

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

JESSE C. TRENTADUE, )  
                          )  
                          )  
Plaintiff,            )  
                          )  
                          )  
v.                     )                            Civil Action No. 08-0788  
                          )  
                          )  
UNITED STATES CENTRAL )  
INTELLIGENCE AGENCY, FEDERAL )  
BUREAU OF INVESTIGATION, and )  
FEDERAL BUREAU OF INVESTIGATION'S )  
OKLAHOMA CITY FIELD OFFICE, )  
                          )  
                          )  
Defendants.            )  
                          )

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**DECLARATION OF MARTHA M. LUTZ  
INFORMATION REVIEW OFFICER  
DIRECTOR'S AREA, CENTRAL INTELLIGENCE AGENCY**

I, MARTHA M. LUTZ, hereby declare and say:

1. I am the Information Review Officer ("IRO") for the Director's Area of the Central Intelligence Agency ("CIA"). The Director's Area encompasses not only the Offices of the Director of the CIA and the Deputy Director of the CIA, but also several components not organized under one of the CIA's four main directorates (Support, Intelligence, National Clandestine Service, and Science & Technology), such as the Office of Inspector General, the Office of General Counsel, and the Open Source Center. I have held this position since 19 January 1999.

I also have held various administrative and professional positions within the CIA since 1989.

2. As the IRO for the Director's Area, I am authorized to assess the current, proper classification of Director's Area information, based on the classification criteria of Executive Order 12958, as amended, and applicable CIA regulations.<sup>1</sup> As IRO, I am responsible for the review of documents or information originated by the Director's Area or otherwise implicating Director's Area 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. It is my responsibility as Director's Area IRO to ensure that the public release of information or documents containing information originated by the Director's Area does not jeopardize the national security.

3. The Director of CIA Information Management Services has appointed me Records Validation Officer ("RVO") for purposes of this 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 the CIA's behalf regarding CIA records systems searches and records contents, including

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<sup>1</sup> Executive Order 12958 was amended by Executive Order 13292. See Exec. Order No. 13292, 68 Fed. Reg. 15315 (Mar. 28, 2003). All citations to Exec. Order No. 12958 are to the Order as amended by Exec. Order No. 13292. See Exec. Order No. 12958, 3 C.F.R. 333 (1995), reprinted as amended in 50 U.S.C.A. § 435 note at 193 (West Supp. 2008).

those located in, or containing information under the purview of, the Director's Area and CIA directorates other than the Director's Area.

4. Through the exercise of my official duties, I am familiar with this civil action. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. The purpose of this Declaration is to explain and justify, to the extent possible on the public record, the CIA's responses to Plaintiff's FOIA requests.

5. As explained below, the CIA can neither confirm nor deny the existence or non-existence of certain records relating to a specific foreign national named by Plaintiff in one of his three FOIA requests. To do so would itself reveal classified information; namely, the existence or non-existence of a CIA clandestine intelligence interest in a specific foreign national, a fact that is currently and properly classified at the SECRET level.

6. The CIA carefully reviewed all of the documents retrieved by a reasonable search that contain information responsive to Plaintiff's other two requests to determine what information, if any, could be released to Plaintiff. After carefully reviewing the information at issue, I have determined that 36 of the documents described in the attached Vaughn Index

must be withheld in full and 16 of the documents may be released in part.

7. The CIA conducted a line-by-line review of these documents, individually and as a whole, with the aim of identifying all meaningful, reasonably segregable, non-exempt portions of documents so that all such portions could be released. I have confirmed that the CIA released all information that was segregable and not otherwise exempt, except where the fragment of segregable information would be entirely meaningless if disclosed, or where the information (such as document dates) was disclosed in the attached Vaughn Index and no additional nonexempt meaning would be conveyed by releasing the information in its original form surrounded by redacted exempt information.

8. I have determined that the documents responsive to Plaintiff's request contain information exempt from release under one or more of the following provisions:

a. FOIA exemption (b) (1), 5 U.S.C. § 552(b) (1), because the information is currently and properly classified pursuant to E.O. 12958, and its disclosure reasonably could be expected to damage the national security;

b. FOIA exemption (b) (3), 5 U.S.C. § 552(b) (3), because the information at issue, if released, reasonably

could be expected to lead to the unauthorized disclosure of intelligence sources and methods that the Director of the CIA must protect pursuant to section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 403-1(i)(1), and section 6 of the Central Intelligence Agency Act of 1949 ("CIA Act"), as amended, 50 U.S.C. § 403g;

c. FOIA exemption (b)(3), 5 U.S.C. § 552(b)(3), because the information at issue concerns the organization, functions, names, official titles, salaries and/or numbers of personnel employed by the CIA, all of which are protected from disclosure under section 6 of the CIA Act of 1949, as amended, 50 U.S.C. § 403g;

d. FOIA exemption (b)(5), 5 U.S.C. § 552(b)(5), because the information is contained in inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the CIA; and

e. FOIA exemption (b)(6), 5 U.S.C. § 552(b)(6), because the information withheld qualifies as "personnel" and "similar" files, and the disclosure of this information identifying specific individuals not affiliated with the CIA and not party to this litigation would constitute a clearly unwarranted invasion of personal privacy.

9. For the Court's convenience, this declaration is divided into four parts: **Part I** provides background on Plaintiff's FOIA request and the procedural history of this case; **Part II** describes the bases for CIA's response to Plaintiff's request for information on a foreign national; **Part III** describes the CIA's search of its files, identifies the documents deemed responsive to the other FOIA requests at issue in this litigation, and explains the inter-agency referral and coordination process; and **Part IV** discusses the FOIA exemptions on which the CIA relies in this action.

10. Attached as Exhibit A to this declaration, and incorporated by reference herein, is a copy of the Vaughn Index that describes each responsive document, identifies the applicable FOIA exemptions to each document, and explains why each applicable FOIA exemption justifies withholding information from each of these responsive documents.

#### **I. PLAINTIFF'S FOIA REQUEST AND PROCEDURAL HISTORY**

11. By letter dated 19 December 2006, Plaintiff Trentadue submitted to the CIA a FOIA request seeking "documents, information and/or records prepared and/or received by" the CIA's Office of Inspector General "relating or referring to the

bombing of the Murrah Federal Building on April 19, 1995." (the "OIG Request").<sup>2</sup>

12. By letter dated 19 December 2006, Plaintiff Trentadue submitted another request to the CIA, this time seeking "information, documents and/or records which Ms. Cippriani," a CIA attorney, or the CIA provided to Ms. Wilkinson, a Department of Justice attorney, "as well as any and all documents, information and/or records which Ms. Cippriani and/or the CIA provided to the United States Department of Justice which, directly or indirectly, relate, concern or refer to the bombing of the Murrah Building, including documents and/or records related to the CIA, Federal Bureau of Investigation and/or Bureau of Alcohol, Tobacco and Firearm's possible prior knowledge of a plan to attack the Murrah Federal Building" (the "DOJ request").<sup>3</sup>

13. By letter dated 19 December 2006, Plaintiff Trentadue submitted to the CIA the third and final FOIA request implicated in this litigation, in which he sought records and information on "German foreign national Andreas Carl Strassmeir." The request included, but was not limited to, information relating to "(1) Strassmeir's possible involvement in the bombing of the Oklahoma City Murrah Federal Building on April 19, 1995; (2)

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<sup>2</sup> A true and correct copy of this letter is attached to this declaration as Exhibit B.

