

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ROGER HALL, <u>et al.</u> ,	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
v.	)	<b>Civil Action No. 1:04-cv-00814-HHK</b>
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**DEFENDANT’S SUPPLEMENTAL REPSONSE PURSUANT TO THE COURT’S  
MEMORANDUM OPINION & ORDER**

Pursuant to the Court’s November 12, 2009, Memorandum Opinion and Order (“Order”), the Central Intelligence Agency (“Defendant,” “CIA,” or “Agency”), by and through undersigned counsel, respectfully submits this supplemental response (“Def.’s Supp. Response”). The Agency’s Supplemental Response describes the specific actions undertaken in response to the Court’s Order, Hall v. CIA, 668 F. Supp. 2d 172 (D.D.C. 2009), and, where necessary, further explains the actions already undertaken by the Agency. In support of this Supplemental Response, the Agency respectfully submits the Declaration of Mary Ellen Cole, Information Review Officer, National Clandestine Service (“Cole Decl.”); the Declaration of Delores M. Nelson, Information and Privacy Coordinator (“Nelson Decl.”); and respectfully incorporates herein the previously filed Declaration of Ralph S. DiMaio, Information Review Officer,

National Clandestine Service (“DiMaio Decl.”);<sup>1</sup> and the Declaration of Scott A. Koch, Information and Privacy Coordinator (“Koch Decl.”).<sup>2</sup>

**I. THE AGENCY HAS PROPERLY WITHHELD INFORMATION CONTAINED IN DOCUMENTS RESPONSIVE TO ITEM 4. (ORDER, III.A.1)**

Plaintiffs’ Item 4 requested production of all records of the Senate Select Committee on POW/MIA Affairs that were withdrawn from the National Archives and Records Administration (“NARA”). Hall, 668 F. Supp. 2d at 179. In Part III.A.1 of the Order, the Court held that the Agency must confirm that it has independently reviewed all CIA-originated documents responsive to Item 4 that were included in the Senate Select Committee documents. See Hall, 668 F. Supp. 2d at 179. The Agency does so below.

Pursuant to Part III.A.1 of the Court’s Order, the Agency has determined that it retained copies of each CIA-originated document included in the congressional records withdrawn from the NARA. Cole Decl. ¶ 54. The Agency now confirms that it possesses 1,452 CIA-originated documents responsive to Item 4. Id. The electronic copies of the responsive documents the Agency has located are the only known documents that the Agency could reasonably determine are responsive to the Court’s Order. Id.

On August 20, 2010, the Agency furnished Plaintiffs with the non-exempt portions of these documents. Id. & id. Exh. B. Specifically, 44 documents have been released in full, 970 have been released in part, and 271 have been withheld in full. Id. ¶ 55. The Agency has also determined that 167 of the 1,452 documents contain information that affects the interests or activities of third-party federal agencies and, as such, the Agency is currently coordinating with

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<sup>1</sup> The DiMaio Declaration is appended to Defendant’s Motion for Partial Summary Judgment, Docket No. 109 (Oct. 20, 2008).

<sup>2</sup> The Koch Declaration is appended to Defendant’s Motion to Dismiss and for Partial Summary Judgment, Docket No. 54 (Oct. 30, 2006).

each third-party agency in order to determine what releases are appropriate. *Id.* ¶ 55. After completion of the coordination process, the Agency will release to Plaintiffs all remaining, non-exempt records responsive to Item 4 from the 167 coordination documents.

With respect to non-coordination documents that are responsive to Item 4, the Agency demonstrates below that it has properly withheld information under 5 U.S.C. §§ 552(b)(1) (“Exemption 1”), 552(b)(3) (“Exemption 3”), and 552(b)(6) (“Exemption 6”). The Agency also provides herewith an extensive Vaughn index that contains a detailed description of each withholding made to the 1,452 records responsive to Item 4.<sup>3</sup> *See* Cole Decl. ¶ 56 & Cole Decl. Exh. C. 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. *Id.* ¶ 56. Due to the large volume of Item 4 documents being released, the Agency does not address the withholdings for each document but instead respectfully refers the Court to the accompanying Item 4 Vaughn index. *See id.* Exh. C.

**A. The Agency properly withheld Item 4 information under Exemption 1.**

Exemption 1 provides that agencies need not disclose information deemed classified “under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy” and which is “in fact properly classified pursuant to such Executive order.” 5 U.S.C. § 552(b)(1); *see Morley v. CIA*, 508 F.3d 1108, 1123-24 (D.C. Cir. 2007) (acknowledging that Exemption 1 protects information properly classified under national-security executive order). The Supreme Court has recognized that Congress intended for the

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<sup>3</sup> The Agency’s Item 4 Vaughn index does not address the 167 coordination documents or the 44 documents that have already been released in full to Plaintiffs. Cole Decl. ¶ 56; *see id.* Exh. C.

President of the United States to bear immediate responsibility for protecting the national security, which includes the development of policy through executive orders that establish what information must be classified to prevent harm to the national security. See, e.g., Dep't of the Navy v. Egan, 484 U.S. 518, 527-30 (1988).

**1. The Agency properly classified the withheld Item 4 information.**

The authority to classify the Item 4 information Plaintiffs seek is derived from a succession of executive orders, the most recent being Executive Order 13526, which “prescribes a uniform system for classifying, safeguarding, and declassifying national security information.” Classified National Security Information, Exec. Order No. 13526, 75 Fed. Reg. 707, 707 (Dec. 29, 2009).<sup>4</sup> Consistent with Section 1.1(a) of Executive Order 13526, the Agency has determined that information withheld from the documents responsive to Item 4 is currently and properly classified. Cole Decl. ¶ 57.<sup>5</sup> That Section provides that information may be originally classified under the terms of Executive Order 13526 if the following conditions are met:

- a. An original classification authority is classifying the information;
- b. The information is owned by, produced by or for, or is under the control of the United States Government;
- c. The information falls within one or more of the categories of information listed in Section 1.4 of Executive Order 13526; and

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<sup>4</sup> At the time the Agency made its Item 4 withholdings, Executive Order 12958, not Executive Order 13526, was in effect. See Classified National Security Information, Exec. Order No. 12958, 60 Fed. Reg. 19825 (Apr. 17, 1995). Executive Order 12958 was, in turn, superseded by Executive Order 13292, which was amended by Executive Order 13526. See Classified National Security Information, Exec. Order No. 13292, 68 Fed. Reg. 15315 (Mar. 28, 1995).

<sup>5</sup> 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.” Exec. Order. No. 13526 § 6.1(i), 75 Fed. Reg. at 727.

- d. The original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to 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.

See Exec. Order No. 13526 § 1.1(a), 75 Fed. Reg. at 707. As discussed below, the Agency has properly classified the withheld Item 4 information pursuant to Executive Order 13526.

**a. The Agency is the original classification authority.**

Section 1.3(a) of Executive Order 13526 provides that the authority to classify information originally may be exercised only by the President, Vice President, agency heads, presidentially-designated officials, and officials who possess authority delegated by Section 1.3(c). See Exec. Order No. 13526 § 1.3, 75 Fed. Reg. at 708. Original “top secret” classification authority includes the authority to classify information originally as “secret” and “confidential.” Id. Section 1.3(c)(2) provides that “top secret” original classification authority may be delegated only by the President, Vice President, agency heads, or by officials designated pursuant to Section 1.3(a)(2). Id. § 1.3(c)(2), 75 Fed. Reg. at 708.

In accordance with Section 1.3(a)(2), the President has designated the Director of the CIA as an official who may classify information originally as “top secret.” See Order, Original Classification Authority, 75 Fed. Reg. 735 at 735 (Dec. 29, 2009). Pursuant to that grant of authority, the Agency has determined that the information withheld from documents responsive to Item 4 has been properly classified at the top-secret, secret, and confidential levels. See Cole Decl. ¶¶ 15 & 57-60.<sup>6</sup>

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<sup>6</sup> The Agency has also determined that the information withheld under Exemption 1 relating to intelligence activities, sources, methods, and foreign activities has not 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

**b. The withheld information is 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. See Exec. Order No. 13526 § 1.1(a)(2), 75 Fed. Reg. at 707. The Agency has determined that the withheld information responsive to Item 4 is owned by, produced by, or under the control of the United States Government. See Cole Decl. ¶¶ 16 & 57.

