

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES)	
UNION and THE AMERICAN CIVIL)	
LIBERTIES FOUNDATION)	
)	
Plaintiffs,)	
)	
v.)	Case No. 15-cv-9317 (AKH)
)	
DEPARTMENT OF DEFENSE,)	
et. al.)	
)	
Defendants.)	
)	

DECLARATION OF ANTOINETTE B. SHINER
INFORMATION REVIEW OFFICER
FOR THE LITIGATION INFORMATION REVIEW OFFICE
CENTRAL INTELLIGENCE AGENCY

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

1. I currently serve as the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I assumed this position effective 19 January 2016.

2. Prior to becoming the IRO for LIRO, I served as the IRO for the Directorate of Support ("DS") for over sixteen months. In that capacity, I was responsible for making classification and release determinations for information originating within the DS. Prior to serving in the DS, I was the Deputy IRO for the Director's Area of the CIA ("DIR Area") for over three years. In that role, I was responsible for making

classification and release determinations for information originating within the DIR Area, which included, among other offices, the Office of the Director of the CIA, the Office of Congressional Affairs, the Office of Public Affairs, and the Office of General Counsel. I have held other administrative and professional positions within the CIA since 1986, and have worked in the information review and release field since 2000.

3. As the IRO for the LIRO, I am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to Section 1.3(c) of Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010), reprinted in 50 U.S.C. § 3161 note ("E.O. 13526"). Among other things, I am responsible for the classification review of CIA documents and information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

4. This declaration supports the government's motion for summary judgment by providing details regarding the 24 documents challenged by the ACLU. 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.

I. RECORDS AT ISSUE

5. By letter dated 14 August 2015, the ACLU requested 69 documents that were referenced in the Executive Summary to the Senate Select Committee on Intelligence's ("SSCI's") study on the CIA's former detention and interrogation program, which was released by SSCI in December 2014. The ACLU attached a chart to the request identifying each of these records by description and footnote. The request also asked for a fee waiver and requested expedited processing.

6. By letter dated 26 August 2015, the CIA denied the ACLU's request for expedited treatment.

7. The ACLU filed this lawsuit on 25 November 2015.

8. After conducting searches for responsive material, the Agency located copies of all of the CIA-originated documents. In addition, separate searches conducted by other federal agencies uncovered the remainder of the responsive documents. On 13 June 2016 and 30 September 2016, the Agency produced non-exempt, segregable portions of the CIA-originated records to the ACLU. The ACLU has indicated that they intend to challenge the redactions associated with twenty-four of the requested records. The attached *Vaughn* index describes those documents and indicates the basis for any redactions made by the Agency.¹

¹ The documents numbers in the *Vaughn* index correspond with the document numbering convention used by the ACLU in its initial request. Because the

9. I note that, in conjunction with SSCI's study, the CIA declassified certain information related to the former detention and interrogation program. I have carefully considered the records at issue in this case in light of those declassifications and I have determined that, notwithstanding those disclosures, each of these documents contains certain details that remain exempt from disclosure pursuant to Exemptions 1, 3, 5 and 6. 5 U.S.C. § 552 (b)(1), (b)(3), (b)(5) and (b)(6). The exempt information is discussed below.²

II. FOIA EXEMPTIONS PROTECTING CLASSIFIED INFORMATION

A. EXEMPTION 1

10. Exemption 1 provides that FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). Here, the information withheld pursuant to Exemption 1 satisfies the procedural and the substantive requirements of Executive Order 13526, which governs classification. See E.O. 13526 § 1.1(a), § 1.4(c).

ACLU is not challenging certain records produced in the course of this litigation, those documents are not listed in the attached index.

² Additionally, I note that in connection with a separate civil action brought by the ACLU against two contractors associated with the former detention and interrogation program, the Agency, as a matter of discretion, released additional material that would have been subject to one or more FOIA exemptions.

11. As an original classification authority, I have determined that discrete portions of the records at issue in this litigation are currently and properly classified. Additionally, this information is owned by, and is under the control of, the U.S. Government. As described below, the information falls under classification categories § 1.4(c) and § 1.4(d) of the Executive Order because it concerns "intelligence activities (including covert action), [or] intelligence sources or methods" and pertains to "foreign relations or foreign activities of the United States, including confidential sources." Further, unauthorized disclosure of this material could reasonably be expected to result in damage to national security. None of the information at issue has been classified in order to conceal violations of law, inefficiency or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security. Further, the responsive documents are properly marked in accordance with § 1.6 of the Executive Order.

