

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Roger HALL, et. al.,
Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,
Defendant.

Case No. 04-CIV-0814 (RCL)

DECLARATION OF MARTHA M. LUTZ
CHIEF OF THE LITIGATION SUPPORT UNIT
CENTRAL INTELLIGENCE AGENCY

I, MARTHA M. LUTZ, hereby declare and state:

1. I am the Chief of the Litigation Support Unit ("LSU") of the Central Intelligence Agency ("CIA" or "Agency"). I have held this position since October 2012. Prior to assuming this position, I served as the Information Review Officer ("IRO") for the Director's Area of the CIA for over thirteen years. In that capacity, I was responsible for making classification and release determinations for information originating within the Director's Area, which includes the Office of the Director of the CIA and the Office of General Counsel, among others. I have held other administrative and professional positions within the CIA since 1989.

2. As Chief of LSU, I am authorized to assess the current, proper classification of CIA information, based on the

classification criteria of Executive Order 13526 and applicable CIA regulations. I am also responsible for the classification review of documents and information, including documents that become the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. As part of my official duties, it is my responsibility to ensure that any determinations as to the public release or withholding of any such documents or information are proper and do not jeopardize national security.

3. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA request. The purpose of this declaration is to explain why it is not reasonably feasible for the CIA to produce the documents requested by plaintiffs in an electronic format.

I. Background

4. Plaintiffs submitted the FOIA request involved in this action on 7 February 2003. They filed the instant complaint in 2004. The request sought various records pertaining to American troops classified as prisoners of war and/or missing in action in connection with the Vietnam War. See Ex. A. Plaintiffs' request did not ask for production of electronic records and only asked that the duplication costs associated with paper copies be waived. For the past ten years, the CIA has processed the records responsive to plaintiffs' request in hard copy,

producing tens of thousands of pages of records without charge. In June 2013 alone, the CIA has produced over 5,000 pages of responsive records to plaintiff in an effort to bring this protracted litigation to a conclusion. On 12 July 2013, nearly ten years into this case, plaintiffs submitted their motion to compel the production of records in an PDF, text readable format. The CIA has indicated that it cannot readily generate those articles in an electronic format and that it will only produce paper copies of any non-exempt material.

II. The Records Requested Are Not Readily Reproducible in an Electronic Format

5. The FOIA requires that "an agency shall provide the record in any form or format requested by the person *if the record is readily reproducible by the agency in that form or format.*" 5 U.S.C. § 552 (a)(3)(B) (emphasis added). The FOIA also provides that "a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to . . . reproducibility under paragraph (3)(B)." 5 U.S.C. § 552 (a)(4)(B). As explained in detail below, for security reasons, CIA systems do not support broad transfers of records to unclassified media. Rather, the ability to transfer such information outside the Agency is restricted and is only performed on a case-by-case basis. As discussed below, the Agency does not have the capability or the capacity to readily produce records requested under the FOIA, the Privacy Act, or

the Mandatory Declassification Review program in an unclassified electronic format. Using existing mechanisms to process the large volume of records requested in response to these information access programs would be prohibitively time consuming and costly - so much so that those records are not "readily reproducible" electronically. In contrast, production on paper does not pose the security concerns that electronic reproduction does and is not as time and resource intensive. For paper production, the records are simply printed straight from the classified system, reviewed, and mailed to the requester and none of the extra steps detailed below are necessary.

A. CIA Systems

6. The CIA maintains two separate information technology systems consisting of a classified ("high-side") and an unclassified ("low-side") system. The classified system, on which CIA officers conduct their day-to-day work, contains both classified and unclassified material maintained by the Agency. Use of the unclassified system, which is restricted to a subset of CIA officers based on mission need, is limited to unclassified activities, such as accessing the Internet and sending and receiving external emails. All of the documents requested by plaintiffs reside within the Agency's high-side environment.

