UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No. 1:04-cv-00814-HHK**
CENTRAL INTELLIGENCE AGENCY,	)	
Defendant.	)	

DEFENDANT'S REPLY TO PLAINTIFFS' RESPONSES TO DEFENDANT'S SUPPLEMENTAL RESPONSE TO THE COURT'S NOVEMBER 12, 2009, ORDER

The Central Intelligence Agency ("Agency," "CIA," or "Defendant"), by and through undersigned counsel, respectfully submits this reply ("Def.'s Reply") to the responses of Roger Hall ("Hall") and Accuracy in Media, Inc. ("AIM;" collectively, "Plaintiffs"), to the CIA's supplemental response ("Def.'s Supp. Response") to the Court's November 12, 2009, Order ("Order").

The Supplemental Response and Reply show that the CIA has fully complied with the requirements of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, conducted reasonable and comprehensive searches for all documents Plaintiffs sought, sufficiently justified its withholdings, and provided Plaintiffs with adequate Vaughn indices. In camera review is not warranted. The CIA thus renews its motion for summary judgment on all issues except for certain limited matters, described herein, that remain pending.

I. THE CIA'S SEARCHES WERE REASONABLE AND COMPREHENSIVE.

A. Item 4[1]

With respect to Item 4, the Court ordered the Agency to independently review and process "any identical copies" of CIA-originated records in its files that had been included in the congressional collection referenced by Plaintiffs in their 2003 FOIA request. See Hall v. CIA, 668 F. Supp. 2d 172, 179 (D.D.C. 2009); see also Cole Declaration ("Cole Decl.") ¶ 53, appended to Def.'s Supp. Response at Def.'s Exh. 7. The CIA accordingly reviewed 1,452 copies of CIA-originated documents responsive to the Court's Order and provided Plaintiffs with non-exempt portions of these records by letter dated August 20, 2010. See Cole Decl. ¶54, Exh. B. Hall nonetheless claims that the CIA's search was inadequate because it should have, among other things, used specific information in the released Item 4 records to search for even more records. See Hall Response at 8-16; see also 2011 Declaration of Roger Hall ("2011 Hall Decl.") ¶¶2-6, 8-9, 11, 13-14, 18-23, 25-34, 40, 42, 48-49, 55, and 58.[2]

As an initial matter, courts have ruled that agencies are generally not obligated to "look beyond the four corners of the request for leads to the location of responsive documents." Kowalczyk v. Dep't of Justice, 73 F.3d 386, 389 (D.C. Cir. 1996) (stating that an "agency is not

[1] Item 4 of Plaintiffs' request pertains to "[r]ecords of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the National Archives and Records Administration ("NARA") and returned to the CIA for processing." See Hall v. CIA, 668 F. Supp. 2d 172, 179 (D.D.C. 2009). Both Hall's and AIM's responses refer to the CIA's release of several thousand pages of records. See Hall Response, Dkt. No. 166 (Apr. 20, 2011) at 1; AIM Response, Dkt. No. 163 (Apr. 18, 2011), at 1. The CIA presumes that these references relate to Item 4 because the CIA produced the vast majority of all records responsive to the Item 4 request with its Supplemental Response in August 2010.

[2] Throughout the arguments in his Response, Hall points only to specific Item 4 documents. See, e.g., Hall Response at 8-16. Similarly, the 2011 Hall Declaration is also limited to arguments concerning only Item 4 documents. As a result, the CIA's reply focuses on the adequacy of its Item 4 search in this section.

required to speculate about potential leads"). This Court has held that the adequacy of an agency's search is not undermined because records referenced in released documents were not provided to plaintiff. Davy v. CIA, 357 F. Supp. 2d 76, 84 (D.D.C. 2004). The "FOIA cannot be used," as Plaintiffs seek to do here, "to troll for documents." Id. at 84. In rejecting a similar argument that searches were inadequate because "responsive documents refer to other documents that were not produced" and because the agency did not pursue so-called "leads" appearing in the responsive documents, the Fourth Circuit held that a FOIA search need only be "reasonably calculated to uncover all relevant documents" based upon the language of the FOIA request. Rein v. U.S. Patent & Trademark Office, 553 F.3d 353 363-65 (4th Cir. 2009). Nor does an agency's inability to locate every conceivably responsive record undermine an otherwise reasonable search. See, e.g., Iturralde v. Comptroller of the Currency, 315 F.3d 311, 315 (D.C. Cir. 2003) ("It is long settled that the failure of an agency to turn up one specific document in its search does not alone render a search inadequate..[a]fter all, particular documents may have been accidentally lost or destroyed, or a reasonable and thorough search may have missed them."). "An agency may prove the reasonableness of its search through affidavits of responsible agency officials so long as the affidavits are relatively detailed, nonconclusory and submitted in good faith." Pollack v. U.S. Bureau of Prisons, 879 F.2d 406, 409 (8th Cir. 1989).

