UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 04-0814 (RCL)
	)	ECF
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S RESPONSE IN SUPPORT OF ITS MAY 15, 2012 FILING AND IN OPPOSITION TO PLAINTIFFS' REQUESTS FOR DISCOVERY AND *IN CAMERA* REVIEW OF DOCUMENTS

Introduction

Plaintiffs Hall and Accuracy in Media's (AIM) responses [Doc. Nos. 181 and 182, respectively], to the Central Intelligence Agency's (CIA) supplemental filings of May 15, 2012 [Doc. No. 177], attempt to argue that even after the federal agencies' release of thousands of pages of documents, with adequate explanations provided for withholdings, that the CIA is still not entitled to summary judgment. Plaintiffs arguments are without merit, as fully explained below, and as previously explained in the Agency's filings [Doc. Nos. 148 and 169] in response to the Court's 2009 Order (*Hall v. CIA*, 668 F. Supp. 2d 172 (D.D.C. 2009)). Further, Plaintiffs' request to conduct discovery, in this Freedom of Information Act (FOIA) matter, and for an *in camera* inspection of certain documents, is without basis in law or fact. Accordingly, having now fully supplemented the record by providing additional declarations and supporting documents, the government has demonstrated that Defendant is entitled to summary judgment and that this case should be dismissed with prejudice.

Argument

I. The CIA Conducted Reasonable Searches for Item 5-Related Records

An agency "fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents." *Ancient Coin Collectors Guild v. U.S. Dep't of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (citations and internal quotation marks omitted). The "search need not be exhaustive." *Barnard v. Dep't of Homeland Sec.*, 598 F.Supp.2d 1, 9 (D.D.C.2009) (citation omitted). "The issue in a[ ] FOIA case is not whether the agenc[y's] searches uncovered responsive documents, but rather whether the searches were reasonable." *Moore v. Aspin*, 916 F.Supp. 32, 35 (D.D.C.1996) (citation omitted).

An agency's search for responsive records is deemed adequate where it queried the relevant database, using appropriate search terms that "would be expected to identify all responsive documents for a particular individual." *Strunk v. U.S. Dep't of State*, No. 08-2234, 2012 WL 562398 *3-*4 (D.D.C. Feb. 15, 2012) (Leon, J.) (internal quote marks and citations omitted). Further, a plaintiff's speculation as to the existence of additional records "does not render the searches inadequate." *Concepcion v. FBI*, 606 F. Supp. 2d 14, 30 (D.D.C.2009). Even if the records a plaintiff seeks do exist, he must provide support for the proposition that they are maintained in the agency's database or that agency controls them. *See Accuracy in Media, Inc. v. Nat'l Transp. Safety Bd.*, No. 03–00024, 2006 WL 826070, at *8 (D.D.C. Mar. 29, 2006) (finding that plaintiff's production of parts of unproduced documents, suggesting the existence of responsive documents, "does not mean that [the responsive documents] exist now or that the agency has possession of them"). Without such support, a plaintiff can neither overcome

the presumption of good faith afforded to agency declarations, *see SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (noting the substantial weight traditionally accorded to agency affidavits in FOIA cases), nor undermine the agency's showing as to the reasonableness of its search, *see Baker & Hostetler LLP v. U.S. Dep't of Commerce*, 473 F.3d 312, 318 (D.C. Cir. 2006) (finding the plaintiff's "assertion that an adequate search would have yielded more documents is mere speculation" and affirming the district court's decision that the agency's search procedure was "reasonably calculated to generate responsive documents"); *Media Research Ctr. v. U.S. Dep't of Justice*, 818 F. Supp. 2d 131, 138 (D.D.C. 2011) (rejecting plaintiffs' contention "that the search was inadequate because certain documents they believe must have been created have not been produced" as "conjecture" deemed "insufficient to justify a finding that the search was inadequate").