<sup>3</sup> A true and correct copy of this letter is attached to this declaration as Exhibit C.

Strassmeir's role and/or activities as an informant, agent or operative, including working for the German government, Federal Bureau of Investigation, Southern Poverty Law Center or others; (3) and/or Strassmeir['s] activities at Elohim City, Oklahoma, including his relationship with Timothy McVeigh and/or the Mid-West Bank Robbery Gang" (the "Strassmeir request.")<sup>4</sup>

14. By letter dated 23 February 2007, the CIA acknowledged receipt of Plaintiff Trentadue's three FOIA requests. It also asked Plaintiff to confirm his willingness to compensate the CIA for certain costs incurred in searching and processing responsive records.<sup>5</sup>

15. By letter dated 4 March 2007, Plaintiff agreed to "pay the cost of searching for and producing responsive records," in accordance with the fee schedule set forth in the CIA's 23 February 2007 letter.<sup>6</sup>

16. By letter dated 17 October 2007, Plaintiff Trentadue inquired about the status of his FOIA requests.<sup>7</sup>

17. The CIA responded to Plaintiff's 17 October 2007 inquiry by letter dated 5 November 2007. In its response, the CIA acknowledged Plaintiff's concern with "not having received a

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<sup>4</sup> A true and correct copy of this letter is attached to this declaration as Exhibit D.

<sup>5</sup> A true and correct copy of this letter is attached to this declaration as Exhibit E.

<sup>6</sup> A true and correct copy of this letter is attached to this declaration as Exhibit F.

<sup>7</sup> A true and correct copy of this letter is attached to this declaration as Exhibit G.

final response," and informed him that any delays in responding were associated with the "overwhelming number of [FOIA, Privacy Act, and Executive Order] requests" that the CIA receives. The CIA further explained that the FOIA "workload comprises thousands of FOIA, Privacy Act and Executive Order requests, and it is our policy to handle each on a first-in, first-out basis that is the most equitable to all requestors."<sup>8</sup>

18. By letter dated 20 March 2008, Plaintiff again inquired about the status of his FOIA request.<sup>9</sup>

19. On 10 October 2008, Plaintiff filed a complaint naming the CIA as a defendant in this litigation. On 11 November 2008, Plaintiff amended his complaint, joining the Federal Bureau of Investigation ("FBI") and the FBI's Oklahoma City Field Office as defendants in the above-captioned FOIA suit.

20. By letter dated 1 June 2009, the CIA released to Plaintiff **15** documents that were released in "segregable form with deletions made on the basis of FOIA exemptions (b) (1), (b) (2), (b) (3), (b) (5), (b) (6), and/or (b) (7) (C)." In the same letter, the CIA also notified Plaintiff that it had located "additional material" that "must be denied in its entirety on

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<sup>8</sup> A true and correct copy of this letter is attached to this declaration as Exhibit H.

<sup>9</sup> A true and correct copy of this letter is attached to this declaration as Exhibit I.

the basis of FOIA exemptions (b) (1), (b) (3), (b) (5), and/or (b) (6).<sup>10</sup>

**II. BASES FOR CIA'S RESPONSE TO PLAINTIFF'S FOIA REQUEST FOR INFORMATION ON GERMAN FOREIGN NATIONAL ANDREAS CARL STRASSMEIR**

21. The CIA responds to a FOIA request seeking information regarding a particular foreign national--such as Plaintiff's request for information on German foreign national Andreas Carl Strassmeir--by neither confirming nor denying the existence or nonexistence of responsive records. This response, called a "Glomar response,"<sup>11</sup> is invoked because the existence or nonexistence of a CIA clandestine intelligence interest in a specific foreign national is itself a fact that is currently and properly classified at the SECRET level.

22. In January 2009, the CIA (through the Department of Justice) conveyed to Plaintiff that it had reason to believe that Strassmeir was a dual citizen and it therefore would not assert a foreign national Glomar response. Accordingly, the CIA conducted a thorough and diligent search of the relevant systems of records that was reasonably calculated to discover any records subject to FOIA that were responsive to Plaintiff's

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<sup>10</sup> A true and correct copy of the letter is attached to this declaration as Exhibit J.

<sup>11</sup> The "Glomar" term comes from the case Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976), which upheld 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 the Hughes Glomar EXPLORER.

request. In the course of preparing to file a motion for summary judgment, Department of Justice counsel raised a question regarding whether the disclosure of the existence or nonexistence of records responsive to the Strassmeir request would violate the Privacy Act, 5 U.S.C. § 552a, as suggested by the court's decision in CREW v. Nat'l Indian Gaming Comm'n, 467 F. Supp. 2d 40, 54-55 (D.D.C. 2006), in the absence of a Privacy Act waiver from Mr. Strassmeir. In order to resolve this question, CIA counsel decided to seek verification of whether Mr. Strassmeir was a U.S. citizen (and thus covered by the Privacy Act).

23. By e-mail dated 11 August 2009, U.S. Citizenship and Immigration Services informed the CIA that Andreas Carl Strassmeir is **not** (1) a U.S. citizen, (2) a national of the United States, or (3) a legal permanent resident. Based upon this newly-discovered information, I have determined that the CIA must assert a Glomar response, neither confirming nor denying the existence or non-existence of records that are responsive to Plaintiff's FOIA request for information on German foreign national Strassmeir.<sup>12</sup>

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<sup>12</sup> The CIA has not released any information that would either confirm or deny whether records were located in response to Plaintiff's request for information on German foreign national Strassmeir.

24. Such a response protects a specific and narrow type of classified fact, and is provided for under Executive Order 12958, section 3.6(a), which provides:

An 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.

The particular request by Plaintiff is just such a narrow circumstance, wherein the confirmation or denial of the existence of responsive records would reveal a classified fact --namely, whether CIA has gathered information on a specific foreign national.

25. By contrast, when a FOIA requester submits a request to CIA for information on a particular subject matter, the CIA frequently is able to respond by conducting a search of non-exempt records and advising whether responsive records were located. If records are located, the CIA provides those 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 answer, either to provide or not to provide the records sought, actually confirms to the requester (and to the public, for that matter) the existence or non-existence of such CIA records. Typically, this confirmation poses no harm to the national security or intelligence sources and methods, because the focus

is on releasing or withholding specific substantive information. The fact that the CIA possesses or does not possess records often is not itself a classified fact.