The Court's Order specifically required the CIA to review all CIA-originated records that had been included in the congressional collection and to release all non-exempt portions of those records. Hall, 668 F. Supp. 2d at 179. The CIA completed that task. As the Cole Declaration states, the CIA retained electronic copies of CIA-originated records included in the congressional collection. See Cole Decl. ¶ 54. After determining that these electronic copies were the only known copies of the records that the CIA could reasonably conclude were responsive to the

Court's Order, the CIA processed each of the 1,452 documents for release to Plaintiffs and released non-exempt portions in August 2010. Id. Additionally, the CIA submitted a thorough and detailed declaration in addition to a Vaughn index, which addressed each individual record reviewed pursuant to the Court's Order concerning Item 4. See Cole Decl. ¶¶ 53-67. These actions demonstrated the CIA's good faith and its extensive efforts to ensure that it provided an adequate and comprehensive response to the Court's Order. The CIA has fully complied with the Court's Order and otherwise had no obligation to "troll" for additional documents on Plaintiffs' behalf.

Hall also contends the CIA failed to provide "all Senate documents" in response to the Court's Order for Item 4. See Hall Response at 19. He errs. The Court never ordered the CIA to provide Plaintiffs with all Senate documents, but instead requested that the CIA review any identical copies of CIA-originated records in its files that had been included in the congressional collection. See Hall, 668 F. Supp. 2d at 179. As explained above, the CIA identified and reviewed the CIA-originated records in its files as directed by the Court and released the non-exempt records to Plaintiffs. See Cole Decl. ¶¶ 53-67.

Finally, Hall references a November 9, 1993, letter from former CIA Director R. James Woolsey to suggest that the CIA should have located 1,766 documents in response to the Court's Order concerning Item 4. Not only is this a new issue raised for the first time by Hall in this litigation, but Woolsey's letter discusses documents reviewed pursuant to Executive Order 12812, an effort entirely distinct from the CIA's review of the "records of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the National Archives." Hall, 668 F. Supp. 2d at 179. The Woolsey letter is irrelevant to Item 4 of Plaintiffs' FOIA request.

The CIA fully complied with the Court's Order as to Item 4 by releasing to Plaintiffs all reasonably segregable, non-exempt information contained in the 1,452 copies of CIA-originated records that the CIA could determine were included in the Senate Select Committee's collection.

B. Item 5

In response to the Court's Order as to Item 5, the CIA provided the Court with additional information explaining why it requires biographical data to verify the identity of individuals whose names appear in its records and conducted a reasonable search for responsive documents. See Cole Decl. ¶¶ 68-71. Even so, Plaintiffs continue to challenge the adequacy of the CIA's response to the Court's Order. See Hall Response at 2-8; AIM Response at 2-7.

1. The CIA has sufficiently justified its need for additional biographical data.

In the Supplemental Response the CIA explained that it looks to identifying information such as date of birth, place of birth, and social security number when making responsiveness determinations about records that mention individuals. See Cole Decl. ¶ 69. Without additional identifying information, the CIA might not be able to confirm whether records discovered through a name search actually pertain to the individual listed in Plaintiffs' FOIA request, rather than to a different individual with an identical or similar name.[3] Id. The CIA also described why other Government agency information, such as Department of Defense ("DoD") reference numbers, does not help it determine whether a document is responsive. Id. Because the CIA does not recognize or utilize "other" agency reference numbers in its documents, only

[3] Consider, for example, how Plaintiffs' FOIA request requires CIA to locate records on numerous individuals with very common surnames (e.g., Anderson, Bell, Collins, Smith, and Wilson). Pls.' February 7, 2003, FOIA request, Attachment 2; see Hall, 668 F. Supp. 2d at 176. Additionally, some individuals about whom Plaintiffs have requested records share similar names (e.g., "John Edward Bailey" and "John Howard Bailey;" "Walter Louis Hall" and "Walter Ray Hall"). Pls.' February 7, 2003, FOIA request, Attachment 2.

biographical data, such as dates, places of birth, and social security numbers, are likely to contribute to CIA searches in a meaningful way. Id.

In this case, Hall provided additional identifying information for 31 of the 1,711 names. See Cole Decl. ¶ 70. As a result, the CIA conducted a search of the 31 names in the electronic CIA Automated Declassification and Release Environment ("CADRE"), reviewed its search results for responsive documents, and then released the responsive, non-exempt information to Plaintiffs in January 2011. See Supp. Cole Decl., Dkt. No. 157 (Feb. 1, 2011). The CIA has therefore provided a proper response to the Court's Order concerning Item 5.

Plaintiffs also erroneously contend there is no legal basis to support an assertion that a particular search is unduly burdensome and therefore not required by the FOIA. See Hall Response at 4-8; AIM Response at 3-4. Courts of this Circuit have consistently held that the FOIA does not require agencies to conduct unreasonably burdensome searches for records. See, e.g., American Fed'n of Gov't Employees, Local 2782 v. U.S. Dep't of Commerce, 907 F.2d 203 (D.C. Cir. 1990) (concluding that while the FOIA requests at issue "might identify the documents requested with sufficient precision to enable the agency to identify them…it is clear that these requests are so broad as to impose an unreasonable burden upon the agency. They would require the agency to locate, review, redact, and arrange for inspection a vast quantity of material."); Goland v. CIA, 607 F.2d 339 (D.C. Cir. 1978) (holding that the Agency's "sworn affidavits on their face are plainly adequate to demonstrate the thoroughness of the CIA's search for responsive documents...[and] give detailed descriptions of why further searches would be unreasonably burdensome"); Int'l Counsel Bureau v. Dep't of Defense, 723 F. Supp. 2d 54 (D.D.C. 2010) (affirming that "[g]enerally, an agency need not honor a FOIA request that requires it to conduct an unduly burdensome search"); id. ("[C]ourts are entitled to rely upon an

agency affidavit for an explanation of why a further search would be unduly burdensome when the affidavit is relatively detailed, nonconclusory, and not impugned in the record by evidence of bad faith on the part of the agency") (internal quotation marks omitted).

