

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Robert Moore, et al.

Plaintiff,

v.

Case No. 20-cv-01027-RCL

CENTRAL INTELLIGENCE AGENCY,

Defendant.

DECLARATION OF VANNA BLAINE, INFORMATION REVIEW OFFICER FOR THE
LITIGATION INFORMATION REVIEW OFFICE,
CENTRAL INTELLIGENCE AGENCY

I, VANNA BLAINE, hereby declare and state:

I. INTRODUCTION

1. I currently serve as the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I have held this position since February 2020.

2. Prior to becoming the IRO for LIRO, I served as the Deputy IRO for LIRO beginning in April 2019, during which time I also served as the Acting IRO in the IRO's absence. Prior to becoming the Deputy IRO for LIRO, I served as the office's Litigation Production Manager for 24

months. In that capacity, I was the senior litigation analyst responsible for managing and tracking case assignments, and litigation deadlines. In this role, I also conducted second-line reviews of Agency information subject to litigation, making classification and release determinations regarding such information when necessary. Before serving as the Production Manager, I was an Associate Information Review Officer for the Director's Area of the CIA for 11 months. In that role, I was responsible for making classification and release determinations for information originating within the Director's Area, which included, among other offices, the Office of the Director of the CIA, the Office of Congressional Affairs, the Office of Public Affairs, and the Office of General Counsel. Prior to that, I was an Associate Information Review Officer and Team Lead in LIRO for 28 months, where I performed similar review functions, routinely making classification and release determinations regarding Agency-wide information subject to pending litigation. I have held other administrative and professional positions within the CIA since 2007, and have worked in the information review and release field since 2014.

3. As the IRO for LIRO, I am currently responsible for the classification review of CIA documents and information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. I am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order No. 13,526, 75 Fed. Reg. 707 (Jan. 5, 2010) ("E.O. 13526"). This means I am authorized to assess the current, proper

classification of CIA information, up to and including TOP SECRET information, based on the classification criteria of E.O. 13526 and applicable regulations.

4. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA request. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. I am submitting this declaration in support of the Motion for Summary Judgment the United States Department of Justice filed in this proceeding.

5. The purpose of this declaration is to explain and justify, to the greatest extent possible on the public record, the CIA's actions in responding to Plaintiffs' FOIA request.

II. PLAINTIFFS' FOIA REQUEST

6. By letter dated 25 November 2019, Plaintiffs submitted a FOIA request to the CIA seeking disclosure of 21 items:

- i. Request 1: From the period of March 16, 1954 through 1961, all records of CIA's efforts in undertaking "clandestine and covert action to locate, identify, and recover those U.S. prisoners of war still in Communist custody."
- ii. Request 2: An unredacted copy of this report (January 5, 1952, *CIA Information Reports*), together with all intelligence material upon which it was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.
- iii. Request 3: Please produce the [following] referenced [in July 15, 1952, *CIA Cross Reference Sheet*]:
 - a) July 15, 1952 "Basic Communication;"
 - b) June 24, 1953 "Basic Document;"
 - c) Information described as "etcetera;"
 - d) POW information in, or otherwise "Routed to, C.I. File;"
 - e) POW information related to or bearing the "Cross Reference Number 040;" and

