

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al.,)
)
Plaintiffs,)
)
v.) Civil Action 04-00814 (HHK)
)
Central Intelligence Agency,)
)
Defendant.)
_____)

SUPPLEMENTAL DECLARATION OF MARY ELLEN COLE
INFORMATION REVIEW OFFICER
NATIONAL CLANDESTINE SERVICE
CENTRAL INTELLIGENCE AGENCY

I, MARY ELLEN COLE, 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 in June 2010. I have held operational and managerial positions in the CIA since 1979.

2. I refer the Court to my declaration of 17 August 2010 ("Cole Declaration"),¹ which I incorporate by reference. That declaration provides, inter alia, a description of my authorities as an Information Review Officer ("IRO") and Records Validation Officer ("RVO").

¹ Declaration of Mary Ellen Cole (1:04-cv-00814-HHK, Document 148, filed 8/23/2010).

3. The purpose of this supplemental declaration is to further respond to the Court's 12 November 2009 Order ("Order") as it pertains to Item 5 of Plaintiffs' Freedom of Information Act ("FOIA") request,² which seeks records relating to individuals who allegedly are Vietnam-era POW/MIAs. See Cole Declaration, ¶¶ 68-76. As stated in the Cole Declaration, Plaintiffs provided identifying data, such as social security numbers or dates of birth, for 31 individuals about whom they seek records.³ The CIA agreed that, no later than 31 January 2011, it would release non-exempt records in the CIA Automatic Declassification and Release Environment ("CADRE") that are responsive to Plaintiffs' request for information relating to the 31 individuals. Id., ¶ 76.

4. CADRE is an electronic database that stores information processed pursuant to the Agency's information release programs, such as the FOIA, Privacy Act, and

² In the Court's Order, Item 5 corresponds to section III.A.2.

³ The names of these individuals are as follows: Daniel V. Borah, Jr.; Thomas T. Hart, III; George Duncan Macdonald; Thomas Moore; Jerry M. Shriver; Carl Richard Ussery; Robert D. Beutel; Russell P. Bott; Robert Franklin Coady; James E. Dooley; Jerry W. Elliot; Patrick Martin Fallon; Gary H. Fors; Frank A. Gould; James W. Grace; Andre R. Guillet; James Wayne Herrick, Jr.; Earl P. Hopper, Jr.; David L. Hrdlicka; James Alan Ketterer; Albro L. Lundy, Jr.; Michael J. Masterson; William Patrick Milliner; Robert D. Morrissey; Larry Warren Robinson; Leo Earl Seymour; Ronald Dean Stafford; Larry J. Stevens; Michael Lora Bouchard; Francis W. Townsend and Frances W. Townsend. Plaintiffs submitted the last two names separately even though it appears they may refer to the same individual. Accordingly, the CIA conducted a separate search of each name consistent with Plaintiffs' request.

Mandatory Declassification Review programs, and is full-text searchable. Id., ¶ 75. As described in the Cole Declaration, CIA personnel who have access to CADRE and who are qualified by training and practice to search those records in the course of their professional duties conducted a search in CADRE for the 31 individuals, using the names, as provided by Plaintiffs, as search terms. CIA personnel, while considering the additional identifying information provided by Plaintiffs, reviewed the search results to determine responsiveness.

5. The CIA subsequently provided Plaintiffs with non-exempt responsive records by letter on 14 January 2011. See Exhibit A. Specifically, the CIA released twenty-one (21) documents in full⁴ and two (2) documents in part. The CIA also located responsive records that originated with other agencies, or that contain information the disclosure of which would affect the interests or activities of other agencies, and are therefore subject to referral or coordination⁵ in accordance with § 3.6 of Executive Order

⁴ The documents released to Plaintiffs in full include certain documents that contain preexisting redactions and some information that is not clearly readable; however, they are the only known copies that the CIA could reasonably determine were responsive to Item 5 of Plaintiffs' FOIA request.