26. However, a request for whether the CIA maintains records on a particular foreign national generally must be handled by neither confirming nor denying the existence of such records. As discussed in greater detail below, this response is necessary to safeguard intelligence sources and methods, as well as U.S. foreign relations. Furthermore, the CIA must respond to requests for CIA records on foreign nationals in a consistent manner. In order for a "Glomar" response to be credible and effective, the CIA must use it with every requester seeking records on a foreign national (unless officially acknowledged by the CIA), including in those instances in which the CIA does not actually hold records on the subject individual. If the CIA were to give a Glomar response only when it possessed responsive records, and inform requesters when it has no records, the Glomar response would quickly become an admission that records did indeed exist. Because the CIA will not provide a "no records" response when it actually does have records, the only means by which the CIA can protect the identities of actual sources and intelligence targets is to routinely issue a Glomar response to requesters seeking records on foreign nationals,

regardless of whether or not it actually possesses responsive records.

27. If the CIA were to admit to a FOIA requester that it possesses intelligence information about a particular foreign national, it essentially alerts the foreign national (along with his associates and functional successors), as well as foreign intelligence services, that CIA intelligence methods have been applied against him. The foreign national, his colleagues, or the foreign intelligence services could then take countermeasures to identify and frustrate the intelligence collection method, thereby making his future activities undetectable by the CIA. If the countermeasures are successful, the CIA will lose its ability to monitor his activities. In addition, others who have been or may be collaborating with the foreign national also will soon cease engaging in these detectable activities, with similar negative results for the CIA. Moreover, clandestine human sources who have provided the CIA with information on the foreign national under assurances of secrecy could be detected and cease providing information, or could suffer physical harm or other retaliation for their detected activities, or both.

28. Conversely, if the CIA states that it does not possess information about a particular foreign national, the CIA essentially admits to that individual (as well as to his

associates and functional successors) or foreign intelligence service that his efforts to conceal his activities have been successful and the foreign national, his colleagues, or foreign intelligence service would know that operational security practices have successfully defeated CIA intelligence methods. Moreover, other foreign nationals could learn of and begin to emulate this same successful pattern of undetectable intelligence activities with similar results.

29. Although the potential harm to the CIA from the two preceding examples is self-evident, the potential harm to the CIA is possibly magnified if a foreign intelligence service were to submit multiple FOIA requests. For example, if a foreign intelligence service were to submit separate FOIA requests for information concerning all nationals it suspected of being CIA collaborators, and the CIA were to provide a response other than to neither confirm nor deny the existence of such records, the CIA would, in essence, provide the foreign intelligence service with information that would greatly aid it in eliminating CIA's intelligence network in that particular country.

30. The effective collection and analysis of intelligence requires the CIA to prevent disclosing to our adversaries the specific persons and areas in which CIA is interested, and upon which it focuses its methods and resources. Every country or group has limited resources. The disclosure to a potential U.S.

intelligence target of the areas and persons of CIA interest would indicate to that target how the CIA is allocating its resources. Therefore, the target may array its counterintelligence and security resources most efficiently to frustrate the CIA. The more efficiently an intelligence target may apply its counterintelligence resources, the more likely it will deny the information of interest to the United States.

**A. Glomar Response: Applicable FOIA Exemptions**

**1. FOIA Exemption (b) (1)**

31. FOIA Exemption (b) (1), 5 U.S.C. § 552(b) (1), provides that the FOIA disclosure provisions do 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.

**a. Intelligence Sources and Methods**

32. Section 1.4 of Executive Order 12958 specifies categories of information that are eligible for classification. One such category is information concerning intelligence activities or intelligence sources or methods.<sup>13</sup> In addition, Executive Order 12958, section 1.1(a) (4), provides that information falling within one of those categories must be classified when an "original classification authority determines

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<sup>13</sup> Exec. Order No. 12958 § 1.4(c).

that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security.”<sup>14</sup>

33. The CIA’s clandestine intelligence interest in a specific individual represents an intelligence activity, source, and/or method, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security. For reasons detailed above, a Glomar response, consistently applied to FOIA requests such as the Strassmeir Request, is the only appropriate response to effectively protect the United States against groups who seek to learn about its clandestine intelligence sources and methods.

34. The monitoring of each individual of potential intelligence interest to CIA is a very costly enterprise with significant resource and national security implications. At present, these costs are, in a sense, shared by both CIA (which attempts to monitor the operatives) and the foreign intelligence service or other group of foreign intelligence interest (which attempts to conceal from the CIA the identities of its operatives). The CIA may sometimes expend resources monitoring a particular individual who is not, in fact, an intelligence

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<sup>14</sup> In addition to providing for classification of such information, section 6.2(c) of Executive Order 12958 also specifies that “[n]othing in this order limits the protection afforded any information by other provisions of law, including . . . the National Security Act of 1947.” This provision, therefore, authorizes the withholding of intelligence sources and methods even if they do not warrant classification.

operative, while foreign intelligence operatives may sometimes undertake elaborate precautions because they believe they are being monitored by the CIA when, in fact, they are not. If the CIA were required to confirm or deny the existence or nonexistence of CIA records about a given individual, it would reveal whether it had an intelligence interest in that person. Such a revelation would provide the foreign intelligence service or other group of foreign intelligence interest with information concerning which intelligence operatives or types of intelligence activities CIA can and cannot monitor. Furthermore, it may also indicate the potential human sources or methods by which CIA obtained intelligence on that person, providing information on how the CIA allocates its resources and conducts its intelligence activities.

35. Human intelligence sources can be expected to furnish information to CIA only when they are confident that CIA will protect their cooperation from public disclosure. In the case of a foreign national abroad who has been cooperating with the CIA, official confirmation of that cooperation could cause the target government or other group of foreign intelligence interest to take retaliatory action against that person, his family, and associates. Furthermore, it would also seriously damage the CIA's credibility with other intelligence sources who might conclude that the CIA is unwilling or unable to protect

their cooperation with the United States from public disclosure. To betray such confidentiality would seriously damage the United States' ability to retain present sources and recruit new sources.

36. Intelligence methods include the basic business practices and methodological "tools" used by CIA to accomplish its mission. Intelligence methods must be protected from disclosure in every situation where a certain intelligence interest, capability, or technique is unknown to those groups that could take countermeasures to nullify the CIA's effectiveness. Secret information collection techniques, capabilities, or technological devices are valuable (from an intelligence gathering perspective) only so long as they remain unknown and unsuspected. Once an intelligence method (or the fact of its use in a certain situation) is discovered, its continued successful use by the CIA is seriously jeopardized. In fact, knowledge of intelligence methods and how and when they are employed must be protected from disclosure because such knowledge would be of material assistance to those who seek to detect, prevent, or damage U.S. intelligence operations.

37. Because foreign intelligence services view discovery of CIA methodology as one of their primary defensive missions, these admissions would be of great benefit, by enabling the foreign services to redirect their resources to identify

potential CIA sources, circumvent the CIA's monitoring efforts, and generally enhance their intelligence activities at the expense of the United States. As a result, the CIA's efforts can 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.

38. In exercising and fulfilling its mission, the CIA must do more than prevent explicit references to an intelligence method; it must also prevent indirect references to such a method. A primary vehicle for gathering intelligence methods information is by reviewing officially released information. We know that foreign intelligence services have the capacity and ability to gather information from myriad sources, analyze it, and deduce means and methods (from disparate and even seemingly unimportant details) to defeat CIA collection efforts. Even seemingly innocuous, indirect references to an intelligence method could have significant adverse effects when combined and analyzed with other publicly available data.