- f) POW information related to or bearing the "Classification Number 383.6 Korea."
- iv. Request 4: All records regarding the June 1, 1951 shoot down and capture over North Korea of the American F-51 piloted by U.S. Air Force Captain Harry Cecil Moore, born February 11, 1924, in Elm Grove, West Virginia, service number AO 711850¹.
- v. Request 5: All records which the following statement from February 27, 1952 Memo from Chief Naval Personnel to Commanding General, Far East Air Force was based: "It is believed that there is a possibility that Captain Moore survived and is now a Prisoner of War."
- vi. Request 6: All records regarding Captain Moore's incarceration and transportation from North Korea to the Soviet Union, his locations in the Soviet Union, and all evidence that he "may have been interrogated by Soviet officials."
- vii. Request 7: An unredacted version of the July 17, 1952, three page *CIA Information Report*, the subject of which is "Prisoner-of-War Camps in North Korea and China," subtitled "War Prisoner Administrative Office and Camp Classification," together with the materials upon which this Report was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.
- viii. Request 8: An unredacted copy of the December 31, 1953 *CIA Information Report* regarding a USSR interrogation center in Korea, where, "after interrogation PWs were taken to the USSR," together with the materials upon which this Report was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.
- ix. Request 9: An unredacted copy of the March 24, 1954 *CIA Information Report* relating that "some PWs listed as missing were in fact turned over to the Soviets," and "will never be released because they will have learned too much about Soviet PW handling techniques," together with the materials upon which this Report was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.
- x. Request 10: The unredacted and complete version of the April 23, 1954 *CIA Information Report*, "Subject Soviet Concentration Camps in the Vorkuta Area."

¹ As explained below, this request is identical to Plaintiffs' prior request no. 1 in F-2017-02391. We addressed this request in our 28 March 2018 correspondence with Plaintiffs and, as a result, no search was conducted for Request 4 of this FOIA request.

- xi. Request 11: The unredacted, and complete, version of the April 27, 1954 CIA Information Report relating "information regarding the presence of US prisoners captured during the Korea War" in camps in Komsomolsk, Magadan, Chita, and Irkutsk, USSR, together with the materials upon which the Report was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.
- xii. Request 12: The unredacted and complete version of the December 8, 1954 CIA Information Report, "Subject Alleged American Held in Soviet Prison."
- xiii. Request 13: On January 15, 1992, an individual who had been a KGB officer from 1974 to 1984 appeared at the US Embassy in Helsinki, Finland, and reported that, to "ease his conscience," he was reporting that "three Americans were still being held in the camps of Mordovia in July 1978." The source "added that if necessary, he can provide more detailed information." Produce any and all information related to this Report.
- xiv. Request 14: A complete and unredacted version of the March 9, 1988 CIA Memorandum to "US Army Chief, Special Office for Prisoners of War and Missing in Action," referencing two 1980 sightings and one 1988 sighting of "31 Caucasians, possibly American prisoners from the Korean war, in the fall of 1979," together with all intelligence material upon which this Report was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.
- xv. Request 15: All records relating to any of the POW/MIAs named in an attached list.
- xvi. Request 16: Any and all records relating that any POW/MIAs may have been held in the prisons identified in an attached list of Russian prison camps.
- xvii. Request 17: For the period beginning June of 1951, and continuing to the present time, please produce all POW records provided to, or received from, any office of any component of the Department of Defense, including but not limited to:
 - a) CCRAK
 - b) Air Force 6004 Air Intelligence Service Squadron during the tenure of "Project American"
 - c) Missing in Action Office, including those provided in response to the February 12, 1997 letter from U.S. House of Representatives James Talent seeking "intelligence pertaining to American prisoners who were taken to China and the Soviet Union during the

war," as well as "(a) the 389 American service members who into the 1980s were listed as unaccounted prisoners of war by the United Nations Command Military Armistice Commission (UNCMAC) and (b) all US Air Force F-86 pilots who remain unrepatriated."

