UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, CENTER FOR CONSTITUTIONAL RIGHTS, PHYSICIANS FOR HUMAN RIGHTS, VETERANS FOR COMMON SENSE, and VETERANS FOR PEACE,

Plaintiffs,

v. 04 Civ. 4151 (AKH)

DEPARTMENT OF DEFENSE, AND ITS COMPONENTS DEPARTMENT OF ARMY, DEPARMENT OF NAVY, DEPARTMENT OF AIR FORCE, DEFENSE INTELLIGENCE AGENCY; DEPARTMENT OF HOMELAND SECURITY; DEPARMENT OF JUSTICE, AND ITS COMPONENTS CIVIL RIGHTS DIVISION, CRIMINAL DIVISION, OFFICE OF INFORMATION AND PRIVACY, OFFICE OF INTELLIGENCE POLICY AND REVIEW, FEDERAL BUREAU OF INVESTIGATION; DEPARTMENT OF STATE; and CENTRAL INTELLIGENCE AGENCY,

Defendants.

FOURTH DECLARATION OF MARILYN A. DORN
INFORMATION REVIEW OFFICER
CENTRAL INTELLIGENCE AGENCY

I, MARILYN A. DORN, hereby declare and say:

1. I am the Information Review Officer (IRO) for the Directorate of Operations (DO) of the Central Intelligence Agency (CIA). This is my fourth declaration in this case. This declaration incorporates by reference my previous

declarations submitted in this case dated 15 October 2004, 16 February 2005, and 9 March 2005.

2. As stated in my declaration dated 15 October 2004, as a senior CIA official and under a written delegation of authority pursuant to Section 1.3(c) of Executive Order 12958, as amended,[1] I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification and declassification decisions. The Executive Director of the CIA also has appointed me Records Validation Officer (RVO) for purposes of this and certain other litigation. As RVO, I am authorized access to all CIA records on any subject relevant to this litigation, and am authorized to sign declarations on behalf of CIA regarding CIA searches of records systems and the contents of records, including those located in, or containing information under the cognizance of, CIA directorates other than the DO.

3. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

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[1] Executive Order 12958 was amended by Executive Order 13292, effective March 25, 2003. See Exec. Order No. 12958, 3 C.F.R. 333 (1995), *reprinted as amended in* 50 U.S.C.A. § 435 note at 91 (Supp. 2004); see also Exec. Order No. 13292, 68 Fed. Reg. 15315 (Mar. 28, 2003). All citations to Executive Order No. 12958 are to the Order as amended by Executive Order No. 13292.

4. Plaintiffs' Freedom of Information Act (FOIA) request seeks records concerning the treatment, death, and rendition of detainees in U.S. custody.[2] On 16 August 2004, plaintiffs submitted a list of 70 specific items regarding their FOIA request to the U.S. Attorney's Office in this case (hereinafter "the list"). CIA provided responses to that list on 15 October 2004 and 30 November 2004. Thereafter, plaintiffs submitted a motion for summary judgment challenging certain CIA responses to the list. Specifically, plaintiffs challenge CIA's Glomar response to item nos. 1, 29, and 61 of the list, and plaintiffs challenge CIA's withholding of classified information in documents responsive to item no. 43 of the list.

5. The purpose of this declaration is to describe, to the greatest extent possible on the public record, the CIA's response to date to those challenged items on plaintiffs' list requesting information under the FOIA, 5 U.S.C. § 552.

6. For the Court's convenience, I have divided this Declaration into three parts. Part I sets forth the CIA's Glomar response to item nos. 1, 29, and 61. Part II explains CIA's response to item no. 43. Part III describes

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[2] For the complete administrative history of plaintiffs' FOIA request, please see ¶¶ 14-19, of the Declaration of Scott A. Koch dated 15 October 2004.

the FOIA exemptions, (b)(1), (b)(2), (b)(3), (b)(5), and (b)(7)(A), applicable to information withheld in documents responsive to item no. 43, and those exemptions, (b)(1) and (b)(3), applicable to a Glomar response; describes the categories of protected information withheld; and explains why this information is exempt from disclosure. Finally, I have attached to this Declaration a Vaughn Index that describes the individual documents responsive to item no. 43, describes the FOIA exemptions applied to each document, and identifies the applicable categories of information discussed in Part III.

PART I: PLAINTIFFS' CHALLENGE TO THE GLOMAR RESPONSE TO ITEM NOS. 1, 29, AND 61

7. Plaintiffs challenge CIA's Glomar response to item nos. 1, 29, and 61, of the list.[3] For the Court's reference, item no. 1 sought an alleged "Memorandum from DOJ to CIA interpreting the Convention Against Torture," item no. 29 sought an alleged "DOJ memorandum, specifying interrogation methods that the CIA may use against top al-Qaeda members," and item no. 61 sought an alleged "Directive signed by President Bush that grants CIA, the authority to set up detention facilities outside the United

[3] Item no. 43 will be addressed separately in paragraphs 20 through 26 below.

States and/or outlining interrogation methods that may be used against Detainees."[4]

8. As I stated in my previous declaration dated 15 October 2004, ¶¶ 13-18, item nos. 1, 29, and 61 make specific reference to the CIA and its alleged intelligence activities relating to interrogation and detainees in U.S. custody. If true, these allegations constitute clandestine intelligence activities that the CIA has not officially acknowledged. To the extent that the CIA engages in these activities, its engagement in them would be classified and would constitute intelligence methods and intelligence activities of the CIA. Therefore, CIA invoked the Glomar response and asserted that it is not able to confirm or deny whether it has any records relating to its purported involvement in these specific activities related to the interrogation or detention of detainees. To do otherwise would reveal classified information and intelligence

[4] These requests must be considered in light of plaintiffs' complete allegations. Specifically, I understand that plaintiffs allege in their motion for summary judgment that item no. 1 "provides that certain interrogation techniques -- including sleep deprivation, the use of phobias and the deployment of 'stress factors' -- are legally permissible," and that item no. 29 "provides a legal justification for the use of an interrogation technique known as 'waterboarding,' in which a Detainee is made to believe that he is drowning." Plaintiffs' Motion for Summary Judgment, pages 27 and 28.

methods and activities that are protected from disclosure by FOIA exemptions (b)(1) and (b)(3).[5]

9. I understand that plaintiffs have alleged that such a response is inappropriate because the alleged documents in item nos. 1 and 29 are legal memoranda that "do not reveal the existence of clandestine activity but rather constitute the Department's [DOJ] conclusions as to the legal limits of interrogation." Plaintiffs claim the existence or non-existence of such documents do not reveal anything about "CIA policy." Moreover, I understand that plaintiffs argue that although a document responsive to item no. 61 allegedly "provides CIA with certain authority," it does "not reveal whether CIA has chosen to exercise that authority." These arguments do not obviate the need to Glomar these alleged documents, as explained below.[6]

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[5] Exemptions (b)(1) and (b)(3) are the exemptions applicable to a Glomar response to neither confirm nor deny the existence or non-existence of documents. Because CIA neither confirms nor denies the existence or non-existence of responsive documents, CIA cannot make any representations about other possible FOIA exemptions applicable to the items challenged by plaintiffs. Nevertheless, I note that plaintiffs allege that the three items are either DOJ legal opinions to CIA or a directive from the President, all three of which would fall within the (b)(5) exemption, if they existed.

