

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| ROGER HALL, <u>et al.</u> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | 04-0814 (HHK) |
| CENTRAL INTELLIGENCE AGENCY, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

DECLARATION OF RALPH S. DIMAIO
INFORMATION REVIEW OFFICER
NATIONAL CLANDESTINE SERVICE
CENTRAL INTELLIGENCE AGENCY

I, RALPH S. DIMAIO, hereby declare and state:

1. I am the Information Review Officer (IRO) for the National Clandestine Service (NCS) of the Central Intelligence Agency (CIA). I was appointed to this position on 11 June 2007. I have held several operational and administrative positions in the CIA since 1983.

2. The NCS is the organization within the CIA responsible for conducting the CIA's foreign intelligence and counterintelligence activities; conducting special activities, including covert action; conducting liaison with foreign intelligence and security services; serving as the repository for foreign counterintelligence information; supporting clandestine technical collection; and

coordinating CIA support to other U.S. Government agencies. Specifically, the NCS is responsible for the conduct of foreign intelligence collection activities through the clandestine use of human sources.

3. As IRO, I am authorized to assess the current, proper classification of CIA information, based on the classification criteria of Executive Order 12958, as amended,¹ and applicable CIA regulations. As part of my official duties, I am authorized to review proposals for release or withholding of information originated by the CIA or implicating CIA interests, such as those under the Freedom of Information Act, 5 U.S.C. §552. I am able to describe, based on my experience, the damage to the national security that reasonably could be expected to result from the unauthorized disclosure of specific classified information.

4. Through the exercise of my official duties, I am familiar with this civil action. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

¹ (U) Executive Order 12958 was amended by Executive Order 13292. See Exec. Order No. 13292, 68 Fed. Reg. 15315 (Mar. 28, 2003). All citations to Exec. Order No. 12958 are to the Order as amended by Exec. Order No. 13292. See Exec. Order No. 12958, 3 C.F.R. 333 (1995), reprinted as amended in 50 U.S.C.A. § 435 note at 193 (West Supp. 2008).

5. This declaration supplements the 20 October 2006 declaration of CIA's Information and Privacy Coordinator, Scott Koch ("Koch Declaration") and responds to several issues plaintiffs Roger Hall, Studies Solutions Results, Inc., and Accuracy in Media raise in their Oppositions and Cross-Motions to Defendant's Motion to Dismiss and for Partial Summary Judgment, filed on 10 May 2007 ("Plaintiff's Cross Motion"). One such issue is Plaintiffs' objection to several exemptions that the CIA asserted in responding to Hall's Item 6 FOIA request. This declaration also incorporates the First Vaughn Index filed with Defendant's Motion for Summary Judgment and for Partial Summary Judgment; includes, at the end, a Supplemental Vaughn Index that further describes the CIA's withholdings of Item 6 records under Exemptions (b)(1), (b)(2), and (b)(6)²; and describes for the first time the CIA's withholdings in Item 3 records under Exemptions (b)(1), (b)(2), (b)(3), b(5) and (b)(6). In addition, this declaration describes the search and review of over 700 documents from one database that the CIA undertook in the Hall I case, and which plaintiff challenged; describes the

² Plaintiffs are not challenging the CIA's withholdings under Exemption (b)(3). As a result, this declaration will not further discuss the CIA's (b)(3) withholdings within the Item 6 documents, which are described in the First Vaughn Index.

CIA's determination of the segregability of the withholdings within the documents; and sets forth the decision of the CIA to waive search fees for plaintiffs.

I. Item 3 Documents

6. CIA has completed its search for, and its review of records responsive to portions of Item 3 of plaintiffs' February 7, 2003 request that do not duplicate plaintiff Hall's previous request and litigation. By letter dated 28 September 2007, records responsive to that request, or the non-exempt portions thereof, were provided to the Plaintiff. See, Exhibit 1. I have described the withholdings to Item 3 documents to the greatest extent possible on the public record in the Supplemental Vaughn Index attached as Exhibit 2.

7. CIA has located information within CIA records responsive to Item 3 that originated from a third agency. As was stated in the Koch Declaration in this case, CIA coordinates its responses to FOIA requests with other agencies whenever the responsive records it proposes to release contain information that originated in another agency or in which another agency has an equity. In many such instances, another agency classified the information in question, and the information is subject to referral or coordination under § 3.6 of Executive Order 12958, as

amended. CIA does not have the authority to require other federal agencies to respond to its requests for coordination within a specific period of time.