- d) Air Force Office of Special Investigations, or AFOSI
 - e) Naval Criminal Investigative Service, or NCIS
 - f) Army Criminal Investigation Command, or CID
 - g) U.S. Army Combined Command Reconnaissance Activities Far East, or CCRAFE
- xviii. Request 18: All POW records prepared by any officer, agent, or employee of the CIA, prepared for the Office of the President, including the President's Daily Brief, or PDB, that include information on the possibility of POWs being transferred to the Soviet Union or China.
- xix. Request 19: Any records reflecting communications with Members of Congress, or Congressional oversight committees concerning the capture of American airmen during the Korean conflict who may have been transported to the Soviet Union or China and their presumed fate.
- xx. Request 20: All records concerning POWs and KGB defector Yuri (or Yury) Rastvorov, who informed the United States Government that American military personnel were taken to the Soviet Union during the Korean conflict. Request included an unredacted version of an attached page with the heading "Terminology."
- xxi. Request 21: All intelligence material (including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports) concerning statements made by former Czech General Jan Sejna and other former Czech officials concerning US POWs held, interrogated and experimented on by Czech and Soviet advisors, and thereafter transferred to China, Czechoslovakia, East Germany, and the Soviet Union.

7. By letter dated 10 December 2019, the CIA acknowledged receipt of Plaintiffs' FOIA request and assigned it reference number F-2020-00473. A true and correct copy of this letter is attached as Exhibit A.

8. On 20 April 2020, Plaintiffs filed a complaint in this Court naming the CIA as Defendant. The CIA filed its Answer to the complaint on 03 June 2020.

9. By letter dated 07 October 2020, CIA provided an interim response to Plaintiffs whereby it identified six documents responsive to Plaintiffs' request that could be released in segregable form. A true and correct copy of this letter is attached as Exhibit B.

10. By letter dated 22 October 2020, CIA provided a second interim response to Plaintiffs whereby it identified two documents responsive to Plaintiffs' request that could be released in segregable form. A true and correct copy of this letter is attached as Exhibit C.

11. By letter dated 08 January 2021, CIA provided a third interim response to Plaintiffs whereby it identified an additional three documents responsive to Plaintiffs' request, one of which could be released in full, another in segregable form, and the last document withheld in full. A true and correct copy of this letter is attached as Exhibit D.

12. By letter dated 30 April 2021, CIA provided a fourth interim response to Plaintiffs whereby it identified an additional eight documents responsive to Plaintiffs' request. Three documents were released in full, four in segregable form, and one document was withheld in full. A true and correct copy of this letter is attached as Exhibit E.

13. By letter dated 25 June 2021, CIA provided a fifth interim response to Plaintiffs whereby it identified an additional five documents responsive to Plaintiffs' request. One document was released in full, two in segregable form, and two were withheld in full. A true and correct copy of this letter is attached as Exhibit F.

14. By letter dated 16 September 2021, CIA provided a sixth interim response to Plaintiffs whereby it identified an additional thirteen documents responsive to Plaintiffs' request that could be released in segregable form. A true and correct copy of this letter is attached as Exhibit G.

15. By letter dated 13 October 2021, CIA issued its final response to Plaintiffs, wherein it noted that a thorough search for records responsive to the request yielded two additional documents responsive to Plaintiffs' request. One document was released in full, the other in segregable form. A true and correct copy of this letter is attached as Exhibit H.

16. By letter dated 16 November 2021, CIA issued a supplemental final response to Plaintiffs after determining additional information was releasable. Upon further review, CIA determined it would no longer rely on a (b)(5) FOIA exemption in one of the documents previously released (C00465476). CIA re-issued this document to Plaintiffs along with the supplemental final response letter. A true and correct copy of this letter is attached as Exhibit I.

17. In total, CIA produced twenty-nine documents in part, six documents in full, and withheld four documents in full. Redactions and withholdings were both made pursuant to FOIA exemptions (b)(1), (b)(3), and (b)(6).²

² The CIA is no longer relying on exemption (b)(5) for portions of C00465476 and C06010920. As discussed above, CIA determined there was additional releasable information related to C00465476 and re-issued the document to Plaintiffs. As noted in CIA's *Vaughn* Index, redactions in C06010920 previously supported by (b)(5) exemptions remain supported by other exemptions, thus CIA determined no additional information was releasable.