In this case, due to the absence of additional identifying information for the vast majority of names submitted by Plaintiffs, as well as the limitations of CIA's records systems as set forth in the Cole Declaration, it is unreasonable and unduly burdensome to require the CIA to review the 16,423 Archived Record hard copy file folders and 140,000 CADRE documents for responsiveness.[4] See Cole Decl., ¶¶72-76. The staggering number of potentially responsive documents, combined with the difficulty of determining responsiveness in the absence of additional identifying information, makes this task unduly burdensome. Even if the CIA were to manually review each of these documents individually, without the additional identifying information requested by the CIA, it would be extremely difficult if not impossible to make responsiveness determinations based on a name alone. Id. at ¶¶ 71-76. Such a task would place an inordinate burden on the CIA's already limited resources which, as the D.C. Circuit has recognized, the FOIA does not require.

2. The CIA has accounted for all privacy waivers and conducted reasonable Item 5 name searches.

Hall asserts the CIA failed to account for all of the privacy waivers. Hall Response at 3-4 & n.1. Hall originally sent the CIA a total of 47 privacy waivers including three duplicates, which made the total 44. Of those 44, Hall submitted additional identifying information on 31 individuals. See Elizabeth Anne Culver Declaration ("Culver Decl.") ¶¶ 5-6, attached; see also

[4] These figures are associated with the number of potentially responsive CADRE documents and Archived Record hard copy file folders (each of which contains numerous documents); they do not refer to the total number of potentially responsive pages, which would be even greater. See Cole Decl. ¶ 73 & ¶ 75.

Cole Decl. ¶¶ 68-70. Accordingly, the CIA accounted for all of Hall's privacy waivers associated with this litigation.

On April 14, 2011, Hall sent the CIA three additional privacy waivers for individuals that Hall admits were "not previously submitted to the CIA." See Culver Decl. ¶ 7 & id. Exh. A. Only one of these individuals, Captain Peter Richard Matthes ("Matthes"), is on the DPMO list attached to Plaintiffs' FOIA request and therefore subject to this litigation. See Plaintiffs' Februar 7, 2003, FOIA request, Attachment 2; see also Culver Decl. ¶ 7. Had Hall submitted the information pertaining to Matthes with his original request, Matthes could have been included in the CIA's search of the 31 individuals for whom Plaintiffs provided additional identifying information (e.g., social security number, date of birth). Culver Decl. ¶ 7.

Even though Hall has provided the CIA with this information at this very late date the CIA will nonetheless conduct a search for Matthes in CADRE as it did for the other 31 individuals. Id. By contrast, the other two named individuals are two new names that Hall is attempting to interject into this case without filing a proper FOIA request. Id. ¶ 8. Even though it has no legal obligation to do so absent a new FOIA request, the CIA will accept and conduct a search of the two new names which likewise contain additional identifying information (e.g., date of birth, social security number). Id. The CIA will then process, review, and release any responsive documents concerning the three new names to Hall by September 30, 2011. Id. The CIA has agreed to conduct a search of the two new names in an effort to bring final closure to this protracted litigation. The CIA will not, however, conduct searches on any additional names for which Plaintiffs fail to first submit a proper FOIA request.

Finally, AIM contends the CIA "exclud[ed] two individuals whose social security number appears on the subject waivers," specifically, those of Robert D. Buetel and Russell P.

Bott. See AIM Response at 6 & n.6. AIM errs. These two individuals were included in the search of 31 names conducted by the CIA as expressly referenced in the Cole Declaration. See Cole Decl. ¶ 70 & n.27.

3. The CIA conducted a reasonable Item 5 search.

Hall suggests the CIA failed to conduct an adequate Item 5 search because it only searched databases "most likely" to contain responsive records – a standard he contends was rejected in Oglesby v. U.S. Dep't of Army, 920 F.2d 57 (D.C. Cir. 1990). See Hall Response at 4 & n.2.[5] But as the court explained in Oglesby, "[t]here was no requirement that an agency search every record system" for information. Oglesby, 920 F.2d at 63; see Meeropol v. Meese, 790 F.2d 942, 952-53 (D.C. Cir. 1986) (search is not presumed unreasonable simply because it failed to produce all relevant material); Ferranti v. Bureau of Alcohol, Tobacco & Firearms, 177 F. Supp. 2d 41, 47 (D.D.C. 2001) ("In assessing the reasonableness of a search, a court is not guided by whether the search actually uncovered every document or whether the search was exhaustive…[t]he court's inquiry is limited to whether the search itself, and not the results of that search, were reasonable").

For Item 5, the CIA expressly attested that it searched the databases most likely to contain information responsive to Plaintiffs' Item 5 FOIA request. See Cole Decl. ¶ 71.[6] The CIA did not limit its search to exclude any additional databases likely to contain responsive

[5] In addition to Item 5, Hall also claims the CIA failed to conduct an adequate Item 3 search because it only searched those databases most likely to contain responsive records. See Hall Response at 4 & n.2. Similar to Item 5, the CIA's Item 3 search was adequate and is supported by the same legal authorities as set forth in this section for Item 5.

