IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION, et al., Plaintiffs, v. DEPARTMENT OF JUSTICE, et al., Defendants.	Case No. 1:10-CV-00436-RMC

DECLARATION OF MARY ELLEN COLE
INFORMATION REVIEW OFFICER
NATIONAL CLANDESTINE SERVICE
CENTRAL INTELLIGENCE AGENCY

I. INTRODUCTION

I, MARY ELLEN COLE, hereby declare and state:

1. I am the Information Review Officer ("IRO") for the National Clandestine Service ("NCS") of the Central Intelligence Agency ("CIA"). I was appointed to this position in June 2010. I have held operational and managerial positions in the CIA since 1979.

2. The NCS is the organization within the CIA responsible for conducting the CIA's foreign intelligence and counterintelligence activities. As the IRO for the NCS, I am authorized to assess the current, proper classification of CIA information based on the classification criteria of Executive Order 13526 and applicable CIA regulations. As the IRO, I am

responsible for the classification review of documents and information originated by the NCS or otherwise implicating NCS interests, including documents which may be the subject of court proceedings or public requests for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. As part of my official duties, I ensure that any determinations regarding the public release or withholding of any such documents or information are proper and do not jeopardize the national security by disclosing classified NCS intelligence methods, operational targets, or activities or endanger NCS personnel, facilities, or sources.

3. As a senior CIA official and under a written delegation of authority pursuant to section 1.3(c) of Executive Order 13526, 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.

4. I am submitting this declaration in support of the CIA's motion for summary judgment in this proceeding. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA request. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

5. Plaintiffs' FOIA request seeks ten categories of records "pertaining to the use of unmanned aerial vehicles ('UAVs') - commonly referred to as 'drones'… - by the CIA and the Armed Forces for the purposes of killing targeted individuals." As an original classification authority for the CIA, I have determined that the CIA can neither confirm nor deny the existence or nonexistence of responsive records because the existence or nonexistence of any such records is a currently and properly classified fact that is exempt from release under FOIA exemptions (b)(1) and (b)(3). Official CIA acknowledgement of the existence or nonexistence of the requested records would reveal information that concerns intelligence activities, intelligences sources and methods, and U.S. foreign relations and foreign activities, the disclosure of which reasonably could be expected to cause damage to the national security of the United States. I explain the basis for this determination, commonly referred to as a Glomar response,[1] in Part III.

6. This declaration will explain, to the greatest extent possible on the public record,[2] the basis for the CIA's Glomar response to Plaintiffs' FOIA request and to identify the

[1] The origins of the Glomar response trace back to this Circuit's decision in *Phillippi v. CIA*, 546 F.2d 1009 (D.C. Cir. 1976), which affirmed 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' ship, the "Hughes Glomar Explorer."

[2] If the Court desires, the CIA is prepared to supplement this unclassified declaration with a classified declaration containing additional information that the CIA cannot file on the public record.

applicable FOIA exemptions that support the Glomar response in this case.

II. PLAINTIFFS' FOIA REQUEST

7. In a letter to the CIA's Information and Privacy Coordinator dated 13 January 2010,[3] Plaintiffs submitted a FOIA request seeking "records pertaining to the use of unmanned aerial vehicles ('UAVs') - commonly referred to as 'drones' and including the MQ-1 Predator and MQ-9 Reaper - by the CIA and the Armed Forces for the purposes of killing targeted individuals." The request refers to this subject as "drone strikes" for short, a term I will use for convenience in this declaration while not confirming or denying the CIA's involvement or interest in such drone strikes. According to Plaintiffs' Amended Complaint, Plaintiffs submitted identical FOIA requests to the Department of Defense ("DOD"), the Department of State ("State"), the Department of Justice ("DOJ"), and DOJ's Office of Legal Counsel ("OLC") on the same day. A true and correct copy of the 13 January 2010 letter is attached as Exhibit A.