18. With respect to any records that might reveal a classified or unacknowledged connection to the Agency, the CIA issued a "Glomar" response,³ indicating that the CIA could neither confirm nor deny the existence or nonexistence of such records, as the mere fact of their existence or nonexistence of records was properly classified and protected from disclosure under FOIA Exemptions (b)(1) and (b)(3). In its final production letter dated 13 October 2021, CIA confirmed that it could neither confirm nor deny the existence or nonexistence of records responsive to items 1, 5-6, 13, 16-17, and 21 of Plaintiffs' request. A true and correct copy of this letter is attached as Exhibit H.

III. CIA'S SEARCH FOR RECORDS

19. The CIA's search included an exhaustive electronic and hard copy search of Agency records, including archived records. The CIA employees who performed the necessary searches have access to the pertinent records, are qualified to search those records, and regularly search those records in the course of their professional duties.

20. The CIA conducted thorough and diligent searches of relevant systems of records that were reasonably calculated to find documents responsive to Plaintiffs' request (if such records existed). Given the age and type of records Plaintiff requested, CIA information management professionals searched all Agency records in three different records

³ This term is derived from the case Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976), which upheld CIA's use of a "neither confirm nor deny" response to a FOIA request for records concerning CIA's reported contacts with the media regarding Howard Hughes's ship, the "Hughes Glomar Explorer."

systems. Those systems encompass: (1) indices of all archived hard-copy Agency records; (2) electronic versions of all Agency records that have been reviewed and/or compiled for potential public release; and (3) multiple repositories of non-operational intelligence reporting from various sources. Where hard-copy files were identified as possibly containing relevant records, CIA information management professionals hand-searched those records in their entirety without the use of terms or other filtering mechanisms.

21. As discussed below, with regard to any records responsive to Plaintiffs' FOIA request that might reveal a classified or unacknowledged connection to the CIA, the Agency invoked the Glomar response, refusing to confirm or deny the existence or nonexistence of such records because the existence or nonexistence of such records is itself a currently and properly classified fact that could reveal clandestine CIA intelligence activities, sources, and methods.

A. CIA's Search for Records Responsive to Items 2, 3, 4, 7, 8-10, 11-12, 14-15, and 18-20

22. The CIA conducted the search for records pursuant to the processes explained above. Below, the search terms, date range, and number of responsive records located is detailed by item.

23. For Item 2: A search was conducted for the unredacted copy of the January 5, 1952 CIA Information Report attached to the Plaintiffs' complaint. CIA determined that Plaintiffs' additional request for "all intelligence material upon which [the report] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports" is not reasonably described, as required by the

FOIA statute, and, as such, did not conduct any further search related to this request. One record was located.

24. For Item 3: A search was conducted for the referenced material in the July 15, 1952 CIA Cross Reference Sheet identified by the Plaintiffs. CIA searched for part (a) "Basic Communication" and part (b) "Basic Document" referenced in the document attached to the request. CIA did not conduct a search related to parts (c)-(f) of the request, as CIA believes the scope of the requested items for those parts was not reasonably defined. Two records were located related to parts (a) and (b).

25. For Item 4: No search was conducted related to this request under collateral estoppel as this request is identical to a previous FOIA request submitted by Plaintiffs, assigned reference number F-2017-02391. We addressed this request in our March 28, 2018 correspondence with plaintiffs and thus did not re-address it in this FOIA request.

26. For Item 7: A search was conducted to locate the unredacted copy of the July 17, 1952, CIA Information Report attached to Plaintiffs' complaint. CIA believes Plaintiffs' additional request for "all intelligence material upon which [the report] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports" is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request. One record was located.

27. For Item 8: A search was conducted for the unredacted copy of the December 31, 1953, CIA Information Report attached to Plaintiffs' complaint. CIA believes Plaintiffs' additional request for "all

intelligence material upon which [the report] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports" is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request. One record was located.

28. **For Item 9:** A search was conducted for the unredacted copy of the March 24, 1954, CIA Information Report attached to Plaintiffs' complaint. CIA believes Plaintiffs' additional request for "all intelligence material upon which [the report] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports" is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request. One record was located.