[6] The CIA attested that specific "DIR offices were directed to conduct the Item 3 search because they were most likely to contain records responsive to the request," and that they were the only offices within the DIR likely to contain such information. See Declaration of Delores M. Nelson ("Nelson Decl.") ¶ 9, Dkt. No. 148, Exh. 12 (Aug. 23, 2010).

information. In addition, CIA's highly detailed declarations show that it made a good-faith effort to search all records systems reasonably likely to contain responsive information. Per Oglesby, summary judgment is warranted if the agency "made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." 920 F. 2d at 63. In light of the CIA's thorough efforts, which are described in detail in the declarations provided to the Court, it complied with its FOIA obligation to conduct a reasonable search.

C. Item 7

AIM raised a new issue for the first time in its response when it claimed the CIA failed to conduct an adequate Item 7 search because it did not include in its search records produced "in response to any request by any congressional committee." See AIM Response at 7-8. AIM has thus waived that issue.

Noting that the Koch Declaration states that CIA uses an electronic database system known as "MORI" to track "searches recently conducted for other federal agencies," the Court explicitly requested the CIA to "perform[] a search of that system [MORI, now CADRE] for responsive documents or explain[] to the Court why it cannot do so." Hall, 668 F. Supp. 2d at 181. In response, the CIA searched CADRE for all searches conducted for other federal agencies concerning Vietnam War POW/MIAs. See Nelson Decl. ¶ 39. The CIA described in detail the search conducted, the variety of search terms used, the databases involved, and the results of its search. Id. ¶¶ 35-40. The CIA thus relies on the record it submitted to the Court which comprehensively responds to the Court's Order.

D. Item 8

AIM contends the CIA failed to conduct an adequate search in response to Item 8. See AIM Response at 8. The Court did not, however, order the CIA to take any further action concerning Item 8. To the contrary, in its Order, the Court concluded that "judgment shall be entered in favor of the CIA as to the adequacy of its search for item 8 records." Hall, 668 F. Supp. 2d at 186. As such, to the extent AIM's Response challenges the adequacy of the Item 8 search, the matter is moot.

E. Item 6

AIM also challenges the adequacy of the search for Item 6. This item pertains to searches the CIA performed in response to Hall's 1994 and 1998 FOIA requests. In its Order, the Court specifically requested more information about the search so it could determine whether it was adequate under the law. See id. at 185-86. In response, the CIA submitted additional detailed information to show the Court that it conducted an extensive search in an effort to locate documents responsive to Item 6 of Plaintiffs' FOIA request. See Nelson Decl. ¶¶ 32-34. The CIA thus rests on the record it submitted to the Court which directly responds to the Court's Order concerning Item 6.

II. THE CIA'S VAUGHN INDICES ARE ADEQUATE.

A. The CIA's Item 4 Vaughn Index is sufficiently detailed.[7]

Hall erroneously contends that the Item 4 Vaughn index is inadequate. See Hall Response at 19-28. The sufficiency of a Vaughn index is not determined by reference to the length of its document descriptions or the "richness or evocativeness of their vocabularies." Landmark Legal Found. v. IRS, 267 F.3d 1132, 1138 (D.C. Cir. 2001), and the "explanation of

[7] Although Hall appears to challenge the adequacy of all Vaughn indices the CIA submitted, the CIA's reply in this section focuses on the Item 4 Vaughn index because, throughout his response, Hall challenges only Item 4 Vaughn index entries. See Hall Response at 19-28.

the exemption claim and the descriptions of withheld material need not be so detailed as to reveal that which the agency wishes to conceal," Vaughn v. United States, 936 F.2d 862, 866 (6th Cir. 1991). The D.C. Circuit has also made clear that the Vaughn index is not to be used in a manner where it "could cause the very harm that [the exemption] was intended to prevent." Linder v. NSA, 94 F.3d 693, 697 (D.C. Cir. 1996). Instead, the Vaughn index must only be "sufficiently specific to permit a reasoned judgment as to whether the material is actually exempt under FOIA." Vaughn, 936 F.2d at 867.

Here, each Item 4 Vaughn index entry contains a document description, a subject description, reference to its disposition (e.g., released in part), its classification, number of pages, a segregability analysis, and the specific exemptions claimed with detailed justifications. See Cole Decl. ¶ 56 & id. Exh. C. Each Vaughn index entry also indicates the dates of each document or otherwise indicates if a particular document is not dated. The CIA's Item 4 Vaughn index, when considered in conjunction with the Cole Declaration, provides Plaintiffs and this Court with more than sufficient specificity and detailed information to determine that the withheld information is exempt from release under the FOIA.

Also, the CIA has met its FOIA obligations by providing to Plaintiffs the only known copies of the documents that the CIA could reasonably determine were responsive to the Court's Order. Courts have recognized that, in some cases, an agency's highest quality copy of a requested record may still be imperfect, or even unreadable. Therefore, courts have ruled that an agency should provide the best available copy of the requested records. See McDonnell v. United States, 4 F.3d 1227, 1262 n.21 (3d Cir. 1998); Int'l Trade Overseas, Inc. v. Agency for Int'l Dev., 688 F.Supp.33 (D.D.C. 1988) (accepting defendant's representations that documents provided to plaintiff are the "best available copies"). As explained in the Cole Declaration, the

CIA acknowledged that the Item 4 documents released to Plaintiffs "include[] certain documents with preexisting redactions and some information that is not clearly readable." See Cole Decl. ¶ 54. The CIA confirmed that these were the "only known documents that the CIA could reasonably determine are responsive to the Court's Order" and therefore constituted the best – and only – available copies of the records the CIA could release to Plaintiffs. Id. In sum, by providing its only known copies of the Item 4 documents to Plaintiffs, the CIA has fully complied with the Court's Order.

