

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROBERT MOORE, <i>et al.</i> ,	)	
	)	
Plaintiffs.	)	
	)	
v.	)	Case No. 20-1027 (RCL)
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendant.	)	
_____	)	

PLAINTIFFS' MOTION FOR *IN CAMERA* INSPECTION

COME NOW plaintiffs Robert Moore, Jana Orear, Christianne O'Malley, and Mark Sauter, and respectfully move this Court for *in camera* review. Defendant opposes the relief sought.

In support of this relief, plaintiffs submit their attached Memorandum of Points and Authorities.

Date: January 17, 2022.

Respectfully submitted,

\_\_\_\_\_/s/ John H. Clarke  
 John H. Clarke # 388599  
 1629 K Street, NW  
 Suite 300  
 Washington, DC 20006  
 (202) 344-0776  
 Fax: (202) 332-3030  
 john@johnhclarkelaw.com  
 Counsel for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROBERT MOORE, <i>et al.</i> ,	)	
	)	
Plaintiffs.	)	
	)	
v.	)	Case No. 20-1027 (RCL)
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF PLAINTIFFS' MOTION FOR *IN CAMERA* INSPECTION

Plaintiffs seek *in camera* review of four records that the CIA withheld in their entirety:

- (1) A three-page 1952 *Information Report* discussing the location of transit camps for POWs in the USSR;<sup>1</sup>
- (2) A 1973 three-page memorandum discussing a Congressperson's inquiry into American POWs in the USSR;<sup>2</sup>

<sup>1</sup> See *Vaughn Index* ECF. No. 22-1 at 25-26:

This document consists of information report discussing the location of transit camps for POWs in the USSR. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence activities or intelligence sources and methods (intelligence activities). The CIA conducted a line-by-line review of this document to determine whether meaningful, reasonably segregable, non-exempt portions of the document could be released. This document is withheld in full because there is no meaningful non-exempt information that can reasonably be segregated from any exempt information. This document is classified as CONFIDENTIAL, and as such, disclosure of this information could be reasonably expected to result in damage to national security.

<sup>2</sup> *Id.* at 22-23:

This document consists of a memorandum discussing a Congressperson's inquiry into American POWs in the USSR. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under

- (3) A 1987 three-page record discussing the potential return of the remains of two missing persons;<sup>3</sup> and
- (4) A classified version of a 2000 213-page record that the CIA produced in this Case.<sup>4</sup>

---

1.4(c) of E.O. 13526 and reflects intelligence activities or intelligence sources and methods (intelligence activities). Exemption (b)(6) was invoked to protect identifying information of CIA personnel and individuals (names, official titles, location, telephone number, and email addresses). The CIA conducted a line-by-line review of this document to determine whether meaningful, reasonably segregable, non-exempt portions of the document could be released. This document is withheld in full because there is no meaningful non-exempt information that can reasonably be segregated from any exempt information. This document is classified as SECRET, and as such, disclosure of this information could be reasonably expected to result in damage to national security.

<sup>3</sup> *Id.* at 23-24:

This document consists of a cable discussing the potential return of the remains of two missing persons to the US. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence activities or intelligence sources and methods (intelligence activities). The CIA conducted a line-by-line review of this document to determine whether meaningful, reasonably segregable, non-exempt portions of the document could be released. This document is withheld in full because there is no meaningful non-exempt information that can reasonably be segregated from any exempt information. This document is classified as SECRET, and as such, disclosure of this information could be reasonably expected to result in damage to national security.

<sup>4</sup> *Id.* at 25-26, referring to *A Review of the 1998 National Intelligence Estimate on POW/MIA Issues and the Charges Levied by A CRITICAL ASSESSMENT OF THE ESTIMATE*:

This document consists of the classified version of the joint Department of Defense and CIA report on POW/MIA issues (unclassified version released in full as C00500205). Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence activities or intelligence sources and methods (intelligence activities). This document is withheld in full because CIA determined that the ability to see where the classified, redacted sections were located in the report is sensitive information. This document is classified as SECRET, and as such, disclosure of this information could be reasonably expected to result in damage to national security.