29. **For Item 10:** A search was conducted for the unredacted copy of the April 23, 1954, CIA Information Report attached to Plaintiffs' complaint. One record was located.

30. **For Item 11:** A search was conducted for the unredacted copy of the April 27, 1954, CIA Information Report attached to Plaintiffs' complaint. CIA believes Plaintiffs' additional request for "all intelligence material upon which [the report] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports" is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request. One record was located.

31. **For Item 12:** A search was conducted for the unredacted copy of the December 8, 1954 CIA Information Report attached to Plaintiffs' complaint. One record was located.

32. **For Item 14:** A search was conducted for the unredacted copy of the March 9, 1988 CIA Memorandum to "US Army Chief, Special Office for Prisoners of War and missing in Action." CIA believes Plaintiffs' additional request for "all intelligence material upon which [the report] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports" is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request. One record was located.

33. **For Item 15:** A search was conducted using the names provided by Plaintiffs, along with "Prisoner of War," "Killed in Action," "Missing in Action," "Missing Person," "Defense Prisoner of War" and their variations. Eight records were located.

34. **For Item 18:** A search was conducted for POW records prepared by CIA for the Office of the President using key terms, including "Prisoner of War," "Missing in Action," "transfer," "Soviet Union," "Russia," "China," "Korea" and their variations. Search parameters were extended to March 17, 2021. Three records were located.

35. **For Item 19:** A search was conducted using the terms "American Airmen/pilots," "capture/prisoner/missing/POW," "Korea," "Soviet Union," "Russia," "China," "transport," "movement," "Congress," "memorandum" and their variations. The date range searched included June 1, 1950 to August 25, 2021. Fifteen records were located.

36. For Item 20: A search was conducted using "Yuri Rastvorov," "Yury Rastvorov" and their variations with no date restrictions. Four records were located.

37. In total, the CIA identified 39 documents responsive to these searches. The Agency conducted a line-by-line review of each document and identified information that could be released and information that is exempt from disclosure because of classification, privacy, or privilege concerns. Following that review, the CIA determined it would release six of the documents in full, 29 of the documents in part, and withheld four documents in full.

IV. EXEMPTIONS CLAIMED

38. As explained below, the CIA withheld in part certain records responsive to Plaintiffs' FOIA request pursuant to FOIA Exemptions (b) (1), (b) (3), and (b) (6).⁴

39. The CIA also can neither confirm nor deny the existence or nonexistence of records responsive to items 1, 5-6, 13, 16-17, and 21 of Plaintiffs' request. Official confirmation of whether such records do, or do not, exist would reveal a classified and statutorily-protected fact within the meaning of FOIA Exemptions (b) (1), and (b) (3). This response is commonly referred to as the Glomar response.

A. FOIA Exemption (b) (1)

40. Exemption (b) (1) provides that the FOIA does not require the production of records that are: "(A) specifically authorized under

⁴ As previously discussed, CIA is no longer relying on FOIA exemption (b) (5) for any document related to this request.

criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). Here, the information withheld pursuant to Exemption 1 satisfies the procedural and the substantive requirements of Executive Order 13526, which governs classification. See E.O. 13526 § 1.1(a), § 1.4(c)-(d).

41. Section 1.1(a) of Executive Order 13526 provides that information may be originally classified only if all of the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S. Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of Executive Order 13526; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in some level of damage to the national security, and the original classification authority is able to identify or describe the damage.

i. FOIA Exemption (b) (1) as Applied to Records Released in Part

42. As an original classification authority, I have determined that portions of the records responsive to Plaintiffs' request are currently and properly classified. Additionally, the U.S. Government owns and controls this information. Here, the information falls under classification categories § 1.4(c) and § 1.4(d) of the Executive Order because it concerns "intelligence activities (including covert action), [or] intelligence sources or methods" and "foreign relations or foreign

activities of the United States." Additionally, the information's unauthorized disclosure could reasonably be expected to result in damage to national security. Further, the responsive documents that contain classified information are properly marked in accordance with § 1.6 of the Executive Order.

