UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROBERT MOORE, *et al.*, Plaintiffs,	)	
v.	)	Civil Action No. 20cv1027 (RCL)
UNITED STATES CENTRAL INTELLIGENCE AGENCY Defendant.	)	

DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OMNIBUS OPPOSTION TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT AND AND FOR AN IN CAMERA INSPECTION

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REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR FOR SUMMARY JUDGMENT AND OMNIBUS OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AND MOTION FOR IN CAMERA INSPECTION

In this Freedom of Information Act ("FOIA") matter, the CIA is well-aware and sympathetic to the fact that some of the named plaintiffs have a strong and personal interest in the subject matter of the material sought by their FOIA request. Indeed, the CIA has been able to provide some unclassified material that has given Plaintiffs an understanding of what happened to U.S. Air Force Captain Harry Cecil Moore after he was shot down during the Korean War, *see* Declaration of Vanna Blaine ("Blaine Decl.") (ECF No. 21-2) at ¶¶ 9-17. *See also* Affidavit of Mark Sauter (ECF No. 25-2) and Affidavit of Robert Moore (ECF No. 25-3). But Plaintiffs also are seeking information regarding "clandestine and covert action" taken by the CIA in obtaining this information, as well as the source of that information and other highly sensitive matter, which the CIA has properly determined would reveal the identity of a confidential human 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; or would reveal information, including foreign government information, that would cause serious harm to relations between the United States and a foreign government, or to ongoing diplomatic activities of the United States. In their Opposition to Defendant's Motion for Summary Judgment and Cross-Motion for Summary Judgment ("Pl. Opp./Cross"), Plaintiffs make the conclusory and unsupported argument that the age of the material undermines the CIA's classification of information. But age alone, is insufficient to overcome the CIA's determinations that the information redacted or withheld should be classified. Because the CIA has an interest in protecting its sources of information and the methodology used to gain intelligence abroad, and because the CIA has

unquestionably complied with all review procedures for classification and/or declassification of information, including a determination regarding the historical value or public interest of the protected documents, Plaintiffs' claims here must fail, and the Court should enter judgment in favor of Defendant.

ARGUMENT

A. Plaintiffs Waived Any Challenge to the CIA's Search

As set forth in the Parties' representations to this Court, the sole issues in this FOIA lawsuit are the withholdings and redactions made by the CIA. ECF No. 20. *See also* ECF No. 21 at 3 ("The parties held subsequent discussions in an attempt to narrow the issues to be resolved by the Court. Counsel for Plaintiffs informed Defendant that Plaintiffs were objecting to the redactions and withholdings made by Defendant"). In their Opposition to Defendant's Motion for Summary Judgment and Cross-Motion for Summary Judgment ("Pl. Opp./Cross-Motion"), however, Plaintiffs argue an issue regarding the search for records, which was previously waived by them. *See* ECF No. 20. Interestingly, it was Plaintiffs who affirmatively limited the scope of the summary judgment proceedings to exclude the search for records. *Id.*

On October 15, 2021, counsel for Defendant contacted counsel for Plaintiffs by email to inquire if Plaintiffs had any issues with Defendant's responses. Declaration of AUSA Darrell C. Valdez ("AUSA Valdez Decl.") at ¶ 6; Def. Exh. J. In that same email communication, I advised counsel for Plaintiffs that I was making the inquiry "in an attempt to resolve or narrow any disputes before we ask for a summary judgment schedule." Def. Exh. J. Shortly thereafter, the parties held a telephone conference in an effort to discuss any issues that Plaintiffs had with the production. AUSA Valdez Decl. at ¶ 7. On that call, counsel for Defendant specifically asked counsel for Plaintiffs what issues Plaintiffs had with the Defendant's FOIA responses. *Id.* In

response, counsel for Plaintiffs stated that Plaintiffs' only issues were with the "redactions and withholdings" made by Defendant. *Id*. Counsel for Defendant then immediately drafted a Status Report stating that Plaintiffs were only challenging "the redactions and withholdings" made by Defendant and then sent the draft Status Report to counsel for Plaintiffs to confirm that it was correct. Def. Ex. J.; AUSA Valdez Decl. at ¶ 8. That same afternoon, counsel for Plaintiffs confirmed by email that the representations made in the Status Report was "perfect." Def. Exh. J; AUSA Valdez Decl. at ¶ 9. That draft Status Report was then converted to .pdf format and filed with the Court. ECF No. 20; AUSA Valdez Decl. at ¶ 10.