8. By letter dated 9 March 2010, the CIA issued a final response to Plaintiffs' request stating that "[i]n accordance with section 3.6(a) of Executive Order 12958, as amended, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to [Plaintiffs'] request," citing FOIA

[3] The letter is misdated as 13 January 2009.

exemptions (b)(1) and (b)(3) and "[t]he fact of the existence or nonexistence of requested records is currently and properly classified and is intelligence sources and methods information that is protected from disclosure by section 6 of the CIA Act of 1949, as amended." The CIA informed Plaintiffs that they had a right to appeal the finding to the Agency Release Panel, the body within the CIA that considers FOIA appeals. A true and correct copy of the CIA's 9 March 2010 letter is attached as Exhibit B.

9. By letter dated 22 April 2010, Plaintiffs appealed the CIA's final response. A true and correct copy of the 22 April 2010 letter is attached as Exhibit C.

10. By letter dated 6 May 2010, the CIA acknowledged receipt of counsel for Plaintiffs' letter challenging the CIA's Glomar response. The CIA accepted Plaintiffs' appeal and noted that arrangements would be made for its consideration by the appropriate members of the Agency Release Panel. A true and correct copy of the CIA's 6 May 2010 letter is attached as Exhibit D.

11. While this appeal was pending, Plaintiffs filed an Amended Complaint in this matter on 1 June 2010, which added the CIA as a co-defendant to their previously-filed lawsuit against DOD, State, and OLC. As a result of the filing of the Amended Complaint, and pursuant to its FOIA regulations at 32 C.F.R. §

1900.42(c), the CIA terminated the administrative appeal proceedings on 14 June 2010. A true and correct copy of the CIA's 14 June 2010 letter is attached as Exhibit E.

III. THE CIA'S GLOMAR DETERMINATION

12. The CIA has invoked the Glomar response in this case because confirming or denying the existence or nonexistence of CIA records responsive to Plaintiffs' FOIA request would reveal classified information that is protected from disclosure by statute. An official CIA acknowledgement that confirms or denies the existence or nonexistence of records responsive to Plaintiffs' FOIA request would reveal, among other things, whether or not the CIA is involved in drone strikes or at least has an intelligence interest in drone strikes. As discussed below, such a response would implicate information concerning clandestine intelligence activities, intelligence sources and methods, and U.S. foreign relations and foreign activities. The CIA's only course of action is to invoke a Glomar response by stating that it can neither confirm nor deny the existence or nonexistence of the requested records.

13. The CIA is charged with carrying out a number of important functions on behalf of the United States, which include, among other activities, collecting and analyzing foreign intelligence and counterintelligence. A defining characteristic of the CIA's intelligence activities is that they

are typically carried out through clandestine means, and therefore they must remain secret in order to be effective. In the context of FOIA, this means that the CIA must carefully evaluate whether its response to a particular FOIA request could jeopardize the clandestine nature of its intelligence activities or otherwise reveal previously undisclosed information about its sources, capabilities, authorities, interests, strengths, weaknesses, resources, etc.

14. In a typical scenario, a FOIA requester submits a request to the CIA for information on a particular subject and the CIA conducts a search of non-exempt records and advises whether responsive records were located. If records are located, the CIA provides non-exempt records or reasonably segregable non-exempt portions of records and withholds the remaining exempt records and exempt portions of records. In this typical circumstance, the CIA's response - either to provide or not provide the records sought - actually confirms the existence or nonexistence of CIA records related to the subject of the request. Such confirmation may pose no harm to the national security or clandestine intelligence activities because the response focuses on releasing or withholding specific substantive information. In those circumstances, the fact that the CIA possesses or does not possess records is not itself a classified fact.

15. In the present situation, however, the CIA asserted a Glomar response to Plaintiffs' request because the existence or nonexistence of CIA records responsive to this request is a currently and properly classified fact, the disclosure of which reasonably could be expected to cause damage to the national security. What is classified is not just individual records themselves on a document-by-document basis, but also the mere fact of whether or not the CIA possesses responsive records that pertain to drone strikes.

