

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION,  
et al.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant.

Case No. 1:18-CV-02784-CJN

SECOND SUPPLEMENTAL 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 am the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I am authorized to assess the current, proper classification of CIA information, based on the classification criteria of Executive Order 13526 and applicable CIA regulations. I am also responsible for the classification review of documents and information, including documents which may be the subject of court proceedings or public requests for information under the Freedom of Act ("FOIA"), 5 U.S.C. § 552. Through the exercise of my official duties, as detailed in my previous declarations, which are

incorporated by reference, 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.

2. As discussed in my initial and supplemental declarations (hereinafter "Blaine Declaration" and "Blaine Supplemental Declaration" respectively), this case involves a FOIA request for records concerning CIA efforts to support Ms. Haspel's nomination for Director. The purpose of this second supplemental declaration and the attached second supplemental *Vaughn* index, which I hereby incorporate by reference, is to provide additional detail in support of the Agency's withholdings under FOIA Exemption (b)(5). The supplemental *Vaughn* index includes additional detail for the Exemption (b)(5) withholdings in the following entries: 17, 18, 19, 26-28, 45, 53-54, 57-58, 60-62, 64-67, 74-75, 77-78, 80, 82, 83-85, 88, 91, 93-96, 98-99, 104-107, 111, 116-117, and 126-128<sup>1</sup>. Also, all of the *Vaughn* Index entries that included an Exemption (b)(5) assertion were revised to further correlate the consequence of the disclosure of the deliberative material statement with the described inter-agency or intra-agency deliberation.

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<sup>1</sup> The second supplemental *Vaughn* Index has been revised to correct previously inadvertently misstated document dates for entries 36, 91-93, 94, 118, 122, and 124 and revised minor typographical errors in entries 17, 24-25, 28, 40, 61, 67, and 91.

3. Furthermore, this declaration provides additional detail regarding the Agency's reasonable and proper segregability analysis. The Agency conducted a supplemental review of the all of the documents released in part and denied in full and made a supplemental production to the Plaintiff on August 24, 2021. The Agency's August 24, 2021 supplemental response letter is attached as Exhibit A.

4. As described in the Blaine Declaration, the scope of the *Vaughn* Index is based on a representational sample of documents withheld in full or in part which included 16 documents withheld in part and 113 documents withheld in full for a total of 129 documents. The Agency's August 24, 2021 supplemental release included documents that are and are not included in the representational sample. For the purposes of this declaration, I will describe the released information for the documents that are included in the *Vaughn* Index.

5. The Agency released discrete portions of information included in the *Vaughn* Index entries 21, 22, 34, 35, 86, and 129<sup>2</sup>. For entries 21, 22, and 86, the Agency released a portion of email communications between Agency personnel. With respect to entry 34, the Agency released a portion of an email

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<sup>2</sup> While the disposition of *Vaughn* Index entries 21, 22, 34, 35, 86, and 129 were changed from DIF to RIP, these entries were not relocated to the RIP section of the index and maintained its original entry number for ease of reference during the Court's review.

communication between Agency personnel and the attached SSCI Questionnaire for Completion by Presidential Nominees. As the result of the supplemental review for entry 35, the Agency released the attached transcript of the unclassified confirmation hearing that occurred on May 9, 2018 and the SSCI unclassified questions for the record that were addressed to Acting Director Gina Haspel with the attached cover letter. The cover letter was released in segregable form. The Agency also released the attached cover letter that conveys the submission of the SSCI classified questions for the record in segregable form. Finally, regarding entry 129, the Agency released a cover letter addressed to the SSCI Vice Chairman in segregable form<sup>3</sup>. For the reasons discussed in the Blaine Declaration and the Blaine Supplemental Declaration, FOIA Exemptions (b)(1), (b)(3), (b)(5), and (b)(6) were asserted to protect the withheld information. I incorporate the Agency's justifications for these withholdings as described in my previous declarations and *Vaughn* indices by reference. I will also address the Agency's Exemption (b)(5) withholding in further detail below.