39. As discussed below, intelligence sources and methods information also falls within the ambit of the National Security Act of 1947, as amended, 50 U.S.C.A. § 403-1(i)(1), and section 6 of the Central Intelligence Act, as amended, 50 U.S.C. § 403g, and thus is exempt from disclosure under these provisions. Accordingly, FOIA exemptions (b) (1) and (b) (3) apply

independently and co-extensively to Plaintiff's Strassmeir Request.

**b. U.S. Foreign Relations**

40. In addition to intelligence sources and methods, U.S. foreign relations comprise another category of information eligible for classification pursuant to Executive Order 12958.<sup>15</sup> I have determined that official acknowledgment that the CIA maintains information concerning a particular foreign national could be construed by that foreign government, whether friend or adversary, to mean that CIA has collected intelligence information on or recruited one of its citizens or resident aliens. Such a perception could adversely affect U.S. foreign relations with that nation. This is especially true where U.S. allies are concerned.

41. Further, an official acknowledgment that the CIA maintains information on a particular individual can be tantamount to a CIA admission that it has or has not collected (or intends to collect) specific information on specific foreign targets during specific time periods. Such an admission by the CIA invariably would adversely affect U.S. foreign relations. If a clandestine interest in a foreign national were publicly acknowledged, countries to which that individual traveled and lived could be expected to respond based on its perception of

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<sup>15</sup> Exec. Order No. 12958 § 1.4(d).

the U.S. disclosure. The foreign government's response could be of a diplomatic or economic nature, a ground for anti-American propaganda, or a reason for retaliation against former associates, including American citizens or other American interests. Such responses could reasonably be expected even though the events may be several years past. Experience has taught that perceptions of violation of sovereignty will generate retribution even years later.

## 2. FOIA Exemption (b) (3)

42. FOIA exemption (b) (3), 5 U.S.C. § 552(b) (3), provides that the FOIA disclosure provisions do not apply to matters that are:

specifically exempted from disclosure by statute . . . 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.

43. Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C.A. § 403-1(i)(1) (West Supp. 2008), provides that the Director of National Intelligence (DNI) "shall protect intelligence sources and methods from unauthorized disclosure." For the reasons stated above, the "fact of" the existence or nonexistence of documents, information, and/or records sought by Plaintiff on German foreign national

Strassmeir is specifically related to intelligence sources and methods.

44. Similarly, section 6 of the Central Intelligence Act of 1949, as amended, 50 U.S.C. § 403g, provides that in the interests of the security of the foreign intelligence activities of the United States and in order to further implement section 403-1(i) of Title 50 that the Director of National Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the CIA shall be exempt from the provision of any law requiring the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by CIA. As such, under section 6, the CIA is exempt from disclosing any information relating to its core function: foreign intelligence collection through its intelligence sources and methods.

45. Because to confirm or deny the existence or nonexistence of CIA documents, information, or records located in response to Plaintiff's Strassmeir Request falls within the ambit of Section 102(A)(i)(1) of the National Security Act and Section 6 of the Central Intelligence Act, the CIA's Glomar response also is authorized pursuant to FOIA exemption (b) (3). These statutes further protect intelligence sources and methods. In contrast to Executive Order 12958, these statutes do not require the CIA to identify or describe the damage to national

security that reasonably could be expected to result, should the CIA confirm or deny the existence of records responsive to the Strassmeir request. As both statutes and the Executive Order relate to the protection of sources and methods, I refer the Court to the paragraphs above for a description of the damage to national security should anything but a Glomar response be provided in this case. Accordingly, FOIA exemptions (b) (1) and (b) (3) apply independently and co-extensively to the Strassmeir Request.

### **III. THE OIG AND DOJ REQUESTS: THE CIA'S SEARCH FOR RESPONSIVE DOCUMENTS**

#### **A. CIA Records Systems**

46. Any intelligence or security agency continually faces the risk that there may be a spy within its ranks. Prudence dictates that an agency take appropriate counterintelligence and security precautions to minimize the potential damage to national security that could result from a spy in the agency's midst. One way to minimize such damage is to strictly limit the amount of information to which any particular employee has access.

47. The CIA limits employee access to information by employing a "need-to-know" policy, which provides that an employee has access only to that information required to perform

the employee's duties. The CIA implements this policy through decentralizing and compartmenting its records systems.

48. While the counterintelligence advantage of this practice is obvious, one disadvantage is equally obvious: the inherent inefficiencies created in the records search and retrieval processes. These inefficiencies affect not only the day-to-day activities of CIA employees trying to perform their missions, but also the process of responding to FOIA and Privacy Act requests.

**B. Procedures for Processing FOIA Requests**

49. The Information Management Services ("IMS") component of the CIA is the initial reception point for all requests for information under FOIA. Experienced IMS information management professionals analyze each request, determine which CIA directorate(s) might reasonably be expected to possess records that are subject to FOIA and responsive to a particular request, and transmit a copy of the request to the IRO for that directorate(s) for action.

50. Because the CIA's records systems are decentralized and compartmented, each directorate IRO must determine which component(s) within the directorate might reasonably be expected to possess records responsive to a particular request and then work with personnel within each of these components to devise a search strategy tailored to the component's configuration of its

records systems and unique characteristics of that configuration. This process includes identifying which of the records systems subject to FOIA to search as well as which search tools, methods, and terms to employ. In many of the components, the information management professionals conducting FOIA searches are the same professionals searching records in support of the component's daily mission.

51. After a tasked component locates documents in response to the FOIA request, officers must review those documents to determine whether they, in fact, respond to the request. Because of the nature of a particular records system, or the search tools, indices, or terms employed, a search may locate many documents that are not responsive to the request.

52. After officers identify and remove any non-responsive documents, the officers must then carefully review the remaining responsive documents to determine if any FOIA exemptions apply, and whether they can reasonably segregate non-exempt information from exempt information. If officers determine that no segregable, non-exempt portions of documents can be released without potentially compromising classified information, information concerning intelligence sources and methods, or other information protected by FOIA exemptions, then such documents may be denied in full. This process is laborious and time-consuming.

53. In the course of reviewing documents for exempt information and segregability, officers frequently identify information that must be coordinated with or referred to another CIA component or another agency because the other component or agency originated the information or is believed to have an equity in it.<sup>16</sup> This coordination<sup>17</sup> and referral<sup>18</sup> process itself can be quite time-consuming because other components and agencies have their own mission and FOIA priorities.

54. When all of the components and agencies complete their respective reviews, IMS professionals incorporate all of the recommendations regarding exemptions, segregation, and release, resolve conflicting recommendations, and ensure that the release or withholding determinations comply with the law and published CIA regulations. Under the direction and supervision of the CIA Information and Privacy Coordinator, a review is then conducted from a corporate perspective on behalf of the entire CIA, and additional exempt information that reflects overall CIA equities may be identified. A final record copy of each document is then produced and a response is provided to the requestor.