Accordingly, I cannot reliably estimate when CIA can complete its processing of documents that are subject to coordination with other agencies. Similarly, CIA also has located records responsive to Item 3 that originated in other federal agencies, which we must refer to those agencies for their review and response directly to plaintiffs. I cannot state with any reliability or authority when the other agencies will respond to the Plaintiff.

8. As was explained in the Koch Declaration, CIA cannot normally provide piecemeal responses to FOIA requests, but must review the entire body of material subject to release prior to releasing any of it. However, in this case, CIA determined that, once it had completed its own review, it was appropriate to release any nonexempt records, or portions thereof, that did not require coordination with other agencies, rather than await the other agencies' responses before making a release to the Plaintiff.

II. DS&T Search for Documents

9. In Plaintiff's Cross Motion, Plaintiff contends that the CIA's Directorate of Science and Technology (DS&T) improperly limited its search for responsive documents in 2003. Hall bases this contention on one document that notes that "[deleted's] search of its [deleted] database alone yielded over 700 potentially responsive hits; because this number exceeds what is normally considered 'reasonable' by FOIA standards, processing was suspended." Hall Cross-Motion and Opposition Brief at 5-6. In fact, CIA searches revealed 713 potentially responsive documents. All 713 of those documents were reviewed; 19 of them were found to be responsive, and those 19 were released in the Hall I litigation.

III. Waiver of Fees

10. On 18 July 2007, the CIA published new regulations on FOIA processing fees. FOIA Processing Fees, 72 Fed. Reg. 39315, 39316 (to be codified at 32 C.F.R. § 1900.02). The CIA does not concede that any of the plaintiffs are news media organizations under either the old or new regulations. As a matter of administrative discretion, however, the Agency will waive search fees in

this case. The plaintiffs' fee treatment will be the same as what representatives of the news media receive.

IV. Supplemental Vaughn Index

11. This declaration incorporates the Defendant's Supplemental Vaughn Index for Documents Responsive to Item 6 of Plaintiff's 7 February 2003 Request. See, Exhibit 2. This Supplemental Vaughn Index not only provides the Court with additional information on those Item 6 documents previously described in the Koch Declaration and First Vaughn Index, but it also provides the Court with descriptions of the withholdings on the Item 3 documents which were provided to the Plaintiff on 28 September 2007.

A. FOIA Exemption b(1)

12. FOIA Exemption b(1) provides that the FOIA does not apply to matters that are:

(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(B) are in fact properly classified pursuant to such Executive order.

5 U.S.C. § 552(b)(1).

13. The authority to classify information is derived from a succession of Executive Orders, the most recent of which is Executive Order 12958, as amended. The documents

responsive to Items 3 and 6 have been reviewed and determination made that portions of those documents as further described in the Supplemental Vaughn contain information withheld on the basis of FOIA Exemption b(1). That information is in fact properly classified pursuant to Executive Order 12958.

14. I have determined that all of the information withheld on the basis of FOIA Exemption b(1) is within one category of classified information listed in Section 1.4 of E.O. 12958, as amended: "(c) intelligence activities . . . intelligence sources or methods, or cryptology." This category of information is further described below. The withheld information is properly classified SECRET or CONFIDENTIAL pursuant to E.O. 12958 criteria because its disclosure could reasonably be expected to cause damage to U.S. national security. Accordingly, and as demonstrated in the Supplemental Vaughn index at the end of this declaration, the withheld classified information in documents is exempt from disclosure pursuant to FOIA Exemption (b)(1).

1. Intelligence Methods

15. Certain information was withheld under Exemption (b)(1) and (b)(3) because it could lead to the unauthorized disclosure of intelligence methods.

16. Generally, intelligence methods are the means by which an intelligence agency accomplishes its mission. Most organized professions or businesses employ methods to accomplish their goals and objectives that are common to and, in some cases, unique to that business or profession. Certain intelligence methods are of a special character necessitating the protection of their use, as well as the details of their use.

17. Intelligence methods must be protected in situations where a certain capability or technique, or the application thereof, is unknown to those individuals or entities that would take countermeasures. Secret information-collection techniques, capabilities, or technological devices are valuable (from an intelligence-gathering perspective) only so long as they remain unknown and unsuspected. Once the nature of an intelligence method or its use is discovered, its continued successful use will be in serious jeopardy. Indeed, disclosure of intelligence methods and practices would be of material assistance to those who would seek to penetrate, detect, prevent, or damage U.S. intelligence operations. Thus, disclosure of a particular intelligence method leads to the neutralization of that method -- whether the method is used for

information collection, the conduct of clandestine activities, or information analysis and evaluation.

