UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No.: 04-814 (RCL)
CENTRAL INTELLIGENCE AGENCY,	)	
Defendant.	)	

MEMORANDUM OF POINTS AND AUTHORITIES

The background to this long-running FOIA case is familiar to the Court, which previously has ruled on two dispositive motions. *See* Nov. 9, 2009, Mem. Op. (ECF No. 137); Aug. 3, 2012, Mem. Op. (ECF No. 187). Briefly, plaintiffs sought seven categories of records, or "Items," relating to Vietnam Prisoners of War ("POWs") and persons declared Missing in Action ("MIAs"). The Court has granted summary judgment in defendant's favor regarding five of the seven Items; the Agency's renewed motion addresses those Items as to which the Court denied summary judgment in its opinion dated August 3, 2012. *See* ECF No. 187.

BACKGROUND

By letter dated 7 February 2003, Plaintiffs submitted a FOIA request seeking various records pertaining to POW/MIAs from the Vietnam War era. *See* Shiner Decl. Ex. A. Plaintiffs filed their complaint in 2004.

In 2012, the CIA filed a renewed motion for summary judgment, attempting to address the remaining issues set forth in the Court's 12 November 2009 Order. On 3 August 2012, the Court granted that motion in part and denied it in part. *See* ECF No. 187. The Court ordered that the following issues remained outstanding: (a) the inadequate disposition of Item 5 referral

documents; (b) production of the names where Exemption 3 and 6 claims have been rejected; (c) the inadequate search for Item 5 documents; and (d) the inadequate search for Item 7 documents.

First, for Item 5, Plaintiffs requested:

> All 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 those persons who are on the Prisoner of War/Missing Personnel Office's List of persons whose primary next-of-kin (PNOK) have authorized the release of information concerning them.

Attachments to this item listed over 1,700 individuals pertaining to the request. The Court's 2012 Order notes that the CIA conducted a supplemental Item 5 search for "Capt. Peter Richard Mathes," finding seven responsive documents, all originating with other agencies. The Court's Order indicates that these seven documents were referred to the originating agencies but no response had been provided to Plaintiffs. The Court ordered the CIA to confirm in a supplemental filing that it had taken immediate affirmative steps to ensure that these seven referral documents were being processed.

Second, the Court's 2012 Order provides that the names and photographs must be produced where the CIA's Exemption 3 and 6 claims were rejected. For Exemption 3, the Court ordered that the 29 documents listed under ¶ 5B of the Tisdale Declaration must be released without the POW/MIA names redacted, or a declaration must be submitted to the Court specifying that the withheld names are not on the primary next of kin ("PNOK") list. For Exemption 6, Plaintiffs challenged the withholdings of three specific documents – C00942526, C00472096, and C00465780. For these three documents, the Court ordered the CIA to disclose the names of deceased individuals who were not CIA employees.

Third, in connection with Item 5, the Court held that the Agency's search was inadequate because: (a) the CIA searched its Classified Automated Declassification and Review Environment ("CADRE") system for only 31 of the 1,711 names; (b) the CIA did not search its

archived records; and (c) the CIA had erroneously stated that it had searched the systems "most likely" to contain responsive documents rather than "all systems that are likely to produce responsive documents."

Finally, for Item 7, Plaintiffs requested:

> All records on or pertaining to any search conducted regarding any other requests for records pertaining to Vietnam War POW/MIAs, including any search for such records conducted in response to any request by a Congressional Committee or executive branch agency.

The CIA previously searched its CIA Automatic Declassification and Release Environment ("CADRE") system for documents requested by other federal agencies that concerned POW/MIAs and found no responsive documents. In its 2012 Order, the Court instructed the Agency to also search "all systems likely to contain responsive documents" pertaining to any search conducted regarding any congressional committee requests related to Vietnam War POW/MIAs.

In connection with Item 7, the Court also noted in that the CIA previously provided Plaintiffs with documents that reference other specific responsive records that had not been produced. The Court ordered the CIA to show that it has conducted a reasonable good-faith search for the missing attachments, enclosures, photographs, and reports mentioned in the following 14 documents: C00482286; C00465737; C00482286; C00492378; C00492397; C00492546; C00478688; C00492526; C00471978; C00478651; C00492461; C00492546; C00472096; and C00483710.

As explained below, the CIA has now met its burden with respect to each of these outstanding issues, and summary judgment therefore is warranted in its favor.

LEGAL STANDARD

Summary judgment is appropriate when the pleadings and evidence "show[] that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Tao v. Freeh*, 27 F.3d 635, 638 (D.C. Cir. 1994). The party seeking summary judgment must demonstrate the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 248. A genuine issue of material fact is one that "might affect the outcome of the suit under the governing law." *Anderson*, 477 U.S. at 248. Once the moving party has met its burden, the nonmoving party "may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 248.

The "vast majority" of FOIA cases are decided on motions for summary judgment. *See Brayton v. Office of U.S. Trade Rep.*, 641 F.3d 521, 527 (D.C. Cir. 2011); *Media Research Ctr. v. U.S. Dep't of Justice*, 818 F. Supp. 2d 131, 136 (D.D.C. 2011) ("FOIA cases typically and appropriately are decided on motions for summary judgment."); *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Labor*, 478 F. Supp. 2d 77, 80 (D.D.C. 2007) ("*CREW*"). An agency may be entitled to summary judgment in a FOIA case if it demonstrates that no material facts are in dispute, it has conducted an adequate search for responsive records, and each responsive record that it has located either has been produced to the plaintiff or is exempt from disclosure. *See Weisberg v. Dep't of Justice*, 627 F.2d 365, 368 (D.C. Cir. 1980). To meet its burden, a defendant may rely on reasonably detailed and non-conclusory declarations. *See McGehee v. C.I.A.*, 697 F.2d 1095, 1102 (D.C. Cir. 1983); *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert denied*, 415 U.S. 977 (1974); *Media Research Ctr.*, 818 F. Supp. 2d at 137. "[T]he Court may award summary judgment solely on the basis of information provided by the

department or agency in declarations when the declarations describe 'the documents and the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.'" *CREW*, 478 F. Supp. 2d at 80 (quoting *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981)). "[A]n agency's justification for invoking a FOIA exemption is sufficient if it appears 'logical' or 'plausible.'" *Media Research Ctr.*, 818 F. Supp. 2d at 137 (quoting *Larson v. Dep't of State*, 565 F.3d 857, 862 (D.C. Cir. 2009)).

