

FILED

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00 JAN -3 AM 10: 30

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

00-00009 CM (EX)

11 ALLAN J. FAVISH,
12 Plaintiff,
13 vs.
14 OFFICE OF INDEPENDENT COUNSEL,
15 Defendant

Case No.
COMPLAINT FOR INJUNCTIVE RELIEF
UNDER FREEDOM OF INFORMATION
ACT (5 U.S.C. § 552)

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

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

23 3. Venue of this action is properly laid in this court.

24 4. The OIC maintains a record entitled "Report of Investigation by Medical Examiner"
25 that is identified in the OIC's report on the death of former Deputy White House Counsel
26 Vincent Foster as OIC Doc. No. DC-106A-1 to DC-106A-2. The OIC's report says that Dr.
27 Donald Haut completed a:
28

1 “Report of Investigation by Medical Examiner” after the incident;
2 the report is stamped with the date July 30, 1993. OIC Doc. No.
3 DC-106A-1 to DC-106A-2. The report states that the cause of
4 death was “perforating gunshot wound mouth-head” and the means
5 of death was “38 caliber handgun.”

6 Report on the Death of Vincent W. Foster, Jr., by the Office of Independent Counsel In Re:
7 Madison Guaranty Savings & Loan Association at 27 n.57 (released to the public by order of the
8 U.S. Court of Appeals for the District of Columbia Circuit, Division for the Purpose of
9 Appointing Independent Counsels, October 10, 1997) (OIC Report). *See* Exhibit 1.

10 5. A copy of the “Report of Investigation by Medical Examiner” (Haut Report) is
11 available from the National Archives. *See* Exhibit 2. But the original version of the report is
12 maintained by the OIC.

13 6. Page one of the Haut Report states that the death shot was “mouth-head;” but page
14 two of the Haut Report states that the death shot was “mouth to neck.” *See* Exhibit 2.

15 7. Officially, there was no “mouth to neck” shot. The “mouth to neck” description on
16 page two of the Haut Report contradicts both the official autopsy conclusion of “mouth to head”
17 and the publicly reported conclusion of the OIC. The OIC says that the autopsy report “indicates
18 ‘backward’ and ‘upward’ as the direction of the bullet through the head” and that the doctor who
19 performed the autopsy said the exit wound was “three inches from the top of the head.” OIC
20 Report at 31 (*see* Exhibit 1). The OIC says that the “autopsy report and the reports of the
21 pathologists retained by the OIC and Mr. Fiske’s office (Kenneth Starr’s predecessor)
22 demonstrate that the cause of death was a gunshot wound through the back of Foster’s mouth and
23 out the back of his head.” OIC Report at 111 (*see* Exhibit 1).

24 8. The publicly available copy of the Haut Report appears to show that a portion of the
25 original version was improperly altered by what appears to be correction fluid, e.g. “white out,”
26 or some erasure or other alteration. The “mouth-head” language on page one apparently was
27 altered so as to almost completely conceal what appears to be a four-letter word that was
28

1 replaced with the word “head” slightly to the right of the concealed word. *See* Exhibit 2. It is
2 possible that such a concealed word is “neck,” as appears on page two of the Haut Report.

3 9. The OIC report on the Foster death quotes from the apparently altered language from
4 page one of the Haut Report and fails to mention the unaltered “mouth to neck” language on
5 page two of the Haut Report. *See* paragraph 4, *supra*.

6 10. A leading medical textbook states:

7 When you make a mistake on a chart, correct it promptly.
8 Never erase, cover, completely scratch out, or otherwise obscure
9 an erroneous entry because this may imply a coverup . . . Erasures
10 or the use of correction fluid or heavy black ink to obliterate an
11 error are red flags.

12

13 When you make a mistake documenting on the medical
14 record, correct it by drawing a single line through it and writing the
15 words “mistaken entry” above or beside it. Follow these words
16 with your initials and the date. If appropriate, briefly explain the
17 necessity for the correction.

18 Make sure that the mistaken entry is still readable. This
19 indicates that you’re only trying to correct a mistake, not cover it
20 up.

