UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et. al.,	)	
Plaintiffs	)	
v.	)	Civil Action No. 04-00814 (HHK)
CENTRAL INTELLIGENCE AGENCY,	)	
Defendant.	)	

DECLARATION OF DIANE M. JANOSEK

I, DIANE M. JANOSEK, hereby declare and state:

1. I am currently the Deputy Associate Director for Policy and Records for the National Security Agency ("NSA" or "Agency"). I have served with NSA for 11 years, and prior to my current assignment, I held various leadership positions throughout the Agency. As the Deputy Associate Director of Policy and Records, I am responsible for the processing of all requests made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for NSA records.

2. In addition, I am a TOP SECRET classification authority pursuant to section 1.3 of Executive Order (E.O.) 13526 dated 29 December 2009 (75 Fed. Reg. 707). Consequently, it is my responsibility to assert the FOIA exemptions over NSA information in the course of litigation. Through the exercise of my official duties, I have become familiar with the current litigation arising out of a request for information filed

by the Plaintiffs,[1] as the NSA received consultations from the Department of Defense (DOD) and the Central Intelligence Agency (CIA). These agencies referred to NSA classified documents because they either originated with NSA and/or contained NSA equities.

3. The purpose of this declaration and attached Document Index[2] is to explain how NSA processed documents that were referred to the NSA by the CIA and DoD. The declaration further advises the Court that NSA withheld certain information, as set forth below, because it is properly exempt from disclosure under the FOIA based on Exemption 1, 5 U.S.C. §552(b)(1), since the information is a currently and properly classified matter in accordance with E.O. 13526, and Exemption 3, 5 U.S.C. §552(b)(3), since the information is protected from release by statutes. In this case, the relevant Exemption 3 statutes are Section 6 of the National Security Agency Act of 1959, 50 U.S.C. §402 note (Pub. L. No. 86-36); 18 U.S.C. §798; and Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 30 U.S.C. §403-1(i)(1). In order to provide the necessary context for the discussion that follows, I will first describe NSA's origin and mission.

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[1] Throughout this declaration, the NSA refers to Plaintiff Hall only when discussing the processing of records responsive to the 7 February 2003 FOIA request submitted by attorney James H. Lesar on behalf of his client Plaintiff Hall. Mr. Lesar represents Mr. Hall only, and accordingly, NSA released responsive information to Mr. Lesar exclusively. Additionally, some of the released documents contain information about certain POW/MIAs that only Mr. Hall can receive because has received the consent from POW/MIAs family members. These documents have been marked "For Hall Only."

[2] The Document Index contains a complete listing of all the documents that NSA reviewed in response to the referrals that NSA received from the CIA and DoD. For each document listed in the Document Index, NSA identified the referring agency; identified any exempt material in the document and the specific exemptions invoked; and explained the ultimate disposition of the record, which was either a direct release by NSA to the Plaintiffs or return to the referring agency with NSA redactions.

ORIGIN AND MISSION OF NSA

4. The NSA was established by Presidential Directive in 1952 as a separately organized agency within the Department of Defense under the direction, authority, and control of the Secretary of Defense. NSA's foreign intelligence mission includes the responsibility to collect, process, analyze, produce, and disseminate signals intelligence (SIGINT) information, of which communications intelligence (COMINT) is a significant subset, for (a) national foreign intelligence purposes, (b) counterintelligence purposes, and (c) the support of military operations. *See* E.O. 12,333, section 1.7(c), as amended. COMINT is a subcategory of Sensitive Compartmented Information ("SCI"), and it identifies SCI that was derived from exploiting cryptographic systems or other protected sources by applying methods or techniques, or from intercepted foreign communications.

5. In performing its SIGINT mission, NSA exploits foreign electromagnetic signals to obtain intelligence information necessary to the national defense, national security, or the conduct of foreign affairs. NSA has developed a sophisticated worldwide SIGINT collection network that acquires, among other things, foreign and international electronic communications. The technological infrastructure that supports the NSA's foreign intelligence information collection network has taken years to develop at a cost of billions of dollars and untold human effort. It relies on sophisticated collection and processing technology.

IMPORTANCE OF SIGINT TO THE NATIONAL SECURITY

6. There are two primary reasons for gathering and analyzing intelligence information. The first, and most important, is to gain the information required to direct U.S. resources as necessary to counter threats. The second reason is to obtain the

information necessary to direct the foreign policy of the United States. Foreign intelligence information provided by the NSA is routinely distributed to a wide variety of senior Government officials, including the President; the President's National Security Advisor; the Director of National Intelligence; the Secretaries of Defense, State, Treasury and Commerce; U.S. ambassadors serving in posts abroad; the Joint Chiefs of Staff; and the Unified and Specified Commanders. In addition, SIGINT information is disseminated to numerous agencies and departments, including, among others, the Central Intelligence Agency; the Federal Bureau of Investigation; the Drug Enforcement Administration; the Departments of the Army, Navy, and Air Force; and various intelligence components of the Department of Defense. Information provided by NSA is relevant to a wide range of important issues, including, but not limited to, military order of battle; threat warnings and readiness; arms proliferation; terrorism; and foreign aspects of international narcotics trafficking. This information is often critical to the formulation of U.S. foreign policy and the support of U.S. military operations around the world. Moreover, intelligence produced by NSA is often unobtainable by other means.

7. NSA's ability to produce foreign intelligence information depends on its access to foreign and international electronic communications. Further, SIGINT technology is both expensive and fragile. Public disclosure of either the capability to collect specific communications or the substance of the information itself can easily alert targets to the vulnerability of their communications. Disclosure of even a single communication holds the potential of revealing the intelligence collection techniques that are applied against targets around the world. Once alerted, SIGINT targets can easily frustrate SIGINT collection by using different or new encryption techniques,

disseminating disinformation, or by utilizing a different communications link. Such evasion techniques may inhibit access to the target's communications and, therefore, deny the United States access to information crucial to the defense of the United States both at home and abroad.