16. To illustrate, consider a FOIA request for all records within the CIA's possession regarding a specific clandestine technology. The CIA's acknowledgement of responsive records, even if the CIA withheld the records pursuant to a FOIA exemption, would reveal that the CIA has an interest in this clandestine technology and may be employing the technology. Moreover, if CIA were required to provide information about the number and nature of the responsive records it withheld (including the dates, authors, recipients, and general subject matter of each record), as is typically required in FOIA litigation, the CIA's response would reveal additional information about the depth and breadth of the CIA's interest in or use of that technology.

17. Conversely, if the CIA were to confirm that no responsive records existed, that fact would tend to reveal that

the CIA does not have an interest in or is not able to use the technology at issue. That fact could be extremely valuable to the targets of CIA intelligence efforts, who could carry out their activities with the knowledge that the CIA would be unable to monitor their activities using that particular technology.

18. To be credible and effective, the CIA must use the Glomar response consistently in all cases where the existence or nonexistence of records responsive to a FOIA request is a classified fact, including instances in which the CIA does not possess records responsive to a particular request. If the CIA were to invoke a Glomar response only when it actually possessed responsive records, the Glomar response would be interpreted as an admission that responsive records exist. This practice would reveal the very information that the CIA must protect in the interest of national security.

19. In this case, Plaintiffs seek ten categories of records concerning the use of drones "by the CIA and the Armed Forces for the purposes of killing targeted individuals." Hypothetically, if the CIA were to respond to this request by admitting that it possessed responsive records, it would indicate that the CIA was involved in drone strikes or at least had an intelligence interest in drone strikes - perhaps by providing supporting intelligence, as an example. In either case, such a response would reveal a specific clandestine

intelligence activity or interest of the CIA, and it would provide confirmation that the CIA had the capability and resources to be involved in these specific activities - all facts that are protected from disclosure by Executive Order 13526 and statute.

20. Still further, if the CIA were to admit having responsive records but withhold them under a FOIA exemption, normally it would be required to create an index that revealed the number and nature of those withheld records (including their date, authors, recipients, and general subject matter). This disclosure would reveal additional information about the depth and breadth of the CIA's involvement, or interest, in drone strikes. If, for instance, the CIA possessed 10,000 responsive records, that might indicate a significant CIA involvement or interest in drone strikes whereas 10 responsive records might indicate minimal involvement or interest. Similarly, disclosing the dates of the responsive records would provide a timeline of the CIA's activities that could provide a roadmap to when and where the CIA is operating or not operating.

21. On the other hand, if the CIA were to respond by admitting that it did not possess any responsive records, it would indicate that the CIA had no involvement or interest in drone strikes. Such a response would reveal sensitive information about the CIA's capabilities, interests, and

resources that is protected from disclosure by Executive Order 13526 and statute.

22. As each of the ten categories of records requested by Plaintiffs relate to the topic of drone strikes in some manner, a response other than a Glomar would implicate all of the concerns outlined above. For illustration purposes, however, I will address some of the categories individually.

- Category No. 1 seeks records regarding the legal basis for drone strikes. Whether or not the CIA possesses legal opinions concerning drone strikes would itself be classified because the answer provides information about the types of intelligence activities in which the CIA may be involved or interested.
- Category No. 3 requests records concerning "selection of human targets for drone strikes …" If the CIA were required to confirm or deny the existence or nonexistence of such records, the response would reveal whether or not the CIA was specifically involved in target selection, which would itself be a classified fact as the CIA has never officially acknowledged whether or not it is involved in drone strikes.
- Category No. 5 seeks records concerning "after the fact" evaluations or assessments of individual drone

strikes. Confirming or denying the existence or nonexistence of such records would reveal a classified fact - i.e., specific intelligence collection activities and interests of the CIA, or lack thereof.

- Category No. 10 requests records regarding the "training, supervision, oversight, or discipline of UAV operators and other individuals involved in the decision to execute a targeted killing using a drone." If the CIA were to respond with anything other than a Glomar, it would unquestionably reveal whether or not the CIA was involved in drone strike operations, which is a classified fact.

