

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ROBERT MOORE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 20cv1027 (RCL)
	)	
UNITED STATES CENTRAL	)	
INTELLIGENCE AGENCY	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT’S STATEMENT OF MATERIAL FACTS AS TO WHICH  
THERE EXISTS A GENUINE ISSUE**

Pursuant to Fed. R. Civ. P. 56(c)(1) and Local Civil Rule 7(h), Defendant United States Central Intelligence Agency (“Defendant” or “CIA”) submits this Statement of Material Facts as to Which There Exists a Genuine Issue in response to Plaintiffs’ Statement of Material Facts Not in Genuine Dispute, ECF No. 25-9 (“Pl. Statement of Facts”), in this Freedom of Information Act (“FOIA”) action.

**I. NO GENUINE ISSUE OF MATERIAL FACT EXISTS PRECLUDING  
SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT**

Pursuant to the Local Civil Rules, a party opposing a motion for summary judgment must provide “a separate concise statement of genuine issues setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated, which shall include references to the parts of the record relied on to support the statement.” LCvR 7(h). In the present matter, however, Defendant does not contend that any genuine issues of material fact exist, and so has moved for summary judgment on its own behalf. ECF No. 21.

Plaintiffs’ Statement of Facts, however, contains many conclusory allegations that are immaterial to the issue regarding the FOIA civil proceedings here. Other facts asserted by

Plaintiff selectively quote from the Declaration of Vanna Blaine in order to create the misimpression that the CIA did not conduct a search for responsive documents, when in fact the CIA located the very documents identified and requested by Plaintiffs but could not conduct any further search for records because the remainder of Plaintiffs' requests failed to reasonably describe the additional information requested. Plaintiffs' Statement of Facts also contains numerous mischaracterizations of documents that will be pointed out and addressed in Defendant's individual responses below.

To the extent that this Court requires the Defendant to set forth the factual evidence favoring its opposition to the Plaintiffs' motion for summary judgment, the Defendant respectfully refers this Court to, and incorporates Defendant's Statement of Material Facts Not in Genuine Dispute, ECF No. 16-1, and the declarations and exhibits attached thereto.

**II. THE DEFENDANT'S RESPONSE TO PLAINTIFFS' STATEMENT OF ISSUES NOT IN DISPUTE**

Defendant specifically addresses Plaintiffs' Statement of Material Facts as follows, each numbered paragraph below corresponds with the numbered paragraph in the Plaintiffs' Statement.

1. CIA did not name any component searched, (sic) and did not name any repository, (sic) or system, (sic) searched. *Blaine Decl.*, ECF No. 21-2 ¶ 20.

**Response:**

Paragraph 1 makes allegations regarding the search for records that are immaterial to the issue of summary judgment in this FOIA civil action. To the extent that a response is required, Defendant denies as irrelevant. Because Plaintiffs limited their objections to the redactions and withholdings of records, Defendant is not required to provide such detail of its search.

Moreover, where Plaintiffs requested a specific document(s) and the document was located and processed for release/redaction/withholding, no detail of the search is necessary. Finally, to the extent that Defendant asserted a *Glomar* response, no search is required.

2. The CIA Information Act 50 U.S.C. § 3141(a) defines “operational files” and authorizes the CIA Director to designate certain records as “operational,” making such records exempt (sic) search, review, and disclosure under the FOIA. CIA did not search these “operational files.”

**Response:**

Paragraph 2 makes allegations regarding the search for records that are immaterial to the issue of summary judgment in this FOIA civil action. To the extent that a response is required, Defendant denies as irrelevant. Because Plaintiffs limited their objections to the redactions and withholdings of records, Defendant is not required to provide such detail of its search. Moreover, where Plaintiffs requested a specific document(s) and the document was located and processed for release/redaction/withholding, no detail of the search is necessary. Finally, to the extent that Defendant asserted a *Glomar* response, no search is required.

3. The CIA did not search the repositories of the records of the National Clandestine Service, or of the Directorate for Science and Technology, or of the Office of Personnel Security.