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<sup>16</sup> See Exec. Order No. 12958 § 3.6(b).

<sup>17</sup> Coordination refers to the process required when an agency ("first agency") receiving a FOIA request finds a second agency's information in a document originated by the first agency. The first agency then consults, or "coordinates" with the second agency to ensure that the second agency's equities are properly protected. After having coordinated with the second agency, the first agency then responds directly to the requestor.

<sup>18</sup> A "referral" occurs when an agency receiving a FOIA request finds a document originated by a second agency. That document is then forwarded to the second agency, which will respond directly to the requestor.

55. In response to a broad FOIA request, the searches may locate many documents in many components. When considered individually, a particular document may not indicate on its face that it contains exempt information. Nevertheless, when reviewers consider all responsive documents in total, it frequently becomes apparent that, considered collectively, the documents reveal information exempt from release. For this reason, IMS cannot make final release determinations with respect to any particular document until IMS reviews all responsive documents.

**C. Plaintiff's Request for OIG Records**

56. The CIA conducted thorough and diligent searches of relevant systems of records that were reasonably designed to discover any records subject to FOIA that were responsive to Plaintiff's three requests.<sup>19</sup> In this case, Plaintiff's narrow and focused requests aided IMS's determination that all responsive records reasonably would be expected to be located in the Director's Area.

57. The Director's Area, in turn, tasked the OIG to search for documents related to Plaintiff's request for "documents, information, and/or records prepared and/or received by the

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<sup>19</sup> As I explained above, ultimately, it was determined that it was necessary to issue a Glomar response in connection with Plaintiff's Strassmeir Request. Because the CIA can neither conform nor deny whether there exists records responsive to this request, I do not describe the search process associated with that request.

[CIA] Office of Inspector General." Given Plaintiff's request, the Director's Area determined that no other CIA component would be likely to have responsive records. The OIG conducted an electronic search of all of its files, employing the following search terms: Murrah Federal Building; April 19, 1995; Murrah Building Bombing; Timothy McVeigh; Oklahoma; Oklahoma City; Oklahoma City Bombing; OK bombing; and bombing.

58. The OIG made all reasonable efforts to locate documents responsive to Plaintiff's OIG request. Although all files likely to contain records responsive to the OIG request were searched, these thorough and diligent searches failed to locate any responsive records.

#### **D. Plaintiff's Request for DOJ Records**

59. The transmission of records concerning the Oklahoma City bombing would most likely have occurred between the CIA and DOJ attorneys in the course of the DOJ investigation of the bombing and the prosecution of Timothy McVeigh and Terry Nichols.<sup>20</sup> The Director's Area therefore tasked the CIA's Office of General Counsel to search for records responsive to Plaintiff's DOJ Request. The Director's Area determined that no other CIA component would be likely to have records responsive to the request.

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<sup>20</sup> CIA practice and regulations make the Office of General Counsel the focal point for Agency interaction with the Department of Justice.

60. The Office of General Counsel searched all files that could reasonably be expected to contain records deemed responsive to Plaintiff's request, including litigation files and documents stored in archives. Most of the searches required manual review of hardcopy documents. Because it was often not possible to identify from the document itself whether it had been provided to DOJ, all communications between the CIA and DOJ that referred to the Timothy McVeigh or Terry Nichols litigations or the Oklahoma City bombing, as well as all CIA cables in the litigation files that referred to the Oklahoma City bombing, were deemed responsive.

61. IMS professionals did not task the Directorate of Intelligence (DI),<sup>21</sup> the Directorate of Science and Technology (DS&T),<sup>22</sup> the National Clandestine Service,<sup>23</sup> or the Directorate of Support<sup>24</sup> to conduct searches in response to the OIG or the DOJ Requests because there was no reason to expect those offices would have any responsive records or information.

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<sup>21</sup> The DI is the CIA directorate that analyzes, interprets, and forecasts foreign-intelligence issues and world events of importance to the United States. It is responsible for the production of finished intelligence reports for dissemination to policymakers in the United States Government.

<sup>22</sup> The DS&T is the CIA directorate that creates and applies technology to fulfill intelligence requirements.

<sup>23</sup> The NCS is the CIA directorate that is responsible for the clandestine collection of foreign intelligence information. The NCS's records system contains information on persons or entities that are of foreign intelligence or counterintelligence interest to the CIA and other United States Government agencies.

<sup>24</sup> The DS is the CIA's administrative and support arm. It is responsible for administrative and support matters, including matters relating to personnel and security.

62. In total, the CIA's search located 86 responsive documents, 48 of which were sent to other agencies as referrals or coordinations, as set forth below.

63. By letters dated 23 February 2009, 12 March 2009, and 22 April 2009, the CIA forwarded to the FBI five coordination documents, corresponding to CIA Vaughn numbers C05350591, C05350595, C05354408, C05354062, and C05359211. In its response, the FBI directed the CIA to withhold certain FBI-originated information in these documents pursuant to FOIA exemptions (b) (2), (b) (6), and (b) (7) (C), as is set forth in the attached Vaughn Index.

64. By letter dated 23 February 2009, the CIA referred eight responsive documents to the FBI for its review and direct release to Plaintiff. As is more fully set forth in the FBI's Vaughn Index, after reviewing the CIA-originated information contained in these eight documents, I determined that certain information should be withheld pursuant to FOIA exemptions (b) (1), (b) (3) and (b) (6).

65. By letter dated 23 February 2009, the CIA referred 25 responsive documents to the National Geospatial-Intelligence Agency ("NGA"), for its review and direct response to Plaintiff. In that letter, the CIA informed NGA that its review of the documents identified no "CIA equities"; accordingly, the CIA did

not direct NGA to withhold any information contained in these documents.<sup>25</sup>

66. By letter dated 23 February 2009, the CIA referred to the Department of Defense ("DOD") one responsive document for its review and direct response to Plaintiff. I understand that the DOD, in turn, forwarded the document to the Air Force. After reviewing the CIA-originated information contained in this document, I determined that certain information should be withheld pursuant to FOIA exemption (b) (3), as is set forth in the Air Force's Declaration.

67. By letter dated 19 March 2008, the CIA forwarded to the Department of Justice ("DOJ") eight responsive coordination documents, which correspond to CIA Vaughn numbers C05350594, C05350601, C05350616, C05350852, C05350854, C05350855, C05350589, and C05350590. The DOJ responded to the CIA in communications dated 7 April 2009 and 27 April 2009. In its response, DOJ directed the CIA to withhold certain DOJ-originated information pursuant to FOIA exemptions (b) (2), (b) (6), and (b) (7) (C), as is described in the CIA's Vaughn Index.

68. By letter dated 12 May 2009, the CIA forwarded to the Department of State ("DOS") one responsive referral document,

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<sup>25</sup> Although the NGA's letter to Plaintiff Trentadue informs him that it must deny in full 26 documents pursuant to FOIA exemptions (b) (1) and (b) (3), the CIA only referred a total of 25 responsive documents to NGA.

which corresponds to CIA Vaughn number C05354072. After reviewing the CIA-originated information contained in this document, I determined that certain information should be withheld pursuant to FOIA exemption (b) (3). Because the Department of State released in full its information, the CIA's withholding determinations are described in the attached Vaughn Index.