B. The CIA has complied with segregability requirements as to Item 4.

Hall erroneously contends the CIA failed to comply with the FOIA's segregability requirement as to Item 4. See Hall Response at 21, 24-28; see also 2011 Hall Declaration ¶¶ 11, 37, 43, 46, and 52. The FOIA requires that "any reasonably segregable portion of a record" be released after appropriate application of the exemptions. 5 U.S.C. § 552(b). Segregability should not be determined by evaluating whether nonexempt portions of records would be "helpful" to the requester if segregated and released. Stolt-Nielsen Transp. Group, Ltd. v. United States, 534 F.3d 728, 734 (D.C. Cir. 2008). Moreover, the D.C. Circuit has long held that when nonexempt information is "inextricably intertwined" with exempt information, reasonable segregation is not possible and is not otherwise required. Mead Data Cent., Inc. v. U.S. Dep't of the Air Force, 566 F.2d 242, 260 (D.C. Cir. 1977). The Circuit further concluded that segregation is not reasonable when it would produce "an essentially meaningless set of words and phrases," such as "disjointed words, phrases, or even sentences which taken separately or together have minimal or no information content." Id. at 261; see Flight Safety Servs. Corp. v. Dep't of Labor, 326 F.3d 607, 613 (5th Cir. 2003) (concluding that documents contained no reasonably segregable information because "any disclosable information is so inextricably

intertwined with the exempt, confidential information that producing it would require substantial agency resources and produce a document of little informational value").

Here, the CIA dedicated numerous resources and made extensive efforts to ensure that its response to the Court's Order was both comprehensive and complete and otherwise satisfied its obligations under the FOIA. The CIA's efforts are evidenced by the fact that the vast majority of the documents released to Plaintiffs were released in part. Specifically, 970 documents were released in part and only 271 were withheld in full.[8] See Cole Decl. ¶ 55. The results of these efforts are also illustrated by the detailed information concerning the withholdings in the Cole Declaration in addition to the Item 4 Vaughn index that addresses segregability for each individual Item 4 document. See id. ¶¶ 66-67. The CIA has satisfied its obligation under the FOIA to release reasonably segregable, non-exempt information.

C. In Camera inspection is not warranted.

Because Hall alleges that the Item 4 Vaughn Index is inadequate, he requests that the Court conduct an in camera inspection of the documents in light of the "massive, complicated record of this case." See Hall Response at 27-28. An in camera review of the documents is not warranted and would unnecessarily burden the Court.

This Court has "broad discretion" to decide if in camera review under 5 U.S.C. § 552(a)(4)(B) "is necessary to determine whether the government has met its burden." Loving v. Dep't of Defense, 550 F.3d 32, 41 (D.C. Cir. 2009). In camera review is generally not necessary when agencies meet their burden of proof by means of sufficiently detailed declarations. Id. (determining that in camera inspection is unnecessary where the district court relied on "the description of the documents set forth in the Vaughn index and the agency's declaration that it

[8] In addition to the documents released in part, the CIA also released 44 documents in full to Plaintiffs. See Cole Decl. ¶ 55.

released all segregable material"). This Court has also held that in camera review of classified records is not necessary where "there is no indication that these materials were classified in order to conceal violations of the law" and the agency's "declaration credibly outlines the (proper) motives behind the classification decisions." ACLU v. Dep't of Defense, 584 F. Supp. 2d 19, 24 (D.D.C. 2008) (internal quotation marks omitted).

The CIA has provided the Court with detailed, comprehensive declarations from the now-former NCS Information Review Officer, Mary Ellen Cole, and the current NCS Information Review Officer, Elizabeth Anne Culver, in addition to a Vaughn index to justify its withholdings. This information, as a whole, completely and exhaustively explains the CIA's release decisions. As a result, in camera inspection of the documents would yield little new information concerning CIA's rationale for properly withholding information exempt from release under the FOIA. In light of the CIA's detailed declarations and Vaughn index, in camera inspection is not warranted.

III. THE CIA PROPERLY WITHHELD INFORMATION UNDER THE FOIA.

A. Item 4 Withholdings: Exemptions (b)(1) & (b)(3)

Hall challenges the CIA's reliance on exemption (b)(1) on numerous grounds including allegations that the CIA's NCS Information Review Officer lacks credibility and that the CIA otherwise failed to comply with Executive Order 13526. See Hall Response at 28-37. Hall's contentions are wholly without merit.

The CIA fully complied with Executive Order 13526 § 1.6.[9] Per section 1.6(a), a document that is classified must contain certain information and markings, such as the identity of

[9] In Hall's Response he refers to Executive Order 13526 § 1.5(a), which provides guidance about the duration of classification. See Hall Response at 29. The CIA presumes that he meant to refer to § 1.6(a), which addresses identification and markings.

the classification authority and a concise reason for classification. Because the documents released to Plaintiffs were all unclassified in their redacted form – i.e., the CIA released no classified documents to Plaintiffs – the information and markings required by Section 1.6(a) are inapplicable to the documents released to Plaintiffs.