12. More specifically, the classified material contained in the reports consists of details about foreign liaison services; identities of covert personnel; current locations of covert CIA installations and former detention centers located

abroad; and descriptions of specific intelligence methods and activities, including certain counterterrorism techniques; code words and pseudonyms; and classification and dissemination control markings. See CIA *Vaughn* index, doc. nos. 1, 2, 6-10, 13-15, 17-19, 28, 29, 37, 43-46, 50 and 66. To the greatest extent possible, I have attempted to explain on the public record the nature of the information subject to Exemption 1 from the records at issue. Should the court require additional details about the classified and statutorily-protected national security information, the Agency is prepared to submit an *in camera, ex parte* declaration for that purpose. As described below, disclosure of these details, which would reveal intelligence sought by the Agency and the means by which it is acquired, could reasonably be expected to cause harm, and in some instances exceptionally grave damage, to the CIA's continued ability to collect this information and to the Agency's relationships with foreign partners.

13. *Foreign Liaison and Government Information.* The documents at issue contain foreign liaison and government information. Foreign liaison services and foreign government officials, including those whose information is contained in the documents at issue, provide sensitive intelligence to the CIA in confidence. In order to ensure the uninterrupted flow of that information, the Agency protects the content of those

communications as well as the mere fact of the existence of the U.S. Government's relationships with particular intelligence services and foreign government officials. Disclosure of these details could damage the relations with the entities mentioned in the records and with other foreign partners working with the Agency, who may discount future assurances that information will be kept confidential. This, in turn, could reasonably be expected to harm intelligence sharing and cooperation on other areas of importance to the national security.

14. *Covert Personnel.* The records also contain names and personally-identifying details related to covert CIA employees. As part of the CIA's mission, the Agency places certain employees undercover to protect the fact, nature, and details of its intelligence activities. Disclosing the identity of a covert employee could expose those activities as well as intelligence sources with whom the employee has had contact. Moreover, disclosing the identity of a covert employee could jeopardize the safety of the employee, his or her family, and others with whom he or she has had contact. Given the sensitivity of the CIA's former detention and interrogation program, there is a significant concern that the release of any information about these officers mentioned in the documents could place them and their associates in danger. In order for the Agency to effectively carry out its foreign intelligence

gathering mission, it is imperative that the identities of covert personnel remain protected.

15. *Field Installations.* The records also contain details regarding the current locations of covert CIA installations and former detention centers located abroad. The places where the CIA maintains a presence constitute intelligence methods of the Agency. Official acknowledgment that the CIA has a facility in a particular location abroad could cause the government of the country in which the installation is or was located to take countermeasures, either on its own initiative or in response to public pressure, to eliminate the CIA's presence within its borders or curtail cooperation with the CIA. Disclosing the location of a particular CIA facility could result in terrorists and foreign intelligence services targeting that installation and the persons associated with it. Moreover, given the politically charged nature of the former detention and interrogation program, even releasing information about the location of former facilities could harm relationships with foreign countries that housed those installations. In order to protect bilateral relations with these foreign partners, the CIA has consistently refused to confirm or deny the location of these facilities. In fact, these details were redacted from the Executive Summary publicly released by SSCI because of this sensitivity. As discussed above, damage to those relationships

with foreign governments could harm the CIA's continued ability to obtain accurate and timely foreign intelligence.

16. Intelligence Methods and Activities. The documents at issue also contain details that would disclose other intelligence methods and activities of the CIA. Intelligence methods are the means by which the CIA accomplishes its mission. Intelligence activities refer to the actual implementation of intelligence methods in an operational context. Intelligence activities are highly sensitive because their disclosure often would reveal details regarding specific methods which, in turn, could provide adversaries with valuable insight into CIA operations that could impair the effectiveness of CIA's intelligence collection.

17. For example, the CIA protected undisclosed details about certain intelligence gathering techniques and Agency tradecraft, which have been, and continue to be, used in range of CIA operations and activities including current counterterrorism operations. Revealing this information would tend to show the breadth, capabilities, and limitations of the Agency's intelligence collection or activities. Such disclosures could provide adversaries with valuable insight into CIA operations that would damage their effectiveness. Adversaries could use this information to develop measures to

detect and counteract the Agency's intelligence methods and the operational exercise of those methods.

18. Code Words and Pseudonyms. Some of the information redacted from the records consists of code words and pseudonyms. The use of code words 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 and other federal agencies use code words in cables and other correspondence to disguise the true name of a person or entity of operational intelligence interest, such as a source, a foreign liaison service, or a covert program. As discussed above, the CIA also uses pseudonyms, which are essentially code names, in many of its internal communications.

19. When obtained and matched to other information, code words 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 code word or pseudonym. By using these code words, the CIA and other federal agencies add an extra measure of security, minimizing the damage that would flow from an unauthorized disclosure of intelligence information. The disclosure of code words and pseudonyms --

especially in context or in the aggregate -- can permit foreign intelligence services and other groups to fit disparate pieces of information together and to discern or deduce the identity or nature of the person or project for which the code word or pseudonym stands.

