

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. ) Civil Action 04-00814 (RCL)  
 )  
 Central Intelligence Agency, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

DECLARATION OF ANTOINETTE B. SHINER  
INFORMATION REVIEW OFFICER  
FOR THE LITIGATION INFORMATION REVIEW OFFICE  
CENTRAL INTELLIGENCE AGENCY

I, ANTOINETTE B. SHINER, hereby declare and state:

1. I am the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). Through the exercise of my official duties, as detailed in my declaration filed in this case on 13 July 2016, which I incorporate by reference, I have become familiar with this civil action and the underlying FOIA requests at issue.

2. The purpose of this supplemental declaration is to address certain arguments in the two separate cross motions for summary judgement filed by Plaintiffs on 21 October 2016. Specifically, this declaration explains certain details about the Agency's initial *Vaughn* indices, assertion of FOIA

exemptions, one of the referred documents, and CIA's operational files.

**I. CIA Vaughn Indices**

3. Plaintiffs argue that several of the denied-in-full entries in the *Vaughn* index reference compilations or "packages" of documents that, in effect, do not allow plaintiffs to determine the date of the individual records that are part of combined documents.<sup>1</sup> Plaintiffs speculate that some of these individual records are older than 50 years, which could affect their current classification. However, as explained below, none of the records at issue are older than 50 years and the Agency properly considered the appropriate procedural and substantive requirements of Executive Order 13526, which governs classification. I will discuss each of the *Vaughn* index entries identified by plaintiffs in turn.

4. Item 6 on the index consists of a cover letter dated 6 October 1992 with 22 enclosures. The dates of the enclosures are 1992, 1980 and 1981. The Agency properly evaluated the proper classification in light of the fact that the documents are over 25 years old and, as indicated in the initial declaration and *Vaughn* index, that certain information remains currently and properly classified.

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<sup>1</sup> I note that whenever possible the CIA attempted to maintain the integrity of the original documents located in the course of the searches for responsive records. Accordingly, the *Vaughn* index entries reflected the date of the final document, not each separate attachment.

5. Item 20 on the *Vaughn* index is a memorandum and background material used by a senior Agency official to prepare for a briefing to a Senate committee. The document and the accompanying background material are dated 1991. The exemptions noted on the *Vaughn* index for this entry apply to the entire document.

6. Item 21 is similar to Item 20 in that it is background material compiled in preparation for a Senate committee briefing. All pages are dated 1991. Again, all of the noted exemptions in the *Vaughn* index apply to the entire document.

7. Item 23 is a draft statement an Agency official made to a Senate committee. This draft document is dated 1991 and all exemptions noted in the *Vaughn* index apply to each page of the document.

8. Item 29 is the Agency's response to a Congressional request. The document consists of the Agency's responses to the request and certain enclosures that were included as part of those responses. All exemptions noted in the *Vaughn* index apply to the letters and enclosures. The enclosures are dated 1991 and 1979 respectively. The Agency's responses to Congress are dated 11 February 1992.

9. Item 31 is similar to Item 29 in that it consists of letters to Congressional members in response to a request and enclosures referenced in the letters that were part of the

Agency's response. This material is dated 1992 and the exemptions noted in the *Vaughn* index apply throughout.

10. Item 36 is as described on the initial *Vaughn* index; detailed written responses to questions posed to the Agency by the Senate. The exemptions noted in the *Vaughn* index apply throughout the document, which is dated 1992.

## II. Application of Exemptions

### A. Exemption 1

11. Plaintiffs argue that the Agency incorrectly applied the Executive Order's standard for documents older than 25 years, rather than the correct provision for documents older than 50 years. However, as noted above, none of the documents for which the Agency claimed Exemption 1 are 50 years or older.<sup>2</sup> Additionally, plaintiffs' claim that the Agency relied upon a "mosaic theory" for the classified information at issue is incorrect. In fact, I am familiar with all the information in this case and determined that these specific details for which Exemption 1 was asserted remain currently and properly classified standing alone - not based on a mosaic theory. My initial declaration sets forth the rationale underlying these classification determinations.

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<sup>2</sup> Document No. C00005776 (Released-in-Part *Vaughn* index, No. 1) is dated 1961, but the Agency did not apply Exemption 1 to any information in this record.



**B. Exemption 3**

12. Plaintiffs argue that the Agency broadly asserted Exemption 3 in conjunction with Section 6 of the CIA Act. However, Exemption 3 was applied narrowly and only asserted to withhold the names, official titles, and offices of CIA employees. I note that language of the Section 6 of the CIA Act does not restrict its application to current Agency personnel.

13. Plaintiffs also argue that the intelligence sources and methods protected by the National Security Act, 50 U.S.C. § 3024(i)(1), should no longer apply to information contained in the documents because the records and the events discussed therein are older. However, the National Security Act recognizes the inherent sensitivity of revealing sources and methods of intelligence collection and, consequently, does not place temporal limitations on their protection. I note that, to the extent that Exemption 1 was asserted for the same material withheld pursuant to the National Security Act, this information remains currently and properly classified for the reasons discussed in my initial declaration.