[6] I also understand that plaintiffs argue in their motion for summary judgment that CIA cannot Glomar item nos. 1, 29, and 61 because the DCI's 2002 Annual Report of the United States Intelligence Community states that "Central Intelligence Agency officers worked with foreign intelligence services to detain more than 2,900 al-Qa'ida operatives

10. As I explained in my 15 October 2004 declaration, ¶¶ 14-15, plaintiffs' request for item nos. 1, 29, and 61 seeks records that would exist if CIA had engaged in clandestine intelligence activities or had an interest in pursuing clandestine intelligence activities upon which DOJ allegedly advised or which were allegedly included in the "Presidential Directive." Disclosure of even a CIA interest in such intelligence methods or activities reasonably could be expected to cause serious damage to national security. Thus, CIA is not able to confirm or deny the existence or non-existence of records responsive to these requests.

11. CIA would not request legal memoranda from DOJ or authorizations from the President for intelligence activities in which it had no interest. Therefore, confirming or denying the existence or non-existence of these documents would necessarily confirm or deny a CIA intelligence interest in engaging in these intelligence methods or activities in the war on terrorism. Specifically, confirming the existence of these documents would acknowledge a CIA intelligence interest in detainee interrogation and detention activities (which would be

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and associates in over 90 countries." This sentence does not address the alleged records requested in item nos. 1, 29, and 61.

intelligence activities and methods within the meaning of the Executive Order) and would further acknowledge a CIA capability to pursue such intelligence activities and employ such methods. A denial of the existence of these documents would acknowledge a lack of CIA interest or capability.

12. Merely acknowledging that the CIA sought legal opinions or authorizations addressing specific interrogation and detention activities is itself classified because the answer provides information about the types of intelligence methods and activities that are available to the CIA or may be of interest to the CIA. Revealing that information reasonably could be expected to interfere with the United States Government's collection of intelligence in the war on terrorism.

13. In sum, a CIA confirmation of the existence of the records requested in item nos. 1, 29, and 61 would confirm a CIA interest in or use of specific intelligence methods and activities. Similarly, a CIA response that it had no records responsive to those items would suggest that the CIA was not authorized to use or was not interested in using these intelligence methods and activities. Either response would provide foreign intelligence agencies and

other groups hostile to the United States with information about CIA's intelligence activities and methods.

14. It is important to note that CIA is bound to follow United States law. Therefore, if CIA were to confirm that no document existed for item no. 61, then hostile groups, including terrorist organizations, would know that the President has not granted CIA authority to set up detention facilities outside the United States. It would benefit such groups greatly to know what CIA is or is not interested in, or what CIA is or is not authorized to do, just as much as it would benefit those groups to know whether or not CIA actually uses those intelligence methods or activities. As I explained in my previous declaration, ¶¶ 33-34, 37-38, and below, intelligence agencies have limited resources. Therefore, CIA intelligence interests and intelligence methods and activities must be protected from disclosure because knowing what activities the CIA is or is not interested in and can or cannot engage in would be of material assistance to those who would seek to detect, disrupt, or damage the intelligence operations of the United States.

15. Moreover, to either confirm or deny the existence or non-existence of these documents would affect the United States' foreign relations. Many countries cooperate with

the United States in the war on terrorism. Some do so openly; others only secretly. Those countries may be less willing to cooperate if the U.S. Government were to officially acknowledge CIA current or past clandestine intelligence activities and methods, or intelligence interests.

16. Therefore, based on my authority and experience as a classification official, I have determined that the mere confirmation or denial of the existence or non-existence of documents responsive to item nos. 1, 29, and 61 of plaintiffs' list reasonably could be expected to cause serious damage to the national security of the United States because confirming the existence or non-existence of such documents would give our enemies information about specific intelligence methods and activities utilized by the CIA or of interest to the CIA, and would affect foreign relations.

17. As I stated in my 15 October 2004 declaration, ¶17, a response neither confirming nor denying the existence of records reflecting unacknowledged covert or clandestine activities and interests must be consistently given in **all** instances alleging purported but unacknowledged covert or clandestine CIA activities and interests. If the CIA denied that it maintains responsive

information only in cases when CIA does not possess such information, a CIA response that refuses to confirm or deny when CIA has information would be tantamount to admitting that CIA possesses such information. Such a policy in responding to such FOIA requests obviously reveals the very information that CIA is attempting to protect (current or past clandestine intelligence sources, methods, interests or activities), provides a valuable advantage to our enemies, and unduly jeopardizes the CIA's intelligence activities and U.S. foreign relations worldwide. On the other hand, if the CIA admitted that it maintains such records but refuses to release them, a response of this nature would also disclose the very fact that CIA must protect (current or past clandestine intelligence sources, methods, interests or activities).

18. This is so because, as explained above, the fact of the existence or non-existence of records containing such information would be classified for reasons of national security pursuant to §1.4(c) (intelligence activities and intelligence sources and methods) and § 1.4(d) (foreign relations or foreign activities of the United States) of Executive Order 12958. Further, the Director of Central Intelligence (DCI) has the authority and responsibility to protect such information --

information concerning CIA intelligence methods and activities -- from unauthorized disclosure in accordance with Section 103(c)(7) of the National Security Act of 1947, as amended, 50 U.S.C.A. § 403-3(c)(7) (West 2003). As in all such instances, my determination neither confirms nor denies the existence or non-existence of responsive records.

19. Therefore, I have determined that the mere confirmation or denial of the existence or non-existence of records responsive to item nos. 1, 29, and 61 reasonably could be expected to cause serious damage to national security through the disclosure of intelligence activities and intelligence methods, and through the disclosure of that information damage the foreign activities or foreign relations of the United States. Therefore, the fact of the existence or non-existence of responsive records is properly classified under Executive Order 12958 and protected under FOIA Exemption (b)(1). In addition, I have concluded that the CIA must neither confirm nor deny the existence or non-existence of responsive records in order to preclude disclosure of intelligence sources and methods that the Director of Central Intelligence is required to protect against disclosure pursuant to Section 103(c)(7) of the National Security Act of 1947 pursuant to FOIA

Exemption (b)(3). As such, plaintiff's request with respect to item nos. 1, 29 and 61, must be given a Glomar response pursuant to FOIA Exemptions (b)(1) and (b)(3).

PART II: CIA'S 72 DOCUMENTS RESPONSIVE TO ITEM NO. 43, WITHHELD IN FULL

20. Item no. 43 requests purported "documents relating to Central Intelligence Director, George Tenet's request that Defense Secretary Donald Rumsfeld hold an Iraqi suspect at a high level detention center but not be listed on the prison rolls, and Rumsfeld's order implementing that request." CIA searched for documents concerning the incident described in the Secretary of Defense's Briefing of 17 June 2004, in which the Secretary of Defense stated that he "was requested by the Director of Central Intelligence to take custody of an Iraqi national who was believed to be a high-ranking member of Ansar al-Islam. . . . [DOD was] asked not to immediately register the individual [with the ICRC]."