ARGUMENT

The CIA's processing of plaintiffs' FOIA request has faithfully adhered to President Obama's directive that, "[i]n the face of doubt, openness prevails." *Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act*, 74 Fed. Reg. 4683 (Jan. 21, 2009). Over the course of this litigation, the CIA has made discretionary releases of thousands of documents. Of the records released, approximately 80 percent were released in full, whereas only 45 documents were denied in full. Those relatively few denied-in-full records were withheld primarily under Exemptions 1, 3, and 5, exemptions that, by nature, often preclude word-by-word redactions. For the records that were released in part, plaintiffs identified 84 records for the CIA to include in a *Vaughn* index. In an effort to limit, or perhaps eliminate, any remaining disputes in this long-running case, the CIA compiled the sample *Vaughn* and provided it to plaintiffs on multiple occasions and in multiple formats, but the Agency's efforts at conciliation were not rewarded – plaintiffs declared flatly that they intended to challenge each and every withholding the CIA asserted.

At this late date, as explained below, summary judgment is warranted in the Agency's favor as to all outstanding records.

I. REFERRALS TO DOD AND NSA

As explained in the Court's 2012 Order, the Agency conducted a supplemental Item 5 search in 2011 for "Capt. Peter Richard Mathes," finding seven responsive documents, all originating with other agencies – specifically the Department of Defense ("DOD") and the National Security Agency ("NSA"). CIA sent referral letters to these two agencies in September 2011 for direct response to Plaintiffs, and were directed in the 2012 Order to take steps to ensure the referrals were being processed by DOD and NSA. Consistent with the Order, CIA followed up with both agencies, notifying the Court in its November 2012 Status Report that NSA had sent an update to Plaintiffs on 5 October 2012 and DOD planned to have its review completed no later than December 2012. Based on subsequent interactions with Plaintiffs and the agencies, it is CIA's understanding that this issue has been resolved. *See* Shiner Decl. ¶ 16. Accordingly, the CIA has met its burden as to the handling of those records.

II. RELEASE OF NAMES

In its 2012 Order, the Court held that one of the outstanding issues was the production of the names where CIA's Exemption 3 and 6 claims were rejected.

Regarding Exemption 3, 50 U.S.C. § 435 requires the Primary Next of Kin ("PNOK") to give written consent to the release of information concerning a POW/MIA's treatment, location, or condition. The Court found that there was a genuine issue of material fact regarding whether DOD had consulted the PNOK list before redacting the names from the 29 documents listed under ¶ 5B of the Roland D. Tisdale Declaration. Accordingly, the Court held that the 29 documents must be released without the POW/MIA names redacted, or a declaration must be submitted to the Court specifying that the withheld names are not on the PNOK list. To address this outstanding issue, DOD's Roland D. Tisdale submitted a supplemental declaration on 23 August 2012 clarifying and confirming that he had in fact consulted the PNOK list prior to

making redactions of the missing persons' names and only redacted the names for which written consent had not been provided. *See* ECF No. 188. That clarification having been made, summary judgment is warranted.

For Exemption 6, the Court's 2012 Order granted the CIA's motion for summary judgment except for redactions concerning the names of non-CIA employees. By letter dated 20 November 2012, the Agency informed Plaintiffs that it had lifted the redactions of the non-CIA names from the three CIA documents being challenged by Plaintiffs (C00465780, C00472096 and C00492526), and released the new versions of these three documents to Plaintiffs. *See* Shiner Decl. ¶ 19. Summary judgment therefore is warranted as to these records.

III. THE CIA CONDUCTED A THOROUGH SEARCH FOR RECORDS RESPONSIVE TO ITEMS 5 AND 7 OF PLAINTIFFS' REQUEST

A. Legal Standard

An agency's search for records in the context of a FOIA case is adequate if it was "reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (internal quotation marks omitted); *see Oglesby*, 920 F.2d at 68 ("[T]he agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested."). 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). A search is inadequate only if the agency fails to "show, with reasonable detail, that the search method . . . was reasonably calculated to uncover all relevant documents," *Oglesby*, 920 F.2d at 68. An agency may prove the adequacy of its search through a reasonably detailed declaration. *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982).

B. The CIA Conducted A Search For Item 5 Records That Was Reasonably Calculated To Locate All Responsive Records

1. Description of the Search

In its 2012 Order, the Court held that the Agency's Item 5 search was inadequate because: (a) CIA searched its CADRE system for only 31 of the 1,711 names provided by Plaintiffs; (b) the CIA did not search its archived records; and (c) the CIA had erroneously stated that it had searched the systems "most likely" to contain responsive documents rather than "all systems that are likely to produce responsive records." *See* ECF No. 187.