18. Foreign intelligence services view discovery of CIA methodology as one of their primary defensive missions. Indeed, the cost ratio between developing and validating an intelligence method and negating that method via public disclosure is hugely disproportionate. Intelligence methods can cost many millions of dollars to develop, and a single newspaper story generated by a single disclosure will often end the utility of that method. CIA may lose intelligence during the time it takes to fund and field a replacement method.

19. In exercising and fulfilling its mission, CIA must do more than prevent explicit references to an intelligence method; it must also prevent indirect references to such a method. A primary vehicle for gathering intelligence methods information is by reviewing officially-released information. We know that foreign intelligence services have the capacity and ability to gather information from myriad sources, analyze it, and deduce means and methods (from disparate and even seemingly unimportant details) to defeat CIA collection efforts. CIA officials have testified consistently over the years that what may seem trivial to the uninformed, could be of great

significance to one who has a broader view of the issue and can place the item of information in its proper context. Thus, even seemingly innocuous, indirect references to an intelligence method could have significant adverse effects when juxtaposed with other publicly-available data.

20. Accordingly, CIA may withhold information concerning particular intelligence methods if CIA determines that such information could reasonably be expected to assist foreign intelligence services to the detriment of the United States. Without such protection, CIA would quickly become impotent.

21. Because some of the information contained in the documents released to Plaintiff detailed intelligence methods, such information fell within the ambit of 50 U.S.C. § 403-3(c)(7), and CIA Act § 6, 50 U.S.C. § 403g, and was thus exempt from disclosure under FOIA exemption (b)(3). As such information can be classified SECRET under E.O. 12958 because its disclosure could cause serious damage to national security, intelligence methods are exempt from disclosure under FOIA exemption (b)(1). CIA's specific application of FOIA exemption (b)(3) is described in more detail in both the First and Supplemental Vaughn indices.

2. Internal Information

22. CIA Act Section 6 exempts CIA from the provisions of any law requiring publication or disclosure of information concerning the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. See 50 U.S.C. § 403g. On the basis of this statute, CIA employees' names and personal identifiers (e.g., employee signatures, employee numbers or initials), titles, file numbers, and internal organizational data are absolutely protected from disclosure by law and have been redacted from the documents described in the Supplemental Vaughn index.³ Section 6 requires no showing of harm.

23. In some documents, internal CIA filing information has been withheld because it tends to provide insight into the records systems structure at CIA. Similarly, titles or other organizational identifiers and filing instructions of CIA internal organizational components have been deleted. All of this information has been withheld to prevent public release of CIA structure, organization, and procedures, all of which could be used in hostile penetration or manipulation. Because such information is classified up to the SECRET level, it is

³ As discussed above, FOIA exemption (b)(2) also protects information pertaining to the internal administrative practices of CIA.

exempt under FOIA exemption (b)(1) as well as exemption (b)(3).

3. Cryptonyms

24. CIA disclosure of cryptonyms, which are word and letter codes substituted for actual names or identities, could also lead to the unauthorized disclosure of intelligence methods. A cryptonym has been withheld from disclosure from document 31 pursuant to FOIA exemptions (b)(1) and (b)(3).

25. Cryptonyms are used in cables and other correspondence to disguise the true name of a person or entity of operational intelligence interest. Pseudonyms are used similarly in internal CIA communications. When obtained and matched to other information, cryptonyms and pseudonyms can assist someone in deciphering a communication's proper cognitive framework. For example, the reader of a message is better able to assess the value of its contents if the reader knows the identity of the particular individual or project by its cryptonym or pseudonym. And by knowing a cryptonym or pseudonym's meaning, a reader may be able to identify the CIA intelligence source or covert employee. The mere use of a cryptonym to describe a project or person is an important piece of information in a document.

26. Since these codewords are themselves intelligence methods that also protect other intelligence sources and methods, information that would disclose cryptonyms or pseudonyms is appropriately classified under E.O. 12958 as either SECRET or CONFIDENTIAL, and properly withheld under FOIA exemptions (b)(1) and (b)(3).

B. FOIA Exemption (b)(2)

27. FOIA exemption (b)(2) states that FOIA does not apply to matters that are "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. § 552(b)(2).

