

official duties of the NCS/IRO.¹ In addition, I refer the Court to the Scott A. Koch declaration ("Koch Declaration") filed in this case on 30 October 2006.²

3. Pursuant to authority delegated by the Associate Deputy Director of the CIA, I also have been appointed Records Validation Officer ("RVO") in this case. As RVO, I am authorized to sign declarations on behalf of the Agency regarding Agency searches for records, and the contents of any located records, including those located in, or containing information under the cognizance of CIA Directorates other than the NCS.

4. As NCS IRO and RVO, I am authorized to assess the current, proper classification of CIA information, based on the classification criteria of the applicable Executive orders as well as all applicable CIA regulations. Through the exercise of my official duties, I am familiar with the facts in this case. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

5. The purpose of this declaration is to respond to the Court's 12 November 2009 Order ("Order") for: (I) Item 3; (II) Item 4; (III) Item 5; (IV) the November 2005

¹Declaration of Ralph S. DiMaio (1:04-cv-00814-HHK, Document 109, filed 10/20/2008).

²Declaration of Scott A. Koch (1:04-cv-00814-HHK, Document 54-1, filed 10/30/2006).

withholdings; (V) the exemptions the CIA used to justify its withholdings for items 3, 6 and 8, and (VI) the segregability of the items 3, 6 and 8 documents.

I. ITEM 3: COORDINATIONS³

6. As explained in the previously filed Koch and DiMaio declarations, information that originates with another agency, the disclosure of which would affect the interests or activities of such agency, is subject to either referral or coordination⁴ under § 3.6 of Executive Order 13526.⁵ For purposes of this section, I will address all CIA-originated documents that required coordination with other agencies, in addition to justification for all CIA withholdings in the documents.

7. On 28 September 2007, the CIA notified Plaintiffs that it processed their FOIA request, located responsive material, and among other determinations, identified responsive material that required the CIA to coordinate with other federal agencies. See DiMaio Declaration,

³ In the Court's Order this section corresponds to section III.A.4.

⁴ A "referral" occurs when the CIA possesses a document that originated with another agency. In such a case, the CIA transmits the document to the originating agency for a direct response to the requester. A "coordination" occurs when a CIA-originated document contains information the disclosure of which would affect the interests or activities of another agency, and the CIA contacts that agency to obtain guidance on whether to release or withhold the information. The CIA responds to the FOIA requester in a coordination.

⁵ On 29 December 2009, President Obama signed Executive Order 13526, which superseded Executive Order 12958, as amended, on 27 June 2010. See 75 Fed. Reg. 707 (Jan. 5, 2010).

Exhibit 2. The CIA further informed Plaintiffs that once the coordination process was complete, the CIA would provide supplemental responses concerning the coordination documents. Id. The CIA subsequently sent each affected agency a notice that coordination documents needed to be processed in this case.

8. Thirteen (13) documents were subject to coordination in this case because they would affect the interests or activities of one or more of the following eleven (11) federal entities: United States Air Force ("AF"), Federal Bureau of Investigation ("FBI"), Defense Intelligence Agency ("DIA"), National Security Agency ("NSA"), National Security Council ("NSC"), National Reconnaissance Office ("NRO"), National Geospatial-Intelligence Agency ("NGA"), United States Department of the Navy ("Navy"), United States Department of Defense ("DoD"), United States Department of State ("DoS"), and the United States Marine Corps ("Marine Corps").

9. The CIA subsequently confirmed that each agency completed its review of the coordination documents. As a result, on 3 August 2010, two (2) of the coordination documents were released to Plaintiffs in full and eleven (11) were released in part or "RIP." See Exhibit A. The purpose of this section is to justify all CIA withholdings

from the eleven (11) RIP coordination documents. The other federal entities that withheld information from the documents will justify their redactions in separate declarations submitted directly to the Court.

A. APPLICABLE FOIA EXEMPTIONS

i. Exemption (b)(1)

10. FOIA exemption (b)(1) provides that agencies need not disclose materials 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).

11. The authority to classify information is derived from a succession of Executive orders, the most recent of which is Executive Order 13526.⁶ Consistent with Section 1.1(a) of Executive Order 13526, and in my capacity as Information Review Officer for the NCS, I have determined that all of the CIA information withheld from the

⁶ I have determined that in processing Plaintiffs' FOIA request, the CIA made proper classification decisions pursuant to Executive Order 12958, as amended, which was the Executive Order in effect at the time the classification decisions at issue were made. Executive Order 12958 was amended by Executive Order 13292, and all further citations to Executive Order 12958 in this declaration are to the Order as amended by Executive Order 13292. See Executive Order 13292, 68 Fed. Reg. 15315 (Mar. 28, 2003); Executive Order 12958, 3 C.F.R. 333 (1995), reprinted as amended in 50 U.S.C.A. § 435 note at 204 (West Supp. 2009). This declaration further attests that the information withheld by the CIA in this case pursuant to FOIA exemption (b)(1) remains currently and properly classified under Executive Order 13526.

coordination documents pursuant to exemption (b)(1) is currently and properly classified.

12. Section 6.1(i) of Executive Order 13526 defines "classified national security information" or "classified information" as "information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form." Section 6.1(cc) of the Executive Order defines "national security" as the "national defense or foreign relations of the United States."⁷

13. Section 1.1(a) of the Executive Order provides that information may be originally classified under the terms of this Order 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 United States Government;
- (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to

⁷ Executive Order 12958 provides identical definitions for the terms "classified national security information" or "classified information" and "national security." See Executive Order 12958, §§ 6.1(h), 6.1(y).

result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

Exec. Order 13526, § 1.1(a).⁸

14. *Original classification authority* - Section 1.3(a) of the Executive Order provides that the authority to classify information originally may be exercised only by the President and the Vice President; agency heads and officials designated by the President; and United States Government ("USG") officials delegated this authority pursuant to section 1.3(c). Section 1.3(b) of the Executive Order provides that original TOP SECRET classification authority includes the authority to classify information originally as SECRET and CONFIDENTIAL. Section 1.3(c)(2) provides that TOP SECRET original classification authority may be delegated only by the President; the Vice President; or an agency head or official designated pursuant to section 1.3(a)(2) of the Executive Order.

15. In accordance with section 1.3(a)(2), the President designated the Director of the CIA as an official who may classify information originally as TOP SECRET.⁹

⁸ Identical language is also found in section 1.1(a) of Executive Order 12958.

⁹ Order of President, Original Classification Authority, 75 Fed. Reg. 735 (Jan. 5, 2010). This Order succeeded the prior Order of the President, Designation under Executive Order 12958, 70 Fed. Reg. 21,609

Under a written delegation of authority pursuant to section 1.3(c)(2), I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification, declassification, and release decisions. With respect to the RIP documents from which the CIA withheld information pursuant to exemption (b)(1), I determined they contain information that is currently and properly classified as SECRET or TOP SECRET by an original classification authority.

16. *U.S. Government information* - Information may be originally classified only if the information is owned by, produced by or for, or is under the control of the United States Government or "USG."¹⁰ With respect to the RIP documents from which the CIA withheld information pursuant to exemption (b)(1), I determined the documents and the information contained therein are owned by the USG, produced by the USG, or under the control of the USG.

17. *Categories in Section 1.4 of the Executive Order* - Executive Order 13526 addresses classification of information relating to intelligence and national security. Section 1.4(c) provides that information shall be

(Apr. 21, 2005), reprinted in 50 U.S.C.A. § 435 note at 226-27 (West Supp. 2009).

¹⁰ Executive Order 13526, § 1.1(a)(2). Identical language appears in section 1.1(a)(2) of Executive Order 12958.

classified only when it includes, *inter alia*, information concerning "intelligence activities (including covert action), intelligence sources or methods, or cryptology." Moreover, section 1.4(d) provides that information regarding "foreign activities of the United States" may be classified.¹¹ Regarding the RIP documents from which the CIA withheld information pursuant to FOIA exemption (b)(1), I determined they contain information concerning the CIA's intelligence activities, sources, and methods, as well as information concerning the foreign activities of the United States. I further describe this information and its relation to the national security below. I will also demonstrate that the unauthorized disclosure of this information could reasonably be expected to cause identifiable or describable damage to the national security in accordance with section 1.2 of the Executive Order.