21. To date, CIA has located 72 documents responsive to this request. I have determined, after carefully reviewing the information at issue, that these documents must be withheld in their entirety on the basis of FOIA exemptions (b)(1), (b)(2), (b)(3), (b)(5) and (b)(7)(A). The nature of the information withheld in each document is

specified in the attached Vaughn document description index; below in Part III are descriptions of the FOIA exemptions upon which the withholdings are based.

22. These documents have been denied in full because I have determined that no meaningful, reasonably segregable portion of those documents could be released. The determination of segregability was made based upon a careful review of the documents in this case, both individually, and as a whole.[7] Indeed, a line-by-line review was conducted for all the documents, individually and as whole, at issue to identify and release meaningful, reasonably segregable, non-exempt portions of documents. Any non-exempt information is so inextricably intertwined with the exempt information that there are no meaningful, reasonably segregable, non-exempt portions. Therefore, I determined that there are no meaningful segments of information that reasonably can be segregated for release.

23. Executive Order 12958, Section 1.2 lists three classification levels for national security information. Information that, if subject to unauthorized disclosure, reasonably could be expected to cause damage to national

[7] In making this determination I must consider the entire mosaic of information available, including information that may be publicly available in other cases or available to our adversaries through their intelligence activities, to determine if any releases would reveal classified information.

security may be classified as CONFIDENTIAL; serious damage as SECRET; and exceptionally grave damage as TOP SECRET. In this case, disclosure of information in these documents relating to CIA's intelligence activities, sources and methods reasonably could be expected to cause serious damage, or exceptionally grave damage, to national security. The information withheld from release in those documents is therefore properly classified as SECRET or TOP SECRET.

24. I understand that plaintiffs argue that these documents cannot be classified because they do not reveal information about intelligence sources and methods. This assertion is not correct.[9] The disclosure of any information concerning the individual and the incident, other than that stated in paragraph 20 above, would tend to reveal intelligence sources and methods.

25. For example, the name of the individual would reveal in whom the CIA has an intelligence interest. A CIA intelligence interest in an individual is a classified fact, as explained in paragraphs 88 through 89 below. The effective collection and analysis of intelligence require

[9] I understand that plaintiffs argue in particular that the CIA's request cannot reveal intelligence sources and methods. This assertion is mistaken for the reasons described in Part II of this declaration and as stated in the description of the DCI's request, Document No. 428, in the attached Vaughn document index.

the CIA to prevent disclosing to our adversaries the identity of specific persons and areas in which the CIA is interested and upon which it focuses its sources and methods. Moreover, disclosure of the information the CIA has collected on this individual (i.e., his background and activities), would tend to reveal intelligence sources and methods because revealing the information could indicate how, when, and in what circumstances it was collected. For example, if only one source knew certain information about an individual, revealing that information could disclose the identity of that source. Similarly, if a certain method was used to target the individual and gather information about him, revealing the information that CIA knows could compromise that intelligence method, as explained in paragraphs 60 through 63 below. Therefore, the Secretary of Defense's statement does not declassify other aspects of the intelligence community's involvement with and information about the individual, as that information must remain classified in order to protect intelligence sources and methods.

26. I also understand that plaintiffs argue that no information about this individual may be classified because the incident concerns an alleged "illegality." The CIA does not classify information to conceal violations of law.

Moreover, in this case, I have not classified any information in order to conceal violations of law. Where otherwise properly classified records might contain information about possible violations of law, the CIA provides information to the appropriate oversight committees and law enforcement entities. Nothing in Executive Order 12958, however, prevents the CIA from protecting classified information that might also reveal a violation of law where, as here, there is an independent basis for classifying the information -- protecting intelligence sources, methods, and activities whose disclosure reasonably could be expected to cause serious or exceptionally grave damage to the national security.

PART III: FOIA EXEMPTIONS

27. The invocation of the Glomar response is made pursuant to, and all of the information withheld in documents that are denied in full falls within, one or more of the following exempt categories of information.

> a. the information would tend to reveal intelligence activities, intelligence sources, or intelligence methods; or foreign government information; or foreign relations or foreign activities of the United States; and is thus currently and properly classified pursuant Section 1.4(b), (c) or (d) of Executive Order 12958, respectively, as its disclosure reasonably could be expected to cause damage, serious damage, or exceptionally grave damage to the national security, and is therefore protected from disclosure by FOIA exemption (b)(1);

b. the information relates to internal personnel rules and practices of the CIA, and is therefore exempt from disclosure pursuant to FOIA Exemption (b)(2);

c. the information would tend to reveal intelligence activities, intelligence sources, or intelligence methods which the DCI is responsible for protecting from unauthorized disclosure in accordance with Section 103(c)(7) of the National Security Act of 1947, as amended, 50 U.S.C.A. § 403-3(c)(7) (West 2003), and is therefore protected from disclosure by FOIA exemption (b)(3);

d. the information would tend to reveal the organization, functions, names, or official titles of personnel employed by the CIA, which the DCI is responsible for protecting from disclosure in accordance with Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C.A. § 403g (West Supp. 2004), and is therefore protected from disclosure by FOIA exemption (b)(3);

e. the information constitutes privileged attorney-client communications or attorney work product and is therefore protected from disclosure by FOIA exemption (b)(5);

f. the information is predecisional and deliberative and is therefore protected from disclosure by FOIA exemption (b)(5); and/or

g. the information was compiled for law enforcement purposes and its disclosure reasonably could be expected to interfere with enforcement proceedings, and is protected from disclosure by FOIA exemption (b)(7)(A).

The categories of information withheld by CIA under each FOIA exemption are described below.

A. <u>FOIA Exemption (b)(1)</u>

28. FOIA Exemption (b)(1), 5 U.S.C. § 552(b)(1), provides that the FOIA does not apply to matters 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.

As I will discuss below, the CIA invokes FOIA Exemption (b)(1) to justify its Glomar response and its withholding in full of CIA documents responsive to item no. 43 that are properly classified.

1. The Definition of "Specifically Authorized" by Executive Order

29. The authority to classify documents is derived from a succession of Executive Orders, the most current of which is Executive Order 12958. Under the criteria of Executive Order 12958, § 1.1, information may be originally classified if it: (1) is owned by, produced by or for, or is under the control of the United States Government; (2) falls within one or more of the categories of information set forth in Section 1.4 of the Order; and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security that the original classification authority can identify or describe. As explained more fully below, the classified CIA information withheld from release in the 72

documents described in the attached index meets the Executive Order criteria for classification and thus is properly withheld under FOIA exemption (b)(1).