⁵ A "referral" occurs when the CIA possesses a document that originated with another agency. In such a case, the CIA transmits the document to the originating agency for a direct response to the requester. A "coordination" occurs when a CIA-originated document contains information the disclosure of which would affect the interests or

13526.⁶ On 21 January 2011, the CIA sent to the appropriate agencies the non-CIA-originated documents for referral and direct response to Plaintiffs, as well as nineteen (19) CIA-originated documents for coordination. The CIA will respond to Plaintiffs concerning the 19 CIA-originated documents once the coordination process is complete. In addition, the CIA determined that document C00495762, which is responsive to Item 5 and was sent to another Government agency on 21 January 2011 for coordination, was also responsive to Item 4 of Plaintiffs' FOIA request. The CIA had withheld the document in full in response to Item 4, as noted in the Vaughn index filed on 23 August 2010 in this case. Upon further review, the CIA concluded that the document contained reasonably segregable information. As a result, the CIA will release this document to Plaintiffs in part once consultation with the appropriate third agency is complete.

A. FOIA EXEMPTION (b) (3)

6. The documents responsive to Item 5 that have been released to Plaintiffs in part contain information disclosing internal CIA organizational and employee

activities of another agency, and the CIA contacts that agency to obtain guidance on whether to release or withhold the information. The CIA responds to the FOIA requester in a coordination.

⁶On 29 December 2009, President Obama signed Executive Order 13526, which superseded Executive Order 12958, as amended, on 27 June 2010. See 75 Fed. Reg. 707 (Jan. 5, 2010).

information, as detailed in the attached Item 5 Vaughn index. See Exhibit B. This information is exempt from disclosure under FOIA exemption (b) (3), 5 U.S.C. § 552(b) (3).

7. As described in the Cole Declaration, FOIA exemption (b) (3) provides that the FOIA disclosure provisions do not apply to matters that are specifically exempted from disclosure by statute provided that such statute: (a) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (b) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

8. Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C.A. § 403g (West Supp. 2007), provides that in the interests of the security of the foreign intelligence activities of the United States and in order to further implement § 403-1(i) of Title 50, the CIA shall be exempted from the provisions of "any other law" which requires disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the CIA. As a result, such information is protected from disclosure by law. The CIA Act therefore constitutes a federal statute which "establishes particular

criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). CIA employees' names and personal identifiers (for example, employee signatures, employee identification numbers, or initials), titles, file numbers, and internal organizational information are specifically protected from disclosure by the CIA Act.

9. As further outlined in the Item 5 Vaughn index, the two documents responsive to Item 5 that have been released to Plaintiffs in part contain CIA organizational notations, internal phone numbers, employee signatures, and an employee name and initial. Section 6 of the CIA Act, and, thus, FOIA exemption (b)(3), unambiguously protect this information from disclosure.

B. SEGREGABILITY

10. The CIA conducted a review of the Item 5 documents that were released in part to determine whether meaningful, reasonably segregable, non-exempt portions of documents could be released. The CIA made this determination regarding segregability based upon a careful review of the Item 5 documents, both individually, and as a whole. Specifically, the CIA conducted a line-by-line review of each Item 5 document to ensure the CIA properly withheld information pursuant to FOIA exemptions. The CIA

has determined that the Item 5 documents released to Plaintiffs in part contain no additional reasonably segregable non-exempt information. Accordingly, the CIA released all information that was reasonably segregable and not otherwise exempt in the Item 5 documents.

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

Executed this 21st day of January, 2011.



