

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 THE TREASURY
Washington, D.C. 20226

Defendant.

Civil Action No. 82-2335

Shaw
(Allen)

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 9, 1982, plaintiffs made a formal request under FOIA to defendant Bureau of Alcohol, Tobacco and Firearms, for "all records (including "see references" or cross references) maintained by your agency pertaining to Thomas Eli Davis III AKA Thomas Eli Davis, Jr., who was born in Jaxboro, Texas on Aug 27, 1936. On June 18, 1958 he attempted a bank robbery in Detroit. Davis used the code name "Oswald" in some of his anti-Castro activities. On Jan 31, 1963 Davis was granted a U.S. Passport, number D236764. He was arrested in Algiers and Tangier in 1963 for gunrunning. He is referenced in the Hearings of the House Select Committee on Assassinations at pp. 184-185 of Vol.9." 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 10, 1982, defendant acknowledged receipt of the request, assigned it Number F821606, but produced no records. (See Exhibit 1b, attached hereto)

7. On March 16, 1982, defendant replied further that a search produced no records relevant to the request. (See Exhibit 1c, attached hereto)

8. 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. It was pointed out that Mr. Davis was a notorious gunrunner and mercenary and that ATF must have some file on him. (See Exhibit 1d, attached hereto)

9. On May 28, 1982, defendant replied again to the effect that ATF has no records relating to Mr. Davis. (See Exhibit 1e, attached hereto)

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

11. To date, no records have been released.

COUNT TWO

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

13. On March 11, 1982, plaintiffs made a formal request under FOIA to defendant Bureau of Alcohol, Tobacco and Firearms 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 costs. (See Exhibit 2a, attached hereto)

14. On March 15, 1982, defendant acknowledged receipt of the request, assigned it Number F821613, but produced no records. (See Exhibit 2b, attached hereto)

15. On April 1, 1982, ATF replied further that a search revealed no records relevant to the request. (See Exhibit 2c, attached hereto)

16. On April 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 2d, attached hereto)

17. On May 26, 1982, plaintiffs sent ATF a document which indicates that Orcarberro was an ATF informant. (See Exhibit 2e, attached hereto)

18. On June 2, June 30, and July 14, 1982, defendant replied to the

effect that no records could be found relating to Orcarberro. (See Exhibits 2f, 2g, and 2h, attached hereto)

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

20. To date, no records have been released.

COUNT THREE

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

22. On March 12, 1982, plaintiffs made a formal request under FOIA to defendant Bureau of Alcohol, Tobacco and Firearms, for "all records (including "see references" or cross references) maintained by your agency pertaining to John Thomas Masen, of Masen's Gunshop, Dallas, (see Warren Commission Exhibit CE 2694; CD 853A, p2; and CD 897.83) who told the FBI that he acquired and sold ten boxes of Mannbicher-Carrano ammunition in 1963. Masen had been investigated for violation of the Firearms Act before the assassination (CD 853A.2) and admitted association with a prominent member of Alpha 66, Manuel Rodriguez." 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)

23. On March 16, 1982, defendant acknowledged receipt of the request, assigned it Number F821627, but produced no records. (See Exhibit 3b, attached hereto)

24. On April 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)

25. On April 21, 1982, defendant replied to the effect that a few records were being released but that most of them were being withheld. (See Exhibit

3d, attached hereto)

26. On May 26, 1982, plaintiffs appealed again, saying that the records were aged, and that the Court of Appeals had stated that the Kennedy assassination was a matter of great public interest, and asked for a re-consideration of the determination to withhold. (See Exhibit 3e, attached hereto)

27. On July 14, 1982, defendant reiterated its decision to withhold, citing Exemptions 2, 3, 6, and 7. (See Exhibit 3f, attached hereto)

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

29. To date, most of the records have wrongfully been withheld.

COUNT FOUR

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

31. On March 8, 1982, plaintiffs made a formal request under FOIA to defendant Bureau of Alcohol, Tobacco and Firearms, for "all records (including "see references" or cross references) maintained by your agency pertaining to Louis Mortimer Bloomfield, a partner in the law firm of Phillips, Bloomfield, Vineberg and Coodman of Montreal. Mr. Bloomfield was a Major in the OSS. Later, he was a principal shareholder in Permindex, a Swiss corporation." 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)

32. On March 9, 1982, defendant acknowledged receipt of the request, assigned it Number P-821594, but produced no records. (See Exhibit 4b, attached hereto)

33. On March 11, 1982, defendant replied that a search revealed no records relating to Bloomfield. (See Exhibit 4c, attached hereto)

34. On March 22, 1982, plaintiff wrote, supplying more biographical data re Bloomfield. (See Exhibit 4d, attached hereto)

35. On March 30, 1982, defendant again replied that they had not received sufficient information to locate Bloomfield in their files. (See Exhibit 4e, attached hereto)

36. On June 3, 1982, ATF said that a further search revealed no records. (See Exhibit 4f, attached hereto)

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

37. To date, no records have been released.

COUNT FIVE

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

39. On March 10, 1982, plaintiffs made a formal request under FOIA to defendant Bureau of Alcohol, Tobacco and Firearms 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 5a, attached hereto)

40. On March 11, 1982, defendant acknowledged receipt of the request, assigned it Number P821607, but produced no records. (See Exhibit 5b, attached hereto)

41. On March 16, 1982, defendant replied that no records relating to Perrin could be found. (See Exhibit 5c, attached hereto)

42. On March 23, 1982, plaintiffs sent more biographical data. (See Exhibit 5d, attached hereto)

43. On April 17, 1982, defendant wrote that a check of their Dallas and New Orleans offices revealed no records. (See Exhibit 5e, attached hereto)

44. On May 27, 1982, plaintiffs asked for a re-check of files. (See Exhibit 5f, attached hereto)

45. On June 3, 1982, defendant again denied being able to locate any records. (See Exhibit 5g, attached hereto)

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

47. To date, no records have been released.

COUNT SIX

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

49. On March 15, 1982, plaintiffs made a formal request under FOIA to defendant Secret Service for "all records (including "see references" or cross references) maintained by your agency pertaining to Gilberto Policarpo Lopez who was born in Cuba on Jan. 26, 1940. He came to the U.S. soon after Castro took power. In July 1960 he was issued U.S. Passport 310162. In 1962 he married an American woman and they lived in Key West, Florida. In 1963 he and his wife moved to Tampa. He was involved with the Fair Play for Cuba Committee. See Warren Commission Document 205 pp. 750-751, CIA 118, CIA 308-114, House Select Committee Report pp. 118-121." 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)

50. On April 5, 1982, the Secret Service acknowledged receipt of the request, but produced no records. They said that no records would be released

without a waiver of privacy or proof of death. (See Exhibit 6b, attached hereto)

51. 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)

52. On June 15, 1982, the appeals officer replied to the effect that the appeal of May 24, 1982, was denied. (See Exhibit 6d, attached hereto)

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

54. To date, no records have been released.

REQUESTED RELIEF

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

56. Plaintiffs have exhausted their administrative remedies.

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

58. 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;

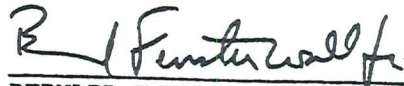
b) In cases of withholding or deletions, order defendant by a date certain to prepare an index, description, and justification in accordance with the requirements of Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974), and a draft order to this effect is appended for the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



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

Counsel to Plaintiffs

Dated: July 28, 1982