18. *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

¹¹ Executive Order 12958 likewise permits classification of information pertaining to these categories. See §§ 1.4(c) and 1.4(d).

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.¹²

19. Regarding the SECRET information withheld from documents C01352208, C01352210, C01352212, C01352213, C01442335, and C01442360 pursuant to FOIA exemption (b)(1), I determined disclosure of this information reasonably could be expected to cause serious damage to the national security. Regarding the TOP SECRET information withheld from documents C01342308 and C01442334 pursuant to exemption (b)(1), I determined disclosure of this information reasonably could be expected to cause exceptionally grave damage to the national security. I further describe this classified information and its relation to CIA intelligence activities, sources, methods, and foreign activities below.

¹² Identical language regarding classification levels appears in section 1.2(a) of Executive Order 12958.

20. *Proper purpose* - With respect to the information the CIA has withheld pursuant to exemption (b)(1) relating to CIA intelligence activities, sources, methods, and foreign activities, I have determined that no information has been classified in order to conceal violations of law, inefficiency, or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security.¹³

21. *Proper classification* - I have determined that the CIA information relating to intelligence activities, sources, methods and foreign activities, described herein, has been classified in accordance with the substantive and procedural requirements of Executive Order 13526 and that this information is currently and properly classified.¹⁴

**(a) The CIA Redacted Information that Would
Reveal CIA Intelligence Sources**

22. The CIA withheld information that would reveal CIA sources in the coordination documents, specifically C01342308, C01352213, C01442334, and C01442360. The disclosure of this information would significantly harm the

¹³ See Executive Order 13526, § 1.7(a).

¹⁴ I have also determined that in processing Plaintiffs' FOIA request, the CIA made proper classification decisions pursuant to Executive Order 12958, which was the Executive Order in effect at the time the classification decisions at issue were made.

national security by damaging the CIA's relationships with those who serve as CIA sources. The primary mission of the CIA is to gather intelligence from around the world that can be used by the President and other Government officials in making national security decisions. To do this, the CIA must often depend upon information that can only be gathered from knowledgeable clandestine human intelligence sources under an arrangement of absolute, lasting secrecy.

23. Notwithstanding the passage of time since these documents were created, the disclosure of the withheld information would have the damaging effect of suggesting to the CIA's sources that the CIA is unable or unwilling to observe an agreement of absolute secrecy over time. This perception could discourage sources from entering into any kind of relationship with the CIA, thus preventing altogether the collection of information from these sources. Of course, intelligence sources can be expected to furnish information to, and cooperate with, the CIA only when they are confident that the CIA can and will do everything in its power to prevent the public disclosure of their cooperation, and that their cooperation will forever remain secret. The loss of such intelligence sources, and the accompanying loss of the critical intelligence that

they provide, would seriously and adversely affect the national security of the United States.

24. In the cases of foreign nationals abroad who have cooperated with the CIA in intelligence-related activities, official confirmation of that cooperation could cause the target government to take retaliatory action against that person, or, if he or she is no longer alive, against surviving family and friends. More importantly, it places in realistic jeopardy every individual with whom the foreign national has had contact. Indiscretion with regard to a single source in the chain of intelligence sources can ravage an entire spectrum of sources. The damage occasioned by the disclosure of a single source is thus incalculable.

25. These concerns are present even if the information at issue does not specifically identify the CIA source by name. In many cases, the very nature of the information that the source communicates necessarily tends to reveal the identity of the source because of the limited number of individuals with access to the information. Accordingly, special precautions are taken to protect a source's identity even if that source is not identified by name in a given document.

26. In sum, if the CIA were not able to protect the source revealing information at issue, sources could reasonably be expected to conclude that the CIA is unable to protect the confidentiality surrounding their affiliation with the CIA. They could conclude that cooperation with the United States entails the risk that, at some unknown later date, the United States will make an official acknowledgement of clandestine activity in that country and, thus, jeopardize their careers, families, or even lives. To betray such confidentiality would seriously damage this Agency's ability to retain present sources, recruit new sources, and provide the best intelligence to the nation's policymakers.

**(b) The CIA Redacted Information that Would
Reveal CIA Intelligence Methods**

27. Generally speaking, intelligence methods are the means by which the CIA accomplishes its mission. Intelligence methods include the basic business practices and methodological "tools" used by the CIA to accomplish its mission. Significantly, the term "intelligence methods" is not limited to sophisticated techniques and electronic devices. "Intelligence methods" also include, *inter alia*, innocuous appearing facts such as where the CIA operates or has operated, the different types of "cover"

used by CIA employees, and how long the CIA operated in a particular part of the world.

28. In this case, the CIA redacted information from coordination documents C01342308, C01352208, C01352210, C01352212, C01352213, C01442334, C01442335, and C01442360 that would reveal classified intelligence methods that the CIA uses to collect, assess, and evaluate intelligence. The disclosure of this information would provide the United States' adversaries with insight into how the CIA collects, analyzes, evaluates, and compiles intelligence, and how it disseminates that intelligence to other governmental entities. Such a disclosure could allow hostile governments, intelligence agencies, and other adversaries to influence and potentially manipulate the CIA's intelligence collection and analysis.

29. It should be emphasized that, in order to protect a particular intelligence method from disclosure, the CIA must protect the information produced by that method. Further, the CIA must protect from public disclosure not only the information it has collected using a given method, but also the *lack of information* it has collected, as this may indicate a potential weakness or vulnerability in the CIA's operations.

30. Lastly, the CIA must protect seemingly mundane intelligence methods from disclosure, including dissemination control markings. These markings, which indicate restrictions placed upon the dissemination of particularly sensitive information, may reveal or highlight areas of particular intelligence interest, sensitive collection sources or methods, or foreign sensitivities. To avoid highlighting information that reveals such matters, the CIA withholds dissemination control markings and markings indicating the classification levels and controls of individual paragraphs or specific bits of information. Otherwise, if the CIA were to withhold dissemination control and classification markings only in cases where the accompanying information indicates a special intelligence interest, a particularly sensitive method, or a foreign liaison relationship, the CIA would focus public attention on those sensitive cases.

31. As described, disclosure of the intelligence methods withheld from these documents would be of invaluable assistance to those who wish to detect, penetrate, counter or evaluate CIA activities in ways inimical to United States security. Information revealing classified intelligence methods was therefore properly withheld pursuant to FOIA exemption (b)(1).

(c) Foreign Activities of the United States

32. Among the most critical sources and methods in the collection of foreign intelligence are the relationships that the United States maintains with the intelligence and security services of foreign countries. Through these intelligence liaison relationships, the CIA can collect intelligence and provide to national security and foreign policy officials information that is critical to informed decision making - information that the CIA cannot obtain through other sources and methods. From some of the documents that reveal classified intelligence methods, the CIA withheld classified information concerning the foreign activities of the United States. Disclosure of this information reasonably could be expected to cause serious damage to the national security.

33. Foreign governments provide critical assistance to CIA operations under the condition that their assistance is kept secret. Like the revelation of information revealing individual human sources, disclosing the fact of a clandestine foreign liaison relationship would suggest to all other foreign liaison services and foreign government officials that the CIA is unable or unwilling to observe an agreement of absolute secrecy. This perception could cause liaison services and government officials to limit their

provision of information to, or cooperation with, the CIA, or even to end the relationship altogether, thus causing the United States Government to lose valuable foreign intelligence. Moreover, this perception could discourage foreign governments from entering into any kind of relationship with the CIA.

34. As such, official acknowledgement by the CIA of a past or current liaison relationship, or revelation of information by the CIA that implicates a past or current relationship, with a foreign intelligence service or a foreign government official could result in a significant loss of intelligence information for the United States. Since liaison relationships offer the United States a force-multiplier for its intelligence collection activities, disclosure of the information at issue reasonably could be expected to cause serious damage to the national security. The information was, therefore, properly withheld pursuant to exemption (b)(1).

35. Accordingly, the information withheld from the coordination documents pursuant to exemption (b)(1) concerns intelligence sources and methods and the foreign activities of the United States. This information is classified, as its unauthorized disclosure reasonably could be expected to result in serious or exceptionally grave

damage to the national security. Moreover, all of the CIA information that is exempt from disclosure pursuant to exemption (b)(1) is also coextensively protected from disclosure under exemption (b)(3), discussed below.

