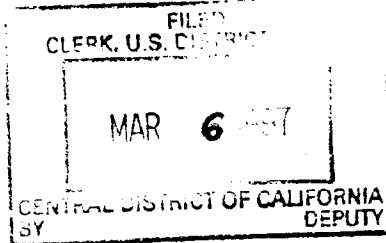


1 Robert L. Reeves, Bar no. 92878
2 Robert L. Reeves, A Professional Law Corporation
3 Two North Lake Ave., Suite 950
Pasadena, California 91101
(818) 795-6777

4
5 Attorneys for Plaintiff, Allan J. Favish
6



7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11
12 ALLAN J. FAVISH,
13 Plaintiff,

14 v.

15 OFFICE OF THE INDEPENDENT
16 COUNSEL,
17 Defendant.

NO. 97-1479 WDK (Ex)

COMPLAINT FOR INJUNCTIVE
RELIEF UNDER FREEDOM OF
INFORMATION ACT

(5 U.S.C. § 552)

18
19 1. This action is brought under the Freedom of Information Act (FOIA), as amended
20 (5 USC §552(a)(4)(B)), and seeks a preliminary and final injunction thereunder against
21 the defendant for withholding certain records from plaintiff. This action seeks an order
22 that the records be disclosed.

23 2. Plaintiff is an individual resident of Los Angeles County, California. Defendant,
24 Office of the Independent Counsel, is a federal administrative agency within the meaning
25 of the Act.

26 3. Venue of this action is properly laid in this court.
27
28

1 4. Defendant, Office of the Independent Counsel, maintains certain records
2 consisting of photographs taken in connection with the investigation into the death of
3 Vincent Foster, as follows:

4 (A) The photographs of a gun that were published on pages 2406-2412 & 2436 of
5 volume 2 of Hearings Relating to Madison Guaranty S&L and the Whitewater
6 Development Corporation--Washington, DC Phase, S. Hrg. 103-889.

7 (B) The photograph of a gun alleged to be of Mr. Foster's hand with a gun still in it
8 that was broadcast by ABC-TV News in March of 1994 and reprinted in Time
9 magazine (March 18, 1996, p. 68). For tentative identification purposes only, this
10 photograph appears to be the first Polaroid listed among the set of eight listed at
11 the bottom of page 2112 of S. Hrg. Volume 2 (see category (C), below).

12 (C) The photographs listed on page 2112 of volume 2 of Hearings Relating to
13 Madison Guaranty S&L and the Whitewater Development Corporation--
14 Washington, DC Phase, S. Hrg. 103-889.

15 (D) The photographs of a gun and accompanying materials that were published on
16 pages 2395-2399 of volume 2 of Hearings Relating to Madison Guaranty S&L and
17 the Whitewater Development Corporation--Washington, DC Phase, S. Hrg. 103-
18 889.

19 (E) The photographs published on pages 2388-2391 of volume 2 of Hearings Relating
20 to Madison Guaranty S&L and the Whitewater Development Corporation--
21 Washington, DC Phase, S. Hrg. 103-889.

22 (F) The photographs published on page 2392 of volume 2 of Hearings Relating to
23 Madison Guaranty S&L and the Whitewater Development Corporation--
24 Washington, DC Phase, S. Hrg. 103-889.

25 (G) The photographs published on pages 2393-2394 of volume 2 of Hearings Relating
26 to Madison Guaranty S&L and the Whitewater Development Corporation--
27 Washington, DC Phase, S. Hrg. 103-889.

28

1 (H) The photographs published on pages 2399-2405 of volume 2 of Hearings Relating
2 to Madison Guaranty S&L and the Whitewater Development Corporation--
3 Washington, DC Phase, S. Hrg. 103-889.

4 (I) The photographs published on pages 2413-2424 of volume 2 of Hearings Relating
5 to Madison Guaranty S&L and the Whitewater Development Corporation--
6 Washington, DC Phase, S. Hrg. 103-889.

7 (J) The photographs published on pages 2425-2428 of volume 2 of Hearings Relating
8 to Madison Guaranty S&L and the Whitewater Development Corporation--
9 Washington, DC Phase, S. Hrg. 103-889.

10 5. By letter dated January 6, 1997, plaintiff requested that defendant, through the
11 appropriate officer or employee thereof, disclose the records described above to plaintiff
12 and that it permit inspection and copying of the records. See exhibit 1, attached hereto.
13 Such request was refused in writing by defendant on January 24, 1997, citing 5 U.S.C.
14 §§ 552(b)(7)(A) & (C). See exhibit 2, attached hereto.

15 6. By letter dated January 28, 1997, plaintiff appealed defendant's denial of
16 plaintiff's request. See exhibit 3, attached hereto.