With regard to the adequacy of the CIA's search, the CIA previously indicated that CADRE and archived records are the two systems "most likely" to contain responsive records. By saying this, however, the CIA did not intend to erroneously suggest that it had excluded other record systems or databases that are also "likely" to contain responsive records. Nonetheless, given the historical nature of the requested documents, CIA has reconsidered the matter and determined that CADRE and archived records are in fact the only systems likely to contain responsive records. Thus, as described below, the CIA searches of CADRE and archived records constitute CIA's good-faith effort to search all records systems likely to produce responsive documents. *See* Shiner Decl. ¶ 21.

a. AARC Search

Consistent with the Court's 2012 Order, the CIA has conducted a reasonable search of the Agency Archives and Records Center ("AARC") for records on the 1,711 individuals. As outlined in the 28 June 2013 Status Report, the Agency queried an electronic database which contains an automated inventory of records retired to the AARC. Personnel from the Agency's records management and technology group conducted Boolean searches for each of the names provided by Plaintiffs. An expansion character was used to ensure all variations of the names

were retrieved (e.g., for "Roger Hall" the searches "roger%hall%" and "hall%, roger%" were conducted). These broad searches yielded approximately 16,500 hits. Personnel reviewed these search results for any false hits that did not match the names provided (e.g., excluding "Roger Hallman" or "Hallan Rogers") and did not search operational files which are exempt from search and review pursuant to the CIA Information Act of 1984, 50 U.S.C. § 431(a). From this initial search, the response was narrowed to 569 hard copy folders associated with 204 individuals. It was later determined that 114 of those folders had been properly destroyed in accordance with the CIA's records control schedule. At the AARC, designated search staff located and retrieved the boxes containing the remaining folders and "hits" compiled from the electronic search. The search team manually reviewed each folder, page-by-page, to determine responsiveness. Files were found responsive if the names matched those provided by Plaintiffs and contained information indicating the individual was a POW/MIA or possessed a connection to Southeast Asia. As a result, the search team located 46 responsive folders, representing eleven names on Plaintiffs' list, six of whom are Air America employees. The 46 responsive folders contained approximately 10,000 pages. *See* Shiner Decl. ¶ 22.

After the AARC search team completed its search, information review specialists in the LIRO reviewed each document contained in the 46 responsive folders. LIRO identified material Plaintiffs previously agreed to exclude from production.[1] The remaining responsive documents were processed for possible public release, as described below. *See* Shiner Decl. ¶ 23.

b. CADRE Search

Pursuant to the Court's 2012 Order, the CIA searched CADRE for responsive records on all 1,711 names provided by Plaintiffs, not just the 34 names that included additional information

[1] At the status conference held on July 2, 2013, Plaintiffs agreed to exclude from the search personnel records with minimal public interest value.

such as birthdate and/or social security numbers. Due to the volume of hits, the LIRO staff conducted an initial review of the document title (*e.g.*, looking for key words such as "POW/MIA," "Prisoner," "Vietnam," "Laos," "Southeast Asia," "Cambodia," and "Viet Cong") and date (documents dated before 1959 were deemed non-responsive as U.S. involvement in the war began that year) to help rule out false hits. If there was uncertainty as to the whether a document was potentially responsive, it was reviewed in its entirety. After this initial review, the LIRO team then reviewed each of the remaining documents, page-by-page, to determine responsiveness. Ultimately, LIRO identified 208 responsive documents, although some of them had already been previously released to Plaintiffs in this case. *See* Shiner Decl. ¶ 24.

2. The CIA's release

After completing both the AARC and CADRE searches outlined above, CIA released over 500 documents to Plaintiffs. *See* Shiner Decl. ¶ 25.

C. The CIA Conducted A Search For Item 7 Records That Was Reasonably Calculated To Locate All Responsive Records

1. Searches for Congressional Committee Reports

Regarding Item 7, in its 2012 Order, the Court stated that the CIA's search of CADRE was insufficient and, "summary judgment cannot be granted until it searches for all records on or pertaining to any search conducted regarding any congressional committee requests pertaining to Vietnam War POW/MIAs, in all systems likely to contain responsive documents, and provides plaintiffs with all non-exempt records and photographs." Because these documents specifically relate to responses to congressional requests, the Agency determined that the Office of Congressional Affairs and the Office of the Director of the CIA were the two offices likely to contain responsive records. Accordingly, the Agency searched both of these offices using the following search terms with no date parameters: "Missing in Action", "MIA", "Missing",

"POW/MIA", "POW-MIA", "Prisoner(s) of War," "POW", "Prisoners", "War", "Vietnam War," and "Vietnam." As a result of this search, the CIA identified 260 responsive documents. In 2013 and 2014, the Agency released over 200 documents to Plaintiffs. *See* Shiner Decl. ¶ 26.

2. Missing Attachments, Enclosures, Photographs, Reports

In connection with Item 7, the Court also noted in its 2012 Order that the CIA previously provided Plaintiffs with documents that reference other specific responsive records that had not been produced. The Court ordered the CIA to show that it has conducted a reasonable good-faith search for the missing attachments, enclosures, photographs, and reports mentioned in the following 14 documents: C00482286; C00465737; C00482286; C00492378; C00492397; C00492546; C00478688; C00492526; C00471978; C00478651; C00492461; C00492546; C00472096; and C00483710. *See* Shiner Decl. ¶ 27.

In the fall of 2012, the Agency conducted a thorough search of its records repository and located attachments referenced in the documents noted above. In a letter dated 20 November 2012, the Agency informed Plaintiffs about the additional searches and released all of the attachments found, redacting portions based on exemptions 1, 3, and 6 (redacting intelligence sources and methods, names of CIA employees and military personnel, and signatures). The Agency also removed the SECRET stamp from C00492526, which was an incorrect classification and released an updated version of the document with fewer redactions. An updated version of document C00465780 was also found and sent to Plaintiffs, with its accompanying attachment. *See* Shiner Decl. ¶ 28.

IV. THE CIA CORRECTLY APPLIED EXEMPTIONS AND RELEASED TO PLAINTIFFS ALL RECORDS TO WHICH THEY WERE ENTITILED

"Under FOIA, an agency is obligated to produce requested information unless it falls under one of the Act's nine exemptions." *Reliant Energy Power Generation Inc. v. Fed. Energy*

Regulatory Comm'n, 520 F. Supp.2d 194, 200 (D.D.C. 2007) (*citing U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 150-51 (1989)). The agency bears the burden of demonstrating that the documents it has withheld fall into one of the enumerated exemptions. 5 U.S.C. § 552(a)(4)(B); *see also Natural Res. Defense Council, Inc. v. Nuclear Regulatory Comm'n*, 216 F.3d 1180, 1190 (D.C. Cir. 2000). Document-by-document withholdings are explained in the *Vaughn* indexes attached to the Shiner declaration. *See* Shiner Decl. at Exs. B (Released in Part), C (Denied in Full).