**Response:**

Paragraph 3 makes allegations regarding the search for records that are immaterial to the issue of summary judgment in this FOIA civil action. To the extent that a response is required, Defendant denies as irrelevant. Because Plaintiffs limited their objections to the redactions and withholdings of records, Defendant is not required to provide such detail of its search. Moreover, where Plaintiffs requested a specific document(s) and the document was located and processed for release/redaction/withholding, no detail of the search is necessary. Finally, to the extent that Defendant asserted a *Glomar* response, no search is required.

4. In response to Item 2 seeking “intelligence material upon which [the referenced, and attached, *CIA Information Report*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports,” CIA responded that the Request “is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request.” *Blaine Decl.*, ECF No. 21-2 ¶ 23.

**Response:**

Paragraph 4 makes allegations regarding the search for records that are immaterial to the issue of summary judgment in this FOIA civil action. To the extent that a response is required, Defendant denies the allegation as inaccurate, incomplete, and a misrepresentation of the contents of the Blaine Declaration. The CIA did conduct a search for the unredacted copy of the 1952 Report as requested by Plaintiffs in Item 2 and did, in fact, locate a responsive record. Blaine Decl. at ¶ 23. The CIA admits that the remainder of Plaintiffs' request failed to reasonably describe the documents sought, as required by FOIA, and as a result the CIA did not conduct a further search related to the request. Furthermore, because Plaintiffs limited their objections to the redactions and withholdings of records, Defendant denies as irrelevant.

5. The *CIA Information Report* identified in the foregoing statement references four separate live sighting reports of POWs. See *FOIA Request* ECF No. 9-2 at 3.

**Response:**

Paragraph 5 contains Plaintiffs' characterizations of the content of the Report. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 5.

6. In response to Item 7 seeking "intelligence material upon which [the referenced, and attached, *CIA Information Report*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports," CIA responded that the Request "is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request." *Blaine Decl.*, ECF No. 21-2 ¶ 26.

**Response:**

Paragraph 6 makes allegations regarding the search for records that are immaterial to the issue of summary judgment in this FOIA civil action. To the extent that a response is required, Defendant denies the allegation as inaccurate, incomplete, and a misrepresentation of the contents of the Blaine Declaration. The CIA did conduct a search for the unredacted copy of the

1952 Report as requested by Plaintiffs in Item 2 and did, in fact, locate a responsive record. Blaine Decl. at ¶ 26. The CIA admits that the remainder of Plaintiffs' request failed to reasonably describe the documents sought, as required by FOIA, and as a result the CIA did not conduct a further search related to the request. Furthermore, because Plaintiffs limited their objections to the redactions and withholdings of records, Defendant denies as irrelevant.

7. The subject of the *CIA Information Report* identified in the foregoing statement is "Prisoner-of-War Camps in North Korea and China," subtitled "War Prisoner Administrative Office and Camp Classification." See *FOIA Request* ECF No. 9-2 at 5.

**Response:**

Paragraph 7 contains Plaintiffs' characterization of the content of the Report. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 7.

8. In response to Item 8 seeking "intelligence material upon which [the referenced, and attached, *CIA Information Report*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports," CIA responded that the Request "is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request." *Blaine Decl.*, ECF No. 21-2 ¶ 27.

**Response:**

Paragraph 8 makes allegations regarding the search for records that are immaterial to the issue of summary judgment in this FOIA civil action. To the extent that a response is required, Defendant denies the allegation as inaccurate, incomplete, and a misrepresentation of the contents of the Blaine Declaration. The CIA conducted a search for the unredacted copy of the 1953 Report as requested by Plaintiffs in Item 8 and did, in fact, locate a responsive document. Blaine Decl. at ¶ 27. The CIA admits that the remainder of Plaintiffs' request failed to reasonably describe the documents sought, as required by FOIA, and as a result the CIA did not

conduct a further search related to the request. Furthermore, because Plaintiffs limited their objections to the redactions and withholdings of records, Defendant denies as irrelevant.

9. The *CIA Information Report* identified in the foregoing statement is regarding a USSR interrogation center in Korea, where, “after interrogation PWs were taken to the USSR,” *FOIA Request* ECF No. 9-2 at 5.