## II. Exemption (b)(5)

### A. Deliberative Process Privilege

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<sup>3</sup> *Vaughn* Index entry 129 includes a second Cadre number, C06912943, which is the Cadre number attached to the released cover letter in segregable form.

6. As described in the Agency's previous declarations and *Vaughn* indices, the CIA asserted Exemption (b)(5) to withhold particular documents in full as well as discrete portions of documents released in part, pursuant to the deliberative process privilege and attorney client privilege. In my supplemental declaration, I discussed the deliberative process for several categories of information that were reflected in documents withheld in full. The four categories were draft responses to Senate inquiries, the Agency's correspondence with the White House, draft written material in support of Ms. Haspel's nomination, and draft written responses and deliberations regarding how to address media inquiries concerning Ms. Haspel's nomination. In this declaration, while I will discuss the foreseeable harm that would occur if the deliberative process is disclosed to the public for each category separately for documents released in part and in full, it is important to note that the documents - and the foreseeable harm from their disclosure - cannot be viewed in isolation. Rather, they are all part and parcel of the Agency's overall deliberative and consultative process for supporting Presidential nominations and confirmations. For the reasons set forth below, the resulting harm from disclosure extends beyond a single document or even a single nomination, but would be reasonably likely to have longer-lasting impacts on the Agency's deliberative process.

7. The Director of the CIA is one of three Agency positions appointed by the President of the United States and confirmed by the Senate. The other positions are the General Counsel and Inspector General. For the purposes of this declaration, I will focus on the Director nomination. The Senate Select Committee on Intelligence (SSCI) is the committee of jurisdiction that oversees the confirmation within the Senate. The confirmation process for a nominee to be the new Director of the CIA is an important and recurring event for the Agency as it is a key leadership position. It also requires transparency with the Senate and the American public which provides fidelity on the nominee's experience and suitability to lead the CIA. As a result of the Agency's transparency, the confirmation is a very public and high profile event that attracts increased public attention and scrutiny which may be reflected in SSCI inquiries and media reporting about the nominee. It is important that the Agency, in its support for the nomination, addresses any request for information from the Senate or the public (by way of the media) in the most accurate and forthcoming manner for the Senate to properly fulfill its constitutional responsibility by providing consent on the nomination. It is similarly important that the Agency proactively informs the Senate and the American public about the nominee to garner Senate and public support and corrects any

inaccuracies as incorrect public information can inhibit proper discussion concerning the nominee during the nomination process. By virtue of the sensitive nature of the Agency's mission, there is also considerable internal discussion within CIA and the Executive Branch about what may be shared on the public record and what must be shared with the SSCI in closed session to ensure that the Senate is fully informed without publicly disclosing information that would harm the national security. As a result, the confirmation is an amalgamation of the Agency, White House, and full Senate effort to successfully confirm the President's appointment.

8. In this matter, the Agency received numerous SSCI requests for information regarding Ms. Haspel's Agency career and her position on specific issues relevant to the CIA as its nominated Director. Several components of the Agency, such as personnel in the Office of Congressional Affairs, Office of Public Affairs, Office of General Counsel, and the Directorate of Digital Innovation, worked in collaboration to analyze, discuss, draft, and edit responses to SSCI inquiries prior to final submission. In addition to the subject matter expertise that these individuals contribute to this process, many of them have worked on previous Agency nominations and/or will work on future Agency nominations and contribute a particularly valuable expertise obtained by experience in handling responses to the

SSCI. Due to the high profile nature of the nomination process and the increased public scrutiny, anticipated disclosure of the opinions and recommendations of these individuals to the public, would discourage them from providing particularly useful knowledge, perspectives, and opinions and prevent the Agency from benefitting from their skill in Ms. Haspel's nomination process and future nominations. Furthermore, such disclosure would inhibit open and candid discussions that would provide pertinent information related to and about the nominee, Agency policy, and Agency positions that are necessary for accurate and complete responses to the SSCI questions. This would tend to degrade the quality of Agency decisions and undermine the integrity of the nomination process as a whole. Finally, as discussed in the Blaine Declaration and identified in the *Vaughn* indices, disclosure of some of these deliberations would also reveal classified intelligence activities that are reasonably likely to cause damage to the national security.