As a result of the Item 5 and Item 7 searches conducted in response to the Court's 2012 Order and described above, the Agency has processed and released – either in-full or in-part – over 750 additional responsive documents to Plaintiffs. In 2014, the parties agreed that the Agency would provide a sample *Vaughn* index of the newly located release-in-part documents. Given the opportunity to identify up to 100 documents, Plaintiffs ultimately selected 86 of the documents released-in-part since the 2012 Order for inclusion in the sample *Vaughn* index. Because two of the 86 documents are duplicates, the CIA's sample *Vaughn* index, which is attached as Exhibit B to the Shiner Decl., covers only 84 documents, with the duplications noted in the index. In addition, in February 2016, the CIA provided Plaintiffs with a separate *Vaughn* index of all documents that have been denied-in-full throughout the duration of this case.

Denied-in-Full Vaughn Index (Shiner Decl. Ex. C). The vast majority of the responsive records identified in this case – approximately 80 percent – were released in full. Only 45 documents were denied in full. The attached *Vaughn* index for the denied-in-full documents describes what the documents are and what information was withheld under FOIA Exemptions 1, 3, 5, and 6. Exemptions 1 and 3 were asserted for almost all of the DIF documents to protect the names of Agency employees and their signatures, office locations, and phone numbers (entry numbers 1-3, 5-22, 24-34, 36-45) as well as to prevent disclosure that would reveal intelligence

sources, methods and activities and/or would harm foreign relations and activities of the United States (entry numbers 2-12, 15-45). Documents denied-in-full were properly classified as SECRET because releasing the information could reasonably be expected to cause serious damage to national security.

Exemption 5 was also asserted for many of the DIF documents to protect pre-decisional intra-agency analysis and recommendations (entry numbers 1,2,5,6,7,9, 11, 12, 13, 14, 20, 21, 23, 25, 32, 34, 35). *See* Shiner Decl. ¶ 31. Similarly, Exemption 6 was applied to several of the denied-in-full documents to protect the names, signatures, and identifying information of third parties not employed by the Agency, members of Congress, and military personnel (entry numbers 18, 19, 22, 31, 33). *See* Shiner Decl. ¶ 32.

Released-in-Part (Sample) Vaughn Index (Shiner Decl. Ex. B). As noted, 84 of the newly released-in-part documents are contained in a sample *Vaughn* index. Like the denied-in-full documents, information was withheld from these released-in-part documents based on Exemptions 1, 3, 5, and 6. The Agency made minimal redactions, only withholding information which would reveal names and personal information of CIA employees, intelligence sources, methods and activities and/or harm foreign relations and activities of the United States (entry numbers 2-35, 37-68, 70-86), disclose internal, deliberative agency processes (entry numbers 26, 62, 79), or disclose personal information of third party individuals whose privacy interest outweighs the interest of public disclosure (entry numbers 1-3, 7, 9-10, 13-14, 18-19, 22-24, 26-27, 31-32, 35-37, 43, 45-46, 48-50, 53-57, 62-63, 66, 68-77, 79-80, 83, 86). *See* Shiner Decl. ¶ 33.

As described below, each of the CIA's withholdings was as narrow as possible and was fully consistent with a FOIA Exemption. The CIA refers the Court to the *Vaughn* indexes for specific withholding explanations; the legal discussion below analyzes the types of withholdings

asserted and gives examples, but is not meant to be an exhaustive treatment of each record at issue.

A. The CIA Properly Invoked Exemption 1

a. Legal Standard

FOIA Exemption 1 provides that agencies are not required to produce 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). As explained below, the Exemption 1 withholdings in the responsive documents set forth in the two *Vaughn* indexes satisfy the procedural and substantive requirements of Executive Order 13526.

b. Application

1. Procedural requirements

Section 1.1(a) of Executive Order 13526 provides that information may be originally classified only if all of the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S. Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of Executive Order 13526; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in some level of damage to the national security, and the original classification authority is able to identify or describe the damage. Each of these criteria has been met for the CIA information at issue here.

Original Classification Authority. Pursuant to a written delegation of authority in accordance with Executive Order 13526, Shiner, the CIA's declarant, holds original classification authority at the TOP SECRET level. Therefore, she is authorized to conduct

classification reviews and to make original classification decisions. She has determined that the records described above that are responsive to the Plaintiff's request are currently and properly classified at the TOP SECRET, SECRET, and CONFIDENTIAL levels. *See* Shiner Decl. ¶ 36.

U.S. Government information. The information at issue is owned by the U.S. Government, was produced by or for the U.S. Government, and is under the control of the U.S. Government. *See* Shiner Decl. ¶ 37.

Classification Categories in Section 1.4 of the Executive Order. As for the categories of information listed in section 1.4 of the Executive Order, Shiner determined that certain of the responsive records at issue contain information concerning sections 1.4(c) ("intelligence activities (including covert action) [and] intelligence sources or methods") and/or 1.4(d) ("foreign relations or foreign activities of the United States"). *See* Shiner Decl. ¶ 38.

Damage to the National Security. The unauthorized disclosure of the classified information at issue in this case reasonably could be expected to result in damage, serious damage, or in some cases, exceptionally grave damage to the national security. Section 1.2(a) of Executive Order 13526 provides that information shall be classified at one of three levels if the unauthorized disclosure of the information reasonably could be expected to cause damage to the national security and the original classification authority is able to identify or describe the damage. Information shall be classified TOP SECRET if its unauthorized disclosure reasonably could be expected to result in exceptionally grave damage to the national security; SECRET if its unauthorized disclosure reasonably could be expected to result in serious damage to the national security; and CONFIDENTIAL if its unauthorized disclosure reasonably could be expected to result in damage to the national security. As described more fully below, Shiner determined that the unauthorized disclosure of the classified information at issue in this case reasonably could be

expected to cause damage, serious damage, or in some cases exceptionally grave damage to U.S. national security. *See* Shiner Decl. ¶ 39.