Executive Order 13526 § 1.6(h) directs that prior to public release, "all declassified records shall be appropriately marked to reflect their declassification." The CIA, in order to make clear that the documents released to Plaintiffs are not classified, has either: (1) put a "strikethrough" or "slash" marking through the classification banner; (2) stamped the document "UNCLASSIFIED;" and/or (3) explained in the Vaughn index that it released all information that was not exempt (and therefore not classified) per the FOIA. See Cole Decl. ¶¶ 54-56 & id. Exhs. B & C. All of these methods of identifying and marking a document as unclassified comply with Section 1.6(h) and explain why there are, as Hall remarks, "crossed-out" classification markings on some of the documents. See Hall Response at 28. As a result, Hall's contentions concerning whether the CIA procedurally complied with Executive Order 13526 are wholly without merit.

Hall also contends the Court should not give any deference or evidentiary weight to the Cole Declaration and Supplemental Cole Declaration. See id. at 31-37. This Circuit, however, has held that courts routinely defer to agency expertise when assessing the legitimacy of redactions made on the basis of Exemption (b)(1). The D.C. Circuit has in fact emphasized that "little proof or explanation is required beyond a plausible assertion that information is properly classified." Morley v. CIA, 508 F.3d 1108, 1124 (D.C. Cir. 2007); see Students Against Genocide v. Dep't of State, 257 F.3d 828, 837 (D.C. Cir. 2001) (courts give "substantial weight to agency statements"); Taylor v. Dep't of the Army, 684 F.2d 99, 109 (D.C. Cir. 1982)

(classification affidavits are entitled to "the utmost deference"); ACLU v. Dep't of Justice, 429 F. Supp. 2d 179, 188 (D.D.C. 2006) (agency has "unique insights and special expertise" to determine classification level). The declarations submitted by the CIA are obviously entitled to the "utmost deference" and deserve extensive evidentiary weight because far from being merely "plausible assertions," each provides ample explanation, including a detailed corresponding Vaughn index, justifying its reliance on exemption (b)(1).

Finally, Hall argues the CIA's reliance on Exemption (b)(3) is misplaced. See Hall Response at 37-38 n.5. As the Cole Declaration explains, the CIA properly invoked Exemption (b)(3) to protect intelligence sources and methods in accordance with the National Security Act of 1947 and Executive Order 12333. See Cole Decl. ¶¶ 61-62. The CIA also properly invoked the Exemption to withhold information protected under Section 6 of the CIA Act of 1949, which expressly exempts from disclosure "the organization, functions, names, official titles, salaries or numbers of personnel, employed by the CIA." 50 U.S.C. § 403g. Accordingly, the CIA rests on the record it has provided to the Court in support of its assertion of Exemption (b)(3).

B. November 2005 Withholdings & Exemption (b)(2)

In its Order, the Court instructed the CIA to supplement its justification for invoking the "low b(2)" exemption. The CIA did so. See Cole Decl. ¶¶ 84-86, 98-100. Hall nonetheless claims that the CIA failed to respond to the Court's Order and has not complied with the Supreme Court's recent Exemption (b)(2) decision in Milner v. Dep't of Navy, 131 S. Ct. 1259 (2011). See Hall Response at 39-40.

Hall's reliance on Milner is misplaced because the Exemption (b)(2) redactions in this FOIA litigation pertain only to "low b(2)." By contrast, Milner concerns "high b(2)" – the CIA asserted no "high (b)(2)" redactions in this case. See Milner, 131 S. Ct. at 1265; Nat'l Day

Laborer Organizing Network v. U.S. Immigration and Customs Enforcement, 2011 WL 2693655 at *4 (S.D.N.Y. July 11, 2011) ("As a result, after Milner, High 2 has ceased to exist and 'Low 2 is all of 2.'"). Even so, this issue is moot. As stated in the Cole Declaration, the CIA asserted Exemption (b)(3) for all the redactions where it also asserted "low b(2)." Cole Decl. ¶ 99. The Court has already granted the CIA's motion for summary judgment with respect to Exemption (b)(3) withholdings. See Hall, 668 F. Supp. 2d at 190.

C. Exemption (b)(5)

Hall argues that he cannot find the Vaughn index entries for seven documents cited at Paragraph 103 of the Cole Declaration. See Hall Response at 42. This Court ordered the CIA to provide additional information – not a Vaughn index – concerning its reliance specifically on the deliberative process privilege. See Hall, 669 F. Supp. 2d at 190-92. In response, the CIA provided detailed justifications concerning its reliance on the deliberative process privilege pursuant to Exemption (b)(5) and therefore has fully complied with the Court's Order as well as the FOIA.[10] See Cole Decl. ¶¶ 101-06.

D. Exemption (b)(6)

Hall claims the CIA "failed to sustain its burden of showing entitlement" to rely on Exemption (b)(6) and specifically challenges the CIA's (b)(6) withholdings for three Item 4 documents: C00492526, C00472096, and C00465780. See Hall Response at 42.