Even if the records a plaintiff seeks do exist, he must provide support for the proposition that they are maintained in the agency's database or that agency controls them. *See Accuracy in Media, Inc. v. Nat'l Transp. Safety Bd.*, No. 03–00024, 2006 WL 826070, at *8 (D.D.C. Mar. 29, 2006) (finding that plaintiff's production of parts of unproduced documents, suggesting the existence of responsive documents, "does not mean that [the responsive documents] exist now or that the agency has possession of them"). Without such support, a plaintiff can neither overcome the presumption of good faith afforded to agency declarations, *see SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (noting the substantial weight traditionally accorded to agency affidavits in FOIA cases), nor undermine CBP's showing as to the reasonableness of its search, *see Baker & Hostetler LLP v. U.S. Dep't of Commerce*, 473 F.3d 312, 318 (D.C.Cir.2006) (finding the plaintiff's "assertion that an adequate search would have yielded

more documents is mere speculation" and affirming the district court's decision that the agency's search procedure was "reasonably calculated to generate responsive documents"); *Media Research Ctr. v. U.S. Dep't of Justice*, 818 F.Supp.2d 131, 138 (D.D.C. 2011) (rejecting plaintiffs' contention "that the search was inadequate because certain documents they believe must have been created have not been produced" as "conjecture" deemed "insufficient to justify a finding that the search was inadequate").

Here, the CIA advised the Plaintiffs of its need for additional biographical data in order to search the relevant database. In response to the Court's Order as to Item 5, the CIA explained why it requires biographical data to verify the identity of individuals whose names appear in its records. Cole Decl. ¶¶ 68-71 [Doc. No. 157]. The CIA looks to identifying information such as date of birth, place of birth, and social security number when making responsiveness determinations on records pertaining to individuals, so the Agency can confirm whether records discovered through a name search actually pertain to the individual listed in the Plaintiffs' FOIA request. Otherwise, there is no way to distinguish whether a name search actually pertains to the individual listed in the FOIA request or to a different individual with a similar or identical name. *Id*. ¶ 69.

Mr. Hall provided additional identifying information for 31 of the 1,711 names, and the CIA conducted a search of the 31 names in the electronic CIA Automated Declassification and Release Environment ("CADRE"). *Id*. ¶ 70. After reviewing its search results for responsive documents, CIA released responsive, non-exempt information to Plaintiffs in January 2011. Supp. Cole Decl., [Doc. No. 157 (Feb. 1, 2011)]. Further, despite Plaintiff's contentions to the contrary, Plaintiff AIM claim that the agency has "refuse[d] to conduct a search for records

responsive to ... [item] 5." [Doc. No. 181 at 2]. Mr. Hall would have this Court believe that after he submitted three new privacy waivers to the CIA in 2011, the CIA failed to conduct an adequate search for documents for the three named individuals. [Doc. No. 182 at 3-4]. First, it should be noted that Mr. Hall submitted these waivers *eight years after* he made his initial request, and regarding two individuals who were not a part of the original request. [Culver Decl., attach to Doc. No. 177, ¶¶ 51-52.] Despite the foregoing, the CIA conducted a search of the CADRE database, found responsive documents and forwarded them to the federal agencies with which the documents originated for a direct response to plaintiffs. *Id*. ¶ 52.

Without additional identifying information for the other individuals, it would be extremely difficult, if not impossible, to make responsiveness determinations on name alone, thus making the search unduly burdensome. Cole Decl. ¶ 71-76. As courts in this Circuit have consistently recognized, FOIA does not require agencies to conduct unreasonably burdensome record searches. *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); *Goland v. CIA*, 607 F.2d 339 (D.C. Cir. 1978); *Int'l Counsel Bureau v. Dep't of Defense*, 723 F. Supp. 2d 54 (D.D.C. 2010). Accordingly, the CIA conducted an adequate search for item 5 documents.

Plaintiff Hall further challenges the adequacy of the CIA's search in response to Item 5 by taking issue with the alleged lack of responsiveness from other government agencies. Doc. No. 182 at 4. On September 21, 2011, the CIA sent referral letters to the originating agencies of the seven responsive records that it located in response to Item 5. Culver Declaration ¶ 52. Copies of these letters are attached as exhibits to the Culver Declaration. *Id*. If these agencies have failed to provide a timely response to Plaintiff, it is up to Plaintiffs to take whatever action

they deem appropriate directly with those agencies. CIA has fulfilled its obligation and has no power or control over the actions of another federal agency.

