

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

ROGER HALL, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. ) Civil Action No. 04-00814 (HHK)  
 )  
 CENTRAL INTELLIGENCE AGENCY, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**DECLARATION OF SCOTT A. KOCH  
INFORMATION AND PRIVACY COORDINATOR  
CENTRAL INTELLIGENCE AGENCY**

I, SCOTT A. KOCH, hereby declare and say:

1. I am the Chief, Public Information Programs Division (PIPD), Information Management Services (IMS), within the Information Services Center, Office of the Chief Information Officer, Central Intelligence Agency (CIA). I serve as the CIA Information and Privacy Coordinator (Coordinator). I have held these positions since 9 August 2004. This declaration supports CIA's Motion for Summary Judgment in this proceeding.

2. I have served with the United States Government for approximately fifteen years and, in addition to my current positions, have held other supervisory positions with the CIA in the field of records management.

3. In my capacities as Chief of PIPD/IMS and Coordinator, I am responsible

for managing the Freedom of Information Act (FOIA), Privacy Act, and Executive Order 12958<sup>1</sup> Mandatory Declassification Review programs in the CIA. These responsibilities include directing searches of CIA records systems pursuant to public requests for records under these programs, and coordinating the reviews of any records retrieved in such searches. These review processes include undertaking any intra-agency and inter-agency coordination and referrals necessary in light of the information found in responsive records.<sup>2</sup>

4. As part of my official duties, I ensure that the Agency administratively processes FOIA and Privacy Act requests, including the search, retrieval, analysis, review, redaction, and release of documents according to the law and as efficiently as possible with the personnel and resources available.

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

6. This declaration describes CIA's records systems, its procedures for responding to FOIA/Privacy Act requests, and actions the Agency took in responding to Plaintiffs' FOIA request.

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<sup>1</sup> Executive Order 12958 was amended by Executive Order 13292. See Exec. Order No. 13292, 68 Fed. Reg. 15315 (Mar. 28, 2003). All citations to Exec. Order No. 12958 are to the Order as amended by Exec. Order No. 13292. See Exec. Order No. 12,958, 3 C.F.R. 333 (1995), reprinted as amended in 50 U.S.C.A. § 435 note at 180 (West Supp. 2006).

<sup>2</sup> A "coordination" occurs when a CIA-originated document contains information involving the equities of another agency, and the CIA contacts that agency to obtain guidance on whether to release or withhold that agency's information. The CIA responds to the requester. A "referral" occurs when CIA possesses a document that originated with another agency. In such a case, CIA transmits the document to the originating agency for a direct response to the FOIA or Privacy Act requestor.

**I. CIA RECORDS SYSTEMS**

7. Any intelligence or security agency continually faces the risk that there may be espionage inside the Agency. Prudence dictates that an agency take appropriate counterintelligence and security precautions to minimize the potential damage to national security that could result from a spy in the Agency's midst. Limiting the amount of information to which any particular employee has access is one way to minimize such damage.

8. CIA limits employee access to information by employing a "need-to-know" policy, which provides that an employee has access only to that information required to perform the employee's duties. CIA implements this policy through decentralizing and compartmenting its records systems.

9. While the counterintelligence advantage of this practice is obvious, one disadvantage is equally obvious: the inherent inefficiencies created in the records search and retrieval processes. These inefficiencies affect not only the day-to-day activities of CIA employees trying to perform their mission, but also the process of responding to FOIA/Privacy Act requests.

**II. PROCESSING OF FOIA REQUESTS**

10. The CIA Information and Privacy Coordinator receives all FOIA requests. Under the direction and supervision of the Coordinator, experienced IMS information management professionals in PIPD analyze each request and determine which CIA components might reasonably be expected to possess records responsive to a particular request. PIPD then transmits a copy of the request to each relevant component. When a request is broad, it is quite common for PIPD to transmit the request to many

components. Because CIA's records systems are decentralized and compartmented, each component must then devise its own search strategy, which includes identifying which of its records systems to search as well as what search tools, indices, and terms to employ. The information management professionals in each component conducting FOIA searches are the same professionals searching records to support the component's daily mission.

