

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 DEFENSE)
Washington, D.C.)
)
and)
)
DEPARTMENT OF THE ARMY)
Washington, D.C. 20314,)
)
and)
)
DEPARTMENT OF THE AIR FORCE)
Washington, D.C. 20332,)
)
and)
)
DEPARTMENT OF THE NAVY)
Washington, D.C. 20350,)
)
Defendants.)
)
)

Civil Action No. 82-2411

8/25/82

(Rickey)

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 defendants to permit access to certain records in their possession and under their 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. Defendants are agencies of the United States and have possession of the records to which plaintiffs seek access.

COUNT ONE

5. On March 10, 1982, plaintiffs made a formal request under FOIA to defendant Defense Intelligence Agency for "all records (including "see references" or cross references) maintained by your agency pertaining to Clemard Joseph Charles during the years 1959-1964. Charles was a Haitian citizen and was a banker. He was a close friend of "Papa Doc" Duvalier." 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 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 1b, attached hereto)

7. On June 29, 1982, defendant replied to the effect that relevant records had been located but were being withheld in toto under Exemptions 1 and 3. Other records, originated by other agencies, were being referred for releasability (See Exhibit 1c, attached hereto)

8. On July 12, 1982, plaintiffs made a formal appeal of the denial. (See Exhibit 1d, attached hereto)

9. Plaintiffs 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 March 8, 1982, plaintiffs made a formal request under FOIA to the defendant Department of the Army for "all records (including "see references" or cross references) maintained by your agency pertaining to Clemard Joseph Charles during the years 1959-1964. Charles was a Haitian citizen and was a banker. He was a close friend of "Papa Doc" Duvalier. 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 12, 1982, defendant acknowledged receipt of the request, but produced no records. (See Exhibit 2b, attached hereto)
14. On March 26, 1982, the Department of the Army admitted having relevant records but withheld them under Exemption 1. They also said that the State Department, Federal Bureau of Investigation, and the Central Intelligence Agency had relevant records. (See Exhibit 2c, attached hereto)
15. On April 29, 1982, the Federal Bureau of Investigation replied that it could not release its records without a waiver of privacy. (See Exhibit 2d, attached hereto)
16. On May 16, 1982, the State Department released the one document which originated with it. (See Exhibit 2e, attached hereto)
17. 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 2f, attached hereto)
18. Plaintiffs assert that their administrative remedies have been exhausted.

19. To date, no records have been released.

COUNT THREE

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

21. On March 12, 1982, plaintiffs made a formal request under FOIA to defendant Defense Intelligence Agency 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 3a, attached hereto)

22. 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 3b, attached hereto)

23. On May 5, 1982, defendant replied to the effect that "DIA systems of records failed to identify any files, records, or data concerning" Jim Garrison. (See Exhibit 3c, 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 released.

COUNT FOUR

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

27. On March 11, 1982, plaintiffs made a formal request under FOIA to defendant Defense Intelligence Agency for "all records (including "see references" or cross references) maintained by your agency pertaining to

Schlumberger Well Services Company during the years 1959-1964. The company headquarters is in Houston, Texas. It is alleged that the company engaged in anti-Gaullist activities." 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 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 4b, attached hereto)

29. On May 5, 1982, defendant replied to the effect that a search of DIA systems failed to identify any records which were relevant to the request. (See Exhibit 4c, attached hereto)

30. Plaintiffs 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 March 8, 1982, plaintiffs made a formal request under FOIA to defendant Defense Investigative Service, for "all records (including "see references" or cross references) maintained by your agency pertaining to any relationship or communication during the years 1961-64 between the O.A.S. (French secret army) or its adherents on the one hand and any U.S. Department or agency or its employees or agents on the other hand." 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 April 7, 1982, defendant acknowledged receipt of the request, but produced no records. (See Exhibit 5b, attached hereto)

35. 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 5c, attached hereto)

36. On April 23, 1982, defendant replied to the effect that the request was being forward to the Air Force. (See Exhibit 5d, attached hereto)