**Response:**

Paragraph 9 contains Plaintiffs’ characterization of the content of the Report. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 9.

10. In response to Item 9 seeking “intelligence material upon which [the referenced, and attached, *CIA Information Report*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports,” CIA responded that the Request “is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request.” *Blaine Decl.*, ECF No. 21-2 ¶ 28.

**Response:**

Paragraph 10 makes allegations regarding the search for records that are immaterial to the issue of summary judgment in this FOIA civil action. To the extent that a response is required, Defendant denies the allegation as inaccurate, incomplete, and a misrepresentation of the contents of the Blaine Declaration. The CIA conducted a search for the unredacted copy of the 1954 Report as requested by Plaintiffs in Item 9 and located a responsive document. *Blaine Decl.* at ¶ 28. The CIA admits that the remainder of Plaintiffs’ request failed to reasonably describe the documents sought, as required by FOIA, and as a result the CIA did not conduct a further search related to the request. Furthermore, because Plaintiffs limited their objections to the redactions and withholdings of records, Defendant denies as irrelevant.

11. The *CIA Information Report* identified in the foregoing statement relates 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.” *FOIA Request* ECF No. 9-2 at 6.

**Response:**

Paragraph 11 contains Plaintiffs’ characterizations of the content of the Report. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 11.

12. In response to Item 11 seeking “intelligence material upon which [the referenced, and attached, *CIA Information Report*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports,” CIA responded that the Request “is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request.” *Blaine Decl.*, ECF No. 21-2 ¶ 9.

**Response:**

Paragraph 12 cites to a section of the Blaine Decl. that does not correspond to any search for Item 11 as Plaintiffs describe. Specifically, Plaintiffs’ paragraph 12 cites to Blaine Decl. ¶ 9 as support for its allegation, but that paragraph from the Blaine Decl. addresses the CIA’s interim response dated October 7, 2020, which the CIA provided Plaintiffs with six responsive documents.

13. The *CIA Information Report* identified in the foregoing statement states (sic) is regarding “information regarding the presence of US prisoners captured during the Korean War” in camps in Komsomolsk, Magadan, Chita, and Irkutsk, USSR. *FOIA Request* ECF 9-2 at 6.

**Response:**

Paragraph 13 contains Plaintiffs’ characterizations of the content of the Report. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 13.

14. In response to Item 14 seeking “intelligence material upon which [the referenced, and attached, *CIA Memorandum*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports,” CIA responded that the Request “is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request.” *Blaine Decl.*, ECF No. 21-2 ¶ 32.

**Response:**

Paragraph 14 makes allegations regarding the search for records that are immaterial to the issue of summary judgment in this FOIA civil action. To the extent that a response is required, Defendant denies the allegation as inaccurate, incomplete, and a misrepresentation of the contents of the Blaine Declaration. The CIA conducted a search for the unredacted copy of the 1988 Report as requested by Plaintiffs in Item 14 and located a responsive document. Blaine Decl. at ¶ 32. The CIA admits that the remainder of Plaintiffs’ request failed to reasonably describe the documents sought, as required by FOIA, and as a result the CIA did not conduct a further search related to the request. Furthermore, because Plaintiffs limited their objections to the redactions and withholdings of records, Defendant denies as irrelevant.

15. The *CIA Memorandum* identified in the foregoing statement, to “US Army Chief, Special Office for Prisoners of War and Missing in Action,” referenced two 1980 sightings and one 1988 sighting of “31 Caucasians, possibly American prisoners from the Korean war, in the fall of 1979.” *FOIA Request* ECF No. 9-2 at 6.

**Response:**

Paragraph 15 contains Plaintiffs’ characterization of the content of the Report. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 15.

16. In response to Item 3 (*FOIA Request* ECF No. 9-2 at 3) attaching a July 15, 1952 *CIA Cross Reference Sheet* on “Location of Certain Soviet Transit Camps for POW from Korea,” seeking the referenced:

- 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;”
- f. POW information related to or bearing the “Classification Number 383.6 Korea;”

CIA responded that it “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.” *Blaine Decl.*, ECF No. 21-2 ¶ 24.