9. During the nomination process, the Agency worked closely with the White house in support of Ms. Haspel's confirmation as CIA Director. The Agency also conducted intra-agency deliberations concerning separate White House inquiries regarding Ms. Haspel's CIA Director nomination. Similar to drafting responses to the SSCI inquiries, Agency personnel from various components provided subject matter expertise and/or



previous nomination process experience to analyze, discuss, draft, and edit responses to White House inquiries prior to final submission. As discussed above, if these individuals were to expect that their opinions and recommendations would be disclosed publicly, it would chill the free flow of open discussions during a very high profile nominations process. As a result, the Agency would lose the benefit of useful knowledge and perspectives related to and about the nominee, Agency policy, and Agency positions that are necessary to successfully support not only Ms. Haspel's nomination, but also future Presidential appointees in the Agency's recurring nomination process. Furthermore, disclosure of some of these deliberations would also reveal classified intelligence activities that are reasonably likely to cause damage to the national security as discussed in the Blaine Declaration and identified in the *Vaughn* indices.

10. Another aspect of the collaborative effort between the Agency and the White House was the co-authored draft written material about Ms. Haspel's background and Agency career to encourage Senate and public support for her nomination as CIA Director. The Agency also independently crafted draft written material about Ms. Haspel to encourage the same support. As previously discussed in the Blaine Supplemental Declaration, these drafts contained edits, recommendations, and opinions on

the content of the material from Agency and White House personnel. See Blaine Supplemental Decl., ¶6. Disclosure of these deliberative communications would prevent forthright discussions necessary to select and publish information about Ms. Haspel and future nominees. It would reveal Agency considerations of material it sought to publish about the nominee and information that was otherwise discarded which would reveal the details that were considered significant and what weight was accorded to certain pieces of information in a recurring process to support a Presidential appointee. It would also reveal deliberations about what could be publicly released without compromising national security. Routine disclosure of such information to the public would open up the Agency's process to promote a nominee to increased public scrutiny and Agency personnel would be disinclined to participate in frank communications and the free exchange of ideas and discussions in Agency decision-making during the high profile Agency nomination process. Additionally, revealing this information could mislead or confuse the public by disclosing rationales that were not the basis for the Agency's final decision. Public release of some of these deliberations would also reveal classified intelligence activities whose disclosure is reasonably likely to cause damage to the national security. This is also discussed in the Blaine declaration and identified in the *Vaughn* indices.

11. Through the Office of Public Affairs, the Agency conducted internal discussions and coordination with other Agency components on responses to media requests for information and deliberated prospective media outreach in support of the CIA nomination. As I described in the Blaine Supplemental Declaration the internal communications either solicited or forwarded suggestions and comments for the proposed media responses or engagement and requested opinions and approval on whether to engage with the media on particular topics related to Ms. Haspel's nomination. See Blaine Supplemental Decl., ¶7. If these communications were publicly released it would reveal the Agency's internal considerations and practices when engaging with the media on a particularly high profile and significant event such as the nomination of an Agency director. Specifically, it would disclose how the Agency selects information to support the CIA nominee in the media, the considerations on whether and to what extent to engage with the media, and how to respond to particular questions in a manner that would encourage support without revealing national security information. Since the Agency's nominations process attracts increased public attention and scrutiny, disclosure of such pre-decisional considerations would discourage personnel from engaging in the necessary open discussions required in Agency decision-making about media engagement and diminish the Agency's

ability to effectively handle press inquiries and public reaction in a recurring nomination process, which can lead to a public that is less well-informed about Ms. Haspel and future nominees.

12. As demonstrated above, release of this information would harm the integrity of the Agency's recurring nomination process as it would effectively discourage the necessary open discourse in the Agency's decision-making process concerning how best to support the nominations of CIA Presidential appointees. Accordingly, the Agency invoked the deliberative process privilege covered by Exemption (b) (5) to protect discrete pieces of information in part and in full.