Proper Purpose. As required by Executive Order 13526, § 1.7(a), Shiner has stated under penalty of perjury that the information at issue has not been classified to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interests of national security. *See* Shiner Decl. ¶ 40.

Marking. The documents are properly marked in accordance with section 1.6 of the Executive Order. *See* Shiner Decl. ¶ 41.

2. Substantive requirements

Shiner is familiar with the records at issue and avers that, with respect to information relating to CIA intelligence activities, sources, and methods; and with respect to foreign relations and activities, and for which FOIA Exemption 1 is asserted, she determined that this information has been classified in accordance with the substantive and procedural requirements of Executive Order 13526, and that this information is currently and properly classified. *See* Shiner Decl. ¶ 42.

In general, the information being withheld in the documents at issue implicates intelligence sources and methods, intelligence activities, and the foreign relations and activities of the United States. More specifically, the information, if disclosed, would reveal the Agency's presence in certain foreign countries, the location and undisclosed details of certain covert operations, intelligence collection techniques, and clandestine relationships with certain foreign governments. This information is classified as its unauthorized disclosure could reasonably be expected to result in damage, serious damage or exceptionally grave damage to the national security. *See* Shiner Decl. ¶ 43.

Intelligence Sources. Some of the information at issue relates to intelligence sources. One of the core functions of the CIA is to collect foreign intelligence from around the world for the President and other United States Government officials to use in making policy decisions. To accomplish this function, the CIA must rely on information from knowledgeable sources that the CIA can obtain only under an arrangement of absolute secrecy. Intelligence sources will rarely furnish information unless they are confident that they are protected from retribution or embarrassment by the confidentiality surrounding the source-CIA relationship. In other words, intelligence sources must be certain that the CIA can and will do everything in its power to prevent the public disclosure of their association with the CIA. *See* Shiner Decl. ¶ 44.

The CIA relies on clandestine human sources – often called "assets" – to collect foreign intelligence, and it does so with the promise that the CIA will keep their identities and their relationships with the CIA secret. This is because the revelation of this secret relationship could harm the individual and inhibit the CIA's ability to collect foreign intelligence from that individual and others in the future. When a foreign national abroad cooperates with the CIA, for example, it is often without the knowledge of his or her government or organization, and the consequences of the disclosure of this relationship can be swift and far-ranging, from economic reprisals to harassment, imprisonment, or death. In addition, such disclosure may place in jeopardy the lives of every individual with whom the foreign national has had contact, including his or her family and associates. *See* Shiner Decl. ¶ 45.

Another type of CIA source is a "liaison relationship." A liaison relationship is a cooperative and secret relationship between the CIA and an entity of a foreign government. Most CIA liaison relationships involve a foreign country's intelligence or security service. Liaison relationships between the CIA and other foreign intelligence services or government entities are initiated and continued only on the basis of a mutual trust and understanding that the

existence and details of such liaison arrangements will be kept in the utmost secrecy. The CIA's liaison relationships are critical and extremely sensitive. Accordingly, officially acknowledging foreign liaison information – or even the existence of a particular liaison relationship – can undermine a foreign government's trust in the CIA's ability to protect their sensitive intelligence information. *See* Shiner Decl. ¶ 46.

Additionally, in many foreign countries, cooperation with the CIA is not a popular concept. If a foreign liaison service's cooperation with the CIA were to be officially confirmed by the CIA, then that service and government could face a popular backlash that reasonably could be expected to reduce or eliminate the information-sharing relationship with the CIA. This, in turn, reasonably could be expected to damage U.S. national security. *See* Shiner Decl. ¶ 47.

Intelligence Methods. The information at issue also implicates intelligence methods. Intelligence methods are the means by which an intelligence agency accomplishes its objectives. Intelligence methods must be protected in situations where a certain capability or technique or the application thereof is unknown to others, such as a foreign intelligence service or terrorist organization, which could take countermeasures. Secret information collection techniques are valuable from an intelligence-gathering perspective only so long as they remain unknown and unsuspected. Once the nature of an intelligence method or the fact of its use in a certain situation is discovered, its usefulness in that situation is neutralized and the CIA's ability to apply that method in other situations is significantly degraded. *See* Shiner Decl. ¶ 48.

The CIA must do more than prevent explicit references to intelligence methods; it must also prevent indirect references that would tend to reveal the existence (or non-existence) of such methods. One vehicle for gathering information about the capabilities of the CIA is by reviewing officially-released information. The CIA is aware that terrorist organizations and

other hostile groups have the capacity and ability to gather information from myriad sources, analyze it, and deduce means and methods from disparate details in order to defeat the CIA's collection efforts. Thus, even seemingly innocuous, indirect references to an intelligence method could have significant adverse effects when juxtaposed with other publicly-available data. *See* Shiner Decl. ¶ 49.

Intelligence methods include the use of human assets and liaison relationships, described above. Intelligence methods also include the CIA's selection of targets for intelligence collection or operational activities. When a foreign intelligence service or adversary nation learns that a particular foreign national or group has been targeted for intelligence collection by the CIA, it will seek to glean from the CIA's interest what information the CIA has received, why the CIA is focused on that type of information, and how the CIA will seek to use that information for further intelligence collection efforts and clandestine intelligence activities. If terrorist groups, foreign intelligence services, or other hostile entities were to discover what the CIA has or has not learned about certain individuals or groups, this information could be used against the CIA to thwart future intelligence operations, jeopardize ongoing human sources, and otherwise derail the CIA's intelligence collection efforts. Finally, intelligence methods include specific technical capabilities and the financial resources to effectively implement those capabilities. *See* Shiner Decl. ¶ 50.