PROCESSING OF PLAINTIFF HALL'S FOIA REQUEST

8. On 7 February 2003, Attorney James H. Lesar, on behalf of Plaintiff, Roger Hall, submitted a FOIA request to the Central Intelligence Agency (CIA) seeking all records and information on or pertaining to:

(1) Southeast Asia POW/MIAs (civilian or military) and detainees, who have not returned, or whose remains have not been returned to the US, regardless of whether they are currently held in prisoner status, and regardless of whether they were sent out of Southeast Asia;

(2) POW/MIAs sent out of Southeast Asia;

(3) Prepared by/assembled by CIA between 1 Jan 1960 and 31 Dec 2002, relating to the status of any US POWs or MIAs in Laos, including but not limited to any reports, memoranda, letters, notes or other documents prepared by Mr. Horgan or any other officer, agent or employee of the CIA for the JCS, the President, or any federal agency;

(4) records of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the National Archives and returned to the CIA for processing;

(5) Records relating to 47 individuals who allegedly are Vietnam era POW/MIAs and whose next-of-kin have provided privacy waivers to Roger Hall, and those persons who are on the POW/Missing Personnel office's list of persons whose primary next-of-kin (PNOK) have authorized the release of information concerning them;

(6) all records on or pertaining to any search conducted for documents responsive to Roger Hall's requests dated 5 Jan 1994, 7 Feb 1994 and 23 Apr 1998; and

(7) all records on or pertaining to any search conducted regarding any other requests for records pertaining to Vietnam War POW/MIAs including any search for such records conducted in response to any request by any Congressional Committee or executive branch agency.

CIA's FIRST REFERRAL OF DOCUMENTS TO THE NSA THAT WERE RESPONSIVE TO PLAINTIFF HALL'S FOIA REQUEST TO CIA (CIA CASE NO. F-2010-01645 AND NSA CASE NO. 63960)

9. By Memorandum dated 21 January 2011, the CIA referred three NSA originated documents to the NSA for review and direct response to the Plaintiff Hall.

TAB B. The CIA FOIA Case No. was F-2010-01645. Prior to sending these three documents to the NSA for review, the CIA reviewed these documents for their equities and redacted CIA information based on Exemptions 1 and 3. These three documents were portions of an NSA working aid entitled "NSA SIGINT Correlation Study-POW/MIA," which began in 1992 but was continually modified as more SIGINT was correlated to POW/MIAs.

10. In an effort to provide Plaintiff Hall with the most complete release of information responsive to his request, NSA, instead of reviewing the earlier and outdated portions that were referred to NSA by the CIA, reviewed the most updated NSA SIGINT Correlation Study-POW/MIA using the most updated Vietnam declassification guidance. NSA reviewed the most updated NSA SIGINT Correlation Study-POW/MIA because it not only contained the same information in the three documents referred to it by the CIA, but it also contained additional information about POW/MIAs, which is the information that Plaintiff Hall sought from the U.S. Government. Based on this review, NSA redacted certain NSA information (information about collection sites and the sources of SIGINT collection) because that information remains a currently and properly classified matter, as discussed below, in accordance with E.O. 13526 and is protected from release by statutes, specifically, Section 6 of the National Security Agency Act of 1959, 50 U.S.C. §402 note (Pub. L. No. 86-36); 18 U.S.C. §798; and Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 30 U.S.C. §403-1(i)(1). With this most updated NSA SIGINT Correlation Study-POW/MIA, NSA also redacted information based on Exemptions 1 and 3 of the FOIA as requested by the CIA which were marked in the three documents referred to the NSA, consistent with how NSA had

previously released this working aid over the years to requesters under the FOIA and/or under mandatory declassification review (MDR) requests following consultation with the CIA on its information.

11. NSA also redacted certain information on behalf of the Department of Defense (DoD) POW/MIA Office (DPMO). Specifically, NSA redacted certain information to protect the privacy of POW/MIAs, whose family members did not consent to Plaintiff Hall having access to this information. NSA's redactions for the DPMO were based on Exemption 3 of the FOIA pursuant to P.L. 102-90 and Exemption 6.

12. NSA generally marked the CIA and DPMO redactions in the updated NSA SIGINT Correlation Study-POW/MIA as Other Government Agency (OGA).

13. By letter dated 5 October 2011, NSA provided the updated NSA SIGINT Correlation Study-POW/MIA to Plaintiff Hall through his attorney with redactions of NSA, CIA and DPMO information. TAB A. In the response letter that accompanied the release of the updated NSA SIGINT Correlation Study-POW/MIA, NSA explained how it processed the referral that NSA received from the CIA to include the fact that it processed the most updated Correlation Study instead of reviewing three earlier portions of this working aid. TAB A. Additionally, NSA explained that it had withheld certain NSA information based on Exemptions 1 and 3 of the FOIA, that it withheld certain information on behalf of the CIA based on Exemptions 1 and 3 of the FOIA, and that it withheld certain information on behalf of the DPMO based on Exemptions 3 and 6 of the FOIA. TAB A; Document Index, entries 35-36.

CIA'S SECOND REFERRAL OF DOCUMENTS TO THE NSA THAT WERE RESPONSIVE TO PLAINTIFF HALL'S FOIA REQUEST TO CIA (CIA CASE NO. F-2010-01645 AND NSA CASE NO. 63961)

14. By Memorandum dated 21 January 2011, the CIA referred two CIA originated documents to the NSA for review of NSA equities and return back to the CIA with any requested NSA redactions. The documents were: "Vietnam Checklist for the Director of Central Intelligence" dated 19 December 1965 and a CIA Memorandum entitled "The Situation in Vietnam" dated 26 July 1966.

15. NSA assigned this second CIA referral as FOIA Case No. 63961, which was processed as a consultation since these documents originated with the CIA. NSA reviewed both documents and redacted a small amount of information in each document because the information pertained to certain currently classified NSA targets and NSA collection activities. Some redacted information also pertained to the sensitive sources and methods of NSA's collection activities. NSA redacted this information based on Exemption 1 and 3 of the FOIA as discussed in detail below. The NSA did not protect the remaining NSA information in the two documents.

16. By letter dated 21 June 2011, NSA responded back to the CIA and informed them that certain information as marked in the documents must be protected from release under FOIA Exemption 1 because it is a currently and properly classified matter in accordance with E.O. 13526 and under Exemption 3 because the information falls with the scope of Section 6 of the National Security Agency Act of 1959, 50 U.S.C. §402 note (Pub. L. No. 86-36); 18 U.S.C. §798; and Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 30 U.S.C. §403-1(i)(1). NSA further informed

the CIA that the remaining NSA information in the two documents could be released to the requester. Document Index, entries 37-38.