**B. Attorney-Client Privilege**

13. As described in my previous declarations and Vaughn indices, the Agency withheld information that reflects confidential communications between Agency personnel and CIA attorneys, in the Office of General Counsel, regarding Ms. Haspel's CIA Director nomination. In the nomination process, Agency staff solicits the Office of General Counsel for legal guidance regarding Agency rules, regulations, policies, and authorities. The communications between Agency personnel and CIA attorneys, to include the legal guidance and the underlying CIA information, are confidential and were not disclosed beyond the attorney-client relationship. Disclosure of these

confidential communications would discourage Agency personnel to fully inform the CIA attorney on a particular issue on which they are seeking legal guidance. This would prevent the CIA attorney from appropriately advising the client and severely damage the integrity of the legal advice provided. Additionally, it would subject the Agency's legal guidance to scrutiny and reveal preliminary legal risk analysis and strategy.

**III. SEGREGABILITY**

14. As described above, the Agency has conducted a careful supplemental review of the documents at issue in order to release all reasonably segregable non-exempt information. As described in my previous declarations, information withheld in full pursuant to the deliberative process privilege in conjunction with Exemption (b)(5) is deliberative and predecisional in nature, and any factual information is inextricably intertwined with the deliberative, predecisional material. Disclosure of such information could reveal the basis and nature of the Agency decision-making process prior to a final Agency determination. Additionally, the information is also protected by additional FOIA Exemptions as described in my previous declarations and *Vaughn* indices. With respect to the instant filing, I have again conducted a page-by-page, line-by-line review of the documents at issue and have determined that

there is no reasonably segregable non-exempt and meaningful information left to disclose.

\* \* \*

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

Executed this 24<sup>th</sup> day of August 2021.



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

# EXHIBIT A

Central Intelligence Agency



Washington, D.C. 20505

24 August 2021

Dror Ladin  
American Civil Liberties Union Foundation  
125 Broad Street, 18<sup>th</sup> Floor  
New York, New York 10004

Re: F-2018-01533; Civil Action No. 18-cv-02784

Dear Mr. Ladin:

This is a supplemental response to the 04 May 2018 Freedom of Information Act (FOIA) request for the records concerning Central Intelligence Agency (CIA) efforts to support Ms. Haspel's nomination for Director, including but not limited to records related to:

- (1) Selective declassification of information concerning Ms. Haspel;
- (2) Whether Ms. Haspel serves as the original classification authority over information concerning her own participation in abuse, torture, rendition, and detention, and any consideration of possible conflicts of interest in this position;
- (3) Communications between CIA personnel and journalists regarding Ms. Haspel's nomination;
- (4) Communications between CIA personnel and former CIA employees seeking statements of support or other legislative and/or media outreach for Ms. Haspel's nomination;
- (5) CIA decisions to promote coverage deemed favorable of Ms. Haspel;
- (6) CIA resources expended to support Ms. Haspel's nomination;
- (7) Actions undertaken by career, nonpolitical CIA employees in support of Ms. Haspel's nomination;
- (8) Coordination with nongovernmental actors to promote Ms. Haspel's nomination;
- (9) CIA guidance on use of Agency resources to promote a nominee facing Senate Confirmations; and
- (10) Communications from CIA staff to the White House concerning efforts to promote Ms. Haspel's nomination.

We processed the request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the Privacy Act of 1974, 5 U.S.C. § 552a.

We recently conducted a supplemental review of all of the responsive documents previously released in segregable form and denied in their entirety. Upon conclusion of our



supplemental review, we have determined that fifteen (15) documents previously denied in their entirety may be released in segregable form. Additionally, we determined additional information may be released in one document previously released in segregable form. Redactions are made on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5) and/or (b)(6). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507, noted as exemption “(b)(3)CIAAct,” and/or Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i)(1), noted as exemption “(b)(3)NatSecAct” on the enclosed documents. The documents are on the enclosed CD.

This completes our response to the above referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Lilly', is written over a faint dotted line.

Mark Lilly

Information and Privacy Coordinator

Enclosures