Intelligence Activities. The information being withheld in this case also concerns clandestine intelligence activities, which lie at the heart of the CIA's mission. Intelligence activities refer to the actual implementation of intelligence sources and methods in the operational context. Accordingly, the discussion above of the harm to national security stemming from the disclosure of "sources and methods" applies with equal force to the disclosure of "intelligence activities." An acknowledgment of information regarding specific

intelligence activities can reveal the CIA's specific intelligence capabilities, authorities, interests, and resources, allowing hostile groups to use the information to attack the U.S. and its interests. *See* Shiner Decl. ¶ 51.

U.S. Foreign Relations. Finally, some of the material being withheld would reveal information concerning U.S. foreign relations and foreign activities, the disclosure of which reasonably can be expected to harm the national security. In carrying out its legally authorized intelligence activities, the CIA engages in activities which, if officially confirmed, reasonably could be expected to cause damage to U.S. relations with affected or interested nations. Although it is generally known that the CIA conducts clandestine intelligence operations, identifying an interest in a particular matter or publicly disclosing a particular intelligence activity could cause the affected or interested foreign government to respond in ways that would damage U.S. national interests. An official acknowledgement that the CIA possesses the requested information could be construed by a foreign government, whether friend or foe, to mean that the CIA has operated within that country's borders or has undertaken certain intelligence operations against its residents. Such a perception could adversely affect U.S. foreign relations with that nation. *See* Shiner Decl. ¶ 52.

Exemption from Automatic Declassification at 25 Years. Executive Order 13526 provides that all classified records that are more than 25 years old and otherwise have been determined to have permanent historical value shall be automatically declassified. Such information, however, is exempt from automatic declassification per §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." As explained below, the denied-in-full and released-in-part documents, outlined in the accompanying *Vaughn* indexes, that are older than 25 years, are exempt from automatic declassification pursuant to the Executive Order.[2] *See* Shiner Decl. ¶ 53.

As part of the Agency's processing of FOIA and Privacy Act requests, information responsive to FOIA requests is reviewed to determine whether the information is currently and properly classified. *See* Shiner Decl. ¶ 54.

Shiner determined that the information withheld pursuant to FOIA Exemption 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. 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 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. 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. *See* Shiner Decl. ¶ 55.

Additionally, release of the withheld information would impair the effectiveness of CIA intelligence methods, many of which remain in use today. As noted above, the documents describe 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. These

[2] Five of the documents included in the denied-in-full Vaughn index are undated; having been unable to discern the true date of these documents, Shiner used the analysis applicable to documents older than 25 years.

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. In sum, Shiner reasonably determined that the classified information at issue that is older than 25 years remains currently and properly classified and, therefore, exempt from disclosure pursuant to Exemption 1. *See* Shiner Decl. ¶ 56.

B. The CIA Properly Invoked Exemption 3

1. Legal standard

FOIA Exemption 3 provides that 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." 5 U.S.C. § 552(b)(3). The sole issue for decision "is the existence of a relevant statute and the inclusion of withheld material within the statute's coverage." *Morley v. CIA*, 508 F.3d 1108, 1126 (D.C. Cir. 2007).

2. Application

Some of the information at issue in this case is exempted from disclosure under the Central Intelligence Agency Act of 1949 and/or National Security Act, as discussed below. *See* Shiner Decl. ¶ 57.

Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507 (the "CIA Act"), provides that the CIA shall be exempted from the provisions of "any other law" (in this case, FOIA) which requires the publication or disclosure of, the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. Accordingly, under Section 6, the CIA is exempt from disclosing information relating to employees' names and personal identifiers (for example, employee signatures or identification numbers, titles and

internal organizational data). The CIA Act therefore constitutes a federal statute that "establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). Many of the documents at issue contain information concerning the organization, names, or official titles of personnel employed by the CIA, the disclosure of which the CIA Act expressly prohibits. *See* Shiner Decl. ¶ 58.

Additionally, Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024 (the "National Security Act"), which provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure," applies to certain responsive records. The National Security Act is a well-recognized Exemption 3 withholding statute that both refers to particular types of matters to be withheld, and "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). *See CIA v. Sims*, 471 U.S. 159, 167 (1985) (holding that the National Security Act qualifies as a withholding statute under Exemption 3). Under the direction of the DNI pursuant to section 102A of the National Security Act, as amended, and in accordance with Section 6 of the CIA Act of 1949, as amended, and sections 1.6(b) and 1.6(d) of Executive Order 12333,[3] the Director of the CIA is responsible for protecting CIA intelligence sources and methods from unauthorized disclosure. Accordingly, the CIA relies on the National Security Act to withhold information that would reveal intelligence sources and methods and their application. The National Security Act's statutory requirement to protect intelligence sources and methods does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized

[3] Section 1.6(d) of Executive Order 12333, as amended by Executive Order 13470 (July 30, 2008), requires the Director of the Central Intelligence Agency to "[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure . . . ."

disclosure. *See* Shiner Decl. ¶ 59. That is because "the congressional intent to withhold is made manifest in the withholding statute itself." *Fitzgibbon v. CIA*, 911 F.2d 755, 762 (1990).

The Supreme Court and D.C. Circuit have described the scope of Exemption 3 as "sweeping." *Id.* at 764. In considering its contours with respect to intelligence sources and methods, courts "accord substantial weight and due consideration to the CIA's affidavits." *Id.* (citing *King v. DOJ*, 830 F.2d 210, 217 (D.C. Cir. 1987)). The exemption extends to any material that "relates to" intelligence sources and methods. *Id.*. With respect to intelligence sources, it does not matter that a certain contact between the CIA and a foreign official might be considered "nonsensitive," because "apparently innocuous information can be protected and withheld." *Id.* (citing *Sims*, 471 U.S. at 176. Indeed, "information from ordinary private citizens – information from contacts that are as 'nonsensitive' as any imaginable – is a vital part of the Agency's congressionally-mandated function and indeed composes 'one of the greatest repositories of intelligence that we have.'" *Id.* Even unwitting and potential sources are exempt from disclosure. *Id.* at 762.