21 *Mastering Documentation* at 304-305 (Springhouse Corp., 2d ed. 1999).

22 11. The publicly available copy of the Haut Report fails to reveal important information
23 about the report. The publicly available copy does not reveal what is concealing the apparent
24 four letter word next to “head” on page one of the original report. Also, the publicly available
25 copy does not reveal what is written underneath any correction fluid that might be on the original
26 or what might have been erased from the original. This information only can be revealed by
27 inspection of the original version of the Haut Report.

1 12. The OIC has been fully aware since at least February 1998 that the publicly released
2 copy of the Haut Report appears to show that the original Haut Report has been altered as
3 described above. This is because in February 1998 plaintiff served the OIC with a summary
4 judgment motion in another FOIA case that fully discussed the issue of the apparently altered
5 Haut Report. That FOIA case was filed in the central district of California, in Los Angeles, as
6 *Allan J. Favish v. Office of Independent Counsel*, Case No. 97-1479 WDK (Ex). That case is
7 presently awaiting a decision by the United States Court of Appeals for the Ninth Circuit under case
8 number 98-55594. A full discussion of the apparently altered Haut Report also was included in
9 the appellate briefs in that case. The publicly available copy of the Haut Report was presented as
10 an exhibit to both the district and appellate courts. That case does not seek any copy or
11 inspection of the Haut Report, but instead seeks photographs taken in connection with the Foster
12 case, and merely uses the publicly available copy of the Haut Report as evidence.

13 13. By letter dated October 28, 1999, plaintiff requested that the OIC, through the
14 appropriate officer or employee thereof, disclose the records described above to plaintiff and that
15 the OIC permit inspection of the records. A copy of the publicly available copy of the Haut
16 Report was enclosed with plaintiff's request. *See* Exhibit 3 (original was signed).

17 14. The OIC refused to allow plaintiff to inspect the original version of the Haut Report
18 by letter dated November 22, 1999, without citing any exemptions from disclosure under the
19 FOIA. The OIC said:

20 Upon review of the document you provided, this Office notes that
21 the released document does not contain any redactions. Therefore,
22 this Office considers your copy of the released document complete
23 and is closing this request.

24 *See* Exhibit 4. The OIC did not comment on the condition of the original version of the Haut
25 Report and ignored the apparent alteration on the publicly available copy of the report. Contrary
26 to the OIC's statement, the publicly available copy of the Haut Report appears to contain a
27 redaction, in the form of an improper alteration that was made on the original version, possibly
28 by somebody other than the OIC.

1 15. By letter dated November 24, 1999, plaintiff appealed the OIC's denial of plaintiff's
2 request, stating:

3 Under the FOIA I am entitled to personally inspect the document.
4 5 U.S.C. § 552(a)(2) says that federal agencies "shall make [certain
5 records] available for public *inspection* and copying" and §
6 552(a)(3) says that with regard to records not covered by
7 subsections (a)(1) & (a)(2), agencies "shall make the records
8 promptly available to any person . . . in any form or format
9 requested by the person if the record is readily reproducible by the
10 agency in that form or format." (Emphasis added.)

11 *See* Exhibit 5 (original was signed).

12 16. By letter dated December 28, 1999, the OIC denied plaintiff's appeal, stating:

13 This letter responds to your Freedom of Information Act
14 (FOIA) "appeal" dated November 24, 1999 and received on
15 November 29, 1999. In your correspondence you note that the
16 response this Office sent on November 22, 1999, to your FOIA
17 request failed to grant you permission to view original copies of
18 documents previously released to the public. FOIA provides only
19 for an appeal from an agency's withholding of information. In as
20 much as this agency has not previously withheld any information
21 sought by you, and you do not assert otherwise, there is no basis
22 upon which to appeal your request to personally inspect original
23 documents. Nevertheless, I hereby reaffirm the previous decision
24 of this Office to deny your request to personally inspect original
25 documents.