DOD'S REFERRAL OF RESPONSIVE DOCUMENTS TO THE NSA THAT WERE RESPONSIVE TO LESAR'S FOIA REQUEST TO THE CIA (CIA CASE NO. F-2010-01645; DOD CASE NOS. 10-l-0010, 10-l-0018 AND 11-l-0032; AND NSA CASE NO. 65207)

17. By e-mail memoranda dated 11 August, 15 August, 9 September, 13 September, and 22 December 2011, the Department of Defense referred 19[3] documents consisting of 598 pages to the NSA that were responsive to the Plaintiff Hall's FOIA request to the CIA. DoD referred these documents to the NSA because they contained NSA equities. These documents were initially referred by the CIA to the DoD. NSA provided a formal interim response to both CIA and DOD on 8 September 2011 and a final response to DoD on 5 January 2012. NSA also coordinated informally with both agencies concerning its processing of these referred documents.

18. In NSA's first formal interim response, NSA's FOIA Office addressed 13 documents that the DoD had referred to the NSA for review. In nine documents (CIA Case Nos. C00488720, C05123606, C00005798, C00005799, C00005972, C00336699, C01464904, C03375985, and C05081415), NSA determined that it had no equities and advised DoD that NSA did not seek any redactions of information in these nine documents. Document Index, entries 17-25. Regarding the remaining four documents, NSA's FOIA Office provided DoD with the following information. For CIA Document C02189996, NSA informed DoD that it had already reviewed this information in its

[3] It should be noted that Plaintiff Hall has submitted over 50 requests for information under the FOIA or Mandatory Declassification Review (MDR) provisions set forth in E.O. 13526 and its predecessors, for records pertaining to POW/MIAs. Most of the records referred to the NSA by the DoD were previously provided to Plaintiff Hall with redactions of exempt information. As part of its review of these records referred to it from the DoD, NSA reviewed even previously released documents in light of the most updated classification guidance so that Plaintiff Hall would have the most complete and updated release of non-exempt information.

consultation with the CIA (NSA Case No. 63961), and that it had advised the CIA to redact certain NSA information based on Exemptions 1 and 3 of the FOIA as set forth in paragraphs 14-16 above. Document Index, entries 37-38. For CIA Document C0049885, NSA informed DoD that NSA was already reviewing this information (the NSA SIGINT Correlation Study-POW/MIA) because it was referred to the NSA by the CIA (NSA Case No. 63960) except for the DoD cover memorandum and Enclosure 2 (pages 156-164). NSA informed DoD that NSA was reviewing the most complete and updated version of the NSA SIGINT Correlation Study-POW/MIA and that NSA would provide this document with NSA, CIA, and DoD redactions directly to Plaintiff Hall, as set forth in paragraphs 9-13 above. Document Index, entries 27 and 35-36. NSA further informed DoD that it would review the DoD cover memorandum and Enclosure 2 and advised them on whether NSA would seek any redactions of exempt information. For CIA Document C00495839, the information is duplicative of information previously released by NSA under the MDR process except for a DoD cover memorandum and an NSA cover memorandum. NSA informed DoD that it would re-review this previously released information to see if any new information could be released to Plaintiff Hall and that it would review both the NSA and DoD cover memoranda. Finally, for Document C00311210, NSA informed DoD that it would review this document and return it with any NSA redactions to DoD for their response back to Plaintiff Hall.

19. In NSA's second and final formal response, NSA provided the following guidance to DoD regarding the documents reviewed by NSA since its first formal response on 8 September 2011. For CIA Document C0049885 (DoD Referral 10-L-00010), NSA had no information that required withholding in the DoD cover

memorandum and approved the release of the ten foreign intelligence reports, with redactions, that comprised Enclosure 2. NSA informed DoD that it would send the 10 foreign intelligence reports (9 pages) directly to Plaintiff Hall, and this occurred with accompanying letter dated 6 January 2012. TAB B; Document Index, entries 1-5, 13-16. The information protected in these ten foreign intelligence reports consisted of NSA collection activities against specified targets, collection sites, and sources of intelligence collection.

20. For CIA Document C00495839 (DoD Referral 10-L-00010), all of the information, except a DoD cover memorandum, was released in part in a prior MDR case, which is ultimately a release to the public. NSA re-reviewed the redacted information and determined that in three of the documents, it could release additional information to Plaintiff Hall, which was information about a POW/MIA and some SIGINT addresses (SIGADs). NSA did not have any equities in the DoD cover memoranda. NSA returned the DoD cover memoranda back to DoD on 6 January 2012 and released the remaining information to Plaintiff Hall on 6 January 2012. Document Index, entries 6-12.

21. In CIA Document C00311210, NSA reviewed a National Intelligence Estimate and redacted information about NSA targets and collection activities based on Exemptions 1 and 3 of the FOIA. On 6 January 2012, NSA returned the document to the DoD with exempt NSA information redacted for a direct response to the requester. Document Index, entry 26.

22. In CIA Document C00498934, which consisted of three NSA foreign intelligence reports that were previously released in part in an MDR case, NSA re-

reviewed these three reports in light of new declassification guidance and released additional information to Plaintiff Hall. Some of the remaining previously withheld information still warranted protection based on Exemptions 1 and 3 of the FOIA. NSA provided these three foreign intelligence reports to Plaintiff Hall on 6 January 2012. TAB B; Document Index, entries 28-30. As part of this referral in CIA Document C00498934, DoD also sent NSA a collection of DIA documents consisting of 56 pages. NSA redacted two pieces of information on page 4 based on Exemptions 1 and 3 of the FOIA, and returned the DIA documents to the DoD on 6 January 2012 for response to the requester. Document Index, entry 34.

23. In CIA Document C00498728, NSA reviewed a 31-page DIA briefing to the Senate Select Committee on Intelligence. All of the NSA information in this document was releasable (non-exempt), and NSA informed DoD of this fact in an informal consultation on 4 October 2011, and formalized that response on 6 January 2012. See Document Index, entry 31.

24. In CIA Document C0051220, NSA reviewed a Secretary of Defense Response to Senator McCain's request for information on a DoD investigation of POW/MIA reports. All of the NSA information in this document was releasable to the public except for the names of certain POW/MIAs, which were releasable to Plaintiff Hall only because he had the consent of family members. These documents are marked "For Hall Only." NSA informed DoD of this fact in an informal consultation response to DoD on 6 December 2011, and formalized that response on 6 January 2012. Document Index, entry 32.

25. In CIA Document C00488217, NSA reviewed a 20 page DIA chronology of reporting. All of the NSA information in this document was releasable, and NSA informed DoD of this fact in an informal response on 6 December 2011, and formalized that response on 6 January 2012. Document Index, entry 33.