Exemption 3 permits similarly broad withholding to protect intelligence methods. In *Fitzgibbon*, the Court upheld the withholding of even information related to intelligence methods that is considered "so basic and innocent that its release could not harm the national security or betray a CIA method." 911 F.2d at 762. The Supreme Court has emphasized that it is not the province of the judiciary to determine whether a method should be (or should not be) disclosed:

> [I]t is the responsibility of the Director of Central Intelligence, not that of the judiciary, to weigh the variety of complex and subtle factors in determining whether disclosure of information may lead to an unacceptable risk of compromising the Agency's intelligence-gathering process.

Sims, 471 U.S. at 180. For that reason, it is insufficient to argue that an intelligence method must be disclosed if widely known – in considering potential harm, courts "must take into

account . . . that each individual piece of intelligence information, much like a piece of jigsaw puzzle, may aid in piecing together other bits of information even when the individual piece is not of obvious importance itself." *Fitzgibbon*, 911 F.2d at 763 (quoting *Gardels v. CIA*, 689 F.2d 1100, 1106 (D.C. Cir. 1982)).

In this case, the protections of the National Security Act apply to the same information for which Exemption 1 was asserted as well as other information that would reveal sources and methods of the Agency, such as techniques used by the CIA to assess and evaluate intelligence and the sources of intelligence information. As indicated above, although no harm rationale is required, the release of this information could significantly impair the CIA's ability to carry out its core missions of gathering and analyzing foreign intelligence. *See* Shiner Decl. ¶ 60.

C. The CIA Properly Invoked Exemption 5

1. Legal Standard

Exemption 5 of the FOIA protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). This exemption shields documents of the type that would be privileged in the civil discovery context, including materials protected by the attorney-client privilege, the attorney work-product privilege, and the executive deliberative process privilege. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975); *see Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1113 (D.C. Cir. 2004); *Rockwell Intern. Corp. v. DOJ*, 235 F.3d 598, 601 (D.C. Cir. 2001).

Documents covered by the deliberative process privilege and exempt under Exemption 5 include those "'reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.'" *Sears, Roebuck*, 421 U.S. at 150 (quoting *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318, 324

(D.D.C. 1966)); *see McKinley v. FDIC*, 744 F. Supp. 2d 128, 137-38 (D.D.C. 2010). As the Supreme Court has explained:

> The deliberative process privilege rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government.

Department of the Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 8-9 (2001) (internal quotation marks and citations omitted).

The deliberative process privilege is designed to prevent injury to the quality of agency decisions by: (1) encouraging open, frank discussions on matters of policy between subordinates and superiors; (2) protecting against premature disclosure of proposed policies before they are adopted; and (3) protecting against public confusion that might result from the disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's decision. *See Sears, Roebuck*, 421 U.S. at 151-53; *Coastal States Gas Corp. v. U.S. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980); *Citizens for Responsibility and Ethics in Washington v. U.S. Dep't of Homeland Security*, 648 F. Supp. 2d 152, 156 (D.D.C. 2009); *FPL, supra*, 698 F. Supp. 2d 66, 81 (D.D.C. 2010). Examples of documents covered by the deliberative process privilege include recommendations, draft documents, proposals, suggestions, advisory opinions and other documents such as email messages, that reflect the personal opinions of the author rather than the policy of the agency or the give and take of the policy making process. *See Bloomberg, L.P. v. U.S. Securities and Exchange Commission*, 357 F. Supp. 2d 156, 168 (D.D.C. 2004).

To invoke the deliberative process privilege, an agency must show that the exempt document is both pre-decisional and deliberative. *Access Reports v. U.S. Dep't of Justice*, 926 F.2d 1192, 1194 (D.C. Cir. 1991); *Coastal States Gas*, *supra*, 617 F.2d at 868; *Tax Analysts v. IRS*, 117 F.3d 607, 616 (D.C.Cir.1997). For a document to be pre-decisional, it must be

antecedent to the adoption of an agency policy. *See Jordan v. U.S. Dep't of Justice*, 591 F.2d 753, 774 (D.C. Cir. 1978) (en banc); *see also In re Sealed Case*, 121 F.3d 729, 737 (D.C.Cir.1997) ("The deliberative process privilege does not shield documents that simply state or explain a decision the government has already made[.]"). To show that a document is pre-decisional, however, the agency need not identify a specific final agency decision; it is sufficient to establish "'what deliberative process is involved, and the role played by the documents at issue in the course of that process.'" *Heggestad v. United States Dep't of Justice*, 182 F. Supp. 2d 1, 7 (D.D.C. 2000) (quoting *Coastal States Gas, supra*, 617 F.2d at 868); *see Gold Anti-Trust Action Committee v. Board of Governors*, 2011 U.S. Dist. LEXIS 10319 at *22 (D.D.C., Feb. 3, 2011) ("*GATA*") ("even if an internal discussion does not lead to adoption of a specific government policy, its protection under Exemption 5 is not foreclosed as long as the document was generated as part of a definable decision-making process.").

A document is "deliberative" if it "'reflects the give-and-take of the consultative process.'" *McKinley*, 744 F. Supp. 2d at 138 (quoting *Coastal States Gas*, 617 F.2d at 866). Thus, "'pre-decisional materials are not exempt merely because they are pre-decisional; they also must be part of the agency give-and-take of the deliberative process by which the decision itself is made.'" *Jowett, Inc. v. U.S. Dep't of the Navy*, 729 F. Supp. 871, 875 (D.D.C. 1989) (quoting *Vaughn v. Rosen*, 523 F.2d 1136, 1144 (D.C Cir. 1975)). The privilege protects factual material if it is "inextricably intertwined" with deliberative material, *FPL*, 698 F. Supp. 2d at 81, or if disclosure "would 'expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.'" *Quarles v. Dep't of Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990)) (quoting *Dudman Communications Corp. v. Dep't of Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987)). "The 'key question' in identifying 'deliberative' material is whether disclosure of the information would

'discourage candid discussion within the agency.'" *Access Reports*, 926 F.2d at1195 (quoting *Dudman*, 815 F.2d at 1567-68).

