

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LOIS MOORE, et al., )  
 )  
 )  
 v. ) Case No. 20-1027 (RCL)  
 )  
 CENTRAL INTELLIGENCE AGENCY, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

PLAINTIFFS' RESPONSE TO DEFENDANT'S LOCAL RULE STATEMENT

COME NOW plaintiffs Robert Moore, Jana Orear, Christianne O'Malley, and Mark Sauter, under Local Civil Rule 7(h), and respectfully submit this Response to Defendant's Statement of undisputed Material Facts.

**Plaintiffs' Prior FOIA Request**

CIA Statement:

1. On July 31, 2017, the CIA received a FOIA request from Mark Sauter, the James Madison Project, Lois Moore, Robert Moore, Jana Orear, and Christianne O'Malley requesting "nine separate categories of records about American prisoners of war captured during the Korean conflict." *Sauter v. Dep't of State, et al.*, 17cv1596 at ECF No. 30-2 at ¶ 96; *see also* Mem Op. (ECF No 47) at 3 (identifying the requestors as the same requestors in this matter).

Plaintiff's Response: Deny. ECF No. 30-2 at ¶ 96, *Defendant's Statement of Material Facts*, recites that there were nine "subparts," not "categories," and that *Mem Op.*, ECF No 47 at 3, identifies the James Madison Project, a requestor that is not present in this matter.

CIA Statement:

2. The request contained nine separate subparts, some of which are the same or similar to requests in this civil action. *Id.* at ECF No. 12 (Amended Complaint) at ¶ 24.

Plaintiff's Response: Deny. Only a small fraction of the information sought here would be coterminous with that sought in CA 17-1596.

CIA Statement:

3. The CIA conducted a search for records responsive to some of the FOIA request and found no responsive records. *Id.* at ECF No. 30-2 (Statement of Material Facts) at ¶¶ 97-110.

Plaintiff's Response: Deny. Defendant's assertion of *Glomar* renders plaintiffs unable to admit or deny that defendant "found no responsive records." Admit that the CIA "conducted a search for some of the records."

CIA Statement:

4. Where the FOIA request sought information that would otherwise be classified, Defendant asserted a *Glomar* response and refused to confirm or deny the existence of any responsive records. *Id.* at ¶¶ 111-113.2

Plaintiff's Response: Deny that information "would otherwise be classified."

CIA Statement:

5. The requestors filed a Complaint on August 9, 2017, *Id.* at ECF No. 1, and an Amended Complaint on December 20, 2017, seeking an order from the Court compelling production of material responsive to the FOIA Request. ECF No. 12.

Plaintiff's Response: Admit.

CIA Statement:

6. The CIA filed an Answer to the Amended Complaint on January 31, 2018. *Id.* at ECF No. 15.

Plaintiff's Response: Admit.

CIA Statement:

7. After full briefing by the parties, this Court granted summary judgment in favor of the CIA. *Id.* at ECF Nos. 46 (Court Order), and 47 (Mem. Op.) at 9-10.

Plaintiff's Response: Admit.

CIA Statement:

8. Plaintiffs did not challenge or appeal the decision of the Court. *See generally*, 17cv1596, and ECF No. 62 (Notice of Concession).

Plaintiff's Response: Admit that those plaintiffs did not challenge the CIA's *Glomar* responses, or appeal that decision.

**Plaintiffs' Current FOIA Request**

CIA Statement:

9. Plaintiffs allege that they submitted a written FOIA request to the CIA on November 25, 2019. ECF No. 1. In their request, Plaintiffs sought 21 types of records relating to American POWs from the Korean Conflict, including USAF Captain Harry Cecil Moore, who was shot down over North Korea and possibly taken prisoner. *Id.*

Plaintiff's Response: Deny. Twelve of the requests correspond to redacted CIA records that were supplied with the request, and the requests seek specific information, not "21 types of records." .

CIA Statement:

10. In their FOIA request, Plaintiffs sought the following records:

Request 1

For 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."

Request 2

Please provide an unredacted copy of this Report [attached January 5, 1952, *CIA Information Report*], together with all intelligence material upon which it was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.

Request 3

Please produce the [following] referenced [in attached 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  
(e) POW information related to or bearing the "Classification Number 383.6 Korea."

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 711850.

Request 5

All records upon which the following statement from February 27, 1952 Memo from Chief of 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."

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."

Request 7

An unredacted version of the attached 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.

Request 8

An unredacted copy of the attached 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.

Request 9

An unredacted copy of the attached 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.

Request 10

The unredacted, and complete, version of the attached April 23, 1954, *CIA Information Report*, "Subject Soviet Concentration Camps in the Vorkuta Area."

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 Korean War" in camps in Komsomolsk, Magadan, Chita, and Irkutsk, USSR, together with the materials upon which this Report was based,

including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports. The first page of this three-page Report is enclosed.

Request 12

The unredacted, and complete, version of the attached December 8, 1954, *CIA Information Report*, "Subject Alleged American Held in Soviet Prison."