26. As outlined above, NSA conducted a review of all the information referred to the NSA by the CIA and DoD, which for the majority of documents was a re-review because this information had been previously released to requesters, to include Plaintiff Hall, under the FOIA and/or MDR provisions. Ultimately, NSA redacted only a small amount of information because it was classified in accordance with E.O. 13526 and protected from release by statute (all three above-cited statutes). Specifically, the redacted information pertained to the sources of NSA's collection activities, collection sites, countries and organizations that were targeted by NSA and the results of such collection efforts. All of this information, as set forth in greater detail below, is exempt from release based on Exemption 1 of the FOIA because the information is currently and properly classified in accordance with E.O. 13526 and Exemption 3 because the information is protected from release by three statutes, Section 6 of the National Security Agency Act of 1959, 50 U.S.C. §402 note (Pub. L. No. 86-36); 18 U.S.C. §798; and Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 30 U.S.C. §403-1(i)(1).

FOIA EXEMPTION ONE

27. Section 552(b)(1) of the FOIA provides that the FOIA does not require the release of matters that are specifically authorized - under criteria established by an Executive Order - to be kept secret in the interest of the national defense or foreign policy

and are in fact properly classified pursuant to such Executive Order. The current Executive Order that establishes such criteria is E.O. 13526.

28. Section 1.4 of E.O. 13526 provides that information shall not be considered for classification unless it falls within one (or more) of seven specifically enumerated categories of information. The categories of classified information in the documents at issue here are those found in Section 1.4(b), which includes foreign government information, and Section 1.4(c), which include intelligence activities (including special activities), intelligence sources and methods, or cryptology.

29. In my role as a TOP SECRET classification authority, I have reviewed the information responsive to Plaintiff Hall's FOIA request made directly to the CIA and the information forwarded to NSA for consultation by the CIA and DoD because the information originated with NSA and/or contained NSA equities. For the following reasons, I have determined that all of the information withheld by NSA is currently and properly classified at the SECRET-Sensitive Compartmented Information ("SCI") level in accordance with E.O. 13526. Accordingly, the release of this information could reasonably be expected to cause serious damage to the national security. Additionally, this information is subject to special access and handling restrictions because it involves SCI, which means that the information involves or derives from particularly sensitive intelligence sources and methods. Because of the exceptional sensitivity and vulnerability of such information, these special safeguards and access requirements exceed the access standards that are normally required for information of the same classification level.

30. Plaintiff Hall's FOIA request encompasses information about operational details of NSA's SIGINT activities in Southeast Asia. The methodologies used by NSA to log, track, account for, and analyze collection during the Vietnam era are still used today. Thus, any revelation of this "who," "when," "where," and "how" could provide an adversary with a great deal of insight into NSA's targets, collection sites, and other collection and analysis-related information that is being used today.

31. The release of such specific information would reveal details of NSA's success or lack of success in its collection efforts against targets whose identities are still classified. Revealing information about specific NSA targets will enable adversaries to deduce the strength and range of NSA's capabilities at that time. Further, in many cases there is a direct link between the communications systems used then and those used today by NSA targets. Any disclosure of NSA's ability or lack of ability to collect intelligence against these targets at that time could cause our targets to adopt practices to deny or degrade NSA's current collection capabilities. Public disclosure of either NSA's capability to collect specific communications or the frequency with which such information is collected during that time period can easily alert targets to the vulnerability of their communications. Once alerted, SIGINT targets can frustrate SIGINT collection by using different communication techniques, or by utilizing a different communications link. This may result in denial of access to the target's communications and therefore result in a loss of access to information crucial to the defense of the United States.

32. Further, some of the information in the NSA-originated documents contains intelligence collected by foreign SIGINT partners, and any such disclosure of information

that revealed the equities of SIGINT partners would jeopardize the future of these SIGINT partnerships.

33. Thus, disclosing any operational details of NSA's SIGINT activities in Southeast Asia for this time period would provide our adversaries with critical information about the capabilities and limitations of the NSA, such as the types of communications that may be accessible to NSA detection. Accordingly, certain operational details of NSA's SIGINT activities in Southeast Asia, outside of those activities that have been declassified, are exempt from disclosure pursuant to Exemption 1 of the FOIA because the information is currently and properly classified in accordance with E.O. 13526.

FOIA EXEMPTION THREE

34. Section 552(b)(3) of the FOIA provides that the FOIA does not require the release of matters that are specifically exempted from disclosure by statute, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or established particular criteria for withholding or refers to particular types of matter to be withheld. *See* 5 U.S.C. §552(b)(3). Review of the application of Exemption 3 statutes consists solely of determining that the statute relied upon qualifies as an Exemption 3 statute and that the information withheld falls within the scope of the statute.

35. The information at issue here falls squarely within the scope of several statutes. The first of these statutes is a statutory privilege unique to NSA. As set forth in section 6 of the National Security Agency Act of 1959, Public Law 86-36 (50 U.S.C. § 402 note), "**[n]othing in this Act or any other law . . . shall be construed to require**

the disclosure of the organization or any function of the National Security Agency, [or] of any information with respect to the activities thereof. . . . " (emphasis added). Congress, in enacting the language in this statute, decided that disclosure of any information relating to NSA activities is potentially harmful. *Hayden v. NSA,* 608 F.2d 1381, 1390 (D.C. Cir. 1979); *see also Wilner v. NSA*, 592 F.3d 60, 75 (2nd Cir. 2010); *Larson, et al. v. Department of State*, 565 F.3d 857, 868 (D.C. Cir. 2009); *Students Against Genocide, et al. v. Department of State, et al.*, 257 F.3d 828 (D.C. Cir. 2001); *Lahr v. National Transp. Safety Bd., et al.*, 453 F. Supp.2d 1153, 1171-73 (C.D. Cal. 2006); *People for the American Way v. NSA*, 462 F.Supp.2d 21, 30 (D.D.C. 2006), *Florida Immigrant Advocacy Center v. NSA*, 380 F.Supp.2d 1332, 1340-41 (S.D. Fla. 2005). Federal courts have held that the protection provided by this statutory privilege is, by its very terms, absolute. *See, e.g., Linder v. NSA*, 94 F. 3d 693 (D.C. Cir. 1996). Section 6 states unequivocally that, notwithstanding any other law, including the FOIA, NSA cannot be compelled to disclose any information with respect to its activities. *See Hayden,* 608 F.2d at 1389. Further, while in this case the harm would be serious, NSA is not required to demonstrate specific harm to national security when invoking this statutory privilege, but only to show that the information relates to its activities. *Id.* at 1390. To invoke this privilege, NSA must demonstrate only that the information it seeks to protect falls within the scope of section 6. NSA's functions and activities are therefore protected from disclosure regardless of whether or not the information is classified.