7. In an effort to properly protect classified information, the CIA Director has mandated stringent security controls regarding the access, processing, storage, and transfer of CIA information. Access to the Agency's different information systems is compartmented and restricted to those with a need-to-know. Additionally, the ability to import or export electronic media is confined to a limited number of specially trained and certified employees and can only be completed on designated workstations. Excepting those authorized individuals, CIA employees do not have access to the CD-Rom drives or USB ports on their computers.

8. Although unclassified records residing on the classified system can be transferred to the unclassified system, these transfers are not routine.¹ Rather, they are only done to the extent necessary to support critical Agency functions. Each transfer request requires special permission and the transfer process is strictly controlled. This process applies across the board to Agency personnel. The data transfer process described below would need to be conducted for each of the records responsive to plaintiffs' request.

¹ To be clear, the data transfer process involves the transfer of *documents* from the high-side environment to the low-side. Some activities, such as corresponding with the media or vendors, are often accomplished exclusively using the unclassified system and do not involve the transfer of data from the high-side to the low-side.

B. Data Transfer Process in General

9. A CIA officer seeking to transfer a record from the classified to the unclassified system is required to submit a request through a Data Transfer Officer ("DTO"). DTOs are appointed by each Directorate or independent office to move data files to and from Agency systems via removable media and to conduct high-side to low-side transfers of unclassified records. The main purpose of the DTO program is to lower the risk of unauthorized removal of classified or sensitive information via removable media.²

10. For security reasons, the number of employees with DTO privileges is intentionally limited. In fact, the number of DTOs throughout the Agency has been severely limited in the past several years in response to security concerns. For example, there are only eleven DTOs for all of the CIA's Information Management Services division - which has several hundred employees. In response to a transfer request, DTOs are required to perform a series of checks to determine whether classified content or metadata are embedded in the record. These checks are required to be conducted for all documents, regardless of whether they have previously undergone this security screening. DTOs have the authority to deny certain transfer requests and

² Removable media presents serious security risks. Individuals seeking to steal classified information could easily conceal CDs or thumb drives that contain large amounts of classified information from security personnel.

even those transfers that are approved can take hours to complete due to the screening process and the backlog of other pending requests.³ The DTO process is designed for transfer of discrete sets of data files for mission critical purposes and does not have the resources to support massive information review and release projects. Enlarging the DTO program would increase the risk of unauthorized disclosure of classified national security information. Accordingly, any changes to the existing DTO program would require security and budgetary approvals from the highest levels of the Agency.

C. Producing Records from CIA'S Automated Declassification and Review Environment ("CADRE")

11. Records responsive to all FOIA requests are processed using the CIA's Automated Declassification and Review Environment ("CADRE"), which resides on the Agency's classified system. CADRE is the repository for documents related to various release programs, including FOIA, Privacy Act, and Mandatory Declassification Review, and it also serves as the application for redacting and marking documents responsive to those information access requests. In the course of responding to a typical FOIA request, the Agency conducts searches of the Directorates and component offices that are likely to maintain responsive records. Upon identifying those records, electronic

³ Additionally, individuals with DTO authority have other responsibilities beyond their data transfer functions.

copies of those documents are uploaded into CADRE. In the instances where the original document is in a paper format, that document is scanned on the high-side and the electronic copy is then uploaded into CADRE. In the instant case, the documents located at the Agency Archives and Records Center ("AARC"), as discussed in the CIA's recent status report, are paper records that need to be individually scanned and uploaded into CADRE.⁴ Once the documents are entered into CADRE, Agency personnel review and treat each record, using the application's tools to redact information and apply FOIA exemptions to any exempt material.

12. CADRE access is restricted to authorized users and, by design, the system does not have a function to transfer or convert records contained in the system directly into the form of a PDF.⁵ These restrictions help to ensure that dissemination within the Agency of compartmented information, Privacy Act protected records, and other sensitive material is properly controlled.

