

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| _____ |) | |
| AMERICAN CIVIL LIBERTIES UNION |) | |
| And AMERICAN CIVIL LIBERTIES |) | |
| UNION FOUNDATION, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Case No. 17-cv-3391 (PAE) |
| v. |) | |
| |) | |
| CENTRAL INTELLIGENCE AGENCY, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

SUPPLEMENTAL DECLARATION OF ANTOINETTE B. SHINER,
INFORMATION REVIEW OFFICER,
LITIGATION INFORMATION REVIEW OFFICE,
CENTRAL INTELLIGENCE AGENCY

I, ANTOINETTE B. SHINER, hereby declare and state:

I. INTRODUCTION

1. I continue to serve as the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I respectfully refer the Court to CIA's first declaration, dated 9 November 2017, for information concerning my Agency work experience.

2. Through the exercise of my official duties, I have become and remain 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. I submit this supplemental declaration in support of the

Motion for Summary Judgment filed by the United States Department of Justice in this proceeding.

3. The purpose of this declaration is to explain and justify, to the greatest extent possible on the public record, CIA's actions in responding to Plaintiffs' FOIA request. I also respectfully refer the Court to the classified declaration being submitted *ex parte* and *in camera*; that declaration addresses matters that cannot be explained on the public record, as explained below.

II. PROCEDURAL HISTORY

4. I respectfully refer the Court to CIA's 9 November 2017 declaration for a description of the procedural history of this matter up to the submission of that declaration. That declaration was filed in support of CIA's first motion for summary judgment and in opposition to Plaintiffs' motion for partial summary judgment dated 11 October 2017.

5. On 27 June 2018, this Court issued an Order denying in full CIA's motion for summary judgment and denying Plaintiffs' motion for partial summary judgment except as to FOIA request two, seeking "any and all records" pertaining to:

[t]he process by which the government approved the al Ghayil Raid, including which individuals possessed decision-making authority and the evidentiary standard by which the factual evidence was evaluated to support the determination.

6. By letter dated 18 July 2018, CIA informed Plaintiffs that it would conduct searches for responsive records related to two Deputies Committee meetings and a White House dinner

meeting, consistent with then-Press Secretary Sean Spicer's press briefing of 2 February 2017 acknowledging that the raid had been discussed during those Deputies Committee meetings¹ and at a White House dinner meeting that was attended by a number of government officials including then-CIA Director Michael Pompeo. CIA also informed Plaintiffs that it was conducting searches for records responsive to FOIA request two, consistent with the Court's Order. CIA further stated that it otherwise maintained its Glomar response to FOIA requests one, three, four, and five.² Plaintiffs subsequently notified CIA that they did not intend to challenge CIA's renewed Glomar response to requests one, three, four, and five.

7. On 5 October 2018, CIA informed Plaintiffs and the Court that it had completed its document searches and review. Apart from records received in connection with the Deputies Committee meetings that had already been or were being processed by other agencies in the litigation, CIA stated that it would withhold in full the responsive records located during its searches, pursuant to multiple FOIA exemptions,

¹ CIA regularly attends interagency Deputies Committee meetings.

² "Glomar" is derived from the case *Phillippi v. CIA*, 546 F.2d 1009 (D.C. Cir. 1976), which upheld the CIA's use of the "neither confirm nor deny" response to a FOIA request for records concerning CIA's reported contacts with the media regarding Howard Hughes's ship, the "Hughes Glomar Explorer."

including Exemption 1 (classified information) and Exemption 3 (information protected from disclosure by statute, including the National Security Act).

8. By letter dated 7 December 2018, CIA provided a final FOIA response to Plaintiffs. Specifically, CIA notified Plaintiffs that it had located three categories of documents responsive to FOIA request 2 and/or related to the Deputies Committee and White House dinner meetings:

1) Duplicative documents that had been or were being processed by other agencies in the litigation;

2) Records that CIA had referred in whole or in part to the Department of Defense ("DOD") for processing, and which DOD had either already processed or was currently processing; and

3) Additional material for which the CIA could not provide further detail without revealing information that is itself exempt from disclosure under Exemptions 1 and/or 3.

As to documents in category 2, DOD subsequently provided Plaintiffs with a preliminary description of responsive documents referred by CIA to DOD and the reasons for withholding.