2. The Definition of Information That is "Properly Classified"

30. Pursuant to Executive Order 12958, § 1.3(a)(2), the President designated the DCI as an official authorized to exercise original TOP SECRET classification authority. The DCI has delegated such authority, pursuant to Executive Order 12958, § 1.3(c)(2), to a limited number of CIA officials whom he has determined have a demonstrable and continuing need to exercise this authority. As noted above (¶ 2), I am one such official.[9] I, therefore, am authorized to conduct classification reviews and to make original classification decisions.

31. With respect to the information for which FOIA exemption (b)(1) has been asserted, I have reviewed the information and have determined that the information--

(1) comprises information that is owned by, produced by or for, or is under the control of CIA; and

[9] Original TOP SECRET classification authority also includes the authority to classify information originally as SECRET and CONFIDENTIAL. See Exec. Order No. 12958, § 1.3(c)(3).

(2) falls within one or more of the following categories of information set forth in Section 1.4 of the Order: foreign government information, § 1.4(b); intelligence activities, and intelligence sources or methods, § 1.4(c); and foreign relations or foreign activities of the United States, including confidential sources, § 1.4(d); and

(3) if disclosed, reasonably could be expected to result in damage, serious damage, or exceptionally grave damage to the national security that I can identify or describe.

32. I will identify and describe below, to the extent possible in a public declaration, the damage to national security that I reasonably expect could result from the unauthorized disclosure of the classified CIA information being withheld.

33. I have determined that the classified information being withheld continues to meet the standards for classification under Executive Order 12958. Section 3.1(b) of Executive Order 12958 states, "[i]t is presumed that information that continues to meet the classification requirements under this order requires continued protection." I have determined that the CIA information being withheld falls within three of the seven categories

for classified information listed in Section 1.4 of Executive Order 12958: foreign government information (§ 1.4(b)), intelligence activities, intelligence sources or methods (§ 1.4(c)), and foreign relations or foreign activities (§ 1.4(d)). I have determined that all of the information withheld on the basis of FOIA Exemption (b)(1) is within the aforementioned Section 1.4 categories for classified information.

34. Moreover, under Executive Order Section 3.6(a), "[a]n agency may refuse to confirm or deny the existence or nonexistence of requested records whenever **the fact of** their existence or nonexistence is itself classified under this order." As explained above, I have determined that confirmation or denial of the existence or non-existence of certain alleged documents would itself be classified. Accordingly, the CIA's Glomar response is based on the (b)(1) Exemption, as well as the (b)(3) Exemption.

3. Articulable Damage to the National Security

35. The information withheld under FOIA Exemption (b)(1) involves foreign government information, foreign activities and foreign relations, and CIA intelligence activities, sources and methods, as described below. Intelligences sources, methods, and activities are also exempt under Exemption (b)(3) as set forth in paragraph 92

of this declaration. The CIA relies on a variety of types of intelligence activities, sources, and methods to collect foreign intelligence critical to our national security.

a. Intelligence Sources

36. Certain of the information in the documents at issue has been withheld because its disclosure could reasonably be expected to lead to the identification of intelligence sources of the CIA. The DCI, as the official responsible for the conduct of foreign intelligence operations, has broad authority to protect intelligence sources from disclosure.

37. One of the major functions of the CIA is to gather intelligence from around the world for the President and other United States Government officials to use in making policy decisions. To accomplish this, the CIA must rely on information from knowledgeable sources that the CIA can obtain only under an arrangement of absolute secrecy. Intelligence sources will furnish information only when they are confident that they are protected from retribution or embarrassment by the absolute secrecy surrounding the source-CIA relationship. In other words, intelligence sources must be certain that the CIA can and will do everything in its power to prevent the public disclosure of their association with the CIA.

38. Intelligence sources include individual human sources, foreign intelligence and security services, and foreign governments generally. I will explain each of

these intelligence sources and the reasons for the protection of these sources in more detail below.

(i) Human Sources

39. The CIA relies both on United States citizens and foreign nationals to collect foreign intelligence, and it does so with the promise that the CIA will keep their identities forever secret. This is because the CIA's revelation of this secret relationship could harm the individual. In the case of an United States citizen, for example, a business executive who shares with the CIA information collected in the course of his everyday business conducted abroad, could suffer serious embarrassment and loss of business if the fact of his cooperation with the CIA were publicized. More importantly, if the business executive were to travel to certain parts of the world, this fact would place his life at risk.

40. In the case of a foreign national abroad who cooperates with the CIA, almost always without the knowledge of his government, the consequences of the disclosure of this relationship are often swift and far-ranging, from economic reprisals to harassment, imprisonment, and even death. In addition, such disclosure places in jeopardy the lives of every individual with whom

the foreign national has had contact, including his family and friends.

41. In some cases, persons who are not even CIA sources are at times subject to retribution merely because they are suspected of cooperating with the CIA.

42. In light of these possible and probable consequences of disclosure, individuals and entities are understandably reluctant to cooperate with the CIA or other United States intelligence agencies unless they are absolutely certain that the fact of their cooperation will remain forever secret.

43. In many cases, the very nature of the information that the source communicates necessarily tends to reveal the identity of the human source because of the limited number of individuals with access to the information. If such information is disclosed, the source may be perpetually vulnerable to discovery and retribution.

44. Moreover, the release of information that would or could identify an intelligence source would damage seriously the CIA's credibility with all other current intelligence sources and undermine the CIA's ability to recruit future sources. As stated previously, most individuals will not cooperate with the CIA unless they are sure that their identities will remain forever secret.

Additionally, the CIA itself has a primary interest in keeping these identities secret, not only to protect the sources, but also to demonstrate to other sources and future sources that these sources can trust the CIA to preserve the secrecy of the relationship.

45. If a potential source has any doubts about the ability of the CIA to preserve secrecy, that is, if he were to learn that the CIA had disclosed the identity of another source, his desire to cooperate with the CIA would likely diminish. In other words, sources, be they present or future, usually will not work for the CIA if they are convinced or believe that the CIA may not protect their identities. The loss of such intelligence sources, and the accompanying loss of the critical intelligence that they provide, would seriously and adversely affect the national security of the United States.

46. For the foregoing reasons, I have determined that information that is responsive to plaintiffs' FOIA request that reasonably would or could be expected to lead to the identification of a human intelligence source is properly classified SECRET or TOP SECRET pursuant to the criteria of Executive Order 12958, because the unauthorized disclosure of this information could reasonably be expected to cause serious or exceptionally grave damage to the national

security of the United States. As a result, this information has been withheld in full because it is exempt from disclosure pursuant to FOIA Exemption (b)(1)

(ii) Foreign Liaison and Government Information

47. Another kind of intelligence source upon which the CIA relies and therefore must protect from unauthorized disclosure is foreign liaison and foreign government information. Foreign liaison information is information that the CIA obtains clandestinely from foreign intelligence and security services. In this way, the foreign service itself functions as an intelligence source.

48. Similarly, foreign government information is information that the CIA obtains clandestinely from officials of foreign governments with whom the CIA maintains an official liaison relationship. In this way, the official of the foreign government functions as the intelligence source.

