

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 the declarations filed in this case on 13 July 2016 and 27 January 2017, which I incorporate by reference, I have become familiar with this civil action and the underlying FOIA request at issue.

2. The purpose of this supplemental declaration is to address the outstanding issues set forth in the Court's 2 August 2017 Order; specifically, the Court's questions regarding dates on several denied-in-full documents, the Agency's records control schedules in relation to certain destroyed records, and the adequacy of CIA's search for "Items 5 and 7" of Plaintiffs' request.

**I. CIA's Denied-in-Full Vaughn Index**

3. In its recent Order, the Court directs the Agency to provide the latest date it can discern for three entries on the denied-in-full *Vaughn* index provided to Plaintiffs that cite to Exemption 1: documents 2, 3 and 15. The dates can be ascertained from the content, recipients, and dates noted within the text. Document 2, C05999027, is dated 2000; Document 3, C05999550, is dated 2003 and Document 15, C06002421, is dated 1991.

**II. Adequacy of CIA's Searches**

**A. "Item 5" Searches**

4. The Court had two additional questions regarding the Agency's search for responsive documents to "Item 5"<sup>1</sup>: first, the Court directed the CIA to provide additional details regarding the regulations and records control schedules governing the destruction of 114 folders that may have contained potentially responsive records; second, the Court asked for a fuller explanation as to why any potentially responsive "Item 5" records residing in the Agency's operational files, given the age of subject matter, would continue to be considered exempt from search and review from FOIA pursuant to the "operational files" exemption.

**1. Records Retention Schedules**

5. In my 13 July 2016 declaration, I described the search for Item 5 documents in the Archives and Records Center (AARC), noting that: "From this initial search, the response was narrowed to 569 hard copy folders associated with 204 individuals. It was later

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<sup>1</sup> "Item 5" requests records on over 1,700 persons reporting to be prisoners of war or missing-in-action during the Vietnam War.

determined that 114 of those folders had been properly destroyed in accordance with CIA's records control schedule."

6. Chapter 33 of United States Code Title 44 provides the framework for federal records management. The National Archives and Records Administration (NARA), through the Code of Federal Regulations, provides detailed guidance for records and information management for all federal agencies. The Agency has promulgated internal policies and regulations in accordance with NARA's framework to govern the management and retention of the Agency's records. The CIA's retention rules are captured in its Records Control Schedules, which were coordinated in conjunction with NARA and formally approved by the Archivist of the United States. These schedules control the disposition of all records under that schedule, including their destruction. Each records control schedule sets forth required retention dates, based on the nature and contents of the record.

7. Here, part of the CIA's search for "Item 5" records consisted of a search of temporary records files in the Agency archives. Specifically, the Agency conducted searches for the 1700 names of POW/MIAs provided by plaintiffs. As a result of these searches, the Agency uncovered a number of "hits," which indicated that potentially responsive records may have been held in 114 files that had been destroyed. Those files were largely administrative in nature and contained documents related to routine administrative support, working papers, films of no intelligence value, and the correspondence and reference documents associated with certain FOIA/Privacy Act and declassification files. Based on the nature of the records contained

in the files, these documents were designated as "temporary" and only required to be kept for a designated period of time (from one to 10 years, depending on the file type). By the time the searches were conducted, these files had been properly destroyed in connection with the relevant record control schedule. Separately, I note that given the volume and the commonness of the names requested, although the Agency encountered "hits" during its searches, there is no indication that these records were truly responsive to plaintiff's request.

## **2. Operational Files**

8. The Court notes that plaintiff have "present[ed] evidence of imagery of suspected prison camps, up to 1,400 live-sighting reports, and named reconnaissance and rescue operations alleged to have taken place" and finds that "the Court cannot be left to speculate about whether such records if they exist, are among those that the CIA Director has designated as operational files pursuant to his statutory authority." The Court directs the CIA to demonstrate how dated records about American prisoners of war can "reasonably be considered operational under the statute."

9. In my supplemental declaration filed in January 2017, I described the decennial review process required under 50 U.S.C. § 3141, generally. Additional details about the review may assist the Court with its question about how even dated or older records may remain within the operational files.

10. During a decennial review a validation team ensures the following: categories and subcategories of designated files series fall within the boundaries of the CIA Information Act of 1984; the

actual records in the file categories are appropriately filed; and the information in those records cannot be declassified and released if subject to the FOIA line-by-line review and release process. Public comment is solicited through a Federal Register notice. In addition, CIA sends letters to organizations and individuals known to have views about historical and other public interest disclosures requesting their input.<sup>2</sup> Indeed, the CIA Information Act requires that the decennial review, "include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein."