Plaintiff also makes reference to old search issues that he claims "remain unaddressed." [Doc. No. 182 at Argument §§ I.B., through I.E.] However, plaintiff provides no background or frame of reference for these "issues" that appear to have been initially raised more than a decade ago, in his case brought in 1998 (*Hall I*). *Id*. n. 2, *citing* Civil Action No. 98-1319. Without additional information, CIA remains unable to respond. Defendant's present Supplemental Memorandum, to which Plaintiff Hall's pleading purports to respond, was filed in response to the this Court's November 12, 2009 Order and specifically pertains to Items 4 and 5 only. Hence, Defendant is at a loss why Plaintiffs believe they are entitled to yet another bite at the proverbial apple.

II. The Vaughn Submissions Were Adequate

A. The CIA's Submissions Sufficiently Describes the Justifications for Its Withholdings in its Sufficiently Detailed Vaughn Index

CIA provided a detailed Vaughn index sufficient to provide to the Court an explanation of the documents and the types of information withheld without fully disclosing the contents of the documents. Plaintiff Hall alleges that the CIA's *Vaughn* index is inadequate because it does not aver which portions of the document were withheld as not responsive to Plaintiff's request and which exemption claim applies to which portions of a redacted document. [Doc. No. 182 at 17.] The *Vaughn* attached to the Culver declaration provides a detailed description of the information and documents withheld, along with a description of the relevant exemptions and the basis for those exemptions. The CIA is under no obligation to provide an index identifying

which exemption applies to which specific *portions or passages* of a redacted document.

B. The NSA Declaration Sufficiently Describes the Justifications for Its Withholdings Under Exemptions 1 and 3 of the FOIA

Plaintiff Hall's challenges the sufficiency of the NSA's declaration, which he refers to as a *Vaughn* index. Doc. No. 182 at 13. Plaintiff's contention is simply without merit. Diane M. Janosek, NSA's declarant, "describe[s] the justification for nondisclosure with reasonably specific detail" and "demonstrate[s] that the information withheld logically falls within the claimed exemption," and Plaintiff has made no showing of "contrary evidence in the record" or "agency bad faith." *See Larson v. Dep't of State*, 565 F.3d 857, 862 (D.C. Cir. 2009).

To underscore the flaws in Plaintiff Hall's argument, it is worth emphasizing the two issues facing the Court in this case. First, is the material withheld under Exemption 1 specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and is in fact properly classified pursuant to such Executive Order. Second, because it is undisputed that Section 6 of the National Security Agency Act of 1959, Section 102(A)(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004; and 18 U.S.C. § 798 qualify as Exemption 3 statutes, the question is whether , as a matter of law, the withheld information falls within these statutes-specifically, that it "relates to . . . any function or activities of the agency (*Larson*, 565 F.3d at 868); that it pertains to intelligence sources and methods (*CIA v. Sims*, 471 U.S. 159, 169-70 (1985)); and/or that it concerns the "communications intelligence" activities of the United States.

The NSA declaration is 20 pages long, and included with it as a six-page index that contains a list of every document reviewed, how it was processed (released in full, released with

redactions, etc.), the legal basis for any withholdings, *inter alia*. [Janosek Decl. attached to Doc. No. 177 ¶¶ 10, 20, et seq.]. In her declaration, Ms. Janosek described how the information withheld by NSA falls within one of the eight categories listed in Section 1.4 of the E.O. 13,526 and the damage to the national security if this information were to be disclosed without authorization. *Id*. Specifically, the declaration explained that the categories of classified information in the withheld information pertain to foreign government information (Section 1.4(b)) and intelligence activities (including special activities), intelligence sources and methods, or cryptology. Further, the Janosek declaration explained with the requisite specificity how the unauthorized disclosure of this information would provide our nation's adversaries with critical information about the capabilities and limitations of the NSA, and with this knowledge, could cause NSA's SIGINT targets to adopt practices to deny or degrade NSA's collection capabilities. *Id*. ¶¶ 28-33.