49. Both foreign liaison services and individual foreign government officials provide sensitive information in strict confidence to the CIA on issues of importance to United States foreign relations and national security. These services and officials of such services convey information to CIA with the CIA's express agreement that the content of the information, as well as the mere fact of

the relationship through which they have provided the information, will remain forever secret.

50. If the CIA were to violate this express agreement, internal or external political pressure on the foreign government could cause the foreign liaison service or foreign government official to limit or even end the CIA relationship, causing the United States Government to lose valuable foreign intelligence. In fact, this political pressure could compel the foreign government to take defensive actions against the CIA, such as reducing the approved CIA presence in that country, which would further damage CIA's ability to collect intelligence about other countries or persons operating in that country.

51. Like the revelation of information provided by individual human sources, in many cases, the very nature of the information that the foreign liaison service or foreign government official provides necessarily tends to reveal the identity of the source of the information and, therefore, the relationship itself.

52. In this way, disclosing the fact of the relationship or the information itself would suggest to other foreign liaison services and foreign government officials that the CIA is unable or unwilling to observe an express agreement of absolute secrecy. This perception

could cause the liaison services and government officials to limit their provision of information to the CIA or even to end the relationship altogether, thus causing the United States Government to lose valuable foreign intelligence.

53. Moreover, this perception could discourage foreign governments from entering into any kind of relationship with the CIA, thus preventing altogether the collection of information from these sources.

54. As such, any official acknowledgment by the CIA of a past or current liaison relationship, or any revelation of information by the CIA that implicates a past or current relationship, with a foreign intelligence service or a foreign government official could cause serious damage to relations with that foreign government and possibly other relationships with other governments as well. This could result in a significant loss of intelligence information for the United States Government and thereby cause serious damage to national security.

55. Liaison relationships with foreign intelligence services offer the United States a force-multiplier for its intelligence collection activities, especially in the global war on terrorism. Intelligence services with which the CIA has a close or robust liaison relationship will provide the CIA with the intelligence reported by many of

its own intelligence sources. Such services may even task their own sources to gather information at the request of the CIA. Therefore, through liaison relationships, CIA can gather and provide intelligence information to United States national security and foreign policy decision makers that is critical to informed decision making. Harm to these relationships can be particularly damaging to the fight against terrorism.

56. Therefore, I have determined that certain information located in response to plaintiffs' FOIA request that reveals the fact or the nature of a CIA liaison relationship is currently and properly classified SECRET or TOP SECRET pursuant to the criteria of Executive Order 12958 because its unauthorized disclosure reasonably could be expected to cause serious or exceptionally grave damage to the national security of the United States. As a result, this information has been withheld in full because it is exempt from disclosure pursuant to FOIA exemption (b)(1).

57. Information provided by foreign liaison services and foreign government officials is also properly classified SECRET or TOP SECRET pursuant to Executive Order 12958, because it falls within two other protected categories of information: foreign government information

provided to the United States Government, § 1.4(b), and information that, if disclosed, could reasonably be expected to cause damage to the foreign relations or foreign activities of the United States, § 1.4(d). Section 1.1(c) of Executive Order 12958 stresses the importance and sensitivity of foreign government information, stating that "[t]he unauthorized disclosure of foreign government information is presumed to cause damage to the national security." As such, for these additional reasons, this information is exempt from disclosure pursuant to FOIA Exemption (b)(1).

b. Intelligence Methods

58. Certain of the information requested by plaintiffs has been withheld because the information would tend to reveal intelligence methods. Generally, intelligence methods are the means by which the CIA accomplishes its mission. I will describe some specific intelligence methods as examples in further detail below. (Other intelligence methods may not be described on the public record.) Like the DCI's authority for protecting intelligence sources, the DCI also has broad authority for protecting intelligence methods.

59. In exercising this authority, the DCI protects not only references to intelligence methods but also the information produced by those intelligence methods. One of

the primary missions of foreign intelligence services is to discover the particular methods that the CIA uses. To this end, foreign intelligence services scour open sources for officially released intelligence information. These foreign intelligence services are capable of gathering information from myriad sources, analyzing this information, and deducing means to defeat CIA collection efforts from disparate and seemingly unimportant details. What may seem trivial to the uninformed may, in fact, be of great significance, and may put a questioned item of information in its proper context. As such, it is the fact of the use of a particular intelligence method in a particular situation, in addition to the method itself, that the DCI must protect.

60. A particular intelligence method is effective only so long as it remains unknown and unsuspected to its target. When an intelligence method is revealed, this causes the target of the method to take countermeasures. Once the target discovers the nature of an intelligence method or the fact of its use in a certain situation, the method usually ceases to be effective.

61. As such, the DCI must protect the full spectrum of intelligence methods from disclosure because such information would be of material assistance to those who would seek to penetrate, detect, prevent, or damage the intelligence operations of the United States. Knowledge of or insights into specific intelligence collection methods

would be of invaluable assistance to those who wish to detect, penetrate, counter, or evaluate the activities of the CIA. In fact, without legal protection against the public release of intelligence methods, the CIA would likely become impotent.

62. When a particular intelligence method ceases to be effective, the United States endures a significant loss. This is because the cost of developing and validating an intelligence method is hugely disproportionate to the cost of destroying that method via public disclosure. A single intelligence method can cost many millions of dollars, but a single newspaper story generated by a single disclosure can often end the utility of the method. Moreover, the actual damage and loss to the United States from the loss of the intelligence method is not only the cost of the method itself but also the loss of intelligence during the time it takes to fund and field a replacement method.

63. Detailed knowledge of the methods and practices of an intelligence agency must be protected from disclosure because such knowledge would be of material assistance to those who would seek to penetrate, detect, prevent, or damage the intelligence operations of the United States. The result of disclosure of a particular method leads to the neutralization of that method, whether the method is used for the collection of intelligence information, the conduct of clandestine activities, or the analysis and evaluation of intelligence information.

64. For the foregoing reasons, I have determined that the disclosure of certain information responsive to plaintiffs' FOIA request that pertains to intelligence methods could reasonably be expected to cause serious or exceptionally grave damage to the national security and therefore that the information is currently and properly classified SECRET or TOP SECRET pursuant to the criteria of Executive Order 12958. As a result, this information has been withheld from release because it is exempt from disclosure pursuant to FOIA Exemption (b)(1).

(i) Cover

65. One specific intelligence method used by the CIA is cover. In order to carry out its mission of gathering and disseminating intelligence information, the CIA places individual CIA employees under cover to protect the fact, nature, and details of CIA's interest in foreign activities and the intelligence sources and methods employed to assist those activities. CIA considers the cover identities of individual employees and cover mechanisms both to be intelligence methods.

66. The purpose of cover is to provide a believable, non-threatening reason for a CIA officer to move around and meet individuals of intelligence interest to the United States, and to do so without attracting undue attention.

67. Disclosing the identity of an undercover employee could expose the intelligence activities with which the employee has been involved, the sources with whom the

employee has had contact, and other intelligence methods used by the CIA. Compromise of an officer's cover not only reveals his intelligence officer status, but also allows hostile intelligence services and terrorist organizations to find out precisely the location in which that person works. In fact, disclosing the identity of an undercover employee could jeopardize the life of the employee, his family, his sources, and even innocent individuals with whom he has had contact.