2. Application

In this case, all of the documents for which Exemption 5 was asserted have either been circulated within the Agency, and therefore satisfy the intra-agency threshold, or have been circulated between agencies, thereby satisfying the inter-agency threshold. As described in the attached *Vaughn* indexes, the CIA determined that the information for which Exemption 5 was asserted is protected by the deliberative process privilege. The CIA invoked the deliberative process privilege to withhold draft versions of various memoranda, letters, charts and other documents which contain comments or handwritten notes, made in connection with inter and intra-agency pre-decisional discussions. Disclosure of these drafts would inhibit the frank communications and the free exchange of ideas that the privilege is designed to protect, and would hamper the ability of Agency personnel to candidly discuss, debate, and provide assessments of the facts. *See* Shiner Decl. ¶ 62.

D. The CIA Properly Invoked Exemption 6

1. Legal Standard

Exemption 6 permits the withholding of "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The term "similar files" is broadly construed and includes "[g]overnment records on an individual which can be identified as applying to that individual." *U.S. Dep't of State v. Wash. Post Co.*, 456 U.S. 595, 602 (1982); *Lepelletier v. Fed. Deposit Ins. Corp.*, 164 F.3d 37, 47 (D.C. Cir. 1999) ("The Supreme Court has interpreted the phrase 'similar files' to include all information that applies to a particular individual."); *Govt. Accountability Project v. U.S. Dep't of State*, 699 F. Supp. 2d 97, 105-06 (D.D.C. 2010). In

assessing the applicability of Exemption 6, courts weigh the "privacy interest in non-disclosure against the public interest in the release of the records in order to determine whether, on balance, the disclosure would work a clearly unwarranted invasion of personal privacy." *Lepelletier*, 164 F.3d at 46; *Chang v. Dep't of Navy*, 314 F. Supp. 2d 35, 43 (D.D.C. 2004). "[T]he only relevant public interest in the FOIA balancing analysis [is] the extent to which disclosure of the information sought would 'she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know 'what their government is up to.'" *Lepelletier*, 164 F.3d at 47 (quoting *U.S. Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 497 (1994)) (alterations in original); *Beck v. Dep't of Justice*, 997 F.2d 1489, 1492 (D.C. Cir. 1993) (quoting *Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)). "Information that 'reveals little or nothing about an agency's own conduct' does not further the statutory purpose." *Beck*, 997 F.2d at 1492.

2. Application

The CIA invoked FOIA Exemption 6 to withhold the names and personally-identifying details of individuals working in other government entities, personally identifying information of CIA employees, or names of individuals whose privacy interest outweighs public release of their information in relation to the subject matter of the document. The release of the identities of these individuals would not serve the core purpose of the FOIA, *i.e.*, informing the public about the operations or activities of the government. *See* Shiner Decl. ¶ 63. As described in the attached *Vaughn* indexes, the information at issue includes personal identifying information about private citizens including CIA employees and third parties not employed by the Agency. *See* Shiner Decl. ¶ 64.

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

this personal information would certainly violate the personal privacy of these persons, while identifying the specific individuals whose personal information is discussed would not serve the purpose of the FOIA. In some cases, names and information regarding military members have been redacted in the interest of national security[4] (*e.g.*, entry number 3 on the sample released-in-part *Vaughn* index). Likewise, individuals' signatures and names have been redacted as the public interest in that information is outweighed by the individuals' privacy interest. Public release of the names and identifying information could bring unwanted attention from the media or general public, especially in the social media age. *See* Shiner Decl. ¶ 65.

Because there is no qualifying public interest in disclosure, the release of this information would constitute a clearly unwarranted invasion of these individuals' personal privacy.

V. SEGREGATION

With regard to the denied-in-full documents, as described in this declaration and accompanying *Vaughn* index, the CIA determined that the documents did not contain any non-exempt, reasonably segregable material. This determination was based on a careful review of the documents, following a line-by-line review of each. *See* Shiner Decl. ¶ 67.

With respect to documents denied-in-full under Exemption 5, the nature of the exemption and the nature and content of the documents, comprised of internal pre-decisional deliberations, are such that there exists no information that is nonexempt which can be reasonably segregated. The documents were reviewed line-by-line and in all instances the character of the statements are an integral part of CIA's internal deliberative process. Any nonexempt information in these documents is either non-responsive to Plaintiffs' requests or is so inextricably intertwined that no portions can be reasonably segregated and released. *See* Shiner Decl. ¶ 68.

[4] In light of ever-increasing terrorist activities, names and personal information of military and Department of Defense civilians are generally protected pursuant to Exemption 6 for national security reasons.

In the instances where documents have been denied-in-full based on exemptions other than 5, the contents of the documents are such that any nonexempt information is either non-responsive to the Plaintiff's requests or is so inextricably intertwined with exempt information that release of the nonexempt information would produce only incomplete, fragmented, unintelligible phrases composed of isolated, meaningless words. Thus, no nonexempt information remains that reasonably could be segregated for release, and as a result, these documents must be withheld-in-full. *See* Shiner Decl. ¶ 69.

As explained above, and as described in the denied-in-part *Vaughn* index, partial withholdings also were tailored as closely as possible. For example, redactions under Exemption 6 were limited to names, signatures, and similar identifying information. *See* Shiner Decl. ¶ 65.

CONCLUSION

For the reasons set forth above, summary judgment should be granted in favor of the CIA.

Respectfully Submitted,

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