**c. The information withheld falls within the scope of Section 1.4.**

Section 1.4 of Executive Order 13526 provides that information shall be classified only when it includes, among other things, information concerning “intelligence activities (including covert action), intelligence sources or methods, or cryptology.” Exec. Order No. 13526 § 1.4, 75 Fed. Reg. at 709. Additionally, Section 1.4(d) provides that “foreign activities of the United States” may be classified. Id. The Agency has withheld information contained in documents responsive to Item 4 because those documents contain classified information about CIA sources, methods, intelligence liaison relationships, foreign governments, and other information concerning the foreign activities of the United States. See Cole Decl. ¶¶ 17 & 57-60.

**d. Unauthorized release of withheld Item 4 information would harm the national security.**

Unauthorized release of the withheld Item 4 information could reasonably be expected to cause identifiable or describable damage to the national security in accordance with Section 1.2. Id. ¶¶ 57-60. That Section provides that information shall be classified at one of three levels if the unauthorized disclosure of information reasonably could be expected to cause damage to the national security and the original classification authority is able to identify or describe the

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release of information that does not require protection in the interests of national security. See Cole Decl. ¶ 20 (citing Exec. Order No. 13526, § 1.7(a)(1)-(4), 75 Fed. Reg. at 710).

damage. See Exec. Order No. 13526 § 1.2, 75 Fed. Reg. at 707-08; Cole Decl. ¶ 18. Information is classified as “top secret” if its unauthorized disclosure reasonably could be expected to result in exceptionally grave damage to the national security; “secret” if unauthorized disclosure reasonably could be expected to result in serious damage to the national security; and “confidential” if unauthorized disclosure reasonably could be expected to result in damage to the national security. See Exec. Order No. 13526 § 1.2, 75 Fed. Reg. at 707-08; Cole Decl. ¶ 18.

Release of the withheld Item 4 information classified at the confidential, secret, and top-secret levels could be reasonably expected to damage the national security. Cole Decl. ¶ 58. The Item 4 documents contain information about human-intelligence sources. Id. ¶ 59. This information, if released, could be expected to reveal the identities of those sources because there is detailed information as to time, date, and place of human-intelligence collection activities. Id. 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. Id.; see also id. ¶¶ 22-26 (justifying protection of human-intelligence-based information). 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. Id. ¶ 60. If released, such information could be expected to reveal Agency techniques concerning the application of intelligence methods, thereby neutralizing the usefulness of those methods and degrading the Agency’s ability to apply those methods in the future. Id.; see id. ¶¶ 27-31 (describing how disclosure would harm the Agency’s intelligence-gathering methods).

**2. The withheld information is exempt from automatic declassification.**

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. Exec. Order No. 12958 § 3.3(a), 60 Fed. Reg. at 19832. However, such information is exempt from automatic declassification 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.” Id. § 3.4(b)(1), 60 Fed. Reg. at 19832.

The Item 4 documents are exempt from automatic declassification under Executive Orders 12958 and 13526. Cole Decl. ¶ 59.<sup>7</sup> Due to the specificity of the withheld information – and recognizing that foreign intelligence services are capable of gathering and analyzing information from many sources – the Agency has determined that disclosure of the withheld Item 4 information would clearly and demonstrably be expected to reveal the identity of human-intelligence sources or impair the effectiveness of intelligence methods currently in use by, or available to, the Agency. Id. ¶¶ 40 & 60. 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 vulnerable to discovery, retribution, possible imprisonment, or even death. Id. ¶¶ 40 & 60. The documents’ detailed descriptions of intelligence methods would greatly assist foreign intelligence services

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<sup>7</sup> Some Item 4 documents redacted under Exemption 1 are undated. Cole Decl. ¶ 59 n.23. However, in light of the information contained in those documents, the dates of records similar to the undated documents, and the subject matter of Plaintiffs’ request, the Agency evaluated those documents under the standard set forth by Executive Order 12958 for exemption from automatic declassification after 25 years. Id. The Agency has also determined that the information withheld pursuant to Exemption 1 in the undated Item 4 documents remains classified under the standard set out by Executive Order 13526. Id.



and other adversaries in thwarting United States intelligence activities, thereby significantly degrading the usefulness of those methods to the Agency. Id. ¶ 40 & 60. The withheld Item 4 information thus remains currently and properly classified.

**B. The Agency properly withheld Item 4 information under Exemption 3.**

Exemption 3 allows withholding of information prohibited from disclosure by another federal statute provided that one of two disjunctive requirements is met. The withholding statute must either (1) “require[] that the matters be withheld from the public in such a manner as to leave no discretion on the issue,” or (2) “establish[] particular criteria for withholding or refer[] to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3). The D.C. Circuit has held that a statute falls within Exemption 3’s coverage if it satisfies either of its disjunctive requirements. See, e.g., Irons & Sears v. Dann, 606 F.2d 1215, 1220 (D.C. Cir. 1979).

The Agency has determined that the National Security Act, 50 U.S.C. § 403, et seq., and the Central Intelligence Agency Act of 1949 (“CIA Act”), 50 U.S.C. § 403g, justify withholding of Item 4 information under Exemption 3. Cole Decl. ¶¶ 42-46 & 61. Section 102A(i)(1) of the National Security Act provides that the Director of National Intelligence (“DNI”) “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 403-1(i)(1) (emphasis added); see also United States Intelligence Activities, Exec. Order No. 12333, § 1.6(d), 46 Fed. Reg. 59941, 59944 (Dec. 4, 1981), amended by Exec. Order No. 13470, 73 Fed. Reg. 45323 (July 30, 2008) (requiring the CIA Director to “[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure”). The National Security Act thus constitutes a federal statute that “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).

Similarly, and in furtherance of the National Security Act, Section 6 of the CIA Act provides that the DNI “shall be responsible for protecting intelligence sources and methods from unauthorized disclosure” and that the Agency “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.” 50 U.S.C. § 403g. Because one of the Agency’s primary functions is to collect intelligence through human sources and by other appropriate methods, Section 6 of the CIA Act authorizes the Agency to withhold intelligence sources and methods that are related to the Agency’s core function. Cole Decl. ¶ 44. CIA employees’ names and personal identifiers, signatures, identification numbers, initials, titles, file numbers, and internal organization information are specifically protected from disclosure. Id.

In contrast to Executive Order 13526 and its predecessor orders, the Agency’s obligations under the National Security Act and the CIA Act to protect intelligence information, sources, and methods are absolute and do not require the Agency to identify or describe the damage to the national security that reasonably could be expected to result from unauthorized disclosure. Nonetheless, the Item 4 information withheld from disclosure contains the following information, all of which is exempt under Exemption 3:

- Names of CIA employees;
- Information regarding clandestine human-intelligence sources;
- Information regarding CIA intelligence methods, including methods the Agency uses to assess and evaluate intelligence and to inform policy makers and other government officials;
- Information identifying the countries in which the Agency operated or targeted for intelligence activities; and

- Internal CIA organizational information, among other CIA intelligence methods as outlined in the Item 4 Vaughn index.

Cole Decl. ¶ 62. Withholding of Item 4 information as described in the Item 4 Vaughn index was therefore justified under Exemption 3.

**C. The Agency properly withheld Item 4 information under Exemption 6.**

Exemption 6 protects information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The D.C. Circuit understands the phrase “similar files” to include any information pertaining to a particular individual. See Lepelletier v. FDIC, 164 F.3d 37, 46 (D.C. Cir. 1999).

The privacy information withheld from the Item 4 documents is protected from disclosure under Exemption 6 because the individuals identified have a significant privacy interest in the information. Cole Decl. ¶¶ 47-51 & 64. The information includes names of individuals and other biographical identifying data. Id. ¶ 64. Unlike information concerning decisions made or actions taken by CIA employees, the data withheld pursuant to Exemption 6 do not shed light upon the operations or activities of the United States Government. Id. Likewise, the withheld information will not contribute to the public understanding of the thoroughness, scope, intensity, or creativity of the United States Government’s efforts to locate POW/MIAs. Id.