20. Classification and Dissemination-Control Markings. The documents also contain classification and dissemination-control markings, which are among the intelligence methods used to control the dissemination of intelligence-related information and protect it from unauthorized disclosure. These markings indicate the overall classification level as well as the classification of discrete portions of a document, the presence of any compartmented information, and the limits on disseminating the information, which, in turn, would reveal details about the sensitivity and content of the underlying intelligence and indicate restrictions on access and handling. Disclosure of these markings would reveal or highlight areas of particular intelligence interest, sensitive collection sources or methods, foreign sensitivities, and procedures for gathering, protecting, and processing intelligence. Accordingly, the release of this information could reasonably be expected to cause damage to national security.

21. For all of the reasons discussed above, the CIA cannot disclose certain information contained in the responsive records

that pertains to intelligence sources, intelligence methods, intelligence activities, and foreign relations or foreign activities. I have determined that this information remains currently and properly classified pursuant to the criteria of Executive Order 13526, as its disclosure could reasonably be expected to cause damage to the national security of the United States.

B. EXEMPTION 3

22. Exemption 3 protects information that is specifically exempted from disclosure by statute. A withholding statute under Exemption 3 must (A) require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establish particular criteria for withholding or refer to particular types of matters to be withheld. 5 U.S.C. § 552(b)(3).

23. Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024 (the "National Security Act"), which provides that the Director of National Intelligence "shall protect intelligence sources and methods from unauthorized disclosure," has been widely recognized by courts to constitute a withholding statute in accordance with Exemption 3. All of the information withheld pursuant to Exemption 1 constitutes intelligence sources and methods (as well as the operational exercise of those methods) of the

Agency. See *CIA Vaughn* index, doc. nos. 1, 2, 6-10, 13-15, 17-19, 28, 29, 37, 55 and 66. Having reviewed the material, I find it to be properly exempt from disclosure under the National Security Act. Although no harm rationale is required, for the reasons discussed above, the release of this information could significantly impair the CIA's ability to carry out its core missions.

24. Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507 (the "CIA Act"), has also been widely recognized as a withhold statute under Exemption 3. Section 6 of the CIA Act protects from disclosure information that would reveal the CIA's organization, functions, including the function of protecting intelligence sources and methods, names, official titles, salaries, or numbers of personnel employed by the CIA. Here, the CIA Act applies to identifying information of Agency personnel, including covert personnel. See *CIA Vaughn* index, doc. nos. 2, 4, 6-10, 13-15, 17-19, 28, 29, 37, 43-46, 50, 55 and 66. Although the CIA Act requires no showing of harm, releasing details regarding Agency personnel, particularly in the context of the former detention and interrogation program, could subject them to harassment, intimidation and possibly physical harm.

III. FOIA EXEMPTIONS PROTECTING PRIVILEGED INFORMATION

A. DELIBERATIVE PROCESS PRIVILEGE

25. The deliberative process privilege protects Agency communications that are pre-decisional and deliberative. The purpose of the privilege is to prevent injury to the quality of agency decision-making. Here, the CIA invoked the deliberative process privilege in conjunction with the attorney-client privilege (as well as the national security exemptions) to protect certain communications between attorneys in the CIA's Office of General Counsel and Agency employees and between Department of Justice attorneys to CIA officials consisting of legal advice provided by attorneys to Agency clients or information gathered from Agency personnel in furtherance of providing legal advice. See CIA *Vaughn* index, doc. nos. 2, 4, 6-10, 15, 17, 18, 26, 29, 37, and 43-46. The attorney's role, in these instances, was to provide legal counsel in connection with specific proposals. These communications reflect interim stages associated with given deliberations. In the contexts in which these deliberations occurred, the lawyers presented a range of legal options and this advice served as one consideration for decision-makers when deciding whether to pursue a certain course of action. The legal advice itself was one part of that decision-making process and did not constitute

the Agency's final decision to undertake a particular operation or action.

26. Additionally, the CIA invoked the deliberative process privilege for draft documents, comments related to draft documents, proposals, assessments of ongoing activities and recommendations for future steps. See CIA *Vaughn* index, doc. nos. 2, 13, 14, 17, 19, 28, 50, 55 and 66. Each of these documents reflect interim stages associated with a given deliberation concerning to how to handle different policies related to the former detention and interrogation program. These communications do not convey final Agency viewpoints on a particular matter, but rather reflect different considerations, opinions, options and approaches that preceded an ultimate decision or are part of a policy-making process.