In reliance upon counsel's representation, Defendant filed its Motion for Summary Judgment confining its arguments solely to those issues identified by Plaintiffs. ECF No. 21. AUSA Valdez Decl. at ¶ 11. At no time prior to filing its Opposition/Cross-Motion for Summary Judgment did Plaintiffs ever notify counsel for Defendant that Plaintiffs had issue with the search or that its counsel was going to violate its agreement to limit the scope of the dispositive motions. AUSA Valdez Decl. at ¶ 12.

"Parties may either forfeit or waive their rights during the course of litigation. Forfeiture is the failure to make the timely assertion of a right; waiver is the intentional relinquishment or abandonment of a known right." *Am. Ctr. for Law & Justice v. Dep't of Justice*, 325 F. Supp. 3d 162, 167-68 (D.D.C. 2018) (challenge to agency's search waived when plaintiff agreed in status report to narrow case to issues with agency's withholdings) (quoting *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 n.1 (2017), and *United States v. Olano*, 507 U.S. 725, 733 (1993)). Indeed, "once the parties have appeared in a civil matter, they routinely agree to narrow the issues in dispute or to give up important procedural rights." *Am. Ctr.*, 325 F. Supp. 3d at 168. "When the parties make representations at a conference about which issues remain

outstanding, they may fairly be held to those oral representations." *Id.* (citing *Genereux v. Raytheon Co.*, 754 F.3d 51, 57-59 (1st Cir. 2014)).

These principles are equally at play in FOIA cases:

> These considerations compel the conclusion that, where sophisticated parties to a FOIA case have agreed to narrow the issues in a written status report, they generally may be held to their agreement under traditional waiver principles. Given the volume of FOIA litigation in this District, and the fact that FOIA plaintiffs located anywhere in the country may file here, written status reports often play the same role in FOIA cases as pretrial conferences do in other civil litigation. Just as a party may agree to narrow the case during a pretrial conference, a FOIA plaintiff may agree to do so in a written status report. Having voluntarily narrowed the case to a set of agreed-upon issues, the plaintiff may be said to have waived the others…. Thus, when a plaintiff narrows his FOIA request in a joint status report, it supersedes any broader request set forth in the plaintiff's complaint. [And] where a plaintiff agrees in a joint status report not to challenge the adequacy of the government's search, she effectively narrows her request to cover only the documents the government has already located.

Am. Ctr., 325 F. Supp. 3d at 168 (internal citations omitted).

Other judges in this Court have deemed challenges in FOIA cases waived when a plaintiff narrowed its case in status reports. *See, e.g., DeFraia v. CIA*, 311 F. Supp. 3d 42, 48 (D.D.C. 2018) (McFadden, J.) (finding plaintiff waived right to challenge withholdings of other documents when status reports narrowed dispute to specific contracts); *Gilman v. Dep't of Homeland Sec.*, 32 F. Supp. 3d 1, 22 (D.D.C. 2014) (Howell, C . J.) (plaintiff waived right to receive attachments to emails when it narrowed its request in a status report); *People for Am. Way Found. v. Dep't of Justice*, 451 F. Supp. 2d 6, 12 (D.D.C. 2006) (Bates, J.) (finding plaintiff had narrowed request as noted in status reports).

In its Opposition/Cross-Motion, Plaintiffs raised for the first time an argument that the CIA's search for responsive records was inadequate in direct contradiction of its representation to Defendant and the Court that the sole issues were the withholdings and redactions. ECF Nos. 25 and 27, at 3-15. Because it is clear that Plaintiffs created the situation by affirmatively

limiting their challenges and assuring Defendant that the only issues Plaintiffs had with Defendant's responses were the withholdings and redactions, the Court should not allow Plaintiffs to now overhaul that limitation and render meaningless the good faith meetings and conferences that the parties engaged in pursuant to the Court's General Order.[1]