17 7. By letter dated February 19, 1997, defendant denied plaintiff's appeal. See exhibit
18 4, attached hereto.

19 8. The records sought are not covered by the FOIA exemptions and defendant has
20 waived all FOIA exemptions by voluntarily disclosing most of the requested records to
21 third parties.

22 9. Plaintiff has employed attorneys to represent him in this action, and has incurred
23 and will continue to incur expenses for attorney's fees and costs herein.

24 //

25 //

26 //

27 //

28

1 10. The subject records were and are identifiable records within the meaning of the
2 Freedom of Information Act. Defendant's refusal to disclose the records to plaintiff was
3 wrongful and without lawful reason or excuse, and plaintiff is entitled to the relief
4 provided by the Act.

5 Wherefore, plaintiff prays:

- 6 1. For preliminary and final injunctions prohibiting defendant from withholding from
7 plaintiff the subject records;
- 8 2. For preliminary and final injunctions directing defendant to make such records
9 available to plaintiff and permit the inspection and copying thereof;
- 10 3. For attorney's fees and costs, and for such other and further relief as to the court
11 may deem proper.

12 Dated: March 5, 1997

13 Respectfully submitted,
14 ROBERT L. REEVES, a PLC
15 Attorneys for Plaintiffs

16 By: 

17 ROBERT L. REEVES
18 Attorney at Law
19
20
21
22
23
24
25
26
27
28

Allan J. Favish
Attorney at Law
18645 Hatteras St., #289
Tarzana, CA 91356-1802

Voice & Fax: (818) 343-9095

Web Site: <http://members.aol.com/AllanF8702/page1.htm>
CompuServe: 71177,3044
America Online: AllanF8702
Direct Internet: AJFavish@worldnet.att.net

January 6, 1997

FOIA Officer
Office of Independent Counsel
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552.

I request copies of the following documents: Photographs taken in connection with the investigation into the death of Vincent Foster. The specific photographs I request are the following:

1. The photographs of a gun that were published on pages 2406-2412 & 2436 of volume 2 of Hearings Relating to Madison Guaranty S&L and the Whitewater Development Corporation--Washington, DC Phase, S. Hrg. 103-889.
2. The photograph of a gun alleged to be of Mr. Foster's hand with a gun still in it that was broadcast by ABC-TV News in March of 1994 and reprinted in Time magazine (March 18, 1996, p. 68). For tentative identification purposes only, this photograph appears to be the first Polaroid listed among the set of eight listed at the bottom of page 2112 of S. Hrg. volume 2 (see category 3, below).
3. The photographs listed on page 2112 of volume 2 of Hearings Relating to Madison Guaranty S&L and the Whitewater Development Corporation--Washington, DC Phase, S. Hrg. 103-889.
4. The photographs of a gun and accompanying materials that were published on pages 2395-2399 of volume 2 of Hearings Relating to Madison Guaranty S&L and the Whitewater Development Corporation--Washington, DC Phase, S. Hrg. 103-889.
5. The photographs published on pages 2388-2391 of volume 2 of Hearings Relating to Madison Guaranty S&L and the Whitewater Development Corporation--Washington, DC Phase, S. Hrg. 103-889.
6. The photographs published on page 2392 of volume 2 of Hearings Relating to Madison Guaranty S&L and the Whitewater Development Corporation--Washington, DC Phase, S. Hrg. 103-889.
7. The photographs published on pages 2393-2394 of volume 2 of Hearings Relating to Madison Guaranty S&L and the Whitewater Development Corporation--Washington, DC Phase, S. Hrg. 103-889.

FOIA Officer
January 6, 1997
Page 2

8. The photographs published on pages 2399-2405 of volume 2 of Hearings Relating to Madison Guaranty S&L and the Whitewater Development Corporation--Washington, DC Phase, S. Hrg. 103-889.
9. The photographs published on pages 2413-2424 of volume 2 of Hearings Relating to Madison Guaranty S&L and the Whitewater Development Corporation--Washington, DC Phase, S. Hrg. 103-889.
10. The photographs published on pages 2425-2428 of volume 2 of Hearings Relating to Madison Guaranty S&L and the Whitewater Development Corporation--Washington, DC Phase, S. Hrg. 103-889.

My preference is to obtain the highest quality duplicate photographic prints and negatives of the requested photographs. I assume this would include negatives to be made from the first generation copies of any Polaroid prints and duplicate negatives made from original 35 mm, etc., negatives. If that is not allowable under the law, please state the reason why, in which case I request high quality photocopies. I also request that my copies be in color if the original photograph is in color.

Naturally, any production of photographs by you should be labeled to correspond with one of the appropriate nine categories listed above and labeled to correspond with the photographs as published and listed in the Senate Hearings volumes.