**C. Exemption 6**

14. As a general matter, the CIA used Exemption 6 sparingly and applied it only to protect names of low-level government employees, congressional staffers, and military personnel. I determined that these individuals have a privacy

interest in this information. For example, release of this information could subject them to harassment, intimidation, or unwanted contact. Conversely, I was unable to ascertain, and plaintiffs have failed to identify, any countervailing qualifying public interest in disclosure of this information. Specifically, the disclosure of these names would not contribute to the public's understanding of government operations or activities. I further note that the CIA did not assert Exemption 6 to redact information about deceased individuals or individuals presumed to be deceased because of their inclusion on the U.S. Department of Defense's Primary Next of Kin (PNOK) list of POW/MIAs.

15. Plaintiffs claim that in two documents, Item 6 and 69 of the released-in-part *Vaughn* index, the Agency redacted the name of a deceased individual and the signature of a U.S. Senator. For Item 6, Plaintiffs incorrectly allege that Sandy Berger's signature, who died during the pendency of this case, was redacted - it was not. For Item 69, we removed the redaction for the signature and have re-released the document to Plaintiffs.

### **III. Referral Documents**

16. In its 2012 Order, the Court directed the CIA to follow up on seven responsive documents it had referred to other agencies - one of which was referred to the National Security

Agency (NSA). CIA has confirmed with NSA that this referred record, Document No. C00800075, was processed and sent to plaintiffs. Plaintiffs do not contest receiving this record, but now claim that CIA has not adequately justified the NSA's redactions to the document. However, this NSA document was, in fact, already addressed in NSA's *Vaughn* index filed in support of CIA's last motion for summary judgment. Declaration of Diane M. Janosek, Deputy Associate Director for Policy and Records for the NSA, 10 July 2012, Dckt. No. 185-1, page 10. The justification for the redactions to Document No. C00800075 are discussed on page six of the inventory, which accompanies NSA's declaration.

#### **IV. Operational Files**

17. Plaintiffs question whether the decennial review of operational files, required by the National Security Act, has been conducted. The Agency undertook a decennial review of the exempt operational files designations in 2015 and has completed the review in accordance with the process described below.

18. Under 50 U.S.C. § 3141(a), the Director of the Central Intelligence Agency (DCIA) "may exempt operational files of the CIA" from the search and review requirements of the FOIA. Operational files are defined, in turn, to include certain files of the Directorate of Operations, the Directorate of Science &



Technology, and the Office of Personnel Security that contain sensitive information about CIA sources and methods.

19. The DCIA implements his authority under 50 U.S.C. § 3141(a) by designating specific file series as exempt. In identifying the exempt file series, the DCIA and his advisers carefully consider whether files falling within each proposed series would perform the functions set forth in the statute. If a proposed file series would not perform one of the statutory functions, it would not be designated as exempt. The scope of each designated file series is defined in classified internal regulations and policies. Although I cannot provide additional detail about the designated file series in an unclassified setting, I can assure the Court that they are carefully and tightly defined to ensure that they serve the specific operational purposes.

20. To maintain the integrity of the Agency's exempted operational files, the CIA has an Agency-wide regulation that details procedures for designating or eliminating the designation of operational files. This regulation provides that at any time, the Deputy Director of CIA for Operations, the Deputy Director of CIA for Science and Technology, and the Director of Security may recommend to the DCIA that the DCIA add categories of operational files under their jurisdiction for designation as exempt from search, review, publication or

disclosure under FOIA. The regulation also allows for eliminating previously designated categories of operational files. Such written recommendations must explain how the files meet the standards for designation (or elimination) and must be approved by the DCIA. The regulation further provides that the Agency will notify Congress of all categories of files designated and any subsequent additions to or changes in those categories.

21. As plaintiffs point out, certain materials about POWs and MIAs were made available in response to an Executive Order 12812. This Order signed by President George H.W. Bush required government agencies to declassify and publicly release certain information "without compromising United States national security." As plaintiffs further indicate, former CIA Director James Woolsey noted that review conducted pursuant to Executive Order 12812 had "included a thorough, exhaustive search of operational files, finished intelligence reports, memoranda, background studies and open source files." To the extent that plaintiffs are arguing that material made publicly available pursuant to this Order was omitted by the Agency here, I note that the CIA's search in this case included these records. If plaintiffs are instead claiming that Executive Order 12812 gives them another right of access, as the text of the Order indicates, it "is not intended to create any right or benefit,

substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."

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

Executed this 27<sup>th</sup> day of January 2017.



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Antoinette B. Shiner  
Information Review Officer  
Central Intelligence Agency