43. I also note that, in accordance with § 1.7(a) of the Order, none of the information at issue has been classified in order to conceal violations of law, inefficiency or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security.

44. The records Plaintiffs requested cover a range of Agency functions and operations, and contain classified information related to: the priority of intelligence activities and targets; methods of collection; and classified relationships. For these reasons, the CIA has applied Exemption (b)(1) to currently and properly classified information. Despite the passage of time, this information remains currently and properly classified because the release of this information could significantly impair the CIA's ability to carry out its core missions of gathering and analyzing foreign intelligence and counter intelligence and conducting intelligence operations, thereby damaging the national security.

45. *Intelligence Activities.* Intelligence activities refer to the CIA's targets and operations, including the means the CIA utilizes to collect intelligence. Here, disclosure of information contained in the CIA documents would reveal the means, policies, and approval processes

used to collect certain CIA intelligence interests and activities. Although it is widely acknowledged that the CIA is responsible for conducting intelligence collection and analysis for the United States, the CIA generally does not disclose the targets of specific intelligence collection activities or the operations it conducts or supports because such disclosure would allow intelligence targets to circumvent the CIA's collection efforts, damaging the Agency's ability to carry out its intelligence mission. Here, the documents at issue contain information that would reveal the priority of specific U.S. intelligence targets, the locations of CIA activities, and the targets of specific CIA operations. Disclosing this type of detail could reasonably be expected to damage national security because it would greatly impair effective collection of foreign intelligence.

46. *Intelligence Methods.* Intelligence methods are the means by which an intelligence agency accomplishes its objectives. Intelligence methods must be protected to prevent foreign adversaries, terrorist organizations, and others from learning the ways in which the CIA operates, which would allow them to take measures to hide their activities from the CIA or target Agency officers. The more information the CIA discloses about its operational tradecraft, the more difficult it becomes for the CIA to actually collect foreign intelligence around the world. Clandestine information collection methods are valuable from an intelligence-gathering perspective only so long as they remain unknown and unsuspected. Once the nature of an intelligence method or the fact of its use in a certain situation is discovered, its usefulness in that situation is neutralized and the CIA's ability to apply that method in

other situations is significantly degraded. Here, the documents contain specific types of intelligence methods, as well as policies and processes for utilizing those intelligence methods. Disclosure of these details would likely impair the CIA's ability to continue to collect intelligence and conduct operations.

47. *Classified Relationships.* The CIA also protects the nature and details of classified relationships because this information would disclose specific intelligence sources, methods, and activities in operational use, including the identities of individuals and foreign partners who do business with the Agency. Here, certain documents at issue discuss the process and policies for working with foreign services, foreign individuals, and clandestine assets to aid the CIA in its intelligence operations. These details have been withheld because their disclosure would reveal intelligence priorities, and the CIA's information-sharing relationships with specific foreign individuals and governments. This information constitutes "foreign government information" and "information pertaining to the foreign relations or activities of the United States" under Executive Order 13526. Revelation of these relationships could hurt the Agency's relationship with these entities — entities that often agree to cooperate with the CIA on the understanding that the relationship will remain secret. Disclosing the details of these relationships could reasonably be expected to harm national security because it would reveal certain interests and activities of the U.S. Government, and could lead to the deterioration of relationships, thereby decreasing the CIA's access to information.

ii. FOIA Exemption (b) (1) as Applied to the CIA's Glomar Response

48. Consistent with sections 1.1(a) and 3.6(a) of Executive Order 13526,⁵ I have determined the fact of the existence or nonexistence of classified records responsive to items 1, 5-6, 13, 16-17, and 21 of Plaintiffs' FOIA request are currently and properly classified. The existence or nonexistence of these records pertains to "intelligence activities (including covert action), [or] intelligence sources or methods" and "foreign relations or foreign activities of the United States, including confidential sources" within the meaning of sections 1.4(c) and 1.4(d) of the Executive Order.