35. The second applicable statute is 18 U.S.C. § 798. This statute prohibits the unauthorized disclosure of classified information: (i) concerning the communications intelligence activities of the United States; or (ii) obtained by the process of

communication intelligence derived from the communications of any foreign government. The term "communications intelligence," as defined by 18 U.S.C. § 798(b), means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients.

36. The third applicable statute is Section 102A(i)(l) of the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 403-1(i)(1), which states that "[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure." NSA, as a member agency of the U.S. Intelligence Community, must also protect intelligence sources and methods. Like the protection afforded to core NSA activities by Section 6 of the NSA Act of 1959, the protection afforded to intelligence sources and methods is absolute. *See Central Intelligence Agency v. Sims*, 471 U.S. 159 (1985). Whether the sources and methods at issue are classified is irrelevant for purposes of the protection afforded by 50 U.S.C. § 403-l(i)(1). *Id.*

37. As described above, Congress has enacted three statutes to protect the fragile nature of NSA's SIGINT efforts, to include but not limited to, the existence and depth of signals intelligence-related successes, weaknesses and exploitation techniques. These statutes recognize the vulnerability of signals intelligence to countermeasures and the significance of the loss of valuable intelligence information to national policymakers and the Intelligence Community. Given that Congress specifically prohibited the disclosure of information related to NSA's functions and activities and its communications intelligence activities, as well as the sources and methods used by the Intelligence

Community as a whole, I have determined that NSA's SIGINT activities and functions, and its intelligence sources and methods would be revealed if any of the withheld information about NSA's SIGINT activities in Southeast Asia during the time period at issue in this FOIA case were disclosed.

38. The "who," "when," "where," and "how" NSA collected communications during this time period all reveal information related to "any function" or "the activities" of the NSA, and thus, this withheld information falls squarely with Section 6 of the NSA Act. Likewise, this information all pertains to the communications intelligence activities of the NSA and is also protected from release pursuant to 18 U.S.C. § 798. Finally, the sources and methods used by NSA's to obtain SIGINT would be revealed if the withheld information were disclosed to the plaintiffs and thus is protected from release pursuant to 50 U.S.C. § 403-1(i)(1).

39. Accordingly, based upon my review of the responsive NSA material, I conclude that NSA made every effort to provide Plaintiff Hall with the most complete and updated information that was responsive to his request and that the information NSA withheld (and continues to withhold) is protected from disclosure by statute pursuant to the following three authorities: (1) Section 6 of the National Security Act of 1959 (Pub. L. 86-36) (50 U.S.C. § 402 note), because the information concerns the organizations, function and activities of the NSA as described above; (2) 18 U.S.C. § 798, because disclosure would reveal classified information derived from NSA's exploitation of foreign communications; and (3) 50 U.S.C. § 403-1(i)(1), because the information concerns intelligence sources and methods.

40. I declare under penalty of perjury that the facts set forth above are true and correct.

Executed, this 8th day of February 2012, pursuant to 28 U.S.C. § 1746.

DIANE M. JANOSEK
Deputy Associate Director for Policy and Records
National Security Agency

	A	B	C	D	E		G	H	I	J	K
1	#	NSA Doc ID	CIA Doc ID	Other Agency Case Number/NSA Case Number	Case Type	DOCUMENT TITLE	Pgs	DISPO	Redactions Cited	Released to Plaintiff On:	COMMENTS
2	1	3938868	C0049885	10-L-0010 /65207	consultation	U.S. Copter Downed Near Thai/Lao Border	1	Partial Denial	(b)(1), (b)(3)-50 USC 403, (b)(3)-P.L. 86-36	To Plaintiff on 6 Jan 2012	
3	2	3938869	C0049885	10-L-0010 /65207	consultation	Assisting American Pilots in Distress	1	Partial Denial	b)(1), (b)(3)-50 USC 403, (b)(3)-P.L. 86-36	To Plaintiff on 6 Jan 2012	
4	3	3938892	C0049885	10-L-0010 /65207	consultation	U.S. Copter Shot Down Near Thai/Lao Border	1	Partial Denial	(b)(1), (b)(3)-50 USC 403, (b)(3)-P.L. 86-36	To Plaintiff on 6 Jan 2012	
5	4	3938893	C0049885	10-L-0010 /65207	consultation	Police Investigating Report of U.S. Copter Crash	1	Partial Denial	(b)(1), (b)(3)-50 USC 403, (b)(3)-P.L. 86-36	To Plaintiff on 6 Jan 2012	
6	5	3938894	C0049885	10-L-0010 /65207	consultation	Forces in District	1	Partial Denial	(b)(1), (b)(3)-50 USC 403, (b)(3)-P.L. 86-36	To Plaintiff on 6 Jan 2012	
7	6	3902418	C00495839	10-L-0010 /65207	consultation	Letter to Select Committee on POW/MIA Affairs, U.S. Senate	1	No Equities	n/a	Returned to DoD on 6 Jan 2012	returned to DoD
8	7	3902417	C00495839	10-L-0010 /65207	consultation	Letter to Select Committee on POW/MIA Affairs, U.S. Senate	1	No Equities	n/a	Returned to DoD on 6 Jan 2012	returned to DoD
9	8	3938873	C00495839	10-L-0010 /65207	consultation	Senate Select Committee Request of 9 Oct 1992 (Mooney Material) - CDO 373/92 - Information Memorandum	2	Granted in Full	n/a	To Plaintiff on 6 Jan 2012	page 2 only
10	9	3938874	C00495839	10-L-0010 /65207	consultation	Senate Select Committee on POW/MIA Affairs Request for Information, 9 October 1992 - Information Memorandum	2	Partial Denial	(b)(3)-P.L. 86-36	To Plaintiff on 6 Jan 2012	Previously released in MDR 20985