B. Plaintiffs' Collateral Estoppel Argument

Plaintiffs mistakenly allege that the CIA asserted a "collateral estoppel" argument by citing to the very-recently litigated matter of *Sauter, et al. v. CIA, et al.*, 17cv1596 (RCL), in which the same plaintiffs sought the same material from the CIA in a prior FOIA matter. Pl. Opp./Cross-Motion at 15-16. At no time in its summary judgment motion, however, did Defendant ever raise a collateral estoppel defense. *See generally* ECF No. 21. Instead, the Plaintiffs' prior FOIA matter was raised to demonstrate that the CIA had already conducted a very recent search and classification review of any and all potentially responsive matter at Plaintiffs' request, and that Plaintiffs withdrew any objection to the results of that review.

C. Exemptions 1 and 3 and *Glomar*

1. There Has Been No Official Acknowledgment That Would Require Disclosure of Classified Information

Plaintiffs likewise make a conclusory and unsupported claim that the CIA has defeated its own *Glomar* response by acknowledging that it has an "intelligence interest," mandated by law, on matters concerning POWs. Pl. Opp./Cross-Motion at 34 and n. 20. Neither the record here nor the law, however, supports plaintiffs' assertion.

To compel disclosure of information on the ground of official acknowledgment, Plaintiffs must meet a high bar:

[1] Because Plaintiffs waived the issue of the search for records, the CIA in no way concedes any facts or argument raised by Plaintiffs regarding the search.

> For information to qualify as 'officially acknowledged,' it must satisfy three criteria: (1) the information requested must be as specific as the information previously released; (2) the information requested must match the information previously disclosed; and (3) the information requested must already have been made public through an official and documented disclosure.

ACLU v. Dep't of Defense, 628 F.3d 612, 620-621 (D.C. Cir. 2011). In other words, official acknowledgment sufficient to overcome a *Glomar* assertion requires that "the prior disclosure necessarily matches both the information at issue - the existence of records - and the specific request for that information." *Wolf v. CIA*, 473 F.3d 370, 379 (D.C. Cir. 2007). "[A] plaintiff asserting a claim of prior disclosure must bear the initial burden of pointing to specific information in the public domain that appears to duplicate that being withheld." *Afshar v. Dep't of State*, 702 F.2d 1125, 1130 (D.C. Cir. 1983).

Plaintiffs have not satisfied those requirements here. The CIA has never provided any reason to doubt its consistent position that it could not confirm or deny whether any records exist that would reveal a classified connection to the agency, and plaintiffs' speculation about a statutory requirement regarding an "intelligence interest" in POWs cannot satisfy the stringent standard set forth in *ACLU* and *Wolf* requiring a precise match between the information sought and any earlier disclosure by the government agency.

2. <u>CIA Properly Withheld Documents in Full or in Part Under Exemptions 1 and 3</u>

In support of their claim that the withholdings and redactions were improper, Plaintiffs cite to two statutes and one Executive Order, claiming that each one requires that the CIA declassify and produce the documents sought. The legal authority cited by Plaintiffs, however, fails to support their arguments and their claims.

First, Plaintiffs cite to Executive Order 13526 and argues that the CIA failed to comply with the "automatic declassification" provisions of the Executive Order. Pl. Opp./Cross-Motion

at 24. Executive Order 13526 prescribes a uniform system for classifying, safeguarding, and declassifying national security information. Executive Order 13526, 75 Fed. Reg. 707 (Dec. 29, 2009). In its initial Motion for Summary Judgment, the CIA set out the procedures and the reasons why the information redacted or withheld was classified as National Security Information. ECF No. 21 at 9-11. Plaintiffs argue, however, that the information redacted or withheld should have been declassified pursuant to the "Automatic Declassification" section of the Executive Order because the documents are over 25 years old. Pl. Opp./Cross-Motion at 17, 20 (citing Executive Order at Section 3.3). The Executive Order, however, exempts nine categories of information from the Automatic Declassification requirement, including information "the release of which should be expected to: (1) reveal the identity of a confidential human 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; . . . (6) reveal information, including foreign government information, that would cause serious harm to relations between the United States and a foreign government, or to ongoing diplomatic activities of the United States." Executive Order 13526 at Section 3.3.