Mary Ellen Cole
Information Review Officer
National Clandestine Service
Central Intelligence Agency

EXH. A

Central Intelligence Agency



Washington, D.C. 20505

14 January 2011

James H. Lesar, Esq.
1003 K Street, NW
Suite 640
Washington, DC 20001

Reference: F-2003-00449/F-2010-01218/F-2010-01307/F-2010-01645
Hall, et al. v. CIA (04-cv-00814) (DDC)

Dear Mr. Lesar:

This is our final response to Item 5 of your 7 February 2003 Freedom of Information Act (FOIA) request and subsequent litigation made on behalf of your clients, Roger Hall, et al., as it pertained to:

“Records relating to 47 individuals who allegedly are Vietnam era POW/MIAs, and whose next-of-kin have provided privacy waivers to Roger Hall, see Attachment (sic) 1 hereto, and those persons who are on the Prisoner (sic) of War/Missing Personnel Office’s list of persons whose primary next-of-kin (PNOK) have authorized the release of information concerning them (Attachment 2).”

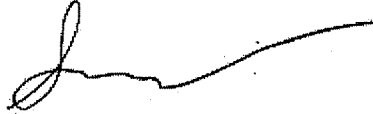
We processed your request in accordance with the Court’s 12 November 2009 Order, and the FOIA, 5 U.S.C. section 552, as amended. Per the Court’s Order and consistent with our filing of 23 August 2010, we reviewed records pertaining to the above request and made the following determinations.

Enclosed at Tab A are 21 documents that can be released in their entirety. Enclosed at Tab B are two documents that can be released in segregable form with redactions made on the basis of FOIA exemption (b)(3).

In addition, there are 19 documents that we determined must be coordinated with other federal agencies or entities. Once the consultation process is complete, we will provide a supplemental response concerning those documents. Also, we located additional United States Government material that was not originated by CIA. This material appears to be relevant to Item 5 of your request, and has been referred to the originating agencies for review and direct response to you.

Because the information in question is the subject of pending litigation in federal court, the CIA cannot accept any administrative appeal of these determinations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Susan Viscuso', with a long horizontal flourish extending to the right.

Susan Viscuso
Information and Privacy Coordinator

Enclosures

EXH. B

Roger Hall, et al. v. Central Intelligence Agency

FOIA/PA Request No.:	F-2003-00449
Document Number:	Item 5: C00465493
Date of Document:	October 30, 1998
Document Type:	Letter
Classification:	Unclassified
From/To:	CIA to Members of the Senate Select Committee on Intelligence
Subject:	Responses to SSCI letter Requesting Information Concerning two Vietnam War Pilots
Document Pages:	3

FOIA Exemptions :

- (b)(1) properly classified information
- (b)(1) foreign government information
- (b)(1) foreign relations or foreign activities of the US
- (b)(1) intelligence activities (including special activities)
- (b)(1) intelligence methods
- (b)(1) intelligence sources (including confidential sources)
- (b)(2) internal rules and practices
- (b)(3) Section 102A(i)(1), National Security Act of 1947, as amended (sources and methods)
- (b)(3) Section 6, Central Intelligence Agency Act of 1949, as amended (sources and methods)
- (b)(3) Section 6, Central Intelligence Agency Act of 1949, as amended (organizational information)
- (b)(3) Section 6, Central Intelligence Agency Act of 1949, as amended (functions)
- (b)(3) Section 6, Central Intelligence Agency Act of 1949, as amended (names)
- (b)(3) Section 6, Central Intelligence Agency Act of 1949, as amended (official titles)
- (b)(5) attorney-client privilege
- (b)(5) attorney work product
- (b)(5) deliberative process
- (b)(5) presidential communication
- (b)(6) personal privacy

Dispositor

- Denied
- Partial F
- Release
- Referre

Justification Category IDs :
Document Description :

This document is 3 pages total and consists of two letters, each dated October 30, 1998, from the CIA to members of the Senate Select Committee on Intelligence (SSCI). Each letter, which are nearly identical in substance, is in response to the SSCI's inquiry for information concerning Vietnam War pilots Colonel David L. Hrdlicka and Major Robert F. Coady. Internal CIA organizational notations such as internal phone numbers, CIA personnel information, including a signature, and distribution information have been properly withheld. The substantive portion of this document has been released. This

document is UNCLASSIFIED but remains statutorily exempted from release under the FOIA.