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." For reference, a copy of the January 23, 1992 cable from Embassy Helsinki to Secretary of State is attached. Please produce any and all information related to this Report.

Request 14

A complete, and unredacted version of the attached 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.

Request 15

All records relating to any of the POW/MIAs named in the attached list.

Request 16

Any and all records relating that any POW/MIAs may have been held in the prisons identified in the attached list of Russian prison camps.

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 attached February 12, 1997 letter from U.S. House of Representative 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.

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.

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.

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. This request includes an unredacted version of the attached page with the heading, "Terminology."

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.

Plaintiff's Response: Deny. Defendant omitted explanatory language

appearing in Requests 1, 2, 3, and 14.

CIA Statement:

11. On December 10, 2019, Defendant acknowledged receiving the Plaintiffs' request on December 3, 2019, and assigned an agency tracking number. Def. Ex. A.

Plaintiff's Response: Admit.

CIA Statement:

12. Plaintiffs Lois Moore, Robert Moore, Jana Orear, Christianne O'Malley, and Mark Sauter ("Plaintiffs") commenced this litigation against the CIA on April 20, 2021, alleging that the CIA failed to respond to their FOIA request. ECF No. 1 (Complaint).

Plaintiff's Response: Admit.

CIA Statement:

13. On June 3, 2020, CIA filed an Answer to the Complaint. ECF No. 6 (Answer).

Plaintiff's Response: Admit.

CIA Statement:

14. On July 19, 2019, the Court issued a Minute Order requiring that the parties meet and confer and file a Joint Status Report proposing a schedule for proceeding in this matter. Minute Order dated July 19, 2019.

Plaintiff's Response: Admit.

CIA Statement:

15. The parties conferred and agreed to a rolling processing/production of records beginning on September 27, 2019. ECF No. 11.

Plaintiff's Response: Admit.

**Defendant's FOIA Response**

CIA Statement:

16. Thereafter, the parties agreed that Defendant would continue to process documents and provide non-exempt material on a monthly basis. *See* ECF No. 13.

Plaintiff's Response: Admit.

CIA Statement:

17. On October 7, 2020, CIA provided an interim response to Plaintiffs, identifying six documents responsive to Plaintiffs' request that could be released in part. Exhibit B.

Plaintiff's Response: Admit.

CIA Statement:

18. A second interim response to Plaintiffs' request was provided on October 22, 2020, identifying two documents responsive to Plaintiffs' request that could be released in part form. Exhibit C.

Plaintiff's Response: Admit.

CIA Statement:

19. On January 8, 2021, CIA provided a third interim response to Plaintiffs, identifying three documents responsive to Plaintiffs' request, one of which could be released in full, another in part, and the last document withheld in full. Exhibit D.

Plaintiff's Response: Deny that one was properly be released in part, and one document was properly withheld in full.

CIA Statement:

20. On April 30, 2021, CIA provided a fourth interim response to Plaintiffs, identifying eight documents responsive to Plaintiffs' request. Three documents were released in full, four in part, and one document was withheld in full. Exhibit E.

Plaintiff's Response: Admit.

CIA Statement:

21. The CIA provided a fifth interim response to Plaintiffs on June 25, 2021, identifying an additional five documents responsive to Plaintiffs' request. One document was released in full, two in part, and two were withheld in full. Exhibit F.

Plaintiff's Response: Admit.

CIA Statement:

22. By letter dated September 16, 2021, the CIA provided a sixth interim response to Plaintiffs, identifying thirteen documents responsive to Plaintiffs' request that could be released in part. Exhibit G.

Plaintiff's Response: Admit.

CIA Statement:

23. On October 13, 2021, the CIA issued its final response to Plaintiffs, noting that a thorough search for records responsive to the request yielded two additional documents responsive to Plaintiffs' request. One document was released in full and the other was released in part. Exhibit H.

Plaintiff's Response: Admit.



CIA Statement:

24. By letter dated November 16, 2021, CIA issued a supplemental final response to Plaintiffs after determining that the CIA would no longer rely on FOIA Exemption 5 in one of the documents previously released in part. The CIA re-issued this document to Plaintiffs along with a supplemental final response letter. Exhibit I. Portions of the document remained exempt under other exemptions. Declaration of Vanna Blaine ("Blaine Decl.") at ¶ 17, n.2.

Plaintiff's Response: Deny that "[p]ortions of the document remained exempt under other exemptions."

CIA Statement:

25. In total, CIA produced six documents in full, twenty-nine documents in part, and withheld four documents in full. Redactions and withholdings were made pursuant to FOIA exemptions 1, 3, and 6. Blaine Decl. at ¶ 17.

Plaintiff's Response: Deny. CIA produced 55 distinct records. CIA counted distinct documents as one record. *See Hendershot Aff. Exhibit A* at 1-7.

CIA Statement:

26. With respect to items 1, 5-6, 13, 16-17, and 21 of Plaintiffs' request seeking any records that might reveal a classified or unacknowledged connection to the CIA, the CIA issued a "Glomar" response, stating 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 1 and 3. Exhibit H.

