

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. 82-2681

9/21/82

Seull

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 14, 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 Dean Adams Andrews, Jr. for the years 1962-1964. Mr. Andrews was a member of the bar of Louisiana. In 1964, he lived at 207 Metairie Drive, Metairie, Louisiana. He provided legal services to Lee Harvey Oswald. He testified before the Warren Commission on July 21, 1964 and his testimony can be found at p.325 of Vol. XI of the Hearings. Mr. Andrews died in Jefferson Parish, La., 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 1a, attached hereto)

6. On June 23, 1982, defendant acknowledged receipt of the request, but produced no records. Defendant required more biographical data, a change in the request, and a check for \$90.00 before processing could begin. (See Exhibit 1b, attached hereto)

7. On July 1, 1982, plaintiffs supplied the biographical data, the change in the request, and agreed to the search and copying fees. (See Exhibit 1c, attached hereto)

8. On July 15, 1982, defendant replied to the effect that the processing could not begin until a deposit was made of \$90.00. (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 March 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 activities of the "French secret army" (OAS) in Canada, the United States, and the Caribbean, 1961-64." 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 April 14, 1982, defendant acknowledged receipt of the request, but produced no records. (See Exhibit 2c, attached hereto)

14. 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 2b, attached hereto)

15. On April 19, 1982, defendant replied to the effect that the appeal of April 9, 1982, could not currently be processed because of a backlog of appeals. (See Exhibit 2d, attached hereto)

16. On May 26, 1982, defendant demanded a check for \$480.50 before processing the appeal. (See Exhibit 2e, attached hereto)

17. On May 28, 1982, plaintiffs wrote the CIA, agreeing to search costs of \$484.50, plus copying costs. (See Exhibit 2f, attached hereto)

18. On June 7, 1982, defendant acknowledged receipt of plaintiffs' last letter, but sent no records. (See Exhibit 2g, 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 June 28, 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 Clay Shaw, who was Managing Director of the International Trade Mart in New Orleans. Mr. Shaw was born in Kentwood, La., in 1913. He joined the Army in New York in 1942. During the late 1950's he was named to the Board of Directors of Permindex (a Swiss Corp.) and Centro Mondiale Commerciale (an Italian Corporation). He was tried in New Orleans for conspiracy in the death of President Kennedy. Mr. Shaw is deceased, having died in New Orleans of cancer." 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 July 14, 1982, defendant acknowledged receipt of the request, but produced no records. CIA demanded \$90.00 before the processing of the request could begin. (See Exhibit 3b, attached hereto)

24. On July 15, 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 July 21, 1982, defendant replied to the effect that the appeal could not be processed until the CIA received a check for \$90.00. (See Exhibit 3d, attached hereto)

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

27. To date, no records have been released.

REQUESTED RELIEF

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

29. Plaintiffs have exhausted their administrative remedies.

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

31. 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.

B Fensterwald Jr

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Dated: September 1, 1982