Even if some minimal public interest could be found in disclosure of the personal privacy information at issue, the balance nonetheless tilts dramatically against disclosure. Disclosure of the personal information could expose the affected individuals and their families to unnecessary public scrutiny, violating their personal privacy. Id. ¶¶ 47-51 & 65. The strong privacy interests

at stake outweigh the negligible public interest, if any, in disclosure, justifying the Agency's withholding of certain Item 4 information pursuant to Exemption 6.

**D. The Agency has released all reasonably segregable material responsive to Item 4.**

The Agency conducted a review of all Item 4 documents that were released in part ("RIP") or withheld in full to determine whether meaningful, reasonably segregable, non-exempt information contained in the documents could be released. Cole Decl. ¶ 66. The Agency made its segregability determination based upon careful review of the Item 4 documents individually and as a whole. Id. Specifically, the Agency conducted a line-by-line review of each Item 4 document to ensure that it has properly withheld information pursuant to the applicable FOIA exemptions. Id.

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

**II. THE AGENCY IS CONDUCTING A REASONABLE SEARCH FOR DOCUMENTS RESPONSIVE TO ITEM 5. (ORDER, III.A.2)**

Plaintiffs' Item 5 request seeks records pertaining to 1,711 individuals who allegedly are Vietnam-era POW/MIAs, including 44 individuals whose next-of-kin have provided privacy waivers. Cole Decl. ¶ 68; see Hall, 668 F. Supp. 2d at 180 & n.6. In Part III.A.2 of the Order, the Court held that the Agency must explain why it requires biographical 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 Agency can verify as responsive to Item 5. See Hall, 668 F. Supp. 2d at 180-81. The Agency explains below the actions it has undertaken pursuant to the Court's Order.

The Agency generally requires biographical information – e.g., date of birth, place of birth, or Social Security number – in order to identify records pertaining to named individuals. Cole Decl. ¶ 69; Koch Decl. ¶¶ 25-27. This is because such identifying information allows the Agency to make proper responsiveness determinations. Cole Decl. ¶ 69. Because individuals often have the same or similar names, the Agency cannot confirm whether records discovered through a name-based search in fact pertain to the individual listed in the FOIA request. Id. Put otherwise, it is extremely difficult, and often impossible, to determine responsiveness based on a name alone. Id.; Koch Decl. ¶ 25. And, although Plaintiffs' have provided the Department of Defense ("DOD") reference numbers for many of the individuals listed in their FOIA request, such information has little relevance to searches of CIA records because the Agency does not recognize or use third-party-agency reference numbers in its own documents. Cole Decl. ¶ 69; Koch Decl. at 10 n.7.

Plaintiffs have provided additional identifying information, such as Social Security numbers or dates of birth, for 31 of the 1,711 names. Cole Decl. ¶ 70 & n.27 (listing individuals). This information increases the Agency's ability to determine responsiveness, but such ability is not guaranteed. Id. ¶ 70. The Agency therefore agrees to search for and process records responsive to the 31 names by using the electronic CIA Automatic Declassification and Release Environment ("CADRE") system, as described below.

The Agency has determined that there are two systems of records most likely to contain information responsive to Item 5: (A) the Agency's archived records; and (B) the CADRE system. Id. ¶ 71. As described below, the Agency has determined that a search of the archived records would be unduly burdensome but that searches can, and are, being completed in the CADRE system. Id.

**A. A search for documents responsive to Item 5 in the Agency's archived records would be unduly burdensome.**

The Agency's archived records contain 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 CIA Act's operational-files exemption. Id. ¶ 72. Archived records are searchable only by use of an electronic index. Id.

Performing such a search would be unduly burdensome. By way of illustration, the Agency has attempted a search in the electronic index of the archived records for the 1,711 individuals using names provided by Plaintiffs as search terms. Id. ¶ 73. The Agency 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. Id. As previously discussed, the supplemental biographical information enables the Agency to determine whether any of the records located through a name-based search are in fact responsive. Id. The search of the electronic index indicated that 16,423 hard-copy file folders may contain responsive records to Item 5. Id.

Review of those 16,423 file folders would be unduly burdensome because the process to review each document would require Agency officials to manually retrieve each specific file folder from the remote location where the particular archived record is stored. Id. ¶ 74. Each file folder contains numerous documents in hard copy only – the files are not searchable by electronic means. Id. Moreover, documents in each file folder may not refer to a specific topic, country, region, or subject-matter area. Id. Agency officials would thus have to retrieve each relevant storage box for its remote location, unseal it, locate and retrieve each of the 16,423 individual hard-copy file folders, and then manually review every document in each file folder merely to determine whether each archived document would be responsive to Item 5. Id. That massive task would impose an inordinate and unreasonable burden on Agency resources. Id.

**B. The Agency is currently conducting a search of the CADRE system for documents pertaining to the 31 individuals for whom Plaintiffs have provided supplemental identifying information.**

The CADRE system 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. Id. ¶ 75. CADRE is text-searchable and is entirely electronic, unlike the archived records described above. Id. Even so, to conduct and process a CADRE search for all 1,711 names provided is unreasonable. Id. By way of illustration, Agency officials have attempted a CADRE search for the 1,711 names and identified almost 140,000 documents as potentially responsive. Id. In order to process these documents, Agency officials would not only have to review each individual document, but with respect to the individuals for whom Plaintiffs have not provided supplemental biographical information, the Agency could face considerable difficulty in making responsiveness determinations. Id. The

amount of time required to review and determine responsiveness would impose an unreasonable burden on the Agency's already limited resources. Id.

It is, however, reasonable for the Agency to examine and process potentially responsive electronic documents in CADRE that pertain to the 31 individuals for whom Plaintiffs have provided supplemental biographical information. Id. ¶ 76. This substantially less imposing task would still require the Agency to examine approximately 1,400 records identified by the CADRE search. Id. Only by reviewing each individual record can the Agency determine which documents constitute so-called "false hits" and which hits are truly responsive to Item 5. Id.

Due to the large number of potentially responsive records, the Agency requires additional time to review the 1,400 documents and to process those found to be responsive. Id. The Agency will review and release all non-exempt, responsive records pertaining to the 31 individuals for whom Plaintiffs have provided supplemental identifying information no later than January 31, 2011. Id.

### **III. THE AGENCY HAS CONDUCTED A SUPPLEMENTAL SEARCH FOR DOCUMENTS RESPONSIVE TO ITEM 7. (ORDER, III.A.3)**

In response to Plaintiffs' request for "all records pertaining to any search ever conducted by the Agency, at any time and for any reason, for records concerning Vietnam War POW/MIAs," the Court ordered CIA to conduct a search for any searches recently undertaken on behalf of other federal agencies. Hall, 668 F. Supp. 2d at 181. The Court interpreted Plaintiffs' request "as excluding records of searches performed in response to previous FOIA requests" and noted that it "will not order the CIA to perform a search that its recordkeeping system does not allow." Id.



As the Nelson Declaration explains, since the filing of the Koch Declaration in 2006, the CIA's MORI system has been replaced by CADRE. Nelson Decl. ¶ 38; see also id. ¶ 37 (describing the MORI system). When CADRE replaced MORI, information contained in MORI was transferred to CADRE. Id. ¶ 38. Whenever a search is conducted in CADRE, MORI documents will be included in the search. Id.

Pursuant to the Court's Order, the CIA searched CADRE for all searches conducted for other federal agencies concerning Vietnam War POW/MIAs. Id. ¶ 39. CADRE labels requests from other federal agencies asking the CIA to perform a search for records as executive branch ("EB") searches. Id. The only part of CADRE likely to contain any information concerning search requests from federal agencies is the EB case type. Id. Accordingly, the CIA searched all EB cases to determine if any requested search pertained to Vietnam War POW/MIAs using the following terms: "Prisoner of War;" "Prisoners of War;" "Missing in Action;" "PW;" "PWs;" "POW;" "POWs;" "MIA;" "MIAs;" "POW/MIA;" "POW/MIAs;" and "Vietnam." Id. ¶ 40. CADRE is not case-sensitive: the CIA's search therefore included all terms and references irrespective of case. Id. No responsive documents were found. Id.