9. Following CIA's 7 December 2018 response, Plaintiffs informed CIA that they would challenge the responsive documents in category 3 (i.e., documents located during CIA's searches but not already processed by other agencies or referred to and processed by DOD). Plaintiffs also stated their intent to challenge the withholding in full of certain documents in category 2 (documents referred to and processed by DOD). By

letter dated 18 December 2018, the parties informed the Court of Plaintiffs' intent to challenge CIA's withholding of category 3 documents and the withholding of a category 2 document referred by CIA and processed by DOD. The parties proposed a briefing schedule by which CIA, other agencies involved in this litigation, and Plaintiffs would submit new motions and cross-motions for summary judgment.

III. SEARCHES FOR RESPONSIVE RECORDS

10. I respectfully refer the Court to CIA's 9 November 2017 declaration for a description of the search CIA conducted for responsive materials related to the White House dinner meeting referenced by then-Press Secretary Spicer. The Agency conducted additional searches for records concerning the White House dinner meeting and the two Deputies Committee meetings referenced by Mr. Spicer, as well as records responsive to FOIA request 2. Specifically, the Agency conducted searches using terms reasonably calculated to locate responsive records, such as "operation," "Shabwah," "Yemen," "Ghayil," and "raid" across systems likely to maintain, *inter alia*, any records about CIA's presence at the meetings referenced by Mr. Spicer as well as any records concerning any process by which the United States government approved the raid. The searches covered the time frame 19 December 2016 to 15 February 2017, which would have reflected CIA's involvement in those meetings. The searches were conducted in all locations in which it is reasonably likely that responsive records would reside,

including but not limited to the paper and electronic records of individuals associated with the meetings. These searches yielded responsive records falling into the three categories described above.

11. CIA's searches yielded duplicative documents that already had been processed by other agencies during this litigation and released to Plaintiffs. CIA provided Plaintiffs with the bates numbers of the previously released versions of these documents in its letter dated 7 December 2018. Additionally, the searches returned two other categories of responsive documents: 1) documents already in DOD's possession or that CIA sent to DOD to be processed solely by DOD, and 2) documents that CIA referred to DOD for further processing and release. To the extent documents in the second category contained Agency information exempt from disclosure under Exemption 1 and/or Exemption 3, CIA identified that information and requested that DOD redact it before release. DOD has processed each of these documents and released any nonexempt information to Plaintiffs. DOD also provided Plaintiffs with preliminary indexes, dated 30 November 2018 and 10 December 2018, describing the documents in these two subcategories and the redactions thereto. Plaintiffs have indicated that they intend to challenge the withholding of material from six of the documents on these preliminary indexes, including one document that contains

information identified for redaction by CIA, pursuant to Exemption 1 and/or Exemption 3.³

12. CIA's searches also yielded responsive documents containing intelligence reporting compiled in connection with the meetings referenced by Mr. Spicer during the 2 February 2017 press briefing. As explained below, CIA is unable to provide additional detail about the documents or the nature of the intelligence to Plaintiffs, as doing so would reveal classified and statutorily protected information that is itself exempt from disclosure under Exemptions 1 and 3 - namely, the Agency's intelligence priorities and capabilities and sensitive details about CIA's intelligence methods and activities, or lack thereof, in this area of the world (i.e., Yemen and the surrounding region).⁴

IV. CIA INFORMATION AT ISSUE

13. In evaluating documents CIA located in the course of its searches and/or referred in whole or in part to DOD for processing,

³ This document was noted as "Referral Doc. 13" on the preliminary index dated 10 December 2018. This document is an Executive Summary of the 6 January 2017 Deputies Committee Meeting on Yemen referenced by Mr. Spicer in his 2 February 2017 press briefing. For details regarding the information CIA identified in this document for redaction, I respectfully refer the Court to CIA's classified declaration, filed concurrently herewith. I understand that this document is also discussed in DOD's declaration submitted in support of the government's motion for summary judgment, with respect to DOD's withholdings of information from the document.

⁴ Because no additional information can be disclosed on the public record concerning these documents without compromising underlying classified and statutorily protected material, I respectfully refer the Court to CIA's classified declaration, filed concurrently herewith, for further details.

CIA conducted a page-by-page and line-by-line review and identified the information that is exempt from disclosure because it is classified and statutorily protected, and therefore falls within the scope of Exemptions 1 and 3. Some of the documents that CIA located contained non-CIA information; CIA referred these documents in whole or in part to DOD for further assessment and, where appropriate, the application of additional exemptions.

A. Exemption 1

14. As noted in CIA's 9 November 2017 declaration, Exemption 1 provides that FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1).