26 5 U.S.C. § 552(a)(2)(D) states "each agency, in accordance
27 with published rules, shall make available for public inspection and
28 copying *copies* of all records, regardless of form or format, which

1 have been released to any person under paragraph (3). . . .” 5
2 U.S.C. § 552(a)(3)(B) states that agencies “shall make the records
3 promptly available to any person . . . in any form or format
4 requested by the person if the record is readily *reproducible* by the
5 agency in that form or format.” As you currently possess
6 unredacted copies of the records sought, this Office did not see a
7 need to send additional copies of the documents.

8 If you are dissatisfied with my action, judicial review is
9 available to you in an appropriate United States District Court. See
10 5 U.S.C. § 552(a)(4)(B).

11 *See* Exhibit 6 (emphasis in original).

12 17. According to the United States Supreme Court:

13 Without question, the [Freedom of Information] Act is broadly
14 conceived. It seeks to permit access to official *information* long
15 shielded unnecessarily from public view and attempts to create a
16 judicially enforceable public right to secure such *information* from
17 possibly unwilling official hands.

18 *EPA v. Mink*, 410 U.S. 73, 80, 35 L.Ed.2d 119, 128, 93 S.Ct. 827 (1973) (emphasis added).

19 18. According to the United States District Court for the Southern District of New York:

20 [T]he “basic objective” of the Act: “the full . . . release of
21 *information*.” House Report No. 93-876, March 5, 1974, [1974]
22 U.S.Code Cong. & Admin.News, p. 6267 (emphasis added); *cf.*
23 *Mead Data Control, Inc. v. U.S. Department of Air Force*, 566
24 F.2d 242, 260 (D.C.Cir. 1977) (non-exempt portions of documents
25 containing material exempt from disclosure must be released
26 because **the “focus of the FOIA is information, not documents . .**
27 **.”**).

1 *Diamond v. Federal Bureau of Investigation*, 487 F.Supp. 774, 777 (S.D.N.Y. 1979) (bold
2 emphasis added).

3 19. According to the United States Court of Appeals for the Second Circuit:

4 In enacting the Freedom of Information Act, codified as part of the
5 Administrative Procedure Act, Congress expressed the strong
6 policy which favors the disclosure to the public of *information* in
7 the possession of federal agencies.

8 *Donovan v. F.B.I.*, 806 F.2d 55, 57-58 (2nd Cir. 1986) (emphasis added) (citations
9 omitted).

10 20. According to the United States Supreme Court:

11 [T]he [Freedom of Information] Act seeks ‘to establish a general
12 philosophy of full agency disclosure unless information is
13 exempted under clearly delineated statutory language.’ S Rep No.
14 813, 89th Cong, 1st Sess, 3 (1965) (hereinafter S Rep No. 813);
15 *EPA v. Mink*, supra, at 80, 35 L Ed 2d 119, 93 S Ct 827. As the
16 Act is structured, virtually every document generated by an agency
17 is available to the public in one form or another, unless it falls
18 within one of the Act's nine exemptions.

19 *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 136, 44 L.Ed2d 29, 95 S.Ct. 1504 (1975).

20 21. According to the United States Court of Appeals for the Second Circuit:

21 The exemptions that are part and parcel of the FOIA’s
22 broad disclosure plan are not to be used to deflect its aim that is
23 focused on openness, not secrecy. The exemptions are exclusive,
24 *Mink*, 410 U.S. at 79, 93 S.Ct. at 832, not to be added to or
25 detracted from, *see U.S. Dept. of Justice v. Tax Analysts*, 492 U.S.
26 136, 153, 109 S.Ct. 2841, 2852, 106 L.Ed.2d 112 (1989) (*Tax*
27 *Analysts*), to be narrowly construed with doubts resolved in favor
28 of disclosure. *See Rose*, 425 U.S. at 366, 96 S.Ct. at 1601. In

1 stressing the broad policy objective of disclosure the Supreme
2 Court has noted that “unless the requested material falls within one
3 of these nine statutory exemptions, FOIA requires that records and
4 material in the possession of federal agencies be made available on
5 demand to any member of the general public.” *NLRB v. Robbins*
6 *Tire & Rubber Co.*, 437 U.S. 214, 221, 98 S.Ct. 2311, 57 L.Ed.2d
7 159 (1978); *accord NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132,
8 136, 95 S.Ct. 1504, 1509, 44 L.Ed.2d 29 (1975).