**IV. THE AGENCY HAS TAKEN AFFIRMATIVE STEPS TO CONFIRM THE PROCESSING OF REFERRALS & COORDINATIONS INVOLVING OTHER FEDERAL AGENCIES. (ORDER, III.A.4)**

In Part III.A.4 of the Order, the Court declined to grant Plaintiffs the relief they requested with respect to Item 3, holding instead that the CIA "must take affirmative steps to ensure that its referrals are being processed, which it should describe in its supplemental filing." Hall, 668 F. Supp. 2d at 182. This Section describes the steps taken by CIA with respect to referrals and coordinations, another type of collaborative action involving third-party agencies.

A “referral” is necessary when the CIA possesses a document that originated with another agency. Cole Decl. at 3 n.4; Nelson Decl. at 13 n.9. The Agency then refers the document to the originating agency for a direct response to the requester. Cole Decl. at 3 n.4; Nelson Decl. at 13-14 n.9. Referrals differ from “coordinations,” which are necessary when a CIA-originated document contains information the disclosure of which would affect the interests or activities of another federal agency. Cole Decl. at 3 n.4; Nelson Decl. at 14 n.9. The Agency then contacts the third-party agency in order to obtain guidance on whether to release or withhold the information and responds to the FOIA requestor in a coordination. Cole Decl. at 3 n.4; Nelson Decl. at 14 n.9.

**A. The Agency has taken affirmative steps to confirm the processing of referrals to third-party agencies.**

On September 28, 2007, the Agency informed Plaintiffs that the CIA had processed their FOIA request, located responsive documents, and determined that some information contained in those documents had not originated with the CIA. Nelson Decl. ¶ 28; see id. Exh. A. The CIA then contacted each agency from which the information originated and informed the originating agencies to respond directly to Plaintiffs. The agencies concerned were: Department of Defense (“DOD”) (30 documents); National Security Agency (“NSA”) (1 document); Defense Intelligence Agency (“DIA”) (3 documents); Department of the Navy (“Navy”) (1 document); Department of the Army (“Army”) (1 document); and Department of State (“DOS”) (2 documents). Id. ¶ 29.

On May 24, 2010, the CIA sent registered letters to each of the originating agencies. Id. ¶ 30.<sup>8</sup> The CIA requested that the originating agencies process the Item 3 referral documents and

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<sup>8</sup> The NSA has advised the Agency that it has already responded directly to Plaintiffs. Nelson Decl. ¶ 30.

respond directly to Plaintiffs “as soon as possible as CIA has a court deadline of August 2010.” Id. ¶ 30; see id. Exhs. B, C, D, E, F & G. The CIA followed up with each originating agency in June and July 2010. Id. ¶ 30. The specific communications between the CIA and each originating agency are described in detail in the Nelson Declaration. See id. ¶ 31 (describing responses of the DIA, DOD, NSA, DOS, Navy, and Army). Plaintiffs have received final responses from all six originating agencies to which the CIA sent referral documents. See id.

**B. The Agency has taken affirmative steps to confirm the processing of coordinations with third-party agencies.**

On September 28, 2007, the Agency notified Plaintiffs that it had processed their FOIA request and had located responsive documents that required coordination with other federal agencies. Cole Decl. ¶ 7 (citing DiMaio Decl. Exh. 2). The Agency informed Plaintiffs that once the coordination process was complete the Agency would furnish them with supplemental responses addressing the coordination documents. Id. To initiate the coordination process, the CIA then contacted each third-party agency whose equities were affected by the responsive documents. Id.

Thirteen documents necessitated coordination in this case and affected the following federal agencies: United States Air Force (“AF”); Federal Bureau of Investigation (“FBI”); DIA; NSA; National Security Council (“NSC”); National Reconnaissance Office (“NRO”); National Geospatial-Intelligence Agency (“NGA”); Navy; DOD; DOS; and the United States Marine Corps (“Marine Corps”). Id. ¶ 8. The Agency has subsequently confirmed that each third-party agency completed its review of the coordination documents. Id. ¶ 9 & Nelson Decl. Exh. A. Accordingly, on August 3, 2010, two coordination documents were released to Plaintiffs in full and eleven were RIP. Id. ¶ 9. & Nelson Decl. Exh. A. The third-party federal agencies that

withheld information have justified the withholdings made in separate declarations that correspond to each coordination document. See Def.'s Supp. Response Exh. A (Declaration of Alesia Y. Williams); Exh. B (Declaration of Roland D. Tisdale); Exh. C (Declaration of LCDR Jessica M. Hudson, JAGC, USN); Exh. D (Declaration of Elizabeth M. Smith); Exh. E (Declaration of Diane M. Janosek); & Exh. F (Declaration of Robert A. Harney, NRO).<sup>9</sup>

**C. The Agency has properly withheld information responsive to Item 3 contained in the coordination documents.**

The Agency has properly invoked Exemptions 1, 3, and 6 to withhold information responsive to Item 3 contained in the coordination documents.

**1. The Agency has properly invoked Exemption 1.**

The Agency's reliance on Exemption 1 to protect classified information is described, supra, at Section I.A. In the interest of avoiding repetition of the discussion provided in Section 1.A, the Agency respectfully directs the Court to Paragraphs 10-21 of the Cole Declaration for the justifications underpinning its invocation of Exemption 1 for withholding of the classified information responsive to Item 3.

Regarding the secret information withheld from documents C01352208, C01352210, C01352213, C01442335, and C01442360, the Agency has determined that disclosure of such information could be expected to cause serious damage to the national security. Cole Decl. ¶ 19; see id. ¶¶ 22-35. Such information is exempt from automatic declassification under Executive Order 12958. See id. ¶¶ 36-40.

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<sup>9</sup> The Agency originally sought to coordinate release of document C01342308 with the NSC and obtain a third-party-agency declaration but was later informed that NSC no longer considers the redacted information classified. However, because CIA has invoked Exemption 1 for precisely the same information the NSC considers unclassified, the information is still properly withheld under Exemption 1.

Regarding the top-secret information withheld from documents C01342308 and C01442334, the Agency has determined that disclosure of such information could be expected to cause exceptionally grave damage to the national security. Id. ¶ 19; see id. ¶¶ 22-35. Such information is exempt from automatic declassification under Executive Order 12958. See id. ¶¶ 36-40.

**2. The Agency has properly invoked Exemption 3.**

The Agency's reliance on Exemption 3 and the National Security Act and CIA Act to withhold classified information is discussed, supra, at Section I.B. In the interest of avoiding repetition of the discussion provided in Section 1.B, the Agency respectfully directs the Court to Paragraphs 41-44 of the Cole Declaration for the justifications underpinning its invocation of Exemption 3 for withholding of the classified information responsive to Item 3.

The Agency has determined that documents C01340082, C01352208, C01352210, C01652212, C01352213, C01442326, C01442334, C01442335, C01442356, and C01442360 contain information exempt from release under Exemption 3, including:

- names of CIA employees, among them covert employees;
- information regarding CIA clandestine human-intelligence sources;
- information regarding CIA intelligence methods, including methods the CIA uses to assess and evaluate intelligence and to inform policymakers and other government officials;
- information regarding covert CIA installations;
- information identifying the countries in which the CIA operated or targeted for intelligence activities;
- signatures of CIA employees;
- CIA employee identification numbers; and

- internal CIA organizational information, including the names of CIA components and the names and designations of certain files.

Cole Decl. ¶ 45. The National Security Act, Section 6 of the CIA Act and, in turn Exemption 3, unambiguously protect such information from disclosure. See supra, Section 1.B.

**3. The Agency has properly invoked Exemption 6.**

The Agency's reliance on Exemption 6 to withhold personal information is discussed, supra, at Section I.C. In the interest of avoiding repetition of the discussion provided in Section 1.C, the Agency respectfully directs the Court to Paragraphs 47-50 of the Cole Declaration for the justifications underpinning its invocation of Exemption 6 for withholding of the personal information responsive to Item 3 contained in document C01352210.