69. As is detailed in the Vaughn Index submitted with this declaration, based upon my review of the documents, I have determined that 36 CIA-originated documents were properly denied in full pursuant to FOIA exemptions (b) (1), (b) (3), (b) (5) and/or (b) (6), because no meaningfully responsive information was reasonably segregable from exempt information. And, as has been detailed in the Vaughn Index submitted with this declaration, I further determined the classified CIA information withheld from the single State Department referral and from the 15 CIA-originated released-in-part documents is properly withheld under FOIA exemptions (b) (1), (b) (3), (b) (5), and/or (b) (6).<sup>26</sup>

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<sup>26</sup> For the convenience of the Court and in accord with longstanding practice, this declaration and the accompanying Vaughn Index address exemptions claimed in the records that the CIA did not refer to other agencies, including those that the CIA coordinated with other agencies, while the FBI, Air Force, and NGA have provided declarations to address all exemptions claimed in the records that the CIA referred to them for direct response to the plaintiff. The CIA provided language to the FBI and to the Air Force to justify the exemptions claimed by the CIA in the referred records. I have reviewed the language that the CIA provided to the FBI and Air Force and have determined that it accurately reflects the CIA's exemption determinations. I have also

**IV. WITHHOLDING DETERMINATIONS**

**A. FOIA Exemption (b) (1)**

70. As described above, FOIA exemption (b) (1) provides that FOIA does not require disclosure of information that is:

(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.

I have reviewed the documents responsive to Plaintiff's FOIA requests under the criteria established by Executive Order 12958, as amended, and have determined the information withheld from the released-in-part and denied-in-full documents pursuant to FOIA exemption (b) (1), as indicated in the Vaughn Index attached as Exhibit A, is in fact properly classified.

71. Section 1.2(a) of Executive Order 12958, as amended, establishes three levels of classification for national security information. Information shall be classified TOP SECRET if its unauthorized disclosure reasonably could be expected to result in *extremely grave damage* to the national security; SECRET if its unauthorized disclosure reasonably could be expected to result in *serious damage* to the national security; and CONFIDENTIAL if its unauthorized disclosure reasonably could be expected to result in *damage* to the national security.

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determined that the portions of the records referred to the FBI and Air Force, as to which the CIA asserted exemption (b) (1), are properly classified in accord with the criteria discussed below.

72. Section 1.1(a) of Executive Order 12958, as amended, provides information may be originally classified under the terms of this Executive 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 United States Government;
- (3) the information falls within one or more of the categories of information listed in Section 1.4 of this order; and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.<sup>27</sup>

#### **1. Original Classification Authority**

73. Section 1.3(a) of Executive Order 12958, as amended, provides the authority to classify information originally may be exercised only by the President and, in the performance of executive duties, the Vice President; agency heads and officials designated by the President in the Federal Register; and U.S. Government officials delegated this authority pursuant to section 1.3(c) of Executive Order 12958, as amended.<sup>28</sup> Section 1.3(c)(2) provides TOP SECRET original classification authority

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<sup>27</sup> Id.

<sup>28</sup> See id.

may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to section 1.3(a) (2) of Executive Order 12958, as amended.<sup>29</sup>

74. In accordance with section 1.3(a) (2), the President designated the Director of the CIA as an official who may classify information originally as TOP SECRET.<sup>30</sup> Under the authority of section 1.3(c) (2), the Director of the CIA delegated original TOP SECRET classification authority to me. Section 1.3(b) of the Executive Order provides original TOP SECRET classification authority includes the authority to classify information originally as SECRET and CONFIDENTIAL.<sup>31</sup> Regarding the released-in-part and denied-in-full documents from which the CIA withheld exempt information pursuant to FOIA exemption (b) (1), as indicated in the Vaughn Index attached as Exhibit A, I, as an original classification authority, determined they contain information that is currently and properly classified SECRET and CONFIDENTIAL.

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<sup>29</sup> See id.

<sup>30</sup> See Presidential Order of April 21, 2005, Designation under Executive Order 12958, 70 Fed. Reg. 21,609 (Apr. 26, 2005), reprinted in 50 U.S.C. § 435 note (Supp. V 2005). Similarly, the Presidential Order of 13 October 1995 designates the Director of the CIA as an official authorized to classify information originally as TOP SECRET. See Presidential Order of Oct. 13, 1995, 60 Fed. Reg. 53,845 (Oct. 17, 1995), reprinted in 50 U.S.C. § 435 note (2000).

<sup>31</sup> Exec. Order No. 12,958, 60 Fed. Reg. 19,825 (Apr. 20, 1995), reprinted as amended in 50 U.S.C. § 435 note (Supp. V 2005).

**2. U.S. Government Information**

75. Information may be originally classified only if the information is owned by, produced by or for, or is under the control of the U.S. Government. The released-in-part and denied-in-full documents from which the CIA withheld information pursuant to FOIA exemption (b) (1), as indicated in the Vaughn Index attached as Exhibit A, are owned by the U.S. Government, produced by the U.S. Government, and under the control of the U.S. Government.

**3. Categories of Information Listed in Section 1.4 of Executive Order 12958**

76. Executive Order 12958, as amended, addresses classification of information relating to intelligence and national security. Section 1.4 provides information shall be classified only when it includes, among other things, information concerning "foreign government information," "intelligence activities (including special activities), intelligence sources or methods, or cryptology," "foreign relations or foreign activities of the United States, including confidential sources." The released-in-part and denied-in-full documents from which the CIA withheld information pursuant to FOIA exemption (b) (1), as indicated in the Vaughn Index attached as Exhibit A, contain information concerning the categories enumerated above.

**4. Damage to the National Security**

77. Disclosure of the CONFIDENTIAL information withheld from the released-in-part and denied-in-full documents pursuant to FOIA exemption (b) (1), as indicated in the Vaughn Index attached as Exhibit A, reasonably could be expected to cause damage to the national security. Disclosure of the SECRET information withheld from the released-in-part and denied-in-full documents pursuant to FOIA exemption (b) (1), as indicated in the Vaughn Index attached as Exhibit A, reasonably could be expected to cause serious damage to the national security. I further describe this classified information and its relation to intelligence activities, sources, and methods in Section IV(A) (8), and in the Vaughn Index submitted with this Declaration.

**5. Proper Purpose**

78. Regarding the released-in-part and denied-in-full documents from which the CIA withheld information pursuant to FOIA exemption (b) (1), as indicated in the Vaughn Index attached as Exhibit A, I have reviewed the documents and there is no reason to believe that any information 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.

**6. Marking**

79. Regarding the released-in-part and denied-in-full documents from which the CIA withheld information pursuant to FOIA exemption (b) (1), as indicated in the Vaughn Index attached as Exhibit A, I determined that each of these documents bears on its face one of the three classification levels defined in section 1.2 of Executive Order 12958, as amended.