9 *FLRA v. U.S. Dept. of Veterans Affairs*, 958 F.2d 503, 508 (2nd Cir. 1992).

10 22. The records sought are not covered by the FOIA exemptions.

11 23. The subject records were and are identifiable records within the meaning of the
12 FOIA. The OIC’s refusal to allow inspection of the original version of the Haut Report was
13 wrongful and without lawful reason or excuse, and plaintiff is entitled to the relief provided by
14 the Act.

15 Wherefore, plaintiff prays:

16 1. For preliminary and final injunctions prohibiting defendant from failing to allow
17 plaintiff to inspect and copy the subject records;

18 2. For preliminary and final injunctions directing defendant to make such records
19 available to plaintiff and permit the inspection and copying thereof.

20
21 Dated: January 3, 2000



Allan J. Favish
In pro se

EXHIBIT 1

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division (94-1) for the Purpose of
Appointing Independent Counsels

REPORT ON THE DEATH OF VINCENT W. FOSTER, JR.,
BY THE OFFICE OF INDEPENDENT COUNSEL
IN RE: MADISON GUARANTY SAVINGS & LOAN ASSOCIATION

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED OCT 10 1997

Division for the Purpose of
Appointing Independent Counsels

Special Division

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings
& Loan Association

Division No. 94-1

Before: SENTELLE, *Presiding*, and BUTZNER and FAY, *Senior Circuit
Judges*.

O R D E R

Upon consideration of the motion of Independent Counsel
Starr for leave to publicly release the Report on the Death of
Vincent Foster, it is

ORDERED that the motion be granted. It is therefore

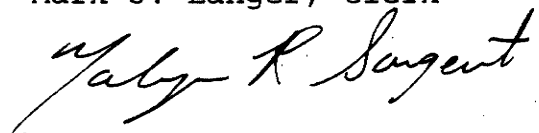
ORDERED, ADJUDGED, and DECREED that the Report on the Death
of Vincent Foster, inclusive of an appendix containing all
comments or factual information submitted by any individual
pursuant to 28 U.S.C. § 594, shall be released to the public.

Per Curiam

For the Court:

Mark J. Langer, Clerk

by



Marilyn R. Sargent
Chief Deputy Clerk

towed to a Park Police impoundment lot that night.⁵⁵ The next day, the car was further photographed and examined at the impoundment lot.⁵⁶

Dr. Haut, the medical examiner's representative, arrived at Fort Marcy Park at approximately 7:40 p.m. on July 20 and confirmed the death.⁵⁷ The body was then transported by FCFRD ambulance personnel to a morgue at Fairfax Hospital in Fairfax,

Gavin's knowledge, he was the first person to notify anyone at the White House or the Secret Service about Mr. Foster's death. Id. at 26-27. According to a Secret Service memorandum prepared at 10:01 p.m. on July 20, the Secret Service was notified of Mr. Foster's death at 8:30 p.m. when Lieutenant Woltz was contacted by Lieutenant Gavin. OIC Doc. No. DC-211-147.

⁵⁵ Raley's Towing Receipt, Case No. 30502; USPP Impounded Car Record, Case No. 30502.

⁵⁶ USPP Report (Smith) at 1. Photographs were taken at the impound lot of the interior of the trunk of the car. Those photographs show stray papers, moccasin-type shoes, a book, cassette tapes, and the like (no evidence that a body had been in the trunk).

⁵⁷ Officer Hodakievic's report and Technician Simonello's report indicate that Dr. Haut arrived at 7:40 p.m. USPP Report (Hodakievic) at 1; USPP Report (Simonello) at 1. Investigator Abt's contemporaneous notes place Dr. Haut's arrival at 7:43 p.m. Although Dr. Haut subsequently recalled arriving at an earlier time, see 302, 4/14/94, at 1 (6:45 p.m.); OIC, 2/16/95, at 8 (7:15 p.m.), Dr. Haut did not contemporaneously record the time of his arrival. The several contemporaneously prepared notes and reports of the Park Police officers therefore are likely more accurate.

