

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. 20520,)
)
)
Defendant.)
)
)

Civil Action No. 87-2129
7129152
Overlander

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 April 30, 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 David William Ferrie, an ex-Eastern Airlines pilot who lived in New Orleans in the 1960's. Ferrie dabbled in religion and medicine. He did investigative work for Carlos Marcello. He was alleged to have known both Clay Shaw and Lee Harvey Oswald. Ferrie died in New Orleans on February 22, 1967." 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 May 12, 1982, defendant acknowledged receipt of the request, assigned it Number 8201556, but produced no records. (See Exhibit 1b, attached hereto)

7. On May 28, 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's Policy Appeals officer replied to the effect that the appeal of May 28, 1982, could not currently be processed. (See Exhibit 1d, attached hereto)

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

10. To date, no records have been produced.

COUNT TWO

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

12. On May 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 Major General Edwin A. Walker, a U.S. Army officer who retired to Dallas, in the years 1960-1964. By 1963, General Walker was a notorious leader of the ultra-conservative right. He ran for the Texas Governorship. He was a member of the John Birch Society. Oswald is believed to have made an attempt on his life in 1963." 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 May 12, 1982, defendant acknowledged receipt of the request, assigned it Number 8201555, but produced no records. (See Exhibit 2b, attached hereto)

14. On June 1, 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 June 11, 1982, defendant's Policy Appeals officer replied to the effect that the appeal of June 1, 1982, could not be currently processed. (See Exhibit 2d, attached hereto)

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

17. To date, no records have been produced.

COUNT THREE

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

19. On May 4, 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 Soustelle, former French Governor to Algeria and former French Prime Minister, for the years 1960-64." 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 3a, attached hereto)

20. On May 14, 1982, defendant acknowledged receipt of the request, assigned it Number 8201575, but produced no records. (See Exhibit 3b, attached hereto)

21. On June 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)

22. On June 11, 1982, defendant's Policy Appeals officer replied to the effect that the appeal of June 2, 1982, could not be currently processed. (See Exhibit 3d, attached hereto)

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

24. To date, no records have been produced.

COUNT FOUR

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

26. On March 30, 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 independence movements in Guadeloupe and Martinique, 1960-64." 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 4a, attached hereto)

27. On April 7, 1982, defendant acknowledged receipt of the request, assigned it Number 8201098, but produced no records. (See Exhibit 4b, attached hereto)

28. On May 21, 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)

29. On May 27, 1982, defendant's Policy Appeals officer replied to the effect that the appeal of May 21, 1982, could not currently be processed. (See Exhibit 5d, attached hereto)

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

31. To date, no records have been produced.

COUNT FIVE

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

33. On May 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 Silvia Odio during the years 1960-1964. Mrs. Odio, a Cuban born woman who fled her country after the Castro take over and was living in Dallas in September 1963 when she was visited by a "Leon Oswald." She was questioned at great length by the Warren Commission." 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)

34. On May 18, 1982, defendant acknowledged receipt of the request, assigned it Number 8201594, but produced no records. (See Exhibit 5b, attached hereto)

35. On June 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 5c, attached hereto)

36. On June 11, 1982, defendant's Policy Appeals officer replied to the effect that the appeal of June 7, 1982, could not be currently processed. (See Exhibit 5d, attached hereto)

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

38. To date, no records have been produced.

REQUESTED RELIEF

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

40. Plaintiffs have exhausted their administrative remedies.

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

42. 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;

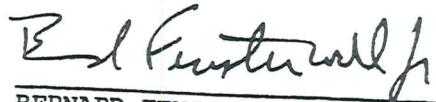
b) In cases of withholding or deletions, order defendant by a date certain to prepare an index, description, and justification in accordance with the requirements of Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974), and a draft order to this effect is appended for the 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 15, 1982