49. Further, section 3.6(a) of Executive Order 13526 specifically states "[a]n agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors." Executive Order 13526 therefore explicitly authorizes precisely the type of response the CIA provided to Plaintiff.

50. Here, the mere confirmation of whether certain responsive records do, or do not, exist would, in and of itself, reveal a classified fact: whether or not the CIA has an intelligence interest in or clandestine connection to a particular individual, group, subject-matter, or activity.

51. To be credible and effective, the CIA must use the Glomar response consistently, including instances in which the CIA does not

⁵ Section 1.1(a) sets forth procedural standards for classification, which have been satisfied in this case. Section 3.6(a) provides that, "[a]n agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors."

possess records responsive to a particular request. If the CIA were to invoke a Glomar response only when it actually possessed responsive records that revealed intelligence interests, connections or activities as described above, the Glomar response would be interpreted over time as an admission that responsive records exist. This practice would reveal the very information that the CIA must protect in the interest of national security.

52. Terrorist organizations, foreign intelligence services, and other hostile groups search continually for information regarding the activities of the CIA and are able to gather information from a myriad of sources, analyze this information, and devise ways to defeat CIA activities from seemingly disparate pieces of information. Even where the subject of an intelligence interest or a group the CIA has engaged with in connection with intelligence operations is no longer of interest or engaged in operations, the CIA's adversaries continue to seek such information, as it may reveal to these adversaries the focus of the CIA's intelligence activities.

53. After careful review, I have determined that if the CIA were to confirm or deny the existence or nonexistence of records responsive to items 1, 5-6, 13, 16-17, or 21 of Plaintiffs' FOIA request, such confirmation or denial would reveal sensitive information about the CIA's intelligence interests, personnel, capabilities, authorities, and resources that Executive Order 13526 protects from disclosure. Adversaries of the U.S. government could use such information to better predict CIA intelligence sources and methods.

54. In sum, merely confirming or denying that the CIA does or does not possess records regarding the requested items would serve to reveal classified intelligence information. In either case, such an admission would implicate intelligence sources and methods in a manner that could reasonably be expected to cause damage to U.S. national security because it would reveal facts about the CIA's clandestine intelligence activities to Plaintiffs and the public. Thus, this information is currently and properly classified, and consequently exempt from disclosure under FOIA exemption (b) (1).

B. FOIA Exemption (b) (3)

55. FOIA Exemption (b) (3) provides that FOIA does not apply to matters that are:

Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. . .

5 U.S.C. § 552(b) (3).

56. Here, Section 102A(i) (1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i) (1) (the "National Security Act"), and the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507, apply.

57. The National Security Act provides that the Director of National Intelligence ("DNI"), "shall protect intelligence sources and methods from unauthorized disclosure." Accordingly, it is well-established that the National Security Act constitutes a federal statute which "requires that the matters be withheld from the public in such a

manner as to leave no discretion on the issue." 5 U.S.C. §552(b)(3). Under the direction of the DNI pursuant to section 102A, and consistent with section 1.6(d) of Executive Order 12333, the CIA is required to protect CIA intelligence sources and methods from unauthorized disclosure. As addressed above, some of the records responsive to Plaintiffs' request contain classified information related to the priority of intelligence activities and targets, and methods of collection. Additionally, acknowledging the existence or nonexistence of records reflecting a classified connection to the CIA would reveal information that concerns intelligence sources and methods. The National Security Act is designed to protect both instances.