27. Further, I have examined all of the documents withheld pursuant to the deliberative process privilege and have determined that to the extent there is any factual material it is part and parcel of the deliberations and cannot be segregated. The selection of facts in these documents would reveal the nature of the preliminary recommendations and opinions preceding the final determinations. In the case of draft documents, disclosure of these records would allow for the comparison between the wording in the final version and the drafts thereby revealing what information was considered

significant or was discarded in the course of the drafting process. Although no showing of harm is required for invoking the deliberative process privilege, disclosure of these documents would significantly hamper the ability of Agency personnel to candidly discuss and assess the viability of certain courses of action. Additionally, revealing this information could mislead or confuse the public by disclosing rationales that were not the basis for the Agency's final decisions. None of the information withheld by the CIA pursuant to the deliberative process privilege has been expressly adopted or incorporated by reference into any final policy statement. Additionally, none of this information was released in the public version of SSCI's study or otherwise publicly disclosed.

B. ATTORNEY-CLIENT PRIVILEGE

28. The attorney-client privilege protects confidential communications between an attorney and his or her client relating to a legal matter for which the client has sought professional advice. In this case, the attorney-client privilege applies to confidential communications between Agency employees and attorneys within the CIA's Office of General Counsel and between CIA officials and Department of Justice lawyers on issues related to the former detention and interrogation program. See *CIA Vaughn* index, doc. nos. 2, 4, 6-10, 15, 18, 29, 37, and 43-46. Here, Agency employees requested

legal advice related to certain proposed courses of action or operations. These confidential communications consist of factual information supplied by the clients in connection with their requests for legal advice, discussions between attorneys that reflect those facts, and legal analysis and advice provided to the clients. The confidentiality of these communications was maintained. If this confidential information were to be disclosed, it would inhibit open communication between CIA personnel and their attorneys, thereby depriving the Agency of full and frank legal counsel. None of the withheld attorney-client communications have been released in connection with SSCI's study or otherwise publicly disclosed.

C. PRESIDENTIAL COMMUNICATIONS PRIVILEGE

29. In addition, the presidential communications privilege applies to the Memorandum of Notification ("MON") exchanged between the President and CIA. See CIA Vaughn index, doc. no. 1. This document is a direct, confidential communication from the President to Agency officials on sensitive topics, and disclosure would inhibit the President's ability to engage in effective communications and decisionmaking. The MON was issued on 17 September 2001 by President George W. Bush. It made certain findings and authorized the CIA to capture and detain terrorists. Consistent with the requirements of National

Security Act, 50 U.S.C. § 3093, Congress was notified of the MON. However, given the extraordinary sensitivity of the MON, the notification to Congress was strictly limited to certain members of Congress, as provided in 50 U.S.C. § 3093(c)(2). The MON also has been closely held within the Executive Branch. The MON is also withheld in full on the basis of Exemptions 1 and 3.

IV. PRIVACY EXEMPTIONS

30. Exemption 6 provides that the FOIA's information-release requirements do not apply to "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Courts have broadly construed the term "similar files" to cover any personally identifying information. Here, Exemption 6 applies to personally-identifying information of covert and overt CIA personnel and other individuals mentioned in the documents, such as names, positions, contact information, unique Agency identifiers (such as pseudonyms and Agency identification numbers) and similar identifying details.

31. Each of these individuals mentioned in these documents maintains a strong privacy interest in this information because its release could subject them to intimidation, harassment, reputational damage or physical harm merely due to their association with the former detention and interrogation program. The extensive media coverage and the sensitivity and controversy

surrounding the former detention and interrogation program further heighten those privacy concerns. Conversely, the release of individuals' identities or other personal information would not further the core purpose of the FOIA -- informing the public as to the operations or activities of the government. Because there are significant privacy concerns and no corresponding qualifying public interest in disclosure, I have determined that the release of this information would constitute a clearly unwarranted invasion of these individuals' personal privacy under Exemption 6. I note that to the extent that the identifying information is that of Agency personnel or associates protections of Exemption 3 in conjunction with the CIA Act jointly apply.

V. SEGREGABILITY

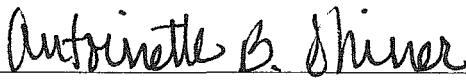
32. In evaluating the responsive documents, the CIA conducted a document-by-document and line-by-line review and released all reasonably segregable non-exempt information to plaintiffs. In instances where no segregable, non-exempt portions of documents could be released without potentially compromising classified, statutorily-protected or privileged information, then such documents were withheld from plaintiffs in full. In this case, the withheld information is protected by at least one of the exemptions and, in many instances, by

several overlapping and coextensive FOIA exemptions. For example, legal advice withheld pursuant to the deliberative process and attorney-client privileges of Exemption 5, may also contain classified information covered by Exemption 1 as well as intelligence sources and methods and Agency employee information that are protected by the Exemption 3 statutes - the National Security Act and the CIA Act. After reviewing all of the records at issue, I have determined that no additional information can be released without compromising classified or privileged material, and/or other protected information that falls within the scope of one or more FOIA exemptions.

* * *

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

Executed this 14th day of October 2016.



ANTOINETTE B. SHINER
Information Review Officer
Litigation Information Review
Office
Central Intelligence Agency