**7. Proper Classification**

80. The released-in-part and denied-in-full documents from which the CIA withheld information pursuant to FOIA exemption (b) (1), as indicated in the Vaughn Index attached as Exhibit A, are currently and properly classified in accordance with the substantive and procedural requirements of Executive Order 12958, as amended.

**8. Classified Documents at Issue in this Case**

81. The exempt (b) (1) information withheld from the released-in-part and denied-in-full documents identified in the Vaughn Index attached as Exhibit A includes, among other things:

- Information regarding classified intelligence collection methods and capabilities;
- The names of clandestine human intelligence sources;

- CIA cryptonyms;
- Locations in which the CIA maintained covert CIA installations;
- Inter-agency relations in times of crisis;
- Information regarding specific covert CIA activities; and,
- Information which, if released, could damage U.S. foreign relations with other nations.

82. Disclosure of the information withheld from the released-in-part and denied-in-full documents listed in the Vaughn Index attached as Exhibit A would reveal classified information regarding the CIA's intelligence activities, sources, and methods. Such disclosures would provide the United States' adversaries with keen insights into the CIA's intelligence activities, sources, and methods and reasonably could be expected to cause damage to the national security.

83. Specifically, the sources and methods that might be discerned from the documents at issue are particularly sensitive because they reflect the manner in which the CIA responded to a major terrorist attack--the Oklahoma City Bombing--during its immediate aftermath. At a time when there was no clear notion of who was responsible for the attack, the CIA's role included the exercise of every possible manner of collecting information as part of the effort to locate the responsible parties and

determine whether there was an ongoing threat. The disclosure of how and what the CIA did in order to collect this information would seriously threaten its future operations in any similar circumstances.

84. Moreover, release of the classified information would reveal the locations of CIA field stations in foreign countries.<sup>32</sup> The disclosure of the SECRET information withheld from these documents would damage the national security by providing foreign intelligence services with specific information about the CIA's activities, sources, and methods. The disclosure of this information also reasonably could be expected to cause serious damage to U.S. foreign policy by revealing the countries in which the CIA operated or that were targeted for intelligence activities.

85. As described in the Vaughn Index, document number C05350602 reveals details surrounding classified intelligence collection methods and capabilities. Disclosure of this information reasonably could be expected to cause serious damage to the national security. Specifically, a particular intelligence method is effective only so long as it remains unknown and unsuspected to its target. When an intelligence method is revealed, the target of the method will likely take countermeasures. Once the target discovers the nature of an

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<sup>32</sup> See, for example, Document numbers C05354064, C05354077, C0535600, and C05353604.

intelligence method or the fact of its use in a certain situation, the method usually ceases to be effective.

86. The CIA withheld the name of a clandestine human intelligence source from, among others, document numbers C05354126 and C05354209. In each case, the identity of the clandestine human intelligence source is classified SECRET. The disclosure of this information would obviously provide foreign intelligence services with valuable insights into the CIA's activities, sources, and methods. Moreover, the disclosure of the source's identity also could endanger the source and the source's family and associates. Significantly, the possibility of reprisals against the source's family and associates exists even if the source is deceased.

87. The CIA withheld classified information regarding CIA cryptonyms from, among others, document numbers C05354064 and C05354066. The CIA's use of cryptonyms, whereby words and letter codes are substituted for actual names or identities in order to protect intelligence sources and other intelligence methods, is also an intelligence method. When obtained and matched to other information, cryptonyms can assist someone in deciphering a communication's proper cognitive framework. For example, the reader of a message is better able to assess the value of its contents if the reader knows the identity of the particular individual or project by the cryptonym or pseudonym.

And by knowing a cryptonym's meaning, a reader may be able to identify the CIA intelligence source. Accordingly, the disclosure of this SECRET information could be expected to cause serious damage to the national security by assisting foreign intelligence services to identify both the CIA's intelligence methods and clandestine human intelligence sources.

88. The CIA withheld classified information concerning U.S. foreign relations from, among others, documents C05354161, C05353607, and C05354062. This information reveals operational assistance provided to the U.S. government by foreign governments, or their agents. Release of that material could negatively affect U.S. relations with those foreign governments who provided the assistance. Any official acknowledgement by the CIA of past or current liaison relationships could cause serious damage to relations with those governments and foreign intelligence services (and possibly other liaison relationships as well), and would likely result in a significant loss of intelligence information or foreign cooperation for the U.S. Government, thereby causing serious damage to the national security.

**B. FOIA Exemption (b) (3)**

89. Because classified information about intelligence sources and methods withheld pursuant to FOIA exemption (b) (1) also falls within the ambit of Section 102(A)(i)(1) of the

National Security Act, and section 6 of the CIA Act, as described above, it is coextensively exempt from disclosure under FOIA exemption (b) (3).<sup>33</sup>

90. Moreover, the CIA properly withheld exempt information and documents from release under FOIA exemption (b) (3) where disclosure would reveal CIA organization, functions, employee names, and the number of personnel employed by the CIA.

91. For example, the following is a partial list of exempt information that the CIA withheld from the released-in-part and denied-in-full documents listed in the Vaughn Index attached as Exhibit A:<sup>34</sup>

- CIA administrative information, including but not limited to names of CIA offices and routing information;
- the names of CIA employees;
- signatures of CIA employees;
- CIA employee identification numbers;
- CIA fax and telephone numbers;
- information regarding CIA intelligence methods, including information regarding operational and technological capabilities; and
- cryptonyms.

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<sup>33</sup> For a more complete discussion of FOIA exemption (b) (3), see Section II(A)(i).

<sup>34</sup> The CIA respectfully refers the Court to the Vaughn Index attached as Exhibit A for a specific accounting of the information withheld from each document.

Section 6 of the CIA Act and, thus, FOIA exemption (b) (3), unambiguously protect this information from disclosure.

**C. FOIA Exemption (b) (5)**

92. FOIA Exemption (b) (5) provides that FOIA does not apply to inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the agency. The CIA has reviewed the documents identified as exempt under Exemption (b) (5) on the attached Vaughn Index, and determined that they are intra-agency or inter-agency records that contain information that is protected from disclosure by the attorney work product.

93. *Attorney Work Product* - The attorney work product privilege protects information, mental impressions, legal analysis, conclusions, and opinions prepared by attorneys or other representatives of a party in anticipation of criminal, civil, or administrative proceedings. Those documents for which the work product privilege has been asserted, as specified in the attached Vaughn Index, contain information prepared by CIA attorneys in anticipation of criminal litigation.

94. Specifically, during the prosecutions of Timothy McVeigh and Terry Nichols in connection with the Oklahoma City bombing, the DOJ attorneys responsible for prosecuting these cases consulted with and requested advice and information in the

course of carrying out their discovery obligations and in compliance with court orders requiring them to gather certain information. CIA attorneys therefore cooperated with and assisted the DOJ prosecution team in locating and preparing material in connection with these litigation-related activities.

