

Judiciary Committee dated 22 May 2013, the Attorney General publicly acknowledged that Samir Khan and Aulagi's son were among four U.S. citizens killed in the course of U.S. counterterrorism operations. However, the Attorney General further noted that, unlike Anwar al-Aulagi, "these individuals were not specifically targeted by the United States." The next day, in his speech at the National Defense University, President Obama explained that he had declassified these pieces of information in order "to facilitate transparency and debate on the issue, and to dismiss some of the more outlandish claims," but still emphasized the "necessary secrecy" involved in such operations. Thus, notwithstanding the limited official acknowledgment that Khan and Aulagi's son were killed in the course of U.S. counterterrorism operations, the specifics of those operations remain classified.

12. Accordingly, the CIA can neither confirm nor deny having responsive records pertaining to these individuals. The existence of such records would tend to reveal that these individuals were contemplated as targets of an operation and/or that the CIA gathered intelligence on these individuals. Conversely, if records did not exist, it would tend to show that the CIA did not have such authorities or did not specifically track information about Samir Khan or Abdulraham al-Aulagi. In either case, confirming the existence or nonexistence of the

CIA's authorities in connection with individual counterterrorism operations or the subjects of the Agency's foreign intelligence collection would disclose details about the CIA's intelligence activities, methods, and functions. It would benefit hostile groups, including terrorist organizations such as al-Qa'ida and Al-Qa'ida in the Arabian Peninsula ("AQAP"), to know with certainty the activities for which the CIA has or has not been specifically authorized or to learn the targets of intelligence collection. To reveal such information would provide valuable insight into the CIA's authorities, capabilities, priorities, and interests, which could be used by adversaries to inhibit the effectiveness of the CIA's intelligence operations. In addition, terrorists could use this information to assess the CIA's capabilities vis-à-vis its resource allocation. These individuals could take steps to avoid detection or provide false information to frustrate the Agency's intelligence collection efforts. For these reasons, the CIA cannot confirm or deny the existence of any responsive records regarding these individuals and, accordingly, asserts FOIA exemptions (b)(1) and (b)(3) over this information.

**B. Classified Records**

13. As with the documents located by OLC in the course of this litigation, the records in the CIA's *Vaughn* index are replete with sensitive classified information reflecting

intelligence activities, sources and methods - which serve as the principal means by which the CIA accomplishes its mission. As discussed in my earlier declaration, the protection of intelligence sources and methods is crucial in situations such as this one, where the source of information, and the capabilities, techniques and applications of certain methods are unknown to others, such as foreign intelligence services or terrorist organizations. Secret collection techniques and sources of intelligence are effective from an intelligence-gathering perspective only so long as they remain unknown and unsuspected. Once the nature of an intelligence source or method, or the fact of its use in a certain situation, is discovered, its value in that situation is neutralized and the ability to utilize that source or apply that method in other situations is significantly impaired.

14. Because revealing additional details about the records at issue would disclose classified equities involved, I am limited in my ability to describe the specific intelligence activities, sources and methods involved or the harm that would be occasioned by their disclosure on the public record. However, I can say that it would greatly benefit AQAP and other terrorist organizations to know which clandestine sources and methods were used to obtain information about Aulagi and other terrorists, as well as the specific intelligence that these

techniques produced. This information could be used by AQAP and other terrorist organizations to uncover current collection activities and take countermeasures to avoid future detection by Intelligence Community agencies, thereby harming national security. In some instances, even indirect references to information obtained by classified sources and methods must be protected. Terrorist organizations and other hostile groups have the capacity and ability to gather information from myriad public sources, analyze it, and determine the means and methods of intelligence collection from disparate details. This type of disclosure could defeat the specific collection efforts of the CIA and, more broadly, the Intelligence Community. Accordingly, even seemingly innocuous, indirect references to an intelligence method could have significant adverse effects when coupled with other publicly-available data. For these reasons and the reasons set forth in the classified submissions, I have determined that disclosure of the records at issue reasonably could be expected to cause serious -- and in some cases, exceptionally grave -- damage to the national security.