**Response:**

Paragraph 16 makes allegations regarding the search for records that are immaterial to the issue of summary judgment in this FOIA civil action. The CIA conducted a search for the unredacted copy of the 1952 Cross Reference Sheet, the “Basic Communications” and “Basic Document” as requested by Plaintiffs in Item 3 and located two responsive documents. *Blaine Decl.* at ¶ 24. The CIA admits that the remainder of Plaintiffs’ request failed to reasonably describe the documents sought, as required by FOIA, and as a result the CIA did not conduct a further search related to the request. In any event, because Plaintiffs limited their objections to the redactions and withholdings of records, Defendant denies as irrelevant.

17. On September 9, 1999, the CIA released, in part, April 9, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 1.

**Response:**

Admitted.

18. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 22 years ago, and was cited in the Senate Select Committee on POW/MIA Affairs, *Chronology of Policy and Intelligence Matters Concerning Unaccounted for U.S. Military Personnel at the End of the Korean Conflict and During the Cold War*, November 10, 1992 (hereinafter “*Select Committee Chronology*”). See, e.g., *Smith Aff.* ¶ 30.

**Response:**

Denied. The document is not responsive to the Plaintiffs’ requests in this FOIA action.

19. On April 1, 2010, the CIA released, in part, May 8, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 1.

**Response:**

Admitted.

20. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 11 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 31.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

21. On August 3, 2011, the CIA released, in part, September 6, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 2.

**Response:**

Admitted.

22. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 10 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 32.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

23. On May 1, 2014, the CIA released, in part, May 29, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 2.

**Response:**

Admitted.

24. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 7 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 33.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

25. On May 23, 2002, the CIA released, in part, June 27, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 3.

**Response:**

Admitted.

26. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 9 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 34.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

27. The *Select Committee Chronology* includes the following paragraph:

August 11, 1951. The Central Intelligence Agency reports information from a subsource that, according to a North Korean staff member of the State Security Bureau in Seoul on 12 February 1951, "all American prisoners of war were sent to camps in Mukden, Tunghua, and Antung Provinces of Manchuria, where they were put to hard labor in mines and factories." (Note: February 12 is before the U.N. forces retook Seoul on March 14, 1951) (Source: CIA Report No. S065823, declassified)

*Smith Aff.* ¶ 36.

**Response:**

Paragraph 27 contains Plaintiffs' characterizations of the content of the Chronology. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 27.

28. CIA did not review, or produce, the record identified in the forgoing Statement.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

29. The *Select Committee Chronology* includes the following paragraph:

August 22, 1951. The Central Intelligence Agency reports that, according to a source, some 40 U.N. POWs in Canton, including British and American officers and enlisted men, have participated in “propaganda tours and street demonstrations” in Canton in early May, 1951. (Source: CIA Declassified Report No. S070338)

*Smith Aff.* ¶ 38.

**Response:**

Paragraph 29 contains Plaintiffs’ characterizations of the content of the Chronology. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 29.

30. CIA did not review, or produce, the record identified in the forgoing Statement.

**Response:**

Denied. The document is not responsive to the Plaintiffs’ requests in this FOIA action.

31. [Missing]

32. The *Select Committee Chronology* includes the following paragraph:

August 24. The Central Intelligence Agency reports that, according to a source, “78 American prisoners of war are in a camp at No. 35, Lane 1136 Yuyen Road, Shanghai. They have no freedom of movement and are not free to talk. They must attend meetings daily to study Communist doctrine. Camp officers are appointees of the Est China Bureau and the East China Military Area, and four English speaking Soviets.” Ten names of 8 alleged U.S. servicemen, written in Chinese, are provided “from a scrap of paper picked up in the POW camp.” The identities are not evaluated by CIA. (Source: 24 August 1951 declassified CIA report no. S070512.)

*Smith Aff.* ¶ 39.

**Response:**

Paragraph 32 contains Plaintiffs’ characterizations of the content of the Chronology. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks

for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 32.