**D. The Agency has released all segregable information contained in the coordination documents.**

The Agency has released 11 RIP coordination documents; no document was withheld in its entirety. Cole Decl. ¶ 52. The Agency conducted a line-by-line review of each RIP coordination document to determine whether meaningful, reasonably segregable, non-exempt portions of the documents could be released. Id. The Agency has determined that it has released all information that was segregable and not otherwise exempt. Id.

**V. THE AGENCY'S SEARCH FOR RECORDS RESPONSIVE TO ITEM 3 WAS ADEQUATE. (ORDER, III.B.1.i)**

In Part III.B.1.i of the Order, the Court held that the Agency "must provide a supplemental declaration describing its search method, including search terms, databases searched, and other relevant information that will allow the Court to evaluate whether the Agency's search [for documents responsive to Item 3] was adequate." Hall, 668 F. Supp. 2d at 184. The Court added that the Agency "should address whether it used both 'Prisoner of War'

and ‘Prisoners of War’ as search terms” and “must either explain why the unused form would not have turned up any additional responsive documents or perform a new search using that term.” Id. at 184 n.9. Additionally, the Court specified that the Agency “should also indicate whether its retrieval system is case-sensitive” and should “explain why it believes its search terms are sufficient to locate responsive documents.” Id.

As described in this Section, the CIA has conducted a thorough search for documents responsive to Item 3 in all relevant components of the Agency, specifically: (A) the Director’s Area; (B) the Directorate of Science and Technology; (C) the Directorate of Support; and (D) the Directorate of Intelligence.

**A. The Agency’s search for Item 3 records in the Director’s Area was adequate.**

The Director’s Area (“DIR”) encompasses the Offices of the Director and Deputy Director in addition to offices such as the Office of Inspector General (“OIG”), the Office of General Counsel (“OGC”), and the Office of Congressional Affairs (“OCA”) that are not organized under one of the Agency’s four main directorates. Nelson Decl. ¶ 7. The Agency tasked the five DIR offices most likely to contain documents responsive to Item 3: the Director’s Action Center (“DAC”); the National Intelligence Counsel (“NIC”); the OIG; the OCA; and the OGC. Id. ¶ 9. These five offices handle relevant topics including policy issues, issues of high public interest, correspondence between the Agency’s most senior officials, or had previously produced records on POW/MIA issues. Id. These offices are the only ones within the DIR that contain information responsive to Item 3. Id.

Each of the five DIR offices conducted searches of their systems of records using the following terms: “POW;” “MIA;” “POW’s;” “MIA’s;” “Prisoner of War;” “Missing in Action;”

“PW;” “PWs;” “PW’s;” “POWs;” “MIAs;” “Laos;” and “Horgan.” Id. ¶ 10. Searches in each of the DIR offices’ systems of records captured records responsive to singular and plural forms of these search terms. Id. None of the systems of records searched is case-sensitive. Id. The searches thus included all terms and references regardless of whether the search term was in upper or lower case. Id. The searches conducted by the five DIR offices were both expansive and inclusive in an effort to obtain the maximum number of records responsive to Item 3. Id. Additionally, DIR personnel conducted certain manual searches of NIC, OIG, and DAC files that encompassed all variations of the above-listed search terms, thereby increasing the likelihood that responsive documents would be located. Id. All searches – manual and electronic – encompassed the timeframe from 1960 to 2002 and were thus comprehensive, complete, and otherwise would have recovered all information responsive to Item 3. Id. ¶ 11. All responsive documents were subsequently reviewed and released to Plaintiffs in September 2007. Id.

**B. The Agency’s search for Item 3 records in the Directorate of Science & Technology was adequate.**

The Agency determined that the Directorate of Science and Technology’s (“DS&T”) archived records database was the only DS&T system of records likely to contain non-exempt documents responsive to Item 3. Nelson Decl. ¶ 13. The archived records database contains all archived information responsive to the relevant timeframe, i.e., 1960 to 2002. Id. Search of the DS&T’s component files would have been unreasonable because there was no information in the archived files suggesting recent or continuing activity that would otherwise trigger a search of the DS&T’s active component files. Id.

The DS&T used the following search terms: “POW;” “MIA;” “missing;” “missing in action;” “PW;” “prisoner of war;” “prisoners of war;” and “Horgan.” Id. ¶ 14. The DS&T’s



search functionality locates words that include characters of the search term inputted. For example, the search term “POW” would yield all records containing the following terms: “POWS,” “POWERS,” “POW’s,” and any other term containing the sequence of characters “POW.” Id. The system of records searched is not case sensitive and included all terms irrespective of the case of the words searched. Id. The Agency determined that these search terms would provide the broadest possible search and yield the maximum potential number of responsive records within the DS&T. Id. The system of records searched fully encompassed the timeframe from 1960 to 2002. Id. ¶ 15. As a result of this search, the Agency located responsive documents, all of which it released to Plaintiffs in September 2007. Id.

**C. The Agency’s search for Item 3 records in the Directorate of Support was adequate.**

The Agency has searched all non-exempt systems of records within the Directorate of Support (“DS”) likely to contain information responsive to Item 3. Nelson Decl. ¶ 16. Specifically, the Agency searched the DS’s largest personnel security database, which contains an index to other non-exempt Office of Security (“OS”) records, including information pertaining to persons that have ever been of interest to the Agency, primarily personnel-, employee-, and applicant-related matters. Id. As such, the system searched is the only DS system of records likely to contain responsive information to Item 3 because it contains information on individual persons. Id.

The Agency searched the DS database using the following search terms: “U.S. Prisoner of War;” “Prisoners of War;” “Prisoners;” “POW;” “POWs;” “PW;” “PO;” “US;” “POW/MIA;” “POW/MIAs;” “POW/MIA Affairs;” “Missing in Action;” “MIA;” “MIAs;” “MI;” “Laos;” “Royal Laotian government;” “Royal Laotian;” “Kampuchea;” “Cambodia;” “Vietnam;” “Vi;”

“Southeast Asia;” “North Korea;” “China;” “Cuba;” “Russia;” “Horgan Laos;” “Horgan Vietnam;” “Horgan;” and “Horagen.” Id. ¶ 17. The searches were not case-sensitive and included all terms and references irrespective of the case of the terms searched. Id.<sup>10</sup>

Despite this extensive search, the DS database yielded no documents responsive to Item 3. Id. ¶ 18. The Agency conducted no further searches of any DS system of records because no other system could reasonably be expected to contain responsive documents if the database that was searched did not return any responsive documents. Id. A negative search result in the DS database the Agency searched indicates that no other DS database would contain responsive documents. Id.

**D. The Agency’s search for Item 3 records in the Directorate of Intelligence was adequate.**

The Agency conducted searches of all Directorate of Intelligence (“DI”) systems of records likely to contain records responsive to Item 3. Nelson Decl. ¶ 19. In searching the relevant DI databases, the Agency used the following search-term string: (“UNITED STATES POW” OR “UNITED STATES MIA” OR “UNITED STATES PRISONER OF WAR” OR “UNITED STATES PW” OR “UNITED STATES PWS” OR “UNITED STATES PW’S” OR “UNITED STATES MISSING IN ACTION” OR “U.S. POW” OR “U.S. PW” OR “U.S. PWS” OR “U.S. PW’S” OR “US PW” OR “US PWS” OR “US PW’S” OR “U.S. POW” OR “US MIA” OR “U.S. PRISONER OF WAR” OR “U.S. MISSING IN ACTION”) AND “LAOS” WITHIN 50. Id. ¶ 20. Use of the term “or” in these searches would have located all instances of

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<sup>10</sup> Additionally, the DS database has a unique search capability allowing the use of an asterisk symbol that allows the search term to operate as a “wildcard,” which would have located all records that include the relevant character sequence, irrespective of spaces or typographical errors. Id. ¶ 17. For example, if the name “Robert Johnson” were searched, and a “wildcard” search using the search terms “rob\*” and “johns\*” were inputted, the system would return all information pertaining to persons named “Rob,” “Robert,” “Rober,” “Johns,” “Johnson,” or “Johnston.” Nelson Decl. ¶ 16.

any of the terms searched. Id. For example, the search “DOGS OR CATS” would have returned all documents containing the word “DOG” and all documents containing the word “CAT.” Id. This search capability greatly increases the number of responsive results. Id. Also, the search-term string “AND LAOS WITHIN 50” means that the term “LAOS” must occur within 50 words or any of the search terms used. Id. Use of that search-term string would have produced the maximum number of results that have a probable relationship between the terms searched. Id.