28. Exemption (b)(2) encompasses two distinct categories of information: (a) internal information of a less significant nature, such as administrative routing notations and agency rules and practices, sometimes referred to as "low 2" information; and (b) more substantial internal information, the disclosure of which would risk circumvention of a legal requirement, sometimes referred to as "high 2" information.

29. CIA has properly invoked Exemption (b)(2) in this case to withhold the following "low 2" information: internal and administrative routing and filing information,

and internal phone numbers.⁴ There is no public interest in the disclosure of such internal procedures and clerical information that would justify the administrative burden that would be placed upon CIA. The Agency has carefully reviewed each page of every document and released all reasonably segregable information. The Supplemental Vaughn further describes specific withholdings of information from Items 3 and 6 records under (b) (2).

C. FOIA Exemption (b) (5)

30. FOIA exemption (b) (5) provides, in sum, that FOIA does not apply to those documents which are normally privileged in the civil litigation context. 5 U.S.C. § 552(b) (5). In the instances in which withholdings were made on the basis of Exemption(b) (5) in this case, information was withheld to protect CIA internal deliberations, attorney client communications or attorney work-product, which was compiled in anticipation of civil litigation. I refer the Court to the Supplemental Vaughn for the specific application of this exemption.

⁴ CIA has not invoked Exemption (b) (2) to withhold "high 2" information.

D. FOIA Exemption (b)(6)

31. FOIA exemption (b)(6) provides that FOIA does not apply to matters that are "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

5 U.S.C. § 552(b)(6). The CIA has withheld certain information from the Plaintiff on the ground that, if disclosed, it would constitute a clearly unwarranted invasion of the personal privacy of third parties by revealing their names and other identifying (including biographical) information.

32. In invoking FOIA exemption (b)(6), the threshold inquiry is whether the particular information in question qualifies as "personnel," "medical," or "similar" information. Information that applies to or describes a particular individual's (or their family's) biographical and/or medical history, clearly falls within these FOIA categories. Here, the information at issue identifies the names of, and/or identifying information about specific individuals, including CIA employees. Therefore, I have determined that this information qualifies as "personnel," "medical," or "similar" files, and because its disclosure would constitute a clearly unwarranted invasion of the

personal privacy of third parties, it is subject to (b) (6) protection.

33. Once this threshold has been met, the Agency is required to balance the interests between safeguarding an individual's private affairs from unnecessary public scrutiny against the public's right to government information. In this case, no overriding public interest requires the disclosure of the names of, or identifying information about, the third parties at issue. To this Plaintiffs have not -- and could not -- demonstrate any public interest for this type of information or explain in any way how disclosure would shed light on government operations.

34. Even if some minuscule public interest could be found in disclosing the third-party information at issue, the balance would still tilt dramatically against disclosure. Disclosure of this personal information would certainly violate the personal privacy of these third parties. Because the privacy interests involved will clearly outweigh the negligible public interest in disclosure, I have determined that the information should not be disclosed. I refer the Court to the Supplemental *Vaughn* for the specific application of this exemption.

V. Segregability

35. It was determined that there is no further information that can be segregated for release to Plaintiff. The CIA has made a conscientious effort to release all possible information to plaintiffs. Deletions and withholdings have been made only to the extent necessary to protect classified information, intelligence methods, CIA internal deliberations, attorney client communications or attorney work product, and CIA organization, personnel, and procedures.

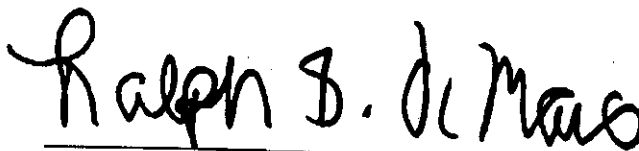
36. With respect to information withheld, factual material was examined carefully to determine whether it could be segregated and released. If information was segregable and not otherwise exempt, it was released. In some instances, however, facts are so inextricably intertwined as to be part and parcel of the deliberative process or privileged communication (or otherwise exempt). In these instances, no meaningful information could reasonably be segregated and released. In other instances, once applicable exemptions were asserted, there was literally no information remaining to segregate. Release of any further information would risk disclosure of the very information sought to be protected.

37. Where documents have been denied in full, I have determined that no reasonably segregable, non-exempt portion of those documents exists. I wish to be clear that information management professionals conducted a line-by-line review for all the documents at issue to identify and release reasonably segregable, non-exempt portions of documents.

* * * *

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17~~th~~ day of October, 2008.



Ralph S. DiMaio
Information Review Officer
Central Intelligence Agency