33. CIA did not review, or produce, the record identified in the forgoing Statement.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

34. The *Select Committee Chronology* includes the following paragraph:

September 6, 1951. 60 American prisoners of war are reported being held in Canton as of mid-July, according to a CIA source. (Note: According to another source (11 August 1951), 52 American POWs were moved from Canton on August 2, 1951 by rail to Peiping.) (Source: declassified CIA report dated 6 September 1951)

*Smith Aff.* ¶ 40.

**Response:**

Paragraph 34 contains Plaintiffs' characterizations of the content of the Chronology. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 34.

35. CIA did not review, or produce, the record identified in the forgoing Statement.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

36. At some date, not intelligible on the document, the CIA released, in part, September 28, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 5.

**Response:**

Admitted.

37. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 42.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

38. The *Select Committee Chronology* includes the following paragraph:

October 4, 1951. The Central Intelligence Agency reports, that according to a source, the Chinese Communists held a meeting on August 1, 1951 to celebrate Army Day. "During the meeting, 5 American prisoners of war, captured in Korea, were escorted by Communists soldiers to the rostrum. Two of them addressed the gathering." (Source: Declassified CIA Report No. S073337, dated 4 October 1951.). *Smith Aff.* ¶ 43.

**Response:**

Paragraph 38 contains Plaintiffs' characterizations of the content of the Chronology. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 38.

39. CIA did not review, or produce, the record identified in the forgoing Statement.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

40. On December 4, 2001, the CIA released, in part, October 23, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 6.

**Response:**

Admitted.

41. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 10 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 44.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

42. On April 1, 2009, the CIA released, in part, October 25, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 6.

**Response:**

Admitted.

43. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 12 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 45.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

44. The *Select Committee Chronology* includes the following paragraph:

October 27, 1951. A CIA source reports that 125 American prisoners of war were observed walking to Antung, China on the night of March 25, 1951. (declassified CIA report)

*Smith Aff.* ¶ 46.

**Response:**

Paragraph 44 contains Plaintiffs' characterizations of the content of the Chronology. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 44.

45. CIA did not review, or produce, the record identified in the forgoing Statement.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

46. On March 21, 2011, the CIA released, in part, January 4, 1952 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 7.

**Response:**

Admitted.

47. CIA did not review, or process, the record identified in the forgoing Statement, which was written 69 years ago, was released in part 10 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 51.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

48. The *Select Committee Chronology* includes the following paragraph:

January 5, 1952. A CIA source reports that 13 American and 8 British prisoners of war were transferred by rail from Canton to Hankow. CIA also reports they have another report of U.S. POWs in the Canton area "performing hard labor on airfields." (Source: 5 January 1952 CIA declassified report.) *Smith Aff.* ¶ 52.

**Response:**

Paragraph 48 contains Plaintiffs' characterizations of the content of the Chronology. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 48.

49. CIA did not review, or produce, the record identified in the forgoing Statement.

**Response:**

Denied. The document identified by Plaintiffs was reviewed by the CIA and produced in the course of this action. The record was produced to the Plaintiffs with the CIA's January 8 Interim Response Letter.

50. At some date (unintelligible), the CIA released, in part, February 6, 1952 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 7.

**Response:**

Admitted.

51. CIA did not review, or process, the record identified in the forgoing Statement, which was written 69 years ago, was released in part, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 53.



**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

52. The *Select Committee Chronology* includes the following paragraph:

February 14, 1952. A CIA source reports that about the first week of January, the Chinese Communists were parading U.S. captives (prisoners of war) in Paoshan, Yunnan Province, for propaganda purposes. The source reports the Communists pointed the U.S. soldiers to the spectators, saying "these are the people we've been fighting -- and have conquered."  
(Source: CIA declassified report dated 14 February 1951)

*Smith Aff.* ¶ 54.

**Response:**

Paragraph 52 contains Plaintiffs' characterizations of the content of the Chronology. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 52.