District courts have broad discretion to decide whether *in camera* inspection is necessary. Consequently, there is no bright-line rule as regards what must be demonstrated by the plaintiff before inspection will take place. However, courts are generally inclined to permit *in camera* inspection where agency affidavits/*Vaughn* Indices are insufficiently detailed to permit meaningful review. *See, e.g., Islamic Shura Council of S. Cal. v. FBI*, 635 F.3d 1160, 1166 (9th Cir. 2011); *Spirko v. USPS* 147 F.3d 992, 997 (D.C. Cir. 1998); *Quiñon v. FBI*; 86 F.3d 1222, 1229 (D.C. Cir. 1996); *In re DOJ*, 999 F.2d 1302, 1310 (8th Cir. 1993) (*en banc*).

In *Allen v. Central Intelligence Agency*, 636 F.2d 1287, 1298-99 (D.C. Cir. 1980), the Court of Appeals laid down guidelines for *in camera* inspection of records and listed six factors for a district court to consider: (1) judicial economy; (2) the conclusory nature of the agency's affidavits; (3) bad faith on the part of the agency; (4) disputes concerning the contents of the document; (5) the agency proposes *in camera* inspection; and (6) strong public interest in disclosure. Five of the six are present here.

***Bad Faith.*** Plaintiffs aver that the most reasonable inference to be drawn from defendant's conduct, as outlined in their dispositive motion filed herewith, is that it acts in bad faith in this action, which would be consistent with its approach over the decades.

The CIA refused to conduct searches for six items that were, in fact, "reasonably described" under the FOIA. It failed to search its "operational files," as it must for such aged records. It failed to process previously released—over 20 years ago—records that are now up to 68-years-old. Its nondisclosures violate Executive Order 13526's time limits for declassifying national security information. It demonstrably ignored the "historical value

or other public interest in the subject matter of the particular category of files" in conducting its Decennial reviews.

The CIA offers no justification for these failures. In fact, the terms "automatic declassification," "operational records," and "decennial review" appear nowhere in its pleadings.

***Conclusory Nature of the Agency Affidavit.*** The sum total of the information that the CIA provided was that it searched three unnamed records systems, one of which contained hard copies and had an index, the other two were electronic, and one of those two contained already-released records. Defendant failed to even identify any of its components or offices searched. On this record, the Court cannot review whether the CIA has, in fact, conducted thorough and diligent searches, as it claims. The CIA "fail[ed] to describe what records were searched, by whom, and through what processes." *Hall v. C.I.A.*, 668 F.Supp.2d 172, 179 (D. D.C. 2009).

Its reliance on Exemptions 1, 3, and 6 are unfounded, and entirely conclusory. Disclosure has no national security implications as it would not reveal the identity of a living, confidential source, nor impair the effectiveness of an intelligence method currently in use, nor reveal information that would cause serious harm to foreign relations. Nor would the disclosure of identities of deceased persons be a clearly unwarranted invasion of personal privacy. The CIA stated its conclusions, but has offered no justification for its nondisclosures.

***Judicial economy.*** This factor also favors the relief sought. There are only four documents at issue here. Three of these are three-pages each. While the fourth, a classified

version of a 2000 record that the CIA produced in this case, is 213 pages, the CIA can identify for the Court the portions that it withholds.

***Dispute over Contents.*** There are disputes over the extent to which multiple exemption claims cover the information withheld. Plaintiffs dispute whether the information withheld would reveal the identity of a living confidential source, or impair the effectiveness of an intelligence method currently in use, or reveal information that would cause serious harm to foreign relations, or that deceased persons have personal privacy interests. Plaintiffs believe that national security risks are no longer present, while the CIA claims the opposite.

***Public Interest in Disclosure.*** The public interest is very strong, as reflected by documentaries, books, magazines, newspapers, and three reports by Congressional Committee, two of which held public hearings.

WHEREFORE, plaintiffs Robert Moore, Jana Orear, Christianne O'Malley, Mark Sauter, respectfully move this Court to order the CIA to submit the four records that it withheld in full, for the Court's review through *in camera* inspection.

Date: January 17, 2022.

Respectfully submitted,

\_\_\_\_\_/s/ John H. Clarke  
John H. Clarke # 388599  
1629 K Street, NW  
Suite 300  
Washington, DC 20006  
(202) 344-0776  
Fax: (202) 332-3030  
john@johnhclarkelaw.com  
*Counsel for Plaintiffs*