Dr. Haut completed a "Report of Investigation by Medical Examiner" after the incident; the report is stamped with the date July 30, 1993. OIC Doc. No. DC-106A-1 to DC-106A-2. The report states that the cause of death was "perforating gunshot wound mouth-head" and the means of death was "38 caliber handgun." Id. It states that the manner of death was "suicide." Id. Dr. Haut signed the death certificate. It states that the cause of death was "perforating gunshot wound mouth - head" and that the manner of death was "suicide" by "self-inflicted gunshot wound mouth to head."

exit wound as a wound of 1 1/4" x 1". The report indicates "backward" and "upward" as the direction of the bullet through the head.⁶⁷

With respect to the wound, Dr. Beyer stated: "The entrance wound was in the back of the mouth, what we call the posterior oropharynx, where a large defect was present. There was also a soft palate tissue defect, and powder debris could be identified in the area of the soft palate and the back of the mouth. The exit wound is depicted [in the autopsy report] as being present three inches from the top of the head, approximately in the midline, and there is an irregular wound measuring one and one-quarter inch by one inch."⁶⁸ There was "good alignment" between the entrance and exit wounds, and there was "no reason to think that this was not an entrance and exit defect configuration."⁶⁹ As the report indicates, Dr. Beyer did not recover any bullets or bullet fragments from the body.⁷⁰

⁶⁷ Officer Morrissette's report similarly indicates that "[t]he cause of death was determined to be 'perforated gunshot wound in and out.' The point of entry was in the back of the mouth with the exit in the back of the head." Id.

⁶⁸ OIC, 2/16/95, at 19.

⁶⁹ Id. at 20.

⁷⁰ Id. at 16. The lack of a bullet or bullet fragments was confirmed by others who attended the autopsy. Dr. Beyer's assistant recalled that Dr. Beyer inserted a probe through the path of the bullet before the skull was opened and commented that the path was clear. (Autopsy photographs clearly depict the wound and the probe through the wound path.) The assistant recalled that after the brain was removed and visually inspected, Dr. Beyer dissected it with cuts of approximately one-eighth inch thickness, and that no bullet fragments were located in the brain. 302, 9/11/95, at 2-3. According to Officer Morrissette's

investigators. The experts included Dr. Brian D. Blackbourne, Dr. Henry C. Lee, and Dr. Alan L. Berman. The investigators included an FBI agent detailed from the FBI-MPD Cold Case Homicide Squad in Washington, D.C.; an investigator who also had extensive homicide experience as a detective with the Metropolitan Police Department in Washington, D.C., for over 20 years; and two other OIC investigators who had experience as FBI agents investigating the murders of federal officials and other homicides. The OIC legal staff in Washington, D.C., and Little Rock, Arkansas, participated in assessing the evidence, examining the analyses and conclusions of the OIC experts and investigators, and preparing this report.

The autopsy report and the reports of the pathologists retained by the OIC and Mr. Fiske's Office demonstrate that the cause of death was a gunshot wound through the back of Mr. Foster's mouth and out the back of his head. The autopsy photographs depict the wound in the back of the head, and the photographs show the trajectory rod through the wound. The evidence, including the photographic evidence, reveals no other trauma or wounds on Mr. Foster's body.

The available evidence points clearly to suicide as the manner of death. That conclusion is based on the evidence gathered and the analyses performed during previous investigations, and the additional evidence gathered and analyses performed during the OIC investigation, including the evaluations of Dr. Lee, Dr. Blackbourne, Dr. Berman, and the various OIC

EXHIBIT 2

Declaration of Hugh H. Sprunt

I, Hugh H. Sprunt, of Farmers Branch, Texas, declare as follows:

I have MBA & JD degrees from Stanford University and BS & MS degrees in Earth & Planetary Science from the Massachusetts Institute of Technology. I am a Certified Public Accountant qualified as a Personal Financial Specialist by the American Institute of CPAs and a member of the Texas Bar.