53. CIA did not review, or produce, the record identified in the forgoing Statement.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

54. The *Select Committee Chronology* includes the following paragraph:

April 15, 1952. The Central Intelligence Agency reports, that according to a source, "In November, 1951 about 50 American prisoner of war were brought under guard from Shanghai to Hangchow, and were taken to Maochiafou and placed in the detention center there." The report further states that as of February 10, 1952, 15 of them were taken elsewhere, leaving only 35. Maochiafou is reported as "probably near Hangchow."  
(Source: CIA report dated 15 April 1952, declassified)

*Smith Aff.* ¶ 57.

**Response:**

Paragraph 54 contains Plaintiffs' characterizations of the content of the Chronology. To the extent a response is required, Defendant states that the document cited by Plaintiffs speaks for itself, and Defendant directs the Court to the document for the truth or falsity of the statement in Paragraph 54.

55. CIA did not review, or produce, the record identified in the forgoing Statement.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

56. On March 22, 2012, the CIA released, in part, May 2, 1952 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 9.

**Response:**

Admitted.

57. CIA did not review, or process, the record identified in the forgoing Statement, which was written 69 years ago, was released in part 9 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 60.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

58. On March 22, 2012 the CIA released, in part, July 17, 1952 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 9.

**Response:**

Admitted.

59. CIA did not review, or process, the record identified in the forgoing Statement, which was written 69 years ago, was released in part 9 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 60.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

60. On August 31, 2007 the CIA released, in part, July 15, 1953 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 11.

**Response:**

Admitted.

61. CIA did not review, or process, the record identified in the forgoing Statement, which was written 68 years ago, was released in part 14 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 68.

**Response:**

Denied. The document is not responsive to the Plaintiffs' requests in this FOIA action.

62. CIA has the ability to search its documents housed at the National Archives and Records Administration.

**Response:**

Denied. All documents turned over to the National Archives and Records Administration ("NARA") were permanently transferred to the physical and sole legal custody of NARA, and are no longer "agency records" of the CIA. See 36 C.F.R. § 1250.8(a).

63. CIA has the authority to declassify documents housed at the National Archives and Records Administration.

**Response:**

Denied. See 36 C.F.R. § 1250.8(a).

64. Six of the 55 records produced are unredacted. Twenty-eight contain redactions based on both (b)(1) and (b)(3), and thirty have redactions under (b)(6). *Hendershot Aff.* ¶ 5.

**Response:**

Denied. Only 35 records were produced in the course of this action.

65. Claiming grants of "(b)(1)(b)(3) NatSecAct," CIA redacted the following from its January 5, 1952 *Information Report*:

GRADING OF SOURCE						COLLECTOR'S PRELIMINARY GRADING OF CONTENT					
COMPL ETELY RELIAB LE	USUA LLY RELI ABLE	FAIRL Y RELI ABLE	NOT USUA LLY RELI ABLE	NOT RELI ABLE	CAN NOT BE JUD GED	CONFI RMED BY OTHER SOUR CES	PROB ABLY TRUE	POSS IBLY TRUE	DOUB TFUL	PROB ABLY FALSE	CAN NOT BE JUD GED
A	B	C	D	E	F	1	2	3	4	5	6

Compare CIA production *Hendershot Aff.* Exhibit A at Bates 27 with same *Information Report* submitted with *FOIA Request*, ECF No. 9-1 at 13.

**Response:**

Admitted. The discrepancy was made in error. CIA will re-release the January 5, 1952

*Information Report* to Plaintiffs in the less-redacted format.

66. Senator Bob Smith, Vice Chairman Senate Select Committee on POW/MIA Affairs, opines that he has “personally have seen hundreds of classified documents that could and should be released as they pose no national security risk. What is really at risk are the reputations and careers of the intelligence officials who participated in and perpetrated this sorry chapter in American history.” *Smith Aff.* ¶ 5.

**Response:**

Paragraph 66 contains opinions and editorial of a former senator that are irrelevant to the matter before the Court. To the extent that a response is required, Defendant is without information to confirm or deny the allegation as it contains the purported opinion of a former senator and is further supported by a declaration that appears by its date to have been written for another matter but reformatted with the present case caption.