	A	B	C	D	E		G	H	I	J	K
1	#	NSA Doc ID	CIA Doc ID	Other Agency Case Number/NSA Case Number	Case Type	DOCUMENT TITLE	Pgs	DISPO	Redactions Cited	Released to Plaintiff On:	COMMENTS
11	10	3938875	C00495839	10-L-0010 /65207	consultation	POW/MIA Names Appearing in Both SIGINT Correlations and in Mooney Material	7	Partial Denial	(b)(3) 102-190 (b)(6)	To Plaintiff on 6 Jan 2012	Previously released in MDR 20985. **Reviewed and Released additional name for Hall.**
12	11	3938876	C00495839	10-L-0010 /65207	consultation	Information on POW/MIA Names Appearing in SIGINT Correlations and Mooney Material	107	Partial Denial	(b)(1), OGA, (b)(3)-10 USC 130, (b)(3)-18 USC 798, (b)(3)-P.L. 86-36, (b)(3)-50 USC 403, (b)(3) 102-190, (b)(6)	To Plaintiff on 6 Jan 2012	Released in MDR 20985. **Conducted updated review. This version is for Hall ONLY.**
13	12	3938877	C00495839	10-L-0010 /65207	consultation	POW/MIA Names Listed in Mooney Material (October 1992 Update)	17	Partial Denial	(b)(3)-P.L. 86-36	To Plaintiff on 6 Jan 2012	Previously released in MDR 20985. **Conducted updated review. This version is for Hall ONLY.**
14	13	3938891	C0049885	10-L-0010 /65207	consultation	Americans Among Vang Vieng Area Casualties	1	Partial Denial	(b)(1),(b)(3)-18 USC 798, (b)(3)-P.L. 86-36, (b)(3)-50 USC 403	To Plaintiff on 6 Jan 2012	Previously released in 11529. Reviewed but no additional info released.
15	14	3938895	C0049885	10-L-0010 /65207	consultation	Provincial Committees in Eastern Nam Bo Receive Orders on Handling Captured Personnel	1	Partial Denial	FOIA(b)1, FOIA(b)3 - 50 USC 403, FOIA(b)3 - 18 USC 798, FOIA(b)3 - P.L. 86-36 sec 6	To Plaintiff on 6 Jan 2012	Previously released in FOIA 11529. Reviewed and released SIGAD and validity terms.
16	15	3938896	C0049885	10-L-0010 /65207	consultation	Search for U.S. Soldier Who Vanished from Vietnam Mission	1	Partial Denial	FOIA(b)1, FOIA(b)3 - 50 USC 403, FOIA(b)3 - P.L. 86-36 sec 6	To Plaintiff on 6 Jan 2012	Previously released in 11529. Reviewed but no additional info released.

	A	B	C	D	E	F	G	H	I	J	K
1	#	NSA Doc ID	CIA Doc ID	Other Agency Case Number/NSA Case Number	Case Type	DOCUMENT TITLE	Pgs	DISPO	Redactions Cited	Released to Plaintiff On:	COMMENTS
17	16	3938884	C0049885	10-L-0010 /65207	consultation	Communist Chinese Capture American Soldiers in Laos; Laotian Refugee Reports	1	Partial Denial	FOIA(b)1, FOIA(b)3 - 50 USC 403, FOIA(b)3 - 18 USC 798, FOIA(b)3 - P.L. 86-36 sec 6	To Plaintiff on 6 Jan 2012	Previously released in 11529. Reviewed and released indicators of missing text and validity terms which adds additional context.
18	17	3887448	C00488720	10-L-0018/65207	consultation	South Vietnam	1	No Equities		Responded to DoD on 8 Sep 2011	no equities.
19	18	3896037	C05123606	10-L-0018/65207	consultation	NSC Response to requester	3	No Equities		Responded to DoD on 8 Sep 2011	no equities.
20	19	3896048	C00005798	10-L-0018/65207	consultation	CIA CIR	1	No Equities	n/a	Responded to DoD on 8 Sep 2011	no equities.
21	20	3896050	C00005799	10-L-0018/65207	consultation	CIA CIR	1	No Equities	n/a	Responded to DoD on 8 Sep 2011	no equities.
22	21	3896053	C00005972	10-L-0018/65207	consultation	CIA Background Date Possibly Relevant to the Current Vietnamese Communist Prisoner Exchang Overture	6	No Equities	n/a	Responded to DoD on 8 Sep 2011	no equities.
23	22	3890658	C00005972	10-L-0018/65207	consultation	CIA Prisoner Exchange Instructions for Saigon Station	51	No Equities	n/a	Responded to DoD on 8 Sep 2011	no equities.
24	23	3896062	C00005972	10-L-0018/65207	consultation	CIA Background Data Possibly Relevant to the Current Vietnamese Communist Prisoner Exchange Overture	6	No Equities	n/a	Responded to DoD on 8 Sep 2011	no equities.
25	24	3896066	C00005972	10-L-0018/65207	consultation	CIA New Vietnamese Communist Overture on Prison Exchanges	29	No Equities	n/a	Responded to DoD on 8 Sep 2011	no equities.

	A	B	C	D	E	F	G	H	I	J	K
1	#	NSA Doc ID	CIA Doc ID	Other Agency Case Number/NSA Case Number	Case Type	DOCUMENT TITLE	Pgs	DISPO	Redactions Cited	Released to Plaintiff On:	COMMENTS
26	25	3896068	C00005972	10-L-0018/65207	consultation	CIA Background Data Possibly Relevant to the Current Vietnamese Communist Prisoner Exchange Overture	6	No Equities	n/a	Responded to DoD on 8 Sep 2011	no equities.
27	26	3898851	C00311210	11-L-0032/65207	consultation	National Intelligence Estimate; Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue	42	Partial Denial	(b)(1), (b)(3)-50 USC 403, (b)(3)-18 USC 798, (b)(3)-P.L. 86-36	Returned to DoD on 6 Jan 2012	Redactions on page 32.
28	27	3902456	C00498885	11-L-0032/65207	consultation	C00498885 Technical Sigint Report 002-92	164				This document was sent by DoD but was NOT be reviewed for this case. The document, with the exception of a DoD cover memo and Enclosure 2 (pages 156-164), was reviewed in 63960. The 11 pages (156-164) of foreign intelligence reports in Enclosure 2 were scanned into Case 65207 for redaction.
29	28	3938878	C00498934	11-L-0032/65207	consultation	NSA: Shootdown of Allied Acft by NVN	1	Partial Denial	(b)(1), (b)(3)-P.L. 86-36	To Plaintiff on 6 Jan 2012	Previously released in MDR (24020). Reviewed for this case and released Intelligence Source Identifiers

