

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ASSASSINATION ARCHIVES AND	:
RESEARCH CENTER	:
930 Wayne Avenue, Suite 1111	:
Silver Spring, MD 20910	:
	:
Plaintiff,	:
	:
v.	: Civil Action No. _____
	:
CENTRAL INTELLIGENCE AGENCY	:
Washington, D.C. 20505	:
	:
Defendant.	:
	:

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, challenging the failure of the Central Intelligence Agency (“CIA”), to fulfill the request of the Assassination Archives and Research Center (“AARC”) for documents relating to plots to assassinate Adolf Hitler, and in particular CIA’s documented study of such plots in the Fall 1963 as part of U.S. efforts to topple Fidel Castro in Cuba, as specified below.

2. This case seeks declaratory relief that defendant is in violation of the FOIA for failing to fulfill plaintiff’s request for records, and injunctive relief that defendant immediately and fully comply with plaintiff’s request under the FOIA.

JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

4. Plaintiff AARC is a non-profit, non-stock corporation, organized in 1984 under section 501(c)(3) of the Internal Revenue code. AARC is committed to collecting, preserving and making available to the public research materials relating to political assassinations and related subjects; conducting research and seminars in the field of political assassinations, and publishing and disseminating scientific and public information concerning political assassinations and related subjects. As part of its research and public information functions, AARC uses government records made available to it under the FOIA. AARC's archive contains the largest collection of materials on the assassination of President John F. Kennedy in private hands.

5. AARC has invested considerable organizational resources in publishing on the internet large quantities of released U.S. government documents related to political assassinations and related subjects.

6. The CIA's failure to comply with the FOIA harms AARC's ability to

provide full, accurate and current information to the public on matters of high public interest. 5 U.S.C. § 552(a)(6)(c). Absent this critical information, AARC cannot advance its goal of informing the public on the documentary record on critical public issues related to political assassinations and related subjects.

7. AARC will analyze the information it receives that is responsive to its request and will share it with the public through memoranda, reports, press releases, letters, emails, videos and social media. In addition, AARC will disseminate any documents it acquires from its request to the public through a website that AARC has founded, www.aarclibrary.org. AARC's website and the website of AARC's partner organization Mary Ferrell Foundation, www.maryferrell.org contain hundreds of thousands of pages of documents AARC has acquired from multiple FOIA requests.

8. Defendant CIA is an agency within the meaning of 5 U.S.C. § 552(f). Defendant is the federal agency with possession and control of the requested records and is responsible for fulfilling AARC's FOIA request.

STATUTORY FRAMEWORK

The Freedom of Information Act

9. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records or information to the public unless one or more

specific statutory exemptions or exclusions apply.

10. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination whether or not to fulfill the request and of the requester's right to appeal the agency's determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

11. An agency must respond to a FOIA appeal within 20 working days, notifying the appealing party of the agency's determination to either release the withheld records or uphold the denial. 5 U.S.C. § 552(a)(6)(A)(ii).

12. In "unusual circumstances," an agency may delay its response to a FOIA request or appeal, but must provide notice and must also provide "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B).

13. The FOIA also requires each agency to promulgate regulations specifying a fee schedule for the processing of FOIA requests and establishing procedures and guidelines for the waiver or reduction of fees. 5 U.S.C. § 552(a)(4)(A). Under the FOIA, agencies should produce documents at no charge to the requester or at a reduced charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

14. This Court has jurisdiction, upon receipt of a complaint, “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 52(a)(4)(B).

15. The FOIA provides a mechanism for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the court makes a written finding that “the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously,” a disciplinary investigation is triggered. 5 U.S.C. § 552(a)(4)(F).

FACTS GIVING RISE TO PLAINTIFF’S CLAIMS FOR RELIEF

16. On August 25, 2012, AARC sent a FOIA request to the CIA seeking documents relating to plots to assassinate Adolf Hitler, and in particular CIA studies of such plots in the Fall of 1963 as part of its efforts to topple Fidel Castro of Cuba. Letter from James H. Lesar, AARC, to CIA, FOIA Request (August 25, 2012) (attached as Exhibit 1). On October 19, 2012, after receiving a no records response dated October 11, 2012, AARC amended its FOIA request to CIA. Letter from James H. Lesar, AARC to CIA (October 19, 2012)(attached as Exhibit 2). Specifically, as amended, AARC requested:

1. All records pertaining to any plot to assassinate Adolf Hitler, including, but not limited to, all records in any way reflecting or referencing the CIA's study in 1963 of plots to assassinate Hitler. As I did with my original request, I attach a copy of the September 25, 1963 Memorandum for the Record of Walter M. Higgins, Jr. of the Joint Chief re: "Briefing of Desmond Fitzgerald on CIA Cuban Operations and Planning."
2. All records on or pertaining to communications by or with Allen Dulles regarding plots to assassinate Adol(f) Hitler during Dulles's service in the Office of Policy Coordination (OPC), the Office of Strategic Services (OSS), and the Central intelligence Agency (CIA).
3. All index entries or other records reflecting the search for records responsive to this request in its original or amended form, including all search times used with each of the components searched.