68. Disclosing cover mechanisms used by the CIA would expose and officially confirm those mechanisms, hindering the effectiveness of the cover for current and future undercover employees, as well as current and future intelligence operations.

69. Therefore, I have determined that the unauthorized disclosure of certain information that is responsive to plaintiffs' FOIA request that pertains to cover reasonably could be expected to cause damage, and in some cases, serious damage, to the national security of the United States, and thus this information is currently and properly classified CONFIDENTIAL or, in some cases, SECRET. As such, this information has been withheld from disclosure pursuant to FOIA exemption (b)(1).

(ii) Field Installations

70. Another intelligence method used by the CIA is to operate covert installations abroad.

71. Official acknowledgment that the CIA maintains an installation in a particular location abroad would likely cause the government of the country in which the installation is located to take countermeasures, either on its own initiative or in response to public pressure in order to eliminate the CIA presence within its borders, or otherwise to retaliate against the United States Government, its employees, or agents. Revelation of this information also would likely result in terrorists and foreign intelligence services targeting that installation, and persons associated with it.

72. Additionally, in some cases, the disclosure of information concerning a covert CIA installation would, in and of itself, reveal another specific intelligence method for which the CIA uses the installation.

73. For the foregoing reasons, I have determined that the unauthorized disclosure of information that is responsive to plaintiffs' FOIA request that pertains to covert CIA installations abroad reasonably could be expected to cause serious damage to the national security of the United States and therefore that this information is currently and properly classified SECRET pursuant to Executive Order 12958. As such, this information has been withheld from release pursuant to FOIA exemption (b)(1).

(iii) Cryptonyms and Pseudonyms

74. The use of cryptonyms and pseudonyms is an intelligence method whereby words and letter codes are substituted for actual names, identities, or programs in order to protect intelligence sources and other intelligence methods. Specifically, the CIA uses cryptonyms in cables and other correspondence to disguise the true name of a person or entity of operational intelligence interest, such as a source, foreign liaison service, or a covert program. The CIA uses pseudonyms, which are essentially code names, solely for internal CIA communications.

75. When obtained and matched to other information, cryptonyms and pseudonyms possess a great deal of meaning for someone able to fit them into the proper framework. For example, the reader of a message is better able to assess the value of its contents if the reader can identify a source, an undercover employee, or an intelligence activity by the cryptonym or pseudonym. By using these code words, the CIA adds an extra measure of security, minimizing the damage that would flow from an unauthorized disclosure of intelligence information.

76. In fact, the mere use of a cryptonym or pseudonym in place of plain text to describe a program or person is an important piece of information in a document. Use of such code words may signal to a reader the importance of

the program or person signified by the codeword. By disguising individuals or programs, cryptonyms and pseudonyms reduce the seriousness of a breach of security if a document is lost or stolen.

77. Although release or disclosure of isolated code words may not in and of itself necessarily create serious damage to the national security, their disclosure in the aggregate or in a particular context could permit foreign intelligence services to fit disparate pieces of information together and to discern or deduce the identity or nature of the person or project for which the cryptonym or pseudonym stands.

78. For the foregoing reasons, I have determined that the unauthorized disclosure of information that is responsive to plaintiffs' FOIA request that would reveal a cryptonym or a pseudonym could reasonably be expected to cause damage or serious damage to the national security of the United States and therefore that this information is properly classified CONFIDENTIAL or SECRET pursuant to the Executive Order 12958. As such, this information has been withheld from release pursuant to FOIA exemption (b)(1).

(iv) Foreign Intelligence Relationships

79. Another intelligence method used by the CIA is, as previously discussed, to obtain foreign intelligence and assistance via liaison relationships with foreign intelligence services and foreign government officials.

The DCI must protect these relationships both as intelligence sources and methods.

80. Each relationship constitutes a specific method for the collection of intelligence, and the fact of the use of each relationship in a given circumstance must be protected. As previously discussed under the category of intelligence sources, divulging information concerning a particular liaison relationship could compromise the relationship and thereby destroy this specific intelligence method.

81. For the foregoing reasons, I have determined that information that is responsive to plaintiffs' FOIA request that pertains to a CIA relationship with a foreign intelligence service or a foreign government officials could reasonably be expected to cause serious or exceptionally grave damage to the national security and therefore that this information is therefore currently and properly classified SECRET or TOP SECRET pursuant to Executive Order 12958. As such, the information has been withheld from release pursuant to FOIA exemption (b)(1).

(v) Dissemination-Control Markings

82. Additional intelligence methods used by CIA are those concerned with the protection and dissemination of information. These methods include procedures for marking documents to indicate procedures for and indicators

restricting dissemination of particularly sensitive information contained in the documents.

83. Although such markings, standing alone, may sometimes be unclassified, when placed in the context of specific substantive collection or analysis they may reveal or highlight areas of particular intelligence interest, sensitive collection sources or methods, or foreign sensitivities. To avoid highlighting information that reveals such matters, the CIA withholds dissemination control markings and markings indicating the classification levels and controls of individual paragraphs or specific bits of information. Otherwise, if the CIA were to withhold dissemination control and classification markings only in cases where the accompanying information indicates a special intelligence interest, a particularly sensitive method, or a foreign liaison relationship, the CIA would focus public attention on those sensitive cases.

84. Additionally, as a practical matter, deleting dissemination control markings (other than the overall classification level) rarely deprives a requester of the information he or she is actually seeking.

85. For the foregoing reasons, I have determined that the unauthorized disclosure of information that is responsive to plaintiffs' FOIA request that concerns dissemination-control markings reasonably could be expected to cause damage or serious damage to the national security of the United States and therefore that this information is

currently and properly classified CONFIDENTIAL or SECRET pursuant to Executive Order 12958. Therefore, this information has been withheld from release pursuant to Exemption (b)(1). In addition, such dissemination markings when not classified are properly withheld under (b)(3), as explained in paragraph 98 below.

c. Intelligence Activities

86. Intelligence activities refer to the actual implementation of intelligence sources and methods in the operational context. Intelligence activities are highly sensitive because their disclosure often would reveal details regarding specific intelligence collection activities. The CIA is charged with both foreign intelligence and counterintelligence collection and analysis responsibilities. Although it is obviously widely acknowledged that CIA is responsible for performing activities in support of this mission for the United States, CIA cannot confirm or deny the existence of any specific intelligence collection or disclose the target of such intelligence gathering activities.

87. To disclose the existence (or non-existence) of a particular intelligence collection operation would reveal U.S. intelligence needs, priorities, and capabilities to a foreign intelligence service or hostile organization seeking to take advantage of any national security weakness. The damage that would be caused by such an admission is clear. Foreign government services and

hostile organizations would be advised that their activities and information had been targeted by the CIA; future intelligence collection operations would be made more difficult by such a revelation; and, as a result, the conduct of such operations would become even more dangerous.