I believe this request should be granted because, to the best of my knowledge, all of the photographs I am requesting have already been published or listed in the Senate Hearings volumes. With regard to those photographs that have already been published, I merely am seeking higher quality images of those photographs.

I would like two sets of the photographs.

I am willing to pay fees for this request up to a maximum of \$200 per set of photographs. If you estimate that the fees will exceed this amount, please inform me first.

If my request is denied in whole or in part, please specify which exemptions are claimed for each document denied. Also, please specify the office and address to which an appeal of any denial should be directed.

Please feel free to telephone or fax if there are any questions or if you need additional information from me.

I expect a response to this request within ten working days, as provided for in the Freedom of Information Act.

FOIA Officer
January 6, 1997
Page 3

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Allan J. Favish".

Allan J. Favish
Attorney at Law



Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

January 24, 1997

Mr. Allan J. Favish
Attorney at Law
18645 Hatteras Street, #289
Tarzana, CA 91356-1802

Dear Mr. Favish:

We have completed our review of your Freedom of Information Act request dated January 6, 1997, specifying 10 categories of photographs. Based on that review, we have determined that the photos must be withheld pursuant to FOIA Exemption (b)(7)(A), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings, and (b)(7)(C), which provides protection for law enforcement information the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Accordingly, the photographs you have requested are not appropriate for discretionary release. In asserting only Exemptions (b)(7)(A) and (b)(7)(C) with respect to these photos, this Office does not waive its ability to assert other relevant exemptions of need be. *See, e.g., Young v. CIA*, 972 F.2d 536, 538-539 (4th Cir. 1992); *Gula v. Meese*, 699 F. Supp. 956, 959 n.2 (D.D.C. 1988).

If you are dissatisfied with my action on this request, you may appeal from this denial by writing to John Bates, Deputy Independent Counsel, Office of the Independent Counsel, 1001 Pennsylvania Ave., NW, Room 490-North, Washington, D.C., 20004, within 30 days of your receipt of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in an appropriate United States District Court. *See* 5 U.S.C. § 552 (a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen A. Kubiowski".

Stephen A. Kubiowski
Associate Independent Counsel

Allan J. Favish

Attorney at Law

18645 Hatteras St., #289
Tarzana, CA 91356-1802

Voice & Fax: (818) 343-9093

Web Site: <http://members.aol.com/AllanF8702/page1.htm>

CompuServe: 71177,3044

America Online: AllanF8702

Direct Internet: AJFavish@worldnet.att.net

January 28, 1997

Mr. John Bates
Deputy Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, NW
Room 490-North
Washington, D.C. 20004

By Fax and Mail

Re: Freedom of Information Act Appeal

Dear Mr. Bates:

This letter is regarding my Freedom of Information Act request dated January 6, 1997.

By letter dated January 24, 1997, your office is withholding the photographs I requested by claiming the exemptions under 5 U.S.C. §§ 552(b)(7)(A) & (b)(7)(C). These exemptions are for documents "compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings ... (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy"

I am a reasonable person and do not want to waste your time. However, the failure of your office to provide any explanation justifying your claims leaves me no alternative but to appeal the denial of my request.

I am anxious to learn how release of photographs that already have been published or listed by the U.S. Government "could reasonably be expected to interfere with enforcement proceedings" and "could reasonably be expected to constitute an unwarranted invasion of personal privacy," especially when the photographs, to the best of my knowledge, do not show any persons who are alive.

Sincerely,



Allan J. Favish
Attorney at Law



Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

February 19, 1997

Mr. Allen J. Favish
Attorney at Law
18645 Hatteras St., #289
Tarzana, CA 91356-1802

Dear Mr. Favish:

I have completed my review of your appeal of this Office's denial of certain aspects of the FOIA request you made in January 6, 1997. Your appeal, specifying 10 categories of photographs, was received by this Office on January 28, 1997.

I have determined that the information to which your appeal related must be withheld pursuant to FOIA Exemption (b)(7)(A), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings, and (b)(7)(C), which provides protection for law enforcement information the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Accordingly, the records you have requested are not appropriate for discretionary release and your appeal must be denied. In asserting Exemption (b)(7)(A) and (b)(7)(C) with respect to these records, this Office does not waive its right or ability to assert other relevant exemptions if the case should arise. *See, e.g., Young v. CIA*, 972 F.2d 536, 538-39 (4th Cir. 1992); *Gula v. Meese*, 699 F.Supp. 956, 959 n.2 (D.D.C. 1988).

If you are dissatisfied with my action on this appeal, judicial review is available to you in an appropriate United States District Court. *See* 5 U.S.C. § 552 (a)(4)(B).

Sincerely,

A handwritten signature in cursive script, appearing to read "John D. Bates".

John D. Bates
Deputy Independent Counsel