23. Two categories that merit additional attention are Category No. 2, which seeks records concerning any "agreements, understandings, cooperation, or coordination between the U.S. and the governments of Afghanistan, Pakistan," or other countries concerning drone strikes, and Category No. 1.B, which requests records relating to the potential involvement of foreign governments, including the government of Pakistan, in drone strikes. Responding to these requests with anything other than a Glomar would reveal not only whether or not the CIA plays a role in drone strikes, but also whether or not foreign governments are involved in drone strikes in some manner. This

fact also is protected from disclosure by Executive Order 13526 and statute.

24. Under any of these scenarios, the CIA's confirmation or denial that it does or does not possess responsive records regarding drone strikes reasonably could be expected to cause damage to national security. It would greatly benefit hostile groups, including terrorist organizations, to know with certainty in what intelligence activities the CIA is or is not engaged or in what the CIA is or is not interested. To reveal such information would provide valuable insight into the CIA's capabilities, interests and resources that our enemies could use to reduce the effectiveness of CIA's intelligence operations.

25. The CIA's admission or denial that it does or does not possess responsive records reasonably could be expected to cause damage to the national security by negatively impacting U.S. foreign relations. Any response by the CIA that could be seen as a confirmation of its alleged involvement in drone strikes could raise questions with other countries about whether the CIA is operating clandestinely inside their borders, which in turn could cause those countries to respond in ways that would damage U.S. national interests. Moreover, as noted, some of the individual categories of requested records specifically concern the potential involvement of foreign governments in drone strikes. If the CIA is forced to acknowledge the existence or

nonexistence of records responsive to a request concerning the assistance of a foreign liaison partner, such acknowledgement would be seen as a tacit confirmation or denial of a clandestine foreign intelligence relationship and/or the involvement of a foreign government in a clandestine activity. When foreign governments cooperate with the CIA, most of them require the CIA to keep the fact of their cooperation in the strictest confidence. Any violation of this confidence could weaken, or even sever, the relationship between the CIA and its foreign intelligence partners, thus degrading the CIA's ability to combat hostile threats abroad. Given the sensitivity of these foreign relationships and their importance to the national security, Plaintiffs' request reflects precisely the situation in which CIA finds it necessary to assert a Glomar response.

26. In sum, for the CIA to officially confirm or deny the existence or nonexistence of the requested records would reveal classified national security information that concerns intelligence activities, intelligence sources and methods, and U.S. foreign relations and foreign activities. I have determined that such a revelation could be expected to cause damage to U.S. national security. As discussed below, I have determined that the fact of the existence or nonexistence of records responsive to Plaintiffs' FOIA request is currently and

properly classified and exempt from release under FOIA exemptions (b)(1) and (b)(3).

IV. APPLICATION OF FOIA EXEMPTIONS

A. FOIA Exemption (b)(1)

27. FOIA exemption (b)(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).

28. Section 1.1(a) of Executive Order 13526 provides that information may be originally classified under the terms of this order only if all of the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S. Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of Executive Order 13526; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in some level of damage to the national security, and the original classification authority is able to identify or describe the damage.

29. Furthermore, section 3.6(a) of Executive Order 13526 specifically states that "[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 or its predecessors." Executive Order 13526 therefore explicitly authorizes precisely the type of response that the CIA has provided to Plaintiffs in this case.

30. Consistent with sections 1.1(a) and 3.6(a) of Executive Order 13526, and as described below, I have determined that the existence or nonexistence of the requested records is a properly classified fact that concerns sections 1.4(c) ("intelligence activities . . . [and] intelligence sources or methods") and 1.4(d) ("foreign relations or foreign activities of the United States"). This fact constitutes information that is owned by and under the control of the U.S. Government, the unauthorized disclosure of which reasonably could be expected to result in damage to national security.

31. My determination that the existence or nonexistence of the requested records is 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.