11. After a tasked component locates documents in response to the FOIA request, officers must review them to determine whether they are responsive to the request. Because of the nature of a particular records system, or the search tools, indices, or terms employed, a search may locate many documents that are not responsive to the request.

12. After officers remove the non-responsive documents, the Information Review Officers must then review the remaining documents to determine which, if any, FOIA and Privacy Act exemptions apply, and whether they can reasonably segregate non-exempt information from exempt information. In evaluating responsive documents, officers must segregate exempt information to avoid the inadvertent disclosure of classified information, information concerning intelligence sources and methods, or other information FOIA and Privacy Act exemptions protect. This process is laborious and time-consuming.

13. In the course of reviewing documents for exempt information and segregability, a component frequently identifies information that it must coordinate with or refer to another CIA component or another agency because the other component or

agency originated the information or otherwise has an equity in it.<sup>3</sup> This coordination and referral process itself can be quite time-consuming because other components and agencies have their own mission and FOIA/Privacy Act priorities.

14. When all of the components and agencies complete their respective reviews, IMS professionals, under my direction and supervision, incorporate all of their recommendations regarding exemption, segregation, redaction, and release. These IMS professionals then conduct a review from a corporate perspective on behalf of the entire CIA. In this review, IMS professionals resolve conflicting recommendations, ensure that the release or withholding determinations comply with law and published CIA regulations, identify additional exempt information that reflects overall CIA equities, ultimately produce the integrated final record copy of each document, and respond to the requestor.

15. In response to a broad FOIA request, the searches may locate many documents in many components. When considered individually, a particular document may not indicate on its face that it contains exempt information. Nevertheless, when reviewers consider all responsive documents in total, it frequently becomes apparent that, considered collectively, the documents reveal information exempt from release. For this reason, we cannot make final release determinations with respect to any particular document until we review all responsive documents. In certain instances, the CIA Information and Privacy Coordinator may withhold additional information when it is necessary to apply FOIA and Privacy Act exemptions to protect overall CIA equities.

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<sup>3</sup> See Exec. Order No. 12958 § 3.6(b).

### **III. PLAINTIFFS' FOIA REQUEST OF 7 FEBRUARY 2003**

16. Plaintiffs Roger Hall, Studies Solutions Results, Inc. (SSRI), and Accuracy in Media (AIM) submitted a written FOIA request to CIA dated February 7, 2003. A copy of the 7 February 2003 request is attached to this Declaration as Exhibit 1.<sup>4</sup> In this request, Plaintiffs asked for seven items of information. CIA assigned Plaintiffs' request reference number F-2003-00449. By letter dated 15 June 2004, CIA notified Plaintiffs that it could not accept certain items of the request. A copy of that letter is attached as Exhibit 2. The specific problems with these items and the CIA's response with respect to the request are explained in greater detail below.

#### **Items 1, 2, and 3 (1971-1975)**

17. Items 1, 2 and 3 sought the following:

**Item 1:** Records and information pertaining to Southeast Asia POW/MIAs (civilian or military) and detainees who have not returned or whose remains have not been returned to the United States, regardless of whether they are currently held in prisoner status, and regardless of whether they were sent out of Southeast Asia;

**Item 2:** Records or information pertaining to POW/MIAs sent out of Southeast Asia (for example, to China, Cuban [sic Cuba], North Korea, Russia);

**Item 3:** Records or information prepared and/or assembled by the CIA between January 1, 1960 and December 31, 2002 relating to the status of any United States POW/MIAs in Laos, including but not limited to any reports, memoranda, letters, notes or other documents prepared by Mr. Horgan or any other officer, agent or employee of the CIA for the Joint Chiefs of Staff, the President, or any federal agency.

18. Items 1, 2, and a five-year span of item 3 of Plaintiffs' 7 February 2003

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<sup>4</sup> The correspondence and related documents relevant to Defendant's Motion for Summary Judgment are attached to this Declaration as Exhibits 1 through 14.

request (January 1, 1971 through December 31, 1975) are duplicates of items Hall requested in 1994 and 1998. These items were the subject of prior litigation in Hall v. Central Intelligence Agency, Civil Action No. 98-1319 (D.D.C.) (PLF) (Hall I). In connection with the Hall I lawsuit CIA performed numerous searches, produced responsive documents, and withheld other documents on the basis of various FOIA exemptions.

