

SUMMONS IN A CIVIL ACTION ©

July 1983  
83-1836

**United States District Court**  
FOR THE  
**District of Columbia**

**RICHY, J.**

**83- 1836**

CIVIL ACTION FILE NO. \_\_\_\_\_

American Broadcasting Companies, Inc.,  
et al.,

Plaintiff

v.

SUMMONS

U.S. Department of the Army, et al.,

Defendant

To the above named Defendant : Central Intelligence Agency

You are hereby summoned and required to serve upon

Lionel Kestenbaum, Esq.  
Barry R. Goldsmith, Esq.  
BERGSON, BORKLAND, MARGOLIS & ADLER

plaintiff's attorney , whose address

11 Dupont Circle, N.W.  
Washington, D.C. 20036

DECLASSIFIED AND RELEASED BY  
CENTRAL INTELLIGENCE AGENCY  
SOURCES METHODS EXEMPTION 3B2B  
NAZI WAR CRIMES DISCLOSURE ACT  
DATE 2000 2006

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

**JAMES F. DAVEY**

Clerk of Court.

Deputy Clerk.

Date: JUN 24 1983

[Seal of Court]

United States District Court  
For the District of Columbia  
Office of the Clerk  
3rd and Constitution Avenue, N.W.  
Washington, D. C. 20001

James F. Davey  
Clerk

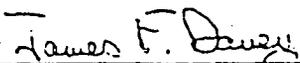
NOTICE OF RIGHT TO CONSENT TO TRIAL  
BEFORE A UNITED STATES MAGISTRATE

The Federal Magistrates Act of 1968, 28 U.S.C. §636(c), as amended on October 10, 1979, requires the Clerk of Court to notify all parties in each civil action, that they may voluntarily consent to have the case tried with a jury or without a jury before a United States Magistrate. If all parties so consent, and the Court concurs, the matter will be referred to a Magistrate for disposition.

The plaintiff (or counsel) has received a consent form. If the parties agree to trial before a Magistrate, plaintiff (or counsel) shall have all the parties (or counsel) jointly execute the consent form and file it in duplicate with the Clerk at any time prior to the pretrial Order.

In accordance with 28 U.S.C. §636(c), any aggrieved party may appeal from the judgment directly to the United States Court of Appeals for the circuit in the same manner as an appeal from any other judgment of the District Court. The parties may further stipulate, at the time of the reference to the Magistrate, that the appeal shall be taken instead to a District Court Judge.

The consent form is not required to be executed or returned to the Clerk of the Court unless all parties voluntarily consent to this procedure. If an executed consent form is not received by the Clerk prior to the pretrial Order, the case will proceed to disposition before a United States District Court Judge in the normal fashion.

  
\_\_\_\_\_  
JAMES F. DAVEY  
Clerk of the Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN BROADCASTING COMPANIES, INC.  
1330 Avenue of the Americas  
New York, New York 10019  
(212) 887-7777

and

JOHN MARTIN  
1926 Broadway  
New York, New York 10023  
(212) 887-4960

and

MARK HOSENBALL  
814 National Press Building  
Washington, D.C. 20045  
(202) 624-0945

v

DEPARTMENT OF THE ARMY  
Washington, D.C. 20310

and

JOHN O. MARSH, JR.,  
Individually and as  
Secretary of the Army

and

CENTRAL INTELLIGENCE AGENCY  
Washington, D.C. 20505

and

WILLIAM J. CASEY  
Individually and as Director  
of the Central Intelligence Agency

CIVIL ACTION

NO.

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action brought under the Freedom of Information Act, 5 U.S.C. § 552, as amended, to enjoin defendants

from withholding public disclosure certain records of the Department of the Army ("Army") and the Central Intelligence Agency ("CIA") within their possession and control.

2. This Court has jurisdiction and venue over the action pursuant to 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff, American Broadcasting Companies, Inc., is a New York corporation which owns and operates radio and television stations, operates radio and television networks, and among other things, broadcasts news reports and news programs to the public.