1. Intelligence Activities

32. Clandestine intelligence activities lie at the heart of the CIA's mission. As previously described, an acknowledgment of information regarding specific intelligence activities can reveal the CIA's specific intelligence capabilities, authorities, interests, and resources. Terrorist organizations, foreign intelligence services, and other hostile groups use this information to thwart CIA activities and attack the United States and its interests. These parties search continually for information regarding the activities of the CIA and are able to gather information from myriad sources, analyze this information, and devise ways to defeat the CIA activities from seemingly disparate pieces of information. In this case, as detailed in Part III, acknowledging the existence or nonexistence of the requested records reasonably could be expected to cause damage to the national security by disclosing whether or not the CIA is engaged in or otherwise interested in clandestine intelligence activities related to drone strikes.

2. Intelligence Sources and Methods

33. For the same reasons, the existence or non-existence of records responsive to Plaintiffs' requests also implicates intelligence sources and methods; disclosure of this information likewise reasonably can be expected to cause damage to national security. Intelligence sources and methods are the basic

practices and procedures used by the CIA to accomplish its mission. They can include human assets, foreign liaison relationships, sophisticated technological devices, collection activities, cover mechanisms, and other sensitive intelligence tools. As articulated in Part III, to confirm or deny that the CIA possesses records responsive to Plaintiffs' request could risk the disclosure of the existence or nonexistence of several potential intelligence sources and methods, including the CIA's possible relationships with foreign liaison partners relating to drone strikes, any CIA interest in drone strikes, and the CIA's capabilities relating to that particular device.

34. Intelligence sources and methods must be protected from disclosure in every situation where a certain intelligence capability, technique, or interest is unknown to those groups that could take countermeasures to nullify its effectiveness. Clandestine intelligence techniques, capabilities, or devices are valuable only so long as they remain unknown and unsuspected. Once an intelligence source or method (or the fact of its use in a certain situation) is discovered, its continued successful use by the CIA is seriously jeopardized.

35. The CIA must do more than prevent explicit references to an intelligence source or method; it must also prevent indirect references to such a source or method. One vehicle for gathering information about the CIA capabilities is by reviewing

officially-released information. We know that terrorist organizations and other hostile groups have the capacity and ability to gather information from myriad sources, analyze it, and deduce means and methods from disparate details to defeat the CIA's collection efforts. Thus, even seemingly innocuous, indirect references to an intelligence source or method could have significant adverse effects when juxtaposed with other publicly-available data.

3. Foreign Relations and Foreign Activities of the United States

36. Responding to Plaintiffs' FOIA request with anything other than a Glomar response also would reveal information concerning U.S. foreign relations and foreign activities, the disclosure of which reasonably can be expected to cause damage to the national security. As an initial matter, because CIA's operations are conducted almost exclusively overseas or otherwise concern foreign intelligence matters, they generally are U.S. "foreign" activities by definition. In this case, that means that information concerning the CIA's involvement in drone strikes, if such information existed, would concern a potential foreign activity that would fall within section 1.4(d) of Executive Order 13526.

37. As described in Section III, to confirm or deny the existence of responsive records also could reveal information

that would negatively impact the foreign relations of the United States. In carrying out its legally authorized intelligence activities, the CIA engages in activities that, if known by foreign nations, reasonably could be expected to cause damage to U.S. relations with affected or interested nations. Although it is generally known that the CIA conducts clandestine intelligence operations, identifying an interest in a particular matter or publicly disclosing a particular intelligence activity could cause the affected or interested foreign government to respond in ways that would damage U.S. national interests. An official acknowledgement that the CIA possesses the requested information could be construed by a foreign government, whether friend or foe, to mean that the CIA has operated undetected within that country's borders or has undertaken certain intelligence operations against its residents. Such a perception could adversely affect U.S. foreign relations with that nation.

38. U.S. foreign relations are further implicated by the categories of the FOIA request that specifically concern the potential involvement of foreign countries in drone strikes. If the CIA is required to deny the existence of such records, it would have the same impact on foreign relations as described in the preceding paragraph. If the CIA is required to confirm the existence of such records, it could be interpreted by some to

mean that certain foreign liaison partners of the CIA are involved in drone strikes, which could have political implications in those countries and also make them less willing to cooperate with the CIA in the future.