Consistent with section 1.1(a)⁵ of Executive Order 13526, and as described below, I have determined that the CIA's withholdings are currently and properly classified and pertain to "intelligence activities, [or] intelligence sources or methods" within the meaning of section 1.4(c), and "foreign relations or foreign

⁵ Section 1.1(a) sets forth the procedural standards for classification, which have been satisfied in this case.

activities of the United States, including confidential sources” within the meaning of section 1.4(d) of the Executive Order.⁶

15. The CIA information withheld pursuant to Exemption 1 describes particular intelligence, including CIA activities, assessments, capabilities, and interests. Release of this information not only would reveal the intelligence itself, but also could reasonably be expected to reveal CIA’s sources and methods used in acquiring this intelligence as well as the apportionment of Agency resources, relationships with foreign entities, strengths and weaknesses in collection capacity, and/or resources available to the Agency that allowed it to obtain the intelligence. The disclosure of such intelligence and information relating to Agency sources and methods can permit foreign intelligence services and other groups to disrupt CIA activities and/or exploit perceived weaknesses, thereby compromising intelligence operations and impairing the national security of the United States.

16. Additionally, as discussed in CIA’s 9 November 2017 declaration, CIA’s intelligence interests are synonymous with intelligence sources and methods. Intelligence interests show the strategic direction of the Agency’s intelligence practice. CIA has

⁶ My determination that these documents and details about them are classified has not been made to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interests of national security.

a unique intelligence gathering role -- much of the information obtained by the CIA is attained through clandestine means, and is not otherwise obtainable. Even the particular topics that are of interest to the CIA and U.S. Government consumers of the CIA's intelligence (which would be revealed by the withheld records) would be revealing of CIA's and the U.S. Government's intelligence objectives. Such a revelation, through the disclosure of details about the withheld documents, could reasonably be expected to cause irreparable harm and impair the Agency's ability to carry out its core functions. Moreover, information about CIA's interest in a particular area or event may benefit a foreign intelligence service or terrorist organization by enabling it to redirect its resources to identify particular CIA sources, circumvent the CIA's monitoring efforts, and generally enhance its intelligence or deception activities at the expense of the United States' national security. Furthermore, disclosure would reveal the targets of the CIA's collection efforts as well as the demands placed upon it by government consumers of the Agency's intelligence products. As a result, the CIA's efforts may be thwarted or made more difficult, reducing the CIA's effectiveness, requiring a diversion of CIA resources, and resulting in a loss of valuable intelligence. Accordingly, Exemption 1 protects this information from disclosure.

B. Exemption 3

17. As noted in CIA's 9 November 2017 declaration, Exemption 3 provides that FOIA does not apply to matters that are:

specifically exempted from disclosure by statute (other than section 552b of this title), if that statute (A) (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld

U.S.C. § 552(b) (3).

18. Section 102A(i) (1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024 (the "National Security Act"), provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure." Accordingly, the National Security Act constitutes a federal statute which "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. § 552(b) (3). Under the direction of the DNI pursuant to section 102A, and consistent with section 1.6(d) of Executive Order 12333, CIA is authorized to protect CIA sources and methods from unauthorized disclosure.⁷ Accordingly, the CIA relies

⁷ Section 1.6(d) of Executive Order 12333, as amended, 3 C.F.R. 200 (1981), reprinted in 50 U.S.C. 3001 note at 25 (formerly codified at 50 U.S.C.A. § 401 note at 25 (West Supp. 2009)), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008), requires the Director of the Central Intelligence Agency to "[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure in accordance with guidance from the [DNI][.]"

on the National Security Act to withhold information that would reveal intelligence sources and methods and their application by Agency personnel. As described below, I have determined that Exemption 3 in conjunction with the National Security Act applies to the same information withheld by CIA pursuant to Exemption 1 because its disclosure could identify CIA intelligence sources and methods.

19. In this case, the protections of the National Security Act apply to the same information for which Exemption 1 was asserted to protect CIA intelligence and, by extension, CIA's intelligence sources and methods. The National Security Act's statutory requirement to protect intelligence sources and methods does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized disclosure. Nonetheless, as noted above, the release of the information withheld under Exemptions 1 and 3 is reasonably likely to significantly impair the CIA's ability to carry out its core missions of gathering and analyzing intelligence.

VI. CONCLUSION

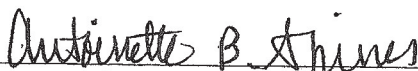
20. The information concerning the withheld intelligence reporting documents yielded by CIA's searches would reveal intelligence activities and intelligence sources and methods, and U.S. foreign relations and foreign activities that remain currently and properly classified and protected from disclosure by the National Security Act. Accordingly, I have determined that this

information is exempt from disclosure pursuant to Exemption 1 and Exemption 3.

* * *

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

Executed this 5th day of April 2019.



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Litigation Information Review Office
Central Intelligence Agency