4. Plaintiff John Martin ("Martin") is a reporter and correspondent employed by the News Division of American Broadcasting Companies, Inc.

5. Plaintiff Mark Hosenball ("Hosenball") is a regular contributor and correspondent for the London Sunday Times.

6. Defendant Army is an agency of the United States, established by statute. The defendant agency has possession of records to which plaintiffs seek access.

7. Defendant John O. Marsh, Jr. is Secretary of the Army, and through his agents has denied plaintiffs access to the requested records.

8. Defendant CIA is an agency of the United States, established by statute and charged with the responsibility of coordinating the intelligence activities of several governmental departments and agencies in the interest of national

security. The defendant agency is believed to have possession of records to which plaintiff Hosenball seeks access.

9. Defendant William J. Casey is Director of the CIA and, through his agents, has denied plaintiff Hosenball access to the requested records.

10. On February 16, 1983, plaintiff Hosenball filed with the Department of the Army a request for certain documents under the Freedom of Information Act, including records concerning Klaus Barbie. Klaus Barbie is the former Gestapo Chief of Lyons, France who, it is believed, worked for United States' authorities after World War II. It has been reported that Barbie was assisted by such United States' authorities in escaping from Europe to South America after the War. In February 1983, Barbie was extradited from Bolivia to France to face eight specific counts of "crimes against humanity." The Government of France is holding Barbie responsible for the deaths of 4,000 people and for deporting 7,500 to Nazi concentration camps.

11. By letter of March 24, 1983, a copy of which is attached as Exhibit A, the request for records described in paragraph 10 above was denied by Roger B. Pierce, Freedom of Information Act Officer, acting on behalf of defendant Army. Mr. Pierce asserted that the documents were exempt from disclosure under paragraph b(7)(A) of the Freedom of Information Act, governing disclosure of investigatory records for law enforcement proceedings.

12. On March 30, 1983, plaintiff Hosenball filed with the Army a timely administrative appeal.

13. By letter of April 8, 1983, defendant Army, through its agent Sarah J. Crawford, Principal Deputy of the Office of General Counsel, affirmed the initial denial, which decision constituted final agency action. A copy of Ms. Crawford's letter is attached as Exhibit B.

14. On April 4, 1983, plaintiff Hosenball filed with the CIA a request for certain documents under the Freedom of Information Act, including records concerning Klaus Barbie.

15. By letter dated May 4, 1983, a copy of which is attached as Exhibit C, the request for the records described in paragraph 14 above, was denied by the CIA, through its agent Larry R. Strawderman, Information and Privacy Coordinator. The denial was based on the alleged ground that defendant CIA found it "difficult to distinguish between different individuals with the same or similar names" and that "additional biographical information" about Barbie would be necessary before the request could be processed.

16. Plaintiff Hosenball's request to the CIA, insofar as it related to Klaus Barbie, reasonably described the records requested under the provisions of the Freedom of Information Act and the CIA's denial of his request on that ground was improper.

17. The CIA failed to comply with the applicable time limit provisions of the Freedom of Information Act, 5 U.S.C.

§522a(6)(A) and, accordingly, plaintiff Hosenball is deemed to have exhausted his administrative remedies under 5 U.S.C. §522a(6)(A) and, accordingly, plaintiff Hosenball is deemed to have exhausted his administrative remedies under 5 U.S.C. §552a(6)(C).

18. On March 30, 1983, plaintiff Martin filed with the Army a request for certain documents under the Freedom of Information Act relating to Klaus Barbie, also known as Klaus Altmann, including a field interrogation of Barbie by agents of the 7970th Counter-Intelligence Corps Group on January 28, 1948. A copy of this request is attached as Exhibit D.

19. By letter of April 12, 1983, a copy of which is attached as Exhibit E, the request for records described in paragraph 18 above was denied by defendant Army through its agent Thomas F. Conley, Chief of the Freedom of Information/Privacy Office. Mr. Conley asserted that the documents requested were exempt from disclosure under paragraph b(7)(A) of the Freedom of Information Act, governing disclosure of investigatory records for law enforcement proceedings.