67. In Senator Smith’s opinion, is that “[a]fter decades of FOIA requests, emotional appeals from family members, senators and congressmen, and House and Senate Committee investigations, the intelligence agencies still keep numerous documents classified under the guise of national security. I can state without any evocation that they are still holding documents that should be declassified. The families if these men, and the American public, deserve to know the truth of what is in those files.” *Smith Aff.* ¶ 7.

**Response:**

Paragraph 67 contains opinions and editorial of a former senator that are irrelevant to the matter before the Court. To the extent that a response is required, Defendant is without information to confirm or deny the allegation as it contains the purported opinion of a former senator and is further supported by a declaration that appears by its date to have been written for another matter but reformatted with the present case caption.

68. “The estimated number of known U.S. POWS not repatriated from the Korean War...in January, 1954...’are approximately 954’...” *Sauter Aff.* ¶ 10.

**Response:**

Paragraph 68 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of classification of matter withheld from production. Defendant notes that the source of the allegation in Paragraph 68 is just one of many guestimates that are contained in the Sauter Affidavit. *See Sauter Aff.* at ¶¶ 8-13.

69. In 1993, Directorate investigators reported, "We believe that U.S. Korean War POWs were transferred to the Soviet Union and never repatriated. This transfer was a highly-secret MGB [KGB] program approved by the inner circle of the Stalinist dictatorship." Evidence of the transfers was included in the Joint Commission's 1993 report, "The Transfer of U.S. Korean War POWs to the Soviet Union." *Sauter Aff.* ¶ 17.

**Response:**

Paragraph 69 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA’s classification of matter withheld from production.

70. “An Army Combined Command for Reconnaissance Activities Korea memorandum states... ‘According to reliable information, the Communist Chinese Forces have transferred UN POWs to Russia... to be specially trained at Moscow for espionage work... 10 Americans... Russia has established a Higher Informant Training Team...in Siberia in October, 1952. [including] American[s] s.” *Smith Aff.* ¶ 64.

**Response:**

Paragraph 70 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA's classification of matter withheld from production.

71. "An April 29, 1954 response to a request by Assistant Secretary of the Army, Hugh Milton, to 'consolidate information on prisoners of war which may remain in Communist hands'" cites intelligence that "'corroborates previous indications UNC POWs might have been shipped to Siberia during Korean hostilities.... [and that] support earlier indications that American prisoners of war from Korea had been transported into Soviet Union and are now in Soviet custody.'" *Sauter Aff.* ¶ 17.

**Response:**

Paragraph 71 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA's classification of matter withheld from production.

72. In 1954, the DoD's "summary show[ed] 944 U.S. military personnel 'presumed to be in Communist custody' and for whom 'the United Nations Command has not received a satisfactory accounting'... [and] lists the names of 18 USAF personnel for whom 'the United States has reason to believe are being held by Communist China'...[and] lists 11 U.S. military personnel downed on January 18, 1953 in the South China Sea... may be in Communist custody." *Smith Aff.* ¶ 110.

**Response:**

Paragraph 72 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA's classification of matter withheld from production.

73. A January 1952 report related that "63 U.S. POWs were being shipped by truck and rail from Pyongyang, North Korea to Chita, in the Soviet Union... U.S. command cancelled air strikes on the railway he reported would be carrying the POWs." *Smith Aff.* ¶ 49.

**Response:**

Paragraph 73 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA's classification of matter withheld from production.

74. On June 23, 1992, Senator Smith release[d] the list of up to 125 names (from February, 1991 Moscow trip and subsequent research) of U.S. servicemen who were reportedly interrogated by Soviets during the Korean Conflict and sent to China." *Smith Aff.* ¶ 272.

**Response:**

Paragraph 74 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA's classification of matter withheld from production.

75. "[On] January 2, 1952. U.S. Army Intelligence receive[d] information that more than 500 U.N. prisoners were in a camp in Tung Kuan Ying... [in] Manchuria 'to be given short-term training pending transfer to the Soviet Union on order of central authorities,' ... and that '494 U.N. POWs had been observed inside China since December, 1951.'" *Smith Aff.* ¶ 50.

