

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

OBAID ULLAH, AMERICAN CIVIL
LIBERTIES UNION, and AMERICAN CIVIL
LIBERTIES UNION FOUNDATION,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendants.

No. 18-cv-2785-JEB

PLAINTIFFS' STATEMENT OF GENUINE ISSUES

Pursuant to Local Civil Rule 7(h) and in opposition to Defendant's motion for summary judgment, Plaintiffs respond to Defendants' Statement of Material Facts As To Which There Is No Genuine Issue as follows:

1.–11. No dispute.

12. Plaintiffs dispute that the FOIA Exemption (b)(1) withholdings satisfy the substantive requirements of Executive Order 13,526, which governs classification. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

13. Plaintiffs dispute that the CIA has established that it withheld under FOIA Exemption (b)(1) only information that concerns "intelligence activities (including covert action), [or] intelligence sources or methods," or "foreign relations or foreign activities of the United States." Plaintiffs dispute that the CIA has established that it withheld only information that, if disclosed, could reasonably be expected to result in damage to national security. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

14. Plaintiffs dispute the CIA's legal conclusion that no withheld information has been improperly classified. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

15. Plaintiffs dispute that the CIA has established that the classified information at issue consists exclusively of "details about foreign liaison services; locations of covert CIA installations and former detention centers located abroad; and descriptions of specific intelligence methods and activities, including specific details related to intelligence collection and attempts to identify and capture certain terrorists." Plaintiffs dispute the conclusory statement that "[t]o the greatest extent possible, CIA attempted to explain on the public record the nature of the information subject to Exemption (b)(1)." As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

16. Plaintiffs dispute the CIA's legal conclusion that disclosure of every detail the CIA has withheld "would reveal intelligence sought by the Agency and the means by which it is acquired, could reasonably be expected to cause harm, and in some instances exceptionally grave damage, to the CIA's continued ability to collect this information and to the Agency's relationships with foreign partners, thereby damaging the national security." As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

17. Plaintiffs dispute that the CIA has established that it has withheld only information under Exemption (b)(1) that was not declassified as a result of the Senate Select Committee on Intelligence ("SSCI") review of the former RDI program and related disclosures. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

18. Plaintiffs dispute that the CIA has established that it withheld as “foreign liaison and government information” only confidential details, and that “disclosure of these details could damage the relations with the entities mentioned in the documents and with other foreign partners working with the Agency, in turn, harming intelligence sharing and cooperation on other areas of importance to national security.” Plaintiffs dispute that Exemption 1 applies here. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

19. Plaintiffs dispute the CIA’s legal conclusions that “the places where the CIA maintains a presence constitute intelligence methods of the Agency” for the purposes of the governing Executive Order, and its speculation that “Official acknowledgment that the CIA has or had a facility in a particular location abroad could cause the government of the country in which the installation is or was located to take countermeasures, either on its own initiative or in response to public pressure, to eliminate the CIA’s presence within its borders or curtail cooperation with the CIA.” Plaintiffs dispute that the CIA has established that Exemption 1 applies here. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

20. Plaintiffs dispute the CIA’s conclusory speculation that “disclosing the location of a particular CIA facility could result in terrorists and foreign intelligence services targeting that installation and the persons associated with it,” particularly when the location at issue has been closed for more than a decade. Plaintiffs dispute the CIA’s conclusory speculation that “even releasing information about the location of former facilities could harm relationships with foreign countries that housed those installations,” particularly as applied to those countries where the CIA’s operations have been documented in legal proceedings. Plaintiffs dispute that the CIA

has established that Exemption 1 applies here. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

21. Plaintiffs dispute the CIA has established that the information withheld here “could harm the CIA’s continued ability to obtain accurate and timely foreign intelligence,” particularly as applied to those countries where the CIA’s operations have been documented in legal proceedings. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

22. Plaintiffs dispute that the CIA has established that “the documents also contain details that would disclose other intelligence methods and activities of the CIA.” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

23. Plaintiffs dispute that the CIA has established that the dates it withheld would reveal intelligence methods and activities. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

24. Plaintiffs dispute that the CIA has established that it withheld only “undisclosed details about the practice of intelligence gathering and Agency tradecraft, which continue to have application to other types of CIA operations and activities,” or that from the withheld “details, a picture of the breadth, capabilities, and limitations of the Agency’s intelligence collection or activities would begin to emerge.” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

25. Plaintiffs dispute that the CIA has established that the information withheld “could provide adversaries with valuable insight into CIA operations that would damage their effectiveness” and that “Adversaries could use this information to develop measures to detect and counteract the Agency’s intelligence methods and the operational exercise of those

methods.” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

26. Plaintiffs dispute that the CIA’s conclusory speculation that disclosure of intelligence collected more than a decade ago “would show the focus of, or gaps in, the CIA’s intelligence collection” establishes that information is properly withheld here.