While examining copies of Senate "Whitewater" documents at the National Archives in Washington, DC, on Saturday, July 19, 1997, Mr. Patrick Knowlton and I found a photocopy of a document entitled "Report of Investigation by Medical Examiner" (CME Form No. 1 Revised 6/89) and dated July 20, 1993. This document was apparently created and executed by Dr. Donald David Haut, MD, a Medical Examiner under contract to the Virginia Office of the Chief Medical Examiner, Northern Virginia District, 9797 Braddock Road, Suite #100, Fairfax, Virginia 22032-1700, in connection with Dr. Haut's examination of Deputy White House Counsel Vincent Foster's body on July 20, 1993, in Fort Marcy Park, Virginia ("Haut Report").

The Haut Report was found in a file box among the set of several dozen such boxes containing records transferred by the Senate "Whitewater" Committee to the Archives in January 1995 and, with very few exceptions, also published by the Senate in January 1995 in S. Hrg. 103-889, Volumes I and II.

The Haut Report itself was *not* published in the Senate Hearings Volumes (selected small extracts were quoted and published in S. Rpt. 104-433, Vol. I, January 3, 1995, at page 18 and in footnote 57) even though it was among the numerous documents gathered and published by the Senate "Whitewater" Committee during the course of its investigation into the death of Vincent Foster and subsequently transferred to the Archives.

I photocopied the Haut Report (the two 8-1/2" by 11" photocopied sheets found at the Archives) while at the Archives and a true and correct copy of this document, as I found it at the Archives (reproduced, as required by the Archives, on 8-1/2" by 14" paper with the addition of the mandatory wording at the top of the photocopy: REPRODUCED AT THE NATIONAL ARCHIVES), is attached to this declaration.

I declare under penalty of perjury that the foregoing is true and correct. Executed within the United States on April 21, 1998.


Hugh H. Sprunt

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
NORTHERN VIRGINIA DISTRICT
9797 BRADDOCK ROAD
SUITE 100
FAIRFAX, VA 22032-1700
PHONE (703) 764-4640



Resident
Non-resident Washington D.C.
* Jan 15, 1945

REPORT OF INVESTIGATION BY MEDICAL EXAMINER

DECEDENT Vincent Walker FOSTER Jr AGE: 48 RACE: Cauc SEX: male
First Name Middle Name Last Name
ADDRESS: 3027 Cambridge Place N.W. M W S D OCCUPATION: Attorney
Number and Street
Washington D.C. 20007 SSN: 429-80-1132 EMPLOYER: Law
City or County Zip Code

TYPE OF DEATH: (Check one only)
Sudden in apparent health Suspicious Violent or Unnatural
Unattended by physician Unusual Means/Weapon x 38 caliber handgun
In prison, jail, or police custody

	Last Seen Alive	Injury or Illness	Death	Medical Examiner Notified	View of Body	Police Notified
DATE			JULY 20'93	JULY 20'93	JULY 20'93	
TIME			6:15pm	6:45 pm	7:15 pm	

If Motor Vehicle Accident Check One of the Following:
 DRIVER
 PASSENGER
 PEDESTRIAN

NOTIFICATION BY: United States Park Police OFFICIAL TITLE Case # 30502
Address 202 619-7105

	LOCATION	CITY OR COUNTY	TYPE OF PREMISES (E.G., HIGHWAY, ETC.)
INJURY OR ONSET OF ILLNESS	<u>George Washington Parkway (Marcey Park)</u>	<u>Fairfax Co.</u>	<u>Park</u>
PLACE OF DEATH	<u>Fairfax Hospital</u>	<u>Fairfax County</u>	<u>Morgue</u>
VIEWING OF BODY BY MEDICAL EXAMINER	<u>Marcey Park (GW Parkway)</u>	<u>Fairfax County</u>	<u>Park</u>