95. For example, document C05350602 is correspondence from a CIA attorney to a DOJ attorney regarding a draft Classified Information Procedures Act filing. Such correspondence necessarily reflects the CIA attorney's mental impressions, legal analysis, conclusions, and opinions. In other correspondence, a CIA attorney responds to DOJ requests for information in support of the Oklahoma Bombing criminal prosecution.<sup>35</sup>

96. Those records described in the attached Vaughn Index for which the CIA has asserted the work product privilege were prepared in contemplation of specific litigation. Those records were created with the expectation that they would be held in confidence, and they have been held in confidence. Accordingly, they are properly withheld pursuant to the attorney work product privilege.

97. *Attorney-Client Privilege* - The attorney-client privilege protects confidential communications between a client and his attorney. Those documents for which the attorney-client

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<sup>35</sup> See, for example, document numbers C05350594 and C05350855.

communication has been asserted, as specified in the attached Vaughn index, contain information prepared by the CIA for DOJ in support of the prosecutions of Timothy McVeigh and Terry Nichols in connection with the Oklahoma City bombing.

98. Specifically, the CIA and DOJ cooperated with a common interest in the criminal prosecution in the Oklahoma City bombing case. DOJ attorneys, on behalf of their client - the United States government - sought information from CIA in connection with their litigation obligations.

99. In the context of the prosecution, the CIA provided confidential information to DOJ, the entity authorized to speak on its behalf in relation to the subject matter of the communication. For instance, in document number C05350594, the CIA responded to a DOJ request for certain information in the context of the Oklahoma City bombing prosecution. In the letter, the CIA describes the searches conducted by the CIA, the results of the search, and advice as to other entities that should be consulted.

100. Likewise, in document number C05350590, the CIA provided information regarding a potential witness in the Oklahoma City bombing trial. In so doing, the CIA relayed CIA assessments about the individual.

101. I have reviewed the records described in the attached Vaughn index for which the CIA has asserted the attorney-client

privilege. These documents were prepared in consultation with DOJ by the CIA, with the joint expectation of the DOJ and the CIA that they would be held in confidence. Moreover, these documents have been held in confidence.

**D. FOIA Exemption (b) (6)**

102. FOIA exemption (b) (6) provides 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."<sup>36</sup> FOIA's protection of personal privacy is not affected by the type of record in which the agency stores the information. As noted in the Vaughn Index filed with this Declaration, the CIA invoked FOIA exemption (b) (6) to withhold exempt information contained in responsive documents on the grounds that: (1) the withheld information qualifies as "personnel," "medical" or "similar" files; (2) the individuals identified in these documents have a privacy interest in the withheld information; (3) the public does not have a legitimate interest in the disclosure of the withheld information; and (4) disclosure of the individuals' information would constitute a clearly unwarranted invasion of the individuals' personal privacy.

103. The CIA withheld information that would identify specific individuals, including their names, dates of birth,

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<sup>36</sup> 5 U.S.C. § 552(b) (6) (2000).

citizenship, and addresses. For example, the CIA withheld the following information about Terry Lynn Nichols and another individual from document number C05350854: a) social security numbers; b) home addresses and telephone numbers; and c) dates and places of birth. Similarly, in document C05350590, the CIA withheld the social security number and other personal information of an individual identified as a potential witness in the Oklahoma City Bombing case. Finally, the names of government employees, including FBI special agents, were withheld in certain CIA-originated records, including document numbers C05354209 and C05393308.

104. The individuals identified in the CIA records at issue have a privacy interest in this information. Individuals have a privacy interest in their names. In the case of non-CIA government employees that are only mentioned in passing, and particularly in the case of FBI special agents who, because of the nature of their duties, could be targeted or face increased danger if their names were disclosed, this privacy interest clearly outweighs any public interest in their specific identities.

105. Moreover, individuals generally also have privacy interests in their social security numbers, home addresses, telephone numbers, and dates of birth because disclosure of this information could lead to the unauthorized use of this

information for identity theft purposes or to initiate unwanted contact with the people identified, or their relatives.

Moreover, with respect to those individuals whose identities were completely withheld, as individuals named in CIA documents regarding the Oklahoma City bombing, if their identities were revealed, they would become targets for, at a minimum unsolicited media inquiries. Given the tenacity of today's media, there is a realistic probability that disclosure of the withheld information regarding individuals named in CIA-originated materials regarding the Oklahoma City Bombing will cause an interference with their personal privacy.<sup>37</sup> Publicly disclosing the individual's names and personal information also would likely raise their public profile and result in unsolicited inquiries from co-workers, neighbors, and friends. Whether the unwanted intrusions take the form of media telephone calls, written correspondence, personal solicitations for interviews, or questions from inquisitive neighbors, it is reasonable to anticipate these invasions of privacy will be significant.

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<sup>37</sup> Indeed, there already has been press coverage regarding information released in connection with this FOIA litigation. See Pamela Manson, FBI Tipster Said Salt Lake City Targeted in Wake of Oklahoma City Bombing, THE SALT LAKE TRIB., Mar. 26, 2009, available at [www.sltrib.com/ci\\_11994723?ADID](http://www.sltrib.com/ci_11994723?ADID).

106. The concerns associated with releasing the names and identifying information of certain individuals are even more profound where, as is the case here, certain of the CIA-originated documents reported information naming possible persons of interest and potential witnesses in the Oklahoma City Bombing. For example, document number C05354351 provides the name and address of an individual who, according to a person of questionable reliability, fit the description of one of the Oklahoma City bombers. Releasing the name of this individual, and the names of other individuals named as possible suspects in connection with the bombing, would undoubtedly subject them to intense questioning from a variety of sources, that is, the media, family, friends, neighbors, etc. And, even though the individuals named in these documents were never charged with any wrongdoing, disclosure of their names could place these individuals and their families in danger from individuals seeking retribution for the Oklahoma City bombing.

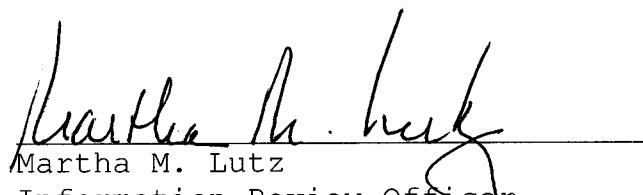
107. Similarly, documents C05350590 and C05354098 are CIA assessments and requests for additional information regarding individuals who provided information regarding the Oklahoma City bombing. As was detailed above, releasing the names of these individuals would undoubtedly cause an interference with their personal privacy.

108. As is set forth more fully in the attached Vaughn Index, based upon the nature of the information withheld pursuant to FOIA exemption (b) (6), I determined that individuals have privacy interests in that information. I examined the records with the respective public and private interests in mind and concluded that disclosure of the withheld information would be a clearly unwarranted invasion of personal privacy. Accordingly, the information is properly withheld pursuant to FOIA exemption (b) (6).

\* \* \* \*

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

Executed this 21 day of August, 2009.

  
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Martha M. Lutz  
Information Review Officer  
Director's Area  
Central Intelligence Agency