27. Plaintiffs dispute the CIA’s legal conclusion that “the information withheld pursuant to Exemption (b)(1) could reasonably be expected to damage the national security.” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

28.–29. No dispute.

30. Plaintiffs dispute the CIA’s legal conclusion that it has established that “release of the information [would] reveal intelligence sources and methods and their application by Agency personnel.” Plaintiffs dispute that the CIA has established the applicability of Exemption 3 as to all the withheld information. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

31. Plaintiffs dispute that the CIA has established as to all information that it seeks to withhold under Exemption 3 that “release of this information could impair the CIA’s ability to carry out its core mission of gathering and analyzing intelligence.” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

32. No dispute.

33. Plaintiffs dispute that the CIA has established that documents it seeks to withhold under the deliberative process privilege “reflect information at the interim stages, and/or are associated with a given deliberation,” and that they “reflect different considerations, opinions,

options, and approaches that preceded an ultimate decision and are part of a policymaking process.” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

34. Plaintiffs dispute that the CIA has established that “certain responsive documents contain recommendations or deliberations at interim stages of Agency inquiries and/or the CIA OIG’s investigation into Rahman’s death.” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

35. Plaintiffs dispute the CIA’s legal conclusion that “[e]ach of these copies is deliberative insofar as it represents a particular stage in the drafting process and reflects different considerations contemplated by Agency employees.” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

36. Plaintiffs dispute the CIA’s legal conclusion that no information is segregable. Plaintiffs dispute that the CIA has established that “to the extent there is any factual material, it is part and parcel of the deliberations and cannot be segregated” or that “the selection of facts in these documents would reveal the nature of the preliminary recommendations and opinions preceding final determinations.” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

37. Plaintiffs dispute that the CIA has established that “[d]isclosure of these documents would significantly hamper the ability of Agency personnel to candidly discuss and assess the viability of certain courses of action,” that “revealing this information could mislead or confuse the public by disclosing rationales that were not the basis for the Agency’s final decisions,” and that “none of the information withheld pursuant to Exemption 5 has otherwise been publicly

disclosed.” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

38. Plaintiffs dispute the CIA’s legal conclusion that the attorney-client privilege applies to any documents here. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

39. Plaintiffs dispute the CIA’s legal conclusion that the attorney-client privilege applies to any documents here. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

40. Plaintiffs dispute the CIA’s legal conclusion that the attorney-client privilege applies to any documents here and that their confidentiality must be maintained. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

41. Plaintiffs dispute the CIA’s legal conclusion that the deliberative process privilege applies to any communications also covered by the attorney-client privilege. As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

42. To the extent that Document 14 is not itself the creation of an attorney, Plaintiffs dispute the CIA’s claim that release of the document “would expose the attorney’s mental impressions to scrutiny and could reveal preliminary litigation risk analysis and strategy.”

43.–52. No dispute.

53. Plaintiffs dispute the CIA’s legal conclusion that it “released all reasonably segregable non-exempt information.” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

54. Plaintiffs dispute the CIA’s legal conclusion that “no additional information can be released without jeopardizing classified or privileged material, individuals’ personal privacy,

and/or other protected information that falls within the scope of one or more FOIA exemptions.”

As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

55. Plaintiffs dispute the CIA’s legal conclusion that “the documents are redacted in part or withheld in full pursuant to Exemptions (b)(1), (b)(3), and (b)(5); and, to the extent that they are personally-identifying, Exemptions (b)(6), (b)(7)(C), and (b)(7)(D).” As this is a legal rather than a factual issue, Plaintiffs respectfully refer the Court to their Memorandum of Law.

Dated: October 28, 2019

Respectfully submitted,

/s/ Dror Ladin

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