, plaintiffs wrote to defendant, explaining that the request was under FOIA, not the Privacy Act. (See Exhibit 8c, attached hereto)

61. On April 8, 1982, defendant restated the FBI's position. (See Exhibit 8d, attached hereto)

62. On May 24, 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's agency's regulations. (See Exhibit 8e, attached hereto)

63. On June 21, 1982, defendant replied to the effect that the appeal could not be currently considered and assigned it no. 82-0774. (See Exhibit 8f, attached hereto)

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

65. To date, no records have been produced.

COUNT NINE

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

67. On March 11, 1982, plaintiffs made a formal request under FOIA to the FBI Field Office in San Antonio, Texas, 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 WW II 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 9a, attached hereto)

68. On March 17, 1982, defendant acknowledged receipt of the request, but produced no records. (See Exhibit 9b, attached hereto)

69. On April 7, 1982, defendant informed plaintiffs that 8 "see references" were being forwarded to FBI Washington for processing. (See Exhibit 9c, attached hereto)

70. On May 24, 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 9d, attached hereto)

71. Plaintiffs assert that their administrative remedies have been exhausted.

72. To date, the 8 "see references" have not been produced.

REQUESTED RELIEF

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

74. Plaintiffs have exhausted their administrative remedies.

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

76. 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.

B. Fensterwald Jr.

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

Counsel to Plaintiffs

Dated: July 12, 1982