Likewise, the NSA explained that the withheld information, which is the "who," "when," "where" and "how" of NSA's SIGINT collection in Southeast Asia, undeniably relates to "any function" or "the activities" of the National Security Agency, 50 U.S.C. § 402 note[1]--indeed, it relates to one of NSA's primary functions, which is its SIGINT mission, and NSA's activities in carrying out its SIGINT mission. Janosek Decl. ¶¶ 16, 26. Congress expressly provided NSA with authority to protect such information from disclosure in Section 6, and Exemption 3 serves to ensure that this congressional judgment is not implicitly overridden by the FOIA. *Assn. of*

[1] Section 6 provides, in pertinent part, that "nothing in this Act or any other law . . . shall be construed to require the disclosure of the organization or any function of the National Security Agency, [or] of any information with respect to the activities thereof." 50 U.S.C. § 402 note.

Retired R.R. Workers v. U.S. R.R. Retirement Bd., 830 F.2d 331, 336 (D.C. Cir. 1987) ("[T]he purpose of Exemption 3 [is] to assure that Congress, not the agency, makes the basis nondisclosure decision."); *Founding Church of Scientology of Washington, D.C. v. NSA*, 610 F.2d 824, 828 (D.C. Cir. 1979) ("[Section 6] reflects . . . a congressional judgment that, in order to preserve national security, information elucidating the subjects specified ought to be safe from forced exposure. The basic policy choice was made by Congress, not entrusted to administrative discretion in the first instance.").

In addition to being protected from unauthorized disclosure pursuant to Section 6, much of this information is also protected from such disclosure, as indicated in the 6-page index and marked in the redacted documents themselves, by the two remaining statutes cited by NSA, 50 U.S.C. § 403-1(i)(1) and 18 U.S.C. § 798. As set forth in the Janosek declaration at 34-39, the NSA explained how this withheld information falls squarely within these two statutes, which authorize NSA to protect intelligence sources and methods and communications intelligence information from unauthorized disclosure. Given that the Janosek declaration establishes that NSA officials have determined that the withheld information pertains to "any function" or "the activities" of the NSA and sufficiently described this determination in her Declaration, the Court should grant summary judgment in agency's favor for documents processed by the NSA. *See Larson*, 565 F.3d 857, 862.

III. Plaintiffs Have Presented No Evidence of Agency Bad Faith

AIM attacks the credibility of the CIA's affidavits alleging bad faith in the Agency's administrative determination of its FOIA fee provisions. [Doc. 181 at 9-13]. Specifically, AIM takes issue with the Agency's previous denial of a news media fee waiver and alleged refusal to

accept Item 8. First, the issue of fee limitations and fee waivers are no longer at issue since the Court's 2009 ruling. *See generally*, *Hall*, 668 F. Supp. 2d at 195-196. Second, CIA waived all applicable fees for the searches it conducted in response to Item 8, so the agency is at a loss as to why AIM continues to raise this issue. Moreover, CIA processes requests for FOIA fee waivers in accordance with its promulgated regulations. 32 C.F.R. § 1900 *et seq*. Those regulations set forth and define the specific fee categories for processing FOIA requests. *Id*. It also provides requesters with a medium for appealing such determinations. *Id*. AIM has proffered no proof that the agency failed to adhere to its regulations, as detailed in its numerous declarations, which are afforded the presumption of good faith (*see SafeCard Servs., Inc. v. SEC*, 926 F.2d at 1200). Finally, AIM's remaining allegations of CIA "cover up" have been addressed in previous filings which remain uncontroverted. *See e.g.*, Doc. Nos. 109 and 120.

IV. The Government Properly Withheld Information Pursuant to FOIA Exemptions

A. Exemption 1

Exemption 1 permits the withholding of records 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). The CIA has withheld a number of documents pursuant to this exemption and Executive Order 13,526,[2] which supersedes Executive Order 12,958 "Classified National Security Information," as amended, 60 Fed. Reg. 19,825 (April 17, 1995).

Executive Order 13526 provides that all classified records that are more than 25 years old

[2] Signed by President Barak Obama on Dec. 29, 2009, and superseding E.O. 12,958 on Jun. 27, 2010.

and otherwise have been determined to have permanent historical value shall be automatically declassified. Such information, however, is exempt from automatic declassification per the Executive Order's § 3.3(a) if it includes "information, the release of which should clearly and demonstrably be expected to: reveal the identity of a confidential human source, a human intelligence source, a relationship with an intelligence or security service of a foreign government or international organization, or a nonhuman intelligence source; or impair the effectiveness of an intelligence method currently in use, available for use, or under development. § 3.3 (b)(1). As explained below, the items 4 and 5 coordination documents that contain classified information older than 25 years, as identified in the *Vaughn* index, are exempt from automatic declassification pursuant to the Order. Supp. Culver Decl. ¶ 36.[3]