DESCRIPTION OF BODY	NOSE	MOUTH	EARS	RIGOR	LIVOR	NON FATAL WOUNDS	
							Blood
Clothed <input type="checkbox"/> Unclothed <input type="checkbox"/> Partly Clothed <input type="checkbox"/> Hair Color _____ Beard _____ Mustache _____ Pupils R _____ L _____ Eye Color _____ Body Heat _____ Scars, Tattoos, etc. _____				<input type="checkbox"/> Jaw <input type="checkbox"/> Neck <input type="checkbox"/> Arms <input type="checkbox"/> Legs <input type="checkbox"/> Complete	Color _____ Anterior <input type="checkbox"/> Posterior <input type="checkbox"/> Lateral <input type="checkbox"/> Regional _____	<input type="checkbox"/> Abrasion <input type="checkbox"/> Burn <input type="checkbox"/> Contusion <input type="checkbox"/> Stab <input type="checkbox"/> Gunshot <input type="checkbox"/> Incised <input type="checkbox"/> Laceration <input type="checkbox"/> Fracture DISTRIBUTION: <input type="checkbox"/> Scalp <input type="checkbox"/> Chest <input type="checkbox"/> Face <input type="checkbox"/> Neck <input type="checkbox"/> Arms <input type="checkbox"/> Back <input type="checkbox"/> Abdomen <input type="checkbox"/> Legs	

FATAL WOUNDS (SHOT, STAB, ETC.)	SIZE	SHAPE	LOCATION	PLANE, LINE OR DIRECTION

CAUSE OF DEATH: PERFORATING GUNSHOT WOUND MOUTH-HEAD
MANNER OF DEATH: (check one only)
 Accident Suicide Homicide
 Natural Undetermined Pending
AUTOPSY: Yes No
AUTHORIZED BY: ME
Pathologist Dr. Beyer
Autopsy No. 353-93 7-21-93

I hereby declare that after receiving notice of the death described herein I took charge of the body and made inquiries regarding the cause and manner of death in accordance with the Code of Virginia as amended; and that the information contained herein regarding such death is correct to the best of my knowledge and belief.

July 20, 1993 Fairfax County [Signature]
Date City or County of Appointment Signature of Medical Examiner

1 COPY DESTROYED - NOV 2 1994
NW036666

D. C. Beyer
Assistant Chief Medical Examiner

MEDICAL ATTENTION AND HOSPITAL OR INSTITUTIONAL CARE:

NAME OF PHYSICIAN OR INSTITUTION	ADDRESS	DIAGNOSIS	DATE

CIRCUMSTANCES OF DEATH:

	NAME	Official Title or Relationship to Decedent	ADDRESS
FOUND DEAD BY			
LAST SEEN ALIVE BY			
WITNESSES TO INJURY OR ILLNESS AND DEATH			

NARRATIVE SUMMARY OF CIRCUMSTANCES SURROUNDING DEATH:

JULY 20,1993 After anonymous call was received at 18:04 hours US Park Police officers found 48 yrs Caucasian male with self-inflicted gunshot wound mouth to neck on a foot path in Marcey Park .His car was parked in the parking lot but no note was found,
 MEDICAL HISTORY Unknown

FOR PROFESSIONAL USE ONLY
 CONTENTS NOT TO BE DUPLICATED

Toxicology sent: Yes No
 Blood
 Urine
 Other _____

NOV 2 1994
1 COPY TESTED
V. C. Bayler
 Assistant Chief Medical Examiner

DECEDENT FOSTER, Vincent Walker, Jr.

EXHIBIT 3

ALLAN J. FAVISH

Attorney at Law
2813 S. Bentley Ave.
Los Angeles, CA 90064-4003

Voice & Fax (310) 479-8764
allanf8702@aol.com
ajfavish@worldnet.att.net
<http://members.aol.com/allanf8702/page1.htm>

October 28, 1999

CERTIFIED MAIL

FOIA Officer
Office of the Independent Counsel
1001 Pennsylvania Avenue, NW
Room 490-North
Washington, D.C. 20004

Re: FOIA Request

Dear FOIA Officer:

This is a request under the Freedom of Information Act. I request that I and my expert be allowed to make a personal inspection of the original "Report of Investigation by Medical Examiner" that is identified in the OIC's report on the death of Vincent Foster as OIC Doc. No. DC-106A-1 to DC-106A-2. A copy of the "Report of Investigation by Medical Examiner" is enclosed.