	A	B	C	D	E	F	G	H	I	J	K
1	#	NSA Doc ID	CIA Doc ID	Other Agency Case Number/NSA Case Number	Case Type	DOCUMENT TITLE	Pgs	DISPO	Redactions Cited	Released to Plaintiff On:	COMMENTS
30	29	3938879	C00498934	11-L-0032/65207	consultation	NSA: NVN 243rd AAA Regiment Reports Shootdown of an OV10	1	Partial Denial	(b)(3)-P.L. 86-36	To Plaintiff on 6 Jan 2012	Previously released in MDR (24020). Reviewed for this case and released Intelligence Source Identifiers
31	30	3938880	C00498934	11-L-0032/65207	consultation	NSA: NVN 243rd AAA Regiment Reports Shootdown of an OV10 (message)	1	Partial Denial	(b)(1), (b)(3)-P.L. 86-36	To Plaintiff on 6 Jan 2012	Previously released in MDR (24020). Reviewed for this case and released Intelligence Source Identifiers
32	31	3902948	C00498728	11-L-0032/65207	consultation	DIA Briefing of the Senate Select Committee on POW's and MIA's	31	Granted in Full	n/a	Informal GF response to DoD sent 4 October 2011	NSA equities are releasable. See page 25 and term "signal intelligence. **Informal GF response sent 4 October**
33	32	3902949	C00501220	11-L-0032/65207	consultation	SecDef Response to McCain Request for Info on DoD Investigation of POW/MIA Reports	18	Granted in Full	n/a	Informal GF response to DoD sent 4 October 2011	NSA equities releasable.
34	33	3931038	C00488217	11-L-0032/65207	consultation	C00488217 DIA: Chronology of Reporting	20	Granted in Full	n/a	Informal GF response to DoD sent sent 6 Dec 2011	NSA equities releasable.
35	34	3939013	C00498934	11-L-0032/65207	consultation	DIA: Collection of DIA Documents	56	Partial Denial	(b)(1), (b)(3)-50 USC 403, (b)(3)-P.L. 86-36	Returned to DoD on 6 Jan 2012	Page 4 only

	A	B	C	D	E		G	H	I	J	K
1	#	NSA Doc ID	CIA Doc ID	Other Agency Case Number/NSA Case Number	Case Type	DOCUMENT TITLE	Pgs	DISPO	Redactions Cited	Released to Plaintiff On:	COMMENTS
36	35	3909306	C00268074, C00268075, and C00800075	F-2010-01645/F2003-00449/63960	referral	NSA: NSA Sigint Correlation Study - POW/MIA	428	Partial Denial	(b)(1), OGA, (b)(3)-10 USC 130, (b)(3)-18 USC 798, (b)(3)-P.L. 86-36, (b)(3)-50 USC 403, (b)(3), (b)(3) 102-190, (b)(6)	(Subsituted document provided to Plaintiff on 5 Oct 2011 - see entry 36)	CIA forwarded 3 documents (737 pages) C00268074, C00268075, and C00800075. The documents forwarded were 'outdated' versions of a more complete document in our system. Discussions with our FOIA attorney and CIA attorneys determined that our updated version of the documents would be used instead of the three CIA forwarded since it was more comprehensive.
37	36	3909305	see above	F-2010-01645/F2003-00449/63960	referral	NSA: NSA Sigint Correlation Study - POW/MIA page 107	1	Partial Denial	b)(1), (b)(3)-50 USC 403, (b)(3)-P.L. 86-36, (b)(3)-18 USC 798	To Plaintiff on 5 Oct 2011	see above.
38	37	3866555	C02189996	F-2010-01645/F2003-00449/63961	consultation	CIA: Vietnam Checklist for the Director	25	Partial Denial	b)(1), (b)(3)-50 USC 403, (b)(3)-P.L. 86-36, (b)(3)-18 USC 798	Returned to CIA on 21 June 2011	
39	38	3866559	C02985239	F-2010-01645/F2003-00449/63961	consultation	CIA: The Situation In Vietnam	19	Partial Denial	b)(1), (b)(3)-50 USC 403, (b)(3)-P.L. 86-36, (b)(3)-18 USC 798	Returned to CIA on 21 June 2011	

TAB A

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 63960
5 October 2011

Mr. James H. Lesar
Attorney at Law
930 Wayne Avenue
Unit 1111
Silver Spring, MD 20910

Dear Mr. Lesar:

This responds to your Freedom of Information Act (FOIA) request of 7 February 2003 on behalf of Mr. Roger Hall to the Central Intelligence Agency (CIA) for "all records and information on or pertaining to:

- 1) Southeast Asia POW/MIAs (civilian or military) and detainees who have not returned, or whose remains have not been returned, to the US regardless of whether they are currently held in prisoner status or whether they were sent out of Southeast Asia;
- 2) POW/MIAs sent out of Southeast Asia;
- 3) records prepared by/assembled by CIA between 1 Jan 60 and 31 Dec 02, relating to the status of any US POWs or MIAs in Laos, including but not limited to any reports etc prepared by Mr. Horgan and any other officer, agent or employee of the CIA for the JCS, the President or any federal agency;
- 4) records of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the Nat'l Archives and returned to CIA for processing;
- 5) records relating to 47 individuals who allegedly are Vietnam-era POW/MIAs, and whose next-of-kin have provided privacy waivers to Roger Hall;
- 6) records on or pertaining to any search conducted for documents responsive to Roger Hall's requests dated 5 Jan 94, 7 Feb 94 and 23 Apr 98;
- 7) records on or pertaining to any search conducted regarding any other requests for records pertaining to Vietnam War POW/MIAs, including any search for such records conducted in response to any request by any Congressional Committee or executive branch agency."

FOIA Case: 63960

A copy of your request is enclosed. The CIA (original FOIA Case F-2003-00449) referred three NSA-originated documents (734 pages) to the National Security Agency/Central Security Service (NSA/CSS) on 21 January 2011 (new CIA Case F-2010-01645) for review and direct response to you. This referral has been assigned case number 63960. The three documents referred to us by the CIA as responsive to Item 5 of your request were portions of early versions of an NSA working aid originated in 1992 as an open or "draft" working aid called "NSA SIGINT Correlation Study – POW/MIA." That working aid continued to grow through several years as additional SIGINT data and all-source information was correlated to POWs/MIAs and was incorporated into the report, as late as 1996. The "NSA SIGINT Correlation Study – POW/MIA" has been reviewed in the past for release under the FOIA. Because this document is a more complete version of the documents forwarded to us by the CIA, this document was processed as the document responsive to your request rather than providing portions of incomplete documents.