**(d) Exemption from Automatic
Declassification at 25 years**

36. Executive Order 12958 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. See Executive Order 12958, § 3.3(a).¹⁵ Such information, however, is exempt from automatic declassification per § 3.3(a) if it includes "information, the release of which could be expected to: reveal the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence source or method." See id. § 3.4(b)(1). Coordination documents C01352208, C01352212, C01442334, C01442335, and C01442360 contain classified information older than 25 years that, as

¹⁵ As stated in footnote 5, above, on 29 December 2009, President Obama signed Executive Order 13526, which superseded Executive Order 12958 on 27 June 2010. The standards set forth in Executive Order 12958 for exemption from automatic declassification at 25 years, however, are the standards that apply to the coordination documents, since Executive Order 12958 was the Executive Order in effect when the classification decisions at issue were made. The documents would nonetheless remain exempt from automatic declassification under Executive Order 13526 as set forth in paragraph 40 of this declaration.

I explain below, is exempt from automatic declassification pursuant to these provisions.

37. The CIA has established several major declassification review and release programs. Under the Agency's FOIA and Privacy Act Declassification Review Program, information responsive to FOIA requests is reviewed to determine whether the information is currently and properly classified.

38. I have determined the information withheld pursuant to exemption (b)(1) in the above-listed documents falls within categories of information exempt from automatic declassification listed in § 3.4(b) of Executive Order 12958. First, information contained in documents C01442334 and C01442360, if released, could be expected to reveal the identities of human intelligence sources. Information contained 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.

39. Furthermore, the release of documents C01352208, C01352212, C01442334, and C01442335 would reveal

information about the application of intelligence methods. These documents describe, in great detail, the practices of the CIA, many of which remain in use, and the means by which the CIA planned or carried out specific activities, including information regarding the relative success of certain methods. Detailed knowledge of these methods and practices of the CIA certainly would be of material assistance to those who seek to neutralize the CIA's effectiveness. Therefore, I have determined that the classified information at issue that is older than 25 years is exempt from automatic declassification under Executive Order 12958, as this information would reveal the identities of human intelligence sources and reveal detailed information regarding the application of intelligence methods.

40. Although Executive Order 12958 is the Executive Order that governs the review of these documents, I have also reviewed these documents under Executive Order 13526 and determined that this information would remain exempt from automatic declassification at 25 years under the current Order. Given the specificity of the withheld information, and recognizing that foreign intelligence services are capable of gathering and analyzing information

from myriad sources, I have determined that disclosure of the information should clearly and demonstrably be expected to reveal the identity of human intelligence sources or impair the effectiveness of intelligence methods currently in use or available for use.¹⁶ As described above, the limited number of individuals who would have had access to the information at issue, as well as the detailed nature of the information itself, clearly demonstrates that disclosure could leave sources and their families perpetually vulnerable to discovery, retribution, possible imprisonment or even death. Moreover, the documents' detailed descriptions of intelligence methods would greatly assist foreign intelligence services and other adversaries in thwarting U.S. intelligence activities, thereby significantly degrading the usefulness of those methods to the CIA. Thus, the classified information withheld from documents older than 25 years is exempt from automatic declassification under Executive Order 13526 and remains currently and properly classified.

ii. Exemption (b) (3)

41. The RIP coordination documents contain information disclosing CIA intelligence sources, methods,

¹⁶ See Executive Order 13526, § 3.3(b)(1).

organization, functions, and names and official titles of personnel employed by the CIA. This information is exempt from disclosure under exemption (b)(3).

42. Exemption (b)(3) provides that the 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.¹⁷

I have determined that the National Security Act, 50 U.S.C. § 403-1, as amended, and the Central Intelligence Agency Act of 1949 ("CIA Act"), 50 U.S.C. § 403g, as amended, are the withholding statutes applicable to this case.

43. *National Security Act of 1947* - Section 102A(i)(1) of the National Security Act, as amended, provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure." Accordingly, the National Security Act constitutes a federal statute which "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). Under the direction of the DNI pursuant to

¹⁷ 5 U.S.C. § 552(b)(3) (2006).

section 102A, and consistent with section 1.6(d) of Executive Order 12333,¹⁸ the CIA is authorized to protect CIA sources and methods from unauthorized disclosure. I have determined that disclosure of exempt information withheld from documents C01340882, C01342308, C01352208, C01352210, C01352212, C01352213, C01442334, and C01442360 would reveal intelligence sources and methods, including methods the CIA uses to assess and evaluate intelligence and to inform policy makers and other Government officials. Accordingly, the CIA relies on the National Security Act to withhold any information that would reveal intelligence sources and methods.

44. *Central Intelligence Agency Act of 1949 - Section 6 of the CIA Act, as amended, provides:*

In the interests of the security of the foreign intelligence activities of the United States and in order to further implement section 403-1(i) of this title that the Director of National Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the . . . [CIA] shall be exempted from . . . the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.

¹⁸ Section 1.6(d) of Executive Order 12333, as amended, 3 C.F.R. 200 (1981), reprinted in 50 U.S.C.A. §401 note at 25 (West Supp. 2009), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008), requires the Director of the Central Intelligence Agency to "[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure . . . [.]"

50 U.S.C.A. § 403g (West Supp. 2007). As one of the CIA's primary functions is to collect intelligence through human sources and by other appropriate methods, section 6 of the CIA Act authorizes the CIA to withhold intelligence sources and methods that are related to the CIA's core function. Moreover, CIA employees' names and personal identifiers (for example, employee signatures, employee identification numbers, or initials), titles, file numbers, and internal organizational information are specifically protected from disclosure by the CIA Act.

45. I have determined that documents C01340082, C01352208, C01352210, C01352212, C01352213, C01442326, C01442334, C01442335, C01442356, and C01442360 contain information exempt from release under exemption (b)(3), such as: (a) the names of CIA employees, including covert employees; (b) information regarding CIA clandestine human intelligence sources; (c) information regarding CIA intelligence methods, including methods the CIA uses to assess and evaluate intelligence and to inform policy makers and other Government officials; (d) information regarding covert CIA installations; (e) information identifying the countries in which the CIA operated or targeted for intelligence activities; (f) signatures of CIA employees; (g) CIA employee identification numbers; and (h)

internal CIA organizational information, including the names of CIA components and the names and designations of certain files. Section 6 of the CIA Act, and, thus, exemption (b)(3), unambiguously protect this information from disclosure.

46. In contrast to Executive Order 13526, and predecessor Orders, the CIA's statutory requirements under the National Security Act and the CIA Act to further protect intelligence sources and methods are absolute and do not require the CIA to identify or describe the damage to the national security that reasonably could be expected to result from their unauthorized disclosure. Nonetheless, the information withheld pursuant to exemption (b)(3) is the same as the information relating to intelligence sources and methods withheld pursuant to exemption (b)(1). Thus, damage reasonably could be expected to result from the disclosure of this information as set forth in paragraphs 22-35 above.

iii. Exemption (b)(6)

47. FOIA exemption (b)(6) provides that the FOIA's information release requirements do not apply to "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of

personal privacy."¹⁹ FOIA's protection of personal privacy is not impacted by the type of record in which the agency stores the information.

48. The CIA withheld from document C01352210 information that is exempt from disclosure under exemption (b)(6). The CIA withheld this information on the grounds that it qualifies as "personnel," "medical" or "similar" files; the individuals identified in the documents have a significant privacy interest in the withheld information; the public does not have an interest in the disclosure of the withheld information; and the disclosure of the individuals' information would constitute a clearly unwarranted invasion of the individuals' personal privacy.

49. Information that applies to or describes a particular individual qualifies as "personnel," "medical," or "similar files" under exemption (b)(6). The withheld information identifies the names and home addresses of CIA officers, as well as the dates during which they served in particular CIA positions. Because this withheld information provides the names of, and other identifying information about, CIA employees, it qualifies as both "personnel" and "similar" files and is thus amenable to protection under exemption (b)(6).

¹⁹ 5 U.S.C. § 552(b)(6) (2000).