Plaintiff's Response: Deny. Plaintiffs aver that disclosure would not "reveal a classified or unacknowledged connection to the CIA."

CIA Statement:

27. The CIA conducted a line-by-line review of each document in order to identify and release all information that is exempt from disclosure, without compromising classified information or other information protected by privacy or privilege concerns. Blaine Decl. at ¶¶ 37, 65.

Plaintiff's Response: Deny.

CIA Statement:

28. The parties held subsequent discussions to narrow the issues to be resolved by the Court. ECF No. 20.

Plaintiff's Response: Admit.

**Plaintiff's Objections to Defendant's Production**

CIA Statement:

29. Counsel for Plaintiffs informed Defendant that Plaintiffs were objecting to the redactions and withholdings made by Defendant. *Id.*

Plaintiff's Response: Admit.

**Exemptions at Issue**

CIA Statement:

30. In this case, the withheld information challenged by Plaintiffs is protected by Exemptions 1, 3, and 6 because it is classified information concerning intelligence sources, methods and activities, and also contains personally identifiable information related to third parties and CIA personnel. Blaine Decl. at ¶ 65.

Plaintiff's Response: Deny. The statement is a legal conclusion, which is contested.

**FOIA Exemption 1 – Classified Information**

CIA Statement:

31. The Defendant has withheld information in challenged documents and further asserted a “Glomar” response where Plaintiffs requested classified information pursuant to the protection of Exemption 1 of FOIA. 5 U.S.C. § 552(b)(1). Vaughn Index; Blaine Decl. at ¶¶ 40-54.

Plaintiff's Response: Deny that plaintiffs requested classified information exempt from disclosure under Exemption 1.

CIA Statement:

32. The Defendant asserts that the information withheld under this exemption contains information that is established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified as such. Blaine Decl. at ¶ 40.

Plaintiff's Response: Deny that the requested information is established by an Executive Order to be kept secret.

**FOIA Exemption 3 – Federal Statute Protection**

CIA Statement:

33. The Defendant further withheld information in challenged documents and further asserted a “Glomar” response pursuant to Exemption 3 of FOIA, 5 U.S.C. § 552(b)(3), where Plaintiffs requested classified information protected by the National Security Act of 1947, 50 U.S.C. § 3024(i)(1) (“National Security Act”), and the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507 (“CIA Act”). Vaughn Index; Blaine Decl. at ¶¶ 55-60.

Plaintiff's Response: Deny that plaintiffs requested classified information exempt from disclosure under Exemption 3.

CIA Statement:

34. Some of the records responsive to Plaintiffs’ request contain information classified pursuant to the National Security Act that relates to the priority of intelligence activities and targets, and methods of collection, and would further acknowledging the existence or nonexistence of records reflecting a classified connection to the CIA would reveal information that concerns intelligence sources and methods. Blaine Decl. at ¶ 57.

Plaintiff's Response: Deny that some of the information responsive to plaintiffs’ request contain information that is classified under the National Security Act as relating to the intelligence activities, or methods of collection.

### **FOIA Exemption 6 – Personal Privacy**

#### CIA Statement:

35. Likewise, Plaintiffs' request seeks titles, names, identification numbers, functions, and organizational information related to CIA employees that would put CIA officers at risk and are protected from disclosure by the CIA Act, and where the CIA issued a Glomar response, would cause the CIA to acknowledge the existence or nonexistence of that would disclose information about its functions that would increase the likelihood of exposing sensitive information. Blaine Decl. at ¶¶ 58-59

Plaintiff's Response: Deny. Plaintiffs do not seeks titles, names, identification numbers, functions, and organizational information related to CIA employees that would put CIA officers at risk and are protected from disclosure by the CIA Act. Disclosure would not cause the CIA to acknowledge the existence or nonexistence of information that would expose properly classified information.

#### CIA Statement:

36. Defendant has redacted information in the challenged documents pursuant to Exemption 6 of FOIA, asserting that the release of names and other personal information of certain U.S. Government and non-U.S. Government individuals would constitute an unwarranted invasion of privacy, and that this privacy interest is not outweighed by any public interest in the release of the information. 5 U.S.C. § 552(b)(6). Ex. 1; Blaine at ¶ 67.

Plaintiff's Response: Deny that "this privacy interest is not outweighed by any public interest in the release of the information."

#### CIA Statement:

37. To ensure that Plaintiffs were provided all releasable information within the documents at issue, the CIA released the identities of more senior or high-ranking officials whose connection to the matter would be relevant to the understanding of the Government's actions, and further released the non-exempt contents of the documents, which evidence CIA's activities. *Id.*

Plaintiff's Response: Deny. Defendant did not disclose the identities of any senior or high-ranking officials

Date: January 17, 2022.

Respectfully submitted,

          /s/ John H. Clarke

John H. Clarke Bar No. 388599

1629 K Street, NW

Suite 300

Washington, DC 20006

(202) 344-0776

Fax (202) 332-3030

john@johnhclarkelaw.com

*Attorney for Plaintiffs*