⁴ In the CIA's status report, filed 28 June 2013, the Agency noted that, due to their age, the documents located at the AARC are fragile and require special treatment in order for personnel to scan them into CADRE for processing. Plaintiffs take this statement to mean that the Agency possesses the capability to scan documents into an electronic format, but as discussed below, this scanning takes place on the classified system and does not produce records in an unclassified format.

⁵ CADRE contains two features for extracting data -- one for use on the Agency's website and the other for use at the National Archives and Records Administration. These utilities export data in a specific format that is designed for import into the receiving systems, not for dissemination in a PDF or other user accessible format.

13. CADRE's inability to directly convert records into a PDF format does not present a problem where records are produced in a paper format -- as those records can be printed directly from CADRE for release to the FOIA requester. However, the absence of this functionality presents a significant challenge when producing records in an electronic format. Production of records in unclassified PDF format would require Agency personnel to print the documents from the CADRE system and then scan and upload them back into the classified work environment for DTO review.⁶ As described above, the DTO process is intended to bridge the divide between the classified work environment and low-side networks to support essential Agency operations. It is not designed to accommodate the volume of records involved in responding to information access requests, which require the production of hundreds of thousands of pages per year.

14. In this case, the DTO would be required to conduct security scans for each of the thousands of pages of remaining responsive records in order to check for classified metadata and content before transferring the record to a CD-Rom or other form of electronic media. Although DTOs provide an important backstop for the inadvertent release of information, they do not verify the content of the data, determine the classification of

⁶ Again, the vast majority of Agency work is conducted on the classified system - accordingly, the scanning equipment converts documents for use on the high-side, not for unclassified dissemination.

the information, or take responsibility for errors made by the employee requesting the transfer. Because the scanned documents reside on the high-side, the agency cannot simply assume that the only information transferred onto a CD or other removable media is the information that appears on the paper copies of records. Accordingly, after the DTO review is complete, Agency personnel would be required to conduct an additional security screening of content and metadata to ensure that no classified information had been inadvertently transmitted in the DTO process. Given the high volume of records involved in this request and the necessity of the security screening procedures designed to protect against the unauthorized release of classified information, it would take multiple Agency employees several months to complete the transfers of the remaining records that are responsive to plaintiffs' request to an unclassified PDF format, which would not necessarily be word searchable.⁷ This type of production would require extensive utilization of CIA personnel and resources and would severely disrupt the normal business processes of the Agency.

15. The CIA differs from other federal agencies and entities subject to the FOIA in that the vast majority of Agency work is conducted on a secure system that is walled off from

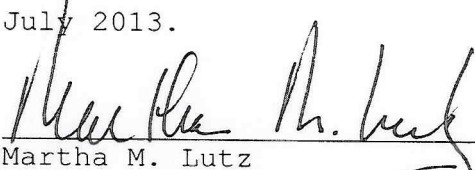
⁷ The condition of the original record affects how it scans. Due to the age and the condition of the responsive records in this case, it is likely that many records could not be produced in a text searchable PDF format.

access to the outside. The CIA's strict segregation of information in the high-side environment from unclassified systems is necessary to ensure that sensitive national security information is not compromised by foreign intelligence services, terrorist organizations, and other hostile actors that pose a threat to the Agency. Additionally, these safeguards and controls are necessary to ensure that classified information is not, either unwittingly or intentionally, released into the public domain. The extensive and harmful disclosures of classified information in the Wikileaks case and the recent leak of documents relating to the foreign intelligence surveillance program underscore the need for robust security measures that restrict the easy transfer of material from the classified system to an unclassified medium. These security procedures, which are essential to the operations of the Agency, make it prohibitively costly and burdensome to produce records in an electronic format in response to information access requests. Accordingly, the CIA has determined that records are not readily reproducible in an electronic format and, as such, cannot comply with plaintiffs' stated preference of receiving documents as PDFs instead of paper.

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

Executed this 24th day of July 2013.



Martha M. Lutz
Chief, Litigation Support Unit
Central Intelligence Agency