Because the construction of the DI’s systems of records differ, the Agency adapted its search in another DI database likely to contain responsive information using the following search terms and used the following search data: (“UNITED STATES POW” OR “UNITED STATES MIA” OR “UNITED STATES PRISONER OF WAR” OR “UNITED STATES PW” OR “UNITED STATES PWS” OR “UNITED STATES PW’S” OR “UNITED STATES MISSING IN ACTION” OR “U.S. POW” OR “U.S. PW” OR “U.S. PWS” OR “U.S. PW’S” OR “US PW” OR “US PWS” OR “US PW’S” OR “U.S. POW” OR “US MIA” OR “U.S. PRISONER OF WAR” OR “U.S. MISSING IN ACTION”) AND “LAOS.” Id. ¶ 21. The searches of this system of records otherwise functioned similarly to the searches described above.

The Agency also searched the DI’s oldest database, which is organized by index and can only be searched using limited numerical codes. Id. ¶ 22. Accordingly, the Agency was able to search with only broad subject-matter areas by using codes corresponding to: “Laos;” “Prisoners of War;” “POW Camps;” “POW Hospitals;” “Conduct for POWS;” “Political Indoctrination;” and “Repatriations.” Id. This search enabled the greatest likelihood of locating documents responsive to Item 3. Id.

The Agency also searched the DI's archived records database using the following search terms: "PW;" "PWs;" "POW;" "POW's;" "Prisoners of War;" "MIA;" "MIAs;" "MIA's;" "Missing in Action;" "Kampuchea;" "Cambodia;" "Laos;" and "Vietnam." Id. ¶ 23. The DI's archived records database functions in the same manner as the DS&T's archived records database. Id.

All searches the Agency conducted for information controlled by the DI – with the exception of the DI's oldest database due to its unique search limitations – captured records responsive to the search terms irrespective of the singular or plural form of the terms. Id. ¶ 23. For example, the search term "United State Prisoner of War" also would have recovered documents that contain the search terms "United States Prisoners of Wars," "United State Prisoners of War," "United State Prisoner of Wars," and all other variations of the plural and singular forms of the words contained in the search term. Id. ¶ 24. None of the DI systems of records searched are case-sensitive and the Agency's searches accordingly would have returned all documents that contain the search terms irrespective of the case of the terms located. Id. ¶ 25. Like the other Item 3 searches the Agency conducted, the DI searches encompassed all records within the timeframe from 1960 to 2002. Id. All DI searches were tailored to the Item 3 request in a manner that would yield the maximum, reasonably precise set of results that could then be analyzed for responsiveness in a document-by-document fashion by the Agency. Id. The Agency's DI searches located responsive documents, which were released to Plaintiffs in September 2007. Id.

**VI. THE AGENCY CONFIRMS THAT ONLY THE PIPD CONTAINS RECORDS RESPONSIVE TO ITEM 6. (ORDER, III.B.2)**

In Part III.B.2 of the Order, the Court required the Agency to state that no CIA division other than the Public Information Programs Division (“PIPD”) is likely “to have any records related to Hall’s [1994 and 1998 FOIA requests] or the Agency’s fee assessments.” Hall, 668 F. Supp. 2d at 185.<sup>11</sup> As the Court noted, Item 6 “seeks records pertaining to searches the CIA performed in response to Hall’s 1994 and 1998 FOIA requests.” Id.

The Agency’s search for documents responsive to Item 6 was conducted exclusively in the PIPD and did not include records systems of any other CIA division, except for the litigation files of the CIA’s OGC. Nelson Decl. ¶ 33. The PIPD is the only CIA division responsible for managing and processing FOIA requests and assessing fees arising out of such requests. Id. Only the PIPD retains a complete copy of the administrative file associated with a FOIA request made of the Agency. Id. Information concerning the processing of a FOIA request located in any CIA division other than the PIPD would be duplicative of the information stored in the PIPD’s administrative files. Id.

When the Agency searched Plaintiff Hall’s administrative files concerning his fee assessments for the 1994 and 1998 FOIA requests, a PIPD officer conducted a search using Plaintiff Hall’s name and case numbers in order to locate all relevant files. Id. ¶ 34. The files were identified and, document by document, manually inspected for all information pertaining to fee assessments associated with the 1994 and 1998 requests. Id. (quoting Koch Decl. ¶ 32). The PIPD also conducted a manual search of all other records likely to be responsive to Item 6,

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<sup>11</sup> The Agency previously agreed to search the PIPD and make available to Plaintiffs all non-exempt documents responsive to Item 6 of their February 2003 FOIA request. Nelson Decl. ¶ 32 (citing Koch Decl. ¶¶ 31-36).

including all Hall-related OGC litigation files. Id. The Agency has thus conducted an extensive and thorough search in order to locate documents responsive to Item 6.

**VII. THE AGENCY HAS PROPERLY JUSTIFIED THE NOVEMBER 2005 WITHHOLDINGS. (ORDER, III.C.1)**

Part III.C.1. of the Court's Order held that the Agency must submit a Vaughn index describing "the documents and the justifications for nondisclosure" of documents responsive to Plaintiffs' 1994 and 1998 requests and specifically directed the Agency to describe the 102 documents that were RIP in addition to the 26 documents that were withheld in full from disclosure to Plaintiffs in November 2005. Hall, 668 F. Supp. 2d at 187.<sup>12</sup> As the Agency has described in previous submissions to the Court, the Agency voluntarily provided documents to Plaintiffs that are responsive to the 1994 and 1998 requests (the "Hall I requests"), on November 7, 2005. Cole Decl. ¶ 77; see Brief in Support of Defendant's Renewed Motion to Dismiss & for Partial Summary Judgment, Docket No. 109 at 6. These voluntarily disclosed documents were responsive to Items 1, 2, and part of Item 3. Cole Decl. ¶ 77; Koch Decl. ¶ 20.

Pursuant to the Court's Order, the Agency provides herewith a Vaughn index for the November 2005 withholdings and describes the propriety of FOIA exemptions invoked – Exemptions 1, 2, and 5 – below. See Cole Decl. ¶ 79 & id. Exh. E.

**A. The Agency properly invoked Exemption 1 to protect information contained in the November 2005 withholdings.**

The Agency relies on Exemption 1 to withhold information in all RIP documents with the exception of documents C00465476 and C00520816. Cole Decl. ¶ 80. The Agency's reliance

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<sup>12</sup> Due to an administrative error, the Agency has determined that DIF document C00510535 should be released in part and DIP document C00437023 should be released in full to the Plaintiffs. Cole Decl. ¶ 78. The Agency's Vaughn index thus describes a total of 103 documents that were RIP in addition to 24 documents withheld in full. See Cole Decl. Exh. E. The Agency released DIP document C00437023 in full and released DIF document C00510535 in part to Plaintiffs on August 5, 2010. Id. ¶ 78 & id. Exh. D.

on Exemption 1 goes directly to intelligence sources and methods, in particular, human-intelligence sources. Id.; see id. ¶¶ 10-31.

The Agency has determined that disclosure of information classified as “confidential” withheld from documents C00435681, C00435767, C00435901, C00435913, C00435956, C004336529, C00436591, C00436601, and C00436790 reasonably could be expected to cause damage to the national security. Id. ¶ 81. Disclosure of information classified as “top secret” 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. Id. The information classified as “secret” contained in the remaining withheld documents reasonably could be expected to cause serious damage to the national security. Id.<sup>13</sup>

Moreover, all November 2005 withholdings older than 25 years are properly exempt from automatic declassification under Executive Order 12958. Id. ¶ 82. These documents contain detailed information about human-intelligence sources that, if released, could be expected to reveal the identities of those sources. Id. The withheld information provides precise descriptions of the times, dates, and places that particular human sources collected intelligence information. Id. 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. Id. The November 2005 withholdings contain information that, if released, could be expected to reveal information about the application of specific intelligence methods. Id. This is because the withheld information describes in detail the intelligence practices of the Agency, many of which remain in use, and the means by which the Agency conducts specific

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<sup>13</sup> Documents C00465476, C00465477, C00520816, and C00510535 are unclassified but remain statutorily exempted from release under Exemption 3. See Cole Decl. ¶ 81 n.31.

intelligence activities. Id.; see id. ¶¶ 36-39. The Agency has also determined that the November 2005 withholdings older than 25 years remain exempt from disclosure under Executive Order 13526. Id. ¶ 82; see id. ¶ 40.