19. In connection with Hall I, on 7 November 2005, the Agency made a voluntary disclosure of the 122 documents at issue in that litigation. A copy of the 7 November 2005 letter with an attached chart detailing exemptions is attached as Exhibit 3. Twenty documents were released in their entirety, and 102 were released in segregable form with redactions made on the basis of FOIA exemptions (b)(1), (b)(2), (b)(3), and (b)(5). Twenty-six additional records were withheld in their entirety on the basis of FOIA exemptions (b)(1), (b)(2), (b)(3) and (b)(5).

20. Collectively, the documents voluntarily disclosed to Plaintiffs on 7 November 2005 represent all non-exempt documents that are responsive to items 1, 2, and the 1971 to 1975 portion of item 3 of the 7 February 2003 request at issue here. Therefore, items 1, 2, and the 1971 to 1975 portion of item 3 are administratively closed.

21. Much of the documentation responsive to Plaintiff Hall's 1993-94 requests for information concerning American prisoners of war (POW) and missing in action (MIA) lost in Southeast Asia had been released pursuant to Executive Order 12812, 57 F.R. 32879 (July 24, 1992). That Executive Order directed certain federal agencies to locate and release all non-sensitive materials pertaining to such POWs and MIAs. In Hall I, the district court addressed the search terms the Agency used, when it conducted searches

under Executive Order 12812. The Directorate of Operations had documented its search terms and produced them to the district court, but the Agency was not able to produce reliable records of the terms the other directorates had used in their searches.<sup>5</sup> In response to the district court's August 10, 2000 opinion in Hall I, the other directorates conducted new searches, using the DO's search terms and two additional terms, "PW" and "PWS", which the district court's opinion determined they should have used in addition to any other terms that might identify documents responsive to Plaintiff's request. A copy of the August 10, 2000 Opinion is attached as Exhibit 4.

22. The respective Information Review Officers (IROs) for each of the directorates determined which databases within their directorates were reasonably likely to contain responsive records, and they directed officers under their supervision to search those databases. Agency officers used the search terms that the district court in the previous litigation indicated were sufficient. The 122 documents that were disclosed in November 2005, and twenty-six other responsive records that were exempt from disclosure under the FOIA, emerged from those searches.<sup>6</sup>

**Item 3 (1960-1970 and 1976-2002)**

23. CIA has agreed to search and review any responsive documents and to make available to Plaintiffs any non-exempt documents responsive to item 3 that have not already been produced. In other words, CIA will search, review and produce non-exempt

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<sup>5</sup> The DO retained records using the following search terms during its Executive Order search: "POW, POWS, PRISONERS OF WAR, MIA, MIAS, MIAS, MISSING IN ACTION, KAMPUCHEA, CAMBODIA, LAOS", and "VIETNAM".

<sup>6</sup> The DO did not conduct an additional search, because it determined that any responsive records it had would be contained in properly designated operational files, which are exempt from the search, review, and release provisions of the FOIA. Those files were not exempt from search under Executive Order 12812.

The remaining directorates' searches included the terms listed above as well as additional country names (in southeast Asia) and names of individuals about whom Plaintiffs requested records.



documents responsive to item 3 for the date ranges 1960 to 1970 and 1976 to 2002. CIA has apprised Plaintiffs that the same search terms will be used as were used in connection with the searches conducted during the Hall I and that the search time was estimated to be approximately 18 months. Upon completion, item 3 will be administratively closed.

**Item 4**

24. Item 4 sought "records of the Senate Select Committee on POW/MIA affairs which were withdrawn from the collection at the National Archives and returned to CIA for processing." In Hall I, the court held that the records sought by item 4 are not "agency records" subject to FOIA. In light of the court's ruling that these documents are not subject to FOIA, item 4 is closed. See Exhibit 4 at 16.