20. The documents relating to Klaus Barbie which were requested by plaintiff Martin from the Army were the same as those which had been previously requested from the Army by plaintiff Hosenball on February 16, 1983 and appealed on March 30, 1983. (See paragraphs 10-13, supra). Plaintiff Hosenball's request and administrative appeal were denied by the Army on the same grounds as the Army's denial of

plaintiff Martin's March 30, 1983 request. Accordingly, the filing of an administrative appeal by plaintiff Martin is not required since the actions and statements of the agency demonstrate that it would be futile to appeal its initial decision.

21. Most of the records sought by plaintiffs are believed to be more than 30 years old. The documents requested are not "investigatory records compiled for law enforcement purposes" 5 U.S.C. §552a(7)(A), nor would their disclosure "interfere with enforcement proceedings" within the meaning of that section since there is no such enforcement proceeding pending or contemplated. The investigation by the Attorney General referred to in Exhibits B and E is not a law enforcement proceeding looking to criminal or civil action, but is merely an inquiry "to develop a factual record of any relationship that may have existed between Klaus Barbie and the U.S. government at any time," with the goal of making a "report to Congress and the public." Department of Justice announcement, quoted in N.Y. Times, March 15, 1983, § A, at 4, Col. 3.

22. Plaintiffs are seeking access to the records to insure that the public is provided with a full understanding of the facts of Barbie's relationship to American government agencies.

23. Pursuant to the Freedom of Information Act, 5 U.S.C. §552(a)(3), plaintiffs have a right to have access to the

documents requested, and defendants have no legal basis for their actions denying access.

24. Plaintiffs have met the exhaustion requirements of the Freedom of Information Act and agency regulations.

WHEREFORE, plaintiffs pray this Court:

1. To take jurisdiction of this cause;
2. To order defendants to permit access to the requested documents;
3. To expedite the hearing of this action under 5 U.S.C. §522(a)(4)(D);
4. To award plaintiffs reasonable attorney fees and other litigation costs and;
5. To grant such other and further relief as the Court may deem just and proper.

  
Lionel Kestenbaum  
Barry R. Goldsmith

BERGSON, BORKLAND, MARGOLIS  
& ADLER  
11 Dupont Circle, N.W.  
Washington, D.C. 20036  
(202) 462-5930

Attorneys for Plaintiffs

Dated: Washington, D.C.  
June 23, 1983

EXHIBIT A



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT CHIEF OF STAFF FOR INTELLIGENCE  
WASHINGTON, DC 20310

March 24, 1983

REPLY TO  
ATTENTION OF

Freedom of Information  
Office

Mr. Mark Hosenball  
The Sunday Times of London  
814 National Press Building  
Washington, D.C. 20045

Dear Mr. Hosenball:

This is in response to your February 16, 1983 letter to the Office of Public Affairs, Secretary of the Army, requesting records concerning Klaus Barbie, under the provisions of the Freedom of Information Act, 5 USC 552. The Office of Public Affairs referred your request to the Office of the Adjutant General for further forwarding to this office for appropriate action and direct response to you. This correspondence was received on March 8, 1983.

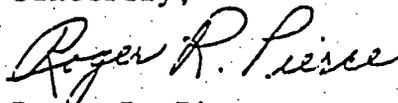
We regret to inform you that the records you have requested concerning Klaus Barbie are now the subject of a full investigation by the Attorney General of the United States. Accordingly, I find it necessary to withhold the requested records under paragraph (b)(7)(a) of the Freedom of Information Act, since the release of these records would interfere with the investigation proceedings. When the factual inquiry is completed, this office will reprocess your original request.

This determination is made of behalf of the properly designated Initial Denial Authority. Please be advised that you have the right to appeal this decision to the Secretary of the Army. If you wish to file an appeal, you should forward it so that it reaches this office for necessary processing no later than 45 days from the date of this letter. The mailing address is:

Headquarters, Department of the Army  
Office of the Assistant Chief of Staff for Intelligence  
Attention: DAMI-CIS(L)  
Washington, D.C. 20310

While I regret that we cannot provide further assistance at this time, I trust that you appreciate the considerations involved.