Finally, the Agency has determined that 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 Exec. Order No. 13526 § 3.3(h)(1)(A), 75 Fed. Reg. at 715. The information withheld from these two documents pursuant to Exemption 1 contains detailed descriptions of three human intelligence sources. Cole Decl. ¶ 83. The source-identifying information includes biographical data, such as names nationalities, occupations, and associates. Id. 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. Id. In light of this information, as well as the biographical descriptions of the sources themselves, disclosure of information withheld pursuant to Exemption 1 should clearly and demonstrably be expected to reveal the identities of the three human-intelligence sources. Id. As such, the information is exempt from automatic declassification at 50 years and is properly protected under Exemption 1.

**B. The Agency properly invoked Exemption 2 to protect information contained in the November 2005 withholdings.**

Exemption 2 encompasses two categories of information: (1) internal matters of relatively trivial nature, often referred to as “low 2” information; and (2) more substantial internal matters, the disclosure of which would risk circumvention of a legal requirement, often



referred to as “high 2” information. See, e.g., Schiller v. NLRB, 964 F.2d 1205, 1207 (D.C. Cir. 1992) (describing “low 2” and “high 2” aspects of Exemption 2); Judicial Watch, Inc. v. U.S. Secret Serv., 579 F. Supp. 2d 182, 186 (D.D.C. 2008) (describing records protected by “low 2” and “high 2”).

The Agency has properly invoked Exemption 2 to withhold exempt “low 2” information contained in RIP documents C00465476 and C00520816. The information withheld consists of internal organizational data, administrative codes, and routing information, including the names of Agency employees. Cole Decl. ¶ 85. In addition to being purely internal, record-keeping data, this information is not subject to any genuine or significant public interest. Id. ¶ 86. The disclosure of CIA employee names or of codes unique to the Agency’s administrative practices would not contribute to the public understanding of the operations or activities of the government. Id. As such, the withheld information falls outside the ambit of the public interest that the FOIA was enacted to serve. The Agency has properly invoked Exemption 2 to withhold such “low 2” information.

**C. The Agency properly invoked Exemption 3 to protect information contained in the November 2005 withholdings.**

The Agency has properly invoked Exemption 3 for all withheld-in-full and RIP documents, including RIP document C0051035, which was released to Plaintiffs on August 5, 2010. Cole Decl. ¶ 87. Disclosure of the information contained in the withheld and RIP documents would reveal intelligence sources and methods, including methods the Agency uses to assess and evaluate intelligence and to inform policymakers and other government officials, as well as other exempt information, including: (1) names of CIA employees; (2) information regarding CIA clandestine human-intelligence sources; (3) information identifying the countries

in which the CIA operated or targeted for intelligence activities; (4) information concerning the location of CIA facilities; and (5) internal CIA organizational information, including telephone numbers and information dissemination control markings. Id. In light of the Agency's obligations under the National Security Act and Section 6 of the CIA Act, the Agency properly withheld such information pursuant to Exemption 3. Id.; see id. ¶¶ 41-46.

**D. The Agency properly invoked Exemption 5 to protect information contained in the November 2005 withholdings.**

Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). Exemption 5 has been construed to exempt documents "that are normally privileged in the civil discovery context." Dep't of Justice v. Julian, 486 U.S. 1, 19 n.1 (1988) (Scalia, J., dissenting); see Martin v. Office of Special Counsel, 819 F.2d 1181, 1184 (D.C. Cir. 1987).

The Agency properly invoked Exemption 5 to withhold exempt information contained in RIP documents C00465476 and C00520816. The Agency has 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-level Agency officials had determined was of policy interest to the Agency. Cole Decl. ¶ 88-89. These communications were between the Agency's Executive Secretariat on behalf of the Director of Central Intelligence and other Agency officers. Id. The deliberative information contained in these documents was solicited, received, or generated as part of the process by which policy is formulated by the Agency. Id. ¶ 90. Because the withheld communications reflect candid, predecisional exchanges regarding policy issues, disclosure of the information is

likely to stifle the Agency's future predecisional debates. Id. The information was accordingly withheld pursuant to Exemption 5.

**VIII. THE AGENCY PROPERLY WITHHELD INFORMATION CONTAINED IN RECORDS RESPONSIVE TO ITEM 3 FOR THE YEARS NOT COVERED IN THE HALL I REQUESTS, AND IN RECORDS RESPONSIVE TO ITEM 6 & ITEM 8. (ORDER, III.C.2; III.C.3; III.C.5.i-ii; III.C.6)**

Pursuant to Parts III.C.2, III.C.3, III.C.5.i-ii, and III.C.6 of the Court's Order, the Agency below provides additional justification for its reliance on FOIA exemptions with respect to records responsive to Item 3 for the years not covered in the Hall I requests, and in records responsive to Items 6 and 8. See Cole Decl. ¶¶ 90-115; DiMaio Decl. at 7-19.

**A. The Agency properly applied Exemption 1 to the non-Hall I Item 3 documents and to the Item 6 & Item 8 documents.**

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. Exec Order No. 12958 § 3.3(a), 60 Fed. Reg. at 19832.<sup>14</sup> Such information is exempt from automatic declassification under Section 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." Id. § 3.4(b)(1), 60 Fed. Reg. at 19832. As the Agency indicated in the Vaughn index it released to Plaintiffs in 2008, the Agency withheld classified information responsive to Items 3, 6, and 8 that was older than 25 years. Cole Decl. ¶ 92. Such information is exempt from automatic declassification.

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<sup>14</sup> The standards set forth in Executive Order 12958 apply to the records responsive to Items 3, 6, and 8 because Executive Order 12958 was the Executive Order in effect when the classification decisions at issue were made. Cole Decl. ¶ 92 n.36. However, the documents are exempt from automatic declassification under Executive Order 12958 as well as under Executive Order 13526. See id. ¶¶ 96-97.

The Agency has determined that information contained in documents 1479592, 1479601, 1479602, 1479607, 1479608, 1484804, 1484807, 1484809, 1484817, 1484822, 1484830-1484877, and 1484883-1484885 if released, could be expected to reveal the identities of human-intelligence sources. Id. ¶ 94. 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 location of the CIA's collection of the information, disclosure of the documents would necessarily tend to reveal the identity of human sources. Id. Additionally, many of the documents are intelligence cables that provide specific biographical information about particular sources, including nationality, occupation, and other similar information. Id. Foreign intelligence services could use such detailed information to identify the human sources referred to. Id.

Moreover, release of documents 1474817, 1474819, 1479600, 1479601, 1479602, 1479606, 1479608, 1484805, 1484806, and 1484819 would reveal information about the application of particular intelligence methods. Id. ¶ 95. These documents describe, in great detail, practices the Agency has used and continues to use to carry out its national-security mission. Id. Detailed knowledge of these methods and practices of the Agency would be of material assistance to those who seek to dull the CIA's effectiveness. Id. The Agency has therefore determined that the classified information at issue that is older than 25 years is exempt from automatic declassification under Executive Order 12958 because such information would reveal the identities of human-intelligence sources as well as information regarding the application of intelligence methods. Id.