**Item 5**

25. Item 5 sought records "relating to 47 individuals who allegedly are Vietnam era POW/MIAs, and whose next-of-kin have provided privacy waivers to Roger Hall, and persons in the Prisoner or War/Missing Personnel Office's list of persons whose primary next-of-kin have authorized release of information concerning them." In its 15 June 2004 letter, CIA advised Plaintiffs that, at a minimum, the date and place of birth and the full name of all individuals were necessary to conduct the search for the requests in item 5. See Exhibit 2. CIA required the date and place of birth and the full names of the roughly 1700 individuals included in item 5 because, in many cases, individuals might share a similar name. Without additional identifying information, there would be no way to know whether information discovered through a search for a name, was in fact about the individual listed in the request.<sup>7</sup> Accordingly, without some information to verify the

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individuals' identities, a search for ascertainably responsive information would be impossible.

26. If the CIA searched for the 1700 names anyway, since it could not be assured that information located through such a search would, in fact, relate to the individuals listed in the request (and not some other individuals with the same or similar names), it still could not release such information to Plaintiff. If the information that emerged from the search might relate to someone other than the individual whose next of kin had authorized its release, then the CIA would be obliged to protect that information from disclosure under FOIA exemption (b)(6).

27. The 15 June 2004 letter also advised Plaintiff that CIA would hold the item 5 request in abeyance for forty-five days pending receipt of the additional biographical information necessary to process the request. See Exhibit 2. To date, CIA has never received the requisite additional information, and therefore has never accepted this item. My letter dated 11 May 2005 advised Plaintiff that the Agency had closed this item and did not accept it as part of his request. A copy of the 11 May 2005 letter is attached as Exhibit 5.

28. Even if Plaintiffs had provided the additional biographical information necessary to process the request, the Agency would be under no obligation to process the request because Plaintiff has failed to submit an advance deposit as required by CIA FOIA regulations. In the 15 June 2004 letter, CIA estimated that the costs of conducting searches for all of the documents requested in items 5, 6 and 7 would amount to

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<sup>7</sup> Plaintiff has referred to reference numbers that the Department of Defense assigned to individual POWs and MIAs. The CIA does not use these numbers, and they are meaningless to this Agency. The FOIA does not require the CIA to do research to determine what information exists elsewhere in the government regarding individuals assigned identifying numbers by another federal Agency.

\$606,950.00 for the searches alone. See Exhibit 2. Therefore, in accordance with 32 C.F.R. § 1900.13(f), CIA required an advance deposit in the amount of \$50,000.00 before processing the request.<sup>8</sup> In response, Plaintiffs chose not to provide the additional biographical information, but to instead seek fee limitations and a fee waiver.

29. In a memorandum opinion dated April 13, 2005, the Court denied Plaintiffs' motions, holding that they did not qualify for fee limitations or a fee waiver. Following the Court's order, Plaintiffs could have initiated processing of Item 5 by paying the required deposit, and by providing the additional biographical data. Plaintiffs did neither. Rather, they chose to repeatedly renew their requests for fee waivers and fee limitations, within only six weeks of the Court's decision that they did not qualify for them. See Plaintiffs' 26 April 2005 Request and 26 May 2005 Notice of Filing, attached as Exhibits 9 and 11. By letters dated 1 June 2005 and 1 July 2005, the CIA denied Plaintiffs' renewed requests, indicating that the Court had already decided the issue.<sup>9</sup> Letters dated 1 June 2005 and 1 July 2005 are attached as exhibits 10 and 12. Plaintiffs have still not provided the additional biographical information necessary to process Item 5, nor have they submitted the required deposit. As such, the CIA has not conducted searches for documents responsive to Item 5, and it remains closed.

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<sup>8</sup> In its 11 May 2005 letter, the CIA indicated that because items 5 and 7 were closed, the fee estimate dropped to \$40,466.00 and the required deposit was adjusted to \$20,000.00.

It is also important to note that while Hall initially claimed that CIA's \$606,950.00 estimate was "ludicrous", this charge was based on Hall's erroneous assertion that only 47 names appeared on the request, rather than the roughly 1700 names which actually appeared. USDC Pacer, Dkt. No. 46, Order dated January 25, 2006 at 6. Hall apologized for the error in his reply brief. Id.