Plaintiffs also incorrectly allege that the CIA failed to address these exceptions. Pl. Opp./Cross-Motion at 19. In fact, the Declaration of Vanna Blaine specifically addresses these exemptions and further demonstrates how the documents and information sought by Plaintiffs, including any that may or may not exist pursuant to the *Glomar* response, meet the requirements of the exemptions. Blaine Decl. at ¶¶ 47-49, 53-54. *See also* Executive Order 13526 at Section 3.6(a) (authorizing a *Glomar* response).

Next, Plaintiffs cite to the Decennial Review requirements of the CIA Act, requiring the

CIA to review exempt files every ten (10) years to determine if they should be declassified on the basis of "historical value or other public interest.…" Pl. Opp./Cross-Motion at 20. A District Court's review of the CIA's Decennial Review is limited to the court's determining (1) whether the CIA has conducted its review before the expiration of the ten-year period since the last review, and (2) whether the CIA considered the "public interest" criteria. *Smith v. CIA*, 246 F. Supp. 3d 117, 125-26 (D.D.C. 2017) (citing 50 U.S.C. § 3141(g)(3)). As noted in *Smith*, "the CIA is not required to demonstrate that it conducted an appropriate decennial review of the specific files that Plaintiff seeks, because the CIA is not required to search its operational files for records responsive to Plaintiff's request." *Id*. at 126. Moreover, "[i]t is the CIA's interpretation of whether the files are no longer exempt based on historical value or public interest that determines whether files are removed from exemption." *Id.*

Here, Plaintiffs admit that the CIA has dutifully conducted its decennial reviews of its records, with the last review occurring in 2015. *Id.* at 21. *See also* 80 Fed. Reg. 21,704 (Apr. 20, 2015) (Notice of Decennial Review of Operational Files - solicitation of comments for the 2015 Review). Nevertheless, citing only to the fact that the CIA withheld the records sought by Plaintiffs, Plaintiffs make the bare and conclusory allegation that such withholding demonstrates that the CIA "did not consider the 'historical value or other public interest in the subject matter of the particular category of files' in conducting its decennial reviews." *Id.* As demonstrated in *Smith*, however, the 2015 Decennial Review did comply with the statutory requirements of the CIA Act. The CIA's 2015 Decennial Review consisted of reviews by Director of NCS, Deputy Director of CIA for Science and Technology, and the Director of Support (in consultation with the Chief of the CIA History Staff), who then make recommendations to the Director of the CIA as to files or portions of files that should no longer be exempt, taking into account

"considerations of the historical value or other public interest in the subject matter." *Smith*, 246 F. Supp. 3d at 126. Thus, Plaintiffs must do more than make conclusory allegations to demonstrate that the CIA's Decennial Review was inadequate, and they have failed to do so.

Finally, Plaintiffs cite to the "McCain Act" or § 1082 of the National Defense Authorization Act, Dec. 5, 1991, as requiring the CIA to declassify all documents regarding unaccounted-for Prisoners of War ("POWs"). Pl. Opp./Cross-Motion at 21-22. The Act requires the Secretary of Defense to make available to the public – in a "library-like setting" – all information relating to the treatment, location, and/or condition of United States personnel who are unaccounted-for from the Korean War, the Cold War, and the Vietnam War. 105 Stat. 1482 at § 1082(b), P.L. 102-190 (December 5, 1991); 50 U.S.C. § 3161(a) Note (as amended in 1995 and 1996). The Act further directs all Federal agencies who come into possession of declassified information regarding unaccounted for POWs to turn those documents over to the Secretary of Defense, who must then place the documents in the "library." 50 U.S.C. § 3161(b)(2) Note. The Act, however, does not specifically direct declassification. By the very terms of the McCain Act, the reporting requirement does not apply if the information is otherwise classified and/or exempt from public disclosure. 50 U.S.C. § 3161(b)(1) Note. As demonstrated above, the information redacted and withheld by the CIA were properly classified, and thus, the McCain Act is unavailable in this matter to require the CIA to declassify or otherwise make publicly available the information sought by Plaintiffs.