**Response:**

Paragraph 75 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA's classification of matter withheld from production.

76. "Hugh M. Milton II, Assistant Secretary of the Army in January, 1954," wrote, "A further complicating factor in the situation is that to continue to carry this personnel in a missing status is costing over one million dollars annually. It may become necessary at some future date to drop them from our records as 'missing and presumed dead.'" *Sauter Aff.* ¶ 10.

**Response:**

Paragraph 76 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA's classification of matter withheld from production.

77. “On February 27, 1952, eight months after the shoot-down, the Chief of Naval Personnel wrote to the Judge Advocate General ‘that there is a possibility that Captain Moore survived and is now a prisoner of war.’ But the government did not inform Lois and me of this intelligence. Rather, in December of 1953, the Air Force notified us that Harry had been re-classified, from missing-in-action to killed-in-action. In 2002 the Department of Defense first advised Lois and me of Harry’s survival, and captivity. In 2013, the government provided us the February 1952 memorandum referenced above.” *Moore Aff.* ¶¶ 12-13.

**Response:**

Paragraph 77 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA’s classification of matter withheld from production.

78. In 1954, “the Department of the Army... placed 618 soldiers, *known to have been in enemy hands and unaccounted for* by the Communist Forces, in the following categories—313 Finding of Death (Administratively determined), 275—report of death, 21—dishonorable discharge, 4—under investigation (missing in action for less than one year), 3—under investigation, prognosis undecided, missing in action for over one year.” *Smith Aff.* ¶ 107.

**Response:**

Paragraph 78 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA’s classification of matter withheld from production.

79. The fate of most of the more than 8,000 men initially listed as MIA was to be administratively declared “presumed dead, remains unknown.” In 1953, General Van Fleet, commanding General of United States Army forces during the Korean War, stated that “a large percentage of the 8,000 American soldiers listed as missing in Korea were alive.” *Sauter Aff.* ¶ 26.

**Response:**

Paragraph 71 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA’s classification of matter withheld from production.

80. The number “had already been dropped from 954 to 618 through a series of presumed findings of death” of “unaccounted-for Americans believed to be still held illegally by the Communists.” *Sauter Aff.* ¶ 12.



**Response:**

Paragraph 80 contains opinions and information from declassified documents that were provided to Plaintiffs and are irrelevant to the issue of CIA's classification of matter withheld from production.

81. During the course of CIA Decennial Reviews in 1985, 1995, 2005, 2015, defendant did not release the 55 records it produced in this case, "14 of which were generated in 1952-55, five in 1981-88, and 26 in 1991-92." *Hendershot Aff.* ¶ 4.

**Response:**

Denied. Only 35 documents were produced in the course of this action.

82. Of the 55 records that the CIA produced, three are dated 1952, three are dated 1953, five are dated 1954, three are dated 1955, one is dated 1981, one is dated 1982, two are dated 1985, one is dated 1988, fifteen are dated 1991, eleven are dates 1992, two are dated 1993, one is dated 1994, one is dated 1996, one is dated 1998, one is dated 1999, two are dated 2000, one is dated 2018 and one record date is unintelligible. *Hendershot Aff.* ¶¶ 3-4.

**Response:**

Denied. Only 35 documents were produced in the course of this action.

83. All but five of the records identified in the foregoing statement are subject to automatic declassification under E.O. 13526 § 3.3, *Automatic Declassification*.

**Response:**

Denied.

\* \* \*

Respectfully submitted,

MATTHEW M. GRAVES, D.C. Bar # 481052  
United States Attorney

BRIAN HUDAK  
Acting Chief, Civil Division

By: /s/ Darrell C. Valdez  
DARRELL C. VALDEZ, D.C. Bar #420232  
Assistant United States Attorney  
555 4th Street, N.W., Civil Division  
Washington, D.C. 20530  
(202) 252-2507  
[Darrell.Valdez@usdoj.gov](mailto:Darrell.Valdez@usdoj.gov)

*Counsel for Defendant*