

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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

**CIA’S RESPONSE TO PLAINTIFFS’ STATEMENT OF
MATERIAL FACTS NOT IN GENUINE DISPUTE**

Pursuant to Federal Rules of Civil Procedure 56 and Local Rule 7(h), defendant Central Intelligence Agency (“CIA”) respectfully submits its Response to Plaintiffs’ Statement of Material Facts Not in Genuine Dispute (ECF No. 258-5).

1. Admit that on February 7, 2003, plaintiffs submitted a FOIA request to CIA. The Court is respectfully referred to the document itself for a full, fair and accurate account of its contents, and plaintiffs’ characterization is denied to the extent inconsistent with that document. Shiner Decl., 13 July 2016, Dckt No. 248-2.

2. Admit. The Court is respectfully referred to Ms. Shiner’s 30 January 2017 declaration regarding CIA’s obligation to search operational files in this case. Plaintiffs’ assertion is denied to the extent that it conflicts with that document. Shiner Decl., 30 January 2017, Ex. 1.

3. Deny. The Court is respectfully referred to Ms. Shiner’s 30 January 2017 declaration regarding CIA’s decennial review and declassification of records. Plaintiffs’ assertion is denied to the extent that it conflicts with that document. Shiner Decl., Ex. 1.

4. Deny. The Court is respectfully referred to Ms. Shiner's 30 January 2017 declaration regarding CIA's review and declassification of records under Executive Order 12812. Plaintiffs' assertion is denied to the extent that it conflicts with that document. Shiner Decl., Ex. 1. CIA also denies the second paragraph 4, which states: "The long-standing communist policy holding back POWs in furtherance of political and economic goals." This statement is a sentence fragment that appears immaterial in any event.

5. Deny. Defendant disputes paragraphs 4 through 24 as immaterial because they do not concern the reasonableness of CIA's search or legal bases for its withholdings under FOIA Exemptions. Indeed, they appear to be little more than improper requests for admission where no discovery has been ordered. Furthermore, these allegations are inadmissible assertions (and not facts) under Fed. R. Civ. P. 56(e) because most are not based on personal knowledge, and they also are inadmissible hearsay because most simply quote from a third-party report for the truth of the matter asserted. To the extent that these paragraphs appear to challenge the adequacy of the CIA's search, in demonstrating that a FOIA search is adequate, "the agency must demonstrate that it has conducted a 'search reasonably calculated to uncover all relevant documents.'" *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). A search is not inadequate merely because it failed to "uncover every document extant." *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1201 (D.C. Cir. 1991). The Court is respectfully referred to Ms. Shiner's 13 July 2016 declaration and the Defendant's 13 July 2016 Renewed Motion for Summary Judgment, for a description of the Agency's search. Shiner Decl, at ¶¶ 22-26 (ECF No. 248-2); Defendant's Motion for Summary Judgment (ECF No. 248-1).

6. Defendant denies paragraphs 25 and 26. CIA does not have sufficient

knowledge to admit or deny these assertions, and also disputes their materiality to the reasonableness of its search or propriety of its withholdings under FOIA Exemptions.

7. Defendant disputes paragraphs 27 through 46 as immaterial because they do not concern the reasonableness of CIA's search or legal bases for its withholdings under FOIA Exemptions. Indeed, they appear to be little more than improper requests for admission where no discovery has been ordered. To the extent that these paragraphs could be construed to challenge the adequacy of the CIA's search, in demonstrating that a FOIA search is adequate, "the agency must demonstrate that it has conducted a 'search reasonably calculated to uncover all relevant documents.'" *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). A search is not inadequate merely because it failed to "uncover every document extant." *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1201 (D.C. Cir. 1991). The Court is respectfully referred to Ms. Shiner's 13 July 2016 declaration and the Defendant's 13 July 2016 Renewed Motion for Summary Judgment, for a description of the Agency's search. Shiner Decl, at ¶¶ 22-26 (ECF No. 248-2); Defendant's Motion for Summary Judgment (ECF No. 248-1).

8. Defendant disputes paragraphs 47 through 50 as immaterial as immaterial because they do not concern the reasonableness of CIA's search or legal bases for its withholdings under FOIA Exemptions.. These allegations are inadmissible assertions (and not facts) under Fed. R. Civ. P. 56(e) because they are not based on Hall's personal knowledge. To the extent that these paragraphs could be construed to challenge the adequacy of the CIA's search, in demonstrating that a FOIA search is adequate, "the agency must demonstrate that it has conducted a 'search reasonably calculated to uncover all relevant documents.'" *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). A search is not inadequate merely because it failed to "uncover every document extant." *SafeCard Servs., Inc. v. S.E.C.*,

926 F.2d 1197, 1201 (D.C. Cir. 1991). The Court is respectfully referred to Ms. Shiner's 13 July 2016 declaration and the Defendant's 13 July 2016 Renewed Motion for Summary Judgment, for a description of the Agency's search. Shiner Decl, at ¶¶ 22-26 (ECF No. 248-2); Defendant's Motion for Summary Judgment (ECF No. 248-1). Defendant also notes that the exhibits referenced in these paragraphs are not the documents CIA was directed by the Court to search for missing attachments, enclosures, photographs and reports.