The CIA has established several major declassification review and release programs. Under the Agency's FOIA and Privacy Act Declassification Review Program, information responsive to FOIA requests is reviewed to determine whether the information is currently and properly classified. *Id*. ¶ 37. Ms. Culver has determined that the information withheld pursuant to FOIA exemption (b) (1) which is older than 25 years falls within categories of information exempt from automatic declassification listed in § 3.3(b) of the Executive Order. *Id*. ¶ 38. First, the information, if released, should clearly and demonstrably be expected to reveal the identities of human intelligence sources. For instance the withheld CIA information in these documents is precise as to time, date, and place of collection that, combined with the fact that

[3] The NSA's withholdings pursuant to Exemptions 1 and 3 were addressed in Argument Section II.B., *supra*. Department of Defense's (DOD) single holding pursuant to Exemption 1 is based on the CIA's need to protect the name of a classified source. Tisdale Decl., attached to Doc. No. 177 at ¶ 5.

only a limited number of individuals would have had access to such information, disclosure of the documents would necessarily tend to reveal the identity of the sources at issue. *Id.* Given the specificity of the source - revealing information, and recognizing that foreign intelligence services are capable of gathering and analyzing information from myriad sources, disclosure of this information could leave sources and their families perpetually vulnerable to discovery and retribution. *Id.*

Furthermore, release of the withheld information would impair the effectiveness of CIA intelligence methods, many of which remain in use today. *Id.* ¶ 39. As noted above, the documents describe, in great detail, the practices of the CIA, the means by which the CIA planned or carried out specific activities, as well as information regarding the relative success of particular methods. *Id.* These detailed descriptions would greatly assist foreign intelligence services and other adversaries in thwarting U.S. intelligence activities, thereby significantly degrading the usefulness to the CIA of the described intelligence methods. *Id.* In sum, Ms. Culver has determined that the classified information at issue that is older than 25 years remains currently and properly classified. *Id.* ¶ 39. Accordingly, the government has properly invoked FOIA exemption (b)(1).

B. Exemption 3

The items 4 and 5 coordination documents that were released in part to Plaintiffs contain information disclosing CIA intelligence sources, methods, organizational information, functions, and details concerning personnel employed by the CIA, among other information as detailed in the *Vaughn* index. See Exhibit B attached to Supp. Culver Decl. This information is statutorily exempt from disclosure under FOIA exemption (b) (3). Supp. Culver Decl. ¶ 40. FOIA

exemption (b) (3) provides that the FOIA does not apply to matters that are:

> specifically exempted from disclosure by statute (other than section 552b of this title) 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.

Ms. Culver determined that the National Security Act of 1947, 50 U.S.C. § 403 - 1, as amended, and the Central Intelligence Agency Act of 1949 ("CIA Act"), 50 U.S.C. § 403g, as amended, are the withholding statutes applicable to this case. Supp. Culver Decl. ¶ 41. The National Security Act of 1947 - Section 102A(i)(1) of the National Security Act, as amended, provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure." Accordingly, the National Security Act constitutes a federal statute which "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. §552(b)(3). Under the direction of the DNI pursuant to section 102A, and consistent with section 1.6(d) of Executive Order 12333 the CIA is authorized to protect CIA sources and methods from unauthorized disclosure. Supp. Culver Decl. ¶ 42.

Ms. Culver has further determined that disclosure of exempt information withheld from the documents would reveal the names of CIA employees, including covert employees; information regarding CIA clandestine human intelligence sources; information regarding CIA intelligence methods, including methods the CIA uses to assess and evaluate intelligence and to inform policy makers and other government officials; intelligence liaison sources; and information identifying the countries in which the CIA operated or targeted for intelligence activities, among other CIA intelligence methods as outlined in the *Vaughn* index. *Id*. ¶ 42 and

its attached Exhibit B. Accordingly, the CIA relied on the National Security Act to withhold information that would reveal intelligence sources and methods. *Id*.