3. Because of the Sensitive and Classified Nature of the Information Sought By Plaintiffs, the Disclosure of the Identities and Other Personal Information of Third Parties and U.S. Government and CIA Personnel Would Constitute a Clearly Unwarranted Invasion of Personal Privacy

Exemption 6 prohibits the release of personnel and medical files and similar files the disclosure of which would constitute "a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). As set forth in the Defendant's initial Motion, the application of Exemption 6 requires a two-step analysis: (1) Does the material withheld involve the release of "personal and medical files and similar files," and (2) "would [the disclosure of the information] constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6); *U.S. Dep't. of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 762 (1989).

Here, Plaintiffs do not dispute, nor can they, that the redactions made pursuant to Exemption 6 are personnel, medical or similar information. Pl. Opp./Cross-Motion at 26-27. *See also N.Y. Times Co. v. Nat'l Aeronautics & Space Admin.*, 920 F.2d 1002, 1004 (D.C. Cir. 1990) (all information that "applies to a particular individual" meets the threshold requirement for Exemption 6 protection). Rather, Plaintiffs argue that due to (1) the age of the documents sought, and (2) the fact that the identifying information redacted pertains to government employees, there is no privacy interests implicated by the release of the requested records against the public's interest in their disclosure. Pl. Opp./Cross-Motion at 27-28.

In support of the "age" argument, Plaintiffs alleges that "[m]ost, if not all, of the officials whose name and identifying information appear in the documents at issue in this case are either retired or deceased." *Id.* at 26. CIA, however, has been unable to verify if any of the persons redacted from the records are deceased, and the mere fact that the document may have been created 50 years ago does not create or support such a presumption. Blaine Supp. Decl. at ¶ 6. Moreover, irrespective of whether a federal employee is retired or not, the identity of lower-level

U.S. Government or CIA personnel to this highly volatile matter would no doubt expose the personnel to unwanted contact or harassment by the press or other persons who have an interest in the matter of POWs from the Korean War. *Id.* at ¶¶ 7-8.

Exposing CIA or U.S. Government affiliation exposes persons and their families to unwanted harassment, even possible retaliation or death in their home countries, because of their affiliation. In any event, because any higher-level CIA officials with knowledge of the matter have been identified in the production, disclosure of the identities of lower-level CIA or Government personnel or third parties would not make that information any more accessible than it already is through the disclosure of higher-level CIA officials. *See Davidson v. U.S. Dep't of State*, 206 F. Supp. 3d 178, 200 (D.D.C. 2016) (upholding the redaction of State Department employee names "[b]ecause [the names and contact information of State Department employees] would reveal 'little or nothing' more about the Department's conduct than the other information released to [Plaintiff]").

Plaintiffs also attempt to support their demand for the identities by citing to the Circuit Court's decision in *Lesar v. Dep't of Justice*, 636 F.2d 472 (D.C. Cir. 1980), and then claiming that the Court's decision in that case leads to the conclusion that information about federal employees "does not qualify for protection" under FOIA Exemption 6. Pl Opp./Cross-Motion at 27. But the Circuit Court in *Lesar* reached quite the opposite conclusion. The Court in *Lesar* specifically held that "agent[s] by virtue of [their] official status do[] not forgo altogether any privacy claim in matters related to official business." *Id.* at 487. Indeed, the privacy interest of a Federal employee is strong where "agents have a legitimate interest in preserving the secrecy of matters that conceivably could subject them to annoyance or harassment in either their official or private lives." *Id.* Since *Lesar*, courts in this Circuit have held that Exemption 6 protects the

identity of lower-level employees from disclosure if it could subject the employees to annoyance or harassment. *See Judicial Watch v. FDA*, 449 F. 3d 141, 152-53 (D.C. Cir. 2006) (upholding the redaction of the names of Food and Drug Administration employees involved in the regulatory approval of a controversial drug); *see also N.Y. Times Co.*, 920 F.2d at 1009-1010 (Exemption 6 applies to government employees – NASA astronauts – even after they are deceased, and the Court must determine whether any disclosure of the employees' information would cause a "clearly unwarranted" invasion of those employees' privacy when compared to the citizens' right to be informed about what their government is up to"). With respect to the identities of agents and CIA sources, Congress has already struck the balance in favor of withholding their identities when it enacted Section 6 of the CIA Act that protects information about CIA employees and their sources from public disclosure. *See* 50 U.S.C. § 3507; *see also Minier v. CIA*, 88 F.3d 796, 801 (D.C. Cir. 1996) (Section 6 of the CIA Act authorizes the CIA to withhold agent names, sources, and method for collecting information from FOIA).