<sup>9</sup> The 1 June 2005 letter did not specifically mention the fee waiver and fee limitation issue. Rather, it rejected the requests in their entirety on the grounds that they were the subject of the current litigation. See Exhibit 10.

**Item 6**

30. Item 6 sought the following:

Records on or pertaining to any search conducted for documents responsive to Roger Hall's requests dated January 5, 1994, February 7, 1994, and April 23, 1998, including but not limited to all instructions and descriptions of searches to be undertaken by any component of the CIA and all responses thereto, and all records pertaining to the assessment of fees in connection therewith, including but not limited to any itemizations or other records reflecting the time spent on each search, the rate charged for the search, the date and duration and kind of search performed, etc.

31. As set forth in the Joint Report and Proposed Briefing Schedule filed with the Court on 26 May 2006, CIA agreed to search and make available to Plaintiffs any non-exempt documents responsive to Item 6 of the February 2003 request, insofar as that item seeks records relating to the assessment of fees. See USDC Pacer Dkt. No. 49, para. 1.

32. In order to locate records relating to the assessment of fees in connection with Roger's Hall's requests dated 5 January 1994, 7 February 1994, and 23 April 1998, my office conducted a manual search of the administrative file for Mr. Hall's prior FOIA requests. PIPD is the division at CIA that manages the processing of FOIA requests, including any assessment of fees associated with FOIA requests. Therefore, PIPD's administrative files are the systems of records that are most reasonably likely to contain documents or information pertaining to the assessment of fees associated with Hall's requests. The file is maintained in chronological order. In July of 2006, a PIPD officer under my supervision manually examined the file, document-by-document, searching for information pertaining to fee assessments associated with the 5 January 1994, 7 February 1994, and 23 April 1998 requests. My staff located two fee assessments as a result of this search, contained in letters dated 25 May 1994 and 22 March 1995.

33. By letter dated 15 August 2006, CIA provided Plaintiffs copies of the two

responsive documents. A copy of the 15 August 2006 letter is attached as Exhibit 6. CIA further notified Plaintiffs that small amounts of information were redacted pursuant to FOIA Exemption (b)(3). Specifically, the information concerned the organization, functions, or official titles of CIA personnel, and is protected from disclosure under Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. §403g. (West Supp. 2006).

34. With respect to the remainder of Item 6, relating to any search conducted for documents responsive to Plaintiff's January 1994, February 1994 and April 1998 requests, the Agency presented available documentation regarding its searches under Executive Order 12812 to the district court and to Plaintiff Hall in the previous litigation. In addition, as described in paragraphs 20-21, above, the Agency also conducted additional searches. As I stated above, those searches generated the records voluntarily disclosed to Plaintiffs in November 2005. The Agency did not charge Plaintiffs for any of the costs, including search time and photocopying, of the Fall 2000 searches.

35. The Agency provided nonexempt documents relating to the 2000 searches to Plaintiffs on 17 October 2006. Records responsive to Item 6 would reside in the administrative files of Plaintiff Hall's 1994 and 1998 requests, which PIPD officers previously scanned electronically into the case-tracking system for FOIA and other information-release cases. PIPD reviewed the relevant electronic files and identified records that were responsive to the request, including any records relating to the searches conducted in Fall 2000. In addition, because these matters were in litigation when the searches occurred, a document by document manual search of all Hall related Office of General Counsel (OGC) files was conducted, and responsive documents were identified.

On 26 September 2006, counsel for CIA notified Plaintiffs by e-mail that additional documents responsive to the remainder of Item 6 had been located as a result of these searches.

36. The non-exempt, responsive documents were provided to both counsel of record for Plaintiffs on 17 October 2006. A copy of the 17 October 2006 letter is attached as Exhibit 7. A total of eighteen documents were produced. Five documents were released in their entirety and thirteen documents contained redactions on the basis of FOIA exemptions (b)(2), (b)(3), (b)(5), and (b)(6). Additional materials were withheld in their entirety on the basis of FOIA exemptions (b)(1), (b)(2), (b)(3), (b)(5), and (b)(6).<sup>10</sup>

