

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. )  
 )  
FEDERAL BUREAU OF INVESTIGATION )  
Washington, D.C. 20535, )  
 )  
 )  
Defendant. )  
 )  
\_\_\_\_\_ )

Civil Action No. 82-2680  
9/21/82  
Plannery

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 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 a visit by General de Gaulle to New Orleans and the Caribbean in May, 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 1a, attached hereto)

6. On April 5, 1982, defendant acknowledged receipt of the request, assigned it Number 224833, but produced no records. (See Exhibit 1b, attached hereto)

7. On April 14, 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 May 11, 1982, defendant replied to the effect that the appeal could not be currently processed. (See Exhibit 1d, attached hereto)

9. On June 1, 1982, defendant replied further that FBI Headquarters files contained no relevant records. (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 June 7, 1982, plaintiffs made a formal request under FOIA to FBI New Orleans Field Office for "all records (including "see references" or

cross references) maintained by your agency pertaining to a visit by General de Gaulle to New Orleans and the Caribbean in May, 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)

14. On June 18, 1982, defendant acknowledged receipt of the request, but produced no records. The reply stated that FBI New Orleans had no relevant records. (See Exhibit 2b, attached hereto)

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

16. To date, no records have been released.

#### COUNT THREE

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

18. On March 10, 1982, plaintiffs made a formal request under FOIA to FBI New Orleans Field Office for "all records (including "see references" or cross references) maintained by your agency pertaining to William George Gaudet, an informant for the CIA in New Orleans. For many years Gaudet edited and published the Latin American Newsletter. After the assassination of President Kennedy, he telephoned the FBI and gave them information relative to the activities of Jack Ruby. He had his office in the "old" International Trade Mart building in New Orleans. He lived in Waveland, Mississippi, until his recent death. He was born circa 1908. He is the subject of one report in Warren Commission Document 75." 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)

19. On March 24, 1982, defendant acknowledged receipt of the request, but produced no records. (See Exhibit 3b, attached hereto)

20. On May 24, 1982, defendant replied further that the Gaudet file had been located but was being withheld in its entirety. (See Exhibit 3c, attached hereto)

21. 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 3d, attached hereto)

22. On July 27, 1982, defendant replied to the effect that the appeal was acknowledged but could not be currently processed. (See Exhibit 3e, 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 March 12, 1982, plaintiffs made a formal request under FOIA to the Legat (Paris, France) for "all records (including "see references" or cross references) maintained by your agency pertaining to Pierre Sergent, former French Army Officer, for the years 1960-64. Sergent was a Captain in the French Army who deserted and joined the OAS. Much of his OAS duty was seen in metropolitan France. He contacted CIA personnel in an attempt to get U.S. aid for the OAS." 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 the matter, defendant was asked for a waiver of search and copying fees. (See Exhibit 4a, attached hereto)

27. On March 19, and June 1, 1982, defendant acknowledged receipt of the request, but produced no records. Legat Paris said that they could not locate any relevant records. They referred plaintiffs to the Department of Justice. (See Exhibit 4b and Exhibit 4d, 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 June 4, 1982, plaintiffs appealed to the Department of Justice. (See Exhibit 4e, attached hereto)

30. On June 21, 1982, defendant's Office of Legal Policy replied to the effect that the appeal could not be currently processed. (See Exhibit 4f, 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 released.

#### COUNT FIVE

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

34. On March 11, 1982, plaintiffs made a formal request under FOIA to Legat (Mexico City) 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., rea. He travelled on a bus from Loreda, 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 5a, attached hereto)

35. On March 17, 1982, defendant acknowledged receipt of the request, but produced no records. Defendant said that the request had been forwarded to Washington for processing. (See Exhibit 5b and Exhibit 5d, attached hereto)

36. 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 5c, attached hereto)

37. On June 21, 1982, defendant's Office of Legal Policy replied to the effect that the appeal could not be processed currently.

38. Plaintiffs construe this as a further denial and 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 8, 1982, plaintiffs made a formal request under FOIA to Legat (Mexico City) for "all records (including "see references" or cross references) maintained by your agency pertaining to Silvia Duran, a Mexican woman who worked in the Cuban Embassy in Mexico City in 1963 when the Embassy was visited by "Lee Harvey Oswald." After the assassination of President Kennedy, Ms. Duran was picked up by the Mexican police and questioned extensively. She is quoted at some length in the Warren Report." 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 March 17, and April 5, 1982, defendant acknowledged receipt of the request, but produced no records. (See Exhibits 6b and 6c, attached hereto)

43. On May 24 and June 4, 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 Exhibits 6d and 6f, attached hereto)

44. On June 21, 1982, defendant replied to the effect that the appeal could not be processed currently. (See Exhibit 6g, attached hereto)

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

46. To date, no records have been released.

#### COUNT SEVEN

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

48. On March 10, 1982, plaintiffs made a formal request under FOIA to FBI Dallas Field Office for "all records (including "see references" or cross references) maintained by your agency pertaining to an airplane that arrived in Havana from Dallas (via Tijuana and Mexico City) on or about November 22, 1963. This flight is referenced in CIA's Kennedy Assassination Document 979-927 AX which was declassified in 1977." 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)

49. On March 19, 1982, defendant acknowledged receipt of the request, but produced no records. The reply stated that no relevant records could be found (See Exhibit 7b, attached hereto)

