

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROGER B. FEINMAN,

Plaintiff,

-v-

THE UNITED STATES DEPARTMENT
OF JUSTICE,

Defendant.

Civil Action No.

79 C 1537 (ERN)

STATEMENT PURSUANT TO
RULE 9(g)

Pursuant to Rule 9(g) of the General Rules of the United States District Court for the Eastern District of New York, plaintiff Roger B. Feinman submits the following statement of material facts as to which he contends there is no genuine issue to be tried for the purposes of this cross-motion:

1. On May 25, 1976 plaintiff Roger B. Feinman sent a Freedom of Information Act request letter addressed to Mr. Quinlan J. Shea, Jr., Chief of the Freedom of Information and Privacy Unit within the Office of the Deputy Attorney General at the United States Department of Justice. Copies of that letter are appended to plaintiff's complaint and motion papers, and the Court is respectfully referred to the letter for any interpretation thereof.
2. Mr. Shea was the official responsible for processing initial requests for records of the Department of Justice, and for appeals from denials of requests in which the Office of the Deputy Attorney General had not participated.
3. Defendant Department of Justice failed to reply to plaintiff's request within the time limit prescribed by the Freedom of Information Act; neither did it request any extension of time. Plaintiff exhausted his administrative remedies with respect thereto.
4. Plaintiff voluntarily sent a letter of appeal for the requested records on June 19, 1976 to Edward Levi, then Attorney General of the United States. He did not reply to this appeal.

5. By letter of August 12, 1976 defendant advised plaintiff that processing of his FOIA request had begun. Such processing was prematurely terminated without notification or final response to plaintiff, and defendant has offered no explanation for this phenomenon.

6. The defendant closed its file on plaintiff's request in April 1978.

7. On June 10, 1978 plaintiff wrote to defendant asking to be informed of the status of his request, but that inquiry was ignored.

8. On or about June 14, 1979 plaintiff commenced this lawsuit.

9. On July 21, 1979 plaintiff received a letter from Mr. Shea dated July 18, 1979. The Court is respectfully referred to the letter for any interpretation thereof.

10. Further correspondence between plaintiff and Mr. Shea ensued, and plaintiff's request was referred to several of defendant's Divisions.

11. The Criminal Division on its own initiative produced for plaintiff an inventory of documents in its files relating to the assassination of President Kennedy and invited plaintiff to request documents from the inventory list. Plaintiff accepted this invitation and returned the inventory list to the Criminal Division, having marked the documents he wished to be reviewed. Defendant has failed to comply with plaintiff's amended request.

12. Defendant's search for records responsive to plaintiff's original Freedom of Information Act request of May 25, 1976 has been inadequate, incomplete, and not reasonably calculated to either identify, locate or retrieve the records requested.

WHEREFORE, plaintiff prays for summary judgment as follows :

1- Enjoining defendant from withholding records responsive to his Freedom of Information Act request of May 25, 1976 and reference to whether any such records have been destroyed or otherwise disposed of, and ordering defendant to release same to him immediately and without any further delay.

2- Granting him leave to amend his complaint to incorporate defendant's failure to release to him those of its Criminal Division Inventory records which he requested; enjoining defendant from withholding those records; and ordering defendant to release same to him immediately and without further delay.

3- Ordering the Clerk of the Court to place this action on inactive status, and retaining jurisdiction in order to monitor defendant's compliance with the Court's orders.

4- Relieving him of the time limit of Rule 59(e) of the Federal Rules of Civil Procedure, so that he may bring on a motion for an award of attorneys fees under § 552(a)(4)(F) of the Freedom of Information Act, 5 U.S.C. §552 as amended.

5- Granting to him such other and further relief as to the Court may seem just, proper and equitable, together with the costs and disbursements he has incurred in the within action.

DATED: New York, New York
November 17, 1980

Roger B. Feinman

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The Honorable BENJAMIN R. CIVILETTI
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