This document is withheld in part on the basis of FOIA exemption (b)(3).

Exemption (b)(3): This document contains internal organizational data and functions of the CIA, including CIA personnel information in the form of a signature, that is specifically exempted from disclosure pursuant to the Central Intelligence Agency Act of 1949, and thus is protected from disclosure by exemption (b)(3).

* * * *

The CIA conducted a line-by-line review of this document to determine whether meaningful, reasonably segregable, non-exempt portions of the document could be released. As a result, the CIA is releasing all information that was segregable and not otherwise exempt.

Case Number: Civil Action 04-00814 (HHK)
Judge's Initials: HHK

Roger Hall, et al. v. Central Intelligence Agency

FOIA/PA Request No.:	F-2003-00449
Document Number:	Item 5: C00041846
Date of Document:	December 19, 1989
Document Type:	Letter
Classification:	Unclassified
From/To:	CIA to FOIA Requester
Subject:	Response to FOIA Referral
Document Pages:	3

FOIA Exemptions :

- | | |
|---|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> (b)(1) properly classified information <input type="checkbox"/> (b)(1) foreign government information <input type="checkbox"/> (b)(1) foreign relations or foreign activities of the US <input type="checkbox"/> (b)(1) intelligence activities (including special activities) <input type="checkbox"/> (b)(1) intelligence methods <input type="checkbox"/> (b)(1) intelligence sources (including confidential sources) <input type="checkbox"/> (b)(2) internal rules and practices <input type="checkbox"/> (b)(3) Section 102A(i)(1), National Security Act of 1947, as amended (sources and methods) <input type="checkbox"/> (b)(3) Section 6, Central Intelligence Agency Act of 1949, as amended (sources and methods) <input checked="" type="checkbox"/> (b)(3) Section 6, Central Intelligence Agency Act of 1949, as amended (organizational information) <input checked="" type="checkbox"/> (b)(3) Section 6, Central Intelligence Agency Act of 1949, as amended (functions) <input type="checkbox"/> (b)(3) Section 6, Central Intelligence Agency Act of 1949, as amended (names) <input type="checkbox"/> (b)(3) Section 6, Central Intelligence Agency Act of 1949, as amended (official titles) <input type="checkbox"/> (b)(5) attorney-client privilege <input type="checkbox"/> (b)(5) attorney work product <input type="checkbox"/> (b)(5) deliberative process <input type="checkbox"/> (b)(5) presidential communication <input type="checkbox"/> (b)(6) personal privacy | <p>Disposition</p> <ul style="list-style-type: none"> <input type="radio"/> Denied in <input checked="" type="radio"/> Partial R <input type="radio"/> Released <input type="radio"/> Referred |
|---|---|

Justification Category IDs :

Document Description :

This is a 3 page document consisting of a cover letter dated December 19, 1989, and a 2 page Foreign Broadcast Information Service (FBIS) document. The document is in response to a FOIA request for information pertaining to Thomas T. Hart which was released to the FOIA requester in 1989. Internal CIA organizational notations such as CIA personnel information, including a signature, have been properly withheld. The substantive portion of this document has been released. This document is UNCLASSIFIED but remains statutorily exempted from release under the FOIA.

This document is withheld in part on the basis of FOIA exemption (b)(3).

Exemption (b)(3): This document contains internal organizational data and functions of the CIA, including CIA personnel information in the form of a signature, that is specifically exempted from disclosure pursuant to the Central Intelligence Agency Act of 1949, and thus is protected from disclosure by exemption (b)(3).

* * * *

The CIA conducted a line-by-line review of this document to determine whether meaningful, reasonably segregable, non-exempt portions of the document could be released. As a result, the CIA is releasing all information that was segregable and not otherwise exempt.

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