[10] Hall also erroneously claims that the numbers cited in the Cole Declaration for these documents "differ from those in the indexes which counsel are familiar with, which have either a MORI or a C00 preceding the number." Hall Response at 42. The numbers cited in the Cole Declaration are MORI numbers. They are identical to the MORI numbers cited by the CIA in its final response letters concerning Item 3 and Item 8 of Plaintiffs' FOIA request. These letters are dated September 28, 2007, and July 13, 2007, respectively. See Dkt. Nos. 111-1 and 111-2 (Oct. 21, 2008).

As explained in the Cole Declaration, the privacy information withheld from the Item 4 documents may be protected from disclosure under Exemption (b)(6) because the individuals indentified in the documents have a significant privacy interest in the information that overrides the minimal public interest – if indeed any public interest exists – in disclosure. See Cole Decl. ¶ 64. Because release of the personal information withheld by the CIA from the Item 4 documents could expose the individuals and their families to unnecessary public scrutiny, disclosure of the information would compromise a substantial privacy interest. See id. ¶ 65. Additionally, the information withheld in the three Item 4 documents as noted by Hall consists of names of individuals, including CIA personnel, and the signature of a CIA officer.[11] As set forth in the Vaughn index and Cole Declaration, the CIA similarly concluded there is a significant privacy interest in the information withheld in these documents which overrides any public interest in the information. See id. ¶¶ 63-67 & id. Exh. C. Because the strong privacy interests involved outweigh the public interest, if any, in disclosure, the CIA has properly withheld the information under Exemption (b)(6).

E. The CIA has reassessed certain documents for accuracy and completeness.

Hall asserts several arguments alleging inconsistencies and improper redactions. See Hall Response at 22-27; see generally 2011 Hall Decl. As noted below and explained in the Culver Declaration, the CIA has reevaluated certain documents to ensure the accuracy and completeness of its response to the Court's Order. For any other documents not specifically addressed in this Reply, the CIA rests on the record and previous submissions made to Plaintiffs and the Court.

[11] Information pertaining to CIA personnel is also exempt from disclosure under Exemption (b)(3). See 50 U.S.C. § 403g (The CIA "shall be exempt from…the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.").

1. Document C00465306

Item 4 document C00465306 (which Hall references as C00028081) is a two-page intelligence cable that identifies U.S. military personnel identified as alive in North Vietnam in July 1966. Hall contends the CIA improperly redacted the names of "United States Military Personnel" who were identified as alive in North Vietnamese POW camps. The CIA properly withheld information pertaining to intelligence sources and methods in this document on the basis of FOIA Exemptions (b)(1) and (b)(3). See Culver Decl. ¶ 10. Due to an administrative error, the CIA did not identify FOIA Exemption (b)(6) as the basis for withholding the names of the individuals. See Culver Decl. ¶ 10. The CIA's correction of this administrative error does not alter or add any redactions on the document; the redacted version originally provided to Plaintiffs is correct except for the missing reference to FOIA Exemption (b)(6). Id. The names were properly protectable under FOIA Exemption (b)(6) because release of the information would constitute a clearly unwarranted invasion of the privacy of the named individuals; there is no overriding public interest that requires release of the names; and such release would otherwise not directly reveal the operations or activities of the Government. Id. ¶¶ 10-11. The CIA has properly withheld the information under Exemption (b)(6) and attaches the corrected documents to the Culver Declaration. See id.

2. Document C00482286

Hall contends that the CIA improperly redacted from C00482286 the number "52". See Hall Response at 26; see also 2011 Hall Decl. ¶ 17. Upon further review, the CIA determined that the number "52" could be released without harm. Specifically, the CIA determined that it could release the numerical notation (the number "52") on the first page of the document. See

Culver Decl. ¶ 12. A copy of C00482286 with the additional release of information is attached as an exhibit to the Culver Declaration. See id.

3. Document C00472095

Hall claims that the CIA improperly redacted the document summary from C00472095. Upon further review, the CIA confirmed that the document summary was redacted in error, as the vast majority of the information in the document's body was released to Plaintiffs. The CIA has now released information in the document summary and attached a copy of C00482286 with the additional release of information as an exhibit to the Culver Declaration. See id.

4. Documents C00482214 & C00482222

Item 4 documents C00482214 and C00482222 are distinct documents containing distinct content that Hall claims the CIA treated inconsistently. See Hall Response at 26-27. Specifically, these documents are CIA memoranda describing the status of Thai and American prisoners and include classified information the CIA redacted on the basis of Exemptions (b)(1) and (b)(3). See Culver Decl. ¶ 14. Upon re-review of these documents, the CIA concluded that it properly withheld the limited amount of information redacted on the basis of Exemptions (b)(1) and (b)(3). Id. The information withheld reveals the locations of certain CIA activities occurring overseas, reveals CIA methods for collecting intelligence, and provides information concerning a particular human source. Id. The documents also contain internal CIA organizational notations and document control identifiers. Id. In conducting a line-by-line re-review of these documents the CIA confirmed that all reasonably segregable, non-exempt portions have been released to Plaintiffs. Id.