37. On May 11, 1982, the Air Force replied that it had no records. (See Exhibit 5e, attached hereto)

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

39. To date, no records have been released.

COUNT SIX

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

41. On March 15, 1982, plaintiffs made a formal request under FOIA to defendant Defense Intelligence Agency for "all records (including "see references" or cross references) maintained by your agency pertaining to Guy L. Johnson during the years 1960-1968. Johnson was a New Orleans attorney who maintained an office in the Pere Marquette building. He ran for a seat on the Criminal District Court bench in 1963, but he was defeated. He was a reserve officer in Naval Intelligence. He also served as Clay Shaw's first defense attorney when he was accused of conspiring to murder President Kennedy. He died some years ago." 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)

42. On April 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 6b, attached hereto)

43. On May 5, 1982, defendant replied to the effect that a search of files revealed no relevant records. (See Exhibit 6c, attached hereto)

44. Plaintiffs 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 March 16, 1982, plaintiffs made a formal request under FOIA to defendant Defense Intelligence Agency for "all records (including "see references" or cross references) maintained by your agency pertaining to Jacqueline Lancelot during the years 1959-64. During the time in question, Ms. Lancelot owned the Picardy Restaurant in Haitianville, Haiti. After the assassination of President Kennedy, she is said to have declared that \$200,000.00 had been deposited to the account of Mr. George de Mohrenschildt in Port-au-Prince." 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 April 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 7b, attached hereto)

49. On May 5, 1982, defendant replied to the effect that a search of files revealed no relevant records. (See Exhibit 7c, attached hereto)

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

51. To date, no records have been released.

COUNT EIGHT

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

53. On March 17, 1982, plaintiffs made a formal request under FOIA to defendant Defense Intelligence Agency 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)

54. On April 8, 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 8b, attached hereto)

55. On May 5, 1982, defendant replied to the effect that a search of files revealed no relevant records. (See Exhibit 8c, attached hereto)

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

57. To date, no records have been released.

COUNT NINE

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

59. On March 18, 1982, plaintiffs made a formal request under FOIA to defendant Defense Intelligence Agency for "all records (including "see references" or cross references) maintained by your agency pertaining to Eugene Barry Dinkin, who was a PFC in the "code section" of the 599th Ordnance Group stationed in Germany in the fall of 1963. Reference is made to Dinkin in Warren Commission document CD 1107, pp. 353-362. U.S. Army Serial No. RA-76710292. Born circa 1942. See also CD 943." 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)

60. On April 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 9b, attached hereto)

61. On May 5, 1982, defendant replied to the effect that a search of files revealed no relevant records. (See Exhibit 9c, attached hereto)

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

63. To date, no records have been released.

COUNT TEN

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

65. On March 19, 1982, plaintiffs made a formal request under FOIA to defendant Defense Intelligence Agency for "all records (including "see references" or cross references) maintained by your agency pertaining to

Marquis Brousse de Montpeyroux, a French officer who deserted from the French forces in Algeria in 1961. He was arrested for helping in the establishment of an anti-Gaullist force in Algeria." 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 10a, attached hereto)

66. On April 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 10b, attached hereto)

67. On May 5, 1982, defendant replied to the effect that a search of files revealed no relevant information. (See Exhibit 10c, attached hereto)

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

69. To date, no records have been released.

COUNT ELEVEN

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

71. On March 9, 1982, plaintiffs made a formal request under FOIA to defendant the Department of the Navy for "all records (including "see references" or cross references) maintained by your agency pertaining to Kerry Wendell Thornley, a writer, who served in the Marine Corps with Lee Harvey Oswald. Thornley wrote a book which included an Oswald-like character. He gave the Warren Commission extensive testimony of Oswald's Marine days. Mr. Thornley was born on April 17, 1938. His testimony appears at p82, Vol.XI of the Warren Commission Hearings." 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 11a, attached hereto)

72. On March 24, 1982, defendant acknowledged receipt of the request, but produced no records. (See Exhibits 11b and 11c, attached hereto)

73. On March 30, 1982, the Navy replied that they had no records on Thornley. (See Exhibit 11d, attached hereto)

74. 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 11e, attached hereto)

75. On June 22, 1982, the Marine Corp released a few records re Thornley but withheld the bulk on grounds that release was barred by the Privacy Act. (See Exhibit 11f, attached hereto)

76. On July 2, 1982, defendant replied to the effect that the appeal of May 24, 1982, was denied. (See Exhibit 11g, attached hereto)

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

78. To date, no records have been released.

REQUESTED RELIEF

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

80. Plaintiffs have exhausted their administrative remedies.

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

82. 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