B. FOIA Exemption (b)(3)

39. FOIA exemption (b)(3) provides that FOIA does not apply to matters that are:

> specifically exempted from disclosure by statute (other than section 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).

40. Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 403-1(i)(1) (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, the CIA is authorized to protect CIA sources and methods

from unauthorized disclosure.[4] Parts III and IV(A) of this declaration demonstrate that acknowledging the existence or nonexistence of the requested records would reveal information that concerns intelligence sources and methods, which the National Security Act is designed to protect.

41. Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 403g (the "CIA Act"), provides that the CIA shall be exempted from the provisions of "any other law" (in this case, FOIA) which requires the publication or disclosure of, *inter alia*, the "functions" of the CIA. Accordingly, under section 6, the CIA is exempt from disclosing information relating to its core functions - which plainly include clandestine intelligence activities, intelligence sources and methods and foreign liaison relationships. The CIA Act therefore constitutes a federal statute which "establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). As this declaration has explained in detail, acknowledging the existence or nonexistence of the requested records would require

[4] Section 1.6(d) of Executive Order 12333, as amended, 3 C.F.R. 200 (1981), *reprinted in* 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][.]"

the CIA to disclose information about its core functions, an outcome the CIA Act expressly prohibits.

42. Given that Plaintiffs' request falls within the ambit of both the National Security Act and the CIA Act, revealing the existence or nonexistence of the requested records is a classified fact that is exempt from disclosure under FOIA exemption (b)(3). In contrast to Executive Order 13526, these statutes do not require the CIA to identify and describe the damage to the national security that reasonably could be expected to result should the CIA confirm or deny the existence or nonexistence of records responsive to Plaintiffs' FOIA request. Nonetheless, I refer the Court to the paragraphs above for a description of the damage to the national security should anything other than a Glomar response be required of the CIA in this case. FOIA exemptions (b)(1) and (b)(3) thus apply independently and co-extensively to Plaintiffs' request.

V. THE ABSENCE OF AUTHORIZED OFFICIAL DISCLOSURES

43. In their administrative appeal, Plaintiffs reference a number of statements of current and former U.S. Government officials, news reports, and other publicly available information to support their argument that the CIA has "waived [its] ability to invoke a Glomar response..." Contrary to Plaintiffs' suggestion, no authorized CIA or Executive Branch official has disclosed whether or not the CIA possesses records

regarding drone strikes or whether or not the CIA is involved in drone strikes or has an interest in drone strikes. These news reports largely amount to media speculation and conjecture by individuals who do not have the authority to make an official and documented disclosure on behalf of the CIA.

44. Indeed, many of the statements cited by Plaintiffs are either unsourced or come from former government officials or anonymous individuals. These statements do not constitute officially authorized disclosures by the CIA. If the CIA was precluded from issuing a Glomar response to FOIA requests as a result of such non-authoritative statements, the U.S. Government's ability to protect classified information would be eviscerated, thereby causing significant and far reaching damage to the U.S. national security.

45. Pages 3-4 of Plaintiffs' administrative appeal also cite several statements from the CIA Director and the Director of National Intelligence (DNI) to support their argument that the CIA has waived its right to invoke the Glomar response. I have reviewed these statements. In none of the statements did the CIA Director or the DNI acknowledge whether or not the CIA possesses responsive records regarding drone strikes - the relevant inquiry here. Nor did they acknowledge whether or not the CIA is involved in drone strikes or has an intelligence interest in drone strikes. When focusing on what the CIA

Director and DNI specifically said in these remarks, it is apparent that these two officials made no admissions that would imperil the CIA's ability to invoke a Glomar response.

VI. CONCLUSION

46. In this case the existence or nonexistence of the requested records is itself a properly classified fact and is so intricately intertwined with intelligence activities, intelligence sources and methods, and U.S. foreign relations and foreign activities that this fact must remain classified. Accordingly, I have determined the only appropriate response is for the CIA to neither confirm nor deny the existence of the requested records under FOIA exemptions (b)(1) and (b)(3).

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

Executed this 30th day of September 2010.

Mary Ellen Cole
Information Review Officer
Central Intelligence Agency