The Central Intelligence Agency Act of 1949 - Section 6 of the CIA Act, as amended, provides:

> In the interests of the security of the foreign intelligence activities of the United States and in order to further implement section 403-1(i) of this title t hat the Director of National Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the . . . [CIA] shall be exempted 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.

50 U.S.C.A. § 403g (West Supp. 2007). As one of the CIA's primary functions is to collect intelligence through human sources and by other appropriate methods, section 6 of the CIA Act authorizes the CIA to withhold information related to its core functions. Supp. Culver Decl. ¶ 43. Moreover, information such as CIA employees' names and personal identifiers (for example, employee signatures, i.d. numbers or initials) titles, file number and internal organizational information are specifically protected from Disclosure by the Act. *Id*.

In contrast to E.O. 13,526, and predecessor orders, the CIA's statutory requirements under the National Security Act and the CIA Act to further protect intelligence sources and methods do not require the CIA to identify or describe the damage to the national security that reasonably could be expected to result from their unauthorized disclosure. *Id.* ¶ 44. Nonetheless, the information withheld pursuant to FOIA exemption (b)(3) is the same as the information relating to intelligence sources and methods withheld pursuant to FOIA exemption (b)(1). *Id*. Thus, damage, serious damage or exceptionally grave damage reasonably could be

expected to result from the disclosure of this information as set forth above. *Id.*

The DOD's declarations states that it did not disclosure information concerning U.S. personnel classified as POW/MIA during the Vietnam and Korean conflicts pursuant to 50 U.S.C. § 435 Note Sec. 1082, POL. 102-190 ("McCain Bill"), a law that falls within the purview of FOIA Exemption 3. This law requires the missing Americans' primary next of kin give written consent to release information regarding their treatment, location, and/or condition. Consent to release information was not given for the 31 documents; therefore, the missing individual's names were redacted. Tisdale Decl. ¶ 5(b). DoD redacted one additional document pursuant to FOIA Exemption 3, in order to protect personal identifying information including the names of DoD personnel in overseas, sensitive, or routinely deployable units. *Id.* ¶ 5(c).

C. Exemption 6

FOIA exemption (b)(6) provides that the FOIA's information release requirements do not apply to "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The FOIA's protection of personal privacy is not impacted by the type of record in which an agency stores its information. FOIA exemption (b)(6) is designed to protect information in official government records, even if the information is not embarrassing or of an intimate nature.

In the present matter, the CIA withheld information in the items 4 and 5 coordination documents on the grounds that it qualifies as "personnel" or "similar" files pursuant to FOIA exemption (b)(6). Supp. Culver Decl. ¶ 46. As described in Ms. Culver's supplemental declaration ¶¶ 47-49, and also in the *Vaughn* index attached to her supplemental declaration (Exhibit B), the individuals identified in the documents have a significant privacy interest in the

withheld information; the public does not have an interest in the disclosure of the withheld information; and the disclosure of the individuals' information would constitute a clearly unwarranted invasion of the individuals' personal privacy. *Id.*

The information withheld from the items 4 and 5 coordination documents may be protected from disclosure under FOIA exemption (b)(6) because the individuals identified in the documents have a significant privacy interest in the information. *Id.* ¶ 47. This information includes names of individuals and other identifying information, such as date of birth, place of birth, social security number, blood type, place of residence, names of family members or religious affiliation. *Id.* There is no overriding public interest that requires disclosure of this information. Unlike information concerning decisions made or actions taken by CIA employees, this data would not shed light upon the operations or activities of the government. *Id.* Likewise, the information would not contribute to the public understanding of the thoroughness, scope, intensity, or creativity of the government's efforts to locate POW/MIAs. *Id.*

The information withheld pursuant to FOIA exemption (b)(6) also includes the names of, and other identifying information about, CIA employees. *Id.* ¶ 48. Disclosing the names of CIA employees, some of whom served undercover, could subject the individuals to intense questioning from a variety of sources such as the media, family, friends, neighbors and others. *Id.* In addition, by revealing that certain employees served at the CIA in senior positions, the withheld information could also place the individuals and their families in danger from those seeking retribution against the CIA. *Id.* There is no overriding public interest that requires the disclosure of the names of, or identifying information about, the CIA officers at issue. *Id.* The names of particular employees are not fundamental to understanding the operations or activities

of the government, nor will such information shed light upon the thoroughness, scope, intensity, or creativity of the government's efforts to locate POW/MIAs. *Id*.