Sincerely,

A handwritten signature in cursive script that reads "Roger R. Pierce". The signature is written in dark ink and is positioned above the typed name.

Roger R. Pierce  
Freedom of Information Act Officer

EXHIBIT B



RDLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
OFFICE OF THE GENERAL COUNSEL  
WASHINGTON, DC 20310

8 April 1983

Mr. Mark Hosenball  
The Sunday Times of London  
1333 H Street, N.W.  
Suite 440  
Washington, D.C. 20005

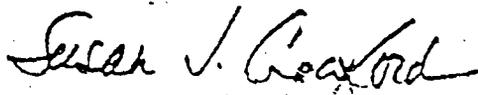
Dear Mr. Hosenball:

This is in response to your letter of March 30, 1983, in which you appealed the Assistant Chief of Staff for Intelligent's denial of your Freedom of Information Act (Act) request for all Army documents relating to Klaus Barbie aka Klaus Altmann.

After careful review and coordination with the Department of Justice, I have decided to deny your appeal. As you are aware, the Attorney General has directed that the Department of Justice undertake a full investigation into the Klaus Barbie matter. That investigation is ongoing presently and the Army is cooperating fully with it. Until that investigation is completed, all Army records relating to Klaus Barbie are considered investigating records compiled for law enforcement purposes, the release of which would interfere with the ongoing investigation. Thus, all Army records responsive to your appeal are exempt from mandatory disclosure by section (b)(7)(A) of the Act.

The letter constitutes final action on behalf of the General Counsel, who has been designated by the Secretary of the Army to consider appeals under the Act. You may, if you so desire, seek judicial revisions of this decision in accordance with the Act.

Sincerely,

  
Susan J. Crawford  
Principal Deputy

3 April 1983

Mr. Mark Rosenball  
The Sunday Times of London  
1932 W Street, N.W.  
Suite 440  
Washington, D.C. 20005

Dear Mr. Rosenball:

This is in response to your letter of March 30, 1983, in which you appealed the Assistant Chief of Staff for Intelligence's denial of your Freedom of Information Act (FOIA) request for all Army documents relating to Klaus Barbie aka Klaus Altmann.

After careful review and coordination with the Department of Justice, I have decided to deny your appeal. As you are aware, the Attorney General has directed that the Department of Justice undertake a full investigation into the Klaus Barbie matter. That investigation is ongoing presently and the Army is cooperating fully with it. Until that investigation is completed, all Army records relating to Klaus Barbie are considered investigating records and are not for law enforcement purposes, the release of which would interfere with the ongoing investigation. Thus, all Army records responsive to your appeal are exempt from mandatory disclosure by section (b) (7) (A) of the Act.

The letter constitutes final action on behalf of the General Counsel, who has been designated by the Secretary of the Army to consider appeals under the Act. You may, if you so desire, seek judicial review of this decision in accordance with the Act.

Sincerely,

(Signature of Secret. General)

SECRETARY GENERAL  
Principal Deputy

EXHIBIT C

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

4 MAY 1983

Mark Hosenball  
The Sunday Times  
1333 H Street, NW  
Suite 440  
Washington, DC 20005

Dear Mr. Hosenball:

This acknowledges receipt of your letter written on 4 April 1983 in which you requested certain information pursuant to the Freedom of Information Act (FOIA).

Portions of your request, as submitted, cannot be processed under the FOIA. Under the provisions of the FOIA, we are neither authorized nor required to perform research or create records on behalf of a requester. Almost without exception, our FOIA searches, because of the structure of our records systems, must be limited to those that can be conducted for records that are indexed or maintained under the name of an individual, organization, title, or other specific entity. Further, if our searches surface information, we are not permitted to analyze that information on behalf of a requester to determine if it is in some way related to an event, activity, incident, or other occurrence.

Regarding that portion of your request dealing with specific names of individuals, these are searchable items within the meaning of the FOIA; however, we will need basic biographic information on each of the individuals named in your letter as well as their full name. At the very least we need a date and place of birth and nationality. Without such information, it will be difficult to distinguish between different individuals with the same or similar names.