5. Document C00492526

Hall challenges the CIA's redactions in Item 4 document C00492526, which contains detailed information about two Air America pilots. Upon re-review of this document, the CIA concluded it properly redacted names of CIA personnel and the signature of a CIA employee on the basis of Exemptions (b)(3) and (b)(6).[12] See Culver Decl. ¶ 15. CIA personnel information is specifically exempted from disclosure pursuant to Section 6 of the CIA Act, 50 U.S.C. § 403g, and thus is protected from disclosure by Exemption (b)(3). Id. In addition, revealing individuals' affiliation with the CIA could subject them to intense scrutiny from a variety of sources, and may even place the individuals or their families in danger from persons seeking retribution against the CIA. Id. Because there is little public interest, if any, in the names and signatures of CIA employees, the disclosure of this information would constitute a clearly unwarranted invasion of the individuals' privacy and is thus properly protectable under Exemption (b)(6). Id.

6. Documents C00483014 and C00492507

Hall contends Item 4 documents C00483014 and C00492507 contain inconsistent redactions. See Hall Response at 22-24; see also 2011 Hall Decl. ¶ 36. These documents are CIA reports regarding the Soviet Union's alleged receipt of U.S. prisoners of war from Vietnam for long-term or lifetime incarceration. C00483014 and C00492507 are two separate and distinct documents. See Culver Decl. ¶ 16. While there may appear to be some superficial similarities between these two documents, they contain substantive differences. Id. Upon re-review of each document, the CIA concluded that additional information could be released in C00483014 and that C00492507 could be released in its entirety. Id. ¶¶ 16-18. The remaining redactions in C00483014 continue to be justified on the basis of Exemptions (b)(1) and (b)(3). Id. ¶ 17. The

[12] The CIA also determined this document was responsive to Item 5. See Culver Decl. ¶ 15.

information withheld in C00483014 on the basis of Exemption (b)(1) is currently and properly classified CONFIDENTIAL pursuant to Executive Order 13526, section 3.3(b)(1). Id. The information at issue is greater than 25 years old, but the disclosure of this specific information would clearly and demonstrably reveal the identity of a human intelligence source and thereby damage the national security for the reasons described in the previous declarations filed in this case. Id. In addition, information that was withheld in C00483014 on the basis of Exemption (b)(3) is information that relates to intelligence sources, methods, functions, and organizational information (e.g., internal CIA dissemination control markings) of the CIA that is protected from release pursuant to the National Security Act and Section 6 of the CIA Act. Id. A copy of document C00483014 with the additional release of information, in addition to a copy of C00492507 which has been released in its entirety, is attached as an exhibit to the Culver Declaration. Id.

F. Operational Files Exemption

Hall claims that the CIA's operational files are not exempt and that the CIA must now provide a declaration from the Director of the CIA. See Hall Response at 17-18. Additionally, Hall contends the CIA has otherwise failed to conduct a decennial review of its operational files. Id. Not only do Hall's arguments have no correlation to the Court's Order, but they appear to be new arguments that Hall is raising on the record for the first time at this late stage of the litigation and therefore cannot assert for the first time in his Response. The CIA rests on its responses to the Court's Order and submits that Hall's operational file contentions should be deemed waived or otherwise moot.

IV. CONSULTATIONS WITH OTHER AGENCIES

Hall asserts that not all documents which required consultation with other agencies, as explained in the Cole Declaration and the Supplemental Cole Declaration, have been provided to Plaintiffs. See Hall Response at 16-17. As further explained below, the CIA has taken affirmative steps to ensure the continued processing of all Item 4 and Item 5 coordination documents. As a result, the CIA is making a good-faith effort to ensure that all outstanding referral and coordination documents are being processed pursuant to the FOIA.

A. Item 4 Coordination Documents

As previously explained in the Cole Declaration, the CIA located 167 Item 4 documents that would affect the interests or activities of another federal agency. See Cole Decl. ¶ 55. In accordance with section 3.6 of Executive Order 13526, the CIA provided copies of those documents to the appropriate agencies for coordination.[13] The CIA subsequently contacted each agency and obtained all outstanding responses in July 2011. See Culver Decl. ¶ 17. The CIA is currently processing and will release all Item 4 coordination documents to Plaintiffs, which will include a Vaughn index for each document and supporting declaration, by September 30, 2011. Id.

B. Item 5 Referral and Coordination Documents

The CIA has also taken affirmative steps to confirm the processing of the outstanding Item 5 referral[14] and coordination documents. See Culver Decl. ¶ 18. As noted in the Supplemental Cole Declaration, the CIA located records responsive to Item 5 that originated

[13] A "coordination" occurs when a CIA-originated document contains information the disclosure of which would affect the interests or 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.

[14] 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.

with other agencies, or that contained information the disclosure of which would affect the interests or activities of other agencies, and were therefore subject to referral or coordination in accordance with Section 3.6 of Executive Order 13526. On January 21, 2011, the CIA sent to the relevant agencies the non-CIA originated documents for referral and direct response to Plaintiffs, as well as all CIA-originated documents for coordination. Id. While certain coordination documents remain outstanding as of July 2011, the CIA is taking affirmative steps to follow up with the appropriate agencies with the intention of processing and releasing all Item 5 coordination documents to Plaintiffs by September 30, 2011. Id.

CONCLUSION

Because the CIA has fully complied with the Court's Order, it renews its previous motions for summary judgment on all issues with exception of the remaining outstanding items.[15]

Dated: July 18, 2011

Respectfully Submitted,

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[15] The only remaining items include the processing and release of all Item 4 and 5 coordination documents, Item 5 referral documents, in addition to any responsive documents located in response to the search the CIA is conducting on the three names recently submitted by Plaintiff Hall on April 14, 2011.