88. Similarly, the CIA's clandestine intelligence interest in a specific individual or organization represents an intelligence activity, source and/or method. If the CIA admits that it possesses clandestine intelligence information about a particular individual who may be an intelligence operative of a foreign intelligence service or a member of a terrorist organization, the CIA essentially admits to that operative that one or more of his intelligence or terrorist activities have been detected by the CIA. Such an acknowledgment alerts this operative that he must take countermeasures to make his future intelligence activities undetectable by the CIA. If the operative's countermeasures are successful, the CIA loses its ability to monitor his activities. Moreover, others who may be collaborating with the operative also will soon cease engaging in these detectable activities with similar results. In a case where the targeted operative is no longer active, the foreign intelligence service or terrorist organization for which he worked is still alerted to the fact that one or more of his intelligence activities may have been detected by the CIA. This benefits the

hostile organization because it will be alerted to that fact that any information gained from that operative's missions may be compromised to the CIA.

89. In general the monitoring of a terrorist or intelligence organization of potential intelligence interest to the CIA is a very costly enterprise with significant resource and national security implications. At present, these costs are, in a sense, shared by both the CIA (which attempts to monitor foreign intelligence service's and terrorist organization's sources, operatives, and activities) and the foreign intelligence service or terrorist organization (which attempt to conceal from the CIA the identities of their sources, operatives and activities). The CIA sometimes may expend resources monitoring a particular organization or individual which is not, in fact, a foreign intelligence or terrorist source or operative, while foreign intelligence or terrorist organizations may sometimes undertake elaborate precautions because they believe they are being monitored by the CIA when, in fact, they are not. If CIA's intelligence interest in a given individual or organization is known, such a revelation would provide the foreign intelligence or terrorist organization with information concerning which intelligence sources or types of intelligence activities the CIA can and cannot monitor. It may also indicate which are potential CIA sources. It will at a minimum indicate CIA interest in identified individuals or organizations.

These admissions may greatly benefit a foreign intelligence service or terrorist organization by enabling it to redirect its resources to identify potential CIA sources, circumvent the CIA's monitoring efforts, and generally enhance its intelligence or deception activities at the expense of the United States. 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 information.

90. For the foregoing reasons, I have determined that the unauthorized disclosure of information that is responsive to plaintiffs' FOIA request that concerns the details of CIA intelligence activities would cause serious or exceptionally grave damage to the national security of the United States and therefore that this information is currently and properly classified SECRET or TOP SECRET pursuant to Executive Order 12958. Therefore, this information has been withheld from release pursuant to Exemption (b)(1).

91. In sum, I have determined that unauthorized disclosure of information in documents responsive to plaintiffs' FOIA request which reasonably would or could be expected to lead to the identification of intelligence activities, sources and methods, foreign government information, or information that would harm foreign relations or foreign activities of the United States, is

currently and properly classified pursuant to the criteria of Executive Order 12958, as its disclosure could reasonably be expected to cause damage, serious damage, or exceptionally grave damage to the national security of the United States, and is thus exempt from disclosure pursuant to FOIA Exemption (b)(1). Coextensively, information that could lead to the revelation of an intelligence activity, source, or method falls precisely within the scope of 50 U.S.C.A. § 403-3(c)(7), and is also exempt from disclosure pursuant to FOIA Exemption (b)(3).

B. FOIA Exemption (b)(2)

92. FOIA Exemption (b)(2) states that the FOIA does not apply to matters that are "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. § 552(b)(2).

93. Exemption (b)(2) of the FOIA encompasses two distinct categories of information: a) internal matters of a relatively trivial nature, sometimes referred to as "low 2" information; and b) more substantial internal matters the disclosure of which would risk circumvention of a legal requirement, sometimes referred to as "high 2" information.

94. The CIA has properly invoked Exemption (b)(2) in this case to withhold "low 2" information: administrative and routing notations. There is no public interest in the release of this internal, clerical information. CIA is not

withholding any information on the basis of (b)(2) "high 2" information.

C. FOIA Exemption (b)(3)

95. Much of the information withheld concerns intelligence sources, or methods, and CIA organizational or functional information. As a result, that information is also exempt from disclosure pursuant to FOIA Exemption (b)(3). FOIA Exemption (b)(3) states that the FOIA does not apply to matters that are:

> Specifically exempted from disclosure by statute (other than § 552b of this title), provided that such statute (A) 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.

5 U.S.C. § 552(b)(3). As I will discuss below, the CIA invokes FOIA Exemption (b)(3) to justify its Glomar response as well as its withholding of certain information within CIA documents that have been identified as responsive to item no. 43.

96. Two (b)(3) withholding statutes exempt the CIA information at issue: Section 103(c)(7) of the National Security Act of 1947, as amended, codified at 50 U.S.C.A. § 403-3(c)(7) (West 2003), which requires the DCI to protect intelligence sources and methods from unauthorized

disclosure;[10] and Section 6 of the Central Intelligence Agency Act of 1949, as amended, codified at 50 U.S.C.A. § 403g (West Supp. 2003), which provides that the CIA shall be exempt from the provision of any other law requiring the publication or disclosure of the organization, function, names, official titles, salaries, or numbers of personnel employed by the CIA. Thus, as discussed herein, information falling within the scope of either of these two statutes is exempt from disclosure pursuant to FOIA Exemption (b)(3).

1. National Security Act of 1947

97. As previously noted, Section 103(c)(7) of the National Security Act of 1947 requires the DCI to protect intelligence sources and methods from unauthorized disclosure. As DO/IRO, I am charged with implementing these DCI statutory responsibilities with respect to the Directorate of Operations.

98. I have discussed in detail these intelligence sources and methods and the reasons for withholding this information in Part III, Section A, of this declaration. The intelligence source and method information protected

[10] Although the Act was amended on 17 December 2004 to provide that the Director of National Intelligence (DNI) shall protect intelligence sources and methods from unauthorized disclosure, the position of DNI is not yet filled and, in any event, this amendment is not yet effective.

under this statute, while often similar to that protected under (b)(1) as classified, does not have to be the same. This statute requires the DCI to withhold information that would compromise intelligence sources and methods. Such information is withheld even if is not classified if it would still reveal intelligence sources and methods.

99. In addition, when the fact of the existence or non-existence of records would reveal intelligence sources, methods and activities, a Glomar response is appropriate to protect intelligence sources, methods and activities from unauthorized disclosure in accordance with Section 103(c)(7) of the National Security Act of 1947, as amended, 50 U.S.C.A. § 403-3(c)(7) (West 2003).

2. CIA Act of 1949

100. Certain CIA-specific information that is responsive to plaintiffs' FOIA request has been withheld pursuant to FOIA exemption (b)(3), in conjunction with Section 6 of the CIA Act of 1949, 50 U.S.C.A. § 403g (West Supp. 2004). As previously noted, Section 6 of the CIA Act provides that the CIA "shall be exempted from . . . the provision of any other laws requiring the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the [CIA]." 50 U.S.C.A. § 403g.