The document (428 pages) has been reviewed as required by the FOIA using current guidance and is enclosed. Certain information, however, has been deleted from the enclosure. Some of the withheld information has been found to be currently and properly classified in accordance with Executive Order 13526. This information meets the criteria for classification as set forth in (c)and (d) of Section 1.4 and remains classified TOP SECRET as provided in Section 1.2 of Executive Order 13526. The information is classified because its disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Because the information is currently and properly classified, it is exempt from disclosure pursuant to the first exemption of the FOIA (5 U.S.C. Section 552(b)(1)).

In addition, this Agency is authorized by various statutes to protect certain information concerning its activities. We have determined that such information exists in this document. Accordingly, those portions are exempt from disclosure pursuant to the third exemption of the FOIA, which provides for the withholding of information specifically protected from disclosure by statute. The specific statutes applicable in this case are Title 18 U.S. Code 798; Title 50 U.S. Code 403-1(i); and Section 6, Public Law 86-36 (50 U.S. Code 402 note).

The Initial Denial Authority for NSA information is the Deputy Associate Director for Policy and Records, Diane M. Janosek. Since these deletions may be construed as a partial denial of your request, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days from the date of the

initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DJP4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the initial denial of access and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes release of the information is required. The NSA/CSS Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

The CIA has asked that we protect information pursuant to 5 U.S.C. 552 (b)(1) and (b)(3), and the Department of Defense (DoD) has asked that we protect information pursuant to 5 U.S.C. 552 (b)(3), specifically Public Law 102-190, and (b)(6). Those deletions have been marked with the code OGA (Other Government Agency). Any appeal of the denial of CIA or DoD information should be directed to those agencies.

Finally, please be advised that the enclosed document released to Mr. Hall contains the names of some POW/MIA next of kin that he, specifically, has permission to receive. It should not be further disseminated in order to respect their privacy. Those names will be removed from a public copy which we will post to NSA's web site in the future.

Sincerely,

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

Encls:
a/s

TAB B

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 65207
6 January 2012

James H. Lesar, Esq.
1003 K Street, N.W. Suite 640
Washington, DC 20001

Dear Mr. Lesar:

This responds to your Freedom of Information Act (FOIA) request of 7 February 2003 to the Central Intelligence Agency (CIA) on behalf of Mr Roger Hall for all records and information on or pertaining to:

1) Southeast Asia POW/MIAs (civilian or military) and detainees, who have not returned, or whose remains have not been returned to the US, regardless of whether they are currently held in prisoner status, and regardless of whether they were sent out of Southeast Asia;

2) POW/MIAs sent out of Southeast Asia;

3) Prepared by/assembled by CIA between 1 Jan 1960 and 31 Dec 2002, relating to the status of any US POWs or MIAs in Laos, including but not limited to any reports, memoranda, letters, notes or other documents prepared by Mr. Horgan or any other officer, agent or employee of the CIA for the JCS, the President, or any federal agency;

4) records of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the National Archives and returned to the CIA for processing;

5) Records relating to 47 individuals who allegedly are Vietnam era POW/MIAs and whose next-of-kin have provided privacy waivers to Roger Hall, and those persons who are on the POW/Missing Personnel office's list of persons whose primary next-of-kin (PNOK) have authorized the release of information concerning them;

6) all records on or pertaining to any search conducted for documents responsive to Roger Hall's requests dated 5 Jan 1994, 7 Feb 1994 and 23 Apr 1998;

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

A copy of your request is enclosed. The Department of Defense (DoD) referred NSA-originated documents to the National Security Agency/Central Security Service (NSA/CSS) on 11 August, 15 August, 9 September, 14 September and 22 December 2011 (case numbers DoD/10-L-0010, 10-L-0018 and 11-L-0032) for our review and direct response to you. The DoD apparently received the documents first from the CIA as a result of your original request to the CIA. This referral has been assigned case number 65207.

Most of the documents referred to our Agency have been released in previous FOIA and Mandatory Declassification Review (MDR) requests (many to Mr. Hall);

however, we have conducted an updated review of the documents as required by the FOIA consistent with current declassification guidance for this response, and the documents are enclosed. These are not recently discovered Vietnam-related documents being released, but rather, previously available information being released using the most current declassification guidance available. Certain information, however, has been deleted from the enclosures.

Some of the withheld information has been found to be currently and properly classified in accordance with Executive Order 13526. The information meets the criteria for classification as set forth in Subparagraph (c) of Section 1.4 and remains classified SECRET as provided in Section 1.2 of Executive Order 13526. The information is classified because its disclosure could reasonably be expected to cause serious damage to the national security. The information is exempt from automatic declassification in accordance with Section 3.3(b (1) of E.O. 13526. Because the information is currently and properly classified, it is exempt from disclosure pursuant to the first exemption of the FOIA (5 U.S.C. Section 552(b)(1)).

In addition, this Agency is authorized by various statutes to protect certain information concerning its activities. We have determined that such information exists in these documents. Accordingly, those portions are exempt from disclosure pursuant to the third exemption of the FOIA which provides for the withholding of information specifically protected from disclosure by statute. The specific statutes applicable in this case are Title 18 U.S. Code 798; Title 50 U.S. Code 403-1(i); and Section 6, Public Law 86-36 (50 U.S. Code 402 note).

The Initial Denial Authority for NSA information is the Deputy Associate Director for Policy and Records, D. M. Janosek. Since these deletions may be construed as a partial denial of your request, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days after the date of the initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DJP4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the initial denial of access and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes release of the information is required. The NSA/CSS Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent unusual circumstances.

The CIA has asked that we protect information pursuant to 5 U.S.C. 552(b)(1) and (b)(3). Those deletions have been marked with the code OGA (Other Government Agency). The Department of Defense (DoD) has asked that we protect information pursuant to 5 U.S.C. 552 (b)(3), specifically Public Law 103-190, and (b)(6) in order to protect the names of some POW/MIA whose next of kin do not want names released, in addition to protecting some personal information about them. Any appeal of the denial of CIA or DoD information should be directed to those agencies.

Finally, please be advised that the enclosed documents released to Mr. Hall contain the names of some POW/MIAs whose next of kin specifically gave him permission to receive the names. Those documents are marked "For HALL ONLY" and

FOIA Case: 65207

should not be further disseminated in order to respect the families' privacy. Those names will be removed from the public copy which will be posted to NSA's web site in the future.

Sincerely,

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

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a/s