15. Although the U.S. Government has officially acknowledged some information about Anwar al-Aulaqi -- namely, that he was considered an imminent threat to national security and was targeted in a U.S. Government operation in which CIA played an unidentified role -- the redacted information goes



beyond what has been publicly disclosed. These records reveal the methods by which intelligence about Aulagi was collected and would reveal undisclosed details about his terrorist activities -- all of which remain classified. Releasing this information would indicate human sources and/or the technical collection used to obtain intelligence. Among other things, this information could be used by Aulagi's associates in AQAP and other terrorist organizations to defeat the U.S. Government's counterterrorism efforts abroad. There has been no official acknowledgement of this information, which is far more specific than the general statements made by government officials about Aulagi and the threat he posed. I refer the Court to the classified declarations for a more detailed description of the information at issue and the explanations as to why it is properly withheld.

16. For the same reasons outlined above, the information at issue here also is exempt from disclosure pursuant to Exemption (b)(3). In reviewing the records that contain CIA information, I have determined that the information constitutes protected intelligence sources and methods -- information that falls squarely within the scope of Section 102A(i)(1) of the National Security Act. Additionally, the names of CIA officials were protected. This information falls within the ambit of the CIA Act. Although no harm rationale is required, as noted

above, the release of this information could significantly damage the ability of the CIA and other members of the Intelligence Community to collect and analyze foreign intelligence information. Disclosure of this information is prohibited by statute and having reviewed the material, I find it to be properly exempt from disclosure under the National Security Act and CIA Act.

**VI. PRIVILEGED MATERIAL**

17. Additionally, for particular documents, the CIA asserted Exemption (b) (5) to protect certain information covered by the attorney-client, deliberative process and the attorney-work product privileges. I note that all of the privileged information discussed below is also withheld on the grounds that it is currently and properly classified in accordance with Exemption (b) (1) and protected by statute pursuant to Exemption (b) (3).

18. The deliberative process privilege was invoked to protect certain documents that are pre-decisional and deliberative in nature, including drafts. All of the material for which the deliberative process privilege was asserted reveals an interim stage in intra- and inter-agency discussions, which preceded a final decision of the CIA or other agency or component of the Executive Branch. Disclosure of this

information would inhibit the frank communications and the free exchange of ideas that the privilege is designed to protect.

19. Additionally, the CIA has asserted the attorney-client privilege to protect certain communications between the CIA and DOJ in connection with a request for the provision of legal advice as well as information provided by Agency personnel in furtherance of that advice. In all instances for which the attorney-client privilege was asserted, the confidentiality of these communications was maintained. If this type of confidential information were to be disclosed, it would inhibit open communication between client-agencies and their lawyers, thereby depriving the Agency of the full and candid counsel of its attorneys.

20. The CIA also asserted the attorney work-product privilege to protect documents that were prepared by, or at the direction of, CIA and DOJ attorneys in reasonable anticipation of litigation. As applied in this case, the privilege was asserted to withhold communications concerning the civil case brought by the father of Anwar al-Aulaqi, which was pending in a U.S. District Court. If this information were to be released, it would expose the attorneys' preparation to scrutiny and provide parties filing claims against the Agency an unfair advantage in litigation.

21. Additionally, for the reasons discussed in my classified declaration, certain documents are covered by the presidential communications privilege. These documents reflect communications between Executive Branch agencies and presidential advisors for the purpose of presidential decision-making.

**VII. SEGREGABILITY**

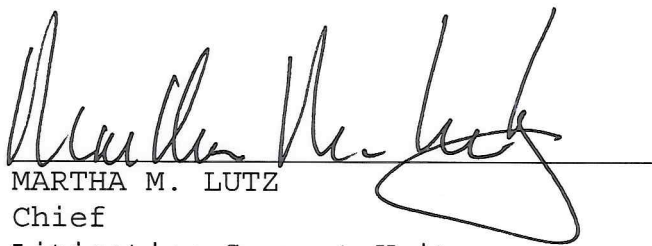
22. In evaluating responsive documents, the CIA conducted a page-by-page and line-by-line review and determined that there is no reasonably segregable, non-exempt portions of documents that can be released without potentially compromising classified information, intelligence sources and methods, and/or material protected by privilege. Accordingly, each withheld record is wholly exempt pursuant to Exemptions (b)(1), (b)(3), and/or (b)(5). I respectfully refer the Court to the *in camera*, *ex parte* submissions in this case which provide detailed explanations of classified, statutorily-protected, and privileged material contained in the documents - information for which a complete discussion on the public record is not possible.



\* \* \*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 14<sup>th</sup> day of November 2014.

  
MARTHA M. LUTZ  
Chief  
Litigation Support Unit  
Central Intelligence Agency