50. Exemption (b)(6) is designed to protect information in official Government records, even if the information is not embarrassing or of an intimate nature. The individuals identified in the withheld information have a significant privacy interest in the information that the CIA withheld. Disclosing the names and addresses of the employees, some of whom served under cover, reveals their affiliation with the CIA.²⁰ This disclosure could subject the individuals to intense questioning from a variety of sources, such as the media, family, friends, neighbors, and others. By revealing that the employees served at the CIA in certain senior positions, and by providing their home addresses, the withheld information could also place the employees and their families in danger from any individuals seeking retribution against the CIA.

51. Moreover, there is no overriding public interest that requires the disclosure of the names of, or identifying information about, the CIA officers at issue. Unlike information concerning decisions made or actions taken by CIA employees, the names and home addresses of particular employees are not fundamental to the operations or activities of the Government, nor will such information

²⁰ To the extent that the information redacted pursuant to exemption (b)(6) exposes certain officers' classified affiliation with the CIA, this information is coextensive with withholdings pursuant to exemptions (b)(1) and (b)(3).

contribute to the public understanding of the thoroughness, scope, intensity, or creativity of the Government's efforts to locate POW/MIAs. 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 the personal information would expose the individuals and their families to unnecessary public scrutiny, certainly violating the personal privacy of those persons. Because the strong privacy interests involved outweigh the negligible, if any, public interest, in disclosure, the CIA has properly withheld the information under exemption (b)(6).

B. SEGREGABILITY

52. The CIA has released eleven RIP coordination documents; no documents were denied in full. The CIA conducted a line-by-line review of each RIP document, individually and as a whole, to determine whether meaningful, reasonably segregable, non-exempt portions of the documents could be released. I have determined that the CIA released to Plaintiffs any information that was segregable and not otherwise exempt.

II. ITEM 4²¹

²¹ In the Court's Order this section corresponds to section III.A.1.

53. Item 4 of Plaintiffs' FOIA request pertains to "[r]ecords of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the National Archives and Records Administration ("NARA") and returned to the CIA for processing." See Plaintiff's 7 February 2003 FOIA request. The CIA sought dismissal of this item on the grounds that Plaintiffs continued to seek congressional records not subject to the FOIA, and the Court ruled that collateral estoppel prevents Plaintiffs from arguing that the Senate Committee's records are "agency records." See Order pg 9. However, the Court ordered the CIA independently to review any identical copies of CIA-originated records in its files that had been included in the congressional collection. To be clear, any CIA-originated documents responsive to the Court's Order are wholly separate and distinct from the congressional records that Plaintiffs requested.

54. According to CIA records, the CIA retained electronic copies of each CIA-originated document included with the congressional records withdrawn from NARA. I have confirmed that there are a total of 1,452 CIA-originated documents responsive to the Court's Order concerning Item 4. These electronic copies are the only known documents that the CIA could reasonably determine are responsive to

the Court's Order.²² The CIA provided Plaintiffs with the non-exempt portions of these records by letter dated 20 August 2010. See Exhibit B.

55. Specifically, 44 documents have been released in full, 970 released in part, and 271 withheld in full. Additionally, CIA personnel determined that 167 of the 1,452 documents contained information that would affect the interests or activities of other federal agencies. As explained in the Item 3 discussion above (See footnote 4), information in a CIA-originated document that would affect the interests or activities of another federal agency is subject to coordination under § 3.6 of Executive Order 13526. As such, the CIA is currently coordinating with each appropriate agency. After completion of this coordination process, the CIA will release the remaining non-exempt records to Plaintiffs.

A. APPLICABLE FOIA EXEMPTIONS

56. Attached as Exhibit C, and incorporated by reference herein, is a Vaughn index which contains a detailed description of the responsive records to the Court's Order excluding only those 167 documents subject to coordination with other agencies and the 44 released in

²² This body of responsive records includes certain documents with preexisting redactions and some information that is not clearly readable. However, these records are the documents responsive to the Court's Order.

full documents which do not require a Vaughn index. The Item 4 Vaughn index describes, to the extent possible in an unclassified manner, the withheld information as to each document, states the applicable FOIA exemptions, and explains why the applicable FOIA exemptions justify withholding information from these responsive documents. Due to the large number of Item 4 documents, the Vaughn index contains additional detailed information to address the withholdings specific to each document. Thus, I will not address the withholdings in each document separately in this declaration. Further justification describing the CIA's withholdings in the Item 4 documents, in addition to the Vaughn index, is set forth below.

i. Exemption (b) (1)

57. The Item 4 documents contain information about CIA sources, methods, intelligence liaison relationships, foreign governments, and other information concerning the foreign activities of the United States. I determined that the CIA properly withheld information concerning these equities pursuant to exemption (b)(1). Moreover, I refer the Court to paragraphs 10-21 above which outline the authority and additional basis for the CIA's reliance on exemption (b)(1).

58. Regarding the CONFIDENTIAL, SECRET and TOP SECRET information withheld from the Item 4 documents pursuant to exemption (b)(1), I determined disclosure of this information reasonably could be expected to cause damage, serious damage or exceptionally grave damage to the national security.

59. Moreover, as indicated in the Vaughn index, all Item 4 documents older than 25 years are exempt from automatic declassification under Executive Order 12958.²³ The Item 4 documents contain information about human intelligence sources. This information, if released, could be expected to reveal the identities of such sources because there is detailed information as to time, date and place of human intelligence collection. Since only a limited number of individuals would have had access to such intelligence information, disclosure of the documents would necessarily tend to reveal the identity of the sources at issue. For additional justification concerning the protection of human sources, see paragraphs 22-26 above.

²³ Some Item 4 documents redacted pursuant to exemption (b)(1) are undated. In light of the information contained in the documents themselves, the dates of records similar to the undated documents, and the subject matter of Plaintiffs' request, the CIA evaluated those documents under the standard set forth by Executive Order 12958, for exemption from automatic declassification at 25 years. The CIA additionally determined that the information withheld pursuant to exemption (b)(1) in these documents remains classified under the standard for exemption from automatic declassification at 25 years set forth by Executive Order 13526.

60. Additionally, the Item 4 documents contain information describing, in detail, the practices that the CIA has used, and continues to use, in carrying out its national security mission. If released, this data could be expected to reveal information about the application of intelligence methods, thereby neutralizing the usefulness of those methods and degrading the CIA's ability to apply those methods in future situations. I refer the Court to paragraphs 27-31 above which outline the authority and additional basis for this exemption. In addition, I determined that the Item 4 documents older than 25 years would remain exempt under Executive Order 13526 for the same reasons as set forth in paragraph 40 above.

ii. Exemption (b) (3)

61. The Item 4 documents contain information disclosing CIA intelligence sources, methods, functions, and details concerning personnel employed by the CIA, among other information as detailed in the Item 4 Vaughn index. This information is exempt from disclosure under exemption (b) (3). As discussed above, I incorporate paragraphs 42-46 which outline the authority and basis for the CIA's reliance on FOIA exemption (b) (3).

62. More specifically, the Item 4 documents contain the following types of information exempt from release

under exemption (b)(3): (a) the names of CIA employees, including covert employees; (b) information regarding CIA clandestine human intelligence sources; (c) information regarding CIA intelligence methods, including methods the CIA uses to assess and evaluate intelligence and to inform policy makers and other government officials; (d) information identifying the countries in which the CIA operated or targeted for intelligence activities; and (e) internal CIA organizational information, among other CIA intelligence methods as outlined in the Item 4 Vaughn index.

iii. Exemption (b)(6)

63. Certain Item 4 documents contain information that qualifies as "personnel" or "similar" files and that identifies specific individuals. As detailed further in the Item 4 Vaughn index, disclosure of this information would constitute a clearly unwarranted invasion of the personal privacy of these individuals. As discussed above, I incorporate paragraphs 47-51 which outline the authority and basis for the CIA's reliance on FOIA exemption (b)(6).

64. The privacy information withheld from the Item 4 documents may be protected from disclosure under exemption (b)(6) because the individuals identified in the documents have a significant privacy interest in the information.