In the present matter, the CIA released the identities of senior or high-ranking officials whose connection to the matter would be relevant to the understanding of the Government's actions. Blaine Decl. at ¶¶ 62. The CIA also released the non-exempt contents of the documents, which evidence CIA's activities. *Id.* Given the significant privacy interest in non-disclosure of their identities, particularly in a matter that involves undisclosed or covert activities used to collect information that poses an increased likelihood of harassment, abuse, and harm to the individuals' lives, families, and reputations, the CIA properly found that this information is exempt under FOIA Exemption 6.

4. All Reasonably Segregable Information Was Provided

Plaintiffs challenge the segregation review conducted by Ms. Blaine with respect to four documents withheld in full. Pl. Opp.-Cross-Motion at 37-43. Plaintiffs' guess as to the content of the reports is not dispositive as to whether a proper segregation review was conducted. Rather, the CIA has pointed out that the documents are classified in their entirety, Blaine Decl. at ¶¶ 40-41, 56-60, and Ms. Blaine has reviewed and confirmed that the release of any material from these documents would reveal or compromise classified information, such as CIA activity, the collection of information and their sources, and personal identifiable information related to CIA personnel. *Id*. at 65 (the release of any information from the four reports would reveal classified information regarding "intelligence sources, methods and activities, and also contains personally indentifiable information related to CIA personnel). *See, e.g., Juarez v. Dep't of Justice*, 518 F.3d 54, 61 (D.C. Cir. 2008) ("[the agency] justified its inability to simply redact sensitive portions (i.e., informant names) from these documents by pointing out that the balance of information remaining in the documents could still reveal the extent of the government's investigation, the acts on which it is focused, what evidence of wrongdoing it is aware of, the identity of cooperating sources, and the agency's investigative techniques in this investigation")].[2] Accordingly, the Defendant has adequately reviewed the documents for segregability and, based on its review, has properly withheld them in full.

[2] With respect to the *Review of the 1998 National Intelligence Estimate on POW/MIA Issues*, which the CIA released in an unclassified (redacted) form, Plaintiffs admit that the CIA has already conducted a segregation review of that document and has released the portions that do not disclose classified information.

D. Plaintiffs Failed to Demonstrate the Need for an *In Camera* Review

Although FOIA provided district courts with the option to conduct *in camera* review of withheld or redacted material, it does not compel the exercise of that option. *ACLU v. Dep't of Defense*, 628 F.3d 612, 626 (D.C. Cir. 2011). Significantly, in cases involving national security issues, an *in camera* inspection is "a last resort," and "a court should not resort to it routinely on the theory that 'it can't hurt.'" *Larson v Dep't of State*, 565 F.3d 857, 870 (D.C. Cir. 2009) (quoting *Ray v. Turner*, 587 F.2d 1187, 1195 (D.C. Cir. 1978)). Even more, when the agency has met its burden by means of declaration, "*in camera* review is neither necessary nor appropriate." *ACLU*, 628 F.3d at 626 (quoting *Hayden v. N.S.A.*, 608 F.2d 1381, 1387 (D.C. Cir. 1979)); *Larsen*, 565 F.3d at 870 (same).

Here, Plaintiffs seek an *in camera* review of four records held in full. Instead of discussing the alleged content of the records to determine if they should be disclosed or not, Plaintiffs complain about the scope of the CIA's search for responsive records – an issue not only waived by Plaintiffs for these dispositive motions, but also completely unrelated to the review of the four document's contents. Indeed, the four documents were located by the CIA and acknowledged to exist – one of which was produced in a non-classified form. Vaughn Index (ECF No. 22-1) at Documents 22-26. In addition, as demonstrated in the Defendant's initial Motion for Summary Judgment and above, the CIA provided sufficiently detailed information establishing that the CIA properly classified, and properly retained the classification of the protected sections of the documents pursuant to the CIA Act ad National Security Act. Accordingly, *in camera* inspection of the four documents is neither warranted nor appropriate.

Respectfully submitted,

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