Concerning that portion of your request dealing with general information such as "neo-Nazi activity in Latin America since World War II" and "material relating to possible links between Latin American neo-Nazis and European neo-fascist movements from 1946 to the present time," it is of such a general and, frankly, ambiguous nature as to require endless hours of

research to determine such things as "neo-Nazis" and "neo-fascists." Permit us to repeat that the FOIA neither requires nor authorizes any federal agency to conduct research. We ask, therefore, that you re-examine your overall request and attempt to restructure it in such a way as to avoid any research requirements and to identify events, organizations, and incidents with more specificity.

Regarding your request for a waiver of fees, we will address that issue when you have refined your request to meet the searchability test of the FOIA.

We are suspending all active processing of your request until such time as we hear from you regarding the above matters.

Sincerely,



Larry R. Strawderman  
Information and Privacy Coordinator

EXHIBIT D

March 30, 1983

Commanding General  
Army Intelligence and Security Command  
Arlington Hill Station  
Arlington, Virginia

Dear Sir :

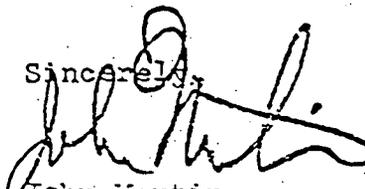
This is a request for documents under the Freedom of Information Act, as amended (5 USC 552).

As a correspondent for ABC News, I wish to obtain all documents under your control relating to Klaus Barbie, also known as Klaus Altmann. I specifically request that you review, declassify, and furnish ABC News a copy of a field interrogation of Barbie by agents of the 7970th Counter-Intelligence Corps Group on January 28, 1948.

I make this request on a matter of wide public interest in understanding the facts of Barbie's relationship to American government agencies from the end of the Second World War and continuing in the 1960s, 1970s, and 1980s. ABC News is prepared to pay customary research and copying fees unless waived in the public interest by your command. It is also prepared to take legal action in the event the records are not produced in accordance with the FOI Act.

Your reply should be addressed to my office in New York at 1926 Broadway, Fourth Floor, New York, N.Y. 10023.

Sincerely,



John Martin  
Correspondent

EXHIBIT E



DEPARTMENT OF THE ARMY  
US ARMY INTELLIGENCE AND SECURITY COMMAND  
FORT GEORGE G. MEADE, MARYLAND 20755

April 12, 1983

Mr. John Martin  
ABC News  
Fourth Floor  
1926 Broadway  
New York, New York 10023

Dear Mr. Martin:

This is in response to your March, 30 1983 letter to the Commanding General, U.S. Army Intelligence and Security Command, requesting certain records on Klaus Barbie (aka: Klaus Altmann) under the provisions of the Freedom of Information Act, as amended (5 USC552). Your letter has been referred to this office for reply and was received here on this date.

The records you have requested concerning Klaus Barbie are now the subject of a full investigation by the Attorney General of the United States. Accordingly, I find it necessary to withhold the requested records under exemption (b)(7)(A) of the Freedom of Information Act, since the release of these records would interfere with the investigation proceedings. When this investigation has been completed, this office will reprocess your original request.

This denial is made on behalf of the Commanding General, U.S. Army Intelligence and Security Command, who is the Initial Denial Authority (IDA) for Army intelligence and security records under the Freedom of Information Act. You have the right to appeal this decision to the Secretary of the Army. If you wish to file an appeal, you should forward it so that it reaches this office for necessary processing no later than 45 days from the date of this letter (excepting Saturdays, Sundays, and legal public holidays). The mailing address is:

Freedom of Information/Privacy Office  
U.S. Army Intelligence and Security Command  
ATTN: IACSF-FI  
Fort Meade, Maryland 20755

-2-

While I regret we cannot provide further assistance at this time, I trust that you appreciate the considerations involved.

Sincerely,



Thomas F. Conley

Chief

Freedom of Information/Privacy Office

Copy Furnished:  
DAMI-CIS(L)