This information includes names of individuals and other biographic identifying information. Moreover, there is no overriding public interest that requires disclosure of this information. Unlike information concerning decisions made or actions taken by CIA employees, the data withheld pursuant to exemption (b)(6) does not shed light upon the operations or activities of the Government. Likewise, the withheld information will not contribute to the public understanding of the thoroughness, scope, intensity, or creativity of the Government's efforts to locate POW/MIAs.

65. 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 the personal information could expose the individuals and their families to unnecessary public scrutiny, certainly violating the personal privacy of those persons. Because the strong privacy interests involved outweigh the negligible public interest, if any, in disclosure, the CIA has properly withheld the information under exemption (b)(6).

B. SEGREGABILITY

66. The CIA conducted a review of the Item 4 documents that were RIP or withheld in full to determine whether meaningful, reasonably segregable, non-exempt

portions of documents could be released. The CIA made this determination regarding segregability based upon a careful review of the Item 4 documents, both individually, and as a whole. Specifically, the CIA conducted a line-by-line review of each Item 4 document to ensure the CIA properly withheld information pursuant to FOIA exemptions.

67. The Item 4 documents that have been withheld in full contain no reasonably segregable, non-exempt information. Any non-exempt information in these documents is so inextricably intertwined with exempt information that there are no meaningful, reasonably segregable, non-exempt portions. Similarly, the Item 4 documents that were RIP contain no additional reasonably segregable non-exempt information. Accordingly, the CIA released any information that was reasonably segregable and not otherwise exempt in the Item 4 documents.

III. ITEM 5²⁴

68. Item 5 of Plaintiffs' FOIA request seeks records relating to 1,711 individuals who allegedly are Vietnam-era POW/MIAs.²⁵ The Court's Order directed the CIA to explain

²⁴ In the Court's Order this section corresponds to section III.A.2.

²⁵ The Court's Order describes Item 5 as referring to "approximately 1,700 individuals" in addition to forty-four individuals whose next-of-kin provided privacy waivers. See Order, pg. 10. In conducting a search on each name, as further described below, the CIA determined that Plaintiffs' request pertained to a total of 1,711 individuals,

why it requires biographic information to verify the identity of individuals whose names appear in its records and to otherwise search for and disclose any non-exempt records concerning the individuals that the CIA can verify as responsive to Plaintiffs' Item 5 request.

69. As the CIA explained in the Koch Declaration filed with the Court on 30 October 2006,²⁶ as well as in its 15 June 2004 letter to Plaintiffs, it generally requires biographic information (e.g. date of birth, place of birth, social security number) in order to identify records pertaining to named individuals. This is because identifying information enables the CIA to make proper responsiveness determinations. In many cases, different individuals share similar names. Without additional identifying information, the CIA cannot confirm whether records discovered through a name search in fact pertain to the individual listed in the FOIA request. In other words, it is extremely difficult or impossible to determine responsiveness based on name alone. See also Koch Declaration ¶25. Although Plaintiffs provided Department of Defense reference numbers for many of the individuals on the Item 5 list, as described in the Koch Declaration, this

including those forty-four individuals whose next-of-kin provided privacy waivers.

²⁶ See Koch Declaration ¶¶ 25-27.

information has little relevance to searches of Agency records. Since the CIA does not recognize or utilize "other" agency reference numbers in its documents, this information does not contribute to the CIA's search in any meaningful way. See also Koch Declaration, pg 10, n 7. Accordingly, the CIA generally requests biographic information, such as date of birth, place of birth or social security number, from FOIA requesters who seek information about a named individual.

70. Plaintiffs provided additional identifying information, such as social security numbers or dates of birth, for 31 of the 1,711 names.²⁷ As explained, this information increases the CIA's ability to determine responsiveness, although such ability is not guaranteed. Therefore, the CIA agrees to search for and process records responsive to the 31 names, as outlined in paragraph 76 below.

71. In conducting a search for records on 1,711 individuals to be responsive to Item 5, the Agency's

²⁷ The names of these individuals are as follows: Daniel V. Borah, Jr.; Thomas T. Hart, III; George Duncan Macdonald; Thomas Moore; Jerry M. Shriver; Frances W. Townsend; Carl Richard Ussery; Robert D. Beutel; Russell P. Bott; Robert Franklin Coady; James E. Dooley; Jerry W. Elliot; Patrick Martin Fallon; Gary H. Fors; Frank A. Gould; James W. Grace; Andre R. Guillet; James Wayne Herrick, Jr.; Earl P. Hopper, Jr.; David L. Hrdlicka; James Alan Ketterer; Albro L. Lundy, Jr.; Michael J. Masterson; William Patrick Milliner; Robert D. Morrissey; Larry Warren Robinson; Leo Earl Seymour; Ronald Dean Stafford; Larry J. Stevens; Francis W. Townsend; and Michael Lora Bouchard.

Information Review Officers determined that there are two records systems most likely to contain information responsive to Plaintiffs' Item 5 FOIA request: the CIA's archived records, which are stored only in hardcopy, and the electronic CIA Automatic Declassification and Release Environment (a.k.a. CADRE). For reasons described below, the CIA determined that searching its archived records would be unduly burdensome. However, searches can and are being completed in the CADRE system.

A. ARCHIVED RECORDS

72. The CIA's archived records include all archives from the Director's Area, the Directorate of Intelligence, the Directorate of Science and Technology, and the Directorate of Support, as well as the archived records of the National Clandestine Service not subject to the operational files exemption²⁸ and likely to be responsive to Plaintiffs' request.²⁹ These archived records are searchable only by use of an electronic index.

73. To continue the search and process the results for the 1,711 names in the CIA's archived records would be

²⁸ See Central Intelligence Agency Information Act, 50 U.S.C. § 431(b)-(d) (2010).

²⁹ The CIA's archived records consist of all CIA records not actively used in the current day-to-day business of CIA components. Given the subject matter of Plaintiffs' request, CIA Information Release Officers knowledgeable about the Agency's records determined that responsive records are unlikely to be found among components' active files.

unduly burdensome. To illustrate, the CIA conducted a search in the electronic index of the archived records for the 1,711 individuals using the names, as provided by Plaintiffs, as search terms. The CIA did not use other information provided by Plaintiffs as search terms because, under the Agency's procedures for archiving records, a record discussing an individual likely would have been archived by the individual's name, not by other identifying information. As previously explained, the identifying information enables the CIA to determine whether any records located through a search are responsive to Plaintiffs' request. The search of the electronic index indicated that 16,423 hardcopy file folders could contain responsive records.

74. It would be unduly burdensome for the CIA to review and process the documents contained in each of the 16,423 hardcopy file folders. This is because the process to review each document would require Agency officials to manually retrieve each specific file folder from the remote location where the archived records are stored. Each file folder contains numerous documents in hard copy only. These files are not full-text searchable via electronic means. Moreover, documents in each file folder may or may not refer to a specific topic, country region or situation.

Thus, CIA personnel would have to pull the relevant boxes, unseal the boxes, locate the correct file folders identified by the electronic index, then manually review all of the documents in each folder merely to determine whether each archived document would be responsive to Plaintiffs' request. This task would place an inordinate burden on Agency resources.

B. CADRE

75. CADRE is an electronic database that stores information processed pursuant to the Agency's information release programs, such as the FOIA, Privacy Act, and Mandatory Declassification Review programs. CADRE is full-text searchable and is entirely electronic, unlike the archived records described above. Even so, to conduct and process a search of the 1,711 names in the CADRE system would be unreasonable. To illustrate, CIA employees who have access to CADRE and who are qualified by training and practice to search those records in the course of their professional duties conducted a search in CADRE for the 1,711 individuals. CIA personnel used the names, as provided by the Plaintiffs, as search terms. The CADRE database identified almost 140,000 documents as potentially responsive to the named individuals. In order to process these documents, CIA personnel would not only have to

review each document, but with respect to the individuals for whom Plaintiffs have not provided identifying information, the CIA would face considerable difficulty in making responsiveness determinations as described above. The amount of time required to review and determine responsiveness would put an unreasonable burden on the CIA's already limited resources.