#### Item 7

37. The Agency advised the Plaintiffs in June 2004, that Item 7 of their request imposed such an unreasonably burdensome search requirement that the Agency did not have to conduct a search under the FOIA. The Agency invited Plaintiff to discuss narrowing the requested search. Plaintiff did not respond to that invitation and I advised Plaintiff in my 11 May 2005 letter that we would accordingly not accept this item of the request. Item 7 requests all records pertaining to any search ever conducted by the Agency, at any time and for any reason, for records concerning Vietnam War POW/MIAs. While DMS maintains records of FOIA requests, and it is at least theoretically possible to conduct a search of FOIA searches on a particular topic, the Agency's record systems are not configured in a way that enables us to search for records

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<sup>10</sup> The redacted and withheld documents are described, along with the bases for the redactions and withholdings, in the attached Vaughn Index for Documents Responsive to Item 6.

of searches in other contexts. The requested search would require the Agency to conduct independent research to try to identify when and under what circumstances Agency personnel in relevant offices within each directorate had ever conducted a non-FOIA search for information on POW/MIA's. It would then require further efforts to identify responsive records, if any, with respect to each search so identified. The requested search is not feasible and it requires research, going far beyond what the FOIA requires of federal agencies.

38. Even if Plaintiff narrowed his request to searches pursuant to FOIA requests or to requests under programs recorded in the Agency's electronic databases, which he did not do, the requested search would be unreasonably burdensome.<sup>11</sup> When a search for all records regarding FOIA searches pertaining to Vietnam War POW/MIAs was attempted, the computer database containing FOIA records was unable to complete the request because the results were too voluminous. That is, the automated system for recording FOIA requests and responses "timed out" before ever generating the response to the request for such records. My personnel were able to determine from the automated system that it reported some 3,517 cases, each of which might contain responsive records, in response to requests for items using various search terms that applied to this item. Each of the 3,517 cases has a separate electronic file. In order to determine whether each of the 3,517 cases has records of searches that are, in fact, responsive to Plaintiffs' request, my staff would have to search each of the electronic files individually, to determine, one by one, the nature of the request, the search history, and the specific

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<sup>11</sup> PIPD uses an electronic database system known as "MORT" to track and record FOIA requests, Privacy Act requests, the mandatory declassification review process, and searches recently conducted for other federal agencies.

documents reviewed and released in each case. Moreover, while some of the electronic files are likely to include correspondence, internal information regarding the searches conducted for that request, and the records released in response, the records for many requests would no longer exist.<sup>12</sup>

39. Even if CIA were required to undertake such an unreasonably burdensome search, the Agency would be under no obligation to process the request because Plaintiff has failed to submit an advance deposit as requested in the 15 June 2004 letter and as required by CIA FOIA regulations. In Paragraphs 27 and 28 of this declaration, I recount in detail the correspondence surrounding Plaintiffs' response to the requirement to pay a deposit in order for the Agency to process Items 5 and 7. See Exhibit 2. Rather than pay the required deposit or respond to CIA's invitation to narrow the Item 7 request, Plaintiffs chose to repeatedly renew their requests for fee limitations and fee waivers, in spite of the Court's ruling against them on that very issue. In other words, to date, Plaintiffs have not paid the required deposit nor have they narrowed their Item 7 request. As such, Item 7 remains closed.

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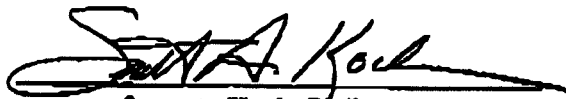
<sup>12</sup> This office has used various electronic databases to track FOIA and other information-release requests since October 1977. For cases prior to 1977, records were maintained in hard copy and, except for a hand-typed log, were destroyed according to applicable federal records schedules. The current system was established in the late 1990's. Records prior to that time are inconsistent, and some data regarding searches was corrupted during the transfer to the current system. For FOIA cases in which there is no administrative appeal, records are destroyed five years after the last correspondence with the requester.



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

Executed this 30<sup>th</sup> day of October, 2006.

A handwritten signature in black ink, appearing to read "Scott A. Koch", written over a horizontal line.

Scott A. Koch, Ph.D.  
Information and Privacy Coordinator  
Central Intelligence Agency