

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
Laura Poitras,)	
)	
Plaintiff,)	
)	Civil Action No. 1:15-CV-01091
v.)	
)	
Department of Homeland)	
Security, et al.)	
)	
Defendants.)	
_____)	

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

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

I. Introduction

1. I 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. 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). 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, and the Privacy Act of 1974, 5 U.S.C. § 552a.

4. Although CIA is not a party to this litigation, this declaration supports the Government's motion for summary judgment by providing additional details regarding certain CIA-related information contained in documents located by the Federal Bureau of Investigation ("FBI") in connection with this litigation. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA/Privacy Act request. I make the following statements based

upon my personal knowledge and information made available to me in my official capacity.

5. The purpose of this declaration is, to the greatest extent possible on the public record, (a) to explain the nature and scope of the CIA information involved in this case; (b) to identify the FOIA exemptions that apply to that information; and (c) to explain why the information is classified and cannot be publicly released.

II. Plaintiff's FOIA/Privacy Act Request

6. It is my understanding that Plaintiff Laura Poitras, through her attorney, submitted a FOIA/Privacy Act request to the FBI, a component of the Department of Justice ("DOJ"), on 24 January 2014. Plaintiff's request sought "disclosure of all agency records concerning, naming, or relating to Ms. Poitras."

7. In the course of processing the Plaintiff's FOIA/Privacy Act request, the FBI located FBI documents that possibly contained CIA information. In a letter dated 5 February 2015, the FBI referred certain FBI documents to the CIA for consultation. On 23 June 2015, the CIA sent a letter to the FBI stating that the Agency had determined that three of the documents contained CIA information that needed to be redacted on the basis of FOIA exemptions (b)(1) and (b)(3).¹ Specifically, CIA requested that FBI redact CIA information on

¹ The CIA also inadvertently cited Privacy Act exemptions (j)(1) and (k)(1) as an additional basis for some of these redactions.

pages 243, 246, 249, and 330-32 of the documents produced to Plaintiff.

8. On 31 August 2015, the FBI referred five additional documents to the CIA for consultation. On 16 September 2015, the CIA responded to the FBI that it had determined that all five of the documents contained CIA information that must be redacted on the basis of FOIA exemptions (b)(1) and (b)(3). Specifically, CIA requested that FBI redact CIA information on pages 146, 148-52, 155, 231, 234-35, 237, and 241 of the documents produced to Plaintiff.

III. Application of FOIA Exemptions

A. FOIA Exemption (b)(1)

9. FOIA exemption (b)(1) provides that agencies need not disclose materials that are "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and "are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). Here, the information withheld pursuant to exemption (b)(1) satisfies the procedural and substantive requirements of Executive Order 13526, which governs classification. See Executive Order 13526 § 1.1(a), § 1.4(c).

10. As an original classification authority, I have determined that discrete portions of records responsive to Plaintiff's request are currently and properly classified. This

information is owned by and is under the control of the U.S. Government. As described below, the information falls under classification category § 1.4(c) of the Executive Order because it concerns "intelligence activities (including covert action), [or] intelligence sources or methods." The unauthorized disclosure of this information could reasonably be expected to result in serious damage to national security, and thus the redacted information is classified SECRET. 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.

11. Because revealing additional details about the withheld portions would disclose classified information, I am limited in my ability to describe the intelligence activities, sources, and methods at issue and the harm that would be occasioned by their disclosure on the public record.² However, publicly I can acknowledge that the redacted CIA information can generally be grouped into three categories: (1) information relating to the CIA's cooperation with law enforcement; (2) information that

² If the Court desires, the CIA is prepared to supplement this unclassified declaration with an in camera, ex parte classified declaration containing additional information about the withheld information that the CIA cannot file on the public record.

would reveal whether or not the CIA possesses information about a particular individual; and (3) information concerning CIA's organization and functions. The disclosure of this information could reasonably be expected to cause serious damage to the national security.