76. It would be reasonable, however, for the CIA to examine and process potentially responsive electronic documents in CADRE that pertain to the 31 individuals for whom Plaintiffs provided identifying information. This task would require the CIA to examine almost 1,400 records identified as potentially responsive in CADRE. Only by reviewing each record could the CIA determine which documents constitute false hits and which would be responsive to Plaintiffs' request. Due to this large number of potentially responsive records, the CIA requires additional time to review these documents and to process those found to be responsive for release to Plaintiffs. The CIA will review and release all non-exempt responsive records on the 31 individuals for whom Plaintiffs have already provided identifying data no later than 31 January 2011.

IV. NOVEMBER 2005 WITHHOLDINGS³⁰

77. As outlined in previous pleadings in this case, the CIA voluntarily provided documents to Plaintiffs that are responsive to the 1994 and 1998 FOIA requests (*Hall I*) on 7 November 2005. See Brief in Support of Defendant's Renewed Motion to Dismiss and for Partial Summary Judgment, 1:04-cv-00814-HHK, Document 109, pg 6. These voluntary disclosure documents were responsive to items 1, 2 and part of item 3 (1975-1971). Id. at pg 7; See also Koch Declaration at ¶20.

78. Per the Court's Order, it directed the CIA to submit a Vaughn index describing the 102 documents that were RIP in addition to the 26 documents that were withheld in full to the Plaintiffs in November 2005. Due to an administrative error, I determined that DIF document C00510535 should be released in part and DIF document C00437023 should be released in full to Plaintiffs. Thus, the Vaughn index describes a total of 103 documents that were RIP in addition to 24 documents withheld in full. On 5 August, 2010, C00437023 (released in full) and C00510535 (RIP) were released to Plaintiffs. See Exhibit D.

³⁰ In the Court's Order this section corresponds to section III.C.1.

79. The CIA also created a Vaughn index to justify its withholdings for the 103 RIP and 24 DIF documents which is hereby incorporated into this declaration and attached as Exhibit E. The Vaughn index describes the CIA's justifications for nondisclosure with reasonable specificity and it demonstrates that the information withheld logically falls within certain FOIA exemptions justifying each respective redaction.

A. APPLICABLE FOIA EXEMPTIONS

i. Exemption (b)(1)

80. As noted in the Vaughn index (See Exhibit E), the CIA relies on FOIA exemption (b)(1) to withhold information in all RIP documents with exception to C00465476 and C00520816, which I address in further detail below. The CIA's reliance on (b)(1) goes directly to intelligence sources and methods, in particular human sources. For additional background and justification as to the CIA's reliance on exemption (b)(1) concerning intelligence sources and methods, I refer the Court to paragraphs 10-31 above.

81. I determined that disclosure of the CONFIDENTIAL information withheld from the November 2005 withholdings, specifically documents C00435681, C00435767, C00435901,

C00435913, C00435956, C00436529, C00436591, C00436601, and C00436790 reasonably could be expected to cause damage to the national security. Disclosure of the TOP SECRET information withheld from documents C00436763, C00436784, C00436785, C00436788, C00436789, C00436926, C00436927, C00436929, C00436930, and C00436931 reasonably could be expected to cause exceptionally grave damage to the national security. The SECRET information withheld from the balance of the documents reasonably could be expected to cause serious damage to the national security.³¹

82. All November 2005 withholdings older than 25 years are exempt from automatic declassification under Executive Order 12958. These documents contain detailed information about human intelligence sources that, if released, could be expected to reveal the identities of those sources. The withheld information provides precise descriptions of the times, dates and places that particular human sources collected intelligence information. Since only a limited number of individuals would have had access to such information, disclosure of these descriptions would necessarily tend to reveal the identity of the sources at issue. Additionally, the November 2005 withholdings

³¹ Documents C00465476, C00465477, C00520816 and C00510535 are UNCLASSIFIED but remain statutorily exempted from release under the FOIA pursuant to exemption (b)(3).

contain information that, if released, could be expected to reveal information about the application of specific intelligence methods. This is because the withheld information describes in detail the intelligence practices of the CIA, many of which remain in use, and the means by which the CIA conducts specific intelligence activities. I refer the Court to paragraphs 36-39, which outline the authority and additional basis for this exemption. Likewise, I have determined that the November 2005 withholdings that are older than 25 years remain exempt under Executive Order 13526 for the same reasons as set forth in paragraph 40.

83. Finally, documents C00435766 and C00435767 are exempt from automatic declassification at 50 years under Executive Order 13526. The Executive Order exempts from automatic declassification at 50 years classified records that contain information the release of which should clearly and demonstrably be expected to reveal the identity of a human intelligence source. See Executive Order 13526, § 3.3(h)(1)(A). The information withheld from these two documents pursuant to exemption (b)(1) contains detailed descriptions of three human intelligence sources. This source identifying information includes biographic data, such as names, nationalities, occupations, and associates.

The withheld information also reveals the identities of human sources by demonstrating that the sources had access to specific information that could only have been collected at particular times, dates, and locations. In light of this information, as well as the biographic descriptions of the sources themselves, disclosure of the information withheld pursuant to exemption (b)(1) should clearly and demonstrably be expected to reveal the identities of the three human intelligence sources. As such, this information is exempt from automatic declassification at 50 years and is properly protected under exemption (b)(1).

ii. Exemption (b)(2)

84. The CIA relies on FOIA exemption (b)(2) to withhold exempt information contained in RIP documents C00465476 and C00520816. This exemption encompasses two distinct categories of information: (a) internal matters of a relatively trivial nature, sometimes referred to as "low 2" information, and (b) more substantial internal matters the disclosure of which would risk circumvention of a legal requirement, sometimes referred to as "high 2" information.

85. The CIA properly withheld "low 2" information from the two aforementioned documents. The information withheld from these documents consists of internal

organizational data, administrative codes, and routing information, including the names of CIA employees.³²

86. In addition to being purely internal data, this information is not subject to any genuine or significant public interest. The disclosure of CIA employee names or of codes unique to the administrative practices of the CIA would not contribute to the public understanding of the operations or activities of the Government. As such, the withheld information falls outside the ambit of the public interest that the FOIA was enacted to serve. In sum, the CIA properly invoked exemption (b)(2) to withhold this information.

iii. Exemption (b)(3)

87. The CIA also relies on FOIA exemption (b)(3) in all withheld in full and RIP documents, including RIP document C00510535 that was released to Plaintiffs on 5 August 2010. Disclosure of the withheld information would reveal intelligence sources and methods, including methods the CIA uses to assess and evaluate intelligence and to inform policy makers and other Government officials, as well as other exempt information such as: (a) the names of CIA employees; (b) information regarding CIA clandestine

³² As further explained below, the information withheld pursuant to exemption (b)(2) is independently and coextensively exempt from disclosure pursuant to exemption (b)(3).

human intelligence sources; (c) information identifying the countries in which the CIA operated or targeted for intelligence activities; (d) information concerning the location of CIA facilities; and (e) internal CIA organizational information, including telephone numbers and information dissemination control markings. In light of the CIA's authorities under the National Security Act and section 6 of the CIA Act, described in paragraphs 41 through 46 above, the CIA properly withheld such information pursuant to FOIA exemption (b)(3).

iv. Exemption (b)(5)

88. The CIA invoked FOIA exemption (b)(5) to withhold exempt information contained in RIP documents C00465476 and C00520816. Exemption (b)(5) provides that the FOIA's information-release requirements do not apply to matters that are inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the CIA.³³

89. I have determined that the information redacted in the two aforementioned documents on deliberative process grounds consists of predecisional deliberations, including preliminary evaluations, of news information that high-

³³ 5 U.S.C. § 552(b)(5).

level CIA officials had determined was of policy interest to the Agency. These communications were between the CIA's Executive Secretariat on behalf of the Director of Central Intelligence and other CIA officers.

90. The deliberative information contained in these documents was solicited, received, or generated as part of the process by which policy is formulated by the CIA. Because the withheld communications reflect candid, predecisional exchanges regarding policy issues, disclosure of the information is likely to stifle the CIA's future predecisional debates. The information is therefore properly exempt from release pursuant to exemption (b)(5).

V. EXEMPTIONS³⁴

91. Pursuant to the Court's Order, the CIA is providing additional justification³⁵ for its reliance on certain FOIA exemptions with respect to records responsive to Item 3 (for the years not covered in the *Hall I* requests), as well as to Items 6 and 8. I will address each exemption separately and consistent with the Court's Order.