These records are relevant to various official investigations, including those of the President's Commission on the Assassination of President John F. Kennedy (The Warren Commission), the Senate Select Committee on Government Operations with Respect to Intelligence Activities (The Church Committee), and the House Select Committee On Assassinations (The HSCA). As such, the immunity from search and review for operational files does not apply to these records. Please conduct a full search of operations files for all records pertaining to this request.

17. By letter dated December 6, 2012 the Information and Privacy Office of the CIA acknowledged receipt of AARC's amended request and assigned it FOIA reference number F-2013-00195. December 6, 2012 CIA Information and Privacy Office letter attached hereto as Exhibit 3. This letter made no determinations as to AARC's request, rather with regard to Item 1 of the request, CIA said it could conduct a search for records pertaining to any plot to assassinate Adolph (sic)

Hitler. However, the letter stated that the portion on the CIA's study in 1963 of plots to assassinate Hitler was addressed in CIA's 11 October 2012 "no records" response under reference number F-2012-02068 which AARC subsequently appealed. (CIA letter dated October 11, 2012 attached hereto as Exhibit 4; AARC's administrative appeal letter dated October 21, 2012 attached hereto as Exhibit 5). CIA has not ruled on AARC's administrative appeal of this decision, despite the elapse of over three years since the filing of the administrative appeal. CIA's December 6, 2012 letter stated that it would conduct a search for Items 2 and 3 of the amended request.

18. AARC received no determination on its amended request until it received a letter dated June 5, 2015 by which the CIA informed AARC that a search revealed no records responsive to AARC's request. (CIA June 5, 2015 letter attached hereto as Exhibit 6). However, by letter dated November 2, 2015 CIA notified AARC, "(p)lease be advised that our letter of 5 June 2015 was sent to you in error. Your request is still under review. We apologize for any inconvenience." (Exhibit 6.) By later dated April 29, 2016 CIA notified AARC that the June 5, 2015 letter remained unchanged and that CIA located no records responsive to AARC's request. (Exhibit 6).

19. As of the filing of this complaint, the CIA has not provided documents

responsive to AARC's request.

20. CIA failed to make a determination on AARC's original FOIA request (F-2012-02068) within the twenty working days provided in 5 U.S.C. § 552(a)(6)(A)(i). CIA failed to act on AARC's administrative appeal in F-2012-02068 within twenty working days of its receipt as required by 5 U.S.C. § 552(a)(6)(A)(ii). CIA failed to make a determination on AARC's amended FOIA request F-2013-00195 within twenty working days as required by 5 U.S.C. § 552(a)(6)(A)(i).

21. The requested records are highly relevant to several official investigations, including the Department of Justice and Federal Bureau of Investigation, President's Commission on the Assassination of President John F. Kennedy (The Warren Commission), the Senate Select Committee on Government Operations with Respect to Intelligence Activities (The Church Committee), and the House Select Committee on Assassinations (The HSCA). As such, the exception from search and review of operational files does not apply to these records pursuant to 50 U.S.C. Sec. 3141(c)(3). The Higgins memorandum of the Joint Chiefs of Staff meeting of September 25, 1963 states that CIA Cuba Task Force chief Desmond Fitzgerald briefed the Joint Chiefs that CIA was studying the plot to kill Hitler to develop avenues for ousting Fidel Castro from power in Cuba.

(Attached to Exhibits 1 and 2). Information about CIA plots to kill Fidel Castro was withheld from the Warren Commission. However subsequent official investigations of the assassination of President Kennedy focused on these plots as a possible cause of the President's assassination, amid reports that a plot to assassinate Castro had been turned and redirected against President Kennedy. The Church Committee investigated the performance of the intelligence agencies in the investigation of President Kennedy's assassination and found it wanting.

PLAINTIFF'S CLAIMS FOR RELIEF

CLAIM ONE **(Failure to Produce Records Under the FOIA)**

22. Plaintiff realleges and incorporates by reference all preceding paragraphs.

23. Plaintiff properly asked for records within the CIA's possession and/or control.

24. Plaintiff is entitled by law to copies of the records requested under the FOIA, unless defendant makes an explicit and justified statutory exemption claim.

25. The CIA has produced no records to AARC.

26. Therefore, the CIA violated FOIA's mandate to release agency records to the public by failing to release the records as plaintiff specifically requested. 5

U.S.C. §§ 552(a)(3)(A), 552(a)(4)(B).

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court:

(1) Declare that the CIA has violated the Freedom of Information Act by failing to lawfully satisfy plaintiff's FOIA request of August 25, 2012 as amended October 19, 2012;

(2) Order the CIA to promptly release all records responsive to plaintiff's FOIA request without charge for search or duplication fees;

(3) Order defendants to file a *Vaughn v. Rosen* index;

(4) Award plaintiff its reasonable attorney fees and litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

(5) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

 /s/ Daniel S. Alcorn
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