12. Much of the redacted information contains details concerning the coordination process between the CIA and the FBI. Although it is generally acknowledged that the CIA and the FBI coordinate and cooperate to some extent in both the overseas and domestic arenas, the CIA cannot reveal certain details concerning the nature, scope, or application of the CIA-FBI coordination process because doing so would reveal classified CIA intelligence activities, sources, and methods. Disclosing these details could harm the national security by hindering the intelligence community and law enforcement's ability to track and identify certain individuals who may seek to avoid detection. For example, if terrorists were to gain knowledge about the specific methods used to facilitate interagency coordination, they might be able to utilize such information to purposely mislead reporting, misdirect investigators, or circumvent detection.

13. Additionally, some of the redacted CIA information would reveal the results of name traces run by the CIA. The results of a name trace, regardless of whether the CIA possesses

any responsive information about an individual, is classified. Indeed, the mere confirmation or denial of the existence or nonexistence of responsive information would in itself reveal a classified fact: namely, whether the CIA has an intelligence interest in or clandestine connection to a particular individual or activity. Our adversaries could use this information to identify CIA intelligence interests, capabilities, and priorities, and to exploit gaps in coverage. Accordingly, the results of name traces run by the CIA, regardless of whether the CIA possesses or does not possess any responsive information, would reveal sensitive information about the CIA's intelligence collection interests, capabilities, and activities. This information is currently and properly classified pursuant to Executive Order 13526 and, therefore, protected from disclosure under FOIA exemption (b) (1) because its disclosure could cause serious damage to the national security.³

14. Similarly, additional classified information was withheld regarding the CIA's organization and functions. The CIA is charged with carrying out a number of important functions on behalf of the United States, which include, among other

³ When the CIA can neither confirm nor deny the existence or nonexistence of records that would reveal a classified connection to the CIA, it issues what is known as a "Glomar" response. The origins of the Glomar response trace back to the D.C. Circuit's decision in Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976), which affirmed the CIA's use of the "neither confirm nor deny" response to a FOIA request for records concerning the CIA's reported contacts with the media regarding Howard Hughes' ship, the "Hughes Glomar Explorer."

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 must remain secret in order to be effective. Disclosure of certain details related to the CIA's organization and functions, which pertain to intelligence activities and methods, could undermine these efforts by revealing, among other things, CIA capabilities, interests, and resources. Disclosure of these details could help our adversaries exploit, infiltrate, and target CIA facilities, infrastructure, and employees.

15. For the reasons set forth above, disclosure of this information could reasonably be expected to cause serious damage to national security and must be withheld under FOIA exemption (b) (1).

B. FOIA Exemption (b) (3)

16. FOIA exemption (b) (3) provides that the FOIA disclosure provision 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).

17. 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

18. Because the information withheld in this case falls within the ambit of the National Security Act, it is exempt from disclosure under FOIA exemption (b)(3). In contrast to Executive Order 13526, this (b)(3) qualified statute does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from the unauthorized disclosure of intelligence sources and methods. Simply stated, no showing of harm is required.

⁴Section 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][.]"

19. Nevertheless, because information withheld pursuant to exemption (b)(3) involves intelligence activities, sources, and methods, i.e., the same categories of information which are classified and exempt from release pursuant to (b)(1), I refer the Court to the paragraphs above for a description of the damage that reasonably could be expected to result from the disclosure of this information.

IV. Conclusion

20. For all of the reasons stated above, eight of the documents in the FBI records responsive to Plaintiff's FOIA request contain classified information concerning intelligence activities, sources, and methods, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security of the United States. Consequently, that information must be withheld under FOIA exemption (b)(1). Additionally, and separately, because the classified information implicates intelligence sources and methods, the information must also be withheld under FOIA exemption (b)(3).

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

Executed this 3rd day of June 2016.

A handwritten signature in cursive script, reading "Antoinette B. Shiner", is written over a horizontal line.

Antoinette B. Shiner,
Information Review Officer
Litigation Information Review Office
Central Intelligence Agency