A. The CIA Correctly Applied FOIA Exemption (b)(1) regarding Exemption from Automatic Declassification at 25 Years

³⁴ In the Court's Order this section corresponds to sections III.C.2, III.C.3, III.C.5.i, III.C.5.ii and III.C.6.

³⁵ See also DiMaio Declaration pgs 7-19.

92. Executive Order 12958 provides that all classified records that are more than 25 years old and have otherwise been determined to have permanent historical value shall be automatically declassified. See Executive Order 12958, as amended, § 3.3(a).³⁶ Such information is exempt, however, from automatic declassification per § 3.3(a) if it includes "information, the release of which could be expected to: reveal the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence source or method." See Id. § 3.4(b)(1). As indicated in the 2008 Vaughn index, the CIA withheld classified information responsive to Items 3, 6, and 8 of Plaintiffs' FOIA request that was older than 25 years. As I explain below, this information is exempt from automatic declassification under § 3.4(b)(1) of Executive Order 12958.

93. The CIA has established several major declassification review and release programs. Under the CIA's FOIA and Privacy Act Declassification Review Program,

³⁶ The standards set forth in Executive Order 12958 apply to the records responsive to Items 3, 6, and 8 since Executive Order 12958 was the Executive Order in effect when the classification decisions at issue were made. I attest that the documents would nonetheless remain exempt from automatic declassification under Executive Order 13526 in paragraphs 96 and 97 of this declaration.

information responsive to FOIA requests is reviewed to determine whether the information is currently and properly classified.

94. I have determined that information contained in documents 1479592, 1479601, 1479602, 1479607, 1479608, 1484804, 1484807, 1484809, 1484817, 1484822, 1484830 to 1484877, and 1484883 to 1484885, if released, could be expected to reveal the identities of human intelligence sources. Because only a limited number of individuals would have had access to the withheld intelligence information, and in light of the fact that the records provide extensive detail regarding the time, date, and place of the CIA's collection of that information, disclosure of the documents would necessarily tend to reveal the identity of human sources. Moreover, many of the documents are intelligence cables that provide specific biographic information about particular sources, including nationality, date of birth, place of birth, marital status, education, occupation, and other similar information. Clearly, foreign intelligence services could use this detailed information to identify the human sources.

95. Moreover, the release of documents 1474817, 1474819, 1479600, 1479601, 1479602, 1479606, 1479608,

1484805, 1484806, and 1484819 would reveal information about the application of intelligence methods. These documents describe, in great detail, practices the CIA has used and continues to use to carry out its national security mission. Detailed knowledge of these methods and practices of the CIA would be of material assistance to those who seek to neutralize the CIA's effectiveness. Therefore, I have determined that the classified information at issue that is older than 25 years is exempt from automatic declassification under Executive Order 12958, as this information would reveal the identities of human intelligence sources as well as information regarding the application of intelligence methods.

96. Additionally, although Executive Order 12958 governs the review of these documents, the withheld information would remain exempt from automatic declassification at 25 years under Executive Order 13526. Given the specificity of the withheld information, and recognizing that foreign intelligence services gather and analyze information from myriad sources, I have determined that disclosure of the information should clearly and demonstrably be expected to reveal the identity of human intelligence sources due to the limited number of

individuals who would have had access to the intelligence at issue, as well as the detailed nature of the biographic information withheld.³⁷

97. Likewise, the documents contain very detailed descriptions of intelligence methods, many of which remain in use. Foreign intelligence services and others who have interests opposed to those of the United States can use this information to thwart CIA activities and attack the United States. These parties search constantly for information regarding the activities of the CIA and create ways to defeat CIA activities from seemingly disparate pieces of information. An official disclosure of the withheld information would therefore greatly assist foreign intelligence services and other adversaries in undermining the usefulness of the CIA's intelligence methods. Thus, the withheld classified information that is older than 25 years is exempt from automatic declassification and remains currently and properly classified pursuant to Executive Order 13526.

B. The CIA Correctly Applied FOIA Exemption (b) (2)

98. FOIA exemption (b) (2) provides that FOIA's information release requirements do not apply to matters

³⁷ See Executive Order 13526, § 3.3(b)(1).

"related solely to the internal personnel rules and practices of an agency."³⁸ This exemption encompasses two distinct categories of information: (a) internal matters of a relatively trivial nature, sometimes referred to as "low 2" information, and (b) more substantial internal matters the disclosure of which would risk circumvention of a legal requirement, sometimes referred to as "high 2" information.

99. The question whether the CIA properly withheld "low 2" information from documents 141096, 141695, 145421, 151870, 218589, 821490, 833126, 1264773, 1320458, 1370083, 1370085, 1370087, 1370539, 1370540, 1370544, 1371724, 1383898, 1383899, 1383982, 1383983, 1383984, 1383987, 1383988, 1383989, 1383990, and 1484818 is moot in this litigation because in all instances where the CIA asserted exemption (b)(2), the CIA also asserted exemption (b)(3). As the Court may recall, it held that the CIA was entitled to summary judgment on whether it properly withheld records pursuant to exemption (b)(3). See Order, pg 29.

100. Nonetheless, the CIA properly withheld the "low 2" information in this case. The information withheld pursuant to exemption (b)(2) consists of CIA file numbers, document numbers, distribution and routing codes, handling information, filing identifiers, origination markings, CIA

³⁸ 5 U.S.C. § 552(b)(2).

telephone numbers, organizational abbreviations, and various other internal administrative codes. As release of this internal information would not meaningfully contribute to the public understanding of the mission or operations of the Government, the CIA has properly invoked exemption (b)(2) in this case.

C. The CIA Correctly Applied FOIA Exemption (b)(5)

101. FOIA exemption (b)(5) provides that the FOIA's information-release requirements do not apply to "inter-agency or intra-agency memoranda or letters that would not be available by law" to a private party in litigation with the CIA.³⁹ The scope of exemption (b)(5) is quite broad and incorporates virtually all civil discovery privileges, extending protection to information that is predecisional and reflects an agency's deliberative process and documents that are protected by the attorney-client privilege, among other privileges.

i. Deliberative Process Privilege

102. The deliberative process privilege protects the internal deliberations of the Government by exempting from release those recommendations, analyses and discussions prepared to inform or in anticipation of decision-making. The privilege is designed to protect and encourage open and

³⁹ 5 U.S.C. § 552(b)(5).

candid policy discussions between subordinates and superiors. It also protects the ability of decisionmakers to receive confidential advice and counsel, and allows agencies to explore alternative avenues of action and engage in internal debates without fear of public scrutiny. The integrity of the Government's deliberative process, not just the withheld information itself, is protected by exemption (b) (5).

103. In its Order, the Court granted the CIA summary judgment as to all withholdings justified by reliance on the deliberative process privilege, except for documents 1383976, 1383977, 1383978, 1383979, 1383980, 1383983, and 1479603. I have determined that the information redacted from documents 1383976, 1383977, 1383978, 1383979, 1383980, and 1383983 on deliberative process grounds consists of internal emails, memoranda, and handwritten notes by CIA officers regarding the calculation of fee estimates for processing Plaintiffs' 2003 FOIA request. These communications between the CIA's Public Information Programs Division and various directorate information release officers reflect candid internal exchanges of opinion concerning the legal and policy issues involved in processing Plaintiffs' FOIA request, including recommendations as to the records systems that may need to

be searched, estimates of the amounts of time required for conducting searches, and opinions regarding appropriate search methods and likely search costs. This deliberative information was solicited, received, or generated as part of the process by which policy is formulated by the CIA. Also, to the extent that the documents contain policy recommendations, these documents do not indicate that either the recommendations themselves or the underlying reasoning in support of such recommendations was ever adopted by the appropriate decisionmaker. Disclosure of this information would therefore reveal the predecisional deliberations of CIA officers.