11. While the age of documents designated as exempt operational files is a factor considered during a decennial review, there is not a specific age limit on how long files may be held in operational files. Some records, although over 60 years old in some cases, may still contain detailed, still viable sources and methods information which remains very sensitive today. For example, certain operational files, even old ones, may reveal a particular collection technique that remains viable or which has never been detected. Disclosure would reveal not only the technique, but the Agency's use of the technique and the particular target against whom it was deployed. In its most recent decennial review, the validation team determined which records, including those containing imagery, held in designated operational files should continue to have that designation.

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<sup>2</sup> The latest Federal Register notice is dated April 15, 2015 at Fed. Reg. Vol. 80, No. 75.

12. In addition to the thorough decennial review, in this case, the Agency searched for and released to Plaintiffs any records that had been removed from operational files and therefore had lost that designation. Moreover, as explained in further detail addressing the search for "Item 7" responsive documents, below, most of the Agency's documents on POWs/MIAs have been permanently accessioned to NARA in association with mandated declassification, although CIA has also searched its records to ensure Plaintiffs received all responsive, non-exempt material in the Agency's possession.<sup>3</sup>

**B. "Item 7" Searches**

13. The Court found the search in response to "Item 7"<sup>4</sup> inadequate, holding that the Agency has not directly addressed Plaintiffs' claim that there are responsive documents that were shared with congressional committees but not produced in this litigation. However, the Court expressly states the Agency is not required to search its operational files even if underlying records were shared with other government agencies or with Congress.

14. I note that the CIA has provided Congress with documents concerning American POWs and MIAs and that searches conducted in response to "Item 7" have included those records. In the early 1990s, the Senate created a select committee on the POW/MIA issue with then-

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<sup>3</sup> Plaintiffs have been referred to NARA several times throughout this litigation. It should also be noted that the Defense Intelligence Agency (DIA) has been the lead agency on resolution of POW/MIA issues since 1985 (noted in document C06002422 released-in-full to Plaintiffs) and may have records of the type requested here.

<sup>4</sup> "Item 7" refers to plaintiff's request for "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."

Senators Kerry and Smith (the latter submitted a declaration on behalf of Plaintiffs) as leads. As part of this effort, CIA, and several other government agencies, sent thousands of documents to Congress, including some classified records. The committee also conducted closed hearings in which classified testimony was presented. In early 1993, the committee's records were sent to NARA for declassification. In turn, NARA sent CIA original records and records from other government agencies containing CIA equities for review.<sup>5</sup>

15. The select committee's records were exempt from FOIA search and release. When "Item 4"<sup>6</sup> of Plaintiffs' request was still being litigated, the Court determined that CIA was not required to re-review the documents sent from NARA in response to the committee's declassification directive as the Agency had held the documents in a read, review, and return status.<sup>7</sup> Nevertheless, in the interest of resolving the litigation, CIA searched for these documents in response to "Item 4" of Plaintiffs' request and released over 1,000 records during the 2010-2011 timeframe. The Court upheld the search for "Item 4" records in its 2012 order.

16. For the documents, including imagery, photographs, and the like, shared with Congress that were not part of the NARA project, CIA has treated all responsive documents in its possession and produced

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<sup>5</sup> Separately, Executive Order 12812 also directed Executive Branch agencies to review and declassify records on POWs/MIAs. Pursuant to the E.O., declassified versions of all classified records in the committee's possession were made.

<sup>6</sup> "Item 4" of plaintiff's request asked for: All records of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the National Archives and returned to CIA for processing.

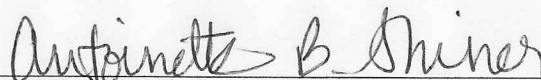
<sup>7</sup> These documents have been permanently accessioned to NARA.

any non-exempt portions to Plaintiffs throughout this litigation (with the exception of any records that might be maintained in operational files, a search of which the Court has consistently held is not required).

17. There are documents that remain currently and properly classified as their release could reveal intelligence sources, methods and activities, as described in the denied-in-full *Vaughn* index (containing only 45 entries). If the Court requires a sample of such documents, CIA can provide it, *in camera*, for review.

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

Executed this 29<sup>th</sup> day of November 2017.



Antoinette B. Shiner  
Information Review Officer  
Central Intelligence Agency