58. Further, section 6 of the CIA Act provides that the CIA shall be exempted from the provisions of any law which requires the publication or disclosure of the "organization, functions, names, official titles, salaries, or numbers of personnel employed by CIA". The CIA Act therefore constitutes a federal statute which "establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). As this declaration has explained, section 6 of the CIA Act supports the CIA's final response here in two instances: where the CIA released records in part, withholding information such as titles, names, identification numbers, functions, and organizational information related to CIA employees; and where the CIA issued a Glomar response, refusing to acknowledge the existence or nonexistence of the requested records that would require the CIA to disclose information about its functions.

59. In contrast to Exemption (b) (1), Exemption 3 does not require the CIA to identify and describe the damage to national security that reasonably could be expected to result in harm should the CIA disclose the information. Nonetheless, I refer the Court to the paragraphs above for a description of the damage to national security should the Court require the CIA to disclose this information. Disclosure of this information would also reveal sensitive security requirements, potentially putting Agency officers at risk, and increasing the likelihood of exposure of sensitive information.

60. FOIA Exemptions (b) (1) and (b) (3) thus apply independently and co-extensively to the aspect of Plaintiffs' request that would show a classified or unacknowledged association with the Agency.

C. FOIA Exemption (b) (6)

61. Exemption 6 protects from disclosure "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). Courts have broadly construed the term "similar files" to cover any personally identifying information. In applying Exemption 6, an agency is required to balance the relevant privacy interests of the individuals against the public interest in disclosure. In order to withhold information pursuant to Exemption 6, an agency must determine that the disclosure "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b) (6). The public interest in the FOIA

context is defined as information that would "shed[] light on the performance of [an Agency's] statutory duties."⁶

62. Here, nineteen of the documents at issue contain personally identifiable information, including names, signatures, and other identifying information, in which the individuals maintain a cognizable privacy interest.⁷ The release of the redacted names and other identifying information is reasonably likely to subject those individuals or those associated with them to increased harassment or threats based on their association with the CIA. This is true of both individuals employed by the CIA, as well as individuals associated with it. By contrast, there is no countervailing public interest in disclosure. Revealing the identities of these specific individuals, or information that would allow them to be identified, will not shed light on the conduct of the Agency's activities or operations beyond what is already being disclosed to the public through the release in part of these records. I note that in instances where the documents refer to high ranking officials, such that the disclosure of that individual's connection to the information at issue is potentially relevant to an understanding of the Government's actions, those names remain unredacted.

⁶ Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 773 (1989).

⁷ Documents containing personally identifiable information withheld under Exemption 6 include: C00046678, C00437028, C00465476, C00495799, C06002273, C06002566, C06010742, C06010860, C06010917, C06010920, C06444587, C06471810, C06471815, C06471817, C06891138, C06898446, C06914415, C06914416, C03100305.

63. As a result, disclosure of the redacted names or identifying information of certain individuals would constitute a clearly unwarranted invasion of personal privacy.

64. Therefore, I have determined that Exemption 6 applies to the names and identifying information of CIA employees and the names of non-agency personnel appearing in these records. Accordingly, the CIA has applied Exemption 6 to protect the privacy interest of these individuals.

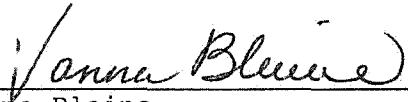
V. Segregability

65. In evaluating the responsive documents, the CIA conducted a document-by-document and line-by-line review and released all reasonably segregable non-exempt information. In four instances where no segregable, non-exempt portions of the document could be released without potentially compromising classified information or other information protected under the FOIA, the documents were withheld from Plaintiffs in full. In this case, the withheld information challenged by Plaintiffs is protected by Exemptions (b)(1), (b)(3), and (b)(6) because it is classified information concerning intelligence sources, methods and activities, and also contains personally identifiable information related to CIA personnel.

* * *

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

Executed this 08 day of December 2021.



Vanna Blaine
Information Review Officer
Litigation Information Review Office
Central Intelligence Agency