9. Defendant disputes paragraphs 51 through 62 as immaterial. These allegations are inadmissible assertions (and not facts) under Fed. R. Civ. P. 56(e) because they are not based on personal knowledge. To the extent that these paragraphs could be construed to challenge the adequacy of the CIA's search, in demonstrating that a FOIA search is adequate, "the agency must demonstrate that it has conducted a 'search reasonably calculated to uncover all relevant documents.'" *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). A search is not inadequate merely because it failed to "uncover every document extant." *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1201 (D.C. Cir. 1991). The Court is respectfully referred to Ms. Shiner's 13 July 2016 declaration and the Defendant's 13 July 2016 Renewed Motion for Summary Judgment, for a description of the Agency's search. Shiner Decl, at ¶¶ 22-26 (ECF No. 248-2); Defendant's Motion for Summary Judgment (ECF No. 248-1).

10. Defendant disputes paragraphs 63 through 64 as immaterial. These allegations are inadmissible assertions (and not facts) under Fed. R. Civ. P. 56(e) because they are not based on Hall's personal knowledge. To the extent that these paragraphs could be construed to challenge the adequacy of the CIA's search, in demonstrating that a FOIA search is adequate, "the agency must demonstrate that it has conducted a 'search reasonably calculated to uncover all relevant documents.'" *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). A

search is not inadequate merely because it failed to “uncover every document extant.” *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1201 (D.C. Cir. 1991). The Court is respectfully referred to Ms. Shiner’s 13 July 2016 declaration and the Defendant’s 13 July 2016 Renewed Motion for Summary Judgment, for a description of the Agency’s search. Shiner Decl, at ¶¶ 22-26 (ECF No. 248-2); Defendant’s Motion for Summary Judgment (ECF No. 248-1). Defendant also notes that the exhibits referenced in these paragraphs are not the documents CIA was directed by the Court to search for missing attachments, enclosures, photographs and reports.

11. Defendant disputes paragraphs 65 through 70 as immaterial. These allegations are inadmissible assertions (and not facts) under Fed. R. Civ. P. 56(e) because they are not based on Hall’s personal knowledge. To the extent that these paragraphs could be construed to challenge the adequacy of the CIA’s search, in demonstrating that a FOIA search is adequate, “the agency must demonstrate that it has conducted a ‘search reasonably calculated to uncover all relevant documents.’” *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). A search is not inadequate merely because it failed to “uncover every document extant.” *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1201 (D.C. Cir. 1991). The Court is respectfully referred to Ms. Shiner’s 13 July 2016 declaration and the Defendant’s 13 July 2016 Renewed Motion for Summary Judgment, for a description of the Agency’s search. Shiner Decl, at ¶¶ 22-26 (ECF No. 248-2); Defendant’s Motion for Summary Judgment (ECF No. 248-1).

12. Defendant disputes paragraphs 71 through 73 as immaterial. These allegations are inadmissible assertions (and not facts) under Fed. R. Civ. P. 56(e) because they are not based on Hall’s personal knowledge. To the extent that these paragraphs could be construed to challenge the adequacy of the CIA’s search, in demonstrating that a FOIA search is adequate, “the agency must demonstrate that it has conducted a ‘search reasonably calculated to uncover all relevant

documents.” *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). A search is not inadequate merely because it failed to “uncover every document extant.” *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1201 (D.C. Cir. 1991). The Court is respectfully referred to Ms. Shiner’s 13 July 2016 declaration and the Defendant’s 13 July 2016 Renewed Motion for Summary Judgment, for a description of the Agency’s search. Shiner Decl, at ¶¶ 22-26 (ECF No. 248-2); Defendant’s Motion for Summary Judgment (ECF No. 248-1). Defendant also notes that the exhibits referenced in these paragraphs are not the documents CIA was directed by the Court to search for missing attachments, enclosures, photographs and reports.

13. Defendant disputes paragraphs 74 through 180 as immaterial. These allegations are inadmissible assertions (and not facts) under Fed. R. Civ. P. 56(e) because they are not based on Hall’s personal knowledge. To the extent that these paragraphs could be construed to challenge the adequacy of the CIA’s search, in demonstrating that a FOIA search is adequate, “the agency must demonstrate that it has conducted a ‘search reasonably calculated to uncover all relevant documents.’” *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999). A search is not inadequate merely because it failed to “uncover every document extant.” *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1201 (D.C. Cir. 1991). The Court is respectfully referred to Ms. Shiner’s 13 July 2016 declaration and the Defendant’s 13 July 2016 Renewed Motion for Summary Judgment, for a description of the Agency’s search. Shiner Decl, at ¶¶ 22-26 (ECF No. 248-2); Defendant’s Motion for Summary Judgment (ECF No. 248-1). Defendant also notes that exhibits referenced in these paragraphs are not the documents CIA was directed by the Court to search for missing attachments, enclosures, photographs and reports.

Respectfully Submitted,

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