Therefore, even if some minimal public interest could be found in disclosure of the personal information at issue, the balance would still tilt dramatically against disclosure. Disclosure of the personal information could expose the individuals and their families to unnecessary public scrutiny, certainly violating the personal privacy of those persons. *Id.* ¶ 49. Because the strong privacy interests involved outweigh the negligible public interest, if any, in disclosure, the CIA has properly withheld the information under FOIA exemption (b)(6). *Strunk v. U.S. Dep't of State*, No. 08-2234, 2012 WL 562398 (D.D.C. Feb. 15, 2012) (Leon, J.) (concluding that the information withheld pursuant to Exemption 6 need not necessarily be embarrassing or of an intimate nature, but that the user of the information's users have a privacy interest in the withheld information) (internal quotations and citations omitted).

DOD redacted segregable information from 22 documents in order to protect private citizens from an unwarranted invasion of their personal privacy. Tisdale Decl. ¶ 5(d) and (e). Specifically, the withheld material includes social security numbers, dates of birth, names, and home addresses. *Id*. Pursuant to FOIA's Exemption 6 such withholdings are permissible. *Morley v. CIA*, 508 F.3d 1108, 1128 (D.C. Cir. 2007).

V. It is Unnecessary for Plaintiffs to Take Discovery in this FOIA Action

In FOIA cases, discovery is the exception, not the rule. As this Court has noted, "[d]iscovery is not favored in lawsuits under the FOIA. Instead, when an agency's affidavits or declarations are deficient regarding the adequacy of its search . . . the courts generally will request that the agency supplement its supporting declarations." *Hall*, 668 F. Supp. 2d at 196.

See also Public Citizen Health Research Group v. FDA, 997 F. Supp. 56, 72 (D.D.C. 1998) ("Discovery is to be sparingly granted in FOIA actions."); *Wheeler v. C.I.A.*, 271 F. Supp. 2d 132, 139 (D.D.C. 2003) (discovery generally unavailable in FOIA actions).

Limited discovery may sometimes be allowed where a plaintiff has made "a sufficient showing that the agency acted in bad faith, has raised a sufficient question as to the agency's good faith, or when a factual dispute exists and the plaintiff has called the affidavits submitted by the government into question." *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Justice*, 2006 WL 1518964 (D.D.C. June 1, 2006) (citations omitted). Plaintiffs here have failed to show bad faith or raise a sufficient question as to the CIA's good faith, as discussed in Argument Section III. The CIA's affidavits are "accorded a presumption of good faith, which cannot be rebutted by purely speculative claims, *Safecard Services*, 926 F.2d at 1200, and this Court has already found that, "despite Hall's unsupported assertion to the contrary, there is no evidence of bad faith on the part of the CIA before the Court." *Hall*, 668 F. Supp. 2d at 196.

Plaintiff Hall asserts that he is entitled to discovery because he claims to have "new information" (Doc. No. 182, p. 10), that demonstrates the inadequacy of the CIA's search. [Doc. No. 182, at 8.] The adequacy of the search is judged by a standard of reasonableness. *Weisberg v. U.S. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). However, "mere speculation that as yet uncovered documents may exist" does not undermine a finding that an agency conducted a reasonable search. *SafeCard Services*, 926 F.2d at 1201. Plaintiff Hall's reasons as to why he needs to conduct discovery (Doc. No. 182, pp. 9-10), are largely conclusory and do not rise above the level of speculation. Furthermore, Mr. Hall's repeated discussion of CIA documents

that appear to reference other files (*e.g.*, Doc. No. 182, pp. 7 and 16), does not establish the existence of documents relevant to his FOIA request. "If that were the case, an agency responding to FOIA requests might be forced to examine virtually every document in its files, following an interminable trail of cross-referenced documents like a chain letter winding its way through the mail []. FOIA clearly does not impose this burden on federal agencies." *Steinberg v. United States Dep't of Justice*, 23 F.3d 548, 552 (D.C. Cir. 1994).