Finally, although Executive Order 12958 governs review of these documents, the withheld information would remain exempt from automatic declassification at 25 years under Executive Order 13526 as well. Given the specificity of the withheld information, and recognizing that foreign intelligence services gather and analyze information from diverse sources, the Agency has 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 biographical information withheld. *Id.* ¶ 96 & n.37. The documents also contain detailed descriptions of intelligence methods, many of which remain in use. *Id.* ¶ 97. Foreign intelligence services and other entities that have interests opposed to those of the United States can use this information to thwart CIA activities and attack the United States. *Id.* These parties search constantly for information regarding the activities of the Agency and create ways to defeat CIA activities from seemingly disparate pieces of information. *Id.* 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. *Id.* The Agency therefore has properly withheld classified information older than 25 years that would otherwise be exempt from automatic declassification. Such information remains currently and properly classified pursuant to Executive Order 13526.

**B. The Agency properly applied Exemption 2 to the non-Hall I Item 3 documents and to the Item 6 & Item 8 documents.**

The Agency has properly applied Exemption 2 to withhold “low 2” information contained in the relevant non-Hall I Item 3, Item 6, and Item 8 documents. The following documents contain exempt, “low 2” information: 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. Cole Decl. ¶ 99.<sup>15</sup> The information withheld consists of CIA file numbers, document numbers, distribution and routing codes, handling information, filing identifiers, origination markings, CIA telephone numbers, organizational abbreviations, and various other internal administrative codes. Id. ¶ 100. Because release of such internal information would not meaningfully contribute to the public understanding of the mission or operations of the government, the Agency has properly invoked Exemption 2 to withhold the information. Id.

**C. The Agency properly applied Exemption 5 to the non-Hall I Item 3 documents and to the Item 6 & Item 8 documents.**

The Agency properly applied Exemption 5 to the non-Hall I Item 3 documents, the Item 6 documents, and the Item 8 documents. In its Order, the Court granted the Agency 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. Hall, 668 F. Supp. 2d at 190-92; Cole Decl. ¶ 103. The Agency has 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 Agency officers regarding the calculation of fee estimates for processing Plaintiffs' 2003 FOIA request. Cole Decl. ¶ 103. These communications between the Agency's PPID 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

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<sup>15</sup> The Court has held that the Agency was entitled to summary judgment with respect to withholding of these same documents pursuant to Exemption 3. See Hall, 668 F. Supp. 2d at 190.

recommendations as to the systems of records to be searched, estimates of the amounts of time required for conducting searches, and opinions regarding appropriate search methods and likely search costs. Id. This deliberative information was solicited, received, or generated as part of the process by which policy is formulated by the Agency. Id. 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. Id. Disclosure of this information would therefore reveal the predecisional deliberations of the Agency's officers. Id.

The portions of document 1479603 withheld pursuant to Exemption 5 concern the deliberations of Agency officers on how to process a particular FOIA request. Id. ¶ 104. The document, 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 Agency officers' opinions about the policy issues raised by processing such a large request. Id. The withheld information contains recommendations for addressing those policy concerns. Id. The Agency has determined that such deliberative information is predecisional, as the documents provide no indication that the opinions and policy recommendations, or their rationale, was ever adopted by the appropriate decisionmaker. Id.

Although Plaintiffs correctly note that the date of the document is June 4, 1981, the Agency's future predecisional debates would be stifled or chilled if this information were to become subject to public release. Id. Deliberations concerning how to treat FOIA requests, as well as other policy matters, occur daily at the CIA. Id. If such information were released, Agency officers would hesitate to voice policy recommendations that may, at first blush, appear

unorthodox or that could be subject to misinterpretation. If the deliberative process were to be deprived of Exemption 5's protection, Agency officers would likely refrain from providing the unvarnished truth in their analyses to their superiors. Id.; see id. ¶¶ 105-106. The Agency has properly withheld these documents pursuant to Exemption 5.

The Agency has also properly withheld documents under the attorney-client privilege and Exemption 5. The Agency has reviewed the records described in the 2008 Vaughn index for which it has asserted the attorney-client privilege. Id. ¶ 107-08. Those records contain confidential communications between CIA staff and attorneys within the Agency's OGC, acting in their capacity as legal advisors to the Agency. Id. ¶ 108. Specifically, documents 1370083, 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 Plaintiff Hall's 1998 FOIA request. Id. 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. Id. Document 1370087 is a memorandum from a CIA information-release professional to CIA attorneys regarding how Plaintiff Hall's 1994 FOIA request was processed. Id. Documents 1370086, 1370544, 1371725, 1371726, 1371729, and 1383986 contain discussions between CIA information-release professionals and attorneys concerning litigation with Plaintiff Hall over his FOIA requests. Id. Finally, document 1370081 is a memorandum for a CIA information-release professional from a CIA attorney concerning the identification of documents responsive to Plaintiff Hall's 1998 FOIA request. Id.



The legal advice contained in these documents was based upon, and reflects, facts provided by the CIA to its attorneys.

Each of these documents between CIA attorneys and other Agency officers was prepared with the joint expectation that they would be held in confidence. Id. ¶ 109. As an intelligence agency, the CIA's practice is to communicate information only to those with a legitimate need-to-know. Id. Under the Agency's standard operating procedures, communications are distributed only to those officers who require the information in order to perform their official duties. Id. The Agency has reviewed the documents over which it has asserted the attorney-client privilege and has 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. Id. Because the communications were distributed only to those authorized to act or speak for the Agency in relation to the subject matter of the communications, the communications were made in confidence and are therefore entitled to protection under the attorney-client privilege and Exemption 5. Id. ¶ 110. If such confidential, attorney-client information were to be disclosed, such disclosure would 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 design to protect such communications from disclosure. Id. The Agency has properly invoked Exemption 5 to protect such information.

**D. The Agency properly applied Exemption 6 to the non-Hall I Item 3 documents and to the Item 6 & Item 8 documents.**

The Agency properly applied Exemption 6 to the non-Hall I Item 3 documents, the Item 6 documents, and the Item 8 documents. The Agency has withheld personally-identifiable

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 personal privacy for the affected individuals. Cole Decl. ¶ 111. Documents 1479603 and 1479604 contain the names of FOIA requesters other than Plaintiffs, as well as the names and signatures of CIA employees. Id. ¶ 112. Documents 1320458, 1371724, and 1484810 contain the names of CIA employees, with documents 1320458 and 1371724 also providing the signatures of Agency employees. Id. Document 1484812 contains the names of CIA employees as well as personal medical information about one employee. Id. Document 1484820 contains the home address of an individual who had written a letter to President George H.W. Bush about Vietnam-era POW/MIA matters. Id. 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. Id. Because the withheld information provides the names of, and other personally-identifying information about, particular individuals, it satisfies the requirements for protection under Exemption 6.

The affected individuals have a significant privacy interest in such 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. Id. ¶ 113. Such disclosure could also place employees and their families in danger from any persons seeking retribution against the CIA. Id. Similarly, individuals have a substantial privacy interest in controlling detailed, personal information about themselves, particularly in the age of identity theft. Id.

There is no overriding public interest requiring disclosure of the withheld information. Unlike information concerning decisions made or action taken by CIA employees, the withheld information does not illuminate the operations or activities of the government. Id. ¶ 114. 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. Id. As such, the withheld information falls outside the ambit of the public interest that the FOIA was enacted to serve should be protected by Exemption 6. Id. ¶¶ 114-15.

**IX. THE AGENCY HAS RELEASED ALL NON-EXEMPT, SEGREGABLE INFORMATION.**

As described above, the Agency has released many records, in whole or in part, in response to Plaintiffs' FOIA requests. The Agency has conducted a careful review of the records at issue, individually and as a whole, to determine whether meaningful, reasonably segregable, non-exempt portions of documents could be released. Cole Decl. ¶ 116. The Agency has released any information that was segregable and not otherwise exempt. Id. Those records that have been withheld in full contained no reasonably segregable, non-exempt information. Id. ¶ 117. Any non-exempt information in these records is so inextricably intertwined with exempt information that there are no meaningful, reasonably segregable, non-exempt portions. Id. Release of any non-exempt information in the withheld documents would produce only incomplete, fragmented, or unintelligible sentences and phrases. Id. Similarly, the Agency has conducted a line-by-line review of the documents released in part and determined that all reasonably segregable portions of the records have been released to Plaintiffs. Id. The Agency has ensured that it has properly withheld information pursuant to applicable FOIA exemptions and that it has released all reasonably segregable, non-exempt information.

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Washington, D.C.

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