

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 JUSTICE )  
Washington, D.C. 20530, )  
 )  
 )  
Defendant. )  
 )  
 )  
 )

Civil Action No. 82-2155  
8/2/82  
*Oberdorfer*

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 20, 1982, plaintiffs made a formal request under FOIA to defendant's Immigration and Naturalization Services for "all records (including "see references" or cross references) maintained in your agency pertaining to a Frenchman picked up in Dallas by INS Investigator Virgil Bailey on or about November 22, 1963. It is Bailey's remembrance that the Frenchman was circa 50 years of age and slightly over six feet tall, and that he was a temporary resident of Dallas." 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 30, 1982, INS acknowledged receipt of the request, assigned it Number C02.12-C (2402), but produced no records. The reply stated that INS could not identify the records sought, and that the request was being transferred to INS Dallas "since they may have some local records relative to the incident." (See Exhibit 1b, attached hereto)

7. 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 1c, attached hereto)

8. On June 15, 1982, defendant's Office of Legal Policy replied to the effect that the appeal of May 21, 1982, could not be currently 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 March 20, 1982, plaintiffs made a formal request under FOIA to defendant's Immigration and Naturalization Service for "all records (including "see references" or cross references) maintained by your agency pertaining to request by INS Washington to INS Dallas on or about November 22, 1963, to pick up an alien; request handled by INS investigator Hal Norwood who informed INS Washington that the alien was already in custody, having been turned over by the Dallas Police Department." 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 30, 1982, INS acknowledged receipt of the request, assigned it Number CO 2.12-C (2403), but produced no records. The reply stated that the request was being transferred to INS Dallas. (See Exhibit 2b, attached hereto)

14. 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 2c, attached hereto)

15. On June 15, 1982, defendant's Office of Legal Policy replied to the effect that the appeal of May 21, 1982, could not be currently processed. On July 13, 1982, the Office of Legal Policy wrote further, saying that the appeal had been "closed." (See Exhibits 2d and 2e, 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 March 9, 1982, plaintiffs made a formal request under FOIA to defendant's Immigration and Naturalization Service in New Orleans, Louisiana, for "all records (including "see references" or cross references) maintained by your agency pertaining to an interview by an INS Inspector of "Lee Harvey Oswald" in a jail cell in New Orleans shortly before April 1, 1963. The INS Inspector testified before the Senate Intelligence Committee 12/11/75 and reference to the interview may be found in footnote 29, page 91, of the Committee's Report (see 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 3a, attached hereto)

20. On March 12, 1982, INS New Orleans replied that all records relating to Oswald had been transferred to Dallas and plaintiffs' request was being transferred there also. (See Exhibit 3b, attached hereto)

21. On April 9, 1982, INS Dallas replied that the records were on loan to INS Washington and the request was being forwarded there. (See Exhibit 3c, attached hereto)

22. 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 3d, attached hereto)

23. On June 11, 1982, defendant's Office of Legal Policy replied to the effect that it could not act on the appeal of May 21, 1982. (See Exhibit 3e, attached hereto)

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

25. To date, no records have been produced.

COUNT FOUR

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

27. On March 17, 1982, plaintiffs made a formal request under FOIA to defendant's Immigration and Naturalization Service 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 4a, attached hereto)

28. On March 23, 1982, defendant acknowledged receipt of the request, but produced no records. The reply required more biographical data and enclosed forms. (See Exhibit 4b, attached hereto)

29. 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)

30. On some unknown date, defendant's Office of Legal Policy replied to the effect that the appeal of May 24, 1982, could not be currently processed. (See Exhibit 4d, attached hereto)

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

32. To date, no records have been produced.

REQUESTED RELIEF

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

34. Plaintiffs have exhausted their administrative remedies.

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

36. 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