In support of his contention that discovery is necessary, Plaintiff Hall cites *Donofrio v. Camp*, 470 F.2d 428 (D.C. Cir. 1972), to emphasize the liberal nature of discovery rules, even though *Donofrio* did not involve a FOIA action and in fact stressed the *limits* of discovery rules. *Id*. at 432. Denying the appellant's request for further discovery, the *Donofrio* court held that the discovery rules do not require judges to allow "repeated abuses of the discovery process or to let discovery go on indefinitely in a groundless suit," (*id*.), nor must discovery be allowed when government affidavits present a *prima facie* case that the government is entitled to judgment as a matter of law and there is a strong suggestion from the record that the suit was groundless. *Id*.

In light of the Court's previous rulings, and based on the foregoing reasons, the Plaintiffs are not entitled to engage in discovery.

VI. It is Unnecessary and Inappropriate to Submit Any Documents for *In Camera* Review

Pursuant to 5 U.S.C. § 552(a)(4)(B), the court has the authority to perform an *in camera* review of documents withheld from production in response to a FOIA request. The decision to perform an *in camera* review is left to the "broad discretion" of the judge. *Carter v. U.S. Dep't of Commerce*, 830 F.2d 388, 392 (D.C. Cir. 1987). *See also NLRB v. Robbins Tire & Rubber*

Co., 437 U.S. 214, 224, (1978) ("[t]he in camera review provision is discretionary by its terms."). However, when the agency meets its burden by means of affidavits, *in camera* review is neither necessary nor appropriate. *Weissman v. CIA*, 565 F.2d 692, 696-97 (D.C. Cir. 1977). *In Camera* reviews are generally not favored in FOIA actions. *PHE, Inc. v. United States Dep' t of Justice*, 983 F.2d 248, 252-53 (D.C. Cir. 1993); *Williams v. Federal Bureau of Investigation*, 822 F. Supp. 808, 814 (D.D.C. 1993). However, "*in camera* inspection may be particularly appropriate when either the agency affidavits are insufficiently detailed to permit meaningful review of exemption claims or there is evidence of bad faith on the part of the agency," when the number of withheld documents is relatively small, or "when the dispute turns on the contents of the withheld documents, and not the parties' interpretations of those documents." *Quinon v. FBI*, 86 F.3d 1222, 1228 (D.C.Cir.1996). Affidavits are sufficient to justify summary judgment without *in camera* inspection when they meet the following standard:

> [T]he affidavits must show, with reasonable specificity, why the documents fall within the exemption. The affidavits will not suffice if the agency's claims are conclusory, merely reciting statutory standards, or if they are too vague or sweeping. If the affidavits provide specific information sufficient to place the documents within the exemption category, if this information is not contradicted in the record, and if there is no evidence in the record of agency bad faith, then summary judgment is appropriate without in camera review of the documents.

Hayden v. Nat'l Sec. Agency, 608 F.2d 1381, 1387 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 937 (1980).

As noted in Argument section II, the government's affidavits are sufficiently detailed. The Plaintiff has made a vague and unjustified request for "certain documents" to undergo an in camera review. [Doc. No. 182 at 24.] The CIA has presented affidavits that clearly and

sufficiently explain the reasons why certain information has been withheld, and as discussed in Argument Sections II and III, there has been no showing of bad faith and the FOIA exemptions invoked were appropriate. Accordingly, no in camera review is called for in this matter.

VII. Segregability

A federal agency has complied with its obligation to disclose all reasonably segregable information where it conducted a document-by-document, line by line review of records released in part and properly withheld three documents in full. *Abuhouran v. U.S. State Dep't*, No. 11-271, 2012 WL 473241 (D.D.C. Feb. 14, 2012) (Huvelle, J.). Here, the CIA conducted a review of the released in part items 4 and 5 coordination documents to determine whether meaningful, reasonably segregable, non-exempt portions of documents could be released; no documents were denied in full. Supp. Culver Decl. ¶ 50.

The CIA made this determination regarding segregability based upon a careful review of the aforementioned coordination documents, both individually, and as a whole. *Id.* Specifically, the CIA conducted a line-byline review of each coordination document to ensure it properly withheld information pursuant to FOIA exemptions. *Id.* The items 4 and 5 coordination documents that were released in part contain no additional reasonably segregable nonexempt information. *Id.* Accordingly, the CIA released any information that was reasonably segregable and not otherwise exempt in the coordination documents.

Respectfully submitted,

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