

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.

CENTRAL INTELLIGENCE AGENCY
Washington, D.C. 20505,

Defendant.

Civil Action No. 82-1388

5/24/82

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 June 24, 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 Sergeant Jean Petit of the French Army during the years 1960-65. Sergeant Petit deserted and joined the anti-Gaullist "secret army" (OAS) in 1961. He was the founder of "Ressurrection-Patrie". Sergeant Petit, who used the alias of "Petitjean", was sentenced by a French court to 15 years in 1962." 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 July 7, 1982, defendant acknowledged receipt of the request, but produced no records. Before agreeing to process the request, the CIA required (a) a change in the request; (b) a waiver of privacy or proof of death; and (c) a deposit of \$90.00. (See Exhibit 1b, attached hereto)

7. On July 9, 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 July 16, 1982, defendant replied to the effect that the appeal of July 9 would not be processed until the items in the letter of July 7th were received. (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 released.

COUNT TWO

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

12. On June 21, 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 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 2a, attached hereto)

13. On July 7, 1982, defendant acknowledged receipt of the request, but produced no records. The CIA refused to process the request without (a) more biographical data; (b) a privacy waiver or proof of death; and (c) a deposit of \$90.00. (See Exhibit 2b, attached hereto)

14. On July 9, 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 July 15, 1982, defendant replied to the effect that the appeal of July 9 could not be processed until the demands of July 7 were met. (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 released.

COUNT THREE

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

19. On June 25, 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 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 3a, attached hereto)

20. On July 7, 1982, defendant acknowledged receipt of the request, but produced no records. Before processing the request, the CIA required (a) more biographical information; (b) a waiver of privacy or proof of death; and (c) a deposit of \$90.00. (See Exhibit 3b, attached hereto)

21. On July 12, 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 July 16, 1982, defendant replied to the effect that the appeal of July 12 could not be processed until the requirements of the letter of July 7th were met. (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 released.

COUNT FOUR

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

26. On May 19, 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 Jim Garrison, the former District

Attorney of New Orleans Parish, currently a state judge in Louisiana." 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 May 28, 1982, defendant acknowledged receipt of the request, but produced no records. Before processing the request, the CIA required (a) more biographical data; (b) a privacy waiver or proof of death; and (c) a commitment to pay all search and reproduction costs. (See Exhibit 4b, attached hereto)

28. On June 17, 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 June 24, 1982, defendant replied to the effect that the appeal of June 17, 1982, could not be processed until the requirements of May 28, 1982, were met. (See Exhibit 4d, 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 released.

COUNT FIVE

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

33. On June 18, 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 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 5a, attached hereto)

34. On July 1, 1982, defendant acknowledged receipt of the request, but produced no records. Before processing the request, the CIA required (a) more biographical information; (b) a waiver of privacy or proof of death; (c) an advance payment of \$90.00. (See Exhibit 5b, attached hereto)

35. On July 9, 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 July 16, 1982, defendant replied to the effect that the appeal of July 9, 1982, could not be processed until the requirements of July 1, 1982, were met. (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 released.

COUNT SIX

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

40. On June 22, 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 Manuel Rodriquez 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 6a, attached hereto)

41. On July 7, 1982, defendant acknowledged receipt of the request, but produced no records. Before processing, the CIA required (a) a waiver of privacy or proof of death; and (b) a deposit of \$90.00. (See Exhibit 6b, attached hereto)

42. On July 9, 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)

43. On July 16, 1982, defendant replied to the effect that the appeal of July 9 could not be processed until the requirements of July 7 were met. (See Exhibit 6d, attached hereto)

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

45. To date, no records have been released.

COUNT SEVEN

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

47. On May 25, 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 Free Cuba Committee, an exile Cuban organization, for the years 1960-64. The Florida branch of the organization was headed by Eladio del Valle. The Dallas branch was alleged to have been housed at 3128 Harlendale in 1963. See Warren Commission, Vol. 7, p548." 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)

48. On June 2, 1982, defendant acknowledged receipt of the request, but produced no records. The CIA refused to process the request without a commitment to pay all search and copying fees. (See Exhibit 7b, attached hereto)

49. On June 18, 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 7c, attached hereto)

50. On June 28, 1982, defendant replied to the effect that the search could only be made for records dated 1960-64, not for records relating to the years 1960-64. (See Exhibit 7d, attached hereto)

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

52. To date, no records have been released.

COUNT EIGHT

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

54. On June 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 Delesseps Morrison, for the years 1960-

65. Morrison was Mayor of New Orleans and later connected with the Organization of American States. Morrison introduced Clay Shaw to President Kennedy in 1963. He died in a plane crash in Mexico on May 23, 1965." 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)

55. On June 15, 1982, defendant acknowledged receipt of the request, but produced no records. Before processing the request, the CIA required (a) more biographical information; (b) a waiver of privacy or proof of death; and (c) a deposit of \$90.00. (See Exhibit 8b, attached hereto)

56. On June 18, 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 8c, attached hereto)

57. On July 1, 1982, defendant replied to the effect that the appeal of June 18, 1982, would not be processed until the requirements of June 15, 1982, were met. (See Exhibit 8d, attached hereto)

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

59. To date, no records have been released.

COUNT NINE

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

61. On June 2, 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 Alpha 66, a Miami-based Cuban exile organization, for the years 1960-1964. The organization mounted a number of raids against Castro's Cuba." 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)

62. On June 8, 1982, defendant acknowledged receipt of the request, but produced no records. Before processing, the CIA required (a) a change in the request; (b) a commitment to pay all search and copying costs. (See Exhibit 9b, attached hereto)

63. On June 23, 1982, plaintiffs agreed to the change in the request and to the payment of search and copying costs. (See Exhibit 9c, attached hereto)

64. On July 7, 1982, defendant replied to the effect that there was a backlog of 3,000 cases and plaintiffs' request would have to be processed on a FIFO basis. (See Exhibit 9d, attached hereto)

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

66. To date, no records have been released.

REQUESTED RELIEF

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

68. Plaintiffs have exhausted their administrative remedies.

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

70. 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, and a ^{MOT. OR, Memo, ←} draft Order to this effect ^{are} ~~is~~ appended for the Court's consideration;

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 28, 1982