104. The portions of document 1479603 withheld pursuant to exemption (b)(5) concern the deliberations of CIA officers on how to process a particular FOIA request. The record, which is a memorandum from the head of the office that processes FOIA requests to one of his superiors, describes the FOIA request at issue as one involving a very large number of documents, and contains CIA officers' opinions about the policy issues raised by processing such a large request. The withheld information contains recommendations for addressing those policy concerns. Thus, the withheld information is deliberative. Additionally, I have determined that the information is

predecisional, as the document provides no indication that the opinions and policy recommendations, or their rationale, was ever adopted by the appropriate decisionmaker. Although Plaintiffs correctly note that the date of the document is 4 June 1981, the CIA's future predecisional debates would be stifled or "chilled" if this information were subject to public release. Deliberations concerning how to treat FOIA requests, as well as other policy matters, occur daily at the CIA. If this information were released, CIA officers would hesitate to voice policy recommendations that may, at first blush, appear radical or "outside the box," or that could be subject to misinterpretation. Consequently, if the deliberative process were unprotected, CIA officers would likely refrain from providing the unvarnished truth in their analyses to superiors.

105. The deliberative process privilege also protects factual information contained in deliberative communications to the extent that the particular facts contained in the communications were identified, extracted, and highlighted out of other potentially relevant facts and background materials by the authors, in the exercise of their judgment. Accordingly, the disclosure of the facts that were selected for inclusion in the deliberative

communications at issue would themselves tend to reveal the authors' and the CIA's deliberative process.

106. Because the CIA officers involved in the predecisional deliberations reflected in the seven documents expected that their candid discussions, personal opinions, and recommendations would remain confidential, release of the information withheld pursuant to the deliberative process privilege in these documents would discourage open and frank discussions among CIA officers in the future, thereby threatening the confidence needed to ensure the candor of future CIA deliberations. Such information is therefore properly exempt from disclosure under exemption (b)(5).

ii. Attorney-Client Privilege

107. The attorney-client privilege protects confidential communications between a client and his attorney relating to a matter for which the client has sought legal advice. The CIA has reviewed the records described in the 2008 Vaughn index for which the CIA has asserted the attorney-client privilege. Those records contain confidential communications between CIA staff and attorneys within the CIA's Office of General Counsel, acting in their capacity as legal advisors to the CIA.

108. I have determined that all of the information withheld pursuant to the attorney-client privilege relates to matters for which the attorneys provided legal advice to the CIA. Documents 1370083, 1370086, 1370539, 1370544, 1371726, 1371727, 1371732, 1371734, 1371736, 1383981, 1383983, and 1383985 contain communications between CIA attorneys and information release professionals concerning the assessment of fees for Hall's 1998 FOIA request. Documents 1370085, 1370089, 1370540, 1370544, 1371724, 1371726, and 1371733 contain communications between CIA attorneys and information release professionals concerning searches conducted for Hall's 1998 FOIA request. Document 1370087 is a memorandum from a CIA information release professional to CIA attorneys regarding how Hall's 1994 FOIA request was processed. Documents 1370086, 1370544, 1371725, 1371726, 1371729, and 1383986 contain discussions between CIA information release professionals and attorneys concerning litigation with Hall over his FOIA requests. Finally, document 1370081 is a memorandum for a CIA information release professional from a CIA attorney concerning the identification of documents responsive to Hall's 1998 FOIA request. As these descriptions indicate, some of the legal advice contained in the documents was

based upon, and reflects, facts provided by the CIA to its attorneys.

109. Each of these documents between CIA attorneys and other CIA officers was prepared with the joint expectation that they would be held in confidence. As an intelligence agency, the CIA's practice is to communicate information only to those with a legitimate need-to-know. This means that, under the CIA's standard operating procedures, communications are distributed only to those officers who require the information in order to perform their official duties. Additionally, I have reviewed the documents over which the CIA has asserted the attorney-client privilege and have confirmed that all individuals who received the communications at issue were authorized to make, implement, or oversee decisions, or to provide information, concerning the matters discussed in the communications.

110. Because the withheld communications were distributed only to those authorized to act or speak for the CIA in relation to the subject matter of the communications, the communications were made in confidence and are thus entitled to protection under the attorney-client privilege. If this type of confidential, candid information were to be disclosed, it would likely chill

future communications between client-agencies and their attorneys, depriving agencies of the full and frank counsel of their attorneys and frustrating the FOIA's intention to protect such communications from disclosure.

D. The CIA Correctly Applied FOIA Exemption (b) (6)

111. FOIA exemption (b) (6) provides that the FOIA's information release requirements do not apply to "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."⁴⁰ The FOIA's protection of personal privacy is not impacted by the type of record in which the agency stores the information. In this case, the CIA withheld certain personal information from documents 147957, 1320458, 1371724, 1479603, 1479604, 1484810, 1484812, and 1484820, on the grounds that the information, if disclosed, would constitute a clearly unwarranted invasion of the personal privacy of certain individuals.

112. The threshold question for invoking exemption (b) (6) is whether the particular information in question qualifies as "personnel," "medical," or "similar" files. Information that applies to or describes a particular individual meets this threshold requirement for protection under FOIA Exemption 6. Here, documents 1479603 and

⁴⁰ 5 U.S.C. § 552(b) (6).

1479604 contain the names of FOIA requesters other than Plaintiffs, as well as the names and signatures of CIA employees. Documents 1320458, 1371724, and 1484810 contain the names of CIA employees, with documents 1320458 and 1371724 also providing the signatures of employees.

Document 1484812 contains the names of CIA employees, as well as personal medical information about one employee.

Document 1484820 contains the home address of an individual who had written a letter to George H.W. Bush about Vietnam-era POW/MIA matters. Finally, document 147957 is a CIA cable that contains the name, social security number, blood type, and religion of an individual believed to be an MIA.

Because this withheld information provides the names of, and other personal identifying information about, particular individuals, it meets the threshold for protection under exemption (b)(6).

113. Exemption (b)(6) is designed to protect information in official Government records, even if the information is not embarrassing or of an intimate nature. Once the threshold for protection under exemption (b)(6) is met, an agency must balance the interest in protecting individuals' private affairs from unnecessary public scrutiny against the public's right to Government information. The individuals whose personal data was

withheld have a significant privacy interest in the information. Revealing individuals' affiliation with the CIA could subject them to intense questioning from a variety of sources, including the media, family, friends, neighbors, and others. Such a disclosure could also place employees and their families in danger from any persons seeking retribution against the CIA. Similarly, individuals have a substantial privacy interest in controlling detailed, personal information about themselves, particularly in an age of identity theft.

114. In this case, there is no overriding public interest that requires the disclosure of the withheld information. Unlike information concerning decisions made or actions taken by CIA employees, none of the withheld information illuminates the operations or activities of the Government. Nor will disclosure of the information contribute to the public understanding of the thoroughness, scope, intensity or creativity of the Government's efforts to locate POW/MIAs. As such, the withheld information falls outside the ambit of the public interest that the FOIA was enacted to serve, and should clearly be protected.

115. In sum, I have balanced the public interest in shedding light on the functions of our Government against the harm from intruding upon the privacy of the third

parties, if such information were disclosed. I was unable to identify any overriding public interest which would require disclosing the names of, and other identifying information about, the third parties at issue.

VI. SEGREGABILITY⁴¹

116. As described previously, the CIA has released a number of records, in whole or in part, in response to Plaintiffs' FOIA request. The CIA conducted a careful review of the documents at issue in this case, individually and as a whole, to determine whether meaningful, reasonably segregable, non-exempt portions of documents could be released. The CIA released any information that was segregable and not otherwise exempt.

117. Those records that have been withheld in full contained no reasonably segregable, non-exempt information. Any non-exempt information in these records is so inextricably intertwined with exempt information that there are no meaningful, reasonably segregable, non-exempt portions. Release of any non-exempt information in the withheld documents would produce only incomplete, fragmented, or unintelligible sentences and phrases. Similarly, the CIA conducted a line-by-line review of the documents released in part and determined that all

⁴¹ In the Court's Order this section corresponds to section III.C.7.

reasonably segregable portions of records have been provided to Plaintiffs. In sum, the CIA has ensured that it properly withheld information pursuant to FOIA exemptions in this case, and that it has released all reasonably segregable, non-exempt information to Plaintiffs.

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

Executed this 17th day of August, 2010.



Mary Ellen Cole
Information Review Officer
National Clandestine Service
Central Intelligence Agency