Sincerely,

Allan J. Favish

Enclosures: copy of "Report of Investigation by Medical Examiner"

EXHIBIT 4



Office of the Independent Counsel

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

November 22, 1999

Mr. Allan J. Favish
2813 S. Bentley Avenue
Los Angeles, CA 90064

Dear Mr. Favish:

This correspondence is in response to your Freedom of Information Act (FOIA) request dated October 28, 1999 and received by this Office November 1, 1999. In this correspondence you requested the opportunity to view the original copy of the "Report of Investigation by Medical Examiner" identified as OIC Doc. No. DC-106A-1 to DC-106A-2, a copy of which you enclosed with your request.

Upon review of the document you provided, this Office notes that the released document does not contain any redactions. Therefore, this Office considers your copy of the released document complete and is closing this request.

Sincerely,

A handwritten signature in cursive script that reads "Regina Ann McCoy". The signature is written in dark ink and is positioned above the printed name.

Regina Ann McCoy
FOI/PA Paralegal Specialist

EXHIBIT 5

ALLAN J. FAVISH

Attorney at Law
2813 S. Bentley Ave.
Los Angeles, CA 90064-4003

Voice & Fax (310) 479-8764
allanf8702@aol.com
ajfavish@worldnet.att.net
<http://members.aol.com/allanf8702/page1.htm>

November 24, 1999

EXPRESS MAIL

FOIA Officer
Office of the Independent Counsel
1001 Pennsylvania Avenue, NW
Room 490-North
Washington, D.C. 20004

Re: FOIA Request Appeal

Dear FOIA Officer:

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552(a).

On November 1, 1999, you received my FOIA request, dated October 28, 1999, for a personal inspection of the original "Report of Investigation by Medical Examiner" that is identified in the OIC's report on the death of Vincent Foster as OIC Doc. No. DC-106A-1 to DC-106A-2.

Today I received a response to my request in a letter dated November 22, 1999, signed by Regina Ann McCoy. Without citing any FOIA exemptions, that response failed to grant me permission to personally inspect the requested document.

Under the FOIA I am entitled to personally inspect the document. 5 U.S.C. § 552(a)(2) says that federal agencies "shall make [certain records] available for public *inspection* and copying" and § 552(a)(3) says that with regard to records not covered by subsections (a)(1) & (a)(2), agencies "shall make the records promptly available to any person . . . in any form or format requested by the person if the record is readily reproducible by the agency in that form or format." (Emphasis added.)

I expect a final ruling on my appeal within twenty working days, the time specified in the statute.

FOIA Officer
November 24, 1999
Page 2

Thank you for consideration of this appeal.

Sincerely,

Allan J. Favish

EXHIBIT 6



Office of the Independent Counsel

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

December 28, 1999

Mr. Allan J. Favish, Esq.
2813 S. Bentley Avenue
Los Angeles, CA 90064

Dear Mr. Favish:

This letter responds to your Freedom of Information Act (FOIA) "appeal" dated November 24, 1999 and received on November 29, 1999. In your correspondence you note that the response this Office sent on November 22, 1999, to your FOIA request failed to grant you permission to view original copies of documents previously released to the public. FOIA provides only for an appeal from an agency's withholding of information. In as much as this agency has not previously withheld any information sought by you, and you do not assert otherwise, there is no basis upon which to appeal your request to personally inspect original documents. Nevertheless, I hereby reaffirm the previous decision of this Office to deny your request to personally inspect original documents.

5 U.S.C. § 552(a)(2)(D) states "each agency, in accordance with published rules, shall make available for public inspection and copying *copies* of all records, regardless of form or format, which have been released to any person under paragraph (3) . . ." 5 U.S.C. § 552(a)(3)(B) states that agencies "shall make the records promptly available to any person . . . in any form or format requested by the person if the record is readily *reproducible* by the agency in that form or format." As you currently possess unredacted copies of the records sought, this Office did not see a need to send additional copies of the documents.

If you are dissatisfied with my action, 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 black ink, appearing to read "Jay Apperson".

Jay Apperson
Deputy Independent Counsel