50. On May 28, 1982, plaintiffs wrote, asking defendant to check their Warren Commission files. (See Exhibit 7d, attached hereto)

51. On June 14, 1982, defendant referred to plaintiffs to FBI Washington. (See Exhibit 7e, attached hereto)

52. On June 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 7f, attached hereto)

53. On July 22, 1982, defendant replied to the effect that the appeal could not currently be processed. (See Exhibit 7g, attached hereto)

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

55. To date, no records have been released.

#### COUNT EIGHT

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

57. On March 24, 1982, plaintiffs made a formal request under FOIA to FBI New Orleans Field Office for "all records (including "see references" or cross references) maintained by your agency pertaining to a raid which was made by anti-Castro supporters on a Schlumberger bunker at Houma, Louisiana, in 1961, and which was staged for the purpose of "liberating" munitions and explosives. The raiding party consisted of Gordon Novel and Sergio Acacha Smith, among others." 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)

58. On April 7, 1982, defendant acknowledged receipt of the request, but produced no records. The reply stated that no relevant records could be located. (See Exhibit 8b, attached hereto)

59. On May 27, 1982, plaintiffs requested a recheck of the records. (See Exhibit 8c, attached hereto)



60. On June 15, 1982, defendant replied that a recheck revealed no relevant records. (See Exhibit 8d, attached hereto)

61. On June 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 8e, attached hereto)

62. On July 22, 1982, defendant replied to the effect that the appeal could not be currently processed. (See Exhibit 8f, attached hereto)

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

64. To date, no records have been released.

#### COUNT NINE

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

66. On March 8, 1982, plaintiffs made a formal request under FOIA to the Immigration and Naturalization Service 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 9a, attached hereto)

67. On March 12, 1982, INS acknowledged receipt of the request, but produced no records. (See Exhibit 9d, attached hereto)

68. On March 25, 1982, INS said that the request was being forwarded to another office. (See Exhibit 9c, attached hereto)

69. On April 6, 1982, INS denied any relevant records existed. (See Exhibit 9d, attached hereto)

70. On May 27, 1982, plaintiffs pointed out why records should exist. (See Exhibit 9e, attached hereto)

71. On June 22, 1982, defendant again insisted that no records were generated or in existence. (See Exhibit 9f, attached hereto)

72. On July 1, 1982, plaintiffs again requested any records relating to the incident. (See Exhibit 9g, attached hereto)

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

74. To date, no records have been released.

#### COUNT TEN

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

76. On April 13, 1982, plaintiffs made a formal request under FOIA to FBI Dallas Field Office for "all records (including "see references" or cross references) maintained by your agency pertaining to Ferenc Nagy for the years 1956-1964. Mr. Nagy was ousted as Premier of Hungary by a Communist coup in 1947. For a number of years, he made his home in Northern Virginia, but he moved to Dallas Texas in 1963. To the best of requesters' knowledge, Mr. Nagy died violently." 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)

77. On April 21, 1982, defendant acknowledged receipt of the request, but produced no records. Defendant refused to process the request without a waiver of privacy or proof of death. (See Exhibit 10b, attached hereto)

78. On July 9, 1982, the statutory time for production or denial of

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 10c, attached hereto)

79. On July 22, 1982, defendant replied to the effect that the appeal could not be processed currently. (See Exhibit 10d, attached hereto)

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

81. To date, no records have been released.

#### COUNT ELEVEN

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

83. On April 14, 1982, plaintiffs made a formal request under FOIA to FBI Dallas Field Office for "all records (including "see references" or cross references) maintained by your agency pertaining to Miguel Casas Saez who was born in Remedios, Las Villas, Cuba. Left Cuba on Sept. 26, 1963 by small boat, was caught in hurricane, and ended up in Puerto Rico, thence to Miami. Was in Dallas on Nov. 22, 1963. Flew to Tijuana, Mexico City, and Havana. See CIA declassified JFK documents 256-96; 510-199 and 491-201." 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)

84. On April 21, 1982, defendant acknowledged receipt of the request, but produced no records. Without a privacy waiver, defendant refused to process the request. (See Exhibit 11b, attached hereto)

85. 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 11c, attached hereto)

86. On July 22, 1982, defendant replied to the effect that the appeal could not be currently processed. (See Exhibit 11d, attached hereto)

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

88. To date, no records have been released.

COUNT TWELVE

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

90. On April 5, 1982, plaintiffs made a formal request under FOIA to FBI Dallas Field Office for "all records (including "see references" or cross references) maintained by your agency pertaining to David G. Copeland, a Texas attorney, who had an office in the Landmark Building 530 New Road, Waco, Texas 76710, and who died in 1981." 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 12a, attached hereto)

91. On April 16, 1982, defendant acknowledged receipt of the request, but produced no records. They required a death certificate before processing the request. (See Exhibit 12b, attached hereto)

92. On June 9, 1982, plaintiffs submitted a death certificate. (See Exhibit 12c, attached hereto)

93. On June 23, 1982, FBI Dallas replied that it could find no relevant records. (See Exhibit 12d, attached hereto)

94. On July 9, 1982, plaintiffs made an identical request to FBI Headquarters. (See Exhibit 12e, attached hereto)

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

96. To date, no records have been released.

REQUESTED RELIEF

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

98. Plaintiffs have exhausted their administrative remedies.

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

100. 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*

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Counsel to Plaintiffs

Dated: September 1, 1982