101. On the basis of this statute, the CIA withholds CIA employees' names and personal identifiers (for example, employee signatures and initials), official titles, file numbers, dissemination markings, and internal organizational data. Titles or other organizational identifiers of CIA organizational components also have been withheld pursuant to (b)(3) under 50 U.S.C.A. § 403g.

102. Pursuant to Section 6 of the CIA Act of 1949, the CIA routinely withholds the names of its employees who may come into public view during the course of their duties. Such employees may have served under cover or in sensitive positions or operations in the past, may be doing so now, or may do so in the future. Revelation of their affiliation with the CIA could compromise past, present, or future intelligence operations or activities; identify them as targets for terrorists or hostile foreign intelligence services; or place their lives, the lives of their families, and the lives of human intelligence sources with whom they have worked, in jeopardy.

103. Internal CIA filing information has also been withheld since it tends to reveal information pertaining to the structure of the CIA records systems. This information has been withheld to prevent detailed knowledge of CIA personnel, structure, organization, and procedures from

becoming publicly available and possibly used as a tool for hostile penetration or manipulation. This information is also sometimes classified SECRET and, as such, it is also exempt under FOIA exemption (b)(1).

104. Additionally, the titles or other organizational identifiers and filing instructions of CIA internal organizational components have been withheld. This information has been withheld to prevent detailed knowledge of CIA personnel, structure, organization, and procedures from becoming publicly available and possibly used as a tool for hostile penetration or manipulation. Since such information is covered by 50 U.S.C.A. § 403g, it is properly exempt from disclosure pursuant to FOIA Exemption (b)(3).

D. FOIA Exemption (b)(5)

105. FOIA Exemption (b)(5), 5 U.S.C. § 552(b)(5), provides that the FOIA does not apply to matters that are:

> inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

The scope of Exemption (b)(5) is quite broad, incorporating virtually all civil discovery privileges.

106. Exemption (b)(5) has been construed to exempt those documents or information normally privileged in the civil discovery context and includes attorney-client privilege, the attorney work-product doctrine, and the

governmental predecisional deliberative process privilege. The attorney-client privilege protects communications between attorney and client relating to a legal matter for which the client has sought professional advice. The attorney-work product privilege protects documents created in anticipation of or in the course of litigation by or at the direction of an attorney. The deliberative process privilege protects the internal deliberations of the government by exempting from release recommendations, analyses, speculation and other information prepared in anticipation of decision-making. It also exempts factual information to the extent these are an expression of deliberative communications. The CIA withheld information protected by Exemption (b)(5) in certain documents.

1. Attorney-Client Communications

107. The CIA applied Exemption (b)(5) to withhold documents or portions of documents containing attorney-client communications. These documents reflect legal advice of counsel. The documents where an attorney-client privilege has been claimed address two types of situations: (1) instances where CIA officials requested legal advice from CIA and other government attorneys; and (2) instances where CIA and other government attorneys offered CIA officials advice on a variety of legal issues arising from the CIA's activities. The requests for legal advice, and the advice rendered, were kept confidential. The withheld documents reflect not only the attorneys' views, but also

reflect or include information that was provided by CIA officials (i.e., the attorneys' clients) as part of the officials' efforts to secure legal advice in confidence, and were used by counsel in advising clients as to these matters.

2. Attorney Work Product

108. The CIA applied Exemption (b)(5) to withhold documents or portions of documents that contain attorney work product. Specifically, CIA has withheld information reflecting the mental impressions, thought processes, and evaluations of CIA attorneys that was compiled in anticipation of litigation. I have consulted with the Office of General Counsel (OGC). At the time the OGC attorneys were compiling their work product, they were aware that there was CIA Office of Inspector General (OIG), military and congressional interest in item no. 43. Although this FOIA action is currently the only pending litigation regarding this item, OGC attorneys understood at the time that such circumstances frequently spawn investigations that can lead to criminal or administrative sanctions. Therefore, the OGC attorneys were compiling their work product at a time when they anticipated criminal or civil litigation.

3. Deliberative Process

109. Additionally, the CIA applied Exemption (b)(5) to withhold documents or portions of documents that contain

information that would reveal the Agency's deliberative thought processes. The deliberative process privilege protects the internal deliberations of the government by exempting from release recommendations, analyses, speculation and other information, both non-factual and in some cases factual, prepared in anticipation of or to inform decisionmaking. Not merely documents, but rather the integrity of the deliberative process itself, is protected by this privilege.

110. This privilege is designed to protect and encourage open, candid discussions on matters of policy between subordinates and superiors. It protects decisionmakers' ability to receive confidential advice and counsel, as well as allows agencies to freely explore alternative avenues of action and to engage in internal debates without fear of public scrutiny. If it were known that CIA's predecisional analysis and deliberation might be subject to public release, it would effectively stifle and "chill" predecisional debates within CIA.

111. Where the CIA has withheld documents under the deliberative process privilege, the documents contain recommendations, candid internal discussions, preliminary judgments, multiple draft responses, briefing papers, proposed recommendations or proposed answers. Disclosure

of the information would reveal the thought processes of CIA officials, including intelligence officers and CIA attorneys. In fact, as described in the document index, many comments by officials are included in the drafts. The privilege also applies to the factual information: the specific facts contained in the drafts, summaries and assessments were selected and highlighted out of other potentially relevant facts and background material.

112. Because the officials involved expected that these matters would remain confidential, release of these records would discourage open and frank discussions among CIA personnel, thereby threatening the confidence needed to ensure the candor of future CIA deliberations. Disclosure of the information thus would cause harm to CIA's internal deliberative process. Such information is therefore currently and properly exempt from disclosure pursuant to FOIA Exemption (b)(5).

E. FOIA Exemption (b)(7)(A)

113. FOIA Exemption (b)(7)(A), 5 U.S.C. § 552(b)(7)(A), authorizes the withholding of:

> records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings.

FOIA Exemption (b)(7)(A) has been invoked in this case for withholding information compiled in connection with a properly authorized pending law enforcement activity. The CIA records withheld pursuant to Exemptions (b)(7)(A) are in the CIA OIG investigatory files compiled in the course of its investigations of potential unlawful activity. These records relate to the OIG investigation and are currently located in OIG investigatory files, although the documents described in the attached index are duplicates located outside of the OIG files.

114. I have consulted with the OIG regarding plaintiffs' FOIA requests. The OIG is investigating the events underlying item no. 43. The OIG has determined that the release of certain information in these records could reasonably be expected to interfere with that investigation. Specifically, the OIG has stated that information in these documents would (1) reveal the course, nature, scope or strategy of an ongoing investigation, (2) prematurely reveal evidence in this ongoing investigation, (3) hinder OIG ability to control or shape the investigation, and (4) reveal investigative trends, emphasis, or targeting schemes. In addition, certain documents discuss other OIG investigations and those portions of those documents would prematurely reveal the

existence of, or evidence in, ongoing investigations. Therefore the release of the information withheld under Exemption (7)(A) could reasonably be expected to interfere with a law enforcement activity.

* * * *

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

Executed this 30 day of March 2005.

Marilyn A. Dorn
Information Review Officer
Central Intelligence Agency